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

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA

21 FOR THE COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE

22 ARTHUR BODNER and MICHAEL )  
23 FELKER, on behalf of themselves and all )  
24 others similarly situated )

25 Plaintiffs,

26 v.

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

Defendants. )

) CASE NO. BC516868  
) Assigned to Honorable Elihu M. Berle, D 6,  
) Rm 211

) **DECLARATION OF JOSHUA S. DAVIS**  
) **IN SUPPORT OF MOTION FOR AN**  
) **ORDER GRANTING: (1) FINAL**  
) **APPROVAL OF CLASS-ACTION**  
) **SETTLEMENT; (2) ATTORNEY FEES,**  
) **LITIGATION EXPENSES, CLASS**  
) **REPRESENTATIVE INCENTIVE**  
) **AWARDS, AND (3) SETTLEMENT**  
) **ADMINISTRATIVE EXPENSES**

29 Date: May 28, 2020  
30 Time: 10:00 a.m.  
31 Place: Department 6

1 I, Joshua S. Davis, declare:

2 1. I am an attorney licensed in California and duly admitted to practice law before this  
3 Court. I am an attorney in the law firm of Gianelli & Morris, attorneys of record for Plaintiffs  
4 Arthur Bodner and Michael Felker (the “Class Representatives”) and the certified class in this  
5 case. I submit this declaration in support of Plaintiffs’ motion for an order granting: (1) final  
6 approval of class-action settlement; (2) attorney fees, litigation expenses, class representative  
7 incentive awards; and (3) settlement administrative expenses. I have been involved in all aspects of  
8 litigating this action and I have first-hand knowledge of all matters stated in this declaration. If  
9 called upon to testify, I could competently do so.

10 2. In this motion, Plaintiffs and the firms of Gianelli & Morris, Stuart Lawfirm and the  
11 Law Offices of Kathryn Trepinski (“Class Counsel”) seek an award of 33 and 1/3% of the \$12.5  
12 million common fund settlement, for a total of **\$4,166,250** in attorney fees. Class Counsel also  
13 seek reimbursement of **\$655,433.46** in litigation expenses; incentive awards in the amount of  
14 **\$10,000** each to the Class Representatives; and settlement administrative expenses of **\$98,508**.

15 3. The law firm of Gianelli & Morris has specialized in representing aggrieved  
16 consumers in complex insurance class action and unfair business practices (Business &  
17 Professions Code section 17200) litigation for over 30 years. I have been a practicing attorney for  
18 over 20 years. During this time, I handled the investigation, preparation, and trial of numerous  
19 consumer class actions, in both state and federal courts.

20 4. Gianelli & Morris has been appointed class counsel in a number of significant  
21 consumer class actions, including: *Trujillo v. UnitedHealth Group, Inc.* (C.D. Cal.) Case No. 5:17-  
22 2547-JFW (KKx); *Hill v. UnitedHealthcare Insurance Company* (C.D. Cal.) Case No. SACV15-  
23 00526 DOC (RNBx); *Dion v. Kaiser Foundation Health Plan, Inc.*, Alameda County Superior  
24 Court Case No. RG14718903; *Akmal v. California Physicians’ Service dba Blue Shield of*  
25 *California*, Los Angeles Superior Court Case No. BC 540033; *Escalante v. California Physicians*  
26 *Service dba Blue Shield of California* (C.D. Cal.) Case No. 2:14-CV-3021; *Gallimore v. Kaiser*  
27 *Foundation Health Plan, Inc.*, Alameda Superior Court, Case No. RG12616206; *Voshall v.*  
28 *Metropolitan Life Insurance Company*, Los Angeles Superior Court, Case No. BC5779832;

1 *Bradford v. Anthem, Inc., et al.*, United States District Court (C.D. Cal.), Case No. 2:17-CV-5098-  
2 AB; *Vaccarino v. Midland National Life Ins. Co.* (C.D. Cal.) Case No. 11 CV-5858 CAS; *Arce v.*  
3 *Kaiser Foundation Health Plan, Inc.*, Los Angeles Superior Court, Case No. BC388689; *Bath v.*  
4 *Blue Shield of California*, San Luis Obispo Superior Court, Case No. CV070360; *Ticconi v. Blue*  
5 *Shield Life & Health Ins. Co.*, Los Angeles Superior Court, Case No. BC330989; *Peterman v.*  
6 *North American Co. for Life and Health*, Los Angeles Superior Court, Case No. BC357194;  
7 *Stephens v. American Equity Investment Life Insurance Company*, San Luis Obispo Superior  
8 Court, Case No. CV040965; *Iorio v. Allianz Life Ins. Co. of North America* (S.D. Cal.) Case No.  
9 05-CV-0633 IEG; *Chastain v. Union Security Life Insurance Company* (C.D. Cal.) Case No. 06-  
10 CV-5885 ABC; and *Kavruck v. Blue Cross of California*, Los Angeles Superior Court, Case No.  
11 BC160180.

12 5. Gianelli & Morris has represented the insureds in a number of significant, published  
13 consumer law decisions, including: *Escalante v. California Physicians Service dba Blue Shield of*  
14 *California* (C.D. Cal. 2015) 309 F.R.D. 612; *Myers v. State Board of Equalization* (2015) 240  
15 Cal.App.4th 722; *Broberg v. The Guardian Life Insurance Co.* (2009) 171 Cal.App.4th 912;  
16 *Rodriguez v. Blue Cross of California* (2008) 162 Cal.App.4th 330; *Kavruck v. Blue Cross of*  
17 *California* (2003) 108 Cal.App.4th 773; *State Farm Mutual Auto. Ins. Co. v. Superior Court (Hill)*  
18 (2003) 114 Cal.App.4th 434; *IT Corp. v General American* (9th Cir. 1997) 107 F.3d 1415;  
19 *American States Ins. Co. v. Borbor* (9th Cir. 1987) 826 F.2d 888; *Hansen v. Blue Cross* (9th Cir.  
20 1989) 891 F.2d 1384; and *Allstate v. Overton* (1984) 160 Cal.App.3d 84.

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

26 7. Plaintiffs alleged that when Blue Shield administered claims submitted by its  
27 enrollees with the Vital Shield policies, Blue Shield wrongfully failed to count most commonly  
28 used out-patient medical services towards its members’ deductibles and out-of-pocket maximums,

1 and wrongfully excluded from coverage these same out-patient medical services until the  
2 maximums had been met. Plaintiffs alleged that as a result of these practices, many enrollees had  
3 their deductibles and out-of-pocket maximums greatly expanded beyond the actual amounts stated  
4 in their Vital Shield policies, and thus incurred liability for medical services that should have been  
5 paid by Blue Shield. Plaintiffs further alleged that Blue Shield drafted the Vital Shield in a  
6 confusing and ambiguous manner so as to hide the true expanded deductibles and out-of-pocket  
7 maximums, and engaged in a deceptive marketing campaign to sell the Vital Shield policies.  
8 Plaintiffs requested damages, injunctive and declaratory relief.

9           8.       Discovery in this case showed that Blue Shield ceased selling Vital Shield policies  
10 in or about 2012, but has permitted enrollees to continue renewing these policies if they so choose.

11           9.       After over six years of litigation, the docket amply reflects that this case has been  
12 hard fought from the outset, both in law and motion and discovery, and thoroughly investigated.

13           10.      Class Counsel undertook this complicated and challenging class action case on a  
14 contingency basis.

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

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

26           13.      In addition to written discovery, the parties took 14 depositions. These included: (1)  
27 Marcy Reeder, Blue Shield Senior Account Manager for Covered California, who testified as Blue  
28 Shield's PMQ on the Vital Shield policy forms, and Blue Shield's practices in regards to

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

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

26 ///

27 ///

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

4           16.     Following Class Certification, the Court appointed KCC Class Action Services,  
5 LLC (“KCC”) as the class administrator to effectuate notice of the settlement to the members of  
6 the certified class. The specific work performed performed was set forth in the declaration of  
7 Corinne Lefler, submitted as Exhibit B to the Motion for Preliminary Approval. Services including  
8 mailing the notice to the members of the certified class, maintaining a website and a toll-free  
9 hotline, and keeping track of exclusion requests.

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

19          18.     The briefing on the motion was delayed as a result of extensive discovery disputes  
20 regarding the discoverability and ability to recover internal emails, and subsequent difficulties in  
21 locating and extracting the emails from Blue Shield’s archives. Following Court intervention and  
22 the subsequent depositions of Blue Shield IT personnel, in January 2018, Blue Shield eventually  
23 produced its email archives back-tapes, which then had to be extracted by forensic ESI experts  
24 Kroll Discovery retained by Gianelli & Morris. The experts also assisted and advised Class  
25 Counsel in taking the discovery disputes and depositions which resulted in the locating of, and  
26 eventual production of the archived emails.

27          19.     Plaintiffs took additional merits depositions and filed their opposition on April 6,  
28 2018. Blue Shield filed its reply on August 8, 2018.

1           20.     On May 28, 2018, the Court held a hearing on Blue Shield’s motion for summary  
2 judgment/adjudication. The Court denied Blue Shield’s motion. However, notwithstanding the  
3 denial, at the hearing, the Court indicated that it might in fact agree with Blue Shield’s  
4 interpretation of the Vital Shield policies. The Court stated that Blue Shield’s practice to not count  
5 certain out-patient services towards Mr. Bodner’s deductible, namely laboratory pathology,  
6 “appears to comport with the policies.” (May 22, 2018 Rpt. Transcript of Proceedings, p. 37:13.)  
7 Accordingly, the Court held that Blue Shield had met its initial burden to establish that it was  
8 entitled to a judgment as a matter of law on Plaintiffs’ breach of contract cause of action. The  
9 Court, however, found that that Plaintiffs had raised a triable issue of fact as to the amount that  
10 Blue Shield failed to count towards the deductible and out-of-pocket maximum because of a  
11 conflict between the submitted declaration of Bruce Deal and Blue Shield’s interrogatory  
12 responses.

13           21.     On May 30, 2018, Blue Shield filed a motion for reconsideration arguing the Court  
14 had failed to consider its explanation addressing the conflict in its reply separate statement. On  
15 July 25, 2018, the Court denied the motion for reconsideration, holding that Plaintiffs had raised  
16 triable issues of facts, and that reply separate statements are not authorized by the summary  
17 judgment statute.

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

28           23.     On August 17, 2018, the Court requested supplemental briefing on MIL 1

1 addressing several cases on medical billings and damages, including *Howell v Hamilton Meats &*  
2 *Provisions, Inc.* (2011) 52 Cal.4th 541. Blue Shield filed its supplemental brief on August 31,  
3 2018. Plaintiffs filed their supplemental brief on September 14, 2018. Blue Shield filed its  
4 supplemental brief on September 21, 2018.

5 24. The Court held a hearing on MIL 1 on January 15, 2019. At the hearing, the Court  
6 stated the issue was a close call, but ultimately denied MIL 1 without prejudice. The Court stated  
7 that Defendant could re-raise the issues at trial. The Court further indicated that he was skeptical  
8 that Class Members were entitled to 100% of their damages from uncovered medical bills, absent  
9 some evidence that the Class Member actually paid the provider 100% or the provider was  
10 pursuing them for 100%. The Court suggested he might hold that Class Members could get only a  
11 discounted number based on statistical evidence of what average enrollees' paid.

12 25. On April 16, 2019, Blue Shield filed a motion to bifurcate the trial on Plaintiffs'  
13 equitable claims for UCL and declaratory relief, and have them heard in a bench trial prior to  
14 Plaintiffs' breach of contract and bad faith causes of action. Plaintiffs filed an opposition on May  
15 10, 2019, arguing that the Court should try the legal issues first in a jury trial. Blue Shield filed its  
16 reply brief on May 16, 2019. On May 23, 2019, the Court held a hearing and granted the motion  
17 to bifurcate. The Court held it would first hold a bench trial on the declaratory relief cause of  
18 action, where it would address the meaning of the Vital Shield contracts. There would then be  
19 second jury trial phase on the breach of contract and bad faith causes of action. Finally, there  
20 would be a third phase on the UCL cause of action.

21 26. The parties filed their first phase trial briefs, witness lists, and exhibits on August  
22 16, 2019. On August 29, 2019, shortly before the trial was set to commence on September 10,  
23 2019, the parties filed a Joint Notice of Settlement, subject to Court approval, and a stipulation to  
24 further continue the trial date. The trial date was subsequently vacated.

25 27. The parties attended five intensive in-person mediations in this matter before  
26 experienced and well-respected mediators, Robert Kaplan, Esq. and Edwin Oster, Esq. over a six-  
27 year period. The final mediation session took place on August 27, 2019 with Mr. Kaplan, shortly  
28 before trial was set to commence. Since the conclusion of the final mediation session, the parties



1 have continued to devote substantial time and energy to the arm's length negotiations of the  
2 settlement details, including the distribution of settlement benefits. This required detailed analysis  
3 by experts on both sides to ensure that the parties accurately determined what each Class Member:  
4 (1) received in insurance benefits; and (2) would have received in insurance benefits had Blue  
5 Shield counted all the out-patient medical services towards the members' deductible and out-of-  
6 pocket maximum in the manner Plaintiffs allege they should have done so; and (3) the difference  
7 in these numbers. The above analysis, the form and substance of the notice and dissemination of  
8 the class action settlement to the more than 24,000 class members, as well as the terms of the  
9 settlement agreement and release, have also all been the subject of nearly two months of additional  
10 negotiations and the unabated exchange of proposals, edits to proposals and counter-proposals.

11 28. Prior to the final mediation, Class Counsel conducted an investigation and  
12 evaluation of the relevant law and facts necessary to assess the strengths and weaknesses of the  
13 case. Class Counsel's evaluation was enabled by the extensive information obtained during  
14 discovery and the experience and expertise of Class Counsel developed in handling other class  
15 actions. Class Counsel also consulted with forensic accountants Susan Thompson and Taytyana  
16 Shtyrkova at Hemming Morse, LLP, to develop a damage model, build a computer program that  
17 could determine each Class Members' damages, and then actually reprocess the millions of claims  
18 made by Vital Shield enrollees' to Blue Shield since 2010.

19 29. In short, this action has been extensively and vigorously litigated before settlement  
20 was reached. The parties were fully on track for the scheduled September trial date. Based upon  
21 the extent of the proceedings, the parties were adequately informed of the legal bases for their  
22 respective claims and defenses and were capable of balancing the risks of continued litigation and  
23 the benefits of the proposed settlement.

24 30. The common fund total settlement is \$12.5 million (the "Gross Settlement  
25 Amount"), which includes the amounts that will be paid for notice and settlement administration  
26 costs, class representative service awards, and attorneys' fees, administration and litigation costs  
27 and expenses. There is no reversion to Blue Shield of any of the common fund monies and the  
28 distribution of the fund will be made without the necessity of Class Members submitting claim

1 forms.

2 31. From the Gross Settlement Amount of \$12.5 million, the attorney fees and costs,  
3 administration costs, and service awards to the Class Representatives will first be deducted, to  
4 result in a net settlement fund, which is approximately \$7.56 million (the “Net Settlement Fund”).  
5 Class Members who do not request exclusion from the Class will receive a pro rata distribution  
6 from the Net Settlement Fund based on their Actual Damages incurred through December 31,  
7 2018, which is the last year for which there is complete claims data. Actual Damages refers to the  
8 difference between what each Class Member received in health insurance benefit payments from  
9 Blue Shield and what they would have received if Plaintiffs prevailed on all theories and defenses.

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

17 33. By tying individual recovery to the Actual Damages, with certain minimum  
18 distributions, the distribution plan insures a fair and equitable distribution to Class Members. The  
19 minimum \$10.00 distribution ensures that no settlement benefits paid are *de minimus*. Class  
20 Members who are still Vital Shield policyholders are guaranteed at least \$50.000 for several  
21 reasons. First, because the 2019 calendar year applicable to the deductible and maximum was not  
22 complete as of this Settlement, the Actual Damages, if any, could not be determined for the Class  
23 Members in 2019 or thereafter. And because some Class Members will remain on the policy going  
24 forward, a cut-off date would be required. Second, the minimum distribution ensures that enrollees  
25 who have suffered no Actual Damages by the end of 2018, but who chose to renew their policies  
26 for 2019 and any future years despite receiving the class certification notice in 2016 alerting them  
27 to Blue Shield's allegedly improper application of deductibles and maximums, receive financial  
28 benefits to release rights they may have to challenge Blue Shield’s practices at issue in this case in

1 those future years.

2 34. This is a non-claims made and no reversion settlement, and thus the entire Net  
3 Settlement Fund will be distributed. Settlement checks will be valid and negotiable for 180 days.  
4 The amounts of the uncashed Settlement Checks will be sent to the State Controller’s Office under  
5 the Unclaimed Property Law Statutes.

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

17 36. Following the final mediation at which the \$12.5 million settlement was reached,  
18 Class Counsel, along with their consultant, Susan Thompson, continued to work cooperatively  
19 with Blue Shield’s counsel, and their expert on the claims data, Bruce Deal, to resolve any  
20 discrepancy in individual Class Members’ “Actual Damages” to ensure the results were accurate  
21 and to prepare a distribution list. Class Counsel, with the assistance of their experts and  
22 consultants, have identified 24,739 Class Members The formula used to calculate each Class  
23 Members’ settlement check, and a list of each Class Member’s Actual Damages and their  
24 estimated settlement check is attached as Exhibit 4 to the Amended Settlement Agreement filed  
25 with the Court on January 9, 2020.

26 37. Importantly, no portion of this relief will be subject to any claims process. Cash  
27 benefits will be automatically distributed to the Class Members. The administrative mailing and  
28 payment procedures are designed to maximize the likelihood of *actual receipt* of benefits by each

1 class member. The average estimated Settlement Check will be \$377.00.

2 38. As indicated on preliminary approval, Plaintiffs believe that the class claims are  
3 legally meritorious, and present a reasonable probability of a favorable determination on behalf of  
4 the Class, as is amply borne out by the significant amount offered in settlement by Blue Shield. At  
5 the same time, there is undeniably significant litigation risk that is avoided by the Settlement.

6 39. Class Counsel believes defense arguments would be overcome. But any realistic  
7 assessment of the case must admit that the outcome of these legal and factual disputes is uncertain,  
8 that true litigation risk exists for all parties, and that at a minimum, trial and inevitable appeal  
9 would present a substantial delay in obtaining any relief for the Class.

10 40. This complex case has been litigated fully and intensively by the parties for over  
11 six years. The firms involved are sophisticated litigators, who are well acquainted with appellate  
12 proceedings. If the case were tried, it is a near certainty that post-trial appellate proceedings would  
13 ensue. Therefore, this Settlement is timely and appropriate.

14 41. It is my opinion, based upon my qualifications and experience, and upon advice of  
15 my respective experts and consultants, that the common fund of \$12.5 million and pro-rata  
16 distribution to the Class Members based upon Actual Damages fairly and equitably distributes the  
17 settlement proceeds among the Class Members.

18 42. Pursuant to the Settlement Agreement, and as detailed in the disseminated notice of  
19 Settlement, Class Counsel seek an award of 33 and 1/3% of the \$12.5 million common fund, for a  
20 total of **\$4,166,250** in attorney fees. As set forth above, and for the reasons detailed in the motion  
21 for final approval, the requested fee award is fair and reasonable under California standards and, in  
22 light of the excellent result achieved for the Class as set forth in the Motion for Preliminary  
23 Approval, which the Court granted on January 28, 2020, and should be awarded in full. Class  
24 Counsel's request for one-third of the common fund falls well within the range of fee awards  
25 commonly granted by courts in California.

26 43. Class Counsel have achieved an excellent result. The \$12.5 million settlement  
27 represents between 43% and 50% of total potential damages in this lawsuit. Given the significant  
28 risk that Plaintiffs would not prevail at all if this case goes to trial, or that the damage award would

1 be significantly be reduced, this represents an excellent result for Class Members.

2 44. The requested fee award of one-third the total Gross Settlement Fund is further  
3 justified in light of Class Counsel's skill and specialized knowledge. Class Counsel has over thirty  
4 years of experience litigating class action actions against insurance companies. Class Counsel's  
5 requested attorney fee of one-third of the settlement fund is well within the norm for attorneys with  
6 their skills and depth of experience.

7 45. Class Counsel undertook significant risks in prosecuting this case entirely on a  
8 contingency basis. Class Counsel could only recover their fees and expenses if Plaintiffs prevailed.

9 46. Class Counsel have devoted substantial time and effort to this lawsuit. Class  
10 Counsel have litigated it vigorously for six years up to trial as detailed above and below. Class  
11 Counsel have invested 4,054.8 attorney hours litigation this case since 2013.

12 47. The fee award is also supported by a lodestar cross-check analysis. Under the  
13 lodestar method, a reasonable attorneys' fee is determined by the number of hours reasonably  
14 expended on the litigation, multiplied by a reasonable hourly rate.

15 48. Plaintiffs and the Class were represented by three law firms: Gianelli & Morris  
16 Morris, ALC ("Gianelli & Morris"), Stuart Law Firm, and the Law Offices of Kathryn Trepinski.  
17 Class Counsel spent an aggregate of 4,054.8 attorney hours investigating and prosecuting this case,  
18 broken down as follows: Gianelli & Morris spent 3,351 hours investigating and prosecuting this  
19 case, the Law Office of Antony Stuart spent 317.30 hours investigating and prosecuting this case,  
20 and the Law Offices of Kathryn Trepinski spent 386.5 hours investigating and prosecuting this  
21 case. The actual time records for all three firms will be made available to the Court upon request  
22 and will be brought to the hearing on this Motion.

23 49. The number of hours that Class Counsel expended prosecuting this case is  
24 reasonable. This case was settled only after more than six years of contentious litigation, just a few  
25 weeks before the scheduled trial. Blue Shield conceded nothing and fought Plaintiffs at every turn.  
26 Blue Shield vigorously opposed class certification, filed a summary judgment motion and an early  
27 motion in *limine*, all of which required substantial attorney hours to oppose.

28 50. As detailed above, the scope and depth of the discovery further supports Class

1 Counsel's hours spent prosecuting the case. Blue Shield produced about 611,576 pages of  
2 documents during the discovery process, including tens of thousands of archived emails that  
3 needed to be extracted by forensic ESI experts. Class Counsel engaged in extensive discovery and  
4 investigation regarding the development of the Vital Shield policies and Blue Shield's marketing  
5 strategy. Along the way, numerous discovery disputes arose that required the assistance of the  
6 Court to resolve through informal discovery conferences.

7 51. Class Counsel also extensively prepared for and took the depositions of numerous  
8 Blue Shield employees and witnesses, and prepared for and defended the depositions of Plaintiff's  
9 witnesses. Fourteen depositions were completed prior to settlement.

10 52. Class Counsel's discovery efforts were supplemented by their own investigation  
11 and research. As noted above, Class Counsel consulted with numerous experts regarding Blue  
12 Shield's ESI, and the extraction of the ESI, and regarding the production, analysis and  
13 reprocessing of Class Members claims since 2010.

14 53. Because the case settled shortly before trial, Class Counsel also needed to work the  
15 case up for trial, including preparation of a trial brief, joint exhibit lists, a motion to strike Blue  
16 Shield's improper brief regarding the joint exhibit and witness list, motions in *limine*, and  
17 preparing witness testimony.

18 54. The time spent negotiating the settlement – which necessitated working with  
19 Plaintiff's claims data/damages experts, along with Blue Shield's experts to resolve any  
20 discrepancy's in Individual Class Member's Actual Damages to ensure the results were accurate  
21 and prepare a distribution list, and drafting the settlement documents – was also reasonable and  
22 necessary to achieve the settlement.

23 55. The information in this declaration regarding my firm's time is taken from the time  
24 reports prepared and maintained by my firm in the ordinary course of business. I am the attorney  
25 who oversaw and conducted the day-to-day activities in the litigation and reviewed these reports  
26 (and backup documentation where necessary and appropriate). The purpose of my reviews was to  
27 confirm the accuracy of the entries and the necessity for, and reasonableness, of the time  
28 committed to the litigation. As a result of my reviews, I believe that the time reflected in the firm's

1 lodestar calculation is reasonable in amount and was necessary for the effective and efficient  
2 prosecution and resolution of the case.

3 56. The following are the billing rates for the Gianelli & Morris attorneys who  
4 performed work on this case:

5	Robert S. Gianelli	\$900 per hour
6	Joshua S. Davis	\$700 per hour
7	Adrian J. Barrio	\$675 per hour

8 57. Each of these rates has already been found reasonable and awarded in other class  
9 action cases over the last six years for the various billers. The rate sought for lead Class Counsel,  
10 Robert S. Gianelli, was found reasonable and awarded by this Court in 2013 in *Arce v. Kaiser*  
11 *Foundation Health Plan, Inc.*, Los Angeles Superior Court, Case No. BC388689 ("*Arce*") and  
12 *Glick v. Anthem Blue Cross Life & Health Ins. Co.*, Los Angeles Superior Court, Case No.  
13 BC393528 ("*Glick*") and found reasonable and awarded in numerous other cases since that time.  
14 *Gallimore v. Kaiser Foundation Health Plan, Inc.*, Alameda County Superior Court, Case No.  
15 RG12616206 ("*Gallimore*"); *Dion v. Kaiser Foundation Health Plan, Inc.*, Alameda County  
16 Superior Court, Case No. RG14718903 ("*Dion*"), *Akmal, et al. v. California Physicians' Service*  
17 *dba Blue Shield of California*, Los Angeles Superior Court, Case No. BC540033 ("*Akmal*");  
18 *Voshall v. Metropolitan Life Insurance Company*, Los Angeles Superior Court, Case No.  
19 BC5779832 ("*Voshall*"); *Trujillo v. United Health Ins. Co.*, (C.D. Cal.) Case No. 5:17-cv-2547-  
20 JFW ("*Trujillo*"); *Hill v. United Health Ins. Co.* (C.D. Cal.) SACV15-00526 DOC ("*Hill*");  
21 *Escalante v. California Physicians Service dba Blue Shield of California* (C.D. Cal.) Case No.  
22 2:14-CV-3021-DDP ("*Escalante*"); *Vaccarino, et al. v. Midland National Life Ins. Co.*, United  
23 States District Court (C.D. Cal.) Case No. 11 CV-5858-CAS ("*Vaccarino*"); and *Bradford v.*  
24 *Anthem, Inc., et al.*, United States District Court (C.D. Cal.), Case No. 2:17-CV-5098-AB  
25 ("*Bradford*"). Similarly, the rates sought for the remaining billers have been found reasonable and  
26 awarded: for myself in *Dion, Gallimore, Akmal, Trujillo, Hill, Bradford, Vaccarino, and*  
27 *Escalante*, and for Mr. Barrio in *Bradford, Gallimore, Escalante, Akmal, Hill, Trujillo* and *Voshall*.

28 58. These very rates were found reasonable by the court as a result of a contested fee

1 application in *Gallimore* on January 26, 2016 following my firm’s successful trial of a class action  
2 on behalf of approximately 10,000 class members.

3 59. Mr. Gianelli has been a practicing attorney for 41 years. In 2015 he received a  
4 “California Lawyers Attorney of the Year,” award, also known as a CLAY Award, from California  
5 Lawyer magazine, for his work as lead counsel in two cases concerning the denial of treatment for  
6 children with autism, *Arce, supra*, and *Glick, supra*. He was also a Finalist for the 2014 Consumer  
7 Attorney of the Year for the Consumer Attorneys of California for his work as lead counsel in  
8 *Arce*. Also in 2015, he was lead counsel in a class action trial that resulted in a judgment in favor  
9 of a class of approximately 10,000 Kaiser members, *Gallimore, supra*. He was also a Finalist for  
10 the 2011 Consumer Attorney of the Year for the Consumer Attorneys of California for his work as  
11 lead counsel for plaintiffs in a senior citizen deferred annuity class action, *Stephens v. American*  
12 *Equity Investment Life Insurance Company, supra*. In *Stephens*, plaintiffs were victorious after a  
13 month-long, phase-one trial in securing an award of \$15.4 million, which ultimately resulted in a  
14 \$47 million settlement on behalf of a class of approximately 8,600 senior citizens. Mr. Gianelli has  
15 served as an Adjunct Professor of Insurance Law at Whittier Law School and La Verne University  
16 College of Law and as a Contributing Editor to The Rutter Group publication, *California Practice*  
17 *Guide: Insurance Litigation*.

18 60. I graduated from the University of Southern California Law School in 1997, where  
19 I served as an Executive Editor of the University of Southern California Law Review. From  
20 October 1997 to September 1999, I worked as an associate at Orrick, Herrington & Sutcliffe LLP  
21 in its business litigation department, where my practice emphasized class action defense. From  
22 October 1999 to December 2005, I was an associate at Gaims, Weil, West & Epstein LLP, where  
23 my business litigation practice included class actions and unfair business practices. From January  
24 2006 to August 2013, I worked as a Senior Associate at Sedgwick, LLP in its Insurance Practices  
25 department, where his litigation practice emphasized insurance coverage disputes and professional  
26 liability. Since September 2013, I have worked at Gianelli & Morris on the firm's consumer class  
27 action cases. I participated as co-counsel in the *Gallimore* trial.

28 61. Adrian Barrio graduated from the University of Illinois College of Law in 1997,



1 where he served on the Board of Editors of the University of Illinois Law Review. From August  
 2 1997 to September 1998, Mr. Barrio served as a judicial law clerk in the chambers of the  
 3 Honorable Rebecca R. Pallmeyer, U.S. District Judge for the Northern District of Illinois.  
 4 Following his clerkship, Mr. Barrio worked as an Assistant Attorney General in the Criminal  
 5 Appeals Division of the Illinois Office of Attorney General. Mr. Barrio subsequently relocated to  
 6 California and began work as an Associate at Franscell, Strickland, Roberts & Lawrence in  
 7 October 2002, handling civil appeals on behalf of governmental entities in civil rights and  
 8 employment cases. From September 2004 to June 2014, Mr. Barrio worked as a Senior Associate  
 9 at Murchison & Cumming, where his litigation practice included class actions and unfair business  
 10 practices. Since July 2014, Mr. Barrio has worked at Gianelli & Morris on the firm's consumer  
 11 class action cases.

12 62. The lodestar amount for my firm is \$2,506,765.00 The breakdown of this amount  
 13 is as follows:

<u>Attorney</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Lodestar</u>
Robert S. Gianelli	875.5	\$900/hr	\$787,950.
Joshua S. Davis	1,914.1	\$700/hr	\$1,339,870
Adrian Barrio	561.4	\$675/hr	\$378,945
	<b>3,351</b>		<b>\$2,506,765.00</b>

19 63. As set forth in the concurrently filed declaration of Antony Stuart, the lodestar  
 20 amount for his lawfirm is \$285,570. (See Stuart Decl. at ¶ 13.)

21 64. As set forth in the concurrently filed declaration of Katherine Trepinski, the lodestar  
 22 for her lawfirm is \$347,850. (See Trepinski Decl. at ¶ 19.)

23 65. Adding the Gianelli & Morris, Stuart Lawfirm and the Law Offices of Katherine  
 24 Trepinski lodestar figures yields a total Class Counsel lodestar of **\$3,140,185.00**.

25 66. In litigating this case, Class Counsel have incurred expenses in the aggregate  
 26 amount of **\$653,433.46** through the Settlement. The breakdown is as follows: Gianelli & Morris  
 27 incurred \$644,422.71 in expenses. The Stuart Lawfirm incurred \$4,106.75 in expenses. The Law  
 28 Offices of Katherine Trepinski incurred \$4,904 in expenses.

1           67.     The below concerns the expenses incurred by Gianelli & Morris in prosecuting this  
 2 action (expenses incurred by the Stuart Lawfirm and the Law Offices of Katherine Trepinski are  
 3 addressed in the concurrently filed declarations of Antony Stuart and Katherine Trepinski. It is  
 4 taken from the expense reports prepared and maintained by my firm in the ordinary course of  
 5 business. I oversaw the day-to-day activities in this case and reviewed the reports to confirm both  
 6 the accuracy of the entries as well as the necessity for, and reasonableness of, the expenses  
 7 incurred. As a result of my reviews, I believe the expenses for which reimbursement is sought are  
 8 reasonable in amount and were necessary for the effective and efficient prosecution and resolution  
 9 of this case.

10           68.     The expenses reflect the costs of prosecuting this case, including fees incurred on  
 11 motion practice, discovery, expert fees, depositions, electronic research, photocopies, postage,  
 12 filing fees, messenger fees, and transcript fees. All of these expenses were reasonably incurred and  
 13 necessary to litigate this case. The expenses incurred by Gianelli & Morris are summarized below:  
 14

<b>Category</b>	<b>Total</b>
Attorney service	3,062.45
Class Certification Administrator Notice	55,492.00
Copy service	6,757.75
Deposition costs	17,155.48
Expert consultation fees	499,719.67
Filing fees	630.50
Mediation fees	29,245.00
Messenger fees	5,028.12
Miscellaneous	3,623.78
Electronic research	9,894.17
General research	382.15
Records Reports	117.20
Transcript fees	7,222.19
Travel depositions	6,057.25
Witness fees	35.00
<b>TOTAL:</b>	<b>\$644,422.71</b>

24  
 25           69.     The expert/consultant fees included, among other things, the followings significant  
 26 and extremely important items:

- 27           a.     Consultant expenses to analyze claims data produced by Blue Shield to determine  
 28                 whether it was complete and accurate, and to assist with the initial claims data

1 depositions - \$48,590.58. The work and expense was reasonable and necessary  
2 because it helped Class Counsel determine that the initial production was  
3 incomplete and included errors, and resulted in the further complete and corrected  
4 production of claims data.

- 5 b. Expert expenses to assist with creating a damages model, and developing a  
6 computer program that could reprocess all Vital Shield member claims since 2010  
7 to determine which Vital Shield members were Class Members and each Class  
8 Member's damages under Plaintiffs' theory of the case, and then reprocessing each  
9 Class Member's claims - \$284,980.25. This significant expense was reasonable and  
10 necessary. Without this program, Plaintiffs could not have identified the Class  
11 Members, calculated damages, and reached any settlement of this matter.
- 12 c. Computer forensics ESI discovery consultants to recover and extract emails from  
13 Blue Shield's archived systems and to advise on archival e-discovery deposition -  
14 \$44,080.19. This significant expense was reasonable and necessary. Recovered  
15 emails were used by Plaintiffs to help defeat summary judgment, and to obtain the  
16 identify of additional witnesses and documents related to the actuarial development  
17 of the Vital Shield policy and the marketing of the Vital Shield.
- 18 d. Class Certification Notice to Class Members - \$55,492.00.
- 19 e. Reasonable and necessary expert costs related to preparation for trial of this matter,  
20 which was to commence shortly before the matter settled, including health actuaries  
21 to testify regarding the actuarial aspects of the Vital Shield policies, linguistic  
22 experts who would testify regarding the plain meaning of the policies, and health  
23 insurance marketing experts who would testify regarding the misleading marketing  
24 of the Vital Shield policies - \$71,250.00.

25 70. In addition to attorney fees and expenses, Class Representatives Arthur Bodner and  
26 Michael Felker seek incentive awards of \$10,000.00 each. As detailed in their concurrently filed  
27 declarations, both Class Representatives spent a significant amount of time litigating this action for  
28 the benefit of the class.

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71. Plaintiffs also request that the Court authorize the payment of \$98,508.00 to the Settlement Administrator for their work in administering the Settlement. The concurrently filed declaration of Mathew Neylon supports the Settlement Administrator cost request.

72. Class Counsel entered into a written agreement under which any fees awarded by the Court will be split by Class Counsel as follows: 50% of the fees to Gianelli & Morris, ALC, 27.5% of the fees to the Stuart Law firm, and 22.5% to the Law Offices of Kathryn Trepinski.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on this 30th day of March, 2020 in Woodland Hills, California.

  
JOSHUA S. DAVIS



**SERVICE LIST**

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themselves and all others similarly  
situated

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COMPANY