

In the Matter of

LINCOLN LIFE & ANNUITY COMPANY OF NEW YORK.

Respondent.

CONSENT ORDER

WHEREAS, the New York State Department of Financial Services (“DFS” or “Department”) identified a practice arising from the replacement of deferred annuity contracts with immediate income annuity contracts, in violation of the disclosure and suitability requirements of New York Regulations 60 and 187;

WHEREAS, the Department commenced an investigation (“Investigation”), including Lincoln Life & Annuity Company of New York (“Lincoln”), in connection with the practice described in the preceding paragraph, from the period of January 1, 2011 through March 31, 2019 (the “Relevant Period”);

WHEREAS, the Department found that Lincoln (1) failed to obtain appropriate annuitization information for replaced deferred annuities, (2) failed to disclose adequate suitability and annuitization information to contract holders, and (3) thereby prevented contract holders from being fully informed in deciding whether to replace deferred annuities;

WHEREAS, the Department found that Lincoln issued replacement immediate annuity contracts to consumers without sufficient Annuitization (as that term is subsequently defined in this Consent Order) information to determine suitability;

WHEREAS, the Department found that Lincoln (1) failed to adequately train agents and brokers to conduct proper suitability reviews, (2) failed to adequately train agents and brokers to provide disclosures to contract holders when replacing their deferred annuities with Lincoln's immediate annuities, and (3) failed to maintain adequate supervisory controls over its agents and brokers to ensure compliance with applicable regulations;

WHEREAS, the Department found Lincoln's conduct and failures to disclose to certain consumers that they could annuitize their existing deferred annuities with higher guaranteed income harmed those consumers, causing them to exchange more financially favorable deferred annuities with immediate annuities; and

WHEREAS, Lincoln has cooperated with the Department's Investigation and has adopted the revised LICONY Disclosure Statement promulgated by the Department and will work with the Department's Life Bureau as appropriate, to revise its procedures, after the Department identified these improper practices.

NOW, THEREFORE, the Department and Lincoln are willing to resolve the matters cited herein in lieu of proceeding by notice and a hearing.

FINDINGS

The findings of the Department's Investigation are as follows:

Respondent

1. Lincoln is a wholly-owned subsidiary of The Lincoln National Life Insurance Company, an Indiana life insurance company which, in turn, is a wholly-owned subsidiary of Lincoln National Corporation, an Indiana holding company.

2. Lincoln is authorized to write life insurance, annuities, and accident and health insurance, and is licensed to transact business in the District of Columbia and fifty states, including New York State.

3. Lincoln's principal products subject to the Department's investigation during the Relevant Period were fixed single premium immediate annuities.

4. Career agents, independent broker-dealer firms, independent agents, and financial institutions market Lincoln's products.

5. Lincoln is headquartered in Syracuse, New York.

Terms

6. For purposes of this Consent Order, the following terms shall have the meanings set forth herein:

- a. "Annuitization" refers to the conversion of the actual accumulation amount of a deferred annuity into a series of annuity payments to the contract holder. Upon Annuitization, the annuity payments are calculated as the greater of the guaranteed annuity purchase rates in the contract applied to the actual accumulation amount or the company's current single premium immediate annuity rates applied pursuant to Insurance Law § 4223(a)(1)(E).
- b. "Deferred annuity" refers to an annuity contract in which periodic income payments are not scheduled to commence during the first 13 months after the contract is issued.
- c. "Disclosure Statement" means the form prescribed in Appendix 10B to Insurance Regulation 60, which, in connection with the issuance of a

replacement annuity, requires accurate completion of certain disclosures and information, including but not limited to a side-by-side comparison of the deferred annuity and proposed replacement immediate annuity.

- d. “Immediate annuity” refers to an annuity contract in which the first periodic income payment begins in 13 or fewer months after the contract is issued. The immediate annuity is usually purchased with a single premium.
- e. “Replacement Contracts” refers to new single premium immediate annuities delivered or issued for delivery in the State of New York by Lincoln during the Relevant Period, and which were known by Lincoln to include, as part of the resulting transactions, existing annuity contracts that have been or were likely to be lapsed, surrendered, partially surrendered, or otherwise terminated, as provided in Regulation 60, 11 NYCRR § 51.2(a).

Findings

7. An annuity is a contract between a purchaser and an insurance company in which the purchaser agrees to make a lump sum payment or series of payments in return for regular payments, also known as annuity payments, that begin either immediately (within the first 13 months following purchase of the annuity) or, for a deferred annuity, at some future date. Annuity payments are designed to provide a steady stream of income for a specified period of time or for the remainder of one or more lives.

8. Replacement of existing deferred annuities with immediate annuities without disclosing annuitization income comparison information may cost consumers substantial lifetime income.

9. Lincoln's producers marketed to consumers Lincoln immediate annuities, and replaced consumers' deferred annuities with immediate annuities during the Relevant Period.

10. In these efforts to sell the Replacement Contracts and replace the deferred annuities with immediate annuities, Lincoln's producers failed to provide to consumers required disclosures with annuitization income information, which would have revealed the detrimental nature of certain of these transactions.

11. Lincoln did not require or ensure that contract holders received for their review a comparison between the income benefit that contract holders would derive from their existing deferred annuity contracts and the income benefit available from Lincoln's proposed Replacement Contracts.

12. As a result, Lincoln did not satisfy its obligations regarding the suitability of the Replacement Contracts, as required by Regulation 187, 11 NYCRR § 224:

- a. Lincoln failed to make reasonable efforts to obtain contract holders' complete suitability information, which would have included information about existing assets, such as the amount of guaranteed income available if the existing deferred annuity contracts were annuitized, prior to the recommendation of a Replacement Contract;
- b. In some instances, Lincoln failed to properly consider whether proposed Replacement Contracts were suitable for consumers, including whether

the consumers would lose existing benefits available through annuitization options in the existing deferred annuities;

- c. Lincoln issued Replacement Contracts to consumers without reasonable bases to believe the annuities at issue were suitable in some instances, and without providing consumers with the required Annuitization information for replaced deferred annuities;
- d. Lincoln did not establish a supervisory system reasonably designed to achieve compliance with Regulation 187; and
- e. Lincoln failed to ensure that every producer recommending Lincoln's immediate annuities to consumers was adequately trained to make those recommendations.

13. The Department's investigation found that the Disclosure Statements provided by Lincoln to contract holders were inadequate because they failed to include information regarding the Annuitization of the existing deferred annuities, including periodic payment amounts available.

14. The Department's investigation also found that Lincoln's producers did not disclose to certain consumers the disadvantages of replacing their existing deferred annuities, including losing the opportunity to annuitize their deferred annuities, potentially on more advantageous terms than the proposed Replacement Contracts.

15. Due to these failures, certain consumers were uninformed regarding material disadvantages relating to the Replacement Contracts and were therefore prevented from making fully-informed decisions with respect to the Replacement Contracts, resulting in less income for substantially similar or identical options.

16. Certain of the replaced deferred contracts also had more favorable guaranteed purchase rates, resulting in some contract holders receiving less retirement income from the Replacement Contracts.

17. When the Department brought its concerns regarding suitability and disclosure in replacement transactions to the attention of Lincoln, Lincoln adopted the revised version of the LICONY Disclosure Statement.

Violations

18. Based on the foregoing, the Department finds that Lincoln violated New York Insurance Regulations 187 and 60.

AGREEMENT

IT IS HEREBY UNDERSTOOD AND AGREED by Lincoln and the Department that:

Monetary Penalty

19. Lincoln shall pay a civil monetary penalty of seventy thousand dollars (\$70,000) to DFS within ten days of the Effective Date of this Consent Order. The payment shall be in the form of a wire transfer in accordance with instructions provided by DFS.

20. Lincoln agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state, or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order. Lincoln further agrees that it will not claim, seek, or receive indemnification or reimbursement of the civil monetary penalty from any other person or entity.

Injunctive Relief

21. Lincoln shall comply with Regulations 187 and 60. Going forward, Lincoln will obtain income information regarding replaced deferred annuities and replacement immediate annuities in all deferred-to-immediate replacement transactions and will disclose this information to consumers pursuant to Regulation 60.

Remediation and Restitution

22. Lincoln represents to the Department that it sold or issued 70 Replacement Contracts during the Relevant Period.

23. Lincoln has obtained income information regarding the replaced deferred annuities and the Replacement Contracts and will disclose this information to impacted consumers to ensure compliance with Insurance Regulations 187 and 60.

24. Lincoln and the Department have agreed upon restitution and remediation for the affected contract holders of the Replacement Contracts. Lincoln will administer the payment and notice provisions discussed below in paragraphs 25-30 (the “Review and Restitution Process”).

25. Pursuant to the Review and Restitution Process, Lincoln has compared the income options and payment amounts available under each replaced deferred annuity contract with the income options and payment amounts of each Replacement Contract.

26. Lincoln has submitted to the Department for its review and approval all annuity contract comparison information and a recommendation for each of the Replacement Contracts.

The recommendations placed each Replacement Contract into one of three categories:

- a. *Remediation*: contract holders of the Replacement Contracts shall receive restitution and remediation because the income options of the Replacement Contracts are substantially the same as the replaced deferred

annuities and the contract holders are receiving less income from the Replacement Contracts than they would have received if their replaced deferred annuities were annuitized;

- b. *No remediation*: contract holders of the Replacement Contracts will not receive restitution and remediation because the income options of the Replacement Contracts are substantially the same as the replaced deferred annuities and the contract holders are receiving either the same or more income from the Replacement Contracts; or
- c. *Indeterminable*: contract holders of the Replacement Contracts shall receive restitution and remediation because the income options and contract features of the Replacement Contracts and the replaced deferred annuities are materially different, and the contracts cannot be readily compared. This category also relates to contract holders where the data suggested additional disclosure information will be provided.

27. The Department and Lincoln have agreed on the type and amount of restitution and remedies for affected contract holders:

- a. *Remediation*: for contract holders whose Replacement Contracts pay less than they would have received through the Annuitization of their replaced deferred annuities, Lincoln shall determine the amount the contract holder would have received if, from the time of replacement to the Effective Date of this Consent Order, the contract holder had annuitized the replaced policy. Lincoln will include in this amount the applicable interest agreed to by the Department and Lincoln. Lincoln will issue a notice, subject to

DFS's approval, that will accompany checks for the amounts owed to contract holders in this category that explains why contract holders are receiving the checks including, at a minimum, the comparison of income options and payment amounts between the replaced deferred annuities and the Replacement Contracts. Lastly, Lincoln shall determine the monthly (or other frequency) difference between the payments from Replacement Contracts and the replaced deferred annuities, an amount that will be added to each such contract holder's monthly (or other frequency) annuity payments within 30 days of the Effective Date of this Consent Order and stated clearly on that notice.

- b. *Indeterminable*: The Department has identified certain contract holders in this category pursuant to the Department's review, and Lincoln will provide restitution as appropriate. Lincoln will issue a notice, subject to DFS's approval, that will accompany checks for the amounts designated for contract holders in this category that explains the differences in income options and payout amounts between the replaced deferred annuity and the Replacement Contracts. Lincoln will issue a separate notice, subject to DFS's approval, that will be sent to certain other contract holders, which provides disclosure and may result in payment to these contract holders if appropriate.

28. In accordance with paragraph 27, Lincoln shall, within 30 days or other time period approved by DFS, deposit in the facilities of the U.S. Post Office, for delivery by prepaid first-class mail to all affected contract holders or their beneficiaries, notices and checks, or other

payment means approved by the Department, in the required amounts. All checks must be valid for six months.

29. For any payment or notice to a contract holder or beneficiary that is returned as undeliverable or not deposited within six months, Lincoln shall conduct a reasonable search for a current address. Should the search show a more current address, Lincoln shall re-issue a check valid for six months in the amount of the returned or undeposited check, and/or re-send the notice to the current address within fifteen days.

30. If a contract holder or beneficiary did not cash his or her check before the expiration date of the check or the check was returned after Lincoln re-sent it as described in paragraph 29, Lincoln shall follow all applicable provisions of the New York State Abandoned Property Law, including all reporting, mailing, and remittance requirements.

31. Upon the commencement of the process described in paragraphs 28-30, Lincoln will provide to the Department quarterly reports detailing the number of checks mailed, the total amount of individual checks, and the number of checks deposited, undelivered, and/or not deposited.

32. Lincoln may contract with a third party to conduct the Review and Restitution Process. Alternatively, the Department, in its discretion, may at any time select an independent third-party administrator (“TPA”) to conduct the Review and Restitution Process. Lincoln will retain the TPA after the Department’s review and approval of the retainer agreement. Lincoln shall be fully and solely responsible for all proper fees, expenses, and disbursements of the TPA in connection with the Review and Restitution Process provided for in this Consent Order and the TPA’s retainer agreement.

Breach of the Consent Order

33. In the event that the Department believes Lincoln to be materially in breach of the Consent Order (“Breach”), the Department will provide written notice to Lincoln of the Breach. Within ten business days from the date of receipt of said notice, or on a later date if so determined in the sole discretion of the Department, Lincoln must appear before the Department and shall have an opportunity to rebut the Department’s assertion that a Breach has occurred and, to the extent pertinent, demonstrate that any such Breach is not material or has been cured.

34. Lincoln understands and agrees that its failure to appear before the Department to make the required demonstration within the specified period set forth in paragraph 33 is presumptive evidence of Lincoln’s Breach. Upon a finding of Breach, the Department has all the remedies available under the New York State Insurance Law, Financial Services Law, or other applicable laws and may use any and all evidence available to the Department for all ensuing hearings, notices, orders, and other remedies that may be available under the New York State Insurance Law, Financial Services Law, or other applicable laws.

Other provisions

35. Lincoln represents and warrants, through the signatures below, that the terms and conditions of this Consent Order are duly approved, and execution of this Consent Order is duly authorized.

36. If Lincoln defaults on any of its material obligations under this Consent Order, DFS may terminate the Consent Order, at its sole discretion, upon ten days’ written notice to Lincoln. In the event of such termination, Lincoln expressly agrees and acknowledges that this Consent Order shall in no way bar or otherwise preclude the Department from commencing, conducting, or prosecuting any investigation, action, or proceeding against Lincoln, however

denominated, related to the Consent Order, or from using in any way statements, documents, or other materials produced or provided by Lincoln prior to or after the date of this Consent Order, including, without limitation, such statements, documents, or other materials, if any, provided for purposes of settlement negotiations.

37. The Department has agreed to the terms of this Consent Order based on, among other things, representations made to the Department by Lincoln. To the extent that representations made by Lincoln are later found to be materially incomplete or inaccurate, this Consent Order is voidable by the Department in its sole discretion.

38. All notices, reports, requests, certifications, and other communications to either party pursuant to this Consent Order shall be in writing and shall be directed as follows:

For the Department:

Laura Sarli
Assistant Counsel, Enforcement
New York Department of Financial Services
One State Street
New York, New York 10004-1511

David Crockett
Attorney
New York Department of Financial Services
One State Street
New York, New York 10004-1511

For Lincoln:

Robert Sheppard
General Counsel
Lincoln Life & Annuity Company of New York
120 Madison Street, Suite 1310
Syracuse, New York 13202

39. This Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

40. Lincoln waives its right to further notice and hearing in this matter as to any allegations of past violations relating to the subject matter of this Consent Order up to and including its Effective Date and agrees that no provision of the Consent Order is subject to review in any court or tribunal outside of the Department.

41. This Consent Order may not be amended except by an instrument in writing signed on behalf of both parties to this Consent Order.

42. This Consent Order constitutes the entire agreement between the Department and Lincoln and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Consent Order. No inducement, promise, understanding, condition, or warranty not set forth in this Consent Order has been relied upon by any party to this Consent Order.

43. In the event that one or more provisions contained in this Consent Order shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Consent Order.

44. Upon execution by the parties to this Consent Order, the Department will discontinue the Investigation as against Lincoln with respect to the identified Replacement Contracts. The Department will not take any further action against Lincoln with respect to the Replacement Contracts for the conduct detailed herein that was found to have violated the Insurance Law and Regulations provided that Lincoln complies fully with the terms of the Consent Order.

45. This Consent Order may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by both of the parties hereto and the

Consent Order is So Ordered by the Superintendent of Financial Services or her designee
("Effective Date").

WHEREFORE, the signatures evidencing assent to this Consent Order have been affixed hereto on the dates set forth below.

**NEW YORK STATE DEPARTMENT OF
FINANCIAL SERVICES**

**LINCOLN LIFE & ANNUITY
COMPANY OF NEW YORK**

By: Laura C. Sarli
Laura C. Sarli
Assistant Counsel, Enforcement
Consumer Protection & Financial
Enforcement

By: Brian A. Kroll
Brian A. Kroll
Senior Vice President, Annuity Solutions

March 10, 2020

March 5, 2020

By: Christopher B. Mulvihill
Christopher B. Mulvihill
Deputy Superintendent, Enforcement Unit
Consumer Protection & Financial
Enforcement

By: Paul T. Chryssikos
Paul T. Chryssikos
Vice President and Chief Counsel, Annuities

March , 2020

March 6, 2020

By: Katherine A. Lemire
Katherine A. Lemire
Executive Deputy Superintendent
Consumer Protection & Financial
Enforcement

March 10, 2020

**THE FOREGOING IS HEREBY APPROVED.
IT IS SO ORDERED.**

Linda A. Lacewell

LINDA A. LACEWELL
Superintendent of Financial
Services

April 9, 2020

In the Matter of

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY.

Respondent.

CONSENT ORDER

WHEREAS, the New York State Department of Financial Services (“DFS” or “Department”) identified a practice arising from the replacement of deferred annuity contracts with immediate income annuity contracts, in violation of the disclosure and suitability requirements of New York Regulations 60 and 187;

WHEREAS, the Department commenced an investigation (“Investigation”), including Massachusetts Mutual Life Insurance Company (“MassMutual”), in connection with the practice described in the preceding paragraph, from the period of January 1, 2012 through May 31, 2018 (the “Relevant Period”);

WHEREAS, the Department found that MassMutual (1) failed to obtain appropriate annuitization information for replaced deferred annuities, (2) failed to disclose adequate suitability and annuitization information to contract holders, and (3) thereby prevented contract holders from being fully informed in deciding whether to replace deferred annuities;

WHEREAS, the Department found that MassMutual issued replacement immediate annuity contracts to consumers without sufficient Annuitization (as that term is subsequently defined in this Consent Order) information to determine suitability;

WHEREAS, the Department found that MassMutual (1) failed to adequately train agents and brokers to conduct proper suitability reviews, (2) failed to adequately train agents and brokers to provide disclosures to contract holders when replacing their deferred annuities with MassMutual's immediate annuities, and (3) failed to maintain adequate supervisory controls over its agents and brokers to ensure compliance with applicable regulations;

WHEREAS, the Department found MassMutual's conduct and failures to disclose to consumers that they could annuitize their existing deferred annuities with higher guaranteed income harmed certain consumers, causing them to exchange more financially favorable deferred annuities with immediate annuities; and

WHEREAS, MassMutual has cooperated with the Department's Investigation and has agreed to work with the Department's Life Bureau to revise its procedures, after the Department identified these improper practices. MassMutual has sought and received the Department's approval to use a revised Disclosure Statement.

NOW, THEREFORE, the Department and MassMutual are willing to resolve the matters cited herein in lieu of proceeding by notice and a hearing.

FINDINGS

The findings of the Department's Investigation are as follows:

Respondent

1. MassMutual is a mutual life insurance company, incorporated in the State of Massachusetts.
2. MassMutual is authorized to write life insurance, annuities, and accident and health insurance, and is licensed to transact business in the District of Columbia and fifty states, including New York State.

3. MassMutual's principal products subject to the Department's investigation during the Relevant Period were fixed and variable annuities, including single premium deferred and immediate annuities, and flexible premium variable annuity contracts.

4. Career agents, independent broker-dealer firms, independent agents, and financial institutions market MassMutual's products.

5. MassMutual is headquartered in Springfield, Massachusetts.

Terms

6. For purposes of this Consent Order, the following terms shall have the meanings set forth herein:

- a. "Annuitization" refers to the conversion of the actual accumulation amount of a deferred annuity into a series of annuity payments to the contract holder. Upon Annuitization, the annuity payments are calculated as the greater of the guaranteed annuity purchase rates in the contract applied to the actual accumulation amount or the company's current single premium immediate annuity rates applied pursuant to Insurance Law § 4223(a)(1)(E).
- b. "Deferred annuity" refers to an annuity contract in which periodic income payments are not scheduled to commence during the first 13 months after the contract is issued.
- c. "Disclosure Statement" means the form prescribed in Appendix 10B to Insurance Regulation 60, which, in connection with the issuance of a replacement annuity, requires accurate completion of certain disclosures

and information, including but not limited to a side-by-side comparison of the deferred annuity and proposed replacement immediate annuity.

- d. “Immediate annuity” refers to an annuity contract in which the first periodic income payment begins in 13 or fewer months after the contract is issued. The immediate annuity is usually purchased with a single premium.
- e. “Replacement Contracts” refers to new immediate annuities delivered or issued for delivery in the State of New York by MassMutual during the Relevant Period, and which were known by MassMutual to include, as part of the resulting transactions, existing annuity contracts that have been or were likely to be lapsed, surrendered, partially surrendered, or otherwise terminated, as provided in Regulation 60, 11 NYCRR § 51.2(a).

Findings

7. An annuity is a contract between a purchaser and an insurance company in which the purchaser agrees to make a lump sum payment or series of payments in return for regular payments, also known as annuity payments, that begin either immediately (within the first 13 months following purchase of the annuity) or, for a deferred annuity, at some future date. Annuity payments are designed to provide a steady stream of income for a specified period of time or for the remainder of one or more lives.

8. Replacement of existing deferred annuities with immediate annuities without disclosing annuitization income comparison information may cost consumers substantial lifetime income.

9. MassMutual's producers marketed to consumers MassMutual immediate annuities, and replaced consumers' deferred annuities with immediate annuities during the Relevant Period.

10. In these efforts to sell the Replacement Contracts and replace the deferred annuities with immediate annuities, MassMutual's producers failed to provide to consumers required disclosures with annuitization income information, which would have revealed the detrimental nature of certain of these transactions.

11. MassMutual did not require or ensure that contract holders received for their review a comparison between the income benefit that contract holders would derive from their existing deferred annuity contracts and the income benefit available from MassMutual's proposed Replacement Contracts.

12. As a result, MassMutual did not satisfy its obligations regarding the suitability of the Replacement Contracts, as required by Regulation 187, 11 NYCRR § 224:

- a. MassMutual failed to make reasonable efforts to obtain contract holders' complete suitability information, which would have included information about existing assets, such as the amount of guaranteed income available if the existing deferred annuity contracts were annuitized, prior to the recommendation of a Replacement Contract;
- b. MassMutual failed to properly consider whether proposed Replacement Contracts were suitable for consumers in some instances, including whether the consumers would lose existing benefits available through annuitization options in the existing deferred annuities;

- c. MassMutual issued Replacement Contracts to consumers without reasonable bases to believe the annuities at issue were suitable in some instances, and without providing consumers with the required Annuitization information for replaced deferred annuities;
- d. MassMutual did not establish a supervisory system reasonably designed to achieve compliance with Regulation 187 in connection with the deferred-to-immediate replacements at issue; and
- e. MassMutual failed to ensure that every producer recommending MassMutual's immediate annuities to consumers was adequately trained to make those recommendations in connection with the deferred-to-immediate replacements at issue.

13. The Department's investigation found that the Disclosure Statements provided by MassMutual to contract holders were inadequate because they failed to include information regarding the Annuitization of the existing deferred annuities, including periodic payment amounts available.

14. The Department's investigation also found that MassMutual's producers did not adequately discuss with consumers the disadvantages of replacing their existing deferred annuities, including losing the opportunity to annuitize their deferred annuities, potentially on more advantageous terms than the proposed Replacement Contracts.

15. Due to these failures, certain consumers were uninformed regarding material disadvantages relating to the Replacement Contracts and were therefore prevented from making fully-informed decisions with respect to the Replacement Contracts, resulting in less income for substantially similar or identical payout options.

16. Certain of the replaced deferred contracts also had more favorable guaranteed purchase rates, resulting in some contract holders receiving less retirement income from the Replacement Contracts.

17. MassMutual sought and received approval from the Department of revisions to its Disclosure Statement following commencement of the Department's Investigation.

Violations

18. Based on the foregoing, the Department finds that MassMutual violated New York Insurance Regulations 187 and 60.

AGREEMENT

IT IS HEREBY UNDERSTOOD AND AGREED by MassMutual and the Department that:

Monetary Penalty

19. MassMutual shall pay a civil monetary penalty of six hundred ninety-two thousand dollars (\$692,000) to DFS within ten days of the Effective Date of this Consent Order. The payment shall be in the form of a wire transfer in accordance with instructions provided by DFS.

20. MassMutual agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state, or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order. MassMutual further agrees that it will not claim, seek, or receive indemnification or reimbursement of the civil monetary penalty from any other person or entity.

Injunctive Relief

21. MassMutual shall comply with Regulations 187 and 60.

Remediation and Restitution

22. MassMutual represents to the Department that it sold or issued 692 Replacement Contracts during the Relevant Period.

23. MassMutual has obtained income information necessary regarding the replaced deferred annuities and the Replacement Contracts, and subject to the Department's approval, will disclose this information to the appropriate consumers to ensure compliance with Insurance Regulations 187 and 60. Going forward, MassMutual will obtain income information regarding replaced deferred annuities and replacement immediate annuities in all deferred-to-immediate replacement transactions and will disclose this information to consumers prior to the replacement recommendations.

24. MassMutual and the Department have agreed upon restitution and remediation for the affected contract holders of the Replacement Contracts. MassMutual will administer the payment and notice provisions discussed below in paragraphs 25-30 (the "Review and Restitution Process").

25. Pursuant to the Review and Restitution Process, MassMutual has compared the income options and payment amounts available under each replaced deferred annuity contract with the income options and payment amounts of each Replacement Contract.

26. MassMutual has submitted to the Department for its review and approval all annuity contract comparison information and a recommendation for each of the Replacement Contracts. The recommendations placed each Replacement Contract into one of three categories:

- a. *Remediation*: contract holders of the Replaced Contracts shall receive restitution and remediation because the income options of the Replacement Contracts are substantially the same as the replaced deferred annuities and the contract holders are receiving less income over the payout term from the Replacement Contracts than they would have received if their replaced deferred annuities were annuitized;
- b. *No remediation*: contract holders of the Replaced Contracts will not receive restitution and remediation because the income options of the Replacement Contracts are substantially the same as the replaced deferred annuities and the contract holders are receiving either the same or more income from the Replacement Contracts; or
- c. *Indeterminable*: the Replacement Contracts and the replaced deferred annuities are materially different in their income options and contract features, and the contracts cannot be readily compared.

27. The Department and MassMutual have agreed on the type and amount of restitution and remedies for affected contract holders:

- a. *Remediation*: for contract holders whose Replacement Contracts pay less than they would have received through the Annuitization of their replaced deferred annuities under the same or substantially similar payout options, MassMutual shall determine the amount the contract holder would have received if, from the time of replacement to the Effective Date of this Consent Order, the contract holder had annuitized the replaced policy. MassMutual will include in this amount the applicable interest agreed to

by the Department and MassMutual. MassMutual will issue a notice, subject to DFS's approval, that will accompany checks for the amounts owed to contract holders in this category that explains why contract holders are receiving the checks including, at a minimum, the comparison of income options and payment amounts between the replaced deferred annuities and the Replacement Contracts. Lastly, MassMutual shall determine the monthly (or other frequency) difference between the payments from Replacement Contracts and the replaced deferred annuities, an amount that will be added to each such contract holder's monthly (or other frequency) annuity payments within 30 days of the Effective Date of this Consent Order and stated clearly on that notice.

- b. *Indeterminable*: Where the Replacement Contracts and the replaced deferred annuities cannot be readily compared due to materially different payout options and contract features, MassMutual will issue notices subject to the Department's approval, that explain the differences in payout options and payout amounts between the replaced deferred annuity and the Replacement Contracts, which may result in payment of appropriate amounts to these contract holders in the future. To the extent agreed upon by the Department and MassMutual, such notices may also include checks for any amounts designated for contract holders in this category.

28. In accordance with paragraph 27, MassMutual shall, within 30 days or other time period approved by DFS, deposit in the facilities of the U.S. Post Office, for delivery by prepaid

first-class mail to all affected contract holders or their beneficiaries, notices and checks, or other payment means approved by the Department, in the required amounts. All checks must be valid for six months.

29. For any payment or notice to a contract holder or beneficiary that is returned as undeliverable or not deposited within six months, MassMutual shall conduct a reasonable search for a current address. Should the search show a more current address, MassMutual shall re-issue a check valid for six months in the amount of the returned or undeposited check, and/or re-send the notice to the current address within fifteen days.

30. If a contract holder or beneficiary did not cash his or her check before the expiration date of the check or the check was returned after MassMutual re-sent it as described in paragraph 29, MassMutual shall follow all applicable provisions of the New York State Abandoned Property Law, including all reporting, mailing, and remittance requirements.

31. Upon the commencement of the process described in paragraphs 28-30, MassMutual will provide to the Department quarterly reports detailing the number of checks mailed, the total amount of individual checks, and the number of checks deposited, undelivered, and/or not deposited.

32. MassMutual may contract with a third party to conduct the Review and Restitution Process. Alternatively, the Department, in its discretion, may at any time select an independent third-party administrator (“TPA”) to conduct the Review and Restitution Process. MassMutual will retain the TPA after the Department’s review and approval of the retainer agreement. MassMutual shall be fully and solely responsible for all proper fees, expenses, and disbursements of the TPA in connection with the Review and Restitution Process provided for in this Consent Order and the TPA’s retainer agreement.

Breach of the Consent Order

33. In the event that the Department believes MassMutual to be materially in breach of the Consent Order (“Breach”), the Department will provide written notice to MassMutual of the Breach. Within ten business days from the date of receipt of said notice, or on a later date if so determined in the sole discretion of the Department, MassMutual must appear before the Department and shall have an opportunity to rebut the Department’s assertion that a Breach has occurred and, to the extent pertinent, demonstrate that any such Breach is not material or has been cured.

34. MassMutual understands and agrees that its failure to appear before the Department to make the required demonstration within the specified period set forth in paragraph 33 is presumptive evidence of MassMutual’s Breach. Upon a finding of Breach, the Department has all the remedies available under the New York State Insurance Law, Financial Services Law, or other applicable laws and may use any and all evidence available to the Department for all ensuing hearings, notices, orders, and other remedies that may be available under the New York State Insurance Law, Financial Services Law, or other applicable laws.

Other provisions

35. MassMutual represents and warrants, through the signatures below, that the terms and conditions of this Consent Order are duly approved, and execution of this Consent Order is duly authorized.

36. If MassMutual defaults on any of its material obligations under this Consent Order, DFS may terminate the Consent Order, at its sole discretion, upon ten days’ written notice to MassMutual. In the event of such termination, MassMutual expressly agrees and acknowledges that this Consent Order shall in no way bar or otherwise preclude the Department

from commencing, conducting, or prosecuting any investigation, action, or proceeding against MassMutual, however denominated, related to the Consent Order, or from using in any way statements, documents, or other materials produced or provided by MassMutual prior to or after the date of this Consent Order, including, without limitation, such statements, documents, or other materials, if any, provided for purposes of settlement negotiations.

37. The Department has agreed to the terms of this Consent Order based on, among other things, representations made to the Department by MassMutual. To the extent that representations made by MassMutual are later found to be materially incomplete or inaccurate, this Consent Order is voidable by the Department in its sole discretion.

38. All notices, reports, requests, certifications, and other communications to either party pursuant to this Consent Order shall be in writing and shall be directed as follows:

For the Department:

Laura Sarli
Assistant Counsel, Enforcement
New York Department of Financial Services
One State Street
New York, New York 10004-1511

David Crockett
Attorney
New York Department of Financial Services
One State Street
New York, New York 10004-1511

For MassMutual:

Bradley Lucido
Chief Compliance & Ethics Officer
Massachusetts Mutual Life Insurance Company
1295 State Street
Springfield, Massachusetts 01111-0001

39. This Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

40. MassMutual waives its right to further notice and hearing in this matter as to any allegations of past violations relating to the subject matter of this Consent Order up to and including its Effective Date and agrees that no provision of the Consent Order is subject to review in any court or tribunal outside of the Department.

41. This Consent Order may not be amended except by an instrument in writing signed on behalf of both parties to this Consent Order.

42. This Consent Order constitutes the entire agreement between the Department and MassMutual and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Consent Order. No inducement, promise, understanding, condition, or warranty not set forth in this Consent Order has been relied upon by any party to this Consent Order.

43. In the event that one or more provisions contained in this Consent Order shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Consent Order.

44. Upon execution by the parties to this Consent Order, the Department will discontinue the Investigation as against MassMutual with respect to the identified Replacement Contracts. The Department will not take any further action against MassMutual with respect to the Replacement Contracts for the conduct detailed herein that was found to have violated the Insurance Law and Regulations provided that MassMutual complies fully with the terms of the Consent Order.

45. This Consent Order may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by both of the parties hereto and the Consent Order is So Ordered by the Superintendent of Financial Services or her designee (“Effective Date”).

WHEREFORE, the signatures evidencing assent to this Consent Order have been affixed hereto on the dates set forth below.

**NEW YORK STATE DEPARTMENT OF
FINANCIAL SERVICES**

**MASSACHUSETTS MUTUAL LIFE
INSURANCE COMPANY**

By: Laura C. Sarli
Laura C. Sarli
Assistant Counsel, Enforcement
Consumer Protection & Financial
Enforcement

By: Bradley Lucido
Bradley Lucido
Chief Compliance & Ethics Officer

March 10, 2020

March 6, 2020

By: Christopher B. Mulvihill
Christopher B. Mulvihill
Deputy Superintendent, Enforcement
Consumer Protection & Financial
Enforcement

By: Michael O'Connell
Michael O'Connell
General Counsel

March , 2020

March 6, 2020

By: Katherine A. Lemire
Katherine A. Lemire
Executive Deputy Superintendent
Consumer Protection & Financial
Enforcement

March 10, 2020

**THE FOREGOING IS HEREBY APPROVED.
IT IS SO ORDERED.**

Linda A. Lacewell

LINDA A. LACEWELL
Superintendent of Financial
Services

April 9, 2020

In the Matter of

PACIFIC LIFE & ANNUITY COMPANY.

Respondent.

CONSENT ORDER

WHEREAS, the New York State Department of Financial Services (“DFS” or “Department”) identified a practice arising from the replacement of deferred annuity contracts with immediate income annuity contracts, in violation of the disclosure and suitability requirements of New York Regulations 60 and 187;

WHEREAS, the Department commenced an investigation (“Investigation”), including Pacific Life & Annuity Company (“Pacific Life”), in connection with the practice described in the preceding paragraph, from the period of January 1, 2012 through April 30, 2018 (the “Relevant Period”);

WHEREAS, the Department found that Pacific Life (1) failed to obtain appropriate annuitization information for replaced deferred annuities, (2) failed to disclose adequate suitability and annuitization information to contract holders, and (3) thereby prevented contract holders from being fully informed in deciding whether to replace deferred annuities;

WHEREAS, the Department found that Pacific Life issued replacement immediate annuity contracts to consumers without sufficient Annuitization (as that term is subsequently defined in this Consent Order) information to determine suitability;

WHEREAS, the Department found that Pacific Life (1) failed to adequately train its producers to conduct proper suitability reviews, (2) failed to adequately train its producers to provide disclosures to contract holders when replacing their deferred annuities with Pacific Life's immediate annuities, and (3) failed to maintain adequate supervisory controls over its producers to ensure compliance with applicable regulations;

WHEREAS, the Department found Pacific Life's conduct and failures to disclose to consumers that they could annuitize their existing deferred annuities with higher guaranteed income harmed certain consumers, causing them to exchange more financially favorable deferred annuities with immediate annuities; and

WHEREAS, Pacific Life has cooperated with the Department's Investigation and has agreed to revise its Disclosure Statement and work with the Department's Life Bureau to revise its procedures, after the Department identified these improper practices.

NOW, THEREFORE, the Department and Pacific Life are willing to resolve the matters cited herein in lieu of proceeding by notice and a hearing.

FINDINGS

The findings of the Department's Investigation are as follows:

Respondent

1. Pacific Life is an affiliate of Pacific Life Insurance Company, a Nebraska life insurance company which, in turn, is a wholly-owned subsidiary of Pacific LifeCorp, an intermediate Delaware holding company. The ultimate parent of Pacific Life is Pacific Mutual Holding Company, a Nebraska mutual holding company.

2. Pacific Life is authorized to write life insurance and annuities, and is licensed to transact business in the District of Columbia and fifty states, including New York State.

3. Pacific Life's principal products subject to the Department's investigation during the Relevant Period were fixed and variable annuities, including single premium deferred and immediate annuities.

4. Independent broker-dealer firms, producers, and financial institutions market Pacific Life's products.

5. Pacific Life is headquartered in Newport Beach, California.

Terms

6. For purposes of this Consent Order, the following terms shall have the meanings set forth herein:

- a. "Annuitization" refers to the conversion of the actual accumulation amount of a deferred annuity into a series of annuity payments to the contract holder. Upon Annuitization, the annuity payments are calculated as the greater of the guaranteed annuity purchase rates in the contract applied to the actual accumulation amount or the company's current single premium immediate annuity rates applied pursuant to Insurance Law § 4223(a)(1)(E).
- b. "Deferred annuity" refers to an annuity contract in which periodic income payments are not scheduled to commence during the first 13 months after the contract is issued.
- c. "Disclosure Statement" means the form prescribed in Appendix 10B to Insurance Regulation 60, which, in connection with the issuance of a replacement annuity, requires accurate completion of certain disclosures

and information, including but not limited to a side-by-side comparison of the deferred annuity and proposed replacement immediate annuity.

- d. “Immediate annuity” refers to an annuity contract in which the first periodic income payment begins in 13 or fewer months after the contract is issued. The immediate annuity is usually purchased with a single premium.
- e. “Replacement Contracts” refers to new immediate annuities delivered or issued for delivery in the State of New York by Pacific Life during the Relevant Period, and which were known by Pacific Life to include, as part of the resulting transactions, existing annuity contracts that have been or were likely to be lapsed, surrendered, partially surrendered, or otherwise terminated, as provided in Regulation 60, 11 NYCRR § 51.2(a).

Findings

7. An annuity is a contract between a purchaser and an insurance company in which the purchaser agrees to make a lump sum payment or series of payments in return for regular payments, also known as annuity payments, that begin either immediately (within the first 13 months following purchase of the annuity) or, for a deferred annuity, at some future date. Annuity payments are designed to provide a steady stream of income for a specified period of time or for the remainder of one or more lives.

8. Replacement of existing deferred annuities with immediate annuities without disclosing annuitization income comparison information may cost consumers substantial lifetime income.

9. Pacific Life's producers marketed to consumers Pacific Life immediate annuities, and replaced consumers' deferred annuities with immediate annuities during the Relevant Period.

10. In these efforts to sell the Replacement Contracts and replace the deferred annuities with immediate annuities, Pacific Life's producers failed to provide to consumers required disclosures with annuitization income information, which would have revealed the detrimental nature of certain of these transactions.

11. Pacific Life did not require or ensure that contract holders received for their review a comparison between the income benefit that contract holders would derive from their existing deferred annuity contracts and the income benefit available from Pacific Life's proposed Replacement Contracts.

12. As a result, Pacific Life did not satisfy its obligations regarding the suitability of the Replacement Contracts, as required by Regulation 187, 11 NYCRR § 224:

- a. Pacific Life failed to ensure that its producers made reasonable efforts to obtain contract holders' complete suitability information, which would have included information about existing assets, such as the amount of guaranteed income available if the existing deferred annuity contracts were annuitized, prior to the recommendation of a Replacement Contract;
- b. Pacific Life failed to ensure that its producers properly considered whether proposed Replacement Contracts were suitable for consumers in some instances, including whether the consumers would lose existing benefits available through annuitization options in the existing deferred annuities;
- c. Pacific Life issued Replacement Contracts to consumers without reasonable bases to believe the annuities at issue were suitable in some

instances, and without providing consumers with the required
Annuitization information for replaced deferred annuities;

- d. Pacific Life did not establish a supervisory system reasonably designed to achieve compliance with Regulation 187 in connection with the deferred-to-immediate replacements at issue; and
- e. Pacific Life failed to ensure that every producer recommending Pacific Life's immediate annuities to consumers was adequately trained to make those recommendations in connection with the deferred-to-immediate replacements at issue.

13. The Department's investigation found that the Disclosure Statements provided by Pacific Life to contract holders were inadequate because they failed to include information regarding the Annuitization of the existing deferred annuities, including periodic payment amounts available.

14. The Department's investigation also found that Pacific Life's producers did not adequately discuss with certain consumers the disadvantages of replacing their existing deferred annuities, including losing the opportunity to annuitize their deferred annuities, potentially on more advantageous terms than the proposed Replacement Contracts.

15. Due to these failures, certain consumers were uninformed regarding material disadvantages relating to the Replacement Contracts and were therefore prevented from making fully-informed decisions with respect to the Replacement Contracts, resulting in less income for substantially similar or identical options.

16. Certain of the replaced deferred contracts also had more favorable guaranteed purchase rates, resulting in some contract holders receiving less retirement income from the Replacement Contracts.

17. When the Department brought its concerns regarding suitability and disclosure in replacement transactions to the attention of Pacific Life, Pacific Life agreed to work with the Department's Life Bureau to revise its Disclosure Statement to address the Department's concerns.

Violations

18. Based on the foregoing, the Department finds that Pacific Life violated New York Insurance Regulations 187 and 60.

AGREEMENT

IT IS HEREBY UNDERSTOOD AND AGREED by Pacific Life and the Department that:

Monetary Penalty

19. Pacific Life shall pay a civil monetary penalty of one hundred seventy-two thousand dollars (\$172,000) to DFS within ten days of the Effective Date of this Consent Order. The payment shall be in the form of a wire transfer in accordance with instructions provided by DFS.

20. Pacific Life agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state, or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order. Pacific Life further agrees that it will not claim, seek, or receive indemnification or reimbursement of the civil monetary penalty from any other person or entity.

Injunctive Relief

21. Pacific Life shall comply with Regulations 187 and 60.

Remediation and Restitution

22. Pacific Life represents to the Department that it sold or issued 172 Replacement Contracts during the Relevant Period.

23. Going forward, Pacific Life will obtain income information regarding replaced deferred annuities and replacement immediate annuities in all deferred-to-immediate replacement transactions and will disclose this information to consumers to ensure compliance with Insurance Regulations 187 and 60.

24. Pacific Life and the Department have agreed upon restitution and remediation for the affected contract holders of the Replacement Contracts. Pacific Life will administer the payment and notice provisions discussed below in paragraphs 25-30 (the “Review and Restitution Process”).

25. Pursuant to the Review and Restitution Process, Pacific Life has compared the income options and payment amounts available under each replaced deferred annuity contract with the income options and payment amounts of each Replacement Contract.

26. Pacific Life has submitted to the Department for its review and approval all annuity contract comparison information and a recommendation for each of the Replacement Contracts. The recommendations placed each Replacement Contract into one of three categories:

- a. *Remediation*: contract holders of the Replaced Contracts shall receive restitution and remediation because the income options of the

Replacement Contracts are substantially the same as the replaced deferred annuities and the contract holders are receiving less income from the Replacement Contracts than they would have received if their replaced deferred annuities were annuitized;

- b. *No remediation*: contract holders of the Replaced Contracts will not receive restitution and remediation because the income options of the Replacement Contracts are substantially the same as the replaced deferred annuities and the contract holders are receiving either the same or more income from the Replacement Contracts; or
- c. *Indeterminable*: the Replacement Contracts and the replaced deferred annuities are materially different in their income options and contract features, and the contracts cannot be readily compared.

27. The Department and Pacific Life have agreed on the type and amount of restitution and remedies for affected contract holders:

- a. *Remediation*: for contract holders whose Replacement Contracts pay less than they would have received through the Annuitization of their replaced deferred annuities, Pacific Life shall determine the amount the contract holder would have received if, from the time of replacement to the Effective Date of this Consent Order, the contract holder had annuitized the replaced policy. Pacific Life will include in this amount the applicable interest agreed to by the Department and Pacific Life. Pacific Life will issue a notice, subject to DFS's approval, that will accompany checks for the amounts owed to contract holders in this category that explains why

contract holders are receiving the checks including, at a minimum, the comparison of income options and payment amounts between the replaced deferred annuities and the Replacement Contracts. Lastly, Pacific Life shall determine the monthly (or other frequency) difference between the payments from Replacement Contracts and the replaced deferred annuities, an amount that will be added to each such contract holder's monthly (or other frequency) annuity payments within 30 days of the Effective Date of this Consent Order or other time period approved by DFS and stated clearly on that notice.

- b. *Indeterminable*: The Department has identified certain contract holders in this category pursuant to the Department's review, and Pacific Life will provide restitution as appropriate. Pacific Life will issue a notice, subject to DFS's approval, that will accompany checks for the amounts designated for contract holders in this category that explains the differences in income options and payout amounts between the replaced deferred annuity and the Replacement Contracts. Pacific Life will issue a separate notice, subject to DFS's approval, that will be sent to certain other contract holders, which may result in payment of appropriate amounts to these contract holders.

28. In accordance with paragraph 27, Pacific Life shall, within 30 days or other time period approved by DFS, deposit in the facilities of the U.S. Post Office, for delivery by prepaid first-class mail to all affected contract holders or their beneficiaries, notices and checks, or other

payment means approved by the Department, in the required amounts. All checks must be valid for six months.

29. For any payment or notice to a contract holder or beneficiary that is returned as undeliverable or not deposited within six months, Pacific Life shall conduct a reasonable search for a current address. Should the search show a more current address, Pacific Life shall re-issue a check valid for six months in the amount of the returned or undeposited check, and/or re-send the notice to the current address within fifteen days.

30. If a contract holder or beneficiary did not cash his or her check before the expiration date of the check or the check was returned after Pacific Life re-sent it as described in paragraph 29, Pacific Life shall follow all applicable provisions of the New York State Abandoned Property Law, including all reporting, mailing, and remittance requirements.

31. Upon the commencement of the process described in paragraphs 28-30, Pacific Life will provide to the Department quarterly reports detailing the number of checks mailed, the total amount of individual checks, and the number of checks deposited, undelivered, and/or not deposited.

32. Pacific Life may contract with a third party to conduct the Review and Restitution Process. Alternatively, the Department, in its discretion, may at any time select an independent third-party administrator (“TPA”) to conduct the Review and Restitution Process. Pacific Life will retain the TPA after the Department’s review and approval of the retainer agreement. Pacific Life shall be fully and solely responsible for all proper fees, expenses, and disbursements of the TPA in connection with the Review and Restitution Process provided for in this Consent Order and the TPA’s retainer agreement.

Breach of the Consent Order

33. In the event that the Department believes Pacific Life to be materially in breach of the Consent Order (“Breach”), the Department will provide written notice to Pacific Life of the Breach. Within ten business days from the date of receipt of said notice, or on a later date if so determined in the sole discretion of the Department, Pacific Life must appear before the Department and shall have an opportunity to rebut the Department’s assertion that a Breach has occurred and, to the extent pertinent, demonstrate that any such Breach is not material or has been cured.

34. Pacific Life understands and agrees that its failure to appear before the Department to make the required demonstration within the specified period set forth in paragraph 33 is presumptive evidence of Pacific Life’s Breach. Upon a finding of Breach, the Department has all the remedies available under the New York State Insurance Law, Financial Services Law, or other applicable laws and may use any and all evidence available to the Department for all ensuing hearings, notices, orders, and other remedies that may be available under the New York State Insurance Law, Financial Services Law, or other applicable laws.

Other provisions

35. Pacific Life represents and warrants, through the signatures below, that the terms and conditions of this Consent Order are duly approved, and execution of this Consent Order is duly authorized.

36. If Pacific Life defaults on any of its material obligations under this Consent Order, DFS may terminate the Consent Order, at its sole discretion, upon ten days’ written notice to Pacific Life. In the event of such termination, Pacific Life expressly agrees and acknowledges that this Consent Order shall in no way bar or otherwise preclude the Department from

commencing, conducting, or prosecuting any investigation, action, or proceeding against Pacific Life, however denominated, related to the Consent Order, or from using in any way statements, documents, or other materials produced or provided by Pacific Life prior to or after the date of this Consent Order, including, without limitation, such statements, documents, or other materials, if any, provided for purposes of settlement negotiations.

37. The Department has agreed to the terms of this Consent Order based on, among other things, representations made to the Department by Pacific Life. To the extent that representations made by Pacific Life are later found to be materially incomplete or inaccurate, this Consent Order is voidable by the Department in its sole discretion.

38. All notices, reports, requests, certifications, and other communications to either party pursuant to this Consent Order shall be in writing and shall be directed as follows:

For the Department:

Laura Sarli
Assistant Counsel, Enforcement
New York Department of Financial Services
One State Street
New York, New York 10004-1511

David Crockett
Attorney
New York Department of Financial Services
One State Street
New York, New York 10004-1511

For Pacific Life:

Sharon Cheever
Senior VP and General Counsel
Pacific Life & Annuity Company
700 Newport Center Drive
Newport Beach, California 92660-6397

39. This Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

40. Pacific Life waives its right to further notice and hearing in this matter as to any allegations of past violations relating to the subject matter of this Consent Order up to and including its Effective Date and agrees that no provision of the Consent Order is subject to review in any court or tribunal outside of the Department.

41. This Consent Order may not be amended except by an instrument in writing signed on behalf of both parties to this Consent Order.

42. This Consent Order constitutes the entire agreement between the Department and Pacific Life and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Consent Order. No inducement, promise, understanding, condition, or warranty not set forth in this Consent Order has been relied upon by any party to this Consent Order.

43. In the event that one or more provisions contained in this Consent Order shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Consent Order.

44. Upon execution by the parties to this Consent Order, the Department will discontinue the Investigation as against Pacific Life with respect to the identified Replacement Contracts. The Department will not take any further action against Pacific Life with respect to the Replacement Contracts for the conduct detailed herein that was found to have violated the Insurance Law and Regulations provided that Pacific Life complies fully with the terms of the Consent Order.

45. This Consent Order may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by both of the parties hereto and the Consent Order is So Ordered by the Superintendent of Financial Services or her designee (“Effective Date”).

WHEREFORE, the signatures evidencing assent to this Consent Order have been affixed hereto on the dates set forth below.

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

PACIFIC LIFE & ANNUITY COMPANY

By: Laura C. Sarli
Laura C. Sarli
Assistant Counsel, Enforcement
Consumer Protection & Financial
Enforcement

By: Laurie A. Fitzgerald
Laurie A. Fitzgerald
Senior Vice President
Finance, Risk, Valuation & Compliance

March 10, 2020

March 3, 2020

By: Christopher B. Mulvihill
Christopher B. Mulvihill
Deputy Superintendent, Enforcement
Consumer Protection & Financial
Enforcement

By: Frank J. Boynton
Frank J. Boynton
Assistant Secretary

March , 2020

March 3, 2020

By: Katherine A. Lemire
Katherine A. Lemire
Executive Deputy Superintendent
Consumer Protection & Financial
Enforcement

March 10, 2020

**THE FOREGOING IS HEREBY APPROVED.
IT IS SO ORDERED.**

Linda A. Lacewell
LINDA A. LACEWELL
Superintendent of Financial Services

April 9, 2020