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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

ROBERT H. HANSEN, an individual, and on behalf of all other similarly situated persons,	Case No.: C05 04726 RS
Plaintiff,	**CLASS ACTION COMPLAINT FOR:**
v.	1. Civil RICO; 2. Elder Abuse; 3. Unlawful, Deceptive and Unfair Business Practices;
CONSECO INSURANCE COMPANY, an Illinois corporation f/k/a CONSECO ANNUITY ASSURANCE COMPANY,	4. Unlawful, Deceptive and Misleading Advertising; 5. Breach of Fiduciary Duty; 6. Aiding and Abetting of Breach of Fiduciary Duty; and 7. Unjust Enrichment and Imposition of Constructive Trust
Defendant.	**DEMAND FOR JURY TRIAL**

NATURE OF ACTION

1. This class action seeks to halt and remedy the harm caused by Conseco Insurance Company's (hereinafter "Conseco") systematic unfair, fraudulent and unlawful sales practices in connection with its solicitation, offering and sale of equity-indexed and fixed deferred annuity products (hereinafter "deferred annuities") to senior citizens (65 years of age or older) in California and elsewhere in the United States where the date that the annuity matures is beyond the annuitant's actuarial life expectancy. A prime example of the insidious nature of Conseco's sales practices can be found in defendant's annuity sale to Robert H. Hansen. Specifically, Mr. Hansen was 68 years old when Conseco sold him a "Conseco Choice" equity-indexed deferred annuity in August 2000 that by its terms would not "mature", *i.e.*, receive the full contractual principal and accrued interest benefits, until August 2027 – well beyond Mr. Hansen's actuarial life expectancy. Additionally, for the first 15 years following the purchase Mr. Hansen was entitled only withdraw minimal amounts from the annuity lest he be subject to a 20% graduated surrender charge. The expiration of this 15 year lock-up period was also beyond Mr. Hansen's actuarial life expectancy at the time he purchased the annuities.

2. Since the late 1990's, Conseco has focused and targeted its deferred annuity sales efforts towards senior citizens without complying with the insurance disclosure requirements and consumer protection laws of California and other similar state's laws and Conseco's own internal policies and procedures to ensure that these complex financial products are not sold to persons who are not suitable candidates to purchase them. Because senior citizens cannot wait for a deferred annuities long-term investment to mature and because such senior citizens often need access to their money to pay for health and long term care, a deferred annuity that does not mature until after the person's actuarial life expectancy is not an appropriate investment. During this same period, Conseco has also repeatedly failed to include in its standard form annuity contracts, sales illustrations and related marketing materials all material facts necessary to adequately inform prospective senior citizen annuity purchasers of the true risks and unsuitability of these products and has similarly failed to properly train and supervise its annuity sales force to adhere to said laws and

its own internal policies and procedures in connection with the sale of deferred annuities to senior citizens.

3. Deferred annuities are a different product than traditional annuities (also known in the insurance industry as an "immediate annuity"). An annuity is the reverse of life insurance in that life insurance pools the risk of a premature death, while annuities pool the risk of living beyond the annuitant's life expectancy. When a consumer purchases a traditional annuity, the consumer typically acquires, in exchange for an up-front payment, the right to a stream of periodic payments from the insurer that is guaranteed to continue for as long as the annuitant is alive. This type of annuity can provide comfort and protection for persons who are afraid that they may outlive their assets. To find the best deal, consumers can shop for an annuity that provides the highest benefits in comparison with the premium paid in, also taking into consideration, the fact that the financial strength of the issuing life insurance company is the sole basis of its payment guarantee. This traditional fixed annuity is known as an "immediate annuity" because annuity payments to the contract owner (or purchaser) begin immediately after tender of the premium to the insurer.

4. In contrast to an immediate annuity, a deferred annuity – the type of annuity at issue in this complaint – is an accumulation product. As a leading authority has commented:

> It is important to keep in mind that there are two different products called "annuities" offered by the insurance industry, and they have very little in common. The first such product, the deferred annuity, is basically an investment vehicle. Deferred annuities . . . have settlement options which provide a periodic income, but the settlement options are most often not elected and almost never play an important part in the purchase or selection of a particular deferred annuity.

Albert E. Easton and Timothy F. Harris, Actuarial Aspects of Individual Life Insurance and Annuity Contracts (ACTEX Publications 1999) at p. 20.

5. With a deferred annuity, the purchaser invests money and expects the value of the account to grow (depending on the performance of the investment vehicle that is chosen) prior to using the accumulated account assets during retirement. Additionally, within a deferred annuity, there are usually a limited number of investment options. Specifically, when a fixed account funds a deferred annuity, the purchaser receives from the insurer an interest rate on the amount of premiums paid into the product by the purchaser. The insurer may contractually agree to a particular

rate for a period of time, but generally adjusts the rate at its discretion. In the case of Conseco's deferred annuities, the Company generally gives the annuitant two options: to invest in a fixed account guaranteeing a minimal rate of interest return; or an account whose rate of return is dictated by a specific stock market index, *e.g.*, Dow Jones Industrial Average, Standard & Poor's Composite Stock Index, *etc.*[1]

6. A deferred annuity imposes substantial surrender charges and/or penalties upon the withdrawal of any portion of the initial investment or accrued interest within its first 10-15 years which severely limits an annuitant's access to his or her funds. This inherent lack of flexibility, coupled with the diminishing resources of the elderly, was one of the principal reasons for California's 1990 enactment of the Senior Insurance provisions in California's Insurance Code's General Regulations (Cal. Ins. Code §§ 785, *et seq.*). These provisions, as well as similar statutory enactments in and common laws of Florida, Illinois, Ohio, Michigan, New Jersey, Texas and the other states where Conseco principally markets and sells its annuity products (the "Market States"), imposed upon an insurance carrier a statutory duty of honesty, good faith and fair dealing when selling new or replacement deferred annuity products to senior citizens. In addition, they prohibit "churning" and similar unscrupulous sales practices, and also require an insurer to adhere to strict disclosure requirements in connection with such sales to ensure the *suitability* of the proposed annuity to the senior citizen's actual insurance and financial needs. (*See, e.g.*, Cal. Ins. Code §§ 785,

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[1]This latter type of deferred annuities is referred to in the insurance industry as an "equity-indexed" annuity. In 2004, equity-indexed annuities accounted for over 75% of Conseco's U.S. annuity sales. However, all deferred annuity products underwritten by Conseco provide for the repayment of the invested principal amount upon the annuity's maturity, together with any earned accumulated interest – which amount is determined by the particular interest accrual vehicle selected by the annuitant at the time of purchase, *e.g.*, fixed or equity-indexed. According to the National Association of Securities Dealers ("NASD") and well recognized industry publications, equity-indexed annuities are generally considered more risky in terms of their ability to ensure the annuitant receives more than just the return of annuity's initial principal investment upon its maturity. This is because only 75% - 90% of the premiums paid into the annuity are eligible to earn accrued interest gain, and these type of annuities also generally have higher surrender charges and longer surrender and maturity periods than deferred annuities.

789.8 and 789.10; Fla. Stat. § 627.4554(4); 720 Ill. Comp. Stat. 5/363a(5)(b); Mich. Admin. Code r. 500.849a, *et seq*.).

7. Further, the solicitation, offering and sale of annuities in this State can only be performed by licensed insurance agents in California and other Market States. *See, e.g.*, Cal. Ins. Code §1631; Fla. Stat. Ann. § 626.112; 215 Ill. Comp. Stat. Ann. 5/121; Mich. Comp. Laws § 500.1201a; N.J. Stat. § 17:22A-3(a); Ohio R. Codes Ann. § 3905.02; Tex. Ins. Code § 4001.101. The licensing requirement is intended to guarantee that consumers receive appropriate guidance in their purchases and a level of integrity and accountability by communicating with a person who is licensed to transact insurance. The licensing requirement accordingly narrows those permitted to transact insurance to professional agents and brokers – persons not only having the training and know-how to counsel prospective insureds regarding the material aspects and complex details of coverages – but who are required to refrain from misleading the vulnerable consumer. For example, insurance agents are required to disclose all facts and information within the agent's knowledge regarding a marketed insurance product which may be "material" to a prospective annuitant's decision to purchase such product.[2] An agent's neglect in disclosing or concealing such material facts entitles the injured party to rescind the insurance contract. *See, e.g.*, Cal. Ins. Code §§ 330, 331. Plaintiff specifically alleges that defendant's egregious sales practices violate the federal Racketeering Influenced Corrupt Organizations Act ("RICO"); violate the elder abuse laws, unfair competition and deceptive trade practice laws, and unfair advertising laws in those states where Conseco markets its deferred annuity products to senior citizens; breach defendant's fiduciary duties to plaintiff; comprise aiding and abetting in breach of defendant's fiduciary duties; and constitute unjust enrichment such that a constructive trust should be established.

[2] Under Cal. Ins. Code § 334, "Materiality is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due, in forming his estimates of the *disadvantages* of the proposed contract, or in making his inquiries." *Id.*, (emphasis added).

8. Throughout the relevant time period, Conseco has aggressively marketed its deferred annuity products in the domestic United States to seniors through so-called field marketing organizations ("FMOs") and, to a lesser extent, its captive sales agents.

9. In response to these insurance law requirements, in the mid 1990's Conseco developed and implemented an internal policy and practice whereby senior citizen annuitant applicants over a certain age were ineligible to purchase a single or flexible premium annuity absent the issuance of an age exemption by management level supervisors. Such an exemption was not supposed to be issued until after a comprehensive review of the senior citizen application and such ancillary information as necessary to determine the suitability of the proposed deferred annuity. This procedure would often entail an objective assessment of, *inter alia*, the applicant's annual income, tax status, source of funds for the proposed annuity, insurance objectives, investment liquidity and savings, short and long term capital requirements, Medicare eligibility status, and such other information as may be pertinent to determine if the proposed deferred annuity product was truly "suitable" for the applicant's needs.

10. However, due to increased competitive and internal financial pressures, the later primarily caused by increasing losses from sister companies affiliates engaged in offering and selling financial, major medical and long term health care insurance services and products to the public, in early 2000 Conseco was forced to revamp the structuring of its sales efforts in order to boost annuity sales which concomitantly resulted in the Company's systematic failure to adhere to its statutory obligations and its own internal policies and practices when determining whether or not to issue an age exemption for a proposed deferred annuity sale to a senior citizen. As a result, the Company could no longer ensure that its annuity sales agents actually understood the workings and nuances of Conseco's complex deferred annuity products and thus, by default, ensured that such agents would not be able to fully communicate all material information regarding Conseco's annuity products to prospective customers during sales presentations.

11. Instead, the agents were instructed not to deviate from the limited information presented in the Company's standard form annuity contracts, and uniform pre-printed sales illustrations and marketing materials when making a sales presentation to prospective customers.

Agents were also instructed not to conduct the level of in depth client interview necessary to gather and obtain the types of information crucial for a management level supervisor to make an objectively informed, good faith determination of whether to issue an age exemption for a proposed annuity sale to a senior citizen. Rather, deferred annuity contracts with extended maturity dates and surrender periods were systematically issued to senior citizens in nearly every instance and without regard to their suitability for the senior applicant's insurance and financial needs.

12. Thus, during the relevant time period, and even currently, Conseco conducted no objective review or otherwise made a reasonable good faith effort to verify the suitability of its deferred annuity products for a senior citizen even those that should require an age exemption. During this period, Conseco did not even have a requirement for its managerial level employees issuing age exemptions to speak to the potential policyholder prior to issuing such an exemption. Conseco's conduct was, and remains, unreasonable due to the absence of any due diligence by the Company that the sales agent disclosed all pertinent material information to the senior about the annuity product.

13. Lost in the Company's all consuming zeal to maximize its profits were the interests of its senior citizen annuity purchasers who time after time were sold overpriced deferred annuities which Conseco knew (or should have known) would not mature until well beyond their actuarial life expectancy and, therefore, were not suitable for their financial and insurance needs.

14. By this Complaint, plaintiff Hansen, on behalf of himself and all other similarly affected senior citizen purchasers of defendant's deferred annuity products, seek an order enjoining Conseco from, among other things, selling a deferred annuity to senior citizens without first determining its suitability for the prospective purchaser and/or from selling deferred annuities that do not mature until after the prospective purchaser's actuarial life expectancy. Plaintiff also seeks treble damages for violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C., §§ 1961, *et seq.*, as well as claims for violation of the elder abuse statutes and unfair competition laws of California and the Market States in accordance with Business and Professions Code section 17200, *et seq.*, on behalf of all affected, together with such monetary and punitive damages, statutory damages, restitution, injunctive and other equitable relief as may be appropriate to redress

the defendant's wrongful conduct in marketing and selling senior citizens annuity products that are inappropriate, unsuitable and detrimental to persons in their age group, often by means of the improper replacement of existing annuities and/or life insurance policies.

JURISDICTION AND VENUE

15. This Court has jurisdiction over this removed action pursuant to the Class Action Fairness Act based upon defendant's claim of complete diversity of citizenship of the named parties. 28 U.S.C., §§ 1332, 1446 and 1453(b). In addition, pursuant to this Complaint, plaintiff asserted a claim against the defendant for violation of RICO thereby also giving this Court federal question jurisdiction. 18 U.S.C., § 1964; 28 U.S.C., § 1331.

16. Plaintiff further alleges, upon information and belief, that less than one-third of all class members reside in the State of California and the cumulative amount in controversy for the class exceeds $5,000,000.[3]

17. Venue is proper in this district pursuant to 28 U.S.C., § 1391 and 18 U.S.C., § 1965 of RICO in that many of the acts and transactions giving rise to the violations of federal and state law complained of herein occurred in this district and because the defendant:

a. works or does business itself or through an agent in this district; and/or

b. is licensed or registered in this district.

18. In connection with the acts, conduct and other wrongs complained of herein, defendant, directly or indirectly, used the means and instrumentalities of interstate commerce and the United States mails.

PARTIES

19. Plaintiff Robert H. Hansen is, and at all times mentioned herein was, a resident and citizen of the State of California, County of Santa Clara, and over 65 years of age.

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[3] According to Conseco's A.M. Best Co. reports and its parent company's (Conseco, Inc.) Form 10-K's issued over the past 4 years, on average the geographic direct premium distribution for the Company's products has roughly been: California (21.5%); Florida (8.7%); Illinois (6.2%); Ohio (5.4%); New Jersey (5.2%); Texas (5%) and other jurisdictions (48%).

20. Defendant Conseco Insurance Company ("Conseco") is, and at all relevant times herein was, a stock insurance corporation and a wholly owned subsidiary of Conseco, Inc., a corporation whose stock is publicly traded on the New York Stock Exchange under the symbol "CON". Founded in 1951, and originally incorporated as American Christian Life Insurance Company, Conseco is currently organized and existing under and by virtue of the laws of the State of Illinois and is authorized to transact and, in fact, transacting the business of insurance in this State and within this judicial district. Prior to July 2004, defendant was known as Conseco Annuity Assurance Company. Conseco currently maintains its offices at 222 Merchandise Mart Plaza, Chicago, Illinois 60654, with its executive offices maintained within its parent holding company's corporate offices at 11815 North Pennsylvania Street, Carmel, Indiana 46032.

21. Over 76% of Conseco's annual direct premiums are derived from its domestic (U.S.) sales of the Company's fixed deferred and equity-indexed annuity products. During the relevant time period Conseco marketed and sold its deferred annuity products primarily through FMOs, many of whom employed purported financial and estate planning advisors who engaged in trust mill activities in addition to the insurance sales agents authorized and appointed by Conseco to sell its deferred annuity products.[4] Some of the larger FMOs which have conducted business on behalf of Conseco in California and other Market States include, among others: Estate Planners of America, Inc.; FSD Financial & Insurance Services; National Marketing Alliance; Fairlane Financial Corp.; First Financial Center, Ltd.; Mature Benefits Store Insurance and Financial Services; National Brokers Alliance; AHA Financial Group; North Star Resource Group; Pinnacle Financial and Insurance Services; Retirement Plus Insurance Services; Retirement Wealth & Insurance Marketing; Seniors Choice Financial and Insurance Services; and Silver Star Financial & Insurance Services.

[4] Trust mills typically use both licensed and unlicensed representatives, and often operate in conjunction with attorneys or attorney reference services in order to give the operation the appearance of legitimacy. After the living trust and related estate planning documents have been sold, a representative, usually a licensed agent, again misrepresenting his or her identity and purpose, attempts to sell an annuity to the client as part of their estate planning program. Clients characteristically perceive the agent as their legal advisor or estate planner and not as an insurance agent.

22. While the FMOs recruit and hire individual sales agents and brokers, each agent and broker enters into a separate written agency agreement with Conseco and the defendant is responsible for their formal appointment as the Company's licensed insurance agents in California and other states in which Conseco conducts business. Conseco nonetheless is ultimately is responsible for their training regarding the characteristics, attributes and limitations of the Company's annuity products and providing adequate supervision of its agents' sales activities.

23. Conseco also creates and disseminates the sales brochures, contract illustrations and specimen annuity contracts that its FMO sales force used in marketing and selling the Company's deferred annuity products. The Company also administers the various "incentive programs" which it uses to motivate its agents' sales activities. Unbeknownst to Mr. Hansen and other members of the class, Conseco and its principal FMOs often offered such incentives as free vacations and other sales promotions in addition to the any agent commissions and persistency bonuses to bolster its deferred annuity sales. Mr. Hansen and the class were thus unaware of the nature and extent of the potential and actual conflicts of interest between Conseco and its agents, and senior citizen annuitants.

24. At all times mentioned in the causes of action alleged herein, each and every FMO was an agent and/or employee of each and every other FMO and defendant Conseco. In doing the things alleged in the causes of action stated herein, each and every FMO and their respective officers and employees were acting within the course and scope of this agency or employment and was acting with the consent, permission and authorization of each of the remaining FMOs and defendant Conseco. All actions of each FMO and their respective officers, employees and agents as alleged in the causes of action stated herein were ratified and approved by every other FMO and defendant Conseco or its officers or managing agents. Whenever this complaint references acts of any FMO or defendant, such allegation shall be deemed to mean the act of those FMOs and the defendant named in the particular cause of action and each of them acting, individually, jointly, and severally.

25. According to A.M. Best Company reports, over the last nine (9) years, Conseco has collected over $5.9 billion in premiums from the marketing and sale of its deferred annuity products to persons in California and in elsewhere in the United States. Of that annuitant group, a substantial

number were senior citizens when they purchased their Conseco deferred annuity that had a maturity date beyond their actuarial life expectancy at the time of sale. Likewise, senior citizens are being forced to suffer surrender charges on their deferred annuities while living on a fixed incomes and with little future earning capacity.

DEFENDANT'S TRUST MILL AND FINANCIAL PLANNING DEFERRED ANNUITY SALES SCHEME

26. During the relevant time period, Conseco's deferred annuity marketing and sales efforts were primarily undertaken by its FMO network, as opposed to the Company's career sale agent force. Among the many FMOs that defendant has employed are Estate Preservation, Inc. ("ESI"), Family First Advanced Estate Planning, and Gentry Group, Inc. a.k.a. "Addison Insurance Marketing, Inc." and "The Addison Group" which are notorious trust mill operators. Plaintiff hereby reserves the right to amend these pleadings to include ESI, Gentry Group Inc. and other unnamed FMO trust mill operators as their relationship with Conseco becomes clearer. These contracted sales organizations are required to strictly adhere to the sales procedures and protocols dictated by the Conseco, which include using only the standard annuity marketing materials, illustrations and form contracts created and authorized by the Company, and refraining from deviating from the Company's sales presentation scripts.

27. For at least the last decade, Conseco increasingly steered their annuity marketing and sales efforts towards the senior market because of the billions of dollars in assets maintained by seniors. Further, seniors are generally susceptible to defendants' deceptive and misleading sales practices which prey on their fears of risky and unsecured investments.

28. Conseco's formula for its successful annuity sales program primarily consists of a simple 2 step process. First, agents of the Company's FMOs and/or their trust mill and financial planning affiliates are carefully trained to approach prospective senior citizen annuitants under the guise of offering to provide low-cost estate and/or financial planning services, including the preparation of a living trust. Second, once they have prepared the seniors' living trust and obtained their confidence and trust, the sales agents encourage them to fund their trusts with Conseco deferred annuities.

29. Training begins immediately upon the agents' employment with the Company's FMOs. Agents are taught techniques for selling living trusts (either an original trust, a restatement of an existing trust or a "completion" of an existing trust) and other estate and/or financial planning services to seniors, including, *inter alia*:

a. To misrepresent themselves as estate and financial planning experts offering free or low cost in-home consultations to senior citizens purportedly to educate them about protecting their rights, estate and financial assets. Agents do not disclose to senior citizens that they are not attorneys, have no legal training, are not experts in estate or financial planning, are not versed in matters of "advanced" estate planning, "professional" or financial services, or that they are agents with the mission of selling annuities;

b. To engage in the unauthorized practice of law by offering legal opinions on the purported benefits and advantages of living trusts and other estate planning products and financial services to persuade senior citizens to purchase these products and services;

c. To illegally solicit senior citizens to purchase estate and financial planning services;

d. To provide senior citizens with standardized marketing materials that misrepresent the benefits and advantages of living trusts, exaggerate the costs associated with a probated estate and misrepresent the nature and extent of a probate proceeding;

e. To use the free in-home estate and financial planning consultations to access confidential financial information from which they can identify senior citizens with available assets to purchase Conseco's deferred annuities; and

f. To conceal that they are sharing fees with lawyers and that most of the fees are not for legal services but for solicitation services related to the sale of defendant's annuities.

30. Conseco's FMOs arm their sales agents with standardized forms designed to elicit financial and other information necessary for the preparation of legal documents. In the process of helping the senior citizens complete the forms, defendant's FMO agents work towards gaining the senior's trust and confidence while simultaneously determining whether the senior citizen has available assets to purchase Conseco deferred products. The agents are specifically trained to identify all assets and list them in standardized documents.

33. After the agents complete the standardized forms, they are forwarded to an attorney for finalization. The agents do not disclose that an attorney will do minimal work, if any, on the trust and will receive 20% or less of the fee.

34. When delivering the trust documents, agents are trained to use standardized sales presentations designed to mislead senior citizens regarding the purported benefits and advantages of annuities versus other forms of investments. For example, the standardized sales presentations and materials:

a. Conceal load-commissions and other costs and misrepresent that in the event of a medical emergency or death, the Company's FMOs will always be there to offer assistance to the senior citizen and his family - regardless of how far into the future this event may take place;

b. Frighten senior citizens into believing their other investments, including money in banks, are not safe;

c. Misrepresent that money placed into annuities provides "guaranteed" investment returns and "lifetime income" and is relatively safer than money in banks or the stock market, and that draw unfair analogies of the relative investment risks;

d. Falsely represent that annuities will enable them to qualify for Medi-Cal (or other similar state Medicaid programs) should they suffer a long term illness that could waste assets and "enjoy favorable treatment as an 'unavailable asset'" under Medicare/Medi-Cal programs; and

e. Falsely describe surrender penalties without disclosing all surrender charges.

35. These representations are untrue and deceptive because they fail to disclose the high commissions and other surrender charges that remain in effect for the first 10-15 years of the annuity, that the annuity will not mature until after the actuarial life expectancy of the annuitant, and that annuities are not exempt from the criteria used by governmental agencies to determine eligibility for government-sponsored senior assistance programs such as Medicare.

36. Conseco's annuity contracts obscure and hide penalty provisions by, *inter alia*, the use of indistinguishable text characteristics, confusing verbiage, ambiguous definitions, and "chain" provisions requiring the reader to refer from one provision to another provision in a concerted effort to conceal these penalties.

37. Adding to the egregious nature of defendant's conduct is that sales agents from the Company's FMO trust mill affliates represent themselves to prospective senior citizen annuitants as being completely independent from Conseco FMOs and career sales agents when just the opposite is true. Regardless of which FMO or brokerage firm they are employed by, all sales agents are instructed that to avoid immediate termination and/or forfeiture of sales commissions they are not to deviate from the limited information presented in the Company's standard form annuity contracts, uniform pre-printed sales illustrations, and marketing materials when making sales presentations. Agents also are instructed not to conduct the in depth client interview necessary to obtain the information crucial for a management level supervisor to make an objectively informed, good faith determination of whether a deferred annuity should be issued to a senior citizen. Indeed, Conseco does not even require management to speak to the potential senior citizen annuitant prior to issuing the annuity. Rather, annuities are systematically issued in nearly each and every instance and

without regard to the actual suitability of the annuity for the senior citizen applicant's insurance and financial needs.

38. Because senior citizens will not live to see the return on such a long-term investment and often need access to their money to pay for health care and nursing homes, a deferred annuity is simply not a suitable investment.

CONSECO'S CHURNING SCHEME

39. By this action, plaintiff also seek redress for defendant's improper and systematic "churning" of existing senior citizen life insurance and/or annuity policyholders through the Company's usage of deceptive standard form, pre-printed sales illustrations and similar written sales materials which were designed to mislead prospective annuitants into believing that the product had been carefully designed to meet the financial and insurance needs of and, therefore, suitable for the senior citizens when, in fact, they were not. Similarly, the standard for sales materials and accompanying annuity materials also were likely to and did, in fact, deceive senior citizens into believing that the Company's sale force had been competently trained and that Conseco had in place adequate policies and procedures to ensure that the Company's deferred annuity products were suitable for the prospective annuitant when, in fact, they had not. Lastly, the Company's practice and policy that its sales agents closely follow if not parrot the same limited information contained in the Company's standard-form written annuity contracts, illustrations and sales materials when making an annuity sales presentation similarly ensured conformity with Conseco's carefully scripted sales scheme designed to lull senior citizens into believing that these inherently unsuitable annuities met their insurance and financial needs.

40. The term "churning" is commonly used in the insurance annuity industry to describe the use of deceptive 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), or sale of other assets (such as mutual funds) and to apply that money to purchase a new Conseco deferred annuity. These practices result in: (a) a substantial financial detriment to the policyholder; (b) a significant financial benefit to the sales agent in the form of a large commission on the first year premium and thereafter; and (c) a sales "load" or other

administrative charge being paid to the insurer, and are prohibited under the laws of California law and the other Market States. *See, e.g.*, Cal. Ins. Code §§781 and 10509.8; Fla. Stat. §626.9541(1)(l) and (aa); Mich Comp. Laws Ann. § 550.1496; and Ill. Admin. Code tit. 50, § 2005.101. Churning is sometimes known and referred to as "replacement," "twisting" or "piggybacking."[5]

41. Conseco did not inform senior citizens that by replacing or borrowing against their existing life insurance policies or annuities to purchase new or additional deferred annuities they would lose substantial cash values, pay substantial surrender charges and pay new and significant commission charges. Through its churning activities, the defendant was able to strip or deplete the cash values from the annuitant's existing life insurance policies and/or annuities to finance the purchase of a new Conseco deferred annuity. Moreover, to the extent the earlier policy or annuity had been purchased from defendant (or its affiliates), Conseco also collected either substantial surrender charges or interest on policy loans secured by the policy's underlying cash values.

42. To promote and facilitate their churning scheme, defendant furnished sales agents employed by the Company's FMOs with information about defendant's existing senior citizen customers, including the cash value available in their already existing life insurance policies and annuities. Using a deceptive and misleading specimen annuity contract, illustration(s) and related pre-printed sales materials supplied by defendant, agents targeted those policyholders/annuitants with substantial accumulated cash values in their existing policies and annuities, and recommended that they acquire a new or additional annuity that would provide additional benefits or other purported improvements over their existing policy or annuity. However, the agents did not disclose, and the standardized marketing materials failed to include, adequate disclosures of the *prima facie* unsuitability of the annuity.

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[5]"Twisting" is normally used in the insurance industry to refer to a situation where the cash value is stripped from an existing policy or annuity issued by another company. The term "piggybacking" is normally used in the insurance industry to refer to the situation where the cash value is stripped from a life insurance policy or annuity and used to acquire another policy/annuity issued by the same company. Insurance companies sometimes euphemistically refer to some or all of these practices as "financed life insurance."

43. The sale of deferred annuity products to senior citizens based upon the uniformly deceptive specimen contracts, illustrations and related sales materials was an enormous marketing success for defendant. Conseco received tens if not hundreds of millions of dollars in additional annuity premium income as a result of its churning practices. And, defendant's FMOs and their respective sales agents, received millions of dollars in additional commissions from the sales of these inherently unsuitable products based upon uniformly deceptive sales practices. In addition, defendant's improper churning activities provided Conseco with a large source of additional revenue and profit by turning the accumulated cash value in existing life insurance policies and annuities into new deferred annuity premiums.

MR. HANSEN'S DEFERRED ANNUITY PURCHASE

44. At all times relevant to this action, Mr. Robert H. Hansen was over 65 years of age.

45. In or about March 2000, Robert C. Zehner, a duly appointed F&G sales agent met with Mr. Hansen and his spouse, Eileen J. Hansen, ostensibly for the purpose of providing financial advice on connection with the Hansen's estate planning. During this meeting Mr. Zehner never inquired about or sought information concerning plaintiff's financial or insurance advice necessary to determine whether Conseco's deferred annuity products were suitable for Mr. Hansen's needs. Instead, the agent's focus was ascertaining the degree and extent of Mr. Hansen's pre-existing deferred annuity issued by Security Life Insurance Company ("Security Life") and the Hansen's other liquid assets that could be used to purchase a new Conseco deferred annuity.

46. At the conclusion of the meeting, the sales agent recommended and induced Mr. Hansen to surrender his existing Security Life deferred annuity and use its net proceeds to purchase a $108,194.24 single premium "Conseco Choice" equity-indexed Flexible Premium Deferred and Fixed Annuity issued by Conseco in August 2000 under certificate no. CC002509.

47. At the time of the solicitation and sale of the Conseco annuity, Mr. Zehner, in addition to being a licensed and appointed agent of Conseco, operated an insurance trust mill which targeted senior citizens for unsuitable deferred annuity sales.

48. At no time during the meeting did Conseco's sales agent disclose to the Hansens that the deferred annuity had a maturity date of August 22, 2027, and thus would not mature and begin

to distribute the full contracted benefits to plaintiff until long after his actuarial life expectancy. Agent Zehner also did not disclose that the Conseco annuity imposed high surrender charges (20% graduated over the first 15 years of the annuity) and that Zehner was receiving substantial commissions from Conseco as a result of plaintiff Hansen's deferred annuity purchase. The agent also did not explain or disclose to the Hansens the negative financial and investment consequences associated with the surrender of plaintiff's Security Life deferred annuity, the net proceeds of which were used to purchase the Conseco annuity product.

49. Plaintiff Hansen was harmed by his purchase of the Conseco deferred annuity because it was an unsuitable financial product in light of the maturity date and surrender charges as known to Conseco at the time it approved Plaintiff Hansen's application. In addition to a maturity date of 2027, the Conseco annuity provided that Plaintiff Hansen would only be permitted minimal access to the principal investment for the first 15 years of the annuity unless he paid substantial surrender charges to Conseco.

50. Aside from the minimal guaranteed first year interest (3%) on 75% of the $108,194.24 in premiums deposited into annuity's opening account, the only benefit from Plaintiff Hansen's transaction accrued to Conseco and its sales agent who collected premiums, fees, and commissions from the sale of the annuity which required Plaintiff Hansen to relinquish any rights to the money paid into the Conseco deferred annuity.

51. Due to his age and other factors, including without limitation, the concealment and other misconduct by defendant and its sales agents, including agent Zehner, plaintiff did not discover until 2004 that the Conseco deferred annuity products recommended and sold to him were wholly unsuitable for his insurance and financial needs. At such time, Plaintiff Hansen terminated his Conseco annuity and was assessed a substantial surrender charge by the defendant which damaged plaintiff.

52. Despite exercising reasonable diligence, plaintiff and class members could not discover, and were prevented from discovering, Conseco's wrongdoing. The uniform marketing materials prepared, approved and disseminated by Conseco to plaintiff and class members contained insufficient, if any, information or disclosure regarding the true characteristics, attributes and

limitations of Conseco's deferred annuity products. Conseco's marketing materials failed to disclose, among other things, that:

a. The interest crediting assumptions used by Conseco on its fixed annuities were based on: inflated scales, values, and rates; unrealistic expense and surrender rate assumptions; and underlying interest rate and investment income projections that had no reasonable basis in fact;

b. The crediting rates on its equity-indexed annuities were inconsistent with Conseco's own internal forecasts, business plans, estimates, analyses and/or projections of investment returns and expense assumptions;

c. Conseco had determined that it would have to reduce its inflated interest crediting rates on its fixed deferred annuities to narrow the sizeable negative gap between its illustrated rates and its actual investment earnings;

d. The agent would earn substantial commissions as a result of the transaction which would diminish the cash value otherwise available to the annuitant;

e. Agents were failing to provide detailed disclosures required by state law whenever a deferred annuity product was being replaced;

f. Agents were failing to determine and provide detailed disclosures required by state law regarding the effect of the annuity on the annuitant's eligibility to receive Medicare and other governmental health care benefits and aid;

g. The Company was not adhering to its internal policies and procedures regarding the determination and issuance of age exceptions;

h. The transaction exposed the annuitant to numerous undisclosed risks, including tax risks; and

i. The Company and its agents failed to disclosed and concealed that the purchase of the deferred annuity was unsuitable for the annuitant's financial, investment and insurance needs.

53. Without disclosure of the foregoing material facts and information, the uniform marketing materials prepared, approved and disseminated by Conseco were inherently false, misleading and deceptive and not subject to discovery by plaintiff and class members.

CLASS ACTION ALLEGATIONS

54. Plaintiff Hansen brings this action on behalf of himself and all persons in the Market States, or such states as the Court may determine to be appropriate for class certification treatment, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b). The class of persons which plaintiff seeks to represent is defined as:

> All persons who within the applicable statute of limitations of the date of the commencement of this action, and while 65 years of age or older, purchased one or more Conseco Insurance Company deferred annuities either directly, or through the surrender (in whole or part) of an existing permanent life insurance policy or annuity, or by borrowing against an existing permanent life insurance policy, which annuity had a maturity date beyond the annuitant's actuarial life expectancy.

Excluded from the class are the defendant, any parent, subsidiary or affiliate of the defendant, any entity in which the defendant has a controlling interest, and the respective officers, directors, employees, agents, legal representatives, heirs, predecessors, successors, and assigns of such excluded persons or entities.

55. This class seeks certification of claims for damages pursuant to 18 U.S.C. §1962(d). The class also seeks certification of claims for injunctive relief, restitution, disgorgement and monetary and exemplary damages under the consumer protection and elder abuse statutes of California and similar statutory enactments of the Market States.

56. The class of annuitants is so numerous that joinder of all members individually, in one action or otherwise, would be impractical. On information and belief, the number of persons qualifying for class membership exceeds 100,000 persons and that the vast majority of those annuitants can be readily identified through defendant's records. Therefore, class notice easily can be mailed to all class members in the event the class is certified by this Court.

57. Judicial determination of the common legal and factual issues essential to this case would be far more efficient and economical than piecemeal individual determinations.

58. This action involves questions of law and fact common to plaintiff and all members of the class involving violations of RICO, state consumer protection and elder abuse statutory enactments which predominate over any claims affecting individual members of the class. Such common question of fact and law predominate over individual issues and include:

a. Whether defendant deployed a scheme or artifice to deceive and engaged in a common course of business conduct which deceived or misled plaintiff Hansen and members of the class into purchasing a deferred annuity with a maturity date beyond their actuarial life expectancy at the time of sale;

b. Whether defendant failed to disclose material information concerning suitability, impact of and detriments from using some or all of the cash value of an existing life insurance policy or annuity to purchase a new Conseco deferred annuity by means of a lapse, surrender or withdrawal/partial surrender of a life insurance policy or annuity, or a life insurance policy loan;

c. Whether defendant churned or twisted members of the class in connection with their purchase of the Company's deferred annuities;

d. Whether defendant developed, encouraged and engaged in a scheme designed to sell deferred annuities to its existing policyholders and annuitants through the concealment of material facts;

f. Whether defendant utilized a common scheme employing common standardized misleading marketing materials and other deceptive sales practices in order to sell unsuitable deferred annuities to senior citizens;

g. Whether defendant breached their implied duty of good faith and fair dealing with plaintiff Hansen and members of the class or otherwise engaged in unfair, fraudulent or wrongful business practices during the relevant time period in connection with the marketing and sale of their deferred annuity products to senior citizens;

h. Whether the plaintiff Hansen and members of the class are entitled to damages, specific performance, injunctive relief, restitution, disgorgement or other equitable relief from the defendant; and

i. Whether plaintiff Hansen and members of the class have sustained damages as a result of defendant's wrongful conduct and, if so, what is the proper measure of such damages.

59. The amount of restitution and damages awardable to plaintiff Hansen and each class member can easily be determined from the computer records and the computer data possessed by the defendant.

60. There is no need for any manual computation of these amounts because, among other things, the precise amount of money unreasonably, unlawfully, unfairly and wrongfully taken from plaintiff Hansen and each class member can be computed through the data processing system possessed by defendant.

61. There is no plain, speedy or adequate remedy other than by maintenance of this class action because each member of the class is a senior citizen and their respective damages are relatively small making it economically infeasible for class members to pursue their remedies individually.

62. Further, a class action is superior to other available methods for the fair and efficient adjudication of the controversies herein in that: (a) individual claims by plaintiff Hansen or class members are impractical as the costs of pursuit far exceed what plaintiff Hansen or any one class member has at stake; (b) as a result, although some class actions have been filed, there has been very little individual litigation over the controversies herein, and individual members of the class have no interest in prosecuting and controlling separate actions; (c) it is desirable to concentrate litigation of the claims herein in this forum; and (d) the proposed class action is manageable.

63. Judicial determination of the common legal and factual issues essential to this case would be far more efficient and economical as a class action than in piecemeal individual determinations. The prosecution of separate actions by individual class members, even if theoretically possible, would create a risk of inconsistent or varying adjudications with respect to individual class members against defendant and would establish impractical standards of conduct for defendant.

64. The claims of plaintiff Hansen are typical claims of the members of the class of deferred annuity policyholders. Plaintiff Hansen is a member of the class of victims described herein. Plaintiff Hansen purchased and currently owns a Conseco deferred annuity based upon the deceptive and wrongful sales practices described in this Complaint.

65. The named plaintiff in this action will fairly and adequately act to protect the interests of all members of the class, the named plaintiff has retained experienced counsel in this area of the law.

66. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to different class members, that would establish incompatible standards of conduct for defendant.

67. Conseco has acted on grounds generally applicable to the class as stated above, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

CONSPIRACY/AIDING & ABETTING ALLEGATIONS

68. Conseco did not engaged in the above described wrongful acts and practices alone. Instead, it acted as part of a common scheme and conspiracy with the FMOs and insurance trust mills it owns, operates and/or controls, and unnamed co-conspirators including, but not limited to, those entities referred to in ¶¶ 21 and 26, *supra*, and the current and former officers and sales agents of those FMOs and insurance trust mills who agreed to market and sell Conseco's unsuitable deferred annuities to senior citizens.

69. Conseco and each member of the conspiracy, with knowledge and intent, agreed to the overall objective of the conspiracy. They also agreed to, and actually committed, the above

alleged acts of fraud and unlawful conduct with the goal of depriving plaintiff Hansen and other class members of their money and property in connection with the sale of unsuitable deferred annuities.

70. Indeed, for the fraudulent deferred annuity marketing and sales scheme described above to be successful, Conseco and each of the other members of the conspiracy had to agree to enact and utilize the same devices and fraudulent tactics against the plaintiff Hansen and other and class members.

71. Numerous common facts and similar activities evidences the existence of a conspiracy among the defendant, its FMOs, insurance trust mills and other sellers of the defendant's deferred annuities, including, *inter alia*: (a) senior citizens are intentionally targeted for the marketing and sale of deferred annuities with maturity dates beyond their actuarial life expectancy; (b) deferred annuity sales presentations are commonly made by agents of the FMOs and insurance trust mills owned, operated and/or controlled by Conseco, in conjunction with a so-called "estate planning services" and/or "financial planning services" sales pitch (including but not limited to those referred to in ¶¶ 21 and 26, *supra*); (c) the defendant's own internal deferred annuity senior citizen age exemption protocols and procedures are deliberately disregarded; (d) existing policyholders with large accumulated cash values are churned into defendant's deferred annuity products; and (e) the lavish incentives that the defendant offers its annuity sales force.

72. Within the applicable statute(s) of limitations, the conspiracy was conducted through and implemented by: (a) defendant's sharing of its policyholder lists with FMOs and insurance trust mills for the purpose of generating churned annuity sales; (b) the defendant's development of uniformly deceptive and misleading sales materials, illustrations and scripted sales presentations which were disseminated through its sales force; (c) defendant's use of agents to promote low-cost estate and financial planning services as means to facilitate deferred annuity sales to senior citizens; (d) defendant's direction to their sales force to refrain from collecting information concerning a prospective senior citizen's suitability for Conseco's deferred annuity products; and (e) the defendant's utter disregard of the Company's internal deferred annuity age exemption protocols and procedures.

RICO ALLEGATIONS

A. The Conseco Annuity Enterprise

73. Plaintiff Hansen and class members are each "persons" within the meaning of 18 U.S.C. 1961(3), and each of them has sustained injury to their business or property as a result of the acts and the conduct of the defendant described herein.

74. Based upon plaintiff's current knowledge, the following group of individuals associated in fact (which plaintiff refer to as the "Conseco Annuity Enterprise" ("CAE")) is responsible for the marketing, solicitation and sale of various types of immediate and deferred Conseco annuity products to members of the general public which include, as a subpart thereof, senior citizens — and constitutes an "enterprise" as that term is defined in 18 U.S.C. §1961(4): (a) Conseco who underwrites and issues the annuities; and (b) the FMOs and insurance trust mills (and their respective officers and sales agents) that Conseco has contractually engaged for the purpose of assisting, perfecting and furthering its wrongful scheme to market and sell the Company's unsuitable deferred annuity products to senior citizens.

75. The CAE is an ongoing organization which engages in, and whose activities affect, interstate commerce.

76. While the defendant participates in, and its FMOs and insurance trust mill are members and part of the CAE, they also have an existence separate and distinct from the enterprise, and each of these entities are "persons" as defined by 18 U.S.C. 1961(3).

77. To successfully market and sell unsuitable deferred annuities to senior citizens in the manner set forth above, Conseco required a systematic means to control the substantive information provided to prospective purchasers at the point of sale, including concealing the inherent unsuitability of an investment vehicle that in all likelihood will not mature until long after the senior citizen purchaser has died. The CAE provides Conseco with a system and the ability, and their control of and participation in it is necessary for the successful operation of its scheme. The defendant controls and operates the CAE by:

a. Designing and issuing deferred annuity products with extended maturity dates, high surrender charges and steep commissions for sale to senior citizens;

b. Developing itself, and through its FMOs and insurance trust mills owned, operated and/or controlled by Conseco, programs for "low-cost" senior citizen estate and/or financial planning services to be performed by its FMOs and insurance trust mills (including those referred to in ¶¶ 21 and 26, *supra*), as a means to facilitate the sale of defendant's unsuitable deferred annuity products to senior citizens, often including misrepresenting themselves as "paralegals," "estate planners" or "financial planners or advisors" to gain entry to seniors' homes and to learn their confidential financial information otherwise unavailable to them as "insurance agents;"

c. Developing uniform marketing materials, standardized annuity contracts and scripted sales presentations including but not limited to those materials developed at annual conventions and in agent training programs which focus on how to target seniors and other high pressure sales techniques, all of which extol the purported safety of deferred annuities for purchase by senior citizens while concealing their true unsuitability for use by the Company's sales force;

d. Developing by themselves, and through the FMOs and insurance trust mills owned and/or controlled by Conseco, uniform sales techniques to "churn" senior citizens into purchasing deferred annuities from the defendant, for example by recommending that instead of receiving low returns on CDs, the senior may wish to transfer their money into an annuity without disclosing its associated penalties;

e. Directing and controlling the Company's sales force's strict adherence to and use of uniform and standardized sales materials, techniques and presentations developed and authorized by Conseco to market and sell unsuitable deferred annuities to senior citizens, frequently within 90 days of the date of the trust sold via the "estate planning" services;

f. Developing and implementing a comprehensive sales incentive program whereby the defendant tracked and measured the success of its FMO and insurance trust mill sales force's deferred annuity sales and lavishly rewarded top sales producers with cash bonuses, exotic vacations and other substantial sales perks, and by paying high commission costs to independent agents for steering business to Conseco, costs passed on to the annuitant and factored into the underwriting criteria;

g. Accepting applications for, and issuing deferred annuity products to, senior citizens even though the maturity dates for such products were beyond the actuarial life expectancy of the annuitant and, thus, were inherently unsuitable investments; and

h. Imposing, causing to be imposed and/or collecting improper annuity charges from plaintiff Hansen and other class members upon their surrender of all or part of their annuity and/or in the event the annuitant dies within the annuity's surrender period.

78. As set forth above, the CAE has an ascertainable structure separate and apart from the pattern of racketeering activity in which the defendant engages. For example, the CAE operations include the marketing, solicitation and sale of various types of Conseco annuity products to persons under age 65, as well as senior citizens. In addition to the unsuitable deferred annuities at issue, the products include immediate annuities that enable the annuitant to receive income distributions immediately upon purchase, as well as deferred annuities with maturity dates within the actuarial life expectancy of the annuitant. Notwithstanding the availability of annuity products that are suitable for purchase by senior citizens, defendant has exerted control and dominance over

the operations of CAE for the purpose of furthering its unlawful scheme of targeting senior citizens specifically for the marketing and sale of unsuitable deferred annuity products.

B. Predicate Acts

79. Section 1961(1)(B) of RICO provides that "racketeering activity" includes any act indictable under 18 U.S.C. §1341 (relating to mail fraud) and 18 U.S.C. §1343 (relating to wire fraud). As set forth below, Conseco has and continues to engage in conduct violating each of these laws to effectuate its scheme.

80. In addition, to effectuate their scheme, defendant and each of its FMOs and insurance trust mills sought to and did aid and abet the others in violating the above laws within the meaning of 18 U.S.C. §2. As a result, their conduct is indictable under 18 U.S.C. §§1341 and 1343 on this additional basis.

C. Violations of 18 U.S.C. 1341 and 1343

81. For the purpose of executing and/or attempting to execute the above-described scheme to market and sell unsuitable deferred annuities to senior citizens by means of false pretenses, representations or promises, the defendant, in violation of 18 U.S.C. §1341, placed in post offices and/or in authorized repositories matter and things to be sent or delivered by the Postal Service, caused matter and things to be delivered by commercial interstate carriers, and received matter and things from the United States Postal Service or commercial interstate carriers, including, but not limited to, deferred annuity marketing brochures, performance illustrations, applications, contracts, sales presentation scripts, training manuals and video tapes, correspondence, annuitant leads lists, premium and commission payments, reports, data, summaries, statements, and other materials relating to the marketing and sale of Conseco's deferred annuity products.

82. For the purpose of executing and/or attempting to execute the above-described scheme to defraud or obtain money by means of false pretenses, representations or promises, the defendant, also in violation of 18 U.S.C. § 1343, transmitted and received by wire, matter and things, which include, but are not limited to, annuitant applications, sales presentation scripts, correspondence, annuitant leads lists, premium and commission payments, reports, data, summaries, oral and written statements, faxes, and other deferred annuity materials.

83. The matters and things sent by defendant via the Postal Service, commercial carrier, wire or other interstate electronic media as identified above include, *inter alia*

a. False and fraudulent representations that defendant's deferred annuity products are safe and suitable for purchase by senior citizens;

b. Material omissions of fact concealing that defendant would and did use the fraudulent and unlawful sales techniques and presentations and the deceptive and misleading sales materials and annuity contracts described above to solicit and induce Plaintiff Hansen and other members of the class into purchasing defendant's unsuitable deferred annuities, either as new stand alone purchases or through the surrender (in whole or part) of an existing permanent life insurance policy or annuity, or by borrowing against an existing permanent life insurance policy;

c. False and deceptive representations concerning the purported "independence" of the FMOs marketing and selling the defendant's deferred annuities to senior citizens when, in fact, many of those entities, are secretly owned, operated and controlled by Conseco; and

d. Material omissions of fact that the sales agents employed by the defendant's FMOs are required (and highly incentivized) to adhere to Conseco's scripted sales materials and thus are not providing prospective annuitants with "independent" estate and financial planning services or insurance advice as represented.

84. The defendant's misrepresentations, acts of concealment and failures to disclose were knowing and intentional, and made for the purpose of deceiving plaintiff Hansen and the class and wrongfully obtaining their monies and property for defendant's gain.

85. The defendant either knew or recklessly disregarded the fact that the misrepresentations and omissions described above and incorporated herein were material, and

plaintiff Hansen and the members of the class reasonably relied on the misrepresentations and omissions as set forth above.

86. As a result, defendant has obtained money and property belonging to plaintiff Hansen and class members, and they have been respectively injured in their business or property by the defendant's overt acts of mail and wire fraud, and by Conseco's and its FMOs' aiding and abetting each other's acts of mail and wire fraud.

D. Pattern of Racketeering Activity

87. The defendant has engaged in a "pattern of racketeering activity," as defined by 18 U.S.C. §1961(5), by committing or aiding and abetting in the commission of at least 2 acts of racketeering activity, *i.e.*, indictable violations of 18 U.S.C. §§1341 and 1343 as described above, within the past 10 years. In fact, defendant and its FMOs each have committed or aided and abetted each other in the commission of thousands of acts of racketeering activity. Each racketeering act was related, had a similar purpose, involved the same or similar participants and method of commission, had similar results and impacted similar victims, includingplaintiff Hansen and other members of the class.

88. The multiple acts of racketeering activity which defendant committed and/or conspired to, or aided and abetted in the commission of, were related to each other and amount to and pose a threat of continued racketeering activity, and therefore constitute a "pattern of racketeering activity" as defined in 18 U.S.C. §1961(5).

E. RICO Violations

89. Defendant, through the conduct described above, acquired, maintained and exercised control over the CAE enterprise, which was engaged in or affected interstate or foreign commerce. Therefore, Conseco has violated 18 U.S.C. §1961(1)(B).

90. As a direct and indirect result of defendant's conduct as described above, substantial income was generated and received by and came under the control of defendant. Defendant used that income to establish and/or operate the CAE enterprise described herein, which was engaged in interstate or foreign commerce. Therefore, defendant has violated 18 U.S.C. §1962(a).

91. Section 1962(c) of RICO provides that it "shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity…." Through the patterns of racketeering activities outlined above, the defendant has conducted and participated in the affairs of the CAE.

92. Defendant and each of the FMOs owned, operated and/or controlled by it, willfully agreed to, and did, materially participate, directly or indirectly, in the conduct of the affairs of the CAE through a pattern of racketeering activity comprised of numerous acts of mail fraud and wire fraud, and defendant and each FMO so participated in violation of 18 U.S.C. §1962(c).

93. Additionally, Section 1962(d) of RICO makes it unlawful "for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section." Defendant's conspiracy with its FMOs to defraud the plaintiff and other class members of their money and property from the sale of unsuitable deferred annuities pursuant to the scheme described above violates 18 U.S.C. §1962(d).

COUNT ONE

(Civil RICO)

94. Plaintiff refers to each and realleges every preceding paragraph and incorporates those paragraphs as though set forth at length in this cause of action.

95. This claim for relief arises under 18 U.S.C. §1964(c).

96. In violation of 18 U.S.C. §1962(c), defendant has, as set forth above, conspired to violate 18 U.S.C. §1962(c) by conducting or participating in the conduct of, the affairs of the CAE through a pattern of racketeering.

97. As a result and by reason of the foregoing, the plaintiff and class members have been injured, suffered irreparable harm and sustained damage to their business and property, and are therefore entitled to recover actual and treble damages, and their costs of suit, including reasonable attorney fees, pursuant to 18 U.S.C. §1964(c).

98. In addition, as set forth above, defendant has violated 18 U.S.C. §§1962(c) and (d), and will continue to do so in the future. Enjoining Conseco from committing these RICO violations

in the future and or declaring their invalidity is appropriate pursuant to 18 U.S.C. §1964(a), which authorizes the district courts to enjoin violations of 18 U.S.C. §1962.

COUNT TWO

(Elder Abuse)

99. Plaintiff refers to each and realleges every preceding paragraph and incorporates those paragraphs as though set forth at length in this Count.

100. This Count is brought under California's Welfare and Institutions Code §§15610, *et seq.*, and the similar statutory enactments of all the other Market States. *See, e.g.*, 320 ILCS 20/1 and 750 ILCS 60/101, *et seq.*; Fla. Stat. Ann. §415.101, *et seq.*

101. Plaintiff Hansen and each member of the class were age 65 or older at all times relevant to this action.

102. At all times relevant to this action, the defendant had a confidential, position of trust and/or fiduciary relationship with plaintiff Hansen and class members, in that the defendant, thought its FMO sales force, were advising plaintiff Hansen and class members as to their estate planning, insurance and financial affairs.

103. Defendant took, depleted, appropriated, concealed and/or retained plaintiff Hansen's and other class member's personal property in bad faith for a wrongful use and/or with intent to defraud, which constitutes financial abuse as defined in Cal. Welf. & Inst. Code §15610.30 and similar enactments in the Market States in that neither plaintiff Hansen nor other class members benefitted from the recommended transaction. Rather, the only beneficiary of the transaction was the defendant.

104. The defendant is guilty of oppression, fraud, and malice in the commission of the above-described acts of abuse.

105. Under Cal. Welf. & Inst. Code §15657(a) and similar statutory enactments in the Market States, the defendant is liable to plaintiff Hansen and the class for reasonable attorney fees and costs.

106. Under Cal. Civ. Code §3294 and similar statutory enactments in the Market States, the defendant is liable to plaintiff Hansen and the class for punitive damages. *See, e.g.*, Fla. Stat. Ann. §768.735.

COUNT THREE

(Unlawful, Deceptive and Unfair Business Practices)

107. Plaintiff refers to each and realleges every preceding paragraph and incorporates those paragraphs as though set forth at length in this Count.

108. In marketing and selling deferred annuities to the plaintiff and members of the class as described above, the defendant engaged in unlawful, deceptive and unfair business acts and deceptive and misleading advertising within the meaning of Cal. Bus. & Prof. Code §§17200, *et seq.*, and the similar statutory enactments of the other Market States, including consumer protection and consumer sales practices acts prohibiting unlawful, deceptive and unfair business practices and acts of unfair competition. *See, e.g.*, Fla. Stat. Ann. §§501.201, *et seq.*; Mich. Comp. Laws § 445.903.

109. Defendant's acts of unfair competition and unlawful practices include violations of, *inter alia*, federal civil RICO, Cal. Ins. Code §§ 330, 331, 785, Cal. Civ. Code § 3345, and similar statutory enactments in the other Market States by:

a. Selling plaintiff Hansen and class members deferred annuities that were unsuitable for their estate planning, insurance and/or financial needs;

b. Issuing age exemptions without performing a full and complete investigation regarding whether an exemption was appropriate for the annuitant;

c. Ignoring Company protocols and practices regarding the sale of deferred annuities to senior citizens to further defendant's financial interests;

d. Failing to fully and accurately perform underwriting duties; and

e. Maintaining an illegal marketing scheme to sell annuity policies to senior citizens.

110. Accordingly, defendant has violated Cal. Bus. & Prof. Code §17200's proscription against engaging in unfair and unlawful business practices, and similar statutory enactments in the other Market States, and plaintiff Hansen and class members are entitled to injunctive and equitable relief in the form of restitution and disgorgement of all earnings, profits, compensation and benefits defendant obtained as a result of such unfair and unlawful business practices.

111. As a result of the conduct described above, defendant has been and will be unjustly enriched at the expense of plaintiff Hansen and class members. Specifically, defendant has been unjustly enriched by receiving substantial monies and profits from the sale of its deferred annuity products which were promoted and sold through advertisements which affirmatively misrepresent, either directly or by implication, the true suitability of such products for purchase by senior citizen class Members. Further, both plaintiff Hansen and other class members have been deprived of money or property as a result of defendant's wrongful conduct and unlawful acts and practices and, therefore, have sustained injury in fact.

112. Pursuant to Cal. Bus. & Prof. Code §17203, and the similar relief provided for under the statutory enactments in other Market States, plaintiff seeks a Court Order requiring defendant to immediately cease such acts of unfair competition and enjoining them from continuing to deceptively advertise or conduct business via the unlawful or unfair business acts and practices and deceptive and misleading advertising complained of herein and for failing to disclose fully the unsuitability of defendant's annuity products. Plaintiff also requests an order requiring defendant to engage in a corrective advertising campaign.

113. Plaintiff additionally requests an Order requiring defendant to disgorge its ill-gotten gains as described above and awarding plaintiff Hansen and class members full restitution of all monies and property wrongfully acquired by defendant by means of such unlawful business practices, acts of unfair competition and false advertising, plus interest and attorneys' fees, so as to restore any and all monies to plaintiff Hansen and class members which were acquired and obtained by means of such deceptive, unfair or unlawful business practices. Plaintiff further requests an

award of monetary and exemplary damages as may permitted by law under California law and similar statutory enactments in the other Market States.

COUNT FOUR

(Unfair, Deceptive and Misleading Advertising)

114. Plaintiff refers to each and realleges every preceding paragraph and incorporates those paragraphs as though set forth at length in this Count.

115. Cal. Bus. & Prof. Code §§17500, *et seq.*, and similar statutory enactments in other Market States, prohibit unfair, deceptive and misleading advertising.

116. Defendant's uniform sales materials and standardized annuity contract forms deceived and misled plaintiff Hansen and other members of the class as to the suitability of the deferred annuities they purchased from Conseco and thus also constitute deceptive or misleading advertising in violation of, *inter alia*, Cal. Bus. & Prof. Code §§17500, *et seq.*, and similar statutory enactments prohibiting unfair, deceptive and misleading advertising in other Market States.

117. Defendant used various forms of media to advertise, call attention to, and otherwise publicize its deferred annuities by, *inter alia*, misleadingly and deceptively representing that its annuity products are suitable for purchase by senior citizens even when the annuity's maturity date is beyond the purchaser's actuarial life expectancy. Such promotions and advertisements constitute unfair competition and unfair, untrue or misleading advertising within the meaning of Cal. Bus. & Prof. Code §§17500, *et seq.*, and similar statutory enactments in other Market States, which advertisements are likely to have deceived and continue to deceive the consuming public. Defendant either knew or recklessly disregarded that such advertising was deceptive, misleading or otherwise inadequate. Such conduct also constitutes a violation of Cal. Bus. & Prof. Code §§17200, *et seq.*, and similar statutory enactments in other Market States.

118. The above-described unfair, unlawful, deceptive and misleading advertising and business acts conducted by the defendant still continue to this day and present a threat to class members and the general public in that Conseco has failed to publicly acknowledge its wrongdoing or publicly issue adequate corrective notices and advertising to purchasers of defendant's annuity products and to the public generally.

119. The advertising/marketing brochures, along with the sales techniques utilized by defendant are, in fact, false and misleading in that defendant made repeated express representations that:

a. The Conseco deferred annuity products were a smart choice for the plaintiff and other class members' financial future;

b. The defendant's deferred annuity products offered access to money, including free withdrawals;

c. The defendant's deferred annuity products offered special access to money for emergencies;

d. The defendant's deferred annuity products are appropriate and suitable for senior citizens;

e. The defendant's deferred annuity products satisfy estate and financial planning requirements; and

f. The defendant's deferred annuity products will provide financial security and peace of mind.

120. These representations were made by defendant with the intent to induce and did, in fact, reasonably induce plaintiff Hansen and other class members to purchase the defendant's annuity products and thus deprived them of monies and property as a result of defendant's acts and practices. Had plaintiff Hansen and the class members known the actual facts, they would not have purchased the annuities.

121. As a result of the conduct described above, defendant has been and will be unjustly enriched at the expense of plaintiff Hansen and class members. Specifically, Conseco has been unjustly enriched by receiving substantial monies and profits from the sale of its deferred annuity products which were promoted and sold through advertisements which affirmatively misrepresent, either directly or by implication, the true suitability of such products for purchase by senior citizens. Pursuant to Cal. Bus. & Prof. Code §17535, and all similar statutory enactments in other Market States, plaintiff seeks a Court Order requiring defendant to immediately cease such acts of unfair competition and enjoining them and/or their affiliates from continuing to deceptively advertise and

market their deferred annuity products. Plaintiff also requests an Order requiring defendant to engage in a corrective advertising campaign. Plaintiff further requests an Order requiring defendant to disgorge their ill-gotten gains as described above and awarding plaintiff Hansen and class members full restitution of all monies wrongfully acquired by defendant through such acts of unfair competition and deceptive and misleading advertising, plus interest and attorney fees so as to restore any and all monies and property to plaintiff Hansen and class members which were acquired and obtained by means of such deceptive and misleading advertising.

COUNT FIVE

(Breach of Fiduciary Duty)

122. Plaintiff refers to each and realleges every preceding paragraph and incorporates those paragraphs as though set forth at length in this Count.

123. By virtue of their purported positions as financial advisors, estate planning specialists, and because of their superior knowledge and ability to manipulate and control senior citizens' finances and legal status, the FMOs owned, operated and/or controlled by defendant who marketed and sold Conseco deferred annuities to senior citizens assumed fiduciary duties to plaintiff Hansen and the class.

124. These entities and defendant owed to plaintiff Hansen and members of the class the highest duties of loyalty, honesty, fidelity, trust, and due care in their fiduciary obligations, and were and are required to use their utmost ability to provide estate planning and investment advice in a fair, just and equitable manner, and to act in furtherance of the best interests of plaintiff Hansen and the class so as to benefit their clients, and not themselves.

125. As set forth above, defendant and its FMOs each breached their obligations and fiduciary duties of care, loyalty, reasonable inquiry, oversight, good faith and supervision by, *inter alia*:

a. Unreasonably and in bad faith, refusing to give sufficient consideration to plaintiff Hansen's welfare rather than their own financial interests;

b. Unreasonably and in bad faith issuing an age exception without performing a full and complete investigation of whether or not such an exception would be suitable for their customer;

c. Ignoring Conseco's protocols and standards in order to further their own financial interests;

d. Churning existing senior citizen life insurance and/or annuity policyholders using deceptive and misleading standardized marketing materials in violation of Cal. Ins. Code §§781 and 10509.8 and the similar statutory enactments of all the other Market States (*see, e.g.*, Fla. Stat. §626.9541(1)(1) and (aa);

e. Failing to competently supervise and monitor their employees;

f. Failing to fully disclose the true characteristics of the deferred annuities sold to senior citizens, instead making false and fraudulent representations that defendant's deferred annuities are safe and suitable for purchase by senior citizens;

g. Making material omissions of fact that the FMOs marketing and selling defendant's deferred annuities were "independent;" and

h. Maintaining an illegal marketing scheme and conspiracy in violation of §1961(1)(B) of RICO to sell annuity insurance to senior citizens.

126. As described herein, defendant and the FMOs owned, operated and/or controlled by Conseco recklessly or knowingly breached their fiduciary duties by orchestrating, devising, carrying out, participating in, and/or failing to prevent, terminate, or timely correct the wrongdoing alleged herein.

127. Each of these violations was achieved because defendant willingly, knowingly, and/or with recklessness sought to gain its own financial advantage to the disadvantage of plaintiff Hansen and the class.

128. As a direct and proximate result of defendant's violations of their fiduciary duties,plaintiff Hansen and the class have been injured, and suffered and continue to suffer economic and non-economic losses, all in an amount to be determined according to proof at trial.

129. In light of the foregoing, plaintiff requests that the Court deem this a constructive fraud, and require defendant to immediately rescind the annuity contracts to whichplaintiff Hansen and the class are subject as their fiduciary obligations so require.

130. In addition, the wrongful acts of the defendant were done maliciously, oppressively, and with the intent to mislead and defraud, and plaintiff Hansen and the class are entitled to punitive and exemplary damages to be ascertained according to proof, which is appropriate to punish and set an example of defendant, pursuant to Cal. Civ. Code §3294, *et. seq.*, and similar statutory enactments in the other Market States.

COUNT SIX

(Aiding and Abetting Breach of Fiduciary Duty)

131. Plaintiff refers to each and realleges every preceding paragraph and incorporates those paragraphs as though set forth at length in this Count.

132. Defendant and the FMOs owned, operated and/or controlled by Conseco aided and abetted, encouraged, and rendered substantial assistance to one another in order to accomplish the wrongful acts complained of herein. In aiding and abetting and substantially assisting the commission of the acts complained of, defendant and its FMOs acted with an awareness of their wrongdoing and realized that their conduct would substantially assist the accomplishment of the wrongful conduct and scheme alleged herein. In performing these acts, each such FMO either acted as agents of the Company, or the Company ratified such acts, or both, and benefitted financially from their scheme.

133. As a result of the wrongful conduct of defendant and its FMOs, and each of them, plaintiff Hansen and the class have suffered and continue to suffer economic and non-economic losses, all in an amount to be determined according to proof at trial.

134. In addition, the wrongful acts of defendant and its FMOs, and each of them, were done maliciously, oppressively, and with the intent to mislead and defraud, and plaintiff Hansen and

the class are entitled to punitive and exemplary damages to be ascertained according to proof, which is appropriate to punish and set an example of defendant, pursuant to Cal. Civ. Code §3294, *et. seq*, and the similar statutory enactments of the other Market States.

COUNT SEVEN

(Unjust Enrichment and Imposition of Constructive Trust)

135. Plaintiff refers to each and realleges every preceding paragraph and incorporates those paragraphs as though set forth at length in this Count.

136. By engaging in the unsuitable deferred annuity sales scheme, Conseco and the FMOs owned, operated and/or controlled by the defendant obtained payments fromplaintiff Hansen and class members in the form of annuity premiums, commissions, service charges, surrender charges, and other fees, expenses and charges based upon misleading and fraudulent uniform sales presentations, marketing materials, and annuity illustrations, all as detailed more fully above.

137. As a result of the relationships between the parties and the facts stated above, defendant will be unjustly enriched if they are permitted to retain such funds and therefore a constructive trust should be established over the monies plaintiff Hansen and the class members paid to Conseco, including annuity premiums, commissions, service charges and other fees, expenses and charges imposed by the defendant and its agents. These monies are traceable to Conseco and its FMOs owned, operated and/or controlled by Conseco.

138. The victims of the unsuitable deferred annuity sales scheme described above have no adequate remedy at law and have been damaged in an amount to be determined at the trial of this action.

PRAYER

WHEREFORE, plaintiff Robert H. Hansen prays for judgment against defendant Conseco Insurance Company as appropriate to each cause of action alleged, as follows:

1. For an Order certifying this action as a plaintiff class action under Fed. R. Civ. Proc. 23 as set forth herein;

2. Compensatory damages in such amount as the Court deems just and proper;

3. Statutory, treble and/or punitive damages as to Counts for which they are available under the applicable law in such amount as the Court deems just and proper;

4. Imposition of a constructive trust, an Order granting rescissionary and injunctive relief, or such other equitable relief, including restitution and an order for 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 as the Court deems just and proper;

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

6. Attorney fees;

7. Costs of litigation;

8. Prejudgment interest; and

9. Such other relief as this Court deems equitable and just.

Dated: November 16, 2005

FINKELSTEIN & KRINSK LLP

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DEMAND FOR JURY TRIAL

Plaintiff and the class hereby demand an expedited trial by jury due to their age.

Dated: November 16, 2005

FINKELSTEIN & KRINSK LLP

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