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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**

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

8 INTRODUCTION

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

20 2. Using uniformly misleading marketing materials and sales illustrations, PacLife
21 deceptively misrepresented that the PDX Policies can produce outsized returns when, in reality,
22 PacLife knew the PDX Policies would not and could not perform as represented given (a) the
23 excessive embedded undisclosed base charges, (b) the undisclosed risks to the illustrated
24 performance, and (c) PacLife’s deceptive utilization of a mysterious multiplier – the so-called
25

27 ¹ <https://lifeproductreview.com/2018/02/19/pdx-review-part-5-more-to-the-story/>.

28 ² <https://lifeproductreview.com/2018/01/17/intro-to-the-pdx-series/>.

1 “Performance Factor” – through which PacLife circumvented insurance regulations and
2 fraudulently inflated the illustrated performance of the PDX Policies.

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

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

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

22 6. Despite its critical impact on the illustrated and represented performance of the
23 PDX Policies, however, *nowhere* in the PacLife illustrations or in the PDX uniform marketing
24 materials or policy forms is the Performance Factor explained or defined, is the formula used to
25 determine the Performance Factor described, or is the value of the assumed Performance Factor
26 disclosed. That is because, as alleged with particularity below, the Performance Factor is
27 intentionally misleading and deceptive: among other things, it is premised on assumed leverage
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1 associated with unsustainable option trading profits that are very unlikely to be attained and is
2 skewed to defer the illustrated non-guaranteed account value enhancements until late durations
3 when most elderly policyholders will have died. Once consumers purchase a PDX Policy, they are
4 locked into the policy by onerous surrender penalties that continue for ten years.

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

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

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

1 10. Consequently, if the index to which the PDX account values are allocated performs
2 poorly, or if the **unsustainable option profits³** assumed by PacLife fail to materialize, the high
3 policy charges will result in **negative returns** on the Policies' account values and will cause the
4 policy to **lapse unless the** policy owner pays additional hefty premiums – directly contradicting
5 PacLife's false representations that there is no downside market risk associated with the PDX
6 Policies. In addition, because the Performance Factor is applied as an undisclosed multiplier to the
7 policy account values, the PDX illustrations create the false impression that the projected double-
8 digit returns are “conservative” based on the **disclosed** interest crediting rate (slightly higher than
9 6%) when, in reality, they are juiced by the **undisclosed** Performance Factor multiplier making the
10 PDX Policies the riskiest IUL product in the industry.

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

21 12. As a consequence, PacLife offers agents higher commissions – up to three times
22 higher – to steer customers into a PDX Policy with all or a substantial portion of the face amount
23 allocated to base coverage, even though the policy charges would be far less under a blended
24 structure. Although the policyowner pays higher policy charges and incurs far more risk by virtue
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26 ³ The option profits PacLife assumes to generate the unsustainably high account values in the PDX
27 Illustrations are not retained by PacLife. Rather, PacLife assumes that it will earn a 50% annual
28 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.

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

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

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

18 **PARTIES**

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

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

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

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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.

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

4 **GENERAL ALLEGATIONS**

5 **A. The Background and Nature of Indexed Universal Life Policies**

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

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

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

25 28. Like fixed interest universal life policies, when a premium is paid on an IUL policy,
26 it is deposited in an account, from which monthly policy charges are deducted. Policyholders may
27 choose to allocate the policy values to: (a) an account crediting a fixed interest rate not less than a
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1 modest guaranteed rate; and/or (b) an account crediting interest determined by changes in a
2 designated index like the S&P 500 index, the Russell 1000 index or a “proprietary” index based
3 on the reported prices of a collection of equities, bonds, commodities or other assets.

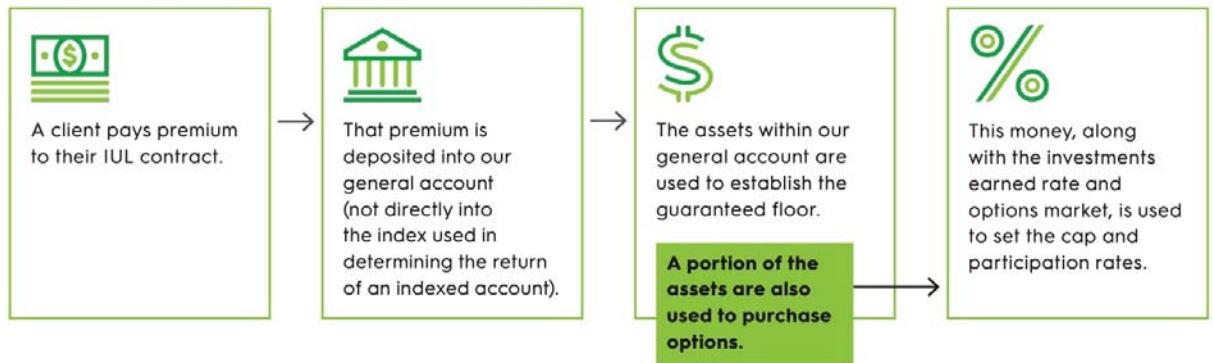
4 29. Most IUL policies limit the growth in account values allocated to equity-based
5 indices, however, by limiting the amount of appreciation to a non-guaranteed fixed percentage (the
6 “cap” rate), or limiting the appreciation by crediting to the account value only a non-guaranteed
7 specified percentage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

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

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

1 policyowner, and adjusts the cap and/or participation rates to cover the cost of the options
2 purchased by the company.⁴ The following graphic⁵ depicts this process:

3
4 **Establishing floor, cap and participation rates:**



10
11 **B. The Explosion of Misleading Illustrations Leading to the Adoption of AG 49**

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

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

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

26
27 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.

28 ⁵ <http://theasagroup.com/wp-content/uploads/How-Caps-and-Par-Rates-are-determined.pdf>

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

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

17 36. Among other participants in the Task Force, MetLife, Northwestern Mutual and
18 New York Life expressed their view that the IUL illustration practices prevalent in the industry
19 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.

23 Arthur D. Postal, “Insurers Take Aim At IUL Illustrations,” InsuranceNewsNet article (December
24 23, 2014), <https://insurancenewsnet.com/oarticle/insurers-take-aim-at-iul-illustrations#.XxnxKkBFyUm>.

26 37. After considerable debate among the regulators, insurance companies, and other
27 participants, the NAIC adopted AG 49 effective as of September 1, 2015. To prevent cherry-picked
28

1 backtesting, AG 49 sets a ceiling on illustrated performance by limiting life insurance companies
2 illustrating IUL products to an objective “benchmark” rate based on the annual returns of the S&P
3 500 beginning 66 years prior to the current calendar year and calculated using the geometric
4 average for successive 25-year periods. AG 49 thus prohibits insurance companies from using
5 illustrations based on assumed crediting rates higher than the resulting benchmark rate. At the time
6 AG 49 became effective, the resulting benchmark rate was approximately 6.85%, based on a 12%
7 illustrated cap rate.

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

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

16 39. The California Insurance Code (the “Insurance Code”) contains numerous
17 provisions governing the format, content and use of sales illustrations by insurance companies
18 issuing life insurance policies within California. The Insurance Code defines three types of
19 illustrations. A “[b]asic illustration’ means a ledger or proposal used in the sale of a life insurance
20 policy that shows both guaranteed and nonguaranteed elements.” Cal. Ins. Code §
21 10509.953(h)(1). A “[s]upplemental illustration’ means an illustration furnished in addition to a
22 basic illustration that meets the applicable requirements of this regulation, and that may be
23 presented in a format differing from the basic illustration, but may only depict a scale of
24 nonguaranteed elements that is permitted in a basic illustration.” *Id.*, § 10509.953(h)(2). An “[i]n
25 force illustration’ means an illustration furnished at any time after the policy that it depicts has
26 been in force for one year or more.” *Id.*, § 10509.953(h)(3). As used in the following paragraphs,

27 ⁶ https://content.naic.org/cipr_topics/topic_life_insurance_illustrations.htm (last visited July 24,
28 2020).

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

4 40. Among many other requirements, the Insurance Code provides that: (a) life
5 insurance illustrations may not “[u]se or describe nonguaranteed elements in a manner that is
6 misleading or has the capacity or tendency to mislead” [Cal. Ins. Code § 10509.955(b)(2)]; (b)
7 basic illustrations must include “[a] brief description of any policy features, riders or options,
8 guaranteed or nonguaranteed, shown in the basic illustration and the impact they may have on the
9 benefits and values of the policy” and must also include “[i]dentification and a brief definition of
10 column headings and key terms used in the illustration” [*Id.*, § 10509.956(b)(3) and (4)]; (c)
11 “Nonguaranteed elements may be shown [in the illustration only] if described in the contract” [*Id.*,
12 10509.956(e)(3)]; and (d) “If an interest rate used to determine the illustrated nonguaranteed
13 elements is shown, it shall not be greater than the earned interest rate underlying the disciplined
14 current scale” [*Id.*, § 10509.955(c)]. The Performance Factor and policy charges are
15 “nonguaranteed elements” within the meaning of the Insurance Code, which are defined as “the
16 premiums, benefits, values, credits or charges under a policy of life insurance that are not
17 guaranteed or not determined at issue.” *Id.*, § 10509.953(m).

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

1 42. The Insurance Code furthermore specifically requires that, if a basic illustration is
2 used by an insurance agent in the sale of a life insurance policy and the policy is applied for as
3 illustrated, a copy of the illustration, signed by the agent and by the applicant, must be submitted
4 to the insurance company and a copy provided to the applicant. Cal. Ins. Code, § 10509.958(a)(1).
5 If no illustration is used in the sale of the life insurance policy, the sales agent must so certify on a
6 written form submitted to the insurance company at the time of application and if the policy is
7 issued, a basic illustration must be sent with the policy and signed by the policy owner no later
8 than when the policy is delivered to the owner. *Id.*, § 10509.958(b)(1) & (2). Finally, the insurance
9 company must maintain a copy of the basic illustration, signed as required, and the agent
10 certification, for a period of at least three years after the policy is no longer in force. *Id.*, §
11 10509.958(d).

12 **D. PacLife Develops the PDX Policies to Circumvent AG 49**

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

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

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

4 *Insurers appear to be sidestepping a recent rule [AG 49] meant to tamp down on*
5 *overly rosy projections of returns in indexed universal life policies via new product*
6 *features, an alarming trend that may deceive or confuse would-be buyers, advisors*
7 *said.*

8 ...

9 *Pacific Life Insurance Co., the largest IUL seller, has a PDX product with a*
10 *unique multiplier — its formula isn't explicitly explained in the insurance*
11 *contract, yet it drives a "significant portion," roughly 40%-50%, of the illustrated*
12 *performance,* Mr. Love said.

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

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

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

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

28 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>

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

- 3 • “Competitive in a Low Interest Rate Environment”
- 4 • “New **Performance Factor** May Enhance the Indexed Interest Credits”
- 5 • “Competitive Performance When Comparing Same or Maximum Illustrated Rate”
- 6 • “Potential for High Accumulated Values”

7
8 *Id.* at 12 (emphasis original). In the same PowerPoint, PacLife reminded its agents that “[m]any
9 times the ‘best’ illustrations wins.” *Id.* at 9. ←

10 49. It did not take long for PacLife agents to jump on the PDX bandwagon. One major
11 Independent Marketing Organization posted the following newsletter¹⁰ to its sales force, along
12 with a chart purporting to show that PDX illustrated more favorably than any of the IUL products
13 offered by PacLife’s primary competitors:

14 We mentioned in the last month’s newsletter that Pacific Life rolled out their new
15 IUL product designed primarily for max-funded scenarios. Now that we have had
16 a few days to digest it and run comparisons, the verdict is in: Pacific Life is
17 BACK!!!

18 ***

19 We can vary target premiums and how the DB [death benefit] is paid in different
20 ways. **But even at an interest rate projection that is, in some cases, more than 1%
21 less than the completion [sic], the income and compensation are far greater.**

22 **How is this possible?** Pacific Life uses an interest multiplier formula [i.e., the
23 Performance Factor] that is made part of the contract and is based on age, sex,
24 funding level, cash value, etc. that kicks in year 3.

25 *Id.* (emphasis added).

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

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

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

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

10 **E. PacLife’s Uniform PDX Consumer Brochures, Marketing Materials and**
11 **Policy Documents**

12 52. PacLife prepared and disseminated uniform consumer brochures to market the PDX
13 Policies after their product launch. One early version contained a series of platitudes trumpeting
14 the PDX Policies as providing “PROTECTION FOR YOUR LOVED ONES,” “ASSET
15 DIVERSIFICATION” and “MARKET LOSS PROTECTION.”¹³ As key selling points, PacLife
16 represented that the PDX Policies would (a) provide “attractive cash value growth potential in and
17 after policy year 15”; and (b) protect policy cash values “from market-based losses ... reduced
18 only by policy charges and any policy loans, withdrawals, and other distributions you take.” *Id.* at
19 3 and 5.

20
21
22
23
24
25 ¹¹ <https://www.businesswire.com/news/home/20171212005395/en/Pacific-Life-Ranked-1-Indexed-Universal-Life> (last visited July 24, 2020).

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

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

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

3
4 **➤ POTENTIAL POLICY BOOST**

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

8 **Ex. 1** at 6.

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

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

24
25
26
27
28 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.*

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

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

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

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

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

28 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

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

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

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

9 What we appear to have then, is this – a product that has quantifiably the highest
10 charges of any IUL product in the market with an unspecified Performance Factor,
11 and somehow the combination of the two generates the most competitive
12 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.*

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

15 **F. The PDX Product Is Misleading and Deceptive**

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

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

- 25 a. PacLife misrepresented the fundamental nature of the Performance Factor and
26 failed to disclose that the Performance Factor was a subterfuge intentionally

1 conceived and used by PacLife to circumvent and evade the consumer protections
2 of AG 49;

- 3 b. PacLife misrepresented and failed to disclose critical information necessary for
4 consumers to understand the operation, impact, and risks of the Performance
5 Factor;
- 6 c. PacLife misrepresented that the PDX Policies are structured to protect the
7 policyowner from “market loss,” while in fact secretly subjecting them to market-
8 based diminution in policy account values due to the excessive policy charges and
9 their impact on the Performance Factor;
- 10 d. PacLife misrepresented the illustrated performance of the PDX Policies and failed
11 to disclose that the PDX Policies could not perform as represented because the
12 illustrated performance was based on assumptions that PacLife knew were
13 unsupportable and unsustainable;
- 14 e. PacLife failed to disclose that the high cap rates it established to launch the PDX
15 Policies were unsupported and unsustainable;
- 16 f. PacLife failed to disclose material information showing that the PDX Policies are
17 in fact the costliest and riskiest IUL products on the market; and
- 18 g. PacLife incentivized its sales agents to maximize their own compensation to the
19 detriment of the policyowners.

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

24 1. The Performance Factor Is Inherently Misleading and Deceptive

25 66. The Performance Factor has a profound, yet undisclosed, impact on the illustrated
26 performance of the PDX Policies. After policy year 3, and until attained age 121, the index credits
27 to the illustrated account values of the PDX Policies are multiplied by the Performance Factor
28

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

9 67. Through this sleight of hand, PacLife intentionally misleads consumers into
10 thinking that the hyper-aggressive account values shown in the PDX Illustrations and marketing
11 materials are based on the conservative illustrated crediting rate of around 6% mandated by AG
12 49, while concealing that the PDX Policies are, in reality, the riskiest and most highly leveraged
13 IUL products in the entire insurance industry.

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

18 The first Performance Factor calculated on a PDX policy is 2.46, which means it
19 will multiply any positive index-based interest crediting rate by 2.46 at segment
20 maturity. It was promptly followed by another Performance Factor calculated on
21 another PDX policy at 4.18.

22 According to [PacLife Vice President of Product Design] O’Donnell, “If the
23 client’s indexed interest credit met the then-current growth cap rate of 10 percent,
24 **those segments would earn respective indexed crediting rates of 24.60 percent
25 and 41.80 percent at segment maturity.**”

26 *Id.* (emphasis added)

27 69. The undisclosed leverage and resulting risks associated with the PDX Policies stem
28 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>

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

10 70. The **steps taken by PacLife to conceal** the nature, effect and true cost of the
11 Performance Factor were **deliberate**. The lack of disclosure with respect to the illustrated
12 performance of the PDX Policies not only stands in sharp contrast to other IUL products on the
13 market (which transparently offer allocation options allowing the policyowner to receive a higher
14 specified cap or account multiplier in exchange for a specified charge to the policy’s account value
15 of 1% or so), it also stands in contrast with PacLife’s own past conduct. For instance, with the
16 Pacific Indexed Performer LT – a PacLife IUL product that was a predecessor to the PDX Policy
17 – PacLife at least disclosed that the policy could receive a multiplier of 23% in policy years 11–
18 **20 in exchange for higher policy charges**. The PDX Policies, by contrast, automatically embed
19 the Performance Factor in projecting the illustrated policy values and automatically includes the
20 cost of the Performance Factor in the base policy charges, without disclosing the amount of the
21 Performance Factor multiplier or the amount of the increased policy charges attributable to the
22 phantom multiplier.

23 71. In addition, PacLife **fails to disclose that the Performance Factor is designed not as**
24 **a constant multiplier, but instead is back-end loaded to peak in later policy durations** and, if that
25 were not enough, that this back-end peak is particularly pronounced for PDX Policies with higher
26 issue ages due to further undisclosed and unsupportable mortality assumptions made by PacLife.
27 In essence, the PDX Policies **shift mortality risk** – the risk that fewer people will die than PacLife
28

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

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

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

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

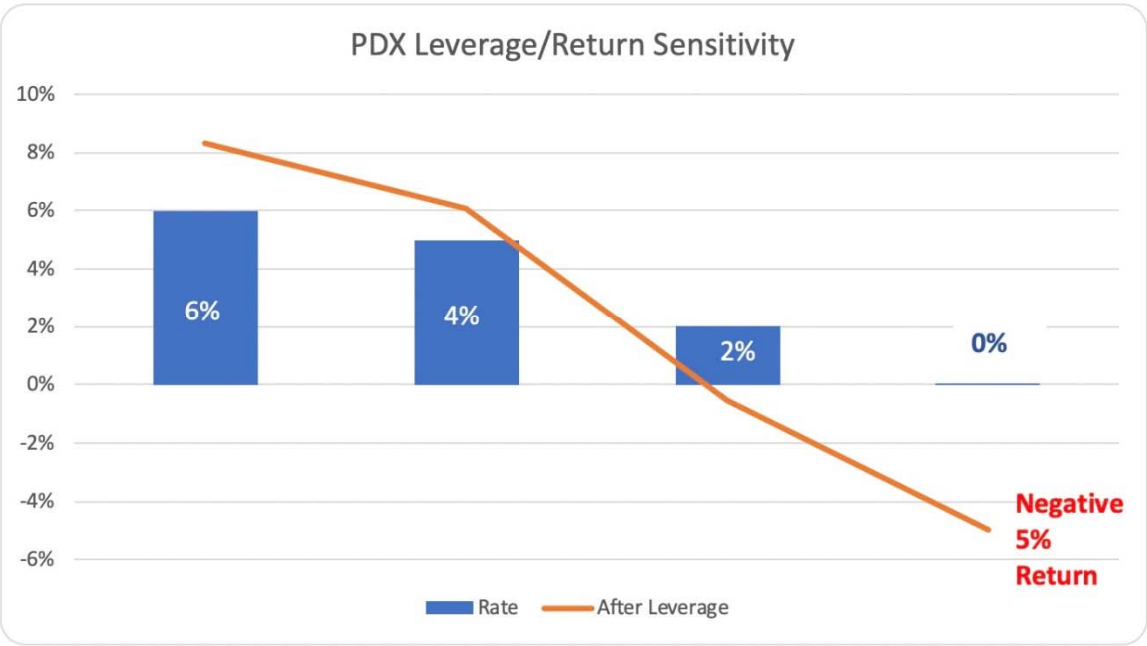
21 74. The excessive policy costs associated with the PDX Policies, combined with the
22 internal undisclosed leverage and the likely index performance over the long-term, expose PDX
23 policy owners to the “death spiral” illustrated in Paragraph 76, in which the policies become
24 prohibitively expensive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

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

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

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

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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

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

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

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

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

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

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

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

10 There is little, if any, reason to believe that options systematically deliver
11 meaningful profits to the buyer over extended periods of time for the following
12 reasons:

13 1) Options are financial instruments with contingent payoffs. As is well
14 documented in academic literature, the expected price to enter an option transaction
15 is the present value of its expected future payoff – in other words, a zero profit
16 baseline assumption.

17 2) In an option transaction, both parties assume risk on opposite sides of the same
18 trade. As a result, evaluating options transactions under a long-term risk/return
19 framework is not particularly useful....

20 3) The best analogy for options is insurance. Using an option to hedge is analogous
21 to buying an insurance policy because the held risk is transferred to a third party.
22 As with any insurance policy, we should expect the seller to recoup profits for
23 accepting risk over the long run....

24 4) The best evidence against the idea of systematic profits to option buyers is the
25 fact that investment professionals, endowments and pension funds do not employ
26 the strategy as a way to enhance returns with very little risk, as is argued with IUL
27 products. ... [I]f buying options is so incredibly profitable and has been for such a
28 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**

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

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

8 84. PacLife launched the PDX Policies using illustrations and policy contracts showing
9 unsustainably high cap rates for the available index options as another artifice to mislead
10 consumers into purchasing the policies. For example, in the initial illustrations provided to Hong
11 Li, “Growth Cap” was based on an assumed 10% cap rate for the illustrated S&P 500 1-Year
12 Indexed Account. The implied options budget necessary to support this cap rate was approximately
13 4%.

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

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

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

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

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

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

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

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

12 7. PacLife Designed the PDX Policies to Incentivize Agents to Receive Excessive
13 Compensation Resulting in Higher Policy Charges for Policyowners

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

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

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

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

6 I have been analyzing IUL’s for about 10 years now and I rarely editorialize about
7 one, but this PDX IUL represents such an *egregious abuse* by a co. to delude and
8 deceive clients and agents as to how it could perform that I feel I have no choice
9 because agents at what I consider the “top” co.’s – trying to do the best for their
10 clients – are emailing me that they cannot ‘compete’ against these “false”
11 PDX illustrations. My analysis of this IUL started out as normal, then an agent
12 emailed me asking about the features above that were not even listed in the
13 illustration. So I called Pacific Life, and yep, there are those 3 features for the cash
14 value crediting in this policy that are **NOT** mentioned/described/explained in the
15 illustration and **NOT** mentioned and/or described and/or even explained in the
16 Agent Technical Guide.

13 ***

14 This is the kind of product that gives the industry a bad name, and riles other
15 companies up such as those in the Whole Life industry to rail against IUL. Frankly
16 it should be AGAINST THE LAW for a co. to offer this product and for agents to
17 sell it as is – the only reasons to do so are ignorance and/or greed.

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

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

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

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28 ¹⁶ <https://lifeproductreview.com/2018/01/17/intro-to-the-pdx-series/>

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

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

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

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

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

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

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

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

12 **I. Plaintiff’s Purchase of the PDX Policy**

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

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

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

22 105. In one of these meetings, Agent Xu presented Plaintiff with an illustration (attached
23 as **Exhibit 6**) showing that, upon the payment of five annual premiums of \$500,000, the PDX
24 Policy would generate sufficient accumulated values so that beginning in policy year 6, \$175,000
25 per year could be withdrawn using policy loans and that the PDX Policy would still remain in force
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1 for Plaintiff's lifetime. *See Ex. 6.*¹⁸ The values and policy performance depicted in this illustration
2 were all generated using the PacLife illustration system (although agent Xu stripped the illustration
3 of disclosures) which embedded the Performance Factor and unsustainable cap as alleged above.
4 Consequently, the illustrated values, as well as the projected performance showing that Hong Li
5 could withdraw \$175,000 each year beginning in the sixth policy year, were all false and
6 unattainable.

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

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

20 108. During the meeting, agent Xu reviewed the PDX Illustration with Hong Li and her
21 husband, again emphasizing the substantial death benefits, that the policy would remain in place
22 during Hong Li's lifetime based on the payment of five annual premiums of \$500,000 each and
23 that the values would grow sufficiently to allow Hong Li to withdraw funds from the account
24 values. Plaintiff looked at the new PDX Illustration and saw that the illustrated values in the early
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27 ¹⁸ In violation of the applicable provisions of the California Insurance Code, the illustration used
28 by agent Xu stripped out and failed to contain the footnotes, disclosures and other information
required by the California statutes.

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

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

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

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

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

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

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

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

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

5 114. Plaintiff became concerned in February, 2020 after she received the Quarterly
6 Statement for the PDX Policy covering the period from October 26, 2019 to January 25, 2020. The
7 Quarterly Statement reflected significant deterioration in the policy's performance due to the
8 ongoing exorbitant policy charges, amounting to a \$54,286.59 loss for the reported period. The
9 periodic allocations from the Fixed Account to the selected index account (the 1 Year High Par
10 Indexed Account) reflected no increase in value whatsoever. And the total Accumulated Value for
11 all accounts *declined* from \$638,832.75 as of October 26, 2019 to \$593,907.01 as of January 25,
12 2020. Compounding this injury, the Quarterly Statement reflected that, due to the PDX Policy's
13 onerous surrender charges, the Net Cash Surrender Value for the \$1,000,000 in premiums paid by
14 Plaintiff to date was now only \$360,567.01, meaning that she would receive back only 36% of the
15 premium upon surrender of the PDX Policy.

16 115. Based on these concerns, Hong Li spoke with her husband's nephew, who is a
17 licensed insurance producer. He suggested that Hong Li obtain several in-force illustrations from
18 PacLife so that the family could evaluate the Policy's status and anticipated future performance.
19 Accordingly, Hong Li requested in-force illustrations showing the projected policy performance
20 based on the average crediting rate applied by PacLife and the current account allocation for the
21 following scenarios: (1) the policy would remain in its current "as-is," status with the same
22 premium funding assumed in the initial illustrations [Exhibit 4]; (2) Hong Li would make no more
23 premium payments but maintain the existing death benefits [Exhibit 10]; (3) Hong Li would make
24 no more premium payments but reduce the death benefits from \$12.2 million to \$5.0 million
25 [Exhibit 11]; and (4) Hong Li would fund the policy paying the projected premiums necessary to
26 maintain the existing death benefits (and additional benefits) until she is 72 years old [Exhibit 12].
27
28

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

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

20 **CLASS ALLEGATIONS**

21 118. Plaintiff brings the claims against PacLife on behalf of herself and all other
22 similarly situated California consumers pursuant to Cal. Civ. Proc. Code § 382 and Cal. Civ. Code
23 § 1781 and seeks certification of the following class (the “Class”):

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

26 Excluded from the Class are (a) Defendants and, as applicable, their officers, members, directors
27 and employees; (b) the judge adjudicating this action and court personnel employed in his or her
28

1 chambers or courtroom; (c) PacLife and its parents, subsidiaries, successors, predecessors, and any
2 entity in which PacLife has a controlling interest; (d) any officer or director of PacLife reported in
3 its most recent Annual Statements; (e) any person alleging wrongful inducement in the purchase
4 of a PDX Policy in any pending or resolved lawsuit against PacLife other than this action; and (f)
5 the legal representatives, successors, or assigns of any of the foregoing excluded Policyowners
6 (but only then in their capacity as legal representative, successor, or assignee).

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

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

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

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

- 20 a. Whether PacLife engaged in the alleged misconduct;
- 21 b. Whether PacLife's alleged misconduct constitutes violations of the statutory and
22 common laws of the State of California;
- 23 c. Whether Plaintiff and Class members are entitled to the various legal and equitable
24 forms of relief available under their respective causes of action; and
- 25 d. Whether Plaintiff and Class members are entitled to other, further relief deemed
26 appropriate and warranted by the Court.

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

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

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

12 **APPLICATION OF THE DISCOVERY RULE**
13 **AND THE FRAUDULENT CONCEALMENT DOCTRINE**

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

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

24 128. Based on the false and misleading information fed to Plaintiff Li, and the material
25 information concealed from her by the Defendants, under California’s discovery rule Plaintiff did
26 not discover and did not have reason to discover her causes of action relating to the PDX Policy
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1 until February, 2020 at the earliest. Prior to that date, Plaintiff did not have a reasonable factual
2 basis to suspect that she had been injured by the misconduct of Defendants.

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

6 CLAIMS FOR RELIEF

7 COUNT ONE

8 (Violation of Cal. Bus. & Prof. Code § 17200, *et. seq.* – 9 against PacLife Individually and on Behalf of the Class)

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

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

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

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

22 • Unlawful Prong

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

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

- 1 • Cal. Ins. Code § 790.02 (“No person shall engage in this State in any trade practice
2 which is defined in this article as, or determined pursuant to this article to be, an unfair
3 method of competition or an unfair or deceptive act or practice in the business of
4 insurance.”);
- 5 • Cal. Ins. Code § 790.03(a) (defining as unfair methods of competition and unfair and
6 deceptive acts or practices in the business of insurance the “[m]aking, issuing,
7 circulating, or causing to be made, issued or circulated, any estimate, illustration,
8 circular, or statement misrepresenting the terms of any policy issued or to be issued or
9 the benefits or advantages promised thereby....”);
- 10 • Cal. Ins. Code § 780 (“An insurer ... shall not cause or permit to be issued, circulated
11 or used, any statement that is known, or should have been known, to be a
12 misrepresentation of the ... terms of a policy issued by the insurer [or] ... [t]he benefits
13 or privileges promised thereunder....”);
- 14 • Cal. Ins. Code § 332 (“Each party to a contract of insurance shall communicate to the
15 other, in good faith, all facts within his knowledge which are or which he believes to
16 be material to the contract and as to which he makes no warranty, and which the other
17 has not the means of ascertaining.”);
- 18 • Cal. Ins. Code § 331 (“Concealment, whether intentional or unintentional, entitles the
19 injured party to rescind insurance.”);
- 20 • Cal. Ins. Code § 10509.955(b)(2) (Life insurance illustration may not “[u]se or describe
21 nonguaranteed elements in a manner that is misleading or has the capacity or tendency
22 to mislead.”);
- 23 • Cal. Ins. Code § 10509.955(c) (“If an interest rate used to determine the illustrated
24 nonguaranteed elements is shown, it shall not be greater than the earned interest rate
25 underlying the disciplined current scale.”);
- 26 • Cal. Ins. Code § 10509.956(a)(7) (“If the illustration shows any nonguaranteed
27 elements, they cannot be based on a scale more favorable to the policy owner than the
28 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

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

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

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

9 • **Fraudulent Prong**

10 143. Conduct is “deceptive” within the meaning of the UCL’s “fraudulent” prong when
11 members of the public are likely to be deceived by the practice.

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

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

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

25 • **UCL Standing**

26 147. Under the UCL, private standing is afforded to any person “who has suffered injury
27 in fact and has lost money or property as a result of the unfair competition.” Cal. Bus. & Prof.
28

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

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

11 **• UCL Relief Sought**

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

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

25 151. Plaintiff accordingly seeks restitution, rescission, and injunctive relief for PacLife’s
26 UCL violations, the appropriateness of which will be determined by common evidence.
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1 158. PacLife’s conduct, as alleged above, was a substantial factor causing Plaintiff and
2 members of the Class to purchase PDX Policies and sustain economic injuries. As a consequence,
3 Plaintiff and the members of the Class sustained damages.

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

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

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

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

12 **COUNT THREE**

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

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

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

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

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

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

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

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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.

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

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

5 **COUNT SIX**

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

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

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

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

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

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

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

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

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

24 **COUNT SEVEN**

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

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

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

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

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

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

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

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

12 **PRAYER FOR RELIEF**

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

- 16 a. Enjoining Defendants from further violations of their legal and fiduciary duties;
17 b. Enjoining Defendants from continuing the acts and practices described above;
18 c. Awarding members of the Class, at their option: (1) rescission; or (2) restitution or
19 damages;
20 d. Awarding Plaintiff and members of the Class monetary damages and interest at the
21 legal rate;
22 e. Awarding Plaintiff and members of the Class appropriate equitable relief;
23 f. Awarding Plaintiff the costs and disbursements of this action, including reasonable
24 counsel fees, costs and expenses in amounts to be determined by the Court;
25 g. Awarding pre- and post-judgment interest at the legal rate; and
26 h. Granting such other and further relief as is just and proper.
27

1 **REQUEST FOR JURY TRIAL**

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

4 DATED: August 6, 2020.

5 BONNETT FAIRBOURN FRIEDMAN
& BALINT, PC

6 /s/ Patricia N. Syverson

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