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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

HONG LI, a California resident, individually and on behalf of herself and others similarly situated, by and through TAILONG LIU, as attorney in fact, Plaintiffs, vs. PACIFIC LIFE INSURANCE COMPANY, a California corporation; TIFFANY XU, a California resident; SKY VISION INSURANCE AGENCY, a California corporation; and DOES 1 through 5, inclusive, Defendants.	Case #: 30-2020-01153426-CU-BT-CXC COMPLAINT: INDIVIDUAL AND CLASS ACTION DEMAND FOR JURY TRIAL Assigned for all purposes to: Judge Peter Wilson Dept: CX102 1. Violation of Unfair Competition Law Business & Professions Code § 17200, *et. seq.*; 2. Fraud and Deceit 3. Intentional Misrepresentation 4. Negligent Misrepresentation 5. Breach of Fiduciary Duty 6. Professional Negligence

Plaintiff Hong Li and Plaintiff Tailong Liu, as attorney in fact for Hong Li, (collectively referred to hereinafter as "Plaintiff"), by and through their undersigned attorneys, bring this action on behalf of Hong Li and others similarly situated arising out of a deceptive scheme implemented by Defendant Pacific Life Insurance Company ("PacLife") to sell its "Pacific Discovery Xelerator IUL" ("PDX") indexed universal life insurance policies to California residents. Plaintiff alleges the following on information and belief, except for those allegations relating to Plaintiff, which are alleged on personal knowledge.

INTRODUCTION

1. This class action seeks redress on behalf of California purchasers of PDX indexed universal life ("IUL") insurance policies issued by PacLife (the "PDX Policies"). According to one respected commentator***, PDX "is the riskiest and most leveraged IUL product in the industry,"***[1] yet ***"is impossible to understand, impossible to explain to clients and impossible [for agents] not to sell, simply because it illustrates the best."***[2] The PDX Policies are impossible to understand and impossible to explain to consumers because PacLife in its uniform sales illustrations intentionally overstates the future performance of these IUL policies, while failing to disclose critical policy attributes and components that operate collectively to dramatically increase the costs and risks associated with these highly leveraged insurance products. Accordingly, as the same commentator concluded, "***no product has been more misunderstood, misrepresented or mis-sold than PDX.***" *Id.*

2. Using uniformly misleading marketing materials and sales illustrations, PacLife deceptively misrepresented that the PDX Policies can produce outsized returns when, in reality, PacLife knew the PDX Policies would not and could not perform as represented given (a) the excessive embedded undisclosed base charges, (b) the undisclosed risks to the illustrated performance, and (c) PacLife's deceptive utilization of a mysterious multiplier – the so-called

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[1] https://lifeproductreview.com/2018/02/19/pdx-review-part-5-more-to-the-story/.

[2] https://lifeproductreview.com/2018/01/17/intro-to-the-pdx-series/.

"Performance Factor" – through which PacLife circumvented insurance regulations and fraudulently inflated the illustrated performance of the PDX Policies.

3. In particular, the Performance Factor is a subterfuge that PacLife developed to circumvent and evade Actuarial Guideline 49 ("AG 49") promulgated by the National Association of Insurance Commissioners ("NAIC"), which was specifically adopted to curtail misleading excessive illustrated interest rates in IUL illustrations. AG 49 was adopted to address the misleading use in illustrations of the historical performance of the S&P 500 index, by limiting the annual rate of index-based interest that may be used to calculate projected policy values in IUL illustrations. AG 49 governs all illustrations produced on or after September 1, 2015.

4. To circumvent and evade AG 49, PacLife in 2017 began selling the PDX Policies, which incorporated the undefined Performance Factor to boost illustrated policy performance beyond that otherwise permitted by AG 49. Using this unexplained artifice, PacLife sold the PDX Policies based on misleading illustrations showing outsized yet unattainable returns far higher than the limit imposed by AG 49.

5. The PDX Performance Factor operates as a multiplier applied to the otherwise applicable index credits after the third policy year which is guaranteed to be not less than 1 (which, as explained below, is an illusory guarantee permitting PacLife to unilaterally eliminate any positive impact of the multiplier). Without revealing any details about this embedded multiplier, PacLife claims it can change the Performance Factor at any time based on its unbridled discretion. Like a turbocharger, the Performance Factor thus has a huge, albeit unexplained, impact on the illustrated performance of the PDX Policies.

6. Despite its critical impact on the illustrated and represented performance of the PDX Policies, however, ***nowhere*** in the PacLife illustrations or in the PDX uniform marketing materials or policy forms is the Performance Factor explained or defined, is the formula used to determine the Performance Factor described, or is the value of the assumed Performance Factor disclosed. That is because, as alleged with particularity below, the Performance Factor is intentionally misleading and deceptive: among other things, it is premised on assumed leverage

associated with unsustainable option trading profits that are very unlikely to be attained and is skewed to defer the illustrated non-guaranteed account value enhancements until late durations when most elderly policyholders will have died. Once consumers purchase a PDX Policy, they are locked into the policy by onerous surrender penalties that continue for ten years.

7. The use of such multipliers circumvents and contravenes the restrictions of AG 49 and is so obviously abusive and misleading that the NAIC has been forced to promulgate Actuarial Guideline 49A – expressly outlawing the deceptive practice PacLife has used to "win" the illustration performance war with competing insurers.

8. The undisclosed risks and leverage associated with the PDX Policies are furthermore exacerbated by the extraordinarily high base policy charges, which are among the highest of any IUL products. These excessively high current policy charges are not quantified or specified in the policy contracts or in the illustrations. Furthermore, the policy charges will extend for the entire life of the PDX Policies.

9. In addition, the excessive policy charges are not devoted solely to covering administrative expense or the cost of providing insurance coverage. Instead, a substantial portion of the undisclosed current policy charges are used by PacLife to purchase additional call options, the cost of which varies with changes in the prevailing market volatilities, interest rates and other market factors. Consequently, the PDX account values are, in fact, subject to diminution based on market risk, contrary to PacLife's fundamental promotional mantra that the policy account values are fully protected from market risk by PacLife's 0% minimum interest crediting guarantee. Moreover, to spike the illustrated performance of the PDX Policies, PacLife assumes the call options will generate profits of 50% ***in perpetuity***, on each transaction, an indefensible assumption that is unsupportable, unsustainable and actuarially unreasonable. The high policy charges and inflated assumed option trading profits operate in tandem to create a tremendous degree of leverage in the PDX Policy performance, resulting in enormous undisclosed risks – including substantial market risks – to the PDX account values and policy performance.

10. Consequently, if the index to which the PDX account values are allocated performs poorly, or if the unsustainable option profits[3] assumed by PacLife fail to materialize, the high policy charges will result in ***negative*** returns on the Policies' account values and will cause the policy to lapse unless the policy owner pays additional hefty premiums – directly contradicting PacLife's false representations that there is no downside market risk associated with the PDX Policies. In addition, because the Performance Factor is applied as an undisclosed multiplier to the policy account values, the PDX illustrations create the false impression that the projected double-digit returns are "conservative" based on the ***disclosed*** interest crediting rate (slightly higher than 6%) when, in reality, they are juiced by the ***undisclosed*** Performance Factor multiplier making the PDX Policies the riskiest IUL product in the industry.

11. Compounding the foregoing, PacLife structured the PDX Policies in a way that incentivizes its sales agents to heap even more risk on the unwitting policyowners. The death benefits for the PDX Policies can be allocated between less costly term coverage under an Annual Renewable Term Rider and far more costly coverage as Basic Life Coverage under the base policy. Because agent commissions are tied to policy charges during the first 10 policy years, a higher base policy face amount translates into higher agent compensation and much higher policy charges. In fact, every extra dollar in agent compensation translates into about two more dollars in policy charges to the policyowner. The increased policy charges resulting from the skewed allocation of death benefits to the base policy is not disclosed, described or defined in the PacLife illustrations.

12. As a consequence, PacLife offers agents higher commissions – up to three times higher – to steer customers into a PDX Policy with all or a substantial portion of the face amount allocated to base coverage, even though the policy charges would be far less under a blended structure. Although the policyowner pays higher policy charges and incurs far more risk by virtue

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[3] The option profits PacLife assumes to generate the unsustainably high account values in the PDX Illustrations are not retained by PacLife. Rather, PacLife assumes that it will earn a 50% annual profit on its options trades each and every year for the next 30–50 years and that those profits will fund the Performance Factor used to artificially inflate the illustrated account values.

of the additional leverage, the Performance Factor conceals the undisclosed increased risks and allows PacLife to deceptively portray the product with the artificially inflated long-term illustrated performance.

13. Through the foregoing misleading and deceptive practices, PacLife wrongfully induced Plaintiff and thousands of similarly situated residents of California to purchase PDX Policies through materially false and misleading representations and misleading half-truths, in contravention of the California Unfair Competition Law ("UCL"). In addition, the fraudulent scheme perpetrated by PacLife constitutes fraud and deceit and intentional misrepresentation under the laws of California. The misleading representations and omissions by PacLife were a substantial factor inducing Plaintiff to purchase her PacLife Policy. Plaintiff in this action therefore seeks damages, rescission, restitution, and other appropriate forms of equitable or injunctive relief to halt and remedy PacLife's deceptive sales of PDX Policies to California residents.

14. In addition, Plaintiff also asserts individual claims for negligent misrepresentation, breach of fiduciary duties, negligence and fraud and deceit and intentional misrepresentation against PacLife producer Stephanie Xu and her life insurance agency, Sky Vision, based on oral misrepresentations that were also a substantial factor inducing Plaintiff to purchase her PDX Policy.

PARTIES

15. Plaintiff Hong Li at all material times resided in Los Angeles County, California. Plaintiff Tailong Liu is Hong Li's son and is acting as attorney in fact pursuant to a Power of Attorney dated July 3, 2020.

16. Defendant Pacific Life Insurance Company is a life insurance company organized under California law, with its principal place of business located at 700 Newport Center Drive in Newport, California. PacLife is a citizen of the State of California.

17. Defendant Tiffany Xu is an insurance agent who is a resident of Los Angeles County, California. Defendant Xu is a citizen of the State of California.

18. Defendant Sky Vision Insurance Agency ("Sky Vision") is an insurance agency, with its principal place of business located at 2390 Huntington Drive, San Marino, California. Defendant Sky Vision is a citizen of the State of California. Defendant Xu is Managing Director of Sky Vision.

19. The true names and capacities of Does 1–5, whether individuals or corporations or other entities, are unknown to Plaintiff who therefore sues such Defendants by such fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff further alleges that each such fictitious Defendant is legally responsible for the acts and occurrences set forth herein or arising from the same nucleus of facts alleged herein. Plaintiff will amend this Complaint to reflect the true names of such fictitious parties and the manner in which each of them is responsible when ascertained.

JURISDICTION AND VENUE

20. The Court has subject matter jurisdiction over Plaintiff's claims pursuant to Code of Civil Procedure § 410.10 and the California Constitution, Article VI §10, because this case is a cause not given by statute to other trial courts.

21. The Court has personal jurisdiction over Defendant PacLife because it is headquartered in California and transacts substantial business in California, including in Orange County. PacLife markets, promotes, sells and distributes its PDX Policies in and from Orange County, causing Defendants to incur both obligations and liabilities in Orange County.

22. The Court has personal jurisdiction over Defendants Xu and Sky Vision because they are citizens of the State of California and transact substantial business in California.

23. Venue is proper in this Court because Defendant PacLife is headquartered in Orange County, California, systematically and continuously transacts business in Orange County, the PDX Policies were designed in Orange County, the actuarial, marketing and sales activities of PacLife occurred in Orange County and the PDX Policy sold to Plaintiff Li was issued from Orange County.

24. This case is not removable to Federal court because, among other things, Plaintiff, the members of the putative Class, PacLife, Xu and Sky Vision are all citizens of the State of California. 28 U.S.C. § 1332(d)(4).

GENERAL ALLEGATIONS

A. The Background and Nature of Indexed Universal Life Policies

25. Traditionally, life insurance companies sold two types of policies: term and whole life insurance. Term life insurance is issued for a term of years, normally building up no cash value and expiring without value. Whole life insurance provides coverage for life and provides an increasing cash value that is available when needed. The premiums remain the same throughout the life of the policy.

26. In the early 1980s, life insurance companies began selling universal life policies. Universal life policies combine aspects of term life insurance (life insurance policies that pay a benefit in the event of the death of the insured during a specified term) with an interest-bearing account into which premium payments are made. As a result, policyholders are able to adjust allocations of their contributions between the “insurance” component of their policy and the savings or “investment component” of their policy. In addition, policyholders can adjust both the amount and frequency of their premium payments so long as the policy value is sufficient to cover monthly deductions consisting of a cost of insurance charge and an administrative fee. By 1985, universal life sales had largely displaced sales of traditional life insurance products.

27. In the late 1990s, insurance companies developed IUL policies to offer more attractive illustrated crediting rates in order to boost sales. Sales of IUL policies exploded during the 2000s as interest rates declined and insurance companies adopted aggressive strategies allowing them to employ sales illustrations and marketing materials depicting more attractive projected returns to lure consumers into purchasing their IUL products.

28. Like fixed interest universal life policies, when a premium is paid on an IUL policy, it is deposited in an account, from which monthly policy charges are deducted. Policyholders may choose to allocate the policy values to: (a) an account crediting a fixed interest rate not less than a

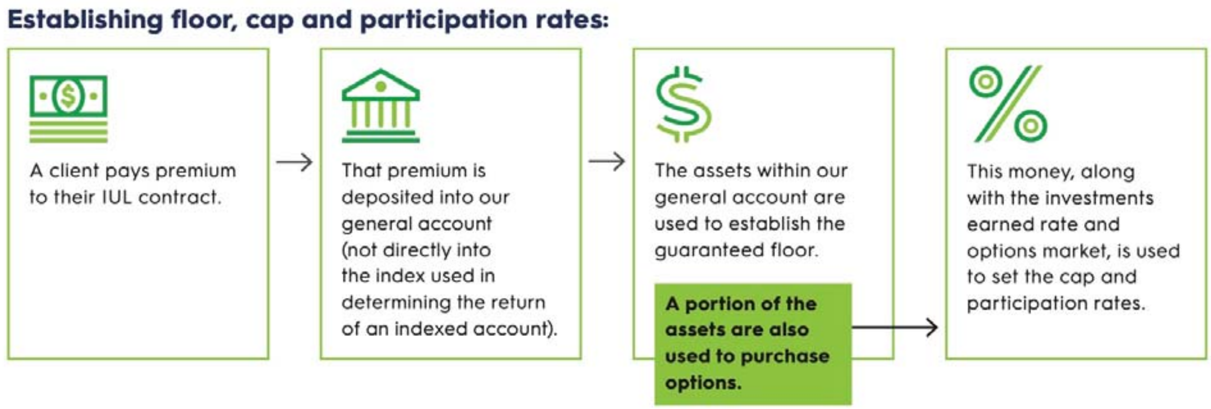
modest guaranteed rate; and/or (b) an account crediting interest determined by changes in a designated index like the S&P 500 index, the Russell 1000 index or a "proprietary" index based on the reported prices of a collection of equities, bonds, commodities or other assets.

29. Most IUL policies limit the growth in account values allocated to equity-based indices, however, by limiting the amount of appreciation to a non-guaranteed fixed percentage (the "cap" rate), or limiting the appreciation by crediting to the account value only a non-guaranteed specified percentage of the index's annual or other periodic increase (the "participation" rate).

30. For an annual index account, the value of the selected index is recorded at the beginning of the year and compared with the value at the end of the year. If the index increases during the year, the interest is added to the cash value. The index gains alternatively may be computed on a multi-year (i.e., a 2-year or 5-year period) basis. IUL policies typically credit the index interest to cash accumulations either once a year, or once every two or five years, and guarantee that, regardless of decreases in the applicable index, the cash value account will not be reduced by index-based losses.

31. With an IUL policy, the insurance company does not actually purchase equities or invest collected premiums in indexed investment funds. Instead, the company buys options on one or more index – typically call options – to hedge the company's risk of having to make good on the guarantee that account values will not be reduced by declines in the index or indices selected by the policy owners. Each year, the insurance company establishes an "option budget," essentially equal to the amount of interest declared for the policy's fixed-interest account (based on the interest being earned by the company's general account less a "spread" retained by the company as profit). The company uses the budgeted amount to buy options to hedge its contractual obligations to the

policyowner, and adjusts the cap and/or participation rates to cover the cost of the options purchased by the company.[4] The following graphic[5] depicts this process:



B. The Explosion of Misleading Illustrations Leading to the Adoption of AG 49

32. As competition in the marketplace intensified in the years following the introduction of IUL products, insurance companies engaged in an intense battle to attract customers using deceptive sales illustrations and marketing materials depicting returns higher than their competitors. Insurance companies went to great lengths to extoll the supposedly exceptional performance of their IULs through a plethora of features and purported benefits calculated to portray superior investment returns and future account value growth.

33. As the competition intensified, some insurance companies began using illustrations and marketing materials that projected future policy values based on selected past periods when the S&P 500 or other applicable index had experienced non-representative increases that were unlikely to reoccur or were otherwise unsustainable under accepted finance principles. These assumptions were gerrymandered and deliberately cherry-picked by the insurance companies to inflate the illustrated future policy values.

34. In addition, insurance companies began to manipulate the caps and participation rates used in their illustrations and marketing materials for the same deceptive purpose of inflating

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[4] Unlike a direct investment in an indexed fund, IUL policies do not receive dividends on the underlying index. This further limits the returns on the account value of an IUL policy.

[5] http://theasagroup.com/wp-content/uploads/How-Caps-and-Par-Rates-are-determined.pdf

the illustrated future policy values to levels that were completely unsupported and unsustainable over the long-term. To depict even higher unrealistic returns in their sales illustrations and marketing materials, insurance companies to illustrate future values of their IUL products using "backtested" projections based upon more cherry-picked and non-representative historical periods of the S&P 500 or other applicable index. The resulting illustrated crediting rates based on these backtested projections showed unrealistically high and unattainable projected values, thereby allowing insurance companies to gain an illustration advantage over their competitors, even though the insurance companies knew it was highly unlikely the policies would achieve anywhere close to those projected values.

35. The ubiquitous and ever-increasing use of misleading sales illustrations and marketing materials in the illustration wars – resulting in widespread consumer deception – did not go unnoticed by industry commentators, well-respected conservative insurance companies and, ultimately, the insurance regulators. In 2014, the National Association of Insurance Commissioners convened the Life Actuarial (A) Task Force (the "NAIC Task Force") to study the growing problems associated with deceptive IUL illustrations with the objective of formulating potential model regulations or guidance addressing these concerns.

36. Among other participants in the Task Force, MetLife, Northwestern Mutual and New York Life expressed their view that the IUL illustration practices prevalent in the industry had the capacity to mislead prospective purchasers:

> We believe that these high illustrated rates are highly unlikely to be achieved, which could lead to widespread consumer disappointment and potentially damage the reputation of the entire life insurance industry … Companies are justifying these aggressive illustrations by pointing to a historical look-back of index returns, based on current non-guaranteed product parameters and options prices.

Arthur D. Postal, "Insurers Take Aim At IUL Illustrations," InsuranceNewsNet article (December 23, 2014), https://insurancenewsnet.com/oarticle/insurers-take-aim-at-iul-illustrations#.XxnxKkBFyUm.

37. After considerable debate among the regulators, insurance companies, and other participants, the NAIC adopted AG 49 effective as of September 1, 2015. To prevent cherry-picked

backtesting, AG 49 sets a ceiling on illustrated performance by limiting life insurance companies illustrating IUL products to an objective "benchmark" rate based on the annual returns of the S&P 500 beginning 66 years prior to the current calendar year and calculated using the geometric average for successive 25-year periods. AG 49 thus prohibits insurance companies from using illustrations based on assumed crediting rates higher than the resulting benchmark rate. At the time AG 49 became effective, the resulting benchmark rate was approximately 6.85%, based on a 12% illustrated cap rate.

38. According to the NAIC, "AG 49 was developed to bring uniformity to the illustrations of policies tied to an external index or indices by providing a reasonable cap on the illustrated credited rate."[6] Unfortunately for consumers, however, as shown below PacLife promptly undertook to evade and circumvent the NAIC restrictions by launching new IUL products which juiced illustrated performance beyond the AG 49 benchmark rate by using multipliers and bonuses that were not disclosed to consumers.

C. The California Insurance Code Requirements Governing Sales Illustrations and Sales Practices of Insurance Companies and their Agents

39. The California Insurance Code (the "Insurance Code") contains numerous provisions governing the format, content and use of sales illustrations by insurance companies issuing life insurance policies within California. The Insurance Code defines three types of illustrations. A "'[b]asic illustration' means a ledger or proposal used in the sale of a life insurance policy that shows both guaranteed and nonguaranteed elements." Cal. Ins. Code § 10509.953(h)(1). A "'[s]upplemental illustration' means an illustration furnished in addition to a basic illustration that meets the applicable requirements of this regulation, and that may be presented in a format differing from the basic illustration, but may only depict a scale of nonguaranteed elements that is permitted in a basic illustration." *Id.*, § 10509.953(h)(2). An "'[i]n force illustration' means an illustration furnished at any time after the policy that it depicts has been in force for one year or more." *Id.*, § 10509.953(h)(3). As used in the following paragraphs,

[6] https://content.naic.org/cipr_topics/topic_life_insurance_illustrations.htm (last visited July 24, 2020).

the term "PDX Illustration" refers to the basic illustrations and supplemental illustrations used by PacLife and its agents in connection with the sale or issuance of PDX Policies to California residents.

40. Among many other requirements, the Insurance Code provides that: (a) life insurance illustrations may not "[u]se or describe nonguaranteed elements in a manner that is misleading or has the capacity or tendency to mislead" [Cal. Ins. Code § 10509.955(b)(2)]; (b) basic illustrations must include "[a] brief description of any policy features, riders or options, guaranteed or nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy" and must also include "[i]dentification and a brief definition of column headings and key terms used in the illustration" [*Id.*, § 10509.956(b)(3) and (4)]; (c) "Nonguaranteed elements may be shown [in the illustration only] if described in the contract" [*Id.*, 10509.956(e)(3)]; and (d) "If an interest rate used to determine the illustrated nonguaranteed elements is shown, it shall not be greater than the earned interest rate underlying the disciplined current scale" [*Id.*, § 10509.955(c)]. The Performance Factor and policy charges are "nonguaranteed elements" within the meaning of the Insurance Code, which are defined as "the premiums, benefits, values, credits or charges under a policy of life insurance that are not guaranteed or not determined at issue." *Id.*, § 10509.953(m).

41. In addition to the provisions expressly related to insurance illustrations, the Insurance Code prohibits an insurance company from causing or permitting to be issued, circulated or used "any statement that is known, or should have been known, to be a misrepresentation of the … terms of a policy issued by the insurer [or] … [t]he benefits or privileges promised thereunder…." Cal. Ins. Code. § 780. Furthermore, the Insurance Code requires that an insurance company must "communicate to the … [purchaser], in good faith, all facts within [its] knowledge which are or which [it] believes to be material to the contract and as to which [it] makes no warranty, and which the [purchaser] has not the means of ascertaining." *Id.*, § 332. "Concealment, whether intentional or unintentional, entitles the injured party to rescind insurance." *Id.*, § 331.

42. The Insurance Code furthermore specifically requires that, if a basic illustration is used by an insurance agent in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of the illustration, signed by the agent and by the applicant, must be submitted to the insurance company and a copy provided to the applicant. Cal. Ins. Code, § 10509.958(a)(1). If no illustration is used in the sale of the life insurance policy, the sales agent must so certify on a written form submitted to the insurance company at the time of application and if the policy is issued, a basic illustration must be sent with the policy and signed by the policy owner no later than when the policy is delivered to the owner. *Id.*, § 10509.958(b)(1) & (2). Finally, the insurance company must maintain a copy of the basic illustration, signed as required, and the agent certification, for a period of at least three years after the policy is no longer in force. *Id.*, § 10509.958(d).

D. PacLife Develops the PDX Policies to Circumvent AG 49

43. PacLife was among those insurance companies illustrating its IUL products in the years before the adoption of AG 49 with non-guaranteed interest bonuses as a means to enhance the policies' illustrated performance. These PacLife products included the Pacific Indexed Accumulator 4 (designed to illustrate higher cash surrender values in early durations) and the Pacific Indexed Performer LT (designed to illustrate higher cash surrender values in later durations). When AG 49 was adopted, PacLife promptly developed and launched the PDX IUL to circumvent and effectively evade the maximum illustrated crediting rate permitted by the NAIC.

44. PacLife launched the PDX IUL on February 17, 2017. PacLife marketed the PDX IUL as a cash accumulation product offering substantial long-term cash value appreciation (as opposed to a low cost death benefit product), while preserving the policy account values from downside market risk by guaranteeing a 0% credited interest rate. To enhance the illustrated performance of the PDX Policies, PacLife developed an opaque internal multiplier, which it called the "Performance Factor." The Performance Factor operates to multiply the otherwise applicable indexed credits in durations after policy year 3 by an unspecified non-guaranteed factor.

45. PacLife employs the Performance Factor as an artifice to circumvent and evade the very consumer protections that AG 49 was adopted to achieve; as one industry commentator has reported:

> ***Insurers appear to be sidestepping a recent rule [AG 49]*** meant to tamp down on overly rosy projections of returns in indexed universal life policies via new product features, an alarming trend that may deceive or confuse would-be buyers, advisors said.
>
> …
>
> ***Pacific Life Insurance Co., the largest IUL seller, has a PDX product with a unique multiplier — its formula isn't explicitly explained in the insurance contract, yet it drives a "significant portion," roughly 40%-50%, of the illustrated performance***, Mr. Love said.

Greg Iacurci, "Insurers Bend Rule on Indexed Universal Life With New Policy Features," InvestmentNews, June 27, 2019 (emphasis added).[7]

46. PacLife appears to contend that, because the Performance Factor is applied as a separate multiplier to the illustrated interest crediting rate rather than as an increase in the illustrated rate itself, it supposedly falls outside the limitation imposed by AG 49. But that is incorrect and (as the NAIC has since made clear) there is little or no functional difference between the two constructs.

47. To launch the new PDX IUL policy, PacLife issued a Bulletin to its life insurance producers and others on March 17, 2017, announcing that the PDX Policies were available for new sales in California.[8] According to the Bulletin, PDX offered "Top Tier Potential vs. Competition." PacLife advised its agents that PDX, "[d]esigned for affluent clients … ***illustrates particularly well*** when funded with large premiums within the policy's first 7 to 10 years" based on the "performance factor that may increase policy performance on a nonguaranteed basis." *Id.* at 1.

48. PacLife went even further in a PowerPoint presentation directed to its sales agents when the PDX launched in February, 2017,[9] in which PacLife with the following bullet points

[7]https://www.investmentnews.com/insurers-bend-rule-on-indexed-universal-life-with-new-policy-features-80182.

[8] http://www.marketing.pacificlife.com/documents/MasterLinks/BT-45570.pdf

[9] http://marketing.pacificlife.com/documents/MasterLinks/PT-45568.pptx

emphasized the illustrated performance of the PDX Policies generated by use of the Performance Factor:

- "Competitive in a Low Interest Rate Environment"
- "New **Performance Factor** May Enhance the Indexed Interest Credits"
- "Competitive Performance When Comparing Same or Maximum Illustrated Rate"
- "Potential for High Accumulated Values"

Id. at 12 (emphasis original). In the same PowerPoint, PacLife reminded its agents that "[m]any times the 'best' illustrations wins." *Id.* at 9.

49. It did not take long for PacLife agents to jump on the PDX bandwagon. One major Independent Marketing Organization posted the following newsletter[10] to its sales force, along with a chart purporting to show that PDX illustrated more favorably than any of the IUL products offered by PacLife's primary competitors:

> We mentioned in the last month's newsletter that Pacific Life rolled out their new IUL product designed primarily for max-funded scenarios. Now that we have had a few days to digest it and run comparisons, the verdict is in: Pacific Life is BACK!!!
>
> ***
>
> We can vary target premiums and how the DB [death benefit] is paid in different ways. ***But even at an interest rate projection that is, in some cases, more than 1% less than the completion [sic], the income and compensation are far greater***.
>
> ***How is this possible?*** Pacific Life uses an interest multiplier formula [i.e., the Performance Factor] that is made part of the contract and is based on age, sex, funding level, cash value, etc. that kicks in year 3.

Id. (emphasis added).

50. PacLife's PDX Illustrations depicted the most aggressive and highest projected cash values in the industry, while creating the false impression that the illustrated performance was

[10] https://www.firstheartland.com/blog/how-good-pacific-life-pdx (last visited July 24, 2020).

premised on a conservative credited interest rate, but concealing that the PDX IUL is the costliest and riskiest IUL product in the marketplace.

51. Based on the unsustainable, astronomically-high cash value buildup shown in the PDX Illustrations – producing projected outsized returns as high as 42% at product maturity – and the excessive compensation available to producers, the PDX Policies swiftly became the highest selling IUL product in the years immediately after it was launched. PacLife proclaimed that it "was the top-ranked indexed universal life insurance performer for the third quarter [of 2017], led by its top-selling indexed universal life (IUL) product, Pacific Discovery Xelerator."[11] And in 2019, PacLife proclaimed that PDX was "the #1 selling IUL for the last two years in a row."[12]

E. PacLife's Uniform PDX Consumer Brochures, Marketing Materials and Policy Documents

52. PacLife prepared and disseminated uniform consumer brochures to market the PDX Policies after their product launch. One early version contained a series of platitudes trumpeting the PDX Policies as providing "PROTECTION FOR YOUR LOVED ONES," "ASSET DIVERSIFICATION" and "MARKET LOSS PROTECTION."[13] As key selling points, PacLife represented that the PDX Policies would (a) provide "attractive cash value growth potential in and after policy year 15"; and (b) protect policy cash values "from market-based losses … reduced only by policy charges and any policy loans, withdrawals, and other distributions you take." *Id.* at 3 and 5.

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[11] https://www.businesswire.com/news/home/20171212005395/en/Pacific-Life-Ranked-1-Indexed-Universal-Life (last visited July 24, 2020).

[12] https://www.businesswire.com/news/home/20190227005798/en/Leader-Indexed-Universal-Life-Insurance-Announces-New (last visited July 24, 2020).

[13] Pacific Discovery Xelerator Flexible Premium Life Insurance Client Guide at 4 (attached hereto as **Exhibit 1**).

53. The PacLife consumer brochure (attached as **Exhibit 1**) also mentioned a vague yet alluring PDX Policy performance booster:

> **POTENTIAL POLICY BOOST**
>
> Beginning in policy year three, the accumulated values in the policy's fixed account and indexed accounts may benefit from an additional credit on a nonguaranteed basis. This credit is called the fixed account additional credit in the fixed account and the indexed interest performance factor in the indexed accounts. The credits will vary based on account, face amount, accumulated value, insured's issue age, and other factors.

Ex. 1 at 6.

54. The PacLife consumer brochure disclosed no other information about this mysterious "Policy Boost." PacLife did not disclose or explain how the Performance Factor was derived, applied or funded, how it would impact the accumulated cash values, the current magnitude of the multiplier, what factors would impact the fluctuation, amount, timing or incidence of this so-called "Policy Boost" or anything else about it. Nor did the brochure disclose that the illustrated policy performance attributable to the Performance Factor depended on PacLife's unsupported and unsustainable assumption that it would earn a 50% profit on future option purchases in perpetuity. Instead, PacLife misleadingly suggested only that the Performance Factor was tied to a list of objective policy factors, like "face amount, accumulated value, insured's issue age, and other factors."

55. PacLife prepared and disseminated another marketing piece in June of 2017, entitled "Discover the Performance Factor in Pacific Discovery Xelerator IUL."[14] The vague description of the Performance Factor in this consumer brochure was equally misleading. The brochure included the following graphic illustrating how the Performance Factor multiplier could increase the interest credited to the PDX account values:

[14] http://jh-bt.s3.amazonaws.com/wp-content/uploads/2018/03/Performance-Factor.pdf.

Hypothetical Performance Factor Crediting Examples

Hypothetical Segment Total Interest Crediting Rate	Hypothetical Performance Factor	Final Segment Interest Crediting Rate	If Average Segment Balance Is...	Then Interest Credited at Segment Maturity Would Be...
0% x	1.0	= 0%	$1000 x 0% =	$0.00
10% x	1.0	= 10%	$1000 x 10% =	$100.00
10% x	1.25	= 12.5%	$1000 x 12.5% =	$125.00
2% x	1.25	= 2.5%	$1000 x 2.5% =	$25.00

56. This graphic is misleading because it appears to be based on an inflated and unsustainable cap rate of 10% and, as PacLife knew, the projected values in its sales illustrations at the time were based on undisclosed Performance Factors substantially higher than 1.25. Consequently, while the brochure suggested that the Performance Factor multiplier was a relatively modest component of anticipated policy performance, in reality it created the enormous undisclosed leverage, risks and attendant policy underperformance described below. Furthermore, the brochure fails to disclose that the Performance Factor was funded by excessively high policy charges that PacLife knew would exceed any reasonably projected index returns, thereby resulting in negative returns.

57. The PacLife consumer brochure encouraged prospective purchasers to "[r]equest a personalized illustration showing what [the] Pacific Discovery Xelerator IUL can do for you." **Ex. 1** at 6. These PacLife sales illustrations were standardized and uniform. Indeed, as explained above, the Insurance Code, which regulates life insurance illustrations, ***requires*** among other things that a copy of each basic illustration used in connection with the sale of a life insurance policy must be signed by the customer and producer and submitted to the insurance company with the application. Cal. Ins. Code §§ 10509.958(a)(1) and 10509.956(d)(1) and (2). Furthermore, the Insurance Code requires each producer to affirmatively attest that they "have made no statements [to the consumer] that are inconsistent with the illustration." *Id.*

58. The PDX Illustrations used to sell the PDX Policies projected double-digit growth in policy values driven largely by the inclusion of the Performance Factor, without disclosing any meaningful information about the embedded multiplier and attendant risks. Instead, the PacLife standardized illustrations, attached as **Exhibit 2**, simply state:

> One of the segment components, the Performance Factor, is used to determine the Segment Indexed Interest. The Performance Factor is determined for each segment at the segment start date based upon certain factors, including but not limited to: the face amount, the policy's Accumulated Value, and which Indexed Account the segment is allocated to…. A Performance Factor greater than the Guaranteed Minimum Performance Factor for an Indexed Account will increase the Segment Indexed Interest as reflected in this illustration, but is not guaranteed. This illustration reflects Performance Factors greater than the minimum beginning with segments created in policy year 3 and until age 121.

Ex. 2 at 9. The PDX Illustrations failed to define the Performance Factor or disclose how it functions. Nor do the PDX Illustrations meaningfully disclose that the Performance Factor operates as a multiplier that is applied to the illustrated Indexed Interest rate. Further, the PDX Illustrations misleadingly state that the Performance Factor is "determined … based upon" certain listed factors, all of which are objective policy factors, namely "the face amount, the policy's Accumulated Value, and which indexed Account the segment is allocated to." In reality, the Performance Factor that PacLife may apply at each Segment maturity date is not tied to these factors mentioned in the PDX Illustrations.

59. The description of the phantom Performance Factor is also cryptic and uninformative in the PDX Policy contract itself, which states only:

> **Performance Factor.** This is the factor used to determine the final Segment Indexed Interest and Segment Guaranteed Interest Rate. The Guaranteed Minimum Performance Factor [1.0] is shown above. We may declare a higher Performance Factor. Certain policy charges may be used in determining the Performance Factor.

See PDX Policy Contract, attached as **Exhibit 3**.

60. That's it. Nothing more. These shockingly vague, ambiguous, and uninformative descriptions were at best misleading half-truths, just like the description in the uniform PacLife marketing materials, and each fails to disclose the value of the Performance Factor used in the illustration, what portion of the illustrated values are attributable to the Performance Factor, the

assumptions used to set the Performance Factor, how the generally described "certain factors" are applied, how they impact the Performance Factor, or how other undisclosed factors are taken into account by PacLife in establishing the Performance Factor.

61. Nor did PacLife disclose the withheld information concerning the Performance Factor and its impact on PDX Policy performance to its own sales agents. Nowhere in the "Technical Guide" supplied by PacLife when the PDX Policy was introduced did PacLife adequately explain the Performance Factor.

62. In sum, as one respected insurance analyst writes:

> What we appear to have then, is this – a product that has quantifiably the highest charges of any IUL product in the market with an unspecified Performance Factor, and somehow the combination of the two generates the most competitive accumulation, income and sometimes even death benefit solves by a mile…. ***The product is impossible to understand, impossible to explain to clients and impossible not to sell, simply because it illustrates the best.***

B. Samuelson, "PDX Review – Part 1 – Intro to the PDX Series" The Life Product Review, https://lifeproductreview.com/2018/01/17/intro-to-the-pdx-series/.

F. The PDX Product Is Misleading and Deceptive

63. At the same time it was being pitched to thousands of unwitting California consumers, the PacLife PDX Policies attracted widespread industry criticism and outright condemnation for several inter-related product attributes: use of the mysterious Performance Factor, aberrational and extremely high base policy charges, aggressive initial cap rates, and excessive agent compensation all making the PDX the most highly leveraged, most highly risky and most highly misleading IUL product on the market.

64. As alleged more fully below, the PDX marketing materials, the PDX Illustrations and the PDX Policies themselves were misleading and deceptive for a variety of reasons because, among other things:

a. PacLife misrepresented the fundamental nature of the Performance Factor and failed to disclose that the Performance Factor was a subterfuge intentionally conceived and used by PacLife to circumvent and evade the consumer protections of AG 49;

b. PacLife misrepresented and failed to disclose critical information necessary for consumers to understand the operation, impact, and risks of the Performance Factor;

c. PacLife misrepresented that the PDX Policies are structured to protect the policyowner from "market loss," while in fact secretly subjecting them to market-based diminution in policy account values due to the excessive policy charges and their impact on the Performance Factor;

d. PacLife misrepresented the illustrated performance of the PDX Policies and failed to disclose that the PDX Policies could not perform as represented because the illustrated performance was based on assumptions that PacLife knew were unsupportable and unsustainable;

e. PacLife failed to disclose that the high cap rates it established to launch the PDX Policies were unsupported and unsustainable;

f. PacLife failed to disclose material information showing that the PDX Policies are in fact the costliest and riskiest IUL products on the market; and

g. PacLife incentivized its sales agents to maximize their own compensation to the detriment of the policyowners.

65. As detailed below, the foregoing material misrepresentations and misleading half-truths in, and omissions from, PacLife's uniform standardized marketing materials, illustrations, and contract documents induced Plaintiff and other California residents to acquire PDX Policies and proximately caused injuries to them.

1. <u>The Performance Factor Is Inherently Misleading and Deceptive</u>

66. The Performance Factor has a profound, yet undisclosed, impact on the illustrated performance of the PDX Policies. After policy year 3, and until attained age 121, the index credits to the illustrated account values of the PDX Policies are multiplied by the Performance Factor

applicable to the particular illustration. Thus, if the disclosed illustrated crediting rate is at the approximate 6.1% maximum rate allowed when AG 49 was first adopted and the Performance Factor is 2, the actual effective illustrated rate after the third policy year is actually 12.2%. For a level pay minimum premium PDX Illustration, the undisclosed Performance Factor may result in a multiplier of 4, meaning that the 6.1% rate shown on the illustration actually translates into an effective rate of more than 24%. Despite this dramatic increase in the effective illustrated rate created by the Performance Factor, the actual numerical amount of the multiplier is not disclosed in the PDX Illustrations, nor in the marketing materials or even in the PDX Policies themselves.

67. Through this sleight of hand, PacLife intentionally misleads consumers into thinking that the hyper-aggressive account values shown in the PDX Illustrations and marketing materials are based on the conservative illustrated crediting rate of around 6% mandated by AG 49, while concealing that the PDX Policies are, in reality, the riskiest and most highly leveraged IUL products in the entire insurance industry.

68. Although PacLife deliberately conceals the nature of the Performance Factor multiplier from prospective policyowners, it offered to industry sources in late 2018 a glimpse at "the calculation of the first Performance Factors for its industry-leading … Pacific Discovery Xelerator IUL (PDX)."[15] As reported by Business Wire on November 15, 2018:

> The first Performance Factor calculated on a PDX policy is 2.46, which means it will multiply any positive index-based interest crediting rate by 2.46 at segment maturity. It was promptly followed by another Performance Factor calculated on another PDX policy at 4.18.
>
> According to [PacLife Vice President of Product Design] O'Donnell, "If the client's indexed interest credit met the then-current growth cap rate of 10 percent, ***those segments would earn respective indexed crediting rates of 24.60 percent and 41.80 percent at segment maturity***."

Id. (emphasis added)

69. The undisclosed leverage and resulting risks associated with the PDX Policies stem from a number of other concealed features and indefensible assumptions underlying the product

[15] https://www.businesswire.com/news/home/20181115005287/en/Pacific-Life-Announces-Performance-Factors-2.46-4.18

design. First, the projected increase in returns created by the Performance Factor is purportedly supported by a PacLife assumption of ***perpetual option profits of 50%*** in its option hedging program. As alleged in Paragraphs 80–83 below, PacLife knows that a 50% perpetual options profit assumption is impossible to sustain over the long-term horizon depicted in the PDX Illustrations. PacLife is essentially betting the huge increases in projected account values will materialize based on the assumed leverage (and resulting arbitrage) between the high policy charges paid by the Policyholders and PacLife's ability to earn a 50% profit on its option trades each year over the next 40 years or more. None of these unsustainable assumptions underpinning PacLife's illustrated PDX Policy performance is disclosed to PacLife's customers.

70. The steps taken by PacLife to conceal the nature, effect and true cost of the Performance Factor were deliberate. The lack of disclosure with respect to the illustrated performance of the PDX Policies not only stands in sharp contrast to other IUL products on the market (which transparently offer allocation options allowing the policyowner to receive a higher specified cap or account multiplier in exchange for a specified charge to the policy's account value of 1% or so), it also stands in contrast with PacLife's own past conduct. For instance, with the Pacific Indexed Performer LT – a PacLife IUL product that was a predecessor to the PDX Policy – PacLife at least disclosed that the policy could receive a multiplier of 23% in policy years 11–20 ***in exchange for higher policy charges***. The PDX Policies, by contrast, automatically embed the Performance Factor in projecting the illustrated policy values and automatically includes the cost of the Performance Factor in the base policy charges, without disclosing the amount of the Performance Factor multiplier or the amount of the increased policy charges attributable to the phantom multiplier.

71. In addition, PacLife fails to disclose that the Performance Factor is designed not as a constant multiplier, but instead is back-end loaded to peak in later policy durations and, if that were not enough, that this back-end peak is particularly pronounced for PDX Policies with higher issue ages due to further undisclosed and unsupportable mortality assumptions made by PacLife. In essence, the PDX Policies shift mortality risk – the risk that fewer people will die than PacLife

assumes in its model – from the insurance company to the PDX Policyowners, who purchased an IUL policy in the first place as a cash value accumulation product (not as a low cost death benefit product).

2. PacLife Failed to Disclose the Excessive Costs Associated with the PDX Policies

72. The PDX Policies have extremely high current policy costs that are as much as three to four times the charges associated with other IUL products on the market. These costs are not meaningfully or sufficiently disclosed to prospective customers, nor does PacLife disclose that the excessive costs are not to cover the cost of providing insurance coverage or administrative costs but are, instead, used to purchase options in order to fund the magical Performance Factor.

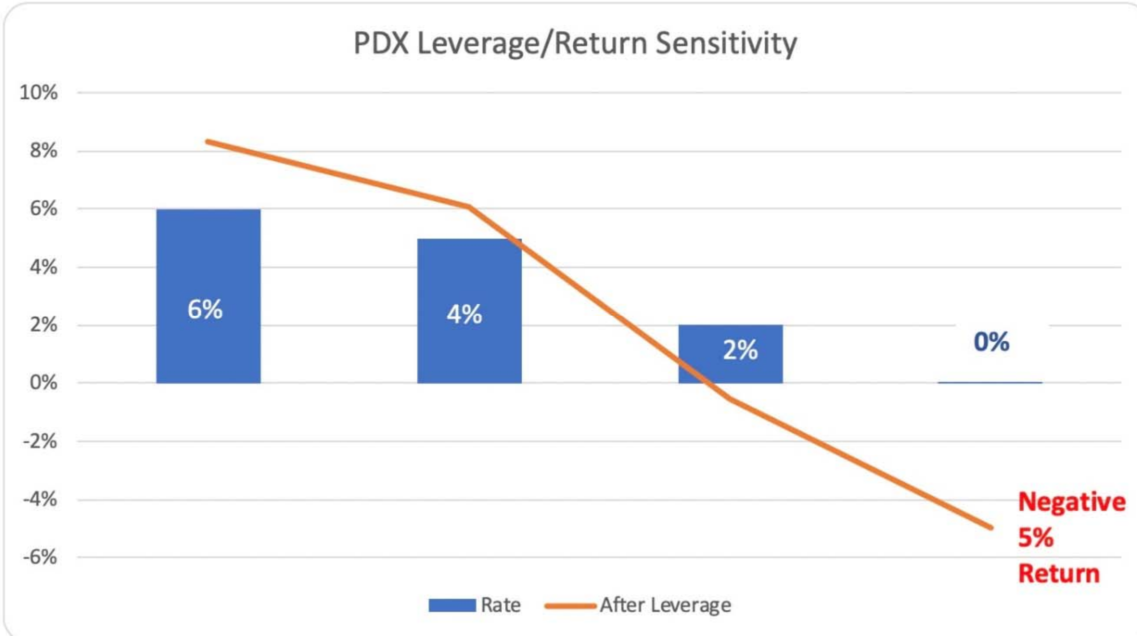
73. The actual current charges embedded in the PDX Illustrations and applied upon issuance of the PDX Policies are not disclosed in the PDX Illustrations, in the policy contracts or anywhere else. Thus, although the policy contract discloses the maximum allowable charges, there is no way for prospective purchasers to know or understand the actual charges assumed in the PDX Illustrations or the charges that will apply when the policy is issued. In essence, prospective purchasers are enticed by the projected returns associated with the PDX Policies without knowing the actual cost of the policy charges, let alone that a very substantial portion of the policy charges are being used by PacLife to acquire more options, creating additional undisclosed leverage and risk, rather than to pay for the cost of insurance, administrative expenses or other insurance-related costs.

74. The excessive policy costs associated with the PDX Policies, combined with the internal undisclosed leverage and the likely index performance over the long-term, expose PDX policy owners to the "death spiral" illustrated in Paragraph 76, in which the policies become prohibitively expensive to maintain as the permanently reoccurring high policy charges exceed the index interest credited to the account values, requiring the owners to pay additional out-of-pocket premiums to avoid lapsing their policies and losing insurance coverage above and beyond the prior premium dollars that they have already sunk into the policies.

3. PacLife Misrepresented the Safety of the PDX Policies and Failed to Disclose the Leverage and Risks Associated With the Policies

75. The undisclosed leverage and resulting risks associated with the PDX Policies are revealed through a stochastic analysis examining the risks associated with the projected statistical sequence of returns associated with the product. Such an analysis confirms that the volatility and sequence of return risk associated with the Performance Factor show a range of results to be far wider than that associated with other IUL products. This means that, when the applicable index performs favorably, the PDX Policies perform more favorably than other IUL products ***but*** when the applicable index underperforms or performs poorly, the PDX performs ***far worse*** than other IULs. So much so, in fact, that the extremely high policy charges – which are tied to face amount and remain fixed over the lifetime of the PDX Policies – have eroded existing policy values and resulted in negative returns when the selected equity index fails to yield sufficient positive movement to achieve the undisclosed arbitrage baked into the PDX policy design. These undisclosed risks, including the very real risk of negative performance, are squarely at odds with PacLife's representations that the PDX provides guaranteed protection against market-based losses.

76. As a result of this leverage, relatively small changes in the illustrated rate have a far greater impact on the projected returns for the PDX Policies than they do with other IUL products. As the following chart shows, even without considering the cost of insurance charges, when the credited interest rate falls from 6% to 4%, the return on the illustrated account values falls from more than 8% to 6%. When the credited rate falls to 2%, the return on the illustrated account value is ***negative***. If the actual credited rate is zero because the increase on the applicable index is zero or less, the illustrated account value is a ***negative 5%***.



77. As this chart makes clear, the undisclosed leverage created by the Performance Factor exposes unwitting PDX Policyowners to the risk that a volatile and underperforming equity index will eviscerate the projected growth in cash surrender value and, potentially, cause the PDX Policies to suffer negative account value growth and lapse. The chart also illustrates how and why PacLife's representations that the PDX Policies protect cash values from market-based losses are misleading half-truths at best, and false at worst.

78. These undisclosed risks and leverage associated with the PDX Policies are confirmed by a comparison between the PDX Illustration received by Plaintiff when she applied for the PDX Policy and the in-force illustration that she requested and received from PacLife less than two years later. The PacLife sales illustration presented to Hong Li on June 5, 2018, indicated that the PDX Policy account values would grow to $5,147,956 in 20 years (when Hong Li will be 69 years old) based on the disclosed assumed credited rate of 6.0%. *See* **Ex. 2**. By contrast, the in-force illustration dated March 5, 2020, attached as **Exhibit 4**, indicates that the policy account values in year 20 will be only $2,353,001 based on an assumed credited rate of 4.92%. *Id.* Thus, while the disclosed credited rate fell from 6.0% to 4.92%, a decrease of 18%, the projected account

values declined ***by 64%*** as a result of the undisclosed leverage and risks attendant to the PDX Policy.

4. PacLife Uniformly Misrepresented that the PDX Policies Were Immune from Market Losses

79. For the reasons just explained, PacLife's description of the PDX Policies as affording the Policyowners "MARKET LOSS PROTECTION" which immunizes the policy account values "from market-based losses … reduced only by policy charges and any policy loans, withdrawals, and other distributions you take" is at best a false and misleading half-truth given the operation of the Performance Factor and the excessive policy charges, which secretly reintroduce market-based risk to the account values and policy performance.

5. PacLife Knew that the PDX Policies Would Not Perform as Illustrated because They are Based on Unsustainable Assumed Option Profits

80. The primary factor driving the PDX Illustrations is PacLife's assumption that the company will earn a 50% profit from the call options it buys with the PDX Policyowner premiums every single year for the next 30–50 years or longer (depending on the age and life expectancy of the insured). Furthermore, PacLife essentially doubles down on this bet, which it knows is untenable in the long run, by imposing on the PDX Policies the highest base policy charges in the industry, and then using those charges to acquire even more call options that PacLife again assumes will yield additional profits of 50% in perpetuity, in order to increase the leverage and illustrated performance of the PDX Policies.

81. The excessive policy charges for the PDX Policies consist of a fixed annual charge based on the face amount of the Policy that is imposed each and every Policy year, ***regardless*** of actual policy performance. Thus, a significant portion of the illustrated cash value buildup in the PDX Policies comes from PacLife's assumption that the high policy charges will be more than offset by even higher profits on the company's option trades (based again on its assumed 50% perpetual option profits).

82. Like the rest of the industry, PacLife knows that the undisclosed option profit assumptions embedded in the PDX Illustrations based on the non-guaranteed Performance Factor are unsustainable, and that as a result the outsized returns depicted in the illustrations were and are unattainable. In 2014, MetLife, New York Life, Northwestern Mutual and OneAmerica submitted a joint position statement to the NAIC, attached as **Exhibit 5**, explaining that illustrations projecting that an insurance company can earn "50% annual returns, year after year" are based on "an unreasonable long-term assumption, which creates unrealistic consumer expectations." **Ex. 5** at 5. This coalition of highly-respected insurance companies explained why "[s]uch exorbitant returns on options" are unattainable:

> There is little, if any, reason to believe that options systematically deliver meaningful profits to the buyer over extended periods of time for the following reasons:
>
> 1) Options are financial instruments with contingent payoffs. As is well documented in academic literature, the expected price to enter an option transaction is the present value of its expected future payoff – in other words, a zero profit baseline assumption.
>
> 2) In an option transaction, both parties assume risk on opposite sides of the same trade. As a result, evaluating options transactions under a long-term risk/return framework is not particularly useful….
>
> 3) The best analogy for options is insurance. Using an option to hedge is analogous to buying an insurance policy because the held risk is transferred to a third party. As with any insurance policy, we should expect the seller to recoup profits for accepting risk over the long run….
>
> 4) The best evidence against the idea of systematic profits to option buyers is the fact that investment professionals, endowments and pension funds do not employ the strategy as a way to enhance returns with very little risk, as is argued with IUL products. … [I]f buying options is so incredibly profitable and has been for such a long time with so little variation, then why doesn't everyone do it and why aren't life insurers employing this strategy to generate higher returns in their own general accounts?

Ex. 5 at 5–6.

83. Although AG 49, as originally adopted, imposes an effective 50% upper ***limit*** on the option profits assumed in IUL illustrations, it does not condone or permit PacLife to use

actuarial assumptions that are unsupported, actuarially unreasonable or unattainable, such as perpetual annual returns of 50%. A properly constructed model using reasonable assumptions will demonstrate the statistical probability that the PDX Policies will perform as illustrated is infinitesimal. As a consequence, the PDX Policies issued to Plaintiff and the other Class members have a present value far less than the premiums paid by them, net of cost of insurance charges.

6. PacLife Also Knew that the PDX Illustrations Were Based on Unsustainable Assumed Cap Rates

84. PacLife launched the PDX Policies using illustrations and policy contracts showing unsustainably high cap rates for the available index options as another artifice to mislead consumers into purchasing the policies. For example, in the initial illustrations provided to Hong Li, "Growth Cap" was based on an assumed 10% cap rate for the illustrated S&P 500 1-Year Indexed Account. The implied options budget necessary to support this cap rate was approximately 4%.

85. As PacLife knew but failed to disclose, a realistic analysis of related option costs over a representative period associated with the reported performance of the S&P 500 index reveals that the 10% cap rate used in the PDX Illustrations in the Spring of 2018 was unsustainable. Given the prevailing low interest rates and then current option pricing, PacLife's net earnings on its General Account assets were insufficient to support a 10% cap rate.

86. PacLife knew, but failed to disclose that the cap rates used in the PDX Illustrations were based on erroneous actuarial assumptions and were unsustainable. Insurance companies set cap rates so that the cost of the options purchased to hedge the underlying liabilities are equal to the yield on the company's portfolio of assets. If the portfolio net investment earned rate declines, the prices of call options increase or the underlying index experiences high volatility or higher volatility "skew" (e.g., the difference between the implied volatility for out-of-the-money options and at-the-money options issued for the same expiration date on same index), then the insurance company must reduce its declared cap rates on the indices for the available Indexed Account options.

87. PacLife knew when it launched the PDX Policies that its portfolio earned rates were falling due to the long persisting low interest rate environment, and that the massive anticipated PDX sales would only accelerate the downward spiral in its portfolio rate as the new premiums were invested in lower-yielding new money assets. PacLife also knew that the high cap rates used in the PDX Illustrations to induce sales were based on aberrational low option prices that inevitably would increase over time. Indeed, as PacLife knew, the average historical costs for options was substantially higher than the prevailing option costs when the PDX Policies were launched. And, as PacLife also knew, the ongoing explosion in IUL sales was putting upward pressure on option prices because there was an insufficient supply of options (since the availability of counterparties willing to trade with insurers was strained) to support the existing historically low option prices.

88. Just as PacLife was ramping up PDX sales, the M Financial Group questioned whether existing IUL cap rates were sustainable in light of the low interest rate environment and increasing option prices, noting that "[o]ver the short term there may be increased pressure to reduce caps and participation rates, as portfolio earning rates remain low and increased volatility increases the cost of the underlying options." https://mfin.com/m-intelligence-details/market-volatility-and-rising-interest-rates-whats-going-on-with-my-life-insurance-policy (last visited on July 24, 2020).

89. By early 2020, only three years after the PDX product launch, the inevitable occurred and PacLife was forced to slash the unsustainable cap rates it had been using throughout the short life of the PDX Policies which by then had been pulled from the market. The Insurance Code requires life insurance companies to designate an "illustration actuary" who must certify illustrations used by the company comply with the "disciplined current scale" which is a scale of nonguaranteed elements establishing a limit on current illustrations that is reasonably based on actual recent historical experience. Cal. Ins. Code, § 10509.953. PacLife's illustration actuary was either unable or unwilling to certify that the existing PDX in-force illustrations complied with this actuarial standard because, as PacLife knew all along, the cap rates used in the PDX Illustrations to garner sales were unsustainable.

90. Accordingly, in January of 2020, PacLife announced reductions to the cap rates applicable to the Indexed Accounts for the PDX Policies. PacLife reduced the cap rate for the 1 Year Indexed Account from 10% to 9% and reduced the cap rate for the 1 Year High Par Indexed Account from 7.5% to 7.25%.

91. Only months later, on July 15, 2020, PacLife ***again*** reduced the cap rates applicable to the PDX Policies. PacLife further reduced the cap rate for the 1 Year Indexed Account from 9% to 8.5% and further reduced the cap rate for 1 Year High Par Indexed Account from 7.25% to 7%.

92. As a result of these reductions, which PacLife knew to be inevitable when it sold the PDX Policies, the PDX Policy owners will receive far lower returns than shown in the PDX Illustrations. As a result, in the short span of 3 years, PDX Policy owners have experienced a decline in the illustrated performance of their PDX Policies in the neighborhood of *35% or more*.

7. <u>PacLife Designed the PDX Policies to Incentivize Agents to Receive Excessive Compensation Resulting in Higher Policy Charges for Policyowners</u>

93. Agent compensation for selling the PDX Policies is based on the policy charges for the first 10 policy years. As alleged above, the base policy charges on the PDX Policies are the highest in the industry. And, as also alleged above, the excessively high base policy charges operate to increase the applicable Performance Factor, thereby juicing the illustrated performance of the PDX Policies. So unlike other products in which higher policy charges adversely impact illustrated performance, the PDX Policy is designed to motivate agents through some of the highest commissions in the industry to steer their clients to the highest policy charges in the industry, but none of this shows up in the illustrations due to the alchemy of the Performance Factor.

94. In fact, an agent who sells a PDX Policy providing base coverage stands to earn compensation that is almost three times higher than the agent could make selling a competing IUL product showing comparable illustrated future performance. Indeed, because the PDX Policies allow agents to vary the percentage of base coverage, an agent who sells a PDX Policy structured with 100% base coverage stands to earn compensation that is almost three times higher than the agent could make selling the PDX Policy itself blended with a 50% term component.

G. The PDX is the Most Abusive and Deceptive IUL Product in the Marketplace

95. PacLife's PDX Policies and its misleading and deceptive marketing and sales practices have been widely condemned by independent life insurance analysts. One such analyst has observed that "no product has been more misunderstood, misrepresented or mis-sold than PDX."[16] Another industry analyst is even more blunt in his assessment of the PDX:

> I have been analyzing IUL's for about 10 years now and I rarely editorialize about one, but this PDX IUL represents such an ***egregious abuse*** by a co. to delude and deceive clients and agents as to how it could perform that I feel I have no choice because agents at what I consider the "top" co.'s – trying to do the best for their clients – are emailing me that they cannot 'compete' against these "false" PDX illustrations. My analysis of this IUL started out as normal, then an agent emailed me asking about the features above that were not even listed in the illustration. So I called Pacific Life, and yep, there are those 3 features for the cash value crediting in this policy that are **NOT** mentioned/described/explained in the illustration and **NOT** mentioned and/or described and/or even explained in the Agent Technical Guide.
>
> ***
>
> This is the kind of product that gives the industry a bad name, and riles other companies up such as those in the Whole Life industry to rail against IUL. Frankly it should be AGAINST THE LAW for a co. to offer this product and for agents to sell it as is – the only reasons to do so are ignorance and/or greed.

"Pacific Life PDX", IUL Digest, March 2017, https://www.iuldigest.com/?page_id=5860 (emphasis in original).

H. The NAIC Moves to Halt the Use of Illustrated Multipliers to Circumvent AG 49

96. The use of bonuses and multipliers like the Performance Factor to circumvent and evade AG 49 caused the NAIC to reconvene the Task Force in 2019 to evaluate and make recommendations concerning potential modifications to the guideline. During these discussions, which are ongoing, a significant cross-section of the Task Force members have acknowledged that products using internal undisclosed multipliers like the PDX Performance Factor are inherently misleading. According to the deputy superintendent for life insurance at the New York Department

[16] https://lifeproductreview.com/2018/01/17/intro-to-the-pdx-series/

of Financial Services, who served as Chair of the Task Force, "[w]e have consumers out there being misled by these illustrations…." "Regulator Calls for 'A Total Rework' of Key NAIC Illustration Guide," (July 16, 2019), https://insurancenewsnet.com/innarticle/regulator-calls-for-a-total-rework-of-key-naic-illustration-guide#.XxorokBFyUk.

97. Having already cast its lot with the Performance Factor, PacLife has in its comments to the Task Force not surprisingly tried to defend the use of illustration multipliers. According to PacLife, "IUL products with bonus features provide a unique risk profile, and may be appropriate for consumers who, for example, are willing to accept additional charges for the potential of enhanced performance and reduced premium outlay."[17] The problem, of course, is that this trade-off is not disclosed in PacLife's PDX Policy marketing materials. It is no small irony, then, that in opposing the proposal to ban or restrict the use of multipliers and bonuses in IUL illustrations PacLife argued instead for "consumer education" and "improved and more effective disclosure." *Id.*

98. After many months of deliberation and after receiving input from regulators, industry participants, industry trade groups and consumer advocates, the NAIC settled on a revised AG 49 (called AG 49-A), slated to become effective in mid-2020. The new AG 49-A implements a series of modifications and clarifications to the existing standard, including provisions that are intended to ban the use of multipliers and bonuses to generate illustrations more favorable than those applicable to IUL products without such multipliers or bonuses.

99. In short, AG 49-A explicitly prohibits precisely the abusive illustration practices PacLife used to induce consumers to purchase the PDX Policy.

100. As criticism of the PDX Policies intensified and regulatory concerns began to surface, PacLife pulled PDX from the market in 2019 and replaced it with a new IUL product called "Pacific Discovery Xelerator IUL 2" ("PDX 2"). Tellingly, unlike the PDX Policy sold to Plaintiff and the other members of the putative class, PDX 2 allows consumers to choose a fixed-charge multiplier by purchasing a separate rider called the "Enhanced Performance Factor" ("EPF

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[17] https://content.naic.org/sites/default/files/inline-files/Pac Life Comments on Items 13-16.pdf

Rider”). Unlike the PDX Policies, in which the Performance Factor was hidden as an embedded multiplier of unknown magnitude, the EPF Rider offers three different options, each of which includes a schedule of ***disclosed*** asset-based charges and specified multipliers.

101. The PDX 2 and EPF Rider still entail heightened leverage and risk – and enhanced illustrated performance – but at least these newer products disclose the actual multiplier value and impose asset-based charges rather than the indiscernible fixed policy charges embedded in the PDX Policies, thereby reducing the likelihood that the policies will lapse in the wake of poor index performance. The PDX 2 product thus not only amounts to an admission by PacLife concerning the lack of transparency associated with the PDX Policies, it also demonstrates that PacLife was fully capable of designing a leveraged product that provides both greater disclosure and considerably lower risk.

I. Plaintiff’s Purchase of the PDX Policy

102. Plaintiff Hong Li is a 52-year-old Chinese-speaking U.S. citizen who lives in Walnut, California.

103. Tiffany Xu (“Agent Xu”), who is fluent in Chinese, is the owner of Sky Vision Insurance Agency and is a licensed sales agent for PacLife.

104. Plaintiff and her husband met with Agent Xu and other members of her insurance agency on several occasions in the Spring of 2018 at Xu’s offices in San Marino, California. Plaintiff’s son, Tailong Lui also attended certain of these meetings. During these meetings, Agent Xu induced Plaintiff to purchase a PDX Policy using PacLife’s false and misleading depiction of Policy performance described with particularity above.

105. In one of these meetings, Agent Xu presented Plaintiff with an illustration (attached as **Exhibit 6**) showing that, upon the payment of five annual premiums of $500,000, the PDX Policy would generate sufficient accumulated values so that beginning in policy year 6, $175,000 per year could be withdrawn using policy loans and that the PDX Policy would still remain in force

for Plaintiff's lifetime. ***See* Ex. 6**.[18] The values and policy performance depicted in this illustration were all generated using the PacLife illustration system (although agent Xu stripped the illustration of disclosures) which embedded the Performance Factor and unsustainable cap as alleged above. Consequently, the illustrated values, as well as the projected performance showing that Hong Li could withdraw $175,000 each year beginning in the sixth policy year, were all false and unattainable.

106. When Plaintiff returned to Agent Xu's office to sign the policy application and other paperwork on June 5, 2018, Xu presented Plaintiff with another PacLife PDX Policy Illustration. *See* **Ex. 2**. This 41-page illustration showed that, upon the payment of five annual premiums of $500,000 each and no additional out-of-pocket premium payments, the PDX Policy would provide an initial death benefit of more than $12 million that would grow to more than $18 million when Plaintiff is 80 years old. The illustration also depicted that the accumulated value of the PDX Policy would grow to more than $13 million by the time Plaintiff was 80 years old.

107. The PDX Illustration indicated that the values depicted were based on systematic allocations of the account values to the one-year S&P 500 index and an assumed hypothetical interest rate of 6% (the approximate maximum allowed by AG 49). The PDX Illustration did not disclose the actual Performance Factor multipliers used in the illustration, or that the Performance Factor was a multiplier at all, nor did it reflect how the Performance Factors were derived, how they were applied or their actual impact on the values depicted in the illustration.

108. During the meeting, agent Xu reviewed the PDX Illustration with Hong Li and her husband, again emphasizing the substantial death benefits, that the policy would remain in place during Hong Li's lifetime based on the payment of five annual premiums of $500,000 each and that the values would grow sufficiently to allow Hong Li to withdraw funds from the account values. Plaintiff looked at the new PDX Illustration and saw that the illustrated values in the early

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[18] In violation of the applicable provisions of the California Insurance Code, the illustration used by agent Xu stripped out and failed to contain the footnotes, disclosures and other information required by the California statutes.

years of the policy were generally comparable to those contained in the earlier illustration, and also noted the projected growth of the accumulated values in later policy years.

109. During the meetings with Hong Li and her family members, Agent Xu also made additional deceptive oral statements, above and beyond the false and misleading content of the PDX Policy and the PDX Illustration:

a. Agent Xu misdescribed the PDX Policy as a "whole life" policy and falsely represented to Plaintiff that the PDX Policy was "guaranteed" to remain in effect for Plaintiff's entire lifetime and that the account values allocated periodically to the S&P 500 Index were "guaranteed" to provide positive returns.

b. Agent Xu also falsely represented to Plaintiff that under no circumstances would she be required to make premium payments beyond the five annual premiums shown in the sales illustrations.

110. Plaintiff accordingly signed a written application towards the conclusion of the meeting on June 5, 2018. The PacLife Policy was issued with an effective date of July 26, 2018 as PDX Policy No. VF533XXXXX, with base coverage in the amount of $11,400,000 and term coverage in the amount of $600,000. ***See* Ex. 3**.[19] Unbeknownst to Plaintiff, Agent Xu structured the PDX Policy in this fashion to Plaintiff's detriment to maximize Agent Xu's own commission.

111. The PDX Policy was ultimately delivered to Hong Li on November 6, 2018, when she received a copy of the Policy (**Ex. 3**), a copy of the policy Application (attached as **Exhibit 7**), a new PDX Illustration dated November 1, 2018 (attached as **Exhibit 8**) and a Policy Delivery Receipt (attached as **Exhibit 9**). Hong Li signed these documents where required, including the new basic illustration.

112. The PDX Policy issued to Plaintiff was structured for periodic transfers from the fixed interest account, where the premiums were initially deposited, to the 1 Year High Par Indexed Account.

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[19] Over the following several months, Plaintiff discussed other insurance options with agent Xu, including a possible increase in the policy face amount. The PDX Policy was ultimately not delivered to Plaintiff until November 6, 2018.

113. Plaintiff made the first two $500,000 premium payments called for in the PDX Illustration. She was surprised and upset, though, by various statements she received from PacLife in the months following the issuance of the PDX Policy. Plaintiff paid another $500,000 premium for the second policy year on September 24, 2019.

114. Plaintiff became concerned in February, 2020 after she received the Quarterly Statement for the PDX Policy covering the period from October 26, 2019 to January 25, 2020. The Quarterly Statement reflected significant deterioration in the policy's performance due to the ongoing exorbitant policy charges, amounting to a $54,286.59 loss for the reported period. The periodic allocations from the Fixed Account to the selected index account (the 1 Year High Par Indexed Account) reflected no increase in value whatsoever. And the total Accumulated Value for all accounts ***declined*** from $638,832.75 as of October 26, 2019 to $593,907.01 as of January 25, 2020. Compounding this injury, the Quarterly Statement reflected that, due to the PDX Policy's onerous surrender charges, the Net Cash Surrender Value for the $1,000,000 in premiums paid by Plaintiff to date was now only $360,567.01, meaning that she would receive back only 36% of the premium upon surrender of the PDX Policy.

115. Based on these concerns, Hong Li spoke with her husband's nephew, who is a licensed insurance producer. He suggested that Hong Li obtain several in-force illustrations from PacLife so that the family could evaluate the Policy's status and anticipated future performance. Accordingly, Hong Li requested in-force illustrations showing the projected policy performance based on the average crediting rate applied by PacLife and the current account allocation for the following scenarios: (1) the policy would remain in its current "as-is," status with the same premium funding assumed in the initial illustrations [**Exhibit 4**]; (2) Hong Li would make no more premium payments but maintain the existing death benefits **[Exhibit 10**]; (3) Hong Li would make no more premium payments but reduce the death benefits from $12.2 million to $5.0 million [**Exhibit 11**]; and (4) Hong Li would fund the policy paying the projected premiums necessary to maintain the existing death benefits (and additional benefits) until she is 72 years old [**Exhibit 12**].

116. Hong Li and her family were dismayed to learn that if she paid the additional $1.5 million in planned premiums over the next three years, the accumulated value of the PDX Policy was now illustrated to be only $2.353 million in policy year 20, meaning that after paying $2.5 million in premiums during the first five years, the accumulated value of the PDX Policy after 20 years would be less than her premium payments. And: if Hong Li made no additional premium payments, the PDX Policy would lapse without value in policy year 6, meaning that Hong Li would have no insurance coverage whatsoever after paying $1 million in premiums. And: if Hong Li sought to reduce the policy face amount, the policy funding pattern would disqualify the policy from favorable tax treatment under the Internal Revenue Code.

117. Plaintiff now understands that the PDX Illustrations used to induce her into purchasing the PDX Policy were materially misleading. The illustrations depicted that a 6% interest rate was purportedly used to generate the illustrated performance assuming that all Accumulated Value was allocated to the S&P 500 index, thereby creating the illusion that the illustrated values were conservative, when in fact a far higher effective rate was assumed using the undisclosed Performance Factors and other internal non-guaranteed factors creating leverage and inflated illustrated future policy value that will never be realized by Plaintiff or her beneficiary. For the reasons explained in the forgoing allegations, the representations and misleading half-truths by PacLife and Agent Xu that induced Plaintiff to buy the PDX Policy were false and misleading, and the material adverse facts about the PDX Policy were not disclosed to her.

CLASS ALLEGATIONS

118. Plaintiff brings the claims against PacLife on behalf of herself and all other similarly situated California consumers pursuant to Cal. Civ. Proc. Code § 382 and Cal. Civ. Code § 1781 and seeks certification of the following class (the "Class"):

> All persons or entities who purchased a PDX Policy issued by PacLife and resided in California at the time of the purchase.

Excluded from the Class are (a) Defendants and, as applicable, their officers, members, directors and employees; (b) the judge adjudicating this action and court personnel employed in his or her chambers or courtroom; (c) PacLife and its parents, subsidiaries, successors, predecessors, and any entity in which PacLife has a controlling interest; (d) any officer or director of PacLife reported in its most recent Annual Statements; (e) any person alleging wrongful inducement in the purchase of a PDX Policy in any pending or resolved lawsuit against PacLife other than this action; and (f) the legal representatives, successors, or assigns of any of the foregoing excluded Policyowners (but only then in their capacity as legal representative, successor, or assignee).

119. Plaintiff and the members of the Class are so numerous and geographically dispersed throughout the state of California that joinder of all members of the Class individually is impracticable. While the exact number and identities of the Class members are presently unknown, such information can be ascertained through appropriate investigation and discovery.

120. The disposition of Plaintiff's and the proposed Class members' claims in a class action will provide substantial benefits to both the parties and the Court.

121. The proposed Class members are ascertainable from business records maintained by PacLife and there is a well-defined community of interest in the questions of law or fact alleged herein since the rights of each proposed Class member were infringed or violated in a similar fashion based upon PacLife's conduct.

122. This action involves common questions of law and fact, which are substantially similar and predominate over any questions involving each Class member. These common legal and factual questions include, but are not limited to, the following:

a. Whether PacLife engaged in the alleged misconduct;

b. Whether PacLife's alleged misconduct constitutes violations of the statutory and common laws of the State of California;

c. Whether Plaintiff and Class members are entitled to the various legal and equitable forms of relief available under their respective causes of action; and

d. Whether Plaintiff and Class members are entitled to other, further relief deemed appropriate and warranted by the Court.

123. Judicial determination of the common legal and factual issues essential to this case would be far more efficient and economical as a class action than in piecemeal individual determinations.

124. Plaintiff's claims are typical of the claims of the members of the Class because, *inter alia*, all Class members were injured through the misconduct described. Plaintiff is advancing the same claim and legal theories on behalf of herself and all members of the Class.

125. Plaintiff is willing and prepared to serve the Court and the proposed Class in a representative capacity with all of the obligations and duties material thereto. Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained counsel experienced in complex consumer class action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff has no adverse or antagonistic interests to those of the Class members.

APPLICATION OF THE DISCOVERY RULE AND THE FRAUDULENT CONCEALMENT DOCTRINE

126. Plaintiff first became concerned that her PDX Policy was not performing as illustrated when she received the 2019 Annual Statement shortly after July 26, 2019. Even then, given the complex and technical nature of the PDX Policy and the fact that virtually all of the relevant information and assumptions were undisclosed and in the sole and exclusive possession of PacLife and agent Xu, Plaintiff could not reasonably discover that she had sustained injuries caused by Defendants' wrongful conduct until many months later.

127. After becoming concerned about the performance of her PDX Policy, Plaintiff acted with reasonable diligence to investigate the reasons for the poor policy performance, including making inquiries with agent Xu and PacLife, attempting to re-examine the available documents and information about the PDX Policy and, ultimately, conferring with legal counsel.

128. Based on the false and misleading information fed to Plaintiff Li, and the material information concealed from her by the Defendants, under California's discovery rule Plaintiff did not discover and did not have reason to discover her causes of action relating to the PDX Policy

until February, 2020 at the earliest. Prior to that date, Plaintiff did not have a reasonable factual basis to suspect that she had been injured by the misconduct of Defendants.

129. Alternatively, under California's fraudulent concealment and equitable tolling doctrines, the limitations period was likewise tolled at least through February, 2020 based on the active deceptive conduct of the Defendants.

CLAIMS FOR RELIEF

COUNT ONE

(Violation of Cal. Bus. & Prof. Code § 17200, *et. seq.* – against PacLife Individually and on Behalf of the Class)

130. Plaintiff repeats and realleges the allegations contained in the paragraphs above, as if fully set forth herein.

131. Section 17200 of the California Business and Professions Code ("UCL") prohibits "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." Cal. Bus. & Prof. Code § 17200.

132. PacLife committed acts of unfair competition by engaging in the wrongful practices alleged above, which are alternatively actionable under all three prongs of the UCL.

133. PacLife's materially misleading use and description of the Performance Factor and other nonguaranteed elements in its standardized illustrations, marketing materials, and policy documents used to market the PDX Policies were a substantial factor causing Plaintiff and other similarly situated persons in California to purchase PDX Policies and sustain economic injuries as a result of the deception.

- **Unlawful Prong**

134. The "unlawful" prong of the UCL treats violations of other federal, state, regulatory, or court-made law as unlawful business practices independently actionable under state law.

135. The standardized illustrations, marketing materials, and policy documents used to market the PDX Policies were unlawful and in violation of the following California statutes:

- Cal. Ins. Code § 790.02 ("No person shall engage in this State in any trade practice which is defined in this article as, or determined pursuant to this article to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.");

- Cal. Ins. Code § 790.03(a) (defining as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance the "[m]aking, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular, or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby….");

- Cal. Ins. Code § 780 ("An insurer … shall not cause or permit to be issued, circulated or used, any statement that is known, or should have been known, to be a misrepresentation of the … terms of a policy issued by the insurer [or] … [t]he benefits or privileges promised thereunder….");

- Cal. Ins. Code § 332 ("Each party to a contract of insurance shall communicate to the other, in good faith, all facts within his knowledge which are or which he believes to be material to the contract and as to which he makes no warranty, and which the other has not the means of ascertaining.");

- Cal. Ins. Code § 331 ("Concealment, whether intentional or unintentional, entitles the injured party to rescind insurance.");

- Cal. Ins. Code § 10509.955(b)(2) (Life insurance illustration may not "[u]se or describe nonguaranteed elements in a manner that is misleading or has the capacity or tendency to mislead.");

- Cal. Ins. Code § 10509.955(c) ("If an interest rate used to determine the illustrated nonguaranteed elements is shown, it shall not be greater than the earned interest rate underlying the disciplined current scale.");

- Cal. Ins. Code § 10509.956(a)(7) ("If the illustration shows any nonguaranteed elements, they cannot be based on a scale more favorable to the policy owner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled nonguaranteed.");

- Cal. Ins. Code § 10509.956(b)(3) (Basic illustration must include "[a] brief description of any policy features, riders or options, guaranteed or nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy.");

- Cal. Ins. Code § 10509.956(b)(4) (Basic illustration must include "[i]dentification and a brief definition of column headings and key terms used in the illustration.");

- Cal. Ins. Code § 10509.956(e)(3) ("Nonguaranteed elements may be shown [in the illustration only] if described in the contract….");

- Cal. Ins. Code § 10509.960(c)(5) ("Nonguaranteed elements illustrated for both new and in force policies that are not consistent with the nonguaranteed elements actually being paid, charged or credited to the same or similar forms shall be disclosed in the annual certification.");
- Cal. Civ. Code § 1709 ("One who willfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers.").

136. Specifically with respect to her citation to Cal. Ins. Code § 790.03(a), Plaintiff further alleges that the UCL violations occurred in the specific context of first-party false advertising and fraudulent inducement by PacLife, conduct that gives rise to independently actionable claims of common law fraud as well as violations of Cal. Ins. Code §§ 780 and 331-32, and Cal. Civ. Code § 1709. PacLife thus engaged in misconduct that allegedly violated § 790.03 in addition to obligations imposed by other statutes and the common law.

137. Plaintiff is informed and believes and, on that basis, alleges that the "unlawful" practices alleged above are continuing in nature and are widespread practices engaged in by PacLife.

- **Unfair Prong**

138. A claim under the UCL's "unfair" prong is predicated on a business practice that violates established public policy or is immoral, unethical, oppressive or unscrupulous and causes injury to consumers which outweighs its benefits.

139. PacLife violated the "unfair" prong by engaging in the business acts or practices alleged above by which it has been unjustly enriched. Because the utility of PacLife's conduct is outweighed by the gravity of harm to Plaintiff and the other members of the Class, and the market, PacLife's conduct is "unfair" having offended an established public policy. Furthermore, as alleged above, PacLife intentionally sought to evade the requirements of AG 49, thereby violating the intention and spirit of those regulatory requirements.

140. As alleged above, PacLife has engaged in immoral, unethical, oppressive, and unscrupulous activities that are reasonably avoidable and substantially injurious to the public at

large. There were reasonably available alternatives to further PacLife's legitimate business interests other than the conduct described herein.

141. PacLife furthermore violated UCL "unfair" prong based on its violations of Cal. Ins. Code §§ 790.02 & 790.03(a), Cal. Ins. Code § 780, Cal. Ins. Code §§ 331-32, and Cal. Civ. Code § 1709.

142. Plaintiff is informed and believes and, on that basis, alleges that the "unfair" practices alleged above are continuing in nature and are widespread practices engaged in by PacLife.

- **Fraudulent Prong**

143. Conduct is "deceptive" within the meaning of the UCL's "fraudulent" prong when members of the public are likely to be deceived by the practice.

144. PacLife's materially misleading use and description of the Performance Factor and other nonguaranteed elements in its standardized illustrations, marketing materials, and policy documents used to market the PDX Policies is likely to deceive members of the public. Plaintiff and other similarly situated persons in California have suffered economic injury as a result of the deception.

145. Reliance on PacLife's uniform misrepresentations and omissions concerning the description of the Performance Factor and the depicted performance of the PDX Policies in its illustrations, marketing materials, and policy documents is reasonably inferred because such information is something a reasonable person would attach importance to in determining his or her choice of action in the transaction in question.

146. Plaintiff is informed and believes and, on that basis, alleges that the "fraudulent" practices alleged above are continuing in nature and are widespread practices engaged in by PacLife.

- **UCL Standing**

147. Under the UCL, private standing is afforded to any person "who has suffered injury in fact and has lost money or property as a result of the unfair competition." Cal. Bus. & Prof.

Code § 17204. To satisfy this standing requirement, a plaintiff must: (1) establish a loss or deprivation of money or property sufficient to qualify as injury in fact, i.e., economic injury, and (2) show that the economic injury was the result of, i.e., caused by, the unfair business practice or false advertising that is the gravamen of the claim.

148. As alleged above, since the date of issuance the PDX Policy has cost Plaintiff not only the lost use of tens of thousands of dollars allocated to the 1 Year High Par Index and additional out-of-pocket losses to surrender the policy, but the PDX Policy she purchased was itself worth less than she paid for it on the date of issuance, causing her to suffer economic injury in fact and loss of money or property as a result of PacLife's wrongful actions. Plaintiff thus has statutory standing to assert her UCL claim on behalf of herself and the other members of the Class.

- **UCL Relief Sought**

149. Cal. Bus. & Prof. Code § 17203 authorizes courts to make "such orders or judgments … as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person … any money or property … which may have been acquired by means of such unfair competition."

150. Cal. Bus. & Prof. Code § 17535 provides: "Any person, corporation, firm, partnership, joint stock company, or any other association or organization which violates or proposes to violate this chapter may be enjoined by any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person, corporation, firm, partnership, joint stock company, or any other association or organization of any practices which violate this chapter, or which may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any practice in this chapter declared to be unlawful."

151. Plaintiff accordingly seeks restitution, rescission, and injunctive relief for PacLife's UCL violations, the appropriateness of which will be determined by common evidence.

152. On behalf of the general public and the Class, Plaintiff respectfully requests that this Court order that PacLife make available to the Plaintiff and other members of the Class equitable relief, at their election, of either:

a. Rescission and restitution of all amounts wrongfully acquired, obtained and collected as the result of PacLife's alleged misconduct, but subject, as always in the case of equitable rescission, to offset for any benefits received in the interim, plus prejudgment interest; or

b. Court-ordered payment of the "intrinsic value" relief based on statistical or other proof of the difference between the values or charges shown in the PDX Illustrations and the values or charges that would have applied absent the misleading representations and omission, plus prejudgment interest.

153. Cal. Bus. & Prof. Code §17203 authorizes Plaintiff to pursue representative claims for injunctive relief. On behalf of herself and the Class, Plaintiff respectfully requests that the Court issue an injunction against PacLife permanently enjoining it from continuing to engage in its alleged unlawful, unfair and fraudulent conduct.

154. Plaintiff finally respectfully requests an award of attorneys' fees as the prevailing party.

COUNT TWO

(Fraud, Deceit and Intentional Misrepresentation –
against PacLife Individually and on Behalf of the Class)

155. Plaintiff repeats and realleges the allegations contained in the paragraphs above, as if fully set forth herein.

156. PacLife made uniform false representations and concealed or failed to disclose material facts concerning the features, benefits, performance, safety and risks of the PDX Policies with the intent to deceive prospective policy owners.

157. Plaintiff and the members of the Class justifiably relied on the false and misleading representations and material omissions, were unaware of the falsity of the representations or the material omissions.

158. PacLife's conduct, as alleged above, was a substantial factor causing Plaintiff and members of the Class to purchase PDX Policies and sustain economic injuries. As a consequence, Plaintiff and the members of the Class sustained damages.

159. PacLife had actual knowledge of the false and misleading statements and material omissions used to solicit purchases of the PDX Policies, and its conduct was a substantial factor in causing harm to Plaintiff and the members of the Class.

160. PacLife acted with the specific intent to facilitate the foregoing wrongful conduct.

161. PacLife is therefore liable for common law fraud and deceit.

162. PacLife is guilty of oppression, fraud and malice, within the meaning of California Civil Code § 3294, thereby entitling Plaintiff and members of the Class to punitive and exemplary damages.

<u>COUNT THREE</u>

**(Negligent Misrepresentation –
against PacLife Individually and on Behalf of the Class)**

163. Plaintiff repeats and realleges the allegations contained in the paragraphs above, as if fully set forth herein.

164. PacLife made false statements to Plaintiff and the members of the Class concerning the features, benefits, performance, safety and risks of the PDX Policies.

165. PacLife intended that Plaintiff and the members of the Class would rely on the false representations but had no reasonable grounds for believing that the representations were true when it made them.

166. Plaintiff and the members of the Class justifiably relied on the false statements made by PacLife.

167. PacLife's false and misleading statements were a substantial factor in causing harm to Plaintiff and the members of the Class.

168. PacLife is therefore liable for the negligent misrepresentations it made to Plaintiff and the members of the Class.

COUNT FOUR

(Breach of Fiduciary Duties –
against Tiffany Xu and Sky Vision Insurance Agency Individually)

169. Plaintiff repeats and realleges the allegations contained in the paragraphs above, as if fully set forth herein.

170. In her dual role as a financial advisor and insurance agent for Plaintiff, Agent Xu assumed fiduciary duties imposed by law.

171. Agent Xu breached her fiduciary obligations to Plaintiff through her specific actions and inaction as alleged in ¶¶ 101–117, supra.

172. At all times, Agent Xu was acting within the scope and authority as an officer and member of Defendant Sky Vision Insurance Agency.

173. As a direct and proximate result of the foregoing breaches of fiduciary duties, Plaintiff has been damaged in an amount to be proven at trial.

COUNT FIVE

(Professional Negligence –
against Tiffany Xu and Sky Vision Insurance Agency Individually)

174. Plaintiff repeats and realleges the allegations contained in the paragraphs above, as if fully set forth herein.

175. In her dual role as a financial advisor and insurance agent with expertise in the use of life insurance as an investment vehicle, Agent Xu owed Plaintiff the duty to use such skill, prudence and diligence in procuring insurance for Plaintiff and in providing investment advice to Plaintiff as members of her profession commonly possess.

176. Agent Xu breached her duty to Plaintiff through her specific actions and inaction as alleged in ¶¶ 101–117, supra.

177. Plaintiff relied upon the advice given by Agent Xu in making the initial decision to purchase the PDX Policy and in continuing to maintain the policy. Agent Xu's negligent acts were a substantial factor causing Plaintiff to purchase the PacLife Policy.

178. At all times, Agent Xu was acting within the scope and authority as an officer and member of Defendant Sky Vision Insurance Agency.

179. As a direct and proximate result of the foregoing breaches of duty, Plaintiff has been damaged in an amount to be proven at trial.

COUNT SIX

(Fraud, Deceit and Intentional Misrepresentation – against Tiffany Xu and Sky Vision Insurance Agency Individually)

180. Plaintiff repeats and realleges the allegations contained in the paragraphs above, as if fully set forth herein.

181. Agent Xu made false representations and concealed or failed to disclose material facts concerning the features, benefits, performance, safety and risks of the PDX Policies.

182. Agent Xu knew the statements were false when made or were made recklessly and without regard to their truth, and intended that Plaintiff would rely on the representations.

183. Plaintiff justifiably relied on the false statements and sustained damages as a result.

184. Agent Xu had actual knowledge of some or all of the false statements and material omissions used to solicit Plaintiff's purchase of the PDX Policy, and her conduct was a substantial factor in causing harm to Plaintiff.

185. At all times, Agent Xu was acting within the scope and authority as an officer and member of Defendant Sky Vision Insurance Agency.

186. Agent Xu and Sky Vision Insurance Agency are therefore liable for common law intentional misrepresentation.

187. The foregoing actions by Agent Xu were done maliciously, oppressively, and with intent to defraud, thereby entitling Plaintiff to punitive and exemplary damages.

COUNT SEVEN

(Negligent Misrepresentation – against Tiffany Xu and Sky Vision Insurance Agency Individually)

188. Plaintiff repeats and realleges the allegations contained in the paragraphs above, as if fully set forth herein.

189. Agent Xu made false statements to Plaintiff concerning the features, benefits, performance, safety and risks of the PDX Policy.

190. Agent Xu intended that Plaintiff would rely on the false representations but had no reasonable grounds for believing that the representations were true when she made them.

191. Plaintiff justifiably relied on the false statements made by Agent Xu.

192. At all times, Agent Xu was acting within the scope and authority as an officer and member of Defendant Sky Vision Insurance Agency.

193. Agent Xu's false and misleading statements were a substantial factor in causing harm to Plaintiff.

194. Agent Xu and Sky Vision Insurance Agency are therefore liable for the negligent misrepresentations Xu made to Plaintiff.

PRAYER FOR RELIEF

WHEREFORE on behalf of herself and, with respect to those causes of action asserted on behalf of similarly situated owners of PacLife PDX Policies, Plaintiff prays for an order and judgment against Defendants as follows:

a. Enjoining Defendants from further violations of their legal and fiduciary duties;
b. Enjoining Defendants from continuing the acts and practices described above;
c. Awarding members of the Class, at their option: (1) rescission; or (2) restitution or damages;
d. Awarding Plaintiff and members of the Class monetary damages and interest at the legal rate;
e. Awarding Plaintiff and members of the Class appropriate equitable relief;
f. Awarding Plaintiff the costs and disbursements of this action, including reasonable counsel fees, costs and expenses in amounts to be determined by the Court;
g. Awarding pre- and post-judgment interest at the legal rate; and
h. Granting such other and further relief as is just and proper.

REQUEST FOR JURY TRIAL

Plaintiff requests a jury trial for any and all causes of action for which a trial by jury is permitted by law.

DATED: August 6, 2020.

BONNETT FAIRBOURN FRIEDMAN
& BALINT, PC

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