

1 ROBERT S. GIANELLI, SB# 82116
2 JOSHUA S. DAVIS, SB# 193187
3 GIANELLI & MORRIS, A Law Corporation
4 550 South Hope Street, Suite 1645
5 Los Angeles, California 90071
6 Tel: (213) 489-1600; Fax: (213) 489-1611

7 ANTONY STUART, SB# 89375
8 STUART LAW FIRM
9 801 South Grand Avenue, 11th Floor
10 Los Angeles, California 90017-4613
11 (213) 612-0009 Tel; (213) 489-0225 Fax

12 KATHRYN M. TREPINSKI, SB# 118378
13 LAW OFFICE OF KATHRYN TREPINSKI
14 8840 Wilshire Boulevard, Suite 333
15 Beverly Hills, California 90211
16 (310) 201-0022 Tel; (866) 201-2251 Fax

17 Attorneys for Plaintiffs
18 ARTHUR BODNER and MICHAEL FELKER,
19 On behalf of themselves and all others similarly situated

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

18 ARTHUR BODNER and MICHAEL)
19 FELKER, on behalf of themselves and all)
20 others similarly situated)
21 Plaintiffs,)
22 v.)
23 BLUE SHIELD OF CALIFORNIA LIFE)
24 AND HEALTH INSURANCE COMPANY,)
25 Does 1 through 25, Inclusive,)
26 Defendants.)

) CASE NO. BC516868
) Assigned to Honorable Elihu M. Berle, D 6, Rm
) 211
)
) **MOTION FOR PRELIMINARY APPROVAL**
) **OF CLASS-ACTION SETTLEMENT**
)
) Date: December 4, 2019
) Time: 10:00 a.m.
) Place: Department 211
)
)
)

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ORIGINAL FILED
Superior Court of California
Los Angeles

NOV 05 2019

Sherri K. Ganci, Executive Officer/Clerk of Court
By Steven Drew, Deputy

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21 FOR THE COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE

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23	FELKER, on behalf of themselves and all)	Assigned to Honorable Elihu M. Berle, D 6, Rm
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26	Plaintiffs,)	MOTION FOR PRELIMINARY APPROVAL
27)	OF CLASS-ACTION SETTLEMENT
28	v.)	
)	Date: December 4, 2019
	BLUE SHIELD OF CALIFORNIA LIFE)	Time: 10:00 a.m.
	AND HEALTH INSURANCE COMPANY,)	Place: Department 211
	Does 1 through 25, Inclusive,)	
)	
	Defendants.)	
)	

1 TO THE COURT, ALL PARTIES HEREIN AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on December 4, 2019 at 10:00 a.m., or as soon thereafter
3 as the matter may be heard, before the Honorable Elihu M. Berle, presiding in Department 6 of
4 the Superior Court of California for the County of Los Angeles, located at Room 211, Spring
5 Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012, Plaintiffs Arthur Bodner
6 and Michael Felker, on behalf of themselves and the Class, will move the Court for preliminary
7 approval of the proposed settlement of this certified class action lawsuit against Defendant Blue
8 Shield of California Life and Health Insurance Company (“Blue Shield”) and for related orders
9 pertinent thereto, all as set forth in the settlement and proposed preliminary settlement approval
10 order, served and submitted herewith.

11 Specifically, Plaintiffs and the Class will move the Court for:

- 12 1. An order conditionally certifying the settlement Class.
- 13 2. An order granting preliminary approval of the settlement of this action on the
14 terms and conditions set forth in the Settlement Agreement and Exhibits (“Settlement”) attached
15 as Exhibit A to the Declaration of Joshua S. Davis, filed herewith;
- 16 3. An order setting a Final Approval Hearing, to consider final approval of the
17 Settlement, entry of a final order pursuant to the Settlement, Class Counsel’s application for an
18 award of attorneys’ fees, litigation expenses, and Class Representatives’ application for incentive
19 awards; and all other related issues which the Court deems necessary and proper;
- 20 4. An order approving the proposed form, content and manner of dissemination of
21 the proposed notice of this class settlement (“Class Notice”), attached as Exhibit 1 to the
22 Settlement;
- 23 5. An order establishing the procedures and deadlines for exclusions from the
24 Settlement, objecting to the Settlement, appearing at the Final Approval hearing, and presenting
25 evidence at the Final Approval Hearing, all as set forth in the Settlement;
- 26 6. An order retaining continuing jurisdiction over the Settlement, the settlement
27 proceedings and settlement administration; and
28

1 7. Such related orders and findings as are set forth in the Preliminary Approval
2 Order, served and submitted herewith.

3 This motion is made pursuant to the Settlement, on the grounds that the proposed
4 Settlement reached by the parties is an adequate and reasonable settlement of the claims in this
5 case and falls within the range of possible final approval such that dissemination of the Class
6 Notice is appropriate.

7 This Motion is based on this Notice of Motion, the Memorandum of Points and
8 Authorities, the supporting Declaration of Joshua S. Davis and the Exhibits thereto (including the
9 proposed Settlement and Class Notice), the complete records in this action, and such further oral
10 and documentary evidence as may be presented at the hearing of this Motion.

11 DATED: November 5, 2019

GIANELLI & MORRIS
STUART LAW FIRM
LAW OFFICE OF KATHRYN TREPINSKI

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15 By: _____

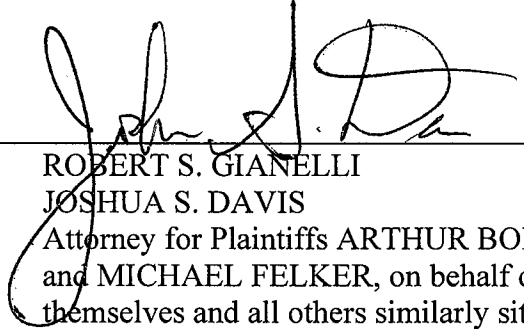
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1 **MEMORANDUM OF POINT AND AUTHORITIES**

2 **I. INTRODUCTION**

3 After more than six years of litigation, multiple mediations, extensive discovery and
4 investigation and numerous court battles, Plaintiffs Arthur Bodner and Michael Felker, and
5 Defendant Blue Shield of California Life and Health Insurance Company (“Blue Shield), have agreed
6 to settle this action for significant financial benefit to 24,739 Class Members.

7 This case involves Blue Shield’s practice, when administering claims under its Vital Shield
8 policies, to not count certain commonly used out-patient medical services, such as x-rays and MRIs,
9 towards its enrollees’ deductibles and out-of-pocket/co-insurance maximums (“out-of-pocket
10 maximums”). Plaintiffs allege that as a result, many enrollees had their deductibles and out-of-pocket
11 maximums greatly expanded beyond the actual amounts stated in their Vital Shield policies, and thus
12 incurred liability for medical services that should have been paid by Blue Shield. Blue Shield denies
13 it did anything wrong. The matter involves significant liability and damage disputes, including the
14 proper construction of the Vital Shield policies, and the evidence needed to prove damages.

15 Blue Shield has agreed to pay \$12.5 million into a common fund to settle this matter. This
16 is a non-reversionary cash settlement and Class Members need *not* submit a claim to receive a
17 payment. The \$12.5 million settlement represent between 43% to 50% of Blue Shield’s potential
18 maximum liability for unpaid health insurance benefits.

19 The settlement not only falls within the range of possible final judicial approval, but
20 represents an excellent recovery. Preliminary approval of the settlement should be granted.

21 **II. SUMMARY OF THE LITIGATION**

22 **A. Litigation in the case before the settlement**

23 **1. The causes of action alleged and their factual and legal basis**

24 This case arises from Blue Shield’s sale and claims administration of its Vital Shield health
25 insurance policies. The operative First Amended Complaint (“FAC”) names Plaintiffs Arthur Bodner
26 and Michael Felker as putative class representatives and asserts claims for breach of contract, breach
27 of the implied covenant of good faith and fair dealing, violations of Business and Professions Code
28 section 17200 (“UCL”) and declaratory relief.

1 In the FAC, Plaintiffs alleged that when Blue Shield administered claims submitted by its
2 enrollees with the Vital Shield policies, Blue Shield wrongfully failed to count most commonly used
3 out-patient medical services towards its members' deductibles and out-of-pocket maximums, and
4 wrongfully excluded from coverage these same out-patient medical services until the maximums had
5 been met. (FAC, ¶¶ 21-33.) Plaintiffs alleged that as a result of these practices, many enrollees had
6 their deductibles and out-of-pocket maximums greatly expanded beyond the actual amounts stated in
7 their Vital Shield policies, and thus incurred liability for medical services that should have been paid
8 by Blue Shield. (*Id.*, ¶¶ 55-61.) Plaintiffs further alleged that Blue Shield drafted the Vital Shield
9 policies in a confusing and ambiguous manner so as to hide the true expanded deductibles and out-of-
10 pocket maximums, and engaged in a deceptive marketing campaign to sell the Vital Shield policies.
11 (*Id.*, ¶¶ 13-33.) Plaintiffs' requested damages, injunctive and declaratory relief. Blue Shield ceased
12 selling Vital Shield policies in or about 2012, but permitted enrollees to continue renewing these
13 policies if they so choose. (Declaration of Joshua Davis ("Davis Dec."), ¶ 9.)

14 2. Key court rulings; investigation and discovery

15 After over six years of litigation, the docket amply reflects that this case has been hard
16 fought from the outset, both in law and motion and discovery, and thoroughly investigated. Class
17 Counsel's declaration confirms this. (Davis Dec., ¶¶ 10-28.)

18 Plaintiffs' original Complaint was filed on August 1, 2013. Plaintiffs filed the operative
19 pleading, the FAC, on May 21, 2014. Blue Shield filed an Answer on July 7, 2014.

20 Discovery was extensive. Plaintiffs served Blue Shield with multiple sets of production
21 requests, form interrogatories, special interrogatories and requests for admissions. (Davis Dec., ¶ 12.)
22 Following intensive discovery battles and discovery conferences with the Court, Blue Shield
23 eventually produced about 611,576 pages of documents, including extensive internal documents
24 regarding the development of the Vital Shield policies, its marketing strategy, and tens of thousands
25 of archived emails dating back to 2004, which needed to be extracted by forensic electronic stored
26 information (ESI) experts. (*Id.*) Blue Shield also produced extensive claims data on all Vital Shield
27 members that had to be reviewed and analyzed by forensic accountants, at significant expense. (*Id.*)

28 In addition to written discovery, the parties took 14 depositions. (Davis Dec., ¶ 13.) These

1 included: (1) Marcy Reeder, Blue Shield Senior Account Manager for Covered California, who
2 testified as Blue Shield's person most qualified ("PMQ") on the Vital Shield policy forms, and Blue
3 Shield's practices in regards to administering claims under Vital Shield; (2) Natasha Hawkins, Blue
4 Shield's Senior Manager for Marketing, who testified as its PMQ on the creation, drafting and design
5 of various advertisements and marketing materials relating to Vital Shield; (3) Michael Beuoy, a Blue
6 Shield actuary, who testified as its PMQ on the actuarial design of the Vital Shield policies; (4) Tina
7 Weiss, a former Blue Shield Senior Manager in the Product Strategy Department, who testified
8 regarding the development and creation of the Vital Shield products; (5) Donald Formanek, a former
9 Blue Shield product manager, who also testified regarding the development and creation of the Vital
10 Shield products; (6) Kristin Linehan, a former Blue Shield Senior Marketing Manager regarding the
11 marketing of the Vital Shield policies; (7) Mark Foss, a Blue Shield IT employee, who testified as its
12 PMQ on Blue Shield's emails systems; (8) Travis Witcher, Blue Shield Claims Operation Senior
13 Manager, who testified as its PMQ on the claims data, and (9) Aleloita Pulu, who testified as Blue
14 Shield's PMQ on the drafting history of the Vital Shield. (*Id.*) Other personnel and experts were also
15 deposed, including Blue Shield's expert on its claims data, Bruce Deal. (*Id.*) Blue Shield deposed
16 Plaintiffs Arthur Bodner and Michael Felker. (*Id.*)

17 On September 3, 2015, Plaintiffs filed a motion for class certification. Blue Shield vigorously
18 opposed class certification, arguing there was no commonality, individuals issues predominated, the
19 proposed class was unmanageable and the Plaintiffs were inadequate class representatives. (Davis
20 Dec., ¶ 14.) Blue Shield submitted three expert declarations in opposition to the motion. (*Id.*) These
21 included two from health economists, Bruce Deal and Lawrence Baker, who opined that Blue Shield's
22 competitors offered policies with similar deductible and out-of-pocket maximum provisions, and that
23 most Vital Shield enrollees had not sustained damages from expanded deductibles and out-of-pocket
24 maximums, and thus benefited from low premiums. (*Id.*) They also included a expert declaration
25 from an insurance agent who opined that most enrollees' understanding of the Vital Shield policies
26 stemmed from their agent's representations, and thus individual issues predominated. (*Id.*)

27 Plaintiffs filed their reply on January 22, 2016. On February 18, 2016, the Court held a
28 hearing and granted class certification on all causes of action, holding all the elements were satisfied.

1 The Court certified the following class:

2 “All individuals currently enrolled in, or who were enrolled in, a Blue Shield Vital
3 Shield policy, including Vital Shield 2900, Vital Shield 2900-G, Vital Shield Plus
4 2900, Vital Shield Plus 2900-G, Vital Shield 2900 Plus Generic Rx, Vital Shield
5 Plus 2900 Generic Rx-G, Vital Shield 900, Vital Shield 900-G, Vital Shield Plus
6 900, Vital Shield Plus 900-G, Vital Shield 900 Plus Generic Rx, Vital Shield Plus
7 900 Generic Rx-G, Vital Shield Plus 400, Vital Shield Plus 400-G, Vital Shield
8 Plus 400 Generic Rx, Vital Shield Plus 400 Generic Rx-G, excluding persons who
9 are no longer enrolled in a Vital Shield Policy and who did not incur any expanded
10 deductible or co-insurance/co-payment maximum.”

11 (the “Certified Class”).

12 Following Class Certification, the Court appointed KCC Class Action Services, LLC as the
13 class administrator to effectuate Class Notice. Twenty Four enrollees excluded themselves from the
14 Certified Class, the list of which is attached as Exhibit C.

15 Following the grant of class certification, the parties proceeded with additional merits
16 discovery and extensive motions on merits issues. (Davis Dec., ¶ 17.) On September 28, 2016, Blue
17 Shield filed a motion for summary judgment/ adjudication. Blue Shield asserted the Vital Shield
18 policies were unambiguous and expressly informed its enrollees how the deductibles and out-of-
19 pocket maximum provisions operated, and at the very least enrollees were put on notice of the
20 ambiguity the first year they had an expanded deductible, and thus waived their right to sue by
21 renewing the policies. (*Id.*) Blue Shield also submitted an expert declaration from Mr. Deal, who
22 opined Blue Shield administered the policies in the manner set forth in the policy provisions. (*Id.*)

23 The briefing on the motion was delayed as a result of extensive discovery disputes regarding
24 the discoverability and ability to recover internal emails, and subsequent difficulties in locating and
25 extracting the emails from Blue Shield’s archives. (Davis Dec., ¶ 18.) Following Court intervention
26 and the subsequent depositions of Blue Shield IT personnel, in January 2018, Blue Shield eventually
27 produced its email archives, which then had to be examined by forensic experts. (*Id.*) Plaintiffs took
28 additional merits depositions and filed their opposition on April 6, 2018. (*Id.*) Blue Shield filed its
reply on August 8, 2018.

On May 28, 2018, the Court held a hearing on Blue Shield’s motion for summary
judgment/adjudication. The Court denied Blue Shield’s motion. However, notwithstanding the
denial, at the hearing, the Court indicated that it might in fact agree with Blue Shield’s interpretation

1 of the Vital Shield policies. (Davis Dec., ¶ 19.) The Court stated that Blue Shield’s practice to not
2 count certain out-patient services towards Mr. Bodner’s deductible, namely laboratory pathology,
3 “appears to comport with the policies.” (May 22, 2018 Rpt. Trans. of Proc., p. 37:13; Davis Dec., ¶
4 19.) Accordingly, the Court held that Blue Shield had met its initial burden to establish that it was
5 entitled to a judgment as a matter of law on Plaintiffs’ breach of contract cause of action. (*Id.*) The
6 Court, however, found that that Plaintiffs had raised a triable issue of fact as to the amount that Blue
7 Shield failed to count towards the deductible and out-of-pocket maximum because of a conflict
8 between the submitted declaration of Bruce Deal and Blue Shield’s interrogatory responses. (*Id.*)

9 On May 30, 2018, Blue Shield filed a motion for reconsideration arguing the Court had
10 failed to consider its explanation addressing the conflict in its reply separate statement. (Davis Dec., ¶
11 20.) On July 25, 2018, the Court denied the motion for reconsideration, holding that Plaintiffs had
12 raised triable issues of facts, and that reply separate statements are not authorized by the summary
13 judgment statute. (*Id.*)

14 Blue Shield also filed an early motion *in limine* no. 1 (“MIL 1”) on June 27, 2018 on
15 damages. In MIL 1, Blue Shield sought to preclude Plaintiffs from introducing evidence of damages
16 based solely on amounts billed by medical providers. (Davis Dec., ¶ 21.) Citing *Green Wood*
17 *Industrial Co. v. Forceman Int’l Dev. Group, Inc.* (2007) 1564 Cal.App.4th 766, Blue Shield argued
18 Plaintiffs needed to provide evidence that either the Class Member had paid the bill or that the Class
19 Member was being actively pursued by the medical provider. (*Id.*) On July 20, 2018, Plaintiffs filed
20 their opposition, in which they argued *Greenwood* was inapposite because it did not involve a direct
21 first party claim for insurance benefits, but a claim for consequential damages for resale of goods
22 under the UCC. Blue Shield filed a reply brief on July 26, 2019. (*Id.*)

23 On August 17, 2018, the Court requested supplemental briefing on MIL 1 addressing
24 several cases on medical billings and damages, including *Howell v Hamilton Meats & Provisions,*
25 *Inc.* (2011) 52 Cal.4th 541. (Davis Dec., ¶ 22.) Blue Shield filed its supplemental brief on August 31,
26 2018. Plaintiffs filed their supplemental brief on September 14, 2018. Blue Shield filed its
27 supplemental brief on September 21, 2018.

28 The Court held a hearing on MIL 1 on January 15, 2019. At the hearing, the Court stated

1 the issue was “a close call”, but ultimately denied MIL 1 without prejudice. (Davis Dec., ¶ 23.) The
2 Court stated that Defendant could re-raise the issues at trial. (*Id.*) The Court further indicated that he
3 was skeptical that Class Members were entitled to 100% of their damages from uncovered medical
4 bills, absent some evidence that Class Members actually paid the provider 100% or the provider was
5 pursuing them for 100%. (*Id.*) The Court suggested he might hold that Class Members could get only
6 a discounted number based on statistical evidence of what average enrollees paid. (*Id.*)

7 On April 16, 2019, Blue Shield filed a motion to bifurcate the trial on Plaintiffs’ equitable
8 claims for UCL and declaratory relief, and have them heard in a bench trial prior to Plaintiffs’ breach
9 of contract and bad faith causes of action. (Davis Dec., ¶ 24.) Plaintiffs filed an opposition on May
10 10, 2019, arguing the Court should try the legal issues first in a jury trial. Blue Shield filed its reply
11 brief on May 16, 2019. On May 23, 2019, the Court held a hearing and granted the motion to
12 bifurcate. (*Id.*) The Court held it would first hold a bench trial on the declaratory relief cause of
13 action, where it would address the meaning of the Vital Shield contracts. (*Id.*) There would then be a
14 second jury trial phase on the breach of contract and bad faith causes of action. (*Id.*) Finally, there
15 would be a third phase on the UCL cause of action. (*Id.*)

16 The parties filed their first phase trial briefs, witness lists, and exhibits on August 16, 2019.
17 (Davis Dec., ¶ 25.) On August 29, 2019, shortly before the trial was set to commence on September
18 10, 2019, the parties filed a Joint Notice of Settlement, subject to Court approval, and a stipulation to
19 further continue the trial date. (*Id.*) The trial date was subsequently vacated. (*Id.*)

20 **B. Mediation and negotiation of the settlement**

21 The parties attended five intensive in-person mediations in this matter before experienced
22 and well-respected mediators, Robert Kaplan, Esq. and Edwin Oster, Esq. over a six-year period.
23 (Davis Dec., ¶ 26.) The final mediation session took place on August 27, 2019 with Mr. Kaplan,
24 shortly before trial was set to commence. (*Id.*) Since the conclusion of the final mediation session, the
25 parties have continued to devote substantial time and energy to the arm’s length negotiations of the
26 Settlement details, including the distribution of settlement benefits. (*Id.*) This required detailed
27 analysis by experts on both sides to ensure that the parties accurately determined what each Class
28 Member: (1) received in insurance benefits; and (2) would have received in insurance benefits had

1 Blue Shield counted all the out-patient medical services towards the members' deductible and out-of-
2 pocket maximum in the manner Plaintiffs allege they should have done so; and (3) the difference in
3 these numbers. (*Id.*) The above analysis, the form and substance of the notice and dissemination of
4 the class action settlement to the more than 24,000 class members, as well as the terms of the
5 settlement agreement and release, have also all been the subject of nearly two months of additional
6 negotiations and the unabated exchange of proposals, edits to proposals and counter-proposals. (*Id.*)

7 Prior to the final mediation, Class Counsel conducted an investigation and evaluation of the
8 relevant law and facts necessary to assess the strengths and weaknesses of the case. (Davis Decl. at ¶
9 27.) Class Counsel's evaluation was enabled by the extensive information obtained during discovery
10 and the experience and expertise of Class Counsel developed in handling other class actions. (*Id.*)
11 Class Counsel also consulted with forensic accountants to develop a damage model and determine
12 each Class Members' damages. (*Id.*)

13 In short, this action has been extensively and vigorously litigated before settlement was
14 reached. (Davis Decl. at ¶ 28.) The parties were fully on track for the scheduled September trial date.
15 Based upon the extent of the proceedings, the parties were adequately informed of the legal bases for
16 their respective claims and defenses and were capable of balancing the risks of continued litigation
17 and the benefits of the proposed settlement. (*Id.*)

18 The informed view of experienced Class Counsel is that the proposed settlement is fair,
19 reasonable, and adequate, and meets the criteria for preliminary approval. (Davis Decl., ¶ 6.)

20 **III. THE SETTLEMENT**

21 **A. Summary of Settlement**

22 The common fund total settlement is \$12.5 million, which includes the amounts that will be
23 paid for notice and settlement administration costs, class representative service awards, and
24 attorneys' fees, administration and litigation costs and expenses. (Ex. A, ¶ 10(j) and 11.) There is no
25 reversion to Blue Shield of any of the common fund monies and the distribution of the fund will be
26 made without the necessity of Class Members submitting claim forms. (*Id.*, ¶¶ 16, 19.)

27 **B. The distribution plan**

28 From the Gross Settlement Amount of \$12.5 million, the attorney's fees and costs,

1 administration costs, and service awards to the Class Representatives will first be deducted, to result
2 in a Net Settlement Fund, which is approximately \$7.56 million. (Ex. A., ¶ 1.)

3 Class Members who do not request exclusion from the Class will receive a pro rata
4 distribution from the Net Settlement Fund based on their Actual Damages incurred, through
5 December 31, 2018, which is the last year for which there is complete claims data. (Ex. 4 to
6 Settlement Agreement., p. 1) Actual Damages refers to the difference between what each Class
7 Member received in health insurance benefit payments from Blue Shield, and what they would have
8 received if Plaintiffs prevailed on all theories and defenses, as explained in Section III(c). (*Id.*)

9 There are several exceptions to the pro rata distribution, guaranteeing certain minimum
10 payments. Class Members who are no longer Vital Shield members after December 31, 2018, and
11 whose pro-rata distribution is less than \$10.00, will receive a \$10.00 distribution. (Ex. 4 to Settlement
12 Agreement, p.1) Class Members enrolled in a Vital Shield policy after December 31, 2018, but who
13 did not have Actual Damages by that date, will receive a \$50.00 distribution. (*Id.*) Class Members
14 enrolled in a Vital Shield policy after December 31, 2018 who had Actual Damages by that date, will
15 receive their pro rata distribution or \$50.00, whichever is greater. (*Id.*)

16 By tying individual recovery to the Actual Damages, with certain minimum distributions, the
17 distribution plan insures a fair and equitable distribution to Class Members. (Davis Dec., ¶ 33.) The
18 minimum \$10.00 distribution ensures that no settlement benefits paid are *de minimus*. Class Members
19 who are still Vital Shield policyholders are guaranteed at least \$50.000 for several reasons. (*Id.*)
20 First, because the 2019 calendar year applicable to the deductible and out-of-pocket maximum was
21 not complete as of this settlement, the Actual Damages, if any, cannot yet be determined for the Class
22 Members in 2019 or thereafter. (*Id.*) And because some Class Members will remain on the policy
23 going forward, a cut-off date will be required. (*Id.*) Second, the minimum distribution ensures that
24 enrollees who have suffered no Actual Damages by the end of 2018, but who chose to renew their
25 policies¹ for 2019 and any future years despite receiving the class certification notice in 2016 alerting

26
27 ¹ Commencing in 2014, individual health insurance policies with Blue Shield and other companies became available in
28 California without medical underwriting pursuant to the Affordable Care Act. Thus, Vital Shield policyholders were free
to switch to one of these policies since that time, as many undoubtedly did, as shown by the claims data produced by
Blue Shield. There were tens of thousands of Vital Shield members in 2012, the last year the policies were sold. But at

1 them to Blue Shield's allegedly improper application of deductibles and out-of-pocket maximums,
2 receive financial benefits to release rights they may have to challenge Blue Shield's practices at issue
3 in this case in those future years. (*Id.*)

4 This is a non-claims made and no reversion Settlement, and thus the entire Net Settlement
5 Fund will be distributed. Settlement checks will be valid and negotiable for 180 days. (Ex. A, ¶ 17.)
6 The amounts of the uncashed Settlement Checks will be sent to the State Controller's Office under
7 the Unclaimed Property Law Statutes. (*Id.*, ¶ 19.)

8 **C. How the distribution plan was determined**

9 In preparation for trial in this matter, Plaintiffs retained forensic accountants who
10 independently analyzed claims data from January 1, 2010 through December 31, 2018 to determine
11 potential damages in this case for every single Class Member. (Davis Decl., ¶ 36.) Blue Shield
12 similarly retained an expert who also examined the claims data. Both experts estimated overall
13 damages for the Class at between \$25 million and \$29 million. (*Id.*) Both parties' damage models
14 made determinations as to the following: (1) What each Class Member received in health care benefit
15 payments from Blue Shield, (2) What each Class Member should have received if the Court held that
16 all of Plaintiffs' allegations regarding how the Vital Shield deductible and out-of-pocket maximum
17 provisions should have been administered were correct; and (3) the difference between what each
18 Class Member received and what they would have received under Plaintiffs' theory of the case. (*Id.*)

19 Following the final mediation at which the \$12.5 million settlement was reached, the Parties
20 continued to work cooperatively to resolve any discrepancies in individual Class Members' Actual
21 Damages to ensure the results were accurate and prepare a distribution list. (Davis Decl., ¶ 37.) The
22 formula used to calculate each Class Members' Settlement Check, and a list of each Class Member's
23 Actual Damages and their estimated Settlement Check is attached as Exhibit 4 to the Agreement filed
24 with this Motion.

25 The Parties, with the advice of their respective experts and consultants, have satisfied
26 themselves that the common fund of \$12.5 million and pro-rata distribution to the Class Members

27
28 the end of 2018, there only 2,899 Vital Shield members, and only 1,605 who were remained enrolled in 2019 who had
not sustained Actual Damages in an earlier year. (Davis Decl., ¶ 35.)

1 based upon Actual Damages fairly and equitably distributes the settlement proceeds among the Class
2 Members. (Davis Decl., ¶ 38.)

3 **D. Notice Plan and Class Members' rights to exclude themselves from or object**
4 **to the Settlement**

5 No later than 30 days after entry of the Preliminary Approval Order, the Settlement
6 Administrator will mail the Class Notice to each Class Member. A true and correct copy of the Class
7 Notice is attached as Exhibit 1 to the Settlement Agreement.

8 The Class Notice includes a brief explanation of the case and clearly explains the procedures
9 for a Class Member to exclude themselves from, or object to the settlement. The Class Notice
10 provides Class Members must mail a written request for exclusion to the Settlement Administrator no
11 later than 35 days after the mailing of the Class Notice. (Ex. A, ¶ 37.) The Notice further provides
12 that any Class Members who wishes to object to the fairness, reasonableness, or adequacy of the
13 proposed settlement must intervene and deliver to Class Counsel and to Blue Shield's Counsel, and
14 file with the Court, no later than 35 days from the date the Class Notice was mailed, a written
15 statement of the objections, as well as the specific reason(s), if any, for each objection, including any
16 legal support the Class Member wishes to bring to the Court's attention and any evidence or other
17 information the Class Member wishes to introduce in support of the objections. (Ex. A at ¶ 40.). The
18 Class Notice further advises that any Class Member who so objects may attend the Final Approval
19 Hearing, either in person or through counsel hired at the Class Member's expense, so long as notice
20 of the intention to appear is delivered to Class Counsel and Blue Shield's counsel, and filed with the
21 Court, no later than 55 days from when the Class Notice was mailed to the Class Members. (Ex. A at
22 ¶ 41.) Thus, the detailed Class Notice satisfies the requirements of California Rule of Court 3.766.

23 **E. The release**

24 Class Members, who do not exclude themselves from the settlement, shall only release their
25 rights to bring a suit against Blue Shield for claims that were or could have been pleaded against Blue
26 Shield based on the facts contained in the FAC, including but not limited to those arising out of Blue
27 Shield's application of the deductible and out-of-pocket maximum provisions incurred while the
28 Class Members were enrolled in Vital Shield Policies, including claims for damages. (Ex. A, ¶¶

1 10(p), 20-23.) This is a narrow release that complies with the factual predicate rule. *Hesse v. Sprint*
2 *Corp.* (9th Cir. 2010) 598 F.3d 581, 590.

3 **F. Attorneys' fee and costs**

4 The parties agreed that \$4,162,500.00, or 33.3% of the Gross Settlement Amount, may be
5 allocated to pay attorneys' fees. (Ex. A, ¶ 24.) This is well within the historical range of attorney fee
6 awards in common fund cases in California. *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480,
7 503 (2016) (Supreme Court upheld 33.3% attorney fee award); *Chavez v. Netflix, Inc.* (2008) 162
8 Cal.App.4th 43, 66 n.11 (California courts routinely approve class action attorneys' fee awards
9 "averag[ing] around one-third of the recovery.") The parties further agreed that up \$653,433.46 from
10 the Gross Settlement Amount may also be allocated to pay Class Counsel's litigation expenses. (*Id.*,
11 ¶ 25.)

12 Class Counsel will bring a motion for attorneys' fees and costs within 14 days after the
13 Court grants preliminary approval of this settlement. (Ex. A, ¶ 45.) Class Counsel intends to brief the
14 fee application using common fund percentage of recovery methodology, as well as setting forth a
15 lodestar/multiplier cross check. (Davis Dec., ¶ 45.) Any fees awarded by the Court will be split by
16 Class Counsel as follows: 50% of the fees to Gianelli & Morris, ALC, 27.5% of the fees to the Stuart
17 Law firm, and 22.5% to the Law Offices of Kathryn Trepinski, pursuant to a written agreement. (*Id.*)

18 **G. Administrative expenses**

19 The parties have selected KCC Class Action Services, LLC, as the Settlement
20 Administrator. (Davis Dec., ¶ 43.) The costs of settlement administration, which includes
21 the mailing of the Class Notice and distribution of settlement checks to 24,739 persons, is estimated
22 at \$97,508.00. (*Id.*) These costs will be paid from the Gross Settlement Amount. (Ex. A, ¶ 35.)

23 **H. Service award**

24 The Parties have agreed that up \$10,000.00 will be paid to each of the Class
25 Representatives, which will be paid from the Gross Settlement Amount. (Davis Dec., ¶ 27.)

26 **IV. CERTIFICATION OF THE SETTLEMENT CLASS**

27 **A. The Proposed Settlement Class**

28 The parties have agreed to seek conditional certification of the following Class, for

1 settlement purposes only:

2 “All individuals who are or were enrolled in, a Blue Shield Vital Shield series of
3 policies, including but not limited to Vital Shield 2900, Vital Shield 2900-G, Vital
4 Shield Plus 2900, Vital Shield Plus 2900-G, Vital Shield 2900 Plus Generic Rx,
5 Vital Shield Plus 2900 Generic Rx-G, Vital Shield 900, Vital Shield 900-G, Vital
6 Shield Plus 900, Vital Shield Plus 900-G, Vital Shield 900 Plus Generic Rx, Vital
7 Shield Plus 900 Generic Rx-G, Vital Shield Plus 400, Vital Shield Plus 400-G,
8 Vital Shield Plus 400 Generic Rx, Vital Shield Plus 400 Generic Rx-G, and were
9 mailed notice as set forth herein, excluding persons for whom both of the following
10 is true: (1) the person did not incur any expanded deductible or co-insurance/co-
11 payment maximum up to and including January 1, 2019; and (2) the person was not
12 enrolled in a Vital Shield Policy as of January 1, 2019.”

13 (the “Class”). The proposed settlement Class is virtually identical to the Certified Class. The only
14 difference is that it clarifies that persons who suffered no harm through the end of 2018, which is the
15 last year for which Blue Shield has complete claims data, and who also are no longer Blue Shield
16 enrollees, are excluded from the Class.

17 **B. Certification of the settlement Class is appropriate**

18 A class must satisfy Code of Civil Procedure section 382’s requirements—it must be
19 ascertainable and there must be a well-defined community of interest. *Sav-On Drug Stores, Inc. v.*
20 *Super. Ct.* (2004) 34 Cal.4th 319, 326; *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435. The
21 community-of-interest requirement embodies three elements: (1) common questions of law or fact;
22 (2) a class representative with claims or defenses typical of the class; and (3) a class representative
23 who can adequately represent the class. *Linder, supra*, 23 Cal.4th at 435. In a settlement context,
24 these same standards apply. In fact, a lesser standard of scrutiny applies to certification of settlement
25 classes. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807, fn. 19.

26 Here, the Court previously held all class certification elements were met when it granted the
27 motion to certify in March 2016. The only change here is inclusion of the specific date limitation for
28 enrollees to have suffered harm, and thus receive a share of the distribution, for those enrollees who
are no longer Vital Shield Members. There are 24,739 Class Members under this definition. (Davis
Dec., ¶ 37.) All other issues remain the same. Accordingly, certification of the settlement Class is
appropriate.

IV. STANDARD FOR SETTLEMENT APPROVAL

California courts strongly favor settlement. *Stambaugh v. Super. Ct.* (1976) 62 Cal.App.3d

1 321, 326. Likewise, in the federal courts, “[s]trong judicial policy ... favors settlements, particularly
2 where complex class litigation is concerned,” so long as there is no indicia of collusion or unfairness
3 among the negotiating parties.” *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276.

4 The Court has broad powers to determine whether a proposed class action settlement is fair
5 under the circumstances of the case. Generally, the Court should grant preliminary approval, and
6 direct that notice of the settlement and fairness hearing be disseminated, wherever the proposed
7 settlement falls within the range of possible final approval and does not suffer from any obvious
8 deficiency or reason to doubt its fairness (e.g., unjustifiable preferential treatment of class
9 representatives or some segment of the defined class, excessive compensation for attorneys at the
10 expense of class member, etc.). *See, e.g., Newberg & Conte, Newberg on Class Actions* (5th ed.
11 2017) § 13:13 at pp. 310-315 (citing *Manual for Complex Litigation, 3d* (1997) § 30.41).²

12 The Court’s *final* approval responsibility in reviewing a proposed class action settlement is
13 to ensure that the settlement is “fair, reasonable and adequate” and, if so, a proposed settlement
14 should be approved. As one California court has explained,

15 Due regard ... should be given to what is otherwise a private consensual agreement
16 between the parties. The inquiry must be limited to the extent necessary to reach a
17 reasoned judgment that the agreement is not the product of fraud or overreaching
by, or collusion between, the negotiating parties, and that the settlement, taken as a
whole, is fair, reasonable and adequate to all concerned.

18 *7-Eleven Owners v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1145 (quoting *Dunk, supra*, 1794,
19 1801 (internal quotations and citations omitted). In making this determination, the Court should
20 consider all relevant factors, but particularly,

21 (1) the strength of plaintiff’s case, (2) the risk, expense, complexity and likely
22 duration of further litigation, (3) the risk of maintaining class action status
23 through trial, (4) the amount offered in settlement, (5) the extent of discovery
completed and the stage of proceedings, (6) the experience and views of
counsel, and (7) the reaction of the class members to the proposed settlement.

24 *Id.* at 1146 (quoting *Dunk, supra*, 48 Cal.App.4th at 1801). Except for considerations particular to the
25

26 ² *See also Acosta v. TransUnion, LLC* (C.D. Cal. 2007) 243 F.R.D. 377, 386 (“To determine whether preliminary
27 approval is appropriate, the settlement need only be *potentially* fair, as the Court will make a final determination of its
28 adequacy at the hearing on Final Approval, after such time as any party has had a chance to object and/or opt out”)
(emphasis in original); *Satchell v. Federal Express Corp.* (N.D. Cal. 2007) 2007 WL 1114010 at *4 (granting preliminary
approval because proposed settlement was the result of arm’s length negotiation, non-collusive, free of “obvious defects,”
and “within the range of possible settlement approval”).

1 class nature of the litigation, proper evaluation of the fairness of a class action settlement is similar to
2 the process applied by the courts to evaluate good faith settlement under Code of Civil Procedure
3 section 877.6. *See Tech-Bilt, Inc. v. Woodward-Clyde & Assoc.* (1985) 38 Cal.3d 488, 499-500.

4 In considering the fairness of a class action settlement, however, the Court should not
5 attempt to reach any ultimate conclusions on disputed questions of law or fact.

6 Neither the trial court nor this court is to reach any ultimate conclusions on the
7 contested issues of fact and law which underlie the merits of the dispute, for it is the
8 very uncertainty of outcome in litigation and avoidance of wasteful and expensive
litigation that induce consensual settlements. In other words, the settlement or
fairness hearing is not to be turned into a trial or rehearsal for trial on the merits.

9 *7-Eleven Owners, supra*, 85 Cal.App.4th at 1145, 1146 (internal quotations and citations
10 omitted); *see also Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250 (because
11 “[c]ompromise is inherent and necessary in the settlement process,” “[a] settlement need not obtain
12 100 percent of the damages sought in order to be fair and reasonable”) *disapproved of on other
13 grounds in Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.4th 160.

14 Finally, where a good faith settlement is reached through arm’s-length bargaining, after
15 qualified opposing counsel have properly developed their claims and defenses, there is a presumption
16 of fairness.

17 [A] presumption of fairness exists where, (1) the settlement is reached through
18 arm’s-length bargaining, (2) investigation and discovery are sufficient to allow
19 counsel and the court to act intelligently, (3) counsel is experienced in similar
litigation, and (4) the percentage of objectors is small.

20 *7-Eleven Owners, supra*, at 1146 (quoting *Dunk, supra*, 48 Cal.App.4th at 1802).

21 Under the foregoing standards, preliminary approval is appropriate here.

22 **V. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

23 The proposed settlement is fair, reasonable, and adequate. There is no “obvious deficiency”
24 or indicia of unfairness. The settlement provides very significant monetary relief to a class of former
25 and current Vital Shield members, none of whom have previously asserted their rights individually.
26 Although the Class response is not yet known, few objections or exclusions are anticipated. Apart
27 from a moderate service award, the named plaintiffs are not seeking or receiving any relief apart from
28 that to which each Class Member is entitled. Negotiations occurred only after extensive litigation,

1 discovery, and investigation to meaningfully assess the case. Indeed, the Settlement was reached
2 only right before trial was set to commence. Further, the Settlement was achieved only through
3 extensive arm's length negotiations under the guidance of two highly-respected mediators. These
4 factors confirm that the *Dunk* presumption of fairness (*supra*) applies. The amount offered in
5 settlement unquestionably falls within the range of possible final approval. As such, preliminary
6 approval is properly granted.

7 **A. Strength of Plaintiffs' case and the risks of litigation**

8 Plaintiffs believe that each of the class claims are legally meritorious, and present a
9 reasonable probability of a favorable determination on behalf of the Class, as is amply borne out by
10 the significant amount offered in settlement by Blue Shield. At the same time, there is undeniably
11 significant litigation risk that is avoided by the proposed settlement. (*See, generally*, Davis Dec., ¶¶
12 19, 23, 46-47.)

13 For instance, Blue Shield has forcefully argued the Vital Shield policies unambiguously and
14 expressly informed its enrollees how the deductible and out-of-pocket maximum provisions operated.
15 (Davis Dec., ¶ 46.) In its summary judgment ruling, the Court stated it might in fact agree with Blue
16 Shield's construction of the Vital Shield policies, when it held Blue Shield's handling of Mr.
17 Bodner's claims "appears to comport with the policies." (May 22, 2018 Rpt. Transcript of
18 Proceedings, p. 37:13; Davis Dec., ¶ 46.) If this Court were to so interpret the Vital Shield policies at
19 the first phase of the bifurcated trial on declaratory relief, and so instruct the jury in phase 2, there is a
20 high probability the jury would find no breach of contract or bad faith. (*Id.*)

21 The Court also indicated when denying Blue Shield's Motion in Limine No. 1, that the
22 question was a close call, and it still might sustain objections to Plaintiffs' evidence of damages at
23 trial absent further evidence of the amount Class Members paid their providers or for which providers
24 pursued them. (Davis Dec., ¶ 47.) This could have resulted in a significant reduction in damages given
25 the difficulties inherent in such proof. (*Id.*)

26 Plaintiffs believes such defense arguments would be overcome. (Davis Dec., ¶ 48.) But any
27 realistic assessment of the case must admit that the outcome of these legal and factual disputes is
28 uncertain, that true litigation risk exists for all parties, and that at a minimum, trial and inevitable

1 appeal would present a substantial delay in obtaining any relief for the Class. (*Id.*)

2 **B. The expense and duration of further litigation**

3 This complex case has been litigated fully and intensively by the parties for over six years.
4 The firms involved are sophisticated litigators, who are well acquainted with appellate proceedings. If
5 the case were tried, it is a near certainty that post-trial appellate proceedings would ensue. Therefore,
6 this settlement is timely and appropriate. (Davis Dec., ¶ 49.)

7 **C. Equitable distribution of settlement benefits**

8 The proposed settlement provides for an equitable distribution of settlement benefits among
9 the Class Members. The Net Settlement Fund will be distributed *pro rata* in accordance with each
10 Class Members' Actual Damages, with a minimum distribution of \$10 for all Class Members who are
11 no longer Vital Shield members, and a minimum \$50 distribution for Class Members who are still
12 Vital Shield members. (Davis Dec., ¶¶ 31-33.)

13 **D. The Settlement Amount.**

14 As noted, so long as the amount offered in settlement falls within the range of possible
15 approval, preliminary approval and dissemination of notice are appropriate. *Newberg on Class*
16 *Actions, supra*, § 13:13 at pp. 310-315. “[T]he very essence of a settlement is compromise, ‘a
17 yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice v. Civil Service*
18 *Comm’n of City & County of S.F.* (9th Cir. 1982) 688 F.2d 615, 624. Thus, when evaluating the
19 amount offered in settlement, the Court should consider “the complete package taken as a whole,”
20 and the amount should “not be judged against a hypothetical or speculative measure of what might
21 have been achieved by the negotiators.” *Id.* at 625-28.

22 Courts routinely approve class action settlements where the settlement amount is a lower
23 percentage of the claimed amount of damages. *See, e.g., In re Mego Fin. Corp. Sec. Litig.* (9th Cir.
24 2000) 213 F.3d 454, 459 (finding recovery of 16.67% of the potential recovery adequate in light of
25 the plaintiffs’ risks); *Glass v. UBS Fin. Serv.* (N.D. Cal. Jan. 26, 2007) 2007 WL 221862 at * 4 (court
26 approved a settlement of unpaid overtime wages where the settlement amount constituted only
27 approximately 25 to 35% of the estimated actual loss to the class.); *Villegas v. J.P Morgan Chase &*
28 *Co.* (N.D. Cal. Nov. 21, 2012) 2012 WL 5878390, at *6; *Nichols v. Smithkline Beecham Corp.*, 2005

1 WL 950616, at *16 (E.D. Pa. April 22, 2005) (approving settlement that represented between 9.3%
2 and 13.9% of the claimed damages). Simply put, “the fact that a proposed settlement may only
3 amount to a fraction of the potential recovery does not mean that [it] should be disapproved.” 7-
4 *Eleven Owners, supra*, 85 Cal.App.4th at 1150 (citation omitted).

5 Here, the \$12.5 million offered in the settlement represents approximately 43% to 50% of
6 the total potential damages in this lawsuit assuming Plaintiffs prevailed on every theory, defeated
7 every defense, and overcame Blue Shield’s objections to evidence of damages. Given the significant
8 risk that Plaintiffs would not prevail in this case at all, that the Court could exclude evidence of
9 damages, or that any damage reward would be significantly reduced, this represents an excellent
10 result for Class Members. (Davis Dec., ¶ 50.)

11 Importantly, no portion of this relief will be subject to any claims process. Instead, cash
12 benefits will be automatically distributed to the 24,739 Class Members. (Davis Dec., ¶ 50.) The
13 administrative mailing and payment procedures are designed to maximize the likelihood of *actual*
14 *receipt* of benefits by each class member. (*Id.*) The average estimated Settlement Check will be
15 \$377.00. (*Id.*)

16 There is no question that the settlement presents a substantial financial benefit to the Class
17 Members and the relief obtained falls well within “the range of possible approval.” (*Id.*)

18 **E. The extent of discovery and proceedings completed.**

19 As summarized above, this settlement was reached only after more than six years of
20 protracted pretrial proceedings had taken place, extensive pretrial discovery were completed and trial
21 was about to commence. Among other things, Class Counsel obtained and analyzed, with assistance
22 from forensic accountants and health economists, the class data and claims history for every single
23 Vital Shield enrollee. Class Counsel, with expert assistance, further built a program to reprocess all
24 the enrollee claims to determine what they would have received in health insurance benefits if
25 Plaintiffs prevailed in this lawsuit, and how that differed from what they did receive, in order to
26 derive each Class Members’ Actual Damages. (Davis Dec., ¶ 52.) In short, when the settlement was
27 negotiated, the parties were fully capable of meaningful assessment of the relative risks and benefits
28 of the settlement. *See discussion supra.*

1 **F. Absence of “obvious defects” or indicia of unfairness**

2 There was no collusion among the settling parties or any other “obvious defect” with regard
3 to the proposed settlement. The settlement was reached only after near-total pre-trial litigation of the
4 action. Litigation was, at all times, fully adversarial, with counsel for each side vigorously advocating
5 their clients’ respective positions, as reflected in the Court’s docket. The assistance of two highly
6 respected mediators, Robert Kaplan and Edwin Oster, guiding negotiations, has ensured the absence
7 of collusion among the parties. *See Satchell, supra*, 2007 WL 1114010 at *4. (*See also* Davis Dec. at
8 ¶ 53.)

9 **G. Attorneys’ fees, litigation costs and class representative service awards**

10 As noted *supra*, the total \$12.5 million settlement includes payment for class notice costs,
11 administration and litigation costs and expenses, class representative incentive awards, and attorneys’
12 fees out of the common fund.

13 Class Counsel will file an application for an award of fees and costs, and for an incentive
14 award to the Class Representatives, prior to the Final Approval Hearing, with an accounting of the
15 considerable hours, litigation costs and expenses expended on this matter, and the relevant case law
16 authorizing the requested fees, costs, and incentive awards. (Davis Dec., ¶ 45.) As will be fully
17 demonstrated in Class Counsel’s fee motion, the amount of fees and litigation expenses provided for
18 by the settlement is appropriate under a common fund percentage of recovery analysis as well as a
19 lodestar/multiplier cross-check, consistent with California law. As the Court’s file and the declaration
20 submitted here reflect, the amount of time spent on this case was substantial, and involved counsel
21 with specialized expertise in the matters at issue as well as the retention and participation of
22 numerous forensic accounting, actuarial, ESI and insurance consultants and experts at every stage of
23 the litigation. (*Id.*, ¶ 45.) Class Counsel has taken this matter on a contingency basis and has not
24 received any monies for the extraordinary time and effort expended in prosecuting this lawsuit nor
25 have any of the costs incurred in those efforts been reimbursed. (*Id.*) Class counsel will seek an
26 award (not including Settlement Administrator costs and expenses) of attorneys’ fees not to exceed
27 33.3% of the common fund amount plus litigation expenses not to exceed \$653,433.46 (5.2% of the
28 common fund) that Class Counsel has incurred in the aggressive prosecution of this lawsuit. Any

1 litigation expenses in excess of that 5.2% will be the responsibility of Class Counsel, and not paid
2 from the common fund. Class Counsel will seek incentive awards of \$10,000 for both Mr. Bodner
3 and Mr. Felker, for their assistance in prosecuting this lawsuit.

4 **H. Experience and views of counsel**

5 In granting class certification, this Court has already determined that the qualifications of
6 Class Counsel (attorneys specializing in complex class actions generally and in insurance litigation,
7 in particular) are more than ample. Class Counsel are well-suited to realistically assess the fair and
8 reasonable value of the claims at issue given the full litigation of this action and Class Counsel's
9 experience in settling and trying other cases against health plans. Blue Shield's counsel are also well
10 acquainted with the complicated issues presented by this action and are unquestionably able to assess
11 the merits of this settlement and the relative strengths of the parties' claims and defenses.

12 This was a hard-bargained settlement, hammered out during six mediation sessions over
13 many years, with the assistance of highly-respected mediators. Class Counsel and Blue Shield's
14 counsel concur that the Settlement represents a fair and reasonable resolution to this matter in light of
15 the various risks and costs to the respective parties of continued litigation. (Davis Dec., ¶ 6.)

16 **I. Reaction of the Class Members.**

17 The reaction of the Class Members is a factor that cannot be assessed at the preliminary
18 approval stage and must await the fairness hearing for consideration of the objections (if any) of the
19 Class Members. Class Counsel anticipate, however, very few, if any, objections after notice of this
20 settlement due to the substantial financial benefits that have been obtained on the Class Members'
21 behalf. (Davis Dec., ¶ 54.)

22 **VI. PROPOSED SCHEDULE**

23 As set forth at paragraph 45 of the Settlement Agreement, the parties propose the following
24 schedule for class notice, opt-out, and Plaintiffs' motion for final approval and motion for attorneys'
25 fees and costs and class representative service awards.

26 ///

Event Date	Event
December 4, 2019	Hearing on Motion for Preliminary Approval
Within 21 days after entry of Preliminary Approval Order	Blue Shield shall pay \$34,424.00 into the Settlement Fund to effectuate class notice.
Within 14 days after entry of Preliminary Approval Order	Class Counsel files a motion for an award of attorneys' fees and costs and Class Representatives incentive award
Within 30 days after Preliminary Approval Order	Settlement Administrator mails Class Notice
35 days after mailing of Class Notice	Deadline for postmarking of exclusions and objections
55 days after mailing of Class Notice	Deadline to file requests with Court to be heard at the Final Approval Hearing
Within 15 days after expiration of deadline for postmarking of exclusions	Settlement Administrator shall cause to be filed a declaration attesting to Class Notice and list of any Class Members who have timely requested exclusion from the Class.
Two weeks before the Final Approval Hearing	Class Counsel to file a motion for final approval
To be set by the Court, but not less than 91 days after entry of Preliminary Approval Order	Final Approval Hearing
Within 21 days after the Effective Date	Blue Shield shall pay attorneys' fees, litigation expenses and any incentive award
Within 21 business days after the Effective Date	Blue Shield shall pay the remainder of the Gross Settlement Amount into the Settlement Fund.
Within 30 days after the Effective Date	Settlement Administrator shall mail Settlement Checks to Class Members.

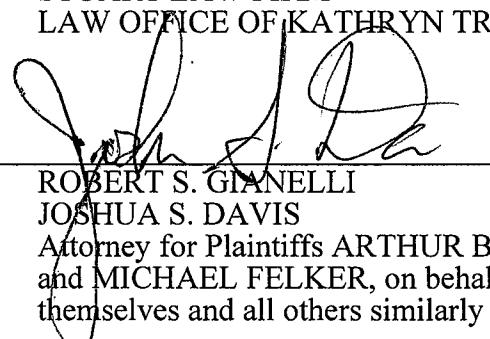
VII. CONCLUSION

For the foregoing reasons, Plaintiffs Arthur Bodner and Michael Felker, and the Class respectfully request that the Court issue an order granting preliminary approval of the Settlement of the Class Action, and issue the related orders and make such findings as are set forth in the proposed Preliminary Approval Order.

DATED: November 5, 2019

GIANELLI & MORRIS
 STUART LAW FIRM
 LAW OFFICE OF KATHRYN TREPINSKI

By: _____



ROBERT S. GIANELLI
 JOSHUA S. DAVIS
 Attorney for Plaintiffs ARTHUR BODNER
 and MICHAEL FELKER, on behalf of
 themselves and all others similarly situated

PROOF OF SERVICE

Bodner v. Blue Shield

Case No. BC516868

**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 years and not a party to the within action; my business address is 550 South Hope Street, Suite 1645, Los Angeles, CA 90071.

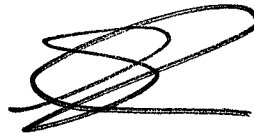
On November 5, 2019, I served the foregoing document described as **MOTION FOR PRELIMINARY APPROVAL OF CLASS-ACTION SETTLEMENT** on the interested parties in this action by placing a true copy of the original thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED

By Electronic Service, I caused a true and correct copy of the above-entitled documents to be electronically transferred onto **CASE ANYWHERE FILE AND SERVE** via the Internet, which constitutes service, pursuant to *Order Authorizing Electronic Service dated 11/15/2013*.

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

Executed on November 5, 2019 at Los Angeles, California.



Leticia Shaw

SERVICE LIST

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Antony Stuart
STUART LAW FIRM
801 South Grand Avenue, 11th Floor
Los Angeles, California 90017-4613
Tel: (213) 612-0009; Fax (213) 489-0225
ts@stuartlaw.us

Kathryn M. Trepinski
LAW OFFICE OF KATHRYN TREPINSKI
8840 Wilshire Boulevard, Suite 333
Beverly Hills, California 90211
Tel: (310) 201-0022; Fax: (866) 201-2251
ktrepinski@trepinskilaw.com

John T. Fogarty
Gregory N. Pimstone
John M. LeBlanc
MANATT, PHELPS & PHILLIPS, LLP
11355 West Olympic Boulevard
Los Angeles, California 90064-1614
Tel: (310) 312-4000; Fax (310) 312-4224
jfogarty@manatt.com
gpimstone@manatt.com
jleblanc@manatt.com

COUNSEL FOR PLAINTIFFS
ARTHUR BODNER and
MICHAEL FELKER, on behalf of
themselves and all others similarly
situated

COUNSEL FOR DEFENDANTS
BLUE CROSS OF CALIFORNIA
LIFE AND HEALTH INSURANCE
COMPANY