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4 CALIFORNIA DEPARTMENT OF  
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8 Attorneys for Complainant

9 BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE  
10 OF THE STATE OF CALIFORNIA

11 IN THE MATTER OF THE ACCUSATION  
12 AGAINST:

13 Care 1st Health Plan,

14 Respondent.

Enforcement Matter Nos.: 16-235<sup>1</sup>

OAH No.: 2018030566

**SETTLEMENT AGREEMENT AND  
ORDER OF THE DIRECTOR OF THE  
DEPARTMENT OF MANAGED HEALTH  
CARE**

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19 The parties to the above-entitled Office of Administrative Hearings (OAH) Case and  
20 Department of Managed Health Care Enforcement Matter agree, settle and resolve this matter  
21 as follows:

- 22 1. **Parties.** The parties (collectively Parties, or individually party) to this Settlement  
23 Agreement and Order of the Director of the Department of Managed Health Care (the  
24 Settlement Agreement) are:

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27 <sup>1</sup> Enforcement Matter Nos.: 16-235 (Control Case), 16-1293, 16-1769, 16-1838, 16-2074, 16-  
28 2135, 17-044, 17-045, 17-046, 17-065, 17-434, 17-435, 17-436, 17-438, 17-439, 17-440, 17-  
528, and 17-716.

1 a. Drew Brereton (Complainant) is the Deputy Director of the DEPARTMENT OF  
2 MANAGED HEALTH CARE's (the Department) Office of Enforcement. Pursuant to  
3 Health and Safety Code section 1341.8 and Government Code section 11180 et  
4 seq., Complainant has been delegated with the power and authority by the  
5 Department's Director (the Director) to conduct the Department's investigations and  
6 enforcement matters. This Accusation was brought solely in the official capacity of  
7 the Complainant Deputy Director.

8 b. Blue Shield of California Promise Health Plan (the Plan), formerly Care 1st Health  
9 Plan, is licensed as a health care service plan pursuant to the Knox-Keene Health  
10 Care Service Plan Act of 1975 (the Knox-Keene Act), Health and Safety Code  
11 section 1340 et seq. On or about November 1, 1995, the Plan was issued license  
12 No. 933 0326, to operate a health care service plan. The Plan is represented in this  
13 proceeding by Kennaday Leavitt Owensby, PC, 621 Capitol Mall, Suite 2500,  
14 Sacramento, California 95814.

15 2. **The Accusation**. On December 8, 2017, the Department filed an Accusation against  
16 the Plan, as Enforcement Matter 16-235, et al., and filed with the Office of  
17 Administrative Hearings as OAH No. 2018030566, alleging various violations of the  
18 Knox-Keene Act and regulations arising out of the Plan's handling of 18 separate  
19 enrollee grievance files. The Plan filed a Notice of Defense on December 22, 2017. On  
20 December 21, 2018, the Department filed a First Amended Accusation (First Amended  
21 Accusation). A copy of the First Amended Complaint is attached to this Settlement  
22 Agreement as "Attachment 1."

23 3. **The Administrative Hearing**. This matter was previously scheduled for administrative  
24 hearing before Administrative Law Judge Timothy Aspinwall, ALJ, with the Office of  
25 Administrative Law, on behalf of the Department, beginning March 18, 2018, in  
26 Sacramento, California. The Parties agree this hearing date shall be vacated.

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- 1 4. **Consideration and Intent of the Parties to Settle.** The Parties intend to settle and  
2 resolve all matters stated in the First Amended Accusation. The Parties believe that it is  
3 in their mutual and individual interests to enter into the Settlement Agreement without  
4 resort to further litigation, and that the promises and warranties contained within this  
5 Settlement Agreement represent adequate consideration for entering into this  
6 Settlement Agreement. The Parties intend that the Plan shall pay a civil penalty, as  
7 described in Paragraph 7 below, and the Department shall dismiss the entire  
8 administrative case as described in Paragraph 8, below.
- 9 5. **Resolution of Case.** This Settlement Agreement resolves OAH No. 2018030566/  
10 Enforcement Matter No. 16-235, et al.
- 11 6. **Admission of Violations.**
- 12 a. The Plan admits that its license No. 933 0326, is subject to discipline and agrees  
13 to be bound by terms of this Settlement Agreement.
- 14 b. The Plan admits violations the Knox-Keene Act and/or its implementing  
15 regulations in 9 of the 18 separate enrollee grievance cases, alleged in the First  
16 Amended Accusation. Subsequent to the filing of the Accusation and the First  
17 Amended Accusation, the Department voluntarily dismissed the following nine (9)  
18 matters because the Plan was not responsible for those particular matters  
19 pursuant to the Department's policies: 16-1293; 16-2074; 16-2135; 17-045; 17-  
20 434; 17-438; 17-439; 17-440; 17-528. A summary of these changes and the  
21 violations to which the Plan is admitting can be found in Attachment 2.
- 22 c. This Agreement reflects the Parties' compromise and settlement of the  
23 Accusation and First Amended Accusation.
- 24 7. **Payment of Penalties.** The Plan agrees to pay an administrative penalty in the amount  
25 of \$65,000 (sixty-five thousand dollars) (the Penalty Amount) for violations as set forth  
26 in Attachment 2. The Plan is hereby ordered to pay to the Department the amount of  
27 \$65,000 (sixty-five thousand dollars) within 10 business days of the effective date of this  
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1 Settlement Agreement.

2 8. **Dismissal of Enforcement Action and OAH Accusation.** Within ten (10) business  
3 days of execution of this Agreement, the Department shall withdraw the entire First  
4 Amended Accusation.

5 9. **No Waiver.** Nothing in this Settlement Agreement shall constitute a disclaimer, accord,  
6 relinquishment, estoppel, or a waiver of any form of any right or authority of the  
7 Department, including without limitation to continue with its current investigations,  
8 surveys, audits, or examinations and/or to exercise its enforcement and disciplinary  
9 authority relative to, or independent of, those investigations, audits or examinations,  
10 except as to the matters alleged in the First Amended Accusation. Nothing in this  
11 Settlement Agreement shall limit, affect, or inhibit in any manner the Department's  
12 powers to initiate any new investigations, routine or non-routine audits or examinations,  
13 or to require and/or order any remediation, penalties, and/or other remedies the  
14 Department deems necessary or appropriate to carry out the objectives of the Knox-  
15 Keene Act, including, without limitation, actions necessary to protect and/or effectuate  
16 remediation to enrollees and/or providers. Nor shall anything in this Settlement  
17 Agreement limit, affect, or inhibit in any manner the Plan's legal rights including, without  
18 limitation, the right to dispute, contest, assert objections to, file a notice of defense, file a  
19 writ, or otherwise challenge the Department's actions or inactions with respect to all  
20 investigations, routine or non-routine audits or examinations, or remediation, penalties,  
21 and/or other remedies the Department takes in carrying out the Department's objectives  
22 or efforts to protect and/or effectuate remediation to enrollees and/or providers.

23 10. **Waiver of Right to Administrative Hearing.** The Plan and the Department are fully  
24 aware of their legal rights in this matter, including the right to a hearing on the  
25 Accusation related to this Enforcement Matter; the right to be represented by counsel at  
26 their own expense; the right to confront and cross-examine witnesses; the right to  
27 present evidence and testimony; the right to the issuance of subpoenas to compel the  
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1 attendance of witnesses and the production of documents; the right to reconsideration  
2 and court review of the administrative decision; the right to require the Department to  
3 meet its burden of proof to establish all elements of the violations charged at an  
4 administrative or other hearing, and all other rights accorded by the California  
5 Administrative Procedure Act and other applicable laws.

6 By entering into this Settlement Agreement, the Plan and the Department voluntarily,  
7 knowingly, and intelligently waive and give up each and every right set forth above with  
8 respect to this Enforcement Matter.

9 **11. Order of the Director.** This Settlement Agreement constitutes, and is binding on the  
10 Plan, as an Order of the Director.

11 **12. Breach of Agreement.**

12 a. **Material Breach by the Plan.** Failure of the Plan to perform the terms of  
13 Paragraph 7 shall constitute a material breach of this Settlement Agreement.

14 b. **Material Breach by the Department.** Failure of the Department to perform the  
15 terms of Paragraph 8 of this Settlement Agreement shall constitute a material  
16 breach of this Settlement Agreement.

17 c. **Remedies for Material Breach**

18 i. Remedy of the Plan. If the Department is in material breach, but the Plan  
19 is not in material breach, the Plan may use this Settlement Agreement to  
20 estop any further legal action, which is the subject of this Settlement  
21 Agreement, administrative or civil, by the Department.

22 ii. Remedy of the Department. If the Plan is in material breach, the  
23 Department may seek to enforce this Order of the Director, and does not  
24 waive any and all remedies for failure to do so immediately. Alternatively,  
25 the Department may seek to enforce the terms of this Settlement  
26 Agreement in a civil action before a court of competent jurisdiction in the  
27 County of Sacramento, California.

1                   iii. Venue and jurisdiction in case of breach. Each Party submits to the  
2                   jurisdiction of the California Superior Court located in Sacramento County,  
3                   over any suit, action or other proceeding arising out of or relating to this  
4                   Settlement Agreement.

5   13. **Construction of Settlement Agreement.** For purposes of construction, both Parties  
6                   shall be deemed to have drafted the Settlement Agreement. The language of the  
7                   Settlement Agreement shall not be construed for or against either Party. Headings used  
8                   within the Settlement Agreement are for reference only and shall not affect construction  
9                   of this Settlement Agreement.

10 14. **Governing Law.** This Settlement Agreement shall be governed by and construed in  
11                   accordance with the laws of the State of California without regard for conflicts of law  
12                   principles.

13 15. **Admissibility of this Settlement Agreement.** In the event of any future litigation  
14                   (administrative or civil) between the Department and the Plan, the Plan agrees it will not  
15                   object on the basis of California Evidence Code section 1151 to the admissibility of this  
16                   Settlement Agreement.

17 16. **Counterparts, Copies and Originals.** This Settlement Agreement may be executed  
18                   simultaneously in one or more counterparts, each of which shall be deemed an original,  
19                   but all of which together shall constitute one and the same agreement. The Parties  
20                   understand and agree that facsimile or PDF copies of the hard copy of the original  
21                   hand-signed Settlement Agreement shall have the same force and effect as the original.  
22                   After the Plan representative has signed the document by hand, the Plan shall forward  
23                   the hard copy of its original hand-signed Settlement Agreement to the Department's  
24                   Office of Enforcement, located at 980 9th Street, Suite 500, Sacramento, CA 95814.

25 17. **Severance.** In the event any term or portions of any term set forth herein shall be  
26                   declared invalid or unenforceable for any reason by a court of competent jurisdiction,  
27                   such term or any portion of any term, to the extent declared invalid or unenforceable,  
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1 shall not affect the validity or enforceability of any other terms, and such other terms  
2 shall remain in full force and effect and shall be enforceable to the maximum extent  
3 permitted by applicable law, so long as the remaining terms are consistent with the spirit  
4 of, and the expressed intent of the Parties, in this Settlement Agreement.

5 18. **Authority to Bind.** Each signatory below warrants and represents that she or he has  
6 authority to sign on behalf of, and to bind, her or his respective entity.

7 19. **Successors.** This Settlement Agreement shall be binding on all parties, including all  
8 principals, executors, administrators, representatives, and successors in interest.

9 20. **Effective Date.** This Settlement Agreement shall take effect upon execution by both  
10 Parties.

11 21. **Entire Agreement.** This Settlement Agreement is the entire agreement between the  
12 Parties and supersedes any prior negotiations, discussions, representations, or  
13 agreements, whether written or oral, between the Parties and/or their respective  
14 counsel with respect to the subject matters of the Settlement Agreement.

15 22. **Amendments.** Any amendment to this Settlement Agreement must be in writing, signed  
16 by duly-authorized representatives of the Parties, and must expressly state the intent of  
17 the Parties to amend this Settlement Agreement.

18 **ACCEPTANCE**

19  
20 Dated: 6/3/2019

Blue Shield of California Promise Health Plan,  
(formerly Care 1st Health Plan)

21  
22 /Original Signed/  
23 Greg Buchert  
24 Title: President & CEO

25 DEPARTMENT OF MANAGED HEALTH CARE

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Dated: 3/27/2019

/Original Signed/  
Drew Brereton, Complainant  
Deputy Director | Chief Counsel  
Department of Managed Health Care  
Office of Enforcement

Approved as to form:

KENNADAY, LEAVITT, OWENSBY

Dated: 3/22/2019

/Original Signed/James Novello, Esq.  
Attorney for Blue Shield of California Promise Health  
Plan (formerly Care 1st Health Plan)