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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

**NOTICE OF MOTION AND MOTION FOR
ORDER GRANTING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

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 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on March 29, 2023, at 10:00 a.m., or as soon thereafter
3 as the matter may be heard in Department 7 of the above entitled court, located at 312 North
4 Spring Street, Los Angeles, California 90012, plaintiffs Michael Reynolds Enterprise, Inc. dba
5 Reynolds Termite Control, American Jetter & Plumbing, Inc., and Resilience Treatment Center
6 (collectively “Named Plaintiffs”), individually and on behalf of all others similarly situated, will
7 move and do hereby move this Court, pursuant to California Rules of Court, rule 3.769, *et seq.*,
8 and California Code of Civil Procedure, Section 382, for an order finally approving the proposed
9 settlement of this action and entering the [Proposed] Final Approval Order and the [Proposed]
10 Judgment, attached hereto as Exhibits A and B, respectively. Specifically, Named Plaintiffs seek
11 a final order and judgment that, *inter alia*: (i) finally approves the proposed Amended Class
12 Action Settlement and Release (“Settlement Agreement”); (ii) finally certifies the Settlement
13 Class; and (iii) finds that the Notice Program constituted the best practicable notice and was
14 executed in accordance with the Court’s November 30, 2022 Order Granting Motion for
15 Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”) and the terms
16 of the Settlement Agreement. Named Plaintiffs also request an award of Attorneys’ Fees and
17 Costs, and of Service Payments to Named Plaintiffs, as set forth in the concurrently filed Motion
18 for an Award of Attorneys’ Fees and Costs, and Named Plaintiff Service Payments (“Fee
19 Motion”).

20 This motion is made on the grounds that the proposed settlement is fair, reasonable and
21 adequate and that notice has been provided to the Settlement Class in compliance with the
22 Court’s Preliminary Approval Order and the terms of the Settlement Agreement.

23 This motion is based upon the Memorandum of Points and Authorities attached hereto;
24 the Declarations of Drew E. Pomerance, Michael Liskow, Betsy C. Manifold, Scott M. Priz,
25 Jason P. Sultzer, Jeremy Talavera, Timothy O’Connor, Michael Reynolds Enterprise, Inc. dba
26 Reynolds Termite Control, American Jetter & Plumbing, Inc., and Resilience Treatment Center;
27 the Settlement Agreement with exhibits previously filed with the Court; all files and records in
28 these Actions; any argument and evidence which may be presented at the hearing on this motion;

1 and such other matters as the Court may consider.

2
3 Dated: January 30, 2023

ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP

4
5 By: 

DREW E. POMERANCE

6 DAVID R. GINSBURG

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

8
9
10 Dated: January 30, 2023

By: 

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TABLE OF CONTENTS

	Page(s)
I. INTRODUCTION.....	1
II. SUMMARY OF THE LITIGATION.....	2
III. TERMS OF THE SETTLEMENT.....	3
A. The Settlement Class.....	3
B. Summary of Key Settlement Terms.....	3
1. The Settlement Fund.....	3
2. Injunctive Relief.....	3
3. Plan of Allocation.....	4
4. The Release is Narrowly Tailored to the Claims.....	6
5. Requested Attorneys' Fees and Costs and Service Payments to Named Plaintiffs.....	6
IV. METHODS AND REACH OF NOTICE AND NOTICE AND CLAIMS ADMINISTRATION COSTS.....	7
V. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE, AND THE COURT SHOULD FINALLY APPROVE THE SETTLEMENT	8
A. Legal Standards for Final Approval of Settlement.....	8
B. The Settlement is Entitled to a Presumption of Fairness.....	9
1. The Settlement is the Result of Arm's-Length Negotiations.....	9
2. Sufficient Investigation and Discovery Have Been Performed.....	9
3. Plaintiffs' Counsel Have Extensive Experience in Similar Litigation	10
C. The Settlement is Fair, Reasonable and Adequate.....	10
1. The Strength of Named Plaintiffs' Case Balanced Against the Value of the Settlement Weighs in Favor of Final Approval	11
a. State Fund Contends that the California Department of Insurance Approved Its Tier Modifiers.....	11
b. State Fund Has Raised Significant Equitable Defenses.....	12
c. Named Plaintiffs Would Likely Have to Prevail in Both the Administrative Proceedings and Again in This Court.....	13

1	d.	The Value of the Settlement as Balanced Against the Strength of Named Plaintiffs' Case.....	13
2			
3	2.	The Risk, Expense, Complexity and Likely Duration of Further Litigation, Including the Risk of Maintaining Class Action Status Through Trial, Favors Final Approval	15
4			
5	3.	The Extent of Discovery Completed and the Stage of the Proceedings Favors Final Approval.....	16
6			
7	4.	The Experience and Views of Counsel.....	16
8	VI.	FINAL CERTIFICATION OF THE CLASS IS APPROPRIATE.....	16
9	A.	The Proposed Settlement Class is Ascertainable and Numerous.....	17
10	B.	The Community of Interest Requirement Is Met for Purposes of a Settlement Class.....	17
11			
12	1.	Common Issues of Law and Fact Predominate.....	17
13	2.	Typicality.....	18
14	3.	Named Plaintiffs and Plaintiffs' Counsel Will Fairly and Adequately Represent the Class.....	18
15	4.	A Classwide Settlement is Superior to Other Available Methods of Resolution.....	19
16			
17	VII.	THE NOTICE PROGRAM SATISFIES DUE PROCESS AND WAS EXECUTED IN ACCORDANCE WITH THE COURT'S PRELIMINARY APPROVAL ORDER.....	19
18			
19	VIII.	CONCLUSION.....	20
20			
21			
22			
23			
24			
25			
26			
27			
28			

TABLE OF AUTHORITIES

Page(s)

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135.....	8, 15
<i>Brinker Restaurant Corp. v. Superior Court</i> (2012) 53 Cal.4th 1004.....	17
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43.....	9, 16
<i>Daar v. Yellow Cab Co.</i> (1967) 67 Cal.2d 695.....	19
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794.....	10, 16
<i>Ebensteiner Co., Inc. v. Chadmar Group</i> (2006) 143 Cal.App.4th 1174.....	8
<i>Eisen v. Carlisle & Jacquelin</i> (1974) 417 U.S. 156	19
<i>Hamilton v. Oakland Sch. Dist.</i> (1933) 219 Cal. 322.....	8
<i>Hernandez v. Restoration Hardware, Inc.</i> (2018) 4 Cal.5th 260.....	8
<i>In re M.D.C. Holdings Sec. Litig.</i> (S.D.Cal. Aug. 30, 1990) Master File No. CV 89-0090 E (M), 1990 U.S. Dist. LEXIS 15488	15
<i>In re Microsoft I-V Cases</i> (2006) 135 Cal.App.4th 706	10
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	11, 13, 14
<i>MacKay v. Superior Court</i> (2010) 188 Cal.App.4th 1427.....	11
<i>McGhee v. Bank of America</i> (1976) 60 Cal.App.3d 442.....	19

1	<i>Officers for Justice v. Civil Serv. Comm’n</i>	
2	(9th Cir. 1982) 688 F.2d 615	12, 15
3	<i>Richmond v. Dart Industries, Inc.</i>	
4	(1981) 29 Cal.3d 462.....	18
5	<i>Sav-on Drug Stores, Inc. v. Superior Court</i>	
6	(2004) 34 Cal.4th 319.....	17
7	<i>Simons v. Horowitz</i>	
8	(1984) 151 Cal.App.3d 834	18
9	<i>Wershba v. Apple Computer, Inc.</i>	
10	(2001) 91 Cal.App.4th 224.....	8, 9, 11
11	Statutes	
12	Code Civ. Proc	
13	§ 382.....	17
14	Ins. Code	
15	§ 332.....	18
16	§ 11735.....	18
17	Rules	
18	Cal. Rules of Court,	
19	rule 3.769(a).....	8
20	rule 3.769(d).....	17
21	rule 3.769(f).....	19

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

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”¹) seek final approval of the proposed \$65,000,000 non-
6 reversionary class action settlement (“Settlement”) reached with defendant State Compensation
7 Insurance Fund (“State Fund”) (collectively, the “Parties”).² This extraordinary Settlement will
8 provide substantial cash payments to the 89,931 members of the Settlement Class, mostly small
9 businesses in California, while also providing significant injunctive relief that will mitigate the
10 issues that animated the litigation in the first place.

11 The Parties have complied with the Court’s November 30, 2022 Order Granting Motion
12 for Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”). Direct
13 mail notice will have been sent to 89,931 Settlement Class Members, and email notice to over
14 8,011. A Settlement Website and toll-free telephone hotline were established. And while most
15 of the Settlement Class has until March 1, 2023 to object to or opt-out of the Settlement,³ as of
16
17
18

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

25 ² Named Plaintiffs attach as Exhibit C a chart identifying each of the requirements of the
26 Complex Civil Department’s Checklist for Final Approval of Class Action Settlement, including
27 the location in Named Plaintiffs’ papers where each applicable requirement is addressed.

28 ³ Pursuant to the Court’s January 26, 2023 Order Granting Joint Stipulation Regarding
Notice to Additional Class Members (“Additional Notice Order”), 7,666 Settlement Class
Members (“New Class Members”) will be sent notice on or before February 3, 2023, and will
have until March 17, 2023 to opt out of or object to the Settlement.

January 27, 2023 there have been no objections and only two opt-outs.⁴

This strong support for the Settlement is not surprising in light of the real and meaningful Settlement Payments provided to the Participating Settlement Class Members, here an average of \$503.04, with no Settlement Class Member receiving less than \$100. But the Settlement also provides additional benefits through injunctive relief that will increase the transparency of the tier modifier system, allowing the Settlement Class and other workers' compensation insurance consumers to make better informed decisions about their premium rates and insurance options.

The Settlement also provides funds directly to Settlement Class Members without any requirement that they file a claim. Instead, Settlement Payment checks will automatically be sent to any Settlement Class Member who does not opt-out of the Settlement. With no claim form to complete, Named Plaintiffs anticipate that the amount of Settlement Payment checks cashed will be significant, and will conduct a secondary distribution of funds if the Court deems it necessary.

In sum, the Settlement presents comprehensive, significant and immediate benefits to the Settlement Class, an excellent result especially given the significant risks and delay of continued litigation. The Court should grant final approval.

II. SUMMARY OF THE LITIGATION

The concurrently filed Plaintiffs' Motion for an Award of Attorneys' Fees and Costs, and Named Plaintiff Service Payments ("Fee Motion"), and supporting declarations, detail the claims alleged in the Actions and the factual background and procedural history of the litigation, including the settlement negotiations and the preliminary approval of the Settlement. To avoid repeating those details, Named Plaintiffs respectfully refer the Court to those filings. *See* Fee Motion, Sections II-IV; Pomerance Final Decl., ¶¶ 3-40; Declaration of Michael Liskow in Support of Order Granting Final Approval of Class Action Settlement and for an Award of

⁴ *See* Declaration of Jeremy Talavera on Behalf of CPT Group, Inc. ("CPT Decl."), ¶¶ 12, 14. Named Plaintiffs will provide the Court with responses to any objections, except those made by New Class Members, by March 22, 2023, pursuant to the Preliminary Approval Order, *see id.*, ¶ 12. Named Plaintiffs will provide responses to any objections from new Class Members by March 28, 2023. *See* Additional Notice Order, ¶ 9.

Attorneys' Fees and Costs, and Plaintiffs' Service Payments ("Liskow Final Decl."), ¶¶ 8-21.

III. TERMS OF THE SETTLEMENT

A. The Settlement Class

The proposed Settlement Class consists of:

"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 higher premiums 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."

Settlement Agreement, ¶ 2.1.26. Excluded from the Settlement Class are State Fund, its affiliates, predecessors, successors, officers, directors, agents, servants and employees and the immediate families of such persons. *See id.*

B. Summary of Key Settlement Terms

The essential terms of the Settlement Agreement are as follows:

1. The Settlement Fund

The Settlement Agreement provides for a Settlement Fund of \$65,000,000. *See id.* at ¶ 2.4.1. No portion of the Settlement Fund will revert to State Fund. *See id.*

2. Injunctive Relief

The Settlement Agreement also provides substantial injunctive relief, with State Fund agreeing to (1) not file any portion of any of its rate filings pertaining to tier rating or tier modifiers confidentially with the California Department of Insurance ("DOI") for at least the next five years, and to notify Settlement Class Counsel for five years thereafter if State Fund seeks to do so; (2) make all tier rating rate filings publicly available as long as the applicable statute remains in effect; (3) explicitly identify the tier modifier on certain documents provided to insureds in the same manner as it does now for brokers; and (4) provide to any policyholder or broker who inquires a complete and fair explanation as to how and why State Fund applied a particular tier modifier to the policyholder. *See id.* at ¶ 2.5.

1 **3. Plan of Allocation**

2 The Settlement Fund will first be used to pay for all Administrative Costs, then any
3 Service Payments granted to the Named Plaintiffs, and any Attorneys' Fees and Costs awarded
4 to Plaintiffs' Counsel. *See id.* at ¶ 2.4.5(a). Thereafter, the Claims Administrator will calculate
5 the individual Settlement Payments to each Participating Settlement Class Member from the
6 remaining funds (the "Net Settlement Amount"). *See id.* at ¶¶ 2.1.15; 2.4.5(b). The Net
7 Settlement Amount will then be allocated to Participating Settlement Class Members based on a
8 *pro rata* share of the Net Settlement Amount in a proportion equal to the Participating Settlement
9 Class Members' share of the total Additional Premiums paid to State Fund during the Class
10 Period. *See id.* at ¶¶ 2.4.5(a); 2.4.5(c). In no event shall any Settlement Class Member receive
11 less than \$100.00. *See* ¶ 2.4.5(a). The precise formula is detailed in Section 2.4.5(b) of the
12 Settlement Agreement.

13 The Claims Administrator will commence mailing Settlement Payment checks to
14 Participating Settlement Class Members within 21 days of the Effective Date. *See id.*, ¶ 2.10.2.
15 The checks will be sent via First Class U.S. Mail, postage prepaid, with each check stating the
16 date (180 days after the date of mailing) when the check will be voided by the Claims
17 Administrator. *See id.*, ¶ 2.10.3. Before mailing the checks, the Claims Administrator will
18 update Participating Settlement Class Members' addresses using the National Change of Address
19 Database. *See id.* For any checks that are returned as undeliverable without a USPS forwarding
20 address, the Claims Administrator will conduct an address search and re-mail the check to any
21 new address found, if any. *See id.*, ¶ 2.10.4. The Claims Administrator will also promptly send
22 a replacement check to any Participating Settlement Class Member whose original check was
23 lost or misplaced if such request is made prior to the void date. *See id.*

24 Within 60 days following the last day upon which all Settlement Payment checks have
25 either been cashed or have become void, the Parties will file a joint report with the Court setting
26 forth the total amount that was actually paid to Participating Settlement Class Members, the total
27 number of Participating Settlement Class Members who cashed checks (and the amount of such
28 checks), the number of checks returned as undeliverable (and amount of such checks), the

1 number of checks voided due to not being timely cashed (and amount of such checks), and the
2 total dollar amount of monies (including any accrued interest) remaining in the Settlement Fund
3 Account (the “Joint Settlement Report”). *See id.*, ¶ 2.10.5.

4 If, after the first distribution, there is \$500,000 or less in the Settlement Fund Account,
5 these residual funds will automatically be distributed to any *Cy Pres* recipients approved by the
6 Court (discussed *infra*) in equal amounts. *See id.*, ¶ 2.10.6. If, however, after the first
7 distribution there remains over \$500,000 in the Settlement Fund Account, a second distribution
8 will occur after the Court determines whether the residual funds should be dispersed only to
9 those Participating Settlement Class Members who timely cashed their Settlement Payment
10 checks or instead to all Participating Settlement Class Members. *See id.*

11 Within 60 days following the last day upon which all settlement checks from any second
12 distribution have either been cashed or become void, the Parties shall file a second Joint
13 Settlement Report with the Court. *See id.*, ¶ 2.10.7. If, after the second distribution, there is
14 \$500,000 or less in the Settlement Fund Account, these residual funds will automatically be
15 distributed to any *Cy Pres* recipients approved by the Court in equal amounts. *See id.* If instead,
16 after the second distribution there still remains in excess of \$500,000 in the Settlement Fund
17 Account, counsel will confer with the Court, in consultation with the Claims Administrator, to
18 determine whether further distributions shall take place, or whether the residual amount shall be
19 paid to the *Cy Pres* recipients. *See id.*

20 The Parties propose Worksafe (Worksafe.org) and Kids’ Chance of California as *Cy Pres*
21 recipients. *See id.*, ¶ 2.10.8. Worksafe satisfies the requirements of California Code of Civil
22 Procedure § 384(b)⁵ because it is a California-based non-profit organization dedicated to
23 promoting and protecting the basic right of all people to a safe and healthy workplace. *See id.*
24 Kids’ Chance of California satisfied Section 384(b) as a non-profit providing need-based

25
26
27 ⁵ Section 348(b) requires that *Cy Pres* recipients be “nonprofit organizations or
28 foundations to support projects that will benefit the class or similarly situated persons, or that
promote the law consistent with the objectives and purposes of the underlying cause of action
[or] to child advocacy programs.”

1 educational scholarships to the children of California workers who have been fatally or seriously
2 injured on the job. *See id.* None of the Parties or their counsel have any interests or involvement
3 in the governance or work of the *Cy Pres* recipients. *See* Settlement Agreement, Exs. G-N.

4 **4. The Release is Narrowly Tailored to the Claims**

5 Participating Settlement Class Members will release only claims accrued during the Class
6 Period, limited to those “arising out of or [that are] related to any of the claims asserted in either
7 the *Reynolds* or *Jetter* class action lawsuits.” *Id.*, ¶ 2.7.1. There is no Civil Code Section 1542
8 waiver included in the Settlement Agreement; however, the Released Claims include those
9 “known or unknown, contingent or accrued,” Settlement Agreement, ¶ 2.7.1, which is
10 appropriate because the Released Claims are limited solely to claims that relate to the allegations
11 contained in the complaints in the Actions. *See id.* Moreover, pursuant to the Court’s direction,⁶
12 the Settlement Agreement was modified to make the Released Claims effective upon the date
13 that the Settlement Fund is fully funded by State Fund. *See* Checklist Order at 5; Settlement
14 Agreement, ¶ 2.7.1.

15 **5. Requested Attorneys’ Fees and Costs and Service Payments to Named** 16 **Plaintiffs**

17 In Named Plaintiffs’ concurrently filed Fee Motion, Plaintiffs’ Counsel have applied for
18 an award of 30% of the \$65 million Settlement Fund, or \$19,500,000, for attorneys’ fees and
19 reimbursable costs. *See id.* The requested award of 30% is inclusive of Plaintiffs’ Counsel’s
20 reasonable costs of \$55,157.71. *See id.* Also addressed in the Fee Motion is Named Plaintiffs’
21 application for Service Payments of \$25,000 each (totaling \$75,000 for the three Named
22 Plaintiffs), to be paid to Named Plaintiffs in recognition of their respective contributions to the
23 Settlement Class. *See id.*

27 ⁶ *See* August 29, 2022 order requiring Named Plaintiffs to reconsider the initial
28 settlement agreement in light of certain portions of the Court’s Checklist for Preliminary
Approval of Class Action Settlement (“Checklist Order”).

1 **IV. METHODS AND REACH OF NOTICE AND NOTICE AND CLAIMS**
2 **ADMINISTRATION COSTS**

3 The Settlement Class received notice in various ways through the robust Notice Program
4 developed and implemented by the Claims Administrator and ordered by the Court. *See*
5 Preliminary Approval Order, ¶ 9. The Notice Program is described in the CPT Declaration, and
6 included the following:

- 7 1. Direct Mail Notice: On December 30, 2022, the Claims Administrator mailed the
8 postcard Short Form Notice, via First Class USPS mail, to 90,438 potential Settlement
9 Class Members. *See* CPT Decl., ¶ 5. 414 of these Short Form Notices were returned by
10 the USPS with undeliverable addresses. *See id.* Pursuant to the Additional Notice Order,
the Claims Administrator will mail the Short Form Notice to the recently identified New
Class Members on or before February 3, 2023.
- 11 2. Email Notice: On December 30, 2022, the Claims Administrator emailed the Long Form
12 Notice to 8,011 potential Settlement Class Members. *See* CPT Decl., ¶ 7. All Settlement
13 Class Members who were sent an email notice were also sent a postcard notice. *See id.*
14 Pursuant to the Additional Notice Order, the Claims Administrator will email the Long
Form Notice to those additional New Class Members for whom State Fund provides an
email address on or before January 31, 2023.
- 15 3. Settlement Website: On or before December 30, 2023, the Claims Administrator
16 established the case-specific Settlement Website,
17 www.cptgroupcaseinfo.com/SCIFSettlement/, to provide information to the Settlement
18 Class Members and to answer frequently asked questions. *See* CPT Decl., ¶ 8. The
19 Settlement Website includes links to the complaints in the Actions, the Settlement
20 Agreement and exhibits, the Preliminary Approval Order and other relevant documents.
21 *See id.* A banner written in Spanish is also displayed on the home page directing visitors
22 to downloadable versions of the Long Form Notice in Spanish. *See id.* The Settlement
Website also includes the date, time and location of the Final Approval Hearing, and 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. *See id.* The Settlement Website address is also included in the Short
Form Notice and Long Form Notice. *See id.*
- 23 4. Toll-Free Telephone Helpline: On or before December 30, 2023, the Claims
24 Administrator established a toll-free telephone hotline, (888) 318-0965, for potential
25 Settlement Class Members. *See id.*, ¶ 9. The telephone hotline is accessible 24 hours a
26 day, 7 days a week, to provide potential members of the Settlement Class with (a) general
27 and detailed information about the Actions; (b) answers to frequently asked questions,
28 and (c) information relating to Settlement Class Members' options under the terms of the
Settlement Agreement. *See id.* Interactive Voice Response ("IVR") calling and live
support are available in both English and Spanish. *See id.*
5. Customer Service Email: On or before December 30, 2023, the Claims Administrator
established a dedicated email address, SCIFSettlement@cptgroup.com, for Settlement

1 Class Members to contact the Claims Administrator and Settlement Class Counsel with
2 any questions about the Settlement. *See* CPT Decl., ¶ 10.

3 The Claims Administrator has incurred approximately \$186,500 in costs. *See id.*, ¶ 16. The
4 Claims Administration Costs reflect the work the Claims Administrator has performed in
5 connection with settlement administration to date (as well as expenses), which includes
6 administering the Notice Program; implementing and maintaining a dedicated toll-free number
7 and email inbox for Settlement Class Member communications; designing and maintaining the
8 Settlement Website; and time spent overseeing and managing the project. *See id.* The Claims
9 Administrator has agreed to cap its fees for services at \$186,500 if there is only one distribution
10 of benefits. *See* CPT Decl., ¶ 18. If a second distribution occurs, the Claims Administrator's
11 fees would be capped at \$275,000, with the additional \$88,500 for the second distribution to be
12 paid from the residual funds prior to the second distribution. *See id.*

13 **V. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE, AND THE**
14 **COURT SHOULD FINALLY APPROVE THE SETTLEMENT**

15 **A. Legal Standards for Final Approval of Settlement**

16 California Rules of Court ("CRC"), rule 3.769(a) provides that a "settlement or
17 compromise of an entire class action, or of a cause of action in a class action, or as to a party,
18 requires the approval of the court after hearing." *Id.* The Court has broad discretion to approve
19 or reject a proposed settlement. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th
20 224, 234-235, *disapproved on other grounds in Hernandez v. Restoration Hardware, Inc.* (2018)
21 4 Cal.5th 260, 269. California also has a well-established and strong public policy favoring
22 compromises of litigation. *See Hamilton v. Oakland Sch. Dist.* (1933) 219 Cal. 322, 329 ("[I]t is
23 the policy of the law to discourage litigation and to favor compromises"); *see also Ebensteiner*
24 *Co., Inc. v. Chadmar Group*, (2006) 143 Cal.App.4th 1174, 1179-1180. This policy is
25 particularly compelling in class actions. *See 7-Eleven Owners for Fair Franchising v. Southland*
26 *Corp.*, (2000) 85 Cal.App.4th 1135, 1152. The standard for final approval is whether the
27 Settlement is "fair, adequate and reasonable" to the Class. *Wershba v. Apple Computer, Inc.*,
28 *supra*, 91 Cal. App. 4th at pp. 244-245.

1 **B. The Settlement is Entitled to a Presumption of Fairness**

2 “The burden is on the proponent of the settlement to show that it is fair and reasonable.
3 However, ‘a presumption of fairness exists where: (1) the settlement is reached through arm’s-
4 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
5 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
6 objectors is small.’” *Wershba v. Apple Computer, Inc., supra*, 91 Cal. App. 4th at p. 245. The
7 Settlement is entitled to a presumption of fairness because it was reached only as a result of
8 extensive, contentious, arm’s-length negotiations by knowledgeable counsel after sufficient
9 investigation and discovery and with the assistance of a respected mediator in multiple mediation
10 sessions.

11 **1. The Settlement is the Result of Arm’s-Length Negotiations**

12 The Settlement was the result of extensive and vigorous arm’s-length negotiations
13 between experienced counsel. *See* Pomerance Final Decl., ¶ 23. The Parties engaged in three
14 separate mediation sessions with respected mediator Bruce Friedman in January 2021, March
15 2021, and August 2021. *See id.* After the final mediation, Mr. Friedman made a mediator’s
16 proposal with respect to the amount of the Settlement Fund, which all Parties accepted after
17 considering it for several days. *See id.*, ¶ 21. The Parties thereafter engaged in substantial
18 confirmatory discovery and further negotiations concerning the details of the Settlement
19 Agreement over a period of nine months, with the initial agreement executed on May 25, 2022.
20 *See id.*, ¶¶ 24-27. The use of a respected mediator provides a high degree of assurance that the
21 settlement is the result of arm’s-length bargaining. *See, e.g., Chavez v. Netflix, Inc.*, (2008) 162
22 Cal.App.4th 43, 52-53.

23 **2. Sufficient Investigation and Discovery Have Been Performed**

24 The investigation performed and discovery conducted by Named Plaintiffs in these
25 Actions is more than adequate to make an informed settlement decision. Named Plaintiffs and
26 their counsel thoroughly investigated the tier modifiers and the manner in which they were
27 calculated by State Fund, including reviews of all relevant State Fund rate filings with the DOI.
28 *See* Pomerance Final Decl., ¶ 22; Liskow Final Decl., ¶ 13. Plaintiffs’ Counsel also investigated

1 the size of the Settlement Class, its composition, and the amount of potential damages. *See*
2 Pomerance Final Decl., ¶ 22; Liskow Final Decl., ¶ 13. Jetter Plaintiffs served on Defendant,
3 and received responses to, 26 Requests for Admission, 19 Requests for Production, and four
4 Interrogatories. *See* Liskow Final Decl., ¶ 11. Plaintiffs’ Counsel collectively reviewed
5 thousands of pages of documents, transcripts, pleadings, and correspondence including
6 communications between DOI personnel and State Fund regarding its tier modifiers and its rate
7 filings. *See* Pomerance Final Decl., ¶ 22; Liskow Final Decl., ¶ 13. In addition, a DOI witness
8 was deposed in the *Reynolds* Administrative Appeal and testified about the tier modifiers and
9 State Fund’s rate filings. *See* Pomerance Final Decl., ¶ 22. Finally, Plaintiffs’ Counsel
10 extensively negotiated with Defendant regarding the scope of confirmatory discovery, ultimately
11 resulting in Named Plaintiffs acquiring significant information about the Settlement Class. *See*
12 Pomerance Final Decl., ¶ 24; Liskow Final Decl., ¶ 14. This is entirely sufficient to allow the
13 Court to ascertain that this Settlement is the product of informed, arm’s-length negotiation.

14 **3. Plaintiffs’ Counsel Have Extensive Experience in Similar Litigation**

15 As detailed in the concurrently filed Fee Motion, there is no dispute regarding Plaintiffs’
16 Counsel’s significant experience and ability in litigating complex class actions and insurance
17 matters, including against State Fund. *See id.*, Section VI.B(3). Accordingly, this factor
18 supports the presumption of fairness of the Settlement.⁷

19 **C. The Settlement is Fair, Reasonable and Adequate**

20 To make the fairness determination, the Court should consider several factors, including
21 “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further
22 litigation, the risk of maintaining class action status through trial, the amount offered in
23 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
24 experience and views of counsel.” *Dunk v. Ford Motor Co.*, (1996) 48 Cal.App.4th 1794, 1801;
25

26 ⁷ The fourth factor, that “the percentage of objectors is small,” currently weighs in favor
27 of the presumption of fairness in light of the fact that as of January 27, 2023 there were no
28 objections to the Settlement. *See* CPT Decl., ¶ 12. The deadline for the majority of Participating
Settlement Class Members to object is March 1, 2023. *See supra*, page 1 & note 3.

1 *see also In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723. “The list of factors is not
2 exclusive and the court is free to engage in a balancing and weighing of factors depending on the
3 circumstances of each case.” *Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245.
4 Of the factors that the Court must consider in determining fairness, “[t]he most important factor
5 is the strength of the case for plaintiffs on the merits, balanced against the amount offered in
6 settlement.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (internal
7 quotation omitted).

8 **1. The Strength of Named Plaintiffs’ Case Balanced Against the Value of**
9 **the Settlement Weighs in Favor of Final Approval**

10 While Named Plaintiffs firmly believe in the strength of their cases, they are also mindful
11 of the significant risks in proceeding to a trial. Here, a number of considerations make clear that
12 State Fund’s offer of a massive \$65 million Settlement Fund, paired with substantial injunctive
13 relief, was too strong of an offer to pass up and provided excellent relief for the Settlement Class
14 while avoiding the risk of future litigation.

15 **a. State Fund Contends that the California Department of**
16 **Insurance Approved Its Tier Modifiers**

17 Named Plaintiffs’ claims rely in large part on the California Insurance Commissioner’s
18 *A-Brite* administrative decision, which found that State Fund did not obtain approval for, nor
19 disclose to the public, its tier modifiers, and as such, the tier modifiers above 1.0 were unlawful.
20 State Fund contends, however, that the DOI did in fact approve its tier modifiers, and that the
21 DOI specifically allowed State Fund to file the tier modifier algorithm portion of its 2016 rate
22 filings confidentially so as to protect proprietary data and processes. *See Pomerance Final Decl.*,
23 ¶ 35. Named Plaintiffs have reviewed substantial documentation regarding State Fund’s rate
24 filings, and there does appear to be some evidence potentially supporting this argument. *See id.*

25 As a result, State Fund contends that the “filed rate” doctrine immunizes it from any civil
26 action for damages based on its use of rates that have been approved by the DOI. *See id.*, ¶ 36.
27 In *MacKay v. Superior Court* (2010) 188 Cal.App.4th 1427, the Court held that a civil class
28 action against an automobile insurer was barred under the Filed Rate doctrine because the DOI

1 had approved the disputed rating factor. *See id.* at 1448. Given the evidence reviewed by
2 Named Plaintiffs, they believe there is a material risk that State Fund’s argument regarding the
3 legality of its tier algorithm could be accepted by a court or the DOI, leaving the Settlement
4 Class with no damages. *See Pomerance Final Decl.*, ¶ 36.

5 **b. State Fund Has Raised Significant Equitable Defenses**

6 State Fund also makes two equitable arguments, either of which has the potential to
7 defeat the Actions on their merits, or significantly reduce their settlement value. First, State
8 Fund contends that even if its tier modifier is found to be illegal, it nevertheless acted in
9 accordance with DOI regulations and protocols, and thus the tier ratings should only be
10 prohibited on a *prospective basis*. *See Pomerance Final Decl.*, ¶ 38. If this argument were
11 successful, it would eliminate any damages for the Settlement Class.

12 Second, State Fund has contended that because almost 85,000 policyholders (who are not
13 members of the Settlement Class) received over \$1 billion⁸ in premium reductions due to tier
14 modifiers below 1.0 during the Class Period, under the California workers’ compensation system
15 and equitable principles, it cannot be liable to policyholders with tier modifiers over 1.0 unless it
16 receives a corresponding credit for those policyholders who paid less in premiums because of tier
17 modifiers below 1.0. *See Pomerance Final Decl.*, ¶ 39. Therefore, if this equitable argument
18 succeeds, it would result in a significantly reduced award to the Settlement Class, with many
19 Settlement Class Members potentially due no damages at all.

20 While Named Plaintiffs believe that they could overcome these anticipated defenses and
21

22
23 ⁸ As part of the confirmatory discovery process State Fund provided various calculations
24 regarding, among other things, the effect of the tier modifier on the Additional Premiums paid, if
25 any, by Settlement Class Members and other policyholders. *See Settlement Agreement, Ex. O*
26 *(Declaration of M. Kate Smith (“Smith Decl.”))*. This analysis reflected data from the start of
27 the Class Period, March 1, 2013, through August 31, 2021. *See id.*, ¶ 6. State Fund has
28 subsequently provided the concurrently filed Declaration of Timothy O’Connor (“O’Connor
Decl.”), which updates some of the Smith Declaration data through the end of the Class Period,
November 30, 2022. *See id.*, ¶ 8. State Fund will provide the outstanding updated calculations
through the end of the Class Period in a supplemental declaration that will be submitted to the
Court as part of Named Plaintiffs’ supplemental briefing on or before March 22, 2023. *See id.*

1 arguments, they also recognize the significant risk of dismissal or reduced damages if Plaintiffs
2 choose to continue to litigate the class actions. *See, e.g., Officers for Justice v. Civil Serv.*
3 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624 (essence of settlement is compromise, “a yielding of
4 absolutes and an abandoning of highest hopes”) (citation omitted).

5 **c. Named Plaintiffs Would Likely Have to Prevail in Both the**
6 **Administrative Proceedings and Again in This Court**

7 Any final decision by the Insurance Commissioner in favor of Reynolds in the
8 administrative hearing would be subject to review by this Court. Under the primary jurisdiction
9 doctrine, this Court is not bound by any decision of the Insurance Commissioner on this issue,
10 and could ultimately reverse or limit any administrative decision favorable to Reynolds. And
11 even if this Court were to follow and apply a favorable administrative ruling on the merits, State
12 Fund would likely file an appeal. Accordingly, even if Named Plaintiffs were to win at every
13 stage, through trial, it would likely be many years before any Settlement Class Member could
14 reap the benefits of a successful prosecution. With this Settlement, the Settlement Class
15 Members will receive significant monetary payments and valuable injunctive relief now.

16 **d. The Value of the Settlement as Balanced Against the Strength**
17 **of Named Plaintiffs’ Case**

18 As set forth above, the most important factor for the court to consider in evaluating the
19 reasonableness of the Settlement is the strength of Named Plaintiffs’ claims, balanced against the
20 value of the Settlement. *See Kullar v. Foot Locker Retail, Inc., supra*, 168 Cal.App.4th at p. 130.
21 In conducting the analysis, the Court is not to try the case or rule on the merits, but should
22 instead “consider and weigh the nature of the claim, the possible defenses, the situation of the
23 parties, and the exercise of business judgment in determining whether the proposed settlement is
24 reasonable.” *Id* at 132. Here, the total Settlement Fund is \$65,000,000, all in cash, with no
25 reversion of any kind to State Fund. Participating Settlement Class Members will not have to
26 submit a claim but will instead automatically be sent a check. The Settlement also provides
27 substantial injunctive relief that will benefit the Settlement Class Members and other insureds for
28 years to come, with State Fund agreeing to make various improvements in the transparency of its

1 tier modifier system. *See* Settlement Agreement, ¶ 2.5.⁹ This injunctive relief will help State
2 Fund’s policyholders make sound and informed decisions about their workers’ compensation
3 program.

4 Accordingly, the above analysis demonstrates that the Settlement is fair, adequate, and
5 reasonable. *See* Pomerance Final Decl., ¶ 40. As set forth above, confirmatory discovery
6 previously established that the net Additional Premiums paid by the Settlement Class as of
7 August 31, 2021, due to having been assigned at least one tier modifier in excess of 1.0 during
8 the great majority of the Class Period was approximately \$287 million. *See* Settlement
9 Agreement, Ex. O, ¶ 13. That is likely the maximum amount of State Fund’s exposure under the
10 claims alleged in these class actions. The \$65 million Settlement Fund therefore equated to
11 approximately 22% of the Settlement Class’s likely maximum recovery.¹⁰ As *Kullar v. Foot*
12 *Locker Retail, Inc.* requires, this amount needs to be weighed against the various defenses
13 offered by State Fund; the hurdles Named Plaintiffs will face at the DOI, in this Court, and
14 thereafter potentially on appeal; the time and expense to litigate the case on the merits; and, of
15 course, the likelihood that Named Plaintiffs will ultimately obtain and secure a class judgment
16 for more than the \$65 million offered here by State Fund. *See id., supra*, 168 Cal.App.4th at p.
17 130.

18 The average payment to each of the 89,931 Settlement Class Members will be about
19 \$503, a significant sum.¹¹ *See* Pomerance Final Decl., ¶ 31. Some of the larger policyholders
20

21 ⁹ Named Plaintiffs have not attempted to calculate the specific monetary value of the
22 injunctive relief and do not believe such calculation is necessary in light of the readily
23 quantifiable and significant value of the cash Settlement Payments to be made to Settlement
Class Members.

24 ¹⁰ Named Plaintiffs’ supplemental brief will include updated data through the end of the
25 Class Period.

26 ¹¹ The Claims Administrator has agreed to cap the total Administrative Costs at \$186,500
27 if only one distribution is required. *See* CPT Decl., ¶ 16. Plaintiffs’ Counsel are collectively
28 seeking 30% of the Settlement Fund for an award of Attorneys’ Fees and Costs, or \$19,500,000.
See Fee Motion at Section VI. Also pursuant to the Settlement Agreement, Named Plaintiffs

1 will receive considerably more, while some smaller policyholders will receive less (but not less
2 than \$100). *See* Settlement Agreement, ¶ 2.4.5(a). But given that each Participating Settlement
3 Class Member will receive a substantial cash payment without having to submit a claim, this is
4 an excellent result. *See* Pomerance Final Decl., ¶¶ 30-31, 40.

5 **2. The Risk, Expense, Complexity and Likely Duration of Further**
6 **Litigation, Including the Risk of Maintaining Class Action Status**
7 **Through Trial, Favors Final Approval**

8 The benefits of this Settlement must also be balanced against the risk, expense, and
9 complexity of further litigation. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.*,
10 *supra*, 85 Cal.App.4th at p. 1152. An evaluation of the Settlement must be tempered by
11 recognition that any compromise involves concessions by the settling parties. Indeed, the very
12 essence of a settlement is “a yielding of absolutes and an abandoning of highest hopes.” *Officers*
13 *for Justice v. Civil Serv. Comm’n*, *supra*, 688 F.2d at p. 624 (citation omitted). While Named
14 Plaintiffs are prepared to proceed with litigation in the Actions if the Settlement is not approved,
15 the Settlement will put money in Participating Settlement Class Members’ pockets this year and
16 provide immediate and valuable injunctive relief. *See In re M.D.C. Holdings Sec. Litig.*
17 (S.D.Cal. Aug. 30, 1990) Master File No. CV 89-0090 E (M), 1990 U.S. Dist. LEXIS 15488, at
18 *21 (“Early settlements benefit everyone involved in the process and everything that can be done
19 to encourage such settlements -- especially in complex class action cases -- should be done.”).
20 Accordingly, a balancing of these considerations strongly supports approval of the Settlement at
21 this stage of the litigation.

22 **3. The Extent of Discovery Completed and the Stage of the Proceedings**
23 **Favors Final Approval**

24 As discussed *supra*, Sections V.B(1)-(2), Named Plaintiffs and Plaintiffs’ Counsel
25

26 collectively seek Service Payments of \$75,000, or \$25,000 each. *See id.* at Section VI.D. These
27 deductions would leave \$45,238,500 to be distributed as Settlement Payments to Participating
28 Settlement Class Members. If all 89,931 Settlement Class Members participate in the
Settlement, their average recovery will be \$503.04.

1 conducted extensive investigations into their claims and the makeup of the Settlement Class, and
2 were able to obtain meaningful discovery from State Fund. Named Plaintiffs also obtained
3 significant confirmatory discovery into various aspects of their claims, potential damages, and
4 composition of the Settlement Class. *See id.* Moreover, the significant litigation both at the
5 DOI's Administrative Law Bureau and in the Sacramento Superior Court, combined with a year
6 and a half of hard-fought negotiations, strongly supports final approval. *See Pomerance Decl.*,
7 ¶¶ 10-40.

8 **4. The Experience and Views of Counsel**

9 In determining whether a proposed settlement is fair, reasonable and adequate, California
10 courts value highly the opinion of experienced counsel. *See, e.g., Chavez v. Netflix, Inc., supra*,
11 162 Cal.App.4th at p. 53. As detailed in the Fee Motion, Plaintiffs' Counsel are deeply
12 experienced in complex class action litigation and workers' compensation insurance disputes,
13 especially against State Fund. *See id.*, Section VI.B(3). Plaintiffs' Counsel's emphatic view that
14 this Settlement is an excellent result for the Settlement Class is based on this experience and
15 grounded on the extensive investigation and analysis undertaken during these Actions as well at
16 the DOI and in Sacramento. This activity allowed Named Plaintiffs and their counsel to make a
17 reasoned decision that this Settlement is in the best interests of the Settlement Class. *See*
18 *Pomerance Final Decl.*, ¶ 40. These factors support a finding that the Settlement is fair,
19 adequate, and reasonable.

20 **VI. FINAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

21 The Court granted conditional certification of the Settlement Class for purposes of
22 settlement in the Preliminary Approval Order. *See id.* at 1-2. Names Plaintiffs now seek final
23 certification of the Settlement Class for purposes of settlement.

24 The Court has broad discretion to certify a class for purposes of a class action settlement.
25 *See Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th at p. 1807 n.19 (holding settlement class
26 certification subject to "lesser standard of scrutiny"). A court may certify a settlement class
27 "when the question is one of a common or general interest, of many persons, or when the parties
28 are numerous, and it is impracticable to bring them all before the court." Code. Civ. P. § 382;

1 *see also* CRC, rule 3.769(d). The basic requirements to sustain a class action are: (1) an
2 “ascertainable class” and (2) “a well-defined community of interest among class members.” *Sav-*
3 *on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. The Settlement Class
4 satisfies these requirements.

5 **A. The Proposed Settlement Class is Ascertainable and Numerous**

6 The proposed Settlement Class definition, as set forth in the Settlement Agreement,
7 ¶ 2.1.26, is both objective and narrowly defined, and the identities of the 89,931 Settlement Class
8 Members are fully ascertainable from State Fund’s records. *See* Pomerance Final Decl., ¶ 26;
9 O’Connor Decl., ¶ 7. And the Settlement Class is so large that joinder is not practicable.

10 **B. The Community of Interest Requirement Is Met for Purposes of a Settlement**
11 **Class**

12 The community of interest requirement encompasses three factors: “(1) predominant
13 common questions of law or fact; (2) class representatives with claims or defenses typical of the
14 class; and (3) class representatives who can adequately represent the class.” *Sav-On Drug*
15 *Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at p. 326. Each factor is met here.

16 **1. Common Issues of Law and Fact Predominate**

17 To determine whether common questions predominate, a court should look at “the theory
18 of recovery advanced by the proponents of certification.” *Brinker Restaurant Corp. v. Superior*
19 *Court* (2012) 53 Cal.4th 1004, 1021-22. As a general rule, “if the defendants’ liability can be
20 determined by facts common to all members of the class, a class will be certified even if the
21 members must individually prove their damages.” *Id.* at 1022 (citation omitted).

22 Here this requirement is satisfied because there are a number of common questions of
23 fact and law among the Settlement Class Members including, *inter alia*:

- 24 • whether State Fund used a tier modifier of greater than 1.00 to calculate the premiums of
25 the Settlement Class Members;
- 26 • whether State Fund included its complete tier modifier algorithm in the rate filings it
27 publicly filed with the DOI;
- 28 • whether State Fund disclosed its tier modifier algorithm to Settlement Class Members;

- whether State Fund violated Insurance Code Section 11735 by failing to file and disclose its tier modifier algorithm;
- whether State Fund violated Insurance Code Sections 332 and 11735 by failing to provide Insufficient Documentation Subgroup members (1) notice that State Fund had deemed them to have failed to provide sufficient documentation; (2) notice of what documentation was purportedly still outstanding; (3) any opportunity to contest or cure the purported lack of documentation; and/or (4) direct notification of the tier modifier assigned or the basis of the assignment of the tier modifier;
- whether State Fund’s conduct constituted unfair or unlawful business practices;
- whether State Fund breached its policies of insurance with Settlement Class Members through its conduct; and
- whether State Fund concealed its conduct described herein from Settlement Class Members.

2. Typicality

To satisfy the typicality requirement, the class representatives’ interests must be similar to those of the Settlement Class Members, although they do not need to be identical. *See Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462. Named Plaintiffs’ claims are typical of those of the Settlement Class because they arise from the same set of core facts and are based on the same legal theories as those applicable to the Settlement Class members. The three Named Plaintiffs each paid increased premiums due to State Fund’s application of tier modifiers in excess of 1.0 during the Class Period. Thus, the three Named Plaintiffs’ claims are typical of the Settlement Class as a whole, and Named Plaintiffs do not have any extraneous issues that would put them in conflict with other Settlement Class Members. *See Pomerance Final Decl.*, ¶ 42.

3. Named Plaintiffs and Plaintiffs’ Counsel Will Fairly and Adequately Represent the Class

The class representatives must “vigorously and tenaciously protect[] the interests of the class.” *Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 846 (internal quotation omitted). Named Plaintiffs, who the Court has already appointed as class representatives of the Settlement Class, are adequate class representatives because they have no conflicts of interest with the class, they each cooperated with Plaintiffs’ Counsel in making themselves available to prosecute the Actions, and were each prepared to testify if needed. *See Pomerance Final Decl.*, ¶¶ 41-43.

1 Adequacy of representation also looks at whether Plaintiffs' Counsel are qualified to
2 conduct the litigation. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450. For the
3 reasons detailed in the Fee Motion, Section VI.B(3), Plaintiffs' Counsel clearly meet this
4 requirement.

5 **4. A Classwide Settlement is Superior to Other Available Methods of**
6 **Resolution**

7 Classwide resolution of these Actions is plainly superior to other available methods for
8 the fair and efficient adjudication of the controversy, particularly in the settlement context.
9 Given that each individual Settlement Class Member's claims involve a relatively small amount
10 of damages in comparison to resources that would need to be expended to litigate the individual
11 action, each Settlement Class Member has little incentive to pursue their claims individually
12 because the litigation costs would greatly exceed potential recovery. Indeed, "[i]t is more likely
13 that, absent a class suit, defendant will retain the benefits from its alleged wrongs." *Daar v.*
14 *Yellow Cab Co.* (1967) 67 Cal.2d 695, 714-715. For these and other reasons, a class action is
15 superior to other available methods of resolution.

16 **VII. THE NOTICE PROGRAM SATISFIES DUE PROCESS AND WAS EXECUTED**
17 **IN ACCORDANCE WITH THE COURT'S PRELIMINARY APPROVAL ORDER**

18 Due process requires that reasonable notice of the settlement be given to all potential
19 class members. *See Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 177. Moreover, "notice
20 of the final approval hearing must be given to the class members in the manner specified by the
21 court." CRC, rule 3.769(f). The Notice Program implemented here, *see supra*, Section IV,
22 complied with the direction of the Court's Preliminary Approval Order. *See id.*, ¶ 9; CPT
23 Declaration. Moreover, when additional class members were identified, notice was promptly
24 scheduled to be sent to them as well via both the Short Form postcard and, where an email is
25 available, the Long Form Notice. *See supra*, note 3. Furthermore, pursuant to the Court's
26 direction in the Checklist Order, the verbatim text of the release language in the Settlement
27 Agreement is included in the Long Form Notice. *See CPT Decl.*, Ex. B. Finally, pursuant to the
28 Settlement Agreement, and as reflected in the Long Form Notice, the Final Approval Order and

Judgment will be posted to the Settlement Website within three days of their entry. *See* Settlement Agreement, ¶ 2.9; CPT Decl., ¶ 8. Consequently, the Settlement meets the requirements for reasonable notice.

VIII. CONCLUSION

For all of the foregoing reasons, Named Plaintiffs respectfully request the Court grant final approval to the proposed Settlement and enter the [Proposed] Final Approval Order and the [Proposed] Judgment, submitted herewith.

Respectfully submitted,

Dated: January 30, 2023

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By: 

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EXHIBIT A

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7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE**

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

15 Plaintiff,
16 vs.

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

21 Defendants.

22 And Related Case:

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

28 Plaintiff,
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

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

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

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

It is hereby ORDERED, ADJUDGED, and DECREED that:

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

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

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

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

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

EXHIBIT B

1
2
3
4
5
6
7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE**

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

15 Plaintiff,

16 vs.

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

21 Defendants.

22 And Related Case:

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

28 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
21 any policy in effect from March 1, 2013, through November 30, 2022, the date of
22 preliminary approval of this Settlement.

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

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

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

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

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

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

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

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

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

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

11. Upon the date that Defendant fully funds the entire Settlement Fund (within 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

EXHIBIT C

Chart of Compliance with Complex Litigation Program Checklist for Final Approval of Class Action Settlement

CHECKLIST REQUIREMENT	LOCATION (OR BASIS FOR OMISSION)
I. NOTICE TO CLASS	
How was notice given?	<i>See</i> Motion for Order Granting Final Approval of Class Action Settlement (“Final Approval Motion”) at 19-20; Declaration of Jeremy Talavera on Behalf of CPT Group, Inc. (“CPT Decl.”), ¶¶ 2-10, 15.
How many class members opted out?	As of January 27, 2023, there have been two opt-outs. <i>See</i> CPT Decl., ¶ 14. The deadline for opt-outs for the majority of the Settlement Class is March 1, 2023, with some Settlement Class Members (“New Class Members”) having until March 17, 2023. <i>See</i> Final Approval Motion at 1 n.3.
How many class members submitted a claim form?	N/A – No claim form is required. <i>See</i> Final Approval Motion at 2.
Explanation for the low response rate.	N/A – No claim form is required.
Are there any objectors and, if so, please indicate the nature of the objections.	As of January 27, 2023, there have been no objectors. <i>See</i> CPT Decl., ¶ 12. The deadline for objections for the majority of the Settlement Class is March 1, 2023, with some Settlement Class Members having until March 17, 2023. <i>See</i> Final Approval Motion at 1 n.3.
Provide a response to the objections.	As of January 27, 2023, no objections have been received. <i>See</i> CPT Decl., ¶ 12. In the event that any objections are received, pursuant to the Preliminary Approval Order, Named Plaintiffs will provide responses to any objections no later than seven (7) days prior to the Final Approval Hearing, March 22, 2023. <i>See id.</i> , ¶ 13.
II. EVALUATIONS OF THE SETTLEMENT	
Need to provide “basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” <i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116, 133; <i>Dunk</i>	<i>See</i> Final Approval Motion at 9-16; Motion for Award of Attorneys’ Fees and Costs, and Named Plaintiffs’ Service Payments (“Fee Motion”) at 1-4, 16-19.

<i>v. Ford Motor Company</i> (1996) 48 Cal.App.4th 1794, 1802.	
Estimate of recovery to each class member.	<i>See, e.g.,</i> Final Approval Motion at 14 n.11 (average Settlement Class Member Settlement Payment will be \$503, and no less than \$100).
Valuation of injunctive relief.	<i>See</i> Final Approval Motion at 14 n. 9.
Explanation as to the why the number of class members has changed from the date of preliminary approval.	<i>See</i> Declaration of R. Timothy O'Connor ("O'Connor Decl.") ¶¶ 2-7.
III. ATTORNEY FEES	
Need to provide a lodestar analysis. <i>Consumer Privacy Cases</i> (2009) 175 Cal.App.4th 545, 556-558.	<i>See</i> Fee Motion at 24-28.
Justification of the multiplier. <i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1138-1139.	<i>See</i> Fee Motion at 26-28.
Need to lodge billing records for Court's review.	<i>See</i> Fee Motion at 26 n.17 (Plaintiffs' Counsel are prepared to promptly lodge their detailed time records with the Court under seal if the Court would like to review them).
Why the hourly rate is reasonable as compared to the community for similar work. <i>PLCM Group, Inc. v. Drexler</i> (2000) 22 Cal.4th 1084, 1095; <i>Shaffer v. Superior Court</i> (1995) 33 Cal.App.4th 993, 1002.	<i>See</i> Fee Motion at 25; Declaration of Michael Liskow in Support of Order Granting Final Approval of Class Action Settlement and for an Award of Attorneys' Fees and Costs, and Plaintiffs' Service Payments ("Liskow Final Decl."), Ex. 5.
Any agreement about how attorney fees will be paid, including fee splitting and whether the client has given written approval. <i>Mark v. Spencer</i> (2008) 166 Cal.App.4th 219; Ca. Rules of Professional Conduct, §2-200; Ca. Rules of Court, Rule 3.769.	<i>See</i> Fee Motion at 13; Declaration of Drew Pomerance in Support of Order Granting Final Approval of Class Action Settlement and for an Award of Attorneys' Fees and Costs, and Plaintiffs' Service Payments ("Pomerance Final Decl."), ¶ 49; Liskow Final Decl., ¶ 26.
IV. COSTS	
What are the costs claimed?	<i>See</i> Fee Motion at 28-29; Pomerance Final Declaration, ¶ 66.
Details of the costs claimed.	<i>See</i> Fee Motion at 28-29; Pomerance Final Declaration, ¶¶ 60-66.
Explanation of why the costs are higher than previously estimated.	N/A – Named Plaintiffs did not previously estimate their costs.

V. INCENTIVE PAYMENTS	
Need to provide declarations from class representatives.	<i>See</i> Amended Class Action Settlement and Release (“Settlement Agreement,” Ex. 1 to Pomerance Final Decl.), Exs. P-S.
Incentive fee award to a named class representative must be supported by evidence that time and effort expended by the individual and a reasoned explanation of financial or other risks undertaken by the class representative. <i>Clark v. American Residential Services LLC</i> (2009) 175 Cal.App.4th 785, 806-807. <i>See also Cellphone Termination Cases</i> (2010) 186 Cal.App.4th 1380, 1394-1395.	<i>See</i> Settlement Agreement, Exs. P-S.
Explanation as to why the class representative enhancement is reasonable. <i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399, 412; <i>Radcliffe v. Experian Information Solutions Inc.</i> (9th Cir. 2013) 715 F.3d 1157, 1165.	<i>See</i> Fee Motion at 29-31; Settlement Agreement, Exs. P-S.
VI. CLAIMS ADMINISTRATION COSTS	
Need to provide declaration from claims administrator justifying the costs sought.	<i>See</i> CPT Decl., ¶¶ 16-19; <i>id.</i> , Ex. G.
Explanation of why the administration costs are higher than previously estimated.	<i>See</i> CPT Decl., ¶ 19.
VII. CY PRES	
Why does such distribution fill the purposes of the lawsuit or is otherwise appropriate. <i>State of California v. Levi Strauss & Co.</i> (1986) 41 Cal.3d 460, 472; <i>In re Microsoft I-V Cases</i> (2006) 135 Cal.App.4th 706, 722; <i>Nachshin v. AOL, Inc.</i> (9th Cir. 2011) 663 F.3d 1034, 1038-1041; <i>Dennis v. Kellogg Co.</i> (9th Cir.2012) 697 F.3d 858, 865; Ca. Code of Civil Proc., §384.	<i>See</i> Final Approval Motion at 5-6.
Declaration disclosing interests or involvement by any counsel or party in the governance or work of the cy pres recipient.	<i>See</i> Settlement Agreement, Exs. G-N (no involvement).
VIII. NOTICE	
How will notice of final judgment be given to the class. Ca. Rules of Court, Rule 3.	<i>See</i> Final Approval Motion at 19-20 (“the Final Approval Order and Judgement will be posted to the Settlement Website within three days of

771(b) (e.g. posted on claims administrator's website)?	their entry.") (citing Settlement Agreement, ¶ 2.9); CPT Decl., ¶ 8).
IX. PROPOSED ORDER AND JUDGMENT	
Proposed date for final accounting and, if applicable, a Final Distribution of Residual Funds.	The [Proposed] Final Approval Order provides for the Court to schedule a hearing to occur after the issuance of the Joint Settlement Report to determine whether a final accounting can be conducted, and whether the final distribution of the residual funds can occur, at that time. <i>See</i> Final Approval Motion, Ex. A, ¶ 16.
Fails to note the injunctive relief.	The [Proposed] Final Approval Order describes the injunctive relief. <i>See</i> Final Approval Motion, Ex. A.
Proposed Judgment must not include a dismissal. Ca. Rules of Court, Rule 3.769(h).	Confirmed. <i>See</i> Final Approval Motion, Ex. B.
Order and Judgment must be in separate documents.	Confirmed. <i>See</i> Final Approval Motion, Exs. A and B.
The proposed judgment fails to specifically list the members of the class who requested exclusion and are not bound by the judgment.	The [Proposed] Final Judgment submitted prior to the Final Approval Hearing will list any members of the Settlement Class who requested exclusion and are not bound by the judgment. <i>See</i> Final Approval Motion, Ex B., ¶ 3.
VII. OTHER INFORMATION	
N/A	N/A

1 **PROOF OF SERVICE**

2
3 STATE OF CALIFORNIA)
4) ss.
5 COUNTY OF LOS ANGELES)

6 I am employed in the county of Los Angeles, State of California. I am over the age of 18
7 and not a party to the within action; my business address is 5900 Canoga Avenue, Suite 450,
8 Woodland Hills, California 91367.

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

10 **NOTICE OF MOTION AND MOTION FOR ORDER GRANTING**
11 **FINAL APPROVAL OF CLASS ACTION SETTLEMENT;**
12 **MEMORANDUM OF POINTS AND AUTHORITIES**

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 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.

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 /s/ ELIA RAMIREZ
22 ELIA RAMIREZ
23
24
25
26
27
28

**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

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

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

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

It is hereby ORDERED, ADJUDGED, and DECREED that:

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

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

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

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

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

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 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.

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

**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
21 any policy in effect from March 1, 2013, through November 30, 2022, the date of
22 preliminary approval of this Settlement.

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

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

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

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

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

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

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

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

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

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

11. Upon the date that Defendant fully funds the entire Settlement Fund (within 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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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.

[PROPOSED] FINAL JUDGMENT

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

/s/Elia Ramirez
Elia Ramirez

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

[Additional Counsel Listed on Signature Page]

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.

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

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. 19STCV36307
Honorable Lawrence P. Riff

Amended Complaint Filed: August 10, 2020

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1. I am an attorney at law, duly licensed to practice before all California State
I am a senior founding partner of Roxborough, Pomerance, Nye & Adreani (“RPNA”),
and for Michael Reynolds Enterprises, Inc, dba Reynolds Termite Control (“Reynolds”),
the Named Plaintiffs.¹

Background of Actions

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

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.4th 1504; *Security Offices Services v. State Fund* (1993) 17 Cal.App.4th 887; and
11 *McGregor Yacht v. State Fund* (1998) 63 Cal.App.4th 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 32nd Street*
14 *Market v. State Fund* (1999) 70 Cal.App.4th 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.4th 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.
28

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,
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26
27
28

1 because of tier modifiers in excess of 1.0.² 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 ² 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.

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

The Terms and Benefits of the Settlement

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

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

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

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

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

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

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

35. Here, State Fund has several defenses and arguments which, if any one was successful, could either defeat the Settlement Class's case outright, or could significantly reduce any recovery. For example, Named Plaintiffs rely a great deal on the Insurance Commissioner's decision in *A-Brite* as a basis for their claims. *A-Brite* found that State Fund's tier modifier was illegal because the algorithm was not submitted to the DOI for approval, nor was it made publicly available as required by law. But State Fund contends that, in fact, it did disclose its algorithm to the DOI on a confidential basis, which the DOI approved. Because this Court is not bound by the findings of the Commissioner, it is possible that the Court could determine that State Fund is correct, and that the algorithm was properly filed and therefore not illegal. After reviewing substantial documentation in this case, and although not conclusive, there is 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.4th 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 4th 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 5th 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.
28

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.5th 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

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

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

Timekeeper	Hours to Date	Rate Per Hour	Total Amount Billed
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
TOTAL	2,015.05		\$1,444,616.25

54. These records were prepared from contemporaneous, daily time records regularly prepared and maintained by RPNA in the usual course and manner of my firm. RPNA 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.

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 Sultz Law
28

Group P.C. (“SLG”)³ 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:

Firm	Hours to Date	Lodestar
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
TOTAL	4,613.35	\$3,269,687.75

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

³ 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.

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

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

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

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

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

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

Expense Category	Total
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
TOTAL	\$27,808.78

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

Firm	Expenses
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
TOTAL	\$55,157.71

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


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 \$540.00.¹

(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.

¹ 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

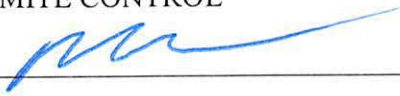
After this Settlement Agreement is fully executed by the Parties, it will constitute the entire agreement of the Parties. No oral representations, warranties, inducements, or writings have been made by any Party concerning this Settlement Agreement, other than those expressly stated herein.

[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

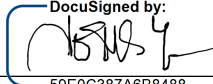
NAMED PLAINTIFF MICHAEL REYNOLDS
ENTERPRISE, INC. DBA REYNOLDS
TERMITE CONTROL

By: _____

Michael Reynolds

Dated: October ¹¹__, 2022

NAMED PLAINTIFF AMERICAN JETTER,
INC.

By: _____
DocuSigned by:

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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

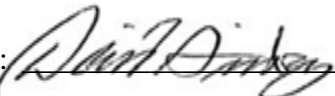
By: Kenneth Van Laar

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' compensation 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' compensation 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

EXCLUDE YOURSELF BY [DATE], 2022	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.
OBJECT BY [DATE], 2022	Write to the Court about why you think the Settlement is unfair, inadequate, or unreasonable by following the instructions in this notice.
GO TO A HEARING [DATE], 2022	Ask to speak in Court about the fairness of the Settlement. You do not need to attend the hearing to receive payment.
DO NOTHING	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.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

PageNo.

1. Why is there a notice?.....	3
2. What is this lawsuit about?	3
3. Why is this a class action?	3
4. Why is there a Settlement?	3

WHO IS IN THE SETTLEMENT?

5. How do I know if I am in the Settlement?	3
6. What if I am still not sure if I am included in the Settlement?	4

SETTLEMENT BENEFITS

7. What does the Settlement provide?	4
8. What can I get from the Settlement?	4
9. What am I giving up to stay in the Class?	4

HOW TO GET A PAYMENT

10. How can I get a payment?	5
11. When will I get my payment?	6

EXCLUDING YOURSELF FROM THE SETTLEMENT

12. How do I get out of the Settlement?	6
13. If I do not exclude myself, can I sue the Defendant for the same thing later?	6
14. If I exclude myself, can I still get a payment?	6

OBJECTING TO THE SETTLEMENT

15. How can I tell the Court if I do not like the Settlement?	7
16. What is the difference between objecting and excluding?	7

THE LAWYERS REPRESENTING YOU

17. Do I have a lawyer in these cases?	7
18. How will the lawyers be paid?	7

THE COURT'S FINAL APPROVAL HEARING

19. When and where will the Court decide whether to finally approve the Settlement?.....	8
20. Do I have to come to the hearing?	8
21. May I speak at the hearing?	8

IF YOU DO NOTHING

22. What happens if I do nothing at all?	8
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GETTING MORE INFORMATION

23. How do I get more information?	8
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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].

**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

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

[Additional Counsel Listed on Signature Page]

**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 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

EXHIBIT D
MODIFIED [PROPOSED] FINAL
APPROVAL ORDER AND
JUDGMENT

**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 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

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

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

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

It is hereby ORDERED, ADJUDGED, and DECREED that:

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

2. The Court has jurisdiction over the subject matter of the Actions and over all 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
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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,

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.

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

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

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

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

IT IS SO ORDERED

DATED: _____

HONORABLE LAWRENCE P. RIFF

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**

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

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

CPT'S EXPERIENCE RELEVANT TO THIS CASE

5. CPT is a leader in the settlement administration industry and has extensive experience in providing court approved notice of class actions and administering various types of notice programs and settlements. In the past 30-plus years, CPT has provided notification and/or claims administration services in thousands of class action cases, including TCPA and other privacy violation related matters. Throughout our history, CPT has disbursed billions of dollars in settlement funds, and serviced over 65,000,000 class members. CPT offers a wide range of class action administrative services for developing, managing and executing all stages of integrated settlement 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_x (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
affiliates, predecessors, successors, officers, directors, agents, servants
and employees and the immediate families of such persons.

11 **NOTICE**

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

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

2 14. CPT understands that Settlement Class Members may submit Objections or Requests
3 for Exclusions (“Opt-Outs”). These requests must be mailed to CPT as instructed in the Class
4 Notice. CPT will maintain a record of and inform the parties of all Opt-Out requests submitted by
5 Settlement Class Members, as well as any Objections CPT may receive.

6 **LIMITATION OF REDISTRIBUTION OF CHECKS**

7 15. CPT understands that the Settlement Agreement currently leaves open the issue of
8 whether, in any distribution of residual funds following the completion of the initial distribution,
9 checks for such residual funds should be provided only to Participating Settlement Class Members
10 who timely cashed their check from the initial distribution, or to all Participating Settlement Class
11 Members regardless of whether they cashed the previous check. CPT also understands that under
12 the Settlement Agreement this will be determined, if necessary, at a hearing taking into
13 consideration, among other things, the amount of residual funds remaining.

14 16. To assist the Court in considering this issue, CPT notes that in its experience it is
15 typical that any subsequent distribution of residual funds is only sent to class members who timely
16 cashed their check from the prior distribution because it is unlikely that a class member who does
17 not timely cash the initial check will timely cash a check from a subsequent distribution. The initial
18 check is often not cashed due to, among other reasons, the unavailability of a current mailing address
19 or a lack of interest by the class member in participating in the settlement. CPT also understands
20 that in this case the class members are businesses, many of which may have closed during the
21 COVID pandemic. Sending secondary distribution checks to class members who are unlikely to
22 cash the checks reduces the total funds available to other class members through postage and other
23 administrative costs, and delays the distribution of the maximum payment possible to the class as a
24 whole. Therefore, in these cases CPT recommends that subsequent distributions of residual funds
25 be limited only to class members who timely cashed their initial checks.

26 **ADMINISTRATION FEES**

27 17. Based on 83,306 anticipated Settlement Class Members, CPT has agreed to cap its
28 fees for the notice and administration of this matter at \$159,000 if processing one disbursement. If

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.

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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:

- ***Helmick 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.

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.

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



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 | • Government Services |
| • Wage & Hour | • Insurance |
| • Labor & Employment | • Securities |
| • PAGA | • Finance |
| • Consumer | • Antitrust |
| • Product Liability | • ERISA |
| • Data Breach Notification | |

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

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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

INTRODUCTION

1. Plaintiffs American Jetter & Plumbing, Inc. (“American Jetter”) and Resilience Treatment Center (“Resilience,” collectively with American Jetter, “Plaintiffs”) bring this class action on behalf of themselves and all others similarly situated (the “Class,” defined *infra*) against defendants State Compensation Insurance Fund (“State Fund”) and Does 1 through 50, inclusive (collectively “Defendants”).

2. This lawsuit seeks refunds of the unlawful workers’ compensation insurance premiums Defendants charged Plaintiffs and the Class. As detailed further herein, Defendants have improperly and illegally charged the Class inflated insurance premium rates using two separate but related schemes. First, Defendants charged Plaintiff American Jetter and the “Algorithm Group” (defined *infra*) inflated insurance premium rates by calculating the premiums using improper and illegal “tier modifiers” and “rating plan modifiers” based on formulas that were not filed, disclosed to the public, or permitted to be disclosed to the public at the time of the filing of the rate filings utilizing the formulas, as required by law (the “Algorithm”). Defendants have charged the Algorithm Group these improper and illegal premiums since 2013, and continued to do so even after the California Insurance Commissioner confirmed that Defendants’ use of the tier modifiers and rating plan modifiers at issue was illegal and unenforceable.

3. Defendants have also charged Plaintiff Resilience and the “Insufficient Documentation Group” (defined *infra*) inflated insurance premium rates by increasing the Insufficient Documentation Group’s tier modifiers, and consequent premiums (for most by 50%), due to the Insufficient Documentation Group members’ purported failure to provide State Fund with information necessary for it to accurately underwrite risk and to “encourage full disclosure.” However, Defendants (i) never notified Plaintiff Resilience or, upon information and belief, the other Insufficient Documentation Group members of their purported failure to provide sufficient documentation; (ii) never provided them an opportunity to question or cure this purported failure; or (iii) even directly disclosed to Plaintiff Resilience or the Insufficient Documentation Group members of the tier modifier they were being assigned or the basis of that tier modifier.

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).¹

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

¹ 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.²

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

27 ² 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.³

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

27 ³ 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"),⁴ 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 ⁴ 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)

61. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-60 above as if fully set forth herein.

62. Plaintiffs and the Algorithm Group entered into contracts with State Fund to provide workers' compensation insurance to Plaintiffs and the Class.

63. Upon information and belief, these standard form contracts provided in pertinent part that "[a]ll premium for this policy will be determined by our manuals of rules rates, rating plan and classifications. We may change our manual and apply the changes to this policy if authorized by law or a governmental agency regulating this workers' compensation insurance." The contracts further provide that "[t]he final premium will be determined after this policy ends by using the actual premium basis and the proper classifications, rates and rating plan that lawfully apply to the business and work covered by this policy."

64. Plaintiff American Jetter and each member of the Algorithm Group purchased a workers' compensation insurance policy from State Fund and was charged and paid a premium to State Fund based in part on State Fund's unlawful application of a tier modifier in excess of 1.00 where such tier modifier was applied by State Fund based on the mathematical application of the tier modifier Algorithm to the insured's claims history and other information taken into account by the Algorithm.

65. Defendants breached State Fund's agreements with Plaintiff American Jetter and the Algorithm Group by charging insurance rates that were not calculated in a lawful manner. For the reasons set forth herein, Defendants' usage of the undisclosed tier modifier Algorithm, and the rating plan modifier incorporating the undisclosed tier modifier Algorithm, in calculating its insureds' premiums was unlawful. Accordingly, Defendants' assessment of unlawful rates is a breach of State Fund's insurance agreements with Plaintiff American Jetter and the Algorithm Group.

66. Plaintiff Resilience and each member of the Insufficient Documentation Group purchased a workers' compensation insurance policy from State Fund and was charged and paid a 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.

70. Plaintiffs have performed all of the terms of its agreements with State Fund except for those for which performance has been excused by Defendants' unlawful conduct.

71. As a proximate result of Defendants' breach of the agreements, Plaintiffs and the Class have suffered losses in an amount exceeding the jurisdictional minimum of this Court.

COUNT II
CAL. BUS. & PROF. CODE § 17200, *et seq.*
(On Behalf of Plaintiffs and the Class)

72. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-60 above as if fully set forth herein.

73. Plaintiffs have standing to pursue this claim under California's UCL because they suffered an injury-in-fact and lost money as a result of Defendants' practices.

74. Plaintiff American Jetter and each member of the Algorithm Group purchased a workers' compensation insurance policy from State Fund and was charged and paid a premium to State Fund based in part on State Fund's unlawful application of a tier modifier in excess of 1.00 where such tier modifier was applied by State Fund based on the mathematical application of the tier modifier Algorithm to the insured's claims history and other information taken into account by the Algorithm.

75. For the reasons set forth herein, State Fund’s application of a tier modifier in excess of 1.00, and a rating plan modifier incorporating the tier modifier, violated, with respect to the Algorithm Group, Insurance Code section 11735 which requires, among other things, that all insurers doing business in California file, publicly disclose and/or permit to be publicly disclosed all rates and supplementary rate information before charging any such rates. Specifically, section 11735(b) requires in pertinent part that “[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. Copies may be obtained by any person upon request and the payment of a reasonable charge.” Under section 11730 of the Insurance Code, 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.”

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 (1) 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: May __, 2022

Respectfully submitted,

2 By: _____
Michael Liskow

3 Michael Liskow (243899)
4 mliskow@calcaterrapollack.com
5 **CALCATERRA POLLACK LLP**
6 1140 Avenue of the Americas, 9th Floor
7 New York, NY 10036-5803
Tel: (212) 899-1761
Fax: (332) 206-2073

8 Scott M. Priz (*pro hac vice*)
9 priz@priz-law.com
10 **PRIZ LAW, LLC**
11 3230 S. Harlem Avenue, Suite 221B
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Tel: (708) 268-5768

12 Betsy C. Manifold (182450)
13 manifold@whafh.com
14 **WOLF HALDENSTEIN ADLER**
15 **FREEMAN & HERZ LLP**
16 750 B Street, Suite 1820
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Tel: (619) 239-4599
Fax: (619) 234-4599

17 *Counsel for Plaintiffs and the Class*
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EXHIBIT G
REYNOLDS CY PRES
DECLARATION

Drew E. Pomerance, Esq. (SBN 101239)
David R. Ginsburg, Esq. (SBN 210900)
ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP
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Attorneys for Plaintiff Michael Reynolds Enterprise, Inc. dba Reynolds Termite Control

**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 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

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1. I am the Chief Executive Officer of named plaintiff Michael Reynolds Enterprise, a Reynolds Termite Control (“Reynolds”). Reynolds is petitioning the Court to be appointed a Class Representative in the above-captioned action. I have personal knowledge of the facts stated in this declaration and if called as a witness, I could and would competently testify to all matters set forth herein.

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



Michael Reynolds

EXHIBIT H
JETTER CY PRES
DECLARATION

BETSY C. MANIFOLD (182450)
manifold@whafh.com
BRITTANY N. DEJONG (258766)
dejong@whafh.com
**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**
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Counsel for Plaintiffs and the Class

**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. 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 Danbury California.



JESUS LOYA

EXHIBIT I
RESILIENCE CY PRES
DECLARATION

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BRITTANY N. DEJONG (258766)
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priz@priz-law.com
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Tel: (708) 268-5768

Counsel for Plaintiffs and the Class

**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. 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

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. Neither I nor Resilience have any interest or involvement in the governance or work
6 of either of the two proposed *cy pres* recipients, Worksafe and Kids’ Chance of California.

7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct. Executed this 25th day of May, 2022, at Santa Barbara, California.

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12 JENNIFER STEINER
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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

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 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**

1. The undersigned, on behalf of defendant State Compensation Insurance Fund (“State Fund”), confirms that State Fund has no interest or involvement in the governance or work of either of the proposed Cy Pres recipients, Worksafe and Kids’ Chance of California.

2. Kids' Chance of California 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. State Fund is an Elite Sponsor for Kids' Chance of California and I am a volunteer member of its Advisory Council. I am not on the Board of Directors and have no voting rights on the direction, governance, operations or work of Kids' Chance of California. I am not invited to nor do I attend Board of Directors meetings. I have no voting interest or input regarding the recipients of scholarships. My duties are limited to collaborating on ideas of how to grow the scholarship fund. I have personal knowledge of the facts stated in this Declaration and, if called upon, I could and would competently testify thereto.

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

Executed on May 25, 2022 at Pleasanton, California.

Angela Harder
Angela Harder
Human Resources Manager
State Compensation Insurance Fund

EXHIBIT K
RPNA CY PRES
DECLARATION

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

**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 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

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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.

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



Drew Pomerance

EXHIBIT L
CALCATERRA POLLACK
CY PRES DECLARATION

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Counsel for Plaintiffs and the Class

**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. 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

7 2. Neither I nor Calcaterra Pollack have any interest or involvement in the governance
8 or work of either of the two proposed *cy pres* recipients, Worksafe and Kids’ Chance of California.

9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct. Executed this 18th day of May, 2022, at West Orange, New Jersey.
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13 *Michael Liskow*

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Michael Liskow
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EXHIBIT M
PRIZ LAW CY PRES
DECLARATION

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Counsel for Plaintiffs and the Class

**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. 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

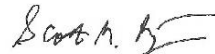
Hearing Date: _____, 2022
Time: 2:00 p.m.
Dept. 7

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

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct. Executed this 17th day of May, 2022, at Chicago, Illinois.
14

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16 _____
17 Scott M. Priz
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EXHIBIT N
WHAFH CY PRES
DECLARATION

BETSY C. MANIFOLD (182450)
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FREEMAN & HERZ LLP**
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Tel: (708) 268-5768

Counsel for Plaintiffs and the Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

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

Plaintiffs,

v.

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

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

1 I, Betsy C. Manifold, declare as follows:

2 1. I am a partner attorney at Wolf Haldenstein Adler Freeman & Herz LLP ("Wolf
3 Haldenstein"). I am an attorney duly licensed to practice before all the courts of the State of
4 California. Priz Law LLP, Calcaterra Pollack LLP and Wolf Haldenstein ("Jetter Counsel")
5 represent plaintiffs American Jetter & Plumbing, Inc. and Resilience Treatment Center ("Plaintiffs")
6 in this action. The following facts are based upon my personal knowledge and if called upon to do
7 so, I could, and would, competently testify thereto.

8 2. Neither I nor Wolf Haldenstein have any interest or involvement in the governance or
9 work of either of the two proposed cy pres recipients, Worksafe and Kids' Chance of California.

10 I declare under penalty of perjury under the laws of the State of California that the foregoing
11 is true and correct. Executed this 24th day of May, 2022, at San Diego, California.

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13 BETSY C. MANIFOLD
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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.
18
19

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

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”).

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

amount as explained below). I reviewed the data and analysis substantiating the total dollar amount above and confirm that this is correct.

9. My review and conclusions as set forth herein confirm that State Fund Policyholders, as a whole, derived a significant benefit from State Fund's application of the tier rating algorithm. During the years at issue, State Fund was able to provide significant savings greater than \$1.3 billion dollars to those Policyholders who met certain risk criteria indicating that they were a lower risk for serious workplace injury. State Fund assigned fair and reasonable rates to those Policyholders who were assigned a tier rating modifier of over 1.0 to help offset the higher risk nature of their risk characteristics.

Forty-Four Thousand, Four Hundred and Four (44,404) Policyholders Were Assigned a Tier Rating Modifier Above 1.0 Without Computation by the Algorithm Due to Failure to Provide Sufficient Insurance Application Information as Disclosed in State Fund's Rate Filing For At Least One Annual Policy Period During the Relevant Time Period

10. I understand that the allegations in this case contend that State Fund used a tier rating modifier that increased the premium of certain policyholder class members by assigning them to rating tiers over 1.0. As such, State Fund extracted the total number of Policyholders who paid additional risk premiums due to tier scores greater than 1.0 for at least one annual policy period during the Relevant Time Period. State Fund's Actuarial Staff reviewed the data provided by State Fund's IT department and determined that 83,306 Policyholders paid additional premiums due to a tier score greater than 1.0 for at least one annual policy period during the Relevant Time Period. This total includes 44,404 Policyholders who provided insufficient insurance application information and/or history and were automatically assigned to the appropriate tier as disclosed in State Fund's publically available rate filings. For example, Rate Filing 13-9005, effective 3/1/2014, as shown on page 3 and 4 of the Filing Memorandum of that Rate Filing discloses this automatic assignment of a tier of 1.5 (certain policies during the Relevant Time Period were also assigned a 1.25 tier modifier due to insufficient documentation). I reviewed this rate filing at or about the time 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 
MKSmith (Apr 19, 2022 16:18 PDT)

25 Apr 19, 2022

26 M. Kate Smith
27
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:	CBJCHBCAABAA0Ihb6bqjMTsOEeJ1HnEdZBWZC050bE0e

"Declaration of M.K.Smith_Apr2022" History

 Document created by Vidhi Gupta (vpgupta@scif.com)

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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

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David R. Ginsburg, Esq. (SBN 210900)
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Attorneys for Plaintiff Michael Reynolds Enterprise, Inc. dba Reynolds Termite Control

**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

**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

1 **SUPPLEMENTAL DECLARATION OF MICHAEL REYNOLDS**

2 I, Michael Reynolds, declare as follows:

3 1. I am the Chief Executive Officer of named plaintiff Michael Reynolds
4 Enterprise, Inc. dba Reynolds Termite Control (“Reynolds”). Reynolds is petitioning the Court
5 to be appointed a Class Representative in the above-captioned action. I have personal
6 knowledge of all facts stated in this declaration and if called as a witness, I could and would
7 competently testify to all matters set forth herein.

8 2. From the commencement of this litigation, my company and I have been
9 informed and are aware of Reynolds’ fiduciary duty to the putative class members, as well as of
10 the responsibilities that Reynolds would be required to undertake in order to be an adequate
11 class representative. These responsibilities include, among others, monitoring the progress of
12 the litigation with an eye towards the best interests of the putative class and not just Reynolds,
13 and analyzing any potential settlement proposals from the same perspective. Reynolds accepted
14 this fiduciary duty while understanding that it might entail a substantial burden with respect to
15 time and resources, and despite the risks taken on in representing the putative class against State
16 Fund, as discussed further below.

17 3. Reynolds performed its responsibilities to the putative class including reviewing
18 the operative complaints, becoming familiar with the basic theories of the case, communicating
19 with counsel on various issues including settlement negotiations, analyzing the potential
20 settlement agreement from the perspective of the putative class in order to assess whether the
21 settlement is in the best interests of the putative class, and ultimately entering into the
22 Settlement Agreement on behalf of the putative class. My company and I remain available to
23 address any future issues that require our attention in order to assure that the interests of the
24 putative class are represented before the Court and with counsel for all parties, including
25 Reynolds’ counsel.

26 4. On behalf of my company, I have spent several hours performing the above
27 actions, and understand that there may be additional commitments in the future requiring my
28 company and I to expend time and resources.

1 5. Reynolds accepted the responsibility and fiduciary duty of pursuing this class
2 action on behalf of the putative class despite being aware of the risks faced by Reynolds as a
3 California business spearheading a class action against California's largest and oldest insurer for
4 legally-mandated workers' compensation insurance. This meant that even if Reynolds was not
5 inclined to obtain insurance from State Fund in the future, if it was declined by other carriers, it
6 might have no choice but to insure with State Fund, as Reynolds is required by law to maintain
7 available workers' compensation insurance.

8
9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct.

11
12 Dated: October 10, 2022



Michael Reynolds

EXHIBIT Q
SUPPLEMENTAL AMERICAN
JETTER DECLARATION

1 BETSY C. MANIFOLD (182450)
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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.)
 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

1 oldest insurers for legally-mandated workers' compensation insurance. In the past, American
2 Jetter has had difficulty finding coverage in the voluntary workers compensation insurance market.
3 This meant that even if American Jetter was not inclined to obtain insurance from State Fund in
4 the future, if it was declined by other carriers, it might have no choice but to insure with State
5 Fund, as American Jetter is required by law to maintain available workers' compensation
6 insurance.

7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct. Executed this 11 th day of October, 2022, at Pico Rivera,
9 California.

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DocuSigned by:

59E0C387A6B8488...
JESUS LOYA

EXHIBIT R
SUPPLEMENTAL RESILIENCE
DECLARATION (STEINER)

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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.

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
JENNIFER STEINER

EXHIBIT S
SUPPLEMENTAL RESILIENCE
DECLARATION (GARAI)

BETSY C. MANIFOLD (182450)
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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. 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: _____ p.m.
 Dept. 7

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 31st, 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

1 difficulty finding coverage in the voluntary workers compensation insurance market. This meant
2 that even if Resilience was not inclined to obtain insurance from State Fund in the future, if it was
3 declined by other carriers, it might have no choice but to insure with State Fund, as Resilience is
4 required by law to maintain available workers' compensation insurance.

5 I declare under penalty of perjury under the laws of the State of California that the
6 foregoing is true and correct. Executed this 11th day of October, 2022, at Los Angeles,
7 California.

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DocuSigned by:
Andrea Garai
1D873DF516E1498...
ANDREA GARAI

EXHIBIT 2

COPY

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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

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, STANLEY MOSK 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.

Case No.

BY FAX
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]

CLASS ACTION COMPLAINT

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 ///

7. SCIF is, and at all times relevant to this action was, a public enterprise fund engaged in the business of writing workers' compensation insurance throughout the State of California, including in Los Angeles County. SCIF was established by the California legislature in 1914, and is often used as a carrier of last resort.

8. SCIF is the second largest workers' compensation insurance carrier in the State of California. According to the California Department of Insurance's 2017 Market Share Report, SCIF's share of California's \$ 12.8 billion workers' compensation market was approximately 10.7 percent, with \$1.36 billion dollars in written premium. SCIF's day to day operations are indistinguishable from a private insurance carrier.

9. Reynolds Termite Control is not currently aware of the true names and capacities of the Defendants designated as Does 1 through 50, inclusive, and will hereafter seek leave of court to amend this complaint in order to allege the true names and capacities of each such Defendant.

10. Upon information and belief, SCIF and Does 1 through 50, inclusive (hereafter jointly referred to as “Defendants”), are each responsible in some manner for the transactions, events and occurrences alleged, and the damages alleged were proximately caused thereby.

11. Upon information and belief, Defendants, and each of them, were the agents, joint venturers, trustees, servants, partners, alter-egos, parent corporations, subsidiaries, affiliates, contractors, or employees of each of the remaining Defendants, and that the acts or omissions here alleged were done by them, acting individually, through such capacity or through the scope of their authority, and that said conduct was thereafter ratified by the remaining Defendants.

GENERAL ALLEGATIONS

12. Reynolds Termite Control provides termite control and treatment services to its customers.

13. Reynolds Termite Control procured workers' compensation insurance policies from SCIF for at least four years during the period of time that SCIF has been using tier modifiers.

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 x 1.2 x .9 x 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 28. Reynolds Termite Control will fairly and adequately protect the interests of the
2 Class Members and has retained counsel who is competent and experienced in both class action
3 and insurance litigation.

4 29. Common questions of law and fact predominate, including:

- 5 1. whether SCIF used a tier modifier of greater than 1.00 to calculate the
6 premium of the Class Members;
- 7 2. whether SCIF's use of a tier modifier greater than 1.00 caused the
8 premium of Class Members to be higher than it would have otherwise
9 been but for the use of the tier modifier;
- 10 3. whether SCIF included its tier modifier algorithm in the rate filings it
11 filed with the California Department of Insurance;
- 12 4. whether SCIF disclosed its tier modifier algorithm to Class Members;
- 13 5. whether SCIF violated Insurance Code section 11735 by failing to file
14 and disclose its tier modifier algorithm;
- 15 6. whether the failure to file and disclose its tier modifier algorithm is an
16 unfair or unlawful business practice; and
- 17 7. whether the failure to file and disclose its tier modifier algorithm is a
18 breach of the policy of insurance.

19 30. Reynolds Termite Control knows of no difficulty which will be encountered in
20 the management of this litigation which would preclude its maintenance as a class action.

21 31. The Class is ascertainable as the identity of all Class Members is contained
22 within SCIF's records, and their contact information is available from SCIF. Notice will be
23 provided to the Class Members via first class mail or by the use of techniques and a form of
24 notice similar to those customarily used in class actions.

25 **FIRST CAUSE OF ACTION**

26 **(Breach of Contract against Defendants SCIF and Does 1 through 50)**

27 32. Reynolds Termite Control incorporates the preceding paragraphs of this
28 complaint.

1 33. Plaintiffs and SCIF entered into the workers' compensation policies, whereby
2 Plaintiffs agreed to purchase insurance covering workers' compensation. The workers'
3 compensation policies provide that "[a]ll premium for this policy will be determined by our
4 manuals of rules, rates, rating plans and classifications. We may change our manuals and apply
5 the changes to this policy if authorized by law or a governmental agency regulating this workers'
6 compensation insurance." The policy further provides that "[t]he final premium will be
7 determined after this policy ends by using the actual premium basis and the proper
8 classifications, rates and rating plans that lawfully apply to the business and work covered by
9 this policy." Attached as Exhibit "B" is what Reynolds Termite Control is informed and
10 believes and thereon alleges is SCIF's standard policy form issued to the Class Members.

11 34. SCIF breached the policies by failing to apply its rates and rating plans in a
12 proper and lawful manner. As the Insurance Commissioner held, the tier modifier constituted an
13 improper adjustment to SCIF's filed rates. By using the secretly-derived tier modifiers, SCIF
14 used unfiled rates and unfiled supplementary rate information. The Insurance Commissioner
15 held this to be unlawful. The use of unlawful rates is a breach of the insurance policy.

16 35. Plaintiffs have performed all terms of the workers' compensation policies except
17 for which any of whose performance has been excused by SCIF's conduct.

18 36. As a proximate result of SCIF's breaches of the workers' compensation policies,
19 Plaintiffs have suffered losses in an amount which exceeds the jurisdictional minimum of this
20 Court.

21 **SECOND CAUSE OF ACTION**

22 **(Unfair Competition in Violation of Business & Professions Code Section 17200 et seq.** 23 **against Defendants SCIF and DOES 1 through 50)**

24 37. Reynolds Termite Control incorporates the preceding paragraphs of this
25 complaint.

26 38. Each of the Class Members purchased a workers' compensation policy from
27 SCIF.

28 39. Each of the Class Members was charged and paid premium to SCIF based on a

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 51. The Class Members have been damaged as a result of SCIF's withholding of
2 information, as alleged herein, in that they were not able to question, challenge, or seek
3 adjustment of the tier modifier, and are entitled to all damages incurred as a result of this
4 concealment.

5 52. The conduct of SCIF as described above was carried out in bad faith, was
6 malicious, fraudulent, oppressive and evidences a complete disregard for the Class Members'
7 interests and an intent to injure, harass, vex and annoy the Class Members. Under the
8 circumstances described, Reynolds Termite Control allege that SCIF's conduct constitutes
9 "despicable conduct" as defined in California Civil Code section 3294 and established common
10 law, thus entitling Class Members to recover punitive damages in an amount appropriate to
11 punish or to set an example of SCIF. Reynolds Termite Control further alleges that SCIF at all
12 times acted through its officers, directors and employees and that it had advance knowledge of
13 the damage being caused to the Class Members and that SCIF approved, ordered, instructed,
14 supervised and controlled the conduct of its officers, directors and employees such as to
15 constitute a ratification of the conduct of said officers, directors and employees. Accordingly,
16 pursuant to the doctrine of respondeat superior, SCIF is liable for punitive damages as prayed for
17 herein.

18 WHEREFORE, Reynolds Termite Control, on its own behalf and on behalf of the Class
19 Members, prays for relief and judgment against Defendants as follows:

20 **ON THE FIRST CAUSE OF ACTION**

21 1. For general and special damages in a sum to be proven at trial with pre-judgment
22 and post-judgment interest thereon at the maximum rate permitted by law;

23 **ON THE SECOND CAUSE OF ACTION**

24 2. For an order for an injunction requiring SCIF to stop using tier modifiers greater
25 than 1.00 to calculate its insureds' premiums, unless and until SCIF obtains approval from the
26 Insurance Commissioner for its use, and the algorithm or components of the tier modifier are
27 disclosed in a rate filing;

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

DAVID R. GINSBURG

Attorneys for Plaintiffs

Michael Reynolds Enterprise, Inc. dba

Reynolds Termite Control and

EXHIBIT A

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

Respondent.

FILE AHB-WCA-17-26

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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, 2018.¹ 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.² 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

¹ 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.

² 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.³ The Newmans are also the shareholders of a corporation named Firetect, Inc. ("Firetect").⁴ Ms. Newman is Firetect's president.⁵ The Newmans, as A-Brite's general partners, and Firetect are jointly insured as a single employer under the Policy.⁶

Appellant is in the business of cleaning residential and theatrical blinds and drapery, as well as treating drapery with fire retardant.⁷ The business is headquartered in Valencia, Los Angeles County, California, and has been in operation for 30 years.⁸

B. Appellant's Policy and Claims History

SCIF has provided workers' compensation insurance to Appellant for about the last 20 years.⁹ 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.¹⁰ For those

³ Transcript of Proceedings on January 16, 2018 ("Tr.") at 25:10-26:3.

⁴ Tr. 26:18-25.

⁵ Tr. 27:22-23.

⁶ 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.

⁷ Tr. 26:4-17.

⁸ Tr. 25:1-4.

⁹ Tr. 38:11-14; Exh. 219.

¹⁰ 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.¹¹

During the 20 years it has been insured by SCIF, Appellant received a single workers' compensation claim.¹² That claim resulted from a bruise sustained by one of Appellant's employees on September 10, 2015.¹³ SCIF initially reserved \$24,000 to cover the estimated losses and expenses.¹⁴ However, the claim closed on November 6, 2015 with substantially lower total combined losses and expenses of \$819, which SCIF paid.¹⁵

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."¹⁶ SCIF's manuals and rating plans include several modifiers, which affected Appellant's premium.¹⁷

1. Rating Plan Modifier

SCIF determined the premiums for the 2015 Period and 2016 Period in part based on a "rating plan modifier."¹⁸ SCIF applied the rating plan modifier to Appellant's "standard premium" to arrive at a "modified premium."¹⁹ 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

¹¹ Tr. 37:23-24, 38:5-7; Exh. 206; Exh. 215.

¹² Tr. 28:21-29:11; Exh. 3 at 3-3 through 3-6.

¹³ Exh. 201 at 201-1.

¹⁴ Exh. 1 at 1-40.

¹⁵ Tr. 65:8-9; Exh. 201 at 201-1.

¹⁶ Exh. 209 at 209-4 [Part Five, § A].

¹⁷ Exh. 1; Exh. 2.

¹⁸ Exh. 210 at 210-1; Exh. 218 at 218-2.

¹⁹ 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.²⁰ 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 Policy²¹. SCIF’s rate filings with the Commissioner included a 1.15 territory modifier for Los Angeles County, effective April 1, 2015.²²

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).²³ For unclear reasons, SCIF did not apply the credit to the 2016 period.²⁴ 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).²⁵

c. Direct Placement Modifier

SCIF applied a three percent “direct placement” credit (0.97 modifier) to the Policy

²⁰ Tr. 58:14-59:8. See also Tr. 15:3-17:18 regarding trade secret privilege claimed by SCIF in the algorithm.

²¹ Exh. 206 at 206-3; Exh. 215 at 215-3.

²² Exh. 1 at 1-9, 1-27.

²³ Exh. 206 at 206-3; Exh. 208 at 208-2.

²⁴ Exh. 215 at 215-3; Exh. 218 at 218-2.

²⁵ Exh. 1 at 1-4; Exh. 2 at 2-1.

for both the 2015 Period and 2016 Period.²⁶ A 2011 SCIF rate filing with the Commissioner describes this three percent credit.²⁷

d. Rating Tier Modifier

SCIF assigns policyholders to various “rating tiers,” each with its own modifier.²⁸ SCIF assigns tiers based on “tier scores.”²⁹ Tier scores are calculated by SCIF using software it alternately refers to as the rating engine, tiering engine, scoring engine, or quote engine.³⁰ 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.³¹ 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.³² The algorithm is not included in any of SCIF’s rate filings with the Commissioner.³³

The algorithm takes into account the policyholder’s prospective estimated premium, payroll and number of employees.³⁴ It also factors in three years of the policyholder’s historical premium and loss data.³⁵ That data includes the frequency and number of workers’ compensation claims and whether those claims involved medical expenses or compensation for

²⁶ Exh. 206 at 206-3; Exh. 208 at 208-2; Exh. 215 at 215-3; Exh. 218 at 218-2.

²⁷ Exh. 1 at 1-1; Exh. 2 at 2-2.

²⁸ Tr. 56:10-17; Exh. 1 at 1-26; Exh. 2 at 2-27.

²⁹ Tr. 74:22-75:2.

³⁰ Tr. 62:24, 65:19-21; 74:20-25.

³¹ Tr. 14:22-17:18; Tr. 74:20-75:13; See also SCIF Letter to ALJ renewing objection, dated February 1, 2018.

³² Tr. 97:3-21, 101-3; 102-17; Exh. 101; Exh. 205; Exh. 208.

³³ See Exh. 1, Exh. 2.

³⁴ Tr. 57:8-11.

³⁵ Tr. 57:11-13, 83:10-19.

lost employee time or disability.³⁶

Each rating tier has an associated modifier.³⁷ Starting in 2013 and through the commencement of the 2015 Period, SCIF employed a rating framework with four tiers, A through D.³⁸ In the year preceding the 2015 Period, Appellant was assigned to Tier B, which at the time had a rating tier modifier of 0.951.³⁹

SCIF revised its tier rating framework for the 2015 Period.⁴⁰ 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 2.0.⁴¹

In the 2015 Period, Tier D applied to tier scores of at least 0.30092.⁴² Using its secret algorithm, SCIF initially calculated Appellant's tier score as 0.419525161.⁴³ Consequently, SCIF moved Appellant from Tier B to Tier D, thereby doubling Appellant's premium.⁴⁴ 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.⁴⁵ SCIF notified Appellant of the tier change and premium increase in a renewal quote dated October 5, 2015.⁴⁶ Nothing in the record or in SCIF's rate filings explains how Appellant's tier scores were calculated.

³⁶ Tr. 57:15-25.

³⁷ Tr. 56:10-17; 58:12-17; Exh. 1 at 1-26; Exh. 2 at 2-33, 2-34.

³⁸ Tr. 56:18; Exh. 1 at 1-26.

³⁹ Tr. 59:11-12.

⁴⁰ Tr. 59:21-24; Exh. 1 at 1-26.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Exh. 1 at 1-39.

⁴⁴ Tr. 61:5-6.

⁴⁵ Tr. 61:5-64:10; Exh. 1 at 1-40.

⁴⁶ Exh. 205 at 205-3.

Appellant complained to SCIF about the increase,⁴⁷ which resulted in SCIF recalculating the tier score and reassigning Appellant to Tier C on January 25, 2016, with a tier modifier of 1.5.⁴⁸ 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.⁴⁹ 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 1.0.⁵⁰

Starting in the 2016 Period, SCIF increased the number of rating tiers to a numerical system ranging from four to seven.⁵¹ 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.⁵² SCIF assigned Appellant to Tier 4 for the 2016 Period.⁵³ If Appellant had incurred no workers' compensation claims in the three prior years, SCIF would have assigned Appellant to Tier 3.⁵⁴

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.⁵⁵

⁴⁷ Exh. 3 at 3-7.

⁴⁸ Tr. 33:12-23, 64:11-65:16; Exh. 3 at 3-30.

⁴⁹ Tr. 64:21-65:21; Exh. 1 at 1-36 through 1-41.

⁵⁰ Tr. 105:21-106:14.

⁵¹ Tr. 72:12-14; Exh. 2 at 2-27.

⁵² Tr. 93:6-14; Exh. 2 at 2-27.

⁵³ Tr. 72:7-11; Exh. 2 at 2-39.

⁵⁴ Tr. 106:15-107:3.

⁵⁵ 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."⁵⁶ That modifier applied a flat discount of 11.3% to all modified premium over \$5,000.⁵⁷ SCIF's 2011 rate filings with the Commissioner describe that discount.⁵⁸

D. Policy Audit

On March 27, 2017, SCIF conducted an audit for the 2015 Period.⁵⁹ 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 \$20,996.99,⁶⁰ a total premium of \$19,189.36,⁶¹ mandatory surcharges of \$629.83, and total charges of \$19,819.19.⁶²

V. Discussion

Appellant argues SCIF's rating plan modifiers and premium discount modifiers were incorrectly applied.⁶³ Appellant further contends SCIF miscalculated Appellant's 2015 Period payroll. SCIF argues all of the modifiers were valid and correctly applied.⁶⁴ SCIF also stands behind its audit and further asserts the Commissioner may lack jurisdiction to determine the payroll calculation issue.⁶⁵ For the reasons discussed below, the Commissioner finds that (1)

⁵⁶ Tr. 71:6-72:6; Exh. 210 at 210-1; Exh. 218 at 218-2.

⁵⁷ Tr. 71:6-16; Exh. 210 at 210-1; Exh. 218 at 218-2.

⁵⁸ Exh. 1 at 1-2, 1-3.

⁵⁹ Tr. 115:14-25; Exh. 211 at 211-1.

⁶⁰ Obtained by multiplying the base premium by a rating plan modifier of 1.50593. (Exh. 212 at 212-1.)

⁶¹ Obtained by multiplying the modified premium by a premium discount modifier of 0.91391. (*Ibid.*)

⁶² Obtained by adding the total premium and the mandatory surcharges. (*Id.* at 212-1, 212-2.)

⁶³ Appeal dated August 25, 2017 ("Appeal").

⁶⁴ SCIF's Response to the Appeal, dated October 18, 2017, at 3-4.

⁶⁵ 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.⁶⁶

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.⁶⁷ 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."⁶⁸

b. Jurisdiction over Private Party Appeals

Insurance Code section 11737, subdivision (f), confers jurisdiction on the

⁶⁶ See generally Ins. Code §§ 11730-11742.

⁶⁷ Ins. Code § 11730, subd. (g). Rates exclude the application of individual risk variations based on loss or expense considerations, as well as minimum premiums.

⁶⁸ 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.⁶⁹ 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

⁶⁹ 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."⁷⁰ "[M]oney paid by an insured to an insurer for coverage constitutes premium regardless of its name."⁷¹ 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.⁷² As the Commissioner determined in his precedential

⁷⁰ Ins. Code § 11730, subd. (j), emphasis added.

⁷¹ *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."]

⁷² 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.⁷³ That is true regardless of whether the Commissioner first disapproved the unfiled rates under Insurance Code section 11737.⁷⁴

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"⁷⁵ that increased Appellant's premium.⁷⁶ 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,⁷⁷ as well as the policyholder's historical premium and loss data.⁷⁸ 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

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."]

⁷³ *Shasta Linen* at 52. *Shasta Linen* was designated precedential under Gov. Code section 11425.60, subdivision (b).

⁷⁴ See *Ibid.*

⁷⁵ Exh. 210 at 210-1; Exh. 218 at 218-2.

⁷⁶ 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.*)

⁷⁷ Tr. 57:8-11.

⁷⁸ Tr. 57:11-13.

depending on the rating tier, it is not possible to determine premium without the algorithm.⁷⁹ 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).⁸⁰

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[.]”⁸¹ 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.⁸² When rate information is transparent, policyholders are better able to compare coverage and reduce their costs. Transparency reduces the likelihood that

⁷⁹ Exh. 1 at 1-26.

⁸⁰ 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).)

⁸¹ 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”).)

⁸² 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."⁸³ 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.

⁸³ 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 11735.⁸⁴ 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

⁸⁴ 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 to determine SCIF's rates. Since SCIF's algorithm falls squarely within the statutory and regulatory definitions, SCIF was required to 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.⁸⁵ 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,⁸⁶ 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

⁸⁵ Ins. Code § 11737(b).

⁸⁶ Tit. 10, Cal. Code Regs. § 2509.32(c).

premium.⁸⁷

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.⁸⁸ Specifically, SCIF contends that because section 11735 does not expressly override the subsequently enacted

⁸⁷ (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..."].)

⁸⁸ 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 [(1)] (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.⁸⁹ It has no applicability to administrative or other governmental proceedings unless expressly invoked by statute or regulation.⁹⁰

Government Code section 6254 exempts certain trade secrets from the disclosure requirements of the California Public Records Act.⁹¹ 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

⁸⁹ Evid. Code § 300.

⁹⁰ 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.

⁹¹ 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*⁹² 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.⁹³ That section's exclusion of the specific provision of section 6254

⁹² *State Farm Mut. Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029.

⁹³ *Id.* at 1042-1043, emphasis in original.

“merely buttresses this rule.”⁹⁴ 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 1060.⁹⁵

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...”⁹⁶

Finally, contrary to SCIF’s assertions,⁹⁷ 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

⁹⁴ Id. at 1042.

⁹⁵ Id. at 1047. As noted above, privilege under Evidence Code section 1060 is incorporated by reference in Government Code section 6254, subdivision (k).

⁹⁶ Emphasis added.

⁹⁷ 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]."⁹⁸

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

⁹⁸ Ins. Code § 12926.

preceding the current policy period (or two years for policyholders with less than \$10,000 in annual base premium).⁹⁹ 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.¹⁰⁰

However, SCIF did not apply the modifier to the 2016 Period.¹⁰¹ 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 \$819.¹⁰² 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.”¹⁰³ 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)

⁹⁹ Exh. 1 at 1-4; Exh. 2 at 2-1.

¹⁰⁰ Exh. 206 at 206-3; Exh. 208 at 208-2.

¹⁰¹ Exh. 215 at 215-3; Exh. 218 at 218-2.

¹⁰² Tr. 65:8-9; Exh. 201 at 201-1.

¹⁰³ 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.¹⁰⁴

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.¹⁰⁵ 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.¹⁰⁶

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 \$5,000.¹⁰⁷ 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.¹⁰⁸ 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.¹⁰⁹

¹⁰⁴ Exh. 206 at 206-3; Exh. 208 at 208-2; Exh. 215 at 215-3; Exh. 218 at 218-2.

¹⁰⁵ Exh. 1 at 1-9, 1-27 [effective April 1, 2015]; Exh. 2 [no changes to territory modifiers from prior year].

¹⁰⁶ Exh. 206 at 206-3; Exh. 215 at 215-3.

¹⁰⁷ Exh. 1 at 1-2, 1-3.

¹⁰⁸ Tr. 71:6-72:6; Exh. 210 at 210-1; Exh. 218 at 218-2.

¹⁰⁹ 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.¹¹⁰

2. Analysis

SCIF produced a final payroll audit report for the 2015 Period, indicating Appellant's workers' compensation payroll for the entire period was \$188,995.¹¹¹ Appellant contests the accuracy of the report and produced its own payroll summary for that period, asserting a total workers' compensation payroll of \$180,890.44.¹¹² 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.¹¹³ But Appellant's payroll summary sets forth the payments made during that period, rather than the amounts earned. The

¹¹⁰ *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051 fn. 5.

¹¹¹ Exh. 211 at 211-5.

¹¹² Exh. 3 at 3-47 through 3-51.

¹¹³ 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, 2016,¹¹⁴ which were for the work period ending November 20, 2016.¹¹⁵ 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.¹¹⁶

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

¹¹⁴ Exh. 3 at 3-47 through 3-50.

¹¹⁵ See, e.g., Exh. 102 at 102-88.

¹¹⁶ 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:

- non-payment of premium;
- failure to report payroll;
- failure to permit us to audit payroll as required by the terms of this policy or of a previous policy issued by us;
- 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;
- material misrepresentation made by you or your agent;
- failure to cooperate with us in the investigation of a claim;
- failure to comply with federal or state safety orders;
- failure to comply with written recommendations of our designated loss control representatives;
- the occurrence of a material change in the ownership of your business;
- the occurrence of any change in your business or operations that materially increases the hazard for frequency or severity of loss;
- the occurrence of any change in your business or operations that requires additional or different classification for premium calculation;
- 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.

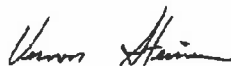
Under California law it is unlawful for an insurer to promise the future payment of dividends under an unexpired workers' compensation policy or to misrepresent the conditions for dividend payment. Dividends are payable only pursuant to conditions determined by our Board of Directors or other governing 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

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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.

**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**

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

/s/Elia Ramirez
Elia Ramirez

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

[Additional Counsel Listed on Signature Page]

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.

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

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. 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 Plaintiffs¹ 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 ¹ 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 6. Attached hereto as **Exhibit 4** is a true and correct copy of Calcaterra Pollack's
2 Firm Resume.

3 7. Attached hereto as **Exhibit 5** is a true and correct copy of the 2022 Major,
4 Lindsey & Africa Partner Compensation Survey.

5 **I. The Jetter Class Action**

6 8. In 2019, Jetter began investigating the basis for certain premiums charged by
7 State Compensation Insurance Fund ("State Fund"), including the manner in which the rating
8 plan modifier (which includes the tier rating modifier) affected the calculation of the premiums.
9 Jetter made multiple requests to State Fund to confirm the basis for the calculation of Jetter's
10 premium, as well as to simply provide a breakdown of the components of the rating plan
11 modifier assigned to Jetter's policy (including the tier rating modifier). After State Fund
12 consistently refused to provide this information, and following further investigation by Jetter
13 Counsel, Jetter filed the Jetter Complaint. *See* Ex. 1. The case was assigned to this Court. On
14 October 23, 2019, the court found the *Jetter* class action to be related to the *Reynolds* class action
15 and designated *Reynolds* as the lead case.
16

17 9. On August 10, 2020, Jetter filed the Amended Jetter Complaint which added
18 Resilience as a named plaintiff. *See* Ex. 2.
19

20 **II. Jetter Is Stayed After Overcoming State Fund's Demurrer and Commencing Class**
21 **Discovery**

22 10. On September 11, 2020, State Fund filed a demurrer in the *Jetter* class action. On
23 November 13, 2020, the Court overruled State Fund's demurrer and declined to refer the *Jetter*
24 class action to the Insurance Commissioner. On November 23, 2020, State Fund moved for
25 reconsideration of the Court's order overruling State Fund's demurrer in the *Jetter* class action
26 ("State Fund Motion for Reconsideration"). On December 17, 2020, State Fund filed a Petition
27 for Writ of Mandate, Prohibition or Other Appropriate Writ ("Petition for Writ") with the Court
28 of Appeal, Second Appellate District, seeking reversal of the Court's overruling of State Fund's
29 demurrer. On April 15, 2021, the Court of Appeal denied the Petition for Writ.
30
31

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 14. Named Plaintiffs’ Counsel extensively negotiated with State Fund regarding the
23 scope of confirmatory discovery, ultimately resulting in the production to Named Plaintiffs of
24 significant information about the Settlement Class.

25
26 **IV. Mediations**

27 15. The Parties began negotiating a potential class wide settlement of the Actions in
28 November 2020. The Parties participated in three spirited mediation sessions of arm’s-length
29 and informed negotiations over the course of eight months with experienced mediator Bruce
30
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
6 16. In response to the Court's August 29, 2022 order denying preliminary approval of
7 the initial settlement agreement, Named Plaintiffs engaged in significant negotiations with State
8 Fund in order to reach agreement on the modifications to the Settlement requested by the Court,
9 with Named Plaintiffs submitting the amended Settlement Agreement and supplementary
10 briefing to the Court on October 26, 2022.

11 17. After the Court preliminarily approved the Settlement, Plaintiffs' Counsel worked
12 closely with the Claims Administrator to supervise the implementation of the Notice Program.
13 These efforts included reviewing and editing the language and format of the Settlement Website
14 and the notice materials sent to the Settlement Class. Plaintiffs' Counsel also worked with the
15 Claims Administrator to ensure prompt responses to each Class Member inquiry regarding the
16 Settlement.
17

18 **VI. Strength of Jetter Plaintiffs' Claims Balanced Against the Value of the Settlement**
19 **Weighs in Favor of Approval**

20 18. The strength of Jetter Plaintiffs' claims, when considered alongside State Fund's
21 defenses and the risks if the Parties were to attempt to litigate through a final class wide
22 judgment and appeal, and when balanced against the value of the proposed Settlement, weighs
23 heavily in favor of a finding that the Settlement is fair, adequate, and reasonable.
24

25 19. I believe that the estimated average payment of \$503 to each of the Settlement
26 Class Members, plus the valuable injunctive relief secured by Named Plaintiffs, is an excellent
27 result for the Settlement Class, particularly because each Participating Settlement Class Member
28 will be able to receive a substantial cash payment without having to submit a claim.
29
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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
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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
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the Court in the Actions (the “Fee Agreement”). Jetter Plaintiffs have each been informed of the Fee Agreement and have provided written approval to the Fee Agreement.

X. The Attorneys’ Fees Requested are Fair and Reasonable

27. As of the date of this declaration, Calcaterra Pollack has expended over 1,679.6 hours prosecuting this litigation, and the total lodestar based on the firm’s current rates is \$1,348,552.50. Going forward, Calcaterra Pollack and the other Plaintiffs’ Counsel will have to expend considerable additional time, and incur additional costs, (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. I estimate these tasks will require another 75-100 hours of attorney time from Calcaterra Pollack going forward.

28. Listed below is the time expended by Calcaterra Pollack on these Actions, and consequent lodestar, as of the date of this declaration:

Timekeeper	Hours to Date	Rate Per Hour	Total Amount Billed
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
TOTAL	1,679.6		\$1,348,552.50

29. These records were prepared from contemporaneous, daily time records regularly prepared and maintained by Calcaterra Pollack in the usual course and manner of the firm. Calcaterra Pollack maintains detailed records regarding the amount of time spent by attorneys and paralegals at the 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.

30. I, Michael Liskow, a partner at the Firm with 17 years’ experience largely as a class action litigator, have a billing rate of \$800. Janine L. Pollack, a founding partner of the

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

15 33. In my judgment, and based on my experience in complex class action litigation
16 and other litigation, the number of hours expended, and the services performed by my firm, were
17 reasonable and necessary for my firm's representation of Named Plaintiffs.
18

19 34. Calcaterra Pollack litigated these Actions on a contingent basis and relied on its
20 resources to do so. The firm has not received any compensation during the course of this
21 litigation and has invested \$1,348,552.50 in time, and incurred costs totaling \$16,430.97, in
22 obtaining the Settlement for the benefit of Named Plaintiffs and the Settlement Class. This time
23 could have been spent by Calcaterra Pollack litigating other cases with fewer obstacles, or that
24 offered a guaranteed hourly rate of attorneys' fees.
25

26 35. Obtaining the Settlement in this litigation required substantial skill by Plaintiffs'
27 Counsel, particularly in light of the significant obstacles Named Plaintiffs had to overcome as
28 described in the Fee Motion. Due to the substantial hurdles that Plaintiffs' Counsel had to face,
29 Plaintiffs' Counsel shouldered a real possibility of achieving no recovery. In taking this case on
30
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:

Category	Costs
Mediation Costs	\$10,903.34
Transcripts and Court Reporting	\$502.18
CaseAnywhere Costs	\$1,218.00
Travel Costs	\$785.85
Docket Review Costs	\$497.90
Pacer Costs	\$47.00
LEXIS Research	\$2,384.30
Printing	\$92.40
Total	\$16,430.97

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct. Executed this 30th day of January, 2023, at West Orange, New
14 Jersey.

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MICHAEL LISKOW

EXHIBIT 1

COPY

By Fax

1 Michael Liskow (243899)
2 liskowm@thesultzerlawgroup.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
Riverside, IL 60546
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

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,

Defendants.

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

Case No. **19STCV36307**
CLASS ACTION COMPLAINT FOR
DAMAGES & INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

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.¹

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.²

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 ¹ The 2017 Policy and 2018 Policy are attached as Exhibits B and C.

27 ² Plaintiff currently lacks sufficient information to determine whether its policy commencing
28 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 _____

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28 25968

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, 2018.¹ 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.² 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

¹ 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.

² 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.³ The Newmans are also the shareholders of a corporation named Firetect, Inc. ("Firetect").⁴ Ms. Newman is Firetect's president.⁵ The Newmans, as A-Brite's general partners, and Firetect are jointly insured as a single employer under the Policy.⁶

Appellant is in the business of cleaning residential and theatrical blinds and drapery, as well as treating drapery with fire retardant.⁷ The business is headquartered in Valencia, Los Angeles County, California, and has been in operation for 30 years.⁸

B. Appellant's Policy and Claims History

SCIF has provided workers' compensation insurance to Appellant for about the last 20 years.⁹ 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.¹⁰ For those

³ Transcript of Proceedings on January 16, 2018 ("Tr.") at 25:10-26:3.

⁴ Tr. 26:18-25.

⁵ Tr. 27:22-23.

⁶ 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.

⁷ Tr. 26:4-17.

⁸ Tr. 25:1-4.

⁹ Tr. 38:11-14; Exh. 219.

¹⁰ 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.¹¹

During the 20 years it has been insured by SCIF, Appellant received a single workers' compensation claim.¹² That claim resulted from a bruise sustained by one of Appellant's employees on September 10, 2015.¹³ SCIF initially reserved \$24,000 to cover the estimated losses and expenses.¹⁴ However, the claim closed on November 6, 2015 with substantially lower total combined losses and expenses of \$819, which SCIF paid.¹⁵

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."¹⁶ SCIF's manuals and rating plans include several modifiers, which affected Appellant's premium.¹⁷

1. Rating Plan Modifier

SCIF determined the premiums for the 2015 Period and 2016 Period in part based on a "rating plan modifier."¹⁸ SCIF applied the rating plan modifier to Appellant's "standard premium" to arrive at a "modified premium."¹⁹ 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

¹¹ Tr. 37:23-24, 38:5-7; Exh. 206; Exh. 215.

¹² Tr. 28:21-29:11; Exh. 3 at 3-3 through 3-6.

¹³ Exh. 201 at 201-1.

¹⁴ Exh. 1 at 1-40.

¹⁵ Tr. 65:8-9; Exh. 201 at 201-1.

¹⁶ Exh. 209 at 209-4 [Part Five, § A].

¹⁷ Exh. 1; Exh. 2.

¹⁸ Exh. 210 at 210-1; Exh. 218 at 218-2.

¹⁹ 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.²⁰ 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 Policy²¹. SCIF’s rate filings with the Commissioner included a 1.15 territory modifier for Los Angeles County, effective April 1, 2015.²²

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).²³ For unclear reasons, SCIF did not apply the credit to the 2016 period.²⁴ 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).²⁵

c. Direct Placement Modifier

SCIF applied a three percent “direct placement” credit (0.97 modifier) to the Policy

²⁰ Tr. 58:14-59:8. See also Tr. 15:3-17:18 regarding trade secret privilege claimed by SCIF in the algorithm.

²¹ Exh. 206 at 206-3; Exh. 215 at 215-3.

²² Exh. 1 at 1-9, 1-27.

²³ Exh. 206 at 206-3; Exh. 208 at 208-2.

²⁴ Exh. 215 at 215-3; Exh. 218 at 218-2.

²⁵ Exh. 1 at 1-4; Exh. 2 at 2-1.

for both the 2015 Period and 2016 Period.²⁶ A 2011 SCIF rate filing with the Commissioner describes this three percent credit.²⁷

d. Rating Tier Modifier

SCIF assigns policyholders to various “rating tiers,” each with its own modifier.²⁸ SCIF assigns tiers based on “tier scores.”²⁹ Tier scores are calculated by SCIF using software it alternately refers to as the rating engine, tiering engine, scoring engine, or quote engine.³⁰ 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.³¹ 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.³² The algorithm is not included in any of SCIF’s rate filings with the Commissioner.³³

The algorithm takes into account the policyholder’s prospective estimated premium, payroll and number of employees.³⁴ It also factors in three years of the policyholder’s historical premium and loss data.³⁵ That data includes the frequency and number of workers’ compensation claims and whether those claims involved medical expenses or compensation for

²⁶ Exh. 206 at 206-3; Exh. 208 at 208-2; Exh. 215 at 215-3; Exh. 218 at 218-2.

²⁷ Exh. 1 at 1-1; Exh. 2 at 2-2.

²⁸ Tr. 56:10-17; Exh. 1 at 1-26; Exh. 2 at 2-27.

²⁹ Tr. 74:22-75:2.

³⁰ Tr. 62:24, 65:19-21; 74:20-25.

³¹ Tr. 14:22-17:18; Tr. 74:20-75:13; See also SCIF Letter to ALJ renewing objection, dated February 1, 2018.

³² Tr. 97:3-21, 101-3; 102-17; Exh. 101; Exh. 205; Exh. 208.

³³ See Exh. 1, Exh. 2.

³⁴ Tr. 57:8-11.

³⁵ Tr. 57:11-13, 83:10-19.

lost employee time or disability.³⁶

Each rating tier has an associated modifier.³⁷ Starting in 2013 and through the commencement of the 2015 Period, SCIF employed a rating framework with four tiers, A through D.³⁸ In the year preceding the 2015 Period, Appellant was assigned to Tier B, which at the time had a rating tier modifier of 0.951.³⁹

SCIF revised its tier rating framework for the 2015 Period.⁴⁰ 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 2.0.⁴¹

In the 2015 Period, Tier D applied to tier scores of at least 0.30092.⁴² Using its secret algorithm, SCIF initially calculated Appellant's tier score as 0.419525161.⁴³ Consequently, SCIF moved Appellant from Tier B to Tier D, thereby doubling Appellant's premium.⁴⁴ 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.⁴⁵ SCIF notified Appellant of the tier change and premium increase in a renewal quote dated October 5, 2015.⁴⁶ Nothing in the record or in SCIF's rate filings explains how Appellant's tier scores were calculated.

³⁶ Tr. 57:15-25.

³⁷ Tr. 56:10-17; 58:12-17; Exh. 1 at 1-26; Exh. 2 at 2-33, 2-34.

³⁸ Tr. 56:18; Exh. 1 at 1-26.

³⁹ Tr. 59:11-12.

⁴⁰ Tr. 59:21-24; Exh. 1 at 1-26.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Exh. 1 at 1-39.

⁴⁴ Tr. 61:5-6.

⁴⁵ Tr. 61:5-64:10; Exh. 1 at 1-40.

⁴⁶ Exh. 205 at 205-3.

Appellant complained to SCIF about the increase,⁴⁷ which resulted in SCIF recalculating the tier score and reassigning Appellant to Tier C on January 25, 2016, with a tier modifier of 1.5.⁴⁸ 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.⁴⁹ 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 1.0.⁵⁰

Starting in the 2016 Period, SCIF increased the number of rating tiers to a numerical system ranging from four to seven.⁵¹ 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.⁵² SCIF assigned Appellant to Tier 4 for the 2016 Period.⁵³ If Appellant had incurred no workers' compensation claims in the three prior years, SCIF would have assigned Appellant to Tier 3.⁵⁴

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.⁵⁵

⁴⁷ Exh. 3 at 3-7.

⁴⁸ Tr. 33:12-23, 64:11-65:16; Exh. 3 at 3-30.

⁴⁹ Tr. 64:21-65:21; Exh. 1 at 1-36 through 1-41.

⁵⁰ Tr. 105:21-106:14.

⁵¹ Tr. 72:12-14; Exh. 2 at 2-27.

⁵² Tr. 93:6-14; Exh. 2 at 2-27.

⁵³ Tr. 72:7-11; Exh. 2 at 2-39.

⁵⁴ Tr. 106:15-107:3.

⁵⁵ 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."⁵⁶ That modifier applied a flat discount of 11.3% to all modified premium over \$5,000.⁵⁷ SCIF's 2011 rate filings with the Commissioner describe that discount.⁵⁸

D. Policy Audit

On March 27, 2017, SCIF conducted an audit for the 2015 Period.⁵⁹ 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 \$20,996.99,⁶⁰ a total premium of \$19,189.36,⁶¹ mandatory surcharges of \$629.83, and total charges of \$19,819.19.⁶²

V. Discussion

Appellant argues SCIF's rating plan modifiers and premium discount modifiers were incorrectly applied.⁶³ Appellant further contends SCIF miscalculated Appellant's 2015 Period payroll. SCIF argues all of the modifiers were valid and correctly applied.⁶⁴ SCIF also stands behind its audit and further asserts the Commissioner may lack jurisdiction to determine the payroll calculation issue.⁶⁵ For the reasons discussed below, the Commissioner finds that (1)

⁵⁶ Tr. 71:6-72:6; Exh. 210 at 210-1; Exh. 218 at 218-2.

⁵⁷ Tr. 71:6-16; Exh. 210 at 210-1; Exh. 218 at 218-2.

⁵⁸ Exh. 1 at 1-2, 1-3.

⁵⁹ Tr. 115:14-25; Exh. 211 at 211-1.

⁶⁰ Obtained by multiplying the base premium by a rating plan modifier of 1.50593. (Exh. 212 at 212-1.)

⁶¹ Obtained by multiplying the modified premium by a premium discount modifier of 0.91391. (*Ibid.*)

⁶² Obtained by adding the total premium and the mandatory surcharges. (*Id.* at 212-1, 212-2.)

⁶³ Appeal dated August 25, 2017 ("Appeal").

⁶⁴ SCIF's Response to the Appeal, dated October 18, 2017, at 3-4.

⁶⁵ 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.⁶⁶

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.⁶⁷ 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."⁶⁸

⁶⁶ See generally Ins. Code §§ 11730-11742.

⁶⁷ Ins. Code § 11730, subd. (g). Rates exclude the application of individual risk variations based on loss or expense considerations, as well as minimum premiums.

⁶⁸ 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.⁶⁹ 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).

⁶⁹ 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.*"⁷⁰ "[M]oney paid by an insured to an insurer for coverage constitutes premium regardless of its name."⁷¹ 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

⁷⁰ Ins. Code § 11730, subd. (j), emphasis added.

⁷¹ *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.⁷² 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.⁷³ That is true regardless of whether the Commissioner first disapproved the unfiled rates under Insurance Code section 11737.⁷⁴

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"⁷⁵ that increased Appellant's premium.⁷⁶ 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,⁷⁷ as well as the policyholder's historical premium and loss data.⁷⁸ There is no way for the policyholder or anyone else to calculate a tier score without the algorithm. Without the

⁷² 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."]

⁷³ *Shasta Linen* at 52. *Shasta Linen* was designated precedential under Gov. Code section 11425.60, subdivision (b).

⁷⁴ See *Ibid.*

⁷⁵ Exh. 210 at 210-1; Exh. 218 at 218-2.

⁷⁶ 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.*)

⁷⁷ Tr. 57:8-11.

⁷⁸ 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.⁷⁹ 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).⁸⁰

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[.]"⁸¹ 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

⁷⁹ Exh. 1 at 1-26.

⁸⁰ 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).)

⁸¹ 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.⁸² 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

⁸² See generally Ins. Code §§ 11730-11742.

shocked.”⁸³ 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 11735.⁸⁴ 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

⁸³ Tr. at 29:8-25.

⁸⁴ 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.⁸⁵ 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,⁸⁶ 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

⁸⁵ Ins. Code § 11737(b).

⁸⁶ 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.⁸⁷

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

⁸⁷ (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.⁸⁸ 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.⁸⁹ It has no applicability to administrative or other governmental proceedings unless expressly invoked by statute or regulation.⁹⁰

Government Code section 6254 exempts certain trade secrets from the disclosure requirements of the California Public Records Act.⁹¹ 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,

⁸⁸ Obj. to Order to Disclose at 6-8.

⁸⁹ Evid. Code § 300.

⁹⁰ 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.

⁹¹ 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*⁹² 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

⁹² *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.⁹³ That section’s exclusion of the specific provision of section 6254 “merely buttresses this rule.”⁹⁴ 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 1060.⁹⁵

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...”⁹⁶

Finally, contrary to SCIF’s assertions,⁹⁷ 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

⁹³ Id. at 1042-1043, emphasis in original.

⁹⁴ Id. at 1042.

⁹⁵ Id. at 1047. As noted above, privilege under Evidence Code section 1060 is incorporated by reference in Government Code section 6254, subdivision (k).

⁹⁶ Emphasis added.

⁹⁷ 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]."⁹⁸

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.

⁹⁸ 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).⁹⁹ 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.¹⁰⁰

However, SCIF did not apply the modifier to the 2016 Period.¹⁰¹ 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 \$819.¹⁰² 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

⁹⁹ Exh. 1 at 1-4; Exh. 2 at 2-1.

¹⁰⁰ Exh. 206 at 206-3; Exh. 208 at 208-2.

¹⁰¹ Exh. 215 at 215-3; Exh. 218 at 218-2.

¹⁰² 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.”¹⁰³ 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.¹⁰⁴

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.¹⁰⁵ 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.¹⁰⁶

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 \$5,000.¹⁰⁷ 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.¹⁰⁸ 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

¹⁰³ Exh. 1 at 1-1; Exh. 2 at 2-2.

¹⁰⁴ Exh. 206 at 206-3; Exh. 208 at 208-2; Exh. 215 at 215-3; Exh. 218 at 218-2.

¹⁰⁵ Exh. 1 at 1-9, 1-27 [effective April 1, 2015]; Exh. 2 [no changes to territory modifiers from prior year].

¹⁰⁶ Exh. 206 at 206-3; Exh. 215 at 215-3.

¹⁰⁷ Exh 1 at 1-2, 1-3.

¹⁰⁸ Tr. 71:6-72:6; Exh. 210 at 210-1; Exh. 218 at 218-2.

using the revised modified premiums.¹⁰⁹

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.¹¹⁰

2. Analysis

SCIF produced a final payroll audit report for the 2015 Period, indicating Appellant's workers' compensation payroll for the entire period was \$188,995.¹¹¹ Appellant contests the accuracy of the report and produced its own payroll summary for that period, asserting a total workers' compensation payroll of \$180,890.44.¹¹² Appellant thereby met its initial burden of going forward.

¹⁰⁹ 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: $1 - ((\$13,997.94 - \$5,000) \times 0.113) \div \$13,997.94 = 0.927363$.

¹¹⁰ *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051 fn. 5.

¹¹¹ Exh. 211 at 211-5.

¹¹² 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.¹¹³ 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, 2016,¹¹⁴ which were for the work period ending November 20, 2016.¹¹⁵ 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.¹¹⁶

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

¹¹³ Cal. Code Regs., tit. 10, § 2318.6, Part 3, Section V, Rule 1 [payroll includes amounts "earned during the policy period"].

¹¹⁴ Exh. 3 at 3-47 through 3-50.

¹¹⁵ See, e.g., Exh. 102 at 102-88.

¹¹⁶ 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.

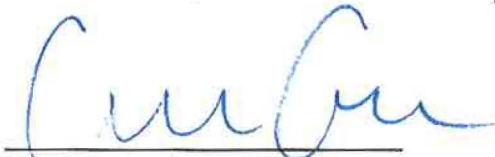

CANDACE GOODALE

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

THE RATING PERIOD BEGINS AND ENDS AT 12:01AM
PACIFIC STANDARD TIME

CONTINUOUS POLICY

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

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

THE RATING PERIOD BEGINS AND ENDS AT 12:01AM
PACIFIC STANDARD TIME

CONTINUOUS POLICY

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

*
* 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.

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

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

THE RATING PERIOD BEGINS AND ENDS AT 12:01AM
PACIFIC STANDARD TIME

CONTINUOUS POLICY

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 [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.

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

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

Michael Liskow (243899)
mliskow@calcaterrapollack.com
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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

**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.

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.¹

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 ¹ 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.

37. For the 2016 Policy period, Resilience was not informed of its placement into the Tier C category.

38. Instead Resilience’s policies, and audit materials received regarding the policies, reflect a blended rating plan modifier that included the tier modifier as one of its factors.

39. For the 2016 Policy, Resilience received a rating plan modifier of 1.7765, causing additional premium charges of approximately \$30,537, inclusive of the increased premium caused by the tier modifier.

40. Although Resilience cannot calculate or determine what other factors have been used to calculate the rating plan modifier, upon information and belief, Resilience believes that a territorial modifier and a scheduled rating modifier were included in the rating plan modifier.

41. It is impossible to calculate the rating plan modifier without knowledge of the unfiled algorithm that is used to calculate the tier modifier, thereby making the rating plan modifier, like the tier modifier, a separate improperly undisclosed component of insureds' premiums.

CLASS ACTION ALLEGATIONS

42. Plaintiffs bring this action pursuant to Code of Civil Procedure section 382 as a class action individually on behalf of themselves and on behalf of all others similarly situated. The Class is defined as follows:

All insureds of State Fund whose workers' compensation insurance premiums were calculated using a tier modifier in excess of 1.00. Excluded from the Class are Defendants, their affiliates, predecessors, successors, officers, directors, agents, servants and employees and the immediate families of such persons.

Numerosity

43. The members of the Class are too numerous for joinder to be practicable. There are tens of thousands of State Fund insureds whose premiums were calculated using a tier modifier in excess of 1.00. The exact quantity and identities of the Class is known to Defendants through State Fund's own records.

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.

49. Counsel for Plaintiffs are highly experienced in consumer class action litigation and will prosecute the action with skill and diligence.

Superiority

50. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for the parties opposing the Class. Such incompatible standards of conduct and varying adjudications of the same essential facts, proof and legal theories would also create and allow the existence of inconsistent and incompatible rights within the Class.

51. Moreover, a class action is superior to other methods for the fair and efficient adjudication of the controversies raised in this Complaint because:

a. Individual claims by the Class members could be impracticable as the costs of pursuit would far exceed what any one Class member has at stake;

b. Plaintiffs are unaware of any significant number of other actions that have been commenced over the controversies alleged in this Complaint, and individual Class members are unlikely to have an interest in separately prosecuting and controlling individual actions;

c. The concentration of litigation of these claims in one forum will achieve efficiency and promote judicial economy; and

d. The proposed class action is manageable.

52. Defendants have acted in a uniform manner on grounds generally applicable to Plaintiffs and the other members of the Class so that final declaratory and injunctive relief as requested herein are appropriate with respect to the Class as a whole.

53. Therefore, class treatment of Plaintiffs' claims is appropriate and necessary.

COUNT I

BREACH OF CONTRACT

(On Behalf of Plaintiffs and the Class)

54. Plaintiffs repeats and reallege each and every allegation contained in paragraphs 1-53 above as if fully set forth herein.

55. Plaintiffs and the Class entered into contracts with State Fund to provide workers'

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.

1 Dated: August 10, 2020

Respectfully submitted,

2 By: 

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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, 2018.¹ 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.² 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

¹ 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.

² 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.³ The Newmans are also the shareholders of a corporation named Firetect, Inc. ("Firetect").⁴ Ms. Newman is Firetect's president.⁵ The Newmans, as A-Brite's general partners, and Firetect are jointly insured as a single employer under the Policy.⁶

Appellant is in the business of cleaning residential and theatrical blinds and drapery, as well as treating drapery with fire retardant.⁷ The business is headquartered in Valencia, Los Angeles County, California, and has been in operation for 30 years.⁸

B. Appellant's Policy and Claims History

SCIF has provided workers' compensation insurance to Appellant for about the last 20 years.⁹ 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.¹⁰ For those

³ Transcript of Proceedings on January 16, 2018 ("Tr.") at 25:10-26:3.

⁴ Tr. 26:18-25.

⁵ Tr. 27:22-23.

⁶ 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.

⁷ Tr. 26:4-17.

⁸ Tr. 25:1-4.

⁹ Tr. 38:11-14; Exh. 219.

¹⁰ 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.¹¹

During the 20 years it has been insured by SCIF, Appellant received a single workers' compensation claim.¹² That claim resulted from a bruise sustained by one of Appellant's employees on September 10, 2015.¹³ SCIF initially reserved \$24,000 to cover the estimated losses and expenses.¹⁴ However, the claim closed on November 6, 2015 with substantially lower total combined losses and expenses of \$819, which SCIF paid.¹⁵

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."¹⁶ SCIF's manuals and rating plans include several modifiers, which affected Appellant's premium.¹⁷

1. Rating Plan Modifier

SCIF determined the premiums for the 2015 Period and 2016 Period in part based on a "rating plan modifier."¹⁸ SCIF applied the rating plan modifier to Appellant's "standard premium" to arrive at a "modified premium."¹⁹ 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

¹¹ Tr. 37:23-24, 38:5-7; Exh. 206; Exh. 215.

¹² Tr. 28:21-29:11; Exh. 3 at 3-3 through 3-6.

¹³ Exh. 201 at 201-1.

¹⁴ Exh. 1 at 1-40.

¹⁵ Tr. 65:8-9; Exh. 201 at 201-1.

¹⁶ Exh. 209 at 209-4 [Part Five, § A].

¹⁷ Exh. 1; Exh. 2.

¹⁸ Exh. 210 at 210-1; Exh. 218 at 218-2.

¹⁹ 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.²⁰ 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 Policy²¹. SCIF’s rate filings with the Commissioner included a 1.15 territory modifier for Los Angeles County, effective April 1, 2015.²²

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).²³ For unclear reasons, SCIF did not apply the credit to the 2016 period.²⁴ 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).²⁵

c. Direct Placement Modifier

SCIF applied a three percent “direct placement” credit (0.97 modifier) to the Policy

²⁰ Tr. 58:14-59:8. See also Tr. 15:3-17:18 regarding trade secret privilege claimed by SCIF in the algorithm.

²¹ Exh. 206 at 206-3; Exh. 215 at 215-3.

²² Exh. 1 at 1-9, 1-27.

²³ Exh. 206 at 206-3; Exh. 208 at 208-2.

²⁴ Exh. 215 at 215-3; Exh. 218 at 218-2.

²⁵ Exh. 1 at 1-4; Exh. 2 at 2-1.

for both the 2015 Period and 2016 Period.²⁶ A 2011 SCIF rate filing with the Commissioner describes this three percent credit.²⁷

d. Rating Tier Modifier

SCIF assigns policyholders to various “rating tiers,” each with its own modifier.²⁸ SCIF assigns tiers based on “tier scores.”²⁹ Tier scores are calculated by SCIF using software it alternately refers to as the rating engine, tiering engine, scoring engine, or quote engine.³⁰ 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.³¹ 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.³² The algorithm is not included in any of SCIF’s rate filings with the Commissioner.³³

The algorithm takes into account the policyholder’s prospective estimated premium, payroll and number of employees.³⁴ It also factors in three years of the policyholder’s historical premium and loss data.³⁵ That data includes the frequency and number of workers’ compensation claims and whether those claims involved medical expenses or compensation for

²⁶ Exh. 206 at 206-3; Exh. 208 at 208-2; Exh. 215 at 215-3; Exh. 218 at 218-2.

²⁷ Exh. 1 at 1-1; Exh. 2 at 2-2.

²⁸ Tr. 56:10-17; Exh. 1 at 1-26; Exh. 2 at 2-27.

²⁹ Tr. 74:22-75:2.

³⁰ Tr. 62:24, 65:19-21; 74:20-25.

³¹ Tr. 14:22-17:18; Tr. 74:20-75:13; See also SCIF Letter to ALJ renewing objection, dated February 1, 2018.

³² Tr. 97:3-21, 101-3; 102-17; Exh. 101; Exh. 205; Exh. 208.

³³ See Exh. 1, Exh. 2.

³⁴ Tr. 57:8-11.

³⁵ Tr. 57:11-13, 83:10-19.

lost employee time or disability.³⁶

Each rating tier has an associated modifier.³⁷ Starting in 2013 and through the commencement of the 2015 Period, SCIF employed a rating framework with four tiers, A through D.³⁸ In the year preceding the 2015 Period, Appellant was assigned to Tier B, which at the time had a rating tier modifier of 0.951.³⁹

SCIF revised its tier rating framework for the 2015 Period.⁴⁰ 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 2.0.⁴¹

In the 2015 Period, Tier D applied to tier scores of at least 0.30092.⁴² Using its secret algorithm, SCIF initially calculated Appellant's tier score as 0.419525161.⁴³ Consequently, SCIF moved Appellant from Tier B to Tier D, thereby doubling Appellant's premium.⁴⁴ 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.⁴⁵ SCIF notified Appellant of the tier change and premium increase in a renewal quote dated October 5, 2015.⁴⁶ Nothing in the record or in SCIF's rate filings explains how Appellant's tier scores were calculated.

³⁶ Tr. 57:15-25.

³⁷ Tr. 56:10-17; 58:12-17; Exh. 1 at 1-26; Exh. 2 at 2-33, 2-34.

³⁸ Tr. 56:18; Exh. 1 at 1-26.

³⁹ Tr. 59:11-12.

⁴⁰ Tr. 59:21-24; Exh. 1 at 1-26.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Exh. 1 at 1-39.

⁴⁴ Tr. 61:5-6.

⁴⁵ Tr. 61:5-64:10; Exh. 1 at 1-40.

⁴⁶ Exh. 205 at 205-3.

Appellant complained to SCIF about the increase,⁴⁷ which resulted in SCIF recalculating the tier score and reassigning Appellant to Tier C on January 25, 2016, with a tier modifier of 1.5.⁴⁸ 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.⁴⁹ 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 1.0.⁵⁰

Starting in the 2016 Period, SCIF increased the number of rating tiers to a numerical system ranging from four to seven.⁵¹ 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.⁵² SCIF assigned Appellant to Tier 4 for the 2016 Period.⁵³ If Appellant had incurred no workers' compensation claims in the three prior years, SCIF would have assigned Appellant to Tier 3.⁵⁴

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.⁵⁵

⁴⁷ Exh. 3 at 3-7.

⁴⁸ Tr. 33:12-23, 64:11-65:16; Exh. 3 at 3-30.

⁴⁹ Tr. 64:21-65:21; Exh. 1 at 1-36 through 1-41.

⁵⁰ Tr. 105:21-106:14.

⁵¹ Tr. 72:12-14; Exh. 2 at 2-27.

⁵² Tr. 93:6-14; Exh. 2 at 2-27.

⁵³ Tr. 72:7-11; Exh. 2 at 2-39.

⁵⁴ Tr. 106:15-107:3.

⁵⁵ 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."⁵⁶ That modifier applied a flat discount of 11.3% to all modified premium over \$5,000.⁵⁷ SCIF's 2011 rate filings with the Commissioner describe that discount.⁵⁸

D. Policy Audit

On March 27, 2017, SCIF conducted an audit for the 2015 Period.⁵⁹ 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 \$20,996.99,⁶⁰ a total premium of \$19,189.36,⁶¹ mandatory surcharges of \$629.83, and total charges of \$19,819.19.⁶²

V. Discussion

Appellant argues SCIF's rating plan modifiers and premium discount modifiers were incorrectly applied.⁶³ Appellant further contends SCIF miscalculated Appellant's 2015 Period payroll. SCIF argues all of the modifiers were valid and correctly applied.⁶⁴ SCIF also stands behind its audit and further asserts the Commissioner may lack jurisdiction to determine the payroll calculation issue.⁶⁵ For the reasons discussed below, the Commissioner finds that (1)

⁵⁶ Tr. 71:6-72:6; Exh. 210 at 210-1; Exh. 218 at 218-2.

⁵⁷ Tr. 71:6-16; Exh. 210 at 210-1; Exh. 218 at 218-2.

⁵⁸ Exh. 1 at 1-2, 1-3.

⁵⁹ Tr. 115:14-25; Exh. 211 at 211-1.

⁶⁰ Obtained by multiplying the base premium by a rating plan modifier of 1.50593. (Exh. 212 at 212-1.)

⁶¹ Obtained by multiplying the modified premium by a premium discount modifier of 0.91391. (*Ibid.*)

⁶² Obtained by adding the total premium and the mandatory surcharges. (*Id.* at 212-1, 212-2.)

⁶³ Appeal dated August 25, 2017 ("Appeal").

⁶⁴ SCIF's Response to the Appeal, dated October 18, 2017, at 3-4.

⁶⁵ 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.⁶⁶

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.⁶⁷ 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."⁶⁸

⁶⁶ See generally Ins. Code §§ 11730-11742.

⁶⁷ Ins. Code § 11730, subd. (g). Rates exclude the application of individual risk variations based on loss or expense considerations, as well as minimum premiums.

⁶⁸ 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.⁶⁹ 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).

⁶⁹ 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.*"⁷⁰ "[M]oney paid by an insured to an insurer for coverage constitutes premium regardless of its name."⁷¹ 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

⁷⁰ Ins. Code § 11730, subd. (j), emphasis added.

⁷¹ *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.⁷² 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.⁷³ That is true regardless of whether the Commissioner first disapproved the unfiled rates under Insurance Code section 11737.⁷⁴

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"⁷⁵ that increased Appellant's premium.⁷⁶ 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,⁷⁷ as well as the policyholder's historical premium and loss data.⁷⁸ There is no way for the policyholder or anyone else to calculate a tier score without the algorithm. Without the

⁷² 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."]

⁷³ *Shasta Linen* at 52. *Shasta Linen* was designated precedential under Gov. Code section 11425.60, subdivision (b).

⁷⁴ See *Ibid.*

⁷⁵ Exh. 210 at 210-1; Exh. 218 at 218-2.

⁷⁶ 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.*)

⁷⁷ Tr. 57:8-11.

⁷⁸ 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.⁷⁹ 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).⁸⁰

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[.]"⁸¹ 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

⁷⁹ Exh. 1 at 1-26.

⁸⁰ 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).)

⁸¹ 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.⁸² 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

⁸² See generally Ins. Code §§ 11730-11742.

shocked.”⁸³ 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 11735.⁸⁴ 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

⁸³ Tr. at 29:8-25.

⁸⁴ 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.⁸⁵ 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,⁸⁶ 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

⁸⁵ Ins. Code § 11737(b).

⁸⁶ 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.⁸⁷

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

⁸⁷ (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.⁸⁸ 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.⁸⁹ It has no applicability to administrative or other governmental proceedings unless expressly invoked by statute or regulation.⁹⁰

Government Code section 6254 exempts certain trade secrets from the disclosure requirements of the California Public Records Act.⁹¹ 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,

⁸⁸ Obj. to Order to Disclose at 6-8.

⁸⁹ Evid. Code § 300.

⁹⁰ 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.

⁹¹ 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*⁹² 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

⁹² *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.⁹³ That section’s exclusion of the specific provision of section 6254 “merely buttresses this rule.”⁹⁴ 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 1060.⁹⁵

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...”⁹⁶

Finally, contrary to SCIF’s assertions,⁹⁷ 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

⁹³ Id. at 1042-1043, emphasis in original.

⁹⁴ Id. at 1042.

⁹⁵ Id. at 1047. As noted above, privilege under Evidence Code section 1060 is incorporated by reference in Government Code section 6254, subdivision (k).

⁹⁶ Emphasis added.

⁹⁷ 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]."⁹⁸

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.

⁹⁸ 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).⁹⁹ 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.¹⁰⁰

However, SCIF did not apply the modifier to the 2016 Period.¹⁰¹ 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 \$819.¹⁰² 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

⁹⁹ Exh. 1 at 1-4; Exh. 2 at 2-1.

¹⁰⁰ Exh. 206 at 206-3; Exh. 208 at 208-2.

¹⁰¹ Exh. 215 at 215-3; Exh. 218 at 218-2.

¹⁰² 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.”¹⁰³ 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.¹⁰⁴

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.¹⁰⁵ 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.¹⁰⁶

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 \$5,000.¹⁰⁷ 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.¹⁰⁸ 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

¹⁰³ Exh. 1 at 1-1; Exh. 2 at 2-2.

¹⁰⁴ Exh. 206 at 206-3; Exh. 208 at 208-2; Exh. 215 at 215-3; Exh. 218 at 218-2.

¹⁰⁵ Exh. 1 at 1-9, 1-27 [effective April 1, 2015]; Exh. 2 [no changes to territory modifiers from prior year].

¹⁰⁶ Exh. 206 at 206-3; Exh. 215 at 215-3.

¹⁰⁷ Exh 1 at 1-2, 1-3.

¹⁰⁸ Tr. 71:6-72:6; Exh. 210 at 210-1; Exh. 218 at 218-2.

using the revised modified premiums.¹⁰⁹

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.¹¹⁰

2. Analysis

SCIF produced a final payroll audit report for the 2015 Period, indicating Appellant's workers' compensation payroll for the entire period was \$188,995.¹¹¹ Appellant contests the accuracy of the report and produced its own payroll summary for that period, asserting a total workers' compensation payroll of \$180,890.44.¹¹² Appellant thereby met its initial burden of going forward.

¹⁰⁹ 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: $1 - ((\$13,997.94 - \$5,000) \times 0.113) \div \$13,997.94 = 0.927363$.

¹¹⁰ *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051 fn. 5.

¹¹¹ Exh. 211 at 211-5.

¹¹² 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.¹¹³ 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, 2016,¹¹⁴ which were for the work period ending November 20, 2016.¹¹⁵ 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.¹¹⁶

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

¹¹³ Cal. Code Regs., tit. 10, § 2318.6, Part 3, Section V, Rule 1 [payroll includes amounts "earned during the policy period"].

¹¹⁴ Exh. 3 at 3-47 through 3-50.

¹¹⁵ See, e.g., Exh. 102 at 102-88.

¹¹⁶ 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.

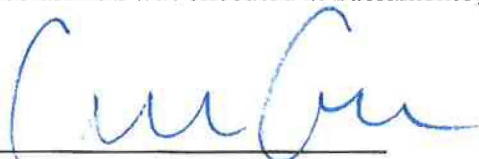
☒ On November 16, 2018 following ordinary business practices, I caused a true and correct copy of the following document(s):

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

THE RATING PERIOD BEGINS AND ENDS AT 12:01AM
PACIFIC STANDARD TIME

CONTINUOUS POLICY

RATING PERIOD 1-13-17 TO 1-13-18

AMERICAN JETTER

DEPOSIT PREMIUM

\$1,185.00

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

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

THE RATING PERIOD BEGINS AND ENDS AT 12:01AM
PACIFIC STANDARD TIME

CONTINUOUS POLICY

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

*
* 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.

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

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

THE RATING PERIOD BEGINS AND ENDS AT 12:01AM
PACIFIC STANDARD TIME

CONTINUOUS POLICY

RATING PERIOD 1-13-18 TO 1-13-19

AMERICAN JETTER

DEPOSIT PREMIUM

\$1,045.00

MINIMUM PREMIUM

\$1,045.00

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 01-13-18 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.

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

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

EXHIBIT 3

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

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

18
19 Plaintiffs,

20 v.

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

23 Defendants.
24
25
26
27
28

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

INTRODUCTION

1. Plaintiffs American Jetter & Plumbing, Inc. (“American Jetter”) and Resilience Treatment Center (“Resilience,” collectively with American Jetter, “Plaintiffs”) bring this class action on behalf of themselves and all others similarly situated (the “Class,” defined *infra*) against defendants State Compensation Insurance Fund (“State Fund”) and Does 1 through 50, inclusive (collectively “Defendants”).

2. This lawsuit seeks refunds of the unlawful workers’ compensation insurance premiums Defendants charged Plaintiffs and the Class. As detailed further herein, Defendants have improperly and illegally charged the Class inflated insurance premium rates using two separate but related schemes. First, Defendants charged Plaintiff American Jetter and the “Algorithm Group” (defined *infra*) inflated insurance premium rates by calculating the premiums using improper and illegal “tier modifiers” and “rating plan modifiers” based on formulas that were not filed, disclosed to the public, or permitted to be disclosed to the public at the time of the filing of the rate filings utilizing the formulas, as required by law (the “Algorithm”). Defendants have charged the Algorithm Group these improper and illegal premiums since 2013, and continued to do so even after the California Insurance Commissioner confirmed that Defendants’ use of the tier modifiers and rating plan modifiers at issue was illegal and unenforceable.

3. Defendants have also charged Plaintiff Resilience and the “Insufficient Documentation Group” (defined *infra*) inflated insurance premium rates by increasing the Insufficient Documentation Group’s tier modifiers, and consequent premiums (for most by 50%), due to the Insufficient Documentation Group members’ purported failure to provide State Fund with information necessary for it to accurately underwrite risk and to “encourage full disclosure.” However, Defendants (i) never notified Plaintiff Resilience or, upon information and belief, the other Insufficient Documentation Group members of their purported failure to provide sufficient documentation; (ii) never provided them an opportunity to question or cure this purported failure; or (iii) even directly disclosed to Plaintiff Resilience or the Insufficient Documentation Group members of the tier modifier they were being assigned or the basis of that tier modifier.

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).¹

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

¹ 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.²

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

27 ² 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.³

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

27 ³ 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"),⁴ 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 ⁴ 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)

61. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-60 above as if fully set forth herein.

62. Plaintiffs and the Algorithm Group entered into contracts with State Fund to provide workers' compensation insurance to Plaintiffs and the Class.

63. Upon information and belief, these standard form contracts provided in pertinent part that "[a]ll premium for this policy will be determined by our manuals of rules rates, rating plan and classifications. We may change our manual and apply the changes to this policy if authorized by law or a governmental agency regulating this workers' compensation insurance." The contracts further provide that "[t]he final premium will be determined after this policy ends by using the actual premium basis and the proper classifications, rates and rating plan that lawfully apply to the business and work covered by this policy."

64. Plaintiff American Jetter and each member of the Algorithm Group purchased a workers' compensation insurance policy from State Fund and was charged and paid a premium to State Fund based in part on State Fund's unlawful application of a tier modifier in excess of 1.00 where such tier modifier was applied by State Fund based on the mathematical application of the tier modifier Algorithm to the insured's claims history and other information taken into account by the Algorithm.

65. Defendants breached State Fund's agreements with Plaintiff American Jetter and the Algorithm Group by charging insurance rates that were not calculated in a lawful manner. For the reasons set forth herein, Defendants' usage of the undisclosed tier modifier Algorithm, and the rating plan modifier incorporating the undisclosed tier modifier Algorithm, in calculating its insureds' premiums was unlawful. Accordingly, Defendants' assessment of unlawful rates is a breach of State Fund's insurance agreements with Plaintiff American Jetter and the Algorithm Group.

66. Plaintiff Resilience and each member of the Insufficient Documentation Group purchased a workers' compensation insurance policy from State Fund and was charged and paid a 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.

70. Plaintiffs have performed all of the terms of its agreements with State Fund except for those for which performance has been excused by Defendants' unlawful conduct.

71. As a proximate result of Defendants' breach of the agreements, Plaintiffs and the Class have suffered losses in an amount exceeding the jurisdictional minimum of this Court.

COUNT II
CAL. BUS. & PROF. CODE § 17200, *et seq.*
(On Behalf of Plaintiffs and the Class)

72. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-60 above as if fully set forth herein.

73. Plaintiffs have standing to pursue this claim under California's UCL because they suffered an injury-in-fact and lost money as a result of Defendants' practices.

74. Plaintiff American Jetter and each member of the Algorithm Group purchased a workers' compensation insurance policy from State Fund and was charged and paid a premium to State Fund based in part on State Fund's unlawful application of a tier modifier in excess of 1.00 where such tier modifier was applied by State Fund based on the mathematical application of the tier modifier Algorithm to the insured's claims history and other information taken into account by the Algorithm.

75. For the reasons set forth herein, State Fund’s application of a tier modifier in excess of 1.00, and a rating plan modifier incorporating the tier modifier, violated, with respect to the Algorithm Group, Insurance Code section 11735 which requires, among other things, that all insurers doing business in California file, publicly disclose and/or permit to be publicly disclosed all rates and supplementary rate information before charging any such rates. Specifically, section 11735(b) requires in pertinent part that “[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. Copies may be obtained by any person upon request and the payment of a reasonable charge.” Under section 11730 of the Insurance Code, 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.”

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 (1) 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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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, 2018.¹ 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.² 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

¹ 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.

² 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.³ The Newmans are also the shareholders of a corporation named Firetect, Inc. ("Firetect").⁴ Ms. Newman is Firetect's president.⁵ The Newmans, as A-Brite's general partners, and Firetect are jointly insured as a single employer under the Policy.⁶

Appellant is in the business of cleaning residential and theatrical blinds and drapery, as well as treating drapery with fire retardant.⁷ The business is headquartered in Valencia, Los Angeles County, California, and has been in operation for 30 years.⁸

B. Appellant's Policy and Claims History

SCIF has provided workers' compensation insurance to Appellant for about the last 20 years.⁹ 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.¹⁰ For those

³ Transcript of Proceedings on January 16, 2018 ("Tr.") at 25:10-26:3.

⁴ Tr. 26:18-25.

⁵ Tr. 27:22-23.

⁶ 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.

⁷ Tr. 26:4-17.

⁸ Tr. 25:1-4.

⁹ Tr. 38:11-14; Exh. 219.

¹⁰ 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.¹¹

During the 20 years it has been insured by SCIF, Appellant received a single workers' compensation claim.¹² That claim resulted from a bruise sustained by one of Appellant's employees on September 10, 2015.¹³ SCIF initially reserved \$24,000 to cover the estimated losses and expenses.¹⁴ However, the claim closed on November 6, 2015 with substantially lower total combined losses and expenses of \$819, which SCIF paid.¹⁵

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."¹⁶ SCIF's manuals and rating plans include several modifiers, which affected Appellant's premium.¹⁷

1. Rating Plan Modifier

SCIF determined the premiums for the 2015 Period and 2016 Period in part based on a "rating plan modifier."¹⁸ SCIF applied the rating plan modifier to Appellant's "standard premium" to arrive at a "modified premium."¹⁹ 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

¹¹ Tr. 37:23-24, 38:5-7; Exh. 206; Exh. 215.

¹² Tr. 28:21-29:11; Exh. 3 at 3-3 through 3-6.

¹³ Exh. 201 at 201-1.

¹⁴ Exh. 1 at 1-40.

¹⁵ Tr. 65:8-9; Exh. 201 at 201-1.

¹⁶ Exh. 209 at 209-4 [Part Five, § A].

¹⁷ Exh. 1; Exh. 2.

¹⁸ Exh. 210 at 210-1; Exh. 218 at 218-2.

¹⁹ 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.²⁰ 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 Policy²¹. SCIF’s rate filings with the Commissioner included a 1.15 territory modifier for Los Angeles County, effective April 1, 2015.²²

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).²³ For unclear reasons, SCIF did not apply the credit to the 2016 period.²⁴ 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).²⁵

c. Direct Placement Modifier

SCIF applied a three percent “direct placement” credit (0.97 modifier) to the Policy

²⁰ Tr. 58:14-59:8. See also Tr. 15:3-17:18 regarding trade secret privilege claimed by SCIF in the algorithm.

²¹ Exh. 206 at 206-3; Exh. 215 at 215-3.

²² Exh. 1 at 1-9, 1-27.

²³ Exh. 206 at 206-3; Exh. 208 at 208-2.

²⁴ Exh. 215 at 215-3; Exh. 218 at 218-2.

²⁵ Exh. 1 at 1-4; Exh. 2 at 2-1.

for both the 2015 Period and 2016 Period.²⁶ A 2011 SCIF rate filing with the Commissioner describes this three percent credit.²⁷

d. Rating Tier Modifier

SCIF assigns policyholders to various “rating tiers,” each with its own modifier.²⁸ SCIF assigns tiers based on “tier scores.”²⁹ Tier scores are calculated by SCIF using software it alternately refers to as the rating engine, tiering engine, scoring engine, or quote engine.³⁰ 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.³¹ 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.³² The algorithm is not included in any of SCIF’s rate filings with the Commissioner.³³

The algorithm takes into account the policyholder’s prospective estimated premium, payroll and number of employees.³⁴ It also factors in three years of the policyholder’s historical premium and loss data.³⁵ That data includes the frequency and number of workers’ compensation claims and whether those claims involved medical expenses or compensation for

²⁶ Exh. 206 at 206-3; Exh. 208 at 208-2; Exh. 215 at 215-3; Exh. 218 at 218-2.

²⁷ Exh. 1 at 1-1; Exh. 2 at 2-2.

²⁸ Tr. 56:10-17; Exh. 1 at 1-26; Exh. 2 at 2-27.

²⁹ Tr. 74:22-75:2.

³⁰ Tr. 62:24, 65:19-21; 74:20-25.

³¹ Tr. 14:22-17:18; Tr. 74:20-75:13; See also SCIF Letter to ALJ renewing objection, dated February 1, 2018.

³² Tr. 97:3-21, 101-3; 102-17; Exh. 101; Exh. 205; Exh. 208.

³³ See Exh. 1, Exh. 2.

³⁴ Tr. 57:8-11.

³⁵ Tr. 57:11-13, 83:10-19.

lost employee time or disability.³⁶

Each rating tier has an associated modifier.³⁷ Starting in 2013 and through the commencement of the 2015 Period, SCIF employed a rating framework with four tiers, A through D.³⁸ In the year preceding the 2015 Period, Appellant was assigned to Tier B, which at the time had a rating tier modifier of 0.951.³⁹

SCIF revised its tier rating framework for the 2015 Period.⁴⁰ 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 2.0.⁴¹

In the 2015 Period, Tier D applied to tier scores of at least 0.30092.⁴² Using its secret algorithm, SCIF initially calculated Appellant's tier score as 0.419525161.⁴³ Consequently, SCIF moved Appellant from Tier B to Tier D, thereby doubling Appellant's premium.⁴⁴ 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.⁴⁵ SCIF notified Appellant of the tier change and premium increase in a renewal quote dated October 5, 2015.⁴⁶ Nothing in the record or in SCIF's rate filings explains how Appellant's tier scores were calculated.

³⁶ Tr. 57:15-25.

³⁷ Tr. 56:10-17; 58:12-17; Exh. 1 at 1-26; Exh. 2 at 2-33, 2-34.

³⁸ Tr. 56:18; Exh. 1 at 1-26.

³⁹ Tr. 59:11-12.

⁴⁰ Tr. 59:21-24; Exh. 1 at 1-26.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Exh. 1 at 1-39.

⁴⁴ Tr. 61:5-6.

⁴⁵ Tr. 61:5-64:10; Exh. 1 at 1-40.

⁴⁶ Exh. 205 at 205-3.

Appellant complained to SCIF about the increase,⁴⁷ which resulted in SCIF recalculating the tier score and reassigning Appellant to Tier C on January 25, 2016, with a tier modifier of 1.5.⁴⁸ 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.⁴⁹ 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 1.0.⁵⁰

Starting in the 2016 Period, SCIF increased the number of rating tiers to a numerical system ranging from four to seven.⁵¹ 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.⁵² SCIF assigned Appellant to Tier 4 for the 2016 Period.⁵³ If Appellant had incurred no workers' compensation claims in the three prior years, SCIF would have assigned Appellant to Tier 3.⁵⁴

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.⁵⁵

⁴⁷ Exh. 3 at 3-7.

⁴⁸ Tr. 33:12-23, 64:11-65:16; Exh. 3 at 3-30.

⁴⁹ Tr. 64:21-65:21; Exh. 1 at 1-36 through 1-41.

⁵⁰ Tr. 105:21-106:14.

⁵¹ Tr. 72:12-14; Exh. 2 at 2-27.

⁵² Tr. 93:6-14; Exh. 2 at 2-27.

⁵³ Tr. 72:7-11; Exh. 2 at 2-39.

⁵⁴ Tr. 106:15-107:3.

⁵⁵ 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."⁵⁶ That modifier applied a flat discount of 11.3% to all modified premium over \$5,000.⁵⁷ SCIF's 2011 rate filings with the Commissioner describe that discount.⁵⁸

D. Policy Audit

On March 27, 2017, SCIF conducted an audit for the 2015 Period.⁵⁹ 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 \$20,996.99,⁶⁰ a total premium of \$19,189.36,⁶¹ mandatory surcharges of \$629.83, and total charges of \$19,819.19.⁶²

V. Discussion

Appellant argues SCIF's rating plan modifiers and premium discount modifiers were incorrectly applied.⁶³ Appellant further contends SCIF miscalculated Appellant's 2015 Period payroll. SCIF argues all of the modifiers were valid and correctly applied.⁶⁴ SCIF also stands behind its audit and further asserts the Commissioner may lack jurisdiction to determine the payroll calculation issue.⁶⁵ For the reasons discussed below, the Commissioner finds that (1)

⁵⁶ Tr. 71:6-72:6; Exh. 210 at 210-1; Exh. 218 at 218-2.

⁵⁷ Tr. 71:6-16; Exh. 210 at 210-1; Exh. 218 at 218-2.

⁵⁸ Exh. 1 at 1-2, 1-3.

⁵⁹ Tr. 115:14-25; Exh. 211 at 211-1.

⁶⁰ Obtained by multiplying the base premium by a rating plan modifier of 1.50593. (Exh. 212 at 212-1.)

⁶¹ Obtained by multiplying the modified premium by a premium discount modifier of 0.91391. (*Ibid.*)

⁶² Obtained by adding the total premium and the mandatory surcharges. (*Id.* at 212-1, 212-2.)

⁶³ Appeal dated August 25, 2017 ("Appeal").

⁶⁴ SCIF's Response to the Appeal, dated October 18, 2017, at 3-4.

⁶⁵ 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.⁶⁶

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.⁶⁷ 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."⁶⁸

⁶⁶ See generally Ins. Code §§ 11730-11742.

⁶⁷ Ins. Code § 11730, subd. (g). Rates exclude the application of individual risk variations based on loss or expense considerations, as well as minimum premiums.

⁶⁸ 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.⁶⁹ 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).

⁶⁹ 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.*"⁷⁰ "[M]oney paid by an insured to an insurer for coverage constitutes premium regardless of its name."⁷¹ 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

⁷⁰ Ins. Code § 11730, subd. (j), emphasis added.

⁷¹ *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.⁷² 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.⁷³ That is true regardless of whether the Commissioner first disapproved the unfiled rates under Insurance Code section 11737.⁷⁴

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"⁷⁵ that increased Appellant's premium.⁷⁶ 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,⁷⁷ as well as the policyholder's historical premium and loss data.⁷⁸ There is no way for the policyholder or anyone else to calculate a tier score without the algorithm. Without the

⁷² 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."]

⁷³ *Shasta Linen* at 52. *Shasta Linen* was designated precedential under Gov. Code section 11425.60, subdivision (b).

⁷⁴ See *Ibid.*

⁷⁵ Exh. 210 at 210-1; Exh. 218 at 218-2.

⁷⁶ 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.*)

⁷⁷ Tr. 57:8-11.

⁷⁸ 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.⁷⁹ 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).⁸⁰

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[.]"⁸¹ 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

⁷⁹ Exh. 1 at 1-26.

⁸⁰ 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).)

⁸¹ 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.⁸² 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

⁸² See generally Ins. Code §§ 11730-11742.

shocked.”⁸³ 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 11735.⁸⁴ 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

⁸³ Tr. at 29:8-25.

⁸⁴ 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.⁸⁵ 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,⁸⁶ 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

⁸⁵ Ins. Code § 11737(b).

⁸⁶ 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.⁸⁷

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

⁸⁷ (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.⁸⁸ 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.⁸⁹ It has no applicability to administrative or other governmental proceedings unless expressly invoked by statute or regulation.⁹⁰

Government Code section 6254 exempts certain trade secrets from the disclosure requirements of the California Public Records Act.⁹¹ 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,

⁸⁸ Obj. to Order to Disclose at 6-8.

⁸⁹ Evid. Code § 300.

⁹⁰ 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.

⁹¹ 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*⁹² 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

⁹² *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.⁹³ That section’s exclusion of the specific provision of section 6254 “merely buttresses this rule.”⁹⁴ 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 1060.⁹⁵

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...”⁹⁶

Finally, contrary to SCIF’s assertions,⁹⁷ 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

⁹³ Id. at 1042-1043, emphasis in original.

⁹⁴ Id. at 1042.

⁹⁵ Id. at 1047. As noted above, privilege under Evidence Code section 1060 is incorporated by reference in Government Code section 6254, subdivision (k).

⁹⁶ Emphasis added.

⁹⁷ 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]."⁹⁸

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.

⁹⁸ 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).⁹⁹ 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.¹⁰⁰

However, SCIF did not apply the modifier to the 2016 Period.¹⁰¹ 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 \$819.¹⁰² 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

⁹⁹ Exh. 1 at 1-4; Exh. 2 at 2-1.

¹⁰⁰ Exh. 206 at 206-3; Exh. 208 at 208-2.

¹⁰¹ Exh. 215 at 215-3; Exh. 218 at 218-2.

¹⁰² 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.”¹⁰³ 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.¹⁰⁴

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.¹⁰⁵ 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.¹⁰⁶

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 \$5,000.¹⁰⁷ 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.¹⁰⁸ 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

¹⁰³ Exh. 1 at 1-1; Exh. 2 at 2-2.

¹⁰⁴ Exh. 206 at 206-3; Exh. 208 at 208-2; Exh. 215 at 215-3; Exh. 218 at 218-2.

¹⁰⁵ Exh. 1 at 1-9, 1-27 [effective April 1, 2015]; Exh. 2 [no changes to territory modifiers from prior year].

¹⁰⁶ Exh. 206 at 206-3; Exh. 215 at 215-3.

¹⁰⁷ Exh. 1 at 1-2, 1-3.

¹⁰⁸ Tr. 71:6-72:6; Exh. 210 at 210-1; Exh. 218 at 218-2.

using the revised modified premiums.¹⁰⁹

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.¹¹⁰

2. Analysis

SCIF produced a final payroll audit report for the 2015 Period, indicating Appellant's workers' compensation payroll for the entire period was \$188,995.¹¹¹ Appellant contests the accuracy of the report and produced its own payroll summary for that period, asserting a total workers' compensation payroll of \$180,890.44.¹¹² Appellant thereby met its initial burden of going forward.

¹⁰⁹ 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: $1 - ((\$13,997.94 - \$5,000) \times 0.113) \div \$13,997.94 = 0.927363$.

¹¹⁰ *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051 fn. 5.

¹¹¹ Exh. 211 at 211-5.

¹¹² 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.¹¹³ 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, 2016,¹¹⁴ which were for the work period ending November 20, 2016.¹¹⁵ 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.¹¹⁶

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

¹¹³ Cal. Code Regs., tit. 10, § 2318.6, Part 3, Section V, Rule 1 [payroll includes amounts "earned during the policy period"].

¹¹⁴ Exh. 3 at 3-47 through 3-50.

¹¹⁵ See, e.g., Exh. 102 at 102-88.

¹¹⁶ 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

THE RATING PERIOD BEGINS AND ENDS AT 12:01AM
PACIFIC STANDARD TIME

CONTINUOUS POLICY

RATING PERIOD 1-13-17 TO 1-13-18

AMERICAN JETTER

DEPOSIT PREMIUM

\$1,185.00

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

THE RATING PERIOD BEGINS AND ENDS AT 12:01AM
PACIFIC STANDARD TIME

CONTINUOUS POLICY

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

*
* 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.

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

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

THE RATING PERIOD BEGINS AND ENDS AT 12:01AM
PACIFIC STANDARD TIME

CONTINUOUS POLICY

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 [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.

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

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
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 000000000

TOTAL ESTIMATED ANNUAL PREMIUM

\$1,610

BROKER COPY

COUNTERSIGNED AND ISSUED AT SAN FRANCISCO DECEMBER 27, 2018 POLICY L PAGE 1 OF 3
SCIF FORM 10963A (REV.7-2014) (OVER PLEASE)

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

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

BROKER COPY

EXHIBIT E



HOME OFFICE	SAN FRANCISCO	POLICY DECLARATIONS
CALIFORNIA WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY POLICY THESE DECLARATIONS ARE A PART OF THE WORKERS' COMPENSATION POLICY INDICATED HEREON.		

THIS INSURANCE IS EFFECTIVE FROM
12:01 A.M., PACIFIC STANDARD TIME
12-03-15 TO 12-03-16 AND SHALL
AUTOMATICALLY RENEW EACH 12-03
UNTIL CANCELLED

CONTINUOUS POLICY 9147758-15

RESILIENCE TREATMENT CENTER

DEPOSIT PREMIUM

\$1,545.00

1940 CENTURY PARK
LOS ANGELES, CALIF 90067

MINIMUM PREMIUM	PREMIUM ADJUSTMENT PERIOD
100	12
200	12
300	12
400	12
500	12
600	12
700	12
800	12
900	12
1000	12
1100	12
1200	12
1300	12
1400	12
1500	12
1600	12
1700	12
1800	12
1900	12
2000	12
2100	12
2200	12
2300	12
2400	12
2500	12
2600	12
2700	12
2800	12
2900	12
3000	12
3100	12
3200	12
3300	12
3400	12
3500	12
3600	12
3700	12
3800	12
3900	12
4000	12
4100	12
4200	12
4300	12
4400	12
4500	12
4600	12
4700	12
4800	12
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6600	12
6700	12
6800	12
6900	12
7000	12
7100	12
7200	12
7300	12
7400	12
7500	12
7600	12
7700	12
7800	12
7900	12
8000	12
8100	12
8200	12
8300	12
8400	12
8500	12
8600	12
8700	12
8800	12
8900	12
9000	12
9100	12
9200	12
9300	12
9400	12
9500	12
9600	12
9700	12
9800	12
9900	12
10000	12

\$390.00
MONTHLY
N SP

NAME OF EMPLOYER-	RESILIENCE TREATMENT CENTER (A CORPORATION)

TRADE NAMES- RESILIENCE TREATMENT CENTER

LOCATIONS- 001 1940 CENTURY PARK, STE 200
LOS ANGELES CA 90067

1. WORKERS' COMPENSATION INSURANCE - PART ONE OF THIS POLICY APPLIES TO THE WORKERS' COMPENSATION LAWS OF THE STATE OF CALIFORNIA.
2. EMPLOYER'S LIABILITY INSURANCE - PART TWO OF THIS POLICY APPLIES TO LIABILITY UNDER THE LAWS OF THE STATE OF CALIFORNIA. THE LIMIT OF OUR LIABILITY INCLUDING DEFENSE COSTS UNDER PART TWO IS,

\$1,000,000

CODE NO. PRINCIPAL WORK AND RATES EFFECTIVE FROM 12-03-15 TO 12-03-16

		PREMIUM BASIS	BASE RATE	INTERI BILLIN RATE
8834-1	PHYSICIANS' PRACTICES AND OUTPATIENT CLINICS--ALL EMPLOYEES--INCLUDING CLERICAL OFFICE EMPLOYEES	480000	3.04	3.2

*****BUREAU NOTE INFORMATION*****

GARAI, ANDIE P, S, T 100.00%

FEIN 474573476

TOTAL ESTIMATED ANNUAL PREMIUM **\$15,450**



HOME OFFICE	SAN FRANCISCO	POLICY DECLARATIONS
CALIFORNIA WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY POLICY		
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

CALIFORNIA WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY POLICY
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.

A handwritten signature in cursive script, appearing to read "Kent R. LaRue".

AUTHORIZED REPRESENTATIVE

A handwritten signature in cursive script, appearing to read "Vernon Steiner".

PRESIDENT AND CEO

BETSY C. MANIFOLD (182450)
manifold@whafh.com
WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP
750 B Street, Suite 1820
San Diego, CA 92101
Tel: (619) 239-4599
Fax: (619) 234-4599

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

AMERICAN JETTER & PLUMBING, INC. and
RESILIENCE TREATMENT CENTER, on behalf
of itself 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

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
ANYWHERE to those persons noticed above at their respective electronic service
21 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

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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

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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

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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

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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.

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- **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

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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

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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

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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

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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.

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- 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

<div>500 LEADING PLAINTIFF FINANCIAL LAWYERS</div> <div>LAWDRAGON 2020</div>	<div>500 LEADING PLAINTIFF FINANCIAL LAWYERS</div> <div>LAWDRAGON 2021</div>	<div>500 LEADING PLAINTIFF FINANCIAL LAWYERS</div> <div>LAWDRAGON 2022</div>
<div>RATED BY Super Lawyers® Regina Calcaterra</div> <div>SELECTED IN 2021 THOMSON REUTERS</div>	<div>RATED BY Super Lawyers® Regina Calcaterra</div> <div>SELECTED IN 2022 THOMSON REUTERS</div>	

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 list¹ 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* – Practicing 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* – Practicing Law Institute – December 10, 2020
- HarrisMartin Webinar Series: Baby Food Litigation- April 8, 2021

¹ 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. NBEO* (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

Calcaterra Pollack LLP



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.

Calcaterra Pollack LLP

- 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.

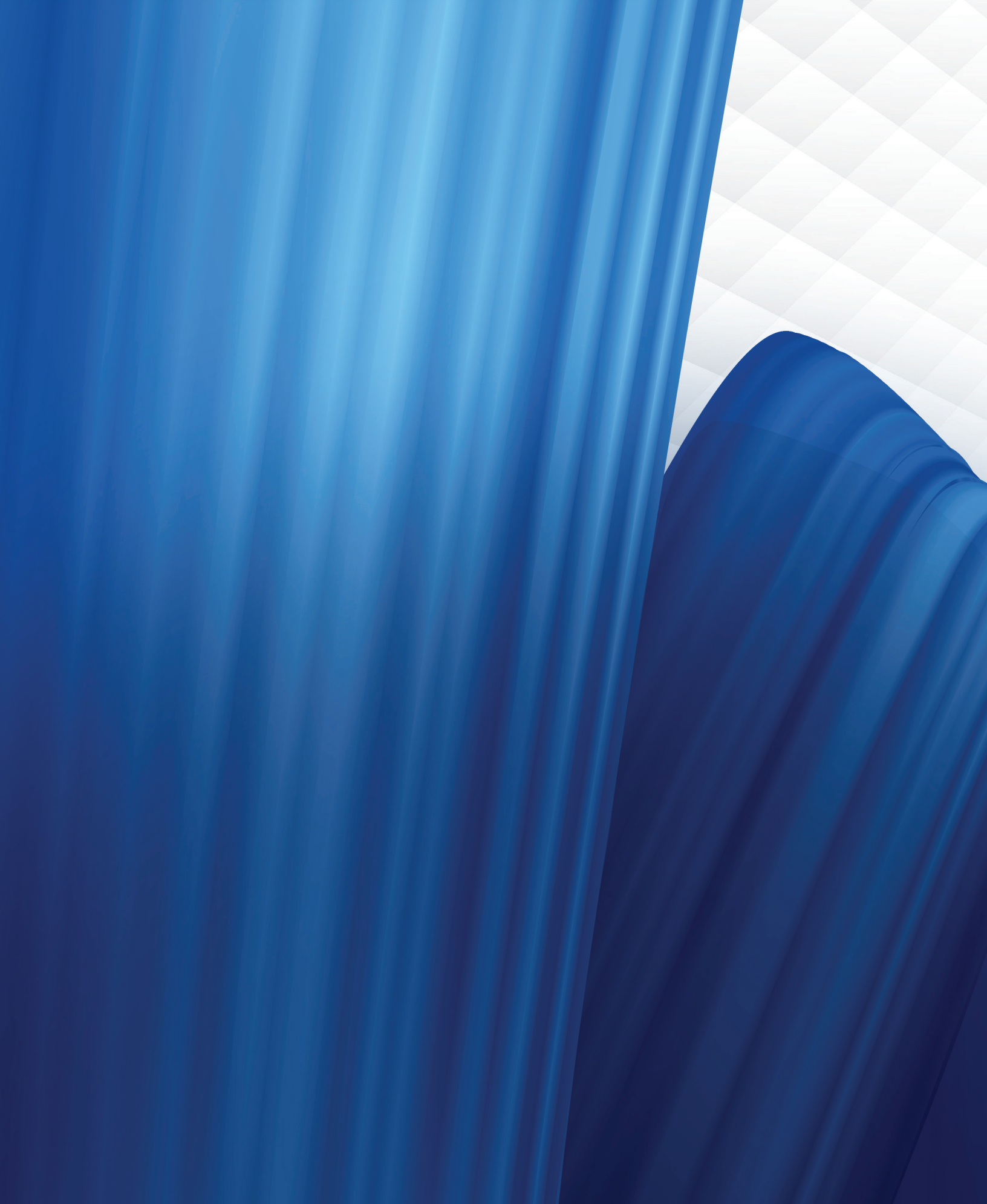


Table of Contents

BACKGROUND.....	7
THE SURVEY	7
METHODOLOGY	9
STATISTICAL TERMS USED	10
KEY FINDINGS.....	11
IMPACT OF COVID-19 ON COMPENSATION.....	16
Covid-19 -- A Historical Lens	16
EXHIBIT 1.1 EFFECT OF COVID-19 ON COMPENSATION	17
IMPACT OF COVID-19 ON ABILITY TO WORK REMOTELY, GEOGRAPHIC LOCATION, FIRM PROGRAMS AND BENEFITS, RETIREMENT AGE, AND FULL/PART TIME STATUS	18
WORKING REMOTELY - IMPORTANCE	18
EXHIBIT 2.1 – IMPORTANCE OF WORKING REMOTELY	18
PARTNERSHIP TENURE AND PARTNERSHIP STATUS	18
EXHIBIT 2.2 IMPORTANCE OF WORKING REMOTELY BY PARTNERSHIP TENURE	18
PRACTICE AREA	19
CITY	19
GENDER AND ETHNICITY.....	19
WORKING REMOTELY -FREQUENCY	20
EXHIBIT 2.3 FREQUENCY OF WORKING REMOTELY	20
PARTNERSHIP TENURE AND PARTNERSHIP STATUS	20
CITY	20
GENDER AND ETHNICITY.....	20
CHANGE IN GEOGRAPHY	21
EXHIBIT 2.4 CHANGE IN GEOGRAPHY	21
PARTNERSHIP TENURE AND PARTNERSHIP STATUS	21
CITY	21

HEALTH AND WELL-BEING PROGRAMS AND BENEFITS	22
EXHIBIT 2.5 HEALTH AND WELL-BEING PROGRAMS AND BENEFITS INTRODUCED OR INCREASED IN COVID-19	22
CITY	22
RETIREMENT AGE.....	22
EXHIBIT 2.6 CHANGE IN RETIREMENT AGE.....	23
PARTNERSHIP TENURE AND PARTNERSHIP STATUS	23
CITY	23
GENDER AND ETHNICITY.....	23
IMPACT ON FULL-TIME/PART-TIME STATUS.....	24
EXHIBIT 2.7 IMPACT ON WORK SCHEDULE.....	24
PARTNERSHIP TENURE AND PARTNERSHIP STATUS	24
PRACTICE AREA	24
CITY	25
GENDER AND ETHNICITY.....	25
COMPENSATION, ORIGINATIONS, RECEIPTS, BILLING RATES AND HOURS	26
Partnership Tenure and Partnership Status.....	26
EXHIBIT 3.1 – AVERAGE TOTAL COMPENSATION BY PARTNER TENURE	27
EXHIBIT 3.2 – AVERAGE TOTAL COMPENSATION BY PARTNERSHIP STATUS.....	27
Practice Area.....	27
EXHIBIT 3.3 – AVERAGE TOTAL COMPENSATION BY PRACTICE AREA	28
City	28
EXHIBIT 3.4 – AVERAGE TOTAL COMPENSATION BY CITY	28
Compensation Transparency and Lockstep Type	29
EXHIBIT 3.5 – AVERAGE TOTAL COMPENSATION BY COMPENSATION TRANSPARENCY	29
EXHIBIT 3.6 – AVERAGE TOTAL COMPENSATION BY COMPENSATION SYSTEM	29
Gender and Ethnicity	30
EXHIBIT 3.7 – AVERAGE TOTAL COMPENSATION BY GENDER	30
EXHIBIT 3.8 – AVERAGE TOTAL COMPENSATION BY ETHNICITY	31
ORIGINATIONS	31
Partnership Tenure and Partnership Status	31
EXHIBIT 4.1 – AVERAGE ORIGINATIONS BY PARTNERSHIP TENURE	31
EXHIBIT 4.2 – AVERAGE ORIGINATIONS BY PARTNERSHIP STATUS.....	32
Practice Area.....	32

EXHIBIT 4.3 – AVERAGE ORIGINATIONS BY PRACTICE AREA	32
City	32
EXHIBIT 4.4 – AVERAGE ORIGINATIONS BY CITY	33
Compensation Transparency and Lockstep Type	33
EXHIBIT 4.5 – AVERAGE ORIGINATIONS BY COMPENSATION TRANSPARENCY	33
EXHIBIT 4.6 – AVERAGE ORIGINATIONS BY COMPENSATION SYSTEM	34
Gender and Ethnicity	34
EXHIBIT 4.7 – AVERAGE ORIGINATIONS BY GENDER.....	34
EXHIBIT 4.8 – AVERAGE ORIGINATIONS BY ETHNICITY	35
WORKING ATTORNEY RECEIPTS	35
BILLING RATES, DISCOUNTS, BILLABLE HOURS AND NON-BILLABLE HOURS	36
EXHIBIT 5.1 – AVERAGE BILLING RATE BY PRACTICE AREA	36
EXHIBIT 5.2 – AVERAGE BILLABLE HOURS BY PRACTICE AREA	37
EXHIBIT 5.3 – AVERAGE NON-BILLABLE HOURS BY PRACTICE AREA	37
COMPENSATION SATISFACTION	40
Satisfaction Ratings	40
EXHIBIT 6.1A – OVERALL SATISFACTION WITH TOTAL COMPENSATION (2022)	40
EXHIBIT 6.1B – OVERALL SATISFACTION WITH TOTAL COMPENSATION (2020)	40
Partnership Tenure and Partnership Status	41
EXHIBIT 6.2A – SATISFACTION BY PARTNERSHIP TENURE (2022)	41
EXHIBIT 6.2B – SATISFACTION BY PARTNERSHIP TENURE (2020)	41
EXHIBIT 6.3 A– SATISFACTION BY PARTNERSHIP STATUS (2022)	42
EXHIBIT 6.3B – SATISFACTION BY PARTNERSHIP STATUS (2020)	42
Practice Area.....	42
EXHIBIT 6.4A – SATISFACTION BY PRACTICE AREA (2022)	43
EXHIBIT 6.4B – SATISFACTION BY PRACTICE AREA (2020)	43
City	44
EXHIBIT 6.5A – SATISFACTION BY CITY (2022)	44
EXHIBIT 6.5B – SATISFACTION BY CITY (2020).....	44
Compensation Transparency and Lateral Status.....	45
EXHIBIT 6.6A – SATISFACTION BY COMPENSATION TRANSPARENCY (2022)	45
EXHIBIT 6.6B – SATISFACTION BY COMPENSATION TRANSPARENCY (2020)	45
EXHIBIT 6.7A – SATISFACTION BY LATERAL STATUS (2022)	46
EXHIBIT 6.7B – SATISFACTION BY LATERAL STATUS (2020)	46
Total Compensation, Total Originations and Billable Hours	46
EXHIBIT 6.8A – SATISFACTION BY TOTAL COMPENSATION (2022)	47

EXHIBIT 6.8B – SATISFACTION BY TOTAL COMPENSATION (2020)	47
EXHIBIT 6.9A – SATISFACTION BY TOTAL ORIGINATIONS (2022)	48
EXHIBIT 6.9B – SATISFACTION BY TOTAL ORIGINATIONS (2020)	48
EXHIBIT 6.10A – SATISFACTION BY BILLABLE HOURS (2022)	49
EXHIBIT 6.10B – SATISFACTION BY BILLABLE HOURS (2020).....	49
Gender and Ethnicity	50
EXHIBIT 6.11A – SATISFACTION BY GENDER (2022).....	50
EXHIBIT 6.11B – SATISFACTION BY GENDER (2020)	50
EXHIBIT 6.12A – SATISFACTION BY ETHNICITY (2022)	51
EXHIBIT 6.12B – SATISFACTION BY ETHNICITY (2020)	51
NOTES	52
About The Author	52
About Major, Lindsey & Africa	52
About Law360	52
APPENDICES.....	53
I – Respondent Profile.....	54
II – Impact of COVID-19.....	58
III – Average Total Compensation	85
IV – Average Total Originations	87
V – Average Total Working Attorney Receipts	89
VI – Average Billing Rates	91
VII – Average Billable Hours.....	93
VIII – Average Non-Billable Hours.....	95
IX – Satisfaction with Total Compensation.....	97
QUESTIONNAIRE.....	104

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%).¹

¹ 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.²

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

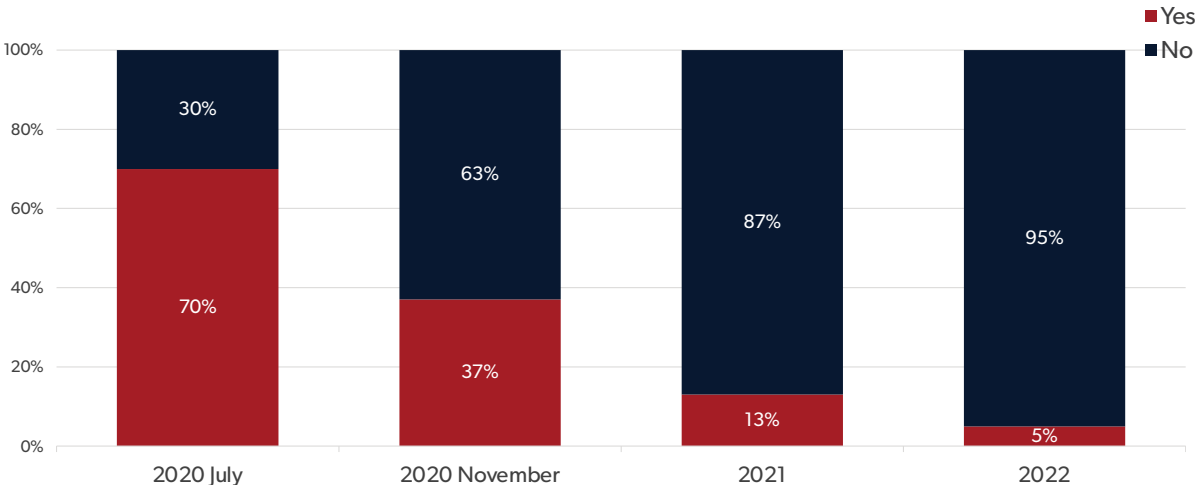
A total of 1,758 partners answered Question 11a, which asked respondents whether their 2021 total compensation/capital was affected by the COVID-19 pandemic. Only 13% of partners reported that COVID-19 impacted their 2021 compensation. A total of 1,757 partners answered Question 11c, which asked respondents 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.

²For 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

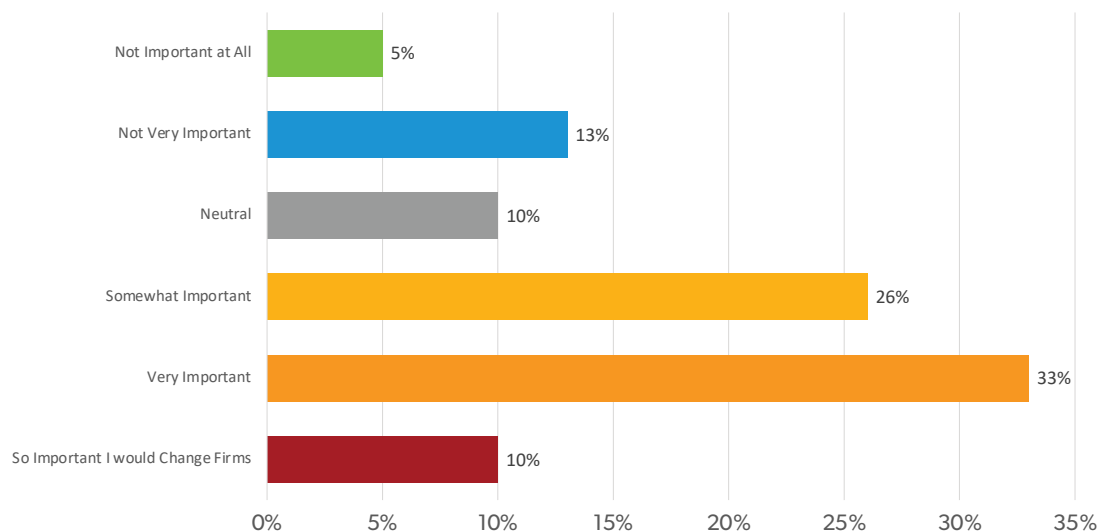
Questions 11e through 11j and 16 through 17c of the Survey dealt with the impact of COVID-19 on a respondent's ability to work remotely, geographic location, firm programs and benefits, anticipated retirement age, and full-time/part-time status. These key metrics were then sorted by the following categories:

- › 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

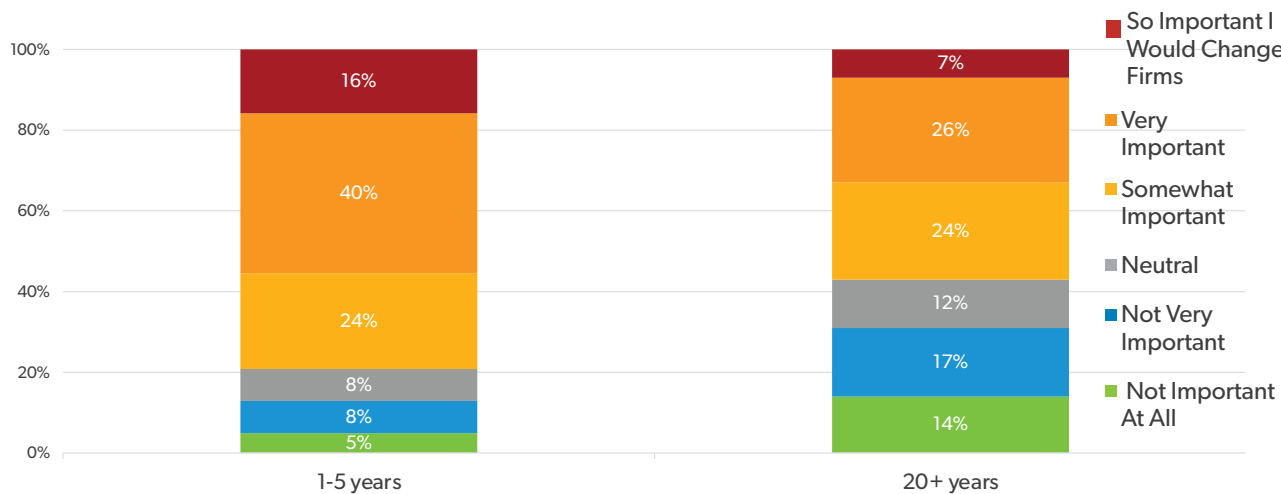


Partnership Tenure and Partnership Status

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%).

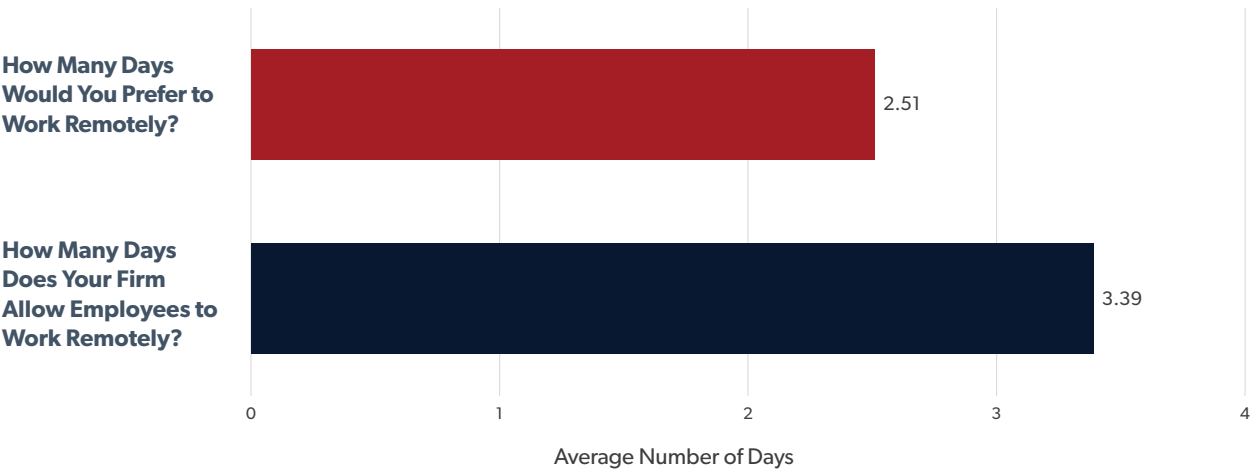
Black partners were most likely to place importance on working from home (84%) but least likely to say they would change jobs because of it (5%), while White partners were least likely to place importance on working from home (69%) but were more than twice as likely to say they would change jobs because 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

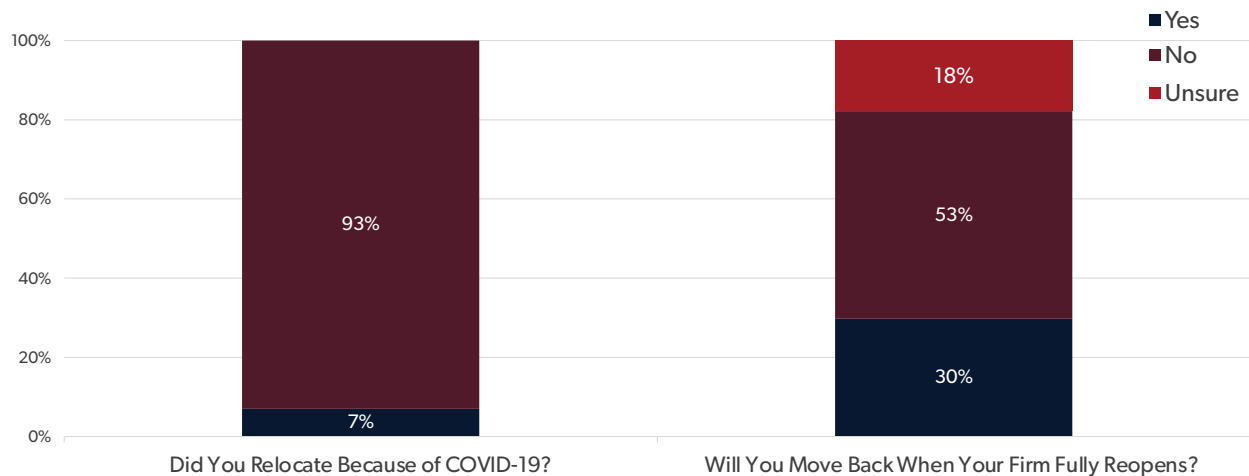
Female partners expressed a preference for working a greater number of days at home (3) than male partners (2).

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%).

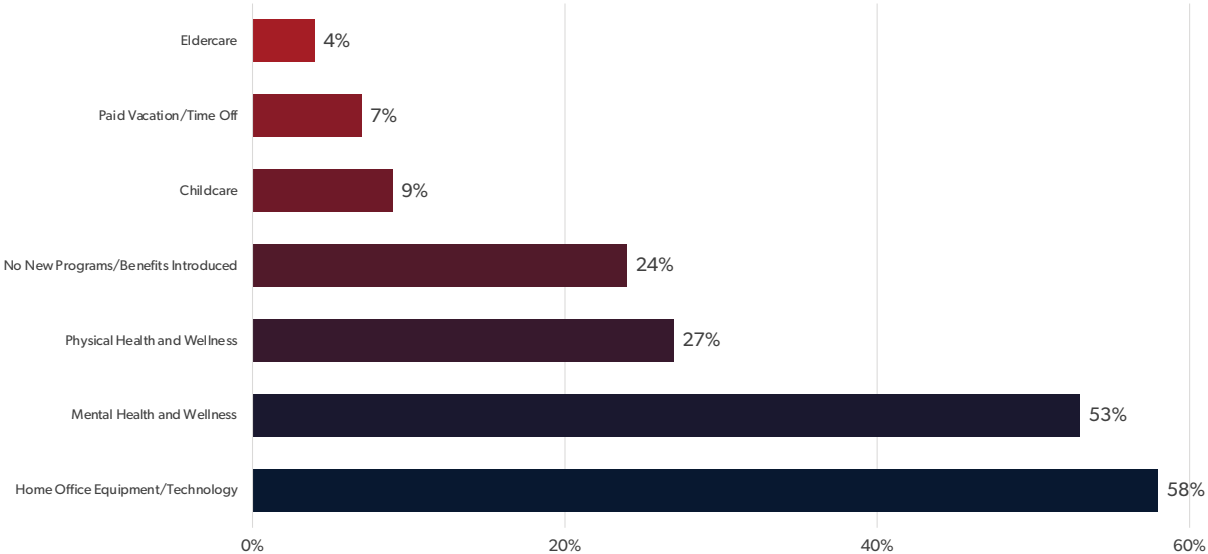
City

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



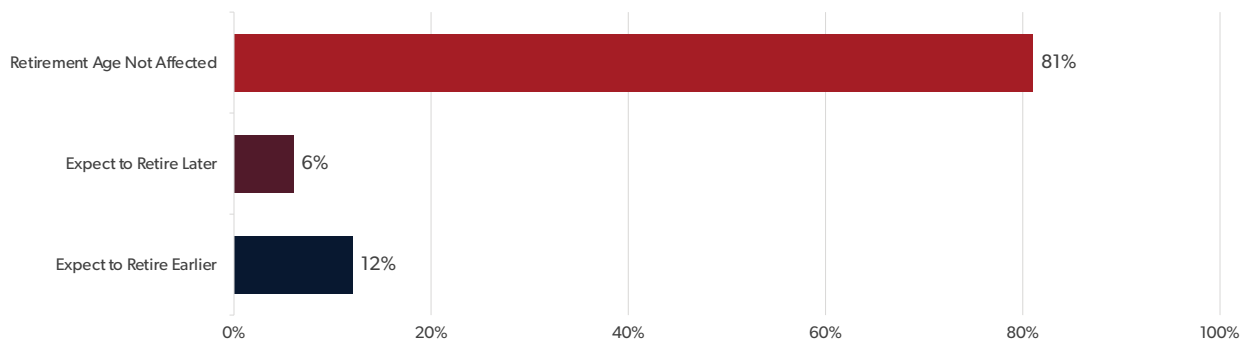
City

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).

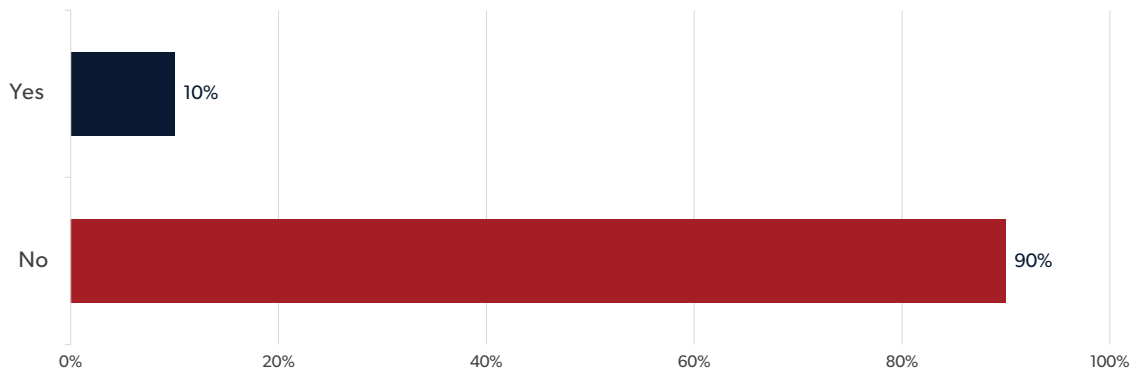
IMPACT ON FULL-TIME/PART-TIME STATUS

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

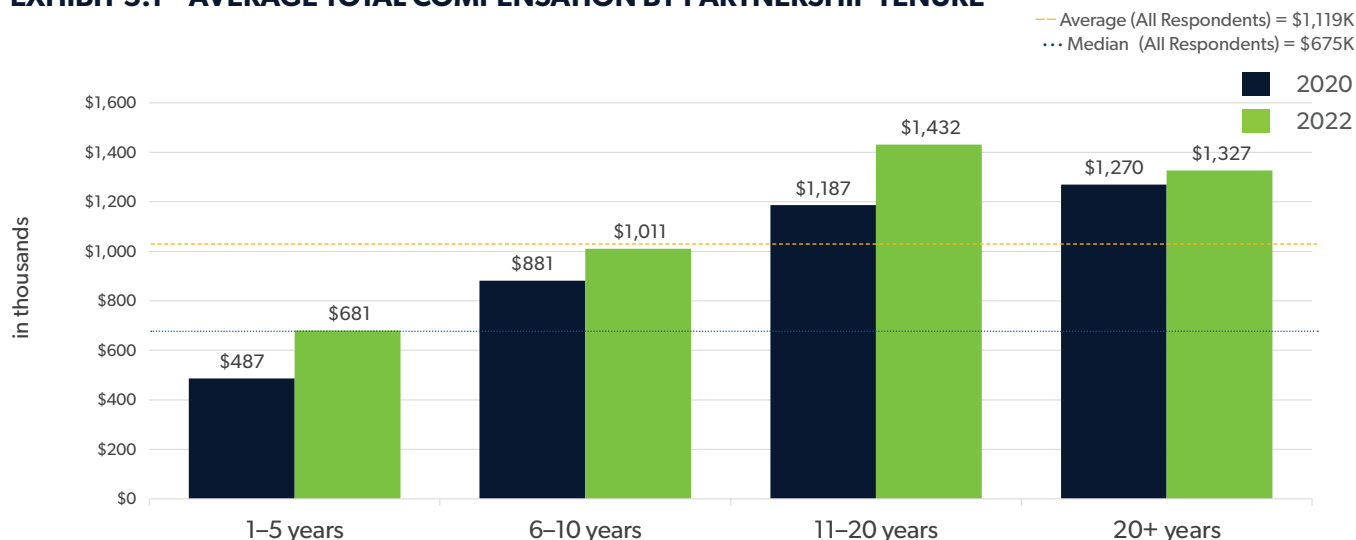
A total of 1,755 partners provided their compensation data, with reported compensation ranging from less than \$150,000 (31 respondents) to more than \$8,000,000 (15 respondents). Average compensation for all partners was \$1,119,000, up 15% from 2020 (\$970,000). Median compensation was \$675,000.³

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.

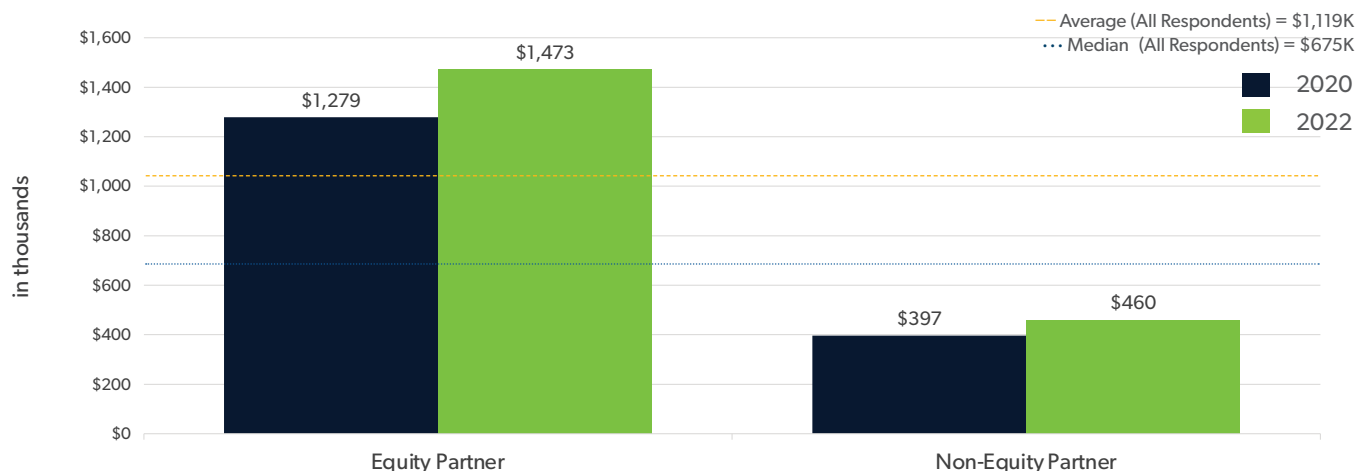
³ In many instances, this Report compares the results of the 2022 Survey with those of the 2020 Survey. However, it is important to note that due to the pandemic the 2020 Survey was targeted to a narrower range of partners (i.e., only partners at AmLaw 200-size firms and not also those at NLJ 350- and 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.

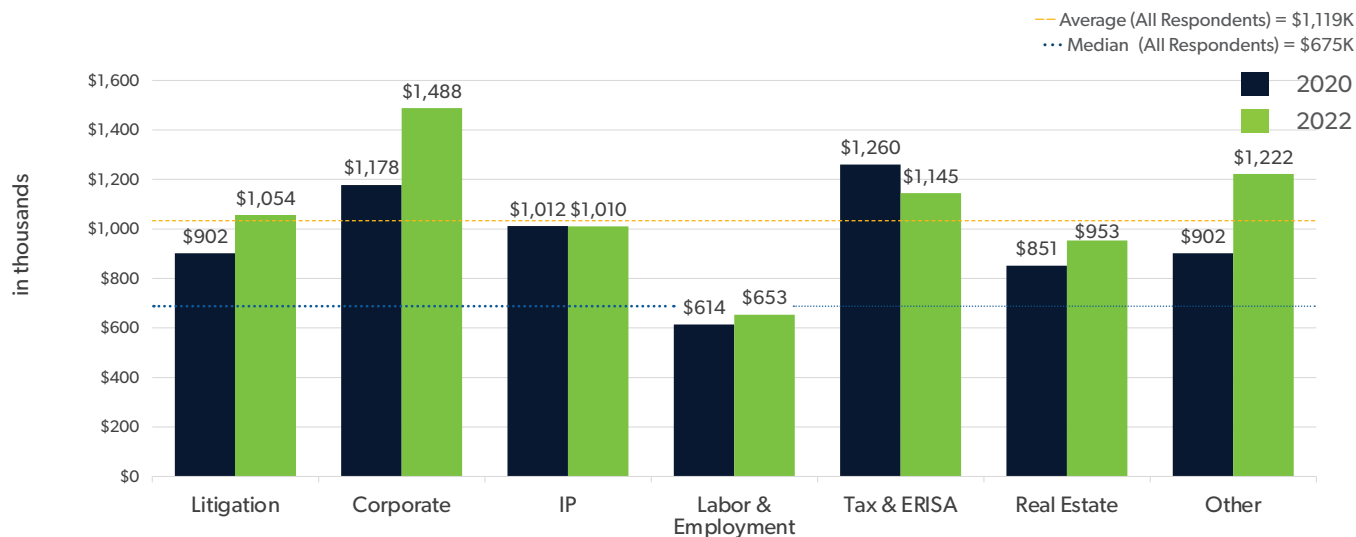
EXHIBIT 3.2 – AVERAGE TOTAL COMPENSATION BY PARTNERSHIP STATUS



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.

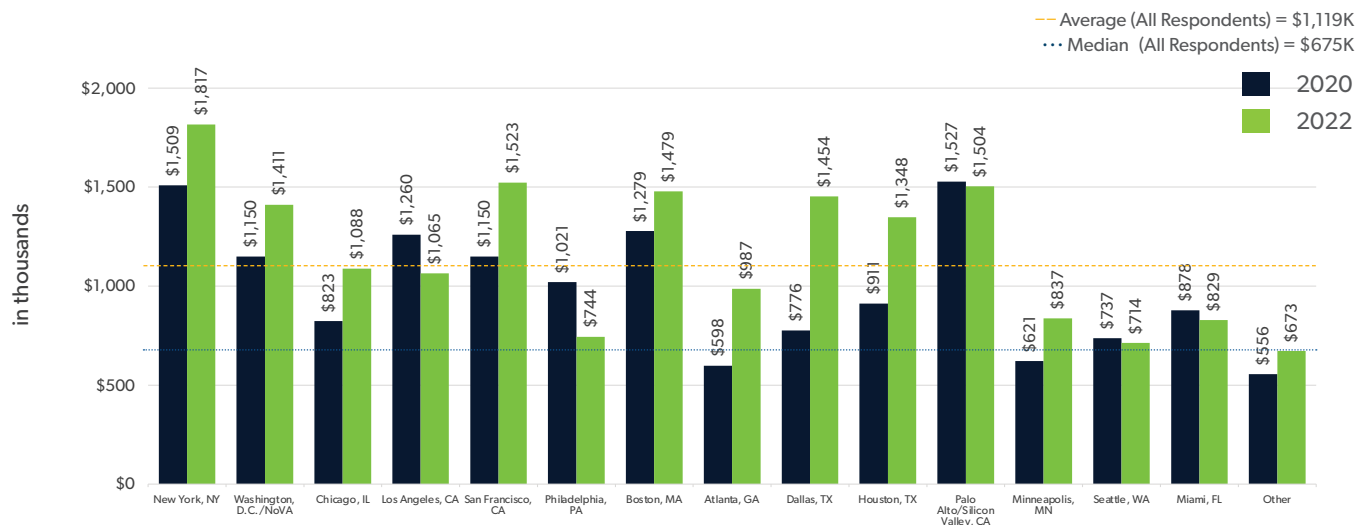
EXHIBIT 3.3 – AVERAGE TOTAL COMPENSATION BY PRACTICE AREA



CITY⁴

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



⁴ 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 Lockstep⁵ 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

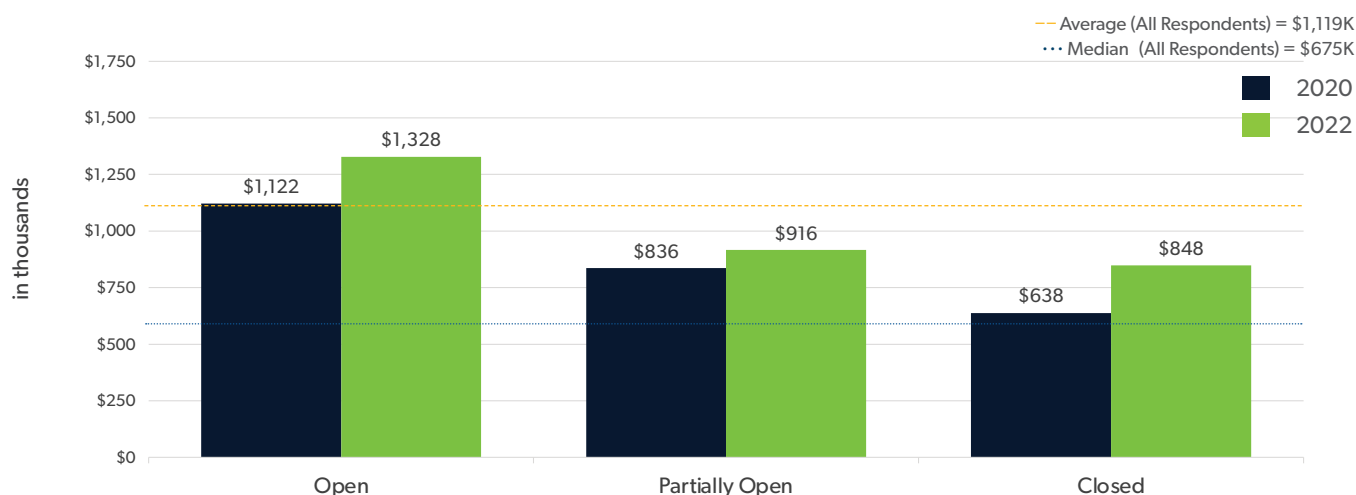
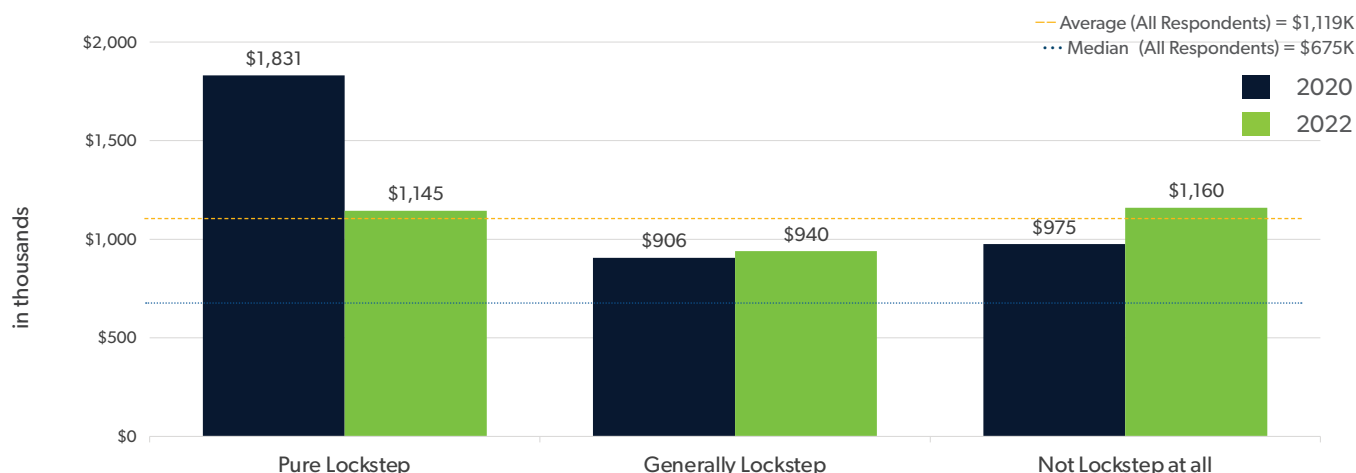


EXHIBIT 3.6 – AVERAGE TOTAL COMPENSATION BY COMPENSATION SYSTEM



⁵ 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.

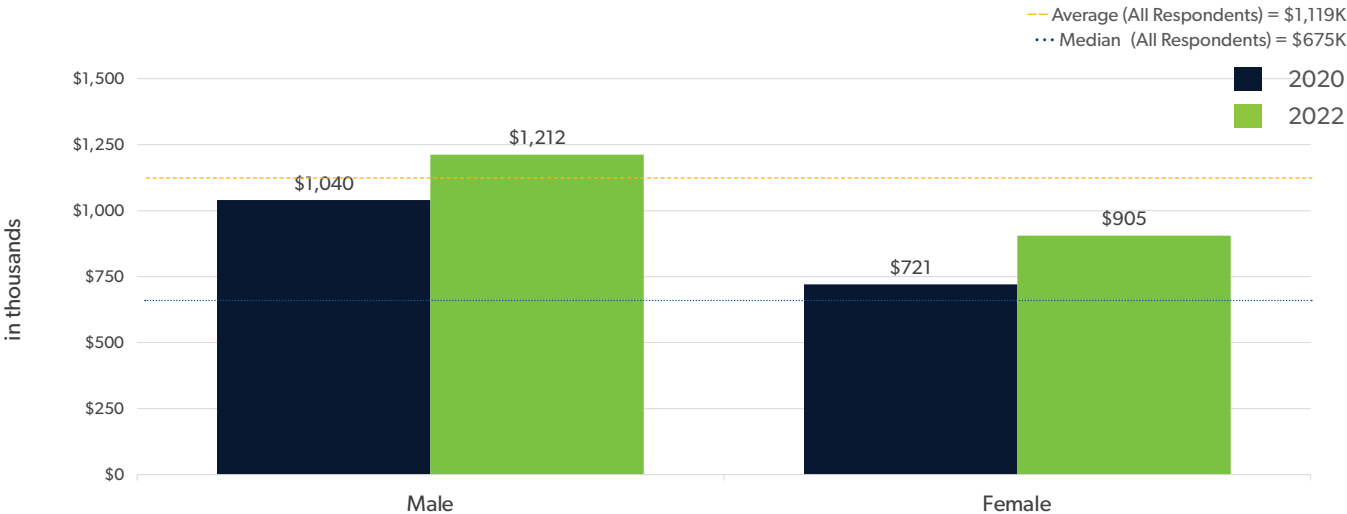
GENDER AND ETHNICITY

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.⁶ 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.

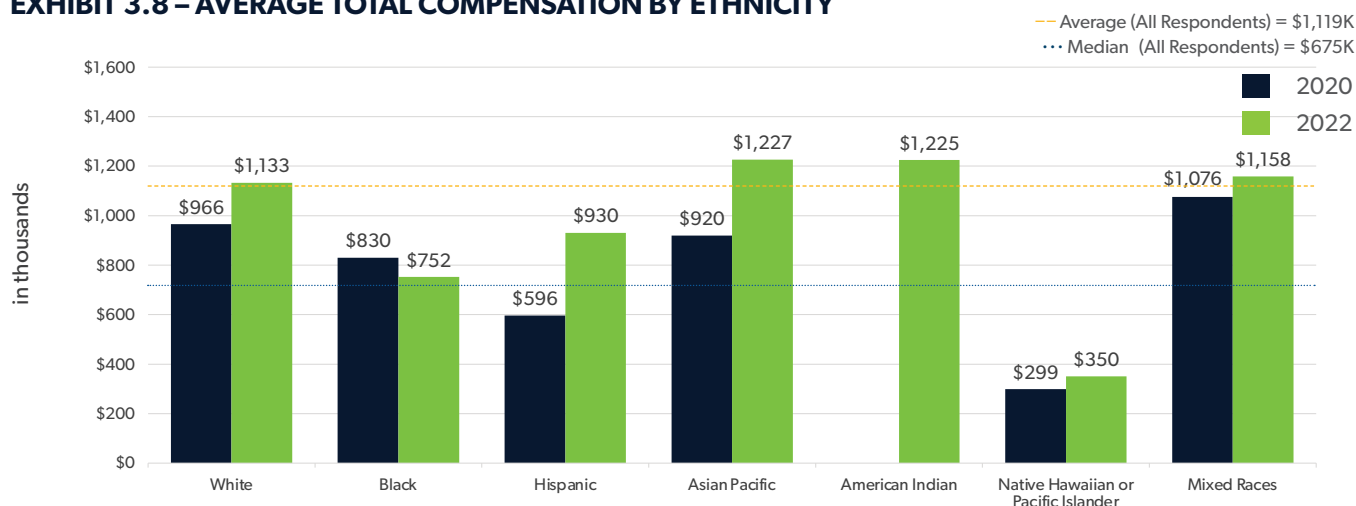
The average total compensation for those identifying with a non-White ethnicity is 10% lower than that of White partners (\$1,030,000 vs. \$1,133,000). Hispanic partners reported a 56% increase in compensation, followed by a 33% increase for Asian Pacific partners and a 17% increase for White partners. Black partners were the only category to report a decline (-9%).

EXHIBIT 3.7 – AVERAGE TOTAL COMPENSATION BY GENDER



⁶ 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

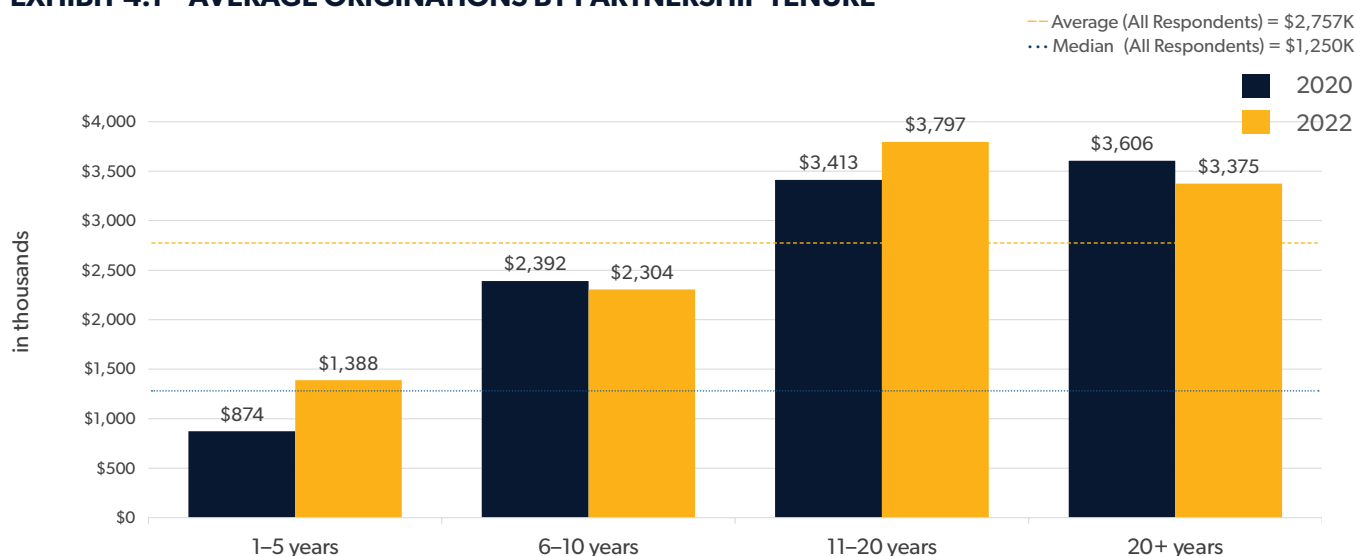
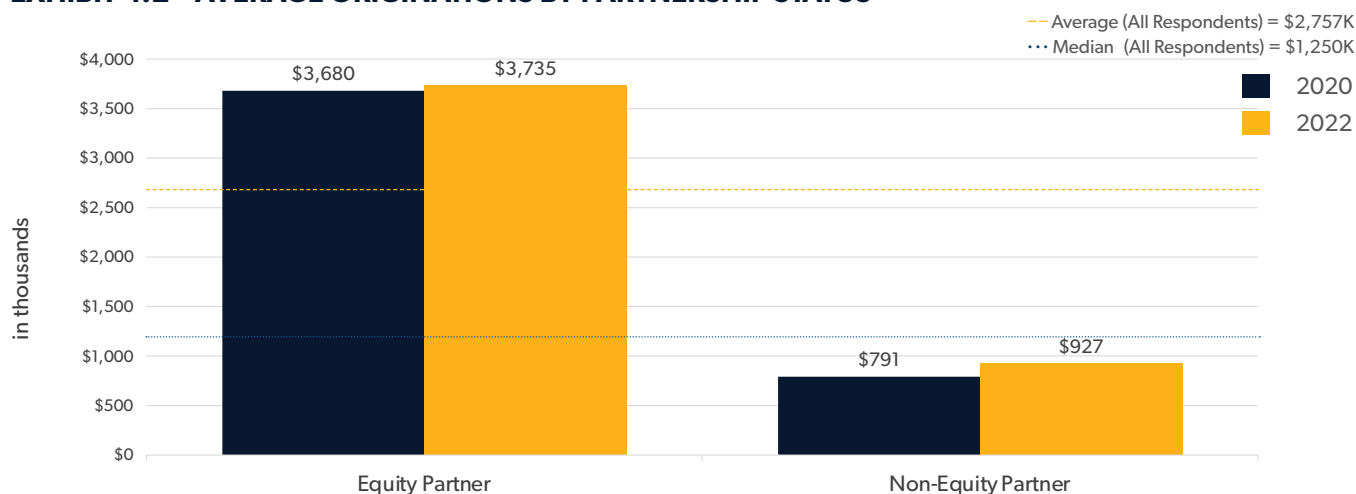


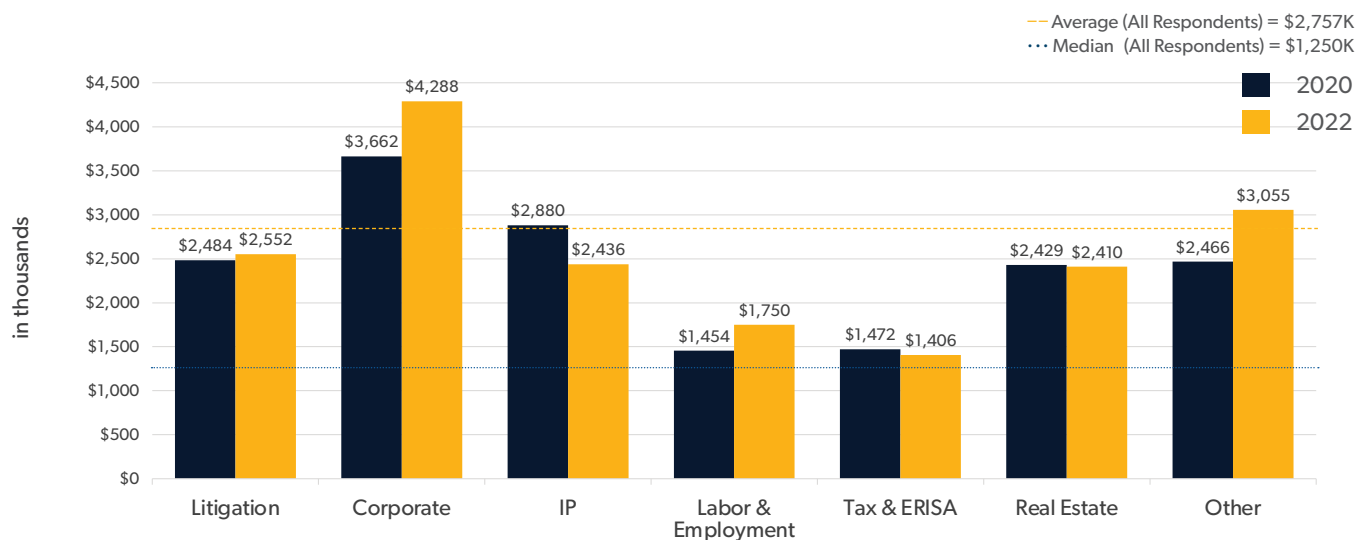
EXHIBIT 4.2 – AVERAGE ORIGINATIONS BY PARTNERSHIP STATUS



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

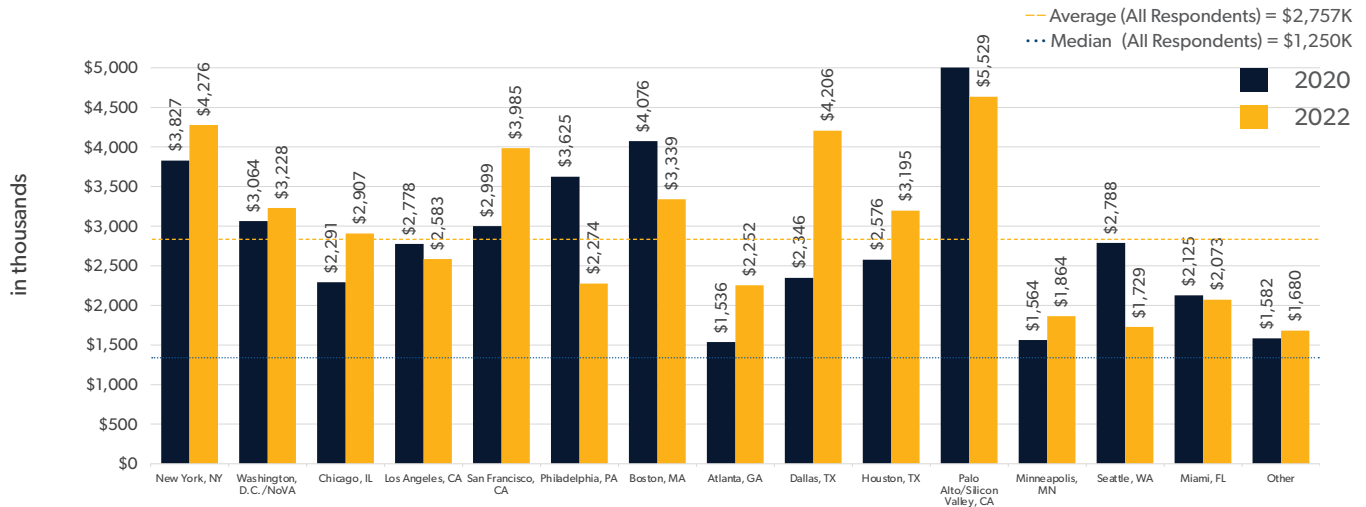


CITY

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

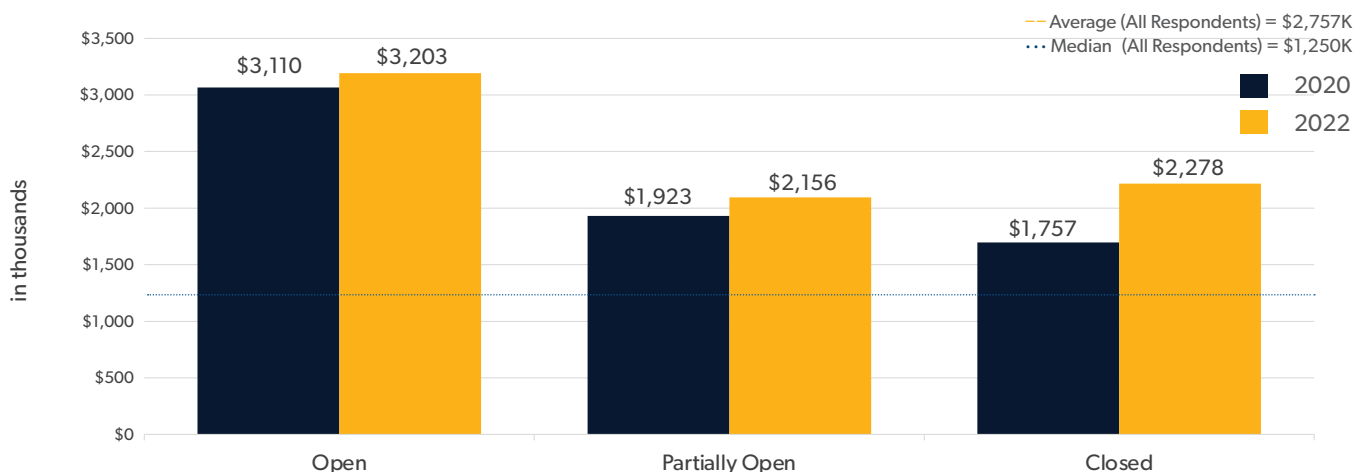
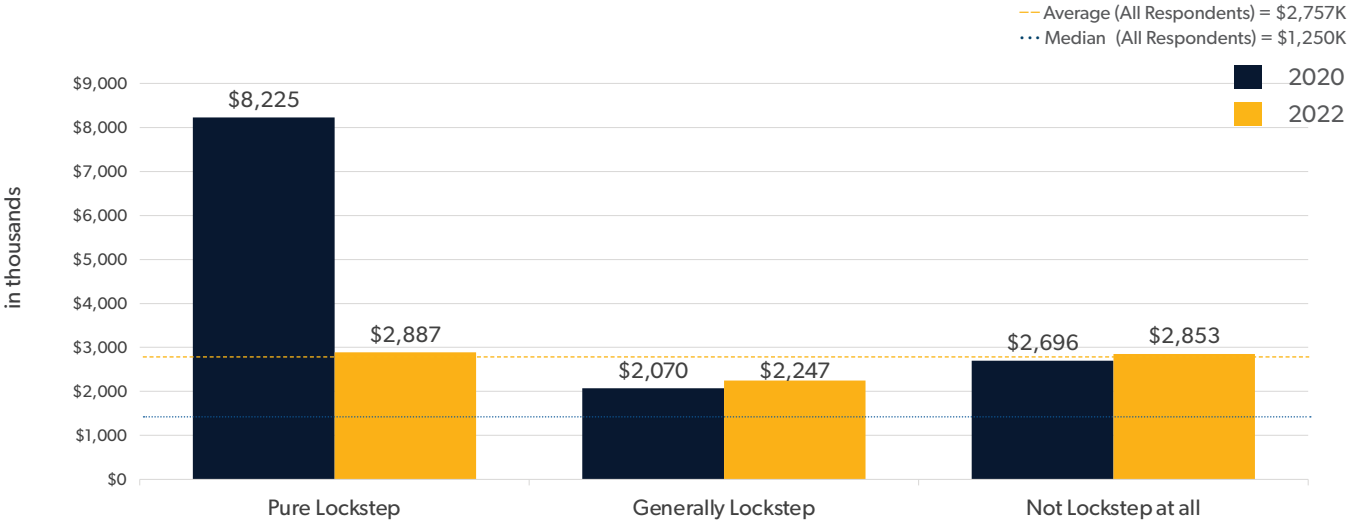


EXHIBIT 4.6 – AVERAGE ORIGINATIONS BY COMPENSATION SYSTEM



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

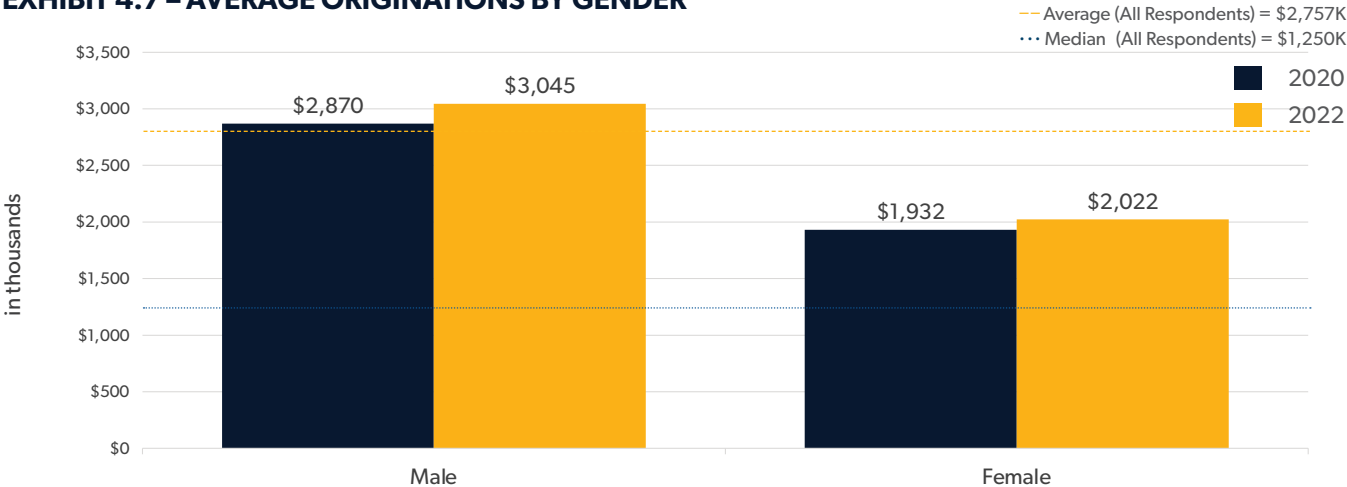
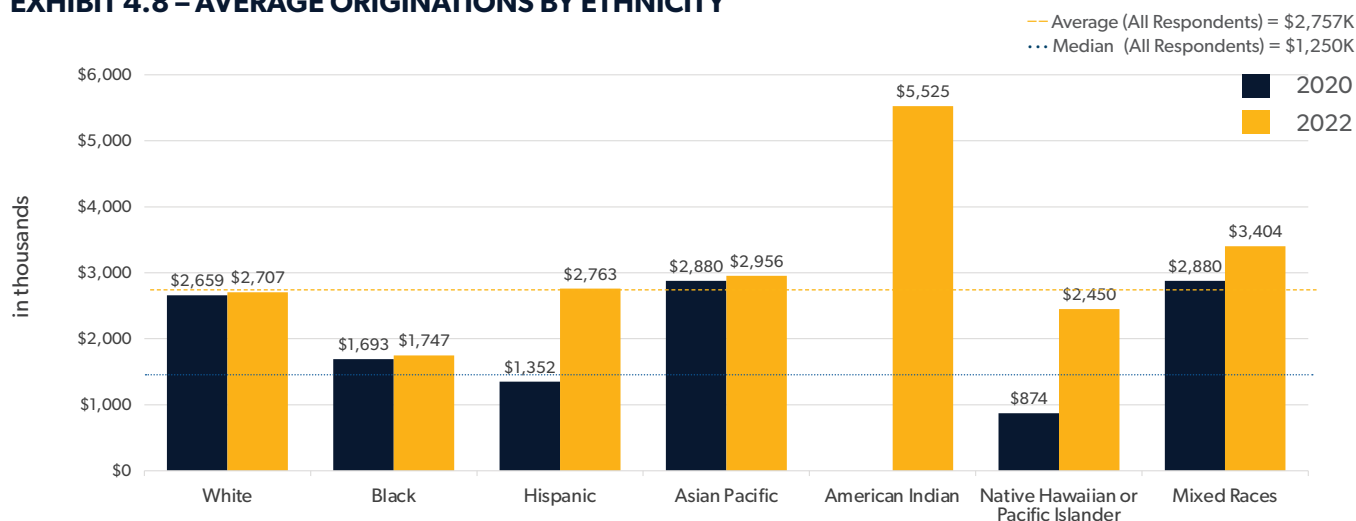


EXHIBIT 4.8 – AVERAGE ORIGINATIONS BY ETHNICITY



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

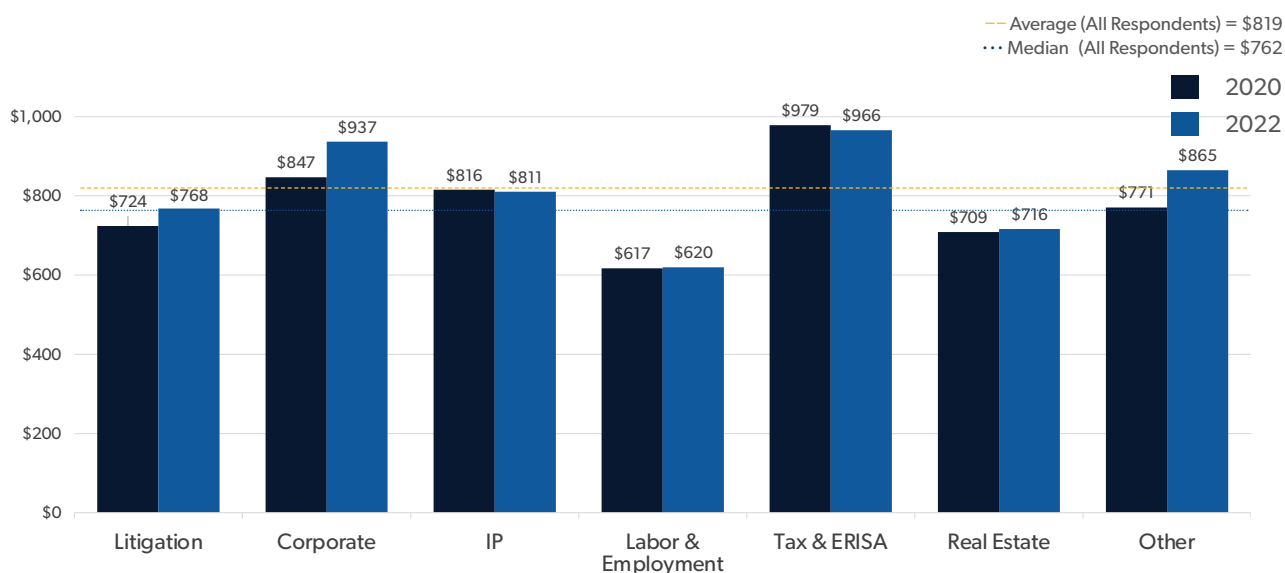


EXHIBIT 5.2 AVERAGE BILLABLE HOURS BY PRACTICE AREA

— Average (All Respondents) = 1,721
 ... Median (All Respondents) = 1,724

■ 2020
 ■ 2022

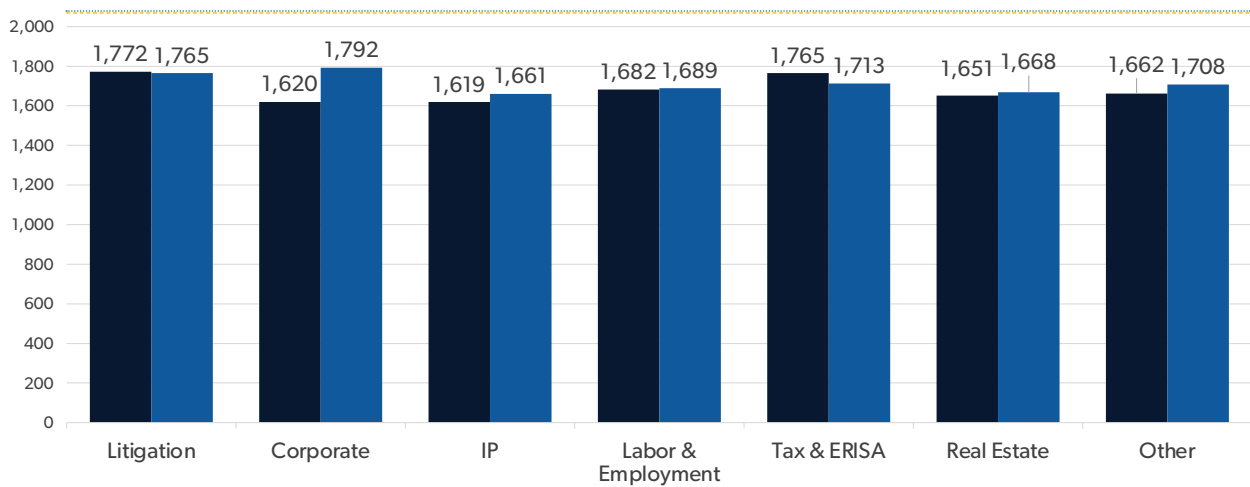
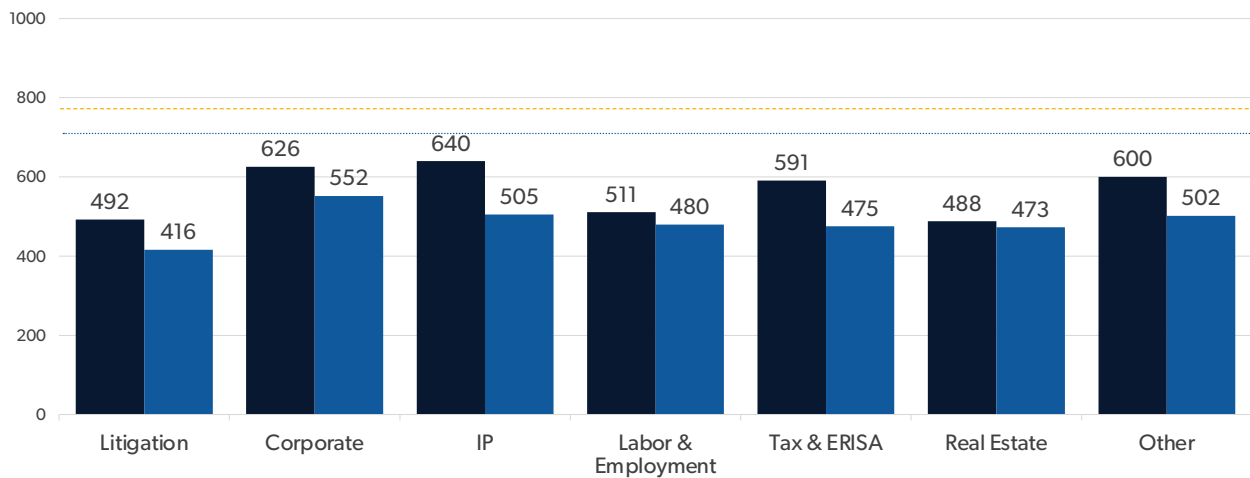


EXHIBIT 5.3 AVERAGE NON-BILLABLE HOURS BY PRACTICE AREA

— 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 VII – 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)

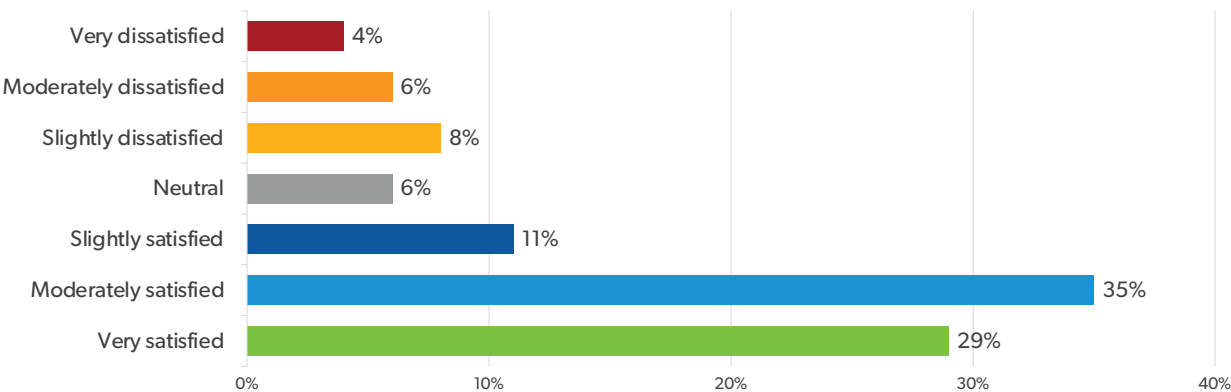
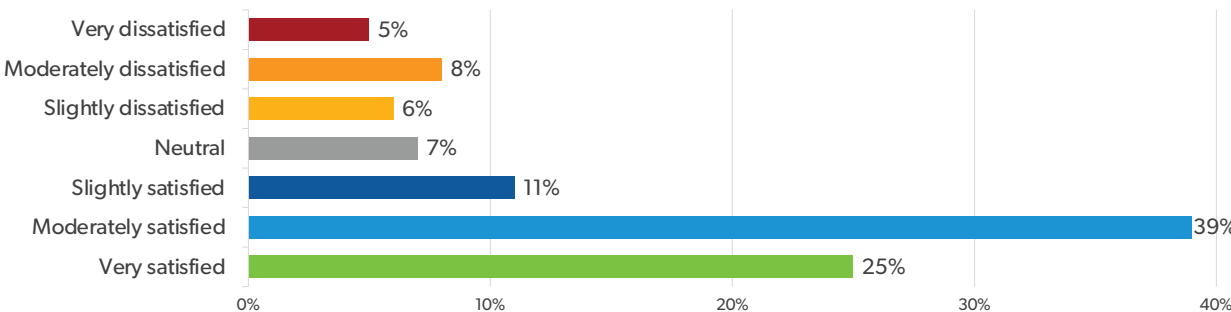


EXHIBIT 6.1B – OVERALL SATISFACTION WITH TOTAL COMPENSATION (2020)



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)

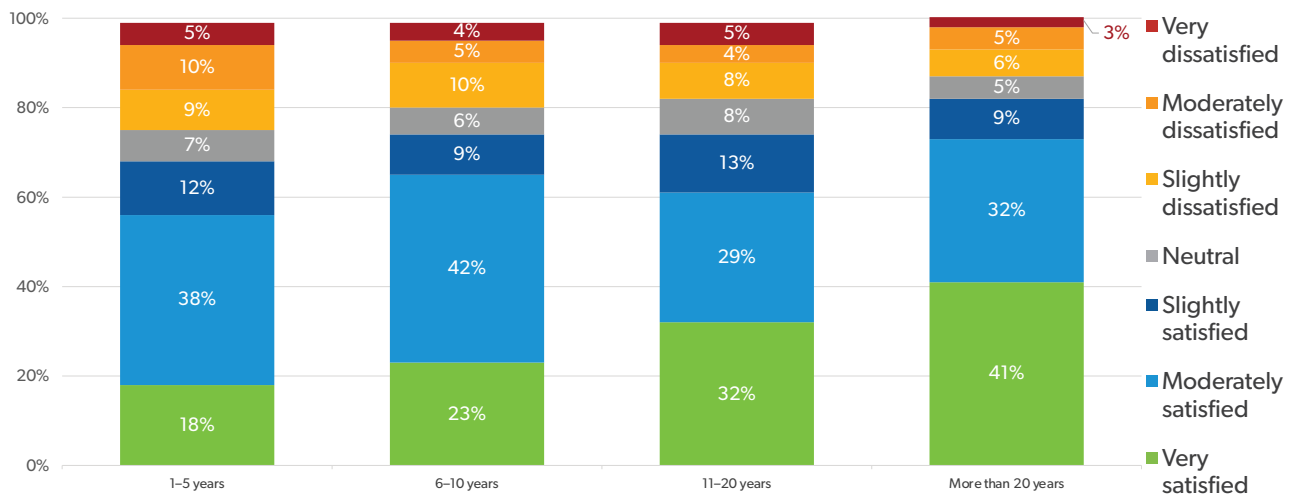


EXHIBIT 6.2B – SATISFACTION BY PARTNERSHIP TENURE (2020)

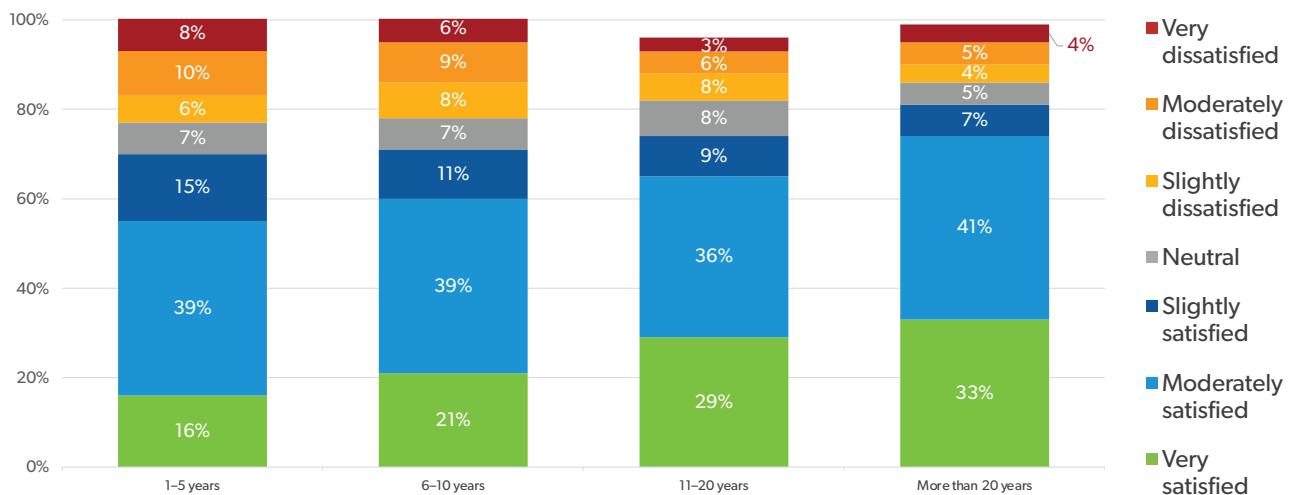


EXHIBIT 6.3A – SATISFACTION BY PARTNERSHIP STATUS (2022)

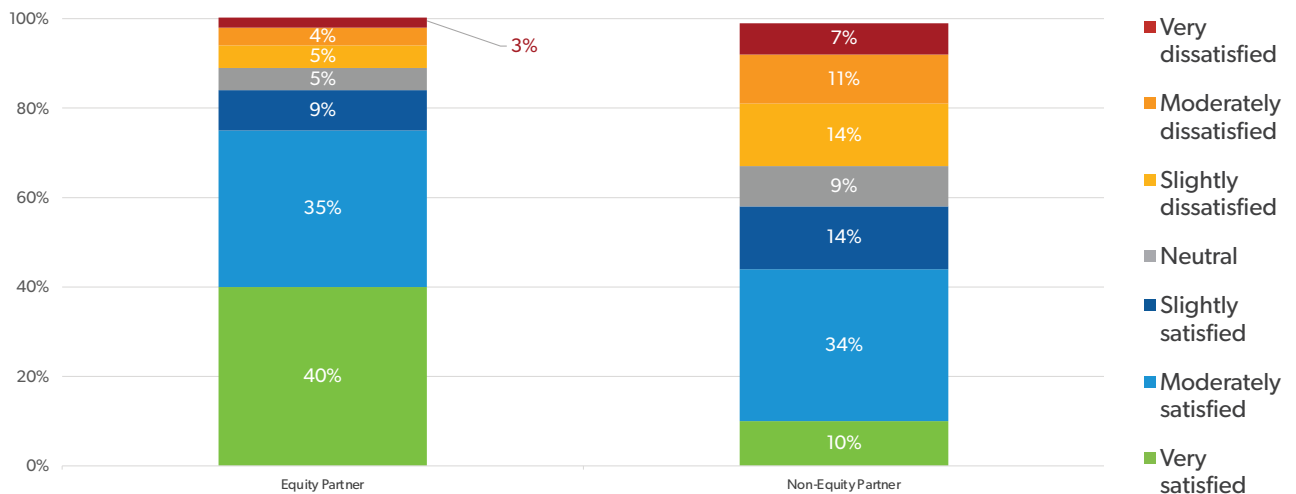
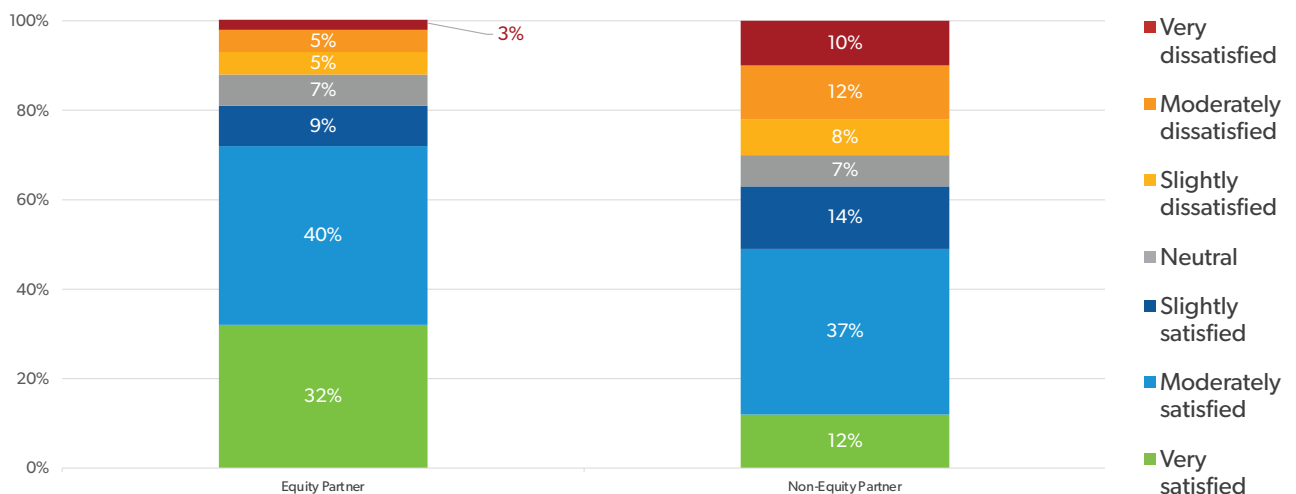


EXHIBIT 6.3B – SATISFACTION BY PARTNERSHIP STATUS (2020)



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)

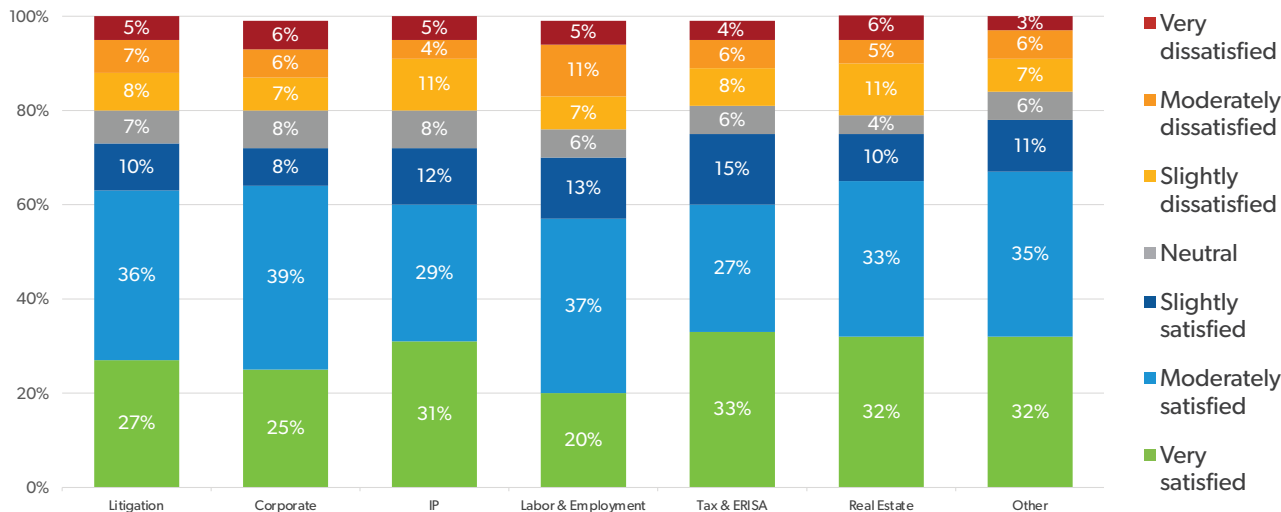
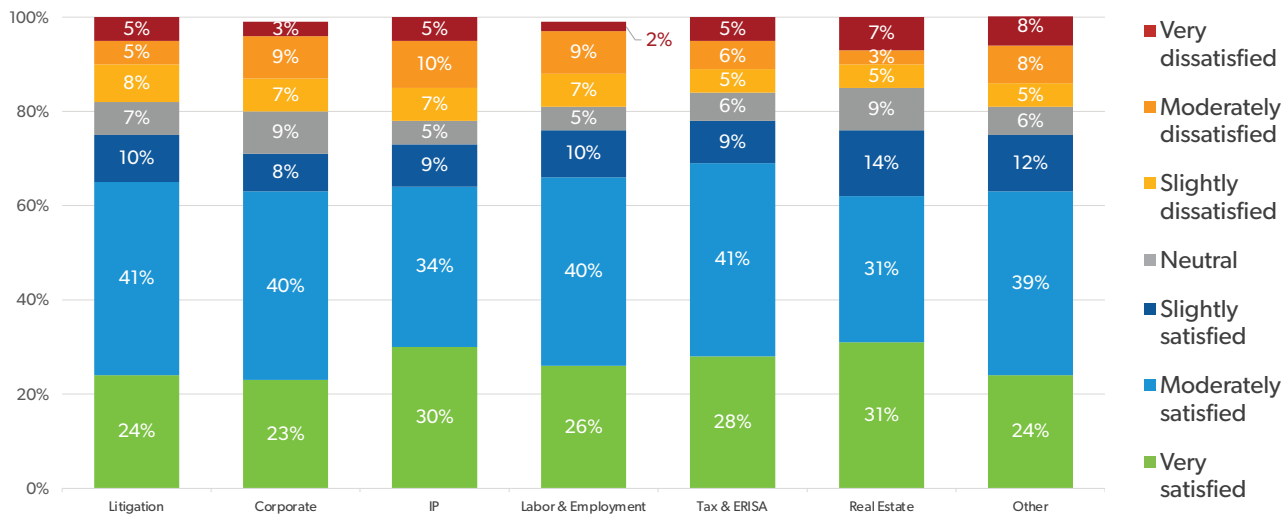


EXHIBIT 6.4B – SATISFACTION BY PRACTICE AREA (2020)



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)

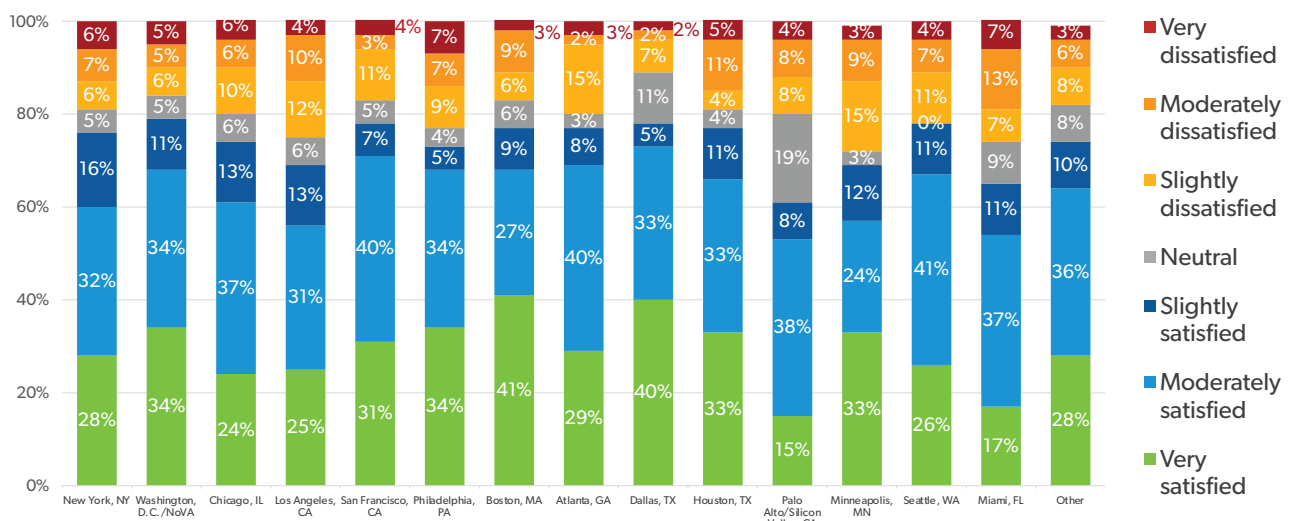
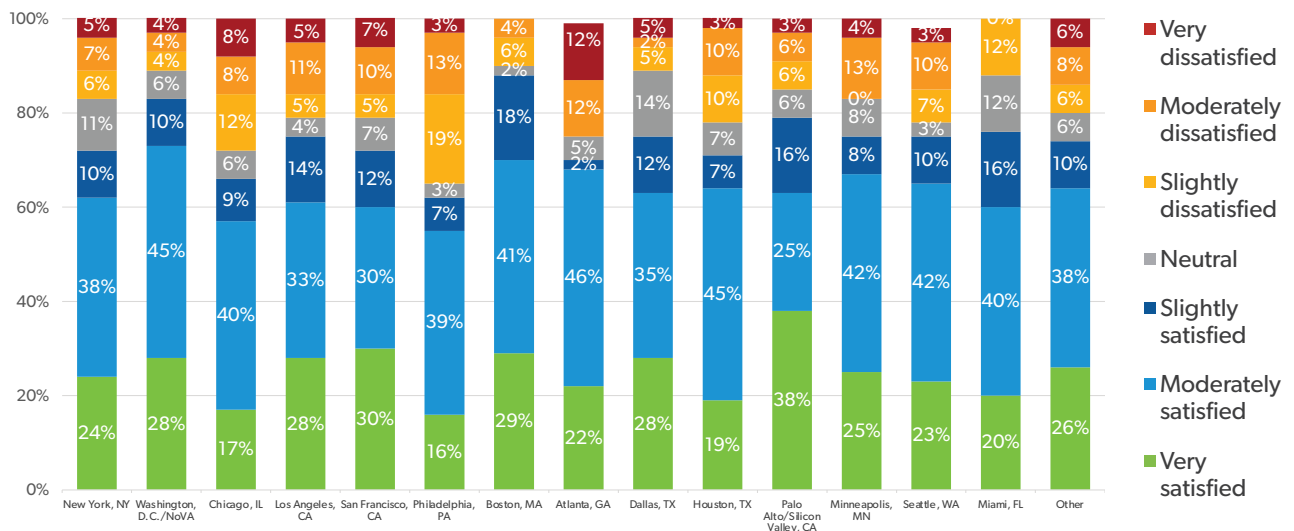


EXHIBIT 6.5B – SATISFACTION BY CITY (2020)



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)

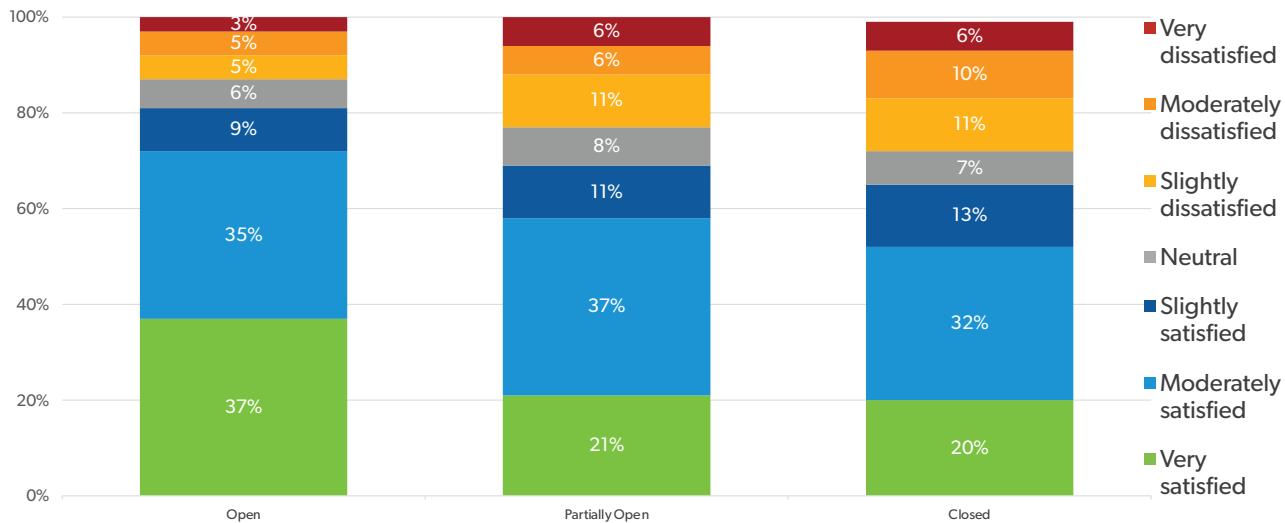


EXHIBIT 6.6B – SATISFACTION BY COMPENSATION TRANSPARENCY (2020)

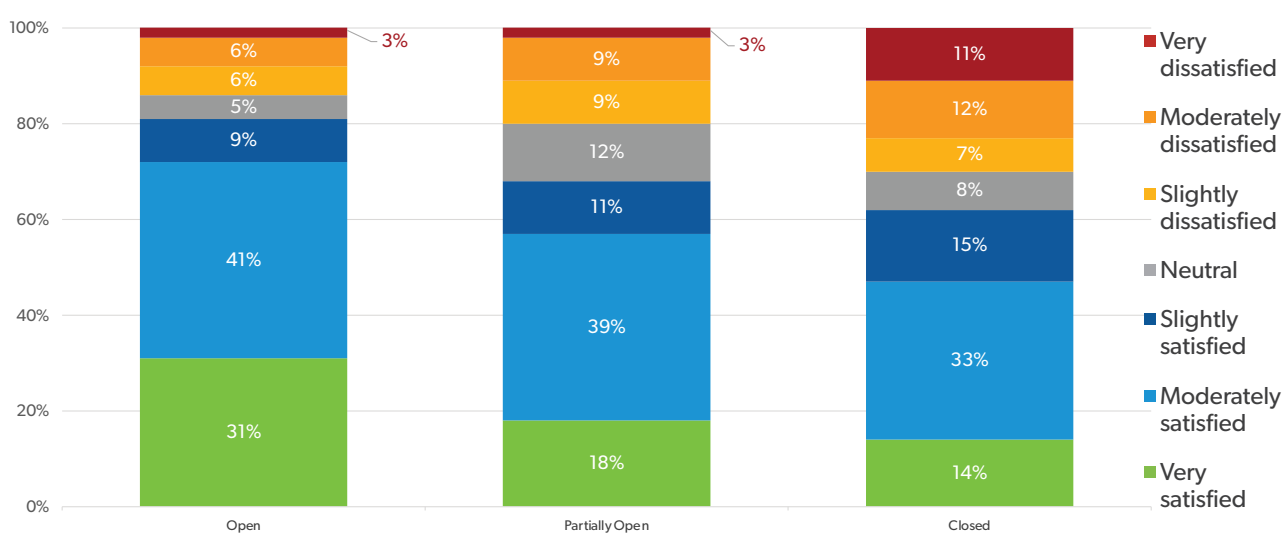


EXHIBIT 6.7A – SATISFACTION BY LATERAL STATUS (2022)

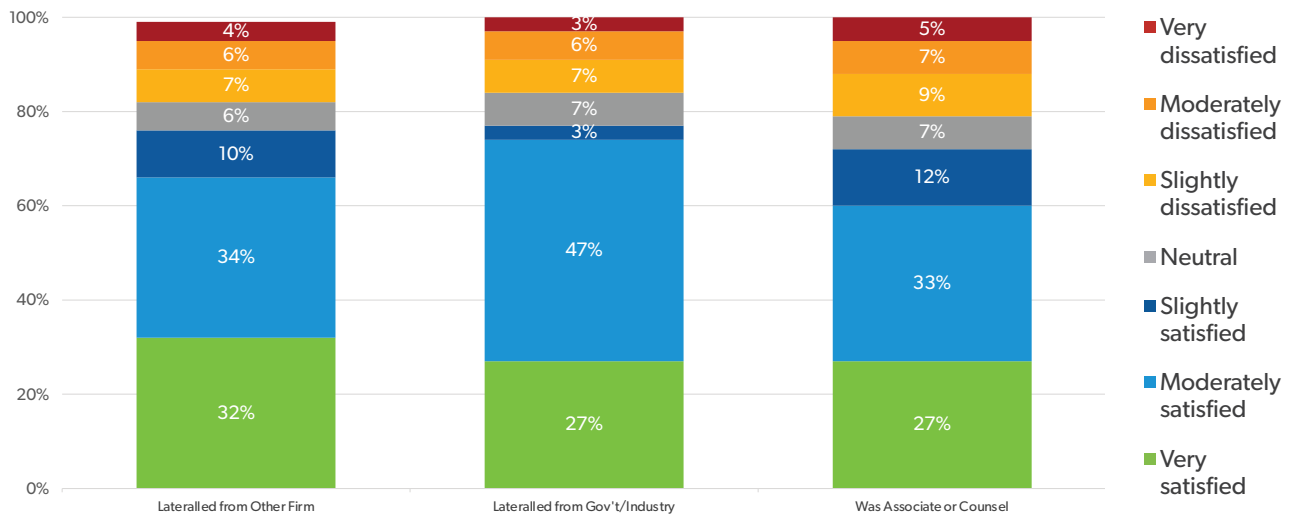
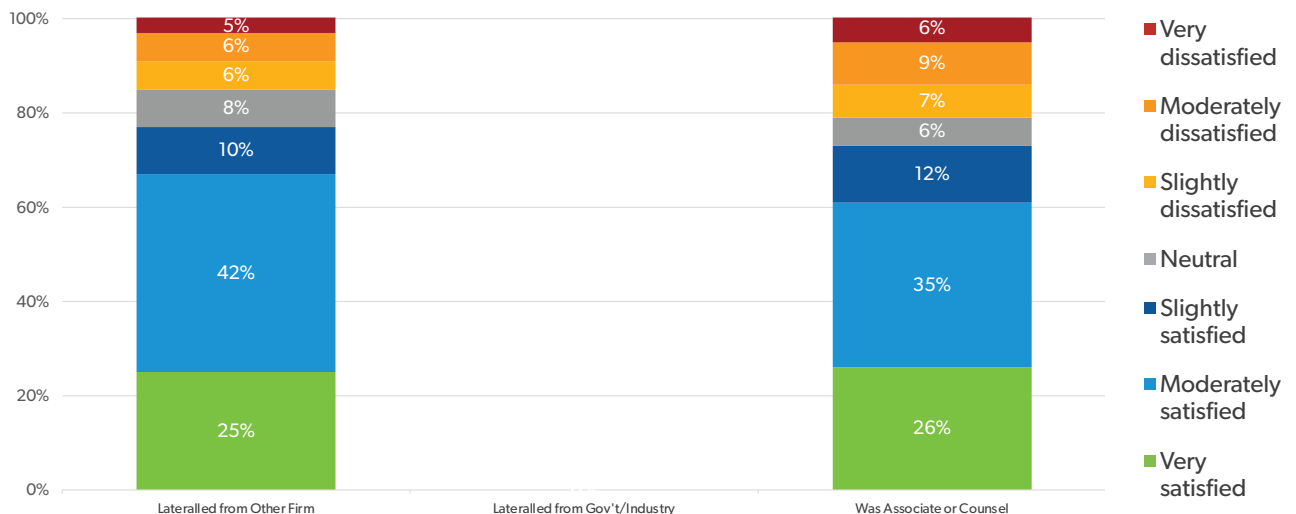


EXHIBIT 6.7B – SATISFACTION BY LATERAL STATUS (2020)



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)

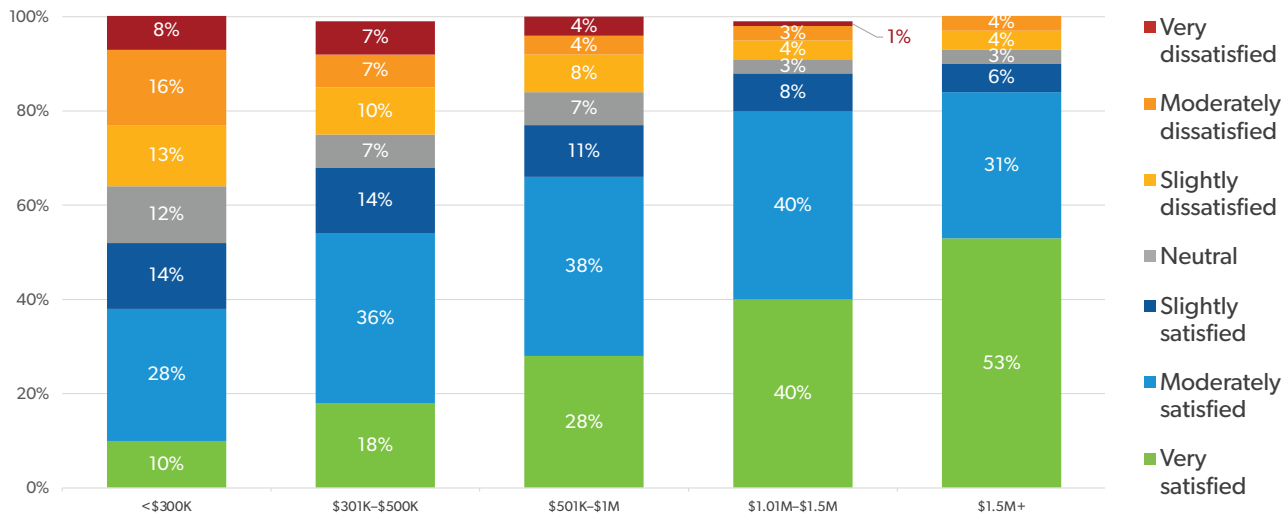


EXHIBIT 6.8B - SATISFACTION BY TOTAL COMPENSATION (2020)

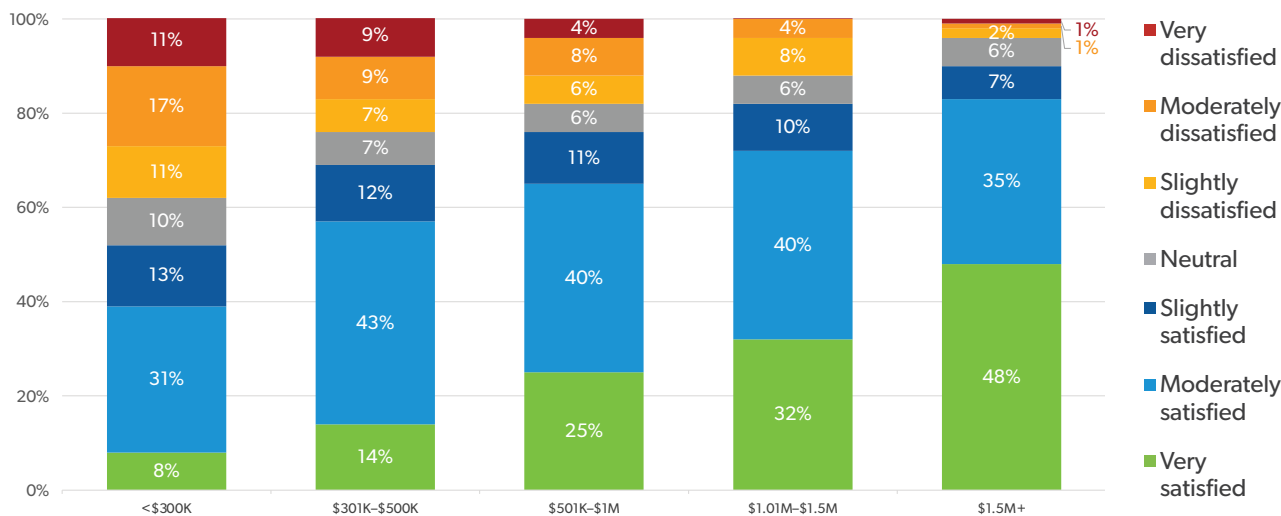


EXHIBIT 6.9A – SATISFACTION BY TOTAL ORIGINATIONS (2022)

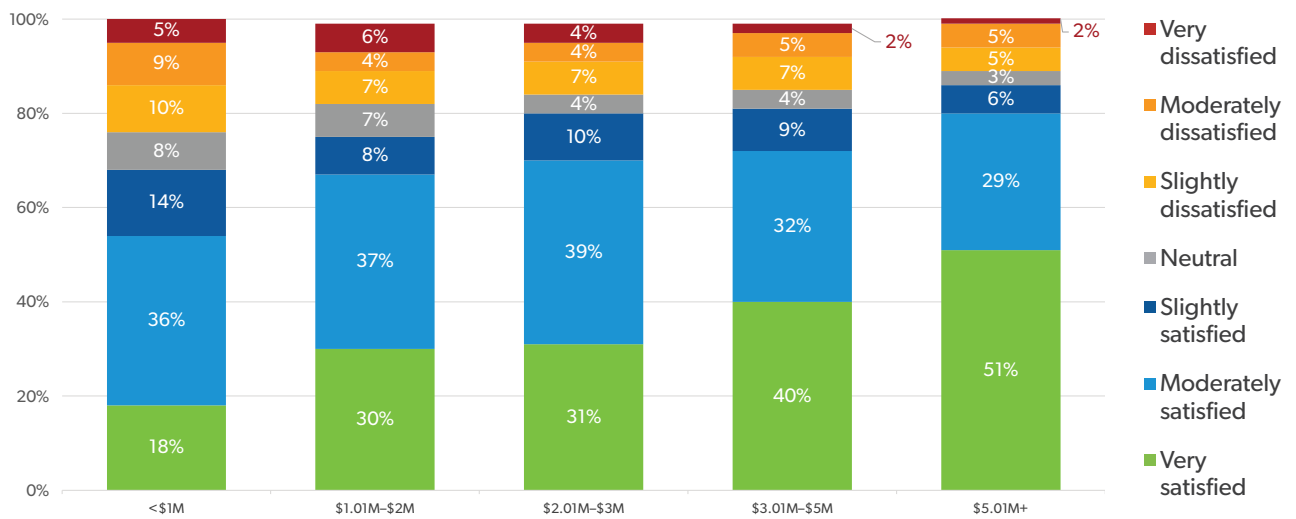


EXHIBIT 6.9B – SATISFACTION BY TOTAL ORIGINATIONS (2020)

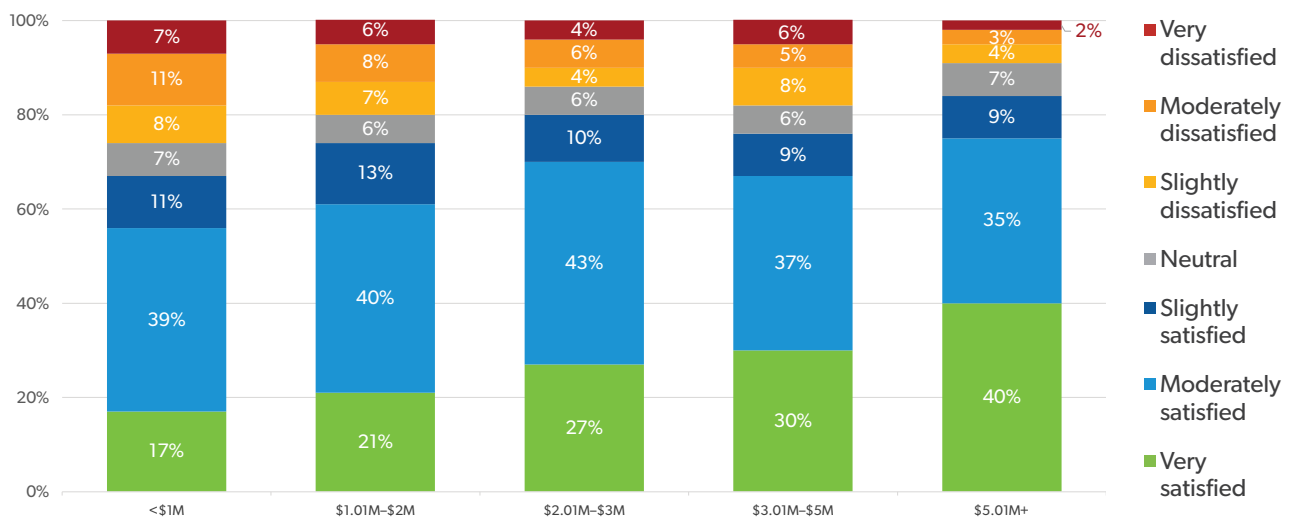


EXHIBIT 6.10A – SATISFACTION BY BILLABLE HOURS (2022)

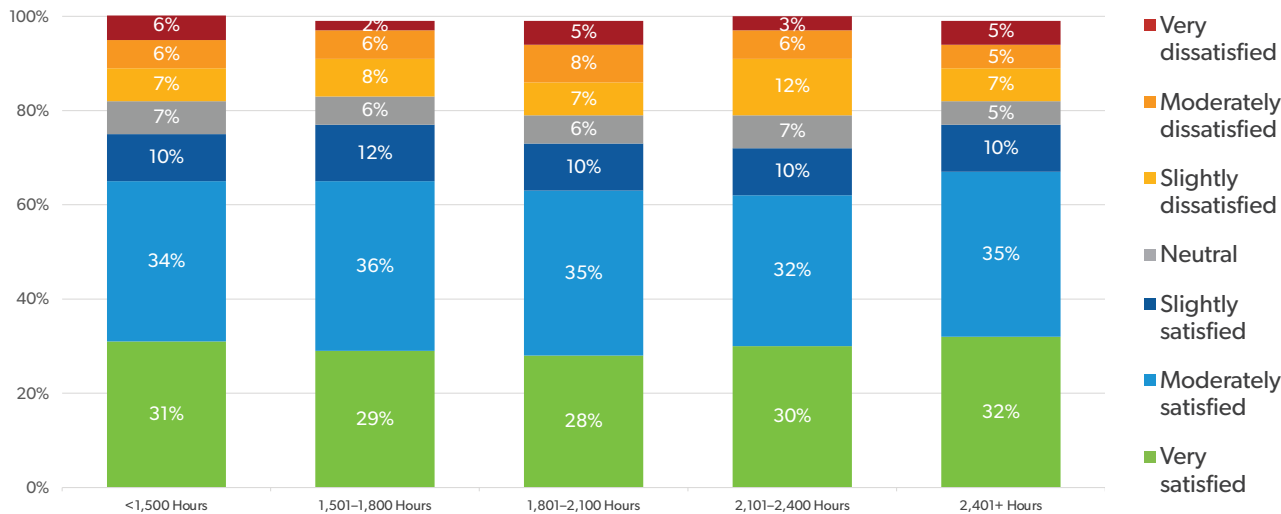
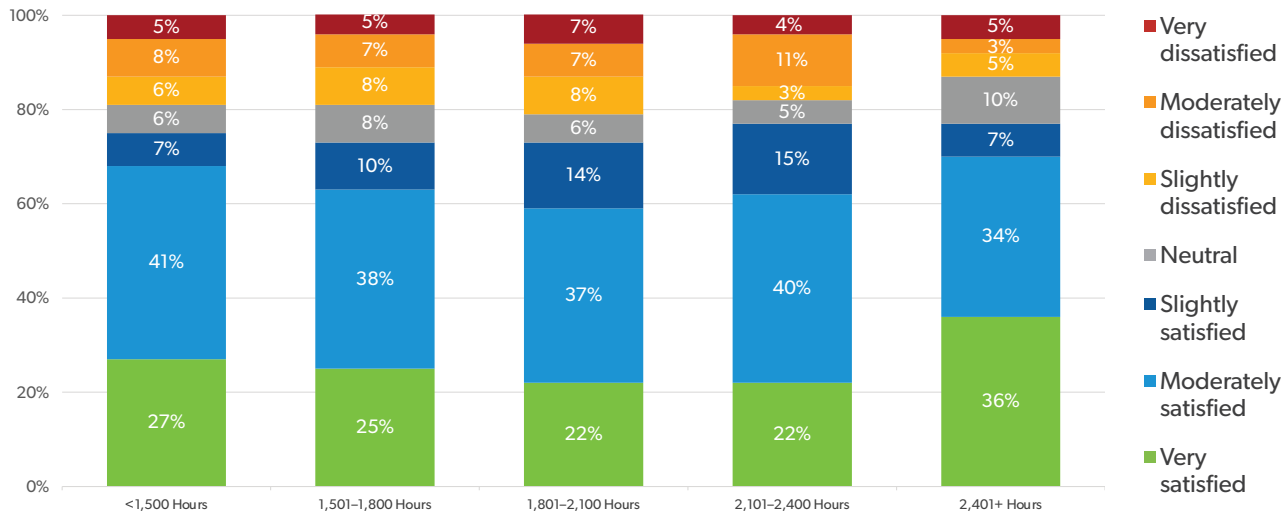


EXHIBIT 6.10B – SATISFACTION BY BILLABLE HOURS (2020)



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)

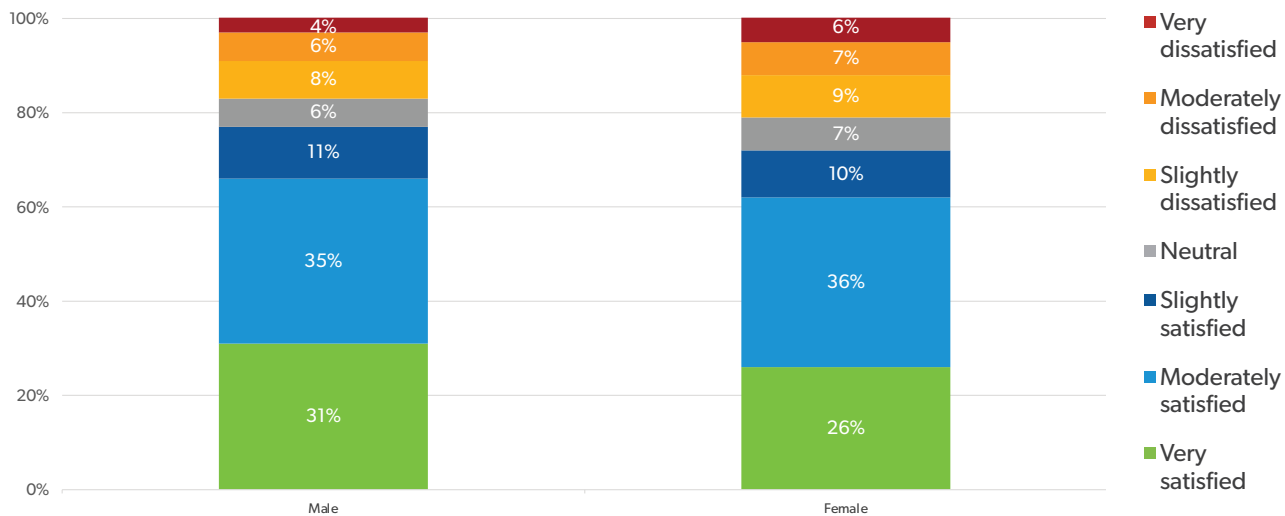
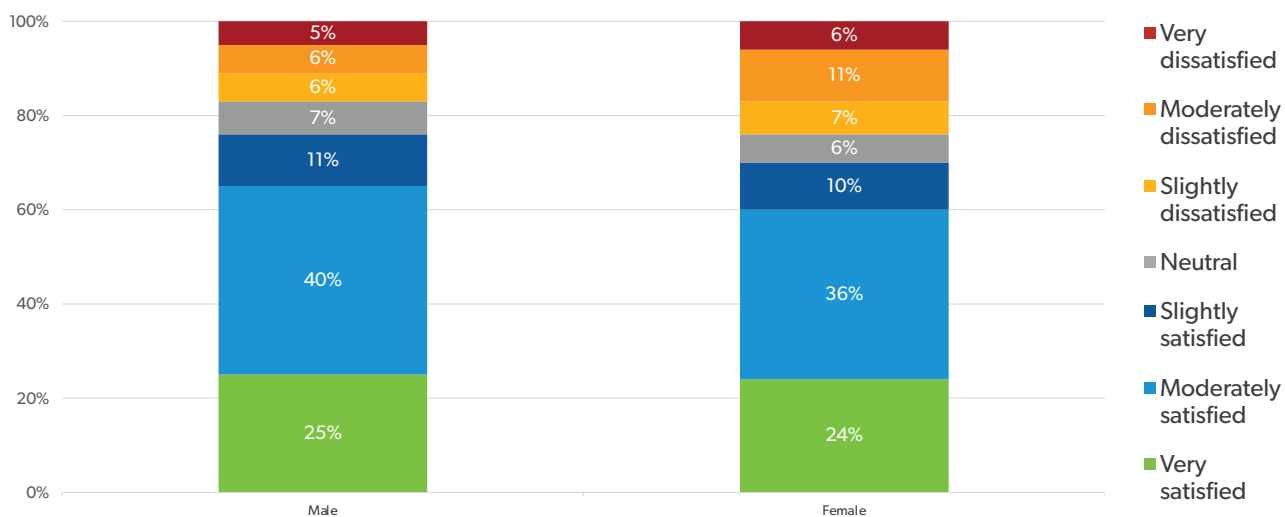


EXHIBIT 6.11B – SATISFACTION BY GENDER (2020)



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)

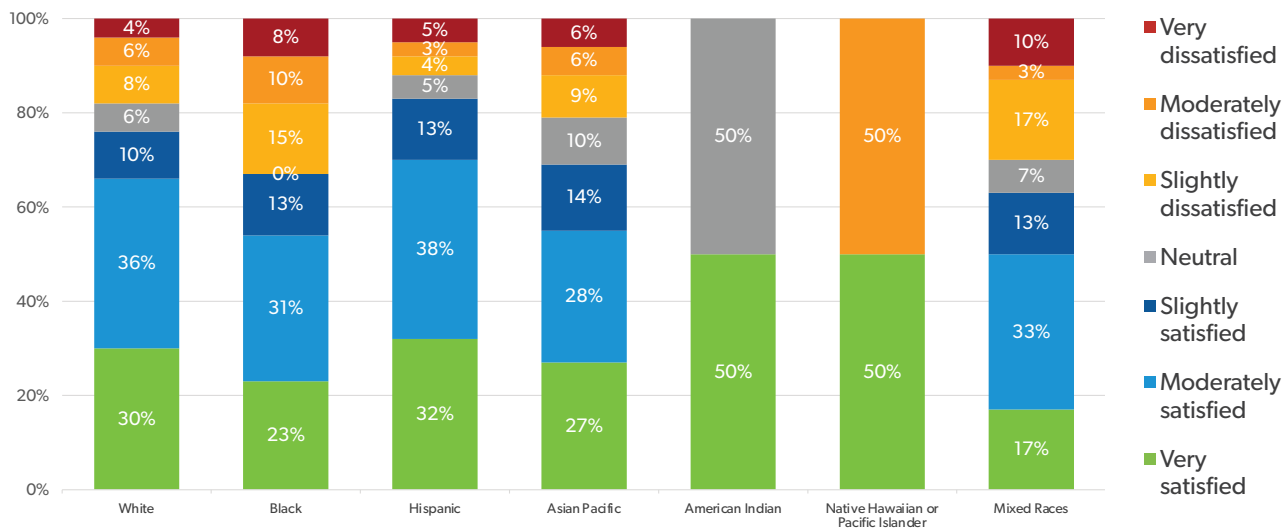
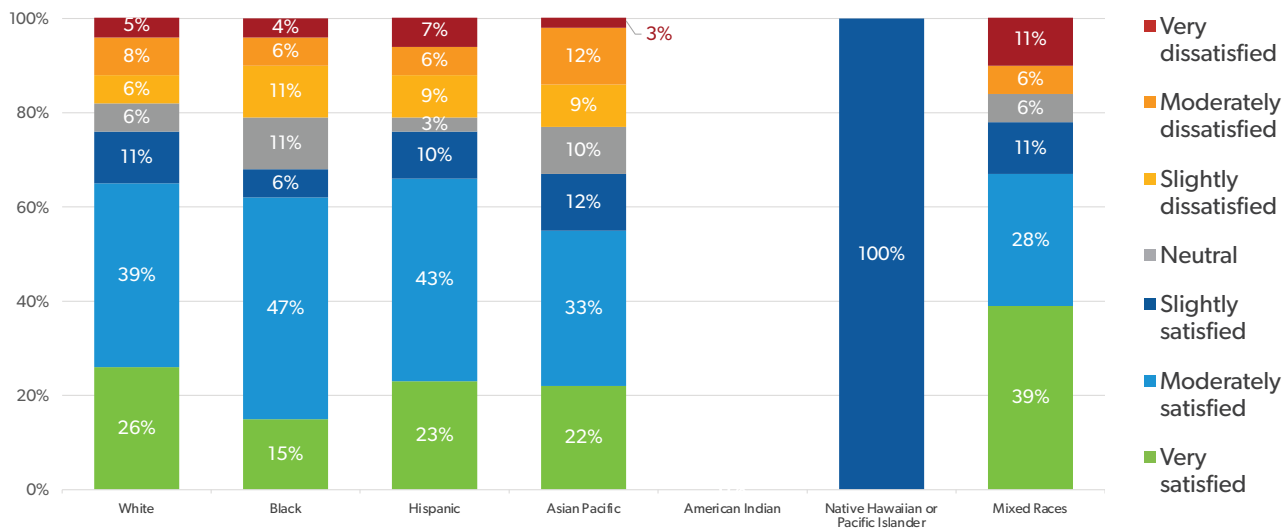


EXHIBIT 6.12B – SATISFACTION BY ETHNICITY (2020)



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

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

	Total 2022	1 to 5 years	6 to 10 years	11 to 20 years	More than 20 years
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%

	Total 2020	1 to 5 years	6 to 10 years	11 to 20 years	More than 20 years
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

	Total 2022	Equity Partner	Non-Equity Partner
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%

	Total 2020	Equity Partner	Non-Equity Partner
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

	No	Yes
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

	No	Yes
Equity Partner	95%	5%
Non-Equity Partner	94%	6%

PRACTICE AREAS

	No	Yes
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

	No	Yes
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

	2022 Frequency	2022 Mean
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

	2022 Frequency	2022 Mean
Equity Partner	1148	2
Non-Equity Partner	620	3

PRACTICE AREAS

	2022 Frequency	2022 Mean
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

	2022 Frequency	2022 Mean
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

	So important I would change firms	Very important	Somewhat important	Neutral	Not very important	Not important at all
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

	So important I would change firms	Very important	Somewhat important	Neutral	Not very important	Not important at all
Equity Partner	9%	30%	24%	12%	16%	10%
Non-Equity Partner	14%	37%	28%	7%	7%	7%

PRACTICE AREAS

	So important I would change firms	Very important	Somewhat important	Neutral	Not very important	Not important at all
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

	So important I would change firms	Very important	Somewhat important	Neutral	Not very important	Not important at all
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

	No	Yes
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

	No	Yes
Equity Partner	92%	8%
Non-Equity Partner	95%	5%

PRACTICE AREAS

	No	Yes
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

	No	Yes
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

	No	Not sure	Yes
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

	No	Not sure	Yes
Equity Partner	51%	18%	31%
Non-Equity Partner	57%	17%	27%

PRACTICE AREAS

	No	Not sure	Yes
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

	No	Not sure	Yes
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

	2022 Frequency	2022 Mean
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

	2022 Frequency	2022 Mean
Equity Partner	87	20%
Non-Equity Partner	93	24%
Not Lockstep at all	90%	10%

PRACTICE AREAS

	2022 Frequency	2022 Mean
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

	2022 Frequency	2022 Mean
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

2022	Very satisfied	Moderately satisfied	Slightly satisfied	Neutral	Slightly dissatisfied	Moderately dissatisfied	Very dissatisfied	2022 Frequency
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
2020	Very satisfied	Moderately satisfied	Slightly satisfied	Neutral	Slightly dissatisfied	Moderately dissatisfied	Very dissatisfied	
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

2022	Very satisfied	Moderately satisfied	Slightly satisfied	Neutral	Slightly dissatisfied	Moderately dissatisfied	Very dissatisfied	2022 Frequency
Equity Partner	40%	35%	9%	5%	5%	4%	3%	771
Non-Equity Partner	10%	34%	14%	9%	14%	11%	7%	432
2020	Very satisfied	Moderately satisfied	Slightly satisfied	Neutral	Slightly dissatisfied	Moderately dissatisfied	Very dissatisfied	
Equity Partner	32%	40%	9%	7%	5%	5%	3%	
Non-Equity Partner	12%	37%	14%	7%	8%	12%	10%	

PRACTICE AREA

2022	Very satisfied	Moderately satisfied	Slightly satisfied	Neutral	Slightly dissatisfied	Moderately dissatisfied	Very dissatisfied	2022 Frequency
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
2020	Very satisfied	Moderately satisfied	Slightly satisfied	Neutral	Slightly dissatisfied	Moderately dissatisfied	Very dissatisfied	
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

2022	Very satisfied	Moderately satisfied	Slightly satisfied	Neutral	Slightly dissatisfied	Moderately dissatisfied	Very dissatisfied	2022 Frequency
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
2020	Very satisfied	Moderately satisfied	Slightly satisfied	Neutral	Slightly dissatisfied	Moderately dissatisfied	Very dissatisfied	
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

2022	Very satisfied	Moderately satisfied	Slightly satisfied	Neutral	Slightly dissatisfied	Moderately dissatisfied	Very dissatisfied	2022 Frequency
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
2020	Very satisfied	Moderately satisfied	Slightly satisfied	Neutral	Slightly dissatisfied	Moderately dissatisfied	Very dissatisfied	
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

2022	Very satisfied	Moderately satisfied	Slightly satisfied	Neutral	Slightly dissatisfied	Moderately dissatisfied	Very dissatisfied	2022 Frequency
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
2020	Very satisfied	Moderately satisfied	Slightly satisfied	Neutral	Slightly dissatisfied	Moderately dissatisfied	Very dissatisfied	
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

2022	Very satisfied	Moderately satisfied	Slightly satisfied	Neutral	Slightly dissatisfied	Moderately dissatisfied	Very dissatisfied	2022 Frequency
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
2020	Very satisfied	Moderately satisfied	Slightly satisfied	Neutral	Slightly dissatisfied	Moderately dissatisfied	Very dissatisfied	
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

2022	Very satisfied	Moderately satisfied	Slightly satisfied	Neutral	Slightly dissatisfied	Moderately dissatisfied	Very dissatisfied	2022 Frequency
Male	31%	35%	11%	6%	8%	6%	4%	812
Female	26%	36%	10%	7%	9%	7%	6%	353
2020	Very satisfied	Moderately satisfied	Slightly satisfied	Neutral	Slightly dissatisfied	Moderately dissatisfied	Very dissatisfied	
Male	25%	40%	11%	7%	6%	6%	5%	
Female	24%	36%	10%	6%	7%	11%	6%	

ETHNICITY

2022	Very satisfied	Moderately satisfied	Slightly satisfied	Neutral	Slightly dissatisfied	Moderately dissatisfied	Very dissatisfied	2022 Frequency
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
2020	Very satisfied	Moderately satisfied	Slightly satisfied	Neutral	Slightly dissatisfied	Moderately dissatisfied	Very dissatisfied	
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

2022	Very satisfied	Moderately satisfied	Slightly satisfied	Neutral	Slightly dissatisfied	Moderately dissatisfied	Very dissatisfied	2022 Frequency
<\$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
2020	Very satisfied	Moderately satisfied	Slightly satisfied	Neutral	Slightly dissatisfied	Moderately dissatisfied	Very dissatisfied	
<\$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

2022	Very satisfied	Moderately satisfied	Slightly satisfied	Neutral	Slightly dissatisfied	Moderately dissatisfied	Very dissatisfied	2022 Frequency
<\$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
2020	Very satisfied	Moderately satisfied	Slightly satisfied	Neutral	Slightly dissatisfied	Moderately dissatisfied	Very dissatisfied	
<\$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

2022	Very satisfied	Moderately satisfied	Slightly satisfied	Neutral	Slightly dissatisfied	Moderately dissatisfied	Very dissatisfied	2022 Frequency
<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
2020	Very satisfied	Moderately satisfied	Slightly satisfied	Neutral	Slightly dissatisfied	Moderately dissatisfied	Very dissatisfied	
<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 | ➤ Not a partner during |
| ➤ Non-Equity Partner | 2021 |

Q3. What is your primary practice area?

- | | | |
|---|------------------------|--|
| ➤ Administrative/
Regulatory | ➤ Corporate – M&A | ➤ IP – Transactional |
| ➤ Antitrust | ➤ Employment/Labor | ➤ Litigation – General |
| ➤ Banking | ➤ Energy | ➤ Litigation – Appellate |
| ➤ Bankruptcy | ➤ Entertainment | ➤ Litigation – White Collar/
Securities Enforcement |
| ➤ Corporate – General | ➤ Environmental | ➤ Privacy/Cybersecurity |
| ➤ Corporate – Emerging
Company/Venture
Capital | ➤ ERISA/Benefits | ➤ Project Finance |
| ➤ Corporate – Finance/
Securities/Capital
Markets | ➤ Government Contracts | ➤ Real Estate |
| | ➤ Healthcare | ➤ Tax |
| | ➤ Immigration | ➤ Trusts & Estates |
| | ➤ Insurance | ➤ Other (please specify) |
| | ➤ International | |
| | ➤ IP – Litigation | |

Q4. In what city do you primarily practice?

- | | | |
|------------------------|-----------------------------|------------------------------------|
| > Akron, OH | > Houston, TX | CA |
| > Albuquerque, NM | > Indianapolis, IN | > Philadelphia, PA |
| > Arlington, TX | > Irvine, CA | > Phoenix, AZ |
| > Atlanta, GA | > Jacksonville, FL | > Pittsburgh, PA |
| > Austin, TX | > Kansas City, MO | > Portland, OR |
| > Baltimore, MD | > Las Vegas, NV | > Providence, RI |
| > Birmingham, AL | > Long Beach, CA | > Raleigh, NC |
| > Boston, MA | > Los Angeles, CA | > Richmond, VA |
| > Buffalo, NY | > Louisville, KY | > Sacramento, CA |
| > Charlotte, NC | > Memphis, TN | > San Antonio, TX |
| > Chicago, IL | > Mesa, AZ | > San Diego, CA |
| > Cincinnati, OH | > Miami, FL | > San Francisco, CA |
| > Cleveland, OH | > Milwaukee, WI | > San Jose, CA |
| > Colorado Springs, CO | > Minneapolis, MN | > Seattle, WA |
| > Columbia, SC | > Mountain View, CA | > St. Louis, MO |
| > Columbus, OH | > Nashville, TN | > Tallahassee, FL |
| > Dallas, TX | > New Orleans, LA | > Tampa, FL |
| > Denver, CO | > New York, NY | > Tucson, AZ |
| > Detroit, MI | > Newark, NJ/Northern NJ | > Tulsa, OK |
| > El Paso, TX | > Oakland, CA | > Virginia Beach/
Tidewater, VA |
| > Fort Worth, TX | > Oklahoma City, OK | > Washington, D.C./NoVA |
| > Fresno, CA | > Omaha, NE | > Westchester, NY |
| > Greenville, SC | > Orange County, CA | > Winston-Salem, NC |
| > Hartford, CT | > Orlando, FL | > Other (please specify) |
| > Honolulu, HI | > Palo Alto/Silicon Valley, | |

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 than \$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
- Somewhat important
- Not important at all
- Neutral
- Very dissatisfied
- Not very important
- Very important

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 or 202-628-0661.

To learn more about Major, Lindsey & Africa, visit 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 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.

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

RHETT R. JOHNSON, Assistant Chief Counsel, SBN 219521
R. TIMOTHY O'CONNOR, Staff Counsel, SBN 179631
STEVEN CLARENCE, Staff Counsel, SBN 198271
STATE COMPENSATION INSURANCE FUND
Corporate Legal Department
5880 Owens Drive, 3rd Floor
Pleasanton, California 94588-3900
Telephone: (323) 526-2045

Attorneys for Defendant
STATE COMPENSATION INSURANCE FUND,
A public benefit fund and Independent Agency of the State of California

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

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

Plaintiffs,

vs.

STATE COMPENSATION INSURANCE
FUND, a public enterprise fund; and DOES 1
through 50, inclusive,
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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19 
20 R. Timothy O'Connor

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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.

DECLARATION OF R. TIMOTHY O'CONNOR

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

/s/Elia Ramirez
Elia Ramirez