Wilmer J. Harris, SBN 150407
wharris@sshhlaw.com
SCHONBRUN SEPLOW HARRIS & HOFFMAN LLP
715 Fremont Ave., Suite A
South Pasadena, CA. 91030
Telephone No.: (626) 441-4129
Facsimile No.: (626) 283-5770

[Additional counsel on following page]

Class Counsel

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ROGER HARRIS, DUANE BROWN, AND BRIAN LINDSEY, Plaintiffs, vs. FARMERS INSURANCE EXCHANGE AND MID CENTURY INSURANCE COMPANY, Defendants.	Case No: BC 579498 **SECOND AMENDED CLASS ACTION COMPLAINT FOR DAMAGES** 1. **Violation of the Unfair Competition Law – Commission of Unlawful Business Act or Practice Cal. Bus. & Prof. Code § 17200 et seq.** 2. **Violation of the Unfair Competition Law – Commission of Unfair Business Act or Practice Cal. Bus. & Prof. Code § 17200 et seq.** 3. **Violation of the Unfair Competition Law – Commission of Fraudulent Business Act or Practice Cal. Bus. & Prof. Code § 17200 et seq.** 4. **Unjust Enrichment** **JURY TRIAL DEMANDED**

Jay Angoff, Esq.
Cyrus Mehri, Esq.
MEHRI & SKALET PLLC
1250 Connecticut Ave. NW, Suite 300
Washington, DC 20036
Tel: (202) 822-5100
Fax: (202) 822-4997
jay.angoff@findjustice.com
cyrus@findjustice.com

Peter Kahana, Esq.
Jeff Osterwise, Esq.
BERGER MONTAGUE, P.C.
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Tel: (215) 875-3000
Fax: (215) 875-4613
pkahana@bm.net
josterwise@bm.net

Hassan A. Zavareei, Esq. (CA Bar. No. 181547)
Andrea Gold, Esq.
TYCKO & ZAVAREEI LLP
1828 L Street NW, Suite 1000
Washington, DC 20036
Tel: (202) 973-0900
Fax: (202) 973-0950
hzavareei@tzlegal.com
agold@tzlegal.com

Class Counsel

Plaintiffs Roger Harris, Duane Brown, and Brian Lindsey (collectively "Plaintiffs"), bring this action on behalf of themselves and all others similarly situated against Farmers Insurance Exchange and its Affiliate, Mid Century Insurance Company (collectively referred to herein as "Farmers" or "Defendants"). Plaintiffs, through undersigned counsel, allege the following based on personal knowledge as to allegations regarding Plaintiffs and on information and belief as to other allegations.

NATURE OF THE ACTION

1. In California, as in other states, drivers are required to maintain auto insurance. For many consumers, who may own more than one vehicle, auto insurance costs take up a considerable portion of a household's monthly budget.

2. Auto insurance companies are not permitted to determine auto insurance premiums on the basis of what the market will bear.

3. Instead, all states have laws requiring that auto insurance companies, including Defendants, calculate premiums based on the risk presented by the policyholder, meaning those objectively discernible characteristics or facts about the insured person which directly impact the likelihood of a covered event occurring (and thus, the cost to the insurer of providing the offered insurance).

4. This case arises from Defendants' practice from at least April 2009 until October 2018 of using the policyholder's willingness to tolerate a price increase as a factor in calculating premiums, even though Defendants' use of that factor has neither been disclosed to nor approved by the California Department of Insurance.

5. Using a policyholder's willingness to tolerate a price increase—more technically, the policyholder's elasticity of demand—as a factor in calculating premiums harms policyholders who Defendants judge to be less price-sensitive and more loyal to Defendants: they pay more than they would pay if Defendants did not use the policyholder's willingness to tolerate a price increase as a factor in calculating premiums.

6. Defendants have compiled or reviewed data indicating that people with certain (non-risk based) characteristics are willing to pay more than they should pay based on the risk

they present. That data indicates, among other things, that their most loyal customers are price inelastic and are willing to renew their policies and pay more than the risk they present justifies.

7. After reviewing internal documents and testimony by Defendants' employees responsible for developing Defendants' California auto insurance class plans, California Department of Insurance Senior Casualty Actuary Edward D. Cimini, Jr. has concluded that "Farmers engaged in price optimization in the construction of its Private Passenger Auto Class Plan with regard to the selection of rate relativities for the optional rating factor of Persistency."

8. The use of elasticity of demand as a rating factor results in the Defendants' most loyal customers paying more than they would pay based on the risk they present. As the Department's Senior Casualty Actuary Cimini observed, "Farmers' existing persistency discounts for tenured policyholders were considerably smaller than the actuarially indicated discounts. Lower discounts for these policyholders resulted in higher premium for these policyholders."

9. Defendants did not disclose their use of elasticity of demand as a rating factor to the California Department of Insurance when seeking approval of their Private Passenger Auto Class Plan ("class plans" or "2008 class plans"), and the Department did not approve its use.

10. In their marketing materials, Defendants intentionally omit and fail to disclose their use of elasticity of demand as a rating factor in determining auto insurance premiums.

11. Plaintiffs and members of the Class have paid higher prices for their insurance coverage than the risk they present would justify.

12. Plaintiffs bring this action on behalf of themselves and other similarly situated insureds for violation of California's Unfair Competition law, and for unjust enrichment.

JURISDICTION AND VENUE

13. This action is properly brought in the Superior Court of the State of California. Each cause of action enumerated below arises from California state law and the events giving rise to this lawsuit took place in California, including the County of Los Angeles.

PARTIES

14. Plaintiff Roger Harris is a citizen of the State of California and was a customer

of Defendants until 2018. Mr. Harris resides in Lompoc, California in the County of Santa Barbara.

15. Plaintiff Harris has been a loyal customer of Defendants for more than 15 years.

16. Plaintiff Harris has purchased auto insurance from Defendants for multiple vehicles. Most recently, Plaintiff purchased auto insurance for one vehicle from Defendants.

17. Plaintiff Duane Brown is a citizen of the State of California and is a customer of Defendants. Mr. Brown resides in Lompoc, California in the County of Santa Barbara.

18. Plaintiff Brown became a customer of Defendants in 1997 and has been a loyal customer of Defendants since that time.

19. Plaintiff Brown has purchased auto insurance from Defendants. Currently, Plaintiff purchases auto insurance for six automobiles from Defendants.

20. Plaintiff Brian Lindsey is a citizen of the State of California and was a customer of Defendants until 2018. Mr. Lindsey resides in the County of Santa Barbara.

21. Plaintiff Lindsey was a loyal customer of Defendants for almost ten years.

22. Plaintiff Lindsey purchased auto insurance from Defendants. Plaintiff purchased auto insurance for at least one automobile from Defendants.

23. Defendants have never notified Plaintiffs that they are charging them more than other policyholders presenting the same risk because of their willingness to tolerate a price increase.

24. As explained in more detail below, Plaintiffs have been injured in fact and directly harmed as a result of Defendants' failure to disclose their use of elasticity of demand as a rating factor, in that Plaintiffs have been fraudulently, deceptively and unfairly misled into paying a premium that is higher than it would have been had Defendants calculated Plaintiffs' premiums based on the risk they present.

25. A direct causal relationship exists between Defendants' unlawful conduct and the ascertainable losses suffered by Plaintiffs and the Class. Had Defendants' use of elasticity of demand as a rating factor been disclosed, Plaintiffs (and other Class members) would have paid less for auto insurance.

26. Defendants are all organized under the laws of California and domiciled in California, and their principal place of business is Los Angeles, CA. Their statutory home office and main administrative office is in Los Angeles, and Los Angeles is the primary location of their books and records. Farmers is the largest auto insurer in California. Consumers obtain auto insurance via Farmers agents, as well as via www.farmers.com.

COMMON FACTUAL ALLEGATIONS

How Auto Insurance Premiums Are Set in California

Establishing the Base Rate

27. Auto insurance premiums in California are set pursuant to a two-step process. First, the insurer must calculate a base rate, which is the same for each policyholder and represents the total annual premium that the insurer must charge in order to cover expenses and obtain a reasonable rate of return. The insurer must obtain the Department's approval of its base rate by filing a rate application. Cal. Ins. Code § 1861.05 (West).

28. Cal. Code Regs. Tit. 10, § 2644.1 et seq. sets forth the standards governing the base rate. In the rate application, the insurer seeks the Department's approval of the base rate, but it does not seek the Department's approval of the rating factors it will apply to the base rate to calculate individual premiums.

Applying Rating Factors to the Base Rate to Calculate Premiums

29. The second step in establishing auto insurance premiums in California is applying rating factors to the base rate in order to produce the premium. California law defines "rating factor" as "any factor, including discounts, used by an insurer which establishes or affects the rates, premiums, or charges assessed for a policy of automobile insurance." Cal. Code Regs. Tit. 10, § 2632.2(a)

30. California also requires insurers to submit a separate filing, called a class plan, which discloses the rating factors the insurer uses and explains how those rating factors are applied to the base rate to produce individual premiums. Cal. Code Regs. Tit. 10, § 2632.11

31. In California, three mandatory rating factors are authorized by statute: mileage driven, driving record, and years of driving experience. Cal. Ins. Code § 1861.02(a).

32. The statute also authorizes the Commissioner to adopt additional rating factors by regulation. Cal. Ins. Code § 1861.02(a)(4). The Department has promulgated a regulation setting forth the rating factors insurers are permitted to use, Cal. Ins. Code § 2632.5(d), and has specifically provided that "No insurer shall use a rating factor which is not set forth in these regulations." Cal. Code Regs. § 2632.4(a).

33. The Commissioner has not adopted elasticity of demand as a rating factor, and thus does not permit insurers to use elasticity of demand to "establish[] or affect[] the rates, premiums, or charges assessed for a policy of automobile insurance." Cal. Code Regs. § 2632.2(a).

34. In California, insurers, including Defendants, are also barred from using any rating factor that does not bear a substantial relationship to the risk of loss. Cal. Ins. Code § 1861.02(a)(4); Cal. Code Regs. Tit. 10, § 2632.4(b).

35. California law also provides that "no insurer may hereafter use a class plan, or charge or collect a premium which does not comply with" the California Insurance Code or the regulations of the Department of Insurance. Cal. Code Regs. Tit. 10, § 2632.10(a).

36. California law also directs that "[n]o person, insurer or organization shall willfully withhold information from, or knowingly give false or misleading information to, the commissioner or to any rating organization, advisory organization, insurer or group, association or other organization of insurers, which will affect the rates, rating systems or premiums for the classes of insurance to which the provisions of this chapter are applicable. Cal. Ins. Code § 1859.

The Use of Elasticity of Demand as a Rating Factor

37. "Elasticity of demand" is the technical term for an individual's sensitivity to price changes.

38. An individual whose demand is elastic is sensitive to price changes, *i.e.*, he or she will seek insurance elsewhere in response to a relatively small price increase. The more sensitive the individual is to price changes – *i.e.*, the smaller the increase in price that will cause the individual to shop – the more elastic is that individual's demand.

39. Conversely, an individual whose demand is inelastic is relatively insensitive to price changes – he or she is relatively unlikely to seek insurance elsewhere in response to a price increase. The more the insurer can raise its prices to such an individual without causing him or her to switch carriers, the more inelastic that individual's demand is.

40. By using elasticity of demand as a rating factor, Defendants charge customers whose demand is inelastic—who are unlikely to seek insurance elsewhere in response to a price increase—more than customers who are likely to shop around in response to a price increase, all other things being equal. Defendants' customers whose demand is inelastic thus pay prices that are higher than the risk they present would justify.

41. Defendants did not disclose in their class plan the use of elasticity of demand as a rating factor to the Department, and the Department did not approve Defendants' use of elasticity of demand as a rating factor.

California Has Specifically Prohibited the Use of Elasticity of Demand as a Rating Factor, As Have Other States

42. The term commonly used by insurance companies and insurance regulators for the use of elasticity of demand as a rating factor is "price optimization." On February 18, 2015, the California Department of Insurance issued a Notice (the "Notice") announcing that "any use of Price Optimization in the ratemaking/pricing process or in a rating plan is unfairly discriminatory in violation of California law," and ordering any insurer using price optimization to discontinue doing so. The Notice defines "price optimization" as "any method of taking into account an individual's or class's willingness to pay a higher premium relative to other individuals or classes." It also notes that "price optimization does not seek to arrive at an actuarially sound estimate of the risk of loss and other future costs of a risk transfer."

43. The Notice further ordered that "Any insurer currently using Price Optimization to adjust its rates in California shall cease this practice." More specifically, the Notice ordered "any insurer that has a factor or factors based on Price Optimization in its rating plan" to "remove the factor or factors in its next filing" to be made "no later than six months from the date of this Notice."

44. The California Department of Insurance further explained how price optimization works in a press release accompanying its Notice:

> Because price optimization does not use actuarially sound methods to estimate the risk of loss, its use in the ratemaking process is unfairly discriminatory and violates California law. Insurers have utilized price optimization by applying sophisticated models that allow them to identify trends that predict at what price point a consumer would terminate his or her policy or comparison shop. Insurers have relied on these complex models to price policies based on what they believe a consumer will pay, instead of risk based factors as required by law.

45. The Department's Senior Casualty Actuary Cimini has likewise testified that "Price Optimization does not seek to arrive at an actuarially sound estimate of the risk of loss and other future costs of a risk transfer."

46. The Insurance Departments of Delaware, the District of Columbia, Florida, Indiana, Maine, Maryland, Ohio, Pennsylvania, Rhode Island, Vermont and Washington have also issued bulletins finding that price optimization is unlawful.

Defendants Hide Their Use of Elasticity of Demand as a Rating Factor From Their Customers and Regulators

47. Defendants provide customers and potential customers with information regarding their auto insurance policies, practices, and premiums via marketing materials, including Farmers' website, www.farmers.com.

48. Yet, Defendants hide their use of elasticity of demand as a rating factor from customers and potential customers.

49. Defendants do not inform insureds that they are using elasticity of demand as a rating factor and that their car insurance premiums are impacted—or, more specifically, increased—by their willingness to accept a price increase.

50. To the contrary, at their website, www.farmers.com, Defendants convey the impression that they determine premiums based solely on risk, and do not consider an insured's willingness to tolerate a price increase at all in setting premiums.

51. For example, Farmers states at its website that "insurance companies charge a rate that is appropriate for the risk of the insured individual," and that "tickets and accidents,"

"adding a driver," "moving to a new residence," and "if you've recently switched vehicles" can cause your premium to increase. Nowhere on Farmers' website does Farmers disclose that an insured's elasticity of demand can affect an individual's premium, even though that is the case.

52. Consultants have boasted about the fact that the use of elasticity of demand as a rating factor is hidden from regulators and therefore that regulators cannot tell whether an insurer is using an individual's willingness to pay a higher premium than the risk-based premium in its computations.

<u>Farmers' Use of Elasticity of Demand as a Rating Factor</u>

53. Farmers' employees have acknowledged Farmers' use of elasticity of demand in calculating premiums. A Senior Analyst who worked at Farmers between August 2008 and June 2012, for example, has said that his projects included "price elasticity modeling of differing consumer segments."

54. An Actuarial Analyst at the Farmers Personal Lines Pricing Group, who has been in that position since February 2012, says that he is "managing team on the design, implementation, and delivery of an auto insurance price optimization tool," and that he has "pitched potential price optimization schemes that incorporate retention, conversion, and elasticity modeling."

55. A Product Manager working at Farmers between 2003 and 2008 says that he "built and used GLM's for retention price elasticity."

56. Further, a Senior Product Manager who was working at Farmers in 2007-2008 says he "designed pricing strategy" through "proper segmentation" and "demand estimation."

57. Defendants specifically have engaged in price optimization in California for more than a decade by charging their most loyal policyholders—those insured by the company for nine or more years—more than the risk they present justifies because they are willing to pay more than that risk-based rate.

58. Defendants have known for years that their longer-tenured customers are price inelastic. This knowledge was captured and shared in internal PowerPoint presentations and memorandums circulated as early as at least 2006 and 2007. These materials further

emphasized that it was in Defendants' business interest to capitalize on this knowledge in ratemaking. It thus was standard practice for Defendants to charge price-inelastic, tenured policyholders higher-than-indicated rates. For example:

a. A May 2007 PowerPoint presentation from Defendants' Insight & Innovation ("I&I") group entitled "Retention-Elasticity Modeling," states that "[r]enewal elasticity [is] extraordinarily low," among Defendants' policyholders and that the number one variable associated with higher retention was "[p]olicy [t]enure" — specifically, "[o]lder policies."

b. A memorandum describing Defendants' pricing strategy in 2006 or 2007 notes that "the retention model tells us that tenured business tends to hive [sic] higher retention levels. Lowering the price point for those that are likely to renew anyway does not gain a premium advantage."

c. A presentation at the company in approximately 2006 emphasized that Defendants' auto product managers should be thinking about "how you optimize rate — how you maximize margins with every customer who allows you to."

59. Similarly, in emails, then-Vice President Bill Martin endorsed the use of price optimization practices that "surgically allow for subsidies within our portfolio, as a means to superior growth without compromising on targeted profitability." He instructed his subordinates, including Regional Vice President for California Auto Russina Sgoureva and Chief Auto Actuary Morgan Bugbee, that:

> We need our PM's [(product managers)] to be creative with what they have — *encouraging subsidy where it generates overall profitable growth*, eliminating mix shifts toward unsubsidized unprofitable segments. *That means we need to make intensive use of even the most preliminary revenue-forecasting tools (rate optimization or elasticity) as part of the process* and track whether the outcome is the same as predicted so as to refine the forecast model.

60. This practice of charging price-inelastic, tenured policyholders higher-than-indicated rates did not require sophisticated algorithms and computer software to be effective. Indeed, as Mr. Martin acknowledged in 2007, it was the "massive amounts of premium gained

and saved" from considering policyholders' elasticity of demand that led Defendants to see the value in investing in price optimization software that could mechanize its consideration of elasticity of demand.[1]

61. Defendants' knowledge of the price inelasticity of its long-tenured customers carried over and was incorporated into the development of Defendants' California auto insurance class plans. Specifically, the undisclosed elasticity rating factor was employed to deprive Defendants' long-term customers of the persistency discounts the risk they presented warranted.

62. In preparing their 2008 Class Plans, Defendants knew that the loss ratios for their longer-tenured policyholders were far lower (nearly 20 percentage points) than the loss ratios for their less-tenured policyholders. In other words, Defendants were making a significantly greater profit off their longer-tenured policyholders than their less-tenured policyholders, because the losses relative to premiums were lower for longer-tenured policyholders compared to less-tenured policyholders.[2]

63. This profit occurred because Defendants had been charging rates far higher than their loss-models indicated for the longer-tenured customers. Specifically, Defendants used relativities for "Persistency" — a rating factor based on the length of time a policyholder had been consistently insured by the company — that were significantly higher for policyholders with nine or more years tenure than its own data showed was justified.

64. In October 2007, Defendants identified giving larger discounts to their long-term policyholders as a "future product change." Implementing such discounts would have brought the rates paid by Defendants' long-term policyholders closer to the rates the risk they presented

[1]Farmers employees have also recognized that price optimization does not need to rely on sophisticated software to be unlawful. As Defendants' Chief Auto Actuary Morgan Bugbee noted, "[w]hether or not these tools are being used is irrelevant. What's relevant is whether or not regulators are comfortable with companies deviating from the point estimates of cost from their models, the reasons why the company has deviated, and the extent to which those deviations occur (not excessive or inadequate...)."

[2] Notably, because renewal business is less expensive to administer than new business, Defendants were likely already earning greater profits on its longer-tenured policyholders without even comparing loss ratios.

justified. But despite knowing that they were overcharging their longest-tenured policyholders, Defendants affirmatively chose not to reduce the rates for these policyholders in their 2008 class plans.

65. Internal documents show that this decision was made in June 2008 — relatively early in Defendants' planning process — after a meeting with a set of officials responsible for overseeing Defendants' agency workforce in California. The decision was then immediately presented to and approved by the executives overseeing work in California, including Mr. Martin and then-President of Personal Lines, Jeff Dailey.

66. Internal documents further make clear that Defendants chose not to follow its indications for the persistency rating factor because doing so would have meant lowering rates for their customers who would renew anyway at a higher, actuarially unjustifiable rate.

67. While actuarially improper, this decision made business sense for Defendants. In fact, back in January 2007, Defendants' Senior Customer Advocacy Manager Chris Maydak had specifically advised Mr. Bugbee that he should not "react" to his loss indications showing that longer-tenured policyholders in California should receive 30-35% discounts. Mr. Maydak explained, "If you react to the loss indications, you end up lowering rate for those who tend to renew anyway."

68. After reviewing internal documents and testimony by Defendants' employees responsible for developing Defendants' California auto insurance filings, California Department of Insurance Senior Casualty Actuary Edward D. Cimini, Jr. testified in a sworn statement that "Farmers engaged in price optimization in the construction of its Private Passenger Auto Class Plan with regard to the selection of rate relativities for the optional rating factor of Persistency."

69. Mr. Cimini based his conclusion that Defendants engaged in price optimization, despite not having employed a sophisticated software program or algorithm, on evidence that "Farmers had extensively studied how sensitive their existing policyholders were to varying levels of premium increases at renewal," knew its "most tenured business ... would likely renew their policies at premium levels which were higher than premium levels supported by the underlying data," and "decided to retain its existing persistency discounts because [it] believed

the renewal customers would be willing to pay the higher rates."

Defendants Were Aware That the 2015 Notice on Price Optimization Reached Their Conduct, But Failed to File a New Class Plan Removing the Factor Based on Price Optimization Until August 2018

70. Defendants paid close attention to state actions regulating price optimization and tried to influence regulators not to prohibit the practice.

71. Defendants' employees immediately recognized that the 2015 Notice prohibited a broad range of conduct, including non-mechanized forms of price optimization. Defendants had implemented such price optimization in its 2008 Class Plans, which were then still in effect.

72. Nonetheless, Defendants did not file a new class plan removing the factor based on price optimization within the time period set by the Notice. Instead, Defendants did not file an amended class plan removing the price optimized persistency rating factor until August 2018 — three years past the deadline.

Defendants' Use of Elasticity of Demand as a Rating Factor in California Has Injured Defendants' Long-Tenured Policyholders

73. Had Defendants chosen to use the indicated relativities — those based on the risk presented by the policyholder as set forth in Exhibit 4 of its 2008 class plans — the rates paid by policyholders who had been with the company for nine or more years would have been between 4.1% and 11.2% less, depending on the type of coverage a policyholder had.

74. During the class period, Defendants overcharged its policyholders that had been with the company for nine or more years by more than $200 million.

CLASS ALLEGATIONS

75. Plaintiffs, on behalf of themselves and all others similarly situated, bring this action pursuant to California Code of Civil Procedure Section 382. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements.

76. The proposed Class is defined as:

> All persons who (1) had 9 or more years of tenure/persistency as a Farmers Insurance Exchange ("FIE" and/or Mid Century Auto

("MCA") policyholder as of August 18, 2015 or who reached 9 or more years of tenure/persistency as a FIE and/or MCA policyholder on or before March 31, 2017, and (2) were FIE and/or MCA policyholders of Defendants at any time during the period extending from August 18, 2015 through March 31.

77. Excluded from the Class are (a) officers, directors, and employees of any member of the Farmers Insurance Group of Companies; (b) the judge overseeing the proposed settlement and the judge's immediate family; and (c) all Policy Holders who make a timely election to be excluded.

78. Membership in the class is ascertainable based on computerized records maintained by Defendants. Plaintiffs reserve the right to modify or amend the definition of the proposed Class before the Court determines whether certification is appropriate.

79. The Class is numerous such that joinder of all Class members is impracticable. The proposed Class contains many thousands of members.

80. Common questions of law and fact exist as to all members of the Class and predominate over questions affecting only individual Class members. The common legal and factual questions include, but are not limited to, the following:

a. Whether Defendants consider Class members' elasticity of demand as a rating factor in establishing the premium charged to Class members;

b. Whether Defendants' use of elasticity of demand as a rating factor produces premiums that exceed the risk-based premium;

c. Whether Defendants' use of elasticity of demand as a rating factor produces premiums that are higher than the expected value of future costs for those policyholders who have inelastic demand;

d. Whether Defendants' use of elasticity of demand as a rating factor results in customers presenting the same risk being charged different premiums based on their elasticity of demand;

e. Whether Defendants use elasticity of demand as a rating factor to charge inflated premiums that are not strictly related to individual risk transfer;

f. Whether Defendants are unjustly enriched through their use of elasticity of demand as a rating factor;

g. Whether Defendants violate California's Unfair Competition Law through their use of elasticity of demand as a rating factor.

81. Other questions of law and fact common to the Class include:

a. The proper method or methods by which to measure damages, and

b. The declaratory relief to which the Class is entitled.

82. Plaintiffs' claims are typical of the claims of other members of the Class and there is no defense available to Defendants that is unique to Plaintiffs.

83. The claims of the representative Plaintiffs are typical of the claims of the Class in that the representative Plaintiffs, like all Class members, paid more than the risk-based premium due to Defendants' use of elasticity of demand as a rating factor. Furthermore, the factual basis of Farmers' misconduct is common to all Class members, and represents a common thread of deceptive, unfair, and unlawful conduct resulting in injury to all members of the Class.

84. Plaintiffs will fairly and adequately represent the interests of the Class. Plaintiffs have no interests that are antagonistic to those of the Class. Plaintiffs have the ability to assist and adequately protect the rights and interests of the Class during litigation. Further, Plaintiffs are represented by counsel who are competent and experienced in this type of class action litigation.

85. This class action is not only the appropriate method for the fair and efficient adjudication of the controversy, it is the superior method because:

a. Joinder of thousands of individual Class members is impracticable, cumbersome, unduly burdensome, and a waste of judicial and litigation resources;

b. There is no special interest by the Class members in individually controlling separate causes of action;

c. The Class members' individual claims are small compared with the expense of litigating the claim thereby making it impracticable, unduly burdensome, and expensive, if not totally impossible, to justify individual Class members addressing their losses in litigation;

d. When liability is determined, the claims of all Class members can be determined through routine mathematical calculations and thus can be determined by the Court and administered efficiently in a manner that is far less onerous, burdensome, and expensive than if it were attempted through filing, discovery, and trial of many individual cases;

e. This class action will promote the orderly, efficient, expeditious, and appropriate adjudication and administration of class claims to promote economies of time and resources;

f. This class action will assure uniformity of decisions among Class members;

g. The resolution of this controversy through this class action presents fewer management difficulties than individual claims filed in which the parties may be subject to varying adjudication of their rights.

86. Furthermore, class treatment is appropriate because Defendants have acted on grounds generally applicable to the Class, making class-wide equitable, injunctive, declaratory and monetary relief appropriate. In addition, the prosecution of separate actions by or against individual members of the Class would create a risk of incompatible standards of conduct for Defendants and inconsistent or varying adjudications for all parties.

CAUSES OF ACTION[3]

<u>FIRST CAUSE OF ACTION</u>

Violation of the Unfair Competition Law – Commission of Unlawful Business Act or Practice

[3] Plaintiffs have removed their Fifth Cause of Action for Violation of California Insurance Code § 1861.10 consistent with the Court's Order on January 25, 2016. However, Plaintiffs are not waiving any of their rights vis-à-vis this cause of action, including their right to appeal.

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

87. Plaintiffs repeat, reassert, and incorporate the allegations contained in paragraphs 1-86 above as if set forth herein.

88. Cal. Bus. & Prof. Code § 17200 prohibits any "unlawful, unfair or fraudulent business act or practice."

89. Defendants' conduct is "unlawful" because it violates the California Insurance Code and its implementing regulations in the following ways:

a. Defendants' use of elasticity of demand as a rating factor violates Cal. Ins. Code § 1861.02 because it is not one of the three mandatory rating factors that are authorized by § 1861.02(a) and it has not been adopted by the Commissioner as a permissible rating factor pursuant to § 1861.02(a)(4).

b. Defendants' use of elasticity of demand as a rating factor violates Cal. Code Regs. Tit. 10, § 2632.4(a) because elasticity of demand constitutes a rating factor that is not set forth in or authorized by California regulations.

c. Defendants' use of elasticity of demand as a rating factor violates Cal. Ins. Code § 1861.02(a)(4) and Cal. Code Regs. Tit. 10, § 2632.4(b) because elasticity of demand does not bear a substantial relationship to loss.

d. Defendants' use of elasticity of demand as a rating factor violates Cal. Code Regs. Tit. 10, § 2632.10(a) in that it causes Farmers to collect a premium which is not calculated in accordance with a class plan that complies with California regulation.

e. Defendants' use of elasticity of demand as a rating factor violates Cal. Ins. Code § 1859 in that Farmers willfully withheld information from, or knowingly gave false or misleading information to, the California Insurance Commissioner concerning its use of elasticity of demand as a rating factor to unlawfully increase Plaintiffs' and the Class' insurance premiums.

90. Plaintiffs and the Class members have suffered injury in fact and have lost money as a result of Defendants' unlawful business acts or practices.

91. Pursuant to Business and Professions Code §§ 17200 and 17203, Plaintiffs seek an order providing restitution and disgorgement of all profits relating to the above-described unfair business acts or practices, and injunctive and declaratory relief as may be appropriate.

SECOND CAUSE OF ACTION

Violation of the Unfair Competition Law – Commission of Unfair Business Act or Practice

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

92. Plaintiffs repeat, reassert, and incorporate the allegations contained in paragraphs 1-91 above as if set forth herein.

93. Cal. Bus. & Prof. Code § 17200 prohibits any "unlawful, unfair or fraudulent business act or practice."

94. The acts and practices of Defendants as alleged herein also constitute "unfair" business acts and practices under the UCL in that Defendants' conduct is unconscionable, immoral, deceptive, unfair, illegal, unethical, oppressive, and/or unscrupulous. Further, the gravity of Defendants' conduct outweighs any conceivable benefit of such conduct.

95. Defendants have, in the course of their business and in the course of trade or commerce, undertaken and engaged in unfair business acts and practices under the UCL by using elasticity of demand as a rating factor.

96. Defendants have also, in the course of their business and in the course of trade or commerce, undertaken and engaged in unfair business acts and practices by:

a. Engaging in bad faith in using elasticity of demand as a rating factor;

b. Not calculating auto insurance premiums based on risk or loss costs but, instead, using elasticity of demand as a rating factor to inflate premiums;

c. Making material and misleading omissions about the manner in which they determine a customer's auto insurance premium;

d. Using elasticity of demand as a rating factor in a manner that was not transparent, ascertainable, or verifiable by Plaintiffs and Class members; and

e. Unlawfully and unfairly using elasticity of demand as a rating factor to extract additional revenues from their price inelastic customers, including but not limited to those who are or were most loyal by virtue of their tenure as insureds of Defendants.

f. Failing to remove price optimization from their class plans even after being instructed to do so by the Department in its February 2015 Notice.

97. The above-described unfair business acts or practices present a threat and likelihood of harm and deception to members of the Class in that Defendants have systematically perpetrated the unfair conduct upon members of the public by engaging in the conduct described herein.

98. Pursuant to Business and Professions Code §§ 17200 and 17203, Plaintiffs seek an order providing restitution and disgorgement of all profits relating to the above-described unfair business acts or practices, and injunctive and declaratory relief as may be appropriate.

<u>THIRD CAUSE OF ACTION</u>

Violation of the Unfair Competition Law – Commission of Fraudulent Business Act or Practice

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

99. Plaintiffs repeat, reassert, and incorporate the allegations contained in paragraphs 1-98 above as if set forth herein.

100. Cal. Bus. & Prof. Code § 17200 prohibits any "unlawful, unfair or fraudulent business act or practice."

101. The acts and practices of Defendants as alleged herein constitute "fraudulent" business acts and practices under the UCL in that Defendants' conduct is false, misleading, and has a tendency to deceive the Class and the general public.

102. Defendants' conduct in using elasticity of demand as a rating factor to inflate

auto insurance premiums for its price inelastic customers was likely to deceive, and did in fact deceive, Plaintiffs and the Class.

103. Defendants' conduct in failing to disclose to Plaintiffs and members of the Class their use of elasticity of demand as a rating factor to inflate auto insurance premiums for price inelastic policyholders was likely to deceive, and did in fact deceive, Plaintiffs and the Class.

104. Plaintiffs and the Class members have suffered injury in fact and have lost money as a result of Defendants' fraudulent business acts or practices.

105. The above-described fraudulent business acts or practices present a threat and likelihood of harm and deception to members of the Class in that Defendants have systematically perpetrated the fraudulent conduct upon members of the public by engaging in the conduct described herein.

106. Pursuant to Business and Professions Code §§ 17200 and 17203 Plaintiffs seek an order providing restitution and disgorgement of all profits relating to the above-described fraudulent business acts or practices, and injunctive and declaratory relief as may be appropriate.

FOURTH CAUSE OF ACTION

Unjust Enrichment

107. Plaintiffs repeat, reassert, and incorporate the allegations contained in paragraphs 1-106 above as if set forth herein.

108. Defendants have been unjustly enriched at the expense of Plaintiffs and Class members as a result of their conduct as alleged above.

109. Defendants have wrongfully and unjustly collected higher auto insurance payments from thousands of insureds than they were entitled to by using elasticity of demand as a rating factor.

110. It would be inequitable to allow Defendants to retain these ill-gotten gains, and the Plaintiffs and Class members are entitled to restitution and/or disgorgement of all revenues obtained by Defendants as a result of their unlawful conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the Class, pray for judgment in favor of Plaintiffs and the Class and against Defendants as follows:

A. Finding that this action satisfies the prerequisites for maintenance as a class action under California Code of Civil Procedure Section 382 and certifying the Class defined herein;

B. Designating Plaintiffs as representatives of the Class and their counsel as class counsel;

C. Declaring Defendants' use of elasticity of demand as a rating factor to be unlawful and granting equitable and/or injunctive relief;

D. Awarding Plaintiffs and members of the Class their compensatory damages in an amount to be determined at trial;

E. Disgorgement of, restitution of, and/or imposing a constructive trust upon, the ill-gotten gains derived by Defendants from their unjust enrichment;

F. Plaintiffs' reasonable attorneys' fees and non-taxable expenses;

G. Plaintiffs' taxable costs;

H. Pre- and post-judgment interest at the maximum rate permitted by applicable law; and

I. Granting such further relief as the Court deems just.

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JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

Dated: March 5, 2020

SCHONBRUN SEPLOW
HARRIS & HOFFMAN LLP

MEHRI & SKALET PLLC

BERGER MONTAGUE, P.C.

TYCKO & ZAVAREEI LLP

By: ______________________________
Jay Angoff

Class Counsel

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 715 Fremont Avenue, Suite A, South Pasadena, CA 91030.

On March 5, 2020, I caused the service of the following document(s) described as:

SECOND AMENDED COMPLAINT

to the person(s) listed on the Service List.

_x__ **[By E-MAIL or ELECTRONIC TRANSMISSION VIA CASE ANYWHERE]** Pursuant to a court order, I electronically transmitted the document(s) listed above via Case Anywhere to the individual(s) listed on the Service List. The Case Anywhere system sends an e-mail notification of the electronic transmission to the parties and counsel of record who are registered with the Case Anywhere system.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 5, 2020, at South Pasadena, California.

K. Akopyan
____
Kristina Akopyan

SERVICE LIST

Peter Kahana, Esq. pkahana@bm.net Jeff Osterwise, Esq. josterwise@bm.net **BERGER & MONTAGUE, P.C.** 1818 Market Street, Suite 3600 Philadelphia, PA 19103 Tel.: (215) 875-3000 Fax: (215) 875-4613 *Class Counsel*	James C. Castle, Esq. jcastle@mail.hinshawlaw.com **HINSHAW & CULBERTSON, LLP** 633 West Fifth Street, 47th Floor Los Angeles, CA 90071 Tel.: (213) 614-7343 Fax: (213) 614-7399 *Attorneys for Defendants* Farmers Insurance Exchange and Mid Century Insurance Co.
Jonathan K. Tycko, Esq. jtycko@tzlegal.com Andrea Gold, Esq. agold@tzlegal.com **TYCKO & ZAVAREEI LLP** 1828 L Street, NW Washington, DC 20036 Tel.: (202) 973-0900 Fax: (202) 973-0950 *Class Counsel*	Harvey Rosenfield, Esq. harvey@consumerwatchdog.org Pamela Pressley, Esq. pam@consumerwatchdog.org **CONSUMER WATCHDOG** 6330 San Vicente Blvd, Suite 250 Los Angeles, CA 90048 Tel.: (213) 897-2000 Fax: (213) 897-5775 *Attorneys for* Consumer Watchdog
Jay Angoff, Esq. jay.angoff@findjustice.com Cyrus Mehri, Esq. Cyrus@findjustice.com **MEHRI & SKALET PLLC** 1250 Conneticut Ave. NW, Suite 300 Washington, DC 2003 Tel.: (202) 822-5100 Fax: (202) 822-4997 *Class Counsel*	Laura Robbins,Esq. laura.robbins@doj.ca.gov Andrea Schoor, Esq. andrea.schoor@doj.ca.gov **CALIFORNIA DEPARTMENT OF JUSTICE** 300 South Spring Street, Suite 1702 Los Angeles, CA 90013 Tel.: (213) 897-2000 Fax: (213) 897-5775 *Attorneys for* California Department of Insurance, Dave Jones, in his capacity as Insurance Commissioner of the State of California