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**IN THE UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA**

RALPH SHAFFER, individually and
on behalf of all others similarly
situated,

Plaintiff,

vs.

CONTINENTAL CASUALTY
COMPANY, and CNA FINANCIAL
CORPORATION dba CNA LTC.,

Defendants.

CASE NO. CV 06-~~2355~~-PSG (PJWx)

**~~[PROPOSED]~~ PRELIMINARY
APPROVAL ORDER**

Date: January 14, 2008
Time: 1:30 PM
Crtrm: 790

~~[PROPOSED]~~ ORDER

The Court has received the Stipulation of Settlement (“Agreement” or “Settlement Agreement”), entered into by and between (1) Plaintiffs Ralph Shaffer, Samuel Loeb, and Susan Souveroff (“Plaintiffs” or “Class Representatives), on behalf of themselves, and on behalf of the Class hereinafter defined; and (2) Defendants Continental Casualty Company, Valley Forge Life Insurance Company, and CNA Financial Corporation (“Defendants” or “the Company”).

The Court having reviewed the Settlement Agreement and the exhibits attached to the Settlement Agreement, and good cause appearing,

IT IS HEREBY ORDERED as follows:

1. The Court, for purposes of this order (the “Order”), adopts all defined terms as set forth in the Settlement Agreement;

2. The Court preliminarily approves the Settlement as sufficiently fair and reasonable to warrant sending notice to the Class;

3. Solely for purposes of effectuating the Settlement, the Court hereby amends the class definition as follows (the “Settlement Class”): all individuals nationwide who had in-force an individual Premier, Classic, Preferred Advantage, Preferred Advantage TQ or Classic TQ Long-Term Care Policy numbered P1-18215, P1-18876, P0-18876, P1-21295, P1-21300, P1-21305, P0-21295, P0-21300, P0-21305, P1-N0022, P1-N0023, P1-N0026, P1-N0027, P1-N0030, P1-N0031, P1-N0034, P1-N0035, P1-N0066, P1-N0070, P0-N0022, P0-N0023, P0-N0026, P0-N0027, P0-N0030, or P0-N0034 purchased from Continental Casualty Company or Valley Forge Life Insurance Company; except that, notwithstanding the foregoing, the Class does not include any of the following: (1) persons whose policies lapsed before receiving notice of a premium rate increase; (2) persons who received claim payments under their policies before November 15, 2007; (3) persons who, as of November 15, 2007, lapsed their policies within 120 days

1 following a rate increase of less than 50% where the total increase, when combined
2 with all past increases (if any), was less than the contingent nonforfeiture threshold
3 percentage amount specified by the NAIC Model Regulation for that person's issue
4 age, as set forth in Exhibit B of the Stipulation of Settlement; (4) persons who
5 owned Policy forms numbered P0-N0023, P0-N0027, P1-N0023, P1-N0027, P1-
6 N0031, or P1-N0035 but lapsed or cancelled their Policies before November 15,
7 2007; and (5) persons who are deceased as November 15, 2007;

8 4. For purposes of effectuating the Settlement, the Court hereby
9 appoints as representatives of the Settlement Class Ralph Shaffer, Samuel Loeb
10 and Susan Souveroff and appoints Lead Counsel Kanner & Whiteley, as Lead
11 Class Counsel for the Settlement Class. The Court further appoints Perry Pearce
12 Benton, Richard Arsenault and J.R. Whaley of Neblett, Beard & Arsenault, and
13 Wayne Kreger and Gillian Wade of Milstein, Adelman & Kreger, LLP as Class
14 Counsel;

15 5. With respect to the Settlement Class, and solely for the purposes of
16 effectuating the Settlement, this Court expressly finds and concludes that the
17 requirements of Fed. R. Civ. P. 23(a) and 23(b)(2) are satisfied as (a) the Class
18 Members are so numerous that joinder is impracticable, (b) there are questions of
19 law and fact common to the Class Members which predominate over any
20 individual questions, (c) the claims of the Lead Plaintiffs are typical of the claims
21 of the Class Members, (d) the Lead Plaintiffs and their counsel have fairly and
22 adequately represented and protected the interests of all of the Class Members, and
23 (e) a class action is superior to other available methods for the fair and efficient
24 adjudication of the controversy;

25 6. The class certification and counsel designations shall be automatically
26 deleted if the Settlement Agreement is terminated or is disapproved in whole or in
27 party by the Court, any appellate court, or any of the Parties, in which event the
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1 Settlement Agreement or the fact that it was entered into shall not be offered,
2 received, or construed as an admission or as evidence for any purpose, including as
3 a basis for any argument that certification of any class is appropriate;

4 6. This Court will hold a Fairness Hearing on **May 5, 2008 at 1:30 PM**
5 to consider the fairness, reasonableness and adequacy of the proposed Settlement
6 as well as the award of costs, fees and incentive awards;

7 7. The Court approves the Notice substantially in the form of Exhibit
8 "E" to the Settlement Agreement for distribution to Settlement Class Members.

9 8. The Court approves the Notice methodology described in the
10 Settlement Agreement;

11 9. The Court approves the Election of Benefits Forms substantially in the
12 form of Exhibit "F" to the Settlement Agreement for distribution to Settlement
13 Class Members;

14 10. The Company is directed to mail or to cause the Class Notice to be
15 mailed to each Class Member who can be identified through reasonable effort by
16 first class, postage prepaid, to such Class Member's last known address no later
17 than 60 days before the Final Fairness Hearing;

18 11. The Company is directed to cause the Class Notice to be published on
19 the Settlement Website no later than 60 days before the Fairness Hearing;

20 12. The Court finds that the Notice to be provided to Class Members in
21 this case, including both the Class Notice and the methodology by which the Class
22 Notice will be disseminated: (a) is the best practicable notice; (b) is reasonably
23 calculated, under the circumstances, to apprise the Class Members of the pendency
24 of the Action and of their right to object or to exclude themselves from the
25 proposed Settlement; (c) is reasonable and constitutes due, adequate and sufficient
26 notice to all persons entitled to receive notice; and (d) meets all applicable
27 requirements of the Federal Rules of Civil Procedure, the Class Action Fairness
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1 Act, the United States Constitution (including the Due Process Clause), the Rules
2 of Court, and any other applicable law;

3 13. The Settlement Parties are hereby authorized to: (a) establish the
4 means necessary to administer the Proposed Settlement and Benefits Forms in
5 accordance with this Settlement Agreement; and (b) retain or specially employ one
6 or more Administrators to help administer the proposed Settlement, including the
7 Notice provisions, in accordance with the Settlement Agreement;

8 14. Class Members who wish to participate in the Settlement shall
9 complete and submit a Benefits Form postmarked by the date specified in the Class
10 Notice, which must be postmarked no later than 30 days before the Final Fairness
11 Hearing. Class Members who do not elect a benefit to which they are entitled by
12 submitting a Benefits Form postmarked by the date specified in the Class Notice or
13 who do not properly elect a benefit to which they are entitled, and who maintain
14 Policies with the Company, shall be limited to the Settlement Benefit described in
15 Section IV(A)(1) of the Settlement Agreement (the “Enhanced Contingent
16 Nonforfeiture Benefit”). Class Members Who Lapsed Due to Premium Increase
17 who do not properly submit the Benefits Form requesting the Paid Up Benefit and
18 certifying that they lapsed their Policies due to a premium rate increase postmarked
19 by the date specified on the Class Notice will not receive any benefits under this
20 Agreement;

21 15. Each Class Member who wishes to exclude himself or herself from
22 the Class must submit a valid and timely written request for exclusion, postmarked
23 by the date specified on the Class Notice, which will be no later than 30 days
24 before the Final Fairness Hearing, to the address provided in the Class Notice;

25 16. Any Class Member who does not submit a valid and timely written
26 request for exclusion from the Class will be bound by all proceedings, orders, and
27 judgments in this Action relating to the Settlement Agreement, even if such Class
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1 Member has previously initiated or subsequently initiates individual litigation
2 against any Defendant or Releasees or other proceedings involving Released
3 Claims;

4 17. Each Class Member who wishes to object to the fairness,
5 reasonableness or adequacy of the Settlement Agreement, to any terms of the
6 proposed Settlement, or to the proposed Attorneys' Fees and Expense, must deliver
7 to Lead Counsel and Defendants' Counsel and file with the Court by the date
8 specified on the Class Notice, which must not be later than 30 days before the
9 Final Fairness Hearing, or at such other time as the Court may direct, a statement
10 each such objection, as well as the specific reasons, if any, for each objection,
11 including any legal support the Class Member wishes to bring to the Court's
12 attention and any evidence the Class Member wishes to introduce in support of
13 each such objection, or be forever barred from objecting;

14 18. Any attorney hired by a Class Member at that Class Member's
15 expense for the purpose of objecting to the fairness, reasonableness, or adequacy of
16 the Settlement Agreement, to any terms of the proposed Settlement, or to the
17 proposed Attorneys' Fees and Expenses must file with the Court and deliver to
18 Lead Counsel and Defendants' Counsel a notice of appearance by the date
19 specified on the Class Notice, which will be no later than 30 days before the Final
20 Fairness Hearing, or as the Court otherwise may direct;

21 19. Any Class Member who files and serves a written objection and who
22 intends to make an appearance at the Final Fairness Hearing, either in
23 person or through counsel hired at that Class Member's expense, must deliver to
24 Lead Counsel and Defendants' Counsel and file with the Court by the date
25 specified in the Class Notice, which will be no later than 30 days before the Final
26 Fairness Hearing, or as the Court otherwise may direct, a notice of intention to
27 appear and a statement identifying any documents the Class Member will seek to
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1 introduce or witnesses the Class Member will seek to call at the Final Fairness
2 Hearing;

3 20. The Company or their Administrator(s) is directed to rent one or
4 more post-office boxes or to otherwise make arrangements to receive requests for
5 exclusion and any other communications.

6 21. Defendants' Counsel and Lead Counsel, and any other counsel for
7 Plaintiffs or the Class, must promptly furnish each other with copies of any and all
8 objections or written requests for exclusion that might come into their possession;

9 22. A means for individuals filing objections must be provided to allow
10 any objector, at their own expense, at Lead Counsel's office, access to the
11 discovery materials in this Action, provided that such individuals shall not be given
12 access to these materials unless and until they enter into the Stipulation and Order
13 of Confidentiality agreed upon by Class Counsel and Defendants;

14 23. The Company, including its agents or other representatives and any
15 other retained personnel, is authorized to communicate with Class Members and
16 other present or former policyholders about the terms of the proposed Settlement,
17 and to engage in any other communications within the normal course of the
18 Company's business;

19 24. All Class Members who have not timely excluded themselves from
20 the Class are preliminarily enjoined from filing, commencing, prosecuting,
21 intervening in, or participating in (as a Class Member or otherwise) in any lawsuit
22 in any jurisdiction based on or relating to the claims and causes of actions, or the
23 facts and circumstances relating to such claims and causes of actions, in the
24 Actions or to the Released Claims;

25 25. All persons are preliminarily enjoined from filing, commencing, or
26 prosecuting a lawsuit as a class action on behalf of Class Members who do not
27 timely exclude themselves (including by seeking to amend a pending complaint to
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1 include class allegations or seeking class certification in a pending action), based
2 on or relating to the claims and causes of action, or the facts and circumstances
3 relating to such claims and causes of action, in the Actions or to the Released
4 Claims;

5 26. Any application for an award attorneys' fees and reimbursement of
6 expenses, and any briefs supporting the Settlement, or the application for an award
7 of attorneys' fees and reimbursement of expenses, shall be served and filed no later
8 than seven (7) days before the Final Fairness Hearing;

9 27. All proceedings in the Action are stayed until further order of the
10 Court, except as may be necessary to implement the Settlement or comply with the
11 terms of the Settlement Agreement or this Order.

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14 **IT IS SO ORDERED.**

15 DATE: 01/14/ 2008

PHILIP S. GUTIERREZ
Honorable Philip S. Gutierrez
Judge of the United States District Court,
Central District

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