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11 Attorneys for Receiver
12 THOMAS C. HEBRANK

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15
16 SECURITIES AND EXCHANGE
COMMISSION,

17 Plaintiff,

18 vs.
19

20 PACIFIC WEST CAPITAL GROUP,
INC.; ANDREW B. CALHOUN IV;
PWCG TRUST; BRENDA CHRISTINE
21 BARRY; BAK WEST, INC.; ANDREW
B. CALHOUN JR.; ERIC
22 CHRISTOPHER CANNON; CENTURY
POINT, LLC; MICHAEL WAYNE
23 DOTTA; and CALEB AUSTIN MOODY
(dba SKY STONE),

24 Defendants.
25

Case No. 2:15-cv-02563-DDP (FFMx)

RECEIVER'S NOTICE OF MOTION
AND MOTION FOR AUTHORITY TO
PURSUE CLAIMS AGAINST MILLS,
POTOCZAK & COMPANY, PC

Date: June 8, 2020

Time: 10:00 a.m.

Ctrm: 9C

Judge: Hon. Dean D. Pregerson

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR**
2 **COUNSEL OF RECORD:**

3 **PLEASE TAKE NOTICE THAT** on June 8, 2020 at 10:00 a.m. or as soon
4 thereafter as the matter may be heard, in Courtroom 9C of the above-entitled Court,
5 located at 350 West 1st Street, Los Angeles, California 90012, Thomas C. Hebrank
6 (the "Receiver"), the Court-appointed permanent receiver for PWCG Trust, will and
7 hereby does move for an order ("Motion") authorizing the Receiver to commence
8 litigation against Mills Potoczak & Company, PC ("MPC") in order to seek recovery
9 on behalf of the estate of PWCG Trust (the "Estate" or "Receivership Estate") for
10 damages incurred by the Estate as a consequence of MPC's involvement and
11 cooperation in the underlying fraud, including claims for Breach of Fiduciary Duty,
12 Negligence, Aiding and Abetting Fraud and Deceit, and Conspiracy to Commit
13 Fraud and Deceit.

14 This Motion is based on this Court's February 16, 2018 Judgment as to
15 Defendant PWCG Trust (the "Appointment Order") (Dkt. 145), which appointed the
16 Receiver and authorized the Receiver to commence litigation he deems necessary
17 and advisable, as well as the attached Memorandum of Points and Authorities, the
18 concurrently filed Declaration of Thomas C. Hebrank, the documents and pleadings
19 on file in this action, and upon such further oral and documentary evidence as may
20 be presented at the time of hearing on the Motion.

21 **Procedural Requirements:** If you oppose this Motion, you are required to
22 file your written opposition with the Office of the Clerk, United States District
23 Court, 350 West 1st Street, suite 4311, Los Angeles, California 90012-4565, and
24 serve the same on the undersigned not later than 21 days prior to the hearing.

25 **IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION** by the
26 above date, the Court may grant the requested relief without further notice. This
27 Motion is made following the conference of counsel pursuant to L.R. 7-3.
28

1 Dated: May 5, 2020

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
EDWARD G. FATES
TIM C. HSU

By: /s/ David R. Zaro

DAVID R. ZARO
Attorneys for Receiver
THOMAS C. HEBRANK

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In accordance with the terms of the Appointment Order, the Receiver gathered and reviewed records relevant to the set up and operations of PWCG Trust, including the investments in life settlements held by PWCG Trust, which were sold to investors by Defendants Pacific West Capital Group, Inc. ("Pacific West") and Andrew B. Calhoun, IV ("Calhoun"). As part of his investigation, the Receiver has reviewed and analyzed the factual allegations supporting the underlying claims of fraud perpetrated against investors, including, but not limited to, evidence demonstrating the various misrepresentations and omissions of material facts made to investors. The information the Receiver has reviewed suggests that PWCG Trust's former trustee, MPC, knew of the misrepresentations and omissions of material facts. However, rather than inform investors of the truth of these matters, MPC, an accounting firm located in Ohio, assisted and cooperated with Calhoun and Pacific West to make and conceal these material misrepresentations and omissions from investors. In doing so, MPC breached its fiduciary duties owed to PWCG Trust and the investors, was negligent in carrying out its duties as trustee, and aided and conspired with Calhoun and Pacific West to perpetrate the fraud on investors, as further detailed herein. These actions caused harm to PWCG Trust by, among other things, subjecting the Trust to further liabilities to investors that the Trust (*i.e.* the Receivership Estate) is unable to pay.

In his reasonable business judgment, the Receiver believes litigation against MPC is appropriate as the evidence strongly supports the Receiver's claims against MPC, and because the Receiver believes a significant recovery is available to the Estate which he expects will outweigh the estimated costs the Estate may have to expend in litigation. In addition to potential direct recovery from MPC, the Receiver believes there may be as much as \$10 million in coverage under MPC's insurance policies for the Receiver's claims.

1 Accordingly, the Receiver respectfully requests the Court authorize him to
2 commence litigation against MPC to recover the damages and losses PWCG Trust
3 has suffered as a consequence of MPC's wrongful conduct, which amount will be
4 demonstrated at trial and will reflect the total amount of investor claims against the
5 Estate.

6 If authorized, the Receiver will file a complaint in this Court, substantially in
7 the form attached to the Declaration of Thomas Hebrank filed herewith ("Hebrank
8 Decl."), along with a Notice of Related Action such that this Court, which is familiar
9 with the underlying facts in this action and receivership, can preside over the
10 litigation. Having the case against MPC before this Court will maximize judicial
11 economy and also help conserve Receivership Estate resources.

12 **II. RELEVANT FACTS AND PROCEDURAL HISTORY**

13 **A. Calhoun's and Pacific West's Life Settlements Investment.**

14 As alleged in the Securities and Exchange Commission's (the "Commission")
15 Complaint (Dkt. No. 1), Calhoun and Pacific West offered and sold investments of
16 fractionalized interests in a type of life insurance policy called "universal life" or
17 "flexible premium adjustable life" insurance. (Hebrank Decl., ¶ 3.) In these
18 investments, investor funds were pooled to purchase life insurance policies taken out
19 on the life of an insured. (Id.) Investor funds were paid to PWCG Trust, which
20 used those funds to purchase the policies. Investors were provided fractional
21 interests in the policies in exchange for their investments, which would pay returns
22 when the policy matured (*i.e.*, when the insured died and policy benefits were paid).
23 (Id.) As such, each of the policies needed to be maintained by payment of
24 premiums for the life of the investment. (Id.)

25 The Commission alleged that, in order to address the need to pay premiums
26 on the policies for the life of the investment, Calhoun and Pacific West represented
27 to investors that three levels of reserves (a "Primary," "Secondary," and "Tertiary
28 Premium Reserve") would be established and maintained for this purpose. (Id. at

¶ 4.) The Commission's allegations further state that Calhoun and Pacific West determined the amount of reserves required based on the length of estimated "Contract Period" (the expected remaining life expectancy of the insured) and allocated an amount of investors' funds to the Primary Premium Reserve for each policy as funds reserved to pay premiums. (Id.)

Based on his review of the Commissions' allegations, supporting evidence, and documents gathered during the receivership, the Receiver believes Calhoun and Pacific West effected sales of the investments through various offering disclosures (the "Offering Circulars"), a Purchase Agreement between the investors and Pacific West, and a Life Settlement Disclosure Form signed by each investor. (Id. at ¶ 5.) Pursuant to the Offering Circulars, PWCG Trust purchased the life policies from the policy owners, and PWCG Trust was recorded with the issuing insurance company as the new owner and beneficiary of the policy. (Id. at ¶ 6.) PWCG Trust then sold fractional interests in those policies to investors, providing investors with a percentage of the face value of the policy. (Id.) PWCG Trust then issued an "assignment of death benefit" confirming the beneficiary designation with a specific policy for each investor. (Id.) From there, the Receiver believes PWCG Trust informed Calhoun and Pacific West when the Primary Premium Reserve for particular policies were depleted. (Id.) PWCG Trust ultimately collected death benefits when the policies matured and distributed pro rata shares of the death benefit to the life settlement investors. (Id.) Through the Offering Circulars and other offering materials, Calhoun and Pacific West offered "total fixed returns" to investors of between 100% and 150%. (Id.)

Since the investments began in late 2004, investors paid almost \$118 million into PWCG Trust for the purchase of fractionalized interests in life insurance policies. (Id.) The Commission alleges that approximately 46% of the funds raised was paid by MPC, as Trustee of PWCG Trust, to Pacific West as so-called "margins." (Id.)

B. Calhoun's and Pacific West's Alleged Misrepresentations and Omissions of Material Facts.

In offering and selling the investments, the Commission's Complaint alleges that Calhoun and Pacific West made a number of misrepresentations and omissions of material facts to investors. Among other things, Calhoun and Pacific West is alleged to have downplayed the risk of the investors having to pay future premiums by touting the premium reserves established for each policy. (Id. at ¶ 7.) However, the amount of premium reserves were not established using actuarial data or life expectancy reports. (Id.) Rather, it appears Calhoun, who is not an actuary or medical doctor, selected policies based on his judgment and estimates, significantly increasing the risk to investors that the premium reserves would not be sufficient should the insured outlive the estimated life expectancy assigned to them by Calhoun. (Id.) Indeed, Calhoun is alleged to have selected policies largely based on the premium cost to keep the policy in force. Per the Commission's allegations, Calhoun set a Contract Period based upon the insured's age, health, and family history, and then calculated the amount necessary to keep a policy in force during the Contract Period while using up the cash value of the policy. (Id.) Calhoun then used this calculation to set the amount of the Primary Premium Reserve. In general, at the end of the Contract Period, the cash value of the policy would be depleted. (Id.) Notwithstanding these risks, the evidence indicates it was not disclosed to investors that the cash value of the policy would be used to pay premiums or that the premium reserves were not established based on actuarial data. (Id.)

In addition, Calhoun and Pacific West are alleged to have misrepresented to investors that the Secondary and Tertiary Premium Reserves had *never* been used, presumably because the policies each paid out during the insured life expectancy period as estimated by Calhoun. (Id. at ¶ 8.) However, this was not the case because, as the Commission alleges, beginning around early 2012 and continuing to at least November 2014, an increasing number of life settlements sold from 2004

1 through 2008 by Pacific West and Calhoun ran out of funds in their Primary
2 Premium Reserves. (Id.) In response, Calhoun and Pacific West, with MPC's
3 assistance, are alleged to have directed a portion of Pacific West's margin from the
4 sale of new life settlements to pay premiums on older policies where the Primary
5 Premium Reserve had been depleted. (Id.) In this manner, Calhoun and Pacific
6 West could continue to represent to investors that the Secondary and Tertiary
7 Premium Reserves have never been used to pay premiums, further misleading
8 investors regarding the risk of the investment. (Id.) Accounting records provided
9 by MPC also reflect that Pacific West transferred approximately \$5 million of
10 proceeds from the sale of new policies to pay premiums between 2012 and 2017.
11 (Id.)

12 The Commission's allegations also suggest that Calhoun and Pacific West
13 further misled investors through their representations that Pacific West selected
14 policies for investment that “typically,” or it “estimate[s],” “feel[s],” or “target[s]”
15 will mature (e.g., pay a death benefit) in four to seven years. (Id. at ¶ 9.) In reality,
16 Calhoun and Pacific West appear to have had no reasonable basis to make those
17 representations, because they did not rely on life expectancies or other actuarial data
18 in selecting policies or setting Contract Periods. (Id.) This would have further
19 misled investors into believing that the investments were likely to payout during the
20 Contract Period, presumably decreasing the risk of the investments and the risk that
21 investors would be required to pay additional funds to satisfy premiums in the event
22 the premium reserves were depleted (*i.e.*, if the insured lived beyond the estimated
23 Contract Period for which reserves were established). (Id.) Based on the
24 Commission's allegations, these representations were also apparently false
25 beginning in early 2012 because only a small percentage of the life settlements sold
26 during 2004 and 2007 actually matured within seven years. (Id.)

27 Moreover, Calhoun and Pacific West are alleged to have misled investors
28 regarding Pacific West's continued role in the investments. While Calhoun and

1 Pacific West told investors the success of the investments were entirely independent
2 of Pacific West's fortunes, Calhoun and Pacific West allegedly did not inform
3 investors of their continued involvement in the investments, including the fact that
4 Pacific West's "margins" would be used to pay premiums when the Primary
5 Premium Reserves were exhausted. (Id. at ¶ 10.) Thus, contrary to Calhoun and
6 Pacific West's representations, the investor's economic benefit would have depended
7 significantly on Pacific West's willingness to use "margins" generated from new
8 investor funds to pay fees and policy premiums for older policies. (Id.)
9 Additionally, these representations to investors were apparently false and misleading
10 and omitted material facts because Calhoun and Pacific West did not explain that
11 the success of the investment was dependent on Calhoun's and Pacific West's ability
12 to continually find new investors and raise new investor funds to cover premium
13 shortfalls in older policies. (Id.)

14 **C. MPC's Breach of Fiduciary Duties, Negligence, and Assistance and**
15 **Cooperation in the Fraud.**

16 Pursuant to trust agreements entered into between MPC and Pacific West in
17 2004 and 2011, MPC agreed to serve as the Trustee for PWCG Trust. (Id. at ¶ 11.)
18 In so doing, MPC was bound to a fiduciary duty of trust owed to PWCG Trust,
19 including the duty to act in good faith and in accordance with the purposes of the
20 trust and to act in the best interests of the investors. (Id.) Rather than abiding by its
21 fiduciary duties as Trustee and administering the Trust in a competent manner for
22 the benefit of investors, the evidence shows MPC was negligent and breached these
23 duties by failing to abide by its duties as required in the trust agreements, failing to
24 disclose material facts to investors or correct material misrepresentations made to
25 them by Calhoun and Pacific West, and by intentionally assisting Calhoun and
26 Pacific West in covering up the fraud. (Id.)

27 Among other things, the Receiver asserts that MPC failed to disclose to
28 investors the use of "margins" from new investments to pay policy premiums and

1 further failed to disclose the actual amount of such margins paid to Calhoun and
2 Pacific West for each investment, which facts would have been material to the
3 investors' investment decisions. (Id. at ¶ 12.) The Receiver further believes MPC
4 failed to ensure, as it was required to do pursuant to the 2004 trust agreement, that
5 each policy purchased by PWCG Trust included life expectancy reports for valid
6 actuarial data, which data was vital to estimating an appropriate Contract Period for
7 the purchased policies. (Id.) In addition, MPC appears to have failed to disclose to
8 investors or correct Calhoun's and Pacific West's numerous misrepresentations
9 concerning the policies including, among other things, that the premium reserves
10 were not established based on actuarial information for the insured, and that
11 Calhoun was simply selecting policies based on his own personal judgment and
12 estimates. (Id.)

13 Once the reserves were depleted, and in those instances where Calhoun and
14 Pacific West did not use their "margins" to cover the shortfalls, MPC issued cash
15 calls to investors. The Receiver believes MPC did this without disclosing to
16 investors the risks associated with the depletion of premium reserves for the
17 policies. (Id. at ¶ 13.) Some investors paid cash calls and some did not, but Pacific
18 West and Calhoun treated the fractionalized interests of investors who did not
19 respond to cash calls as "forfeited." (Id.) The Receiver believes MPC then assisted
20 Calhoun and Pacific West to sell these purportedly "forfeited" interests, apparently
21 without disclosure to investors, and paid the proceeds to Calhoun and Pacific West.
22 (Id.)

23 Based on the above, the Receiver believes MPC's actions in administering
24 PWCG Trust constitute negligence and a breach of its fiduciary duties owed to the
25 trust and the investors as beneficiaries. (Id. at ¶ 14.) MPC's alleged actions and
26 cooperation also support claims of aiding and abetting fraud and conspiracy, which
27 claims the Receiver strongly believes will result in judgment against MPC and in
28 favor of the Receivership Estate. (Id.)

1 **III. ARGUMENT**

2 **A. This Court Should Exercise its Discretion to Authorize the**
3 **Receiver to Commence Litigation Against MPC.**

4 As a preliminary matter, the Appointment Order already authorizes the
5 Receiver to "investigate and, where appropriate, to institute, pursue, and prosecute
6 all claims and causes of action of whatever kind and nature that may now or
7 hereafter exist as a result of the activities of present or past employees or agents of
8 Defendant PWCG Trust," and further authorizes the Receiver to "institute,
9 compromise, adjust, appear in, intervene in, or become party to such actions or
10 proceedings in state, federal, or foreign courts, which ... (ii) the [R]eceiver deems
11 necessary and advisable to carry out the [R]eceiver's mandate under this Order."
12 (See Dkt. No. 145 at 4:6-14.)

13 This grant of general litigation authority derives from the broad equitable
14 powers of the Court in the receivership context. "The power of a district court to
15 impose a receivership or grant other forms of ancillary relief does not in the first
16 instance depend on a statutory grant of power from the securities laws. Rather, the
17 authority derives from the inherent power of a court of equity to fashion effective
18 relief." SEC v. Wencke, 622 F.2d 1363, 1369 (9th Cir. 1980). The "primary
19 purpose of equity receiverships is to promote orderly and efficient administration of
20 the estate by the district court for the benefit of creditors." SEC v. Hardy, 803 F.2d
21 1034, 1038 (9th Cir. 1986).

22 District courts have the broad discretion to determine the appropriate actions
23 to be taken in the administration and supervision of an equity receivership. SEC v.
24 Capital Consultants, LLC, 397 F.3d 733, 738 (9th Cir. 2005). As the Ninth Circuit
25 has explained:

26 A district court's power to supervise an equity receivership
27 and to determine the appropriate action to be taken in the
28 administration of the receivership is extremely broad. The
district court has broad powers and wide discretion to
determine the appropriate relief in an equity receivership.
The basis for this broad deference to the district court's

1 supervisory role in equity receiverships arises out of the
2 fact that most receiverships involve multiple parties and
3 complex transactions. A district court's decision
concerning the supervision of an equitable receivership is
reviewed for abuse of discretion.

4 Id. (citations omitted); see also CFTC v. Topworth Int'l, Ltd., 205 F.3d 1107,
5 1115 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory
6 role, and 'we generally uphold reasonable procedures instituted by the district court
7 that serve th[e] purpose' of orderly and efficient administration of the receivership
8 for the benefit of creditors."). Accordingly, the Court has broad equitable powers
9 and discretion in the context of the administration of the instant receivership,
10 including broad power to authorize the Receiver to undertake litigation, when
11 necessary and appropriate, to seek recovery for claims on behalf of the Receivership
12 Estate.

13 **B. The Receiver's Claims Against MPC are Appropriate.**

14 Pursuant to the terms of its trust agreements, PWCG Trust is an Ohio business
15 trust governed by Ohio law. Under Ohio law, a trustee generally must "administer
16 the trust in good faith, in accordance with the terms and purpose and the interests of
17 the beneficiaries...." Ohio Rev. Code. Ann. §§ 5808.01, *et seq.* As in California,
18 trustees in Ohio owe various fiduciary duties to the trust and beneficiaries including
19 the duty of loyalty, impartiality, and duty to act in the interests of the trust and
20 beneficiaries as a prudent person would and exercise reasonable care, skill and
21 caution in that regard.¹ Id. at §§ 5808.02-5808.04. In the event of a breach of duties
22 by a trustee, "a successor trustee has standing to sue a predecessor for breach of
23 trust," which is defined as "[a] violation by a trustee of a duty the trustee owed to a
24 beneficiary...." Id. at 5810.01, cmt. Uniform Trust Code Art. 10; *see also*,
25 Restatement (Second) of Trusts § 200 cmt. f (1959) ("If the trustee commits a
26

27 ¹ As provided in California Probate Code Sections 16000, *et seq.*, trustees in California
28 owe similar duties to the trust and its beneficiaries. See also, O'Neal v. Stanislaus
County Employees' Retirement Assn., 8 Cal.App.5th 1184, 1209-1210 (2017) (citing
Cal. Prob. Code §§ 1600, *et seq.*).

1 breach of trust and is thereafter removed as trustee ..., the successor trustee can
2 maintain a suit against him to redress the breach of trust.").

3 In addition, Ohio law provides that MPC is liable for negligence if the
4 Receiver can show "(i) the existence of a legal duty, (2) [MPC] breached that duty,
5 and (3) injury that is the proximate cause of [MPC's] breach."² See Wallace v. Ohio
6 DOC, 96 Ohio St. 3d 266, (Ohio Sup. Ct. 2002).

7 Here, MPC indisputably owed PWCG Trust and its investors fiduciary duties
8 as Trustee. Moreover, and as set forth above and as further detailed in the draft
9 complaint appended to the Hebrank Decl. filed concurrently herewith, the evidence
10 reflects that: (i) Calhoun and Pacific West made numerous misrepresentations and
11 omissions of material facts to investors in the offer and sale of life settlements; and
12 (ii) MPC, as the Trustee of PWCG Trust, breached its duties when it negligently or
13 intentionally failed to correct the misrepresentations or disclose material facts to
14 investors that were previously omitted. Such actions violated MPC's fiduciary
15 duties as Trustee and the Receiver, as the successor trustee of PWCG Trust (by this
16 Court's appointment as receiver and by formal amendment of the Trust Agreement,
17 pursuant to the Court's order approving the stipulated removal of MPC as Trustee),
18 has standing to bring such claims to seek recovery on behalf of the Estate and,
19 ultimately, for the benefit of investors who are determined to have allowed claims.

20
21
22 ² For harm arising from investments made from California (*i.e.*, those investors residing
23 in California who invested in Pacific West's life settlements), the Receiver's claims
24 against MPC may arise under California law. However, California law pertaining to
25 MPC's breach of its fiduciary duties, negligence, aiding and abetting, and conspiracy
26 are functionally the same as those claims arising under Ohio law. See, e.g., Vasquez v.
27 Residential Investments, Inc., 118 Cal.App.4th 269, 278 (elements of negligence
28 requires duty, breach, causation, and injury); American Master Lease LLC v. Idanta
Partners, Ltd., 225 Cal.App.4th 1451, 1474-1746 (elements of aiding and abetting
requires knowledge of the conduct constituting tort and substantial assistance to
accomplish the result); Applied Equipment Corp. v. Litton Saudi Arabia Ltd., 7 Cal.4th
503, 511 (1994) (elements of civil conspiracy require formation and operation of the
conspiracy and resulting damage from the acts done in furtherance of the common
design.)

1 As for the Receiver's intended claims for MPC's action in aiding and abetting
2 the fraud and conspiracy, Ohio law provides as follows:

3 In a civil aiding and abetting case, a plaintiff must show
4 two elements: (1) knowledge that the primary party's
5 conduct is a breach of duty, and (2) substantial assistance
6 or encouragement to the primary party in carrying out the
7 tortious act.

8 To establish a civil conspiracy claim, the plaintiff must
9 prove: (1) a malicious combination of two or more
10 persons, (2) causing injury to another person or property,
11 and (3) the existence of an unlawful act independent from
12 the conspiracy itself.

13 See Kelley v. Buckley, 196 Ohio App. 3d 11, 36 (2011).

14 Here, MPC's actions in giving assistance to Calhoun and Pacific West to
15 perpetrate the fraud on investors satisfy each of the elements of these claims. More
16 specifically, and as described herein, the Receiver believes MPC knew of the
17 numerous misrepresentations and omissions of material facts Calhoun and Pacific
18 West made to investors and provided substantial assistance in the fraud by, among
19 other things, allowing its name to be used in the Offering Circulars to investors and
20 intentionally hiding the use of "margins" from new investments to pay premiums on
21 older policies.

22 The Receiver further believes MPC's conduct in issuing cash calls to
23 investors, treating the interest of investors who did not pay as forfeited, and assisting
24 Pacific West and Calhoun in selling those interests, all without any disclosures to
25 investors, constitutes aiding and abetting the fraud on investors. MPC's conduct
26 also gives rise to claims for civil conspiracy because MPC's actions involved the
27 malicious combination of MPC, Calhoun, and Pacific West, causing injury to
28 PWCG Trust, which injuries are independent of the conspiracy itself. Moreover, it
should be noted that Calhoun and Pacific West have each consented to judgment
against them in this Action, including permanent injunctive relief and monetary
awards in favor of the Commission. (Dkt. Nos. 162, 163)

1 Some investors have filed separate actions in Los Angeles Superior Court
2 against Calhoun, Pacific West, and MPC based on their conduct in perpetrating the
3 alleged fraud.³ (Hebrank Decl., ¶ 15.) However, the Receiver believes it is
4 necessary and appropriate to file an independent suit in this Court against MPC on
5 behalf of PWCG Trust. (*Id.*) As set forth above, the Receiver, as successor Trustee,
6 has standing to bring an independent action on behalf of the trust for MPC's actions
7 that have caused harm to the Trust. (*Id.*) The Servicing Agreement dated April 29,
8 2011 between MPC and PWCG also required MPC to carry \$10 million of
9 insurance, which insurance was to provide the Trust a source of recovery should
10 MPC's negligence or wrongful conduct result in damages to the Trust. (*Id.*) Here,
11 as a result of MPC's negligence and breach of its fiduciary duties, the Trust is
12 subject to what amounts to rescission claims for return of the investors' money, or at
13 least all of their losses. (*Id.*)

14 Moreover, MPC's primary insurers, having received notice of the investors'
15 actions, as well as the Receiver's claims, have, thus far, denied MPC coverage under
16 the applicable policies. (*Id.*) As such, the Receiver believes it is prudent for both
17 the Receiver, as trustee, and the investors to pursue their claims concurrently. (*Id.*)
18 By doing so, the Receiver believes there is a stronger chance for recovery by one or
19 both parties. (*Id.*)

20 Further, the pending actions brought by individual investors (or their class
21 representatives) may be unable to provide relief to all investors with losses,
22 particularly because it is uncertain if a class can or will be certified by the Los
23 Angeles Superior Court. Even if a class were to be certified, certain investors may
24
25

26
27 ³ These pending investor actions were each filed in the Superior Court of the County of
28 Los Angeles and include: (i) Applebaum v. Pacific West Capital Group, Inc., et al.,
Case No. BC652409; (ii) Names v. Pacific West Capital Group, Inc., et al., Case No.
BC658582; and (iii) Schechter v. Pacific West Capital Group, Inc., et al., Case No.
BC621512.

1 opt out based on the fact that a receivership has been established to provide them
2 with a recovery. (Id. at ¶ 16.)

3 A claims process has been established in this case, which will determine each
4 investor's net loss from their investments with PWCG Trust, and therefore their
5 allowed claim in the receivership. This process is based on the Receiver's review
6 and analysis of financial records and investor documents. The claims analysis work,
7 and the costs associated therewith, should not be duplicated in the context of the
8 pending investor actions.

9 Allowing the Receiver to file suit against MPC will provide the Estate, and
10 therefore the investors, an opportunity to seek the full amount of recovery against
11 MPC, which amount reflects the entire amount of all investors' claims arising from
12 MPC's alleged conduct in its capacity as former Trustee. (Id.) This will also benefit
13 all investors by allowing the orderly processing of their claims in the manner
14 already approved by this Court, which will then allow for the fair and equitable
15 distribution of funds in the Receivership Estate, including the prospective recovery
16 from MPC. (Id.; Dkt. No. 311, 312.) The Receiver has conferred with counsel in
17 the pending investor actions on numerous occasions and will continue to do so in
18 order to coordinate efforts, avoid duplication of work, and reduce administrative
19 expenses. (Hebrank Decl., ¶ 16.)

20 Accordingly, the Receiver, in his reasonable business judgment, believes
21 there exists factual and legal merit to support his intended claims and submits that
22 the intended suit against MPC is appropriate, necessary, and in the best interest of
23 the Receivership Estate. (Id. at ¶ 17.) The Receiver thus requests the Court grant
24 authority for him to file suit against PWCG for the claims of Breach of Fiduciary
25 Duty, Negligence, Aiding and Abetting Fraud and Deceit, and Conspiracy to
26 Commit Fraud and Deceit. (Id.)

27
28

C. The Receiver Will Endeavor to Minimize Litigation Fees and Expenses.

The Receiver has consulted with his counsel, Allen Matkins Leck Gamble Mallory & Natsis LLP ("Allen Matkins"), and believes the legal fees and expenses for the contemplated action could be as low as \$50,000, in the event of a default or prompt settlement, and as much as \$350,000, in the event of a full trial. (Hebrank Decl., ¶ 18.) Based on the information presently available, the Receiver believes a full trial is highly unlikely and that the case could be resolved through early settlement with limited legal fees and expenses. (Id.)

In the event the matter cannot be resolved through early settlement, the Receiver and Allen Matkins will make every effort to minimize administrative expenses associated with the proposed action. (Id. at ¶ 19.) While Allen Matkins' litigation fees will be charged on an hourly basis, at the same rates as those charged to assist the Receiver's administration of the Estate (including a 10% discount on Allen Matkins' standard hourly rates), the Receiver believes such rates, overall, will still result in a higher net recovery to the Estate as compared to alternative arrangements such as a contingent fee. (Id.) If the matter is resolved through early settlement, as the Receiver presently believes is possible, hourly rates will be more beneficial to the Receivership Estate, on balance. (Id.) As with all litigation matters, the Receiver and Allen Matkins will continue to monitor the costs and likely net benefit to the Receivership Estate throughout the litigation. (Id.) Having the case as a related action in this Court will also promote judicial economy and help conserve receivership estate resources. (Id.)

After reviewing the available evidence, weighing the merits of the proposed claims against MPC, and assessing the anticipated costs of litigation and likelihood of success and collectability, the Receiver believes, in his reasonable business judgment, that it is in the best interest of the receivership estate to pursue such

1 claims, and respectfully requests the Court issue an order authorizing him to do so.
2 (Id. at ¶ 19.)

3 **IV. CONCLUSION**

4 For the reasons stated herein, the Receiver respectfully requests the Court
5 issue an Order granting him authority to pursue claims against MPC in a related
6 action before this Court.

7
8 Dated: May 5, 2020

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
EDWARD G. FATES
TIM C. HSU

9
10
11 By: /s/ David R. Zaro

12 DAVID R. ZARO
13 Attorneys for Receiver
14 THOMAS A. HEBRANK
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11 Attorneys for Receiver
12 THOMAS C. HEBRANK

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15

16 SECURITIES AND EXCHANGE
COMMISSION,

17 Plaintiff,

18 vs.
19

20 PACIFIC WEST CAPITAL GROUP, INC.;
ANDREW B. CALHOUN IV; PWCG
TRUST; BRENDA CHRISTINE BARRY;
21 BAK WEST, INC.; ANDREW B.
CALHOUN JR.; ERIC CHRISTOPHER
22 CANNON; CENTURY POINT, LLC;
MICHAEL WAYNE DOTTA; and CALEB
23 AUSTIN MOODY (dba SKY STONE),

24 Defendants.
25
26
27
28

Case No. 2:15-cv-02563-DDP (FFMx)

DECLARATION OF THOMAS C.
HEBRANK IN SUPPORT OF MOTION
FOR AUTHORITY TO PURSUE
CLAIMS AGAINST MILLS, POTOCZAK
& COMPANY, PC

Date: June 8, 2020

Time: 10:00 a.m.

Ctrm: 9C

Judge: Hon. Dean D. Pregerson

DECLARATION OF THOMAS C. HEBRANK

I, Thomas C. Hebrank, declare,

1. I am the Court-appointed receiver for PWCG Trust. I make this declaration in support of my Motion ("Motion") for Authority to Pursue Claims Against Mills Potoczak & Company, PC ("MPC"). I have personal knowledge of the facts stated herein, and if called upon to do so, I could and would personally and competently testify to them.

2. The Motion seeks authority to file suit against MPC, the former trustee of PWCG Trust. A true and correct copy of the draft complaint I intend to file, setting forth the claims against MPC, is attached hereto as **Exhibit A**.

Calhoun's and Pacific West's Life Settlements Investment

3. As alleged in the Securities and Exchange Commission's (the "Commission") Complaint, Defendants Andrew B. Calhoun IV ("Calhoun") and Pacific West Capital Group, Inc. ("Pacific West") offered and sold investments of fractionalized interests in a type of life insurance policy called "universal life" or "flexible premium adjustable life" insurance. (Complaint, Dkt. No. 1.) In these investments, investor funds were pooled to purchase life insurance policies taken out on the life of an insured. Investor funds were paid to PWCG Trust, which used those funds to purchase the policies. Investors were provided fractional interests in the policies in exchange for their investments, which would pay returns when the policy matured (*i.e.*, when the insured died and policy benefits were paid). As such, each of the policies needed to be maintained by payment of premiums for the life of the investment.

4. The Commission further alleges that, in order to address the need to pay premiums on the policies for the life of the investment, Calhoun and Pacific West represented to investors that three levels of reserves (a "Primary," "Secondary," and "Tertiary Premium Reserve") would be established and maintained for this purpose. The Commission's allegations further state that Calhoun and Pacific West determined the amount of reserves required based on the length of estimated "Contract Period" (the

1 expected remaining life expectancy of the insured) and allocated an amount of investors'
2 funds to the Primary Premium Reserve for each policy as funds reserved to pay premiums.

3 5. Based on my review of the Commissions' allegations, supporting evidence,
4 and documents gathered during the receivership, I believe Calhoun and Pacific West
5 effected sales of the investments through various offering disclosures (the "Offering
6 Circulars"), a Purchase Agreement between the investors and Pacific West, and a Life
7 Settlement Disclosure Form signed by each investor. An exemplar of the Offering
8 Circular provided to investors is attached as an exhibit to the draft Complaint submitted
9 herewith.

10 6. Pursuant to the Offering Circulars, PWCG Trust purchased the life insurance
11 policies from the policy owners, and PWCG Trust was recorded with the issuing insurance
12 company as the new owner and beneficiary of the policy. PWCG Trust then sold
13 fractional interests in those policies to investors, providing investors with a percentage of
14 the face value of the policy. PWCG Trust then issued an "assignment of death benefit"
15 confirming the beneficiary designation with a specific policy for each investor. From
16 there, I believe PWCG Trust informed Calhoun and Pacific West when the Primary
17 Premium Reserve for particular policies were depleted. PWCG Trust would then collect
18 death benefits when the policies matured and distributed pro rata shares of the death
19 benefit to the life settlement investors. As reflected in the Offering Circulars and other
20 offering materials, Calhoun and Pacific West offered "total fixed returns" to investors of
21 between 100% and 150%. Since the investments began in late 2004, investors paid almost
22 \$118 million into PWCG Trust for the purchase of fractionalized interests in life insurance
23 policies. The Commission alleges that approximately 46% of the funds raised was paid by
24 MPC, as Trustee of PWCG Trust, to Pacific West as so-called "margins."

25 **Calhoun's and Pacific West's Alleged Misrepresentations and**
26 **Omissions of Material Facts.**

27 7. In offering and selling the investments, the Commission's Complaint alleges
28 Calhoun and Pacific West made a number of misrepresentations and omissions of material

1 facts to investors. Among other things, Calhoun and Pacific West are alleged to have
2 downplayed the risk of investors having to pay future premiums by touting the premium
3 reserves established for each policy. However, the amount of premium reserves were not
4 established using actuarial data or life expectancy reports. Rather, it appears Calhoun, who
5 is not an actuary or medical doctor, selected policies based on his judgment and estimates,
6 significantly increasing the risk to investors that the premium reserves would not be
7 sufficient should the insured outlive the estimated life expectancy assigned to them by
8 Calhoun. Indeed, Calhoun is alleged to have selected policies largely based on the
9 premium cost to keep the policy in force. Per the Commission's allegations, Calhoun set a
10 Contract Period based upon the insured's age, health, and family history, and then
11 calculated the amount necessary to keep a policy in force during the Contract Period while
12 using up the cash value of the policy. Calhoun then used this calculation to set the amount
13 of the Primary Premium Reserve. In general, at the end of the Contract Period, the cash
14 value of the policy would be depleted. Notwithstanding these risks, the evidence indicates
15 it was not disclosed to investors that the cash value of the policy would be used to pay
16 premiums or that the premium reserves were not established based on actuarial data.

17 8. In addition to the above, Calhoun and Pacific West are alleged to have
18 misrepresented to investors that the Secondary and Tertiary Premium Reserves had *never*
19 been used, presumably because the policies each paid out during the insured life
20 expectancy period as estimated by Calhoun. However, this was not the case because, as
21 the Commission alleges, beginning around early 2012 and continuing to at least
22 November 2014, an increasing number of life settlements sold from 2004 through 2008 by
23 Pacific West and Calhoun ran out of funds in their Primary Premium Reserves. In
24 response, Calhoun and Pacific West, with MPC's assistance, are alleged to have directed a
25 portion of Pacific West's margin from the sale of new life settlements to pay premiums on
26 older policies where the Primary Premium Reserve had been depleted. In this manner,
27 Calhoun and Pacific West could continue to represent to investors that the Secondary and
28 Tertiary Premium Reserves have never been used to pay premiums, further misleading

1 investors regarding the risk of the investment. Accounting records provided by MPC also
2 reflect that Pacific West transferred approximately \$5 million of proceeds from the sale of
3 new policies to pay premiums between 2012 and 2017.

4 9. The Commission's allegations also suggest that Calhoun and Pacific West
5 further misled investors through their representations that Pacific West selected policies
6 for investment that "typically," or it "estimate[s]," "feel[s]," or "target[s]" will mature
7 (e.g., pay a death benefit) in four to seven years. In reality, Calhoun and Pacific West
8 appear to have had no reasonable basis to make those representations, because they did not
9 rely on life expectancies or other actuarial data in selecting policies or setting Contract
10 Periods. This would have further misled investors into believing that the investments were
11 likely to payout during the Contract Period, presumably decreasing the risk of the
12 investments and the risk that investors would be required to pay additional funds to satisfy
13 premiums in the event the premium reserves were depleted (*i.e.*, if the insured lived
14 beyond the estimated Contract Period for which reserves were established). Based on the
15 Commission's allegations, these representations were also apparently false beginning in
16 early 2012 because only a small percentage of the life settlements sold during 2004 and
17 2007 actually matured within seven years.

18 10. Moreover, Calhoun and Pacific West are alleged to have misled investors
19 regarding Pacific West's continued role in the investments. While Calhoun and Pacific
20 West told investors that the success of the investments were entirely independent of Pacific
21 West's fortunes, Calhoun and Pacific West allegedly did not inform investors of their
22 continued involvement in the investments, including the fact that Pacific West's "margins"
23 would be used to pay premiums when the Primary Premium Reserves were exhausted.
24 Thus, contrary to Calhoun and Pacific West's representations, the investor's economic
25 benefit would have depended significantly on Pacific West's willingness to use "margins"
26 generated from new investor funds to pay fees and policy premiums for older policies.
27 Additionally, these representations to investors were apparently false and misleading and
28 omitted material facts because Calhoun and Pacific West did not explain that the success

1 of the investment was dependent on Calhoun's and Pacific West's ability to continually
2 find new investors and raise new investor funds to cover premium shortfalls in older
3 policies

4 **MPC's Breach of Fiduciary Duties, Negligence, and Assistance and**
5 **Cooperation in the Fraud.**

6 11. I have obtained and reviewed trust agreements entered into between MPC
7 and Pacific West in 2004 and 2011, copies of which are appended to the draft complaint
8 attached hereto as Exhibit A. Based on the terms of these agreements, MPC agreed to
9 serve as the Trustee for PWCG Trust. In so doing, I believe MPC was bound to a fiduciary
10 duty of trust owed to PWCG Trust, including the duty to act in good faith and in
11 accordance with the purposes of the trust and to act in the best interests of the investors.
12 Rather than abiding by its fiduciary duties as Trustee and administering the Trust in a
13 competent manner for the benefit of investors, the evidence shows MPC was negligent and
14 breached these duties by failing to abide by its duties as required in the trust agreements,
15 failing to disclose material facts to investors or correct material misrepresentations made to
16 them by Calhoun and Pacific West, and by intentionally assisting Calhoun and Pacific
17 West in covering up the fraud.

18 12. Among other things, I believe MPC failed to disclose to investors the use of
19 "margins" from new investments to pay policy premiums and further failed to disclose the
20 actual amount of such margins paid to Calhoun and Pacific West for each investment,
21 which facts would have been material to the investors' investment decisions. I further
22 believe MPC failed to ensure, as it was required to do pursuant to the 2004 trust
23 agreement, that each policy purchased by PWCG Trust included life expectancy reports for
24 valid actuarial data, which data was vital to estimating an appropriate Contract Period for
25 the purchased policies. In addition, MPC appears to have failed to disclose to investors or
26 correct Calhoun's and Pacific West's numerous misrepresentations concerning the policies
27 including, among other things, that the premium reserves were not established based on
28

1 actuarial information for the insured, and that Calhoun was simply selecting policies based
2 on his own personal judgment and estimates.

3 13. Once the reserves were depleted, and in those instances where Calhoun and
4 Pacific West did not use their "margins" to cover the shortfalls, MPC issued cash calls to
5 investors. I believe MPC did this without disclosing to investors the risks associated with
6 the depletion of premium reserves for the policies. Some investors paid cash calls and
7 some did not, but Pacific West and Calhoun treated the fractionalized interests of investors
8 who did not respond to cash calls as "forfeited." I believe MPC then assisted Calhoun and
9 Pacific West to sell these purportedly "forfeited" interests, apparently without disclosure to
10 investors, and paid the proceeds to Calhoun and Pacific West.

11 14. Based on the above, I believe MPC's actions in administering PWCG Trust
12 constitute negligence and a breach of its fiduciary duties owed to the trust and the investors
13 as beneficiaries. MPC's alleged actions and cooperation also support claims of aiding and
14 abetting fraud and conspiracy, which claims I strongly believe will result in judgment
15 against MPC and in favor of the receivership estate.

16 **Filing an Independent Action Against MPC is Appropriate.**

17 15. Some investors have filed separate actions in Los Angeles Superior Court
18 against Calhoun, Pacific West, and MPC based on their conduct in perpetrating the alleged
19 fraud. However, I believe it is necessary and appropriate to file an independent suit in this
20 Court against MPC on behalf of PWCG Trust. First, I have standing to bring an
21 independent action on behalf of the trust for MPC's actions that have caused harm to the
22 Trust, as I am the Court-appointed Receiver and successor Trustee of PWCG Trust. Under
23 MPC's Services Agreement with PWCG, Inc., dated April 29, 2011, MPC was promised to
24 maintain \$10 million of insurance, which insurance was to provide the Trust a source of
25 recovery should MPC's negligence or wrongful conduct result in damages to the Trust.
26 Here, as a result of MPC's negligence and breach of its fiduciary duties, the Trust is subject
27 to what amounts to damages equivalent to those prospective rescission claims for return of
28 the investors' money, or at least all of their losses. Moreover, the insurers have, thus far,

1 denied MPC coverage under the applicable policies. As such, I believe it is prudent for
2 myself, as trustee, and the investors to pursue claims against MPC concurrently. By doing
3 so, I believe there is a stronger change for recovery by one or both parties.

4 16. Further, I understand the pending actions brought by individual investors (or
5 their class representatives) may be unable to provide relief to all investors with losses,
6 particularly because it is uncertain if a class can or will be certified by the Los Angeles
7 Superior Court. Even if a class were to be certified, certain investors may opt out based on
8 the fact that the receivership has been established to provide them with a recovery. If I am
9 authorized to file suit against MPC, the Estate, and therefore the investors, will have an
10 opportunity to seek the full amount of recovery against MPC, which amount reflects the
11 entire amount of all investors' claims arising from MPC's alleged conduct in its capacity as
12 former Trustee. I believe this will also benefit all investors by allowing the orderly
13 processing of their claims in the manner already approved by this Court. (Dkt. No. 311,
14 312.) This will then allow for the fair and equitable distribution of funds in the
15 Receivership Estate, including the prospective recovery from MPC. I have conferred with
16 counsel in the pending investor actions on numerous occasions and will continue to do so
17 in order to coordinate efforts, avoid duplication of work, and reduce administrative
18 expenses.

19 17. Based on the above, I believe in my reasonable business judgment that there
20 exists factual and legal merit to support my intended claims and I submit that the intended
21 suit against MPC is appropriate, necessary, and in the best interests of the Receivership
22 Estate. I respectfully request the Court grant authority to file suit against PWCG for the
23 claims of Breach of Fiduciary Duty, Negligence, Aiding and Abetting Fraud and Deceit,
24 and Conspiracy to Commit Fraud and Deceit, as set forth in the draft complaint attached
25 hereto.

26 **Litigation Fees and Expenses**

27 18. In contemplating taking action against MPC, I have consulted with my
28 counsel, Allen Matkins Leck Gamble Mallory & Natsis LLP ("Allen Matkins"), and

1 believe the legal fees and expenses for the intended action could be as low as \$50,000, in
2 the event of a default or prompt settlement, and as much as \$350,000, in the event of a full
3 trial. Based on the information presently available, I believe a full trial is highly unlikely
4 and that the case could be resolved through early settlement with limited legal fees and
5 expenses.

6 19. In the event the matter cannot be resolved through early settlement, my
7 counsel and I will make every effort to minimize administrative expenses associated with
8 the proposed action. While Allen Matkins' litigation fees will be charged on an hourly
9 basis, at the same rates as those charged to assist my administration of the Estate
10 (including a 10% discount on Allen Matkins' standard hourly rates), I believe that such
11 rates, overall, will still result in a higher net recovery to the Estate as compared to
12 alternative arrangements such as a contingent fee. If the matter is resolved through early
13 settlement, as I presently believe is possible, hourly rates will be more beneficial to the
14 Receivership Estate, on balance. As with all litigation matters, my counsel and I will
15 continue to monitor the costs and likely net benefit to the Receivership Estate throughout
16 the litigation. Having the case as a related action in this Court will also promote judicial
17 economy and help conserve receivership estate resources.

18 20. In sum, after reviewing the available evidence, weighing the merits of the
19 proposed claims against MPC, and assessing the anticipated costs of litigation and
20 likelihood of success and collectability, I believe, in my reasonable business judgment, that
21 it is in the best interests of the Receivership Estate to pursue such claims, and respectfully
22 requests the Court issue an order authorizing the commencement of litigation against
23 MPC.

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1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed this 21 day of April, 2020, at San Diego, California.

4 
5 THOMAS C. HEBRANK

EXHIBIT A

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11 Attorneys for Receiver
12 THOMAS C. HEBRANK

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15

16 THOMAS C. HEBRANK, in his capacity as
Court-appointed permanent receiver and
17 successor trustee for PWCG Trust,

18 Plaintiffs,

19 vs.

20 MILLS, POTOZAK & COMPANY, PC,
and DOES 1 through 10, inclusive,

21 Defendant.
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Case No. _____

COMPLAINT FOR:

(I) BREACH OF FIDUCIARY DUTY;
(II) NEGLIGENCE;
(III) AIDING AND ABETTING FRAUD
AND DECEIT;
(IV) CONSPIRACY TO COMMIT
FRAUD AND DECEIT

1 Plaintiff Thomas C. Hebrank, in his capacity as Court-appointed permanent receiver
2 for PWCG Trust (the "Receiver"), hereby brings this complaint against Defendant Mills,
3 Potoczak & Company, PC ("Defendant") and alleges as follows:

4 **PARTIES**

5 1. Plaintiff Thomas C. Hebrank is the Court-appointed permanent receiver for
6 PWCG Trust pursuant to the Judgment as to Defendant PWCG Trust ("Appointment
7 Order") entered in the action styled as *Securities and Exchange Commission v. Pacific*
8 *West Capital Group, Inc., et al.*, filed in the U.S. District Court for the Central District of
9 California, Case No. 2:15-cv-02563-DDP-FFM (the "SEC Action"). Mr. Hebrank is also
10 the Successor Trustee of PWCG Trust pursuant to an order entered in the SEC Action
11 authorizing the removal of MPC as Trustee and an Amendment to the Trust Agreement
12 officially removing MPC and appointing Mr. Hebrank, in his capacity as receiver, as
13 Successor Trustee.

14 2. Defendant Mills, Potoczak & Company, PC ("MPC"), a public accounting
15 firm, is an Ohio corporation with its principal place of business in Beachwood, Ohio.
16 MPC served as the Trustee for PWCG Trust.

17 3. The Receiver is unaware of the true names and identities of defendants sued
18 herein as Does 1 through 10. The Receiver will amend this Complaint, or will serve an
19 amendment to this Complaint, to allege the true names and capacities of such fictitiously
20 named defendants, whether individual, corporate or otherwise, when ascertained. Plaintiff
21 alleges on information and belief that each of the fictitiously named defendants is legally
22 responsible in some manner for the events and occurrences alleged herein, and have caused
23 injuries and damages to the Receiver in his capacity as receiver for PWCG Trust.

24 **JURISDICTION AND VENUE**

25 4. This Court has jurisdiction over this matter under 28 U.S.C. sections 1345
26 and 1367(a), and the doctrines of ancillary and supplemental jurisdiction, in that this action
27 arises from a common nucleus of operative facts as, and is substantially related to the
28 original claims in, SEC Action.

5. This Court may exercise personal jurisdiction over the above-captioned Defendants pursuant to Federal Rule of Civil Procedure 4(k)(1)(A); and 28 U.S.C. §§ 754 and 1692.

6. Venue in the Central District of California is proper under 28 U.S.C. § 1391(b)(2) because this action is an ancillary proceeding to the SEC Action, and because a substantial part of the events or omissions giving rise to the claim at issue occurred in the Central District of California, in that the offer and sale of some of the investments occurred in this district.

GENERAL ALLEGATIONS

I. Nature of the Action

7. The United States Securities and Exchange Commission ("SEC") filed the SEC Action on April 7, 2015 against PWCG Trust, Pacific West Capital Group, Inc. ("Pacific West"), Andrew B. Calhoun IV ("Calhoun"), and a number of other individuals and entities, alleging fraud and violations of securities laws in connection with the operation of a business offering and selling life settlements.

8. As alleged in the SEC Action, Pacific West and Calhoun offered and sold investments in life insurance policies structured around when those policies mature at the time of the insured death and benefits are paid. In these investments, investor funds were pooled to purchase life insurance policies taken out on the life of an insured. Investor funds were paid to PWCG Trust, which used the funds to purchase the policies. Investors were provided fractional interests in the policies in exchange for their investments.

9. MPC, through its role as Trustee of PWCG Trust, was actively involved in the management of the investments, including purchasing the life insurance policies selected by Calhoun and Pacific West, establishing and maintaining reserves from investor funds to pay policy premiums, making premium payments and distributions of death benefits, and generally administering the investments.

10. While these investments were touted as providing guaranteed "total fixed returns" for investors, the reality was that Calhoun and Pacific West failed to properly

1 analyze actuarial data in selecting policies for purchase and estimating required premiums
2 and reserves, creating substantial risk for investors that was never properly disclosed.
3 Calhoun and Pacific West further made a number of misrepresentations and omissions of
4 material facts to investors and concealed the fraud from investors, with assistance and
5 cooperation from MPC. Among other things, MPC knew of the misstatements and
6 omissions of material facts, but helped Calhoun and Pacific West conceal the fraud from
7 investors, including, among other things, by (a) diverting funds from new investments to
8 pay premiums on older policies where the inadequately established reserves had been
9 exhausted and, later, (b) taking forfeited shares from those investors who did not
10 contribute additional funds to cover premium shortfalls, selling those forfeited shares to
11 third parties, and paying the sales proceeds to Calhoun and Pacific West.

12 11. As a direct consequence of MPC's conduct and involvement in the fraud,
13 PWCG Trust has been substantially harmed as it has been subjected to claims and
14 liabilities owed to investors. Accordingly, the Receiver brings this action for judgment
15 against MPC for those injuries, the amount of which will be proved at trial.

16 **II. Pacific West's Offer and Sale of Life Settlements**

17 12. In offering and soliciting the life settlements to investors, Calhoun and
18 Pacific West made a number of material misrepresentations and omissions to investors,
19 including that the policies were expected to mature in four to seven years, and were
20 expected to pay a total return to investors of at least 100% to 150% of their investments.
21 In reality, however, the insurance policies PWCG Trust purchased required continued
22 payment of substantial premiums to keep the policies in force, the amounts of which would
23 rise as the policies aged.

24 13. To address the need to pay premiums on the policies for the life of the
25 investment, Calhoun and Pacific West represented to investors that three levels of reserves
26 (a "Primary," "Secondary," and "Tertiary Premium Reserve") would be established and
27 maintained for this purpose. Calhoun and Pacific West determined the amount of reserves
28 required based on the length of estimated "Contract Period" (the expected remaining life

1 expectancy of the insured) and allocated an amount of investors' funds to the Primary
2 Premium Reserve for each policy as funds reserved to pay premiums.

3 14. While Calhoun and Pacific West disclosed to investors that they would be
4 required to make additional cash contributions for their pro rata share of policy premiums
5 if all three levels of reserves were depleted, Calhoun and Pacific West also represented to
6 investors that they had never had to utilize the Secondary and Tertiary Premium Reserves
7 in the past and had never required investors to contribute additional funds to cover
8 premiums. In various offering disclosures provided to investors (the "Offering Circulars"),
9 Calhoun and Pacific West failed to disclose that they did not rely on actuarial data or
10 methods to determine the estimated Contract Period for the life expectancy of the insured,
11 nor did these disclosures tell investors how much money was actually being set aside for
12 the Primary Reserve for each policy, or how much money investors may have to contribute
13 in the event the Primary Reserve was exhausted. Calhoun and Pacific West also did not
14 disclose to investors that they were reaping a 45% margin on the life settlements. Indeed,
15 Calhoun and Pacific West informed investors that the success of their life settlements
16 business was independent of Pacific West, and that Pacific West had no involvement after
17 a policy was purchased by PWCG Trust. One exemplar of an Offering Circular provided
18 to investors is attached hereto as **Exhibit 1**.

19 15. Calhoun and Pacific West effected the sales through the Offering Circulars, a
20 Purchase Agreement between the investors and Pacific West, and a Life Settlement
21 Disclosure Form signed by each investor. Pursuant to the Offering Circulars, PWCG Trust
22 purchased the life policies from the policy owners, and PWCG Trust was recorded with the
23 issuing insurance company as the new owner and beneficiary of the policy. PWCG Trust
24 then sold fractional interests in those policies to investors, providing investors with a
25 percentage of the face value of the policy as their beneficiary designation. PWCG Trust
26 then issued an "assignment of death benefit" confirming the beneficiary designation with a
27 specific policy for each investor. PWCG Trust would inform Calhoun and Pacific West
28 when the Primary Premium Reserve for particular policies were depleted. PWCG Trust

1 ultimately collected death benefits when the policies matured and distributed pro rata
2 shares of the death benefit to the life settlement investors.

3 16. Calhoun controls Pacific West, and controlled all aspects of the process of its
4 offer and sale of life settlements, including identifying life insurance policies to be offered,
5 determining the amount of the Primary Premium Reserve by setting the Contract Period
6 and the premiums paid during that period, requesting PWCG Trust to use money from the
7 sale of new life settlements to pay premiums on older policies with depleted Primary
8 Premium Reserves, and controlling the information provided to investors through sales
9 representatives.

10 17. Calhoun and Pacific West have raised substantial funds from investors
11 through the sale of life settlement to investors. On information and belief, from late 2004
12 through at least November 2014, Calhoun and Pacific West raised more than \$99.9 million
13 from over 3,200 investors who had purchased interests in approximately 125 policies.
14 During that period, approximately \$45.9 million, or about 46% of the total amount raised
15 from investors, was paid by MPC, as Trustee of PWCG Trust, to Pacific West as
16 "margins." MPC never informed investors about the margin payments.

17 18. On information and belief, for the period beginning January 2012 through at
18 least November 2014, Calhoun and Pacific West raised approximately \$37.3 million from
19 investors. Of that amount, just over 15%, or about \$5.7 million, was used to purchase
20 policies, and just less than 34%, or about \$12.6 million, was used to fund the Primary
21 Premium Reserve. About 4%, or over \$1.5 million, was used to pay broker commissions
22 and escrow fees. From the funds raised in this period, MPC, as Trustee of PWCG Trust,
23 paid Pacific West over \$17.2 million as "margin," or over 46% of the total amount raised
24 from investors.

25 **III. Calhoun Selected the Policies to be Offered to Investors**

26 19. Calhoun and Pacific West sold fractionalized interests in a type of life
27 insurance policy called "universal life" or "flexible premium adjustable life" insurance.
28 These types of policies have an insurance component like a term life insurance policy, and

1 a savings component like a whole life insurance policy. The cost of the insurance
2 component generally increases each year. The policyholder can determine the amount of
3 premium that they wish to pay annually, but to keep the policy in force a policyholder
4 must pay an amount equal to the insurance component. A universal life insurance
5 policyholder may use a policy's accumulated cash value, if any, to subsidize and decrease
6 the amount needed to be paid each year to keep the policy in force, which has the effect of
7 depleting the cash value of the policy. Once the cash value reaches zero, it may no longer
8 be used to subsidize annual payments to keep a policy in force.

9 20. Calhoun personally selected each of the policies that Pacific West offered
10 and sold to investors as life settlements. Regarding the selection of policies, Calhoun and
11 Pacific West represented to investors in the Offering Circulars that Pacific West selects
12 only policies that are non-contestable, have been issued by A-rated life insurance
13 companies, and are on Insureds who are of "advanced ages and/or who typically
14 experience chronic or degenerative health conditions." Calhoun and Pacific West further
15 represented that they "typically purchase policies that have between a four- to seven-year
16 life expectancy," that "[for most policies, [they] engage the services of a third-party
17 independent company to obtain life expectancy evaluations," and that they "utilize premier
18 companies in the field of life expectancy evaluations and insurance underwriting" which
19 "perform these evaluations based on medical records, family history, and other information
20 pertinent to an individual's life." Calhoun and Pacific West further claimed that "[t]his
21 analysis enables the health professionals to create a more individualized statistical
22 calculation than standard mortality tables provide and determine a life expectancy on the
23 insured of the policies [Calhoun and Pacific West] consider for purchasing."

24 21. Calhoun and Pacific West's Offering Circulars lead potential investors to
25 believe Calhoun and Pacific West utilized analysis from actuaries and that such
26 information was analyzed to determine which life insurance policies were appropriate for
27 investment.

28

1 22. However, Calhoun and Pacific West had no reasonable basis for their
2 representations. Although Calhoun received some life expectancy reports from third
3 parties, he did not rely on any actuarial information to select the policies. Instead,
4 Calhoun, who is not an actuary or medical doctor, selected policies based on his judgment
5 and estimates. In a life settlement transaction, an actuarial-based estimate of an insured
6 life expectancy is a critical factor in determining the present value of the policy and
7 making a reasoned estimate of any premium reserve.

8 23. In reality, Calhoun selected policies largely based on the premium cost to
9 keep the policy in force. To determine that amount, Calhoun set a Contract Period based
10 upon the insured's age, health, and family history, and then calculated the amount
11 necessary to keep a policy in force during the Contract Period while using up the cash
12 value of the policy. Calhoun then used this calculation to set the amount of the Primary
13 Premium Reserve. In general, at the end of the Contract Period, the cash value of the
14 policy would be depleted. Calhoun and Pacific West generally selected a Contract Period
15 of six to nine years.

16 24. Assuming the insured does not die within the Contract Period, the depletion
17 of cash value of the policies would eventually require the payment of premiums from
18 established reserves or, if such reserves are not sufficient, from additional cash to be
19 contributed by the investors. Notwithstanding the risks attendant to establishing
20 insufficient reserves, it was not disclosed to investors that the cash value of the policy
21 would be used to pay premiums.

22 25. Since 2011, in connection with the selection and purchase of five policies,
23 the insurance broker offering the policy provided Pacific West and Calhoun with life
24 expectancy reports prepared by third parties as part of a package of materials provided to
25 prospective buyers. On information and belief, Calhoun never used actuarial charts or
26 looked at life expectancies in selecting policies. However, on information and belief, the
27 estimated life expectancies of the insureds in the five reports provided to Pacific West and
28

1 Calhoun were years longer than Contract Periods set by Calhoun for the corresponding life
2 settlements offered and sold by Pacific West.

3 **IV. Calhoun and Pacific West Represented to Investors That They Established**
4 **Three Levels of Reserves to Pay Premiums**

5 26. In their sales materials and presentations to investors, Pacific West and
6 Calhoun represented that three levels of premium reserves protected the investors'
7 investment: (i) a "Primary Premium Reserve" which was to contain sufficient funds to pay
8 premiums for a policy during the entire Contract Period, funded from the proceeds of the
9 sale of the fractional interests in the specific underlying life insurance policy; (ii) a
10 "Secondary Premium Reserve" which was a general reserve available for all policies sold
11 by Pacific West that was funded by 1% of all investment proceeds from all life settlements
12 sold by Pacific West; and (iii) a "Tertiary Premium Reserve" which was a general reserve
13 available for all policies sold by Pacific West and was funded by any unused Primary
14 Premium Reserves remaining on policies that mature before those primary reserves are
15 depleted.

16 27. Calhoun was personally responsible for determining the method used by
17 Pacific West to set the amount of the Primary Premium Reserves for each life settlement
18 offered and sold by Pacific West.

19 **V. Calhoun and Pacific West Offered Investors a "Total Fixed Return" of At**
20 **Least 100% to 150%**

21 28. Through the Offering Circulars and other offering materials, Calhoun and
22 Pacific West offered "total fixed returns" of between 100% and 150%. These documents
23 further provided examples showing how an investor who made a \$100,000 investment for
24 a "100% total fixed return" would receive a payment at maturity of \$200,000. Calhoun
25 and Pacific West also provided examples showing a "simple annual rate" of between 100%
26 if the policy matured in one year, which decreased to a 20% annual return if the policy
27 matured in five years, and further decreased to 10% annual return if a policy matured in
28 ten years.

29. Nowhere in the Offering Circulars or other offering materials did Calhoun and Pacific West inform investors that their "total fixed returns" would be reduced if premiums reserves are depleted and the investors are required to make an additional cash contribution.

VI. MPC's Role as Trustee of PWCG Trust

30. Calhoun and Pacific West entered into a Trust Agreement dated November 9, 2004 ("2004 Trust Agreement"), and an Amended and Restated Trust Agreement dated April 29, 2011 ("2011 Trust Agreement"), with MPC as the Trustee of PWCG Trust. A true and correct copy of the 2004 Trust Agreement is attached hereto as **Exhibit 2**. A true and correct copy of the 2011 Trust Agreement is attached hereto as **Exhibit 3**.

31. The 2004 Trust Agreement and the 2011 Trust Agreement each provide, among other things, that MPC shall be empowered to do all things necessary or convenient for the orderly administration of the Trust in compliance with the Trust Agreements and, importantly, that MPC "shall act in a manner that is reasonable and equitable in view of the interests of the [investors], and in the manner in which persons of ordinary prudence, diligence, discretion and judgment would act in the management of their own affairs." In addition, the 2004 Trust Agreement further expressly provided that it is MPC's responsibility "to confirm receipt" of specified documents in connection with the purchase of life insurance policies, including a "life expectancy report" for the policies purchased and documentation indicating the insurance companies issuing such policies have an "A" rating or better, for the apparent purpose of ensuring the policies purchased were suitable for the level of risk offered to investors.

32. On information and belief, the 2004 Trust Agreement and the 2011 Trust Agreement were not part of the of the offering materials provided to investors.

33. On information and belief, MPC reviewed Pacific West's business operations, including its policies and procedures for selecting specific insurance policies for purchase, and its policies and procedures for calculating Primary Reserves for each

1 policy. The Receiver is further informed and believes that MPC, in its capacity as trustee
2 for PWCG Trust, reviewed and collaborated with Pacific West in preparing the Offering
3 Circulars to solicit investors.

4 34. In administering PWCG Trust, MPC maintained only a single bank account
5 in which the Primary, Secondary, and Tertiary Premium Reserves were commingled and
6 maintained for all life settlements offered and sold by Pacific West. MPC, as Trustee of
7 PWCG Trust, also maintained a ledger purportedly showing the different amounts
8 maintained for the Primary, Secondary, and Tertiary Reserves.

9 **VII. The Established Reserves Were Insufficient to Pay Premiums**

10 35. Beginning around early 2012 and continuing to at least November 2014, an
11 increasing number of life settlements sold from 2004 through 2008 by Pacific West and
12 Calhoun ran out of funds in their Primary Premium Reserves. The Primary Premium
13 Reserves were depleted because Calhoun set up a Primary Premium Reserve that was
14 insufficient to cover premiums necessary to keep policies in force during the Contract
15 Period, and/or because the insured had outlived the Contract Period.

16 36. At the same time, Calhoun and Pacific West requested MPC to use a portion
17 of Pacific West's margin from the sale of new life settlements to pay premiums on older
18 policies where the Primary Premium Reserve had been depleted. Rather than complying
19 with the stated protocol of drawing from the Secondary and Tertiary Premium Reserves to
20 cover these shortfalls and, on information and belief, MPC complied with the requests,
21 drawing on funds raised from new investors to pay premiums on older policies. MPC did
22 not provide any notice of or disclose such actions to investors.

23 37. From January 1, 2012 through November 14, 2014, MPC diverted
24 approximately \$1.9 million in funds received from new investors to pay premiums on older
25 policies that were sold between 2004 and 2008. This represented approximately 5% of all
26 funds raised from investors during this period, and approximately 11% of the
27 approximately \$17.2 million Pacific West received as margins from the sale of life
28 settlements during that period.

1 38. By using margins generated from new investments to pay premiums on older
2 policies, Calhoun and Pacific West avoided using any funds from the Secondary or
3 Tertiary Premium Reserves. In fact, the Secondary and Tertiary Premium Reserves totaled
4 slightly over \$1.1 million as of November 2014, so that the contingent reserves were
5 insufficient to pay the over \$1.9 million in premiums that Pacific West and Calhoun paid
6 from new investor money. If Pacific West and Calhoun had followed the protocol
7 disclosed to investors, the Secondary and Tertiary Premium Reserves would have been
8 completely depleted, and they would have needed to make premium calls for over
9 \$780,000 to investors. Such a course of events would have put a significant damper on
10 their sales efforts and their ability to raise money from new investors. During this same
11 period of time, Calhoun and Pacific West continued to tell new and existing investors that
12 it had never used any funds from the Secondary and Tertiary Premium Reserves to pay
13 premiums, and had never made a premium cash call to investors for additional funds.

14 39. Calhoun and Pacific West engaged in this conduct to generate additional
15 sales of life settlements by creating the false appearance that they were successfully
16 selecting policies that will mature within four to seven years, and that the life settlements
17 they sold in fact matured during the Contract Period.

18 40. Calhoun and Pacific West engaged in this conduct to create the false
19 appearance that Pacific West was successful in estimating sufficient amounts of Primary
20 Premium Reserves, so that there was a low risk that investors would need to pay additional
21 sums as a consequence of a premium cash call and thereby realize lower annual returns.

22 41. Calhoun and Pacific West engaged in this conduct to create the false
23 appearance that Pacific West did not have a continuing involvement in the life settlements
24 after policies were purchased by the Trust, and the investors would not be affected if
25 Pacific West went out of business.

26 42. In perpetrating this fraudulent scheme, Calhoun acted with scienter. As the
27 control person of Pacific West, Calhoun's scienter is imputed to Pacific West.
28

1 43. At all relevant times, Calhoun knowingly and recklessly perpetrated this
2 fraudulent scheme. As the founder, sole owner, and president of Pacific West, Calhoun's
3 knowledge and recklessness are imputed to Pacific West.

4 44. Information that Pacific West and Calhoun were using new investor proceeds
5 to pay premiums on older policies was material to investors because the likelihood of
6 success of the investments and returns were fundamentally tied to Calhoun and Pacific
7 West's representations that they have never previously used the Secondary and Tertiary
8 Policy Premiums or made cash calls to cover premium shortfalls. Such information is also
9 material because it could significantly affect the length of time until an investor received a
10 return, the net annual return, the cost of the investment, and the risk that the life settlement
11 would lapse before the policy paid a death benefit to investors.

12 **VIII. Forfeiture and Sale of Investor Interests**

13 45. On information and belief, despite Calhoun, Pacific West, and MPC's
14 manipulation of investor funds to cover shortfalls in premiums, some policies were at risk
15 of lapse by August 2015 as the amounts remaining in the Primary and Secondary Premium
16 Reserves were insufficient to cover required premiums. In those instances, and again in
17 2016, MPC issued cash calls to investors requiring additional, pro-rata cash contributions
18 which, in some cases, were based on substantially higher premiums than originally
19 disclosed (due to the amount of required premiums increasing overtime).

20 46. In issuing the cash calls, MPC did not disclose material information to
21 investors, including that the policies may still lapse, despite some addition cash
22 contributions, if other investors refused to contribute additional funds. MPC also did not
23 disclose to investors the circumstances precipitating the shortfall in the reserves, the use of
24 new investor funds to pay past premiums shortfalls, or the risks to investors associated
25 with the depletion of reserves.

26 47. For those investors that did not agree to contribute new funds, their interests
27 were considered "forfeited," and MPC allowed and assisted Calhoun and Pacific West in
28

1 selling those interests to a third party. The funds generated from these sales were paid to
2 Calhoun and Pacific West. Again, MPC did not disclose these material facts to investors.

3 **IX. Calhoun and Pacific West's Materially False and Misleading Statements, and**
4 **Omissions of Material Facts**

5 **A. Misrepresentations Regarding Premium Risk**

6 48. Pacific West and Calhoun made materially false and misleading statements
7 and omitted material facts regarding the investors' risk of having to make future, out-of-
8 pocket, premium payments that would be substantially higher than the premiums disclosed
9 in the Disclosure Form. Pacific West and Calhoun knew, or were reckless or negligent in
10 not knowing, that these material misstatements and omissions were false when made.

11 49. In the Disclosure Form, Pacific West and Calhoun stated the annual premium
12 amount, the premium due date, and the Contract Period covered by the Primary Premium
13 Reserve. Pacific West's Purchase Agreement and Disclosure Form stated that if the
14 reserves were exhausted, then investors were liable for their pro rata share of premiums
15 needed to keep a policy in force. However, these disclosures were misleading because
16 they omitted material information that if there was a premium call, the total premiums paid
17 by investors would be substantially higher than the premium amount disclosed in the
18 Disclosure Form. The premiums would be substantially higher because the premiums
19 necessary to keep the policies in force increase substantially over time as the insured age,
20 and the policies were managed such that any cash value in the policies would have been
21 depleted to subsidize the policy premiums.

22 50. Thus, Calhoun and Pacific West knew, or were reckless or negligent in not
23 knowing, that premiums would spike at the end of the Contract Period if the policy had not
24 matured by that time. If an investor were required to pay pro rata shares of a substantially
25 higher premium, then that would negatively impact the investor's returns. However,
26 Pacific West and Calhoun generally did not disclose the premium spike, the amount of the
27 spike, or the reasons for the spike.

28

1 51. Pacific West and Calhoun also misled investors by omitting material
2 information about the likelihood that investors will have to meet a premium cash call.
3 Pacific West and Calhoun, directly and through their sales representatives, represented to
4 investors that the Secondary and Tertiary Premium Reserves had never been used to pay
5 policy premiums. Pacific West and Calhoun failed to disclose that the reason that the
6 Secondary and Tertiary Premium Reserves had never been used was because Pacific West
7 and Calhoun were using funds from the sale of new life settlements to pay premiums on
8 older policies.

9 52. When a potential investor asked about the likelihood of a premium call,
10 Pacific West, directly and through the Sales Agent Defendants, stated that the Secondary
11 and Tertiary Premium Reserves had never been touched. In general, Pacific West refused
12 to disclose the amount in those reserves, and refused to disclose the number of life
13 settlements that had not paid off during the Contract Period.

14 53. Information about the risks relating to the amount and likelihood of a
15 premium call was material to investors because, among other reasons, it could significantly
16 impact the returns the investors received on their investments in the life settlements.

17 **B. Misrepresentations Regarding Annual Returns and Maturity**

18 54. Pacific West and Calhoun made misleading statements and omissions to
19 investors about the investors' annual returns and the maturity of the policies that they
20 offered and sold. Pacific West and Calhoun knew, or were reckless or negligent in not
21 knowing, that these material misstatements and omissions were false and misleading when
22 made.

23 55. Pacific West, through Calhoun and its sales representatives, represented to
24 potential investors orally and in writing that Pacific West selected policies that "typically,"
25 or it "estimate[s]," "feel[s]," or "target[s]" will mature (e.g., pay a death benefit) in four to
26 seven years. Pacific West and Calhoun omitted material information that they had no
27 reasonable basis to make those representations, because they did not rely on life
28 expectancies or other actuarial data in selecting policies or setting Contract Periods.

1 56. Pacific West, through Calhoun and the Sales Agent Defendants, further
2 represented that Secondary and Tertiary Premium Reserves had never been drawn on to
3 make premium payments, which while true, omitted the material fact that the reserves had
4 not been used only because money was drawn from the sale of new life settlements to pay
5 premiums on older policies to create the façade that he never had to touch the reserves.

6 57. Beginning in early 2012, these representations were also misleading because
7 they omitted material information that only a small percentage of the life settlements sold
8 matured within seven years. On information and believe, as of November 2014, just 7.6%
9 of the life settlements sold during 2004 and 2007 actually matured within seven years.

10 58. Information that Pacific West and Calhoun were using new investor proceeds
11 to pay premiums on older policies was material to their statements that they had not used
12 reserves to make premium payments. Information about the accuracy of the estimates of
13 when a policy would mature was material to investors because it could significantly affect
14 the length of time until an investor received a return, the net annual return, the cost of the
15 investment, and the risk that the life settlement would expire before the policy paid a death
16 benefit.

17 **C. Misrepresentations Regarding Pacific West's Role**

18 59. Pacific West and Calhoun falsely represented that the success of an
19 investment in a life settlement was completely independent of Pacific West's efforts or
20 fortunes, and omitted material information regarding Pacific West's continuing role in the
21 success of the life settlements offered and sold. Pacific West and Calhoun knew, or were
22 reckless or negligent in not knowing, that these misrepresentations and omissions were
23 false and misleading when made.

24 60. Pacific West's Purchase Agreement stated "that the economic benefit derived
25 from the transaction(s) contemplated by this Agreement will result solely from the
26 maturity of the life insurance policy(ies) upon the death of the insured(s), and will not be
27 derived from the efforts of any person or entity employed by or associated with" Pacific
28 West.

1 61. Pacific West represented to investors in at least one sales brochure that the
2 life settlements are "independent" of Pacific West, that the "prosperity" of Pacific West
3 "does not affect you at all," and that "your investment is implemented before distributions
4 are made to us."

5 62. The statements were false and misleading because the investors' economic
6 benefit is dependent upon Calhoun's and Pacific West's ability accurately to estimate a
7 Contract Period and establish a sufficient Primary Premium Reserve.

8 63. The statements were also false and misleading, and omitted material facts,
9 because the investors' economic benefit depends, significantly, on Pacific West's
10 willingness to use "margins" generated from new investor funds to pay fees and policy
11 premiums for older policies where the Primary Premium Reserve has been depleted.
12 Additionally, the statements were false and misleading and omitted material facts because
13 they did not explain that the success of the investment was also dependent on Calhoun's
14 and Pacific West's ability to continually find new investors and raise new investor funds to
15 cover premium shortfalls in older policies.

16 64. Information concerning risks to Pacific West's continuing role in the life
17 settlement investments, and the impact to investors if Pacific West were to go out of
18 business, was material to investors.

19 65. At all relevant times with regard to the above-alleged false and misleading
20 statements and omissions of material fact, Calhoun acted with knowledge or recklessness.
21 Calhoun's knowledge and recklessness are imputed to Pacific West.

22 **X. MPC Aided Calhoun and Pacific West in the Fraud and Deceit**

23 66. On information and belief, MPC was involved in the drafting of the Offering
24 Circulars provided to investors. In those documents, investors were informed about
25 Pacific West's purportedly limited involvement in the life settlements post-sale, and were
26 informed about MPC's purported active involvement in monitoring the policies purchased
27 by PWCG Trust. These representations were made to induce investments in Pacific West's
28 life settlements and were material to the investors' decision to invest in the life settlements.

1 67. On information and belief, MPC knew and approved of the Offering
2 Circulars and the representations made therein. MPC further knew that Calhoun and
3 Pacific West would utilize the Offering Circulars to offer and solicit investments in Pacific
4 West's life settlements. With this knowledge, MPC allowed its name to be used in the
5 Offering Circulars, which touted MPC as one of the most experienced trustees in the area
6 of life settlements, providing Pacific West's life settlement investments an aura of
7 legitimacy and success.

8 68. Because MPC participated in the drafting of, and approved, the Offering
9 Circulars, it was aware of the misrepresentations and omissions contained therein. Despite
10 this knowledge, MPC allowed and continued to allow Calhoun and Pacific West to utilize
11 its name and reputation in order to solicit new investors.

12 69. MPC further aided Calhoun and Pacific West in the fraud by concealing the
13 fact that certain policies were not performing as well as represented. MPC did this by
14 cooperating with Calhoun and Pacific West to use margins generated from new investors
15 to pay premiums on older policies that had depleted their Primary Premium Reserves, in
16 order to avoid drawing from the insufficient amount of funds held in the Secondary and
17 Tertiary Premium Reserves. MPC further aided the fraud by concealing from investors the
18 fact that their investments would not receive the promised "total fixed return" had MPC
19 not utilized margins from new investments to pay premiums on older policies where the
20 reserves had been exhausted.

21 70. The Offering Circulars further provided that "[t]hroughout the process,
22 [MPC] provides all investors in the Trust with *complete* documentation as to the policy,
23 the insured, changes of ownership and beneficiary, and *all other information relevant to*
24 *the investment.*" This was a another material misrepresentation MPC allowed to be
25 included in the Offering Circulars as the trust agreement purported to limit MPC's duties as
26 trustee to those limited administrative duties described above. Contrary to these
27 representation in the Offering Circulars, MPC did not provide "complete documentation as
28 to the policy," nor did it provide "all other information relevant to the investment," which

1 information would have necessarily included, among other things, MPC's use of "margin"
2 funds to pay premiums on policies with depleted reserves.

3 71. On information and belief, MPC further aided Calhoun's and Pacific West's
4 fraud and deceit by, among other things, knowingly: (i) allowing and assisting Calhoun
5 and Pacific West to establish premium reserves without timely and accurate life
6 expectancy reports or other actuarial information; (ii) failing to notify investors that policy
7 reserves were not established based on actuarial information; (iii) failing to notify investors
8 when policy reserves were exhausted or of the risk associated therewith; (iv) allowing and
9 assisting Calhoun's and Pacific West's actions to cover shortfalls in policy reserves by
10 using funds from new investments, and failing to notify investors of such shortfalls and use
11 of funds; (v) issuing cash calls to investors demanding funds without disclosing the risks
12 associated with the depletion of premium reserves; and (vi) allowing and assisting
13 Calhoun's and Pacific West's action to take forfeited interests of investors and resell such
14 interests without disclosure to investors and with payments going solely to Calhoun and
15 Pacific West.

16 **FIRST CAUSE OF ACTION**

17 (Breach of Fiduciary Duty)

18 72. The Receiver incorporates herein each and every allegation contained in
19 Paragraphs 1 through 71, inclusive, hereinabove set forth.

20 73. As the trustee of PWCG Trust, MPC had a fiduciary duty to PWCG Trust to
21 act in good faith and in accordance with the purposes of the trust and the interests of the
22 trust's beneficiaries, including the duty of disclosure to keep beneficiaries of the trust
23 reasonably informed about trust administration and material facts necessary to protect their
24 interests.

25 74. MPC breached its fiduciary duties to PWCG Trust by failing to disclose
26 certain material information to the investors, subjecting PWCG Trust to liability owed to
27 those investors on account of MPC's bad acts.

28 75. Among other things, MPC breached its fiduciary duties to PWCG Trust by:

- a. Failing to disclose the use of "margins" from new investments to pay premiums owed on older policies;
- b. Failing to disclose the actual amount of "margins" paid to Calhoun and Pacific West;
- c. Failing to disclose that the 2004 Trust Agreement and 2011 Trust Agreement purported to limit MPC's duties and responsibilities contrary to representations made to investors;
- d. Failing to ensure that a life expectancy report or similar actuarial information was obtained with each policy purchased by PWCG Trust;
- e. Failing to disclose that premium reserves for policies were not established based on actuarial information for the insureds;
- f. Failing to notify investors when premium reserves for policies were exhausted or of the risks associated therewith;
- g. Allowing and assisting Calhoun's and Pacific West's actions to cover shortfalls in policy reserves by using funds from new investments, and failing to notify investors of such shortfalls and use of funds;
- h. Issuing cash calls to investors demanding funds without disclosing the risks associated with the depletion of premium reserves; and
- i. Allowing and assisting Calhoun's and Pacific West's action to take forfeited interests of investors and resell such interests without disclosure to investors and with payments going solely to Calhoun and Pacific West.

76. MPC further breached its fiduciary duties to PWCG Trust by failing to correct or tell investors the truth regarding Calhoun and Pacific West's misrepresentations including, among other things, misrepresentations stating that:

- a. Investments "typically" mature in four to seven years;
- b. Actuarial information was used to determine which policies to purchase;
- c. Actuarial information was used to determine the Contract Period;

- d. Actuarial information was used to establish the appropriate amount of premium reserves;
- e. Calhoun and Pacific West would not have continued involvement in the life settlements after the policies were purchased;
- f. The annual premiums due on policies in the event of a cash call would be equal to the amount set forth in the Disclosure Form;
- g. Calhoun and Pacific West had never had to make use of Secondary and Tertiary Premium Reserves;
- h. It was unlikely that investors would have to contribute additional funding in a cash call;
- i. The amount of promised "total fixed return" for each policy; and
- j. MPC would provide "all investors in the Trust with complete documentation as to the policy, the insured, changes of ownership and beneficiary, and all other information relevant to the investment."

77. As a direct and proximate result of MPC's breach of its fiduciary duties described herein, PWCG Trust has suffered substantial harm as MPC's actions have directly subjected PWCG Trust to liabilities owed to the investors. The amount of harm directly and proximately caused by MPC's actions will be proven at trial.

78. MPC's actions in breach of its fiduciary duties were undertaken with malice, oppression, and/or fraud, and were undertaken with the intent to injure PWCG Trust. Accordingly, MPC's conduct alleged herein supports an award of punitive damages in an amount appropriate to punish MPC for the unlawful conduct and to deter such conduct in the future.

SECOND CAUSE OF ACTION

(Negligence)

79. The Receiver incorporates herein each and every allegation contained in Paragraphs 1 through 78, inclusive, hereinabove set forth.

80. As the trustee of PWCG Trust, and as a professional trustee with experience in administering life settlement trusts, MPC owed a duty to PWCG Trust to exercise the skill and knowledge normally possessed by members of that profession.

81. As alleged herein, MPC acted negligently in failing to disclose to investors those material facts specified in paragraph 74 concerning the life settlements, causing harm to PWCG Trust by subjecting the trust to liabilities owed to the investors.

82. MPC further acted negligently by failing to tell investors the truth regarding those misrepresentations specified in paragraph 75 made by Calhoun and Pacific West to the investors, causing harm to PWCG Trust by subjecting the trust to liabilities owed to investors.

83. MPC's conduct, as alleged herein, rises to the level of gross negligence in that it failed to exercise any care with respect to the life settlements and its administration of PWCG Trust as its trustee when MPC failed to make those disclosures specified in paragraph 74 and failed to tell investors the truth regarding those misrepresentations specified in paragraph 75.

84. As a direct and proximate result of MPC's negligent acts described herein, PWCG Trust has suffered substantial harm as MPC's actions have directly subjected PWCG Trust to liabilities owed to the investors. The amount of harm directly and proximately caused by MPC's actions will be proven at trial.

THIRD CAUSE OF ACTION

(Aiding and Abetting Fraud or Deceit)

85. The Receiver incorporates herein each and every allegation contained in Paragraphs 1 through 84, inclusive, hereinabove set forth.

86. As alleged herein, Calhoun and Pacific West made a number of misrepresentations and omissions of material facts concerning the life settlements to investors. Calhoun and Pacific West made the misrepresentations and omissions of material facts with the intent to defraud or deceive investors.

1 87. On information and belief, the investors did not know the truth of Calhoun's
2 and Pacific West's misrepresentations and omissions of material facts, and would not have
3 made their investments in the life settlements had the truth of the material facts been
4 disclosed. Calhoun's and Pacific West's misrepresentations and omissions of material facts
5 were a substantial factor in causing harm to the investors and, in turn, harm to PWCG
6 Trust by subjecting PWCG Trust to liabilities owed to the investors .

7 88. At all times Calhoun and Pacific West made these misrepresentations and
8 omissions concerning the life settlements to investors, MPC knew about the
9 misrepresentations and omissions of material facts, and intentionally and substantially
10 assisted and encouraged such misrepresentations and omissions. As detailed herein, MPC
11 assisted and encouraged the fraud on investors perpetrated by Calhoun and Pacific West
12 by, among other things:

- 13 a. Assisting in the drafting and approve of the Offering Circulars, which
14 contained numerous misrepresentations and omissions of material facts as
15 described herein;
 - 16 b. Approving or allowing the use of its name in the Offering Circulars,
17 lending the life settlement investments sold by Calhoun and Pacific West
18 an aura of legitimacy and success;
 - 19 c. Concealing the fact that its role in the life settlements was purportedly
20 limited by the terms of its trust agreement;
 - 21 d. Concealing the truth regarding the use of "margins" from new
22 investments to pay premiums on older policies;
 - 23 e. Concealing the fact that investments would not receive the promised
24 "total fixed return" if "margins" from new investments had not been used
25 to pay premiums;
 - 26 f. Failing to provide investors with "complete documentation" and "all
27 other information relevant to the investment;"
- 28

- g. Allowing and assisting Calhoun and Pacific West to establish premium reserves without timely and accurate life expectancy reports or other actuarial information;
- h. Failing to notify investors that policy reserves were not established based on actuarial information;
- i. Failing to notify investors when policy reserves were exhausted or of the risk associated therewith;
- j. Issuing cash calls to investors demanding funds without disclosing the risks associated with the depletion of premium reserves;
- k. Allowing and assisting Calhoun's and Pacific West's action to take forfeited interests of investors and resell such interests without disclosure to investors and with payments going solely to Calhoun and Pacific West;

89. As a direct and proximate result of MPC's conduct described herein, PWCG Trust has suffered substantial harm as MPC's aiding and abetting of the fraud has directly subjected PWCG Trust to liabilities owed to the investors. The amount of harm directly and proximately caused by MPC's actions will be proven at trial.

90. MPC's actions described herein were undertaken with malice, oppression, and/or fraud, and were undertaken with the intent to injure PWCG Trust. Accordingly, MPC's conduct alleged herein supports an award of punitive damages in an amount appropriate to punish MPC for the unlawful conduct and to deter such conduct in the future.

FOURTH CAUSE OF ACTION

(Conspiracy to Commit Fraud or Deceit)

91. The Receiver incorporates herein each and every allegation contained in Paragraphs 1 through 90, inclusive, hereinabove set forth.

92. As alleged herein, Calhoun and Pacific West made a number of misrepresentations and omissions of material facts concerning the life settlements to

1 investors. Calhoun and Pacific West made the misrepresentations and omissions of
2 material facts with the intent to defraud or deceive investors.

3 93. On information and belief, the investors did not know the truth of Calhoun's
4 and Pacific West's misrepresentations and omissions of material facts, and would not have
5 made their investments in the life settlements had the truth of the material facts been
6 disclosed. Calhoun's and Pacific West's misrepresentations and omissions of material facts
7 were a substantial factor in causing harm to the investors and, in turn, harm to PWCG
8 Trust by subjecting PWCG Trust to liabilities owed to the investors .

9 94. At all times Calhoun and Pacific West made these misrepresentations and
10 omissions concerning the life settlements to investors, MPC knew Calhoun and Pacific
11 West intended to defraud the investors, and cooperated with Calhoun and Pacific West to
12 commit the fraud. As detailed herein, MPC cooperated with Calhoun and Pacific West to
13 commit fraud on investors by, among other things:

- 14 a. Assisting in the drafting and approve of the Offering Circulars, which
15 contained numerous misrepresentations and omissions of material facts as
16 described herein;
- 17 b. Approving or allowing the use of its name in the Offering Circulars,
18 lending the life settlement investments sold by Calhoun and Pacific West
19 an aura of legitimacy and success;
- 20 c. Concealing the fact that its role in the life settlements was purportedly
21 limited by the terms of its trust agreement;
- 22 d. Concealing the truth regarding the use of "margins" from new
23 investments to pay premiums on older policies;
- 24 e. Concealing the fact that investments would not receive the promised
25 "total fixed return" if "margins" from new investments had not been used
26 to pay premiums;
- 27 f. Failing to provide investors with "complete documentation" and "all
28 other information relevant to the investment;"

- g. Allowing and assisting Calhoun and Pacific West to establish premium reserves without timely and accurate life expectancy reports or other actuarial information;
- h. Failing to notify investors that policy reserves were not established based on actuarial information;
- i. Failing to notify investors when policy reserves were exhausted or of the risk associated therewith;
- j. Issuing cash calls to investors demanding funds without disclosing the risks associated with the depletion of premium reserves;
- k. Allowing and assisting Calhoun's and Pacific West's action to take forfeited interests of investors and resell such interests without disclosure to investors and with payments going solely to Calhoun and Pacific West;

95. As a direct and proximate result of MPC's conduct described herein, PWCG Trust has suffered substantial harm as MPC's conspiracy and cooperation in perpetrating the fraud on investors has directly subjected PWCG Trust to liabilities owed to the investors. The amount of harm directly and proximately caused by MPC's actions will be proven at trial.

96. MPC's actions described herein were undertaken with malice, oppression, and/or fraud, and were undertaken with the intent to injure PWCG Trust. Accordingly, MPC's conduct alleged herein supports an award of punitive damages in an amount appropriate to punish MPC for the unlawful conduct and to deter such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, the Receiver prays for judgment against MPC, as follows:

On all counts:

1. For PWCG Trust's actual damages according to proof in a sum to be determined at the time of trial;

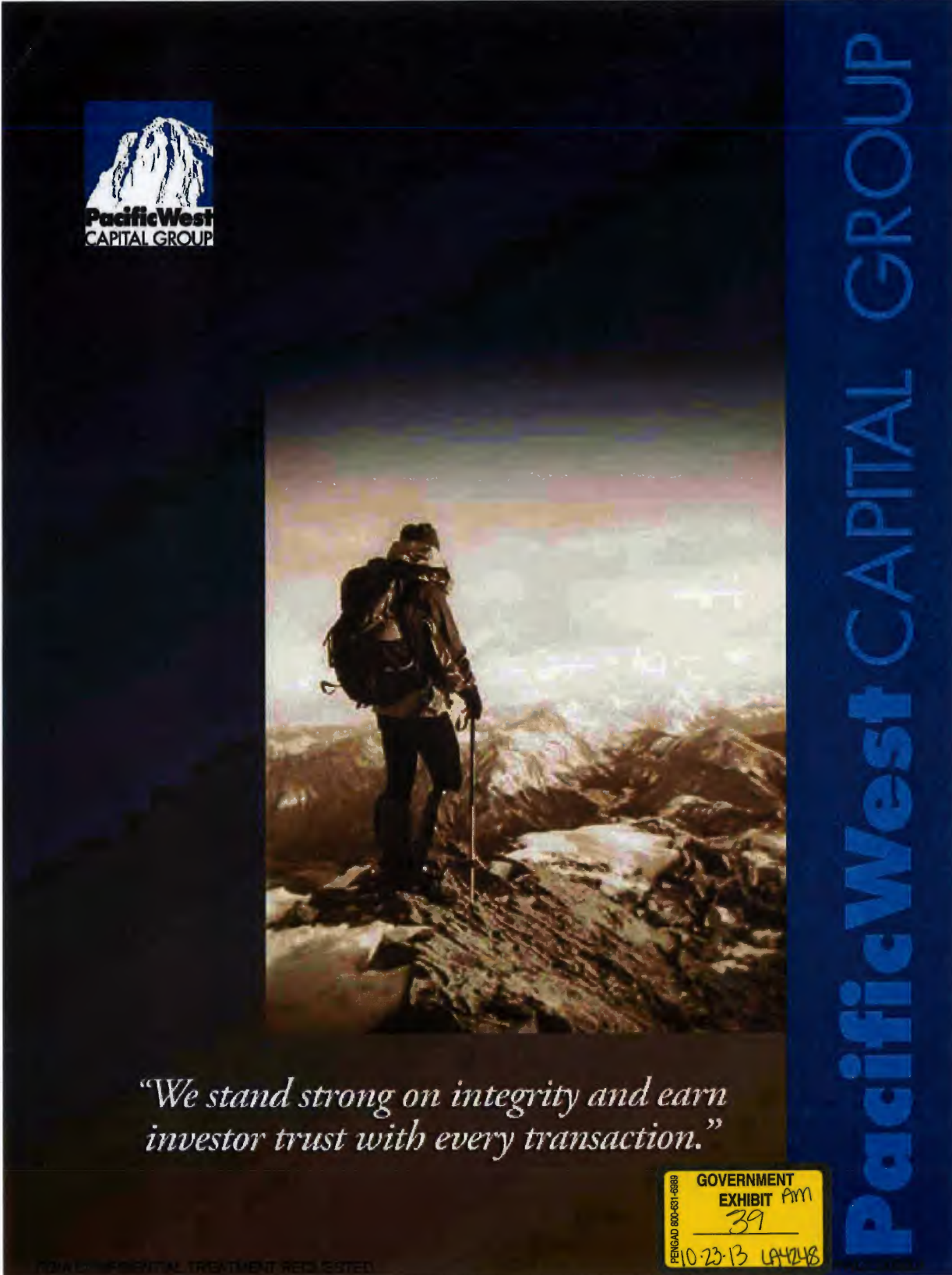
2. For PWCG Trust's general damages according to proof in a sum to be determined at the time of trial;
3. For punitive and exemplary damages according to proof;
4. For reasonable attorneys' fees and costs;
5. For costs of suit incurred; and
6. For any and all other relief, at law or in equity, which the Court may deem appropriate.

Dated: _____, 2020

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
EDWARD G. FATES
TIM C. HSU

By: _____
DAVID R. ZARO
Attorneys for Plaintiff
THOMAS A. HEBRANK, in his capacity
as Court-Appointed receiver for PWCG
Trust

EXHIBIT 1



PacificWest
CAPITAL GROUP

PacificWest CAPITAL GROUP

"We stand strong on integrity and earn investor trust with every transaction."

FOIA CONFIDENTIAL TREATMENT REQUESTED

GOVERNMENT
EXHIBIT Am
39
10-23-13 LPH/248



"We stand strong on integrity and earn investor trust with every transaction."

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INVESTMENT OBJECTIVE

To achieve mid- to long-term capital growth for qualifying investors through life settlement investments.

THE STRENGTH OF SELECTED LIFE SETTLEMENTS

Pacific West Capital Group (PWCG) purchases interests in the proceeds of life insurance policies at a discount to face value where the insureds are 75 years of age or older typically with a reduced life outlook due to chronic and degenerative health complications. This translates into an opportunity for returns higher than those offered by traditional investment vehicles.

POLICIES CHOSEN TO MEET OUR HIGH STANDARDS...

In seeking to achieve the investment objective, PWCG reviews over \$250 million of face value policies each month, selects policies that are non-contestable, and only purchases policies that have been issued by United States life insurance companies that are "A-rated" or better as determined by Standard & Poors.

...TO PROTECT AND NURTURE YOUR WEALTH

PWCG then sells interests in these policies to qualified investors allowing them to participate in the profits.

INVESTMENT ADMINISTRATION

PACIFIC WEST CAPITAL GROUP, INC.

Offering company facilitating life settlement investments

1901 Avenue of the Stars
Suite 680
Los Angeles, CA 90067
800 588-8000
310 578-6343
Fax 310 578-6443
www.pwcapital.net

MILLS, POTOCZAK & COMPANY

- *CPA firm acting as Trustee for PWCG Trust*
- *Bonded Escrow Agent*

27600 Chagrin Blvd., Suite 200
Cleveland, OH 44122
216 464-7481
Fax 216 464-7581
www.mpccpa.com

ENTRUST IRA SERVICES

IRA Account Custodian

520 Broadway, Suite 350
Santa Monica, CA 90401
Phone 310 496-4216
Fax 310 899-3822
www.theentrustgroup.com



A+ RATING

MEMBER

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MEMBER
WWW.LISASSOCIATION.ORG

PWCG000002



Dear Investor,

We are pleased to send information explaining Pacific West Capital Group's opportunities for investors, large and small, to take advantage of the profitable and growing market in life settlement investments.

We encourage you to read this material thoroughly as it describes both the life settlement industry and how we provide opportunities for qualified investors with \$20,000 minimum investments.

We have worked with thousands of qualified California investors who have found this vehicle to be a desirable diversification for their current investment portfolios. The offering is qualified for cash investments as well as IRA transfers and 401k rollovers.

Investments in life settlements serve as a great defensive strategy since the return is not dependent on or affected by the ups and downs of the stock market, interest rate fluctuations, domestic and world economy instabilities, or unexpected global events. With Pacific West Capital Group's structure, the investment offers prudence while producing a minimum 100% total fixed return, meaning you double your money. Some policies even pay as much as 150% total fixed return, more than twice your investment!

The investment's integrity is enhanced by regulation in the State of California and the fact that your payout comes from the largest, most financially stable life insurance companies in the world.

Our investors consistently find that the life settlement investment vehicle provides peace of mind and confidence. We at Pacific West Capital Group believe that you will discover it produces above average returns for your investment dollars.

We hope this material expands your awareness of investment opportunities and provides many good reasons for you to move forward with a life settlement investment. If you have any questions, we always welcome your call.



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PWCG000003



What is the minimum investment?

Can I use my IRA or 401k or any type of qualified vehicle to fund a life settlement investment?

The minimum investment is \$20,000. You have many choices for funding a life settlement investment with PWCG. These range from cash to retirement accounts such as IRA (Traditional, SEP, Roth) and 401K, 403B, etc.

We use a third party administrator, Entrust IRA Services, to act as custodian for our IRA accounts. Upon opening an account with Entrust you would transfer/rollover funds from your existing retirement account into a new IRA. Once funds are received, the investment is then placed with your IRA account, which then owns the investment.

A BUSINESS BUILT ON A BEDROCK OF BENEFIT AND A WIN-WIN SCENARIO

Toward the end of the last century, a change occurred in the life insurance arena that had dramatic benefits for life insurance policy holders and investors. This change laid the foundation for the business of our company.

Originally, only one avenue existed to collect on a life insurance policy before it matured: the insured could surrender the policy to the issuing company for a small fraction of its face value. If the insured wanted to cash out his/her policy to cut expenses, to acquire funds to help with medical or living expenses, or just to improve quality of remaining life, he/she could not expect to receive a great deal.

For example, if a policy had a \$1,000,000 face value, the policy holder might hope to receive \$100,000 from the issuing insurance company.

A New Opportunity Emerges

In the late 1980s, a trend emerged whereby people could sell their existing life insurance policies to investors at a more equitable settlement than the life insurance companies were willing to offer. The development of this secondary market meant good news for people in certain challenging circumstances.

Now, instead of being able to receive only \$100,000 on a \$1,000,000 policy, the insured might expect to receive \$250,000 from investors. The investors would then hold the policy until the insured passed away, at which point the policy would mature and the investors would collect the face value of \$1,000,000.

That type of transaction was known as a "viatical settlement," defined as the purchase of an insurance policy from an insured with a diagnosis of a terminal illness.

Expanding the Range of Opportunity and Benefit

In the mid-90s, another step in this evolution took place. The industry recognized the ability for seniors who do not necessarily have terminal illnesses, but in many cases, have significant chronic or degenerative conditions, to benefit from the same type of transaction. This transaction became known as a "life settlement," the type of investment PWCG now provides.

The life settlement transaction rapidly gained popularity with investors. While the time frame of a viatical settlement could potentially extend far beyond investor expectations due to misdiagnoses and medical advances, life settlements provided a more finite window because, simply stated, there is no cure for old age.

Also, life settlements were attractive to senior policy holders for two primary reasons: 1) many seniors needed money to meet rising medical costs; and 2) more seniors found themselves over-insured due to changes in estate tax laws. In both cases, seniors found strong motivation to seek life settlement solutions and enjoyed substantial benefit as a result. More than just a better alternative than surrender value, they found life settlements to be a good deal.

A Fast-Growing Market with Plenty of Room to Expand

Because its attractiveness to both investors and seniors makes it a true win-win situation, the life settlement market grew to approximately \$5 billion by the turn of the century. With approximately \$500 billion of outstanding life insurance on people 65 or older, the market is in its infancy and is poised for rapid growth.

CALIFORNIA LAW REGULATES INVESTMENTS IN LIFE SETTLEMENTS AS A SECURITY

Because life settlements are unique in that they involve both investors and life insurance, in the past, there was no clear regulatory agency originally exercising regulatory oversight of the transaction. Then, it was unclear as to whether life settlements were a security transaction or an insurance product, or both. Individual states are responsible for laws and regulations concerning investments in these transactions.

California is on the forefront for regulations and legislation protecting investors within the state in these transactions. It became one of the first states to enact defined laws with regard to regulating investments in life settlements as a security. As a California corporation offering the sale of investments in life settlements only to California residents who are qualified purchasers, Pacific West Capital Group strictly abides by the following legislation which allows for an exemption from qualification of its offering with the CA Department of Corporations: Senate Bill 1837.

For additional information, please visit the following Web site:
www.leginfo.ca.gov/pub/99-00/bill/sen/sb_1801-1850/sb_1837_bill_20000927_chaptered.html

PACIFIC WEST CAPITAL GROUP

We stand strong on integrity and earn investor trust with every transaction

Pacific West Capital Group, Inc. is a California corporation that facilitates the sale of interests in the life settlements. We have an "A+" rating from the Better Business Bureau and are the most reputable and most experienced company offering life settlement investments to qualified California investors. Using an approach that has been tested and proven reliable, we purchase select policies that meet our high standards for investment and sell interests to qualified investors.

We work with respected and licensed brokers who have an extensive network of insurance agents to supply us with an inventory of quality policies. Each policy submitted to us undergoes rigorous scrutiny using a predetermined set of criteria, and we select the most desirable from approximately \$250+ million worth of policies per month.

Upon selecting policies that meet our quality-based criteria, we raise capital from investors to fund them. Our investors include corporations, foundations, and institutions that may purchase an entire portfolio of policies as well as individual investors who may purchase interest in a single policy. Through the investment Trust, the PWCG Trust, we offer policies for purchase in fractional interests by qualified individual investors.

HOW THE PWCG TRUST WORKS TO SERVE YOU

Pacific West Capital Group specializes in serving investors whose portfolio or IRA account supports investments starting as low as \$20,000. To maximize the protection of investors, large and small, all our fractional transactions take place through the Pacific West Capital Group Trust. The Trust purchases the policies and establishes capital reserves. This means the Trust will prosper independent of the life of Pacific West Capital Group, Inc.

Another advantage to using a Trust applies to those investors looking to utilize qualified retirement account funds, such as money in an IRA or 401K. Life insurance companies cannot pay benefits into an IRA account. However, under this highly efficient and reliable Trust structure, the death benefit from the policy is paid into the Trust and the Trust can legally distribute the money into the IRA. In other words, the Trust opens this profitable market to investors whose funds are in IRAs and 401ks.

The way the PWCG Trust works is simple and direct. The Trust purchases policies from the policy owners and is recorded as the new owner and beneficiary of the policy. When the change of ownership and beneficiary have been officially recorded and recognized by the life insurance company, Pacific West Capital Group then sells fractional interests to the investors giving them a percentage of the face value as their beneficiary designation. The trustee, Mills, Potoczak & Company, then issues an assignment of death benefit confirming the beneficiary designation within a specific policy.

Are life settlement transactions regulated?

By whom?

Yes. Without a doubt. In California, investments in life settlements are considered securities and therefore are regulated by the Securities Division of the CA Department of Corporations, as set forth through legislation with the passage of Senate Bill 1837. This legislation allows for Pacific West Capital Group to offer and sell investments in life settlements to qualified investors under an exemption from qualification of its offering with the CA Department of Corporations.



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FOIA CONFIDENTIAL TREATMENT REQUESTED

PWCG000005



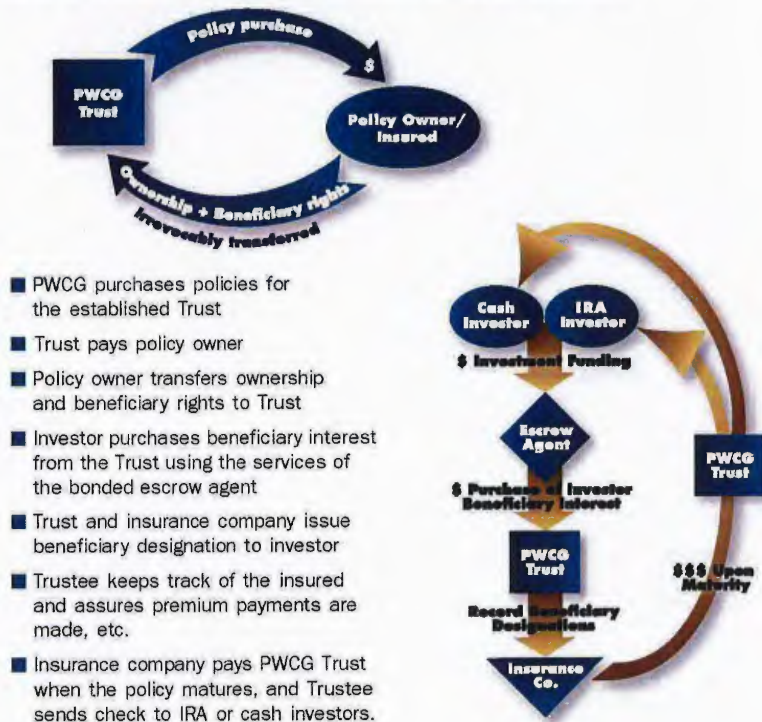
Oh, I've heard of this. Isn't this a viatical settlement?

No. A viatical settlement applies only to policies of people who have a terminal illness. Such people could be of any age. Life settlement policies are based on the insured's advanced age alone.

We focus on life settlements because we don't want to expose our investors to risk due to the subjectivity of health diagnosis. With a viatical settlement, an unexpected cure, a new drug, or a new treatment could result in the insured living for years or even decades beyond the expectation. Since we buy policies from seniors, the time frame is much narrower because there simply is no cure for old age.

Mills, Potoczak & Company, one of the most experienced trustees in the area of life settlements, monitors the policy until the insured's death and handles all investment distributions. Throughout the process it provides all investors in the Trust with complete documentation as to the policy, the insured, changes of ownership and beneficiary, and all other information relevant to the investment. When the policy matures, the life insurance company pays the PWCG Trust, which then distributes the beneficiary designation to the cash investor or to the investor's IRA.

IN A NUTSHELL, HERE'S HOW THE PROCESS WORKS:



- PWCG purchases policies for the established Trust
- Trust pays policy owner
- Policy owner transfers ownership and beneficiary rights to Trust
- Investor purchases beneficiary interest from the Trust using the services of the bonded escrow agent
- Trust and insurance company issue beneficiary designation to investor
- Trustee keeps track of the insured and assures premium payments are made, etc.
- Insurance company pays PWCG Trust when the policy matures, and Trustee sends check to IRA or cash investors.

TAKING STEPS TO ASSURE MAXIMUM PROTECTION

PWCG goes the extra mile to assure policies are protected. For example, for every policy we establish a primary premium reserve with an amount equal to the cost of premiums for a period of six to nine years with the exact amount disclosed in the Life Settlement Disclosure Form (some policies already have sufficient cash value within the policy to keep it in force for an even longer time frame). In addition, some policies have a disability waiver rider that pays premiums in the event the insured becomes disabled.

We have also established two other general reserves that can be used to pay premiums should the primary reserve become depleted. The first general reserve is funded from 1% of all investor money for all policies. The second general reserve is funded from excess or unused premium dollars from any primary reserve due to the policy maturing before the primary premium reserve becomes depleted. In addition, interest on all of the premium reserves account is accrued and added into the second general reserve.

We have established this plan to pay premiums so that every policy is kept in force. For further explanation, please refer to the Life Settlement Purchase Agreement.

A CLEAN, CLEAR APPROACH TO BUILDING WEALTH

As a qualified investor with a \$20,000 minimum investment per policy, an investor may purchase a share of as many policies as are available. The process is simple and straightforward.

The investor can fund the investment with cash or retirement accounts such as an IRA transfer or 401k rollover. No matter what the funding source, investment dollars are deposited with Mills, Potoczak & Company, a bonded escrow agent that has been a significant participant in the life settlement industry since 1991.

For an investment to be implemented, an investor must also complete a purchase agreement, policy disclosure form and purchaser suitability questionnaire.

- The **Purchase Agreement** covers the purchase of an interest in the death benefit of a life insurance policy. It identifies the terms of the agreement, the amount invested, and the total fixed return percentage.
- The **Policy Disclosure Form** gives details required by California law about the specific policy in which the investor is acquiring an interest. Most importantly, the investor gets information about the age and gender of the insured, the life insurance company, the total fixed return percentage, and dollar amount to be received upon maturity.
- The **Purchaser Suitability Questionnaire** provides information to PWCG that allows us to confirm that the investor is a qualified purchaser of an interest in a life settlement investment in accordance with California law.

Upon funding and return of these completed documents to PWCG, Mills, Potoczak will implement an investment into the policy the investor has designated. Mills, Potoczak then issues a beneficiary designation to the investor. After passing of the insured, the life insurance company will pay the PWCG Trust the amount of the designation. The PWCG Trustee will then pay a cash investor the amount of their beneficiary designation or for an IRA investor, the Trustee pays the IRA custodian for the benefit of the investor.

ASSESSING RISK VS. RETURN

Principal Risk

Unlike most traditional investment vehicles, PWCG's life settlement investments are not directly affected by stock market volatility, interest rate fluctuations, variations in the economy, or foreign instability. The factors that do affect these investments are few, and we consider them carefully before we act.

Two of the major factors PWCG considers when purchasing policies for the Trust are:

- The financial strength of the underwriting companies, and
- Possible loopholes that could affect the full payout of a policy.

To minimize risk regarding the first concern above, all policies involved in the PWCG Trust must be issued by "A-rated" or better insurance companies as rated by Standard & Poors. These companies are typically well-known and reputable companies such as John Hancock, MetLife, or New York Life. Consequently, investors can feel confident that their payout sources are some of the largest and most stable companies in the world.

Regarding loopholes, through extensive analysis and experience, we have established a set of guidelines that anticipate loophole situations and eliminate policies that are vulnerable to them. These loopholes include contestability of the policy and the legal rights the previous owner or beneficiary may have to the policy benefit.

What documentation do I get to show for my investment?

As evidence of an investor's holdings, you will receive copies of your signed purchase agreement and policy disclosure form, a deposit receipt from the escrow company, a copy of the recorded changes of ownership and beneficiary rights, and an assignment of death benefit showing your beneficiary designation issued by the Trustee.





Can I put my money into more than one policy?

Sure. You can place your money in as many policies as you wish depending upon availability. For example, you can invest \$100,000 in a single policy or invest a minimum of \$20,000 per policy in several policies.

Contestability issues, for example, would be if an insured individual did not fully disclose his/her past medical history and died from a related ailment, or if he/she committed suicide. As long as the death occurs after the contestable period, the life insurance company must legally pay the full face amount of the policy to the PWCG Trust. We select only policies that are beyond any contestable or suicide clause period. (For most policies, the contestability period is two years from the date of issue.)

PWCG addresses risks of legal recourse from the previous owner and beneficiary by requiring two documents before a life insurance policy is purchased from a senior: 1) the policy owner must supply a statement from his/her physician that he/she is of sound mental capacity and able to enter into a contract; 2) the beneficiaries also must sign a statement that they are aware the sale of the policy will rescind any future rights they may have to the policy benefits. An insurance policy is only purchased for the PWCG Trust after both signed statements have been received.

Term Risk

Policies offered by PWCG have a minimum total fixed return of 100%, meaning investors will double their money. In fact, many policies have paid a 150% total fixed return. Since PWCG purchases policies before offering them, investors know exactly what the total return will be before purchasing an interest in the specific policy or policies. This return is paid in full upon the maturity of the policy.

No one can predict exactly when the insured will pass away and the policy will mature. Because the exact date of passing is the single factor that determines the effective annual rate of return, the shorter the longevity of the insured, the higher the effective annual rate of return. In contrast, the longer the actual longevity, the lower the effective annual rate of return. The chart below illustrates the effective rate of return for two scenarios: 100% Total Return, 150% Total Return.

FACTORS INFLUENCING PERCENTAGE OF RETURN

Based on our previous purchases of policies, we most often have been able to negotiate a discount in purchase price while still providing the insured with substantially more money than the surrender value on the policy. Factors such as age of the insured, life expectancy, and whether a policy is a single-life or survivorship policy can affect the total fixed return percentage.

Since PWCG already has purchased the policy, the total return is always known by the investor in advance.

HYPOTHETICAL EFFECTIVE ANNUAL RATES OF RETURN

(Minimum \$20,000 investment; illustration based on a \$100,000 investment)

POLICY WITH 100% TOTAL FIXED RETURN

Years to Maturity	Amount Invested	Amount Returned	Simple Annual Rate
1	\$100,000	\$200,000	100%
2	-	\$200,000	50%
3	-	\$200,000	33.33%
4	-	\$200,000	25%
5	-	\$200,000	20%
6	-	\$200,000	16.66%
7	-	\$200,000	14.28%
8	-	\$200,000	12.5%
9	-	\$200,000	11.11%
10	-	\$200,000	10%

POLICY WITH 150% TOTAL FIXED RETURN

Years to Maturity	Amount Invested	Amount Returned	Simple Annual Rate
1	\$100,000	\$250,000	150%
2	-	\$250,000	75%
3	-	\$250,000	50%
4	-	\$250,000	37.5%
5	-	\$250,000	30%
6	-	\$250,000	25%
7	-	\$250,000	21.42%
8	-	\$250,000	18.75%
9	-	\$250,000	16.66%
10	-	\$250,000	15%

ADDITIONAL STEPS TO PROTECT INVESTOR WEALTH

Even though no one can predict the actual longevity of a single individual, which ultimately determines the length of the investment, we take specific steps to gain an understanding of the life of an insured person.

After meeting our minimum requirement for an insured person of 75 years of age, we further review and qualify policies based on the insureds' health conditions and lifestyles. Because we review well over \$250 million of face value policies every month, we are able to select and purchase those policies with insureds of advanced ages and/or who typically experience chronic or degenerative health conditions.

Along with the total fixed returns in policies offered by PWCG, this sets the stage for phenomenal return potentials. Our objective is to assist investors in achieving their investment goal and continue their relationship with Pacific West Capital Group.

IN SUMMARY...

Pacific West Capital Group has built a reputation for thoroughness and integrity in the field of facilitating life settlements. We are proud of the methodology we have devised for supporting preservation of principal and capital and maximizing return potential for our investors. It works reliably because it includes:

- Buying policies issued only by "A-rated" U.S. companies;
- Selecting policies with insureds being at least 75 years old with chronic or degenerative health conditions;
- Utilizing a Trust that makes the investments independent of our company;
- Creating reserves in an escrow account to ensure policy premiums are paid;
- Employing an escrow agent to assure funds are implemented properly for every transaction;
- Retaining a trustee known for meticulousness, experience and excellence; and
- Knowing our market and always seeking a win-win outcome.

How Do I Get Started?

It's easy. Call your representative at PWCG who will assist you in completing the paperwork in the back of this booklet. This will start the ball rolling to provide you with everything you need to invest in our life settlement program.



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FOIA CONFIDENTIAL TREATMENT REQUESTED

PWCG000009



ANSWERS TO FREQUENTLY ASKED QUESTIONS

Can I buy this through my stock broker, financial planner, or bank?

No. This vehicle is a proprietary offering. If you invest into it, you would do so through the offering company (PWCG), whether you use cash or an IRA to fund the vehicle.

What annual rate of return should I expect?

You don't receive annual payments, so there is no annual rate of return as such. You do receive a 100% total fixed return or higher. Your hypothetical annual rate of return is determined by the duration between purchase of the investment and when the investment pays off. For example, with a policy paying a 100% total fixed return, an investment of \$100,000 in the policy will return \$200,000 upon maturity. If that term is five years, your annual rate of return would, in effect, be 20%. If it's six years, your return would be 16-17%. We buy policies from insureds 75 years of age and older with chronic or degenerative health conditions. As you know, we cannot predict exactly when an insured will pass away, but upon policy maturity you will receive double your investment amount or higher, depending on the policy in which you invest.

How long after I give you money is the investment placed?

After funds go to the escrow agent, the investment can usually be implemented within a couple of business days. However, there is a five-day waiting period after the policy disclosure form has been received and is being reviewed by you.

What kind of policies does your company buy for this investment?

We select only Universal Life, also known as Flexible Premium Adjustable Life policies. We never buy any type of term policy.

Can I put this investment in my company's name, living trust name, etc.?

Yes. Virtually any entity that has a tax I.D. number or social security number can invest into our life settlement investments.

Can I roll my annuity into this investment?

If you use annuity money, it would be subject to taxes on the portion rolled out, and any applicable penalties the government would impose if you are younger than 59 1/2 would apply. However, if your annuity is held within your IRA account, penalties would not apply because the investment would be an IRA to IRA transfer.

What information do I get about the policy and the insured?

Per California laws, strict disclosures exist as to the information you must receive before any investment can be made and money distributed from escrow. You receive this information in the policy disclosure form that you sign, which designates the policy that your money is invested in. You also receive the name of the life insurance company, policy number, face value amount of the policy, annual premiums for the policy, type of policy, life insurance company rating, age of the insured, and sex of the insured.

How do I know if the policy is in force?

Premiums are paid through the policy premium reserve structure we have established. However, we can supply you with a verification of coverage from the life insurance company.

If I die before the investment pays out, what happens?

The investment would transfer to your heirs per your will or living trust. Your heirs would be required to contact the Trustee, Mills, Potoczak & Co., to re-register the asset to the new assignee.

How do I know I'll get paid my return?

This is exactly why we use licensed, bonded entities to process all the money through the transaction. Mills, Potoczak & Co. has extensive experience and a flawless reputation as an escrow agent and trustee in this industry. In addition, Mills, Potoczak is a founding member of the largest nationwide organization pertaining to life settlements. And remember, the life insurance company, which will be at least an "A-rated" U.S. company, is going to be paying the beneficiary designation directly.

What if someone sues the trustee, escrow agent, or Pacific West Capital Group?

Investment assets, such as the policies and the premium accounts, are owned by the PWCG Trust. If someone were to sue Pacific West Capital Group, the trustee, or the escrow agent, he/she could not attach the assets of the Trust as they are not owned by any of the three entities.

How does your company make money?

There are no fees or loads from us. We make a margin above: 1) what we pay for the policy; and 2) costs of funding the premium accounts.

For example, if a \$1,000,000 face value policy costs us \$300,000 plus premium reserves of \$100,000, we can sell shares for \$500,000 giving us a \$100,000 gross margin. The investors who put up the \$500,000 will be paid the full \$1,000,000 face value from the life insurance company, giving them a 100% total fixed return. If a policy costs us less money, or if the premiums are not as high, for example, we could sell shares for \$400,000, giving the investor a 150% total return, and still preserve our margin percentage.

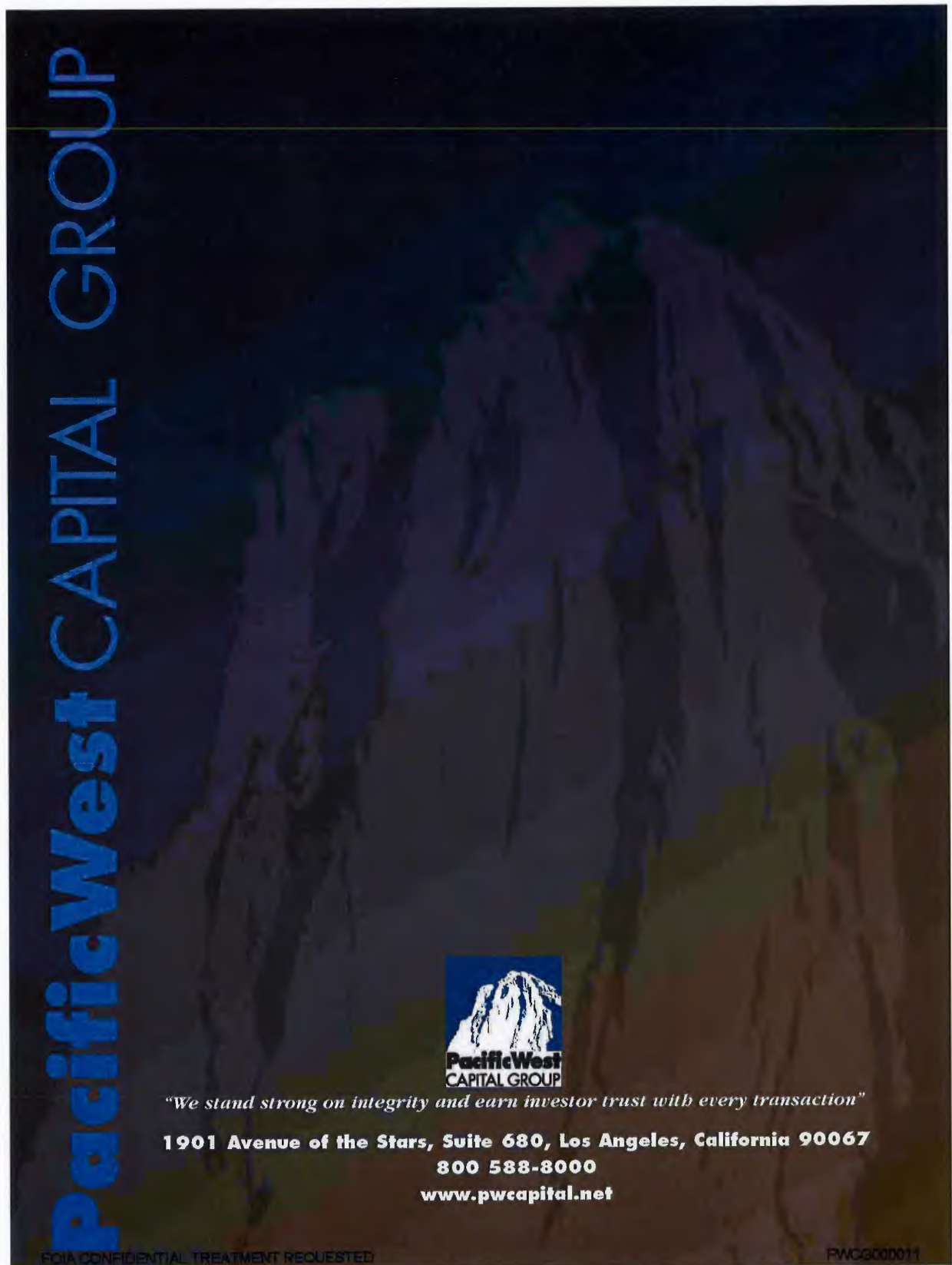
What if PWCG goes out of business?

The prosperity of our company does not affect you at all. We never touch your funds. Your money goes to an escrow agent and your investment is implemented at the direction of the trustee before distributions are made to us. Once the investment is implemented, as an investor, the source of your payout is the life insurance company. That is why we use "A-rated" and better life insurance companies—we have great confidence that they will be in business and available to make the payout regardless of how our company is doing.


We hope this answers most of the questions you may have. If you have other questions that are not addressed here, please feel free to call us any time.

FOIA CONFIDENTIAL TREATMENT REQUESTED

PWCG000010



PacificWest CAPITAL GROUP



"We stand strong on integrity and earn investor trust with every transaction"

1901 Avenue of the Stars, Suite 680, Los Angeles, California 90067
800 588-8000
www.pwcapital.net

FOIA CONFIDENTIAL TREATMENT REQUESTED

PWCG000011

EXHIBIT 2

TRUST AGREEMENT

THIS TRUST AGREEMENT ("Agreement") is made and entered into this 9th day of November, 2004 by and between Pacific West Capital Group, Inc. (a California corporation) with an address at 330 Washington Boulevard, Suite 301, Marina Del Ray, California, 90292 (hereinafter referred to as "Grantor" or "Pacific West") and Mills, Potoczak & Company, an Ohio Professional Corporation, with an address at 27600 Chagrin Boulevard, Suite 200, Cleveland, Ohio 44122 (hereinafter referred to as "Trustee").*This Trust shall be referred to as the "PWCG Trust."

W I T N E S S E T H

WHEREAS, Pacific West is a California corporation principally engaged in identifying and assisting buyers ("Buyers") in the funding and purchasing life settlements consisting of death benefits ("Death Benefits") of certain life insurance policies ("Policies") insuring the life or lives of one or more senior individuals (individually and collectively, the "Insured") owned either by the Insured or a third party ("Selling Policy Owner") pursuant to a Life Settlement Purchase Agreement; and

WHEREAS, Trustee desires to serve as a trustee in connection with the purchase of Policies and the payments of Death Benefits as is more fully set forth in this Agreement; and

WHEREAS, this Trust is designed to provide a vehicle for assignments of beneficial interests in the Death Benefits upon the written certification of Grantor as hereinafter set forth;

WHEREAS, both Grantor and Trustee agree that the sole relationship between them arising under this Agreement is a trust arrangement.

NOW THEREFORE, it is hereby agreed as follows:

I. TRUST PROPERTY

Grantor, as Grantor, has transferred to Trustee the sum of FIVE HUNDRED DOLLARS (\$500) receipt of which is acknowledged by Trustee, as the initial trust principal, which shall be held by Trustee, in trust, for the purposes and upon the terms as set forth herein. Additional assets may be transferred to the Trust, and shall be held by Trustee pursuant to the terms hereof as though originally included as part of the Trust estate. This Trust shall be known as the "PWCG Trust."

II. APPOINTMENT OF TRUSTEE

Grantor hereby appoints Mills, Potoczak & Company, the Trustee for the purposes set forth in this Agreement, and Trustee hereby accepts appointment under the terms and conditions set forth in this Agreement. Trustee is willing to hold in trust the funds and property as described herein and to administer such other assets as Trustee may from time to time receive to be held in accordance with the terms hereof, and to act as Trustee hereunder. It is expressly understood that the recording of any assignment, ownership or beneficiary on the Policies shall be "PWCG Trust", and shall be for

pacific west trust and service agreement



the benefit of Buyers in accordance with the written direction included in the fully executed Life Settlement Benefit Purchase Agreement

III. BENEFICIARIES

Beneficiaries of the Trust shall be the Buyers as specifically identified in a list attached to each policy purchase ("Beneficiary List"). The Grantor shall be the sole beneficiary of any remaining assets or liabilities upon the termination of the Trust.

IV. PREMIUM ESCROW ACCOUNT

A. Establishment of Premium Escrow Account:

1. **Purchase Escrow Account.** Upon the execution of this Agreement, Grantor shall establish and maintain an escrow account for the benefit of Buyers named "Mills, Potoczak & Company -PWCG Escrow Account" ("Purchase Escrow Account"). From time to time, Grantor shall cause to be deposited for the benefit of Buyers, and to be held in the Purchase Escrow Account for the benefit of the Buyers all funds from Buyers to be used for the purchase of life insurance policies.

2. **Sub-Ledger Accounts.** Trustee agrees to maintain accounting records in separate designated ledgers for each Buyer ("Sub-Ledger Accounts"), which itemizes all funds received from such individual Buyer and the allocation of such funds for specific policies.

3. **Premium Escrow Account.** Upon the execution of this Agreement, Trustee shall establish and maintain an escrow account for the benefit of Buyers named "Mills, Potoczak & Company -PWCG Premium Escrow Account" (the "Premium Escrow Account"). From time to time, Grantor shall cause to be deposited with the Trustee, for the benefit of Buyers, all premiums for Policies for a period of time further defined in the Life Settlement Purchase Agreement (the "Premiums" or "Premium Reserve Amount").

4. From time to time, the Purchase Escrow Account and the Premium Escrow Account may be referred to as the Escrow Accounts.

B. Investment of Funds in Escrow Accounts. During the term of this Trust Agreement, the cash balances of the Escrow Accounts shall be invested and reinvested by the Trustee in a Money Market Account, or in a similar approved fund or such other liquid investment account as Grantor may from time to time designate in writing to Trustee and which account is reasonably acceptable to Trustee. Funds in these accounts shall mature on the business day prior to any payment. The Trustee, in its capacity as trustee hereunder, shall have no liability for any loss sustained as a result of any investments made pursuant to this Agreement or the instructions of Grantor, as a result of any liquidation of any investment prior to its maturity or for the failure of Grantor to give the Trustee timely instructions to invest or reinvest any monies in the Escrow Account or any earnings thereon.

C. **Financial Reporting.** Trustee will provide Grantor with a detailed monthly financial activity report of the Escrow Accounts, itemizing each individual credit and debit posting, as well as a report listing all Policies and the Premiums paid with respect to each such Policy during the immediately preceding month.

D. **Taxes.** Trustee shall not be liable or responsible for the payment of any taxes on the earnings in the Escrow Accounts.

E. **Interest.** All interest earned on the cash balances held in the Escrow Accounts shall accrue to the benefit of Grantor. Interest earnings shall be paid from time to time as per Grantor's written instructions.

F. **Income.** The Trust shall pay out so much of its annual income as is necessary to pay expenses as authorized by this Agreement. Any distributions made under this Trust other than payment of premiums or death benefits may only be made at the written direction of Grantor.

V. DUTIES OF TRUSTEE

A. Review of Policies and Closing Documentation and Confirmation of Certain Information.

1. From time to time, the Trustee shall receive the following documents with respect to each Selling Policy Owner, it being agreed that the Trustee's sole duty and responsibility under this paragraph is to confirm the receipt of said documents and that said documents conform on their face to the description below:

(a) An executed Life Settlement Purchase Agreement between Buyer and Grantor indicating the Buyer and/or another person(s) who is entitled to receive the Death Benefits, with the understanding that the Death Benefits will be paid to the Trustee for the benefit of such person(s). Continuing Contact Consent and Information

(b) An executed Life Settlement Sales Agreement between the Selling Policy Owner and Pacific West including among other items the Continuing Contact Consent and Information.

(c) Beneficiary List for each Policy indicating the person(s) entitled to receive the death benefits as per each individual Buyer's Life Settlement Purchase Agreement.

(d) A copy of the respective Policy, or, certificate of insurance or declaration page, of such policy. In the event that such Policy is lost or destroyed, a lost policy declaration properly executed by the Selling Policy Owner.

(e) Funding Instructions (as defined below), itemizing Buyers' ownership interest in the policy, as well as a premium payment schedule, indicating the name of the insurance company, the premium amount, frequency of payment, and insurance company address to which to send such premium payments.

(f) Disbursement Form, signed by Selling Policy Owner, indicating the method they wish to be paid by the Trustee (the "Disbursement Form").

(g) Verification of coverage from insurance company indicating that the policy is beyond its contestability and suicide period, cash value and loan amount if any, selling policy owner's beneficiary and whether there are any encumbrances on the policy.

(h) Life expectancy report.

(i) Documentation indicating insurance company that issued the policies has a rating of "A" or better as determined by Standard & Poors.

2. From time to time, with respect to facilitating each purchase by Buyers of Death Benefits, Trustee, acting at the direction of Grantor, shall agree to execute all insurance company forms necessary to transfer ownership, or assignment and beneficiary to PWCG Trust.

3. After the change of ownership and beneficiary have been properly recorded by the respective insurance company and group policy owner (if applicable), Grantor shall provide the Trustee with the following confirmations:

(a) In the case of a Group Policy, a confirmation of recording by the appropriate insurance company and group policy owner of an absolute assignment of such Group Policy to PWCG Trust, and a confirmation of recording by the insurance company and group policy owner of a change of beneficiary under such Policy naming PWCG Trust as beneficiary.

(b) In the case of any Policy, other than a Group Policy, a confirmation by the appropriate insurance company of the recording of a change in ownership of such Policy naming PWCG Trust as the owner of record, and a confirmation by the insurance company recording the change in beneficiary of such Policy to PWCG Trust.

4. If Trustee has any questions or doubts as to, or Trustee cannot confirm, any of the foregoing information regarding the Policies, it will promptly ask Grantor to make any final determinations. Prior to Trustee receiving a written determination from Grantor, Trustee shall incur no liability in omitting to take any action and shall have no obligation to accept such Policy or take any other action with respect thereto. Upon receipt of written instructions from Grantor, Trustee shall be fully protected and shall incur no liability in following such instructions.

B. Disbursement of Escrow Account Funds. Upon receipt by Trustee of the confirmation(s) indicated in section V.A.2, Trustee shall make the following disbursements from the Escrow Account with respect to the Death Benefits purchased, all as set forth on a funding instruction form ("Funding Instruction") to be provided to Trustee by Pacific West with each purchase of Death Benefits. Trustee shall make the following disbursements as set forth in the Funding Instructions:

1. **Selling Policy Owner.** Payment to a Selling Policy Owner as set forth in the Funding Instruction, the Buyers Agreement and per the instructions on the Funding Instruction Form.

2. **Pacific West.** Payment due to Grantor shall be made as set forth in the Funding Instruction.

3. **Brokers.** From time to time, Grantor shall authorize Trustee to disburse funds to Grantor for the purpose of paying broker commissions. Notwithstanding any provision in this Agreement to the contrary, Trustee may make disbursements under this section without regard to the conditions set forth in Section IV.A.

4. **Trustee.** Payment shall be made to Trustee as set forth in the Funding Instruction.

5. **Premiums.** Premiums for each Policy for the Premium Reserve Amount shall be transferred to the Premium Escrow Account as set forth on the Funding Instruction, if necessary. The Trustee shall have no responsibility to verify the sufficiency of the premium deposit.

C. Maintenance of Premium Escrow Account and Payment of Premiums. To the extent that funds on deposit in the Premium Escrow Account are sufficient to make the premium payments due on the Policies, the Trustee shall pay premiums on each of the Policies from the principal balances of the Premium Escrow Account as follows:

1. Trustee shall pay by check the premiums on each Policy at such times and in such amounts as instructed in writing. It being agreed that Grantor: (i) shall furnish the Trustee with the name and address of each payee and any documentation that may be required to accompany the check, if any; and (ii) may furnish the Trustee with standing instructions relative to such payments. Trustee shall maintain separate records of premium payments made for each Policy. Trustee shall promptly confirm the receipt by the respective insurance company of such premium payments.

2. In the event that funds on deposit in the Premium Escrow Account for a given Policy are less than the premium payment due on such policy, the Trustee shall promptly notify Grantor of such insufficiency. Grantor shall then have the option to: (i) cause funds representing the insufficiency to be deposited in the Premium Escrow Account and upon receipt of such funds by Trustee, Trustee shall then make such premium payments; or (ii) instruct Trustee not to make such premium payment, provided that such option may only be exercised by Grantor if the Policy has sufficient value to eliminate a need of continued premium payments; or (iii) if the Grantor is unable to provide funds and there is insufficient value in the policy than Trustee shall request from the buyers additional funds for premiums or borrow against the policy.

3. If an Insured dies prior to their life expectancy plus 2 years, then upon notification and written instruction of Grantor to the Trustee, the Trustee shall place the unused principle balance of premiums into a general premium account as described in the Life Settlement Purchase Agreement.

4. Trustee shall make no payments from the Premium Escrow Account except as expressly set forth in this Agreement.

D. Life Tracking

1. Trustee shall track and locate the Insured on a quarterly basis to determine the Insured is living. Trustee will use its best effort in order to locate the Insured utilizing the Contacts contained in the Continuing Contact Consent and Information contained in the Life Settlement Agreement.

2. Trustee shall first contact the Contacts via a letter requiring a positive response to be sent by US mail. Should this attempt fail to produce a reply, Trustee will utilize one of several data basis it subscribes to in order to locate the Insured.

3. A tracking contact is not considered complete for any one Insured until Trustee can communicate with someone who met or spoke with the respective Life Assured in the last 30 days or Trustee is able to locate the Insured in one of its databases. In the event that all attempts to contact the Insured, their representatives and contacts are exhausted and Trustee cannot confirm the status of the Insured, Trustee shall notify the Grantor.

D. Filing of Claims for the Benefit of Buyers

1. When Grantor has advised Trustee or Trustee has learned that an Insured has died, Trustee shall promptly execute a claim as beneficiary and mail the claim for the Death Benefits to the appropriate insurance company using the documentation prepared by Grantor and delivered to the Trustee for this purpose. Upon receipt by the Trustee of payment for such claim, Trustee shall pay, within two business days, the Death Benefits to the Buyer or such other person(s) Buyer has designated in the Life Settlement Purchase Agreement.

VI. FEES.

Grantor agrees to:

A. Pay the Trustee all fees as per the attached fee schedule.

B. Pay or reimburse the Trustee monthly all such other reasonable out-of-pocket expenses incurred or made by Trustee in the immediately preceding month, in connection with the performance of this Agreement.

VII. MISCELLANEOUS.

A. Termination.

1. Removal of Trustee. The Trustee may be removed upon thirty (30) days prior written notice by Grantor to Trustee, and the appointment of a substitute trustee ("Substitute Trustee"). Notwithstanding the foregoing, Grantor may, at any time and in its sole discretion with no

pacific west trust and service agreement

additional notice, remove and/or revoke this Agreement and Trustee's appointment as Trustee on the occurrence of (i) fraud, dishonesty or similar malfeasance by Trustee; (ii) the initiation of any and all investigations by any government agency to which Trustee is a party; (iii) the delivery to the Trustee of a notice of material violation or breach of this Agreement by the Trustee, including, but not limited to, Trustee's refusal to comply with or perform any directions given by Grantor as provided herein; or (iv) upon Trustee's dissolution or insolvency. As used in the preceding sentence, "insolvency" means the application for debtor relief under any federal or state statute, and/or the filing of any petition in bankruptcy by or against Trustee, the institution of any proceeding by or against Trustee that seeks as relief the appointment of a receiver, or the appointment of a receiver.

2. **Agreement Termination.** This Agreement shall terminate on the date that all Premium Escrow Account Funds are transferred to the Substitute Trustee.

3. **Substitute Trustee.** On the termination or resignation of Trustee, Grantor shall appoint a Substitute Trustee on terms and conditions acceptable to Grantor, to accept a transfer of the Premium Escrow Account and act as trustee there under. Every Substitute Trustee shall have the powers given to the originally named Trustee. No Substitute Trustee shall be personally liable for any act or omission of any predecessor Trustee. A Substitute Trustee may accept the account rendered and the property received as a full and complete discharge to the predecessor Trustee without incurring any liability for so doing.

B. Resignation of Duties. The Trustee may resign and be discharged from its duties or obligations hereunder by giving notice in writing, via certified mail, return receipt requested, of such resignation. Such resignation shall not take effect until a Substitute Trustee has been named by Grantor as long as Grantor continues to pay Trustee any Trustee fees due under this Agreement. Subject to the foregoing, Trustee may terminate this Agreement at any time that it determines, in its absolute discretion, that any party directly or indirectly involved in the transactions contemplated by this Agreement is utilizing the transactions contemplated by this Agreement in violation of U.S. or other applicable laws, including, but not limited to, the USA PATRIOT ACT.

C. Authorized Contacts: While this Agreement is in force, Grantor will periodically furnish a written list of individuals, substantially in the form of Attachment "B", who are authorized to contact Trustee by telephone to discuss the existence of the Premium Escrow Account. Trustee is not obligated to accept telephone contact from anyone not included on said list, and shall have no liability in the event that a person claiming to be an individual listed on said list is not who he/she purports to be.

D. Duties: The Trustee is empowered to do all things necessary or convenient for the orderly administration of the Trust in compliance with this Agreement without obtaining the approval of any Court and undertakes to perform such duties as are expressly set forth herein. In exercising such powers, Trustee shall act in a manner that is reasonable and equitable in view of the interest of the Buyers, and in the manner in which persons of ordinary prudence, diligence, discretion and judgment would act in the management of their own affairs.

E. Validity: The Trustee may rely and shall be protected in acting or refraining from acting upon any written notices, instructions, certificates, instruments, opinions, letters or other

written documents or requests furnished to Trustee hereunder and reasonably believed by Trustee to be genuine and to have been signed or presented by the proper party or parties.

F. Liability/Counsel: The Trustee shall not be liable for any action taken or omitted by it in good faith unless a court of competent jurisdiction finally determines that the Trustee's willful misconduct or negligence was the primary cause of any loss, provided that the Trustee used the same degree of care and skill as is reasonably expected of financial institutions acting in comparable capacities. In the administration of the Premium Escrow Account, the Trustee may execute any of its powers and perform its duties under this Agreement directly or through agents and attorneys. The Trustee shall not be liable for the acts or omissions of such agents or attorneys, provided such agents or attorneys have been appointed with due care and act in good faith and in a reasonable and prudent manner, and within the scope of the agency relationship. The Trustee may consult with counsel, accountants and other skilled persons of its own choice (including counsel and accountants for Grantor and Pacific West) and shall have full and complete authorization and protection and shall incur no liability for any action taken or omitted by it hereunder in good faith and in accordance with the opinion or advice of such counsel, accountants and other skilled persons.

G. Neither the corpus nor the income of the Trust herein created shall be liable for the debts of the Trustee or any beneficiary thereof (including, without limitation, Grantor or any party owning a beneficial interest in any annuity or life insurance contract), nor shall the same be subject to seizure or any other legal process by any beneficiary or by any creditor of any beneficiary or the Trustee under any writ or proceeding at law or in equity and no beneficiary shall have any voluntary or involuntary power to sell, assign, transfer, encumber or in any other manner to anticipate or dispose of his interest in the Trust estate or in the income produced thereby, except as may be otherwise agreed to by the Grantor.

H. Indemnification: Grantor shall indemnify the Trustee for, and hold Trustee harmless against any loss, liability or expense (including reasonable fees and expenses of in-house or outside counsel, the costs of litigation or investigation) arising out of or in connection with Trustee's following of any instructions or other directions from Grantor except to the extent that Trustee following any such instructions or direction is expressly forbidden by the terms of this Agreement. Grantor acknowledges that the foregoing indemnity, as well as its obligations under Section V shall survive the resignation or removal of the Trustee and the termination of this Agreement.

I. Disclosure: Grantor shall provide the Trustee with the Trust's Tax Identification Number (TIN) as assigned by the Internal Revenue Service. The TIN for the Trust is 20-6345978 as of the date of this Agreement. All interest or income earned under the Trust Agreement shall be allocated and paid as provided herein and reported by the recipient to the Internal Revenue Service as having been so allocated and paid.

J. Provisions: The duties and responsibilities of the Trustee hereunder shall be determined solely by the express provisions of the Trust Agreement and no other or further duties or responsibilities shall be implied. The Trustee shall not have any liability under, nor duty to inquire into the terms and provisions of any agreement or instructions, other than as outlined in this Agreement. Without limiting the generality of the foregoing, the Trustee shall:

1. Have no duties or obligations other than those specifically set forth herein or as may subsequently be agreed in writing by the parties hereto and shall use the same degree of care and skill as is reasonably expected of financial institutions acting in comparable capacities;

2. Will be regarded as making no representations and having no responsibilities (except as expressly set forth herein) as to the validity, sufficiency, value, genuineness, ownership or transferability of the Policies, and will not be required to and will not make any representations as to the validity, value or genuineness of the Policies;

K. Notices: All notices, directions, consents, instructions or communications hereunder shall be in writing and shall be deemed to be duly given if sent by facsimile, recognized overnight delivery service or registered or certified mail, return receipt requested, as follows:

If to Trustee: Mills, Potoczak & Company
27600 Chagrin Boulevard, Suite 200
Cleveland, Ohio 44122
Attention: President
Telecopier No.: 216-464-7581

If to Grantor: Pacific West Capital Group, Inc.
330 Washington Boulevard, Suite 301
Marina Del Ray, California, 90292
Telecopier No.: 310-577-8826

or at such other address as any of the above may have furnished to the other party in writing by registered or certified mail, return receipt requested and any such notice or communication given in the manner specified in this Section VI (K) shall be deemed to have been given as of the date so received. In the event that the Trustee, in its sole discretion, shall determine that an emergency exists, the Trustee may use such other reasonable means of communications, as the Trustee deems advisable.

L. Confidentiality: The Trustee shall not, without the prior written consent of the Grantor, for any reason, either directly or indirectly, use, divulge, disclose or make accessible to any other person, firm, partnership, corporation or other entity any Confidential Information pertaining to its duties as Trustee except (i) for the purpose of performing its duties required hereunder, or (ii) when required to do so by a court of competent jurisdiction, by any governmental agency having supervisory authority over the business of Grantor, or by any administrative body or legislative body with jurisdiction to order the Trustee to divulge, disclose or make accessible such information. For purposes of this Section (VII)(L), "Confidential Information" shall mean any non-public information concerning the Selling Policy Owner or Insured including, but not limited to, name, address, date of birth, assets, employment information, insurance policy information, health history, etc., as well as any non-public, proprietary and confidential information of the Grantor or its respective affiliates. Failure by the Grantor to mark any of the Confidential Information as confidential or proprietary shall not affect its status as Confidential Information under the terms of this Trust Agreement. Trustee acknowledges that its obligations under this Section VII (L) shall survive the resignation or

pacific west trust and service agreement

removal of the Trustee and the termination of this Agreement. If asked to do so by the Grantor, Trustee shall enter into a Non-Disclosure Agreement with the Grantor.

M. Funds Transfer: In the event Funding Instructions are given (other than in writing at the time of execution of the Agreement), whether in writing, by telecopier or otherwise, the Trustee is authorized, but not obligated, to seek confirmation of such instructions by telephone call-back to the person or persons designated on Attachment "B" hereto, and the Trustee may reasonably rely, and shall be protected in relying, upon the confirmations of anyone purporting to be the persons or persons so designated. The persons and telephone numbers for callbacks may be changed only in writing and signed by an authorized officer of Grantor, actually received and acknowledged by the Trustee. The parties to this Agreement acknowledge that such security procedure is commercially reasonable.

N. Identification of Source: It is understood that the Trustee and the beneficiary's bank in any funds transfer may rely solely upon any account numbers or similar identifying numbers provided by Grantor or Pacific West to identify (i) the beneficiary, (ii) the beneficiary's bank, or (iii) an intermediary bank. The Trustee shall have no liability for applying any of the Escrow Funds for any payment order it executes using any such identifying number, even where its use may result in a person other than the beneficiary being paid, or the transfer of funds to a bank other than the beneficiary's bank, or an intermediary bank designated.

O. Modifications: The provisions of this Trust Agreement may be waived, altered, amended or supplemented, in whole or in part, only by a writing executed and delivered by each of the parties.

P. Assignments: Neither this Trust Agreement nor any right or interest hereunder may be assigned in whole or in part by the Trustee without the prior consent of the Grantor. Grantor may assign its rights and interests under this Agreement to any party.

Q. Counterparts: This Trust Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

R. Conflicts of Direction: In the event that the Trustee shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from Grantor or Pacific West which, in its opinion, conflict with any of the provisions of this Agreement, it shall be fully protected and entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held by it until it shall be directed otherwise in writing by all persons having an interest in the property or by a final order or judgment of a court of competent jurisdiction.

S. Applicable Law: This Agreement shall be construed and enforced in accordance with, and governed by, the laws of Ohio, without giving effect to the provisions thereof relating to conflicts of law.

T. Statutory & Regulatory Compliance: While this Agreement is in force, Grantor will be responsible for ensuring compliance with all statutory and regulatory requirements applicable thereto.

U. Disputes. The Trustee shall be under no duty to institute or defend any proceeding unless the subject of such proceeding is part of its duties hereunder. In addition to the foregoing, in the event of any dispute between the Grantor and the Trustee, or between any of them and any other person, resulting in adverse claims or demands being made upon any of the Premium Escrow Account, or in the event that the Trustee, in good faith, is in doubt as to what action it should take hereunder, the Trustee may, at its option, file a suit as interpleader in a court of appropriate jurisdiction, or refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such dispute shall continue or such doubt shall exist. The Trustee shall be entitled to continue so to refrain from acting until (i) the rights of all parties have been fully and finally adjudicated by a court of competent jurisdiction or (ii) all differences and doubt shall have been resolved by agreement among all of the interested persons, and the Trustee shall have been notified thereof in writing signed by all such persons. The rights of the Trustee under this Section are cumulative of all other rights which it may have by law or otherwise.


V. Merger, Conversion or Consolidation of Escrow Agent: Any entity into which the Trustee in its individual capacity may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Trustee in its individual capacity shall be a party, or any corporation to which substantially all the corporate trust business of the Trustee in its individual capacity may be transferred, shall be the Trustee under this Agreement without further act.

W. Force Majeure: In the event that any party to this Agreement is unable to perform its obligations under the terms of this Agreement because of acts of God, strikes, equipment or transmission failure or damages reasonably beyond its control, or other cause reasonably beyond its control, such party shall not be liable for damages to the other party for any unforeseeable damages resulting from such failure to perform or otherwise from such causes. Performance under this Agreement shall resume when the affected party is able to perform substantially that party's duties.

X. **Entire Agreement:** This Agreement, all attachments and the attached Pacific West Escrow Agreement constitutes the entire agreement between Grantor and Trustee, and there are no terms expressed or implied other than the expressed terms of this Agreement.

IN WITNESS WHEREOF, the PWCG Trust Agreement has been executed by the Grantor and by the Trustee on the day and year last set forth below.

PACIFIC WEST CAPITAL GROUP, INC.
A California corporation, Grantor

By:  Date: 11/17/04

Name: Andrew Calhoun
Title: President

MILLS, POTOCZAK & COMPANY
An Ohio Professional Corporation, Trustee

By: William M Potoczak Date: 11-9-04

William Potoczak, President

Attachment "A"

<u>Service</u>	<u>Amount</u>
• Set-up fee including preparation of agreements, files and initial accounting system	\$Waived
• Escrow closing	\$450 per policy
• Transaction fee for new policy purchases	\$75 per Buyer assigned to a Policy
• Premium payment schedule set-up	\$50
• Premium payments, per disbursement	\$25
• Death claim	\$255
• Trust services, including annual accounting and trust tax returns	\$10,000 per year billed in advance each quarter

All fees are to be paid first from earnings of the Premium Trust Account and then by Pacific West. Fees for services not included above will be billed on a time and material basis as time is incurred. Billing rates at the execution of this agreement are \$80 to \$195 per hour for professional staff and \$40 to \$65 per hour for administrative staff. Out of pocket costs will also be billed to include, but are not limited to, photocopies, fax costs, postage, overnight mail and mileage.

EXHIBIT 3

AMENDED AND RESTATED TRUST AGREEMENT

THIS AMENDED AND RESTATED TRUST AGREEMENT ("Agreement") is made and entered into this 29 day of April, 2011 by and between Pacific West Capital Group, Inc., (a California corporation) with its address at 1901 Avenue of the Stars, Suite 360 Los Angeles, California, 90067 (hereinafter referred to as "Grantor" or "Pacific West") and Mills, Potoczak & Company, an Ohio professional corporation with its address at 27600 Chagrin Boulevard, Suite 200, Cleveland, Ohio 44122 (hereinafter referred to as "Trustee"). This trust created by this Agreement shall be referred to as the "PWCG Trust" (the "Trust"). This Agreement supersedes and replaces in its entirety the PWCG Trust Agreement dated November 9, 2004.

WITNESSETH

WHEREAS, Pacific West is principally engaged in identifying and assisting buyers ("Buyers") in the funding and purchasing life settlements consisting of a portion of the death benefits ("Death Benefits") payable under certain life insurance policies ("Policies") insuring the life or lives of one or more senior individuals (individually and collectively, the "Insured") owned either by the Insured or a third party ("Selling Policy Owner") pursuant to a Life Settlement Purchase Agreement between Pacific West and a Buyer (Exhibit A); and

WHEREAS, Trustee desires to serve as a trustee of the Trust for Policies, assigned to the Trust and of which the Trust becomes the beneficiary, payment of premiums due for the Policies and the payments of Death Benefits to the applicable beneficiaries of the Trust, as is more fully set forth in this Agreement; and

WHEREAS, this Trust is designed to provide a vehicle for assignments of beneficial interests in the Death Benefits upon the written certification of Grantor as hereinafter set forth;

WHEREAS, both Grantor and Trustee agree that the sole relationship between them arising under this Agreement is a trust arrangement.

NOW THEREFORE, it is hereby agreed as follows:

I. PURPOSES AND POWERS

The exclusive purposes and functions of the Trust are as follows:

A. To hold legal title to, and be the beneficiary of, the Policies and all other Trust assets conveyed to the Trust from time to time pursuant to any transaction document;

B. At the direction of the Grantor, to pay from the Premium Account when due to the applicable insurance company that has issued a Policy all insurance premiums required to keep such Policy in-force and to prevent such Policy from lapsing or otherwise terminating;

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C. At the direction of the Grantor following its or the Trustee's receipt of notice of the death of the Insured under a Policy, to prepare, complete, sign and file with the applicable insurance company a claim form for obtaining payment from such insurance company of the Death Benefits payable under the Policy, to receive and promptly deposit such payment of Death Benefits in the Collection Account And to distribute each applicable Beneficiary the portion of such Death Benefits owed to such Beneficiary under the Agreement.

D. To engage in those activities, including entering into agreements, that are necessary or suitable to accomplish the foregoing or are incidental thereto or connected therewith; and

E. To engage in such other activities as may be required in connection with conservation of the Trust's assets and the making of distributions of the Trust assets to the applicable Beneficiaries as required hereunder.

The Trust is hereby authorized to engage in all the foregoing activities. The Trust shall not engage in any activity other than in connection with the foregoing or other than as required or authorized by the terms of this Agreement or any transaction document.

II. TRUST PROPERTY

Grantor, as Grantor, has transferred to Trustee the sum of FIVE HUNDRED DOLLARS (\$500) receipt of which is acknowledged by Trustee, as the initial trust principal, which shall be held by Trustee, in trust, for the purposes and upon the terms as set forth herein. Additional assets may be transferred to the Trust, and shall be held by Trustee pursuant to the terms hereof which shall become part of the Trust estate.

III. APPOINTMENT OF TRUSTEE

Grantor hereby appoints Mills, Potoczak & Company as the Trustee for the purposes set forth in this Agreement, and Trustee hereby accepts such appointment under the terms and conditions set forth in this Agreement. Trustee is willing to hold in trust the funds and property as described herein and to administer such other assets as Trustee may from time to time receive to be held in accordance with the terms hereof, and to act as Trustee hereunder. It is expressly understood that the recording of any assignment, ownership or beneficiary on the Policies shall be "PWCG Trust", and shall be for the benefit of the applicable Buyers in accordance with the written direction from the Grantor included in the fully executed Life Settlement Benefit Purchase Agreements to which such Buyers are a party.

IV. BENEFICIARIES

Beneficiaries of the Trust shall be the Buyers as specifically identified in a beneficiary list attached to each Policy purchase delivered by the Grantor to the Trustee ("Beneficiary List"). The Grantor shall be the sole beneficiary of any remaining assets or liabilities upon the termination of the Trust.

V. PREMIUM ACCOUNT

A. Establishment of Premium Account:

1. **Premium Account.** Upon the execution of this Agreement, Trustee shall establish and maintain an account at City National Bank named "PWCG Trust Premium Account" (the "Premium Account"). From time to time, Grantor shall cause to be deposited with the Trustee, funds for the payment of premiums due for Policies for a period of time further defined in the Life Settlement Purchase Agreement (the "Premiums" or "Premium Reserve Amount").

2. **Sub-Ledger Accounts.** Trustee agrees to maintain proper accounting records in separate designated ledgers for each Policy ("Sub-Ledger Accounts"), which itemizes all funds received by Trustee from Grantor for such Policy and the allocation of such funds for specific Policies.

3. **Collection Account.** Upon execution of this Agreement, Trustee shall establish and maintain an account named PWCG Trust Collection Account (the "Collection Account"). Trustee shall deposit all payments of Death Benefits received by Trustee under the Policies from insurance companies into the Collection Account.

4. From time to time, the Premium Account and Collection Account may be referred to herein as the Accounts.

B. Investment of Funds in the Accounts. During the term of this Agreement, the cash balances of the Accounts shall be invested and reinvested by the Trustee in a Money Market Account, or in a similar approved fund or such other liquid investment account as Grantor may from time to time designate in writing to Trustee and which account is reasonably acceptable to Trustee. The Trustee, in its capacity as trustee hereunder, shall have no liability for any loss sustained as a result of any investments made for funds held in the Accounts pursuant to this Agreement or the instructions of Grantor, as a result of any liquidation of any investment prior to its maturity or for the failure of Grantor to give the Trustee timely instructions to invest or reinvest any monies in the Accounts or any earnings thereon.

C. Financial Reporting. Trustee will provide Grantor with a detailed monthly financial activity report of the Trust activities, itemizing each individual credit and debit posting, as well as a report listing all Policies and the Premiums paid by Trustee with respect to each such Policy during the immediately preceding month.

D. Taxes. Trustee shall not be liable or responsible for the payment of any taxes on the earnings of the Trust.

E. Interest. All interest earned on the cash balances held in the Accounts shall accrue to the benefit of Trust.

F. Income. The Trust shall pay out so much of its annual income as is necessary to pay expenses as authorized by this Agreement. Any distributions made by Trustee under this Agreement, other than payment of premiums or death benefits, may only be made by Trustee at the prior written direction of Grantor.

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VI. DUTIES OF TRUSTEE

A. General Authority. The Trustee is authorized from time to time to take such action as the Grantor instructs in writing to Trustee.

B. General Duties. It shall be the duty of the Trustee to discharge (or cause to be discharged) in good faith and as a fiduciary all of its duties and responsibilities pursuant to the terms of this Agreement and to administer the Trust in the best interests of the Beneficiaries, subject to and in accordance with the provisions of this Agreement. Notwithstanding the foregoing, the Trustee shall be deemed to have discharged its duties and responsibilities hereunder to the extent that any other person assigned by the Grantor to perform any act or to discharge any duty of the Trustee hereunder, and the Trustee shall not be held liable for the default or failure of any such person to carry out such act or duty assigned to such person by Grantor.

C. Maintenance of Premium Account and Payment of Premiums. To the extent that funds on deposit in the Premium Account are sufficient to make the premium payments due on the Policies, the Trustee shall pay premiums on each of the Policies from the principal balances of the Premium Account as follows:

1. Upon assignment of a Policy to the Trust, Grantor shall immediately provide to the Trustee a premium payment schedule for such Policy ("Schedule") that shall include (i) the amount, due date and frequency of each premium payment and (ii) address of each payee and any documentation that may be required to accompany the premium payment check, if any.

2. Trustee shall pay by check the premiums on each Policy at such times and in such amounts in accordance with the related Schedule. Trustee shall maintain separate records of premium payments made by Trustee for each Policy. Trustee shall promptly confirm the receipt by the applicable insurance company of such premium payments for the related Policy.

3. In the event that funds on deposit in the Premium Account for a given Policy are less than the next premium payment due on such Policy, the Trustee shall notify Grantor of such deficiency not less than thirty (30) days prior to the date on which such premium payment is due. Grantor shall then have the option to: (i) cause funds in an amount equal to such deficiency to be deposited in the Premium Account and upon receipt of such funds by Trustee, Trustee shall then make such premium payment; or (ii) instruct Trustee not to make such premium payment, provided that such option may only be exercised by Grantor if the Policy has sufficient value to eliminate the need of continued premium payments for such Policy, or (iii) if the Grantor is unable to provide funds and there is insufficient value in the Policy to eliminate the need of continued premium payments for such Policy, then the Trustee shall request from the applicable Beneficiaries additional funds for payment of premiums due for the related Policy.

1. If an Insured dies prior to the portion of the funds held in the Premium Reserve Account allocable to the related Policy being exhausted, then upon notification and written

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instruction of Grantor to the Trustee, the Trustee shall allocate such unused portion of funds held in the Premium Reserve as described in the Life Settlement Purchase Agreement.

2. Trustee shall make no payments from the Premium Account except as expressly set forth in this Agreement.

D. Beneficiary List

1. Upon assignment of a Policy to the Trust, Grantor shall immediately provide to Trustee the applicable Beneficiary List.

2. Trustee shall issue letters in a form approved by Grantor to the Buyers of their purchase amounts and amounts to be distributed to them upon the death of an Insured from the Death Benefits paid under the related Policy.

3. Grantor shall provide from time to time any additions or changes to the Beneficiary List, and Trustee shall issue letters to the applicable Buyers or Beneficiaries regarding such additions or changes.

B. Filing of Claims for the Benefit of Buyers

1. When Grantor has advised Trustee or Trustee has otherwise learned that an Insured has died, Trustee shall promptly execute a claim as beneficiary of the related Policy and mail the claim for the Death Benefits to the appropriate insurance company using the documentation prepared by Grantor and delivered to the Trustee for this purpose. Upon receipt by the Trustee of payment for such claim, Trustee shall pay, within two business days, the applicable portion of the Death Benefits to the Buyer applicable Beneficiaries.

VII. FEES.

Grantor agrees to:

A. Pay the Trustee all fees as per the attached fee schedule.

B. Pay or reimburse the Trustee monthly all such other reasonable out-of-pocket expenses incurred or made by Trustee in the immediately preceding month, in connection with the performance of this Agreement.

VIII. MISCELLANEOUS.

A. Termination.

1. **Removal of Trustee.** The Trustee may be removed upon not less than thirty (30) days prior written notice of removal by Grantor to Trustee, and the appointment of a substitute

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trustee ("Substitute Trustee"). Notwithstanding the foregoing, Grantor may, at any time and in its sole discretion with no additional notice, remove and/or revoke this Agreement and Trustee's appointment as Trustee on the occurrence of (i) fraud, dishonesty or similar malfeasance by Trustee; (ii) the initiation of any and all investigations by any government agency to which Trustee is a party; (iii) the delivery to the Trustee of a notice of material violation or breach of this Agreement by the Trustee, including, but not limited to, Trustee's refusal to comply with or perform any directions given by Grantor as provided herein; (iv) upon Trustee's dissolution or insolvency or (v) Trustee's violation of law in connection with this Agreement. As used in the preceding sentence, "insolvency" means the application for debtor relief under any federal or state statute, and/or the filing of any petition in bankruptcy by or against Trustee, the institution of any proceeding by or against Trustee that seeks as relief the appointment of a receiver, or the appointment of a receiver.

2. **Agreement Termination.** This Agreement shall terminate on the date that all Premium Account funds are transferred to the Substitute Trustee.

3. **Substitute Trustee.** On the termination or resignation of Trustee, Grantor shall appoint a Substitute Trustee on terms and conditions acceptable to Grantor, to accept a transfer of the Premium Account and act as trustee there under. Every Substitute Trustee shall have the powers given to the originally named Trustee. No Substitute Trustee shall be personally liable for any act or omission of any predecessor Trustee. A Substitute Trustee may accept the account rendered and the property received as a full and complete discharge to the predecessor Trustee without incurring any liability for so doing. Grantor is responsible for notifying each Buyer of any Substitute Trustee.

B. Resignation of Duties: The Trustee may resign and be discharged from its duties or obligations hereunder by giving not less than sixty (60) days prior notice resignation in writing, via certified mail, return receipt requested, of such resignation. Such resignation shall not take effect until a Substitute Trustee has been named by Grantor as long as Grantor continues to pay Trustee any Trustee fees due under this Agreement. Subject to the foregoing, Trustee may terminate this Agreement at any time that it determines, in its absolute discretion, that any party directly or indirectly involved in the transactions contemplated by this Agreement is utilizing the transactions contemplated by this Agreement in violation of U.S. or other applicable laws, including, but not limited to, the USA PATRIOT ACT.

C. Authorized Contacts: During the term of this Agreement, Grantor will periodically furnish to Trustee a written list of individuals, substantially in the form of Attachment "B", who are authorized to contact Trustee on behalf of Grantor by telephone. Trustee is not obligated to accept telephone contact from anyone not included on said list, and shall have no liability in the event that a person claiming to be an individual listed on said list is not who he/she purports to be.

D. Duties: The Trustee is empowered to do all things necessary or convenient for the orderly administration of the Trust in compliance with this Agreement without obtaining the approval of any Court and undertakes to perform such duties as are expressly set forth herein. In exercising such powers, Trustee shall act in a manner that is reasonable and equitable in view of the interest of the Buyers, and in the manner in which persons of ordinary prudence, diligence, discretion and judgment would act in the management of their own affairs.

E. Validity: The Trustee may rely and shall be protected in acting or refraining from acting upon any written notices, instructions, certificates, instruments, opinions, letters or other written documents or requests furnished to Trustee hereunder and reasonably believed by Trustee to be genuine and to have been signed or presented by the proper party or parties.

F. Liability/Counsel: The Trustee shall not be liable for any action taken or omitted by it in good faith unless a court of competent jurisdiction finally determines that the Trustee's willful misconduct, negligence or violation of law was the primary cause of any loss, provided that the Trustee used the same degree of care and skill as is reasonably expected of financial institutions acting in comparable capacities. In the administration of the Accounts, the Trustee may execute any of its powers and perform its duties under this Agreement directly or through agents and attorneys. The Trustee shall not be liable for the acts or omissions of such agents or attorneys, provided such agents or attorneys have been appointed with due care and act in good faith and in a reasonable and prudent manner, and within the scope of the agency relationship. The Trustee may consult with counsel, accountants and other skilled persons of its own choice (including counsel and accountants for Grantor) and shall have full and complete authorization and protection and shall incur no liability for any action taken or omitted by it hereunder in good faith and in accordance with the valid opinion or advice of such counsel, accountants and other skilled persons.

G. Neither the corpus nor the income of the Trust herein created shall be liable for the debts of the Trustee, Grantor or any Beneficiary, nor shall the same be subject to seizure or any other legal process by any beneficiary or by any creditor of any Beneficiary, Grantor or the Trustee under any writ or proceeding at law or in equity and no beneficiary shall have any voluntary or involuntary power to sell, assign, transfer, encumber or in any other manner to anticipate or dispose of his interest in the Trust estate or in the income produced thereby, except as may be otherwise agreed to by the Grantor.

H. Indemnification: Grantor shall indemnify the Trustee for, and hold Trustee harmless against any loss, liability or expense (including reasonable fees and expenses of outside counsel, the costs of litigation or investigation) arising out of or in connection with Trustee's following of any instructions or other directions from Grantor except to the extent that Trustee following any such instructions or direction is expressly forbidden by the terms of this Agreement or in cases of Trustee's negligence or misconduct. Grantor acknowledges that the foregoing indemnity shall survive for a period of four (4) years following the earlier of (i) the resignation or removal of the Trustee and (ii) the termination of this Agreement.

I. Disclosure: Grantor shall provide the Trustee with the Trust's Tax Identification Number (TIN) as assigned by the Internal Revenue Service. The TIN for the Trust is 20-6345978 as of the date of this Agreement. All interest or income earned under the Trust Agreement shall be allocated and paid as provided herein and reported by the recipient to the Internal Revenue Service as having been so allocated and paid.

J. Provisions: The duties and responsibilities of the Trustee hereunder shall be determined solely by the express provisions of the Trust Agreement and no other or further duties or responsibilities shall be implied. The Trustee shall not have any liability under, nor duty to inquire into the terms and provisions of any agreement or instructions, other than as outlined in this Agreement. Without limiting the generality of the foregoing, the Trustee shall:

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1. Have no duties or obligations other than those specifically set forth herein or as may subsequently be agreed in writing by the parties hereto and shall use the same degree of care and skill as is reasonably expected of financial institutions acting in comparable capacities;

2. Will be regarded as making no representations and having no responsibilities (except as expressly set forth herein) as to the validity, sufficiency, value, genuineness, ownership or transferability of the Policies, and will not be required to and will not make any representations as to the validity, value or genuineness of the Policies;

K. Notices: All notices, directions, consents, instructions or communications hereunder shall be in writing and shall be deemed to be duly given if sent by facsimile, recognized overnight delivery service or registered or certified mail, return receipt requested, as follows:

If to Trustee:

Mills, Potoczak & Company
27600 Chagrin Boulevard, Suite 200
Cleveland, Ohio 44122
Attention: President
Phone No.: 216-464-7481
Telecopier No.: 216-464-7581

If to Grantor:

Pacific West Capital Group, Inc.
1901 Avenue of the Stars, Suite 360.
Los Angeles, California 90067
Phone No.: 800-588-8000
Telecopier No.: 310-578-6443

or at such other address as any of the above may have furnished to the other party in writing by registered or certified mail, return receipt requested and any such notice or communication given in the manner specified in this Section VI (K) shall be deemed to have been given as of the date so received. In the event that the Trustee, in its sole discretion, shall determine that an emergency exists, the Trustee may use such other reasonable means of communications, as the Trustee deems advisable.

L. Confidentiality: The Trustee shall not, without its receipt of the prior written consent of the Grantor, for any reason, either directly or indirectly, use, divulge, disclose or make accessible to any other person, firm, partnership, corporation or other entity any Confidential Information except (i) for the purpose of performing its duties required hereunder, or (ii) when required to do so by a court of competent jurisdiction, by any governmental agency having supervisory authority over the business of Grantor, or by any administrative body or legislative body with jurisdiction to order the Trustee to divulge, disclose or make accessible such information. For purposes of this Section (VII)(L), "Confidential Information" shall mean any non-public information concerning the Selling Policy Owner or Insured including, but not limited to, name, address, date of birth, assets, employment information, insurance policy information, health history, etc., as well as any non-public, proprietary and confidential information of the Grantor or its respective affiliates.

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Failure by the Grantor to mark any of the Confidential Information as confidential or proprietary shall not affect its status as Confidential Information under the terms of this Trust Agreement. Trustee acknowledges that its obligations under this Section VII (L) shall survive the resignation or removal of the Trustee and the termination of this Agreement. If asked to do so by the Grantor, Trustee shall enter into a Non-Disclosure Agreement with the Grantor.

M. Identification of Source: It is understood that the Trustee and any Beneficiary's bank in any funds transfer may rely solely upon any account numbers or similar identifying numbers provided by Grantor or Pacific West to identify (i) the Beneficiary, (ii) the Beneficiary's bank, or (iii) an intermediary bank.

O. Modifications: The provisions of this Trust Agreement may be waived, altered, amended or supplemented, in whole or in part, only by a writing executed and delivered by each of the Grantor and the Trustee.

P. Assignments: Neither this Trust Agreement nor any right or interest hereunder may be assigned in whole or in part by the Trustee without the prior consent of the Grantor. Grantor may assign its rights and interests under this Agreement to any party.

Q. Counterparts: This Trust Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

R. Conflicts of Direction: In the event that the Trustee shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from Grantor or Pacific West which, in its opinion, conflict with any of the provisions of this Agreement, it shall be fully protected and entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held by it until it shall be directed otherwise in writing by all persons having an interest in the property or by a final order or judgment of a court of competent jurisdiction.

S. Applicable Law: This Agreement shall be construed and enforced in accordance with, and governed by, the laws of Ohio, without giving effect to the provisions thereof relating to conflicts of law.

T. Statutory & Regulatory Compliance: While this Agreement is in force, Grantor will be responsible for ensuring compliance with all statutory and regulatory requirements applicable thereto.

U. Disputes. The Trustee shall be under no duty to institute or defend any proceeding unless the subject of such proceeding is part of its duties hereunder. In addition to the foregoing, in the event of any dispute between the Grantor and the Trustee, or between any of them and any other person, resulting in adverse claims or demands being made upon any of the Premium Account, or in the event that the Trustee, in good faith, is in doubt as to what action it should take hereunder, the Trustee may, at its option, file a suit as interpleader in a court of appropriate jurisdiction, or refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as

such dispute shall continue or such doubt shall exist. The Trustee shall be entitled to continue so to refrain from acting until (i) the rights of all parties have been fully and finally adjudicated by a court of competent jurisdiction or (ii) all differences and doubt shall have been resolved by agreement among all of the interested persons, and the Trustee shall have been notified thereof in writing signed by all such persons. The rights of the Trustee under this Section are cumulative of all other rights which it may have by law or otherwise.

V. Merger, Conversion or Consolidation of Trustee: Any entity into which the Trustee in its individual capacity may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Trustee in its individual capacity shall be a party, or any corporation to which substantially all the corporate trust business of the Trustee in its individual capacity may be transferred, shall be the Trustee under this Agreement without further act.

W. Force Majeure: In the event that any party to this Agreement is unable to perform its obligations under the terms of this Agreement because of acts of God, strikes, equipment or transmission failure or damages reasonably beyond its control, or other cause reasonably beyond its control, such party shall not be liable for damages to the other party for any unforeseeable damages resulting from such failure to perform or otherwise from such causes. Performance under this Agreement shall resume when the affected party is able to perform substantially that party's duties.

X. Entire Agreement: This Agreement, all attachments and the attached Pacific West Agreement constitutes the entire agreement between Grantor and Trustee, and there are no terms expressed or implied other than the expressed terms of this Agreement.

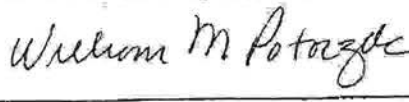
IN WITNESS WHEREOF, the PWCG Trust Agreement has been executed by the Grantor and by the Trustee on the day and year last set forth below.

PACIFIC WEST CAPITAL GROUP, INC.
A California corporation, Grantor

By:  Date: 4/29/11

Name: Andrew Calhoun
Title: CEO/President

MILLS, POTOCZAK & COMPANY
An Ohio Professional Corporation, Trustee

By:  Date: 4/29/2011

William Potoczak, President

Attachment "A"

<u>Service</u>	<u>Amount</u>
• Premium payment schedule set-up	\$75
• Premium payments, per disbursement	\$35
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