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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE**

13 MICHAEL REYNOLDS ENTERPRISE,  
14 INC. DBA REYNOLDS TERMITE  
15 CONTROL, individually and on behalf of  
16 all others similarly situated,

17 Plaintiff,

18 vs.

19 STATE COMPENSATION INSURANCE  
20 FUND, a public enterprise fund; and  
21 DOES 1 through 50, inclusive,

22 Defendants.

Case No. 19STCV05738  
Honorable Lawrence P. Riff

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR AN AWARD OF  
ATTORNEYS' FEES AND COSTS, AND  
NAMED PLAINTIFFS' SERVICE  
PAYMENTS; MEMORANDUM OF POINTS  
AND AUTHORITIES**

Hearing Date: March 29, 2023  
Time: 10:00 a.m.  
Dept. 7

Complaint Filed: February 21, 2019

23 And Related Case:

24 AMERICAN JETTER & PLUMBING,  
25 INC. and RESILIENCE TREATMENT  
26 CENTER, on behalf of themselves and all  
27 others similarly situated,

28 Plaintiffs,

vs.

STATE COMPENSATION INSURANCE  
FUND, a public enterprise fund; and  
DOES 1 through 50, inclusive,  
Defendants.

Case No. 19STCV36307  
Honorable Lawrence P. Riff

Amended Complaint Filed: August 10, 2020

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

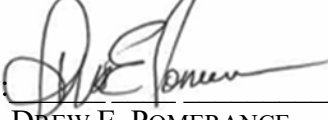
2 **PLEASE TAKE NOTICE** that on March 29, 2023 at 10:00 a.m., in Department 7 of the  
3 Superior Court of California, County of Los Angeles, 312 North Spring Street, Los Angeles,  
4 California 90012, Plaintiffs Michael Reynolds Enterprise, Inc. dba Reynolds Termite Control  
5 (“Reynolds”), American Jetter & Plumbing, Inc. (“Jetter”), and Resilience Treatment Center  
6 (“Resilience”) (collectively, “Named Plaintiffs”), will move and do hereby move this Court for an  
7 Order awarding: (a) counsel for Named Plaintiffs attorneys’ fees and costs in the total amount of  
8 \$19,500,000, which represents 30% of the Settlement Fund; and (b) Service Payments of \$25,000  
9 to each of the three Named Plaintiffs, for a total of \$75,000. Named Plaintiffs separately seek  
10 final approval of the Amended Class Action Settlement and Release (“Settlement Agreement”),  
11 final certification of the Settlement Class and final approval of the Notice Program in the  
12 concurrently filed Notice of Motion and Motion for Order Granting Final Approval of Class  
13 Action Settlement (“Motion for Final Approval”).

14 This motion is made on the grounds that the requested attorneys’ fees, costs and Service  
15 Payments are reasonable and in accordance with California law.

16 This motion is based upon this Notice of Motion; the Memorandum of Points and  
17 Authorities attached hereto; the Declarations of Drew E. Pomerance, Michael Liskow, Betsy C.  
18 Manifold, Scott M. Priz, Jason P. Sultzer, Jeremy Talavera, Timothy O’Connor, Michael  
19 Reynolds Enterprise, Inc. dba Reynolds Termite Control, American Jetter & Plumbing, Inc., and  
20 Resilience Treatment Center; the Settlement Agreement with exhibits previously filed with the  
21 Court; the [Proposed] Final Order and [Proposed] Final Judgment; the Motion for Final Approval  
22 and all papers filed in support; the argument of counsel; all files and records in these Actions; any  
23 argument and evidence which may be presented at the hearing on this motion; and such other  
24 matters as the Court may consider.

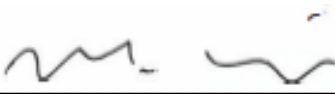
1 Dated: January 30, 2023

ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP

2  
3 By: 

4 DREW E. POMERANCE  
5 DAVID R. GINSBURG  
6 Attorneys for Plaintiff Michael Reynolds  
7 Enterprise, Inc. dba Reynolds Termite Control

8 Dated: January 30, 2023

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 After nearly four years of zealous advocacy in these novel and complex Actions, Plaintiffs  
4 Michael Reynolds Enterprise, Inc. dba Reynolds Termite Control (“Reynolds”), American Jetter  
5 & Plumbing, Inc. (“Jetter”), and Resilience Treatment Center (“Resilience”) (collectively,  
6 “Named Plaintiffs”<sup>1</sup>) and their counsel (“Plaintiffs’ Counsel”) achieved an exceptional non-  
7 reversionary class action settlement (“Settlement”) with defendant State Compensation Insurance  
8 Fund (“State Fund”) including a \$65,000,000 Settlement Fund and significant injunctive relief.  
9 In light of this excellent result, Plaintiffs’ Counsel request the Court award attorneys’ fees and  
10 costs in the amount of thirty percent (30%) of the Settlement Fund (\$19,500,000), which amount  
11 is inclusive of \$55,157.71 in reasonable costs.<sup>2</sup>

12 The all-cash \$65,000,000 Settlement Fund will provide Settlement Payments for 89,931  
13 Settlement Class Members, Administrative Costs incurred by the Claims Administrator, and any  
14 Attorneys’ Fees and Costs and Service Payments granted by the Court. ***All of the Settlement***  
15 ***Fund will be distributed and no monies will revert back to State Fund.***

16 While the Court need not (and should not) consider Plaintiffs’ Counsel’s lodestar in these  
17 common fund Actions, a lodestar cross-check reveals that the fees requested represent a 5.96  
18 multiplier on the reasonable lodestar of \$3,269,687.75. The multiplier is within the range of  
19 others awarded by courts in California and is justified in light of the significant risk Plaintiffs’  
20 Counsel undertook litigating these novel and complex Actions for nearly four years. While  
21 Named Plaintiffs are confident they would have prevailed at trial, State Fund offered vigorous  
22

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23 <sup>1</sup> All capitalized terms used and not otherwise defined herein have the definitions set  
24 forth in the Amended Class Action Settlement and Release (“Settlement Agreement”), a true and  
25 correct copy of which is attached as Exhibit 1 to the Declaration of Drew Pomerance in Support  
26 of Order Granting Final Approval of Class Action Settlement and for an Award of Attorneys’  
27 Fees and Costs, and Plaintiffs’ Service Payments (“Pomerance Final Declaration”), filed  
28 concurrently herewith.

<sup>2</sup> Because Plaintiffs’ Counsel seeks \$55,157.71 in reasonable costs from the \$19,500,000  
award, Plaintiffs’ Counsel’s request for the remaining \$19,444,842.29 for attorneys’ fees equates  
to less than 30% of the Settlement Fund.

1 defenses that may well have been successful prior to trial, at trial, or on appeal. Thus, the  
2 outcome was far from certain, and no court has previously ruled on certain dispositive issues in  
3 the Actions.

4 Plaintiffs' Counsel's efforts have included, *inter alia*, (i) researching and investigating the  
5 claims; (ii) drafting and updating multiple complaints in the Actions; (iii) propounding discovery;  
6 (iv) meeting and conferring on discovery disputes; (v) litigating dispositive issues in this Court as  
7 well as two other forums against State Fund; (vi) attending multiple mediations; (vii) engaging in  
8 extensive confirmatory discovery; and (viii) negotiating the terms of and preparing the initial  
9 settlement agreement and amended Settlement Agreement and their exhibits. Plaintiffs' Counsel  
10 will invest significant additional time in the future including, among other things, preparing for  
11 the Final Approval Hearing, responding to Settlement Class Member questions and objections (if  
12 any), and supervising the Claims Administrator's implementation of the terms of the Settlement  
13 Agreement, including the distribution of Settlement Payments.

14 The excellent result achieved here speaks for itself. The Settlement provides a \$65 million  
15 non-reversionary Settlement Fund as well as important injunctive relief. Additionally, Settlement  
16 Class Members overwhelmingly support the Settlement, with, as of yet, no entity or person  
17 having objected to the Settlement (or the request for attorneys' fees, costs and Service Payments  
18 to Named Plaintiffs), and only two opting out.<sup>3</sup>

19 Given the excellent and substantial recovery obtained for the Settlement Class, the novel  
20 and complex nature of the claims, the skill and expertise required, the substantial work performed,  
21 and the significant risks that Plaintiffs' Counsel undertook, the requested attorneys' fees and costs  
22 award is fair and reasonable.

23 Named Plaintiffs also actively participated in prosecuting the Actions, and fulfilled all  
24 their duties as putative class representatives, for the benefit of the entire Settlement Class.

---

26 <sup>3</sup> The objection and opt-out deadlines are not until March 1, 2023 for the majority of the  
27 Participating Settlement Class. Per the Court's January 26, 2023 Order Granting Joint  
28 Stipulation Regarding Notice to Additional Class Members ("Additional Notice Order"), 7,666  
Settlement Class Members ("New Class Members") will be sent notice by February 3, 2023, and  
will have until March 17, 2023 to opt out of or object to the Settlement.

1 Accordingly, Named Plaintiffs request Service Payments in the amounts of \$25,000 each, for a  
2 total of \$75,000, in recognition of their time and efforts devoted to this litigation and the risks  
3 they took in spearheading the Actions.

4 **II. SUMMARY OF THE CASE**

5 Named Plaintiffs commenced these Actions nearly four years ago, alleging that State Fund  
6 charged excess workers' compensation insurance premiums in two separate unlawful ways. For  
7 certain insureds, State Fund applied a tier modifier above 1.00 for at least one of the insureds'  
8 policies during the Class Period based on the mathematical application of the tier modifier  
9 algorithm to the insured's claims history (the "Algorithm Subgroup"). Named Plaintiffs allege,  
10 among other things, that State Fund did not disclose the tier modifier algorithm to the public or  
11 obtain approval from the California Department of Insurance ("DOI") before using the algorithm.

12 For certain other insureds, State Fund applied a tier modifier above 1.00 during at least  
13 one policy period during the Class Period due to State Fund's determination that the insured failed  
14 to provide during the underwriting process sufficient documentation of its claims history and  
15 other required information (the "Insufficient Documentation Subgroup").<sup>4</sup> Named Plaintiffs  
16 allege that State Fund illegally increased these Settlement Class Members' premiums by applying  
17 a tier score above 1.00 because State Fund never (i) notified the Subgroup members of their  
18 purported failure to provide sufficient documentation; (ii) provided them an opportunity to  
19 question or cure this purported failure; or (iii) disclosed to the Subgroup members the tier  
20 modifier they were being assigned or the basis for that tier modifier. *See* Jetter Plaintiffs' Second  
21 Amended Complaint ("*Jetter SAC*," attached as Ex. 3 to Declaration of Michael Liskow in  
22 Support of Order Granting Final Approval of Class Action Settlement and for an Award of  
23 Attorneys' Fees and Costs, and Plaintiffs' Service Payments ("*Liskow Final Decl.*")), ¶ 3. State  
24 Fund denies that any violations were committed, claims that it did obtain approval for use of the  
25 tier modifiers, and claims that it complied with all relevant laws at all times.

26 Before the Parties reached a settlement, Named Plaintiffs and State Fund were engaged in  
27

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28 <sup>4</sup> A Settlement Class Member could have been charged Additional Premiums for both of  
these reasons for separate policy periods during the Class Period.

1 extensive litigation in both state court and administrative proceedings before the DOI's  
2 Administrative Law Bureau. The multi-faceted litigation, during which State Fund provided  
3 class-related discovery, allowed Named Plaintiffs to thoroughly evaluate liability and potential  
4 damages, and provided a sufficient basis upon which to negotiate a settlement. The ultimate  
5 resolution was the result of protracted arm's-length negotiations following three mediation  
6 sessions with highly skilled and experienced mediator Bruce Friedman.

7 The Settlement was made on behalf of 89,931 members of the Settlement Class, and will  
8 provide each Participating Settlement Class Member with a cash payment without the need to  
9 complete or return a claim form. There are no coupons or vouchers. The proposed Settlement  
10 Class consists of:

11 All insureds of State Fund whose workers' compensation insurance premiums were  
12 calculated using a tier modifier in excess of 1.00, and where such calculation resulted in  
13 the payment of higher premiums than the insured would have otherwise paid, for any  
14 policy in effect from March 1, 2013, through November 30, 2022 (the date of preliminary  
15 approval of the Settlement).

16 Settlement Agreement, ¶ 2.1.26.

### 17 **III. FACTUAL AND PROCEDURAL BACKGROUND**

#### 18 **A. THE INSURANCE COMMISSIONER FINDS STATE FUND'S TIER 19 MODIFIER TO BE UNLAWFUL**

20 In late 2018, the Insurance Commissioner ruled that State Fund's use of tier modifiers  
21 over 1.00 to calculate one of its policyholder's premium was unlawful in the decision *In the*  
22 *Matter of the Appeal of A-Brite Blind & Drapery Cleaning* ("A-Brite") (Cal. Ins. Comm'r,  
23 November 16, 2018) AHB-WCA-17-26). *See* Pomerance Final Decl., ¶ 3. Specifically, the  
24 Insurance Commissioner held that State Fund's use of the tier rating algorithm to calculate the tier  
25 modifier and rating plan modifier of insured A-Brite Blind & Drapery Cleaning ("A-Brite") was  
26 impermissible because, *inter alia*, State Fund failed to file the algorithm with its rate filing, and  
27 also failed to make the algorithm publicly available to its insureds. *See id.*, ¶ 4. The Insurance  
28 Commissioner ordered State Fund to recalculate A-Brite's premium without applying the tier  
modifiers, and to refund A-Brite the excess premiums paid. *See id.*

1                   **B.       REYNOLDS FILES ITS CLASS ACTION**

2           Because State Fund applied its tier modifiers across the board in a consistent and uniform  
3 manner to a large group of policyholders, Reynolds Counsel, Roxborough Pomerance Nye &  
4 Adreani (“RPNA”), suspected that A-Brite could not have been the only policyholder who paid  
5 additional premiums due to State Fund’s application of a tier modifier. *See* Pomerance Final  
6 Decl., ¶ 7. When Reynolds consulted with RPNA regarding issues with its workers’  
7 compensation premiums, RPNA learned that its client was likewise subject to a tier rating  
8 modifier in excess of 1.0. Accordingly, now convinced that a legal challenge to the propriety of  
9 tier modifiers was suitable for class treatment, RPNA filed its class action complaint against State  
10 Fund in *Michael Reynolds Enterprise, Inc. dba Reynolds Termite Control v. State Compensation*  
11 *Insurance Fund*, Case No. 19STCV05738, on February 21, 2019 (the “*Reynolds class action*”).  
12 *See* Pomerance Final Decl., Ex. 2.<sup>5</sup>

13                   **C.       JETTER FILES A CLASS ACTION**

14           In 2019, Jetter began investigating the basis for certain premiums charged by State Fund,  
15 including the manner in which the rating plan modifier (which includes the tier modifier) affected  
16 the calculation of the premiums. *See* Liskow Final Decl., ¶ 8. Jetter made multiple requests to  
17 State Fund to confirm the basis for the calculation of its premium, as well as to simply provide a  
18 breakdown of the components of the rating plan modifier (including the tier modifier). *See id.*  
19 After State Fund consistently refused to provide this information, and following further  
20 investigation by Jetter Counsel, Jetter filed its class action complaint against State Fund in  
21 *American Jetter & Plumbing, Inc. v. State Compensation Insurance Fund*, Case No.  
22 19STCV36307, on October 10, 2019 (the “*Jetter class action*”). *See* Liskow Final Decl., Ex. 1.  
23 This case, like the *Reynolds class action*, was also assigned to this Court. *See* Liskow Final Decl.,  
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26           <sup>5</sup> Reynolds received a 1.50 tier modifier for its State Fund policy effective January 1,  
27 2015 to January 1, 2016, resulting in a \$22,871.83 increase in premium paid by Reynolds to  
28 State Fund. *See id.*, ¶ 21. Reynolds further received a 1.10 tier modifier for its State Fund  
policy effective January 1, 2017 to January 1, 2018, increasing Reynolds’ premium due to State  
Fund by \$4,556.57. *See id.*, ¶ 22.

1 ¶ 8.<sup>6</sup> On October 23, 2019, the Court found the *Jetter* class action to be related to the *Reynolds*  
2 class action, and designated *Reynolds* as the lead case. *See* Liskow Final Decl., ¶ 8.

3 Jetter filed an amended complaint on August 10, 2020, which added Resilience as a  
4 named plaintiff. *See* Liskow Final Decl., Ex. 2.<sup>7</sup>

5 **D. REYNOLDS IS STAYED PENDING ADMINISTRATIVE PROCEEDINGS**

6 State Fund initially attempted to have the *Reynolds* class action dismissed through an anti-  
7 SLAPP motion, which the Court denied. *See* Pomerance Final Decl., ¶ 10. State Fund then filed  
8 a demurrer, which sought to dismiss the case outright on a variety of theories or, in the  
9 alternative, to stay the case and refer it to the Insurance Commissioner pursuant to the primary  
10 jurisdiction doctrine. This Court did not sustain State Fund’s demurrer, but did order the  
11 *Reynolds* class action stayed under the primary jurisdiction doctrine, and referred to the Insurance  
12 Commissioner the issue of whether State Fund’s tier modifier was lawful when used in  
13 calculating the premiums paid by Reynolds and putative class plaintiffs from 2013 to the present.  
14 *See* Pomerance Final Decl., ¶ 10. The Insurance Commissioner’s Administrative Hearing Bureau  
15 accepted the referral through an administrative appeal titled *In the Matter of the Appeal of*  
16 *Michael Reynolds Enterprise, Inc., dba Reynolds Termite Control*, File Number AHB-WCA-20-  
17 13 (“*Reynolds* Administrative Appeal”). *See* Pomerance Final Decl., ¶ 10. The case was assigned  
18 to Administrative Law Judge (“ALJ”) Clarke de Maigret. *See id.*

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22 <sup>6</sup> Jetter received a 1.50 tier modifier for its State Fund policy effective January 13, 2017  
23 through January 13, 2018, resulting in an increase in premium paid by Jetter to State Fund of  
24 approximately \$60. *See* Liskow Final Decl., Ex. 3, ¶ 29. Jetter received a 1.50 tier modifier for  
25 its State Fund policy effective January 13, 2018 through January 13, 2019, resulting in an  
26 increase in premium paid by Jetter to State Fund of approximately \$8,749. *See id.*, ¶ 31. Jetter  
also received a 1.20 tier modifier for its State Fund policy effective January 13, 2019 through  
March 11, 2019, resulting in an increase in premium paid by Jetter to State Fund of  
approximately \$2,013. *See id.*, ¶ 33.

27 <sup>7</sup> Resilience received a 1.50 tier modifier for its State Fund policy effective June 9, 2016,  
28 through June 9, 2017, resulting in an increase in premium paid by Resilience to State Fund of  
approximately \$19,600. *See id.*, ¶ 35.





1 petition was barred by the statute of limitations. *See id.*, ¶ 13. Accordingly, State Fund could no  
2 longer challenge or contest the Commissioner’s *A-Brite* decision. *See id.* RPNA notified the ALJ  
3 in the administrative action of the Court’s ruling. Judgment was thereafter entered against State  
4 Fund, which it then appealed. *See id.*

5 While State Fund’s appeal was pending, the ALJ in the *Reynolds* Administrative Appeal  
6 asked the parties to brief the issue of whether the *A-Brite* decision should now be given collateral  
7 estoppel effect, given that judgment had been entered against State Fund based on its writ petition  
8 being barred by the statute of limitations. *See id.*, ¶ 14. Reynolds Counsel filed a brief which  
9 argued that it would now be appropriate to give collateral estoppel effect to the *A-Brite* decision  
10 because State Fund no longer had an avenue for direct attack on that decision, and instead was  
11 only able to appeal the judgment applying the statute of limitations. *See id.*, ¶ 15. The ALJ  
12 agreed with Reynolds, and accordingly on June 8, 2021, he issued a ruling in the *Reynolds*  
13 Administrative Appeal that State Fund could no longer litigate the issues already determined by  
14 the Insurance Commissioner in *A-Brite*. *See id.*

15 The ALJ’s determination that collateral estoppel would now prevent State Fund from  
16 relitigating the issues in the *A-Brite* decision was a devastating blow to State Fund. *See id.*, ¶ 16.  
17 Without the ability to relitigate and contest the Commissioner’s findings in *A-Brite*, State Fund  
18 would be hard pressed to prevail in the administrative proceeding. *See id.* This also meant that  
19 the Parties would then return to this court with a ruling from the DOI that State Fund’s tier rating  
20 modifier was unlawful. *See id.* Pursuant to the primary jurisdiction doctrine, this Court could  
21 well have followed the administrative decision and reached the same conclusion, thereby resulting  
22 in a class-wide violation by State Fund. *See id.*

23 The implication of the ALJ’s collateral estoppel ruling was immediate and not lost on  
24 State Fund. *See id.*, ¶ 17. Shortly after the ALJ’s ruling, State Fund wrote directly to the Chief  
25 Administrative Law Judge at the DOI, and took the rather unprecedented step of asking her to  
26 “correct” the ALJ’s rulings regarding collateral estoppel and to also immediately send the matter  
27 to the Insurance Commissioner to intercede and overturn the ALJ’s collateral estoppel rulings.  
28 *See id.* Reynolds Counsel immediately responded on June 14, 2021, expressing grave concern

1 over the propriety of State Fund’s letter to Chief ALJ Rossi. *See id.*, ¶ 18. Reynolds also  
2 requested that it be permitted to file a brief seeking terminating sanctions against State Fund. *See*  
3 *id.* Chief ALJ Rosi refused State Fund’s request to interfere with the *Reynolds* Administrative  
4 Appeal. *See id.*

5 Nevertheless, in response to Reynolds’ request for terminating sanctions, the ALJ ordered  
6 State Fund to submit a reply by July 23, 2021. *See id.*, ¶ 19. However, briefing on the sanctions  
7 never occurred because the Parties agreed to attend a third mediation session on August 5, 2021  
8 before Mr. Friedman. *See id.* Although progress was made, no settlement was reached at that  
9 session. *See id.*

10 Meanwhile, on July 6, 2021, having appealed the grant of summary judgment by the  
11 Sacramento Superior Court on its petition for writ of mandate in *A-Brite*, State Fund filed an  
12 emergency motion with the Third District Court of Appeal, seeking to stay the ALJ’s collateral  
13 estoppel order in the *Reynolds* administrative proceeding. *See id.*, ¶ 20. On July 21, 2021, the  
14 RPNA firm filed an opposition on behalf of A-Brite to the emergency motion, and a few weeks  
15 later, on August 17, 2021, the Court of Appeal denied State Fund’s emergency motion. *See id.*

16 On the same day that the court of appeal denied State Funds’ emergency motion, Mr.  
17 Friedman made a mediator’s proposal of \$65,000,000, and a few days later, on August 21, 2021,  
18 all parties accepted the proposal and the case settled in principle. *See id.*, ¶ 21.

## 19 **G. INVESTIGATION AND DISCOVERY**

20 Before and during the course of these civil and administrative proceedings, Named  
21 Plaintiffs and their counsel separately conducted thorough investigations of the tier modifiers and  
22 the manner in which they were calculated by State Fund, including reviews of all relevant State  
23 Fund rate filings with the DOI. *See Pomerance Final Decl.*, ¶ 22; *Liskow Final Decl.*, ¶ 13.  
24 Plaintiffs’ Counsel also conducted detailed investigations into the size of the class, its  
25 composition, and the amount of potential damages. *See Pomerance Final Decl.*, ¶ 22; *Liskow*  
26 *Final Decl.*, ¶ 13. Plaintiffs’ Counsel have collectively reviewed thousands of pages of  
27 documents, transcripts, pleadings, and correspondence. *See Pomerance Final Decl.*, ¶ 22; *Liskow*  
28 *Final Decl.*, ¶ 13. This includes communications between DOI personnel and State Fund

1 regarding State Fund’s tier modifiers and rate filings. *See* Pomerance Final Decl., ¶ 22; Liskow  
2 Final Decl., ¶ 13.

3 In addition, a DOI witness was deposed in the *Reynolds* Administrative Appeal and  
4 testified about the tier modifiers and State Fund’s rate filings. *See* Pomerance Final Decl., ¶ 22.  
5 *Jetter* Plaintiffs also served on State Fund, and received responses to, 26 Requests for Admission,  
6 19 Requests for Production, and four Interrogatories. *See* Liskow Final Decl., ¶ 11. Finally, as  
7 discussed further *infra*, Plaintiffs’ Counsel extensively negotiated with State Fund regarding the  
8 scope of confirmatory discovery, ultimately resulting in significant information about the  
9 Settlement Class being provided to Named Plaintiffs. *See* Pomerance Final Decl., ¶¶ 24-25;  
10 Liskow Final Decl., ¶ 14.

#### 11 **H. MEDIATIONS**

12 The Parties began negotiating a potential class wide settlement of the *Reynolds* and *Jetter*  
13 actions in November 2020. *See* Pomerance Final Decl., ¶ 23; Liskow Final Decl., ¶ 15. The  
14 Parties participated in three spirited mediation sessions of arm’s-length and informed negotiations  
15 over the course of eight months with experienced mediator Bruce Friedman. *See* Pomerance  
16 Final Decl., ¶ 23; Liskow Final Decl., ¶ 15. The mediations occurred in January, March, and  
17 August 2021, and were attended by all Parties, as well as by a representative of the DOI. *See*  
18 Pomerance Final Decl., ¶ 23; Liskow Final Decl., ¶ 15. The third mediation on August 5, 2021  
19 led to a mediator’s proposal, which all Parties accepted after considering it for several days. *See*  
20 Pomerance Final Decl., ¶¶ 19-21; Liskow Final Decl., ¶ 15. This resulted in a class-wide  
21 agreement in principle, subject to additional confirmatory discovery and negotiation of all final  
22 terms, as described below. *See* Pomerance Final Decl., ¶ 21.

#### 23 **I. POST-MEDIATION CONFIRMATORY DISCOVERY**

24 After reaching a settlement in principle, Plaintiffs’ Counsel negotiated extensively with  
25 State Fund regarding each aspect of the initial settlement agreement including the confirmatory  
26 discovery to be provided. State Fund ultimately agreed to provide substantial confirmatory data  
27 regarding the Settlement Class Members. *See* Declaration of M. Kate Smith (“Smith Decl.,” Ex  
28 O to Settlement Agreement).

1 During the confirmatory discovery process, Plaintiffs’ Counsel learned that a significant  
2 number of Settlement Class Members were assigned a tier modifier in excess of 1.0 not due to  
3 State Fund applying its allegedly undisclosed algorithm (the Algorithm Subgroup), but instead  
4 because State Fund unilaterally determined that the Settlement Class Member failed to provide  
5 State Fund with information necessary for State Fund to accurately assess the insureds’  
6 underwriting risk (the Insufficient Documentation Subgroup). State Fund would automatically  
7 assign a tier modifier of either 1.25 or 1.5 to that policyholder, without applying its algorithm to  
8 the insured’s loss history.<sup>8</sup>

9 Named Plaintiffs contended that this automatic assignment of an increased tier modifier to  
10 the Insufficient Documentation Subgroup (and plaintiff Resilience is a member of the Subgroup)  
11 breached State Fund’s insurance policies with the Subgroup, and violated provisions of the  
12 California Insurance Code as well as the California Unfair Competition Law (“UCL”).  
13 Accordingly, as part of the Settlement Agreement, Jetter Plaintiffs filed a second amended  
14 complaint alleging that State Fund (i) never notified the Subgroup members of their purported  
15 failure to provide sufficient documentation; (ii) provided them an opportunity to question or cure  
16 this purported failure; or (iii) disclosed to the Subgroup members the tier modifier they were  
17 being assigned or the basis for that tier modifier. *See Jetter SAC*, ¶ 3.

18 As part of the confirmatory discovery process, State Fund confirmed that as of August 31,  
19 2021 – soon after the Parties reached an agreement on the amount of the Settlement Fund – there  
20 were 83,306 Settlement Class Members who at some point during the Class Period paid  
21 Additional Premiums due to being assigned a tier modifier of more than 1.0.<sup>9</sup> Of these, 47,082  
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23 <sup>8</sup> A single Settlement Class Member could have been charged Additional Premiums for  
24 one or both of these reasons, and therefore be a member of both the Algorithm Subgroup and  
25 Insufficient Documentation Subgroup. *See Smith Decl.*, ¶ 16.

26 <sup>9</sup> *See Smith Decl.*, ¶ 10. At the time the Motion for Preliminary Approval was submitted,  
27 State Fund had analyzed Settlement Class Member data through August 31, 2021. Prior to the  
28 date of the Final Approval hearing, the parties will submit updated data up through the end of  
the Class Period, November 30, 2022. *See Declaration of Timothy O’Connor* (“O’Connor  
Decl.”), ¶ 8.

1 were members of the Algorithm Subgroup while 44,044 were members of the Insufficient  
2 Documentation Subgroup.<sup>10</sup> *See id.* at ¶¶ 14-15.

3 Plaintiffs’ Counsel also learned that these 83,306 Settlement Class Members paid \$644  
4 million in total Additional Premiums through August 31, 2021. *See id.*, ¶ 13. However, that same  
5 group also collectively received \$357 million in discounts to their premiums due to the  
6 application of tier modifiers below 1.0 for policies during this period. *See id.* Thus, the *net*  
7 *Additional Premiums* paid by the Settlement Class Members due to the application of the tier  
8 modifiers was just under \$287 million. *See id.*

9 **J. PRELIMINARY APPROVAL OF SETTLEMENT**

10 On May 27, 2022, Named Plaintiffs submitted their Motion for Order Granting  
11 Preliminary Approval of Class Action Settlement, Conditional Certification, Approval of Class  
12 Notice, and Setting of Final Approval Hearing (“Motion for Preliminary Approval”). On August  
13 29, 2022, the Court issued an order requiring Named Plaintiffs to reconsider the initial settlement  
14 agreement in light of certain portions of the Court’s Checklist for Preliminary Approval of Class  
15 Action Settlement (the “Checklist Order”). In response to the Checklist Order, Named Plaintiffs  
16 engaged in significant negotiations with State Fund in order to reach agreement on the  
17 modifications to the Settlement requested by the Court, with Named Plaintiffs submitting the  
18 amended Settlement Agreement and supplementary briefing to the Court on October 26, 2022.  
19 *See Pomerance Final Decl.*, ¶ 28; *Liskow Final Decl.*, ¶ 16. On November 30, 2022, the Court  
20 issued its Preliminary Approval Order. *See Pomerance Final Decl.*, ¶ 28.

21 After the Court preliminarily approved the Settlement, Plaintiffs’ Counsel worked closely  
22 with the Claims Administrator to supervise the implementation of the Notice Program. *See*  
23 *Pomerance Final Decl.*, ¶ 29; *Liskow Final Decl.*, ¶ 17. These efforts included reviewing and  
24 editing the language and format of the Settlement Website and the notice materials sent to the  
25 Settlement Class. *See Pomerance Final Decl.*, ¶ 29; *Liskow Final Decl.*, ¶ 17. Plaintiffs’ Counsel  
26 also worked with the Claims Administrator to ensure prompt responses to each Class Member  
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28 <sup>10</sup> The total exceeds 83,306 because some Settlement Class Members are members of  
both Subgroups. *See Smith Decl.*, ¶ 16.

1 inquiry regarding the Settlement. *See* Pomerance Final Decl., ¶ 29; Liskow Final Decl., ¶ 17.

#### 2 **IV. PLAINTIFFS' COUNSEL ACHIEVED A SUPERB RESULT FOR THE CLASS**

3 The Settlement provides substantial economic benefits to Participating Settlement Class  
4 Members. The Settlement establishes an all-cash Settlement Fund of \$65,000,000.00. No portion  
5 of the Settlement Fund will revert to State Fund. *See id.* at ¶ 2.4.1. The Settlement also provides  
6 significant injunctive relief that will increase the transparency of the tier modifier system and  
7 allow the Settlement Class and other workers' compensation insurance consumers to make better  
8 informed decisions about their premium rates and insurance options. *See id.* at ¶ 2.5. Named  
9 Plaintiffs provided extensive details of the Settlement Agreement terms, including the allocation  
10 plan, in the concurrently filed Motion for Final Approval. In order to avoid repeating those  
11 details here, Named Plaintiffs refer the Court to those filings. *See* Motion for Final Approval,  
12 Sections II-III; Pomerance Final Declaration, ¶¶ 30-32.

#### 13 **V. AGREEMENTS REGARDING ATTORNEYS' FEES**

14 Plaintiffs' Counsel seek a joint award of Attorneys' Fees and Costs based on their  
15 collective efforts in securing the Settlement of the Actions. Plaintiffs' Counsel entered into an  
16 agreement among themselves as to the division of any Attorneys' Fees and Costs granted by the  
17 Court in the Actions ("Fee Agreement"). Named Plaintiffs have each been informed of the Fee  
18 Agreement and consented in writing. *See* Pomerance Final Decl., ¶ 49; Liskow Final Decl., ¶ 26.

#### 19 **VI. LEGAL ARGUMENT**

20 There are two generally accepted methods for determining an award of attorneys' fees  
21 under California law: the percentage-of-the-recovery method and the lodestar-multiplier method.  
22 As discussed *infra*, the California Supreme Court has held that an award of attorneys' fees in a  
23 class action can be calculated solely by reference to a percentage of any common fund created.  
24 *See Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 503. As discussed below, Plaintiffs'  
25 Counsel's requested award of 30% of the Settlement Fund (\$19,500,000) for attorneys' fees and  
26 costs is appropriate under the percentage-of-recovery method, particularly given the magnitude of  
27 the Settlement's monetary value (\$65 million), the great risk Plaintiffs' Counsel undertook in this  
28 novel and complex nearly four-year litigation, and their superb skill in litigating the Actions to

1 their noteworthy conclusion. And if the Court elects to consider (and it need not do so here) a  
2 lodestar cross-check, the requested attorneys’ fees are equally appropriate under that methodology  
3 for the same reasons.

4 **A. The Requested Attorneys’ Fees Are Reasonable Under the Percentage of the**  
5 **Common Fund Method Approved by the California Supreme Court**

6 In 2016, the California Supreme Court held that an award of attorneys’ fees may be based  
7 solely on a percentage of the common fund created. See *Laffitte v. Robert Half Int’l Inc.*, *supra*, 1  
8 Cal. 5th at p. 503 (“when class action litigation establishes a monetary fund for the benefit of the  
9 class members, and the trial court in its equitable powers awards class counsel a fee out of that  
10 fund, the court may determine the amount of a reasonable fee by choosing an appropriate  
11 percentage of the fund created.”). The common fund doctrine is generally held applicable “where  
12 plaintiffs’ efforts have affected the creation or preservation of an identifiable fund of money out  
13 of which the fees will be paid.” *Jordan v. Dep’t of Motor Vehicles* (2002) 100 Cal.App.4th 431,  
14 446-447 (citing *Serrano v. Priest* (1977) 20 Cal.3d 25, 37-38). As the Supreme Court held in  
15 *Laffitte*, the advantages of the percentage method—including the relative ease of calculation,  
16 alignment of incentives between counsel and the class, an approximation of market conditions in  
17 a contingency case, and the encouragement it provides counsel to seek the greatest recovery and  
18 avoid unnecessarily prolonging litigation—make the percentage method a “valuable tool.”  
19 *Laffitte v. Robert Half Int’l Inc.*, *supra*, 1 Cal.5th at p. 503.

20 This Settlement is a textbook example of a true common fund case where a reasonable fee  
21 may be determined by an appropriate percentage. Here, Plaintiffs’ Counsel’s efforts created a \$65  
22 million all-cash common fund, with no reversion. There are no vouchers or coupons. Every  
23 eligible Class Member will receive a check without having to submit a claim.

24 Thus, in a case such as this, California courts generally prefer the percentage approach to  
25 other methods for awarding attorneys’ fees. See, e.g., *Estrada v. Royalty Carpet Mills* (Mar. 23,  
26 2022) No. G059681, 2022 Cal. App. Unpub. LEXIS 1790, at \*2 (“Typically, in class action  
27 settlements, the parties settle for a gross amount, known as a common fund, and plaintiffs request  
28 a percentage of the common fund (frequently one-third) as attorney fees.”) (citing, *inter alia*,  
*Laffitte v. Robert Half Int’l Inc.*, *supra*, 1 Cal.5th at p. 486); *Vasquez v. Coast Valley Roofing*,

1 *Inc.*, 266 F.R.D. 482, 491 (E.D.Cal. 2010) (“a percentage of the common fund [to assess fees] is  
2 particularly appropriate when each member of a certified class has an undisputed and  
3 mathematically ascertainable claim”); *see also* Thomas E. Willing, *Empirical Study of Class*  
4 *Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules*  
5 4, 71 (1996) (noting that Northern District of California has determined fees by percentage of  
6 recovery 6:1 over the lodestar approach). Moreover, “the percentage-of-the-fund method is  
7 appropriate where — as here — the amount of the settlement is fixed without any reversionary  
8 payment to the defendant.” *Thieriot v. Celtic Ins. Co.* (N.D.Cal. Apr. 21, 2011) No. C 10-04462  
9 LB, 2011 U.S. Dist. LEXIS 44852, at \*15 (Beeler, M.J.) (citations omitted).

10 When applying a percentage-of-the-fund methodology in common fund settlements such  
11 as this, California courts typically award an average of one-third (33⅓%) of the common fund  
12 amount. As a California court recently confirmed, “fee awards in class actions average around  
13 one-third of the recovery regardless of whether the percentage method or the lodestar method is  
14 used.” *Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 545 (quoting *Chavez*  
15 *v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11). *See also Laffitte v. Robert Half Int’l Inc.*,  
16 *supra*, 1 Cal.5th at p. 487 (upholding grant of one-third of common fund); *In re Consumer*  
17 *Privacy Cases* (2009) 175 Cal.App.4th 545, 557 n.13 (“Empirical studies show that, regardless  
18 whether the percentage method or the lodestar method is used, fee awards in class actions average  
19 around one-third of the recovery.”) (quoting *Chavez v. Netflix, Inc.*, *supra*, 162 Cal.App.4th at p.  
20 66 n.11).<sup>11</sup>

21 The requested 30% fee award, inclusive of costs, is also clearly reasonable when  
22 compared to the customary terms of contingent fee contracts negotiated in private litigation,  
23 typically in the range of 33%-40%. *See In re Consumer Privacy Cases, supra*, 175 Cal. App. 4th

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24 <sup>11</sup> *See also Knight v. Red Door Salons, Inc.* (N.D.Cal. Feb. 2, 2009) No. 08-01520 SC,  
25 2009 U.S. Dist. LEXIS 11149, at \*17 (“fee awards in class actions average around one-third of  
26 the recovery”) (internal quotations omitted); *Zamora v. Lyft, Inc.* (N.D.Cal. Sept. 26, 2018) No.  
27 3:26-cv-02558-VC, 2018 U.S. Dist. LEXIS 166618, at \*10 (one-third award “consistent with the  
28 Ninth Circuit authority and the practice in this District”); *Barnes v. The Equinox Grp., Inc.*  
(N.D.Cal. Aug. 2, 2013) No. 10-cv-3586 LB, 2013 U.S. Dist. LEXIS 109088, at \*4 (awarding  
fees of 33% of common fund where “[c]ounsel assumed substantial risk, litigated risk on a  
contingent basis, and are receiving fees that are fair considering those factors”).



1 at p. 557 (common fund fee award should be “within the range of fees freely negotiated in the  
2 legal marketplace in comparable litigation”); *Fernandez v. Victoria Secret Stores, LLC* (C.D.Cal.  
3 July 21, 2008) No. 06-cv-4149-MMM-SH, 2008 U.S. Dist. LEXIS 123546, at \*56 n.59 (citing  
4 study showing jurisdictions where standard contingency fee rates are 33% if case settles before  
5 trial, 40% if trial commences, and 50% if trial completed).

6 In sum, the percentage-of-the-fund method is most appropriate here because the  
7 Settlement results in the immediate creation of an identifiable, non-reversionary \$65 million cash  
8 common fund from which the Administrative Costs, court-approved Attorneys’ Fees and Costs,  
9 and Service Payments will be paid. Plaintiffs’ Counsel’s request is even more reasonable given  
10 that the 30% award requested not only is somewhat less than the typical award of one-third, but it  
11 is also inclusive of all out-of-pocket costs.

## 12 **B. The Fee Request is Fair and Reasonable**

13 In considering the reasonableness of the fees requested under the percentage method,  
14 California courts consider several factors including (1) the results obtained; (2) the risks, novelty  
15 and difficulty of the case; (3) the skill of counsel; (4) the contingent nature of the case; and (5)  
16 awards in similar cases. See *Laffitte v. Robert Half Int’l Inc.*, *supra*, 1 Cal.5th at p. 504 (holding  
17 that court may consider various factors in determining reasonableness of fees); *Ketchum v. Moses*  
18 (2001) 24 Cal.4th 1122, 1132 (applying these factors in considering fee award under lodestar-  
19 multiplier method). Here, application of the above factors supports the requested fee award.

### 20 **1. The Excellent Result Achieved for the Class Supports the Fee Request**

21 “The overall result and benefit to the class from the litigation is the most critical factor in  
22 granting a fee award.” *In re Omnivision Technologies, Inc.* (N.D.Cal. 2008) 559 F.Supp.2d 1036,  
23 1046. “The lodestar method better accounts for the amount of work done, while the percentage  
24 approach more accurately reflects the results achieved.” *Karton v. Ari Design & Constr., Inc.*  
25 (2021) 61 Cal.App.5th 734, 744. “The result achieved is a significant factor to be considered in  
26 making a fee award.” *Spann v. J.C. Penney Corp.*, 211 F.Supp.3d 1244, 1263 (C.D.Cal. 2016)  
27 (citations omitted).

28 As previously detailed, all Settlement Funds will automatically be paid to Participating

1 Settlement Class Members without having to submit a claim. This is an exceptional result. *See*  
2 *Carlin v. DairyAmerica, Inc.* (E.D.Cal. 2019) 380 F. Supp.3d 998, 1022 (settlement providing  
3 that all funds go to claimants with no reversion was “exceptional result” weighing in favor of  
4 33.3%, or \$13.3 million). The average payment to each Participating Settlement Class Member  
5 will be \$503,<sup>12</sup> a substantial sum, and in no event less than \$100. *See* Settlement Agreement,  
6 ¶ 2.4.5(a).

7 The Settlement also provides real and meaningful injunctive relief that will benefit  
8 Settlement Class Members and other insureds for years to come, with State Fund agreeing to  
9 make various improvements in the transparency of its tier modifier system. The injunctive relief  
10 requires State Fund to: (1) not file any portion of any of its rate filings pertaining to tier rating or  
11 tier modifiers confidentially with the DOI for at least the next five years; (2) make all tier rating  
12 rate filings publicly available as long as the applicable statute remains in effect; (3) identify the  
13 tier modifier on certain insurance policy documents provided to insureds, in the same manner as it  
14 does now for brokers; and (4) provide to any policyholder or broker who inquires a complete and  
15 fair explanation as to how and why State Fund applied a particular tier modifier to the  
16 policyholder. *See* Settlement Agreement, ¶ 2.5. The injunctive relief will also help State Fund’s  
17 current and prospective policyholders make sound and informed decisions about their workers’  
18 compensation premiums.<sup>13</sup>

19 The highly favorable terms achieved by Plaintiffs’ Counsel’s skill and perseverance  
20 support Plaintiffs’ Counsel’s request for an award of attorneys’ fees and costs amounting to 30%  
21 of the Settlement Fund. Under any reasonable view, this is an excellent result for the class.  
22

23 \_\_\_\_\_  
24 <sup>12</sup> After deducting anticipated claim expenses \$186,500, an attorneys’ fee and costs  
25 award of 30%, or \$19,500,000, and Service Payments of \$75,000 to Named Plaintiffs, these  
26 deductions would leave \$45,238,500 to be distributed as Settlement Payments. If all 89,931  
Settlement Class Members participate in the Settlement, their average recovery will be \$503.

27 <sup>13</sup> Although this injunctive relief clearly has substantial value, Plaintiffs’ counsel have  
28 not sought to quantify it or to attribute any numerical amount to it in terms of valuing the total  
settlement in light of the readily quantifiable and significant value of the cash Settlement  
Payments to be made to Settlement Class Members.

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## 2. The Risks of Litigating the Actions Were Substantial

“Risk is a relevant circumstance.” *Carlin v. DairyAmerica, Inc.*, *supra*, 380 F.Supp.3d at p. 1020 (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002), and awarding one-third fee). *See also Salton Bay Marina, Inc. v. Imperial Irrigation Dist.* (1985) 172 Cal.App.3d 914, 955 (“‘riskiness,’ difficulty or contingent nature of the litigation is a relevant factor in determining a reasonable attorney fee award”). Courts routinely find that this factor supports a fee request of one-third of the common fund. *See Barnes v. The Equinox Grp., Inc.*, *supra*, 2013 U.S. Dist. LEXIS 109088, at \*4 (awarding fees in the amount of 33% of the common fund where “[c]ounsel assumed substantial risk...”); *see also In re Pacific Enterprises* (9th Cir. 1995) 47 F.3d 373, 379 (awarding 33% of common fund for attorneys’ fees out of \$12 million settlement because of complexity of issues and risks).

There were many risks inherent in litigating the Actions, as detailed in the Motion for Final Approval. *See id.*, Section V.C.1. These included, *inter alia*, two equitable arguments raised by State Fund, either of which might defeat the Actions on their merits, or significantly reduce their value. First, State Fund contends that even if its tier rating modifier is found to be illegal, it nevertheless acted in accordance with DOI regulations and protocols, and thus the tier ratings should only be prohibited on a *prospective basis*. *See Pomerance Final Decl.*, ¶ 35. If this argument were successful, it would eliminate any damages for the Settlement Class. Second, State Fund contends that because almost 85,000 policyholders (who are not members of the Settlement Class) received over \$1 billion in premium reductions due to tier modifiers below 1.0, under the California workers’ compensation system and equitable principles, it cannot be liable to policyholders with tier modifiers over 1.0 unless it receives a corresponding credit for those policyholders who paid less in premiums because of tier modifiers below 1.0. *See Pomerance Final Decl.*, ¶ 39. Therefore, if this equitable argument succeeds, it would result in a significantly reduced award to the Settlement Class, with some Settlement Class Members potentially receiving no damages at all.

The availability of the above arguments, among others, represents a significant risk to Named Plaintiffs of dismissal of the Actions or reduced damages. *See, e.g., Officers for Justice v.*

1 *Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 624 (essence of settlement is compromise, “a  
2 yielding of absolutes and an abandoning of highest hopes.”) (citation omitted). Instead of  
3 gambling that they can overcome *all* of these risks, Named Plaintiffs, after careful consideration,  
4 entered into the Settlement which results in immediate, certain and significant Settlement  
5 Payments to Participating Settlement Class Members as well as important injunctive relief.  
6 Courts recognize the benefits to class members of receiving payments sooner rather than later as  
7 class actions can take years to be resolved, thus significantly delaying any payments to class  
8 members. *See, e.g., California v. eBay, Inc.* (N.D.Cal. Sept. 3, 2015) No. 5:12-cv-05874-EJD,  
9 2015 U.S. Dist. LEXIS 118060, at \*12 (“Since a negotiated resolution provides for a certain  
10 recovery in the face of uncertainty in litigation, this factor weighs in favor of settlement”);  
11 *Oppenlander v. Standard Oil Co.* (D. Colo. 1974) 64 F.R.D. 597, 624 (“It has been held proper to  
12 take the bird in the hand instead of a prospective flock in the bush.”) (internal quotations omitted).

13 Named Plaintiffs, Settlement Class Members, and Plaintiffs’ Counsel faced all of these  
14 risks, and others, many of which could have resulted in no recovery. Plaintiffs’ Counsel’s  
15 perseverance in pursuing the litigation and their commitment to developing the Settlement Class  
16 Members’ claims and maximizing their recovery in the face of these risks warrant a 30% award  
17 for attorney’s fees and costs.

18 **3. Counsel Demonstrated Significant Skill Throughout the Litigation**  
19 **and Have Extensive Background in this Field of Law**

20 Prosecuting class actions requires an “extraordinary commitment of time, resources, and  
21 energy from Class Counsel,” and often settlements “simply [are not] possible but for the  
22 commitment and skill of Class Counsel.” *Garner v. State Farm Mut. Auto. Ins. Co.* (N.D.Cal.  
23 2010) No. CV 08 1365 CW, 2010 U.S. Dist. LEXIS 49482, at \*4. The “prosecution and  
24 management of a complex . . . class action requires unique legal skills and abilities.” *In re*  
25 *Omnivision Techs., Inc.* (N.D.Cal. 2008) 559 F.Supp.2d 1036 at 1047.

26 This factor supports Plaintiffs’ Counsel’s fee request. Plaintiffs’ Counsel are highly  
27 competent and extremely well versed in both class action procedure and the substantive law of  
28 workers’ compensation policyholder rights. RPNA is highly experienced class counsel, having

1 handled hundreds of workers' compensation insurance premium disputes over the past quarter  
2 century. This includes eight reported appellate and Supreme Court decisions, *just against State*  
3 *Fund*. One of RPNA's prior cases against State Fund was a 7-0 California Supreme Court  
4 decision, which ultimately led to a \$24 million class action settlement over the manner in which  
5 State Fund allocated certain expenses to its policyholders' reported losses, thereby resulting in  
6 increased premiums. *See State Fund v. Superior Court* (2001) 24 Cal.4th 930. *See Pomerance*  
7 *Final Decl.*, ¶ 44. RPNA has essentially been responsible for making the law in California when  
8 it comes to protecting employers' rights against their workers' compensation carrier. *See id.*

9 Not only has RPNA successfully prosecuted a workers' compensation class action against  
10 State Fund, but it has also successfully brought and settled other class actions against numerous  
11 other California workers' compensation insurance carriers, including Fremont Indemnity,  
12 Republic Indemnity, AIG, Golden Eagle Insurance, Superior Insurance Company, Liberty  
13 Mutual, and others. *See id.*, ¶ 45.

14 In addition, RPNA has served effectively as lead counsel in other consumer and wage and  
15 hour class actions. RPNA successfully represented automobile insurance policyholders in  
16 premium disputes with a number of auto insurers in California regarding Proposition 103, and it  
17 also successfully represented a class of credit cardholders in billing disputes with Chase Bank and  
18 American Express. *See Pomerance Final Decl.*, ¶ 46.

19 RPNA has also successfully represented California workers in a variety of wage and hour  
20 class actions. Most recently, it successfully sued a Fortune 500 company for violation of  
21 California's rest break laws, involving another trip to the California Supreme Court which, by a 5-  
22 2 margin, reversed a Court of Appeal decision and held in favor of a class of security guards who  
23 were denied lawful rest breaks because, during their alleged breaks, they were nevertheless kept  
24 "on call" at all times. *See Augustus v. ABM Security Services* (2016) 5 Cal.5th 257. This  
25 landmark Supreme Court decision then resulted in a class-wide settlement of \$110 million, the  
26 largest settlement up to that point for missed rest breaks in the state's history. *See Pomerance*  
27 *Final Decl.*, ¶ 47. Accordingly, the RPNA firm is not only highly experienced class action  
28 counsel in the state of California, but it also possesses a unique and unparalleled expertise in

1 complex workers' compensation premium disputes.

2 Michael Liskow and the attorneys of Calcaterra Pollack have extensive experience  
3 litigating complex class actions on behalf of plaintiffs. *See* Liskow Final Decl., ¶¶ 24-25. As  
4 described in Calcaterra Pollack's Firm Resume (*see* Liskow Final Decl., Ex. 4), Michael has  
5 devoted almost his entire career to prosecuting complex class actions on behalf of plaintiffs in a  
6 variety of courts and fields, including consumer fraud, antitrust, data breach, insurance, securities,  
7 housing, and wage and hour matters. *See id.* at ¶¶ 23-24. For example, Michael recently secured  
8 a class settlement of Song-Beverly Act claims in the Superior Court of California, County of San  
9 Diego, against a furniture chain for sale of defective products. *See id.* at ¶ 24.

10 Plaintiffs' Counsel has greatly benefited from the expertise and resources of Jetter  
11 Counsel Priz Law LLP ("Priz Law") and Wolf Haldenstein Adler Freeman & Herz LLP ("Wolf  
12 Haldenstein"). Scott Priz, the proprietor of Priz Law, has extensive experience in the field of  
13 workers' compensation premiums as an insurance consultant for over 19 years. *See* Priz Final  
14 Decl, Ex. A. This includes having worked as a consulting expert on two class action lawsuits  
15 against workers' compensation insurance carriers. Mr. Priz has also utilized his significant  
16 expertise by, *inter alia*, reviewing the rate filings and analyzing the premiums charged by State  
17 Fund. *See id.* Mr. Priz maintains an active law practice representing a variety of clients in areas  
18 including Insurance Law, Consumer Class Actions, and Real Estate Law. *See id.*

19 Wolf Haldenstein has many decades of experience litigating complex class actions in state  
20 and federal courts, having represented millions of consumers in numerous class actions, including  
21 other tax refund actions. Wolf Haldenstein was Class Counsel in several other similar taxes  
22 refund class actions litigated and settled in this Court, including *Ardon v. City of Los Angeles*, No.  
23 BC363959 (telephone users' tax refund class action that settled for \$92.5 million); *McWilliams v.*  
24 *City of Long Beach*, No. BC361469 (telephone users' tax refund class action that settled for \$16.6  
25 million), *Granados v. County of Los Angeles*, No. BC361470 (telephone users' tax refund class  
26 action that settled for \$16.9 million) and *Engquist v. City of Los Angeles*, No. BC591332 (gas tax  
27 refund class action which settled for \$32.5 million). *See* Manifold Final Decl., Ex. A.

28 Accordingly, Plaintiffs' Counsel's expertise and skill in this area of law, coupled with

1 their willingness to take on risky cases, strongly supports the fee request.

2 **4. Plaintiffs' Counsel Incurred a Financial Burden in Litigating these**  
3 **Actions on a Contingency Fee Basis**

4 The contingent nature of the fee considers “the burdens class counsel experienced while  
5 litigating the case (e.g., cost, duration, foregoing other work)” and weighs in favor of granting the  
6 requested fee award. *See Carlin v. DairyAmerica, Inc., supra*, 380 F. Supp.3d at p. 1021. In  
7 *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 580, the Court explained that a  
8 “contingent fee must be higher than a fee for the same legal services paid as they are performed.  
9 The contingent fee compensates the lawyer not only for the legal services he renders but for the  
10 loan of those services.” In *Ketchum v. Moses*, the California Supreme Court instructed courts to  
11 adjust fee compensation to ensure that the fees account for contingency risk: “A lawyer who both  
12 bears the risk of not being paid and provides legal services is not receiving the fair market value  
13 of his work if he is paid only for the second of these functions. If he is paid no more, competent  
14 counsel will be reluctant to accept fee award cases.” *Id., supra*, 24 Cal.4th at pp. 1132-1133.

15 Here, Plaintiffs' Counsel undertook all the risks of this litigation on a completely  
16 contingent fee basis, expending time and incurring costs over the last four years with the  
17 understanding that there was no guarantee of any compensation or reimbursement. *See Plaintiffs'*  
18 *Counsel's Declarations*. The fact that Plaintiffs' Counsel expended over \$55,157.71 in out of  
19 pocket litigation costs with no guarantee of reimbursement amplifies the personal risks taken by  
20 Plaintiffs' Counsel. *See Pomerance Final Decl.*, ¶¶ 65-66. Substantial fee awards encourage  
21 attorneys to take on risky cases on behalf of clients who cannot pay hourly rates and would,  
22 therefore, not otherwise have realistic access to courts. That access is particularly important for  
23 the effective enforcement of California insurance laws in circumstances such as this where the  
24 rules and regulations for computing workers' compensation premiums are complex and outside  
25 the knowledge of lay consumers. By incentivizing plaintiff's attorneys to take on risky, high-  
26 stakes, and important litigation, and devote themselves to it aggressively and fully, fee awards  
27 serve an important purpose and extend the access of top legal talent to constituencies such as the  
28 Settlement Class.

1 In these Actions, although the risks were clear, Named Plaintiffs and Plaintiffs' Counsel  
2 committed themselves to developing and pressing the legal claims to maximize the class and  
3 collective recovery. Accordingly, an award of 30% of the Settlement Fund for attorneys' fees and  
4 costs is appropriate.

5 **5. The Requested Fee Award Is Consistent with Awards in Other**  
6 **Common Fund Cases**

7 As discussed above, courts in this state have customarily approved payments of attorneys'  
8 fees amounting to one-third of the common fund. See, e.g., *Laffitte v. Robert Half Int'l Inc.*,  
9 *supra*, 1 Cal. 5th (affirming award of attorneys' fees equal to 1/3 of the common fund); *Amaro v.*  
10 *Anaheim Arena Mgmt., LLC*, *supra*, 69 Cal. App. 5th at p. 545 (“fee awards in class actions  
11 average around one-third of the recovery’ regardless of ‘whether the percentage method or the  
12 lodestar method is used.’”) (quoting *Chavez v. Netflix, Inc.*, *supra*, 162 Cal.App.4th at p. 66, n.  
13 11); *In re Natural Gas Trust Cases Price Indexing* (San Diego Cnty. Super. Ct. Dec. 11, 2006)  
14 No. 4221, 2006 WL 5377849, at \*7 (awarding \$26,699,828.00 of the \$92.1 million settlement  
15 fund, or 29%); *Knight v. Red Door Salongs Inc.*, *supra*, 2009 U.S. Dist. LEXIS 11149, at \*17  
16 (“fee awards in class actions average around one-third of the recovery”) (internal quotations  
17 omitted); *In re Consumer Privacy Cases*, *supra*, 175 Cal. App. 4th at p. 557 n.13 (“Empirical  
18 studies show that. . . fee awards in class actions average around one-third of the recovery.”)  
19 (quotations omitted); *Romero v. Producers Dairy Foods, Inc.* (E.D.Cal. Nov. 13, 2007) No.  
20 1:05cv0484 DLB, 2007 U.S. Dist. LEXIS 86270, at \*10 (stating “fee awards in class actions  
21 average around one-third of the recovery” and awarding fees in that amount); *Singer v. Becton*  
22 *Dickinson & Co.* (S.D.Cal. June 1, 2010) No. 08-CV-821-IEG (BLM), 2010 U.S. Dist. LEXIS  
23 53416, at \*22 (approving attorney fee award of 33.33% of common fund and holding that award  
24 was similar to awards in other class action cases where fees ranged from 33.33% to 40%); *Smith*  
25 *v. CRST Van Expedited, Inc.* (S.D. Cal. Jan. 14, 2013) No. 10-CV-1116-IEG (WMC), 2013 U.S.  
26 Dist. LEXIS 6049, at \*13 (“Under the percentage method, California has recognized that most fee  
27 awards based on either a lodestar or percentage calculation are 33 percent”).<sup>14</sup> These similar

28 <sup>14</sup> See also, e.g., *Zamora v. Lyft, Inc.*, *supra*, 2018 U.S. Dist. LEXIS 166618, at \*10 (one-



1 cases further support Plaintiffs’ Counsel’s attorneys’ fees and costs request of 30%.

2 **6. The Positive Reaction of the Class Supports the Fee Request**

3 “It is established that the absence of a large number of objections to a proposed class  
4 action settlement raises a strong presumption that the terms of a proposed class settlement action  
5 are favorable to the class members.” *See Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*  
6 (C.D.Cal. 2004) 221 F.R.D. 523, 528-29; *see also Foster v. Adams & Assocs.* (N.D.Cal Feb. 11,  
7 2022) 2022 U.S. Dist. LEXIS 25071, at \*28 (“the lack of any Class Member objections also  
8 supports the fee award”). This factor currently weighs in favor of the fee request because there  
9 have yet to be any objections to the Settlement. *See* CPT Decl., ¶ 12. The deadline for most  
10 Participating Settlement Class Members to object to the Settlement is March 1, 2023. *See supra*,  
11 Note 3. Assuming that the Settlement will receive few, if any, objections to the fee request, such  
12 lack of objections will bolster Plaintiffs’ Counsel’s reasonable request for attorneys’ fees.

13 **C. The Lodestar Method Confirms the Reasonableness of the Requested Fees**

14 If the Court chooses to employ a lodestar cross-check, then the requested fee award is also  
15 reasonable under that methodology. The lodestar-multiplier method calculates the fee by  
16 multiplying the number of hours expended by counsel by an hourly rate and then increasing or  
17 decreasing that amount by applying a positive or negative multiplier. *See Laffitte v. Robert Half*  
18 *Int’l Inc., supra*, 1 Cal.5th at p. 489. While it may be used as a cross-check on the percentage of  
19 recovery method, it “does not override the trial court’s primary determination of the fee as a  
20 percentage of the common fund and thus does not impose an absolute maximum or minimum on  
21 the potential fee award.” *Id.* at 505.

22 Plaintiffs’ Counsel’s combined lodestar of \$3,269,687.75,<sup>15</sup> *see* Pomerance Final Decl.,

23 \_\_\_\_\_  
24 third award “consistent with the Ninth Circuit authority and the practice in this District.”); *Wren*  
25 *v. RGIS Inventory Specialists* (N.D.Cal. Apr. 1, 2011) No. 06-CV-5778- JCS, 2011 U.S. Dist.  
26 LEXIS 38667, at \*79-80 (awarding fees over 40% of settlement fund where class counsel  
27 created gross settlement fund of \$27 million on behalf of over 62,000 class members); *Bennett v.*  
*SimplexGrinnell LP* (N.D.Cal. Sep. 3, 2015) No. 11-cv-01854-JST, 2015 U.S. Dist. LEXIS  
192870, at \*19-21 (38.8% attorneys’ fees award).

28 <sup>15</sup> The combined lodestar and costs of Plaintiffs’ Counsel includes time and costs incurred by

¶ 59, confirms that the requested attorneys’ fee is reasonable. The fee represents a multiplier of 5.96 on Plaintiffs’ Counsel’s lodestar, which is appropriate in light of the “quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented.” *Laffitte v. Robert Half Int’l Inc.*, *supra*, 1 Cal.5th at p. 489.

**1. Plaintiffs’ Counsel’s Rates are Reasonable**

Plaintiffs’ Counsel’s rates are reasonable because they are in line with the hourly rates charged by attorneys of comparable experience, reputation, and ability for similar litigation. *See Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1133. In calculating a lodestar, the Court should first examine the prevailing hourly rate for similar work in the pertinent geographic region. *See PLCM Grp., Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1094-1095 (using prevailing hourly rate in community for comparable legal services). Next, “[g]enerally, the courts will look to equally difficult or complex types of litigation to determine which market rates to apply.” *Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 700.

Plaintiffs’ Counsel include highly-regarded members of the bar with national practices who have successfully brought to bear in these Actions their extensive experience in class actions and insurance litigation. *See* Plaintiffs’ Counsel Declarations. Here, Plaintiffs’ Counsel’s attorneys’ hourly rates range from \$360.00 to \$900.00. *See id.* These rates are squarely in line with prevailing rates in this jurisdiction for attorneys and staff of comparable skill, experience, and reputation, and have been approved by other courts in California and across the country. *See id.*, *see also* Liskow Decl., Ex. 5 (Major, Lindsey & Africa Partner Compensation Survey finding average Los Angeles partner billing rate in 2022 to be \$888).

**2. Plaintiffs’ Counsel’s Lodestar is Reasonable**

The hours expended to date by Plaintiffs’ Counsel firms, 4,613.35, resulting in a lodestar of \$3,269,687.75, is reasonable in the context of these complex class Actions. *See* Pomerance Final Decl., ¶¶ 55, 59. Hours are reasonable when “expended in pursuit of the ultimate result

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The Sultzer Law Group P.C. (“SLG”). *See* concurrently filed Declaration of Jason P. Sultzer in support of Plaintiffs’ Motion for an Award of Attorneys’ Fees and Costs, and Named Plaintiffs’ Service Payments in the Actions (“Sultzer Decl.”). This time spent and costs incurred stem from Plaintiffs’ Counsel Michael Liskow’s previous work at the firm on the Actions. *See id.*, ¶ 2.

1 achieved in the same manner that an attorney traditionally is compensated by a fee-paying client.”  
2 *Hensley v. Eckerhart* (1983) 461 U.S. 424, 431 . The Court “should defer to the winning lawyer’s  
3 professional judgment as to how much time he was required to spend on the case.” *Moreno v.*  
4 *City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1112.

5 Plaintiffs’ Counsel maintained detailed contemporaneous time records and the hours  
6 expended were reasonable and necessary. *See, e.g.,* Pomerance Final Decl., ¶¶ 54-55<sup>16</sup>; *see also*  
7 *Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1324 (“It is not necessary to  
8 provide detailed billing timesheets to support an award of attorney fees under the lodestar method  
9 . . . . Declarations of counsel setting forth the reasonable hourly rate, the number of hours worked  
10 and the tasks performed are sufficient.”) (citing *Wershba v. Apple Computer* (2001) 91  
11 Cal.App.4th 224, 254-55).<sup>17</sup> Based on the various stages of the Actions, and the exemplary result  
12 obtained, the time and effort expended by Plaintiffs’ Counsel was reasonable and necessary for  
13 the prosecution of the Actions. *See* Plaintiffs’ Counsel Declarations.

### 14 3. The Requested 5.96 Multiplier is Justified

15 Plaintiffs’ Counsel’s “unadorned lodestar reflects the general local hourly rate for a *fee-*  
16 *bearing case*; it does *not* include any compensation for contingent risk, extraordinary skill, or any  
17 other factors a trial court may consider . . . .” *Ketchum v. Moses, supra*, 24 Cal.4th at p. 1138. To  
18 “approximate market-level compensation for such services, which typically includes a premium  
19 for the risk of nonpayment or delay in payment of attorney fees,” *id.*, courts employ fee  
20 enhancements, adjusting the fee “based on consideration of factors specific to the case.” *PLCM*  
21 *Grp., Inc. v. Drexler, supra*, 22 Cal.4th at p. 1095. Those factors include: (1) the results achieved  
22 on behalf of the Class; (2) the novelty and difficulty of the questions involved and the skill  
23 displayed in presenting them; (3) the response of the Class to the settlement, including a lack of

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24 <sup>16</sup> These amounts do not include the additional time that Plaintiffs’ Counsel will continue  
25 to spend going forward in obtaining final approval of the Settlement, working on any potential  
26 appeal, and monitoring the Claims Administrator’s implementation of the Settlement as well as  
27 State Fund’s implementation of its responsibilities under the injunctive relief portion of the  
Settlement. *See, e.g.,* Pomerance Final Decl., ¶ 52.

28 <sup>17</sup> Plaintiffs’ Counsel are prepared to promptly lodge these detailed records with the  
Court under seal if the Court would like to review them.

1 objections to the settlement terms, and particularly to the fee award; (4) counsel’s experience,  
2 reputation, and ability; (5) counsel’s preclusion from other work; and (6) the contingent nature of  
3 the fee award. See *Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1132; *Cundiff v. Verizon Cal., Inc.*  
4 (2008) 167 Cal.App.4th 718, 724 n.3 ; *In re Consumer Privacy Cases*, *supra*, 175 Cal.App.4th at  
5 p. 556. All of these factors weigh in favor of the requested 5.96 multiplier.

6 A primary fee enhancement factor is contingency risk. In *Ketchum, v. Moses, supra*, the  
7 Supreme Court explained that its purpose “is to bring the financial incentives for attorneys  
8 enforcing important . . . rights . . . into line with incentives they have to undertake claims for  
9 which they are paid on a fee-for-services basis.” *Id.*, 24 Cal.4th at p. 1132 (citation omitted). To  
10 achieve this purpose, the “contingent fee *must be* higher than a fee for the same legal services  
11 paid as they are performed.” *Id.* (emphasis added) (citation omitted). The enhancement is  
12 “intended to approximate market-level compensation for [the attorney’s] services, which [in  
13 contingency-fee cases] typically includes a premium for the risk of nonpayment or delay in  
14 payment of attorney fees.” *Id.* at 1138; *Graham v. DaimlerChrysler Corp.*, *supra*, 34 Cal.4th at p.  
15 579 (“One of the most common fee enhancers . . . is for contingency risk.”); *Greene v.*  
16 *Dillingham Constr. N.A., Inc.* (2002) 101 Cal.App.4th 418, 428-29 (trial court erred by refusing  
17 to consider contingency risk in awarding fees).

18 Moreover, “Class counsel should not be ‘punished’ for efficiently litigating this action, or  
19 for otherwise providing class members with the benefits of their experience gained litigating  
20 similar class cases. Class members are well-served when they are represented by competent and  
21 experienced counsel.” *Bayat v. Bank of the W.* (N.D.Cal. Apr. 15, 2015) No. C-13-2376 EMC,  
22 2015 U.S. Dist. LEXIS 50416, at \*31-32. In a similar vein, as another court explained, “[a]  
23 positive multiplier rewards . . . Class Counsel for its efforts in achieving a swift settlement, while  
24 recognizing that counsel’s efficiency actually reduced its lodestar. Other district courts have  
25 likewise concluded that remarkable swiftness in resolving litigation warrants a positive  
26 multiplier.” *In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*  
27 (N.D.Cal. Apr. 12, 2017) No. 2672 CRB (JSC), 2017 U.S. Dist. LEXIS 56931, at \*613-14  
28 (citations omitted); *Browne v. Am. Honda Motor Co., Inc.* (C.D. Cal. Oct. 5, 2010) No. 09-cv-

1 06750 MMM, 2010 U.S. Dist. LEXIS 144823, at \*39 (applying positive lodestar multiplier in part  
2 because of “rapidity with which a settlement was reached”). Plaintiffs’ Counsel’s efficient  
3 resolution of the Actions weighs strongly in favor of the requested multiplier.

4 Plaintiffs’ Counsel also undertook substantial risks litigating these novel and complex  
5 Actions over nearly four years on a contingency basis. Plaintiffs’ Counsel’s experience,  
6 reputation, and ability to achieve the extraordinary results here are evident, and Plaintiffs’  
7 Counsel’s skill was put to the test by a sophisticated defendant with experienced counsel and  
8 virtually unlimited resources.

9 Finally, the requested multiplier of 5.96 is within the range of multipliers commonly  
10 awarded to counsel in class action litigation. *See, e.g., Nat. Gas Anti-Trust Cases Price Indexing*  
11 (Cal. Super. Ct. Dec. 11, 2006) No. 4221, 2006 WL 5377849, at \*4 (“numerous cases have  
12 applied multipliers of between 4 and 12 to counsel’s lodestar in awarding fees.”); *Eck v. City of*  
13 *Los Angeles* (L.A. Super. Ct. Feb. 26, 2018) No. BC577028, 2018 Cal. Super. LEXIS 50007  
14 (awarding multiplier of 5.80); *see also Martin v. Toyota Motor Credit Corp.* (C.D.Cal. Nov. 15,  
15 2022) No. 2:20-cv-10518 JVS (MRW), 2022 U.S. Dist. LEXIS 208358, at \*42 (awarding 6.33  
16 multiplier for award of \$19 million in attorneys’ fees, noting that “Ninth Circuit approved a  
17 similar multiplier “as it fell ‘well within the range of multipliers that courts have allowed.’”)  
18 (quoting *Steiner v. Am. Broad Co.* (9th Cir. 2007) 248 Fed. Appx. 780, 783 ); *Craft v. Cty. of San*  
19 *Bernardino* (C.D.Cal. 2008) 624 F. Supp. 2d 1113, 1125 (granting multiplier of approximately  
20 5.2 and citing cases where courts awarded multipliers ranging between 4.5 and 19.6); *Vizcaino v.*  
21 *Microsoft Corp., supra*, 290 F.3d at p. 1051 n.6 (finding a range of multipliers from 0.6 to 19.6);  
22 *Steiner*, 248 F. App’x at 783 (lodestar multiplier of approximately 6.85 “well within the range of  
23 multipliers that courts have allowed.”).

24 As explained above, and in greater detail in Section IV.B above detailing similar factors,  
25 the 5.96 multiplier is justified.

#### 26 **D. Plaintiffs’ Counsel’s Costs Are Reasonable**

27 In addition to being entitled to reasonable attorneys’ fees, Plaintiffs’ Counsel is entitled to  
28 recover their reasonable costs. *See, e.g., Cunha v. Hansen Nat. Corp.* (C.D.Cal. Jan. 29, 2015)

1 No. 08-1249-GW(JCx), 2015 WL 12697627, at \*5 (“[A] private plaintiff, or [its] attorney, whose  
2 efforts create, discover, increase or preserve a fund to which others also have a claim is entitled to  
3 recover from the fund the costs of [its] litigation . . .”).

4 Plaintiffs’ Counsel’s current out-of-pocket costs total \$55,157.71. *See Pomerance Final*  
5 *Decl.*, ¶ 66. These costs are reasonable in amount and are of the type typically charged to fee-  
6 paying clients. *See id.*, ¶ 62. Under the “common fund doctrine,” attorneys may recover their  
7 reasonable expenses that would typically be billed to paying clients in non-contingency matters.”  
8 *Cunha v. Hansen Nat. Corp.*, *supra*, 2015 WL 12697627, at \*5.

9 The costs incurred in this litigation to date are described in the accompanying declarations  
10 of Plaintiffs’ Counsel. *See, e.g.*, *Pomerance Final Decl.*, ¶ 65. These costs are of the type  
11 typically billed by attorneys to paying clients in the marketplace and include such costs as court  
12 costs, filing fees, mediation fees, deposition fees, copying and printing costs, document retrieval  
13 costs, and legal research costs. *See, e.g.*, *Pomerance Final Decl.* ¶ 65. These costs are routinely  
14 found to be reasonable in class actions. *See, e.g., In re Immune Response Securities Litig.*  
15 (S.D.Cal. 2007) 497 F. Supp.2d 1166, 1177 (reimbursing costs for meals, hotels, and  
16 transportation; photocopies; telephone; filing fees; messenger and overnight delivery; online legal  
17 research; and mediation fees as “reasonable and necessary”). All these costs were reasonable and  
18 necessary for the successful prosecution of the Actions. Plaintiffs’ Counsel therefore requests  
19 reimbursement of \$55,157.71 in costs, which amount is included in their request for 30% of the  
20 Settlement Fund.

21 **E. The Requested Service Payments to Named Plaintiffs Are Reasonable**

22 Class representatives are eligible for reasonable service awards. *See In re Cellphone*  
23 *Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394 ([A] class representative is entitled to  
24 a fee in a California class action.”). Class representatives like Named Plaintiffs may receive  
25 service awards based on the rationale that they “should be compensated for the expense or risk  
26 they have incurred in conferring a benefit on other members of the class.” *Clark v. Am.*  
27 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 806. *See also, e.g., Bell v. Farmers Ins.*  
28 *Exchange* (2004) 115 Cal.App.4th 715, 726 (affirming order for “‘service payments;’ to the five

1 named plaintiffs compensating them for their efforts in bringing the action”). The purpose of  
2 such awards is compensating these persons “for work done on behalf of the class [to] make up for  
3 financial or reputational risk undertaken in bringing the action...” *Rodriguez v. West Pul’g Corp.*  
4 (9th Cir. 2009) 563 F.3d 948, 958-59. Service awards are “fairly typical” in class action cases  
5 and are “intended to compensate class representatives for work done on behalf of the class, to  
6 make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to  
7 recognize their willingness to act as a private attorney general.” *In re Cellphone Termination Fee*  
8 *Cases, supra*, 186 Cal.App.4th at pp. 1393-1394 (citing *Rodriguez v. West Pul’g Corp., supra*,  
9 563 F.3d at 958).

10 Here, the requested service awards of \$25,000 for each Named Plaintiff are intended to  
11 compensate and reward them for the critical roles they played in this litigation, and the time,  
12 effort, and risks undertaken in helping secure the result obtained on behalf of the 89,931  
13 Settlement Class Members. *See* Pomerance Final Decl., ¶¶ 41-43. Each Named Plaintiff spent  
14 considerable time, among other things, reviewing the operative complaints, becoming familiar  
15 with the basic theories of the case, communicating with counsel on various issues including  
16 settlement negotiations, analyzing the potential settlement agreement from the perspective of the  
17 putative class in order to assess whether the settlement is in the best interests of the putative class,  
18 and ultimately entering into the Settlement Agreement on behalf of the putative Settlement Class.  
19 *See* Settlement Agreement, Exs. P-S. They have been active participants in this litigation from  
20 the outset, and have provided the approximate time they have spent so far in the Actions.<sup>18</sup>

21 Named Plaintiffs also accepted the responsibility and fiduciary duty of pursuing the  
22 Actions on behalf of the Settlement Class despite being aware of the risks they faced as California  
23 businesses spearheading a class action against one of California’s largest and oldest insurers for  
24 legally-mandated workers’ compensation insurance. *See id.*, Ex. P-S. This meant that even if  
25 Named Plaintiffs did not want insurance from State Fund in the future, and if they were declined  
26 by other carriers, Named Plaintiffs might have no choice but to insure with State Fund, as Named

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27 <sup>18</sup> *See id.*, Ex. Q, ¶ 4 (Jetter spent in excess of 20 hours); *id.*, Exs. R, ¶ 5 & Ex. S, ¶  
28 (Resilience spent in excess of 35 hours and approximately \$2,400 in outside legal expenses  
relating to lawsuit’s effect on sale of business); *id.*, Ex. P, ¶ 4 (Reynolds spent several hours).

1 Plaintiffs are required by law to maintain available workers' compensation insurance. *See id.*

2 In addition, the \$75,000 aggregate amount of the proposed Service Payments is modest in  
3 comparison to the overall benefits of the Settlement and to the Settlement Class, representing a  
4 miniscule percentage of 0.115% of the total \$65,000,000. The Notice Program advised the  
5 Settlement Class of the proposed Service Payments, and no Settlement Class Members have yet  
6 objected to such payments. *See* CPT Decl., ¶ 12. Therefore, the proposed Service Payments  
7 should be granted, as they have been in similar cases. *See Thieriot v. Celtic Ins. Co., supra*, 2011  
8 U.S. Dist. LEXIS 44852, at \*22 (granting service award of \$25,000 in almost 400 member class);  
9 *In re High-Tech Emp. Antitrust Litig.* (N.D.Cal. Sept. 2, 2015) No. 11-CV-02509-LHK, 2015  
10 U.S. Dist. LEXIS 118052, at \*61-62 (awarding service awards of between \$80,000 and \$120,000  
11 per class representative) (citation omitted); *Ross v. US Bank Nat'l Ass'n* (N.D.Cal. Sep. 29, 2010)  
12 No. C 07-02951 SI, 2010 U.S. Dist. LEXIS 107857, at \*6 (awarding \$20,000 for each of four  
13 class representatives).

14 Named Plaintiffs invested significant time and effort in order to vindicate the rights of the  
15 Settlement Class, and faced substantial risks. As such, this Court should approve the Service  
16 Payments.

17 **VII. CONCLUSION**

18 For the foregoing reasons, Named Plaintiffs respectfully request the Court grant this  
19 motion in its entirety.

20 Respectfully submitted,

21 Dated: January 30, 2023

ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP

22  
23 By: 

DREW E. POMERANCE

DAVID R. GINSBURG

Attorneys for Plaintiff Michael Reynolds

Enterprise, Inc. dba Reynolds Termite Control

26 Dated: January 30, 2023

27 By: 

Michael Liskow (SBN 243899)

mliskow@calcaterrapollack.com

CALCATERRA POLLACK LLP



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Inc. and Resilience Treatment Center

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**PROOF OF SERVICE**

STATE OF CALIFORNIA )  
 ) ss.  
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 5900 Canoga Avenue, Suite 450, Woodland Hills, California 91367.

On the date below, I served the foregoing documents on the interested parties:

**PLAINTIFFS’ NOTICE OF MOTION AND MOTION FOR  
AN AWARD OF ATTORNEYS’ FEES AND COSTS,  
AND NAMED PLAINTIFFS’ SERVICE PAYMENTS**

Pursuant to the Order Authorizing Electronic Service, entered in this matter on May 23, 2019, I caused service of the foregoing document(s) on the interested parties as listed on the Service List posted on [www.caseanywhere.com](http://www.caseanywhere.com) for this matter by submitting an electronic version of the document(s) via file transfer protocol (FTP) to Case Anywhere through the upload feature at [www.caseanywhere.com](http://www.caseanywhere.com).

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

Executed on January 30, 2023.

/s/ ELIA RAMIREZ  
ELIA RAMIREZ

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE**

MICHAEL REYNOLDS  
ENTERPRISE, INC. DBA  
REYNOLDS TERMITE CONTROL,  
individually and on behalf of all  
others similarly situated,

Plaintiff,

vs.

STATE COMPENSATION  
INSURANCE FUND, a public  
enterprise fund; and DOES 1 through  
50, inclusive,

Defendants.

And Related Case:

AMERICAN JETTER &  
PLUMBING, INC. and  
RESILIENCE TREATMENT  
CENTER, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

vs.

STATE COMPENSATION  
INSURANCE FUND, a public  
enterprise fund; and DOES 1 through  
50, inclusive,

Defendants.

Case No. 19STCV05738  
Honorable Lawrence P. Riff

**[PROPOSED] ORDER GRANTING FINAL  
APPROVAL OF CLASS ACTION SETTLEMENT**

Hearing Date: March 29, 2023  
Time: 10:00 a.m.  
Dept. 7

Complaint Filed: February 21, 2019

Case No. 19STCV36307  
Honorable Lawrence P. Riff

Amended Complaint Filed: August 10, 2020

1 The Motion for Final Approval of Class Action Settlement (“Final Approval Motion”)  
2 and the Motion for Awards of Attorneys’ Fees and Costs, and Named Plaintiffs’ Service  
3 Payments (“Fee Motion”), filed by Plaintiffs Michael Reynolds Enterprise, Inc. dba Reynolds  
4 Termite Control (“Reynolds”), American Jetter & Plumbing, Inc. (“Jetter”), and Resilience  
5 Treatment Center (“Resilience,” collectively with Reynolds and Jetter, “Named Plaintiffs”) came  
6 on for hearing on March 29, 2023 in Department 7 of the of the Superior Court of California for  
7 the County of Los Angeles, the Honorable Lawrence P. Riff presiding.

8 Drew E. Pomerance of Roxborough, Pomerance, Nye & Adreani, LLP and Michael  
9 Liskow of Calcaterra Pollack LLP appeared for Named Plaintiffs.

10 R. Timothy O’Connor and John De Leon appeared for Defendant State Compensation  
11 Insurance Fund (“Defendant”).

12 Named Plaintiffs and Defendant are referred to herein together as the “Parties.”

13 Unless otherwise defined herein, all capitalized words and terms in this Order Granting  
14 Final Approval of Class Action Settlement (“Order of Final Approval”) shall have the same  
15 meanings as set forth in the Amended Settlement Agreement (“Settlement Agreement”) filed on  
16 October 26, 2022.

17 On November 30, 2022, the Court entered an Order Granting Motion for Preliminary  
18 Approval of Class Action Settlement (“Preliminary Approval Order”), preliminarily approving  
19 the proposed settlement of the *Reynolds* and *Jetter* actions (the “Actions”) pursuant to the terms  
20 of the Settlement Agreement and directing that notice be given to the Settlement Class Members  
21 pursuant to the Notice Program.

22 Pursuant to the Notice Program, the Settlement Class was notified of the terms of the  
23 proposed Settlement and of a Final Approval Hearing (at 10:00 a.m. on March 29, 2023) to  
24 determine: (1) whether the terms and conditions of the Settlement are fair, reasonable and  
25 adequate for the release of the Released Claims against the Released Parties; (2) whether this  
26 Order of Final Approval and corresponding Judgment should be entered; (3) whether the Court  
27 should approve the provisions of the Settlement Agreement with respect to the Service Payments  
28

1 requested by Named Plaintiffs; and (4) whether the Court should grant Reynolds Counsel and  
2 Jetter Counsel's application for Attorneys' Fees and Costs.

3 A Final Approval Hearing was held on March 29, 2023. Prior to the Final Approval  
4 Hearing, proof of completion of the Notice Program was filed with the Court, along with  
5 declarations of compliance as prescribed in the Preliminary Approval Order. Settlement Class  
6 Members were therefore notified of their right to appear at the hearing in support of or in  
7 opposition to the proposed Settlement, the award of Attorneys' Fees and Costs to Reynolds  
8 Counsel and Jetter Counsel, and Service Payments to Named Plaintiffs.

9 The Court, (i) having heard and considered the oral presentations made at the Final  
10 Approval Hearing (including any materials and documents presented to the Court therein), (ii)  
11 having reviewed and considered the Settlement Agreement, the Final Approval Motion, the Fee  
12 Motion, and supporting papers and declarations, including the pleadings filed in support of the  
13 Motion for Preliminary Approval of Class Action Settlement and declarations, and any  
14 supplements thereto, and any timely and proper objections, and (iii) having determined that the  
15 Settlement is fair, adequate and reasonable, and good cause appearing thereon, makes the  
16 following findings and determinations.

17 It is hereby ORDERED, ADJUDGED, and DECREED that:

18 1. The Court, for purposes of this Order of Final Approval, adopts all defined  
19 terms as set forth in the Settlement Agreement.

20 2. The Court has jurisdiction over the subject matter of the Actions and over all  
21 claims raised therein and all Parties thereto, including the Settlement Class Members.

22 3. The Settlement Class, which will be bound by this Order of Final Approval and  
23 corresponding Judgment to be entered, shall include all Settlement Class Members who did not  
24 submit a timely and valid request for exclusion. The Settlement Class Members who have  
25 requested exclusion are identified in Exhibit A to this Order.

26 4. Solely for the purposes of the Settlement Agreement and this Order of Final  
27 Approval, the Court hereby certifies the following Settlement Class:  
28

1 All insureds of State Fund whose workers' compensation insurance premiums were  
2 calculated using a tier modifier in excess of 1.00, and where such calculation resulted in  
3 the payment of a higher premium than the insured would have otherwise paid, for any  
4 policy in effect from March 1, 2013, through November 30, 2022, the date of  
5 preliminary approval of this Settlement.

6 Excluded from the Settlement Class are Defendant State Fund, its affiliates, predecessors,  
7 successors, officers, directors, agents, servants and employees and the immediate families of  
8 such persons.

9 5. The Court finally finds that the requirements of Code of Civil Procedure § 382  
10 are satisfied. Specifically, with respect to the Settlement Class, the Court finds that: (a) the  
11 members of the Settlement Class are so numerous that their joinder is impracticable; (b) there  
12 are questions of law and fact common to the Settlement Class which predominate over any  
13 individual questions; (c) the claims of the Class Representatives are typical of the claims of the  
14 Settlement Class; and (d) a class action is superior to other available methods for the fair and  
15 efficient adjudication of the controversy considering: (i) the interests of the members of the  
16 Settlement Class in individually controlling the prosecution of separate actions, (ii) the extent  
17 and nature of any litigation concerning the controversy already commenced by the Settlement  
18 Class, (iii) the desirability or understandability of concentrating the litigation of these claims in  
19 the particular forum, and (iv) the difficulties likely to be encountered in the management of the  
20 Actions.

21 6. The Court grants final approval to the appointment of Named Plaintiffs  
22 Reynolds, Jetter and Resilience as Class Representatives for the Settlement Class.

23 7. The court grants final approval to the appointment of Roxborough, Pomerance,  
24 Nye & Adreani, LLP and Michael Liskow of Calcaterra Pollack, LLP as Settlement Class  
25 Counsel.

26 8. Notice was provided to the Settlement Class Members in accordance with the  
27 Preliminary Approval Order and the Notice Program. The notice provided to the Settlement  
28 Class (a) satisfied the requirements of due process, California Code of Civil Procedure section  
382 and rule 3.766 of the California Rules of Court; and (b) provided the best notice

1 practicable, and (c) was reasonably calculated under the circumstances to apprise Settlement  
2 Class Members of the pendency of the Actions, the terms of the Settlement Agreement, their  
3 right to appear at the Final Approval Hearing, their right to object to the Settlement, and their  
4 right to exclude themselves from the Settlement.

5 9. The Court finds that the Notice Program set forth in the Settlement Agreement  
6 and effectuated pursuant to the Preliminary Approval Order constitutes the best notice  
7 practicable under the circumstances and shall constitute due and sufficient notice to the  
8 Settlement Class of the pendency of the Actions, certification of the Settlement Class, the terms  
9 of the Settlement Agreement, and the Final Approval Hearing, and satisfies the requirements of  
10 California law and federal due process of law.

11 10. The Settlement Agreement was arrived at following over eighteen months of  
12 extensive serious, informed, adversarial, and arm's-length negotiations conducted in good faith  
13 by counsel for the Parties, facilitated by an experienced mediator, and is supported by the  
14 majority of the members of the Settlement Class.

15 11. The Settlement, as set forth in the Settlement Agreement, is in all respects fair,  
16 reasonable, adequate and in the best interests of the Settlement Class and is approved. The  
17 Parties shall effectuate the Settlement Agreement according to its terms, including the  
18 injunctive relief requiring Defendant to (1) not file any portion of any of its rate filings  
19 pertaining to tier rating or tier modifiers confidentially with the California Department of  
20 Insurance for at least the next five years, and to notify Settlement Class Counsel for five years  
21 thereafter if Defendant seeks to do so; (2) make all tier rating rate filings publicly available as  
22 long as the applicable statute remains in effect; (3) explicitly identify the tier modifier on  
23 certain documents provided to insureds in the same manner as it does now for brokers; and (4)  
24 provide to any policyholder or broker who inquires a complete and fair explanation as to how  
25 and why Defendant applied a particular tier modifier to the policyholder. The Settlement  
26 Agreement shall be deemed incorporated herein as if explicitly set forth and shall have the full  
27 force and effect of an Order of this Court.  
28

1           12.     Upon the date that Defendant fully funds the entire Settlement Fund (within  
2 seven (7) days after the Effective Date), the Class Representatives and each Member of the  
3 Settlement Class, on behalf of themselves and any other legal or natural persons who may  
4 claim by, through or under them, are deemed to have fully, finally and forever released and  
5 discharged the Released Parties from any and all Released Claims (as defined in Section 2.7 of  
6 the Settlement Agreement) arising during the Class Period of March 1, 2013 through the date of  
7 the entry of the Preliminary Approval Order, November 30, 2022.

8           13.     Members of the Settlement Class who have not validly opted-out of the  
9 Settlement Agreement, including the Class Representatives, are hereby barred from hereafter  
10 instituting, maintaining, prosecuting, and/or asserting any of the Released Claims as part of any  
11 suit, action, and/or proceeding against the Released Parties, either directly or indirectly, on their  
12 own behalf, on behalf of a class or on behalf of any other person or entity.

13           14.     This Order of Final Approval and corresponding Judgment, the Settlement  
14 Agreement, the Settlement which it reflects, and any and all acts, statements, documents or  
15 proceedings relating to the Settlement, are not, and shall not, be construed as or used as an  
16 admission by or against Defendant or any other Released Party of any fault, wrongdoing, or  
17 liability on their part, or of the validity of any Released Claim or of the existence or amount of  
18 damages.

19           15.     Pursuant to the Settlement Agreement, within 60 days following the last day  
20 upon which all Settlement Payment checks have either been cashed or have become void, the  
21 Parties will file a joint report with the Court setting forth the total amount that was actually paid  
22 to Participating Settlement Class Members, the total number of Participating Settlement Class  
23 Members who cashed checks (and the amount of such checks), the number of checks returned  
24 as undeliverable (and amount of such checks), the number of checks voided due to not being  
25 timely cashed (and amount of such checks), and the total dollar amount of monies (including  
26 any accrued interest) remaining in the Settlement Fund Account (the “Joint Settlement  
27 Report”).  
28



1           16.     If, after the first distribution, there is \$500,000 or less in the Settlement Fund  
2 Account, these residual funds will automatically be distributed to the *Cy Pres* recipients  
3 approved by the Court herein, in equal amounts. If, however, after the first distribution there  
4 remains more than \$500,000 in the Settlement Fund Account, there shall be a second  
5 distribution following the Court’s determination as to whether the residual funds ought to be  
6 dispersed only to those Participating Settlement Class Members who timely cashed their  
7 Settlement Payment checks, or whether the residual funds shall instead be paid to all  
8 Participating Settlement Class Members. The Court hereby sets a hearing on \_\_\_\_\_, at  
9 10:00 a.m., to review the Joint Settlement Report with the Parties and determine if a final  
10 accounting can be provided and whether a final distribution of the remaining Settlement Fund  
11 can be made at that time.

12           17.     Within 60 days following the last day upon which all settlement checks from  
13 any second distribution have either been cashed or become void, the Parties shall file a second  
14 Joint Settlement Report with the Court. If, after the second distribution, there is \$500,000 or  
15 less in the Settlement Fund Account, these residual funds will automatically be distributed to  
16 any *Cy Pres* recipients approved by the Court in equal amounts. If instead, after the second  
17 distribution there still remains in excess of \$500,000 in the Settlement Fund Account, counsel  
18 for State Fund and Settlement Class Counsel will confer with the Court, in consultation with  
19 the Claims Administrator, to determine whether any further distributions shall take place, or  
20 whether the residual amount shall be paid to any *Cy Pres* recipients approved by Court in equal  
21 amounts.

22           18.     The Court finds that distribution to the proposed *cy pres* recipients may be  
23 useful in fulfilling the purposes of the underlying Actions; the nonprofit organizations  
24 designated as *cy pres* recipients by the Parties satisfy the requirements of California Code of  
25 Civil Procedure 384(b) by supporting projects that fulfill the purposes of the underlying  
26 Actions, benefiting members of the public, including Settlement Class Members. Worksafe is a  
27 California-based non-profit organization dedicated to promoting and protecting the basic right  
28 of all people to a safe and healthy workplace. Worksafe’s mission of creating safer workplaces

1 in California directly benefits the Members of the Settlement Class by reducing their workers'  
2 compensation insurance premiums and preventing secondary effects from worker injuries.  
3 Kids' Chance of California satisfies the requirements of California Code of Civil Procedure  
4 section 384(b) because it is a non-profit organization whose mission is to provide need-based  
5 educational scholarships to the children of California workers who have been fatally or  
6 seriously injured on the job. The Parties, Reynolds Counsel and Jetter Counsel have provided  
7 declarations, attached to the Settlement Agreement as Exhibits G-N, affirming that they have  
8 no interest or involvement in the governance or work of either of the proposed *Cy Pres*  
9 recipients.

10 19. Within 60 days following the last day upon which all settlement checks have  
11 either been cashed or have become void, the Parties shall file a joint report with the Court that  
12 sets forth the total amount that was actually paid to the Participating Settlement Class  
13 Members, the total number of Participating Settlement Class Members who cashed checks (and  
14 the amount of such checks), the number of checks returned as undeliverable (and amount of  
15 such checks), the number of checks voided due to not being timely cashed (and amount of such  
16 checks), and the total dollar amount of monies (including any accrued interest) remaining in the  
17 Settlement Fund Account (the "Joint Settlement Report").

18 20. For the reasons set forth in the Fee Motion, the Court hereby collectively awards  
19 Reynolds Counsel and Jetter Counsel attorneys' fees from the Settlement Fund in the total  
20 amount of \$19,500,000, which amount is 30% of the total common fund and which amount  
21 includes reimbursable costs of \$55,157.71, which the Court finds fair and reasonable. The  
22 Court finds that the percentage of the benefit approach is the preferred method for awarding  
23 attorneys' fees and costs in these Actions, given that Plaintiffs' Counsel created a true common  
24 fund.

25 21. For the reasons set forth in the Named Plaintiffs' request for Service Payments,  
26 the Court hereby awards each Named Plaintiff a Service Payment of \$25,000 each (totaling  
27 \$75,000). Such amounts are reasonable considering Named Plaintiffs' service in bringing and  
28 prosecuting the Actions, and the risks they have taken by agreeing to be Class Representatives.

1 The foregoing sums shall be paid from the Settlement Fund in accordance with the Settlement  
2 Agreement.

3 22. This Order of Final Approval does not constitute an expression by the Court of  
4 any opinion, position or determination as to the merit or lack of merit of any of the claims or  
5 defenses of Named Plaintiffs or Defendant. This Order of Final Approval is not an admission  
6 or indication by Defendant of the validity of any claims in these Actions or of any liability or  
7 wrongdoing or of any violation of law.

8 23. Named Plaintiffs and the Settlement Class, on the one hand, and the Defendant,  
9 on the other, shall take nothing further from the other side except as expressly set forth in the  
10 Settlement Agreement and this Order of Final Approval and corresponding Judgment.

11 24. The Parties are authorized to implement the terms of the Settlement Agreement.

12 25. Pursuant to California Code of Civil Procedure section 664.6 and rule 3.769(h)  
13 of the California Rules of Court, and without affecting the finality of this Order of Final  
14 Approval and corresponding Judgment, the Court reserves exclusive and continuing  
15 jurisdiction over these Actions, the Class Representatives, the Members of the Settlement  
16 Class, and Defendant in order to, among other things: (i) monitor and enforce compliance with  
17 the Settlement Agreement, this Order of Final Approval, and any related order of this Court;  
18 and (ii) resolve any disputes over this Settlement Agreement or the administration of any  
19 benefits of this Settlement Agreement, including disputes over entitlement to payments for  
20 Attorneys' Fees and Costs.

21 26. The Claims Administrator shall post this Order of Final Approval on the  
22 settlement website, [www.https://www.cptgroupcaseinfo.com/SCIFSettlement.com](http://www.cptgroupcaseinfo.com/SCIFSettlement.com), forthwith.

23 27. [The objections to the Settlement, the objections to the Fee Motion, and the  
24 objections to Named Plaintiffs' requests for Service Payments are without merit and are  
25 overruled.].

26 28. The Court approves the Administrative Costs associated with the Settlement.

27 29. The Clerk is directed to enter this Order of Final Approval forthwith.  
28

**IT IS SO ORDERED**

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE LAWRENCE P. RIFF

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**PROOF OF SERVICE**

STATE OF CALIFORNIA )  
 ) ss.  
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 5900 Canoga Avenue, Suite 450, Woodland Hills, California 91367.

On the date below, I served the foregoing documents on the interested parties:

**[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT**

Pursuant to the Order Authorizing Electronic Service, entered in this matter on May 23, 2019, I caused service of the foregoing document(s) on the interested parties as listed on the Service List posted on [www.caseanywhere.com](http://www.caseanywhere.com) for this matter by submitting an electronic version of the document(s) via file transfer protocol (FTP) to Case Anywhere through the upload feature at [www.caseanywhere.com](http://www.caseanywhere.com).

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

Executed on January 30, 2023

/s/Elia Ramirez  
Elia Ramirez

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE**

MICHAEL REYNOLDS  
ENTERPRISE, INC. DBA  
REYNOLDS TERMITE CONTROL,  
individually and on behalf of all  
others similarly situated,

Plaintiff,

vs.

STATE COMPENSATION  
INSURANCE FUND, a public  
enterprise fund; and DOES 1 through  
50, inclusive,

Defendants.

And Related Case:

AMERICAN JETTER &  
PLUMBING, INC. and  
RESILIENCE TREATMENT  
CENTER, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

vs.

STATE COMPENSATION  
INSURANCE FUND, a public  
enterprise fund; and DOES 1 through  
50, inclusive,

Defendants.

Case No. 19STCV05738  
Honorable Lawrence P. Riff

**[PROPOSED] FINAL JUDGMENT**

Hearing Date: March 29, 2023  
Time: 10:00 a.m.  
Dept. 7

Complaint Filed: February 21, 2019

Case No. 19STCV36307  
Honorable Lawrence P. Riff

Amended Complaint Filed: August 10, 2020

1           WHEREAS, these Actions came before the Court for hearing on March 29, 2023 at  
2 10:00 a.m. (“Final Approval Hearing”), in accordance with the (i) Order Granting Motion for  
3 Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”) entered by  
4 this Court on November 30, 2022, (ii) Plaintiffs’ Motion for Order Granting Final Approval of  
5 Class Action Settlement filed on January 27, 2023 seeking final approval of the Amended  
6 Settlement Agreement filed on October 26, 2022 (“Settlement Agreement”);

7           WHEREAS, the Court, having considered all papers filed in these action, oral  
8 arguments of counsel in these Actions and those persons appearing at the Final Approval  
9 Hearing, and otherwise being fully informed, and good cause appearing therefore; and

10           WHEREAS, unless otherwise defined herein, all capitalized words and terms  
11 contained in this Final Judgment shall have the same meanings as set forth in the Settlement  
12 Agreement.

13           It is hereby ORDERED, ADJUDGED, and DECREED that:

14           1.       This Court has jurisdiction over the subject matter of the Actions, this  
15 litigation, and over all Parties to the Actions, including all Settlement Class Members.

16           2.       Solely for the purposes of the Settlement Agreement and this Final Judgment,  
17 the Court hereby certifies the following Settlement Class:

18           All insureds of State Fund whose workers’ compensation insurance premiums were  
19 calculated using a tier modifier in excess of 1.00, and where such calculation resulted  
20 in the payment of a higher premium than the insured would have otherwise paid, for  
any policy in effect from March 1, 2013, through November 30, 2022, the date of  
preliminary approval of this Settlement.

21 Excluded from the Settlement Class are Defendant State Fund, its affiliates, predecessors,  
22 successors, officers, directors, agents, servants and employees and the immediate families of  
23 such persons.

24           3.       The Settlement Agreement and the Preliminary Approval Order permit  
25 Settlement Class Members to exclude themselves from the Settlement. Excluded from the  
26 Action, this litigation and the Class are those persons who have submitted valid and timely  
27

1 requests for exclusion. Attached hereto as Exhibit A is a list of all persons excluded from the  
2 Actions or the Settlement Class by submitting valid and timely requests for exclusion.

3 4. This Court hereby enters Judgment in accordance with, and subject to, the  
4 terms set forth in the Order Granting Final Approval of Class Action Settlement, and the Class  
5 Representatives and the Participating Settlement Class Members shall take nothing except as  
6 provided in the Settlement Agreement.

7 5. Class Representatives Reynolds Termite Control, American Jetter & Plumbing,  
8 Inc., and Resilience Treatment Center fairly and adequately represented the Settlement Class  
9 Members.

10 6. Settlement Class Counsel Roxborough, Pomerance, Nye & Adreani, LLP and  
11 Michael Liskow of Calcaterra Pollack, LLP fairly and adequately represented the Settlement  
12 Class Members.

13 7. The Parties shall take all steps necessary and appropriate to provide Settlement  
14 Class Members with the benefits to which they are entitled under the terms of the Settlement  
15 Agreement and pursuant to the Orders of the Court.

16 8. Class Representatives are each awarded Service Payments of \$25,000 (totaling  
17 \$75,000), in special recognition of their service in bringing and prosecuting the Actions, and  
18 the risks they have taken by agreeing to be Class Representatives. The foregoing sums shall  
19 be paid from the Settlement Fund in accordance with the Settlement Agreement.

20 9. Reynolds Counsel and Jetter Counsel shall be collectively awarded the total  
21 amount of \$19,500,000, which amount is 30% of the total common fund and includes  
22 reimbursable costs of \$55,157.71, which amount is approved as fair and reasonable. The  
23 foregoing sum shall be paid from the Settlement Fund in accordance with the Settlement  
24 Agreement.

25 10. The Court hereby approves the Settlement Agreement and finds that the  
26 Settlement is, in all respects, fair, reasonable, and adequate to the Settlement Class.

27 11. Upon the date that Defendant fully funds the entire Settlement Fund (within  
28 seven (7) days after the Effective Date), the Class Representatives and each Member of the



1 Settlement Class, on behalf of themselves and any other legal or natural persons who may  
2 claim by, through or under them, are deemed to have fully, finally and forever released and  
3 discharged the Released Parties from any and all Released Claims (as defined in Section 2.7 of  
4 the Settlement Agreement) arising during the Class Period of March 1, 2013 through the date  
5 of the entry of the Preliminary Approval Order, November 30, 2022.

6 12. The Class Notice disseminated in accordance with the Preliminary Approval  
7 Order and the Notice Program was the best notice practicable under the circumstances. The  
8 Notice Program provided due and adequate notice of those proceedings and of the matters set  
9 forth therein, including the proposed Settlement, to all persons entitled to such notice, and the  
10 Notice Program fully satisfied the requirements of California law and satisfies the  
11 requirements of California law and federal due process of law.

12 13. Pursuant to California Code of Civil Procedure section 664.6 and rule 3.769(h)  
13 of the California Rules of Court, and without affecting the finality of this Judgment, the Court  
14 reserves exclusive and continuing jurisdiction over these Actions, the Class Representatives,  
15 the Members of the Settlement Class, and Defendant in order to, among other things: (i)  
16 monitor and enforce compliance with the Settlement Agreement, Order of Final Approval, and  
17 any related order of this Court; and (ii) resolve any disputes over this Settlement Agreement or  
18 the administration of any benefits of this Settlement Agreement, including disputes over  
19 entitlement to payments for Attorneys' Fees and Costs.

20 14. This document shall constitute a judgment for purposes of California Rules of  
21 Court, rule 3.769(h). The Court is directed to enter this Final Judgment forthwith .

22 15. This Final Judgment shall be posted on the Settlement Website within three (3)  
23 days of its entry.

24  
25 **IT IS SO ORDERED**

26  
27 DATED: \_\_\_\_\_

\_\_\_\_\_  
HONORABLE LAWRENCE P. RIFF

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**PROOF OF SERVICE**

STATE OF CALIFORNIA )

) ss.

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 5900 Canoga Avenue, Suite 450, Woodland Hills, California 91367.

On the date below, I served the foregoing documents on the interested parties:

**[PROPOSED] FINAL JUDGMENT**

Pursuant to the Order Authorizing Electronic Service, entered in this matter on May 23, 2019, I caused service of the foregoing document(s) on the interested parties as listed on the Service List posted on [www.caseanywhere.com](http://www.caseanywhere.com) for this matter by submitting an electronic version of the document(s) via file transfer protocol (FTP) to Case Anywhere through the upload feature at [www.caseanywhere.com](http://www.caseanywhere.com).

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

Executed on January 30, 2023

/s/Elia Ramirez  
Elia Ramirez

1 Drew E. Pomerance, Esq. (SBN 101239)  
2 David R. Ginsburg, Esq. (SBN 210900)  
3 ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP  
4 5900 Canoga Avenue, Suite 450  
5 Woodland Hills, California 91367  
6 Telephone: (818) 992-9999  
7 Facsimile: (818) 992-9991  
8 Email: dep@rpnalaw.com; drg@rpnalaw.com  
9 Attorneys for Plaintiff Michael Reynolds Enterprise, Inc. dba Reynolds Termite Control

10 [Additional Counsel Listed on Signature Page]

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE**

13 MICHAEL REYNOLDS ENTERPRISE,  
14 INC. DBA REYNOLDS TERMITE  
15 CONTROL, individually and on behalf of  
16 all others similarly situated,

17 Plaintiff,

18 vs.

19 STATE COMPENSATION INSURANCE  
20 FUND, a public enterprise fund; and  
21 DOES 1 through 50, inclusive,

22 Defendants.

Case No. 19STCV05738  
Honorable Lawrence P. Riff, Department 7

**DECLARATION OF DREW POMERANCE  
IN SUPPORT OF PLAINTIFFS' MOTIONS  
FOR ORDER GRANTING FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT AND FOR AN AWARD OF  
ATTORNEYS' FEES AND COSTS, AND  
PLAINTIFFS' SERVICE PAYMENTS**

Hearing Date: March 29, 2023  
Time: 10:00 a.m.  
Dept. 7

Complaint Filed: February 21, 2019

23 And Related Case:

24 AMERICAN JETTER & PLUMBING,  
25 INC. and RESILIENCE TREATMENT  
26 CENTER, on behalf of themselves and  
27 all others similarly situated,

28 Plaintiffs,

vs.

STATE COMPENSATION INSURANCE  
FUND, a public enterprise fund; and  
DOES 1 through 50, inclusive,

Defendants.

Case No. 19STCV36307  
Honorable Lawrence P. Riff

Amended Complaint Filed: August 10, 2020

1 **DECLARATION OF DREW POMERANCE**

2 I, Drew Pomerance, hereby state and declare as follows:

3 1. I am an attorney at law, duly licensed to practice before all California State  
4 Courts. I am a senior founding partner of Roxborough, Pomerance, Nye & Adreani (“RPNA”),  
5 counsel for Michael Reynolds Enterprises, Inc, dba Reynolds Termite Control (“Reynolds”),  
6 one of the Named Plaintiffs.<sup>1</sup>

7 2. I submit this declaration in support of Plaintiffs’ Motions for an Order Granting  
8 Final Approval of the Class Action Settlement (“Motion for Final Approval”) and for an Award  
9 of Attorneys’ Fees and Costs, and Named Plaintiffs’ Service Payments (“Fee Motion”). I have  
10 personal knowledge of all facts stated in this declaration and if called as a witness, I could and  
11 would competently testify to all matters set forth herein.

12 **Background of Actions**

13 3. This class action was born out of an administrative decision issued by former  
14 California Insurance Commissioner Dave Jones, entitled *In the Matter of the Appeal of A-Brite*  
15 *Blind and Drapery Cleaning* (“A-Brite”). In that case, the insured challenged State  
16 Compensation Insurance Fund’s (“State Fund” or “SCIF”) use of a tier modifier to increase the  
17 insured’s premium. A tier modifier is a mathematical calculation by State Fund that takes into  
18 account a number of factors pertaining to the insured’s business, and it applies an algorithm to  
19 those factors, resulting in a modifier that can either decrease or increase the insured’s premium.  
20 A modifier of 1.0 would have no impact. But a modifier of .75 would decrease premium,  
21 while a modifier of 1.25 would increase premium by 25%, a modifier of 1.5 would increase  
22 premium by 50%, and so on.

23 4. In the *A-Brite* case, the Commissioner determined that State Fund’s tier modifier  
24 was improper because it did not properly file its algorithm with the Department of Insurance  
25 (“DOI”) when it submitted its rate filing, nor did it make the algorithm available for public  
26

27 <sup>1</sup> All capitalized terms used and not otherwise defined herein have the definitions set  
28 forth in the Amended Class Action Settlement and Release (“Settlement Agreement”), a true and  
correct copy of which is attached as **Exhibit 1**.

1 inspection. As such, the Commissioner concluded that the tier modifier could not be used  
2 because it was in violation of Insurance Code §11735. The Commissioner ordered State Fund  
3 to refund to A-Brite the excess premium it collected as a result of the tier modifier.

4 5. My law firm specializes in representing aggrieved policyholders against their  
5 workers' compensation insurers for claims mishandling and premium disputes. My firm was a  
6 pioneer in the development of insured policyholder rights, as we were responsible for several  
7 landmark Court of Appeal and California Supreme Court decisions against State Fund. Our  
8 firm established the right of a policyholder to sue its workers' compensation insurance carrier in  
9 tort for bad faith claims mishandling. *See Courtesy Ambulance v. State Fund* (1992) 8  
10 Cal.App.4<sup>th</sup> 1504; *Security Offices Services v. State Fund* (1993) 17 Cal.App.4<sup>th</sup> 887; and  
11 *McGregor Yacht v. State Fund* (1998) 63 Cal.App.4<sup>th</sup> 448. I was the lead trial lawyer in another  
12 case against State Fund where we obtained at the time the largest punitive damages verdict ever  
13 against a workers' compensation carrier in the State of California. *See Notrica's 32<sup>nd</sup> Street*  
14 *Market v. State Fund* (1999) 70 Cal.App.4<sup>th</sup> 911.

15 6. I was also the lead lawyer who argued before the California Supreme Court in a  
16 case which held that a policyholder may pursue a civil action for damages against its workers'  
17 compensation carrier for the manner in which the carrier used certain loss data to compute  
18 premium in violation of applicable regulations. State Fund argued that no civil action was  
19 permitted and that a policyholder's only relief was to proceed administratively at the DOI for  
20 prospective relief. We prevailed at the California Supreme Court by a 7-0 decision. *See State*  
21 *Compensation Ins. Fund v. Superior Court (Schaefer Ambulance)* (2001) 24 Cal.4<sup>th</sup> 930.

22 7. As a result of our extensive experience in workers' compensation matters, our  
23 firm was keenly interested in the *A-Brite* case when it came down from the DOI. After studying  
24 the decision, we became convinced that the propriety of State Fund's tier modifier was  
25 something that could be litigated on a class-wide basis, as State Fund would have almost  
26 certainly applied its tier modifier across the board in a uniform manner to a large group of its  
27 insureds.

1           8.       Accordingly, after further investigation and analysis, our client, Reynolds  
2 Termite Control, retained our firm to pursue a class-wide action. As such, we filed our lawsuit  
3 on February 21, 2019, and it was assigned to this Court. The *Reynolds* Complaint is attached as  
4 **Exhibit 2.**

5           9.       Reynolds’ tier modifier with State Fund was 1.5 for the policy year 2015, which  
6 increased Reynolds’ premium by \$22,871.83, and for the policy year 2017, its premium was an  
7 additional \$4,556.57 because of a 1.10 tier modifier.

8           10.      After State Fund was served with the *Reynolds* Complaint, it filed an anti-  
9 SLAPP Motion, which this Court denied. State Fund then filed a demurrer, which sought to  
10 dismiss the case on a variety of theories. The Court did not dismiss the case, but it did invoke  
11 the primary jurisdiction doctrine to refer this matter to the Insurance Commissioner to  
12 determine whether the tier modifier was illegal. The litigation in this Court, therefore, was  
13 stayed pending the proceedings at the DOI. At the DOI, the case was assigned to  
14 Administrative Law Judge (“ALJ”) Clarke de Maigret.

15           11.      Ultimately, the related *Jetter* case was also stayed by this Court, pending the  
16 decision of *Reynolds* at the DOI.

17 **The Concurrent Proceedings at the DOI and the Sacramento Superior Court**

18           12.      Shortly after *Reynolds* was filed, State Fund filed a Petition for Writ of Mandate  
19 in the Sacramento Superior Court, which sought to challenge the Commissioner’s decision in *A-*  
20 *Brite*. Because that proceeding undoubtedly would have a profound impact on this class action,  
21 our firm contacted A-Brite to discuss the matter. A-Brite then decided to hire our firm to  
22 represent it in the proceedings in the Sacramento Superior Court.

23           13.      Accordingly, and along with the state Attorney General representing the DOI,  
24 our firm defended the writ proceeding in Sacramento by first filing two demurrers and thereafter  
25 filing a Motion for Summary Judgment, arguing that State Fund’s writ petition was untimely, as  
26 it was barred by the statute of limitations. On February 5, 2021, the Sacramento Superior Court  
27 granted our motion and ruled that State Fund’s petition was time barred as a matter of law.  
28 Accordingly, State Fund could no longer challenge or contest the Commissioner’s *A-Brite*

1 decision. Judgment was entered against State Fund, which it then appealed. Our firm then  
2 notified the ALJ in the *Reynolds* administrative action that State Fund had lost its challenge to  
3 *A-Brite*, and that judgment had been entered against it.

4 14. Soon thereafter, ALJ de Maigret in the *Reynolds* administrative case asked the  
5 parties to brief the issue of whether the *A-Brite* decision could be given collateral estoppel effect  
6 in that matter because State Fund's writ petition challenge to *A-Brite* in the trial court had now  
7 been resolved adversely to State Fund by way of summary judgment.

8 15. In response, my firm filed a brief on behalf of Reynolds which argued that  
9 collateral estoppel could now be invoked in the administrative matter because State Fund no  
10 longer had an avenue for direct attack on the Commissioner's *A-Brite* decision. Rather, on  
11 appeal all that State Fund could do was challenge the trial court's decision as to the applicability  
12 of the statute of limitations. The ALJ agreed with us, and accordingly issued a ruling in the  
13 *Reynolds* administrative matter that State Fund could no longer litigate any issues in *Reynolds*  
14 that had already been determined by the Commissioner in the *A-Brite* case.

15 16. The ALJ's determination that collateral estoppel would now prevent State Fund  
16 from relitigating the issues in the *A-Brite* decision was obviously a devastating blow to State  
17 Fund. Without the ability to relitigate and contest the Commissioner's findings in *A-Brite*, State  
18 Fund would be hard pressed to prevail in the administrative proceeding. This also meant that  
19 we would then return to this court with a ruling from the DOI that State Fund's tier rating  
20 modifier was unlawful. Pursuant to the primary jurisdiction doctrine, this court could well have  
21 followed the administrative decision and reached the same conclusion, thereby resulting in a  
22 class-wide violation by State Fund.

23 17. The implication of the ALJ's collateral estoppel ruling was immediate and not  
24 lost on State Fund. Shortly after the ALJ's ruling, State Fund wrote directly to the Chief  
25 Administrative Law Judge at the DOI, and took the rather unprecedented step of asking her to  
26 "correct" the ALJ's rulings regarding collateral estoppel and to also immediately send the  
27 matter to the Insurance Commissioner to intercede and overturn the ALJ's collateral estoppel  
28 rulings.

1           18. My firm immediately responded on June 14, 2021, and expressed grave concern  
2 over the propriety of State Fund's letter to the Chief Administrative Law Judge. We also  
3 requested that we be allowed to brief the issue of whether terminating sanctions were  
4 appropriate against State Fund in light of that letter.

5           19. The Chief Administrative Law Judge denied State Fund's request to interfere in  
6 any way with the ALJ's collateral estoppel ruling in *Reynolds*. Nevertheless, in response to  
7 Reynolds' request for terminating sanctions, the *Reynolds* ALJ issued an order for State Fund to  
8 submit a responsive brief on the issue of terminating sanctions by July 23, 2021. However,  
9 briefing on the sanctions issue did not occur, and has since been stayed because the Parties in  
10 this case agreed to attend a third session of mediation on August 5, 2021, before mediator Bruce  
11 Friedman. Although progress was made, no settlement was reached at that session on August  
12 5th.

13           20. Meanwhile, on July 6, 2021, having appealed the grant of summary judgment by  
14 the Sacramento Superior Court on its petition for writ of mandate in *A-Brite*, State Fund filed an  
15 emergency motion with the Third District Court of Appeal, seeking to stay the ALJ's collateral  
16 estoppel order in the *Reynolds* administrative proceeding. On July 21, 2021, my firm filed an  
17 opposition on behalf of A-Brite to the emergency motion, and a few weeks later, on August 17,  
18 2021, the Court of Appeal denied State Fund's emergency motion.

19           21. On the same day that the Court of Appeal denied State Funds' emergency  
20 motion, Bruce Friedman made a mediator's proposal of \$65,000,000, and a few days later, on  
21 August 21, 2021, all parties accepted the proposal and the case settled in principle.

22 **The Plaintiffs' Research and Investigation into State Fund's Tier Rating Modifier**

23           22. Both before and during the course of both the civil and administrative  
24 proceedings, my firm conducted a thorough investigation of State Fund's tier modifiers, and the  
25 manner in which they were calculated by State Fund. This included a review of all relevant  
26 State Fund rate filings with the DOI, as well as a detailed investigation into the size of the  
27 Settlement Class, its composition, and the potential amount of damages if we were ultimately  
28 successful. I would estimate that we have reviewed several thousand pages of documents,



1 transcripts, pleading, and correspondence. This includes communications between the DOI and  
2 State Fund regarding its tier modifiers and its rate filings. In addition, a DOI witness was  
3 deposed in the *Reynolds* administrative proceeding about State Fund’s tier modifiers and rate  
4 filings.

5 23. The parties began negotiating a potential class-wide settlement of both our  
6 lawsuit and the *Jetter* action in November 2020. Over the course of eighteen months, we  
7 participated in numerous arms-length negotiations, as well as three separate mediation sessions,  
8 with experienced mediator Bruce Friedman. These mediations took place in January, March,  
9 and August of 2021, and were attended by all parties, including representatives from the DOI.

10 24. After reaching a settlement in principle, counsel for Named Plaintiffs negotiated  
11 extensively with State Fund regarding the scope of confirmatory discovery to be provided. It  
12 was obviously incumbent upon us to ensure that the actual data provided by State Fund under  
13 penalty of perjury was consistent with what had been represented to us, and with our own views  
14 after studying the data.

15 25. State Fund provided information during the confirmatory discovery process that  
16 revealed that not only did it have thousands of policyholders who paid additional premiums  
17 because of tier modifiers in excess of 1.0 due to application of its algorithm, but as well, there  
18 were a substantial amount of policyholders who were automatically assigned a tier modifier of  
19 1.25 or 1.50, because State Fund determined that they provided insufficient documentation to  
20 State Fund during the underwriting process.

21 26. After even more investigation and analysis, State Fund provided verified  
22 information up through August 31, 2021 – soon after the Parties reached an agreement on the  
23 amount of the Settlement Fund –demonstrating that 83,606 policyholders paid an additional  
24 amount of premium in excess of \$644 million between March 1, 2013 and August 31, 2021,  
25  
26  
27  
28

1 because of tier modifiers in excess of 1.0.<sup>2</sup> However, that same group also collectively received  
2 over \$357 million in discounts to their premiums during various policy years, because at times  
3 they had tier modifiers below 1.0, and essentially received refunds of premium. Thus, the net  
4 additional premium paid by Settlement Class Members identified in the confirmatory discovery  
5 was just over \$287 million. That amount represents the likely maximum recovery that the class  
6 could obtain if it were completely successful on all issues in the Actions.

7 27. Moreover, State Fund also provided verified data that demonstrated that, from  
8 the start of the Class Period through August 31, 2021, it provided another almost 85,000  
9 policyholders with premium discounts or refunds totaling just over \$1 *billion* due to having tier  
10 modifiers below 1.0. Because none of these policyholders had a single policy that was assessed  
11 a tier score of over 1.0, none of these 85,000 policyholders are members of the Settlement  
12 Class.

### 13 **Preliminary Approval of Settlement**

14 28. On May 27, 2022, Named Plaintiffs submitted their Unopposed Motion for  
15 Order Granting Preliminary Approval of Class Action Settlement, Conditional Certification,  
16 Approval of Class Notice, and Setting of Final Approval Hearing (“Motion for Preliminary  
17 Approval”). On August 29, 2022, the Court issued an order requiring Named Plaintiffs to  
18 reconsider the initial settlement agreement in light of certain portions of the Court’s Checklist  
19 for Preliminary Approval of Class Action Settlement (the “Checklist Order”). In response to  
20 the Checklist Order, Named Plaintiffs engaged in significant negotiations with State Fund in  
21 order to reach agreement on the modifications to the Settlement requested by the Court, with  
22 Named Plaintiffs submitting the amended Settlement Agreement and supplementary briefing to  
23 the Court on October 26, 2022. On November 30, 2022, the Court issued its Preliminary  
24 Approval Order.

25  
26 <sup>2</sup> Prior to the Final Approval Hearing, State Fund will provide updated verified data up  
27 through November 30, 2022, which is the end of the class period. Plaintiffs’ Counsel will inform  
28 the Court of this updated data before that hearing. We do know that because the Class Period  
extends to November 30, 2022, that the number of class members have increased since the  
confirmatory discovery was provided. There are now 89,931 class members.

1           29.     After the Court preliminarily approved the Settlement, Plaintiffs' Counsel  
2 worked closely with the Claims Administrator to supervise the implementation of the Notice  
3 Program. These efforts included reviewing and editing the language and format of the  
4 Settlement Website and the notice materials sent to the Settlement Class. Plaintiffs' Counsel  
5 also worked with the Claims Administrator to ensure prompt responses to each Class Member  
6 inquiry regarding the Settlement.

7     **The Terms and Benefits of the Settlement**

8           30.     The Settlement requires State Fund to pay \$65 million, all cash, with no  
9 reversion of any kind. There are no coupons or vouchers. Participating Settlement Class  
10 Members do not have to submit any claim form. All members of the Settlement Class will  
11 receive a check for their pro-rata share of the settlement.

12           31.     The distribution formula, which is set out in detail in section 2.4.5 of the  
13 Settlement Agreement, essentially provides each class member with an amount of money equal  
14 to its share of the total Additional Premiums paid by the Settlement Class as a whole due to the  
15 application of tier modifiers in excess of 1.0. In other words, and for example, if a single  
16 Settlement Class Member's share of Additional Premiums due to a tier modifier in excess of 1.0  
17 amounted to one percent (1%) of the \$287 million in total Additional premiums, then that  
18 Settlement Class Member's cash payment would be one percent of the total available settlement  
19 funds. Based on the estimated settlement funds available after deducting Administrative Costs,  
20 as well as the potential awards of attorney's fees, costs and Named Plaintiffs' Service Payments,  
21 each of the eligible 89,931 Settlement Class members would receive approximately \$503 based  
22 on the data provided by Defendant to date. Obviously, larger policyholders will receive more,  
23 and smaller policyholders will receive less. In no event, however, will any Participating  
24 Settlement Class Member receive less than \$100.

25           32.     The Settlement provides for significant and meaningful injunctive relief as well.  
26 As the Settlement Agreement describes at Section 2.5, State Fund has agreed: (1) not to file any  
27 portion of its rate filing pertaining to tier modifiers confidentially with the DOI for at least the  
28 next five years; (2) to make all tier rating filings publicly available as long as the applicable

1 statute remains in effect; (3) to identify the tier modifier on certain documents that it provides to  
2 insureds just as it does now for brokers; and (4) to provide to any policyholder who inquires a  
3 complete and fair explanation as to how and why State Fund applied a tier modifier to a  
4 particular policy. The injunctive relief will increase transparency and help policyholders better  
5 understand the various factors that go into the premium that they pay.

6 **The Benefits of the Settlement as Balanced Against the Risks of Further Litigation**

7 33. I have handled a number of class-action lawsuits on behalf of policyholders  
8 against their insurance carriers. I have a great deal of experience in this area of the law and a  
9 unique understanding of the risks that are inherent in any such lawsuit. Here, the risks of  
10 proceeding against State Fund as balanced against a \$65 million all cash settlement with  
11 significant injunctive relief weigh heavily in favor of the Settlement. I explain in more detail  
12 below.

13 34. The \$65 million Settlement represents about 22% of the maximum recovery the  
14 Settlement Class could hope to obtain if it were completely successful at trial. As of August 31,  
15 2021, the total Additional Premiums paid by the Settlement Class as a whole due to tier  
16 modifiers in excess of 1.0 was \$287 million. A 22% percent recovery of the total maximum  
17 potential recovery via settlement is an excellent result.

18 35. Here, State Fund has several defenses and arguments which, if any one was  
19 successful, could either defeat the Settlement Class's case outright, or could significantly reduce  
20 any recovery. For example, Named Plaintiffs rely a great deal on the Insurance Commissioner's  
21 decision in *A-Brite* as a basis for their claims. *A-Brite* found that State Fund's tier modifier was  
22 illegal because the algorithm was not submitted to the DOI for approval, nor was it made  
23 publicly available as required by law. But State Fund contends that, in fact, it did disclose its  
24 algorithm to the DOI on a confidential basis, which the DOI approved. Because this Court is  
25 not bound by the findings of the Commissioner, it is possible that the Court could determine  
26 that State Fund is correct, and that the algorithm was properly filed and therefore not illegal.  
27 After reviewing substantial documentation in this case, and although not conclusive, there is  
28 some evidence that State Fund may well have disclosed its algorithm to the DOI.

1           36.     State Fund contends, therefore, that the “Filed Rate” doctrine precludes any  
2 liability in this case. The Filed Rate doctrine immunizes an insurer from civil liability based on  
3 use of rates that were approved by the DOI. *See MacKay v. Superior Court* (2010) 188  
4 Cal.App.4<sup>th</sup> 1427. Thus, State Fund contends that, at most, the Settlement Class could only be  
5 entitled to prospective relief. Given the evidence reviewed by Named Plaintiffs, they believe  
6 there is a material risk that State Fund’s argument regarding the legality of its tier algorithm  
7 could be accepted by a court or the DOI, leaving the Settlement Class with no damages.

8           37.     State Fund also contends that even if the Settlement Class is allowed to pursue a  
9 civil action for damages, that it has a number of equitable defenses which either defeat the  
10 Settlement Class’s case outright or significantly reduce damages.

11           38.     For example, State Fund argues that even if the tier modifier were to be found  
12 illegal, because it acted in accordance with DOI regulations, that the tier modifier should, as  
13 matter of equity, only be prohibited prospectively.

14           39.     State Fund further argues that because there are another almost 85,000  
15 policyholders (who are not members of the Settlement Class), who received over \$1 billion in  
16 premium reductions due to having tier modifiers below 1.0, that State Fund should not have to  
17 pay any damages at all, because it actually collected about \$700 million *less* in premium over  
18 the entire class period than it would have collected had it not utilized the tier modifier rating  
19 factor. Thus, as a basic matter of equity and fairness, State Fund claims that because it collected  
20 less premium due to the tier modifier factor, it should not have to pay any damages to the class.

21           40.     Taking all the foregoing into account, as well as factoring in the additional time  
22 and expense of proceeding to trial, and thereafter to appeal, it is my strong belief that this  
23 settlement is an excellent one, and very much in the best interest of the Settlement Class as a  
24 whole.

25 **The Service Awards to the Named Plaintiffs are Warranted**

26           41.     The proposed Service Payments of \$25,000 to each of the three Named Plaintiffs  
27 are justified because of the unique risks faced by them as the class representatives. It is always  
28 risky to sue any insurance company, but especially so here. Workers’ compensation insurance

1 is required by law in California, so these three Named Plaintiffs are suing a carrier whose  
2 product they are required to buy. Moreover, State Fund is statutorily mandated to maintain  
3 available workers compensation insurance in California, such that these Named Plaintiffs may  
4 have no choice but to buy their legally mandated workers' compensation coverage from State  
5 Fund if no other private carrier will insure them. Having to sue the very insurer from who you  
6 might have no choice but to do business with is obviously an extremely risky endeavor, thereby  
7 justifying the proposed \$25,000 service payment.

8 42. The three Named Plaintiffs are also typical of the Settlement Class as a whole.  
9 They have had the tier modifier applied to them in precisely the same manner as State Fund  
10 applied it to the other 89,931 Settlement Class Members. They do not have issues unique to  
11 them that would affect or interfere with their ability to represent the Settlement Class as a  
12 whole. They have been available to counsel and have assisted in the investigation and  
13 prosecution of the Actions.

14 43. As detailed in their declarations that are attached as exhibits P-S of the  
15 Settlement Agreement, the Named Plaintiffs were extensively involved in this litigation in terms  
16 of communicating with Plaintiffs' counsel at all stages, gathering relevant documents and  
17 evidence, and participating in the various stages of litigation, including settlement negotiations.

18 **RPNA's Extensive Experience in Workers Compensation Bad Faith and Class Actions**

19 44. As already briefly touched on above, my firm and I have extensive and unique  
20 experience in representing insured policyholders against their workers' compensation carriers.  
21 Our firm has handled hundreds of cases involving claims mishandling and premium disputes.  
22 This includes eight reported appellate and Supreme Court decisions just against State Fund.  
23 One of our prior cases against State Fund was a 7-0 California Supreme Court decision which I  
24 argued, and which ultimately led to a \$24 million class action settlement over the manner in  
25 which State Fund allocated certain expenses to its policyholders' reported losses, thereby  
26 resulting in increased premiums. *See Schaefer Ambulance, supra*, 24 Cal 4<sup>th</sup> 930. In that case,  
27 State Fund argued that no civil action should be permitted, as an aggrieved policyholder's sole  
28 recourse was to seek prospective relief from the DOI. The Supreme Court disagreed, and held

1 that State Fund’s illegal allocation of losses was redressable in a civil lawsuit. The decision in  
2 *Schaefer Ambulance* paved the way for this lawsuit to proceed. Accordingly, our firm has  
3 essentially been responsible for making the law in California when it comes to protecting  
4 employer’s rights against their workers’ compensation carrier.

5 45. Not only has our firm successfully prosecuted a worker’s compensation class  
6 action against State Fund, we have also successfully brought and settled other class actions  
7 against a number of other California workers’ compensation carriers, including Freemont  
8 Indemnity, Republic Indemnity, AIG, Golden Eagle Insurance, Superior Insurance Company,  
9 Liberty Mutual, as well as others.

10 46. Moreover, RPNA has served as lead counsel in other consumer and wage and  
11 hour class actions. I personally represented insured policyholders in several class actions  
12 against various automobile insurers in California regarding their rights under Proposition 103. I  
13 have also represented a class of credit card holders in billing disputes with both Chase Bank and  
14 American Express.

15 47. Most recently, I was the lead attorney when our firm represented a successful  
16 class of security guards in a landmark decision in California involving violation of the rest  
17 break laws. That case went all the way to the California Supreme Court, where I argued  
18 successfully that the workers were denied rest breaks because they were kept “on call” at all  
19 times while they were supposedly being given their breaks. *See Augustus v. ABM Security*  
20 *Services* (2016) 5 Cal 5<sup>th</sup> 257. This landmark Supreme Court decision resulted in a class-wide  
21 settlement of \$110 million, which was the largest missed rest break case at that time in the state  
22 of California.

23 48. Accordingly, my firm is uniquely positioned as one of the most experienced and  
24 successful firms in California pertaining to both class actions and specifically the rights of  
25 policyholders against their workers’ compensation insurance carriers.

26 49. Finally, neither I nor my firm has any interest in or involvement in the  
27 governance or work of either of the proposed *Cy Pres* recipients.

1 **The Attorneys' Fees Requested are Fair and Reasonable**

2 50. Plaintiffs' Counsel seeks a collective award of attorneys' fees of \$19,500,000, or  
3 30% of the \$65,000,000 Settlement Fund. That amount includes \$55,157 in out of pocket costs  
4 that would be reimbursed to counsel out of the fee award. The requested fee of 30% of the  
5 common fund is fair and reasonable, as it is well within the standard percentage ranges for class  
6 wide settlements that create a true common fund. Here, the \$65 million settlement is a true  
7 common fund, as it is an all-cash settlement with no reversion of any kind, and involves no  
8 coupons or vouchers. All eligible members will receive a check without even having to  
9 complete or turn in a claim form. Accordingly, and pursuant to the California Supreme Court's  
10 decision of *Laffitte v. Robert Half Int'l* (2016) 1 Cal.5<sup>th</sup> 480, Plaintiffs respectfully request that  
11 the Court award attorneys' fees and costs in the amount of 30% of the common fund, or  
12 \$19,500,000. Plaintiffs' Counsel have agreed to an allocation of the fees between the various  
13 firms, and each of the Named Plaintiffs have been informed of and have consented to that  
14 allocation in writing.

15 51. If the Court chooses to employ a lodestar cross-check, then as of the date of this  
16 declaration RPNA has expended 2,015.05 hours prosecuting this litigation, and the total lodestar  
17 based on the firm's current rates is \$1,444,616.25. The hours include all time spent in the  
18 litigation in Sacramento Superior Court regarding State Fund's writ petition to challenge the  
19 Commissioner's decision in the *A-Brite* matter. That time was spent on a pure contingency, as  
20 my firm was not paid for that work. Clearly, that work was essential in ensuring that the class  
21 here was protected because the *A-Brite* administrative decision is the critical legal foundation  
22 upon which these related class actions are based. The total hours spent by my firm in the *A-*  
23 *Brite* case was 329.1, and the total hours spent by my firm just in the *Reynolds* matter amount to  
24 1,685.95. Thus, the total hours spent on the entire case are 2,015.05.

25 52. Going forward, RPNA and the other Plaintiffs' Counsel will have to expend  
26 considerable additional time, and incur additional costs, (a) preparing for and attending the  
27 Final Approval Hearing; (b) addressing any objections that may be raised to the Settlement; (c)  
28 communicating with Settlement Class Members to answer any questions they may have or



1 address any issues with the settlement distribution process; and (d) if the Settlement is  
 2 approved, continuing to work with the Claims Administrator to ensure that the Settlement is  
 3 fully implemented. I estimate these tasks will require another 75-100 hours of attorney time  
 4 going forward.

5 53. Listed below is the time expended by RPNA on these Actions, and consequent  
 6 lodestar, as of the date of this declaration:

<b>Timekeeper</b>	<b>Hours to Date</b>	<b>Rate Per Hour</b>	<b>Total Amount Billed</b>
Drew Pomerance (Partner)	712.25	\$895	\$637,463.75
David Ginsburg (Associate)	1,224.8	\$625	\$765,500.00
Nicholas Roxborough (Partner)	18.05	\$875	\$15,793.75
Gary Nye (Partner)	8.0	\$850	\$6,800.00
Michael Adreani (Partner)	10.0	\$775	\$7,750.00
Marina Vitek (Partner)	1.1	\$775	\$852.50
Vince Gannuscio (Associate)	.4	\$625	\$250.00
Ryan Salsig (Associate)	.25	\$625	\$156.25
Michael Martell (Paralegal)	38.2	\$250	\$9,550.00
Sean An (Paralegal)	2.0	\$250	\$500.00
<b>TOTAL</b>	<b>2,015.05</b>		<b>\$1,444,616.25</b>

21 54. These records were prepared from contemporaneous, daily time records regularly  
 22 prepared and maintained by RPNA in the usual course and manner of my firm. RPNA  
 23 maintains detailed records regarding the amount of time spent by my firm, and the lodestar  
 24 calculation is based on my firm's current billing rates. These records are available for review at  
 25 the request of the Court.  
 26  
 27  
 28

1           55.     In my judgment, and based on my experience in complex class action litigation  
2 and other litigation, the number of hours expended, and the services performed by my firm,  
3 were reasonable and necessary for my firm’s representation of Named Plaintiffs.

4           56.     I have general familiarity with the range of hourly rates typically charged by  
5 plaintiffs’ class action counsel in the geographical area where my firm practices and throughout  
6 the United States, both on a current basis and historically. From that basis, I am able to  
7 conclude that the rates charged by my firm are commensurate with those prevailing in the  
8 market for such legal services furnished in complex class action litigation such as this.

9           57.     My hourly rate for this litigation is \$895. I have over 40 years of experience in  
10 litigating complex insurance bad faith matters, with an emphasis on workers compensation  
11 premium disputes. As detailed earlier, our firm is one of, if not the leading firm in California in  
12 this area of the law. I also have about 30 years of experience in supervising complex class  
13 action lawsuits, and have been lead counsel, as also detailed above, in several landmark class  
14 actions where I successfully argued the cases before the California Supreme Court. A list of the  
15 class, complex, or representative actions where I have been lead counsel is attached as **Exhibit**  
16 **3**. I am a member of the American Board of Trial Advocates (ABOTA), and have been named  
17 as a SuperLawyer 15 times. Based on my familiarity with the market, I am confident that my  
18 hourly rate is more than fair and reasonable.

19           58.     The primary associate on this case, David Ginsburg, billed at a rate of \$625 per  
20 hour. He has over 17 years of experience in handling almost exclusively complex workers  
21 compensation premium disputes. He regularly litigates cases against State Fund, is frequently  
22 before the Department of Insurance Administrative Law Bureau, and has a unique  
23 understanding of workers compensation and insurance premiums. I believe his rate to be  
24 commensurate with the market as well.

25           59.     The other Plaintiffs’ Counsel firms have provided separate declarations filed  
26 concurrently with this declaration that include summaries of their time and expenses incurred in  
27 the Actions. Through the date of this declaration, Plaintiffs’ Counsel and the Sultzer Law  
28

Group P.C. (“SLG”)<sup>3</sup> have collectively devoted 4,613.35 hours in prosecuting these Actions with a total lodestar of \$3,269,687.75 when applying their usual and customary rates. Listed below is the total time expended by Plaintiffs’ Counsel and SLG collectively and the resulting lodestar:

<b>Firm</b>	<b>Hours to Date</b>	<b>Lodestar</b>
Roxborough, Pomerance, Nye & Adreani	2,015.05	\$1,444,616.25
Calcaterra Pollack LLP	1,679.6	\$1,348,552.50
Priz Law LLP	477.4	\$243,474.00
Wolf Haldenstein Adler Freeman & Herz LLP	311.7	\$142,325.00
The Sultzer Law Group P.C.	129.6	\$90,720.00
<b>TOTAL</b>	<b>4,613.35</b>	<b>\$3,269,687.75</b>

60. Given Plaintiffs’ Counsel’s and SLG’s total lodestar of \$3,269,687.75 at their regular rates, an award of \$19,500,0000 would result in a multiplier of 5.96. This multiplier will ultimately end up slightly lower given the additional hours that Plaintiffs’ Counsel expect to expend in connection with preparing for and attending the Final Approval Hearing; addressing any objections that may be raised to the Settlement; communicating with Settlement Class Members to answer any questions they may have or address any issues with the claims process; and if the Settlement is approved, continuing to work with the Claims Administrator to ensure that the Settlement is fully implemented.

61. Plaintiffs’ Counsel litigated this matter on a contingent basis and relied on their resources to do so. Plaintiffs’ Counsel have received no compensation during the course of this litigation and have invested \$3,269,687.75 in time, and incurred costs totaling \$55,157.71, in obtaining the Settlement for the benefit of Named Plaintiffs and the Settlement Class. This time

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<sup>3</sup> Settlement Counsel Michael Liskow, currently at Calcaterra Pollack LLP, was previously at SLG where he performed work on the Actions through the end of April 2020.

1 could have been spent by Plaintiffs' Counsel litigating other cases with less obstacles, or that  
2 offered a guaranteed hourly rate of attorneys' fees.

3 62. Obtaining the Settlement in this litigation required substantial skill by Plaintiffs'  
4 Counsel, particularly in light of the significant obstacles Named Plaintiffs had to overcome.  
5 Due to the substantial hurdles that Plaintiffs' Counsel had to face, Plaintiffs' Counsel  
6 shouldered a real possibility of achieving no recovery. In taking this case on a contingency  
7 basis, Plaintiffs' Counsel knew that they were undertaking a significant risk that they would  
8 never be reimbursed for their time or costs.

9 **Plaintiffs' Counsel's Request for Reimbursement of Costs is Reasonable**

10 63. If the Court awards the full \$19,500,000 in attorneys' fees as sought by  
11 Plaintiffs' Counsel, then there is no need to separately approve or award any additional  
12 reimbursable costs, as any and all costs incurred by counsel will be included within the  
13 attorneys' fee award. If, however, the court awards less than the full amount of attorneys' fees  
14 requested, then Plaintiffs' Counsel do seek a separate award of reimbursable costs on top of the  
15 attorneys' fees.

16 64. RPNA requests reimbursement of out-of-pocket costs in the amount of  
17 \$27,808.78 incurred by the firm in connection with the prosecution of the Actions on behalf of  
18 the Settlement Class. That amount is within the range of reasonable expenses in a case of this  
19 magnitude and complexity.

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1           65. Listed below are the costs reasonably and necessarily incurred by RPNA, broken  
2 down by category:

<b>Expense Category</b>	<b>Total</b>
Filing and Attorney Service Fees	\$7,660.25
Mailing and Delivery Fees	\$394.33
Court Reporter and Transcript Fees	\$3,689.76
Travel Expenses	\$768.86
Photocopies	\$72.67
Westlaw	\$4,015.37
Online Court Retrieval and Printing Fees	\$284.20
Mediation Fees	\$10,923.34
<b>TOTAL</b>	<b>\$27,808.78</b>

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13           66. Listed below is a summary of the total \$55,157.71 in costs reasonably and  
14 necessarily incurred by Plaintiffs' Counsel firms and SLG, as detailed in the other firms'  
15 concurrently-filed declarations:

<b>Firm</b>	<b>Expenses</b>
Roxborough, Pomerance, Nye & Adreani	\$27,808.78
Calcaterra Pollack LLP	\$16,430.97
Priz Law LLP	\$1,181.10
Wolf Haldenstein Adler Freeman & Herz LLP	\$8,314.19
The Sultzer Law Group P.C.	\$1,422.67
<b>TOTAL</b>	<b>\$55,157.71</b>

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25           I declare under penalty of perjury that the foregoing is true and correct and that this  
26 declaration is executed this 30th day of January, 2023 at Woodland Hills, California.

27  
28  
  
Drew E. Pomerance

# **EXHIBIT 1**

## **AMENDED CLASS ACTION SETTLEMENT AND RELEASE**

This Amended Class Action Settlement Agreement (“Settlement Agreement”) is entered into by and between Named Plaintiffs (as defined below), individually and on behalf of the Settlement Class Members, and Defendant State Compensation Insurance Fund (“State Fund”). Named Plaintiffs and State Fund are referred to in this Settlement Agreement as the “Parties.”

This Settlement Agreement is intended to fully, finally, and forever compromise, release, resolve, discharge, and settle the Released Claims subject to the terms and conditions set forth in this Settlement Agreement. This Settlement Agreement provides for the settlement of claims on behalf of the Settlement Class Members, as described further herein.

This Settlement Agreement supersedes the prior proposed settlement agreement submitted to the Court on May 27, 2022.

### **1. THE INSTANT ACTIONS**

#### **1.1 Background and Procedural History**

##### **1.1.1 Reynolds Files Its Class Action**

Named Plaintiff Michael Reynolds Enterprise, Inc. dba Reynolds Termite Control (“Reynolds”) filed its class action complaint against State Fund in *Michael Reynolds Enterprise, Inc. dba Reynolds Termite Control v. State Compensation Insurance Fund*, Los Angeles County Superior Court Case No. 19STCV05738, on February 21, 2019 (the “Reynolds class action”). Reynolds alleged (1) breach of contract, (2) unfair competition in violation of Business & Professions Code section 17200 *et seq.*, and (3) concealment on behalf of itself and other State Fund insureds whose premium was calculated using a tier modifier greater than 1.00. The case was assigned to the Honorable Amy D. Hogue in Department 7 of the Spring Street Courthouse.

##### **1.1.2 Jetter Files a Related Class Action**

Named Plaintiff American Jetter & Plumbing, Inc. (“Jetter”) filed its class action complaint against State Fund in *American Jetter & Plumbing, Inc. v. State Compensation Insurance Fund*, Los Angeles County Superior Court Case No. 19STCV36307, on October 10,

2019 (the “*Jetter* class action”). *Jetter* alleged (1) breach of contract, and (2) violations of Business & Professions Code section 17200 *et seq.* on behalf of itself and other State Fund insureds whose premium was calculated using a tier modifier in excess of 1.00. This case was also assigned to the Honorable Amy D. Hogue in Department 7 of the Spring Street Courthouse. *Jetter* filed an amended complaint on August 10, 2020, which added Resilience Treatment Center (“Resilience”) as a named plaintiff. On October 23, 2019, the court found the *Jetter* class action to be related to the *Reynolds* class action, and designated the *Reynolds* class action as the lead case.

#### 1.1.3 The Class Actions Are Stayed Pending an Administrative Ruling

State Fund filed a demurrer in the *Reynolds* class action. In response, on July 30, 2020, the court stayed the *Reynolds* class action proceedings and referred to the California Insurance Commissioner the issue of whether State Fund used an unlawful rate in calculating the premiums paid by Reynolds and putative class plaintiffs from 2013 to the present. The Insurance Commissioner’s Administrative Hearing Bureau accepted the issue for review and adjudication through an administrative appeal titled *In the Matter of the Appeal of Michael Reynolds Enterprise, Inc., dba Reynolds Termite Control*, File Number AHB-WCA-20-13 (“*Reynolds* administrative appeal”).

On September 11, 2020, State Fund filed a demurrer in the *Jetter* class action. On November 13, 2020, the Court overruled State Fund’s demurrer and declined to refer the *Jetter* class action to the California Insurance Commissioner. On November 23, 2020, State Fund moved for reconsideration of the Court’s order overruling State Fund’s demurrer in the *Jetter* class action. On April 1, 2021, the Court stayed the *Jetter* class action pending a decision by the California Insurance Commissioner in the *Reynolds* administrative appeal or in a separate administrative appeal, whichever was issued first.

#### 1.1.4 Proposed *Jetter* Second Amended Complaint

During the pendency of the litigation, *Jetter* and Resilience became aware that the factual and legal bases of their claims against State Fund materially differed from each other.



Accordingly, *Jetter* Plaintiffs and State Fund agreed that in the event that this Settlement Agreement was finalized, the Agreement would provide that *Jetter* Plaintiffs would file the Proposed *Jetter* Second Amended Complaint after the filing of this Settlement Agreement with the Court.

#### 1.1.5 The Court Orders the Parties to Make Amendments to the Proposed Settlement Agreement

On May 27, 2022, the Parties submitted to the Court a proposed settlement agreement of the *Reynolds* and *Jetter* class actions (the “Initial Settlement Agreement”) as part of Named Plaintiffs’ Unopposed Motion for Order Granting Preliminary Approval of Class Action Settlement, Conditional Certification, Approval of Class Notice and Setting of Final Approval Hearing. On July 11, 2022, the *Reynolds* and *Jetter* class actions were reassigned to Judge Lawrence P. Riff. On August 29, 2022, the Court issued an Order that, among other things, directed the Parties to amend the Initial Settlement Agreement to address certain issues raised by the Court. The Parties believe this amended Settlement Agreement addresses the Court’s concerns.

#### 1.1.6 State Fund Denies the Allegations

State Fund denies the allegations of the *Reynolds* and *Jetter* class actions, and any and all charges of wrongdoing or liability arising out of the acts, omissions, facts, matters, transactions, or occurrences alleged, or that could have been fairly alleged based on the facts of the lawsuit.

### **1.2 Parties’ Statements and Recognition of the Benefits of the Settlement**

Between the state court matters and the *Reynolds* administrative appeal, this dispute has been litigated for over three years. Reynolds Counsel and Jetter Counsel have vigorously prosecuted the *Reynolds* and *Jetter* class actions since the outset, having conducted an investigation into the facts of the actions and the Settlement Class Members’ claims.

The Parties also engaged in extensive arms-length negotiations with mediator Bruce Friedman over a period of several months, involving three separate spirited mediation sessions. As a result, Reynolds Counsel and Jetter Counsel have concluded that this Settlement Agreement

is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risks associated with the continued prosecution of these costly, complex, and time-consuming lawsuits, the likelihood of success on the merits at trial and thereafter on appeal, and the potential damages at issue.

State Fund denies each and all of the claims in the *Reynolds* and *Jetter* class actions. State Fund has concluded that further litigation of the *Reynolds* and *Jetter* class actions would be protracted and expensive. State Fund, therefore, has determined that it is desirable and beneficial that the *Reynolds* and *Jetter* class actions be settled in a manner and upon the terms and conditions set forth in this Settlement Agreement. Neither this Settlement Agreement, nor any action taken to carry out this Settlement Agreement, may be construed as, or may be used by any person, party, or entity now or in the future as, an admission, concession, or indication by or against State Fund of any fault, wrongdoing or liability whatsoever as it relates to the Released Claims.

## **2. TERMS OF THE SETTLEMENT AGREEMENT**

### **2.1 Definitions**

As used in this Settlement Agreement, the following terms have the meanings specified below:

2.1.1 “Additional Premiums” means the amount of additional premiums paid by Settlement Class Members for any annual policy period due to being assigned a tier modifier in excess of 1.0 for that annual policy period.

2.1.2 “Administrative Costs” means the costs of administering the Settlement, including, without limitation, providing Notice of Settlement, establishing a website, establishing a toll-free number, making various efforts to locate Settlement Class Members, receiving and forwarding objections from Settlement Class Members, administering any disputes regarding payments to Participating Settlement Class Members, administering payment of claims on behalf of the Participating Settlement Class Members, and administering Service Payments to the

Named Plaintiffs and a payment of attorneys' fees to Reynolds Counsel and Jetter Counsel. To the extent agreed upon by the parties, administrative costs shall also include use of third-party technical support services and outside experts for analysis of data.

2.1.3 "Attorneys' Fees and Costs" refers to the attorneys' fees and costs to be paid to Reynolds Counsel and Jetter Counsel for their work in litigating the *Reynolds* and *Jetter* actions, pursuant to Section 2.4.2 of this Settlement Agreement.

2.1.4 "Claims Administrator" means CPT Group, Inc., who has been selected to provide Notice of Settlement to the Settlement Class and to perform all other necessary and related functions to administer the Settlement contemplated by this Settlement Agreement as described herein.

2.1.5 "Class Period" means the period from March 1, 2013 through the date of preliminary approval of this Settlement.

2.1.6 "Court" means the California Superior Court for the County of Los Angeles, and any Court-appointed referee or agent of the Court or other judicial entity with jurisdiction over this matter.

2.1.7 "Defendant" or "State Fund" means the State Compensation Insurance Fund.

2.1.8 "Effective Date" means the date by when both of the following have occurred: (a) the Court enters the Order of Final Approval and Judgment; and (b) the Order of Final Approval and Judgment is final. The Order of Final Approval and Judgment is final as of the latest of the following occurrences: (a) if no Participating Settlement Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Settlement Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Order of Final Approval and Judgment; or if a timely appeal from the Order of Final Approval and Judgment is filed, the day after the appellate court affirms the Order of Final Approval and Judgment and issues a remittitur.

2.1.9 "Final Approval Hearing" means the hearing to be conducted by the Court

to determine whether to finally approve the Settlement.

2.1.10 “Jetter Counsel” means Michael Liskow of the law firm Calcaterra Pollack LLP (Michael Liskow), 1140 Avenue of the Americas, 9th Floor, New York, New York 10036-5803; Priz Law, LLC (Scott M. Priz), 3230 S. Harlem Ave., Suite 221B, Riverside, Illinois 60546; and Wolf Haldenstein Adler Freeman & Herz LLP (Betsy C. Manifold), 750 B Street, Suite 1820, San Diego, California 92101.

2.1.11 “Jetter Plaintiffs” means plaintiffs American Jetter & Plumbing, Inc. and Resilience Treatment Center.

2.1.12 “Long Form Notice” means the form of Notice of Settlement to be emailed to the Settlement Class and posted on the Settlement Website that shall be substantially in the form attached hereto as Exhibit A. The terms of the release effectuated by this Settlement Agreement are included verbatim in the Long Form Notice.

2.1.13 “Motion for Preliminary Approval” means the motion for preliminary approval of this Settlement and its supporting papers.

2.1.14 “Named Plaintiffs” means Michael Reynolds Enterprise, Inc. dba Reynolds Termite Control, American Jetter & Plumbing, Inc., and Resilience Treatment Center.

2.1.15 “Net Settlement Amount” means the total settlement amount, less the Administrative Costs, and any Service Payments and Attorneys’ Fees and Costs granted by the Court.

2.1.16 “Notice Program” means the methods provided for in this Agreement for notifying the Settlement Class of the Settlement, as described in the document attached as Exhibit E prepared by the Claims Administrator.

2.1.17 “Notice of Settlement” means collectively the official notices of settlement of the *Reynolds* and *Jetter* class actions, materially in the forms attached hereto as Exhibits A and B.

2.1.18 “Order Granting Preliminary Approval” refers to the Court order or statement of decision granting preliminary approval to this Settlement Agreement and the

sending of notice, in substantially the same form as Exhibit C.

2.1.19 “Order of Final Approval and Judgment” and “Final Approval” means the order and judgment, in a form substantially the same as in the attached Exhibit D, that finally and unconditionally grants final approval of this Settlement Agreement, and authorizes payments to the Claims Administrator, the Settlement Class Members, Reynolds Counsel, and Jetter Counsel as provided in this Settlement Agreement.

2.1.20 “Participating Settlement Class Members” means all Settlement Class Members who do not validly exclude themselves from this settlement.

2.1.21 “Proposed *Jetter* Second Amended Complaint” means the proposed second amended complaint to be filed in *Jetter* in the same or substantially similar form as the version attached as Exhibit F.

2.1.22 “Released Claims” means the claims released pursuant to Section 2.7.1 of this Settlement Agreement.

2.1.23 “Released Parties” means State Fund, including all of State Fund’s past and present successors, subsidiaries, parents, holding companies, sister and affiliated companies, divisions as well as directors, officers, and employees.

2.1.24 “Reynolds Counsel” means the law firm of Roxborough, Pomerance, Nye & Adreani LLP (Drew E. Pomerance and David R. Ginsburg), 5820 Canoga Avenue, Suite 250, Woodland Hills, California 91367.

2.1.25 “Service Payment” means a Court-approved sum to be paid to certain Named Plaintiffs in accordance with Section 2.4.3.

2.1.26 “Settlement Class” means “All insureds of State Fund whose workers’ compensation insurance premiums were calculated using a tier modifier in excess of 1.00, and where such calculation resulted in the payment of a higher premium than the insured would have otherwise paid, for any policy in effect from March 1, 2013, through the date of preliminary approval of this Settlement.” Excluded from the Settlement Class is State Fund, its affiliates, predecessors, successors, officers, directors, agents, servants and employees and the immediate

families of such persons. The Parties will propose that the Settlement Class be certified pursuant to Code of Civil Procedure section 382, and all Settlement Class Members will have the right to exclude themselves by way of an opt-out procedure set forth in the Preliminary Approval Order.

2.1.27 “Settlement Class Counsel” means Reynolds Counsel and Michael Liskow of the law firm Calcaterra Pollack LLP (Michael Liskow), 1140 Avenue of the Americas, 9th Floor, New York, New York 10036-5803.

2.1.28 “Settlement Class Members” means the persons or entities in the Settlement Class.

2.1.29 “Settlement Fund” or “Settlement Amount” means the Sixty-Five Million Dollars and 00/100 (\$65,000,000.00) that State Fund will pay in settlement of these class action lawsuits, which is the total and maximum amount State Fund will be required to pay under this Settlement plus any interest that may accrue on this amount. The Settlement Fund will be distributed in accordance with Section 2.4.

2.1.30 “Settlement Fund Account” means the interest-bearing account to be established by the Claims Administrator into which State Fund shall deposit the Settlement Amount and from which any and all payments in connection with this Settlement shall be made. Interest shall accrue in the Settlement Fund Account for the benefit of the Settlement Class Members.

2.1.31 “Settlement Payments” means the amounts to be paid to individual Participating Settlement Class Members pursuant to the terms and conditions of this Settlement Agreement.

2.1.32 “Short Form Notice” means the form of Notice of Settlement to be mailed to the Settlement Class Members in substantially the form attached as Exhibit B.

## **2.2 Settlement of the Action**

2.2.1 It is agreed by and among the Named Plaintiffs and State Fund that any and all claims, damages, remedies sought or causes of action arising out of or related to any of the claims asserted in either the *Reynolds* or *Jetter* class action lawsuits for any policy in effect

from March 1, 2013, through the date of preliminary approval of this Settlement, shall be settled and compromised as between the Named Plaintiffs and State Fund, subject to the terms and conditions set forth in this Settlement Agreement and the approval of the Court. This Settlement shall be a bar to Plaintiffs for any and all Released Claims, and may be pleaded as a complete and total defense to any Released Claims raised in the future including those that are or could be brought to the Insurance Commissioner and/or the Administrative Hearing Bureau.

2.2.2 The occurrence of the Effective Date is a prerequisite to any distributions from the Settlement Fund.

2.2.3 The Initial Settlement Agreement provided that within five (5) days of the execution of the Initial Settlement Agreement by all Parties, Jetter Plaintiffs would seek leave of the Court through its online message board to file the Proposed *Jetter* Second Amended Complaint and notify the Court that all Parties consent to the amendment. Jetter Plaintiffs did so and on June 10, 2022, with leave of the Court, filed the Proposed *Jetter* Second Amended Complaint. On July 26, 2022, the Court entered an order based upon a stipulation of the parties staying State Fund's response to the *Jetter* Second Amended Complaint pending settlement approval.

### **2.3 Cancellation of Settlement Agreement**

In the event that the Court does not enter the Order of Final Approval and Judgment, or the Order of Final Approval and Judgment is modified in any material respect on appeal (other than through a decision of the Court to not grant the Service Payment or Attorneys' Fees and Costs sought, or in order to account for the distribution of any portion of the Settlement Fund to any *Cy Pres* recipients pursuant to Section 2.10 of this Settlement Agreement), then (a) this Settlement Agreement shall be deemed cancelled, null and void, and shall be of no force or effect whatsoever, and shall not be referred to or utilized for any purpose whatsoever, and (b) State Fund shall be entitled to the return of all funds, except that the Parties will share, on a 50-50 basis, any Administrative Costs incurred, with State Fund providing 50%, Reynolds providing 25% and Jetter Plaintiffs providing 25%.

## **2.4 Settlement Fund Distribution**

### **2.4.1 Settlement Fund**

In consideration for settlement of the *Reynolds* and *Jetter* class actions, State Fund agrees to pay the sum of Sixty-Five million dollars (\$65,000,000.00) (“Settlement Fund” or “Settlement Amount”) to be allocated to the Claims Administrator, Reynolds Counsel, Jetter Counsel, any Named Plaintiffs receiving a Service Payment, and the Settlement Class Members, as described herein. The Settlement Fund is the total and maximum amount State Fund is required to pay for any and all purposes under this Settlement Agreement. No portion of the Settlement Fund will revert to State Fund.

### **2.4.2 Attorneys’ Fees and Costs**

(a) Settlement Class Counsel will apply to the Court in advance of the Final Approval Hearing for a determination of attorneys’ fees not to exceed, in the aggregate, thirty percent (30%) of the Settlement Fund, as well as reimbursement of reasonable expenses incurred.

(b) Any Attorneys’ Fees and Costs that are paid to Reynolds Counsel and Jetter Counsel will be paid solely from the Settlement Fund, which constitutes the common fund in the *Reynolds* and *Jetter* class actions.

### **2.4.3 Named Plaintiffs Service Payment**

In addition to the amounts determined to be due to them as Settlement Class Members under this Settlement Agreement, the Named Plaintiffs may apply to the Court through their counsel for a Class Representative Service Payment not to exceed \$25,000 each. Plaintiffs contend that such amount is reasonable in light of the circumstances as set forth in the Motion for Preliminary Approval. Any Service Payment approved by the Court in conjunction with the Settlement shall be paid from the Settlement Fund.

### **2.4.4 Claims Administration Costs**

The Claims Administrator shall be paid for the Administrative Costs from the Settlement Fund. The Parties agree to cooperate in the claims administration process and to



make all efforts to control and minimize the costs and expenses incurred in the administration of this Settlement.

#### 2.4.5 Calculation of Settlement Payments

(a) Participating Settlement Class Members will receive their Settlement Payment from the Settlement Fund. Each Settlement Class Member's Settlement Payment will be calculated by the Claims Administrator as a *pro rata* share of the Settlement Fund in a proportion equal to the Settlement Class Members' share of the total Additional Premiums paid to State Fund between March 1, 2013 and the date of preliminary approval as a result of a tier surcharge in excess of 1.0 using the methodology set forth in Section 2.4.5(b). The date range for participation as a Settlement Class Member will be between March 1, 2013 and the date of preliminary approval as a result of a tier modifier assigned in excess of 1.0. In no event shall any Settlement Class Member receive less than \$100.00. The average payment per class member is currently estimated to be approximately \$540.00.<sup>1</sup>

(b) Settlement Payments for Participating Settlement Class Members shall be calculated as follows:

- i. First, by calculating the total amount of Additional Premiums paid by each Participating Settlement Class Member.
- ii. Second, by calculating a "Base Share Factor" for each Participating Settlement Class Member, which shall be calculated as follows: (i) the Participating Settlement Class Member's Additional Premiums; divided by (b) the total aggregate Additional Premiums paid by all Participating Settlement Class Members.

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<sup>1</sup> This estimated average payment is based on the assumptions that the \$65,000,000 Settlement Fund will be reduced by (1) \$19,500,000 for Attorneys' Fees and Costs (at 30% of Settlement Fund); (2) \$159,000 for Administrative Costs (the maximum costs agreed to by the Claims Administrator); and \$75,000 for Service Payments to the Plaintiffs. The remaining \$45,266,000 Net Settlement Fund, when divided equally among the approximately 83,306 Settlement Class Members from March 1, 2013 through August 31, 2021, is \$543.37.

iii. Third, by calculating the “Base Distribution Amount” for each Participating Settlement Class Member as follows: (a) the Participating Settlement Class Member’s Base Share Factor; multiplied by (b) the Net Settlement Amount.

Participating Settlement Class Members with a Base Distribution Amount below \$100.00 are deemed “Minimum Payment Recipients.” Participating Settlement Class Members with a Base Distribution Amount of \$100.00 or above are deemed “Extra Payment Recipients.”

iv. Fourth, by allocating a “Minimum Payment” of one hundred dollars (\$100.00) to each Participating Settlement Class Member. The aggregate total of all Minimum Payments, for all Participating Settlement Class Members, shall be called the “Total Minimum Payments.”

v. Fifth, by calculating the “Additional Distribution Funds,” which shall be calculated as follows: (i) the Net Settlement Amount; minus (b) the Total Minimum Payments.

vi. Sixth, by calculating the “Extra Share Factor” amount for each Extra Premium Recipient, which shall be calculated as follows: (i) the Extra Premium Recipient’s Additional Premium; divided by (b) the total aggregate Additional Premiums paid by all Extra Premium Recipients.

vii. Seventh, by calculating the “Additional Distribution Amount” due each Extra Payment Recipient as follows: (a) the Extra Payment Recipient’s Extra Share Factor; multiplied by (b) the Additional Distribution Funds.

viii. Eighth, by calculating the Settlement Payment for each Participating Settlement Class Member as follows: (a) the Participating Settlement Class Member’s Minimum Payment; plus (b) any Additional Distribution Amount due if the Participating Settlement Class Member is an Extra Payment Recipient.

(c) In the event the aggregate amount of Settlement Payments dictated by the proportional payment structure described above exceeds the Net Settlement Amount, each

Settlement Payment shall be reduced pro rata until the aggregate amount of Settlement Payments no longer exceeds the Net Settlement Amount.

(d) Within fourteen (14) days following the Effective Date, the Claims Administrator shall provide to Settlement Class Counsel a computation of each Participating Settlement Class Member's Settlement Payment.

(e) In the event a Settlement Class Member disputes the amount of its Settlement Payment, the Settlement Class Member shall notify the Claims Administrator of such dispute and provide any materials or evidence in support of its claim. The Claims Administrator shall promptly notify counsel for the Parties of any such disputes and forward any materials or evidence received in support thereof to counsel for the Parties. If the Parties are unable to resolve the dispute, then the dispute shall be submitted to Bruce Friedman, who will arbitrate the dispute and make a binding decision. Mr. Friedman's fees for arbitrating the dispute shall be paid out of the Settlement Fund. In the event that Mr. Friedman is not available to arbitrate these disputes, the Parties will promptly meet and confer to determine a substitute arbitrator. If the Parties cannot agree on a substitute arbitrator within five (5) days, the Named Plaintiffs and State Fund will each submit two (2) proposed candidates to the Court for the Court's determination. For the avoidance of doubt, the Named Plaintiffs will collectively choose two (2) proposed arbitrators, and State Fund will choose two (2) proposed arbitrators, for a total of four (4).

## **2.5 Injunctive Relief**

In consideration for settlement of the Reynolds and *Jetter* class actions, State Fund also agrees to the following:

(a) State Fund will not file any portion of any rate filings pertaining to tier rating or tier modifiers confidentially with the California Department of Insurance for at least five (5) years from the date of Final Approval. If for five (5) years thereafter, State Fund seeks to file any of its tier modifier filings confidentially, it will notify Settlement Class Counsel in advance so as to give Settlement Class Counsel an opportunity to be heard.

(b) State Fund will make all tier rating rate filings publicly available as long as the current version of California Insurance Code §11735(b) remains in force and effect.

(c) State Fund will modify its current “Applicant Quote” document, provided to applicants for new or renewal State Fund insurance policies, to identify the applicant’s tier modifier as is currently done in current “Broker Quote” documents provided to Brokers. State Fund expects to implement the modification of its Applicant Quote document to include the tier modifier by the end of the first quarter of 2023. In the event State Fund’s implementation is delayed past the first quarter of 2023, State Fund will contact Class Counsel within thirty (30) days following the end of the first quarter of 2023 so that the parties may arrange a conference with the Court. State Fund will continue to provide all direct applicants who apply for new or renewal insurance policies without a Broker, with the modified Applicant Quote document for at least five (5) years, as long as it continues the use of tier modifiers during that five year period, running from the date of final approval of the Class Action Settlement. In the event that State Fund discontinues use of the modified Applicant Quote document for applicants without a Broker, within this time period, State Fund will continue to provide all applicants for new or renewal insurance policies with their tier modifier through other means for at least five (5) years from the date of final approval. Separately, in the event that any policyholder (or a policyholder’s broker) inquires about the basis for their tier rating modifier, State Fund will provide a reasonable and good faith explanation as to why the particular tier modifier was assigned to the policyholder’s policy.

## **2.6 Appointment and Duties of Claims Administrator**

2.6.1 Subject to the approval of the Court, the Parties have agreed to the appointment of CPT Group, Inc., a professional class action claims administration firm, as the Claims Administrator for the purpose of administering the settlement process. CPT Group, Inc. is one of the premier administrators of class action settlements in the United States, having administered thousands of class settlements and billions of dollars in class funds over the last 30

years. The Claims Administrator shall provide all services typically undertaken in administering a class action settlement, including the following:

- (a) Implement and conduct all aspects of the Notice Program;
- (b) Establish and maintain a settlement website and toll-free number for Settlement Class Members to make inquiries and receive information about the settlement. If practical, these services shall be in both English and Spanish;
- (c) Process all objections and opt-out requests pursuant to the time-frames agreed upon;
- (d) Calculate and distribute Settlement Payments, as well as any Service Payment and payments of Attorneys' Fees and Costs;
- (e) Any other services that are reasonable and customary in the administration of a Class Action Settlement.

2.6.2 The Claims Administrator shall keep counsel for all Parties timely apprised of the performance of all Claims Administrator responsibilities through weekly emails.

2.6.3 Any disputes relating to the Claims Administrator's performance of its duties will be referred to the Court, if necessary, which will have continuing jurisdiction over this Settlement until all payments and obligations contemplated by this Settlement Agreement have been fully carried out. Neither the Parties nor their counsel shall have any responsibility or liability for the acts or omissions of the Claims Administrator.

2.6.4 At least twenty-one (21) days before the Final Approval Hearing, the Claims Administrator shall provide to all counsel a declaration of due diligence detailing the completion of the Notice Program, and any attempts by the Claims Administrator to locate Settlement Class Members, and its inability to deliver Notice to the Settlement Class Members due to invalid mailing or email addresses ("Due Diligence Declaration"). Settlement Class Counsel shall be responsible for filing the Due Diligence Declaration with the Court.

## **2.7 Release of Claims by the Settlement Class Members**

2.7.1 Effective on the date that State Fund fully funds the entire Settlement Fund (within seven (7) days after the Effective Date), the Settlement Class Members, including their heirs, assigns, and estates, shall be deemed to fully forever, irrevocably and unconditionally release, and discharge State Fund and the Released Parties from any and all claims, debts, liabilities, demands, obligations, guarantees, penalties, costs, expenses, attorneys' fees, damages, liquidated damages, action or causes of action whatever kind or nature, whether known or unknown, contingent or accrued, against State Fund or the Released Parties or any of them, under any state or municipal statute, ordinance, regulation, order or common law, arising out of or related to any of the claims asserted in either the *Reynolds* or *Jetter* class action lawsuits, through the date of preliminary approval of this Settlement, and any related claims for interest (whether pre- or post-judgment) and/or attorneys' fees and costs (the "Released Claims").

2.7.2 This Settlement Agreement shall be binding on all Settlement Class Members whether or not they actually receive a payment pursuant to this Settlement Agreement, unless they have opted-out in accordance with the procedures set forth in this Agreement. This Settlement Agreement shall constitute, and may be pleaded as, a complete and total defense to any Released Claims raised in the future.

2.7.3 The Named Plaintiffs and Participating Settlement Class Members agree not to file a lawsuit in any court alleging any of the Released Claims, or participate as a party or a class member in any administrative or other legal proceedings, in any forum, against State Fund or the Released Parties, for any Released Claims under this Settlement Agreement. The Named Plaintiffs and Participating Settlement Class Members further agree they will not cause, encourage, assist, volunteer, advise or cooperate with any other potential plaintiffs to commence, maintain, initiate or prosecute, any action, lawsuit, proceeding, charge, petition, complaint or claim asserting any of the Released Claims against State Fund. In consideration for the promises made by State Fund in this Settlement Agreement, the Named Plaintiffs and Participating Settlement Class Members agree not to institute any suit, complaint, proceeding, grievance, or

action of any kind at law, in equity, or otherwise in any court of the United States, state, or municipality, or administrative agency, or any arbitration or other legal forum, against State Fund or the Released Parties for any claim included in the Released Claims. The Named Plaintiffs and Participating Settlement Class Members also agree that they will not join, participate in, or consent to opt in to any actions alleging that he, she, or it is similarly situated to any other policyholder with respect to any such Released Claims, and that each will elect to opt out of any such actions against State Fund or the Released Parties of which he, she, or it is involuntarily made a member or party. If any of the Settlement Class Members are joined in any class or collective lawsuits for any Released Claims, he, she, or it will receive no further compensation of any kind for such released claim or claims.

2.7.4 The Parties agree that the *Reynolds* lawsuit is premised upon the decision issued by the Insurance Commissioner entitled *In the Matter of the Appeal of A-Brite Blind & Drapery Cleaning* (AHB WCA-17-26) (“*A-Brite*”). The Parties further agree that the release given here covers all allegations, legal theories, and claims brought in the *Reynolds* lawsuit that are premised upon and/or rely on the *A-Brite* decision, which was attached as an exhibit to the *Reynolds* lawsuit.

2.7.5 The Released Claims defined herein specifically do not include, or otherwise affect, State Fund’s ability to pursue and collect outstanding premiums.

## 2.8 Preliminary Approval

### 2.8.1 Preliminary Approval Order

Promptly upon execution of this Settlement Agreement, the Named Plaintiffs shall file a Motion for Preliminary Approval, seeking an Order of Preliminary Approval and determination by the Court as to the fairness, adequacy, and reasonableness of this settlement, pursuant to California Rules of Court, Rule 3.769. Named Plaintiffs will file a Motion for Preliminary Approval seeking the following:

(a) Preliminarily approving this Settlement Agreement as fair, reasonable, and adequate as to the Settlement Class Members;

- (b) Approval as to form and content of the proposed Notices of Settlement;
- (c) Directing commencement of the Notice Program by the Claims

Administrator;

- (d) Appointing CPT Group, Inc. as Claims Administrator;
- (e) Appoint the Named Plaintiffs as the Class Representatives for the Settlement Class;
- (f) Appoint Reynolds Counsel and Michael Liskow as Settlement Class Counsel for the Settlement Class;
- (g) Approving the procedures and deadlines for objections and opt-outs; and
- (h) Scheduling a Final Approval Hearing on the question of whether the proposed Settlement should be finally approved.

#### 2.8.2 Denial Of Preliminary Approval Order

If the Court fails for any reason to enter the Preliminary Approval Order in substantially the same format as Exhibit C, or to certify the Settlement Class for settlement purposes consistent with the provisions hereof, and if the Parties do not agree jointly to either address the reasons given by the Court and seek further approval again, or to appeal such a ruling, then this Settlement Agreement will terminate and be of no further force or effect without any further action by the Parties.

#### 2.8.3 The Notice Program

(a) Within ten (10) days of entry of the Order Granting Preliminary Approval of Settlement, State Fund shall provide the Claims Administrator with all available contact information for the Settlement Class Members in an agreed upon format. Within thirty (30) days of entry of the Order Granting Preliminary Approval of Settlement, State Fund shall provide the Claims Administrator with all premium information necessary for the Claims Administrator to calculate the payments to be made to the Participating Settlement Class Members. The data provided to the Claims Administrator will remain confidential and will not be disclosed to any outside party, except as required by law, or with the express written consent of State Fund, or by



order of the Court. It is necessary to keep this data confidential because, among other reasons, it includes various identifying information of the Settlement Class Members including their premiums paid. The data provided under this Section shall be used only for the purpose of administering this Settlement.

(b) The Short Form Notice, as approved by the Court, shall be sent by the Claims Administrator to the Settlement Class Members, by First Class Mail to those addresses provided, as soon as practicable, but in any event within thirty (30) days after entry of the Preliminary Approval Order. The Short Form Notice shall set forth a brief description of the *Reynolds* and *Jetter* class actions, provide the definition of the Settlement Class, inform the Settlement Class Members of the nature and scope of the settlement of claims, set forth the requested Attorneys' Fees and Costs, disclose the Service Payment that will be requested by certain Named Plaintiffs, inform the Settlement Class Members of their opportunity to be heard at the Final Approval Hearing, inform the Settlement Class Members of their right to opt out of the Settlement Class, and inform the Settlement Class Members of their right to submit an objection to any term of the Settlement. The Short Form Notice will direct Settlement Class Members to the Settlement Website and to the toll-free number established by the Claims Administrator to obtain further information about the settlement.

(c) The Claims Administrator will attempt to locate any Settlement Class Members whose Short Form Notice is returned by the Post Office by performing a National Change of Address search on the entire list of Settlement Class Members and if needed, conducting one skip trace search regarding any returned Notice of Settlement.

(d) If a Short Form Notice has not been returned within twenty-one (21) days of the mailing, it shall be conclusively presumed that the person or entity to whom the notice was addressed received the Notice of Settlement.

(e) The Long Form Notice, as approved by the Court, shall be sent by the Claims Administrator to the Settlement Class Members by email to those addresses provided, as soon as practicable, but in any event within thirty (30) days after entry of the Preliminary

Approval Order. The Claims Administrator will take reasonable steps to resend returned emails as described in the Notice Program.

(f) The Claims Administrator shall establish and maintain a Settlement Website which shall contain all material information about the settlement, including the date, time and location of the Final Approval Hearing, the Long Form Notice, this Settlement Agreement, the Preliminary Approval Motion and Order, the Motions for Final Approval and for a Payment of Attorneys' Fees and Costs, and such other documents as counsel agree upon or the Court orders. The Settlement Website will be established by the Claims Administrator no later than thirty (30) days after entry of the Preliminary Approval Order. In the event that the date, time or location of the Final Approval Hearing is changed, notification of the change will be prominently displayed on the home page of the Settlement Website.

#### 2.8.4 Objecting to the Settlement

(a) The Notice of Settlement shall provide that Settlement Class Members who wish to object to this Settlement Agreement must submit to the Claims Administrator a written statement objecting to this Settlement Agreement. Such objection and any supporting materials must be in writing, mailed to the Claims Administrator and postmarked no later than twenty-eight (28) days prior to the Final Approval Hearing (the "Objection Deadline"). An objection must state the objector's name, current address, email address (if available) and telephone number, the basis for the objection, and be signed by the objector. Any Settlement Class Member to whom any Short Form Notice or Long Form Notice is resent after having been returned undeliverable to the Claims Administrator shall have an additional fourteen (14) calendar days beyond the Objection Deadline has expired.

(b) Promptly upon receipt of any objections, the Claims Administrator shall forward the objections and any supporting briefs or other materials to counsel for the Parties.

(c) Counsel for the Parties shall file the objections, and any responses to any objections, at least seven (7) days in advance of the Final Approval Hearing.

(d) Any Settlement Class Member may appear at the Final Approval Hearing.

## 2.8.5 Opt-Out/Requests For Exclusion From Settlement

(a) Requests For Exclusion. Settlement Class Members will be given the opportunity to be excluded from the Settlement Class. All requests by Settlement Class Members to be excluded must be in writing, sent to the Claims Administrator and postmarked no later than twenty-eight (28) days prior to the Final Approval Hearing (the “Opt-Out Deadline”). Any Settlement Class Member to whom any Short Form Notice or Long Form Notice is resent after having been returned undeliverable to the Claims Administrator shall have an additional fourteen (14) calendar days beyond the Opt-Out Deadline has expired. To be valid, a request for exclusion must be personally signed by the Settlement Class Member and must include: (i) the Settlement Class Member’s name, address and telephone number; (ii) a sentence stating that he, she or it believes that they are a Settlement Class Member; (iii) a statement making clear that the Settlement Class Member requests to be excluded from the Reynolds and Jetter class settlements; and (iv) the Settlement Class Members’ signature. No Settlement Class Member, or any person acting on behalf of or in concert or participation with that Settlement Class Member, may exclude any other Settlement Class Member from the Settlement Class.

(b) Delivery To Parties; Certification To The Court. The Claims Administrator will provide copies of the original requests for exclusion to the Parties by no later than seven (7) days after the opt-out deadline. Not later than seven (7) days before the Final Approval Hearing, the Parties will file with the Court the Due Diligence Declaration and a declaration by the Claims Administrator listing all of the valid opt-outs received.

(c) Effect. Settlement Class Members who timely exclude themselves from the Settlement Class will not be eligible to receive any payment pursuant to the Settlement, will not be permitted to object to the Settlement, will not be bound by any further orders or judgments in the *Reynolds* and *Jetter* class actions, and will preserve their ability to independently pursue any individual claims for damages they may have against State Fund by filing their own individual lawsuit at their own expense.

(d) Right To Withdraw For Excessive Opt-Outs. If more than three (3) percent of total Settlement Class Members timely and validly request exclusion from the settlement, then State Fund in its sole discretion may terminate this Settlement Agreement, and the Parties will be returned to the status quo ante as of August 27, 2021, for all litigation purposes, as if no settlement had been negotiated or entered into. If State Fund exercises this right to declare the Settlement Agreement void, it must provide Reynolds Counsel and Jetter Counsel with written notice of this election no later than ten (10) days before the Final Approval Hearing; provided, however, State Fund will remain responsible for paying all Administrative Costs incurred to that point.

## **2.9 Final Approval Hearing**

The Parties will request the Court to conduct a Final Approval Hearing to determine if the Settlement is fair, reasonable, and adequate, and if so, enter the Order of Final Approval and Judgment which will (a) approve the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions; (b) certify the Settlement Class; (c) approve in whole or in part the application of Reynolds Counsel and Jetter Counsel for a payment of Attorneys' Fees and Costs; (d) approve in whole or in part any requests for Service Payment; and (e) permanently bar and enjoin all Participating Settlement Class Members from prosecuting any Released Claims against State Fund or any Released Parties. Within three (3) days of entry of any Order of Final Approval and Judgment by the Court, Settlement Class Counsel will cause the Claims Administrator to post the Order on the Settlement Website.

### 2.10 Funding the Settlement Amount and Distribution of Settlement Fund

2.10.1 State Fund will pay Sixty-Five Million Dollars and 00/100 (\$65,000,000.00), the full Settlement Amount, into the Settlement Fund Account within seven (7) days after the Effective Date. This Settlement Amount is inclusive of any award for Attorneys' Fees and Costs, or any Service Payments granted by the Court under this Settlement.

2.10.2 Within twenty-one (21) days after the Effective Date, the Claims Administrator will mail checks drawn from the Settlement Fund Account for all Settlement Payments to Participating Settlement Class Members, and direct payment from the Settlement Fund Account of any Court-approved Service Payments to Named Plaintiffs, any Court-approved payment of Attorneys' Fees and Costs to Reynolds Counsel and Jetter Counsel; and any Administrative Costs to the Claims Administrator. Any Court-approved payment of Attorneys' Fees and Costs to Reynolds Counsel and Jetter Counsel will be paid from the Settlement Fund Account to Reynolds Counsel and Jetter Counsel in amounts agreed to in writing by Reynolds Counsel and Jetter Counsel or as otherwise ordered by the Court. Disbursement of the Service Payments, Attorneys' Fees and Costs and Administrative Costs shall not precede the initial disbursement of Settlement Payments to Participating Settlement Class Members.

2.10.3 The Claims Administrator will issue checks for the Settlement Payments and send them to the Participating Settlement Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Claims Administrator will cancel all checks not cashed by the void date. The Claims Administrator will send checks for Settlement Payments to all Participating Settlement Class Members (including those for whom Class Notice was returned undelivered). Before mailing any checks, the Claims Administrator must update the recipients' mailing addresses using the National Change of Address Database.

2.10.4 The Class Administrator must conduct a Participating Settlement Class Member Address Search for all other Participating Settlement Class Members whose checks are returned undelivered without USPS forwarding address. Within seven (7) days of receiving a returned check the Claims Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Participating Settlement Class Member Address Search. The Claims Administrator need not take further steps to deliver checks to Participating Settlement Class Member whose re-mailed checks are returned as undelivered. The

Claims Administrator shall promptly send a replacement check to any Participating Settlement Class Member whose original check was lost or misplaced, requested by the Participating Settlement Class Member prior to the void date.

2.10.5 Within 60 days following the last day upon which all settlement checks have either been cashed or have become void, the Parties shall file a joint report with the Court that sets forth the total amount that was actually paid to the Participating Settlement Class Members, the total number of Participating Settlement Class Members who cashed checks (and the amount of such checks), the number of checks returned as undeliverable (and amount of such checks), the number of checks voided due to not being timely cashed (and amount of such checks), and the total dollar amount of monies (including any accrued interest) remaining in the Settlement Fund Account (the “Joint Settlement Report”).

2.10.6 If, after the first distribution, there is \$500,000 or less in the Settlement Fund Account, these residual funds will be distributed to any *Cy Pres* recipients in equal amounts as detailed *infra* in Section 2.10.8. If, however, after the first distribution there remains more than \$500,000 in the settlement fund account, there shall be a second distribution following the Court’s determination as to whether the residual funds ought to be dispersed only to those participating settlement class members who timely cashed their settlement checks, or whether the residual funds shall instead be paid to all Participating Settlement Class Members. In making this determination, the Court may hold a hearing with Settlement Class Counsel to review the Joint Settlement Report, and to discuss the relative pros and cons of whether to distribute the remaining residual funds to only those who timely cashed a settlement check, or to all Participating Settlement Class Members.

2.10.7 Within 60 days following the last day upon which all settlement checks from any second distribution have either been cashed or become void, the Parties shall file a second Joint Settlement Report with the Court. If, after the second distribution, there is \$500,000 or less in the Settlement Fund Account, these residual funds will be distributed to any *Cy Pres* recipients in equal amounts as detailed *infra* in Section 2.10.8. If, after the second

distribution, there still remains in excess of \$500,000 in the Settlement Fund Account, counsel for State Fund and Settlement Class Counsel will confer with the Court, in consultation with the Claims Administrator, as to whether any further distributions shall take place, or whether the residual amount shall be paid to any *Cy Pres* recipients in equal amounts.

2.10.8 Once the Parties and/or the Court determine that no additional distributions shall take place, any residual funds will be paid to any *Cy Pres* recipients approved by the Court in equal amounts. The *Cy Pres* recipients agreed to by the Parties are Worksafe (Worksafe.org) and Kids' Chance of California subject to approval by the Court. Worksafe satisfies the requirements of California Code of Civil Procedure section 384(b) because it is a California-based non-profit organization dedicated to promoting and protecting the basic right of all people to a safe and healthy workplace. Kids' Chance of California satisfies the requirements of California Code of Civil Procedure section 384(b) because it is a non-profit organization whose mission is to provide need-based educational scholarships to the children of California workers who have been fatally or seriously injured on the job. The Parties, Reynolds Counsel and Jetter Counsel have provided declarations, attached as Exhibits G-N, affirming that they have no interest or involvement in the governance or work of either of the proposed *Cy Pres* recipients. In the event that one of the two proposed *Cy Pres* recipients is deemed to not be suitable by the Court, the other, suitable *Cy Pres* recipient will receive the full amount of any residual funds. If the Court orders residual funds in the Settlement Fund Account to be disbursed to any *Cy Pres* recipients, the Court shall amend the Order of Final Approval and Judgment to direct the Claims Administrator to pay such remaining monies (including any accrued interest) to the designated *Cy Pres* recipients.

2.10.9 The payment of Settlement Payments shall not obligate State Fund to confer any additional benefits or make any additional payments to Participating Settlement Class Members beyond those specified in this Settlement Agreement, including any Attorneys' Fees and Costs or Service Payments not granted by the Court under this Settlement.

## 2.11 Confirmatory Discovery

The Parties acknowledge that State Fund has provided to Settlement Class Counsel a sworn declaration attesting to, *inter alia*, the following from March 1, 2013 through August 31, 2021 (1) the total Additional Premiums paid by the Settlement Class Members due to a tier rating score in excess of 1.0; (2) the total number of Settlement Class Members; and (3) the total discounts received by Settlement Class due to receiving a tier modifier below 1.0. The declaration includes a proper foundation as to the methodology employed by State Fund to obtain this information sufficient to warrant its accuracy. That sworn declaration is attached as Exhibit O, and is made a part of this Settlement Agreement. Within thirty (30) days of the Court's grant of the Motion for Preliminary Approval, State Fund will provide Settlement Counsel and the Claims Administrator with an updated version of the declaration reflecting data for the Settlement Class for the entire Class Period, through the date of Preliminary Approval.

## 2.12 Communications

2.12.1 Confidentiality Prior to Preliminary Approval. Settlement Class Members, Named Plaintiffs, Settlement Class Counsel and State Fund separately agree that until the Motion for Preliminary Approval of Settlement is filed, he/she/it will not to disclose, disseminate and/or publicize, cause or permit to disclose, disseminate or publicize, any of the terms of the Settlement Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Settlement Agreement confidential; (2) to the extent necessary to report income to appropriate taxing authorities; (3) in response to a court order or subpoena; or (4) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Settlement Class Members, Named Plaintiffs, Settlement Class Counsel and State Fund separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Settlement Agreement or the matters



giving rise to this Settlement Agreement and further agree to respond to any conversation initiated by a third party by stating only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Settlement Class Counsel’s communications with Settlement Class Members in accordance with Settlement Class Counsel’s ethical obligations owed to Settlement Class Members.

2.12.2 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Settlement Class Member to opt out of or object to the Settlement, or appeal from any Judgment approving the Settlement. Nothing in this paragraph shall be construed to restrict Settlement Class Counsel’s ability to communicate with Settlement Class Members in accordance with Settlement Class Counsel’s ethical obligations owed to Settlement Class Members.

2.12.3 Following the Order Granting Preliminary Approval, the Parties and their counsel will direct inquiries from Settlement Class Members to the Claims Administrator to ensure consistent and accurate communication with Settlement Class Members.

2.12.4 Nothing in this Settlement Agreement shall limit State Fund from communicating with its counsel regarding this Settlement Agreement, or Settlement Class Members from communicating with Reynolds Counsel or Jetter Counsel regarding this Settlement Agreement.

### 2.13 Continuing Jurisdiction of the Court

The Parties agree that the Court shall retain exclusive jurisdiction over the Parties, and over this Settlement Agreement, in order to, among other things: (i) monitor and enforce compliance with this Settlement Agreement, Final Approval, and any related order of this Court; and (ii) resolve any disputes over this Settlement Agreement or the administration of any benefits of this Settlement Agreement, including, disputes over entitlement to payments for Attorneys’ Fees and Costs.

**2.14 Dispute Resolution**

Except as otherwise authorized herein and in Section 2.4.5(e) with regard to Settlement Class Member disputes regarding Settlement Payments, all disputes concerning the interpretation, implementation, calculation, or payment of the Settlement Amount or other disputes regarding compliance with this Settlement Agreement will be resolved by the Court.

**2.15 Parties' Authority**

The signatories hereto hereby represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

**2.16 Mutual Full Cooperation**

The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement as expeditiously as possible, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement and obtain Final Approval. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Reynolds Counsel and Jetter Counsel shall, with the assistance and cooperation of State Fund and its counsel, take all necessary steps to secure the Court's Final Approval of this Settlement Agreement. Reynolds Counsel and Jetter Counsel will also notify counsel for State Fund if they are subpoenaed or receive any other request for documents or information regarding any other action filed or potential action against State Fund or the Released Parties that covers or includes any Settlement Class Members.

**2.17 No Prior Assignments**

The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

## **2.18 No Admission**

Nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of State Fund or any of the Released Parties, and they expressly deny liability or wrongdoing. Each of the parties hereto has entered into this Settlement Agreement with the sole purpose and intention to avoid further disputes and litigation with the attendant inconvenience and expenses. In the event this Settlement Agreement is not approved by the Court or otherwise does not become final, State Fund does not waive any defenses or rights. This Settlement Agreement is a settlement document and shall, pursuant to Federal Rule of Evidence 408, California Evidence Code section 1152, and any and all analogous state laws, be inadmissible in evidence except: (1) in action or proceeding to approve, interpret, or enforce this Settlement Agreement; (2) in an action or proceeding in which State Fund wishes to assert a defense to the Released Claims; or (3) in an action, proceeding or any other collection efforts by State Fund, or its assignees, to pursue and collect outstanding premium owed to State Fund.

## **2.19 Notices**

Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

To Named Plaintiffs and the Settlement Class:

Drew E. Pomerance  
David Ginsburg  
ROXBOROUGH, POMERANCE, NYE & ADREANI LLP  
5820 Canoga Avenue, Suite 250  
Woodland Hills, California 91367

Michael Liskow  
CALCATERRA POLLACK LLP  
1140 Avenue of the Americas, 9th Floor  
New York, New York 10036-5803,

Scott M. Priz

PRIZ LAW, LLC  
3230 S. Harlem Ave., Suite 221B  
Riverside, Illinois 60546

Betsy C. Manifold  
WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP  
750 B Street, Suite 1820  
San Diego, California 92101.

To State Fund:

R. Timothy O'Connor  
John B. De Leon  
State Compensation Insurance Fund  
900 Corporate Center Drive, Suite 401  
Monterey Park, California 91754

## **2.20 Construction**

The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms-length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or his, her or its counsel participated in the drafting of this Settlement Agreement.

### 2.21 Captions and Interpretations

Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

## **2.22 Modification**

This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by State Fund, Reynolds Counsel, and Jetter Counsel, and Named Plaintiffs Michael Reynolds Enterprise, Inc. dba Reynolds Termite Control, American Jetter & Plumbing, Inc., and Resilience Treatment Center. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

### **2.23 Integration Clause**

This Settlement Agreement contains the entire agreement between the Parties relating to the Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements relating to this Settlement and the transaction contemplated hereby, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

### **2.24 Binding on Assigns**

The provisions of this Settlement Agreement shall run in perpetuity. This Settlement Agreement shall be binding upon the Parties hereto and their spouses, heirs, administrators, representatives, executors, successors and assigns, and shall inure to the benefit of State Fund and the Released Parties, and their predecessors, successors, affiliates, subsidiaries, parent companies, partners, current and past employees, insurers, agents, legal representatives, each of which is entitled to enforce this Settlement Agreement.

### **2.25 Signatories**

It is agreed that because the members of the Settlement Class are so numerous, it is impossible or impractical to have each member of the Settlement Class execute this Settlement Agreement. It is agreed that this Settlement Agreement may be executed on behalf of the Settlement Class by Reynolds Counsel, Jetter Counsel, and Named Plaintiffs Michael Reynolds Enterprise, Inc. dba Reynolds Termite Control, American Jetter & Plumbing, Inc., and Resilience Treatment Center, and shall have the same force and effect as if executed by each Participating Settlement Class Member.

### **2.26 Reasonableness of Settlement Agreement**

The Parties jointly warrant that this is a fair, reasonable, and adequate settlement and have arrived at this Settlement through arms-length negotiations, taking into account all relevant factors, present and potential.

**2.27 Named Plaintiffs' Understanding and Recognition of Their Responsibilities as Class Representatives**

Prior to the commencement of their involvement in the *Reynolds* and *Jetter* class action, each Named Plaintiff was informed of the duties and responsibilities that they were required to perform, and agreed to accept these responsibilities and duties. This is detailed further in the declarations submitted by Named Plaintiffs attached as Exhibits P-S.

**2.28 California Law and Interpretation**

All terms of this Settlement Agreement and its exhibits will be governed and interpreted by and according to the laws of the State of California, without giving effect to any conflict of law principles or choice of principles. If the Court determines that the release of claims in Section 2.7 above is unenforceable, for whatever reason, this entire Settlement Agreement will become null and void *ab initio*.

**2.29 Counterparts**

This Settlement Agreement may be executed in counterparts and by PDF or facsimile signature (“counterpart”), and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties.

**2.30 Entire Agreement**

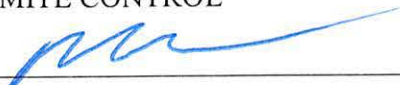
After this Settlement Agreement is fully executed by the Parties, it will constitute the entire agreement of the Parties. No oral representations, warranties, inducements, or writings have been made by any Party concerning this Settlement Agreement, other than those expressly stated herein.

[SIGNATURES APPEAR ON THE NEXT TWO PAGES]

IN WITNESS WHEREOF, Named Plaintiffs Michael Reynolds Enterprise, Inc. dba Reynolds Termite Control, American Jetter & Plumbing, Inc., and Resilience Treatment Center, State Fund, Reynolds Counsel, Jetter Counsel, and State Fund's counsel have executed this Settlement Agreement as of the date(s) indicated on the lines below.

Dated: October 10, 2022

NAMED PLAINTIFF MICHAEL REYNOLDS ENTERPRISE, INC. DBA REYNOLDS TERMITE CONTROL

By:  \_\_\_\_\_

Michael Reynolds

Dated: September \_\_, 2022

NAMED PLAINTIFF AMERICAN JETTER, INC.

By: \_\_\_\_\_

Jesus Loya, Vice President

Dated: September \_\_, 2022

NAMED PLAINTIFF RESILIENCE TREATMENT CENTER

By: \_\_\_\_\_

Jennifer Steiner, Chief Executive Officer

Dated: September \_\_, 2022

STATE COMPENSATION INSURANCE FUND

By: \_\_\_\_\_

Ken Van Laar, Chief Risk Officer

IN WITNESS WHEREOF, Named Plaintiffs Michael Reynolds Enterprise, Inc. dba Reynolds Termite Control, American Jetter & Plumbing, Inc., and Resilience Treatment Center, State Fund, Reynolds Counsel, Jetter Counsel, and State Fund's counsel have executed this Settlement Agreement as of the date(s) indicated on the lines below.

Dated: October \_\_, 2022

NAMED PLAINTIFF MICHAEL REYNOLDS ENTERPRISE, INC. DBA REYNOLDS TERMITE CONTROL

By: \_\_\_\_\_

Michael Reynolds

Dated: October <sup>11</sup>\_\_, 2022

NAMED PLAINTIFF AMERICAN JETTER, INC.

By: \_\_\_\_\_  
DocuSigned by:  
59E0C387A6B8488...

Jesus Loya, Vice President

Dated: October \_\_, 2022

NAMED PLAINTIFF RESILIENCE TREATMENT CENTER

By: \_\_\_\_\_

Jennifer Steiner, Chief Executive Officer

Dated: October 3, 2022

STATE COMPENSATION INSURANCE FUND

By: \_\_\_\_\_  
*Kenneth Van Laar*

Ken Van Laar, Chief Risk Officer



IN WITNESS WHEREOF, Named Plaintiffs Michael Reynolds Enterprise, Inc. dba Reynolds Termite Control, American Jetter & Plumbing, Inc., and Resilience Treatment Center, State Fund, Reynolds Counsel, Jetter Counsel, and State Fund's counsel have executed this Settlement Agreement as of the date(s) indicated on the lines below.

Dated: October \_\_, 2022

NAMED PLAINTIFF MICHAEL REYNOLDS  
ENTERPRISE, INC. DBA REYNOLDS  
TERMITE CONTROL

By: \_\_\_\_\_

Michael Reynolds

Dated: October \_\_, 2022

NAMED PLAINTIFF AMERICAN JETTER,  
INC.

By: \_\_\_\_\_

Jesus Loya, Vice President

Dated: October 12, 2022

NAMED PLAINTIFF RESILIENCE  
TREATMENT CENTER

By: Jennifer Steiner

Jennifer Steiner, Chief Executive Officer

Dated: October 3, 2022

STATE COMPENSATION INSURANCE  
FUND

By: Kenneth Van Laar

Ken Van Laar, Chief Risk Officer

APPROVED AS TO FORM AND CONTENT:

Dated: October 7, 2022

ROXBOROUGH, POMERANCE, NYE &  
ADREANI LLP

By:  \_\_\_\_\_

Drew Pomerance  
David Ginsburg

Attorneys for Named Plaintiff Michael Reynolds  
Enterprise, Inc. dba Reynolds Termite Control

Dated: September \_\_, 2022

CALCATERRA POLLACK LLP

By: \_\_\_\_\_

Michael Liskow  
Attorneys for Named Plaintiffs  
American Jetter & Plumbing, Inc. and  
Resilience Treatment Center

Dated: September \_\_, 2022

PRIZ LAW, LLC

By: \_\_\_\_\_

Scott M. Priz  
Attorneys for Named Plaintiffs  
American Jetter & Plumbing, Inc. and  
Resilience Treatment Center

Dated: September \_\_, 2022

WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP

By: \_\_\_\_\_

Betsy C. Manifold  
Attorneys for Named Plaintiffs  
American Jetter & Plumbing, Inc. and  
Resilience Treatment Center

APPROVED AS TO FORM AND CONTENT:

Dated: October \_\_, 2022

ROXBOROUGH, POMERANCE, NYE &  
ADREANI LLP

By: \_\_\_\_\_

Drew Pomerance  
David Ginsburg  
Attorneys for Named Plaintiff Michael Reynolds  
Enterprise, Inc. dba Reynolds Termite Control

Dated: October 10, 2022

CALCATERRA POLLACK LLP

By: Michael Liskow

Michael Liskow  
Attorneys for Named Plaintiffs  
American Jetter & Plumbing, Inc. and  
Resilience Treatment Center

Dated: October 11, 2022

PRIZ LAW, LLC

By: Scott M. Priz

Scott M. Priz  
Attorneys for Named Plaintiffs  
American Jetter & Plumbing, Inc. and  
Resilience Treatment Center

Dated: October 11, 2022

WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP

By: Betsy C. Manifold

Betsy C. Manifold  
Attorneys for Named Plaintiffs  
American Jetter & Plumbing, Inc. and  
Resilience Treatment Center

**EXHIBIT A**  
**MODIFIED LONG FORM**  
**NOTICE**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

**If You Had A Workers' Compensation Insurance Policy with State  
Compensation Insurance Fund You May be Eligible to Receive a  
Cash Payment from a Class Action Settlement.**

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

*Si desea recibir esta notificación en español visite [\[website\]](#).*

- A proposed Settlement has been reached in two class action lawsuits against State Compensation Insurance Fund (“State Fund” or “Defendant”), about whether State Fund incorrectly charged excess premiums for certain workers’ compensation insurance policies from March 1, 2013 through [\[prelim approval date\]](#) (the “Class Period”). The Settlement resolves litigation over whether State Fund did in fact charge excess premiums.
- You may be eligible to participate in the proposed Settlement, if it is finally approved, if you had a workers’ compenstion insurance policy through State Fund from March 1, 2013 through [\[prelim approval date\]](#) where your premiums were calculated using a tier modifier above 1.00. This may have occurred to you in either or both of the following two ways: State Fund may have applied a tier modifier above 1.00 to at least one of your policies during the Class Period based on the mathematical application of the tier modifier algorithm to your claims history and other information taken into account by the algorithm, and it caused you to pay more premiums than you otherwise would have. State Fund may also have applied a tier modifier above 1.00 to at least one of your policies during the Class Period due to State Fund’s determination that you failed to provide sufficient documentation of your claims history and other required information, and it caused you to pay more premiums than you otherwise would have. If you have been mailed or emailed notice of this class action settlement, it is because State Fund’s records indicate that you paid increased premiums for one or both of these reasons and therefore are a member of the Settlement Class. If you did not receive this notice directly, but had at least one workers’ compenstion insurance policy through State Fund from March 1, 2013 through the present, you may contact the Claims Administrator at the phone number, email address or mailing address listed below in Section 23 to determine whether you may be eligible to participate in the Settlement.
- If you qualify for the Settlement and do not seek to exclude yourself from the Settlement you will be eligible for a cash payment if the Settlement is approved. If you are eligible, you do not need to take any action to receive a payment from the Settlement. If you qualify for the Settlement and do not seek to exclude yourself, you will be sent a check at the address this notice was mailed to. If you would like to provide an updated address for the check to be mailed to, please contact the Claims Administrator at the phone number, email address or mailing address listed below in Section 23 to provide an updated address.
- Your legal rights are affected whether you act, or don’t act. **Please read this notice carefully.**

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

<b>EXCLUDE YOURSELF BY <a href="#">[DATE]</a>, 2022</b>	Receive no payment from the Settlement. This is the only option that allows you to ever be, or continue to be, a part of any other lawsuit against State Fund about the legal claims in these cases.
<b>OBJECT BY <a href="#">[DATE]</a>, 2022</b>	Write to the Court about why you think the Settlement is unfair, inadequate, or unreasonable by following the instructions in this notice.
<b>GO TO A HEARING <a href="#">[DATE]</a>, 2022</b>	Ask to speak in Court about the fairness of the Settlement. You do not need to attend the hearing to receive payment.
<b>DO NOTHING</b>	If you do nothing you will be deemed to have accepted the Settlement and will automatically receive payment in the manner discussed below.

- These rights and options—**and the deadlines to exercise them**—are explained in this notice. The deadlines may be moved, canceled, or otherwise modified, so please check the Settlement Website, [website address], regularly for updates and further details.
- The Court in charge of these cases has yet to decide whether to finally approve the Settlement. Payments will be made if the Court finally approves the Settlement and after any appeals are resolved. Please be patient.

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## **BASIC INFORMATION**

### **1. Why is there a notice?**

This Notice relates to a proposed settlement of two class action lawsuits involving whether State Compensation Insurance Fund incorrectly charged excess premiums for certain workers' compensation insurance policies from March 1, 2013 through [prelim approval date]. You received this notice because you have been identified as a potential Settlement Class Member able to receive payment from a proposed settlement of the class action lawsuits *Michael Reynolds Enterprise, Inc. dba Reynolds Termite Control v. State Compensation Insurance Fund*, Case No. 19STCV05738 and *American Jetter & Plumbing, Inc. v. State Compensation Insurance Fund*, Case No. 19STCV36307. You have a right to know about a proposed Settlement of these class action lawsuits, and about your options, before the Court decides whether to finally approve the Settlement.

These cases are taking place in the Superior Court of California, County of Los Angeles (the "Court"). Judge Lawrence P. Riff of the the Superior Court of California, County of Los Angeles, is in charge of these cases. The individuals who sued are called the Named Plaintiffs, and the company they sued, State Compensation Insurance Fund, is called the Defendant.

### **2. What is this lawsuit about?**

The lawsuit generally alleges that the Defendant breached its insurance agreements with insureds and violated certain state laws and regulations by charging insurance premiums calculated using a tier modifier above 1.00 during certain time periods and for different reasons as discussed below. The Defendant denies any and all wrongdoing of any kind whatsoever, and denies any liability to the Named Plaintiffs and to the Settlement Class.

### **3. Why is this a class action?**

In a class action, one or more people, called "Class Representatives," sue on behalf of people who have similar claims. All these people are in a "class" or are "class members," except for those who exclude themselves from the class. Judge Lawrence P. Riff of the Superior Court of California, County of Los Angeles is in charge of these class actions.

### **4. Why is there a Settlement?**

The Defendant does not admit that it did anything wrong and both sides want to avoid the cost of further litigation. The Court has not decided in favor of the Named Plaintiffs or the Defendant. The Parties and their attorneys think the Settlement is best for everyone who is affected. The Settlement provides Settlement Class Members with the opportunity to receive Settlement benefits.

## **WHO IS IN THE SETTLEMENT?**

### **5. How do I know if I am in the Settlement?**

The Settlement Class includes all insureds of State Fund whose workers' compensation insurance premiums were calculated using a tier modifier in excess of 1.00 for any policy in effect from March 1, 2013, through [prelim approval date]. This may have occurred to you in either or both of the following two ways: State Fund may have applied a tier modifier above 1.00 to at least one of your policies during the Class Period based on the mathematical application of the tier modifier algorithm to your claims history and other information taken into account by the algorithm, and it caused you to pay more premiums than you otherwise would have. State Fund may also have applied a tier modifier above 1.00 to at least one of your policies during the Class Period due to State Fund's determination that you failed to provide sufficient documentation of your claims history and other required information during your policy application process, and it caused you to pay more

premiums than you otherwise would have. If you directly received a copy of this or similar notice by postal mail and/or email you have been identified as having paid increased premiums for one of both of these reasons and therefore are a member of the Settlement Class.

**6. What if I am still not sure if I am included in the Settlement?**

If you are not sure whether you are a Settlement Class Member, or have any other questions about the Settlement, you should call the toll-free number [[phone](#)] for more information.

**SETTLEMENT BENEFITS**

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

The Settlement provides for the establishment of a Settlement Fund of \$65,000,000.00 to pay for (1) claims of eligible “Participating Settlement Class Members” (meaning Settlement Class Members who do not exclude themselves from the Settlement); (2) the costs of providing notice of the Settlement to the Settlement Class and administration of the Settlement; (3) attorneys’ fees and costs approved by the Court; and (4) any service payments to the Named Plaintiffs approved by the Court. The actual amount recovered by each Participating Settlement Class Member will depend on the total amount of the payments due Participating Settlement Class Members who do not opt-out of the Settlement and is explained further below, **but in no event will be less than \$100.00, the minimum payment to be provided to each Participating Settlement Class Member.**

**8. What can I get from the Settlement?**

The amount of each Participating Settlement Class Members’ Settlement payment will be based first on their proportional share of the total excess premiums paid by all Participating Settlement Class Members during the Class Period (the “Base Payment”). If this total amount is less than \$100.00, the Participating Settlement Class Member will be entitled to a Base Payment of no less than \$100.00. Then, each Participating Settlement Class Member will receive a proportional share of the funds remaining from the \$65,000,000 Cash Settlement Amount after subtracting (1) the costs of notice to the Settlement Class and administration of the Settlement; (2) any attorneys’ fees and costs approved by the Court; and (3) any service payments to the Class Representatives approved by the Court. In the event that any checks for Settlement payments are not cashed within 180 days, they will be deemed void, and the unclaimed funds will either be further distributed to Participating Settlement Class Members who did cash their settlement checks, or sent to worthwhile charities potentially including Worksafe and Kids’ Chance of California. For further information on the manner in which each Participating Settlement Class Members’ payment will be calculated, and the manner in which unclaimed funds will be distributed, please review Section 2.4 of the Settlement Agreement, which is available on the Settlement Website, [[website address](#)].

**9. What am I giving up to stay in the Class?**

Unless you exclude yourself from the Settlement, you cannot sue the Defendant, continue to sue, or be part of any other lawsuit against the Defendant based on the issues in these cases. It also means that you will be bound by the Settlement Agreement and any final judgment by the Court. It is important that you carefully review and understand the claims that Participating Settlement Class Members are releasing, and the persons and entities being released from those claims. The full terms of the release are as follows, and are also available at Section 2.7 of the Settlement Agreement:

2.7.1 Effective on the date that State Fund fully funds the entire Settlement Fund (within seven (7) days after the Effective Date), the Settlement Class Members, including their heirs, assigns, and estates, shall be deemed to fully forever, irrevocably and unconditionally release, and discharge State Fund and the Released Parties from any and all claims, debts, liabilities, demands, obligations, guarantees, penalties, costs, expenses, attorneys’ fees, damages, liquidated damages, action or causes



of action whatever kind or nature, whether known or unknown, contingent or accrued, against State Fund or the Released Parties or any of them, under any state or municipal statute, ordinance, regulation, order or common law, arising out of or related to any of the claims asserted in either the *Reynolds* or *Jetter* class action lawsuits, through the date of preliminary approval of this Settlement, and any related claims for interest (whether pre- or post-judgment) and/or attorneys' fees and costs (the "Released Claims").

2.7.2 This Settlement Agreement shall be binding on all Settlement Class Members whether or not they actually receive a payment pursuant to this Settlement Agreement, unless they have opted-out in accordance with the procedures set forth in this Agreement. This Settlement Agreement shall constitute, and may be pleaded as, a complete and total defense to any Released Claims raised in the future.

2.7.3 The Named Plaintiffs and Participating Settlement Class Members agree not to file a lawsuit in any court alleging any of the Released Claims, or participate as a party or a class member in any administrative or other legal proceedings, in any forum, against State Fund or the Released Parties, for any Released Claims under this Settlement Agreement. The Named Plaintiffs and Participating Settlement Class Members further agree they will not cause, encourage, assist, volunteer, advise or cooperate with any other potential plaintiffs to commence, maintain, initiate or prosecute, any action, lawsuit, proceeding, charge, petition, complaint or claim asserting any of the Released Claims against State Fund. In consideration for the promises made by State Fund in this Settlement Agreement, the Named Plaintiffs and Participating Settlement Class Members agree not to institute any suit, complaint, proceeding, grievance, or action of any kind at law, in equity, or otherwise in any court of the United States, state, or municipality, or administrative agency, or any arbitration or other legal forum, against State Fund or the Released Parties for any claim included in the Released Claims. The Named Plaintiffs and Participating Settlement Class Members also agree that they will not join, participate in, or consent to opt in to any actions alleging that he, she, or it is similarly situated to any other policyholder with respect to any such Released Claims, and that each will elect to opt out of any such actions against State Fund or the Released Parties of which he, she, or it is involuntarily made a member or party. If any of the Settlement Class Members are joined in any class or collective lawsuits for any Released Claims, he, she, or it will receive no further compensation of any kind for such released claim or claims.

2.7.4 The Parties agree that the *Reynolds* lawsuit is premised upon the decision issued by the Insurance Commissioner entitled *In the Matter of the Appeal of A-Brite Blind & Drapery Cleaning* (AHB WCA-17-26) ("A-Brite"). The Parties further agree that the release given here covers all allegations, legal theories, and claims brought in the *Reynolds* lawsuit that are premised upon and/or rely on the *A-Brite* decision, which was attached as an exhibit to the *Reynolds* lawsuit.

2.7.5 The Released Claims defined herein specifically do not include, or otherwise affect, State Fund's ability to pursue and collect outstanding premiums.

For more information regarding the terms of the Settlement Agreement, you can review the complete Settlement Agreement on the Settlement Website, [[website](#)].

## **HOW TO GET A PAYMENT**

### **10. How can I get a payment?**

If you do not exclude yourself from the Settlement (discussed below), you do not need to do anything to receive a payment. If you qualify for the Settlement and do not seek to exclude yourself, and had an eligible workers' compensation insurance policy during the Class Period, you will be sent a check at the address on file with the

Claims Administrator. If you have moved recently, plan on moving or would like your check sent to a different address, you should contact the Claims Administrator by phone at [phone], or through the website [website].

**11. When will I get my payment?**

Settlement checks will be mailed within 21 days after (a) the Court enters the Order of Final Approval and Judgment; and (b) the Order of Final Approval and Judgment becomes final. Further information about when the Order of Final Approval and Judgment becomes final is available as Section 2.1.8 of the Settlement Agreement. If the Court approves the Settlement after a hearing on [Date], 2022, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time. Please be patient.

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you do not want a payment from the Settlement Fund, and you want to keep the right to sue or continue to sue the Defendant about the issues in these cases, then you must take steps to remove yourself from the Settlement. This is called excluding yourself or “opting out” of the Settlement Class.

**12. How do I get out of the Settlement?**

To exclude yourself (or “opt-out”) from the Settlement, you must complete and mail to the Claims Administrator a written request that includes the following:

- Your full name, address, and telephone number;
- A sentence stating that you believe you are a Settlement Class Member in the cases;
- A statement making clear that you request to be excluded from the Reynolds and Jetter class settlements; and
- Your own signature.

You must mail your exclusion request, postmarked no later than [DATE], 2022 to:

*Reynolds; Jetter, et al v. State Compensation Insurance Fund*  
c/o CPT Group, Inc.  
50 Corporate Park  
Irvine, CA 92606

If you do not seek to exclude yourself, or do not submit your request for exclusion on time, you will remain a Settlement Class Member and, if the Settlement is finally approved, you will be bound by the Settlement and will not thereafter be able to sue the Defendant about the claims in this lawsuit.

**13. If I do not exclude myself, can I sue the Defendant for the same thing later?**

No. If you are a Settlement Class Member, unless you exclude yourself you give up any right to sue the Defendant for the claims that this Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You may need to exclude yourself from this Settlement Class in order to continue your own lawsuit.

**14. If I exclude myself, can I still get a payment?**

No. You will not get any money from the Settlement if you exclude yourself.

## OBJECTING TO THE SETTLEMENT

### 15. How can I tell the Court if I do not like the Settlement?

If you are a Settlement Class Member, you can object to the Settlement, to Settlement Class Counsel's request for attorneys' fees and costs, or to the Class Representatives' request for service payments. To object, your objection must include the following:

- Your full name, current address, email address (if available) and telephone number;
- The name of the cases: *Michael Reynolds Enterprise, Inc. dba Reynolds Termite Control v. State Compensation Insurance Fund*, Case No. 19STCV05738 and *American Jetter & Plumbing, Inc. v. State Compensation Insurance Fund*, Case No. 19STCV36307;
- The factual and/or legal reason(s) why you object to the Settlement;
- Your own signature (your lawyer's signature is not sufficient).

Your objection must be in writing and mailed to the Claims Administrator and postmarked no later than **[DATE]**, 2022. The Claims Administrator's mailing address is as follows:

*Reynolds; Jetter, et al v. State Compensation Insurance Fund*  
c/o CPT Group, Inc.  
50 Corporate Park  
Irvine, CA 92606

### 16. What is the difference between objecting and excluding (opting-out)?

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is telling the Court that you do not want to be part of the Settlement. If you exclude yourself from the Settlement, you cannot object to the Settlement because it no longer affects you.

## THE LAWYERS REPRESENTING YOU

### 17. Do I have a lawyer in these cases?

Yes. The Court has appointed certain attorneys and law firms as "Settlement Class Counsel," meaning that they were appointed to represent all Settlement Class Members: Roxborough, Pomerance, Nye & Adreani, LLP and Michael Liskow of Calcaterra Pollack LLP.

You will not be charged for these lawyers; they will be paid out of the Settlement Fund. If you want to be represented by your own lawyer, you may hire one at your own expense.

### 18. How will the lawyers be paid?

Settlement Class Counsel intends to file a motion on or before **[DATE]**, 2022 seeking an amount not to exceed 30% of the Settlement Fund, or \$19,500,000.00, in attorneys' fees, which includes reimbursement of reasonable costs. The attorneys' fees and costs awarded by the Court will be paid from the Settlement Fund. The Court will determine the amount of attorneys' fees and costs to award. Settlement Class Counsel will also request a service payment not to exceed \$25,000 each for the three Class Representatives, who took risks and helped the lawyers in bringing these cases on behalf of, and to the benefit of, the Settlement Class.

## **THE COURT'S FINAL APPROVAL HEARING**

### **19. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing on [DATE] at [TIME] at the Superior Court of the State of California, County of Los Angeles, before the Honorable Lawrence P. Riff, in Courtroom [REDACTED], in the Spring Street Courthouse, Department 7, 312 N. Spring St, Los Angeles, CA 90012.

In light of the ongoing COVID-19 pandemic, the hearing may be moved to a different date or time without additional notice, or could take place only online through videoconference, so it is a good idea to check the Settlement Website, [website], for updates. Please also review the Court's current social distancing procedures for attendance at hearings available at <https://www.lacourt.org/>. At the Final Approval Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider how much to award Settlement Class Counsel for attorneys' fees and costs, and the amount of any service payment to the Class Representatives. If there are objections, the Court will consider them at the hearing. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take. Within three days of the entry of any final order by the Court, the Order will be posted on the Settlement Website.

### **20. Do I have to come to the hearing?**

No. Settlement Class Counsel will answer any questions that the Court may have, but you may come at your own expense. You do not need to attend the hearing in order to receive a payment. If you mail the Claims Administrator an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time to the proper address, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

### **21. May I speak at the hearing?**

Yes. You may appear at the Final Approval Hearing and address the Court, in person or through an attorney.

## **IF YOU DO NOTHING**

### **22. What happens if I do nothing at all?**

If you do nothing, you will be deemed to have accepted the Settlement and will receive a payment from the Settlement. Unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendant about the issues arising out of or relating to these cases, ever again.

## **GETTING MORE INFORMATION**

### **23. How do I get more information?**

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can review a complete copy of the Settlement Agreement and other information at the Settlement Website, [website]. If you have additional questions, you can visit the Settlement Website, [website]. You can also write to the Claims Administrator by mail or email, or call toll-free.

**MAIL:** *Reynolds; Jetter, et al v. State Compensation Insurance Fund*, c/o CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606

**EMAIL:** [case email address]

**PHONE:** [case toll-free phone]

Updates will be posted at the Settlement Website as information about the Settlement process becomes available.

**PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE CONCERNING THESE CASES.**

**EXHIBIT B**  
**MODIFIED SHORT FORM**  
**NOTICE**

## *Reynolds; Jetter, et al v. State Compensation Insurance Fund*

**What is this Litigation About?** A settlement (“Settlement”) has been reached with State Compensation Insurance Fund (“State Fund” or “Defendant”) in two class action lawsuits about whether State Fund incorrectly charged excess premiums for certain workers’ compensation insurance policies from March 1, 2013 through [prelim approval date] (the “Class Period”). The Court has not decided who is right. Instead, both sides agreed to the Settlement.

**Who is Included in the Settlement?** You are a “Settlement Class Member” if you had a workers’ compensation insurance policy through State Fund in effect from March 1, 2013, through [prelim approval date] where the premiums were calculated using a tier modifier in excess of 1.00, and where such calculation resulted in your paying a higher premium than you otherwise would have otherwise paid. You are receiving this notice because you, or someone at your current address, appears to meet these criteria. For more information on whether you may be a Settlement Class Member, please visit the Settlement Class Website at [website].

**What Does the Settlement Provide?** The Settlement provides a Settlement Amount of \$65,000,000.00 to pay (1) claims of eligible Settlement Class Members; (2) the costs of notice to the Settlement Class and administration of the Settlement; (3) attorneys’ fees and costs approved by the Court; and (4) any service payments to the plaintiffs in the case approved by the Court. The actual amount recovered by each Settlement Class Member will depend on the total amount of the payments due Settlement Class Members who do not opt-out of the Settlement.

**How Do I Get a Payment?** You do not need to do anything to receive a cash payment. If you do not exclude yourself from the Settlement (discussed below) and had a workers’ compensation insurance policy through State Fund as of [prelim approval date], you will be mailed a check by the Claims Administrator at the address to which this notice was mailed to. If you moved recently, plan on moving or would like your check sent to a different address, you should contact the Claims Administrator by phone at [phone], or through the website [website].

**Are There Other Options?** If you do not want to be legally bound by the Settlement, you must exclude yourself by [deadline]. If you do not exclude yourself, you will release your claims against Defendant about all the allegations in case. Please review the full details of what claims you will release in the Long Form Notice on the website. You may object to the Settlement by [deadline]. The Long Form Notice available on the website explains how to exclude yourself or object. The Court will hold a Final Approval Hearing on [date/time], to consider (1) whether to approve the Settlement; (2) whether to award the plaintiffs a service payment, and the Class Counsel attorneys’ fees and expenses; and (3) any objections. You or your attorney may attend and ask to appear at the Final Approval Hearing, but you do not have to. For more important information on the Final Approval Hearing visit [website].

[case website address]

[case toll-free number]

**COURT APPROVED NOTICE OF CLASS  
ACTION SETTLEMENT**

*Reynolds Enterprise, Inc. dba Reynolds Termite Control v.  
State Compensation Insurance Fund, Case No.  
19STCV05738*

*American Jetter & Plumbing, Inc. v. State Compensation  
Insurance Fund, Case No. 19STCV36307*

**You may be eligible for benefits from a class  
action settlement because you had a  
Workers' Compensation Insurance Policy  
with State Compensation Insurance Fund.**

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

To learn more about the settlement, including  
the claims released or to view the Long Form  
Notice, Settlement Agreement, Court Order  
or other case related documents, visit the  
settlement website at [website].

*Si desea recibir esta notificación en español  
visite [website].*

PRESORTED  
First Class  
US Postage  
PAID  
PBPS

***State Compensation Insurance Fund Settlement***  
c/o CPT Group, Inc.  
50 Corporate Park  
Irvine, CA 92606

**ELECTRONIC SERVICE REQUESTED**

CPT ID: «ID»  
«FullName»  
«Address1» «Address2»  
«City», «State» «Zip»



**EXHIBIT C**  
**MODIFIED [PROPOSED]**  
**PRELIMINARY APPROVAL**  
**ORDER**

1 Drew E. Pomerance, Esq. (SBN 101239)  
David R. Ginsburg, Esq. (SBN 210900)  
2 ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP  
3 5820 Canoga Avenue, Suite 250  
Woodland Hills, California 91367  
4 Telephone: (818) 992-9999  
Facsimile: (818) 992-9991  
5 Email: dep@rpnalaw.com; drg@rpnalaw.com  
6 Attorneys for Plaintiff Michael Reynolds Enterprise, Inc. dba Reynolds Termite Control

7 [Additional Counsel Listed on Signature Page]

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE**

10 MICHAEL REYNOLDS  
11 ENTERPRISE, INC. DBA  
REYNOLDS TERMITE CONTROL,  
12 individually and on behalf of all  
others similarly situated,

13 Plaintiff,

14 vs.

15 STATE COMPENSATION  
16 INSURANCE FUND, a public  
enterprise fund; and DOES 1 through  
17 50, inclusive,

18 Defendants.

19 And Related Case:

20 AMERICAN JETTER &  
21 PLUMBING, INC. and  
RESILIENCE TREATMENT  
22 CENTER, on behalf of themselves  
and all others similarly situated,

23 Plaintiffs,

24 vs.

25 STATE COMPENSATION  
26 INSURANCE FUND, a public  
enterprise fund; and DOES 1 through  
27 50, inclusive,

28 Defendants.

Case No. 19STCV05738  
Honorable Lawrence P. Riff

**[PROPOSED] ORDER GRANTING MOTION  
FOR PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

1 The Motion for Preliminary Approval of Class Action Settlement, Conditional  
2 Certification, Approval of Class Notice and Setting of Final Approval Hearing (“Motion”) by  
3 Plaintiffs Michael Reynolds Enterprise, Inc. dba Reynolds Termite Control (“Reynolds”),  
4 American Jetter & Plumbing, Inc. (“Jetter”), and Resilience Treatment Center (“Resilience,”  
5 collectively “Named Plaintiffs”) came on for hearing on \_\_\_\_\_, 2022 in Department 7  
6 of the of the Superior Court of California for the County of Los Angeles, the Honorable  
7 Lawrence P. Riff presiding.

8 Drew E. Pomerance of Roxborough, Pomerance, Nye & Adreani, LLP and Michael  
9 Liskow of Calcaterra Pollack LLP appeared for Named Plaintiffs.

10 R. Timothy O’Connor and John De Leon appeared for Defendant State Compensation  
11 Insurance Fund (“Defendant”).

12 Named Plaintiffs and Defendant are referred herein together as the “Parties.”

13 Upon reviewing the Motion, the Class Action Settlement and Release and exhibits  
14 attached thereto (“Settlement Agreement” or “Settlement”), filed concurrently with the  
15 Motion, and accompanying supporting declarations and pleadings, and good cause appearing  
16 thereon, IT IS HEREBY ORDERED that the Motion is GRANTED, on the following terms  
17 and conditions:

18 1. The Court, for purposes of this Order, adopts all defined terms as set forth in  
19 the Settlement Agreement.

20 2. The Court preliminarily finds that the Settlement is fair, just, reasonable, and  
21 adequate, and therefore preliminarily approves the Settlement, subject to further consideration  
22 by the Court at the time of the Final Approval Hearing.

23 3. The Court grants conditional certification for the purpose of settlement to the  
24 following Settlement Class:

25 All insureds of State Fund whose workers’ compensation insurance premiums were  
26 calculated using a tier modifier in excess of 1.00, and where such calculation resulted in  
27 the payment of a higher premium than the insured would have otherwise paid, for any  
28 policy in effect from March 1, 2013, through the date of preliminary approval of this  
Settlement. Excluded from the Class is State Fund, its affiliates, predecessors,

1 successors, officers, directors, agents, servants and employees and the immediate  
2 families of such persons.

3 4. The Court appoints Named Plaintiffs Reynolds, Jetter and Resilience as Class  
4 Representatives for the Settlement Class.

5 5. The Court appoints Roxborough, Pomerance, Nye & Adreani, LLP and Michael  
6 Liskow of Calcaterra Pollack, LLP as Settlement Class Counsel.

7 6. The Court approves CPT Group, Inc. as the Claims Administrator. The Claims  
8 Administrator shall comply with the terms and conditions of the Settlement Agreement in  
9 carrying out its duties pursuant to the Settlement.

10 7. A Final Approval Hearing shall be held before this Court on \_\_\_\_\_,  
11 2022 at \_\_\_\_\_ a.m./p.m. before the Honorable Lawrence P. Riff in Department 7 of the  
12 Superior Court of California, County of Los Angeles, 312 North Spring Street, Los Angeles,  
13 California, 90012 to determine: (a) whether the proposed settlement of these actions on the  
14 terms and conditions provided for in the Settlement Agreement should be given final approval  
15 as fair, just and reasonable; (b) whether an Order of Final Approval and Judgment should be  
16 entered: and (c) whether Reynolds Counsel's and Jetter Counsel's application(s) for  
17 Attorneys' Fees and Costs, and the Class Representatives' request for Service Payments to be  
18 paid from the Settlement Fund, should be approved. The Final Approval Hearing may be  
19 postponed, adjourned or continued by further order of the Court, without further notice to the  
20 Parties or the Settlement Class Members.

21 8. The form, manner, and content of the Notices of Settlement, attached to the  
22 Settlement Agreement as Exhibits A and B, will provide the best notice practicable to the  
23 Settlement Class under the circumstances, constitutes valid and sufficient notice to all  
24 Settlement Class Members, and fully complies with California Code of Civil Procedure  
25 section 382, California Code of Civil Procedure section 1781, the Constitution of the State of  
26 California, the Constitution of the United States, and other applicable law.

27 9. The Claims Administrator shall disseminate the Notices of Settlement as  
28 provided in the Settlement Agreement and in the Notice Program, attached as Exhibit E to the

1 Settlement Agreement. The Claims Administrator shall complete the Notice Program no later  
2 than thirty (30) days after entry of this Order.

3 10. Any Settlement Class Member who wishes to be excluded from the Settlement  
4 Class must mail a written request for exclusion to the Claims Administrator at the address  
5 provided in the Notices of Settlement, postmarked no later than twenty-eight (28) days prior to  
6 the Final Approval Hearing (the “Opt-Out Deadline”). The request for exclusion must be  
7 personally signed by the Settlement Class Member and must include: (i) the Settlement Class  
8 Member’s name, address and telephone number; (ii) a sentence stating that he, she or it  
9 believes they are a Settlement Class Member; and (iii) a statement making clear that the  
10 Settlement Class Member requests to be excluded from the Reynolds and Jetter class  
11 settlements. Any Settlement Class Member to whom any Short Form Notice or Long Form  
12 Notice is resent after having been returned undeliverable to the Claims Administrator shall  
13 have an additional fourteen (14) calendar days beyond the Opt-Out Deadline has expired. No  
14 Settlement Class Member, or any person acting on behalf of or in concert or participation with  
15 that Settlement Class Member, may exclude any other Settlement Class Member from the  
16 Settlement Class. All Settlement Class Members will be bound by the Order of Final  
17 Approval and Judgment unless such Settlement Class Member timely files a valid written  
18 request for exclusion in accordance with this Order.

19 11. Any Settlement Class Member who has not filed a timely written request for  
20 exclusion and who wishes to object to the fairness, reasonableness, or adequacy of the  
21 Settlement Agreement or the proposed Settlement, to the request for an award of Attorneys’  
22 Fees and Costs, or to the request for Service Payments for the Class Representatives must  
23 submit to the Claims Administrator a written statement objecting to this Settlement  
24 Agreement. Such objection and any supporting materials must be in writing, mailed to the  
25 Claims Administrator and postmarked no later than twenty-eight (28) days prior to the Final  
26 Approval Hearing (the “Objection Deadline”). An objection must state the objector’s name,  
27 current address, email address (if available) and telephone number, the basis for the objection,  
28 and be signed by the objector. Any Settlement Class Member to whom any Short Form Notice

1 or Long Form Notice is resent after having been returned undeliverable to the Claims  
2 Administrator shall have an additional fourteen (14) calendar days beyond the Objection  
3 Deadline has expired. Any Settlement Class Member may appear at the Final Approval  
4 Hearing.

5 12. Named Plaintiffs shall file and serve papers in support of final approval of the  
6 Settlement and in support of Reynolds Counsel's and Jetter Counsel's application(s) for an  
7 award of Attorneys' Fees and Costs and Class Representatives' Service Payments at least sixty  
8 (60) days prior to the Final Approval Hearing. Named Plaintiffs shall file a supplement to any  
9 motion or petition in support of final approval, application for an award of Attorneys' Fees  
10 and Costs, and Class Representatives' Service Payments, including a response to any  
11 objections received (and attaching such objections), no later than seven (7) days prior to the  
12 Final Approval Hearing.

13 13. No later than twenty-one (21) days before the Final Approval Hearing, the  
14 Claims Administrator shall provide the Parties with a declaration of due diligence detailing the  
15 completion of the Notice Program, and any attempts by the Claims Administrator to locate  
16 Settlement Class Members, and its inability to deliver Notice to the Settlement Class Members  
17 due to invalid mailing or email addresses (the "Due Diligence Declaration").

18 14. No later than seven (7) days before the Final Approval Hearing, the Parties will  
19 file with the Court the Due Diligence Declaration and a declaration by the Claims  
20 Administrator listing all of the valid opt-outs received

21 15. The Parties are hereby ordered, pursuant to the terms and conditions of the  
22 Settlement Agreement, to take all necessary and appropriate steps to establish the means  
23 necessary to implement the Settlement.

24 16. Pending the Final Approval Hearing, all proceedings in these actions, other  
25 than proceedings necessary to carry out or enforce the terms and conditions of the Settlement  
26 Agreement and this Order, are hereby stayed.

**IT IS SO ORDERED**

DATED: \_\_\_\_\_

\_\_\_\_\_  
HONORABLE LAWRENCE P. RIFF

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**EXHIBIT D**  
**MODIFIED [PROPOSED] FINAL**  
**APPROVAL ORDER AND**  
**JUDGMENT**



1                                   **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
2                                   **COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE**

3 MICHAEL REYNOLDS  
4 ENTERPRISE, INC. DBA  
5 REYNOLDS TERMITE CONTROL,  
6 individually and on behalf of all  
7 others similarly situated,

8                                   Plaintiff,

9 vs.

10 STATE COMPENSATION  
11 INSURANCE FUND, a public  
12 enterprise fund; and DOES 1 through  
13 50, inclusive,

14                                   Defendants.

15 And Related Case:

16 AMERICAN JETTER &  
17 PLUMBING, INC. and  
18 RESILIENCE TREATMENT  
19 CENTER, on behalf of themselves  
20 and all others similarly situated,

21                                   Plaintiffs,

22 vs.

23 STATE COMPENSATION  
24 INSURANCE FUND, a public  
25 enterprise fund; and DOES 1 through  
26 50, inclusive,

27                                   Defendants.

Case No. 19STCV05738  
Honorable Lawrence P. Riff

**[PROPOSED] ORDER AND JUDGMENT  
GRANTING FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT**

1 The Motion for Final Approval of Class Action Settlement (“Final Approval Motion”)  
2 and the Motion(s) for Awards of Attorneys’ Fees, Costs, and Service Payments to Plaintiff (“Fee  
3 Motion”) filed by Plaintiffs Michael Reynolds Enterprise, Inc. dba Reynolds Termite Control  
4 (“Reynolds”), American Jetter & Plumbing, Inc. (“Jetter”), and Resilience Treatment Center  
5 (“Resilience,” collectively “Named Plaintiffs”) came on for hearing on \_\_\_\_\_, 2022 in  
6 Department 7 of the of the Superior Court of California for the County of Los Angeles, the  
7 Honorable Lawrence P. Riff presiding.

9 Drew E. Pomerance of Roxborough, Pomerance, Nye & Adreani, LLP and Michael  
10 Liskow of Calcaterra Pollack LLP appeared for Named Plaintiffs.

11 R. Timothy O’Connor and John De Leon appeared for Defendant State Compensation  
12 Insurance Fund (“Defendant”).

14 Named Plaintiffs and Defendant are referred to herein together as the “Parties.”

15 Unless otherwise defined herein, all capitalized words and terms in this Order and  
16 Judgment Granting Final Approval of Class Action Settlement (“Order of Final Approval and  
17 Judgment”) shall have the same meanings as set forth in the Settlement Agreement filed on  
18 [date].

19 On \_\_\_\_\_, the Court entered an Order Granting Motion for Preliminary  
20 Approval of Class Action Settlement (“Preliminary Approval Order”), preliminarily approving  
21 the proposed settlement of the *Reynolds* and *Jetter* actions (the “Actions”) pursuant to the terms  
22 of the Settlement Agreement and directing that notice be given to the Settlement Class Members  
23 pursuant to the Notice Program.

24 Pursuant to the Notice Program, the Settlement Class was notified of the terms of the  
25 proposed Settlement and of a Final Approval Hearing (at \_\_\_ a.m. on \_\_\_\_\_, 2022) to  
26 determine: (1) whether the terms and conditions of the Settlement are fair, reasonable and  
27  
28

1 adequate for the release of the Released Claims against the Released Parties; (2) whether this  
2 Order of Final Approval and Judgment should be entered; (3) whether the Court should approve  
3 the provisions of the Settlement Agreement with respect to the Service Payments requested by  
4 Named Plaintiffs; and (4) whether the Court should grant Reynolds Counsel's and Jetter  
5 Counsel's application(s) for Attorneys' Fees and Costs.  
6

7 A Final Approval Hearing was held on \_\_\_\_\_, 202\_. Prior to the Final Approval  
8 Hearing, proof of completion of the Notice Program was filed with the Court, along with  
9 declarations of compliance as prescribed in the Preliminary Approval Order. Settlement Class  
10 Members were therefore notified of their right to appear at the hearing in support of or in  
11 opposition to the proposed Settlement, the award of Attorneys' Fees and Costs to Reynolds  
12 Counsel and Jetter Counsel, and Service Payments to Named Plaintiffs.  
13

14 The Court, (i) having heard and considered the oral presentations made at the Final  
15 Approval Hearing (including any materials and documents presented to the Court therein), (ii)  
16 having reviewed and considered the Settlement Agreement, the Final Approval Motion, the Fee  
17 Motion, and supporting papers and declarations, including the pleadings filed in support of the  
18 Motion for Preliminary Approval of Class Action Settlement and declarations, and any  
19 supplements thereto, and any timely and proper objections, and (iii) having determined that the  
20 Settlement is fair, adequate and reasonable, and good cause appearing thereon, makes the  
21 following findings and determinations.  
22

23 It is hereby ORDERED, ADJUDGED, and DECREED that:  
24

25 1. The Court, for purposes of this Order of Final Approval and Judgment, adopts  
26 all defined terms as set forth in the Settlement Agreement.

27 2. The Court has jurisdiction over the subject matter of the Actions and over all  
28 claims raised therein and all Parties thereto, including the Settlement Class Members.

1           3.       The Settlement Class, which will be bound by this Order of Final Approval and  
2 Judgment to be entered, shall include all Settlement Class Members who did not submit a timely  
3 and valid request for exclusion. The Settlement Class Members who have requested exclusion  
4 are identified in Exhibit A to this Order.  
5

6           4.       Solely for the purposes of the Settlement Agreement and this Order of Final  
7 Approval and Judgment, the Court hereby certifies the following Settlement Class:

8           All insureds of State Fund whose workers' compensation insurance premiums were  
9 calculated using a tier modifier in excess of 1.00, and where such calculation resulted  
10 in the payment of a higher premium than the insured would have otherwise paid, for  
11 any policy in effect from March 1, 2013, through the date of preliminary approval of  
12 this Settlement.”

13 Excluded from the Settlement Class are State Fund, its affiliates, predecessors, successors,  
14 officers, directors, agents, servants and employees and the immediate families of such persons.

15           5.       The Court finally finds that the requirements of Code of Civil Procedure § 382,  
16 are satisfied. Specifically, with respect to the Settlement Class, the Court finds that: (a) the  
17 members of the Settlement Class are so numerous that their joinder is impracticable; (b) there  
18 are questions of law and fact common to the Settlement Class which predominate over any  
19 individual questions; (c) the claims of the Class Representatives are typical of the claims of the  
20 Settlement Class; and (d) a class action is superior to other available methods for the fair and  
21 efficient adjudication of the controversy considering: (i) the interests of the members of the  
22 Settlement Class in individually controlling the prosecution of separate actions, (ii) the extent  
23 and nature of any litigation concerning the controversy already commenced by the Settlement  
24 Class, (iii) the desirability or understandability of concentrating the litigation of these claims in  
25 the particular forum, and (iv) the difficulties likely to be encountered in the management of the  
26 Actions.  
27  
28

1           6.       The Court grants final approval to the appointment of Named Plaintiffs  
2 Reynolds, Jetter and Resilience as Class Representatives for the Settlement Class.

3           7.       The court grants final approval to the appointment of Roxborough, Pomerance,  
4 Nye & Adreani, LLP and Michael Liskow of Calcaterra Pollack, LLP as Settlement Class  
5 Counsel.  
6

7           8.       Class Notice was provided to the Settlement Class Members in accordance with  
8 the Preliminary Approval Order and the Notice Program. This Class Notice satisfied the  
9 requirements of due process, California Code of Civil Procedure section 382 and rule 3.766 of  
10 the California Rules of Court and (a) provided the best notice practicable, and (b) was reasonably  
11 calculated under the circumstances to apprise Settlement Class Members of the pendency of the  
12 Actions, the terms of the Settlement Agreement, their right to appear at the Final Approval  
13 Hearing, their right to object to the Settlement, and their right to exclude themselves from the  
14 Settlement.  
15

16           9.       The Court finds that the Notice Program set forth in the Settlement Agreement  
17 and effectuated pursuant to the Preliminary Approval Order constitutes the best notice  
18 practicable under the circumstances and shall constitute due and sufficient notice to the  
19 Settlement Class of the pendency of the Actions, certification of the Settlement Class, the terms  
20 of the Settlement Agreement, and the Final Approval Hearing, and satisfies the requirements of  
21 California law and federal due process of law.  
22

23           10.      The Settlement Agreement was arrived at following over eighteen months of  
24 extensive serious, informed, adversarial, and arm's-length negotiations conducted in good faith  
25 by counsel for the Parties, facilitated by an experienced mediator, and is supported by the  
26 majority of the members of the Settlement Class.  
27  
28

1           11.     The Settlement, as set forth in the Settlement Agreement, is in all respects fair,  
2 reasonable, adequate and in the best interests of the Settlement Class and is approved. The  
3 Parties shall effectuate the Settlement Agreement according to its terms. The Settlement  
4 Agreement shall be deemed incorporated herein as if explicitly set forth and shall have the full  
5 force and effect of an Order of this Court.  
6

7           12.     Upon the date that Defendant fully funds the entire Settlement Fund (within  
8 seven (7) days after the Effective Date), the Class Representatives and each Member of the  
9 Settlement Class, on behalf of themselves and any other legal or natural persons who may claim  
10 by, through or under them, are deemed to have fully, finally and forever released and discharged  
11 the Released Parties from any and all Released Claims (as defined in Section 2.7 of the  
12 Settlement Agreement) arising during the Class Period of March 1, 2013 through the date of the  
13 entry of the Preliminary Approval Order, [date].  
14

15           13.     Members of the Settlement Class who have not validly opted-out of the  
16 Settlement Agreement, including the Class Representatives, are hereby barred from hereafter  
17 instituting, maintaining, prosecuting, and/or asserting any of the Released Claims as part of any  
18 suit, action, and/or proceeding against the Released Parties, either directly or indirectly, on their  
19 own behalf, on behalf of a class or on behalf of any other person or entity.  
20

21           14.     This Order of Final Approval and Judgment, the Settlement Agreement, the  
22 Settlement which it reflects, and any and all acts, statements, documents or proceedings relating  
23 to the Settlement, are not, and shall not, be construed as or used as an admission by or against  
24 Defendant or any other Released Party of any fault, wrongdoing, or liability on their part, or of  
25 the validity of any Released Claim or of the existence or amount of damages.  
26

27           15.     The Court finds that distribution to the proposed *cy pres* recipients may be useful  
28 in fulfilling the purposes of the underlying Actions; the nonprofit organizations designated as

1 *cy pres* recipients by the Parties satisfy the requirements of California Code of Civil Procedure  
2 384(b) by supporting projects that fulfill the purposes of the underlying Actions, benefiting  
3 members of the public, including Settlement Class Members. Worksafe is a California-based  
4 non-profit organization dedicated to promoting and protecting the basic right of all people to a  
5 safe and healthy workplace. Worksafe’s mission of creating safer workplaces in California  
6 directly benefits the Members of the Settlement Class by reducing their workers’ compensation  
7 insurance premiums and preventing secondary effects from worker injuries. Kids’ Chance of  
8 California satisfies the requirements of California Code of Civil Procedure section 384(b)  
9 because it is a non-profit organization whose mission is to provide need-based educational  
10 scholarships to the children of California workers who have been fatally or seriously injured on  
11 the job. The Parties, Reynolds Counsel and Jetter Counsel have provided declarations, attached  
12 to the Settlement Agreement as Exhibits G-N, affirming that they have no interest or  
13 involvement in the governance or work of either of the proposed *Cy Pres* recipients.  
14

15  
16 16. Within 60 days following the last day upon which all settlement checks have  
17 either been cashed or have become void, the Parties shall file a joint report with the Court that  
18 sets forth the total amount that was actually paid to the Participating Settlement Class Members,  
19 the total number of Participating Settlement Class Members who cashed checks (and the amount  
20 of such checks), the number of checks returned as undeliverable (and amount of such checks),  
21 the number of checks voided due to not being timely cashed (and amount of such checks), and  
22 the total dollar amount of monies (including any accrued interest) remaining in the Settlement  
23 Fund Account (the “Joint Settlement Report”).  
24

25  
26 17. For the reasons set forth in the Fee Motion, the Court hereby awards Reynolds  
27 Counsel and Jetter Counsel attorneys’ fees from the Settlement Fund in the total amount of  
28 \$ \_\_\_\_\_, with \$ \_\_\_\_\_ to be provided to Reynolds Counsel and \$ \_\_\_\_\_

1 to be provided to Jetter Counsel. The Court further awards Reynolds Counsel and Jetter Counsel  
2 reimbursement of costs from the Settlement Fund in the total amount of \$\_\_\_\_\_, with  
3 \$\_\_\_\_\_ to be provided to Reynolds Counsel and \$\_\_\_\_\_ to be provided to Jetter  
4 Counsel.  
5

6 18. For the reasons set forth in the Named Plaintiffs' request for Service Payments,  
7 the Court hereby awards each Named Plaintiff a Service Payment of \$25,000 each (totaling  
8 \$75,000). Such amounts are reasonable considering Named Plaintiffs' service in bringing and  
9 prosecuting the Actions, and the risks they have taken by agreeing to be Class Representatives.  
10 The foregoing sums shall be paid from the Settlement Fund in accordance with the Settlement  
11 Agreement.  
12

13 19. This Order of Final Approval and Judgment does not constitute an expression by  
14 the Court of any opinion, position or determination as to the merit or lack of merit of any of the  
15 claims or defenses of Named Plaintiffs or Defendant. This Order of Final Approval and  
16 Judgment is not an admission or indication by Defendant of the validity of any claims in these  
17 Actions or of any liability or wrongdoing or of any violation of law.  
18

19 20. Named Plaintiffs and the Settlement Class, on the one hand, and the Defendant,  
20 on the other, shall take nothing further from the other side except as expressly set forth in the  
21 Settlement Agreement and this Order of Final Approval and Judgment.  
22

23 21. The Parties are authorized to implement the terms of the Settlement Agreement.

24 22. Pursuant to California Code of Civil Procedure section 664.6 and rule 3.769(h)  
25 of the California Rules of Court, and without affecting the finality of this Order of Final  
26 Approval and Judgment, the Court reserves exclusive and continuing jurisdiction over these  
27 Actions, the Class Representatives, the Members of the Settlement Class, and Defendant in order  
28 to, among other things: (i) monitor and enforce compliance with this Settlement Agreement,



1 Final Approval, and any related order of this Court; and (ii) resolve any disputes over this  
2 Settlement Agreement or the administration of any benefits of this Settlement Agreement,  
3 including disputes over entitlement to payments for Attorneys' Fees and Costs.

4 23. The Claims Administrator shall post the Order of Final Approval and Judgment  
5 on the settlement website, www. [REDACTED].com, forthwith.

6 24. [The objections to the Settlement, the objections to the Fee Motion, and the  
7 objections to Named Plaintiffs' requests for Service Payments are without merit and are  
8 overruled.].  
9

10 25. The Court approves the Administrative Costs associated with the Settlement.

11 26. The Court is directed to enter this Order of Final Approval and Judgment  
12 forthwith.  
13

14  
15 **IT IS SO ORDERED**

16  
17 DATED: \_\_\_\_\_

18 \_\_\_\_\_  
19 HONORABLE LAWRENCE P. RIFF  
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**EXHIBIT E**  
**MODIFIED NOTICE PROGRAM**  
**DECLARATION**

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE**

MICHAEL REYNOLDS  
ENTERPRISE, INC. DBA  
REYNOLDS TERMITE CONTROL,  
individually and on behalf of all  
others similarly situated,

Plaintiff,

vs.

STATE COMPENSATION  
INSURANCE FUND, a public  
enterprise fund; and DOES 1 through  
50, inclusive,

Defendants.

And Related Case:

AMERICAN JETTER &  
PLUMBING, INC. and  
RESILIENCE TREATMENT  
CENTER, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

vs.

STATE COMPENSATION  
INSURANCE FUND, a public  
enterprise fund; and DOES 1 through  
50, inclusive,

Defendants.

Case No. 19STCV05738  
Honorable Lawrence P. Riff

**DECLARATION OF JULIE GREEN OF CPT  
GROUP, INC. REGARDING NOTICE  
PROGRAM**

1 **DECLARATION OF JULIE GREEN**

2 I, Julie N. Green, declare and state as follows:

3 1. I am the Senior Vice President of Operations, Class Action Services of CPT Group,  
4 Inc. (“Settlement Administrator” or “CPT”). The following statements are based on my personal  
5 knowledge, information provided to me by counsel for Plaintiffs and by other CPT employees  
6 working on this matter, and records of CPT generated and maintained in the usual course of its  
7 business. If called on to do so, I could and would testify competently thereto.

8 2. For this matter, CPT is able and willing to provide Notice and Claims Administration  
9 services as provided in the Class Action Settlement Agreement and Release (“Settlement  
10 Agreement”), if the parties’ motion is approved by the Court.

11 3. CPT Group, Inc. is located at 50 Corporate Park, Irvine, CA 92606.

12 4. I have been employed by CPT for 17 years, managing the operations department and  
13 supervising multiple notice and claims administration programs. As Senior Vice President of  
14 Operations, I am responsible for the oversight, supervision and evaluation of all departments and  
15 positions related to the administration of class action matters to ensure superior quality and  
16 successful execution of each component required to complete the settlement process. In my career  
17 at CPT, I have been responsible for the design and/or implementation of hundreds of class action  
18 administration plans. I submit this declaration at the request of Counsel in support of their Motion  
19 for Preliminary Approval.

20 **CPT’S EXPERIENCE RELEVANT TO THIS CASE**

21 5. CPT is a leader in the settlement administration industry and has extensive  
22 experience in providing court approved notice of class actions and administering various types of  
23 notice programs and settlements. In the past 30-plus years, CPT has provided notification and/or  
24 claims administration services in thousands of class action cases, including TCPA and other privacy  
25 violation related matters. Throughout our history, CPT has disbursed billions of dollars in settlement  
26 funds, and serviced over 65,000,000 class members. CPT offers a wide range of class action  
27 administrative services for developing, managing and executing all stages of integrated settlement  
28 plans. A true and correct copy of CPT’s company resume is attached as **Exhibit A**, which provides

1 detailed information concerning our class action settlement and claims administration qualifications  
2 and experience.

3         6. As a class action notice administrator, CPT has regularly been approved by both  
4 federal and state courts throughout the United States to provide notice of settlement and claim  
5 processing services, including in actions involving consumer classes. In this capacity, CPT handles  
6 all services related to the implementation of class action settlements, including: (a) issuing all types  
7 of legal notice by way of direct mail, email notification, and supplemental media including, but not  
8 limited to, print publication, digital display, television, radio, informational press release, paid  
9 search, and social media advertisement; (b) establishing dedicated URLs and case websites; (c)  
10 providing live call center support through a dedicated toll-free number also with interactive voice  
11 response (IVR); (d) providing electronic and hard copy claims processing; (e) receiving/processing  
12 other communications about the settlement; (f) providing secure data management and reporting;  
13 (g) distributing paper and digital payment through physical check, gift card, mobile wallet,  
14 merchandise credits, direct deposit and other means; (h) providing Qualified Settlement Fund  
15 reporting and banking services; (i) filing applicable tax returns; (j) filing any required reports with  
16 the court; and (k) handling other tasks related to the administration of class action settlements that  
17 may be requested by the parties or court.

18         7. CPT has been entrusted by counsel and appointed by courts to handle complex  
19 nationwide and statewide class action matters. Some of our recent multi-state representative matters  
20 include *Thompson v. 1-800 Contacts, Inc.*, *Vision Direct, Inc.*, *Walgreens Boots Alliance, Inc.*,  
21 *Walgreen Co.*, *Arlington Contact Lens Service, Inc.*, *National Vision, Inc.*, *Luxottica of America,*  
22 *Inc. (f/k/a Luxottica Retail North America, Inc.)*, Case No. 2:16-cv-01183 (D. Utah); *Broomfield v.*  
23 *Craft Brew Alliance, Inc.*, Case No. 5:17-cv-01027-BLF (N.D. Cal); *Morrison v. Ross Stores, Inc.*,  
24 Case No. 4:18-cv-02671-YGR (N.D. Cal); *Jacobo, et al., v. Ross Stores, Inc.*, Case No. 2:15-cv-  
25 04701-MWF-AGR<sub>x</sub> (C.D. Cal); *Livingston v. MiTAC Digital Corporation*, Case No. 3:18-cv-05993-  
26 JST (N.D. Cal); and *Gold, et al. v. Lumber Liquidators, Inc.*, Case No. 3:14-cv-05373-RS (N.D.  
27 Cal.). Some of our single-state representative matters include *Krinsk, et al. v. Monster Beverage*  
28 *Corporation, et al.*, San Diego Superior Court, Case No. 37-2014-00020192-CU-BT-CTL; *Kerr v.*

1 *The New York Times Co.*, et al., San Diego Superior Court Case No. 37-2016-000010125-CU-MC-  
2 CTL; and *Mount v. Wells Fargo Bank*, Los Angeles County Superior Court, Case No. BC395959.

3 **CASE BACKGROUND**

4 8. CPT understands the Settlement Class in this matter will be defined as follows:

5 All insureds of State Fund whose workers' compensation insurance  
6 premiums were calculated using a tier modifier in excess of 1.00, and  
7 where such calculation resulted in the payment of a higher premium than  
8 the insured would have otherwise paid, for any policy in effect from  
9 March 1, 2013, through the date of preliminary approval of this  
10 Settlement." Excluded from the Settlement Class is State Fund, its  
11 affiliates, predecessors, successors, officers, directors, agents, servants  
12 and employees and the immediate families of such persons.

13 **NOTICE**

14 9. It is CPT's understanding that defendant State Compensation Insurance Fund  
15 ("Defendant") will provide CPT with all available contact information for the Settlement Class  
16 Members, including any available mailing addresses and emails addresses, and that the parties  
17 anticipate that Defendants' records include mailing addresses for nearly every Settlement Class  
18 member, and email addresses for close to every Settlement Class Member. Upon receipt of this class  
19 data, CPT will assign a unique identifier to each Settlement Class Member identified in the class  
20 data, which will be used throughout the duration of the administration process. The primary methods  
21 to reach the members of the Settlement Class will include both direct mail and email as follows:

22 10. **Direct Mail:** CPT will mail the postcard Short Form Notice, via First Class USPS  
23 mail, to all Settlement Class Members for whom the class data includes a mailing address. To  
24 increase the success rate of deliverability of the Short Form Notice, prior to mailing CPT will scrub  
25 the list of class members to reduce duplicates and any anomalies, and update the mailing addresses,  
26 first using the National Change of Address program ("NCOA"), and then a Best Address (XML Lex  
27 ID) trace through Lexis Nexis on any records identified as undeliverable by NCOA. CPT will track  
28 Short Form Notices that are returned as undeliverable from the post office and will promptly re-mail  
any with a forwarding address. For Short Form Notices returned without a forwarding address, CPT  
will run an Accurint batch skip trace in attempt to obtain a current mailing address, and resend the  
Short Form Notice to any more current address available.

1           11.       **Email Notice:** CPT will disseminate the Long Form Notice by e-mail to the Class  
2 Members for whom Defendant provides a valid email address. To increase the success rate of  
3 deliverability of the Long Form Notice by e-mail, CPT will scrub the records to reduce duplicates  
4 and run a third-party email validation scan to cleanse the list prior to sending. This process will help  
5 ensure CPT does not send email notice to invalid, SPAM trap or known abuse email addresses. CPT  
6 will attempt to deliver to soft bounced emails for 72 hours after the initial send after which point the  
7 email, if still undeliverable, will be considered a hard bounce. CPT will track all undeliverable  
8 emails.

9           12.       **Settlement Website:** CPT will maintain and administer a dedicated settlement  
10 website that will be informative and easy for potential members of the Settlement Class Members  
11 to navigate. The Settlement Website will include links to the Complaint, Settlement Agreement and  
12 Exhibits, Preliminary Approval and Final Approval Orders., Long Form Notice, and other relevant  
13 filings as instructed by the parties or the Court. A banner written in Spanish will be displayed on the  
14 home page directing visitors to downloadable versions of the Long Form Notice in Spanish. The  
15 Settlement Website will also include the date, time and location of the Final Approval Hearing, and  
16 in the event that the date, time or location of the Final Approval Hearing is changed, notification of  
17 the change will be prominently displayed on the home page of the Settlement Website. The  
18 Settlement Website address or a hyperlink will also be displayed on all notifications described  
19 above.

20           13.       **Toll-Free Number/IVR:** CPT will establish a dedicated 24-hour, toll-free support  
21 line with Interactive Voice Response (“IVR”) capabilities to provide potential members of the class  
22 with (a) general and detailed information about the Actions; (b) answers to frequently asked  
23 questions, and (c) information relating to Settlement Class Members’ options under the terms of the  
24 Settlement Agreement. Callers will have the option of speaking to a live agent during normal  
25 business hours Monday through Friday, 8:30 AM – 5:30 PM PST or to leave a voicemail, which  
26 will be returned during normal business hours. IVR and live support will be available in both English  
27 and Spanish.

28





1 a redistribution of uncashed settlement payments is required, CPT has agreed to cap its fees at  
2 \$235,000.

3

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

6

7 Executed on September 29, 2022, at Irvine, California.

8

9

10

  
JULIE N. GREEN

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# **EXHIBIT A**

# CURRICULUM VITAE



50 Corporate Park  
Irvine, CA 92606



www.CPTGROUP.com



1 (800) 542-0900



## COMPANY PROFILE

CPT Group, Inc. ("CPT"), founded in 1984, is a leading provider of notice and settlement class action administration services and has been appointed as the third-party administrator by all major courts. Throughout our history, CPT has disbursed billions of dollars in settlement funds, serviced tens of millions of class members, and administrated over 5,000 cases. CPT offers a wide range of class action administrative services for developing, managing, and executing all stages of integrated notice plans and settlements. This includes pre-certification and discovery mailings, class-certification mailings, claims processing and administration, data management, data reporting, settlement fund administration, legal noticing campaigns, website design, and web hosting. The project management team, call center, data entry center, IT, and production facilities are all located at the corporate headquarters in Irvine, CA.

## QUALITY ASSURANCE & SECURITY

The integrity of CPT's work and our stringent quality assurance protocols are strengthened by the staff's ability to operate in close proximity keeping the work managed in-house. With a commitment to rigorous security protocols and controls, CPT upholds an obligation to its clients to maintain data and cyber security practices that comply with AICPA SOC 2 - Type II.

## DIVERSITY & INCLUSION

CPT believes that promoting diversity starts with a commitment to building understanding and awareness. Diversity is not just cultural or ethnic, it includes people of all ages and backgrounds. We are guided by a commitment to removing barriers to the recruitment, retention, and advancement of talented individuals from historically excluded populations. CPT recruits and rewards team members based on capability and performance, regardless of race, gender, sexual orientation, gender identity or expression, lifestyle, age, educational background, national origin, religion, or physical ability.

## AREAS OF EXPERTISE

- **PROJECT MANAGEMENT** - At the heart of our administrative capabilities is the ability to manage and process our cases as a neutral TPA with efficiency, accuracy, and in compliance with the terms of the parties' agreement. Our skilled approach in the use of technology, effective management, and quality assurance is the core of our operation.
- **Claims Administration** - CPT conducts extensive Quality Assurance processes throughout the duration of the claims period. Any responses received from Class Members are processed according to our strict internal procedures and in accordance with the Settlement Agreement. Counsel is provided with all required reporting, including, where applicable, a list of approved claimants and the settlement calculations for each.
- **Call Center** - CPT's case support representatives stand ready to service all case inquiries offering live, multi-lingual, 1-1 response, 5 days a week during business hours (extended hours available). Interactive Voice Response (IVR) assures that class members receive the assistance and support they require 24 hours a day. A proprietary call tracking system combined with highly trained representatives ensures an accurate class member history for each and every call.
- **Data Management/Reporting** - Through programmatic analysis, CPT will standardize the class data to compile a master mailing list. CPT prepares weekly status reports for each case that summarize the status of returns and responses such as mail pieces and claim form submissions. CPT is SOC 2 Type II certified, which ensures necessary measures are taken to safeguard all class member data.
- **Noticing Expertise** - CPT's legal notice experts have a combined experience of over 25 years in the industry and come together to plan a successful notice campaign based on the requirements of the Settlement. After strategizing and consulting with Counsel, our team will determine the best method of notification to reach your intended target audience. Whether notification will be through means of a known or unknown data set, CPT will execute the campaign with precision and accountability.
- **Settlement Fund Administration** - CPT's team of tax and accounting professionals manages all fund distributions through a rigorous and supervised process. Stringently following the terms of the Court Order, CPT maintains its Qualified Settlement Fund (QSF) accounts through federally insured banks with access restricted to authorized personnel only. On behalf of the QSF, CPT will handle all remittances and reporting to local, state, and federal tax authorities.

## EXPERIENCE

CPT has extensive experience providing court-approved notice and administration services in complex, large fund, and top-tier class action settlements across a broad spectrum of unique subject matters. Below are highlights from a few relevant cases we handled:

- ***Helnick v. Air Methods Corp., Alameda County Superior Court, Case No. RG13665373***: (*Top Settlements, 2020*) Administration of this \$78,000,000 employment settlement included direct mailed notice to class members, production and maintenance of a settlement website, and distribution of over \$48,000,000 to eligible claimants.
- ***Wackenhut Wage and Hour Cases, Los Angeles County Superior Court, Case No. JCCP Np. 4545***: (*Top Settlements, 2019*) To notify potential class members in this \$130,000,000 wage and hour settlement, CPT' provided email and text notice in both English and Spanish, maintained a dedicated settlement website with an online claims portal, and a toll-free support hotline. CPT's outreach efforts resulted in a 57.14% filing rate.
- ***Sanchez v McDonald's Restaurants of California, Los Angeles County Superior Court, Case No. BC499888***: (*Top Settlements, 2019*) Notice methods in this \$26,000,000 wage and hour settlement included both mailed notice in both English and Spanish and email notification, as well as a settlement website and toll-free case support hotline.
- ***Augustus et al. v. American Commercial Security Services, Inc., Los Angeles County Superior Court, Case No. BC336416***: (*Top Settlements, 2018*) Administration duties in this \$110,000,000 employment settlement included direct mailed notice to class members in both English and Spanish and distributing over \$72,000,000 in settlement funds to valid claimants.
- ***Abdullah v U.S. Security Associates, Inc., Case No. 2:15-cv-09-00984 PSG-E (C.D. Cal.)***: (*Top Settlements, 2018*) Administration of this \$21,000,000 wage and hour settlement included direct mailed notice to class members, class member support hotline and distribution of over \$13,000,000 to eligible claimants.
- ***Thompson v. 1-800 Contacts, Inc., Vision Direct, Inc., Walgreens Boots Alliance, Inc., Walgreen Co., Arlington Contact Lens Service, Inc., National Vision, Inc., Luxottica of America, Inc. (f/k/a Luxottica Retail North America, Inc.), Case No. 2:16-cv-01183 (D. Utah)***: This \$40 million-dollar anti-trust settlement comprised of four settlement classes required design and implementation of a robust, multi-faceted two-part notice program with a multi-layered media campaign combining the use of various digital advertisement platforms, a press release, a dedicated settlement website with an online claims portal, and a toll-free support hotline. The notice program also included an e-mail notice campaign to approximately 10,000,000 potential class members. Combined notice efforts resulted in over 140,000 claimants.
- ***Broomfield v. Craft Brew Alliance, Inc., Case No. 5:17-cv-01027-BLF (N.D. Cal.)***: CPT's outreach efforts in this \$20 million consumer settlement included a multi-media channel approach to notice which employed direct mailed notice and a digital, social, and mobile media campaign which reached an impressive 91.43% of the targeted 8,000,000 class members. CPT processed both electronic and hard copy claim forms and valid claimants were paid via paper checks, e-Check, and ACH.
- ***Livingston v. MiTAC Digital Corporation, Case No. 4:18-cv-05993-JST (N.D. Cal.)***: In this matter, CPT was charged with distributing direct notice via email and mail as well as the design and execution of a multi-media channel supplemental notice campaign that combined the use of various digital advertisement platforms, a nationwide press release, print publication, a dedicated settlement website, and a toll-free support hotline. Combined, these efforts reached 82% of the targeted audience. Claims processing included claim forms submitted both digitally and hard copy and valid claimants received paper checks.
- ***Lim, et al. v. In re Vendi, Inc., Superior Court of the State of California, County of Santa Clara, Case No. 1-14-CV-259897***: In this \$3 million data breach settlement, CPT notified approximately 9,000,000 potential class members through a combination of email, postcard, and publication notice. Claims processing included claim forms submitted both digitally and hard copy, and valid claimants received paper checks.

## EXPERIENCE

- ***Mael v. Evanger's Dog and Cat Food Co., Inc., et al. Case No. NO. 3:17-cv-05469-RBL (W.D. Wash):*** Notice efforts included a multi-media program designed to reach settlement class members through a combination of direct and supplemental notification methods. Email, internet banner and social media advertisements, a dedicated settlement website, and a toll-free support hotline were used to effectively reach 87% of the target audience nationwide. CPT processed both electronic and hard copy claim forms and valid claimants were paid cash awards or product certificates.
- ***Jacobo, et al. v. Ross Stores, Inc., Case No. 2:15-cv-04701-MWF-AGRx (C.D. Cal.):*** In this \$4.85 million consumer settlement, CPT notified approximately 9,000,000 potential class members via direct email notice and a media campaign that combined the use of various digital advertisement platforms, a nationwide press release, print publication in People magazine, a dedicated settlement website, and a toll-free support hotline. Ultimately, CPT processed 285,000 claims and disbursed \$3,000,000 in merchandise certificates.
- ***Gold, et al. v. Lumber Liquidators, Inc., Case No. NO. 3:14-cv-05373-RS (N.D. Cal.):*** The Notice Plan for this matter relied heavily on direct notice, but to ensure effective reach also encompassed supplemental notice efforts including digital advertisements, a nationwide press release, a dedicated settlement website, and a toll-free support hotline. CPT processed claims submitted electronically, and hard copy and valid claimants were paid via a combination of paper checks and vouchers.
- ***Bokelman, et al. v. Zippy's/FCH Enterprises, Inc., United States District Court for the District of Hawaii, Case No. 18-00209-RJB-RLP:*** Notice efforts for this data breach settlement included a multi-media program designed to reach settlement class members through a combination of direct mail, email, in-store notice, and supplemental media. The digital notice campaign served impressions for 8-weeks across Google Display Network (GDN), programmatic display, press releases, Facebook, Instagram, Twitter, print publication, and Google Ads. Overall, the supplemental notice campaign alone reached 72% of the target audience nationwide.
- ***Coleman, et al. v. Boys Town National Research Hospital, District Court of Douglas County, Nebraska, Case No. D01C118008162:*** Notice to 98,957 class members in this data breach settlement was mailed in April 2020 when CA businesses were under stay-at-home orders. CPT was able to execute and carry out all administrative duties outlined in the settlement agreement without any disruption due to our robust Pandemic Policy that was immediately put into practice once the Governor gave executive orders.
- ***Christofferson, et al., v. Creation Entertainment, Inc., Superior Court of the State of California, County of Los Angeles, Case No. 19STCV11000:*** Notice efforts for this data breach settlement included a multi-media program designed to reach settlement class members through direct mail, email, and supplemental media. The digital notice campaign served impressions across Google Display Network (GDN), programmatic display, PR Newswire national Newswire, Facebook, Instagram, Twitter, print publication, Google Ads and Bing Ads. CPT's supplemental notice program reached 75% of the target audience nationwide. In addition, CPT served notice to 94.6% of the class members for whom the defendant provided an email address and 99.5% by mail. CPT reported a 3.79% filing rate.

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## SERVICES

- Pre-Settlement Consultation
- Pre & Post Certification Notification
- Data Analysis
- Bilingual Call Center
- Notice & Media Campaigns
- Claims Processing
- Secure Data Management
- In-House Printing Services
- Electronic Notification
- Website Design & Hosting
- Settlement Fund Distribution
- Electronic Distribution Options
- Tax Compliance & Reporting
- Secure Data Reporting

## QUALIFICATIONS & EXPERIENCE OF KEY PERSONNEL



### **JULIE N. GREEN,** **Senior Vice President of Operations** **Notice Expert**

With 17 years at CPT, Julie Green is a driving force behind the company's ongoing success. Through oversight responsibilities for the entire operation, she has an expert hand in all aspects of notice administration and demands quality and success for each step of the process. Making informed recommendations to meet the goals of complex and unique settlements, Julie has been responsible for the design and or implementation of thousands of class action notice programs. She understands the necessary mechanics to ensure that effective notice is executed while making certain neutrality and client confidentiality is continually maintained. In her position, Julie leverages the Operations Team's abilities to meet the goals and objectives of the Business Development Team, while ensuring that CPT's clients are met with exceptional service and a successful notice program. Julie holds a BA in Drama and Psychology & Social Behavior from the University of California, Irvine.

### **RANDI J. MARTZ,** **Director of Marketing & Business Development** **Notice Expert**

Ms. Martz serves as Director of Marketing and Business Development and has been with CPT Group for more than 13 years. Randi is responsible for critically analyzing the requirements of a settlement for legal notification through secondary market research, data analysis, planning, and execution. Upon consulting with clients to determine the needs of the Settlement parties, Randi finds ways to increase efficiencies to implement cost savings for the RFPs. She is also tasked with researching and analyzing target markets to develop strategic and tactical plans to grow the business. As the liaison between the Business Development and Operations Teams, Randi collaborates on identifying critical business development and marketing opportunities to strengthen the Settlement and Client's core objectives. Randi received her B.A. in Business Administration, a Professional Concentration, from California State University of Fullerton.

### **JACQUELINE N,K. HITOMI,** **Director of Settlement & Treasury Services**

Jackie Hitomi is the Director of Settlement & Treasury Services at CPT Group. With 15 years of experience in the class action industry, Jackie oversees the distribution process and is responsible for ensuring the accuracy of settlement calculations and compliance with court-approved agreements. Jackie manages a team of disbursement and tax administrators and provides guidance to the case management team for complex settlements. As a Director, Jackie serves as a trusted contact for clients and assists with the effectuation of multifaceted projects. She is also a key contributor to the development and execution of the settlement administration process. Jackie began her legal career as a Paralegal at the Orange County District Attorney's Office and has also held Senior Paralegal positions in several law firms in Orange County and Los Angeles. She received her B.A. in International Relations and Law & Public Policy, from the University of Southern California, and completed the ABA Paralegal Studies from the University of California, Los Angeles.

### **ABEL E. MORALES,** **Director of Operations**

Abel Morales is the Director of Operations at CPT Group. Since joining CPT in 2010, Abel has handled hundreds of class action cases from inception through distribution and has become an expert in complex settlements. He is the primary client contact and is well trusted for his expertise in the class action industry. Abel oversees the Claims Processing Department, Production Department, and Class Member Support Services. His wide range of expertise provides valuable insight into all facets of the Administration process. Prior to CPT Group, Abel was a Senior Analyst for 9 years at a prominent Fortune 500 mutual insurance holding company. Abel also holds a B.A. in International Finance from the California State University of Fullerton. He is bilingual in Spanish.

## QUALIFICATIONS & EXPERIENCE OF KEY PERSONNEL



### **DAVID TAWEI CHAO,** **Sr. Data Analyst, Associate Director**

David started his IT career in 1998 and has always been passionate and found great joy in helping companies in different industries and sizes to explore, understand and integrate their data assets into their businesses. David's specialty is to build architecture and processes to realize the true power of their data through technologies like Business Intelligence, Cloud Computing, Data Science, and Analytics. David's past projects include notable companies like Ally Financial, Bank of America, UBS, and The Walt Disney Company. David and his team serve as DevOps at CPT and provide system support and production enhancements for our existing applications. The data team assists with complex data-related analysis, analytics, and reporting needs. David holds a master's degree in Management Information Systems from Northern Illinois University, located in DeKalb, IL.

### **J. LES GAINOUS,** **Software Development Manager**

J. Les Gainous has over 30 years of experience in developing and architecting enterprise-level software applications, with 10 of those years as a solutions architect with the Microsoft Corporation. At Microsoft, Les was involved with major software application projects at many Fortune 50 companies, including corporations such as Motorola, Toyota America, Merck Pharmaceuticals, Chevron, VISA America, and Charles Schwab. At CPT his team is primarily responsible for architecting and engineering CPT's Line of Business software application. The application allows cross-case functionality via a centralized system-of-record data store. Having this cross-case functionality, the application allows for automating sets of processes around the administration of class action cases. Along with automation, his team minimizes data redundancies. Les is a graduate of Florida State University with a BS in Business Administration and a minor degree in Computer Science.

### **TIM CUNNINGHAM,** **Supervising Case Manager**

Tim Cunningham has successfully managed over 400 cases in his 11 years at CPT Group. As Supervising Case Manager, under his direction, a team of Case Managers and Assistants are trained and guided to oversee all case activity—from administrative conception to disbursement. Tim and his team are also the primary contact between the firm and Counsel while also working closely throughout administration with the IT, Mailing, Claims, and Call Center departments. Prior to CPT Group, Tim was a Lead Relationship Manager for 10 years at a prominent Fortune 500 mutual insurance holding company. Tim earned his B.A. in Public Administration with a minor in English from California State University San Diego.

### **ALEJANDRA ZARATE,** **Supervising Case Manager**

Alejandra Zárate de Landa is CPT Group's Case Quality Assurance Manager. In her role, she is responsible for analyzing the Stipulations of Settlement as well as the Court Orders to ensure compliance in all aspects of case administration as well as the allocation of settlement funds to class members. Alejandra started with CPT Group over 15 years ago in the claims department and became a Case Manager in 2009. She was promoted into her current role in 2016. Alejandra received her degree in Computer Engineering from Autonomous University of Baja California in Ensenada, B.C. Mexico. While earning her degree, she worked as a web development assistant and helped develop a web page for students interested in taking off-campus classes.

### **CAROLE THOMPSON,** **Supervising Case Manager**

Carole Thompson is a Supervising Case Manager at CPT Group. In this role, she leads a team of Case Managers and Assistants and ensures the proper guidance and supervision is upheld for high accuracy levels and prompt adherence to court-ordered deadlines. She is also responsible for overseeing all case activities and having a comprehensive understanding of each case her team handles. Carole initially joined CPT in 2010 as a Case Manager. In her career prior, she spent 12 years in the Financial Industry at a prominent Fortune 500 annuities company. Then, when an opportunity took her family to Minot, North Dakota, she had to leave CPT, but gained 5 years of Human Resources expertise, first as Benefits Specialist at Trinity Health and then as a Benefits Coordinator at Food Management Investors, Inc. Upon returning to California in 2016, Carole rejoined CPT, providing a strong professional background to the team.

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## EXHIBITS

- EXHIBIT 1. CPT'S INFORMATION SECURITY STATEMENT
- EXHIBIT 2. CPT'S DATA AND SETTLEMENT FUND TRANSMISSION METHODS
- EXHIBIT 3. CPT'S COMPANY BROCHURE

# **EXHIBIT 1**



## **INFORMATION SECURITY STATEMENT**

### **Confidential**

CPT Group, Inc. (“Company” or “CPT”) maintains a comprehensive, written Information Security Program that complies with all applicable laws and regulations and is designed to (a) ensure the security, privacy, and confidentiality of Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of the Class Member Information, and (c) deny unauthorized access to, use, deletion, or modification of Class Member Information. As part of an ongoing effort, throughout its business CPT has implemented the following security controls and procedures:

- 1) Company uses Class Member Information only for the purposes for which Client provided it, as described in any Agreements and/or Court Orders governing the provisions of the Company’s services on any particular engagement.
- 2) Company has designated one or more specifically named employees to be responsible for the administration of its Information Security Program.
- 3) Company has and maintains processes for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of the Company’s operations and evaluating the effectiveness of the safeguards for controlling these risks.
- 4) Company runs and analyzes daily Risk Assessment and Threat Intelligence scans on all company computer stations, servers, and protected network subnets. These scans search for any software vulnerabilities along with data containing sensitive information (“SI”).
- 5) All computers are provisioned with an advanced security stack. Company’s Endpoint Protection centrally reports activity, handles patch management and security policies. Company’s security stack is based on DNS and content filtering, deep packet inspection at the firewall level, antivirus/antimalware, email filtering, and user behavior analysis. Each endpoint is monitored with modern Data Loss Prevention (“DLP”) software. Company’s DLP system prevents connection to unauthorized external storage, cloud systems, or email accounts. It actively blocks screen prints and will not allow confidential user information to be sent out of our trusted network.
- 6) Login access to Company email or systems requires two-factor authentication, which requires not only a password and username but also something physical, like user location, secure ID token, or biometrics.
- 7) Company regularly monitors, tests, and updates its Information Security Program.
- 8) Company restricts access to Class Member Information only to those employees, agents, or subcontractors who need to know the information to perform their jobs.
- 9) Company performs an annual audit of its Information Security Program. This includes a review of the controls: vulnerability scans, secure software development life cycle, patch management, intrusion detection and prevention, encryption of storage media and devices. The company makes reasonable changes to its Information Security Program to ensure it can maintain safeguards that are appropriate for the Class Member Information at issue.
- 10) At Client’s request, but only when and in a manner consistent with applicable Agreements and/or Court Orders, Company will securely destroy or return all Class Member Information in its possession and certify to Client in writing that Company has done so. If Company destroys Class Member Information rather than return it, Company will use destruction methods that are in compliance with all applicable state and federal laws and regulations including NIST Special Publication 800-88, Revision 1 (2014). This obligation to return or destroy information shall not apply to Class Member Information that is stored in a backup or other disaster recovery systems, archives, or other storage systems that make it impractical to destroy the information, but if Company retains Class Member Information for these reasons, its obligation under the Settlement Agreement will continue to apply for so long as it retains the information. Additionally, the Company will retain all hard copy documents (i.e. Claim Forms, etc.) for a period of 6 months, at which time they are scanned and shredded on Company premises in compliance with SOC 2 - Type II.

# INFORMATION SECURITY STATEMENT

## Confidential

11) Company performs extensive background checks (County Criminal, County Civil, and National Criminal Database Search) of all its employees, including a review of their references, employment edibility, and education verification to ensure they do not pose a risk to the security of Class Member Information or Clients employees. Company will provide, upon request, a copy of its background check requirements for Clients' review and approval. Nothing in this document shall compel Company to disclose the results of such background information of its employees.

12) Company conducts a monthly third-party credentialed vulnerability assessment with Trustwave. Vulnerabilities rated as high are patched/resolved within 48 hours. Medium is 1 week and Low is within 2 weeks. If a vulnerability cannot be resolved within our standard time, a compensating control will be introduced to protect the vulnerable systems. To ensure Company receives timely information regarding new threats and vulnerabilities, Company subscribes to US-CERT notices as well as notices are received from Sonicwall our firewall manufacturer. New threats are communicated to our executive and leadership team to disseminate to all employees within the company.

13) Company has implemented the following safeguards for systems that process, store or transmit Class Member Information:

- Identify and Access Management;
- Windows password complexity with a specific length, history, upper and lower characters, numbers, expiration every 45 days, and separate passwords for email and computer;
- Two-Factor authentication for remote access;
- Removable media devices, personal web-based email, instant message, or online storage (i.e. Dropbox, Google Drive, iCloud, etc.) are blocked and restricted by the firewall;
- Company uses the Microsoft Azure cloud to host corporate email. Remote access to the email system is disabled;
- Company uses the HTTPS or SFTP standard for all data transmissions and shall ensure that all Client Data is encrypted while in transmission between Company's data center and the Company's computer system or other devices (as applicable) and at rest, consistent with the NIST standard, but no less than a 128-bit key for symmetric encryption and a 1024-bit key for asymmetric encryption.
- Company requires its clients and itself to transfer files with personal Class Member Information via a secure transmission protocol through Citrix Sharefile FTP which secures files during transfer with SSL/TFL encryption protocols and in storage using AES 256-bit encryption. Links to the file expire after 7 days. Company requires all files transferred in this method to be password protected during transmission and passwords to be provided telephonically only. Files are retrieved by Company, and then deleted manually upon successful download (or auto-deleted after 7 days from upload by the system)'
- Upon hire and annually thereafter, security training of all employees using the online security training platform Knowbe4. Users are required to do one hour of security training per year in addition to 20 minutes of training per quarter. Users are required to take tests online to ensure they've retained the knowledge. Topics covered are spear-phishing emails, a compromised websites, social engineering, strong passwords, ransomware, handling sensitive information, mobile device security;
- Company actively tests security defenses. Staff participates in simulated phishing exercises to reinforce previous training. Company also conducts monthly external penetration tests and daily internal vulnerability scans to ensure the integrity of our security measures;
- Preventing terminated employees from accessing Class Member Information;
- Appropriately configured and updated firewall, antivirus, and spyware software;
- Separation of Duties;
- Business Continuity Planning;
- Disaster Recovery Planning;
- Pandemic Recovery Planning

# INFORMATION SECURITY STATEMENT

## Confidential

14) Company's physical security requires that employees use an encoded card key to gain access to the facility as all doors are mechanically locked at all times. Employees can only enter or exit through a front door or back door, both of which are protected by security cameras. Inside the facility, secure areas in the office that contain checks or sensitive material are also protected by the electronic card-key badge access and limited to select employees. Security cameras monitor the areas that contain the sensitive material and audits are conducted periodically on the area. Access to the server room is strictly limited to only five individuals and protected by the encoded card-key badge access. Security cameras monitor the inside and outside of the secured area with audits being conducted periodically.

15) Company staff is required to maintain compliance with the Information Security Policies, Compliance Manual, and Non-Disclosure Agreement. The matters covered in the Code of Business Conduct and Ethics are of the utmost importance to the Company and are essential to the Company's ability to conduct its business in accordance with its stated values. We expect all of our officers, directors, employees, agents, contractors, and consultants to adhere to these rules in carrying out their duties for the Company. The Company will take appropriate action against any officer, director, employee, agent, contractor, or consultant whose actions are found to violate these policies or any other policies of the Company. Disciplinary actions may include immediate termination of employment or business relationship at the Company's sole discretion. If the Company has suffered a loss, then it may pursue its remedies against the individuals or entities responsible. If laws have been violated, then the Company will fully cooperate with the appropriate authorities.

### Definitions

- 1) **"Class Member Information"** means Class Member name, address, or other contact information and class member claim filing information necessary for Company to perform services required by applicable Agreements or Court Orders in context to the Administration of a Settlement or other Class Action litigation.
- 2) **"Client"** means collectively Plaintiff Counsel and Defense Counsel, Plaintiff and Defendant.
- 3) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under the Settlement Agreement, as provided by Client.
- 4) **"Company"** means CPT Group, Inc. a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
- 5) **"Sensitive Personal Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally, or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall not include any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.



# **EXHIBIT 2**

## **TRANSMISSION METHODS FOR SENSITIVE INFORMATION**

CPT Group, Inc. ("CPT") maintains strict guidelines for the submission, transfer, and protection of Client Data and Wire Information.

### **A. CLIENT DATA TRANSMISSION METHODS**

Counsel shall submit all Client Data to CPT as follows:

1. Link provided by CPT to secure FTP (sharefile) for transfer of data files.
2. All files uploaded should be password protected.
3. Password provided to CPT personnel telephonically.
4. Once files are uploaded to and retrieved, files are deleted (files set on autodelete after 7 days of upload).

Counsel agrees and acknowledges that the above method is the only method authorized by CPT to receive Client Data. Attempts to transmit Client Data by other means are customarily not accepted. In the event Counsel utilizes other means to transmit or attempt to transmit Client Data, CPT disclaims all responsibility for such transmissions or attempted transmissions.

### **B. BANK WIRE INFORMATION**

*Incoming from Defense Counsel to QSF.*

CPT provides Qualified Settlement Fund bank account wire instructions to Defense Counsel as follows:

1. Wire instructions are printed in PDF format, are uploaded with password protection, and are made available to Defense Counsel via secure Sharefile.
2. CPT will call Defense Counsel directly and provide the password telephonically.
3. Defense Counsel is requested to then call CPT prior to wiring funds to confirm receipt of all applicable information.

Defense Counsel agrees and acknowledges that the above method is the only method authorized by CPT to communicate QSF wire instructions. CPT will decline attempts by Defense Counsel to receive such instructions by other means. In the event Defense Counsel utilizes other means to transmit or attempt to transmit wire instructions, CPT disclaims all responsibility and liability for such transmissions or attempted transmissions including without limitation for any unauthorized access, acquisition, destruction, or loss of such wire instructions.

*Outgoing from QSF to Plaintiff Counsel.*

1. CPT does not send passwords via email either internally or externally.
2. For wire instructions for Plaintiff Counsel, such instructions should be communicated to CPT either by phone or by secure Sharefile.
3. CPT will confirm wire information on file with the bank name and last four digits of the account number only.

Plaintiff Counsel agrees and acknowledges that the above method is the only method authorized by CPT to communicate wire instructions. CPT will decline attempts by Plaintiff Counsel to receive such instructions by other means. In the event Plaintiff Counsel utilizes other means to transmit or attempt to transmit wire instructions, CPT disclaims all responsibility and liability for such transmissions or attempted transmissions including without limitation for any unauthorized access, acquisition, destruction, or loss of such wire instructions.

# **EXHIBIT 3**



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Class Action Administrators

The Industry's Premier  
Class Action Administrator

**CPT Group is the Nation's premier Class Action Claims Administrator handling a broad spectrum of cases with value-added, single-source expertise, and premier service.**



Putting CPT Group in place as your Administrator influences every element of the process thereafter. Rely on us to analyze, plan, and administrate with integrity, drawing from a broad base of administration experience with class action settlement and beyond.

#### **Value Added Philosophy**

CPT Group's cadre of experts understands how each piece of the administrative puzzle fits seamlessly into the big picture. Dynamic, capable, and service-centric our elite staff delivers peak productivity and value. The longevity of our Administrators, stringently tested Case Managers, and trusted Consultants merge to assure neutrality, attention to detail and quality for "true-number" proposals and no costly surprises.

#### **Best In Class Service**

From informed Case Managers who are your single point of contact, to secure in-house resources, we work as one to bring you superior service you can rely on. Count on us to be fully up to date, aware of all contingencies, and espond with speed and accuracy.

#### **Capabilities**

Selecting CPT Group is the first step in determining the outcome of your settlement. Multifaceted capabilities, the distinct advantage of experience, particularly in cross category settlements, require that all pieces are organized, positioned correctly and put into place.

#### **One team. One purpose. We put you first.**

#### **Proprietary Technology and Superior Workflow**

Without doubt, the security of settlement information is of the utmost importance.



## **AdminLink: Internal Case Information Access Management**

Exclusive proprietary technology offers access to real time reports, response rates and more, 24/7. With AdminLink, our operations staff can access current case information in one single location, ensuring every CPT staff member involved in your case is up to date and has all the information they need at their fingertips.

## **Comprehensive Marketing**

Our onsite print/mail house and web development team not only affords you greater value and tighter security, we assure full legal compliance in all materials and up to date information for all class members, thereby reducing demands on client time and resources.

## **Comprehensive Service**

### **Pre-Settlement Consulting**

Entrusting class action administration to CPT Group is the first step in the confident achievement of the goals of the lawsuit. Our full spectrum consultation services address every critical area of need, providing clear and actionable planning combined with cost-effective administration.

- Preliminary Approval Declarations
- Settlement Agreement Consultation
- Timelines
- Scheduling
- Statistical Reporting
- Notice Campaign Planning
- Neutral Third Party Administrator

### **Legal Notification**

CPT Group is adept at third-party data hosting and communication services using proprietary technology across multiple platforms, including print, media and online. Clear-language

documents, translated according to class member needs, support and guide members through a seamless case rollout, regardless of scope or complexity.

- Pre-Certification/Belaire West/Privacy Mailing
- Class Certification Noticing
- Settlement Notification
- Formatting Legal Notices
- Electronic Notification email/website
- Translation Services
- In-House Production
- Expert Legal Noticing Campaigns
- In-House Translation Services

### **Data Management**

Quality, accuracy, speed and security are the cornerstones of CPT's proprietary technology and data management systems. We developed our specialized data management, analysis and reporting tools to move the skillset up, innovate new and better solutions and create a superior workflow with complete and timely accountability and efficiency.

- Data Analysis
- Data Entry
- Data Management
- Secure Data Transfer
- Data Reporting

### **Class Member Assistance**

Customer response and targeted outreach receive multilevel attention. We have a massive capacity to handle this all-important aspect of settlement administration. Our multilingual call center offers class members 1:1 responsiveness. Interactive Voice Response assures that class members receive the assistance and support they require. Our proprietary, case-specific call tracking system uses dedicated toll-free numbers, and highly trained



representatives to document and maintain an accurate class member history of interaction.

- Live Call Center Support (multilingual)
- Interactive Voice Response (IVR) capabilities
- Proprietary Call Tracking System

### Claims Administration

At the heart of CPT's administrative capabilities is our ability to process claims accurately, efficiently and in full compliance. Our skilled approach to using technology and controlling management costs is the bedrock of our effectiveness. Regardless of class size or case intricacy, we address all aspects of administration to provide comprehensive and complete solutions.

- In-House Secure Data Processing
- Track & Process Undeliverable Mail
- Claims Processing (mail/online)
- Host & Maintain Case Websites
- Secure Claims Validation

### Settlement Fund Administration

CPT's centralized fund distribution process manages fully audited and securely supervised accounts, handling all aspects of Federal and State tax filings and forms printing and distribution to all recipients.

- Secure Disbursement Processing

- Qualified Settlement Fund (QSF) Management (establish/maintain)
- Federal and Multi-State Tax Reporting (W2/1099)
- Physical Checks, ACH, eCheck, Merchant eGift Cards, Merchant Physical Gift Cards, and Prepaid Debit Cards Options
- Escheatment of Unclaimed Settlement Funds
- Cy Pres Distribution

### Widespread Experience

- FLSA
- Wage & Hour
- Labor & Employment
- PAGA
- Consumer
- Product Liability
- Data Breach Notification
- Government Services
- Insurance
- Securities
- Finance
- Antitrust
- ERISA

### Contact Us 800.542.0900

CPT Group, Inc. is not just part of the solution. It is the solution. Please allow us to answer your questions and discuss your immediate and future needs.

**EXHIBIT F**  
**PROPOSED SECOND AMENDED**  
**JETTER COMPLAINT**

1 Michael Liskow (243899)  
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10 **PRIZ LAW, LLC**  
11 3230 S. Harlem Ave., Suite 221B  
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13 Tel: (708) 268-5768

14 *Counsel for Plaintiffs and the Class*

15 [Additional Counsel listed on Signature Page]

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

AMERICAN JETTER & PLUMBING, INC. and  
RESILIENCE TREATMENT CENTER, on behalf  
of themselves and all others similarly situated,

Plaintiffs,

v.

STATE COMPENSATION INSURANCE FUND,  
a public enterprise fund, and DOES 1 through 50,  
inclusive,

Defendants.

Case No. 19STCV36307

**[PROPOSED] SECOND AMENDED  
CLASS ACTION COMPLAINT FOR  
DAMAGES & INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

Assigned for All Purposes to:  
Honorable Amy D. Hogue

Department 7 at Spring Street Courthouse

1 **INTRODUCTION**

2 1. Plaintiffs American Jetter & Plumbing, Inc. (“American Jetter”) and Resilience  
3 Treatment Center (“Resilience,” collectively with American Jetter, “Plaintiffs”) bring this class  
4 action on behalf of themselves and all others similarly situated (the “Class,” defined *infra*) against  
5 defendants State Compensation Insurance Fund (“State Fund”) and Does 1 through 50, inclusive  
6 (collectively “Defendants”).

7 2. This lawsuit seeks refunds of the unlawful workers’ compensation insurance  
8 premiums Defendants charged Plaintiffs and the Class. As detailed further herein, Defendants have  
9 improperly and illegally charged the Class inflated insurance premium rates using two separate but  
10 related schemes. First, Defendants charged Plaintiff American Jetter and the “Algorithm Group”  
11 (defined *infra*) inflated insurance premium rates by calculating the premiums using improper and  
12 illegal “tier modifiers” and “rating plan modifiers” based on formulas that were not filed, disclosed  
13 to the public, or permitted to be disclosed to the public at the time of the filing of the rate filings  
14 utilizing the formulas, as required by law (the “Algorithm”). Defendants have charged the  
15 Algorithm Group these improper and illegal premiums since 2013, and continued to do so even after  
16 the California Insurance Commissioner confirmed that Defendants’ use of the tier modifiers and  
17 rating plan modifiers at issue was illegal and unenforceable.

18 3. Defendants have also charged Plaintiff Resilience and the “Insufficient  
19 Documentation Group” (defined *infra*) inflated insurance premium rates by increasing the  
20 Insufficient Documentation Group’s tier modifiers, and consequent premiums (for most by 50%),  
21 due to the Insufficient Documentation Group members’ purported failure to provide State Fund with  
22 information necessary for it to accurately underwrite risk and to “encourage full disclosure.”  
23 However, Defendants (i) never notified Plaintiff Resilience or, upon information and belief, the  
24 other Insufficient Documentation Group members of their purported failure to provide sufficient  
25 documentation; (ii) never provided them an opportunity to question or cure this purported failure;  
26 or (iii) even directly disclosed to Plaintiff Resilience or the Insufficient Documentation Group  
27 members of the tier modifier they were being assigned or the basis of that tier modifier.

28 4. These actions by Defendants breached State Fund’s insurance policies with both the

1 Algorithm Group and Insufficient Documentation Group members, and violated provisions of the  
2 California Insurance Code as well as the California Unfair Competition Law (“UCL”).

3 5. Plaintiffs seek restitution and damages stemming from Defendants’ use of the  
4 improper tier modifiers in excess of 1.00. Plaintiffs also seek to enjoin Defendants from continuing  
5 to charge insurance premiums not permitted under the law.

6 **JURISDICTION AND VENUE**

7 6. This Court has personal jurisdiction over State Fund because it is doing business in  
8 the State of California within Los Angeles County.

9 7. Venue is proper in this Court pursuant to California Code of Civil Procedure section  
10 395 because State Fund does substantial business in this County and has its principal offices in this  
11 County. Plaintiffs are also residents of this County and transacted business with State Fund while  
12 in this County.

13 **PARTIES**

14 8. Plaintiff American Jetter & Plumbing, Inc. is a corporation organized and existing  
15 under the laws of the State of California and qualified to do business in the State of California.  
16 American Jetter’s headquarters are located at 1515 Stevens Avenue, Unit B, San Gabriel, California  
17 91776.

18 9. Plaintiff Resilience Treatment Center is a corporation organized and existing under  
19 the laws of the State of California, and qualified to do business in the State of California.  
20 Resilience’s headquarters are located at 9663 Santa Monica Boulevard, Suite 168, Beverly Hills,  
21 California 90210.

22 10. Defendant State Compensation Insurance Fund is a public enterprise fund established  
23 by the California State legislature in 1914. State Fund provides worker’s compensation insurance  
24 throughout California, including in Los Angeles County. State Fund often functions as an insurer  
25 of last resort.

26 11. State Fund is one of the largest providers of workers’ compensation insurance to  
27 California businesses, with the California Department of Insurance’s 2018 Market Share Report  
28 reporting State Fund as having approximately 10.9% of the market share and total premiums of

1 nearly \$1.4 billion. State Fund reports on its website that it has approximately 110,000  
2 policyholders and nearly \$21 billion in assets. State Fund lists one of its “Values” as “**Do What’s**  
3 **Right**. Approach every situation with a passion to help, a desire to learn and a commitment to  
4 integrity – because doing the right thing isn’t always simple, easy, or clear.” (Emphasis in original).

5 12. Plaintiffs are not presently aware of the true names and capacities of the Defendants  
6 designated as Does 1 through 50, inclusive, and will hereafter seek leave of the Court to amend this  
7 complaint to allege the true names and capacities of each Defendant.

8 13. Upon information and belief, Defendants are each responsible in some manner for  
9 the transactions, events and occurrences alleged, and the damages alleged were proximately caused  
10 thereby.

11 14. Upon information and belief, Defendants were each the agents, joint venturers,  
12 trustees, servants, partners, alter-egos, parent corporations, subsidiaries, affiliates, contractors or  
13 employees of each of the remaining Defendants, and the acts or omissions alleged herein were done  
14 by them acting individually, through such capacity or through the scope of their authority, and said  
15 conduct was thereafter ratified by the remaining Defendants.

## 16 SUBSTANTIVE ALLEGATIONS

### 17 The Algorithm Group Claims

18 15. California Insurance Code section 11735 requires, *inter alia*, that all insurers doing  
19 business in California publicly file all rates and supplementary rate information before charging any  
20 such rates. Specifically, section 11735(b) mandates in pertinent part that “[a]ll rates, supplementary  
21 rate information, and any supporting information for rates filed under this article, as soon as filed,  
22 shall be open to public inspection at any reasonable time. Copies may be obtained by any person  
23 upon request and the payment of a reasonable charge.” Section 11730 of the Insurance Code further  
24 defines “supplementary rate information” as including any “minimum premium, policy fee, rating  
25 rule, rating plan, and any other similar information needed to determine the applicable premium for  
26 an insured.”

27 16. Beginning with its rate filing in effect for policies commencing March 1, 2013 (the  
28 “2013 Rate Filing”), State Fund has calculated certain workers’ compensation insurance premiums

1 using a formula that includes a “tier modifier” and “rating plan modifier.” The tier modifier is  
2 calculated based on an Algorithm that takes into account various factors including insureds’ prior  
3 loss history and average wages.

4 17. The tier modifier is one component of the formula State Fund uses to determine an  
5 insured’s rating plan modifier, which in turn is a component of the formula used to calculate an  
6 insured’s premiums. When the tier modifier is in excess of 1.00, an insured’s rating plan modifier  
7 and premium is set above the rate that would be charged absent the tier modifier. For example, if  
8 an insured is assigned a 1.50 tier modifier for their policy, their premium will be increased by 50%,  
9 all else being equal.

10 18. State Fund violated Insurance Code sections 11735 and 11730, among others, by  
11 failing to file, publicly disclose or permit to be publicly disclosed the Algorithm at the time of the  
12 filing of the rate filings utilizing the Algorithm. The Algorithm is supplementary rate information  
13 necessary for insureds to determine (or later confirm) what tier modifier they should fall under and,  
14 consequently, what their total premiums will be (or should have been). In fact, State Fund has never  
15 even directly informed insureds what tier modifier has been assigned to their policy, further  
16 preventing insureds from being able to determine (or confirm) their applicable premiums and shop  
17 for competitive workers’ compensation insurance coverage.

18 19. The illegality of this scheme was confirmed by the California Insurance  
19 Commissioner. On November 16, 2018, the California Insurance Commissioner issued a decision  
20 in *In the Matter of the Appeal of A-Brite Blind & Drapery Cleaning*, No. AHB-WCA-17-26 (Cal.  
21 Ins. Comm’r, November 16, 2018) (“*A-Brite*,” attached as Exhibit A), concluding as a matter of law  
22 that State Fund used an unlawful and unenforceable tier modifier and rating plan modifier to  
23 calculate an insured’s premium for its policies effective December 2, 2015 to December 2, 2016,  
24 and December 2, 2016 to December 2, 2017.

25 20. The basis for the Insurance Commissioner’s decision was that State Fund had  
26 improperly used the undisclosed Algorithm for calculating insureds’ tier modifiers.

27 21. The Insurance Commissioner in *A-Brite* held that State Fund’s use of the undisclosed  
28 Algorithm to calculate A-Brite’s tier modifier and rating plan modifier was impermissible because,



1 *inter alia*, State Fund failed to make the Algorithm publicly available to its insureds at the time of  
2 filing. Because of this, insureds like A-Brite, Plaintiff American Jetter and the Algorithm Group  
3 members could not determine what their insurance premiums should be, and when assessed a tier  
4 modifier greater than 1.00 were charged premiums in excess of what was lawful.

5 22. The Insurance Commissioner in *A-Brite* ordered State Fund to recalculate A-Brite’s  
6 premium by removing the tier modifier, which was over 1.00 and therefore created a premium  
7 charge. This removal of the tier modifier resulted in an \$8,805 reduction in premiums for A-Brite.

### 8 **The Insufficient Documentation Group Claims**

9 23. In State Fund’s 2013 Rate Filing, State Fund briefly noted the following rating rule  
10 with respect to the assignment of tier modifiers:

11 Every insured with three consecutive years of insurance history can be slotted into one of  
12 the three tiers, regardless of whether they are currently a State Fund policyholder or are  
13 applying as new business. However, not every insured that comes to State Fund will be  
14 mature enough to have three years of history, so State Fund plans to place these into the  
15 Middle/B Tier. When they reach their third year, these insureds will be treated the same as  
16 all other and will be assigned to the appropriate tier depending on their claims experience.  
17 As is already mandatory, State Fund will continue to require full and complete insurance  
18 history as part of the application process. *Those businesses that fail to provide  
19 documentation of claims history and other required information will be placed into the  
20 Worst/C Tier, to encourage full disclosure to enable to State Fund to most accurately  
21 underwrite the risk.* (Emphasis added).<sup>1</sup>

22 24. In other words, State Fund explained that through its “Insufficient Documentation  
23 Rule,” if it unilaterally determined that an insured had failed to provide sufficient documentation of  
24 claims history and “other required information” (left unclear in the rate filing or elsewhere), it would  
25 penalize the insured with a detrimental tier modifier (causing an increase in premiums) in order to  
26 “encourage full disclosure” from the insured in pursuit of the goal of “enabl[ing] . . . State Fund to  
27 most accurately underwrite the risk.”

28 25. Despite State Fund’s 2013 Rate Filing stating that the dual purpose of the Insufficient  
Documentation Rule is to “encourage full disclosure” from insureds and “enable . . . State Fund to  
most accurately underwrite the [insureds’] risk,” upon information and belief State Fund does not

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<sup>1</sup> A version of the Insufficient Documentation Rule has been in effect in every State Fund rate filing since the 2013 Rate Filing

1 as a matter of practice, and in violation of the Insurance Code and the UCL, (1) notify insureds when  
2 it believes insufficient documentation has been provided, or identify what information is purportedly  
3 missing; or (2) provide such insureds an opportunity to question or cure the purported deficiency  
4 and avoid a substantial increase in their premiums. In fact, Defendants do not even directly inform  
5 insureds of the tier modifier that has been applied to their policy premiums (much less the reason  
6 why).

7 **Plaintiffs' Facts**

8 **American Jetter**

9 26. Plaintiff American Jetter is a construction company that does building maintenance,  
10 plumbing, and wallboard construction.

11 27. American Jetter purchased workers' compensation insurance from State Fund  
12 including policies effective for the periods January 13, 2017 through January 13, 2018 (the "2017  
13 Policy"), January 13, 2018 through January 13, 2019 (the "2018 Policy"), and January 13, 2019  
14 through March 11, 2019 (the "2019 Policy"), periods during which State Fund unlawfully set its  
15 rating plan modifier and rates using the undisclosed tier modifier Algorithm.<sup>2</sup>

16 28. American Jetter received a tier modifier of 1.50 for its 2017 Policy and paid  
17 premiums to State Fund based in part on the tier modifier. State Fund assigned the 1.50 tier modifier  
18 to American Jetter for its 2017 Policy based on State Fund's application of the Algorithm to  
19 American Jetter's loss history and other historical data.

20 29. State Fund's use of the 1.50 tier modifier increased American Jetter's premium for  
21 the 2017 Policy period by approximately \$60.

22 30. American Jetter received a tier modifier of 1.50 for its 2018 Policy and paid  
23 premiums to State Fund based in part on the tier modifier. State Fund assigned the 1.50 tier modifier  
24 to American Jetter for its 2018 Policy based on State Fund's application of the Algorithm to  
25 American Jetter's loss history and other historical data.

26 31. State Fund's use of the 1.50 tier modifier increased American Jetter's premium for

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27 <sup>2</sup> The 2017 Policy, 2018 Policy and 2019 Policy are attached as Exhibits B, C and D,  
28 respectively.

1 the 2018 Policy period by approximately \$8,749.

2 32. American Jetter received a tier modifier of 1.20 for its 2019 Policy and paid  
3 premiums to State Fund based in part on the tier modifier. State Fund assigned the 1.20 tier modifier  
4 to American Jetter for its 2019 Policy based on State Fund's application of the Algorithm to  
5 American Jetter's loss history and other historical data.

6 33. State Fund's use of the 1.20 tier modifier increased American Jetter's premium for  
7 the 2019 Policy period by approximately \$2,013.

8 34. In total, American Jetter has paid State Fund approximately \$10,822 in excess  
9 premiums due to State Fund's unlawful charging of premiums based on Defendants' use of  
10 undisclosed Algorithm in calculating American Jetter's tier modifiers, rating plan modifiers and  
11 premiums.

12 35. For the 2017 through 2019 Policy periods, American Jetter was not directly informed  
13 of its assignment of tier modifiers of 1.50 and 1.20 (or provided the basis for such assignments) that  
14 increased its premiums.

15 36. Prior to the commencement of this suit, American Jetter made multiple attempts to  
16 confirm with State Fund, through American Jetter's counsel, both the basis for the calculation of the  
17 tier modifier used in calculating American Jetter's premiums, as well as simply which tier modifier  
18 has been applied to the policies. Remarkably, State Fund consistently refused to answer either  
19 query.<sup>3</sup>

20 37. Instead, American Jetter's policies, and audit materials received regarding the  
21 policies, reflect a blended rating plan modifier that included the tier modifier as one of its factors.

22 38. For the 2017 Policy, American Jetter received a rating plan modifier of 1.725,  
23 causing additional premium charges of approximately \$870, inclusive of the increased premium  
24 caused by the tier modifier.

25 39. For the 2018 Policy, American Jetter received a rating plan modifier of 1.725,  
26 causing additional premium charges of approximately \$13,190, inclusive of the increased premium

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27 <sup>3</sup> American Jetter was later able to confirm the tier modifiers assigned to the policy periods  
28 at issue by obtaining documentation provided to its broker.

1 caused by the tier modifier.

2 40. For the 2019 Policy, American Jetter received a rating plan modifier of 1.380,  
3 causing additional premium charges of approximately \$3,424, inclusive of the increased premium  
4 caused by the tier modifier.

5 41. It is impossible to calculate, and confirm the calculation of, the rating plan modifier  
6 without knowledge of the undisclosed and incomplete Algorithm that is used to calculate the tier  
7 modifier, thereby making the rating plan modifier, like the tier modifier, a separate improperly  
8 undisclosed component of insureds' premiums.

9 **Resilience**

10 42. Plaintiff Resilience is a mental health treatment facility.

11 43. Resilience purchased workers' compensation insurance from State Fund including  
12 the policy effective for the period June 9, 2016, through June 9, 2017 (the "2016 Policy"),<sup>4</sup> a period  
13 during which State Fund unlawfully set its rating plan modifier and rates using the undisclosed tier  
14 modifier Algorithm.

15 44. Resilience received a tier modifier of 1.50 for its 2016 Policy and paid premiums to  
16 State Fund based in part on the tier modifier. State Fund assigned the 1.50 tier modifier to Resilience  
17 for its 2016 Policy based on State Fund's Insufficient Documentation Rule, apparently determining  
18 that Resilience failed to provide sufficient information for State Fund to determine Resilience's  
19 underwriting risk and corresponding tier modifier under the Algorithm.

20 45. But Defendants did not provide Resilience with any notice or indication that  
21 Defendants believed Resilience had failed to provide sufficient documentation, or what  
22 documentation Defendants believed was still outstanding. Nor did Defendants provide Resilience  
23 with an opportunity to question or cure the purported deficiency and avoid a substantial increase in  
24 premiums. In fact, Defendants did not even directly inform Resilience of what tier modifier had  
25 been applied to the 2016 Policy, or the basis for the tier modifier assigned.

26 46. State Fund's use of the 1.50 tier modifier increased Resilience's premium for the  
27

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28 <sup>4</sup> The 2016 Policy is attached as Exhibit E.

1 2016 Policy period by approximately \$23,983.

2 47. For the 2016 Policy, Resilience received a rating plan modifier of 1.77675, causing  
3 additional premium charges of approximately \$31,454, inclusive of the increased premium caused  
4 by the tier modifier.

5 48. For the 2016 Policy period, Resilience was not directly informed of its assignment  
6 to the 1.50 tier modifier category, or the reason for the assignment. Resilience was later able to  
7 confirm the 1.50 tier modifier assigned to the 2016 Policy by obtaining documentation provided to  
8 its broker. However, neither this documentation, nor any other information Resilience or the  
9 Insufficient Documentation Group members were provided, notified or indicated that the basis for  
10 the increased tier modifier was a purported failure to provide sufficient documentation of  
11 underwriting risk.

#### 12 **CLASS ACTION ALLEGATIONS**

13 49. Plaintiffs bring this action pursuant to Code of Civil Procedure section 382 as a class  
14 action individually on behalf of themselves and on behalf of all others similarly situated. The Class  
15 is defined as follows:

16 All insureds of State Fund whose workers' compensation insurance premiums for  
17 any policy in effect from March 1, 2013, through the present were calculated using  
18 a tier modifier in excess of 1.00 and where such calculation resulted in the payment  
19 of a higher premium than the insured would have otherwise paid. Excluded from  
20 the Class are Defendants, their affiliates, predecessors, successors, officers,  
directors, agents, servants and employees and the immediate families of such  
persons.

#### 21 **Numerosity**

22 50. The members of the Class are too numerous for joinder to be practicable. There are  
23 tens of thousands of State Fund insureds whose premiums were calculated using a tier modifier in  
24 excess of 1.00. Upon information and belief the Class has thousands, if not tens of thousands, of  
25 members in its ranks. The exact quantity and identities of each member of the Class is known to  
26 Defendants through State Fund's own records.

#### 27 **Commonality**

28 51. There is a well-defined community of interest in the relevant questions of law and

1 fact among members of the Class. Common questions of law and fact predominate over any  
2 questions affecting individual members of the Class, including, but not limited to:

3 a. Whether State Fund included the complete tier modifier Algorithm in its rate  
4 filings;

5 b. Whether State Fund filed the tier modifier Algorithm at the time of filing the  
6 rate filings utilizing the Algorithm;

7 c. Whether State Fund publicly disclosed the tier modifier Algorithm at the time  
8 of filing the rate filings utilizing the Algorithm;

9 d. Whether State Fund permitted the tier modifier Algorithm to be publicly  
10 disclosed at the time of filing the rate filings utilizing the Algorithm;

11 e. Whether State Fund violated California Insurance Code section 332 by failing  
12 to file the tier modifier Algorithm at the time of filing the rate filings utilizing the Algorithm

13 f. Whether State Fund violated California Insurance Code section 332 by failing  
14 to publicly disclose the tier modifier Algorithm at the time of filing the rate filings utilizing the  
15 Algorithm;

16 g. Whether State Fund violated California Insurance Code section 332 by failing  
17 to allow to be publicly disclosed the tier modifier Algorithm at the time of filing the rate filings  
18 utilizing the Algorithm;

19 h. Whether State Fund violated California Insurance Code section 332 by failing  
20 to provide Insufficient Documentation Group members (1) notice that State Fund had deemed them  
21 to have failed to provide sufficient documentation; (2) notice of what documentation was  
22 purportedly still outstanding; (3) any opportunity to contest or cure the purported lack of  
23 documentation; and/or (4) direct notification of the tier modifier assigned or the basis of the  
24 assignment of the tier modifier;

25 i. Whether State Fund violated California Insurance Code section 11735 by  
26 failing file the tier modifier Algorithm at the time of filing the rate filings utilizing the Algorithm;

27 j. Whether State Fund violated California Insurance Code section 11735 by  
28 failing to publicly disclose the tier modifier Algorithm at the time of filing the rate filings utilizing

1 the Algorithm;

2 k. Whether State Fund violated California Insurance Code section 11735 by  
3 failing to allow to be publicly disclosed the tier modifier Algorithm at the time of filing the rate  
4 filings utilizing the Algorithm

5 l. Whether State Fund violated California Insurance Code section 11735 by  
6 failing to provide Insufficient Documentation Group members (1) notice that State Fund had deemed  
7 them to have failed to provide sufficient documentation; (2) notice of what documentation was  
8 purportedly still required; (3) any opportunity to contest or cure the purported lack of  
9 documentation; and/or (4) direct notification of the tier modifier assigned or the basis of the  
10 assignment of the tier modifier.

11 m. Whether Defendants breached State Fund's contracts for insurance with  
12 Plaintiffs and the Class through their conduct;

13 n. Whether Defendants violated California Business & Professions Code  
14 section 17200 through their conduct;

15 o. Whether Defendants concealed their improper and illegal actions from  
16 members of the Class;

17 p. Whether Defendants should be enjoined from continuing their improper  
18 practices, including by being required to (i) inform members of the Class of their tier modifiers and  
19 the basis of the tier modifiers, and (ii) provide Insufficient Documentation Group members with  
20 notice of the purported insufficient documentation and an opportunity to cure; and

21 q. What the proper measure of damages is for each claim.

22 **Typicality**

23 52. Plaintiffs have the same interests in this matter as all other members of the Class  
24 since they were charged unlawful rates in the same manners as other members of the Class.

25 53. If members of the Class brought individual cases, they would require proof of the  
26 same material and substantive facts and would seek the same relief.

27 54. The claims of Plaintiffs and the members of the Class share a common nucleus of  
28 operative facts and originate from the same conduct by Defendants.

1 **Adequacy of Representation**

2 55. Plaintiffs will diligently represent the interests of the Class. The interests of Plaintiffs  
3 are sufficiently aligned with the interests of the other members of the Class such that they will have  
4 no conflicts with the interests of the Class and will be adequate representatives.

5 56. Counsel for Plaintiffs are highly experienced in consumer class action litigation and  
6 will prosecute the action with skill and diligence.

7 **Superiority**

8 57. The prosecution of separate actions by individual members of the Class would create  
9 a risk of inconsistent or varying adjudications which would establish incompatible standards of  
10 conduct for the parties opposing the Class. Such incompatible standards of conduct and varying  
11 adjudications of the same essential facts, proof and legal theories would also create and allow the  
12 existence of inconsistent and incompatible rights within the Class.

13 58. Moreover, a class action is superior to other methods for the fair and efficient  
14 adjudication of the controversies raised in this Complaint because:

15 a. Individual claims by members of the Class could be impracticable as the costs  
16 of pursuit would far exceed what any one member of the Class has at stake;

17 b. Plaintiffs are unaware of any significant number of other actions that have  
18 been commenced over the controversies alleged in this Complaint, and individual members of the  
19 Class are unlikely to have an interest in separately prosecuting and controlling individual actions;

20 c. The concentration of litigation of these claims in one forum will achieve  
21 efficiency and promote judicial economy; and

22 d. The proposed class action is manageable.

23 59. Defendants have acted in a uniform manner on grounds generally applicable to  
24 Plaintiffs and the other members of the Class so that final declaratory and injunctive relief as  
25 requested herein is appropriate with respect to the Class as a whole.

26 60. Therefore, class treatment of Plaintiffs' claims is appropriate and necessary.  
27  
28



**COUNT I**  
**BREACH OF CONTRACT**  
**(On Behalf of Plaintiffs and the Class)**

1  
2  
3       61.       Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-60  
4 above as if fully set forth herein.

5       62.       Plaintiffs and the Algorithm Group entered into contracts with State Fund to provide  
6 workers' compensation insurance to Plaintiffs and the Class.

7       63.       Upon information and belief, these standard form contracts provided in pertinent part  
8 that "[a]ll premium for this policy will be determined by our manuals of rules rates, rating plan and  
9 classifications. We may change our manual and apply the changes to this policy if authorized by  
10 law or a governmental agency regulating this workers' compensation insurance." The contracts  
11 further provide that "[t]he final premium will be determined after this policy ends by using the actual  
12 premium basis and the proper classifications, rates and rating plan that lawfully apply to the business  
13 and work covered by this policy."

14       64.       Plaintiff American Jetter and each member of the Algorithm Group purchased a  
15 workers' compensation insurance policy from State Fund and was charged and paid a premium to  
16 State Fund based in part on State Fund's unlawful application of a tier modifier in excess of 1.00  
17 where such tier modifier was applied by State Fund based on the mathematical application of the  
18 tier modifier Algorithm to the insured's claims history and other information taken into account by  
19 the Algorithm.

20       65.       Defendants breached State Fund's agreements with Plaintiff American Jetter and the  
21 Algorithm Group by charging insurance rates that were not calculated in a lawful manner. For the  
22 reasons set forth herein, Defendants' usage of the undisclosed tier modifier Algorithm, and the rating  
23 plan modifier incorporating the undisclosed tier modifier Algorithm, in calculating its insureds'  
24 premiums was unlawful. Accordingly, Defendants' assessment of unlawful rates is a breach of State  
25 Fund's insurance agreements with Plaintiff American Jetter and the Algorithm Group.

26       66.       Plaintiff Resilience and each member of the Insufficient Documentation Group  
27 purchased a workers' compensation insurance policy from State Fund and was charged and paid a  
28 premium to State Fund based in part on State Fund's unlawful application of a tier modifier in excess

1 of 1.00 where such tier modifier was applied by State Fund due to State Fund’s determination that  
2 the insured failed to provide sufficient documentation of its claims history and other information  
3 required by State Fund.

4 67. Defendants breached State Fund’s insurance agreements with Plaintiff Resilience  
5 and the Insufficient Documentation Group by charging insurance rates that were not calculated in a  
6 lawful manner. Certain of State Fund’s rate filings provide that “[t]hose businesses that fail to  
7 provide documentation of claims history and other required information will be placed into the  
8 Worst/C Tier, to encourage full disclosure to enable to State Fund to most accurately underwrite the  
9 risk.”

10 68. But Defendants did not provide any notice to Resilience or, upon information and  
11 belief, to the Insufficient Documentation Group that Defendants believed insufficient  
12 documentation had been provided. Nor did Defendants inform Resilience or the Insufficient  
13 Documentation Group members of what documentation Defendants believed was still outstanding,  
14 or provide an opportunity to question or cure the purported deficiency and avoid a substantial  
15 increase in premiums. In fact, Defendants did not even directly inform Resilience or the Insufficient  
16 Documentation Group members of what tier modifier had been applied to their policy premiums or  
17 the basis of the tier modifier applied. Accordingly, Defendants could not have applied the increased  
18 tier modifiers to the Insufficient Documentation Group members for the purpose of “encourag[ing]  
19 full disclosure” of underwriting risk, as policyholders were never even made aware that this was the  
20 basis of their increased premiums. State Fund also declined to provide insureds an opportunity to  
21 provide any purportedly missing information which would have “enable[d] . . . State Fund to most  
22 accurately underwrite the risk.”

23 69. Defendants further breached the terms of State Fund’s insurance agreements with  
24 Plaintiff Resilience and the Insufficient Documentation Group because State Fund promises through  
25 such agreement to charge only lawful premiums. But as discussed *infra*, Defendants’ assignment  
26 of inflated tier modifiers to Plaintiff Resilience and the Insufficient Documentation Group without  
27 notification, an opportunity to cure, or any apparent basis, violates provisions of the California  
28 Insurance Code and the UCL.



1       76.       State Fund violated, with respect to the Algorithm Group, section 11735 of the  
2 Insurance Code by failing to file, publicly disclose, or permit to be publicly disclosed its tier  
3 modifier Algorithm at the time of filing the rate filings utilizing the Algorithm. This prevented  
4 insureds from being able to determine why they were assigned a specific tier modifier, or to  
5 determine how the tier modifier and consequent premiums were derived and calculated.

6       77.       State Fund's failure to file, publicly disclose, or permit to be publicly disclosed its  
7 tier modifier Algorithm at the time of filing the rate filings utilizing the Algorithm further prevented  
8 insureds from being able to determine the basis of their assigned rating plan modifier, or to  
9 determine how their consequent premium was derived and calculated.

10       78.       Section 332 of the Insurance Code requires that "[e]ach party to a contract of  
11 insurance shall communicate to the other, in good faith, all facts within his knowledge which are or  
12 which he believes to be material to the contract and as to which he makes no warranty, and which  
13 the other has not the means of ascertaining." Concealment consists of any "[n]eglect to  
14 communicate that which a party knows, and ought to communicate." Ins. Code § 330.

15       79.       State Fund's failure to file, publicly disclose, or permit to be publicly disclosed its  
16 tier modifier Algorithm at the time of filing the rate filings utilizing the Algorithm violated, with  
17 respect to the Algorithm Group, section 332 of the Insurance Code.

18       80.       Defendants' conduct described herein, with respect to the Algorithm Group,  
19 constitutes a course of unfair conduct within the meaning of Business & Professions Code § 17200,  
20 *et seq.*

21       81.       State Fund's violations of Sections 332 and 11735 of the Insurance Code described  
22 herein, with respect to the Algorithm Group, constitute unlawful business acts and practices in  
23 violation of Business & Professions Code section 17200, *et seq.*

24       82.       Plaintiff Resilience and each member of the Insufficient Documentation Group  
25 purchased a workers' compensation insurance policy from State Fund and was charged and paid a  
26 premium to State Fund based in part on State Fund's unlawful application of a tier modifier in excess  
27 of 1.00 where such tier modifier was applied by State Fund due to State Fund's determination that  
28 the insured failed to provide sufficient documentation of its claims history and other information

1 required by State Fund.

2 83. Certain of State Fund's rate filings set forth State Fund's "Insufficient  
3 Documentation Rule" providing that "[t]hose businesses that fail to provide documentation of  
4 claims history and other required information will be placed into the Worst/C Tier, to encourage full  
5 disclosure to enable to State Fund to most accurately underwrite the risk."

6 84. But Defendants did not provide any notice to Resilience or, upon information and  
7 belief, to Insufficient Documentation Group members that Defendants believed insufficient  
8 documentation had been provided. Nor did Defendants inform Resilience or the Insufficient  
9 Documentation Group members of what documentation Defendants believed was still outstanding,  
10 or provide an opportunity to question or cure the purported deficiency and avoid a substantial  
11 increase in premiums. In fact, Defendants did not even directly inform Resilience or the Insufficient  
12 Documentation Group members of what tier modifier had been applied to their policy premiums or  
13 the basis of the tier modifier applied. Accordingly, Defendants could not have applied the increased  
14 tier modifiers to the Insufficient Documentation Group members for the purpose of "encourag[ing]  
15 full disclosure" of underwriting risk, as policyholders were never even made aware that this was the  
16 basis of their increased premiums. State Fund also declined to provide insureds an opportunity to  
17 provide any purportedly missing information which would have "enable[d] . . . State Fund to most  
18 accurately underwrite the risk."

19 85. Section 332 of the Insurance Code requires that "[e]ach party to a contract of  
20 insurance shall communicate to the other, in good faith, all facts within his knowledge which are or  
21 which he believes to be material to the contract and as to which he makes no warranty, and which  
22 the other has not the means of ascertaining." Concealment consists of any "[n]eglect to  
23 communicate that which a party knows, and ought to communicate." Ins. Code § 330.

24 86. As discussed *supra*, Defendants violated Section 332 by concealing from Plaintiff  
25 Resilience and the Insufficient Documentation Group (1) the fact that State Fund had deemed them  
26 to have failed to provide sufficient documentation; (2) notice of what documentation was  
27 purportedly still required; and (3) the tier modifier assigned or the basis of the assignment of the tier  
28 modifier. This was all information that Defendants clearly "ought to communicate" to Resilience

1 and the Insufficient Documentation Group.

2 87. Section 11735 of the Insurance Code requires in pertinent part that every “insurer  
3 shall file with the commissioner all rates and supplementary rate information that are to be used in  
4 this state.” Section 11730 of the Insurance Code further defines “supplementary rate information”  
5 as including any “minimum premium, policy fee, rating rule, rating plan, and any other similar  
6 information needed to determine the applicable premium for an insured.”

7 88. As discussed *supra*, State Fund violated Section 11735 by first informing prospective  
8 and current insureds in its rate filings that it would only utilize the Insufficient Documentation Rule  
9 in order to “encourage full disclosure” and “enable to State Fund to most accurately underwrite the  
10 risk.” But State Fund then instead, in complete contradiction of the stated Rule, concealed from the  
11 insureds the fact that that the Rule was even applied to them (thereby denying them any  
12 “encouragement” to provide missing information). State Fund also declined to offer insureds an  
13 opportunity to provide any purportedly missing information which would “enable to State Fund to  
14 most accurately underwrite the risk.” As Section 11735 only allows insureds to apply rating rules  
15 that are stated in its rate filings, and because the actions State Fund took were in diametric opposition  
16 to the stated Insufficient Documentation Rule in the rate filings, State Fund violated Section 11735  
17 and 11730’s requirements that only those “rating rule[s], rating plan[s], [or] any other similar  
18 information needed to determine the applicable premium for an insured” can be applied to determine  
19 insureds’ premiums.

20 89. State Fund’s violations of Sections 332 and 11735 of the Insurance Code described  
21 herein, with respect to the Insufficient Documentation Group, constitute unlawful business acts and  
22 practices in violation of Business & Professions Code section 17200, *et seq.*

23 90. Defendants’ conduct described herein, with respect to the Insufficient  
24 Documentation Group, further constitutes a course of unfair conduct within the meaning of Business  
25 & Professions Code § 17200, *et seq.*

26 91. Defendants’ conduct described herein, with respect to the Insufficient  
27 Documentation Group, constitutes a course of fraudulent business acts of practices within the  
28 meaning of Business & Professions Code § 17200, *et seq.*, as members of the public were likely to

1 be deceived by Defendants' conduct.

2 92. Plaintiffs and the Class suffered an injury-in-fact and lost money or property as a  
3 result of Defendants' unlawful and unfair business acts and practices.

4 93. Plaintiffs are also entitled to injunctive relief. Plaintiffs and the Class continue to be  
5 charged unlawful premiums by State Fund and/or could be charged such unlawful premiums in the  
6 future as State Fund is the insurer of last resort for businesses in California, and all businesses are  
7 required by law to purchase workers' compensation insurance. Accordingly, the Court should  
8 enjoin State Fund from continuing its unlawful conduct, including by, *inter alia*, requiring State  
9 Fund to (i) directly notify insureds of their tier modifiers and provide the basis of the tier modifiers  
10 upon request, and (ii) directly provide insureds with notice of any purported insufficient  
11 documentation and a reasonable opportunity to cure.

12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, Plaintiffs, on behalf of themselves and all others similarly situated, pray  
14 for judgment as follows:

- 15 a. Declaring this action to be a proper class action and certifying Plaintiffs as  
16 the representatives of the Class;
- 17 b. Appointing Plaintiffs' attorneys as Class Counsel to the Class;
- 18 c. Awarding restitution and monetary damages as appropriate;
- 19 d. Awarding punitive and exemplary damages as appropriate;
- 20 e. Ordering injunctive and declaratory relief as appropriate;
- 21 f. Awarding pre-judgment and post-judgment interest as appropriate;
- 22 g. Awarding reasonable attorneys' fees, costs and expenses incurred in this  
23 action; and
- 24 h. Granting such other and further relief as the Court may deem just and proper.

25 **JURY DEMAND**

26 Plaintiffs request a trial by jury of all claims so triable.  
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Dated: May \_\_, 2022

Respectfully submitted,

By: \_\_\_\_\_  
Michael Liskow

Michael Liskow (243899)  
mliskow@calcaterrapollack.com  
**CALCATERRA POLLACK LLP**  
1140 Avenue of the Americas, 9th Floor  
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*Counsel for Plaintiffs and the Class*



**EXHIBIT G**  
**REYNOLDS CY PRES**  
**DECLARATION**

1 Drew E. Pomerance, Esq. (SBN 101239)  
2 David R. Ginsburg, Esq. (SBN 210900)  
3 ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP  
4 5900 Canoga Avenue, Suite 450  
5 Woodland Hills, California 91367  
6 Telephone: (818) 992-9999  
7 Facsimile: (818) 992-9991  
8 Email: dep@rpnalaw.com; drg@rpnalaw.com  
9 Attorneys for Plaintiff Michael Reynolds Enterprise, Inc. dba Reynolds Termite Control

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE**

12 MICHAEL REYNOLDS  
13 ENTERPRISE, INC. DBA  
14 REYNOLDS TERMITE CONTROL,  
15 individually and on behalf of all  
16 others similarly situated,

17 Plaintiff,

18 vs.

19 STATE COMPENSATION  
20 INSURANCE FUND, a public  
21 enterprise fund; and DOES 1 through  
22 50, inclusive,

23 Defendants.

24 And Related Case:

25 AMERICAN JETTER &  
26 PLUMBING, INC. and  
27 RESILIENCE TREATMENT  
28 CENTER, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

vs.

STATE COMPENSATION  
INSURANCE FUND, a public  
enterprise fund; and DOES 1 through  
50, inclusive,  
Defendants.

Case No. 19STCV05738  
Honorable Amy D. Hogue

**DECLARATION OF MICHAEL REYNOLDS IN  
SUPPORT OF PLAINTIFFS' UNOPPOSED  
MOTION FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Hearing Date: \_\_\_\_\_, 2022  
Time: 2:00 p.m.  
Dept. 7

Complaint Filed: February 21, 2019

Case No. 19STCV36307  
Honorable Amy D. Hogue

Amended Complaint Filed: August 10, 2020



**EXHIBIT H**  
**JETTER CY PRES**  
**DECLARATION**

1 Betsy C. Manifold (182450)  
manifold@whafh.com  
2 Brittany N. DeJong (258766)  
dejong@whafh.com  
3 **WOLF HALDENSTEIN ADLER**  
4 **FREEMAN & HERZ LLP**  
750 B Street, Suite 1820  
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6 Fax: (619) 234-4599

7 Michael Liskow (243899)  
mliskow@calcaterrapollack.com  
8 **CALCATERRA POLLACK LLP**  
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Tel: (212) 899-1761  
10 Fax: (332) 206-2073

11 Scott M. Priz (*pro hac vice*)  
priz@priz-law.com  
12 **PRIZ LAW, LLC**  
3230 S. Harlem Ave., Suite 221B  
13 Riverside, IL 60546  
14 Tel: (708) 268-5768

15 *Counsel for Plaintiffs and the Class*

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **FOR THE COUNTY OF LOS ANGELES**

18 AMERICAN JETTER & PLUMBING, INC. )  
and RESILIENCE TREATMENT CENTER, )  
19 on behalf of themselves and all others )  
20 similarly situated, )

21 Plaintiffs, )

22 v. )

23 STATE COMPENSATION INSURANCE )  
24 FUND, a public enterprise fund, and DOES 1 )  
through 50, inclusive, )

25 Defendants. )  
26 )  
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28 )

CASE NO. 19STCV05738

**DECLARATION OF JESUS LOYA IN  
SUPPORT OF PLAINTIFFS'  
UNOPPOSED MOTION FOR ORDER  
GRANTING PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT, CONDITIONAL  
CERTIFICATION, APPROVAL OF  
CLASS NOTICE, AND SETTING OF  
FINAL APPROVAL HEARING**

(COMPLEX LITIGATION)

Case assigned for all purposes to the  
Honorable Amy D. Hogue  
Spring Street Courthouse

Hearing Date: \_\_\_\_\_, 2022  
Time: 2:00 p.m.  
Dept. 7

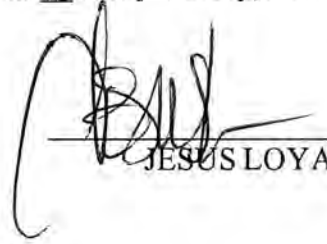
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I, Jesus Loya, declare as follows:

1. I am the Vice President of named plaintiff American Jetter & Plumbing, Inc. (“American Jetter”). American Jetter is petitioning the Court to be appointed a Class Representative in the above-captioned action.

2. Neither I nor American Jetter have any interest or involvement in the governance or work of either of the two proposed *cy pres* recipients, Worksafe and Kids’ Chance of California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 20th day of May, 2022, at Downey California.

  
\_\_\_\_\_  
JESUS LOYA

**EXHIBIT I**  
**RESILIENCE CY PRES**  
**DECLARATION**

1 Betsy C. Manifold (182450)  
manifold@whafh.com  
2 Brittany N. DeJong (258766)  
dejong@whafh.com  
3 **WOLF HALDENSTEIN ADLER**  
4 **FREEMAN & HERZ LLP**  
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7 Michael Liskow (243899)  
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8 **CALCATERRA POLLACK LLP**  
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10 Fax: (332) 206-2073

11 Scott M. Priz (*pro hac vice*)  
priz@priz-law.com  
12 **PRIZ LAW, LLC**  
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13 Riverside, IL 60546  
14 Tel: (708) 268-5768

15 *Counsel for Plaintiffs and the Class*

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

18 AMERICAN JETTER & PLUMBING, INC. )  
19 and RESILIENCE TREATMENT CENTER, )  
20 on behalf of themselves and all others )  
21 similarly situated, )

21 Plaintiffs, )

22 v. )

23 STATE COMPENSATION INSURANCE )  
24 FUND, a public enterprise fund, and DOES 1 )  
25 through 50, inclusive, )

26 Defendants. )

CASE NO. 19STCV05738  
**DECLARATION OF JENNIFER  
STEINER IN SUPPORT OF  
PLAINTIFFS' UNOPPOSED  
MOTION FOR ORDER GRANTING  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT,  
CONDITIONAL CERTIFICATION,  
APPROVAL OF CLASS NOTICE,  
AND SETTING OF FINAL  
APPROVAL HEARING**

(COMPLEX LITIGATION)

Case assigned for all purposes to the  
Honorable Amy D. Hogue  
Spring Street Courthouse

Hearing Date: \_\_\_\_\_, 2022  
Time: 2:00 p.m.  
Dept. 7




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I, Jennifer Steiner, declare as follows:

1. I am the Chief Executive Officer of named plaintiff Resilience Treatment Center (“Resilience”). Resilience is petitioning the Court to be appointed a Class Representative in the above-captioned action.

2. Neither I nor Resilience have any interest or involvement in the governance or work of either of the two proposed *cy pres* recipients, Worksafe and Kids’ Chance of California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 25th day of May, 2022, at Santa Barbara, California.

  
\_\_\_\_\_  
JENNIFER STEINER

**EXHIBIT J**  
**STATE FUND CY**  
**PRES DECLARATION**

1 NOAH GRAFF, Assistant Chief Counsel, SBN 192795  
2 R. TIMOTHY O'CONNOR, Staff Counsel, SBN 179631  
3 JOHN B. DE LEON, Staff Counsel, SBN 261381  
4 STATE COMPENSATION INSURANCE FUND  
5 900 Corporate Center Drive, Suite 401  
6 Monterey Park, California 91754  
7 Telephone: (323) 526-2045  
8 Facsimile: (323) 526-2012

6 Attorneys for Defendant  
7 STATE COMPENSATION INSURANCE FUND,  
8 A public benefit fund and Independent Agency of the State of California

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF LOS ANGELES**

12 MICHAEL REYNOLDS ENTERPRISE, INC.  
13 DBA REYNOLDS TERMITE CONTROL,  
14 individually and on behalf of all others similarly  
15 situated,

15 Plaintiffs,

17 vs.

20 STATE COMPENSATION INSURANCE  
21 FUND, a public enterprise fund; and DOES 1  
22 through 50, inclusive,  
23 Defendant.

Case No. 19STCV05738

Assigned for all purposes to  
Honorable Amy D. Hogue  
Department 7

**STATE COMPENSATION INSURANCE  
FUND'S DECLARATION REGARDING  
CLASS ACTION CY PRES RECIPIENTS**

**(COMPLEX LITIGATION)**

**Case assigned for all purposes to the  
Honorable Amy D. Hogue  
Spring Street Courthouse**

**Hearing Date: \_\_\_\_\_, 2022  
Time: 2:00 p.m.  
Dept. 7**



**EXHIBIT K**  
**RPNA CY PRES**  
**DECLARATION**

1 Drew E. Pomerance, Esq. (SBN 101239)  
2 David R. Ginsburg, Esq. (SBN 210900)  
3 ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP  
4 5820 Canoga Avenue, Suite 250  
5 Woodland Hills, California 91367  
6 Telephone: (818) 992-9999  
7 Facsimile: (818) 992-9991  
8 Email: dep@rpnalaw.com; drg@rpnalaw.com  
9 Attorneys for Plaintiff Michael Reynolds Enterprise, Inc. dba Reynolds Termite Control

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE**

12 MICHAEL REYNOLDS  
13 ENTERPRISE, INC. DBA  
14 REYNOLDS TERMITE CONTROL,  
15 individually and on behalf of all  
16 others similarly situated,

17 Plaintiff,

18 vs.

19 STATE COMPENSATION  
20 INSURANCE FUND, a public  
21 enterprise fund; and DOES 1 through  
22 50, inclusive,

23 Defendants.

24 And Related Case:

25 AMERICAN JETTER &  
26 PLUMBING, INC. and  
27 RESILIENCE TREATMENT  
28 CENTER, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

vs.

STATE COMPENSATION  
INSURANCE FUND, a public  
enterprise fund; and DOES 1 through  
50, inclusive,  
Defendants.

Case No. 19STCV05738  
Honorable Amy D. Hogue

**DECLARATION OF DREW POMERANCE IN  
SUPPORT OF PLAINTIFFS' UNOPPOSED  
MOTION FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Hearing Date: \_\_\_\_\_, 2022  
Time: 2:00 p.m.  
Dept. 7

Complaint Filed: February 21, 2019

Case No. 19STCV36307  
Honorable Amy D. Hogue

Amended Complaint Filed: August 10, 2020

**DECLARATION OF DREW POMERANCE**

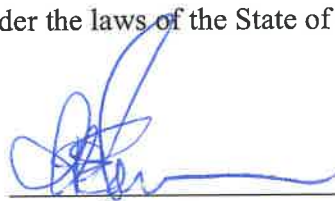
I Drew Pomerance, declare as follows:

1. I am an attorney at law, duly licensed to practice before all California State Courts. I am a senior founding partner of Roxborough, Pomerance, Nye & Adreani (“RPNA”), counsel for Michael Reynolds Enterprises, Inc, dba Reynolds Termite Control (“Reynolds”), one of the Named Plaintiffs . I have personal knowledge of all facts stated in this declaration and if called as a witness, I could and would competently testify to all matters set forth herein.

2. Neither I nor RPNA have any interest or involvement in the governance or work of either of the two proposed *cy pres* recipients, Worksafe and Kids' Chance of California.

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

Dated: May 25, 2022

  
\_\_\_\_\_  
Drew Pomerance

**EXHIBIT L**  
**CALCATERRA POLLACK**  
**CY PRES DECLARATION**



1 BETSY C. MANIFOLD (182450)  
manifold@whafh.com  
2 **WOLF HALDENSTEIN ADLER**  
3 **FREEMAN & HERZ LLP**  
750 B Street, Suite 1820  
4 San Diego, CA 92101  
Tel: (619) 239-4599  
5 Fax: (619) 234-4599

6 MICHAEL LISKOW (243899)  
mliskow@calcaterrapollack.com  
7 **CALCATERRA POLLACK LLP**  
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8 New York, NY 10036-5803  
Tel: (212) 899-1761  
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10 SCOTT M. PRIZ (*pro hac vice*)  
priz@priz-law.com  
11 **PRIZ LAW, LLC**  
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12 Riverside, IL 60546  
13 Tel: (708) 268-5768

14 *Counsel for Plaintiffs and the Class*

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **FOR THE COUNTY OF LOS ANGELES**

17 AMERICAN JETTER & PLUMBING, INC. )  
and RESILIENCE TREATMENT CENTER, )  
18 on behalf of themselves and all others )  
19 similarly situated, )

20 Plaintiffs, )

21 v. )

22 STATE COMPENSATION INSURANCE )  
23 FUND, a public enterprise fund, and DOES 1 )  
through 50, inclusive, )

24 Defendants. )  
25 )  
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CASE NO. 19STCV05738

**DECLARATION OF MICHAEL  
LISKOW REGARDING PROPOSED  
CY PRES RECIPIENTS**

(COMPLEX LITIGATION)

Case assigned for all purposes to the  
Honorable Amy D. Hogue  
Spring Street Courthouse

Hearing Date: \_\_\_\_\_, 2022  
Time: 2:00 p.m.  
Dept. 7

1 I, Michael Liskow, declare as follows:

2 1. I am a partner with Calcaterra Pollack LLP (“Calcaterra Pollack”) one of the firms  
3 representing plaintiffs American Jetter & Plumbing, Inc. and Resilience Treatment Center  
4 (“Plaintiffs”) in this action. I have personal knowledge of the facts stated below and, if called  
5 upon, I could and would competently testify thereto.

6 2. Neither I nor Calcaterra Pollack have any interest or involvement in the governance  
7 or work of either of the two proposed *cy pres* recipients, Worksafe and Kids’ Chance of California.

8 I declare under penalty of perjury under the laws of the State of California that the  
9 foregoing is true and correct. Executed this 18th day of May, 2022, at West Orange, New Jersey.  
10

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12  
13 *Michael Liskow*

14 \_\_\_\_\_  
Michael Liskow

**EXHIBIT M**  
**PRIZ LAW CY PRES**  
**DECLARATION**

1 BETSY C. MANIFOLD (182450)  
manifold@whafh.com  
2 **WOLF HALDENSTEIN ADLER**  
3 **FREEMAN & HERZ LLP**  
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6 MICHAEL LISKOW (243899)  
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10 SCOTT M. PRIZ (*pro hac vice*)  
priz@priz-law.com  
11 **PRIZ LAW, LLC**  
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12 Riverside, IL 60546  
13 Tel: (708) 268-5768

14 *Counsel for Plaintiffs and the Class*

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **FOR THE COUNTY OF LOS ANGELES**

17 AMERICAN JETTER & PLUMBING, INC. )  
and RESILIENCE TREATMENT CENTER, )  
18 on behalf of themselves and all others )  
19 similarly situated, )

20 Plaintiffs, )

21 v. )

22 STATE COMPENSATION INSURANCE )  
23 FUND, a public enterprise fund, and DOES 1 )  
through 50, inclusive, )

24 Defendants. )  
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CASE NO. 19STCV05738

**DECLARATION OF SCOTT PRIZ  
REGARDING PROPOSED CY PRES  
RECIPIENTS**

(COMPLEX LITIGATION)

Case assigned for all purposes to the  
Honorable Amy D. Hogue  
Spring Street Courthouse

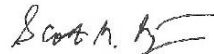
Hearing Date: \_\_\_\_\_, 2022  
Time: 2:00 p.m.  
Dept. 7

1 I, Scott M. Priz, declare as follows:

2 1. I am the principle attorney and sole proprietor of Priz Law LLP (“Priz Law”). I am  
3 an attorney duly licensed to practice before all the courts of the State of Illinois, and have been  
4 admitted *pro hac vice* in this matter. Priz Law, Calcaterra Pollack LLP and Wolf Haldenstein,  
5 LLP (“Jetter Counsel”) represent plaintiffs American Jetter & Plumbing, Inc. and Resilience  
6 Treatment Center (“Plaintiffs”) in this action. The following facts are based upon my personal  
7 knowledge and if called upon to do so, I could, and would, competently testify thereto.  
8

9 2. Neither I nor Priz Law have any interest or involvement in the governance or work  
10 of either of the two proposed *cy pres* recipients, Worksafe and Kids’ Chance of California.

11 I declare under penalty of perjury under the laws of the State of California that the  
12 foregoing is true and correct. Executed this 17th day of May, 2022, at Chicago, Illinois.  
13

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16 \_\_\_\_\_  
17 Scott M. Priz  
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**EXHIBIT N**  
**WHAFH CY PRES**  
**DECLARATION**

1 Betsy C. Manifold (182450)  
manifold@whafh.com  
2 **WOLF HALDENSTEIN ADLER**  
**FREEMAN & HERZ LLP**  
750 B Street, Suite 1820  
3 San Diego, CA 92101  
Tel: (619) 239-4599  
4 Fax: (619) 234-4599

5 Michael Liskow (243899)  
mliskow@calcaterrapollack.com  
6 **CALCATERRA POLLACK LLP**  
1140 Avenue of the Americas, 9th Floor  
7 New York, NY 10036-5803  
Tel: (212) 899-1761  
8 Fax: (332) 206-2073

9 Scott M. Priz (*pro hac vice*)  
priz@priz-law.com  
10 **PRIZ LAW, LLC**  
3230 S. Harlem Ave., Suite 221B  
11 Riverside, IL 60546  
Tel: (708) 268-5768

12 *Counsel for Plaintiffs and the Class*

13  
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **COUNTY OF LOS ANGELES**

16  
17 AMERICAN JETTER & PLUMBING, INC. and  
18 RESILIENCE TREATMENT CENTER, on behalf  
of itself and all others similarly situated,

19 Plaintiffs,

20 v.

21  
22 STATE COMPENSATION INSURANCE FUND,  
a public enterprise fund, and DOES 1 through 50,  
23 inclusive,

24 Defendants.

Case No. 19STCV05738

**DECLARATION OF BETSY C.  
MANIFOLD REGARDING  
PROPOSED CY PRES  
RECIPIENTS**

(COMPLEX LITIGATION)

Case assigned for all purposes to the  
Honorable Amy D. Hogue  
Spring Street Courthouse

Hearing Date: TBD  
Time: 2:00 p.m.  
Dept.: 7

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I, Betsy C. Manifold, declare as follows:

1. I am a partner attorney at Wolf Haldenstein Adler Freeman & Herz LLP (“Wolf Haldenstein”). I am an attorney duly licensed to practice before all the courts of the State of California. Priz Law LLP, Calcaterra Pollack LLP and Wolf Haldenstein (“Jetter Counsel”) represent plaintiffs American Jetter & Plumbing, Inc. and Resilience Treatment Center (“Plaintiffs”) in this action. The following facts are based upon my personal knowledge and if called upon to do so, I could, and would, competently testify thereto.

2. Neither I nor Wolf Haldenstein have any interest or involvement in the governance or work of either of the two proposed cy pres recipients, Worksafe and Kids’ Chance of California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 24th day of May, 2022, at San Diego, California.

  
BETSY C. MANIFOLD



**EXHIBIT O**  
**DECLARATION OF**  
**M. KATE SMITH**

1 NOAH GRAFF, Assistant Chief Counsel, SBN 192795  
2 R. TIMOTHY O'CONNOR, Staff Counsel, SBN 179631  
3 JOHN B. DE LEON, Staff Counsel, SBN 261381  
4 STATE COMPENSATION INSURANCE FUND  
5 900 Corporate Center Drive, Suite 401  
6 Monterey Park, California 91754  
7 Telephone: (323) 526-2045  
8 Facsimile: (323) 526-2012

6 Attorneys for Defendant  
7 STATE COMPENSATION INSURANCE FUND,  
8 A public benefit fund and Independent Agency of the State of California

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF LOS ANGELES**

11  
12 MICHAEL REYNOLDS ENTERPRISE, INC.  
13 DBA REYNOLDS TERMITE CONTROL,  
14 individually and on behalf of all others similarly  
situated,

15 Plaintiffs,

16  
17 vs.  
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19

20 STATE COMPENSATION INSURANCE  
21 FUND, a public enterprise fund; and DOES 1  
through 50, inclusive,

22 Defendant.  
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Case No. 19STCV05738

Assigned for all purposes to  
Honorable Amy D. Hogue  
Department 7

**DECLARATION OF M. KATE SMITH**

1 I, M. Kate Smith, declare as follows:

2 1. I am the Chief Actuarial Officer for Defendant State Compensation Insurance Fund,  
3 a position I have held with State Compensation Insurance Fund (“State Fund”) since 2014. Since  
4 1998, I have held a Fellowship in the Casualty Actuarial Society (FCAS), the highest designation  
5 for an actuary. I have personal knowledge of all facts stated in this declaration, and if called to  
6 testify, I could and would testify competently thereto.

7 **BACKGROUND AND QUALIFICATIONS OF DECLARANT CHIEF**

8 **ACTUARIAL OFFICER M. KATE SMITH**

9 2. I graduated magna cum laude double major in Mathematics and French Literature  
10 from the California State University, Northridge and attained my Masters’ degree in Mathematics at  
11 the University of Virginia in Charlottesville, Virginia. I started my property and casualty actuarial  
12 insurance career in 1990 while working for Transamerica Insurance in Woodland Hills, California.  
13 Since then I have worked for and consulted for insurance companies and employers performing  
14 commercial lines pricing, rate filings, reserving studies for California and large national accounts.

15 3. In 1998, I attained Fellowship in the Casualty Actuarial Society (FCAS), the highest  
16 designation for an actuary. In 2010, I joined the Workers’ Compensation Insurance Bureau  
17 (WCIRB) in San Francisco, California as a member of the actuarial staff. While at the WCIRB, I  
18 led the Bureau’s initiative to implement a medical transaction data call of California insurers.  
19 Additionally, I was responsible for rate relativity classification ratemaking, studying the dual wage  
20 classifications, and developing the methodology for the bureau’s insurer average filed pure premium  
21 rate metric.

22 4. In 2014, I joined State Compensation Insurance Fund as the Chief Actuarial Officer  
23 overseeing the functions of pricing and rate filing; loss and loss adjustment expense reserving;  
24 economic capital modeling, reinsurance; and predictive analytics and modeling.

25 5. As part of my job duties, I represent State Fund and direct State Fund’s actuarial staff  
26 including State Fund’s rate filing activities with the California Department of Insurance (“CDI” or  
27 “the Department”).

28

1 **COMPILATION OF DOCUMENTS AND INFORMATION**

2 6. I assigned State Fund’s Director of Pricing, Actuary Melissa Wang – with support  
3 from State Fund’s Actuarial Data Scientist staff (together with Ms. Wang, “Actuarial Staff”) -- to  
4 work with State Fund’s Information Technology (“IT”) and Legal Departments to pull relevant data  
5 regarding State Fund’s tier modifier and its effects, across several different parameters. I also  
6 directed the Actuarial Staff to create data-derived reports as requested by State Fund’s legal staff  
7 based on the relevant allegations including documents and information regarding class size and  
8 premium amounts. I understand that the assigned Actuarial Staff analyzed the data extracted by  
9 State Fund’s IT department, compiled the relevant data, and summarized the data. I participated in  
10 meetings and reviewed the steps the Actuarial Staff took in developing these conclusions. The data  
11 discussed below is derived from insured information from March 1, 2013 through August 31, 2021  
12 (the “Relevant Time Period”).

13 **IN EXCESS OF 1.3 BILLION IS THE TOTAL DOLLAR AMOUNT OF PREMIUM**  
14 **REDUCTION/ SAVED BY POLICYHOLDERS WITH TIERS <1**

15 7. State Fund’s Actuarial Staff analyzed the data in conjunction with State Fund’s IT  
16 department to determine that State Fund Policyholders saved \$1,376,678,767 in premium as a result  
17 of State Fund’s tier rating algorithm during the Relevant Time Period. This dollar figure is inclusive  
18 of 84,968 non-Minimum Premium Policyholders (defined below) with a tier modifier of less than 1  
19 (1<) for at least one annual policy period during the Relevant Time Period. This dollar figure is also  
20 inclusive of 83,306 Policyholders who paid additional premiums due to a tier score greater than 1.0  
21 for at least one annual policy period during the Relevant Time Period. I reviewed the data and  
22 analysis substantiating the total dollar amount above and confirm that this is correct.

23 **TOTAL AMOUNT OF PREMIUM COLLECTED BY STATE FUND DUE TO**  
24 **POLICYHOLDERS’ TIER MODIFIERS >1**

25 8. The total amount of additional risk premium collected, or projected to be collected,  
26 for the Relevant Time Period by State Fund due to Policyholders having tier scores of more than 1.0  
27 for at least one annual policy period is \$644,484,913 (this number excludes minimum premium  
28

1 amount as explained below). I reviewed the data and analysis substantiating the total dollar amount  
2 above and confirm that this is correct.

3 9. My review and conclusions as set forth herein confirm that State Fund Policyholders,  
4 as a whole, derived a significant benefit from State Fund's application of the tier rating algorithm.  
5 During the years at issue, State Fund was able to provide significant savings greater than \$1.3 billion  
6 dollars to those Policyholders who met certain risk criteria indicating that they were a lower risk for  
7 serious workplace injury. State Fund assigned fair and reasonable rates to those Policyholders who  
8 were assigned a tier rating modifier of over 1.0 to help offset the higher risk nature of their risk  
9 characteristics.

10 **Forty-Four Thousand, Four Hundred and Four (44,404) Policyholders Were Assigned**  
11 **a Tier Rating Modifier Above 1.0 Without Computation by the Algorithm Due to**  
12 **Failure to Provide Sufficient Insurance Application Information as Disclosed in State**  
13 **Fund's Rate Filing For At Least One Annual Policy Period During the Relevant Time**  
14 **Period**

15 10. I understand that the allegations in this case contend that State Fund used a tier rating  
16 modifier that increased the premium of certain policyholder class members by assigning them to  
17 rating tiers over 1.0. As such, State Fund extracted the total number of Policyholders who paid  
18 additional risk premiums due to tier scores greater than 1.0 for at least one annual policy period  
19 during the Relevant Time Period. State Fund's Actuarial Staff reviewed the data provided by State  
20 Fund's IT department and determined that 83,306 Policyholders paid additional premiums due to a  
21 tier score greater than 1.0 for at least one annual policy period during the Relevant Time Period.  
22 This total includes 44,404 Policyholders who provided insufficient insurance application  
23 information and/or history and were automatically assigned to the appropriate tier as disclosed in  
24 State Fund's publically available rate filings. For example, Rate Filing 13-9005, effective 3/1/2014,  
25 as shown on page 3 and 4 of the Filing Memorandum of that Rate Filing discloses this automatic  
26 assignment of a tier of 1.5 (certain policies during the Relevant Time Period were also assigned a  
27 1.25 tier modifier due to insufficient documentation). I reviewed this rate filing at or about the time  
28 I joined State Fund in 2014 and again thereafter within the course and scope of my job duties

1 including related to this litigation. The rate filing was prepared and filed with the CDI. A true and  
2 correct copy of excerpts of relevant pages from the rate filing is attached hereto as **Exhibit “A.”**

3 11. As to Exhibit A, attached hereto, I note that it states as follows:

4 **“Those businesses that fail to provide documentation of claims history and**  
5 **other required information will be placed into the Worst/C Tier, to**  
6 **encourage full disclosure to enable State Fund to most accurately**  
7 **underwrite the risk.”**

8 12. By failing to produce sufficient insurance information and/or history, these 44,404  
9 Policyholders’ rates for the Rate Filing 13-9005, effective 3/1/2014, from the example above, were  
10 calculated for at least one annual policy period, and led to an increase in premiums paid, using a tier  
11 modifier above 1.0 that was not assigned due to the tier modifier rating algorithm. I reviewed the  
12 data and analysis confirming the total policyholder count above and confirm that this is correct.

13 **Net Additional Premiums Paid by Policyholders With a Tier Rating over 1 Excluding**  
14 **Minimum Premium Policyholders Total \$286,886,677**

15 13. Policyholders with a tier rating over 1, excluding Minimum Premium Policyholders  
16 (as explained below), total 83,306 policyholders as noted above. It was determined by State Fund’s  
17 Actuarial Staff, after review of data provided by State Fund’s IT department, that these policyholders  
18 paid \$644,484,913 in additional premiums due to tier scores over 1.0. However, that same group of  
19 policyholder also received discounts totaling \$357,598,236 due to tier ratings less than 1 for one or  
20 more policies at some point during the Relevant Time Period while insured with State Fund. Thus,  
21 the 83,306 policyholders who paid additional premiums due to tier ratings over 1, excluding  
22 Minimum Premium Policyholders (as explained below), only paid \$286,886,677 in net additional  
23 premiums. I reviewed the data and analysis confirming the total additional premium paid by the  
24 above referenced policyholders and confirm that this is correct.

25 **The Two Proposed “Subgroups” Combine for a Total of 91,486 Policyholders**

26 14. State Fund’s Actuarial Staff reviewed the data provided by State Fund’s IT  
27 department and determined that Forty Four Thousand-Four Hundred-Four (44,404) Policyholders  
28 are included in an category, or “subgroups,” consisting of policyholders with at least one policy

1 assigned a tier modifier of 1.25 or 1.5 due to lack of requested documentation and the tier modifier  
2 resulted in an increase in premiums paid (the “Insufficient Documentation Subgroup”).

3 15. State Fund’s Actuarial Staff reviewed the data provided by State Fund’s IT  
4 department and determined that Forty Seven Thousand-Eighty-Two (47,082) Policyholders are  
5 included in a category, or “subgroup”, consisting of policyholders with at least one policy with a tier  
6 rating greater than 1 where that policy was not assigned a tier modifier of 1.25 or 1.5 due to lack of  
7 requested documentation and the tier modifier resulted in an increase in premiums paid (the  
8 “Algorithm Subgroup”).

9 16. The combined total number of policyholders in the two categories, or “subgroups”,  
10 set forth above in paragraphs 14 & 15 is 91,486. This number is higher than the total number of  
11 policyholders with at least one tier modifier greater than 1 and excluding Minimum Premium  
12 Policyholders (83,306) because some policyholders had policies in both the Algorithm Subgroup  
13 and Insufficient Documents Subgroup at some time while being insured by State Fund during the  
14 Relevant Time Period.

15 17. State Fund’s Actuarial Staff reviewed the data provided by State Fund’s IT  
16 department and determined that the total amount of additional premium paid by the Algorithm  
17 Subgroup described above in paragraph 15 is \$421,139,904. The total amount of additional premium  
18 paid by the Insufficient Documentation Subgroup is \$223,345,010. I reviewed the data and analysis  
19 confirming that both the policyholder count and total additional premium paid by the above  
20 referenced policyholders and confirm that this is correct.

21 **Twenty Three Thousand-Twenty-Eight (23,028) Minimum Premium Policyholders**  
22 **Are Excluded from the Count of Policyholders Because They Did Not Meet the**  
23 **Criteria**

24 18. Additionally, 23,028 Policyholders are Minimum Premium Policyholders because  
25 they had tier scores of greater than 1.0 for at least one annual policy period during the Relevant Time  
26 Period, but did not pay additional risk premium due to the application of the tier rating modifier for  
27 any of those annual policy periods because those Policyholders were below the minimum premium  
28 threshold for their classification. State Fund’s Actuarial Staff reviewed the data provided by State

1 Fund's IT department that reflected that 23,028 Policyholders were quoted and agreed to pay the  
2 minimum premium amount for these annual policy periods for their risk as assessed by State Fund  
3 and, therefore, their rates were not affected by the application of the rating tier modifier. I reviewed  
4 the data and analysis substantiating the total policyholder count above and confirm that this is  
5 correct.

6 **DESCRIPTION OF DATA EXTRACTED FROM STATE FUND'S SYSTEMS**

7 19. In relation to the dollar figures and numerical counts provided herein, in the course  
8 and scope of my duties, I regularly review such financial and technical data. Based on my education,  
9 experience, training and specifically the review I conducted in preparation of this Declaration, I am  
10 able to validate the accuracy of the data extraction, analysis and data provided herein.

11 20. On November 9, 2021, State Fund's IT Department extracted data with the date range  
12 of March 1, 2013 to August 31, 2021 corresponding to all policies having a tier modifier value  
13 greater than 1.0 or a tier modifier value between 0.01 and .99 (Tier modifier values of 1 or Policies  
14 with no tier modifiers are excluded in this dataset). The approximate size of the data extract was  
15 over 226 megabytes (MB) and comprised of 597,927 lines (or rows) of data.

16 21. The tier rating algorithm enables State Fund to offer fairer pricing to California  
17 employers by charging those employers with worse risk characteristics more and providing savings  
18 to employers with better risk characteristics and, as such, State Fund's tier rating algorithm provides  
19 an economic incentive to our Policyholders to adopt and sustain safe workplaces. In the absence of  
20 tier rating, safer California employers would subsidize the less safe, riskier employers.

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

23 Executed on April \_\_\_\_, 2022 at Pleasanton, California.

24   
25 MKSmith (Apr 19, 2022 16:18 PDT)  
26 Apr 19, 2022  
27 M. Kate Smith  
28



**Signature:** *MKSmith*  
MKSmith (Apr 19, 2022 16:18 PDT)

**Email:** mksmith@scif.com

**Company:** State Compensation Insurance Fund

# Declaration of M.K.Smith\_Apr2022

Final Audit Report

2022-04-19

Created:	2022-04-19
By:	Vidhi Gupta (vpgupta@scif.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA0Ihb6bjMTsOEeJ1HnEdZBWZC050bE0e

## "Declaration of M.K.Smith\_Apr2022" History

-  Document created by Vidhi Gupta (vpgupta@scif.com)  
2022-04-19 - 10:36:25 PM GMT- IP address: 206.202.88.34
-  Document emailed to MKSmith (mksmith@scif.com) for signature  
2022-04-19 - 10:37:31 PM GMT
-  Email viewed by MKSmith (mksmith@scif.com)  
2022-04-19 - 11:18:22 PM GMT- IP address: 206.202.88.34
-  Document e-signed by MKSmith (mksmith@scif.com)  
Signature Date: 2022-04-19 - 11:18:44 PM GMT - Time Source: server- IP address: 206.202.88.34
-  Agreement completed.  
2022-04-19 - 11:18:44 PM GMT

**EXHIBIT P**  
**SUPPLEMENTAL REYNOLDS**  
**DECLARATION**

1 Drew E. Pomerance, Esq. (SBN 101239)  
2 David R. Ginsburg, Esq. (SBN 210900)  
3 ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP  
4 5900 Canoga Avenue, Suite 450  
5 Woodland Hills, California 91367  
6 Telephone: (818) 992-9999  
7 Facsimile: (818) 992-9991  
8 Email: dep@rpnalaw.com; drg@rpnalaw.com  
9 Attorneys for Plaintiff Michael Reynolds Enterprise, Inc. dba Reynolds Termite Control

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE**

12 MICHAEL REYNOLDS  
13 ENTERPRISE, INC. DBA  
14 REYNOLDS TERMITE CONTROL,  
15 individually and on behalf of all  
16 others similarly situated,

17 Plaintiff,  
18 vs.

19 STATE COMPENSATION  
20 INSURANCE FUND, a public  
21 enterprise fund; and DOES 1 through  
22 50, inclusive,

23 Defendants.

24 And Related Case:

25 AMERICAN JETTER &  
26 PLUMBING, INC. and  
27 RESILIENCE TREATMENT  
28 CENTER, on behalf of themselves  
and all others similarly situated,  
Plaintiffs,

vs.

STATE COMPENSATION  
INSURANCE FUND, a public  
enterprise fund; and DOES 1 through  
50, inclusive,  
Defendants.

Case No. 19STCV05738  
Honorable Lawrence P. Riff

**SUPPLEMENTAL DECLARATION OF  
MICHAEL REYNOLDS IN SUPPORT OF  
PLAINTIFFS' UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

Hearing Date: November 23, 2022  
Time: 10:00 a.m.  
Dept. 7

Complaint Filed: February 21, 2019

Case No. 19STCV36307  
Honorable Lawrence P. Riff

Amended Complaint Filed: August 10, 2020

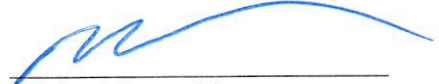


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5. Reynolds accepted the responsibility and fiduciary duty of pursuing this class action on behalf of the putative class despite being aware of the risks faced by Reynolds as a California business spearheading a class action against California's largest and oldest insurer for legally-mandated workers' compensation insurance. This meant that even if Reynolds was not inclined to obtain insurance from State Fund in the future, if it was declined by other carriers, it might have no choice but to insure with State Fund, as Reynolds is required by law to maintain available workers' compensation insurance.

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

Dated: October 10, 2022

  
\_\_\_\_\_  
Michael Reynolds

**EXHIBIT Q**  
**SUPPLEMENTAL AMERICAN**  
**JETTER DECLARATION**

1 BETSY C. MANIFOLD (182450)  
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14 Tel: (708) 268-5768

15 *Counsel for Plaintiffs and the Class*

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

18 AMERICAN JETTER & PLUMBING, INC. )  
and RESILIENCE TREATMENT CENTER, )  
19 on behalf of themselves and all others )  
20 similarly situated, )  
21 Plaintiffs, )  
22 v. )  
23 STATE COMPENSATION INSURANCE )  
24 FUND, a public enterprise fund, and DOES 1 )  
through 50, inclusive, )  
25 Defendants. )  
26 )  
27 )  
28 )

CASE NO. 19STCV05738  
**SUPPLEMENTAL DECLARATION  
OF JESUS LOYA IN SUPPORT OF  
PLAINTIFFS' UNOPPOSED  
MOTION FOR ORDER GRANTING  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT,  
CONDITIONAL CERTIFICATION,  
APPROVAL OF CLASS NOTICE,  
AND SETTING OF FINAL  
APPROVAL HEARING**  
(COMPLEX LITIGATION)



1 I, Jesus Loya, declare as follows:

2 1. I am the Vice President of named plaintiff American Jetter & Plumbing, Inc.  
3 (“American Jetter”). American Jetter is petitioning the Court to be appointed a Class  
4 Representative in the above-captioned action.

5 2. From the commencement of this litigation representatives of American Jetter,  
6 including myself, have been informed and aware of American Jetter’s fiduciary duty to the putative  
7 class members, as well as of the responsibilities that American Jetter would be required to  
8 undertake in order to be an adequate class representative. These responsibilities included, among  
9 others, monitoring the progress of the litigation with an eye towards the best interests of the  
10 putative class and not just American Jetter, and analyzing any potential settlement proposals from  
11 the same perspective. American Jetter accepted this fiduciary duty while understanding that it  
12 might entail a substantial burden with respect to time and resources, and despite the risks taken on  
13 in representing the putative class against State Fund (discussed further below).

14 3. Representatives of American Jetter have performed their responsibilities to the  
15 putative class including reviewing the operative complaints, becoming familiar with the basic  
16 theories of the case, communicating with counsel on various issues including settlement  
17 negotiations, analyzing the potential settlement agreement from the perspective of the putative  
18 class in order to assess whether the settlement is in the best interests of the putative class, and  
19 ultimately entering into the Settlement Agreement on behalf of the putative class. I and other  
20 representatives of American Jetter also remain available to address any future issues that require  
21 our attention in order to assure that the interests of the putative class are represented before the  
22 Court and with counsel for all parties, including American Jetter’s counsel.

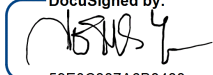
23 4. Representatives of American Jetter have spent extensive time performing the above  
24 actions, in excess of twenty (20) hours, and understand that there may be additional commitments  
25 in the future requiring American Jetter to expend time and resources.

26 5. American Jetter also accepted the responsibility and fiduciary duty of pursuing this  
27 class action on behalf of the putative class despite being aware of the risks faced by American  
28 Jetter as a California businesses spearheading a class action against one of California’s largest and

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oldest insurers for legally-mandated workers' compensation insurance. In the past, American Jetter has had difficulty finding coverage in the voluntary workers compensation insurance market. This meant that even if American Jetter was not inclined to obtain insurance from State Fund in the future, if it was declined by other carriers, it might have no choice but to insure with State Fund, as American Jetter is required by law to maintain available workers' compensation insurance.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 11 th day of October, 2022, at Pico Rivera, California.

DocuSigned by:  
  
59E0C387A6B8488...  
JESUS LOYA

**EXHIBIT R**  
**SUPPLEMENTAL RESILIENCE**  
**DECLARATION (STEINER)**

1 Betsy C. Manifold (182450)  
manifold@whafh.com  
2 Brittany N. DeJong (258766)  
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14 Tel: (708) 268-5768

15 *Counsel for Plaintiffs and the Class*

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **FOR THE COUNTY OF LOS ANGELES**

18 AMERICAN JETTER & PLUMBING, INC. )  
and RESILIENCE TREATMENT CENTER, )  
19 on behalf of themselves and all others )  
20 similarly situated, )

21 Plaintiffs, )

22 v. )

23 STATE COMPENSATION INSURANCE )  
24 FUND, a public enterprise fund, and DOES 1 )  
through 50, inclusive, )

25 Defendants. )  
26 )  
27 )  
28 )

CASE NO. 19STCV05738

**SUPPLEMENTAL DECLARATION  
OF JENNIFER STEINER IN  
SUPPORT OF PLAINTIFFS'  
UNOPPOSED MOTION FOR ORDER  
GRANTING PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT, CONDITIONAL  
CERTIFICATION, APPROVAL OF  
CLASS NOTICE, AND SETTING OF  
FINAL APPROVAL HEARING**

(COMPLEX LITIGATION)

1 I, Jennifer Steiner, declare as follows:

2 1. I am the Chief Executive Officer of named plaintiff Resilience Treatment Center  
3 (“Resilience”). Resilience is petitioning the Court to be appointed a Class Representative in the  
4 above-captioned action.

5 2. I became the Chief Operating Officer of Resilience in February 2022 following the  
6 purchase of the company.

7 3. It is my understanding that from the commencement of this litigation  
8 representatives of Resilience, including myself, have been informed and aware of Resilience’s  
9 fiduciary duty to the putative class members, as well as of the responsibilities that Resilience would  
10 be required to undertake in order to be an adequate class representative. These responsibilities  
11 included, among others, monitoring the progress of the litigation with an eye towards the best  
12 interests of the putative class and not just Resilience, and analyzing any potential settlement  
13 proposals from the same perspective. It is my understanding that Resilience accepted this fiduciary  
14 duty while knowing that it might entail a substantial burden with respect to time and resources,  
15 and despite the risks taken on in representing the putative class against State Fund (discussed  
16 further below).

17 4. As a representative of Resilience I assisted in performing Resilience’s  
18 responsibilities to the putative class including reviewing the proposed second amended complaint,  
19 becoming familiar with the basic theories of the case, communicating with counsel on various  
20 issues including settlement negotiations, analyzing the potential settlement agreement from the  
21 perspective of the putative class in order to assess whether the settlement is in the best interests of  
22 the putative class, and ultimately entering into the Settlement Agreement on behalf of the putative  
23 class. I and other representatives of Resilience also remain available to address any future issues  
24 that require our attention in order to assure that the interests of the putative class are represented  
25 before the Court and with counsel for all parties, including Resilience’s counsel.

26 5. I and other representatives of Resilience have spent extensive time performing the  
27 above actions since February 2022, in excess of approximately 5.0 hours, and understand that there  
28 may be additional commitments in the future requiring Resilience to expend time and resources.

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6. It is my understanding that Resilience also accepted the responsibility and fiduciary duty of pursuing this class action on behalf of the putative class despite being aware of the risks faced by Resilience as a California businesses spearheading a class action against one of California’s largest and oldest insurers for legally-mandated workers’ compensation insurance. This meant that even if Resilience was not inclined to obtain insurance from State Fund in the future, if it was declined by other carriers, it might have no choice but to insure with State Fund, as Resilience is required by law to maintain available workers’ compensation insurance.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 12th day of October, 2022, at Santa Barbara, California.

  
\_\_\_\_\_  
JENNIFER STEINER

**EXHIBIT S**  
**SUPPLEMENTAL RESILIENCE**  
**DECLARATION (GARAI)**

1 BETSY C. MANIFOLD (182450)  
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12 **PRIZ LAW, LLC**  
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14 Tel: (708) 268-5768

15 *Counsel for Plaintiffs and the Class*

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

18 AMERICAN JETTER & PLUMBING, INC. )  
and RESILIENCE TREATMENT CENTER, )  
19 on behalf of themselves and all others )  
20 similarly situated, )

21 Plaintiffs, )

22 v. )

23 STATE COMPENSATION INSURANCE )  
24 FUND, a public enterprise fund, and DOES 1 )  
through 50, inclusive, )

25 Defendants. )  
26 )  
27 )  
28 )

CASE NO. 19STCV05738

**DECLARATION OF ANDREA  
GARAI IN SUPPORT OF  
PLAINTIFFS UNOPPOSED  
MOTION FOR ORDER GRANTING  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT,  
CONDITIONAL CERTIFICATION,  
APPROVAL OF CLASS NOTICE,  
AND SETTING OF FINAL  
APPROVAL HEARING**

(COMPLEX LITIGATION)

Case assigned for all purposes to the  
Honorable Lawrence R. Riff  
Spring Street Courthouse

Hearing Date: \_\_\_\_\_, 2022  
Time: 7 p.m.  
Dept.



1 I, Andrea Garai, declare as follows:

2 1. I was the CEO of named plaintiff Resilience Treatment Center (“Resilience”) from  
3 October, 2015. Resilience is petitioning the Court to be appointed a Class Representative in the  
4 above-captioned action.

5 2. On January 31<sup>st</sup>, 2022, I sold Resilience and no longer am involved with the  
6 company.

7 3. From the commencement of this litigation representatives of Resilience, including  
8 myself, were informed and aware of Resilience’s fiduciary duty to the putative class members, as  
9 well as of the responsibilities that Resilience would be required to undertake in order to be an  
10 adequate class representative. These responsibilities included, among others, monitoring the  
11 progress of the litigation with an eye towards the best interests of the putative class and not just  
12 Resilience, and analyzing any potential settlement proposals from the same perspective.  
13 Resilience accepted this fiduciary duty while knowing that it might entail a substantial burden with  
14 respect to the company’s time and resources, and despite the risks taken on in representing the  
15 putative class against State Fund (discussed further below).

16 4. As a representative of Resilience I assisted in performing Resilience’s  
17 responsibilities to the putative class including reviewing the operative complaints, becoming  
18 familiar with the basic theories of the case, communicating with counsel on various issues  
19 including settlement negotiations, and analyzing the potential settlement agreement from the  
20 perspective of the putative class in order to assess whether the settlement is in the best interests of  
21 the putative class.

22 5. I and other representatives of Resilience have spent extensive time performing the  
23 above actions, in excess of approximately 30 hours. Additionally, Resilience, under my ownership,  
24 spent approximately 2,400 on outside legal expenses on this lawsuit as part of the sale.

25 6. Resilience also accepted the responsibility and fiduciary duty of pursuing this class  
26 action on behalf of the putative class despite being aware of the risks faced by Resilience as a  
27 California businesses spearheading a class action against one of California’s largest and oldest  
28 insurers for legally-mandated workers’ compensation insurance. In the past, Resilience had much

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difficulty finding coverage in the voluntary workers compensation insurance market. This meant that even if Resilience was not inclined to obtain insurance from State Fund in the future, if it was declined by other carriers, it might have no choice but to insure with State Fund, as Resilience is required by law to maintain available workers' compensation insurance.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 11<sup>th</sup> day of October, 2022, at Los Angeles, California.

DocuSigned by:  
*Andrea Garai*  
1D873DF516E1438...  
ANDREA GARAI

# **EXHIBIT 2**

COPY

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2 David R. Ginsburg, Esq. (SBN 210900)  
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Superior Court of California  
County of Los Angeles

FEB 21 2019

Sherri R. Carter, Executive Officer/Clerk of Court  
By: Steven Drew, Deputy

6 Attorneys for Plaintiff  
7 Michael Reynolds Enterprise, Inc. dba  
8 Reynolds Termite Control

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF LOS ANGELES, STANLEY MOSK COURTHOUSE

11  
12 MICHAEL REYNOLDS ENTERPRISE,  
13 INC. DBA REYNOLDS TERMITE  
14 CONTROL, individually and on behalf of  
all others similarly situated,

15 Plaintiff,  
16 vs.

17 STATE COMPENSATION  
18 INSURANCE FUND, a public  
19 enterprise fund; and DOES 1 through 50,  
inclusive,

20 Defendants.

Case No. <sup>BY FAX</sup> 19STCV05738

CLASS ACTION

COMPLAINT FOR:

1. BREACH OF CONTRACT;
2. UNFAIR COMPETITION IN VIOLATION OF BUSINESS & PROFESSIONS CODE SECTION 17200 ET SEQ.; AND
3. CONCEALMENT

[C.C.P. § 425.10]

1 Plaintiff Michael Reynolds Enterprise, Inc. dba Reynolds Termite Control (“Reynolds  
2 Termite Control”), individually and on behalf of all others similarly situated (collectively  
3 referred to as “Plaintiffs” or “Class Members”) allege against defendants State Compensation  
4 Insurance Fund (“SCIF”) and Does 1 through 50, inclusive, as follows:

5 **INTRODUCTION**

6 1. This lawsuit is a class action brought on behalf of the Class Members who are  
7 comprised of all SCIF insureds whose premium was calculated using a tier modifier greater than  
8 1.00.

9 2. On November 16, 2018, the California Insurance Commissioner issued a  
10 decision concluding as a matter of law that SCIF used an unlawful and unenforceable tier  
11 modifier to calculate an insured’s premium for an insured’s policies effective December 2, 2015  
12 to December 2, 2016, and December 2, 2016 to December 2, 2017. The tier modifiers SCIF  
13 used for the policies were 1.5 and 1.2, respectively, thereby increasing the insured’s premium  
14 by 50 and 20 percent, respectively. The Insurance Commissioner ordered SCIF to recalculate  
15 the insured’s premium without applying the unlawful tier modifiers.

16 3. The decision, known as *In the Matter of the Appeal of A-Brite Blind & Drapery*  
17 *Cleaning* (“A-Brite”) (Cal. Ins. Comm’r, November 16, 2018) AHB-WCA-17-26, is attached as  
18 Exhibit “A.”

19 4. Upon information and belief, SCIF has used the same or similar tier modifiers to  
20 calculate the premium of its insureds since 2013, and continues to do so to this day.

21 5. Plaintiffs seek restitution, injunctive relief and damages arising from SCIF’s use  
22 of tier modifiers greater than 1.00 to calculate its insureds’ premiums, from the date SCIF first  
23 used the same or similarly derived tier modifiers described in *A-Brite* to the present.

24 **THE PARTIES**

25 6. Reynolds Termite Control, is, and at all times relevant to this action was, a  
26 corporation organized and existing under the laws of the State of California, and qualified to do  
27 business in the State of California.

28 ///



1           14.     Upon information and belief, beginning in or about March 2013, SCIF began  
2 using the aforementioned tier modifier as one of the modifiers that comprised its “rating plan  
3 modifier.” SCIF continues to use a tier modifier as a component of its rating plan modifier.

4           15.     SCIF uses the rating plan modifier (of which the tier modifier is a component),  
5 as well as two other modifiers, in the calculation of the premium of its insureds. By way of  
6 example, an insured may have employees whose rate for their classification code is \$5 per \$100  
7 in payroll, or 5%. If that employer has \$1,000,000 in payroll for those employees, its base  
8 premium would be \$50,000. Three modifiers are then applied to the base premium, each of  
9 which can either increase, decrease, or have no effect on the premium. These are the (1)  
10 experience modification, (2) premium discount modifier, and (3) rating plan modifier. Each is  
11 expressed as a percentage that is applied in multiplicative fashion to the base premium.

12           16.     For example, if the experience modification is 1.2 (120%), the premium discount  
13 modifier is .9 (90%), and the rating plan modifier is 1.8 (180%), the resulting final premium  
14 would be \$97,200 ( $\$50,000 \times 1.2 \times .9 \times 1.8$ ). This class action only involves the tier modifier  
15 component of rating plan modifier.

16           17.     As detailed in the *A-Brite* decision, SCIF used and continues to use a secret tier  
17 modifier formula that it failed to disclose, and for which it never obtained approval from the  
18 California Department of Insurance (“CDI”) as required by law.

19           18.     According to the Insurance Commissioner’s decision in *A-Brite*, SCIF never  
20 published the algorithm that it used to determine tier modifiers for its insureds. Nor did SCIF  
21 make publicly available the algorithm for any of its insureds to view. SCIF never included the  
22 algorithm in the rate filings that it filed with the CDI. It never submitted the algorithm for  
23 approval by the CDI, and the CDI never approved it.

24           19.     SCIF used and continues to use tier modifiers greater than 1.00 for some of its  
25 insureds, thereby causing an increase in premium that would not have occurred but for the use  
26 of these unapproved tier modifiers.

27           20.     In *A-Brite*, the Insurance Commissioner ordered SCIF to recalculate A-Brite’s  
28 premium by removing tier modifiers greater than 1.00. The Insurance Commissioner found that

1 the use of the unlawful tier modifiers resulted in an additional \$8,805 in premium that A-Brite  
2 had to pay to SCIF.

3 21. Reynolds Termite Control received a 1.50 tier modifier for its SCIF policy  
4 effective January 1, 2015 to January 1, 2016, and it paid premium to SCIF based on SCIF's use  
5 of that tier modifier. Upon information and belief, the use of the 1.50 tier modifier artificially  
6 increased the premium of Reynolds Termite Control by \$22,871.83.

7 22. Reynolds Termite Control received a 1.10 tier modifier for its SCIF policy  
8 effective January 1, 2017 to January 1, 2018, and it paid premium to SCIF based on SCIF's use  
9 of that tier modifier. Upon information and belief, the use of the 1.10 tier modifier artificially  
10 increased the premium of Reynolds Termite Control by \$4,556.57.

11 23. Upon information and belief, many other insureds, possibly numbering in the  
12 many thousands, received tier modifiers greater than 1.00, thereby causing an increase in their  
13 premium compared to what they would have paid without the tier modifier.

14 **CLASS ACTION ALLEGATIONS**

15 24. Reynolds Termite Control brings this action as a class action on behalf of the  
16 following defined class:

17 All SCIF insureds whose workers' compensation insurance premium was  
18 calculated using a tier modifier greater than 1.00.

19 25. Upon information and belief, the class consists of anywhere from hundreds to  
20 thousands of current and former SCIF insureds. Due to this large number of potential class  
21 members who have been harmed by SCIF's conduct, joinder of all potential class members into  
22 one action would be impractical if not impossible. Only by bringing this action as a class action  
23 can the interests of all Plaintiffs be economically tried before this court.

24 26. The claims of Reynolds Termite Control are typical of the Class Members.  
25 Reynolds Termite Control received a tier modifier of greater than 1.00 for one or more of its  
26 policies and paid premium to SCIF based on SCIF's use of that tier modifier.

27 27. A class action is superior to other available methods for the fair and efficient  
28 adjudication of this controversy.







1 premium calculation that included a tier modifier greater than 1.00.

2 40. As found by the Insurance Commissioner, SCIF's use of a tier modifier greater  
3 than 1.00 violated Insurance Code section 11735, which mandates all insurers to file all rates  
4 and supplementary rate information, without exception, before using them in California. Under  
5 Insurance Code section 11730, supplementary rate information includes any "minimum  
6 premium, policy fee, rating rule, rating plan, and any other similar information needed to  
7 determine applicable premium for an insured."

8 41. SCIF violated Insurance Code section 11735 by failing to file and disclose its tier  
9 modifier algorithm, which would show why an insured would be placed in a certain tier that  
10 increased its premium, as well as how that premium increase was derived and computed. This  
11 violation constitutes an unlawful and unfair business act and practice within the meaning of  
12 Business & Professions Code section 17200 et seq.

13 42. In addition, Insurance Code section 332 provides that each party to a contract of  
14 insurance shall communicate to the other, in good faith, all facts within his knowledge which  
15 are or which he believes to be material to the contract and as to which he makes no warranty,  
16 and which the other has not the means of ascertaining. Insurance Code section 330 defines  
17 concealment as neglect to communicate that which a party knows, and ought to communicate.  
18 Insurance Code section 331 recognizes that concealment by a party is improper in the formation  
19 of a contract of insurance.

20 43. SCIF's failure to disclose its tier modifier algorithm violated Insurance Code  
21 sections 331 and 332, resulting in an unlawful and unfair business act and practice in violation  
22 of Business & Professions Code section 17200 et seq.

23 44. Reynolds Termite Control and all other Class Member have suffered injury in  
24 fact, and have lost money or property, as a result of this unlawful and unfair business act and  
25 practice.

26 45. Pursuant to Business & Professions Code section 17200 et seq., Plaintiffs are  
27 entitled to a permanent injunction for the benefit of the public enjoining SCIF from using a tier  
28 modifier greater than 1.00 to calculate its insureds' premiums, unless and until SCIF obtains

1 approval from the Insurance Commissioner for its use, and the algorithm or components of the  
2 tier modifier are disclosed in a rate filing; to restitution of all premiums paid by the Class  
3 Members that would not have been paid but for the use of tier modifiers greater than 1.00; and  
4 to an award of attorney's fees pursuant to Code of Civil Procedure section 1021.5.

5 **THIRD CAUSE OF ACTION**

6 **(Concealment against Defendants SCIF and DOES 1 through 50)**

7 46. Reynolds Termite Control incorporates the preceding paragraphs of this  
8 complaint.

9 47. Plaintiffs allege that a special relationship exists between an insured and insurer  
10 akin to a fiduciary duty, and that, as reflected in the Insurance Code, an insurer is duty bound to  
11 communicate to its insured, in good faith, all facts within the insurer's knowledge which are or  
12 which the insurer believes to be material to the contract and as to which the insurer makes no  
13 warranty, and which the insured has not the means of ascertaining. The insurer is also duty  
14 bound to communicate that which the insurer knows, and ought to communicate. Failure to do  
15 so is concealment, and it is improper for an insurer to engage in concealment in the formation of  
16 an insurance contract.

17 48. SCIF had a duty to disclose to its insureds its tier modifier algorithm. SCIF  
18 knew of how it determined its tier modifiers, which was material to the insurance contract. Its  
19 insureds did not have the means of ascertaining this information, which SCIF purposely kept  
20 secret.

21 49. Upon information and belief, SCIF concealed the tier modifier algorithm, with  
22 the intent to derive more premium from the Class Members, while preventing Class Members  
23 from being able to effectively question, challenge, or seek adjustment of the tier modifier.

24 50. Unaware of the basis for the tier modifier that was used to calculate the  
25 premiums of the Class Members, each of the Class Members paid more in premium than they  
26 would have but for the use of the tier modifier. Class Members would have behaved differently  
27 had SCIF disclosed the basis for computing its tier modifier, or the fact that the California  
28 Department of Insurance did not approve the use of its algorithm.



1 3. For an order of restitution requiring SCIF to return all premium paid by Class  
2 Members that would not have been paid but for the use of tier modifiers greater than 1.00;

3 4. For recovery of all attorneys' fees pursuant to Code of Civil Procedure section  
4 1021.5;

5 **ON THE THIRD CAUSE OF ACTION**

6 5. For general and special damages in a sum to be proven at trial with pre-judgment  
7 and post-judgment interest thereon at the maximum rate permitted by law;

8 6. For punitive and exemplary damages in an amount appropriate to punish or set  
9 an example of SCIF;

10 **ON ALL CAUSES OF ACTION**

11 7. For an Order certifying the class as described herein;

12 8. For all costs incurred to date and to be incurred hereafter in connection with this  
13 action; and

14 9. For such other and further relief as the Court deems just and proper.

15  
16  
17 **DEMAND FOR JURY TRIAL**

18 Reynolds Termite Control, on its own behalf and on behalf of the Class Members,  
19 demand a jury trial.

20  
21 Dated: February 21, 2019

ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP

22  
23 By: 

24 DREW E. POMERANCE  
25 DAVID R. GINSBURG  
26 Attorneys for Plaintiffs  
27 Michael Reynolds Enterprise, Inc. dba  
28 Reynolds Termite Control and

# **EXHIBIT A**

DEPARTMENT OF INSURANCE  
EXECUTIVE OFFICE  
300 Capitol Mall, 17th Floor  
Sacramento, CA 95814  
Tel. (916) 492-3500 Fax (916) 445-5280

**BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA**

In the Matter of the Appeal of )  
)  
**A-BRITE BLIND & DRAPERY CLEANING,** ) FILE AHB-WCA-17-26  
)  
Appellant, )  
)  
From the Decision of the )  
)  
**STATE COMPENSATION INSURANCE FUND,** )  
)  
Respondent. )

**DECISION**

**I. Introduction**

A-Brite Blind & Drapery Cleaning (“Appellant”) brings this appeal against State Compensation Insurance Fund (“SCIF”) in connection with Appellant’s workers’ compensation policy (the “Policy”). The appeal concerns the annual policy periods beginning December 2, 2015 (the “2015 Period”), December 2, 2016 (the “2016 Period”), and December 2, 2017 (the “2017 Period”).

Appellant contends SCIF applied an incorrect rating plan modifier to the 2015 Period and 2016 Period, improperly calculated the premium discount modifier for all three periods, and miscalculated Appellant’s payroll for the 2015 Period. For the reasons discussed below, the



Commissioner finds SCIF misapplied the rating plan modifier but correctly calculated the premium discount modifier. The Commissioner also finds Appellant failed to prove SCIF miscalculated the 2015 Period payroll.

## **II. Issues Presented**

1. Did SCIF apply the correct rating plan modifier during the 2015 Period and 2016 Period, in accordance with SCIF's filings with the California Insurance Commissioner and applicable law?

2. Did SCIF apply the correct premium discount modifier to the Policy for the 2015 Period, the 2016 Period and the 2017 Period, in accordance with SCIF's filings with the Commissioner and applicable law?

3. Did SCIF miscalculate Appellant's payroll for the purposes of determining premium for the 2015 Period?

## **III. Procedural History**

This appeal arises under Insurance Code section 11737, subdivision (f). Appellant initiated the proceedings on August 29, 2017, by filing an appeal from SCIF's July 25, 2017 decision concerning the rating plan modifier and premium discount modifier. On October 6, 2017, Appellant supplemented its appeal by filing copies of its correspondence with SCIF. The California Department of Insurance Administrative Hearing Bureau issued an Appeal Inception Notice on October 10, 2017. SCIF filed its response on October 24, 2017. The Workers' Compensation Insurance Rating Bureau of California ("WCIRB") also filed a response on October 30, 2017, electing not to actively participate in the appeal.

Administrative Law Judge ("ALJ") Clarke de Maigret conducted an evidentiary hearing

in the California Department of Insurance's Los Angeles hearing room on January 16, 2018.<sup>1</sup> Kathleen Newman represented Appellant, and Stefan Janzen, Esq. represented SCIF at the hearing.

Kathleen Newman, one of Appellant's general partners, testified on Appellant's behalf. Keith Mills, an underwriting systems analyst at SCIF, and Marina Montoya, a senior payroll auditor at SCIF, both testified on SCIF's behalf.

The evidentiary record includes the foregoing testimony, SCIF's pre-filed Exhibits 201 through 218, and the ALJ's pre-filed Exhibits 1 and 2, all of which were admitted in evidence at the hearing. It also includes Exhibits 3, 101, 219, and 220, which were introduced and admitted at the hearing. Lastly, the evidentiary record includes Exhibit 102, which Appellant submitted on January 31, 2018 and the ALJ admitted on February 9, 2018. Upon order of the ALJ, certain personal information pertaining to Appellant's employees was redacted from Exhibits 3 and 102, and the unredacted pages were sealed in the administrative record.

At the ALJ's request, SCIF submitted a post-hearing brief on February 6, 2018. The ALJ closed the evidentiary record on February 9, 2018. On March 12, 2018, the ALJ reopened the record and ordered SCIF to provide additional post-hearing briefing and submit further evidence. SCIF filed the additional brief but refused to comply with the ALJ's order to submit the evidence.<sup>2</sup> The ALJ again closed the evidentiary record on March 23, 2018.

On June 15, 2018 a Proposed Decision was submitted to the Insurance Commissioner in this matter. On August 9, 2018, the Commissioner, pursuant to the provisions of 10 CCR

---

<sup>1</sup> These proceedings were conducted in accordance with California Code of Regulations, title 10, sections 2509.40 through 2509.78, and the administrative adjudication provisions of the California Administrative Procedure Act referenced in section 2509.57 of those regulations.

<sup>2</sup> The evidence at issue was SCIF's tiering algorithm and related calculations. See the discussion in part V(B)(3) below.

2509.69, chose not to adopt the proposed decision as his decision, but to decide the case upon the record.

#### **IV. Factual Findings**

The Commissioner makes the following findings of fact, based on a preponderance of the evidence in the record.

##### **A. Appellant's Business**

A-Brite Blind and Drapery Cleaning ("A-Brite") is a general partnership, whose partners include Kathleen Newman and her husband, Randall Newman.<sup>3</sup> The Newmans are also the shareholders of a corporation named Firetect, Inc. ("Firetect").<sup>4</sup> Ms. Newman is Firetect's president.<sup>5</sup> The Newmans, as A-Brite's general partners, and Firetect are jointly insured as a single employer under the Policy.<sup>6</sup>

Appellant is in the business of cleaning residential and theatrical blinds and drapery, as well as treating drapery with fire retardant.<sup>7</sup> The business is headquartered in Valencia, Los Angeles County, California, and has been in operation for 30 years.<sup>8</sup>

##### **B. Appellant's Policy and Claims History**

SCIF has provided workers' compensation insurance to Appellant for about the last 20 years.<sup>9</sup> The Policy at issue in this case renewed on December 2, 2015, 2016 and 2017, the starting dates of the 2015 Period, 2016 Period, and 2017 Period, respectively.<sup>10</sup> For those

<sup>3</sup> Transcript of Proceedings on January 16, 2018 ("Tr.") at 25:10-26:3.

<sup>4</sup> Tr. 26:18-25.

<sup>5</sup> Tr. 27:22-23.

<sup>6</sup> Evidentiary Hearing Exhibit ("Exh.") 208 at 208-1. Throughout this Proposed Decision, the term "Appellant" refers to A-Brite and Firetect jointly, except where otherwise required by the context.

<sup>7</sup> Tr. 26:4-17.

<sup>8</sup> Tr. 25:1-4.

<sup>9</sup> Tr. 38:11-14; Exh. 219.

<sup>10</sup> Tr. 10:3-18; Exh. 208 at 208-1; Exh. 218 at 218-1.

periods, Appellant dealt directly with SCIF and did not use an insurance broker.<sup>11</sup>

During the 20 years it has been insured by SCIF, Appellant received a single workers' compensation claim.<sup>12</sup> That claim resulted from a bruise sustained by one of Appellant's employees on September 10, 2015.<sup>13</sup> SCIF initially reserved \$24,000 to cover the estimated losses and expenses.<sup>14</sup> However, the claim closed on November 6, 2015 with substantially lower total combined losses and expenses of \$819, which SCIF paid.<sup>15</sup>

### C. Determination of Premium under the Policy

The Policy provides that Appellant's premiums are determined by SCIF's "manuals of rules, rates, rating plans and classifications."<sup>16</sup> SCIF's manuals and rating plans include several modifiers, which affected Appellant's premium.<sup>17</sup>

#### 1. Rating Plan Modifier

SCIF determined the premiums for the 2015 Period and 2016 Period in part based on a "rating plan modifier."<sup>18</sup> SCIF applied the rating plan modifier to Appellant's "standard premium" to arrive at a "modified premium."<sup>19</sup> The rating plan modifier resulted from multiplying four components, namely, (a) a "territory modifier," based on geographical area, (b) a "claims free" modifier, for policyholders with claims below a certain level, (c) a "direct placement" modifier for policyholders who deal with SCIF directly rather than through a

<sup>11</sup> Tr. 37:23-24, 38:5-7; Exh. 206; Exh. 215.

<sup>12</sup> Tr. 28:21-29:11; Exh. 3 at 3-3 through 3-6.

<sup>13</sup> Exh. 201 at 201-1.

<sup>14</sup> Exh. 1 at 1-40.

<sup>15</sup> Tr. 65:8-9; Exh. 201 at 201-1.

<sup>16</sup> Exh. 209 at 209-4 [Part Five, § A].

<sup>17</sup> Exh. 1; Exh. 2.

<sup>18</sup> Exh. 210 at 210-1; Exh. 218 at 218-2.

<sup>19</sup> Exh. 212 at 212-1. In Appellant's case, standard premium is equal to base premium, which is calculated by multiplying Appellant's workers' compensation payroll in each employment classification by SCIF's base rate for the respective classification. (*Ibid.*)

broker, and (d) a “tier modifier,” based on a rating tier assigned according to a “tier score” calculated using an algorithm.<sup>20</sup> These modifiers are typically expressed as numerical coefficients. For example, a modifier of 0.80 reduces premium by 20 percent, while a modifier of 1.20 increases it by 20 percent.

**a. Territory Modifier**

In the 2015 Period and 2016 Period, SCIF applied a territory modifier of 1.15 to the Policy<sup>21</sup>. SCIF’s rate filings with the Commissioner included a 1.15 territory modifier for Los Angeles County, effective April 1, 2015.<sup>22</sup>

**b. Claims Free Modifier**

During the 2015 Period, SCIF applied a 10 percent “claims free” credit to the Policy (*i.e.*, a modifier of 0.90).<sup>23</sup> For unclear reasons, SCIF did not apply the credit to the 2016 period.<sup>24</sup> Under SCIF’s rate filings effective during those periods, the credit was applicable to policyholders continuously insured with SCIF who incurred no more than \$1,000 in workers’ compensation claims during the three years preceding the policy period (or two years for policyholders with less than \$10,000 in annual base premium).<sup>25</sup>

**c. Direct Placement Modifier**

SCIF applied a three percent “direct placement” credit (0.97 modifier) to the Policy

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<sup>20</sup> Tr. 58:14-59:8. See also Tr. 15:3-17:18 regarding trade secret privilege claimed by SCIF in the algorithm.

<sup>21</sup> Exh. 206 at 206-3; Exh. 215 at 215-3.

<sup>22</sup> Exh. 1 at 1-9, 1-27.

<sup>23</sup> Exh. 206 at 206-3; Exh. 208 at 208-2.

<sup>24</sup> Exh. 215 at 215-3; Exh. 218 at 218-2.

<sup>25</sup> Exh. 1 at 1-4; Exh. 2 at 2-1.

for both the 2015 Period and 2016 Period.<sup>26</sup> A 2011 SCIF rate filing with the Commissioner describes this three percent credit.<sup>27</sup>

**d. Rating Tier Modifier**

SCIF assigns policyholders to various “rating tiers,” each with its own modifier.<sup>28</sup> SCIF assigns tiers based on “tier scores.”<sup>29</sup> Tier scores are calculated by SCIF using software it alternately refers to as the rating engine, tiering engine, scoring engine, or quote engine.<sup>30</sup> SCIF treats the tiering algorithm as a closely-guarded secret and does not allow it to be viewed by customers, members of the public, or even SCIF’s own underwriting staff.<sup>31</sup> SCIF does not indicate tier scores on its policies, quotes or billing statements; nor does it provide customers with any calculations showing how the scores are calculated, even if customers specifically request that information.<sup>32</sup> The algorithm is not included in any of SCIF’s rate filings with the Commissioner.<sup>33</sup>

The algorithm takes into account the policyholder’s prospective estimated premium, payroll and number of employees.<sup>34</sup> It also factors in three years of the policyholder’s historical premium and loss data.<sup>35</sup> That data includes the frequency and number of workers’ compensation claims and whether those claims involved medical expenses or compensation for

<sup>26</sup> Exh. 206 at 206-3; Exh. 208 at 208-2; Exh. 215 at 215-3; Exh. 218 at 218-2.

<sup>27</sup> Exh. 1 at 1-1; Exh. 2 at 2-2.

<sup>28</sup> Tr. 56:10-17; Exh. 1 at 1-26; Exh. 2 at 2-27.

<sup>29</sup> Tr. 74:22-75:2.

<sup>30</sup> Tr. 62:24, 65:19-21; 74:20-25.

<sup>31</sup> Tr. 14:22-17:18; Tr. 74:20-75:13; See also SCIF Letter to ALJ renewing objection, dated February 1, 2018.

<sup>32</sup> Tr. 97:3-21, 101-3; 102-17; Exh. 101; Exh. 205; Exh. 208.

<sup>33</sup> See Exh. 1, Exh. 2.

<sup>34</sup> Tr. 57:8-11.

<sup>35</sup> Tr. 57:11-13, 83:10-19.

lost employee time or disability.<sup>36</sup>

Each rating tier has an associated modifier.<sup>37</sup> Starting in 2013 and through the commencement of the 2015 Period, SCIF employed a rating framework with four tiers, A through D.<sup>38</sup> In the year preceding the 2015 Period, Appellant was assigned to Tier B, which at the time had a rating tier modifier of 0.951.<sup>39</sup>

SCIF revised its tier rating framework for the 2015 Period.<sup>40</sup> Tier A received a modifier of 0.65. Tier B was assigned a modifier of 1.0. Tier C received a factor of 1.5, and tier D was assigned a modifier of 2.0.<sup>41</sup>

In the 2015 Period, Tier D applied to tier scores of at least 0.30092.<sup>42</sup> Using its secret algorithm, SCIF initially calculated Appellant's tier score as 0.419525161.<sup>43</sup> Consequently, SCIF moved Appellant from Tier B to Tier D, thereby doubling Appellant's premium.<sup>44</sup> The tier score increase resulting in Appellant's move to Tier D was precipitated by the lone workers' compensation claim in 2015, for which SCIF initially reserved \$24,000 in estimated losses and expenses.<sup>45</sup> SCIF notified Appellant of the tier change and premium increase in a renewal quote dated October 5, 2015.<sup>46</sup> Nothing in the record or in SCIF's rate filings explains how Appellant's tier scores were calculated.

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<sup>36</sup> Tr. 57:15-25.

<sup>37</sup> Tr. 56:10-17; 58:12-17; Exh. 1 at 1-26; Exh. 2 at 2-33, 2-34.

<sup>38</sup> Tr. 56:18; Exh. 1 at 1-26.

<sup>39</sup> Tr. 59:11-12.

<sup>40</sup> Tr. 59:21-24; Exh. 1 at 1-26.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> Exh. 1 at 1-39.

<sup>44</sup> Tr. 61:5-6.

<sup>45</sup> Tr. 61:5-64:10; Exh. 1 at 1-40.

<sup>46</sup> Exh. 205 at 205-3.

Appellant complained to SCIF about the increase,<sup>47</sup> which resulted in SCIF recalculating the tier score and reassigning Appellant to Tier C on January 25, 2016, with a tier modifier of 1.5.<sup>48</sup> The sole factor lowering Appellant's tier score from the Tier D range to the Tier C range was SCIF's entry into the scoring engine of \$819 in actual losses and expenses for the 2015 claim rather than the \$24,000 that was originally estimated.<sup>49</sup> In contrast, if Appellant had incurred no workers' compensation claims in the three years prior to the 2015 Period, SCIF would have assigned Appellant to Tier B with a modifier of 1.0.<sup>50</sup>

Starting in the 2016 Period, SCIF increased the number of rating tiers to a numerical system ranging from four to seven.<sup>51</sup> SCIF continued to maintain that its algorithm was confidential and did not include it in its rate filings with the Commissioner. For policyholders with standard premium between \$10,000 and \$25,000, the new Tier 3 had a modifier of 1.0, which would have no impact on premium. And Tier 4 had a factor of 1.2, which would increase standard premium by 20 percent.<sup>52</sup> SCIF assigned Appellant to Tier 4 for the 2016 Period.<sup>53</sup> If Appellant had incurred no workers' compensation claims in the three prior years, SCIF would have assigned Appellant to Tier 3.<sup>54</sup>

In other words, the lone \$819 claim in a 20-year period resulted in a 50 percent (or \$6,971) increase to Appellant's premium for the 2015 Period and a 20 percent (or estimated \$1,834) increase for the 2016 Period.<sup>55</sup>

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<sup>47</sup> Exh. 3 at 3-7.

<sup>48</sup> Tr. 33:12-23, 64:11-65:16; Exh. 3 at 3-30.

<sup>49</sup> Tr. 64:21-65:21; Exh. 1 at 1-36 through 1-41.

<sup>50</sup> Tr. 105:21-106:14.

<sup>51</sup> Tr. 72:12-14; Exh. 2 at 2-27.

<sup>52</sup> Tr. 93:6-14; Exh. 2 at 2-27.

<sup>53</sup> Tr. 72:7-11; Exh. 2 at 2-39.

<sup>54</sup> Tr. 106:15-107:3.

<sup>55</sup> Exh. 212 at 212-1; Exh. 215 at 215-3.



## 2. Premium Discount Modifier

Appellant's premiums for each of the 2015 Period, 2016 Period and 2017 Period were calculated in part using a "premium discount modifier."<sup>56</sup> That modifier applied a flat discount of 11.3% to all modified premium over \$5,000.<sup>57</sup> SCIF's 2011 rate filings with the Commissioner describe that discount.<sup>58</sup>

### D. Policy Audit

On March 27, 2017, SCIF conducted an audit for the 2015 Period.<sup>59</sup> The audit found Appellant's workers' compensation payroll was \$188,995. Based on that audit, SCIF determined that Appellant incurred a base premium of \$13,942.87, a modified premium of \$20,996.99,<sup>60</sup> a total premium of \$19,189.36,<sup>61</sup> mandatory surcharges of \$629.83, and total charges of \$19,819.19.<sup>62</sup>

### V. Discussion

Appellant argues SCIF's rating plan modifiers and premium discount modifiers were incorrectly applied.<sup>63</sup> Appellant further contends SCIF miscalculated Appellant's 2015 Period payroll. SCIF argues all of the modifiers were valid and correctly applied.<sup>64</sup> SCIF also stands behind its audit and further asserts the Commissioner may lack jurisdiction to determine the payroll calculation issue.<sup>65</sup> For the reasons discussed below, the Commissioner finds that (1)

<sup>56</sup> Tr. 71:6-72:6; Exh. 210 at 210-1; Exh. 218 at 218-2.

<sup>57</sup> Tr. 71:6-16; Exh. 210 at 210-1; Exh. 218 at 218-2.

<sup>58</sup> Exh. 1 at 1-2, 1-3.

<sup>59</sup> Tr. 115:14-25; Exh. 211 at 211-1.

<sup>60</sup> Obtained by multiplying the base premium by a rating plan modifier of 1.50593. (Exh. 212 at 212-1.)

<sup>61</sup> Obtained by multiplying the modified premium by a premium discount modifier of 0.91391. (*Ibid.*)

<sup>62</sup> Obtained by adding the total premium and the mandatory surcharges. (*Id.* at 212-1, 212-2.)

<sup>63</sup> Appeal dated August 25, 2017 ("Appeal").

<sup>64</sup> SCIF's Response to the Appeal, dated October 18, 2017, at 3-4.

<sup>65</sup> Letter from SCIF to the ALJ, dated February 9, 2018.

the Commissioner has jurisdiction over all issues in this appeal, (2) SCIF misapplied the rating plan modifier, (3) SCIF correctly applied the premium discount modifier, and (4) Appellant failed to meet its burden of proof to show SCIF miscalculated Appellant's payroll.

**A. The Commissioner Has Jurisdiction over This Appeal**

**1. Applicable Law**

**a. The Statutory Rate Filing Scheme**

California has an "open rating" workers' compensation regulatory system, in which each insurer sets its own rates and files them with the Commissioner. This framework is intended to curtail monopolistic and discriminatory pricing practices, ensure carriers charge rates adequate to cover their losses and expenses, and provide public access to rate information so that employers may find coverage at the best competitive rates.<sup>66</sup>

Insurance Code section 11735 lays out the statutory filing requirements. Subdivision (a) of that section provides in part, "Every insurer shall file with the commissioner all rates and supplementary rate information that are to be used in this state. The rates and supplementary rate information shall be filed not later than 30 days prior to the effective date." The term "rate" means "the cost of insurance per exposure base unit," subject to certain limitations.<sup>67</sup> And "supplementary rate information" means "any manual or plan of rates, classification system, rating schedule, minimum premium, policy fee, rating rule, rating plan, and any other similar information needed to determine the applicable premium for an insured."<sup>68</sup>

**b. Jurisdiction over Private Party Appeals**

Insurance Code section 11737, subdivision (f), confers jurisdiction on the

<sup>66</sup> See generally Ins. Code §§ 11730-11742.

<sup>67</sup> Ins. Code § 11730, subd. (g). Rates exclude the application of individual risk variations based on loss or expense considerations, as well as minimum premiums.

<sup>68</sup> Ins. Code § 11730, subd. (j).

Commissioner to hear and decide private party appeals concerning the application of insurers' section 11735 filings. Specifically, the statute provides in pertinent part:

Every insurer... shall provide within this state reasonable means whereby any person aggrieved by the application of its filings may be heard by the insurer... on written request to review the manner in which the rating system has been applied in connection with the insurance afforded or offered. ... Any party affected by the action of the insurer... on the request may appeal... to the commissioner, who after a hearing ... may affirm, modify, or reverse that action.

## 2. Analysis

Appellant asserts SCIF failed to correctly apply the rates and supplementary rate information filed under Insurance Code section 11735. Specifically, Appellant contends SCIF misapplied its filed rating plan modifiers and premium discount modifiers to SCIF's filed rates. Appellant further contends SCIF miscalculated Appellant's 2015 Period payroll. If true, that would result in the application of SCIF's filed rates to the wrong exposure level. Appellant requested that SCIF remedy these issues. SCIF rejected that request, and Appellant timely filed this appeal.<sup>69</sup> Because the issues on appeal concern the manner in which SCIF applied its rating system to the Policy, the Commissioner has jurisdiction under Insurance Code section 11737, subdivision (f).

### B. Use of the Tier Modifier Resulted in a Misapplication of SCIF's Filed Rates.

SCIF's rating plan modifier consists of four components, one of which is the tier

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<sup>69</sup> See Cal. Code Regs., tit. 10, § 2509.46 ["An appeal is timely if it is filed either within 30 days after rejection of a Complaint and Request for Action or rejection of review thereof . . ."]. California Code of Regulations, title 10, section 2509.42, subdivision (q) provides in part, "Service by first class mail . . . is complete at the time of deposit with the carrier, but any . . . right or duty to do any act or make any response within any prescribed period of notice . . . shall be extended for a period of five days." SCIF mailed its rejection of Appellant's complaint and request for action on July 25, 2017 (See Appeal). Appellant filed this appeal within the 35 day window on August 29, 2017. (*Ibid.*)

modifier. For the reasons discussed below, the tier modifier is an improper adjustment to SCIF's filed rates.

**1. SCIF Misapplied its Filed Rates Due to its Use of an Unfiled Tiering Algorithm.**

SCIF uses a proprietary algorithm to calculate the tier modifier. SCIF contends it is not legally required to file the algorithm with the Commissioner, and that use of the unfiled algorithm to determine Appellant's premium was lawful. The Commissioner disagrees.

**a. Applicable Law**

Insurance Code section 11735, subdivision (a), requires insurers to file all rates and supplementary rate information, without exception, before using them in California. The term "supplementary rate information" includes any "minimum premium, policy fee, rating rule, rating plan, and any other similar information needed to determine the applicable premium for an insured."<sup>70</sup> "[M]oney paid by an insured to an insurer for coverage constitutes premium regardless of its name."<sup>71</sup> Thus, any information necessary to determine amounts owed by an insured to its insurer is supplementary rate information. If SCIF wished to apply its Tiering algorithm to Appellant's rate, it was required to file the algorithm and allow it to be subject to public inspection under Insurance Code section 11735.

Insurers may only charge premium in accordance with their filed rates and supplementary rate information.<sup>72</sup> As the Commissioner determined in his precedential

<sup>70</sup> Ins. Code § 11730, subd. (j), emphasis added.

<sup>71</sup> *In the Matter of the Appeal of Shasta Linen Supply, Inc.* (Cal. Ins. Comm'r, June 22, 2016, AHB-WCA-14-31) (*Shasta Linen*) at 48-49; see also *Troyk v. Farmers Group Inc.* (2009) 171 Cal.App.4th 1305, 1325 ["[I]nsurance premium includes not only the 'net premium,' or actuarial cost of the risk covered (i.e. expected amount of claims payments), but also the direct and indirect costs associated with providing that insurance coverage and any profit or additional assessment charged."]

<sup>72</sup> Ins. Code § 11735, subd. (a); Ins. Code § 11730, subd. (j); See *Appeal of Gary E. Milne* (Cal. Ins. Comm'r Feb. 19, 1999, AHB-WCA-97-11) at 10 ["[I]nsurers do not have unrestricted discretion to set

decision *In the Matter of the Appeal of Shasta Linen Supply, Inc.*, an insurer's use of unfiled rates or supplementary rate information is unlawful.<sup>73</sup> That is true regardless of whether the Commissioner first disapproved the unfiled rates under Insurance Code section 11737.<sup>74</sup>

**b. Analysis**

**i. The Tiering Algorithm Constitutes Supplementary Rate Information.**

SCIF determined Appellant's premiums for the 2015 Period and 2016 Period in part based on a "rating plan modifier"<sup>75</sup> that increased Appellant's premium.<sup>76</sup> The rating plan modifier resulted from multiplying four component modifiers, including a "tier modifier." Tier modifiers, in turn, are tied to "rating tiers" assigned to policyholders based on "tier scores" that SCIF calculates using an algorithm that SCIF claims is proprietary. The algorithm takes account of the policyholder's prospective estimated premium, payroll and number of employees,<sup>77</sup> as well as the policyholder's historical premium and loss data.<sup>78</sup> There is no way for the policyholder or anyone else to calculate a tier score without the algorithm. Without the tier score, it is impossible to determine which rating tier applies, and which tier modifier to assign the policyholder. Since a policyholder's base premium during the 2015 Period, for example, could have been reduced by as much 45 percent or increased by up to 100 percent

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workers' compensation insurance rate levels under open rating. The open rating system contemplates competitive pricing consistent with the public interest in fair and adequate insurance."]

<sup>73</sup> *Shasta Linen* at 52. *Shasta Linen* was designated precedential under Gov. Code section 11425.60, subdivision (b).

<sup>74</sup> See *Ibid.*

<sup>75</sup> Exh. 210 at 210-1; Exh. 218 at 218-2.

<sup>76</sup> Exh. 212 at 212-1. In Appellant's case, standard premium is equal to base premium, which is calculated by multiplying Appellant's workers' compensation payroll in each USRP classification by SCIF's base rate for the respective classification. (*Ibid.*)

<sup>77</sup> Tr. 57:8-11.

<sup>78</sup> Tr. 57:11-13.

depending on the rating tier, it is not possible to determine premium without the algorithm.<sup>79</sup> Because the algorithm is a key component of the rate calculation, it constitutes “information needed to determine the applicable premium for an insured[,]” thereby satisfying the definition of “supplementary rate information” under Insurance Code section 11730, subdivision (j).<sup>80</sup>

**ii. SCIF’s Use of the Unfiled Algorithm Was Unlawful, Contravened Public Policy, and Misapplied SCIF’s Filed Rates.**

Insurers must file all supplementary rate information under Insurance Code section 11735, subdivision (a), and under subdivision (b), which requires that information be publicly available. But SCIF withheld the algorithm—a critical piece of information that determines policyholders’ rates—based on its assertion that “any policyholder (or future policyholder) can potentially ‘game the system’ if the algorithm was known to them” and that other insurers “could, conceivably, use knowledge of the algorithm to gain a competitive advantage over State Fund[.]”<sup>81</sup> SCIF’s position ignores the mandate of the statute and frustrates the public policy concerns behind it.

Among the policy aims of section 11735, two important goals of the public inspection provisions are to enable employers to obtain coverage at the best rates and to curtail monopolistic pricing practices.<sup>82</sup> When rate information is transparent, policyholders are better able to compare coverage and reduce their costs. Transparency reduces the likelihood that

<sup>79</sup> Exh. 1 at 1-26.

<sup>80</sup> Without the algorithm, it is impossible for the Commissioner to determine whether the applied rates tend to create a monopoly in the market, are inadequate or unfairly discriminatory. (See Ins. Code §§ 11732, 11732.5, 11737, subd. (b), (c).)

<sup>81</sup> Letter from State Fund to the ALJ, dated February 1, 2018, objecting to disclosure of the algorithm. In fact, SCIF violated the ALJ’s order to submit a copy of the algorithm in this appeal. (See SCIF’s Amended Objection to Order Vacating Evidentiary Ruling; Order to Disclose Tiering Algorithm, dated March 22, 2018 (“Obj. to Order to Disclose”).)

<sup>82</sup> See generally Ins. Code §§ 11730-11742.

insurers will gain a monopolistic advantage when all carriers' pricing information is public.

In furtherance of those aims, the Legislature passed Insurance Code section 11742 to mandate the establishment of an online rate comparison guide. Subdivision (a) of that section provides:

The Legislature finds and declares that the insolvencies of more than a dozen workers' compensation insurance carriers have seriously constricted the market and lead to a dangerous increase in business at the State Compensation Insurance Fund. Yet more than 200 insurance companies are still licensed to offer workers' compensation insurance in California. Unfortunately, many employers do not know which carriers are offering coverage, and it is both difficult and time consuming to try to get information on rates and coverages from competing insurance companies. A central information source would help employers find the required coverage at the best competitive rates.

When insurers use secret unfiled formulas to modify their filed rates, they directly frustrate the Legislature's intent behind the comparison guide and section 11735's public inspection provisions. Rate disclosure confers little value if the public does not have access to the formulas carriers use to modify their rates. Meaningful price comparison is simply impossible without those formulas.

By hiding its algorithm, SCIF obscured Appellant's looming premium increase until Appellant was in no position to avoid it. Appellant's witness testified, "I could not fathom what a negative monetary impact it would have on our small business to have a claim after over 20 years in business. One claim for \$819.... When I received the final renewal for 2015, I was shocked."<sup>83</sup> If Appellant or its advisors had access to the algorithm, they could have determined in advance the claim's impact on premium and potentially mitigated the effects. At a minimum, Appellant would have had additional time to shop for a less expensive policy.

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<sup>83</sup> Tr. at 29:8-25.

Insurance Code section 11735 and the legislative policy behind it required that SCIF file the algorithm as supplementary rate information. SCIF failed to do so, rendering its use of the unfiled algorithm unlawful. By effectively increasing SCIF's filed rates by 50 percent for the 2015 Period and 20 percent for the 2016 Period, SCIF's use of the algorithm resulted in the misapplication of those rates.

**2. SCIF Wrongly Asserts it Complied with the Commissioner's Regulations, Thus Fulfilling the Statutory Filing Requirements.**

SCIF argues it complied with the Commissioner's rate filing regulations and in so doing satisfied Insurance Code section 11735's filing requirements. Specifically, SCIF asserts that the Commissioner has authority under the regulations to determine what constitutes supplementary rate information. SCIF asserts that the Commissioner's acceptance of its rate filing without the tiering algorithm *ipso facto* constituted a determination that the algorithm was not supplementary rate information. Therefore, SCIF contends that the algorithm did not need to be filed under section 11735.<sup>84</sup> SCIF's interpretation of the rate filing process and regulations is wrong.

**a. Applicable Law**

In addition to complying with the statutory filing requirements under Insurance Code section 11735, workers' compensation insurers must file their rates in accordance with California Code of Regulations, title 10, sections 2509.30 *et seq.* Section 2509.32, subdivision (e), which provides:

A complete rate filing is one for which the insurer has completed the Filing Form and submitted all necessary attachments and exhibits. Necessary attachments and exhibits are those materials that, together with the Filing Form, are

<sup>84</sup> Obj. to Order to Disclose at 4-6.



sufficient to enable the Commissioner to determine the rates the insurer would charge its insureds. Unless the Commissioner notifies the insurer within 30 days of the filing date that its rate filing is incomplete, the rate filing will be considered complete.

#### **b. Analysis**

SCIF did not comply with the regulations, which broadly set forth the information that is required in an insurer's rate filing—insurers must file *all* information that is necessary to determine an insurer's rates, which would encompass SCIF's algorithm. The statute does not give the Commissioner the power to exclude information in violation of the statute's language that all such information must be filed.

The regulation provides further clarification of Insurance Code section 11735, subdivision (b)'s requirement that "[r]ates filed pursuant to this section shall be filed in the form and manner prescribed by the commissioner." Section 2509.32, subdivision (e), does not suggest that an insurer's failure to file supplemental information relieves it from its obligation to comply with statutory law; indeed, the regulation expressly mandates that insurers file information "sufficient to enable the Commissioner to determine the rates the insurer would charge its insureds." The regulation is consistent with the statute, which broadly defines the term "supplementary rate information" to include "minimum premium, policy fee, rating rule, rating plan, and any other similar information needed to determine the applicable premium for an insured." Indisputably, if SCIF intended to use the algorithm to modify its rates, the algorithm would be necessary determine SCIF's rates. Since SCIF's algorithm falls squarely within the statutory and regulatory definitions, SCIF was required file it. SCIF knew that its rate filing was not complete because SCIF knew the algorithm is necessary "to enable the Commissioner to determine the rates the insurer would charge its insureds." Section 2509.32(e) does not purport to allow insurers to

avoid the filing requirements that are specified in Insurance Code section 11735 under any circumstance. Rather, it provides the form and manner of compliance and reiterates the provisions in the statute.

SCIF cites no basis to support its assertion that it need not comply with statutory and regulatory law so long as the Commissioner accepted its filing as complete. SCIF seems to confuse the Commissioner's acceptance of its filing with the Commissioner's limited power to disapprove rates under certain narrowly-tailored circumstances, if he determines that the premiums charged, in the aggregate, would be inadequate to cover an insurer's losses and expenses, unfairly discriminatory, or tend to create a monopoly in the market.<sup>85</sup> While applicable law grants the Commissioner authority to reject a rate filing if an insurer fails to comply with the filing requirements or if the filing is incomplete,<sup>86</sup> the Commissioner lacks the authority to override a statutory mandate that insurers file all supplemental rate information. The Commissioner's determination that a filing is complete is a ministerial function to determine whether the paperwork includes the Filing Form, exhibits and attachments necessary to comprise a complete filing as defined in Title 10 California Code of Regulations section 2509.32(e). The Commissioner's acceptance of SCIF's rate filing as complete is not a substantive endorsement that SCIF has met its statutory obligation to file all of supplementary rate information that it uses to calculate an insured's premium, such as the unfiled algorithm. Whatever else may be said of the legal importance of an administrative action to deem a filing complete, the scope of such action cannot serve to protect formulae an insurer withholds from its filing, and then applies outside of the filing process to calculate a policyholder's applicable

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<sup>85</sup> Ins. Code § 11737(b).

<sup>86</sup> Tit. 10, Cal. Code Regs. § 2509.32(c).

premium.<sup>87</sup>

Moreover, SCIF's failure to file its algorithm undermined an additional purpose of the statute that required it to file its algorithm, preventing A-Brite's ability to access crucial information that greatly affected its workers' compensation insurance rates.

SCIF's argument also overlooks section 11735's important public policy consideration in requiring that pricing information be publicly available to assist employers shopping for coverage. Given this policy, as well as section 11730's broad definition of "supplementary rate information," and section 11735's express requirement that insurers file *all* of that information before using it, an insurer's failure to file such information would frustrate the public's statutory right to access that information. The Commissioner's acceptance of SCIF's rate filing as complete does not relieve SCIF from its responsibility to file its supplementary information as required by law. More to the point, SCIF's failure to file the supplementary information cannot inure to the prejudice of A-Brite. SCIF unlawfully misapplied its rates by modifying them with an unfiled algorithm. The Commissioner will not affirm its use of the unfiled algorithm to A-Brite's prejudice.

### **3. Trade Secret Privilege Did Not Exempt the Algorithm from Statutory Filing and Disclosure Requirements.**

SCIF argues that even if the tiering algorithm is supplementary rate information, it remains protected from disclosure under the trade secret privilege.<sup>88</sup> Specifically, SCIF contends that because section 11735 does not expressly override the subsequently enacted

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<sup>87</sup> (See, e.g., *State Compensation Ins. Fund v. Superior Court* (2001) 24 Cal.4<sup>th</sup> 930 [insurer's misallocation of expenses which were reported to WCIRB, thereby resulting in higher premiums for insured, is not conduct immune from civil liability]; accord *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4<sup>th</sup> 968, 992-93 [11 Cal.Rptr.3d 45, 62] ["It is possible for an insurance carrier to file with the Department a rate filing and class plan that satisf[y] all of the ratemaking components of the regulations; and still result in a violation of the Insurance Code *as applied*," (emphasis in original)]; see also *MacKay v. Superior Court* (2010) 188 Cal.App.4<sup>th</sup> 1427, 1450 [115 Cal.Rptr.3d 893, 911], as modified (Oct. 20, 2010) ["...underlying conduct challenged was not the charging of an approved rate, but the application of an unapproved underwriting guideline..."].)

<sup>88</sup> Obj. to Order to Disclose at 6-8.

trade secret protections of Government Code section 6254, section 11735 does not require the filing and public disclosure of trade secrets. The Commissioner is not persuaded.

**a. Applicable Law**

Civil Code section 3426.1 defines a “trade secret” as information that “(1) [d]erives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and [¶] (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

Evidence Code section 1060 provides: “If he or his agent or employee claims the privilege, the owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice.” Like the rest of the Evidence Code, that section applies to court actions.<sup>89</sup> It has no applicability to administrative or other governmental proceedings unless expressly invoked by statute or regulation.<sup>90</sup>

Government Code section 6254 exempts certain trade secrets from the disclosure requirements of the California Public Records Act.<sup>91</sup> In particular, subdivision (ab) of that section states the act does not require disclosure of “[t]he following records of the State Compensation Insurance Fund:”

(3) Records related to the impressions, opinions, recommendations, meeting minutes of meetings or sessions that are lawfully closed to the public, research, work product, theories, or strategy of the fund or its staff, on the development of rates, contracting strategy, underwriting, or competitive strategy pursuant to the powers granted to the fund [under the

<sup>89</sup> Evid. Code § 300.

<sup>90</sup> 31 Cal.Jur.3d Evidence, § 7; see also *Blg Creek Lumber Co. v. County of San Mateo* (1995) 31 Cal.App.4th 418, 430 fn. 16.

<sup>91</sup> Cal. Gov. Code § 6250 et seq.

Insurance Code].

...  
(5)(A) Records that are trade secrets pursuant to... [Evidence Code section 1060], including without limitation, instructions, advice, or training provided by the State Compensation Insurance Fund to its board members, officers, and employees regarding the fund's special investigation unit, internal audit unit, and informational security, marketing, rating, pricing, underwriting, claims handling, audits, and collections.

In addition, section 6254, subdivision (k) exempts the following information from the Public Records Act's disclosure requirements: "Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege."

#### b. Analysis

Trade secret privilege does not limit section 11735's public inspection requirements. The California Supreme Court's analysis and holding in *State Farm Mutual Automobile Insurance Co. v. Garamendi*<sup>92</sup> are instructive. That case concerned Insurance Code section 1861.07, which broadly requires public disclosure of "[a]ll information provided to the commissioner" in connection with insurance rate approval applications (unrelated to workers' compensation). The plaintiff insurance company argued Government Code section 6254's trade secret provisions limited section 1861.07's disclosure requirements. Specifically, the plaintiff contended that since section 1861.07 expressly excludes a specific subdivision of section 6254, the Legislature implicitly intended all other subdivisions to apply, including those that exempt trade secrets from disclosure. The Court disagreed, holding that the public disclosure rule covering "[a]ll information provided to the commissioner" under section 1861.07 is absolute.<sup>93</sup> That section's exclusion of the specific provision of section 6254

<sup>92</sup> *State Farm Mut. Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029.

<sup>93</sup> *Id.* at 1042-1043, emphasis in original.

“merely buttresses this rule.”<sup>94</sup> Thus, the Court concluded that information provided to the commissioner under section 1861.07 was not subject to trade secret privilege under section 6254 or, by extension, Evidence Code section 1060.<sup>95</sup>

Insurance Code section 11735’s public disclosure requirement is similarly absolute. The statute requires the filing of “*all* rates and supplementary rate information that are to be used in this state” and “[*a*]ll rates, supplementary rate information, and any supporting information for rates filed under this article, as soon as filed, shall be open to public inspection at any reasonable time...”<sup>96</sup>

Finally, contrary to SCIF’s assertions,<sup>97</sup> it is immaterial that Government Code section 6254 was enacted after Insurance Code section 11735. Section 6254 limits public disclosure obligations under the Public Records Act, so the Public Records Act cannot reasonably be construed to limit the Insurance Commissioner’s review and acceptance of supplementary rate information under the Insurance Code. Specifically, the lead-in to section 6254 states that “this chapter does not require the disclosure” of the information exempted pursuant to that section. And “this chapter” refers to Government Code, division 7, chapter 3.5, *i.e.*, the Public Records Act. A plain reading of the Public Records Act limits its application to the chapter within the Government Code, and is plainly inapplicable to the construction of the Insurance Code and workers’ compensation insurance rate filing requirements concerning the Insurance Commissioner. Because a plain reading of Government Code section 6254 and Insurance Code section 11735 demonstrates two separate and independent areas of authority, the order

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<sup>94</sup> Id. at 1042.

<sup>95</sup> Id. at 1047. As noted above, privilege under Evidence Code section 1060 is incorporated by reference in Government Code section 6254, subdivision (k).

<sup>96</sup> Emphasis added.

<sup>97</sup> Obj. to Order to Disclose at 7.

in which they were enacted is of no consequence here.

For these reasons, the trade secret privilege does not exempt the tiering algorithm from Insurance Code section 11735's filing and public inspection provisions.

**4: SCIF Must Exclude The Unfiled Tier Modifier in Computing Appellant's Rates.**

Section 11737, subdivision (f), grants the Commissioner broad authority to award remedies in workers' compensation appeals. The statute authorizes him to "affirm, modify, or reverse" an insurer's action concerning the application of its rating system. The statute contains no language restricting remedies the Commissioner may order to modify or reverse an insurer's action. Nor has any California court inferred such restrictions from the statute. Indeed, the breadth of the Commissioner's authority is consistent with his comprehensive role to "require from every insurer a full compliance with all the provisions of [the Insurance Code]."<sup>98</sup>

SCIF failed to apply the correct rate to the policy by unlawfully applying the unfiled rating tier modifier component for the 2015 Period and 2016 Period. SCIF must recalculate the rates for those Periods without applying the unfiled rating tier modifier.

**C. The Claims Free Modifier Applies to Both the 2015 Period and the 2016 Period.**

The Commissioner finds SCIF correctly applied a claims-free modifier to the 2015 Period but improperly failed to apply that modifier to the 2016 Period.

Under a SCIF rate filing that was in effect during the 2015 Period and 2016 Period, a claims-free modifier of 0.90 applied to policyholders continuously insured with SCIF and incurring no more than \$1,000 in workers' compensation claims during the three years

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<sup>98</sup> Ins. Code § 12926.

preceding the current policy period (or two years for policyholders with less than \$10,000 in annual base premium).<sup>99</sup> In the three years preceding the 2015 Period, Appellant was continuously insured with SCIF and incurred no workers' compensation claims. Accordingly, SCIF correctly applied the claims free modifier to the Policy for that period.<sup>100</sup>

However, SCIF did not apply the modifier to the 2016 Period.<sup>101</sup> In September of 2015, Appellant incurred a single workers' compensation claim, which was closed on November 6, 2015. The total losses and expenses incurred in connection with that claim were \$819.<sup>102</sup> Thus, Appellant incurred less than \$1,000 in claims in the three years preceding the beginning of the 2016 Period. Accordingly, SCIF should have applied the 0.90 claims-free modifier to that period as well.

#### **D. SCIF Correctly Calculated the Remaining Modifiers.**

The Commissioner finds the remaining components of the rating plan modifier—i.e., the direct placement modifier and the territory modifier—were correctly applied for the 2015 Period and the 2016 Period. Appellant contends the premium discount modifier was incorrectly calculated for all three periods at issue. The Commissioner disagrees.

##### **1. Direct Placement Modifier**

A SCIF rate filing applicable to both the 2015 Period and 2016 Period states SCIF "will provide a 3% credit to employers who obtain their policy without engaging a broker."<sup>103</sup> Appellant did not engage a broker but instead dealt directly with SCIF to procure coverage for those periods. SCIF therefore correctly included the three percent credit (i.e., a modifier of 0.97)

<sup>99</sup> Exh. 1 at 1-4; Exh. 2 at 2-1.

<sup>100</sup> Exh. 206 at 206-3; Exh. 208 at 208-2.

<sup>101</sup> Exh. 215 at 215-3; Exh. 218 at 218-2.

<sup>102</sup> Tr. 65:8-9; Exh. 201 at 201-1.

<sup>103</sup> Exh. 1 at 1-1; Exh. 2 at 2-2.



within the rating plan modifier it applied to the Policy for both the 2015 Period and 2016 Period.<sup>104</sup>

## 2. Territory Modifier

SCIF's rate filings applicable to the 2015 Period and 2016 Period required it to apply a territory modifier of 1.15 to customers in Los Angeles County.<sup>105</sup> Appellant is located in that county. Therefore, SCIF correctly included that territory modifier within the Policy's rating plan modifier during both the 2015 Period and the 2016 Period.<sup>106</sup>

## 3. Premium Discount Modifier

SCIF's rate filings require a premium discount of 11.3 percent for all modified premium over \$5,000 and no discount for the first \$5,000.<sup>107</sup> SCIF correctly applied the discount to Appellant's actual modified premium for the 2015 Period, and to Appellant's estimated modified premiums for the 2016 Period and 2017 Period.<sup>108</sup> However, because Appellant's modified premiums must be recalculated using the correct rating plan modifier in accordance with part V (B) above, SCIF must re-compute the premium discount calculations using the revised modified premiums.<sup>109</sup>

<sup>104</sup> Exh. 206 at 206-3; Exh. 208 at 208-2; Exh. 215 at 215-3; Exh. 218 at 218-2.

<sup>105</sup> Exh. 1 at 1-9, 1-27 [effective April 1, 2015]; Exh. 2 [no changes to territory modifiers from prior year].

<sup>106</sup> Exh. 206 at 206-3; Exh. 215 at 215-3.

<sup>107</sup> Exh 1 at 1-2, 1-3.

<sup>108</sup> Tr. 71:6-72:6; Exh. 210 at 210-1; Exh. 218 at 218-2.

<sup>109</sup> For example, Appellant's actual base premium for the 2015 Period was \$13,942.87. (Exh. 212 at 212-1.) The correct rating plan modifier in accordance with part V(B) above is 1.00395 (i.e., 1.15 territory modifier x 0.90 claims free modifier x 0.97 direct placement modifier). Multiplying the base premium by that rating plan modifier yields a modified premium of \$13,997.94 (i.e., 1.00395 x \$13,942.87). Thus, the premium discount modifier for the 2015 Period is:  $1 - [(\$13,997.94 - \$5,000) \times 0.113] \div \$13,997.94 = 0.927363$ .

**E. Appellant Failed to Demonstrate SCIF Miscalculated Appellant's 2015 Period Payroll.**

Appellant asserts SCIF miscalculated Appellant's 2015 Period payroll. The Commissioner finds Appellant has failed to meet its burden of proof on this issue.

**1. Applicable Law**

Under California Code of Regulations, title 10, section 2509.61, "[a] party has the burden of proof as to each fact the existence or non-existence of which is essential to the claim for relief or defense that he or she is asserting." As in an ordinary civil court action, that burden includes both the initial burden of going forward and the burden of persuasion by a preponderance of the evidence.<sup>110</sup>

**2. Analysis**

SCIF produced a final payroll audit report for the 2015 Period, indicating Appellant's workers' compensation payroll for the entire period was \$188,995.<sup>111</sup> Appellant contests the accuracy of the report and produced its own payroll summary for that period, asserting a total workers' compensation payroll of \$180,890.44.<sup>112</sup> Appellant thereby met its initial burden of going forward.

However, Appellant's payroll summary contains inaccuracies. Specifically, it does not entirely coincide with the 2015 Period, which began on December 2, 2015 and ended on December 2, 2016. The workers' compensation payroll for that period should cover the work performed by Appellant's employees between those dates.<sup>113</sup> But Appellant's payroll summary sets forth the payments made during that period, rather than the amounts earned. The

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<sup>110</sup> *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051 fn. 5.

<sup>111</sup> Exh. 211 at 211-5.

<sup>112</sup> Exh. 3 at 3-47 through 3-51.

<sup>113</sup> Cal. Code Regs., tit. 10, § 2318.6, Part 3, Section V, Rule 1 [payroll includes amounts "earned during the policy period"].

summary does not include any activity after the payments on November 25, 2016,<sup>114</sup> which were for the work period ending November 20, 2016.<sup>115</sup> Appellant's summary therefore failed to include payroll earned during the last 11 days of the 2015 Period. If Appellant had included those days, its payroll total would likely have closely matched SCIF's,<sup>116</sup>

Because Appellant's payroll summary is inaccurate and incomplete, Appellant failed to meet its burden of persuasion to establish SCIF incorrectly calculated the 2015 Period payroll.

#### **F. Conclusions of Law**

Based on the foregoing facts and analysis, the Commissioner concludes as follows:

1. SCIF failed to apply the correct rating plan modifier to the Policy during the 2015 Period and 2016 Period, in accordance with SCIF's filings with the Commissioner and applicable law. The rating plan modifier is incorrect for two reasons. First, SCIF included an unlawful and unenforceable rating tier modifier component during both the 2015 Period and 2016 Period. Second, SCIF failed to properly include a claims free modifier component for the 2016 Period.
2. SCIF correctly included a territory modifier component and direct placement modifier component in the rating plan modifier during both the 2015 Period and 2016 Period, in accordance with SCIF's rate filings.
3. The correct rating plan modifier for both the 2015 Period and 2016 Period comprises three components: a territory modifier of 1.15, a claims free modifier of 0.90, and a

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<sup>114</sup> Exh. 3 at 3-47 through 3-50.

<sup>115</sup> See, e.g., Exh. 102 at 102-88.

<sup>116</sup> Using Appellant's payroll total and assuming relatively steady work periods, one would expect the payroll for the full year to be approximately as follows:  $\$180,890.44 \div [(365 \text{ days} - 11 \text{ days}) \div 365 \text{ days}] = \$186,511.33$ . That figure is much closer to the audit total, suggesting SCIF's payroll calculation is more accurate than Appellant's.

direct placement modifier of 0.97. Accordingly, SCIF must apply the following rating plan modifier to each of those periods:  $1.15 \times 0.90 \times 0.97 = 1.00395$ .

4. SCIF used the correct premium discounts to the Policy for the 2015 Period, the 2016 Period, and the 2017 Period, in accordance with SCIF's filings with the Commissioner and applicable law. SCIF applied premium discount modifiers to each of those policy periods at the rate of 11.3 percent on all modified premium over \$5,000, which was consistent with SCIF's rate filings with the Commissioner under Insurance Code section 11735, subdivision (a). However, SCIF must recalculate the premium discount modifier to reflect the correct rating plan modifier's effect on modified premium.

5. Appellant failed to meet its burden of proof to establish SCIF miscalculated Appellant's payroll for the purposes of determining premium for the 2015 Period.

#### ORDER

1. SCIF shall recalculate Appellant's premium for the 2015 Policy Period and 2016 Policy Period in accordance with this decision and submit a revised premium calculation and statement of account for those periods to Appellant within 30 days after the date this decision is adopted.

2. It is further ordered that the entirety of this Decision is designated precedential pursuant to Government Code section 11425.60, subdivision (b).

Dated: November 16, 2018

  
DAVE JONES  
Insurance Commissioner

# **EXHIBIT B**

# WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE POLICY

## INTRODUCTION

In return for the payment of the premium and subject to all terms and conditions of this policy, we (the State Compensation Insurance Fund) agree with you (the employer named in the Declarations) as follows:

## GENERAL SECTION

### A. The Policy

This policy includes the Declarations and all endorsements and schedules issued by us to be part of this policy and constitutes the entire contract of insurance. It is a contract of insurance between you and us. It is non-transferable. The only agreements relating to this insurance are stated in this policy.

The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy. You are responsible for telling us at once when the information contained in this policy is no longer accurate for your operations.

No condition, provision, agreement or understanding not stated in this policy contract will affect any rights, duties or privileges in connection with this policy contract.

### B. Who Is Insured

You are insured for your liability to your employees if you are the employer named in the Declarations, subject to the provisions of this policy.

If the employer is a partnership, and if you are one of its named partners, you are insured but only in your capacity as an employer of the partnership's employees.

This policy does not insure the liability of any employer other than the employer named in the Declarations.

### C. Workers' Compensation Law

Workers' compensation law means the Workers' Compensation Laws of the State of California. It includes any amendments to that law which are in effect during the policy period. It does not include the provisions of any law that provide non-occupational disability benefits. It does not include the provision of any federal law.

### D. Locations

This policy covers all of your California workplaces listed in the Declarations; and it covers all of your other California workplaces unless you have other insurance or are self-insured for such California workplaces.

### E. Who Is Eligible To Receive Workers' Compensation Benefits

Your employees (or in the event of their death, their dependents) are eligible for benefits under this policy, except that:

1. Employees who are covered for California workers' compensation benefits on a policy also affording comprehensive personal liability (CPL) insurance issued to you are not eligible for benefits under this policy.
2. Employees who are excluded under workers' compensation law are not eligible for benefits under this policy, unless they have been included in the Declarations or by endorsement.

If you are named in the Declarations as an Individual Employer or a Husband and Wife Employer, either as individuals or a co-partnership, you are not eligible for benefits under this policy.

## PART ONE: WORKERS' COMPENSATION INSURANCE

### A. How This Insurance Applies

This workers' compensation insurance applies to bodily injury by accident or bodily injury by disease, including resulting death, subject to the following conditions:

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. Your employee's exposure to those conditions causing or aggravating such bodily injury by disease must occur during the policy period.

### B. We Will Pay

We will pay promptly when due to those eligible under this policy the benefits required of you by the workers' compensation law.

### C. We Will Defend

We have the right and duty to defend at our expense any claim or proceeding instituted against you before the Workers' Compensation Appeals Board for benefits payable by this workers' compensation insurance. We have the right to investigate and settle these claims or proceedings.

We have no duty to defend any claim, proceeding or suit that is not covered by this workers' compensation insurance.

We have no duty to defend any claim against you for the discharge, coercion, or discrimination against any employee in violation of the law.

We may, at your request, defend you using our legal staff against a claim of serious and willful misconduct or for sanctions instituted before the Workers' Compensation Appeals Board.

### D. We Will Also Pay

We will also pay the costs enumerated below, in addition to other amounts payable under this workers' compensation insurance, as part of any claim or proceeding we defend before the Workers' Compensation Appeals Board:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to twice the amount payable under this workers' compensation insurance;
3. litigation costs for which we are responsible;
4. interest on an award as required by law; and
5. expenses we incur.

### E. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other insurance or self-insurance. All shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

### F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers' compensation law including, but not limited to, those required because:

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation;
4. you discharge, coerce or discriminate against any employee in violation of the law;
5. of injury to an employee under the minimum age specified in the workers' compensation law and illegally employed at the time of injury;

6. of an increase in indemnity payments due to your failure to provide us with timely and proper notice required by law. We may seek reimbursement for any of these amounts paid on your behalf; or
7. of sanctions imposed on you by the Workers' Compensation Appeals Board.

### G. Recovery From Others

We may enforce your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

### H. Statutory Provisions

These statements apply where they are required by law:

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance for an injury occurring while this policy is in force.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance, subject to the provisions, conditions and limitations of this policy.
4. Jurisdiction over you is jurisdiction over us for purposes of the workers' compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. Terms of this insurance that conflict with the workers' compensation insurance law in effect during the policy period are changed by this statement to conform to that law.
6. Your employee has a first lien upon any amount which becomes owing to you by us on account of this policy, and in the case of your legal incapacity or inability to receive the money and pay it to the claimant, we will pay it directly to the claimant.

Nothing in these paragraphs relieves you of your duties under this policy.

## PART TWO: EMPLOYER'S LIABILITY INSURANCE

### A. How This Insurance Applies

This employer's liability insurance applies to bodily injury by accident or bodily injury by disease of an employee. Bodily injury means physical or mental injury, including resulting death. Bodily injury does not include emotional distress, anxiety, discomfort, inconvenience, depression, dissatisfaction or shock to the nervous system, unless caused by either a manifest physical injury or a disease with a physical dysfunction or condition resulting in treatment by a licensed physician or surgeon. Accident is defined as an event that is neither expected nor intended from the

standpoint of the insured.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in California.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the suit and any related legal actions for damages for bodily injury by accident or by disease must be brought under the laws of the State of California.

## B. We Will Pay

We will pay all sums you legally must pay as damages because of bodily injury to your employees eligible for benefits under this policy, provided the bodily injury is covered by this employer's liability insurance.

The damages we will pay, where recovery is permitted by California law, include damages:

1. for which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee;
2. for care and loss of services; and
3. for the consequential bodily injury that is covered by this employer's liability insurance to a spouse, child, parent, brother or sister of the injured employee; provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and
4. because of bodily injury to your employee that arises out of and in the course of employment claimed against you in a capacity other than as employer.

## C. Exclusions

This insurance does not cover:

1. liability assumed under a contract;
2. punitive or exemplary damages where insurance for such liability is prohibited by law or contrary to public policy;
3. damages or bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. any obligation imposed by a workers' compensation, occupational disease, unemployment compensation or disability benefits law, the provisions of any federal law unless endorsed on this policy or any similar law;
5. damages or bodily injury intentionally caused or aggravated by you;

6. damages or bodily injury arising out of termination of employment;
7. damages or bodily injury arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment or humiliation of, or discrimination against any employee, or from any personnel practices, policies, acts or omissions; or
8. fines or penalties imposed for violation of any law.

## D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this employer's liability insurance. We have the right to investigate and settle these claims, proceedings and suits. We may use counsel of our choice.

We have no duty to defend a claim, proceeding or suit that is not covered by this employer's liability insurance. We have no duty to defend or continue defending after we have paid our limit of liability under this employer's liability insurance.

## E. We Will Also Pay

We will also pay the costs enumerated below, in addition to other amounts payable under this employer's liability insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to twice the limit of our liability under this employer's liability insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law, and
5. expenses we incur.

## F. Other Insurance

We will not pay more than our share of damages and costs covered by this employer's liability insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

## G. Limit Of Liability

Our liability to pay for damages, including defense costs, is limited. Our limit of liability, including defense costs, is shown in the Declarations. It is the most we will pay for all damages covered by this employer's liability insurance because of bodily injury to one or more employees in any one accident or occurrence, or series of accidents or occurrences, arising out of any one event.

We will not pay any claims for damages after we have paid the limit of our liability, including defense costs, under this insurance as explained above.



## H. Recovery From Others

We may enforce your rights to recover our payment from anyone liable for an injury covered by this employer's liability insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

## I. Actions Against Us

There will be no right of action against us under this employer's liability insurance unless:

1. you have complied with all the terms of this policy; and
2. the amount you owe has been determined with our consent or by actual trial and final judgment.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability.

### PART THREE: COVERAGE OUTSIDE OF CALIFORNIA

This coverage is identical to Part One of this policy. It applies to your employees who are hired in California and who are eligible for benefits under this policy while they are temporarily working anywhere outside of California on a specific assignment.

### PART FOUR: YOUR DUTIES IF INJURY OCCURS

Tell us at once if an injury occurs that may be covered by this policy. Your other duties are listed here:

1. Provide for immediate medical treatment and other services required by the workers' compensation law.
2. Give us or our representative the names and addresses of the injured persons and of witnesses, and other information we may need as required by California Workers' Compensation Law.
3. Promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.
4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

### PART FIVE: PREMIUM

#### A. Manuals

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this workers' compensation insurance.

#### B. Classifications

The Declarations show the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy. You are responsible for telling us at once of any change in classification.

#### C. Premium Calculation

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

1. all your employees eligible for benefits under this policy while engaged in work covered by this policy; and
2. all other persons engaged in work that could make us liable under Part One of this policy. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph will not apply if you give us proof that the employers of these persons lawfully secured their workers' compensation obligations.

#### D. Premium Payments

You will pay all premium when due.

#### E. Final Premium

The premium shown on the Declarations, schedules and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual premium basis and the proper classifications, rates and rating plans that lawfully apply to the business and work covered by this policy. If you do not provide us with the information necessary to determine the actual premium basis, the estimated premium will be used. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the minimum premium for this policy.

If this policy is cancelled, final premium will be determined in the following way unless our manuals provide otherwise:

1. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the minimum premium if we cancel because you fail to comply with the terms and conditions of this policy in regard to payroll records or premium payments.

2. If you cancel, final premium will be more than pro rata: it will be based on the time this policy was in force, and increased by any short rate cancellation table and procedure in our manuals.

#### F. Records

You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.

#### G. Audit

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. The rating organization designated by the Insurance Commissioner has the same rights we have under this provision.

#### H. Rate Changes

Premium may be subject to midterm adjustment, for the unexpired term of the policy, pursuant to the Insurance Commissioner's power to disapprove rates.

### PART SIX: CONDITIONS

#### A. Inspection

We have the right, but are not obliged, to inspect your workplaces at any reasonable time. Our inspections relate to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. The rating organization designated by the Insurance Commissioner has the same rights we have under this provision.

#### B. Long Term Policy

If this policy is written for a period longer than one year, all the provisions of this policy shall apply separately to each consecutive twelve month period. If the first or last consecutive period is less than twelve months, the provisions of this policy shall apply as if a separate policy had been written for each consecutive period. Until your policy terminates, your deposit premium will be transferred to each consecutive policy period to act as a deposit as if a separate policy had been written.

#### C. Transfer Of Your Rights And Duties

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

#### D. Cancellation

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect. If certificates of insurance issued by us are in effect, your advance notice to us must be no less than the maximum number of days notice we have agreed to give any one certificate holder when the policy is cancelled.

2. We may cancel this policy for one or more of the following reasons:

- a. non-payment of premium;
- b. failure to report payroll;
- c. failure to permit us to audit payroll as required by the terms of this policy or of a previous policy issued by us;
- d. failure to pay any additional premium resulting from an audit of payroll required by the terms of this policy or any previous policy issued by us;
- e. material misrepresentation made by you or your agent;
- f. failure to cooperate with us in the investigation of a claim;
- g. failure to comply with federal or state safety orders;
- h. failure to comply with written recommendations of our designated loss control representatives;
- i. the occurrence of a material change in the ownership of your business;
- j. the occurrence of any change in your business or operations that materially increases the hazard for frequency or severity of loss;
- k. the occurrence of any change in your business or operations that requires additional or different classification for premium calculation;
- l. the occurrence of any change in your business or operations which contemplates an activity excluded by our reinsurance treaties.

3. If we cancel your policy for any of the reasons listed in Items (a) through (f), we will give you 10 days advance written notice, stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in the Declarations will be sufficient to prove notice.

4. If we cancel your policy for any of the reasons listed in Items (g) through (l), we will give you 30 days advance written notice. Mailing that notice to you at your mailing address shown in the Declarations will

be sufficient to prove notice. In the event of cancellation and reissuance of a policy effective upon a material change in ownership or operations, the notice will not be provided.

5. The policy period will end on the day and hour stated in the cancellation notice.
6. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with that law.

#### E. Our Notice To You

Mailing documents to you that relate to this policy at the mailing address shown in the Declarations will be sufficient to prove notice.

#### F. Participating Provision-Dividends

You will be entitled to participate in any dividend plan applicable to this policy which may be approved for distribution by our Board of Directors, with the following exceptions:

You will not be allowed to participate if:

1. you fail to pay any part of the premium for this policy after we request payment in writing, or allow it to remain unpaid for 90 days after we mail a statement of premium to you at the mailing address shown in the Declarations;
2. you do not keep adequate records of information needed to compute premium, or do not provide them to us when we ask for them; or
3. we must bring suit against you to obtain the records necessary for us to compute premium or to enforce the collection of all or any part of the premium for this policy.

Your participation will be according to the rules adopted by our Board of Directors.

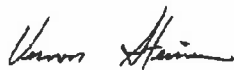
Under California law it is unlawful for an insurer to promise the future payment of dividends under an unexpired workers' compensation policy or to misrepresent the conditions for dividend payment. Dividends are payable only pursuant to conditions determined by our Board of Directors or other governing board following policy expiration.

To be valid this policy must be signed by our President or Executive Vice President and countersigned by our authorized representative.

Countersigned and Issued at San Francisco, California.



Kenneth R. Van Laar  
Authorized Representative



Vernon Steiner  
President & CEO



eFORM L (Rev. 12/14)

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# **EXHIBIT 3**

**CLASS, COMPLEX, OR REPRESENTATIVE ACTIONS**

**DREW E. POMERANCE**

*R&M Food Services, Inc., et al. v. Fremont Compensation Insurance Company, et al.*

Los Angeles County Superior Court Case No. BC 155301

*Coles Carpet, et al. v. Superior National Insurance Group, et al.*

Los Angeles County Superior Court Case No. BC 159813

*Notrica 's 32nd Street Market v. California Compensation Insurance Company*

Los Angeles County Superior Court Case No. BC 157151

*Arrow Air Conditioning Co. v. Golden Eagle Insurance Company*

Riverside County Superior Court Case No. 284825

*Faris Brothers of California v. Liberty Mutual Insurance Company*

Los Angeles County Superior Court Case No. BC 217855

*Hersch & ZiffInc. v. Nationwide Mutual Insurance Company*

Los Angeles County Superior Court Case No. BC 157667

*California Sample Services, Inc. v. Pacific Rim Assurance Company*

Los Angeles County Superior Court Case No. BC 153695

*Drasin Knitting Mills, et al v. Zenith Insurance Company*

Los Angeles County Superior Court Case No. BC 163825

*Apple One Services, Ltd. v. American Home Assurance Company, et al.*

Los Angeles County Superior Court Case No. BC 155301

*9008 Group, Inc., et al. v. TIG Insurance Company, et al.*

Los Angeles County Superior Court Case No. BC 157795

*LA. Airline, Inc. v. Republic Indemnity Company of California, et. al.*

Los Angeles County Superior Court Case No. BC 156891

*Shaefer Ambulance Service v. State Compensation Insurance Fund*

Orange County Superior Court Case No. 725063

*Graciale Virgin, et. al. v. Allstate Insurance Co.*

Los Angeles County Superior Court Case No. BC 212492

*A&J Liquor, et. al. v. State Compensation Insurance Fund*

San Francisco County Superior Court Case No. 975982

*David Braverman v. Citicorp Development Center, Inc. et al.*

Los Angeles County Superior Court Case No. BC 277920

*Heidi Bosch v. Warner Bros., et al.*

Los Angeles County Superior Court Case No. BC 299392

*Karis House, Inc. v. Bank of America Corp.*

Los Angeles County Superior Court Case No. BC 314138

*Chaffee Enterprises, Inc. v. Wells Fargo Bank, LTD*

Los Angeles County Superior Court Case No. BC 314198

*Jerome D. Pomerance v. American Express Bank, et al.*

Los Angeles County Superior Court Case No. BC 318328

*Jennifer Augustus v. American Commercial Security Services, Inc., et al.*

Los Angeles County Superior Court Case No. BC 336416

*Jennifer Augustus and Eleazar Hernandez v. American Commercial Security Services, Inc., et al.*

Los Angeles County Superior Court Case No. BC 347914

*Sam Donabedian v. Mercury Insurance Company, et al.*

Los Angeles County Superior Court Case No. BC 249019

*Milgram v. Chase, United States District Court*

United States District Court, Central District of California, Case No. CV10-00336 GW

*MacKay v. 21st Century Insurance Co.*

Los Angeles County Superior Court Case No. BC 297438

*Davis v. Chase Bank U.S.A., N.A.*

United States District Court, Central District of California, Case No. CV 06-4804 DDP

*PMD Industries, Inc. dba E.I.E. Electric v. State Compensation Insurance Fund*

Orange County Superior Court Case No. 30-2008-00091991

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA )

3 ) ss.

4 COUNTY OF LOS ANGELES )

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18  
6 and not a party to the within action; my business address is 5900 Canoga Avenue, Suite 450,  
7 Woodland Hills, California 91367.

8 On the date below, I served the foregoing documents on the interested parties:

9 **DECLARATION OF DREW POMERANCE IN SUPPORT OF**  
10 **PLAINTIFFS’ MOTIONS FOR ORDER GRANTING FINAL APPROVAL OF**  
11 **CLASS ACTION SETTLEMENT AND FOR AN AWARD OF**  
12 **ATTORNEYS’ FEES AND COSTS, AND PLAINTIFFS’ SERVICE PAYMENTS**

13 Pursuant to the Order Authorizing Electronic Service, entered in this matter on May 23,  
14 2019, I caused service of the foregoing document(s) on the interested parties as listed on the  
15 Service List posted on [www.caseanywhere.com](http://www.caseanywhere.com) for this matter by submitting an electronic  
16 version of the document(s) via file transfer protocol (FTP) to Case Anywhere through the upload  
17 feature at [www.caseanywhere.com](http://www.caseanywhere.com).

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

20 Executed on January 30, 2023

21  
22 /s/Elia Ramirez  
23 Elia Ramirez  
24  
25  
26  
27  
28

1 Drew E. Pomerance, Esq. (SBN 101239)  
2 David R. Ginsburg, Esq. (SBN 210900)  
3 ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP  
4 5900 Canoga Avenue, Suite 450  
5 Woodland Hills, California 91367  
6 Telephone: (818) 992-9999  
7 Facsimile: (818) 992-9991  
8 Email: dep@rpnalaw.com; drg@rpnalaw.com  
9 Attorneys for Plaintiff Michael Reynolds Enterprise, Inc. dba Reynolds Termite Control

10 [Additional Counsel Listed on Signature Page]

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE**

13 MICHAEL REYNOLDS ENTERPRISE,  
14 INC. DBA REYNOLDS TERMITE  
15 CONTROL, individually and on behalf of  
16 all others similarly situated,

17 Plaintiff,

18 vs.

19 STATE COMPENSATION INSURANCE  
20 FUND, a public enterprise fund; and  
21 DOES 1 through 50, inclusive,

22 Defendants.

Case No. 19STCV05738  
Honorable Lawrence P. Riff, Department 7

**DECLARATION OF MICHAEL LISKOW  
IN SUPPORT OF PLAINTIFFS' MOTIONS  
FOR ORDER GRANTING FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT AND FOR AN AWARD OF  
ATTORNEYS' FEES AND COSTS, AND  
PLAINTIFFS' SERVICE PAYMENTS**

Hearing Date: March 29, 2023  
Time: 10:00 a.m.  
Dept. 7

Complaint Filed: February 21, 2019

23 And Related Case:

24 AMERICAN JETTER & PLUMBING,  
25 INC. and RESILIENCE TREATMENT  
26 CENTER, on behalf of themselves and  
27 all others similarly situated,

28 Plaintiffs,

29 vs.

30 STATE COMPENSATION INSURANCE  
31 FUND, a public enterprise fund; and  
DOES 1 through 50, inclusive,

Defendants.

Case No. 19STCV36307  
Honorable Lawrence P. Riff

Amended Complaint Filed: August 10, 2020



1 I, Michael Liskow, declare as follows:

2 1. I am a partner with Calcaterra Pollack LLP (“Calcaterra Pollack”) one of the  
3 firms representing plaintiffs American Jetter & Plumbing, Inc. (“Jetter”) and Resilience  
4 Treatment Center (“Resilience” and, collectively with Jetter, the “Jetter Plaintiffs”), two of the  
5 three Named Plaintiffs<sup>1</sup> in these Actions. I am an attorney duly licensed to practice before all the  
6 courts of the State of California.

7  
8 2. I submit this declaration in support of Plaintiffs’ Motions for an Order Granting  
9 Final Approval of the Class Action Settlement (“Motion for Final Approval”) and Motion for an  
10 Award of Attorneys’ Fees and Costs, and Named Plaintiffs’ Service Payments (“Fee Motion”). I  
11 have personal knowledge of the facts stated below and, if called upon, I could and would  
12 competently testify thereto.

13 3. Attached hereto as **Exhibit 1** is a true and correct copy of the Class Action  
14 Complaint for Damages and Injunctive Relief filed October 10, 2019 in *American Jetter &*  
15 *Plumbing, Inc. v. State Compensation Insurance Fund*, Case No. 19STCV36307 (“Jetter  
16 Complaint”).

17  
18 4. Attached hereto as **Exhibit 2** is a true and correct copy of the Amended Class  
19 Action Complaint for Damages and Injunctive Relief filed August 10, 2020 in *American Jetter &*  
20 *Plumbing, Inc. v. State Compensation Insurance Fund*, Case No. 19STCV36307 (“Amended  
21 Jetter Complaint”).

22 5. Attached hereto as **Exhibit 3** is a true and correct copy of the Second Amended  
23 Class Action Complaint for Damages and Injunctive Relief filed June 10, 2022 in *American*  
24 *Jetter & Plumbing, Inc. v. State Compensation Insurance Fund*, Case No. 19STCV36307  
25 (“Second Amended Jetter Complaint”).  
26

27  
28 \_\_\_\_\_  
29 <sup>1</sup> All capitalized terms used and not otherwise defined herein have the definitions set forth in the  
30 Amended Class Action Settlement and Release (“Settlement Agreement”), a true and correct copy  
31 of which is attached as **Exhibit 1** to the concurrently-filed Declaration of Drew Pomerance in  
Support of Plaintiffs’ Motions for Order Granting Final Approval of Class Action Settlement and  
for an Award Of Attorneys’ Fees and Costs, and Plaintiffs’ Service Payments.



1           11.     Following the Court’s overruling of State Fund’s demurrer, Jetter propounded,  
2 and received responses to, 26 Requests for Admission, 19 Requests for Production and four  
3 Interrogatories. Jetter further engaged in extensive discussions with State Fund regarding the  
4 discovery requests, culminating in the Parties submitting a joint Informal Discovery Conference  
5 Statement on March 30, 2021.

6           12.     On February 1, 2021, Reynolds moved for reconsideration of the Court’s order  
7 sustaining the demurrer in the *Reynolds* action (“Reynolds Motion for Reconsideration”). On  
8 April 1, 2021, the Court denied the Reynolds Motion for Reconsideration and granted the State  
9 Fund Motion for Reconsideration, and stayed the *Jetter* class action pending a decision by the  
10 Insurance Commissioner in the *Reynolds* administrative appeal or in a separate administrative  
11 appeal, whichever was issued first.

12  
13           **III.     Investigation and Discovery**

14           13.     Before and during the course of these civil and administrative proceedings, Jetter  
15 Plaintiffs and their counsel conducted thorough investigations of the tier modifiers and the  
16 manner in which they were calculated by State Fund, including reviews of all relevant State Fund  
17 rate filings with the California Department of Insurance (“CDI”). Jetter Counsel also conducted  
18 detailed investigations into the size of the class, its composition, and the amount of potential  
19 damages. Jetter Counsel have reviewed thousands of pages of documents, transcripts, pleadings,  
20 and correspondence, including communications between CDI personnel and State Fund  
21 regarding State Fund’s tier modifiers and rate filings.

22  
23           14.     Named Plaintiffs’ Counsel extensively negotiated with State Fund regarding the  
24 scope of confirmatory discovery, ultimately resulting in the production to Named Plaintiffs of  
25 significant information about the Settlement Class.

26  
27           **IV.     Mediations**

28           15.     The Parties began negotiating a potential class wide settlement of the Actions in  
29 November 2020. The Parties participated in three spirited mediation sessions of arm’s-length  
30 and informed negotiations over the course of eight months with experienced mediator Bruce  
31

1 Friedman. The mediations occurred in January, March, and August 2021, and were attended by  
2 all Parties, as well as by a representative from the CDI. The third mediation on August 5, 2021  
3 resulted in a mediator’s proposal, which all Parties accepted after considering it for several days.

4 **V. Preliminary Approval of Settlement**

5 16. In response to the Court’s August 29, 2022 order denying preliminary approval of  
6 the initial settlement agreement, Named Plaintiffs engaged in significant negotiations with State  
7 Fund in order to reach agreement on the modifications to the Settlement requested by the Court,  
8 with Named Plaintiffs submitting the amended Settlement Agreement and supplementary  
9 briefing to the Court on October 26, 2022.

10 17. After the Court preliminarily approved the Settlement, Plaintiffs’ Counsel worked  
11 closely with the Claims Administrator to supervise the implementation of the Notice Program.  
12 These efforts included reviewing and editing the language and format of the Settlement Website  
13 and the notice materials sent to the Settlement Class. Plaintiffs’ Counsel also worked with the  
14 Claims Administrator to ensure prompt responses to each Class Member inquiry regarding the  
15 Settlement.

16 **VI. Strength of Jetter Plaintiffs’ Claims Balanced Against the Value of the Settlement**  
17 **Weighs in Favor of Approval**

18 18. The strength of Jetter Plaintiffs’ claims, when considered alongside State Fund’s  
19 defenses and the risks if the Parties were to attempt to litigate through a final class wide  
20 judgment and appeal, and when balanced against the value of the proposed Settlement, weighs  
21 heavily in favor of a finding that the Settlement is fair, adequate, and reasonable.

22 19. I believe that the estimated average payment of \$503 to each of the Settlement  
23 Class Members, plus the valuable injunctive relief secured by Named Plaintiffs, is an excellent  
24 result for the Settlement Class, particularly because each Participating Settlement Class Member  
25 will be able to receive a substantial cash payment without having to submit a claim.  
26  
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31

1           **VII. The Investigation, Experience and Views of Counsel**

2           20. The Parties engaged in extensive investigation, and had sufficient information and  
3 knowledge about the strengths and weaknesses of each other's cases, in order to negotiate a fair  
4 settlement. The Settlement is the result of spirited arm's-length bargaining. At all times, the  
5 Parties and their counsel have negotiated vigorously with each other for nearly 18 months on  
6 nearly every significant issue in the Settlement.  
7

8           21. Jetter Plaintiffs only agreed to the Settlement after extensive investigation by their  
9 counsel, who reviewed thousands of pages of relevant documents, including State Fund's rate  
10 filings, the administrative record in the *A-Brite* administrative proceedings, and transcripts of  
11 hearings and depositions from related cases and administrative proceedings. Jetter Counsel  
12 studied numerous email communications between the CDI and State Fund. Jetter Counsel also  
13 sought and obtained written class discovery from State Fund. As a result of this extensive  
14 review, Jetter Plaintiffs and their counsel were able to make a reasoned decision that this  
15 Settlement is an excellent result and is in the best interests of the Settlement Class.  
16

17           **VIII. Service Payments to Jetter Plaintiffs**

18           22. The maximum service payments Jetter Plaintiffs are permitted to seek under the  
19 Settlement Agreement, \$25,000 each, are reasonable amounts considering their service in  
20 bringing and prosecuting the actions and the risks they have taken by agreeing to be class  
21 representatives. Specifically, Jetter Plaintiffs faced unique risks inherent to these cases in that  
22 they are California businesses spearheading a class action against one of California's largest and  
23 oldest insurers for legally-mandated workers' compensation insurance. This means that even if  
24 Jetter Plaintiffs were not inclined to obtain insurance from State Fund in the future, if they were  
25 declined by other carriers they may have no choice but to insure with State Fund as they are  
26 required by law to maintain available workers compensation insurance. The fact that Jetter  
27 Plaintiffs were willing to commence this litigation against the company that could be their sole  
28 source for legally-required insurance demonstrates that Jetter Plaintiffs knowingly took on  
29  
30  
31

1 significant risks on behalf of the Settlement Class, above and beyond the typical case, justifying  
2 their requested Service Payments.

3 **IX. Jetter Plaintiffs and Settlement Class Counsel Fairly and Adequately Represented**  
4 **the Class**

5 23. Jetter Plaintiffs are adequate class representatives because they raised claims  
6 reasonably expected to be raised by members of the Settlement Class. They do not have any  
7 conflicts of interest with the Settlement Class, each cooperated with Jetter Counsel in making  
8 themselves available to prosecute the class actions, and each was prepared to testify if needed.

9 24. As described in Calcaterra Pollack's Firm Resume, *see* Ex. 4, I and the other  
10 attorneys of Calcaterra Pollack have extensive experience litigating complex class actions on  
11 behalf of plaintiffs. I have devoted almost my entire career to prosecuting complex class actions  
12 on behalf of plaintiffs in a variety of fields and courts, including consumer fraud, antitrust, data  
13 breach, insurance, securities, housing, and wage and hour matters. I also recently represented a  
14 plaintiff in securing a class wide settlement of Song-Beverly Act claims in the Superior Court of  
15 California, County of San Diego, against a furniture chain for the sale of defective products.

16 25. Other attorneys at Calcaterra Pollack have provided, and will continue to provide,  
17 their expertise in litigating class actions and in the insurance field. This includes Regina  
18 Calcaterra who, among other prior distinguished positions, formerly served as Deputy General  
19 Counsel to the New York State Insurance Fund, New York's analog to State Fund. *See* Ex. 4 at  
20 15. Janine Pollack, the current Co-President of the National Association of Shareholder &  
21 Consumer Attorneys, or NASCAT, has also participated in this litigation, offering her 30 years  
22 of experience prosecuting cases that have secured hundreds of millions of dollars for consumers  
23 and defrauded investors. *See id.* at 19-22.

24 26. Plaintiffs' Counsel seek a joint award of Attorneys' Fees and Costs based on their  
25 collective efforts in securing the Settlement of the Actions. Plaintiffs' Counsel have entered into  
26 an agreement among themselves as to the division of any Attorneys' Fees and Costs granted by  
27  
28  
29  
30  
31

1 the Court in the Actions (the “Fee Agreement”). Jetter Plaintiffs have each been informed of the  
2 Fee Agreement and have provided written approval to the Fee Agreement.

3 **X. The Attorneys’ Fees Requested are Fair and Reasonable**

4 27. As of the date of this declaration, Calcaterra Pollack has expended over 1,679.6  
5 hours prosecuting this litigation, and the total lodestar based on the firm’s current rates is  
6 \$1,348,552.50. Going forward, Calcaterra Pollack and the other Plaintiffs’ Counsel will have to  
7 expend considerable additional time, and incur additional costs, (a) preparing for and attending  
8 the Final Approval Hearing; (b) addressing any objections that may be raised to the Settlement;  
9 (c) communicating with Settlement Class Members to answer any questions they may have or  
10 address any issues with the claims process; and (d) if the Settlement is approved, continuing to  
11 work with the Claims Administrator to ensure that the Settlement is fully implemented. I  
12 estimate these tasks will require another 75-100 hours of attorney time from Calcaterra Pollack  
13 going forward.  
14

15 28. Listed below is the time expended by Calcaterra Pollack on these Actions, and  
16 consequent lodestar, as of the date of this declaration:  
17

<b>Timekeeper</b>	<b>Hours to Date</b>	<b>Rate Per Hour</b>	<b>Total Amount Billed</b>
Michael Liskow (Partner)	1,616.4	\$800.00	\$1,302,160.00
Janine Pollack (Partner)	51.4	\$900.00	\$46,260.00
Isidora Echeverria (Paralegal)	0.5	\$265.00	\$132.50
<b>TOTAL</b>	<b>1,679.6</b>		<b>\$1,348,552.50</b>

18 29. These records were prepared from contemporaneous, daily time records regularly  
19 prepared and maintained by Calcaterra Pollack in the usual course and manner of the firm.  
20 Calcaterra Pollack maintains detailed records regarding the amount of time spent by attorneys  
21 and paralegals at the firm, and the lodestar calculation is based on my firm’s current billing rates.  
22 These records are available for review at the request of the Court.  
23

24 30. I, Michael Liskow, a partner at the Firm with 17 years’ experience largely as a  
25 class action litigator, have a billing rate of \$800. Janine L. Pollack, a founding partner of the  
26  
27  
28

1 Firm with 34 years of experience as a trial lawyer and class action litigator, has a billing rate of  
2 \$900. Further information on each of these attorneys is available in the Firm Resume, attached  
3 as **Exhibit 4**.

4 31. These hourly rates are reasonable rates for the Los Angeles area. The 2022  
5 Major, Lindsey & Africa Partner Compensation Survey found the average Los Angeles partner  
6 billing rate in 2022 to be \$888. See **Exhibit 5** at 91.

7 32. I have general familiarity with the range of hourly rates typically charged by  
8 plaintiffs' class action counsel in the geographical area where my firm practices and throughout  
9 the United States, both on a current basis and historically. From that basis, I am able to conclude  
10 that the rates charged by my firm are commensurate with those prevailing in the market for such  
11 legal services furnished in complex class action litigation such as this. For example, my firm's  
12 hourly rates were recently approved by the court in *Tepper v. Santander Bank*, Case No. 7:20-cv-  
13 00501-KMK (S.D.N.Y.).

14 33. In my judgment, and based on my experience in complex class action litigation  
15 and other litigation, the number of hours expended, and the services performed by my firm, were  
16 reasonable and necessary for my firm's representation of Named Plaintiffs.

17 34. Calcaterra Pollack litigated these Actions on a contingent basis and relied on its  
18 resources to do so. The firm has not received any compensation during the course of this  
19 litigation and has invested \$1,348,552.50 in time, and incurred costs totaling \$16,430.97, in  
20 obtaining the Settlement for the benefit of Named Plaintiffs and the Settlement Class. This time  
21 could have been spent by Calcaterra Pollack litigating other cases with fewer obstacles, or that  
22 offered a guaranteed hourly rate of attorneys' fees.

23 35. Obtaining the Settlement in this litigation required substantial skill by Plaintiffs'  
24 Counsel, particularly in light of the significant obstacles Named Plaintiffs had to overcome as  
25 described in the Fee Motion. Due to the substantial hurdles that Plaintiffs' Counsel had to face,  
26 Plaintiffs' Counsel shouldered a real possibility of achieving no recovery. In taking this case on  
27  
28  
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31



1 a contingency basis, I knew that my firm was undertaking a significant risk that it would never  
2 be reimbursed for its time or costs.

3 36. Throughout the litigation, I and others at my firm made every effort to operate as  
4 efficiently as possible and to avoid unnecessary duplication.

5 **XI. Plaintiffs' Counsel's Request for Reimbursement of Costs is Reasonable**

6 37. Calcaterra Pollack requests reimbursement of out-of-pocket costs in the amount of  
7 \$16,430.97 incurred by the firm in connection with the prosecution of the Actions on behalf of  
8 the Settlement Class. That amount is within the range of reasonable expenses in a case of this  
9 magnitude and complexity.

10 38. Listed below are the costs reasonably and necessarily incurred by Calcaterra  
11 Pollack, broken down by category:

12

13 Category	14 Costs
15 Mediation Costs	\$10,903.34
16 Transcripts and Court Reporting	\$502.18
17 CaseAnywhere Costs	\$1,218.00
18 Travel Costs	\$785.85
19 Docket Review Costs	\$497.90
20 Pacer Costs	\$47.00
21 LEXIS Research	\$2,384.30
22 Printing	\$92.40
23 <b>Total</b>	<b>\$16,430.97</b>

24 I declare under penalty of perjury under the laws of the State of California that the  
25 foregoing is true and correct. Executed this 30th day of January, 2023, at West Orange, New  
26 Jersey.

27   
28 MICHAEL LISKOW

# **EXHIBIT 1**

**COPY**

By Fax

1 Michael Liskow (243899)  
2 liskowm@thesultzlawgroup.com  
3 **THE SULTZER LAW GROUP P.C.**  
4 270 Madison Avenue, Suite 1800  
New York, NY 10016  
Tel: (212) 969-7811  
Fax: (888) 749-7747

5 Scott M. Priz (*pro hac vice* forthcoming)  
6 priz@priz-law.com  
7 **PRIZ LAW, LLC**  
8 3230 S. Harlem Ave., Suite 221B  
9 Riverside, IL 60546  
10 Tel: (708) 268-5768

*Counsel for Plaintiff and the Class*

[Additional Counsel listed on Signature Page]

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF LOS ANGELES

13  
14 AMERICAN JETTER & PLUMBING, INC., on  
15 behalf of itself and all others similarly situated,

16 Plaintiff,

17 v.

18 STATE COMPENSATION INSURANCE FUND,  
19 a public enterprise fund, and DOES 1 through 50,  
20 inclusive,

21 Defendants.

Case No. **19STCV36307**

**CLASS ACTION COMPLAINT FOR  
DAMAGES & INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

**CONFORMED COPY  
ORIGINAL FILED**  
Superior Court of California  
County of Los Angeles

**OCT 10 2019**

Sherri R. Carter, Executive Officer/Clerk of Court  
By: Isaac Lovo, Deputy

1 **INTRODUCTION**

2 1. Plaintiff American Jetter & Plumbing, Inc. (“Plaintiff”) brings this class action on  
3 behalf of itself and all others similarly situated (the “Class”) against defendants State  
4 Compensation Insurance Fund (“State Fund”) and Does 1 through 50, inclusive (collectively  
5 “Defendants”).

6 2. This lawsuit seeks refunds of the unlawful workers’ compensation insurance  
7 premiums Defendants charged Plaintiff and the Class. As detailed further herein, Defendants have  
8 engaged in a scheme to charge inflated insurance premium rates by using improper “tier  
9 modifiers” and “rating plan modifiers” based on secret formulas as components of insureds’  
10 premiums despite the California Insurance Commissioner having deemed the tier modifiers, and  
11 rating plan modifiers including the tier modifiers, illegal and unenforceable. Upon information  
12 and belief, Defendants have charged these improper premiums to the Class since 2013 and  
13 continue to do so despite the Insurance Commissioner’s ruling.

14 3. Plaintiff seeks restitution and damages stemming from Defendants’ use of the  
15 improper tier modifiers in excess of 1.00. Plaintiff also seeks to enjoin Defendants from  
16 continuing to charge insurance premiums not permitted under the law.

17 **JURISDICTION AND VENUE**

18 4. This Court has personal jurisdiction over State Fund because it is doing business in  
19 the State of California within Los Angeles County.

20 5. Venue is proper in this Court pursuant to California Code of Civil Procedure  
21 section 395 because State Fund does substantial business in this County and has its principal  
22 offices in this County. Plaintiff is also a resident of this County and transacted business with State  
23 Fund while in this County.

24 **PARTIES**

25 6. Plaintiff American Jetter & Plumbing, Inc. is a corporation organized and existing  
26 under the laws of the State of California, and qualified to do business in the State of California.  
27 Plaintiff’s headquarters are located at 1515 Stevens Avenue, Unit B, San Gabriel, CA 91776

28 7. Defendant State Compensation Insurance Fund is a public enterprise fund

1 established by the California State legislature in 1914. State Fund provides worker's  
2 compensation insurance throughout California, including in Los Angeles County. State Fund  
3 often functions as an insurer of last resort.

4 8. State Fund is currently the second-largest provider of workers' compensation  
5 insurance to California businesses, with the California Department of Insurance's 2018 Market  
6 Share Report reporting State Fund as having approximately 10.9% of the market share and total  
7 premiums of nearly \$1.4 billion. State Fund reports on its website that it has approximately  
8 110,000 policyholders and nearly \$21 billion in assets. State Fund lists one of its "Values" as "**Do**  
9 **What's Right**. Approach every situation with a passion to help, a desire to learn and a  
10 commitment to integrity – because doing the right thing isn't always simple, easy, or clear."  
11 (Emphasis in original).

12 9. Plaintiff is not presently aware of the true names and capacities of the Defendants  
13 designated as Does 1 through 50, inclusive, and will hereafter seek leave of the Court to amend  
14 this complaint to allege the true names and capacities of each Defendant.

15 10. Upon information and belief, Defendants are each responsible in some manner for  
16 the transactions, events and occurrences alleged, and the damages alleged were proximately  
17 caused thereby.

18 11. Upon information and belief, Defendants were each the agents, joint venturers,  
19 trustees, servants, partners, alter-egos, parent corporations, subsidiaries, affiliates, contractors or  
20 employees of each of the remaining Defendants, and the acts or omissions alleged herein were  
21 done by them acting individually, through such capacity or through the scope of their authority,  
22 and said conduct was thereafter ratified by the remaining Defendants.

### 23 **SUBSTANTIVE ALLEGATIONS**

#### 24 **The A-Brite Decision**

25 12. On November 16, 2018, the California Insurance Commissioner issued a decision  
26 in *In the Matter of the Appeal of A-Brite Blind & Drapery Cleaning*, No. AHB-WCA-17-26 (Cal.  
27 Ins. Comm'r, November 16, 2018) ("*A-Brite*," attached as Exhibit A), concluding as a matter of  
28 law that State Fund used an unlawful and unenforceable tier modifier and rating plan modifier to

1 calculate an insured's premium for its policies effective December 2, 2015 to December 2, 2016,  
2 and December 2, 2016 to December 2, 2017.

3 13. The basis for the Insurance Commissioner's decision was that State Fund had  
4 improperly used a secret formula for calculating insureds' tier modifiers for which it had never  
5 received approval from the California Department of Insurance ("CDI") as required by law.

6 14. The tier modifier is one component of the formula Defendant uses to determine an  
7 insured's rating plan modifier, which in turn is a component of the formula to calculate an  
8 insured's premiums. When the tier modifier is in excess of 1.00, an insured's rating plan modifier  
9 and premium is set above the rate that would be charged absent the tier modifier. State Fund has  
10 been employing the secret formula since approximately 2013.

11 15. The Insurance Commissioner in *A-Bright* held that State Fund's use of the secret  
12 tier modifier and rating plan modifier formula was impermissible because, *inter alia*, State Fund  
13 never published the secret formula nor made the formula available to its insureds. State Fund also  
14 never included the secret formula in its rate filings, never submitted the formula for approval to  
15 CDI, and never had the secret formula approved by CDI. Because of this, insureds like Plaintiff  
16 and the Class Members could not anticipate in advance what their insurance premiums might be,  
17 and insureds who were assessed a tier modifier greater than 1.00 were charged premiums in excess  
18 of what was lawful.

19 16. The Insurance Commissioner in *A-Brite* ordered State Fund to recalculate A-Brite's  
20 premium by removing the tier modifier, which was over 1.00 and therefore created a premium  
21 charge. This removal of the tier modifier resulted in an \$8,805 reduction in premiums for A-Brite.

22 **Plaintiff's Facts**

23 17. Plaintiff is a construction company that does building maintenance, plumbing, and  
24 wallboard construction.

25 18. Plaintiff has purchased workers' compensation insurance from State Fund since  
26 January 13, 2017, including the policies effective for the period January 13, 2017 through January  
27 13, 2018 (the "2017 Policy"), and from January 13, 2018 through January 13, 2019 (the "2018  
28 Policy"), years during which State Fund has unlawfully set its rating plan modifier and rates using

1 the secret tier modifiers.<sup>1</sup>

2 19. Upon information and belief, Plaintiff received a “Tier C” modifier of 1.50 for its  
3 2017 Policy, and paid premiums to State Fund based in part on the tier modifier.

4 20. Upon information and belief, State Fund’s use of the Tier C modifier of 1.50  
5 increased Plaintiff’s premium for the 2017 Policy period by approximately \$60.

6 21. Upon information and belief, Plaintiff received a Tier C modifier of 1.50 for its  
7 2018 Policy, and paid premiums to Defendant based in part on the tier modifier.

8 22. Upon information and belief, State Fund’s use of the Tier C modifier increased  
9 Plaintiff’s premium for the 2018 Policy period by approximately \$8,749.00.

10 23. In total, Plaintiff has paid State Fund approximately \$8,809 in excess premiums  
11 due to State Fund’s unlawful charging of premiums based on Defendants’ use of tier modifiers in  
12 calculating Plaintiff’s rating plan modifiers and premiums.<sup>2</sup>

13 24. For both the 2017 and 2018 Policy periods, Plaintiff was not informed of its  
14 placement into the Tier C category.

15 25. Plaintiff made multiple attempts to confirm with Defendant, through Plaintiff’s  
16 counsel, both the basis for the calculation of the tier modifier used in calculating Plaintiff’s  
17 premiums, as well as simply which tier modifier has been assessed. Remarkably, State Fund  
18 consistently refused to answer either query.

19 26. Instead Plaintiff’s policies, and audit materials received regarding the policies,  
20 reflect a blended rating plan modifier that included the tier modifier as one of its factors.

21 27. For the 2017 Policy, Plaintiff received a rating plan modifier of 1.725, causing  
22 additional premium charges of approximately \$870, inclusive of the increased premium caused by  
23 the tier modifier.

24 28. For the 2018 Policy, Plaintiff received a rating plan modifier of 1.725, causing  
25 additional premium charges of approximately \$12,686, inclusive of the increased premium caused

26 \_\_\_\_\_  
27 <sup>1</sup> The 2017 Policy and 2018 Policy are attached as Exhibits B and C.

28 <sup>2</sup> Plaintiff currently lacks sufficient information to determine whether its policy commencing  
January 13, 2019 includes a tier modifier in excess of 1.00.

1 by the tier modifier.

2 29. Although Plaintiff cannot calculate or determine what other factors have been used  
3 to calculate the rating plan modifier, upon information and belief, Plaintiff believes that a  
4 territorial modifier and a scheduled rating modifier were included in the rating plan modifier.

5 30. It is impossible to calculate the rating plan modifier without knowledge of the  
6 unfiled algorithm that is used to calculate the tier modifier, thereby making the rating plan  
7 modifier, like the tier modifier, a separate improperly undisclosed component of insureds'  
8 premiums.

9 **CLASS ACTION ALLEGATIONS**

10 31. Plaintiff brings this action pursuant to Code of Civil Procedure section 382 as a  
11 class action individually on behalf of itself and on behalf of all others similarly situated. The  
12 Class is defined as follows:

13 All insureds of State Fund whose workers' compensation insurance premiums  
14 were calculated using a tier modifier in excess of 1.00. Excluded from the Class  
15 are Defendants, its affiliates, predecessors, successors, officers, directors, agents,  
servants and employees and the immediate families of such persons.

16 **Numerosity**

17 32. The members of the Class are too numerous for joinder to be practicable. Upon  
18 information and belief there are at least hundreds of State Fund insureds whose premiums were  
19 calculated using a tier modifier in excess of 1.00. The exact quantity and identities of the Class is  
20 known to Defendants through State Fund's own records.

21 **Commonality**

22 33. There is a well-defined community of interest in the relevant questions of law and  
23 fact among members of the Class. Common questions of law and fact predominate over any  
24 questions affecting individual Class members, including, but not limited to:

- 25 a. Whether State Fund included the tier modifiers in its filings with the CDI;  
26 b. Whether State Fund disclosed the basis for the tier modifiers to the Class;  
27 c. Whether State Fund violated California Insurance Code section 332 by  
28



1 failing to disclose the tier modifier algorithm;

2 d. Whether State Fund violated California Insurance Code section 11735 by  
3 failing to file and disclose the tier modifier formula;

4 e. Whether State Fund breached the contract for insurance with Plaintiff and  
5 the Class through its conduct;

6 f. Whether State Fund violated California Business & Professions Code  
7 section 17200 through its conduct;

8 g. Whether Defendants should be enjoined from continuing to use the tier  
9 modifiers in setting insurance premium rates; and

10 h. What the proper measure of damages is for each claim.

11 **Typicality**

12 34. Plaintiff has the same interests in this matter as all other members of the Class since  
13 it was charged the same unlawful rates by State Fund as the other members of the Class

14 35. If members of the Class brought individual cases, they would require proof of the  
15 same material and substantive facts and would seek the same relief.

16 36. The claims of Plaintiff and the Class members share a common nucleus of  
17 operative facts and originate from the same conduct by Defendants.

18 **Adequacy of Representation**

19 37. Plaintiff will diligently represent the interests of the Class. The interests of  
20 Plaintiff are sufficiently aligned with the interests of the other Class members such that it will  
21 have no conflicts with the interests of the Class and will be an adequate representative.

22 38. Counsel for Plaintiff is highly experienced in consumer class action litigation and  
23 will prosecute the action with skill and diligence.

24 **Superiority**

25 39. The prosecution of separate actions by individual members of the Class would  
26 create a risk of inconsistent or varying adjudications which would establish incompatible  
27 standards of conduct for the parties opposing the Class. Such incompatible standards of conduct  
28 and varying adjudications of the same essential facts, proof and legal theories would also create

1 and allow the existence of inconsistent and incompatible rights within the Class.

2 40. Moreover, a class action is superior to other methods for the fair and efficient  
3 adjudication of the controversies raised in this Complaint because:

4 a. Individual claims by the Class members could be impracticable as the costs  
5 of pursuit would far exceed what any one Class member has at stake;

6 b. Plaintiff is unaware of any significant number of other actions that have  
7 been commenced over the controversies alleged in this Complaint, and individual Class members  
8 are unlikely to have an interest in separately prosecuting and controlling individual actions;

9 c. The concentration of litigation of these claims in one forum will achieve  
10 efficiency and promote judicial economy; and

11 d. The proposed class action is manageable.

12 41. Defendants have acted and failed to act in a uniform manner on grounds generally  
13 applicable to Plaintiff and the other members of the Class so that final declaratory and injunctive  
14 relief as requested herein are appropriate with respect to the Class as a whole.

15 42. Therefore, class treatment of Plaintiff's claims is appropriate and necessary.

16 **COUNT I**

17 **BREACH OF CONTRACT**

18 **(On Behalf of Plaintiff and the Class)**

19 43. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-  
20 42 above as if fully set forth herein.

21 44. Plaintiff and the Class entered into contracts with State Fund to provide workers'  
22 compensation insurance to Plaintiff and the Class.

23 45. Upon information and belief, these standard form contracts provided in pertinent  
24 part that "[a]ll premium for this policy will be determined by our manuals of rules rates, rating  
25 plan and classifications. We may change our manual and apply the changes to this policy if  
26 authorized by law or a governmental agency regulating this workers' compensation insurance."  
27 The policy further provides that "[t]he final premium will be determined after this policy ends by  
28 using the actual premium basis and the proper classifications, rates and rating plan that lawfully

1 apply to the business and work covered by this policy.”

2 46. Defendants breached the agreements between State Fund and Plaintiff and the  
3 Class by charging insurance rates that were not calculated in a lawful manner. As determined by  
4 the Insurance Commissioner, Defendants’ usage of the unfiled secret tier modifier, and the rating  
5 plan modifier incorporating the secret tier modifier, in calculating its insureds’ premiums was  
6 unlawful. Accordingly, Defendants’ assessment of unlawful rates is a breach of the insurance  
7 agreements.

8 47. Plaintiff has performed all of the terms of its agreements with State Fund except for  
9 those for which performance has been excused by Defendants’ unlawful conduct.

10 48. As a proximate result of Defendants’ breach of the agreements, Plaintiff and the  
11 Class have suffered losses in an amount exceeding the jurisdictional minimum of this Court.

12 **COUNT II**

13 **CAL. BUS. & PROF. CODE § 17200, et seq.**  
14 **(On Behalf of Plaintiff and the Class)**

15 49. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-  
16 42 above as if fully set forth herein.

17 50. Plaintiff has standing to pursue this claim under California’s Unfair Competition  
18 Law (“UCL”) because it suffered an injury-in-fact and lost money as a result of Defendants’  
19 practices.

20 51. Plaintiff and each member of the Class purchased a workers’ compensation  
21 insurance policy from State Fund and was charged and paid a premium to State fund based in part  
22 on State Fund’s unlawful application of a tier modifier in excess of 1.00.

23 52. As determined by the Insurance Commissioner, State Fund’s application of a tier  
24 modifier in excess of 1.00, and a rating plan modifier incorporating the tier modifier, violated  
25 Insurance Code section 11735, which requires, among other things, that all insurers doing business  
26 in California file all rates and supplementary rate information before charging any such rates.  
27 Under section 11730 of the Insurance Code, supplementary rate information includes any  
28 “minimum premium, policy fee, rating rule, rating plan, and any other similar information needed

1 to determine the applicable premium for an insured.”

2 53. State Fund violated section 11735 of the Insurance Code by failing to file and  
3 disclose its tier modifier algorithm which would allow an insured to determine why it was placed  
4 in any tier, as well as determine how its rating plan modifier and consequent premium were  
5 derived and calculated.

6 54. State Fund’s failure to disclose its tier modifier algorithm also did not allow an  
7 insured to determine the basis of its rating plan modifier, and to determine how its premium was  
8 derived and calculated.

9 55. Section 332 of the Insurance Code requires that “[e]ach party to a contract of  
10 insurance shall communicate to the other, in good faith, all facts within his knowledge which are  
11 or which he believes to be material to the contract and as to which he makes no warranty, and  
12 which the other has not the means of ascertaining.” Concealment consists of any “[n]eglect to  
13 communicate that which a party knows, and ought to communicate.” Ins. Code § 330.

14 56. State Fund’s failure to disclose the tier modifier algorithm violated section 332 of  
15 the Insurance Code and resulted in unlawful and unfair business acts and practices in violation of  
16 Business & Professions Code section 17200, *et seq.*

17 57. Plaintiff and the Class suffered an injury-in-fact and lost money or property as a  
18 result of Defendants’ unlawful and unfair business acts and practices.

19 58. Plaintiff is also entitled to injunctive relief. Plaintiff and the Class continue to be  
20 charged unlawful premiums by State Fund. Accordingly, the Court should enjoin State Fund from  
21 continuing its unlawful conduct.

22 **PRAYER FOR RELIEF**

23 **WHEREFORE**, Plaintiff, on behalf of itself and all others similarly situated, prays for  
24 judgment as follows:

- 25 a. Declaring this action to be a proper class action and certifying Plaintiff as  
26 the representative of the Class;
- 27 b. Appointing Plaintiff’s attorneys as Class Counsel;
- 28 c. Awarding restitution and monetary damages as appropriate;

- 1 d. Awarding punitive and exemplary damages as appropriate;  
2 e. Ordering injunctive and declaratory relief as appropriate;  
3 f. Awarding pre-judgment and post-judgment interest as appropriate;  
4 g. Awarding reasonable attorneys' fees, costs and expenses incurred in this  
5 action; and  
6 h. Granting such other and further relief as the Court may deem just and  
7 proper.

8 **JURY DEMAND**

9 Plaintiff requests a trial by jury of all claims so triable.

10 Dated: October 9, 2019

Respectfully submitted,

11 By:   
12 \_\_\_\_\_

Michael Liskow

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*Counsel for Plaintiff and the Class*

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# **EXHIBIT A**

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Sacramento, CA 95814  
Tel. (916) 492-3500 Fax (916) 445-5280

FILED

DEC 04 2018

ADMINISTRATIVE HEARING BUREAU

**BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA**

In the Matter of the Appeal of )  
)  
**A-BRITE BLIND & DRAPERY CLEANING,** ) FILE AHB-WCA-17-26  
)  
Appellant, )  
)  
From the Decision of the )  
)  
**STATE COMPENSATION INSURANCE FUND,** )  
)  
)  
Respondent. )  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

A-Brite Blind & Drapery Cleaning (“Appellant”) brings this appeal against State Compensation Insurance Fund (“SCIF”) in connection with Appellant’s workers’ compensation policy (the “Policy”). The appeal concerns the annual policy periods beginning December 2, 2015 (the “2015 Period”), December 2, 2016 (the “2016 Period”), and December 2, 2017 (the “2017 Period”).

Appellant contends SCIF applied an incorrect rating plan modifier to the 2015 Period and 2016 Period, improperly calculated the premium discount modifier for all three periods, and miscalculated Appellant’s payroll for the 2015 Period. For the reasons discussed below, the

Commissioner finds SCIF misapplied the rating plan modifier but correctly calculated the premium discount modifier. The Commissioner also finds Appellant failed to prove SCIF miscalculated the 2015 Period payroll.

## **II. Issues Presented**

1. Did SCIF apply the correct rating plan modifier during the 2015 Period and 2016 Period, in accordance with SCIF's filings with the California Insurance Commissioner and applicable law?

2. Did SCIF apply the correct premium discount modifier to the Policy for the 2015 Period, the 2016 Period and the 2017 Period, in accordance with SCIF's filings with the Commissioner and applicable law?

3. Did SCIF miscalculate Appellant's payroll for the purposes of determining premium for the 2015 Period?

## **III. Procedural History**

This appeal arises under Insurance Code section 11737, subdivision (f). Appellant initiated the proceedings on August 29, 2017, by filing an appeal from SCIF's July 25, 2017 decision concerning the rating plan modifier and premium discount modifier. On October 6, 2017, Appellant supplemented its appeal by filing copies of its correspondence with SCIF. The California Department of Insurance Administrative Hearing Bureau issued an Appeal Inception Notice on October 10, 2017. SCIF filed its response on October 24, 2017. The Workers' Compensation Insurance Rating Bureau of California ("WCIRB") also filed a response on October 30, 2017, electing not to actively participate in the appeal.

Administrative Law Judge ("ALJ") Clarke de Maigret conducted an evidentiary hearing



in the California Department of Insurance's Los Angeles hearing room on January 16, 2018.<sup>1</sup> Kathleen Newman represented Appellant, and Stefan Janzen, Esq. represented SCIF at the hearing.

Kathleen Newman, one of Appellant's general partners, testified on Appellant's behalf. Keith Mills, an underwriting systems analyst at SCIF, and Marina Montoya, a senior payroll auditor at SCIF, both testified on SCIF's behalf.

The evidentiary record includes the foregoing testimony, SCIF's pre-filed Exhibits 201 through 218, and the ALJ's pre-filed Exhibits 1 and 2, all of which were admitted in evidence at the hearing. It also includes Exhibits 3, 101, 219, and 220, which were introduced and admitted at the hearing. Lastly, the evidentiary record includes Exhibit 102, which Appellant submitted on January 31, 2018 and the ALJ admitted on February 9, 2018. Upon order of the ALJ, certain personal information pertaining to Appellant's employees was redacted from Exhibits 3 and 102, and the unredacted pages were sealed in the administrative record.

At the ALJ's request, SCIF submitted a post-hearing brief on February 6, 2018. The ALJ closed the evidentiary record on February 9, 2018. On March 12, 2018, the ALJ reopened the record and ordered SCIF to provide additional post-hearing briefing and submit further evidence. SCIF filed the additional brief but refused to comply with the ALJ's order to submit the evidence.<sup>2</sup> The ALJ again closed the evidentiary record on March 23, 2018.

On June 15, 2018 a Proposed Decision was submitted to the Insurance Commissioner in this matter. On August 9, 2018, the Commissioner, pursuant to the provisions of 10 CCR

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<sup>1</sup> These proceedings were conducted in accordance with California Code of Regulations, title 10, sections 2509.40 through 2509.78, and the administrative adjudication provisions of the California Administrative Procedure Act referenced in section 2509.57 of those regulations.

<sup>2</sup> The evidence at issue was SCIF's tiering algorithm and related calculations. See the discussion in part V(B)(3) below.

2509.69, chose not to adopt the proposed decision as his decision, but to decide the case upon the record.

#### **IV. Factual Findings**

The Commissioner makes the following findings of fact, based on a preponderance of the evidence in the record.

##### **A. Appellant's Business**

A-Brite Blind and Drapery Cleaning ("A-Brite") is a general partnership, whose partners include Kathleen Newman and her husband, Randall Newman.<sup>3</sup> The Newmans are also the shareholders of a corporation named Firetect, Inc. ("Firetect").<sup>4</sup> Ms. Newman is Firetect's president.<sup>5</sup> The Newmans, as A-Brite's general partners, and Firetect are jointly insured as a single employer under the Policy.<sup>6</sup>

Appellant is in the business of cleaning residential and theatrical blinds and drapery, as well as treating drapery with fire retardant.<sup>7</sup> The business is headquartered in Valencia, Los Angeles County, California, and has been in operation for 30 years.<sup>8</sup>

##### **B. Appellant's Policy and Claims History**

SCIF has provided workers' compensation insurance to Appellant for about the last 20 years.<sup>9</sup> The Policy at issue in this case renewed on December 2, 2015, 2016 and 2017, the starting dates of the 2015 Period, 2016 Period, and 2017 Period, respectively.<sup>10</sup> For those

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<sup>3</sup> Transcript of Proceedings on January 16, 2018 ("Tr.") at 25:10-26:3.

<sup>4</sup> Tr. 26:18-25.

<sup>5</sup> Tr. 27:22-23.

<sup>6</sup> Evidentiary Hearing Exhibit ("Exh.") 208 at 208-1. Throughout this Proposed Decision, the term "Appellant" refers to A-Brite and Firetect jointly, except where otherwise required by the context.

<sup>7</sup> Tr. 26:4-17.

<sup>8</sup> Tr. 25:1-4.

<sup>9</sup> Tr. 38:11-14; Exh. 219.

<sup>10</sup> Tr. 10:3-18; Exh. 208 at 208-1; Exh. 218 at 218-1.

periods, Appellant dealt directly with SCIF and did not use an insurance broker.<sup>11</sup>

During the 20 years it has been insured by SCIF, Appellant received a single workers' compensation claim.<sup>12</sup> That claim resulted from a bruise sustained by one of Appellant's employees on September 10, 2015.<sup>13</sup> SCIF initially reserved \$24,000 to cover the estimated losses and expenses.<sup>14</sup> However, the claim closed on November 6, 2015 with substantially lower total combined losses and expenses of \$819, which SCIF paid.<sup>15</sup>

### **C. Determination of Premium under the Policy**

The Policy provides that Appellant's premiums are determined by SCIF's "manuals of rules, rates, rating plans and classifications."<sup>16</sup> SCIF's manuals and rating plans include several modifiers, which affected Appellant's premium.<sup>17</sup>

#### **1. Rating Plan Modifier**

SCIF determined the premiums for the 2015 Period and 2016 Period in part based on a "rating plan modifier."<sup>18</sup> SCIF applied the rating plan modifier to Appellant's "standard premium" to arrive at a "modified premium."<sup>19</sup> The rating plan modifier resulted from multiplying four components, namely, (a) a "territory modifier," based on geographical area, (b) a "claims free" modifier, for policyholders with claims below a certain level, (c) a "direct placement" modifier for policyholders who deal with SCIF directly rather than through a

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<sup>11</sup> Tr. 37:23-24, 38:5-7; Exh. 206; Exh. 215.

<sup>12</sup> Tr. 28:21-29:11; Exh. 3 at 3-3 through 3-6.

<sup>13</sup> Exh. 201 at 201-1.

<sup>14</sup> Exh. 1 at 1-40.

<sup>15</sup> Tr. 65:8-9; Exh. 201 at 201-1.

<sup>16</sup> Exh. 209 at 209-4 [Part Five, § A].

<sup>17</sup> Exh. 1; Exh. 2.

<sup>18</sup> Exh. 210 at 210-1; Exh. 218 at 218-2.

<sup>19</sup> Exh. 212 at 212-1. In Appellant's case, standard premium is equal to base premium, which is calculated by multiplying Appellant's workers' compensation payroll in each employment classification by SCIF's base rate for the respective classification. (*Ibid.*)

broker, and (d) a “tier modifier,” based on a rating tier assigned according to a “tier score” calculated using an algorithm.<sup>20</sup> These modifiers are typically expressed as numerical coefficients. For example, a modifier of 0.80 reduces premium by 20 percent, while a modifier of 1.20 increases it by 20 percent.

**a. Territory Modifier**

In the 2015 Period and 2016 Period, SCIF applied a territory modifier of 1.15 to the Policy<sup>21</sup>. SCIF’s rate filings with the Commissioner included a 1.15 territory modifier for Los Angeles County, effective April 1, 2015.<sup>22</sup>

**b. Claims Free Modifier**

During the 2015 Period, SCIF applied a 10 percent “claims free” credit to the Policy (*i.e.*, a modifier of 0.90).<sup>23</sup> For unclear reasons, SCIF did not apply the credit to the 2016 period.<sup>24</sup> Under SCIF’s rate filings effective during those periods, the credit was applicable to policyholders continuously insured with SCIF who incurred no more than \$1,000 in workers’ compensation claims during the three years preceding the policy period (or two years for policyholders with less than \$10,000 in annual base premium).<sup>25</sup>

**c. Direct Placement Modifier**

SCIF applied a three percent “direct placement” credit (0.97 modifier) to the Policy

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<sup>20</sup> Tr. 58:14-59:8. See also Tr. 15:3-17:18 regarding trade secret privilege claimed by SCIF in the algorithm.

<sup>21</sup> Exh. 206 at 206-3; Exh. 215 at 215-3.

<sup>22</sup> Exh. 1 at 1-9, 1-27.

<sup>23</sup> Exh. 206 at 206-3; Exh. 208 at 208-2.

<sup>24</sup> Exh. 215 at 215-3; Exh. 218 at 218-2.

<sup>25</sup> Exh. 1 at 1-4; Exh. 2 at 2-1.

for both the 2015 Period and 2016 Period.<sup>26</sup> A 2011 SCIF rate filing with the Commissioner describes this three percent credit.<sup>27</sup>

**d. Rating Tier Modifier**

SCIF assigns policyholders to various “rating tiers,” each with its own modifier.<sup>28</sup> SCIF assigns tiers based on “tier scores.”<sup>29</sup> Tier scores are calculated by SCIF using software it alternately refers to as the rating engine, tiering engine, scoring engine, or quote engine.<sup>30</sup> SCIF treats the tiering algorithm as a closely-guarded secret and does not allow it to be viewed by customers, members of the public, or even SCIF’s own underwriting staff.<sup>31</sup> SCIF does not indicate tier scores on its policies, quotes or billing statements; nor does it provide customers with any calculations showing how the scores are calculated, even if customers specifically request that information.<sup>32</sup> The algorithm is not included in any of SCIF’s rate filings with the Commissioner.<sup>33</sup>

The algorithm takes into account the policyholder’s prospective estimated premium, payroll and number of employees.<sup>34</sup> It also factors in three years of the policyholder’s historical premium and loss data.<sup>35</sup> That data includes the frequency and number of workers’ compensation claims and whether those claims involved medical expenses or compensation for

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<sup>26</sup> Exh. 206 at 206-3; Exh. 208 at 208-2; Exh. 215 at 215-3; Exh. 218 at 218-2.

<sup>27</sup> Exh. 1 at 1-1; Exh. 2 at 2-2.

<sup>28</sup> Tr. 56:10-17; Exh. 1 at 1-26; Exh. 2 at 2-27.

<sup>29</sup> Tr. 74:22-75:2.

<sup>30</sup> Tr. 62:24, 65:19-21; 74:20-25.

<sup>31</sup> Tr. 14:22-17:18; Tr. 74:20-75:13; See also SCIF Letter to ALJ renewing objection, dated February 1, 2018.

<sup>32</sup> Tr. 97:3-21, 101-3; 102-17; Exh. 101; Exh. 205; Exh. 208.

<sup>33</sup> See Exh. 1, Exh. 2.

<sup>34</sup> Tr. 57:8-11.

<sup>35</sup> Tr. 57:11-13, 83:10-19.

lost employee time or disability.<sup>36</sup>

Each rating tier has an associated modifier.<sup>37</sup> Starting in 2013 and through the commencement of the 2015 Period, SCIF employed a rating framework with four tiers, A through D.<sup>38</sup> In the year preceding the 2015 Period, Appellant was assigned to Tier B, which at the time had a rating tier modifier of 0.951.<sup>39</sup>

SCIF revised its tier rating framework for the 2015 Period.<sup>40</sup> Tier A received a modifier of 0.65. Tier B was assigned a modifier of 1.0. Tier C received a factor of 1.5, and tier D was assigned a modifier of 2.0.<sup>41</sup>

In the 2015 Period, Tier D applied to tier scores of at least 0.30092.<sup>42</sup> Using its secret algorithm, SCIF initially calculated Appellant's tier score as 0.419525161.<sup>43</sup> Consequently, SCIF moved Appellant from Tier B to Tier D, thereby doubling Appellant's premium.<sup>44</sup> The tier score increase resulting in Appellant's move to Tier D was precipitated by the lone workers' compensation claim in 2015, for which SCIF initially reserved \$24,000 in estimated losses and expenses.<sup>45</sup> SCIF notified Appellant of the tier change and premium increase in a renewal quote dated October 5, 2015.<sup>46</sup> Nothing in the record or in SCIF's rate filings explains how Appellant's tier scores were calculated.

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<sup>36</sup> Tr. 57:15-25.

<sup>37</sup> Tr. 56:10-17; 58:12-17; Exh. 1 at 1-26; Exh. 2 at 2-33, 2-34.

<sup>38</sup> Tr. 56:18; Exh. 1 at 1-26.

<sup>39</sup> Tr. 59:11-12.

<sup>40</sup> Tr. 59:21-24; Exh. 1 at 1-26.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> Exh. 1 at 1-39.

<sup>44</sup> Tr. 61:5-6.

<sup>45</sup> Tr. 61:5-64:10; Exh. 1 at 1-40.

<sup>46</sup> Exh. 205 at 205-3.

Appellant complained to SCIF about the increase,<sup>47</sup> which resulted in SCIF recalculating the tier score and reassigning Appellant to Tier C on January 25, 2016, with a tier modifier of 1.5.<sup>48</sup> The sole factor lowering Appellant's tier score from the Tier D range to the Tier C range was SCIF's entry into the scoring engine of \$819 in actual losses and expenses for the 2015 claim rather than the \$24,000 that was originally estimated.<sup>49</sup> In contrast, if Appellant had incurred no workers' compensation claims in the three years prior to the 2015 Period, SCIF would have assigned Appellant to Tier B with a modifier of 1.0.<sup>50</sup>

Starting in the 2016 Period, SCIF increased the number of rating tiers to a numerical system ranging from four to seven.<sup>51</sup> SCIF continued to maintain that its algorithm was confidential and did not include it in its rate filings with the Commissioner. For policyholders with standard premium between \$10,000 and \$25,000, the new Tier 3 had a modifier of 1.0, which would have no impact on premium. And Tier 4 had a factor of 1.2, which would increase standard premium by 20 percent.<sup>52</sup> SCIF assigned Appellant to Tier 4 for the 2016 Period.<sup>53</sup> If Appellant had incurred no workers' compensation claims in the three prior years, SCIF would have assigned Appellant to Tier 3.<sup>54</sup>

In other words, the lone \$819 claim in a 20-year period resulted in a 50 percent (or \$6,971) increase to Appellant's premium for the 2015 Period and a 20 percent (or estimated \$1,834) increase for the 2016 Period.<sup>55</sup>

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<sup>47</sup> Exh. 3 at 3-7.

<sup>48</sup> Tr. 33:12-23, 64:11-65:16; Exh. 3 at 3-30.

<sup>49</sup> Tr. 64:21-65:21; Exh. 1 at 1-36 through 1-41.

<sup>50</sup> Tr. 105:21-106:14.

<sup>51</sup> Tr. 72:12-14; Exh. 2 at 2-27.

<sup>52</sup> Tr. 93:6-14; Exh. 2 at 2-27.

<sup>53</sup> Tr. 72:7-11; Exh. 2 at 2-39.

<sup>54</sup> Tr. 106:15-107:3.

<sup>55</sup> Exh. 212 at 212-1; Exh. 215 at 215-3.

## 2. Premium Discount Modifier

Appellant's premiums for each of the 2015 Period, 2016 Period and 2017 Period were calculated in part using a "premium discount modifier."<sup>56</sup> That modifier applied a flat discount of 11.3% to all modified premium over \$5,000.<sup>57</sup> SCIF's 2011 rate filings with the Commissioner describe that discount.<sup>58</sup>

### D. Policy Audit

On March 27, 2017, SCIF conducted an audit for the 2015 Period.<sup>59</sup> The audit found Appellant's workers' compensation payroll was \$188,995. Based on that audit, SCIF determined that Appellant incurred a base premium of \$13,942.87, a modified premium of \$20,996.99,<sup>60</sup> a total premium of \$19,189.36,<sup>61</sup> mandatory surcharges of \$629.83, and total charges of \$19,819.19.<sup>62</sup>

### V. Discussion

Appellant argues SCIF's rating plan modifiers and premium discount modifiers were incorrectly applied.<sup>63</sup> Appellant further contends SCIF miscalculated Appellant's 2015 Period payroll. SCIF argues all of the modifiers were valid and correctly applied.<sup>64</sup> SCIF also stands behind its audit and further asserts the Commissioner may lack jurisdiction to determine the payroll calculation issue.<sup>65</sup> For the reasons discussed below, the Commissioner finds that (1)

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<sup>56</sup> Tr. 71:6-72:6; Exh. 210 at 210-1; Exh. 218 at 218-2.

<sup>57</sup> Tr. 71:6-16; Exh. 210 at 210-1; Exh. 218 at 218-2.

<sup>58</sup> Exh. 1 at 1-2, 1-3.

<sup>59</sup> Tr. 115:14-25; Exh. 211 at 211-1.

<sup>60</sup> Obtained by multiplying the base premium by a rating plan modifier of 1.50593. (Exh. 212 at 212-1.)

<sup>61</sup> Obtained by multiplying the modified premium by a premium discount modifier of 0.91391. (*Ibid.*)

<sup>62</sup> Obtained by adding the total premium and the mandatory surcharges. (*Id.* at 212-1, 212-2.)

<sup>63</sup> Appeal dated August 25, 2017 ("Appeal").

<sup>64</sup> SCIF's Response to the Appeal, dated October 18, 2017, at 3-4.

<sup>65</sup> Letter from SCIF to the ALJ, dated February 9, 2018.



the Commissioner has jurisdiction over all issues in this appeal, (2) SCIF misapplied the rating plan modifier, (3) SCIF correctly applied the premium discount modifier, and (4) Appellant failed to meet its burden of proof to show SCIF miscalculated Appellant's payroll.

**A. The Commissioner Has Jurisdiction over This Appeal**

**1. Applicable Law**

**a. The Statutory Rate Filing Scheme**

California has an "open rating" workers' compensation regulatory system, in which each insurer sets its own rates and files them with the Commissioner. This framework is intended to curtail monopolistic and discriminatory pricing practices, ensure carriers charge rates adequate to cover their losses and expenses, and provide public access to rate information so that employers may find coverage at the best competitive rates.<sup>66</sup>

Insurance Code section 11735 lays out the statutory filing requirements. Subdivision (a) of that section provides in part, "Every insurer shall file with the commissioner all rates and supplementary rate information that are to be used in this state. The rates and supplementary rate information shall be filed not later than 30 days prior to the effective date." The term "rate" means "the cost of insurance per exposure base unit," subject to certain limitations.<sup>67</sup> And "supplementary rate information" means "any manual or plan of rates, classification system, rating schedule, minimum premium, policy fee, rating rule, rating plan, and any other similar information needed to determine the applicable premium for an insured."<sup>68</sup>

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<sup>66</sup> See generally Ins. Code §§ 11730-11742.

<sup>67</sup> Ins. Code § 11730, subd. (g). Rates exclude the application of individual risk variations based on loss or expense considerations, as well as minimum premiums.

<sup>68</sup> Ins. Code § 11730, subd. (j).

**b. Jurisdiction over Private Party Appeals**

Insurance Code section 11737, subdivision (f), confers jurisdiction on the Commissioner to hear and decide private party appeals concerning the application of insurers' section 11735 filings. Specifically, the statute provides in pertinent part:

Every insurer... shall provide within this state reasonable means whereby any person aggrieved by the application of its filings may be heard by the insurer... on written request to review the manner in which the rating system has been applied in connection with the insurance afforded or offered. ... Any party affected by the action of the insurer... on the request may appeal... to the commissioner, who after a hearing ... may affirm, modify, or reverse that action.

**2. Analysis**

Appellant asserts SCIF failed to correctly apply the rates and supplementary rate information filed under Insurance Code section 11735. Specifically, Appellant contends SCIF misapplied its filed rating plan modifiers and premium discount modifiers to SCIF's filed rates. Appellant further contends SCIF miscalculated Appellant's 2015 Period payroll. If true, that would result in the application of SCIF's filed rates to the wrong exposure level. Appellant requested that SCIF remedy these issues. SCIF rejected that request, and Appellant timely filed this appeal.<sup>69</sup> Because the issues on appeal concern the manner in which SCIF applied its rating system to the Policy, the Commissioner has jurisdiction under Insurance Code section 11737, subdivision (f).

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<sup>69</sup> See Cal. Code Regs., tit. 10, § 2509.46 [“An appeal is timely if it is filed either within 30 days after rejection of a Complaint and Request for Action or rejection of review thereof . . . “]. California Code of Regulations, title 10, section 2509.42, subdivision (q) provides in part, “Service by first class mail . . . is complete at the time of deposit with the carrier, but any . . . right or duty to do any act or make any response within any prescribed period of notice . . . shall be extended for a period of five days.” SCIF mailed its rejection of Appellant's complaint and request for action on July 25, 2017 (See Appeal). Appellant filed this appeal within the 35 day window on August 29, 2017. (*Ibid.*)

**B. Use of the Tier Modifier Resulted in a Misapplication of SCIF's Filed Rates.**

SCIF's rating plan modifier consists of four components, one of which is the tier modifier. For the reasons discussed below, the tier modifier is an improper adjustment to SCIF's filed rates.

**1. SCIF Misapplied its Filed Rates Due to its Use of an Unfiled Tiering Algorithm.**

SCIF uses a proprietary algorithm to calculate the tier modifier. SCIF contends it is not legally required to file the algorithm with the Commissioner, and that use of the unfiled algorithm to determine Appellant's premium was lawful. The Commissioner disagrees.

**a. Applicable Law**

Insurance Code section 11735, subdivision (a), requires insurers to file all rates and supplementary rate information, without exception, before using them in California. The term "supplementary rate information" includes any "minimum premium, policy fee, rating rule, rating plan, and any other similar *information needed to determine the applicable premium for an insured.*"<sup>70</sup> "[M]oney paid by an insured to an insurer for coverage constitutes premium regardless of its name."<sup>71</sup> Thus, any information necessary to determine amounts owed by an insured to its insurer is supplementary rate information. If SCIF wished to apply its Tiering algorithm to Appellant's rate, it was required to file the algorithm and allow it to be subject to public inspection under Insurance Code section 11735.

Insurers may only charge premium in accordance with their filed rates and

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<sup>70</sup> Ins. Code § 11730, subd. (j), emphasis added.

<sup>71</sup> *In the Matter of the Appeal of Shasta Linen Supply, Inc.* (Cal. Ins. Comm'r, June 22, 2016, AHB-WCA-14-31) (*Shasta Linen*) at 48-49; see also *Troyk v. Farmers Group Inc.* (2009) 171 Cal.App.4th 1305, 1325 ["[I]nsurance premium includes not only the 'net premium,' or actuarial cost of the risk covered (i.e. expected amount of claims payments), but also the direct and indirect costs associated with providing that insurance coverage and any profit or additional assessment charged."]

supplementary rate information.<sup>72</sup> As the Commissioner determined in his precedential decision *In the Matter of the Appeal of Shasta Linen Supply, Inc.*, an insurer's use of unfiled rates or supplementary rate information is unlawful.<sup>73</sup> That is true regardless of whether the Commissioner first disapproved the unfiled rates under Insurance Code section 11737.<sup>74</sup>

**b. Analysis**

**i. The Tiering Algorithm Constitutes Supplementary Rate Information.**

SCIF determined Appellant's premiums for the 2015 Period and 2016 Period in part based on a "rating plan modifier"<sup>75</sup> that increased Appellant's premium.<sup>76</sup> The rating plan modifier resulted from multiplying four component modifiers, including a "tier modifier." Tier modifiers, in turn, are tied to "rating tiers" assigned to policyholders based on "tier scores" that SCIF calculates using an algorithm that SCIF claims is proprietary. The algorithm takes account of the policyholder's prospective estimated premium, payroll and number of employees,<sup>77</sup> as well as the policyholder's historical premium and loss data.<sup>78</sup> There is no way for the policyholder or anyone else to calculate a tier score without the algorithm. Without the

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<sup>72</sup> Ins. Code § 11735, subd. (a); Ins. Code § 11730, subd. (j); See *Appeal of Gary E. Milne* (Cal. Ins. Comm'r Feb. 19, 1999, AHB-WCA-97-11) at 10 ["[I]nsurers do not have unrestricted discretion to set workers' compensation insurance rate levels under open rating. The open rating system contemplates competitive pricing consistent with the public interest in fair and adequate insurance."]

<sup>73</sup> *Shasta Linen* at 52. *Shasta Linen* was designated precedential under Gov. Code section 11425.60, subdivision (b).

<sup>74</sup> See *Ibid.*

<sup>75</sup> Exh. 210 at 210-1; Exh. 218 at 218-2.

<sup>76</sup> Exh. 212 at 212-1. In Appellant's case, standard premium is equal to base premium, which is calculated by multiplying Appellant's workers' compensation payroll in each USRP classification by SCIF's base rate for the respective classification. (*Ibid.*)

<sup>77</sup> Tr. 57:8-11.

<sup>78</sup> Tr. 57:11-13.

tier score, it is impossible to determine which rating tier applies, and which tier modifier to assign the policyholder. Since a policyholder's base premium during the 2015 Period, for example, could have been reduced by as much 45 percent or increased by up to 100 percent depending on the rating tier, it is not possible to determine premium without the algorithm.<sup>79</sup> Because the algorithm is a key component of the rate calculation, it constitutes "information needed to determine the applicable premium for an insured[.]" thereby satisfying the definition of "supplementary rate information" under Insurance Code section 11730, subdivision (j).<sup>80</sup>

**ii. SCIF's Use of the Unfiled Algorithm Was Unlawful, Contravened Public Policy, and Misapplied SCIF's Filed Rates.**

Insurers must file all supplementary rate information under Insurance Code section 11735, subdivision (a), and under subdivision (b), which requires that information be publicly available. But SCIF withheld the algorithm—a critical piece of information that determines policyholders' rates—based on its assertion that "any policyholder (or future policyholder) can potentially 'game the system' if the algorithm was known to them" and that other insurers "could, conceivably, use knowledge of the algorithm to gain a competitive advantage over State Fund[.]"<sup>81</sup> SCIF's position ignores the mandate of the statute and frustrates the public policy concerns behind it.

Among the policy aims of section 11735, two important goals of the public inspection

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<sup>79</sup> Exh. 1 at 1-26.

<sup>80</sup> Without the algorithm, it is impossible for the Commissioner to determine whether the applied rates tend to create a monopoly in the market, are inadequate or unfairly discriminatory. (See Ins. Code §§ 11732, 11732.5, 11737, subd. (b), (c).)

<sup>81</sup> Letter from State Fund to the ALJ, dated February 1, 2018, objecting to disclosure of the algorithm. In fact, SCIF violated the ALJ's order to submit a copy of the algorithm in this appeal. (See SCIF's Amended Objection to Order Vacating Evidentiary Ruling; Order to Disclose Tiering Algorithm, dated March 22, 2018 ("Obj. to Order to Disclose").)

provisions are to enable employers to obtain coverage at the best rates and to curtail monopolistic pricing practices.<sup>82</sup> When rate information is transparent, policyholders are better able to compare coverage and reduce their costs. Transparency reduces the likelihood that insurers will gain a monopolistic advantage when all carriers' pricing information is public.

In furtherance of those aims, the Legislature passed Insurance Code section 11742 to mandate the establishment of an online rate comparison guide. Subdivision (a) of that section provides:

The Legislature finds and declares that the insolvencies of more than a dozen workers' compensation insurance carriers have seriously constricted the market and lead to a dangerous increase in business at the State Compensation Insurance Fund. Yet more than 200 insurance companies are still licensed to offer workers' compensation insurance in California. Unfortunately, many employers do not know which carriers are offering coverage, and it is both difficult and time consuming to try to get information on rates and coverages from competing insurance companies. A central information source would help employers find the required coverage at the best competitive rates.

When insurers use secret unfiled formulas to modify their filed rates, they directly frustrate the Legislature's intent behind the comparison guide and section 11735's public inspection provisions. Rate disclosure confers little value if the public does not have access to the formulas carriers use to modify their rates. Meaningful price comparison is simply impossible without those formulas.

By hiding its algorithm, SCIF obscured Appellant's looming premium increase until Appellant was in no position to avoid it. Appellant's witness testified, "I could not fathom what a negative monetary impact it would have on our small business to have a claim after over 20 years in business. One claim for \$819.... When I received the final renewal for 2015, I was

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<sup>82</sup> See generally Ins. Code §§ 11730-11742.

shocked.”<sup>83</sup> If Appellant or its advisors had access to the algorithm, they could have determined in advance the claim’s impact on premium and potentially mitigated the effects. At a minimum, Appellant would have had additional time to shop for a less expensive policy.

Insurance Code section 11735 and the legislative policy behind it required that SCIF file the algorithm as supplementary rate information. SCIF failed to do so, rendering its use of the unfiled algorithm unlawful. By effectively increasing SCIF’s filed rates by 50 percent for the 2015 Period and 20 percent for the 2016 Period, SCIF’s use of the algorithm resulted in the misapplication of those rates.

**2. SCIF Wrongly Asserts it Complied with the Commissioner’s Regulations, Thus Fulfilling the Statutory Filing Requirements.**

SCIF argues it complied with the Commissioner’s rate filing regulations and in so doing satisfied Insurance Code section 11735’s filing requirements. Specifically, SCIF asserts that the Commissioner has authority under the regulations to determine what constitutes supplementary rate information. SCIF asserts that the Commissioner’s acceptance of its rate filing without the tiering algorithm *ipso facto* constituted a determination that the algorithm was not supplementary rate information. Therefore, SCIF contends that the algorithm did not need to be filed under section 11735.<sup>84</sup> SCIF’s interpretation of the rate filing process and regulations is wrong.

**a. Applicable Law**

In addition to complying with the statutory filing requirements under Insurance Code section 11735, workers’ compensation insurers must file their rates in accordance with

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<sup>83</sup> Tr. at 29:8-25.

<sup>84</sup> Obj. to Order to Disclose at 4-6.

California Code of Regulations, title 10, sections 2509.30 *et seq.* Section 2509.32, subdivision (e), which provides:

A complete rate filing is one for which the insurer has completed the Filing Form and submitted all necessary attachments and exhibits. Necessary attachments and exhibits are those materials that, together with the Filing Form, are sufficient to enable the Commissioner to determine the rates the insurer would charge its insureds. Unless the Commissioner notifies the insurer within 30 days of the filing date that its rate filing is incomplete, the rate filing will be considered complete.

#### **b. Analysis**

SCIF did not comply with the regulations, which broadly set forth the information that is required in an insurer's rate filing—insurers must file *all* information that is necessary to determine an insurer's rates, which would encompass SCIF's algorithm. The statute does not give the Commissioner the power to exclude information in violation of the statute's language that all such information must be filed.

The regulation provides further clarification of Insurance Code section 11735, subdivision (b)'s requirement that “[r]ates filed pursuant to this section shall be filed in the form and manner prescribed by the commissioner.” Section 2509.32, subdivision (e), does not suggest that an insurer's failure to file supplemental information relieves it from its obligation to comply with statutory law; indeed, the regulation expressly mandates that insurers file information “sufficient to enable the Commissioner to determine the rates the insurer would charge its insureds.” The regulation is consistent with the statute, which broadly defines the term “supplementary rate information” to include “minimum premium, policy fee, rating rule, rating plan, and any other similar information needed to determine the applicable premium for an insured.” Indisputably, if SCIF intended to use the algorithm to modify its rates, the algorithm would be necessary determine SCIF's rates. Since SCIF's algorithm falls squarely within the statutory and regulatory



definitions, SCIF was required file it. SCIF knew that its rate filing was not complete because SCIF knew the algorithm is necessary “to enable the Commissioner to determine the rates the insurer would charge its insureds.” Section 2509.32(e) does not purport to allow insurers to avoid the filing requirements that are specified in Insurance Code section 11735 under any circumstance. Rather, it provides the form and manner of compliance and reiterates the provisions in the statute.

SCIF cites no basis to support its assertion that it need not comply with statutory and regulatory law so long as the Commissioner accepted its filing as complete. SCIF seems to confuse the Commissioner’s acceptance of its filing with the Commissioner’s limited power to disapprove rates under certain narrowly-tailored circumstances, if he determines that the premiums charged, in the aggregate, would be inadequate to cover an insurer’s losses and expenses, unfairly discriminatory, or tend to create a monopoly in the market.<sup>85</sup> While applicable law grants the Commissioner authority to reject a rate filing if an insurer fails to comply with the filing requirements or if the filing is incomplete,<sup>86</sup> the Commissioner lacks the authority to override a statutory mandate that insurers file all supplemental rate information. The Commissioner’s determination that a filing is complete is a ministerial function to determine whether the paperwork includes the Filing Form, exhibits and attachments necessary to comprise a complete filing as defined in Title 10 California Code of Regulations section 2509.32(e). The Commissioner’s acceptance of SCIF’s rate filing as complete is not a substantive endorsement that SCIF has met its statutory obligation to file all of supplementary rate information that it uses to calculate an insured’s premium, such as the unfiled algorithm. Whatever else may be said of the legal importance of an administrative action to deem a filing

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<sup>85</sup> Ins. Code § 11737(b).

<sup>86</sup> Tit. 10, Cal. Code Regs. § 2509.32(c).

complete, the scope of such action cannot serve to protect formulae an insurer withholds from its filing, and then applies outside of the filing process to calculate a policyholder's applicable premium.<sup>87</sup>

Moreover, SCIF's failure to file its algorithm undermined an additional purpose of the statute that required it to file its algorithm, preventing A-Brite's ability to access crucial information that greatly affected its workers' compensation insurance rates.

SCIF's argument also overlooks section 11735's important public policy consideration in requiring that pricing information be publicly available to assist employers shopping for coverage. Given this policy, as well as section 11730's broad definition of "supplementary rate information," and section 11735's express requirement that insurers file *all* of that information before using it, an insurer's failure to file such information would frustrate the public's statutory right to access that information. The Commissioner's acceptance of SCIF's rate filing as complete does not relieve SCIF from its responsibility to file its supplementary information as required by law. More to the point, SCIF's failure to file the supplementary information cannot inure to the prejudice of A-Brite. SCIF unlawfully misapplied its rates by modifying them with an unfiled algorithm. The Commissioner will not affirm its use of the unfiled algorithm to A-Brite's prejudice.

### **3. Trade Secret Privilege Did Not Exempt the Algorithm from Statutory Filing and Disclosure Requirements.**

SCIF argues that even if the tiering algorithm is supplementary rate information, it

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<sup>87</sup> (See, e.g., *State Compensation Ins. Fund v. Superior Court* (2001) 24 Cal.4<sup>th</sup> 930 [insurer's misallocation of expenses which were reported to WCIRB, thereby resulting in higher premiums for insured, is not conduct immune from civil liability]; accord *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4<sup>th</sup> 968, 992-93 [11 Cal.Rptr.3d 45, 62] ["It is possible for an insurance carrier to file with the Department a rate filing and class plan that satisf[y] all of the ratemaking components of the regulations, and still result in a violation of the Insurance Code *as applied.*" (emphasis in original)]; see also *MacKay v. Superior Court* (2010) 188 Cal.App.4<sup>th</sup> 1427, 1450 [115 Cal.Rptr.3d 893, 911], as modified (Oct. 20, 2010) ["...underlying conduct challenged was not the charging of an approved rate, but the application of an unapproved underwriting guideline..."].)

remains protected from disclosure under the trade secret privilege.<sup>88</sup> Specifically, SCIF contends that because section 11735 does not expressly override the subsequently enacted trade secret protections of Government Code section 6254, section 11735 does not require the filing and public disclosure of trade secrets. The Commissioner is not persuaded.

**a. Applicable Law**

Civil Code section 3426.1 defines a “trade secret” as information that “(1) [d]erives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and [¶] (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

Evidence Code section 1060 provides: “If he or his agent or employee claims the privilege, the owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice.” Like the rest of the Evidence Code, that section applies to court actions.<sup>89</sup> It has no applicability to administrative or other governmental proceedings unless expressly invoked by statute or regulation.<sup>90</sup>

Government Code section 6254 exempts certain trade secrets from the disclosure requirements of the California Public Records Act.<sup>91</sup> In particular, subdivision (ab) of that section states the act does not require disclosure of “[t]he following records of the State Compensation Insurance Fund:”

(3) Records related to the impressions, opinions,

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<sup>88</sup> Obj. to Order to Disclose at 6-8.

<sup>89</sup> Evid. Code § 300.

<sup>90</sup> 31 Cal.Jur.3d Evidence, § 7; see also *Big Creek Lumber Co. v. County of San Mateo* (1995) 31 Cal.App.4th 418, 430 fn. 16.

<sup>91</sup> Cal. Gov. Code § 6250 et seq.

recommendations, meeting minutes of meetings or sessions that are lawfully closed to the public, research, work product, theories, or strategy of the fund or its staff, on the development of rates, contracting strategy, underwriting, or competitive strategy pursuant to the powers granted to the fund [under the Insurance Code].

...

(5)(A) Records that are trade secrets pursuant to... [Evidence Code section 1060], including without limitation, instructions, advice, or training provided by the State Compensation Insurance Fund to its board members, officers, and employees regarding the fund's special investigation unit, internal audit unit, and informational security, marketing, rating, pricing, underwriting, claims handling, audits, and collections.

In addition, section 6254, subdivision (k) exempts the following information from the Public Records Act's disclosure requirements: "Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege."

#### **b. Analysis**

Trade secret privilege does not limit section 11735's public inspection requirements. The California Supreme Court's analysis and holding in *State Farm Mutual Automobile Insurance Co. v. Garamendi*<sup>92</sup> are instructive. That case concerned Insurance Code section 1861.07, which broadly requires public disclosure of "[a]ll information provided to the commissioner" in connection with insurance rate approval applications (unrelated to workers' compensation). The plaintiff insurance company argued Government Code section 6254's trade secret provisions limited section 1861.07's disclosure requirements. Specifically, the plaintiff contended that since section 1861.07 expressly excludes a specific subdivision of section 6254, the Legislature implicitly intended all other subdivisions to apply, including

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<sup>92</sup> *State Farm Mut. Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029.

those that exempt trade secrets from disclosure. The Court disagreed, holding that the public disclosure rule covering “[a]ll information provided to the commissioner” under section 1861.07 is absolute.<sup>93</sup> That section’s exclusion of the specific provision of section 6254 “merely buttresses this rule.”<sup>94</sup> Thus, the Court concluded that information provided to the commissioner under section 1861.07 was not subject to trade secret privilege under section 6254 or, by extension, Evidence Code section 1060.<sup>95</sup>

Insurance Code section 11735’s public disclosure requirement is similarly absolute. The statute requires the filing of “all rates and supplementary rate information that are to be used in this state” and “[a]ll rates, supplementary rate information, and any supporting information for rates filed under this article, as soon as filed, shall be open to public inspection at any reasonable time...”<sup>96</sup>

Finally, contrary to SCIF’s assertions,<sup>97</sup> it is immaterial that Government Code section 6254 was enacted after Insurance Code section 11735. Section 6254 limits public disclosure obligations under the Public Records Act, so the Public Records Act cannot reasonably be construed to limit the Insurance Commissioner’s review and acceptance of supplementary rate information under the Insurance Code. Specifically, the lead-in to section 6254 states that “this chapter does not require the disclosure” of the information exempted pursuant to that section. And “this chapter” refers to Government Code, division 7, chapter 3.5, *i.e.*, the Public Records Act. A plain reading of the Public Records Act limits its application to the chapter within the

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<sup>93</sup> Id. at 1042-1043, emphasis in original.

<sup>94</sup> Id. at 1042.

<sup>95</sup> Id. at 1047. As noted above, privilege under Evidence Code section 1060 is incorporated by reference in Government Code section 6254, subdivision (k).

<sup>96</sup> Emphasis added.

<sup>97</sup> Obj. to Order to Disclose at 7.

Government Code, and is plainly inapplicable to the construction of the Insurance Code and workers' compensation insurance rate filing requirements concerning the Insurance Commissioner. Because a plain reading of Government Code section 6254 and Insurance Code section 11735 demonstrates two separate and independent areas of authority, the order in which they were enacted is of no consequence here.

For these reasons, the trade secret privilege does not exempt the tiering algorithm from Insurance Code section 11735's filing and public inspection provisions.

**4. SCIF Must Exclude The Unfiled Tier Modifier in Computing Appellant's Rates.**

Section 11737, subdivision (f), grants the Commissioner broad authority to award remedies in workers' compensation appeals. The statute authorizes him to "affirm, modify, or reverse" an insurer's action concerning the application of its rating system. The statute contains no language restricting remedies the Commissioner may order to modify or reverse an insurer's action. Nor has any California court inferred such restrictions from the statute. Indeed, the breadth of the Commissioner's authority is consistent with his comprehensive role to "require from every insurer a full compliance with all the provisions of [the Insurance Code]."<sup>98</sup>

SCIF failed to apply the correct rate to the policy by unlawfully applying the unfiled rating tier modifier component for the 2015 Period and 2016 Period. SCIF must recalculate the rates for those Periods without applying the unfiled rating tier modifier.

**C. The Claims Free Modifier Applies to Both the 2015 Period and the 2016 Period.**

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<sup>98</sup> Ins. Code § 12926.

The Commissioner finds SCIF correctly applied a claims-free modifier to the 2015 Period but improperly failed to apply that modifier to the 2016 Period.

Under a SCIF rate filing that was in effect during the 2015 Period and 2016 Period, a claims-free modifier of 0.90 applied to policyholders continuously insured with SCIF and incurring no more than \$1,000 in workers' compensation claims during the three years preceding the current policy period (or two years for policyholders with less than \$10,000 in annual base premium).<sup>99</sup> In the three years preceding the 2015 Period, Appellant was continuously insured with SCIF and incurred no workers' compensation claims. Accordingly, SCIF correctly applied the claims free modifier to the Policy for that period.<sup>100</sup>

However, SCIF did not apply the modifier to the 2016 Period.<sup>101</sup> In September of 2015, Appellant incurred a single workers' compensation claim, which was closed on November 6, 2015. The total losses and expenses incurred in connection with that claim were \$819.<sup>102</sup> Thus, Appellant incurred less than \$1,000 in claims in the three years preceding the beginning of the 2016 Period. Accordingly, SCIF should have applied the 0.90 claims-free modifier to that period as well.

**D. SCIF Correctly Calculated the Remaining Modifiers.**

The Commissioner finds the remaining components of the rating plan modifier—i.e., the direct placement modifier and the territory modifier—were correctly applied for the 2015 Period and the 2016 Period. Appellant contends the premium discount modifier was incorrectly calculated for all three periods at issue. The Commissioner disagrees.

**1. Direct Placement Modifier**

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<sup>99</sup> Exh. 1 at 1-4; Exh. 2 at 2-1.

<sup>100</sup> Exh. 206 at 206-3; Exh. 208 at 208-2.

<sup>101</sup> Exh. 215 at 215-3; Exh. 218 at 218-2.

<sup>102</sup> Tr. 65:8-9; Exh. 201 at 201-1.

A SCIF rate filing applicable to both the 2015 Period and 2016 Period states SCIF “will provide a 3% credit to employers who obtain their policy without engaging a broker.”<sup>103</sup> Appellant did not engage a broker but instead dealt directly with SCIF to procure coverage for those periods. SCIF therefore correctly included the three percent credit (i.e., a modifier of 0.97) within the rating plan modifier it applied to the Policy for both the 2015 Period and 2016 Period.<sup>104</sup>

## **2. Territory Modifier**

SCIF’s rate filings applicable to the 2015 Period and 2016 Period required it to apply a territory modifier of 1.15 to customers in Los Angeles County.<sup>105</sup> Appellant is located in that county. Therefore, SCIF correctly included that territory modifier within the Policy’s rating plan modifier during both the 2015 Period and the 2016 Period.<sup>106</sup>

## **3. Premium Discount Modifier**

SCIF’s rate filings require a premium discount of 11.3 percent for all modified premium over \$5,000 and no discount for the first \$5,000.<sup>107</sup> SCIF correctly applied the discount to Appellant’s actual modified premium for the 2015 Period, and to Appellant’s estimated modified premiums for the 2016 Period and 2017 Period.<sup>108</sup> However, because Appellant’s modified premiums must be recalculated using the correct rating plan modifier in accordance with part V (B) above, SCIF must re-compute the premium discount calculations

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<sup>103</sup> Exh. 1 at 1-1; Exh. 2 at 2-2.

<sup>104</sup> Exh. 206 at 206-3; Exh. 208 at 208-2; Exh. 215 at 215-3; Exh. 218 at 218-2.

<sup>105</sup> Exh. 1 at 1-9, 1-27 [effective April 1, 2015]; Exh. 2 [no changes to territory modifiers from prior year].

<sup>106</sup> Exh. 206 at 206-3; Exh. 215 at 215-3.

<sup>107</sup> Exh 1 at 1-2, 1-3.

<sup>108</sup> Tr. 71:6-72:6; Exh. 210 at 210-1; Exh. 218 at 218-2.



using the revised modified premiums.<sup>109</sup>

**E. Appellant Failed to Demonstrate SCIF Miscalculated Appellant's 2015 Period Payroll.**

Appellant asserts SCIF miscalculated Appellant's 2015 Period payroll. The Commissioner finds Appellant has failed to meet its burden of proof on this issue.

**1. Applicable Law**

Under California Code of Regulations, title 10, section 2509.61, “[a] party has the burden of proof as to each fact the existence or non-existence of which is essential to the claim for relief or defense that he or she is asserting.” As in an ordinary civil court action, that burden includes both the initial burden of going forward and the burden of persuasion by a preponderance of the evidence.<sup>110</sup>

**2. Analysis**

SCIF produced a final payroll audit report for the 2015 Period, indicating Appellant's workers' compensation payroll for the entire period was \$188,995.<sup>111</sup> Appellant contests the accuracy of the report and produced its own payroll summary for that period, asserting a total workers' compensation payroll of \$180,890.44.<sup>112</sup> Appellant thereby met its initial burden of going forward.

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<sup>109</sup> For example, Appellant's actual base premium for the 2015 Period was \$13,942.87. (Exh. 212 at 212-1.) The correct rating plan modifier in accordance with part V(B) above is 1.00395 (i.e., 1.15 territory modifier x 0.90 claims free modifier x 0.97 direct placement modifier). Multiplying the base premium by that rating plan modifier yields a modified premium of \$13,997.94 (i.e., 1.00395 x \$13,942.87). Thus, the premium discount modifier for the 2015 Period is:  $1 - [(\$13,997.94 - \$5,000) \times 0.113] \div \$13,997.94 = 0.927363$ .

<sup>110</sup> *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051 fn. 5.

<sup>111</sup> Exh. 211 at 211-5.

<sup>112</sup> Exh. 3 at 3-47 through 3-51.

However, Appellant's payroll summary contains inaccuracies. Specifically, it does not entirely coincide with the 2015 Period, which began on December 2, 2015 and ended on December 2, 2016. The workers' compensation payroll for that period should cover the work performed by Appellant's employees between those dates.<sup>113</sup> But Appellant's payroll summary sets forth the payments made during that period, rather than the amounts earned. The summary does not include any activity after the payments on November 25, 2016,<sup>114</sup> which were for the work period ending November 20, 2016.<sup>115</sup> Appellant's summary therefore failed to include payroll earned during the last 11 days of the 2015 Period. If Appellant had included those days, its payroll total would likely have closely matched SCIF's.<sup>116</sup>

Because Appellant's payroll summary is inaccurate and incomplete, Appellant failed to meet its burden of persuasion to establish SCIF incorrectly calculated the 2015 Period payroll.

#### **F. Conclusions of Law**

Based on the foregoing facts and analysis, the Commissioner concludes as follows:

1. SCIF failed to apply the correct rating plan modifier to the Policy during the 2015 Period and 2016 Period, in accordance with SCIF's filings with the Commissioner and applicable law. The rating plan modifier is incorrect for two reasons. First, SCIF included an unlawful and unenforceable rating tier modifier component during both the 2015 Period and 2016 Period. Second, SCIF failed to properly include a claims free modifier component for the

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<sup>113</sup> Cal. Code Regs., tit. 10, § 2318.6, Part 3, Section V, Rule 1 [payroll includes amounts "earned during the policy period"].

<sup>114</sup> Exh. 3 at 3-47 through 3-50.

<sup>115</sup> See, e.g., Exh. 102 at 102-88.

<sup>116</sup> Using Appellant's payroll total and assuming relatively steady work periods, one would expect the payroll for the full year to be approximately as follows:  $\$180,890.44 \div [(365 \text{ days} - 11 \text{ days}) \div 365 \text{ days}] = \$186,511.33$ . That figure is much closer to the audit total, suggesting SCIF's payroll calculation is more accurate than Appellant's.

2016 Period.

2. SCIF correctly included a territory modifier component and direct placement modifier component in the rating plan modifier during both the 2015 Period and 2016 Period, in accordance with SCIF's rate filings.

3. The correct rating plan modifier for both the 2015 Period and 2016 Period comprises three components: a territory modifier of 1.15, a claims free modifier of 0.90, and a direct placement modifier of 0.97. Accordingly, SCIF must apply the following rating plan modifier to each of those periods:  $1.15 \times 0.90 \times 0.97 = 1.00395$ .

4. SCIF used the correct premium discounts to the Policy for the 2015 Period, the 2016 Period, and the 2017 Period, in accordance with SCIF's filings with the Commissioner and applicable law. SCIF applied premium discount modifiers to each of those policy periods at the rate of 11.3 percent on all modified premium over \$5,000, which was consistent with SCIF's rate filings with the Commissioner under Insurance Code section 11735, subdivision (a). However, SCIF must recalculate the premium discount modifier to reflect the correct rating plan modifier's effect on modified premium.

5. Appellant failed to meet its burden of proof to establish SCIF miscalculated Appellant's payroll for the purposes of determining premium for the 2015 Period.

#### **ORDER**

1. SCIF shall recalculate Appellant's premium for the 2015 Policy Period and 2016 Policy Period in accordance with this decision and submit a revised premium calculation and statement of account for those periods to Appellant within 30 days after the date this decision is adopted.

2. It is further ordered that the entirety of this Decision is designated precedential pursuant to Government Code section 11425.60, subdivision (b).

Dated: November 16, 2018

  
\_\_\_\_\_  
DAVE JONES  
Insurance Commissioner

**DECLARATION OF SERVICE BY MAIL**

Case Name/No.: In the Matter of the Appeal of:  
A-BRITE BLIND & DRAPERY CLEANING,  
File AHB-WCA-17-26

I, CANDACE GOODALE, declare that:

I am employed in the County of Sacramento, California. I am over the age of 18 years and not a party to this action. My business address is State of California, Department of Insurance, Executive Office, 300 Capitol Mall, Suite 1700, Sacramento, California, 95814.

I am readily familiar with the business practices of the Sacramento Office of the California Department of Insurance for collection and processing of correspondence for mailing with the United States Postal Service. Said ordinary business practice is that correspondence is deposited with the United States Postal Service that same day in Sacramento, California.

On November 16, 2018 following ordinary business practices, I caused a true and correct copy of the following document(s):

**ORDER ADOPTING PROPOSED DECISION; PROPOSED DECISION; and  
NOTICE OF THE LIMITS FOR RECONSIDERATION & JUDICIAL  
REVIEW**

to be placed for collection and mailing at the office of the California Department of Insurance at 300 Capitol Mall, Sacramento, California, 95814 with proper postage prepaid, in a sealed envelope(s) addressed as follows:

(SEE ATTACHED SERVICE LIST)

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Sacramento, California, on November 16, 2018.

  
CANDACE GOODALE

**CORRECTED DECLARATION OF SERVICE BY MAIL**

Case Name/No.: In the Matter of the Appeal of:  
A-BRITE BLIND & DRAPERY CLEANING,  
File AHB-WCA-17-26

I, CANDACE GOODALE, declare that:

I am employed in the County of Sacramento, California. I am over the age of 18 years and not a party to this action. My business address is State of California, Department of Insurance, Executive Office, 300 Capitol Mall, Suite 1700, Sacramento, California, 95814.

I am readily familiar with the business practices of the Sacramento Office of the California Department of Insurance for collection and processing of correspondence for mailing with the United States Postal Service. Said ordinary business practice is that correspondence is deposited with the United States Postal Service that same day in Sacramento, California.

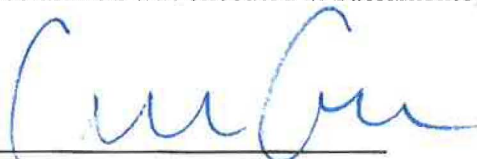
On November 16, 2018 following ordinary business practices, I caused a true and correct copy of the following document(s):

**DECISION; NOTICE OF TIME LIMITS FOR RECONSIDERATION & JUDICIAL REVIEW**

to be placed for collection and mailing at the office of the California Department of Insurance at 300 Capitol Mall, Sacramento, California, 95814 with proper postage prepaid, in a sealed envelope(s) addressed as follows:

(SEE ATTACHED SERVICE LIST)

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Sacramento, California, on November 16, 2018.

  
\_\_\_\_\_  
CANDACE GOODALE

# **EXHIBIT B**



HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE CONTINUOUS POLICY ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.		

HERE ARE YOUR NEW RATES FOR THE PERIOD INDICATED. IF YOUR NAME OR ADDRESS SHOULD BE CORRECTED OR IF INSURANCE IS NOT NEEDED FOR NEXT YEAR, PLEASE TELL US.

**IMPORTANT** THIS IS NOT A BILL  
SEND NO MONEY UNLESS STATEMENT IS ENCLOSED

CONTINUOUS POLICY [REDACTED]

THE RATING PERIOD BEGINS AND ENDS AT 12:01AM PACIFIC STANDARD TIME

RATING PERIOD 1-13-17 TO 1-13-18

AMERICAN JETTER	DEPOSIT PREMIUM	\$1,185.00
[REDACTED]	MINIMUM PREMIUM	\$980.00
WEST COVINA, CALIF 91790	PREMIUM ADJUSTMENT PERIOD	ANNUALLY R NA

NAME OF EMPLOYER- LOYA, JAVIER  
(AN INDIVIDUAL EMPLOYER AND NOT JOINTLY WITH ANY OTHER EMPLOYER)

CODE NO. PRINCIPAL WORK AND RATES EFFECTIVE FROM 01-13-17 TO 01-13-18

		PREMIUM BASIS	BASE RATE	INTERIM BILLING RATE*
5187-1	PLUMBING--SHOP AND OUTSIDE	1200	9.15	15.78
5183-1	PLUMBING--SHOP AND OUTSIDE	0	14.04	24.22

\*\*\*\*\*BUREAU NOTE INFORMATION\*\*\*\*\*

SSN 000000000

TOTAL ESTIMATED ANNUAL PREMIUM \$980





HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE CONTINUOUS POLICY ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.		

HERE ARE YOUR NEW RATES FOR THE PERIOD INDICATED. IF YOUR NAME OR ADDRESS SHOULD BE CORRECTED OR IF INSURANCE IS NOT NEEDED FOR NEXT YEAR, PLEASE TELL US.

**IMPORTANT** THIS IS NOT A BILL  
SEND NO MONEY UNLESS STATEMENT IS ENCLOSED

CONTINUOUS POLICY [REDACTED]

THE RATING PERIOD BEGINS AND ENDS AT 12:01AM PACIFIC STANDARD TIME

RATING PERIOD 1-13-17 TO 1-13-18

\* INTERIM BILLING RATES WILL BE USED ON PAYROLL REPORTS. THEY TAKE INTO ACCOUNT RATING PLAN CREDITS (OR DEBITS) WHICH WILL APPLY AT FINAL BILLING AND AN ESTIMATE OF YOUR PREMIUM DISCOUNT AS DETAILED BELOW.

RATING PLAN CREDITS (DEBITS) EFFECTIVE FROM 01-13-17 TO 01-13-18

RATING PLAN MODIFIER	1.72500
ESTIMATED PREMIUM DISCOUNT MODIFIER	<u>1.00000</u>
COMPOSITE FACTOR APPLIED TO BASE RATES TO DERIVE INTERIM BILLING RATES	1.72500

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*****
*
*          PREMIUM DISCOUNT SCHEDULE EFFECTIVE FROM 01-13-17 TO 01-13-18
* ESTIMATED MODIFIED PREMIUM IS DISCOUNTED ACCORDING TO THE FOLLOWING SCHEDULE:
*
*          FIRST                ABOVE
*          $5,000              $5,000
*          0.0%                11.3%
*
*****
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THE ESTIMATED PREMIUM DISCOUNT IS BASED ON AN ESTIMATE OF YOUR PAYROLL. ACTUAL PREMIUM DISCOUNT APPLIED AT FINAL BILLING WILL BE BASED ON THE ACTUAL PAYROLL REPORTED ON YOUR POLICY AND SUBJECT TO AUDIT.



HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE CONTINUOUS POLICY ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.		

CONTINUOUS POLICY [REDACTED]

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT YOUR LOCAL STATE FUND OFFICE BELOW:

CSC - POLICY AT VACAVILLE  
 1020 VAQUERO CIRCLE  
 VACAVILLE, CA 95688  
 (877) 405-4545

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions agreements or limitations of the Policy other than as herein stated.

When countersigned by a duly authorized officer or representative of the State Compensation Insurance Fund, these declarations shall be valid and form part of the Policy.

AUTHORIZED REPRESENTATIVE

PRESIDENT AND CEO

# **EXHIBIT C**



HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE CONTINUOUS POLICY ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.		

HERE ARE YOUR NEW RATES FOR THE PERIOD INDICATED. IF YOUR NAME OR ADDRESS SHOULD BE CORRECTED OR IF INSURANCE IS NOT NEEDED FOR NEXT YEAR, PLEASE TELL US.

**IMPORTANT** THIS IS NOT A BILL  
SEND NO MONEY UNLESS STATEMENT IS ENCLOSED

CONTINUOUS POLICY

THE RATING PERIOD BEGINS AND ENDS AT 12:01AM  
PACIFIC STANDARD TIME

RATING PERIOD 1-13-18 TO 1-13-19

AMERICAN JETTER  
WEST COVINA, CALIF 91790

DEPOSIT PREMIUM \$1,045.00  
MINIMUM PREMIUM \$1,045.00  
PREMIUM ADJUSTMENT PERIOD ANNUALLY  
R NA

NAME OF EMPLOYER- LOYA, JAVIER  
(AN INDIVIDUAL EMPLOYER AND NOT JOINTLY  
WITH ANY OTHER EMPLOYER)

CODE NO. PRINCIPAL WORK AND RATES EFFECTIVE FROM 01-13-18 TO 01-13-19

		PREMIUM BASIS	BASE RATE	INTERIM BILLING RATE*
5187-1	PLUMBING--SHOP AND OUTSIDE	1200	8.44	14.56
5183-1	PLUMBING--SHOP AND OUTSIDE	0	14.06	24.25

\*\*\*\*\*BUREAU NOTE INFORMATION\*\*\*\*\*

SSN 000000000

TOTAL ESTIMATED ANNUAL PREMIUM \$1,045



HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE CONTINUOUS POLICY ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.		

HERE ARE YOUR NEW RATES FOR THE PERIOD INDICATED. IF YOUR NAME OR ADDRESS SHOULD BE CORRECTED OR IF INSURANCE IS NOT NEEDED FOR NEXT YEAR, PLEASE TELL US.

**IMPORTANT** THIS IS NOT A BILL  
SEND NO MONEY UNLESS STATEMENT IS ENCLOSED

CONTINUOUS POLICY



THE RATING PERIOD BEGINS AND ENDS AT 12:01AM  
PACIFIC STANDARD TIME

RATING PERIOD 1-13-18 TO 1-13-19

\* INTERIM BILLING RATES WILL BE USED ON PAYROLL REPORTS. THEY TAKE INTO ACCOUNT RATING PLAN CREDITS (OR DEBITS) WHICH WILL APPLY AT FINAL BILLING AND AN ESTIMATE OF YOUR PREMIUM DISCOUNT AS DETAILED BELOW.

RATING PLAN CREDITS (DEBITS) EFFECTIVE FROM 01-13-18 TO 01-13-19

RATING PLAN MODIFIER	1.72500
ESTIMATED PREMIUM DISCOUNT MODIFIER	<u>1.00000</u>
COMPOSITE FACTOR APPLIED TO BASE RATES TO DERIVE INTERIM BILLING RATES	1.72500

\*\*\*\*\*  
\*  
\* PREMIUM DISCOUNT SCHEDULE EFFECTIVE FROM 01-13-18 TO 01-13-19 \*  
\* ESTIMATED MODIFIED PREMIUM IS DISCOUNTED ACCORDING TO THE FOLLOWING SCHEDULE: \*  
\* FIRST ABOVE \*  
\* \$5,000 \$5,000 \*  
\* 0.08 11.38 \*  
\*  
\*\*\*\*\*

THE ESTIMATED PREMIUM DISCOUNT IS BASED ON AN ESTIMATE OF YOUR PAYROLL. ACTUAL PREMIUM DISCOUNT APPLIED AT FINAL BILLING WILL BE BASED ON THE ACTUAL PAYROLL REPORTED ON YOUR POLICY AND SUBJECT TO AUDIT.



HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE CONTINUOUS POLICY ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.		

CONTINUOUS POLICY [REDACTED]

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT YOUR LOCAL STATE FUND OFFICE BELOW:

CSC - POLICY AT VACAVILLE  
 1020 VAQUERO CIRCLE  
 VACAVILLE, CA 95688  
 (877) 405-4545

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions agreements or limitations of the Policy other than as herein stated.

When countersigned by a duly authorized officer or representative of the State Compensation Insurance Fund, these declarations shall be valid and form part of the Policy.

AUTHORIZED REPRESENTATIVE

PRESIDENT AND CEO

# **EXHIBIT 2**

1 Michael Liskow (243899)  
mliskow@calcaterrapollack.com  
2 **CALCATERRA POLLACK LLP**  
3 1140 Avenue of the Americas, 9th Floor  
New York, NY 10036-5803  
4 Tel: (212) 899-1761  
Fax: (332) 206-2073  
5

6 Scott M. Priz (*pro hac vice*)  
priz@priz-law.com  
7 **PRIZ LAW, LLC**  
8 3230 S. Harlem Ave., Suite 221B  
Riverside, IL 60546  
9 Tel: (708) 268-5768

10 *Counsel for Plaintiffs and the Class*

11 [Additional Counsel listed on Signature Page]

12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 FOR THE COUNTY OF LOS ANGELES

15 AMERICAN JETTER & PLUMBING, INC. and  
16 RESILIENCE TREATMENT CENTER, on behalf  
of themselves and all others similarly situated,

17  
18 Plaintiffs,

19 v.

20 STATE COMPENSATION INSURANCE FUND,  
21 a public enterprise fund, and DOES 1 through 50,  
inclusive,

22 Defendants.  
23

Case No. 19STCV36307

**AMENDED CLASS ACTION  
COMPLAINT FOR DAMAGES &  
INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

Assigned for All Purposes to:  
Honorable Amy D. Hogue

Department 7 at Spring Street Courthouse



1 **INTRODUCTION**

2 1. Plaintiffs American Jetter & Plumbing, Inc. (“American Jetter”) and Resilience  
3 Treatment Center (“Resilience,” collectively with American Jetter, “Plaintiffs”) bring this class  
4 action on behalf of themselves and all others similarly situated (the “Class”) against defendants  
5 State Compensation Insurance Fund (“State Fund”) and Does 1 through 50, inclusive (collectively  
6 “Defendants”).

7 2. This lawsuit seeks refunds of the unlawful workers’ compensation insurance  
8 premiums Defendants charged Plaintiffs and the Class. As detailed further herein, Defendants  
9 have engaged in a scheme to charge inflated insurance premium rates by using improper “tier  
10 modifiers” and “rating plan modifiers” based on secret formulas as components of insureds’  
11 premiums despite the California Insurance Commissioner having deemed the tier modifiers, and  
12 rating plan modifiers including the tier modifiers, illegal and unenforceable. Defendants have  
13 charged these improper premiums based on secret, non-public formulas to the Class since 2013  
14 and continue to do so despite the Insurance Commissioner’s ruling.

15 3. Plaintiffs seek restitution and damages stemming from Defendants’ use of the  
16 improper tier modifiers in excess of 1.00. Plaintiffs also seek to enjoin Defendants from  
17 continuing to charge insurance premiums not permitted under the law.

18 **JURISDICTION AND VENUE**

19 4. This Court has personal jurisdiction over State Fund because it is doing business in  
20 the State of California within Los Angeles County.

21 5. Venue is proper in this Court pursuant to California Code of Civil Procedure  
22 section 395 because State Fund does substantial business in this County and has its principal  
23 offices in this County. Plaintiffs are also residents of this County and transacted business with  
24 State Fund while in this County.

25 **PARTIES**

26 6. Plaintiff American Jetter & Plumbing, Inc. is a corporation organized and existing  
27 under the laws of the State of California and qualified to do business in the State of California.  
28 American Jetter’s headquarters are located at 1515 Stevens Avenue, Unit B, San Gabriel,

1 California 91776.

2 7. Plaintiff Resilience Treatment Center is a corporation organized and existing under  
3 the laws of the State of California, and qualified to do business in the State of California.  
4 Resilience’s headquarters are located at 9663 Santa Monica Boulevard, Suite 168, Beverly Hills,  
5 California 90210.

6 8. Defendant State Compensation Insurance Fund is a public enterprise fund  
7 established by the California State legislature in 1914. State Fund provides worker’s  
8 compensation insurance throughout California, including in Los Angeles County. State Fund  
9 often functions as an insurer of last resort.

10 9. State Fund is one of the largest provider of workers’ compensation insurance to  
11 California businesses, with the California Department of Insurance’s 2018 Market Share Report  
12 reporting State Fund as having approximately 10.9% of the market share and total premiums of  
13 nearly \$1.4 billion. State Fund reports on its website that it has approximately 110,000  
14 policyholders and nearly \$21 billion in assets. State Fund lists one of its “Values” as “**Do What’s**  
15 **Right**. Approach every situation with a passion to help, a desire to learn and a commitment to  
16 integrity – because doing the right thing isn’t always simple, easy, or clear.” (Emphasis in  
17 original).

18 10. Plaintiffs are not presently aware of the true names and capacities of the  
19 Defendants designated as Does 1 through 50, inclusive, and will hereafter seek leave of the Court  
20 to amend this complaint to allege the true names and capacities of each Defendant.

21 11. Upon information and belief, Defendants are each responsible in some manner for  
22 the transactions, events and occurrences alleged, and the damages alleged were proximately  
23 caused thereby.

24 12. Upon information and belief, Defendants were each the agents, joint venturers,  
25 trustees, servants, partners, alter-egos, parent corporations, subsidiaries, affiliates, contractors or  
26 employees of each of the remaining Defendants, and the acts or omissions alleged herein were  
27 done by them acting individually, through such capacity or through the scope of their authority,  
28 and said conduct was thereafter ratified by the remaining Defendants.

1 **SUBSTANTIVE ALLEGATIONS**

2 **The A-Brite Decision**

3 13. On November 16, 2018, the California Insurance Commissioner issued a decision  
4 in *In the Matter of the Appeal of A-Brite Blind & Drapery Cleaning*, No. AHB-WCA-17-26 (Cal.  
5 Ins. Comm’r, November 16, 2018) (“*A-Brite*,” attached as Exhibit A), concluding as a matter of  
6 law that State Fund used an unlawful and unenforceable tier modifier and rating plan modifier to  
7 calculate an insured’s premium for its policies effective December 2, 2015 to December 2, 2016,  
8 and December 2, 2016 to December 2, 2017.

9 14. The basis for the Insurance Commissioner’s decision was that State Fund had  
10 improperly used a secret formula for calculating insureds’ tier modifiers for which it had never  
11 received approval from the California Department of Insurance (“CDI”) as required by law.

12 15. The tier modifier is one component of the formula State Fund uses to determine an  
13 insured’s rating plan modifier, which in turn is a component of the formula used to calculate an  
14 insured’s premiums. When the tier modifier is in excess of 1.00, an insured’s rating plan modifier  
15 and premium is set above the rate that would be charged absent the tier modifier. State Fund has  
16 been employing the secret formula since approximately 2013.

17 16. The Insurance Commissioner in *A-Bright* held that State Fund’s use of the secret  
18 tier modifier and rating plan modifier formula was impermissible because, *inter alia*, State Fund  
19 never published the secret formula nor made the formula publicly available to its insureds. State  
20 Fund also never included the secret formula in its rate filings, never submitted the formula for  
21 approval to CDI, and never had the secret formula approved by CDI. Because of this, insureds  
22 like Plaintiffs and the Class Members could not anticipate in advance what their insurance  
23 premiums might be, and insureds who were assessed a tier modifier greater than 1.00 were  
24 charged premiums in excess of what was lawful.

25 17. The Insurance Commissioner in *A-Brite* ordered State Fund to recalculate A-Brite’s  
26 premium by removing the tier modifier, which was over 1.00 and therefore created a premium  
27 charge. This removal of the tier modifier resulted in an \$8,805 reduction in premiums for A-Brite.

28

1 **Plaintiffs' Facts**

2 **American Jetter**

3 18. Plaintiff American Jetter is a construction company that does building maintenance,  
4 plumbing, and wallboard construction.

5 19. American Jetter purchased workers' compensation insurance from State Fund  
6 including policies effective for the period January 13, 2017 through January 13, 2018 (the "2017  
7 Policy") and from January 13, 2018 through January 13, 2019 (the "2018 Policy"), periods during  
8 which State Fund unlawfully set its rating plan modifier and rates using the secret tier modifiers.<sup>1</sup>

9 20. American Jetter received a "Tier C" modifier of 1.50 for its 2017 Policy and paid  
10 premiums to State Fund based in part on the tier modifier.

11 21. State Fund's use of the Tier C modifier of 1.50 increased American Jetter's  
12 premium for the 2017 Policy period by approximately \$60.

13 22. American Jetter received a Tier C modifier of 1.50 for its 2018 Policy and paid  
14 premiums to State Fund based in part on the tier modifier.

15 23. State Fund's use of the Tier C modifier increased American Jetter's premium for  
16 the 2018 Policy period by approximately \$8,749.

17 24. In total, American Jetter has paid State Fund approximately \$8,809 in excess  
18 premiums due to State Fund's unlawful charging of premiums based on Defendants' use of secret  
19 tier modifiers in calculating American Jetter's rating plan modifiers and premiums.

20 25. For both the 2017 and 2018 Policy periods, American Jetter was not informed of its  
21 placement into the Tier C category.

22 26. American Jetter made multiple attempts to confirm with State Fund, through  
23 American Jetter's counsel, both the basis for the calculation of the tier modifier used in calculating  
24 American Jetter's premiums, as well as simply which tier modifier has been assessed.  
25 Remarkably, State Fund consistently refused to answer either query.

26 27. Instead American Jetter's policies, and audit materials received regarding the  
27

28 <sup>1</sup> The 2017 Policy and 2018 Policy are attached as Exhibits B and C.

1 policies, reflect a blended rating plan modifier that included the tier modifier as one of its factors.

2 28. For the 2017 Policy, American Jetter received a rating plan modifier of 1.725,  
3 causing additional premium charges of approximately \$870, inclusive of the increased premium  
4 caused by the tier modifier.

5 29. For the 2018 Policy, American Jetter received a rating plan modifier of 1.725,  
6 causing additional premium charges of approximately \$12,686, inclusive of the increased  
7 premium caused by the tier modifier.

8 30. Although American Jetter cannot calculate or determine what other factors have  
9 been used to calculate the rating plan modifier, upon information and belief, American Jetter  
10 believes that a territorial modifier and a scheduled rating modifier were included in the rating plan  
11 modifier.

12 31. It is impossible to calculate the rating plan modifier without knowledge of the  
13 unfiled algorithm that is used to calculate the tier modifier, thereby making the rating plan  
14 modifier, like the tier modifier, a separate improperly undisclosed component of insureds'  
15 premiums.

16 **Resilience**

17 32. Plaintiff Resilience is a mental health treatment facility.

18 33. Resilience purchased workers' compensation insurance from State Fund including  
19 the policy effective for the period June 9, 2016, through June 9, 2017 (the "2016 Policy"), a period  
20 during which State Fund unlawfully set its rating plan modifier and rates using the secret tier  
21 modifiers.

22 34. Resilience received a "Tier C" modifier of 1.50 for its 2016 Policy and paid  
23 premiums to State Fund based in part on the tier modifier.

24 35. State Fund's use of the Tier C modifier of 1.50 increased Resilience's premium for  
25 the 2016 Policy period by approximately \$19,600.

26 36. Accordingly, Resilience has paid State Fund approximately \$19,600 in excess  
27 premiums due to State Fund's unlawful charging of premiums based on Defendants' use of tier  
28 modifiers in calculating Resilience's rating plan modifiers and premiums.

1 37. For the 2016 Policy period, Resilience was not informed of its placement into the  
2 Tier C category.

3 38. Instead Resilience's policies, and audit materials received regarding the policies,  
4 reflect a blended rating plan modifier that included the tier modifier as one of its factors.

5 39. For the 2016 Policy, Resilience received a rating plan modifier of 1.7765, causing  
6 additional premium charges of approximately \$30,537, inclusive of the increased premium caused  
7 by the tier modifier.

8 40. Although Resilience cannot calculate or determine what other factors have been  
9 used to calculate the rating plan modifier, upon information and belief, Resilience believes that a  
10 territorial modifier and a scheduled rating modifier were included in the rating plan modifier.

11 41. It is impossible to calculate the rating plan modifier without knowledge of the  
12 unfiled algorithm that is used to calculate the tier modifier, thereby making the rating plan  
13 modifier, like the tier modifier, a separate improperly undisclosed component of insureds'  
14 premiums.

15 **CLASS ACTION ALLEGATIONS**

16 42. Plaintiffs bring this action pursuant to Code of Civil Procedure section 382 as a  
17 class action individually on behalf of themselves and on behalf of all others similarly situated.

18 The Class is defined as follows:

19 All insureds of State Fund whose workers' compensation insurance premiums  
20 were calculated using a tier modifier in excess of 1.00. Excluded from the Class  
21 are Defendants, their affiliates, predecessors, successors, officers, directors,  
22 agents, servants and employees and the immediate families of such persons.

23 **Numerosity**

24 43. The members of the Class are too numerous for joinder to be practicable. There are  
25 tens of thousands of State Fund insureds whose premiums were calculated using a tier modifier in  
26 excess of 1.00. The exact quantity and identities of the Class is known to Defendants through  
27 State Fund's own records.

28

1 **Commonality**

2 44. There is a well-defined community of interest in the relevant questions of law and  
3 fact among members of the Class. Common questions of law and fact predominate over any  
4 questions affecting individual Class members, including, but not limited to:

- 5 a. Whether State Fund included the tier modifiers in its filings with the CDI;
- 6 b. Whether State Fund disclosed the basis for the tier modifiers to the Class;
- 7 c. Whether State Fund violated California Insurance Code section 332 by  
8 failing to publicly disclose the tier modifier algorithm;
- 9 d. Whether State Fund violated California Insurance Code section 11735 by  
10 failing to file and publicly disclose the tier modifier formula;
- 11 e. Whether State Fund breached the contract for insurance with Plaintiffs and  
12 the Class through its conduct;
- 13 f. Whether Defendants violated California Business & Professions Code  
14 section 17200 through their conduct;
- 15 g. Whether Defendants should be enjoined from continuing to use the tier  
16 modifiers in setting insurance premium rates; and
- 17 h. What the proper measure of damages is for each claim.

18 **Typicality**

19 45. Plaintiffs have the same interests in this matter as all other members of the Class  
20 since they were charged unlawful rates in the same manner as other members of the Class.

21 46. If members of the Class brought individual cases, they would require proof of the  
22 same material and substantive facts and would seek the same relief.

23 47. The claims of Plaintiffs and the Class members share a common nucleus of  
24 operative facts and originate from the same conduct by Defendants.

25 **Adequacy of Representation**

26 48. Plaintiffs will diligently represent the interests of the Class. The interests of  
27 Plaintiffs are sufficiently aligned with the interests of the other Class members such that they will  
28 have no conflicts with the interests of the Class and will be adequate representatives.





1 compensation insurance to Plaintiffs and the Class.

2 56. Upon information and belief, these standard form contracts provided in pertinent  
3 part that “[a]ll premium for this policy will be determined by our manuals of rules rates, rating  
4 plan and classifications. We may change our manual and apply the changes to this policy if  
5 authorized by law or a governmental agency regulating this workers’ compensation insurance.”  
6 The policy further provides that “[t]he final premium will be determined after this policy ends by  
7 using the actual premium basis and the proper classifications, rates and rating plan that lawfully  
8 apply to the business and work covered by this policy.”

9 57. Defendants breached the agreements between State Fund and Plaintiffs and the  
10 Class by charging insurance rates that were not calculated in a lawful manner. As determined by  
11 the Insurance Commissioner, Defendants’ usage of the unfiled secret tier modifier, and the rating  
12 plan modifier incorporating the secret tier modifier, in calculating its insureds’ premiums was  
13 unlawful. Accordingly, Defendants’ assessment of unlawful rates is a breach of the insurance  
14 agreements.

15 58. Plaintiffs have performed all of the terms of its agreements with State Fund except  
16 for those for which performance has been excused by Defendants’ unlawful conduct.

17 59. As a proximate result of Defendants’ breach of the agreements, Plaintiffs and the  
18 Class have suffered losses in an amount exceeding the jurisdictional minimum of this Court.

19 **COUNT II**

20 **CAL. BUS. & PROF. CODE § 17200, et seq.**

21 **(On Behalf of Plaintiffs and the Class)**

22 60. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-  
23 53 above as if fully set forth herein.

24 61. Plaintiffs have standing to pursue this claim under California’s Unfair Competition  
25 Law (“UCL”) because they suffered an injury-in-fact and lost money as a result of Defendants’  
26 practices.

27 62. Plaintiffs and each member of the Class purchased a workers’ compensation  
28 insurance policy from State Fund and were charged and paid a premium to State fund based in part

1 on State Fund’s unlawful application of a tier modifier in excess of 1.00.

2 63. As determined by the Insurance Commissioner, State Fund’s application of a tier  
3 modifier in excess of 1.00, and a rating plan modifier incorporating the tier modifier, violated  
4 Insurance Code section 11735, which requires, among other things, that all insurers doing business  
5 in California publicly file all rates and supplementary rate information before charging any such  
6 rates. Specifically, section 11735(b) requires in pertinent part that “[a]ll rates, supplementary rate  
7 information, and any supporting information for rates filed under this article, as soon as filed, shall  
8 be open to public inspection at any reasonable time. Copies may be obtained by any person upon  
9 request and the payment of a reasonable charge.” Under section 11730 of the Insurance Code,  
10 supplementary rate information includes any “minimum premium, policy fee, rating rule, rating  
11 plan, and any other similar information needed to determine the applicable premium for an  
12 insured.”

13 64. State Fund violated section 11735 of the Insurance Code by failing to file and  
14 publicly disclose its tier modifier algorithm which would allow an insured to determine why it was  
15 placed in any tier, as well as determine how its rating plan modifier and consequent premium were  
16 derived and calculated.

17 65. State Fund’s failure to publicly disclose its tier modifier algorithm also did not  
18 allow an insured to determine the basis of its rating plan modifier, and to determine how its  
19 premium was derived and calculated.

20 66. Section 332 of the Insurance Code requires that “[e]ach party to a contract of  
21 insurance shall communicate to the other, in good faith, all facts within his knowledge which are  
22 or which he believes to be material to the contract and as to which he makes no warranty, and  
23 which the other has not the means of ascertaining.” Concealment consists of any “[n]eglect to  
24 communicate that which a party knows, and ought to communicate.” Ins. Code § 330.

25 67. State Fund’s failure to publicly disclose the tier modifier algorithm violated section  
26 332 of the Insurance Code and resulted in unlawful and unfair business acts and practices in  
27 violation of Business & Professions Code section 17200, *et seq.*

28 68. Plaintiffs and the Class suffered an injury-in-fact and lost money or property as a

1 result of Defendants' unlawful and unfair business acts and practices.

2 69. Plaintiffs are also entitled to injunctive relief. Plaintiffs and the Class continue to  
3 be charged unlawful premiums by State Fund. Accordingly, the Court should enjoin State Fund  
4 from continuing its unlawful conduct.

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Plaintiffs, on behalf of themselves and all others similarly situated, pray  
7 for judgment as follows:

8 a. Declaring this action to be a proper class action and certifying Plaintiffs as  
9 the representatives of the Class;

10 b. Appointing Plaintiffs' attorneys as Class Counsel;

11 c. Awarding restitution and monetary damages as appropriate;

12 d. Awarding punitive and exemplary damages as appropriate;

13 e. Ordering injunctive and declaratory relief as appropriate;

14 f. Awarding pre-judgment and post-judgment interest as appropriate;

15 g. Awarding reasonable attorneys' fees, costs and expenses incurred in this  
16 action; and

17 h. Granting such other and further relief as the Court may deem just and  
18 proper.

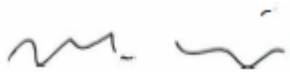
19 **JURY DEMAND**

20 Plaintiffs request a trial by jury of all claims so triable.

21  
22  
23  
24  
25  
26  
27  
28

1 Dated: August 10, 2020

Respectfully submitted,

2 By:   
3 \_\_\_\_\_

Michael Liskow

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27 *Counsel for Plaintiffs and the Class*

28 26620v4

# **EXHIBIT A**

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FILED

DEC 04 2018

ADMINISTRATIVE HEARING BUREAU

**BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA**

In the Matter of the Appeal of )  
)  
**A-BRITE BLIND & DRAPERY CLEANING,** ) FILE AHB-WCA-17-26  
)  
Appellant, )  
)  
From the Decision of the )  
)  
**STATE COMPENSATION INSURANCE FUND,** )  
)  
)  
Respondent. )  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

A-Brite Blind & Drapery Cleaning (“Appellant”) brings this appeal against State Compensation Insurance Fund (“SCIF”) in connection with Appellant’s workers’ compensation policy (the “Policy”). The appeal concerns the annual policy periods beginning December 2, 2015 (the “2015 Period”), December 2, 2016 (the “2016 Period”), and December 2, 2017 (the “2017 Period”).

Appellant contends SCIF applied an incorrect rating plan modifier to the 2015 Period and 2016 Period, improperly calculated the premium discount modifier for all three periods, and miscalculated Appellant’s payroll for the 2015 Period. For the reasons discussed below, the

Commissioner finds SCIF misapplied the rating plan modifier but correctly calculated the premium discount modifier. The Commissioner also finds Appellant failed to prove SCIF miscalculated the 2015 Period payroll.

## **II. Issues Presented**

1. Did SCIF apply the correct rating plan modifier during the 2015 Period and 2016 Period, in accordance with SCIF's filings with the California Insurance Commissioner and applicable law?

2. Did SCIF apply the correct premium discount modifier to the Policy for the 2015 Period, the 2016 Period and the 2017 Period, in accordance with SCIF's filings with the Commissioner and applicable law?

3. Did SCIF miscalculate Appellant's payroll for the purposes of determining premium for the 2015 Period?

## **III. Procedural History**

This appeal arises under Insurance Code section 11737, subdivision (f). Appellant initiated the proceedings on August 29, 2017, by filing an appeal from SCIF's July 25, 2017 decision concerning the rating plan modifier and premium discount modifier. On October 6, 2017, Appellant supplemented its appeal by filing copies of its correspondence with SCIF. The California Department of Insurance Administrative Hearing Bureau issued an Appeal Inception Notice on October 10, 2017. SCIF filed its response on October 24, 2017. The Workers' Compensation Insurance Rating Bureau of California ("WCIRB") also filed a response on October 30, 2017, electing not to actively participate in the appeal.

Administrative Law Judge ("ALJ") Clarke de Maigret conducted an evidentiary hearing

in the California Department of Insurance's Los Angeles hearing room on January 16, 2018.<sup>1</sup> Kathleen Newman represented Appellant, and Stefan Janzen, Esq. represented SCIF at the hearing.

Kathleen Newman, one of Appellant's general partners, testified on Appellant's behalf. Keith Mills, an underwriting systems analyst at SCIF, and Marina Montoya, a senior payroll auditor at SCIF, both testified on SCIF's behalf.

The evidentiary record includes the foregoing testimony, SCIF's pre-filed Exhibits 201 through 218, and the ALJ's pre-filed Exhibits 1 and 2, all of which were admitted in evidence at the hearing. It also includes Exhibits 3, 101, 219, and 220, which were introduced and admitted at the hearing. Lastly, the evidentiary record includes Exhibit 102, which Appellant submitted on January 31, 2018 and the ALJ admitted on February 9, 2018. Upon order of the ALJ, certain personal information pertaining to Appellant's employees was redacted from Exhibits 3 and 102, and the unredacted pages were sealed in the administrative record.

At the ALJ's request, SCIF submitted a post-hearing brief on February 6, 2018. The ALJ closed the evidentiary record on February 9, 2018. On March 12, 2018, the ALJ reopened the record and ordered SCIF to provide additional post-hearing briefing and submit further evidence. SCIF filed the additional brief but refused to comply with the ALJ's order to submit the evidence.<sup>2</sup> The ALJ again closed the evidentiary record on March 23, 2018.

On June 15, 2018 a Proposed Decision was submitted to the Insurance Commissioner in this matter. On August 9, 2018, the Commissioner, pursuant to the provisions of 10 CCR

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<sup>1</sup> These proceedings were conducted in accordance with California Code of Regulations, title 10, sections 2509.40 through 2509.78, and the administrative adjudication provisions of the California Administrative Procedure Act referenced in section 2509.57 of those regulations.

<sup>2</sup> The evidence at issue was SCIF's tiering algorithm and related calculations. See the discussion in part V(B)(3) below.



2509.69, chose not to adopt the proposed decision as his decision, but to decide the case upon the record.

#### **IV. Factual Findings**

The Commissioner makes the following findings of fact, based on a preponderance of the evidence in the record.

##### **A. Appellant's Business**

A-Brite Blind and Drapery Cleaning ("A-Brite") is a general partnership, whose partners include Kathleen Newman and her husband, Randall Newman.<sup>3</sup> The Newmans are also the shareholders of a corporation named Firetect, Inc. ("Firetect").<sup>4</sup> Ms. Newman is Firetect's president.<sup>5</sup> The Newmans, as A-Brite's general partners, and Firetect are jointly insured as a single employer under the Policy.<sup>6</sup>

Appellant is in the business of cleaning residential and theatrical blinds and drapery, as well as treating drapery with fire retardant.<sup>7</sup> The business is headquartered in Valencia, Los Angeles County, California, and has been in operation for 30 years.<sup>8</sup>

##### **B. Appellant's Policy and Claims History**

SCIF has provided workers' compensation insurance to Appellant for about the last 20 years.<sup>9</sup> The Policy at issue in this case renewed on December 2, 2015, 2016 and 2017, the starting dates of the 2015 Period, 2016 Period, and 2017 Period, respectively.<sup>10</sup> For those

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<sup>3</sup> Transcript of Proceedings on January 16, 2018 ("Tr.") at 25:10-26:3.

<sup>4</sup> Tr. 26:18-25.

<sup>5</sup> Tr. 27:22-23.

<sup>6</sup> Evidentiary Hearing Exhibit ("Exh.") 208 at 208-1. Throughout this Proposed Decision, the term "Appellant" refers to A-Brite and Firetect jointly, except where otherwise required by the context.

<sup>7</sup> Tr. 26:4-17.

<sup>8</sup> Tr. 25:1-4.

<sup>9</sup> Tr. 38:11-14; Exh. 219.

<sup>10</sup> Tr. 10:3-18; Exh. 208 at 208-1; Exh. 218 at 218-1.

periods, Appellant dealt directly with SCIF and did not use an insurance broker.<sup>11</sup>

During the 20 years it has been insured by SCIF, Appellant received a single workers' compensation claim.<sup>12</sup> That claim resulted from a bruise sustained by one of Appellant's employees on September 10, 2015.<sup>13</sup> SCIF initially reserved \$24,000 to cover the estimated losses and expenses.<sup>14</sup> However, the claim closed on November 6, 2015 with substantially lower total combined losses and expenses of \$819, which SCIF paid.<sup>15</sup>

### **C. Determination of Premium under the Policy**

The Policy provides that Appellant's premiums are determined by SCIF's "manuals of rules, rates, rating plans and classifications."<sup>16</sup> SCIF's manuals and rating plans include several modifiers, which affected Appellant's premium.<sup>17</sup>

#### **1. Rating Plan Modifier**

SCIF determined the premiums for the 2015 Period and 2016 Period in part based on a "rating plan modifier."<sup>18</sup> SCIF applied the rating plan modifier to Appellant's "standard premium" to arrive at a "modified premium."<sup>19</sup> The rating plan modifier resulted from multiplying four components, namely, (a) a "territory modifier," based on geographical area, (b) a "claims free" modifier, for policyholders with claims below a certain level, (c) a "direct placement" modifier for policyholders who deal with SCIF directly rather than through a

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<sup>11</sup> Tr. 37:23-24, 38:5-7; Exh. 206; Exh. 215.

<sup>12</sup> Tr. 28:21-29:11; Exh. 3 at 3-3 through 3-6.

<sup>13</sup> Exh. 201 at 201-1.

<sup>14</sup> Exh. 1 at 1-40.

<sup>15</sup> Tr. 65:8-9; Exh. 201 at 201-1.

<sup>16</sup> Exh. 209 at 209-4 [Part Five, § A].

<sup>17</sup> Exh. 1; Exh. 2.

<sup>18</sup> Exh. 210 at 210-1; Exh. 218 at 218-2.

<sup>19</sup> Exh. 212 at 212-1. In Appellant's case, standard premium is equal to base premium, which is calculated by multiplying Appellant's workers' compensation payroll in each employment classification by SCIF's base rate for the respective classification. (*Ibid.*)

broker, and (d) a “tier modifier,” based on a rating tier assigned according to a “tier score” calculated using an algorithm.<sup>20</sup> These modifiers are typically expressed as numerical coefficients. For example, a modifier of 0.80 reduces premium by 20 percent, while a modifier of 1.20 increases it by 20 percent.

**a. Territory Modifier**

In the 2015 Period and 2016 Period, SCIF applied a territory modifier of 1.15 to the Policy<sup>21</sup>. SCIF’s rate filings with the Commissioner included a 1.15 territory modifier for Los Angeles County, effective April 1, 2015.<sup>22</sup>

**b. Claims Free Modifier**

During the 2015 Period, SCIF applied a 10 percent “claims free” credit to the Policy (*i.e.*, a modifier of 0.90).<sup>23</sup> For unclear reasons, SCIF did not apply the credit to the 2016 period.<sup>24</sup> Under SCIF’s rate filings effective during those periods, the credit was applicable to policyholders continuously insured with SCIF who incurred no more than \$1,000 in workers’ compensation claims during the three years preceding the policy period (or two years for policyholders with less than \$10,000 in annual base premium).<sup>25</sup>

**c. Direct Placement Modifier**

SCIF applied a three percent “direct placement” credit (0.97 modifier) to the Policy

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<sup>20</sup> Tr. 58:14-59:8. See also Tr. 15:3-17:18 regarding trade secret privilege claimed by SCIF in the algorithm.

<sup>21</sup> Exh. 206 at 206-3; Exh. 215 at 215-3.

<sup>22</sup> Exh. 1 at 1-9, 1-27.

<sup>23</sup> Exh. 206 at 206-3; Exh. 208 at 208-2.

<sup>24</sup> Exh. 215 at 215-3; Exh. 218 at 218-2.

<sup>25</sup> Exh. 1 at 1-4; Exh. 2 at 2-1.

for both the 2015 Period and 2016 Period.<sup>26</sup> A 2011 SCIF rate filing with the Commissioner describes this three percent credit.<sup>27</sup>

**d. Rating Tier Modifier**

SCIF assigns policyholders to various “rating tiers,” each with its own modifier.<sup>28</sup> SCIF assigns tiers based on “tier scores.”<sup>29</sup> Tier scores are calculated by SCIF using software it alternately refers to as the rating engine, tiering engine, scoring engine, or quote engine.<sup>30</sup> SCIF treats the tiering algorithm as a closely-guarded secret and does not allow it to be viewed by customers, members of the public, or even SCIF’s own underwriting staff.<sup>31</sup> SCIF does not indicate tier scores on its policies, quotes or billing statements; nor does it provide customers with any calculations showing how the scores are calculated, even if customers specifically request that information.<sup>32</sup> The algorithm is not included in any of SCIF’s rate filings with the Commissioner.<sup>33</sup>

The algorithm takes into account the policyholder’s prospective estimated premium, payroll and number of employees.<sup>34</sup> It also factors in three years of the policyholder’s historical premium and loss data.<sup>35</sup> That data includes the frequency and number of workers’ compensation claims and whether those claims involved medical expenses or compensation for

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<sup>26</sup> Exh. 206 at 206-3; Exh. 208 at 208-2; Exh. 215 at 215-3; Exh. 218 at 218-2.

<sup>27</sup> Exh. 1 at 1-1; Exh. 2 at 2-2.

<sup>28</sup> Tr. 56:10-17; Exh. 1 at 1-26; Exh. 2 at 2-27.

<sup>29</sup> Tr. 74:22-75:2.

<sup>30</sup> Tr. 62:24, 65:19-21; 74:20-25.

<sup>31</sup> Tr. 14:22-17:18; Tr. 74:20-75:13; See also SCIF Letter to ALJ renewing objection, dated February 1, 2018.

<sup>32</sup> Tr. 97:3-21, 101-3; 102-17; Exh. 101; Exh. 205; Exh. 208.

<sup>33</sup> See Exh. 1, Exh. 2.

<sup>34</sup> Tr. 57:8-11.

<sup>35</sup> Tr. 57:11-13, 83:10-19.

lost employee time or disability.<sup>36</sup>

Each rating tier has an associated modifier.<sup>37</sup> Starting in 2013 and through the commencement of the 2015 Period, SCIF employed a rating framework with four tiers, A through D.<sup>38</sup> In the year preceding the 2015 Period, Appellant was assigned to Tier B, which at the time had a rating tier modifier of 0.951.<sup>39</sup>

SCIF revised its tier rating framework for the 2015 Period.<sup>40</sup> Tier A received a modifier of 0.65. Tier B was assigned a modifier of 1.0. Tier C received a factor of 1.5, and tier D was assigned a modifier of 2.0.<sup>41</sup>

In the 2015 Period, Tier D applied to tier scores of at least 0.30092.<sup>42</sup> Using its secret algorithm, SCIF initially calculated Appellant's tier score as 0.419525161.<sup>43</sup> Consequently, SCIF moved Appellant from Tier B to Tier D, thereby doubling Appellant's premium.<sup>44</sup> The tier score increase resulting in Appellant's move to Tier D was precipitated by the lone workers' compensation claim in 2015, for which SCIF initially reserved \$24,000 in estimated losses and expenses.<sup>45</sup> SCIF notified Appellant of the tier change and premium increase in a renewal quote dated October 5, 2015.<sup>46</sup> Nothing in the record or in SCIF's rate filings explains how Appellant's tier scores were calculated.

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<sup>36</sup> Tr. 57:15-25.

<sup>37</sup> Tr. 56:10-17; 58:12-17; Exh. 1 at 1-26; Exh. 2 at 2-33, 2-34.

<sup>38</sup> Tr. 56:18; Exh. 1 at 1-26.

<sup>39</sup> Tr. 59:11-12.

<sup>40</sup> Tr. 59:21-24; Exh. 1 at 1-26.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> Exh. 1 at 1-39.

<sup>44</sup> Tr. 61:5-6.

<sup>45</sup> Tr. 61:5-64:10; Exh. 1 at 1-40.

<sup>46</sup> Exh. 205 at 205-3.

Appellant complained to SCIF about the increase,<sup>47</sup> which resulted in SCIF recalculating the tier score and reassigning Appellant to Tier C on January 25, 2016, with a tier modifier of 1.5.<sup>48</sup> The sole factor lowering Appellant's tier score from the Tier D range to the Tier C range was SCIF's entry into the scoring engine of \$819 in actual losses and expenses for the 2015 claim rather than the \$24,000 that was originally estimated.<sup>49</sup> In contrast, if Appellant had incurred no workers' compensation claims in the three years prior to the 2015 Period, SCIF would have assigned Appellant to Tier B with a modifier of 1.0.<sup>50</sup>

Starting in the 2016 Period, SCIF increased the number of rating tiers to a numerical system ranging from four to seven.<sup>51</sup> SCIF continued to maintain that its algorithm was confidential and did not include it in its rate filings with the Commissioner. For policyholders with standard premium between \$10,000 and \$25,000, the new Tier 3 had a modifier of 1.0, which would have no impact on premium. And Tier 4 had a factor of 1.2, which would increase standard premium by 20 percent.<sup>52</sup> SCIF assigned Appellant to Tier 4 for the 2016 Period.<sup>53</sup> If Appellant had incurred no workers' compensation claims in the three prior years, SCIF would have assigned Appellant to Tier 3.<sup>54</sup>

In other words, the lone \$819 claim in a 20-year period resulted in a 50 percent (or \$6,971) increase to Appellant's premium for the 2015 Period and a 20 percent (or estimated \$1,834) increase for the 2016 Period.<sup>55</sup>

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<sup>47</sup> Exh. 3 at 3-7.

<sup>48</sup> Tr. 33:12-23, 64:11-65:16; Exh. 3 at 3-30.

<sup>49</sup> Tr. 64:21-65:21; Exh. 1 at 1-36 through 1-41.

<sup>50</sup> Tr. 105:21-106:14.

<sup>51</sup> Tr. 72:12-14; Exh. 2 at 2-27.

<sup>52</sup> Tr. 93:6-14; Exh. 2 at 2-27.

<sup>53</sup> Tr. 72:7-11; Exh. 2 at 2-39.

<sup>54</sup> Tr. 106:15-107:3.

<sup>55</sup> Exh. 212 at 212-1; Exh. 215 at 215-3.

## 2. Premium Discount Modifier

Appellant's premiums for each of the 2015 Period, 2016 Period and 2017 Period were calculated in part using a "premium discount modifier."<sup>56</sup> That modifier applied a flat discount of 11.3% to all modified premium over \$5,000.<sup>57</sup> SCIF's 2011 rate filings with the Commissioner describe that discount.<sup>58</sup>

### D. Policy Audit

On March 27, 2017, SCIF conducted an audit for the 2015 Period.<sup>59</sup> The audit found Appellant's workers' compensation payroll was \$188,995. Based on that audit, SCIF determined that Appellant incurred a base premium of \$13,942.87, a modified premium of \$20,996.99,<sup>60</sup> a total premium of \$19,189.36,<sup>61</sup> mandatory surcharges of \$629.83, and total charges of \$19,819.19.<sup>62</sup>

### V. Discussion

Appellant argues SCIF's rating plan modifiers and premium discount modifiers were incorrectly applied.<sup>63</sup> Appellant further contends SCIF miscalculated Appellant's 2015 Period payroll. SCIF argues all of the modifiers were valid and correctly applied.<sup>64</sup> SCIF also stands behind its audit and further asserts the Commissioner may lack jurisdiction to determine the payroll calculation issue.<sup>65</sup> For the reasons discussed below, the Commissioner finds that (1)

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<sup>56</sup> Tr. 71:6-72:6; Exh. 210 at 210-1; Exh. 218 at 218-2.

<sup>57</sup> Tr. 71:6-16; Exh. 210 at 210-1; Exh. 218 at 218-2.

<sup>58</sup> Exh. 1 at 1-2, 1-3.

<sup>59</sup> Tr. 115:14-25; Exh. 211 at 211-1.

<sup>60</sup> Obtained by multiplying the base premium by a rating plan modifier of 1.50593. (Exh. 212 at 212-1.)

<sup>61</sup> Obtained by multiplying the modified premium by a premium discount modifier of 0.91391. (*Ibid.*)

<sup>62</sup> Obtained by adding the total premium and the mandatory surcharges. (*Id.* at 212-1, 212-2.)

<sup>63</sup> Appeal dated August 25, 2017 ("Appeal").

<sup>64</sup> SCIF's Response to the Appeal, dated October 18, 2017, at 3-4.

<sup>65</sup> Letter from SCIF to the ALJ, dated February 9, 2018.

the Commissioner has jurisdiction over all issues in this appeal, (2) SCIF misapplied the rating plan modifier, (3) SCIF correctly applied the premium discount modifier, and (4) Appellant failed to meet its burden of proof to show SCIF miscalculated Appellant's payroll.

**A. The Commissioner Has Jurisdiction over This Appeal**

**1. Applicable Law**

**a. The Statutory Rate Filing Scheme**

California has an "open rating" workers' compensation regulatory system, in which each insurer sets its own rates and files them with the Commissioner. This framework is intended to curtail monopolistic and discriminatory pricing practices, ensure carriers charge rates adequate to cover their losses and expenses, and provide public access to rate information so that employers may find coverage at the best competitive rates.<sup>66</sup>

Insurance Code section 11735 lays out the statutory filing requirements. Subdivision (a) of that section provides in part, "Every insurer shall file with the commissioner all rates and supplementary rate information that are to be used in this state. The rates and supplementary rate information shall be filed not later than 30 days prior to the effective date." The term "rate" means "the cost of insurance per exposure base unit," subject to certain limitations.<sup>67</sup> And "supplementary rate information" means "any manual or plan of rates, classification system, rating schedule, minimum premium, policy fee, rating rule, rating plan, and any other similar information needed to determine the applicable premium for an insured."<sup>68</sup>

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<sup>66</sup> See generally Ins. Code §§ 11730-11742.

<sup>67</sup> Ins. Code § 11730, subd. (g). Rates exclude the application of individual risk variations based on loss or expense considerations, as well as minimum premiums.

<sup>68</sup> Ins. Code § 11730, subd. (j).



## **b. Jurisdiction over Private Party Appeals**

Insurance Code section 11737, subdivision (f), confers jurisdiction on the Commissioner to hear and decide private party appeals concerning the application of insurers' section 11735 filings. Specifically, the statute provides in pertinent part:

Every insurer... shall provide within this state reasonable means whereby any person aggrieved by the application of its filings may be heard by the insurer... on written request to review the manner in which the rating system has been applied in connection with the insurance afforded or offered. ... Any party affected by the action of the insurer... on the request may appeal... to the commissioner, who after a hearing ... may affirm, modify, or reverse that action.

## **2. Analysis**

Appellant asserts SCIF failed to correctly apply the rates and supplementary rate information filed under Insurance Code section 11735. Specifically, Appellant contends SCIF misapplied its filed rating plan modifiers and premium discount modifiers to SCIF's filed rates. Appellant further contends SCIF miscalculated Appellant's 2015 Period payroll. If true, that would result in the application of SCIF's filed rates to the wrong exposure level. Appellant requested that SCIF remedy these issues. SCIF rejected that request, and Appellant timely filed this appeal.<sup>69</sup> Because the issues on appeal concern the manner in which SCIF applied its rating system to the Policy, the Commissioner has jurisdiction under Insurance Code section 11737, subdivision (f).

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<sup>69</sup> See Cal. Code Regs., tit. 10, § 2509.46 ["An appeal is timely if it is filed either within 30 days after rejection of a Complaint and Request for Action or rejection of review thereof . . . "]. California Code of Regulations, title 10, section 2509.42, subdivision (q) provides in part, "Service by first class mail . . . is complete at the time of deposit with the carrier, but any . . . right or duty to do any act or make any response within any prescribed period of notice . . . shall be extended for a period of five days." SCIF mailed its rejection of Appellant's complaint and request for action on July 25, 2017 (See Appeal). Appellant filed this appeal within the 35 day window on August 29, 2017. (*Ibid.*)

**B. Use of the Tier Modifier Resulted in a Misapplication of SCIF's Filed Rates.**

SCIF's rating plan modifier consists of four components, one of which is the tier modifier. For the reasons discussed below, the tier modifier is an improper adjustment to SCIF's filed rates.

**1. SCIF Misapplied its Filed Rates Due to its Use of an Unfiled Tiering Algorithm.**

SCIF uses a proprietary algorithm to calculate the tier modifier. SCIF contends it is not legally required to file the algorithm with the Commissioner, and that use of the unfiled algorithm to determine Appellant's premium was lawful. The Commissioner disagrees.

**a. Applicable Law**

Insurance Code section 11735, subdivision (a), requires insurers to file all rates and supplementary rate information, without exception, before using them in California. The term "supplementary rate information" includes any "minimum premium, policy fee, rating rule, rating plan, and any other similar *information needed to determine the applicable premium for an insured.*"<sup>70</sup> "[M]oney paid by an insured to an insurer for coverage constitutes premium regardless of its name."<sup>71</sup> Thus, any information necessary to determine amounts owed by an insured to its insurer is supplementary rate information. If SCIF wished to apply its Tiering algorithm to Appellant's rate, it was required to file the algorithm and allow it to be subject to public inspection under Insurance Code section 11735.

Insurers may only charge premium in accordance with their filed rates and

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<sup>70</sup> Ins. Code § 11730, subd. (j), emphasis added.

<sup>71</sup> *In the Matter of the Appeal of Shasta Linen Supply, Inc.* (Cal. Ins. Comm'r, June 22, 2016, AHB-WCA-14-31) (*Shasta Linen*) at 48-49; see also *Troyk v. Farmers Group Inc.* (2009) 171 Cal.App.4th 1305, 1325 ["[I]nsurance premium includes not only the 'net premium,' or actuarial cost of the risk covered (i.e. expected amount of claims payments), but also the direct and indirect costs associated with providing that insurance coverage and any profit or additional assessment charged."]

supplementary rate information.<sup>72</sup> As the Commissioner determined in his precedential decision *In the Matter of the Appeal of Shasta Linen Supply, Inc.*, an insurer's use of unfiled rates or supplementary rate information is unlawful.<sup>73</sup> That is true regardless of whether the Commissioner first disapproved the unfiled rates under Insurance Code section 11737.<sup>74</sup>

**b. Analysis**

**i. The Tiering Algorithm Constitutes Supplementary Rate Information.**

SCIF determined Appellant's premiums for the 2015 Period and 2016 Period in part based on a "rating plan modifier"<sup>75</sup> that increased Appellant's premium.<sup>76</sup> The rating plan modifier resulted from multiplying four component modifiers, including a "tier modifier." Tier modifiers, in turn, are tied to "rating tiers" assigned to policyholders based on "tier scores" that SCIF calculates using an algorithm that SCIF claims is proprietary. The algorithm takes account of the policyholder's prospective estimated premium, payroll and number of employees,<sup>77</sup> as well as the policyholder's historical premium and loss data.<sup>78</sup> There is no way for the policyholder or anyone else to calculate a tier score without the algorithm. Without the

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<sup>72</sup> Ins. Code § 11735, subd. (a); Ins. Code § 11730, subd. (j); See *Appeal of Gary E. Milne* (Cal. Ins. Comm'r Feb. 19, 1999, AHB-WCA-97-11) at 10 ["[I]nsurers do not have unrestricted discretion to set workers' compensation insurance rate levels under open rating. The open rating system contemplates competitive pricing consistent with the public interest in fair and adequate insurance."]

<sup>73</sup> *Shasta Linen* at 52. *Shasta Linen* was designated precedential under Gov. Code section 11425.60, subdivision (b).

<sup>74</sup> See *Ibid.*

<sup>75</sup> Exh. 210 at 210-1; Exh. 218 at 218-2.

<sup>76</sup> Exh. 212 at 212-1. In Appellant's case, standard premium is equal to base premium, which is calculated by multiplying Appellant's workers' compensation payroll in each USRP classification by SCIF's base rate for the respective classification. (*Ibid.*)

<sup>77</sup> Tr. 57:8-11.

<sup>78</sup> Tr. 57:11-13.

tier score, it is impossible to determine which rating tier applies, and which tier modifier to assign the policyholder. Since a policyholder's base premium during the 2015 Period, for example, could have been reduced by as much 45 percent or increased by up to 100 percent depending on the rating tier, it is not possible to determine premium without the algorithm.<sup>79</sup> Because the algorithm is a key component of the rate calculation, it constitutes "information needed to determine the applicable premium for an insured[.]" thereby satisfying the definition of "supplementary rate information" under Insurance Code section 11730, subdivision (j).<sup>80</sup>

**ii. SCIF's Use of the Unfiled Algorithm Was Unlawful, Contravened Public Policy, and Misapplied SCIF's Filed Rates.**

Insurers must file all supplementary rate information under Insurance Code section 11735, subdivision (a), and under subdivision (b), which requires that information be publicly available. But SCIF withheld the algorithm—a critical piece of information that determines policyholders' rates—based on its assertion that "any policyholder (or future policyholder) can potentially 'game the system' if the algorithm was known to them" and that other insurers "could, conceivably, use knowledge of the algorithm to gain a competitive advantage over State Fund[.]"<sup>81</sup> SCIF's position ignores the mandate of the statute and frustrates the public policy concerns behind it.

Among the policy aims of section 11735, two important goals of the public inspection

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<sup>79</sup> Exh. 1 at 1-26.

<sup>80</sup> Without the algorithm, it is impossible for the Commissioner to determine whether the applied rates tend to create a monopoly in the market, are inadequate or unfairly discriminatory. (See Ins. Code §§ 11732, 11732.5, 11737, subd. (b), (c).)

<sup>81</sup> Letter from State Fund to the ALJ, dated February 1, 2018, objecting to disclosure of the algorithm. In fact, SCIF violated the ALJ's order to submit a copy of the algorithm in this appeal. (See SCIF's Amended Objection to Order Vacating Evidentiary Ruling; Order to Disclose Tiering Algorithm, dated March 22, 2018 ("Obj. to Order to Disclose").)

provisions are to enable employers to obtain coverage at the best rates and to curtail monopolistic pricing practices.<sup>82</sup> When rate information is transparent, policyholders are better able to compare coverage and reduce their costs. Transparency reduces the likelihood that insurers will gain a monopolistic advantage when all carriers' pricing information is public.

In furtherance of those aims, the Legislature passed Insurance Code section 11742 to mandate the establishment of an online rate comparison guide. Subdivision (a) of that section provides:

The Legislature finds and declares that the insolvencies of more than a dozen workers' compensation insurance carriers have seriously constricted the market and lead to a dangerous increase in business at the State Compensation Insurance Fund. Yet more than 200 insurance companies are still licensed to offer workers' compensation insurance in California. Unfortunately, many employers do not know which carriers are offering coverage, and it is both difficult and time consuming to try to get information on rates and coverages from competing insurance companies. A central information source would help employers find the required coverage at the best competitive rates.

When insurers use secret unfiled formulas to modify their filed rates, they directly frustrate the Legislature's intent behind the comparison guide and section 11735's public inspection provisions. Rate disclosure confers little value if the public does not have access to the formulas carriers use to modify their rates. Meaningful price comparison is simply impossible without those formulas.

By hiding its algorithm, SCIF obscured Appellant's looming premium increase until Appellant was in no position to avoid it. Appellant's witness testified, "I could not fathom what a negative monetary impact it would have on our small business to have a claim after over 20 years in business. One claim for \$819.... When I received the final renewal for 2015, I was

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<sup>82</sup> See generally Ins. Code §§ 11730-11742.

shocked.”<sup>83</sup> If Appellant or its advisors had access to the algorithm, they could have determined in advance the claim’s impact on premium and potentially mitigated the effects. At a minimum, Appellant would have had additional time to shop for a less expensive policy.

Insurance Code section 11735 and the legislative policy behind it required that SCIF file the algorithm as supplementary rate information. SCIF failed to do so, rendering its use of the unfiled algorithm unlawful. By effectively increasing SCIF’s filed rates by 50 percent for the 2015 Period and 20 percent for the 2016 Period, SCIF’s use of the algorithm resulted in the misapplication of those rates.

**2. SCIF Wrongly Asserts it Complied with the Commissioner’s Regulations, Thus Fulfilling the Statutory Filing Requirements.**

SCIF argues it complied with the Commissioner’s rate filing regulations and in so doing satisfied Insurance Code section 11735’s filing requirements. Specifically, SCIF asserts that the Commissioner has authority under the regulations to determine what constitutes supplementary rate information. SCIF asserts that the Commissioner’s acceptance of its rate filing without the tiering algorithm *ipso facto* constituted a determination that the algorithm was not supplementary rate information. Therefore, SCIF contends that the algorithm did not need to be filed under section 11735.<sup>84</sup> SCIF’s interpretation of the rate filing process and regulations is wrong.

**a. Applicable Law**

In addition to complying with the statutory filing requirements under Insurance Code section 11735, workers’ compensation insurers must file their rates in accordance with

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<sup>83</sup> Tr. at 29:8-25.

<sup>84</sup> Obj. to Order to Disclose at 4-6.

California Code of Regulations, title 10, sections 2509.30 *et seq.* Section 2509.32, subdivision (e), which provides:

A complete rate filing is one for which the insurer has completed the Filing Form and submitted all necessary attachments and exhibits. Necessary attachments and exhibits are those materials that, together with the Filing Form, are sufficient to enable the Commissioner to determine the rates the insurer would charge its insureds. Unless the Commissioner notifies the insurer within 30 days of the filing date that its rate filing is incomplete, the rate filing will be considered complete.

#### **b. Analysis**

SCIF did not comply with the regulations, which broadly set forth the information that is required in an insurer's rate filing—insurers must file *all* information that is necessary to determine an insurer's rates, which would encompass SCIF's algorithm. The statute does not give the Commissioner the power to exclude information in violation of the statute's language that all such information must be filed.

The regulation provides further clarification of Insurance Code section 11735, subdivision (b)'s requirement that “[r]ates filed pursuant to this section shall be filed in the form and manner prescribed by the commissioner.” Section 2509.32, subdivision (e), does not suggest that an insurer's failure to file supplemental information relieves it from its obligation to comply with statutory law; indeed, the regulation expressly mandates that insurers file information “sufficient to enable the Commissioner to determine the rates the insurer would charge its insureds.” The regulation is consistent with the statute, which broadly defines the term “supplementary rate information” to include “minimum premium, policy fee, rating rule, rating plan, and any other similar information needed to determine the applicable premium for an insured.” Indisputably, if SCIF intended to use the algorithm to modify its rates, the algorithm would be necessary determine SCIF's rates. Since SCIF's algorithm falls squarely within the statutory and regulatory

definitions, SCIF was required file it. SCIF knew that its rate filing was not complete because SCIF knew the algorithm is necessary “to enable the Commissioner to determine the rates the insurer would charge its insureds.” Section 2509.32(e) does not purport to allow insurers to avoid the filing requirements that are specified in Insurance Code section 11735 under any circumstance. Rather, it provides the form and manner of compliance and reiterates the provisions in the statute.

SCIF cites no basis to support its assertion that it need not comply with statutory and regulatory law so long as the Commissioner accepted its filing as complete. SCIF seems to confuse the Commissioner’s acceptance of its filing with the Commissioner’s limited power to disapprove rates under certain narrowly-tailored circumstances, if he determines that the premiums charged, in the aggregate, would be inadequate to cover an insurer’s losses and expenses, unfairly discriminatory, or tend to create a monopoly in the market.<sup>85</sup> While applicable law grants the Commissioner authority to reject a rate filing if an insurer fails to comply with the filing requirements or if the filing is incomplete,<sup>86</sup> the Commissioner lacks the authority to override a statutory mandate that insurers file all supplemental rate information. The Commissioner’s determination that a filing is complete is a ministerial function to determine whether the paperwork includes the Filing Form, exhibits and attachments necessary to comprise a complete filing as defined in Title 10 California Code of Regulations section 2509.32(e). The Commissioner’s acceptance of SCIF’s rate filing as complete is not a substantive endorsement that SCIF has met its statutory obligation to file all of supplementary rate information that it uses to calculate an insured’s premium, such as the unfiled algorithm. Whatever else may be said of the legal importance of an administrative action to deem a filing

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<sup>85</sup> Ins. Code § 11737(b).

<sup>86</sup> Tit. 10, Cal. Code Regs. § 2509.32(c).



complete, the scope of such action cannot serve to protect formulae an insurer withholds from its filing, and then applies outside of the filing process to calculate a policyholder's applicable premium.<sup>87</sup>

Moreover, SCIF's failure to file its algorithm undermined an additional purpose of the statute that required it to file its algorithm, preventing A-Brite's ability to access crucial information that greatly affected its workers' compensation insurance rates.

SCIF's argument also overlooks section 11735's important public policy consideration in requiring that pricing information be publicly available to assist employers shopping for coverage. Given this policy, as well as section 11730's broad definition of "supplementary rate information," and section 11735's express requirement that insurers file *all* of that information before using it, an insurer's failure to file such information would frustrate the public's statutory right to access that information. The Commissioner's acceptance of SCIF's rate filing as complete does not relieve SCIF from its responsibility to file its supplementary information as required by law. More to the point, SCIF's failure to file the supplementary information cannot inure to the prejudice of A-Brite. SCIF unlawfully misapplied its rates by modifying them with an unfiled algorithm. The Commissioner will not affirm its use of the unfiled algorithm to A-Brite's prejudice.

### **3. Trade Secret Privilege Did Not Exempt the Algorithm from Statutory Filing and Disclosure Requirements.**

SCIF argues that even if the tiering algorithm is supplementary rate information, it

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<sup>87</sup> (See, e.g., *State Compensation Ins. Fund v. Superior Court* (2001) 24 Cal.4<sup>th</sup> 930 [insurer's misallocation of expenses which were reported to WCIRB, thereby resulting in higher premiums for insured, is not conduct immune from civil liability]; accord *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4<sup>th</sup> 968, 992-93 [11 Cal.Rptr.3d 45, 62] ["It is possible for an insurance carrier to file with the Department a rate filing and class plan that satisf[y] all of the ratemaking components of the regulations, and still result in a violation of the Insurance Code *as applied*." (emphasis in original)]; see also *MacKay v. Superior Court* (2010) 188 Cal.App.4<sup>th</sup> 1427, 1450 [115 Cal.Rptr.3d 893, 911], as modified (Oct. 20, 2010) ["...underlying conduct challenged was not the charging of an approved rate, but the application of an unapproved underwriting guideline..."].)

remains protected from disclosure under the trade secret privilege.<sup>88</sup> Specifically, SCIF contends that because section 11735 does not expressly override the subsequently enacted trade secret protections of Government Code section 6254, section 11735 does not require the filing and public disclosure of trade secrets. The Commissioner is not persuaded.

**a. Applicable Law**

Civil Code section 3426.1 defines a “trade secret” as information that “(1) [d]erives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and [¶] (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

Evidence Code section 1060 provides: “If he or his agent or employee claims the privilege, the owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice.” Like the rest of the Evidence Code, that section applies to court actions.<sup>89</sup> It has no applicability to administrative or other governmental proceedings unless expressly invoked by statute or regulation.<sup>90</sup>

Government Code section 6254 exempts certain trade secrets from the disclosure requirements of the California Public Records Act.<sup>91</sup> In particular, subdivision (ab) of that section states the act does not require disclosure of “[t]he following records of the State Compensation Insurance Fund:”

(3) Records related to the impressions, opinions,

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<sup>88</sup> Obj. to Order to Disclose at 6-8.

<sup>89</sup> Evid. Code § 300.

<sup>90</sup> 31 Cal.Jur.3d Evidence, § 7; see also *Big Creek Lumber Co. v. County of San Mateo* (1995) 31 Cal.App.4th 418, 430 fn. 16.

<sup>91</sup> Cal. Gov. Code § 6250 et seq.

recommendations, meeting minutes of meetings or sessions that are lawfully closed to the public, research, work product, theories, or strategy of the fund or its staff, on the development of rates, contracting strategy, underwriting, or competitive strategy pursuant to the powers granted to the fund [under the Insurance Code].

...

(5)(A) Records that are trade secrets pursuant to... [Evidence Code section 1060], including without limitation, instructions, advice, or training provided by the State Compensation Insurance Fund to its board members, officers, and employees regarding the fund's special investigation unit, internal audit unit, and informational security, marketing, rating, pricing, underwriting, claims handling, audits, and collections.

In addition, section 6254, subdivision (k) exempts the following information from the Public Records Act's disclosure requirements: "Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege."

#### **b. Analysis**

Trade secret privilege does not limit section 11735's public inspection requirements. The California Supreme Court's analysis and holding in *State Farm Mutual Automobile Insurance Co. v. Garamendi*<sup>92</sup> are instructive. That case concerned Insurance Code section 1861.07, which broadly requires public disclosure of "[a]ll information provided to the commissioner" in connection with insurance rate approval applications (unrelated to workers' compensation). The plaintiff insurance company argued Government Code section 6254's trade secret provisions limited section 1861.07's disclosure requirements. Specifically, the plaintiff contended that since section 1861.07 expressly excludes a specific subdivision of section 6254, the Legislature implicitly intended all other subdivisions to apply, including

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<sup>92</sup> *State Farm Mut. Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029.

those that exempt trade secrets from disclosure. The Court disagreed, holding that the public disclosure rule covering “[a]ll information provided to the commissioner” under section 1861.07 is absolute.<sup>93</sup> That section’s exclusion of the specific provision of section 6254 “merely buttresses this rule.”<sup>94</sup> Thus, the Court concluded that information provided to the commissioner under section 1861.07 was not subject to trade secret privilege under section 6254 or, by extension, Evidence Code section 1060.<sup>95</sup>

Insurance Code section 11735’s public disclosure requirement is similarly absolute. The statute requires the filing of “all rates and supplementary rate information that are to be used in this state” and “[a]ll rates, supplementary rate information, and any supporting information for rates filed under this article, as soon as filed, shall be open to public inspection at any reasonable time...”<sup>96</sup>

Finally, contrary to SCIF’s assertions,<sup>97</sup> it is immaterial that Government Code section 6254 was enacted after Insurance Code section 11735. Section 6254 limits public disclosure obligations under the Public Records Act, so the Public Records Act cannot reasonably be construed to limit the Insurance Commissioner’s review and acceptance of supplementary rate information under the Insurance Code. Specifically, the lead-in to section 6254 states that “this chapter does not require the disclosure” of the information exempted pursuant to that section. And “this chapter” refers to Government Code, division 7, chapter 3.5, *i.e.*, the Public Records Act. A plain reading of the Public Records Act limits its application to the chapter within the

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<sup>93</sup> Id. at 1042-1043, emphasis in original.

<sup>94</sup> Id. at 1042.

<sup>95</sup> Id. at 1047. As noted above, privilege under Evidence Code section 1060 is incorporated by reference in Government Code section 6254, subdivision (k).

<sup>96</sup> Emphasis added.

<sup>97</sup> Obj. to Order to Disclose at 7.

Government Code, and is plainly inapplicable to the construction of the Insurance Code and workers' compensation insurance rate filing requirements concerning the Insurance Commissioner. Because a plain reading of Government Code section 6254 and Insurance Code section 11735 demonstrates two separate and independent areas of authority, the order in which they were enacted is of no consequence here.

For these reasons, the trade secret privilege does not exempt the tiering algorithm from Insurance Code section 11735's filing and public inspection provisions.

**4. SCIF Must Exclude The Unfiled Tier Modifier in Computing Appellant's Rates.**

Section 11737, subdivision (f), grants the Commissioner broad authority to award remedies in workers' compensation appeals. The statute authorizes him to "affirm, modify, or reverse" an insurer's action concerning the application of its rating system. The statute contains no language restricting remedies the Commissioner may order to modify or reverse an insurer's action. Nor has any California court inferred such restrictions from the statute. Indeed, the breadth of the Commissioner's authority is consistent with his comprehensive role to "require from every insurer a full compliance with all the provisions of [the Insurance Code]."<sup>98</sup>

SCIF failed to apply the correct rate to the policy by unlawfully applying the unfiled rating tier modifier component for the 2015 Period and 2016 Period. SCIF must recalculate the rates for those Periods without applying the unfiled rating tier modifier.

**C. The Claims Free Modifier Applies to Both the 2015 Period and the 2016 Period.**

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<sup>98</sup> Ins. Code § 12926.

The Commissioner finds SCIF correctly applied a claims-free modifier to the 2015 Period but improperly failed to apply that modifier to the 2016 Period.

Under a SCIF rate filing that was in effect during the 2015 Period and 2016 Period, a claims-free modifier of 0.90 applied to policyholders continuously insured with SCIF and incurring no more than \$1,000 in workers' compensation claims during the three years preceding the current policy period (or two years for policyholders with less than \$10,000 in annual base premium).<sup>99</sup> In the three years preceding the 2015 Period, Appellant was continuously insured with SCIF and incurred no workers' compensation claims. Accordingly, SCIF correctly applied the claims free modifier to the Policy for that period.<sup>100</sup>

However, SCIF did not apply the modifier to the 2016 Period.<sup>101</sup> In September of 2015, Appellant incurred a single workers' compensation claim, which was closed on November 6, 2015. The total losses and expenses incurred in connection with that claim were \$819.<sup>102</sup> Thus, Appellant incurred less than \$1,000 in claims in the three years preceding the beginning of the 2016 Period. Accordingly, SCIF should have applied the 0.90 claims-free modifier to that period as well.

**D. SCIF Correctly Calculated the Remaining Modifiers.**

The Commissioner finds the remaining components of the rating plan modifier—i.e., the direct placement modifier and the territory modifier—were correctly applied for the 2015 Period and the 2016 Period. Appellant contends the premium discount modifier was incorrectly calculated for all three periods at issue. The Commissioner disagrees.

**1. Direct Placement Modifier**

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<sup>99</sup> Exh. 1 at 1-4; Exh. 2 at 2-1.

<sup>100</sup> Exh. 206 at 206-3; Exh. 208 at 208-2.

<sup>101</sup> Exh. 215 at 215-3; Exh. 218 at 218-2.

<sup>102</sup> Tr. 65:8-9; Exh. 201 at 201-1.

A SCIF rate filing applicable to both the 2015 Period and 2016 Period states SCIF “will provide a 3% credit to employers who obtain their policy without engaging a broker.”<sup>103</sup> Appellant did not engage a broker but instead dealt directly with SCIF to procure coverage for those periods. SCIF therefore correctly included the three percent credit (i.e., a modifier of 0.97) within the rating plan modifier it applied to the Policy for both the 2015 Period and 2016 Period.<sup>104</sup>

## **2. Territory Modifier**

SCIF’s rate filings applicable to the 2015 Period and 2016 Period required it to apply a territory modifier of 1.15 to customers in Los Angeles County.<sup>105</sup> Appellant is located in that county. Therefore, SCIF correctly included that territory modifier within the Policy’s rating plan modifier during both the 2015 Period and the 2016 Period.<sup>106</sup>

## **3. Premium Discount Modifier**

SCIF’s rate filings require a premium discount of 11.3 percent for all modified premium over \$5,000 and no discount for the first \$5,000.<sup>107</sup> SCIF correctly applied the discount to Appellant’s actual modified premium for the 2015 Period, and to Appellant’s estimated modified premiums for the 2016 Period and 2017 Period.<sup>108</sup> However, because Appellant’s modified premiums must be recalculated using the correct rating plan modifier in accordance with part V (B) above, SCIF must re-compute the premium discount calculations

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<sup>103</sup> Exh. 1 at 1-1; Exh. 2 at 2-2.

<sup>104</sup> Exh. 206 at 206-3; Exh. 208 at 208-2; Exh. 215 at 215-3; Exh. 218 at 218-2.

<sup>105</sup> Exh. 1 at 1-9, 1-27 [effective April 1, 2015]; Exh. 2 [no changes to territory modifiers from prior year].

<sup>106</sup> Exh. 206 at 206-3; Exh. 215 at 215-3.

<sup>107</sup> Exh 1 at 1-2, 1-3.

<sup>108</sup> Tr. 71:6-72:6; Exh. 210 at 210-1; Exh. 218 at 218-2.

using the revised modified premiums.<sup>109</sup>

**E. Appellant Failed to Demonstrate SCIF Miscalculated Appellant's 2015 Period Payroll.**

Appellant asserts SCIF miscalculated Appellant's 2015 Period payroll. The Commissioner finds Appellant has failed to meet its burden of proof on this issue.

**1. Applicable Law**

Under California Code of Regulations, title 10, section 2509.61, “[a] party has the burden of proof as to each fact the existence or non-existence of which is essential to the claim for relief or defense that he or she is asserting.” As in an ordinary civil court action, that burden includes both the initial burden of going forward and the burden of persuasion by a preponderance of the evidence.<sup>110</sup>

**2. Analysis**

SCIF produced a final payroll audit report for the 2015 Period, indicating Appellant's workers' compensation payroll for the entire period was \$188,995.<sup>111</sup> Appellant contests the accuracy of the report and produced its own payroll summary for that period, asserting a total workers' compensation payroll of \$180,890.44.<sup>112</sup> Appellant thereby met its initial burden of going forward.

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<sup>109</sup> For example, Appellant's actual base premium for the 2015 Period was \$13,942.87. (Exh. 212 at 212-1.) The correct rating plan modifier in accordance with part V(B) above is 1.00395 (i.e., 1.15 territory modifier x 0.90 claims free modifier x 0.97 direct placement modifier). Multiplying the base premium by that rating plan modifier yields a modified premium of \$13,997.94 (i.e., 1.00395 x \$13,942.87). Thus, the premium discount modifier for the 2015 Period is:  $1 - ((\$13,997.94 - \$5,000) \times 0.113) \div \$13,997.94 = 0.927363$ .

<sup>110</sup> *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051 fn. 5.

<sup>111</sup> Exh. 211 at 211-5.

<sup>112</sup> Exh. 3 at 3-47 through 3-51.



However, Appellant's payroll summary contains inaccuracies. Specifically, it does not entirely coincide with the 2015 Period, which began on December 2, 2015 and ended on December 2, 2016. The workers' compensation payroll for that period should cover the work performed by Appellant's employees between those dates.<sup>113</sup> But Appellant's payroll summary sets forth the payments made during that period, rather than the amounts earned. The summary does not include any activity after the payments on November 25, 2016,<sup>114</sup> which were for the work period ending November 20, 2016.<sup>115</sup> Appellant's summary therefore failed to include payroll earned during the last 11 days of the 2015 Period. If Appellant had included those days, its payroll total would likely have closely matched SCIF's.<sup>116</sup>

Because Appellant's payroll summary is inaccurate and incomplete, Appellant failed to meet its burden of persuasion to establish SCIF incorrectly calculated the 2015 Period payroll.

#### **F. Conclusions of Law**

Based on the foregoing facts and analysis, the Commissioner concludes as follows:

1. SCIF failed to apply the correct rating plan modifier to the Policy during the 2015 Period and 2016 Period, in accordance with SCIF's filings with the Commissioner and applicable law. The rating plan modifier is incorrect for two reasons. First, SCIF included an unlawful and unenforceable rating tier modifier component during both the 2015 Period and 2016 Period. Second, SCIF failed to properly include a claims free modifier component for the

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<sup>113</sup> Cal. Code Regs., tit. 10, § 2318.6, Part 3, Section V, Rule 1 [payroll includes amounts "earned during the policy period"].

<sup>114</sup> Exh. 3 at 3-47 through 3-50.

<sup>115</sup> See, e.g., Exh. 102 at 102-88.

<sup>116</sup> Using Appellant's payroll total and assuming relatively steady work periods, one would expect the payroll for the full year to be approximately as follows:  $\$180,890.44 \div [(365 \text{ days} - 11 \text{ days}) \div 365 \text{ days}] = \$186,511.33$ . That figure is much closer to the audit total, suggesting SCIF's payroll calculation is more accurate than Appellant's.

2016 Period.

2. SCIF correctly included a territory modifier component and direct placement modifier component in the rating plan modifier during both the 2015 Period and 2016 Period, in accordance with SCIF's rate filings.

3. The correct rating plan modifier for both the 2015 Period and 2016 Period comprises three components: a territory modifier of 1.15, a claims free modifier of 0.90, and a direct placement modifier of 0.97. Accordingly, SCIF must apply the following rating plan modifier to each of those periods:  $1.15 \times 0.90 \times 0.97 = 1.00395$ .

4. SCIF used the correct premium discounts to the Policy for the 2015 Period, the 2016 Period, and the 2017 Period, in accordance with SCIF's filings with the Commissioner and applicable law. SCIF applied premium discount modifiers to each of those policy periods at the rate of 11.3 percent on all modified premium over \$5,000, which was consistent with SCIF's rate filings with the Commissioner under Insurance Code section 11735, subdivision (a). However, SCIF must recalculate the premium discount modifier to reflect the correct rating plan modifier's effect on modified premium.

5. Appellant failed to meet its burden of proof to establish SCIF miscalculated Appellant's payroll for the purposes of determining premium for the 2015 Period.

#### **ORDER**

1. SCIF shall recalculate Appellant's premium for the 2015 Policy Period and 2016 Policy Period in accordance with this decision and submit a revised premium calculation and statement of account for those periods to Appellant within 30 days after the date this decision is adopted.

2. It is further ordered that the entirety of this Decision is designated precedential pursuant to Government Code section 11425.60, subdivision (b).

Dated: November 16, 2018

  
\_\_\_\_\_  
DAVE JONES  
Insurance Commissioner

**DECLARATION OF SERVICE BY MAIL**

Case Name/No.: In the Matter of the Appeal of:  
A-BRITE BLIND & DRAPERY CLEANING,  
File AHB-WCA-17-26

I, CANDACE GOODALE, declare that:

I am employed in the County of Sacramento, California. I am over the age of 18 years and not a party to this action. My business address is State of California, Department of Insurance, Executive Office, 300 Capitol Mall, Suite 1700, Sacramento, California, 95814.

I am readily familiar with the business practices of the Sacramento Office of the California Department of Insurance for collection and processing of correspondence for mailing with the United States Postal Service. Said ordinary business practice is that correspondence is deposited with the United States Postal Service that same day in Sacramento, California.

On November 16, 2018 following ordinary business practices, I caused a true and correct copy of the following document(s):

**ORDER ADOPTING PROPOSED DECISION; PROPOSED DECISION; and  
NOTICE OF THE LIMITS FOR RECONSIDERATION & JUDICIAL  
REVIEW**

to be placed for collection and mailing at the office of the California Department of Insurance at 300 Capitol Mall, Sacramento, California, 95814 with proper postage prepaid, in a sealed envelope(s) addressed as follows:

(SEE ATTACHED SERVICE LIST)

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Sacramento, California, on November 16, 2018.

  
CANDACE GOODALE

**CORRECTED DECLARATION OF SERVICE BY MAIL**

Case Name/No.: In the Matter of the Appeal of:  
A-BRITE BLIND & DRAPERY CLEANING,  
File AHB-WCA-17-26

I, CANDACE GOODALE, declare that:

I am employed in the County of Sacramento, California. I am over the age of 18 years and not a party to this action. My business address is State of California, Department of Insurance, Executive Office, 300 Capitol Mall, Suite 1700, Sacramento, California, 95814.

I am readily familiar with the business practices of the Sacramento Office of the California Department of Insurance for collection and processing of correspondence for mailing with the United States Postal Service. Said ordinary business practice is that correspondence is deposited with the United States Postal Service that same day in Sacramento, California.

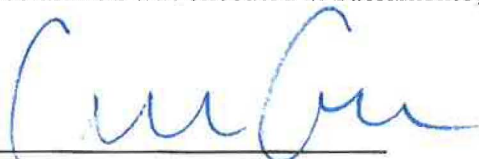
On November 16, 2018 following ordinary business practices, I caused a true and correct copy of the following document(s):

**DECISION; NOTICE OF TIME LIMITS FOR RECONSIDERATION & JUDICIAL REVIEW**

to be placed for collection and mailing at the office of the California Department of Insurance at 300 Capitol Mall, Sacramento, California, 95814 with proper postage prepaid, in a sealed envelope(s) addressed as follows:

(SEE ATTACHED SERVICE LIST)

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Sacramento, California, on November 16, 2018.

  
\_\_\_\_\_  
CANDACE GOODALE

# **EXHIBIT B**



HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE CONTINUOUS POLICY ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.		

HERE ARE YOUR NEW RATES FOR THE PERIOD INDICATED. IF YOUR NAME OR ADDRESS SHOULD BE CORRECTED OR IF INSURANCE IS NOT NEEDED FOR NEXT YEAR, PLEASE TELL US.

**IMPORTANT** THIS IS NOT A BILL  
SEND NO MONEY UNLESS STATEMENT IS ENCLOSED

CONTINUOUS POLICY [REDACTED]

THE RATING PERIOD BEGINS AND ENDS AT 12:01AM PACIFIC STANDARD TIME

RATING PERIOD 1-13-17 TO 1-13-18

AMERICAN JETTER	DEPOSIT PREMIUM	\$1,185.00
[REDACTED]	MINIMUM PREMIUM	\$980.00
WEST COVINA, CALIF 91790	PREMIUM ADJUSTMENT PERIOD	ANNUALLY R NA

NAME OF EMPLOYER- LOYA, JAVIER  
(AN INDIVIDUAL EMPLOYER AND NOT JOINTLY WITH ANY OTHER EMPLOYER)

CODE NO. PRINCIPAL WORK AND RATES EFFECTIVE FROM 01-13-17 TO 01-13-18

		PREMIUM BASIS	BASE RATE	INTERIM BILLING RATE*
5187-1	PLUMBING--SHOP AND OUTSIDE	1200	9.15	15.78
5183-1	PLUMBING--SHOP AND OUTSIDE	0	14.04	24.22

\*\*\*\*\*BUREAU NOTE INFORMATION\*\*\*\*\*

SSN 000000000

TOTAL ESTIMATED ANNUAL PREMIUM \$980



HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE CONTINUOUS POLICY ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.		

HERE ARE YOUR NEW RATES FOR THE PERIOD INDICATED. IF YOUR NAME OR ADDRESS SHOULD BE CORRECTED OR IF INSURANCE IS NOT NEEDED FOR NEXT YEAR, PLEASE TELL US.

**IMPORTANT** THIS IS NOT A BILL  
SEND NO MONEY UNLESS STATEMENT IS ENCLOSED

CONTINUOUS POLICY [REDACTED]

THE RATING PERIOD BEGINS AND ENDS AT 12:01AM PACIFIC STANDARD TIME

RATING PERIOD 1-13-17 TO 1-13-18

\* INTERIM BILLING RATES WILL BE USED ON PAYROLL REPORTS. THEY TAKE INTO ACCOUNT RATING PLAN CREDITS (OR DEBITS) WHICH WILL APPLY AT FINAL BILLING AND AN ESTIMATE OF YOUR PREMIUM DISCOUNT AS DETAILED BELOW.

RATING PLAN CREDITS (DEBITS) EFFECTIVE FROM 01-13-17 TO 01-13-18

RATING PLAN MODIFIER	1.72500
ESTIMATED PREMIUM DISCOUNT MODIFIER	<u>1.00000</u>
COMPOSITE FACTOR APPLIED TO BASE RATES TO DERIVE INTERIM BILLING RATES	1.72500

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*
*           PREMIUM DISCOUNT SCHEDULE EFFECTIVE FROM 01-13-17 TO 01-13-18
* ESTIMATED MODIFIED PREMIUM IS DISCOUNTED ACCORDING TO THE FOLLOWING SCHEDULE:
*
*           FIRST                ABOVE
*           $5,000              $5,000
*           0.0%                 11.3%
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THE ESTIMATED PREMIUM DISCOUNT IS BASED ON AN ESTIMATE OF YOUR PAYROLL. ACTUAL PREMIUM DISCOUNT APPLIED AT FINAL BILLING WILL BE BASED ON THE ACTUAL PAYROLL REPORTED ON YOUR POLICY AND SUBJECT TO AUDIT.





HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE CONTINUOUS POLICY ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.		

CONTINUOUS POLICY [REDACTED]

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT YOUR LOCAL STATE FUND OFFICE BELOW:

CSC - POLICY AT VACAVILLE  
 1020 VAQUERO CIRCLE  
 VACAVILLE, CA 95688  
 (877) 405-4545

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions agreements or limitations of the Policy other than as herein stated.

When countersigned by a duly authorized officer or representative of the State Compensation Insurance Fund, these declarations shall be valid and form part of the Policy.

AUTHORIZED REPRESENTATIVE

PRESIDENT AND CEO

# **EXHIBIT C**



HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE CONTINUOUS POLICY ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.		

HERE ARE YOUR NEW RATES FOR THE PERIOD INDICATED. IF YOUR NAME OR ADDRESS SHOULD BE CORRECTED OR IF INSURANCE IS NOT NEEDED FOR NEXT YEAR, PLEASE TELL US.

**IMPORTANT** THIS IS NOT A BILL  
SEND NO MONEY UNLESS STATEMENT IS ENCLOSED

CONTINUOUS POLICY [REDACTED]

THE RATING PERIOD BEGINS AND ENDS AT 12:01AM  
PACIFIC STANDARD TIME

RATING PERIOD 1-13-18 TO 1-13-19

AMERICAN JETTER  
[REDACTED]  
WEST COVINA, CALIF 91790

DEPOSIT PREMIUM \$1,045.00  
MINIMUM PREMIUM \$1,045.00  
PREMIUM ADJUSTMENT PERIOD ANNUALLY  
R NA

NAME OF EMPLOYER- LOYA, JAVIER  
(AN INDIVIDUAL EMPLOYER AND NOT JOINTLY  
WITH ANY OTHER EMPLOYER)

CODE NO. PRINCIPAL WORK AND RATES EFFECTIVE FROM 01-13-18 TO 01-13-19

		PREMIUM BASIS	BASE RATE	INTERIM BILLING RATE*
5187-1	PLUMBING--SHOP AND OUTSIDE	1200	8.44	14.56
5183-1	PLUMBING--SHOP AND OUTSIDE	0	14.06	24.25

\*\*\*\*\*BUREAU NOTE INFORMATION\*\*\*\*\*

SSN 000000000

TOTAL ESTIMATED ANNUAL PREMIUM \$1,045



HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE CONTINUOUS POLICY ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.		

HERE ARE YOUR NEW RATES FOR THE PERIOD INDICATED. IF YOUR NAME OR ADDRESS SHOULD BE CORRECTED OR IF INSURANCE IS NOT NEEDED FOR NEXT YEAR, PLEASE TELL US.

**IMPORTANT** THIS IS NOT A BILL  
SEND NO MONEY UNLESS STATEMENT IS ENCLOSED

CONTINUOUS POLICY



THE RATING PERIOD BEGINS AND ENDS AT 12:01AM PACIFIC STANDARD TIME

RATING PERIOD 1-13-18 TO 1-13-19

\* INTERIM BILLING RATES WILL BE USED ON PAYROLL REPORTS. THEY TAKE INTO ACCOUNT RATING PLAN CREDITS (OR DEBITS) WHICH WILL APPLY AT FINAL BILLING AND AN ESTIMATE OF YOUR PREMIUM DISCOUNT AS DETAILED BELOW.

RATING PLAN CREDITS (DEBITS) EFFECTIVE FROM 01-13-18 TO 01-13-19

RATING PLAN MODIFIER	1.72500
ESTIMATED PREMIUM DISCOUNT MODIFIER	<u>1.00000</u>
COMPOSITE FACTOR APPLIED TO BASE RATES TO DERIVE INTERIM BILLING RATES	1.72500

```

*****
*
*           PREMIUM DISCOUNT SCHEDULE EFFECTIVE FROM 01-13-18 TO 01-13-19           *
* ESTIMATED MODIFIED PREMIUM IS DISCOUNTED ACCORDING TO THE FOLLOWING SCHEDULE: *
*           FIRST                ABOVE                *
*           $5,000              $5,000                *
*           0.08                 11.38                 *
*
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THE ESTIMATED PREMIUM DISCOUNT IS BASED ON AN ESTIMATE OF YOUR PAYROLL. ACTUAL PREMIUM DISCOUNT APPLIED AT FINAL BILLING WILL BE BASED ON THE ACTUAL PAYROLL REPORTED ON YOUR POLICY AND SUBJECT TO AUDIT.



HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE CONTINUOUS POLICY ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.		

CONTINUOUS POLICY [REDACTED]

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT YOUR LOCAL STATE FUND OFFICE BELOW:

CSC - POLICY AT VACAVILLE  
 1020 VAQUERO CIRCLE  
 VACAVILLE, CA 95688  
 (877) 405-4545

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions agreements or limitations of the Policy other than as herein stated.

When countersigned by a duly authorized officer or representative of the State Compensation Insurance Fund, these declarations shall be valid and form part of the Policy.

AUTHORIZED REPRESENTATIVE

PRESIDENT AND CEO

1 **CERTIFICATE OF SERVICE**

2 I, Kathryn Cabrera, the undersigned, do declare as follows:

3 I am a resident of the County of San Diego; I am over the age of 18 years, and not a party to,  
4 or have any interest in, this legal action; my business address is 750 B Street, Suite 1820, San Diego,  
5 California 92101.

6 On August 10, 2020, I served the following document(s):

7 **AMENDED CLASS ACTION COMPLAINT FOR DAMAGES &**  
8 **INJUNCTIVE RELIEF**

9 on the interested parties in this action:

10 Noah Graff, Assistant Chief Counsel  
NGraff@scif.com  
11 R. Timothy O'Connor, Staff Counsel  
RTOConnor@scif.com  
12 John B. De Leon, Staff counsel  
JDeLeon2@scif.com  
13 Steven Clarence, Staff Counsel  
SCLarence@scif.com  
14 STATE COMPENSATION INSURANCE FUND  
900 Corporate Center Drive, Suite 401  
15 Monterey Park, CA 91754

16 *Counsel for Defendant*  
17 *State Compensation Insurance Fund*

18 in the manner identified below on all interested parties:

19 **(XX) VIA ELECTRONIC MAIL** – I electronically transmitted a copy of the  
20 document(s) listed above in a pdf or word processing format via CASE  
ANYWHERE to those persons noticed above at their respective electronic service  
addresses pursuant to Cal. Rules of Court, rule 2.2515(g) on the date set forth.

21 I declare under penalty of perjury under the laws of the State of California that the foregoing  
22 is true and correct. Executed this 10th day of August 2020 at San Diego, California.

23   
24 \_\_\_\_\_  
25 KATHRYN CABRERA

26  
27 26023  
28

# **EXHIBIT 3**

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Michael Liskow (243899)  
mliskow@calcaterrapollack.com  
**CALCATERRA POLLACK LLP**  
1140 Avenue of the Americas, 9th Floor  
New York, NY 10036-5803  
Tel: (212) 899-1761  
Fax: (332) 206-2073

Scott M. Priz (*pro hac vice*)  
priz@priz-law.com  
**PRIZ LAW, LLC**  
3230 S. Harlem Ave., Suite 221B  
Riverside, IL 60546  
Tel: (708) 268-5768

*Counsel for Plaintiffs and the Class*  
[Additional Counsel listed on Signature Page]

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

AMERICAN JETTER & PLUMBING, INC. and  
RESILIENCE TREATMENT CENTER, on behalf  
of themselves and all others similarly situated,  
  
Plaintiffs,  
  
v.  
  
STATE COMPENSATION INSURANCE FUND,  
a public enterprise fund, and DOES 1 through 50,  
inclusive,  
  
Defendants.

Case No. 19STCV36307  
**SECOND AMENDED CLASS ACTION  
COMPLAINT FOR DAMAGES &  
INJUNCTIVE RELIEF**  
  
JURY TRIAL DEMANDED  
  
Assigned for All Purposes to:  
Honorable Amy D. Hogue  
Department 7 at Spring Street Courthouse



1 **INTRODUCTION**

2 1. Plaintiffs American Jetter & Plumbing, Inc. (“American Jetter”) and Resilience  
3 Treatment Center (“Resilience,” collectively with American Jetter, “Plaintiffs”) bring this class  
4 action on behalf of themselves and all others similarly situated (the “Class,” defined *infra*) against  
5 defendants State Compensation Insurance Fund (“State Fund”) and Does 1 through 50, inclusive  
6 (collectively “Defendants”).

7 2. This lawsuit seeks refunds of the unlawful workers’ compensation insurance  
8 premiums Defendants charged Plaintiffs and the Class. As detailed further herein, Defendants have  
9 improperly and illegally charged the Class inflated insurance premium rates using two separate but  
10 related schemes. First, Defendants charged Plaintiff American Jetter and the “Algorithm Group”  
11 (defined *infra*) inflated insurance premium rates by calculating the premiums using improper and  
12 illegal “tier modifiers” and “rating plan modifiers” based on formulas that were not filed, disclosed  
13 to the public, or permitted to be disclosed to the public at the time of the filing of the rate filings  
14 utilizing the formulas, as required by law (the “Algorithm”). Defendants have charged the  
15 Algorithm Group these improper and illegal premiums since 2013, and continued to do so even after  
16 the California Insurance Commissioner confirmed that Defendants’ use of the tier modifiers and  
17 rating plan modifiers at issue was illegal and unenforceable.

18 3. Defendants have also charged Plaintiff Resilience and the “Insufficient  
19 Documentation Group” (defined *infra*) inflated insurance premium rates by increasing the  
20 Insufficient Documentation Group’s tier modifiers, and consequent premiums (for most by 50%),  
21 due to the Insufficient Documentation Group members’ purported failure to provide State Fund with  
22 information necessary for it to accurately underwrite risk and to “encourage full disclosure.”  
23 However, Defendants (i) never notified Plaintiff Resilience or, upon information and belief, the  
24 other Insufficient Documentation Group members of their purported failure to provide sufficient  
25 documentation; (ii) never provided them an opportunity to question or cure this purported failure;  
26 or (iii) even directly disclosed to Plaintiff Resilience or the Insufficient Documentation Group  
27 members of the tier modifier they were being assigned or the basis of that tier modifier.

28 4. These actions by Defendants breached State Fund’s insurance policies with both the

1 Algorithm Group and Insufficient Documentation Group members, and violated provisions of the  
2 California Insurance Code as well as the California Unfair Competition Law (“UCL”).

3 5. Plaintiffs seek restitution and damages stemming from Defendants’ use of the  
4 improper tier modifiers in excess of 1.00. Plaintiffs also seek to enjoin Defendants from continuing  
5 to charge insurance premiums not permitted under the law.

6 **JURISDICTION AND VENUE**

7 6. This Court has personal jurisdiction over State Fund because it is doing business in  
8 the State of California within Los Angeles County.

9 7. Venue is proper in this Court pursuant to California Code of Civil Procedure section  
10 395 because State Fund does substantial business in this County and has its principal offices in this  
11 County. Plaintiffs are also residents of this County and transacted business with State Fund while  
12 in this County.

13 **PARTIES**

14 8. Plaintiff American Jetter & Plumbing, Inc. is a corporation organized and existing  
15 under the laws of the State of California and qualified to do business in the State of California.  
16 American Jetter’s headquarters are located at 1515 Stevens Avenue, Unit B, San Gabriel, California  
17 91776.

18 9. Plaintiff Resilience Treatment Center is a corporation organized and existing under  
19 the laws of the State of California, and qualified to do business in the State of California.  
20 Resilience’s headquarters are located at 9663 Santa Monica Boulevard, Suite 168, Beverly Hills,  
21 California 90210.

22 10. Defendant State Compensation Insurance Fund is a public enterprise fund established  
23 by the California State legislature in 1914. State Fund provides worker’s compensation insurance  
24 throughout California, including in Los Angeles County. State Fund often functions as an insurer  
25 of last resort.

26 11. State Fund is one of the largest providers of workers’ compensation insurance to  
27 California businesses, with the California Department of Insurance’s 2018 Market Share Report  
28 reporting State Fund as having approximately 10.9% of the market share and total premiums of

1 nearly \$1.4 billion. State Fund reports on its website that it has approximately 110,000  
2 policyholders and nearly \$21 billion in assets. State Fund lists one of its “Values” as “**Do What’s**  
3 **Right**. Approach every situation with a passion to help, a desire to learn and a commitment to  
4 integrity – because doing the right thing isn’t always simple, easy, or clear.” (Emphasis in original).

5 12. Plaintiffs are not presently aware of the true names and capacities of the Defendants  
6 designated as Does 1 through 50, inclusive, and will hereafter seek leave of the Court to amend this  
7 complaint to allege the true names and capacities of each Defendant.

8 13. Upon information and belief, Defendants are each responsible in some manner for  
9 the transactions, events and occurrences alleged, and the damages alleged were proximately caused  
10 thereby.

11 14. Upon information and belief, Defendants were each the agents, joint venturers,  
12 trustees, servants, partners, alter-egos, parent corporations, subsidiaries, affiliates, contractors or  
13 employees of each of the remaining Defendants, and the acts or omissions alleged herein were done  
14 by them acting individually, through such capacity or through the scope of their authority, and said  
15 conduct was thereafter ratified by the remaining Defendants.

## 16 SUBSTANTIVE ALLEGATIONS

### 17 The Algorithm Group Claims

18 15. California Insurance Code section 11735 requires, *inter alia*, that all insurers doing  
19 business in California publicly file all rates and supplementary rate information before charging any  
20 such rates. Specifically, section 11735(b) mandates in pertinent part that “[a]ll rates, supplementary  
21 rate information, and any supporting information for rates filed under this article, as soon as filed,  
22 shall be open to public inspection at any reasonable time. Copies may be obtained by any person  
23 upon request and the payment of a reasonable charge.” Section 11730 of the Insurance Code further  
24 defines “supplementary rate information” as including any “minimum premium, policy fee, rating  
25 rule, rating plan, and any other similar information needed to determine the applicable premium for  
26 an insured.”

27 16. Beginning with its rate filing in effect for policies commencing March 1, 2013 (the  
28 “2013 Rate Filing”), State Fund has calculated certain workers’ compensation insurance premiums

1 using a formula that includes a “tier modifier” and “rating plan modifier.” The tier modifier is  
2 calculated based on an Algorithm that takes into account various factors including insureds’ prior  
3 loss history and average wages.

4 17. The tier modifier is one component of the formula State Fund uses to determine an  
5 insured’s rating plan modifier, which in turn is a component of the formula used to calculate an  
6 insured’s premiums. When the tier modifier is in excess of 1.00, an insured’s rating plan modifier  
7 and premium is set above the rate that would be charged absent the tier modifier. For example, if  
8 an insured is assigned a 1.50 tier modifier for their policy, their premium will be increased by 50%,  
9 all else being equal.

10 18. State Fund violated Insurance Code sections 11735 and 11730, among others, by  
11 failing to file, publicly disclose or permit to be publicly disclosed the Algorithm at the time of the  
12 filing of the rate filings utilizing the Algorithm. The Algorithm is supplementary rate information  
13 necessary for insureds to determine (or later confirm) what tier modifier they should fall under and,  
14 consequently, what their total premiums will be (or should have been). In fact, State Fund has never  
15 even directly informed insureds what tier modifier has been assigned to their policy, further  
16 preventing insureds from being able to determine (or confirm) their applicable premiums and shop  
17 for competitive workers’ compensation insurance coverage.

18 19. The illegality of this scheme was confirmed by the California Insurance  
19 Commissioner. On November 16, 2018, the California Insurance Commissioner issued a decision  
20 in *In the Matter of the Appeal of A-Brite Blind & Drapery Cleaning*, No. AHB-WCA-17-26 (Cal.  
21 Ins. Comm’r, November 16, 2018) (“*A-Brite*,” attached as Exhibit A), concluding as a matter of law  
22 that State Fund used an unlawful and unenforceable tier modifier and rating plan modifier to  
23 calculate an insured’s premium for its policies effective December 2, 2015 to December 2, 2016,  
24 and December 2, 2016 to December 2, 2017.

25 20. The basis for the Insurance Commissioner’s decision was that State Fund had  
26 improperly used the undisclosed Algorithm for calculating insureds’ tier modifiers.

27 21. The Insurance Commissioner in *A-Brite* held that State Fund’s use of the undisclosed  
28 Algorithm to calculate A-Brite’s tier modifier and rating plan modifier was impermissible because,

1 *inter alia*, State Fund failed to make the Algorithm publicly available to its insureds at the time of  
2 filing. Because of this, insureds like A-Brite, Plaintiff American Jetter and the Algorithm Group  
3 members could not determine what their insurance premiums should be, and when assessed a tier  
4 modifier greater than 1.00 were charged premiums in excess of what was lawful.

5 22. The Insurance Commissioner in *A-Brite* ordered State Fund to recalculate A-Brite’s  
6 premium by removing the tier modifier, which was over 1.00 and therefore created a premium  
7 charge. This removal of the tier modifier resulted in an \$8,805 reduction in premiums for A-Brite.

8 **The Insufficient Documentation Group Claims**

9 23. In State Fund’s 2013 Rate Filing, State Fund briefly noted the following rating rule  
10 with respect to the assignment of tier modifiers:

11 Every insured with three consecutive years of insurance history can be slotted into one of  
12 the three tiers, regardless of whether they are currently a State Fund policyholder or are  
13 applying as new business. However, not every insured that comes to State Fund will be  
14 mature enough to have three years of history, so State Fund plans to place these into the  
15 Middle/B Tier. When they reach their third year, these insureds will be treated the same as  
16 all other and will be assigned to the appropriate tier depending on their claims experience.  
17 As is already mandatory, State Fund will continue to require full and complete insurance  
18 history as part of the application process. *Those businesses that fail to provide  
19 documentation of claims history and other required information will be placed into the  
20 Worst/C Tier, to encourage full disclosure to enable to State Fund to most accurately  
21 underwrite the risk.* (Emphasis added).<sup>1</sup>

22 24. In other words, State Fund explained that through its “Insufficient Documentation  
23 Rule,” if it unilaterally determined that an insured had failed to provide sufficient documentation of  
24 claims history and “other required information” (left unclear in the rate filing or elsewhere), it would  
25 penalize the insured with a detrimental tier modifier (causing an increase in premiums) in order to  
26 “encourage full disclosure” from the insured in pursuit of the goal of “enabl[ing] . . . State Fund to  
27 most accurately underwrite the risk.”

28 25. Despite State Fund’s 2013 Rate Filing stating that the dual purpose of the Insufficient  
Documentation Rule is to “encourage full disclosure” from insureds and “enable . . . State Fund to  
most accurately underwrite the [insureds’] risk,” upon information and belief State Fund does not

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<sup>1</sup> A version of the Insufficient Documentation Rule has been in effect in every State Fund rate filing since the 2013 Rate Filing

1 as a matter of practice, and in violation of the Insurance Code and the UCL, (1) notify insureds when  
2 it believes insufficient documentation has been provided, or identify what information is purportedly  
3 missing; or (2) provide such insureds an opportunity to question or cure the purported deficiency  
4 and avoid a substantial increase in their premiums. In fact, Defendants do not even directly inform  
5 insureds of the tier modifier that has been applied to their policy premiums (much less the reason  
6 why).

7 **Plaintiffs' Facts**

8 **American Jetter**

9 26. Plaintiff American Jetter is a construction company that does building maintenance,  
10 plumbing, and wallboard construction.

11 27. American Jetter purchased workers' compensation insurance from State Fund  
12 including policies effective for the periods January 13, 2017 through January 13, 2018 (the "2017  
13 Policy"), January 13, 2018 through January 13, 2019 (the "2018 Policy"), and January 13, 2019  
14 through March 11, 2019 (the "2019 Policy"), periods during which State Fund unlawfully set its  
15 rating plan modifier and rates using the undisclosed tier modifier Algorithm.<sup>2</sup>

16 28. American Jetter received a tier modifier of 1.50 for its 2017 Policy and paid  
17 premiums to State Fund based in part on the tier modifier. State Fund assigned the 1.50 tier modifier  
18 to American Jetter for its 2017 Policy based on State Fund's application of the Algorithm to  
19 American Jetter's loss history and other historical data.

20 29. State Fund's use of the 1.50 tier modifier increased American Jetter's premium for  
21 the 2017 Policy period by approximately \$60.

22 30. American Jetter received a tier modifier of 1.50 for its 2018 Policy and paid  
23 premiums to State Fund based in part on the tier modifier. State Fund assigned the 1.50 tier modifier  
24 to American Jetter for its 2018 Policy based on State Fund's application of the Algorithm to  
25 American Jetter's loss history and other historical data.

26 31. State Fund's use of the 1.50 tier modifier increased American Jetter's premium for

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27 <sup>2</sup> The 2017 Policy, 2018 Policy and 2019 Policy are attached as Exhibits B, C and D,  
28 respectively.

1 the 2018 Policy period by approximately \$8,749.

2 32. American Jetter received a tier modifier of 1.20 for its 2019 Policy and paid  
3 premiums to State Fund based in part on the tier modifier. State Fund assigned the 1.20 tier modifier  
4 to American Jetter for its 2019 Policy based on State Fund's application of the Algorithm to  
5 American Jetter's loss history and other historical data.

6 33. State Fund's use of the 1.20 tier modifier increased American Jetter's premium for  
7 the 2019 Policy period by approximately \$2,013.

8 34. In total, American Jetter has paid State Fund approximately \$10,822 in excess  
9 premiums due to State Fund's unlawful charging of premiums based on Defendants' use of  
10 undisclosed Algorithm in calculating American Jetter's tier modifiers, rating plan modifiers and  
11 premiums.

12 35. For the 2017 through 2019 Policy periods, American Jetter was not directly informed  
13 of its assignment of tier modifiers of 1.50 and 1.20 (or provided the basis for such assignments) that  
14 increased its premiums.

15 36. Prior to the commencement of this suit, American Jetter made multiple attempts to  
16 confirm with State Fund, through American Jetter's counsel, both the basis for the calculation of the  
17 tier modifier used in calculating American Jetter's premiums, as well as simply which tier modifier  
18 has been applied to the policies. Remarkably, State Fund consistently refused to answer either  
19 query.<sup>3</sup>

20 37. Instead, American Jetter's policies, and audit materials received regarding the  
21 policies, reflect a blended rating plan modifier that included the tier modifier as one of its factors.

22 38. For the 2017 Policy, American Jetter received a rating plan modifier of 1.725,  
23 causing additional premium charges of approximately \$870, inclusive of the increased premium  
24 caused by the tier modifier.

25 39. For the 2018 Policy, American Jetter received a rating plan modifier of 1.725,  
26 causing additional premium charges of approximately \$13,190, inclusive of the increased premium

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27 <sup>3</sup> American Jetter was later able to confirm the tier modifiers assigned to the policy periods  
28 at issue by obtaining documentation provided to its broker.

1 caused by the tier modifier.

2 40. For the 2019 Policy, American Jetter received a rating plan modifier of 1.380,  
3 causing additional premium charges of approximately \$3,424, inclusive of the increased premium  
4 caused by the tier modifier.

5 41. It is impossible to calculate, and confirm the calculation of, the rating plan modifier  
6 without knowledge of the undisclosed and incomplete Algorithm that is used to calculate the tier  
7 modifier, thereby making the rating plan modifier, like the tier modifier, a separate improperly  
8 undisclosed component of insureds' premiums.

9 **Resilience**

10 42. Plaintiff Resilience is a mental health treatment facility.

11 43. Resilience purchased workers' compensation insurance from State Fund including  
12 the policy effective for the period June 9, 2016, through June 9, 2017 (the "2016 Policy"),<sup>4</sup> a period  
13 during which State Fund unlawfully set its rating plan modifier and rates using the undisclosed tier  
14 modifier Algorithm.

15 44. Resilience received a tier modifier of 1.50 for its 2016 Policy and paid premiums to  
16 State Fund based in part on the tier modifier. State Fund assigned the 1.50 tier modifier to Resilience  
17 for its 2016 Policy based on State Fund's Insufficient Documentation Rule, apparently determining  
18 that Resilience failed to provide sufficient information for State Fund to determine Resilience's  
19 underwriting risk and corresponding tier modifier under the Algorithm.

20 45. But Defendants did not provide Resilience with any notice or indication that  
21 Defendants believed Resilience had failed to provide sufficient documentation, or what  
22 documentation Defendants believed was still outstanding. Nor did Defendants provide Resilience  
23 with an opportunity to question or cure the purported deficiency and avoid a substantial increase in  
24 premiums. In fact, Defendants did not even directly inform Resilience of what tier modifier had  
25 been applied to the 2016 Policy, or the basis for the tier modifier assigned.

26 46. State Fund's use of the 1.50 tier modifier increased Resilience's premium for the  
27

---

28 <sup>4</sup> The 2016 Policy is attached as Exhibit E.



1 2016 Policy period by approximately \$23,983.

2 47. For the 2016 Policy, Resilience received a rating plan modifier of 1.77675, causing  
3 additional premium charges of approximately \$31,454, inclusive of the increased premium caused  
4 by the tier modifier.

5 48. For the 2016 Policy period, Resilience was not directly informed of its assignment  
6 to the 1.50 tier modifier category, or the reason for the assignment. Resilience was later able to  
7 confirm the 1.50 tier modifier assigned to the 2016 Policy by obtaining documentation provided to  
8 its broker. However, neither this documentation, nor any other information Resilience or the  
9 Insufficient Documentation Group members were provided, notified or indicated that the basis for  
10 the increased tier modifier was a purported failure to provide sufficient documentation of  
11 underwriting risk.

12 **CLASS ACTION ALLEGATIONS**

13 49. Plaintiffs bring this action pursuant to Code of Civil Procedure section 382 as a class  
14 action individually on behalf of themselves and on behalf of all others similarly situated. The Class  
15 is defined as follows:

16 All insureds of State Fund whose workers' compensation insurance premiums for  
17 any policy in effect from March 1, 2013, through the present were calculated using  
18 a tier modifier in excess of 1.00 and where such calculation resulted in the payment  
19 of a higher premium than the insured would have otherwise paid. Excluded from  
20 the Class are Defendants, their affiliates, predecessors, successors, officers,  
directors, agents, servants and employees and the immediate families of such  
persons.

21 **Numerosity**

22 50. The members of the Class are too numerous for joinder to be practicable. There are  
23 tens of thousands of State Fund insureds whose premiums were calculated using a tier modifier in  
24 excess of 1.00. Upon information and belief the Class has thousands, if not tens of thousands, of  
25 members in its ranks. The exact quantity and identities of each member of the Class is known to  
26 Defendants through State Fund's own records.

27 **Commonality**

28 51. There is a well-defined community of interest in the relevant questions of law and

1 fact among members of the Class. Common questions of law and fact predominate over any  
2 questions affecting individual members of the Class, including, but not limited to:

3 a. Whether State Fund included the complete tier modifier Algorithm in its rate  
4 filings;

5 b. Whether State Fund filed the tier modifier Algorithm at the time of filing the  
6 rate filings utilizing the Algorithm;

7 c. Whether State Fund publicly disclosed the tier modifier Algorithm at the time  
8 of filing the rate filings utilizing the Algorithm;

9 d. Whether State Fund permitted the tier modifier Algorithm to be publicly  
10 disclosed at the time of filing the rate filings utilizing the Algorithm;

11 e. Whether State Fund violated California Insurance Code section 332 by failing  
12 to file the tier modifier Algorithm at the time of filing the rate filings utilizing the Algorithm

13 f. Whether State Fund violated California Insurance Code section 332 by failing  
14 to publicly disclose the tier modifier Algorithm at the time of filing the rate filings utilizing the  
15 Algorithm;

16 g. Whether State Fund violated California Insurance Code section 332 by failing  
17 to allow to be publicly disclosed the tier modifier Algorithm at the time of filing the rate filings  
18 utilizing the Algorithm;

19 h. Whether State Fund violated California Insurance Code section 332 by failing  
20 to provide Insufficient Documentation Group members (1) notice that State Fund had deemed them  
21 to have failed to provide sufficient documentation; (2) notice of what documentation was  
22 purportedly still outstanding; (3) any opportunity to contest or cure the purported lack of  
23 documentation; and/or (4) direct notification of the tier modifier assigned or the basis of the  
24 assignment of the tier modifier;

25 i. Whether State Fund violated California Insurance Code section 11735 by  
26 failing file the tier modifier Algorithm at the time of filing the rate filings utilizing the Algorithm;

27 j. Whether State Fund violated California Insurance Code section 11735 by  
28 failing to publicly disclose the tier modifier Algorithm at the time of filing the rate filings utilizing

1 the Algorithm;

2 k. Whether State Fund violated California Insurance Code section 11735 by  
3 failing to allow to be publicly disclosed the tier modifier Algorithm at the time of filing the rate  
4 filings utilizing the Algorithm

5 l. Whether State Fund violated California Insurance Code section 11735 by  
6 failing to provide Insufficient Documentation Group members (1) notice that State Fund had deemed  
7 them to have failed to provide sufficient documentation; (2) notice of what documentation was  
8 purportedly still required; (3) any opportunity to contest or cure the purported lack of  
9 documentation; and/or (4) direct notification of the tier modifier assigned or the basis of the  
10 assignment of the tier modifier.

11 m. Whether Defendants breached State Fund's contracts for insurance with  
12 Plaintiffs and the Class through their conduct;

13 n. Whether Defendants violated California Business & Professions Code  
14 section 17200 through their conduct;

15 o. Whether Defendants concealed their improper and illegal actions from  
16 members of the Class;

17 p. Whether Defendants should be enjoined from continuing their improper  
18 practices, including by being required to (i) inform members of the Class of their tier modifiers and  
19 the basis of the tier modifiers, and (ii) provide Insufficient Documentation Group members with  
20 notice of the purported insufficient documentation and an opportunity to cure; and

21 q. What the proper measure of damages is for each claim.

22 **Typicality**

23 52. Plaintiffs have the same interests in this matter as all other members of the Class  
24 since they were charged unlawful rates in the same manners as other members of the Class.

25 53. If members of the Class brought individual cases, they would require proof of the  
26 same material and substantive facts and would seek the same relief.

27 54. The claims of Plaintiffs and the members of the Class share a common nucleus of  
28 operative facts and originate from the same conduct by Defendants.

1 **Adequacy of Representation**

2 55. Plaintiffs will diligently represent the interests of the Class. The interests of Plaintiffs  
3 are sufficiently aligned with the interests of the other members of the Class such that they will have  
4 no conflicts with the interests of the Class and will be adequate representatives.

5 56. Counsel for Plaintiffs are highly experienced in consumer class action litigation and  
6 will prosecute the action with skill and diligence.

7 **Superiority**

8 57. The prosecution of separate actions by individual members of the Class would create  
9 a risk of inconsistent or varying adjudications which would establish incompatible standards of  
10 conduct for the parties opposing the Class. Such incompatible standards of conduct and varying  
11 adjudications of the same essential facts, proof and legal theories would also create and allow the  
12 existence of inconsistent and incompatible rights within the Class.

13 58. Moreover, a class action is superior to other methods for the fair and efficient  
14 adjudication of the controversies raised in this Complaint because:

15 a. Individual claims by members of the Class could be impracticable as the costs  
16 of pursuit would far exceed what any one member of the Class has at stake;

17 b. Plaintiffs are unaware of any significant number of other actions that have  
18 been commenced over the controversies alleged in this Complaint, and individual members of the  
19 Class are unlikely to have an interest in separately prosecuting and controlling individual actions;

20 c. The concentration of litigation of these claims in one forum will achieve  
21 efficiency and promote judicial economy; and

22 d. The proposed class action is manageable.

23 59. Defendants have acted in a uniform manner on grounds generally applicable to  
24 Plaintiffs and the other members of the Class so that final declaratory and injunctive relief as  
25 requested herein is appropriate with respect to the Class as a whole.

26 60. Therefore, class treatment of Plaintiffs' claims is appropriate and necessary.  
27  
28

**COUNT I**  
**BREACH OF CONTRACT**  
**(On Behalf of Plaintiffs and the Class)**

1  
2  
3       61.       Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-60  
4 above as if fully set forth herein.

5       62.       Plaintiffs and the Algorithm Group entered into contracts with State Fund to provide  
6 workers' compensation insurance to Plaintiffs and the Class.

7       63.       Upon information and belief, these standard form contracts provided in pertinent part  
8 that "[a]ll premium for this policy will be determined by our manuals of rules rates, rating plan and  
9 classifications. We may change our manual and apply the changes to this policy if authorized by  
10 law or a governmental agency regulating this workers' compensation insurance." The contracts  
11 further provide that "[t]he final premium will be determined after this policy ends by using the actual  
12 premium basis and the proper classifications, rates and rating plan that lawfully apply to the business  
13 and work covered by this policy."

14       64.       Plaintiff American Jetter and each member of the Algorithm Group purchased a  
15 workers' compensation insurance policy from State Fund and was charged and paid a premium to  
16 State Fund based in part on State Fund's unlawful application of a tier modifier in excess of 1.00  
17 where such tier modifier was applied by State Fund based on the mathematical application of the  
18 tier modifier Algorithm to the insured's claims history and other information taken into account by  
19 the Algorithm.

20       65.       Defendants breached State Fund's agreements with Plaintiff American Jetter and the  
21 Algorithm Group by charging insurance rates that were not calculated in a lawful manner. For the  
22 reasons set forth herein, Defendants' usage of the undisclosed tier modifier Algorithm, and the rating  
23 plan modifier incorporating the undisclosed tier modifier Algorithm, in calculating its insureds'  
24 premiums was unlawful. Accordingly, Defendants' assessment of unlawful rates is a breach of State  
25 Fund's insurance agreements with Plaintiff American Jetter and the Algorithm Group.

26       66.       Plaintiff Resilience and each member of the Insufficient Documentation Group  
27 purchased a workers' compensation insurance policy from State Fund and was charged and paid a  
28 premium to State Fund based in part on State Fund's unlawful application of a tier modifier in excess

1 of 1.00 where such tier modifier was applied by State Fund due to State Fund’s determination that  
2 the insured failed to provide sufficient documentation of its claims history and other information  
3 required by State Fund.

4 67. Defendants breached State Fund’s insurance agreements with Plaintiff Resilience  
5 and the Insufficient Documentation Group by charging insurance rates that were not calculated in a  
6 lawful manner. Certain of State Fund’s rate filings provide that “[t]hose businesses that fail to  
7 provide documentation of claims history and other required information will be placed into the  
8 Worst/C Tier, to encourage full disclosure to enable to State Fund to most accurately underwrite the  
9 risk.”

10 68. But Defendants did not provide any notice to Resilience or, upon information and  
11 belief, to the Insufficient Documentation Group that Defendants believed insufficient  
12 documentation had been provided. Nor did Defendants inform Resilience or the Insufficient  
13 Documentation Group members of what documentation Defendants believed was still outstanding,  
14 or provide an opportunity to question or cure the purported deficiency and avoid a substantial  
15 increase in premiums. In fact, Defendants did not even directly inform Resilience or the Insufficient  
16 Documentation Group members of what tier modifier had been applied to their policy premiums or  
17 the basis of the tier modifier applied. Accordingly, Defendants could not have applied the increased  
18 tier modifiers to the Insufficient Documentation Group members for the purpose of “encourag[ing]  
19 full disclosure” of underwriting risk, as policyholders were never even made aware that this was the  
20 basis of their increased premiums. State Fund also declined to provide insureds an opportunity to  
21 provide any purportedly missing information which would have “enable[d] . . . State Fund to most  
22 accurately underwrite the risk.”

23 69. Defendants further breached the terms of State Fund’s insurance agreements with  
24 Plaintiff Resilience and the Insufficient Documentation Group because State Fund promises through  
25 such agreement to charge only lawful premiums. But as discussed *infra*, Defendants’ assignment  
26 of inflated tier modifiers to Plaintiff Resilience and the Insufficient Documentation Group without  
27 notification, an opportunity to cure, or any apparent basis, violates provisions of the California  
28 Insurance Code and the UCL.



1       76.       State Fund violated, with respect to the Algorithm Group, section 11735 of the  
2 Insurance Code by failing to file, publicly disclose, or permit to be publicly disclosed its tier  
3 modifier Algorithm at the time of filing the rate filings utilizing the Algorithm. This prevented  
4 insureds from being able to determine why they were assigned a specific tier modifier, or to  
5 determine how the tier modifier and consequent premiums were derived and calculated.

6       77.       State Fund's failure to file, publicly disclose, or permit to be publicly disclosed its  
7 tier modifier Algorithm at the time of filing the rate filings utilizing the Algorithm further prevented  
8 insureds from being able to determine the basis of their assigned rating plan modifier, or to  
9 determine how their consequent premium was derived and calculated.

10       78.       Section 332 of the Insurance Code requires that "[e]ach party to a contract of  
11 insurance shall communicate to the other, in good faith, all facts within his knowledge which are or  
12 which he believes to be material to the contract and as to which he makes no warranty, and which  
13 the other has not the means of ascertaining." Concealment consists of any "[n]eglect to  
14 communicate that which a party knows, and ought to communicate." Ins. Code § 330.

15       79.       State Fund's failure to file, publicly disclose, or permit to be publicly disclosed its  
16 tier modifier Algorithm at the time of filing the rate filings utilizing the Algorithm violated, with  
17 respect to the Algorithm Group, section 332 of the Insurance Code.

18       80.       Defendants' conduct described herein, with respect to the Algorithm Group,  
19 constitutes a course of unfair conduct within the meaning of Business & Professions Code § 17200,  
20 *et seq.*

21       81.       State Fund's violations of Sections 332 and 11735 of the Insurance Code described  
22 herein, with respect to the Algorithm Group, constitute unlawful business acts and practices in  
23 violation of Business & Professions Code section 17200, *et seq.*

24       82.       Plaintiff Resilience and each member of the Insufficient Documentation Group  
25 purchased a workers' compensation insurance policy from State Fund and was charged and paid a  
26 premium to State Fund based in part on State Fund's unlawful application of a tier modifier in excess  
27 of 1.00 where such tier modifier was applied by State Fund due to State Fund's determination that  
28 the insured failed to provide sufficient documentation of its claims history and other information



1 required by State Fund.

2 83. Certain of State Fund's rate filings set forth State Fund's "Insufficient  
3 Documentation Rule" providing that "[t]hose businesses that fail to provide documentation of  
4 claims history and other required information will be placed into the Worst/C Tier, to encourage full  
5 disclosure to enable to State Fund to most accurately underwrite the risk."

6 84. But Defendants did not provide any notice to Resilience or, upon information and  
7 belief, to Insufficient Documentation Group members that Defendants believed insufficient  
8 documentation had been provided. Nor did Defendants inform Resilience or the Insufficient  
9 Documentation Group members of what documentation Defendants believed was still outstanding,  
10 or provide an opportunity to question or cure the purported deficiency and avoid a substantial  
11 increase in premiums. In fact, Defendants did not even directly inform Resilience or the Insufficient  
12 Documentation Group members of what tier modifier had been applied to their policy premiums or  
13 the basis of the tier modifier applied. Accordingly, Defendants could not have applied the increased  
14 tier modifiers to the Insufficient Documentation Group members for the purpose of "encourag[ing]  
15 full disclosure" of underwriting risk, as policyholders were never even made aware that this was the  
16 basis of their increased premiums. State Fund also declined to provide insureds an opportunity to  
17 provide any purportedly missing information which would have "enable[d] . . . State Fund to most  
18 accurately underwrite the risk."

19 85. Section 332 of the Insurance Code requires that "[e]ach party to a contract of  
20 insurance shall communicate to the other, in good faith, all facts within his knowledge which are or  
21 which he believes to be material to the contract and as to which he makes no warranty, and which  
22 the other has not the means of ascertaining." Concealment consists of any "[n]eglect to  
23 communicate that which a party knows, and ought to communicate." Ins. Code § 330.

24 86. As discussed *supra*, Defendants violated Section 332 by concealing from Plaintiff  
25 Resilience and the Insufficient Documentation Group (1) the fact that State Fund had deemed them  
26 to have failed to provide sufficient documentation; (2) notice of what documentation was  
27 purportedly still required; and (3) the tier modifier assigned or the basis of the assignment of the tier  
28 modifier. This was all information that Defendants clearly "ought to communicate" to Resilience

1 and the Insufficient Documentation Group.

2 87. Section 11735 of the Insurance Code requires in pertinent part that every “insurer  
3 shall file with the commissioner all rates and supplementary rate information that are to be used in  
4 this state.” Section 11730 of the Insurance Code further defines “supplementary rate information”  
5 as including any “minimum premium, policy fee, rating rule, rating plan, and any other similar  
6 information needed to determine the applicable premium for an insured.”

7 88. As discussed *supra*, State Fund violated Section 11735 by first informing prospective  
8 and current insureds in its rate filings that it would only utilize the Insufficient Documentation Rule  
9 in order to “encourage full disclosure” and “enable to State Fund to most accurately underwrite the  
10 risk.” But State Fund then instead, in complete contradiction of the stated Rule, concealed from the  
11 insureds the fact that that the Rule was even applied to them (thereby denying them any  
12 “encouragement” to provide missing information). State Fund also declined to offer insureds an  
13 opportunity to provide any purportedly missing information which would “enable to State Fund to  
14 most accurately underwrite the risk.” As Section 11735 only allows insureds to apply rating rules  
15 that are stated in its rate filings, and because the actions State Fund took were in diametric opposition  
16 to the stated Insufficient Documentation Rule in the rate filings, State Fund violated Section 11735  
17 and 11730’s requirements that only those “rating rule[s], rating plan[s], [or] any other similar  
18 information needed to determine the applicable premium for an insured” can be applied to determine  
19 insureds’ premiums.

20 89. State Fund’s violations of Sections 332 and 11735 of the Insurance Code described  
21 herein, with respect to the Insufficient Documentation Group, constitute unlawful business acts and  
22 practices in violation of Business & Professions Code section 17200, *et seq.*

23 90. Defendants’ conduct described herein, with respect to the Insufficient  
24 Documentation Group, further constitutes a course of unfair conduct within the meaning of Business  
25 & Professions Code § 17200, *et seq.*

26 91. Defendants’ conduct described herein, with respect to the Insufficient  
27 Documentation Group, constitutes a course of fraudulent business acts of practices within the  
28 meaning of Business & Professions Code § 17200, *et seq.*, as members of the public were likely to

1 be deceived by Defendants' conduct.

2 92. Plaintiffs and the Class suffered an injury-in-fact and lost money or property as a  
3 result of Defendants' unlawful and unfair business acts and practices.

4 93. Plaintiffs are also entitled to injunctive relief. Plaintiffs and the Class continue to be  
5 charged unlawful premiums by State Fund and/or could be charged such unlawful premiums in the  
6 future as State Fund is the insurer of last resort for businesses in California, and all businesses are  
7 required by law to purchase workers' compensation insurance. Accordingly, the Court should  
8 enjoin State Fund from continuing its unlawful conduct, including by, *inter alia*, requiring State  
9 Fund to (i) directly notify insureds of their tier modifiers and provide the basis of the tier modifiers  
10 upon request, and (ii) directly provide insureds with notice of any purported insufficient  
11 documentation and a reasonable opportunity to cure.

12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, Plaintiffs, on behalf of themselves and all others similarly situated, pray  
14 for judgment as follows:

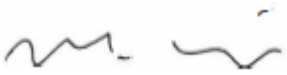
- 15 a. Declaring this action to be a proper class action and certifying Plaintiffs as  
16 the representatives of the Class;
- 17 b. Appointing Plaintiffs' attorneys as Class Counsel to the Class;
- 18 c. Awarding restitution and monetary damages as appropriate;
- 19 d. Awarding punitive and exemplary damages as appropriate;
- 20 e. Ordering injunctive and declaratory relief as appropriate;
- 21 f. Awarding pre-judgment and post-judgment interest as appropriate;
- 22 g. Awarding reasonable attorneys' fees, costs and expenses incurred in this  
23 action; and
- 24 h. Granting such other and further relief as the Court may deem just and proper.

25 **JURY DEMAND**

26 Plaintiffs request a trial by jury of all claims so triable.  
27  
28

1 Dated: June 10, 2022

Respectfully submitted,

2 By:  \_\_\_\_\_

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25 *Counsel for Plaintiffs and the Class*

26  
27  
28

# **EXHIBIT A**

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FILED

DEC 04 2018

ADMINISTRATIVE HEARING BUREAU

**BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA**

In the Matter of the Appeal of )  
)  
**A-BRITE BLIND & DRAPERY CLEANING,** ) FILE AHB-WCA-17-26  
)  
Appellant, )  
)  
From the Decision of the )  
)  
**STATE COMPENSATION INSURANCE FUND,** )  
)  
)  
Respondent. )  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

A-Brite Blind & Drapery Cleaning (“Appellant”) brings this appeal against State Compensation Insurance Fund (“SCIF”) in connection with Appellant’s workers’ compensation policy (the “Policy”). The appeal concerns the annual policy periods beginning December 2, 2015 (the “2015 Period”), December 2, 2016 (the “2016 Period”), and December 2, 2017 (the “2017 Period”).

Appellant contends SCIF applied an incorrect rating plan modifier to the 2015 Period and 2016 Period, improperly calculated the premium discount modifier for all three periods, and miscalculated Appellant’s payroll for the 2015 Period. For the reasons discussed below, the

Commissioner finds SCIF misapplied the rating plan modifier but correctly calculated the premium discount modifier. The Commissioner also finds Appellant failed to prove SCIF miscalculated the 2015 Period payroll.

## **II. Issues Presented**

1. Did SCIF apply the correct rating plan modifier during the 2015 Period and 2016 Period, in accordance with SCIF's filings with the California Insurance Commissioner and applicable law?

2. Did SCIF apply the correct premium discount modifier to the Policy for the 2015 Period, the 2016 Period and the 2017 Period, in accordance with SCIF's filings with the Commissioner and applicable law?

3. Did SCIF miscalculate Appellant's payroll for the purposes of determining premium for the 2015 Period?

## **III. Procedural History**

This appeal arises under Insurance Code section 11737, subdivision (f). Appellant initiated the proceedings on August 29, 2017, by filing an appeal from SCIF's July 25, 2017 decision concerning the rating plan modifier and premium discount modifier. On October 6, 2017, Appellant supplemented its appeal by filing copies of its correspondence with SCIF. The California Department of Insurance Administrative Hearing Bureau issued an Appeal Inception Notice on October 10, 2017. SCIF filed its response on October 24, 2017. The Workers' Compensation Insurance Rating Bureau of California ("WCIRB") also filed a response on October 30, 2017, electing not to actively participate in the appeal.

Administrative Law Judge ("ALJ") Clarke de Maigret conducted an evidentiary hearing

in the California Department of Insurance's Los Angeles hearing room on January 16, 2018.<sup>1</sup> Kathleen Newman represented Appellant, and Stefan Janzen, Esq. represented SCIF at the hearing.

Kathleen Newman, one of Appellant's general partners, testified on Appellant's behalf. Keith Mills, an underwriting systems analyst at SCIF, and Marina Montoya, a senior payroll auditor at SCIF, both testified on SCIF's behalf.

The evidentiary record includes the foregoing testimony, SCIF's pre-filed Exhibits 201 through 218, and the ALJ's pre-filed Exhibits 1 and 2, all of which were admitted in evidence at the hearing. It also includes Exhibits 3, 101, 219, and 220, which were introduced and admitted at the hearing. Lastly, the evidentiary record includes Exhibit 102, which Appellant submitted on January 31, 2018 and the ALJ admitted on February 9, 2018. Upon order of the ALJ, certain personal information pertaining to Appellant's employees was redacted from Exhibits 3 and 102, and the unredacted pages were sealed in the administrative record.

At the ALJ's request, SCIF submitted a post-hearing brief on February 6, 2018. The ALJ closed the evidentiary record on February 9, 2018. On March 12, 2018, the ALJ reopened the record and ordered SCIF to provide additional post-hearing briefing and submit further evidence. SCIF filed the additional brief but refused to comply with the ALJ's order to submit the evidence.<sup>2</sup> The ALJ again closed the evidentiary record on March 23, 2018.

On June 15, 2018 a Proposed Decision was submitted to the Insurance Commissioner in this matter. On August 9, 2018, the Commissioner, pursuant to the provisions of 10 CCR

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<sup>1</sup> These proceedings were conducted in accordance with California Code of Regulations, title 10, sections 2509.40 through 2509.78, and the administrative adjudication provisions of the California Administrative Procedure Act referenced in section 2509.57 of those regulations.

<sup>2</sup> The evidence at issue was SCIF's tiering algorithm and related calculations. See the discussion in part V(B)(3) below.



2509.69, chose not to adopt the proposed decision as his decision, but to decide the case upon the record.

#### **IV. Factual Findings**

The Commissioner makes the following findings of fact, based on a preponderance of the evidence in the record.

##### **A. Appellant's Business**

A-Brite Blind and Drapery Cleaning ("A-Brite") is a general partnership, whose partners include Kathleen Newman and her husband, Randall Newman.<sup>3</sup> The Newmans are also the shareholders of a corporation named Firetect, Inc. ("Firetect").<sup>4</sup> Ms. Newman is Firetect's president.<sup>5</sup> The Newmans, as A-Brite's general partners, and Firetect are jointly insured as a single employer under the Policy.<sup>6</sup>

Appellant is in the business of cleaning residential and theatrical blinds and drapery, as well as treating drapery with fire retardant.<sup>7</sup> The business is headquartered in Valencia, Los Angeles County, California, and has been in operation for 30 years.<sup>8</sup>

##### **B. Appellant's Policy and Claims History**

SCIF has provided workers' compensation insurance to Appellant for about the last 20 years.<sup>9</sup> The Policy at issue in this case renewed on December 2, 2015, 2016 and 2017, the starting dates of the 2015 Period, 2016 Period, and 2017 Period, respectively.<sup>10</sup> For those

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<sup>3</sup> Transcript of Proceedings on January 16, 2018 ("Tr.") at 25:10-26:3.

<sup>4</sup> Tr. 26:18-25.

<sup>5</sup> Tr. 27:22-23.

<sup>6</sup> Evidentiary Hearing Exhibit ("Exh.") 208 at 208-1. Throughout this Proposed Decision, the term "Appellant" refers to A-Brite and Firetect jointly, except where otherwise required by the context.

<sup>7</sup> Tr. 26:4-17.

<sup>8</sup> Tr. 25:1-4.

<sup>9</sup> Tr. 38:11-14; Exh. 219.

<sup>10</sup> Tr. 10:3-18; Exh. 208 at 208-1; Exh. 218 at 218-1.

periods, Appellant dealt directly with SCIF and did not use an insurance broker.<sup>11</sup>

During the 20 years it has been insured by SCIF, Appellant received a single workers' compensation claim.<sup>12</sup> That claim resulted from a bruise sustained by one of Appellant's employees on September 10, 2015.<sup>13</sup> SCIF initially reserved \$24,000 to cover the estimated losses and expenses.<sup>14</sup> However, the claim closed on November 6, 2015 with substantially lower total combined losses and expenses of \$819, which SCIF paid.<sup>15</sup>

### **C. Determination of Premium under the Policy**

The Policy provides that Appellant's premiums are determined by SCIF's "manuals of rules, rates, rating plans and classifications."<sup>16</sup> SCIF's manuals and rating plans include several modifiers, which affected Appellant's premium.<sup>17</sup>

#### **1. Rating Plan Modifier**

SCIF determined the premiums for the 2015 Period and 2016 Period in part based on a "rating plan modifier."<sup>18</sup> SCIF applied the rating plan modifier to Appellant's "standard premium" to arrive at a "modified premium."<sup>19</sup> The rating plan modifier resulted from multiplying four components, namely, (a) a "territory modifier," based on geographical area, (b) a "claims free" modifier, for policyholders with claims below a certain level, (c) a "direct placement" modifier for policyholders who deal with SCIF directly rather than through a

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<sup>11</sup> Tr. 37:23-24, 38:5-7; Exh. 206; Exh. 215.

<sup>12</sup> Tr. 28:21-29:11; Exh. 3 at 3-3 through 3-6.

<sup>13</sup> Exh. 201 at 201-1.

<sup>14</sup> Exh. 1 at 1-40.

<sup>15</sup> Tr. 65:8-9; Exh. 201 at 201-1.

<sup>16</sup> Exh. 209 at 209-4 [Part Five, § A].

<sup>17</sup> Exh. 1; Exh. 2.

<sup>18</sup> Exh. 210 at 210-1; Exh. 218 at 218-2.

<sup>19</sup> Exh. 212 at 212-1. In Appellant's case, standard premium is equal to base premium, which is calculated by multiplying Appellant's workers' compensation payroll in each employment classification by SCIF's base rate for the respective classification. (*Ibid.*)

broker, and (d) a “tier modifier,” based on a rating tier assigned according to a “tier score” calculated using an algorithm.<sup>20</sup> These modifiers are typically expressed as numerical coefficients. For example, a modifier of 0.80 reduces premium by 20 percent, while a modifier of 1.20 increases it by 20 percent.

**a. Territory Modifier**

In the 2015 Period and 2016 Period, SCIF applied a territory modifier of 1.15 to the Policy<sup>21</sup>. SCIF’s rate filings with the Commissioner included a 1.15 territory modifier for Los Angeles County, effective April 1, 2015.<sup>22</sup>

**b. Claims Free Modifier**

During the 2015 Period, SCIF applied a 10 percent “claims free” credit to the Policy (*i.e.*, a modifier of 0.90).<sup>23</sup> For unclear reasons, SCIF did not apply the credit to the 2016 period.<sup>24</sup> Under SCIF’s rate filings effective during those periods, the credit was applicable to policyholders continuously insured with SCIF who incurred no more than \$1,000 in workers’ compensation claims during the three years preceding the policy period (or two years for policyholders with less than \$10,000 in annual base premium).<sup>25</sup>

**c. Direct Placement Modifier**

SCIF applied a three percent “direct placement” credit (0.97 modifier) to the Policy

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<sup>20</sup> Tr. 58:14-59:8. See also Tr. 15:3-17:18 regarding trade secret privilege claimed by SCIF in the algorithm.

<sup>21</sup> Exh. 206 at 206-3; Exh. 215 at 215-3.

<sup>22</sup> Exh. 1 at 1-9, 1-27.

<sup>23</sup> Exh. 206 at 206-3; Exh. 208 at 208-2.

<sup>24</sup> Exh. 215 at 215-3; Exh. 218 at 218-2.

<sup>25</sup> Exh. 1 at 1-4; Exh. 2 at 2-1.

for both the 2015 Period and 2016 Period.<sup>26</sup> A 2011 SCIF rate filing with the Commissioner describes this three percent credit.<sup>27</sup>

**d. Rating Tier Modifier**

SCIF assigns policyholders to various “rating tiers,” each with its own modifier.<sup>28</sup> SCIF assigns tiers based on “tier scores.”<sup>29</sup> Tier scores are calculated by SCIF using software it alternately refers to as the rating engine, tiering engine, scoring engine, or quote engine.<sup>30</sup> SCIF treats the tiering algorithm as a closely-guarded secret and does not allow it to be viewed by customers, members of the public, or even SCIF’s own underwriting staff.<sup>31</sup> SCIF does not indicate tier scores on its policies, quotes or billing statements; nor does it provide customers with any calculations showing how the scores are calculated, even if customers specifically request that information.<sup>32</sup> The algorithm is not included in any of SCIF’s rate filings with the Commissioner.<sup>33</sup>

The algorithm takes into account the policyholder’s prospective estimated premium, payroll and number of employees.<sup>34</sup> It also factors in three years of the policyholder’s historical premium and loss data.<sup>35</sup> That data includes the frequency and number of workers’ compensation claims and whether those claims involved medical expenses or compensation for

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<sup>26</sup> Exh. 206 at 206-3; Exh. 208 at 208-2; Exh. 215 at 215-3; Exh. 218 at 218-2.

<sup>27</sup> Exh. 1 at 1-1; Exh. 2 at 2-2.

<sup>28</sup> Tr. 56:10-17; Exh. 1 at 1-26; Exh. 2 at 2-27.

<sup>29</sup> Tr. 74:22-75:2.

<sup>30</sup> Tr. 62:24, 65:19-21; 74:20-25.

<sup>31</sup> Tr. 14:22-17:18; Tr. 74:20-75:13; See also SCIF Letter to ALJ renewing objection, dated February 1, 2018.

<sup>32</sup> Tr. 97:3-21, 101-3; 102-17; Exh. 101; Exh. 205; Exh. 208.

<sup>33</sup> See Exh. 1, Exh. 2.

<sup>34</sup> Tr. 57:8-11.

<sup>35</sup> Tr. 57:11-13, 83:10-19.

lost employee time or disability.<sup>36</sup>

Each rating tier has an associated modifier.<sup>37</sup> Starting in 2013 and through the commencement of the 2015 Period, SCIF employed a rating framework with four tiers, A through D.<sup>38</sup> In the year preceding the 2015 Period, Appellant was assigned to Tier B, which at the time had a rating tier modifier of 0.951.<sup>39</sup>

SCIF revised its tier rating framework for the 2015 Period.<sup>40</sup> Tier A received a modifier of 0.65. Tier B was assigned a modifier of 1.0. Tier C received a factor of 1.5, and tier D was assigned a modifier of 2.0.<sup>41</sup>

In the 2015 Period, Tier D applied to tier scores of at least 0.30092.<sup>42</sup> Using its secret algorithm, SCIF initially calculated Appellant's tier score as 0.419525161.<sup>43</sup> Consequently, SCIF moved Appellant from Tier B to Tier D, thereby doubling Appellant's premium.<sup>44</sup> The tier score increase resulting in Appellant's move to Tier D was precipitated by the lone workers' compensation claim in 2015, for which SCIF initially reserved \$24,000 in estimated losses and expenses.<sup>45</sup> SCIF notified Appellant of the tier change and premium increase in a renewal quote dated October 5, 2015.<sup>46</sup> Nothing in the record or in SCIF's rate filings explains how Appellant's tier scores were calculated.

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<sup>36</sup> Tr. 57:15-25.

<sup>37</sup> Tr. 56:10-17; 58:12-17; Exh. 1 at 1-26; Exh. 2 at 2-33, 2-34.

<sup>38</sup> Tr. 56:18; Exh. 1 at 1-26.

<sup>39</sup> Tr. 59:11-12.

<sup>40</sup> Tr. 59:21-24; Exh. 1 at 1-26.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> Exh. 1 at 1-39.

<sup>44</sup> Tr. 61:5-6.

<sup>45</sup> Tr. 61:5-64:10; Exh. 1 at 1-40.

<sup>46</sup> Exh. 205 at 205-3.

Appellant complained to SCIF about the increase,<sup>47</sup> which resulted in SCIF recalculating the tier score and reassigning Appellant to Tier C on January 25, 2016, with a tier modifier of 1.5.<sup>48</sup> The sole factor lowering Appellant's tier score from the Tier D range to the Tier C range was SCIF's entry into the scoring engine of \$819 in actual losses and expenses for the 2015 claim rather than the \$24,000 that was originally estimated.<sup>49</sup> In contrast, if Appellant had incurred no workers' compensation claims in the three years prior to the 2015 Period, SCIF would have assigned Appellant to Tier B with a modifier of 1.0.<sup>50</sup>

Starting in the 2016 Period, SCIF increased the number of rating tiers to a numerical system ranging from four to seven.<sup>51</sup> SCIF continued to maintain that its algorithm was confidential and did not include it in its rate filings with the Commissioner. For policyholders with standard premium between \$10,000 and \$25,000, the new Tier 3 had a modifier of 1.0, which would have no impact on premium. And Tier 4 had a factor of 1.2, which would increase standard premium by 20 percent.<sup>52</sup> SCIF assigned Appellant to Tier 4 for the 2016 Period.<sup>53</sup> If Appellant had incurred no workers' compensation claims in the three prior years, SCIF would have assigned Appellant to Tier 3.<sup>54</sup>

In other words, the lone \$819 claim in a 20-year period resulted in a 50 percent (or \$6,971) increase to Appellant's premium for the 2015 Period and a 20 percent (or estimated \$1,834) increase for the 2016 Period.<sup>55</sup>

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<sup>47</sup> Exh. 3 at 3-7.

<sup>48</sup> Tr. 33:12-23, 64:11-65:16; Exh. 3 at 3-30.

<sup>49</sup> Tr. 64:21-65:21; Exh. 1 at 1-36 through 1-41.

<sup>50</sup> Tr. 105:21-106:14.

<sup>51</sup> Tr. 72:12-14; Exh. 2 at 2-27.

<sup>52</sup> Tr. 93:6-14; Exh. 2 at 2-27.

<sup>53</sup> Tr. 72:7-11; Exh. 2 at 2-39.

<sup>54</sup> Tr. 106:15-107:3.

<sup>55</sup> Exh. 212 at 212-1; Exh. 215 at 215-3.

## 2. Premium Discount Modifier

Appellant's premiums for each of the 2015 Period, 2016 Period and 2017 Period were calculated in part using a "premium discount modifier."<sup>56</sup> That modifier applied a flat discount of 11.3% to all modified premium over \$5,000.<sup>57</sup> SCIF's 2011 rate filings with the Commissioner describe that discount.<sup>58</sup>

### D. Policy Audit

On March 27, 2017, SCIF conducted an audit for the 2015 Period.<sup>59</sup> The audit found Appellant's workers' compensation payroll was \$188,995. Based on that audit, SCIF determined that Appellant incurred a base premium of \$13,942.87, a modified premium of \$20,996.99,<sup>60</sup> a total premium of \$19,189.36,<sup>61</sup> mandatory surcharges of \$629.83, and total charges of \$19,819.19.<sup>62</sup>

### V. Discussion

Appellant argues SCIF's rating plan modifiers and premium discount modifiers were incorrectly applied.<sup>63</sup> Appellant further contends SCIF miscalculated Appellant's 2015 Period payroll. SCIF argues all of the modifiers were valid and correctly applied.<sup>64</sup> SCIF also stands behind its audit and further asserts the Commissioner may lack jurisdiction to determine the payroll calculation issue.<sup>65</sup> For the reasons discussed below, the Commissioner finds that (1)

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<sup>56</sup> Tr. 71:6-72:6; Exh. 210 at 210-1; Exh. 218 at 218-2.

<sup>57</sup> Tr. 71:6-16; Exh. 210 at 210-1; Exh. 218 at 218-2.

<sup>58</sup> Exh. 1 at 1-2, 1-3.

<sup>59</sup> Tr. 115:14-25; Exh. 211 at 211-1.

<sup>60</sup> Obtained by multiplying the base premium by a rating plan modifier of 1.50593. (Exh. 212 at 212-1.)

<sup>61</sup> Obtained by multiplying the modified premium by a premium discount modifier of 0.91391. (*Ibid.*)

<sup>62</sup> Obtained by adding the total premium and the mandatory surcharges. (*Id.* at 212-1, 212-2.)

<sup>63</sup> Appeal dated August 25, 2017 ("Appeal").

<sup>64</sup> SCIF's Response to the Appeal, dated October 18, 2017, at 3-4.

<sup>65</sup> Letter from SCIF to the ALJ, dated February 9, 2018.

the Commissioner has jurisdiction over all issues in this appeal, (2) SCIF misapplied the rating plan modifier, (3) SCIF correctly applied the premium discount modifier, and (4) Appellant failed to meet its burden of proof to show SCIF miscalculated Appellant's payroll.

**A. The Commissioner Has Jurisdiction over This Appeal**

**1. Applicable Law**

**a. The Statutory Rate Filing Scheme**

California has an "open rating" workers' compensation regulatory system, in which each insurer sets its own rates and files them with the Commissioner. This framework is intended to curtail monopolistic and discriminatory pricing practices, ensure carriers charge rates adequate to cover their losses and expenses, and provide public access to rate information so that employers may find coverage at the best competitive rates.<sup>66</sup>

Insurance Code section 11735 lays out the statutory filing requirements. Subdivision (a) of that section provides in part, "Every insurer shall file with the commissioner all rates and supplementary rate information that are to be used in this state. The rates and supplementary rate information shall be filed not later than 30 days prior to the effective date." The term "rate" means "the cost of insurance per exposure base unit," subject to certain limitations.<sup>67</sup> And "supplementary rate information" means "any manual or plan of rates, classification system, rating schedule, minimum premium, policy fee, rating rule, rating plan, and any other similar information needed to determine the applicable premium for an insured."<sup>68</sup>

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<sup>66</sup> See generally Ins. Code §§ 11730-11742.

<sup>67</sup> Ins. Code § 11730, subd. (g). Rates exclude the application of individual risk variations based on loss or expense considerations, as well as minimum premiums.

<sup>68</sup> Ins. Code § 11730, subd. (j).



## b. Jurisdiction over Private Party Appeals

Insurance Code section 11737, subdivision (f), confers jurisdiction on the Commissioner to hear and decide private party appeals concerning the application of insurers' section 11735 filings. Specifically, the statute provides in pertinent part:

Every insurer... shall provide within this state reasonable means whereby any person aggrieved by the application of its filings may be heard by the insurer... on written request to review the manner in which the rating system has been applied in connection with the insurance afforded or offered. ... Any party affected by the action of the insurer... on the request may appeal... to the commissioner, who after a hearing ... may affirm, modify, or reverse that action.

## 2. Analysis

Appellant asserts SCIF failed to correctly apply the rates and supplementary rate information filed under Insurance Code section 11735. Specifically, Appellant contends SCIF misapplied its filed rating plan modifiers and premium discount modifiers to SCIF's filed rates. Appellant further contends SCIF miscalculated Appellant's 2015 Period payroll. If true, that would result in the application of SCIF's filed rates to the wrong exposure level. Appellant requested that SCIF remedy these issues. SCIF rejected that request, and Appellant timely filed this appeal.<sup>69</sup> Because the issues on appeal concern the manner in which SCIF applied its rating system to the Policy, the Commissioner has jurisdiction under Insurance Code section 11737, subdivision (f).

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<sup>69</sup> See Cal. Code Regs., tit. 10, § 2509.46 ["An appeal is timely if it is filed either within 30 days after rejection of a Complaint and Request for Action or rejection of review thereof . . . "]. California Code of Regulations, title 10, section 2509.42, subdivision (q) provides in part, "Service by first class mail . . . is complete at the time of deposit with the carrier, but any . . . right or duty to do any act or make any response within any prescribed period of notice . . . shall be extended for a period of five days." SCIF mailed its rejection of Appellant's complaint and request for action on July 25, 2017 (See Appeal). Appellant filed this appeal within the 35 day window on August 29, 2017. (*Ibid.*)

**B. Use of the Tier Modifier Resulted in a Misapplication of SCIF's Filed Rates.**

SCIF's rating plan modifier consists of four components, one of which is the tier modifier. For the reasons discussed below, the tier modifier is an improper adjustment to SCIF's filed rates.

**1. SCIF Misapplied its Filed Rates Due to its Use of an Unfiled Tiering Algorithm.**

SCIF uses a proprietary algorithm to calculate the tier modifier. SCIF contends it is not legally required to file the algorithm with the Commissioner, and that use of the unfiled algorithm to determine Appellant's premium was lawful. The Commissioner disagrees.

**a. Applicable Law**

Insurance Code section 11735, subdivision (a), requires insurers to file all rates and supplementary rate information, without exception, before using them in California. The term "supplementary rate information" includes any "minimum premium, policy fee, rating rule, rating plan, and any other similar *information needed to determine the applicable premium for an insured.*"<sup>70</sup> "[M]oney paid by an insured to an insurer for coverage constitutes premium regardless of its name."<sup>71</sup> Thus, any information necessary to determine amounts owed by an insured to its insurer is supplementary rate information. If SCIF wished to apply its Tiering algorithm to Appellant's rate, it was required to file the algorithm and allow it to be subject to public inspection under Insurance Code section 11735.

Insurers may only charge premium in accordance with their filed rates and

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<sup>70</sup> Ins. Code § 11730, subd. (j), emphasis added.

<sup>71</sup> *In the Matter of the Appeal of Shasta Linen Supply, Inc.* (Cal. Ins. Comm'r, June 22, 2016, AHB-WCA-14-31) (*Shasta Linen*) at 48-49; see also *Troyk v. Farmers Group Inc.* (2009) 171 Cal.App.4th 1305, 1325 ["[I]nsurance premium includes not only the 'net premium,' or actuarial cost of the risk covered (i.e. expected amount of claims payments), but also the direct and indirect costs associated with providing that insurance coverage and any profit or additional assessment charged."]

supplementary rate information.<sup>72</sup> As the Commissioner determined in his precedential decision *In the Matter of the Appeal of Shasta Linen Supply, Inc.*, an insurer's use of unfiled rates or supplementary rate information is unlawful.<sup>73</sup> That is true regardless of whether the Commissioner first disapproved the unfiled rates under Insurance Code section 11737.<sup>74</sup>

**b. Analysis**

**i. The Tiering Algorithm Constitutes Supplementary Rate Information.**

SCIF determined Appellant's premiums for the 2015 Period and 2016 Period in part based on a "rating plan modifier"<sup>75</sup> that increased Appellant's premium.<sup>76</sup> The rating plan modifier resulted from multiplying four component modifiers, including a "tier modifier." Tier modifiers, in turn, are tied to "rating tiers" assigned to policyholders based on "tier scores" that SCIF calculates using an algorithm that SCIF claims is proprietary. The algorithm takes account of the policyholder's prospective estimated premium, payroll and number of employees,<sup>77</sup> as well as the policyholder's historical premium and loss data.<sup>78</sup> There is no way for the policyholder or anyone else to calculate a tier score without the algorithm. Without the

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<sup>72</sup> Ins. Code § 11735, subd. (a); Ins. Code § 11730, subd. (j); See *Appeal of Gary E. Milne* (Cal. Ins. Comm'r Feb. 19, 1999, AHB-WCA-97-11) at 10 ["[I]nsurers do not have unrestricted discretion to set workers' compensation insurance rate levels under open rating. The open rating system contemplates competitive pricing consistent with the public interest in fair and adequate insurance."]

<sup>73</sup> *Shasta Linen* at 52. *Shasta Linen* was designated precedential under Gov. Code section 11425.60, subdivision (b).

<sup>74</sup> See *Ibid.*

<sup>75</sup> Exh. 210 at 210-1; Exh. 218 at 218-2.

<sup>76</sup> Exh. 212 at 212-1. In Appellant's case, standard premium is equal to base premium, which is calculated by multiplying Appellant's workers' compensation payroll in each USRP classification by SCIF's base rate for the respective classification. (*Ibid.*)

<sup>77</sup> Tr. 57:8-11.

<sup>78</sup> Tr. 57:11-13.

tier score, it is impossible to determine which rating tier applies, and which tier modifier to assign the policyholder. Since a policyholder's base premium during the 2015 Period, for example, could have been reduced by as much 45 percent or increased by up to 100 percent depending on the rating tier, it is not possible to determine premium without the algorithm.<sup>79</sup> Because the algorithm is a key component of the rate calculation, it constitutes "information needed to determine the applicable premium for an insured[.]" thereby satisfying the definition of "supplementary rate information" under Insurance Code section 11730, subdivision (j).<sup>80</sup>

**ii. SCIF's Use of the Unfiled Algorithm Was Unlawful, Contravened Public Policy, and Misapplied SCIF's Filed Rates.**

Insurers must file all supplementary rate information under Insurance Code section 11735, subdivision (a), and under subdivision (b), which requires that information be publicly available. But SCIF withheld the algorithm—a critical piece of information that determines policyholders' rates—based on its assertion that "any policyholder (or future policyholder) can potentially 'game the system' if the algorithm was known to them" and that other insurers "could, conceivably, use knowledge of the algorithm to gain a competitive advantage over State Fund[.]"<sup>81</sup> SCIF's position ignores the mandate of the statute and frustrates the public policy concerns behind it.

Among the policy aims of section 11735, two important goals of the public inspection

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<sup>79</sup> Exh. 1 at 1-26.

<sup>80</sup> Without the algorithm, it is impossible for the Commissioner to determine whether the applied rates tend to create a monopoly in the market, are inadequate or unfairly discriminatory. (See Ins. Code §§ 11732, 11732.5, 11737, subd. (b), (c).)

<sup>81</sup> Letter from State Fund to the ALJ, dated February 1, 2018, objecting to disclosure of the algorithm. In fact, SCIF violated the ALJ's order to submit a copy of the algorithm in this appeal. (See SCIF's Amended Objection to Order Vacating Evidentiary Ruling; Order to Disclose Tiering Algorithm, dated March 22, 2018 ("Obj. to Order to Disclose").)

provisions are to enable employers to obtain coverage at the best rates and to curtail monopolistic pricing practices.<sup>82</sup> When rate information is transparent, policyholders are better able to compare coverage and reduce their costs. Transparency reduces the likelihood that insurers will gain a monopolistic advantage when all carriers' pricing information is public.

In furtherance of those aims, the Legislature passed Insurance Code section 11742 to mandate the establishment of an online rate comparison guide. Subdivision (a) of that section provides:

The Legislature finds and declares that the insolvencies of more than a dozen workers' compensation insurance carriers have seriously constricted the market and lead to a dangerous increase in business at the State Compensation Insurance Fund. Yet more than 200 insurance companies are still licensed to offer workers' compensation insurance in California. Unfortunately, many employers do not know which carriers are offering coverage, and it is both difficult and time consuming to try to get information on rates and coverages from competing insurance companies. A central information source would help employers find the required coverage at the best competitive rates.

When insurers use secret unfiled formulas to modify their filed rates, they directly frustrate the Legislature's intent behind the comparison guide and section 11735's public inspection provisions. Rate disclosure confers little value if the public does not have access to the formulas carriers use to modify their rates. Meaningful price comparison is simply impossible without those formulas.

By hiding its algorithm, SCIF obscured Appellant's looming premium increase until Appellant was in no position to avoid it. Appellant's witness testified, "I could not fathom what a negative monetary impact it would have on our small business to have a claim after over 20 years in business. One claim for \$819.... When I received the final renewal for 2015, I was

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<sup>82</sup> See generally Ins. Code §§ 11730-11742.

shocked.”<sup>83</sup> If Appellant or its advisors had access to the algorithm, they could have determined in advance the claim’s impact on premium and potentially mitigated the effects. At a minimum, Appellant would have had additional time to shop for a less expensive policy.

Insurance Code section 11735 and the legislative policy behind it required that SCIF file the algorithm as supplementary rate information. SCIF failed to do so, rendering its use of the unfiled algorithm unlawful. By effectively increasing SCIF’s filed rates by 50 percent for the 2015 Period and 20 percent for the 2016 Period, SCIF’s use of the algorithm resulted in the misapplication of those rates.

**2. SCIF Wrongly Asserts it Complied with the Commissioner’s Regulations, Thus Fulfilling the Statutory Filing Requirements.**

SCIF argues it complied with the Commissioner’s rate filing regulations and in so doing satisfied Insurance Code section 11735’s filing requirements. Specifically, SCIF asserts that the Commissioner has authority under the regulations to determine what constitutes supplementary rate information. SCIF asserts that the Commissioner’s acceptance of its rate filing without the tiering algorithm *ipso facto* constituted a determination that the algorithm was not supplementary rate information. Therefore, SCIF contends that the algorithm did not need to be filed under section 11735.<sup>84</sup> SCIF’s interpretation of the rate filing process and regulations is wrong.

**a. Applicable Law**

In addition to complying with the statutory filing requirements under Insurance Code section 11735, workers’ compensation insurers must file their rates in accordance with

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<sup>83</sup> Tr. at 29:8-25.

<sup>84</sup> Obj. to Order to Disclose at 4-6.

California Code of Regulations, title 10, sections 2509.30 *et seq.* Section 2509.32, subdivision (e), which provides:

A complete rate filing is one for which the insurer has completed the Filing Form and submitted all necessary attachments and exhibits. Necessary attachments and exhibits are those materials that, together with the Filing Form, are sufficient to enable the Commissioner to determine the rates the insurer would charge its insureds. Unless the Commissioner notifies the insurer within 30 days of the filing date that its rate filing is incomplete, the rate filing will be considered complete.

#### **b. Analysis**

SCIF did not comply with the regulations, which broadly set forth the information that is required in an insurer's rate filing—insurers must file *all* information that is necessary to determine an insurer's rates, which would encompass SCIF's algorithm. The statute does not give the Commissioner the power to exclude information in violation of the statute's language that all such information must be filed.

The regulation provides further clarification of Insurance Code section 11735, subdivision (b)'s requirement that “[r]ates filed pursuant to this section shall be filed in the form and manner prescribed by the commissioner.” Section 2509.32, subdivision (e), does not suggest that an insurer's failure to file supplemental information relieves it from its obligation to comply with statutory law; indeed, the regulation expressly mandates that insurers file information “sufficient to enable the Commissioner to determine the rates the insurer would charge its insureds.” The regulation is consistent with the statute, which broadly defines the term “supplementary rate information” to include “minimum premium, policy fee, rating rule, rating plan, and any other similar information needed to determine the applicable premium for an insured.” Indisputably, if SCIF intended to use the algorithm to modify its rates, the algorithm would be necessary determine SCIF's rates. Since SCIF's algorithm falls squarely within the statutory and regulatory

definitions, SCIF was required file it. SCIF knew that its rate filing was not complete because SCIF knew the algorithm is necessary “to enable the Commissioner to determine the rates the insurer would charge its insureds.” Section 2509.32(e) does not purport to allow insurers to avoid the filing requirements that are specified in Insurance Code section 11735 under any circumstance. Rather, it provides the form and manner of compliance and reiterates the provisions in the statute.

SCIF cites no basis to support its assertion that it need not comply with statutory and regulatory law so long as the Commissioner accepted its filing as complete. SCIF seems to confuse the Commissioner’s acceptance of its filing with the Commissioner’s limited power to disapprove rates under certain narrowly-tailored circumstances, if he determines that the premiums charged, in the aggregate, would be inadequate to cover an insurer’s losses and expenses, unfairly discriminatory, or tend to create a monopoly in the market.<sup>85</sup> While applicable law grants the Commissioner authority to reject a rate filing if an insurer fails to comply with the filing requirements or if the filing is incomplete,<sup>86</sup> the Commissioner lacks the authority to override a statutory mandate that insurers file all supplemental rate information. The Commissioner’s determination that a filing is complete is a ministerial function to determine whether the paperwork includes the Filing Form, exhibits and attachments necessary to comprise a complete filing as defined in Title 10 California Code of Regulations section 2509.32(e). The Commissioner’s acceptance of SCIF’s rate filing as complete is not a substantive endorsement that SCIF has met its statutory obligation to file all of supplementary rate information that it uses to calculate an insured’s premium, such as the unfiled algorithm. Whatever else may be said of the legal importance of an administrative action to deem a filing

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<sup>85</sup> Ins. Code § 11737(b).

<sup>86</sup> Tit. 10, Cal. Code Regs. § 2509.32(c).



complete, the scope of such action cannot serve to protect formulae an insurer withholds from its filing, and then applies outside of the filing process to calculate a policyholder's applicable premium.<sup>87</sup>

Moreover, SCIF's failure to file its algorithm undermined an additional purpose of the statute that required it to file its algorithm, preventing A-Brite's ability to access crucial information that greatly affected its workers' compensation insurance rates.

SCIF's argument also overlooks section 11735's important public policy consideration in requiring that pricing information be publicly available to assist employers shopping for coverage. Given this policy, as well as section 11730's broad definition of "supplementary rate information," and section 11735's express requirement that insurers file *all* of that information before using it, an insurer's failure to file such information would frustrate the public's statutory right to access that information. The Commissioner's acceptance of SCIF's rate filing as complete does not relieve SCIF from its responsibility to file its supplementary information as required by law. More to the point, SCIF's failure to file the supplementary information cannot inure to the prejudice of A-Brite. SCIF unlawfully misapplied its rates by modifying them with an unfiled algorithm. The Commissioner will not affirm its use of the unfiled algorithm to A-Brite's prejudice.

### **3. Trade Secret Privilege Did Not Exempt the Algorithm from Statutory Filing and Disclosure Requirements.**

SCIF argues that even if the tiering algorithm is supplementary rate information, it

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<sup>87</sup> (See, e.g., *State Compensation Ins. Fund v. Superior Court* (2001) 24 Cal.4th 930 [insurer's misallocation of expenses which were reported to WCIRB, thereby resulting in higher premiums for insured, is not conduct immune from civil liability]; accord *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 992-93 [11 Cal.Rptr.3d 45, 62] ["It is possible for an insurance carrier to file with the Department a rate filing and class plan that satisf[y] all of the ratemaking components of the regulations, and still result in a violation of the Insurance Code as applied." (emphasis in original)]; see also *MacKay v. Superior Court* (2010) 188 Cal.App.4th 1427, 1450 [115 Cal.Rptr.3d 893, 911], as modified (Oct. 20, 2010) ["...underlying conduct challenged was not the charging of an approved rate, but the application of an unapproved underwriting guideline..."].)

remains protected from disclosure under the trade secret privilege.<sup>88</sup> Specifically, SCIF contends that because section 11735 does not expressly override the subsequently enacted trade secret protections of Government Code section 6254, section 11735 does not require the filing and public disclosure of trade secrets. The Commissioner is not persuaded.

**a. Applicable Law**

Civil Code section 3426.1 defines a “trade secret” as information that “(1) [d]erives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and [¶] (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

Evidence Code section 1060 provides: “If he or his agent or employee claims the privilege, the owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice.” Like the rest of the Evidence Code, that section applies to court actions.<sup>89</sup> It has no applicability to administrative or other governmental proceedings unless expressly invoked by statute or regulation.<sup>90</sup>

Government Code section 6254 exempts certain trade secrets from the disclosure requirements of the California Public Records Act.<sup>91</sup> In particular, subdivision (ab) of that section states the act does not require disclosure of “[t]he following records of the State Compensation Insurance Fund:”

(3) Records related to the impressions, opinions,

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<sup>88</sup> Obj. to Order to Disclose at 6-8.

<sup>89</sup> Evid. Code § 300.

<sup>90</sup> 31 Cal.Jur.3d Evidence, § 7; see also *Big Creek Lumber Co. v. County of San Mateo* (1995) 31 Cal.App.4th 418, 430 fn. 16.

<sup>91</sup> Cal. Gov. Code § 6250 et seq.

recommendations, meeting minutes of meetings or sessions that are lawfully closed to the public, research, work product, theories, or strategy of the fund or its staff, on the development of rates, contracting strategy, underwriting, or competitive strategy pursuant to the powers granted to the fund [under the Insurance Code].

...

(5)(A) Records that are trade secrets pursuant to... [Evidence Code section 1060], including without limitation, instructions, advice, or training provided by the State Compensation Insurance Fund to its board members, officers, and employees regarding the fund's special investigation unit, internal audit unit, and informational security, marketing, rating, pricing, underwriting, claims handling, audits, and collections.

In addition, section 6254, subdivision (k) exempts the following information from the Public Records Act's disclosure requirements: "Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege."

#### **b. Analysis**

Trade secret privilege does not limit section 11735's public inspection requirements. The California Supreme Court's analysis and holding in *State Farm Mutual Automobile Insurance Co. v. Garamendi*<sup>92</sup> are instructive. That case concerned Insurance Code section 1861.07, which broadly requires public disclosure of "[a]ll information provided to the commissioner" in connection with insurance rate approval applications (unrelated to workers' compensation). The plaintiff insurance company argued Government Code section 6254's trade secret provisions limited section 1861.07's disclosure requirements. Specifically, the plaintiff contended that since section 1861.07 expressly excludes a specific subdivision of section 6254, the Legislature implicitly intended all other subdivisions to apply, including

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<sup>92</sup> *State Farm Mut. Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029.

those that exempt trade secrets from disclosure. The Court disagreed, holding that the public disclosure rule covering “[a]ll information provided to the commissioner” under section 1861.07 is absolute.<sup>93</sup> That section’s exclusion of the specific provision of section 6254 “merely buttresses this rule.”<sup>94</sup> Thus, the Court concluded that information provided to the commissioner under section 1861.07 was not subject to trade secret privilege under section 6254 or, by extension, Evidence Code section 1060.<sup>95</sup>

Insurance Code section 11735’s public disclosure requirement is similarly absolute. The statute requires the filing of “all rates and supplementary rate information that are to be used in this state” and “[a]ll rates, supplementary rate information, and any supporting information for rates filed under this article, as soon as filed, shall be open to public inspection at any reasonable time...”<sup>96</sup>

Finally, contrary to SCIF’s assertions,<sup>97</sup> it is immaterial that Government Code section 6254 was enacted after Insurance Code section 11735. Section 6254 limits public disclosure obligations under the Public Records Act, so the Public Records Act cannot reasonably be construed to limit the Insurance Commissioner’s review and acceptance of supplementary rate information under the Insurance Code. Specifically, the lead-in to section 6254 states that “this chapter does not require the disclosure” of the information exempted pursuant to that section. And “this chapter” refers to Government Code, division 7, chapter 3.5, *i.e.*, the Public Records Act. A plain reading of the Public Records Act limits its application to the chapter within the

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<sup>93</sup> *Id.* at 1042-1043, emphasis in original.

<sup>94</sup> *Id.* at 1042.

<sup>95</sup> *Id.* at 1047. As noted above, privilege under Evidence Code section 1060 is incorporated by reference in Government Code section 6254, subdivision (k).

<sup>96</sup> Emphasis added.

<sup>97</sup> *Obj. to Order to Disclose* at 7.

Government Code, and is plainly inapplicable to the construction of the Insurance Code and workers' compensation insurance rate filing requirements concerning the Insurance Commissioner. Because a plain reading of Government Code section 6254 and Insurance Code section 11735 demonstrates two separate and independent areas of authority, the order in which they were enacted is of no consequence here.

For these reasons, the trade secret privilege does not exempt the tiering algorithm from Insurance Code section 11735's filing and public inspection provisions.

**4. SCIF Must Exclude The Unfiled Tier Modifier in Computing Appellant's Rates.**

Section 11737, subdivision (f), grants the Commissioner broad authority to award remedies in workers' compensation appeals. The statute authorizes him to "affirm, modify, or reverse" an insurer's action concerning the application of its rating system. The statute contains no language restricting remedies the Commissioner may order to modify or reverse an insurer's action. Nor has any California court inferred such restrictions from the statute. Indeed, the breadth of the Commissioner's authority is consistent with his comprehensive role to "require from every insurer a full compliance with all the provisions of [the Insurance Code]."<sup>98</sup>

SCIF failed to apply the correct rate to the policy by unlawfully applying the unfiled rating tier modifier component for the 2015 Period and 2016 Period. SCIF must recalculate the rates for those Periods without applying the unfiled rating tier modifier.

**C. The Claims Free Modifier Applies to Both the 2015 Period and the 2016 Period.**

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<sup>98</sup> Ins. Code § 12926.

The Commissioner finds SCIF correctly applied a claims-free modifier to the 2015 Period but improperly failed to apply that modifier to the 2016 Period.

Under a SCIF rate filing that was in effect during the 2015 Period and 2016 Period, a claims-free modifier of 0.90 applied to policyholders continuously insured with SCIF and incurring no more than \$1,000 in workers' compensation claims during the three years preceding the current policy period (or two years for policyholders with less than \$10,000 in annual base premium).<sup>99</sup> In the three years preceding the 2015 Period, Appellant was continuously insured with SCIF and incurred no workers' compensation claims. Accordingly, SCIF correctly applied the claims free modifier to the Policy for that period.<sup>100</sup>

However, SCIF did not apply the modifier to the 2016 Period.<sup>101</sup> In September of 2015, Appellant incurred a single workers' compensation claim, which was closed on November 6, 2015. The total losses and expenses incurred in connection with that claim were \$819.<sup>102</sup> Thus, Appellant incurred less than \$1,000 in claims in the three years preceding the beginning of the 2016 Period. Accordingly, SCIF should have applied the 0.90 claims-free modifier to that period as well.

#### **D. SCIF Correctly Calculated the Remaining Modifiers.**

The Commissioner finds the remaining components of the rating plan modifier—i.e., the direct placement modifier and the territory modifier—were correctly applied for the 2015 Period and the 2016 Period. Appellant contends the premium discount modifier was incorrectly calculated for all three periods at issue. The Commissioner disagrees.

##### **1. Direct Placement Modifier**

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<sup>99</sup> Exh. 1 at 1-4; Exh. 2 at 2-1.

<sup>100</sup> Exh. 206 at 206-3; Exh. 208 at 208-2.

<sup>101</sup> Exh. 215 at 215-3; Exh. 218 at 218-2.

<sup>102</sup> Tr. 65:8-9; Exh. 201 at 201-1.

A SCIF rate filing applicable to both the 2015 Period and 2016 Period states SCIF “will provide a 3% credit to employers who obtain their policy without engaging a broker.”<sup>103</sup> Appellant did not engage a broker but instead dealt directly with SCIF to procure coverage for those periods. SCIF therefore correctly included the three percent credit (i.e., a modifier of 0.97) within the rating plan modifier it applied to the Policy for both the 2015 Period and 2016 Period.<sup>104</sup>

## **2. Territory Modifier**

SCIF’s rate filings applicable to the 2015 Period and 2016 Period required it to apply a territory modifier of 1.15 to customers in Los Angeles County.<sup>105</sup> Appellant is located in that county. Therefore, SCIF correctly included that territory modifier within the Policy’s rating plan modifier during both the 2015 Period and the 2016 Period.<sup>106</sup>

## **3. Premium Discount Modifier**

SCIF’s rate filings require a premium discount of 11.3 percent for all modified premium over \$5,000 and no discount for the first \$5,000.<sup>107</sup> SCIF correctly applied the discount to Appellant’s actual modified premium for the 2015 Period, and to Appellant’s estimated modified premiums for the 2016 Period and 2017 Period.<sup>108</sup> However, because Appellant’s modified premiums must be recalculated using the correct rating plan modifier in accordance with part V (B) above, SCIF must re-compute the premium discount calculations

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<sup>103</sup> Exh. 1 at 1-1; Exh. 2 at 2-2.

<sup>104</sup> Exh. 206 at 206-3; Exh. 208 at 208-2; Exh. 215 at 215-3; Exh. 218 at 218-2.

<sup>105</sup> Exh. 1 at 1-9, 1-27 [effective April 1, 2015]; Exh. 2 [no changes to territory modifiers from prior year].

<sup>106</sup> Exh. 206 at 206-3; Exh. 215 at 215-3.

<sup>107</sup> Exh 1 at 1-2, 1-3.

<sup>108</sup> Tr. 71:6-72:6; Exh. 210 at 210-1; Exh. 218 at 218-2.

using the revised modified premiums.<sup>109</sup>

**E. Appellant Failed to Demonstrate SCIF Miscalculated Appellant's 2015 Period Payroll.**

Appellant asserts SCIF miscalculated Appellant's 2015 Period payroll. The Commissioner finds Appellant has failed to meet its burden of proof on this issue.

**1. Applicable Law**

Under California Code of Regulations, title 10, section 2509.61, “[a] party has the burden of proof as to each fact the existence or non-existence of which is essential to the claim for relief or defense that he or she is asserting.” As in an ordinary civil court action, that burden includes both the initial burden of going forward and the burden of persuasion by a preponderance of the evidence.<sup>110</sup>

**2. Analysis**

SCIF produced a final payroll audit report for the 2015 Period, indicating Appellant's workers' compensation payroll for the entire period was \$188,995.<sup>111</sup> Appellant contests the accuracy of the report and produced its own payroll summary for that period, asserting a total workers' compensation payroll of \$180,890.44.<sup>112</sup> Appellant thereby met its initial burden of going forward.

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<sup>109</sup> For example, Appellant's actual base premium for the 2015 Period was \$13,942.87. (Exh. 212 at 212-1.) The correct rating plan modifier in accordance with part V(B) above is 1.00395 (i.e., 1.15 territory modifier x 0.90 claims free modifier x 0.97 direct placement modifier). Multiplying the base premium by that rating plan modifier yields a modified premium of \$13,997.94 (i.e., 1.00395 x \$13,942.87). Thus, the premium discount modifier for the 2015 Period is:  $1 - ((\$13,997.94 - \$5,000) \times 0.113) \div \$13,997.94 = 0.927363$ .

<sup>110</sup> *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051 fn. 5.

<sup>111</sup> Exh. 211 at 211-5.

<sup>112</sup> Exh. 3 at 3-47 through 3-51.



However, Appellant's payroll summary contains inaccuracies. Specifically, it does not entirely coincide with the 2015 Period, which began on December 2, 2015 and ended on December 2, 2016. The workers' compensation payroll for that period should cover the work performed by Appellant's employees between those dates.<sup>113</sup> But Appellant's payroll summary sets forth the payments made during that period, rather than the amounts earned. The summary does not include any activity after the payments on November 25, 2016,<sup>114</sup> which were for the work period ending November 20, 2016.<sup>115</sup> Appellant's summary therefore failed to include payroll earned during the last 11 days of the 2015 Period. If Appellant had included those days, its payroll total would likely have closely matched SCIF's.<sup>116</sup>

Because Appellant's payroll summary is inaccurate and incomplete, Appellant failed to meet its burden of persuasion to establish SCIF incorrectly calculated the 2015 Period payroll.

#### **F. Conclusions of Law**

Based on the foregoing facts and analysis, the Commissioner concludes as follows:

1. SCIF failed to apply the correct rating plan modifier to the Policy during the 2015 Period and 2016 Period, in accordance with SCIF's filings with the Commissioner and applicable law. The rating plan modifier is incorrect for two reasons. First, SCIF included an unlawful and unenforceable rating tier modifier component during both the 2015 Period and 2016 Period. Second, SCIF failed to properly include a claims free modifier component for the

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<sup>113</sup> Cal. Code Regs., tit. 10, § 2318.6, Part 3, Section V, Rule 1 [payroll includes amounts "earned during the policy period"].

<sup>114</sup> Exh. 3 at 3-47 through 3-50.

<sup>115</sup> See, e.g., Exh. 102 at 102-88.

<sup>116</sup> Using Appellant's payroll total and assuming relatively steady work periods, one would expect the payroll for the full year to be approximately as follows:  $\$180,890.44 \div [(365 \text{ days} - 11 \text{ days}) \div 365 \text{ days}] = \$186,511.33$ . That figure is much closer to the audit total, suggesting SCIF's payroll calculation is more accurate than Appellant's.

2016 Period.

2. SCIF correctly included a territory modifier component and direct placement modifier component in the rating plan modifier during both the 2015 Period and 2016 Period, in accordance with SCIF's rate filings.

3. The correct rating plan modifier for both the 2015 Period and 2016 Period comprises three components: a territory modifier of 1.15, a claims free modifier of 0.90, and a direct placement modifier of 0.97. Accordingly, SCIF must apply the following rating plan modifier to each of those periods:  $1.15 \times 0.90 \times 0.97 = 1.00395$ .

4. SCIF used the correct premium discounts to the Policy for the 2015 Period, the 2016 Period, and the 2017 Period, in accordance with SCIF's filings with the Commissioner and applicable law. SCIF applied premium discount modifiers to each of those policy periods at the rate of 11.3 percent on all modified premium over \$5,000, which was consistent with SCIF's rate filings with the Commissioner under Insurance Code section 11735, subdivision (a). However, SCIF must recalculate the premium discount modifier to reflect the correct rating plan modifier's effect on modified premium.

5. Appellant failed to meet its burden of proof to establish SCIF miscalculated Appellant's payroll for the purposes of determining premium for the 2015 Period.

#### **ORDER**

1. SCIF shall recalculate Appellant's premium for the 2015 Policy Period and 2016 Policy Period in accordance with this decision and submit a revised premium calculation and statement of account for those periods to Appellant within 30 days after the date this decision is adopted.

2. It is further ordered that the entirety of this Decision is designated precedential pursuant to Government Code section 11425.60, subdivision (b).

Dated: November 16, 2018

  
\_\_\_\_\_  
DAVE JONES  
Insurance Commissioner

## DECLARATION OF SERVICE BY MAIL

Case Name/No.: In the Matter of the Appeal of:  
A-BRITE BLIND & DRAPERY CLEANING,  
File AHB-WCA-17-26

I, CANDACE GOODALE, declare that:

I am employed in the County of Sacramento, California. I am over the age of 18 years and not a party to this action. My business address is State of California, Department of Insurance, Executive Office, 300 Capitol Mall, Suite 1700, Sacramento, California, 95814.

I am readily familiar with the business practices of the Sacramento Office of the California Department of Insurance for collection and processing of correspondence for mailing with the United States Postal Service. Said ordinary business practice is that correspondence is deposited with the United States Postal Service that same day in Sacramento, California.

On November 16, 2018 following ordinary business practices, I caused a true and correct copy of the following document(s):

**ORDER ADOPTING PROPOSED DECISION; PROPOSED DECISION; and  
NOTICE OF THE LIMITS FOR RECONSIDERATION & JUDICIAL  
REVIEW**

to be placed for collection and mailing at the office of the California Department of Insurance at 300 Capitol Mall, Sacramento, California, 95814 with proper postage prepaid, in a sealed envelope(s) addressed as follows:

(SEE ATTACHED SERVICE LIST)

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Sacramento, California, on November 16, 2018.

  
CANDACE GOODALE

**CORRECTED DECLARATION OF SERVICE BY MAIL**

Case Name/No.: In the Matter of the Appeal of:  
A-BRITE BLIND & DRAPERY CLEANING,  
File AHB-WCA-17-26

I, CANDACE GOODALE, declare that:

I am employed in the County of Sacramento, California. I am over the age of 18 years and not a party to this action. My business address is State of California, Department of Insurance, Executive Office, 300 Capitol Mall, Suite 1700, Sacramento, California, 95814.

I am readily familiar with the business practices of the Sacramento Office of the California Department of Insurance for collection and processing of correspondence for mailing with the United States Postal Service. Said ordinary business practice is that correspondence is deposited with the United States Postal Service that same day in Sacramento, California.

On November 16, 2018 following ordinary business practices, I caused a true and correct copy of the following document(s):

**DECISION; NOTICE OF TIME LIMITS FOR RECONSIDERATION & JUDICIAL REVIEW**

to be placed for collection and mailing at the office of the California Department of Insurance at 300 Capitol Mall, Sacramento, California, 95814 with proper postage prepaid, in a sealed envelope(s) addressed as follows:

(SEE ATTACHED SERVICE LIST)

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Sacramento, California, on November 16, 2018.

  
\_\_\_\_\_  
CANDACE GOODALE

# **EXHIBIT B**



HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE CONTINUOUS POLICY ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.		

HERE ARE YOUR NEW RATES FOR THE PERIOD INDICATED. IF YOUR NAME OR ADDRESS SHOULD BE CORRECTED OR IF INSURANCE IS NOT NEEDED FOR NEXT YEAR, PLEASE TELL US.

**IMPORTANT** THIS IS NOT A BILL  
SEND NO MONEY UNLESS STATEMENT IS ENCLOSED

CONTINUOUS POLICY

THE RATING PERIOD BEGINS AND ENDS AT 12:01AM  
PACIFIC STANDARD TIME

RATING PERIOD 1-13-17 TO 1-13-18

AMERICAN JETTER  
WEST COVINA, CALIF 91790

DEPOSIT PREMIUM \$1,185.00  
MINIMUM PREMIUM \$980.00  
PREMIUM ADJUSTMENT PERIOD ANNUALLY  
R NA

NAME OF EMPLOYER- LOYA, JAVIER  
(AN INDIVIDUAL EMPLOYER AND NOT JOINTLY  
WITH ANY OTHER EMPLOYER)

CODE NO. PRINCIPAL WORK AND RATES EFFECTIVE FROM 01-13-17 TO 01-13-18

		PREMIUM BASIS	BASE RATE	INTERIM BILLING RATE*
5187-1	PLUMBING--SHOP AND OUTSIDE	1200	9.15	15.78
5183-1	PLUMBING--SHOP AND OUTSIDE	0	14.04	24.22

\*\*\*\*\*BUREAU NOTE INFORMATION\*\*\*\*\*

SSN 000000000

TOTAL ESTIMATED ANNUAL PREMIUM \$980



HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE CONTINUOUS POLICY ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.		

HERE ARE YOUR NEW RATES FOR THE PERIOD INDICATED. IF YOUR NAME OR ADDRESS SHOULD BE CORRECTED OR IF INSURANCE IS NOT NEEDED FOR NEXT YEAR, PLEASE TELL US.

**IMPORTANT** THIS IS NOT A BILL  
SEND NO MONEY UNLESS STATEMENT IS ENCLOSED

CONTINUOUS POLICY



THE RATING PERIOD BEGINS AND ENDS AT 12:01AM PACIFIC STANDARD TIME

RATING PERIOD 1-13-17 TO 1-13-18

\* INTERIM BILLING RATES WILL BE USED ON PAYROLL REPORTS. THEY TAKE INTO ACCOUNT RATING PLAN CREDITS (OR DEBITS) WHICH WILL APPLY AT FINAL BILLING AND AN ESTIMATE OF YOUR PREMIUM DISCOUNT AS DETAILED BELOW.

RATING PLAN CREDITS (DEBITS) EFFECTIVE FROM 01-13-17 TO 01-13-18

RATING PLAN MODIFIER	1.72500
ESTIMATED PREMIUM DISCOUNT MODIFIER	<u>1.00000</u>
COMPOSITE FACTOR APPLIED TO BASE RATES TO DERIVE INTERIM BILLING RATES	1.72500

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*****
*
*          PREMIUM DISCOUNT SCHEDULE EFFECTIVE FROM 01-13-17 TO 01-13-18
* ESTIMATED MODIFIED PREMIUM IS DISCOUNTED ACCORDING TO THE FOLLOWING SCHEDULE:
*
*          FIRST                ABOVE
*          $5,000                $5,000
*          0.0%                  11.3%
*
*****
```

THE ESTIMATED PREMIUM DISCOUNT IS BASED ON AN ESTIMATE OF YOUR PAYROLL. ACTUAL PREMIUM DISCOUNT APPLIED AT FINAL BILLING WILL BE BASED ON THE ACTUAL PAYROLL REPORTED ON YOUR POLICY AND SUBJECT TO AUDIT.





HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE CONTINUOUS POLICY ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.		

CONTINUOUS POLICY [REDACTED]

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT YOUR LOCAL STATE FUND OFFICE BELOW:

CSC - POLICY AT VACAVILLE  
 1020 VAQUERO CIRCLE  
 VACAVILLE, CA 95688  
 (877) 405-4545

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions agreements or limitations of the Policy other than as herein stated.

When countersigned by a duly authorized officer or representative of the State Compensation Insurance Fund, these declarations shall be valid and form part of the Policy.

AUTHORIZED REPRESENTATIVE

PRESIDENT AND CEO

# **EXHIBIT C**



HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE CONTINUOUS POLICY ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.		

HERE ARE YOUR NEW RATES FOR THE PERIOD INDICATED. IF YOUR NAME OR ADDRESS SHOULD BE CORRECTED OR IF INSURANCE IS NOT NEEDED FOR NEXT YEAR, PLEASE TELL US.

**IMPORTANT** THIS IS NOT A BILL  
SEND NO MONEY UNLESS STATEMENT IS ENCLOSED

CONTINUOUS POLICY [REDACTED]

THE RATING PERIOD BEGINS AND ENDS AT 12:01AM  
PACIFIC STANDARD TIME

RATING PERIOD 1-13-18 TO 1-13-19

AMERICAN JETTER  
[REDACTED]  
WEST COVINA, CALIF 91790

DEPOSIT PREMIUM	\$1,045.00
MINIMUM PREMIUM	\$1,045.00
PREMIUM ADJUSTMENT PERIOD	ANNUALLY
	R NA

NAME OF EMPLOYER- LOYA, JAVIER  
(AN INDIVIDUAL EMPLOYER AND NOT JOINTLY  
WITH ANY OTHER EMPLOYER)

CODE NO. PRINCIPAL WORK AND RATES EFFECTIVE FROM 01-13-18 TO 01-13-19

		PREMIUM BASIS	BASE RATE	INTERIM BILLING RATE*
5187-1	PLUMBING--SHOP AND OUTSIDE	1200	8.44	14.56
5183-1	PLUMBING--SHOP AND OUTSIDE	0	14.06	24.25

\*\*\*\*\*BUREAU NOTE INFORMATION\*\*\*\*\*

SSN 000000000

TOTAL ESTIMATED ANNUAL PREMIUM \$1,045



HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE CONTINUOUS POLICY ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.		

HERE ARE YOUR NEW RATES FOR THE PERIOD INDICATED. IF YOUR NAME OR ADDRESS SHOULD BE CORRECTED OR IF INSURANCE IS NOT NEEDED FOR NEXT YEAR, PLEASE TELL US.

**IMPORTANT** THIS IS NOT A BILL  
SEND NO MONEY UNLESS STATEMENT IS ENCLOSED

CONTINUOUS POLICY [REDACTED]

THE RATING PERIOD BEGINS AND ENDS AT 12:01AM PACIFIC STANDARD TIME

RATING PERIOD 1-13-18 TO 1-13-19

\* INTERIM BILLING RATES WILL BE USED ON PAYROLL REPORTS. THEY TAKE INTO ACCOUNT RATING PLAN CREDITS (OR DEBITS) WHICH WILL APPLY AT FINAL BILLING AND AN ESTIMATE OF YOUR PREMIUM DISCOUNT AS DETAILED BELOW.

RATING PLAN CREDITS (DEBITS) EFFECTIVE FROM 01-13-18 TO 01-13-19

RATING PLAN MODIFIER	1.72500
ESTIMATED PREMIUM DISCOUNT MODIFIER	<u>1.00000</u>
COMPOSITE FACTOR APPLIED TO BASE RATES TO DERIVE INTERIM BILLING RATES	1.72500

\*\*\*\*\*  
\*  
\* PREMIUM DISCOUNT SCHEDULE EFFECTIVE FROM 01-13-18 TO 01-13-19 \*  
\* ESTIMATED MODIFIED PREMIUM IS DISCOUNTED ACCORDING TO THE FOLLOWING SCHEDULE: \*  
\* FIRST ABOVE \*  
\* \$5,000 \$5,000 \*  
\* 0.08 11.38 \*  
\*  
\*\*\*\*\*

THE ESTIMATED PREMIUM DISCOUNT IS BASED ON AN ESTIMATE OF YOUR PAYROLL. ACTUAL PREMIUM DISCOUNT APPLIED AT FINAL BILLING WILL BE BASED ON THE ACTUAL PAYROLL REPORTED ON YOUR POLICY AND SUBJECT TO AUDIT.



HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE CONTINUOUS POLICY ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.		

CONTINUOUS POLICY [REDACTED]

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT YOUR LOCAL STATE FUND OFFICE BELOW:

CSC - POLICY AT VACAVILLE  
 1020 VAQUERO CIRCLE  
 VACAVILLE, CA 95688  
 (877) 405-4545

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions agreements or limitations of the Policy other than as herein stated.

When countersigned by a duly authorized officer or representative of the State Compensation Insurance Fund, these declarations shall be valid and form part of the Policy.

AUTHORIZED REPRESENTATIVE

PRESIDENT AND CEO

# **EXHIBIT D**



HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
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IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE **CONTINUOUS POLICY** ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.

HERE ARE YOUR NEW RATES FOR THE PERIOD INDICATED. IF YOUR NAME OR ADDRESS SHOULD BE CORRECTED OR IF INSURANCE IS NOT NEEDED FOR NEXT YEAR, PLEASE TELL US.

**IMPORTANT** THIS IS NOT A BILL  
SEND NO MONEY UNLESS STATEMENT IS ENCLOSED

CONTINUOUS POLICY 9122347-19

THE RATING PERIOD BEGINS AND ENDS AT 12:01AM  
PACIFIC STANDARD TIME

RATING PERIOD 1-13-19 TO 1-13-20

\* INTERIM BILLING RATES WILL BE USED ON PAYROLL REPORTS. THEY TAKE INTO ACCOUNT RATING PLAN CREDITS (OR DEBITS) WHICH WILL APPLY AT FINAL BILLING AND AN ESTIMATE OF YOUR PREMIUM DISCOUNT AS DETAILED BELOW.

RATING PLAN CREDITS (DEBITS) EFFECTIVE FROM 01-13-19 TO 01-13-20

RATING PLAN MODIFIER	1.38000
ESTIMATED PREMIUM DISCOUNT MODIFIER	<u>1.00000</u>
COMPOSITE FACTOR APPLIED TO BASE RATES TO DERIVE INTERIM BILLING RATES	1.38000

\*\*\*\*\*  
\*  
\* PREMIUM DISCOUNT SCHEDULE EFFECTIVE FROM 01-13-19 TO 01-13-20 \*  
\* ESTIMATED MODIFIED PREMIUM IS DISCOUNTED ACCORDING TO THE FOLLOWING SCHEDULE: \*  
\* FIRST ABOVE \*  
\* \$5,000 \$5,000 \*  
\* 0.0% 11.3% \*  
\*  
\*\*\*\*\*

THE ESTIMATED PREMIUM DISCOUNT IS BASED ON AN ESTIMATE OF YOUR PAYROLL. ACTUAL PREMIUM DISCOUNT APPLIED AT FINAL BILLING WILL BE BASED ON THE ACTUAL PAYROLL REPORTED ON YOUR POLICY AND SUBJECT TO AUDIT.

**BROKER COPY**



HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
-------------	---------------	---------------------------

IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE **CONTINUOUS POLICY** ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.

HERE ARE YOUR NEW RATES FOR THE PERIOD INDICATED. IF YOUR NAME OR ADDRESS SHOULD BE CORRECTED OR IF INSURANCE IS NOT NEEDED FOR NEXT YEAR, PLEASE TELL US.

**IMPORTANT** THIS IS NOT A BILL  
SEND NO MONEY UNLESS STATEMENT IS ENCLOSED

CONTINUOUS POLICY 9122347-19

THE RATING PERIOD BEGINS AND ENDS AT 12:01AM PACIFIC STANDARD TIME

RATING PERIOD 1-13-19 TO 1-13-20

AMERICAN JETTER  
8504 FIRESTONE #188  
DOWNEY, CALIF 90241

DEPOSIT PREMIUM	\$1,610.00
MINIMUM PREMIUM	\$1,610.00
PREMIUM ADJUSTMENT PERIOD	ANNUALLY
	R NA

NAME OF EMPLOYER- LOYA, JAVIER  
(AN INDIVIDUAL EMPLOYER AND NOT JOINTLY WITH ANY OTHER EMPLOYER)

CODE NO. PRINCIPAL WORK AND RATES EFFECTIVE FROM 01-13-19 TO 01-13-20

		PREMIUM BASIS	BASE RATE	INTERIM BILLING RATE*
5183-1	PLUMBING-SHOP<\$26HR	5500	12.83	17.71
5187-1	PLUMBING-SHOP>=\$26HR	1200	6.39	8.82

\*\*\*\*\*BUREAU NOTE INFORMATION\*\*\*\*\*

SSN 00000000

TOTAL ESTIMATED ANNUAL PREMIUM \$1,610

**BROKER COPY**



IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE **CONTINUOUS POLICY** ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.

CONTINUOUS POLICY 9122347-19

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT YOUR LOCAL STATE FUND OFFICE BELOW:

CSC - POLICY AT VACAVILLE  
1020 VAQUERO CIRCLE  
VACAVILLE, CA 95688  
(877) 405-4545

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AUTHORIZED REPRESENTATIVE



PRESIDENT AND CEO

**BROKER COPY**

# **EXHIBIT E**





HOME OFFICE	SAN FRANCISCO	POLICY DECLARATIONS
<b>CALIFORNIA WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY POLICY</b> THESE DECLARATIONS ARE A PART OF THE WORKERS' COMPENSATION POLICY INDICATED HEREON.		

CONTINUOUS POLICY9147758-15

\* INTERIM BILLING RATES WILL BE USED ON PAYROLL REPORTS. THEY TAKE INTO ACCOUNT RATING PLAN CREDITS (OR DEBITS) WHICH WILL APPLY AT FINAL BILLING AND AN ESTIMATE OF YOUR PREMIUM DISCOUNT AS DETAILED BELOW.

RATING PLAN CREDITS (DEBITS) EFFECTIVE FROM 12-03-15 TO 12-03-16

RATING PLAN MODIFIER	1.15000
ESTIMATED PREMIUM DISCOUNT MODIFIER	<u>0.92068</u>
COMPOSITE FACTOR APPLIED TO BASE RATES TO DERIVE INTERIM BILLING RATES	1.05878

\*\*\*\*\*  
 \*  
 \* PREMIUM DISCOUNT SCHEDULE EFFECTIVE FROM 12-03-15 TO 12-03-16 \*  
 \* ESTIMATED MODIFIED PREMIUM IS DISCOUNTED ACCORDING TO THE FOLLOWING SCHEDULE: \*  
 \* FIRST ABOVE \*  
 \* \$5,000 \$5,000 \*  
 \* 0.0% 11.3% \*  
 \*  
 \*\*\*\*\*

THE ESTIMATED PREMIUM DISCOUNT IS BASED ON AN ESTIMATE OF YOUR PAYROLL. ACTUAL PREMIUM DISCOUNT APPLIED AT FINAL BILLING WILL BE BASED ON THE ACTUAL PAYROLL REPORTED ON YOUR POLICY AND SUBJECT TO AUDIT.



IMPORTANT - THIS IS NOT A BILL. SEND NO MONEY UNLESS STATEMENT IS ENCLOSED.

HOME OFFICE	SAN FRANCISCO	POLICY DECLARATIONS
<b>CALIFORNIA WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY POLICY</b> THESE DECLARATIONS ARE A PART OF THE WORKERS' COMPENSATION POLICY INDICATED HEREON.		

CONTINUOUS POLICY 9147758-15

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions agreements or limitations of the Policy other than as herein stated.

When countersigned by a duly authorized officer or representative of the State Compensation Insurance Fund, these declarations shall be valid and form part of the Policy.

AUTHORIZED REPRESENTATIVE

PRESIDENT AND CEO

1 Betsy C. Manifold (182450)  
manifold@whafh.com

2 **WOLF HALDENSTEIN ADLER**  
3 **FREEMAN & HERZ LLP**

4 750 B Street, Suite 1820  
San Diego, CA 92101  
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Fax: (619) 234-4599

5 MICHAEL LISKOW (243899)  
mliskow@calcaterrapollack.com  
6 **CALCATERRA POLLACK LLP**  
7 1140 Avenue of the Americas, 9th Floor  
New York, NY 10036-5803  
Tel: (212) 899-1761  
8 Fax: (332) 206-2073

9 SCOTT M. PRIZ (*pro hac vice*)  
priz@priz-law.com  
10 **PRIZ LAW, LLC**  
11 3230 S. Harlem Ave., Suite 221B  
Riverside, IL 60546  
Tel: (708) 268-5768

12 *Counsel for Plaintiffs and the Class*

13  
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **COUNTY OF LOS ANGELES**

16  
17 AMERICAN JETTER & PLUMBING, INC. and  
18 RESILIENCE TREATMENT CENTER, on behalf  
of itself and all others similarly situated,

19 Plaintiffs,

20 v.

21 STATE COMPENSATION INSURANCE FUND, a  
22 public enterprise fund, and DOES 1 through 50,  
23 inclusive,

24 Defendants.

Case No. 19STCV36307

**PROOF OF SERVICE**

(COMPLEX LITIGATION)

Case assigned for all purposes to the  
Honorable Amy D. Hogue  
Spring Street Courthouse

DATE:

TIME:

DEPT.: 7 at Spring Street Courthouse

1 **PROOF OF SERVICE**

2 I, Michele Mitchell, the undersigned, do declare as follows:

3 I am a resident of the County of San Diego; I am over the age of 18 years, and not a party to,  
4 or have any interest in, this legal action; my business address is 750 B Street, Suite 1820, San Diego,  
5 California 92101.

6 On June 10, 2022, I served the following document(s):

7 **SECOND AMENDED CLASS ACTION COMPLAINT FOR DAMAGES & INJUNCTIVE**  
8 **RELIEF**

9 on the interested parties in this action:


10 Noah Graff, Assistant Chief Counsel  
NGraff@scif.com  
11 R. Timothy O'Connor, Staff Counsel  
RTOConnor@scif.com  
12 John B. De Leon, Staff counsel  
JDeLeon2@scif.com  
13 Steven Clarence, Staff Counsel  
SCLarence@scif.com  
14 STATE COMPENSATION INSURANCE FUND  
900 Corporate Center Drive, Suite 401  
15 Monterey Park, CA 91754

16 *Counsel for Defendant*  
17 *State Compensation Insurance Fund*

18 in the manner identified below on all interested parties:

19 **(XX) VIA ELECTRONIC MAIL** – I electronically transmitted a copy of the  
20 document(s) listed above in a pdf or word processing format via CASE  
21 ANYWHERE to those persons noticed above at their respective electronic service  
addresses pursuant to Cal. Rules of Court, rule 2.2515(g) on the date set forth.

22 I declare under penalty of perjury under the laws of the State of California that the foregoing  
23 is true and correct. Executed this 10th day of June 2022 at San Diego, California.

24 

25 \_\_\_\_\_  
26 MICHELE I. MITCHELL

27 26023

# **EXHIBIT 4**





# Calcaterra Pollack LLP

Experience • Integrity • Leadership



# Calcaterra Pollack LLP

Calcaterra Pollack LLP (“Calcaterra Pollack” or the “Firm”) is pleased to present our qualifications. As set forth below, our partners have litigated dozens of federal and state complex litigation matters, including class actions, securing several hundred million dollars in recoveries for our clients. The Firm’s partners have over five decades of experience prosecuting consumer protection, antitrust, securities, social justice, and commercial federal and state complex litigation. They have been recognized for their litigation experience and leadership, as reflected in numerous lead counsel appointments; the Firm’s co-founders being named to *Lawdragon’s* 500 Leading Plaintiff Financial Lawyers in America in 2020, 2021 and 2022; the Firm receiving the *National Law Journal’s* 2020 Trailblazer – Elite Boutique award; co-founding partner Regina Calcaterra being listed in *Crain’s* Notable Women In Law 2021; and co-founding partner Janine Pollack being elected as Co-President of the National Association of Shareholder and Consumer Attorneys (an organization representing class action plaintiffs’ attorneys protecting consumer and shareholder rights).

Calcaterra Pollack prides itself on its broad experience and strong diversity within the Firm. Calcaterra Pollack is a 100% women-owned firm, and the firm is majority diverse: six of seven team members are women and/or professionals of color and/or openly LGBTQI+.

The Firm is a New York State Certified Women-Owned Business Enterprise and a WBENC-Certified Women’s Business Enterprise.

## Practice Areas

### Consumer Protection

The Firm’s attorneys have secured significant recoveries for plaintiffs in matters related to consumer protection violations. Calcaterra Pollack pursues class action and individual claims on behalf of consumers who have purchased goods or services that are defective, falsely advertised, or sold through deception. Many times, such products cause death or injury, thereby requiring litigation to curtail such practices and secure compensation for our clients.

#### Notable Current Consumer Protection Litigation:

- **Seeking Compensation from Opiate Manufacturers and Distributors who Caused the Opioid Crisis on behalf of Labor Health & Welfare Benefit Funds:** Calcaterra Pollack is representing labor health and welfare benefit funds, including the Teamsters Local 237, the New York City District Council of Carpenters, and the Hollow Metal Trust Fund, in *In re National Opiate Litigation MDL* against opiate manufacturers and distributors. The allegations against the defendants include misrepresenting the risks of addiction from prescription opioids; advising that signs of opioid addiction should be treated with more opioids; making false

## Calcaterra Pollack LLP

representations as to how opioid addiction could be avoided and managed; denying risks of higher opioid dosages; and falsely touting the benefits of long-term opioid use. As a result, our clients incurred burdensome costs, in relation to their members, for (largely ineffective) opioid prescriptions, treatments, and other related health expenses. Several Defendants have been placed into bankruptcy.

- **Co-Counsel Representing Seven Families across the US who Lost Their Infants against Mattel, Inc. And Fisher-Price, Inc. for Falsely Advertising the Safety of the Rock ‘n Play Infant Sleeper:** Calcaterra Pollack represents seven families whose infants tragically passed away in the Fisher- Price Rock ‘n Play Sleeper. Our clients now seek to hold Fisher-Price, Inc., and its corporate parent Mattel, Inc., accountable for their children’s untimely and avoidable deaths. The complaints filed on their behalf allege that the defendants had actual knowledge that the Rock ‘n Play Sleeper could cause infant deaths if used as a sleeper, yet nevertheless callously persisted in marketing and selling the Rock ‘n Play Sleeper to unsuspecting families for years, until it was finally recalled in April 2019. The recall came too late to save the Plaintiff families’ children, and over 80 other infants, who died while sleeping in the Rock ‘n Play Inclined Sleeper between 2009 and 2019.
- **Co-Counsel Representing Consumers of Baby Food Products Contaminated with Heavy Metals:** Calcaterra Pollack is counsel in class action litigation against numerous baby food manufacturers that misrepresented and failed to fully disclose the presence of heavy metals in their baby foods sold throughout the United States. Those cases include class actions against Plum, PBC, Nurture, Inc. (makers of “Happy Baby Organics” products), and Hain Celestial Group, Inc. (makers of “Earth’s Best” products). Calcaterra Pollack is working closely with the attorneys who have been selected by the court to spearhead the litigation.
- **Lead Counsel Representing Workers’ Compensation Insurance Policyholders Charged Improper Premiums:** Calcaterra Pollack serves as lead counsel in a class action in Los Angeles County Superior Court on behalf of nearly 100,000 workers’ compensation insurance policyholders in *American Jetter & Plumbing, Inc. v. State Compensation Insurance Fund*, Case No. 19STCV36307. The plaintiffs allege that the defendant insurance company’s use of its “tier modifier” system in calculating insurance premiums violated the California Insurance Code and breached the defendant’s insurance policies with the policyholders. In October 2022, the parties settled the claims of this and another parallel action, with the defendant agreeing to pay \$65 million into a settlement fund and make significant changes to the tier modifier system. A hearing on final approval of the settlement is currently scheduled for March 2023.
- **Co-Counsel Representing Consumers of Macaroni and Cheese Food Products Containing or At Risk Containing Dangerous Phthalates:** Calcaterra Pollack LLP is among the firms leading litigation representing the named plaintiffs in the consumer class action *Stuve v. Kraft Heinz Co.*, Docket No. 21-CV-1845-RRP (N.D. Ill.). The plaintiffs allege that they were deceived when they purchased Kraft boxed macaroni and cheese

## Calcaterra Pollack LLP

because it contains, or risks containing, ortho-phthalates nowhere disclosed on the package, claims recently upheld by the court in denying Kraft's motion to dismiss. The plaintiffs seek monetary damages and injunctive relief for purchasers of the Kraft boxed macaroni and cheese. Calcaterra Pollack is also among the firms leading a similar consumer class action against Annie's Homegrown in *Franklin v. General Mills Inc. and Annie's Homegrown*, Case No. 2:21-cv-01781-JMA-AYS (S.D.N.Y.).

- **Representing Consumers of Herbs and Spices Containing or At Risk of Containing Heavy Metals:** Calcaterra Pollack LLP is among the firms leading litigation against manufacturers of certain herbs and spices where the plaintiffs allege that they were deceived because the products contain, or risk containing, heavy metals nowhere disclosed on the package. The plaintiffs seek monetary damages and injunctive relief for purchasers of the herbs and spices. In *Gagetta v. Walmart, Inc.*, Case No. 3:22-cv-03757-WHO (N.D. Cal.), the court recently upheld most of the plaintiffs' claims regarding certain of Walmart's Great Value brand herbs and spices, largely denying the defendant's motion to dismiss. In *In re: McCormick & Co. Litig.*, Case No. 5:22-cv-00349-EJD (N.D. Cal.), the plaintiffs make similar allegations regarding certain McCormick brand herbs and spices.
- **Representing Consumers of Baby Formula Containing or At Risk of Containing Heavy Metals:** Calcaterra Pollack LLP is among the firms leading litigation representing the named plaintiffs in the consolidated consumer class action, *Willoughby v. Abbott Labs., Inc.*, Docket No. 1:22-cv-1322 (N.D. Ill.), coordinated with other cases at *In re: Recalled Abbott Infant Formula Products Liability Litig.*, 23 cv 338 (N.D. Ill.). The plaintiffs allege that they were deceived when they purchased Similac powdered infant formulas because the formula contains, or risks containing, heavy metals nowhere disclosed on the package. The plaintiffs further allege that they were deceived due to omissions related to Abbott's lack of quality control that resulted in egregiously unsanitary conditions in its manufacturing of Similac. The plaintiffs seek monetary damages and injunctive relief for purchasers of the infant formulas.

### **Settled:**

- **Co-Interim Class Counsel Representing Customers in a Data Breach Case Against a Large Clothing Retailer:** Calcaterra Pollack acted as Co-Interim Class Counsel in *In re Hudson's Bay Company Data Security Incident Consumer Litigation*, No. 18-cv-8472 (PKC) (S.D.N.Y.), in which Plaintiffs alleged that Hudson's Bay, the parent company of the Saks and Lord & Taylor stores, and others failed to exercise reasonable care to safeguard the personal information of their customers, which allowed a breach of information systems. Plaintiffs sought damages and injunctive relief from the Defendants. Plaintiffs obtained a significant settlement on behalf of the class including injunctive relief.
- **Counsel Representing Named Plaintiffs in Mortgage Escrow Litigation Against A Major Bank:** Calcaterra Pollack LLP led this litigation representing the named plaintiffs in the consumer class action *Tepper v. Santander Bank, N.A.*, Case No. 72020-cv-00501 (S.D.N.Y.). The plaintiffs sought monetary damages and injunctive relief. In November 2022, the court approved a settlement in the amount of \$2 million settling claims alleging

## Calcaterra Pollack LLP

that Santander Bank breached its mortgage agreement with the plaintiffs and other members of the class by refusing to pay interest on mortgage escrow funds held by Santander Bank in violation of various state laws.

### Antitrust

Antitrust laws protect the public by preserving and nurturing the economic advantages inherent in free-market competition. Calcaterra Pollack's antitrust practice works to ensure that these protections are being enforced at both the state and federal level, increasing recoveries for consumers and businesses that have been harmed by anti-competitive practices while encouraging the adoption of remedies intended to discourage future violations. Antitrust violations can include monopolization, price-fixing and manipulation, and other anti-competitive practices.

#### Settled:

- **Significant Recovery Achieved against Visa and MasterCard for Interchange Fee Cost Collusion over Fourteen Years on behalf of the MTA:** Calcaterra Pollack LLP represented the Metropolitan Transit Authority ("MTA") and several of its entities in the antitrust action *Metropolitan Transportation Authority, et al. v. Visa U.S.A., Inc., et al.*, Case No. 19-cv-04256 (E.D.N.Y.), alleging restraint of trade in violation of the Sherman Antitrust Act against Visa and MasterCard. The lawsuit was an "opt-out" action from a class action filed in 2005 in *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, MDL No. 1720 (MKB) (JO), and principally concerned defendants' allegedly unlawful actions to impose and enforce rules that limited merchants from steering their customers to other payment methods, thereby causing merchants to pay excessive interchange fees. Merchants throughout the U.S., including the MTA, were forced to pay non-competitive fees to the credit card companies for over fourteen years. This opt-out litigation sought an increased recovery beyond what could have been achieved otherwise. The MTA also received a settlement years before class members who did not opt-out of the class action settlement.

#### **Notable Current Antitrust Litigation:**

- **Executive Committee Counsel Representing the MTA's Public Pension Funds against Nine Banks for Unfair Investment Costs Incurred Resulting from Bid-Rigging and Market Manipulation on the Mexican Bond Market:** Calcaterra Pollack represents New York's Metropolitan Transportation Authority's pension funds, the Manhattan and Bronx Surface Transit Operating Authority Pension Plan and the Metropolitan Transportation Authority Defined Benefit Pension Plan Master Trust, in an antitrust class action against nine global banks and their affiliates. The allegations against the banks result from a scheme to manipulate prices on the Mexican government bond market. The defendant financial institutions were part of an exclusive group of Mexican government-approved market makers for the bonds who allegedly abused this dominant position to unlawfully increase the profitability

## Calcaterra Pollack LLP

of their trading and sales businesses by overcharging and underpaying their customers for over eleven years. The collusion and market manipulation resulted in investors paying more and recovering less. In October 2019, Mexico's antitrust regulator, the Comisión Federal de Competencia Económica (COFECE), announced formal charges against seven of the defendants. Plaintiffs have secured a \$20 million settlement from Barclay's and JP Morgan.

- **Generic Drug Federal Antitrust Bid Rigging & Price Manipulation Litigation on behalf of Suffolk County:** Calcaterra Pollack represents Suffolk County in *County of Suffolk v. Actavis Holdco US, Inc., et al.*, 20 cv-40009 (SDNY), a federal antitrust lawsuit against 46 major generic drug manufacturers ("Defendants"). Suffolk County pays healthcare costs for individuals including County employees, retirees, inmates of County jails, Medicaid beneficiaries, and Medicare beneficiaries. This includes paying pharmaceutical costs for generic prescription drugs. Suffolk County alleges that Defendants illegally restrained trade, artificially inflated and manipulated prices and reduced competition for generic drugs. The County alleges that as a result of Defendants' illegal collusive activities, it paid artificially inflated prices for at least 130 critical generic drugs since 2011. These generic drugs include medications used to treat high blood pressure, bacterial infections, pneumonia, multiple sclerosis, glaucoma, epilepsy, rheumatoid arthritis, and diabetes, as well as medications used in cancer treatments. The alleged anti-competitive conduct by the drug companies included entering into illegal agreements to simultaneously raise generic drug prices. The drug companies also eliminated price competition by agreeing not to compete in the same market or divide up the market share, as long as their "competitors" did not charge less than the agreed upon price, forcing purchasers such as government entities and individuals to pay the increased collusive price. As a result of a series of investigations into the defendants' illegal antitrust activity, the U.S. Department of Justice has charged four of the named defendants, who have agreed to pay over \$220 million in criminal penalties. Several Defendants have been placed into bankruptcy since Suffolk County's lawsuit was filed.
- **Insurance Settlement Opt-Out Litigation on behalf of the MTA:** Calcaterra Pollack represents New York's Metropolitan Transportation Authority and several of its entities in an opt-out from the Damages Class that was formed as part of *In re: Blue Cross Blue Shield Antitrust Litigation*, MDL 2406, N.D. Ala., Master File No. 2:13-cv-20000-RDP. Plaintiffs allege that the defendants in this case violated antitrust laws by entering into an agreement not to compete with each other and to limit competition among themselves in selling health insurance and administrative services for health insurance. The nationwide class in this litigation includes persons and entities who purchased or were enrolled in a Blue Cross Blue Shield health insurance or administrative services plan between 2008 and 2020. As the MTA is a large employer that offers insurance through Blue Cross Blue Shield plans, Calcaterra Pollack has worked to exclude the MTA from the 2.67 billion settlement fund in hopes that the MTA will be able to achieve a more favorable and timely settlement for its claims.

- **Antitrust Class Action on Behalf of Users of Apple's App Store:** Calcaterra Pollack represents a plaintiff in *In re Apple iPhone Antitrust Litigation*, Case No. 4:2011-cv-06714 (N.D. Cal.). The Plaintiffs allege that Apple illegally monopolized the aftermarket for apps for iOS devices. A ruling in the case went to the United States Supreme Court which held 5-4 that the plaintiffs had standing to bring the action. The plaintiffs are currently seeking class certification.

### Securities Litigation & Shareholder Protection

Calcaterra Pollack is dedicated to ensuring our clients are treated fairly by maximizing recoveries of lost funds and addressing corporate governance issues to enhance shareholder value. Our attorneys have been part of litigation teams that recovered several hundred million dollars on behalf of institutional investors, including the New York State Common Retirement Fund and the Ohio Teachers Retirement Plan. Such experience also includes advising institutional investors on issues related to corporate governance, shareholder rights, portfolio monitoring and claims filing, and private and class action securities litigation. Our Firm works to hold companies accountable for misconduct and misrepresentations to their shareholders and investors.

#### **Settled:**

- **Co-Counsel Representing MTA's Public Pension and Benefit Funds against Allianz after losing over \$200 million in Allianz's Structured Alpha Funds:** Calcaterra Pollack served as Co-Counsel representing public pension and employee benefit funds operated by North America's largest public transportation authority in *Metropolitan Transportation Authority Defined Benefit Pension Plan Master Trust, et al. v. Allianz Global Investors U.S., LLC, et al.*, Case No. 1:20-cv-07842 (S.D.N.Y.). The complaint alleged negligence and breaches of contract and fiduciary duties in connection with losses sustained via an alternative investment fund (Structured Alpha 1000) trading in short and long index option positions. The complaint also alleged that the Defendants undertook unreasonable levels of risk that far exceeded agreements made between the parties and requisite duties of care – all in disregard of the deteriorating market conditions that arose from news of the COVID-19 pandemic in early 2020. In August 2020, the Defendants disclosed that the U.S. Securities & Exchange Commission issued a request for information regarding the collapse of the Structured Alpha family of hedge funds. In 2022, the MTA Plaintiffs secured a settlement from Allianz. Immediately thereafter, the U.S. Attorney for the Southern District of New York announced related guilty pleas.

### Investigations

Calcaterra Pollack conducts public and private sector independent investigations. The Firm's investigations team includes former gubernatorially-appointed attorneys and an assistant district attorney, one of whom served as Executive Director of two statewide investigatory commissions with subpoena power. Both statewide investigative commissions were formed in response to crises and required the issuing of subpoenas, document review, witness

inquiries, and public hearings. Also required and produced were substantive reports on the findings and related solutions, most of which were implemented into new statutory and regulatory schemes.

- **Investigating Statewide Public Pension System Investment-Related Activities:** Calcaterra Pollack was retained by Kentucky Retirement Systems (now, the Kentucky Public Pensions Authority) to investigate specific investment activities conducted by the Kentucky Retirement Systems to determine if any improper or illegal activities occurred on the part of parties involved in transactions. The investment vehicles involved with this investigation involved complex alternative investment strategies, including hedge fund of funds products. Calcaterra Pollack was responsible for evaluating investments of interest through the lens of applicable case law and statutes and weighed millions of pages of documentary evidence over the course of several months.

## Municipal Representation

Calcaterra Pollack attorneys have decades of experience representing state and local governments, authorities, affiliated entities, and public pension funds in complex federal and state litigation, both as in-house counsel and outside counsel. Providing such counsel requires a keen understanding of the budgetary constraints of the public sector balanced with the mandate to provide efficient and accessible services to the public while adhering to related state and local ordinances.

In addition to the public pension fund representation experience described above, another notable matter representing municipalities or governmental entities is provided below:

- **Defending a Government Entity Against Complex Federal Class Action Discrimination Litigation:** Our attorneys represent a large New York metropolitan County in a complex federal class action alleging discrimination based upon the County's tax assessment system and plaintiffs are seeking \$1.7 billion in recovery. The Firm is also representing this same government entity in another matter based upon the County's tax assessment system.

Calcaterra Pollack also represents other municipal entities including the County of Suffolk and the Metropolitan Transportation Authority in three separate antitrust and securities litigation/shareholder actions as reflected herein in the Antitrust Litigation and Securities Litigation & Shareholder Protection practice areas.

## Civil Rights

Our Firm has a deep commitment to civil rights issues, and our attorneys have experience litigating matters including representing survivors of childhood sexual assault under New York's Child Victims Act and litigating high-stakes federal civil rights class and individual actions.



**Notable Current Civil Rights Litigation:**

- **Seeking Justice for Childhood Sexual Assault Victims under New York’s Child Victims Act:** The Child Victims Act addressed the reality that survivors of childhood sexual abuse are often unable to report the abuse or seek justice until many years later. The CVA allowed individuals to bring legal claims concerning childhood sexual abuse that were previously time-barred under New York law. The Firm represents several plaintiffs who are survivors of childhood sexual assault, including those described below.
- **Against the Timothy Hill Children’s Ranch:** Calcaterra Pollack represents individuals who were subjected to physical and sexual abuse as child residents at the Timothy Hill Children’s Ranch (“the “Ranch”), a Long Island group home for youth. The lawsuits allege that the Ranch failed to protect the children in their custody through its systemically inadequate supervision and safety practices, and detailed specific instances where staff members ignored the Plaintiffs’ pleadings for help and failed to protect them.
- **Federal Title IX Syracuse University Litigation:** Calcaterra Pollack represents Plaintiff Jane Doe in an action against Defendant Syracuse University (“SU”) and two individual defendants for discrimination on the basis of sex in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 and related state law claims including negligence and negligent infliction of emotional distress. Plaintiff was a SU student who suffered extended periods of sexual harassment while at Defendant SU, which culminated in a physical assault. The assault was the avoidable conclusion of a chain of sexual harassment and domestic violence incidents against Plaintiff, all of which Plaintiff directly reported to SU. The Complaint alleges that Defendant SU’s response to these repeated warning signs of gender-based harassment and the assault in April 2021 was deliberately indifferent, which resulted in Plaintiff suffering significant and ongoing trauma. By bringing this action, Plaintiff is seeking justice for what happened to her as well as lasting change in the manner in which Defendant SU handles allegations and incidents of sexual harassment and assault.

**Commercial Litigation**

Calcaterra Pollack represents corporations, partnerships, and sole proprietors in complex state and federal litigation, in addition to matters related to business relationships, contracts, business formation and dissolution, affairs related to corporate officers, directors and shareholders, and financial transactions.

**Notable Current Commercial Litigation:**

- **Representing a New York Medicinal Marijuana Licensee in Complex State Commercial Litigation:** Calcaterra Pollack represents a New York medicinal marijuana licensee in a matter alleging twenty-nine causes of action against multiple

## Calcaterra Pollack LLP

individual and corporate defendants addressing issues related to contracts, shareholder rights, corporate by-laws and voting rights, capacity to sue, financial transactions, and acquisitions by US and non-US entities.

## Diversity, Equity & Inclusion

### Commitment & Culture

Diversity, equity and inclusion are much more than mere objectives or talking points at Calcaterra Pollack. Our firm recognizes that action and dedication are required in order for these positive values to take root.

In line with this core tenet, our firm was founded with a true intention behind our mission: to represent, support, and promote diversity, equity and inclusion (“DE&I”) throughout every aspect of our work and firm culture. We believe this commitment truly strengthens and affirms both our practice of the law and our experience as a team. In fact, the very makeup of our firm showcases our dedication to this belief. Not only is Calcaterra Pollack a 100% women-owned firm, but we pride ourselves on the fact that our firm is majority diverse: six of seven team members are women and/or professionals of color and/or openly LGBTQI+.

### Client Service

We recognize that embracing DE&I provides our firm with a better understanding of those we serve. It informs our work with a broad range of experiences and viewpoints and gives us the tools to serve our clients with greater empathy and skill.

### Collaborative and Inclusive Management

The voice and role of each team member is valued. When a firm promotes each team member, the whole firm benefits. We apply this principle across our litigation practices, from case management to client opportunities, to demonstrate to our team that every contribution matters, reinforcing recognition of accomplishments across the firm. As an example, when the firm’s partners publish an article or opinion piece, we endeavor to include in the bylines those who contributed to the publication, from our interns to associates.

#### [Child Safety and Product Safety Disclosures: A Look at Section 6\(b\)](#)

Regina Calcaterra, Janine Pollack and Anjori Mitra  
*New York Law Journal*. December 11, 2020

#### [Dreamers Bring Important Perspective to Legal Industry](#)

Regina Calcaterra, Isidora Echeverria and Montserrat Lopez  
*Expert Analysis – Opinion, Law 360*. July 17, 2020

### Building the Bar and the Bench

**Supporting a Diverse Pipeline to Law Schools:** Calcaterra Pollack sponsors a Pre-Law Diversity Pipeline Paid Summer Internship ([2020](#), [2021](#), [2022](#)) dedicated to promoting diversity in the Bar by supporting diverse undergraduate students and recent graduates as

## Calcaterra Pollack LLP

they consider embarking on a career in law. Established in 2016, we coordinate this program with the State University of New York at New Paltz and the City University of New York Hunter College. Students gain real-life work experience and receive direct exposure to key facets of both the business and practice of law. Many former interns are either attending law schools or are presently applying. Internship Manager: Regina Calcaterra.

**Hispanic National Bar Association:** Associate James Aliaga presently serves as the Hispanic National Bar Association's ("HNBA") National Vice President, Regions and Affiliates, and previously served as Regional President for the New York Region. Through his positions at the HNBA, he works to promote diversity in all aspects of the legal profession, from law school admissions, private and public sector hiring to the state and federal judiciary. James is also a member of the HNBA's Board of Governors, where he works with the HNBA's Endorsements Committee on reviewing requests for endorsement to serve in the U.S. Executive Branch and on the federal bench. James was honored by HNBA as a Regional President of the Year in 2021.

**Gender Equality in Law:** Co-Founding Partner Janine Pollack advocates and promotes women in the bar on the national and local levels. As Co-President of the National Association of Shareholder and Consumer Attorneys ("NASCAT"), Janine also serves as Chair of NASCAT's Women's Initiative where she assists in advancing women as lead litigators. She was a team leader for the publication, "Inclusivity and Excellence: Guidelines and Best Practices for Judges Appointing Lawyers to Leadership Positions in MDL and Class-Action Litigation," from the James F. Humphreys Complex Litigation Center, George Washington Law School (March 15, 2021). Janine is also a member of the Women in the Legal Profession Committee of the Bar Association of the City of New York, where she co-edited the publication, "Street Smarts for Women Lawyers." Janine regularly presents for the Practising law Institute, most recently on Women Lawyers in Leadership 2022.

Associate Anjori Mitra is a member of Columbia Law School Women's Association Professional Mentorship Program, where she mentors women law students. During her time at Columbia Law School, Anjori served on the board of Columbia Law Women's Association, and in that role organized a careers panel of women Columbia alumni working in New York. She also volunteered for the Sexual Respect Initiative, raising awareness on campus around issues of consent and resources available for those who have experienced sexual harassment, assault, and other forms of gender-based misconduct and violence. While at the University of Auckland Law School in New Zealand, Anjori also volunteered extensively for the Equal Justice Project, a pro bono organization which aims to increase access to justice in the community.

## Social Responsibility

Calcaterra Pollack team members are not only committed to those we represent and achieving positive outcomes for our clients; we are also committed to our communities, and to advocating for those in need, as reflected below.

### Youth in Foster Care & Aged Out Youth

Partner Regina Calcaterra serves on the Board of Believers to You Gotta Believe, a nonprofit that, for over 20 years, has worked to find older foster youth “forever families” so they don’t “age out” of the foster care system on their own. Depending on the state in which a youth lives, they can be kicked out of their foster homes upon turning 18 or 21 years old and are left to manage on their own. Without a safety net, the majority of youth who age out of foster care end up homeless, incarcerated, or worse.

Regina has written about the impact of You Gotta Believe’s mission and the plight of aged out foster youth in her *New York Times* best-selling memoir and in national and local publications. She also speaks publicly about the plight of foster youth and addressing their trauma throughout the US to family law judges, educators, social workers, high schools, colleges, and countless not-for-profits that impact the lives of children in need.

Regina’s advocacy for youth in need is also reflected in her support of Case’s for Cases, an annual event focused on providing essential and comfort items and acceptable cases to carry them in, for over 600 teens in homeless shelters and foster group homes on Long Island; and as an advisory committee member to The Felix Organization, an organization that provides unique experiences to youth in foster care; and the New York Society for the Prevention of Cruelty to Children.

### Survivors of Childhood Sexual Abuse

In addition to the Firm’s representation of survivors of childhood sexual abuse, associate James Aliaga, through his work in the Hispanic National Bar Association (“HNBA”), increases visibility about the need of counsel and protections for childhood sexual assault survivors in the Latinx communities. His efforts contributed to the New York Region’s HNBA, the Long Island Hispanic Bar Association, and the New Jersey Hispanic Bar Association November 2020 collaboration to provide access to attorney continuing legal education programs for litigating the complexities of childhood sexual assault cases.

### Mentoring Students

Associate James Aliaga speaks to and mentors high school and college students on critical issues such as Know Your Rights training through Rose2Hope, an organization that serves youths from disadvantaged backgrounds. He is also the alumni advisor to his alma mater’s undergraduate chapter of La Unidad Latina, Inc., and is a mentor in the LatinoJusticePRLDEF’s Next Generation Lideres program, where he guides college students

## Calcaterra Pollack LLP

as they prepare for careers in the legal profession.

Associate Anjori Mitra continues her affiliation with Columbia Law School by serving as a mentor through the Columbia Law Women's Association mentorship program.

## REGINA CALCATERRA

### About Regina



Regina Calcaterra is a co-founding partner of Calcaterra Pollack LLP. Regina specializes in complex federal and state litigation representing public entities, labor health and welfare funds, businesses, and individuals. Prior to founding the Firm, Regina was a partner at securities and consumer class action litigation firms for twelve years. She is also a *New York Times* best-selling author.

Regina also brings a wealth of experience to the Firm from a series of senior executive positions she held in public service, including:

- Managed statewide investigations
- Chief Deputy to Suffolk County Executive Steven Bellone
- Deputy General Counsel to the New York State Insurance Fund
- Deputy General Counsel to the New York City Employees' Retirement System

Regina is admitted to practice in the State of New York, the Commonwealth of Pennsylvania, the Commonwealth of Kentucky, and the United States District Courts of the Southern, Eastern, and Northern Districts of New York.

Calcaterra Pollack LLP is a New York State Certified Women-Owned Business Enterprise and a WBENC-Certified Women's Business Enterprise.

### Representative Matters

- Successfully represented a large metropolitan area public authority and its affiliates in a national antitrust opt-out suit brought against global credit card companies that allegedly colluded and rigged the interchange fee for all merchants.
- Successfully represented public pension and employee benefit funds operated by North America's largest public transportation authority in an action seeking damages sustained by investors in the wake of the collapse of a private alternative investment fund concentrated on short and long index options trades.
- Co-counsel representing seven families who lost their infants in the Rock 'n Play Sleeper against Mattel, Inc. and Fisher-Price, Inc.
- Represents a student athlete in a high-profile lawsuit against a New York-based private university, alleging the university failed to appropriately respond to allegations of domestic violence in violation of Title IX and state law.
- Represents a large suburban county in federal antitrust class action multi-district litigation against generic drug manufacturers for colluding to increase drug prices.

# Calcaterra Pollack LLP

- Represents municipal entities and businesses in a variety of complex federal and state litigation claims and defenses.
- Represents several of the largest New York City labor health and welfare benefit funds in federal class action multi-district litigation against opioid manufacturers and distributors seeking recoveries arising from the opiate crises.
- Represents a privately held company in complex state litigation related to contracts, affairs related to corporate officers, directors and shareholders and financial transactions.
- Executive Committee Member representing institutional investors in a federal antitrust class action seeking recovery from over nine banks who allegedly participated in bid-rigging and market manipulation of the Mexican Government Bond market.
- Represents survivors of childhood sexual assault pursuing justice via New York's Child Victims Act.
- Served on federal securities class action co-lead counsel teams representing: the New York State Common Retirement Fund, recovering over \$6.2 billion in *In re WorldCom Securities Litigation* and over \$2.1 billion in *In re McKesson Securities Litigation*; and the Ohio Teachers Pension Fund, recovering over \$250 million against Merrill Lynch regarding its role related to mortgage-backed securities contributing to the 2008 recession.

## Education

Seton Hall University School of Law (J.D., 1996)

State University of New York at New Paltz (B.A., 1988)

## Honors

Within the first year of launching Calcaterra Pollack LLP, Regina and her partner Janine Pollack were awarded the [National Law Journal's 2020 Trailblazer Award](#) for an Elite Boutique Firm. Regina was recognized in [Crain's New York Business 2021 Notable Women in Law](#), and was also selected to the *Lawdragon* 500 Leading Plaintiff Financial Lawyers list in [2020](#), [2021](#) and [2022](#). Regina was named as a [Super Lawyers Top Rated State, Local & Municipal Attorney in the New York Metro Area](#) in 2021 and 2022.

Regina has received numerous awards for her advocacy work, including the Champion of Civil Rights & Social Justice Award, *City & State New York*; Woman of Substance Award, Seton Hall Law School; Lifetime Achievement Award, Primi-Dieci Society and the Italy-America Chamber of Commerce Award; Speak Out for a Child Award, CASA-NYC; and the Geraldine Ferraro Award of Courage & Grace.

## Professional Affiliations

Regina is a member of various institutional investor associations such as the National Association of Public Pension Attorneys.



## Publications

### [Child Safety and Product Safety Disclosures: A Look at Section 6\(b\)](#)

Regina Calcaterra, Janine Pollack and Anjori Mitra  
*New York Law Journal*. December 11, 2020

### [Dreamers Bring Important Perspective to Legal Industry](#)

Regina Calcaterra, Isidora Echeverria and Montserrat Lopez  
*Expert Analysis – Opinion, Law 360*. July 17, 2020

Regina is a *New York Times* bestselling author. Her memoir, *Etched in Sand, A True Story of Five Siblings Who Survived an Unspeakable Childhood on Long Island* (HarperCollins, 2013) has been incorporated into college and high school curricula throughout the United States. Regina is also co-author of a sequel, *Girl Unbroken, A Sister's Harrowing Journey from the Streets of Long Island to the Farms of Idaho* (HarperCollins, 2016).

## In the News

[Efforts to Hold Law Enforcement Accountable](#), *Bloomberg Law Podcast*, June Grasso, June 19, 2022.

[‘Appalled and Disgusted’: Nassar’s Abuse Victims Bring FTCA Claim Against FBI](#), *Law.com*, Amanda Bronstad, June 8, 2022.

[Women Open Law Firms Amid Pandemic Upheaval](#), *Law360*, Anna Sanders, September 13, 2021.

[Lawyer Limelight: Regina Calcaterra](#), *Lawdragon*, Allison Preece, March 8, 2021.

[Amid the Pandemic, 2 Women Launch Their Own Plaintiffs Firm](#), *New York Law Journal*, Amanda Bronstad, June 8, 2020.

[No Choice But To Succeed: An Inspirational Conversation with Regina Calcaterra](#), *Esq. Counsel Financial*, Elizabeth DiNardo, June 18, 2020.

## Community Affiliations

Regina is a board member to the SUNY New Paltz Foundation Board and a member of the Audit Committee; on the Board of Believers to You Gotta Believe, an organization that works to get older foster youth adopted; on the Advisory Board of The Felix Organization, which provides impactful opportunities and experiences to youth growing up in foster care; and on the Advisory Committee of the New York Society for the Prevention of Cruelty to Children.

## Speaking Engagements

Regina has lectured on matters related to the state of U.S. public pension funds, complex federal litigation, SEC regulations, and corporate governance. Regina also speaks nationally on issues related to foster care, specifically the plight of older foster youth and childhood poverty, abuse and homelessness.

CRAIN'S NEW YORK BUSINESS 2021

# NOTABLE WOMEN IN LAW

**500**  
LEADING PLAINTIFF  
FINANCIAL  
LAWYERS

LAWDRAGON  
2020

**500**  
LEADING PLAINTIFF  
FINANCIAL  
LAWYERS

LAWDRAGON  
2021

**500**  
LEADING PLAINTIFF  
FINANCIAL  
LAWYERS

LAWDRAGON  
2022

RATED BY  
**Super Lawyers®**  
Regina Calcaterra

SELECTED IN 2021  
THOMSON REUTERS

RATED BY  
**Super Lawyers®**  
Regina Calcaterra

SELECTED IN 2022  
THOMSON REUTERS

## JANINE POLLACK

### About Janine



Janine Pollack, co-founder of Calcaterra Pollack LLP, has been a class action litigator for 30 years and has prosecuted cases that have secured hundreds of millions of dollars for defrauded investors and consumers over the course of those nearly three decades. Her focus is on representing clients who seek redress from companies that employ deception in selling their products or services, including through false advertising. Janine is routinely appointed by courts as lead counsel and to other leadership positions, including in data breach litigation. As lead trial counsel, she has prosecuted jury and bench trials, and won a jury verdict against R.J. Reynolds for wrongful death in a tobacco case.

Janine is the Firm's Chief Wellness Officer (CWO). As CWO, she provides opportunities and resources on behalf of the Firm for its personnel to enhance their overall well-being and improve their physical and emotional health. The Firm is committed to supporting the wellness of its personnel both inside and outside of the law firm environment, including through work-life balance, positive reinforcement, personal growth, exercise, and nutrition. Janine engages in frequent public speaking on various issues, including time and stress management and wellness.

Janine is currently admitted to practice in the States of New York and New Jersey and in the U.S. District Courts for the Southern, Northern, and Eastern Districts of New York, the Northern District of Illinois, and the District of New Jersey, in addition to the U.S. Courts of Appeal for the First, Ninth, and Tenth Circuits.

Calcaterra Pollack LLP is a New York State Certified Women-Owned Business Enterprise and a WBENC-Certified Women's Business Enterprise.

### Representative Matters

- Lead litigator in four Child Victims Act (CVA) cases in New York representing survivors of childhood sexual assault.
- One of the lead litigators in consumer class actions against makers of macaroni and cheese for failure to disclose dangerous phthalates.
- Working with co-counsel in a consumer class action against maker of infant formula for failure to disclose presence or risk of heavy metals and failure to disclose lack of quality control in manufacture of products.
- Working with co-counsel in consumer class actions against manufacturers of certain herbs and spices for failure to disclose the risk or presence of heavy metals.

- Working with co-counsel in consumer class actions against manufacturers of certain baby foods for failure to disclose the risk or presence of heavy metals.
- One of the lead litigators in a consumer class action against a lender for misrepresentations in financing documents to pay for energy-saving home improvements, resulting in a significant settlement for the class.
- Lead litigator in a consumer class action against a major bank for failure to pay interest on mortgage escrow monies, resulting in a significant settlement for the class.
- Interim Co-Lead Counsel in a data breach class action against a large clothing retailer for failing to exercise reasonable care in safeguarding the personal information of its customers, resulting in a significant settlement for the class.
- Represented consumers across the country in class action litigation against Skechers, Reebok, and others for false claims regarding the efficacy of “toning shoes” which were advertised as being more effective than regular sneakers in providing body-toning benefits to wearers. Working with the Federal Trade Commission, Janine and her co-counsel were able to secure consumer settlements of approximately \$45 million against Skechers and \$25 million against Reebok.

## Education

University of Pennsylvania Carey Law School (J.D., 1989, elected to Journal of International Business Law)

Rutgers University (B.A., High Honors, English and French, 1986)

New York University in France Semester Abroad, Paris (1985) (fluent in French)

## Professional Affiliations and Activities

Janine currently serves as Co-President of the National Association of Shareholder & Consumer Attorneys (NASCAT), an organization of firms and attorneys which represents consumer and investor rights and supports the opportunity for consumers and investors to bring class action suits. As Co-President, she develops and advocates for national and state policies impacting the class action bar, securities litigation plaintiffs’ bar and consumer protection plaintiffs’ bar. Janine is also the Chair of the Women’s Initiative at NASCAT, which assists in advancing women as lead litigators and fosters relationships and networking opportunities for its female attorneys.

Janine served as a team leader to develop standards and best practices for increasing diversity in mass tort and class action litigation for the James F. Humphreys Complex Litigation Center at the George Washington Law School titled, [“Inclusivity and Excellence: Guidelines and Best Practices for Judges Appointing Lawyers to Leadership Positions in MDL and Class Action Litigation”](#) (March 15, 2021).

Janine serves on the Communications Committee for the [Institute for Well-Being in Law](#). She is also a member of the Women in the Legal Profession Committee of the Bar Association of the City of New York, where she was a co-editor of the publication *Street Smarts for Women Lawyers*. She is also working on wellness and other projects as part of

Committee activities.

Janine serves as an Alumni Interviewer for prospective students who are applying to attend the University of Pennsylvania.

## Publications

### [Child Safety and Product Safety Disclosures: A Look at Section 6\(b\)](#)

Regina Calcaterra, Janine Pollack and Anjori Mitra  
*New York Law Journal*. December 11, 2020

### [Smaller Firms Need Employee Wellness Programs, Too](#)

Janine Pollack  
*Law360 Expert Analysis*. June 9, 2021

## Honors

In their first year of launching Calcaterra Pollack LLP, Janine and her partner Regina Calcaterra were awarded the [National Law Journal's 2020 Trailblazer Award](#) for an Elite Boutique Firm. Janine has been selected to the Super Lawyers list<sup>1</sup> every year since 2012. She was named to the Lawdragon 500 Leading Plaintiff Financial Lawyers list in 2019, [2020](#), [2021](#) and [2022](#). She has also been appointed numerous times to *Law360* editorial boards and was selected to the 2021 *Law360* Consumer Protection Editorial Board. In 2012, Janine was one of the attorneys featured on the front page of *The National Law Journal's* Plaintiffs' Hot List for her work on the toning shoe cases, several of which resulted in record settlements jointly with the Federal Trade Commission against Reebok and Skechers.

## Speaking Engagements

- *Women Lawyers in Leadership 2020* – Practising Law Institute – September 16, 2020
- *How to Wow Motivation and Wellness: Your Guide to Grit and Fit* – University of Pennsylvania Carey Law School – October 21, 2020 - highlighted in *Penn Law Journal Summer 2021*
- *Taking Control of Your Well-Being: How to Leverage Your Legal Organization's Wellness Program* – Practising Law Institute – December 10, 2020
- HarrisMartin Webinar Series: Baby Food Litigation- April 8, 2021

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<sup>1</sup> Super Lawyers, a Thomson Reuters business, is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The annual selections are made using a patented multiphase process that includes a statewide survey of lawyers, an independent research evaluation of candidates and peer reviews by practice area. More information can be found [here](#). No aspect of this advertisement has been approved by the Supreme Court of New Jersey.

## Calcaterra Pollack LLP

- *Getting a Seat at the Table and What to do Once You've Obtained Your Seat: Tips for Women Lawyers – Women Lawyers in Leadership 2021* – Practicing Law Institute – September 23, 2021
- *Taking Care of Our Own: Lawyer Well-Being Programs* – AON Virtual Law Firm Symposium – October 14, 2021
- *Health & Wellness Panel* – Class Action Law Forum – University of San Diego School of Law – March 18, 2022
- *Getting a Seat at the Table and What to do Once You've Obtained Your Seat: Tips for Women Lawyers – Women Lawyers in Leadership 2022* – Practicing Law Institute – September 14, 2022

### In the News

- *Taking Charge- The Travails and Triumphs of the Women Who Started Law Firms – The Journal of the University of Pennsylvania Carey Law School* – Lindsay Podraza and Jay Nachman, Fall 2022.
- [Women Open Law Firms Amid Pandemic Upheaval](#), *Law360*, Anna Sanders, September 13, 2021.
- [Lawyer Limelight: Janine Pollack](#) – *Lawdragon* – Amy Carroll, April 29, 2021.
- Read about Janine's enthusiasm for small law firm wellness here: [Lawyer Well-Being Champions](#)
- Read about Janine's commitment to wellness here: [Women In the Law-A Lawyer's Guide to Wellness](#)



## MICHAEL LISKOW

### About Michael



Michael Liskow is a partner at Calcaterra Pollack LLP. Michael has extensive experience litigating complex class actions on behalf of plaintiffs in consumer fraud, data breach, antitrust, securities, housing, insurance, and wage and hour matters, among others. Prior to joining the Firm, Michael was a clerk for the Honorable Steven H. Levinson of the Supreme Court of Hawai`i, an associate at Quinn Emanuel Urquhart & Sullivan LLP, a Fulbright Teaching Assistant to the Slovak Republic, and a partner at two law firms practicing plaintiff-side class action litigation.

Michael is currently admitted to practice in the States of New York and California and in the U.S. District Courts for the Southern, Eastern, and Northern Districts of New York, the Northern, Central, and Southern Districts of California, the Northern District of Illinois, and the District of Colorado.

### Representative Matters

- Represents plaintiffs in class actions against providers of workers' compensation insurance on behalf of businesses charged improper insurance rates.
- Represents a plaintiff in an antitrust class action against Apple stemming from its monopolization of the iPhone application market that was heard before the U.S. Supreme Court. The Court ruled 5-4 in favor of the named plaintiffs against Apple.
- Represents consumers in various class actions against baby food manufacturers for misrepresentations and omissions regarding the presence of dangerous heavy metals.
- One of the lead litigators in consumer class actions against makers of macaroni and cheese for failure to disclose dangerous phthalates.
- Co-lead litigator for Nassau County, New York in case challenging County's property tax system.
- Represented plaintiffs in a class action against Banner Life Insurance Company alleging improper increases in life insurance premiums.
- Represented plaintiffs in a class action against Bethpage Federal Credit Union and others for violations of the Real Estate Settlement Procedures Act, resulting in a full recovery for each class member.
- Represented plaintiffs in a class action on behalf of overbilled Verizon consumers which resulted in a full recovery, plus interest and fees, for every class member.
- Acted as lead counsel for the data breach class actions *Mizrahi v. NBEQ* (D. Md.) and *Bokelman v. FCH Enterprises* (D. Haw.).

## Calcaterra Pollack LLP

- Represented a plaintiff in securing a class-wide settlement of Song-Beverly Act claims in the Superior Court of California, County of San Diego, against a furniture chain for sale of defective products.
- Represented consumers in numerous class actions challenging unfair and deceptive business practices, including against L.L. Bean, Nestlé Waters, Mondelēz, GNC, Banner Life Insurance, GNC, and Vibram.
- Represented a class of institutional and individual investors who suffered losses resulting from their investment in Goldman Sachs mortgage-backed securities, resulting in a recovery of over \$272 million.
- Represented a class of overcharged tenants of Stuyvesant Town and Peter Cooper Village, resulting in a \$173 million recovery, the largest recovery for tenants in United States history.

### Education

University of Pennsylvania Carey Law School (J.D., 2005)

University of Kansas (B.A., Psychology, 2001)

### Honors

Michael has been designated as a “Super Lawyer” each year since 2019 and was named as a “Rising Star” each year from 2013-2018 by New York Super Lawyers.

### Speaking Engagements

*Cy Pres After Frank v. Gaos*, presentation at 2019 NASCAT Annual meeting

### Publications

“Is Equitable Estoppel in Arbitration a Sinking Ship?” *New York Law Journal* (Dec. 12, 2011)





## JAMES ALIAGA

### About Jimmy



Jimmy Aliaga is an associate at Calcaterra Pollack LLP. Jimmy has experience litigating complex federal and state matters including securities fraud class actions, consumer protection litigation, and individual actions under New York's recently enacted Child Victims Act. Prior to joining the Firm, he was an associate at a plaintiff-side class action firm and served as an Assistant District Attorney in the Brooklyn District Attorney's Office. During his tenure, Jimmy conducted numerous bench and jury trials to verdict as lead counsel and coordinated grand jury investigations on a multitude of criminal actions.

He is currently admitted to practice in the State of New York, the U.S District Courts for the Southern and Eastern Districts of New York, and the U.S. Court of Appeals, Second Circuit .

### Representative Matters

- Represents a student athlete in a lawsuit against Syracuse University, alleging the University failed to appropriately respond to allegations of domestic violence in violation of Title IX and state law.
- Represents survivors of childhood sexual assault pursuing justice via New York's Child Victims Act.
- Represents families who lost their infants in the Rock 'n Play Sleeper against Mattel, Inc. and Fisher-Price, Inc.
- Represented institutional investors in a federal antitrust class action seeking recovery from over nine banks who allegedly participated in bid-rigging and market manipulation of the Mexican Government Bond market.
- Represented institutional investors seeking class-wide relief through federal securities class actions.
- Represented a plaintiff class of workers alleging federal and state labor law violations against a publicly traded utility company.

### Education

New York University School of Law (J.D., 2015)  
James Madison University (B.A., magna cum laude, 2012)

### Professional Affiliations

Hispanic National Bar Association, National Vice President, Regions and Affiliates, 2022-2023 Term

# Calcaterra Pollack LLP

Hispanic National Bar Association, Region II (New York) President, 2020-2022 Term  
American Bar Association, Business Law Section, Fellow, 2020-2022 Term  
American Bar Association, Business Law Section, Young Lawyer Committee's Diversity & Inclusion Chair  
New York City Bar Diversity Fellow 2013

## Honors

Jimmy was named as a Regional President of the Year (Region II – New York) by the Hispanic National Bar Association for 2021. He was selected to the [Super Lawyers Rising Stars](#) list in 2021 and 2022. Jimmy was also named to [City & State New York's 2022 Law Power 100](#) list.

## Community Affiliations

While attending New York University School of Law, Jimmy served as an intern with Morgan Stanley, PricewaterhouseCoopers LLP, the U.S. Commodity Futures Trading Commission, and the Office of the U.S. Attorney for the Eastern District of New York. He also served as a Senior Articles Editor for the Journal of Law & Liberty and an executive board member for the Suspension Representation Project and the Know Your Rights Project and participated in the NYU Legal Ethics Bureau's examination of prosecutorial misconduct. Jimmy currently devotes his time to serve as the alumni advisor to his alma mater's undergraduate chapter of La Unidad Latina and is a mentor in the LatinoJusticePRLDEF's Next Generation Lideres program.

## Speaking Engagements

*Doing Well by Doing Good – So You Want to Be a Plaintiffs Attorney?* – September 9, 2022 – HNBA/VIA Annual Convention - Moderator

*Recent Legislation and Judicial Decisions Affecting the LGBT Community* – March 23, 2022 – HNBA Corporate Counsel Conference - Moderator

*Proliferation of Mass Arbitrations: The Unintended Consequences of the U.S. Supreme Court's Liberal Policy of Favoring Arbitration in Contracts and Enforcement of Class Action Waivers* – September 28, 2021 – HNBA/VIA Annual Convention – Panelist

*The Many Facets of Criminal Practice*, NYU Law Alumni of Color Association, Panelist

*Government & Prosecution Forum, An Introduction to Public Interest Lawyering*, NYU Public Interest Law Center, Panelist

*Preparing for Prosecution Interviews*, NYU Law Public Interest Law Center, Panelist

## In the News

[Hispanic Attorneys Say Opportunities Key to Boosting Diversity](#) – Emily Sides – *Law360* – September 29, 2021

[Why Critics Say a Trump-Era Title IX Rule Hurts Coaches' Ability to Discipline Athletes Accused of Sexual Misconduct](#) – Paula Lavigne – *ESPN* – March 4, 2022



## ANJORI MITRA

### About Anjori



Anjori Mitra is an associate at Calcaterra Pollack LLP with broad civil and commercial litigation experience. Prior to joining the Firm, she worked at a plaintiff-side class action firm on securities, consumer, and Child Victims Act litigation, as well as FINRA arbitrations. Before that, Anjori practiced in New Zealand as a barrister at one of New Zealand's preeminent barristers' chambers, where her work included securities and derivative litigation, labor disputes and investigations, consumer litigation, cross border matters, discrimination claims, and childhood sexual abuse litigation. She has appeared as counsel in a number of New Zealand courts and tribunals, including at the appellate level.

Anjori is currently admitted to practice in the State of New York and the U.S. District Courts for the Southern, Eastern and Northern Districts of New York. She is also admitted to practice in New Zealand.

### Representative Matters

- Represents a large suburban county in the federal antitrust class action multi-district litigation against generic drug manufacturers for colluding to increase drug prices.
- Represents several of the largest New York City labor health and welfare benefit funds in the federal class action multi-district litigation against opioid manufacturers and distributors seeking recoveries arising from the opiate crises.
- Represents a student athlete in a lawsuit against Syracuse University, alleging the University failed to appropriately respond to allegations of domestic violence in violation of Title IX and state law.
- Represents families who lost their infants in the Rock 'n Play Sleeper in lawsuits against Mattel, Inc. and Fisher-Price, Inc.
- Represents survivors of childhood sexual assault pursuing justice under New York's Child Victims Act.
- Represents a large suburban county in defending a challenge to the county's property tax system.
- Represents North America's largest public transportation authority in federal multi-district litigation alleging conduct in violation of antitrust law against a number of health insurance plans.
- Represented consumers in a class action against a large insurer and pharmacy benefit manager, alleging a mail-order program for prescriptions was a deceptive practice in violation of New York law.

- Represented investors who suffered losses in a federal securities class action against a large medical and wellness cannabis operator which allegedly misled investors as to its products.
- Represented claimants in a FINRA arbitration alleging mismanagement of their accounts by a financial advisor.

## Education

Columbia Law School (LL.M., Harlan Fiske Stone honors, 2019)

University of Auckland, New Zealand (LL.B. with honors, 2014)

University of Auckland, New Zealand (B.A., English, History, 2014)

## Publications

[Child Safety and Product Safety Disclosures: A Look at Section 6\(b\)](#)

Regina Calcaterra, Janine Pollack and Anjori Mitra

*New York Law Journal*. December 11, 2020

## Community Affiliations

While at Columbia Law School, Anjori served on the board of Columbia Law Women's Association, volunteered for the Sexual Respect Initiative, and interned at the Knight First Amendment Institute, which focuses on protecting the freedoms of speech and the press. While at the University of Auckland Law School in New Zealand, Anjori was the editor-in-chief of the Public Interest Law Journal of New Zealand and volunteered for the Equal Justice Project, a pro bono organization which aims to increase access to justice in the community. Anjori continues her affiliation with Columbia Law School by serving as a mentor as part of the Columbia Law Women's Association mentorship program.

## Honors

Anjori received a Parker School Certificate in international and comparative law during her LL.M. at Columbia Law School. She was also awarded a Spencer Mason Travelling Scholarship in Law from the Spencer Mason Trust in New Zealand for her LL.M. studies. She was a recipient of the 2017 Auckland District Law Society Prize (New Zealand) for best contribution to the New Zealand Women's Law Journal and received an honorable mention for the 2018 Hon Rex Mason Prize for Legal Writing (New Zealand).

## In the News

[Anjori Mitra and advocacy group Grounded Kiwis successfully challenge aspects of New Zealand's Covid-related border restrictions.](#) April 28, 2022.

## **DANIELA MAESTRO**

### **About Daniela**

Daniela Maestro serves as the Director of Operations and Marketing at Calcaterra Pollack LLP. Prior to joining the Firm, Daniela was a client development and marketing coordinator and litigation secretary at a plaintiffs' class action firm. Before entering the legal field, Daniela managed the scientific and technical research library at an international environmental conservation NGO in Washington DC, where she supported ongoing research and publication programs and contributed to initiatives to broaden the impact and dissemination of conservation science. While in Washington DC, she was an active member of the Society for Scholarly Publishing, the Council of Biology Editors, the Council of Science Editors, and the Special Libraries Association, and was a regular participant in conferences and programs intended to improve and support open access to scientific research and data.

### **Education**

Daniela received her education at Smith College and the George Washington University Elliott School of International Affairs.

## **STEPHANIE COLLORAFI**

### **About Stephanie**

Stephanie Collorafi is the litigation paralegal at Calcaterra Pollack LLP, where she provides litigation support to the Firm's attorneys. Prior to joining the Firm, Stephanie served as a paralegal at a leading New York City insurance defense firm. Her experience includes trial preparation for senior attorneys on matters ranging from municipal liability to child sex abuse cases.

### **Education**

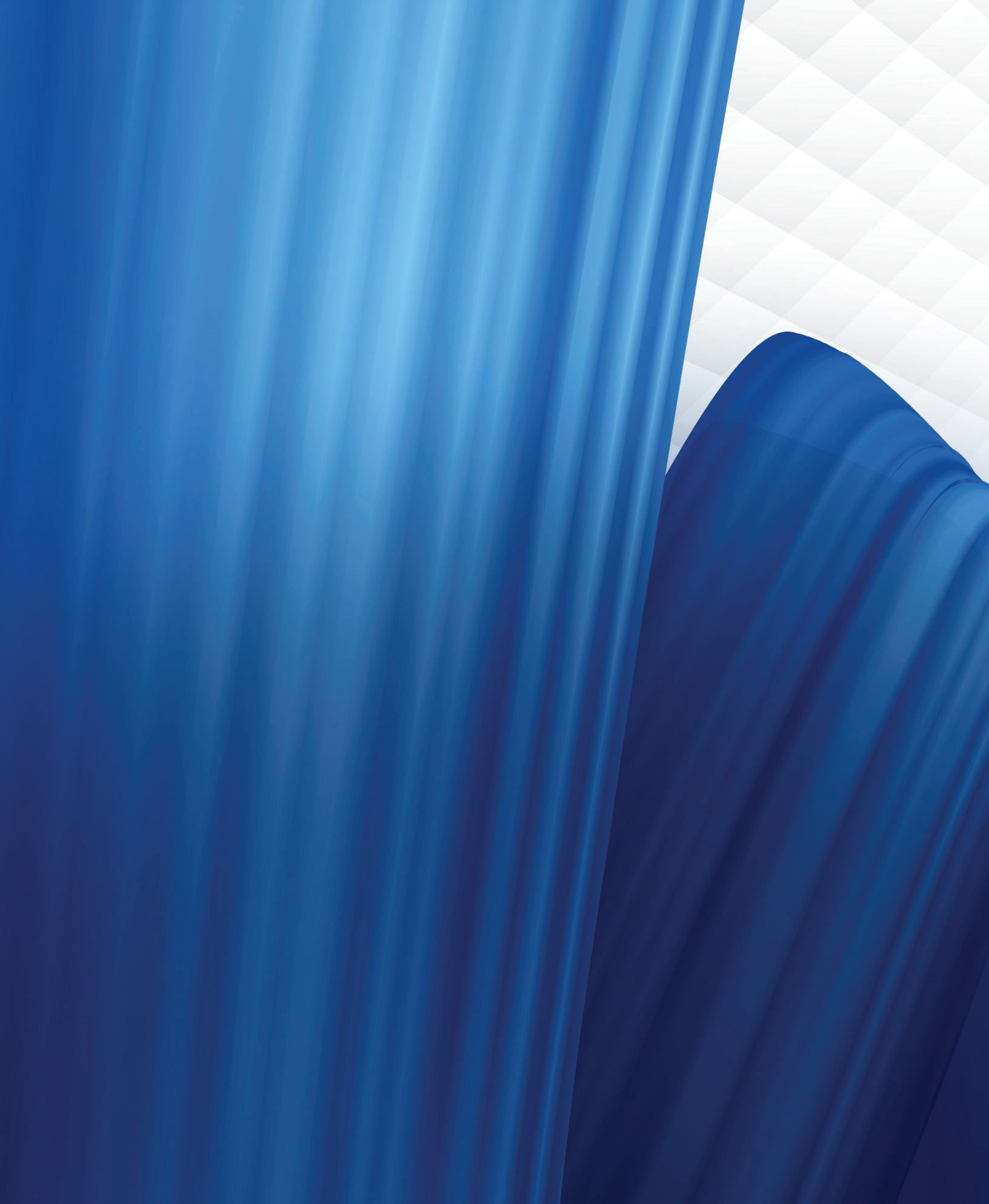
Stephanie received her B.A. in English Composition and Linguistics from CUNY Hunter College.

# **EXHIBIT 5**

# 2022 Partner Compensation Survey

**JEFFREY A. LOWE, ESQ.**  
Global Practice Leader, Law Firm Practice  
Managing Partner, Washington, D.C.





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# BACKGROUND

In May 2022, Major, Lindsey & Africa (MLA) launched its 2022 Partner Compensation Survey in partnership with Law360, a publication of Portfolio Media. The Survey, which was sent independently by Law360 to over 35,000 law firm partners at NLJ 350- and Global 100-size firms across the United States, was the seventh in the series of groundbreaking, biennial surveys begun by MLA in 2010. The MLA Partner Compensation Survey continues to be the most comprehensive effort ever undertaken to identify ranges of partner compensation, the criteria law firms use in determining partner compensation, and the satisfaction of law firm partners with their compensation and compensation systems.

When we launched our 2020 Survey in early summer 2020 during the height of the first wave of the COVID-19 pandemic, we felt it was more important than ever to continue with the Survey so that we could better understand the pandemic's short-term and long-term impact on partner compensation and satisfaction, expecting that law firm revenue and compensation would be materially adversely affected by the pandemic. No one could have guessed at the onset of the pandemic that law firms would not only weather the storm brought on by the pandemic but thrive. Similarly, during those early days of the pandemic we had no idea that the very nature of work would change forever. Accordingly, in addition to repeating the new questions that we added to our 2020 Survey relating to the pandemic's effects on partners' compensation, this year we have added several new questions that address the impact of the pandemic on respondents' ability to work remotely, geographic location, firm programs and benefits, anticipated retirement age, and full-time/part-time status.

This Report provides (i) an overview of the Survey, (ii) the demographic breakdown of the respondents to the Survey, (iii) selected highlights of the impact and expected impact of COVID-19 on respondents' compensation and other aspects of their personal and professional lives, (iv) selected highlights of compensation and other practice metrics as reported by the respondents, and (v) selected highlights of compensation satisfaction as reported by the respondents.

## THE SURVEY

The Survey consisted of 20 questions (including demographic questions), with the results broken down into four major categories:

### 1. Demographic information about each respondent and the respondent's law firm, including:

- › Partnership Tenure
- › Partnership Status (i.e., Equity vs. Non-Equity)
- › Primary Practice Area
- › City
- › Lateral Status (i.e., "Homegrown" vs. Lateral)
- › Compensation Transparency (i.e., Open vs. Closed compensation system)
- › Compensation System (i.e., Lockstep vs. Non-lockstep)
- › Age
- › Expected retirement age
- › Full-time/Part-time status
- › Gender
- › Sexual orientation
- › Ethnicity

2. Objective information about a respondent's compensation and practice metrics for 2021, including:

- › Total compensation
- › Total originations
- › Total working attorney receipts
- › Standard hourly billing rate and discount
- › Total billable hours
- › Total non-billable hours

3. Questions about the impact of the COVID-19 pandemic on a respondent's compensation, ability to work remotely, geographic location, firm programs and benefits, anticipated retirement age, and full-time/part-time status, including:

- › Percentage impact/expected impact on draw, base compensation, bonuses and capital contributions for 2021 and 2022
- › Ability to work remotely and its importance to respondent
- › Impact on respondent's geographical location
- › Programs/benefits introduced by firm as a result of the pandemic
- › Impact on anticipated retirement age
- › Impact on full-time/part-time status

4. Subjective information about a respondent's perception of his or her satisfaction with their total compensation.



# METHODOLOGY

This Survey was sponsored and developed by Major, Lindsey & Africa (MLA) in association with Law360, a publication of Portfolio Media. By having all correspondence and Survey responses go through Law360, MLA enabled all respondents to answer confidentially and anonymously. At no time was MLA made aware of respondents' names or firms, either individually or in the aggregate.

Data for this Survey were collected using an online questionnaire hosted by Law360. Invitations were emailed to 35,000 partners across the United States at NLJ 350- and Global 100-size firms. The emailed invitation contained a link that partners could use to access the Survey online. The Survey was open between May 5, 2022, and July 18, 2022. To maximize the response rate, four email reminders, each spaced one to two weeks apart, were also sent.

The recipient list was sourced through an aggregated and vetted online attorney database. A minority of respondents also participated after being notified of the Survey through MLA's and Law360's LinkedIn campaigns, or via direct invitation from MLA and Law360. The questionnaire was developed by MLA and reviewed by Law360. As an incentive to complete the Survey, respondents were advised that MLA had agreed to make a donation to The Legal Aid Society for each respondent who completed the Survey. Additionally, partners who participated became eligible to receive a \$1,500 American Express gift card, which was to be awarded to one respondent who completed the Survey before its close. Law360 randomly selected one respondent to receive this prize after the Survey closed.

A total of 1,815 responses were received from partners practicing across the United States. Seven thousand of the initial emails were returned as undeliverable. Assuming that all remaining partners contacted received the invitation, the overall response rate was 5.19%.

As is customary with surveys of this nature, not every respondent answered every question.

Each data table notes the actual number of respondents for each category. In order to present the data meaningfully, in certain cases individual respondents were grouped into larger categories.

For a number of Survey questions, respondents were given ranges as response choices. For example, total compensation values were typically grouped in \$50,000 ranges (e.g., \$800,000 to \$850,000). In order to calculate the data for this Report, Law360 used, wherever possible, the midpoint for all responses that were expressed as ranges. In those cases where midpoints were not identifiable (e.g., responses where one parameter of the range was open-ended), Law360 and MLA jointly agreed on values to be used for those responses, applying consistent criteria to previous surveys.

In order to protect respondents' identities, this Report does not disclose any information about any individual or any individual law firm. All information is reported in the aggregate to ensure anonymity. Law360 did not provide the names, email addresses or any other identifying information of individual respondents or any law firm to MLA. At all times, MLA remained blind to the specific sources of the data.

In many instances, this Report compares the results of the 2022 Survey with those of the 2020 Survey. However, it is important to note that due to the pandemic the 2020 Survey was targeted to a narrower range of partners (i.e., only partners at AmLaw 200-size firms and not also those at NLJ 350- and Global 100-size firms). For 2022, we have returned to the broader range of partners. Consequently, we have normalized the 2020 data for the sections of this Report covering Questions 8, 10-12 and 23-24 of the Survey (total compensation, total originations, total working attorney receipts, standard hourly billing rate and discount, total billable hours and total non-billable hours) to adjust for the narrower range of partners surveyed in 2020 in order to make these comparisons more meaningful. The complete results of the 2020 Survey can be found by clicking [here](#).

*For a detailed profile of the Survey respondents, please refer to [Appendix I – Respondent Profile](#).*



## STATISTICAL TERMS USED

The statistical terms used in the Report are defined below.

- › The median (or the 50th percentile) is the middle or central number in a series of numbers arranged in order of value. There are equal numbers of smaller and larger observations.
- › The average (or mean) is the total value of all observations divided by the number of observations.
- › Percentages may not total 100 because of decimal places/rounding.



# KEY FINDINGS

## IMPACT OF COVID-19 ON COMPENSATION

During the height of the first wave of the pandemic in July 2020, 70% of partners expected their 2020 compensation to be affected, but by November 2020 that number was already down to 37%. From this year's data, only 13% of respondents reported that their 2021 compensation was affected by the pandemic and only 5% expect their 2022 compensation to be affected.

## WORKING REMOTELY – IMPORTANCE

Over two-thirds of all respondents value the ability to work remotely. Five percent (5%) of respondents said the ability to work from home was Not Important at All, 13% said it was Not Very Important, 10% were Neutral, 26% said it was Somewhat Important, 33% said it was Very Important, and 10% said it was So Important That I Would Change Firms Because of It.

Not surprisingly, the more junior the tenure grouping the greater the importance of working from home (80% of respondents from the 1-5 years grouping chose one of the pro-working from home categories vs. 57% for the 20+ years grouping), and the most junior partners were more than twice as likely as the most senior partners to say they would change jobs because of it (16% for the 1-5 years grouping vs. 7% for the 20+ years grouping).

Non-Equity partners were also much more likely than Equity partners to place importance on working from home, with 79% selecting one of the pro-working from home categories vs. only 63% for Equity partners. Presumably one reason for this is that the average age for Non-Equity partners is likely lower than that of Equity partners.

Boston and Miami had the highest percentage of partners placing importance on working from home (both 78%), while their Texas counterparts were least likely (Houston, 55%; Dallas, 58%). Atlanta was not far behind the Texans at 61%.

Female partners were much more likely than male partners to place importance on working from home (79% vs. 65%) and were more than twice as likely to say they would change jobs because of it (17% vs. 8%).

Black partners were most likely to place importance on working from home (84%) but least likely to say they would change jobs because of it (5%), while White partners were least likely to place importance on working from home (69%) but were more than twice as likely to say they would change jobs because of it (11%).

## WORKING REMOTELY – FREQUENCY

Amazingly, despite respondents reporting that their firms would allow them to work from home an average of 3.39 weekdays once their firms fully reopened, respondents reported preferring to work at home for an average of only 2.51 weekdays. This result seems to indicate that law firms are providing even greater flexibility than lawyers actually prefer and could have profound implications for law firm remote work policies going forward.

## CHANGE IN GEOGRAPHY

Only 7% of respondents said they changed their geographic location because of the pandemic. Of those who did move, 30% said they expected to move back to their former home when their firm fully reopened, 53% said they would not and 18% were unsure.

New York had the highest percentage of partners who changed their geographic location because of the pandemic (16%), followed closely by San Francisco at 15% and Philadelphia at 11%. Minneapolis, Boston and Miami had the lowest percentages at 0%, 1% and 2%, respectively. 82% of San Franciscans who moved reported that they would not be moving back when their firms fully reopened, compared to 50% of Philadelphians and 46% of New Yorkers.

## HEALTH AND WELL-BEING PROGRAMS AND BENEFITS

Home Office Equipment/Technology was the benefit/program most frequently cited by respondents as having been increased or introduced by their firms as a result of the pandemic, with 58% of respondents noting it. The next highest categories were Mental Health and Wellness (53%) and Physical Health and Wellness (27%). A surprising 24% of respondents said their firms introduced no new programs or benefits, and Childcare, Eldercare and Paid Vacation/Time Off were cited by only 9%, 4% and 7% of respondents, respectively.

The provision of new or increased health and well-being programs and benefits varied widely by geography. Atlanta respondents reported the lowest number of new/increased programs, by far, followed by Miami. At the opposite end of the spectrum, Seattle, Silicon Valley and San Francisco respondents reported the highest number of new or increased programs and benefits.

## RETIREMENT AGE

The average age of expected retirement was 64.48 years. Asked whether the pandemic affected their anticipated retirement age, 12% of respondents said they expected to retire earlier, 6% said they expected to retire later and 81% said that it did not affect their decision.

## COMPENSATION

Average compensation for all partners was \$1,119,000, up 15% from 2020 (\$970,000). Median compensation was \$675,000.

Equity partners continue to average more than three times the total compensation of their Non-Equity colleagues (\$1,473,000 vs. \$460,000). Equity and Non-Equity partners saw similar percentage gains in compensation: Average compensation for Equity partners rose by 15% over 2020, from \$1,279,000 to \$1,473,000, while Non-Equity partner compensation rose by 16%, from \$397,000 to \$460,000.

Among the seven practice areas grouped for purposes of this Report, Corporate partners reported the highest average total compensation and the highest percentage increase (\$1,488,000; +26%), with Labor & Employment partners reporting the lowest average total compensation (\$653,000; +6%). Tax & ERISA partners reported the only decline in average total compensation from 2020 (\$1,145,000; -9%) while IP partners' average total compensation stayed virtually flat (\$1,010,000; 0%). Litigation partners recorded the second highest percentage increase in total compensation, rising 17% to \$1,054,000.

The disparity in compensation among cities continues to be pronounced. Average total compensation ranged from a low of \$714,000 in Seattle (-3%) to a high of \$1,817,000 in New York (+20%). Interestingly, some of the smaller major cities showed the highest percentage gains: Dallas (\$1,454,000; +87%), Atlanta (\$987,000; +65%), Houston (\$1,348,000; +48%), and Minneapolis (\$837,000; +31%). Philadelphia (-27%), Los Angeles (-15%) and Miami (-6%) showed the greatest percentage declines.

As in our prior Surveys, partners in Open compensation systems reported significantly higher average compensation (\$1,328,000; +18%) compared to partners in Partially Open and Closed systems. Average compensation for partners in Partially Open systems rose 10%, to \$916,000, and partners in Closed systems saw a whopping 33% increase, to \$848,000. Though still lagging behind partners in Open and Partially Open systems, this year's increase for Closed systems has significantly narrowed the gap between Closed and Partially Open systems.

As in our prior Surveys, male partners' average compensation continues to significantly outpace that of female partners (\$1,212,000 vs. \$905,000), though female partners' compensation once again rose at a much higher rate than that of male partners (+26% vs. +17%). While the average male partner's total compensation is still 34% more than the average female partner's, the wage gap has narrowed significantly from the 53% differential reported in our 2018 Survey and the 44% differentials reported in 2016 and 2020. One can only hope that these gains show that firms are finally getting the message, though much more work needs to be done.

The average total compensation for those identifying with a non-White ethnicity is 10% lower than that of White partners (\$1,030,000 vs. \$1,133,000). Hispanic partners reported a 56% increase in compensation, followed by a 33% increase for Asian Pacific partners and a 17% increase for White partners. Black partners were the only category to report a decline (-9%).<sup>1</sup>

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<sup>1</sup> The ethnic categories used in the Survey and this Report track those previously used by the American Bar Association. The number of respondents by ethnic category was as follows: White not Hispanic (1,413), Black not Hispanic (39), Hispanic (77), Asian Pacific not Hispanic (79), American Indian not Hispanic (2), Native Hawaiian or Pacific Islander not Hispanic (2), Mixed Races (30). Historically, because of the relatively small number of non-White respondents, it has been difficult to draw statistically meaningful conclusions for those categories. This is also true with regard to other sections of this Report, especially where data is sorted by City, as the fewer the number of respondents, the more susceptible the numbers are to sampling variation. However, we are delighted by the large increase in responses from respondents in the non-White categories since 2018 and would like to thank the leadership and members of the National Bar Association, the Asian Pacific American Bar Association, the National Hispanic Bar Association and the Diverse Partners Network for promoting the Survey to their members. We look forward to sharing additional data and commentary with these organizations and the entire legal community.

## ORIGINATIONS

Average originations for all partners were \$2,757,000, up 4% from \$2,644,000 in 2020. Median originations were \$1,250,000.

Equity partners and Non-Equity partners both reported increases in average originations, though the increase for Equity partners was quite small (\$3,735,000; +1% and \$927,000; +17%, respectively). Thus, Equity partners continue to originate more than four times the amount of business generated by Non-Equity partners, which is consistent with each of our previous Surveys. Median originations for Equity partners were \$2,050,000, while the median for Non-Equity partners was substantially lower at \$500,000.

At the high end, Corporate partners reported average originations of \$4,288,000 (+17%), and on the low end, Tax & ERISA partners reported \$1,406,000 in originations (-4%).

Male partners continue to significantly outpace female partners in originations. Male partners reported average originations of \$3,045,000, representing a 6% gain over 2020. Female partners reported a 5% increase, with average originations of \$2,022,000, down from the huge 19% increase they reported in 2020.

Originations for non-White partners were \$2,763,000, the first time non-White partner average originations exceeded those of White partners. Hispanic partners reported a whopping 104% increase (\$2,763,000) while Black partners and Asian Pacific partners each reported a 3% increase (\$1,747,000 and \$2,956,000, respectively). White partners averaged \$2,707,000 in originations.

## BILLING RATES AND HOURS

The average billing rate for all respondents was \$819, up \$42 (+5%) from 2020. The gap in billing rates between Equity and Non-Equity partners is much smaller than their compensation gap (\$876 vs. \$712, or a 23% difference in billing rates (down from 31% in 2020) vs. a 320% difference in compensation). Average billing rates for Non-Equity partners rose 10% over 2020 compared to only a 3% increase for Equity partners. Thus, while billing rates for Non-Equity partners climb toward parity with Equity partners, the compensation gap remains virtually unchanged.

Forty-six percent (46%) of partners do not provide a standard discount off their hourly billing rate, up from 37% in 2020. Of those who do, the majority give a discount of 15% or less. Only 11% of all partners provide a discount above this figure.

The average billed time for all partners was 1,721 hours, an increase of approximately 2% from the 2020, 2018 and 2016 averages (1,680, 1,683, and 1,686 hours, respectively). Notably, non-billed time averaged 481 hours, dropping 16% from 2020 (572).

These figures represent the highest average number of billable hours and the lowest average number of non-billable hours ever recorded since the inception of the Survey in 2010. Interestingly, as noted above, while respondents believed the pandemic caused a 22% reduction in their work, the average total number of billable/non-billable hours (2,202) reported this year is only about 2% lower than the average total number of billable/non-billable hours recorded in our 2018 and 2020 Surveys (both 2,252).

## COMPENSATION SATISFACTION

Partners' satisfaction with their compensation remains robust: 29% classified themselves as Very Satisfied with their current compensation, 35% classified themselves as Moderately Satisfied and 11% as Slightly Satisfied. Conversely, 8% classified themselves as Slightly Dissatisfied, 6% as Moderately Dissatisfied

and 4% as Very Dissatisfied. 6% felt Neutral. These numbers generally track 2020 results across every measure.

The gap between Equity partners' and Non-Equity partners' compensation satisfaction remains wide and is growing, with 40% of Equity partners Very Satisfied compared to 10% of Non-Equity partners, up from 32% and 12%, respectively, in 2020. Conversely, Non-Equity partners were more than twice as likely to classify themselves as Very Dissatisfied (7% vs. 3%, down from 10% vs. 3% in 2020).

Analyzing the data by Practice Area, Tax & ERISA partners were most likely to classify themselves as Very Satisfied with their compensation (33%), up from 28% in 2020, followed by Real Estate partners at 32%, up slightly from 31% in 2020. Labor & Employment partners were the only practice group to post a decline, with 20% classifying themselves as Very Satisfied compared to 26% in 2020. Interestingly, despite higher levels of Very Satisfied partners in virtually every practice area compared to the 2020 results, every practice area other than Corporate (72%; +0%) posted a decline in Satisfied partners overall.

Boston had the highest level of partners classifying themselves as Very Satisfied with their compensation (42%; +12%), followed by Dallas (40%; +12%). At the other end of the spectrum, only 15% of Palo Alto/Silicon Valley-based partners reported that they are Very Satisfied, down 23% from 2020. Washington, D.C./Northern Virginia, San Francisco, Dallas and Seattle had the highest percentage of partners selecting one of the Satisfied choices (79%, 78%, 78% and 78%, respectively). However, despite most cities reporting a higher percentage of Very Satisfied partners, several cities reported markedly lower percentages of partners selecting one of the Satisfied categories: Silicon Valley (-18%), Miami (-11%) and Boston (-11%).

Minneapolis and Miami had the highest percentage of partners falling into one of the Dissatisfied categories (both 27%), followed by Los Angeles (26%) and Philadelphia (23%). Dallas had by far the lowest percentage (11%), with Washington, D.C./Northern Virginia next lowest (16%).

Thirty-one percent (31%) of male partners reported they were Very Satisfied with their compensation, compared to 26% of female partners, up 6% and 2%, respectively. At the opposite end, a higher percentage of female partners placed themselves in one of the Dissatisfied categories (22%), a 2% decrease from 2020. The male percentage rose 1% to 18%.

All ethnic groups (other than those classifying themselves as Mixed Races) reported strong gains in describing themselves as Very Satisfied with their compensation. Hispanic partners were most likely to classify themselves in one of the Satisfied categories, rising 7% from 76% to 83%. Partners classifying themselves as Mixed Races and Black partners were the only groups to show a decrease in classifying themselves in one of the Satisfied categories, decreasing from 78% and 68%, respectively, in 2020 to 63% and 67%, respectively, in 2022. These same partners also showed the greatest increase in classifying themselves in one of the Dissatisfied categories, rising from 17% and 21%, respectively, in 2020 to 30% and 33%, respectively, in 2022.

# Impact of COVID-19 on Compensation

Questions 11a through 11d of the Survey dealt with the impact of COVID-19 on 2021 and 2022 compensation, specifically the impact on partners' draws, base compensation, bonuses and capital contributions. These key metrics were then sorted by the following categories:

- › Partnership Tenure
- › Partnership Status
- › Practice Area
- › City
- › Compensation Transparency
- › Lockstep Type
- › Gender
- › Ethnicity

## COVID-19 – A HISTORICAL LENS

In our initial 2020 Survey, which was launched during the height of the first wave of the COVID-19 pandemic in July 2020, 70% of respondents reported that they expected COVID-19 to impact their 2020 compensation in some way. However, over the course of the summer and into early fall 2020, it became clear that the industry was faring far better than anyone expected during the early days of the pandemic. In fact, by late summer of 2020, some firms began indicating that they were even outperforming their strong results from 2019.

Given the fluidity of the situation, MLA independently conducted a mini “flash survey” in November 2020 of the same pool of participants as those invited to participate in the main 2020 Survey. Nearly two-thirds of the 134 respondents to the flash survey reported that they did not expect their 2020 compensation to be affected by the pandemic, and of those respondents whose firms enacted austerity measures at the start of the pandemic, 43% reported those austerity measures being reversed completely and 41% reported those measures being reversed in part.<sup>2</sup>

No one could have guessed at the onset of the pandemic that law firms would not only weather the storm brought on by the pandemic but thrive, as evidenced by the strong compensation numbers reported in this year's Report – the highest average compensation numbers ever.

## 2021 ACTUAL COMPENSATION AND 2022 EXPECTED COMPENSATION

A total of 1,758 partners answered Question 11a, which asked respondents whether their 2021 total compensation/capital was affected by the COVID-19 pandemic. Only 13% of partners reported that COVID-19 impacted their 2021 compensation. A total of 1,757 partners answered Question 11c, which asked respondents whether they expected their 2022 total compensation/capital to be affected by the COVID-19 pandemic. Only 5% of partners reported that they expected COVID-19 to impact their 2021 compensation.

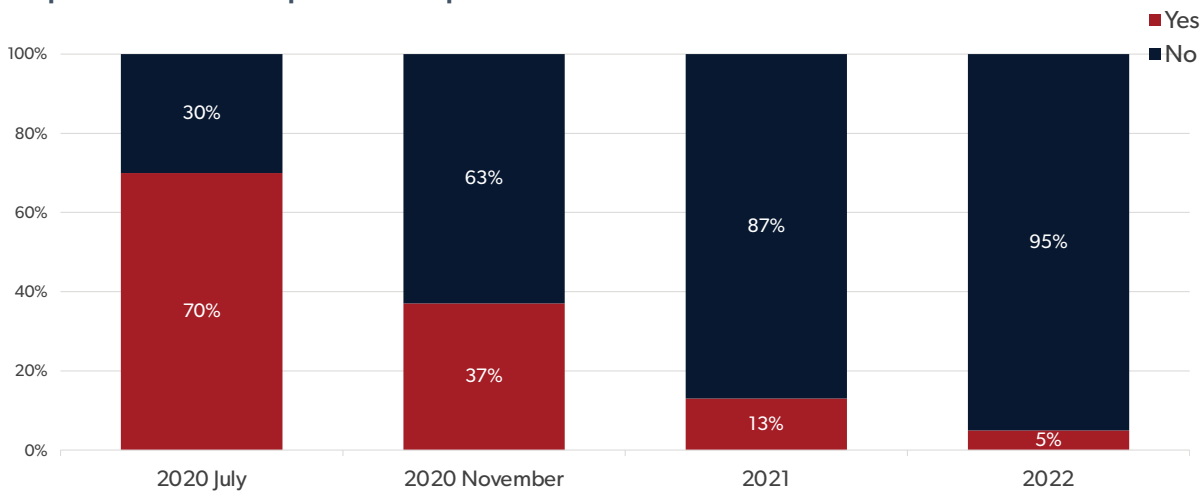
As you can see from the graph below, during the height of the first wave of the pandemic in July 2020, 70% of partners expected their 2020 compensation to be affected, but by November 2020 that number was already down to 37%. Because of the biennial nature of our Surveys, we were not able to measure respondents' actual 2020 compensation, but from this year's data only 13% of respondents reported that their 2021 compensation was affected by the pandemic and only 5% expect their 2022 compensation to be affected.

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<sup>2</sup>For a more complete discussion, please see <https://www.law.com/americanlawyer/2020/10/22/adjusting-the-covid-19-response-how-law-firms-are-altering-austerity-measures/>

## EXHIBIT 1.1 – EFFECT OF COVID-19 ON COMPENSATION

### Do You Expect COVID-19 Will Impact Your Compensation?



Question 11b asked those respondents who answered “Yes” to Question 11a what the actual impacts to their draws, base compensation, bonuses and capital contributions were for 2021. A total of 376 respondents answered this question. For those respondents, draws were reduced by an average of 14%, base compensation was reduced by an average of 15%, bonuses were reduced by an average of 29% and capital was increased by an average of 12%.

Question 11d asked those respondents who answered “Yes” to Question 11c what they expected the impacts to their draws, base compensation, bonuses and capital contributions to be for 2022. A total of 166 respondents answered this question. For those respondents, draws are expected to be reduced by an average of 15%, base compensation is expected to be reduced by an average of 17%, bonuses are expected to be reduced by an average of 29%, and capital is expected to be increased by an average of 6%.

Interestingly, in each case, respondents to Questions 11b and 11d in our 2022 Survey cited a higher impact/expected impact on their draws, base compensation bonuses and capital for 2021 and 2022 than respondents to our initial 2020 Survey expected for their 2020 compensation. In that Survey, respondents expected their 2020 draws, and bonuses to be reduced by an average of 12%, 9% and 13%, respectively, and their capital to be increased by an average of 1%, although percentage-wise, the number of positive respondents to Questions 11a and 11c in our 2022 Survey number is much lower than the 74% of positive respondents to our initial 2020 Survey.

### IMPACT ON GENDER

Male partners and female partners had virtually identical responses to Questions 11a and 11c, with 13% of male partners and 14% of female partners experiencing a negative impact to their 2021 compensation/capital and 5% of male partners and 6% of female partners expecting a negative impact on their 2022 compensation/capital.

With regard to bonuses, for both 2021 and 2022, female partners reported/expect a much bigger reduction than male partners (-40% and -37%, respectively, for female partners vs. -25% and -26%, respectively, for male partners). Interestingly, while female partners expect the impact on their base compensation and draws to be smaller in 2022 than in 2021 (base compensation: -17% in 2021 vs. -14% in 2022; draws: -15% in 2021 vs. -9% in 2022), male partners expect the impact to be greater in both cases (base compensation: -14% in 2021 vs. -19% in 2022; draws: -13% in 2021 vs. -18% in 2022).

*For the complete results, please refer to [Appendix II – Impact of COVID-19 on Compensation](#).*



# Impact of COVID-19 on Ability to Work Remotely, Geographic Location, Firm Programs and Benefits, Anticipated Retirement Age, and Full-Time/Part-Time Status

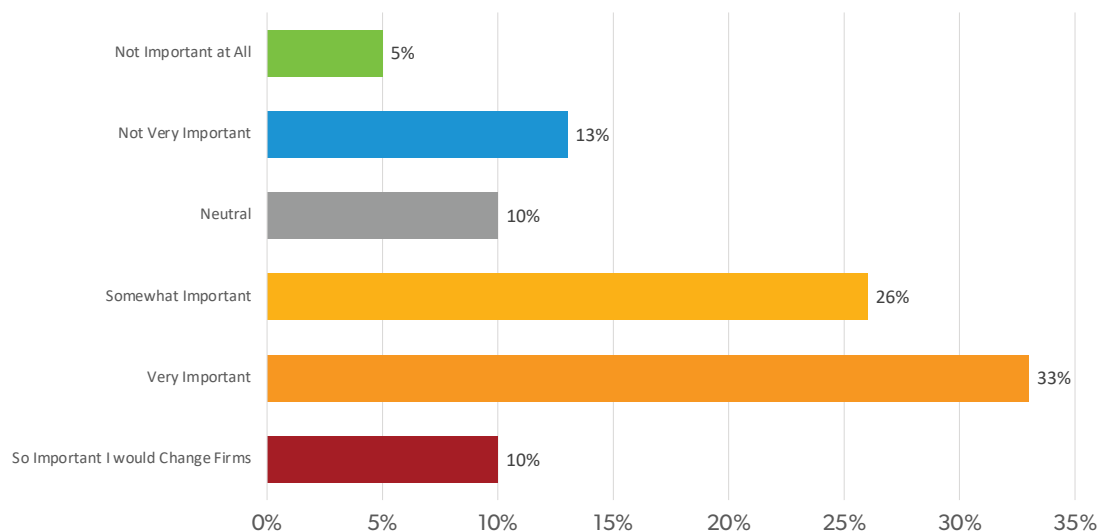
Questions 11e through 11j and 16 through 17c of the Survey dealt with the impact of COVID-19 on a respondent's ability to work remotely, geographic location, firm programs and benefits, anticipated retirement age, and full-time/part-time status. These key metrics were then sorted by the following categories:

- › Partnership Tenure
- › Partnership Status
- › Practice Area
- › City
- › Compensation Transparency
- › Lockstep Type
- › Gender
- › Ethnicity

## WORKING REMOTELY – IMPORTANCE

Question 11g asked respondents to rate how important it was to them to be able to work from home. A total of 1,756 respondents answered this question. Over two-thirds of all respondents value the ability to work remotely. 5% of respondents said the ability to work from home was Not Important at All, 13% said it was Not Very Important, 10% were Neutral, 26% said it was Somewhat Important, 33% said it was Very Important, and 10% said it was So Important That I Would Change Firms Because of It.

### EXHIBIT 2.1 – IMPORTANCE OF WORKING REMOTELY

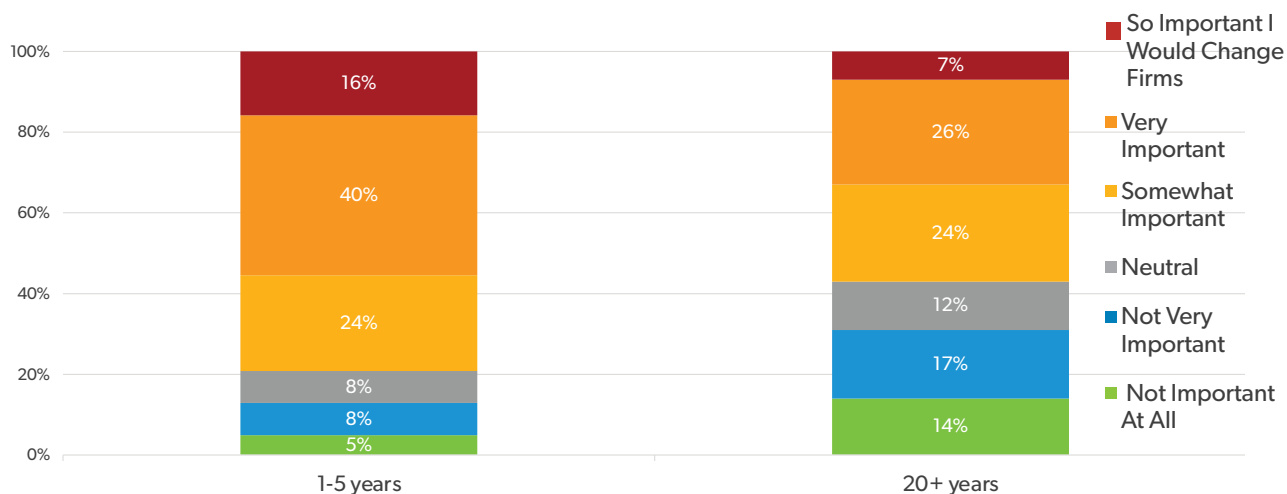


### Partnership Tenure and Partnership Status

Not surprisingly, the more junior the tenure grouping the greater the importance of working from home

(80% of respondents from the 1-5 years grouping chose one of the pro-working from home categories vs. 57% for the 20+ years grouping), and the most junior partners were more than twice as likely as the most senior partners to say they would change jobs because of it (16% for the 1-5 years grouping vs. 7% for the 20+ years grouping). Non-Equity partners were also much more likely than Equity partners to place importance on working from home, with 79% selecting one of the pro-working from home categories vs. only 63% for Equity partners. Presumably one reason for this is that the average age for Non-Equity partners is likely lower than that of Equity partners.

## EXHIBIT 2.2 – IMPORTANCE OF WORKING REMOTELY BY PARTNERSHIP TENURE



### Practice Area

Analyzing the data by Practice Area, Real Estate partners were much less likely to place importance on working from home, with only 56% selecting one of the pro-working from home categories. Litigation partners were next lowest at 65%. Each of the other practice areas ranged from 70 to 72%.

### City

Boston and Miami had the highest percentage of partners placing importance on working from home (both 78%), while their Texas counterparts were least likely (Houston, 55%; Dallas, 58%). Atlanta was not far behind the Texans at 61%. Interestingly, while Boston and Miami had the highest percentage of partners choosing one of the pro-working from home categories, both cities had a relatively low percentage of partners saying they would change jobs because of it (7% and 9% respectively); San Francisco and Minneapolis had the highest percentage (16% and 15%, respectively.)

### Gender and Ethnicity

Female partners were much more likely than male partners to place importance on working from home (79% vs. 65%) and were more than twice as likely to say they would change jobs because of it (17% vs. 8%).

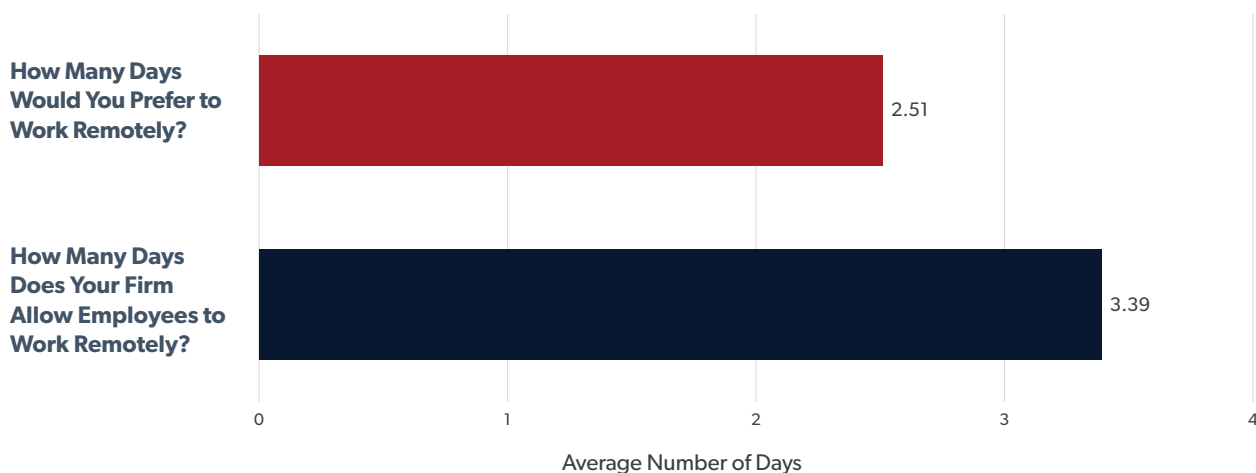
Black partners were most likely to place importance on working from home (84%) but least likely to say they would change jobs because of it (5%), while White partners were least likely to place importance on working from home (69%) but were more than twice as likely to say they would change jobs because of it (11%).

## WORKING REMOTELY – FREQUENCY

Question 11e asked respondents how many weekdays, if any, their firm would allow them to work from home once their firm fully reopened, and Question 11f asked respondents how many days they would prefer to work from home once their firm fully reopened.

Amazingly, despite the average response to Question 11e being 3.39 weekdays, respondents reported preferring to work at home for an average of only 2.51 weekdays. This result seems to indicate that law firms are providing even greater flexibility than lawyers actually prefer and could have profound implications for law firm remote work policies going forward.

### EXHIBIT 2.3 – FREQUENCY OF WORKING REMOTELY



### Partnership Tenure and Partnership Status

Again, not surprisingly, the two more junior tenure groupings reported a preference for working a greater number of days from home (3) than the two more senior tenure groupings (2). Similarly, Equity partners (who are presumably older on average) expressed a preference for working a smaller number of days at home (2) than Non-Equity partners (3).

### City

Given that Houston, Dallas and Atlanta placed the lowest overall importance on working from home in Question 19, it is equally unsurprising that those cities reported a preference for working a smaller number of days at home (2) than every other city (3) other than Minneapolis (which was also 2).

### Gender and Ethnicity

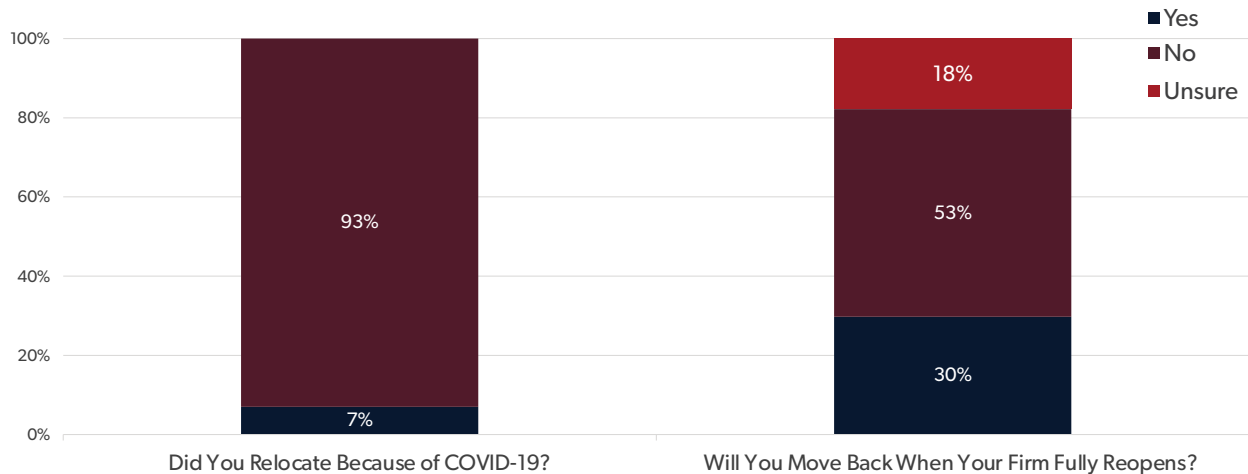
Female partners expressed a preference for working a greater number of days at home (3) than male partners (2).

Black, Hispanic and Asian Pacific partners also expressed a preference for working a greater number of days at home (3) than White partners (2).

## CHANGE IN GEOGRAPHY

Question 11h asked respondents whether they changed their geographical location because of the pandemic, and Question 11i asked those respondents who did change their geographical location whether they would be moving back when their firm fully reopened. A total of 1,754 respondents answered Question 11h and 118 respondents answered Question 11i. Only 7% of respondents said they changed their geographic location because of the pandemic. Of those who did move, 30% said they expected to move back to their former home when their firm fully reopened, 53% said they would not and 18% were unsure.

### EXHIBIT 2.4 – CHANGE IN GEOGRAPHY



### Partnership Tenure and Partnership Status

Somewhat surprisingly, the 20+ years tenure grouping had a slightly higher percentage of partners reporting they changed their geographic location (9%) than each of the other tenure groupings (all 6%). Equity partners also had a slightly higher percentage of partners reporting they changed their geographic location (8%) than Non-Equity partners (5%).

On the other hand, the more junior the tenure grouping the less likely the respondents were to report that they were planning to move back when their firms fully reopened (1-5 years, 21%; 6-10 years, 22%; 11-20 years, 32%; and 20+ years, 37%). Conversely, a slightly higher percentage of Equity partners reported that that they were planning to move back (31%) than Non-Equity partners (27%).

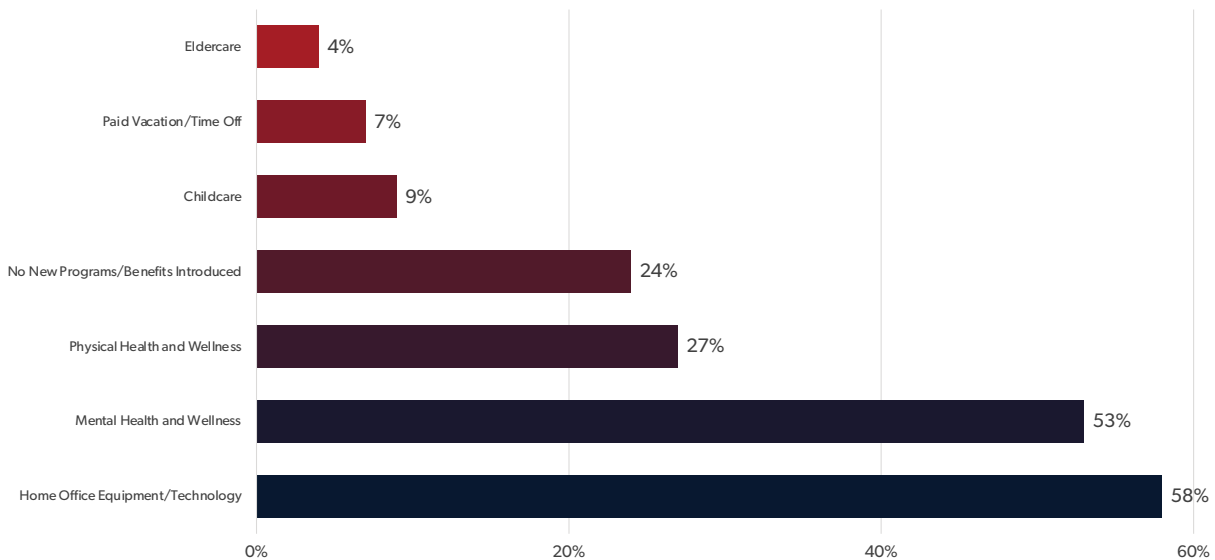
### City

New York had the highest percentage of partners who changed their geographic location because of the pandemic (16%), followed closely by San Francisco at 15% and Philadelphia at 11%. Minneapolis, Boston and Miami had the lowest percentages at 0%, 1% and 2%, respectively. Eighty-two percent (82%) of San Franciscans who moved reported that they would not be moving back when their firms fully reopened, compared to 50% of Philadelphians and 46% of New Yorkers. Although certain cities had a higher percentage of respondents reporting that they would not be moving back, those cities had a much lower percentage of respondents reporting that they were moving in the first place.

## HEALTH AND WELL-BEING PROGRAMS AND BENEFITS

Question 11j asked respondents whether their firm introduced or increased certain health and well-being programs and benefits as a result of the pandemic. A total of 1,739 respondents answered this question. Home Office Equipment/Technology was the benefit/program most frequently cited by respondents as having been increased or introduced by their firms as a result of the pandemic, with 58% of respondents noting it. The next highest categories were Mental Health and Wellness (53%) and Physical Health and Wellness (27%). A surprising 24% of respondents said their firms introduced No New Programs/Benefits, and Childcare, Eldercare and Paid Vacation/Time Off were cited by only 9%, 4% and 7% of respondents, respectively.

### EXHIBIT 2.5 – HEALTH AND WELL-BEING PROGRAMS AND BENEFITS INTRODUCED OR INCREASED IN COVID-19



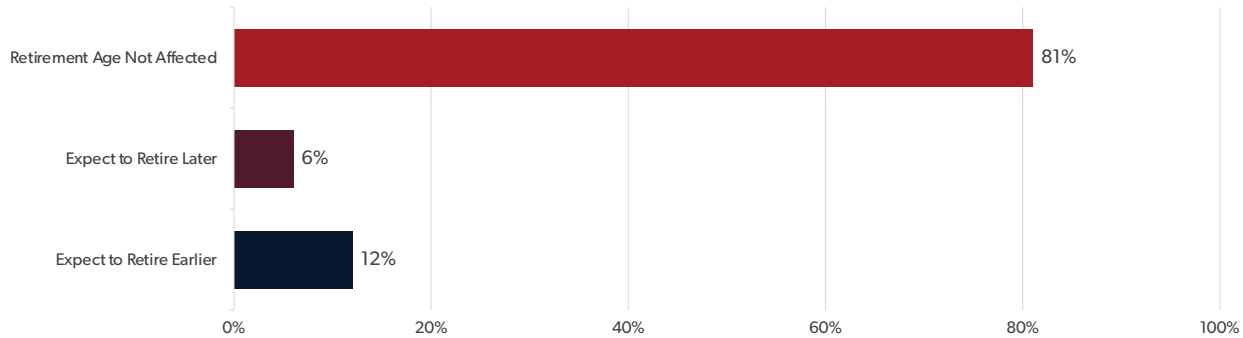
### City

The provision of new or increased health and well-being programs and benefits varied widely by geography. Atlanta respondents reported the lowest number of new/increased programs, by far, followed by Miami. At the opposite end of the spectrum, Seattle, Silicon Valley and San Francisco respondents reported the highest number of new or increased programs and benefits.

## RETIREMENT AGE

Question 16 asked respondents at what age they expected to retire. A total of 1,590 respondents answered this question. The average age of expected retirement was 64.48 years. Question 16a asked respondents whether the pandemic affected their anticipated retirement age. A total of 1,746 respondents answered this question. 12% of respondents said they expected to retire earlier, 6% said they expected to retire later and 81% said that it did not affect their decision.

## EXHIBIT 2.6 – CHANGE IN RETIREMENT AGE



### Partnership Tenure and Partnership Status

Perhaps not surprisingly, the average age of anticipated retirement grew steadily by tenure grouping, rising from 62 for the 1-5 years grouping up to 68 for the 20+ years grouping.

The more senior tenure groupings were generally more likely to say they expected to retire earlier because of the pandemic (18% of respondents from the 11-20 years grouping and 12% from the 20+ years grouping, vs. 8% for the 1-5 years grouping and 11% for the 6-10 years grouping). Interestingly, and somewhat paradoxically, the expectation to retire later also rose by seniority, from 4% for the 1-5 years grouping up to 9% for the 20+ years grouping.

Equity partners and Non-Equity partners reported nearly identical expected retirement ages, at 65 and 64, respectively.

Equity partners were also nearly twice as likely as Non-Equity partners to say they expected to retire earlier because of the pandemic (15% vs. 8%).

### City

Anticipated retirement ages varied by city, with a low of 63 in several cities and a high of 65 in several others.

Partners from Palo Alto/ Silicon Valley were the least likely, by far, to say that the pandemic had affected their anticipated retirement age either way, with 96% saying it would have no impact. The next closest city was Dallas at 88%. Minneapolis had the highest percentage of respondents indicating that they expected to retire earlier (19%) while Philadelphia had the highest percentage of respondents indicating that they expected to retire later (11%).

### Gender and Ethnicity

Male partners reported an anticipated retirement age of 65 vs. 63 for female partners.

An equal percentage (81%) of both male and female partners reported that the pandemic would not impact their anticipated retirement age.

Anticipated retirement ages varied by ethnicity, with a low of 63 for Asian Pacific partners and partners classifying themselves as Mixed Races, and a high of 65 for White partners.

Although Black partners were less likely to report an impact on their anticipated retirement age (76%) than White (81%), Hispanic (83%) and Asian Pacific partners, Black partners who did report a change were more likely to say they expected to retire earlier (18%) than the other groups (12%, 14% and 14%, respectively).

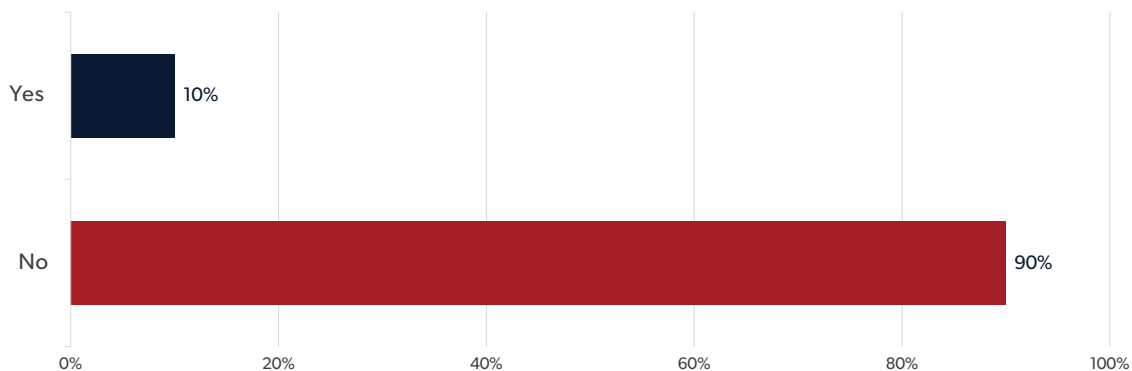
## IMPACT ON FULL-TIME/PART-TIME STATUS

Question 17 asked respondents whether they worked full time or part time. A total of 1,753 respondents answered this question. Ninety-seven percent (97%) of respondents said they worked full-time and 3% said they worked part-time. Question 17a asked respondents who responded that they worked part-time what their work schedule was, expressed as a percentage of what full-time partners at their firm are expected to work. A total of 56 respondents answered this question. The average work schedule for these partners was 62.5% of a full-time partner's work schedule.

Question 17b asked respondents whether their ability to work full time/part time had been adversely affected by the pandemic. A total of 1,750 respondents answered this question. 10% of respondents said that their work schedule had been adversely impacted by the pandemic. Question 17c asked respondents whose schedule was adversely affected to what extent it had been adversely affected, expressed as a percentage of what they were previously able to work before the pandemic. A total of 180 respondents answered this question. The average reduction in work was 22%. The average total number of billable/non-billable hours (2,202) reported this year is only about 2% lower than the average total number of billable/non-billable hours recorded in our 2018 and 2020 Surveys (both 2,252).

## EXHIBIT 2.7 – IMPACT ON WORK SCHEDULE

Has Your Work Schedule Been Adversely Impacted by COVID-19?



### Partnership Tenure and Partnership Status

The more junior the tenure grouping the more likely the respondent's work schedule was impacted by the pandemic. Fifteen percent (15%) of partners in the 1-5 years grouping reported being impacted, vs. 14%, 9% and 5%, respectively, for partners in the 6-10 years, 11-20 years and 20+ years groupings. Partners in the 6-10 years grouping reported the greatest percentage impact (-28%) and partners in the 20+ years grouping reported the lowest impact (-18%).

Similarly, Non-Equity partners were twice as likely to report being impacted as Equity partners (16% vs. 8%), although their respective reductions in hours were much closer (-24% and -20%, respectively).

## Practice Area

Analyzing the data by Practice Area, 13% of Litigation partners reported being impacted, vs. a low of 8% for Corporate, Tax & ERISA and Real Estate partners. Corporate partners reported the greatest impact (-30%) and Tax & ERISA partners reported the lowest (-17%).

## City

San Francisco and Los Angeles partners were most likely to report being impacted (22% and 19%, respectively), vs. a low of 3% for Minneapolis partners and 4% each for Miami and Houston partners.

## Gender and Ethnicity

Female partners were much more likely than male partners to report an impact (18% vs. 8%), although their reductions in hours did not reflect as great a difference (-24% and -20%, respectively).

Similarly, Asian Pacific partners were much more likely to report an impact (19%) than White, Black and Hispanic partners (10%, 8% and 6%, respectively).

*For the complete results, please refer to [Appendix II - Impact of COVID-19](#).*





# Compensation, Originations, Receipts, Billing Rates and Hours

Questions 8 through 13 (not including questions 11a-11j) of the Survey dealt with the principal practice metrics of the respondents for the 2021 fiscal year, and address total compensation, total originations, total working attorney receipts, standard hourly billing rate, standard billing rate discount, total billable hours and total non-billable hours. These key practice metrics were then sorted by the following categories:

- › Partnership Tenure
- › Partnership Status
- › Practice Area
- › City
- › Compensation Transparency
- › Lockstep Type
- › Gender
- › Ethnicity

## COMPENSATION

A total of 1,755 partners provided their compensation data, with reported compensation ranging from less than \$150,000 (31 respondents) to more than \$8,000,000 (15 respondents). Average compensation for all partners was \$1,119,000, up 15% from 2020 (\$970,000). Median compensation was \$675,000.<sup>3</sup>

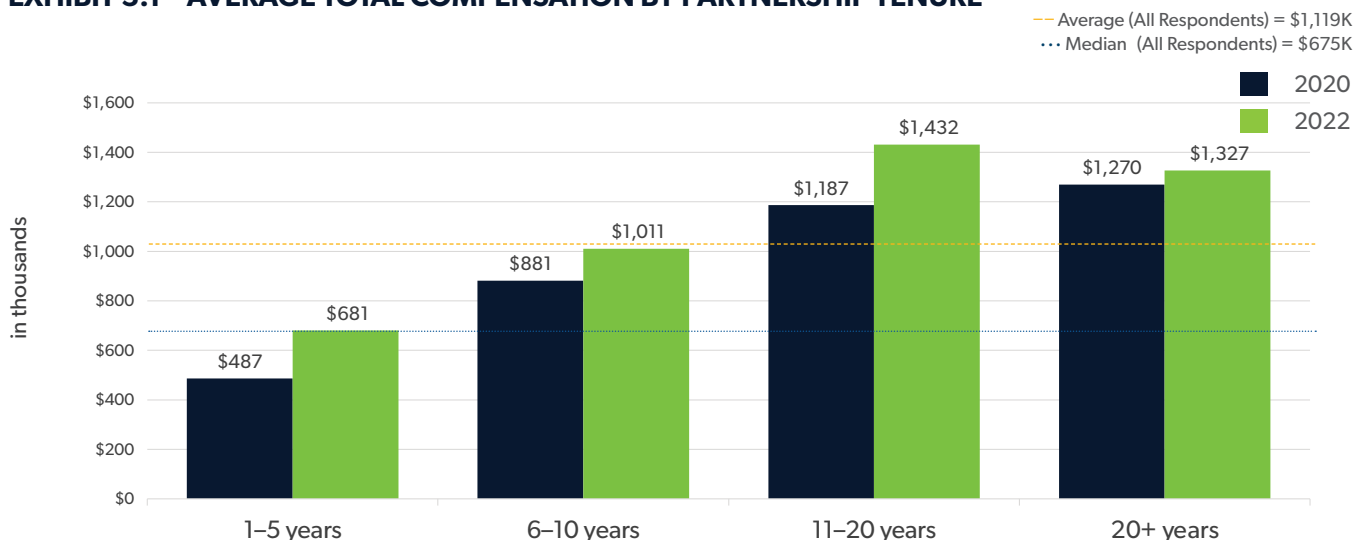
### Partnership Tenure and Partnership Status

When sorted by Partnership Tenure, average compensation climbs steadily by tenure grouping for the first three tenure groupings, from an average of \$681,000 for those in the 1-5 years category up to \$1,432,000 for those in the 11-20 years category. However, unlike prior years, average compensation for the 20+ years grouping was lower than for the 11-20 years grouping, \$1,327,000. All four tenure groupings show increases in compensation over 2020. However, while the first three groupings show a sharp increase over 2020 (1-5 years (+40%), 6-10 years (+15%), 11-20 years (+21%)), the 20+ years grouping reflects only a 4% increase.

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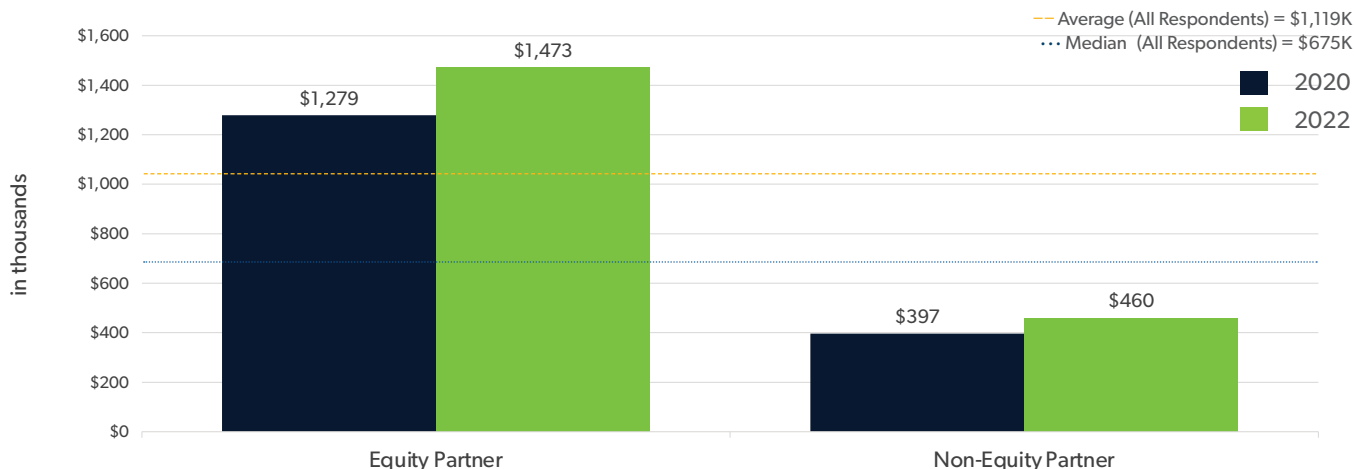
<sup>3</sup> In many instances, this Report compares the results of the 2022 Survey with those of the 2020 Survey. However, it is important to note that due to the pandemic the 2020 Survey was targeted to a narrower range of partners (i.e., only partners at AmLaw 200-size firms and not also those at NLJ 350- and Global 100-size firms). For 2022, we have returned to the broader range of partners. Consequently, we have normalized the 2020 data for the sections of this Report covering Questions 8-11 and 12-13 of the Survey (total compensation, total originations, total working attorney receipts, standard hourly billing rate and discount, total billable hours and total non-billable hours) to adjust for the narrower range of partners surveyed in 2020 in order to make these comparisons more meaningful. However, the Appendices to this Report include both the actual and the normalized data for 2020. This normalized data is reflected in the included charts as “2020 Adj.”

### EXHIBIT 3.1 – AVERAGE TOTAL COMPENSATION BY PARTNERSHIP TENURE



As in our 2020 Survey, Equity partners continue to average more than three times the total compensation of their Non-Equity colleagues (\$1,473,000 vs. \$460,000). While the vast majority of Non-Equity partners earn less than \$500,000, Equity partner pay levels show greater spread: 48% of Equity partners report total compensation of over \$1 million, compared to only 4% of Non-Equity partners. As in 2020, Equity and Non-Equity partners saw similar percentage gains in compensation: Average compensation for Equity partners rose by 15% over 2020, from \$1,279,000 to \$1,473,000, while Non-Equity partner compensation rose by 16%, from \$397,000 to \$460,000.

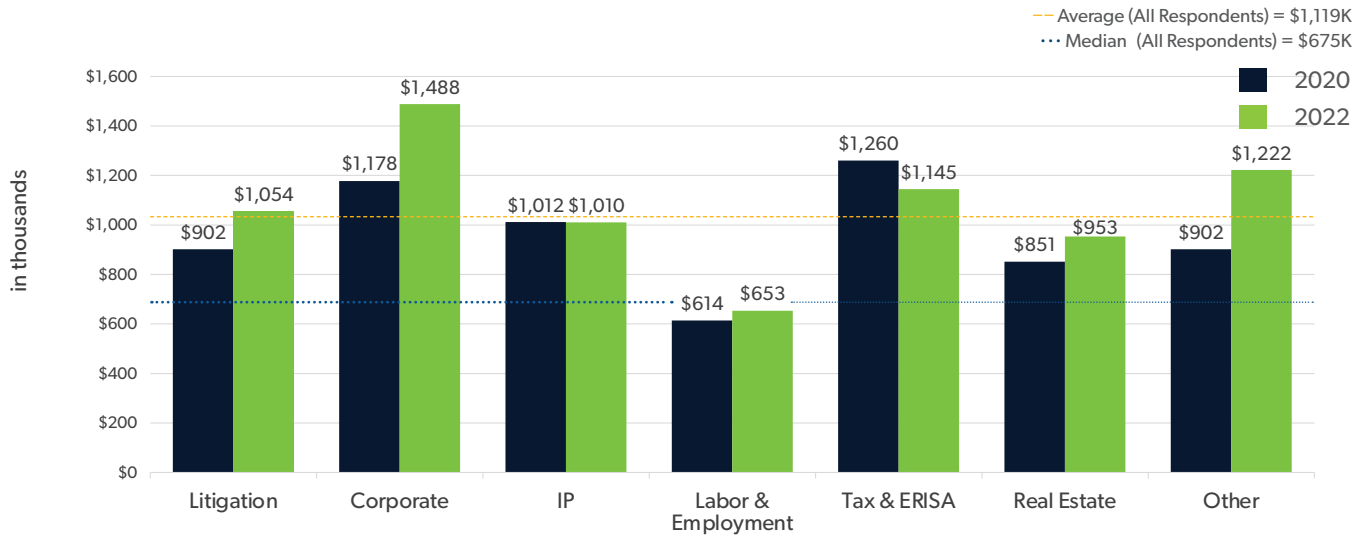
### EXHIBIT 3.2 – AVERAGE TOTAL COMPENSATION BY PARTNERSHIP STATUS



#### Practice Area

Among the seven practice areas grouped for purposes of this Report, Corporate partners reported the highest average total compensation and the highest percentage increase (\$1,488,000; +26%) with Labor & Employment partners reporting the lowest average total compensation (\$653,000; +6%). Tax & ERISA partners reported the only decline in average total compensation from 2020 (\$1,145,000; -9%) while IP partners' average total compensation stayed virtually flat (\$1,010,000; 0%). Litigation partners recorded the second highest percentage increase in total compensation, rising 17% to \$1,054,000.

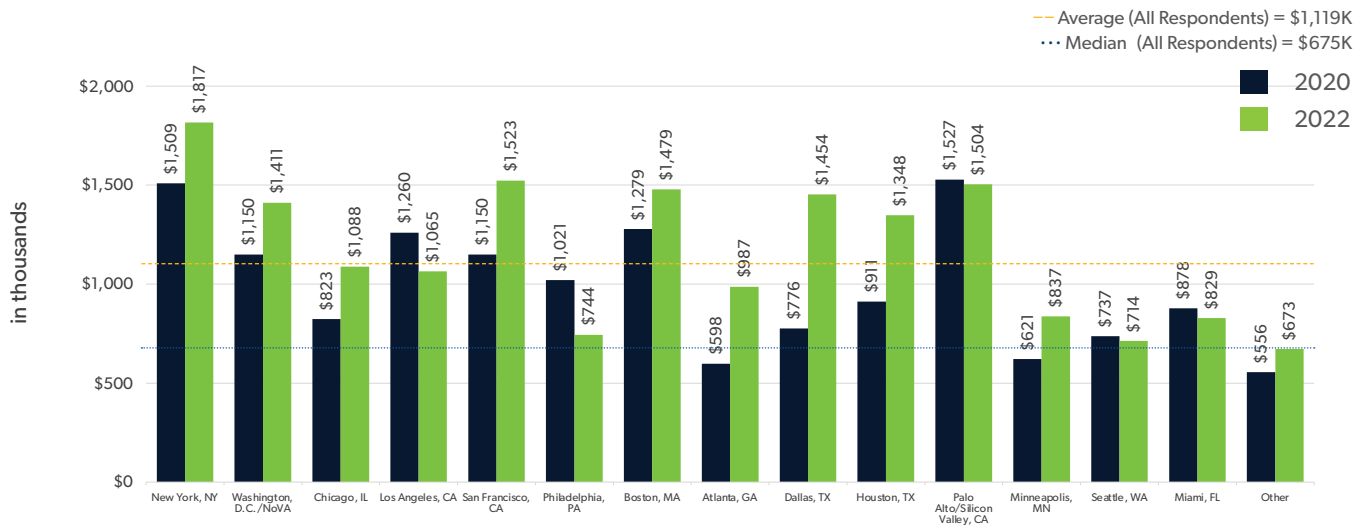
### EXHIBIT 3.3 – AVERAGE TOTAL COMPENSATION BY PRACTICE AREA



### CITY<sup>4</sup>

The disparity in compensation among cities continues to be pronounced. Average total compensation ranged from a low of \$714,000 in Seattle (-3%) to a high of \$1,817,000 in New York (+20%). Interestingly, some of the smaller major cities showed the highest percentages gains: Dallas (\$1,454,000; +87%), Atlanta (\$987,000; +65%), Houston (\$1,348,000; +48%) and Minneapolis (\$837,000; +31%). Philadelphia (-27%), Los Angeles (-15%) and Miami (-6%) showed the greatest percentage declines.

### EXHIBIT 3.4 – AVERAGE TOTAL COMPENSATION BY CITY



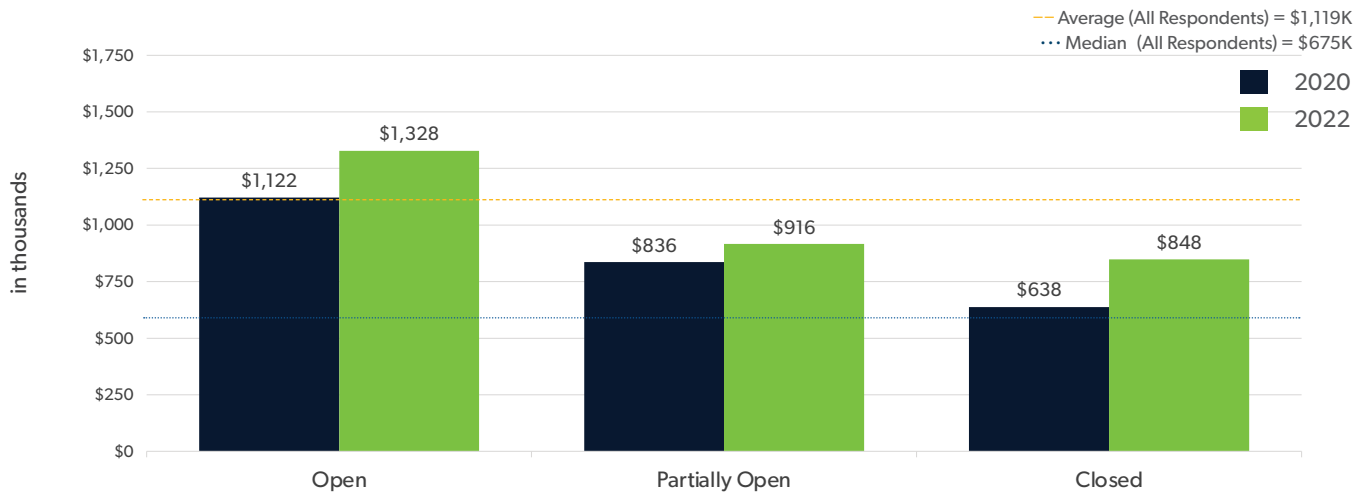
<sup>4</sup> The 14 named cities shown in Exhibit 3.4 were chosen based on their total response counts. All cities had at least 30 respondents (with the exception of Seattle at 27). New York and Washington, D.C., had over 200 respondents and Chicago and Los Angeles each had over 100 respondents.

### COMPENSATION TRANSPARENCY AND LOCKSTEP TYPE

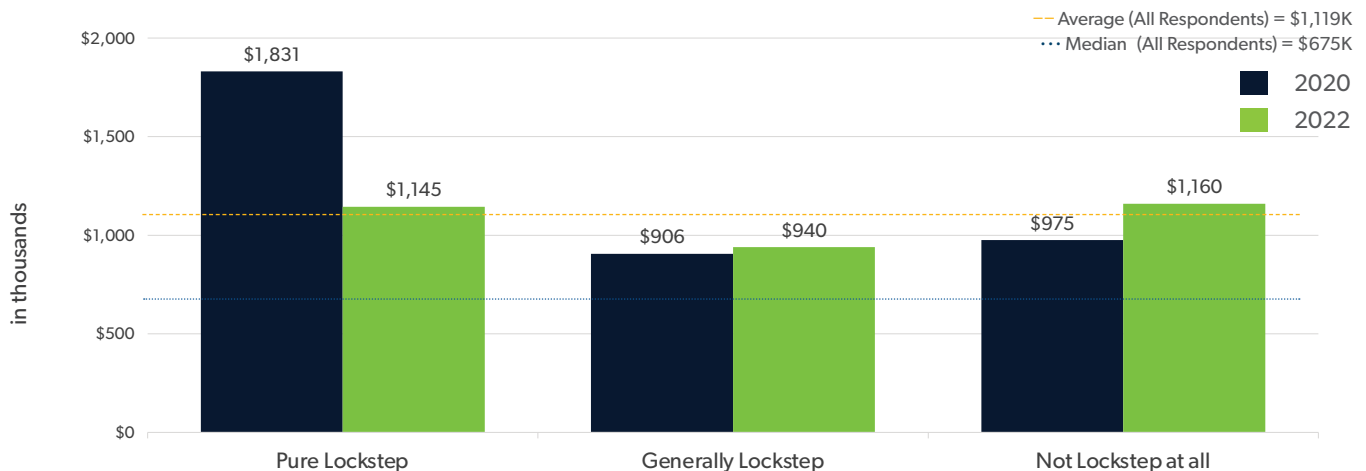
As in our prior Surveys, partners in Open compensation systems reported significantly higher average compensation (\$1,328,000; +18%) compared to partners in Partially Open and Closed systems. Average compensation for partners in Partially Open systems rose 10%, to \$916,000, and partners in Closed systems saw a whopping 33% increase, to \$848,000. Though still lagging behind partners in Open and Partially Open systems, this year’s increase for Closed systems has significantly narrowed the gap between Closed and Partially Open systems.

When sorted by Lockstep Type, Pure Lockstep<sup>5</sup> partners reported average compensation of \$1,145,000 (a 37% decrease from 2020, which ably demonstrates how small populations can significantly skew results). Average compensation for Non-Lockstep and Generally Lockstep partners rose 19% and 4%, respectively, to \$1,160,000, and \$940,000, respectively.

### EXHIBIT 3.5 – AVERAGE TOTAL COMPENSATION BY COMPENSATION TRANSPARENCY



### EXHIBIT 3.6 – AVERAGE TOTAL COMPENSATION BY COMPENSATION SYSTEM



<sup>5</sup> Because the population size for the Pure Lockstep category (38 respondents) is much lower than for the other categories, which had 1,352 (Non-Lockstep) and 339 (Generally Lockstep) responses, it is difficult to draw meaningful conclusions for this category due to potential greater sampling variance in the reported data.

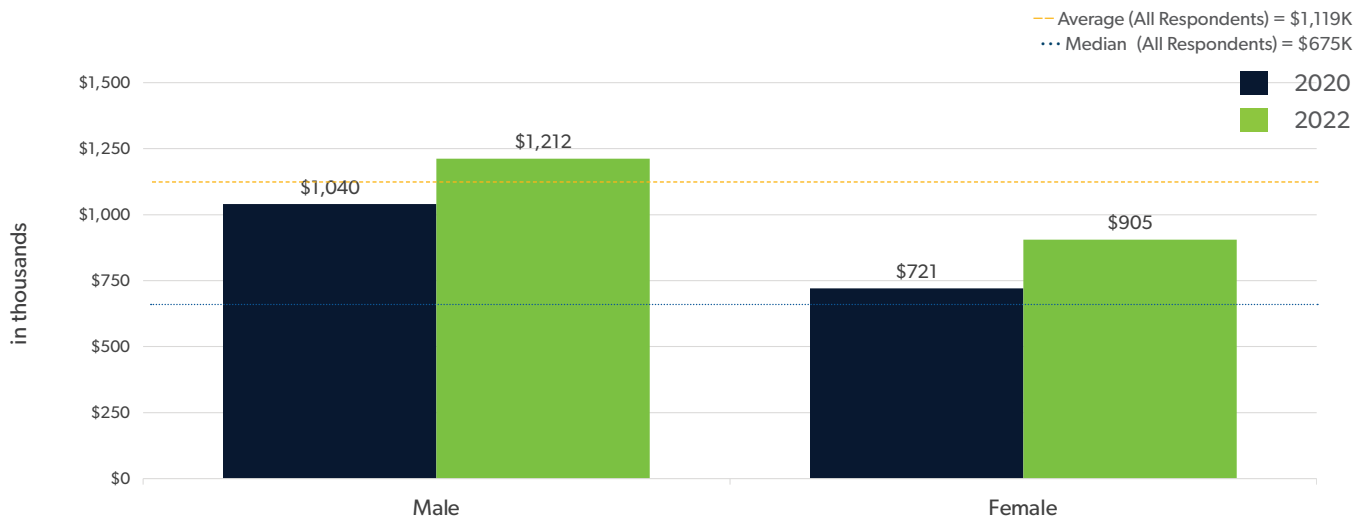
## GENDER AND ETHNICITY

As in our prior Surveys, when data are sorted by gender, male partners' average compensation continues to significantly outpace that of female partners (\$1,212,000 vs. \$905,000), though female partners' compensation once again rose at a much higher rate than that of male partners (+26% vs. +17%). While the average male partner's total compensation is still 34% more than the average female partner's, the wage gap has narrowed significantly from the 53% differential reported in our 2018 Survey and the 44% differential reported in 2016 and 2020. One can only hope that these gains reflect that firms are finally getting the message, though much more work needs to be done.

The ethnic categories used in the Survey and this Report track those previously used by the American Bar Association. The number of respondents by ethnic category was as follows: White, (1,413), Black (39), Hispanic (77), Asian Pacific (79), American Indian (2), Native Hawaiian or Pacific Islander (2), Mixed Races (30). Historically, because of the relatively small number of non-White respondents, it has been difficult to draw statistically meaningful conclusions for those categories.<sup>6</sup> This is also true with regard to other sections of this Report, especially where data is sorted by City, as the fewer the number of respondents, the more susceptible the numbers are to sampling variation. However, we are delighted by the large increase in responses from respondents in the non-White categories since 2018 and would like to thank the leadership and members of the National Bar Association, the Asian Pacific American Bar Association, the National Hispanic Bar Association and the Diverse Partners Network for promoting the Survey to their members. We look forward to sharing additional data and commentary with these organizations and the entire legal community.

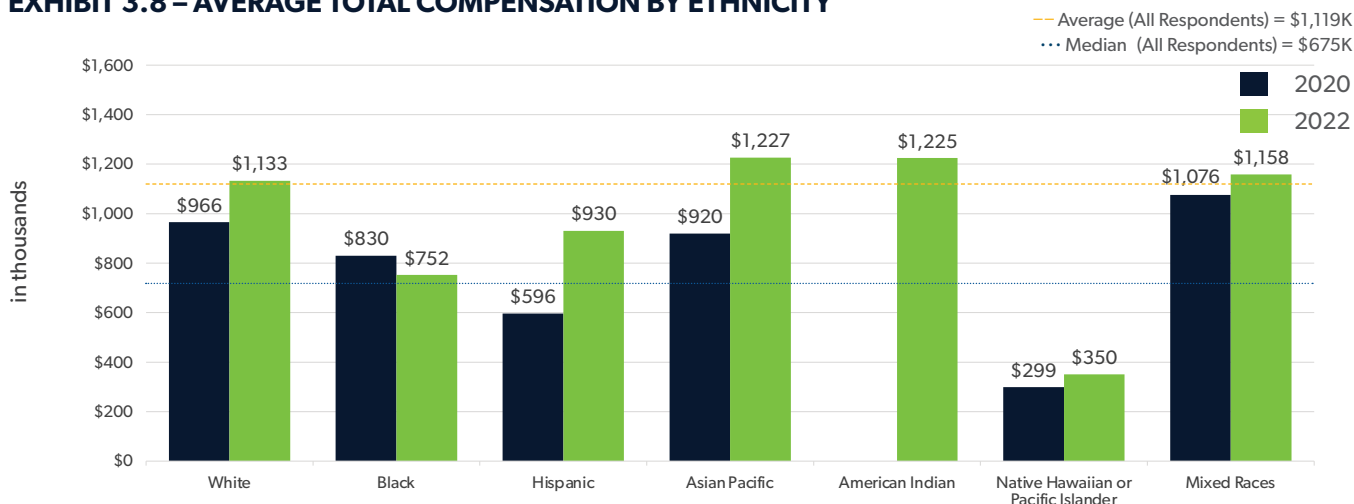
The average total compensation for those identifying with a non-White ethnicity is 10% lower than that of White partners (\$1,030,000 vs. \$1,133,000). Hispanic partners reported a 56% increase in compensation, followed by a 33% increase for Asian Pacific partners and a 17% increase for White partners. Black partners were the only category to report a decline (-9%).

### EXHIBIT 3.7 – AVERAGE TOTAL COMPENSATION BY GENDER



<sup>6</sup> In 2018, the number of respondents by ethnic category was as follows: White (1,030), Black (24), Hispanic (29), Asian Pacific (55), American Indian (1), Native Hawaiian or Pacific Islander, Mixed Races (22).

### EXHIBIT 3.8 – AVERAGE TOTAL COMPENSATION BY ETHNICITY



### ORIGINATIONS

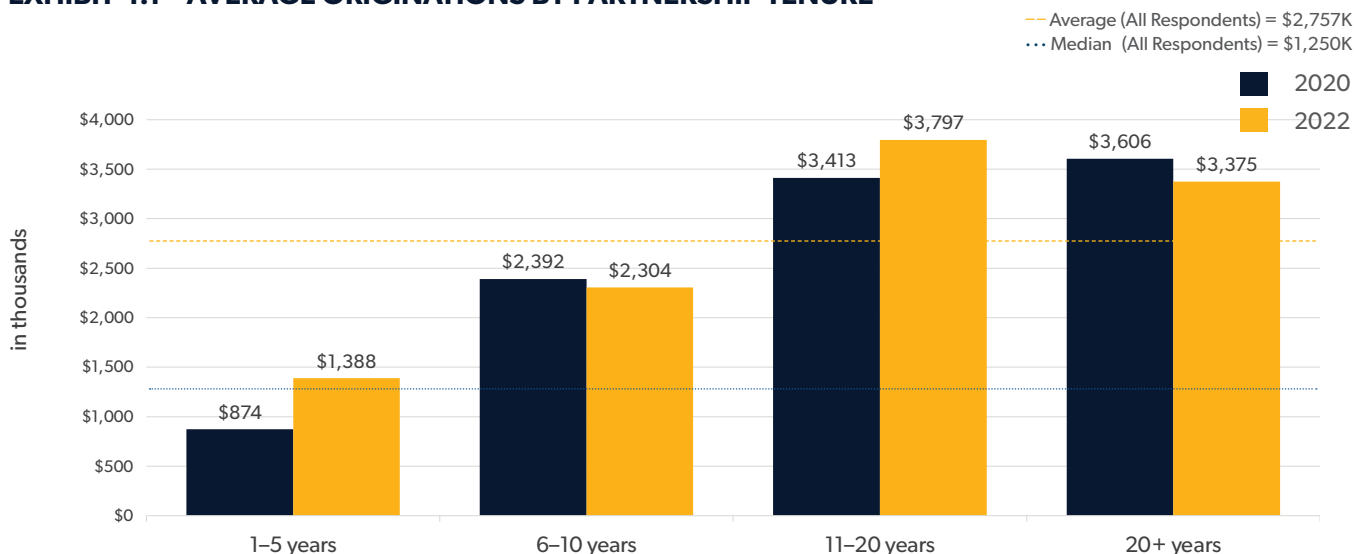
A total of 1,691 respondents provided their originations data, with reported originations ranging from less than \$100,000 (166 respondents) to more than \$30 million (13 respondents).

#### PARTNERSHIP TENURE AND PARTNERSHIP STATUS

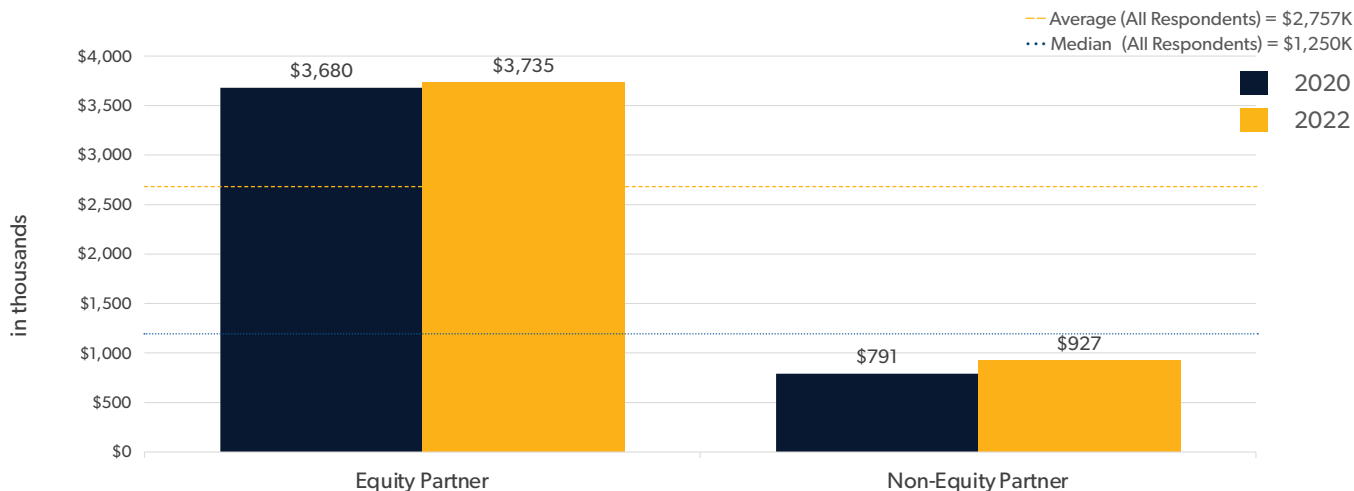
As in 2020, the results for 2022 were mixed among tenure groupings. The 1-5 years grouping showed an astonishing increase (\$1,388,000; +59%), followed by a more moderate increase for those in the 11-20 years grouping (\$3,797,000; +11%). Those in the 6-10 years grouping and the 20+ years grouping once again both showed moderate declines (\$2,304,000; -4% and \$3,375,000; -6%, respectively).

Equity partners and Non-Equity partners both reported increases in average originations, though the increase for Equity partners was quite small (\$3,735,000; +1% and \$927,000; +17%, respectively). Thus, Equity partners continue to originate more than four times the amount of business generated by Non-Equity partners, which is consistent with each of our previous Surveys. Median origination for Equity partners was \$2,050,000, while the median for Non-Equity partners was \$550,000.

### EXHIBIT 4.1 – AVERAGE ORIGINATIONS BY PARTNERSHIP TENURE



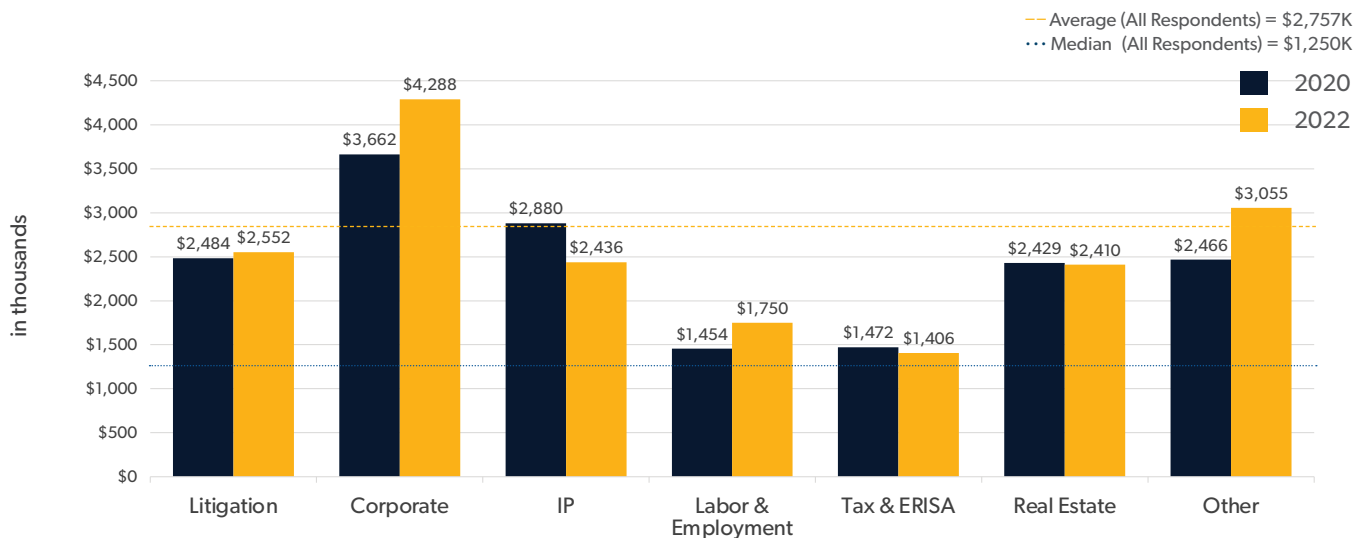
## EXHIBIT 4.2 – AVERAGE ORIGINATIONS BY PARTNERSHIP STATUS



## PRACTICE AREA

At the high end, Corporate partners reported average originations of \$4,288,000 (+17%), and on the low end, Tax & ERISA partners reported \$1,406,000 in originations (-4%).

## EXHIBIT 4.3 – AVERAGE ORIGINATIONS BY PRACTICE AREA

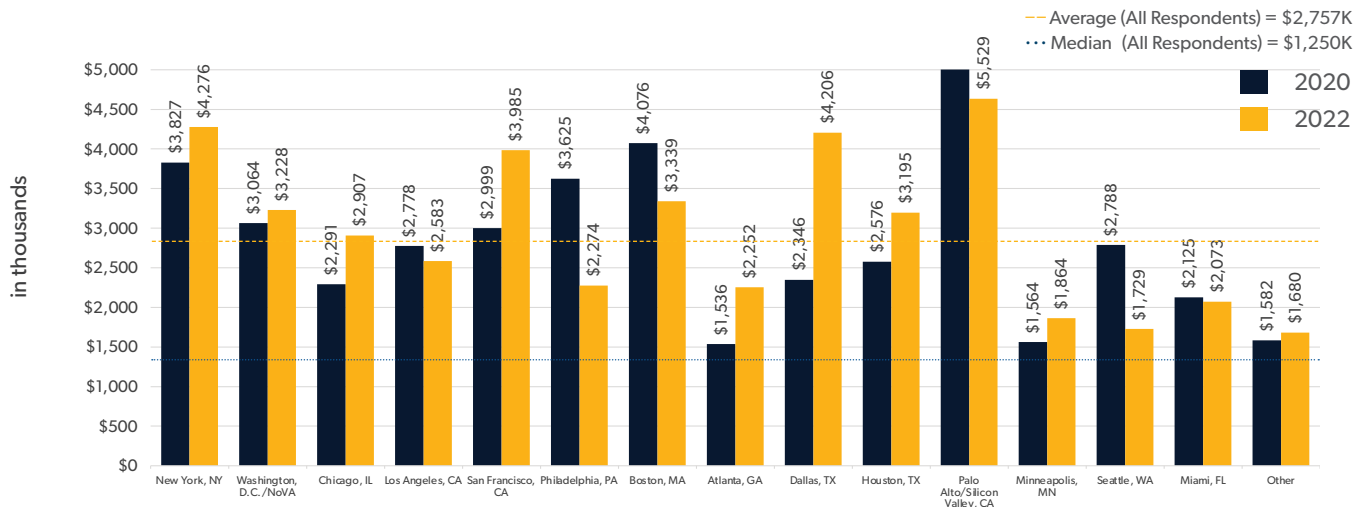


## CITY

Origination trends by City tended to follow compensation trends. Average originations ranged from a low of \$1,729,000 in Seattle (-38%) to a high of \$4,633,000 in Palo Alto/Silicon Valley (-16%). New York was next highest, rising 12% to \$4,276,000, and, surprisingly, Dallas was only slightly behind at \$4,206,000 (+79%). Other cities posting remarkable jumps in originations include Atlanta (+47%; \$2,252,000), San Francisco (+33%; \$3,985,000), Chicago (+27%; \$2,907,000) and Houston (+24%; \$3,195,000).

Seattle reported the largest percentage decline in originations (-38%; \$1,729,000), followed by Philadelphia (-37%; \$2,274,000), Boston (-18%; \$3,339,000) and Palo Alto/Silicon Valley (-16%).

## EXHIBIT 4.4 – AVERAGE ORIGINATIONS BY CITY

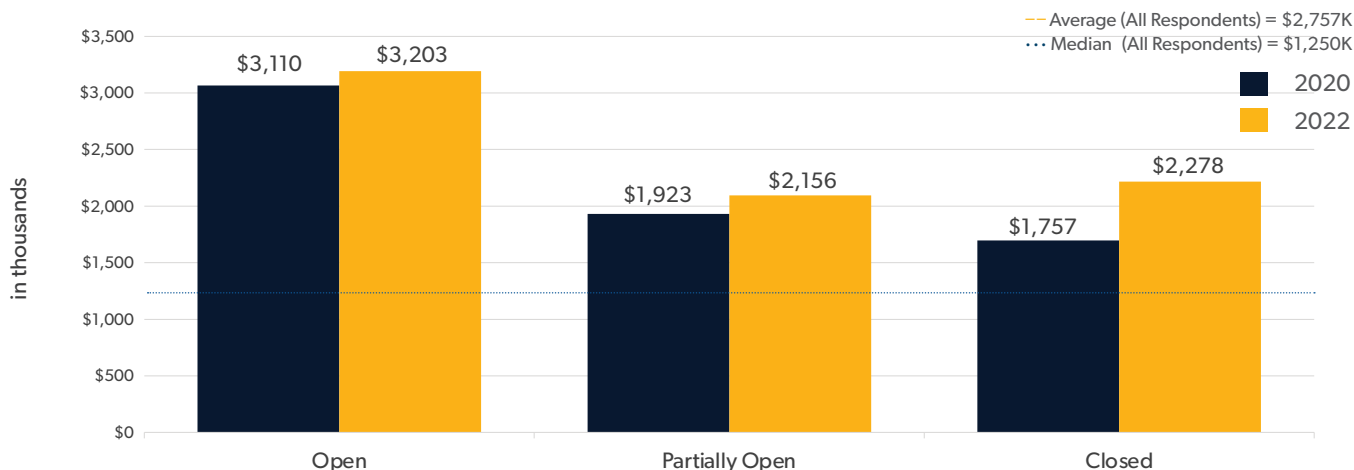


## COMPENSATION TRANSPARENCY AND LOCKSTEP TYPE

Partners in Open compensation systems (\$3,203,000; +3%) continued to report average originations much higher than their Partially Open (\$2,156,000; +12%) and Closed compensation system (\$2,278,000; +30%) counterparts, though for the first time ever Closed compensation system partners reported average originations higher than Partially Open compensation system partners. This mirrors the extremely strong gains made by Closed compensation system partners in compensation as noted above. We continue to believe the wide disparity in originations among these groups accounts for much of the disparity in these groups' respective average compensation.

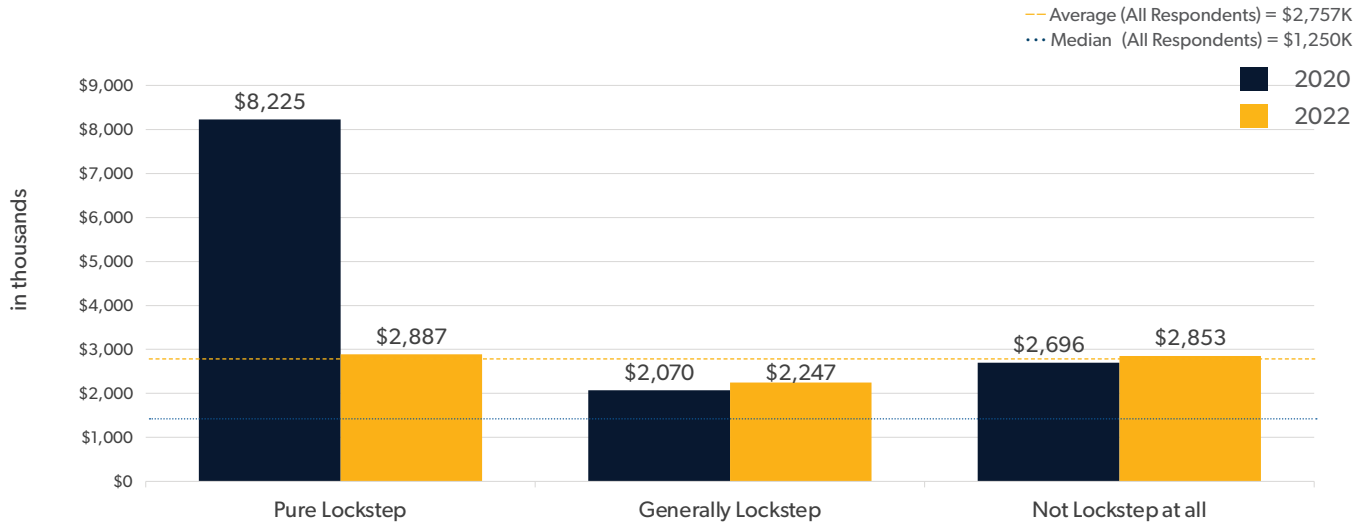
Partners at firms that are Generally Lockstep and Non-Lockstep recorded 9% and 6% increases, respectively, in originations (\$2,247,000 and \$2,853,000, respectively). The 36 partners who classified themselves as Pure Lockstep reported a 65% decrease, from \$8,225,000 to \$2,887,000, again demonstrating the effects of sampling variance for low populations.

## EXHIBIT 4.5 – AVERAGE ORIGINATIONS BY COMPENSATION TRANSPARENCY





## EXHIBIT 4.6 – AVERAGE ORIGINATIONS BY COMPENSATION SYSTEM



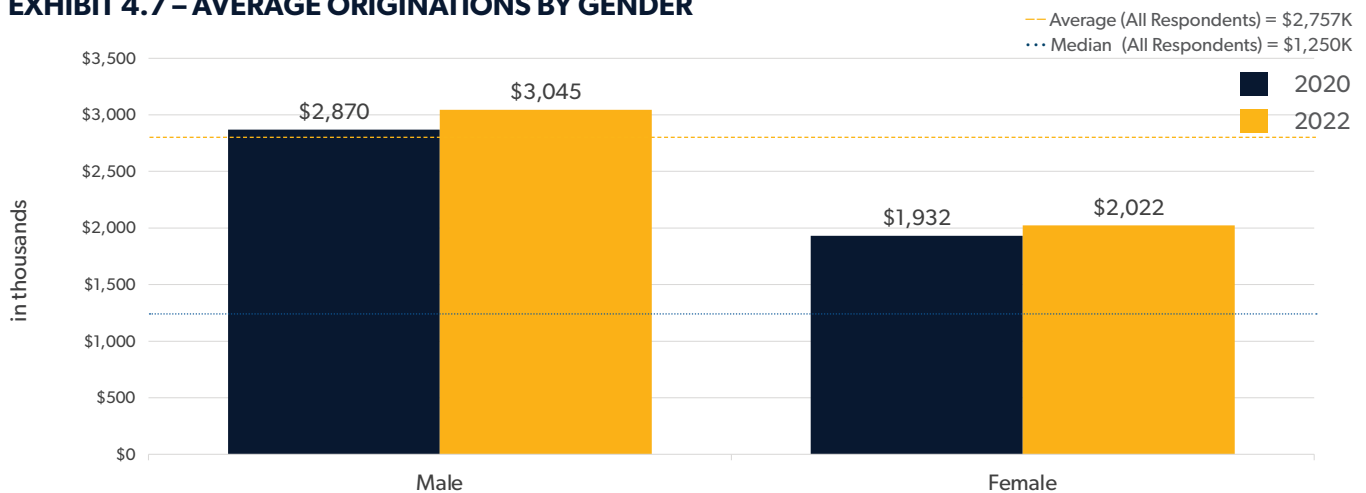
### Gender and Ethnicity

Male partners continue to significantly outpace female partners in originations. Male partners reported average originations of \$3,045,000, representing a 6% gain over 2020. Female partners reported a 5% increase, with average originations of \$2,022,000, down from the huge 19% increase they reported in 2020.

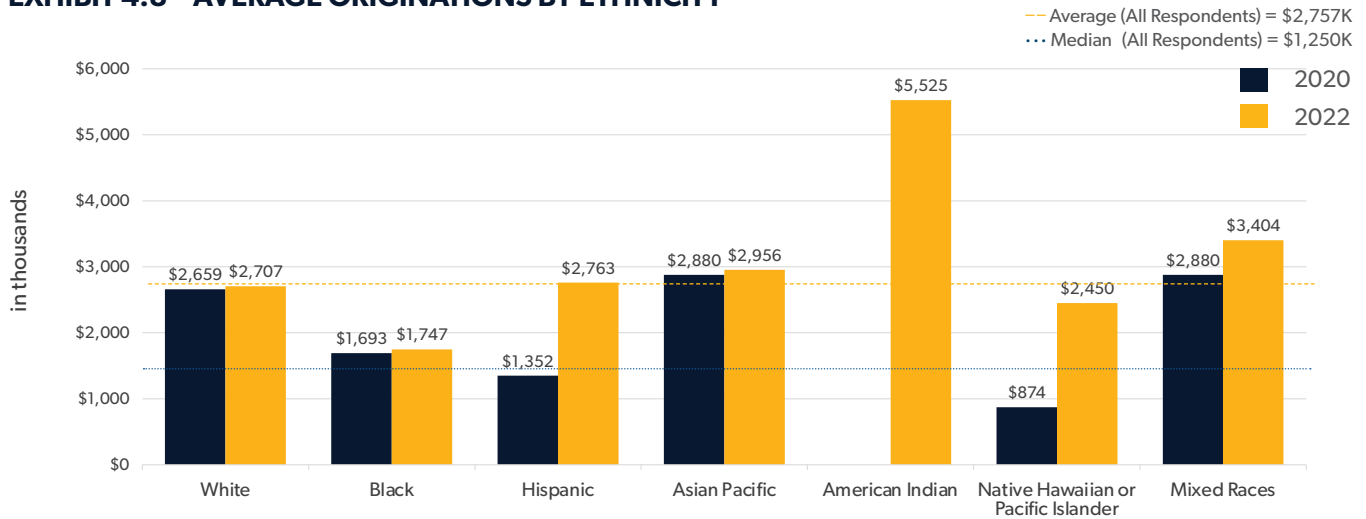
As we noted in our 2018 Report and reiterated in our 2020 Report, regression analysis suggests that 75% of variation in compensation is accounted for by originations and hourly rate. Given that male partners' average originations are approximately 50% higher than female partners', and that male partners' average hourly rate is approximately 5% higher than female partners', there is little wonder why the average compensation for male partners is 34% higher than for female partners. Thus, the question remains: why are male partners' originations and hourly rates higher?

Originations for non-White partners were \$2,763,000, the first time non-White partner average originations exceeded those of White partners. Hispanic partners reported a whopping 104% increase (\$2,763,000) while Black partners and Asian Pacific each reported a 3% increase (\$1,747,000 and \$2,956,000, respectively). White partners averaged \$2,707,000 in originations.

## EXHIBIT 4.7 – AVERAGE ORIGINATIONS BY GENDER



## EXHIBIT 4.8 – AVERAGE ORIGINATIONS BY ETHNICITY



For the complete results, please refer to [Appendix IV – Average Total Originations](#).

## WORKING ATTORNEY RECEIPTS

A total of 1,634 respondents provided their working attorney receipts (WAR) data, with reported WAR ranging from less than \$100,000 (21 respondents) to over \$5 million (54 respondents). Average WAR for all respondents was \$1,378,000, up 17% from 2020 (\$1,176,000).

All tenure groupings reported strong gains in WAR, ranging from 14% for the 6-10 years grouping (\$1,434,000) to 23% for the 1-5 years grouping (\$1,200,000).

Equity partners and Non-Equity partners posted similar percentage increases in average WAR (\$1,555,000; +17% and \$1,049,000; +15%, respectively). The disparity in total compensation continues to suggest that originations rather than billable hours/WAR continue to have a greater bearing on compensation levels.

The results among practice areas were mixed. Corporate partners reported both the biggest percentage increase in WAR (+33%) and the highest dollar amount (\$1,711,000). IP partners posted the biggest percentage decline of the enumerated practice areas (-6%; \$1,179,000), while Labor & Employment partners reported the lowest WAR by dollar amount (\$962,000; +5%).

Every city with the exception of Miami (\$1,024,000; +0%) reported an increase in WAR, ranging from +2% for Seattle (\$938,000) to +55% in Dallas (\$1,586,000).

Similarly, all compensation systems posted large gains in WAR: Open (\$1,427,000; +15%), Partially Open (\$1,403,000; +22%) and Closed (\$1,272,000; +26%).

Despite male partners earning significantly more (34%) than female partners, their WAR remains fairly close at \$1,441,000 (+19%) and \$1,217,000 (+15%), respectively, a difference of only 18%.

For the complete results, please refer to [Appendix V – Average Total Working Attorney Receipts](#).

## BILLING RATES, DISCOUNTS, BILLABLE HOURS AND NON-BILLABLE HOURS

A total of 1,714 respondents provided their hourly billing rate data. Hourly billing rates ranged from less than \$50 (1 respondent) to greater than \$2,400 (1 respondent), though the majority (42%) had a standard rate between \$550 and \$999, while 30% bill over \$1,000. The average billing rate for all respondents was \$819, up \$42 (+5%) from 2020.

The gap in billing rates between Equity and Non-Equity partners is much smaller than their compensation gap (\$876 vs. \$712, or a 23% difference in billing rates (down from 31% in 2020) vs. a 320% difference in compensation). Average billing rates for Non-Equity partners rose 10% over 2020 compared to only a 3% increase for Equity partners. Thus, while billing rates for Non-Equity partners climb toward parity with Equity partners, the compensation gap remains virtually unchanged.

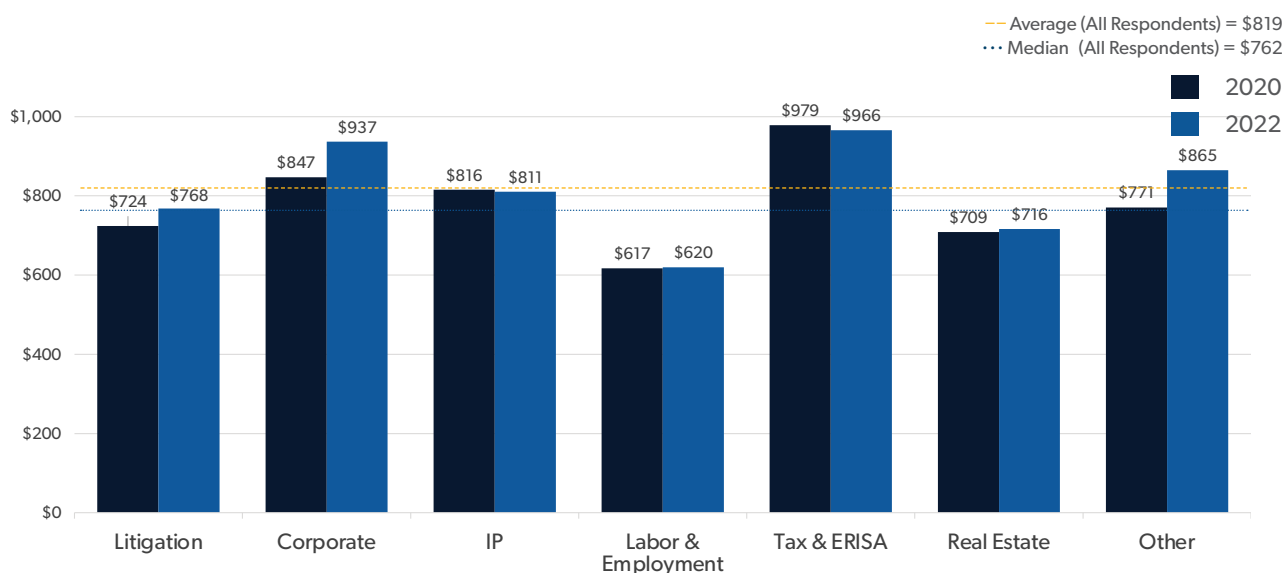
Forty-six percent (46%) of partners do not provide a standard discount off their hourly billing rate, up from 37% in 2020. Of those who do, the majority give a discount of 15% or less. Only 11% of all partners provide a discount above this figure.

Reported billable hours ranged from 1,000 hours or less (104 respondents) to 3,000 hours or more (18 respondents). Reported non-billable hours ranged from 50 hours or below (60 respondents) to 1,000 hours or more (192 respondents).

The average billed time for all partners was 1,721 hours, an increase of approximately 2% from the 2020, 2018 and 2016 averages (1,680, 1683 and 1,686 hours respectively). Notably, non-billed time averaged 481 hours, dropping 20% from 2020 (572).

These figures represent the highest average number of billable hours and the lowest average number of non-billable hours ever recorded since the inception of the Survey in 2010. Interestingly, as noted above, while respondents believed the pandemic caused a 22% reduction in their work, the average total number of billable/non-billable hours (2,202) reported this year is only about 2% lower than the average total number of billable/non-billable hours recorded in our 2018 and 2020 Surveys (both 2,252).

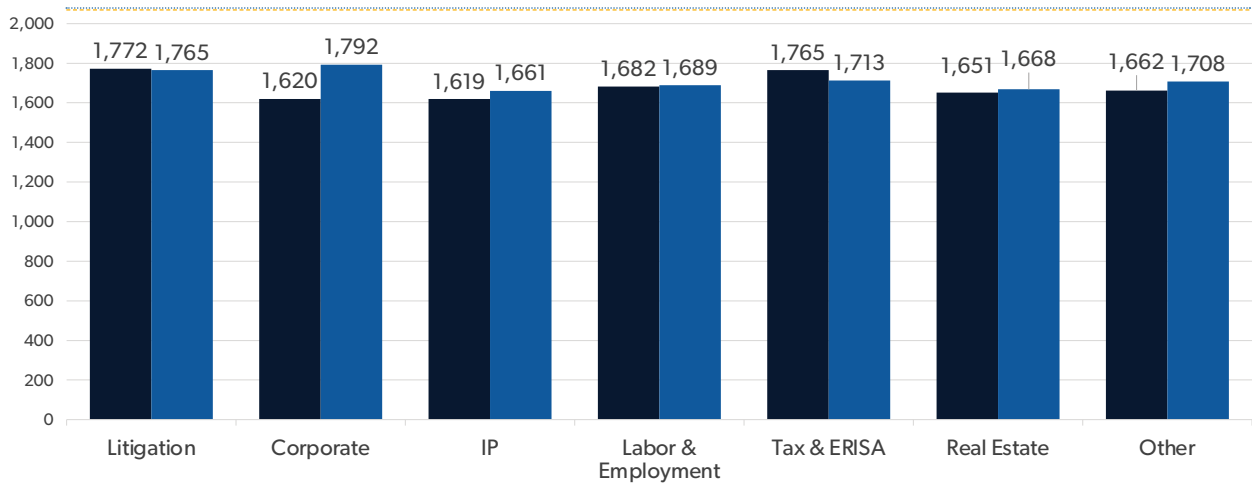
### EXHIBIT 5.1 AVERAGE BILLING RATE BY PRACTICE AREA



### EXHIBIT 5.2 AVERAGE BILLABLE HOURS BY PRACTICE AREA

— Average (All Respondents) = 1,721  
 ... Median (All Respondents) = 1,724

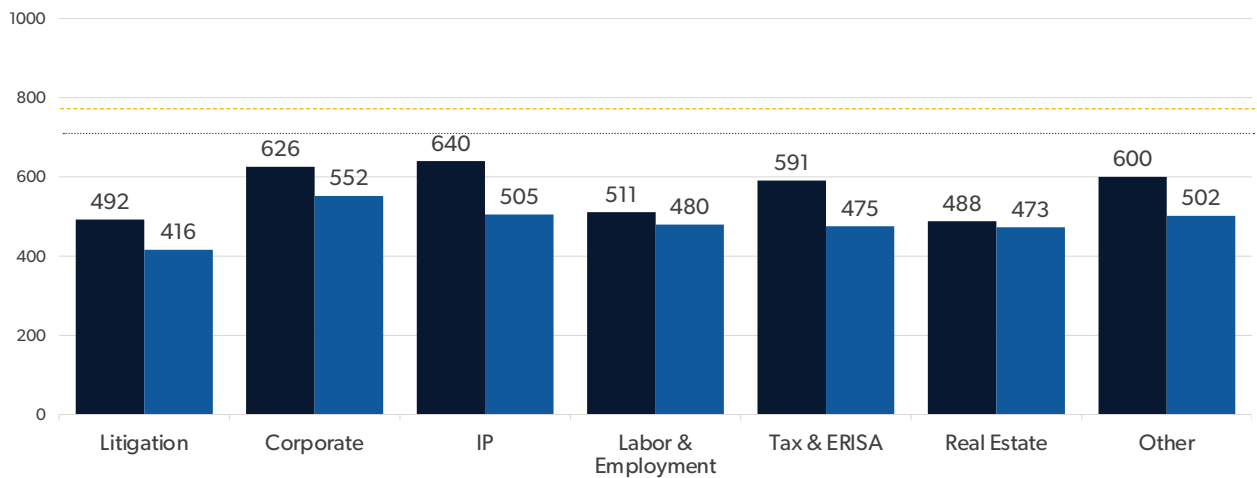
■ 2020  
 ■ 2022



### EXHIBIT 5.3 AVERAGE NON-BILLABLE HOURS BY PRACTICE AREA

— Average (All Respondents) = 481  
 ... Median (All Respondents) = 424

■ 2020  
 ■ 2022



*Below are highlights of selected billing rates, billable hours and non-billable hours data.*

## **BILLING RATES**

- › In contrast to 2020, when all practices reported an increase in billing rates, the 2022 results were varied.
- › Corporate, Litigation and Real Estate partners reported increases in billing rates (+11%, +6% and +1%, respectively), while Tax & ERISA and IP partners reported decreases (both -1%). Labor & Employment partners' billing rates were essentially unchanged.
- › Once again, Tax & ERISA partners reported the highest average billing rate (\$966) and Labor & Employment partners reported the lowest billing rate of all practice groups (\$620).
- › Every city reported an increase in billing rates, with the biggest percentage increases in Palo Alto/Silicon Valley (+17%; \$1,159), Washington, D.C./Northern Virginia (+13%; \$1,048), Philadelphia (+13%; \$761), San Francisco (+12%; \$955) and Miami (+13%; \$787). Palo Alto/Silicon Valley had the highest rates (\$1,159), followed by New York (\$1,109), with Washington, D.C./Northern Virginia coming in third highest (\$1,048). Minneapolis, Atlanta and Seattle reported the lowest average rates at \$628, \$650 and \$687, respectively.
- › Female partners' average hourly billing rate increased by 10%, rising \$70 to \$790. Male partners' average hourly billing rate increased by a smaller percentage (+5%) to \$828, essentially halving the gap in billing rates from 10% in 2020 to 5% in 2022.

## **Billable Hours**

- › Billable hours for Non-Equity partners actually exceeded those of Equity partners (1,737; +4% vs. 1,713; +2%).
- › Corporate partners showed a much bigger percentage increase in billable hours (+11%; 1,792) than any other practice area, while Tax & ERISA partners reported a decline (-3%; 1,713) and Litigation and Labor & Employment partners were essentially flat (0%; 1,765 and 1,689, respectively). For the first time, Corporate partners dethroned Litigation partners for the most billable hours of all practice areas (1,792 vs. 1,765).
- › Changes in billable hours by city were highly variable. Minneapolis reported the biggest increase (+13%; 1,809), followed by Atlanta (+12%; 1,805), Seattle (+10%; 1,707) and Silicon Valley (+10%; 1,843). Miami reported the largest decrease (-9%; 1,615), followed by Philadelphia (-4%; 1,713) and Los Angeles (-2%; 1,684).
- › Billable hours ranged from a high of 1,843 in Silicon Valley to a low of 1,615 in Miami.
- › Male and female partners reported billable hours of 1,748 (+3%) and 1,663 (+2%).
- › Once again, partners in Closed compensation systems reported a higher number of billable hours (1,753; +2%) than partners in Partially Open (1,745; +5%) and Open (1,697; +2%) systems.

## Non-Billable Hours

- › Non-billable hours dropped dramatically from 2020 to 2022, from 572 to 481 (-16%).
- › Equity partners continue to report a higher number of non-billable hours than Non-Equity partners (518 vs. 412). Non-billable hours reported by Equity partners fell 14%, compared to a 21% decrease reported by Non-Equity partners.
- › Non-billable hours among partnership tenure groupings all declined, with partners in the 20+ years grouping showing the biggest decrease (-20%; 501).
- › Changes in non-billable hours by city also varied widely but all showed declines, ranging from -40% in Seattle (372) to -9% in Chicago (488) and Philadelphia (427).
- › Open compensation system partners again significantly outpaced Closed compensation system partners in non-billable hours, reporting 505 non-billable hours (-17%) vs. 442 (-13%).
- › Female partners again reported more non-billable hours than male partners, though the gap narrowed somewhat (491; -18% vs. 474; -16%).

For the complete results, please refer to [Appendix VI – Average Billing Rates](#), [Appendix VII – Average Billable Hours](#), and [Appendix VIII – Average Non-Billable Hours](#).



# Compensation Satisfaction

Question 14 of the Survey dealt with compensation satisfaction and was sorted by the following categories:

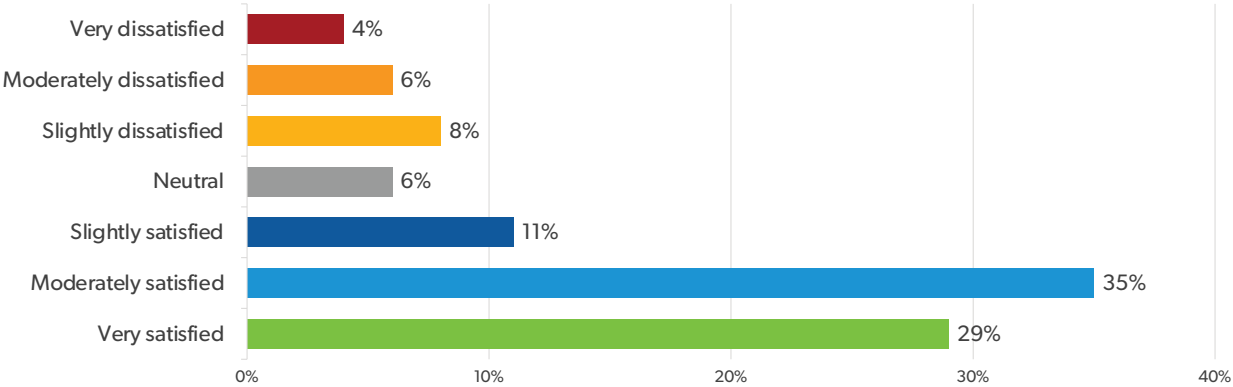
- › Partnership Tenure
- › Partnership Status
- › Practice Area
- › City
- › Lateral Status
- › Compensation Transparency
- › Lockstep Type
- › Total Compensation
- › Total Originations
- › Total Billable Hours
- › Gender
- › Ethnicity

## SATISFACTION RATINGS

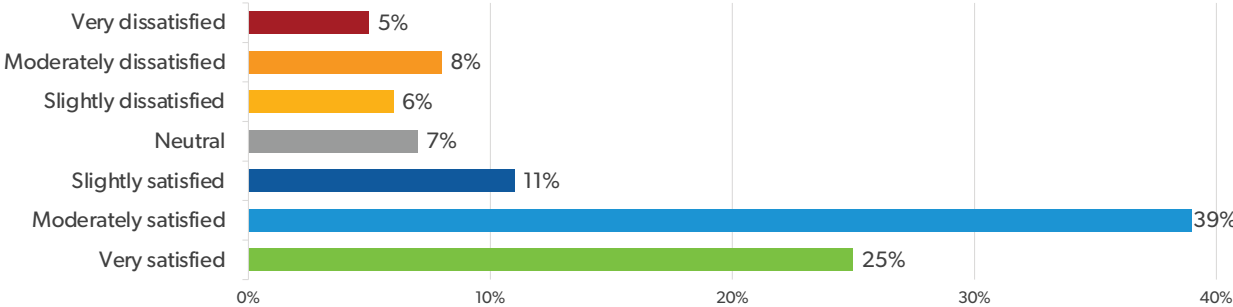
A total of 1,753 respondents answered this question. 29% classified themselves as Very Satisfied with their current compensation, 35% classified themselves as Moderately Satisfied and 11% as Slightly Satisfied.

Conversely, 8% classified themselves as Slightly Dissatisfied, 6% as Moderately Dissatisfied and 4% as Very Dissatisfied. 6% felt Neutral. These numbers generally track 2020 results across every measure.

**EXHIBIT 6.1A – OVERALL SATISFACTION WITH TOTAL COMPENSATION (2022)**



**EXHIBIT 6.1B – OVERALL SATISFACTION WITH TOTAL COMPENSATION (2020)**

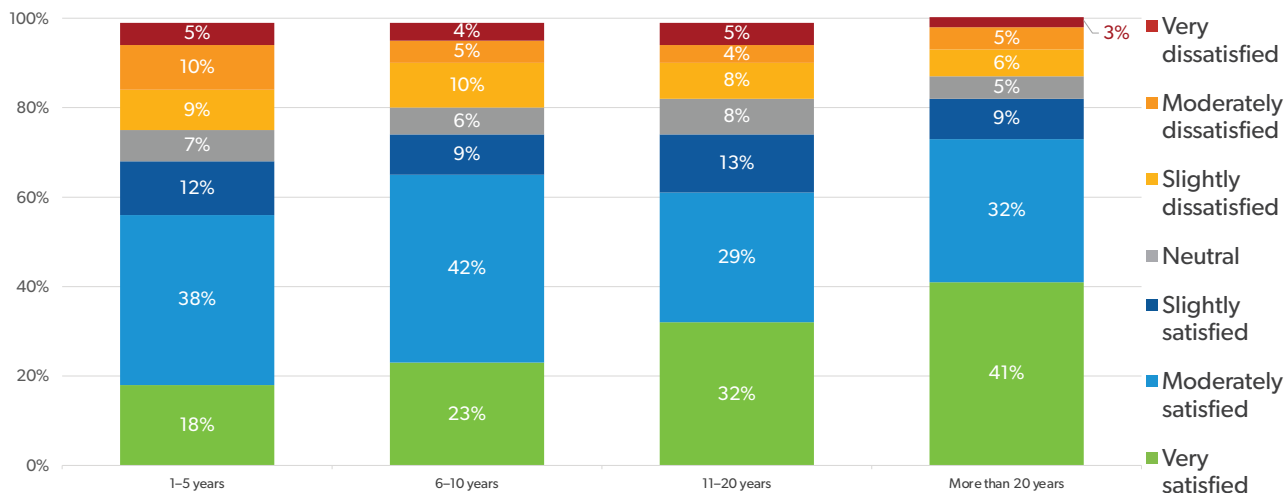


## PARTNERSHIP TENURE AND PARTNERSHIP STATUS

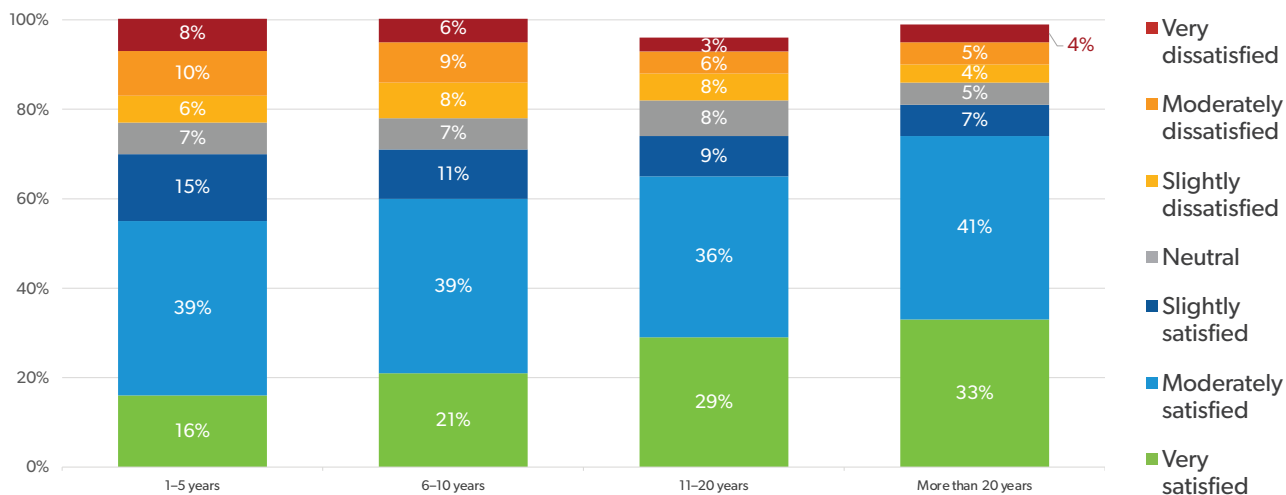
Once again, the two most senior groupings of partners were more likely to classify themselves as Very Satisfied with their compensation (32% and 41% for categories 11-20 years and 20+ years, respectively, vs. 18% and 23% for categories 1-5 years and 6-10 years, respectively). The gap between Equity partners' and Non-Equity partners' compensation satisfaction remains wide and is growing, with 40% of Equity partners Very Satisfied compared to 10% of Non-Equity partners, up from 32% and 12%, respectively, in 2020.

Conversely, Non-Equity partners were more than twice as likely to classify themselves as Very Dissatisfied (7% vs. 3% down from 10% vs. 3% in 2020).

### EXHIBIT 6.2A – SATISFACTION BY PARTNERSHIP TENURE (2022)

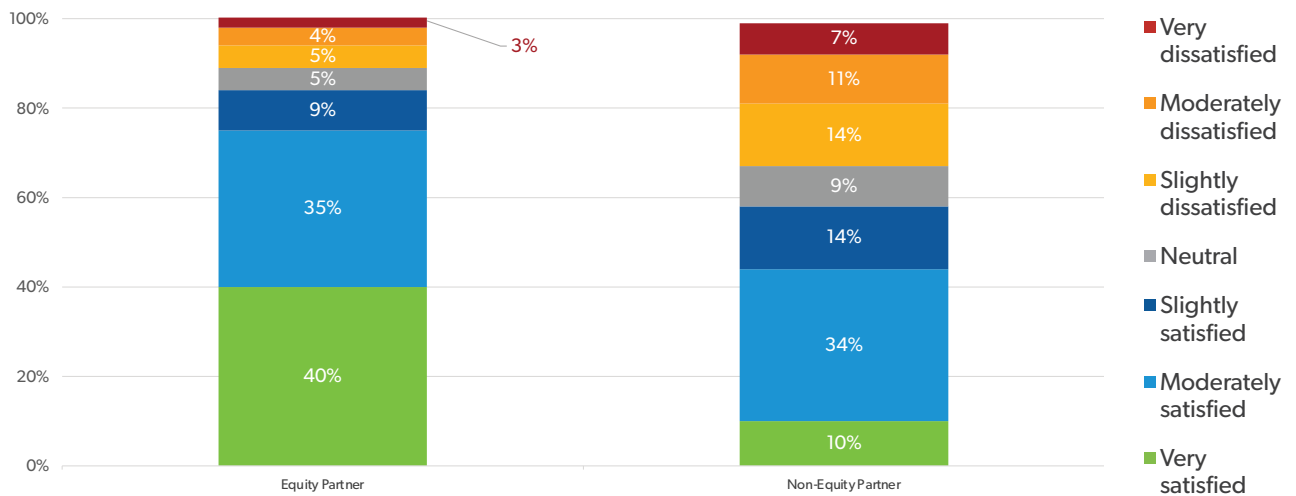


### EXHIBIT 6.2B – SATISFACTION BY PARTNERSHIP TENURE (2020)

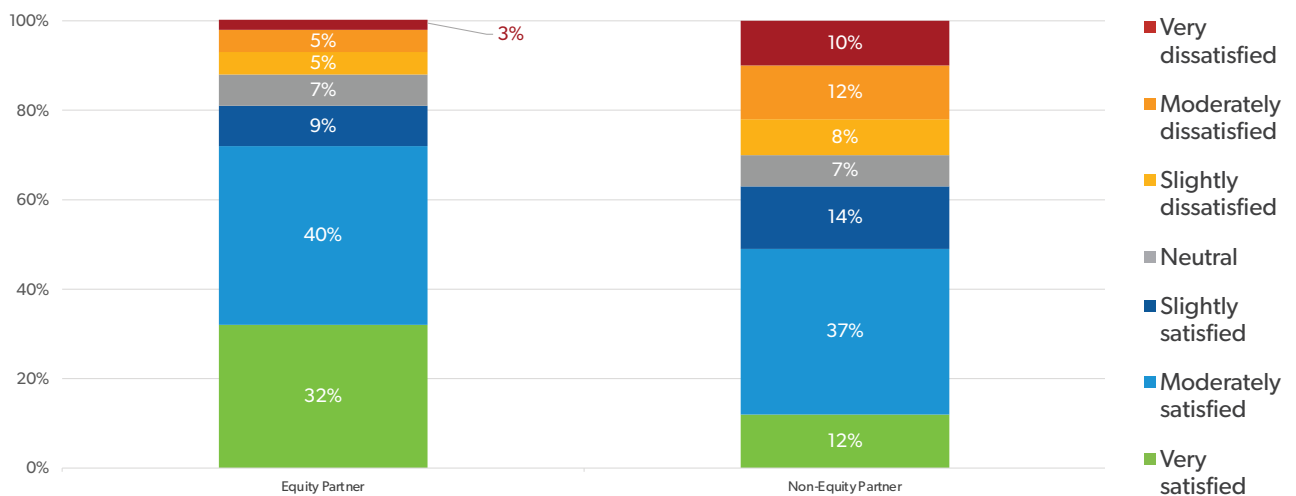




### EXHIBIT 6.3A – SATISFACTION BY PARTNERSHIP STATUS (2022)



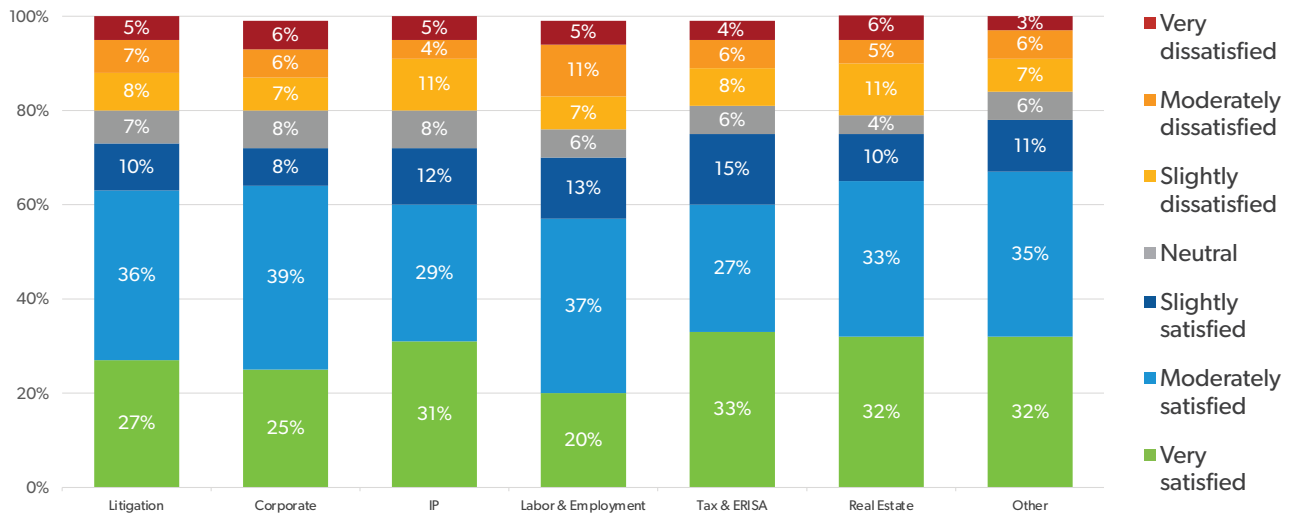
### EXHIBIT 6.3B – SATISFACTION BY PARTNERSHIP STATUS (2020)



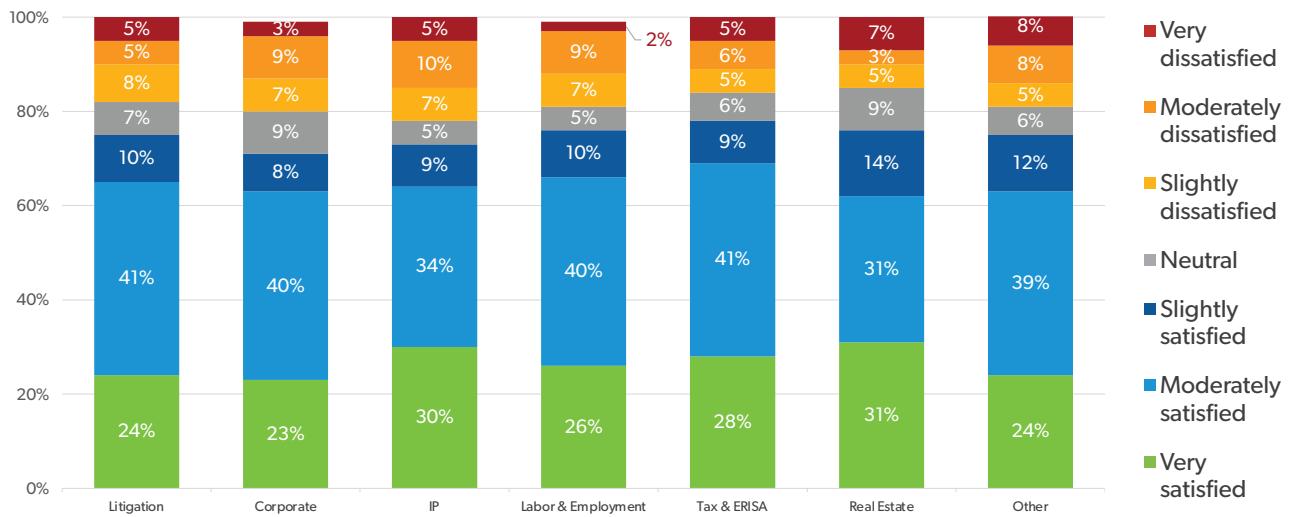
### PRACTICE AREA

Analyzing the data by Practice Area, Tax & ERISA partners were most likely to classify themselves as Very Satisfied with their compensation (33%), up from 28% in 2020, followed by Real Estate partners at 32%, up slightly from 31% in 2020. Labor & Employment partners were the only practice group to post a decline, with 20% classifying themselves as Very Satisfied compared to 26% in 2020. Interestingly, despite higher levels of Very Satisfied partners in virtually every practice area compared to the 2020 results, every practice area other than Corporate (72%; +0%) posted a decline in Satisfied partners overall.

### EXHIBIT 6.4A – SATISFACTION BY PRACTICE AREA (2022)



### EXHIBIT 6.4B – SATISFACTION BY PRACTICE AREA (2020)

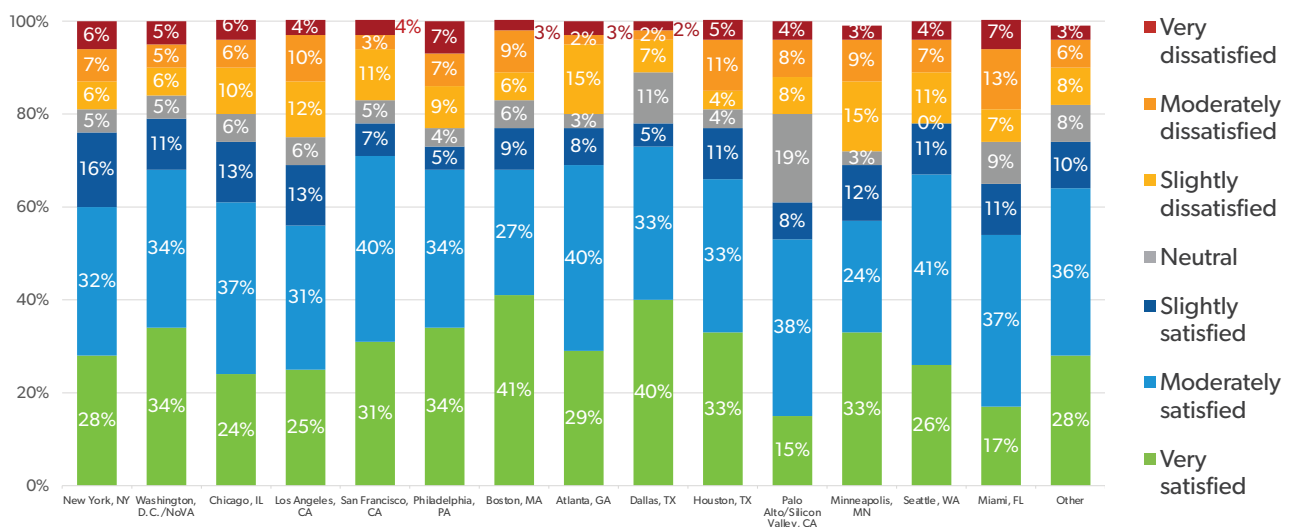


## CITY

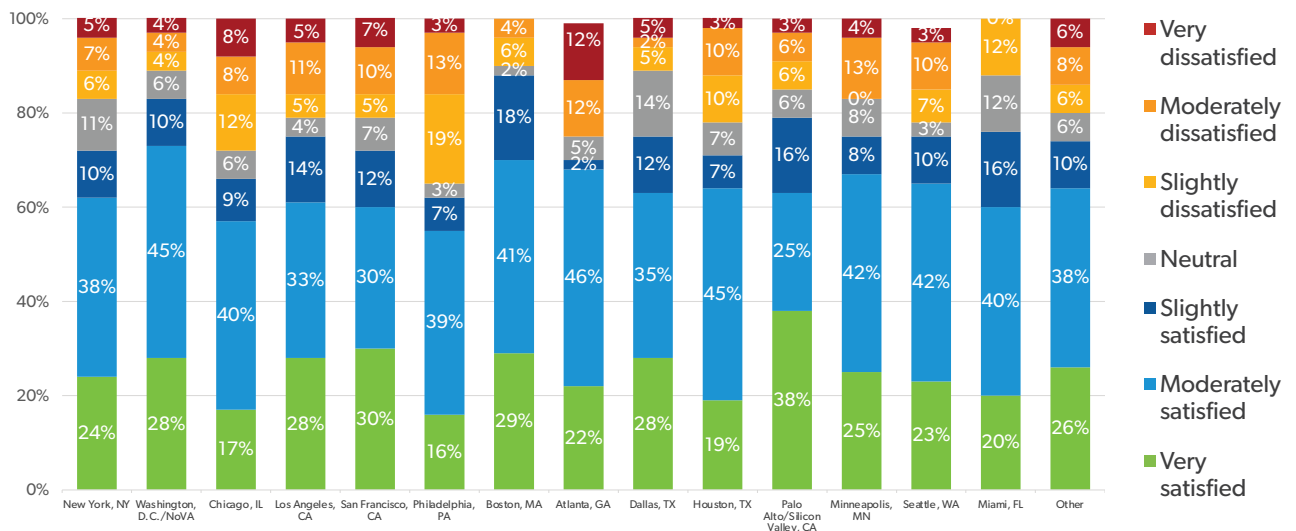
Boston had the highest number of partners classifying themselves as Very Satisfied with their compensation (42%; +12%), followed by Dallas (40%; +12%). At the other end of the spectrum, only 15% of Palo Alto/Silicon Valley-based partners reported that they are Very Satisfied, down 23% from 2020. Washington, D.C./Northern Virginia, San Francisco, Dallas and Seattle had the highest percentage of partners selecting one of the Satisfied choices (79%, 78%, 78% and 78% respectively). However, despite most cities reporting a higher level of Very Satisfied partners, several cities reported markedly lower percentages of partners selecting one of the Satisfied categories: Palo Alto/Silicon Valley (-18%), Miami (-11%) and Boston (-11%).

Minneapolis and Miami had the highest percentage of partners falling into one of the Dissatisfied categories (both 27%), followed by Los Angeles (26%) and Philadelphia (23%). Dallas had by far the lowest percentage (11%), with Washington, D.C./Northern Virginia next lowest (16%).

### EXHIBIT 6.5A – SATISFACTION BY CITY (2022)



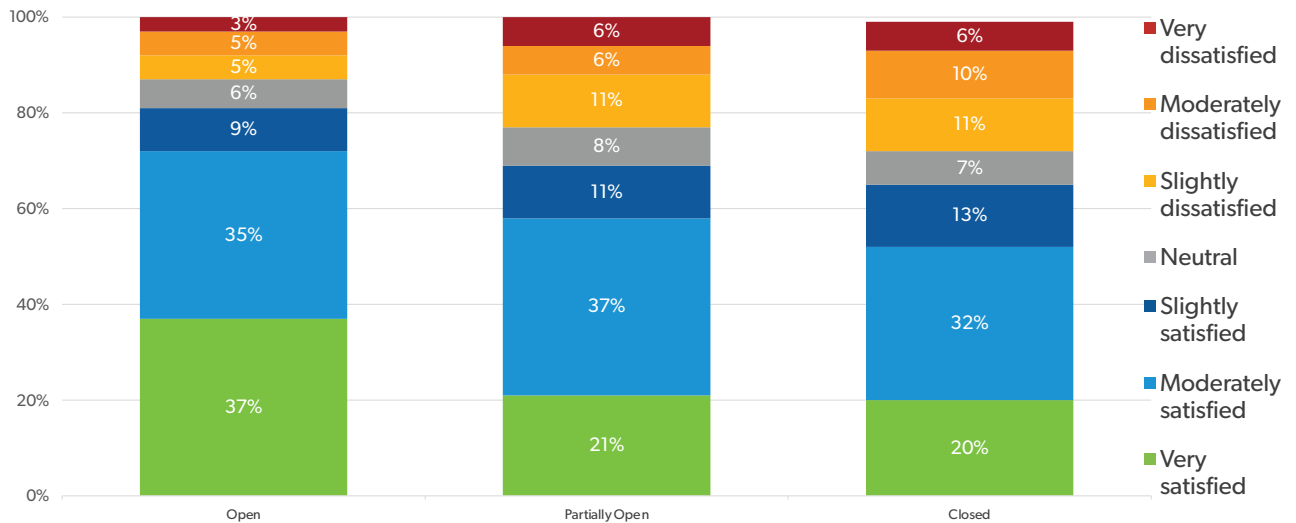
### EXHIBIT 6.5B – SATISFACTION BY CITY (2020)



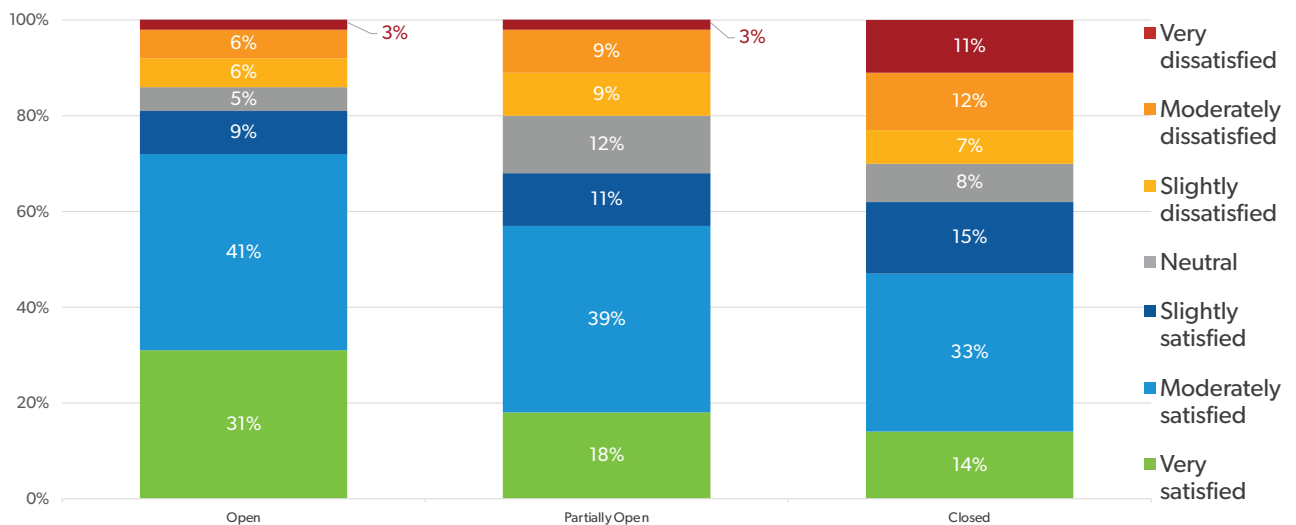
## COMPENSATION TRANSPARENCY AND LATERAL STATUS

Once again, partners in Open compensation systems were far more likely to classify themselves as Very Satisfied with their compensation (37%) than those in Partially Open (21%) or Closed (20%) compensation systems. Similarly, partners who joined their firms laterally from law firms or industry were slightly more likely to classify themselves in one of the Satisfied categories (76% and 77%, respectively) than homegrown partners (72%).

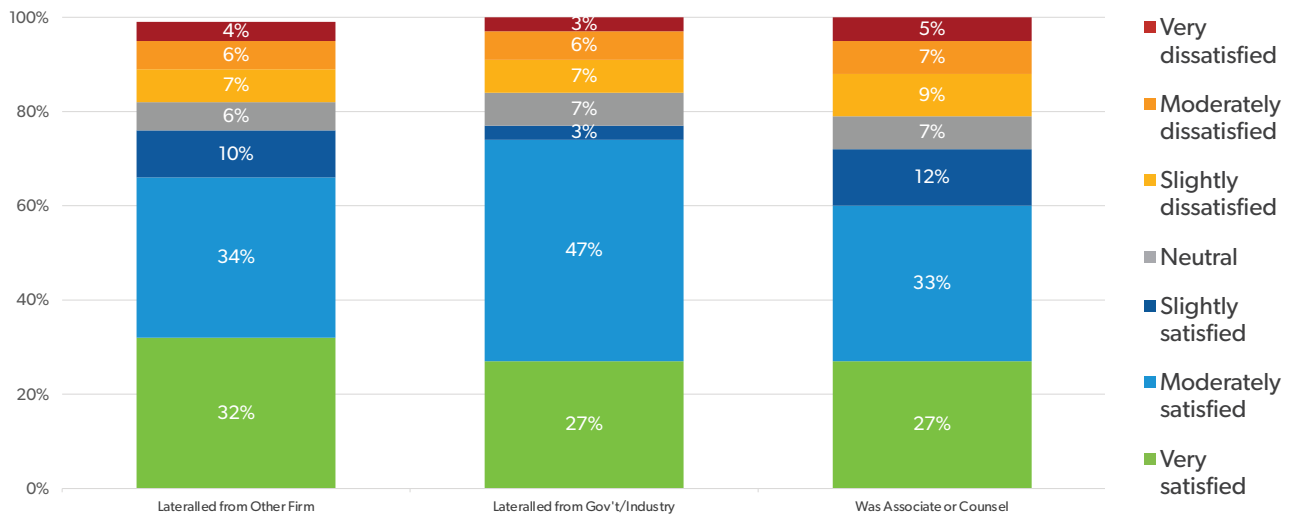
**EXHIBIT 6.6A – SATISFACTION BY COMPENSATION TRANSPARENCY (2022)**



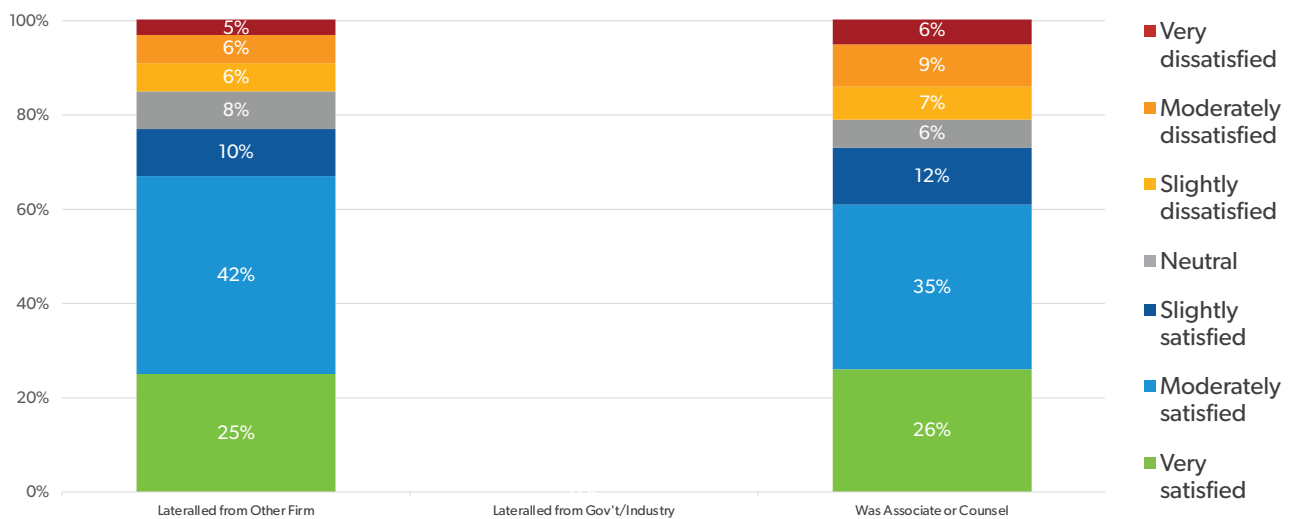
**EXHIBIT 6.6B – SATISFACTION BY COMPENSATION TRANSPARENCY (2020)**



### EXHIBIT 6.7A – SATISFACTION BY LATERAL STATUS (2022)



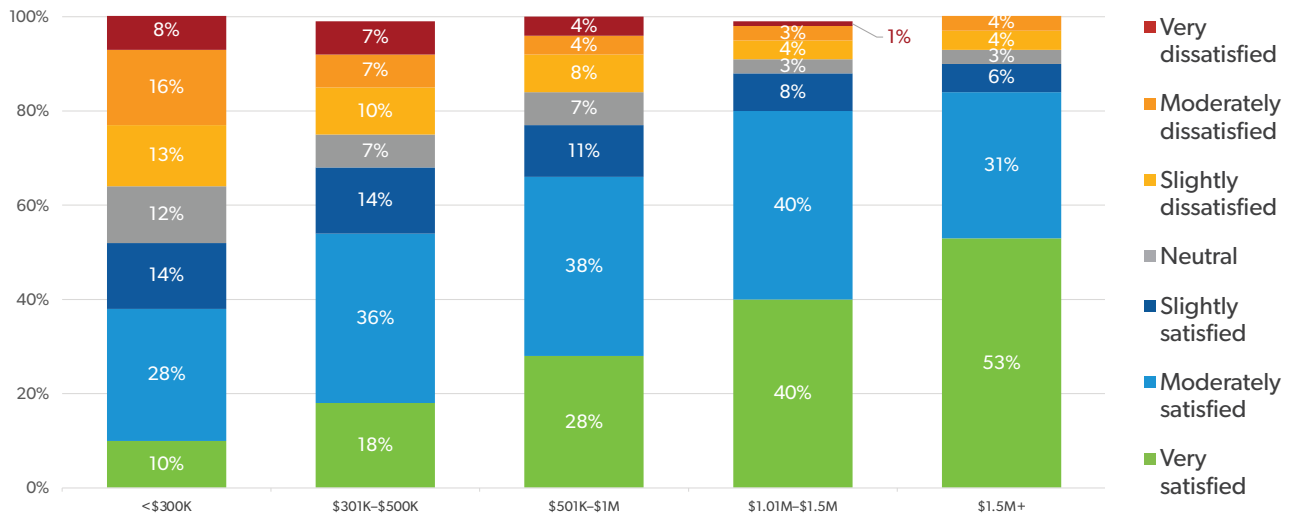
### EXHIBIT 6.7B – SATISFACTION BY LATERAL STATUS (2020)



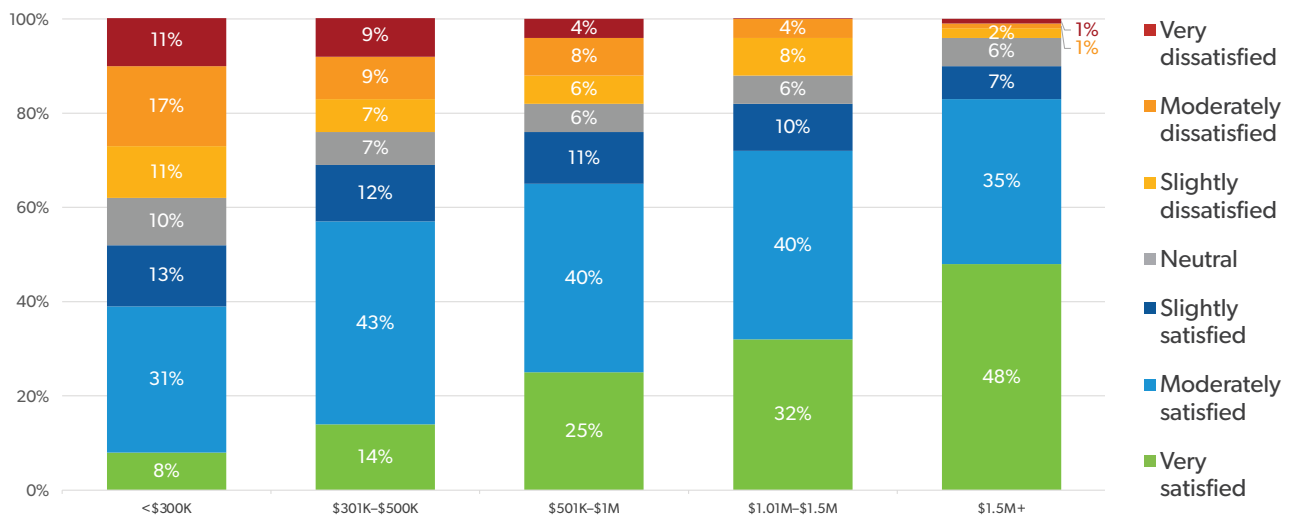
### TOTAL COMPENSATION, TOTAL ORIGINATIONS AND BILLABLE HOURS

Not surprisingly, compensation satisfaction climbs in relation to total compensation and total originations. Once again, those recording the most billable hours (2,401+ hours) are also most likely to be Very Satisfied with their compensation (32%), although unlike in 2020 the difference between the groups is very small.

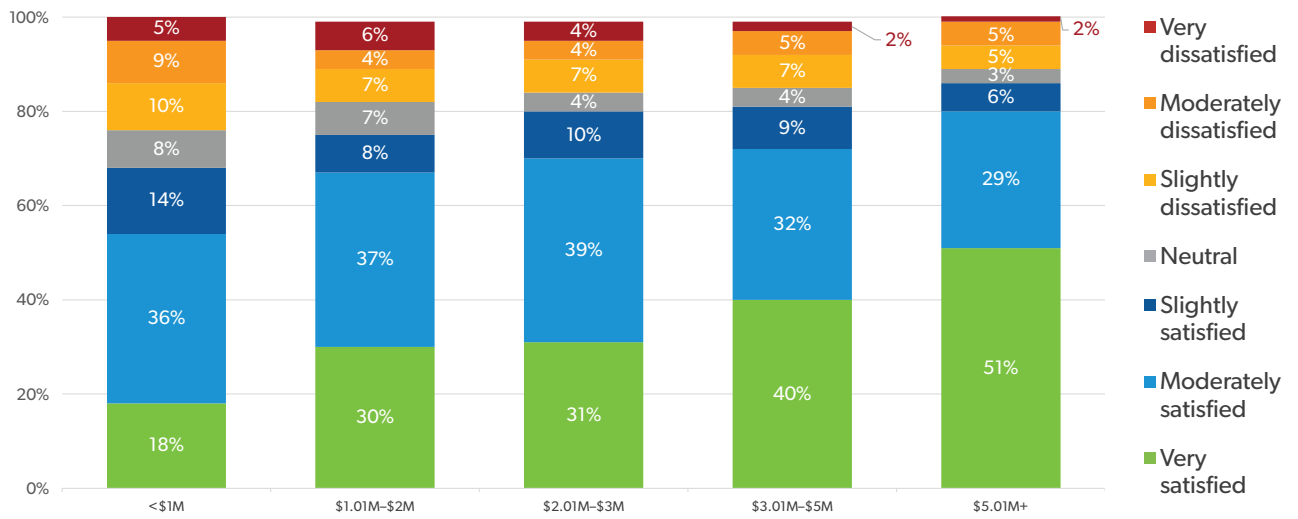
### EXHIBIT 6.8A – SATISFACTION BY TOTAL COMPENSATION (2022)



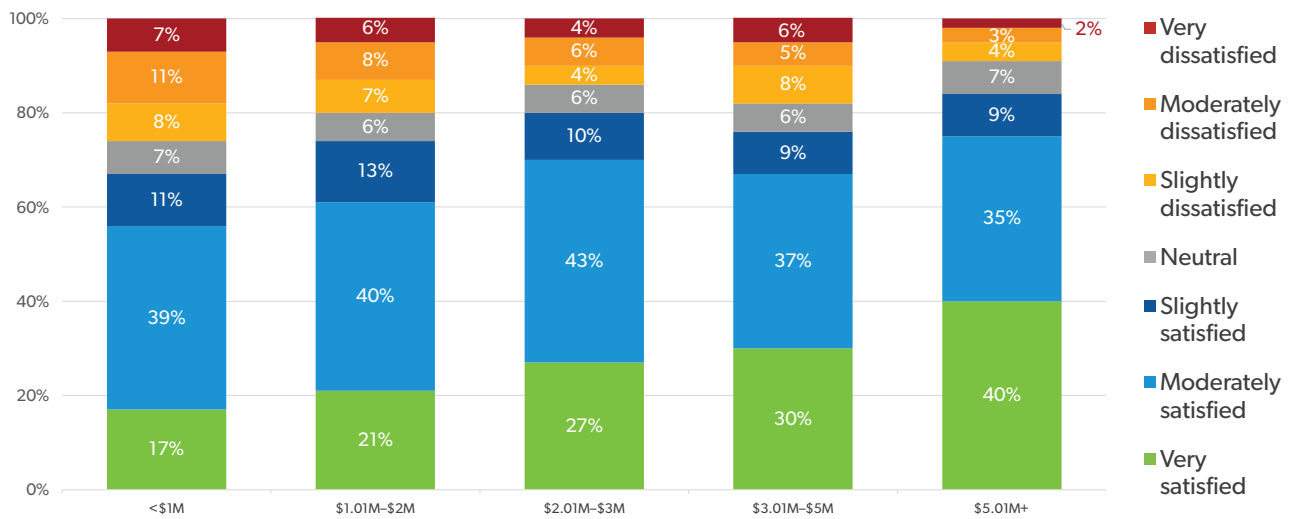
### EXHIBIT 6.8B - SATISFACTION BY TOTAL COMPENSATION (2020)



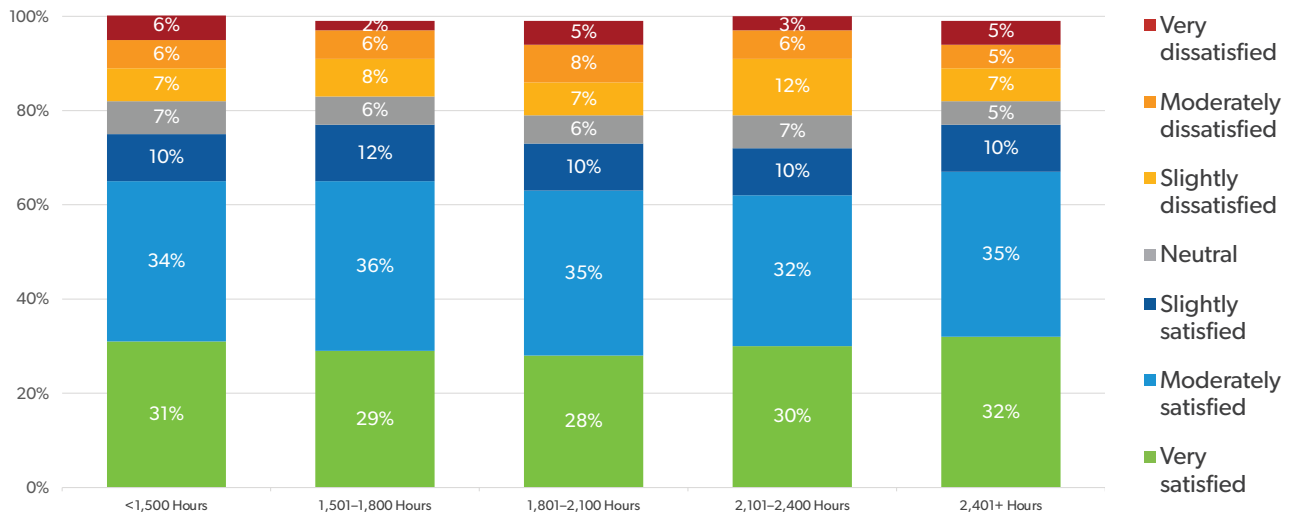
### EXHIBIT 6.9A – SATISFACTION BY TOTAL ORIGINATIONS (2022)



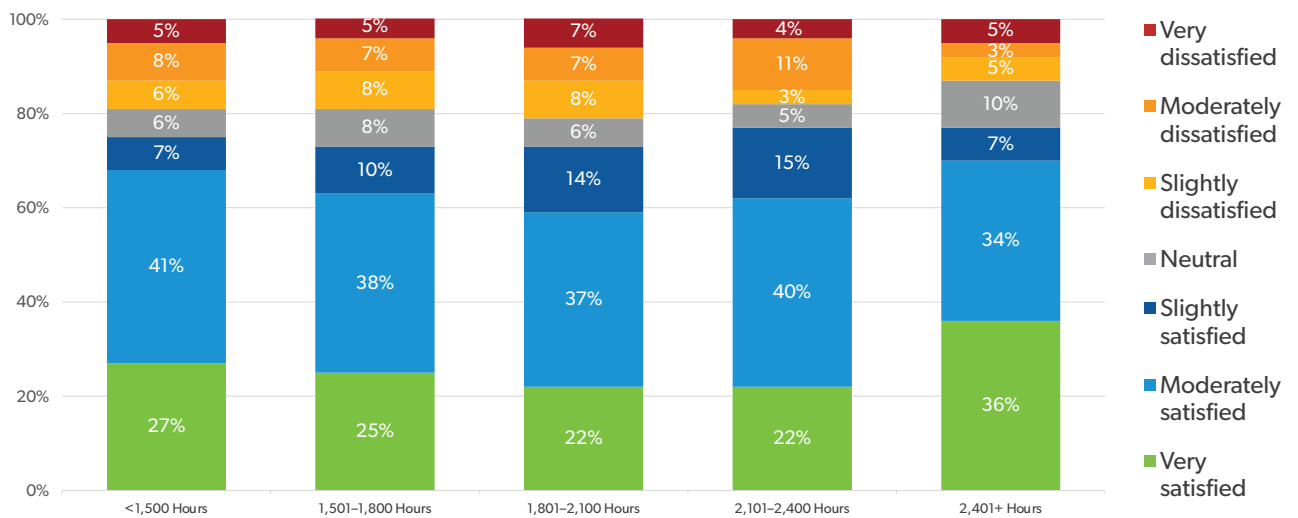
### EXHIBIT 6.9B – SATISFACTION BY TOTAL ORIGINATIONS (2020)



### EXHIBIT 6.10A – SATISFACTION BY BILLABLE HOURS (2022)



### EXHIBIT 6.10B – SATISFACTION BY BILLABLE HOURS (2020)

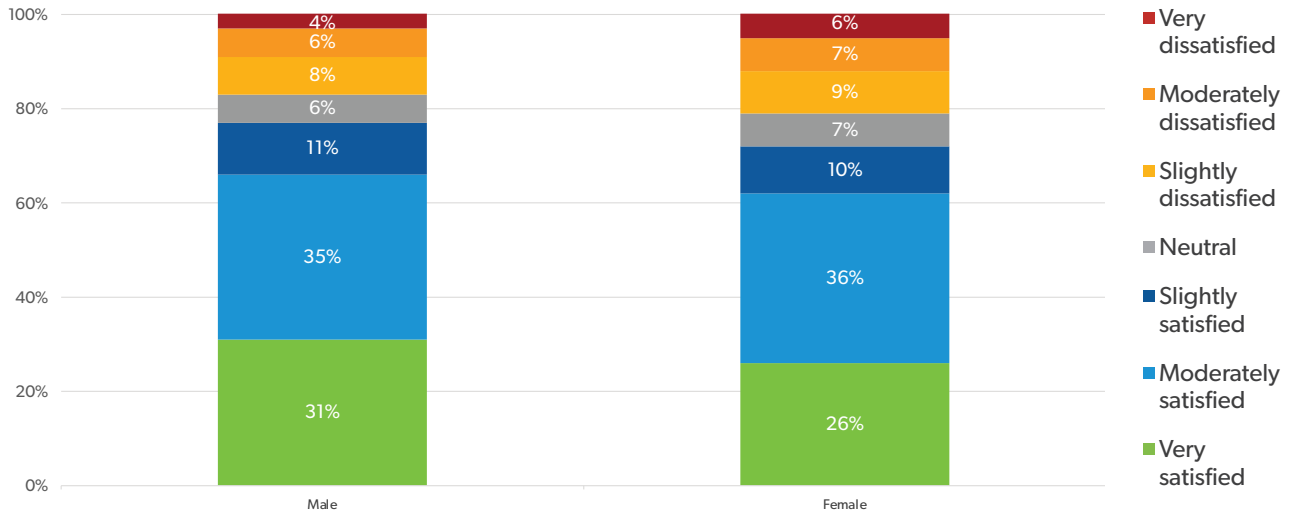




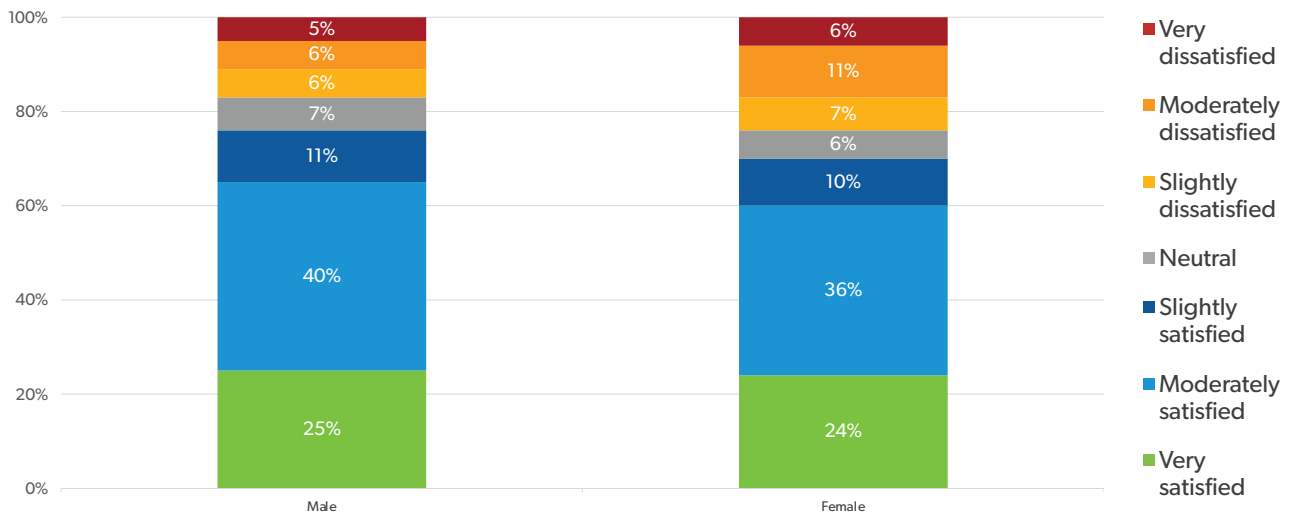
## GENDER AND ETHNICITY

Thirty-one percent (31%) of male partners reported they were Very Satisfied with their compensation, compared to 26% of female partners, up 6% and 2%, respectively. At the opposite end, a higher percentage of female partners placed themselves in one of the Dissatisfied categories (22%), which represents a 2% decrease from 2020. The male percentage rose 1% to 18%.

### EXHIBIT 6.11A – SATISFACTION BY GENDER (2022)

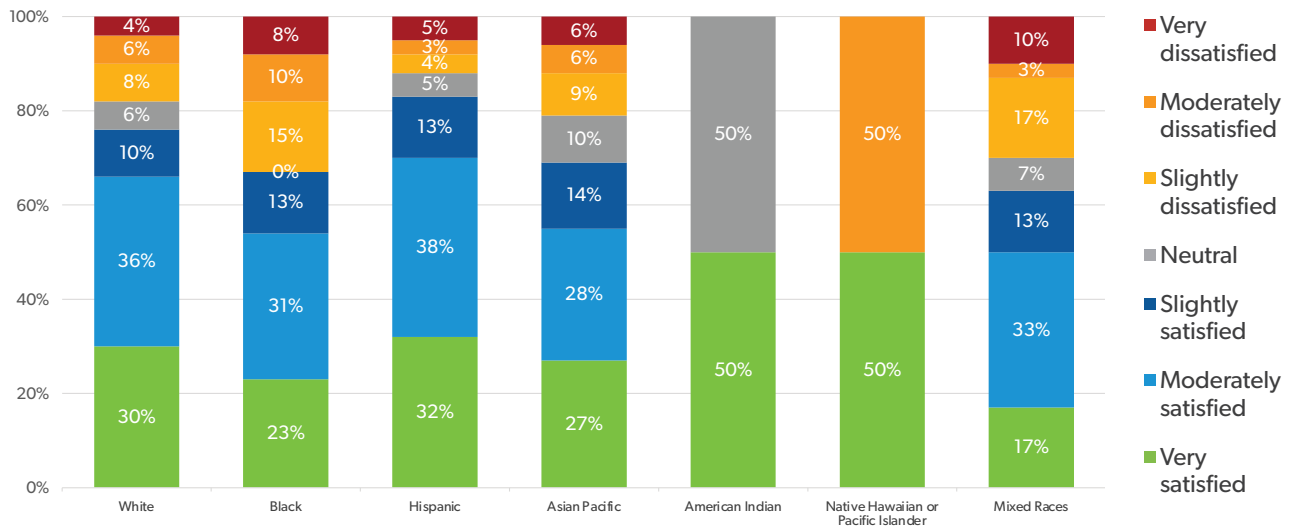


### EXHIBIT 6.11B – SATISFACTION BY GENDER (2020)

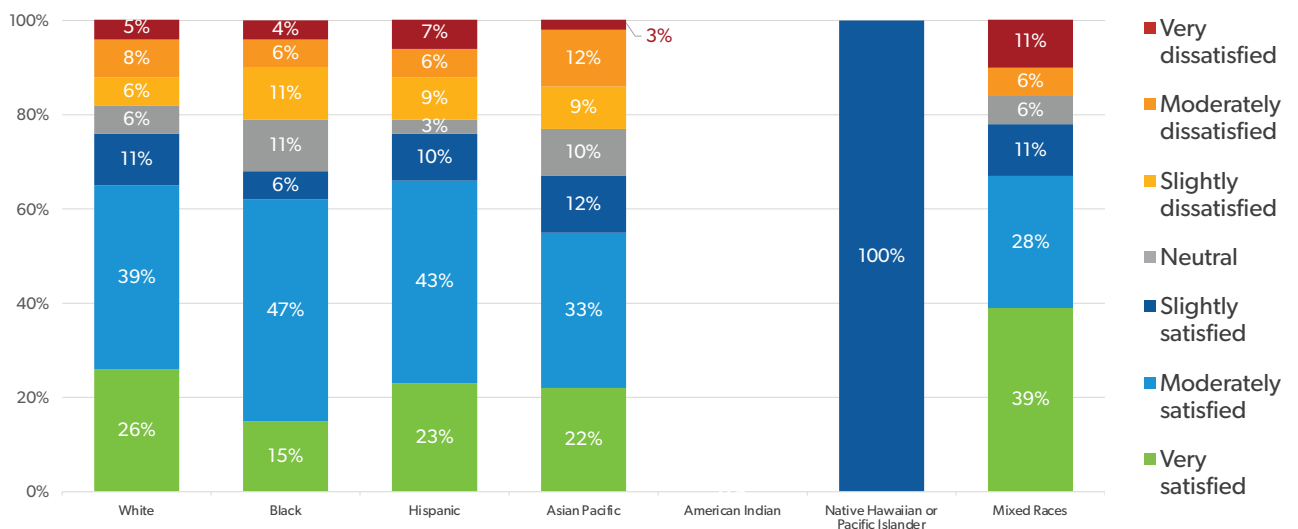


All ethnic groups (other than those classifying themselves as Mixed Races) reported strong gains in describing themselves as Very Satisfied with their compensation. Hispanic partners were most likely to classify themselves in one of the Satisfied categories, an increase from 2020 of 7% from 76% to 83%. Partners classifying themselves as Mixed Races and Black partners were the only groups to show a decrease in numbers classifying themselves in one of the Satisfied categories, decreasing from 78% and 68%, respectively, in 2020 to 63% and 67%, respectively, in 2022. These same partners also showed the greatest increase in classifying themselves in one of the Dissatisfied categories, rising from 17% and 21%, respectively, in 2020 to 30% and 33%, respectively, in 2022.

**EXHIBIT 6.12A – SATISFACTION BY ETHNICITY (2022)**



**EXHIBIT 6.12B – SATISFACTION BY ETHNICITY (2020)**



*For the complete results, please refer to Appendix IX - Satisfaction with Total Compensation.*

# Notes

## ABOUT THE AUTHOR

Jeffrey A. Lowe is the Global Practice Leader of Major, Lindsey & Africa's Law Firm Practice Group and the Managing Partner of MLA's Washington, D.C., office. He handles the most significant placements in Washington, D.C. and is widely regarded as one of the leading partner recruiters and advisors in the United States. He is regularly named to Lawdragon's "100 Leading Legal Consultants and Strategists."

Jeffrey is the creator and author of the Major, Lindsey & Africa Partner Compensation Surveys, the most comprehensive efforts ever undertaken to identify ranges of partner compensation and the criteria law firms use in determining partner compensation, and the co-author of the 2014 Major, Lindsey & Africa Lateral Partner Satisfaction Survey. He is regularly quoted by leading publications and periodicals, such as The American Lawyer, The Wall Street Journal and Law360.

Prior to opening the Washington, D.C. office of Major, Lindsey & Africa in 2003, Jeffrey was a partner in the Washington, D.C., office of Hogan & Hartson L.L.P. (now Hogan Lovells). He joined Hogan & Hartson in 1991 and was elected to the partnership in 1998. From 1994 to 1995, Jeffrey worked in Tokyo, Japan, with Mori Sogo Law Offices (now Mori Hamada & Matsumoto), one of Japan's leading international and domestic law firms.

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# Appendices

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**Note:** In many instances, this Report compares the results of the 2022 Survey with those of the 2020 Survey. However, it is important to note that due to the pandemic the 2020 Survey was targeted to a narrower range of partners (i.e., only partners at AmLaw 200-size firms and not also those at NLJ 350- and Global 100-size firms). For 2022, we have returned to the broader range of partners. Consequently, we have normalized the 2020 data for the sections of this Report covering Questions 8, 10-12 and 23-24 of the Survey (total compensation, total originations, total working attorney receipts, standard hourly billing rate and discount, total billable hours and total non-billable hours), to adjust for the narrower range of partners surveyed in 2020 in order to make these comparisons more meaningful. However, the Appendices to this Report include both the actual and the normalized data for 2020. This normalized data is reflected in the included charts as “2020 Adj.”

## I – Respondent Profile

### RESPONDENTS BY PARTNERSHIP TENURE

	2020		2022	
	FREQUENCY	PERCENTAGE	FREQUENCY	PERCENTAGE
1 - 5 years	327	26%	478	27%
6 - 10 years	239	19%	328	19%
11 - 20 years	345	27%	432	24%
More than 20 years	359	28%	526	30%
TOTAL	1,270		1,764	

### RESPONDENTS BY PARTNERSHIP STATUS

	2020		2022	
	FREQUENCY	PERCENTAGE	FREQUENCY	PERCENTAGE
Equity partner	826	65%	1148	65%
Non-Equity partner	445	35%	620	35%
Not a partner during 2017	0	0%	0	0%
TOTAL	1,271		1,768	

### RESPONDENTS BY PRACTICE AREA

	2020		2022	
	FREQUENCY	PERCENTAGE	FREQUENCY	PERCENTAGE
Other	348	27%	656	37%
Litigation	294	23%	446	25%
Labor & Employment	88	7%	128	7%
Tax & ERISA	66	5%	84	5%
Corporate	269	21%	158	9%
Real Estate	63	5%	103	6%
IP	141	11%	193	11%
TOTAL	1,269		1,768	

## RESPONDENTS BY GENDER

	2020		2022	
	FREQUENCY	PERCENTAGE	FREQUENCY	PERCENTAGE
Female	353	30%	508	29%
Male	812	68%	1186	68%
Non-binary/third gender	1	0%	2	0%
Prefer to self-describe	1	0%	52	3%
Prefer not to say	23	2%	2	0%
TOTAL	1,190		1,750	

## RESPONDENTS BY ETHNICITY

	2020		2022	
	FREQUENCY	PERCENTAGE	FREQUENCY	PERCENTAGE
White, not Hispanic	931	78%	1418	81%
Black, not Hispanic	47	4%	39	2%
Hispanic	70	6%	77	4%
Asian Pacific, not Hispanic	69	6%	79	5%
American Indian, not Hispanic	0	0.0%	2	0%
Native Hawaiian or Pacific Islander, not Hispanic	1	0.1%	2	0%
Mixed races	18	2%	30	2%
Prefer not to say	53	5%	103	6%
TOTAL	1,189		1,750	

## RESPONDENTS BY COMPENSATION TRANSPARENCY

	2020		2022	
	FREQUENCY	PERCENTAGE	FREQUENCY	PERCENTAGE
Open: Partners know what everyone makes, or can easily find out	802	63%	953	54%
Partially Open: Partners know ranges of compensation, but do not know exactly who makes what	169	13%	289	16%
Closed: Partners do not know what anyone else makes	296	23%	513	29%
TOTAL	1,267		1,755	

## RESPONDENTS BY LOCKSTEP TYPE

	2020		2022	
	FREQUENCY	PERCENTAGE	FREQUENCY	PERCENTAGE
My firm is pure lockstep	14	1%	38	2%
My firm is generally lockstep, but allows for some variance	193	15%	342	20%
My firm is not lockstep at all	1,055	84%	1,359	78%
TOTAL	1,262		1,262	

## RESPONDENTS BY CITY

	2020		2022	
	FREQUENCY	PERCENTAGE	FREQUENCY	PERCENTAGE
Other	328	26%	558	32%
Washington, D.C./NoVA	171	14%	227	13%
New York, NY	183	14%	227	13%
Chicago, IL	121	10%	145	8%
San Francisco, CA	63	5%	75	4%
Philadelphia, PA	32	3%	56	3%
Boston, MA	50	4%	70	4%
Los Angeles, CA	85	7%	103	6%
Houston, TX	31	2%	55	3%
Atlanta, GA	43	3%	63	4%
Dallas, TX	46	4%	57	3%
Minneapolis, MN	26	2%	33	2%
Miami, FL	27	2%	46	3%
Palo Alto/Silicon Valley, CA	33	3%	26	1%
Seattle, WA	31	2%	27	2%
TOTAL	1,270		1,768	

## RESPONDENTS BY LATERAL STATUS

	2020		2022	
	FREQUENCY	PERCENTAGE	FREQUENCY	PERCENTAGE
I joined my present firm laterally as a partner from another law firm	621	49%	753	43%
I joined my present firm laterally as a partner from government service or private industry	70	6%	101	6%
I was previously an associate or counsel with my present firm before making partner	570	45%	894	51%
TOTAL	1,261		1,748	

## RESPONDENTS BY TOTAL COMPENSATION

	2020		2022	
	FREQUENCY	PERCENTAGE	FREQUENCY	PERCENTAGE
Less than \$300K	164	13%	0	0%
\$300,001 - \$500,000	306	24%	670	38%
\$500,001 - \$1M	386	31%	508	29%
\$1.01M - \$1.5M	166	13%	205	12%
\$1.51M+	239	19%	372	21%
TOTAL	1,261		1,755	



## II – Impact of COVID-19

**Q11a.** Was your 2021 total compensation/capital affected by the COVID-19 pandemic?

### PARTNERSHIP TENURE

	No	Yes
1 to 5 years	91%	9%
6 to 10 years	86%	14%
11 to 20 years	87%	13%
More than 20 years	84%	16%

### PARTNERSHIP STATUS

	No	Yes
Equity Partner	87%	13%
Non-Equity Partner	87%	13%

### PRACTICE AREAS

	No	Yes
Litigation	84%	16%
Corporate	87%	13%
IP	86%	14%
Labor & Employment	85%	15%
Tax & ERISA	90%	10%
Real Estate	92%	8%
Other	88%	12%

### CITY

	No	Yes
New York, NY	91%	9%
Washington, D.C./NoVA	92%	8%
Chicago, IL	81%	19%
Los Angeles, CA	80%	20%
San Francisco, CA	85%	15%
Philadelphia, PA	84%	16%
Boston, MA	93%	7%
Atlanta, GA	90%	10%
Dallas, TX	93%	7%
Houston, TX	87%	13%
Palo Alto/Silicon Valley, CA	92%	8%
Minneapolis, MN	85%	15%
Seattle, WA	88%	12%
Miami, FL	91%	9%
Other	84%	16%

## COMPENSATION TRANSPARENCY

	No	Yes
Open	86%	14%
Partially Open	85%	15%
Closed	90%	10%

## COMPENSATION SYSTEM

	No	Yes
Pure Lockstep	68%	32%
Generally Lockstep	83%	17%
Not Lockstep at all	88%	12%

## GENDER

	No	Yes
Male	87%	13%
Female	86%	14%

## ETHNICITY

	No	Yes
White, not Hispanic	87%	13%
Black, not Hispanic	82%	18%
Hispanic	90%	10%
Asian Pacific, not Hispanic	87%	13%
American Indian, not Hispanic	0%	100%
Native Hawaiian or Pacific Islander, not Hispanic	100%	0%
Mixed races	83%	17%

**Q11b.** How was your 2021 compensation affected?

**PARTNERSHIP TENURE**

	<b>Total 2022</b>	<b>1 to 5 years</b>	<b>6 to 10 years</b>	<b>11 to 20 years</b>	<b>More than 20 years</b>
Draw reduced by:	14%	6%	12%	18%	16%
Base compensation reduced by:	15%	12%	18%	12%	18%
Anticipated bonus reduced by:	29%	34%	28%	31%	26%
Capital increased by:	12%	3%	21%	17%	8%

	<b>Total 2020</b>	<b>1 to 5 years</b>	<b>6 to 10 years</b>	<b>11 to 20 years</b>	<b>More than 20 years</b>
Draw reduced by:	12%	9%	12%	15%	12%
Base compensation reduced by:	9%	10%	9%	9%	9%
Anticipated bonus reduced by:	13%	19%	11%	11%	11%
Capital increased by:	1%	1%	2%	1%	1%

**PARTNERSHIP STATUS**

	<b>Total 2022</b>	<b>Equity Partner</b>	<b>Non-Equity Partner</b>
Draw reduced by:	14%	15%	10%
Base compensation reduced by:	15%	14%	15%
Anticipated bonus reduced by:	29%	23%	36%
Capital increased by:	12%	13%	11%

	<b>Total 2020</b>	<b>Equity Partner</b>	<b>Non-Equity Partner</b>
Draw reduced by:	12%	14%	8%
Base compensation reduced by:	9%	8%	11%
Anticipated bonus reduced by:	13%	11%	18%
Capital increased by:	1%	2%	1%

## PRACTICE AREAS

	Total 2022	Other	Labor & Employment	Litigation	Tax & ERISA	Corporate	Real Estate	IP
Draw reduced by:	14%	13%	37%	11%	8%	12%	14%	20%
Base compensation reduced by:	15%	13%	20%	13%	2%	20%	15%	17%
Anticipated bonus reduced by:	29%	26	37%	31%	12%	20%	31%	40%
Capital increased by:	12%	8%	10%	8%	5%	22%	16%	23%

	Total 2020	Other	Labor & Employment	Litigation	Tax & ERISA	Corporate	Real Estate	IP
Draw reduced by:	12%	13%	13%	12%	14%	11%	12%	12%
Base compensation reduced by:	9%	10%	11%	9%	10%	8%	8%	10%
Anticipated bonus reduced by:	13%	18%	13%	16%	10%	8%	13%	10%
Capital increased by:	1%	1%	1%	1%	4%	1%	1%	1%

## CITY

	Total 2022	New York	Washington, D.C./NoVA	Chicago	Los Angeles	San Francisco	Dallas	Atlanta	Boston	Seattle	Palo Alto/Silicon Valley	Philadelphia	Houston	Miami	Minneapolis	Other
Draw reduced by:	14%	13%	13%	10%	24%	30%	23%	16%	2%	63%	28%	9%	11%	2%	8%	13%
Base compensation reduced by:	15%	13%	8%	16%	23%	13%	5%	9%	2%	60%	28%	4%	13%	2%	23%	16%
Anticipated bonus reduced by:	29%	24%	21%	39%	58%	23%	25%	45%	2%	76%	28%	9%	34%	23%	28%	23%
Capital increased by:	12%	19%	4%	10%	11%	11%	18%	2%	5%	20%	2%	28%	2%	2%	16%	14%

	Total 2020	New York	Washington, D.C./NoVA	Chicago	Los Angeles	San Francisco	Dallas	Atlanta	Boston	Seattle	Palo Alto/Silicon Valley	Philadelphia	Houston	Miami	Minneapolis	Other
Draw reduced by:	12%	10%	13%	13%	11%	16%	15%	13%	12%	10%	16%	17%	22%	12%	15%	11%
Base compensation reduced by:	9%	9%	10%	9%	11%	11%	7%	11%	10%	8%	10%	8%	11%	8%	7%	9%
Anticipated bonus reduced by:	13%	15%	12%	15%	13%	9%	17%	19%	10%	7%	8%	13%	32%	13%	18%	11%
Capital increased by:	1%	1%	1%	1%	1%	2%	0%	0%	0%	2%	1%	1%	1%	6%	0%	1%

## COMPENSATION TRANSPARENCY

	Total 2022	Open	Partially Open	Closed
Draw reduced by:	14%	13%	18%	12%
Base compensation reduced by:	15%	15%	20%	11%
Anticipated bonus reduced by:	29%	23%	38%	30%
Capital increased by:	12%	11%	17%	10%

	Total 2020	Open	Partially Open	Closed
Draw reduced by:	12%	13%	9%	13%
Base compensation reduced by:	9%	9%	10%	10%
Anticipated bonus reduced by:	13%	11%	12%	21%
Capital increased by:	1%	1%	2%	1%

## COMPENSATION SYSTEM

	Total 2022	Pure lockstep	Generally lockstep	Not lockstep
Draw reduced by:	14%	13%	19%	12%
Base compensation reduced by:	15%	26%	17%	13%
Anticipated bonus reduced by:	29%	28%	30%	29%
Capital increased by:	12%	29%	11%	11%

	Total 2020	Pure lockstep	Generally lockstep	Not lockstep
Draw reduced by:	12%	10%	11%	13%
Base compensation reduced by:	9%	8%	9%	9%
Anticipated bonus reduced by:	13%	2%	15%	13%
Capital increased by:	1%	0%	1%	1%

## GENDER

	Total 2022	Female	Male	Total 2020	Female	Male
Draw reduced by:	14%	13%	15%	12%	13%	12%
Base compensation reduced by:	15%	14%	17%	9%	11%	9%
Anticipated bonus reduced by:	29%	25%	40%	13%	17%	12%
Capital increased by:	12%	12%	13%	1%	2%	1%

## ETHNICITY

	Total 2022	White, not Hispanic	Black, not Hispanic	Hispanic	Asian Pacific, not Hispanic	Am. Indian	Native Hawaiian or Pacific Islander	Mixed races
Draw reduced by:	12%	11%	34%	10%	12%	38%	0%	18%
Base compensation reduced by:	15%	14%	14%	8%	18%	48%	0%	2%
Anticipated bonus reduced by:	14%	29%	51%	98%	16%	28%	0%	25%
Capital increased by:	29%	13%	16%	0%	0%	18%	0%	2%

	Total 2020	White, not Hispanic	Black, not Hispanic	Hispanic	Asian Pacific, not Hispanic	Native Hawaiian or Pacific Islander	Mixed races
Draw reduced by:	12%	12%	16%	13%	14%	13%	20%
Base compensation reduced by:	9%	9%	11%	11%	11%	0%	13%
Anticipated bonus reduced by:	13%	12%	9%	28%	12%	0%	16%
Capital increased by:	1%	1%	1%	3%	1%	0%	1%

**Q11c.** Is your 2022 compensation/capital expected to be affected by the COVID-19 pandemic?

**PARTNERSHIP TENURE**

	<b>No</b>	<b>Yes</b>
1 to 5 years	96%	4%
6 to 10 years	93%	7%
11 to 20 years	94%	6%
More than 20 years	95%	5%

**PARTNERSHIP STATUS**

	<b>No</b>	<b>Yes</b>
Equity Partner	95%	5%
Non-Equity Partner	94%	6%

**PRACTICE AREAS**

	<b>No</b>	<b>Yes</b>
Litigation	95%	5%
Corporate	91%	9%
IP	94%	6%
Labor & Employment	94%	6%
Tax & ERISA	95%	5%
Real Estate	98%	2%
Other	95%	5%

**CITY**

	<b>No</b>	<b>Yes</b>
New York, NY	95%	5%
Washington, D.C./NoVA	96%	4%
Chicago, IL	92%	8%
Los Angeles, CA	94%	6%
San Francisco, CA	90%	10%
Philadelphia, PA	95%	5%
Boston, MA	96%	4%
Atlanta, GA	98%	2%
Dallas, TX	96%	4%
Houston, TX	100%	0%
Palo Alto/Silicon Valley, CA	96%	4%
Minneapolis, MN	97%	3%
Seattle, WA	93%	7%
Miami, FL	98%	2%
Other	93%	7%

## COMPENSATION TRANSPARENCY

	No	Yes
Open	95%	5%
Partially Open	91%	9%
Closed	96%	4%

## COMPENSATION SYSTEM

	No	Yes
Pure Lockstep	79%	21%
Generally Lockstep	93%	7%
Not Lockstep at all	96%	4%

## GENDER

	No	Yes
Male	95%	5%
Female	94%	6%

## ETHNICITY

	No	Yes
White, not Hispanic	95%	5%
Black, not Hispanic	100%	0%
Hispanic	92%	8%
Asian Pacific, not Hispanic	87%	13%
American Indian, not Hispanic	100%	0%
Native Hawaiian or Pacific Islander, not Hispanic	100%	0%
Mixed races	93%	7%

**Q11d.** How is your 2022 compensation/capital expected to be affected?

**PARTNERSHIP TENURE**

	Total 2022	1 to 5 years	6 to 10 years	11 to 20 years	More than 20 years
Draw reduced by:	15%	5%	14%	11%	23%
Base compensation reduced by:	17%	8%	23%	12%	24%
Anticipated bonus reduced by:	29%	31%	38%	16%	17%
Capital increased by:	6%	3%	13%	3%	2%

**PARTNERSHIP STATUS**

	Total 2022	Equity Partner	Non-Equity Partner
Draw reduced by:	15%	15%	14%
Base compensation reduced by:	17%	17%	18%
Anticipated bonus reduced by:	29%	27%	30%
Capital increased by:	6%	5%	8%

**PRACTICE AREAS**

	Total 2022	Litigation	Corporate	IP	Labor & Employment	Tax & ERISA	Real Estate	Other
Draw reduced by:	15%	12%	12%	21%	18%	-	53%	10%
Base compensation reduced by:	17%	15%	21%	18%	32%	13%	53%	8%
Anticipated bonus reduced by:	29%	33%	35%	26%	5%	23%	2%	24%
Capital increased by:	6%	7%	11%	4%	2%	-	2%	2%

**CITY**

	Total 2022	New York	Washington, D.C./NoVA	Chicago	Los Angeles	San Francisco	Philadelphia	Boston	Atlanta	Dallas	Houston	Palo Alto/Silicon Valley	Minneapolis	Seattle	Miami	Other
Draw reduced by:	15%	13%	8%	11%	33%	13%	2%	5%	98%	2%	98%	-	12%	-	-	-
Base compensation reduced by:	17%	9%	8%	11%	23%	11%	5%	2%	98%	5%	98%	-	19%	-	-	-
Anticipated bonus reduced by:	29%	38%	2%	33%	53%	-	2%	2%	2%	2%	98%	2%	30%	-	-	-
Capital increased by:	6%	2%	2%	8%	-	2%	8%	2%	2%	2%	2%	-	8%	-	-	-

**COMPENSATION TRANSPARENCY**

	Total 2022	Open	Partially Open	Closed
Draw reduced by:	15%	11%	23%	5%
Base compensation reduced by:	17%	14%	25%	6%
Anticipated bonus reduced by:	29%	27%	32%	26%
Capital increased by:	6%	5%	9%	4%



## COMPENSATION SYSTEM

	Total 2022	Pure Lockstep	Generally Lockstep	Not Lockstep at all
Draw reduced by:	15%	13%	17%	15%
Base compensation reduced by:	17%	22%	22%	15%
Anticipated bonus reduced by:	29%	29%	37%	25%
Capital increased by:	6%	18%	8%	2%

## GENDER

	Total 2022	Male	Female
Draw reduced by:	15%	18%	9%
Base compensation reduced by:	17%	19%	14%
Anticipated bonus reduced by:	29%	26%	37%
Capital increased by:	6%	8%	4%

## ETHNICITY

	Total 2022	White, not Hispanic	Black, not Hispanic	Hispanic	Asian Pacific, not Hispanic	Am. Indian	Native Hawaiian or Pacific Islander	Mixed races
Draw reduced by:	15%	12%	-	18%	6%	-	-	-
Base compensation reduced by:	17%	16%	-	8%	8%	-	-	8%
Anticipated bonus reduced by:	29%	27%	-	49%	5%	-	-	-
Capital increased by:	6%	8%	-	2%	2%	-	-	-

**Q11e.** How many weekdays (i.e., Monday-Friday), if any, will your firm allow you to work from home once your firm fully re-opens?

### PARTNERSHIP TENURE

	2022 Frequency	2022 Mean
1 to 5 years	477	4
6 to 10 years	328	3
11 to 20 years	432	3
More than 20 years	526	3

### PARTNERSHIP STATUS

	2022 Frequency	2022 Mean
Equity Partner	1148	3
Non-Equity Partner	619	3

### PRACTICE AREAS

	2022 Frequency	2022 Mean
Litigation	446	3
Corporate	158	4
IP	193	4
Labor & Employment	128	3
Tax & ERISA	84	3
Real Estate	103	4
Other	655	3

### CITY

	2022 Frequency	2022 Mean
New York, NY	227	3
Washington, D.C./NoVA	227	3
Chicago, IL	145	3
Los Angeles, CA	103	4
San Francisco, CA	75	4
Philadelphia, PA	55	4
Boston, MA	70	3
Atlanta, GA	63	4
Dallas, TX	57	3
Houston, TX	55	3
Palo Alto/Silicon Valley, CA	26	4
Minneapolis, MN	33	4
Seattle, WA	27	4
Miami, FL	46	4
Other	558	3

## COMPENSATION TRANSPARENCY

	2022 Frequency	2022 Mean
Open	953	3
Partially Open	289	3
Closed	512	3

## COMPENSATION SYSTEM

	2022 Frequency	2022 Mean
Pure Lockstep	38	3
Generally Lockstep	341	3
Not Lockstep at all	1359	3

## GENDER

	2022 Frequency	2022 Mean
Male	1186	3
Female	507	3

## ETHNICITY

	2022 Frequency	2022 Mean
White, not Hispanic	1417	3
Black, not Hispanic	39	3
Hispanic	77	3
Asian Pacific, not Hispanic	79	4
American Indian, not Hispanic	2	1
Native Hawaiian or Pacific Islander, not Hispanic	2	4
Mixed races	30	4

**Q11f.** How many weekdays (i.e., Monday-Friday) would you prefer to work from home once your firm fully re-opens?

### **PARTNERSHIP TENURE**

	<b>2022 Frequency</b>	<b>2022 Mean</b>
1 to 5 years	478	3
6 to 10 years	328	3
11 to 20 years	432	2
More than 20 years	526	2

### **PARTNERSHIP STATUS**

	<b>2022 Frequency</b>	<b>2022 Mean</b>
Equity Partner	1148	2
Non-Equity Partner	620	3

### **PRACTICE AREAS**

	<b>2022 Frequency</b>	<b>2022 Mean</b>
Litigation	446	2
Corporate	158	3
IP	193	3
Labor & Employment	128	3
Tax & ERISA	84	3
Real Estate	103	2
Other	656	3

### **CITY**

	<b>2022 Frequency</b>	<b>2022 Mean</b>
New York, NY	227	3
Washington, D.C./NoVA	227	3
Chicago, IL	145	3
Los Angeles, CA	103	3
San Francisco, CA	75	3
Philadelphia, PA	56	3
Boston, MA	70	3
Atlanta, GA	63	2
Dallas, TX	57	2
Houston, TX	55	2
Palo Alto/Silicon Valley, CA	26	3
Minneapolis, MN	33	2
Seattle, WA	27	2
Miami, FL	46	3
Other	558	2

## COMPENSATION TRANSPARENCY

	2022 Frequency	2022 Mean
Open	953	2
Partially Open	289	3
Closed	513	3

## COMPENSATION SYSTEM

	2022 Frequency	2022 Mean
Pure Lockstep	38	2
Generally Lockstep	342	2
Not Lockstep at All	1359	3

## GENDER

	2022 Frequency	2022 Mean
Male	1186	2
Female	508	3

## ETHNICITY

	2022 Frequency	2022 Mean
White, not Hispanic	1418	2
Black, not Hispanic	39	3
Hispanic	77	3
Asian Pacific, not Hispanic	79	3
American Indian, not Hispanic	2	2
Native Hawaiian or Pacific Islander, not Hispanic	2	4
Mixed races	30	3

**Q11g.** How important is the ability to work from home to you?

**PARTNERSHIP TENURE**

	<b>So important I would change firms</b>	<b>Very important</b>	<b>Somewhat important</b>	<b>Neutral</b>	<b>Not very important</b>	<b>Not important at all</b>
1 to 5 years	16%	40%	24%	8%	8%	5%
6 to 10 years	10%	34%	30%	8%	12%	6%
11 to 20 years	10%	32%	25%	11%	14%	9%
More than 20 years	7%	26%	24%	12%	17%	14%

**PARTNERSHIP STATUS**

	<b>So important I would change firms</b>	<b>Very important</b>	<b>Somewhat important</b>	<b>Neutral</b>	<b>Not very important</b>	<b>Not important at all</b>
Equity Partner	9%	30%	24%	12%	16%	10%
Non-Equity Partner	14%	37%	28%	7%	7%	7%

**PRACTICE AREAS**

	<b>So important I would change firms</b>	<b>Very important</b>	<b>Somewhat important</b>	<b>Neutral</b>	<b>Not very important</b>	<b>Not important at all</b>
Litigation	7%	30%	28%	11%	14%	10%
Corporate	7%	36%	27%	9%	12%	9%
IP	16%	32%	25%	8%	12%	7%
Labor & Employment	12%	36%	24%	10%	12%	5%
Tax & ERISA	15%	32%	23%	5%	14%	11%
Real Estate	8%	25%	23%	12%	18%	14%
Other	11%	35%	25%	10%	11%	8%

**CITY**

	<b>So important I would change firms</b>	<b>Very important</b>	<b>Somewhat important</b>	<b>Neutral</b>	<b>Not very important</b>	<b>Not important at all</b>
New York, NY	10%	37%	25%	11%	11%	7%
Washington, D.C./NoVA	10%	37%	28%	10%	11%	4%
Chicago, IL	11%	42%	24%	6%	10%	6%
Los Angeles, CA	14%	33%	26%	14%	10%	4%
San Francisco, CA	16%	27%	32%	12%	9%	4%
Philadelphia, PA	9%	43%	25%	7%	11%	5%
Boston, MA	7%	41%	30%	7%	9%	6%
Atlanta, GA	5%	27%	29%	5%	16%	18%
Dallas, TX	5%	23%	30%	4%	23%	14%
Houston, TX	4%	33%	18%	13%	11%	22%
Palo Alto/Silicon Valley, CA	12%	23%	35%	12%	12%	8%
Minneapolis, MN	15%	33%	21%	3%	15%	12%
Seattle, WA	11%	22%	37%	7%	15%	7%
Miami, FL	9%	55%	14%	9%	11%	2%
Other	11%	26%	24%	11%	16%	12%

## COMPENSATION TRANSPARENCY

	So important I would change firms	Very important	Somewhat important	Neutral	Not very important	Not important at all
Open	9%	29%	26%	11%	14%	11%
Partially Open	10%	36%	28%	12%	8%	5%
Closed	13%	38%	23%	7%	12%	7%

## COMPENSATION SYSTEM

	So important I would change firms	Very important	Somewhat important	Neutral	Not very important	Not important at all
Pure Lockstep	16%	11%	29%	24%	16%	5%
Generally Lockstep	9%	35%	27%	10%	11%	9%
Not Lockstep at all	11%	33%	25%	9%	13%	9%

## GENDER

	So important I would change firms	Very important	Somewhat important	Neutral	Not very important	Not important at all
Male	8%	30%	27%	11%	14%	11%
Female	17%	38%	24%	7%	10%	4%

## ETHNICITY

	So important I would change firms	Very important	Somewhat important	Neutral	Not very important	Not important at all
White, not Hispanic	11%	32%	26%	10%	13%	9%
Black, not Hispanic	5%	41%	38%	5%	5%	5%
Hispanic	11%	37%	26%	7%	14%	5%
Asian Pacific, not Hispanic	9%	42%	24%	6%	9%	10%
American Indian, not Hispanic	0%	0%	0%	50%	50%	0%
Native Hawaiian or Pacific Islander, not Hispanic	0%	0%	0%	50%	50%	0%
Mixed races	17%	17%	45%	7%	14%	0%

**Q11h.** Did you change your geographic location because of the COVID-19 pandemic?

**PARTNERSHIP TENURE**

	<b>No</b>	<b>Yes</b>
1 to 5 years	94%	6%
6 to 10 years	94%	6%
11 to 20 years	94%	6%
More than 20 years	91%	9%

**PARTNERSHIP STATUS**

	<b>No</b>	<b>Yes</b>
Equity Partner	92%	8%
Non-Equity Partner	95%	5%

**PRACTICE AREAS**

	<b>No</b>	<b>Yes</b>
Litigation	94%	6%
Corporate	92%	8%
IP	93%	7%
Labor & Employment	91%	9%
Tax & ERISA	94%	6%
Real Estate	94%	6%
Other	93%	7%

**CITY**

	<b>No</b>	<b>Yes</b>
New York, NY	84%	16%
Washington, D.C./NoVA	94%	6%
Chicago, IL	93%	7%
Los Angeles, CA	96%	4%
San Francisco, CA	85%	15%
Philadelphia, PA	89%	11%
Boston, MA	99%	1%
Atlanta, GA	95%	5%
Dallas, TX	96%	4%
Houston, TX	91%	9%
Palo Alto/Silicon Valley, CA	96%	4%
Minneapolis, MN	100%	0%
Seattle, WA	96%	4%
Miami, FL	98%	2%
Other	96%	4%



## COMPENSATION TRANSPARENCY

	No	Yes
Open	92%	8%
Partially Open	95%	5%
Closed	94%	6%

## COMPENSATION SYSTEM

	No	Yes
Pure Lockstep	89%	11%
Generally Lockstep	93%	7%
Not Lockstep at all	93%	7%

## GENDER

	No	Yes
Male	94%	6%
Female	93%	7%

## ETHNICITY

	No	Yes
White, not Hispanic	93%	7%
Black, not Hispanic	95%	5%
Hispanic	95%	5%
Asian Pacific, not Hispanic	92%	8%
American Indian, not Hispanic	100%	0%
Native Hawaiian or Pacific Islander, not Hispanic	100%	0%
Mixed races	86%	14%

**Q11i.** Do you expect to move back to your former geographic location when your firm fully re-opens?

**PARTNERSHIP TENURE**

	<b>No</b>	<b>Not sure</b>	<b>Yes</b>
1 to 5 years	69%	10%	21%
6 to 10 years	61%	17%	22%
11 to 20 years	48%	20%	32%
More than 20 years	41%	22%	37%

**PARTNERSHIP STATUS**

	<b>No</b>	<b>Not sure</b>	<b>Yes</b>
Equity Partner	51%	18%	31%
Non-Equity Partner	57%	17%	27%

**PRACTICE AREAS**

	<b>No</b>	<b>Not sure</b>	<b>Yes</b>
Litigation	56%	11%	33%
Corporate	50%	25%	25%
IP	69%	8%	23%
Labor & Employment	70%	0%	30%
Tax & ERISA	20%	60%	20%
Real Estate	17%	33%	50%
Other	51%	20%	29%

**CITY**

	<b>No</b>	<b>Not sure</b>	<b>Yes</b>
New York, NY	46%	19%	35%
Washington, D.C./NoVA	38%	23%	38%
Chicago, IL	40%	30%	30%
Los Angeles, CA	75%	25%	0%
San Francisco, CA	82%	9%	9%
Philadelphia, PA	50%	33%	17%
Boston, MA	0%	0%	100%
Atlanta, GA	0%	0%	100%
Dallas, TX	50%	0%	50%
Houston, TX	80%	0%	20%
Palo Alto/Silicon Valley, CA	100%	0%	0%
Minneapolis, MN	0%	0%	0%
Seattle, WA	100%	0%	0%
Miami, FL	100%	0%	0%
Other	57%	17%	26%

## COMPENSATION TRANSPARENCY

	No	Not sure	Yes
Open	53%	18%	29%
Partially Open	57%	14%	29%
Closed	48%	19%	32%

## COMPENSATION SYSTEM

	No	Not sure	Yes
Pure Lockstep	0%	0%	100%
Generally Lockstep	59%	9%	32%
Not Lockstep at all	53%	21%	26%

## GENDER

	No	Not sure	Yes
Male	43%	19%	38%
Female	65%	15%	21%

## ETHNICITY

	No	Not sure	Yes
White, not Hispanic	52%	17%	31%
Black, not Hispanic	50%	0%	50%
Hispanic	0%	50%	50%
Asian Pacific, not Hispanic	60%	20%	20%
American Indian, not Hispanic	0%	0%	0%
Native Hawaiian or Pacific Islander, not Hispanic	0%	0%	0%
Mixed races	50%	50%	0%

**Q11j.** Which of the following programs/benefits, if any, did your firm introduce or increase as a result of the COVID-19 pandemic?

**PARTNERSHIP TENURE**

	Childcare	Eldercare	Equipment/ Tech	Mental Health	None	Paid Vacation	Physical Health
1 to 5 years	10%	3%	54%	48%	28%	6%	24%
6 to 10 years	11%	4%	54%	55%	24%	7%	25%
11 to 20 years	8%	4%	59%	62%	22%	8%	32%
More than 20 years	8%	4%	63%	50%	23%	6%	27%

**PARTNERSHIP STATUS**

	Childcare	Eldercare	Equipment/ Tech	Mental Health	None	Paid Vacation	Physical Health
Equity Partner	9%	4%	64%	57%	21%	9%	30%
Non-Equity Partner	8%	3%	47%	47%	31%	4%	21%

**PRACTICE AREAS**

	Childcare	Eldercare	Equipment/ Tech	Mental Health	None	Paid Vacation	Physical Health
Litigation	8%	3%	59%	49%	26%	7%	26%
Corporate	9%	6%	65%	66%	13%	6%	33%
IP	9%	3%	55%	54%	27%	7%	24%
Labor & Employment	12%	2%	55%	55%	23%	9%	25%
Tax & ERISA	11%	5%	52%	63%	20%	8%	31%
Real Estate	7%	4%	60%	50%	29%	7%	29%
Other	9%	4%	57%	52%	25%	7%	27%

**CITY**

	Childcare	Eldercare	Equipment/ Tech	Mental Health	None	Paid Vacation	Physical Health
New York, NY	10%	3%	58%	60%	23%	8%	32%
Washington, D.C./NoVA	11%	3%	60%	66%	21%	9%	33%
Chicago, IL	14%	6%	52%	55%	24%	6%	28%
Los Angeles, CA	7%	4%	65%	56%	20%	9%	26%
San Francisco, CA	12%	5%	75%	63%	15%	8%	33%
Philadelphia, PA	5%	0%	52%	61%	23%	7%	23%
Boston, MA	11%	7%	54%	56%	26%	1%	27%
Atlanta, GA	5%	2%	43%	27%	46%	3%	11%
Dallas, TX	14%	7%	63%	56%	26%	4%	44%
Houston, TX	13%	4%	65%	47%	22%	4%	31%
Palo Alto/Silicon Valley, CA	15%	12%	62%	77%	12%	12%	23%
Minneapolis, MN	6%	0%	61%	64%	21%	0%	12%
Seattle, WA	22%	11%	67%	67%	11%	15%	41%
Miami, FL	2%	2%	41%	57%	20%	2%	22%
Other	6%	3%	57%	43%	28%	7%	22%

## COMPENSATION TRANSPARENCY

	Childcare	Eldercare	Equipment/ Tech	Mental Health	None	Paid Vacation	Physical Health
Open	10%	5%	64%	56%	22%	9%	29%
Partially Open	10%	3%	60%	52%	20%	5%	23%
Closed	8%	3%	45%	50%	32%	5%	25%

## COMPENSATION SYSTEM

	Childcare	Eldercare	Equipment/ Tech	Mental Health	None	Paid Vacation	Physical Health
Pure Lockstep	11%	5%	63%	29%	34%	11%	21%
Generally Lockstep	8%	4%	60%	50%	24%	7%	24%
Not Lockstep at all	9%	4%	57%	56%	24%	7%	28%

## GENDER

	Childcare	Eldercare	Equipment/ Tech	Mental Health	None	Paid Vacation	Physical Health
Male	8%	2%	59%	52%	25%	7%	27%
Female	11%	6%	55%	58%	23%	6%	27%

## ETHNICITY

	Childcare	Eldercare	Equipment/ Tech	Mental Health	None	Paid Vacation	Physical Health
White, not Hispanic	9%	3%	58%	53%	25%	7%	27%
Black, not Hispanic	13%	8%	59%	64%	23%	8%	36%
Hispanic	12%	6%	58%	64%	17%	5%	26%
Asian Pacific, not Hispanic	8%	4%	58%	57%	19%	8%	29%
American Indian, not Hispanic	0%	0%	50%	50%	50%	0%	0%
Native Hawaiian or Pacific Islander, not Hispanic	0%	0%	100%	100%	0%	50%	100%
Mixed races	17%	20%	60%	70%	17%	10%	47%

**Q16a.** Has the COVID-19 pandemic affected your anticipated retirement age?

**PARTNERSHIP TENURE**

	No	Yes, I expect to retire earlier	Yes, I expect to retire later
1 to 5 years	88%	8%	4%
6 to 10 years	83%	11%	6%
11 to 20 years	75%	18%	7%
More than 20 years	80%	12%	9%

**PARTNERSHIP STATUS**

	No	Yes, I expect to retire earlier	Yes, I expect to retire later
Equity Partner	79%	15%	6%
Non-Equity Partner	85%	8%	8%

**PRACTICE AREAS**

	No	Yes, I expect to retire earlier	Yes, I expect to retire later
Litigation	83%	12%	5%
Corporate	75%	13%	12%
IP	79%	14%	7%
Labor & Employment	78%	14%	8%
Tax & ERISA	83%	15%	1%
Real Estate	82%	11%	8%
Other	82%	12%	6%

**CITY**

	No	Yes, I expect to retire earlier	Yes, I expect to retire later
New York, NY	79%	13%	7%
Washington, D.C./NoVA	83%	15%	2%
Chicago, IL	81%	13%	6%
Los Angeles, CA	77%	16%	7%
San Francisco, CA	77%	16%	7%
Philadelphia, PA	80%	9%	11%
Boston, MA	83%	13%	4%
Atlanta, GA	77%	15%	8%
Dallas, TX	88%	5%	7%
Houston, TX	81%	13%	6%
Palo Alto/Silicon Valley, CA	96%	0%	4%
Minneapolis, MN	78%	19%	3%
Seattle, WA	78%	15%	7%
Miami, FL	80%	11%	9%
Other	82%	10%	7%

## ETHNICITY

	No	Yes, I expect to retire earlier	Yes, I expect to retire later
White, not Hispanic	81%	12%	7%
Black, not Hispanic	76%	18%	5%
Hispanic	83%	14%	3%
Asian Pacific, not Hispanic	83%	14%	3%
American Indian, not Hispanic	100%	0%	0%
Native Hawaiian or Pacific Islander, not Hispanic	50%	0%	50%
Mixed races	73%	13%	13%

## COMPENSATION TRANSPARENCY

	No	Yes, I expect to retire earlier	Yes, I expect to retire later
Open	81%	13%	6%
Partially Open	78%	15%	6%
Closed	84%	9%	7%

## COMPENSATION SYSTEM

	No	Yes, I expect to retire earlier	Yes, I expect to retire later
Pure Lockstep	70%	5%	24%
Generally Lockstep	81%	12%	7%
Not Lockstep at all	82%	13%	6%

## GENDER

	No	Yes, I expect to retire earlier	Yes, I expect to retire later
Male	81%	12%	7%
Female	81%	14%	5%

**Q17b.** Has your ability to work full-time (or, if you are part-time, your ability to work your normal part-time schedule) been adversely impacted by the COVID-19 pandemic?

**PARTNERSHIP TENURE**

	No	Yes
1 to 5 years	85%	15%
6 to 10 years	86%	14%
11 to 20 years	91%	9%
More than 20 years	95%	5%

**PARTNERSHIP STATUS**

	No	Yes
Equity Partner	92%	8%
Non-Equity Partner	84%	16%

**PRACTICE AREAS**

	No	Yes
Litigation	87%	13%
Corporate	92%	8%
IP	89%	11%
Labor & Employment	90%	10%
Tax & ERISA	92%	8%
Real Estate	92%	8%
Other	90%	10%

**CITY**

	No	Yes
New York, NY	94%	6%
Washington, D.C./NoVA	91%	9%
Chicago, IL	88%	12%
Los Angeles, CA	81%	19%
San Francisco, CA	78%	22%
Philadelphia, PA	91%	9%
Boston, MA	87%	13%
Atlanta, GA	95%	5%
Dallas, TX	91%	9%
Houston, TX	96%	4%
Palo Alto/Silicon Valley, CA	92%	8%
Minneapolis, MN	97%	3%
Seattle, WA	89%	11%
Miami, FL	96%	4%
Other	88%	12%



## COMPENSATION TRANSPARENCY

	No	Yes
Open	91%	9%
Partially Open	84%	16%
Closed	89%	11%

## COMPENSATION SYSTEM

	No	Yes
Pure Lockstep	84%	16%
Generally Lockstep	88%	12%
Not Lockstep at all	90%	10%

## GENDER

	No	Yes
Male	1%	0%
Female	1%	0%

## ETHNICITY

	No	Yes
White, not Hispanic	1%	0%
Black, not Hispanic	1%	0%
Hispanic	1%	0%
Asian Pacific, not Hispanic	1%	0%
American Indian, not Hispanic	1%	1%
Native Hawaiian or Pacific Islander, not Hispanic	1%	1%
Mixed races	1%	0%

**Q17c.** To what extent has it been impacted, expressed as a percentage in reduction in the ability to work full-time (or your normal part-time schedule) during the pandemic?

### **PARTNERSHIP TENURE**

	<b>2022 Frequency</b>	<b>2022 Mean</b>
1 to 5 years	70	20%
6 to 10 years	46	28%
11 to 20 years	39	22%
More than 20 years	25	18%

### **PARTNERSHIP STATUS**

	<b>2022 Frequency</b>	<b>2022 Mean</b>
Equity Partner	87	20%
Non-Equity Partner	93	24%
Not Lockstep at all	90%	10%

### **PRACTICE AREAS**

	<b>2022 Frequency</b>	<b>2022 Mean</b>
Litigation	58	22%
Corporate	13	30%
IP	20	22%
Labor & Employment	13	30%
Tax & ERISA	7	17%
Real Estate	8	25%
Other	61	19%

### **CITY**

	<b>2022 Frequency</b>	<b>2022 Mean</b>
New York, NY	13	18%
Washington, D.C./NoVA	21	15%
Chicago, IL	16	23%
Los Angeles, CA	19	27%
San Francisco, CA	15	24%
Philadelphia, PA	5	22%
Boston, MA	9	11%
Atlanta, GA	3	16%
Dallas, TX	5	28%
Houston, TX	2	16%
Palo Alto/Silicon Valley, CA	2	21%
Minneapolis, MN	1	16%
Seattle, WA	3	42%
Miami, FL	2	10%
Other	64	24%

## COMPENSATION TRANSPARENCY

	2022 Frequency	2022 Mean
Open	82	22%
Partially Open	44	24%
Closed	53	20%
More than 20 years	25	18%

## COMPENSATION SYSTEM

	2022 Frequency	2022 Mean
Pure Lockstep	6	41%
Generally Lockstep	40	28%
Not Lockstep at all	131	19%

## GENDER

	2022 Frequency	2022 Mean
Male	88	20%
Female	90	24%

## ETHNICITY

	2022 Frequency	2022 Mean
White, not Hispanic	137	21%
Black, not Hispanic	3	23%
Hispanic	5	16%
Asian Pacific, not Hispanic	15	22%
Native Hawaiian or Pacific Islander, not Hispanic	1	66%
American Indian, not Hispanic	1	36%
Mixed races	8	24%

### III – Average Total Compensation

#### PARTNERSHIP TENURE

	2020	2020 Adj.	2022	% Change	2022 Frequency
1 - 5 years	\$529K	\$487K	\$681K	40%	476
6 - 10 years	\$958K	\$881K	\$1.01M	15%	327
11 - 20 years	\$1.29M	\$1.18M	\$1.43M	21%	428
More than 20 years	\$1.38M	\$1.27M	\$1.32M	4%	522

#### PARTNERSHIP STATUS

	2020	2020 Adj.	2022	% Change	2022 Frequency
Equity Partner	\$1.39M	\$1.27M	\$1.47M	15%	1142
Non-Equity Partner	\$432K	\$397K	\$460K	16%	613

#### PRACTICE AREAS

	2020	2020 Adj.	2022	% Change	2022 Frequency
Litigation	\$980K	\$902K	\$1.05M	17%	442
Corporate	\$1.28M	\$1.17M	\$1.48M	26%	157
IP	\$1.1M	\$1M	\$1M	0%	192
Labor & Employment	\$667K	\$614K	\$653K	6%	128
Tax & ERISA	\$1.37M	\$1.26M	\$1.11M	-9%	83
Real Estate	\$925K	\$851K	\$953K	12%	103
Other	\$980K	\$902K	\$1.22M	35%	650

#### CITY

	2020	2020 Adj.	2022	% Change	2022 Frequency
New York, NY	\$1.64M	\$1.5M	\$1.81M	20%	226
Washington, D.C./NoVA	\$1.25M	\$1.15M	\$1.41M	23%	226
Chicago, IL	\$895K	\$823K	\$1.08M	32%	143
Los Angeles, CA	\$1.37M	\$1.26M	\$1.06M	-15%	102
San Francisco, CA	\$1.25M	\$1.15M	\$1.52M	32%	74
Philadelphia, PA	\$1.11M	\$1M	\$744K	-27%	56
Boston, MA	\$1.39M	\$1.27M	\$1.47M	16%	70
Atlanta, GA	\$650K	\$598K	\$987K	65%	62
Dallas, TX	\$843K	\$776K	\$1.45M	87%	57
Houston, TX	\$990K	\$911K	\$1.34M	48%	54
Palo Alto/Silicon Valley, CA	\$1.66M	\$1.52M	\$1.5M	-2%	26
Minneapolis, MN	\$675K	\$621K	\$837K	35%	33
Seattle, WA	\$801K	\$737K	\$714K	-3%	27
Miami, FL	\$954K	\$878K	\$829K	-6%	46
Other	\$604K	\$556K	\$673K	21%	553

## COMPENSATION TRANSPARENCY

	2020	2020 Adj.	2022	% Change	2022 Frequency
Open	\$1.22M	\$1.12M	\$1.32M	18%	950
Partially Open	\$909K	\$836K	\$916K	10%	286
Closed	\$694K	\$638K	\$848K	33%	509

## COMPENSATION SYSTEM

	2020	2020 Adj.	2022	% Change	2022 Frequency
Pure Lockstep	\$1.99M	\$1.83M	\$1.14M	-37%	38
Generally Lockstep	\$985K	\$906K	\$940K	4%	339
Not Lockstep at all	\$1M	\$975K	\$1.16M	19%	1352

## GENDER

	2020	2020 Adj.	2022	% Change	2022 Frequency
Male	\$1.13M	\$1.04M	\$1.21M	21%	507
Female	\$784K	\$721K	\$905K	26%	1181

## ETHNICITY

	2020	2020 Adj.	2022	% Change	2022 Frequency
White, not Hispanic	\$1M	\$966K	\$1.13M	17%	1413
Black, not Hispanic	\$902K	\$830K	\$752K	-9%	39
Hispanic	\$648K	\$596K	\$930K	56%	77
Asian Pacific, not Hispanic	\$1M	\$920K	\$1.22M	33%	79
American Indian, not Hispanic	-	-	\$1.22M	-	2
Native Hawaiian or Pacific Islander, not Hispanic	\$325K	\$299K	\$350K	17%	2
Mixed races	\$1.17M	\$1.07M	\$1.15M	8%	30

## IV – Average Total Originations

### PARTNERSHIP TENURE

	2020	2020 Adj.	2022	% Change	2022 Frequency
1 to 5 years	\$950K	\$874K	\$1.38M	59%	446
6 to 10 years	\$2.6M	\$2.39M	\$2.3M	-4%	314
11 to 20 years	\$3.71M	\$3.41M	\$3.79M	11%	417
More than 20 years	\$3.92M	\$3.6M	\$3.37M	-6%	512

### PARTNERSHIP STATUS

	2020	2020 Adj.	2022	% Change	2022 Frequency
Equity Partner	\$4M	\$3.68M	\$3.73M	1%	1102
Non-Equity Partner	\$865K	\$791K	\$927K	17%	589

### PRACTICE AREAS

	2020	2020 Adj.	2022	% Change	2022 Frequency
Litigation	\$2.7M	\$2.48M	\$2.55M	3%	428
Corporate	\$3.98M	\$3.66M	\$4.28M	17%	150
IP	\$3.13M	\$2.88M	\$2.43M	-15%	187
Labor & Employment	\$1.58M	\$1.45M	\$1.75M	20%	122
Tax & ERISA	\$1.6M	\$1.47M	\$1.4M	-4%	81
Real Estate	\$2.64M	\$2.42M	\$2.41M	-1%	101
Other	\$2.68M	\$2.46M	\$3M	24%	622

### CITY

	2020	2020 Adj.	2022	% Change	2022 Frequency
New York, NY	\$4.16M	\$3.82M	\$4.27M	12%	217
Washington, D.C./NoVA	\$3.33M	\$3M	\$3.06M	5%	216
Chicago, IL	\$2.49M	\$2.29M	\$2.29M	27%	138
Los Angeles, CA	\$3M	\$2.77M	\$2.58M	-7%	93
San Francisco, CA	\$3.26M	\$2.99M	\$3.98M	33%	72
Philadelphia, PA	\$3.94M	\$3.62M	\$2.27M	-37%	55
Boston, MA	\$4.43M	\$4M	\$3.33M	-18%	69
Atlanta, GA	\$1.67M	\$1.53M	\$2.25M	47%	62
Dallas, TX	\$2.55M	\$2.34M	\$4.2M	79%	54
Houston, TX	\$2.8M	\$2.57M	\$3.19M	24%	55
Palo Alto/Silicon Valley, CA	\$6M	\$5.52M	\$4.63M	-16%	26
Minneapolis, MN	\$1.7M	\$1.56M	\$1.86M	19%	33
Seattle, WA	\$3M	\$2.78M	\$1.72M	-38%	24
Miami, FL	\$2.31M	\$2.12M	\$2.07M	-2%	46
Other	\$1.72M	\$1.58M	\$1.68M	6%	531

## COMPENSATION TRANSPARENCY

	2020	2020 Adj.	2022	% Change	2022 Frequency
Open	\$3.38M	\$3.11M	\$3.2M	3%	920
Partially Open	\$2.09M	\$1.92M	\$2.15M	12%	272
Closed	\$1.91M	\$1.75M	\$2.27M	30%	490

## COMPENSATION SYSTEM

	2020	2020 Adj.	2022	% Change	2022 Frequency
Pure Lockstep	\$8.94M	\$8.22M	\$2.88M	-65%	36
Generally Lockstep	\$2.25M	\$2.07M	\$2.24M	9%	321
Not Lockstep at all	\$2.93M	\$2.69M	\$2.85M	6%	1311

## GENDER

	2020	2020 Adj.	2022	% Change	2022 Frequency
Male	\$3.12M	\$2.87M	\$3.04M	6%	1151
Female	\$2.1M	\$1.93M	\$2.02M	5%	480

## ETHNICITY

	2020	2020 Adj.	2022	% Change	2022 Frequency
White, not Hispanic	\$2.89M	\$2.65M	\$2.7M	2%	1375
Black, not Hispanic	\$1.84M	\$1.69M	\$1.74M	3%	37
Hispanic	\$1.47M	\$1.35M	\$2.76M	104%	74
Asian Pacific, not Hispanic	\$3.13M	\$2.88M	\$2.95M	3%	71
American Indian, not Hispanic	-	-	\$5.52M	-	2
Native Hawaiian or Pacific Islander, not Hispanic	\$950K	\$875K	\$2.45M	180%	1
Mixed races	\$3.13M	\$2.88M	\$3.4M	18%	29

# V – Average Total Working Attorney Receipts

## PARTNERSHIP TENURE

	2020	2020 Adj.	2022	% Change	2022 Frequency
1 to 5 years	\$1.04M	\$978K	\$1.2M	23%	426
6 to 10 years	\$1.34M	\$1.26M	\$1.43M	14%	305
11 to 20 years	\$1.34M	\$1.26M	\$1.45M	15%	405
More than 20 years	\$1.3M	\$1.22M	\$1.43M	17%	496

## PARTNERSHIP STATUS

	2020	2020 Adj.	2022	% Change	2022 Frequency
Equity Partner	\$1.41M	\$1.32M	\$1.55M	17%	1063
Non-Equity Partner	\$960K	\$902K	\$1.04M	16%	571

## PRACTICE AREAS

	2020	2020 Adj.	2022	% Change	2022 Frequency
Litigation	\$1.16M	\$1.09M	\$1.33M	23%	412
Corporate	\$1.37M	\$1.28M	\$1.71M	33%	150
IP	\$1.34M	\$1.26M	\$1.79M	-6%	180
Labor & Employment	\$970K	\$912K	\$962K	5%	118
Tax & ERISA	\$1.61M	\$1.51M	\$1.54M	2%	78
Real Estate	\$1.22M	\$1.14M	\$1.18M	3%	96
Other	\$1.21M	\$1.13M	\$1.47M	30%	600

## CITY

	2020	2020 Adj.	2022	% Change	2022 Frequency
New York, NY	\$1.8M	\$1.69M	\$1.93M	14%	207
Washington, D.C./NoVA	\$1.53M	\$1.43M	\$1.79M	25%	202
Chicago, IL	\$1.18M	\$1.1M	\$1.32M	20%	131
Los Angeles, CA	\$1.33M	\$1.25M	\$1.38M	11%	94
San Francisco, CA	\$1.52M	\$1.42M	\$1.68M	18%	66
Philadelphia, PA	\$1.25M	\$1.1M	\$1.24M	6%	55
Boston, MA	\$1.58M	\$1.48M	\$1.65M	12%	69
Atlanta, GA	\$860K	\$808K	\$1.08M	34%	62
Dallas, TX	\$1.09M	\$1.02M	\$1.58M	55%	53
Houston, TX	\$1.15M	\$1.08M	\$1.52M	41%	52
Palo Alto/Silicon Valley, CA	\$.042M	\$1.91M	\$2.11M	10%	25
Minneapolis, MN	\$970K	\$912K	\$1.04M	15%	33
Seattle, WA	\$980K	\$921K	\$938K	2%	24
Miami, FL	\$1.09M	\$1.02M	\$1.02M	0%	43
Other	\$860K	\$808K	\$979K	21%	518



## COMPENSATION TRANSPARENCY

	2020	2020 Adj.	2022	% Change	2022 Frequency
Open	\$1.32M	\$1.24M	\$1.42M	15%	886
Partially Open	\$1.22M	\$1.14M	\$1.40M	22%	261
Closed	\$1.07M	\$1M	\$1.27M	26%	478

## COMPENSATION SYSTEM

	2020	2020 Adj.	2022	% Change	2022 Frequency
Pure Lockstep	\$2.43M	\$2.28M	\$1.22M	-46%	33
Generally Lockstep	\$1.3M	\$1.22M	\$1.35M	11%	309
Not Lockstep at all	\$1.23M	\$1.15M	\$1.38M	20%	1269

## GENDER

	2020	2020 Adj.	2022	% Change	2022 Frequency
Male	\$1.29M	\$1.21M	\$1.44M	19%	1120
Female	\$1.13M	\$1.06M	\$1.21M	15%	456

## ETHNICITY

	2020	2020 Adj.	2022	% Change	2022 Frequency
White, not Hispanic	\$1.24M	\$1.16M	\$1.37M	18%	1332
Black, not Hispanic	\$1.2M	\$1.12M	\$1.27M	13%	36
Hispanic	\$1.02M	\$959K	\$1.4M	46%	71
Asian Pacific, not Hispanic	\$1.49M	\$1.4M	\$1.59M	14%	68
American Indian, not Hispanic	-	-	\$1.1M	-	2
Native Hawaiian or Pacific Islander, not Hispanic	\$450K	\$423K	\$1.95M	361%	1
Mixed races	\$1.53M	\$1.43M	\$1.34M	-6%	29

## VI – Average Billing Rates

### PARTNERSHIP TENURE

	2020	2020 Adj.	2022	% Change	2022 Frequency
1 to 5 years	\$724	\$681	\$773	14%	469
6 to 10 years	\$827	\$777	\$810	4%	325
11 to 20 years	\$867	\$815	\$876	7%	430
More than 20 years	\$884	\$831	\$819	-1%	521

### PARTNERSHIP STATUS

	2020	2020 Adj.	2022	% Change	2022 Frequency
Equity Partner	\$902	\$848	\$876	3%	1141
Non-Equity Partner	\$689	\$648	\$712	10%	606

### PRACTICE AREAS

	2020	2020 Adj.	2022	% Change	2022 Frequency
Litigation	\$770	\$724	\$768	6%	440
Corporate	\$901	\$847	\$937	11%	158
IP	\$868	\$816	\$811	-1%	192
Labor & Employment	\$656	\$617	\$620	0%	127
Tax & ERISA	\$1,041	\$979	\$966	-1%	84
Real Estate	\$754	\$709	\$716	1%	103
Other	\$820	\$771	\$865	12%	643

### CITY

	2020	2020 Adj.	2022	% Change	2022 Frequency
New York, NY	\$1,088	\$1,023	\$1,109	8%	225
Washington, D.C./NoVA	\$988	\$929	\$1,048	13%	226
Chicago, IL	\$821	\$772	\$839	9%	142
Los Angeles, CA	\$933	\$877	\$888	1%	100
San Francisco, CA	\$907	\$853	\$955	12%	74
Philadelphia, PA	\$717	\$674	\$761	13%	56
Boston, MA	\$969	\$911	\$953	5%	70
Atlanta, GA	\$634	\$596	\$650	9%	62
Dallas, TX	\$817	\$768	\$810	5%	57
Houston, TX	\$880	\$827	\$896	8%	55
Palo Alto/Silicon Valley, CA	\$1,051	\$988	\$1,159	17%	26
Minneapolis, MN	\$617	\$580	\$628	8%	33
Seattle, WA	\$692	\$650	\$687	6%	25
Miami, FL	\$739	\$695	\$787	13%	46
Other	\$585	\$550	\$576	5%	550

## COMPENSATION TRANSPARENCY

	2020	2020 Adj.	2022	% Change	2022 Frequency
Open	\$861	\$809	\$832	3%	948
Partially Open	\$839	\$789	\$831	5%	286
Closed	\$729	\$685	\$791	15%	503

## COMPENSATION SYSTEM

	2020	2020 Adj.	2022	% Change	2022 Frequency
Pure Lockstep	\$1,009	\$948	\$667	-30%	37
Generally Lockstep	\$785	\$738	\$761	3%	339
Not Lockstep at all	\$833	\$783	\$840	7%	1347

## GENDER

	2020	2020 Adj.	2022	% Change	2022 Frequency
Male	\$841	\$791	\$828	5%	1176
Female	\$766	\$720	\$790	10%	503

## ETHNICITY

	2020	2020 Adj.	2022	% Change	2022 Frequency
White, not Hispanic	\$822	\$773	\$819	6%	1407
Black, not Hispanic	\$797	\$749	\$806	8%	39
Hispanic	\$698	\$656	\$737	12%	77
Asian Pacific, not Hispanic	\$862	\$810	\$893	10%	77
American Indian, not Hispanic	-	-	\$874	-	2
Native Hawaiian or Pacific Islander, not Hispanic	\$287	\$270	\$474	76%	2
Mixed races	\$865	\$813	\$782	-4%	30

## BILLING RATE DISCOUNT

	2020	2022	Frequency
No standard discount	37%	46%	742
<5%	6%	0%	0
5-10%	33%	32%	513
11-15%	15%	12%	190
16-20%	6%	6%	104
21-25%	2%	2%	30
26-30%	1%	1%	13
31-35%	0%	1%	9
36-40%	1%	1%	10
41-45%	0%	0%	2
46-50%	0%	0%	4
>50%	0%	0%	0
Total			1617

## VII – Average Billable Hours

### PARTNERSHIP TENURE

	2020	2020 Adj.	2022	% Change	2022 Frequency
1 to 5 years	1758	1758	1784	1%	463
6 to 10 years	1726	1726	1730	0%	323
11 to 20 years	1674	1674	1732	3%	425
More than 20 years	1586	1586	1650	4%	517

### PARTNERSHIP STATUS

	2020	2020 Adj.	2022	% Change	2022 Frequency
Equity Partner	1685	1685	1713	2%	1131
Non-Equity Partner	1672	1672	1737	4%	599

### PRACTICE AREAS

	2020	2020 Adj.	2022	% Change	2022 Frequency
Litigation	1772	1772	1765	0%	436
Corporate	1620	1620	1792	11%	157
IP	1619	1619	1661	3%	191
Labor & Employment	1682	1682	1689	0%	127
Tax & ERISA	1765	1765	1713	-3%	83
Real Estate	1651	1651	1668	1%	102
Other	1662	1662	1708	3%	634

### CITY

	2020	2020 Adj.	2022	% Change	2022 Frequency
New York, NY	1721	1721	1788	4%	224
Washington, D.C./NoVA	1680	1680	1751	4%	223
Chicago, IL	1672	1672	1697	1%	143
Los Angeles, CA	1711	1711	1684	-2%	99
San Francisco, CA	1748	1748	1747	0%	73
Philadelphia, PA	1788	1788	1713	-4%	56
Boston, MA	1776	1776	1798	1%	70
Atlanta, GA	1606	1606	1805	12%	60
Dallas, TX	1701	1701	1748	3%	54
Houston, TX	1653	1653	1755	6%	55
Palo Alto/Silicon Valley, CA	1673	1673	1843	10%	26
Minneapolis, MN	1598	1598	1809	13%	33
Seattle, WA	1547	1547	1707	10%	26
Miami, FL	1771	1771	1615	-9%	45
Other	1639	1639	1666	2%	543

## COMPENSATION TRANSPARENCY

	2020	2020 Adj.	2022	% Change	2022 Frequency
Open	1669	1669	1697	2%	941
Partially Open	1665	1665	1745	5%	282
Closed	1719	1719	1753	2%	497

## COMPENSATION SYSTEM

	2020	2020 Adj.	2022	% Change	2022 Frequency
Pure Lockstep	2060	2060	1750	-15%	37
Generally Lockstep	1770	1770	1788	1%	333
Not Lockstep at all	1662	1662	1705	3%	1336

## GENDER

	2020	2020 Adj.	2022	% Change	2022 Frequency
Male	1693	1693	1748	3%	1171
Female	1636	1636	1663	2%	494

## ETHNICITY

	2020	2020 Adj.	2022	% Change	2022 Frequency
White, not Hispanic	1681	1681	1723	2%	1396
Black, not Hispanic	1609	1609	1641	2%	38
Hispanic	1672	1672	1712	2%	76
Asian Pacific, not Hispanic	1629	1629	1754	8%	75
American Indian, not Hispanic	-	-	1374	-	2
Native Hawaiian or Pacific Islander, not Hispanic	1775	1775	1824	3%	2
Mixed races	1790	1790	1807	1%	30

## VIII – Average Non-Billable Hours

### PARTNERSHIP TENURE

	2020	2020 Adj.	2022	% Change	2022 Frequency
1 to 5 years	519	503	414	-18%	462
6 to 10 years	576	559	479	-14%	322
11 to 20 years	611	593	531	-10%	422
More than 20 years	643	624	501	-20%	510

### PARTNERSHIP STATUS

	2020	2020 Adj.	2022	% Change	2022 Frequency
Equity Partner	618	599	518	-14%	1122
Non-Equity Partner	538	522	412	-21%	596

### PRACTICE AREAS

	2020	2020 Adj.	2022	% Change	2022 Frequency
Litigation	507	492	416	-15%	429
Corporate	645	626	552	-12%	157
IP	660	640	505	-21%	190
Labor & Employment	527	511	480	-6%	125
Tax & ERISA	609	591	475	-20%	84
Real Estate	503	488	473	-3%	100
Other	619	600	502	-16%	633

### CITY

	2020	2020 Adj.	2022	% Change	2022 Frequency
New York, NY	599	581	497	-14%	224
Washington, D.C./NoVA	650	631	535	-15%	224
Chicago, IL	554	537	488	-9%	140
Los Angeles, CA	601	583	490	-16%	100
San Francisco, CA	611	593	461	-22%	73
Philadelphia, PA	486	471	427	-9%	55
Boston, MA	577	560	486	-13%	70
Atlanta, GA	570	553	465	-16%	58
Dallas, TX	603	585	497	-15%	55
Houston, TX	683	663	450	-32%	54
Palo Alto/Silicon Valley, CA	636	617	547	-11%	26
Minneapolis, MN	602	584	447	-23%	33
Seattle, WA	640	621	372	-40%	26
Miami, FL	366	355	455	28%	44
Other	578	561	465	-17%	536

## COMPENSATION TRANSPARENCY

	2020	2020 Adj.	2022	% Change	2022 Frequency
Open	619	600	505	-16%	931
Partially Open	574	557	466	-16%	282
Closed	524	508	442	-13%	495

## COMPENSATION SYSTEM

	2020	2020 Adj.	2022	% Change	2022 Frequency
Pure Lockstep	454	440	426	-3%	37
Generally Lockstep	516	501	430	-14%	329
Not Lockstep at all	605	587	495	-16%	1329

## GENDER

	2020	2020 Adj.	2022	% Change	2022 Frequency
Male	585	567	474	-16%	1160
Female	619	600	491	-18%	493

## ETHNICITY

	2020	2020 Adj.	2022	% Change	2022 Frequency
White, not Hispanic	590	572	474	-17%	1388
Black, not Hispanic	614	596	569	-5%	38
Hispanic	565	548	509	-7%	72
Asian Pacific, not Hispanic	679	659	514	-22%	76
American Indian, not Hispanic	-	-	424	-	2
Native Hawaiian or Pacific Islander, not Hispanic	625	606	74	-88%	2
Mixed races	653	633	448	-29%	30

# IX – Satisfaction with Total Compensation

## PARTNERSHIP TENURE

<b>2022</b>	<b>Very satisfied</b>	<b>Moderately satisfied</b>	<b>Slightly satisfied</b>	<b>Neutral</b>	<b>Slightly dissatisfied</b>	<b>Moderately dissatisfied</b>	<b>Very dissatisfied</b>	<b>2022 Frequency</b>
1 - 5 years	18%	38%	12%	7%	9%	10%	5%	317
6 - 10 years	23%	42%	9%	6%	10%	5%	4%	228
11 - 20 years	32%	29%	13%	8%	8%	4%	5%	321
More than 20 years	41%	32%	9%	5%	6%	5%	3%	336
<b>2020</b>	<b>Very satisfied</b>	<b>Moderately satisfied</b>	<b>Slightly satisfied</b>	<b>Neutral</b>	<b>Slightly dissatisfied</b>	<b>Moderately dissatisfied</b>	<b>Very dissatisfied</b>	
1 - 5 years	16%	39%	15%	7%	6%	10%	8%	
6 - 10 years	21%	39%	11%	7%	8%	9%	6%	
11 - 20 years	29%	36%	9%	8%	8%	6%	3%	
More than 20 years	33%	41%	7%	5%	4%	5%	4%	

## PARTNERSHIP STATUS

<b>2022</b>	<b>Very satisfied</b>	<b>Moderately satisfied</b>	<b>Slightly satisfied</b>	<b>Neutral</b>	<b>Slightly dissatisfied</b>	<b>Moderately dissatisfied</b>	<b>Very dissatisfied</b>	<b>2022 Frequency</b>
Equity Partner	40%	35%	9%	5%	5%	4%	3%	771
Non-Equity Partner	10%	34%	14%	9%	14%	11%	7%	432
<b>2020</b>	<b>Very satisfied</b>	<b>Moderately satisfied</b>	<b>Slightly satisfied</b>	<b>Neutral</b>	<b>Slightly dissatisfied</b>	<b>Moderately dissatisfied</b>	<b>Very dissatisfied</b>	
Equity Partner	32%	40%	9%	7%	5%	5%	3%	
Non-Equity Partner	12%	37%	14%	7%	8%	12%	10%	



## PRACTICE AREA

<b>2022</b>	<b>Very satisfied</b>	<b>Moderately satisfied</b>	<b>Slightly satisfied</b>	<b>Neutral</b>	<b>Slightly dissatisfied</b>	<b>Moderately dissatisfied</b>	<b>Very dissatisfied</b>	<b>2022 Frequency</b>
Litigation	27%	36%	10%	7%	8%	7%	5%	278
Corporate	25%	39%	8%	8%	7%	6%	6%	253
IP	31%	29%	12%	8%	11%	4%	5%	132
Labor & Employment	20%	37%	13%	6%	7%	11%	5%	87
Tax & ERISA	33%	27%	15%	6%	8%	6%	4%	64
Real Estate	32%	33%	10%	4%	11%	5%	6%	58
Other	32%	35%	11%	6%	7%	6%	3%	329
<b>2020</b>	<b>Very satisfied</b>	<b>Moderately satisfied</b>	<b>Slightly satisfied</b>	<b>Neutral</b>	<b>Slightly dissatisfied</b>	<b>Moderately dissatisfied</b>	<b>Very dissatisfied</b>	
Litigation	24%	41%	10%	7%	8%	5%	5%	
Corporate	23%	40%	9%	9%	7%	9%	3%	
IP	30%	34%	9%	5%	7%	10%	5%	
Labor & Employment.	26%	40%	10%	5%	7%	9%	2%	
Tax & ERISA	28%	41%	9%	6%	5%	6%	5%	
Real Estate	31%	31%	14%	9%	5%	3%	7%	
Other	24%	39%	12%	6%	5%	8%	8%	

**CITY**

<b>2022</b>	<b>Very satisfied</b>	<b>Moderately satisfied</b>	<b>Slightly satisfied</b>	<b>Neutral</b>	<b>Slightly dissatisfied</b>	<b>Moderately dissatisfied</b>	<b>Very dissatisfied</b>	<b>2022 Frequency</b>
New York	28%	32%	16%	5%	6%	7%	6%	165
D.C. / NoVA	34%	34%	11%	5%	6%	5%	5%	161
Chicago	24%	37%	13%	6%	10%	6%	6%	113
Los Angeles	25%	31%	13%	6%	12%	10%	4%	81
San Francisco	31%	40%	7%	5%	11%	3%	4%	60
Philadelphia	34%	34%	5%	4%	9%	7%	7%	31
Boston	41%	27%	9%	6%	6%	9%	3%	49
Atlanta	29%	40%	8%	3%	15%	2%	3%	41
Dallas	40%	33%	5%	11%	7%	2%	2%	43
Houston	33%	33%	11%	4%	4%	11%	5%	31
Silicon Valley	15%	38%	8%	19%	8%	8%	4%	32
Minneapolis	33%	24%	12%	3%	15%	9%	3%	24
Seattle	26%	41%	11%	0%	11%	7%	4%	30
Miami	17%	37%	11%	9%	7%	13%	7%	25
Other	28%	36%	10%	8%	8%	6%	3%	316
<b>2020</b>	<b>Very satisfied</b>	<b>Moderately satisfied</b>	<b>Slightly satisfied</b>	<b>Neutral</b>	<b>Slightly dissatisfied</b>	<b>Moderately dissatisfied</b>	<b>Very dissatisfied</b>	
New York	24%	38%	10%	11%	6%	7%	5%	
D.C. / NoVA	28%	45%	10%	6%	4%	4%	4%	
Chicago	17%	40%	9%	6%	12%	8%	8%	
Los Angeles	28%	33%	14%	4%	5%	11%	5%	
San Francisco	30%	30%	12%	7%	5%	10%	7%	
Philadelphia	16%	39%	7%	3%	19%	13%	3%	
Boston	29%	41%	18%	2%	6%	4%	0%	
Atlanta	22%	46%	2%	5%	0%	12%	12%	
Dallas	28%	35%	12%	14%	5%	2%	5%	
Houston	19%	45%	7%	7%	10%	10%	3%	
Silicon Valley	38%	25%	16%	6%	6%	6%	3%	
Minneapolis	25%	42%	8%	8%	0%	13%	4%	
Seattle	23%	43%	10%	3%	7%	10%	3%	
Miami	20%	40%	16%	12%	12%	0%	0%	
Other	26%	38%	10%	6%	6%	8%	6%	

## LATERAL STATUS

<b>2022</b>	<b>Very satisfied</b>	<b>Moderately satisfied</b>	<b>Slightly satisfied</b>	<b>Neutral</b>	<b>Slightly dissatisfied</b>	<b>Moderately dissatisfied</b>	<b>Very dissatisfied</b>	<b>2022 Frequency</b>
Joined laterally as partner	32%	34%	10%	6%	7%	6%	4%	652
Lateralled from Gov't/Industry	27%	47%	3%	7%	7%	6%	3%	
Homegrown from associate	27%	33%	12%	7%	9%	7%	5%	541
<b>2020</b>	<b>Very satisfied</b>	<b>Moderately satisfied</b>	<b>Slightly satisfied</b>	<b>Neutral</b>	<b>Slightly dissatisfied</b>	<b>Moderately dissatisfied</b>	<b>Very dissatisfied</b>	
Joined laterally as partner	25%	42%	10%	8%	6%	6%	5%	
Lateralled from Gov't/Industry	NA	NA	NA	NA	NA	NA	NA	
Homegrown from associate	26%	35%	12%	6%	7%	9%	6%	

## COMPENSATION TRANSPARENCY

<b>2022</b>	<b>Very satisfied</b>	<b>Moderately satisfied</b>	<b>Slightly satisfied</b>	<b>Neutral</b>	<b>Slightly dissatisfied</b>	<b>Moderately dissatisfied</b>	<b>Very dissatisfied</b>	<b>2022 Frequency</b>
Open	37%	35%	9%	6%	5%	5%	3%	764
Partially Open	21%	37%	11%	8%	11%	6%	6%	153
Closed	20%	32%	13%	7%	11%	10%	6%	283
<b>2020</b>	<b>Very satisfied</b>	<b>Moderately satisfied</b>	<b>Slightly satisfied</b>	<b>Neutral</b>	<b>Slightly dissatisfied</b>	<b>Moderately dissatisfied</b>	<b>Very dissatisfied</b>	
Open	31%	41%	9%	5%	6%	6%	3%	
Partially Open	18%	39%	11%	12%	9%	9%	3%	
Closed	14%	33%	15%	8%	7%	12%	11%	

## COMPENSATION SYSTEM

<b>2022</b>	<b>Very satisfied</b>	<b>Moderately satisfied</b>	<b>Slightly satisfied</b>	<b>Neutral</b>	<b>Slightly dissatisfied</b>	<b>Moderately dissatisfied</b>	<b>Very dissatisfied</b>	<b>2022 Frequency</b>
Pure Lockstep	35%	38%	3%	11%	8%	3%	3%	13
Generally Lockstep	24%	38%	12%	7%	8%	6%	4%	184
Not Lockstep at all	31%	34%	11%	6%	8%	7%	5%	998
<b>2020</b>	<b>Very satisfied</b>	<b>Moderately satisfied</b>	<b>Slightly satisfied</b>	<b>Neutral</b>	<b>Slightly dissatisfied</b>	<b>Moderately dissatisfied</b>	<b>Very dissatisfied</b>	
Pure Lockstep	69%	8%	15%	0%	0%	8%	0%	
Generally Lockstep	21%	36%	10%	9%	9%	8%	6%	
Not Lockstep at all	25%	40%	11%	6%	6%	7%	5%	

## GENDER

<b>2022</b>	<b>Very satisfied</b>	<b>Moderately satisfied</b>	<b>Slightly satisfied</b>	<b>Neutral</b>	<b>Slightly dissatisfied</b>	<b>Moderately dissatisfied</b>	<b>Very dissatisfied</b>	<b>2022 Frequency</b>
Male	31%	35%	11%	6%	8%	6%	4%	812
Female	26%	36%	10%	7%	9%	7%	6%	353
<b>2020</b>	<b>Very satisfied</b>	<b>Moderately satisfied</b>	<b>Slightly satisfied</b>	<b>Neutral</b>	<b>Slightly dissatisfied</b>	<b>Moderately dissatisfied</b>	<b>Very dissatisfied</b>	
Male	25%	40%	11%	7%	6%	6%	5%	
Female	24%	36%	10%	6%	7%	11%	6%	

## ETHNICITY

<b>2022</b>	<b>Very satisfied</b>	<b>Moderately satisfied</b>	<b>Slightly satisfied</b>	<b>Neutral</b>	<b>Slightly dissatisfied</b>	<b>Moderately dissatisfied</b>	<b>Very dissatisfied</b>	<b>2022 Frequency</b>
White, not Hispanic	30%	36%	10%	6%	8%	6%	4%	931
Black, not Hispanic	23%	31%	13%	0%	15%	10%	8%	47
Hispanic	32%	38%	13%	5%	4%	3%	5%	70
Asian Pacific, not Hispanic	27%	28%	14%	10%	9%	6%	6%	69
American Indian, not Hispanic	50%	0%	0%	50%	0%	0%	0%	0
Native Hawaiian or Pacific Islander, not Hispanic	50%	0%	0%	0%	0%	50%	0%	1
Mixed races	17%	33%	13%	7%	17%	3%	10%	18
<b>2020</b>	<b>Very satisfied</b>	<b>Moderately satisfied</b>	<b>Slightly satisfied</b>	<b>Neutral</b>	<b>Slightly dissatisfied</b>	<b>Moderately dissatisfied</b>	<b>Very dissatisfied</b>	
White, not Hispanic	26%	39%	11%	6%	6%	8%	5%	
Black, not Hispanic	15%	47%	6%	11%	11%	6%	4%	
Hispanic	23%	43%	10%	3%	9%	6%	7%	
Asian Pacific, not Hispanic	22%	33%	12%	10%	9%	12%	3%	
American Indian, not Hispanic	-	-	-	-	-	-	-	
Native Hawaiian or Pacific Islander, not Hispanic	0%	0%	100%	0%	0%	0%	0%	
Mixed races	39%	28%	11%	6%	0%	6%	11%	

## TOTAL COMPENSATION

<b>2022</b>	<b>Very satisfied</b>	<b>Moderately satisfied</b>	<b>Slightly satisfied</b>	<b>Neutral</b>	<b>Slightly dissatisfied</b>	<b>Moderately dissatisfied</b>	<b>Very dissatisfied</b>	<b>2022 Frequency</b>
<\$300K	10	28	14	12	13	16	8	158
\$301K - \$500K	18	36	14	7	10	7	7	295
\$501K - \$1M	28	38	11	7	8	4	4	367
\$1.01M - \$1.5M	40	40	8	3	4	3	1	155
\$1.5M+	53	31	6	3	4	4	1	222
<b>2020</b>	<b>Very satisfied</b>	<b>Moderately satisfied</b>	<b>Slightly satisfied</b>	<b>Neutral</b>	<b>Slightly dissatisfied</b>	<b>Moderately dissatisfied</b>	<b>Very dissatisfied</b>	
<\$300K	8%	31%	13%	10%	11%	17%	11%	
\$301K - \$500K	14%	43%	12%	7%	7%	9%	9%	
\$501K - \$1M	25%	40%	11%	6%	6%	8%	4%	
\$1.01M - \$1.5M	32%	40%	10%	6%	8%	4%	1%	
\$1.5M+	48%	35%	7%	6%	2%	1%	1%	

## TOTAL ORIGINATIONS

<b>2022</b>	<b>Very satisfied</b>	<b>Moderately satisfied</b>	<b>Slightly satisfied</b>	<b>Neutral</b>	<b>Slightly dissatisfied</b>	<b>Moderately dissatisfied</b>	<b>Very dissatisfied</b>	<b>2022 Frequency</b>
<\$1M	18	36	14	8	10	9	5	403
\$1.01M - \$2M	30	37	8	7	7	4	6	288
\$2.01M - \$3M	31	39	10	4	7	4	4	136
\$3.01M - \$5M	40	32	9	4	7	5	2	128
\$5.0M+	51	29	6	3	5	5	2	188
<b>2020</b>	<b>Very satisfied</b>	<b>Moderately satisfied</b>	<b>Slightly satisfied</b>	<b>Neutral</b>	<b>Slightly dissatisfied</b>	<b>Moderately dissatisfied</b>	<b>Very dissatisfied</b>	
<\$1M	17%	39%	11%	7%	8%	11%	7%	
\$1.01M - \$2M	21%	40%	13%	6%	7%	8%	6%	
\$2.01M - \$3M	27%	43%	10%	6%	4%	6%	4%	
\$3.01M - \$5M	30%	37%	9%	6%	8%	5%	6%	
\$5.0M+	40%	35%	9%	7%	4%	3%	2%	

## BILLABLE HOURS

<b>2022</b>	<b>Very satisfied</b>	<b>Moderately satisfied</b>	<b>Slightly satisfied</b>	<b>Neutral</b>	<b>Slightly dissatisfied</b>	<b>Moderately dissatisfied</b>	<b>Very dissatisfied</b>	<b>2022 Frequency</b>
<1,500 Hours	31	34	10	7	7	6	6	383
1,501 - 1,800 Hours	29	36	12	6	8	6	2	336
1,801 - 2,100 Hours	28	35	10	6	7	8	5	302
2,101 - 2,400 Hours	30	32	10	7	12	6	3	107
2,401+ Hours	32	35	10	5	7	5	5	59
<b>2020</b>	<b>Very satisfied</b>	<b>Moderately satisfied</b>	<b>Slightly satisfied</b>	<b>Neutral</b>	<b>Slightly dissatisfied</b>	<b>Moderately dissatisfied</b>	<b>Very dissatisfied</b>	
<1,500 Hours	27%	41%	7%	6%	6%	8%	5%	
1,501 - 1,800 Hours	25%	38%	10%	8%	8%	7%	5%	
1,801 - 2,100 Hours	22%	37%	14%	6%	8%	7%	7%	
2,101 - 2,400 Hours	22%	40%	15%	5%	3%	11%	4%	
2,401+ Hours	36%	34%	7%	10%	5%	3%	5%	

# 2022 Major, Lindsey & Africa Partner Compensation Survey

Thank you for taking part in the 2022 Major, Lindsey & Africa Partner Compensation Survey. Major, Lindsey & Africa has partnered with Law360, a publication of Portfolio Media, to administer this survey on its behalf. Your responses will be kept strictly confidential by Law360/Portfolio Media and no identifying information will be associated with your answers or forwarded to Major, Lindsey & Africa or any other party.

Each participant will receive a free copy of the final report. If you are not sure of an answer to a question, please feel free to skip that question.

## ***First, some general questions about your partnership status and practice.***

**Q1.** How many years have you been a partner at a law firm in total? Please include all law firms, including your current one.

- > Less than one year
- > 1 to 5 years
- > 6 to 10 years
- > 11 to 20 years
- > More than 20 years

**Q2.** What was your partnership status during the 2021 compensation year?

For purposes of this survey, Equity Partners are those who receive no more than half their compensation on a fixed-income basis and Non-Equity Partners are those who receive more than half their compensation on a fixed-income basis. If your status changed during the year, please use your status as of the end of the year.

- > Equity Partner
- > Non-Equity Partner
- > Not a partner during 2021

**Q3.** What is your primary practice area?

- > Administrative/Regulatory
- > Antitrust
- > Banking
- > Bankruptcy
- > Corporate – General
- > Corporate – Emerging Company/Venture Capital
- > Corporate – Finance/Securities/Capital Markets
- > Corporate – M&A
- > Employment/Labor
- > Energy
- > Entertainment
- > Environmental
- > ERISA/Benefits
- > Government Contracts
- > Healthcare
- > Immigration
- > Insurance
- > International
- > IP – Litigation
- > IP – Transactional
- > Litigation – General
- > Litigation – Appellate
- > Litigation – White Collar/Securities Enforcement
- > Privacy/Cybersecurity
- > Project Finance
- > Real Estate
- > Tax
- > Trusts & Estates
- > Other (please specify)

**Q4.** In what city do you primarily practice?

- > Akron, OH
- > Albuquerque, NM
- > Arlington, TX
- > Atlanta, GA
- > Austin, TX
- > Baltimore, MD
- > Birmingham, AL
- > Boston, MA
- > Buffalo, NY
- > Charlotte, NC
- > Chicago, IL
- > Cincinnati, OH
- > Cleveland, OH
- > Colorado Springs, CO
- > Columbia, SC
- > Columbus, OH
- > Dallas, TX
- > Denver, CO
- > Detroit, MI
- > El Paso, TX
- > Fort Worth, TX
- > Fresno, CA
- > Greenville, SC
- > Hartford, CT
- > Honolulu, HI
- > Houston, TX
- > Indianapolis, IN
- > Irvine, CA
- > Jacksonville, FL
- > Kansas City, MO
- > Las Vegas, NV
- > Long Beach, CA
- > Los Angeles, CA
- > Louisville, KY
- > Memphis, TN
- > Mesa, AZ
- > Miami, FL
- > Milwaukee, WI
- > Minneapolis, MN
- > Mountain View, CA
- > Nashville, TN
- > New Orleans, LA
- > New York, NY
- > Newark, NJ/Northern NJ
- > Oakland, CA
- > Oklahoma City, OK
- > Omaha, NE
- > Orange County, CA
- > Orlando, FL
- > Palo Alto/Silicon Valley, CA
- > Philadelphia, PA
- > Phoenix, AZ
- > Pittsburgh, PA
- > Portland, OR
- > Providence, RI
- > Raleigh, NC
- > Richmond, VA
- > Sacramento, CA
- > San Antonio, TX
- > San Diego, CA
- > San Francisco, CA
- > San Jose, CA
- > Seattle, WA
- > St. Louis, MO
- > Tallahassee, FL
- > Tampa, FL
- > Tucson, AZ
- > Tulsa, OK
- > Virginia Beach/Tidewater, VA
- > Washington, D.C./NoVA
- > Westchester, NY
- > Winston-Salem, NC
- > Other (please specify)

**Q5.** Which statement best describes your career trajectory?

- > I joined my present firm laterally as a partner from another law firm
- > I joined my present firm laterally as a partner from government service or private industry
- > I was previously an associate or counsel with my present firm before making partner

**Q6.** Is your firm's compensation system an open or closed one, i.e., do partners know what other partners make?

- > Open: Partners know what everyone makes, or can easily find out
- > Partially Open: Partners know ranges of compensation, but do not know exactly who makes what
- > Closed: Partners do not know what anyone else makes



**Q7.** Is your firm's compensation system pure lockstep, generally lockstep but allows for some variance based on certain factors, or not lockstep at all?

- > My firm is pure lockstep
- > My firm is generally lockstep, but allows for some variance
- > My firm is not lockstep at all

**Now some questions about your billing rate, hours, compensation and originations.**

**Q8.** What was your standard hourly billing rate for 2021? If your rate changed, please select the option which reflects the majority of the year.

- > Drop down menu of values ranging from "less that \$50" to \$3,000 or more," in \$25/hour increments.

**Q8a.** What was your standard discount off your hourly billing rate for 2021?

- |                        |          |          |
|------------------------|----------|----------|
| > No standard discount | > 16-20% | > 36-40% |
| > <5%                  | > 21-25% | > 41-45% |
| > 5-10%                | > 26-30% | > 46-50% |
| > 11-15%               | > 31-35% | > >50%   |

**Q9.** What were your total billable hours for 2021?

- > Drop down menu of values ranging from "less than 1,000 hours" to "3,000 hours or more," in 50-hour increments.

**Q10.** What were your total non-billable hours for 2021?

- > Drop down menu of values ranging from "less than 50 hours" to "1,000 hours or more," in 50-hour increments.

**Q11.** What was your total compensation for 2021 (including base and bonus, but excluding one-time contingency case payments, signing bonuses or other unusual payments that are not likely to re-occur)?

- > Drop down menu of values ranging from "less than \$100K" to "\$8M or more," in \$50,000 increments.

**Next, some questions concerning the impact of the COVID-19 pandemic on your practice and compensation.**

**Q11a.** Was your 2021 total compensation/capital affected by the COVID-19 pandemic?

- > Yes
- > No

**Q11b.** How was your 2021 compensation affected by: [Check all that apply]

- > My draw was reduced by \_\_\_% [increment ranges of 5%]
- > My base compensation was reduced by \_\_\_% [increment ranges of 5%]
- > My previously anticipated bonus was reduced by \_\_\_% [increment ranges of 5%]
- > My capital was increased by \_\_\_% [increment ranges of 5%]

**Q11c.** Is your 2022 compensation/capital expected to be affected by the COVID-19 pandemic?

- > Yes
- > No

**Q11d.** How is your 2022 compensation/capital expected to be affected: [Check all that apply]

- > My draw was/is expected to be reduced by \_\_\_% [increment ranges of 5%]
- > My base compensation was/is expected to be reduced by \_\_\_% [increment ranges of 5%]
- > My previously anticipated bonus was/is expected to be reduced by \_\_\_% [increment ranges of 5%]
- > My capital was/is expected to be increased by \_\_\_% [increment ranges of 5%]

**Q11e.** How many weekdays (i.e., Monday-Friday), if any, will your firm allow you to work from home once your firm fully re-opens?

- > 0
- > 1
- > 2
- > 3
- > 4
- > 5
- > Not sure

**Q11f.** How many weekdays (i.e., Monday-Friday) would you prefer to work from home once your firm fully re-opens?

- > 0
- > 1
- > 2
- > 3
- > 4
- > 5
- > Not sure

**Q11g.** How important is the ability to work from home to you?

- > So important that I would change firms because of it
- > Very important
- > Somewhat important
- > Neutral
- > Not very important
- > Not important at all
- > Very dissatisfied

**Q11h.** Did you change your geographic location because of the COVID-19 pandemic?

- > Yes
- > No

**Q11i.** Do you expect to move back to your former geographic location when your firm fully re-opens?

- > Yes
- > No
- > Not sure

**Q11j.** Which of the following programs/benefits, if any, did your firm introduce or increase as a result of the COVID-19 pandemic: [Select all that apply]

- > Mental health and wellness
- > Physical health and wellness
- > Childcare
- > Eldercare
- > Paid vacation/time off
- > Home office equipment/technology
- > None

**Now some questions about your practice.**

**Q12.** What were your total originations for 2021?

- › If your firm doesn't track originations, please provide your best estimate if possible. By total originations, we mean the total dollar value of work performed and collected by you and the other attorneys at your firm for which your efforts were the proximate cause of such work coming to the firm.
- › Drop down menus of values ranging from "less than \$100K" to "\$30M or more" in \$100,000 increments through \$10M and \$1M increments between \$10-\$30M; Don't know/not sure.

**Q13.** What were your total working attorney receipts for 2021?

- › By total working attorney receipts, we mean the number of dollars collected (or expected to be collected) by your firm for work performed personally by you (e.g., your billable hours multiplied by your billing rate) in a fiscal year, even if it was collected in the following fiscal year. (Please exclude one-time contingency case payments or other unusual payments that are unlikely to re-occur.)
- › Drop down menus of values ranging from "less than \$100K" to "\$5M or more" in \$100,000 increments; Don't know/not sure.

**Q14.** Generally, how satisfied are you with your total compensation?

- › Very satisfied
- › Moderately satisfied
- › Slightly satisfied
- › Neutral
- › Slightly dissatisfied
- › Moderately dissatisfied
- › Very dissatisfied

**Finally, just a few demographic questions.**

**Q15.** What is your age?

- › Drop down menu of values ranging from 20 to 100.

**Q16.** At what age do you expect to retire?

- › Drop down menu of values ranging from "Prior to 50" to "After 80"; Don't know/not sure; I don't plan to retire.

**Q16a.** Has the COVID-19 pandemic affected your anticipated retirement age?

- › Yes, I expect to retire earlier
- › Yes, I expect to retire later
- › No

**Q17.** Do you work full-time or part-time?

- > I work full-time
- > I work part-time

**Q17a.** What is your work schedule, expressed as a percentage of what full-time partners at your firm are expected to work?

- > Drop down menu of values ranging from 5% to 95%.

**Q17b.** Has your ability to work full-time (or, if you are part-time, your ability to work your normal part-time schedule) been adversely impacted by the COVID-19 pandemic?

- > Yes
- > No

**Q17c.** To what extent has it been impacted, expressed as a percentage in reduction in the ability to work full-time (or your normal part-time schedule) during the pandemic:

- > 0-10%
- > 11-20%
- > 21-30%
- > 31-40%
- > 41-50%
- > 51-60%
- > 61-70%
- > 71-80%
- > 81-90%
- > 91-100%

**Q18.** What is your gender?

- > Female
- > Male
- > Non-binary/third gender
- > Prefer to self-describe:
- > Prefer not to say

**Q19.** Which of the following statuses do you most closely associate with?

- > Heterosexual
- > Gay or Lesbian
- > Bisexual
- > Prefer to self-describe:
- > Prefer not to say

**Q20.** Which of these categories, used by the American Bar Association, best describes your ethnicity?

- > White, not Hispanic
- > Black, not Hispanic
- > Hispanic
- > Asian Pacific, not Hispanic
- > American Indian, not Hispanic
- > Native Hawaiian or Pacific Islander, not Hispanic
- > Mixed races
- > Prefer not to say

\* \* \* \* \*

By hitting the Submit button, you will be completing this survey and submitting your responses to Law360.

Thank you for participating in the Major, Lindsey & Africa Partner Compensation Survey. For Managing Partners and members of firm management who want a more detailed briefing on the results of this survey, please contact Jeffrey Lowe, Global Practice Leader, Law Firm Practice and Managing Partner, Washington, D.C., at [jlowe@mlaglobal.com](mailto:jlowe@mlaglobal.com) or 202-628-0661.

To learn more about Major, Lindsey & Africa, visit [www.mlaglobal.com](http://www.mlaglobal.com)

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**PROOF OF SERVICE**

STATE OF CALIFORNIA )  
 ) ss.  
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 5900 Canoga Avenue, Suite 450, Woodland Hills, California 91367.

On the date below, I served the foregoing documents on the interested parties:

**DECLARATION OF MICHAEL LISKOW IN SUPPORT OF PLAINTIFFS’  
MOTIONS FOR ORDER GRANTING FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT AND FOR AN AWARD OF ATTORNEYS’ FEES AND COSTS, AND  
PLAINTIFFS’ SERVICE PAYMENTS**

Pursuant to the Order Authorizing Electronic Service, entered in this matter on May 23, 2019, I caused service of the foregoing document(s) on the interested parties as listed on the Service List posted on [www.caseanywhere.com](http://www.caseanywhere.com) for this matter by submitting an electronic version of the document(s) via file transfer protocol (FTP) to Case Anywhere through the upload feature at [www.caseanywhere.com](http://www.caseanywhere.com).

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

Executed on January 30, 2023

/s/Elia Ramirez  
Elia Ramirez



1 BETSY C. MANIFOLD (182450)  
manifold@whafh.com  
2 **WOLF HALDENSTEIN ADLER**  
**FREEMAN & HERZ LLP**  
3 750 B Street, Suite 1820  
4 San Diego, CA 92101  
Tel: (619) 239-4599  
5 Fax: (619) 234-4599

6 MICHAEL LISKOW (243899)  
mliskow@calcaterrapollack.com  
7 **CALCATERRA POLLACK LLP**  
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9 Fax: (332) 206-2073

10 SCOTT M. PRIZ (*pro hac vice*)  
priz@priz-law.com  
11 **PRIZ LAW, LLC**  
3230 S. Harlem Ave., Suite 221B  
12 Riverside, IL 60546  
13 Tel: (708) 268-5768

14 *Counsel for Plaintiffs and the Class*

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **FOR THE COUNTY OF LOS ANGELES**

17 AMERICAN JETTER & PLUMBING, INC. )  
and RESILIENCE TREATMENT CENTER, )  
18 on behalf of themselves and all others )  
19 similarly situated, )

20 Plaintiffs, )

21 v. )

22 STATE COMPENSATION INSURANCE )  
23 FUND, a public enterprise fund, and DOES 1 )  
24 through 50, inclusive, )

25 Defendants. )  
26 )  
27 )  
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CASE NO. 19STCV05738

**DECLARATION OF SCOTT M. PRIZ  
IN SUPPORT OF PLAINTIFFS'  
MOTION FOR AN AWARD OF  
ATTORNEYS' FEES AND COSTS,  
AND NAMED PLAINTIFFS'  
SERVICE PAYMENTS**

1 I, Scott M. Priz, declare as follows:

2 1. All the information set forth in this declaration is based on my personal knowledge,  
3 and on information and belief. If called as a witness, I could and would testify competently to the  
4 following information.

5 2. I am the principle attorney of Priz Law LLP (“Priz Law”). I am an attorney duly  
6 licensed to practice before all the courts of the State of Illinois, and have been admitted *pro hac*  
7 *vice* in this matter.

8 3. I submit this declaration in support of Plaintiffs’ Motion for an Award of Attorneys’  
9 Fees and Costs, and Named Plaintiffs’ Service Payments. The following facts are based upon my  
10 personal knowledge and if called upon to do so, I could, and would, competently testify thereto.  
11

12 4. Attached as **Exhibit A** is a true and correct copy of Priz Law’s firm resume.

13 5. I am the sole proprietor of Priz Law. I have gained extensive experience in the field  
14 of workers’ compensation premiums as an insurance consultant for over 19 years. This includes  
15 having worked as a consulting expert on two class action lawsuits against workers’ compensation  
16 insurance carriers, and court appointed damage calculator in two class action lawsuits. I also  
17 maintain an active law practice representing a variety of clients in areas including Insurance Law,  
18 Consumer Class Actions, and Real Estate Law.  
19  
20

21 6. In this action I have provided my significant expertise in insurance matters by, *inter*  
22 *alia*, reviewing the rate filings and analyzing the premiums charged by State Fund.

23 7. I have also actively participated as co-counsel in the Actions being settled,  
24 including by, among other things, determining through research that first plaintiff American Jetter  
25 & Plumbing, Inc. (“Jetter”), and then Resilience Treatment Center (“Resilience”), had valid claims  
26 against State Fund relating to its application of the Tier Modifier system; extensive research into  
27  
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1 the likely success of a class action lawsuit against SCIF raising such claims; maintaining client  
2 communications and being the primary attorney contact for Jetter and Resilience; assisting co-  
3 counsel in the drafting and editing of all complaints, motions, briefs, statements, and negotiating  
4 frameworks; conducting extensive research into the scope of damages stemming from the claims;  
5 actively participating in three settlement mediations with State Fund and others and otherwise  
6 engaging in over a year of settlement negotiations with State Fund; extensively researching State  
7 Fund filings to determine the specifics of each version of State Fund's Tier Modifier algorithm;  
8 researching prior California Department of Insurance rulings and previous and ongoing litigation  
9 regarding the illegality of insurance plans relating to State Fund's Tier Modifier methodology and  
10 Plaintiffs' claims; and acting as the primary resource for co-counsel regarding the mechanics of  
11 workers' compensation policies, filings, premiums, and the application of the Tier Modifiers to  
12 California policyholders.

13  
14  
15 8. The total number of hours spent by my firm rendering services through the date of  
16 this declaration, 477.4, multiplied by my current hourly rate of \$510.00, results in a lodestar of  
17 \$243,474.00.

18  
19 9. I maintained detailed records regarding the amount of time spent by my firm, and  
20 the lodestar calculation based on my firm's current billing rates. The information was prepared  
21 from contemporaneous, daily time records regularly prepared and maintained by my firm in the  
22 usual course and manner of my firm. These records are available for review at the request of the  
23 Court. Time expended in preparing this application for fees and reimbursement of expenses has  
24 not been included in this request.

25  
26 10. Going forward, I will have to spend considerable additional time, and incur  
27 additional expenses by, among other things, (a) preparing for and attending the Final Approval  
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1 Hearing; (b) addressing any objections that may be raised to the Settlement; (c) communicating  
2 with Settlement Class Members to answer any questions they may have or address any issues with  
3 the claims process; and (d) if the Settlement is approved, continuing to work with the Claims  
4 Administrator to ensure that the Settlement is fully implemented. I estimate that this will require  
5 another 30-50 hours of attorney time.

6  
7 11. In my judgment, and based on my experience in insurance litigation and other  
8 litigation, the number of hours expended, and the services performed by my firm, were reasonable  
9 and necessary for my representation of Plaintiffs.

10 12. I have general familiarity with the range of hourly rates typically charged by  
11 plaintiffs' class action counsel in the geographical area where my firm practices and throughout  
12 the United States, both on a current basis and historically. From that basis, I am able to conclude  
13 that the rates charged by my firm are commensurate with those prevailing in the market for such  
14 legal services furnished in complex class action litigation such as this.

15  
16 13. My firm has incurred costs of \$1,181.10 in litigating this action, consisting of the  
17 following categories of costs:

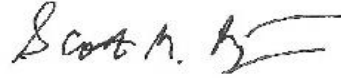
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<b>Category</b>	<b>Costs</b>
CaseAnywhere Legal Support Fees	\$1,173.60
Document Reproduction Fees from California Department of Insurance	7.50
<b>Total</b>	<b>\$1,181.10</b>

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24 14. Throughout the litigation, I made every effort to operate as efficiently as possible  
25 and to avoid unnecessary duplication.

1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct. Executed this 30th day of January, 2023, at Chicago, Illinois.

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6 Scott M. Priz  
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# **EXHIBIT A**

**SCOTT M. PRIZ, ESQ.**

Scott M. Priz received his BA from the University of Chicago in 2003 in Law, Letters and Society and Political Science, and graduated Magna Cum Laude from the John Marshall Law School of Chicago in, and has been licensed as an attorney since, 2018. In addition to his experience as an attorney, Mr. Priz has over 19 years of experience working as an insurance consultant as Vice President of Advanced Insurance Management. In his consulting work, he has recovered millions of dollars of workers' compensation premiums from insurance carriers who have overcharged their policy holders. He has also provided extensive professional advice to commercial insureds, as well as to insurance agents and brokers, on workers' compensation insurance premium charges, audits, classifications, and experience modifiers.

Mr. Priz has further worked on behalf of insurance carriers as a consulting expert in regards to the computation of policyholders' premiums in order to calculate premium fraud, testified in regards to the purpose of the Massachusetts Second Injury Fund, and served as a court-appointed damages calculator on behalf two class actions settlements relating to workers compensation premium overcharges. He was worked with companies large and small to determine whether the technical calculations of their workers' compensation insurance premiums are accurate. He is also co-author of the book titled *Workers Compensation: A Field Guide for Employers*, published in 2005.

As an attorney, Mr. Priz is the proprietor and sole attorney at Priz Law, LLC. He has worked on a variety of cases for a variety of types of clients, with a focus on disputes arising from workers compensation premiums. He has represented clients before Departments of Insurance around the country, including the California Department of Insurance. His practice areas include Insurance Law, Consumer Class Actions, and Real Estate Law.

Mr. Priz is a member of the Illinois State Bar Association and the National Lawyers Guild.

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**PROOF OF SERVICE**

STATE OF CALIFORNIA )  
 ) ss.  
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 5900 Canoga Avenue, Suite 450, Woodland Hills, California 91367.

On the date below, I served the foregoing documents on the interested parties:

**DECLARATION OF SCOTT M. PRIZ IN SUPPORT OF PLAINTIFFS’ MOTION FOR AN AWARD OF ATTORNEYS’ FEES AND COSTS, AND NAMED PLAINTIFFS’ SERVICE PAYMENTS**

Pursuant to the Order Authorizing Electronic Service, entered in this matter on May 23, 2019, I caused service of the foregoing document(s) on the interested parties as listed on the Service List posted on [www.caseanywhere.com](http://www.caseanywhere.com) for this matter by submitting an electronic version of the document(s) via file transfer protocol (FTP) to Case Anywhere through the upload feature at [www.caseanywhere.com](http://www.caseanywhere.com).

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

Executed on January 30, 2023

/s/Elia Ramirez  
Elia Ramirez



1 BETSY C. MANIFOLD (182450)  
manifold@whafh.com  
2 **WOLF HALDENSTEIN ADLER**  
3 **FREEMAN & HERZ LLP**  
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8 New York, NY 10036-5803  
Tel: (212) 899-1761  
9 Fax: (332) 206-2073

10 SCOTT M. PRIZ (*pro hac vice*)  
priz@priz-law.com  
11 **PRIZ LAW, LLC**  
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12 Riverside, IL 60546  
13 Tel: (708) 268-5768

14 *Counsel for Plaintiffs and the Class*

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **FOR THE COUNTY OF LOS ANGELES**

17 AMERICAN JETTER & PLUMBING, INC. )  
and RESILIENCE TREATMENT CENTER, )  
18 on behalf of themselves and all others )  
19 similarly situated, )

20 Plaintiffs, )

21 v. )

22 STATE COMPENSATION INSURANCE )  
23 FUND, a public enterprise fund, and DOES 1 )  
through 50, inclusive, )

24 Defendants. )  
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CASE NO. 19STCV05738

**DECLARATION OF BETSY C.  
MANIFOLD IN SUPPORT OF  
PLAINTIFFS' MOTION FOR AN  
AWARD OF ATTORNEYS' FEES  
AND COSTS, AND NAMED  
PLAINTIFFS' SERVICE PAYMENTS**

1  
2 I, Betsy C. Manifold, declare as follows:

3 1. I am member of Wolf Haldenstein Adler Freeman & Herz LLP (“Wolf  
4 Haldenstein”). I am an attorney duly licensed to practice before all the courts of the State of  
5 California. I submit this declaration in support of Plaintiffs’ Motion for an Award of Attorneys’  
6 Fees and Costs, and Named Plaintiffs’ Service Payments. The following facts are based upon my  
7 personal knowledge and if called upon to do so, I could, and would, competently testify thereto.

8 2. I am a managing partner of Wolf Haldenstein’s San Diego office. I practice in  
9 complex class actions representing clients including institutional investors such as public and labor  
10 pension funds, labor health and welfare benefit funds, and private institutional investors who  
11 suffered losses due to corporate fraud. I have extensive experience in antitrust law and have been  
12 at the forefront of several notable federal class action antitrust actions on behalf of consumers. I  
13 also have over 30 years of experience in wage and hour law and have favorably litigated  
14 noteworthy class actions on behalf of workers.

15 3. I and my Firm have been extensively involved in the litigation of the Actions,  
16 including, among other tasks, assisting in drafting and conducting legal research for the complaint,  
17 amended complaint, mediation brief, motion to amend the complaint, and motion for attorneys’  
18 fees and service awards.

19 4. Wolf Haldenstein’s background and qualifications are set forth in the Firm Resume,  
20 a true and correct copy of which is attached hereto as **Exhibit A**.

21 5. The current hourly rates for the Wolf Haldenstein attorneys and staff that have  
22 worked on the Actions, as well as their hours spent working on the Actions as of January 29,  
23 2023, and their corresponding lodestar, are as follows:

24

<b>Timekeeper</b>	<b>Current Title</b>	<b>Current Hourly Rate</b>	<b>Hours Worked</b>	<b>Lodestar</b>
Betsy C. Manifold	Partner	\$840.00	60.3	\$50,652.00
Rachele R. Byrd	Partner	\$750.00	5.8	\$4,350.00
Marisa C. Livesay	Associate	\$530.00	1.4	\$742.00
Carl V. Malmstrom	Of Counsel	\$570.00	5.9	\$3,363.00
Brittany DeJong	Associate	\$470.00	63.3	\$29,751.00
Ferdeza Zekiri	Associate	\$360.00	70.0	\$25,200.00
James Cirigliano	Paralegal	\$345.00	5.5	\$1,897.50
Alexandra Loutsenhizer	Paralegal	\$250.00	52.8	\$13,200.00
Kerri Warren	Paralegal	\$215.00	4.1	\$881.50
Michele Mitchell	Paralegal	\$250.00	2.0	\$500.00

<b>Timekeeper</b>	<b>Current Title</b>	<b>Current Hourly Rate</b>	<b>Hours Worked</b>	<b>Lodestar</b>
Kathryn M. Cabrera	Paralegal	\$295.00	37.1	\$10,944.50
Amanda Salas	Paralegal	\$205.00	2.6	\$533.00
Elle Chaseton	Paralegal	\$345.00	.9	\$310.50
<b>Totals</b>			<b>311.7</b>	<b>\$142,325.00</b>

6. These records were prepared from contemporaneous, daily time records regularly prepared and maintained by Wolf Haldenstein in the usual course and manner of my firm. Wolf Haldenstein maintains detailed records regarding the amount of time spent by my firm, and the lodestar calculation is based on my firm's current billing rates. These records are available for review at the request of the Court.

7. Going forward, my firm will have to spend considerable additional time, and incur additional expenses by, among other things, (a) preparing for and attending the Final Approval Hearing; (b) addressing any objections that may be raised to the Settlement; (c) communicating with Settlement Class Members to answer any questions they may have or address any issues with the claims process; and (d) if the Settlement is approved, continuing to work with the Claims Administrator to ensure that the Settlement is fully implemented. We estimate these tasks will require another 20 hours of attorney time and 15 hours of paralegal time going forward.

8. In my judgment, and based on my experience in complex class action litigation and other litigation, the number of hours expended, and the services performed by my firm, were reasonable and necessary for my firm's representation of Plaintiffs.

9. I have general familiarity with the range of hourly rates typically charged by plaintiffs' class action counsel in the geographical area where my firm practices and throughout the United States, both on a current basis and historically. From that basis, I am able to conclude that the rates charged by my firm are commensurate with those prevailing in the market for such legal services furnished in complex class action litigation such as this. My firm's hourly rates were approved by the following Courts: *Enquist v. City of Los Angeles*, No. BC591331 (L.A. Cty. Super. Ct. Mar. 17, 2021); *Granados v. County of Los Angeles*, No. BC361470 (L.A. Cty. Super. Ct. Oct. 30, 2018); *McWilliams v. City of Long Beach*, No. BC361469 (L.A. Cty. Super. Ct. Oct. 30, 2018); *Ardon v. City of Los Angeles*, No. BC363959 (L.A. Cty. Super Ct. Oct. 26, 2016); *FabFitFun, Inc.*, No. 2:20-cv-09534-RGK-E (C.D. Cal. Dec. 9, 2021) (ECF No. 52 at 5-6); *DeFrees v. Kirkland*, No. CV 11-4272-JLS (SPx), ECF No. 400 (C.D. Cal. Apr. 11, 2016);


1  
2 *DeFrees v. Kirkland*, No. CV 11-4272 GAF (SPx), 2014 U.S. Dist. LEXIS 157320, at \*2 (C.D.  
3 Cal. Nov. 4, 2014); *DeFrees v. Kirkland*, No. CV 11-4272 GAF (SPx), ECF No. 226 (C.D. Cal.  
4 Sept. 5, 2012); *Carrera Aguallo v. Kemper Corp.*, No. 1:21-cv-01883 (N.D. Ill. Mar. 18, 2022)  
5 (ECF No. 53, ¶ 18); *Riggs v. Kroto, Inc., D/B/A iCanvas*, No. 1:30-cv-05822 (N.D. Ill. Oct. 29,  
6 2021) (ECF No. 61, ¶ 13); *Gaston v.*; and *In re Hanna Andersson & Salesforce.com Data Breach*  
7 *Litig.*, No. 3:20-cv-00812-EMC (N.D. Cal. Jun. 25, 2021) (ECF No. 75, ¶ 12).

8 10. My firm has incurred costs of \$8,314.19 in litigating the Actions, consisting of the  
9 following categories of costs:

Category	Costs
Online Research	\$1,916.49
Reproduction/Duplication	\$149.45
Telephone	\$1.84
Postage	\$3.55
Travel	\$181.11
Court & Filing Fees	\$3,035.05
Transcript Costs	\$257.75
Service of Process	\$2,768.95
<b>Total</b>	<b>\$8,314.19</b>

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18 11. Throughout the litigation, I made every effort to operate as efficiently as possible  
19 and to avoid unnecessary duplication.

20 I declare under penalty of perjury under the laws of the State of California that the  
21 foregoing is true and correct. Executed this 29th day of January, 2023, at San Diego, California.

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Betsy C. Manifold

# **EXHIBIT A**



PROVIDING EXEMPLARY LEGAL SERVICES SINCE 1888

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FIRM RESUME

Founded in 1888, Wolf Haldenstein Adler Freeman & Herz LLP is a full service law firm specializing in complex litigation in federal and state courts nationwide. The firm's practice includes litigation, both hourly and contingent, in securities, antitrust, wage & hour, consumer fraud, false marketing, ERISA, and general and commercial matters, whistleblower, false claim, trust & estate, corporate investigation, and white collar matters, and FINRA arbitration. The Firm has a particular specialty in complex class action and other representative litigation – including investor, shareholder, antitrust, ERISA, consumer, employee, and biotechnology matters – under both federal and state law.

Wolf Haldenstein's total practice approach distinguishes it from other firms. Our longstanding tradition of a close attorney/client relationship ensures that each one of our clients receives prompt, individual attention and does not become lost in an institutional bureaucracy. Our team approach is at the very heart of Wolf Haldenstein's practice. All of our lawyers are readily available to all of our clients and to each other. The result of this approach is that we provide our clients with an efficient legal team having the broad perspective, expertise and experience required for any matter at hand. We are thus able to provide our clients with cost effective and thorough counsel focused on our clients' overall goals.

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111 WEST JACKSON  
SUITE 1700  
CHICAGO, IL 60604  
TELEPHONE: 312-984-0000  
TELECOPIER: 312-214-3110



## THE FIRM

Wolf Haldenstein has been recognized by state and federal courts throughout the country as being highly experienced in complex litigation, particularly with respect to securities, consumer, ERISA, FLSA and state overtime and expense deductions, and antitrust class actions and shareholder rights litigation.

Among its colleagues in the plaintiffs' bar, as well as among its adversaries in the defense bar, Wolf Haldenstein is known for the high ability of its attorneys, and the exceptionally high quality of its written and oral advocacy.

The nature of the Firm's activities in both individual and representative litigation is extremely broad. In addition to a large case load of securities fraud and other investor class actions, Wolf Haldenstein has represented classes of corn and rice farmers in connection with the devaluation of their crops; canned tuna consumers for tuna companies' violations of antitrust laws; merchants compelled to accept certain types of debit cards; insurance policyholders for insurance companies' deceptive sales practices; victims of unlawful strip searches under the civil rights laws; and various cases involving violations of Internet users' on-line privacy rights.

The Firm's experience in class action securities litigation, in particular public shareholder rights under state law and securities fraud claims arising under the federal securities laws and regulations is particularly extensive. The Firm was one of the lead or other primary counsel in securities class action cases that have recouped billions of dollars on behalf of investor classes, in stockholder rights class actions that have resulted in billions of dollars in increased merger consideration to shareholder classes, and in derivative litigation that has recovered billions of dollars for corporations.

Its pioneering efforts in difficult or unusual areas of securities or investor protection laws include: groundbreaking claims that have been successfully brought under the Investment Company Act of 1940 regarding fiduciary responsibilities of investment companies and their advisors toward their shareholders; claims under ERISA involving fiduciary duties of ERISA trustees who are also insiders in possession of adverse information regarding their fund's primary stockholdings; the fiduciary duties of the directors of Delaware corporations in connection with change of control transactions; the early application of the fraud-on-the-market theory to claims against public accounting firms in connection with their audits of publicly traded corporations; and the application of federal securities class certification standards to state law claims often thought to be beyond the reach of class action treatment.





## JUDICIAL COMMENDATIONS

Wolf Haldenstein has repeatedly received favorable judicial recognition. The following representative judicial comments over the past decade indicate the high regard in which the Firm is held:

- *In re Empire State Realty Trust, Inc. Investor Litig.*, No. 650607/2012 (Sup. Ct. N.Y. Co.) – On May 2, 2013, Justice O. Peter Sherwood praised the Firm in its role as chair of the committee of co-lead counsel as follows: "It is apparent to me, having presided over this case, that class counsel has performed in an excellent manner, and you have represented your clients quite well. You should be complimented for that." In awarding attorneys' fees, the Court stated that the fee was "intended to reward class counsel handsomely for the very good result achieved for the Class, assumption of the high risk of Plaintiffs prevailing and the efficiency of effort that resulted in the settlement of the case at an early stage without protracted motion practice." May 17, 2013 slip. op. at 5 (citations omitted).
- *Roberts v. Tishman Speyer*, 13 N.Y.3d 270 (N.Y. 2009) – On April 9, 2013, Justice Richard B. Lowe III praised the Firm's efforts as follows: "[W]hen you have challenging cases, the one thing you like to ask for is that the legal representation on both sides rise to that level. Because when you have lawyers who are professionals, who are confident, who are experienced, each of you know that each side has a job to do [. . .] I want to tell you that I am very satisfied with your performance and with your, quite frankly, tenacity on both sides. And it took six years, but look at the history of the litigation. There were two appeals all of the way to the Court of Appeals [. . .] And then look at the results. I mean, there are dissents in the Court of Appeals, so that shows you the complexity of the issues that were presented in this litigation [. . .] [I]t shows you effort that went into this and the professionalism that was exhibited [. . .] So let me just again express my appreciation to both sides."
- *K.J. Egleston L.P. v. Heartland Industrial Partners, et al.*, 2:06-13555 (E.D. Mich.) – where the Firm was Lead Counsel, Judge Rosen, at the June 7, 2010 final approval hearing, praised the Firm for doing "an outstanding job of representing [its] clients," and further commented that "the conduct of all counsel in this case and the result they have achieved for all of the parties confirms that they deserve the national recognition they enjoy."



- *Klein, et al. v. Ryan Beck Holdings, Inc., et al.*, 06-cv-3460 (DAB) (S.D.N.Y. 2010) – where the Firm was Lead Counsel, Judge Deborah A. Batts described the Firm’s successful establishment of a settlement fund as follows: “[a] miracle that there is a settlement fund at all.” Judge Batts continued: “As I said earlier, there is no question that the litigation is complex and of a large and, if you will, *pioneering magnitude* ...” (Emphasis added).
- *Parker Friedland v. Iridium World Communications, Ltd.*, 99-1002 (D.D.C.) – where the Firm was co-lead counsel, Judge Laughrey said (on October 16, 2008), “[a]ll of the attorneys in this case have done an outstanding job, and I really appreciate the quality of work that we had in our chambers as a result of this case.”
- *In re Dynamic Random Access Memory Antitrust Litigation*, MDL-02-1486 (N.D. Cal.) – where the Firm was co-lead counsel, Judge Hamilton said (on August 15, 2007), “I think I can conclude on the basis with my five years with you all, watching this litigation progress and seeing it wind to a conclusion, that the results are exceptional. The percentages, as you have outlined them, do put this [case] in one of the upper categories of results of this kind of [antitrust] class action. I am aware of the complexity . . . I thought that you all did an exceptionally good job of bringing to me only those matters that really required the Court’s attention. You did an exceptionally good job at organizing and managing the case, assisting me in management of the case. There was excellent coordination between all the various different plaintiffs’ counsel with your group and the other groups that are part of this litigation. . . . So my conclusion is the case was well litigated by both sides, well managed as well by both sides.”
- *In re Comdisco Sec. Litigation*, 01 C 2110 (N.D. Ill. July 14, 2005) – Judge Milton Shadur observed: “It has to be said . . . that the efforts that have been extended [by Wolf Haldenstein] on behalf of the plaintiff class in the face of these obstacles have been exemplary. And in my view [Wolf Haldenstein] reflected the kind of professionalism that the critics of class actions . . . are never willing to recognize. . . . I really cannot speak too highly of the services rendered by class counsel in an extraordinary difficult situation.”
- *Good Morning to You Productions Corp. v. Warner/Chappell Music, Inc.*, No. CV 13-04460-GHK (MRWx) (C.D. Cal., Aug. 16, 2016) – Judge George H. King



stated: "Not all, or perhaps even most, plaintiffs' class counsel could have litigated this case as successfully as did class counsel against such a fierce and exceptionally accomplished opponent."

- *Bokelman et al. v. FCH Enterprises, Inc.*, (Case No. 1:18-cv-209, D. Haw., May 3, 2019): Judge Robert J. Bryan said, "I've been impressed by the quality of the work you've done throughout here, and that is reflected, I think, in the fact that no one has objected to the settlement."

#### RECENT NOTEWORTHY RESULTS

Wolf Haldenstein's performance in representative litigation has repeatedly resulted in favorable results for its clients. The Firm has helped recover ***billions of dollars*** on behalf of its clients in the cases listed below. Recent examples include the following:

- On May 13, 2019, in *Apple Inc. v. Pepper*, No. 17-204, the Supreme Court affirmed a decision by the Ninth Circuit Court of Appeals holding that iPhone purchasers have standing to sue Apple for monopolizing the market for iPhone apps in this longstanding antitrust class action. Wolf Haldenstein has been Lead Counsel for the plaintiffs since 2007. The case was commenced in federal district court in Oakland. The Supreme Court's decision clears the way for the plaintiffs to proceed on the merits of their claim.
- On June 11, 2018, the United States Supreme Court issued a highly anticipated decision in *China Agritech, Inc. v. Michael H. Resh, et al.* Wolf Haldenstein represented the plaintiffs/respondents, having commenced the action on behalf of aggrieved shareholders of *China Agritech* after two prior cases had failed at the class certification stage.
- *In re Genetically Modified Rice Litigation*, MDL 1811 (E.D. Mo.) - Wolf Haldenstein represented U.S. rice farmers in this landmark action against Bayer A.G. and its global affiliates, achieving a global recovery of \$750 million. The case arose from the contamination of the nation's long grain rice crop by Bayer's experimental and unapproved genetically modified Liberty Link rice.
- *Roberts v. Tishman Speyer*, 13 N.Y.3d 270 (N.Y. 2009) - a class action brought on behalf of over 27,500 current and former tenants of New York City's iconic Stuyvesant Town and Peter Cooper Village housing complexes. On April 9, 2013, Justice Richard B. Lowe III of the New York Supreme Court finally



approved settlement of the action, which totals over \$173 million, sets aside \$68.75 million in damages, re-regulates the apartments at issue, and sets preferential rents for the units that will save tenants significant monies in the future. The settlement also enables the tenants to retain an estimated \$105 million in rent savings they enjoyed between 2009 and 2012. **The settlement is by many magnitudes the largest tenant settlement in United States history.**

- *In re Empire State Realty Trust, Inc. Investor Litig.*, Index No. 650607/2012 – The firm served as Chair of the Executive Committee of Co-Lead Counsel for the Plaintiffs in a class action settlement finally approved on May 2, 2013 that provides for the establishment of a \$55 million settlement fund for investors, in addition to substantial tax deferral benefits estimated to be in excess of \$100 million.
- *American International Group Consolidated Derivative Litigation*, Civil Action No. 769-VCS (Del. Ch.) The Firm acted as co-lead counsel and the settlement addressed claims alleging that the D&O Defendants breached their fiduciary duties to the Company and otherwise committed wrongdoing to the detriment of AIG in connection with various allegedly fraudulent schemes during the 1999-2005 time period.
- *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation*, Master File No. 09 MD 2058 (S.D.N.Y.) (firm was co-lead counsel in parallel derivative action pending in Delaware (*In Re Bank of America Stockholder Derivative Litigation*, C.A. No. 4307-CS (Del. Ch.)) (increase of settlement cash recovery from \$20 million to \$62.5 million).
- *The Investment Committee of the Manhattan and Bronx Service Transit Operating Authority Pension Plan v. JPMorgan Chase Bank, N.A.*, 1:09-cv-04408-SAS (S.D.N.Y.) (class recovered \$150 million).
- *In re Tremont Sec. Law, State Law and Insurance Litig.*, No. 08-civ-11117 (TPG) (SDNY) (class recovered \$100 million). The firm was court-appointed co-lead counsel in the Insurance Action, 08 Civ. 557, and represented a class of persons who purchased or otherwise acquired Variable Universal Life (“VUL”) insurance policies or Deferred Variable Annuity (“DVA”) policies issued by Tremont International Insurance Limited or Argus International Life Bermuda Limited from May 10, 1994 - December 11, 2008 to the extent the investment



accounts of those policies were exposed to the massive Ponzi scheme orchestrated by Bernard L. Madoff through one or more Rye funds.

- *In re Initial Public Offering Securities Litigation*, 21 MC 92 (SAS) (S.D.N.Y.) (class recovered \$586 million). Wolf Haldenstein served as Co-Lead Counsel of one of the largest securities fraud cases in history. Despite the United States Court of Appeals for the Second Circuit's decision to vacate the district court's class certification decision, on remand, counsel for plaintiffs were able to press on to a settlement on April 1, 2009, ultimately recovering in excess of a half-billion dollars.



## FIRM PRACTICE AREAS

### CLASS ACTION LITIGATION

Wolf Haldenstein is a leader in class and derivative action litigation and is currently or has been the court-appointed lead counsel, co-lead counsel, or executive committee member in some of the largest and most significant class action and derivative action lawsuits in the United States. For example, the class action *Roberts v. Tishman Speyer*, 13 N.Y.3d 270 (N.Y. 2009) was recently described by a sitting member of the U.S. House of Representatives as the greatest legal victory for tenants in her lifetime. In *Roberts*, the Firm obtained a victory in the New York Court of Appeals requiring the reregulation of thousands of apartment units in the Stuyvesant Town complex in Manhattan, New York. Many of the firm's other successful results are summarized within.

### PRIVATE ACTIONS FOR INSTITUTIONAL INVESTORS

In addition to its vast class action practice, the Firm also regularly represents institutional clients such as public funds, investment funds, limited partnerships, and qualified institutional buyers in private actions. The Firm has represented institutional clients in non-class federal and state actions concerning a variety of matters, including private placements, disputes with investment advisors, and disputes with corporate management.

The Firm has also acted as special counsel to investors' committees in efforts to assert and advance the investors' interests without resorting to litigation. For example, the Firm served as Counsel to the Courtyard by Marriott Limited Partners Committee for several years in its dealings with Host Marriott Corporation, and as Special Counsel to the Windsor Park Properties 7 and 8 limited partners to insure the fairness of their liquidation transactions.

### ANTITRUST LITIGATION

Wolf Haldenstein is a leader in antitrust and competition litigation. The Firm actively seeks to enforce the federal and state antitrust laws to protect and strengthen the rights and claims of businesses, organizations, Taft-Hartley funds, and consumers throughout the United States. To that end, Wolf Haldenstein commences large, often complex, antitrust and trade regulation class actions and other cases that target some of the most powerful and well-funded corporate interests in the world. Many of these interests exert strong influence over enforcement policy that is in the hands of elected officials, so that private enforcement provides the only true assurance that unfair and



anticompetitive conduct will be duly scrutinized for compliance with the law. These cases frequently bring to light concealed, unlawful behavior such as price fixing, monopolization, market allocation, monopoly leveraging, essential facilities, tying arrangements, vertical restraints, exclusive dealing, and refusals to deal. Wolf Haldenstein's Antitrust Practice Group has successfully prosecuted numerous antitrust cases and aggressively advocates remedies and restitution for businesses and investors wronged by violations of the antitrust laws. For example, in *In re DRAM Antitrust Litigation*, No. 02-cv-1486 (PJH) (N.D. Cal.) the firm successfully prosecuted an antitrust case resulting in a \$315 million recovery. Many of the firm's successful results are summarized within.

Wolf Haldenstein attorneys currently serve as lead counsel, co-lead counsel, or as executive committee members in some of the largest and most significant antitrust class action lawsuits. The firm was most recently appointed lead counsel in the Salmon Antitrust Indirect Litigation pending in the U.S. District Court for the Southern District of Florida.

#### OVERTIME AND COMPENSATION CLASS ACTIONS

Wolf Haldenstein is a leader class action litigation on behalf of employees who have not been paid overtime or other compensation they are entitled to receive, or have had improper deductions taken from their compensation. These claims under the federal Fair Labor Standards Act and state labor laws allege improper failure to pay overtime and other wages, and improper deductions from compensation for various company expenses. Wolf Haldenstein has served as lead or co-lead counsel, or other similar lead role, in some of the most significant overtime class actions pending in the United States, and has recovered hundreds of millions of dollars in recovered wages for its clients. For example, in *LaVoice v. Citigroup Global Markets, Inc.*, Case No. C 07-801 (CW) (N.D. Cal.) a \$108 million settlement was secured for the class. Many of the firm's other successful wage and hour results are summarized within.

#### SUBSTANTIAL RECOVERIES IN CLASS ACTION AND DERIVATIVE CASES IN WHICH WOLF HALDENSTEIN WAS LEAD COUNSEL OR HAD ANOTHER SIGNIFICANT ROLE

- *In re Beacon Associates Litigation*, Master File No. 09 Civ. 0777 (LBS) (S.D.N.Y.) (**\$219 million** settlement in this and related action).
- *Roberts v. Tishman Speyer*, No. 100956/2007 (Sup. Ct. N.Y. Cty.) (**\$173 Million** settlement).



- *In re Mutual Fund Investment Litigation*, MDL No. 1586 (D. Md.) (derivative counsel in consolidated cases against numerous mutual fund companies involved in market timing resulting in class/derivative settlements totaling more than **\$300 million**).
- *Inland Western Securities Litigation*, Case No. 07 C 6174 (N.D. Ill.) (settlement value of shares valued between **\$61.5 million** and **\$90 million**).
- *In re Direxion Shares ETF Trust*, No. 09-Civ-8011 (KBF) (S.D.N.Y.) (class recovered **\$8 million**).
- *In re BankAmerica Corp. Securities Litigation*, MDL Docket No. 1264 (JFN) (E.D. Mo.) (class recovered **\$490 million**).
- *In re Dynamic Random Access Memory Antitrust Litigation*, (MD-02 1486 (N.D. Cal.) (class recovered **\$325 million**).
- *In re MicroStrategy, Inc. Securities Litigation*, Civ. No. 00-473-A (E.D. Va.) (class recovered **\$160 million** in cash and securities).
- *Kurzweil v. Philip Morris Cos.*, 94 Civ. 2373, 94 Civ. 2546 (S.D.N.Y.) (securities fraud) (class recovered **\$116.5 million** in cash).
- *In re Starlink Corn Products Liability Litigation*, (N.D. Ill.) (class recovered **\$110 million**).
- *In Computer Associates 2002 Class Action Sec. Litigation*, 2:02-CV-1226 (E.D.N.Y.) (**\$130 million** settlement in this and two related actions).
- *In re Sepracor Inc. Securities Litigation*, Civ. No. 02-12338 (MEL) (D. Mass.) (classes recovered **\$52.5 million**).
- *In re Transkaryotic Therapies, Inc., Securities Litigation*, C.A. No. 03-10165-RWZ (D. Mass) (class recovered **\$50 million**).
- *In re Iridium Securities Litigation*, C.A. No. 99-1002 (D.D.C.) (class recovered **\$43 million**).





- *In re J.P. Morgan Chase Securities Litigation*, MDL No. 1783 (N.D. Ill.) (settlement providing for adoption of corporate governance principles relating to potential corporate transactions requiring shareholder approval).
- *LaVoice v. Citigroup Global Markets, Inc.*, Case No. C 07-801 (CW) (N.D. Cal.) (**\$108 million** settlement).
- *Steinberg v. Morgan Stanley & Co., Inc.*, Case No. 06-cv-2628 (BEN) (S.D. Cal.) (**\$50 million** settlement).
- *Poole v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, Case No. CV-06-1657 (D. Or.) (**\$43.5 million** settlement).
- *In re Wachovia Securities, LLC Wage and Hour Litigation*, MDL No. 07-1807 DOC (C.D. Cal.) (**\$39 million** settlement).
- *In re Wachovia Securities, LLC Wage and Hour Litigation (Prudential)*, MDL No. 07-1807 DOC (C.D. Cal.) (**\$11 million** settlement).
- *Basile v. A.G. Edwards, Inc.*, 08-CV-00338-JAH-RBB (S.D. Cal.) (**\$12 million** settlement).
- *Miguel Garcia, et al. v. Lowe's Home Center, Inc. et al.* – Case No. GIC 841120 (Barton) (Cal. Sup. Ct, San Diego) (co-lead, **\$1.65 million** settlement w/ average class member recovery of \$5,500, attorney fees and cost awarded separately).
- *Neil Weinstein, et al. v. MetLife, Inc., et al.* – Case No. 3:06-cv-04444-SI (N.D. Cal) (co-lead, **\$7.4 million** settlement).
- *Creighton v. Oppenheimer*, Index No. 1:06 - cv - 04607 - BSJ - DCF (S.D.N.Y.) (**\$2.3 million** settlement).
- *Klein v. Ryan Beck*, 06-CV-3460 (DAB)(S.D.N.Y.) (**\$1.3 million** settlement).
- *In re American Pharmaceutical Partners, Inc. Shareholder Litigation*, Consolidated C.A. No. 1823-N (Del. Ch. Ct.) (**\$14.3 million** settlement).
- *Egleston v. Collins and Aikman Corp.*, 06-cv-13555 (E.D. Mich.) (class recovered **\$12 million**).



- *In re Merrill Lynch & Co., Inc. Global Technology Fund Securities Litigation*, 02 CV 7854 (JFK) (SDNY); and *In re Merrill Lynch & Co., Inc. Focus Twenty Fund Securities Litigation*, 02 CV 10221 (JFK) (SDNY) (class recovered **\$39 million** in combined cases).
- *In re CNL Hotels & Resorts, Inc. Securities Litigation*, No. 6:04-cv-1231 (Orl-31) (class recovered **\$35 million**, and lawsuit also instrumental in **\$225 million** benefit to corporation).
- *In re Cablevision Systems Corp. Shareholder Derivative Litigation*, Master File No. 06-CV-4130-DGT-AKT (**\$34.4 million** recovery).
- *In re Monster Worldwide, Inc. Stock Option Derivative Litigation*, Master File No. 06cv4622 (S.D.N.Y.) (**\$32 million** recovery and corporate governance reforms).
- *Berger v. Compaq Computer Corp.*, Docket No. 98-1148 (S.D. Tex.) (class recovered **\$29 million**).
- *In re Arakis Energy Corporation Securities Litigation*, 95 CV 3431 (E.D.N.Y.) (class recovered **\$24 million**).
- *In re E.W. Blanche Holdings, Inc. Securities Litigation*, Civ. No. 01-258 (D. Minn.) (class recovered **\$20 million**).
- *In re Globalstar Securities Litigation*, Case No. 01-CV-1748 (SHS) (S.D.N.Y.) (class recovered **\$20 million**).
- *In re Luxottica Group S.p.A. Securities Litigation*, No. CV 01-3285 (E.D.N.Y) (class recovered **\$18.25 million**).
- *In re Musicmaker.com Securities Litigation*, CV-00-2018 (C.D. Cal.) (class recovered **\$13.75 million**).
- *In re Comdisco Securities Litigation*, No. 01 C 2110 (MIS) (N.D. Ill.) (class recovered **\$13.75 million**).
- *In re Acclaim Entertainment, Inc., Securities Litigation*, C.A. No. 03-CV-1270 (E.D.N.Y.) (class recovered **\$13.65 million**).



- *In re Concord EFS, Inc. Securities Litigation*, No. 02-2097 (MA) (W.D. Tenn) (class recovered **\$13.25 million**).
- *In re Bausch & Lomb, Inc. Securities Litigation*, 01 Civ. 6190 (CJS) (W.D.N.Y.) (class recovered **\$12.5 million**).
- *In re Allaire Corp. Securities Litigation*, 00-11972 (D. Mass.) (class recovered **\$12 million**).
- *Bamboo Partners LLC v. Robert Mondavi Corp.*, No. 26-27170 (Cal. Sup. Ct.) (class recovered **\$10.8 million**).
- *Curative Health Services Securities Litigation*, 99-2074 (E.D.N.Y.) (class recovered **\$10.5 million**).
- *City Partnership Co. v. Jones Intercable*, 99 WM-1051 (D. Colo.) (class recovered **\$10.5 million**).
- *In re Aquila, Inc.*, (ERISA Litigation), 04-865 (W.D. Mo.) (**\$10.5 million** recovery for the class).
- *In re Tenfold Corporation Securities Litigation*, 2:00-CV-652 (D. Utah) (class recovered **\$5.9 million**).
- *In re Industrial Gas Antitrust Litigation*, 80 C 3479 and related cases (N.D. Ill.) (class recovered **\$50 million**).
- *In re Chor-Alkalai and Caustic Soda Antitrust Litigation*, 86-5428 and related cases (E.D. Pa.) (class recovered **\$55 million**).
- *In re Infant Formula Antitrust Litigation*, MDL No. 878 (N.D. Fla.) (class recovered **\$126 million**).
- *In re Brand Name Prescription Drugs Antitrust Litigation*, No. 1:94-cv-00897, M.D.L. 997 (N.D. Ill.) (class recovered **\$715 million**).
- *Landon v. Freel*, M.D.L. No. 592 (S.D. Tex.) (class recovered **\$12 million**).
- *Holloway v. Peat, Marwick, Mitchell & Co.*, No. 84 C 814 EU (N.D. Okla.) (class recovered **\$38 million**).



- *In re The Chubb Corp. Drought Insurance Litigation*, C-1-88-644 (S.D. Ohio) (class recovered **\$100 million**).
- *Wong v. Megafoods*, Civ-94-1702 (D. Ariz.) (securities fraud) (class recovered **\$12.25 million**).
- *In re Del Val Financial Corp. Securities Litigation*, 92 Civ 4854 (S.D.N.Y.) (class recovered **\$11.5 million**).
- *In re Home Shopping Network Shareholders Litigation*, Consolidated Civil Action No. 12868, (Del. Ch. 1995) (class recovered **\$13 million**).
- *In re Paine Webber Limited Partnerships Litigation*, 94 Civ 8547 (S.D.N.Y.) (class recovered **\$200 million**).
- *In re Bristol-Meyers Squibb Co. Securities Litigation*, 92 Civ 4007 (S.D.N.Y.) (class recovered **\$19 million**).
- *In re Spectrum Information Technologies Securities Litigation*, CV 93-2245 (E.D.N.Y.) (class recovered **\$13 million**).
- *In re Chase Manhattan Securities Litigation*, 90 Civ. 6092 (LJF) (S.D.N.Y.) (class recovered **\$17.5 million**).
- *Prostic v. Xerox Corp.*, No. B-90-113 (EBB) (D. Conn.) (class recovered **\$9 million**).
- *Steiner v. Hercules*, Civil Action No. 90-442-RRM (D. Del.) (class recovered **\$18 million**).
- *In re Ambase Securities Litigation*, 90 Civ 2011 (S.D.N.Y.) (class recovered **\$14.6 million**).
- *In re Southmark Securities Litigation*, CA No. 3-89-1402-D (N.D. Tex.) (class recovered **\$70 million**).
- *Steiner v. Ideal Basic Industries, Inc.*, No. 86-M 456 (D. Colo. 1989) (securities fraud) (class recovered **\$18 million**).
- *Tucson Electric Power Derivative Litigation*, 2:89 Civ. 01274 TUC. ACM (corporation recovered **\$30 million**).



- *Alleco Stockholders Litigation*, (Md. Cir. Ct. Pr. Georges County) (class recovered **\$16 million**).
- *In re Revlon Group, Inc. Shareholders Litigation*, No. 8362 (Del. Ch.) (class recovered **\$30 million**).
- *In re Taft Broadcasting Company Shareholders Litigation*, No. 8897 (Del. Ch.) (class recovered **\$20 million**).
- *In re Southland Corp. Securities Litigation*, No. 87-8834-K (N.D.Tex.) (class recovered **\$20 million**).
- *In re Crocker Bank Securities Litigation*, CA No. 7405 (Del. Ch.) (class recovered **\$30 million**).
- *In re Warner Communications Securities Litigation*, No. 82 Civ. 8288 (JFK) (S.D.N.Y.) (class recovered **\$17.5 million**).
- *Joseph v. Shell Oil*, CA No. 7450 (Del. Ch.) (securities fraud) (class recovered **\$200 million**).
- *In re Flight Transportation Corp. Securities Litigation*, Master Docket No. 4-82-874, MDL No. 517 (D. Minn.) (recovery of over **\$50 million**).
- *In re Whittaker Corporation Securities Litigation*, CA000817 (Cal. Super. Ct., Los Angeles County) (class recovered **\$18 million**).
- *Naevus International, Inc. v. AT&T Corp.*, C.A. No. 602191/99 (N.Y. Sup. Ct.) (consumer fraud) (class recovered **\$40 million**).
- *Sewell v. Sprint PCS Limited Partnership*, C.A. No. 97-188027/CC 3879 (Cir. Ct. for Baltimore City) (consumer fraud) (class recovered **\$45.2 million**).
- *In re Vytorin/Zetia Marketing, Sales Practices and Products Liability Litigation*, 2:08-cv-285 (D.N.J.) (class recovered **\$41.5 million**).
- *Egleston v. Verizon*, No. 104784/2011 (N.Y. Sup. Ct.) – Wolf Haldenstein represented a class of New York Verizon Centrex customers in an action against Verizon stemming from overbilling of certain charges. The Firm secured a settlement with a total value to the Class of over **\$5 million**, which



provided, among other things, each class member with full refunds of certain disputed charges, plus interest.

- *Zelouf Int'l Corp. v. Nahal Zelouf*, Index No. 653652/2014 (Sup. Ct. N.Y. Co. 2015). In an important trial decision following an appraisal proceeding triggered by the freeze-out merger of a closely-held corporation, which also included shareholder derivative claims, Justice Kornreich of the New York Supreme Court refused to apply a discount for lack of marketability to the minority interest in the former corporation and found that the insiders stole more than \$14 million dollars; the minority shareholder recovered over **\$9 million**.
- *Zelouf Int'l Corp. v. Zelouf*, 45 Misc.3d 1205(A) (Sup. Ct. N.Y. Co., 2014). The Court rejected application of a discount for lack of marketability and awarded a **\$10,031,438.28** judgment following an eleven day bench trial in the Commercial Division of the Supreme Court of the State of New York (New York County) on the value of a minority interest in a closely held corporation.
- *Thompson et al. v. Bethpage Federal Credit Union et al.*, No. 2:17-cv-00921-GRB (E.D.N.Y.) (**\$3.6 million** settlement)



REPRESENTATIVE REPORTED OPINIONS SINCE 1990 IN WHICH WOLF  
HALDENSTEIN WAS LEAD COUNSEL OR HAD ANOTHER SIGNIFICANT ROLE

FEDERAL APPELLATE AND DISTRICT COURT OPINIONS

- *Apple Inc. v. Pepper*, 139 S. Ct. 1514 (2019)
- *Hymes v. Bank of America*, 408 F. Supp. 3d 171 (E.D.N.Y. 2019)
- *In re Packaged Seafood Prods. Antitrust Litig.*, 332 F.R.D. 308 (S.D. Cal. 2019)
- *China Agritech, Inc. v. Resh*, 138 S. Ct. 1800 (2018)
- *In re Packaged Seafood Prods. Antitrust Litig.*, 242 F. Supp. 3d 1033 (S.D. Cal. 2017)
- *DeFrees v. Kirkland*, 2012 U.S. Dist. LEXIS 52780 (C.D. Cal. Apr. 11, 2012).
- *In re Beacon Associates Litig.*, 282 F.R.D. 315 (S.D.N.Y. 2012).
- *Messner v. Northshore University HealthSystem*, 669 F.3d 802, No. 10-2514 (7th Cir. Jan. 13, 2012).
- *In re Text Message Antitrust Litigation*, 630 F.3d, 622 (7th Cir. 2010).
- *In re Apple & ATTM Antitrust Litig.*, 2010 U.S. Dist. LEXIS 98270 (N.D. Cal. July 8, 2010).
- *In re Beacon Associates Litig.*, 745 F. Supp. 2d 386 (S.D.N.Y. 2010)
- *Freeland v. Iridium World Communications Ltd.*, 545 F. Supp. 2d 59 (D.D.C. 2008).
- *In re Apple & AT&TM Antitrust Litig.*, 596 F. Supp. 2d 1288 (N.D. Cal. 2008).
- *Harzewski v. Guidant Corp.*, 489 F.3d 799 (7th Cir. 2007).
- *In re JP Morgan Chase & Co. Securities Litigation*, No. 06 C 4674, 2007 U.S. Dist. LEXIS 93877 (N.D. Ill. Dec. 18, 2007).
- *Schoenbaum v. E.I. Dupont De Nemours and Co.*, 2007 WL 2768383 (E.D. Mo. Sept. 20, 2007).



- *Jeffries v. Pension Trust Fund*, 99 Civ. 4174 (LMM), 2007 U.S. Dist. LEXIS 61454 (S.D.N.Y. Aug. 20, 2007).
- *Klein v. Ryan Beck*, 06-Civ. 3460 (WCC), 2007 U.S. Dist. LEXIS 51465 (S.D.N.Y. July 13, 2007).
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## ATTORNEY BIOGRAPHIES

The qualifications of the attorneys in the Wolf Haldenstein Litigation Group are set forth below and are followed by descriptions of some of the Firm's attorneys who normally practice outside the Litigation Group who contribute significantly to the class action practice from time to time.

### PARTNERS

**MARK C. RIFKIN:** *admitted:* New York; Pennsylvania; New Jersey; U.S. Supreme Court; U.S. Courts of Appeals for the Second, Third, Fifth, and D.C. Circuits; U.S. District Courts for the Southern and Eastern Districts of New York, the Eastern and Western Districts of Pennsylvania, the District of New Jersey, the Eastern District of Wisconsin and the Western District of Michigan. *Education:* Princeton University (A.B. 1982); Villanova University School of Law (J.D. 1985). Contributor, Packel & Poulin, *Pennsylvania Evidence* (1987).

A highly experienced securities class action and shareholder rights litigator, Mr. Rifkin has recovered hundreds of millions of dollars for victims of corporate fraud and abuse in federal and state litigation across the country. Since 1990, Mr. Rifkin has served as lead counsel, co-lead counsel, or trial counsel in many class and derivative actions in securities, intellectual property, antitrust, insurance, consumer and mass tort litigation throughout the country.

Unique among his peers in the class action practice, Mr. Rifkin has extensive trial experience. Over the past thirty years, Mr. Rifkin has tried many complex commercial actions in federal and state courts across the country in class and derivative actions, including *In re National Media Corp. Derivative Litig.*, C.A. 90-7574 (E.D. Pa.), *Upp v. Mellon Bank, N.A.*, C.A. No. 91-5229 (E.D. Pa.), where the verdict awarded more than \$60 million in damages to the Class (later reversed on appeal, 997 F.2d 1039 (3d Cir. 1993)), and *In re AST Research Securities Litigation*, No. 94-1370 SVW (C.D. Cal.), as well as a number of commercial matters for individual clients, including *Zelouf Int'l Corp. v. Zelouf*, Index No. 653652/2013 (N.Y. Sup. Ct. 2015), in which he obtained a \$10 million judgment for his client.

Mr. Rifkin also has extensive appellate experience. Over thirty years, Mr. Rifkin has argued dozens of appeals on behalf of appellants and appellees in several federal appellate courts, and in the highest appellate courts in New York, Pennsylvania, New Jersey, and Delaware.





Mr. Rifkin has earned the AV®-Preeminent rating by Martindale-Hubbell® for more than 20 years, and has been selected for inclusion in the New York Metro SuperLawyers® listing since 2010. In 2014, Mr. Rifkin was named a “Titan of the Plaintiff’s Bar” by Law360®.

In 2015, Mr. Rifkin received worldwide acclaim for his role as lead counsel for the class in *Good Morning To You Productions Corp. v. Warner/Chappell Music, Inc.*, No. CV 13-04460-GHK (MRWx), in federal court in Los Angeles, successfully challenging the copyright to “Happy Birthday to You,” the world’s most famous song. In recognition of his historic victory, Mr. Rifkin was named a Trailblazer in Intellectual Property by the National Law Journal in 2016. In 2018, Mr. Rifkin led a team of lawyers from Wolf Haldenstein who represented the plaintiffs in *We Shall Overcome Foundation, et al. v. The Richmond Organization, Inc., et al.*, No. 16-cv-02725-DLC (S.D.N.Y.), which successfully challenged the copyright to “We Shall Overcome,” called the “most powerful song of the 20th century” by the Librarian of Congress.

Mr. Rifkin lectures frequently to business and professional organizations on a variety of securities, shareholder, intellectual property, and corporate governance matters. Mr. Rifkin is a guest lecturer to graduate and undergraduate economics and finance students on corporate governance and financial disclosure topics. He also serves as a moot court judge for the A.B.A. and New York University Law School. Mr. Rifkin appears frequently in print and broadcast media on diverse law-related topics in corporate, securities, intellectual property, antitrust, regulatory, and enforcement matters.

**BETSY C. MANIFOLD:** *admitted:* Wisconsin; New York; California; U.S. District Courts for the Western District of Wisconsin, Eastern and Southern Districts of New York, and Northern, Central and Southern Districts of California. *Education:* Elmira College; Middlebury College (B.A., *cum laude*, 1980); Marquette University (J.D., 1986); New York University. Thomas More Scholar. Recipient, American Jurisprudence Award in Agency. Member: The Association of the Bar of the City of New York. Languages: French.

Ms. Manifold served as co-lead counsel in the following cases to recovery on behalf of employees: *Miguel Garcia, et al. v. Lowe’s Home Center, Inc. et al.* – Case No. GIC 841120 (Barton) (Cal. Sup. Ct, San Diego) (\$1.65 million settlement w/ average class member recovery of \$5,500, attorney fees and cost awarded separately) and *Neil Weinstein, et al.*



*v. MetLife, Inc., et al.* – Case No. 3:06-cv-04444-SI (N.D. Cal) (\$7.4 million settlement). Ms. Manifold also served as co-lead counsel in the following derivative actions: *In re Atmel Corporation Derivative Litigation*, Master File No. CV 06-4592-JF (N.D. Cal.) (\$9.65 million payment to Atmel) and *In re Silicon Storage Technology Inc. Derivative Litig.*, Case No. C 06-04310 JF (N.D. Cal.) (cash payment and re-pricing of options with a total value of \$5.45 million). Ms. Manifold also worked as lead counsel on the following class action: *Lewis v. American Spectrum Realty*, Case No. 01 CC 00394, Cal. Sup. Ct (Orange County) (\$6.5 million settlement).

**BENJAMIN Y. KAUFMAN:** *admitted:* New York, United States Supreme Court, United States Court of Appeals for the Fourth Circuit, Southern, Northern and Eastern Districts of New York, District of New Jersey; and District of Colorado. *Education:* Yeshiva University, B.A.; Benjamin N. Cardozo School of Law, Yeshiva University, J.D; New York University, Stern School of Business, M.B.A. Mr. Kaufman focuses on class actions on behalf of defrauded shareholders, investors, and consumers. Mr. Kaufman has extensive experience in complex class actions representing clients including institutional investors such as public and labor pension funds, labor health and welfare benefit funds, as well as private individuals and funds who suffered losses due to corporate fraud. Mr. Kaufman also has extensive experience litigating complex commercial cases in state and federal court.

Mr. Kaufman's successful securities litigations include *In re Deutsche Telekom AG Securities Litigation*, No. 00-9475 (S.D.N.Y.), a complex international securities litigation requiring evidentiary discovery in both the United States and Europe, which settled for \$120 million. Mr. Kaufman was also part of the team that recovered \$46 million for investors in *In re Asia Pulp & Paper Securities Litigation*, No. 01-7351 (S.D.N.Y.); and \$43.1 million in *Freeland v. Iridium World Communications, Ltd.*, No. 99-1002 (D.D.C.).

Mr. Kaufman's outstanding representative results in derivative and transactional litigations include: *In re Trump Hotels Shareholder Derivative Litigation*, No. 96-cv-7820 (S.D.N.Y.) (in settlement Trump personally contributed some of his holdings and the company adopted corporate reforms); *Southwest Airlines Derivative Litigation (Carbon County Employee Retirement System v. Kelly)* (Dist. Ct. Dallas Cnty., Tex.) (derivative matter that resulted in significant reforms to the air carrier's corporate governance and safety and maintenance practices and procedures for the benefit of the company and its shareholders); *Lynn v. Tennessee Commerce Bancorp, Inc., et al.*, No. 3:12-cv-01137 (M.D. Tenn.) (\$2.6 million settlement); *In re ClubCorp Holdings Shareholder Litigation*, No. A-17-758912-B (D. Nev.) (\$5 million settlement and corporate therapeutics). Mr. Kaufman



also argued the appeal in *In re Converse Technology, Inc. Derivative Litig.*, 56 A.D.3d 49 (1st Dep't 2008) which led to the seminal New York Appellate Division opinion clarifying the standards of demand futility in New York and *In re Topps Company, Inc. Shareholders Litigation* which resulted in a 2007 decision vindicating the rights of shareholders to pursue claims in the most relevant forum notwithstanding the state of incorporation. Mr. Kaufman has also lectured and taught in the subjects of corporate governance as well as transactional and derivative litigation.

In addition, Mr. Kaufman has represented many corporate clients in complex commercial matters, including complex copyright royalty class actions against music companies. *Puckett v. Sony Music Entertainment*, No. 108802/98 (Sup. Ct. N.Y. Cnty. ); *Shropshire v. Sony Music Entertainment*, No. 06-3252 (S.D.N.Y.), and *The Youngbloods v. BMG Music*, No. 07-2394 (S.D.N.Y.). In *Mich II Holdings LLC v. Schron*, No. 600736/10 (Sup. Ct. N.Y. Cnty.), Mr. Kaufman represented certain prominent real estate investors and successfully moved to dismiss all claims against those defendants. Mr. Kaufman has also represented clients in arbitrations and litigations involving oppressed minority shareholders in closely held corporations.

Currently, Mr. Kaufman represents clients in a wide array of matters, including shareholders of a large cooperative complex alleging breach of fiduciary duty by the board of directors and property manager; purchasers of New York City taxi medallions in a class action pending in New York Supreme Court, Queens County; a New York art gallery in an action against several European insurers over insurance coverage for paintings seized while on exhibit; and shareholders of Saks, Inc. alleging that the board of directors and its investment advisor sold the company for inadequate consideration. *Cohen v. Saks*, 169 A.D.3d 51 (1st Dep't 2019).

Prior to joining Wolf Haldenstein, and prior to joining Milberg LLP in 1998, Mr. Kaufman was a Court Attorney for the New York State Supreme Court, New York County (1988-1990) and Principal Law Clerk to Justice Herman Cahn of the Commercial Division of the New York State Supreme Court, New York County (1990-1998).

Mr. Kaufman is an active member of the Commercial and Federal Litigation Section of the New York State Bar Association, the International Association of Jewish Lawyers and Jurists and the Jewish Lawyers Guild in which he serves as a Vice President. Mr. Kaufman was the Dinner Chair at the Jewish Lawyers Guild Annual Dinner in 2017, 2018, and 2019. Mr. Kaufman is a member of the Board of Trustees of Congregation



Beth Sholom in Lawrence, NY and was a member of the Board of Trustees of the Hebrew Academy of the Five Towns and Rockaways from 2015-2019.

Mr. Kaufman has been recognized by SuperLawyers® each year since 2012.

**THOMAS H. BURT:** *admitted:* New York; U.S. District Courts for the Southern and Eastern Districts of New York, Eastern District of Michigan. *Education:* American University (B.A. 1993); New York University (J.D. 1997). Articles Editor with New York University Review of Law and Social Change. Mr. Burt is a litigator with a practice concentrated in securities class actions and complex commercial litigation. After practicing criminal defense with noted defense lawyer Jack T. Litman for three years, he joined Wolf Haldenstein, where he has worked on such notable cases as *In re Initial Public Offering Securities Litigation*, No. 21 MC 92 (SAS) (S.D.N.Y.) (a novel and sweeping amalgamation of over 300 class actions which resulted in a recovery of \$586 million); *In re MicroStrategy Securities Litigation*, No. 00-473-A (E.D. Va.) (recovery of \$192 million); *In re DRAM Antitrust Litigation*, No. 02-cv-1486 (PJH) (N.D. Cal.) (antitrust case resulting in \$315 million recovery); *In re Computer Associates 2002 Class Action Securities Litigation*, No. 02-cv-1226 (TCP) (E.D.N.Y.) (settled, together with a related fraud case, for over \$133 million); *K.J. Egleston L.P. v. Heartland Industrial Partners, et al.*, 2:06-13555 (E.D. Mich.) (recovery included personal assets from former Reagan Administration budget director David A. Stockman); and *Parker Friedland v. Iridium World Communications, Ltd.*, 99-1002 (D.D.C.) (recovery of \$43.1 million). Mr. Burt has spoken on several occasions to investor and activist groups regarding the intersection of litigation and corporate social responsibility. Mr. Burt writes and speaks on both securities and antitrust litigation topics. He has served as a board member and officer of the St. Andrew's Society of the State of New York, New York's oldest charity.

**RACHELE R. BYRD:** *admitted:* California; U.S. District Courts for the Southern, Northern, Central and Eastern Districts of California, the Northern District of Illinois, and the Eastern District of Michigan; U.S. Court of Appeals for the Ninth Circuit; U.S. Supreme Court. *Education:* Point Loma Nazarene College (B.A., 1994); University of California, Hastings College of the Law (J.D. 1997). Member: State Bar of California. Ms. Byrd is located in the firm's San Diego office and practices corporate derivative and class action litigation including securities, consumer, privacy and security, antitrust, employment and general corporate and business litigation. Ms. Byrd has played a significant role in litigating numerous class and derivative actions, including *Engquist v. City of Los Angeles*, No. BC591331 (Los Angeles Super. Ct.) (gas tax refund action that recently settled for \$32.5 million and injunctive relief, valued at a minimum of \$24.5



million over 3 years and \$81.8 million over 10 years, following certification of the class and on the eve of a hearing on the parties' cross-motions for summary judgment); *Ardon v. City of Los Angeles*, 52 Cal.4th 241 (2011) (telephone tax refund action against the City of Los Angeles that settled for \$92.5 million after a successful appeal and a groundbreaking opinion from the California Supreme Court); *McWilliams v. City of Long Beach*, Cal. Supreme Ct. No. S202037, 2013 Cal. LEXIS 3510 (April 25, 2013) (telephone tax refund action that settled for \$16.6 million after a successful appeal and another groundbreaking opinion from the California Supreme Court); *Granados v. County of Los Angeles*, BC361470 (Los Angeles Super. Ct.) (telephone tax refund action that settled for \$16.9 million following class certification and a successful appeal); *In re: Zoom Video Communications, Inc. Privacy Litigation*, No. 5:20-cv-0291 (N.D. Cal.) (member of Plaintiffs' Steering Committee; settled for \$85 million); *In re Robinhood Outage Litigation*, No. 20-cv-01626-JD (N.D. Cal.) (member of Plaintiffs' Executive Committee); *In re Apple iPhone Antitrust Litigation*, No. 4:11-cv-06714-YGR (N.D. Cal.) (ongoing antitrust class action on behalf of consumers against Apple over its monopolization of the iOS applications aftermarket that secured a favorable opinion in the U.S. Supreme Court: *Apple Inc. v. Pepper*, 139 S. Ct. 1514 (2019)); *Defrees v. Kirkland, et al.*, 11-04272 (JLS) (C.D. Cal.) (\$12.2 million settlement reached in derivative action on the eve of trial); *Bokelman et al. v. FCH Enterprises, Inc.*, No. 18-00209-RJB-RLP (D. Haw.) (settled data breach class action; final approval granted May 3, 2019); *Carrera Aguallo, et al. v. Kemper Corp., et al.*, No. 1:21-cv-01883 (N.D. Ill.) (settled data breach class action where Ms. Byrd was Interim Co-Lead Counsel; final approval granted March 18, 2022); *In re: Scripps Health Data Incident Litigation*, San Diego Super. Ct. No. 37-2021-00024103-CU-BT-CTL (ongoing data breach class action where Wolf Haldenstein is co-lead counsel); *Hinds v. Community Medical Centers, Inc.*, No. STK-CV-UNPI-2021-10404 (San Joaquin Super. Ct.) (ongoing data breach class action where Wolf Haldenstein is co-lead counsel); *Christofferson v. Creation Entertainment, Inc.*, No. 19STCV11000 (Los Angeles Super. Ct.) (settled data breach class action; final approval granted on June 29, 2021); *In re: Hanna Andersson and salesforce.com Data Breach Litig.*, No. 3:20-cv-00812-EMC (N.D. Cal.) (settled data breach class action; final approval granted on June 25, 2021); *Gaston v. FabFitFun, Inc.*, No. 2:20-cv-09534-RGK-E (C.D. Cal.) (settled data breach class action; final approval granted on December 6, 2021); *Rossi v. Claire's Stores*, No. 1:20-cv-05090 (N.D. Ill.) (settled data breach class action; preliminary approval granted March 28, 2022); *Riggs v. Kroto, Inc., D/B/A/ iCanvas*, No. 1:20-cv-5822 (N.D. Ill.) (settled data breach class action; final approval granted on October 29, 2021); *Thomas v. San Diego Family Care*, San Diego Super. Ct. No. 37-2021-00026758-CU-BT-CTL (settled data breach class action; preliminary approval granted April 13, 2022); *Miller v. CSI Financial, LLC*, No. 37-



2021-00030263-CU-BT-CT (San Diego Super. Ct.) (recently settled data breach class action); *Fields v. The Regents of the University of California*, Alameda Superior Court No. RG21107152 (ongoing data breach class action); *In re Arthur J. Gallagher Data Breach Litigation*, No. 1:21-cv-04056 (N.D. Ill.) (ongoing); *In re: CaptureRx Data Breach Litigation*, No. 5:21-cv-00523-OLG (W.D. Tex.) (settled data breach class action; preliminary approval granted March 3, 2022).

**MATTHEW M. GUINEY:** *admitted:* New York State; United States Supreme Court; United States Courts of Appeals for the Second, Third and Ninth Circuits; U.S. District Courts for the Southern and Eastern District of New York and numerous others. *Education:* The College of William & Mary (B.A. in Government and Economics 1998); Georgetown University Law Center (J.D. 2002). Mr. Guiney's primary areas of practice are securities class actions under the Securities Act of 1933 and the Exchange Act of 1934, complex commercial litigation, Employee Retirement Income Security Act (ERISA) actions on behalf of plan participants, Fair Labor Standards Act of 1938 actions concerning overtime payment, and fiduciary duty actions under various state laws. Mr. Guiney has helped recover hundreds of millions of dollars for victims of corporate fraud and abuse in federal and state litigation across the country. Mr. Guiney was on the merits briefs at the United States Supreme Court on behalf of the plaintiffs/respondents in *Apple Inc. v. Pepper*, No. 17-204, 587 U.S. \_\_\_ (2019) where the Court affirmed plaintiffs' antitrust standing under *Illinois Brick*. Mr. Guiney also represented plaintiffs/respondents at the United States Supreme Court in *China Agritech v. Resh*, 584 U.S. \_\_ (2018), where the Court addressed tolling in the class action context. Mr. Guiney also initially served as counsel of record and briefed opposition to petition for writ of certiorari, and argued and achieved a precedential reversal of motion to dismiss in a published opinion at the United States Court of Appeals for the Ninth Circuit in *Resh v. China Agritech*, No. 15-5543, 2017 U.S. App. LEXIS 9029 (9th Cir. May 24, 2017).

Some of Mr. Guiney's notable results on behalf of investors include: *Mallozzi v. Industrial Enterprises of America, Inc., et al.*, 1:07-cv-10321-DLC (S.D.N.Y.) (\$3.4 million settlement on behalf of shareholders); *In re Luxottica Group S.p.A. Securities Litigation*, No. CV 01-3285 (JBW) (MDG) (E.D.N.Y.) (\$18.5 million settlement on behalf of shareholders); *In re MBNA Corp. ERISA Litigation*, Master Docket No. 05-429 (GMS), (D. Del) (\$4.5 million settlement on behalf of plan participants).

**MALCOLM T. BROWN:** *admitted:* United States District Courts for the Eastern, Northern, and Southern Districts of New York; District of New Jersey; and Eastern



District of Pennsylvania; United States Court of Appeals for the Second Circuit. **Education:** University of Pennsylvania (B.A., Political Science 1988) and Rutgers University School of Law (J.D. 1994). Mr. Brown's primary areas of practice are securities, derivative, M&A litigation and consumer class actions. Recent notable decisions include: *Siegmund v. Bian*, 2019 U.S. Dist. LEXIS 19349 (S.D. Fla. Feb. 6, 2019); *Siegmund v. Bian*, 2018 U.S. Dist. LEXIS 55724, 2018 U.S. Dist. LEXIS 55725 (April 2, 2018); *Johnson v. Ford Motor Co.*, 309 F.R.D. 226 (S.D. W. Va. 2015); *Thomas v. Ford Motor Co.*, 2014 U.S. Dist. LEXIS 43268 (D.S.C. Mar. 31, 2014); *In re Merkin Sec. Litig.*, 2015 U.S. Dist. LEXIS 178084 (S.D.N.Y. Aug. 24, 2015). Prior to joining Wolf Haldenstein, Mr. Brown was a business litigation attorney who represented financial institutions, corporations and partnerships and advised clients on business disputes, reorganizations, dissolutions and insurance coverage matters.

Mr. Brown is a member of the National Association of Pension Plan Attorneys and the National Black Lawyers, and a Fellow of the American Bar Foundation.

#### SPECIAL COUNSEL

**JUSTICE HERMAN CAHN:** *admitted:* New York. **Education:** Harvard Law School and a B.A. from City College of the City University of New York. Justice Herman Cahn was first elected as Judge of the Civil Court of the City of New York in 1976. He subsequently served as an Acting Justice of the Supreme Court from 1980 until 1992, when he was elected to the Supreme Court. Throughout his decades on the bench, he principally handled civil cases, with the exception of 1981 until 1987, when he presided over criminal matters. Justice Cahn was instrumental in the creation of, and a founding Justice in, the Commercial Division within the New York State Supreme Court. He served as a Justice of the Commercial Division from its inception in 1993.

Among his most notable recent cases are the consolidated cases stemming from the Bear Stearns merger with JP Morgan (*In re Bear Stearns Litigation*); litigation regarding the America's Cup Yacht Race (*Golden Gate Yacht Club v. Société Nautique de Genève*); litigation stemming from the attempt to enjoin the construction of the new Yankee Stadium (*Save Our Parks v. City of New York*); and the consolidated state cases regarding the rebuilding of the World Trade Center site (*World Trade Center Properties v. Alliance Insurance; Port Authority v. Alliance Insurance*).

Justice Cahn is a member of the Council on Judicial Administration of the Association of the Bar of the City of New York. He has also recently been appointed to the



Character and Fitness Committee of the Appellate Division, First Department. He is on the Register of Mediators for the United States Bankruptcy Court, Southern and Eastern Districts of New York.

Before ascending the bench, Justice Cahn practiced law in Manhattan. He was first admitted to the New York bar in 1956. He is admitted to practice in numerous courts, including the New York State courts, the Southern District of New York and the United States Supreme Court.

#### OF COUNSEL

**DANIEL W. KRASNER:** *admitted:* New York; Supreme Court of the United States; U.S. Courts of Appeals for the Second, Third, Fourth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits; U.S. District Courts for the Southern and Eastern Districts of New York, Central District of Illinois, and Northern District of Michigan. *Education:* Yale Law School (LL.B., 1965); Yeshiva College (B.A., 1962). Mr. Krasner is of counsel at Wolf Haldenstein. He began practicing law with Abraham L. Pomerantz, generally credited as the "Dean of the Class Action Bar." He founded the Class Litigation Group at Wolf Haldenstein in 1976.

Mr. Krasner received judicial praise for his class action acumen as early as 1978. *See, e.g., Shapiro v. Consolidated Edison Co.*, [1978 Transfer Binder] Fed. Sec. L. Rep. (CCH) & 96,364 at 93,252 (S.D.N.Y. 1978) ("in the Court's opinion the reputation, skill and expertise of . . . [Mr.] Krasner, considerably enhanced the probability of obtaining as large a cash settlement as was obtained"); *Steiner v. BOC Financial Corp.*, [1980 Transfer Binder] Fed. Sec. L. Rep. (CCH) & 97,656, at 98,491.4, (S.D.N.Y. 1980) ("This Court has previously recognized the high quality of work of plaintiffs' lead counsel, Mr. Krasner"). The New York Law Journal referred to Mr. Krasner as one of the "top rank plaintiffs' counsel" in the securities and class action fields. In connection with a failed 1989 management buyout of United Airlines, Mr. Krasner testified before Congress.

More recently, Mr. Krasner has been one of the lead attorneys for plaintiffs in some of the leading Federal multidistrict cases in the United States, including the IPO Litigation in the Southern District of New York, the Mutual Fund Market Timing Litigation in the District of Maryland, and several Madoff-related litigations pending in the Southern District of New York. Mr. Krasner has also been lead attorney in several precedent-setting shareholder actions in Delaware Chancery Court and the New York Court of Appeals, including *American International Group, Inc. v. Greenberg*, 965 A.2d 763 (Del. Ch. 2009) and the companion certified appeal, *Kirschner v. KPMG LLP*, Nos. 151, 152, 2010





N.Y. LEXIS 2959 (N.Y. Oct. 21, 2010); *Teachers' Retirement System of Louisiana and City of New Orleans Employees' Retirement System, derivatively on behalf of nominal defendant American International Group, Inc., v. PricewaterhouseCoopers LLP*, No. 152 (New York, October 21, 2010); *In re CNX Gas Corp. S'holders Litig.*, C.A. No. 5377-VCL, 2010 Del. Ch. LEXIS 119 (Del. Ch., May 25, 2010); *In re CNX Gas Corp. S'holders Litig.*, C.A. No. 5377-VCL, 2010 Del. Ch. LEXIS 139, (Del. Ch. July 5, 2010), appeal refused, 2010 Del. LEXIS 324, 2010 WL 2690402 (Del. 2010).

Mr. Krasner has lectured at the Practicing Law Institute; Rutgers Graduate School of Business; Federal Bar Council; Association of the Bar of the City of New York; Rockland County, New York State, and American Bar Associations; Federal Bar Council, and before numerous other bar, industry, and investor groups.

**PETER C. HARRAR:** *admitted;* New York; United States Court of Appeals for the Fourth Circuit and the United States District Courts for the Southern and Eastern Districts of New York. *Education:* Columbia Law School (J.D. 1984); Princeton University, Phi Beta Kappa, *magna cum laude*. Mr. Harrar is of counsel at the firm and has extensive experience in complex securities and commercial litigation on behalf of individual and institutional clients.

He has represented investment funds, hedge funds, insurance companies and other institutional investors in a variety of individual actions, class actions and disputes involving mortgage-backed securities and derivative instruments. Examples include *In re EMAC Securities Litigation*, a fraud case concerning private placements of securitized loan pools, and *Steed Finance LDC v. LASER Advisors, Inc.*, a hybrid individual and class action concerning the mispricing of swaptions.

Over the years, Mr. Harrar has also served as lead or co-lead counsel in numerous securities class and derivative actions throughout the country, recovering hundreds of millions of dollars on behalf of aggrieved investors and corporations. Recent examples are some of the largest recoveries achieved in resolution of derivative actions, including *American International Group Consolidated Derivative Litigation* (\$90 million), and *Bank of America/Merrill Derivative Litigation* (\$62.5 million).

**JEFFREY G. SMITH:** *admitted:* New York; California; Supreme Court of the United States; U.S. Courts of Appeals for the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Circuits; U.S. Tax Court; U.S. District Courts for the Southern and Eastern Districts of New York, Southern, Central and Northern Districts of California and the Districts of Colorado and Nebraska. *Education:* Woodrow Wilson School of



Public and International Affairs, Princeton University (M.P.A., 1977); Yale Law School (J.D., 1978); Vassar College (A.B., *cum laude generalis*, 1974). At Yale Law School, Mr. Smith was a teaching assistant for the Trial Practice course and a student supervisor in the Legal Services Organization, a clinical program. Member: The Association of the Bar of the City of New York; New York State and American (Section on Litigation) Bar Associations; State Bar of California (Member: Litigation Section); American Association for Justice. Mr. Smith has frequently lectured on corporate governance issues to professional groups of Fund trustees and investment advisors as well as to graduate and undergraduate business student groups, and has regularly served as a moot court judge for the A.B.A. and at New York University Law School. Mr. Smith has substantial experience in complex civil litigation, including class and derivative actions, tender offer, merger, and takeover litigation. Mr. Smith is rated "AV" by Martindale Hubble and, since its inception in 2006, has been selected as among the top 5% of attorneys in the New York City metropolitan area chosen to be included in the Super Lawyers Magazine.

**ROBERT ALTCHILER:** *Education:* State University of New York at Albany (B.S., Finance/Marketing, 1985); The George Washington University (JD, 1988).

Robert's practice focuses primarily in the areas of White Collar criminal investigations, corporate investigations, entertainment, litigation, and general corporate counseling. Robert's diverse practice had developed as a result of his extensive international business contacts and relationships in the entertainment world, in the United States and the United Kingdom. Robert had successfully defended cases and resolved matters spanning the most complex entertainment controversies, to virtually any imaginable complex criminal or corporate matter.

Robert has successfully defended individuals and corporations in a wide array of multifaceted investigations in areas such as mortgage fraud, securities fraud, tax fraud, prevailing wage, money laundering, Bank Secrecy Act, embezzlement, bank and wire fraud, theft of trade secrets, criminal copyright infringement, criminal anti-counterfeiting, Foreign Corrupt Practices Act (FCPA), International Traffic In Arms Regulations (ITAR), racketeering, continuing criminal enterprises, and circumvention of trade restrictions, among many others. Robert also specializes in non-criminal investigations relating to various topics, including finding money allegedly being hidden by individuals, ascertaining the identities of individuals actually involved in corporate matters (when a client believes those identities are being concealed), and



running undercover “sting” operations as part of civil and commercial litigation support.

Because of Robert's significant business contacts in the United Kingdom, and the United States, he is frequently called upon to assist clients in various forms of complex business matters, both domestic and international. Robert's clients look to him as a trusted, experienced, creative, fearless hand who has demonstrated an ability to navigate even the most difficult and desperate situations. Robert prides himself on his ability to develop aggressive creative winning strategies for his clients even when the clients believe their circumstances are hopeless.

In 1988, Robert started his legal career as a prosecutor in New York City, where he prosecuted a wide array of cases and headed up a variety of different investigations. As a prosecutor, he presented hundreds of cases to grand juries, and ran numerous investigations. In addition to trying several dozen serious cases, ranging from murder to fraud to narcotics violations, he also ran wiretap and grand jury investigations involving money laundering and other financial crimes, as well as a wiretap and investigation concerning a plot to assassinate a prominent NYC judge. Upon leaving the government, Robert began focusing on defending individuals and entities under government investigation and/or indictment. Early in private practice he defended numerous law enforcement officers under administrative and criminal scrutiny, in courts and administrative proceedings. His particular area of practice permitted Robert to further develop and strengthen his already close ties to law enforcement.

In addition to his practice, Robert has been an adjunct law professor at Pace University Law School since 1998, where he teaches trial advocacy, a course designed to teach law students how to be trial lawyers via a curriculum including the mock trial of a murder case. Robert is also a faculty member of the EATS Program run by Stetson Law School, an acclaimed program designed to teach law school trial advocacy professors creative and innovative pedagogical methods. Robert has also been a featured participant and lecturer at Cardozo Law School's acclaimed Intensive Trial Advocacy Program in New York City, and has also taught at Yale Law School. Robert's trial advocacy teaching requires him to constantly integrate new developments in communication theory and trial techniques into his teaching methods. Given the changing way students (and prospective jurors) communicate and digest information (via Twitter, Instagram and Snapchat, for example) Robert is a recognized leader at integrating neuroscientific principles into his teaching. By actively participating in the weekly trials his students



conduct in class, and by frequently demonstrating methods, he is able to continually adapt his own communication skills and integrate cutting-edge developments into his own practice.

Robert is Special Advisor to the Dean of the Mt. Sinai School of Nursing, an adjunct professor at the school, a member of the Board of Trustees and the Chair of the Board of Trustees Nominations Committee. In his role as Special Advisor, Robert is tasked with counselling the Dean on innovative pedagogical methods designed to facilitate teaching Narrative Care and other topics. Robert instructs faculty on various topics, and will be teaching courses at the school in the immediate future.

Robert graduated from the George Washington University Law School (formerly, The National Law Center), where he began his career as an advocate by conducting administrative hearings and trials during his second and third year. Prior to GW, Robert graduated with honors from the Business School at the State University of New York at Albany in 1985. He is also a 1996 graduate of the National Criminal Defense College and a 1997 graduate of the National Institute for Trial Advocacy's Harvard Teacher Training Program. Robert has also made dozens of television appearances on Fox, Court TV, and Tru TV, providing legal commentary on televised trials, and participating in discussions related to pertinent issues.

**JENNY YOUNG DU PONT:** *admitted:* New York; Massachusetts; District of Columbia; U.S. Supreme Court. *Education:* Princeton University (A.B. *cum laude*); Georgetown University Law Center/School of Foreign Service (J.D./M.S.F.S. *magna cum laude*); Order of the Coif; *Georgetown Law Journal*, Notes and Comments Editor.

Ms. du Pont has extensive experience representing domestic and international companies ranging in size from small privately-held firms to large public companies in a variety of corporate, investment, banking, insurance, finance, and employment matters. Ms. du Pont began her legal career at two AmLaw 100 firms in Washington, D.C. and London, U.K. and a decade later moved into in-house counsel roles, first with Plymouth Rock Assurance Corporation in Boston, MA, and later with Millennium Management, LLC in New York. Ms. du Pont also advises and presents on issues related to family businesses, family offices, and managing wealth transfer across generations.

In addition to her legal experience, Ms. du Pont has significant experience in the non-profit sector. Ms. du Pont was President and CEO of The Garden Conservancy in Cold



Spring, New York and Executive Director of Miracle House of New York, Inc., and has acted a legal and strategic advisor to a variety of for profit and non-profit entities in New York. For more than 20 years, Ms. du Pont also has been a director, trustee, and officer for a broad range of educational, cultural, scientific, and service non-profit entities. Ms. du Pont served for a number of years as a Trustee of Phillips Exeter Academy, in Exeter, NH, and as a member and Vice Chair of the Warrant Committee for the Town of Dover in Massachusetts. She is currently a Director of the American Friends of the British Museum and of the American Patrons of the National Galleries and Library of Scotland, serves as an Advisory Council member for the Untermyer Gardens Conservancy in Yonkers, NY and the Sing Sing Prison Museum Master Narrative Project, in Ossining, NY, and is chair of the Advisory Council for the Conservation Law Foundation in Boston, MA.

**KATE MCGUIRE:** *admitted:* New York; U.S. District Courts for the Southern and Eastern Districts of New York. *Education:* University of California at Santa Cruz (B.A. 1995), Georgetown University Law Center (J.D., 1998); Member: *Georgetown Immigration Law Journal*.

Ms. McGuire has extensive experience prosecuting complex litigation. Her work encompasses consumer and data protection class actions, securities class and derivative shareholder cases and nationwide antitrust suits.

She is a member of the Firm's Consumer Protection practice group and, in that context, has worked intensively to protect classes of consumers under a range of state and federal laws. Recently, she served as a member of the co-lead counsel team in *Simerlein et al. v. Toyota Motor Corporation et al.*, 3:17-CV-01021-VAB (D. Conn.), representing more than a million owners of Sienna minivans in litigation that settled for class-wide benefits valued at between \$30 and \$40 million. Presently, she serves on a team representing plaintiffs in multi-district litigation against Fisher-Price and Mattel, relating to Rock 'n Play infant sleepers which are alleged to be dangerous and misleadingly marketed. She has also served as a member of the firm's lead or co-counsel teams in other consumer protection cases, including litigation based upon allegations of misrepresentations and omissions concerning the purported safety of electronic cigarettes.

Ms. McGuire has also represented plaintiffs with respect to the protection of their civil rights. For example, she represented a blind plaintiff in a suit under the Americans with Disability Act against a major trading online trading company, and represented a



group of minority business owners in federal civil rights litigation concerning disparate treatment which settled for significant governance therapeutics.

**CARL MALMSTROM:** *admitted:* Illinois; Minnesota; United States Court of Appeals for the Seventh Circuit; Northern and Southern Districts of Illinois; Northern District of Indiana; District of Minnesota; Eastern District of Missouri; Western District of New York. *Education:* University of Chicago (A.B., Biological Sciences, 1999; A.M., Social Sciences, 2001); The University of Hawai'i at Manoa (M.A., Anthropology, 2004); Loyola University Chicago School of Law (J.D., 2007). Prior to joining the firm, Mr. Malmstrom worked for the City of Chicago Department of Law in the Municipal Prosecutions Division; he is a member of the Chicago Bar Association. Mr. Malmstrom has substantial experience litigating complex class actions in several practice areas, including antitrust, consumer fraud, and data security. Representative cases in which he has represented plaintiffs include *Bokelman et al. v. FCH Enterprises, Inc.*, Case No. 1:18-cv-209 (D. Haw.), involving customers of Zippy's Restaurants in Hawaii whose personal data was stolen by hackers, *In re: Experian Data Breach Litigation*, Case No. 8:15-cv-1592 (C.D. Cal.); *Freeman-Hargis v. Taxi Affiliation Services, LLC*, Case No. 2016-CH-02519 (Cir. Ct. Cook Cty.), involving customers of several taxi services in Chicago who were unlawfully charged fees for using credit cards in taxis.

#### ASSOCIATES

**PATRICK DONOVAN:** *admitted:* New York; U.S. District Courts for the Southern and Eastern Districts of New York; United States Court of Appeals for the Second and Fourth Circuits. *Education:* Iona College (B.A., Business Management, 2007); St. John's University School of Law (J.D. 2011). Mr. Donovan's primary areas of focus are securities, derivative and M&A litigation.

**LILLIAN GRINNELL:** *admitted:* New York; United States District Courts for the Southern and Eastern Districts of New York; United States Court of Appeals for the Federal Circuit. *Education:* Bryn Mawr College (A.B., Philosophy and Political Science, 2016); New York University Law School (J.D. 2019). Prior to joining Wolf Haldenstein, Ms. Grinnell served as an Excelsior Service Fellow with the Consumer Protection and Financial Enforcement Division of the NYS Department of Financial Services.

**ROURKE DONAHUE:** *admitted:* New York. *Education:* University of North Carolina at Chapel Hill (B.A., Philosophy, 2017), Honors Program; Georgetown University Law Center (J.D. 2020). Prior to joining the firm, Mr. Donahue clerked for the Hon. Timothy P. Lydon, Presiding Judge of Equity, at the New Jersey Superior Court in Trenton, New



Jersey. In law school, Mr. Donahue interned at the Department of Justice's Civil Division, Christie's Auction House, and Manhattan Legal Services and served as the Administrative Editor of the *Georgetown Environmental Law Review*.

**ALEX J. TRAMONTANO:** *admitted:* California; U.S. District Courts for the Southern, Central and Eastern Districts of California; United States Court of Appeals for the Ninth Circuit. *Education:* University of Massachusetts, Amherst (B.A., Political Science and Legal Studies, *cum laude*, 2008); California Western School of Law (J.D., 2011). Mr. Tramontano's primary areas of focus are securities, anti-trust, unfair and deceptive practices, civil rights and data breach related class actions. Prior to joining Wolf Haldenstein, Mr. Tramontano worked as an associate at an AmLaw 100 firm, as well as other regional law firms in southern California. Mr. Tramontano has over a decade of litigation experience defending and prosecuting complex actions on behalf of individuals and businesses in both Federal and State courts. Mr. Tramontano began his legal career as a Police Cadet at the University of Massachusetts Amherst. He went on to law school and joined the San Diego District Attorney's Office as a Certified Legal Intern before transitioning to private practice.

**FERDEZA ZEKIRI:** *admitted:* California; U.S. District Court for the Central District of California. *Education:* Gonzaga University (B.A., Criminal Justice and Psychology, 2017); University of California, Los Angeles School of Law (J.D. 2020). In law school, Ms. Zekiri served as a Managing Editor of the UCLA School of *Law's Journal of Environmental Law & Policy*, and worked as a research assistant for the UCLA Law Library. Prior to joining Wolf Haldenstein, Ms. Zekiri was an associate attorney at Talkov Law where she primarily focused on real estate litigation.

## PARAPROFESSIONALS

**GREGORY STONE:** *Education:* University of Pennsylvania (B.S., Economics, 1979); University of California, Los Angeles (MBA, 1983). Mr. Stone is the Firm's Director of Case and Financial Analysis. He assists partners and associates in identifying and researching potential federal class action securities, derivative litigation and merger & acquisition (M&A) litigation. Mr. Stone has worked with leading securities class action firms in an analytical and investigative role for over 18 year throughout the United States, and has an extensive professional background in the accounting and investment professions. He plays a key role in new case development, including performing investigations into potential securities fraud class actions, derivative and other



corporate governance related actions. By using a broad spectrum of financial news and legal industry research tools, Mr. Stone analyzes information that helps identify and support the theories behind the firm's litigation efforts.

#### NON-DISCRIMINATION POLICIES

Wolf Haldenstein does not discriminate or tolerate harassment against any employee or applicant because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, or alienage or citizenship status and designs its hiring practices to ensure that minority group members and women are afforded equal employment opportunities without discrimination. The Firm is in compliance with all applicable Federal, State, County, and City equal employment opportunity laws.

Wolf Haldenstein is proud of its long history of support for the rights of, and employment opportunities for, women, the disadvantaged, and minority group persons, including the participation in civil rights and voter registration activities in the South in the early 1960s by partners of the Firm; the part-time employment of disadvantaged youth through various public school programs; the varied *pro bono* activities performed by many of the Firm's lawyers; the employment of many women and minority group persons in various capacities at the Firm, including at the partner level; the hiring of ex-offenders in supported job training programs; and the use of minority and women-owned businesses to provide services and supplies to the Firm.

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TELECOPIER: 312-214-3110







1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA )

3 ) ss.

4 COUNTY OF LOS ANGELES )

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18  
6 and not a party to the within action; my business address is 5900 Canoga Avenue, Suite 450,  
7 Woodland Hills, California 91367.

8 On the date below, I served the foregoing documents on the interested parties:

9 **DECLARATION OF BETSY C. MANIFOLD IN SUPPORT OF PLAINTIFFS’**  
10 **MOTION FOR AN AWARD OF ATTORNEYS’ FEES AND COSTS, AND NAMED**  
11 **PLAINTIFFS’ SERVICE PAYMENTS**

12 Pursuant to the Order Authorizing Electronic Service, entered in this matter on May 23,  
13 2019, I caused service of the foregoing document(s) on the interested parties as listed on the  
14 Service List posted on [www.caseanywhere.com](http://www.caseanywhere.com) for this matter by submitting an electronic  
15 version of the document(s) via file transfer protocol (FTP) to Case Anywhere through the upload  
16 feature at [www.caseanywhere.com](http://www.caseanywhere.com).

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

19 Executed on January 30, 2023

20  
21 /s/Elia Ramirez  
22 Elia Ramirez  
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1 BETSY C. MANIFOLD (182450)  
manifold@whafh.com  
2 **WOLF HALDENSTEIN ADLER**  
**FREEMAN & HERZ LLP**  
3 750 B Street, Suite 1820  
4 San Diego, CA 92101  
Tel: (619) 239-4599  
5 Fax: (619) 234-4599

6 MICHAEL LISKOW (243899)  
mliskow@calcaterrapollack.com  
7 **CALCATERRA POLLACK LLP**  
1140 Avenue of the Americas, 9th Floor  
8 New York, NY 10036-5803  
Tel: (212) 899-1761  
9 Fax: (332) 206-2073

10 SCOTT M. PRIZ (*pro hac vice*)  
priz@priz-law.com  
11 **PRIZ LAW, LLC**  
3230 S. Harlem Ave., Suite 221B  
12 Riverside, IL 60546  
13 Tel: (708) 268-5768

14 *Counsel for Plaintiffs and the Class*

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **FOR THE COUNTY OF LOS ANGELES**

17 AMERICAN JETTER & PLUMBING, INC. )  
and RESILIENCE TREATMENT CENTER, )  
18 on behalf of themselves and all others )  
19 similarly situated, )

20 Plaintiffs, )

21 v. )

22 STATE COMPENSATION INSURANCE )  
23 FUND, a public enterprise fund, and DOES 1 )  
through 50, inclusive, )

24 Defendants. )  
25 )  
26 )  
27 )

CASE NO. 19STCV05738

**DECLARATION OF JASON P.  
SULTZER IN SUPPORT OF  
PLAINTIFFS' MOTION FOR AN  
AWARD OF ATTORNEYS' FEES  
AND COSTS, AND NAMED  
PLAINTIFFS' SERVICE PAYMENTS**

1 I, Jason P. Sultzer, declare as follows:

2 1. I am the owner of the law firm The Sultzer Law Group P.C (“SLG”). I have  
3 personal knowledge of the matters stated herein and, if called upon, I could and would competently  
4 testify thereto. I submit this declaration in support of Plaintiffs’ Motion for an Award of Attorneys’  
5 Fees and Costs, and Named Plaintiffs’ Service Payments in the Actions.

6 2. I have personal knowledge of all material matters related to the action based upon  
7 SLG’s involvement in the prosecution of this action while attorney Michael Liskow was employed  
8 at SLG. Mr. Liskow was the only attorney who worked on the Actions at SLG, and SLG has had  
9 no involvement in the Actions since Mr. Liskow left the firm in May 2020.

10 3. The services rendered and work performed by Mr. Liskow while at SLG in these  
11 Actions included, among other things, engaging in pre-filing research and investigation into the  
12 potential claims against Defendant, researching and drafting the complaint, and preparing for and  
13 attending the initial joint status conference.

14 4. SLG’s background and qualifications are set forth in the Firm Resume attached as  
15 **Exhibit 1.**

16 5. Mr. Liskow’s hourly rate for work performed on behalf of SLG was \$700.00 at the  
17 conclusion of SLG’s involvement in the Actions in May 2020.

18 6. The total number of hours spent on the Actions by Mr. Liskow while at my firm  
19 was 129.60. These hours, multiplied by Mr. Liskow’s hourly rate of \$700.00, result in a total  
20 lodestar of \$90,720.00.

21 7. My firm maintains detailed records regarding the amount of time spent by my firm,  
22 and the lodestar calculation is based on my firm’s current billing rates, in this instance the current  
23 rate when Mr. Liskow left the firm. The information was prepared from contemporaneous, daily  
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1 time records regularly prepared and maintained by my firm in the usual course and manner of my  
2 firm. These records are available for review at the request of the Court. Time expended in  
3 preparing this application for fees and reimbursement of costs has not been included in this request.

4 8. In my judgment, and based on my experience in complex class action litigation, the  
5 number of hours expended and the services performed by Mr. Liskow at my firm were reasonable  
6 and necessary for Mr. Liskow's representation of Plaintiffs.  
7

8 9. I have general familiarity with the range of hourly rates typically charged by  
9 plaintiffs' class action counsel in the geographical area where my firm practices and throughout  
10 the United States, both on a current basis and historically. From that basis, I am able to conclude  
11 that the rates charged by my firm are commensurate with those prevailing in the market for such  
12 legal services furnished in complex class action litigation such as this.  
13

14 10. My firm has incurred costs of \$1,422.67 in litigating this action, consisting of the  
15 following categories of costs:

Category	Costs
Court Costs, Filing Fees and Transcripts	\$264.90
Travel	\$1,157.77
<b>Total</b>	<b>\$1,422.67</b>

21 11. Throughout the litigation, my understanding is that Mr. Liskow made every effort  
22 to operate as efficiently as possible and to avoid unnecessary duplication while working on the  
23 Actions at SLG.  
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1 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
2 true and correct. Executed this 23<sup>rd</sup> day of January, 2023, at Poughkeepsie, New York.

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6 Jason P. Sultzer  
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# **EXHIBIT 1**



A Complex Litigation & Trial Practice

NEW YORK | PENNSYLVANIA | NEW JERSEY | CALIFORNIA

The Sultz Law Group, P.C. focuses on consumer class actions and other complex civil litigation. The firm is headquartered in Poughkeepsie, New York, and maintains offices in New York City, New Jersey, California, and Pennsylvania. Since its founding in 2013, The Sultz Law Group, P.C. has served as lead counsel in numerous high-profile consumer class action cases and has obtained over a billion dollars in class settlements on behalf of consumers throughout the country. The firm is included in Martindale-Hubbell's Bar Register of Preeminent Lawyers for its class action practice. All of the partners in the firm are AV rated by Martindale-Hubbell and have been selected as Super Lawyers. In addition, they have also been selected as the American Law Media's Mass Tort Lawyers of the Year. The firm's founding partner, Mr. Sultz, has earned selection as a Senior Fellow of the Litigation Counsel of America (LCA), recognizing the country's top trial attorneys, and is a member of their Trial Law and Diversity Institute. Mr. Sultz has also been named in Lawdragon's list of 500 Leading Plaintiff Financial Lawyers for 2019, 2020, and 2021. The firm's attorneys have contributed to or been featured in various well-known publications regarding their class action practice, including: *Law360*, *Inside Counsel Magazine*, *Risk Management Magazine*, *CNBC News*, *Reuters*, *Bloomberg News*, and the *New York Post*. The Sultz Law Group was named the best nationwide civil dispute firm in the U.S. Business News Legal Elite Awards in 2020. More detail about the firm, its practice areas, and its attorneys appear on its website: [www.thesultzlawgroup.com](http://www.thesultzlawgroup.com).

## I. Class Action Litigation Experience

Attorneys at The Sultz Law Group, P.C. have advocated for consumers' and workers' rights, successfully challenging some of the nation's largest and most powerful corporations for a variety of improper, unfair, and deceptive business practices in a wide range of industries including, the auto, financial, cosmetic, food, and supplement industries. Through our efforts, we have recovered significant benefits for our consumer clients. Moreover, courts throughout the country have recognized The Sultz Law Group's significant experience with regards to its class action practice. *See Patora v. Tarte, Inc.*, Case No. 18-cv-11760-KMK (S.D.N.Y.), (Judge Kenneth M. Karas stated that "[t]he plaintiff here was ably represented by class counsel, who is clearly well-versed in complex class action litigation. I can speak from personal experience dealing with The Sultz Firm, which has many highly-qualified and capable and experienced lawyers representing plaintiffs in consumer class actions. . ."); *see also Shiv Patel v. St. John's University*, Case No. 1:20-cv-02114 (E.D.N.Y.) (Judge Steven Gold observed that, "The firms' expertise and competency in the class action context are reflected by the favorable outcomes they have obtained in previous suits... particularly in light of their impressive record."); *Griffin, Anthony, et al., v. Aldi, Inc., Doe Defendants 1-10*, Case No. 16-cv-00354 (N.D.N.Y.) (Judge Lawrence E. Kahn stated that "The quality of the representation also supports the award. Plaintiffs' Counsel have worked diligently and are experienced and well-versed in wage and hour cases and class actions."); *Susan Swetz et al v. GSK Consumer Health, Inc.*, Case No. 7:20-cv-04731 (S.D.N.Y.) (Judge Román stated that "Class Counsel have prosecuted the Litigation with skill, perseverance, and diligence, as reflected by the Settlement Fund achieved and the positive reception of the Settlement



Agreement by the Settlement Class.”); *Arredondo v. University of La Verne*, Case No. 2:20-cv-07665 (C.D. Cal.) (Judge Mark C. Scarsi stated “Counsel also has a wealth of experience handling class actions. . . Counsel has demonstrated strong knowledge of the applicable law throughout the briefing process for this class certification motion. And finally, counsel has demonstrated it will commit sufficient resources to represent the class in this heavily litigated case.”)

Recent Settled matters include:

- *In re Kia Engine Litigation.*, No. 8:17-cv-00838-JLS-JDE (C.D. Cal.) (served as co-lead counsel in an automobile defect case and reached a nationwide settlement valued at \$1.3 billion on behalf of owners and lessees of certain Hyundai and Kia vehicles)
- *Foster, Andrew Tyler et al. v. L-3 Communications EOTECH, Inc., et al.*, Case No. 15-cv-03519 (W.D. Mo.) (served as co-lead counsel and obtained more than \$50 million dollars in monetary relief for consumers who purchased falsely advertised holographic weapons sights)
- *Griffin, Anthony, et al., v. Aldi, Inc., Doe Defendants 1-10*, Case No. 16-cv-00354 (N.D.N.Y.) (served as co-lead counsel and obtained a settlement fund of \$9.8 million on behalf of a national and NY class of employees who were not paid for all of the hours they worked and who did not receive appropriate overtime under federal and NY law)
- *Susan Swetz, et al. v. GSK Consumer Health, Inc.*, Case No. 7:20-cv-04731 (S.D.N.Y.) (served as co-lead counsel and obtained a settlement fund of \$6.5 million and injunctive relief in the form of label modifications on behalf of a national class of consumers who purchased dietary supplements alleged to have been deceptively labeled)
- *Run Them Sweet, LLC v. CPA Global, Ltd., et al*, Case No. 1:16-cv-1347 (E.D. VA.) (served as co-lead counsel and obtained a settlement fund of \$5.6 million on behalf of consumers who were overcharged with respect to foreign patent renewal services)
- *Davenport, Sumner, et al. v. Discover Financial Services, et al.*, Case No. 15-cv-06052 (N.D. Ill) (served as co-lead counsel and obtained a settlement fund of \$5.6 million for victims of violations of the Telephone Consumer Protection Act)
- *Rapoport-Hecht, Tziva et al. v. Seventh Generation, Inc.*, Case No. 14-cv-9087 (S.D.N.Y.) (served as co-lead counsel and obtained a settlement fund of \$4.5 million and injunctive relief in the form of label modifications on behalf of a national class of consumers who purchased cleaning products alleged to have been deceptively labeled)
- *Schmitt, et al. v. Yunique, LLC*, No. 8:17-cv-01397-JVS-JDE (C.D. Cal.), (served as co-lead counsel and obtained a settlement fund of \$3.25 million and injunctive relief in the form of label modifications on behalf of consumers in a case involving allegedly deceptive labeling of consumer products)
- *Vincent, Wesley, et al. v. People Against Dirty, PBC. and Method Products, PBC.*, Case No. 7:16-cv-06936 (S.D.N.Y.) (served as co-lead counsel and obtained a settlement fund of \$2.8 million and injunctive relief in the form of label modifications on behalf of a national class of consumers who purchased cleaning products alleged to have been deceptively labeled)
- *Bangoura, Almany Ismael, et al. v. Beiersdorf, Inc. and Bayer Healthcare, LLC*, Case No. 1:22-cv-00291-BMC (E.D.N.Y.) (served as co-lead counsel and obtained a settlement fund of

\$2.3 million on behalf of a national class of consumers who purchased sunscreen products alleged to have been contaminated with benzene)

- *Mayhew, Tanya, et al., v. KAS Direct, LLC and S.C. Johnson & Son, Inc.*, Case No. 16-cv-6981 (S.D.N.Y.) (served as co-lead counsel and obtained a settlement fund of \$2.2 million and injunctive relief in the form of label modifications on behalf of a national class of consumers who purchased baby products alleged to have been deceptively labeled)
- *Porter, Ryan, et al., v. Emerson College*, Case No. 1:20-cv-11897 (District of Massachusetts) (served as co-lead counsel and obtained a settlement fund of \$2.06 million on behalf of college students who paid tuition for in person classes during the COVID pandemic)
- *Patora v. Tarte, Inc.*, Case No. 7:18-cv-11760-KMK (S.D.N.Y.) (served as lead counsel and obtained a settlement fund of \$1.7 million and injunctive relief in the form of label modifications on behalf of a national class of consumers who purchased cleaning products alleged to have been deceptively labeled)
- *Starke v. Stanley Black & Decker, Inc.*, Case No. C-03—CV-21-001091 (Md. Cir. Ct., Baltimore County) (served as lead counsel and obtained settlement of \$1.6 million and injunctive relief in the form of label and website modifications on behalf of a national class of consumers who purchased drill bits alleged to have been deceptively advertised)
- *Luib, Tony, et al., v. Henkel Consumer Goods Inc.*, Case No. 17-cv-03021 (E.D.N.Y.) (served as co-lead counsel and obtained a settlement fund of \$1.5 million and injunctive relief in the form of label modifications on behalf of a national class of consumers who purchased cleaning products alleged to have been deceptively labeled)
- *Georgette Santa Maria, et al. v. Hyatt Equities LLC, et al.*, No. 2018-51928 (Dutchess County Supreme Court) (served as co-lead counsel and obtained a settlement fund on behalf of a national and NY class of employees who were not paid for all of the hours they worked and who did not receive appropriate overtime under federal and NY law)
- *Baumgarten v. Cleanwell, LLC*, Case No. 1:16-cv-01780 (E.D.N.Y.) (served as lead counsel and obtained injunctive relief in the form of label modifications on behalf of a national class of consumers against a company that allegedly sold deceptively labeled products)
- *Nicotra, Jennifer et al. v. Babo Botanicals, LLC*, Case No. 16-cv-00296 (E.D.N.Y.) (served as lead counsel and obtained injunctive relief in the form of label modifications on behalf of a national class of consumers against a company that marketed skin and haircare products alleged to have been deceptively labeled)

## II. Attorney Biographies

### Jason P. Sultzer

Jason P. Sultzer is a nationally recognized trial lawyer and the founding partner of The Sultzer Law Group P.C. He represents clients throughout the United States in high profile litigations and has substantial experience in class actions, mass torts, business disputes, personal injury litigation, product liability, and intellectual property-related issues.

Over the last twenty-five years, Mr. Sultzer has successfully defended and prosecuted nationally recognized companies in highly publicized class action lawsuits in state and federal courts, including proceedings before the Judicial Panel on Multidistrict Litigation. These class actions involved a wide variety of matters, including unfair competition, breach of warranty, product-related issues, employment discrimination, civil rights, overtime wages, the Fair Debt Collection Practices Act, abusive mortgage lending practices, The Telephone Consumer Protection Act, and consumer protection statutes of nearly all fifty states. Mr. Sultzer has been appointed as lead counsel in a number of class action lawsuits in which he has recovered millions of dollars and obtained injunctive relief on behalf of aggrieved consumers nationwide in cases involving fraudulent representations of various products, supplements, foods, and automobiles. In his capacity as lead counsel courts have referred to Mr. Sultzer's credentials as nothing short of sterling.

Mr. Sultzer is a frequent author and lecturer about class action lawsuits and has been quoted in national publications concerning the Class Action Fairness Act and class action settlements.

Mr. Sultzer has received the Martindale-Hubbell AV rating, indicating that his legal peers rank him at the highest level of professional excellence. He was also named as a "Mass Tort Lawyer of the Year" by American Law Media, has been recognized as a Super Lawyer for the last ten years, and was selected for Lawdragon's list of 500 Leading Plaintiff Financial Lawyers for 2019 and 2020. Mr. Sultzer, was also featured on the front cover of the Wall Street Journal's Legal Leader's magazine in 2014 and 2015 designating him as one of New York's top rated lawyers. In addition, Mr. Sultzer has earned selection as a Senior Fellow of the Litigation Counsel of America (LCA), recognizing the country's top trial attorneys. The LCA is an invitation-only honorary society that is composed of less than one-half of one percent of American lawyers. Mr. Sultzer is also a member of the LCA's Trial Law and Diversity Institute and its Honorary Order of Juris (consisting of attorneys who have tried fifty or more bench or jury trials to verdict).

Prior to opening The Sultzer Law Group P.C., Mr. Sultzer was the youngest equity partner at one of the largest law firms in the country where he served as the co-chairman of its class action practice group. Earlier in his career, Mr. Sultzer was in-house counsel for Owens Corning, a Fortune 500 Company, where he was involved in defending the company against tens of thousands of asbestos lawsuits throughout the country.

### **Joseph Lipari**

Joseph Lipari is a partner of The Sultzer Law Group. Mr. Lipari has litigated in state and federal courts throughout the United States, and he has appeared before binding arbitration panels. He has achieved numerous successful outcomes as counsel for plaintiffs and defendants, including verdicts and settlements.

He has successfully represented businesses in complex suits arising out of high-profile, catastrophic events including: underground mining accidents in Alabama; steel mill explosions in

Pennsylvania and Louisiana; and extended unplanned shutdowns and outages in mills, plants, and factories located across the United States and abroad.

Mr. Lipari was featured in *Law360* for a defense verdict he obtained on behalf of his manufacturer client. *See Moyer v. Siemens VAI Services and Signal Metal Industries, Inc.*, No. 2:11-cv-03185 (E.D. La.) (Louisiana jury found defendant was not liable for \$2.6 million wrongful death award following a deadly molten steel eruption allegedly linked to equipment designed by the company's predecessor).

Mr. Lipari has created significant caselaw in the field of consumer class actions. *See, e.g., Silva, Christopher et al. v. Smucker Natural Foods, Inc. and J.M. Smucker Co.*, 14-cv-6154 (E.D.N.Y.); *Sitt v. Nature's Bounty, Inc. et al.*, 15-cv-04199 (S.D.N.Y.).

He is admitted to the bars of New York, Pennsylvania, and New Jersey. He has also appeared as counsel, by way of *pro hac vice* admission, in over twenty states. Mr. Lipari has lectured and published on topics including trial strategy, patent disputes, hydrofracking in the Marcellus Shale, and risk management practices.

Mr. Lipari is a 2002 graduate of Seton Hall University School of Law. Before law school, he attended Officer Candidate School in Quantico, Virginia, and was offered a commission as Second Lieutenant in the United States Marine Corps.

Prior to joining The Sultz Law Group P.C., Mr. Lipari was a partner at a prominent national litigation firm. Earlier in his career, he was associated with one of the largest law firms in the country.

Mr. Lipari has received the Martindale-Hubbell AV rating, indicating that his legal peers rank him at the highest level of professional excellence. He was also named as a "Mass Tort Lawyer of the Year" by American Law Media, and has been recognized as a Super Lawyer.

## **Philip Furia**

Philip Furia is a partner at The Sultz Law Group.

Mr. Furia is a highly experienced litigator who has spent more than a decade obtaining outstanding results for his clients in courts throughout the country. He has handled high-stakes disputes and arbitration matters on behalf of plaintiffs and defendants, corporations and individuals. Mr. Furia's diverse experience has included cases involving breach of contract, fraud, real estate, intellectual property and consumer protection. When needed, he calls upon extensive experience as an appellate advocate, having briefed and argued many appeals.

Mr. Furia is a 2009 graduate of Seton Hall University School of Law. Prior to joining the firm, Mr. Furia was a partner at both a renowned litigation boutique and an AmLaw 100 firm.

## **Daniel Markowitz**

Daniel Markowitz is a partner at the Sultz Law Group. He is an experienced litigator and class action attorney. Mr. Markowitz is known for developing strong client relationships centered around professionalism, clear communication, and dedication to understanding and fighting for the needs of his clients. He has represented clients on complex litigation in both federal and state court, including many high-profile cases involving prominent businesses. Representing plaintiffs, Mr. Markowitz has worked on class actions that resulted in settlements of over \$50,000,000.00.

Mr. Markowitz received recognition by being selected to the NY Metro Super Lawyers Rising Stars list each year from 2014-2019, and was selected to the NY Metro Super Lawyers list in 2020.

Mr. Markowitz graduated cum laude from NYU and went on to receive his law degree from St. John's University.

Prior to joining The Sultz Law Group P.C., Mr. Markowitz began his career as in-house counsel. He then spent several years at a prominent litigation class action firm. He is admitted to practice in New York State, as well as the United States District Courts for the Southern and Eastern Districts of New York.

## **Mindy Dolgoff**

Ms. Dolgoff is an associate at The Sultz Law Group. She is an experienced litigator and class action attorney and has represented clients on complex litigation matters in both state and federal court.

Prior to joining the firm, Ms. Dolgoff started her career at one of the most prominent international law firms and represented high profile clients on numerous complex commercial matters. She also spent several years at one of the top securities class action law firms where she represented institutional investors in securities fraud class action litigation. In that capacity, Ms. Dolgoff was a member of the trial team that took one of the few securities class action cases to trial and achieved a favorable verdict for its investor clients against a regional bank.

Ms. Dolgoff earned her Juris Doctor from NYU School of Law in 2004, where she served as a staff editor for the Environmental Law Journal. She graduated from Emory University with a B.A. in 2001.

## **David Shoop**

For over 15 years, Mr. Shoop has represented injured consumers in a wide range of matters involving the defective design, manufacture, and distribution of dangerous products. He has had a hand in recovering over \$100 million in settlements and verdicts for his clients – just in the realms of product liability and defective medical devices alone. One such case involved a \$30 million verdict in a product liability lawsuit in Los Angeles County (Case No. BC 594187). He

also regularly handles multi-million-dollar cases against the manufacturers of medical devices, including a recent \$14 million aggregate settlement for an implantable medical device.

In addition to understanding the inner workings of insurance defense, David has valuable knowledge of engineering and physics, accident reconstruction, biometrics, and other fields applicable to the cases he handles. He uses this knowledge as well as the testimony and work of experts across many fields, such as engineers, economists, medical professionals, and more. He handles cases involving complex engineering, product testing, hazard identification, faulty warnings, and other matters. David is a member of the National Fire Protection Association (NFPA) and has litigated a number of fire and casualty cases, with a recent \$3.5 million settlement for burn injury clients.

### **Thomas Alch**

Over the span of a legal career that has lasted close to three decades, Thomas S. Alch has recovered hundreds of millions of dollars on behalf of clients who were injured through negligence and by defective products. At the forefront of the law on defective medical devices, he has been featured on national news outlets such as ABC and Fox, as well as radio programs and magazines.

Tom has significant experience litigating highly technical cases involving defective medical devices, which he uses to secure a strong foothold in the uphill battle against negligent manufacturers, distributors, healthcare professionals, and their insurance providers. He has obtained victories for clients in cases involving obstetric vacuums, surgical implements, medical beds, and more.

Tom has many notable wins and achievements on his record. He has argued before the California Court of Appeals and has won numerous jury verdicts. He also regularly handles class actions for medical devices, product recalls, and other dangerous products. He is admitted to practice in California, Nevada, and Arizona.

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**PROOF OF SERVICE**

STATE OF CALIFORNIA )

) ss.

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 5900 Canoga Avenue, Suite 450, Woodland Hills, California 91367.

On the date below, I served the foregoing documents on the interested parties:

**DECLARATION OF JASON P. SULTZER IN SUPPORT OF PLAINTIFFS’  
MOTION FOR AN AWARD OF ATTORNEYS’ FEES AND COSTS, AND NAMED  
PLAINTIFFS’ SERVICE PAYMENTS**

Pursuant to the Order Authorizing Electronic Service, entered in this matter on May 23, 2019, I caused service of the foregoing document(s) on the interested parties as listed on the Service List posted on [www.caseanywhere.com](http://www.caseanywhere.com) for this matter by submitting an electronic version of the document(s) via file transfer protocol (FTP) to Case Anywhere through the upload feature at [www.caseanywhere.com](http://www.caseanywhere.com).

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

Executed on January 30, 2023

/s/Elia Ramirez  
Elia Ramirez

1 RHETT R. JOHNSON, Assistant Chief Counsel, SBN 219521  
2 R. TIMOTHY O'CONNOR, Staff Counsel, SBN 179631  
3 STEVEN CLARENCE, Staff Counsel, SBN 198271  
4 STATE COMPENSATION INSURANCE FUND  
5 Corporate Legal Department  
6 5880 Owens Drive, 3rd Floor  
7 Pleasanton, California 94588-3900  
8 Telephone: (323) 526-2045

9 Attorneys for Defendant  
10 STATE COMPENSATION INSURANCE FUND,  
11 A public benefit fund and Independent Agency of the State of California

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF LOS ANGELES**

14 MICHAEL REYNOLDS ENTERPRISE, INC.  
15 DBA REYNOLDS TERMITE CONTROL,  
16 individually and on behalf of all others similarly  
17 situated,

18 Plaintiffs,

19 vs.

20 STATE COMPENSATION INSURANCE  
21 FUND, a public enterprise fund; and DOES 1  
22 through 50, inclusive,

23 Defendant.

Case No. 19STCV05738

Assigned for all purposes to  
Honorable Lawrence P. Riff  
Department 7

**DECLARATION OF  
R. TIMOTHY O'CONNOR**



1 I, R. Timothy O'Connor, do hereby declare as follows:

2 1. I am an attorney at law duly authorized to practice before the Courts of the State of  
3 California. I am an attorney of record and lead trial counsel for Defendant State Compensation  
4 Insurance Fund ("State Fund") in the instant Class Action Litigation. The matters set forth herein  
5 are of my own personal knowledge or within my information and belief, and if called to testify  
6 thereto, I could and would do so competently.

7 **COMPILATION OF DOCUMENTS AND INFORMATION**

8 2. As lead trial counsel, throughout the course of this litigation and in particularly as  
9 part of the settlement process phase, I worked directly with State Fund's Actuarial Data Scientist  
10 staff and Information Technology ("IT") Departments to pull relevant data regarding State Fund's  
11 tier modifier and its effects, across several different parameters pursuant to the settlement criteria.  
12 State Fund's Actuarial Staff and IT department also worked directly with State Fund's outside  
13 technical experts Cornerstone Research. As part of this process, data-derived reports and datasets  
14 based on the settlement criteria were created which included documents and information regarding  
15 class size and premium amounts. The assigned Actuarial Staff and Cornerstone Research analyzed  
16 the data extracted by State Fund's IT department, compiled the relevant data, and summarized the  
17 data. The data was then transmitted directly to the Class Administrator, CPT.

18 3. On or about December 15, 2022, State Fund's IT Department extracted data with the  
19 final class action data range of March 1, 2013 to November 30, 2022, corresponding to all policies  
20 having a tier modifier value greater than 1.0 (tier modifier values of 1 or Blank, meaning the policy  
21 had no tier modifier, were excluded from this dataset).

22 4. The extracted data was provided to Cornerstone Research who performed the new  
23 calculations to determine the settlement allocations attributable to the Class Members (similar to  
24 those described in Kate Smith's April 19, 2022 Declaration ("Smith Declaration," attached as  
25 Exhibit O to the Amended Settlement Agreement), with the updated data and following the same  
26 methodology. Cornerstone Research assisted with efforts to validate the data used to assess the  
27 additional amounts paid by customers with policies based on tier modifier values greater than 1.0.  
28 Those efforts included reviewing State Fund's policy and premium data, testing relationships

1 between data fields, and working with State Fund’s IT staff to validate the dataset of customer  
2 policies based on tier modifier values greater than 1.0. In gathering data to determine the identities  
3 of the Settlement Class Members, the criteria was limited only to those who not only had premiums  
4 calculated using a tier modifier in excess of 1.00, but also where such calculation resulted in the  
5 payment of higher premiums than the insured would have otherwise paid. That calculation relied  
6 on “estimated annual premium,” which is derived from information provided by the policyholder at  
7 inception of the policy. This initial information might result in a policyholder being designated as a  
8 “minimum premium” policyholder, in which case, despite having been assigned a tier modifier in  
9 excess of 1.0, the tier modifier would still *not* have resulted in the payment of higher premiums than  
10 the insured would have otherwise paid. Conversely, a policyholder, using information provided to  
11 State Fund, might initially be designed as a “non-minimum premium” policyholder but, due to  
12 changes in reported payroll, an audit, etc., might subsequently incur premium which would fall  
13 below the “minimum premium” threshold.

14         5. State Fund engaged both its internal IT and audit personnel, as well as outside  
15 consultant Cornerstone Research to examine a criteria whereby policyholders initially designated as  
16 “minimum premium” policyholders (policyholders whose payroll is below a minimum threshold  
17 and as such are only charged only a set amount of minimum premium) might not fall into the  
18 “minimum premium” category because of subsequent audits, later disclosed increases in payroll,  
19 etc. This type of information, which might effect a policyholder’s inclusion into the “minimum  
20 premium” category, is often only available to State Fund years after the end of the policy period. As  
21 agreed, “minimum premium” policyholders are not included in the settlement class as their premium  
22 paid was not due to any respective tier rating; but rather was simply a result of payroll being under  
23 a certain threshold.

24         6. When using a criteria which includes later discovered audit premium information  
25 from audits completed during the class period, until November 30, 2022, in evaluating “minimum  
26 premium” policyholders to be included/excluded from the settlement class, State Fund determined  
27 that the original estimated count of 90,438 Settlement Class Members would decrease to 89,931:  
28

1 7,666 new policyholders would now be included in the Settlement Class while 8,173 would fall out  
2 of the Settlement Class based on this updated criteria.

3 7. The data provided to Cornerstone Research covered 654,728 policies for as many as  
4 228,044 distinct policyholders with policies in effect during the class period. The subset of  
5 policyholders who paid for a policy based on a tier modifier greater than 1.0 at any point in the class  
6 period was 89,931. Each of the 89,931 policyholders is eligible for a share of the Net Settlement  
7 Amount following the agreed-upon allocation methodology.

8 8. On January 27, 2023, Cornerstone transmitted the updated data, including any  
9 Additional Premiums paid by Settlement Class Members to the Class Administrator, CPT. Once  
10 State Fund has had an opportunity to review this data, I will provide a supplemental declaration  
11 within two (2) weeks that will contain additional policyholder and premium information including  
12 an update of the calculations provided in the Smith Declaration through the end of the class period.  
13 I understand that this supplemental declaration will then be provided to the Court by Plaintiffs as  
14 part of their supplemental briefing due March 22, 2023.

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

17 Executed on January 30, 2023 at Ventura County, California.

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21 R. Timothy O'Connor  
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**PROOF OF SERVICE**

STATE OF CALIFORNIA )

) ss.

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 5900 Canoga Avenue, Suite 450, Woodland Hills, California 91367.

On the date below, I served the foregoing documents on the interested parties:

**DECLARATION OF R. TIMOTHY O’CONNOR**

Pursuant to the Order Authorizing Electronic Service, entered in this matter on May 23, 2019, I caused service of the foregoing document(s) on the interested parties as listed on the Service List posted on [www.caseanywhere.com](http://www.caseanywhere.com) for this matter by submitting an electronic version of the document(s) via file transfer protocol (FTP) to Case Anywhere through the upload feature at [www.caseanywhere.com](http://www.caseanywhere.com).

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

Executed on January 30, 2023

/s/Elia Ramirez  
Elia Ramirez