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25 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

26 FOR THE COUNTY OF LOS ANGELES

27 ELMA SANCHEZ and HOLLY
28 WEDDING and RICHARD M.
LODYGA, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM, ROB
FECKNER, GEORGE DIER, MICHAEL
BILBERY, RICHARD COSTIGAN, JJ
JELINCIC, HENRY JONES, PRIYA
MATHUR, BILL SLATON, TOWERS
WATSON CO., TOWERS PERRIN,
TILLINGHAST-TOWERS PERRIN, and
DOES 12 through 100, inclusive,

Defendants

CASE NO. BC517444

CLASS ACTION

FIRST AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL

1. Breach of Fiduciary Duty
2. Breach of Contract
3. Breach of The Implied Covenant of Good Faith And Fair Dealing
4. Rescission
5. Declaratory and Injunctive Relief
6. Professional Negligence

1 Plaintiffs, ELMA SANCHEZ, HOLLY WEDDING RICHARD M. LODYGA and
2 EILEEN LODYGA (“Plaintiffs”) individually and on behalf of all others similarly
3 situated as defined more fully below (the “Class”), bring this action against Defendant
4 CALIFORNIA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM (“CalPers”); and
5 CalPers Board of Administration Members ROB FECKNER, GEORGE DIER,
6 RICHARD COSTIGAN, JJ JELINCIC, HENRY JONES, PRIYA MATHUR, BILL
7 SLATON; and TOWERS WATSON CO., TOWERS PERRIN, TILLINGHAST-TOWERS
8 PERRIN; and Does 12-100 seeking damages and injunctive relief arising out of CalPers’
9 sale and renewal of long term care insurance policies (“LTC policies”)
10

11 INTRODUCTION

12 1. In 1995 CalPers began offering and promoting the sale of LTC policies to
13 CalPers members and their families. CalPers promised consumers that these policies
14 would provide them with financial security and protect them against the high costs
15 associated with nursing home or other long term facility care. They also promised
16 consumers that the policies would be “reasonably priced” and that rates (which are
17 based on the age of the insured at the time of enrollment) would be fixed and would
18 never rise based on the consumer’s age or health. CalPers touted that its policies were
19 30% cheaper than all other comparable policies and provided superior benefits. CalPers
20 further represented that it had the requisite experience to properly underwrite the LTC
21 policies so as to insure that the funds were carefully and prudently managed.

22 2. After initiating the LTC insurance program, CalPers then disseminated
23 additional promotional materials to policyholders in order to induce them to renew
24 their LTC policies each year. In uniform promotional materials, CalPers repeatedly
25 touted the financial stability and strength of its LTC program.

26 3. From 1995-2012, CalPers, and the CalPers Board of Administration failed
27 to provide timely and accurate information to Plaintiffs and the members of the Class
28

1 that its LTC program was grossly underfunded, had engaged in an improper
2 investment strategy, and it had stopped enrolling new members.

3 4. CalPers and the CalPers Board of Administration members have a
4 fiduciary duty to provide timely and accurate information to its members. (*City of*
5 *Oakland v. Public Employees Retirement System*, (2002) 95 Cal.App.4th 29, 40.) The
6 fiduciary duty to inform and deal fairly with members also requires that the
7 information conveyed be complete and unambiguous.

8 5. CalPers and the CalPers Board of Administration also have a fiduciary
9 duty mandated by the California Constitution which provides that CalPers and its
10 Board of Administration act as “the fiduciary of the public pension or retirement system
11 shall discharge his or her duties with respect to the system with the care, skill,
12 prudence, and diligence under the circumstances then prevailing that a prudent person
13 acting in a like capacity and familiar with these matters would use in the conduct of an
14 enterprise of a like character and with like aims.” (*California Constitution, article XVI,*
15 *section 17(c)*).

16 6. However, in 2013, everything abruptly changed. CalPers suddenly and
17 unexpectedly advised its policyholders that its LTC program was grossly underfunded
18 and, that CalPers, unbeknownst to Plaintiffs and the other members of the Class, had
19 stopped enrolling new members in 2009, four years before. Further, CalPers admitted
20 that it had engaged in an improper investment strategy. For years CalPers had been
21 pursuing an aggressive 44% investment strategy and in 2013 it abruptly shifted to a
22 more stable and conservative 15% investment strategy. As a result, the LTC policy fund
23 was and became even more grossly underfunded. Consequently CalPers announced
24 that it would increase most policyholders’ premiums by 85% commencing in 2015. Now
25 more than 125,000 Class Members, many of whom are elderly and on fixed incomes, are
26 placed in the untenable position of either allowing their policies to lapse or paying
27 CalPers increased premiums that they simply cannot afford.

28

PARTIES

A. Plaintiffs

10. Plaintiff, ELMA SANCHEZ (“Sanchez”) was a resident of the state of California, County of Los Angeles, and city of Hacienda Heights when she applied for and received a CalPers LTC Policy. Sanchez was eligible for CalPers LTC coverage due to her employment with the Walnut Valley Unified School District in Los Angeles County. She was born on July 5, 1925. Sanchez is a member of the Class of consumers who purchased and/or renewed LTC policies from CalPers, and were similarly situated and incurred similar damage as a result of CalPers’ and the CalPers Board of Administration’s breaches of their fiduciary duties, breaches of contract, and wrongful conduct.

11. Due to the fact that Sanchez is 88 years old, and many of the other Class members are advanced in age, this case warrants consideration for an early trial date.

12. Plaintiff, HOLLY WEDDING (“Wedding”), is, and at all times mentioned herein, was a resident of Sacramento, California. Wedding was born on December 29, 1949. Wedding is a member of the Class of individuals who purchased and/or renewed LTC policies from CalPers, and were similarly situated and incurred similar damage as a result of CalPers' and the CalPers Board of Administration’s breaches of their fiduciary duties, breaches of contract, and Defendants’ wrongful conduct.

13. Plaintiff RICHARD LODYGA (“Richard Lodyga”) is, and at all times mentioned herein was a resident of San Clemente, California. Richard Lodyga is a member of the Class of individuals who purchased and/or renewed LTC policies from CalPers, and were similarly situated and incurred similar damages as a result of CalPers’ and the CalPers Board of Administration’s breaches of their fiduciary duties, breaches of contract, and Defendants’ wrongful conduct. In addition, Plaintiff Richard Lodyga purchased the Inflation Protection Plan described below.

14. Plaintiff EILEEN LODYGA (“Eileen Lodyga”) is, and at all times mentioned herein was a resident of San Clemente, California. Eileen Lodyga is a

1 member of the Class of individuals who purchased and/or renewed LTC policies from
2 CalPers and were and are similarly situated and incurred similar damages as a result of
3 CalPers' and the CalPers Board of Administration's breaches of their fiduciary duties,
4 breaches of contract and Defendants' wrongful conduct. In addition, Plaintiff Eileen
5 Lodyga purchased the Inflation Protection Plan described below. Plaintiff Richard
6 Lodyga and Plaintiff Eileen Lodyga are collectively referred to herein as the "Lodygas".

7 15. It is impracticable to bring all members of the Class as individual plaintiffs
8 before the Court because the members of the Class are too numerous.

9 16. Upon information and belief, Plaintiffs allege, that in excess of 125,000
10 LTC policyholders were damaged as a result of Defendants' wrongful conduct herein
11 alleged.

12 17. On March 18, 2013, Plaintiff Sanchez, individually, and on behalf of other
13 similarly situated California residents who purchased CalPers Long Term Care
14 insurance any time from 1995 through the present, with the exception of persons whose
15 policies lapsed before receiving notice of a premium rate increase, served CalPers with
16 a claim pursuant to Government Code section 910. The Victim Compensation and
17 Government Claims Board ("VCGCB") stated in a letter dated April 4, 2013 that it
18 would act on the claim on May 16, 2013 and "rejection of your claim will allow you to
19 initiate litigation should you wish to pursue this matter further." On May 24, 2013, the
20 VCGCB informed Sanchez that her claim had been rejected.

21 18. On March 18, 2013, Plaintiff Wedding, individually, and on behalf of other
22 similarly situated California residents who purchased CalPers Long Term Care
23 insurance any time from 1995 through the present, with the exception of persons whose
24 policies lapsed before receiving notice of a premium rate increase, served CalPers with
25 a claim pursuant to Government Code section 910. On April 26, 2013, the VCGCB
26 informed Wedding that her claim had been rejected, allowing her to initiate litigation.

27 19. On July 31, 2013 the Lodyga Plaintiffs, individually, and on behalf of other
28 similarly situated California residents who purchased CalPers Long Term Care

1 insurance any time from 1995 through the present, with the exception of persons whose
2 policies lapsed before receiving notice of a premium rate increase, served CalPers with
3 claims pursuant to Government Code section 910. On September 27, 2013, the VCGCB
4 informed the Lodygas that their claims had been rejected, allowing them to initiate
5 litigation.

6
7 **B. Defendants**

8 20. Defendant CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM,
9 ("CalPers"), is a pension fund organized under the laws of the State of California. From
10 its headquarters in Sacramento, California, throughout the Class Period (as defined
11 below) it sold, administered and renewed the LTC policies purchased by Plaintiffs and
12 the Class.

13 21. Defendant ROB FECKNER, an individual, is a California resident and has
14 been a member of the CalPers Board of Administration from 1999-2013. He has served
15 as the CalPers Board of Administration President from 2005-2013, and was the Vice
16 President from 2003-2004. Rob Feckner is named in place and stead of Doe 1.

17 22. Defendant GEORGE DIEHR, an individual, is a California resident and
18 has been a member of the CalPers Board of Administration from 2003-2013 serving as
19 the CalPers Board of Administration Vice President from 2008-2013. George Diehr is
20 named in place and stead of Doe 2.

21 23. Defendant MICHAEL BILBREY, an individual, is a California resident
22 and has been a member of the CalPers Board of Administration from 2011-2013.
23 Michael Bilbrey is named in place and stead of Doe 3.

24 24. Defendant RICHARD COSTIGAN, an individual, is a California resident
25 and has been a member of the CalPers Board of Administration from 2011-2013.
26 Richard Costigan is named in place and stead of Doe 4.

1 25. Defendant JJ JELINCIC, an individual, is a California resident and has
2 been a member of the CalPers Board of Administration from 2009-2013. JJ Jelincic is
3 named in place and stead of Doe 5.

4 26. Defendant HENRY JONES, an individual, is a California resident and has
5 been a member of the CalPers Board of Administration from 2008-2013. Henry Jones is
6 named in place and stead of Doe 6.

7 27. Defendant PRIYA MATHUR, an individual, is a California resident and
8 has been a member of the CalPers Board of Administration from 2003-2013. Priya
9 Mathur is named in place and stead of Doe 7.

10 28. Defendant BILL SLATON, an individual, is a California resident and has
11 been a member of the CalPers Board of Administration from 2012-2013. Bill Slaton is
12 named in place and stead of Doe 8.

13 29. Defendant TOWERS WATSON & CO. (“Towers Watson”) is a Delaware
14 corporation with its corporate headquarters in New York, New York. Towers Watson
15 was formed on January 4, 2010, by the merger of Towers Perrin and Watson Wyatt
16 Worldwide. Towers Watson is predecessor to, successor to, or is otherwise affiliated
17 with Towers Perrin. Towers Watson is named in place and stead of Doe 9.

18 30. Defendant TOWERS PERRIN (“TP”) is a business entity of unknown form
19 that is predecessor to, successor to, or is otherwise affiliated with Towers Watson. At
20 relevant times herein, Towers Perrin provided actuarial consulting services to CalPers
21 and the CalPers Board of Administration. TP is named in place and stead of Doe 10.

22 31. Defendant TILLINGHAST-TOWERS PERRIN (“TTP”) is a business entity
23 of unknown form that is predecessor to, successor to, or is otherwise affiliated with
24 Towers Perrin. TTP is named in place and stead of Doe 11. The defendants identified
25 in paragraphs 29 to 31 are collectively referred to herein as “Towers” or the “Towers
26 Defendants”.

27 32. Plaintiffs are unaware of the true names and capacities of the remaining
28 defendants sued in this action by the fictitious names DOES 12 through 100. Plaintiffs

1 will amend their complaint when those names and/or capacities become known to
2 Plaintiffs. Plaintiffs are informed and believe that each of the fictitiously named
3 defendants is in some manner responsible for the events and allegations set forth in this
4 complaint.

5 33. At all relevant times, defendants, and each of them, were the agents and
6 employees of each of the remaining defendants, and were at all times acting within the
7 purpose and scope of said agency and employment, and each defendant has ratified
8 and approved the acts of its agents.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

10 34. Plaintiffs and the Class lack an “adequate, available or non-futile” “clearly
11 defined” administrative remedy. Specifically, there is no administrative remedy
12 provided by California that would permit Plaintiffs to obtain damages and/or injunctive
13 relief for Plaintiffs and the members of the Class for the wrongful conduct alleged
14 herein.

FACTS

A. CalPers’ Long Term Care Insurance

17 35. In 1995 CalPers began offering to its members and their families the LTC
18 policies wherein CalPers promised to protect policyholders from the expenses
19 associated with being confined to a nursing home or other long term care facility. In
20 uniform promotional materials that were given to policyholders, CalPers promised that
21 the premiums for the insurance were set and that “rates do not increase simply because
22 of age or illness.” These promotional materials also utilized charts to demonstrate the
23 advantage of locking in a lower rate at a younger age. These charts projected CalPers
24 LTC premium costs through age 80, with no indication of a possible premium increase.

25 36. In uniform promotional materials, consumers were also told that the
26 insurance was 30% cheaper than other comparable policies and that CalPers was able to
27
28

1 keep the cost low because it is “the nation's first self-funded, not-for-profit long-term
2 care program.” Specifically, CalPers claimed that “since the program is not-for-profit,
3 CalPers is able to pass the resulting savings on to you in lower monthly premiums. This
4 is one of the main reasons why CalPers’ plans cost on average about 30 percent less
5 than comparable commercial plans.” CalPers further represented that its LTC policies
6 were one of the most generous policies in the long term care market. And the
7 promotional materials identified a laundry list of benefits available under its LTC
8 policies.

9 37. CalPers marketed the LTC policies through uniform promotional
10 materials that were distributed to public employees often in meetings held in various
11 school districts around the state. CalPers also requested that State Department Directors
12 disseminate letters promoting its LTC policies to all department employees. In one of
13 these letters, CalPers advertised, “[w]hen you enroll, you lock-in your premium at the
14 same rate for as long as you pay premiums.” CalPers also promised that “[b]y enrolling
15 in the PERS long Term Care Program during the open enrollment period between now
16 and June, 1996, you, your spouse, and your parents and parents-in-law may obtain
17 excellent coverage at a low rate locked-in for the life of your coverage.”

18 38. CalPers also marketed its “Inflation Protection” plan which was an
19 elective benefit offered to policyholders. If selected by the policyholder, the Inflation
20 Protection plan provided that CalPers would increase the policyholder's Nursing Home
21 Daily Maximum; Residential Care Facility Daily Maximum; and Home and Community
22 Care Monthly Maximum by 5% compounded annually each year as long as coverage
23 remains in force. CalPers explicitly promised in the Evidence of Coverage (“EOC”) that
24 the “premium rate will not increase as a result of these annual benefit increases.”
25 Moreover, in uniform promotional materials CalPers informed consumers that “[t]he
26 plans with 'built-in' annual benefit increases will cost more on a monthly basis initially,
27 but you lock in a rate now that is designed to remain level over the life of the plan and
28 that won't rise simply with age.”

1 39. According to CalPers' promotional materials, its LTC program was a huge
2 success. By 1997, or within two years, CalPers had enrolled more than 119,000 members.

3 40. By 2000, the number of enrollees had grown to 128,000. At this time,
4 CalPers announced that it was changing the existing policies to add even more benefits.
5 According to promotional materials disseminated by CalPers to its insureds, the
6 decision to add these benefits was due to the "Program's financial stability." The policy
7 now provided a new hospice benefit, a new more affordable plan option, and a change
8 in the program's deductible period. With the announcement of these new benefits,
9 CalPers heavily touted the strength of the program's finances and gave each enrollee a
10 rider to their original policy listing the new benefits.

11 41. Under the EOC, CalPers had the ability to add benefits to the policy
12 without the policyholders' consent. However, changes could not be made if they would
13 result in an "increase in premium."

14 42. Each year from 1995 through 2003, CalPers provided uniform written
15 materials to its LTC policyholders, and further continued to promote the program to
16 potential new members, advising them that the program was doing well and was
17 financially sound. These promotional materials were intended to induce Class members
18 to keep their insurance in place and continue paying premiums and to induce new
19 individuals to purchase the LTC policies.

20 43. Commencing in 1995 and continuing through 2007, CalPers sold three
21 categories of polices: the LTC1 which are LTC policies issued from 1995 to 2002; the
22 LTC2 which are LTC policies issued from 2003 to 2004; and the LTC3 which are LTC
23 policies issued from 2005 to 2008. Of the 150,330 current policyholders, more than 83%
24 (125,257) purchased the LTC1 category of policies. The vast majority of these
25 policyholders are retired, living on a fixed income, and have a limited ability to earn
26 additional funds to support the enormous premium increase demanded by CalPers. In
27 contrast, the LTC3 policies that were sold more recently account for 10% (16,190) of the
28 total policyholders.

1 44. Sanchez and Wedding and the Lodygas and other members of the Class
2 who selected inflation benefit protection were promised increases in both the daily
3 benefit amounts and the total coverage amount by 5% compounded on the amount of
4 coverage without any increase in premiums. The Evidence of Coverage stated there
5 would be *no* premium increases as a result of the inflation protection benefit option.

6 45. CalPers did not provide timely, complete, unambiguous and accurate
7 information to its members regarding the CalPers LTC program. From the very
8 beginning, the premiums for the insurance were grossly underpriced and were not
9 sufficient to provide the level of benefits promised under the program. Moreover,
10 CalPers was woefully incapable of accurately underwriting the policies that it was
11 actively marketing. Not only was CalPers unable to accurately assess the true projected
12 costs of the policies it was selling, it determined it would aggressively invest the
13 premiums paid by the policyholders. In short, CalPers, which had *no* prior experience
14 providing long-term care coverage, over-promised and under-delivered. CalPers failed
15 to do the necessary underwriting to ensure that premiums were sufficient to support
16 the risks insured against, failed to invest the premiums wisely and safely, and failed to
17 conduct the necessary actuarial analysis that would have revealed the true costs for
18 future benefits.

19 46. From at least 1995 to in or around 2004, Towers, was hired by CalPers and
20 the CalPers Board of Administration to serve as an actuarial consultant for purposes of
21 calculating and setting premiums for the LTC plan. Plaintiffs are informed and believe
22 that Towers agreed to perform their actuarial valuations and knew or should have
23 known that CalPers would rely on Towers' actuarial computations in setting the
24 premiums charged for the LTC policies and the Inflation Protection Plan. Towers knew
25 or should have known that errors on their part in making their valuations, or in making
26 recommendations, or in making presentations to CalPers and the CalPers Board of
27 Administration would cause CalPers to receive an incorrect amount of premiums from
28

1 Plaintiffs and the Class members and would ultimately result in a potential deficit and
2 require an increase in premiums or loss in benefits to Plaintiffs and the Class members.

3 47. Throughout the foregoing time, Towers under calculated the amount
4 necessary to fund the LTC policies. As a result of Towers' calculation errors, the
5 premiums charged failed to adequately fund the LTC policies and plan and were, in
6 part, responsible for CalPers' decision to stop enrollment, and increase premiums in
7 2013. Prior to the 2013 premium increase announcement, Plaintiffs and the Class
8 members could not in the exercise of reasonable diligence, have learned of the Towers
9 Defendants' calculation errors.

10 48. Plaintiffs and the Class were the intended beneficiaries of the work
11 performed by Towers and Towers knew or should have known that any calculation or
12 valuation errors by Towers would adversely affect Plaintiffs and the Class.

13 49. In 2009 CalPers was forced to close the program to new enrollments.
14 When an insurance company fails to properly price an LTC policy and fails to properly
15 establish reserves for a block of LTC insured business, closing the block can lead to a
16 "death spiral" that will guarantee that the premium rates on LTC policies will increase
17 at an even greater rate. Despite this, CalPers never informed Class members about its
18 decision to stop new enrollments nor did it explain the consequences of doing so.

19 50. Commencing in approximately February 2013, Class members began
20 receiving letters from CalPers advising them that it had voted to increase premiums by
21 another 5% immediately, 5% in 2014, and 85% in 2015. These increases applied to all
22 policyholders who purchased LTC1 and LTC2 policies issued from 1995-2004 with
23 lifetime coverage and built-in inflation protection, as well as lifetime policies without
24 inflation protection, and 3-year and 6-year policies with inflation protection.

25 51. The impact of the increase is extraordinary. By way of example, when she
26 originally enrolled in the program, Plaintiff Sanchez was paying \$179.00 per month in
27 premiums. Commencing in 2015 her monthly premium will be \$793.75. When Plaintiff
28 Wedding initially enrolled in the program, she was paying \$58.00 per month in

1 premiums. Commencing in 2015 her monthly premium will be \$304.41. When Richard
2 Lodyga purchased his policy in 1997 he was paying \$102 per month and when Eileen
3 Lodyga purchased her policy in 1997 she was paying \$82 per month. Commencing in
4 2015, Richard Lodyga’s monthly premium will be \$507.97 and Eileen Lodyga’s monthly
5 premium will be \$424.93.

6 52. The stated reason for the increase was to “stabilize” the \$3.6 billion fund.
7 And although CalPers announced that it will re-open enrollment in the LTC program in
8 December 2013 with a new policy entitled LTC4, it has conceded that it does not know
9 if efforts to correct its grossly deficient policy program will succeed.

10 53. At all times, Defendants knew the LTC policies were grossly underpriced
11 and that premiums would have to be raised. Had Class members known the truth, they
12 would not have purchased or renewed the LTC policies. Instead, they would have been
13 able to purchase alternative insurance while younger at a substantially reduced overall
14 cost and avoided the significant rise in premiums that will likely force many Class
15 members to either drop their policies or accept the reduction in benefits now mandated
16 by CalPers.

17 54. Plaintiffs and the other Class members are now faced with an untenable
18 situation; either abandon the policies they have been paying into for almost 20 years or
19 pay premiums that many simply cannot afford. The only other alternative is for Class
20 members to elect to reduce their lifetime benefits to either a 3, 6, or 10 year maximum
21 and to eliminate the inflation protection that Plaintiffs and the Class members paid for.

22 55. Defendants’ irresponsible conduct resulted in Plaintiffs and the Class
23 renewing their policies until they were too old to purchase alternative coverage with
24 another company. Plaintiffs and the Class are also in the untenable position of having to
25 forfeit whatever premiums have been paid to CalPers, if they choose to drop their
26 coverage because they can no longer afford the premiums.

27
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1 56. Upon information and belief, the conduct alleged herein was devised,
2 approved of, and implemented by officers, directors, and/or agents of CalPers at its
3 headquarters in Sacramento, California.

4
5 **B. CalPers Had a Legal Duty to Not Under-Price Its Insurance and Keep**
6 **Policyholders Fully Apprised of Its Financial Condition.**

7 57. Consumers purchase insurance with the common goal of exchanging the
8 gamble of going at it alone -- whereby he or she could either escape all loss whatsoever
9 or suffer a loss that might be devastating -- for the opportunity to pay a fixed and
10 certain amount into a fund knowing that this amount is the maximum he or she will
11 lose on account of the particular type of risk insured against. Whatever the reason one
12 has for buying LTC insurance, a planned hidden rate increase is unacceptable.

13 58. A product is an insurance product only if it shifts the risk of loss from the
14 insured to the insurer, which in turn manages its risk by creating a sufficiently large
15 pool of insureds to spread the risk, by reinsuring all or part of the risk, and/or by
16 carefully investing premiums now to help pay claims later.

17 59. This expertise is reasonably expected and relied upon in the marketplace,
18 and combined with the use of “form contracts” explains the well-known fact that most
19 consumers do not understand their insurance contracts.

20 60. The duty of care of the insurer to the insured is elevated and involves the
21 obligation of utmost good faith. Consumers reasonably expect compliance with that
22 obligation. The duty of care includes the requirement that the insurer communicate to
23 the insured, in good faith, all facts within its knowledge that are material to the
24 contract, and which the insured cannot ascertain.

25 61. Likewise, policy language may not be invoked to frustrate the reasonable
26 expectations of the marketplace regarding the scope or form of coverage. Similarly,
27 policyholders should be notified when a block of business is closed, as it affects the
28 stability of the pool and reserves.

1 62. Consistent with consumers’ expectations, insurers may not engage in the
2 same kind of free-wheeling profit-motivation of other industries dealing with products
3 less close to the core of our long-term, economic well being.

4 63. Thus, insurers may not engage in low-ball pricing of LTC insurance
5 products with planned or reasonably foreseeable rate increases. Similarly, insurers may
6 not insert self-serving, exculpatory language that interferes with or nullifies the
7 insurance being promised. And, any ambiguity in the policy language must be
8 construed against the drafter of the policy.

9 64. The LTC products offered by CalPers were targeted at individuals who
10 could not reasonably be expected to afford rate increases. These individuals either were
11 or would become retirees on fixed incomes, and were employed in the public sector
12 with incomes that were modest in comparison with the private sector. LTC policies such
13 as the subject ones are not suitable for people on fixed incomes unless they are designed
14 and administered as level-premium policies.

15 65. The applications and sales brochures provided to Plaintiffs and the Class
16 did not contain a statement that CalPers would increase premiums or that CalPers had
17 in place planned premium increases for its LTC policies.

18 66. Despite CalPers’ affirmative representations to Plaintiffs and the Class
19 regarding the LTC policies being guaranteed renewable for life, CalPers had knowledge
20 that premiums for the LTC policies would be increased to unaffordable and unexpected
21 levels. CalPers knew this increase would require its policyholders to choose between
22 paying additional enormous premiums to maintain their LTC coverage, forfeiting the
23 thousands of dollars of premiums paid for these policies, and accepting a reduction in
24 benefits.

25 67. When the policies were sold, CalPers knew that many of its LTC
26 policyholders would not be able to purchase affordable long-term care insurance with
27 other carriers should they cease paying the increased premiums, because with the
28

1 passage of time, the policyholders age and/or medical history would either bar coverage
2 or make it unaffordable.

3 68. CalPer's conduct alleged herein, including but not limited to, decisions
4 regarding lapse assumptions, fund investment strategies, the design of the LTC policies,
5 underwriting assumptions, representations regarding the LTC policies, the form and
6 content of applications and brochures, and the decision to stop accepting new
7 applicants in 2009, occurred at the direction, control, and supervision of officers,
8 directors, employees and/or agents of CalPers.

9
10 **C. The Towers Defendants Had a Legal Duty to Accurately Perform Actuarial**
11 **Valuations and to Create Accurate Actuarial Reports and Valuations which**
12 **The Towers Defendants Knew Would Be Used By CalPers in Pricing Its LTC**
13 **Insurance**

14 69. In performing the actuarial valuations used by CalPers and the Board of
15 Administration in setting premiums for the LTC Policies, the Towers Defendants owed
16 Plaintiffs and the members of the Class a duty to insure that the valuations that they
17 performed were accurate. The Towers Defendants knew or should have known that the
18 valuations would be the basis on which CalPers set premiums and further knew or
19 should have known that any errors in the valuations could adversely affect Plaintiffs
20 and the members of the Class in that inadequate funding of premiums would lead to
21 increased premiums or reductions in benefits.

22 70. In addition, the Towers Defendants had a duty to use the care and skill
23 ordinarily used by reputable actuaries in the same and similar locality under similar
24 circumstances and to use reasonable diligence and their best judgment in the exercise of
25 their professional skill and in the application of learning, in an effort to perform the
26 actuarial services.

27 71. The Towers Defendants breached the foregoing duties in that they failed
28 to exercise the reasonable care and skill used by actuaries in undertaking to perform

1 actuarial services required for LTC policies and in particular failed to adequately
2 account for and/or committed calculation errors that led, in part, to the setting of
3 premiums at rates that were insufficient to support the LTC policies and plan. Among
4 other things, Towers failed to properly account for mortality, policy lapses, inflation
5 protection and other critical components of the actuarial valuations performed by
6 Towers.

7
8 **D. General Allegations As To Elma Sanchez**

9 72. In or around 1998, Sanchez became aware that CalPers was offering LTC
10 insurance to CalPers Members. Prior to purchasing the policy, CalPers provided
11 Sanchez with promotional materials for the policy. Those materials stated that the
12 policy was a fixed premium policy and that premiums would never rise based on
13 Sanchez's age or health. None of the materials provided to Sanchez disclosed that the
14 policy being offered by CalPers was underpriced and that rate increases in the future
15 were certain. Based on these representations and/or non-disclosures, Sanchez
16 purchased the subject LTC policy from CalPers.

17 73. Sanchez received additional promotional materials from CalPers wherein
18 CalPers touted the financial stability of its LTC program. At no time during this period
19 did CalPers disclose to Sanchez that its LTC policies were underpriced and improperly
20 invested. Sanchez relied on these representations and non-disclosures each year she
21 decided to renew her LTC policy.

22 74. In February 2013, Sanchez was advised by CalPers that the premiums for
23 her LTC policy would increase by 85%.

24 75. As a direct and proximate result of CalPers' wrongful course of conduct,
25 Sanchez and the Class have been damaged because they are either required to pay
26 premium increases in order to keep their LTC policies in force, reduce their coverage to
27 keep premiums at their original rate, or risk having their coverage terminated by
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1 CalPers for nonpayment of premiums, thereby leaving Class members without the
2 insurance coverage they contracted for with CalPers.

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4 **E. General Allegations As To Holly Wedding**

5 76. In 1995, Wedding became aware that CalPers was offering LTC insurance
6 to CalPers members. Prior to purchasing the policy, CalPers provided Wedding with
7 promotional materials for the policy. Those materials stated that the policy was a fixed
8 premium policy and that premiums would never rise based on Wedding's age or
9 health. None of the materials provided to Wedding disclosed that the policy being
10 offered by CalPers was underpriced and that rate increases in the future were certain.
11 Based on these representations and/or non-disclosures, Wedding purchased the subject
12 LTC policy from CalPers.

13 77. Wedding received additional promotional materials from CalPers wherein
14 CalPers touted the financial stability of its LTC program. At no time during this period
15 did CalPers disclose to Wedding that its LTC policies were underpriced and improperly
16 invested. Wedding relied on these representations and non-disclosures each year she
17 decided to renew her LTC policy.

18 78. In February 2013, Wedding was advised by CalPers that the premiums for
19 her LTC policy would increase by 85%.

20 79. As a direct and proximate result of CalPers' wrongful course of conduct,
21 Wedding and the Class have been damaged because they are either required to pay
22 premium increases in order to keep their LTC policies in force, reduce their coverage to
23 keep premiums at their original rate, or risk having their coverage terminated by
24 CalPers for nonpayment of premiums, thereby leaving Class members without the
25 insurance coverage they contracted for with CalPers.

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1 **F. General Allegations As To Richard and Eileen Lodyga**

2 80. In or around 1995 the Lodygas became aware that CalPers was offering
3 LTC insurance to CalPers members. Prior to purchasing the policy, CalPers provided
4 the Lodygas with promotional materials for the policy. Those materials stated that the
5 policy was a fixed premium policy and that premiums would never rise based on
6 Lodygas' age or health. None of the materials provided to the Lodygas disclosed that
7 the policy being offered by CalPers was underpriced and that rate increases in the
8 future were certain. Based on these representations and/or non-disclosures, the Lodygas
9 each purchased the subject LTC policy from CalPers, including Inflation Protection.

10 81. The Lodygas received additional promotional materials from CalPers
11 wherein CalPers touted the financial stability of its LTC program. At no time during
12 this period did CalPers disclose to the Lodygas that its LTC policies were underpriced
13 and improperly invested. The Lodygas relied on these representations and non-
14 disclosures each year they decided to renew their LTC policies.

15 82. In February 2013, the Lodygas were advised by CalPers that the
16 premiums for their LTC policies would increase by 85%.

17 83. As a direct and proximate result of CalPers' wrongful course of conduct,
18 the Lodygas and the Class have been damaged because they are either required to pay
19 premium increases in order to keep their LTC policies in force, reduce their coverage to
20 keep premiums at their original rate, or risk having their coverage terminated by
21 CalPers for nonpayment of premiums, thereby leaving Class members without the
22 insurance coverage they contracted for with CalPers.

23
24 **CLASS ACTION ALLEGATIONS**

25 84. Plaintiffs bring this action as a class action pursuant to California Code of
26 Civil Procedure section 382 and California Rules of Court 3.760, et seq.

27 85. Class Definition: Plaintiffs bring this action individually and on behalf of
28 all others similarly situated California citizens who purchased LTC1 and LTC2 policies

1 issued from 1995-2004 with lifetime coverage and built-in inflation protection, lifetime
2 policies without inflation protection, as well as 3-year and 6-year policies with inflation
3 protection from CalPers at any time; except that, notwithstanding the foregoing, the
4 Class does not include any of the following: (1) persons whose policies lapsed before
5 receiving notice of a premium rate increase in February 2013; (2) persons who received
6 claim payments under their policies before February 2013; (3) any officer or director of
7 CalPers involved in the management of CalPers Long Term Care program; and (4) any
8 judicial officer who hears this case and their immediate family members and associated
9 court staff assigned to this case, and all persons within the third degree of relationship
10 to any such persons.

11 86. Sub-Class: Contained within the Class is a Sub-Class of individuals who
12 purchased Inflation Protection as a part of their purchase of the LTC policies.

13 87. The Class and Sub-Class as defined above, may be further defined or
14 amended by additional pleadings, evidentiary hearings, a class certification hearing,
15 and orders of this Court.

16 88. The requirements for maintaining this action as a class action are satisfied
17 in that:

- 18 a. It is impracticable to bring all members of the Class before the Court.
19 Plaintiffs estimate that there are more than 125,000 members of the
20 Class and their identities can be ascertained from CalPers' books and
21 records. Attempting to join and name each Class member as a co-
22 Plaintiff would be unreasonable and impracticable.
- 23 b. The prosecution of separate actions by individual Class members or
24 the individual joinder of all Class members in this action is
25 impracticable and would create a massive and unnecessary burden on
26 the resources of the courts and could result in inconsistent
27 adjudications, while a single class action can determine with judicial
28 economy the rights of each member of the Class.

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- c. Because of the disparity of resources available to Defendants versus those available to individual Class members, prosecution of separate actions would work a financial hardship on many Class members.
- d. Prosecuting this case as a class action conserves the resources of the parties and the court system, protects the rights of each member of the Class, and meets all due process requirements as to fairness to the Defendants. Prosecuting this case as a class action is also far superior to individual claims, all arising out of the same circumstances and course of conduct.
- e. The claims or defenses of the representative Plaintiffs are typical of the claims or defenses of each member of the Class.
- f. The Plaintiffs will fairly and adequately protect the interests of the Class. Each Class member's interests are consistent with, and not antagonistic to, those of Plaintiffs. Plaintiffs have engaged counsel experienced and competent in insurance and class action litigation.
- g. Upon certification, notice can be efficiently and effectively accomplished since class members' identities and locations can easily be ascertained from CalPers' records. CalPers regularly provides notice of actions relating to the LTC policies by U.S. Mail or electronic mail to Class members and thus, notice can readily be accomplished through a number of methods including first class mail and/or electronic mail.

89. There are questions of law and fact common to the Class, which are substantially similar and predominate over the questions affecting the individual Class members. Among these common questions of law and fact are:

- a. Whether CalPers and the CalPers Board of Administration breached its fiduciary duties to Class members by failing to provide timely and accurate information to its members.

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- b. Whether CalPers and the CalPers Board of Administration breached its fiduciary duties to Class Members by failing to discharge his or her duties with respect to the system with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims. (*California Constitution, article XVI, section 17(c)*).
- c. Whether CalPers breached its contract with the Class members by forcing Plaintiffs and the Class members to elect between paying an increased premium or accepting decreased benefits;
- d. Whether CalPers induced the sale and renewal of LTC policies through misrepresentations or omissions of material information;
- e. Whether CalPers wrongfully underpriced its LTC policies in order to stimulate policy sales;
- f. Whether CalPers failed in its management of the LTC policies fund in a manner that rendered the fund inadequate;
- g. Whether CalPers concealed from its policyholders the defects inherent in its LTC policies;
- h. Whether the Towers Defendants were negligent in the performance of their actuarial duties;
- i. Whether the actuarial reports prepared by the Towers Defendants were inaccurate and failed to properly account for the present value of all projected benefits and the contribution rates necessary to fund benefits;
- j. Whether Plaintiffs and the Class have sustained damages and the proper measure of those damages.

90. In addition or in the alternative, certification of the Class may be appropriate for purposes of obtaining declaratory or injunctive relief.

1 **FIRST CAUSE OF ACTION**

2 **(Breach of Fiduciary Duty as to Defendants CALPERS, ROB FECKNER, GEORGE**
3 **DIER, MICHAEL BILBERY, RICHARD COSTIGAN, JJ JELINCIC, HENRY JONES,**
4 **PRIYA MATHUR, BILL SLATON and DOES 12 through 100)**

5 91. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1
6 through 90 above, as if fully set forth herein.

7 92. *California Government Code* § 815.6 states that “[w]here a public entity is
8 under a mandatory duty imposed by an enactment that is designed to protect against
9 the risk of a particular kind of injury, the public entity is liable for an injury of that kind
10 proximately caused by its failure to discharge the duty unless the public entity
11 establishes it exercised reasonable diligence to discharge that duty.”

12 93. *California Constitution, article XVI, section 17* provides that,
13 “Notwithstanding any other provisions of law . . . to the contrary” CalPers and the
14 CalPers Board Members owe a fiduciary duty to all individuals who are to benefit from
15 the funds it manages. Specifically Subsection (c) provides the Board Members “shall
16 discharge their duties with respect to the system with the care, skill, prudence, and
17 diligence under the circumstances then prevailing that a prudent person acting in a like
18 capacity and familiar with these matters would use in the conduct of an enterprise of a
19 like character and with like aims.”

20 94. Encompassed within this constitutionally mandated fiduciary duty is the
21 duty by CalPers and the CalPers Board of Administration (“CalPers Board”) to provide
22 timely and accurate information to the beneficiaries of the funds managed by the
23 CalPers Board. The duty to inform and deal fairly with beneficiaries also requires that
24 the information conveyed to beneficiaries be complete and unambiguous.

25 95. A public employee is liable for injury caused by his or omission to the
26 same extent as a private person (*California Government Code* § 820), and a public entity is
27 liable for injury proximately caused by an act or omission of an employee of the public
28 entity. (*California Government Code* §815.2).

1 96. By the nature of their constitutional fiduciary duties, CalPers Board
2 Members who breach their fiduciary duties are personally liable for any such breaches.
3 Pursuant to Government Code Section 21664, the CalPers Board Member Defendants
4 were empowered to establish the LTC policies and a LTC Fund. Section 21664 provides
5 that the CalPers Board Members are required to carry out the establishment and
6 administration of the LTC Fund consistent with their constitutional fiduciary duty to act
7 in the best interests of the beneficiaries of that fund.

8 97. CalPers and CalPers Board Defendants ROB FECKNER, GEORGE DIER,
9 MICHAEL BILBERY, RICHARD COSTIGAN, JJ JELINCIC, HENRY JONES, PRIYA
10 MATHUR, BILL SLATON and DOES 12 through 100 breached their fiduciary duty to
11 plaintiffs and the Class by failing to provide the Class members with complete, timely,
12 and accurate information about the financial stability of the LTC Fund. Specifically,
13 they failed to advise Class members that the Fund was grossly underfunded, that
14 CalPers had engaged in an improper investment strategy, that CalPers had stopped
15 enrolling new members, that the premiums were grossly underpriced, and that
16 premium increases were certain to occur in the future. This breach of fiduciary duty
17 occurred at the inception of the LTC Program and each year that Plaintiffs and Class
18 Members renewed their policies.

19 98. CalPers and CalPers Board Defendants CalPers Board Defendants ROB
20 FECKNER, GEORGE DIER, MICHAEL BILBERY, RICHARD COSTIGAN, JJ JELINCIC,
21 HENRY JONES, PRIYA MATHUR, BILL SLATON and DOES 12 through 100 further
22 breached their constitutional fiduciary duty by failing to use the care, skill, prudence,
23 and diligence under the circumstances then prevailing that a prudent person acting in a
24 like capacity and familiar with these matters would use in the conduct of an enterprise
25 of a like character and with like aims. CalPers and the CalPers Board Defendants
26 grossly underpriced premiums, failed to properly fix premiums based on the 5%
27 inflation protection benefit option, and engaged in an improper and reckless aggressive
28 44% investment strategy.

1 99. CalPers and the CalPers' Board Members' breaches of their constitutional
2 fiduciary duties have caused damages to Plaintiffs and the Class in an amount to be
3 determined at trial.

4
5 **SECOND CAUSE OF ACTION**

6 **(Breach of Contract as to Defendants CalPers, and DOES 12 through 100)**

7 100. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1
8 through 99 above, as if fully set forth herein.

9 101. At all times material hereto, there existed as between Plaintiffs and the
10 members of the Class and CalPers and Does 12-100, an agreement whereby CalPers
11 promised to provide long term care benefits in accordance with the terms of their
12 agreement which are set forth in the EOC. Among other things, the terms of the EOC
13 required that CalPers provide a certain level of benefits to Plaintiffs and the members of
14 the Class in exchange for the payment of premiums. A true and correct copy of the EOC
15 is attached hereto as Exhibit 1.

16 102. The EOC is a contract of adhesion. Standard terms are construed against
17 the draftsman. Clauses in adhesion contracts giving the stronger party, the drafter,
18 discretionary rights to change the deal must be exercised in good faith, and the conduct
19 must be objectively reasonable consistent with the reasonable expectations of weaker
20 parties.

21 103. The EOC states on Page 2: "**Your** premiums will never increase solely to
22 a change In **Your** age or health. CalPERS can, however, change **Your** premiums, but
23 only if We change the premium schedule on an issue age basis for all similar coverage
24 issued in **Your** state on the same form as this coverage."

25 104. The EOC is ambiguous because one sentence states that the premiums will
26 not be changed based on "age", but the next sentence states that CalPers can change the
27 premium schedule based on "issue age." The term "issue age" is never defined in the
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1 EOC, and the ambiguity of the term based on the previous sentence must be resolved
2 against CalPers.

3 105. To the extent that CalPers interprets the EOC giving it discretionary right
4 to increase the premiums, CalPers conduct is not objectively reasonable, not exercised in
5 good faith, and contrary to the reasonable expectations of its members. Specifically, it
6 was never the expectations of the parties and is objectively unreasonable to interpret the
7 EOC to allow CalPers to *almost double premiums* based solely on its incompetence with
8 respect to its management of the fund and the setting of premiums.

9 106. Additionally, for those policyholders who elected to purchase the
10 Inflation Protection Benefit, CalPers' premium increases breached the express terms of
11 that provision. The Inflation Protection Benefit would increase the Nursing Home Daily
12 Maximum; the Residential Care Facility Daily Maximum; and the Home and
13 Community Care Monthly Maximum by 5% compounded annually each year as long as
14 coverage remains in force. The EOC expressly provides on page 22 "**Your** premium will
15 not increase as a result of these annual benefit increases." The EOC provided that
16 CalPers could not increase the premium rate as a result of the annual benefit increases
17 afforded to those who elected to purchase the Inflation Protection benefit.

18 107. CalPers is breaching its contract by seeking to increase premiums for those
19 members who purchased the Inflation Protection Benefit option since one of the reasons
20 why CalPers needs to increase premiums is based on the increased cost to provide
21 benefits for those persons who purchased this option. CalPers claimed need for an
22 increase in premiums based on underfunding of the program and inadequate
23 premiums, is based in part on the increased cost of benefits which have been provided
24 under the 5% Inflation Protection Benefit option. Further the increase in premiums
25 charged to all Class members is a function of the benefits provided under the Inflation
26 Protection plan.

27 108. At all times material hereto, Plaintiffs and the members of the Class
28 performed all obligations that they were required to perform under the agreement and

1 have faithfully and continually paid their premiums.

2 109. CalPers and Does 12-100 have breached their obligations under the
3 agreement, including increasing premiums in violation of the agreement and failing to
4 continue to provide the Inflation Protection Benefit without requiring that Plaintiffs and
5 members of the Class pay additional premiums.

6 110. As a result, Plaintiffs and the members of the Class have been damaged in
7 an amount to be established at trial.

8
9 **THIRD CAUSE OF ACTION**

10 **(Breach of the Covenant of Good Faith & Fair Dealing as to Defendants CalPers and**
11 **DOES 12 through 100)**

12 111. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1
13 through 110 above, as if set forth fully herein.

14 112. The EOC is a contract of adhesion. Standard terms are construed against
15 the draftsman. Clauses in adhesion contracts giving the stronger party, the drafter,
16 discretionary rights to change the deal must be exercised in good faith, and the conduct
17 must be objectively reasonable consistent with the reasonable expectations of weaker
18 parties.

19 113. Plaintiffs and each member of the Class are informed and believe and
20 thereon allege that CalPers and Does 12 - 100 breached the implied covenant of good
21 faith and fair dealing and the special relationship contained in all insurance contracts, in
22 at least the following respects:

- 23 a. CalPers and Does 12 - 100 failed to give its members equal
24 consideration before seeking to raise the premiums;
- 25 b. CalPers and Does 12 - 100 acted in bad faith by engaging in conduct
26 that was not objectively reasonable and was inconsistent with the
27 reasonable expectations of its members;

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- 1 c. CalPers and Does 12-100 failed to reasonably provide timely and
2 accurate information to its members that the LTC program was grossly
3 underfunded, had engaged in an improper investment strategy, and it
4 had stopped enrolling new members;
- 5 d. CalPers and Does 12-100 unreasonably and without proper cause
6 failed to properly and adequately underwrite the policies to ensure
7 that premiums were sufficient to support the risks insured against;
- 8 e. CalPers and Does 12-100 failed to invest the premiums wisely and
9 safely and instead engaged in a strategy of aggressive investment that
10 resulted in enormous losses to the fund;
- 11 f. CalPers and Does 12-100 failed to conduct the necessary actuarial
12 analysis that would have revealed the true costs for future benefits;
- 13 g. CalPers and Does 12-100 closed the program to new enrollments in
14 2009 without notification to Plaintiffs and to the Class knowing full
15 well that closing enrollment would lead to a “death spiral” that would
16 adversely affect the fund and the benefits it had guaranteed Plaintiffs
17 and the Class;
- 18 h. CalPers and Does 12-100 made false promises of fixed premium rates
19 in order to entice Class members to enroll in the program and to
20 purchase the Inflation Protection Benefit.

21 114. CalPers’ announced cessation of promised benefits to Plaintiffs and other
22 Class members in the event that Plaintiffs and the Class members fail to pay exorbitant
23 increases in premiums was done without reasonable cause. CalPers knew that it had a
24 duty to provide the benefits that Plaintiffs and the Class members purchased and for
25 which Plaintiffs and the Class have been regularly and timely paying premiums; a duty
26 to properly invest the funds in a conservative and careful manner; a duty to conduct an
27 appropriate actuarial analysis to insure that the fund would maintain sufficient reserves
28 to provide the promised benefits to Plaintiffs and the Class; and a duty to continue

1 enrollments so as to insure that the fund was not adversely affected by the reduction in
2 younger policyholders at the time when older policyholders were retiring and more
3 likely to require the benefits provided by the LTC policies. CalPers has refused to act in
4 accordance with those duties and in doing so has breached the covenant of good faith
5 and fair dealing.

6 115. As a direct and proximate result of the unreasonable conduct of CalPers
7 and Does 12-100, Plaintiffs and the other members of the Class have been forced into
8 the untenable position of receiving reduced benefits in exchange for not having to pay
9 an 85% increase in premiums and those members of the Class who purchased Inflation
10 Protection have suffered a loss of the benefits provided under that program, and
11 accordingly Plaintiffs and the Class members have been damaged thereby.

12 116. Plaintiffs and the members of the Class are informed and believe and
13 thereon allege that CalPers and Does 12-100 engaged in a course of conduct which was
14 intended to oppress and dissuade Plaintiffs and the Class from seeking the benefits due
15 to them under their LTC policies.

16 117. CalPers and Does 10-100 have refused to fulfill their obligations under the
17 LTC policies and their refusal has been done with a conscious disregard for the rights of
18 Plaintiffs and the Class. These acts were done with the knowledge and approval and
19 ratification of CalPers and its officers, directors and other managing employees.

20 118. As a proximate result of the aforementioned unreasonable and bad faith
21 conduct of Defendants, Plaintiffs and members of the Class have suffered, and will
22 continue to suffer in the future, damages, plus interest, and other economic and
23 consequential damages, for a total amount to be shown at the time of trial.

24 119. As a proximate result of the unreasonable and bad faith conduct of
25 Defendants, and each of them, Plaintiffs were compelled to retain legal counsel to
26 obtain the benefits due under the LTC policies. Therefore, Defendants are liable to
27 Plaintiffs for those attorneys' fees, witness fess, and cost of litigation reasonably
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1 necessary and incurred by Plaintiffs in order to obtain the benefits under the Policy, in a
2 sum to be determined at the time of trial.

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5 **FOURTH CAUSE OF ACTION**

6 **(Rescission as to Defendants CalPers and DOES 12 through 100)**

7 120. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1
8 through 119 above, as if fully set forth herein.

9 121. Pursuant to California Insurance Code section 332, each party to an
10 insurance contract must communicate to the other, in good faith, all facts within their
11 knowledge which are or which they believe to be material to the contract, and to which
12 no warranty is made, and which the other has not the means of ascertaining.

13 122. Pursuant to the provisions of California Insurance Code section 331,
14 concealment, whether intentional or unintentional, entitles the injured party to rescind
15 the insurance contract.

16 123. Pursuant to the provisions of California Insurance Code section 359, if a
17 representation is false on a material point, whether affirmative or promissory, the
18 injured party is entitled to rescind the contract from the time the representations
19 become false.

20 124. Defendant CalPers, and Does 12-100 breached their fiduciary duties and
21 failed to provide timely and accurate information to Plaintiffs and members of the Class
22 which induced them to purchase and continue to pay premiums for the LTC policies. If
23 the true facts had been disclosed to Plaintiffs and other members of the Class, they
24 would not have purchased LTC policies and/or discontinued payment of premiums
25 with Defendant CalPers.

26 125. In addition, Plaintiffs and the members of the Class are entitled to rescind
27 the contract because, among other things, the consideration has failed as a result of the
28 fault of CalPers, and/or has failed in a material respect in that the contract expressly

1 provides, among other things, that the purchase of Inflation Protection will not increase
2 premiums as a result of these annual benefit increases when in fact premium rates have
3 increased as a result of Inflation Protection.

4 126. Plaintiffs and the other members of the Class will suffer substantial harm
5 and injury if the policies issued by CalPers are not rescinded, in that Plaintiffs and the
6 other members of the Class have been deprived of the alleged benefits of the LTC
7 policies and have remitted billions of dollars as alleged above and have not received
8 what they were promised. Plaintiffs and the other members of the Class have also been
9 deprived of the use of the money paid to CalPers for many years.

10 127. Plaintiffs and the other members of the Class are also entitled to rescind
11 the LTC policies and are entitled to the return of the money they paid to CalPers, since
12 CalPers violated its implied contractual duties of good faith and fair dealing through
13 failure to accurately state material facts, and material omissions and other failures to
14 perform as detailed above.

15 128. Alternatively, Plaintiffs allege that consent to the contracts and the
16 continued payment of the premiums referred to above was not real, mutual or free in
17 that it was obtained solely through mistake as herein alleged.

18 129. Plaintiffs and the other members of the Class entered into the above-
19 described LTC policy contracts and renewed the policies each year under a mistake of
20 fact to the contract, in that they thought that they were buying viable insurance which
21 could legally deliver its promised benefits. Plaintiffs and the other members of the Class
22 would not have given their consent to the purchase of the LTC policies and renewed
23 such policies if the timely and accurate information had been provided.

24 130. CalPers had a duty to provide timely and accurate information to
25 Plaintiffs and the Class, and was or should have been aware Plaintiffs and the members
26 of the Class were relying on such timely and accurate information in purchasing and
27 renewing the policies. As a result, CalPers has been unjustly enriched and Plaintiffs and
28 the other members of the Class have been deprived of the use of their money and are

1 entitled to the return of their monies plus interest thereon at the maximum rate allowed
2 by law.

3 131. Service of Plaintiffs' original summons and complaint constituted notice of
4 the rescission of the LTC policies and demand that CalPers restore to Plaintiffs and the
5 other members of the Class all of the money paid by Plaintiffs and the members of the
6 Class, plus interest at the maximum rate allowed by law.

7
8 **FIFTH CAUSE OF ACTION**

9 **(For Declaratory and Injunctive Relief as to Defendants CalPers and DOES 12**
10 **through 100)**

11 132. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1
12 through 131 above, as if fully set forth herein.

13 133. Through the conduct described above, Defendants have refused to
14 provide benefits under the LTC policies that they were required to provide unless
15 exorbitant increases in premiums are paid.

16 134. Defendants will continue to refuse to provide benefits and or to require
17 that Plaintiffs pay exorbitant increases in premiums to maintain those benefits unless
18 and until this Court declares that such actions and charges are unlawful and wrong and
19 enjoins the Defendants from continuing to pursue their course of action.

20 135. The wrongful acts and practices of the Defendants, as alleged herein, are
21 suitable for injunctive relief in that the Plaintiffs and the members of the Class have no
22 wholly adequate legal remedy. Defendants are likely to continue to pursue their scheme
23 to wrongfully reduce benefits or extract exorbitant premiums from Plaintiffs and the
24 members of the Class thus causing irreparable injury to them.

25 136. Accordingly, Plaintiffs seek a judgment against Defendants: (i) declaring
26 that it is unlawful for Defendants to increase premiums for the LTC Policies for
27 Plaintiffs and the Class or to reduce or terminate benefits if Plaintiffs and the Class
28 members cannot pay the exorbitant increase in premiums; (ii) enjoining Defendants

1 from engaging in these activities and actions in the future; and (iii) awarding attorneys'
2 fees and costs incurred in connection with this litigation.

3 **SIXTH CAUSE OF ACTION**

4 **(For Professional Negligence against Towers Watson & Co, Towers Perrin,**
5 **Tillinghast-Towers Perrin and Does 75 to 100)**

6 137. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1
7 through 90 above.

8 138. The Towers Defendants, and Does 75 to 100, and each of them, in
9 performing the actuarial valuations described herein, were required to have, and held
10 themselves out as having, that degree of learning and skill ordinarily possessed by
11 reputable actuaries, practicing in the same or similar locality and under similar
12 circumstances. In addition, the Towers Defendants and Does 75 to 100 had a duty to
13 use the care and skill ordinarily used by reputable actuaries in the same and similar
14 locality under similar circumstances, and to use reasonable diligence and their best
15 judgment in the exercise of professional skill and in the application of learning, in an
16 effort to perform the actuarial services, and to create accurate actuarial reports and
17 valuations, for which Defendants were employed.

18 139. The Towers Defendants, and Does 75 to 100, and each of them, were
19 required to follow the precepts of the Code of Professional Conduct of the American
20 Academy of Actuaries, including precepts that require that the actuary perform
21 professional services with "skill and care" and that "an actuary shall ensure that
22 professional services performed by or under the direction of the actuary meet
23 applicable standards of practice."

24 140. The Towers Defendants, and Does 75 to 100, and each of them, breached
25 these duties in that they failed to exercise the reasonable care and skill used by actuaries
26 in undertaking to perform the actuarial services required.

27 141. The Towers Defendants, and Does 75 to 100, and each of them, failed to
28 follow generally accepted actuarial standards of practice and literature in making the

1 calculation errors. As a result of these defendants failure to properly calculate the
2 necessary valuations, the premiums charged to Plaintiffs and the Class were insufficient
3 to fund the LTC Plan and directly and proximately caused and/or contributed to the
4 funding necessary to insure that Plaintiffs and the Class received and continue to
5 receive the benefits promised.

6 142. Had the Towers Defendants, and Does 75 to 100, exercised the proper care
7 and skill in the foregoing matters, Towers Defendants, and Does 75 to 100, actuarial
8 recommendations would have reflected the accurate and appropriate amount of
9 contribution rates or premiums necessary to insure adequate funding of the policies.

10 143. Because the Towers Defendants, and Does 75 to 100, had a constant and
11 continuing duty to exercise the reasonable skill and care used by actuaries throughout
12 their relationship with CalPers and the CalPers Board of Administration, each breach of
13 duty to exercise reasonable skill and care used by actuaries was a continuous breach of
14 the same, and each breach of the duty to exercise the reasonable skill and care used by
15 actuaries caused continuous and increasing damage to Plaintiffs and the Class.

16 144. CalPers and the Board of Administration relied on the Towers
17 Defendants, and Does 75 to 100. The Towers Defendants, and Does 75 to 100,
18 negligently-arrived at faulty measurements and recommendations in their actuarial
19 valuations and Plaintiffs, who were sold LTC policies at premiums set by CalPers and
20 the CalPers Board of Administration based on the Towers Defendants', and Does 75 to
21 100's, flawed measurements and recommendations, relied to their detriment on the
22 faulty valuations. The Towers Defendants and Does 75 to 100's, faulty measurements
23 and recommendations proximately determined the amount of the premiums paid by
24 Plaintiffs and the Class to CalPers for their LTC policies. The Towers Defendants', and
25 Does 75 to 100's, faulty measurements and recommendations resulted in CalPers
26 receiving inadequate funds than it should have to fully fund the policies and further
27 deprived the LTC plan of earnings on premiums. As a proximate result of Towers
28 Defendants', and Does 75 to 100's negligence, Plaintiffs and the Class have incurred

1 damages in that they have been forced to pay exorbitant additional premiums to retain
2 the policies purchased or reduce their benefits significantly or they have been forced to
3 cancel their LTC policies outright.

4 145. The Towers Defendants, and Does 75 to 100, knew or should have known
5 that their actuarial valuations would form the basis for the premium rates for the
6 periods succeeding their actuarial valuations and that CalPers would rely on the
7 Towers Defendants and Does 75 to 100, to perform accurate actuarial valuations in
8 setting the premiums. The Towers Defendants, and Does 75 to 100, further knew or
9 should have known that errors in their calculations would adversely affect Plaintiffs
10 and the Class in that premiums would not be sufficient to fund the LTC policies and
11 would ultimately result in a loss of benefits, or exorbitant increases in the premiums.

12 146. As a direct and proximate result of the Towers Defendants', and Does 75
13 to 100's, conduct, Plaintiffs and the Class have suffered damage in an amount to be
14 determined at trial.

15 PRAYER FOR RELIEF

16 Wherefore, Plaintiffs respectfully request that the Court enter judgment in their
17 favor and against Defendants as follows:

- 18 a. Determining that this action is a proper class action maintainable and
19 certifying the Class and Sub-Class; certifying Named Plaintiffs as Class
20 representatives of the Class and Sub-Class; and appointing Plaintiffs'
21 counsel as counsel for the Class and Sub-Class;
- 22 b. Awarding Plaintiffs and the Class damages in an amount to proven at
23 trial;
- 24 c. That Defendant be required to make restitution to each Plaintiff and each
25 member of the Class of any and all money or property paid by that
26 Plaintiff and Class member;
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- d. For a determination by the Court of the most suitable mode by which Class members are to come forward, identify themselves, and prove their entitlement to share in the total sum awarded by the Court for actual and/or statutory damages;
- e. For Rescission of the LTC policies sold to Plaintiffs and the Class;
- f. Awarding Plaintiffs and the Class their reasonable attorneys' fees;
- g. Awarding Plaintiffs and the Class pre-judgment and post-judgment interest as provided by law;
- h. For declaratory and/or injunctive relief as requested;
- i. Awarding Plaintiffs and the Class their costs of suit herein incurred; and
- j. Awarding Plaintiffs and the Class such other and further relief as may be just and proper.

Dated: December ____, 2013

SHERNOFF BIDART
ECHEVERRIA BENTLEY LLP

By: _____
Michael J. Bidart
Gregory L. Bentley
Clare H. Lucich

KERSHAW, CUTTER & RATINOFF LLP
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Counsel for Plaintiffs and the Class

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JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

Dated: December __, 2013

SHERNOFF BIDART
ECHEVERRIA BENTLEY LLP

By: _____

Michael J. Bidart
Gregory L. Bentley
Clare H. Lucich

KERSHAW, CUTTER & RATINOFF LLP

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Counsel for Plaintiffs and the Class



PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 707 Wilshire Blvd., Suite 3600, Los Angeles, California 90017.

On December 18, 2013, I served the foregoing document described as:

FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

on all interested parties in this action as follows:

See Attached List

BY MAIL

I caused such envelope to be deposited in the mail at Claremont, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date deposit for mailing in affidavit.

BY PERSONAL SERVICE

I caused to be delivered by hand to the above-listed addressees or to the addressees on the list attached hereto. A proof of service executed by the delivery person will be mailed under separate cover.

BY OVERNIGHT MAIL/COURIER

To expedite the delivery of the above-named document, said document was sent via overnight courier for next day delivery to the above-listed party.

BY ELECTRONIC SERVICE

In accordance with the Court's Order for Electronic Service, all parties were served via the Court ordered Electronic Service Provider, Case Anywhere.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury under the laws of California that the above is true and correct.

Executed on December 18, 2013, at Los Angeles, California.

Patty Davis

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