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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

MAXINE DERRY and RUSSELL HEMEN, Individually, and on Behalf of Themselves and All Others Similarly Situated. Plaintiffs, vs. JACKSON NATIONAL LIFE INSURANCE COMPANY, a Michigan corporation. Defendant.	Case No. SACV11-cv-00343 DOC (RNBx) <u>CLASS ACTION</u> AMENDED CLASS ACTION COMPLAINT FOR: 1. Violations of Cal. Bus. & Prof. Code § 17200 *et seq.* 2. Violations of Financial Elder Abuse, Welf. & Instit. Code § 15600 *et seq.* <u>DEMAND FOR JURY TRIAL</u>

1. Plaintiffs Maxine Derry and Russell Hemen ("Plaintiffs"), by and through their attorneys, bring this amended class action complaint against Jackson National Life Insurance Company ("Jackson National", "Defendant" or "Company") on behalf of themselves and all other similarly situated California senior citizen purchasers of Jackson National deferred annuity products. Upon information and belief, as well as the investigation of counsel, Plaintiffs allege as follows:

INTRODUCTION

2. Plaintiffs bring this California state-wide class action on behalf of themselves and all other similarly situated senior citizens to halt and remedy the harm caused by Defendant's unlawful sales practices in connection with the solicitation and sale of fixed interest and equity-indexed deferred annuity products ("deferred annuities"), excluding variable annuities. As alleged herein, Defendant engaged in unlawful business practices to market and sell deferred annuities to senior citizens in this state by not fully disclosing all material facts and risks, including surrender charge information and all penalties associated with surrender as mandated by California's senior citizen statutory disclosure requirements. Specifically, Defendant's deferred annuities violate the disclosure requirements of Cal. Ins. Code §§ 10127.10 and 10127.13 and, consequently, the "unlawful" prong of Cal. Bus. & Prof. Code § 17200, *et. seq*.

3. Defendant targets senior consumers like Plaintiffs as prospective purchasers of deferred annuities even though they are unlikely to receive any benefit from the deferred annuity because of the long-term nature of the product, extended maturity dates (*i.e.*, the date on which the annuities may be surrendered without any penalties), and confiscatory product features, such as: lengthy surrender periods, high surrender charges, undisclosed penalties and other features that penalize senior citizen purchasers who have limited investment horizons and need unfettered access to their funds.

4. Jackson National manufactures and sells insurance and investment products geared primarily toward retirees and seniors, with the majority of its sales being deferred annuities. Through its distribution subsidiary and network of contracted sales agents ("Agents"), Defendant trains and encourages agents to market and sell its deferred annuity products using Jackson National marketing materials and policy contracts encouraging senior consumers to consolidate their savings and other investments into Defendant's deferred annuities. During the relevant period, Jackson National collected billions of dollars in premiums from deferred annuity sales to senior citizens in California.

5. According to Defendant's website, Jackson National was the Fourth largest seller of both fixed and fixed indexed annuities in the U.S. in 2009. Jackson National is recognized by ratings agencies, such as A.M. Best Ratings, as one of the largest individual annuity writers in the U.S. life insurance industry. As of December 31, 2009, Jackson National had $88 billion in total assets under management.

6. Plaintiffs allege that Defendant's deferred annuity sales practices described herein violate California's senior citizen disclosure statutes, and therefore, violate the unlawful prong of Cal. Bus. & Prof. Code §§ 17200, *et seq*. Plaintiffs allege that Defendant's sales practices also violate Cal. Welf. & Inst. Code §§ 15600, *et seq*. Through this action, Plaintiffs do not assert any claims that are based on or grounded in fraud.

7. Plaintiffs through this action seek certification of the following Class of Jackson National fixed and fixed indexed deferred annuity purchasers:

> All California residents age 60 or older at the time of purchase and within the applicable statute of limitations, who, purchased or surrendered one or more Jackson National Life Insurance Company deferred annuity products.

8. This action seeks to enjoin Defendant from engaging in its illegal and unconscionable sales practices, including the form and substance of its disclosures regarding the drawbacks of deferred annuities, and requiring clear disclosure of all

material facts regarding the costs, risks, surrender periods, charges, and all other penalties associated with surrender of Defendant's deferred annuity products.

9. Plaintiffs seek other equitable remedies, including rescission, restitution, disgorgement of ill-gotten profits, reformation and such other equitable relief as may be appropriate to redress Defendant's unlawful conduct in selling deferred annuity products to seniors in violation of California laws. Plaintiffs additionally seek monetary relief and punitive, treble and/or statutory damages for violations of elder abuse statutes of California.

JURISDICTION AND VENUE

10. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1332. The Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. §1367. The amount in controversy exceeds $75,000 for each plaintiff, exclusive of costs and interest. Furthermore, the aggregate amount in controversy for this class action exceeds $5,000,000, and all members of the putative Class are citizens of a State different from Defendant. *See* Class Action Fairness Act ("CAFA"), 28 U.S.C. §1711.

11. Plaintiffs bring this class action pursuant to Rule 23 of the Federal Rules of Civil Procedure ("F.R.C.P."). Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because a substantial part of the events or unlawful acts giving rise to Plaintiffs' claims occurred in this District. Venue is also proper under 18 U.S.C. §1965(a) because Plaintiffs reside in this District, Plaintiff Maxine Derry is a resident of Garden Grove, California, and Defendant maintains offices, has agents, transacts business, and is located here.

PARTIES

12. At all relevant times, Plaintiff Maxine Derry was and is currently a resident of Garden Grove, California. Plaintiff Derry was age 70 at the time he was sold two Jackson National deferred annuity products as further described in ¶ 50.

13. At all relevant times, Plaintiff Russell Hemen was and is currently a resident of Riverside, California. Plaintiff Hemen was age 73 at the time he was sold two Jackson National deferred annuity products as further described in ¶¶ 51-52.

14. Defendant Jackson National is a Michigan corporation headquartered in Lansing, Michigan and is licensed to transact insurance in 50 states and the District of Columbia. Directly and through subsidiaries, Jackson National manufactures and offers a variety of insurance products and services, including life insurance, annuities, property, casualty and other products and services. Defendant conducts a substantial amount of fixed and fixed indexed annuity sales in California, including to senior citizens.

FACTUAL ALLEGATIONS

Deferred Annuity Products

15. An annuity is a contract between the annuity owner and an insurance company pursuant to which the owner makes an upfront lump-sum payment or a series of payments to the insurance company. The insurance company, in turn, agrees to make payments to the designated annuitant over a period of time. With a standard or "immediate" annuity, the consumer has a right to an immediate stream of income via payments from the insurance company that is usually guaranteed to last for a period certain and/or for as long as the consumer is alive.

16. With a deferred annuity, the owner foregoes payment until some point in the future. During this deferral period, the earnings on the owner's premium payments grow, tax-deferred. Thus, deferred annuities are very different from immediate annuities and provide a long-term investment vehicle, not an immediate income stream and effectively "lock up" the purchaser's money for lengthy periods, typically up to 10 years or more.

17. The specific types of deferred annuities at issue in this Complaint are "fixed interest" deferred and "equity indexed" deferred annuities.

(a) A "fixed interest" annuity is an annuity in which the insurance company offers a guaranteed interest rate for a set period of time on the annuitant's premium payments. Fixed interest annuities typically are marketed as providing safety of principle, a guaranteed minimum interest crediting rate, a projected rate of return and tax deferred earnings.

(b) An "equity indexed" (also referred to as "fixed indexed") annuity is a variation of a fixed deferred annuity in which the amount the company credits to the account values fluctuate depending upon the performance of a stock market index, such as the S&P 500.[1] Equity indexed annuities typically offer an option for the premium (or a portion thereof) to be allocated to a fixed interest account or to an equity-linked account purportedly affording the opportunity for additional growth based on market performance – subject to various participation and interest rate caps and other limitations. In short, fixed and equity indexed annuities are complex long-term derivative products that lend themselves to abusive sales practices, particularly towards senior citizens.

18. Deferred annuities, whether fixed interest or equity indexed, are typically designed and based on substantially similar product chassis containing the same core fundamental concepts and features. In many instances, deferred annuity products are designed, marketed and sold as a series or family of products that contain similar features with certain limited variations or options.

19. With a deferred annuity, the annuitant cannot withdraw their investment or the earned interest without incurring a penalty for a number of years after the initial payment of the premium. The penalty for early surrender of either principal or

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[1] The "S&P 500" is the Standard & Poor's 500 index which is a capitalization weighted index of 500 stocks. Considered to be a benchmark of the overall stock market, this index is comprised of 500 widely-held Blue Chip stocks representing industrial, transportation, utility and financial companies with a heavy emphasis on industrials. The S&P 500 index is commonly used to measure stock market performance.

earnings greater than a specified "penalty free" amount is called a "surrender charge." The percentage of the surrender charge typically starts as high as 9-12%, declining over a 9-12 year surrender period. The surrender charge is a substantial penalty to discourage early surrender of principal or earnings from an annuity so the Company can recover the large undisclosed Agent commission and any up-front "bonus" incentives used to lure unsuspecting consumers, as well as, recoup other charges and maintain Company profits. As a result, the terms of deferred annuities severely restrict the availability of senior purchasers' funds until Jackson National has recouped its high Agent commission payments, bonuses, other costs, expenses and profit margins.

20. Under § 1631 of the California Insurance Code, only licensed insurance agents may solicit, offer and sell deferred annuities. This licensing requirement is intended to help ensure that consumers receive appropriate information when purchasing a deferred annuity and maintain a level of integrity and accountability; in part by ensuring that agents refrain from misleading vulnerable consumers when selling these complex products by subjecting the agent (and insurance companies) to regulations and legal duties requiring disclosure of all facts and information regarding a marketed insurance product, that may be "material" to a prospective annuitant's decision to purchase such products. *See, e.g.*, Cal. Ins. Code §§ 330-334.

Jackson National's Marketing and Sale of Deferred Annuity Products

21. Defendant Jackson National markets and sells its deferred annuity products in California (and on a national basis) primarily through its network of contracted and appointed individual sales Agents and Agents associated with banks and financial institutions.

22. To effectuate the sales process, Agents enter into contractual agreements with Defendant to sell its deferred annuities. Agents are required to adhere to the sales procedures, protocols and materials dictated, prepared and/or approved by Defendant. These sales protocols and procedures include the use of Defendant's standard deferred annuity policy forms.

23. Defendant targets and Agents solicit, market and sell deferred annuities to seniors using various sales tactics, such as offering senior financial planning seminars, senior financial counseling and by utilizing senior financial planning credentials to induce seniors' trust, as well as, obtain personal financial information, and persuade seniors to convert their savings and other investments such as stocks, bonds, mutual funds, 401(k)'s, 403(b)'s, IRAs, CDs, life insurance policies and other investment funds into deferred annuities. Senior citizens are particularly susceptible to Defendant's conduct because many seniors have a diminished ability to understand complex investment transactions, harbor concerns about risky investments and fear outliving their assets.

24. Defendant's marketing materials are designed to appeal to seniors and prey on their fears of risky or insecure investments and promote product features purportedly providing security of principal, wealth accumulation through generous returns, liquidity and other attributes, in order to lure seniors, without fully disclosing material facts such as surrender periods, charges and related penalties.

25. Industry concerns regarding deceptive sales of deferred annuities to seniors have been well documented through various media outlets including, by way of example, a Dateline NBC expose entitled "*Tricks of the Trade*" (NBC broadcast April 13, 2008); Inside Edition special entitled "*Inside Edition Investigates Tactics of Bankers Life & Casualty* Agents" (CBS broadcast June 11, 2010); NY Times, "*Who's preying on Your Grandparents,*" N.Y. Times, May 15, 2005.

26. Defendant knows that its business practices are unlawful and that the deferred annuities it markets and sells contains numerous disadvantages for senior consumers. Nonetheless, Defendant continues to design, promote and sell deferred annuities to seniors in violation of California law.

27. To facilitate the unlawful conduct, Defendant pays its Agents high undisclosed commissions and incentives for selling deferred annuities to seniors, which are thereafter recovered by Defendant at the policyholder's expense during the

surrender period. By doing so, Defendant induces, condones and encourages Agents to engage in aggressive and predatory marketing tactics, including targeting and exploiting the vulnerability and concerns of senior citizens.

28. Undisclosed Agent commissions are inextricably intertwined with surrender periods and surrender charges. Agent commissions typically range from 8-10% or greater and by product design, are secretly included as a product cost or expense – thus hiding the substantial Agent commission from the consumer. By way of example, an Agent who sells a $100,000.00 policy to a senior citizen can receive $8,000-10,000 on the transaction. This commission cost is built into the Company's internal product pricing and recouped by Defendant through undisclosed actuarial and accounting manipulations at the policyholders' expense during the lengthy surrender period. There is also a direct corollary in product design between the amount of the Agent commission and the length of the surrender period and amount of surrender charges. An 8-10% Agent commission generally results in at least an 8-10 year surrender charge period, starting with an 8-10% surrender charge. As the amount of the Agent commission increases, the surrender periods and surrender charges in turn become longer and higher.

29. Deferred annuity purchasers effectively start off in the hole by virtue of the immediate and undisclosed reduction in investment values as a result of the Agent commission and surrender charge. By way of example, for a deferred annuity product with an initial premium of $100,000 and a 9 year surrender period and beginning 9% surrender charge, the amount available for investment is only approximately $91,000 on day one of the contract due to the surrender charge. Because of this correlation, surrender periods, charges and other penalties associated with surrender are an integral part of Defendant's deferred annuity products, which as acknowledged by California's statutory requirements, must be clearly and fully disclosed to senior citizen purchasers.

Defendant Fails to Comply with Statutory Requirements Concerning the Sale of Deferred Annuities to Senior Citizens Including Disclosure of Surrender Periods and All Penalties Associated with Surrender

30. California's legislature recognizes that senior citizens are particularly vulnerable and need additional protections relating to the sale of deferred annuities, due to the complexity, lack of flexibility and inherent illiquidity of these financial products, coupled with the diminishing capacities of the elderly. These provisions (codified at Cal. Ins. Code §785 *et seq.*) impose a duty of honesty, good faith and fair dealing for insurers when selling deferred annuity products to senior citizens, which in turn, prohibit "churning",[2] replacement and similar sales practices, and also dictate strict disclosure requirements.

31. In addition to obligations of honesty, good faith and fair dealing in annuity sales practices, because deferred annuities are complex long-term illiquid products carrying large surrender charges and their features are often misunderstood by consumers, particularly seniors, Cal. Ins. Code §§ 10127.10 and 10127.13, require insurance companies to comply with strict disclosure requirements regarding the sale of deferred annuities to seniors, including mandatory disclosures concerning surrender provisions and all associated penalties or charges.

32. The California legislature adopted Cal. Ins. Code § 10127, a disclosure statute, as part of a comprehensive statutory scheme to safeguard seniors from deceptive and overreaching conduct by insurance companies and their agents in connection with the sale of annuities. Sections 10127.10 and 10127.13 impose strict requirements mandating prominent disclosure of critical information concerning surrender penalties on the cover of deferred annuities because seniors were often

[2] Churning describes the use of deceptive sales practices to deplete the accumulated cash value from an existing life insurance policy or annuity (either by its surrender or in the case of a life insurance policy, borrowing against the policy's cash value) and applying that money to purchase a new insurance policy or annuity.

unaware of those surrender penalties due to confusing policy language and unscrupulous sales tactics of insurance agents.

33. The sponsor of Cal. Ins. Code § 10127 legislation, Senator Henry J. Mello, emphasized the need for protecting seniors from buying annuities without fully understanding the existence and operative impact of all associated surrender penalties:

> Many individuals, especially senior citizens, have lost their retirement savings because they have misunderstood their policies, either because the policy was difficult to understand or because of truly unscrupulous sales tactics.
>
> * * *
>
> Seniors often need to access their investments for health reasons, and, policies with long surrender periods or which inadequately disclose a penalty for an early surrender substantially reduce the cash value, to the detriment of the policyholder.[3]

34. The California Department of Insurance echoed Senator Mello's concerns in supporting the proposed legislation:

> ...[T]here are no adequate requirements for disclosure of penalties, such as those imposed if the policyholder surrenders the policy during the first ten years. These are usually buried on a page in the middle of the policy information and the average consumer finds it difficult to understand. Citizens, especially seniors, often need money from their investments, frequently due to catastrophic situations associated with their health...SB 1065 would go a long way in assuring that policy decisions are made knowledgeably by requiring disclosure of policy limits and surrender penalties on the cover page.[4]

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[3] Commentary of SB 1065, April 28, 1993.

[4] May 4, 1993 letter from Insurance Commissioner, John Garamendi, to Senator, Art Torres re: SB 1065. Section 10127 was "enacted because of many documented cases where the benefits under an insurance policy [which includes annuities] have either been misrepresented or misunderstood by the senior citizen." Excerpts from Senate Final History – SB 1505, Reg. Sess. & 1st Extraordinary Sess., at SP20-21 (Cal. 1994) (Letter dated May 3, 1994, from Cheryl Y. Leonard of the California Department of Insurance to Hon. Art Torres, Chair of the Senate Commission on Insurance, Claims and Corporations).

35. Sections 10127.10 and 10127.13 were enacted to protect senior citizens from documented cases of abusive practices in the sale of deferred annuities. As such, Cal. Ins. Code §§10127.10 and 10127.13 impose the mandatory requirement that annuities "shall" clearly disclose all surrender periods, charges and all associated penalties.

Violations of Cal. Ins. Code §10127.10

36. Cal. Ins. Code §10127.10 applies to annuity contracts sold in California on or after July 1, 2004, to individuals ages 60 years and older, on the date of purchase.[5] Cal. Ins. Code §10127.10(c), provides:

> Every individual life insurance policy and every individual annuity contract, other than variable contracts and modified guaranteed contracts, subject to this section, that is delivered or issued for delivery in this state shall have the following notice either printed on the cover page or policy jacket in 12-point bold print with one inch of space on all sides or printed on a sticker that is affixed to the cover page or policy jacket:
>
> "IMPORTANT
> YOU HAVE PURCHASED A LIFE INSURANCE POLICY OR ANNUITY CONTRACT. CAREFULLY REVIEW IT FOR LIMITATIONS. THIS POLICY MAY BE RETURNED WITHIN 30 DAYS FROM THE DATE YOU RECEIVED IT FOR A FULL REFUND BY RETURNING IT TO THE INSURANCE COMPANY OR AGENT WHO SOLD YOU THIS POLICY. AFTER 30 DAYS, CANCELLATION MAY RESULT IN A SUBSTANTIAL PENALTY, KNOWN AS A SURRENDER CHARGE."
>
> The phrase "after 30 days, cancellation may result in a substantial penalty, known as a surrender charge" may be deleted if the policy does not contain those charges or penalties.

37. Defendant's violation of Cal. Ins. Code §10127.10 is clear and undeniable. The statute identifies the exact disclosure language required for all

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[5] Cal. Ins. Code §10127.10(g) defines senior citizen as any individual who is 60 years of age or older on the date of purchase of the policy.

deferred annuity contracts issued in California. Specifically, the statute requires that disclosure "shall" include the required notice, which includes the identification of surrender penalties through the use of the term "surrender" charges on the policy cover page or policy jacket. Rather than simply complying with the statute's mandatory language, Defendant instead uniformly uses the term "withdrawal" rather than "surrender" throughout its deferred annuity contracts to downplay the force and clarity of the term surrender when referring to surrender periods and charges.

38. In addition, in Defendant's equity indexed contracts, such as Plaintiff Maxine Derry's Elite 90 w/MCI policies, despite carrying substantial surrender charges and penalties, do not contain any of the required Cal. Ins. Code §10127.10 disclosure language on the policy cover page or policy jacket. Defendant's deferred annuity policies therefore do not comply with Cal. Ins. Code §10127.10.

Violations of Cal. Ins. Code §10127.13

39. Cal. Ins. Code §10127.13, provides additional mandatory disclosure of surrender periods and all associated penalties of annuity products, as follows:

> All individual life insurance policies and individual annuity contracts for senior citizens that contain a surrender charge period shall either disclose the surrender period and all associated penalties in 12-point bold print on the cover sheet of the policy or disclose the location of the surrender information in bold 12-point print on the cover page of the policy, or printed on a sticker that is affixed to the cover page or to the policy jacket. The notice required by this section may appear on a cover sheet that also contains the disclosure required by subdivision (d) of Section 10127.10.

40. Defendant's deferred annuity contracts do not disclose the surrender period and all associated penalties on the cover page, nor do they disclose the location of the surrender information on the cover page or policy jacket as required by Cal. Ins. Code §10127.13. Instead, Defendant's deferred annuity contracts either do not disclose, or otherwise obscure and hide, surrender periods and associated penalty provisions by, *inter alia*, the use of misleading headings, indecipherable formulas,

confusing verbiage, inconsistent and ambiguous definitions, and "chain" provisions requiring the reader to refer from one provision to another provision, in an effort to conceal surrender penalties.

41. Defendant's deferred annuities fall into various categories of violations of § 10127.13 including: policies with cover page language that does not clearly disclose the surrender period and all associated penalties on the cover sheet or the location of the surrender information on the cover page; policies directing purchasers to a section of the policy that does not contain the required surrender information; and policies with cover page language directing purchasers to various sections of the policy through chain provisions that do not provide complete or clear disclosure of surrender information and all penalties associated with surrender. In many instances, even a complete reading of the entire policy does not reveal all surrender charges and penalties.

42. None of Defendant's deferred annuities at issue disclose the surrender period or all of the associated penalties on the policy cover sheet, as required by §10127.13. They further fail to disclose the exact location of the required surrender information on the cover page or jacket of the policy to be in compliance with the alternative disclosure method allowed by §10127.13. Instead, the cover pages tell purchasers to search through various portions of the policy including, multiple contract data pages, definitions sections, various policy provisions, tables and formulas, in order to ascertain the location and applicable surrender information and associated penalties. Rather than providing the information up front or in a single identifiable location as required by statute, the senior purchaser is required to jump back and forth across multiple pages of the policy to ferret out the various surrender provisions and penalties in order to try to understand how they operate. This piecemeal approach to Defendant's disclosure obligations is incomplete, misleading and violates §10127.13.

43. For example, with respect to Plaintiff Russell Hemen's Jackson National Bonus Max Two policy, in order to identify the surrender charge information (or to even know where to look), a senior purchaser needs to: (1) read the policy cover page which directs the policyholder to the "CONTRACT DATA PAGE"; (2) then locate page iii of the "CONTRACT DATA PAGE" section of the policy discussing "Withdrawal Charges"; (3) review the "Withdrawal Charge" provisions of the contract data page, which therein refer the policyholder to additional "Withdrawal Charge" provisions in the policy for further explanation; (4) locate the "DEFINITIONS" section of the policy; (5) go through the definitions sections and locate pertinent "Withdrawal charges" and "Withdrawal values" definitions (and in some instances locate definitions for "Excess Interest Adjustment"); (6) review and attempt to comprehend the applicable withdrawal definitions, (7) then separately locate additional "Withdrawal Provisions" sections previously referenced in the contract data page, which are located later in the policy and contain additional withdrawal information, as well as an indecipherable explanation and formula concerning the "Excess Interest Adjustment" factor (described below); and (8) then, piece all of the information together in an attempt to understand the applicable surrender information and all penalties associated with surrender. The process for the Jackson National Elite Annual Reset equity indexed annuity sold to Plaintiff Hemen and Defendant's other deferred annuity policies is substantially similar.

44. With respect to Plaintiff Maxine Derry's Jackson National Elite 90 w/MCI equity indexed policies, the policy cover page does not contain the Cal. Ins. Code §10127.10 required disclosure and the maze is even worse. The policy cover page contains a completely different disclosure from that mandated by §10127.10 and a starting point referring the policyholder to at least three different locations in the complex policy for various explanations of surrender periods, values and charges that include multiple policy sections, provisions, definitions and alternative options, which therein cross-reference the policyholder to additional sections discussing various

policy mechanics rendering it virtually, if not entirely, impossible to ascertain the applicable surrender charges, periods and all penalties associated with surrender.

45. In addition to the above, certain products such as the Bonus Max Two, have a supplemental Excess Interest Adjustment ("EIA") or Market Value Adjustment ("MVA") factor that further penalizes policyholders upon full surrender or partial surrender over the contractual penalty-free amount, which are not disclosed in compliance with Cal. Ins. Code § 10127.13.

46. Like surrender charge provisions and other penalties associated with surrender, the EIA/MVA factor is not fully or clearly disclosed on the policy cover page or policy jacket (nor is the location of the EIA/MVA factor within the contract disclosed) in compliance with Cal. Ins. Code § 10127.13, and is instead, referenced at various points in the contract through extensive chain provisions referring the policyholder from one policy provision to another. Again, even a complete reading of the entire contract does not provide clear disclosure of the nature or impact of the EIA/MVA factor applied upon surrender.

47. The multiple and confusing EIA/MVA factor provisions are also compounded by an indecipherable MVA/EIA formula that contains a hidden penalty or company "bias" that always acts as an undisclosed additional surrender penalty. Nowhere in Defendant's deferred annuities is the bias factor identified or explained. As an example, the following chart compares the surrender charge penalties set forth in Plaintiff Hemen's Bonus Max Two annuity with the actual effective surrender charge percentages once the undisclosed bias is taken into account:

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Number of Years Since Premium Payment Was Received	Surrender Charge Percentage Described in Annuities	Actual Penalty Percentage
Less than 1	9.00%	**13.26%**
Equal to 1 but less than 2	8.00%	**11.80%**
Equal to 2 but less than 3	7.00%	**10.33%**
Equal to 3 but less than 4	6.00%	**8.86%**
Equal to 4 but less than 5	5.00%	**7.39%**
Equal to 5 but less than 6	4.00%	**5.92%**
Equal to 6 but less than 7	3.00%	**4.44%**
Equal to 7 but less than 8	2.00%	**2.96%**
Equal to 8 but less than 9	1.00%	**1.48%**
Equal to 9 and later	0%	**0%**

48. Neither the policy cover page, nor the actual contract discloses the hidden penalties associated with the MVA/EIA factor and its undisclosed bias applied upon surrender, in violation of Cal. Ins. Code § 10127.13.

49. The above violations of Cal. Ins. Code §§ 10127.10 and 10127.13 therefore violate the unlawful prong of California's unfair competition law and financial elder abuse laws.

PLAINTIFFS' TRANSACTIONS

Maxine Derry

50. Plaintiff Maxine Derry, a resident of Garden Grove, California, at nearly 70 years old, following an August 2005 meeting with Jackson National appointed Agent Frank Mercuri ("Mercuri"), a "Chartered Senior Financial Planner,"[6] was sold and Defendant issued two Jackson National Elite 90 (MCI) equity indexed deferred

[6] Agent titles such as Senior Financial Planner and the like are not a recognized or licensed profession and instead, are simply a marketing gimmick designed to induce seniors' trust.

annuity policies with combined initial premiums totaling approximately $74,000.00 (Policy Nos. 007126366A and 007126367A). The Elite 90 (MCI) policy contains an undisclosed 8-9% agent commission built into the policy contract that was paid to agent Mercuri. The Elite 90 (MCI) policy imposes substantial surrender penalties for partial or full surrenders prior to expiration of a 12 year holding term. The Elite 90 (MCI) policy sold to Plaintiff Derry does not comply with Cal. Ins. Code §10127.10 and §10127.13. Plaintiff Derry cannot access her policy funds without substantial surrender charges and penalties and, as a result, Plaintiff Derry was harmed by Defendant's unlawful business practices.

Russell Hemen

51. Plaintiff Russell Hemen, a resident of Riverside, California, at age 73, was sold two Jackson National deferred annuity products by Defendant's appointed Agent Maartin J. Rossouw ("Rossouw"). Following a March 2006 meeting with Mr. Rossouw, Plaintiff Hemen was sold and Defendant subsequently issued a Jackson National Bonus Max Two fixed deferred annuity (Policy No. 1001819050) on April 12, 2006 with an initial premium of $100,316.93. The Bonus Max Two policy contains an undisclosed 8% agent commission built into the policy contract that was paid to agent Rossouw. The Bonus Max Two policy contains a 9 year surrender period beginning at 9%, thereafter decreasing 1% annually during the 9 year period. The Bonus Max Two policy also has as an additional punitive EIA/MVA factor applied upon full or partial surrender within the 9 year period. The Bonus Max Two policy sold to Plaintiff Hemen does not comply with Cal. Ins. Code §10127.10 and §10127.13. Plaintiff Hemen cannot access his policy funds without substantial surrender charges and penalties and, as a result, Plaintiff Hemen was harmed by Defendant's unlawful business practices.

52. At about the same time Mr. Hemen was sold the Bonus Max Two, he was also sold and Defendant subsequently issued an Elite Annual Reset equity indexed deferred annuity (Policy No. 1001819190) on March 29, 2006 with an initial premium

of $76,000.00. The Elite Annual Reset policy contains an undisclosed 9% agent commission built into the policy contract that was paid to agent Rossouw. The Elite Annual Reset policy contains a 12 year surrender period beginning at 10%, thereafter decreasing approximately 1% annually during the 12 year period. The Elite Annual Reset policy sold to Plaintiff Hemen does not comply with Cal. Ins. Code §10127.10 and §10127.13. Plaintiff Hemen cannot access his policy funds without substantial surrender charges and penalties and, as a result, Plaintiff Hemen was harmed by Defendant's unlawful business practices.

CLASS ACTION ALLEGATIONS

53. Plaintiffs bring this action individually and on behalf of all similarly situated persons as the Court may determine to be appropriate for class certification treatment, pursuant to F.R.C.P. 23(a) and 23(b). Plaintiffs seek to represent a California Class for claims arising under California law.

54. The proposed California Class is defined as follows:

> All California residents age 60 or older at the time of purchase and within the applicable statute of limitations, who, purchased or surrendered one or more Jackson National Life Insurance Company deferred annuity products.

55. Excluded from the Class are Defendant Jackson National and its directors, officers, predecessors, successors, affiliates, agents and employees, as well as the immediate family members of such persons.

56. Plaintiffs and the Class seek certification of claims for injunctive relief, restitution, disgorgement or other equitable relief and monetary and exemplary damages under the consumer protection and/or elder abuse statutes of California.

57. All Class members have suffered injury to their property by reason of Defendant's unlawful course of conduct in that they paid for a deferred annuity policy that was sold by Defendant in violation of California law. Senior citizens have or will be damaged as many seniors have already incurred surrender charges and penalties

and others will suffer surrender charges and penalties, as well as, other lost money or property as a result of Defendant's unlawful sales practices.

58. The Class is reasonably estimated to be in the thousands or tens of thousands and is thus so numerous that joinder of all its members is impracticable. The precise number of Class members and their addresses are unknown to Plaintiffs, but can be ascertained through Defendant's records. Class members may be notified of the pendency of this action by mailing, publication or other notice.

59. There is a well-defined community of interest in the relevant questions of law and fact affecting putative senior citizen Class members concerning violations of California consumer protection and elder abuse statutes.

60. Common questions of law and fact predominate over any individual questions affecting Class members, including, but not limited to, the following:

- Whether Defendant committed unlawful business practices in violation of Cal. Bus. & Prof. Code § 17200, *et. seq.* in the sale and issuance of deferred annuities to Plaintiffs and the Class;

- Whether Defendant failed to comply with California statutory senior citizen disclosure requirements under Cal. Ins. Code § 10127.10;

- Whether Defendant failed to comply with California statutory senior citizen disclosure requirements under Cal. Ins. Code § 10127.13;

- Whether the Class is entitled to restitution, disgorgement of ill-gotten gains, injunctive, declaratory and/or other equitable relief;

- Whether Defendant has been unjustly enriched at the expense of the Class;

- Whether Defendant committed financial elder abuse as defined in Cal. Welf. & Inst. Code § 15600 *et seq.*; and

- Whether Plaintiffs and the Class are entitled to treble damages and penalties for violations of California Welfare and Institutions Code.

61. The claims of Plaintiffs and the other Class members have a common origin and share a common basis and originate from the same unlawful conduct on the part of Defendant.

62. Plaintiffs' claims are typical of those of the absent Class members. If brought and prosecuted individually, the claims of each Class member would require proof of many of the same material and substantive facts, rely upon the same remedial theories and seek the same relief.

63. Plaintiffs will fairly and adequately protect the interests of the Class and have no interests adverse to or that directly and irrevocably conflict with the interests of other Class members. Plaintiffs are willing and prepared to serve the Court and the putative Class in a representative capacity with all of the obligations and duties material thereto.

64. Plaintiffs have retained the services of counsel who are experienced in complex class action litigation, and in particular, class actions involving insurance matters. Plaintiffs' counsel will adequately prosecute this action, and will otherwise assert, protect and fairly and adequately represent Plaintiffs and all absent Class members.

65. Class certification is appropriate under F.R.C.P. 23(b)(1), in that the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct for the parties opposing the Class. Such incompatible standards of conduct and varying adjudications on the same essential facts, proof and legal theories would also create and allow the existence of inconsistent and incompatible rights within the Class.

66. Class certification is appropriate under F.R.C.P. 23(b)(2), in that Defendant has acted or refused to act on grounds generally applicable to the Class, making final declaratory, injunctive or other relief appropriate.

67. Class certification is appropriate under F.R.C.P. 23(b)(3), in that common questions of law and fact predominate over any questions affecting only individual Class members.

68. Moreover, a class action is superior to other methods for the fair and efficient adjudication of the controversies raised in this Complaint because:

(a) individual claims by the Class members would be impracticable as the costs of pursuit would far exceed what any one Class member has at stake;

(b) little individual litigation has been commenced over the controversies alleged in this Complaint, and individual Class members are unlikely to have an interest in separately prosecuting and controlling individual actions;

(c) the concentration of litigation of these claims in one forum will achieve efficiency and promote judicial economy; and

(d) the proposed class action is manageable.

DISCOVERY RULE AND EQUITABLE TOLLING

69. Plaintiffs and other Class members did not know and could not reasonably have known through reasonable diligence, of Defendant's unlawful business practices and could not have reasonably discovered Defendant's unlawful conduct until shortly before the filing of this action.

70. Defendant's unlawful business practices are continuing in nature. There is a substantial nexus between the current illegal conduct and the misconduct prior to that time. The acts involve the same type of illicit practices and are recurring events. For the reasons alleged above, the vast majority of Class members still do not know that they have been and continue to be injured by Defendant's unlawful conduct.

71. The statute of limitation applicable to any claims that Plaintiffs or other Class members have brought or could bring as a result of the conduct alleged herein has been tolled as a result, since Plaintiffs and the Class did not and could not have discovered their causes of action until recently, thereby tolling any applicable statute of limitations. In addition, the statue of limitations period regarding the causes of

action asserted in this action were tolled as a result of the class action *Kennedy v Jackson National Life Insurance Company*, Case No. 07-cv-0371, United States District Court, Northern District California, Western Division, Judge Claudia Wilken, concluded January 31, 2011.

COUNT I
Violation of California Business & Professions Code §§17200 *et seq.*
(Against Defendant)

72. Plaintiffs and the Class repeat and reallege all allegations contained in the Complaint as if set forth separately in this Cause of Action.

73. California Business and Professions Code § 17200, prohibits, *inter alia*, any "unlawful . . . business act or practice." Defendants violated § 17200's prohibition against engaging in an unlawful act or practice by, *inter alia*, the following:

(a) violating Cal. Ins. Code §§ 10127.10 and 10127.13;

(b) violating Cal. Civ. Code §§ 1750, *et seq*.; and

(c) violating Cal. Welf. & Inst. Code §§ 15610.30 and 15657 *et seq*. (as alleged in the Second Cause of Action).

74. Plaintiffs and the Class reserve the right to allege other violations of law which constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this day.

75. Defendant aided and abetted its agents in accomplishing the unlawful acts. In doing so, Defendant acted with an awareness of their wrongdoing and realized that its conduct would substantially assist the accomplishment of the wrongful conduct.

76. As a result of Defendant's practice, Plaintiffs and the Class have suffered injury-in-fact, including but not limited to, incurring surrender charges and other penalties associated with surrender, financial losses, including access to needed funds,

unnecessary and concealed fees and penalties that Plaintiffs and Class members would not have otherwise incurred.

77. Plaintiffs and the Class seek injunctive relief barring Defendant from wrongfully collecting these impermissible penalties in the future and requiring Defendant to modify its annuity contracts to comply with the disclosure requirements of Cal. Ins. Code §§ 10127.10 and 10127.13. Unless Defendant is enjoined from continuing to engage in the unlawful business practices described above, members of the California general public will continue to be harmed.

78. Pursuant to California Business and Professions Code § 17203, Plaintiffs seek an order requiring Defendant to immediately cease such acts of unlawful and deceptive business practices and requiring them to return the full amount of money improperly collected-including, but not limited to, restitution, return of income derived from the unlawful surrender charges and associated penalties to all those who have paid them-plus interest and attorneys' fees.

COUNT II

Financial Elder Abuse, California Welfare & Institutions Code §15600 *et seq.*
(Against Defendant)

79. Plaintiffs and the Class repeat and reallege all allegations contained in the Complaint as if set forth separately in this Cause of Action.

80. Defendant's conduct constitutes financial abuse under Cal. Welf. & Inst. Code § 15657.5 *et seq.* as defined in § 15610.30.[7] Section 15610.30(a) provides in relevant part:

(a) "Financial abuse" of an elder or dependant adult occurs when a person or

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[7] Cal. Welf. Inst. Code §15610.27 defines elder as any person residing in California age 65 or older.

entity does any of the following:

> (i) Takes, secretes, appropriates, or retains real or personal property of an elder or dependant adult to a wrongful use or with intent to defraud, or both.
>
> (ii) Assists in taking, secreting, appropriating, or retaining real or personal property of an elder or dependant adult to a wrongful use or with intent to defraud, or both.

81. At all relevant times, Defendant took and/or assisted in the taking of money or property from Plaintiffs and the Class (who for purposes of this Count are all 65 or older) for their own wrongful use. Plaintiffs and other senior members of the Class trusted and relied on Defendant.

82. Defendant induced Plaintiffs and other senior members of the Class into purchasing deferred annuities.

83. By selling deferred annuities to seniors in violation of California laws, Defendant acted with an awareness of its wrongdoing and realized that its conduct would substantially assist the accomplishment of the wrongful conduct.

84. Defendant aided and abetted and assisted its Agents in accomplishing the wrongful acts.

85. Defendant's conduct was reckless and/or oppressive within the meaning of Cal. Welf. & Inst. Code §15657.5 *et seq*.

86. Under Cal. Welf. & Inst. Code §15657.5 *et seq*., Defendants are liable for damages, reasonable attorneys' fees and costs for investigating and litigating this claim.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves, the Class, and the general public, pray for judgment against Defendant as follows:

A. An order certifying this action as a class action under Rule 23 of the Federal Rules of Civil Procedures as set further herein;

B. For a temporary, preliminary and permanent order for injunctive relief
enjoining Defendant from pursuing the unlawful practices complained of above;

C. For a temporary, preliminary and permanent order for injunctive relief requiring Defendant to undertake an immediate public information campaign to inform members of the general public as to its prior practices and notifying the members of the proposed Class of the potential for restitutionary relief;

D. For an order requiring disgorgement and restitution of Defendant's ill-gotten gains and to pay restitution to Plaintiffs, the Class, and the general public all funds acquired by means of any practice declared by this Court to be unlawful;

E. For compensatory, special and general damages according to proof and as the Court deems just and proper;

F. Assuming certification of the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure, for distribution of any recovery on behalf of the general public, or the Class, via fluid recovery or *cy pres* recovery where necessary to prevent Defendant from retaining any of the profits or benefits of its wrongful conduct;

G. For punitive and exemplary damages under Cal. Welf. & Ins. Code § 15657(a); and as to counts for which they are available under the applicable law in such amount as the Court deems just and proper;

H. For treble damages and penalties under Cal. Bus. & Prof. Code § 17206.1; and Cal. Ins. Code § 789; and as to counts for which they are available under the applicable law in such amount as the Court deems just and proper;

I. For transfer of the wrongfully obtained monies and/or property under Cal. Probate Code §§ 850 *et seq*.;

J. Imposition of a constructive trust, an Order granting recessionary and injunctive relief and/or such other equitable relief, including restitution, disgorgement of ill-gotten profits and an order requiring Defendant to provide corrective notice to Class members as set forth herein and as the Court deems just and proper;

K. An appropriate claims resolution facility to administer the relief in this case;

L. For reasonable attorneys' fees and costs of investigation and litigation under, among other statutes, C.C.P. § 1021.5; Cal. Welf. & Inst. Code §§ 15657.5 *et seq*.; and Civil Code §1780(d) or the common fund doctrine;

M. For costs of lawsuit, pre-judgment, and post-judgment interest; and

N. Such other and further relief as the Court may deem necessary or appropriate.

JURY DEMAND

Plaintiffs and the Class hereby demand a trial by jury.

Dated: June 3, 2011

FINKELSTEIN & KRINSK LLP

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MAXINE DERRY and RUSSELL HEMEN, Individually, and on Behalf of Themselves and All Others Similarly Situated PLAINTIFF(S) v. JACKSON NATIONAL LIFE INSURANCE COMPANY, a Michigan corporation DEFENDANT(S).	CASE NUMBER SACV11-00343 DOC (RNBx) **SUMMONS**

TO: DEFENDANT(S): JACKSON NATIONAL LIFE INSURANCE COMPANY

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☐ complaint ☑ first amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Jeffrey R. Krinsk, whose address is 501 West Broadway, Suite 1250, San Diego, CA 92101. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: ______________________ By: ______________________
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].