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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ELMA SANCHEZ and HOLLY WEDDING, RICHARD M. LODYGA, and EILEEN 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
[Hon. Jane L. Johnson]

CLASS ACTION

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO THE TOWERS WATSON DEFENDANTS' DEMURRER TO PLAINTIFFS' FIRST AMENDED COMPLAINT

Date: May 21, 2014
Time: 11:00 a.m.
Place: Dept. 308

Complaint Filed: August 6, 2013
Trial Date: Not Yet Set

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Plaintiffs respectfully submit this memorandum of points and authorities in opposition to the demurrer of Towers Watson Co., Towers Perrin, and Tillinghast-Towers Perrin (collectively "Towers") to Plaintiffs' First Amended Complaint (the "Complaint" or "FAC").

INTRODUCTION AND SUMMARY OF ARGUMENT

In its first challenge to Plaintiffs' Complaint, Towers seeks an outright dismissal, without leave to amend, of Plaintiffs' well-pled claim that Towers' negligence was at the heart of fundamental decisions regarding the setting of premiums for Long Term Care ("LTC") policies sold by the California Public Employees' Retirement System ("CalPers"). The failure to properly set those premiums was due to Towers' negligence in failing to properly account for mortality, policy lapses, inflation protection and other critical components of the actuarial valuations performed by Tower.

Towers was retained by CalPers for the sole purpose of calculating and setting premiums for the LTC policies. Those premiums, which are paid only by the policyholders, are the source of funding for the policy benefits. Any material error made in setting those premiums can, and in this case did, have disastrous consequences to the policyholders. Thus, the retention of Towers was solely to benefit Plaintiffs and the other Class members since proper actuarial valuations are integral to determining the appropriate level of premium necessary to fund the policies.

In the face of well-pled allegations that tie Towers directly to Plaintiffs, Towers has demurred to the Complaint claiming, incorrectly, that Plaintiffs lack standing to pursue a claim against it. Towers claims Plaintiffs lack privity since the retention contract was entered into with CalPers. But where, as here, Plaintiffs were the intended (and indeed sole) beneficiaries of the CalPers/Towers' contract, there is no impediment to Plaintiffs' claims against Towers.

In addition, Towers argues that Plaintiffs' claims are time-barred because Towers last performed services in 2004. But, Plaintiffs' claims accrued here in 2013, when CalPers first announced that the policies were grossly underfunded as a result of, among other things, years of inadequate premiums. And, even if Plaintiffs' claims accrued earlier, these allegations further confirm that Plaintiffs could not have discovered their claims against Towers any earlier than

2013. Thus, the statute of limitations has not expired and Plaintiffs' Complaint is not time-barred.

Towers remaining argument for dismissal, that Plaintiffs have not and cannot alleged causation or actual damages against Towers is equally flawed. Plaintiffs have alleged a causal link between Towers' negligence and the ultimate demise of the policies that Plaintiffs' purchased. Further, Plaintiffs have alleged damages in that they were either forced to pay increased premiums starting in 2013 and continuing to 2015 or terminate their policies thus losing the benefits for which they paid premiums for many years.

For these and all of the reasons stated below, Towers' demurrer to the Complaint should be overruled.

SUMMARY OF FACTS

In 1995, CalPers began offering and promoting the sale of LTC policies to CalPers members and their families. (FAC, ¶ 1.)[1] CalPers promised consumers that these policies would provide them with financial security and protect them against the high costs associated with nursing home or other long term facility care. (*Ibid.*) They also promised consumers that the policies would be "reasonably priced" and that rates (which are based on the age of the insured at the time of enrollment) would be fixed and would never rise based on the consumer's age or health. (*Ibid.*) CalPers touted that its policies were 30% cheaper than all other comparable policies and provided superior benefits. (*Ibid.*)

In addition, CalPers promoted an add-on product – the "Inflation Protection" benefit. If selected by the policyholder, CalPers would increase the policyholder's Nursing Home Daily Maximum, Residential Care Facility Daily Maximum, Home and Community Care Monthly Maximum by 5% compounded annually each year as long as the coverage remained in place. (FAC, ¶ 36.)

[1] As used in this brief, "CalPers" refers not only to the entity but to its Board of Administration. And "Towers" is used to refer to all of the Towers Defendants even though Plaintiffs use the singular in references in the brief.

In 2000, CalPers announced that it was changing the existing policies to add even more benefits including a new hospice benefit. (FAC, ¶ 40.)

From 1995 to 2007, CalPers sold three categories of policies: the LTC1 policy issued from 1995 to 2002; LTC2 policy issued from 2003 to 2004 and the LTC3 policy which was issued from 2005 to 2008. (FAC ¶ 43.) Of the 150,330 current policyholders nearly 90% purchased the LTC1 and LTC2 category of policies. (*Ibid.*)

The premiums set by CalPers for the LTC1 and LTC2 policies were based on calculations performed by Towers. (FAC, ¶¶ 7, 46, 69-71.) From at least 1995 to approximately 2004, Towers was retained by CalPers to serve as the actuarial consultant for purposes of calculating and setting premiums for the LTC plan. (*Ibid.*) Towers agreed to perform their actuarial valuations and knew, or should have known, that CalPers would rely on Towers' computations in setting the LTC1 and LTC2 policy premiums as well as the Inflation Protection elective plan. (*Id.*, ¶7, 46, 69-71.)

Plaintiffs and the Class were the intended beneficiaries of Towers' work and Towers knew, or should have known, that any calculation or valuation errors by Towers would adversely affect Plaintiffs and the Class. (*Id.*, ¶¶ 48, 69-71.) Thus, in performing the actuarial valuations used by CalPers in setting premiums policies, Towers owed Plaintiffs and the Class a duty to insure that the valuations that they performed were accurate. (FAC, ¶¶69-71; 141-145.)

Towers failed to exercise the reasonable care and skill used by actuaries in undertaking to perform its services and failed to adequately account for and/or committed calculation errors that led, in part, to the setting of premiums at rates that were insufficient to support the policies. (FAC, ¶¶ 69-71; 140-145.) Towers failed to properly account for mortality, policy lapses, inflation protection and other critical components of the actuarial valuations performed by Towers.[2] (*Id.*, ¶ 71.)

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[2] Towers was required to follow the precepts of the Code of Professional Conduct of the American Academy of Actuaries, including precepts that require that the actuary perform professional services with "skill and care" and that "an actuary shall ensure that professional services performed by or under the direction of the actuary meet applicable standards of practice." (FAC, ¶139.) Despite this obligation, Towers failed to meet these standards. (*Id.*, ¶¶ 140-141.) Had it done so, its valuations would have reflected the accurate and appropriate

Towers knew or should have known that its valuation errors or errors in its premium recommendations would not only cause CalPers to set premiums at an insupportable level but would result in a funding deficit that would cause in an increase in premiums or loss in benefits. (FAC, ¶¶ 69, 145.) Ultimately that is precisely what occurred. In 2013, CalPers suddenly and unexpectedly for the first time advised its policyholders that the LTC program was grossly underfunded and, that CalPers was rolling out premium increases starting in 2013 that would ultimately culminate in an increase of 85% by 2015. (*Id.*, ¶¶ 6, 50.) These increases applied to the policyholders who purchased LTC1 and LTC2 policies issued from 1995-2004 with lifetime coverage and built-in inflation protection, as well as lifetime policies without inflation protection, and 3-year and 6-year policies with inflation protection – in other words, the increases applied directly to the policyholders whose premiums were set based on Towers' calculations and valuations. (*Id.*, ¶ 50.)

ARGUMENT

A. Plaintiffs Have Standing to Sue Towers

Towers seeks a complete dismissal of the case, without leave to amend, on the grounds that Plaintiffs purportedly lack standing to sue Towers.[3] Towers argument is largely based on the fact Plaintiffs were not Towers' clients. (Towers' Mem., p. 5.) From that overly simplistic fact, Towers leaps to the conclusion that it bears no liability for its negligence because it claims that Plaintiffs' Complaint fails to allege certain facts that Towers maintains are integral to standing. (*Ibid.*) But the problem with Towers' argument is that Plaintiffs have stated

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amount of contribution rates or premiums necessary to insure adequate funding of the policies. (*Id.*, ¶ 142.)

[3] This is the first occasion that the Court has considered any of the challenges raised by Towers to the Complaint. And, despite extensive efforts, Plaintiffs have been stymied in their efforts to obtain discovery from CalPers. Thus, Plaintiffs' Complaint was filed without the benefit of discovery that will likely provide further evidence of the relationship between Towers and CalPers and Plaintiffs. Dismissal without leave to amend at this juncture would be improper. (*Virginia G. v. ABC Unified School Dist.* (1993) 15 Cal.App.4th 1848, 1852 ["Where a demurrer is sustained or a motion for judgment on the pleadings is granted as to the original complaint, denial of leave to amend constitutes an abuse of discretion if the pleading does not show on its face that it is *incapable* of amendment" (emphasis added)].)

allegations that are sufficient to support a claim for negligence against it because Plaintiffs have alleged that they were the intended beneficiaries of CalPers' retention of Towers. (FAC, ¶ 48.)

In fact, Plaintiffs' allegations confirm that the *sole* reason that CalPers retained Towers was to prepare valuations and calculations necessary for CalPers to set the premiums that Plaintiffs paid for the LTC policies. (*Id.*, ¶ 46.) And, as further alleged in the Complaint, those premiums were integral to the ongoing viability of the LTC policies and CalPers' obligations to provide the promised benefits without an increase in premiums over the life of the policy. (*Id.*, ¶ 47.) Thus, contrary to Towers' arguments, Plaintiffs were intended beneficiaries, and have stated a viable claim for negligence against Towers.

To state a claim for professional negligence, a party must allege and prove "(1) the duty of the professional to use such skill, prudence and diligence as other members of the profession commonly possess and exercise; (2) breach of that duty; (3) a causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional negligence." (*Nichols v. Keller* (1993) 15 Cal.App.4th 1672, 1682.) Thus, the threshold element of a negligence claim is "the existence of a duty to use due care toward an interest of another that enjoys legal protection against unintentional invasion." (*Bily v. Arthur Young Co.* ["*Bily*"] (1992) 3 Cal.4th 370, 397.)

Privity of contract is not an absolute requirement for a professional negligence claim. In *Biakanja v. Irving* (1958) 49 Cal.2d 647, the court held that the sole beneficiary of a will could sue and recover from a notary public who negligently prepared a will for the decedent. In extending the duty of care to the beneficiary of a will who was not in privity with the defendant, the court identified the following factors to be considered in allowing a professional negligence claim: "the extent to which the transaction was intended to affect the plaintiff, the foreseeability of harm to him, the degree of certainty that the plaintiff suffered injury, the moral blame attached to the defendant's conduct, and the policy of preventing future harm." (*Id.*, p. 650.)[4]

[4] In subsequent cases, the court has considered additional factors including whether the extension of liability would have an undue burden on the profession. (*Lucas v. Hamm* (1961) 56 Cal.2d 583, 589.)

In the present case, Plaintiffs' allegations fall squarely within the *Biakanja* factors. Plaintiffs have alleged that CalPers retained Towers solely for the purpose of preparing valuations and calculations necessary to set the policy premiums thus confirming that the transaction was intended to affect the Plaintiffs. (FAC, ¶ 46.) Plaintiffs have further alleged that Towers knew or should have known that any errors in their calculations would affect the premium rates and thus adversely affect Plaintiffs. (*Id.*, ¶ 46, 69, 145.) There is no doubt that Plaintiffs have suffered harm – Plaintiffs have alleged they have been forced to either accept reduced policy benefits, the reduction or elimination of the Inflation Protection benefits, or incur increased premiums. (*Id.*, ¶¶ 50-54.)

Ascribing moral blame to Towers' actions is not difficult. Here, Plaintiffs allege that for nine years, throughout the entire time that CalPers sold the vast majority of the flawed policies, Towers was responsible for the underlying calculations that led to the setting of the policy premiums. (*Id.*, ¶¶7, 43, 46-47, 69-71, 141-145.) Plaintiffs and the Class members were induced to not only purchase the policies, but they continued to maintain the policies in force, based on the premiums charged and on representations that premiums would not increase.[5] Nine years of Towers' valuation errors is hard to understand, and cannot be ignored. If there ever was a need for imposing liability to prevent future harm, this is the case.

Courts have also found a duty owed to third parties where the sole purpose of the transaction was to benefit a third party, as it was here. (*Roberts v. Ball, Hunt, Hart, Brown & Baerwitz* (1976) 57 Cal.App.3d 104, 111 [finding that a law firm hired to draft an opinion letter on behalf of its client in order to secure a loan could be sued by the lending company because it knew that the purpose of the opinion letter was to influence the lender's conduct and thus harm was foreseeable]; *Johnson v. Superior Court* (1995) 38 Cal.App.4th 463, 472 [reversing summary judgment in favor of attorneys sued by limited partners for negligent legal advice the

[5] Towers incorrectly argues that "at least one of the Plaintiffs alleges that she was not even an LTC Policyholder during all of the years Towers Watson allegedly provided services to CalPers. (Towers' Mem., p. 5, n. 2.) The allegations in the Complaint demonstrate that Plaintiff Elma Sanchez purchased the LTC1 policy which was sold between 1995 and 2002 during the period of Towers' retention. (See, e.g., FAC, ¶¶ 10, 43, 72.)

attorneys had provided to the partnership because the limited partners were third party beneficiaries of the legal services provided].)

Towers seeks to avoid the consequences of the foregoing by relying heavily on *Bily* and a decision by the Ninth Circuit involving Towers, *Paulsen v. CNF Inc.* ["*Paulsen*"] (9th Cir. 2009) 559 F.3d 1061. But, Towers concedes that the Supreme Court in *Bily* recognized an exception to its holding that independent auditors retained to audit a public company's financial statements do not owe a duty to the public shareholders. That exception occurs, where as here, the professional is an intended third party beneficiary of the professional services contract. (Towers' Mem., pp. 7-8.) Towers incorrectly argues that Plaintiffs' express allegation that they were the intended beneficiaries of the CalPers/Towers agreement (FAC ¶ 48), is "legally insufficient" to support the claim against Towers. (Towers' Mem., p. 8.) But there is more to Plaintiffs' Complaint than just that single allegation that Plaintiffs were intended beneficiaries of the Towers contract. Plaintiffs also allege that:

- Towers was retained by CalPers from 1995 to 2004 for the purpose of performing actuarial valuations and calculations required to set premiums for those who purchased the LTC plan. (FAC, ¶¶ 7, 46.)
- Towers agreed to perform their valuations and calculations knowing that CalPers would rely on the computations in setting the LTC1 and LTC2 policy premiums for its policyholders as well as the premiums for the Inflation Protection plan. (*Id.*, ¶¶ 7, 46-47, 69-71, 144-145.)
- The premiums for the LTC1 and LTC2 policies were based on Towers' calculations. (*Id.*, ¶¶ 46-47, 69, 145.)
- Towers knew, or should have known, that any calculation or valuation errors would adversely affect Plaintiffs and the Class. (*Id.*, ¶¶ 69, 145.)
- Towers owed Plaintiffs and the Class a duty to insure that the valuations that they performed were accurate. (*Id.*, ¶¶69-71, 138-145.)
- Towers failed in its obligation to use reasonable care and skill in performing its services and failed to adequately account for and/or committed calculation errors that

led, in part, to the setting of premiums at rates that were insufficient to support the LTC policies. (*Ibid.*)

- Towers failed to properly account for mortality, policy lapses, inflation protection and other critical components of the actuarial valuations. (*Id.*, ¶ 71.)
- As a result of Towers' valuation errors, CalPers set premiums at an insupportable level and those errors were, in part, responsible for the funding deficit that led to the increase in premiums and/or loss in benefits that Plaintiffs have suffered. (*Id.*, ¶ 47.)

But even if the Complaint only alleged that Plaintiffs were intended beneficiaries of the agreement between Towers and CalPers (which it does not), that allegation alone would be sufficient to overcome Towers' demurrer. It is the *Paulsen* case, on which Towers' relies, that confirms this. In *Paulsen*, contrary to Towers' assertion, the appellate court reversed the dismissal of the negligence claims against Towers Perrin finding that on a motion to dismiss (and prior to any discovery) the simple allegation that plaintiffs were "'intended beneficiaries of the professional services rendered"' by Towers Perrin was sufficient to overcome a motion to dismiss. As a result, the Ninth Circuit reversed the granting of Towers Perrin's motion to dismiss in *Paulsen* and remanded to the district court for further proceedings. (559 F.3d at 1079-80.)[6]

Here, the same is true, Plaintiffs' allegations are sufficient to overcome Towers' standing challenge to the Complaint and, accordingly, the demurrer should be overruled.

B. Plaintiffs' Claims are Not Time Barred

In addition to the flawed standing argument, Towers also contends, incorrectly, that Plaintiffs' claims are time-barred. Towers relies on the two-year limitations period proscribed in Section 339, subdivision 1 of the Code of Civil Procedure which it claims has long expired since the last act that it performed was in 2004. (Towers Mem., p. 11.)

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[6] Towers' reliance on *Tuttle v. Sky Bell Asset Mgmt.* (N.D. Cal. 2011) 2011 WL 2224535, for the proposition that Plaintiffs' alleged conclusory allegations are insufficient, is misplaced. Not only does the summary order in *Tuttle* post-date the U.S. Supreme Court's duet of opinions that altered the pleading landscape in federal court – *Bell Atlantic Corp. v. Twombly* (2007) 550 U.S. 544 and *Ashcroft v. Iqbal* (2009) 556 U.S. 662 – but the allegations in *Tuttle* were far more limited than those in the present case.

However, it is well-settled that the limitations period under Section 339, subdivision (1) does not commence until "(1) the aggrieved party discovers the negligent conduct causing the loss or damage *and* (2) the aggrieved party has suffered actual injury as a result of the negligent conduct." (*Apple Valley Unified School Dist. v. Vavrinek, Trine, Day Co.* (2002) 98 Cal.App.4th 934, 942, emphasis added.) In the present case, Towers argues that Plaintiffs have not suffered actual damage and further contends that Plaintiffs' damage will not occur until 2015. (Towers' Mem., p. 12.)[7] Thus, Towers' contention that Plaintiffs' claim has long expired is at odds with Towers' own argument that Plaintiffs have not yet suffered actual damage.[8] (Towers' Mem., p. 12.) And, the argument is at odds with the Complaint's well-pled allegations that Plaintiffs first became aware of Towers' negligent acts when they were informed in 2013 that (i) the fund was grossly underfunded as a result of, among other things, Towers' negligence, and (ii) premiums would increase dramatically over a two-year period commencing in 2013. (FAC, ¶¶ 6, 7, 46, 47, 50, 52, 53, 71.) In short, the allegations in the Complaint on their face establish that Plaintiffs' claims did not accrue until 2013 when they were first notified of CalPers' decision to increase premiums.

Moreover, even if Plaintiffs' claims accrued earlier, which they did not, Towers concedes that the discovery rule applies to Plaintiffs' professional negligence claims, and Plaintiffs are entitled to the benefit of that rule. (Towers' Mem., p. 11; see also *Czajkowski v. Haskell & White LLP* (2012) 208 Cal.App.4th 166, 174-75 [discovery rule applies to claims against accounting firm for professional negligence].)

Generally, a cause of action accrues when the wrongful act is done and not when a plaintiff discovers that he or she has a cause of action to pursue. However, "[t]he harshness of this rule has been ameliorated in some cases where it is manifestly unjust to deprive plaintiffs of

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[7] Plaintiffs dispute Towers' argument that they have not yet suffered damage. See *infra*, p. 12. Plaintiffs' maintain that they and the Class suffered damage starting in 2013 when their premiums increased and/or they were forced to terminate their policies in light of the announced premium increases. (FAC, ¶¶ 50-55.)

[8] Actual and appreciable harm is a necessary element of a tort cause of action. (Cf. *Budd v. Nixen* (1971) 6 Cal.3d 195, 200-201.)

a cause of action before they are aware that they have been injured." (*Leaf v. City of San Mateo* (1980) 104 Cal.App.3d 398, 406.) Thus, the discovery rule provides that a claim accrues when the plaintiff discovers or should have discovered all facts essential to his cause of action. (*Fox v. Ethicon Endo–Surgery, Inc.* (2005) 35 Cal.4th 797, 806–807.) This has been interpreted to be when "plaintiff either (1) actually discovered his injury and its negligent cause or (2) could have discovered injury and cause through the exercise of reasonable diligence."' (*Leaf*, 104 Cal.App.3d at 407; *Moreno v. Sanchez* (2003) 106 Cal.App.4th 1415, 1423.)[9]

The discovery rule is intended to protect plaintiffs who are unaware of their claims. (*April Enterprises, Inc. v. KTTV* (1983) 147 Cal.App.3d 805, 826–827). It acts "'to prevent tort claims from expiring before they are discovered. . . .'" (*Lambert v. Commonwealth Land Title Ins. Co.* (1991) 53 Cal.3d 1072, 1079.) Although a "plaintiff whose complaint shows on its face that his claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence," (*CAMSI IV v. Hunter Technology Corp.* (1991) 230 Cal.App.3d 1525, 1536-37), when accrual is at issue, belated discovery is usually a question of fact. (*E–Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1320.)

In the present case, Plaintiffs allege that CalPers first informed them that the LTC plan was grossly underfunded. (FAC, ¶ 6.) They further allege that Towers' calculation errors were a critical component in setting the premiums and they could not have learned of Towers' calculation errors until they first were informed that the plan was underfunded. (*Id.*, ¶¶ 46-47.) These allegations are sufficient to show the "time and manner of discovery" and "the inability to

[9] The "discovery rule" assumes that all conditions of accrual of the action-including harm-exist, but nevertheless postpones commencement of the limitation period until "the plaintiff discovers or should have discovered all facts essential to his cause of action [citations]," which is to say "when 'plaintiff either (1) actually discovered his injury and *its negligent cause* or (2) could have discovered injury *and cause* through the exercise of reasonable diligence [italics added].' [Citations.]" (*Leaf v. City of San Mateo, supra,* 104 Cal.App.3d at 407.) Here, of course, Plaintiffs maintain that they did not suffer injury until 2013 and thus the discovery rule does not apply. But, should there be any doubt as to this, Plaintiffs further maintain that they have adequately alleged facts to invoke the discovery rule.

have made earlier discovery despite reasonable diligence." (*CAMSI IV,* supra, 230 Cal.App.3d at 1536.) Nothing more is required.

The Complaint's allegations refute any finding that Plaintiffs' claims are time-barred and the demurrer based on the alleged expiration of the limitations period should be overruled.

C. Plaintiffs Have Adequately Alleged Causation and Actual Damage

In its final challenge to the Complaint, Towers argues that Plaintiffs have not and cannot allege causation or actual damage against it because Towers claims that Plaintiffs have not alleged that it had any involvement in the "alleged conduct by CalPers that gave rise to Plaintiffs' purported damages." (Towers' Mem., p. 12-13.) Distilled to its essence, Towers' argument is based on the wrongheaded notion that the exorbitant premium increases announced in 2013 were not based on Towers' negligence but rather on CalPers' unilateral actions. (*Id.*, p. 12.) Towers also contends that Plaintiffs have not alleged that CalPers relied on Towers' valuations in making the decision 2013 to increase the LTC premiums. (*Ibid.*)

The fundamental flaw in the foregoing arguments is Towers' failure to lend any credence to the well-pled allegations in the Complaint that demonstrate that Towers' negligence was a root cause of the underfunding of the plan which led directly to the premium increases in 2013. (FAC ¶¶ 7, 45, 46, 47, 50, 52, 53, 69-71, 138-145.)

The mere fact that Plaintiffs also allege that a further causal factor was CalPers' (i) failure to properly invest the funds, (ii) unilateral increase of payment on benefits, and (iii) decision to stop enrollments in 2009, does not negate the role played by Towers. One defendant's professional negligence may combine with another's to cause harm. (*See, e.g.*, *Espinosa v. Little Company of Mary Hospital* (1995) 31 Cal.App.4th 1304, 1317-1318 [appellate court reversed the grant of nonsuit on causation grounds in a medical malpractice case where plaintiff produced evidence indicating that three causes were responsible for his brain damage, including two attributable to the defendants, holding that "where a defendant's negligence is a concurring cause of an injury, the law regards it as a legal cause of the injury, regardless of the extent to which it contributes to the injury"].)

Towers' argument that Plaintiffs have failed to adequately allege, and "cannot adequately allege," causation or actual damage as to Towers is simply wrong. The demurrer should be overruled.

CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully submit that the Tower's demurrer should be overruled in its entirety. In the alternative, should the Court find any deficiencies in the complaint, Plaintiffs respectfully request leave to amend.

Dated: April 23, 2014

Respectfully submitted,

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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 April 23, 2014, I served the foregoing document described as: **PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO THE TOWERS WATSON DEFENDANTS' DEMURRER TO PLAINTIFFS' FIRST AMENDED COMPLAINT** 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.

[x]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 April 23, 2014, at Los Angeles, California.

Patty Davis

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