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

MARK ODDEN, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

21ST CENTURY INSURANCE CO.,

Defendant.

Case No. '22CV179 DMS AHG

COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Mark Odden, individually and on behalf of all others similarly situated, alleges the
2 following based on information and belief, except as to allegations specifically pertaining to
3 himself, which are based on personal knowledge:

4 **NATURE OF ACTION**

5 1. Across the United States, insurers selling personal auto insurance in 2020 collected
6 **\$42 billion** in excess premiums as miles driven, vehicle crashes, and auto insurance claims
7 dropped because of the COVID-19 pandemic and related government stay-at-home orders. Instead
8 of returning the COVID-19 windfall to consumers, insurers increased payouts to senior
9 management and stockholders. The California Insurance Commissioner ordered insurance
10 companies to return premiums to Californians. The insurance companies are defying that order.

11 2. 21st Century Insurance Company (“21st Century” or “Defendant”), like many other
12 auto insurers in California and nationwide, has used the COVID-19 pandemic to enrich itself by
13 retaining millions in a windfall resulting from the drastic decrease in driving, accidents, and auto
14 risks associated with pandemic-related shutdowns and stay-at-home orders.

15 3. Before the pandemic and government shutdowns, Defendant collected full
16 premiums for car insurance that were priced to insure against driving risks and behavior associated
17 with pre-pandemic behavior.

18 4. In March 2020, however, as California and other states enacted shelter-in-place
19 mandates and the vast majority of the workplace switched either to remote work – or no work at
20 all, it became clear immediately that car insurance companies like Defendant stood to make
21 immense windfalls if they fail to issue refunds to their customers.

22 5. Defendant issued a 15% refund for three months of premiums in 2020 to placate
23 orders issued by the California Department of Insurance. This represented a paltry amount of the
24 windfall that Defendant obtained from the COVID-19 pandemic. Defendant pocketed the rest of
25 the premiums as profit.

26 6. Although the California Department of Insurance later instructed California insurers
27 like Defendant to issue more refunds, Defendant refused to do so.

1 15. During the duration of the COVID-19 pandemic in 2020, Plaintiff, like most other
2 Californians, barely drove his personal automobile at all and accordingly exposed his car, himself,
3 and the general public to far less risks than what was expected prior to the COVID-19 pandemic.

4 16. Defendant provided insureds with a refund approximating 15% of auto insurance
5 premiums for March and April 2020, and then another 15% refund for the month of May.

6 17. The refund provided by Defendant was not sufficient to compensate for the
7 overpayment of premiums due to the associated decrease in driving and risks stemming from the
8 COVID-19 pandemic. Hence, Plaintiff suffered an injury in fact resulting in the loss of money
9 and/or property.

10 **Defendant**

11 18. Defendant is a Delaware corporation with its principal place of business and
12 headquarters located in Wilmington, Delaware.

13 19. At all times relevant hereto, Defendant was in the business of providing, *inter-alia*,
14 insurance services to individuals in California. Defendant collected, and failed to adequately
15 refund, car insurance premiums in California.

16 **CALIFORNIA INSURANCE COMMISSIONER ACTIONS**

17 20. On April 13, 2020, the California Insurance Commissioner Ricardo Lara issued
18 Bulletin 2020-3.¹ At that time, the Commissioner stated:

19 Insurance Commissioner Ricardo Lara recognizes that the COVID-19
20 pandemic has caused an unprecedented challenge for California's
21 businesses and residents. In response to the COVID-19 pandemic,
22 Governor Gavin Newsom on March 4, 2020 declared a statewide State of
23 Emergency. Californians were ordered to "shelter-in-place" shortly
24 thereafter.

25 The COVID-19 pandemic has severely curtailed activities of policyholders
26 in both personal and commercial lines. As a result, projected loss
27 exposures of many insurance policies have become overstated or
28 misclassified. This is especially true for policies where premiums are
based partly on measures of risk such as number of miles driven, revenue,
and payrolls which have all dropped significantly because of COVID-19.

¹ <http://www.insurance.ca.gov/0250-insurers/0300-insurers/0100-applications/rsb-forms/2020/upload/Covid19CABulletin2020-3.pdf>

1 According to UC Davis' Special Report on Impact of COVID-19 on
2 California Traffic Accidents, reduced driving has resulted in fewer
3 accidents, injuries, and fatalities on public highways and roads. In
4 addition, the Consumer Federation of California Education Foundation
5 (CFC) on March 23, 2020, submitted to the Insurance Commissioner a
6 Petition for Hearing to redress excessive automobile insurance rates and
7 premiums caused by the COVID-19 pandemic. Commissioner Lara agrees
8 that the overall risk of loss for private passenger automobile insurance is
9 lower due to the pandemic, however, the Commissioner also recognizes
10 that these reductions in risk extend beyond the automobile line of
11 insurance referenced in the Petition. Accordingly, this Bulletin requires
12 broader premium reductions for other lines of insurance in addition to
13 reductions for the private passenger automobile insurance line.

14 To protect consumers and to provide consistent direction to the insurance
15 industry regarding misclassifications of risk resulting from the COVID-19
16 pandemic and to address certain issues raised in CFC's petition,
17 Commissioner Lara hereby orders insurers to make an initial premium
18 refund for the months of March and April to all adversely impacted
19 California policyholders in the following lines of insurance, as quickly as
20 practicable, but in any event no later than 120 days after the date of this
21 Bulletin:

- 22 • Private passenger automobile insurance
- 23 • Commercial automobile insurance
- 24 • Workers' compensation insurance
- 25 • Commercial multiple peril insurance
- 26 • Commercial liability insurance
- 27 • Medical malpractice insurance
- 28 • Any other line of coverage where the measures of risk have
become substantially overstated as a result of the pandemic.

19 If the COVID-19 pandemic continues beyond May, Commissioner Lara
20 will send out a subsequent Bulletin to insurers and provide appropriate
21 instructions.

22 Commissioner Lara grants each insurer reasonable flexibility in
23 determining how best to quickly and fairly accomplish the refund of
24 premium to policyholders. Insurers may comply with the premium refund
25 order by providing a premium credit, reduction, return of premium, or
26 other appropriate premium adjustment.

27 ...

1 21. On May 15, 2020, the California Insurance Commissioner issued Bulletin 2020-
2 4,² which extended the relevant time prior for Bulletin 2020-3, thereby requiring refunds into the
3 coming months (beyond May) should stay-at-home orders at curtailed driving behavior have
4 continued, which they did.

5 22. On June 25, 2020, the California Insurance Commissioner issued Bulletin 2020-
6 8,³ which again extended the directives of the prior bulletins, requiring refunds for months
7 subsequent to June 2020, as appropriate. At that time, the Commissioner clarified that
8 “[a]lthough California recently began to ease stay at home restrictions, depending on the type of
9 insurance product and the claims experience of each insurer, current circumstances justify
10 continuing premium relief to certain policyholders to reflect accurately the current risk of loss.”
11 Defendant, however, did not provide any further refunds to “reflect accurately the current risk of
12 loss.”

13 23. On March 11, 2021, the California Insurance Commissioner issued Bulletin 2021-
14 03.⁴ That bulletin made it clear that California insurance companies, like Defendant, had not
15 returned nearly enough premium to their customers to reflect the decreased risk of loss in 2020:

16 The public health “stay-at-home” orders and the resulting decrease in
17 economic activity following the onset of the COVID-19 pandemic in
18 March 2020 decreased the risk of loss for California insurance consumers
19 in many lines of insurance. In response, I directed insurance companies to
20 return a portion of premiums and to report data about their premium relief
21 actions to the Department of Insurance (Department) for our review. To
22 date, private passenger automobile insurance companies have returned
23 more than \$1.75 billion in premium for 2020 to California drivers through
24 direct payments, credits, and future premium offsets. **However, based on
extensive analysis of data received, the Department’s review of this
loss data demonstrates the premium relief that insurance companies
provided to their policyholders was insufficient, leaving consumers**

25 ² [https://www.insurance.ca.gov/0250-insurers/0300-insurers/0200-bulletins/bulletin-notices-commiss-
opinion/upload/Bulletin-2020-4-Premium-Refunds-Credits-and-Reductions-in-Response-to-COVID-19-
Pandemic.pdf](https://www.insurance.ca.gov/0250-insurers/0300-insurers/0200-bulletins/bulletin-notices-commiss-opinion/upload/Bulletin-2020-4-Premium-Refunds-Credits-and-Reductions-in-Response-to-COVID-19-Pandemic.pdf)

26 ³ [http://www.insurance.ca.gov/0250-insurers/0300-insurers/0100-applications/rsb-forms/2020/upload/Bulletin2020-
8_Released_June252020.pdf](http://www.insurance.ca.gov/0250-insurers/0300-insurers/0100-applications/rsb-forms/2020/upload/Bulletin2020-8_Released_June252020.pdf)

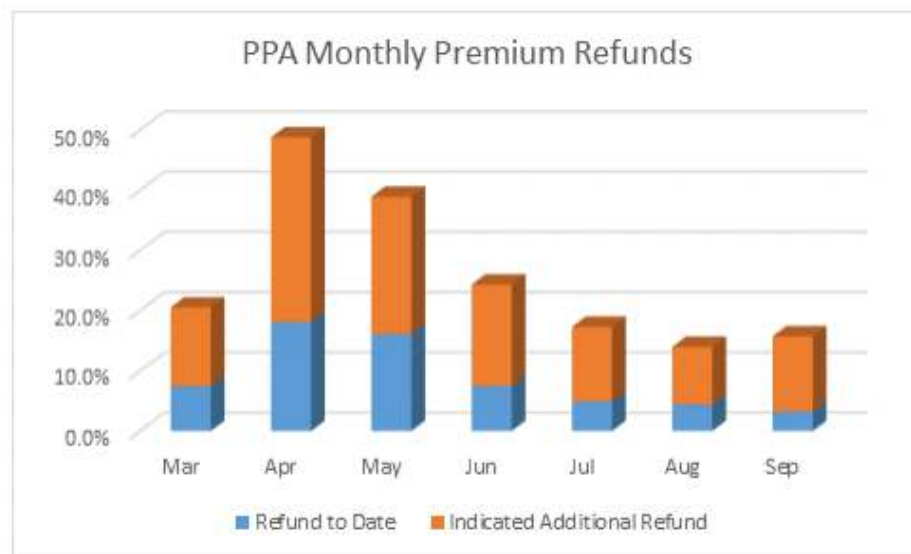
27 ⁴ [http://www.insurance.ca.gov/0250-insurers/0300-insurers/0200-bulletins/bulletin-notices-commiss-
opinion/upload/Bulletin-2021-03-Premium-Refunds-Credits-and-Reductions-in-Response-to-COVID-19-
Pandemic.pdf](http://www.insurance.ca.gov/0250-insurers/0300-insurers/0200-bulletins/bulletin-notices-commiss-opinion/upload/Bulletin-2021-03-Premium-Refunds-Credits-and-Reductions-in-Response-to-COVID-19-Pandemic.pdf)

1 **paying inflated premiums while they continue to experience reduced**
 2 **risk of loss.**

3 ...

4 The Department analyzed bodily injury, property damage, and collision
 5 data for the months of January through September 2020 for the top 10
 6 Private Passenger Automobile groups in the state. Together, these groups
 7 represent over 80 percent of the private passenger automobile insurance
 8 market in California. Although some insurance companies demonstrably
 9 made a good faith effort to return premium to policyholders, some did not
 10 return enough. **Even worse, some insurance companies simply stopped**
 11 **returning premium altogether after June of 2020, although the**
 12 **pandemic still continues.**

13 The data collected by the Department demonstrates that, on average,
 14 insurance companies over-collected premium due to the lower loss
 15 exposures during the pandemic and did not return enough premium to
 16 drivers. If insurance companies do not supplement initial premium refunds
 17 from March through September of 2020, the premium refunds will fall
 18 short of an appropriate premium adjustment for private passenger
 19 automobile insurance by nearly half of the expected premium adjustment
 20 on average over that sevenmonth period. 1 These results are illustrated in
 21 the following refund graphic for the top 10 private passenger automobile
 22 (PPA) insurance groups in California:



In short, many California drivers have been paying overstated premiums that do not reflect the reduced risk of loss during the continuing pandemic.

The Department's data analysis is consistent with a finding, recently reported to the California Automobile Assigned Risk Plan Advisory

1 Committee, that California Low Cost Automobile incurred claims costs
2 from March through November 2020 were considerably lower than
3 previous years. **As a result, the Advisory Committee recommended**
4 **premium refunds to Low Cost Automobile policyholders of 30% for**
5 **the months of March, April, and May, followed by a 15% premium**
6 **reduction for the months of June and July, and a 20% premium**
7 **reduction for August through December.**

8 24. Accordingly, the California Insurance Commissioner directed insurance
9 companies, like Defendant, “to return additional premium relief from March 2020 forward.”

10 25. As noted above, the refunds for automobile policy holders should have been 30%
11 for the months of March, April, and May, followed by a 15% premium reduction for the months
12 of June and July, and a 20% premium reduction for August through December.

13 26. However, the refunds provided by Defendant were far lower than they should
14 have been. Defendant first made a 15% refund covering the months of March and April 2020. It
15 then made another 15% refund covering the month of May, and then ceased all further refunds or
16 credits. Like the 2021 Bulletin noted, Defendant is one of the “insurance companies [that]
17 simply stopped returning premium altogether after June of 2020, although the pandemic still
18 continues.”

19 **OTHER INDEPENDENT STUDIES ALSO SHOW THAT DEFENDANT’S REFUNDS**
20 **ARE INADEQUATE**

21 27. The California Insurance Commissioner was not alone in finding that Defendant’s
22 15% refund for some limited months in 2020 was inadequate. For instance, in May 2020, the
23 Center for Economic Justice and the Consumer Federation of America released a report finding
24 that “[m]otor vehicle data indicate a minimum average 30% premium relief payment [is] needed
25 starting March 18, 2020 through May 2020, even after accounting for offsetting factors.”⁵
26 Clearly, the 15% refund that Defendant issued is inadequate.

27 28. Similarly, the UC Davis Road Ecology Center released a report in April 2020 that
28 found that after Governor Newsom’s shelter-in-place orders went into effect, “collisions and

⁵ <https://consumerfed.org/wp-content/uploads/2020/05/Auto-Insurance-Refunds-COVID-19-Update-Report-5-7-20.pdf>

CLASS ALLEGATIONS

1
2 31. Plaintiff brings this action on his own behalf and on behalf of a California class of
3 similarly situated persons. Plaintiff seeks certification of the following class (the “Class”):

4 All California residents who purchased personal automobile, motorcycle, or RV
5 insurance from Defendant covering any portion of the time period from March 1, 2020
6 through March 1, 2021. Any judicial officer to whom the Action is assigned is excluded
7 from the Class.

8 32. Numerosity of the Class: The Class is composed of at least thousands of
9 individuals who purchased insurance in California, the joinder of which in one action would be
10 impracticable. The disposition of their claims through this class action will benefit both the
11 parties and the Court. The identities of individual members of the Class are ascertainable
12 through Defendant’s billing records.

13 33. Existence and Predominance of Common Questions of Fact and Law: There is a
14 well-defined community of interest in the questions of law and fact involved affecting the
15 members of the proposed Class. The questions of law and fact common to the proposed Class
16 predominate over questions affecting only individual class members. Such questions include,
17 but are not limited to, the following:

- 18 a. Whether Defendant adequately provided refunds to its California
19 policyholders during the COVID-19 pandemic;
- 20 b. Whether Defendant’s failure to provide adequate refunds is unfair;
- 21 c. Whether Plaintiff and the proposed Class members are entitled to
22 restitution or refund of premiums;
- 23 d. Whether Plaintiff and the proposed Class members are entitled to an
24 award of reasonable attorneys’ fees, pre-judgment interest and costs of this
25 suit; and

26 34. Typicality: Plaintiff is asserting claims that are typical of the proposed Class
27 members’ claims, having paid inflated premiums to Defendant, and having failed to have
28 received adequate refunds. Plaintiff and the proposed Class members have similarly suffered
harm arising from Defendant’s violations of the law, as alleged herein.

1 35. Adequacy: Plaintiff is an adequate representative of the proposed Class. His
2 interests do not conflict with, and are not antagonistic to, the interests of the members of that
3 Class. Plaintiff will fairly and adequately represent and protect the interests of the Class.

4 36. Superiority: A class action is superior to other available means for the fair and
5 efficient adjudication of Plaintiff’s and the proposed Class members’ claims. Plaintiff and the
6 members of the proposed Class have suffered irreparable harm as a result of Defendant’s unfair,
7 unlawful, and unconscionable conduct. Because of the size of the individual Class members’
8 claims, few, if any, proposed Class members could afford to seek legal redress for the wrongs
9 complained of herein. Absent a class action, the proposed Class members will continue to suffer
10 losses, and the violations of law described herein will continue without remedy, and Defendant
11 will be permitted to retain the proceeds of its misdeeds. Defendant continues to engage in the
12 unlawful, unfair, and unconscionable conduct that is the subject of this Complaint.

13 **FIRST CAUSE OF ACTION**

14 **Violation of California Unfair Competition Law (“UCL”)**
15 **Cal. Bus. & Prof. Code § 17200 et seq.**

16 37. Plaintiff incorporates herein by reference the allegations contained in all
17 preceding paragraphs of this complaint.

18 38. Plaintiff brings this claim individually and on behalf of the members of the Class
19 against Defendant.

20 39. Plaintiff and Defendant are “persons” as defined by § 17201.

21 40. Defendant’s retention of, and failure to refund, premiums as alleged herein
22 constituted unfair business acts and practices. The failure to refund adequate premiums is unfair
23 because it allowed Defendant to retain refunds that are not based on an accurate assessment of
24 risks, and was an unfair and unreasonable application of approved rates.

25 41. There is also no benefit to society or consumers from Defendant’s failure to
26 adequately refund its customers, and its conduct is substantially injurious to customers, and the
27 gravity of its conduct is outweighed by any benefits. Further, consumers had no reasonable
28 alternatives and could not have avoided Defendant’s actions, as it was not known that Defendant

1 or any other insurance companies would fail to appropriately refund premiums at the outset of
2 the pandemic.

3 42. Defendant's failure to provide adequate refunds also offends California public
4 policy that the cost of insurance be fair, transparent, and affordable. The California Insurance
5 Commissioner's many public bulletins and directives ordering California car insurance
6 companies like Defendant to provide additional and adequate refunds further evidences this
7 public policy as applied to the COVID-19 pandemic.

8 43. Plaintiff and the members of the Class have suffered an injury in fact resulting in
9 the loss of money and/or property as a proximate result of the violations of law and wrongful
10 conduct of Defendant alleged herein, and they lack an adequate remedy at law to address the
11 unfair conduct at issue here. As a result of Defendant's failure to provide adequate refunds,
12 Plaintiff and the members of the Class are entitled to restitution and injunctive relief.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff, individually and on behalf of the members of the Class, prays:

15 A. For an order certifying the Class and appointing Plaintiff and the undersigned
16 counsel of record to represent the Class;

17 B. For a permanent injunction enjoining Defendant, its partners, joint ventures,
18 subsidiaries, agents, servants, and employees, and all persons acting under, in concert with them
19 directly or indirectly, or in any manner, from in any way engaging in the unfair and unlawful
20 practices and violations of law set forth herein;

21 C. For full restitution of all funds acquired from Defendant's unfair business
22 practices and other violations of law, including disgorgement of profits;

23 D. For imposition of a constructive trust upon all monies and assets Defendant has
24 acquired as a result of its unfair and unlawful practices;

25 E. For costs of suit herein;

26 F. For both pre- and post-judgment interest on any amounts awarded;

27 G. For payment of reasonable attorneys' fees; and
28

1 H. For such other and further relief as the Court may deem proper.

2 **DEMAND FOR JURY TRIAL**

3 Plaintiff hereby demands a trial by jury.

4
5 Dated: February 7, 2022

Respectfully submitted,

6 **BURSOR & FISHER, P.A.**

7 By: /s/ Joel D. Smith

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