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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ELMA SANCHEZ and HOLLY
WEDDING, individually and on
behalf of all others similarly
situated,

Plaintiffs,

v.

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM, and DOES
1 through 100, inclusive,

Defendants

CASE NO. _____

CLASS ACTION

COMPLAINT AND DEMAND FOR JURY
TRIAL

1. Breach of Contract
2. Breach of The Implied Covenant
of Good Faith And Fair Dealing
3. Rescission
4. Declaratory and Injunctive Relief

Plaintiffs, ELMA SANCHEZ and HOLLY WEDDING individually and on behalf of all others similarly situated as defined more fully below (the “Class”), bring this action against Defendant CALIFORNIA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM (“CalPers”) seeking damages and injunctive relief arising out of CalPers’ sale and renewal of long term care insurance policies (“LTC policies”).

INTRODUCTION

1. In 1995 CalPers began offering and promoting the sale of LTC policies to CalPers members and their families. 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. 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. CalPers touted that its policies were 30% cheaper than all other comparable policies and provided superior benefits. CalPers further represented that it had the requisite experience to properly underwrite the LTC policies so as to insure that the funds were carefully and prudently managed.

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

3. However, in 2013, everything abruptly changed. CalPers suddenly and unexpectedly advised its policyholders that its LTC program was grossly underfunded and, that CalPers, unbeknownst to Plaintiffs and the other

members of the Class, had stopped enrolling new members in 2009, four years before. Further, CalPers admitted that it had engaged in an improper investment strategy. For years CalPers had been pursuing an aggressive 44% investment strategy and in 2013 it abruptly shifted to a more stable and conservative 15% investment strategy. As a result, the LTC policy fund was and became even more grossly underfunded. Consequently CalPers announced that it would increase most policyholders' premiums by 85% commencing in 2015. Now more than 125,000 Class Members, many of whom are elderly and on fixed incomes, are placed in the untenable position of either allowing their policies to lapse or paying CalPers increased premiums that they simply cannot afford.

4. Plaintiffs are informed and believe and thereon allege that at all times CalPers knew, or should have known, that its policies were grossly underpriced, the program was underfunded, and that CalPers was improperly investing the funds in an aggressive portfolio. Likewise CalPers knew, or should have known, that it would ultimately be forced to raise premiums on policyholders. Had Plaintiffs and the Class members known the truth about CalPers' LTC policies at an earlier date, they would not have purchased LTC insurance from CalPers. Instead, they would have purchased LTC insurance from an alternative carrier, avoiding the unaffordable rise in premiums and the risk of losing their insurance. This case seeks to remedy the harm caused by CalPers' wrongful conduct.

VENUE

5. Venue is proper in this Court because CalPers maintains an office in this County and received substantial compensation from the sale of LTC policies in this County. Further, many of the acts complained of occurred in this County and gave rise to the claims alleged herein.

PARTIES

6. 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' breach of contract and wrongful conduct.

7. 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.

8. 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' breach of contract and wrongful conduct.

9. It is impracticable to bring all members of the Class as individual plaintiffs before the court because the members of the Class are too numerous.

10. Upon information and belief, Plaintiffs allege, that in excess of 125,000 LTC policyholders were damaged as a result of the violations and misrepresentations of CalPers as herein alleged.

11. On March 18, 2013, Plaintiff Sanchez, individually, and on behalf of other similarly situated California residents who purchased CalPers Long

Term Care insurance any time from 1995 through the present, with the exception of persons whose policies lapsed before receiving notice of a premium rate increase, served CalPers with a claim pursuant to Government Code section 910. The Victim Compensation and Government Claims Board (“VCGCB”) stated in a letter dated April 4, 2013 that it would act on the claim on May 16, 2013 and “rejection of your claim will allow you to initiate litigation should you wish to pursue this matter further.” On May 24, 2013, the VCGCB informed Sanchez that her claim had been rejected.

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

13. Defendant CALIFORNIA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM, (“CalPers”), is a pension fund organized under the laws of the State of California. From its headquarters in Sacramento, California, throughout the Class Period (as defined below) it sold, administered and renewed the LTC policies purchased by Plaintiffs and the Class.

14. Plaintiffs are unaware of the true names and capacities of the remaining defendants sued in this action by the fictitious names DOES 1 through 100. Plaintiffs will amend their complaint when those names and/or capacities become known to Plaintiffs. Plaintiffs are informed and believe that each of the fictitiously named defendants is in some manner responsible for the events and allegations set forth in this complaint.

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

EXHAUSTION OF ADMINISTRATIVE REMEDIES

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

FACTS

A. CalPers’ Long Term Care Insurance

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

18. In uniform promotional materials, consumers were also told that the insurance was 30% cheaper than other comparable policies and that CalPers was able to keep the cost low because it is “the nation's first self-funded, not-for-profit long-term care program.” Specifically, CalPers claimed that “since the program is not-for-profit, CalPers is able to pass the resulting

savings on to you in lower monthly premiums. This is one of the main reasons why CalPers' plans cost on average about 30 percent less than comparable commercial plans." CalPers further represented that its LTC policies were one of the most generous policies in the long term care market. And the promotional materials identified a laundry list of benefits available under its LTC policies.

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

20. CalPers also marketed its "Inflation Protection" plan which was an elective benefit offered to policyholders. If selected by the policyholder, the Inflation Protection plan provided that CalPers would increase the policyholder's Nursing Home Daily Maximum; Residential Care Facility Daily Maximum; and Home and Community Care Monthly Maximum by 5% compounded annually each year as long as coverage remains in force. CalPers explicitly promised in the Evidence of Coverage ("EOC") that the "premium rate will not increase as a result of these annual benefit increases." Moreover, in uniform promotional materials CalPers informed consumers that "[t]he plans with 'built-in' annual benefit increases will cost more on a

monthly basis initially, but you lock in a rate now that is designed to remain level over the life of the plan and that won't rise simply with age."

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

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

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

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

25. Commencing in 1995 and continuing through 2007, CalPers sold three categories of policies: the LTC1 which are LTC policies issued from 1995 to 2002; the LTC2 which are LTC policies issued from 2003 to 2004; and the

LTC3 which are LTC policies issued from 2005 to 2008. Of the 150,330 current policyholders, more than 83% (125,257) purchased the LTC1 category of policies. The vast majority of these policyholders are retired, living on a fixed income, and have a limited ability to earn additional funds to support the enormous premium increase demanded by CalPers. In contrast, the LTC3 policies that were sold more recently account for 10% (16,190) of the total policyholders.

26. The truth about CalPers' program was not as represented. From the very beginning, the premiums for the insurance were grossly underpriced and were not sufficient to provide the level of benefits promised under the program. Moreover, CalPers was woefully incapable of accurately underwriting the policies that it was actively marketing. Not only was CalPers unable to accurately assess the true projected costs of the policies it was selling, it determined it would aggressively invest the premiums paid by the policyholders. In short, CalPers, which had *no* prior experience providing long-term care coverage, over-promised and under-delivered. CalPers failed to do the necessary underwriting to ensure that premiums were sufficient to support the risks insured against, failed to invest the premiums wisely and safely, and failed to conduct the necessary actuarial analysis that would have revealed the true costs for future benefits.

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

28. Commencing in approximately February 2013, Class members began receiving letters from CalPers advising them that it had voted to increase premiums by another 5% immediately, 5% in 2014, and 85% in 2015. These increases applied to all 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.

29. The impact of the increase is extraordinary. By way of example, when she originally enrolled in the program, Plaintiff Sanchez was paying \$179.00 per month in premiums. Commencing in 2015 her monthly premium will be \$793.75. When Plaintiff Wedding initially enrolled in the program, she was paying \$58.00 per month in premiums. Commencing in 2015 her monthly premium will be \$304.41.

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

31. At all times, CalPers knew its LTC policies were grossly underpriced and that it would inevitably have to raise premiums due to poor investments. Had Class members known the truth, they would not have purchased or renewed the LTC policies. Instead, they would have been able to purchase alternative insurance while younger at a substantially reduced overall cost and avoided the significant rise in premiums that will likely force many Class members to either drop their policies or accept the reduction in benefits now mandated by CalPers.

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

33. CalPers' irresponsible conduct resulted in Plaintiffs and the Class renewing their policies until they were too old to purchase alternative coverage with another company. CalPers knew that future increases in premiums were inevitable, yet continued on with the misrepresentations. Plaintiffs and the Class are also in the untenable position of having to forfeit whatever premiums have been paid to CalPers, if they choose to drop their coverage because they can no longer afford the premiums.

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

35. Had CalPers informed Plaintiffs and the Class of these material facts and/or omissions, Plaintiffs and the Class would not have initially purchased or renewed these policies.

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

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

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

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

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

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

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

42. Thus, insurers may not engage in low-ball pricing of LTC insurance products with planned or reasonably foreseeable rate increases. Similarly, insurers may not insert self-serving, exculpatory language that

interferes with or nullifies the insurance being promised. And, any ambiguity in the policy language must be construed against the drafter of the policy.

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

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

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

46. When the policies were sold, CalPers knew that many of its LTC policyholders would not be able to purchase affordable long-term care insurance with other carriers should they cease paying the increased premiums, because with the passage of time, the policyholders age and/or medical history would either bar coverage or make it unaffordable.

47. CalPer's conduct alleged herein, including but not limited to, decisions regarding lapse assumptions, fund investment strategies, the design of the LTC policies, underwriting assumptions, representations

regarding the LTC policies, the form and content of applications and brochures, and the decision to stop accepting new applicants in 2009, occurred at the direction, control, and supervision of officers, directors, employees and/or agents of CalPers.

C. General Allegations As To Elma Sanchez

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

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

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

51. As a direct and proximate result of CalPers' wrongful course of conduct, Sanchez and the Class have been damaged because they are either required to pay premium increases in order to keep their LTC policies in force, reduce their coverage to keep premiums at their original rate, or risk having

their coverage terminated by CalPers for nonpayment of premiums, thereby leaving Class members without the insurance coverage they contracted for with CalPers.

D. General Allegations As To Holly Wedding

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

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

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

55. As a direct and proximate result of CalPers' wrongful course of conduct, Wedding and the Class have been damaged because they are either required to pay premium increases in order to keep their LTC policies in force, reduce their coverage to keep premiums at their original rate, or risk having their coverage terminated by CalPers for nonpayment of premiums, thereby

leaving Class members without the insurance coverage they contracted for with CalPers.

CLASS ACTION ALLEGATIONS

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

57. Class Definition: Plaintiffs bring this action individually and on behalf of all others similarly situated who purchased LTC1 and LTC2 policies issued from 1995-2004 with lifetime coverage and built-in inflation protection, lifetime policies without inflation protection, as well as 3-year and 6-year policies with inflation protection from CalPers at any time; except that, notwithstanding the foregoing, the Class does not include any of the following: (1) persons whose policies lapsed before receiving notice of a premium rate increase in February 2013; (2) persons who received claim payments under their policies before February 2013; and (3) any officer or director of CalPers involved in the management of CalPers Long Term Care program.

58. The Class as defined above, may be further defined or amended by additional pleadings, evidentiary hearings, a class certification hearing, and orders of this Court.

59. The requirements for maintaining this action as a class action are satisfied in that:

- a. It is impracticable to bring all members of the Class before the Court. Plaintiffs estimate that there are more than 125,000 members of the Class and their identities can be ascertained from CalPers' books and records. Attempting to join and name

each Class member as a co-Plaintiff would be unreasonable and impracticable.

- b. The prosecution of separate actions by individual Class members or the individual joinder of all Class members in this action is impracticable and would create a massive and unnecessary burden on the resources of the courts and could result in inconsistent adjudications, while a single class action can determine with judicial economy the rights of each member of the Class.
- c. Because of the disparity of resources available to CalPers 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 CalPers. 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.

60. 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 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;
- b. Whether CalPers induced the sale and renewal of LTC policies through misrepresentations or omissions of material information;
- c. Whether CalPers wrongfully underpriced its LTC policies in order to stimulate policy sales;
- d. Whether CalPers failed in its management of the LTC policies fund in a manner that rendered the fund inadequate;
- e. Whether CalPers concealed from its policyholders the defects inherent in its LTC policies;
- f. Whether Plaintiffs and the Class have sustained damages and the proper measure of those damages.

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

FIRST CAUSE OF ACTION

(Breach of Contract as to Defendants CalPers and DOES 1 through 100)

62. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 61 above, as if fully set forth herein.

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

64. The EOC provided that for those policyholders who elected to purchase the Inflation Protection Benefit, CalPers would increase the Nursing Home Daily Maximum; the Residential Care Facility Daily Maximum; and the Home and Community Care Monthly Maximum by 5% compounded annually each year as long as coverage remains in force. And the EOC provided that it would increase any unused balance remaining in the policyholders Total Coverage Amount by 5% compounded annually. The EOC provided that CalPers could not increase the premium rate as a result of the annual benefit increases afforded to those who elected to purchase the Inflation Protection benefit.

65. At all times material hereto, Plaintiffs and the members of the Class performed all obligations that they were required to perform under the agreement and have faithfully and continually paid their premiums.

66. CalPers and Does 1-100 have breached their obligations under the agreement, including increasing premiums in violation of the agreement and failing to continue to provide the Inflation Protection Benefit without requiring that Plaintiffs and members of the Class pay additional premiums.

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

SECOND CAUSE OF ACTION

(Breach of the Covenant of Good Faith & Fair Dealing as to Defendants CalPers and DOES 1 through 100)

68. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 67 above, as if set forth fully herein.

69. Plaintiffs and each member of the Class are informed and believe and thereon allege that CalPers and Does 1 - 100 breached the implied covenant of good faith and fair dealing and the special relationship contained in all insurance contracts, in at least the following respects:

- a. CalPers and Does 1-100 unreasonably and without proper cause failed to properly and adequately underwrite the policies to ensure that premiums were sufficient to support the risks insured against;
- b. CalPers and Does 1-100 failed to invest the premiums wisely and safely and instead engaged in a strategy of aggressive investment that resulted in enormous losses to the fund;
- c. CalPers and Does 1-100 failed to conduct the necessary actuarial analysis that would have revealed the true costs for future benefits;

- d. CalPers and Does 1-100 closed the program to new enrollments in 2009 without notification to Plaintiffs and to the Class knowing full well that closing enrollment would lead to a “death spiral” that would adversely affect the fund and the benefits it had guaranteed Plaintiffs and the Class;
- e. CalPers and Does 1-100 made false promises of fixed premium rates in order to entice Class members to enroll in the program.

70. CalPers’ announced cessation of promised benefits to Plaintiffs and other Class members in the event that Plaintiffs and the Class members fail to pay exorbitant increases in premiums was done without reasonable cause. CalPers knew that it had a duty to provide the benefits that Plaintiffs and the Class members purchased and for which Plaintiffs and the Class have been regularly and timely paying premiums; a duty to properly invest the funds in a conservative and careful manner; a duty to conduct an appropriate actuarial analysis to insure that the fund would maintain sufficient reserves to provide the promised benefits to Plaintiffs and the Class; and a duty to continue enrollments so as to insure that the fund was not adversely affected by the reduction in younger policyholders at the time when older policyholders were retiring and more likely to require the benefits provided by the LTC policies. CalPers has refused to act in accordance with those duties and in doing so has breached the covenant of good faith and fair dealing.

71. As a direct and proximate result of the unreasonable conduct of CalPers and Does 1-100, Plaintiffs and the other members of the Class have been forced into the untenable position of receiving reduced benefits in exchange for not having to pay an 85% increase in premiums and those

members of the Class who purchased Inflation Protection have suffered a loss of the benefits provided under that program, and accordingly Plaintiffs and the Class members have been damaged thereby.

72. Plaintiffs and the members of the Class are informed and believe and thereon allege that CalPers and Does 1-100 engaged in a course of conduct which was intended to oppress and dissuade Plaintiffs and the Class from seeking the benefits due to them under their LTC policies.

73. CalPers and Does 1-100 have refused to fulfill their obligations under the LTC policies and their refusal has been done with a conscious disregard for the rights of Plaintiffs and the Class. These acts were done with the knowledge and approval and ratification of CalPers and its officers, directors and other managing employees.

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

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

THIRD CAUSE OF ACTION

(Rescission as to Defendants CalPers and DOES 1 through 100)

76. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 75 above, as if fully set forth herein.

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

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

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

80. Defendant CalPers and Does 1-100 made material misrepresentations and concealed material facts from Plaintiffs and members of the Class which induced them to purchase the LTC policies. If the true facts had been disclosed to Plaintiffs and other members of the Class, they would not have purchased LTC policies with Defendant CalPers.

81. Plaintiffs and the other members of the Class will suffer substantial harm and injury if the policies issued by CalPers are not rescinded, in that Plaintiffs and the other members of the Class have been deprived of the alleged benefits of the LTC policies and have remitted billions of dollars as alleged above and have not received what they were promised.

Plaintiffs and the other members of the Class have also been deprived of the use of the money paid to CalPers for many years.

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

83. As a proximate result of CalPers' breach of its implied duties of good faith and fair dealing, Plaintiffs and the other members of the Class have suffered damages.

84. Alternatively, Plaintiffs allege that consent to the contracts referred to above was not real, mutual or free in that it was obtained solely through mistake as herein alleged.

85. Plaintiffs and the other members of the Class entered into the above-described LTC policy contracts under a mistake of fact to the contract, in that they thought that they were buying viable insurance which could legally deliver its promised benefits. Plaintiffs and the other members of the Class would not have given their consent to the purchase of the LTC policies if the mistake had not existed.

86. CalPers was or should have been aware of the mistake by the Plaintiffs and the members of the Class as to the facts relating to the LTC policies and unfairly used this mistake to induce Plaintiffs and the other members of the Class to purchase the LTC policies described above. As a result, CalPers has been unjustly enriched and Plaintiffs and the other members of the Class have been deprived of the use of their money and are entitled to the return of their monies plus interest thereon at the maximum rate allowed by law.

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

FOURTH CAUSE OF ACTION
(For Declaratory and Injunctive Relief as to Defendants CalPers and DOES 1 through 100)

88. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 87 above, as if fully set forth herein.

89. Through the conduct described above, Defendants have refused to provide benefits under the LTC policies that they were required to provide.

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

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

92. Accordingly, Plaintiffs seek a judgment against Defendants: (i) declaring that it is unlawful for Defendants to increase premiums for the LTC Policies for Plaintiffs and the Class or to reduce or terminate benefits if Plaintiffs and the Class members cannot pay the exorbitant increase in premiums; (ii) enjoining Defendants from engaging in these activities and actions in the future; and (iii) awarding attorneys' fees and costs incurred in connection with this litigation.

PRAYER FOR RELIEF

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

- a. Determining that this action is a proper class action maintainable and certifying the Class; certifying Named Plaintiffs as Class representatives of the Class; and appointing Plaintiffs' counsel as counsel for the Class;
- b. That Defendant be required to make restitution to each Plaintiff and each member of the Class of any and all money or property paid by that Plaintiff and Class member;
- c. 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;
- d. For Rescission of the LTC policies sold to Plaintiffs and the Class;
- e. Awarding Plaintiffs and the Class their reasonable attorneys' fees;
- f. Awarding Plaintiffs and the Class pre-judgment and post-judgment interest as provided by law;
- g. For declaratory and/or injunctive relief as requested;

- h. Awarding Plaintiffs and the Class their costs of suit herein incurred; and
- i. Awarding Plaintiffs and the Class such other and further relief as may be just and proper.

JURY DEMAND

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

Dated: August __, 2013

**SHERNOFF BIDART
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By: _____

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