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

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ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

JAN 28 2020

Sherri R. Carter, Executive Officer/Clerk  
By Marisela Fregoso, Deputy

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

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

Plaintiffs,

v

BLUE SHIELD OF CALIFORNIA LIFE  
AND HEALTH INSURANCE COMPANY,  
Does 1 through 25, Inclusive,

Defendants.

) CASE NO. BC516868  
) Assigned to Honorable Elihu M. Berle, D 6, Rm  
) 211  
)  
) [PROPOSED] ORDER GRANTING  
) PRELIMINARY APPROVAL OF CLASS-  
) ACTION SETTLEMENT

1 The motion of Plaintiffs Arthur Bodner and Michael Felker (“Plaintiffs”), on behalf of  
2 themselves and all others similarly situated, for preliminary approval of the proposed class action  
3 Settlement reached with Defendant Blue Shield of California Life and Health Insurance Company  
4 (“Blue Shield”) in this lawsuit was heard on 1/28/20. After considering the Settlement, the  
5 moving papers, arguments of counsel, and all other matters presented to the Court, the Court finds  
6 that:

7 1. On August 1, 2013, Plaintiffs filed a putative class action against Blue Shield. On  
8 May 21, 2014, Plaintiffs filed the operative First Amended Complaint (“FAC”).

9 2. Plaintiffs’ FAC made various allegations regarding Blue Shield’s “Vital Shield”  
10 health insurance policies series. Plaintiffs alleged that when Blue Shield administered claims  
11 submitted by Blue Shield enrollees with the Vital Shield policies, Blue Shield wrongfully failed  
12 to count certain out-patient medical services towards its members’ deductibles and out-of-pocket  
13 maximums, and wrongfully excluded from coverage certain services until the out-of-pocket  
14 maximum had been met. Plaintiffs alleged causes of action for breach of contract, breach of the  
15 implied covenant of good faith and fair dealing, unfair business practices in violation of Bus. and  
16 Prof. Code section 17200, and declaratory relief. Plaintiffs sought damages for monies for health  
17 insurance benefits that Blue Shield did not pay as a result of the alleged wrongful practices.

18 3. On September 3, 2015, Plaintiffs filed a motion to certify the following class under  
19 Code of Civil Procedure Section 382 and Rule 3.764 of the California Rules of Court: “All  
20 individuals currently enrolled in, or who were enrolled in, a BlueShield Vital Shield policy,  
21 including Vital Shield 2900, Vital Shield 2900-G, Vital Shield Plus 2900, Vital Shield Plus 2900-  
22 G, Vital Shield 2900 Plus Generic Rx, Vital Shield Plus 2900 Generic Rx-G, Vital Shield 900,  
23 Vital Shield 900-G, Vital Shield Plus 900, Vital Shield Plus 900-G, Vital Shield 900 Plus Generic  
24 Rx, Vital Shield Plus 900 Generic Rx-G, Vital Shield Plus 400, Vital Shield Plus 400-G, Vital  
25 Shield Plus 400, Generic Rx, Vital Shield Plus 400 Generic Rx-G, excluding persons who are no  
26 longer enrolled in a Vital Shield Policy and who did not incur any expanded deductible or co-  
27 insurance/co-payment maximum.” (the “Certified Class”).  
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4. On February 18, 2016, the Court held a hearing and granted the class certification motion on all causes of action. The Court appointed Gianelli & Morris, the Stuart Law Firm and the Law Office of Kathryn Trepinksi as Class Counsel, and appointed Plaintiffs Arthur Bodner and Michael Felker as Class Representatives.

6. Blue Shield denies each and every claim and contention alleged or otherwise made or pursued against it by Plaintiffs in this Litigation. Blue Shield denies all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Litigation.

5. The proposed Settlement resulted from five arms-length in-person mediations sessions with Robert J. Kaplan, Esq. and Edwin Oster, Esq. The proposed Settlement was concluded only after Plaintiffs and Blue Shield conducted their own investigations and evaluations of the factual and legal issues raised by Plaintiffs' claims and Blue Shield's defenses.

6. Plaintiffs and Class Counsel have agreed to settle the Litigation after considering such factors as (a) the benefits to Plaintiffs and the Class provided by the Agreement; (b) the risks and uncertainty of litigation, especially in complex actions such as this, as well as the difficulties and delays inherent in such litigation; and (c) the desirability of consummating the Agreement in order to provide relief to Plaintiffs and the Class. Blue Shield has concluded that further litigation would be protracted and expensive, and Blue Shield considers it desirable to settle this Litigation for the purpose of avoiding the expense, burden, inconvenience, and inherent risk of litigation and the concomitant disruption of its business operations.

7. The Parties have entered into the Agreement previously filed with this Court.

8. The Court has reviewed the Agreement (and all its attachments) and determined the proposed Settlement to be fair, reasonable, adequate, and within the range of possible approval. The proposed Settlement does not improperly grant preferential treatment to Plaintiffs or any segment of the Class. The proposed Settlement is sufficient to warrant sending Class Notice to the Class Members. The procedures for establishing and administering the benefits provided by the proposed Settlement, for providing notice of the proposed Settlement, for

1 exclusion from the Proposed Settlement, and for filing objections to the proposed Settlement are  
2 fair, reasonable, and in the best interests of the Class.

3 9. The Court has reviewed the notice provisions of Paragraph 28-29 of the  
4 Agreement and the form of Notice of Proposed Settlement of Class Action and Final Approval  
5 Hearing ("Class Notice") attached to the Agreement as Exhibit 1. The Court has determined that  
6 mailing the Class Notice to the last known addresses of the identified Class Members:

- 7 (a) constitute the best practicable notice under the circumstances;
- 8 (b) is reasonably calculated to apprise identified Class Members of the  
9 pendency of the Litigation and of their right to object to the proposed Settlement;
- 10 (c) is reasonable and constitutes due, adequate, and sufficient notice to all  
11 persons entitled to receive notice; and
- 12 (d) meets all applicable requirements of Rule 3.769 of the California Rules of  
13 Court.

14 10. Based on Plaintiffs' motion, the Memorandum of Points and Authorities, the  
15 Agreement, and all supporting exhibits and attachments, the Court preliminarily certifies for  
16 settlement purposes the Class, as defined in 10(b) of the Agreement, pursuant to California Code  
17 of Civil Procedure section 382. The Court hereby finds for settlement purposes that all the  
18 elements of Section 382 are satisfied including numerosity, ascertainability, commonality,  
19 typicality, adequacy and superiority.

20 Accordingly, it is ORDERED AND DECREED AS FOLLOWS:

21 1. The Motion for Preliminary Approval is GRANTED. The Court preliminarily  
22 approves the proposed Settlement. All defined terms above and in this Order have the same  
23 meanings as in the Agreement.

24 2. For purposes of the proposed settlement, and conditioned upon the Agreement  
25 receiving final approval following the Final Approval Hearing, the Court hereby preliminarily  
26 and conditionally certifies the Class, as defined in Section 10(b) of the Agreement, and appoints  
27 Plaintiffs Arthur Bodner and Michael Felker as Class Representatives, and the law firms of  
28

1 Gianelli & Morris, the Stuart Law firm and the Law Offices of Katheryn Trepinski as Class  
2 Counsel for the Class. The Class is defined as pursuant to California Code of Civil Procedure  
3 section 382 and Rule 3.764 of the California Rules of Court, as:

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

10 3. A Final Approval Hearing will be held on 5/28/20, at 10:00 a.m., in Department 6,  
11 Room 211, of the Superior Court, County of Los Angeles, Spring Street Courthouse, 312 N.  
12 Spring Street, Los Angeles, California 90012, to consider the fairness, reasonableness, and  
13 adequacy of the proposed Settlement and whether it should be finally approved by the Court.

14 4. The Court approves the proposed Class Notice and the plan for giving notice.

15 5. Blue Shield and Class Counsel are authorized to:

16 (a) establish the means necessary to administer the proposed Settlement, in  
17 accordance with the terms of the Agreement; and

18 (b) retain a Settlement Administrator to help administer the proposed  
19 Settlement, including the mailing of the Class Notice.

20 6. The Court appoints KCC Class Action Services, LLC as the Settlement  
21 Administrator to implement the terms of the Agreement.

22 7. The Settlement Administrator will mail the Class Notice to each identified Class  
23 Member by first-class mail, postage prepaid, to his or her last known address no later than 30  
24 days after entry of this Order, as described in the Agreement. by 2/28/20

25 8. The Settlement Administrator shall file proof of the mailing of the Class Notice at  
26 or before the Final Approval Hearing. by 5/14/20.

1 9. Within 21 days of the Court's entry of the Preliminar Approval Order, Blue Shield  
2 shall pay \$34,424.00 of the Gross Settlement Amount into the Settlement Fund under the control  
3 of the Settlement Administrator to pay the costs for the Settlement Administrator to effectuate the  
4 Class Notice.

5 10. Class Counsel will file their motion for approval of Class Counsel's fees,  
6 expenses, and Class Representative service award no later than 3/30/20 ~~14 days after entry of this Order~~.

7 11. Each Class Member who wishes to exclude himself or herself from the Class must  
8 submit an appropriate, timely written request for exclusion, postmarked no later than 4/28/20 ~~60 days~~  
9 after the mailing of the Class Notice to the Settlement Administrator at the address provided in  
10 the Class Notice.

11 12. Any Class Member who does not file a timely written request for exclusion shall  
12 be bound by all subsequent proceedings, orders, and judgments in this Action, including, but not  
13 limited to, the Release, even if he or she has litigation pending or subsequently initiates litigation  
14 against Blue Shield with respect to the Released Claims.

15 13. Each Class Member who wishes to object to the fairness, reasonableness, or  
16 adequacy of the Agreement, the proposed Settlement, or to the requested award of attorneys' fees  
17 and expenses must mail to the Settlement Administrator, no later than 4/28/20 ~~60 calendar days after the~~  
18 mailing of the Class Notice, a written statement of the objections, setting forth the following  
19 information: (i) The Class Member's name, address, telephone number, signature; (ii) The  
20 specific reasons (if any) for each objection, including any legal support the Class Member wishes  
21 to bring to the Court's attention; (iii) any evidence or other information the Class Member wishes  
22 to submit; and ~~(iv) a statement of any prior class action settlement objections made and any fee~~  
23 ~~arrangements made with an attorney regarding the objection(s).~~

24 14. Each Class Member who wishes to dispute the amount of their estimated  
25 Settlement Check as set forth in Exhibit 4 and/or the Class Notice shall mail to the Settlement  
26 Administrator no later than 4/28/20 ~~60 calendar~~ from the date of the mailing of the Class Notice, a written  
27 statement of the dispute, setting forth the following information: (i) The Class Member's name,  
28

1 address, telephone number, signature; (ii) The specific reasons (if any) for the dispute, including  
2 any legal support the Class Member wishes to bring to the Court's attention; (iii) any evidence or  
3 other information the Class Member wishes to submit; and ~~(iv) a statement of any prior class~~  
4 ~~action settlement objections or disputes made and any fee arrangements made with an attorney~~  
5 regarding the dispute.

6 15. Any Class Member who files and serves a written objection or statement of  
7 dispute, as described in Paragraphs 13 and 14, may appear at the Final Approval Hearing, either  
8 in person or through counsel hired at the Class Member's expense, to object to the fairness,  
9 reasonableness, or adequacy of this Agreement or the proposed Settlement, or dispute their  
10 estimated Settlement Check. Class Members or their attorneys who intend to make an appearance  
11 at the Final Approval Hearing must mail a notice of intention to appear to the Settlement  
12 Administrator, no later than sixty days from the date the Class Notice was mailed to the Class  
13 Members.

14 16. Any Class Member who objects to the Settlement and/or their estimated  
15 Settlement Check will be entitled to all of the benefits of the Settlement if it is approved, as long  
16 as the objecting Class Member complies with all requirements of the Agreement.

17 17. Upon receipt of any request for exclusion, objection, notice of dispute, or notice of  
18 intent to appear, the Settlement Administrator shall immediately forward a copy of the exclusion  
19 request, objection, notice of dispute, or notice of intent to appear to Class Counsel, Blue Shield's  
20 counsel, and the Court.

21 18. All proceedings in the Litigation are stayed until further order of the Court, except  
22 as may be necessary to implement the proposed Settlement or to comply with the terms of the  
23 Agreement.

24 19. This Order will become null and void, and will not prejudice the rights of the  
25 Parties, all of whom shall be restored to their respective positions existing immediately before this  
26 Court entered this Order, if: (a) the proposed Settlement is not finally approved by the Court, or  
27 does not become final, pursuant to the terms of the Agreement; or (b) the Settlement is terminated  
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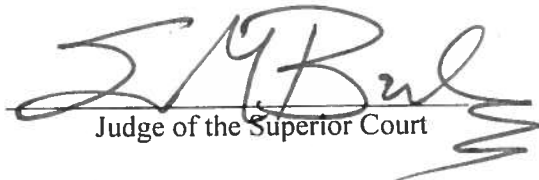
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in accordance with the terms of Agreement. If any of these events occurs, the Settlement and Agreement will become null and void and be of no further force and effect, and neither the Agreement nor this Order may be used in the Litigation or in any other proceeding for any purpose.

20. In no event may the Settlement or any of its provisions, or any negotiations, statements, or proceedings relating to it, be offered as, received as, used as, or deemed to be evidence in the Litigation, any other action, or in any other proceeding, except in a proceeding to enforce the Agreement. Without limiting the preceding sentence, neither the Agreement nor any related negotiations, statements, or proceedings may be offered as, used as, or deemed to be evidence or an admission or concession by any person of any matter, including but not limited to any liability or wrongdoing on the part of Blue Shield.

21. The Court reserves the right to continue the Final Approval Hearing without further written notice to the Class, but will notify counsel for the Parties and any objectors or their counsel who have timely filed a notice of intention to appear in these proceedings. Unless the Court specifically orders otherwise, any such continuance will not be interpreted to expand or change any deadlines contained in this Order or the Agreement.

**IT IS SO ORDERED.**

Dated: *Jan. 28, 2020* By:   
Judge of the Superior Court

Respectfully submitted by:  
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LOS ANGELES



By:  
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Arthur Bodner and Michael Felker

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