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RE
NOV 28 2011
Office of Administrative Hearings
OAKLAND

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BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of PACIFICARE LIFE AND HEALTH INSURANCE COMPANY, Respondent.	File No. UPA 2007-0004 OAH No. 2009061395 **NOTICE OF FILING OF DECLARATION OF SAMER ALAMI** Judge: Hon. Ruth S. Astle

Pursuant to Government Code § 11514, the accompanying Declaration of Samer Alami will be introduced as evidence at the hearing of *In the Matter of PacifiCare Life and Health Insurance Company*, File No. UPA 2007-0004, OAH No. 2009061395. Mr. Alami will not be called to testify orally and you will not be entitled to question him unless you notify PacifiCare's above-captioned counsel at the address above that you wish to cross-examine him. To be effective your request must be mailed or delivered to SNR Denton US LLP on or before December 5, 2011.

Dated: November 28, 2011

SNR DENTON US LLP

By_____
RONALD D. KENT

Attorneys for Respondent
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PROOF OF SERVICE

I, Deborah Waterford, hereby declare: I am employed in the City and County of San Francisco, California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is SNR Denton US LLP, 525 Market Street, 26th Floor, San Francisco, California 94105. On November 28, 2011, I served:

NOTICE OF FILING OF DECLARATION OF SAMER ALAMI; and DECLARATION OF FORENSIC COMPUTER EXPERT PURSUANT TO MAY 23, 2011 ORDER REGARDING DESTRUCTION OF DOCUMENTS BY THE CALIFORNIA DEPARTMENT OF INSURANCE

on the interested parties in this action by placing a true copy thereof, on the above date, enclosed in a sealed envelope, addressed as follows:

Michael J. Strumwasser Bryce Gee LaKeitha Oliver Strumwasser & Woocher LLP 10940 Wilshire Boulevard Suite 2000 Los Angeles, CA 90024 mstrumwasser@strumwooch.com bgee@strumwooch.com loliver@strumwooch.com	Andrea Rosen California Department of Insurance Legal Division Health Enforcement Bureau 300 Capitol Mall, 17th Floor Sacramento, CA 95814 rosena@insurance.ca.gov

☒ **(By Mail)**: I am personally and readily familiar with the business practice of SNR Denton US LLP for collection and processing of correspondence for mailing with the United States Postal Service, pursuant to which mail placed for collection at designated stations in the ordinary course of business is deposited the same day, proper postage prepaid, with the United States Postal Service.

☐ **(By Federal Express)**: As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for Federal Express delivery. Under that practice, it would be picked up by a Federal Express representative on that same business day at San Francisco, California, in the ordinary course of business.

☒ **(By Electronic Mail):** I transmitted the above documents by electronic mail to the interested parties via the e-mail addresses listed above for each party.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED on November 28, 2011, at Oakland, California.

Deborah Waterford

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BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of PACIFICARE LIFE AND HEALTH INSURANCE COMPANY, Respondent.	File No. UPA 2007-0004 OAH No. 2009061395 **DECLARATION OF FORENSIC COMPUTER EXPERT PURSUANT TO MAY 23, 2011 ORDER REGARDING DESTRUCTION OF DOCUMENTS BY THE CALIFORNIA DEPARTMENT OF INSURANCE** Judge: Hon. Ruth S. Astle

I, Samer Alami, declare as follows:

1. I am over 18 years of age, and a resident of the State of California.

2. I am currently the Director of Professional Services for Guidance Software, Inc., a digital forensics, cyber security, and e-discovery solutions firm and have served in that capacity since 2010. More generally, I have been involved in information technology consulting and programming since 1992. (For the convenience of the Court, I have attached hereto as Exhibit A a current version of my curriculum vitae.) Unless otherwise stated, I have

personal knowledge of the matters set forth in this Declaration and if called to testify, could testify competently as to these matters.

3. In September 2011, Guidance Software, Inc. ("Guidance") was retained to provide digital forensic consulting services related to the investigation and potential recovery of documents deleted by California Department of Insurance ("CDI") employee Nicoleta Smith. Guidance's retention was the result of a Court approved Stipulation and Order providing for a forensic exam of certain pieces of identified CDI hardware. Both PacifiCare Life and Health Insurance Company ("PacifiCare") and CDI agreed to Guidance's retention. Guidance was retained to identify the best course of action to attempt to recover Ms. Smith's deleted files, to conduct interviews with CDI to determine the possibility of recovering such deleted files, and, if appropriate, to engage in a forensic exam of CDI's systems to identify and locate such deleted files.

4. As part of Guidance's retention, I reviewed the May 2011 Stipulation and Proposed Order Re. Forensics Examination ("Stipulation") signed by both CDI and PacifiCare and approved by the Court, and excerpts from Nicoleta Smith's December 7, 2009 trial testimony relating to the destruction of her documents.

5. In the Stipulation CDI agreed to make the following hardware available to Guidance for review: (1) "the computer presently used by Nicoleta Smith"; (2) "retired backup tapes used from early 2007 through February 2010"; (3) "the file server(s) for the Los Angeles office decommissioned in January 2009"; and (4) "tape-images from backup tapes to the extent available and requested by Forensic Expert." In addition, CDI agreed to make certain CDI personnel available to "perform searches for documents on current servers using CommVault." No other sources of information haven been identified at any point since Guidance's retention.

6. Based on my review of the Stipulation and Ms. Smith's trial testimony, I formulated a list of questions for CDI's information technology representative. I designed the questions to provide me with a greater understanding of the CDI hardware identified in the Stipulation, and

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CDI's general data and information retention processes and policies, including the specific policies and processes for the identified hardware.

7. On September 27, 2011, I spent over an hour talking to Eric Rosander, CDI's information technology representative. Both PacifiCare's and CDI's legal counsel also participated in the conference. Since that call, I have also submitted several additional follow-up questions to CDI (via PacifiCare's legal counsel) regarding back-up tapes.

8. *CDI's Retention Policies*: Based upon my interview of Mr. Rosander, the CDI has limited document retention policies around electronic mail or other computer files. As reported by Mr. Rosander, with regards to emails, CDI does not have an auto-delete policy but each user has only 300 MB of active storage space. Once an individual user reaches their 300 MB capacity, that user has the ability to archive old emails by calling the service desk, but it is CDI's experience that its users do not take this step, and they simply erase their old emails. Although the email system is backed up every evening using Exchange and Outlook, those backups are deleted after 90-days. CDI has this 90-day retention policy for all its backup tapes (*i.e.*, backups of file servers, group shares, individual shares, etc.), and only creates backups for disaster recovery purposes, not archiving. CDI also has a three-year use cycle for its hardware (*e.g.*, individual computer and servers), and once a piece of hardware reaches the end of that cycle it is typically discarded. Finally, based on my conversation with Mr. Rosander, it is my understanding that there was no litigation and/or legal hold put in place for the *PacifiCare* matter that would have served to suspend CDI's standard procedures and prevent the destruction of electronic data.

9. As a result of the investigation described above, it is my professional opinion that it would not be worthwhile to conduct a more detailed forensic exam given the sources that CDI identified, its policies and procedures around document retention, and the fact that no litigation and/or legal hold was in place to suspend standard procedures and prevent the destruction of data. It is highly unlikely that any of Ms. Smith's deleted files would be recovered, let alone all of them.

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10. ***Current Computer***. First, there would be nothing forensically recoverable from Ms. Smith's current computer. Ms. Smith received her current desktop computer sometime in the past three years, after the relevant period identified by Ms. Smith in her testimony (*i.e.*, late 2006 to early 2008). According to Mr. Rosander, when CDI replaces an employee's computer, it does not make a forensic image of that machine. Rather, it simply moves the active data from the old machine to the new machine, and otherwise completely wipes the old machine and disposes of it. Based on this information, it is my opinion that, in accordance with CDI's standard procedures, all pertinent data from Ms. Smith's old desktop computer was destroyed when she received her current computer and it would not be possible to recover any deleted files from her current computer.

11. ***Retired Back-up Tapes***. It is also my opinion that it would be highly unlikely to recover any of Ms. Smith's deleted files from the "retired backup tapes used from early 2007 through February 2010." As discussed above, CDI has a 90-day overwrite policy for its backup tapes, meaning it reuses its backup tapes every 90-days, overwriting existing data, until the tape is too old, at which time it is discarded. According to CDI, the tapes identified in the Stipulation are end of life "scratch" tapes (meaning they had reached the end of their life and were intended for disposal) that someone found in a storage closet in Sacramento. Even though CDI estimates that these tapes were put into use in 2007, according to CDI's stated policy any late 2006 to early 2008 data that once existed on the tapes would have been erased or overwritten no later than mid to late 2008. Indeed, CDI no longer has the hardware necessary to read the tapes and therefore has no information regarding their contents.

12. ***Decommissioned File Server***. It is also my opinion that it would be unlikely to recover any of Ms. Smith's deleted files from the "the file server(s) for the Los Angeles office decommissioned in January 2009." While the server identified in the Stipulation was likely in service from 2006 through 2009, CDI is not certain what this specific server was used for and it is not labeled or indexed in any way. Unlike a desktop computer or an individual's dedicated work station, a server is in constant use by multiple people and the hard drive is constantly being overwritten. Therefore, given that the server was in use for about a year

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following the relevant time period, the chances of finding a deleted fragment from one specific user is highly unlikely. It is also costly. In the event we were to engage in such a search, it would take, at a minimum, four full weeks to do a forensic analysis of the server in an effort to try and find any pertinent deleted files. This analysis would cost a minimum of $10,000 per week, plus an additional $1,000 per day in software usage fees.

13. Pursuant to the Stipulation, CDI offered to provide "tape-images from backup tapes to the extent available." An "image" is an exact copy of a piece of equipment (*i.e.*, Ms. Smith's old computer, or a specific server used by Ms. Smith); however, according to Mr. Rosander no such images exist.

14. Finally, it is my opinion that a search of the current servers using CommVault would be futile. CommVault, a backup system, was not in use during the relevant time period. CDI suggested nothing that would lead me to believe that CommVault would assist us in locating any old deleted documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 22 day of November, 2011, at Emeryville, California.

Samer Alami

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EXHIBIT A

Guidance SOFTWARE | Professional Services Division

The World Leader in Digital Investigations™

Samer Alami

Curriculum Vitae

Present Employment

Guidance Software, Inc. — **2010 - Present**
Director Professional Services
Professional Services Division / Northwest

Prior Employment

Olive Tree Ideas — **2009 – 2010**
Independent Technology Management Consultant

MicroStrategy — **2008 - 2009**
Director Professional Services

Veeker Corporation — **2006 - 2008**
Director, Business Development

Claraview — **2005 - 2006**
Practice Manager

Digital Foundry — **2004 - 2005**
Business Development Manager

Business Objects — **2001 - 2004**
Practice Manager

Kana — **1999 - 2001**
Engagement Manager

Sapient Corporation — **1998 – 1999**
Project Manager

Andersen Consulting — **1995 – 1998**
Senior Consultant

Business Information Technologies — **1992 – 1995**
Staff

Education

George Mason University — **1995**
BS Accounting

Training

Guidance Software, Inc. New Hire Boot camp
AdMonsters – Internet Advertising Operations
DCI – Customer Relationship Management Training
Sapient – Project Management /Technical Training
Andersen Consulting – Technical Professional Schools