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

24 Defendant.

Case No. 19STCV05738

Assigned for all purposes to
Honorable Lawrence P. Riff
Department 7

**SUPPLEMENTAL 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. As noted in my Declaration dated January 30, 2023, on or about December 15, 2022,
19 State Fund's IT Department extracted data with the final class action data range of March 1, 2013 to
20 November 30, 2022 (the "Class Period"), corresponding to all policies having a tier modifier value
21 greater than 1.0 (tier modifier values of 1 or Blank, meaning the policy had no tier modifier, were
22 excluded from this dataset). On January 27, 2023, Cornerstone transmitted the updated data,
23 including any Additional Premiums paid by Settlement Class Members, to the Class Administrator,
24 CPT.

25 4. The purpose of this Supplemental Declaration is to provide the Parties and the Court
26 with policyholder and premium information that is updated through November 30, 2022 (the end
27 date of the class period and the date Preliminary Approval was granted) and to update the
28 calculations provided in Kate Smith's April 19, 2022 Declaration ("Smith Declaration") attached as

1 Exhibit "O" to the Amended Settlement Agreement.

2 **In Excess of \$1.45 Billion is the Total Dollar Amount of Premium Reduction/Saved by**
3 **Policyholders with Tiers <1**

4 5. State Fund's Actuarial Staff analyzed the data in conjunction with State Fund's IT
5 department to determine that State Fund Policyholders saved \$1,458,488,637 in premium as a result
6 of State Fund's tier rating algorithm during the Class Period. This dollar figure is inclusive of 84,708
7 non-Minimum Premium Policyholders (defined below) with a tier modifier of less than 1 (1<) for at
8 least one annual policy period during the Class Period. This dollar figure is also inclusive of 89,931
9 Policyholders who paid additional premiums due to a tier score greater than 1.0 for at least one
10 annual policy period during the Class Period. I reviewed the data and analysis substantiating the
11 total dollar amount above and confirm that this is correct.

12 **Total Amount of Premium Collected by State Fund Due to Policyholders' Tier Modifiers >1**

13 6. The total amount of additional risk premium collected, or projected to be collected,
14 for the Class Period by State Fund due to Policyholders having tier scores of more than 1.0 for at
15 least one annual policy period is \$751,895,767 (this number excludes minimum premium amount as
16 explained below). I reviewed the data and analysis substantiating the total dollar amount above and
17 confirm that this is correct.

18 7. My review and conclusions as set forth herein confirm that State Fund Policyholders,
19 as a whole, derived a significant benefit from State Fund's application of the tier rating algorithm.
20 During the years at issue, State Fund was able to provide significant savings greater than \$1.45
21 billion dollars to those Policyholders who met certain risk criteria indicating that they were a lower
22 risk for serious workplace injury. State Fund assigned fair and reasonable rates to those
23 Policyholders who were assigned a tier rating modifier of over 1.0 to help offset the higher risk
24 nature of their risk characteristics.

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1 **Forty-Three Thousand, Seven Hundred and One (43,701) Policyholders Were Assigned a**
2 **Tier Rating Modifier Above 1.0 Without Computation by the Algorithm Due to Failure to**
3 **Provide Sufficient Insurance Application Information as Disclosed in State Fund's Rate**
4 **Filing For At Least One Annual Policy Period During the Class Period**

5 8. I understand that the allegations in this case contend that State Fund used a tier rating
6 modifier that increased the premium of certain policyholder class members by assigning them to
7 rating tiers over 1.0. As such, State Fund extracted the total number of Policyholders who paid
8 additional risk premiums due to tier scores greater than 1.0 for at least one annual policy period
9 during the Class Period. State Fund's Actuarial Staff reviewed the data provided by State Fund's IT
10 department and determined that 89,931 Policyholders paid additional premiums due to a tier score
11 greater than 1.0 for at least one annual policy period during the Class Period. This total includes
12 43,701 Policyholders who provided insufficient insurance application information and/or history and
13 were automatically assigned to the appropriate tier as disclosed in State Fund's publicly available
14 rate filings. For example, Rate Filing 13-9005, effective 3/1/2014, as shown on page 3 and 4 of the
15 Filing Memorandum of that Rate Filing discloses this automatic assignment of a tier of 1.5 (certain
16 policies during the Class Period were also assigned a 1.25 tier modifier due to insufficient
17 documentation). I reviewed this rate filing at or about various times during the instant litigation
18 within the course and scope of my job duties including related to preparation of this declaration. The
19 rate filing was prepared and filed with the CDI. A true and correct copy of excerpts of relevant
20 pages from the rate filing is attached as Exhibit "A."

21 9. As to Exhibit A, I note that it states as follows:

22 **"Those businesses that fail to provide documentation of**
23 **claims history and other required information will be placed into the**
24 **Worst/C Tier, to encourage full disclosure to enable State Fund to**
25 **most accurately underwrite the risk."**

26 10. By failing to produce sufficient insurance information and/or history, these 43,701
27 Policyholders' rates for the Rate Filing 13-9005, effective 3/1/2014, from the example above, were
28 calculated for at least one annual policy period, and led to an increase in premiums paid, using a tier
modifier above 1.0 that was not assigned due to the tier modifier rating algorithm. I reviewed the
data and analysis confirming the total policyholder count above and confirm that this is correct.

1 **Net Additional Premiums Paid by Policyholders with a Tier Rating over 1 Excluding**
2 **Minimum Premium Policyholders Total \$347,201,121**

3 11. Policyholders with a tier rating over 1, excluding Minimum Premium Policyholders
4 (as explained below), total 89,931 policyholders, as noted above. With guidance from State Fund
5 staff with subject matter expertise, Cornerstone Research reviewed the data provided by State Fund’s
6 IT department and Cornerstone Research determined that these policyholders paid \$751,895,767 in
7 additional premiums due to tier scores over 1.0. However, that same group of policyholders also
8 received discounts totaling \$404,694,646 due to tier ratings less than 1 for one or more policies at
9 some point during the Class Period while insured with State Fund. Thus, the 89,931 policyholders
10 who paid additional premiums due to tier ratings over 1, excluding Minimum Premium
11 Policyholders (as explained below), only paid \$347,201,121 in net additional premiums. I reviewed
12 the data and analysis confirming the total additional premium paid by the above referenced
13 policyholders and confirm that this is correct.

14 **The Two Proposed “Subgroups” Combine for a Total of 98,854 Policyholders**

15 12. With guidance from State Fund staff with subject matter expertise, Cornerstone
16 Research reviewed the data provided by State Fund’s IT department and Cornerstone Research
17 determined that Forty Three Thousand Seven Hundred and One (43,701) Policyholders are included
18 in a category, or “subgroups,” consisting of policyholders with at least one policy assigned a tier
19 modifier of 1.25 or 1.5 due to lack of requested documentation and the tier modifier resulted in an
20 increase in premiums paid (the “Insufficient Documentation Subgroup”).

21 13. With guidance from State Fund staff with subject matter expertise, Cornerstone
22 Research reviewed the data provided by State Fund’s IT department and Cornerstone Research
23 determined that Fifty Five Thousand One Hundred Fifty Three (55,153) Policyholders are included
24 in a category, or “subgroup,” consisting of policyholders with at least one policy with a tier modifier
25 rating greater than 1 where that policy was not assigned a tier modifier of 1.25 or 1.5 due to lack of
26 requested documentation and the tier modifier resulted in an increase in premiums paid (the
27 “Algorithm Subgroup”).

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1 14. The combined total number of policyholders in the two categories, or “subgroups,”
2 set forth above in paragraphs 12 & 13 is 98,854. This number is higher than the total number of
3 policyholders with at least one tier modifier greater than 1 and excluding Minimum Premium
4 Policyholders (89,931) because some policyholders had policies in both the Algorithm Subgroup
5 and Insufficient Documents Subgroup at some time while being insured by State Fund during the
6 Class Period.

7 15. With guidance from State Fund staff with subject matter expertise, Cornerstone
8 Research reviewed the data provided by State Fund’s IT department and Cornerstone Research
9 determined that the total amount of additional premium paid by the Algorithm Subgroup described
10 above in paragraph 13 is \$510,594,631. The total amount of additional premium paid by the
11 Insufficient Documentation Subgroup is \$241,301,136. I reviewed the data and analysis confirming
12 that both the policyholder count and total additional premium paid by the above referenced
13 policyholders and confirm that this is correct.

14 **Thirty One Thousand Seven Hundred Sixty-One (31,761) Minimum Premium Policyholders**
15 **Are Excluded from the Count of Policyholders Because They Did Not Meet the Criteria**

16 16. Additionally, 31,761 Policyholders are Minimum Premium Policyholders because
17 they had tier scores of greater than 1.0 for at least one annual policy period during the Class Period,
18 but did not pay additional risk premium due to the application of the tier rating modifier for any of
19 those annual policy periods because those Policyholders were below the minimum premium
20 threshold for their classification. With guidance from State Fund staff with subject matter expertise,
21 Cornerstone Research reviewed the data provided by State Fund’s IT department and Cornerstone
22 Research determined the data reflected that 31,761 Policyholders were quoted and agreed to pay the
23 minimum premium amount for these annual policy periods for their risk as assessed by State Fund
24 and, therefore, their rates were not affected by the application of the rating tier modifier. I reviewed
25 the data and analysis substantiating the total policyholder count above and confirm that this is
26 correct.

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

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Executed on February 6, 2023 at Ventura County, California.



R. Timothy O'Connor

Exhibit A

Loss. The projected loss ratio (70.0%) is derived on page 2. Estimated ultimate losses from prior years are adjusted to cost levels for the effective policy period. The ultimate loss ratios are from State Fund's year end 2011 Annual Statement. The on-level factors are based on a Milliman analysis of State Fund as of June 30, 2012. Also, direct earned premiums for prior years are adjusted to effective period rate levels; the premium adjustment factors are shown on page 3.

LAE. The LAE ratio (19.6% of loss) is based on a Milliman analysis of State Fund as of June 30, 2012.

Selected Loss & LAE Ratio. The selected loss & LAE ratio (83.7%) equals the projected loss ratio times 1 plus the LAE ratio.

Permissible Loss & LAE Ratio. The permissible loss and LAE ratio (83.4%) equals 100% minus the expense provisions.

Indicated Rate Change. We believe the company's experience is fully credible. Therefore, using only State Fund's experience, the indicated rate change is +0.4%. State Fund is selecting no change in rates due to experience alone; however, State Fund is selecting a -7.0% SB 863 impact for 2013 policies. Therefore, the total rate change is -7.0%.

Exhibit 6. State Fund is proposing to introduce rating tiers Best/A, Middle/B, or Worst/C to offer a wider range of rates, while simultaneously more closely reflecting the exposure of each policy.

The indicated loss ratio relativities for each of the Best/A, Middle/B, and Worst/C Tiers on Exhibit 6 were calculated by first on-leveling State Fund's policies effective from January 1, 2006 through December 31, 2009. This was done by re-rating every policy using the rates and algorithm effective January 1, 2011 (the most current approved rates available when this analysis was started). The re-rating was done prior to schedule rating.

Then, the policies were segregated into tiers, based on the tier definition which was applied consistently to every policy. The tier definition is based on the policy's past two-year claim history. The more claims activity relative to exposure in the past two years, the higher the claims history attribute score and tier. A claims history attribute of greater than 0.052899 qualifies for the Worst/C Tier. A claims history attribute score of -0.069186 or lower qualifies for the Best/A Tier.

Every insured with two consecutive years of insurance history can be assigned into one of the three tiers, regardless of whether they are currently a State Fund policyholder or are applying as new business. However, not every insured that comes to State Fund will be mature enough to have two years of history, so State Fund plans to place these insureds into the Middle/B Tier. When they complete their second year, these insureds will be treated the same as all other insureds and assigned to the appropriate tier depending on their claims experience. As is already mandatory, State Fund will continue to require full and complete insurance history as part of the application process. Those businesses that fail to provide documentation of claims history and

other required information will be placed into the Worst/C Tier, to encourage full disclosure to enable State Fund to most accurately underwrite the risk.

After the policies were segregated into tiers, the loss ratio for each tier was calculated by policy year as the loss and ALAE valued at May 25, 2011 divided by the on-level premium. The loss and ALAE ratio relativity was calculated as the tier loss and ALAE ratio divided by the Middle/B Tier loss and ALAE ratio, for each policy year. The indicated loss and ALAE ratio relativities for the Best/A Tier relative to the Middle/B Tier range from 0.710 to 0.620, by policy year. The indicated loss and ALAE ratio relativities for the Worst/C Tier relative to the Middle/B Tier range from 4.80 to 4.10, by policy year. Since the tier loss and ALAE ratios were calculated after the on-leveling of all premiums, the tier relativities reflect the residual loss and ALAE ratio relativities after the current algorithm and rates have been taken into account.

After conferring with the CDI, the selected Tier C relativity is significantly lower than the indicated factor. The intention is to temper the one-year impact on Tier C policyholders, as well as to encourage Tier C policyholders to improve workplace safety, data reporting, and other measures to allow them to improve their future experience thereby qualifying for a better tier. State Fund plans to gradually increase the Worst/C Tier Factor in future rate filings over the next three years.

With this filing, State Fund is also proposing to adopt WCIRB January 1, 2013 advisory pure premiums. The impact of the updated advisory pure premiums resulted in a rate increase. To maintain State Fund's targeted change of -7.0%, the LCM was reduced to 2.1686. The process of determining the rate change on the December 31, 2011 in-force book is discussed in the Exhibit 9 section below.

The overall change of -7.0% is based on our review of the experience (0.0%) and the State Fund's assessment of the impact of SB 863 (-7.0%). A summary of State Fund's SB 863 analysis follows page 6 of this memo.

Exhibit 7. Currently State Fund does not have territorial factors, and is proposing to introduce them with this filing. Exhibit 7 provides support for the proposed factors by territory. The territorial relativities are based on data obtained from the WCIRB. Specifically, the statewide annual pure premiums and incurred losses were used from the available First through Fifth Reports for Policy Years 2004 through 2008. The data was grouped by the first three digits of the mailing address zip code. The groupings were consolidated into nine broader territorial categories as outlined in Table 3 below.