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Attorneys for Plaintiff
PACIFIC UNION INTERNATIONAL, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

PACIFIC UNION INTERNATIONAL, INC., a
California corporation,

Plaintiff,

v.

CHRISTIE'S INTERNATIONAL REAL
ESTATE, INC., a Delaware corporation; and
DOES 1-50, inclusive,

Defendants.

Case No.

COMPLAINT FOR:

(1) DECLARATORY RELIEF;

**(2) VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS
CODE § 20000, ET SEQ.;**

(3) BREACH OF CONTRACT; and

**(4) UNFAIR COMPETITION, CAL.
BUS. & PROF. CODE § 17200**

JURY TRIAL DEMANDED

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1 The plaintiff, Pacific Union International, Inc. ("Pacific Union"), by and through its
2 attorneys, and for its Complaint against Christie's International Real Estate, Inc. ("Christie's"),
3 alleges as follows:

4 **Parties**

5 1. Pacific Union is a corporation duly organized and existing under the laws of the State
6 of California, with its principal place of business in San Francisco, California.

7 2. Pacific Union is informed and believes and based thereon alleges that Christie's is a
8 corporation duly organized and existing under the laws of the State of Delaware, with its principal
9 place of business in New York, New York. Pacific Union is informed and believes and based
10 thereon alleges that Christie's is the owner of the federally registered trademark for the mark
11 "Christie's."

12 3. Pacific Union does not know the true names of defendants DOES 1 through 50,
13 inclusive, and therefore sues them by those fictitious names. Pacific Union will amend this
14 Complaint to allege the true names and capacities when they have been ascertained. Pacific Union
15 is informed and believes and thereon alleges that each of said fictitiously named defendants is
16 responsible in some manner for the occurrence herein alleged and that the injuries herein alleged
17 were proximately caused by the acts or omissions of each of them.

18 4. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332. Specifically,
19 Pacific Union is a corporation formed and operating under California law with its principal place
20 of business in California. Christie's is organized under the laws of the State of Delaware, with its
21 principal place of business in New York. The amount in controversy exceeds \$75,000.

22 5. Venue in this district is proper under 28 U.S.C. § 1391(b) because a substantial part of
23 the events or omissions giving rise to these claims occurred in this district.

24 **General Allegations**

25 **A. The Franchise Structure of Christie's Relationship With Pacific Union**

26 6. Christie's has established a commercial relationship with Pacific Union that meets the
27 definition of a "franchise" under California law, entitling Pacific Union to the protections of
28 California franchise statutes.

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7. “It is surprisingly easy for a trademark license. . . to constitute a ‘franchise.’ Companies that are unaware of franchise laws. . . may unwittingly establish. . . arrangements that are subject to franchise laws, thereby becoming inadvertent franchisors who have failed to comply with the franchise laws. . . Coverage under franchise laws cannot be avoided simply by describing a relationship as a ‘license’ or by some other name, or by drafting contracts that do not reflect the characteristics of a franchise.” Mark I. Feldman, *Franchising Law: The Danger of IP Agreements Inadvertently Creating a Franchise* (1996).

8. Many business relationships have been held to be unregistered franchises. *See, e.g., Gentis v. Safeguard Business Systems, Inc.* (1998) 60 Cal. App. 4th 1294 (office products company sales); *Kim v. Servosnax, Inc.* (1992) 10 Cal. App. 4th 1346 (company licensing the right to operate cafeterias); *Spahn v. Guild Industries Corp.* (1979) 94 Cal. App. 3d 143 (baby furniture sellers); *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of the USA, Inc.*, 549 F.2d 1079 (7th Cir. 2008) (the Girl Scouts).

9. “Franchising is a heavily regulated form of business in California.” *Cislaw v. Southland Corporation* (1992) 4 Cal. App. 4th 1284, 1288. The relationship between franchisor and franchisee is regulated by the California Franchise Investment Law (the “CFIL”), Corporations Code § 31000, *et seq.*, which governs the offer, sale and material modification of franchises, the Franchise Relations Act, Business & Professions Code § 20000, *et seq.*, which governs the franchise relationship and its termination, and the FTC Rule [39 Fed. Reg. 30360 (1974)], which also applies to the sale of franchises.

10. California passed the first franchise legislation in the country, based upon a finding by the Legislature that franchisees had suffered “substantial losses” because they had not received appropriate disclosures. Corporations Code § 31001. That law was passed to protect franchisees. Corporations Code § 31001. The California Supreme Court in *Keating v. Superior Court* (1982) 31 Cal. 3d 584, 593-94, *overruled on other grounds*, 459 U.S. 1101, noted that “franchisees are in need of special protection in dealing with franchisors.” In passing the Franchise Investment Law, the legislature “showed a special solicitude for franchisees in their dealings with franchisors.” *Wimsatt v. Beverly Hills Weight Loss Centers* (1995) 32 Cal. App. 4th 1511, 1521. There is a

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“bargaining disparity between franchisors and franchisees;” the “unequal bargaining power of franchisors and franchisees. . . carries within itself the seeds of abuse.” *Postal Instant Press, Inc. v. Sealy* (1996) 43 Cal. App. 4th 1704, 1716 (citations omitted).

11. Under Business & Professions Code § 20009, the “regulations, releases, guidelines and interpretive opinions of the Commissioner of Corporations” as to “whether or not an agreement constitutes a ‘franchise’” are prima facie evidence as to the definition of a franchise. To provide guidance in determining whether an agreement constitutes a franchise, the Department of Corporations has issued a series of opinions and a release entitled, “Guidelines For Determining Whether an Agreement Constitutes a Franchise” (Release 3-F, revised 1996) (“Release 3-F”). These Guidelines are “entitled to great weight” in interpreting the California Franchise Investment Law. *People v. Kline* (1980) 110 Cal. App. 3d 587, 593.

12. “[R]emedial or protective [franchise] statutes are liberally construed to effect their object and quell the mischief at which they are directed. . . .With regard to the statutory definition of ‘franchise,’ this means each element should be construed liberally to broaden the group of investors protected by the law and to carry out the legislative intent.” *Kim v. Servosnax, Inc.* (1992) 10 Cal. App. 4th 1346, 1356 (citations omitted).

13. Under the California Franchise Relations Act, Business & Professions Code § 20001, *et seq.*, a “franchise” is an agreement through which the putative franchisee may offer goods or services “under a marketing plan or system prescribed in substantial part by a franchisor,” and where the franchisee’s business operations are “substantially associated with the franchisor’s trademark or other commercial system;” and where the franchisee is “required to pay, directly or indirectly, a franchise fee.”

B. The Franchise Relationship Established Between the Parties Here

14. On or about September 2, 2011, Pacific Union and Christie’s entered into a written contract, entitled “Participating Broker Agreement” (hereinafter, the “Agreement”), pursuant to which Pacific Union was appointed as Christie’s exclusive real estate broker for the Counties of San Francisco, Marin, Sonoma, Napa, Alameda and Contra Costa, with the right to use Christie’s trademark to market properties within that territory.

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1. Marketing Plan Element

15. Where a licensee may not operate a business without “being subject to restrictions or having to obtain the consent or approval of other persons,” a marketing plan exists. Release 3-F (I)(B)(2)(d). Various business restrictions are considered important because they “are indicative of the franchisor’s controls over the franchisee’s operations and, consequently, of a marketing plan prescribed by the franchisor.” Release 3-F (I)(B)(2)(c).

16. The Agreement includes detailed branding guidelines, which include precise directives as to color, spacing and acceptable text to be used in displaying Christie’s trademarks.

17. Under Paragraph 4.3 of the Agreement, Pacific Union was obligated to take part in Christie’s advertising and marketing program, which could be changed by Christie’s from time to time in its business judgment. Christie’s retained the sole contractual right to make these marketing and advertising changes, without any right on the part of Pacific Union to limit those changes.

18. Under the Agreement, Christie’s agreed to cross-link its website with Pacific Union’s website, with Pacific Union promising that no other luxury real estate marketing affiliation would have a more prominent presence on Pacific Union’s website.

19. Under the Agreement, Pacific Union agreed to purchase advertising in each issue of Christie’s Magazine. Even if Pacific Union failed to submit advertising materials before the publication deadline, it agreed that it would still have to pay for the materials. Pacific Union further agreed to purchase at least 200 copies of each issue of Christie’s Magazine.

20. Under the Agreement, Pacific Union agreed to commission from Christie’s at least one Brochure each year, with a minimum order of 1,000 copies.

21. Under the Agreement, Pacific Union agreed to participate in and facilitate at least two private placement or “bespoke” marketing projects each year, further promising to pay a commission on the sale of each property resulting from such project of between 25% and 50% to Christie’s.

22. Under the Agreement, Pacific Union agreed to comply with Christie’s branding guidelines as published on its extranet. Under the Agreement, Pacific Union was obligated to

1 submit to Christie's typical examples of all of its marketing materials so that Christie's could
2 confirm compliance with its branding guidelines.

3 23. Under the Agreement, Pacific Union was obligated to appoint a management level
4 executive to attend an annual convention sponsored by Christie's.

5 24. Under the Agreement, Pacific Union agreed not to become affiliated with certain
6 specifically named competitors of Christie's.

7 **2. Franchise Fee**

8 25. California law "contains a broad definition of "franchise fee. . . . In accordance with
9 this definition, any fee or charge which the franchisee is required to pay to the franchisor or an
10 affiliate of the franchisor for the right to engage in business is a franchise fee regardless of the
11 designation given to, or the form of, such payment." Release 3-F I(B)(4)(a).

12 26. As set forth in Schedule 1, the Agreement also provides for minimum annual fees that
13 begin with a first year "annual participation fee" of \$210,000 and increases each year thereafter.

14 27. Under Paragraph 4.5.1 of the Agreement, Pacific Union also agreed to pay an annual
15 corporate marketing commitment fee to Christie's.

16 28. The Agreement provides for various other fees including annualized brochures,
17 magazine advertising and corporate marketing fees.

18 **3. Association with the Putative Franchisor's Trademark**

19 29. In exchange for the franchise fees paid by Pacific Union, Christie's licensed Pacific
20 Union the exclusive right to conduct its business in substantial association with Christie's
21 trademarks. Pursuant to the Agreement, Pacific Union was obligated to prominently display the
22 Christie's name on various media. Pacific Union further promised that no other luxury real estate
23 marketing affiliation would have a more prominent presence on Pacific Union's website. Pacific
24 Union's business has been conducted in substantial association with Christie's trademarks which
25 appear prominently on Pacific Union's letterhead and business cards. Christie's has consented to
26 the use of its trademarks and has provided detailed instructions to Pacific Union as to how its
27 marks are to be displayed.

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C. Termination of the Franchise Agreement Without Cause

30. Christie's sold an unregistered franchise to Pacific Union, in violation of California, New York and federal franchise investment laws. Because Christie's sale of an unregistered franchise was willful, the franchise sale violated criminal and civil laws, both federally and within the states of California and New York.

31. By its terms, the Agreement automatically renews on the same terms for successive five year periods unless either party provides written notice to the other of an election not to renew. The Agreement is for an indefinite duration, although it expressly provides for termination without cause at five year intervals, upon 270 days' notice. If the parties do nothing at these five year intervals, the Agreement continues on indefinitely. The Agreement provides that if either party chooses to terminate the relationship at one of these five year intervals, it could do so without cause.

32. The contractual provision allowing Christie's the periodic right to terminate its relationship with Pacific Union was void because it violates the prohibition in the California Franchise Relations Act against terminating a franchise relationship without good cause. Good cause is defined as a failure of the franchisee to substantially comply with the lawful requirements imposed upon the franchisee by the franchise agreement. Pacific Union has not materially breached the Agreement. The Franchise Relations Act invalidates contractual provisions that allow the termination of a franchise relationship without good cause, making them unenforceable. Under *JRS Products v. Matsushita Electric Corp of America* (2004) 115 Cal. App. 4th 168, any contractual right to terminate a franchise without good cause must be disregarded, so that any termination pursuant to an express contractual right to terminate a franchise without good cause becomes a breach of the franchise agreement.

33. On October 27, 2015, Christie's wrote to Pacific Union, stating "we are providing you this notice that we are terminating the Agreement. . . ."

34. Christie's had no "good cause" to terminate the Agreement because Pacific Union has never been in breach of the Agreement. Christie's has never issued a default letter to Pacific

1 Union nor has it ever provided Pacific Union with the statutory right to cure defaults mandated by
2 the California Franchise Relations Act.

3 **First Cause of Action**

4 **(Declaratory Relief)**

5 35. Pacific Union hereby incorporates by reference each and every allegation contained in
6 paragraphs 1 through 34 of the Complaint as though fully set forth herein.

7 36. A present and actual controversy now exists between Pacific Union and Christie's.
8 Pacific Union contends that its relationship with Christie's is a franchise relationship, as defined
9 by the California Franchise Relations Act, and that the relationship has been terminated without
10 good cause, in violation of that Act. Pacific Union is informed and believes, and on that basis
11 alleges, Christie's believes that the relationship between the parties is not a franchise relationship
12 and that it had the right to terminate the relationship when it did so, pursuant to a valid contract
13 right to terminate.

14 37. Pacific Union seeks a declaration pursuant to 28 U.S.C. § 2201 that its relationship
15 with Christie's is a franchise relationship; that the franchise relationship was unlawfully
16 terminated by Christie's without good cause in violation of the provisions of the California
17 Franchise Relations Act; and that Christie's has no lawful right to terminate the relationship in the
18 absence of a material breach and a failure to cure the breach within the mandatory statutory cure
19 period.

20 38. The declaration sought by Pacific Union will serve a useful purpose in establishing the
21 respective controverted rights of the parties and resolving their legal dispute.

22 39. Pacific Union also prays for such other necessary or proper relief based upon a
23 declaratory judgment as the Court may grant under 28 U.S.C. § 2202 or otherwise.

24 **Second Cause of Action**

25 **(Violation of California Business and Professions Code § 20000, et seq.)**

26 40. Pacific Union hereby incorporates by reference each and every allegation contained in
27 paragraphs 1 through 39 of the Complaint as though fully set forth herein.

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1 41. The California Franchise Relations Act, Business & Professions Code § 20000, *et*
2 *seq.*, regulates the termination of franchises in California. Section 20020 of the Act prohibits the
3 termination of a franchise except for good cause.

4 42. A wrongfully terminated franchisee is entitled to the market value of the franchise
5 business and assets, as well as resulting damages, if a franchise relationship is terminated in
6 violation of the Franchise Relations Act.

7 43. On October 27, 2015, Christie's wrote to Pacific Union, stating "we are providing you
8 this notice that we are terminating the Agreement. . . ."

9 44. Christie's had no "good cause" to terminate the ongoing franchise relationship
10 because Pacific Union has never been in breach of the Agreement.

11 45. Christie's violated Pacific Union's rights under the California Franchise Relations Act
12 when it terminated its franchise relationship with Pacific Union without good cause.

13 46. Pacific Union is therefore entitled to the rights and remedies accorded to franchisees
14 under § 20035 of the Business and Professions Code.

15 **Third Cause of Action**
16 **(Breach of Contract)**

17 47. Pacific Union hereby incorporates by reference each and every allegation contained in
18 paragraphs 1 through 46 of the Complaint as though fully set forth herein.

19 48. Pacific Union and Christie's were engaged in a franchise relationship, as defined by
20 the California Franchise Relations Act.

21 49. Pacific Union has performed all of its obligations under the Agreement.

22 50. Under the Franchise Relations Act, any contractual provision allowing for termination
23 of a franchise relationship without cause is void and unenforceable. Any contractual right to end
24 the franchise relationship without cause must, therefore, be "read out of the contract" under
25 California law. There is an implied covenant of good faith and fair dealing in all contracts.

26 51. When Christie's terminated the franchise relationship with Pacific Union on October
27 27, 2015, it did so pursuant to a contractual right to end the franchise relationship without cause.
28 Because that contractual provision in violation of the Franchise Relations Act, Christie's

1 materially breached the Agreement when it terminated the Agreement without cause or an
 2 opportunity to cure. Christie's also violated the covenant of good faith and fair dealing in taking
 3 actions that are prohibited by the Franchise Relations Act.

4 52. As a proximate result of the material breach of the Agreement, Pacific Union has been
 5 damaged.

6 53. Under Paragraph 8.21 of the Agreement, the prevailing party is to be awarded
 7 attorneys' fees and costs.

8 **Fourth Cause of Action**

9 **(Unfair Competition, Cal. Bus. & Prof. Code § 17200, *et seq.*)**

10 54. Pacific Union hereby incorporates by reference each and every allegation contained in
 11 paragraphs 1 through 53 of the Complaint as though fully set forth herein.

12 55. California Business and Professions Code § 17200 defines unfair competition as
 13 including "any unlawful, unfair or fraudulent business act or practice. . . ."

14 56. The conduct of Christie's alleged herein, and specifically the violation of the
 15 California Franchise Relations Act, Cal. Bus. & Prof. Code § 20000, *et seq.*, constituted unlawful,
 16 unfair, and fraudulent methods of competition in violation of the provisions of § 17200, *et seq.*, of
 17 the California Business and Professions Code.

18 57. It was unlawful for Christie's to terminate its franchise relationship with Pacific Union
 19 without good cause and without an opportunity to cure under the California Franchise Relations
 20 Act.

21 58. The termination of the Christie's franchise was, therefore, an unlawful business
 22 practice.

23 59. Pacific Union has no adequate remedy at law for the wrongful termination of its
 24 franchise relationship with Christie's because Pacific Union is conducting business under the
 25 Christie's name and is entitled, under California franchise law, to continue doing so without
 26 interruption.

27 60. Loss of the right to use the Christie's name would cause irreparable harm to Pacific
 28 Union. Pacific Union has had the exclusive right for many years to provide real estate broker

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services under the Christie's name for the Counties of San Francisco, Marin, Sonoma, Napa, Alameda and Contra Costa. Pacific Union has built up substantial good will for the Christie's name within this exclusive territory. If Christie's were to take away the right to continue to use its name, or to license it to a competitor, Pacific Union would suffer irreparable harm and the competitor would be given the right to convert goodwill developed and belonging to Pacific Union.

61. Further, termination of the franchise relationship between Pacific Union and Christie's would be confusing to the public. For many years, the name Christie's has identified Pacific Union's business to the persons living in its exclusive territory and elsewhere. Customers intending to contact Pacific Union, through the use of the Christie's name, would be unlawfully diverted to its competitors if the name were to be licensed to some other licensee in violation of the Franchise Relations Act.

62. Under Business & Professions Code § 17200, Pacific Union is therefore entitled to an injunction prohibiting the termination of its franchise relationship with Christie's.

Prayer for Relief

WHEREFORE, Pacific Union respectfully requests that this Court enter judgment in its favor against Christie's as follows:

- (1) For an award of damages;
- (2) For a declaration pursuant to 28 U.S.C. § 2201 that Pacific Union's relationship with Christie's is a franchise relationship; that the franchise relationship was unlawfully terminated by Christie's without good cause in violation of the provisions of the California Franchise Relations Act; and that Christie's has no lawful right to terminate the relationship in the absence of a material breach and a failure to cure the breach within the mandatory statutory cure period.
- (3) For a declaration that the provision in the Agreement stating that it "may be terminated at five year increments without cause" is void and unenforceable;
- (4) For such other necessary or proper relief based upon a declaratory judgment as the Court may grant under 28 U.S.C. § 2202 or otherwise;

1 (5) For injunctive relief prohibiting the termination of its franchise relationship with
2 Christie's;

3 (6) For an order awarding Pacific Union its rights and remedies available under
4 Business & Professions Code § 20000, *et seq.*;

5 (7) For an order awarding Pacific Union its attorneys' fees, costs and expenses;

6 (8) For an order awarding Pacific Union pre and post-judgment interest to the fullest
7 extent permitted by law; and

8 (9) For such further relief as the Court may deem proper and just.

9
10 Dated: April 12, 2016

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Jonathan Solish

Nicole N. King

11
12 By /s/ Jonathan Solish

Jonathan Solish

Attorneys for Plaintiff

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