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2	Honorable Sean P. O'Donnell Hearing Date: January 7, 2016
3	Time: 8:30 a.m.
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7	SUPERIOR COURT OF WASHINGTON FOR KING COUNTY
8 9	DOUGLAS L. MOORE, MARY CAMP,) GAYLORD CASE, and a class of similarly) NO. 06-2-21115-4 SEA situated individuals,)
10) Plaintiffs,)
11)
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13	HEALTH CARE AUTHORITY and STATE) OF WASHINGTON,)
14) Defendants.
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19 20	CLASS ACTION SETTLEMENT AGREEMENT
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	CLASS ACTION SETTLEMENT AGREEMENT

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I.

SUMMARY OF PROCEEDINGS AND SETTLEMENT

1. This Settlement Agreement is made under Civil Rule 23(e) to settle the claims asserted in *Moore v. Health Care Authority*, King Co. No. 06-2-21115-4 SEA (*Moore I*), *Moore v. HCA*, Thurston County, No. 13-2-02446-0 (*Moore 2*), and other associated litigation as set forth in this Agreement. This Settlement Agreement is subject to approval by the Court.¹

1. In June 2006, Plaintiffs filed a class action against Defendants, claiming that Plaintiffs and a class of similarly situated state employees were wrongly omitted from employerpaid health insurance. Plaintiffs claimed that state employees who "averaged" half-time or more work were eligible for health insurance, and state employees did not need to work half-time in each and every month to establish eligibility for health insurance. Defendants denied Plaintiffs' claims.

In June 2007, the Court certified the *Moore 1* Class under CR 23(b)(1) and (2), including state employees denied health insurance under the non-permanent employee rule, WAC 182-12-115(2) (pre-2010), and the career seasonal rule, WAC 182-12-115(4) (pre-2010).

3. In 2007-09, the Court entered liability rulings largely in favor of the *Moore 1* Class and against the Defendants. The Court ruled that Defendants had failed to provide many members of the *Moore 1* Class the health insurance they were due.

4. In February 2008, after the Court's initial liability ruling, Defendants commenced instructing State agencies that they needed to start "averaging" employees' work hours to determine whether employees were eligible for health insurance.

5. In December 2011, the Court ruled the *Moore 1* Class would continue to be certified for purposes of relief. The Court changed the certification of the *Moore 1* Class from CR 23(b)(1) and (b)(2) to CR 23(b)(3).

¹ Unless defined elsewhere as proper nouns, capitalized terms used in this Settlement Agreement shall have the meanings assigned to them in Section II below.

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6. In 2012, Plaintiffs and Defendants filed cross-motions for partial summary judgment on how to calculate damages. In November 2012, the Court issued an order that largely agreed with the Plaintiffs' approach to calculating damages, but denied both Parties' motions due to unresolved issues of material fact.

7. In February 2013, the Court issued an order severing and dismissing Plaintiffs' contract claim, which Plaintiffs had added to the action by amendment in November 2011. Plaintiff Douglas Moore then re-filed the contract claim in a separate action, which became *Moore 2. Moore 2* covers the time period of June 2000 through May 2003. *Moore 2* was stayed pending resolution of the claims of the *Moore 1* Class in *Moore 1*. The claims in *Moore 2* are part of this settlement as is more fully explained in this agreement.

 In March 2013, the Court of Appeals accepted discretionary review of the Court's November 2012 order denying Defendants' motion on calculating damages. The Washington Supreme Court then granted Plaintiffs' motion to transfer review of Defendants' appeal of the Court's ruling on damages.

9. In August 2014, the Supreme Court issued its decision in *Moore v. HCA*, 181
Wn.2d 299 (2014). The Supreme Court affirmed the trial court's order in *Moore 1* denying
Defendants' motion on damages and expressing support for Plaintiffs' motion on damages.

10. In December 2014, the Court ruled that part-time faculty at community and technical colleges from June 2006 forward and part-time faculty at four-year higher education institutions from January 2010 forward were not part of the initial class. In response to the Court's ruling, Plaintiffs filed an Amended Complaint in *Moore I* to assert these claims on behalf of the part-time faculty.

11. In May 2015, the Court ruled that claims on behalf of state employees denied health insurance after December 2009 were not part of the action. The Court ruled that these employees were not within the initial class.

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12. Trial in *Moore 1* was scheduled to commence in December 2015. Prior to trial, the Parties entered into settlement discussions as directed by the Court and engaged John Aslin to act as a mediator. The Parties held a full-day mediation session in November 2015. At the mediation the Parties agreed to general principles of a settlement, subject to signing a definitive agreement and obtaining the Court's approval. The Parties agreed in writing to the general principles on December 3, 2015.

13. The Parties recognize that to continue litigating the claims that would be resolved under this Settlement Agreement would delay the resolution of those claims for a considerable time (likely some additional years, including possible appeals); would create additional burdens and costs for both Parties; and would present uncertainties and risks for the Parties as to the ultimate outcome. To avoid the uncertainty, risks, delays, burdens and costs of further litigation, the Parties agreed to this Settlement Agreement.

14. All provisions in the Settlement Agreement apply to the Settlement Class Members unless an exception is specifically stated. Just as membership in the *Moore I* Class alone would not necessarily have resulted in relief for any individual class member if the class action had proceeded to judgment, membership in the Settlement Class alone similarly does not necessarily make relief available pursuant to this agreement. Settlement Class Members are entitled to relief only as specifically stated in this Settlement Agreement.

II. DEFINITIONS

The following general definitions apply in this Settlement Agreement.

15. "Attorney Fee Award" means the total of the attorney fees and costs awarded to Class Counsel under the common fund doctrine pursuant to this agreement.

16. "Authorized Representative" of a Settlement Class Member means that Settlement Class Member's legal representative or a surviving beneficiary of the Settlement

SETTLEMENT AGREEMENT - 3 MOORE/pleadings/Settlement Agreement 2.doc Class Member, as legally appropriate, who is authorized to fill out a Claim Form or Opt-Out Form.

17. "Claim Form" means the form approved by the Court for Qualified Class Members to receive compensation pursuant to this Settlement Agreement.

"Claim Period" means a period commencing on the date that the Claims
 Administrator sends Claim Forms to Qualified Class Members and ending 90 days thereafter.

19. "Claim Administrator" is the company selected by Class Counsel and approved by the Court that will administer the settlement, including mailing the Notice to Settlement Class Members, mailing a Claim Form to Qualified Class Members and paying the Attorney Fee Award, the Class Representative Award, and the Net Settlement Proceeds to Qualified Class Members.

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20. "Class Counsel" means the law firm of Bendich, Stobaugh & Strong, P.C.

21. "Class Notice" is the notice approved by the Court that will be mailed to the Settlement Class Members informing the Settlement Class Members of the terms of the settlement, stating the time, date and place of the Final Settlement Hearing, and explaining that settlement class members may make written comments on or objections to the Settlement Agreement. The Class Notice also will provide Settlement Class Members the opportunity to opt out of the settlement. The form of the Class Notice will be agreed to by the Parties and approved by the Court before it is sent to Settlement Class Members by the Claims Administrator.

"Class Representative" means each of the named plaintiffs — Douglas Moore,
 Mary Camp and Gaylord Case.

23.

"Court" means the Superior Court of Washington for King County.

24. "Defendants" means the Health Care Authority and the State of Washington.

25. "Dismissal Order" means the final order and judgment to be entered at or following the Final Settlement Hearing in a form to be agreed upon by the Parties, with such final order and judgment to be consistent with the terms of this Settlement Agreement. 26. "Effective Date" means the date on which the Dismissal Order becomes final, which shall occur upon the later of the following:

(a) if no appeal or other reconsideration or review of the Dismissal Order is sought by any person or entity, the Effective Date shall be the thirty-first (31st) day after the Court enters the Dismissal Order; or

(b) if a motion for reconsideration, an appeal, a motion for discretionary review, review by writ of certiorari or any other form of review or reconsideration is filed by any person or entity, the Effective Date shall be the day after (i) the Dismissal Order is affirmed or the appeal or other action seeking review of the Dismissal Order is dismissed or denied, and (ii) the Dismissal Order is no longer subject to further judicial review.

27. "Eligible Month" means a month for which a Qualified Class Member is entitled to compensation under this Settlement Agreement.

28. "Final Approval Date" means the date on which the Court enters the DismissalOrder after the Final Settlement Hearing.

29. "Final Settlement Hearing" means the reasonableness hearing to be held pursuant to Civil Rule 23(e), at which (a) any Settlement Class Member who meets the requirements established by the Court may appear in order to make favorable comments about the settlement or object to the fairness, adequacy, or reasonableness of this Settlement Agreement, and (b) the Court will consider whether to give final approval to the Settlement Agreement, including the class representative award and the Attorney Fee Award of Class Counsel, and to enter the Dismissal Order.

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"HCA" means the Health Care Authority.

31. "Health Benefits" means the health, medical, dental, life, and disability insurance
 that are provided to eligible State employees and administered by HCA's Public Employees
 Benefits Board.

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32. "*Moore 1* Class" means the class certified by the Court in the certification orders under CR 23(b) (1) and (2) that covers the time period from June 2003 to December 2009.

33. "Net Settlement Proceeds" means the Settlement Amount reduced by the combined amount of the Attorney Fee Award, the Class Representative Award, and the costs of the Claim Administration, which includes any reasonable costs incurred by the Defendants or its consultants to identify settlement class members and/or Eligible Months.

34. "Notice" means the form which will be approved by the Court informing theClass Members of the settlement. Notice will only be sent if the Legislature appropriates the\$80 million for the settlement.

35. "Notice Date" means the date that the Claim Administrator has deposited into the United States mail one copy of the Class Notice to each Settlement Class Member.

36. "Notice Order" means the order entered by the Court after the Legislature appropriates the \$80 million for the settlement. (If the Legislature does not appropriate the funds, there will be no Notice Order and no settlement.) The Notice Order will approve the distribution formula determined by Class Counsel, the Claim Administrator selected by Class Counsel, and will approve the form of Class Notice and Opt-Out Form agreed to by the Parties, approve the mechanism for giving notice to the Settlement Class Members, set the Objection Period, and set the date and time for the Final Settlement Hearing.

37. "Objection Period" means a period commencing on the Notice Date and ending45 days thereafter.

38. "Parties" means the Plaintiffs and the Defendants.

39. "Plaintiffs" means the named plaintiffs, Douglas Moore, Mary Camp, and Gaylord Case, and the membership of the class.

40. "Preliminary Approval Order" means the order that will among other things, if
entered by the Court, (a) preliminarily approve the settlement as fair, reasonable and
(b) preliminarily certify the Settlement Class solely for settlement purposes and appoint the

1	named Plaint	iffs as the representatives of the Settlement Class and Class Counsel as counsel.		
2	The Defendat	nts need the Court to preliminarily approve the Settlement before requesting the		
3	Washington I	Legislature to appropriate the money for the Settlement.		
4	41.	"Qualified Class Members" means class members in the Settlement Class who are		
5	entitled to rel	ief under the Distribution Formula to be determined by Class Counsel and approved		
6	by the Court	and who submit a Claim Form to the Claims Administrator.		
7	42.	"Settlement Agreement" means this document.		
8	43.	"Settlement Amount" means the total of \$80 million being paid by the Defendants		
9	under this Set	ttlement Agreement.		
10	44.	"Settlement Class" means all persons with claims for Health Benefits under the		
11	following rules from June 2000 through December 2015:			
12		(a) WAC 182-12-115(2);		
13		(b) WAC 182-12-115(4);		
14		(c) WAC 182-12-115(5);		
15		(d) RCW 41.05.065; and		
16		(e) RCW 41.05.053.		
17	45.	"Settlement Class Member" means a person who is in the Settlement Class.		
18	46.	"State's Payroll Databases" are those electronic databases used in the normal		
19	course of bus	iness to maintain information related to the employment of the Settlement Class		
20	Members.			
21	47.	"State of Washington," for purposes of this agreement, means the State of		
22	Washington,	including every division, department, or separate agency of state government, and		
23	every state in	stitution of higher education.		
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III. GENERAL MATTERS

Legislative Funding

48. This Settlement Agreement is contingent upon and subject to an appropriation by the Washington State Legislature in the legislative session to convene in January 2016 or any follow-on special session in 2016. If the Legislature does not appropriate the funds for the Settlement, this Settlement Agreement is null and void.

Certification of Class for Settlement Purposes Only.

49. In order to settle the Settlement Class Members' claims that will be resolved if the Effective Date occurs, the Parties agree to seek the entry of the Preliminary Approval Order, the Notice Order and the Dismissal Order certifying the Settlement Class solely for purposes of this settlement.

Effective Date of Settlement Agreement.

50. Following signature of the Settlement Agreement by the Parties or their authorized representatives, Plaintiffs will move the Court to enter the Preliminary Approval Order. If the Legislature appropriates the Settlement Amount, the plaintiffs will present a Notice Order for the Court's approval.

51. This Settlement Agreement will become effective if and when the Effective Date occurs.

Compromise of Disputed Claims.

52. This Settlement Agreement is the result of a compromise and is the product of serious, arms'-length and extended negotiations between the Parties, including separate mediation sessions occurring years apart.

53. The Parties' entry into this Settlement Agreement is a result of compromise and does not constitute an admission of fault, liability or wrongdoing by Defendants.

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54. The Settlement Agreement and the circumstances surrounding the Settlement Agreement shall not be admitted as evidence to establish any liability or admission by either Party in any civil or administrative action.

Claims Subject to This Settlement Agreement.

55. This Settlement Agreement resolves and settles Plaintiffs' claims for damages arising out of their exclusion from Health Benefits which may have arisen at any time from June 2000 through December 2015 as defined herein, under RCW Ch. 49.44.160-.170, WAC 182-12-115(2) (pre-2010), WAC 182-12-115(4) (pre-2010), WAC 182-12-115(5) (pre-2010), RCW 41.05.053 (pre-2010), RCW 41.05.065 (2010), the State's contracts with third-party Health Benefits providers, as well as all other claims that were, or could have been, brought by the Settlement Class Members against Defendants related to the enrollment or eligibility of Plaintiffs for Health Benefits. Claims by Settlement Class Members against Defendants that are separate and independent from the specific claims described in this paragraph, including claims that may arise after the effective date of this Settlement Agreement, are not settled or resolved in this Settlement Agreement.

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Release of Claims Subject to the Settlement Agreement.

56. Contingent upon final approval of this settlement by the Court and payment of the amounts described herein, Plaintiffs hereby completely release and forever discharge the State of Washington and the HCA, including the Defendants' officers, agents, representatives, attorneys, and employees, from any and all claims, charges, demands, liabilities, actions, offsets, and suits, whether known or unknown, arising on or before the Effective Date of this Settlement Agreement, related to the providing or denial of PEBB benefits, that were or could have been asserted in any *Moore*-related litigation (*i.e.*, *Moore 1*, *Moore 2*, and any other *Moore*-related litigation), including any claims relating to off-season and in-season Health Benefits and any damages for denial of benefits.

57. Plaintiffs acknowledge and agree that the release and discharge set forth above is a general release of those claims described above. The Parties have entered into this Agreement as a compromise of disputed claims, and as a means of finally resolving all questions, issues, duties, obligations, and responsibilities between them regarding those disputed claims. It is understood and agreed by the Parties that this settlement is a compromise and nothing contained herein, including the payments, are to be construed or interpreted as an admission of liability on the part of Defendants, by whom liability is expressly denied, or as an admission by either party as to any issue in dispute or which could have been in dispute between the Parties.

Dismissal of Moore 2.

58. Within ten days of the Effective Date, Plaintiffs agree to dismiss with prejudice their claims in *Moore 2*.

Timeliness.

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59. The Settlement Agreement includes certain commitments by the Parties and their counsel to take actions. No procedural failure or error, such as a failure to act in a timely manner, precludes final approval and enforcement of the Settlement Agreement if the error can be corrected or made harmless or if the deadline is extended for good cause shown by the Party seeking such extension.

Effective Date of Settlement Agreement.

60. Following signature of the Parties' representatives, this Settlement Agreement is effective on the date of an order by the Superior Court approving the Settlement Agreement pursuant to Civil Rule 23(e) and dismissing the litigation with prejudice ("Dismissal Order") in the form agreed to by Class Counsel and Defendants and approved by the Court ("Effective Date").

Warranty of Authority to Execute Agreement.

61. The undersigned attorneys represent and warrant that they have the authority to execute this Settlement Agreement on behalf of their respective clients.

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IV. SETTLEMENT QUERY PROCESS

62. The Parties agree to reasonably cooperate in identifying potential class members and eligible months based on existing payroll data for the period 2000 through 2012.

63. The Parties further agree to reasonably cooperate in retrieving additional payroll data from 2012 through 2015 using queries set forth in the Parties' General Principles of Settlement dated December 3, 2015, a copy of which is attached hereto as Exhibit A.

64. The Parties agree that reasonable Costs associated with the identification of potential class members and eligible months, including those costs incurred by the State or its consultants, shall be paid out of the Settlement Amount.

V. ALLOCATION OF SETTLEMENT AMOUNT

65. Defendants are paying the \$80 million for the benefit of the Settlement Class. The Attorney Fee Award, the Class Representative Awards, and the costs of the Claims Administration will be deducted by the Claim Administrator from the Settlement Amount. The amount remaining after those deductions is the Net Settlement Proceeds. The Net Settlement Proceeds will be allocated under a distribution formula to Qualified Class Members for damages.

66. The Dismissal Order shall direct the Defendants to pay the \$80 million to the Claim Administrator. The Defendants shall pay the \$80 million to the Claim Administrator within five days after the Effective Date. The Claim Administrator shall pay the Attorney Fee Award, the Class Representative Awards, and the costs of the Claims Administration. The Claim Administrator will pay the Qualifying Class Members from the remainder. The Settlement Amount shall only be disbursed pursuant to the Dismissal Order or other order from the Court.

Distribution Formula and Claims Administrator

67. Class Counsel will determine a distribution formula for identifying Qualified Class Members who will be sent a Claim Form by the Claim Administrator. The distribution formula will be approved by the Court and set forth in the Notice Order and in the Class Notice approved by the Court. Class Counsel will select a Claim Administrator to be approved by the Court at or before the Notice Order. The Claim Administrator shall be responsible for giving notice to the Class, for mailing Claim Forms for Qualified Class Members, for processing the Opt Out Forms and the Claim Forms, and for paying Class Counsel's Attorney Fee Award, for paying the Class Representative Award, and for paying Qualified Class Members their *pro rata* share of the Settlement Funds, related to the length of time they were denied health insurance for which they were eligible, to compensate for damages for lost health and longevity. The Claim Administrator shall issue IRS 1099 forms to Class Counsel for the Attorney Fee Award, to the Class Representatives for their awards, and to Qualified Class Members for their *pro rata* share of the Settlement Funds to compensate them for damages.

Opt-Outs

68. <u>Opt-Out Form</u>. Settlement Class Members have the opportunity to Opt-Out of this settlement. The Opt-Out Forms must be completed by Class Members or his or her Authorized Representative. The Opt-Out Form will require the Class Member or their Authorized Representative to provide identifying information (potentially including, without limitation: name, address, and Social Security number).

69. <u>Timely Return</u>. The Opt-Out Form may only be returned to the Claim Administrator through the U.S. mail. The Opt-Out Form will specify that the applicable form must be postmarked before the end of the Opt-Out Period to be deemed timely.

70. If a Settlement Class Member does not timely submit a properly completed and executed Opt-Out Form, that Settlement Class Member shall be bound by this Settlement Agreement (including, without limitation, the releases) and by the Dismissal Order upon the Effective Date.

71. If Settlement Class Members representing 7% or more of the total "Eligible Months," opt out of the proposed settlement, the Defendants will have the right to either:

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(a) proceed with the settlement with the \$80 million settlement payment proportionately reduced by the proportionate share of the Settlement Class Members' Eligible Months who opt out of the settlement is of the total Eligible Months or (b) rescind the settlement in its entirety.

Undistributed Settlement Funds

72. The residual of any settlement funds to Qualified Class Members who submit a timely Claim Form, but for some reason do not cash the check containing their pro rata share of the settlement proceeds within 90 days of the mailing of the check by the Settlement Administrator, shall be refunded to the State of Washington for deposit into the Public Employees' and Retirees' Insurance Account. The Parties agree to direct the Claim Administrator to provide periodic updates to the State regarding the Claims Administration process, including with respect to the issuance of checks to Qualified Class Members for their pro rata share of the settlement proceeds, and once the 90-day period for Qualified Class Members to cash their checks has expired.

73. If the amount of the refund exceeds \$15,000, HCA, after consultation with the Office of Financial Management, will make recommendations on improving the information provided to employees and agencies about employee benefits eligibility and processes to identify eligible employees. For those recommendations that require legislative approval, the recommendations shall be provided to the Legislature at the legislative session following any residual undistributed settlement fund to HCA.

74. If the Legislature fails to approve this provision and does not provide the spending authority for the purposes stated in the preceding paragraph, the residual funds will be dispersed in accordance to terms agreed on by the Parties at a later date and as approved by the Court.

VI. ATTORNEY FEES

75. The Washington Supreme Court has affirmed the use of the "common fund" and "percentage of recovery" methods for awarding attorney fees in class actions regarding public

employee benefits. *Bowles v. Department of Retirement Systems*, 121 Wn.2d 52 (1993). The Supreme Court said that when class counsel's efforts have created a "common fund," the fee awarded is a percentage of the fund because "the size of the recovery constitutes a suitable measure of the attorneys' performance." *Id.* at 72. The Supreme Court therefore approved the percentage approach to calculate common fund attorney fees and it specifically rejected the lodestar method of calculating fees in a common fund." *Id.* at 73. The Supreme Court said a percentage-of-recovery approach to awarding common fund attorney fees "furthers important policy interests." *Id.* at 72. The percentage approach in *Bowles* is applicable to this case.

76. The Supreme Court said in *Bowles* that 20% to 30% of the recovery obtained is the usual common fund fee. *Bowles*, 121 Wn.2d at 72-73. In common fund cases, the "benchmark" award is 25% of the recovery obtained. *Id.* The following is a summary of the Class Counsel Fee Award, to which Defendants have no objection.

77. In this action, the common fund consists of both the cash payments to be received as part of this Settlement Agreement and the Health Benefits paid by Defendants and received by Class Members as a result of the injunctive relief obtained in this action.

78. After the liability ruling, in February, 2008, Defendants commenced instructing State agencies that they needed to start "averaging" employees' work hours to determine whether the employees were eligible for health insurance. In 2009, the Washington Legislature amended the statutes governing health insurance for State employees to codify the liability rulings in favor of the class, Laws of 2009, Ch. 537. The statutory amendments became effective on January 1, 2010, and the amendments require state agencies to "average" employees' work hours when determining the employees' eligibility for health insurance

79. As a result of Class Counsel's efforts and the liability rulings and the injunctive relief that Class Counsel obtained, many Settlement Class Members started receiving health insurance in 2008, and even more received health insurance starting in 2010 after the Legislature codified the Court's liability rulings. There are thus eight years in this litigation, 2008 through

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2015, in which Settlement Class Members received health insurance in tens of thousands of months as a result of this litigation. A conservative estimate of the employer cost of the monetary payments received by those class members in the form of employer-paid premiums in health insurance from 2008 through 2015 is \$50 million. They will also receive additional future benefits in the form of employer-paid premiums for health insurance.

80. In accordance with *Bowles*, Class Counsel seek a common fund percentage fee in this case of about 18.5%, or \$24 million, of the \$80 million cash that is part of the settlement and the \$50 million in already-paid employer premiums (\$130 million total recovery already obtained, *not including* the health insurance obtained by State employees in the future as a result of this litigation).

81. The 18.5% fee is within the range of reasonableness set forth in *Bowles*, and such an award is consistent with fee awards in similar employee class actions.

82. The Attorney Fee Award is, with the remainder of the Settlement Agreement, subject to final approval by the Court. Class Counsel request that the Court approve the Attorney Fee Award to Class Counsel, as well as the settlement as a whole, provided the amount of the proposed fee is not found to be unreasonable after considering all the relevant factors including, without limitation, the context of the results obtained, risks, the length of this action, and the overall settlement.

83. The Attorney Fee Award includes all of Class Counsel's costs and expenses.
Defendants agree to not object to this Attorney Fee Award. Defendants take no position on the substance of paragraph 75 through 82, i.e., they are not agreeing or disagreeing with these.

84. The Attorney Fee Award shall be paid out of the Settlement Amount within ten (10) days of the Effective Date; provided, however, that if the end of such period falls on a weekend or court holiday, such payment shall not be required to be made until the next business day.

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VII. CLASS REPRESENTATIVE AWARD

85. The Class Representatives, Douglas Moore, Mary Camp, and Gaylord Case, contributed to the creation of a common fund in this case by bringing the claim, pursuing an extremely lengthy process, providing discovery, and aiding Class Counsel. The class representative award is \$35,000 for each Class Representative. Defendants agree to not object to this Class Representative award. The Parties agree that the Court may modify this amount without rejecting the settlement as a whole if the Court finds the Class Representative award is not reasonable in light of the overall settlement. The class representative award shall be paid out of the Settlement Amount within ten (10) days of the Effective Date; provided, however, that if the end of such period falls on a weekend or court holiday, such payment shall not be required to be made until the next business day.

VIII. SETTLEMENT ADMINISTRATION

86. Settlement Administration shall be handled by the Claim Administrator selected by Class Counsel and approved by the Court and in accordance with settlement administration procedures, which shall be approved by the Court in the Notice Order.

IX. COURT'S AUTHORITY AND ENFORCEMENT

87. This Settlement Agreement is a product of substantial negotiations and compromise by the Parties. This Settlement Agreement is a unitary whole and each and every term therein is an integral part of the entire Agreement. Pursuant to Civil Rule 23, the Court determines whether the proposed settlement as a whole is fair and reasonable and determines whether to approve or reject the Settlement Agreement as a whole. The Court is not authorized to modify the terms of the negotiated settlement.

88. The Court retains authority to interpret and enforce this Agreement, to resolve minor ambiguities, to make reasonable modifications to which the Parties agree, and to correct minor mistakes and minor technical errors, provided the purposes and intent of the Agreement

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1	are fulfilled. The Court retains authority to compel performance of all requirements of the			
2	Agreement that are intended to be carried out after the Effective Date.			
3	X. ADDITIONAL PROVISIONS			
4	89. Class Counsel and Plaintiffs agree to withdraw all Public Records Act requests			
5	submitted by them, or on their behalf, to the State of Washington or the HCA related to the			
6	Moore Litigation.			
7	90. This Settlement Agreement shall be construed with, and incorporates by this			
8	reference, the terms of the December 3, 2015 General Principles of Settlement attached hereto as			
9	Exhibit A. In the case of conflicts between the language of the two documents, the conflicting			
1.0	language in this Settlement Agreement shall prevail.			
11	91. All disputes regarding the final terms of the settlement and/or the settlement			
12	documents shall be resolved by John Aslin.			
13	XI. COUNTERPARTS			
14	This agreement may be executed in counterparts.			
15.	DATED: January 2016.			
16	BENDICH, STOBAUGH & STRONG, P.C. CALFO HARRIGAN LEYH & EAKES LLF			
17	Hail Adden			
18	David F. Stobaugh, WSBA #6376 Stephen K. Strong, WSBA #6299 Randall Thomsen, WSBA #25310			
19	Stephen K. Festor, WSBA #23147 Special Assistant Attorney General for			
20 21	Alexander F. Strong, WSBA #49839the Defendants Health Care Authority andAttorneys for PlaintiffsState of Washington			
22				
22	Robert Ferguson Attorney General			
24	6 A Marka			
25	Eric A. Mentzer, WSBA #21243			
: 26	Senior Counsel			
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General Principles of Settlement

The following principles will serve as the framework for the final settlement in the *Moore*-related matters:

Payment by State of \$80,000,000.

Settlement of all pending *Moore*-related matters in King County and Thurston County courts, in addition to any potential claims relating to 2010-2015 time period.

Class release of State, Health Care Authority, and all employing agencies for period 2000 to 2015. Class release will include all claims related to the providing or denial of PEBB benefits that were or could have been asserted in the *Moore*-related litigation, including any claims relating to off-season and in-season benefits and any damages for denial of benefits

Settlement conditioned on approval by State Legislature and appropriate State representatives. The Parties will seek approval during the next regular legislative session to convene on January 11, 2016 and scheduled to adjourn on March 10, 2016, or any follow-on special session in 2016.

Settlement conditioned on Court(s) approvals, including the Court's approval of all Principles of Settlement referenced.

Parties to reasonably cooperate to consolidate existing matters in King County Superior Court for purposes of approval of class settlement.

Parties to reasonably cooperate and seek Court(s) approval of class definition to reflect settlement class. Parties recognize class definition for settlement class to be broader than existing class definition....

Settlement class definition to include, but not necessarily be limited to, all employees that are currently identified on the State's tentative and final class lists and all others that could claim eligibility based on the following eligibility rules or statutes during the time from June 2000 through December 2015:

"Nonpermanent employees" (WAC 182-12-115(2) (former);

"Career seasonal/instructional year employees" (WAC 182-12-115(4) (former); "Part-time faculty employees" (WAC 182-12-115(5) (former));

"Mader-fix" (RCW 41.05.053) (tepealed)); and

RCW 41.05.065.

Parties to reasonably cooperate in identifying potential class members and eligible months based on existing payroll data for period of 2000 to 2012. Parties recognize need

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to retrieve additional payroll data from 2012 to present for purposes of identifying potential class members and/or eligible months.

- Parties reasonably expect to identify class members for settlement purposes by relying on the following "queries":
 - the 2014 query used to develop the tentative class list for employees potentially eligible under the "Nonpermanent employees" eligibility rule (without subject to reduction based on the "agency reviews");
 - the query used to develop the 2014 query results for employees potentially eligible under the "Career seasonal/instructional year" employees eligibility rule; and

prior queries used to develop the "class notice list" for faculty employees, although the parties recognize that these queries may need to be reasonably modified.

Parties to reasonably cooperate and promptly identify the proposed procedure for settlement approval and administration, class notice, and claims process.

Plaintiffs' counsel will select a claims administrator to disburse the settlement funds and will determine a distribution formula to be approved by the Court. Distribution will be pro rata of all settlement funds based on eligible months to qualifying class member claimants, after deduction of class administration costs and attorneys' fces.

Residual of any undistributed settlement funds shall be refunded to the State of Washington for deposit into the Public Employées' and Retirees' Insurance Account. If the amount of the refund exceeds \$15,000, Health Care Authority, after consultation with the Office of Financial Management, will make recommendations on improving the information provided to employees and agencies about employee benefits eligibility and processes to identify eligible employees. For those recommendations that require legislative approval, the recommendations shall be provided to the legislature at the legislative session following any residual undistributed settlement fund to Health Care Authority. The residual funds shall be used for the purposes as stated in this paragraph. If the legislature fails to approve this provision and does not provide the spending authority for the purposes stated herein, the residual funds will be dispersed in accordance to terms agreed on by the parties at a later time and as approved by the Court.

If, after settlement notice to the class, class members representing 7% or more of potentially eligible months "opt out" of the proposed settlement, the State will have the right to either (1) proceed with the settlement with the settlement payment proportionately reduced by the proportionate share of the class members' class months who opt out of the settlement; or (2) rescind the settlement in its entirety.

Plaintiffs intend to seek Court approval of a common fund attorney fee of 30% from gross settlement funds. The State will incur no additional or separate attorney fee obligation to plaintiffs. State agrees not to object to request.

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All costs of claims administration, class notice, and identification of potential class members and eligible months, including any reasonable costs incurred by State or its consultants, to be paid from settlement funds.

Withdrawal of all Public Records Act requests relating to this case.

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All disputes regarding final terms of the settlement and/or the settlement documents to be resolved by John Aslin.

The parties acknowledge the above "General Principles of Settlement" for purposes of finalizing settlement of the *Moore*-related matters.

Dated this 3rd day of December, 2015.

BENDICH, STOBAUGH & STRONG, P.C.

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