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Attorneys for Plaintiffs,
JOYCE WALKER, KIM BRUCE HOWLETT,
MURIEL SPOONER, TALINE BEDELIAN,
and OSCAR GUEVARA, on behalf of themselves
and all others similarly situated

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

JOYCE WALKER, KIM BRUCE HOWLETT, MURIEL SPOONER, TALINE BEDELIAN, and OSCAR GUEVARA, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

LIFE INSURANCE COMPANY OF THE SOUTHWEST, a Texas corporation and DOES 1-50,

Defendant.

CLASS ACTION

CASE NO.: CV 10-9198 JVS(JDEX)
Assigned for all purposes to the Honorable James V. Selna

Formerly Case No.:
3:10-cv-04852 JSW from
Northern District of California

FOURTH AMENDED CLASS ACTION COMPLAINT

Action Filed: September 24, 2010

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Plaintiffs Joyce Ann Walker, Kim Bruce Howlett, Muriel Lynn Spooner, Taline Bedelian, and Oscar Guevara (together, "Plaintiffs"), on behalf of themselves and all others similarly situated (the "Class"), by and through their undersigned attorneys, allege, upon knowledge as to their own acts and otherwise upon information and belief, as follows:

I. OVERVIEW

1. This class action seeks to redress the unlawful and unfair business acts and practices of defendant Life Insurance Company of the Southwest ("LSW" or "Defendant") with respect to its indexed universal life insurance policies. LSW sells indexed universal life insurance policies, including the SecurePlus Provider ("Provider") policy and the SecurePlus Paragon ("Paragon") policy (together, the "Policies"), to individuals throughout California. LSW sells the Policies through the use of illustrations governed by California Insurance Code Sections 10509.950-10509.965 (the "Illustration Statute"), which is California's version of the Life Insurance Illustration Model Regulation adopted by the National Association of Insurance Commissioners ("NAIC") in 1995. California adopted the Illustration Statute in 1996.

2. LSW engages in unlawful and unfair business practices, in violation of the Unfair Competition Law (California Business and Professions Code Section 17200, et seq.) ("UCL"), because LSW has violated the Illustration Statute in at least the following ways:

- failing to define terms and column headings used in the illustrations (Section 10509.956(b)(4)); [1]

[1] All section references are to the California Insurance Code unless otherwise

- showing nonguaranteed elements in the illustrations that are not described in the Policies (Section 10509.956(e)(3)).

3. The failures of LSW's illustrations to accurately and lawfully describe the operation of the Policies are highly material to any reasonable consumer. For example:

- The guaranteed interest that LSW's illustrations depict but that is not in fact credited is very large; the value of the Policies if the guaranteed interest depicted in the illustrations were actually given would be approximately 44% (Provider) or 50% (Paragon) higher than the value of the Policies given the way that LSW actually credits guaranteed interest.
- The eleventh year elimination of the Monthly Percent of Accumulated Value Charge ("MPAVC") that the Illustration Statute prohibits LSW from showing in its Paragon illustrations inflate the Policy values shown in the illustrations by approximately 41% over the values that the illustrations are lawfully permitted to show.

4. Once Plaintiffs and the Class purchased the Policies and realized that they were not what they were depicted to be in the illustrations, Plaintiffs and the Class were caught between a rock and a hard place because they either had to keep paying into the Policies or pay large surrender charges upon terminating the Policies.

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specified.

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5. Plaintiffs and the Class have been injured by purchasing Policies that have little actual value and far less than they reasonably expected based on the illustrations. Nearly all of the Policies will lapse with no value to the policyholder or will be surrendered at a substantial loss to the policyholder. LSW estimates that over 90% of the Policies will lapse or be surrendered. And those Policies that do not lapse and are not surrendered will still have far less value than was depicted in the illustrations.

6. Plaintiffs estimate that LSW has thus far collected at least $200 million in fees from Plaintiffs and the Class while providing little in return. Plaintiffs and the Class are either stuck in unfavorable contracts with LSW or have already abandoned those contracts through lapse or surrender because the contracts were so unfavorable. Plaintiffs seek equitable relief for LSW's unlawful and unfair business practices, including the right to rescind their Policies, to obtain restitution of monies that may have been acquired by means of LSW's unlawful and unfair practices, and other equitable relief as necessary to prevent or redress LSW's unlawful and unfair practices.

II. JURISDICTION AND VENUE

7. The United States District Court for the Central District of California has subject matter jurisdiction over this class action under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), because one or more members of the Class defined herein are citizens of a state different from one or more defendants and the aggregate amount in controversy exceeds five million dollars ($5,000,000), exclusive of interest and costs.

8. Venue in this district is proper because LSW transacts business in this

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district and part of the unlawful and unfair acts and omissions was carried on within this district.

III. THE PARTIES

9. Plaintiff Joyce Ann Walker (formerly, Joyce Schmidtbauer) was at all relevant times a resident of San Diego, California.

10. Plaintiff Kim Bruce Howlett is a resident of San Diego, California.

11. Plaintiff Muriel Lynn Spooner is a resident of San Diego, California.

12. Plaintiff Taline Bedelian is a resident of Apple Valley, California.

13. Plaintiff Oscar Guevara is a resident of Bakersfield, California.

14. Defendant Life Insurance Company of the Southwest is, and at all relevant times was, a corporation organized and existing under the laws of the State of Texas with its principal place of business in Dallas, Texas.

15. LSW sells or has sold indexed universal life insurance policies, including the Provider Policy and the Paragon Policy, to individuals throughout California.

16. Plaintiffs are currently unaware of the identities of Does 1 through 50, who were the agents of LSW or who conspired with LSW to commit the misconduct described herein.

IV. LSW'S UNLAWFUL AND UNFAIR MARKETING AND SALE OF INDEXED UNIVERSAL LIFE INSURANCE POLICIES IN VIOLATION OF THE ILLUSTRATION STATUTE

17. Provider and Paragon are equity-indexed universal life insurance policies that have a fixed interest rate component as well as an indexed account option. Life insurance is designed to provide a death benefit to a designated beneficiary upon the death of the insured person. Indexed universal life insurance

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policies also allow a policyholder to accumulate cash value based on the performance of certain stock indices. The indexed account option accumulates cash value in the Policy based on the performance of the Standard & Poor's (S&P) 500. The actual interest credited to the Policy's cash value is determined by changes in the S&P 500, the "participation rate," (*i.e.*, the percentage at which the policyholder is given credit for gains in the S&P 500), and any cap that may be imposed on the policyholder's gain in a single year. The economic performance and value of the Policies depend on both the interest credited and the fees deducted, and therefore both are important to consumers.

18. As defined in Section 10509.953(h), an "illustration" means "a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years" and that is either a basic illustration, a supplemental illustration, or an in-force illustration. A basic illustration is defined as "a ledger or proposal used in the sale of a life insurance policy that shows both guaranteed and nonguaranteed elements." Under Section 10509.954(a), "each insurer marketing policies to which this chapter is applicable shall notify the commissioner whether a policy form is to be marketed with or without an illustration." LSW elected to use an illustration in the marketing of the Provider and the Paragon Policies, and so notified the California Insurance Commissioner.

19. Section 10509.954(c) states, "If a policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with this chapter is required . . . ." Accordingly, no later than the time of Policy delivery and thus before the expiration of the Policies' ten-day free-look period, LSW provided each policyholder with at least one illustration

- either a “batch illustration” provided at the time of Policy delivery, or a “sales illustration” prepared at an earlier date, or one or more sales illustrations plus a batch illustration. The illustrations were created by LSW and were distributed to prospective policyholders through agents or brokers who relied on LSW’s illustrations to sell the Policies.

20. Plaintiffs and each member of the Class received one or more illustrations from LSW and then declined to cancel the Policy within the ten-day free-look period. Because LSW elected to market the Policies with an illustration, delivery of one or more of LSW’s illustrations was a necessary element of the sale to each policyholder.

21. LSW markets the Policies as tax-advantaged retirement or investment vehicles. LSW’s illustrations make the Policies appear extremely attractive financially, and capable of providing the policyholder with significant yearly income for life. Interior pages of the standard illustration represent that the Policies will provide “[c]ash accumulation for additional retirement income, college expenses or to meet emergencies.”

22. The Policies are extraordinarily complex products and are very difficult for consumers to understand. Clear and complete disclosures in the illustrations are essential for consumer understanding.

23. The Policies are sold primarily as tax-advantaged retirement or investment vehicles, but a lapse or surrender of the Policy prevents the Policy from achieving that objective (except in those few instances when a tax-advantaged exchange is made with a surrendered Policy). To explain: if the Policy remains in force until the death of the insured, it has the capability to allow the policyholder to

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draw tax-free income from the Policy. This is true because the Policy's loan feature allows the policyholder to borrow from the cash value of the Policy during the lifetime of the insured. Those loans are not taxable at the time they are taken. When the insured dies, the death benefit pays off the loan and no taxes are due even if the money borrowed from the Policy exceeds the premiums paid into the Policy, which premiums constitute the policyholder's basis for tax purposes. However, if the Policy lapses or is surrendered before the death of the insured, taxes will be due in the year of lapse or surrender on any amount by which the Policy loans exceeded premiums paid in. Worse yet for the policyholder, the tax rate applicable to that amount will be the ordinary income rate, not the capital gains rate that would apply to gains on many alternative investments such as mutual funds.

A. LSW's Failure To Define Key Terms And Column Headings In Violation Of Section 10509.956(b)(4)

24. The Illustration Statute requires that all column headings and all key terms used in an illustration be defined. As set forth in Section 10509.950, definitions should be understandable by a typical person within the segment of the public to which the illustration is directed.

25. LSW violates Section 10509.956(b)(4) because the illustrations have headings and key terms stating "Guaranteed Values at 2.00%" for Provider and "Guaranteed Values at 2.50%" for Paragon, yet LSW does not define these column headings and key terms or otherwise explain that the guaranteed interest rates are not true annual rates.

26. The illustrations represent the guaranteed interest rate as 2.00% for

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Provider and 2.50% for Paragon by stating "Guaranteed Values at 2.00%" or "Guaranteed Values at 2.50%" as column headings above the guaranteed Policy values. The Policy values below the headings are calculated by applying the 2.00% or 2.50% guaranteed interest rate each and every year. However, the illustrations do not define those column headings (as required by Section 10509.956(b)(4)) or otherwise disclose that the guaranteed interest rates are not true annual rates and are not applied every year. In fact, the rates are calculated retrospectively upon Policy termination (or in five-year intervals in the case of Provider) on the basis of average annual guarantees.

27. By way of example, a true annual guarantee of 2.50% would provide a 2.50% gain even in a year when the S&P 500 is flat. But that is not the case with LSW's retrospective guarantee. For example, if a Paragon Policy were in effect for four years in which the S&P 500 had zero gains for the first three years and a 10% gain in the fourth year, the policyholder would not receive his or her guarantee of 2.50% for years one, two, and three, and a 10% gain in year four, for a total gain of 17.5%. Instead, the policyholder would only receive a 10% gain because the average gain of 2.50% equals or exceeds the guaranteed rate of return over the four-year lifetime of the Policy.[2] The calculation of LSW's interest guarantees contrasts with how LSW addresses policyholder gains in certain indexed account options, which are subject to a true annual cap (*e.g.*, a limit of 10% even if the S&P 500 rose 20%). In short, the cap on earnings is imposed annually, but the

[2] This example uses simple interest instead of compound interest for ease of presentation. Plaintiffs make no contention at this time concerning whether LSW would augment the 10% gain to account for compounding of an average annual rate of return.

minimum floor set by the guaranteed values is not imposed annually.

28. Although LSW knows that policyholders will not receive a true annual guaranteed interest rate, it fails to disclose this material information to policyholders in the illustration.

B. LSW's Illustration Of The Eleventh Year Elimination Of The MPAVC For Paragon In Violation Of Insurance Code Section 10509.956(e)(3)

29. Because the Policies are marketed primarily as retirement or investment vehicles, the numbers that are used to calculate the Policy values (including accumulated values and cash surrender values) are extremely important. The Policies present guaranteed values and nonguaranteed values. The guaranteed values purport to depict the minimum possible Policy values, as they assume no gains at all in the S&P 500 index and assume the highest fees and charges permitted by the Policy.

30. The illustrations project nonguaranteed Policy values on two different bases, called "Current Basis A" and "Current Basis B." Both bases purport to project nonguaranteed values assuming application of LSW's rates and charges that are "current" at the time the illustration is prepared. Current Basis A reflects projected values under the assumption that the nonguaranteed assumed interest rate equals LSW's then-current variable loan rate. Current Basis B reflects projected values under the assumption that the nonguaranteed assumed interest rate equals the weighted average of LSW's then-current index rates (including application of caps and participation rates) applicable to the various "equity-indexed strategies" that the policyholder may select and assuming the historical performance of the

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S&P 500 over a prior period of about 23 years.

31. The Policy values projected in the Paragon illustrations under Current Basis A and Current Basis B include the elimination of the MPAVC after ten Policy years.

32. The eliminated MPAVC is referred to in the insurance industry as a "Persistency Bonus" because, if it is provided at all, it is provided only to Policies that persist for a specified period (ten years for the eliminated MPAVC).

33. A reasonable policyholder would understand that the nonguaranteed values are not guaranteed because they assume certain interest rates, caps, and participation rates that are not guaranteed. However, since the existence or elimination of the MPAVC for Paragon is mentioned nowhere in the illustration, yet is assumed in the Current Basis A and B Values, it is impossible for the policyholder to understand that those values assume that LSW will eliminate that charge beginning after the tenth Policy year.

34. The inclusion of the MPAVC elimination has a substantial impact on the Current Basis A and Current Basis B Values depicted in the illustrations, which is why LSW includes it in the Current Basis Values. The inclusion of the MPAVC elimination in the Paragon Current Basis B Values increases those values by approximately 41%. The inclusion of the MPAVC elimination had an even greater impact on the Current Basis A Values.

35. While the Illustration Statute permits the depiction of nonguaranteed elements in illustrations, including the showing of nonguaranteed Policy values based on such elements, Section 10509.956(e)(3) limits the nonguaranteed elements that can be shown to those that are "described in the contract."

36. LSW violates Section 10509.956(e)(3) because the MPAVC elimination is shown in the illustrations but is not described in the Policies. Because the MPAVC elimination is not described in the Policies, LSW is prohibited from showing it in the illustrations or showing nonguaranteed values calculated using the MPAVC elimination.

37. While LSW's liability under the UCL for violation of Section 10509.956(e)(3) does not require proof of culpable intent, LSW knew that it was violating Section 10509.956(e)(3) and attempted to hide its violation from state regulators, which belies LSW's assertions that it complied in good faith with the Illustration Statute at all times.

38. When LSW submitted an exemplar Paragon illustration to the CDI, LSW omitted all references to any Persistency Bonuses, including the elimination of the Monthly Administrative Charge after the tenth policy year. Compare Exhibit G (2006 Paragon illustration submitted to the CID) at LSW-00000480 with Exhibit B (Kim Howlett's July 27, 2007 illustration) at LSW-00001230. Similarly, in submitting exemplar Provider illustrations to the California Department of Insurance ("CDI"), LSW omitted all references to Persistency Bonuses, including the reduction of the Monthly Administrative Charge after the tenth policy year and an additional Persistency Bonus called the 1.25% Account Value Enhancement. Compare Exhibit F (2005 Provider illustration submitted to the CDI) at LSW-00000162 & LSW-00000169 and Exhibit H (2009 Provider illustration submitted to the CDI) at LSW-00018084 & LSW-00018097 with Exhibit A (Joyce Schmidtbauer's October 3, 2007 illustration) at LSW-00002336 & LSW-00002349. Although these items were omitted from the exemplars of illustrations

provided to the CDI, Plaintiffs are informed and believe that they are included in all Provider and Paragon illustrations that are presented to prospective LSW policyholders. The effect of LSW's submission of altered exemplar illustrations was to make it impossible for the CDI to detect that LSW was violating provisions of the Insurance Code such as Section 10509.956(e)(3). LSW has offered no valid explanation for why it submitted to the CDI exemplar illustrations that differed materially from those that it actually used in California.

V. PLAINTIFFS' PURCHASE AND RENEWAL OF LSW POLICIES

Plaintiff Joyce Ann Walker

39. Plaintiff Joyce Ann Walker purchased Provider Policy no. LS0156670 from LSW, with a Policy date of December 27, 2007. This Policy accumulates interest or cash value based in part on the performance of the S&P 500. In connection with Ms. Walker's purchase of her Policy, she was presented with several Policy illustrations. A copy of one such illustration (dated October 3, 2007) is attached hereto as Exhibit A, and a copy of the Policy actually issued to Ms. Walker is attached hereto as Exhibit A-1. Her initial premium was to be $112,637, with four more planned periodic premium payments of $112,637 annually. [3]

40. LSW marketed the Policy to Ms. Walker by engaging in unlawful and unfair business acts and practices, as described more fully in paragraphs 2-6 & 17-38, above.

41. Ms. Walker made two periodic payments of $112,000 each. After

[3] Although Ms. Walker's Policy listed a planned annual premium of $112,637, the annual premium actually paid to LSW was $112,000.

LSW denied Ms. Walker's request for a refund of premiums, her only options were to surrender the Policy and incur a very high "surrender charge," or to forfeit her entire $224,000. Ms. Walker ultimately decided to surrender her Policy, incurring a surrender penalty of $55,013.42, which was taken out of the purported "accumulated cash value" of $197,647.21. Ms. Walker received $142,633.79 from LSW for a net loss in excess of $81,366.21.

Plaintiff Kim Bruce Howlett

42. Plaintiff Kim Bruce Howlett purchased Paragon Policy no. LS0149017 from LSW, with a Policy date of September 26, 2007. This Policy accumulates interest or cash value based in part on the performance of the S&P 500. In connection with Mr. Howlett's purchase of his Policy, he was presented with several Policy illustrations. A copy of one such illustration (dated July 27, 2007) is attached hereto as Exhibit B, and a copy of the Policy actually issued to Mr. Howlett is attached hereto as Exhibit B-1. His initial premium was $105,750, with four more planned periodic premium payments of $105,750 annually.

43. LSW marketed the Policy to Mr. Howlett by engaging in unlawful and unfair business acts and practices, as described more fully in paragraphs 2-6 & 17-38, above.

44. Mr. Howlett made one initial periodic payment of $105,750. After LSW denied Mr. Howlett's request for a refund of premiums, his only options were to surrender the Policy and incur a very high "surrender charge," or to forfeit his entire $105,750. Since the surrender charge exceeded the cash value of Mr. Howlett's Policy, he did not surrender his Policy, and the Policy lapsed. Mr.

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Howlett's loss exceeds $105,750.

Plaintiff Muriel Lynn Spooner

45. Plaintiff Muriel Lynn Spooner purchased Provider Policy no. LS0149018 from LSW, with a Policy date of October 5, 2007. This Policy accumulates interest or cash value based in part on the performance of the S&P 500. In connection with Ms. Spooner's purchase of her Policy, she was presented with several Policy illustrations. A copy of one such illustration (dated July 27, 2007) is attached hereto as Exhibit C, and a copy of the Policy actually issued to Ms. Spooner is attached hereto as Exhibit C-1. Her initial premium was $59,500, with four more planned periodic premium payments of $59,500 annually.

46. LSW marketed the Policy to Ms. Spooner by engaging in unlawful and unfair business acts and practices, as described more fully in paragraphs 2-6 & 17-38, above.

47. Ms. Spooner made one initial periodic payment of $59,500. After LSW denied Ms. Spooner's request for a refund of premiums, her only options were to surrender the Policy and incur a very high "surrender charge," or to forfeit her entire $59,500. Ms. Spooner ultimately decided to surrender her Policy. She incurred a surrender penalty of $31,981.82, which was taken out of the purported "accumulated cash value" of $36,794.45. Ms. Spooner received $4,813.17 from LSW for a net loss in excess of $54,686.83.

Plaintiff Taline Bedelian

48. Plaintiff Taline Bedelian purchased Provider Policy no. LS0157044 from LSW, with a Policy date of February 19, 2008. This Policy accumulates interest or cash value based in part on the performance of the S&P 500. In

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connection with Ms. Bedelian's purchase of her Policy, she was presented with at least one sales illustration and a batch illustration. A copy of a sales illustration (dated November 14, 2007) given to her is attached hereto as Exhibit D. Attached hereto as Exhibit D-1 is a copy of the Data Section for Ms. Bedelian's Policy. Plaintiffs are informed and believe that the form of the Policy issued by LSW to Ms. Bedelian is the same as the Provider Policy issued by LSW to Ms. Walker (Exhibit A-1 hereto). Ms. Bedelian's initial premium was $600.

49. LSW marketed the Policy to Ms. Bedelian by engaging in unlawful and unfair business acts and practices, as described more fully in paragraphs 2-6 & 17-38, above.

50. Ms. Bedelian has made numerous premium payments into the policy, and the policy remains in force. The current accumulated value of Ms. Bedelian's Policy is thousands of dollars lower than the amount of premiums she has paid. Even in her most recent policy year (February 18, 2017 to February 18, 2018), when the S&P 500 had strong gains, LSW deducted more in fees from the policy than it credited in interest and the Account Value Enhancement.

Plaintiff Oscar Guevara

51. Plaintiff Oscar Guevara purchased Provider Policy no. LS0212946 from LSW, with a Policy date of April 15, 2010. This Policy accumulates interest or cash value based in part on the performance of the S&P 500. Mr. Guevara was shown multiple sales illustrations before he ultimately purchased a Policy. The signature page from a sales illustration presented to Mr. Guevara on or about January 15, 2010 is attached hereto as Exhibit E. A batch illustration given to Mr. Guevara (dated April 15, 2010) is attached hereto as Exhibit E-1. A copy of the

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Policy actually issued to Mr. Guevara is attached hereto as Exhibit E-2. His initial premium was $3,600.

52. LSW marketed the Policy to Mr. Guevara by engaging in unlawful and unfair business acts and practices, as described more fully in paragraphs 2-6 & 17-38, above.

53. Mr. Guevara made two premium payments of $3,600 each, totaling $7,200. He surrendered his Policy in 2012 and received approximately $3,100 from LSW, after deduction of the surrender penalty.

CLASS ACTION ALLEGATIONS

54. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3).

55. The Class that Ms. Walker, Mr. Howlett, Ms. Spooner, Ms. Bedelian, and Mr. Guevara seek to represent is composed of and defined as follows:

> All persons who purchased a Provider Policy or Paragon Policy from Life Insurance Company of the Southwest that was issued between September 24, 2006 and August 30, 2015, and who resided in California at the time the Policy was issued.[4]

56. Specifically excluded from the Class are past or present officers, directors, agents, brokers, or employees of the Defendant, or its parents or

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[4] Alternatively, the Class is defined as:

> All persons who purchased a Provider Policy or Paragon Policy from Life Insurance Company of the Southwest that was issued between September 24, 2006 and August 30, 2015, who resided in California at the time the Policy was issued, and who received an illustration on or before the date of policy application.

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subsidiaries; any agents, brokers, or others who sold Policies for the Defendant, or its parents or subsidiaries; any entity in which the Defendant has a controlling interest; the affiliates, legal representatives, attorneys or assigns of the Defendant, or its parents or subsidiaries; and any judge, justice or judicial officer presiding over this matter and the staff and immediate family of any such judge, justice or judicial officer.

57. As more fully set forth below, this action is appropriately brought as a class action pursuant to Rule 23(b)(2) and 23(b)(3) because: the Class members are so numerous that joinder of all members is impracticable; there are common questions of law and fact; the claims of the representative Plaintiffs are typical of the claims of the Class they represent; and the representative Plaintiffs will fairly and adequately protect the interests of the Class they represent.

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Numerosity

58. The Class members are so numerous that the individual joinder of all Class members is impracticable under the circumstances of this case. Plaintiffs are informed and believe that the Class has over 50,000 members, whose identities can be determined from the records of LSW.

Common Questions Predominate

59. Common questions of law and fact exist as to all Class members and predominate over any possible questions that might affect only individual Class members. These common questions of law and fact include, among others:

(1) Whether LSW violated the UCL by failing to define column headings and key terms used in the illustrations in violation of Section 10509.956(b)(4);

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(2) Whether LSW violated the UCL by showing nonguaranteed elements in the illustration that are not described in the Policies in violation of Section 10509.956(e)(3);

(3) Whether LSW's violations of the Illustration Statute constitute an unfair business practice;

(4) Whether information omitted or improperly presented in the illustrations was a substantial factor in Plaintiffs' purchasing decisions;

(5) Whether the information omitted or improperly presented in the illustrations was material to Plaintiffs' purchasing decisions;

(6) Whether Plaintiffs suffered injury in fact and lost money or property as a result of LSW's violations of the Illustration Statute;

(7) The balance of equities and the parties' burdens with respect thereto;

(8) Whether rescission and/or injunctive relief should be granted;

(9) Whether restitution should be granted and in what amounts; and

(10) Whether attorneys' fees and incentive awards should be awarded, and in what amounts.

Typicality

60. Plaintiffs Joyce Ann Walker, Kim Bruce Howlett, Muriel Lynn Spooner, Taline Bedelian, and Oscar Guevara's claims are typical of those of the Class members. Plaintiffs' claims are based on the same legal theories as the claims of the other Class members and are based on the same unlawful and unfair business acts or practices. Plaintiffs and Class members suffered injury in fact and lost money or property as a result of LSW's common course of conduct as complained of herein.

Adequacy

61. Plaintiffs will fairly and adequately protect the interests of the Class members. Plaintiffs and the other Class members were injured by the same unlawful and unfair business acts or practices, and Plaintiffs have no interests that are adverse to the interests of absent Class members. Plaintiffs have retained counsel with substantial experience and success in the prosecution of complex class actions, consumer protection litigation, and litigation challenging the practices of insurance companies.

Additional Class Allegations

62. This action is appropriate as a class action under Rule 23(b)(2) and 23(b)(3). Questions of law and fact common to the Class members predominate and a class action is superior to any other possible method for the fair and efficient adjudication of the controversy.

a. Common questions of law and fact predominate, and individual joinder of all Class members is impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the

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unnecessary duplication of effort and expense that numerous individual actions would engender.

b. Class members have little interest in individually controlling the prosecution of separate actions. The substantial fees and costs required to challenge LSW's wrongful conduct greatly exceed the damages suffered by any individual Class member and it would not be feasible or desirable for individual Class members to prosecute separate actions against the Defendant.

c. There are no difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action. Rather, the expense and burden of litigation would make it difficult or impossible for individual Class members to maintain individual actions. Moreover, even if such individual litigation were practicable, the cost to the court system of adjudication of individualized litigation would be substantial. This action will result in an orderly and expeditious administration of Class claims. Economies of time, effort and expense will be fostered, and uniformity of decisions will be ensured.

CLAIM FOR RELIEF
(For Violation Of California's Unfair Competition Law)

63. Plaintiffs Joyce Ann Walker, Kim Bruce Howlett, Muriel Lynn Spooner, Taline Bedelian, and Oscar Guevara reallege paragraphs 1-62, above, and incorporate them as if fully set forth herein.

64. California Business & Professions Code Section 17200, et seq., prohibits unfair competition, which includes any unlawful or unfair practices. LSW

used and continues to use unlawful and unfair practices in connection with the marketing and sale of the Policies. Such acts and practices have continued and will continue unabated unless enjoined.

65. LSW's unlawful acts or practices are described in paragraphs 2-6 & 17-38, above, and include LSW's violation of the following California laws:

a. Insurance Code Section 10509.956(b)(4), which requires that all key terms and column headings be defined. LSW violates this provision as alleged at paragraphs 24-28, above.

b. Insurance Code Section 10509.956(e)(3), which requires that "[n]onguaranteed elements may be shown if described in the contract." LSW violates this provision as alleged at paragraphs 29-36, above.

66. LSW's unfair conduct consists of violations of both Insurance Code Section 10509.956(b)(4) and Section 10509.956(e)(3).

67. LSW's violations of the Illustration Statute had a substantial effect on the apparent value of the Policies conveyed in the illustrations.

68. The guaranteed interest that LSW's illustrations depict but that is not in fact given to policyholders is very large. The value of the Policies (in terms of the expected present value of the Current Basis B Values shown in the illustration) if the guaranteed interest were based on a true annual guarantee would be approximately 44% (Provider) or 50% (Paragon) higher than the actual value of the Policies given LSW's retrospective guarantees. The impact on the Current Basis A Values would be even larger. To look at it a different way: out of 61 years since the beginning of the S&P 500 Index in 1957, the index has had an annual return of less than 2.50% 21 times and less than 2.00% 20 times. Thus,

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approximately one year in three is a year in which a true annual guarantee would provide real money to the policyholder, unlike LSW's retrospective guarantee. Since 1957, the additional interest that a true 2.00% annual guarantee would have provided is over 35%, and the additional interest that a true 2.50% annual guarantee would have provided is over 45%. Plaintiffs are informed and believe that LSW's actual guarantee would rarely, if ever, have provided any guaranteed interest over this period.

69. The inclusion of the Persistency Bonus in the illustrations increased the Current Basis B Values shown in the Paragon illustration by more than 41% higher than those values would have been if the Persistency Bonus had not been included in the Current Basis B values shown in the illustration. The impact on the Current Basis A Values is even larger.

70. To the extent that reliance is required for Plaintiffs to recover for LSW's violations of the UCL, or to represent the Class concerning such violations, Plaintiffs meet the reliance requirement because LSW's violations of the Illustration Statute (and thus the UCL) were a substantial factor in causing Plaintiffs to purchase the Policies.

71. Plaintiffs and the members of the Class purchased Policies that were overpriced relative to the actual value of the Policies, which is far less than the value of the Policies as presented in the illustrations. Some decided, after becoming aware of the true economics of the Policies, that the Policies were not worth keeping and have surrendered them or allowed them to lapse. Others have kept their Policies, which nevertheless have lower value than was conveyed by LSW's illustrations and lower value than the prices they paid for the Policies.

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Were the Policies sold by LSW sold pursuant to an illustration that complied with the Illustration Statute, the prices (in the form of policy charges) commanded by those Policies in the marketplace would have been substantially lower than the prices Plaintiffs and members of the Class paid to LSW.

72. Plaintiffs and, on information and belief, the members of the Class suffered injury in fact and have lost money or property as a result of LSW's unlawful and unfair conduct, including:

a. All sums that Plaintiffs and the members of the Class paid to LSW (less the value of death protection received).

b. Reduced Policy value as a result of LSW's calculation of the guaranteed rate of return upon Policy surrender or other termination (or in five-year intervals in the case of Provider) on the basis of an average rate over the lifetime of the Policy and based solely on full Policy years.

c. The difference between the price that Plaintiffs and members of the Class paid for their Policies and the actual value of those Policies given their true characteristics and the price the Policies would have commanded in the marketplace had proper disclosure been provided.

73. LSW's unlawful and unfair acts should be enjoined and the Court should make such other orders or judgments as may be necessary to prevent such acts, including a declaration that each Plaintiff and Class member is entitled to rescind his or her Policy. Plaintiffs also seek an order restoring to Plaintiffs and the Class all money or property which may have been acquired by LSW by means of

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such unlawful and unfair conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against LSW, as follows:

a. For an Order determining that this action may be maintained as a class action and providing class certification as requested herein;

b. For preliminary and permanent injunctive relief against LSW enjoining LSW from engaging in the unlawful and unfair practices alleged herein;

c. For a restoration of all money or property which may have been acquired by LSW by means of its unlawful and unfair acts;

d. For rescission placing Plaintiffs in the position they held before LSW's unlawful and unfair conduct;

e. For declaratory relief regarding the unlawful and unfair practices alleged herein, including a declaration that each Plaintiff and Class member is entitled to rescind his or her Policy;

f. For reasonable attorneys' fees, and all costs, expenses and disbursements, including, without limitation, filing fees and reasonable costs of suit, including but not limited to an award of attorneys' fees, costs, expenses and disbursements under California Civil Code Section 1021.5, the substantial benefit doctrine, and/or the common fund doctrine as appropriate; and

g. For such other and further relief as this Court deems just and proper.

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DATED: June 22, 2018

Respectfully submitted,

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By: *<u>/s/ Brian P. Brosnahan</u>*
Charles N. Freiberg
Brian P. Brosnahan
Daniel Saunders

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JOYCE WALKER, KIM BRUCE HOWLETT, MURIEL SPOONER, TALINE BEDELIAN, and OSCAR GUEVARA, on behalf of themselves and all others similarly situated.

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