

1 Drew E. Pomerance, Esq., State Bar No. 101239  
2 ROXBOROUGH, POMERANCE & NYE, LLP  
3 5820 Canoga Avenue, Suite 250  
4 Woodland Hills, California 91367  
5 Telephone: (818) 992-9999  
6 Facsimile: (818) 992-9991

7 Mark Goshgarian, Esq., State Bar No. 105703  
8 John A. Marshall, Esq., State Bar No. 109557  
9 GOSHGARIAN & MARSHALL, PLC  
10 23901 Calabastas Road, Suite 2073  
11 Calabastas, California 91302-1542  
12 Telephone: (818) 591-9000  
13 Facsimile: (818) 591-0810

14 Attorneys for Plaintiff,  
15 SAM DONABEDIAN, Individually, and on  
16 Behalf Of Those Similarly Situated

17 Theresa A. Kristovich, Esq., State Bar No. 66490  
18 GORDON & REES LLP  
19 633 West 5th Street, 49th Floor  
20 Los Angeles, California 90071  
21 Telephone: (213) 576-5000  
22 Facsimile: (213) 680-4470

23 Attorneys for Defendants  
24 MERCURY INSURANCE COMPANY, et al.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

19 SAM DONABEDIAN, Individually, and on  
20 Behalf Of Those Similarly Situated,

21 Plaintiff,

22 v.

23 MERCURY INSURANCE COMPANY, a  
24 Corporation; MERCURY CASUALTY  
25 COMPANY; CALIFORNIA AUTOMOBILE  
26 INSURANCE COMPANY; AMERICAN  
27 MERCURY INSURANCE COMPANY;  
28 MERCURY INSURANCE GROUP, an  
unknown entity, and DOES 5 through 100,  
inclusive,

Defendant.

) Case No. BC 249 019

)  
)  
) **STIPULATION REGARDING**  
) **SETTLEMENT OF CLASS CLAIMS**

)  
) [Joint Motion for Preliminary Approval of Settlement and Temporary  
) and Conditional Class Certification, Parties' Separate Supporting  
) Memorandum of Points and Authorities and Declarations, [Proposed]  
) Order, and Stipulation Re: Temporary and Conditional Class  
) Certification Filed Separately But Concurrently]

) **DATE: May 11, 2007**  
) **TIME: 10:00 a.m.**  
) **DEPT.: 324**

1 IT IS HEREBY STIPULATED by and between Plaintiff, SAM DONABEDIAN, on Behalf  
2 of himself and All Others Similarly Situated (herein "Plaintiff" or "Class"), and Defendants,  
3 MERCURY INSURANCE COMPANY, MERCURY CASUALTY COMPANY, AND  
4 CALIFORNIA AUTOMOBILE INSURANCE COMPANY (collectively "Defendants"), as follows:

5 1. The parties settled the claims asserted in the class action complaint ("Action") and  
6 hereby stipulate to the settlement of this Class Action pursuant to the terms and conditions set forth  
7 in the Class Action Settlement Agreement ("Agreement"), attached hereto as Exhibit "1".

8 2. "Defendants" shall mean MERCURY INSURANCE COMPANY, MERCURY  
9 CASUALTY COMPANY, AND CALIFORNIA AUTOMOBILE INSURANCE COMPANY.

10 3. "The Plaintiff Class" shall mean each Plaintiff and every person in his or her  
11 individual capacity who was the purchaser of a California private passenger automobile insurance  
12 policy issued by Defendants with a policy effective date occurring on or after April 20, 1997 and  
13 before December 5, 2005, and whose premium did not include a Persistency Discount. [See  
14 Agreement, ¶ I(B)].

15 4. "The Class Representative" shall mean SAM DONABEDIAN, on Behalf of himself  
16 and All Others Similarly Situated.

17 5. "The Plaintiff Class Counsel" shall mean Roxborough, Pomerance & Nye LLP and  
18 Goshgarian & Marshall.

19 6. The Plaintiff Class contends that Defendants' use of the Persistency Discount  
20 violated Insurance Code §1861.02(c), in that they utilized the absence of prior insurance, in and of  
21 itself, as a criterion in determining premium. Defendants deny Plaintiffs' allegations, and deny that  
22 they acted improperly or otherwise violated the law with respect to the Persistency Discount which  
23 was approved by the Department of Insurance.

24 7. The Class Representatives and Defendants reached the following settlement for a  
25 total potential value of approximately \$45,000,000 which is contingent upon the satisfaction of all  
26 terms and conditions set forth below:

27 a. Defendants agree to a permanent injunction requiring them to offer a  
28 persistency discount which is in accordance with Department of Insurance

1 regulations.

2 b. Defendants will provide a Rebate Certificate for \$45 off the full policy term  
3 premium for a new insurance policy for each Class Member ("Certificate").  
4 The Certificate will be applicable to either a new insurance policy, or a  
5 qualified renewal insurance policy offered by Defendants. The Certificate for  
6 a new or qualified renewal policy shall be called the "Premium Remedy". A  
7 policy is new if during the ninety (90) day period immediately preceding  
8 completion of the application for the policy, the applicant has not been  
9 insured by a Defendant under a policy providing the same type of coverage.  
10 A qualified renewal insurance policy means that this Certificate may be used  
11 for renewal of an existing insurance policy with Defendants if: (1) the amount  
12 of any coverage is increased on renewal; or (2) the policyholder adds a type of  
13 coverage he did not previously have; or (3) an additional person or  
14 automobile is added to the policy.

15 c. In addition to the benefits described above, Class Counsel intend to apply to  
16 the Court for an award of attorneys' fees and reimbursement of expenses for  
17 services rendered, and reasonable expenses incurred, in connection with the  
18 Action. The reasonable fees, reimbursement of expenses and costs, including,  
19 without limitation, the fees of experts and consultants, as awarded by the  
20 Court to Class Counsel shall be paid to Class Counsel by Defendants up to an  
21 aggregate amount not to exceed One Million Five Hundred Seventy Five  
22 Thousand Dollars (\$1,575,000). The award of attorneys' fees and costs, if  
23 any, shall not affect the benefits due to the members of the Class. This  
24 amount reflects the benefit Class Counsel conferred on the Class.

25 9. The entire Agreement is conditioned upon the following:

26 a. The Plaintiff Class Counsel obtaining the following court orders in this  
27 action:  
28

- (1) A preliminary order defining the settlement class;
- (2) A preliminary order approving the entire Agreement;
- (3) An order directing the parties to provide the required notice of the settlement to the Plaintiff Class based upon the class member information provided by Defendants;
- (4) Approval from the Department of Insurance of Mercury's Premium Remedy;
- (5) An order that the entire cost of providing the Class Notice and administering the settlement shall be borne by Defendants;
- (6) A finding that all terms of the Agreement are in the best interests of the class and approving the entire Agreement;
- (7) A final order defining the settlement class;
- (8) A final order from the superior court approving all terms of the settlement;

b. Roxborough, Pomerance & Nye LLP and Goshgarian & Marshall shall also provide Defendants with a release of all claims against Defendants as reflected in the Agreement; and,

c. The occurrence of each of the four (4) matters contained in ¶ III.F of the Agreement.

10. In the event each of the conditions set forth in paragraph 9 is achieved, the terms and releases contained in the Agreement shall become effective on the Effective Date, as that date is defined in the Agreement. The claims released as of that date shall be defined as:

Any and all causes of action asserted in the Action by the Class, and any and all claims, demands, rights, liabilities and existed causes of action, known or unknown, including, but not limited to, any claims arising from alleged breaches of contract, breaches of the covenant of good faith and fair dealing, fraud, negligence, misrepresentation, and violation of Business and

1 Professions Code Sections 17200 et seq., and that have been, could  
2 have been, or could be asserted by any or all members of the class,  
3 against the Defendants, arising out of, based on, related to, or in  
4 any way respecting any acts, omissions, misrepresentations, facts,  
5 events, matters, transactions, or occurrences concerning or in any  
6 way associated with Defendants' use of the Persistency Discount  
7 and/or purported violation of Insurance Code Section 1861.02 (c),  
8 and subsection (a) but only to the extent that subsection (a) deals  
9 with the persistency rating factor, with respect to any private  
10 passenger automobile insurance policy issued by any of the  
11 Defendants with a policy effective date on or after April 20, 1997,  
12 and before December 5, 2005, now or in the future, whether or not  
13 alleged, recited, described or referred to in the Action. [See the  
14 "Settled Claims," as defined in ¶ I(K) of Exhibit "1"].

15 11. If the Court does not issue an order finally approving the settlement, or the settlement  
16 does not otherwise become effective for any reason whatsoever (e.g., one of the conditions set forth  
17 in paragraph 9 is not achieved), the proposed settlement shall not bind any party or have any legal  
18 effect and the parties shall return to the position they were in prior to the time the settlement was  
19 reached. The parties will return to their prior status to litigate and try all of their disputes which then  
20 remain at issue.

21 12. If, for whatever reason, the terms of this stipulation do not coincide with the terms of  
22 the Agreement attached hereto as Exhibit "1", the terms of the Agreement shall control. This  
23 Stipulation shall not be deemed to modify, change or otherwise alter the terms set forth in the  
24 written Agreement attached hereto as Exhibit "1".

25 13. In the interests of justice and judicial economy, counsel for Defendants and the  
26 Plaintiff Class Counsel hereby stipulate to the foregoing.  
27  
28

1 Dated: April 16, 2007

ROXBOROUGH, POMERANCE & NYE LLP

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3  
4 By: 

DREW E. POMERANCE,  
Attorneys for Plaintiff,  
SAM DONABEDIAN, Individually, and on  
Behalf Of Those Similarly Situated

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6  
7 Dated: April \_\_, 2007

GOSHGARIAN & MARSHALL, PLC

8  
9  
10 By: \_\_\_\_\_

MARK GOSHGARIAN  
Attorneys for Plaintiff  
SAM DONABEDIAN, Individually, and on  
Behalf Of Those Similarly Situated

11  
12  
13 Dated: April \_\_, 2007

GORDON & REES, LLP

14  
15  
16 By: \_\_\_\_\_

THERESA A. KRISTOVICH  
Attorneys for Defendants,  
MERCURY INSURANCE COMPANY, et al.

1 Dated: April 16, 2007

ROXBOROUGH, POMERANCE & NYE LLP

2  
3  
4 By: 

DREW E. POMERANCE,  
Attorneys for Plaintiff,  
SAM DONABEDIAN, Individually, and on  
Behalf Of Those Similarly Situated

5  
6  
7 Dated: April 16, 2007

GOSHIGARIAN & MARSHALL, PLC

8  
9  
10 By: 

MARK GOSHIGARIAN  
Attorneys for Plaintiff  
SAM DONABEDIAN, Individually, and on  
Behalf Of Those Similarly Situated

11  
12  
13 Dated: April 17, 2007

GORDON & REES, LLP

14  
15  
16 By: 

THERESA A. KRISTOVICH  
Attorneys for Defendants,  
MERCURY INSURANCE COMPANY, et al.

## SETTLEMENT AGREEMENT

This Class Action Settlement Agreement ("Agreement") is made and entered into by and among all members of the Class (as defined herein) and the Defendants (as defined herein) by their duly authorized counsel, subject to the approval of the Court and the Class.

### **I. DEFINITIONS**

A. "Action" means the lawsuit filed by Plaintiffs individually and on behalf of all others similarly situated, entitled Sam Donabedian, Individually, and on Behalf of Those Similarly Situated v. Mercury Insurance Company, a Corporation, and Does 1 Through 100, Inclusive, Los Angeles County Superior Court Case No. BC249019, filed on or about April 20, 2001, which subsequently was amended. Mercury has filed an answer to Plaintiff's Fourth Amended Complaint.

B. "Class" means each Plaintiff who was the purchaser of a California private passenger automobile insurance policy issued by Mercury Insurance Company, Mercury Casualty Company or California Automobile Insurance Company with a policy effective date occurring on or after April 20, 1997, and before December 5, 2005, and whose premium did not include a Persistency Discount.

C. "Class Counsel" means the law firms of Roxborough, Pomerance & Nye, LLP and Goshgarian & Marshall, PLC.

D. "Defendants" means Mercury Insurance Company, Mercury Casualty Company, or California Automobile Insurance Company. Hereinafter jointly referred to as "Defendants" or "Mercury".

E. "Department" means the California Department of Insurance, which acts on



behalf of the Commissioner.

F. **“Effective Date”** means the date upon which this Agreement becomes effective, which date shall occur after each of the following conditions has occurred:

- (a) the Court’s Order and Judgment of Final Approval is entered;
- (b) the expiration of the time for appeal from the Order and Judgment of Final Settlement Approval; and,
- (c) any appeal is final.

G. **“Notice”** means the Notice of Proposed Class Certification and Settlement of Class Action, substantially in the form of Exhibit “1” hereto.

H. **“Order and Judgment of Final Settlement Approval”** means the order of the Court finally approving this Settlement.

I. **“Persistency Discount”** means the Persistency Discount contained in Defendant’s rate filing with the Department.

J. **“Plaintiffs”** means the plaintiffs named in the Action: Sam Donabedian, individually and on behalf of all other similarly situated persons in the state of California.

K. **“Settled Claims”** means any and all causes of action asserted in the Action by the Class, and any and all claims, demands, rights, liabilities and existed causes of action, known or unknown, including, but not limited to, any claims arising from alleged breaches of contract, breaches of the covenant of good faith and fair dealing, fraud, negligence, misrepresentation, and violation of Business and Professions Code Sections 17200 et seq., and that have been, could have been, or could be asserted by any or all members of the class, against the Defendants, arising out of, based on, related to, or in any way respecting any acts, omissions,

misrepresentations, facts, events, matters, transactions, or occurrences concerning or in any way associated with Defendants' use of the Persistency Discount and/or purported violation of Insurance Code Section 1861.02 subsection (c) and subsection (a) but only to the extent that subsection (a) deals with the persistency rating factor, with respect to any private passenger automobile insurance policy issued by any of the Defendants with a policy effective date on or after April 20, 1997, and before December 5, 2005, now or in the future, whether or not alleged, recited, described or referred to in the Action. With respect to the Settled Claims, it is the intention of the parties hereto that, subject to the terms and conditions of this Agreement, including the Defendants' performance of their obligations under this Agreement, each of the members of the Class does hereby expressly waive and relinquish said claims, and expressly waive the provisions, rights and benefits of section 1542 of the California Civil Code, which provides:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor,”

and any and all provisions, rights, and benefits of any similar statute or law of California or of any other jurisdiction. The members of the Class each further acknowledge hereby that they are aware that they may hereafter discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but it is the intention of each member of the Class to, and each of them does hereby, fully, finally and forever settle and release any and all Settled Claims, known or unknown, suspected or unsuspected, that may

now exist, may hereafter exist, or heretofore have existed, and without regard to the subsequent discovery or existence of such different or additional facts.

## **II. DESCRIPTION OF THE ACTION AND ADMINISTRATIVE PROCEEDING**

### **A. THE ACTION**

On or about April 20, 2001, Plaintiffs, individually and on behalf off all others similarly situated, filed a class action suit, charging Mercury with unfair business practices pursuant to Business and Professions Code section 17200, seeking both restitution and injunctive relief. The complaint is based on the contention that Mercury implemented the Persistency Discount in violation of Insurance Code Section 1861.02.(c). Plaintiff filed a First Amended Complaint on March 13, 2002. On or about May 8, 2002, the Superior Court entered an order sustaining without leave to amend as to Defendant's demurrer the First Amended Complaint. Plaintiffs appealed the judgment of dismissal and on March 11, 2004, the Court of Appeal reversed the Superior Court's order of dismissal. Plaintiff filed their Second Amended Complaint on November 22, 2004, their Third Amended Complaint on January 21, 2005, and on June 28, 2005, the Fourth Amended and Supplemental Class Action Complaint. On February 20, 2007, Mercury filed an Answer to the Fourth Amended Complaint.

Through the Action, Plaintiffs challenge Defendants' ability to provide the Persistency Discount to new insureds based on their persistency with insurers other than Mercury, and contend that the Persistency Discount that was implemented by Mercury is in violation of California Law.

Defendants vigorously deny Plaintiffs' allegations, and deny that they acted improperly in providing the Persistency Discount. Defendants contend that the Department knowingly

approved varying forms of the Persistency Discount when it originally approved the class plan of Mercury in 1995, and then subsequently thereafter. The Defendants further assert that they each were required to charge the rates approved by the Department and would have violated state law by charging policyholders a premium other than that approved by the Department. Defendants contend that the Department encouraged Mercury to adopt a portable persistency discount, among other things, during a market conduct examination in 1994.

### **III. SETTLEMENT TERMS**

#### **A. Plaintiff Class Certification**

In connection with preliminary approval of this Agreement and settlement of the Action, the Court will be requested to certify a Class pursuant to California Code of Civil Procedure section 382 and Chapter 15 of the Los Angeles County Superior Court Rules. The certification of the Class shall be binding on the parties hereto only with respect to and only to effect the terms of the settlement. In the event that this Agreement is not granted final approval by the Court, any condition precedent is not satisfied, or this Agreement is terminated pursuant to its terms, then the certification of the Class shall be vacated without prejudice to the parties.

#### **B. Premium Remedy for Members of the Class**

The Defendants shall provide the following premium remedy to qualifying Class members:

##### **Premium Rebate Certificate**

Each member of the Class who does not opt out of this settlement shall receive a Premium Rebate Certificate for \$45.00 to be used for either a “new” insurance policy or a qualified “renewal” insurance policy offered by Mercury as provided herein (hereinafter

sometimes referred to as the "Premium Remedy").

A policy is new if, during the ninety (90) day period immediately preceding completion of the application for the policy, the applicant has not been insured by a Defendant under a policy providing the same type of coverage.

A qualified "renewal" insurance policy offered by Mercury for purposes of this settlement means that the applicant/policyholder may use the Premium Rebate Certificate on renewal of an existing Mercury insurance policy if: (1) the dollar amount of any coverage on renewal is increased; or (2) the applicant/policyholder adds a type of coverage that he/she previously did not have; or (3) an additional automobile or person is added onto the insurance policy at renewal.

Defendants shall mail the Premium Rebate Certificate form to eligible Class members within sixty (60) days after the Effective Date of the Settlement.

Each qualified Class member shall be able to transfer his/her Premium Rebate Certificate one time to a spouse, child or parent, who cannot be a Mercury insurance agent or broker. Only one Premium Rebate Certificate will be issued for each policy without regard to the number of renewals of the policy and the number of vehicles or persons insured thereunder. The Premium Rebate Certificate will be good for twenty-four (24) months from the date of issuance and is not combinable with any other Premium Rebate Certificate. The Premium Rebate Certificate must accompany the application for insurance submitted by your agent or broker.

**C. Preliminary Approval and Notice Order**

The parties hereto shall request from the Court an order (the "Preliminary Approval and Notice Order") specifically including the provisions that:

1. Certify the Class for settlement purposes only.
2. Appoint Roxborough, Pomerance & Nye, LLP, and Goshgarian & Marshall, PLC, as "Class Counsel", and appoint, for settlement purposes only, Plaintiff, Sam Donabedian, as "Class Representative".
3. Approve this Agreement preliminarily, subject to the right of members of the Class to be heard on the terms and reasonableness of the settlement at the Formal Fairness Hearing.
4. Preliminary approval of this settlement is conditional upon the Department of Insurance approving the Premium Remedy in this settlement.
5. Approve a form of Notice, for mailing to all known members of the Class, which shall provide notice of the Formal Fairness Hearing.
6. Direct counsel for the Defendant within forty five (45) days after the entry of the Preliminary Approval and Notice order, or such other date fixed by the Court, to mail or cause to be mailed, at the Defendants' expense, the Class Notice to those members of the Class who can be identified through Defendants' private passenger automobile insurance records, substantially in the form of Exhibit "1".
7. Find that the mailing described above constitutes the best notice practicable under the circumstances, and is due and sufficient notice to the Class, and that the Notice fully satisfies the requirements of due process of California Code of Civil Procedure Section 382.
8. Set a hearing (the "Formal Fairness Hearing") to be held by the Court to determine whether there exists any reasonable basis why the settlement should not be approved

as being fair, reasonable, adequate, lawful, and in the best interests of the Class and why judgment should not be entered thereon.

9. Provide that any Class Member who seeks to be excluded from the settlement must provide written notice prior to a date certain as ordered by the Court. Any objections to the proposed settlement shall be heard, and any papers submitted in support of said objections shall be received and considered by the Court at the Formal Fairness Hearing (or at such other times as may be directed by the Court), only if, on or before a date to be specified in the notice, persons making objections shall file notice of their intentions and copies of such papers they propose to submit at the hearing with the Clerk of the Court on or before the date specified in the Notice and, on or before such date, such papers are served in accordance with the instructions contained in the Notice.

10. Provide that Class Counsel will apply for approval by the Court of their request that the Defendants pay attorneys' fees and costs, with the hearing thereon at the same date and time of the Formal Fairness Hearing, with the Notice to inform members of the Class of the amount of the application and the procedure for comment thereon.

11. Provide that Defendants be ordered to pay all costs of notice to the Class and all costs of administration..

12. Provide that the Formal Fairness Hearing may, from time to time and without further notice to the Class, be continued or adjourned by order of the Court.

**D. Attorneys' Fees for Class Counsel**

1. The Defendants acknowledge that the experience and conduct of Class Counsel contributed to achieving this settlement, which confers substantial benefits to the Class.

The parties agree that Class Counsel is entitled to an award of attorneys' fees for services rendered and reimbursement of costs for reasonable expenses incurred in connection with the Action. Class Counsel will apply to the Court at the Formal Fairness Hearing for an award of attorneys' fees and reimbursement of expenses for services rendered, and reasonable expenses incurred, in connection with the Action in an aggregate amount not to exceed One Million Five Hundred Seventy Five Thousand Dollars (\$1,575,000), to which Defendants agree. The attorneys' fees are part of an overall settlement fund with a potential value of approximately \$45 million, consisting of the estimated value to the Class of the Premium Remedy, injunction, and attorneys' fees.

2. The reasonable fees, expenses and costs, including, without limitation, the fees of experts and consultants, as awarded by the Court to Class Counsel shall be paid to Class Counsel by the defendants up to an aggregate amount not to exceed One Million Five Hundred Seventy-Five Thousand Dollars (\$1,575,000). Payment will be 15 days after the expiration of the time for appeal from the Order and Judgment of Final Settlement Approval. The Defendants agree to and will not oppose, directly or indirectly, an application for a fee and expense award to Class Counsel that does not exceed One Million Five Hundred Seventy-Five Thousand Dollars (\$1,575,000) and will not appeal a fee and expense award to Class Counsel that does not exceed One Million Five Hundred Seventy-Five Thousand Dollars (\$1,575,000). Defendants agree that any fees and costs awarded to or on behalf of the intervenor, The Foundation for Taxpayer and Consumer Rights, or its counsel shall not impact the Defendants' agreement to pay Class Counsel attorney fees and costs of One Million Five Hundred Seventy Five Thousand Dollars (\$1,575,000).



a. If an appeal from the Order and Judgment of Final Settlement Approval is filed, then Defendants shall place the amount of attorneys' fees awarded into an interest bearing account for the benefit of Class Counsel. The attorneys' fees awarded, plus accrued interest shall be paid to Class Counsel within 15 days after any appeal is final or dismissed.

4. Class Counsel, Roxborough, Pomerance & Nye, LLP, and Goshgarian & Marshall, PLC, shall allocate fees and expenses between themselves, provided that each such counsel prior to receiving payment for such fees and costs, shall first agree in writing delivered to counsel for Defendants of said allocation.

5. Neither a reduction of fees and/or costs to Class Counsel in the amount requested nor a reversal on appeal of any such fee and cost award, shall constitute grounds for cancellation or termination of the Agreement.

**E. Judgment to be Entered**

At the Formal Fairness Hearing, the parties hereto shall request from the Court an Order of Judgment of Final Settlement Approval, which shall:

1. Approve finally this Agreement as fair, reasonable, adequate, and in the best interests of the Class and in accordance with California Law, and direct the parties to consummate the settlement in accordance with this Agreement.

2. Find the mailing constitutes the best notice practicable under the circumstances, and is due and sufficient notice to the Class, and that the Notice fully satisfies the requirement of due process and California Code of Civil Procedure section 382.

3. Dismiss the Settled Claims with prejudice in favor of Defendant, without costs to any party as against any other, and adjudge that the Defendants are released and

discharged from any and all liability as to the Settled Claims, subject to their performance of all terms and conditions of this Agreement.

4. Bar and permanently enjoin members of the Class from prosecuting, commencing or continuing against the Defendants in any jurisdiction any and all claims, causes of action or any lawsuits or administrative proceedings that they had, have or could have, based upon any of the Settled Claims, subject to the terms and conditions of this Agreement.

5. Permanently enjoin Defendants from offering a Persistency Discount which is contrary to California law, including any regulations promulgated by the Department.

6. Hear and determine the application of Class Counsel for an award of fees and reimbursement of costs.

7. Reserve continuing jurisdiction, without affecting the finality of the judgment entered, over: (a) implementation of this settlement and administration of the Agreement; (b) the Action, until the judgment contemplated hereby has become effective and each and every act agreed to be performed by the parties hereto shall have been performed pursuant to this Agreement; (c) all parties to this Agreement, including all members of the Class, for the purpose of enforcing and administering the Agreement and other documents contemplated by, or executed in connection with the Agreement; and (d) any other matters related or ancillary hereto.

8. The Order and Judgment of Final Settlement Approval shall find that there is no just reason for delaying the entry of Order and Judgment of Final Settlement Approval and shall direct the Clerk of the Court to enter the judgment pursuant to the California Code of Civil Procedure Section 664.6.

**F. Contingencies**

This Agreement and the consideration therefore are offered and given in return for, and are conditioned and contingent upon, the following:

1. There must be an Effective Date;
2. The Court must enter the Order and Judgment of Final Settlement Approval;
3. No more than an 8% opt out, however, Mercury can waive this contingency; and,
4. The Department of Insurance must approve the Premium Remedy set forth in this agreement.

**G. Effect of Disapproval or Termination of Settlement**

1. In the event that the Court, or in the event of an appeal, any appellate court of competent jurisdiction, refuses to approve or materially modifies the settlement or this Agreement or any part of it, including the Order and Judgment of Final Settlement Approval, the party or parties to the settlement whose interest is materially adversely affected thereby, at their respective options, may cancel and terminate this Agreement and the settlement by giving all other parties written notice of termination no later than fifteen (15) days following the date of receipt by the terminating party of the order disapproving or materially modifying the settlement.
2. Neither a reduction nor a reversal on appeal of any amount of fees, costs, or expenses awarded by the Court to Class Counsel shall be construed as a material modification of the terms of this Agreement.

3. If this Agreement is terminated pursuant to its terms or due to the failure to occur of a condition precedent specified in Section III.F. above, unless the parties mutually agree in writing otherwise, then: (a) the Action shall revert forthwith to its status as of April 2, 2007, and shall proceed in all material respects as if : (i) this Agreement and related orders and papers had not been executed, and (ii) there had been no written or oral communications regarding settlement; and (b) this Agreement, related orders and papers, and all written and oral communications regarding settlement shall not be used by any party for any purpose.

#### **IV. BENEFITS CONFERRED BY THE ACTION**

As a result of this Agreement, Defendants will only provide or offer persistency discounts that are in compliance with California law. Further, class members will receive the premium remedy described above.

Class Counsel have obtained and reviewed relevant documents through their investigation to evaluate the strength of the claims of the Defendants and to assess the prospects for early settlement. Class Counsel have met with current employees and officers of the Defendants and others, as well as the settlement conference judge, in the course of the litigation and settlement negotiations. The parties have agreed, subject to approval by the Court, on a proposed settlement under which the Defendants will agree not to provide or offer the Persistency Discount and/or Persistency Discounts that are not in compliance with California law. In addition, the parties have agreed that all Class Members shall be entitled to the premium remedy described above.

#### **V. REASONS FOR SETTLEMENT**

The parties claim each and all of the contentions made by them in the Action have merit.

Plaintiffs recognize the expense and length of continued proceedings necessary to continue the litigation against Defendants and through trial and appeals. Plaintiffs have been litigating this case against the Defendants for over five (5) years in both the Los Angeles County Superior Court and California Court of Appeal. Plaintiffs also have taken into account the uncertainty and risk of the outcome of litigation, especially in a complex action as this, the difficulties and delays inherent in such litigation and economic benefit to policyholders available through prompt implementation of the settlement. Class Counsel are also mindful of problems of proof under, and possible defenses to, the claims asserted. Class Counsel have, therefore, determined that the settlement set forth in this Agreement is in the best interest of the Class.

**VI. DEFENDANTS' DENIAL OF WRONGDOING**

The Defendants specifically disclaim any liability whatsoever relating to any of the Settled Claims, expressly denying having engaged in any wrongful or illegal activity or having violated any law or regulation or that any person has suffered any harm or damage as a result of the Settled Claims, and are making this settlement solely to avoid continued litigation. All discussions related to this Agreement have been and are for settlement purposes only, and all agreements and other terms and conditions contained within this Agreement and all other related documents are entered into for settlement purposes only and solely to effect this Agreement.

**VII. NO DETERMINATION OF WRONGDOING**

The Court has not made a finding that the Defendants engaged in any wrongdoing or wrongful conduct or otherwise acted improperly or in violation of any law or regulation in any respect.

### **VIII. INADMISSIBILITY**

Neither (a) this Agreement, (b) any document referred to herein, (c) any action taken to carry out this Agreement, nor (d) any written or oral communication related to the settlement of this Action is, may be construed as, or may be used as an admission by or against the Plaintiffs that any of their claims are without merit. Neither (a) this Agreement, (b) any document referred to herein, (c) any actions taken to carry out this Agreement, nor (d) any written or oral communication related to the settlement of this Action is, may be construed as, or may be used as an admission by or against the Defendant of any fault, wrongdoing, or liability whatsoever or for any purpose in this or any other proceeding.

### **IX. AUTHORITY OF COUNSEL**

A. Class Counsel affirms and represents that, as of the date of this Agreement, all counsel representing Plaintiffs and the Class in the Action have been informed as to the substance of the settlement and no such Class Counsel has objected. Class Counsel, on behalf of the Class, is authorized to take all appropriate action required or permitted to be taken by the Class pursuant to this Agreement to effectuate its terms, and is also authorized to enter into a modification or amendment of this Agreement on behalf of the Class as appropriate.

B. Undersigned counsel for the Defendants are authorized to execute this Agreement on behalf of their respective clients.

### **X. MISCELLANEOUS PROVISIONS**

A. Prior to entry of the Order and Judgment of Final Settlement Approval, this Agreement may be amended or modified by mutual written agreement of the parties hereto, but any such amendment or modification shall not be deemed a waiver of any prior or subsequent

breach of this Agreement unless so specified.

**B.** The waiver by one party of any breach of this Agreement by any other party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

**C.** This Agreement constitutes the entire agreement between the Plaintiffs, the Class, Class Counsel, and the Defendants. No representations, warranties, or inducements have been made to any party concerning this Agreement other than the representations, warranties, and covenants contained and memorialized herein.

**D.** Neither the Defendants nor their attorneys have made any representation or warranty, expressed or implied, with respect to any tax-related issue. Members of the Class should consult with their personal tax advisors.

**E.** All terms of this Agreement shall be governed by and interpreted according to the laws of the State of California.

**F.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the parties to this Agreement shall exchange among themselves original signed counterparts.

**G.** The Plaintiffs and the Defendants shall cooperate in presenting such papers to the Court, in preparing such other documents, and doing all such things as may be necessary to effectuate the purposes and intent of this Agreement.

**H.** This Agreement shall be binding upon and insure to the benefit of the Plaintiffs, members of the Class, the Defendants, and any corporation, partnership or other entity into or with which any Defendant may merge, consolidate, or reorganize.

**I.** Prior to the Effective Date, no party shall take any steps to prosecute or continue

to prosecute the Action except to take such steps as are necessary to implement this Agreement.

**J.** The parties to this Agreement waive any appeal from the Court's Order and Judgment of Final Settlement Approval as between themselves on the terms described herein. However, the parties hereto do not waive the right to file a cross-appeal with respect to an appeal filed by any class member, person or entity not a party to this Agreement.

**K.** Plaintiffs and Class Counsel agree that they will not disseminate any press release regarding (1) the Action, (2) any matters raised in the Action, or (3) this Agreement.

**L.** Class Counsel agrees to cooperate reasonably with Defendants in post-settlement administration of this Agreement.

**M.** Any notice required or permitted to be given under this Agreement, including notice of termination, shall be sent by United States certified mail, return receipt requested

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addressed as follows:

If to Plaintiffs:

Drew Pomerance, Esq.  
Roxborough, Pomerance & Nye, LLP  
5820 Canoga Avenue, Suite 250  
Woodland Hills, CA 91367

Mark Goshgarian, Esq.  
Goshgarian & Marshall, PLC  
23901 Calabasas Road, Suite 2073  
Calabasas, CA 91302

If to Defendants:

Theresa A. Kristovich, Esq.  
Gordon & Rees, LLP  
633 West Fifth Street, Suite 4900  
Los Angeles, CA 90071

IN WITNESS WHEREOF, the parties hereto, through counsel, have executed this  
Agreement as of April 16, 2007.

**Roxborough, Pomerance & Nye, LLP**

By: 

Drew Pomerance  
Counsel for the Class

**Goshgarian & Marshall, PLC**

By: \_\_\_\_\_  
Mark Goshgarian  
Counsel for the Class

**Mercury Insurance Company, Mercury Casualty, and California Automobile Insurance Company**

By: \_\_\_\_\_  
Gabriel Tirador, Authorized Officer

**As to Form and Content:**  
**Gordon & Reese, LLP**

By: \_\_\_\_\_  
Theresa A. Kristovich  
Counsel for Defendants

addressed as follows:

If to Plaintiffs:

Drew Pomerance, Esq.  
Roxborough, Pomerance & Nye, LLP  
5820 Canoga Avenue, Suite 250  
Woodland Hills, CA 91367

Mark Goshgarian, Esq.  
Goshgarian & Marshall, PLC  
23901 Calabasas Road, Suite 2073  
Calabasas, CA 91302

If to Defendants:

Theresa A. Kristovich, Esq.  
Gordon & Rees, LLP  
633 West Fifth Street, Suite 4900  
Los Angeles, CA 90071

IN WITNESS WHEREOF, the parties hereto, through counsel, have executed this

Agreement as of April \_\_\_\_\_, 2007.

**Roxborough, Pomerance & Nye, LLP**

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

Drew Pomerance  
Counsel for the Class  
Goshgarian & Marshall, PLC

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

Mark Goshgarian  
Counsel for the Class

**Mercury Insurance Company, Mercury Casualty, and California Automobile Insurance Company**

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

Gabriel Tirador, Authorized Officer

**As to Form and Content:  
Gordon & Reese, LLP**

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

Theresa A. Kristovich  
Counsel for Defendants

PROOF OF SERVICE

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF LOS ANGELES )

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5820 Canoga Avenue, Suite 250, Woodland Hills, California 91367.

On April 18, 2007, I served the foregoing document described as **STIPULATION REGARDING SETTLEMENT OF CLASS CLAIMS**, on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

[See attached Service List]

- ☒ **BY U.S. MAIL:** As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Woodland Hills, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☐ **BY OVERNIGHT MAIL (OVERNITE EXPRESS OVERNIGHT DELIVERY):**  
I caused such envelope(s) to be delivered by overnight mail, with next business day service to the addresses listed above.
- ☒ **BY PERSONAL SERVICE:** I caused such envelope to be hand delivered to the addressee listed above.
- ☒ **BY EMAIL:** I caused such documents listed above to be transmitted via e-mail to the number(s) set forth above.
- ☒ **BY FACSIMILE:** I caused such documents listed above to be transmitted via facsimile to the number(s) set forth above.
- ☒ **STATE:** I declare under penalty of perjury and under the laws of the State of California that the foregoing is true and correct.

Executed on April 18, 2007, at Woodland Hills, California.

  
LOURDES CASAS

SERVICE LIST

*Sam Donabedian, et al. v. Mercury Insurance Company, et al.*  
Los Angeles County Superior Court Case No. BC 249019

Theresa A. Kristovich, Esq.  
GORDON & REES, LLP  
633 West 5th Street, 49th Floor  
Los Angeles, CA 90071  
Facsimile: (213) 680-4470  
[tkristovich@gordonrees.com](mailto:tkristovich@gordonrees.com)

*Served Via U.S. Mail Only*

Mark Goshgarian, Esq.  
GOSHGARIAN & MARSHALL, PLC  
23901 Calabasas Road, Suite 2073  
Calabasas, California 91302-1542  
Facsimile: (818) 591-0810  
[mgoshgarian@sbcglobal.net](mailto:mgoshgarian@sbcglobal.net)

*Served Via U.S. Mail Only*

Harvey Rosenfield  
Lawrence Markey  
The Foundation for Taxpayer and Consumer Rights  
1750 Ocean Park Blvd., Suite 200  
Santa Monica, California 90405  
Facsimile: (310) 392-8874  
[harvey@consumerwatchdog.org](mailto:harvey@consumerwatchdog.org)

*Served Via Hand Delivery Only*

Mark Chavez  
Chavez & Gertler LLP  
42 Miller Ave.  
Mill Valley, CA 94941  
Phone: (415)381-5599  
Facsimile: (415)381-5572  
[mark@chavezgertler.com](mailto:mark@chavezgertler.com)

*Served By Electronic Mail and Facsimile Only*

Gary Cohen, General Counsel  
The Department of Insurance  
Legal Division, Office of the Commissioner  
45 Fremont Street, 23<sup>rd</sup> Floor  
San Francisco, California 94105  
[cohenG@insurance.ca.gov](mailto:cohenG@insurance.ca.gov)

*Served Via U.S. Mail Only*