IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CASE NO. 5:25-CV-195-MEO-DCK

KYLE BUSCH, Individually and as Trustee for the Samantha Lynn Busch Irrevocable Life Insurance Trust; and SAMANTHA BUSCH, Individually and as Trustee for the Kyle T. Busch Irrevocable Life Insurance Trust, Plaintiffs, v. PACIFIC LIFE INSURANCE COMPANY, RODNEY A. SMITH, and RED RIVER LLC, Defendants.	**AMENDED COMPLAINT** (Jury Trial Demanded)

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure,[1] Plaintiffs Kyle and Samantha Busch hereby submit this Amended Complaint as a matter of right against Defendants Pacific Life Insurance Company, Rodney Smith, and Red River, LLC, and allege:

INTRODUCTION

Plaintiffs Kyle Busch and Samantha Busch bring this action against Defendants Pacific Life Insurance Company ("Pacific Life"), Rodney A. Smith, and Red River LLC to recover damages arising from the design, sale, and administration of multiple Pacific Life indexed universal life ("IUL") policies by Pacific Life's agent, Rodney Smith, in conjunction with multiple Pacific Life employees. Acting in concert with and as an appointed agent

[1] Pursuant to Rule 15(a), Plaintiffs may amend their complaint as a matter of right because Defendants have not yet filed any responsive pleadings. Fed. R. Civ. P. 15(a). This Amended Complaint does not add new causes of action against any party but adds new factual allegations to support the claims previously pled.

and authorized producer of Pacific Life, Defendant Smith designed and promoted an indexed universal insurance strategy that exposed Plaintiffs to substantial financial risk concealed by misleading projections, unrealistic assumptions, and material omissions.

1. At all relevant times, Rodney A. Smith acted as an agent, representative, and authorized producer for Pacific Life Insurance Company. Acting within the scope of his agency, Smith presented multiple policy illustrations, projections, and written communications on Pacific Life's behalf. The recommendations, sales presentations, and illustrations he made to Plaintiffs were negligent, misleading, and fundamentally unsuitable for their financial circumstances. The Pacific Life Indexed Universal Life policies sold and implemented through Smith violated basic suitability and disclosure standards and failed to reveal the true risks associated with variable interest crediting, policy charges, underperformance, and potential policy lapse.

2. Smith and Pacific Life represented that the policies would be fully funded and self-sustaining after a limited number of annual premium payments, and would thereafter generate substantial, tax-free income for retirement. Those representations were negligent and false. The illustrations and sales materials emphasized hypothetical growth rates and multiplier effects that could not be sustained under real-world market conditions, and neither Smith nor Pacific Life disclosed the sensitivity of the policies to cap reductions, policy expenses, or changes in non-guaranteed elements.

3. As recommended and implemented for Plaintiffs by Smith, the strategy involved the direct purchase of Pacific Life IUL policies funded entirely with Plaintiffs' own assets. These were not investment-grade instruments but complex insurance contracts with substantial ongoing costs and performance risk that were never explained. The

advice and sales practices of Smith and Pacific Life fell below the standard of care owed to Plaintiffs and breached the duties of competence, disclosure, and fair dealing required of licensed insurance professionals.

4. As a direct and proximate result of Defendants' negligence, misrepresentations, and omissions, Plaintiffs suffered significant financial losses. Pacific Life is legally responsible for its own negligence and for the conduct of its agent, Rodney Smith, under general agency principles and the doctrine of *respondeat superior*.

5. Pacific Life publicly emphasizes its commitment to policyholders and upholding high ethical standards. In its Code of Conduct, the company states:

> "Ethics and integrity are defining characteristics of Living the Pacific Life. Integrating these core values into daily decisions helps ensure that our customers are taken care of."

6. Pacific Life's public representations concerning ethics, policyholder protection, and institutional oversight stood in stark contrast to the conduct alleged herein. Plaintiffs reasonably relied on those representations in placing their trust in Pacific Life and its distribution system. The conduct at issue reflects not a failure of isolated supervision but a breakdown between Pacific Life's public commitments and its internal distribution practices.

7. Additionally, Pacific Life's Corporate Social Responsibility Report underscores that "**caring for our policyholders is in our DNA, which is why millions of individuals and families have trusted us with their life's needs.**" The company also touts that it has been recognized for its ethical business practices, having been named one of the World's Most Ethical Companies by the Ethisphere Institute, making the actions taken in this matter all the more troubling and inconsistent with the values it represents to the public.

8. Plaintiffs placed their trust in Pacific Life's powerful reputation as a leading financial institution, believing that a company of its size and self-proclaimed high ethical standards would only endorse sound financial products and ethical advisors. Pacific Life actively participated in policy discussions and policy designs reinforcing Smith's credibility and creating the illusion that these transactions were backed by the company's financial expertise and oversight.

9. This false sense of security led Plaintiffs to rely on Smith's advice, unaware that they were being steered into an unsustainable, high-risk product. Had Pacific Life properly vetted Smith and ensured transparency in its policy designs, the Busches would never have entrusted their financial future to such a fundamentally flawed plan.

PARTIES

10. Plaintiff Kyle T. Busch is a citizen and resident of Lincoln County, North Carolina. He is also the Trustee of the Samantha Lynn Busch Irrevocable Life Insurance Trust dated April 3, 2018, an irrevocable trust created and signed in North Carolina under the laws of the State of North Carolina.

11. Plaintiff Samantha Busch is a citizen and resident of Lincoln County, North Carolina. She is also the Trustee of the Kyle T. Busch Irrevocable Life Insurance Trust dated February 21, 2018, an irrevocable trust created and signed in North Carolina under the laws of the State of North Carolina.

12. The Samantha Lynn Busch Irrevocable Life Insurance Trust dated April 3, 2018, is an irrevocable trust created and signed in North Carolina under the laws of the State of North Carolina and is the Owner of Pacific Life Policy No. VF53289970, with the insured being Samantha Busch.

13. The Kyle T. Busch Irrevocable Life Insurance Trust dated February 21, 2018, is an irrevocable trust created and signed in North Carolina under the laws of the State of North Carolina and is the Owner of Pacific Life Policy No. VF53840260 with the insured being Kyle T. Busch.

14. Upon information and belief, Defendant Rodney A. Smith is a citizen and resident of Maricopa County, Arizona, and an individual licensed as an insurance producer by the State of Arizona (NPN #1734425), with his registered office located in Tempe, Arizona 85282.

15. Upon information and belief, Defendant Red River LLC is a Nevada limited liability company with its principal place of business located in Las Vegas, Nevada, and conducted business in North Carolina. Defendant Rodney A. Smith used Red River LLC to conduct his insurance business, market Pacific Life products, and receive commissions and compensation arising from the sale of the Pacific Life Indexed Universal Life policies at issue.

16. Upon information and belief, Defendant Pacific Life Insurance Company is a Nebraska corporation with its principal place of business at 700 Newport Center Drive, Newport Beach, California 92660, in Orange County. Pacific Life is authorized to transact insurance in North Carolina, maintains appointments for its producers in this State, and regularly conducts business in North Carolina by marketing, underwriting, issuing, and servicing life insurance policies to residents, including Plaintiffs, through its agents, electronic platforms, and the U.S. Mail. Pacific Life and its affiliates, including Pacific Life & Annuity Company, sell life insurance and annuity products including the “IUL policy”

described herein, and operate in all states except New York, but in New York under the name Pacific Life & Annuity Company.

JURISDICTION AND VENUE

17. This action was originally filed in the General Court of Justice, Superior Court Division, Lincoln County, North Carolina.

18. Defendants timely removed this action to the United States District Court for the Western District of North Carolina pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, and this Court now has original subject-matter jurisdiction over this action.

19. This court has diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1) because this action presents a dispute between citizens of different states and the amount in controversy exceeds $75,000, exclusive of interest and costs.

20. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Defendants' unlawful acts and omissions occurred in this District, Defendants each conducted substantial and continuous business in this District, utilized agents in this District, and utilized the U.S. Mail and internet to promote retirement strategies and products to Plaintiffs and other individuals in this District.

FACTUAL BACKGROUND

21. Defendant Rodney A. Smith was appointed as a Pacific Life Insurance Company Producer in January 2017.

22. At all times relevant, Defendant Rodney A. Smith and/or Red River were an appointed and authorized producer of Pacific Life Insurance Company. Pacific Life conferred upon him/them express and apparent authority to solicit applications, prepare

and present Pacific Life illustrations, create policy designs, collect premiums, and deliver policies bearing the Pacific Life name and logo.

23. Pacific Life equipped Smith with its proprietary illustration software, compliance training materials, marketing portals, and online access to carrier-generated documents, which he used in soliciting, illustrating, closing sales, and delivering policies bearing the Pacific Life name and logo.

24. At all times relevant to the events described herein, Smith was acting within the course and scope of his agency with Pacific Life and as such, Pacific Life is responsible and liable for the acts and omissions of Smith and its other agents and employees under the doctrine of *respondeat superior* and the law of the State of North Carolina.

25. At all times relevant to the events described herein, Plaintiffs vested their confidence, good faith, reliance, and trust in Smith and Pacific Life, whose aid, advice, and protection was sought on matters of retirement planning. This relationship went far beyond a routine insurance transaction and created a special relationship of trust and confidence giving rise to duties of honesty, competence, full disclosure, and fiduciary obligations.

26. In 2017, Smith first approached Plaintiffs by portraying himself as a trusted "Wealth Management and Insurance Specialist" and "Retirement Planner" with direct access to Pacific Life's internal design and tax teams. He represented that he worked hand-in-hand with Pacific Life's home-office professionals to develop exclusive retirement strategies for high-net-worth clients. Using Pacific Life's official branding, marketing materials, and policy illustrations, Smith created the false impression that he was part of

Pacific Life's institutional advisory network, inducing Plaintiffs to rely on his representations of expertise and authority.

27. Smith claimed that he collaborated directly with Pacific Life to design proprietary retirement strategies that minimized taxes and generated guaranteed, tax-free lifetime income. He assured Plaintiffs that Pacific Life's products were "institutionally engineered" solutions used by elite clients and professional athletes.

28. Smith proposed that by partnering with Pacific Life and utilizing its proprietary IUL products, he could design a custom retirement plan for Plaintiffs that promised significant financial returns through a "tax-free retirement plan" for life.

29. Using Pacific Life's official illustrations, Smith told Plaintiffs that each policy would self-sustain after a limited number of annual payments and that no additional funding would ever be required. He repeated this assurance in writing, labeling specific payments as "final." *See* Exhibit 1.

Ex. 1:

From: ras8842@gmail.com <ras8842@gmail.com>
Sent: 12/12/2022 1:19:24 PM
To: jhadaya@jhadaya.com; cj.figueroa@kylebusch.com; nancy.knutelsky@kylebusch.com; KKlug@mmbcpa.com; mbeals@dickinsonwright.com; rowdy1851@me.com
Subject: Wire Instructions - Pacific Life
Attachments: PacLife Wire Instructions-Current.pdf

Attached is the wire instructions for final Annual Premium to original policy.

Make sure and include in the REFERENCE area:
For Kyle T Busch policy VF53840260

Thanks. Rodney

Sincerely,
Rodney Smith
Wealth Management & Insurance Specialist

1155 Camino Del Mar, #537
Del Mar, CA 92014
Cell 602.625.9547
ras8842@gmail.com

30. Smith further represented that by simply "following the illustrations," Plaintiffs could expect their retirement plan to generate millions of dollars in tax-free retirement income, guaranteeing financial security for their family. These representations were negligent and misleading.

31. Smith and Pacific Life's representatives jointly described the policies as investment platforms rather than insurance, emphasizing performance metrics, illustrated returns, and tax advantages while omitting and failing to disclose the risks of policy failure, volatility of crediting rates, commission expenses, policy charges, and cost-of-insurance drag.

32. This deceptive representation played a pivotal role in Plaintiffs' decision-making process.

33. Relying on these misrepresentations, Plaintiffs believed they were securing a low-maintenance, high-return retirement investment product that would generate tax-free retirement income for life. The claim that they could stop premium payments after a few years and still receive substantial financial benefits was a gross misrepresentation of the policies' actual performance requirements and risks.

34. By perpetuating this falsehood, Pacific Life, through its representatives, created a misleading and deceptive narrative that caused Plaintiffs to rely on promises that were ultimately unattainable.

35. Despite taking on an active advisory role in guiding Plaintiffs on policy structure, performance expectations, and tax implications, Defendants failed to disclose the significant financial risks associated with its IUL policies.

36. By marketing these policies as “investments” and tax-advantaged plans with limited funding requirements, Defendants misrepresented the true costs and ongoing capital necessary to sustain the policies over the long term.

37. Each time Plaintiffs inquired about performance, Smith assured them that “the plan is working exactly as designed,” discouraging them from obtaining independent review or contacting Pacific Life directly. He continuously instructed Plaintiffs to “follow the illustrations” as the sole measure of performance and reiterated that the products were “performing exactly as planned.”

38. These assurances reinforced Plaintiffs’ reliance on Smith’s guidance and concealed the growing divergence between the illustrated projections and the policies’ actual financial results.

39. For years, Smith’s reassurances concealed any cause for concern. In the fall of 2023, Kyle Busch received an unexpected premium-due notice from Pacific Life, even though he had been told in writing that his prior payment would be the *final* premium required under the design. That notice raised concern and prompted him to question whether the policies were performing as represented. Until then, every communication from Smith and Pacific Life had reinforced that the policies were fully funded, properly credited, and operating exactly as illustrated.

40. Plaintiffs allege that Defendants used illustrations and policy designs that appeared compliant on their face but concealed internal mechanics, charge structures, and compensation-driven design choices that Defendants knew would prevent the policies from performing as illustrated. These concealed defects were not discoverable

upon receipt of the policies and were revealed only when Defendants demanded additional premium payments years later.

41. The material facts concealed by Defendants could not have been discovered through ordinary diligence or by reading the policy documents or illustrations. The policies' failure mechanisms operated through internal carrier calculations, administrative elections, and compensation recovery processes not disclosed in any consumer-facing document. Plaintiffs could not reasonably have discovered these facts without access to Defendants' internal data and knowledge, and they were not permitted access to these internal documents. These materials were concealed from Plaintiffs.

42. The notice prompted him to schedule a Zoom meeting with Smith to understand why another payment was being requested. Over the next several months, Smith offered shifting and evasive explanations that failed to reconcile with the illustrations and prior assurances, causing Plaintiffs to grow increasingly concerned that Smith had misled him about the funding and performance of the policies or was negligent in his advice. Until that time, every communication from Smith and Pacific Life had reinforced that the policies were fully funded, properly credited, and operating exactly as illustrated.

43. Over time, Plaintiffs paid $10,400,000.00 in premiums, a staggering amount that highlights the scale of Pacific Life's involvement and the stakes for all parties.

44. Upon information and belief, across the Busch policies, Pacific Life paid millions of dollars in commissions and overrides in connection with these transactions to Defendants Rodney Smith, Red River LLC, and other affiliated producers and entities within Pacific Life's distribution chain. These excessive compensation payments were

generated by the inflated premium structures, death benefit manipulations, and product design features embedded in the policies, all of which were deliberately calibrated to maximize commissionable value at the expense of the policyholders' financial interests.

45. Pacific Life employees, including Field Vice President Noah Jacobs, Regional Vice President Tim Breland, and Product Director Barbara Trost, directly supported Smith's sales efforts. They entered the advisory stream, coached funding urgency, provided ownership guidance, and described the PDX2 product presented to the Busches as having a "guaranteed multiplier" with a "performance factor" that could be turned "on and off." Their communications positioned Pacific Life as a co-advisor actively directing the plan rather than a passive issuer. *See* Exhibit 2.

Ex. 2:

From: TBRELAND@PacificLife.com
Sent: July 8, 2022 10:05 AM
To: ras8842@gmail.com; jhadaya@jhadaya.com
Subject: Difference between PDX and PDX2

One of the reasons why PDX was updated to PDX2 was because:

1) the charges for PDX where not defined, meaning that that the cost was baked into the policy, and we couldn't truly tell the client what the actual charge was. On PDX2 the charges are defined and can also be turned on and off in the future.

2) more importantly was the "guaranteed" performance factor or multiplier being 1 on the PDX policy meaning that if the return was 10% and we multiplied it by the factor of 1 that the return would still only be 10%

10% X 1 = 10%

With PDX2 the multiplier has a **"guarantee"** of 1.72 years 2-20 on performance plus meaning that if the same return is 10% and the multiplier is 1.72% than the return would be 17.2%.

10% x 1.72 = 17.2%

With PDX there was only one performance factor option. PDX2 has multiplied performance factor options, classic, performance, and performance plus. This gives the client more flexibility with their choices in the future.

PDX2 has more flexibility than PDX and gives the client the ability to turn the performance factor on and off in the future when the client feels they no longer want the charge.

Unfortunately, AG49 and Code 7702 have limited how life insurance companies can illustrate their products going forward.

Please let me know if you have any questions?

Tim Breland
RVP West
602-672-5387

46. Pacific Life reviewed and approved the policy applications and illustrations that Smith submitted for Plaintiffs through its internal systems.

47. Each of the policies issued to the Busches was underwritten, approved, and funded directly through Pacific Life, which received and accepted the premiums that Smith instructed Plaintiffs to wire.

48. By approving those transactions, issuing the policies, and accepting the benefits of the sales, Pacific Life ratified Smith's conduct and confirmed that he was acting within the scope of his authority as its agent and representative.

49. By granting Smith this authority and furnishing him with the company's branding, sales materials, and proprietary illustration tools, Pacific Life clothed him with all the trappings of authority to act on its behalf. To Plaintiffs and the public, Smith appeared to be a Pacific Life insurance and retirement advisor offering retirement-planning services backed by Pacific Life's institutional expertise. Plaintiffs reasonably believed that Smith's representations and advice were made in coordination with and on behalf of Pacific Life.

50. Smith and his company, Red River, acted not only as insurance brokers but as de facto financial advisors and retirement planners. He continued to hold himself out as a "Wealth Management and Insurance Specialist" and "Retirement Planner," advising Plaintiffs on retirement income, estate planning, and tax mitigation strategies. He positioned Pacific Life's Indexed Universal Life policies as core components of a "tax-free retirement plan," claiming that Pacific Life's home-office design team had customized the policies to meet Plaintiffs' long-term financial objectives.

51. The relationship between Plaintiffs, Smith, and Pacific Life was not limited to procuring life insurance coverage. Smith and Pacific Life undertook to design and implement an integrated retirement and tax strategy, including recommendations regarding ownership structures, premium schedules, policy elections affecting charges and compensation, internal replacement decisions, and client facing communications about performance.

52. Once Smith undertook to design and implement a “tax-free retirement plan” for Plaintiffs—advising on how to allocate assets, fund the policies, and structure estate liquidity—he assumed duties that went far beyond those of an insurance producer. In doing so, Smith stepped into the role of a financial advisor and fiduciary, owing Plaintiffs duties of care, candor, and loyalty consistent with a professional advisor entrusted with retirement planning. Pacific Life personnel participated directly in design, illustration revision, funding urgency, and messaging. These circumstances created a relationship of trust and confidence in which Plaintiffs reasonably relied on Defendants’ superior expertise and institutional involvement, and Defendants knew Plaintiffs were relying on them to exercise honesty, competence, and full disclosure in structuring the plan.

53. In representing himself as a financial advisor and retirement planner through words and conduct, Smith failed to confine his role to insurance sales, crossing the statutory line between insurance producer and investment advisor in violation of N.C. Gen. Stat. § 58-60-20(c). By crossing this statutory boundary, Smith assumed duties recognized under North Carolina common law applicable to financial and retirement advisors.

54. Indexed Universal Life products, and particularly Pacific Life's Pacific Discovery Xelerator (PDX and PDX2) policies, are among the most complex financial instruments marketed to consumers. These products combine life insurance, derivatives-based index crediting strategies, and variable cost structures that even seasoned investors cannot readily decipher. The policies include multiple proprietary indices, participation rates, multipliers, caps, thresholds, and riders such as the "Enhanced Performance Factor," each of which affects performance in ways that cannot be predicted or understood without specialized actuarial and financial training.

55. Pacific Life's own internal communications confirm that the PDX and PDX2 structures were designed to appear attractive through illustrations that assume steady, compounded growth while concealing the volatility, performance drag, and cost layers that drive actual results.

56. The opacity of these products made Plaintiffs' reliance on Smith and Pacific Life not only foreseeable but unavoidable. Pacific Life's own illustrations for the Busches' policies run over 20 pages of fine print, disclaimers, and actuarial assumptions. The calculations depend on hypothetical 25-year lookbacks, historical index averages, and unverified performance multipliers that no reasonable policyholder could understand without expert assistance.

57. Pacific Life knew that neither Kyle nor Samantha Busch possessed the technical background to analyze or model these products and thus owed them a duty of full candor, fair disclosure, and suitability in all design and sales representations.

58. At the time the policies and illustrations were presented to Plaintiffs, Defendants knew or should have known that the illustrated performance could not be

achieved under the policy designs being implemented. Defendants possessed internal knowledge of Target Premium effects, Basic Coverage cost drag, unrecovered acquisition cost recovery, commission reset mechanics, and historical performance data demonstrating that the designs required additional funding to avoid early erosion and lapse. This knowledge was not disclosed to Plaintiffs.

59. Pacific Life's participation in Smith's sales process further reinforced this special and fiduciary relationship. Its employees, including Field Vice President Noah Jacobs and Regional Vice President Tim Breland, directly communicated with Smith and, through him, with the Busches, providing instructions, illustrations, policy design, and funding guidance. These employees described the IUL products as performance-based investment platforms, emphasized "guaranteed multipliers," and advised that prompt funding was necessary for the policies to "perform at the level originally presented." Pacific Life's conduct placed the company squarely in the advisory stream, operating not as a passive insurer but as a co-advisor on Plaintiffs' retirement plan.

60. Pacific Life's own Field Vice President, Noah Jacobs, directly linked the sale and funding urgency of these policies to anticipated changes under the incoming administration's tax laws.

61. In a January 15, 2021, email, Jacobs instructed that the "second payment needs to be done immediately" to ensure the policies would "perform at the level originally presented." He then advised that with "Biden's new tax plan" taking effect and "taxes going up across the board," life insurance was "the only place he can still park millions and not worry about where the tax code goes in the future."

62. This written communication from a Pacific Life executive demonstrates that Pacific Life was not acting as a neutral insurer but as an active financial advisor, marketing these IUL products as tax-advantaged investment vehicles and positioning itself within the clients' wealth-management and estate-planning decisions.

63. The statements also confirm that the sale was driven by speculative economic and political themes rather than by legitimate insurance needs, and that Pacific Life knowingly provided investment and tax advice in violation of its own internal compliance policies and state insurance law. *See* Exhibit 3.

Ex. 3:

From: Jacobs, Noah <@pacific life>
Sent: Friday, January 15, 2021 9:42 AM
To: ras8842@gmail.com <Producer - Life Insurance Agent>
Subject: Wire instructions

Rod-

Regarding the second part of the premium of the 2 million annual premium policy that was done in March of 2020, I have included the wire instructions and the information that needs to be submitted for the last million of the annual premiums.

The growth of the policy to approach the represented illustrations is based on having the full premiums paid annually. With the recent election and the current political environment with the transfer of power taking place, the market presents opportunities that best allows the investments to perform at the level demonstrated on the original illustrations. The corona virus has also presents the type of volatility that creates opportunities to capitalize in the market. With Biden's new tax plan, which should have little problem getting passed since the democrats control the house and senate now, taxes are going up across the board. Estate taxation, income taxation and investment income/capital gains will all be going up and will effect a person of Kyle's wealth. Life Insurance is the only place he can still park millions and not worry about where the tax code goes in the future.

In order for the policy to perform at a level originally presented, the second payment needs to be done immediately due to the first year annual premium requirements.

Wire Instructions attached: Please include policy owner name and policy number when sending in the wire. If you're sending in both premiums in 1 wire, remember to include the breakdown of how the premium should be applied to each policy.

Policy VF53565800 - $250,000

Policy VF53532080 - $750,000

Noah

Noah Jacobs, WMCP®
Field Vice President
Arizona Regional Life Office
Mobile (480)433-2982

Forbes Names Pacific Life the #1 Life Insurance Company of 2020

The Pacific Difference: *http://paclife.co/noah_jacobs*

*Securities Distributed by **Pacific Select Distributors, LLC,** Member, FINRA & SIPC*

64. Plaintiffs reasonably relied on Smith's and Pacific Life's joint assurances, believing they were receiving coordinated, professional financial and retirement-planning advice rather than a sales presentation.

65. Based on Defendants' holding themselves out as retirement and financial planning professionals, their undertaking of advisory responsibilities beyond insurance procurement, their knowledge that Plaintiffs would rely on their superior expertise, and their failure to confine their role to insurance sales, Defendants entered into a special relationship under North Carolina law giving rise to heightened duties of care, disclosure, and loyalty.

66. Defendants accepted that trust and confidence, creating a special relationship recognized under North Carolina law in which Defendants owed Plaintiffs fiduciary duties of honesty, disclosure, and prudence in all recommendations and communications relating to the design, sale, and management of their policies.

67. In reliance on Smith's representations and Pacific Life's materials, Plaintiffs agreed to purchase a portfolio of Pacific Life Indexed Universal Life policies designed and marketed as an integrated "tax-free retirement plan" funded entirely with their own capital and promoted as components of a single, tax-free retirement strategy.

68. The portfolio began in 2018 with the issuance of two Pacific Discovery Xelerator (PDX) policies, one insuring Kyle Busch and owned by the Kyle Busch Irrevocable Life Insurance Trust (Policy No. VF53260490), and one insuring Samantha Busch and owned by the Samantha Busch Irrevocable Life Insurance Trust (Policy No. VF53289970). In 2020, Pacific Life and Smith expanded the structure by adding two Pacific Discovery Xelerator 2 (PDX2) policies—Policy Nos. VF53532080 and VF53565800, both insuring and owned by Kyle Busch—which were presented as enhancements to the same retirement and estate planning strategy.

69. The 2018 Kyle Busch ILIT policy (VF53260490) was later 1035 exchanged into PDX2 Policy No. VF53840260 under Pacific Life's direction to maintain what Smith and Pacific Life described as a continuation of the original 2018 plan design, consistent with Pacific Life's July 8, 2022, internal guidance that the revised PDX2 terms offered "better performance and added flexibility."

70. From inception, the Pacific Life policies were engineered not to maximize value for the policyholders, but to maximize commissions for Pacific Life's distribution network and its agent, Rodney Smith. Each structural feature reflected a calculated design choice that transferred value from Plaintiffs to the sellers:

a. Artificially Inflated Commissions Through Death Benefit Manipulation – Smith intentionally selected an Increasing Death Benefit (DB) in the first year, which artificially inflates the Target Premium (the commissionable portion of the policy). Then, after securing the highest possible commission, he failed to switch to Level after year one, leaving the net amount at risk and COI charges unnecessarily high across the portfolio

b. Refusal to Use ARTR to Lower Compensation – Pacific Life offers an option for agents to reduce their own compensation using ARTR coverage. Smith chose not to implement this option, once again ensuring his commission remained as high as possible at the expense of his clients.

c. Deliberate Premium Calibration for Maximum Commission – The first-year premium was set at a higher target before dropping in subsequent years. This is a transparent strategy designed solely to ensure the agent was paid the full Target Premium upfront and increase cost and commission burdens on Plaintiffs.

d. Intentional Underfunding to Inflate Commissions – The maximum allowable non-MEC premium for the policies was not utilized. A responsible and well-structured policy could have been funded over seven years at this level, which would have minimized death benefit, reduced policy costs, and maximized long-term value. Instead, the policies were structured with design choices intended to inflate the death benefit and, consequently, the agent's commissions, and fees to Pacific Life.

e. High-Risk Indexed Loan Distributions – The policies were promoted as vehicles for "tax-free retirement income," a structure that depends on policy loans rather than true investment returns. These loan-based income designs expose policyholders to significant long-term risks, including rising loan interest costs, compounding debt, and potential policy lapse if crediting rates fall short of illustrated assumptions. The approach prioritized sales appeal over sustainable performance, placing the Busches in a strategy that could not deliver the promised results.

71. These policies were not just poorly structured, they were actively designed to fail under the weight of excessive fees and commissions. This policy was designed in such a way that benefited Pacific Life and its agent at Plaintiffs' expense, ensuring that the policies would erode in value and ultimately fail once the commission revenue had been realized.

72. Although certain policies were formally owned by the Irrevocable Life Insurance Trusts ("ILITs") established at Pacific Life's and Smith's direction, the Busches personally funded every dollar of premium from their own accounts and bore the full economic risk of loss.

73. The use of the ILITs was merely a structural device recommended by Defendants to facilitate what they represented as an integrated, tax-efficient retirement and estate plan. In substance, the transactions were personally financed by Kyle and Samantha Busch, who were induced to believe that the ILITs would operate as extensions of their own financial planning, not as independent entities.

74. The trust structure does not insulate Defendants from liability where the insureds personally supplied the consideration, the funding, relied on Defendants' representations, and suffered the resulting losses.

75. Pacific Life's Indexed Universal Life policies permit the election of an Increasing Death Benefit option during early policy years. This election materially increases guideline premium limits and artificially inflates the policy's Target Premium,

which in turn increases agent compensation and front-loaded acquisition charges. Where the stated objective is accumulation and retirement income, the Increasing Death Benefit election provides no client benefit and instead increases early cost-of-insurance charges and structural drag on cash value.

76. The Busches' policies were set to an increasing death benefit for the first year with a switch to level in year two, a choice that spikes target premium and compensation while delivering no client benefit unless the switch is made on time. Across the block the switch did not occur, which kept the net amount at risk higher than necessary and allowed ongoing charges to erode value month after month.

77. Pacific Life policies further permit agents to structure death benefit using varying proportions of Basic Coverage and renewable term coverage. Basic Coverage inside the Pacific Life portfolio of products is fully commissionable and carries materially higher cost-of-insurance charges, while renewable term coverage materially reduces Target Premium, early charges, and agent compensation. The selection between these coverage structures is discretionary, agent-controlled, and subject to Pacific Life approval.

78. In Plaintiffs' policies, Smith selected a structure combining Death Benefit Option B with 100% Basic Coverage for extraordinarily large face amounts. Pacific Life approved this design. These combined elections operated to manufacture an inflated Target Premium closely aligned with the planned premium commitment, maximizing commissionable premium and internal carrier revenue while providing no corresponding benefit to policy sustainability or performance for Plaintiffs.

79. The policy illustrations disclosed that death benefit and Basic Coverage would be reduced in later policy years, after the period during which agent compensation

and carrier acquisition costs were recovered. This confirms that the most expensive and charge-dense structure was knowingly temporary and used to extract compensation first, with economic consequences borne entirely by Plaintiffs.

80. Upon information and belief, the compensation-driven design choices utilized by Smith, including the use of Death Benefit Option B, 100% Basic Coverage, inflated Target Premium, and short-pay funding near Seven-Pay limits, were developed and implemented with the input, guidance, and approval of Pacific Life distribution employees, including but not limited to Noah Jacobs and Tim Breland.

81. Upon information and belief, Pacific Life personnel actively designed, evaluated, and directed illustration revisions, policy structure, and funding strategies used in Plaintiffs' policies.

82. Internal communications reflect that Pacific Life employees circulated multiple alternative designs, analyzed premium timing and MEC constraints, advised that certain structures "would not work," and recommended increasing death benefit solely to accommodate large early premiums and avoid MEC status. *See* Exhibit 4.

Ex. 4:

Message

From: Jacobs, Noah [Noah.Jacobs@PacificLife.com]
Sent: 1/23/2019 11:58:43 PM
To: ras8842@gmail.com
CC: Billy Crafton [crafton.billy@gmail.com]; Johnson, Bahn [Bahn.Johnson@PacificLife.com]
Subject: FW: The illustration you requested from Pacific Life or Pacific Life & Annuity- Smith, Busch
Attachments: Kyle, 1_25M.pdf; Kyle, 1_75M.pdf; Kyle, 2M yr 1, 1M 2-5.pdf; Busch, Kyle - $1MM x 5 Yrs - $1MM TP.PDF; Busch, Kyle - $2MM x 5 Yrs - $2MM TP.PDF; Busch, Kyle - $1.5MM x 5 Yrs - $1.5MM TP.PDF

Rod-

See attached for Busch as discussed.

1) $1MM x 5 Yrs ($1MM TP)
2) $1.25MM x 5 Yrs ($1.25MM TP)
3) $1.5MM x 5 Yrs ($1.5MM TP)
4) $1.75MM x 5 Yrs ($1.75MM TP)
5) $2MM x 5 Yrs ($2MM TP)
6) $2MM yr 1, $1MM yrs 2-5 ($1.81MM TP)

As I mentioned on the phone, #6 really just won't work given the big difference between years 1 and 2 premium. We need to buy a lot of death benefit to accommodate the $2MM in year 1 to avoid a MEC, but then we don't get the additional funding needed to support the amount of insurance in later years. It's cleaner if we can keep premiums level.

I am thinking that a better alternative to this approach would be to truncate the premiums over 4 years but keep them level. Food for thought. Please let me know what you think.

Noah

Noah Jacobs
Field Vice President
Arizona Regional Life Office
Mobile (480)433-2982

The Pacific Difference: http://paclife.co/noah_jacobs

83. Upon information and belief, the inflated Target Premium generated by the use of Death Benefit Option B, excessive face amounts, and 100% Basic Coverage directly increased not only agent commissions, but also internal Pacific Life compensation, production credit, and incentive eligibility applicable to sales managers, regional distribution personnel, and internal sales channels.

84. Pacific Life aided Smith and approved designs that inflated target premium and front-loaded charges, transferring the economic consequences of those decisions to Plaintiffs.

85. Higher Target Premium designs generated increased internal production metrics and financial incentives within Pacific Life's distribution hierarchy, creating

institutional pressure to approve and perpetuate compensation-intensive policy structures irrespective of long-term policy sustainability.

86. Relying on Smith's misrepresentation of his role and expertise, and assurances from Pacific Life, Plaintiffs agreed to the issuance of two Pacific Life PDX IUL policies in 2018, and two PDX IUL 2 policies in 2020. The new policies were marketed as seamless extensions of the original plan, again promising that a limited series of premium payments would fully fund the contracts and generate long-term, tax-free retirement income.

87. Upon information and belief, to induce Plaintiffs, Pacific Life presented multiple illustrations before ultimately having Plaintiffs sign a placeholder illustration that could later be changed in violation of state insurance regulations. The illustrations presented to Plaintiffs were never fixed representations that could be considered appropriate disclosures.

88. In addition to the widespread misconduct and fundamental flaws in these policy designs, Pacific Life failed Plaintiffs by even allowing Rodney Smith to be involved in these transactions. Smith's regulatory history in North Carolina alone should have prevented him from structuring, marketing, or selling such complex and high-value IUL policies.

89. The North Carolina Department of Insurance disciplined Smith for providing false and misleading information on his license application, including failing to disclose a criminal conviction.

90. These violations were matters of public record and should have disqualified Smith from marketing, servicing, or selling complex, high-value financial products on behalf of Pacific Life.

91. Pacific Life either knew or should have known of this history but nonetheless entrusted him with multimillion-dollar product sales to the Plaintiffs.

92. Neither Pacific Life nor Smith disclosed these conflicts or disciplinary histories to Plaintiffs, even as they marketed themselves as fiduciary-level retirement professionals performing at the highest of ethical standards.

93. In 2022, following direct guidance from Pacific Life personnel, Smith advised Plaintiffs to conduct an internal 1035 exchange, replacing an existing Pacific Life policy with a new one. The transaction produced no economic benefit to Plaintiffs and merely reset first-year charges and commissions. The transaction was presented as a continuation and improvement of the original plan design and was described as offering "better performance" and "added flexibility," while maintaining the same overall retirement strategy.

94. This plan illustrates the true aim of this sale, design, and implementation: to extract Plaintiffs' wealth and transfer it to Pacific Life's fee and commission machine. It produced no economic gain for the Busch family, yet generated a fresh round of loads, fees, and commissions for the carrier and its agent, Smith.

95. Defendants' misrepresentations of the economic consequences of the policy designs at issue were not discoverable by Plaintiffs through ordinary diligence. The effects of Target Premium inflation, Basic Coverage concentration, unrecovered acquisition cost capitalization, commission adjustment factors, and planned future

reductions operate through internal carrier calculations, actuarial assumptions, and administrative elections that are not disclosed in plain language and cannot be derived from policy documents or illustrations.

96. Pacific Life and Smith possessed exclusive knowledge of these mechanics and controlled their implementation, creating a profound information asymmetry that prevented Plaintiffs from understanding the true risks and costs of the strategy and mandated their reliance on Smith and Pacific Life.

97. The Exact 1035 illustration prepared and approved by Pacific Life assumed an internal rollover premium of approximately $1,991,445 in policy year one, followed by an additional $1,000,000 premium in policy year two, for a total of approximately $2,991,445 in funding within the first two policy years. *See* Exhibit 5.

Ex. 5:

PACIFIC LIFE

Pacific Discovery Xelerator IUL 2 - GPT - Life Insurance Illustration
Flexible Premium Indexed Adjustable Life Insurance
Form Series ICC15 P15IUL or P15IUL based on state of policy issue
For Presentation in NC

Proposed Insured: Kyle Busch
Male, Age 37
Super Preferred Nonsmoker
Initial Flat Extra $4.92

Initial Death Benefit Option = B - (Increasing)
Initial Total Face Amount = $25,379,910
Premium Frequency = Annual

Life Insurance Producer:
Rodney A Smith
1155 Camino Del Mar, Ste 537
Del Mar, CA 92014

Non-Guaranteed Policy Values: Ledger

This illustration assumes non-guaranteed policy charges and non-guaranteed crediting rates. All values represent the end of the policy year except premiums and if applicable: Policy Loans, loan interest, and Withdrawals.

	Allocation	Hypothetical Interest Rate[7]
1-Year High Cap Indexed Account	100.00%	6.12%

Year	Age	Premium Outlay* (1)	Policy Loan (2)	Net Outlay (3)	Net Accumulated Value (4)	Net Cash Surrender Value (5)	Death Benefit (6)
1	37	1,991,445	0	1,991,445	1,431,315	883,109	26,811,225
2	38	1,000,000	0	1,000,000	1,984,545	1,710,442	26,811,225
3	39	0	0	0	1,636,586	1,391,874	26,811,225
4	40	0	0	0	1,315,982	1,096,699	26,811,225
5	41	0	0	0	1,018,011	826,139	26,811,225
6	42	0	0	0	724,273	559,811	26,811,225
7	43	0	0	0	435,100	298,049	26,811,225
8	44	0	0	0	298,792	189,150	965,922
9	45	0	0	0	176,786	121,965	965,922
10	46	0	0	0	47,622	47,622	965,922
Total		**2,991,445**	**0**	**2,991,445**			
11	47	0	0	0	50,157	50,157	965,922
12	48	0	0	0	58,782	58,782	965,922
13	49	0	0	0	74,440	74,440	965,922
14	50	0	0	0	98,166	98,166	965,922
15	51	0	0	0	130,954	130,954	965,922
16	52	0	0	0	173,954	173,954	965,922
17	53	0	0	0	228,556	228,556	965,922
18	54	0	0	0	296,202	296,202	965,922
19	55	0	145,544	-145,544	229,241	229,241	816,665
20	56	0	145,544	-145,544	171,641	171,641	660,378
Total		**2,991,445**	**291,088**	**2,700,357**			
21	57	0	145,544	-145,544	127,116	127,116	496,728
22	58	0	145,544	-145,544	94,730	94,730	374,136
23	59	0	145,544	-145,544	75,984	75,984	380,610
24	60	0	145,544	-145,544	72,554	72,554	396,876
25	61	0	145,544	-145,544	86,329	86,329	447,784
26	62	0	145,544	-145,544	119,265	119,265	517,024
27	63	0	145,544	-145,544	173,546	173,546	605,502
28	64	0	145,544	-145,544	251,552	251,552	714,360
29	65	0	145,544	-145,544	365,623	365,623	844,471
30	66	0	145,544	-145,544	488,377	488,377	1,025,056
Total		**2,991,445**	**1,746,528**	**1,244,917**			

This report is not complete and cannot be presented without the Basic Illustration. Refer to the Basic Illustration for guaranteed elements and other important information. Non-guaranteed elements are not guaranteed.

I-1AJ   Life Insurance Producer: Rodney A Smith   For: Kyle Busch

22.20.0D.R Run: 6/1/2022 6:46 AM   Pacific Life Insurance Company, 45 Enterprise, Aliso Viejo, CA 92656
PDX IUL 2 2020 - GPT - 6/1/2022 - NonGI TP: 914184   Page: 1 of 18

7FE772C6-1539-45F6-A7E1-4764BA60903F

98. Despite this level of funding, the Non-Guaranteed Policy Values Ledger reflected that the Net Cash Surrender Value at the end of policy year one was

approximately $883,109, and declined to approximately $47,622 by policy year ten under illustrated assumptions. This reflects that more than $2,900,000 of premium was effectively consumed by policy charges and deductions within the first decade.

99. The early destruction of value reflected in the ledger was not attributable to market volatility or investment performance. It resulted from front-loaded policy charges driven by the policy's Target Premium, Basic Coverage structure, and cost-of-insurance exposure approved as part of the internal replacement.

100. The internal replacement was not accompanied by any disclosure that would allow a reasonable policyholder to understand the true economic impact of the transaction. The structure of the replacement policy, including front-loaded charges, elevated Target Premium, Basic Coverage concentration, and planned future reductions, was embedded in technical illustration components that are not intelligible to ordinary consumers and were never explained to Plaintiffs in plain language. Plaintiffs were not informed that the replacement policy was designed to consume substantial premium in its earliest years before any possibility of long-term value could exist.

101. Pacific Life and Smith did not explain that the replacement policy was intentionally structured so that its most expensive configuration would operate only long enough to generate compensation and acquisition cost recovery, with later "clean-up" steps required to prevent collapse. Instead, Plaintiffs were led to believe that the replacement represented a performance improvement and a continuation of the original retirement plan, when in fact it preserved the same defects that had already caused the original policy to fail.

102. The Illustrated Coverages section of the Exact 1035 illustration confirms that the replacement policy utilized 100% Basic Coverage for extraordinarily large face amounts during early policy years, with no use of renewable term coverage, blended coverage, or ARTR. Pacific Life's own illustration language acknowledges that different combinations of Basic and renewable term coverage result in different compensation patterns. *See* Exhibit 6.

Ex. 6:

Screen: Death Benefit and Premium

Use Death Benefit Calculator?	No	External	0
Plan Design	Basic Coverage Only	1035 Loan Carryover	0
Total Face Amount	25379910	Internal	1,991,444.94
Death Benefit Option	Increasing From 1 To 1	1035 Loan Carryover	0.00
Reduce Face	Yes	Policy Month	1
Reduce Face Year	Earliest	1035 Basis	4,000,000.00
Policy Premium	1,000,000.00 From 2 To 2	Exchanging MEC	No
Mode	Annual	Non-1035 Lump Sum	No
1035 Exchange	Yes	Term Conversion	No
Is coverage being reduced?	Yes		

103. By utilizing 100% Basic Coverage at these face amounts, the replacement policy maximized Target Premium, first-year and early-year commissions, internal distribution credit, and unrecovered acquisition costs. No accumulation benefit to Plaintiffs resulted from this structure.

104. Application and New Business Submission information associated with the replacement policy confirms that the Death Benefit Option was set to Option B (Increasing), the Guideline Premium Test was selected, renewable term coverage was suppressed, and the Initial Target Premium was set at approximately $914,184.36.

105. The internal 1035 rollover amount of approximately $1,991,444.94 did not represent new growth capital. It consisted of remaining cash value from a prior Pacific Life policy that had already been materially depleted by commissions, premium loads,

cost-of-insurance charges, and other policy expenses. Pacific Life treated this depleted value as a funding source to cover unrecovered acquisition costs from the original sale and rolled it into the replacement policy at inception, thereby embedding prior losses into the new contract and enabling a renewed round of compensation, loads, and charges on money that had already been extracted once.

106. The Death Benefit and Premium configuration selected for the replacement policy confirms that the plan design utilized Basic Coverage only, Increasing Death Benefit from policy month one, and a premium structure backed into predetermined funding amounts rather than optimized for accumulation efficiency. The illustration explicitly indicated that coverage was "being reduced" in later years.

107. These design features demonstrate that the replacement policy was engineered to justify elevated early compensation rather than to deliver sustainable long-term performance for Plaintiffs. The structure relied on planned later reductions to mitigate long-term exposure only after the economic impact of early charges had already been imposed on Plaintiffs.

108. Upon information and belief, Pacific Life personnel reviewed, approved, and processed the internal replacement through home-office systems, including the preparation and approval of the Exact 1035 illustration, the rollover mechanics, and the continued use of compensation-intensive design features.

109. Pacific Life expressly calculated, approved, and carried forward unrecovered acquisition costs from the original policy into the replacement policy. These unrecovered costs reflected compensation and acquisition expenses that had not been recovered through the original policy's charges. Rather than absorbing those losses or

correcting the design, Pacific Life approved their capitalization into the replacement policy, ensuring that Plaintiffs bore the full economic burden of prior compensation.

110. Pacific Life further approved the internal replacement with a Commission Adjustment Factor ("CAF") of 100%, meaning that the replacement policy was treated as fully commissionable for purposes of first-year compensation. In practical terms, this approval allowed Smith and Pacific Life's distribution system to recover compensation as if the replacement were a new sale, despite the failure of the original policy and without any reduction tied to prior performance.

111. Approval of a 100% CAF is not a ministerial act. It is an institutional decision that preserves agent commissions, internal production credit, and distribution compensation metrics. By authorizing a full CAF in connection with an internal replacement that carried forward unrecovered acquisition costs, Pacific Life affirmatively chose to protect its compensation structure rather than correct a failed policy design.

112. Upon information and belief, inflated Target Premium and full-commission internal replacements directly impact Pacific Life's internal bonus, override, and incentive programs applicable to sales managers, regional distribution personnel, and internal sales channels. High-Target policies and internal replacements with full CAF increase production credit, bonus eligibility, and performance compensation within Pacific Life's distribution hierarchy.

113. The approval of compensation-intensive designs, unrecovered acquisition cost roll-forwards, and full CAF treatment aligned the financial incentives of Smith and Pacific Life's internal distribution teams. These incentives rewarded premium volume and compensation recovery, not long-term policy sustainability or client outcomes.

114. This case does not involve a rogue agent exploiting Pacific Life's products without oversight. The evidence demonstrates that while Smith manipulated Pacific Life's policy mechanics to inflate compensation at every step, he did so with the knowledge, assistance, and approval of Pacific Life's internal distribution personnel. Pacific Life reviewed the designs, approved the illustrations, authorized the unrecovered acquisition cost roll-forward, and permitted a full commission reset through a 100% CAF. Smith's conduct was enabled, reinforced, and perpetuated by Pacific Life's distribution system.

115. Pacific Life's approval of unrecovered acquisition cost capitalization and a 100% CAF in the internal replacement, despite knowledge of the prior policy's failure, reflects a conscious and intentional decision to preserve compensation rather than correct a defective design.

116. Plaintiffs were not advised that the replacement policy embedded unrecovered acquisition costs, preserved elevated Target Premium, or relied on a knowingly temporary structure that would require future reductions to avoid collapse. The internal replacement was presented as a performance improvement rather than a continuation of the same defective design.

117. By approving and facilitating these transactions, Pacific Life transformed individual misconduct into institutional conduct. The resulting harm to Plaintiffs was not accidental. It was the foreseeable consequence of a compensation-driven system that prioritized revenue and internal incentives over policyholder outcomes.

118. Upon information and belief, Smith worked closely with an internal distribution team at Pacific Life to structure Indexed Universal Life policies for clients across the country using the same policy design mechanics employed in the Busch

transactions. Acting in conjunction with Pacific Life distribution personnel assigned to support his production, Smith utilized identical design features, including inflated face amounts, Death Benefit Option B, 100% Basic Coverage, short-pay funding near Seven-Pay limits, and premium timing engineered to maximize Target Premium. These designs were not selected for client benefit, but to extract the highest possible commission and to maximize internal bonus, override, and production credit compensation within Pacific Life's distribution system.

119. Upon information and belief, the internal 1035 exchange executed for Plaintiffs was not an isolated event. Rodney Smith employed the same policy design mechanics with other Pacific Life Indexed Universal Life clients similarly situated to Plaintiffs, including the use of Death Benefit Option B, excessive face amounts, 100% Basic Coverage, short-pay funding near Seven-Pay limits, and premium timing engineered to maximize Target Premium and first-year compensation.

120. These internal replacements preserved compensation-intensive policy structures, reset commission and acquisition cost recovery through Pacific Life's approval of unrecovered acquisition cost roll-forwards and full commission treatment, and perpetuated defective designs rather than correcting them. The use of these internal replacements was part of a coordinated practice that allowed Pacific Life and its distribution personnel to recycle failing policies internally, preserve compensation streams, and defer accountability while transferring escalating economic harm to policyholders.

121. This conduct constitutes an unfair and deceptive act that is capable of repetition and has, in fact, been repeated. The structure allowed Pacific Life and its agents

to recycle failing policies internally, preserve compensation streams, and defer accountability, while transferring escalating economic harm to policyholders.

122. As illustrated in this case, the internal 1035 exchange increased Plaintiffs' exposure to early charge drag, accelerated value erosion, and embedded structural impairment into the replacement policy, while providing no offsetting economic benefit to Plaintiffs.

123. Based on the Exact 1035 illustration and related Pacific Life records, the internal replacement operated to maximize agent compensation and internal Pacific Life distribution incentives while transferring the economic consequences of that structure to Plaintiffs.

124. Analysis now shows that the internal replacement consumed $3,131,650 of premium, generated $664,574 in year-one charges and $3,579,631 over ten years, and purchased only $2,193,800 of projected income, an economic loss by design.

125. Notably, Pacific Life directly provided tax planning advice to Plaintiffs, stepping beyond the role of a traditional insurance provider in order to induce the Plaintiffs to follow this change and policy design. Emails between Mr. Smith and Pacific Life representatives reveal that these policies were consistently portrayed as financial investment vehicles rather than traditional insurance products.

126. At the product level, Pacific Life's regional vice president described PDX2 as a "performance platform" with a guaranteed multiplier and controllable charges, portraying cost features as levers rather than expenses. *See* Exhibit 7.

Ex. 7:

From: TBRELAND@PacificLife.com
Sent: July 8, 2022 10:05 AM
To: ras8842@gmail.com; jhadaya@jhadaya.com
Subject: Difference between PDX and PDX2

One of the reasons why PDX was updated to PDX2 was because:

1) the charges for PDX where not defined, meaning that that the cost was baked into the policy, and we couldn't truly tell the client what the actual charge was. On PDX2 the charges are defined and can also be turned on and off in the future.

2) more importantly was the "guaranteed" performance factor or multiplier being 1 on the PDX policy meaning that if the return was 10% and we multiplied it by the factor of 1 that the return would still only be 10%

10% X 1 = 10%

With PDX2 the multiplier has a **"guarantee"** of 1.72 years 2-20 on performance plus meaning that if the same return is 10% and the multiplier is 1.72% than the return would be 17.2%.

10% x 1.72 = 17.2%

With PDX there was only one performance factor option. PDX2 has multiplied performance factor options, classic, performance, and performance plus. This gives the client more flexibility with their choices in the future.

PDX2 has more flexibility than PDX and gives the client the ability to turn the performance factor on and off in the future when the client feels they no longer want the charge.

Unfortunately, AG49 and Code 7702 have limited how life insurance companies can illustrate their products going forward.

Please let me know if you have any questions?

Tim Breland
RVP West
602-672-5387

127. The same email acknowledges that "AG 49 and Code 7702 have limited how life insurance companies can illustrate their products going forward," a concession that Pacific Life's own executives understood the regulatory boundaries intended to prevent misleading performance projections. Yet rather than temper its marketing, Pacific Life exploited those limits by positioning PDX 2 as a workaround.

128. The reference to AG 49 and Code 7702 demonstrates Pacific Life's awareness that illustration standards were imposed precisely because earlier IUL designs had been abused to misrepresent growth potential.

129. By continuing to tout PDX 2 as a superior performance platform, Pacific Life knowingly used the appearance of regulatory compliance to lend credibility to an inherently deceptive structure.

130. Acting together, Smith and Pacific Life promoted quick funding and toggling charges as the key to success, never disclosing that such design choices maximized commissions and fees. Smith repeated those talking points to Plaintiffs, reinforcing the message. *See* Exhibit 8.

Ex. 8:

From: ras8842@gmail.com <ras8842@gmail.com>
Sent: 8/21/2022 2:22:42 PM
To: 'Kyle Busch'; 'Jonathan Hadaya'
Subject: RE: Difference between PDX and PDX2

We are on performance plus to max the annual returns.

The opportunity to "turn-on" or "turn-off" the extra charges is on the anniversary date of the policies. As this investment is geared towards a long-term strategy, most clients choose to seek the highest return until they retire or until they choose to start taking cash distributions (The longer you let the policy grow without taking a distribution the more income there is in future years). It is at that time that you would want to turn the charge off to lower the cost of the policy. Your financial team can help make that decision when you retire or when you choose to take distributions.

Thanks. Rodney

Sincerely,
Rodney Smith
Wealth Management & Insurance Specialist

1155 Camino Del Mar, #537
Del Mar, CA 92014
Cell 602.625.9547
ras8842@gmail.com

131. These communications demonstrate that Smith, Red River, and Pacific Life were acting as advisors and promoters, not neutral product providers, and that they acted jointly in scripting the narrative and policy designs that misled Plaintiffs.

132. Plaintiffs did not independently draft or control the policy designs, the illustration assumptions, the coverage mix, the funding schedules, or the internal replacement mechanics.

133. Those inputs were selected by Smith and Pacific Life personnel and were presented to Plaintiffs as institutionally engineered components of a retirement plan.

134. Plaintiffs were repeatedly assured that the policies would perform as illustrated if they followed the funding instructions and that specific payments were "final." Those specific assurances, together with Pacific Life's direct involvement in policy design

and messaging, reasonably put Plaintiffs off guard from suspecting that the documents they were shown did not reflect the true economics and risks of the transaction.

135. As detailed above, Plaintiffs could not independently evaluate the mechanics, economics, or real-world operation of the policies, regardless of their financial sophistication. The policies' performance and sustainability depended on opaque, carrier-controlled variables—including Target Premium engineering, compensation recovery, internal charges, cost-of-insurance calculations, and future administrative elections—that were neither disclosed nor intelligible to policyholders. The illustrations and policy documents did not explain how these elements interacted in practice, leaving Plaintiffs unable to assess the true risks, costs, or viability of the policies without relying on Defendants' expertise and assurances.

136. Any signatures obtained in connection with the policies and illustrations did not reflect informed consent. Plaintiffs were not asked to select or approve key design inputs, were not presented alternative illustrations showing the effect of different coverage mixes or lower Target Premium structures, and were not informed that Pacific Life personnel were revising illustrations and positioning communications to manage what Plaintiffs would see.

137. Plaintiffs signed documents in reliance on the superior knowledge, representations, and assurances of Smith and Pacific Life, not as a reflection of independent understanding of the underlying mechanics.

138. Upon information and belief, Pacific Life and Smith treated signed illustrations as a procedural requirement to satisfy regulatory submission rules rather than as a fixed or final disclosure of the policy being recommended.

139. Pacific Life personnel expressly instructed that an illustration need only be signed so the application could be submitted, with the understanding that the illustration and underlying policy design could be changed later. *See* Exhibit 9.

Ex. 9:

On Sep 5, 2019, at 8:51 AM, Rodney Smith <ras8842@gmail.com> wrote:

[External Email]

Can it be done on a Docusign? Rodney

On Thu, Sep 5, 2019, 8:46 AM Jacobs, Noah <Noah.Jacobs@pacificlife.com> wrote:

> Rod-
>
> As we discussed, one of the items we need to submit the Kyle Busch application is a signed illustration. While generally in the past we haven't had to get an illustration signed to submit an application, North Carolina requires the insured signs an illustration within 14 days of signing the app otherwise the application will be rejected by state insurance regulations.

> I know we've run a handful of iterations, but we need to pick one and get that signed so we can submit the paperwork formally. We can change the illustration later on if we need to....we just need the best current option signed for now. Both you and the owner need to sign the illustration.
>
> Please let me know if you have any questions.
>
> Thank you!
>
> Noah
>
> Noah Jacobs, WMCP®
>
> Field Vice President
>
> Arizona Regional Life Office
>
> Mobile (480)433-2982<tel:(480)433-2982>
>
> The Pacific Difference: http://paclife.co/noah_jacobs

140. Plaintiffs were therefore directed to sign an illustration that Pacific Life itself knew was provisional and subject to revision. This practice deprived Plaintiffs of any stable, final disclosure of the plan they were being induced to fund and materially impaired

their ability to evaluate the true structure, costs, and risks of the transaction before committing substantial premium.

141. Plaintiffs also reasonably believed that Smith and Pacific Life had an incentive to exercise due care in preparing and submitting accurate policy designs and illustrations because Smith would be paid commissions for the sale only if the carrier issued the policies, and Pacific Life would collect substantial premiums and charges only if the policies remained in force.

142. Plaintiffs reasonably expected that a carrier and its appointed producer would not design and approve a plan that was structurally incapable of delivering the results being represented.

143. Defendants' advisory role, coupled with the omission of critical financial details, created a false sense of security for Plaintiffs, who reasonably relied on Smith, Red River, and Pacific Life's assurances and Pacific Life's reputation as a trusted industry leader.

144. Plaintiffs' reliance was particularly justified given the extraordinary complexity of the Indexed Universal Life products Defendants designed and sold. The PDX and PDX2 policies combined multiple proprietary indices, participation rates, cap limits, crediting formulas, and performance multipliers that even financially sophisticated consumers could not meaningfully evaluate without specialized actuarial and financial expertise.

145. Pacific Life and Smith held themselves out as experts uniquely qualified to navigate these intricate mechanisms, explain their implications, and design a strategy aligned with the Busches' retirement and estate objectives.

146. In reality, that expertise was used to obscure the products' risks, mask excessive internal charges, and present speculative returns as assured outcomes, leaving Plaintiffs dependent on Defendants' superior knowledge and professional judgment.

147. By neglecting to provide a transparent and accurate picture of the policies' risks and deviating from their fiduciary responsibilities, Defendants amplified the harm caused to Plaintiffs, violating the trust placed in them and prioritizing profits over their clients' financial well-being.

148. Had Plaintiffs been provided truthful and complete information, they would never have purchased these policies and instead invested in more suitable, sustainable financial products. Instead, they were lulled into a false sense of security by Defendants' assurances that their policies would provide a stable, tax-free retirement income.

149. This has caused the loss of $8.5 million to date, together with the loss of compounding interest and investment gains that Plaintiffs could have realized had they been properly advised and prudently deployed this capital in alternative investments.

150. From the beginning of their dealings with Plaintiffs, Defendants engaged in ongoing misrepresentations and misconduct by repeatedly advising and facilitating the issuance of the Pacific Life IUL policies referenced above for Plaintiffs.

151. Defendants' combined conduct, continued false assurances, intentional concealment, and repeated misstatements delayed discovery of the wrongdoing and caused Plaintiffs to continue paying premiums long after the policies had become unsustainable.

152. Pacific Life's advisory role, together with Smith's misrepresentations, blurred any line between insurer and advisor.

153. Defendants placed their financial interests above Plaintiffs' and prioritized commission revenue over suitability and sustainability.

154. In addition, Defendants failed to deliver, and Plaintiffs never received, the Buyer's Guide and Policy Summary required by N.C. Gen. Stat. § 58-60-10 prior to policy delivery, further depriving Plaintiffs of material disclosures.

155. As a direct result of Defendants' actions, Plaintiffs have suffered significant net out-of-pocket losses totaling $8,582,007.00, missed opportunities to invest in more suitable and sustainable financial products, and severe financial instability and emotional distress.

FIRST CAUSE OF ACTION
(Negligence – Rodney Smith and Red River LLC)

156. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this Amended Complaint as if fully set forth herein.

157. At all times relevant, Defendant Rodney A. Smith and Defendant Red River LLC, the entity through which Smith conducted his insurance and retirement-planning business, undertook to render insurance planning, retirement-advisory, and financial-planning services to Plaintiffs. In doing so, they owed Plaintiffs a duty to exercise reasonable and ordinary care under the circumstances presented by Plaintiffs' financial situation and objectives.

158. By holding himself out as a Wealth Management and Insurance Specialist and Retirement Planner, Smith assumed duties far exceeding those of a typical insurance salesperson. He advised Plaintiffs on retirement income planning, estate liquidity, and tax

mitigation; integrated Pacific Life products into their overall financial plan; and presented himself as a fiduciary-level advisor collaborating directly with Pacific Life's home-office design and tax teams.

159. The fiduciary and confidential relationship alleged herein arose not merely from the payment of commissions, but from Defendants' undertaking to design and implement an integrated retirement and tax strategy, their assumption of discretionary control over policy structure and funding mechanics, their superior access to non-public information, and their knowledge that Plaintiffs were relying on them to act in Plaintiffs' best interests. Defendants used that position of trust to advance their own financial interests through compensation-driven designs at Plaintiffs' expense.

160. Plaintiffs reposed their confidence and trust in Smith's superior knowledge and expertise, creating a special relationship recognized under North Carolina law that imposed duties of loyalty, prudence, and full disclosure.

161. As professionals engaged in insurance, tax, and retirement planning, Smith and Red River LLC were required to exercise the same degree of care, skill, and prudence that a reasonably prudent insurance or financial professional would exercise under similar circumstances. This included duties to:

a. conduct adequate due diligence on the products and strategies recommended;
b. ensure that any life-insurance recommendation was suitable and sustainable given Plaintiffs' age, income, liquidity, and retirement objectives;
c. disclose all material facts and risks associated with the proposed policies; and
d. avoid conflicts of interest and self-dealing.

162. At all times relevant, in undertaking to render retirement advisory services and to provide financial advice to Plaintiffs, Defendants Smith and Red River owed Plaintiffs a duty of reasonable, ordinary care under the circumstances presented by Plaintiffs' financial situation and objectives.

163. Defendants Smith and Red River LLC breached their duty of care to Plaintiffs and were negligent and grossly negligent in various respects, including but not limited to:

a. By placing their own interests ahead of Plaintiffs' by promoting, marketing, recommending, and selling a risky and flawed insurance, financial, and retirement planning strategy that was imprudent, uninformed, unsuitable, negligent, and reckless for Plaintiffs;
b. By placing their own interests ahead of Plaintiffs' interest, thereby treating them as a profit center;
c. By failing to conduct meaningful due diligence on the design, structure, and risk profile of the Pacific Life Indexed Universal Life policies they recommended;
d. By advocating and implementing a flawed "tax-free retirement" plan that guaranteed substantial commissions for themselves and Pacific Life while exposing Plaintiffs to foreseeable losses;
e. By misrepresenting that the IUL policies would be fully funded and self-sustaining after a limited series of payments, when Smith knew or should have known that continued funding was required to prevent lapse;
f. By failing to disclose the material risks associated with the IUL policies, including cost-of-insurance increases, market volatility, policy underperformance, and potential for early lapse;
g. By failing to disclose that the "tax-free retirement income" would rely on internal policy loans that could compound debt, increase costs, and erode value;

h. By using Pacific Life illustrations that were incomplete, misleading, and non-compliant with regulatory standards, including placeholder illustrations that were not fixed or client-approved;
i. By concealing conflicts of interest, including Smith's personal commission incentives and Pacific Life's override compensation structures, while presenting himself as a fiduciary-level advisor;
j. By failing to conduct due diligence or adequate due diligence on the strategy and product recommended to Plaintiffs;
k. By advocating and recommending a risky strategy and risky product that failed to meet Plaintiffs' financial and retirement planning needs while guaranteeing substantial profits for themselves and Smith's principal, Pacific Life;
l. By failing to advise Plaintiffs of the risks associated with IUL policies;
m. By recommending an IUL policy to Plaintiffs when they knew or should have known that the policy was risky and not suitable or prudent for Plaintiffs; and
n. In other particulars as may be shown at trial.

164. At all relevant times, Red River LLC acted as the operational platform through which Smith marketed, sold, and received compensation for the Pacific Life policies at issue.

165. Red River LLC is therefore vicariously liable for Smith's acts and omissions under principles of agency and respondeat superior and directly liable for its own failure to supervise, train, and monitor Smith's advisory conduct and marketing representations.

166. Defendants' actions and omissions were negligent, grossly negligent, reckless, and carried out with conscious disregard for Plaintiffs' rights and interests. Their conduct was marked by indifference to professional standards, intentional concealment of material risks, and misuse of fiduciary trust.

167. As a direct and proximate result of Defendants' negligence, Plaintiffs have suffered substantial damages, including out-of-pocket losses exceeding $8,582,007.00, the loss of investment opportunity, emotional distress, financial instability, and uncertainty regarding their retirement security. These losses were the foreseeable consequence of Defendants' breach of duty and misconduct.

168. Plaintiffs are entitled to recover all actual and consequential damages resulting from Defendants' conduct, including the return of all premiums paid, lost investment opportunity, and the full measure of financial harm sustained as a result of Defendants' misrepresentations, negligence, and breach of fiduciary duty.

169. As a direct and proximate result of Defendants' fraudulent, deceptive, and willful conduct, Plaintiffs suffered significant emotional distress. Defendants marketed and structured the policies at issue as cornerstone components of Plaintiffs' long-term retirement, tax, and family financial planning, repeatedly assuring Plaintiffs that the policies were stable, sustainable, and suitable vehicles for generating tax-free retirement income.

170. When Plaintiffs later discovered that the policies had been engineered in a manner that predictably destroyed cash value, embedded excessive charges, and required continued capital infusions to avoid collapse, Plaintiffs experienced substantial stress, anxiety, and emotional harm arising from the sudden loss of financial security, the erosion of trust in professional advisors, and the realization that millions of dollars earmarked for long-term planning had been irreversibly depleted.

171. Defendants' conduct constituted negligence, gross negligence and was willful, wanton, and malicious. Defendants consciously and intentionally disregarded

Plaintiffs' rights and financial welfare by approving, implementing, and perpetuating compensation-driven policy designs they knew, or should have known, were unsuitable, unsustainable, and likely to cause substantial financial harm. This conduct demonstrates a reckless indifference to the consequences of Defendants' actions and supports an award of punitive damages to punish Defendants and deter similar misconduct in the future. Plaintiffs are entitled to recover an amount in excess of $25,000.00 from Defendants, together with the full measure of their actual, punitive, and consequential damages.

SECOND CAUSE OF ACTION
(Negligence – Pacific Life)

172. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this Amended Complaint as if fully set forth herein.

173. Defendant Pacific Life Insurance Company is licensed to offer and issue indexed universal life insurance policies in North Carolina.

174. As an insurer offering these complex products, Pacific Life owed a duty to Plaintiffs to exercise reasonable care in the design, marketing, underwriting, supervision, and sale of its insurance products, and in the appointment, training, and oversight of its producers.

175. Pacific Life is liable for its own negligence, and it is also liable under the doctrine of *respondeat superior* for the wrongful acts of its agents Rodney Smith and Red River.

176. A principal may not act through agents it has clothed with authority and then disclaim liability when the consequences of those acts prove harmful.

177. Pacific Life accepted the benefits of the policy sale and must also bear the consequences of its failure to supervise, monitor, and ensure the appropriateness of that sale.

178. Upon information and belief, Pacific Life appointed Defendants Rodney Smith and Red River, LLC as its authorized producers and agents for the solicitation, illustration, and sale of its Indexed Universal Life products.

179. Pacific Life granted them express authority to solicit applications, present policy illustrations, collect initial premiums, and procure issuance of Pacific Life policies.

180. Accordingly, Smith and Red River acted within the scope of their actual and apparent authority as agents of Pacific Life when they designed, promoted, and sold the IUL policies to Plaintiffs.

181. Smith and/or Red River were duly appointed producers of Pacific Life, authorized to solicit, illustrate, submit, and implement the sale of Pacific Life Indexed Universal Life policies. Each acted within the course and scope of that actual and apparent authority in designing, promoting, and administering the Plaintiffs' policies.

182. Pacific Life benefited directly from their conduct through the receipt of premiums, policy fees, and commissions, and is therefore vicariously liable for all resulting harm to Plaintiffs.

183. Pacific Life clothed its agents with all the trappings of authority, provided them with proprietary illustration software, branding, compliance guides, marketing portals, and online access to carrier-generated documents used in the sales process.

184. Pacific Life reviewed and approved the application submitted by Smith, and issued the policy based on illustrations that bore the Pacific Life name and logo.

185. Plaintiffs had no reason to believe Smith was acting independently of Pacific Life.

186. Pacific Life also ratified the wrongful acts and omissions of Defendants Smith and Red River by accepting and retaining the substantial premiums generated through their sales, by continuing to recognize them as authorized producers after learning of their conduct, and by failing to take corrective action once the policies' design flaws and misrepresentations became known.

187. Pacific Life's acceptance of the benefits of these transactions, coupled with its silence and inaction in the face of clear red flags, constitutes ratification of its agents' misconduct and renders Pacific Life jointly and severally liable for all resulting damages.

188. Pac Life is also liable for its own negligence. At all times relevant, in undertaking to render investment advisory services and provide investment and financial advice to Plaintiffs, Pacific Life owed Plaintiffs a duty of reasonable, ordinary care under the circumstances presented by Plaintiffs' financial situation and objectives.

189. By marketing and structuring its Indexed Universal Life products as "wealth transfer" and "tax-free retirement income" vehicles, Pacific Life voluntarily undertook duties extending beyond the traditional role of an insurer.

190. Through its product design, proprietary illustrations, and direct communications with Smith and Plaintiffs, Pacific Life advised on policy structure, ownership configuration, and funding mechanisms intended to achieve tax and estate planning results.

191. In doing so, Pacific Life assumed a duty to ensure that the strategies it promoted and approved were accurate, lawful, and suitable for the client's financial objectives.

192. Pacific Life's internal marketing materials and employee communications reinforced that the company's role encompassed "integrated estate and retirement planning," creating a reasonable expectation that Plaintiffs were receiving coordinated financial and tax guidance backed by Pacific Life's institutional expertise.

193. Pacific Life's employees actively participated in the design and presentation of the policies sold to Plaintiffs. In email communications with Smith and others at Pacific Life, these employees advised on how to structure the policies, select ownership entities (including the ILIT and family trust), and position the product to Plaintiffs as a "tax-free retirement income" plan that would "perform at the level originally illustrated."

194. They further described the PDX2 product as having a "guaranteed multiplier" with charges that could be "turned on and off," and represented that life insurance was "the only place he can still park millions and not worry about where the tax code goes in the future."

195. These communications confirm that Pacific Life itself was directly involved in crafting and endorsing the structure and marketing narrative used by Smith, stepping into the advisory stream and creating a reasonable expectation that Plaintiffs were receiving coordinated financial and tax guidance backed by Pacific Life's institutional expertise.

196. Pacific Life breached its own duty of care to Plaintiffs and was negligent in various respects. Specifically, Defendant Pacific Life breached its duty by:

a. Placing its own financial interests ahead of Plaintiffs', prioritizing premium volume and internal compensation metrics over the suitability and sustainability of the policies sold;

b. Treating Plaintiffs as a profit source rather than clients, designing and approving policies that maximized commissions and carrier revenue at Plaintiffs' expense;

c. Approving policies that failed to meet Pacific Life's own underwriting and suitability standards, including the issuance of oversized short-pay designs that could not sustain themselves under realistic performance assumptions;

d. Disregarding internal guidelines and compliance protocols in pursuit of large-face-amount sales tied to high-profile clients, allowing exceptions and policy deviations because of Plaintiffs' celebrity status and premium size;

e. Failing to perform even basic due diligence on Rodney Smith's background, which would have revealed his prior disciplinary action by the North Carolina Department of Insurance for providing false information and concealing a felony conviction, and ignoring his demonstrated history of manipulating policy designs for personal gain;

f. Ignoring clear red flags in its underwriting and new-business files, including inconsistent financial disclosures, missing income verification, false "no replacement" answers, and underwriting deadlines that were waived without justification;

g. Allowing and encouraging its field personnel, including Field Vice President Noah Jacobs and Regional Vice President Tim Breland, to engage directly in the sale and policy design, pressing for immediate funding and describing the IULs as "tax-free retirement income" vehicles with "guaranteed multipliers" and "controllable charges";

h. Providing and endorsing tax-planning and estate-planning advice through its representatives, including statements that Pacific Life IULs were the safest place to "park millions" to avoid future tax changes, thereby stepping beyond its lawful role as an insurer;

i. Failing to deliver the Buyer's Guide and Policy Summary required by North Carolina law prior to policy delivery, depriving Plaintiffs of mandatory disclosures under the North Carolina Life Insurance Disclosure Act;

j. Approving and relying on incomplete or placeholder illustrations that were not fixed, client-approved, or compliant with illustration regulations, contrary to industry standards and North Carolina law; and

k. Ignoring internal data projecting early lapse, which showed that the Busch policies would exhaust their cash value and lapse by mid-2024 without further premium infusions.

197. Pacific Life's direct involvement in advising on premium allocation, policy design, and tax advantages blurred the line between product producer and financial advisor. This deeper involvement in the management and promotion of the policies, combined with its failure to act in accordance with its own policies, contributed directly to Plaintiffs' financial losses.

198. Pacific Life is independently and vicariously liable for the negligent acts and omissions of its appointed agents, Defendants Smith and Red River, under established principles of agency and *respondeat superior*.

199. Acting within the scope of their actual and apparent authority, Smith and Red River designed, illustrated, and sold the subject Pacific Life IUL policies using company-approved materials, carrier-issued software, and illustrations bearing Pacific Life's name and logo. Pacific Life expressly authorized and benefited from their conduct through the collection of premiums, policy fees, and commissions. By failing to properly train, supervise, and monitor its appointed producers, and by allowing misleading illustrations and unapproved sales practices to persist, Pacific Life breached its own duty of care and is liable for all resulting losses suffered by Plaintiffs.

200. As a direct and proximate result of Pacific Life's negligence, Plaintiffs suffered out-of-pocket losses exceeding $8,582,007.00, lost investment opportunity, emotional distress, financial instability, and uncertainty about their future.

201. These damages were the predictable and foreseeable outcome of Pacific Life's disregard of its duties in the design, approval, and oversight of the policies sold to Plaintiffs.

202. Plaintiffs are entitled to recover all actual and consequential damages arising from Pacific Life's negligence, including the return of premiums paid, the loss of compounding investment gains, and the costs incurred to correct and mitigate the financial harm caused by Pacific Life's conduct.

203. Pacific Life's conduct constituted negligence, gross negligence and was willful, wanton, and malicious. Defendants consciously and intentionally disregarded Plaintiffs' rights and financial welfare by approving, implementing, and perpetuating compensation-driven policy designs they knew, or should have known, were unsuitable, unsustainable, and likely to cause substantial financial harm. This conduct demonstrates a reckless indifference to the consequences of Defendants' actions and supports an award of punitive damages to punish Defendants and deter similar misconduct in the future. Plaintiffs are entitled to recover an amount in excess of $25,000.00 from Defendants, together with the full measure of their actual, punitive, and consequential damages.

THIRD CAUSE OF ACTION
(Violation of North Carolina Unfair and Deceptive Trade Practices Act—All Defendants)

204. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this Amended Complaint as if fully set forth herein.

205. North Carolina General Statute § 75-1.1(a) declares unfair and deceptive acts or practices in or affecting commerce unlawful. The business of selling and marketing life-insurance and financial-planning products constitutes "commerce" within the meaning of the statute.

206. As set forth in more detail above, Defendants, acting jointly and in concert, engaged in unfair methods of competition and unfair or deceptive acts and practices in the conduct of trade or commerce.

207. Pacific Life, acting directly and through its authorized producers and agents, Rodney A. Smith and Red River, LLC, engaged in a deliberate and systematic scheme of deception that misrepresented its IUL products as conservative, self-funding, and sustainable "tax-free retirement" vehicles.

208. In reality, Pacific Life and its agents concealed the products' inherent complexity, hidden costs, and extreme volatility.

209. The sales strategy was designed to create the illusion of stability and investment-grade performance while masking structural risks that guaranteed eventual policy failure.

210. By employing company-branded illustrations, proprietary marketing materials, and coordinated sales scripts, Pacific Life and its agents misled Plaintiffs into

believing they were purchasing a professionally managed retirement strategy rather than speculative, high-cost insurance contracts.

211. In truth, Smith and Pacific Life structured the policies to maximize first-year commissions and corporate revenue, not to meet Plaintiffs' needs.

212. Smith and Pacific Life jointly assured Plaintiffs that, after a limited number of years of premium payments, the policies would generate "tax-free income for life" without the need for further premium payments—a false and negligent representation.

213. Defendants further failed to disclose the substantial risks inherent in these products, including their reliance on non-guaranteed crediting rates, escalating cost-of-insurance charges, volatile Indexed Loan features, and the likelihood of policy lapse.

214. Pacific Life and Smith knew, or should have known, that the short-pay design and funding assumptions could not sustain the policies after the so-called "final" premium payments were made without significant additional funding or policy reductions.

215. As alleged more particularly above, Defendants engaged in unfair and deceptive trade practices and acted intentionally, willfully, and with reckless disregard for Plaintiffs' rights and for the established policy in this State, and further acted in a manner that was deceptive, immoral, unethical, and unscrupulous, as follows:

a. By soliciting the purchase of life insurances policies by deceptively describing them as "tax-free retirement" strategies;
b. By misrepresenting and overstating the benefits, advantages, conditions, and terms of the IUL policies, including use of the proprietary product title "Pacific Discovery Xelerator IUL" and internal performance phrases such as "guaranteed multiplier" and "controllable charges," to create the false impression of guaranteed investment performance, in violation of N.C. Gen. Stat. §§ 58-63-15(1) and 58-60-20;

c. By failing to deliver the Buyer's Guide and Policy Summary required by North Carolina law prior to policy delivery, depriving Plaintiffs of mandatory consumer disclosures;
d. By presenting incomplete and placeholder illustrations in violation of N.C. Gen. Stat. § 58-63-15(1) and North Carolina's Illustration Regulation;
e. By allowing and encouraging Pacific Life employees, including Field Vice President Noah Jacobs and Regional Vice President Tim Breland, to participate directly in the solicitation and policy design, to pressure immediate premium payments, and to represent that life insurance was "*the only place he can still park millions and not worry about where the tax code goes in the future*," thereby promoting the sale through false tax representations;
f. By providing or endorsing tax and estate-planning advice outside the scope of their insurance licensure and competency, thereby misleading Plaintiffs into believing they were receiving qualified professional tax guidance;
g. By failing to conduct any meaningful suitability analysis or stress testing, thereby misrepresenting that the design was safe, low-risk, and compliant with regulatory guidelines;
h. By misusing advisory titles such as "Wealth Management and Insurance Specialist" and "Retirement Planner" to imply professional expertise and independence, in violation of N.C. Gen. Stat. § 58-60-20(b)–(c); and
i. And in other such ways as may be revealed through discovery.

216. Plaintiffs reasonably relied on Defendants' false representations, omissions, and Pacific Life's institutional reputation in deciding to purchase the policies. Plaintiffs would not have done so had they been informed of the true nature and risk of the products.

217. Defendants' misrepresentations and omissions about the policies' tax treatment, performance assumptions, and funding requirements were material and intended to deceive.

218. As a direct and proximate result of Defendants' willful and deceptive conduct, Plaintiffs sustained net out-of-pocket losses exceeding $8,582,007.00, lost investment opportunity, and severe financial and emotional harm. These losses were the natural and foreseeable result of Defendants' unfair and deceptive practices. Plaintiffs are entitled to recover an amount in excess of $25,000.00 from Defendants, together with the full measure of their actual, punitive, and consequential damages.

219. As a direct and proximate result of Defendants' conduct in violation of N.C. Gen. Stat. § 75-16, Plaintiffs are entitled to recover treble their actual damages and attorneys' fees resulting from such defendants' unfair and deceptive trade practices, in an amount to be shown at trial.

FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

220. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this Amended Complaint as if fully set forth herein.

221. At all times relevant, Rodney A. Smith and Red River LLC, the business entity through which Smith conducted his insurance and retirement-advisory business, held themselves out as experts in wealth management, retirement planning, and insurance design. Smith represented that he worked *"hand-in-hand with Pacific Life's home-office design team"* to deliver customized tax-free retirement and estate strategies for high-net-worth clients.

222. By undertaking to design, recommend, and implement a comprehensive *"tax-free retirement plan"* for Plaintiffs and by counseling them on retirement income, asset allocation, ownership structure, and tax mitigation, Smith assumed a position of special trust and confidence.

223. Plaintiffs reasonably relied on his expertise and on Pacific Life's institutional reputation.

224. Under North Carolina law, this relationship created fiduciary duties of honesty, good faith, candor, loyalty, competence, and the duty to place Plaintiffs' interests above his own.

225. Smith and Red River, in acting as appointed producers and authorized agents of Pacific Life, were not independent brokers but representatives of the insurer itself. Through that agency relationship, all fiduciary and professional duties owed by Smith and Red River to Plaintiffs are imputed to Pacific Life. Acting under Pacific Life's supervision, authority, and brand, they solicited, illustrated, and implemented the IUL policies using company-issued software, materials, and compliance systems.

226. Accordingly, Pacific Life owed Plaintiffs the same duties of honesty, full disclosure, loyalty, due care, and suitability that arise when an insurer and its agents undertake to provide customized financial and retirement-planning advice to clients who reasonably rely on their superior knowledge and institutional expertise.

227. Pacific Life also assumed fiduciary obligations to Plaintiffs by ratifying and participating in this advisory relationship. Its employees, including Field Vice President Noah Jacobs, and Regional Vice President Tim Breland, worked directly with Smith in the design and sale of Plaintiffs' policies.

228. These employees advised on ownership configuration, funding mechanisms, and tax positioning, and represented that life insurance was *"the only place he can still park millions and not worry about where the tax code goes in the future."*

229. By participating in and endorsing Smith's advice, Pacific Life joined in the fiduciary relationship and owed Plaintiffs the same duties of good faith, loyalty, and full disclosure.

230. Defendants' fiduciary duties included, but were not limited to:

a. The duty to act with undivided loyalty and to place Plaintiffs' interests above their own;
b. The duty to disclose all material facts, conflicts of interest, risks, and costs related to the policies and strategy recommended;
c. The duty to provide competent, suitable, and fully informed advice consistent with Plaintiffs' financial objectives, age, and liquidity;
d. The duty to refrain from self-dealing, commission-driven design, or any conduct that created divided loyalty;
e. The duty to ensure that all representations were truthful, complete, and not misleading; and
f. The duty to ensure compliance with applicable statutes, regulations, and Pacific Life's own internal suitability and disclosure policies.

231. Defendants breached these fiduciary duties in numerous ways, including but not limited to:

a. Placing their own financial interests above Plaintiffs', recommending and selling IUL policies designed primarily to generate commissions and revenue for themselves and Pacific Life;
b. Failing to disclose material risks, including the non-guaranteed nature of the crediting rate, the policy's dependence on Indexed Loans, the risk of lapse, and the need for ongoing premiums to prevent early termination;

c. Misrepresenting the policies as "self-funding" and "tax-free retirement income" plans, when they were neither self-sustaining nor suitable for Plaintiffs' age and liquidity;
d. Using deceptive illustrations and marketing materials that overstated performance and omitted cost disclosures, while presenting them as accurate and compliant Pacific Life projections;
e. Failing to provide the Buyer's Guide and Policy Summary required by N.C. Gen. Stat. § 58-60-10, and failing to deliver full Basic Illustrations as required by North Carolina regulations;
f. Providing tax and estate-planning advice without appropriate qualifications or licensure;
g. Ignoring their supervisory obligations by allowing the sale to proceed despite clear unsuitability, internal red flags, and evidence that the design would collapse without additional funding; and
h. Treating Plaintiffs as a marketing opportunity and profit source, rather than as clients entitled to fiduciary care and full transparency.

232. Upon information and belief, Defendants' conduct constituted self-dealing and bad faith. Smith, Red River, and Pacific Life all profited substantially from the sale, earning millions in commissions and overrides, while Plaintiffs suffered the loss of $10,400,000 in premium payments, resulting in a net out-of-pocket loss of $8,582,007.

233. Here, Pacific Life and its agents were jointly marketing IUL products as safe, tax-free income strategies, failing to deliver required disclosures, and disregarding suitability and supervisory duties.

234. Defendants' actions were knowing, willful, and carried out with conscious disregard for Plaintiffs' rights and interests.

235. As a direct and proximate result of Defendants' breaches of fiduciary duty, Plaintiffs have suffered substantial damages, including:

a. Out-of-pocket losses exceeding $8,582,007.00;
b. Lost investment opportunity and compounded market growth;
c. Emotional distress and financial insecurity; and
d. The loss of the promised retirement income and insurance protection.

236. Defendants' conduct was negligent, grossly negligent, willful, wanton, and malicious, demonstrating a conscious and intentional disregard for Plaintiffs' rights and financial welfare. Such conduct reflects more than mere negligence; it evidences a deliberate indifference to the truth and to the foreseeable harm caused by Defendants' deceptive practices and self-interested design choices.

237. Plaintiffs are therefore entitled to recover all actual and consequential damages, together with punitive damages to punish and deter similar misconduct, and such other equitable relief as the Court deems just and proper. Plaintiffs are entitled to recover an amount in excess of $25,000.00 from Defendants, together with the full measure of their actual, punitive, and consequential damages.

FIFTH CAUSE OF ACTION
(Negligent Misrepresentation)

238. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of this Complaint as if fully set forth herein.

239. At all times relevant, Defendants Rodney A. Smith, Red River LLC, and Pacific Life Insurance Company were in the business of designing, marketing, and selling life-insurance and financial-planning products, and held themselves out as possessing superior knowledge, skill, and expertise in the areas of retirement and estate planning, investment strategy, and insurance design.

240. Defendants misrepresented and selectively omitted material information about the structure and performance of the policies, creating the false impression that they would self-fund and perform as illustrated, when in fact the policies carried undisclosed costs, risks, and loan exposures that rendered those projections unattainable.

241. Each of these representations was negligent, false, or misleading when made. The policies could not self-fund or produce lifetime tax-free income, and the policy design was inherently unstable and destined to lapse without additional premium funding.

242. Defendants made these representations and omissions without exercising reasonable care or competence to ensure their truth or accuracy.

243. Smith and Red River LLC relied on Pacific Life's materials and repeated those misstatements to Plaintiffs without independent verification.

244. Defendants further omitted material facts they were obligated to disclose, including:

a. That the policies' performance depended on non-guaranteed crediting rates and policy loans that could cause compounding debt and lapse;
b. That ongoing costs of insurance and administrative charges would erode value;
c. That the policies would require continued premium payments beyond the illustrated period; and
d. That Smith had a direct financial conflict of interest through large commissions and overrides tied to the sale.

245. Plaintiffs reasonably relied on these representations and omissions. They believed, based on Defendants' superior knowledge, that the policies were safe and sustainable and that Pacific Life stood behind the advice given by its authorized producer.

246. Pacific Life is liable for all negligent misrepresentations and omissions made by its authorized producers and agents, Smith and Red River, under established principles of agency and *respondeat superior*.

247. At all relevant times, Pacific Life exercised enterprise-level control over the design, illustration, approval, funding, and replacement of the policies sold to Plaintiffs. Pacific Life's distribution structure assigned dedicated personnel to support Smith's production, reviewed and revised illustrations through home-office systems, approved policy designs and internal replacements, controlled commission treatment, and authorized unrecovered acquisition cost roll-forwards and commission adjustment factors.

248. Smith's conduct was not independent or incidental. It was integrated into Pacific Life's distribution enterprise and carried out with the company's knowledge, approval, and participation.

249. At all times relevant, Smith and Red River acted within the course and scope of their actual and apparent authority as Pacific Life's appointed producers, using Pacific Life's name, proprietary illustration software, marketing materials, and internal sales support.

250. Pacific Life reviewed, approved, and issued the policies based on these representations, directly benefited from the resulting premiums and commissions, and ratified its agents' conduct by failing to correct or disclose the falsity of the statements made to Plaintiffs.

251. Accordingly, all acts and omissions of Smith and Red River are legally attributable to Pacific Life.

252. As a direct and proximate result of Defendants' negligent misrepresentations and omissions, Plaintiffs suffered substantial damages, including out-of-pocket losses exceeding $8,582,007.00, lost investment opportunity, emotional distress, financial instability, and the loss of the promised retirement income and insurance protection.

253. Defendants' negligent misrepresentations were material, foreseeable, and made in the course of trade and commerce, and constitute actionable negligence under North Carolina law.

254. Plaintiffs are entitled to recover all compensatory and consequential damages proximately caused by Defendants' conduct, including the return of premiums paid and the full measure of financial harm sustained. Plaintiffs are entitled to recover an amount in excess of $25,000.00 from Defendants, together with the full measure of their actual, punitive, and consequential damages.

255. Defendants' conduct was negligent, grossly negligent, willful, wanton, and malicious, demonstrating a conscious and intentional disregard for Plaintiffs' rights and financial welfare, and therefore justifies an award of punitive damages to punish and deter similar misconduct in the future.

PRAYER FOR RELIEF

WHEREFORE, having set forth their claims, Plaintiffs pray for a judgment against Defendants as follows:

1. That Plaintiffs have and recover an amount in excess of $25,000.00 from Defendants Rodney A. Smith and Red River, LLC for Negligence;
2. That Plaintiffs have and recover an amount in excess of $25,000.00 from Defendant Pacific Life Insurance Company for Negligence;

3. That Plaintiffs have and recover an amount in excess of $25,000.00 from Defendants for Violation of the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1 *et seq.*;
4. That Plaintiffs have and recover an amount in excess of $25,000.00 from Defendants for Breach of Fiduciary Duty;
5. That Plaintiffs have and recover an amount in excess of $25,000.00 from Defendants for Negligent Misrepresentation;
6. That Plaintiffs have and recover actual damages in an amount to be proven at trial, including out-of-pocket losses, lost investment opportunity, and loss of policy value and benefits;
7. That Plaintiffs recover consequential damages proximately caused by Defendants' conduct;
8. That Plaintiffs recover punitive damages in an amount to be determined by the finder of fact, as Defendants' conduct was willful, wanton, and malicious and demonstrates a reckless indifference to Plaintiffs' rights;
9. That Plaintiffs recover treble damages pursuant to N.C. Gen. Stat. § 75-16;
10. That Plaintiffs recover reasonable attorneys' fees pursuant to N.C. Gen. Stat. § 75-16.1;
11. That Plaintiffs recover prejudgment interest at the highest legal rate; and
12. That Plaintiffs recover such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all claims so triable.

JAMES, MCELROY & DIEHL, P.A.

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Pro hac vice applications to be submitted

Counsel for Plaintiffs

January 13, 2026

CERTIFICATE OF COMPLIANCE

The undersigned certifies no artificial intelligence was employed in doing the research and preparation of this document, with the exception of such artificial intelligence embedded in the standard on-line legal research sources Westlaw, Lexus, FastCase, and Bloomberg. Every statement and every citation to an authority contained in this document has been checked by an attorney in this case and/or a paralegal working at his/her direction (or the party making the filing if acting pro se) as to the accuracy of the proposition for which it is offered, and the citation to authority provided.

This the 13th day of January, 2026.

JAMES, McELROY & DIEHL, P.A.

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CERTIFICATE OF SERVICE

The undersigned certifies that on January 13, 2026, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. The undersigned also hereby certifies that a copy of the foregoing has this date been served upon the parties via electronic mail as follows:

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This the 13th day of January, 2026.

JAMES, McELROY & DIEHL, P.A.

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