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19 **UNITED STATES DISTRICT COURT**
20 **CENTRAL DISTRICT OF CALIFORNIA**
21 **WESTERN DIVISION**

22 HOWARD ROSEN, a California resident,
23 TERRI L. STAUFFER-SCHMIDT, an
24 Arizona resident, MICHAEL A. WEBBER,
25 an Illinois resident, individually and on
26 behalf of themselves and others similarly
27 situated,

28 Plaintiffs,

vs.

SECURITY BENEFIT LIFE
INSURANCE COMPANY, a Kansas
corporation,

Defendant.

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1. Restitutionary and Injunctive Relief pursuant to Cal. Bus. & Prof. Code §17200, *et seq.*
2. Rescissionary, Restitutionary and Injunctive Relief pursuant to 815 ILCS 505/10a(a)
3. Equitable or Legal Relief pursuant to Common Law Fraud

1 Plaintiffs, by and through their undersigned attorneys, bring this action on
2 behalf of themselves and others similarly situated arising out of a fraudulent scheme
3 concocted by Defendant Security Benefit Life Insurance Company (“Security
4 Benefit”). Plaintiffs allege the following on information and belief, except as to
5 those allegations that pertain to the named Plaintiffs, which are alleged on personal
6 knowledge.

7 **NATURE OF THE ACTION**

8 1. In August of 2010, Guggenheim Partners LLC acquired Security
9 Benefit, rescuing the failing insurance company from the brink of insolvency. Soon
10 thereafter, with the active assistance of an independent marketing organization
11 known as Advisors Excel, Security Benefit devised and implemented a fraudulent
12 scheme to exploit the market for equity-indexed deferred annuities (“EIAs”). EIAs
13 have traditionally featured annual account value credits linked to well-known, third-
14 party stock indices such as the Standard & Poor’s 500 or the Russell 1000. As
15 explained below, EIAs credit account values with a portion of increases in the
16 underlying index at a rate less than 100%, known as the “participation rate” or limit
17 the amount of any account value increase by an annual limit known as the “cap”
18 rate.

19 2. Security Benefit’s fraudulent scheme included the development and
20 marketing of a series of misleading and deceptive annuity products purporting to
21 provide above-market returns through purported “uncapped” 100% participation in
22 the gains in certain “proprietary” indices artificially engineered specifically for use
23 in these new annuity products (the “Synthetic Indices”). Security Benefit’s
24 marketing of “uncapped” and “100% participation” in the returns on these Synthetic
25 Indices was false and misleading without a clear statement that the Synthetic Indices
26 were in fact designed to have much lower returns than the stock indices traditionally
27 used in EIAs.
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1 3. In furtherance of this fraudulent scheme, Security Benefit sold its
2 “Secure Income Annuity” and “Total Value Annuity” products (collectively, the
3 “Annuities”) to Plaintiffs and thousands of other consumers, offering them the
4 purported ability to earn favorable positive returns by allocating some or all of their
5 account values to the Synthetic Indices that supposedly tracked the performance in
6 certain equity or commodity markets: specifically, the so-called “Morgan Stanley
7 Dynamic Allocation Index Account” (the “MSDA Index”) for the Secure Income
8 Annuity, and the so-called “Annuity Linked TV Index” (the “ALTV Index”) for the
9 Total Value Annuity.

10 4. Using uniformly misleading marketing materials and illustrations to
11 implement the scheme, Security Benefit deceptively illustrated the performance of
12 the Synthetic Indices as capable of producing double-digit returns to the purchasers
13 of a Secure Income or Total Value Annuity (in particular through the use of a
14 grossly misleading, cherry-picked “backcasting” of the indices’ represented
15 performance, as if the Synthetic Indices had existed in the past). Security Benefit
16 enhanced its depicted performance of the Synthetic Indices by contrasting their
17 illustrated performance with less-rewarding returns using “capped” non-proprietary
18 indices, such as the S&P 500 or the Russell 1000. Security Benefit did so with
19 present knowledge that the Secure Income and Total Value Annuities would not in
20 fact perform as represented given their structure and the embedded costs, risks and
21 product features of the Secure Income and Total Value Annuities.

22 5. Security Benefit further misrepresented the nature, attributes and
23 performance of the Synthetic Indices in so-called “Statements of Understanding”
24 delivered to and signed by each prospective purchaser of the Secure Income and
25 Total Value Annuities and by each insurance agent who procured the sale.

26 6. Once consumers purchased the Annuities, they were locked into them
27 by onerous surrender penalties, by bonus claw-back provisions, and by the very
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1 structure of the Synthetic Indices themselves, which were designed to credit no
2 interest until the end of fixed periods ranging from two to five years.

3 7. As Security Benefit knew, the Synthetic Indices by design would not
4 and could not perform as represented, but instead would generate virtually *zero*
5 returns over the periods in which the consumer is locked into them under the terms
6 of the Annuities.

7 8. Through this scheme, Security Benefit wrongfully induced Plaintiffs
8 and thousands of similarly situated California and Illinois residents to purchase the
9 Secure Income and Total Value Annuities through materially false and misleading
10 representations and half-truths, in contravention of the California Unfair
11 Competition Law (“UCL”) and the Illinois Consumer Fraud and Deceptive
12 Business Practices Act (“ICFA”). Alternatively, Security Benefit’s fraudulent
13 scheme constitutes common law fraud under the law of both states. Plaintiffs in this
14 action therefore seek damages, rescission, restitution and other appropriate forms
15 of equitable or injunctive relief to halt and remedy Security Benefit’s scheme to use
16 the Synthetic Indices to induce the sale of Secure Income and Total Value Annuities
17 to California and Illinois residents.

18 **THE PARTIES**

19 9. Plaintiff Howard Rosen (“Plaintiff Rosen”) is domiciled in Ventura
20 County, California, and thus a resident and citizen of the State of California.

21 10. Plaintiff Terri L. Stauffer-Schmidt (“Plaintiff Stauffer-Schmidt”) is
22 domiciled in Maricopa County, Arizona, and thus a resident and citizen of the State
23 of Arizona.

24 11. Plaintiff Michael A. Webber (“Plaintiff Webber”) is domiciled in
25 DuPage County, Illinois, and is thus a resident and citizen of the State of Illinois.

26 12. Defendant Security Benefit is a life insurance company organized
27 under Kansas law, with its principal place of business located at 1 Security Benefit
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1 Place, Topeka, Kansas, 66636. Security Benefit is thus a citizen of the State of
2 Kansas.

3 **JURISDICTION AND VENUE**

4 13. This Court has subject matter jurisdiction based on diversity of
5 citizenship under 28 U.S.C. § 1332. Plaintiffs further allege class claims on behalf
6 of two state-wide classes, each of which includes persons who are minimally
7 diverse from Security Benefit and presents aggregate claims in excess of
8 \$5,000,000. This Court accordingly has subject matter jurisdiction over this case
9 under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2).

10 14. Venue is proper in this District under 28 U.S.C. § 1391 because
11 Plaintiff Rosen resides in this District, Security Benefit maintains substantial
12 operations in this District; thousands of Class Members either reside or did business
13 with Security Benefit in this District; Security Benefit engaged in business in this
14 District; a substantial part of the events or omissions giving rise to the claims at
15 issue occurred in this District; and because Security Benefit entered into
16 transactions and received substantial profits from consumers who reside in this
17 District.

18 **COMMON ALLEGATIONS**

19 **A. Indexed Annuities**

20 15. A deferred annuity is a contract between the annuity owner and an
21 insurance company in which the owner makes an up-front payment of premiums to
22 the insurance company that are deposited into an accumulation account (the
23 “Account Value”) and left on deposit for a number of years. During this deferral
24 period, the earnings on the annuity owner’s premiums are tax-deferred.

25 16. Equity-indexed deferred annuities offer owners the option of
26 allocating the Account Value among several different indexes, theoretically
27 empowering the owner to make his or her own investment risk-reward
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1 determination. Owners of EIAs select from a limited number of investment options
2 permitting them to allocate their Account Value to: (a) an account crediting a fixed
3 interest rate not less than a modest minimum guaranteed rate; and/or (b) an account
4 crediting interest determined by changes in a designated “index” based on the prices
5 of a collection of equities, bonds, commodities or other assets.

6 17. Because deferred annuities involve a long-term investment decision
7 (in which the owner’s premiums are essentially locked up for years due to hefty
8 surrender charges and other restrictions), the represented performance of the
9 annuity contract (i.e., how much the annuity owner can expect to receive in the
10 future as a lump sum or a stream of periodic payments) is of paramount importance
11 to the consumer. To make an informed decision about deferred annuities and the
12 relative attractiveness of the annuities being sold by different insurance companies,
13 it is critically important to consumers that the issuing insurance companies fully and
14 truthfully disclose all features and risks associated with their annuities, including
15 all material information necessary for prospective purchasers to understand the
16 applicable product costs, charges, anticipated rates of return and penalties.

17 **B. The Indexed Annuity Marketplace**

18 18. Insurance companies go to great lengths to extoll the supposedly
19 exceptional performance of their annuities through a plethora of features and
20 purported benefits calculated to portray superior investment returns and future
21 account value growth. For example, although in a traditional deferred annuity
22 contract the annuity’s account value increased based only on the amount of interest
23 the company credits each year, in the mid-1990’s insurance companies began
24 selling deferred *equity-indexed* annuities, which tie account value growth to the
25 performance of an established equity index (such as the S&P 500 index or the
26 Russell 1000). This feature purportedly allows the annuity owners to share in the
27 long-term increases in the equity markets while their investment is locked into the
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1 annuity.

2 19. The link between index performance and account value was typically
3 constrained, however, by non-guaranteed limits unilaterally imposed by the
4 insurance company. Some products, for example, “capped” the credited index
5 appreciation at a maximum fixed percentage (8% for example) such that the annuity
6 account value would be credited with no more than a set percentage no matter how
7 great the given index increase. Other annuity products limited the consumer’s
8 “participation” in a given index’s performance, for example, crediting to the
9 account value only a specified percentage (65% for example) of the index’s annual
10 return. Many EIA products imposed *both* cap levels and percentage participation
11 rates on the account value’s share of the chosen index’s upside appreciation.

12 20. In short order, therefore, the “cap” levels and “participation rates”
13 associated with equity-indexed deferred annuities became key selling points as
14 insurance companies sought to entice consumers with higher cap levels and
15 participation rates. The higher the cap and participation rate, the more the annuity
16 shares in any appreciation of the index.

17 21. As EIA sales soared, insurance companies increasingly used sales
18 illustrations as a weapon to depict anticipated future performance of their respective
19 annuities. These illustrations, used as sales presentation documents, depict
20 projected future annuity values on both a “guaranteed” and a “current” basis. Such
21 illustrations, which were first introduced to promote sales of traditional and
22 universal life insurance products, unfortunately have a long and well-established
23 history as deceptive, misleading and abusive marketing tools allowing companies
24 to misrepresent and overstate the anticipated future performance of insurance
25 products.

26 22. By the mid-2000s, as interest rates declined to historically low levels,
27 insurance companies faced declining returns on their invested assets and began to
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1 reduce the current caps and participation rates on their EIAs.

2 **C. The Fraudulent Scheme to Develop and Market the Secure**
3 **Income and Total Value Annuities**

4 23. Guggenheim Partners LLC (“Guggenheim”) is a private equity
5 financial services firm with more than \$190 billion in assets under management.
6 Beginning in 2009, Guggenheim launched a campaign to acquire financially
7 strapped, vulnerable insurance companies. As part of this strategic plan,
8 Guggenheim acquired Security Benefit in July 2010.

9 24. In the years leading up to the Guggenheim purchase, Security Benefit
10 had written substantial annuity business that had put stress on its surplus, which had
11 fallen to \$420 million at year-end 2009, giving Security Benefit a very weak
12 solvency ratio (the ratio of total assets to total liabilities) of only 104.5%. In 2009,
13 Security Benefit had acquired a mutual-fund manager with \$20 billion in assets
14 under management just as asset prices plunged as a result of the financial crisis. As
15 a consequence, Security Benefit was forced to recapitalize its failing business.

16 25. Guggenheim stepped in and acquired Security Benefit in 2010 for
17 \$400 million. Guggenheim promptly demutualized Security Benefit, so that its
18 dividends would be paid to Guggenheim rather than its policyholders.

19 26. When announcing the acquisition, Guggenheim’s managing partner
20 stated that “[t]his transaction enables us to accelerate Security Benefit’s growth
21 given the marketplace’s increasing demand for robust retirement programs and
22 investment strategies. We believe that Guggenheim Partners brings resources and
23 product development capabilities that will be advantageous to Security Benefit’s
24 current and future clients.”¹

25 27. Soon after the acquisition, Guggenheim deployed Security Benefit to

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27 ¹[https://www.guggenheimpartners.com/firm/news/guggenheim-partners-](https://www.guggenheimpartners.com/firm/news/guggenheim-partners-announces-definitive-agreement)
28 [announces-definitive-agreement](https://www.guggenheimpartners.com/firm/news/guggenheim-partners-announces-definitive-agreement) (last visited on October 16, 2019).

1 generate short-term cash by designing, developing and marketing a series of EIAs
2 falsely portrayed as “uncapped” retirement products providing above-market long-
3 term returns through full participation in the performance of certain proprietary
4 indices purportedly protecting annuity owners from market volatility.

5 28. To implement this fraudulent scheme, Security Benefit partnered
6 with Advisors Excel, an independent marketing organization, to develop and roll
7 out the Secure Income Annuity in 2011. A year later, Security Benefit again
8 partnered with Advisors Excel to develop and roll out the Total Value Annuity in
9 2012. As alleged more fully below, the Secure Income Annuity and the Total Value
10 Annuity were both designed, developed and marketed by Security Benefit as part
11 of and in furtherance of the same overarching scheme.

12 29. Todd Boehly, the Chairman of Security Benefit, and Cody Foster, co-
13 founder of Advisors Excel, attended Washburn College together. Security Benefit
14 and Advisors Excel partnered to develop the Secure Income and Total Value
15 Annuities and to market both annuity products through an exclusive network of four
16 “elite” marketing organizations: Advisors Excel, Creative Marketing, Gradient
17 Financial and Impact Partnership.²

18 30. The Secure Income and Total Value Annuities are both marketed and
19 sold as retirement or investment vehicles and, consistent with that represented
20 objective, the Annuities offer prospective annuity owners the option to purchase the
21 Guaranteed Lifetime Withdrawal Benefit Rider (the “GLWB Income Rider”) and
22 other riders providing benefits for nursing home care and terminal illness
23 protection. The GLWB Income Rider, which can only be purchased at the same
24 time as the underlying Secure Income or Total Value Annuity, purports to provide

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26 ²[https://www.globenewswire.com/news-
27 release/2012/04/02/1218653/0/en/Security-Benefit-Launches-Innovative-Total-
28 Value-Annuity.html](https://www.globenewswire.com/news-release/2012/04/02/1218653/0/en/Security-Benefit-Launches-Innovative-Total-Value-Annuity.html) (last visited on October 16, 2019).

1 annuity owners with a lifetime annual income during their retirement years, while
2 imposing a rider charge that is applied as a percentage amount deducted each year
3 from the annuity's Account Value.

4 31. In addition, the Secure Income and Total Value Annuities contain
5 provisions assessing (a) an Initial Annual Spread, which is a percentage amount
6 deducted each year from the annuity's Account Value, (b) an Initial Participation
7 Rate, which is the percentage of the change in the designated index credited to the
8 Account Value at the end of a specified term, and (c) a percentage cap on interest
9 credited to whatever portion of the Account Value is allocated to the S&P 500 index
10 account.

11 32. The Secure Income and Total Value Annuities also provide for a
12 "Bonus" added to the Account Value, ranging from 8-10% of the initial premium
13 paid by the owner. A specified percentage of the Bonus is recaptured, however, if
14 the Annuity is surrendered or if withdrawals exceeding 10% of the accumulated
15 Account Value are taken during the first 10 years after the Secure Income or Total
16 Value Annuity is issued.

17 33. Security Benefit rolled out the Secure Income Annuity in March of
18 2011, describing the annuity as a long-term, low-risk product designed for
19 retirement savings:

20 "This annuity is designed for policyholders who intend to hold it for
21 the long-term and who want their interest linked to the stock market
22 without the risk of losing money in the stock market...." Some of the
23 basics of the annuity are that it can be bought by individuals up to the
24 age of 80. It can be purchased through a traditional or Roth IRA, which
works well for individuals wanting to rollover money...when they
retire or separate from service....

25 "One of the exciting features of Secure Income Annuity is the optional
26 Guaranteed Lifetime Withdrawal Benefit (GLWB) that can be selected
27 at purchase...the effect of the [GLWB] roll-up and the annual increase
28 in the lifetime withdrawal percentage working together can have a

1 significant impact on the amount of lifetime annual income the
2 policyholder can take and can help people be better prepared for their
retirement years...”

3 “Security Benefit Debuts New Fixed Index Annuity With Optional Guaranteed
4 Income for Life.”³

5 34. The Secure Income Annuity was an immediate success, quickly
6 becoming the number one selling EIA in the industry, generating more than \$7
7 billion in premium for Security Benefit. Nonetheless, Security Benefit was not
8 satisfied with this meteoric rise in the EIA marketplace.

9 35. In its haste to gain an immediate foothold in the EIA market, Security
10 Benefit had designed the Secure Income Annuity to offer a crediting option tied to
11 the MSDA, a pre-existing proprietary index developed by Morgan Stanley.
12 Recognizing that it could achieve even more aggressive represented performance
13 by developing its own synthetic index, Security Benefit enlisted the assistance of
14 Advisors Excel and EAM Partners LP to devise the ALTVI.

15 36. Insurance companies issuing EIAs do not purchase positions in the
16 indices underlying the equity-linked crediting options. Instead, the issuing company
17 establishes an “options budget” each year equal to the amount the company would
18 otherwise credit under the operative fixed interest crediting option. The company
19 then acquires options to hedge its obligation to credit interest to the equity-linked
20 account based on movements in the selected index and establishes “caps” or
21 “participation” rates based on the terms of the options purchased by the company.
22 Consequently, the costs to acquire hedging options, which are tied to the volatility
23 associated with the assets encompassed by the particular index, determine the level
24 of the established “caps” or “participation” rates. For this reason, the lower option
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26 ³[https://www.winkintel.com/2011/03/security-benefit-debuts-new-fixed-index-
27 annuity-with-optional-guaranteed-income-for-life/](https://www.winkintel.com/2011/03/security-benefit-debuts-new-fixed-index-annuity-with-optional-guaranteed-income-for-life/) (last visited on October 16,
28 2019).

1 costs associated with an index having lower volatility allows the company to offer
2 higher “caps” and “participation” rates.

3 37. As the next step in its fraudulent scheme, Security Benefit and its
4 partners developed the ALTVI as a crediting option for the new Total Value
5 Annuity designed as a successor to the Secure Income Annuity. As a mechanism
6 to illustrate even more aggressive yet unachievable projected future returns,
7 Security Benefit incorporated several design features in the ALTVI. First, Security
8 Benefit tethered the ALTVI to the “Trader Vic Index” which tracks a collection of
9 commodities and other futures and added a “volatility overlay” to reduce anticipated
10 volatility. In addition, Security Benefit designed the so-called “5-Year Annuity
11 Linked TVI Index Account” allocation option to credit interest only at the end of a
12 designated five-year period while prohibiting any re-allocation during the five-year
13 lock up period (and simultaneously imposing severe penalties on withdrawals
14 during the lock up period).

15 38. This design allowed Security Benefit to reduce its own hedging costs,
16 permitting the company to acquire cheaper options due to the reduced volatility
17 associated with the gerrymandered assets tracked by the synthetic ALTVI Index.
18 At the same time, as explained below, Security Benefit selected non-representative
19 benchmark periods during which the Trader Vic Index had reported aberrational
20 high gains in order to project future returns Security Benefit knew to be
21 unattainable.

22 39. As the next move in its ongoing scheme, Security Benefit launched the
23 Total Value Annuity in 2012, extolling the new product as a successor to the Secure
24 Income annuity designed for accumulation and retirement savings:

25 “Our Total Value Annuity targets savers with an eye toward asset
26 accumulation and we believe is a sensible part of our retirement
27 savings and income product strategy,” said Doug Wolff, President,
28 Security Benefit Life. “Our TVA extends Security Benefit’s fixed

1 index annuity product line that includes the [Secure Income Annuity]
2 and has rapidly become one of the top four selling products in the
3 industry, positioning Security Benefit as one of the fastest growing
4 fixed index annuity providers in the nation.”

5 The Total Value Annuity comes as close to fully addressing the
6 retirement challenge as any product on the market...The Total Value
7 Annuity was designed to protect retirement savings and provide
8 interest on those savings.

9 “Security Benefit Launches Innovative Total Value Annuity”⁴

10 40. As planned, Security Benefit uniformly represented to prospective
11 purchasers that, unlike other annuities, the Secure Income Annuity and the Total
12 Value Annuity would both provide contract owners with the opportunity to receive
13 ***uncapped, 100% participation*** in the Synthetic Indices. Thus, in contrast to the
14 severely capped S&P 500 index crediting option, Security Benefit presented
15 consumers with the purported opportunity to link some or all of the Account Value
16 in a Secure Income or Total Value Annuity to: (a) “uncapped,” 100% participation
17 in the MSDA Index for the Secure Income Annuity; and (b) “uncapped,” 100%
18 participation in the ALTV Index for the Total Value Annuity.

19 41. Security Benefit represents to prospective purchasers that the MSDA
20 Index and the ALTV Index are based on underlying indices reflecting changes in
21 the prices of a diversified collection of futures contracts (including equities,
22 commodities, global currencies and interest rates).

23 42. To induce sales of the Secure Income and Total Value Annuities,
24 Security Benefit prepared and disseminated to prospective purchasers uniform sales
25 illustrations and marketing materials promoting them and the Synthetic Indices. The
26 Security Benefit sales illustrations are computer-generated documents containing

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28 ⁴[https://www.globenewswire.com/news-
release/2012/04/02/1218653/0/en/Security-Benefit-Launches-Innovative-Total-
Value-Annuity.html](https://www.globenewswire.com/news-release/2012/04/02/1218653/0/en/Security-Benefit-Launches-Innovative-Total-Value-Annuity.html) (last visited on October 16, 2019).

1 columns depicting projected future Account Values for the Secure Income and Total
2 Value Annuities based on assumed allocations of the values among specified
3 interest crediting options, including allocations to the Synthetic Indices. The
4 Security Benefit marketing materials include brochures describing the purported
5 features of the Secure Income and Total Value Annuities. The marketing brochures
6 also contain side-by-side or seriatim comparisons depicting the potential future
7 Account Values of the Secure Income and Total Value Annuities based on assumed
8 allocations to the available interest crediting options. The projected future
9 performance of the equity-linked crediting options is premised on represented
10 historical returns of the applicable index. To ensure uniformity, the sales
11 illustrations and marketing brochures are all prepared by Security Benefit and
12 distributed to prospective purchasers through sales agents or brokers who use these
13 marketing materials to sell the Secure Income and Total Value Annuities.

14 43. Security Benefit's objective was to make the Secure Income and Total
15 Value Annuities appear more attractive by steering purchasers into the index
16 account options linked to the Synthetic Indices. The Security Benefit sales
17 illustrations and marketing brochures represent that the potential returns for account
18 values allocated to the "uncapped," 100% participation Synthetic Indices are
19 substantially higher than the returns on account values allocated to the "capped"
20 S&P 500 index option.

21 44. Indeed, to drive annuity owners into its own Synthetic Indices,
22 Security Benefit designed the Secure Income and Total Value Annuities to throttle
23 the illustrated performance of the S&P 500 index options with extremely low cap
24 rates of 2.5-3.5%. This paltry cap rate, which was lower than the caps and
25 participation rates being offered by other EIA issuers, was intentionally chosen by
26 Security Benefit to induce annuity owners to allocate a large percentage of their
27 account values to the Synthetic Indices (which were more lucrative for Security
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1 Benefit and less favorable to the Secure Income and Total Value Annuity owners).

2 45. The low caps and participation rates that Security Benefit imposed on
3 its S&P 500 index option, coupled with stiff surrender penalties, multi-year index
4 terms and bonus claw back penalties also served to lock annuity owners into the
5 Synthetic Indices. The Secure Income and Total Value Annuities contain a ten-year
6 surrender charge schedule with penalties as high as 12% and a corresponding ten-
7 year bonus recapture provision that claws back 100% of the purported “premium
8 bonus” for the first six contract years. Furthermore, the ALTV and MSDA Indices
9 did not mature and credit interest until the end of a specified Index Term, usually 2
10 or 5 years, meaning that the Account Values would not be credited with interest
11 based on changes in the index until the expiration of the specified Index Term.
12 Security Benefit annuity owners thus faced severe financial penalties if they
13 surrendered their Annuities and had no financially viable escape route from the SP
14 Synthetic Indices because the alternative S&P 500 option offered by Security
15 Benefit carried a significantly below-market, unfavorable cap rate.

16 46. Because the ALTV Index is used exclusively with the Total Value
17 Annuities, prospective purchasers have no pre-existing or independent knowledge
18 about the index. Therefore, any decision by an annuity owner to allocate his or her
19 Account Values to the ALTV Index necessarily results from reliance on the
20 representations and omissions made by Security Benefit in its sales illustrations,
21 marketing materials, and contract documents. The same is true for the MSDA
22 Index, an obscure proprietary index unknown to the consumers comprising Security
23 Benefit’s target market.

24 47. Security Benefit’s aggressive tactics and misleading sales scheme
25 yielded immediate financial rewards for Security Benefit and its parent,
26 Guggenheim Partners. As alleged above, after introducing the Secure Income
27 Annuity, Security Benefit rocketed from unranked on January 1, 2011, to number
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1 one in EIA sales as of December 31, 2011. And the follow-on Total Value Annuity
2 replaced the Secure Income Annuity as the number one selling product in the EIA
3 marketplace.

4 **D. Security Benefit Misrepresents the Features and Performance of**
5 **the Secure Income and Total Value Annuities**

6 1. **Misleading and Incomplete Sales Illustrations and**
7 **Marketing Brochures**

8 48. As alleged above, to induce sales prospects to purchase the Secure
9 Income and Total Value Annuities and direct their premium dollars to the Synthetic
10 Indices, Security Benefit prepares and disseminates misleading sales illustrations
11 and marketing materials depicting that the “uncapped,” 100% participation feature
12 of the Synthetic Indices will potentially generate outsized above-market returns –
13 with projected annual returns as high as 8% or higher – far exceeding the
14 comparative performance of crediting options based on “capped” indices like the
15 S&P 500.

16 49. The Security Benefit illustrations and marketing materials are
17 deceptive and materially misleading for a variety of reasons. The Synthetic Indices
18 are not established reference indices, like the S&P 500. To the contrary, they are
19 proprietary “indices” employed by Security Benefit as a mechanism to depict
20 inflated, unattainable future returns using the artifice of purported “uncapped”
21 100% participation.

22 50. To create the appearance that the ALTV Index is a legitimate
23 independent index developed by a reputable financial institution, Security Benefit
24 touts the ALTV Index as owned by The Royal Bank of Scotland. However, ALTV
25 Index is, in reality, developed by Security Benefit for exclusive use in connection
26 with the Total Value Annuities.

27 51. Moreover, Security Benefit intentionally employed the Synthetic
28 Indices as a fraudulent artifice to overstate and misrepresent the projected future

1 performance of the Secure Income and Total Value Annuities and to intentionally
2 induce prospective purchasers and owners of the Annuities to allocate their Account
3 Values to the Synthetic Indices.

4 52. To achieve the unattainably high future returns depicted in its
5 illustrations and marketing materials, Security Benefit cherry-picked both the
6 composition of the Synthetic Indices and the historical period used as the
7 benchmark to project the future illustrated values of the Secure Income and Total
8 Value Annuities. Security Benefit used such so-called “backtesting” (or
9 “backcasting”) to project future returns based on the non-representative historical
10 performance of a hypothetical collection of assets to a past period beginning years
11 *before the Synthetic Indices even came into existence.*

12 53. At the same time, though, Security Benefit intentionally selected
13 Synthetic Indices that produce near-zero returns, simultaneously thereby reducing
14 its own hedging costs. Thus, the Synthetic Indices were heavily concentrated, either
15 by origin or periodic rebalancing, in cash or cash-like commodities or assets with
16 expected returns close to zero. Security Benefit further eroded even the meager
17 expected returns by spreads deducted by the index managers from the actual annual
18 performance and structuring the Synthetic Indices as “excess return” vehicles
19 (meaning that the actual gross returns are reduced by an amount based on the risk-
20 free rate).

21 54. At the same time that Security Benefit cherry-picked the benchmark
22 reference periods to correspond with years when the index asset components
23 exhibited non-representative gains, it inconsistently assumed a 100% participation
24 rate over the entire backcast period even though the hedging costs associated with
25 such market conditions would preclude full participation in the out-sized returns.

26 55. In short, Security Benefit knowingly and falsely rigged the illustrated
27 future performance of the Secure Income Annuity and Total Value Annuity by
28

backcasting performance of the artificial, Synthetic Indices and applying unsupported assumptions – deliberately depicting future returns in its sales illustrations and marketing materials that it knew could not in fact be replicated going forward.

56. For example, to induce Plaintiff Webber to select the ALTV Index crediting option, Security Benefit provided to him a sales illustration prepared on April 22, 2014. The Security Benefit illustration depicted results for a \$535,000 premium payment allocated 75% to the ALTV Index and 25% to the S&P 500 index based on the most recent 10-year history. As the following excerpt shows, the illustration depicted the ALTV Index yielding a 38.62% return over 5 years (more than 7.7% per year) with the S&P 500 index yielding only between 0-3.25% during the same time:

TOTAL VALUE ANNUITY
HYPOTHETICAL ILLUSTRATION

Most Recent 10 years Scenario Illustrated Values*

Age Lifetime Income St: **66**

Start of Year	Primary / Secondary Attained Age	Withdrawals (1)	S&P 500® Index Acct Annual Point to Point		ALTV Index Acct 5 year Point to Point		Total Account Value (6)
			Index Int Rate (2)	Account Value (3)	Index Int Rate (4)	Account Value (5)	
1	63 / 53	\$0		\$147,125		\$441,375	\$588,500
2	64 / 54	\$0	3.25%	\$146,047	0.00%	\$441,375	\$587,422
3	65 / 55	\$0	3.00%	\$144,292	0.00%	\$441,375	\$585,667
4	66 / 56	\$29,934	3.25%	\$112,615	0.00%	\$441,375	\$553,990
5	67 / 57	\$29,934	3.25%	\$79,405	0.00%	\$441,375	\$520,780
6	68 / 58	\$29,934	0.00%	\$42,535	38.62%	\$611,856	\$654,391

57. In reality, as the following excerpt from Plaintiff Webber’s Annual Statement for 2019 shows, over its 5-year term the ALTV Index exhibited a

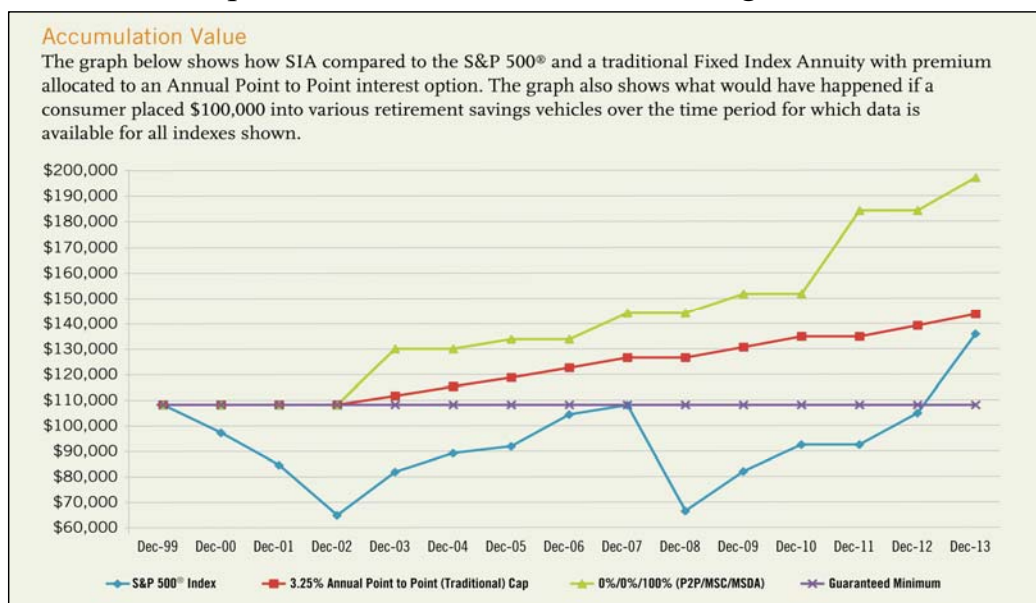
1 *negative* index change of -4.56% resulting in an Index Interest Rate credit of
 2 “0.00%.”

3 **5 Year Annuity Linked TVI Index Accounts**

Index Term	Initial Index value	6/17/2019 Index Value	Index Change through 6/17/2019	Annual Spread	Participation Rate	Index Interest Rate Before Vesting Percentage
06/17/2014 - 06/17/2019	297.00	283.47	-4.56%	0.50%	100%	0.00%

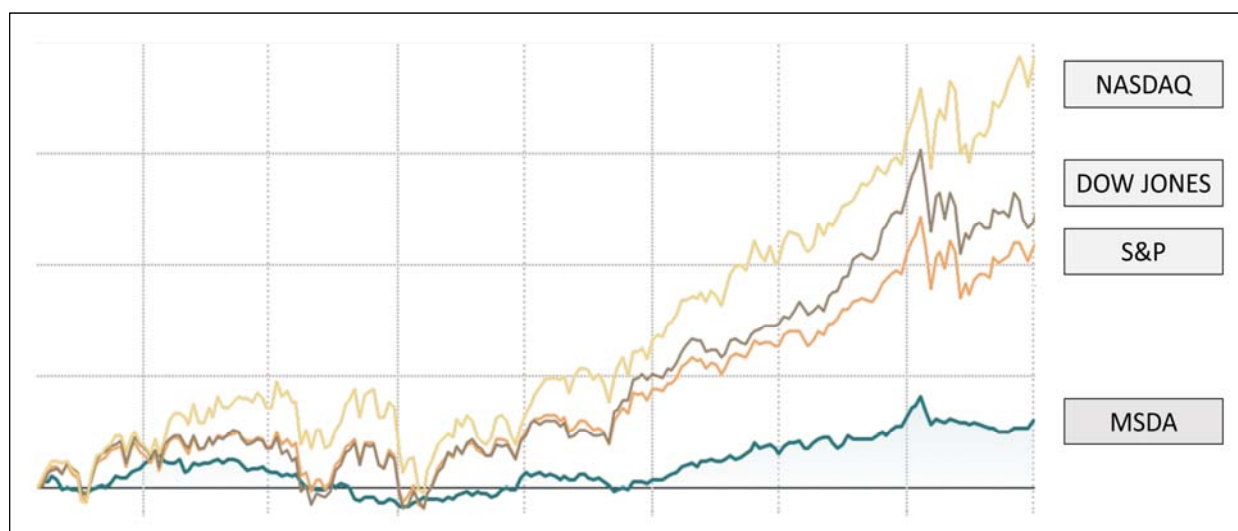
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 6
 7
 8 58. Security Benefit’s uniform marketing materials contained similar false
 9 projections of the future returns potentially achieved through allocation of annuity
 10 values to the “no cap” crediting options linked to the Synthetic Indices. These
 11 uniform marketing materials also contained misleading comparisons falsely
 12 depicting that the future returns available through the Synthetic Indices would be
 13 substantially more favorable than those achieved using established indices like the
 14 S&P 500.

15 59. For example, a Security Benefit marketing brochure from 2014
 16 contained the following graph purporting to compare the performance of a Secure
 17 Income Annuity allocated entirely to the MSDA Index to one allocated entirely to
 18 the S&P 500, for the period from December 1999 through December 2013:



1
2 60. According to this projection, a Secure Income Annuity funded with an
3 initial \$100,000 premium payment would produce a gain of \$97,000 over the 14-
4 year period (an annual return of about 7%), while the same annuity allocated to the
5 S&P 500 would have produced a gain of only \$27,867.

6 61. Again, these unreasonably aggressive backcasted returns for the
7 MSDA Index depicted in the Security Benefit marketing materials stand in sharp
8 contrast to the index's actual real-world performance. The following chart shows
9 the actual comparative performance of the MSDA Index in juxtaposition to the
10 performance of the S&P 500, Dow Jones and NASDAQ indices over the period
11 from 2014 through 2018:



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20 62. Security Benefit was able to represent the favorable returns for the
21 Synthetic Indices depicted in its misleading illustrations and marketing materials
22 only by using selectively engineered backcasting techniques to misrepresent the
23 expected future performance of the rigged Indices. Security Benefit knew that the
24 illustrated future returns for the Synthetic Indices based on its intentionally distorted
25 backcasting models was impossible to achieve because standard economic models
26 using recognized statistical methods (such as the monte carlo analysis) demonstrate
27 that the expected returns for the assets underlying the Synthetic Indices are nearly
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1 zero once the spreads and costs of the Secure Income and Total Value Annuities
2 were taken into account.

3 63. Security Benefit’s pernicious use of the spiked Synthetic Indices has
4 had a particularly deleterious impact on annuity owners who purchased the
5 Annuities with the GLWB Income Rider. Security Benefit represents that the
6 GLWB Income Rider “is designed to help address longevity risk by providing you
7 with a guaranteed stream of income you cannot outlive.”⁵ Nonetheless, according
8 to Security Benefit’s marketing materials, the GLWB Income Rider provides a
9 “Lifetime Annual Income” based on an “Income Benefit Base ... equal to your
10 purchase payments, plus the bonus on purchase payments in the first year, plus the
11 Stacking Roll-up, reduced for partial withdrawals.... The Stacking Roll-up is
12 calculated by adding together the weighted interest rates applied to your Account
13 Value with the guaranteed 4% stacked on top” applied each contract anniversary.
14 The actual Lifetime Annual Income amount is determined as a percentage of the
15 Income Benefit Base dependent on the age at which the owner begins taking the
16 Lifetime Annual Income.

17 64. There are numerous restrictions undermining the true value of the
18 GLWB Income Rider. For example, withdrawals taken before the Lifetime Annual
19 Income begins or any “Excess Withdrawals” exceeding the Lifetime Annual
20 Income Amount will reduce or potentially eliminate the entire benefit available
21 under the GLWB Income Rider. These restrictions are obscured by the confusing
22 prolix language of the GLWB Income Rider itself, which contains a plethora of
23 interrelated defined terms.

24 65. However, even if annuity owners scrupulously comply with these
25 inadequately disclosed restrictions, those who allocate a portion of their Account

26 _____
27 ⁵ <https://www.sbelitepartners.com/products/total-value-annuity.aspx> (last visited
28 on October 16, 2019).

1 Values to the Synthetic Indices will not receive the illustrated Lifetime Annual
2 Income because the Synthetic Indices are designed and administered to generate
3 near-zero returns that are, in turn, eroded by annual spreads and the Income Rider
4 charges (an initial annual fee equal to .95% of the accumulated Account Value
5 which can increase to 1.80%).

6 66. In short, Security Benefit knowingly misrepresented the performance
7 of the Secure Income and Total Value Annuity crediting options by using Synthetic
8 Indices deliberately designed to generate *near-zero* long-term returns to the annuity
9 owner, through materially false and misleading backcasted demonstrations of the
10 purported advantages of allocating all or a portion of the Account Value of the
11 Secure Income or Total Value Annuity to those crediting options.

12 67. As Security Benefit knew and anticipated, the actual returns associated
13 with the Synthetic Indices have in fact hovered near zero, lagging far below the
14 returns associated with legitimate, non-proprietary indices like the S&P 500 or the
15 Dow Jones Industrial Average.

16 68. Regulators and regulatory bodies, including the National Association
17 of Insurance Commissioners (the “NAIC”), have recognized the potentially
18 misleading nature of back-casted proprietary indices used to illustrate or promote
19 annuities. For example, the following Bulletin issued by the Iowa Insurance
20 Commissioner to insurance companies issuing annuities in Iowa highlights the very
21 abuses associated with the Annuities:

22
23 The Division has observed that some IMOs are aggressively promoting
24 indexed annuities in potentially deceptive manners.

25 First, IMOs are emphasizing high-interest lifetime withdrawal benefit
26 riders. Some of the advertising claim the withdrawal benefit rider has
27 an annual rate of return, *e.g.*, “client earns 8%.” This statement is
28 misleading if the consumer is not equally informed of the restrictions
imposed by the rider.

1 Second, the Division reviewed advertisements on annuity products in
2 which the advertisements offer “uncapped” rates of return. ...[I]f the
3 advertising is viewed by a consumer, it has the capacity to contribute to
4 inflated consumer expectations of future performance of the annuity
5 product....[I]n reality, the referenced rate is actually limited by spreads,
6 participation rates, or the design of volatility controls, significantly
7 reducing the actual return. The use of “uncapped” terminology without
8 additional disclosures of limitations is misleading....

9 Similarly, some marketing materials depict charts of recently
10 developed “proprietary indices,” which did not exist during the
11 illustrated time frame, but are back-casted and hypothetically
12 demonstrate how they would have outperformed traditional indices. ...
13 Using these hypothetical performance charts is misleading if they,
14 directly, or indirectly through subsequent representations by producers,
15 are used to project future performance and contribute to inflated
16 consumer expectations.

17 “Bulletin 14-02” issued September 15, 2014.

18 69. Similar concerns about the use of back-casted proprietary indices in
19 sales illustrations and marketing materials were voiced by New York Life, MetLife
20 and Northwestern Mutual in submissions to the NAIC:

21 [M]any market participants utilize the practice of calculating
22 hypothetical historical returns. These hypothetical look back
23 calculations take into account the past performance of the underlying
24 index, but not interest rates, volatility or option prices, which are drivers
25 of the non-guaranteed elements. In certain economic environments, the
26 hypothetical look back approach may allow maximum illustrated rates
27 that are not appropriate for general account life insurance policies and,
28 if used improperly, could be misleading to purchasers....

Statement to NAIC on “Actuarial Guidelines on IUL Illustrations” dated September
5, 2014.

70. Finance experts have acknowledged the actual and potential abuses
stemming from backtested projections, including those made by Security Benefit
using the ALTV Index, resulting from the selection of unrepresentative benchmark

1 time periods, overfitting, data mining, volatility filters and similar assumptions. *See*
2 *e.g.*, G. Deng, C. McCann and M. Yan, “Structured Products and the Mischief of
3 Self-Indexing,” *The Journal of Index Investing* (Spring 2017); O. Sarfati,
4 “Backtesting: A Practitioner’s Guide to Assessing Strategies and Avoiding
5 Pitfalls,” CBOE 2015 Risk Management Conference.

6 **E. Misleading and Incomplete Statements of Understanding**

7 71. To ensure uniformity in sales presentations, Security Benefit requires
8 that each purchaser of a Secure Income or Total Value Annuity acknowledge and
9 sign a “Statement of Understanding” (“SOU”). While Security Benefit does so as
10 a defensive maneuver, in this instance the SOU ensures the consistency of Security
11 Benefit’s misleading representations regarding the Synthetic Indices.

12 72. Each Security Benefit SOU purports to describe the nature, attributes
13 and operation of each interest crediting option available to the annuity owner,
14 including the Synthetic Indices. These descriptions are critically important because
15 the interest crediting allocation made by the owner will determine the future returns
16 creating growth in the Account Value, which is the most critical purported benefit
17 of the Secure Income or Total Value Annuity. Where the owner has purchased the
18 GLWB Income Rider, the importance of the future rate of return is magnified
19 because the Stacking Roll Up feature, which determines the amount of Lifetime
20 Annual Income available to the owner, is tied to the level of accumulated Account
21 Value.

22 73. Furthermore, the standardized disclosures describing the Synthetic
23 Indices contained in the SOU are of paramount importance because this
24 information, coupled with the illustrations projecting the future performance of the
25 Synthetic Indices and the descriptions in the marketing brochure, are as a practical
26 matter the only information about the Synthetic Indices conveyed or reasonably
27 available to prospective purchasers of the Secure Income or Total Value Annuities.

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1 74. Given the complexity of the Secure Income and Total Value Annuities,
2 which are opaque at best, incomplete instruments that obfuscate the operative
3 provisions through a maze of complicated and inter-related defined terms,
4 prospective purchasers need accurate, adequate and clearly disclosed information
5 about the Synthetic Indices presented in an understandable format explaining the
6 true costs and values associated with the interest crediting options tied to those
7 indices.

8 75. Rather than providing the information necessary for a consumer to
9 make an informed decision whether to purchase a Secure Income or Total Value
10 Annuity or to allocate funds to an account tied to performance of the Synthetic
11 Indices, the SOUs contain misleading information and fail to disclose material
12 information about the Synthetic Indices.

13 **1. The SOU for the ALTV Index**

14 76. The uniform Security Benefit SOU represents that the ALTV Index is
15 based on the Trader Vic Index (“TVI”), which is described as “a published index
16 on Bloomberg.” The SOU further represents that the TVI “was launched by the
17 Royal Bank of Scotland N.V. and EAM Partners LP” and that the Royal Bank of
18 Scotland “serves as the calculation agent for the TVI and the Annuity Linked TVI
19 Index.” This description is a misrepresentation by omission. It fails to disclose that
20 the ALTV Index in fact was developed by Security Benefit in collaboration with
21 Advisors Excel and the Innovation Design Group, who are contracted to sell the
22 Secure Income and Total Value Annuities and Alpha Artists LP which holds an
23 exclusive license to distribute the ALTV Index.

24 77. The Security Benefit SOU describes the ALTV Index as an “index that
25 is based on the Trader Vic Index Excess Return Index (TVI) modified by an index
26 cost fee and a volatility control overlay.” The ALTV Index SOU does not disclose
27 or explain that, as an excess return index, the actual returns of the TVI will be
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1 reduced not only by the 1.25% index cost spread, but also by an additional amount
2 corresponding to the risk-free rate of return. Furthermore, because the collection of
3 commodities cherry-picked for the ALTV Index already have an expected near-zero
4 return, deduction of the risk free rate has a far greater adverse impact on
5 performance than would be the case for a traditional excess return index, which
6 would have an expected gross annual return closer to 7-9% before reduction by the
7 risk free rate (of about 1%).

8 78. The Security Benefit Annuities carry multiple spreads, costs and
9 performance dampening features referenced at disparate locations throughout the
10 prolix SOU and other contract documents that operate collectively to essentially
11 offset the already below-market returns of the ALTV Index. The collective impact
12 of these spreads and charges – which include the annual spread deducted at the
13 index level, the excess return reduction, the annual spread deducted by Security
14 Benefit and the fact that interest is not credited until the end of the applicable Index
15 Term – is not meaningfully disclosed in the ALTV Index SOU or the other
16 standardized contract documents.

17 79. Similarly, the SOU fails to disclose the operation, impact or import of
18 the “volatility control overlay.” The volatility control overlay has at least two
19 effects, neither of which is disclosed or explained in the ALTV Index SOU. First,
20 the volatility control overlay operates to effectively reduce the participation rate
21 when the TVI is volatile. Because there already is a 0% floor on the credited interest
22 rate, the owner actually benefits from volatility, which translates into an effective
23 higher participation rate in higher-yielding assets. When the index is less volatile,
24 the volatility control overlay provides only minimal additional positive
25 performance.

26 80. In addition, the volatility control overlay impacts the index cost spread,
27 scaling the fee higher when volatility is lower and scaling the fee lower with
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1 increased volatility. These changes in the index cost fee tend to offset any positive
2 impact of the changes in participation rates resulting from the volatility control
3 overlay.

4 81. None of these material facts are disclosed in the SOU. To the contrary,
5 the SOU falsely states that “[t]he volatility control overlay reduces the impact of a
6 fall in price, as well as increases in the price of the TVI.” There is minimal or no
7 impact on the Total Value Annuities based on a fall in the level of the TVI because
8 the Total Value Annuities have a 0% floor on the credited interest rate. On the other
9 hand, the volatility control overlay does reduce the positive impact of an increase
10 in the value of the TVI. The ALTV SOU misleadingly suggests that the volatility
11 control overlay has a symmetrical impact on performance of the ALTV Index
12 credits when it does not.

13 82. The SOU also represents that “[b]ecause it is based on the TVI, the
14 [ALTV] Index Account provides you with the opportunity to receive index interest
15 credits in times when an index crediting option based on equity or bond markets
16 would not.” This statement is false and misleading. The imposition of a 5-year
17 term makes the ALTV Index less advantageous than an annual point-to-point stock
18 or equity index because the 0% floor applied to more traditional annual point-to-
19 point interest crediting options operates to exclude negative annual returns as the
20 index reference point is reset each year, while the 5-year term applicable to the
21 ALTV Index incorporates interim negative returns in determining the applicable
22 interest credit at the end of the Index Term. If a bond index were chosen, there is
23 no scenario under which the ALTV Index would provide an interest credit when the
24 fixed interest index would not. If an equity index were chosen, there has been no
25 time in history when an annual equity crediting method would not have generated
26 a positive interest credit over a 5-year term.

27 83. Perhaps the most glaring omission of the Security Benefit SOU is its
28

1 utter failure to disclose or describe the actual composition of the assets underlying
2 the ALTV Index. The SOU states only that the ALTV Index is based on the Trader
3 Vic Index, which “measures the movements in prices of futures contracts on
4 physical commodities, global currencies and U.S. interest rates that are publicly
5 traded on a U.S. exchange that publishes the contracts’ daily settlement prices.”
6 The SOU fails to disclose, however, that the futures contracts tracked by the Trader
7 Vic Index are concentrated in commodities and currencies having an expected near-
8 zero return and to the extent a minor portion of the indexed futures are tied to
9 interest rates, any potential return exceeding the risk-free rate is offset by the
10 spreads and charges exacted by the Royal Bank of Scotland and Security Benefit.

11 84. In fact, the SOU not only fails to disclose the foregoing critical facts,
12 it affirmatively misrepresents that the non-correlation of the ALTV Index to equity
13 and bond markets is a positive feature without disclosing that attribute is a drag on
14 future returns for the Total Value Annuities. The SOU states that “[b]ecause the
15 TVI is based on the 24 futures contracts on commodities, global currencies and U.S.
16 interest rates, the daily values of the TVI are likely to be independent from the price
17 movement of equity and bond indices.” Such non-correlation in fact results in lower
18 returns because, as alleged above, the non-correlated futures contracts are
19 concentrated in asset classes producing expected returns no higher or little higher
20 than the risk-free rate attainable through treasuries.

21 2. The SOU for the MSDA Index

22 85. The Security Benefit SOU for the MSDA Index is similarly
23 misleading. Like the description of the ALTV Index, the Security Benefit SOU
24 description of the MSDA Index fails to disclose any information concerning the
25 actual or anticipated allocation of the asset classes underlying the index. The SOU
26 states only that the MSDA Index “consists of U.S.-listed Exchange Traded Funds
27 which track four distinct asset classes: (1) Equities, (2) Bonds, (3) Short-Term
28

1 Treasuries and (4) Alternatives. The allocation among the asset classes is
2 determined by the rules-based strategy.”

3 86. The SOU fails to disclose that, over the past two decades, the MSDA
4 Index on average has allocated *only about 15% or so* of the underlying asset classes
5 to equities, with the balance allocated to short-term treasuries, bonds and
6 commodities with expected returns no higher than the risk-free rate or, respectively,
7 near zero. And once again, any meager expected future returns are then offset by
8 spreads and other charges at the index or annuity level.

9 87. In addition, just as with respect to the ALTV Index, the SOU falsely
10 misstates the true nature and impact of the volatility control overlay, because the
11 Secure Income Annuities have a 0% floor on the credited interest rate, while the
12 volatility control reduces the positive impact of an increase in the value of the
13 MSDA. The MSDA SOU misleadingly suggests that the volatility control overlay
14 has a symmetrical impact on performance of the MSDA Index credits when it does
15 not.

16 **PLAINTIFF-SPECIFIC ALLEGATIONS**

17 **A. Plaintiff Rosen**

18 88. In November 2014, Security Benefit induced Plaintiff Rosen in
19 California to purchase a Secure Income Annuity for \$53,475.65, based on the
20 represented advantages and illustrated performance of that Annuity compared to
21 other annuities and alternative investments available elsewhere, including
22 specifically the opportunity to allocate a significant portion of the account value to
23 track the MSDA Index.

24 89. Security Benefit issued the Secure Income Annuity (No. xxxxxx6286)
25 to Plaintiff Rosen on November 6, 2014.

26 90. In reliance on the represented terms of the Secure Income Annuity
27 contract, Plaintiff Rosen immediately allocated 75% of his account value (\$40,
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1 106.44) to the MSDA Index Account, which Security Benefit promoted as having
2 no cap and 100% participation. The MSDA Index Account has a two-year Index
3 Term.

4 91. As confirmed by his 2016 Annual Statement, for the two-year period
5 between November 6, 2014, and November 6, 2016, Security Benefit credited
6 Plaintiff Rosen with interest in the MSDA Index Account at the rate of 0.00%.

7 92. As confirmed by his 2018 Annual Statement, for the two-year period
8 between November 6, 2016 and November 6, 2018, Security Benefit credited
9 Plaintiff Rosen with interest in the MSDA Index Account at the rate of 1.68%.

10 93. Plaintiff Rosen's overall credited interest in the MSDA Index Account
11 was thus only \$696.30 over the first four years of the Secure Income Annuity
12 contract, an effective credited interest rate for MSDA Index Account of only 1.7%,
13 consistent with the near-zero true expected performance of the MSDA Index for the
14 reasons alleged above.

15 94. In sum, the Secure Income Annuity has not only cost Plaintiff Rosen
16 the lost use of more than \$40,000 allocated to the MSDA Index Account, but also
17 was worth less than he paid for it on the date of issuance, causing him to suffer
18 injury in fact and loss of money or property as a result of Security Benefit's
19 wrongful actions.

20 **B. Plaintiff Stauffer-Schmidt**

21 95. In April 2013, Security Benefit induced Plaintiff Stauffer-Schmidt in
22 Illinois to purchase a Total Value Annuity for \$248,657.84, based on the
23 represented advantages and illustrated performance of that annuity compared to
24 other annuities and alternative investments available elsewhere, including
25 specifically the opportunity to allocate a significant portion of the account value to
26 track the ALTV Index.

27 96. Security Benefit issued the Total Value Annuity (No. xxxxxx2358) to
28

1 Plaintiff Stauffer-Schmidt on April 15, 2013.

2 97. In reliance on the represented terms of the Total Value Annuity
3 contract, Plaintiff Stauffer-Schmidt immediately allocated 75% of her account
4 value to the ALTV Index Account (\$186,439.38), which Security Benefit promoted
5 as having no cap and 100% participation. The ALTV Index Account has a five-year
6 Index Term.

7 98. As confirmed by her 2018 Annual Statement, for the five-year period
8 between April 15, 2013, and April 15, 2018, Security Benefit credited Plaintiff
9 Stauffer-Schmidt with interest in the ALTV Index Account at the rate of 0.00%,
10 consistent with the true expected performance of the ALTV Index for the reasons
11 alleged above.

12 99. As confirmed by her 2019 Annual Statement, for the first year of her
13 new five-year Index Term she has again experienced a zero percent return in the
14 ALTV Index Account.

15 100. In sum, the Total Value Annuity has not only cost Plaintiff Stauffer-
16 Schmidt the lost use of more than \$186,000, but also was worth less than she paid
17 for it on the date of issuance, causing her to suffer injury in fact and loss of money
18 or property as a result of Security Benefit's wrongful actions

19 **C. Plaintiff Webber**

20 101. In June 2014, Security Benefit induced Plaintiff Webber in Illinois to
21 purchase two Total Value Annuities for \$491,815.81 each, based on the represented
22 advantages and illustrated performance of that annuity compared to other EIAs and
23 alternative investments available elsewhere, including specifically the opportunity
24 to allocate a significant portion of the account value to track the ALTV Index.

25 102. Security Benefit issued Total Value Annuity (No. xxxxx8728) to
26 Plaintiff Webber on June 16, 2014, and Total Value Annuity (No. xxxxx8729) to
27 Plaintiff Webber on June 17, 2014.

28

1 103. In reliance on the represented terms of the Total Value Annuity
2 contract, Plaintiff Webber allocated to the ALTV Index Account 50% of his account
3 value in No. xxxx8728 (\$245,907.91), and 50% of his account value in No.
4 xxxxx8729 (\$245,907.91), which Security Benefit promoted as having no cap and
5 100% participation. The ALTV Index Account has a five-year Index Term.

6 104. As confirmed by his 2019 Annual Statements, for the five years
7 between June 16/17, 2014 and June 16/17, 2019, Security Benefit credited Plaintiff
8 Webber in the ALTV Index Accounts interest at the rate of 0.00%, consistent with
9 the true expected performance of the ALTV Index for the reasons alleged above.

10 105. In sum, the Total Value Annuity has not only cost Plaintiff Webber the
11 lost use of more than \$500,000, but also was worth less than he paid for it on the
12 date of issuance, causing him to suffer injury in fact and loss of money or property
13 as a result of Security Benefit's wrongful actions.

14 **D. Accrual of Plaintiffs' Claims under the Discovery Rule**

15 106. As alleged above, the operation of the Secure Income and Total Value
16 Annuities and the Synthetic Indices are exceptionally complex instruments, which
17 Security Benefit described in an opaque, incomplete and misleading manner,
18 obfuscating the operative provisions through a maze of complicated and inter-
19 related defined terms.

20 107. The true nature and operation of the Secure Income and Total Value
21 Annuities and Synthetic Indices and the structure of the Annuities are so
22 complicated that no reasonable person would have known of Security Benefit's
23 wrongful conduct at the time of sale, let alone that such conduct had caused him or
24 her injury at the point of sale.

25 108. Plaintiffs did not know, and were not until retaining undersigned
26 counsel in any position to discover, the nature of Security Benefit's wrongful
27 conduct nor the harm that it worked upon them.

1 **E. Fraudulent Concealment and Equitable Tolling**

2 109. Alternatively, Security Benefit is by its own wrongful conduct – which
3 was intended to and did obfuscate the deceptive nature and operation of the
4 Synthetic Indices – precluded from asserting any limitations defense against
5 Plaintiffs under the fraudulent concealment doctrine.

6 110. Among other things, Security Benefit structured the Secure Income
7 and Total Value Annuities using the ALTV and MSDA Indices to credit interest
8 only at the end of the specified Index Term. This structure operated to conceal from
9 annuity owners that the Annuities would not perform as illustrated until the end of
10 the applicable Index Term. As observed on one industry forum, “if your client ever
11 asks how they [ALTV Index] are doing, you will never really know a good answer
12 until their 5th anniversary.”⁶

13 111. Security Benefit also intentionally restricted sale of the Secure Income
14 and Total Value Annuities to a small group of tightly controlled independent
15 marketing organizations, some of which were active participants in the fraudulent
16 scheme alleged herein, to avoid disclosure of the fraudulent and misleading
17 practices.

18 112. In furtherance of its actions to fraudulently conceal its wrongful
19 conduct, Security Benefit developed a subsequent series of interest crediting options
20 that it launched as new alternative “improved” index options to deflect any
21 suspicions when the ALTV and MSDA Indices failed to deliver the promised
22 returns.

23 113. To this day, Security Benefit continues to fraudulently conceal the
24 wrongful conduct described herein from the class members and the general public.
25 Security Benefit has refused to disclose or provide information about its practices

26 _____
27 ⁶ [https://insurance-forums.com/community/threads/annuity-linked-tvi-index-by-](https://insurance-forums.com/community/threads/annuity-linked-tvi-index-by-security-benefit.47690/)
28 [security-benefit.47690/](https://insurance-forums.com/community/threads/annuity-linked-tvi-index-by-security-benefit.47690/) (last visited on October 16, 2019).

1 in a way that Plaintiffs or the class members could have discovered. Although the
2 initial decisions to perpetrate the fraudulent course of conduct alleged herein were
3 made years ago, Security Benefit has continued its active concealment of those
4 fraudulent practices.

5 114. Security Benefit's wrongful conduct is continuing in nature. There is
6 a substantial nexus between the fraudulent conduct that has occurred within the
7 applicable limitations periods and Security Benefit's misconduct prior to that time.
8 The wrongful acts involve the same types of illicit practice and are part of a
9 recurring, continuous series of events.

10 115. The statutes of limitations applicable to the claims alleged by Plaintiffs
11 and on behalf of the class members as a result of the conduct alleged herein have
12 been tolled as a result of Security Benefit's fraudulent concealment.

13 CLASS ACTION ALLEGATIONS

14 116. This action is brought by Plaintiffs individually and on behalf of the
15 following two plaintiff classes (collectively, the "Classes") pursuant to Rule 23(a)
16 and (b)(2), *Federal Rules of Civil Procedure*.

17 The California Class:

18 All persons who owned a Secure Income or Total Value Annuity from
19 Security Benefit that was issued within the applicable limitations
20 period, who resided in California at the time the Annuity was issued,
21 and who received an illustration on or before the date of annuity
22 application.

23 The Illinois Class:

24 All persons who owned a Secure Income or Total Value Annuity from
25 Security Benefit that was issued within the applicable limitations
26 period, who resided in Illinois at the time the Annuity was issued, and
27 who received an illustration on or before the date of annuity
28 application.

1 **A. Size of Classes**

2 117. There are thousands of members in the Classes described in the
3 foregoing paragraph, and is thus so numerous that joinder of all members is
4 impracticable. The identities and addresses of the members of the Classes can be
5 readily ascertained from business records maintained by Security Benefit.

6 **B. Adequacy of Representation**

7 118. Plaintiffs are willing and prepared to serve the Court and the proposed
8 Classes in a representative capacity. Plaintiffs will fairly and adequately protect the
9 interests of the Classes and have no interest that is adverse to, or which materially
10 and irreconcilably conflicts with, the interests of the other members of the Classes.

11 119. Plaintiffs have engaged the services of legal counsel indicated below
12 who are experienced in complex class litigation and life insurance matters, will
13 adequately prosecute this action, and will assert and protect the rights of and
14 otherwise represent Plaintiffs and the other members of the putative Classes.

15 **C. The Commonality of Questions of the Law and Fact**

16 120. The claims of Plaintiffs and the members of the classes involve
17 common questions of law and fact arising out of Security Benefit's alleged
18 fraudulent scheme, including:

- 19 a. Whether Security Benefit has engaged in unlawful business practices
20 in its dealings with Plaintiffs and the other members of the Classes;
21 b. Whether Security Benefit has engaged in unfair business practices in
22 its dealings with Plaintiffs and the other members of the Classes;
23 c. Whether Security Benefit has engaged in fraudulent business
24 practices in its dealings with Plaintiffs and other members of the
25 Classes; and
26 d. Whether Plaintiffs and the other members of the Classes are entitled
27 to equitable relief against Security Benefit, and if so in what form; and
28

1 e. Whether Plaintiffs and the other members of the Classes are entitled
2 to compensatory or punitive damages, and if so in what amount.

3 **D. Typicality of the Claims or Defenses of the Class Representatives**

4 121. Plaintiffs' claims are typical of the claims and defenses of the other
5 members of the Classes.

6 **E. Rule 23(b)(2) Certification**

7 122. Under Rule 23(b)(2), a plaintiff may maintain a class where the
8 defendant has acted in a manner applicable to the entire class, making injunctive or
9 declaratory relief appropriate.

10 123. This action is appropriate as a class action pursuant to Rule 23 (b)(2)
11 because Plaintiffs seek injunctive relief and corresponding declaratory relief for the
12 benefit of the Classes. Security Benefit has acted in a manner generally applicable
13 to each member of the Classes by utilizing the standardized contract forms and same
14 standardized illustrations for all.

15 124. Security Benefit's actions, if not enjoined, will subject Plaintiffs and
16 other members of the Classes to continuing future harm and will cause irreparable
17 injuries to them, denied as they are to access to their funds under the terms of the
18 wrongfully induced Annuities. The adverse financial impact of Security Benefit's
19 unlawful actions is continuing and, unless permanently enjoined will continue to
20 irreparably injure Plaintiffs and the other members of the Classes.

21 **F. Rule 23(b)(3) Certification**

22 125. Rule 23(b)(3) allows for class actions when necessary to achieve
23 economies of time, effort, and expenses, and promote uniformity of decision as to
24 persons similarly situated, without sacrificing procedural fairness or bringing about
25 other undesirable results.

26 126. The common issues of law and fact raised in this action readily
27 predominate over any questions affecting only individual members of the Classes.
28

1 127. A class action is superior to other available methods for the fair and
2 efficient adjudication of this controversy, for the following reasons:

- 3 a. Few, if any, members of the Classes could afford to seek legal
4 redress individually for the wrongs that Security Benefit has
5 committed against them, and absent members have no
6 substantial interest in individually controlling the prosecution of
7 individual actions;
- 8 b. Once Security Benefit's liability has been adjudicated with
9 respect to the truthfulness of the uniform contract
10 representations and illustrations as to Plaintiffs, the claims of all
11 members of the Classes can be determined by the Court;
- 12 c. This action will ensure an orderly and expeditious
13 administration of the Classes' claims and foster economies of
14 time, effort, and expense, and ensure uniformity of decisions;
- 15 d. Without a class action, many members of the Classes would
16 continue to suffer injury, and Security Benefit's violations of
17 law will continue without redress while it continues to reap and
18 retain the substantial proceeds and reductions in its future
19 liabilities derived from its wrongful conduct; and
- 20 e. This action does not present any undue difficulties that would
21 impede its management by the Court as a class action.

22 128. A class action is superior to other available means for the fair and
23 efficient adjudication of this controversy. The injuries suffered by individual
24 members of the Classes are, though important to them, relatively small compared
25 to the burden and expense of individual prosecution needed to address Security
26 Benefit's conduct. Individualized litigation presents a potential for inconsistent or
27 contradictory judgments. In contrast, a class action presents far fewer management
28 difficulties; allows the hearing of claims that might otherwise go unaddressed; and
provides the benefits of single adjudication, economies of scale, and comprehensive
supervision by a single court.

1 issuing, circulating, or causing to be made, issued or circulated, any estimate,
2 illustration, circular, or statement misrepresenting the terms of any policy issued or
3 to be issued or the benefits or advantages promised thereby”), Cal. Ins. Code §
4 780 (“An insurer ... shall not cause or permit to be issued, circulated or used, any
5 statement that is known, or should have been known, to be a misrepresentation of
6 the ... terms of a policy issued by the insurer [or] ... [t]he benefits or privileges
7 promised thereunder....”), Cal. Ins. Code § 332 (“Each party to a contract of
8 insurance shall communicate to the other, in good faith, all facts within his
9 knowledge which are or which he believes to be material to the contract and as to
10 which he makes no warranty, and which the other has not the means of
11 ascertaining.”), and § 331 (“Concealment, whether intentional or unintentional,
12 entitles the injured party to rescind insurance.”), and Cal. Civ. Code 1709 (“One
13 who willfully deceives another with intent to induce him to alter his position to his
14 injury or risk, is liable for any damage which he thereby suffers.”).

15 135. Specifically with respect to his citation to Cal. Ins. Code § 790.03(a),
16 Plaintiff Rosen further alleges that the UCL violation occurred in the specific
17 context of first-party false advertising and fraudulent inducement by Security
18 Benefit, conduct that gives rise to independently actionable claims of common law
19 fraud as well as violations of Cal. Ins. Code §§ 780 and 331-32, and Cal. Civ. Code
20 § 1709. Security Benefit thus engaged in misconduct that allegedly violated §
21 790.03 in addition to obligations imposed by other statutes and the common law.

22 136. Plaintiff Rosen is informed and believes and, on that basis, alleges that
23 the “unlawful” practices alleged above are continuing in nature and are widespread
24 practices engaged in by Security Benefit.

25 • **Unfair Prong**

26 137. A claim under the UCL’s “unfair” prong is predicated on a business
27 practice that violates established public policy or is immoral, unethical, oppressive
28

1 or unscrupulous and causes injury to consumers which outweighs its benefits.

2 138. Security Benefit violated the “unfair” prong by engaging in the
3 business acts or practices alleged above by which it has been unjustly enriched.
4 Because the utility of Security Benefit’s conduct (zero) is outweighed by the gravity
5 of harm to Plaintiff Rosen and the other members of the California Class, and the
6 market, Security Benefit’s conduct is “unfair” having offended an established
7 public policy.

8 139. As alleged above, Security Benefit has engaged in immoral, unethical,
9 oppressive, and unscrupulous activities that are reasonably avoidable and
10 substantially injurious to the public at large. There were reasonably available
11 alternatives to further Security Benefit’s legitimate business interests other than the
12 conduct described herein.

13 140. Security Benefit furthermore violated UCL unfairness prongs based on
14 its violations of Cal. Ins. Code §§ 790.02 & 790.03(a), Cal. Ins. Code § 780, Cal.
15 Ins. Code §§ 331-32, and Cal. Civ. Code § 1709.

16 141. Plaintiff Rosen is informed and believes and, on that basis, alleges that
17 the “unfair” practices alleged above are continuing in nature and are widespread
18 practices engaged in by Security Benefit.

19 ● **Fraudulent Prong**

20 142. Conduct is deceptive within the meaning of the UCL’s fraudulent
21 prong when members of the public are likely to be deceived by the practice.

22 143. Security Benefit’s materially misleading use and description of the
23 Synthetic Indices in its standardized illustrations, marketing materials, and SOUs
24 used to market the Secure Income and Total Value Annuities is likely to deceive
25 members of the public, as confirmed by Bulletin 14-02 issued by the Iowa Insurance
26 Division, *supra*, Paragraph 68. Plaintiff Rosen and other similarly situated persons
27 in California have suffered economic injury as a result of the deception.
28

1 144. Reliance on Security Benefit’s uniform misrepresentations and
2 omissions concerning the description of the Synthetic Indices and the depicted
3 performance of the Secure Income or Total Value Annuity in its illustrations,
4 marketing materials, and SOUs is reasonably inferred because such information is
5 something a reasonable man would attach importance to in determining his choice
6 of action in the transaction in question.

7 145. Plaintiff Rosen is informed and believes and, on that basis, alleges that
8 the “fraudulent” practices alleged above are continuing in nature and are widespread
9 practices engaged in by Security Benefit.

10 • **UCL Standing**

11 146. Under the UCL, private standing is afforded to any person “who has
12 suffered injury in fact and has lost money or property as a result of the unfair
13 competition.” Cal. Bus. & Prof. Code § 17204. To satisfy this standing requirement,
14 a plaintiff must: (1) establish a loss or deprivation of money or property sufficient
15 to qualify as injury in fact, i.e., economic injury, and (2) show that the economic
16 injury was the result of, i.e., caused by, the unfair business practice or false
17 advertising that is the gravamen of the claim.

18 147. As alleged above, since the date of issuance the Secure Income
19 Annuity has cost Plaintiff Rosen not only the lost use of tens of thousands of dollars
20 allocated to the MSDA Index Account, but the Secure Income Annuity he
21 purchased was itself worth less than he paid for it on the date of issuance, causing
22 him to suffer economic injury in fact and loss of money or property as a result of
23 Security Benefit’s wrongful actions. Plaintiff Rosen thus has statutory standing to
24 assert his UCL claim on behalf of himself and the putative Class.

25 • **UCL Relief Sought**

26 148. Cal. Bus. & Prof. Code § 17203 authorizes courts to make: “such
27
28

1 orders or judgments ... as may be necessary to prevent the use or employment by
2 any person of any practice which constitutes unfair competition, as defined in this
3 chapter, or as may be necessary to restore to any person ... any money or property
4 ... which may have been acquired by means of such unfair competition.”

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

15 150. Plaintiff Rosen accordingly seeks restitution, rescission, and injunctive
16 relief for Security Benefit’s UCL violations, the appropriateness of which will be
17 determined by common evidence.

18 151. On behalf of the general public and the Class, Plaintiff Rosen
19 respectfully request that this Court order that Security Benefit make available to the
20 Plaintiff and other members of the California Class equitable relief in the form of
21 either:

- 22 a. rescission and restitution of all amounts wrongfully acquired,
23 obtained and collected as the result of Security Benefit’s alleged
24 misconduct, but subject, as always in the case of equitable
25 rescission, to offset for any benefits received in the interim; or
- 26 b. court-ordered payment of the “intrinsic value” relief based on the
27 estimated values of the Secure Income and Total Value Annuity

1 illustrations under different factual scenarios to calculate the impact
2 on the illustrated values of the annuity features that Plaintiffs
3 contend was misleadingly or fraudulently depicted in the
4 illustration, plus

5 c. prejudgment interest.

6 152. Cal. Bus. & Prof. Code §17203 authorizes Plaintiff Rosen to pursue
7 representative claims for injunctive relief. On behalf of himself and the California
8 Class, Plaintiff Rosen respectfully requests that the Court issue an injunction against
9 Security Benefit permanently enjoining it from continuing to engage in its alleged
10 unlawful, unfair and fraudulent conduct.

11 153. Plaintiff Rosen finally respectfully requests an award of attorneys' fees
12 as the prevailing party in his request for restitutionary and injunctive relief against
13 Security Benefit on behalf of himself and the other members of the Class, under a
14 "substantial benefit," "private attorney general," "catalyst," or "common fund"
15 theory.

16 **SECOND CAUSE OF ACTION**

17 *(Violation of the ICFA – Illinois Class)*

18 154. Plaintiffs refer to the prior paragraphs of this Complaint and
19 incorporate those paragraphs as though set forth in full in this cause of action.

20 155. The ICFA is a regulatory and remedial statute intended to protect
21 consumers against fraud, unfair methods of competition, and other unfair and
22 deceptive business practices.

23 156. The ICFA prohibits "unfair or deceptive acts or practices, including
24 but not limited to the use or employment of any deception fraud, false pretense,
25 false promise, misrepresentation or the concealment, suppression or omission of
26 any material fact, with intent that others rely upon the concealment, suppression or
27 omission of such material fact, ... in the conduct of any trade or commerce,"
28

1 regardless of whether any person has in fact been misled, deceived or damaged
2 thereby. 815 ILCS 505/2.

3 157. As alleged above, here Security Benefit made numerous statements
4 concerning the nature, operation, and expected performance of the Synthetic
5 Indices, and thus of the Annuities, in the illustrations, marketing materials and
6 SOUs which were untrue statements of existing or future material fact, which
7 Security Benefit knowingly made for the purposes of inducing the reliance of
8 Plaintiffs Stauffer-Schmidt and Webber, on which Plaintiffs did rely and were
9 damaged thereby.

10 158. And as a result of Security Benefit's fraudulent misrepresentations and
11 omissions, Plaintiffs Stauffer-Schmidt and Webber have at a minimum suffered
12 actual damages in the form of the lost use of funds in their respective Account
13 Values allocated to the ALTV Index.

14 159. Alternatively, Security Benefit's conduct at a minimum supports an
15 ICFA "unfairness" claim.

16 160. A plaintiff may predicate an ICFA unfairness claim on violations of
17 other statutes or regulations that themselves do not allow for private enforcement.

18 161. Security Benefit's deceptive practices alleged above (1) offend public
19 policy; (2) are immoral, unethical, oppressive, or unscrupulous; or (3) cause
20 substantial injury to consumers.

21 162. In addition, Security Benefit's conduct "offends public policy" in that
22 it violates both (a) the Illinois Insurance Code's prohibition against the
23 misrepresentation of policy benefits under 215 ILCS 5/149, and (b) the prohibitions
24 set forth in Illinois' enactment of the NAIC's Model Regulation on Advertisements
25 of Life Insurance and Annuities, 50 Ill. Admin. Code Part 909.

26 163. Security Benefit's breach of the foregoing Illinois Insurance Code and
27 Illinois Administrative Code provisions thus constitutes actionable "unfairness"
28

1 under the ICFA.

2 164. Section 10a(a) of the Illinois Insurance Code, 815 ILCS 505/10a(a),
3 provides that “[a]ny person who suffers actual damage as a result of a violation of
4 this Act committed by any other person may bring an action against such person.”
5 Section 10a (a) furthermore places the appropriate remedy, including injunctive
6 relief, in the discretion of the trial judge. *Id.* (“The court, in its discretion may award
7 actual economic damages or any other relief which the court deems proper;...”);
8 815 ILCS 505/10a(c) (“...in any action brought by a person under this Section, the
9 Court may grant injunctive relief where appropriate and may award, in addition to
10 the relief provided in this Section, reasonable attorney's fees and costs to the
11 prevailing party”).

12 **THIRD CAUSE OF ACTION**

13 *(Rescission and Restitutionary Relief Pursuant to Common Law Fraud*
14 *– Both Classes)*

15 165. Plaintiffs refer to the prior paragraphs of this Complaint and
16 incorporate those paragraphs as though set forth in full in this cause of action.

17 166. Under California Civil Code Section 1709, “[o]ne who willfully
18 deceives another with intent to induce him to alter his position to his injury or risk,
19 is liable for any damage which he thereby suffers.” Cal. Civ. Code § 1709. Because
20 fraud is an intentional tort, a plaintiff must plead and prove the following elements
21 of fraud: (1) misrepresentation; (2) knowledge of falsity; (3) intent [to] induce
22 reliance; (4) justifiable reliance; and (5) resulting damage.

23 167. Under Illinois common law, the elements of common law fraud are the
24 same: (1) a false statement of material fact; (2) known or believed to be false by the
25 party making it; (3) an intent to induce the other party to act; (4) action by the other
26 party in reliance on the truth of the statement; and (5) damage to the other party as
27 a result of the reliance.

28 168. As alleged above, here Security Benefit in its standardized

1 illustrations, marketing materials, and SOUs used to market the Secure Income and
2 Total Value Annuities has made false statements and omissions of material fact,
3 known or believed by Security Benefit to be false, with the intent to induce Plaintiffs
4 to purchase the Secure Income and Total Value Annuities in reliance on the truth of
5 the statements, causing damages to Plaintiffs as a result of their reliance.

6 169. Because the Synthetic Indices are used exclusively with the Annuities,
7 prospective purchasers have no pre-existing or independent knowledge about them.
8 Therefore, Plaintiffs in deciding to buy their Annuity and to allocate account values
9 to those Indices necessarily relied on the representations made by Security Benefit
10 concerning the performance of the Synthetic Indices in its sales illustrations,
11 marketing materials and contract documents.

12 170. As a result of Security Benefit's fraudulent misrepresentations and
13 omissions, Plaintiffs Rosen, Stauffer-Schmidt and Webber not only collectively lost
14 the use of hundreds of thousands of dollars in their Account Values for four to five
15 years, but they also purchased Secure Income and Total Value Annuities worth less
16 than what they paid for them on the date of issuance, causing them to suffer injury
17 in fact and loss of money or property as a result of Security Benefit's wrongful
18 actions.

19 171. As the remedy for Security Benefit's fraudulent scheme, Plaintiffs
20 seek an order giving them and each member of the Classes the option (a) to rescind
21 his or her Secure Income or Total Value Annuity, entitling them to a refund of
22 premiums paid, plus interest, subject to an offset for any interim benefits received,
23 or (b) to rescind his or her allocation of the account value to the Synthetic Indices,
24 and recover as restitutionary relief interest with respect to the amounts so allocated
25 at the rate they would have received had allocated to funds to the Annuity's fixed
26 account.

27 172. Plaintiffs reiterate that they seek rescission and restitution based on
28

1 Security Benefit's uniformly misleading Annuity contract terms and illustrations,
2 not based on the circumstances of any individual transaction.

3 173. Plaintiffs in the alternative seek compensatory and punitive damages
4 to the extent permitted under California law or Illinois law, respectively.

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs, individually and on behalf of the respective
8 Classes, pray for relief as follows as applicable for the particular cause of action
9 alleged:

10 A. An Order certifying this action to proceed on behalf of the Classes, and
11 appointing Plaintiffs and the counsel listed below to represent the Classes;

12 B. An Order awarding Plaintiffs and Class Members entitled to such relief
13 restitution and/or rescissionary and such other equitable relief as the Court deems
14 proper;

15 C. An Order enjoining Security Benefit, its representatives, and all others
16 acting with it or on its behalf from misrepresenting or concealing the expected
17 performance of the Synthetic Indices over the terms required under the Secure
18 Income and Total Value Annuities, and other appropriate injunctive relief as
19 necessary to fully remedy Security Benefit's misconduct.

20 D. An Order alternatively awarding Plaintiffs and Class Members entitled
21 to such relief compensatory, punitive, and such other relief as the Court deems
22 proper;

23 E. An Order awarding Plaintiffs' attorneys' fees, expert witness fees and
24 other costs pursuant to California and /or Illinois law, including under Code of Civil
25 Procedure § 1021.5; and
26

27
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1 F. An Order awarding such other and further relief as may be just and
2 proper, including pre-judgment and post-judgment interest on the above amounts.

3
4 **DEMAND FOR JURY TRIAL**

5 Plaintiffs demand a jury trial of all issues so triable.

6
7 Dated: October 16, 2019.

8 **BONNETT FAIRBOURN FRIEDMAN**
9 **& BALINT, PC**

10 /s/ Manfred P. Muecke

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