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10 and the putative class

11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 PHILIP JOHNSON, individually and
14 on behalf of all others similarly
15 situated,

16 Plaintiff,

17 v.

18 UNITED SERVICES
19 AUTOMOBILE ASSOCIATION,
20 USAA CASUALTY INSURANCE
21 GROUP, USAA GENERAL
22 INDEMNITY COMPANY, and
23 GARRISON PROPERTY AND
24 CASUALTY INSURANCE
25 COMPANY, and DOES 1 through
26 20, inclusive,

27 Defendants.

Case No.: '22CV518 TWRJLB

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

(1) Breach of Contract

(2) Unjust Enrichment

**(3) Violation of California Business
and Professions Code § 17200 et seq.**

1 **CLASS ACTION COMPLAINT**

2 Plaintiff Philip Johnson (“Plaintiff Johnson” or “Plaintiff”), by and through
3 his attorneys and on behalf of himself and all others similarly situated, hereby
4 submit this Class Action Complaint against Defendants United Services Auto
5 Association, USAA Casualty Insurance Group, USAA General Indemnity
6 Company, and Garrison Property and Casualty Insurance Company Group
7 (collectively, “USAA” or “Defendants”), and allege as follows:

8 **PRELIMINARY STATEMENT**

9 1. This case is filed to end USAA’s practice of unfairly profiting from
10 the global COVID-19 pandemic.

11 2. Beginning in March 2020, states across the country, including
12 California, began to enforce strict social distancing measures to slow the spread
13 of COVID-19. This included closing schools and businesses and instituting strict
14 “stay-at-home” orders that prevented most individuals from leaving their homes
15 for extended periods of time.

16 3. While many companies, industries, and individuals have suffered
17 financially as a result of the COVID-19 pandemic, auto insurers like USAA have
18 scored a windfall. Not surprisingly, as a result of state-wide social distancing and
19 stay-at-home measures, there has been a dramatic reduction in driving, and an
20 attendant reduction in driving-related accidents. This decrease in driving and
21 accidents has significantly reduced the number of claims that auto insurers like
22 USAA have paid, resulting in a drastic and unfair increase in USAA’s profits at
23 the expense of its customers.

24 4. One published report calculates, very conservatively, that at least a
25 30% average refund of paid premiums would be required to make up for the
26 excess amounts paid by consumers for just the period between mid-March and the
27 end of April of 2020.

1 5. Despite full knowledge of these facts, USAA continued to charge
2 and collect excessive premiums throughout 2020 and 2021 and has failed to issue
3 adequate refunds. USAA’s dividend and premium credit program was inadequate
4 to compensate its customers for overpayments resulting from COVID-19. The
5 program applied only a 20% dividend to policyholders spanning three months
6 starting in March 2020. And although USAA reports that it offered an additional
7 dividend and smaller premium credits later in 2020 and 2021, these amounts were
8 still insufficient.

9 6. To remedy Defendants’ unlawful conduct, Plaintiff bring this class
10 action alleging violations of California state law. Plaintiff seeks disgorgement of
11 the ill-gotten gains obtained by USAA to the detriment of its customers, all
12 available damages, punitive damages, declaratory and injunctive relief, and all
13 other available relief.

14 **JURISDICTION**

15 7. This Court has jurisdiction under 28 U.S.C. § 1332(d) because this is
16 a class action in which the amount in controversy is over \$5,000,000 exclusive of
17 interest and costs, and at least one member of the class is a citizen of a State
18 different from Defendants.

19 **VENUE**

20 8. Venue is proper in the Southern District of California under 28
21 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to
22 the claims occurred in this district.

23 **PARTIES**

24 9. Defendant United Services Auto Association is a Texas corporation
25 with a principal place of business in San Antonio, Texas. Defendant sells personal
26 automobile insurance in states around the country, including California.
27 Defendant issued auto insurance policies during the relevant time period at issue.

28 10. Defendant USAA Casualty Insurance Company is a Texas

1 corporation with a principal place of business in San Antonio, Texas. Defendant
2 sells personal automobile insurance in states around the country, including
3 California. Defendant issued auto insurance policies during the relevant time
4 period at issue.

5 11. Defendant USAA General Indemnity Company is a Texas
6 corporation with a principal place of business in San Antonio, Texas. Defendant
7 sells personal automobile insurance in states around the country, including
8 California. Defendant issued auto insurance policies during the relevant time
9 period at issue.

10 12. Defendant Garrison Property and Casualty Company is a Texas
11 corporation with a principal place of business in San Antonio, Texas. Defendant
12 sells personal automobile insurance in states around the country, including
13 California. Defendant issued auto insurance policies during the relevant time
14 period at issue. Defendant Garrison Property and Casualty Company is a
15 subsidiary of United States Automobile Association.

16 13. Defendants collectively market insurance and present themselves as
17 USAA and virtually all of the insurance operations of these companies are
18 performed by the same USAA entity, named United Services Automobile
19 Association or “USAA” as abbreviated.¹

20 14. Defendants issued personal auto, motorcycle, and/or RV insurance
21 policies to Plaintiff and the members of the putative class during the relevant time
22 period. Defendants are affiliated companies, jointly participated in, and are jointly
23 responsible for the unlawful conduct described herein.

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25 _____
26 ¹ See *Management Discussion and Analysis* in 2020 Annual Financial Statements
27 at
<https://interactive.web.insurance.ca.gov/companyprofile/companyprofile?event=companyProfile&doFunction=getCompanyProfile&eid=3288> (last accessed April
28 11, 2022)

1 15. In April 2020, USAA announced it would be returning a portion of
 2 premiums in the form of statement credits.² These statement credits and return of
 3 a portion of premiums in the form of dividends were uniformly developed by
 4 USAA and was applied in identical fashion by each of the Defendants. Indeed,
 5 Defendants submitted a joint memorandum to the California Department of
 6 Insurance explaining the uniform terms and application of the USAA premium
 7 credits and dividends.³ Defendants have each applied the USAA policy premium
 8 credit and dividend program and the unfair practices at issue to California
 9 policyholders during the relevant time period.⁴

10 16. Plaintiff Johnson is an adult resident of Bonita, California. Plaintiff
 11 has held personal auto insurance policies purchased from United Services Auto
 12 Association during the time period relevant to this lawsuit. As described in more
 13 detail herein, as a result of the global COVID-19 pandemic and corresponding
 14 drop in automobile use and traffic, the credit given by United Services Auto
 15 Association is wholly inadequate to compensate Plaintiff for his overpayments on
 16 these policies.

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20 ² [https://communities.usaa.com/t5/Press-Releases/USAA-to-Return-520-Million-
 21 to-Members/ba-p/228150](https://communities.usaa.com/t5/Press-Releases/USAA-to-Return-520-Million-to-Members/ba-p/228150) (last accessed April 11, 2022)

22 ³ See “CA COVID-19 Premium Refund Report Submissions - Company U to Z,”
 23 California Department of Insurance, at “USAA - Group# 200 - Bulletin 2020-3
 24 Resubmission,” [www.insurance.ca.gov/0250-insurers/0300-insurers/0100-
 25 applications/rsb-forms/2020/2020-3-
 26 submissions/loader.cfm?csModule=security/getfile&pageid=315821](http://www.insurance.ca.gov/0250-insurers/0300-insurers/0100-applications/rsb-forms/2020/2020-3-submissions/loader.cfm?csModule=security/getfile&pageid=315821) (last
 27 accessed April 11, 2022).

28 ⁴ See *id.* at worksheet for United States Automobile Association – NAIC #25941,
 USAA Casualty Insurance Company – NAIC #25968, USAA General Indemnity
 Company – NAIC #18600, and Garrison Property and Casualty Insurance –
 NAIC #21253

1 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

2 **A. The Global COVID-19 Pandemic and State-Mandated Social**
3 **Distancing Measures**

4 17. In late December 2019, a novel coronavirus known as SARS-CoV-2
5 began to spread around the globe. The virus causes a disease called COVID-19.
6 By mid-January, cases of COVID-19 were confirmed in the United States.

7 18. By mid-March, there were thousands of confirmed cases of COVID-
8 19 across the United States and hundreds in the State of California alone.

9 19. Like many states around the country, California responded to the
10 worsening COVID-19 crisis with measures designed to increase, and often
11 mandate, social distancing in order to slow the spread of the virus.

12 20. On March 4, 2020, Governor Gavin Newsom proclaimed a State of
13 Emergency in California as a result of COVID-19. In the following weeks, the
14 state rolled out a series of social distancing measures, including, for example,
15 recommendations that older adults and those with elevated risk should self-
16 isolate.

17 21. On March 19, 2020, Governor Newsom instituted a statewide stay-
18 at-home order,⁵ making California among the first states to establish such an
19 order. With some exceptions, the order mandated “all individuals living in the
20 State of California to stay home.”⁶

21 22. In the time since Governor Newsom first instituted the stay-at-home
22 order, California’s progress toward reopening has been halting, and additional
23 stay-at-home orders were imposed in response to the spread of COVID cases.
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26 ⁵ Executive Order N-33-20 (Mar. 19, 2020), [https://www.gov.ca.gov/wp-](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf)
27 [content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf)
28 [ORDER.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf) (last accessed April 11, 2022)

⁶ *Id.* ¶ 1.

1 **B. USAA Has Obtained a Windfall Due to the Dramatic Decrease in**
 2 **Automobile Use and Traffic Caused by COVID-19**

3 23. Although businesses across the United States have almost uniformly
 4 suffered as a result of COVID-19, state-wide stay-at-home orders, and other
 5 social distancing measures, the auto insurance industry has benefited. In fact, auto
 6 insurance—a \$250 billion industry—has secured a windfall from COVID-19-
 7 related restrictions. The reason is simple. As one report put it: “With shelter-in-
 8 place restrictions and business closings, most people stopped driving or reduced
 9 their driving dramatically. With fewer cars on the road, there were dramatically
 10 fewer accidents. Fewer motor vehicle accidents mean fewer auto insurance
 11 claims.”⁷

12 24. Beginning in mid-March of 2020, the number of miles driven by
 13 individuals dropped dramatically because of COVID-19. This includes the State
 14 of California. Through the use of cell phone location data, it has been reported
 15 that vehicle miles traveled in California dropped significantly from their January
 16 2020 average in March and April of 2020:⁸

Date Range	Decrease in Miles Traveled
March 15 - March 21	-53%
March 22 - March 28	-72%
March 29 - April 4	-74%
April 5 - April 11	-77%
April 12 - April 18	-74%
April 19 - April 25	-71%

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⁷ See Center for Economic Justice & Consumer Federation of America, Personal Auto Insurance Premium Relief in the COVID-19 Era at 5 (May 7, 2020) (“CEJ/CFA Report”), <https://consumerfed.org/wp-content/uploads/2020/05/Auto-Insurance-Refunds-COVID-19-Update-Report-5-7-20.pdf> (last accessed April 11, 2022)

⁸ See *id.* at 6-8.

1 Upon information and belief, decreases in pre-COVID miles traveled continued
2 through the end of 2020 and well into 2021.⁹

3 25. Automobile accidents have also decreased. According to the Road
4 Ecology Center at the University of California, Davis, traffic collisions, including
5 those involving injuries or fatalities, dropped by roughly half after California
6 instituted its stay-at-home order.¹⁰

7 26. This dramatic decrease in driving and auto accidents allowed auto
8 insurance companies, including USAA, to unfairly profit at the expense of their
9 customers during the COVID-19 pandemic. Auto insurance rates, including those
10 set by USAA, are intended to cover the claims and expenses that they expect to
11 occur in the future, extrapolated from historical data. Thus, as explained in the
12 joint report by the Center for Economic Justice and the Consumer Federation of
13 America:

14 Because of COVID-19 restrictions, the assumptions about future
15 claims underlying insurers' rates in effect on March 1 became
16 radically incorrect overnight. When roads emptied, the frequency of
17 motor vehicle accidents and insurance claims dropped dramatically
18 and immediately. The assumptions in insurers' rates covering time-
19 frames from mid-March forward about future frequency of claims
20 became significantly wrong when the roads emptied because of Stay-
21 At-Home orders and business closures starting in mid-March. The
then-current rates became excessive not just for new policyholders
going forward, but also for existing policyholders whose premium
was based on now-overstated expectation about insurance claims.¹¹

22 ⁹ *See id.* at 2; *see also* Center for Economic Justice & Consumer Federation of
23 America, Auto Insurance Refunds Needed as New Data Show Crashes Remain
24 Well Below Normal Due to Pandemic (Dec. 22, 2020),

25 [https://consumerfed.org/press_release/auto-insurance-refunds-needed-as-new-
26 data-show-crashes-remain-well-below-normal-due-to-pandemic-23-fewer-
27 accidents-in-september-and-october/](https://consumerfed.org/press_release/auto-insurance-refunds-needed-as-new-data-show-crashes-remain-well-below-normal-due-to-pandemic-23-fewer-accidents-in-september-and-october/) (last accessed April 11, 2022)

28 ¹⁰ Fraser Shilling and David Waetjen, *Special Report: Impact of COVID19
Mitigation on Numbers and Costs of California Traffic Crashes*, Road Ecology
Center, UC Davis, Apr. 1, 2020 (updated Apr. 15, 2020),

[https://roadecology.ucdavis.edu/sites/g/files/dgvnsk8611/files/files/COVID_CHI
Ps_Impacts_report2.pdf](https://roadecology.ucdavis.edu/sites/g/files/dgvnsk8611/files/files/COVID_CHI_Ps_Impacts_report2.pdf) (last accessed April 11, 2020)

¹¹ CEJ/CFA Report, *supra*, at 4.

1 27. The excessive premiums collected and not refunded by USAA
2 during the COVID-19 pandemic have led to a substantial windfall.

3 **C. USAA Has Failed to Give Adequate Refunds to Plaintiff and Other**
4 **Policyholders in California**

5 28. According to conservative calculations by the Center for Economic
6 Justice and the Consumer Federation of America based on motor vehicle accident
7 data, at least a 30% minimum average premium refund to consumers would be
8 required to correct the unfair windfall to auto insurance companies, including
9 USAA, just for the time period from mid-March through the end of April 2020.¹²

10 29. At all relevant times, USAA has been aware of the need to refund
11 premiums in order to correct the unfair windfall it gained from policyholders in
12 California as a result of the COVID-19 crisis. USAA has likewise been aware of
13 its excessive profits. Despite this, USAA has failed to adequately return these
14 profits to its customers.

15 30. In spring 2020, USAA announced its plans to issue dividends to its
16 auto insurance policyholders. Under the program, USAA provided a dividend
17 representing approximately a 20% premium credit to personal auto insurance
18 customers for three months' worth of premiums.¹³

19 31. Following the issuance of its dividends, USAA subsequently issued
20 premium credits in the amount of 20% of one month's premium for policyholders
21 who were issued a policy in April or May 2020. USAA also issued a second
22 premium credit amounting to 10% of one month's premium for policyholders

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24 ¹² CEJ/CFA Report, *supra*, at 12-13.

25 ¹³ USAA's pandemic-related dividend was extended because, per an August
26 2020, statement attributed to USAA President and CEO Wayne Peacock on
27 USAA's website, "We see that members are driving less than when the pandemic
28 hit. As these patterns unfold, we are adjusting our auto insurance rates." *See*
"USAA to Return an Additional \$270 Million to Members, Totaling Over \$1
Billion in Dividends," (August 2020), <https://communities.usaa.com/t5/Press-Releases/USAA-to-Return-an-Additional-270-Million-to-Members-Totaling/ba-p/235292> (last accessed April 11, 2022).

1 who had a policy in effect in August of 2020. The company reports that it
2 subsequently provided additional, but even smaller refunds to California
3 customers in 2020 and 2021 ranging between 5% and 3% of monthly premiums.

4 32. But USAA's dividend and premium credit program has been
5 inadequate to compensate its customers for the unfair windfall that the company
6 has obtained as a result of COVID-19. The credits were nowhere near the
7 minimum 30% average refund benchmark that has been conservatively
8 estimated as an adequate refund for just the first the first two months of the
9 pandemic alone.

10 33. Plaintiff Johnson has been a customer of USAA at all relevant
11 times. Plaintiff is a current United Services Auto Association policyholder.

12 34. Under USAA's publicly announced dividends and premium credits
13 issued, Plaintiff received dividends and/or premium credits in 2020 and 2021.
14 These dividends and premium credits were inadequate to compensate Plaintiff
15 for the unfair windfall that the company has obtained as a result of COVID-19.

16 35. Under its insurance policies, including the policies of Plaintiff and
17 the members of the putative class, USAA has the discretion to make voluntary
18 downward premium adjustments based on an insured's changed circumstances.

19 36. USAA improperly exercised that discretion by failing to issue
20 refunds of the now-excessive premiums during changed circumstances, when it
21 should have instead used its discretion, in good faith, to make appropriate
22 adjustments.

23 37. Plaintiff's policies described above were in effect during the time
24 period in which most of the United States, including California, was significantly
25 impacted by the global COVID-19 pandemic and stay-at-home orders (along with
26 other measures and conditions) caused a widespread and dramatic decrease in
27 automobile use and traffic. Despite this, USAA gave Plaintiff inadequate
28 dividends and premium credits on their 2020 and 2021 premiums.

1 38. USAA was aware that the shelter-in-place orders, social distancing
2 guidelines, and resulting reduction in driving resulted in premiums that were not
3 based on an accurate assessment of risk. Yet USAA continued to collect and
4 retain excessive, unfair premiums from Plaintiff and others.

5 39. In 1988, California voters approved Proposition 103 to further
6 establish the public policy of the state and to “protect consumers from arbitrary
7 insurance . . . practices, to encourage a competitive insurance marketplace . . . and
8 to ensure that insurance is fair, available, and affordable to all Californians.” The
9 people of the state declared with Proposition 103 that “[t]his law shall be liberally
10 construed and applied in order to fully promote its underlying purposes”

11 40. USAA’s collection and/or retention of such excessive premiums
12 violates California public policy and contravenes Proposition 103’s mandate to
13 protect consumers from arbitrary insurance practices, to encourage a competitive
14 insurance marketplace, and to ensure that insurance is fair, available, and
15 affordable for all Californians.

16 41. Upon information and belief, thousands of other policyholders in
17 California have been injured by USAA’s policy and practice of failing to provide
18 adequate refunds to policyholders due to the COVID-19 pandemic.

19 42. Plaintiff and the members of the putative class were unable to
20 reasonably avoid these harms because the analysis required to determine premium
21 refunds was within the exclusive knowledge of USAA.

22 **CLASS ACTION ALLEGATIONS**

23 43. Pursuant to Fed. R. Civ. P. 23(a) and 23(b), Plaintiff brings this
24 action individually and on behalf of all similarly situated individuals.

25 44. The proposed class is defined as follows:

26 All California residents who purchased personal automobile insurance from
27 USAA covering any portion of the time period from March 1, 2020 to the
28 present.

1 45. The members of the class are so numerous that joinder of all
2 members is impracticable. While the precise number of class members has not
3 been determined at this time, upon information and belief, there are thousands of
4 individuals in the class. The identities of the class members can be determined
5 from USAA's records.

6 46. There are questions of law and fact common to the class that
7 predominate over questions solely affecting individual members.

8 47. The common questions of law and fact include, but are not limited
9 to:

- 10 a. Whether USAA has a common policy or practice of failing to
11 provide adequate refunds to policyholders due to the COVID-19
12 pandemic;
- 13 b. Whether USAA's refund program is inadequate;
- 14 c. Whether USAA violated the covenant of good faith and fair
15 dealing;
- 16 d. Whether USAA was unjustly enriched as a result of its failure to
17 provide adequate refunds to its customers;
- 18 e. Whether USAA's failure to provide adequate refunds to its
19 customers is unfair;
- 20 f. Whether USAA has violated California consumer protection laws
21 through its failure to provide adequate refunds to its customers
22 and its failure to disclose the inadequacy of its refunds; and
- 23 g. the proper measure and calculation of damages.

24 48. The questions of law and fact listed above will yield common
25 answers for Plaintiff and the class as to whether USAA is liable for the alleged
26 legal violations.

1 49. Plaintiff's claims are typical of those of the members of the class.
2 Plaintiff, like other class members, was subject to the unlawful practices
3 described herein.

4 50. Plaintiff will fairly and adequately protect the interests of the class
5 and has retained counsel experienced in complex class action litigation.

6 51. Class treatment is appropriate under Fed. R. Civ. P. 23(b)(2) because
7 USAA has acted on grounds that apply generally to the class, so that final
8 injunctive relief or corresponding declaratory relief is appropriate with respect to
9 the class.

10 52. This action is properly maintainable as a class action under Fed. R.
11 Civ. P. 23(b)(3) because questions of law or fact predominate over any questions
12 affecting individual class members. A class action is superior to other methods in
13 order to ensure a fair and efficient adjudication of this controversy because, in the
14 context of similar litigation, individual Plaintiff often lack the financial resources
15 to vigorously prosecute separate lawsuits in federal court against large corporate
16 defendants. Class litigation is also superior because it will preclude the need for
17 unduly duplicative litigation resulting in inconsistent judgments pertaining to
18 USAA's policies and practices. There will be no difficulties in managing this
19 action.

20 53. In the alternative, class treatment is appropriate under Fed. R. Civ. P.
21 23(c)(4) because this is a case in which class adjudication of particular issues
22 would serve the interests of judicial economy.

23 **CAUSES OF ACTION**

24 **COUNT I**

25 **Breach of Contract –**

26 **Violation of the Covenant of Good Faith and Fair Dealing**

27 **(On Behalf of Plaintiff and the Putative Class)**

1 54. Plaintiff restates and incorporates by reference the above paragraphs
2 as if fully set forth herein.

3 55. Plaintiff and the members of the putative class purchased insurance
4 contracts from USAA and performed their contractual obligations thereunder.

5 56. USAA owed Plaintiff and the members of the putative class a duty
6 of good faith and fair dealing by virtue of their contractual relationship.

7 57. Under the insurance contracts, USAA had the discretion to make
8 voluntary downward premium adjustments based on an insured's changed
9 circumstances

10 58. Plaintiff and the members of the putative class had a reasonable
11 expectation that USAA would exercise this discretion fairly and in good faith,
12 without depriving Plaintiff and the members of the putative class of their right to
13 have the premiums collected for their insurance coverage limited to no more than
14 a fair rate of return, and to have that rate adjusted if it became excessive.

15 59. USAA's failure to return sufficient premiums has disappointed the
16 legitimate expectations of Plaintiff and the members of the putative class of
17 having premiums collected for their insurance coverage that are limited to no
18 more than a fair rate of return, and to have that rate adjusted if it became
19 excessive.

20 60. USAA's conduct has thereby deprived Plaintiff and the members of
21 the putative class of one of the key benefits of their contracts, and constitutes a
22 willful violation of the obligation of good faith and fair dealing owed for the
23 purpose of unfairly maximizing revenue from premiums paid by Plaintiff and
24 members of the putative class.

25 61. In addition, USAA gave more weight to its own interests than to the
26 interests of its policyholders. This conduct violated the higher standard of good
27 faith and fair dealing to which insurers are held due to the special relationship
28 existing between insurer and insured, which is characterized by elements of

1 public interest, adhesion, and fiduciary responsibility.

2 62. USAA consciously and deliberately acted with a lack of good faith,
3 despite knowing that its conduct violated the orders of the Department of
4 Insurance, thereby disappointing the reasonable expectations of Plaintiff and the
5 members of the putative class that premiums collected for their insurance
6 coverage would be limited to no more than a fair rate of return, and would be
7 adjusted if they became excessive.

8 63. Plaintiff and the members of the putative class have been injured as a
9 direct and proximate result of USAA's unlawful conduct.

10 **COUNT II**

11 **Unjust Enrichment/Quasi-Contract**

12 **(On Behalf of Plaintiff and the Putative Class)**

13 64. Plaintiff pleads this Count in the alternative to her other Counts
14 herein.

15 65. As a result of USAA's failure to provide adequate refunds to its
16 customers as described herein, USAA has been unjustly enriched.

17 66. USAA was enriched under such circumstances that it cannot
18 conscientiously retain its gain at Plaintiff's and the putative class's expense.

19 67. Plaintiff and the members of the putative class have been injured as a
20 direct and proximate result of USAA's unlawful conduct.

21 **COUNT III**

22 **Violation the California Unfair Competition Law ("UCL")**

23 **Cal. Bus. & Prof. Code § 17200 *et seq.***

24 **(On Behalf of Plaintiff and the Putative Class)**

25 68. Plaintiff restates and incorporates by reference the above paragraphs
26 as if fully set forth herein.

27 69. Plaintiff and USAA are "persons" within the meaning of the UCL.
28 Cal. Bus. & Prof. Code § 17201.

1 70. The UCL defines unfair competition to include any “unlawful,
2 unfair, or fraudulent business act or practice.” Cal. Bus. & Prof. Code § 17200.

3 71. By committing the acts and practices alleged herein, USAA has
4 engaged in unfair business acts and practices in violation of the UCL.

5 72. A business act or practice is “unfair” under the UCL if it offends an
6 established public policy or is immoral, unethical, oppressive, unscrupulous, or
7 substantially injurious to consumers, and that unfairness is determined by
8 weighing the reasons, justifications, and motives of the practice against the
9 gravity of the harm to the alleged victims. USAA has violated the UCL’s
10 proscription against unfair business practices by, among other things: failing to
11 fully refund premiums with full knowledge of the amount and extent of their
12 excess and the fact that they are not based on an accurate assessment of risk, and
13 failing to disclose the fact that it is earning excessive profits, or the amount of
14 those profits.

15 73. There is no societal benefit from USAA’s conduct—only harm to
16 consumers. USAA has engaged in immoral, unethical, oppressive, and
17 unscrupulous activities that are substantially injurious to consumers, and the
18 gravity of its conduct outweighs any alleged benefits attributable to such conduct.

19 74. California has a longstanding public policy limiting an insurer’s
20 ability to impose rates in excess of a fair rate of return on the insured risk that is
21 reflected in various statutes and regulations.

22 75. USAA’s conduct in collecting and retaining premiums that have
23 become excessive in light of the unforeseen pandemic-related reduction in driving
24 violates this vital public policy and the intent of the statutes and regulations
25 designed to ensure that the rates collected by insurers relate to the risk insured
26 and are limited to a fair rate of return.

27 76. There were reasonably available alternatives to further USAA’s
28 legitimate business interests, other than the conduct described herein.

1 77. The injury caused by USAA’s failure to provide adequate refunds is
2 substantial in light of very conservative calculations that a 30% minimum average
3 premium refund would be required to correct its unfair windfall just for the time
4 period from mid-March through the end of April 2020.

5 78. Plaintiff and the members of the putative class have been injured as a
6 direct and proximate result of USAA’s conduct in violation of the UCL. Plaintiff
7 and the members of the putative class lost money or property and suffered injury
8 in fact because USAA collected and retained, and continues to collect and retain,
9 premiums in excess of the limitations imposed by California public policy, which
10 rightfully belong to Plaintiff and the putative class.

11 79. Plaintiff and the members of the putative class were unable to
12 reasonably avoid these harms because the analysis required to determine premium
13 refunds was within the exclusive knowledge of USAA.

14 80. Plaintiff therefore request that this Court grant the relief enumerated
15 below. Otherwise, Plaintiff and the members of the putative class may be
16 irreparably harmed and/or denied an effective and complete remedy.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiff, individually and on behalf of the members of
19 the putative class, prays for relief as follows:

- 20 A. Certification of this action as a class action pursuant to Fed. R. Civ.
21 P. 23;
- 22 B. The appointment of Plaintiff as class representative and his counsel
23 as class counsel;
- 24 C. A declaration that the practices complained of herein are unlawful
25 and violate the laws of California alleged herein;
- 26 D. An injunction against Defendants from engaging in the unlawful
27 practices complained of herein;
- 28

- 1 E. Awarding Plaintiff and the members of the putative class their
- 2 damages in an amount to be determined at trial, including
- 3 compensatory damages, consequential damages, punitive damages,
- 4 and any other damages provided under relevant laws;
- 5 F. Disgorgement of, restitution of, and/or imposing a constructive trust
- 6 upon, the ill-gotten gains derived by Defendants from its unjust
- 7 enrichment;
- 8 G. An order awarding Plaintiff and the class attorneys’ fees, costs, and
- 9 expert costs;
- 10 H. An order awarding Plaintiff and the members of the putative class
- 11 pre-judgment and post-judgment interest, as allowed by law; and
- 12 I. Such further relief as may be appropriate.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

17 Dated: April 14, 2022

By: s/Manfred P. Muecke

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**Pro hac vice application forthcoming*

Attorneys for Plaintiff Philip Johnson, and the putative class.

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Philip Johnson, on behalf of himself and all others similarly situated,

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Manfred P. Muecke, Manfred, APC 600 West Broadway, Suite 700 San Diego, CA 92101

DEFENDANTS

United Services Automobile Association, USAA Casualty Insurance Group, USAA General Indemnity Company, and

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'22CV518 TWR JLB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(d) Brief description of cause: Breach of Covenant of Good Faith & Fair Dealing and Violation of CA Unfair Competition Law

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ >75,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Hon. Anthony J. Battaglia DOCKET NUMBER 3:22-cv-00166-AJB-AHG

DATE Apr 14, 2022 SIGNATURE OF ATTORNEY OF RECORD /s/ Manfred P. Muecke

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [USAA Gave Inadequate Refunds for Inflated Auto Insurance Premiums Amid Pandemic, Class Action Alleges](#)
