

4TH CIVIL NO.: G065229
Orange County Superior Court Case No.: 30-2019-01120722-CU-Tt-CJC

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION THREE

JOEL M. TROWBRIDGE, et. al.

Plaintiffs and Appellants,

v.

PACIFIC LIFE INSURANCE
COMPANY,

Defendant and Respondent

Appeal from a Judgment of the
Superior Court of the County of Orange
Honorable Randall J. Sherman, Judge

**AMICUS CURIAE BRIEF OF PUBLIC INVESTORS ADVOCACY BAR
ASSOCIATION**

Attorneys for Amicus Curiae Public Investors Advocacy Bar Association

Melinda Jane Steuer
Law Offices of Melinda Jane Steuer
1107 Second Street, Suite 230
Sacramento, CA 965814
(T) (916) 930-0045 | msteuer@californiainvestoradvocate.com

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to Rule 8.208(e)(3) of the *California Rules of Court*, the undersigned counsel for amicus curiae Public Investors Advocacy Bar Association (“PIABA”) certify that PIABA is unaware of any person or entity that has a financial or other interest in the outcome of this proceeding that must be listed under Rule 8.208(e)(1) or (2).

Dated: February 12, 2026

Melinda Jane Steuer (SBN: 216105)
Attorney for Amicus Curiae
Public Investors Advocacy Bar Association

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INTRODUCTION AND SUMMARY OF THE ARGUMENT

There was substantial and undisputed evidence submitted in the trial court that decedent Bettye Trowbridge Vaughen's ("decedent") trusted advisor, Brian Horn ("Horn") breached his fiduciary duty by soliciting her to purchase an expensive, complicated and manifestly inappropriate indexed universal life insurance policy ("IUL") issued by respondent Pacific Life Insurance Company ("Pacific Life"). The dispositive issue for this appeal is the trial court's ruling that Pacific Life has no direct or vicarious liability to the Plaintiffs/Appellants, who are the decedent's beneficiaries. The trial court's ruling and Pacific Life's position is directly contrary to the express language of the California Insurance Code and California Supreme Court precedent. The California Insurance Code and California case law provides that persons such as Horn who transact life insurance business on behalf of an insurer are agents of the insurers with whom they are appointed, and that those insurers are vicariously liable for the tortious conduct of their agents in selling life insurance policies for them. Consequently, Pacific Life is vicariously responsible for its agent Horn's tortious conduct, all of which relates to his solicitation of the decedent's purchase of the Pacific Life IUL.

Likewise, the California Civil Code and long-established California case law holds that principals are liable for all of the tortious conduct of their agents that is within the scope of the agency relationship. Horn's breaches of fiduciary duty were clearly within the scope of his agency relationship with Pacific Life because those

breaches were committed in connection with his solicitation and sale of the Pacific Life IUL to the decedent.

Pacific Life's arguments, if upheld, would turn the foregoing jurisprudence on its head by providing an exception to the fundamental principles of vicarious liability for claims of breach of fiduciary duty. Such a result would have a devastating impact on investors, savers, consumers and retirees. Our members have seen an explosion of cases in recent years in which independent insurance agents who market themselves as financial advisors and/or retirement planners recommend to prospective clients that they invest their retirement savings into costly and unsuitable insurance products which are not regulated as securities, including indexed annuities, indexed universal life insurance policies, and whole life policies. Insurance agents frequently recommend that prospective customers liquidate or exchange their existing IRA and/or 401(k) investments and use the proceeds to purchase indexed life insurance products. We have also seen many cases in which insurance agents recommend to their customers that they finance their premiums in a manner similar to what is alleged to have occurred in the instant case.

In many instances, the agents do not carry any Errors & Omissions insurance, or do not carry sufficient insurance to fairly compensate their customers for their losses. Consequently, investors who have lost their retirement monies in unsuitable life insurance products recommended by these insurance agents are left with no

recourse unless they are able to recover from the insurance companies who issued the investments.

The trial court's decision, if upheld, would have the effect of absolving life insurance companies for the acts of independent agents who transact business on their behalf, despite the substantial financial benefits that those companies reap through the sales of their products. The consequences to consumers would be horrific. Consumers who have been convinced by unscrupulous insurance agents to invest their life savings and retirement monies into unsuitable life insurance products would be left without any viable means of recovery for their losses. Such a result would also leave the insurers with no incentive to oversee or police the conduct of their agents, who frequently hold themselves out as fiduciary financial advisors in the course of procuring the insurance products from which the insurers enormously benefit. Without that incentive, the abusive conduct of life agents in soliciting complex, expensive and manifestly inappropriate products will not only continue, but is highly likely to increase. As discussed herein, such a result is counter to the express language of the California Insurance Code and to California Supreme Court precedent.

Further, Pacific Life's assertion that it cannot be liable for breach of fiduciary duty under the facts and circumstances of this case are not accurate, in any event. Consequently, the jury should have been allowed to decide the issue whether Pacific Life was vicariously liable for Horn's breaches of fiduciary duty.

Lastly, there was also substantial evidence presented to support the Plaintiffs' alternative claims of an agency by ratification. Specifically, Plaintiffs submitted evidence that: Pacific Life received and retained benefits from Horn's tortious conduct; it turned a willful blind eye to Horn's sales practices; and it failed to inquire despite red flags which reasonably should have prompted an inquiry. Such conduct is sufficient to create a triable issue of fact as to ratification, regardless of whether Pacific Life lacked actual knowledge of Horn's misconduct.

For these reasons and as further discussed below, the trial court committed reversible error when it granted Pacific Life's motion for summary judgment.

LEGAL DISCUSSION

I. Pacific Life Is Vicariously Liable For All Of Horn's Torts Which Relate To His Solicitation And Sale Of The Pacific Life Policy, Including His Breaches Of Fiduciary Duty, Because Horn Was Its Appointed Agent

Pacific Life asserts that it cannot be held vicariously responsible for Horn's breaches of fiduciary duty because he was an independent contractor of Pacific Life, and Pacific Life did not directly owe a fiduciary duty to the Plaintiffs. Pacific Life's argument is contrary to California statutes and California Supreme Court precedent.

It has long been the law in the State of California that principals are responsible for the acts of their actual, authorized and/or ostensible agents. (Cal. Civil Code §§ 2295, 2296, 2298, 2299, and 2300.) Life insurance companies appoint agents to represent them in soliciting sales from current and prospective customers. The insurers receive substantial financial benefits from the work of the insurance agents

who are appointed to sell life insurance on their behalf in the form of premiums from the customers whose business the agents have successfully solicited. The life insurance companies then pay those agents a commission from those premiums. This relationship falls squarely within the definition of agency that is set forth in the California Civil Code.

The foregoing is supported by the unambiguous language of the California Insurance Code. Specifically, Cal. Insurance Code Section 32 provides:

(a) A life and accident and health or sickness licensee is a person authorized to act as a life agent on behalf of a life insurer or a disability insurer to transact any of the following:

- (1) Life insurance.
 - (2) Accident and health or sickness insurance.
 - (3) Life and accident and health or sickness insurance.
- (b) licenses to act as a life agent under this chapter shall be of the types as set forth in Section 1626. (See also Cal. Ins. Code § 1622 [stating same].)

The types of licenses set forth in Section 1626 include life insurance policies and annuities. Transacting insurance includes the solicitation, negotiation, and/or execution of an insurance contract (Cal. Ins. Code § 35.)

Cal. Insurance Code § 1731 specifically provides that a licensed agent or broker acts as an agent for the insurers with whom he is appointed. It states:

“A person licensed as a broker–agent shall be deemed to be acting as an insurance agent in the transaction of insurance placed with those insurers for whom a notice of appointment has been filed with the Insurance Commissioner in accordance with *Section 1704* and is then in force.

Cal. Insurance Code § 1704 provides that any insurance licensee “shall not act as an agent of an insurer unless the insurer has filed with the commissioner a notice of appointment, executed by the insurer, appointing the licensee as the insurer’s agent.” As the language of Cal. Insurance Code § 1704 reflects, when an insurer files a notice of appointment of a licensee with the California Insurance Commissioner, that licensee acts as that insurer’s agent.

The foregoing is further borne out by Cal. Insurance Code § 1704.5. Cal. Insurance Code § 1704.5 provides that a licensed life agent who is not appointed by an insurer may transmit an application for insurance to that insurer, and if the insurance policy is then issued pursuant to that application, “the insurer is considered to have authorized the agent to act on its behalf, and the insurer is responsible for all actions of the agent that relate to the application and policy **as if the agent had been duly appointed by the insurer.**” (Emphasis added) It is apparent from the language of Cal. Insurance Code § 1704.5 that a duly appointed agent, or any other insurance licensee who transmits an application for insurance to an insurer pursuant to which an insurance policy is issued, is an authorized agent of the insurer, and that the insurer is responsible for all actions of the agent that relate to the application and policy.

The California Insurance Code also makes it clear that persons who transact life insurance business cannot be brokers. Specifically, Cal. Insurance Code § 33 defines an insurance broker as: “a person who for compensation and on behalf of another person, transacts insurance **other than life, disability or health** with, but not

on behalf of an insurer.” (Emphasis added; see also Cal. Ins. Code § 1623 [stating same]).

Simply put, the California Insurance Code expressly provides that persons such as Horn who transact life insurance are agents of the insurers with whom they are appointed, and that those insurers are responsible for those agents’ acts which relate to the applications and policies that the agents procure on behalf of those insurers. Where, as here, the language of the relevant statutes is clear and unambiguous, the plain meaning controls and meaning must be given to every word and phrase in the statute. (*People v. Cheek* (2001) 25 Cal.4th 894, 899; *Lennane v. Franchise Tax Bd.* (1994) 9 Cal.4th 263, 268.) The Legislature is therefore presumed to have meant what it said when it provided that life insurance agents are agents of the insurers with whom they are appointed, and that those insurers are responsible for their agents’ acts which relate to the policies they procure on behalf of those insurers.

Pacific Life does not have the right to unilaterally decide who is an agent, or who is a broker, or its responsibilities for the acts of its agents, when the Legislature has already enacted laws which expressly delineate who an agent is, and what Pacific Life’s responsibilities are. It is undisputed that Horn was appointed with Pacific Life at all relevant times. (3 AA¹ 698-699) Accordingly, Pacific Life’s argument that

¹“AA” means the Appellant’s Appendix submitted in this matter.

Horn was not its agent should be disregarded because it is contrary to the express language of the California Insurance Code.

Further, Pacific Life's argument that Horn was not its agent is contrary to California Supreme Court precedent, as well as to every published California appellate court decision regarding this issue.

Specifically, in *O'Riordan v. Federal Kemper Life Assurance Co.* (2005) 36 Cal.4th 281, 288, the California Supreme Court held that an independent life insurance agent, who was appointed to transact insurance business on behalf of the defendant insurer as well as multiple other carriers, was an agent of the defendant insurer and that, therefore, the agent's knowledge and conduct was imputed to the insurer.

Similarly, in *Randle v. Farmers New World Life Ins. Co.* (2nd App. Dist. 2022) 85 Cal. App.5th 53, 62, the court held that a life insurance agent's knowledge of facts regarding the policy, which the customer alleged were concealed from her, was imputed to the carrier and that the insurance agent's acts and omissions were binding on the carrier.

Likewise, in *Fischl v. Pacific Life Ins. Co.* (2nd App. Dist. 2023) 94 Cal. App.5th 108, 123, the court held that Pacific Life was vicariously liable for its life insurance agent's negligent conduct of a suitability analysis regarding a policy which the carrier subsequently issued pursuant to an application submitted by the agent. The court explained that: "plaintiff would in the ordinary case be able to assert a

claim against Pacific Life for Acosta's negligent suitability analysis.” (*Id.*) The court ruled against the plaintiff for a different reason, which is that the plaintiff had already released Pacific Life from liability for its agent’s negligence.

In *Loehr v. Great Republic Insurance Co.* (1st App. Dist. 1990) 226 Cal. App.3d 727, 733-34, the court, following Cal. Insurance Code §§ 1704(a) and 1731, held that an insurance company was vicariously liable for a health insurance agent’s acts, errors, and omissions with regard to his solicitation, sale, and servicing of the insurance policy at issue, notwithstanding the fact that the agent was an independent agent who was authorized to transact business on behalf of several different insurance carriers. As the *Loehr* court explained:

Secondly, as discussed, the Insurance Code specifically provides that an individual can be an agent of several different insurance carriers at the same time. [citations] The fact that Doyle was an “independent” insurance agent so licensed to transact insurance business for several different carriers did not insulate Great Republic from responsibility for Doyle’s actions as its agent, or make appellant liable therefor. (*Loehr, supra*, 226 Cal. App.3d at 734.)

In short, the California Supreme Court and California Appellate courts hold, in accordance with the statutes discussed above, that independent life or health insurance agents such as Horn are agents of the carriers with whom they are appointed and that the carriers are vicariously liable for their agents’ tortious conduct. As previously discussed, Horn was an appointed life agent of Pacific Life at all relevant

times. (3 AA² 698-699) Consequently, Pacific Life is vicariously liable for Horn's tortious conduct in soliciting, recommending, and causing Plaintiff to purchase the Pacific Life IUL, and Horn's knowledge and actions are imputed to Pacific Life.

Nonetheless, Pacific Life insists that it cannot be held vicariously liable for Horn's breaches of fiduciary duty because it was not a fiduciary and its employees did not breach fiduciary duties. Pacific Life's argument flies in the face of the basic tenets of agency-principal liability. As previously discussed, the California Insurance Code expressly provides that the insurer is responsible for ALL actions of its appointed agents that relate to the applications and policies they procure on behalf of the insurers. (Cal. Insurance Code §§ 1704, 1704.5 and 1731) Likewise, the California Supreme Court and multiple California appellate courts hold that insurers are vicariously liable for all of the tortious conduct of their agents, including for fraud and negligence. (*O'Riordan, supra*, 36 Cal.4th at 288; *Fischl, supra*, 94 Cal. App.5th at 123; *Randle, supra*, 85 Cal. App.5th at 62; *Loehr, supra*, 226 Cal. App.3d at 733-34.)

The foregoing statutes and case law do not indicate that there is any exception or carve-out of vicarious liability for agents' breaches of fiduciary duties. On the contrary, the Legislature's use of the word "all" reflects that a life insurer's vicarious

² "AA" means the Appellant's Appendix submitted in this matter.

liability extends to any and all tortious acts of its agents in connection with procuring life insurance policies for that insurer. Indeed, it would be nonsensical and contrary to the law to conclude that an insurer is vicariously liable for its agents' fraud, but not for their breaches of fiduciary duty.

Moreover, under California law, a principal who puts an agent in a position that enables the agent, while apparently acting within his authority, to commit any act of wrongdoing upon another is subject to liability to such persons for that wrongdoing. (Civil Code §§ 2332 & 2338; *Rutherford v. The Rideout Bank* (1938) 11 Cal.2d 479, 483-484, quoting the Restatement of the Law of Agency Sections 261 & 262; *Bayuk v. Edson* (1965) 236 Cal. App.2d 309, 314; *Reusche v. California Pacific Title Insurance Company* (1965) 231 Cal. App.2d 731, 736; *California Motor Express, Ltd. v. Chowchilla Union High School District* (1962) 202 Cal. App.2d 314, 318; *Grigsby v. Hagler* (1938) 25 Cal. App.2d 714, 715-716.) The principal is subject to liability even if it is entirely innocent, or has received no benefit from the transaction, or the agent has acted solely for his own purposes. (*Rutherford, supra*, 11 Cal.2d at 484; *Inter Mountain Mortgage, Inc. v. Sulimen* (2000) 78 Cal. App.4th 1434, 1441-1442; *Reusche, supra*, 231 Cal. App.2d at 736; *California Motor, supra*, 202 Cal. App.2d at 318; *Gift v. Ahrnke* (1951) 107 Cal. App.2d 614, 622.) A principal is liable to third parties not only for the negligence of his agent in the transaction of the business of the agency but also for any other wrongful acts committed by such agent in and as a part of the transaction of such business, even if the principal did not

benefit from such acts. (Cal. Civil Code § 2338; *Grigsby, supra*, 25 Cal. App.2d at 715.) Knowledge of the agent's wrongdoing is imputed to the principal, as a matter of law. (*Powell v. Goldsmith* (1984) 152 Cal. App.3d 746, 751; *Lewis v. McClure* (1932) 127 Cal. App. 439, 450.)

Accordingly, the California courts hold that an agent's acts are within the scope of their agency relationship if they relate to the agent's authorized business, even if the acts themselves were not authorized and the principal received no benefit from them.

For example, in *Rutherford*, a bank manager fraudulently induced the plaintiff, who was a borrower on a deed of trust issued by the bank, to sell her property for less than its fair market value by falsely representing to her that the bank would foreclose upon her past due deed of trust if she did not sell. The bank contended that it was not responsible for its manager's actions because he was acting for his own purposes and was not authorized to engage in the alleged acts. The court held that the manager was acting within the scope of his agency because it was part of his duty as a manager to discuss with its debtors the actions the bank would take to collect past due sums that were owed to it. (*Rutherford, supra*, 11 Cal. 2d at 483-484.)

In *Grigsby*, the court held that a driver who collected excess monies from customers that he kept for himself was acting within the scope of his employment, despite the employer's lack of knowledge or authorization for those acts, because he was authorized to collect monies from customers, and each of the collections at issue

were made in connection with deliveries and sales that he was authorized to make. The court explained that, in committing the wrongful acts, the employee did not step aside from the business of his employer but rather used that business as a means to accomplish the fraud. (*Grigsby, supra*, 25 Cal. App.2d at 715.)

In *Walsh v. Hooker & Fay* (1963) 212 Cal. App.2d 450, 455-457, the court held that a stockbroker was acting within the scope of his agency relationship with the brokerage firm when he sold the plaintiff stock that was purchased through a different firm because it was solicited in the course of his business as the plaintiff's stockbroker, it was held in the same brokerage account as his other stocks, and the brokerage firm benefitted from the purchase by charging margin interest on the balance owed.

As other examples, in *Desai v. Farmers Insurance Exchange* (1996) 47 Cal. App.4th 1110, 1118-1121, in *R & B Auto Center, Inc. v. Farmers Group* (2006) 140 Cal. App.4th 327, 345-346, and in *Paper Savers, Inc. v. Nacsa* (1996) 51 Cal. App.4th 1090, 1099, the courts held that the insurers were vicariously liable for their agents' misrepresentations because the agents made those representations in the course of soliciting policies for the insurers who issued them.

Here, as in the cases above, Horn was acting within the scope of his agency relationship with Pacific Life when he breached his fiduciary duties because those breaches were committed in the course of soliciting the decedent to purchase the Pacific Life IUL pursuant to his authority as Pacific Life's appointed agent. Pacific

Life also directly benefitted from Horn's conduct because it received premiums from the decedent for the policy. The solicitation and sale of the Pacific Life IUL was therefore within the scope of Horn's authorized business of selling insurance for Pacific Life as an appointed agent of Pacific Life. Horn was not stepping away from his business of selling Pacific Life products or engaging in conduct that was unrelated to that business. On the contrary, his breaches of fiduciary duty were committed in the course of procuring the decedent's purchase of a Pacific Life policy.

Simply put, Horn was an agent of Pacific Life who was acting within the scope of that agency relationship when he breached his fiduciary duties to the decedent and her beneficiaries. Consequently, Pacific Life is vicariously liable for all of Horn's tortious acts that were committed in connection with soliciting the Pacific Life policy, including Horn's breaches of fiduciary duty. As the authorities above hold, this is true even if Pacific Life was wholly innocent and did not know about or ratify that conduct.

Pacific Life argues that *Fischl, supra*, does not support its vicarious liability because the plaintiff in *Fischl* did not allege a breach of fiduciary duty, the court in *Fischl* granted summary judgment in Pacific Life's favor, and *Fischl* involved a different type of life insurance product than this matter. Pacific Life's argument ignores the *Fischl* court's explicit finding that insurers such as Pacific Life are vicariously liable for all of the tortious conduct of their independent agents that is committed in connection with procuring the policy. The fact that the agent in *Fischl*

committed different torts than the ones which Horn committed and/or that he sold a different type of life insurance product does not change that fundamental principle. Further, the *Fischl* court did not grant summary judgment due to a lack of vicarious liability, but rather because the vicarious liability claims had been released and there was no direct liability. The Plaintiffs herein have not released their vicarious liability claims. Consequently, *Fischl* fully supports the Plaintiffs' argument that Pacific Life is vicariously liable for Horn's tortious conduct, including his breaches of fiduciary duty. Moreover, the California Insurance Code and several other published California cases, including the California Supreme Court's decision in *O'Riordan, supra*, provide that insurers are vicariously liable for the torts of their appointed independent life insurance agents.

Pacific Life also argues that Cal. Ins. Code § 1704.5 is inapplicable because Horn was already appointed with it when it sold the policy. Pacific Life's argument ignores the language of Cal. Ins. Code § 1704.5, discussed above, which provides that an insurer is responsible for all acts of its duly appointed life agents, or of life insurance licensees who procure policies on its behalf, which relate to the policy or application. Pacific Life's argument also disregards Cal. Ins. Code §§ 32, 1622, 1704 and 1731, discussed above, which provide that persons who sell life insurance are agents of the carriers with whom they are appointed. Cal. Ins. Code § 1704.5 simply extends that agency relationship to life insurance licensees who are not appointed with the insurer but who procure policies on that insurer's behalf. It would be absurd

to find, as Pacific Life suggests, that the insurer has no vicarious liability for the acts of its appointed agents who procure policies for it, when Cal. Ins. Code § 1704.5 imposes principal-agency liability for life insurance licensees who are not appointed agents, to the same extent as if they were appointed.

As discussed above, it is not necessary for Plaintiffs to prove that Pacific Life was itself a fiduciary because it is vicariously liable for all of Horn's torts that were committed in connection with procuring the policy, including Horn's breaches of fiduciary duty. Moreover, Pacific Life's argument that it could never be held to a fiduciary standard is inaccurate.

Under California law, any person who acts as an agent for another in rendering investment and financial advice, whether labeled as an investment advisor, financial advisor, stockbroker, securities registered representative, promoter, etc, is a fiduciary. (*Ashburn v. AIG Financial Advisors*, (2015) 234 Cal. App.4th 79, 100-101; *Brown v. Wells Fargo Bank, N.A.* (2008) 168 Cal. App.4th 938, 959-961; *Duffy v. Cavalier* (1989) 215 Cal. App.3d 1517, 1539-1540; *Hobbs v. Bateman Eichler, Hill Richards, Inc.* (1985) 164 Cal. App.3d 174, 201; *Twomey v. Mitchum, Jones, & Templeton, Inc.* (1968) 262 Cal. App.2d 690, 708-710, 720-722.) Moreover, a fiduciary relationship will arise whenever confidence is reposed by persons in the integrity and good faith of another, the other voluntarily accepts or assumes that confidence, and the person in whom such confidence is imposed obtains control over the other person's financial

affairs. (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith* (1998) 68 Cal. App.4th 445, 483-484.)

Courts within the Ninth Circuit, following California law, have therefore consistently held that insurers and their agents are fiduciaries if the insurer's agents hold themselves out as financial advisors and/or recommend insurance products for investment purposes and/or as an alternative to a 401(k) or other market investment. (See e.g. *Abbit v. ING United States Annuity and Life Insurance Company* (S.D. Cal. 2014) 999 F. Supp. 2d 1189, 1199 [holding that allegations that the insurer's agents had promised investors who purchased indexed annuities continued commitment, and thanked them for their ongoing trust and confidence in defendant as a preferred financial services provider, and that the plaintiffs trusted and relied upon the defendant, justified imposing a fiduciary duty against the insurer]; *Fischer v. Aviva Life and Annuity Company* (E.D. Cal. 2010) 2010 US Dist. LEXIS 94537,*15-17 [holding that allegations that the insurer's agents who sold the plaintiffs indexed annuities were the plaintiffs' investment advisors, and that the plaintiffs trusted them were sufficient to support a claim for breach of fiduciary duty against the insurer]; *In Re National Western Life Insurance Deferred Annuities Litigation* (S.D. Cal. 2006) 467 F. Supp. 2d 1071, 1087 [holding that allegations that sales agents of indexed annuities held themselves out as objective financial planners who acted in the plaintiff's best interests were sufficient to show a fiduciary relationship with the insurer on whose behalf the sales agents acted]; *Estate of Migliaccio v. Midland Nat'l*

Life Ins. Co. (C.D. Cal. 2006) 436 F. Supp. 2d 1095, 1108 [holding that the plaintiffs' allegations that the insurer's sales agents acted as their financial advisors, financial planners, and estate planning specialists were sufficient to establish a fiduciary duty as to the insurer and its agents with respect to the agents' recommendation of indexed annuities]; *Negrete v. Fidelity and Guar. Life Ins. Co.* (C.D. Cal. 2006) 444 F. Supp. 2d 998, 1003-1004 [holding that allegations that the insurance agents who marketed and sold indexed annuities to the plaintiffs were the plaintiffs' financial advisors, estate planning specialists, and held themselves out as having superior knowledge were sufficient to show a fiduciary relationship with the insurer whose products the agents sold].)

Here, the Plaintiffs submitted undisputed evidence that Horn was a registered investment advisor, a chartered financial consultant and a specialist in estate planning and tax mitigation for high net worth individuals, and that Horn solicited the decedent to purchase the IUL through a highly complex premium financing mechanism as part of a financial planning, estate planning and tax planning strategy. (1 AA 160-167, 195-196; 2 AA 382-397; 3 AA 616, 655-656, 690-696, 751-752, 775, 783, 801) Plaintiffs' evidence also reflected that the decedent and her trustees relied upon Horn as an expert in recommending and selling the IUL. (3AA 763-764) In short, Plaintiffs' evidence, if credited by the trier of fact, demonstrates that Horn was acting as the decedent's fiduciary in soliciting and selling the Pacific Life IUL. As the cases

discussed above hold, such evidence is sufficient to impose liability upon both Horn and Pacific Life for Horn's breaches of his fiduciary duties.

II. Pacific Life May Be Held Liable For Horn's Torts, Including His Breaches Of Fiduciary Duty, Based Upon Ratification

Pacific Life is also responsible for Horn's breaches of fiduciary duty, irrespective of an agency relationship, if it ratified those acts, including acts that it did not originally authorize. (Cal. Civil Code § 2307; *R & B Auto Center, supra*, 140 Cal. App.4th at 344; *Desai, supra*, 47 Cal. App.4th at 1118-1119) Ratification occurs when the principal accepts the benefits of the transaction and affirms the wrongful acts. (Cal. Civil Code § 2310; *Reusche, supra*, 231 Cal. App.2d at 737-738.) A principal cannot split an agency transaction and accept the benefits from its agent's wrongdoing without also bearing the burden of liability. (*Powell, supra*, 152 Cal. App.3d 746, 751; *Reusche, supra*, 231 Cal. App.2d at 737-738; *Gift, supra*, 107 Cal. App.2d at 623.) Ratification may be proven by circumstantial as well as direct evidence. (*Streetscenes v. ITC Entertainment Group, Inc.* (2002) 103 Cal. App.4th 233, 242-243.)

Pacific Life argues that ratification requires proof that it had actual knowledge of the agent's conduct and of all surrounding facts. This argument is contrary to California law. A purported lack of full knowledge of the agent's actions does not protect a principal who is willfully ignorant and deliberately chooses to act without such knowledge, nor does it protect a principal who fails to make an inquiry under

circumstances which reasonably should have put him on inquiry notice. (*Hutchinson Co. v. Gould* (1919) 180 Cal. 356, 358; *Reusche, supra*, 231 Cal App.2d at 737; *Thompson v. Machado* (1947) 78 Cal. App.2d 870, 878-879; *Chain v. Ehrman* (1928) 92 Cal. App. 334, 336.)

For example, in *Gift*, the plaintiff's stockbroker sold stocks that were held in her account and fraudulently transferred the proceeds of that sale to his personal account without the plaintiff's authorization. The plaintiff sued the stockbroker and his business partner at the firm. The court held that the defendant business partner was vicariously liable for the stockbroker's fraud because the stockbroker had agreed to buy out the defendant's share of the business, this necessarily entailed the stockbroker acquiring those funds from outside sources which included the plaintiff's monies, and the defendant had accepted the benefits of the stockbroker's wrongdoing by receiving and retaining the consideration from the stockbroker for the buy-out. (*Gift, supra*, 107 Cal. App.2d at 621-622.) The defendant argued that he had not ratified the transaction because he was unaware of the transaction with plaintiff or the stockbroker's fraud as to plaintiff at the time when he received the funds. The court rejected this argument. (*Id.* at 622.) The court explained that the defendant and the stockbroker had agreed that the stockbroker would buy out the defendant's interest in the firm, and the stockbroker had used the plaintiff's funds to pay the consideration for the buyout. (*Id.*) The court concluded that the defendant's lack of awareness at the time of the manner in which the stockbroker was acquiring the funds

to pay for the buy-out did not prevent ratification because the defendant received the benefits of those funds and continued to retain those benefits even after later learning of the fraud. (*Id.*)

The court reached the same conclusion in *Reusche*. In *Reusche*, the defendant's agent forged the defendant's signature on a note and deed of trust on real property which the defendant owned. The agent retained most of the proceeds from that loan. However, he remitted some of the proceeds to the defendant. The agent told the defendant that those monies were a payment for a different loan/transaction which the defendant had authorized. The title insurer and beneficiaries of the note and deed of trust contended that the defendant was bound by the illegal acts of her agent, even though the defendant did not know of those acts at the time or that the agent had used the loan proceeds to pay her. The court agreed with the plaintiffs. It held that the defendant had ratified her agent's conduct because the agent had remitted a portion of the fraudulently obtained loan proceeds to the defendant and the defendant had retained those funds after she had learned that her signature had been forged on the loan documents. (*Reusche, supra*, 231 Cal. App.2d at 737-738.) The court explained that, although the defendant did not know about the fraudulent loan transaction at the time or that this loan was the source of her payment, she had accepted the benefits from that transaction. (*Id.*) The court also found that the defendant should have made a reasonable investigation into her agent's conduct because she had previously

learned from the title company that her agent had forged her signature on a check, which was an indicator that her agent was dishonest. (*Id.*)

Several other California courts have similarly held that a defendant's acceptance and retention of benefits that the agent acquired for it constitutes an agency by ratification of acts that the principal did not authorize or know about at the time. (See, e.g. *First National Finance Corporation v. Five-O Drilling Company* (1930) 209 Cal. 569, 575-577 [holding that the defendant corporation had ratified its secretary's wrongdoing in signing a negotiable instrument for the payment of funds to the plaintiff that the bank later dishonored because the secretary had remitted the funds that were borrowed from the plaintiff to the defendant, and the defendant had not returned or offered to return any of those funds to the plaintiff]; *Mills v. Boyle Mining Co.* (1901) 132 Cal. 95, 98 [holding that the defendant had ratified a promissory note which its agent had issued to the plaintiff without the defendant's authorization, because the defendant knew that it had received the funds referenced in that note]; *Phillips v. Sanger Lumber Co.* (1900) 130 Cal. 431, 434 [holding same]; *Wilder v. Beede* (1898) 119 Cal. 646, 650 [holding that the defendant had ratified its agent's fraud in selling a piano to the plaintiff for far more than its value, despite having no notice of the fraud, because he had received and retained the sales proceeds and he knew that those monies greatly exceeded the value of the piano, but made no inquiry into the acts and representations by which the agent had procured the monies]; *Friddle v. Epstein* (1993) 16 Cal. App.4th 1649, 1655-1656 [holding that the

defendants had ratified an agreement to pay a commission to the buyer's broker despite not signing the commission agreement. because they had accepted the benefits of the real estate sale for which the commissions were to be paid].)

Here, as in the cases above, the Plaintiffs presented evidence that Pacific Life received, accepted, and retained substantial benefits from Horn's acts and omissions because it received the benefits of the premium payments that the decedent paid for the policy directly to Pacific Life. As the authorities hold, Pacific Life cannot accept the fruits of Horn's wrongdoing, as it did, without also bearing the burden of liability.

Further, as the authorities above also hold, Pacific Life cannot evade liability by claiming that it did not know all of the details regarding Horn's conduct. If Pacific Life's argument that it did not know that the policy was manifestly inappropriate for the decedent and the insured is accurate, then it chose to be willfully blind to how Horn was conducting his business. Moreover, the Plaintiffs submitted evidence that Pacific life failed to comply with its own underwriting standards or to inquire about red flags which reasonably should have triggered an inquiry. For example, Plaintiffs submitted evidence that Pacific Life failed to comply with its own requirement that an independent third party validate the insured's net worth and instead accepted the decedent's attorney's verification without any further inquiry. (1AA 185-187; 2AA 564, 566-567; 3 AA 672-673, 677-680, 683, 781, 798) Plaintiffs also submitted evidence which indicates that Pacific Life demonstrated a lack of reasonable care in ascertaining the insured's net worth and ability to pay for the policy. (3AA 684) There

was evidence that Pacific Life did not know and did not ask if Horn had done a suitability review, despite that being one of Pacific Life's requirements for underwriting a life insurance policy. (2 AA 422, 3 AA 620; 3 AA 780-781) There was also evidence that Pacific Life would not have issued the policy if Horn had done an appropriate suitability analysis. (3 AA 800-802). In addition, Plaintiffs submitted evidence that the policy was twice as large as would be deemed suitable under Pacific Life's own standards and that it was unsuitable due to the decedent's age; the use of a loan that was more than twice the decedent's liquid net worth to finance the policy premium; and the decedent's financial situation, objectives, risk tolerance and time horizon. (1 AA 184; 3 AA 800, 801, 802)

In short, the Plaintiffs presented evidence which, if believed by the trier of fact, showed that there were numerous red flags associated with the policy at issue, and that, if Pacific Life had fulfilled its responsibilities, it would have learned that the insured's assets were hugely inflated and that the decedent could not afford the policy. Instead, Pacific Life chose to instead stick its head in the sand. The California courts have made it clear that its decision to do so does not exculpate it from responsibility for the benefits it received from Horn's misconduct. As in the cases above, there was sufficient evidence of Pacific Life's receipt and retention of those substantial financial benefits, and of Pacific Life's failure to exercise reasonable care and its disregard of red flags to allow the jury to decide the issue of whether Pacific Life is vicariously liable for Horn's conduct based upon ratification.

Schultz Steel Co. v. Hartford Accident & Indem. Co. (1986) 187 Cal. App.3d 513 is factually distinguishable because there was no evidence submitted in that matter which indicated that the insurer had disregarded its own policies, ignored red flags, or had any way of discovering the alleged wrongful conduct. Here, by contrast, there was significant evidence that Pacific Life would have learned of Horn's wrongdoing had it complied with its policies and followed up regarding obvious red flags, such as the size of the policy relative to the insured's stated net worth and the age of the policy's purchaser.

CONCLUSION

For the foregoing reasons and authorities, the trial court's ruling which granted summary judgment to Pacific Life should be reversed, and this case remanded back to the trial court for further proceedings.

CERTIFICATE OF COMPLIANCE

Counsel of record hereby certifies that pursuant to the California Rules of Court, the attached Opening Brief is 14-point Times New Roman type, double spaced and includes 7,497 words, including footnotes. Counsel relies on the word count of the word processing program used to prepare this brief.

February 12, 2026

LAW OFFICES OF MELINDA JANE STEUER

[/s/ Melinda Jane Steuer](#)

Melinda Jane Steuer
Attorney for Amicus Curiae
Public Investors Advocacy Bar Association

PROOF OF SERVICE

I, Tarra M. Keesee-Chavez, declare that: I am not over the age of eighteen years and not a party to the action. I am employed in the County of Sacramento, within which the subject mailing occurred. My business address is 1107 Second Street, Suite 230, Sacramento, CA 95814. On February 12, 2026, I served the following document **via True Filing**:

AMICUS CURIAE BRIEF

BY ELECTRONIC SUBMISSION

Matthew E. Lilly, SBN 218143
mlilly@frfirm.com
FINLAYSON TOFFER ROOSEVELT &
LILLY, LLP
15615 Alton Parkway, Suite 270
Irvine, CA 92618
(T) (949) 759-3810

*Attorneys for Defendant and Respondent,
Pacific Life Insurance Company*

Mary A. Lehman
Law Offices of Mary A. Lehman
941 Orange Avenue, Suite 531
Coronado, CA 92118
mary@lehmanappeals.com

Richard A. Nervig
Richard A. Nervig, P.C.
501 W. Broadway, Suite 800
San Diego, CA 92101
richard@nerviglaw.com

Jeffrey Pederson
Jeffrey Pederson, P.C.
5619 DTC Parkway, Suite 1100
Greenwood Village, CO 80111
jdp@jpedersonlaw.com

Counsel for Plaintiffs and Appellants

BY MAIL:

Honorable David A. Hoffer
TRIAL COURT JUDGE
Superior Court, County of Orange
751 W. Santa Ana Blvd.
Santa Ana, CA 92701

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 12, 2026.

By: /s/ Tarra M. Keese-Chavez
Tarra M. Keese-Chavez