

1 Jeremy F. Bollinger (SBN 240132)  
2 Dennis F. Moss (SBN 77512)  
3 Ari E. Moss (SBN 238579)  
4 **MOSS BOLLINGER LLP**  
5 15300 Ventura Blvd., Ste. 207  
6 Sherman Oaks, California 91403  
7 Telephone: (310) 982-2984  
8 Facsimile: (818) 963-5954  
9 jeremy@mossbollinger.com  
10 dennis@mossbollinger.com  
11 ari@mossbollinger.com

8 Evan Selik (SBN 251039)  
9 Christine Zaouk (SBN 251355)  
10 **McCATHERN LLP**  
11 523 West Sixth Street, Suite 830  
12 Los Angeles, California 90014  
13 (213) 225-6150 / Fax (213) 225-6151  
14 eselik@mccathernlaw.com  
15 czaouk@mccathernlaw.com

16 Attorneys for Plaintiffs

17 **SUPERIOR COURT OF CALIFORNIA**  
18 **COUNTY OF SAN BERNARDINO**

19 WILLIAM CHRISTOPHER III, and KANDY  
20 CHRISTOPHER, individually and on behalf of  
21 other persons similarly situated,

22 Plaintiffs,

23 vs.

24 RESIDENCE MUTUAL INSURANCE  
25 COMPANY and DOES 1-50,

26 CASE NO. CIVDS1711860

27 [*Assigned for all purposes to Hon. Judge David  
Cohn, dept. S26*]

28 **STIPULATION OF SETTLEMENT AND  
RELEASE**

Action Filed: March 9, 2017

Trial Date: None

**STIPULATION OF SETTLEMENT AND RELEASE**

This Stipulation of Settlement and Release ("Settlement Agreement") is made by and between Plaintiffs William and Kandy Christopher ("Plaintiffs"), on behalf of themselves, their agents, representatives, assigns, heirs, executors, beneficiaries, trustees, and the "Settlement Class" defined below; and Defendant Residence Mutual Insurance Company ("RMIC" or "Defendant"), on behalf of

1 itself, its subsidiaries, agents, directors, officers, employees, successors in interest, and attorneys  
2 (collectively, "Defendants"). Defendant, Plaintiffs, and the Settlement Class are referred to herein as  
3 the "Parties." This Settlement Agreement is intended to fully, finally, and forever compromise, release,  
4 resolve, discharge, and settle the Released Claims subject to the terms and conditions set forth in this  
5 Settlement Agreement. This Settlement Agreement provides for the settlement of claims on behalf of  
6 the Settlement Class, as described further herein. Upon final approval of this Settlement Agreement by  
7 the Court, and any related motions, the instant action shall be dismissed in its entirety with prejudice.

## 8 I. THE INSTANT ACTION

### 9 Section 1.1 Background and Procedural History

10 On March 9, 2017, Plaintiffs initiated this lawsuit by filing a Class Action Complaint against  
11 Defendant in the Superior Court of California for the County of Los Angeles. The case was transferred  
12 by stipulation to the Superior Court for the County of San Bernardino, Case No. CIVDS1711860 (the  
13 "Lawsuit" or "Action"), which is where the matter is now pending. The First Amended Complaint  
14 ("Operative Complaint") seeks equitable relief on behalf of Plaintiffs and "all Residence Mutual  
15 policyholders who made a claim for damage to their real property within the last 4 years where  
16 Residence Mutual provided money to policyholders but did not pay profit and overhead until and/or  
17 unless it was incurred." Plaintiffs allege that the RMIC estimates for said insurance claims included a  
18 line item for overhead and profit. Plaintiffs allege, however, that RMIC either did not pay the overhead  
19 and profit immediately, or only paid the overhead and profit after proof of the completion of the work  
20 was provided to RMIC. Additionally, Plaintiffs make a claim for injunctive and declaratory relief.

21 RMIC denied and denies liability for any and all claims in the Operative Complaint. Defendant  
22 contends its policy with respect to overhead and profit complied with all relevant statutes, regulations,  
23 and case law. Defendant further denies that the asserted claims are appropriate for class action  
24 treatment under California Code of Civil Procedure §382 except pursuant to a settlement, due to,  
25 among other things, the intractable management problems and issues of individualized proof that would  
26 have been associated with a class action and a class-wide trial. Defendant further denies that this action  
27 is appropriate for declaratory relief or injunctive relief.

1 **Section 1.2 Parties' Statements and Recognition of the Benefits of the Settlement**

2 Class Counsel has investigated the facts of the Action and Plaintiffs' and Settlement Class  
3 Members' claims, through formal discovery, informal disclosures between the Parties, and other  
4 investigations undertaken by Plaintiffs' Counsel. Furthermore, the Parties engaged in extensive arms-  
5 length negotiations and exchanges of data, documents and information in mediation with two well-  
6 regarded mediators Hon. Peter Lichtman (Ret.) on February 14, 2019, and Hon. Louis Meisinger (Ret.)  
7 on August 1, 2019. Additionally, between the two mediations, counsel for both parties had a frank and  
8 open in-person discussion about the various claims and defenses on May 15, 2019.

9 As a result of these extensive negotiations, Class Counsel concluded that this Settlement  
10 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of  
11 all known facts and circumstances, including the potential damages, risk of significant delay, risk that  
12 the Lawsuit will not proceed on a class action basis, defenses asserted by Defendants, and numerous  
13 potential appellate issues.

14 Defendant denies each and all of the claims in this Lawsuit. Nevertheless, Defendant has  
15 concluded that further conduct of the Lawsuit would be protracted and expensive. Defendant, therefore,  
16 has determined that it is desirable and beneficial that the Lawsuit be settled upon the terms and  
17 conditions set forth in the Settlement Agreement. Neither this Settlement Agreement, nor any document  
18 referred to or contemplated herein, nor any action taken to carry out this Settlement Agreement is, may  
19 be construed as, or may be used as, an admission, concession, or indication by or against Defendant of  
20 any fault, wrongdoing or liability whatsoever.

21 **II. TERMS OF THE SETTLEMENT AGREEMENT**

22 IT IS HEREBY STIPULATED AND AGREED by and among Plaintiffs (for themselves and  
23 the Settlement Class) and Defendant, by and through their respective undersigned attorneys, that:  
24 subject to final approval by the Court, the Lawsuit will be finally and fully compromised, released,  
25 resolved, discharged, and settled, and will be dismissed in its entirety with prejudice, subject to the  
26 terms and conditions of this Settlement Agreement, as follows:

27 **Section 2.1 Definitions**

28 As used in this Settlement Agreement, the following terms have the meanings specified below:

1           “Administrative Costs” means the estimated reasonable cost by the Claims  
2 Administrator, including for providing Notice, various efforts to locate class members, administering  
3 payments to Plaintiffs, Verified Settlement Class Members (defined below), and to Class Counsel.

4           “Attorneys’ Fees and Costs” refers to the fees and costs to be paid to Class Counsel  
5 under Section 2.4.2 of this Settlement Agreement.

6           “Catalyst Attorneys’ Fees” (“CFA”) means the amount of money paid from the CTA  
7 that are to be considered attorneys’ fees payable to Plaintiffs’ counsel for their efforts in litigating this  
8 matter (total amount not to exceed \$850,000.00).

9           “Catalyst Theory Amount” (“CTA”) means the amount of money that shall be sought by  
10 Plaintiffs and counsel as Private Attorneys General for their respective work in allegedly causing  
11 Defendant to change its practices. The total amount of this award shall be Eight Hundred Thousand and  
12 Fifty Dollars and no cents (\$850,000.00).

13           “Claim Form” refers to the official form that class members must complete and submit  
14 in order to submit a claim, which is attached hereto as **Exhibit A**.

15           “Claims Administrator” means the firm of JND Legal Administrators which is the entity  
16 that has been selected by Defendant and Plaintiffs to provide notice of this proposed class action  
17 settlement to the Settlement Class and to perform other related functions to administer the settlement  
18 contemplated by this Settlement Agreement as described herein.

19           “Class Counsel” means the attorneys representing Plaintiffs in this Lawsuit: Jeremy  
20 Bollinger, Esq., Ari E. Moss, Esq., and Dennis F. Moss, Esq. of Moss Bollinger, LLP, 15300 Ventura  
21 Boulevard, Suite 207, Sherman Oaks, California 91403; and Evan Selik, Esq., and Christine Zaouk,  
22 Esq. of McCathern, LLP, 523 W. 6<sup>th</sup> Street, Suite 830, Los Angeles, California 90017.

23           “Class Members” means the class of individuals encompassed within the Settlement and  
24 includes, specifically: “All current and former RMIC policyholders in California who made a claim  
25 under a Homeowner’s Insurance policy issued by RMIC for covered dwelling damage at a covered  
26 residence premises located within the State of California in which RMIC determined that Profit and  
27 Overhead was part of the repair or replacement of the damage and the amount of Profit and Overhead  
28 was estimated by RMIC and where RMIC did not pay the profit and overhead until and/or unless it was

1 incurred between March 9, 2013 and January 1, 2019. The Class Excludes: (i) claims which were the  
2 subject of any lawsuit brought on an individual basis against RMIC filed during or after the Class  
3 Period and which alleged causes of action related to any Released Claims and/or any claim wherein an  
4 RMIC policyholder executed a policyholder's release related to that claim;(ii) RMIC, including all  
5 present or former officers and/or directors of RMIC, neutral evaluators, Class Counsel and their  
6 immediate families; the presiding judge and court staff to whom this case is assigned, and any member  
7 of the presiding judge's immediate family; RMIC's counsel of record and their immediate families, and  
8 all persons who make a timely election to be excluded from the Settlement Class..”

9 “Class Period” shall mean the period from March 9, 2013 through January 1, 2019

10 “Class Notice” shall mean the Notice sent to all class members that provides all the  
11 information about this Lawsuit, which is attached hereto as **Exhibit B**.

12 “Class Settlement Amount” (CSA) or “Settlement Fund” refers to Two Hundred and  
13 Fifty Thousand Dollars and no cents (\$250,000.00), which is the amount Defendant will be required to  
14 pay under this Settlement that will be allocated for payments to the class. Except as herein provided, all  
15 claims submitted by and payments to Class Members, and all attorneys’ fees, costs, the service awards,  
16 and settlement administration expenses shall be paid out of the CSA. The CSA will be distributed in  
17 accordance with Section 2.4.

18 “Court” shall mean the California Superior Court for the County of San Bernardino,  
19 where the Action is pending, and any Court-appointed referee or agent of the Court or other judicial  
20 entity with jurisdiction over this matter.

21 “Defendant” means Residence Mutual Insurance Company.

22 “Effective Date” means:

23 (a) Seven (7) calendar days after all of the following conditions have been satisfied:

24 (i) Execution of this Settlement Agreement and a General Release by  
25 Plaintiffs in accordance with Sections 2.4.3(d) and 2.6.2, and execution of this Settlement Agreement  
26 by Defendant, Class Counsel and Defendant’s Counsel;

27 (ii) Expiration of the Notice Period; and,  
28

1 (iii) Entry of a final order by the Court approving this Settlement Agreement  
2 and entering final disposition with respect to the Action. Except that, in the event there are written  
3 objections made prior to the formal fairness hearing, or an appeal of the Court's approval of the  
4 settlement taken, then the Effective Date shall be the later of the following events: when the period for  
5 filing any appeal, writ or other appellate proceeding opposing the settlement has elapsed and the issues  
6 are fully and finally resolved without remand, and without any further appeal, writ or other appellate  
7 proceeding having been filed; or any appeal, writ or other appellate proceeding opposing the settlement  
8 has been dismissed finally and conclusively with no right to pursue further remedies or relief; or any  
9 appeal, writ or other appellate proceeding has upheld the Court's final order with no right to pursue  
10 further remedies or relief. The occurrence of the Effective Date is a prerequisite to any distributions  
11 from the Settlement Fund.

12 (b) In the event that the Court does not execute and file an Order of Final Approval;  
13 that any such Order of Final Approval does not become final for any reason, or is modified in any  
14 material respect (other than a modification, reduction, or denial of Class Counsel's application for  
15 Attorneys' Fees and Costs, a modification, reduction, or denial of Class Counsel's application for  
16 Catalyst Attorneys' Fees, or a modification, reduction, or denial of the application for Plaintiffs'  
17 Service Award); that the Effective Date does not occur; this Settlement Agreement shall be deemed null  
18 and void and shall be of no force or effect whatsoever, and shall not be referred to or utilized for any  
19 purpose whatsoever.

20 "Final Fairness Hearing" means the hearing to be conducted by the Court, or any other  
21 court taking jurisdiction of this matter, to determine whether to finally approve the settlement of the  
22 Action.

23 "General Release" means a release of all known and unknown claims against Defendant  
24 and Released Parties as articulated in Section 2.7, which is to be executed by the signing of this  
25 Agreement.

26 "Lawsuit" or "Action" means *William and Kandy Christopher et al. v. Residence Mutual*  
27 *Insurance Co., et al.* Case No CIVDS1711860, pending in the California Superior Court in the County  
28 of San Bernardino.

1           “Motion for Preliminary Approval” refers to the motion for preliminary approval of the  
2 settlement described herein, including any and all supporting papers.

3           “Net Settlement Fund” or “Net Settlement Amount” shall be the Class Settlement  
4 Amount less the service award paid to Plaintiffs from the CSA for acting as the class representative,  
5 attorneys’ fees, costs and settlement administration expenses from the CSA. The Net Settlement  
6 Amount shall be available for Settlement Payments to the Participating Settlement Class Members.

7  
8           “Notice Period” refers to the time period of forty-five (45) days from the first mailing  
9 date postmarked on the first Notice of Settlement mailed by the Claims Administrator.

10           “Opt-Out Date” refers to the expiration of the Notice Period, by which time Settlement  
11 Class Members who do not wish to be part of the settlement and who are permitted to opt out of this  
12 Settlement must have timely and properly opted-out of the Settlement Class as described herein.

13           “Opt-Out Form” refers to the official form to be mailed to the class, providing them with  
14 the ability to Opt-Out of the settlement and attached hereto as **Exhibit C**.

15           “Order Granting Preliminary Approval” refers to the Court order or statement of  
16 decision granting preliminary approval to this Settlement Agreement.

17           “Order of Final Approval” and “Final Approval” mean an order that finally and  
18 unconditionally grants certification of the Settlement Class for settlement purposes only, authorizes  
19 payments to the Claims Administrator, Participating Settlement Class Members, Plaintiffs, and Class  
20 Counsel as provided in this Agreement, and fully and finally extinguishes the Released Claims of the  
21 Participating Settlement Class as set forth herein, which the Parties shall submit in a mutually agreed  
22 upon form.

23           “Participating Settlement Class Member(s)” means Plaintiffs and all Settlement Class  
24 Members who do not submit a timely and valid opt-out/request for exclusion form pursuant to Section  
25 2.7 of this Settlement Agreement.

26           “Plaintiffs” mean William and Kandy Christopher

27           “Qualified Insurance Claim” means the insurance claims of those members of the  
28 Settlement Class where RMIC did not pay profit and overhead until and/or unless it was incurred

1 between March 9, 2013 and January 1, 2019.

2 "Released Claims" means the claims released pursuant to Section 2.7 of this Settlement  
3 Agreement.

4 "Released Parties" means Defendant, including each of the Defendant's respective past  
5 and present direct or indirect officers, directors, owners, operators, predecessors, successors,  
6 subsidiaries, investors, parent companies, holding companies, divisions, assigns and other related  
7 entities, as well as their officers, directors, owners, operators, successors, predecessors, shareholders,  
8 subsidiaries, investors, parent, sister and affiliated companies, officers, directors, partners, members,  
9 managers, assigns, agents, employees, principals, heirs, administrators, attorneys, vendors, accountants,  
10 auditors, consultants, fiduciaries, insurers, reinsurers, employee benefit plans, and representatives of  
11 each of them, both individually and in their official or corporate capacities, past or present, as well as  
12 all persons acting by, through, under or in concert with any of these persons or entities.

13 "Service Award" means a Court-approved sum to be paid to the Plaintiffs from the Class  
14 Settlement Amount not to exceed Twenty Thousand Dollars (\$20,000) in accordance with Section  
15 2.4.3.

16 "Settlement" means the disposition of the Action pursuant to this Agreement.

17 "Settlement Class" means all RMIC insureds who have a Qualified Claim.

18 "Settlement Class Member" means the individuals in the Settlement Class.

19 "Settlement Payments" means the amounts to be paid to individual Participating  
20 Settlement Class Members pursuant to the terms and conditions of this Settlement Agreement.

21 "Total Qualified Claims" means the total aggregate number of Qualified Claims.

22 **Section 2.2 Settlement of the Lawsuit**

23 It is agreed by and among the Plaintiffs, the Participating Settlement Class Members, and  
24 Defendant that the Lawsuit, including any and all allegations in the Operative Complaint and any and  
25 all claims, allegations, requests for damages, remedies sought or causes of action alleged in the  
26 Operative Complaint, or that could have been alleged based on the pleadings, shall be settled,  
27 compromised and released as between the Plaintiffs, the Participating Settlement Class Members and  
28 Defendant, subject to the terms and conditions set forth in this Settlement Agreement and the approval



1 of the Court, including through any Court-appointed referee or agent of the Court or other judicial  
2 entity with jurisdiction over this matter.

3 **Section 2.3 Conditional Certification of the Settlement Class for Settlement Purposes Only**

4 2.3.1. For settlement purposes only, the Parties stipulate to conditional certification of  
5 the Settlement Class, contingent on final approval of the Settlement.

6 2.3.2. The Parties stipulate that Plaintiffs shall be appointed as Class Representative.

7 2.3.3. The Parties stipulate that Moss Bollinger LLP (attorneys Jeremy Bollinger, Ari  
8 Moss, and Dennis Moss) and McCathern, LLP (attorneys, Evan Selik and Christine Zaouk) shall be  
9 appointed as Class Counsel.

10 2.3.4. The conditional certification of the Settlement Class and appointment of Class  
11 Counsel and Class Representative by the Court shall be binding only with respect to the settlement of  
12 this Action. In the event that this Settlement Agreement is terminated pursuant to its terms or the  
13 Settlement is not approved by the Court for any reason, the certification of the Settlement Class shall be  
14 vacated, the Action shall proceed as though the Settlement Class had never been certified, and this  
15 Settlement Agreement shall be of no force or effect.

16 2.3.5. The Parties agree that, for any claim that is not alleged in this Action ((including  
17 the Complaint, Operative Complaint, and any and all amendments), the statute of limitations has and  
18 will continue to run on those claims and no such claims will relate back to the filing of any of the  
19 pleadings in this Lawsuit.

20 **Section 2.4 Class Settlement Amount Distribution**

21 2.4.1. Class Settlement Amount.

22 In consideration for settlement of the Action and the release of all Released Claims of  
23 the Participating Settlement Class Members, Defendant agrees to pay the sum of Two Hundred and  
24 Fifty Thousand dollars and no cents (\$250,000.00) ("Class Settlement Fund" or "Settlement Fund") for  
25 Administrative Costs, Service Award, Settlement Payments, Attorneys' Fees and Costs. The Settlement  
26 Fund is to be allocated to the Claims Administrator, Class Counsel, Plaintiff, Participating Settlement  
27 Class Members as described herein. The Settlement Fund is the maximum total amount Defendant is  
28 required to pay for any and all purposes under this Settlement Agreement, and in connection with the

1 termination of this Lawsuit. The CSA is based on Defendant's estimate of approximately 4,100 class  
2 members, an estimate which Plaintiffs' counsel has investigated through formal discovery, informal  
3 disclosures between the Parties, and other investigations undertaken by Plaintiffs' Counsel.  
4 Furthermore, the Parties engaged in extensive arms-length negotiations and exchanges of data,  
5 documents and information in mediation.

6 2.4.2. Attorneys' Fees and Costs.

7 (a) The Class Settlement Amount is in consideration for settling this Action and in  
8 exchange for the release of all Released Claims by the Participating Settlement Class Members and the  
9 General Release of all claims by Plaintiff as set forth in Section 2.6 of this Settlement Agreement. Class  
10 Counsel will apply for an award of attorneys' fees in an amount up to, but not to exceed one third (33  
11 1/3%) percent of the CSA, not to exceed Fifty Thousand Dollars and no cents (\$50,000.00), plus  
12 reasonable actual costs not to exceed \$20,000, subject to approval by the Court, and will compensate  
13 Class Counsel for the work already performed in relation to resolving the class claims, and the work  
14 remaining to be performed in documenting the Settlement, securing Court approval of the Settlement,  
15 working with the Claims Administrator to administer the Settlement, obtaining dismissal of the Action  
16 with prejudice, and defending against any appeals, as well as all associated expenses.

17 (b) Class Counsel, Plaintiff, and Participating Settlement Class Members, will not  
18 apply to the Court for any payment of attorneys' fees and costs that are in addition to or in excess of the  
19 foregoing as related to the class action claims for retrospective relief outside of that which has been  
20 deemed part of the CSA. The Parties agree that, over and above the Court-approved Attorneys' Fees  
21 and Costs awarded in this Lawsuit under this Settlement Agreement, each of the Parties, including all  
22 Participating Settlement Class Members, shall bear their own fees and costs, including, but not limited  
23 to, those related to the investigation, filing, prosecution, or settlement of the Lawsuit; the negotiation,  
24 execution, or implementation of this Settlement Agreement; and/or the process of obtaining,  
25 administering, or challenging a Certification Order and/or Final Approval.

26 (c) In the event that the Court denies, modifies, or reduces Class Counsel's request  
27 for Attorneys' Fees and Costs, then Plaintiff, Class Counsel, and the Participating Settlement Class  
28

1 Members may not seek modification or cancellation of this Agreement and will not seek, request, or  
2 demand an increase in the Class Settlement Amount..

3 (d) If Class Counsel appeals the Court's ruling on their application for Attorneys'  
4 Fees and Costs, the ruling of the appellate court (regardless of its substance) shall not constitute a  
5 material alteration of a term of this Settlement Agreement.

6 (e) All claims for Attorneys' Fees and Costs or expenses that Class Counsel,  
7 Plaintiffs, and the Settlement Class Members may possess against Defendant have been compromised,  
8 released and resolved in this Settlement Agreement and shall not be affected by any appeal that Class  
9 Counsel may file.

10 2.4.3. Plaintiffs Service Award.

11 (a) In addition to the Settlement Payment determined to be due to the Plaintiff as  
12 Participating Settlement Class Member under this Settlement Agreement, Class Counsel and Plaintiffs  
13 may petition the Court for a Service Award for Plaintiffs, in the total amount of no more than Twenty  
14 Thousand Dollars and no cents (\$20,000.00), collectively. Any such petition shall be filed concurrently  
15 with Class Counsel's application for Attorneys' Fees and Costs. Any Service Award approved by the  
16 Court in conjunction with the Settlement shall be paid solely from the CSA and shall reduce the amount  
17 of the Net Settlement Fund payable to the Participating Settlement Class Members.

18 (b) The Service Award shall be distributed by the Claims Administrator in  
19 accordance with Section 2.11 of this Settlement Agreement and shall not be reported by the Claims  
20 Administrator to state and federal taxing authorities as they are to be considered insurance policy  
21 payments. Plaintiffs shall hold Defendant harmless and indemnify and defend Defendant and Released  
22 Parties for all taxes, interest, penalties, and costs incurred by Defendant or the Released Parties by any  
23 reason of any claims relating to their non-withholding of taxes from the Service Award.

24 (c) In the event that the Court denies, modifies, or reduces Plaintiffs' request for a  
25 Service Award, Plaintiffs may not seek modification or cancellation of this Settlement Agreement and  
26 will not seek, request, or demand an increase in the Class Settlement Amount.

27 (d) Plaintiffs shall receive the Service Award payment and any other payments  
28 under this Settlement Agreement at the earliest possible moment after the Effective Date. Such Service

1 Award is also contingent upon Plaintiffs agreeing to the terms herein which include a General Release  
2 as to any and all claims she may have against Defendant and the Released Parties, whether the claim is  
3 known or unknown, with the exception of worker's compensation claim(s).

4 2.4.4. Claims Administration Expenses.

5 The Claims Administrator shall be paid, for the costs of administration of the  
6 Settlement, an estimated fee of \$16,000. These costs include without limitation the mailing of notice,  
7 establishing a toll-free telephone number, tracking requests for exclusion, disbursement of the CSA,  
8 and other duties set forth below in Section 2.5. No fewer than ten (10) court days prior to the Final  
9 Approval Hearing, the Claims Administrator shall provide the Court and all counsel for the Parties with  
10 a statement detailing these Administrative Costs. The Parties agree to cooperate in the settlement  
11 administration process and to make all efforts to control and to minimize the costs and expenses  
12 incurred in the administration of this Settlement.

13 2.4.6. Distributions to Participating Settlement Class Members.

14 (a) Individual Settlement Payments will be paid from the Net Settlement Fund and  
15 shall be paid pursuant to the settlement formula set forth herein. Individual Settlement Payments shall  
16 be mailed by regular First Class U.S. Mail to Participating Settlement Class Members' last known  
17 mailing address within fourteen (14) calendar days after Defendant provides funds to the Claims  
18 Administrator for disbursement under this Agreement. Any checks issued to Settlement Class Members  
19 shall remain valid and negotiable for one hundred eighty (180) days from the date of their issuance.  
20 Any residue from uncashed Settlement Award checks after the expiration date will be paid to the  
21 California Unclaimed Property Fund of the State Treasurer's Office as permitted by Code Civil  
22 Procedure section 384(b). If the Court does not approve payment to the Unclaimed Property Fund, then  
23 the funds shall be distributed to California Fire Foundation, a California area 501(c)(3) that provides  
24 emotional and financial assistance to families of fallen firefighters, firefighters, and the communities  
25 they protect as the *cy pres* recipient. Individuals will be entitled to payment from the Net Settlement  
26 Fund, as described below.

27 (b) Calculation of Individual Settlement Payments. The Net Settlement Amount  
28 ("NSA") will be allocated to the Class Members based on their proportional share of interest owed for

1 their delayed profit and overhead payment, as measured by the amount provided in RMIC's estimate at  
2 the time each Settlement Class Member tendered a claim, as defined below. The Claims Administrator  
3 will calculate the total amount of unpaid interest on those claims where interest would be owed,  
4 through the date of Preliminary Approval, based on a 10% simple annual interest, for each claim of the  
5 Settlement Class Members. The Administrator will then total the amount of interest owed, and divide it  
6 by the Net Settlement Fund, to ascertain what percentage of the NSA is owed to each Settlement Class  
7 Member, based on his/her proportionate amount of the total amount of interest owed. By way of  
8 example<sup>1</sup>:

- 9 i. Settlement Class Member One had \$1,000.00 of profit and overhead  
10 delayed 1.2 months in 2016, and is therefore owed 1/10 of 10% in an  
11 unpaid interest payment or \$10.00. It has been three years since the  
12 claim, therefore the total owed amount is \$13.00.
- 13 ii. Settlement Class Member Two had a 6-month delay on the claim for  
14 profit and overhead of \$550.00 in 2014. Settlement Class Member Two  
15 would be owed 5/10 of 10% annual interest or \$27.50 plus 10% (on the  
16 \$27.50) for each year Class Member Two was not paid the interest or an  
17 additional \$13.75 for a total of \$41.25 dollars in unpaid interest.
- 18 iii. Settlement Class Member Three was not paid profit and overhead of  
19 \$1,000 in 2015. Class Member Three is thus owed 100% of the 10%  
20 annual unpaid interest for each year Class Member Three was not paid  
21 the interest. It has been four years since the claim, therefore the total  
22 amount of interest owed is \$400.00.

23  
24  
25  
26  
27 <sup>1</sup> The example included herein is for illustrative purposes only, and shall not be construed or used as, an admission,  
28 concession, or indication by or against Defendants of any fault, wrongdoing or liability whatsoever.

1 (c) If the total value of liability retrospectively is: \$1,500,000, and the Net  
2 Settlement Amount is \$150,000 (10%) then the Administrator would pay to each of the aforementioned  
3 Settlement Class Members 10% of the total value of their payments.

4 (d) For each Settlement Class Member who submits a complete claim form, the  
5 Claims Administrator will provide to Defendant the information necessary to identify that claim within  
6 seven days of receipt thereof. No later than three months after the end of the Notice Period, Defendant  
7 shall provide the claims administrator with the following information in the form of an Excel  
8 spreadsheet or similar sortable electronic format: name, claim number, amount of overhead and profit,  
9 date overhead and profit claimed, and date overhead and profit was paid ("Claims Data"). During the  
10 Notice Period, Defendant shall provide Claims Data to the Claims Administrator on a rolling basis as  
11 available.

## 12

### 13 Section 2.5 Catalyst Theory

14 On March 9, 2017, Plaintiffs filed this lawsuit alleging and seeking among other things,  
15 declaratory and injunctive relief declaring that Defendant's delay of overhead and profit payment  
16 violates California Ins. Code §2071, and an injunction mandating that Defendant change its policy  
17 language and practice in this respect.

18 On January 1, 2019, Defendant changed its practice. Plaintiffs estimates that the net value of  
19 this change in practice, based on expert analysis of retrospective damages from delay, for a 10-year  
20 period is more than \$5 million in value for each of those individual policyholders who might have a  
21 claim.

22 There is a dispute as to whether or not Plaintiffs and their counsel are the catalysts for this  
23 policy and practice change. To this end, the Parties have agreed that in addition to the Class Settlement  
24 Amount, Plaintiffs' Counsel shall be permitted to seek, without opposition, Catalyst Attorney's Fees in  
25 the amount of Eight Hundred and Fifty Thousand and no cents (\$850,000.00) based on the Private  
26 Attorney General theory for being the Catalyst changing RMIC's policy and procedures of withholding  
27 overhead and profit unless and/or until it is incurred.

1 In the event that the Court denies, modifies, or reduces Class Counsel's request for Catalyst  
2 Attorneys' Fees, then Plaintiff, Class Counsel, and the Participating Settlement Class Members may not  
3 seek modification or cancellation of this Agreement and will not seek, request, or demand an increase  
4 in the Class Settlement Amount and/or Catalyst Theory Amount.

5 If Class Counsel appeals the Court's ruling on their application for Catalyst Attorneys' Fees, the  
6 ruling of the appellate court on Catalyst Attorney Fees (regardless of its substance) shall not constitute  
7 a material alteration of a term of this Settlement Agreement.

8 All claims for Catalyst Attorneys' Fees that Class Counsel, Plaintiffs, and the Settlement Class  
9 Members may possess against Defendant have been compromised, released and resolved in this  
10 Settlement Agreement and shall not be affected by any appeal that Class Counsel may file.

11  
12 **Section 2.6 Appointment and Duties of Claims Administrator**

13 2.6.1. Subject to the approval of the Court, the Parties have agreed to the appointment of  
14 a professional class action claims administration firm, JND Legal Administrators, as the Claims  
15 Administrator for the purpose of administering the settlement process, including preparing and mailing  
16 (and emailing to the extent Defendant is able to provide email addresses) Notice Forms, providing live  
17 call agents during business hours and responding to Settlement Class Member inquiries. The  
18 Administrative Costs shall be deducted from the CSA. In the event the Settlement Agreement is voided  
19 or canceled by Defendant pursuant to Section 2.17, Defendant shall remain liable for payment of all  
20 Administrative Costs incurred.

21 2.6.2. The duties of the Claims Administrator shall include without limitation:

22 (a) Finalizing and printing the Notice of Settlement and Request for Exclusion/Opt-  
23 Out Forms attached to this Settlement Agreement as Exhibits, as modified by the Court and/or by  
24 mutual agreement of the Parties.

25 (b) Handling all mailings and emails to the Settlement Class Members pursuant to  
26 Section 2.9;

27 (c) Performing an address search and/or trace for returned or undeliverable mailings  
28 as set forth in Section 2.9.3;

1 (d) Recording and tracking responses to the mailing to the Settlement Class  
2 Members and the dates thereof (including recording the postmark date and identity of any Settlement  
3 Class Members who request exclusion or object and promptly forwarding such information to  
4 Defendant's counsel and Class Counsel using numbers instead of providing identifying information);

5 (e) Establishing a toll-free telephone number for Settlement Class Members to call  
6 during business hours to ask questions regarding the Settlement;

7 (f) Responding to inquiries made by the Settlement Class Members;

8 (g) Calculating and mailing Settlement Payments;

9 (h) Settling disputes from Settlement Class Members, with the involvement and  
10 assistance of Defendant's counsel and Class Counsel;

11 (i) Posting any final judgment in the Action on the Claims Administrator's website;

12 (j) Preparing and filing any required tax forms associated with the Claims  
13 Administrator's duties hereunder; and

14 (k) Other related tasks as mutually agreed to by the Parties and required by statute.

15 2.6.3. The Claims Administrator shall keep Defendant's counsel and Class Counsel  
16 timely apprised of the performance of all Claims Administrator responsibilities by weekly emails.

17 2.6.4. All disputes relating to the Claims Administrator's performance of its duties will  
18 be referred to the Court, if necessary, which will have continuing jurisdiction over this Settlement until  
19 all payments and obligations contemplated by this Settlement Agreement have been fully carried out.

20 2.6.5. At least twenty-one (21) days before the Final Fairness Hearing, the Claims  
21 Administrator shall prepare a declaration of compliance and due diligence and proof of mailing with  
22 regard to the mailing and emailing of the Notice of Settlement, and any attempts by the Claims  
23 Administrator to locate Settlement Class Members, its receipt of timely and valid requests for  
24 exclusion, and its inability to deliver the Notice of Settlement to Settlement Class Members due to  
25 invalid addresses ("Due Diligence Declaration"), to Class Counsel and Defendant's counsel for  
26 presentation to the Court. Class Counsel shall be responsible for filing the Due Diligence Declaration  
27 with the Court.

28 **Section 2.7 Release of Claims by the Settlement Class**



1           2.7.1. Upon the Effective Date, all Participating Settlement Class Members, including  
2 their heirs, assigns, estates and representatives, shall be deemed to fully forever, irrevocably and  
3 unconditionally release, and discharge Defendant and the Released Parties from all rights to equitable  
4 or monetary relief, including damages, restitution, and/or payment of interest arising from the Lawsuit,  
5 including any and all allegations in the Operative Complaint and any and all claims, allegations,  
6 requests for damages, remedies sought or causes of action alleged in the Operative Complaint, or that  
7 could have been alleged based on the pleadings.

8           2.7.2. Concurrently with the Court's grant of final approval of this Settlement  
9 Agreement, Plaintiffs, by agreeing to and signing this Settlement Agreement, have Released of all  
10 claims, known or unknown, against Defendant and the Released Parties. Plaintiffs warrant that, at this  
11 time, they are unaware of claims other than those that may be currently pending. Furthermore, Plaintiffs  
12 shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the  
13 provisions, rights, and benefits they may otherwise have had pursuant to §1542 of the California Civil  
14 Code, which provides as follows:

15                   **A general release does not extend to claims that the creditor or releasing party does**  
16                   **not know or suspect to exist in his or her favor at the time of executing the release**  
17                   **and that, if known by him or her, would have materially affected his or her**  
                      **settlement with the debtor or released party.**

18           2.7.3. The Parties intend and agree that this Settlement Agreement shall be binding on  
19 all Participating Settlement Class Members, whether or not they actually receive a payment pursuant to  
20 this Settlement Agreement. This Settlement Agreement shall constitute, and may be pleaded as, a  
21 complete and total defense to any Released Claims raised in the future.

22           2.7.4. Plaintiffs and Participating Settlement Class Members promise not to file a  
23 lawsuit in any court alleging any Released Claims, or to participate as a party or a class member in any  
24 administrative or other legal proceedings, in any forum, against Defendant or the Released Parties, for  
25 any claims released under this Settlement Agreement. In consideration for the promises made by  
26 Defendant in this Settlement Agreement, Plaintiffs and each Participating Settlement Class Member  
27 agrees never to institute any suit, complaint, proceeding, grievance, or action of any kind at law, in  
28 equity, or otherwise in any court of the United States, or of any state or municipality, or with any

1 administrative agency, arbitration or other legal forum, against Defendant or the Released Parties for  
2 any claim included in the Released Claims. Plaintiffs and each Participating Settlement Class Member  
3 also agrees that he or she will not join, participate in, or consent to opt-in to any actions alleging that he  
4 or she is similarly situated to any other employee with respect to any such Released Claims, and that  
5 each will elect to opt-out of any such actions against Defendant or the Released Parties of which he or  
6 she is made a member or party. If Plaintiffs or any Participating Settlement Class Member is joined in  
7 any class or collective lawsuits for any Released Claims, he or she will receive no further compensation  
8 of any kind for such released claim or claims.

9           2.7.5. Participating Settlement Class Members and Class Counsel shall, and hereby do,  
10 fully and finally release and forever discharge Defendant and Released Parties of and from any and all  
11 claims, demands, damages, actions and/or causes of action of whatever kind or nature, including claims  
12 for attorneys' fees or costs, whether known or unknown, existing or claimed to exist, in any way set  
13 forth in or arising out of any: (i) dispute or claim between or among any Participating Settlement Class  
14 Members, and/or Class Counsel, including over any claim to any monetary part of the Settlement  
15 and/or to Class Counsel's fees, costs or expenses; and/or (ii) any dispute between the Participating  
16 Settlement Class Members, Class Counsel and/or any governmental authority with respect to this  
17 Settlement Agreement or any payments made hereunder. This Settlement Agreement shall constitute,  
18 and may be pleaded by Defendant and the Released Parties as, a complete and total defense to any such  
19 dispute or claim.

## 20 **Section 2.8 Opt-Out/Request for Exclusion Procedure**

21           2.8.1. Settlement Class Members, except the Plaintiffs who shall not be permitted to opt-  
22 out of this Settlement Agreement, shall be entitled to "opt out" of this Settlement Agreement. The  
23 Notice Materials shall provide instructions to Settlement Class Members who wish to "opt out." To be  
24 valid, an individual requesting exclusion must timely submit an Opt-Out Form attached hereto as  
25 **Exhibit C** and such form must be returned by U.S. Mail to the Claims Administrator at the specified  
26 address and must be postmarked no later than the last day of the Notice Period. The Claims  
27 Administrator will notify any Settlement Class Member from whom it receives a request for exclusion  
28 that is not timely and/or valid. Any disputes regarding the timeliness, validity or effectiveness of a

1 request for exclusion shall be decided by the Claims Administrator consistent with the terms of this  
2 Settlement Agreement, with the Parties' input, if appropriate. The date of the postmark on the mailing  
3 envelope for any request for exclusion shall be the exclusive means used to determine whether the  
4 request for exclusion has been timely submitted.

5 2.8.2. Any Settlement Class Member who does not properly and timely submit a request  
6 for exclusion in the manner and by the deadline specified above in Section 2.7.1 will be a Participating  
7 Settlement Class Member who is barred from opting out of the Settlement and is bound by all terms  
8 and conditions of the Settlement and this Settlement Agreement, including the releases of claims  
9 pursuant to Section 2.7 of this Settlement Agreement, if the Settlement is approved by the Court, and  
10 will be bound by any Final Approval Order, regardless of whether he or she has objected to the  
11 Settlement.

12 2.8.3. A Settlement Class Member who properly and timely submits a request for  
13 exclusion in the manner and by the deadline specified above in Section 2.7.1 will not be bound the  
14 Settlement Agreement; will be barred from participating in or objecting to the Settlement; will not  
15 receive any benefit from the Settlement; will remain free to contest any claim as to that individual that  
16 would have been barred by this Settlement Agreement; and nothing in this Settlement or Settlement  
17 Agreement will constitute or be construed as a waiver of any defense Defendant or the Released Parties  
18 have or could assert against such a claim.

19 **Section 2.9 Procedures for Objecting to the Settlement**

20 2.9.1. The Class Notice shall provide that Participating Settlement Class Members and  
21 persons purporting to act on behalf of Participating Settlement Class Members who wish to object to  
22 the Settlement Agreement must file with the Claims Administrator a written statement objecting to the  
23 Settlement Agreement. Such objection and any supporting briefs or other materials must be filed with  
24 the Court and mailed, via First Class U.S. Mail, to counsel for the Parties and postmarked no later than  
25 the last day of the Notice Period. Settlement Class Members who opt-out may not file and serve an  
26 objection or otherwise object to this Settlement Agreement. The postmark date of the filing and service  
27 of an objection shall be deemed the exclusive means for determining that the objection is timely. An  
28 objection must be signed and state the Participating Settlement Class Member's name, current address

1 and telephone number, and the basis for the objection. The notice of objection must be signed by the  
2 Participating Settlement Class Member.

3 2.9.2. No Participating Settlement Class Member or person purporting to act on behalf  
4 of Participating Settlement Class Members shall be entitled to be heard at the Final Approval Hearing  
5 (whether individually or through counsel) or to object to the Settlement, and no written objections or  
6 briefs submitted by any such individuals or persons purporting to act on behalf of them shall be  
7 received or considered by the Court at the Final Approval Hearing, unless the individual's objection  
8 and supporting materials have been timely filed and served as set forth above in Section 2.9.1 within  
9 the Notice Period. Any Participating Settlement Class Member who fails to file and serve a timely and  
10 complete objection in the manner specified above in Section 2.9.1 shall be deemed to have waived any  
11 objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the  
12 Settlement.

13 2.9.3. If a Settlement Class Member timely submits both an objection and a request for  
14 exclusion ("opt out" under Section 2.8), the request for exclusion shall supersede the objection, and the  
15 objection shall therefore be waived.

16 2.9.4. Counsel for the Parties shall file any responses to any objections at least seven (7)  
17 calendar days before the Final Approval Hearing.

18 2.9.5. Defendant shall not be responsible for the fees, costs, or expenses incurred by  
19 Plaintiffs, Class Counsel, or the Participating Settlement Class Members arising from or related to  
20 Participating Settlement Class Members who submit objections or otherwise purport to object to the  
21 Settlement Agreement or related to any appeals thereof.

## 22 **Section 2.10 Preparation and Mailing of Notice to the Class**

23 2.10.1. Within thirty (30) days of entry of the Order Granting Preliminary Approval of  
24 Settlement, but subject to the Claims Administrator providing adequate and contractual assurances with  
25 respect to confidentiality and data security, Defendant shall provide the Claims Administrator with the  
26 following information for the Settlement Class Members in the form of an Excel spreadsheet or similar  
27 sortable electronic format: names, claim numbers, current or last-known mailing addresses from  
28 Defendants' records, the date the claim was made, and email addresses only to the extent readily

1 obtainable from Defendant's existing records. Class Counsel and Plaintiffs will not be provided  
2 identifying or contact information for any Settlement Class Members in connection with this Settlement  
3 or Settlement Agreement. The data provided to the Claims Administrator will remain confidential and  
4 will not be disclosed to anyone, except as required to applicable tax authorities, pursuant to the express  
5 written consent of Defendant, or by order of the Court. The data provided under this Section 2.10.1  
6 shall be used only for the purpose of administering this Settlement.

7           2.10.2. The Notice of Class Action Settlement and Hearing Date for Court Approval  
8 ("Notice of Settlement"), materially in the form attached hereto as **Exhibit B** and as approved by the  
9 Court, shall be sent by the Claims Administrator to the Settlement Class Members, by First Class Mail  
10 to those addresses provided, and by email to those email addresses provided, as soon as practicable but  
11 in any event within fourteen (14) days after receipt of their contact information from Defendant. The  
12 Notice of Settlement shall set forth a brief description of the Action, provide the definition of the  
13 Settlement Class, inform Settlement Class Members of the nature and scope of the settlement and  
14 release of claims, set forth the requested Attorneys' Fees and Costs, disclose the Service Award to  
15 Plaintiffs, inform Settlement Class Members of their opportunity to be heard at the Final Fairness  
16 Hearing, inform Settlement Class Members of their right to submit an objection to any term of the  
17 settlement, to submit a claim, and/or to request exclusion from or to opt-out of the settlement and the  
18 procedures for doing so, and explain the *res judicata* effects of not doing so. The Notice of Settlement  
19 also will instruct the Settlement Class Member to submit any disputes to the Claims Administrator  
20 within twenty-one (21) days. The Claims Administrator will consult Class Counsel and Counsel for  
21 Defendant regarding any such dispute(s), but will remain the ultimate arbiter and make the final  
22 decision regarding any such dispute(s). Also, the Notice of Settlement will set forth contact numbers  
23 for Class Counsel and counsel for Defendants, but will direct class members to call the toll-free number  
24 established by the Claims Administrator to answer any questions that Settlement Class Members may  
25 have.

26           2.10.3. The Claims Administrator will attempt to locate any Settlement Class Member  
27 whose Notice of Settlement is returned by the Post Office by performing a National Change of Address  
28 (NCOA) search, and if needed, by conducting one skip trace search regarding any returned Notice of

1 Settlement.

2           2.10.4. If an envelope or email has not been returned within twenty-one (21) days of the  
3 mailing, it shall be conclusively presumed that the Settlement Class Member received the Notice of  
4 Settlement.

5 **Section 2.11 Final Fairness Hearing**

6           The Parties will request the Court to conduct a Fairness Hearing no earlier than 30 days  
7 after the deadline for Defendant to provide the Claims Data to determine if the Settlement is fair,  
8 reasonable, and adequate, and if so, to enter a final order and judgment granting Final Approval of  
9 Settlement, which will (a) approve the Settlement, adjudging the terms thereof to be fair, reasonable  
10 and adequate, and directing consummation of its terms and provisions; (b) approve in whole or in part  
11 Class Counsel's application for an award of Attorneys' Fees and Costs; (c) approve in whole or in part  
12 Plaintiffs' Service Award; (d) approve in whole or in part Plaintiffs' Catalyst Attorneys' Fees; and (e)  
13 permanently bar and enjoin all Participating Settlement Class Members from prosecuting any Released  
14 Claims against Defendant and/or any Released Parties.

15 **Section 2.12 Funding the Gross Settlement Amount and Distribution of Payments**

16           Within 30 days after final approval of the class settlement by the Court, Defendant shall  
17 deposit the total sum of the Class Settlement Amount and Catalyst Attorneys' Fees, but in no event  
18 shall that amount be greater than One Million One Hundred Thousand Dollars and no cents  
19 (\$1,100,000.00), into a bank account created by the Claims Administrator for purposes of the  
20 administration and disbursement of the settlement fund. Within fourteen (14) calendar days after such  
21 payment is received by the Claims Administrator, all Court-approved payments will be made by the  
22 Claims Administrator to Participating Settlement Class Members, Plaintiffs, and Class Counsel  
23 (provided that Class Counsel has provided a completed W-9 to the Claims Administrator). The  
24 approval and denial of a Settlement Payment to any Settlement Class Member under the terms of this  
25 Settlement Agreement will be conclusive and binding, subject to the dispute resolution provisions of  
26 this Settlement Agreement as set forth in Section 2.18. All payments called for under this Section 2.12  
27 shall be made solely from the CSA.

28 **Section 2.13 Attorneys' Fees in Actions on Released Claims**

1           The Parties agree that in any proceeding, claim or action brought subsequent to Final  
2 Approval that: (i) challenges the validity of or arises out of this Settlement Agreement; and/or (ii) seeks  
3 to allege against Defendant or the Released Parties any of the Released Claims, this Settlement  
4 Agreement, and/or any related order of the Court shall constitute, and may be pleaded as, a complete  
5 and total defense to any such dispute or claim. The prevailing party in any such proceeding, claim or  
6 action shall be entitled to an award of its reasonable attorneys' fees and costs.

7 **Section 2.14 Duties of the Parties Prior to Court Approval**

8           Once finalized, the Parties shall promptly submit this Settlement Agreement to the Court  
9 for preliminary approval and determination by the Court as to its fairness, adequacy, and  
10 reasonableness. Promptly upon execution of this Settlement Agreement, Plaintiffs will prepare, send to  
11 Defendant's counsel for comment, and then when it is mutually-agreeable, file a Motion for  
12 Preliminary Approval seeking the following:

13           (a) Approval of the proposed settlement as fair, reasonable, and adequate as to  
14 Settlement Class Members;

15           (b) Approval as to form and content of the proposed Notice of Settlement;

16           (c) Approval of the plan of allocation of the CSA.

17           (d) Directing the mailing of the Notice of Settlement by First Class Mail, and by  
18 email where Defendant's records make it possible, to Settlement Class Members by the Claims  
19 Administrator;

20           (e) Conditionally certifying the Settlement Class for settlement purposes only;

21           (f) Appointing Class Counsel, Plaintiffs as Class Representative, and JND Legal  
22 Administrators as Claims Administrator;

23           (g) Preliminarily approving this Settlement Agreement; and

24           (h) Scheduling a Final Fairness Hearing on the question of whether the proposed  
25 settlement should be finally approved.

26           Prior to the Final Fairness Hearing by the Court of the settlement provided for in this  
27 Settlement Agreement, Class Counsel (in conjunction with Defendant's counsel) will submit a  
28 proposed final order:

1 (i) Approving the settlement, adjudging the terms thereof to be fair, reasonable and  
2 adequate, and directing consummation of its terms and provisions; and

3 (j) Approving Class Counsel's application for an award of Attorneys' Fees and  
4 Costs in whole or in part. These amounts for Attorneys' Fees and Costs shall be paid from the  
5 Settlement Fund;

6 (k) Approving Class Counsel's application for an award of Catalyst Attorneys' Fees  
7 in whole or in part; and

8 (l) Seeking judgment to be entered in this Action that dismisses the Action with  
9 prejudice.

10 **Section 2.15 Communications**

11 Except for disclosures that are authorized by Defendant, that are required by law for  
12 Defendant to make, or that are necessary to prepare the Motion for Preliminary Approval, the terms of  
13 this Settlement shall remain confidential until they are presented to the Court in connection with the  
14 Motion for Preliminary Approval.

15 Following preliminary approval, the Parties and their counsel will direct inquiries from  
16 Settlement Class Members to the Claims Administrator to ensure consistent and accurate  
17 communication with Settlement Class Members. The Parties will make no efforts to solicit requests for  
18 exclusion or opt-outs or objections to this Settlement. Notwithstanding anything to the contrary in this  
19 Section 2.14 or elsewhere in this Settlement Agreement, Defendant and Class Counsel shall be  
20 permitted to disclose the Settlement in order to comply with any state or federal law. Nothing in this  
21 Section 2.14 shall limit Defendant from communicating with its counsel regarding this Settlement  
22 Agreement or Plaintiffs from communicating with Class Counsel regarding this Settlement Agreement.

23 Plaintiffs, Class Counsel, Defendant and Defendant's counsel agree: not to comment  
24 upon or otherwise publicize the Action or its Settlement in the media (including without limitation  
25 internet, print, radio, television or social media); not to initiate or issue any press release, advertising,  
26 mass mailing, social media or website posting or content; not to disparage or comment negatively about  
27 one another, including Defendant, its officers, directors, management, and/or current or former  
28 employees; and to respond to any inquiry from the media regarding the Action or its Settlement by



1 referring the inquiry to the publicly available Court file. If Plaintiffs, Class Counsel, Defendant or  
2 Defendant's counsel is contacted about this Action or Settlement by the press or other media, the party  
3 or their counsel shall state only that the case was settled on mutually satisfactory terms. This Section  
4 2.14 does not apply to any Court-Approved notice of the Settlement. Nothing in this Section 2.14 shall  
5 be construed as prohibiting the Parties or their counsel from responding to an inquiry issued under court  
6 order, subpoena or other request issued under the law.

7 **Section 2.16 Continuing Jurisdiction of the Court**

8 The Parties agree that the Court shall retain jurisdiction over the Parties, and over this  
9 Settlement Agreement, in order to: (i) monitor and enforce compliance with this Settlement Agreement,  
10 Order of Final Approval and/or any related order of this Court; and/or (ii) resolve any disputes over this  
11 Settlement Agreement or the administration of the benefits of this Settlement Agreement, including  
12 disputes over entitlement to payments sought by Class Counsel.

13 **Section 2.17 Voiding the Settlement Agreement**

14 If any of the conditions set forth in the preceding paragraphs are not met and materially  
15 satisfied, this Settlement Agreement shall, at the option of the party to whom the condition was not met,  
16 be ineffective, void, and of no further force and effect and shall not be used nor be admissible in any  
17 subsequent proceedings either in this Court or in any other Court or forum. The Parties may exercise  
18 their option, only on the terms provided herein, to void this settlement by giving notice, in writing, to  
19 the other party and to the Court at any time prior to the Effective Date. In such an event, (1) nothing in  
20 this Settlement Agreement shall be construed as a determination, admission, or concession of any issue  
21 in the Action, and nothing in this Settlement Agreement may be offered into evidence in any trial on  
22 the merits of the claims asserted in the complaints filed in the Action or in any subsequent pleading; (2)  
23 the Parties expressly reserve their rights with respect to the prosecution and defense of the Action as if  
24 this Settlement Agreement never existed; and (3) the Party or Parties who exercised the option to void  
25 the Settlement Agreement shall be responsible for any costs for Notice or claims administration  
26 incurred by the Claims Administrator through that date, provided that such costs shall be recoverable in  
27 the event that the Party who incurred them is a prevailing party in the Action.

28 **Section 2.18 Dispute Resolution**

1           Except as authorized herein, all disputes concerning the interpretation, implementation,  
2 calculation, or payment of the Class Settlement Amount and/or Catalyst Theory Amount or other  
3 disputes regarding compliance with this Settlement Agreement will be resolved by Hon Louis  
4 Meisinger (Ret.).

5 **Section 2.19 Parties' Authority**

6           The signatories hereto hereby represent that they are fully authorized to enter into this  
7 Settlement Agreement and to bind the Parties hereto to the terms and conditions hereof.

8 **Section 2.20 Mutual Full Cooperation**

9           The Parties agree to fully cooperate with each other to accomplish the terms of this  
10 Settlement Agreement, including without limitation to execute such documents and to take such other  
11 action as may reasonably be necessary to implement the terms of this Settlement Agreement. The  
12 Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by  
13 this Settlement Agreement and any other efforts that may become necessary by order of the Court, or  
14 otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as  
15 practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and  
16 cooperation of Defendant and its counsel, take all necessary steps to secure the Court's Final Approval  
17 of this Settlement Agreement. Class Counsel will also notify counsel for Defendant if Class Counsel  
18 are subpoenaed or receive any other request for documents or information regarding any other action  
19 filed or potential action against the Released Parties that covers or includes any Settlement Class  
20 Members.

21 **Section 2.21 No Prior Assignments**

22           The Parties hereto represent, covenant, and warrant that they have not directly or  
23 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any  
24 person or entity any portion of any liability, claim, demand, action, cause of action or rights herein  
25 released and discharged except as set forth herein.

26 **Section 2.22 No Admission**

27           Nothing contained herein, nor the negotiation, consummation or performance of this  
28 Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence,

1 or wrongdoing on the part of Defendant and/or any of the Released Parties, and they expressly deny  
2 liability or wrongdoing. Defendant further denies, for any purpose other than settling this Lawsuit, that  
3 this Lawsuit is appropriate for class, or representative treatment. This Settlement Agreement is not,  
4 shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of  
5 this or similar claims for class action certification or administration other than for the purposes of  
6 administering this Settlement Agreement. Each of the Parties hereto has entered into this Settlement  
7 Agreement with the sole purpose and intention to avoid further disputes and litigation with the  
8 attendant inconvenience and expenses. In the event this Settlement Agreement is not approved by the  
9 Court or otherwise does not become final, Defendant does not waive any defenses or rights, including  
10 without limitation that this case is not suitable for class treatment, and the Parties agree that the  
11 Settlement Class will be decertified. This Settlement Agreement is a settlement document and shall,  
12 pursuant to California Evidence Code §1152 and any and all analogous state laws, be inadmissible in  
13 evidence in any proceeding, except an action or proceeding to approve, interpret, or enforce this  
14 Settlement Agreement.

15 Whether or not the Settlement is finally approved, neither the Settlement, nor any of its terms,  
16 nor any document, statement, proceeding or conduct related to this Settlement Agreement including  
17 without limitation the motions for preliminary and final approval of the settlement and any documents  
18 submitted in support of such motions, nor any reports or accounts thereof, shall in any event be  
19 disclosed, referred to or offered or received in evidence against any of the Parties, in any further  
20 proceeding in this Action, or any other civil, criminal or administrative action or proceeding except for  
21 purposes of settling this Action or enforcing the Released Claims contained herein pursuant to the  
22 terms of this Settlement Agreement.

### 23 **Section 2.23 Enforcement Actions**

24 In the event that one or more of the Parties to this Settlement Agreement institutes any  
25 legal action, arbitration, or other proceeding against any other party to enforce the provisions of this  
26 Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the  
27 successful party shall be entitled to recover from the unsuccessful party reasonable attorneys' fees and  
28 costs, including expert witness fees incurred in connection with any enforcement actions.

1 **Section 2.24 Notices**

2 Unless otherwise specifically provided herein, all notices, demands, or other  
3 communications given hereunder shall be in writing and shall be deemed to have been duly given as of  
4 the third business day after mailing by United States registered or certified mail, return receipt  
5 requested, addressed as follows:

6 To Plaintiffs and the Settlement Class:

7 MOSS BOLLINGER, LLP  
8 Jeremy F. Bollinger, Esq.  
9 Ari Moss, Esq.  
10 Dennis F. Moss, Esq.  
11 15300 Ventura Boulevard, Ste. 207  
12 Sherman Oaks, California 91403

13 Evan Selik  
14 Christine Zaouk  
15 McCATHERN, LLP  
16 523 W. 6<sup>th</sup> Street, Suite 830  
17 Los Angeles, California 90017

18 To Defendant:

19 Mona Hanna  
20 Vincent Loh  
21 MICHELMAN & ROBINSON  
22 17901 Von Karman Ave., 10<sup>th</sup> Flr.  
23 Irvine, California 92614

24 **Section 2.25 Construction**

25 The Parties hereto agree that the terms and conditions of this Settlement Agreement are  
26 the result of lengthy, intensive arms-length negotiations between the Parties and that this Settlement  
27 Agreement shall not be construed in favor of or against any party by reason of the extent to which any  
28 party or his, her or its counsel participated in the drafting of this Settlement Agreement.

**Section 2.26 Captions and Interpretations**

Paragraph titles or captions contained herein are inserted as a matter of convenience and  
for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or

1 any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

2 **Section 2.27 Modification**

3 This Settlement Agreement may not be changed, altered, or modified, except in writing  
4 and signed by Defendant and the Plaintiffs, or their counsel acting on their behalf, hereto. This  
5 Settlement Agreement may not be discharged except by performance in accordance with its terms or by  
6 a writing signed by the Parties hereto.

7 **Section 2.28 Integration Clause**

8 This Settlement Agreement contains the entire agreement between the Parties relating to  
9 the Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements,  
10 understandings, representations, and statements relating to this Settlement and the transaction  
11 contemplated hereby, whether oral or written and whether by a party or such party's legal counsel, are  
12 merged herein. No rights hereunder may be waived except in writing.

13 **Section 2.29 Binding on Assigns**

14 The provisions of this Settlement Agreement shall run in perpetuity. This Settlement  
15 Agreement shall be binding upon the Parties hereto and their spouses, heirs, administrators,  
16 representatives, executors, successors and assigns, and shall inure to the benefit of Defendant and the  
17 Released Parties, and their predecessors, successors, affiliates, subsidiaries, parent companies, partners,  
18 current and past employees, officers, directors, shareholders, insurers, agents, legal representatives, and  
19 benefit plans, each of which is entitled to enforce this Settlement Agreement.

20 **Section 2.30 Signatories**

21 It is agreed that because the members of the Settlement Class are so numerous, it is  
22 impossible or impractical to have each member of the Settlement Class execute this Settlement  
23 Agreement. It is agreed that this Settlement Agreement may be executed on behalf of the Settlement  
24 Class by Class Counsel and Plaintiffs; and shall have the same force and effect as if executed by each  
25 member of the Settlement Class, who will be notified of the Settlement by the Notice of Settlement.

26 **Section 2.31 Incorporation of Exhibits**

27 All exhibits attached hereto are incorporated by reference and are a material part of this  
28 Settlement Agreement. Any notice, order, judgment, or other exhibit that requires approval of the Court

1 must be approved without material alteration from its current form in order for this Settlement  
2 Agreement to become effective.

3 **Section 2.32 Reasonableness of Settlement Agreement**

4 The Parties jointly warrant that this is a fair, reasonable, and adequate settlement and  
5 have arrived at this settlement through arms-length negotiations, involving an experienced and well-  
6 regarded mediator, taking into account all relevant factors, present and potential.

7 **Section 2.33 California Law and Interpretation**

8 All terms of this Settlement Agreement and its exhibits will be governed and interpreted  
9 by and according to the laws of the State of California, without giving effect to any conflict of law  
10 principles or choice of law principles. If the Court determines that the Release of Claims in Section 2.7  
11 above is unenforceable, for whatever reason, this entire Settlement Agreement will become null and  
12 void *ab initio*.

13 **Section 2.34 Counterparts**

14 This Settlement Agreement may be executed in counterparts and/or by facsimile  
15 signature ("counterpart"), and when each party has signed and delivered at least one such counterpart,  
16 each counterpart shall be deemed an original, and, when taken together with other signed counterparts,  
17 shall constitute one fully-executed Settlement Agreement, which shall be binding upon and effective as  
18 to all Parties.

19 **Section 2.35 Confidential Documents**

20 Plaintiff and Class Counsel agree that none of the documents and information provided  
21 to them in discovery or at any other time during this Action shall be used for any purposes other than  
22 prosecution of this Action. Class Counsel shall not refer to, rely upon, or otherwise utilize any  
23 documents or information obtained during this Action to prosecute a separate action against Defendant  
24 and/or any Released Parties; however, nothing in this Section will be construed as a restraint on the  
25 right of any counsel to practice or a limitation on the rights that any Settlement Class Member or Class  
26 Counsel may have under any applicable federal, state, or local law to separately obtain documents or  
27 information from Defendants.

28 Plaintiff and Class Counsel agree that, no later than thirty (30) days after the conclusion

1 of the litigation, a party in the possession of confidential or highly confidential information, other than  
2 that which is contained in pleadings, correspondence, and deposition transcripts, shall either (a) return  
3 such documents no later than thirty (30) days after conclusion of this action to counsel for the party or  
4 non-party who provided such information, or (b) destroy such documents within the time period upon  
5 consent of the party who provided the information and certify in writing within thirty (30) days that the  
6 documents have been destroyed.

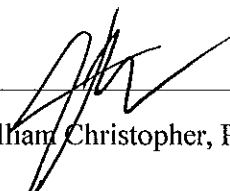
7  
8 **Section 2.36 Entire Agreement**

9 After this Settlement Agreement is fully executed by the Parties, it will constitute the  
10 entire agreement of the Parties. No oral representations, warranties, inducements, or writings have been  
11 made by any Party concerning this Settlement Agreement, other than those expressly stated herein.

12  
13 IN WITNESS WHEREOF, Plaintiffs and Defendant and their respective undersigned  
14 counsel have executed this Settlement Agreement as of the date(s) indicated on the lines below.


15 Date: January 24, 2020

16 By: \_\_\_\_\_

17   
William Christopher, Plaintiff

18 Date: January 24, 2020

19 By: \_\_\_\_\_

20   
Kandy Christopher, Plaintiff

21 Date: January \_\_\_\_, 2020

22 By: \_\_\_\_\_

23 Mark Carande, on behalf of Defendant, Residence  
24 Mutual Insurance Company

1 of the litigation, a party in the possession of confidential or highly confidential information, other than  
2 that which is contained in pleadings, correspondence, and deposition transcripts, shall either (a) return  
3 such documents no later than thirty (30) days after conclusion of this action to counsel for the party or  
4 non-party who provided such information, or (b) destroy such documents within the time period upon  
5 consent of the party who provided the information and certify in writing within thirty (30) days that the  
6 documents have been destroyed.

7  
8 **Section 2.36 Entire Agreement**

9 After this Settlement Agreement is fully executed by the Parties, it will constitute the  
10 entire agreement of the Parties. No oral representations, warranties, inducements, or writings have been  
11 made by any Party concerning this Settlement Agreement, other than those expressly stated herein.

12  
13 IN WITNESS WHEREOF, Plaintiffs and Defendant and their respective undersigned  
14 counsel have executed this Settlement Agreement as of the date(s) indicated on the lines below.

15 Date: January \_\_, 2020

By: \_\_\_\_\_

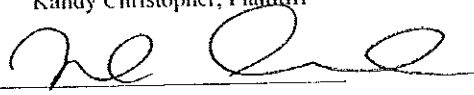
William Christopher, Plaintiff

16  
17  
18 Date: January \_\_, 2020

By: \_\_\_\_\_

Kandy Christopher, Plaintiff

19  
20  
21 Date: January 24, 2020

By:  \_\_\_\_\_

Mark Carande, on behalf of Defendant, Residence  
Mutual Insurance Company

22  
23  
24  
25  
26  
27  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

APPROVED AS TO FORM AND CONTENT ON BEHALF OF THE NAMED PLAINTIFF AND AS A SUBSTANTIVE RECOMMENDATION TO THE COURT ON BEHALF OF THE SETTLEMENT CLASS:

Date: January 17, 2020

McCATHERN, LLP

By: \_\_\_\_\_

  
Evan Selik  
Class Counsel for Representative Plaintiffs and the Class

APPROVED AS TO FORM AND CONTENT:

Date: January \_\_, 2020

MICHELMAN & ROBINSON, LLP

By: \_\_\_\_\_

Mona Hanna  
Attorneys for Defendant, Residence Mutual Insurance Company

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

APPROVED AS TO FORM AND CONTENT ON BEHALF OF THE NAMED PLAINTIFF AND AS  
A SUBSTANTIVE RECOMMENDATION TO THE COURT ON BEHALF OF THE SETTLEMENT  
CLASS:

Date: January \_\_, 2020

McCATHERN, LLP

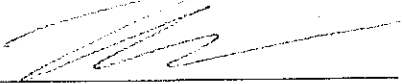
By: \_\_\_\_\_

Evan Selik  
Class Counsel for Representative Plaintiffs and the  
Class

APPROVED AS TO FORM AND CONTENT:

Date: January 27, 2020

MICHELMAN & ROBINSON, LLP

By:  \_\_\_\_\_

Mona-Hanna Vincent Loh  
Attorneys for Defendant, Residence Mutual  
Insurance Company