

1 Brian S. Kabateck, State Bar No. 152054
2 bsk@kbklawyers.com
3 Shant A. Karnikian, State Bar No. 285048
4 sk@kbklawyers.com
5 **KABATECK LLP**
6 633 W. 5th St., Suite 3200
7 Los Angeles, CA 90071
8 Phone: (213) 217-5000

9 John J. Reagan (*pro hac vice* pending)
10 reagan@knrlegal.com
11 Christopher J. Van Blargan (*pro hac vice* pending)
12 cvanblargan@knrlegal.com

13 **KISLING NESTICO & REDICK, LLC**
14 3412 W. Market Street
15 Akron, OH 44333
16 Phone: (330) 729-1090

17 *Counsel for Plaintiffs and all others similarly situated*

18 **UNITED STATES DISTRICT COURT**
19 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

20 FRANCISCO ROCHA, an individual;
21 and ESTER ROCHA, an individual, on
22 behalf of themselves and all others
23 similarly situated,

24 Plaintiffs.

25 vs.

26 AMCO INSURANCE COMPANY, a
27 California entity; NATIONWIDE
28 INSURANCE COMPANY OF
AMERICA, a California entity;
ALLIED PROPERTY AND
CASUALTY INSURANCE
COMPANY, a California entity;
VICTORIA FIRE AND CASUALTY
COMPANY, a California entity;
CRESTBROOK INSURANCE
COMPANY, a California entity;
DEPOSITORS INSURANCE
COMPANY, a California entity;
NATIONWIDE MUTUAL
INSURANCE COMPANY, a
California entity; and TITAN
INDEMNITY COMPANY, a
California entity,

Defendants.

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiffs, Francisco Rocha and Ester Rocha (hereinafter referred to as
2 “Plaintiffs”) by and through counsel, who hereby bring this action on their own
3 behalf and on behalf of the class of individuals defined below, allege the following
4 based on their own personal knowledge pertaining to themselves and on
5 information and belief as to other allegations, as for the their Complaint against
6 Defendants, Amco Insurance Company, Nationwide Insurance Company of
7 America, Allied Property and Casualty Insurance Company, Victoria Fire and
8 Casualty Company, Crestbrook Insurance Company, Depositors Insurance
9 Company, Nationwide Mutual Insurance Company and Titan Indemnity Company,
10 (hereinafter “Defendants”, “Nationwide Corp. Group,” and/or “Control Group”).

11 **NATURE OF THE ACTION**

12 1. Plaintiffs bring this suit on behalf of themselves and the following
13 Class of persons:

14 All of the Defendants’ current and former policyholders qualified under
15 California Law to purchase a Good Driver Discount (“GDD”) policy who,
16 from January 1, 2009 through the last date Titan and Victoria sold personal
17 auto policies in California (“Class Period”), paid premiums for Defendants’
18 automobile policies containing a GDD (as defined in Cal. Ins. Code § 660),
19 in excess of the lowest rate GDD policy available for that coverage from
20 another insurance company within Defendants’ California-Licensed Common
Ownership, Management or Control (“Control Group”).

21 Excluded from the Class are:

- 22 (1) All present and former directors, officers, and management
23 employees of Defendants;
24 (2) Any current or former policyholders who filed a lawsuit
25 involving any of the claims asserted herein;
26 (3) Employees of Plaintiffs’ Class Counsel in the case and their
27 immediate families, any judge assigned to this case and their
28 staff, Defendants’ Counsel of record, and their immediate
families; and,

1 (4) All persons who make a timely and proper election to be
2 excluded from the Class.

3 2. From January 1, 2009 through approximately 2019, when Victoria and
4 Titan stopped selling personal auto liability policies in California (“Class Period”),
5 Plaintiffs paid premiums for Defendants’ automobile liability policies (defined in
6 Cal. Ins. Code § 660) for personal automobile liability coverage in California, but
7 did not receive the lowest Good Driver rate available for that coverage from the
8 Defendant insurer that had the lowest Good Driver rate.

9 3. California Law requires that insurance companies that write
10 automobile coverage for liability, physical damage collision “or any combination
11 thereof” for defined private passenger vehicles sell GDD policies to the statutory
12 qualified drivers, (Cal. Ins. Code §§ 1861.02 and 1861.025).

13 4. The statutorily qualified Good Drivers are entitled to be offered by
14 insurance company agents or representatives and are entitled to purchase the policy
15 with the lowest Good Driver rate for that coverage from any company within the
16 group of insurers having common ownership or operating in California under
17 common management or control, (aka “Control Group”)

18 5. Defendants are of a common ownership, management or control
19 “Control Group”, known as Nationwide Corp. Group.

20 6. Defendants, acting together in concert and holding themselves out to
21 be a single entity, through their agents and representatives, all of whom Defendants
22 control, have unlawfully failed to offer and Defendants have failed to sell, GDD
23 policies for their Private Passenger Automobile Insurance policies (“PPA”) to
24 Plaintiffs and their other qualified California Good Drivers in the Class, from the
25 Defendant insurer with the lowest Good Driver rates for that coverage.

26 7. Cal. Ins. Code § 1861.02(b)(1) requires “every person who meets the
27 criteria of § 1861.025 shall be qualified to purchase a GDD policy.” Cal. Ins.
28 Code §1861.02(b)(2) indicates “the rate charged for a Good Driver Discount policy

1 shall comply with subdivision (a) and shall be at least 20% below the rate the
2 insured would otherwise have been charged for the same coverage.”

3 8. Plaintiffs and the Class all held insurance policies issued by one or
4 more of the Defendants. Plaintiffs, along with all members of the putative class,
5 qualify as “Good Drivers” as defined in Cal. Ins. Code §§ 1861.02 and 1861.025.

6 9. Plaintiffs do not challenge the premium rates approved by the
7 California Department of Insurance for use by any of the Defendants. Rather, the
8 subject of this lawsuit is the unlawful, unfair and fraudulent business operations,
9 marketing, management and sales practices of the Defendants as members of the
10 same Control Group.

11 10. Plaintiffs further allege that Defendants did not comply with California
12 Law by failing to offer, through their agents and representatives, all of whom
13 Defendants control, nor did the Defendant insurers sell, the lowest Good Driver rate
14 PPA that was available from the Defendants in their Control Group, to the Plaintiffs
15 and the Class they propose to represent.

16 11. Had the Defendant insurers’ agents and representatives, all of whom
17 are controlled by Defendants for all issues associated with this Complaint, offered
18 the lowest Good Driver rate PPA that was available from other companies in its
19 Control Group, and had the Defendants sold the lowest Good Driver PPA to the
20 Plaintiffs and the members of the Class, they would have accepted the lower Good
21 Driver rate policies from the other Defendants’ insurers. Plaintiffs and the Class
22 were therefore overcharged by paying premiums which were in excess of the lowest
23 available premium offered by any of the Defendant insurers within the Control
24 Group.

25 12. Throughout the Class Period, Defendants have unlawfully overcharged
26 Plaintiffs and the Class members for, and wrongfully retained, automobile
27 insurance premiums in violation of Defendants’ fiduciary duties, policy contractual
28 obligations and marketing representations, in violation of Cal. Bus. Prof. Code §

1 17200 and in violation of other applicable California Law (Cal. Ins. Code § 660,
2 §1861.02, §1861.025, §1861.15 and §1861.16).

3 13. Plaintiffs and all members of the Class held insurance policies issued
4 by one or more of Defendants' Control Group companies and paid premium
5 overcharges as a result of Defendants' unlawful acts and misrepresentations.

6 14. During the Class Period, Defendants were commonly owned or
7 operated under common management, and belong to the Control Group
8 "Nationwide Corp. Group." Nationwide Corp. Group is identified by the National
9 Association of Insurance Commissioners ("NAIC") as Group #0140. The
10 Nationwide Corp. Group (Defendants) had common ownership, Nationwide Mutual
11 Insurance Company, ("NMIC") and operated in California under common
12 management or control as set forth in Cal. Ins. Code § 1861.16(b).

13 15. Plaintiffs and the Class were, at times during the Class Period, legally
14 qualified "Good Drivers" as defined in Cal. Ins. Code §§ 1861.02 and 1861.025.

15 16. There was actual or apparent agency among Defendants with respect to
16 the marketing of policies, marketing of GDD, and the resulting legal and
17 contractual responsibilities of each Defendant Company on behalf of the other
18 named Defendant Companies.

19 17. Plaintiffs and the Class were all policyholders of Defendants insurers
20 who were statutorily defined Good Drivers in the State of California during the
21 Class Period. Plaintiffs and the Class were entitled to the legally required lowest
22 Good Driver rate for a PPA policy offered by the agents and representatives of the
23 Nationwide Corp. Group (Defendants).

24 18. Defendants, through their agents and representatives, systematically
25 and uniformly failed to provide the lowest Good Driver premium rates to Plaintiffs
26 and the Class, rather overcharging Plaintiffs and the Class and thereby engaging in
27 and continuing to engage in unlawful, unjust, bad faith, fraudulent and/or unfair
28 business practices.

1 25. Plaintiff, Ester Rocha is a citizen of the State of California and is a
2 customer of Defendants. Mrs. Rocha resides in Lake Elsinore, California in the
3 County of Riverside.

4 26. Plaintiffs have jointly been loyal customers of Nationwide Corp.
5 Group (Defendants) and NMIC, for more than ten years.

6 27. Plaintiffs have purchased automobile insurance from Defendants.
7 Plaintiffs have purchased two PPA policies from Defendant Amco Insurance
8 Company, (“AMCO”). Plaintiffs and the Class they propose to represent, were
9 Good Drivers during the Class Period as defined by Cal. Ins. Code § 1861.02 and
10 §1861.025.

11 28. Defendant, Amco Insurance Company, (AMCO), NAIC #19100 is an
12 insurance company domiciled in the State of Iowa that, at times during the Class
13 Period, routinely conducted business and maintained a physical presence in the
14 State of California.

15 29. Defendant, Nationwide Insurance Company of America, (NICOA),
16 NAIC #25453 is an insurance company domiciled in the State of Wisconsin that, at
17 times during the Class Period, routinely conducted business and maintained a
18 physical presence in the State of California.

19 30. Defendant, Allied Property and Casualty Insurance Company, (Allied),
20 NAIC #42579 is an insurance company domiciled in the State of Iowa that, at times
21 during the Class Period, routinely conducted business and maintained a physical
22 presence in the State of California.

23 31. Defendant, Victoria Fire and Casualty Company, (VFCC), NAIC
24 #42889 is an insurance company domiciled in the State of Ohio that, at times during
25 the Class Period, routinely conducted business and maintained a physical presence
26 in the State of California.

27 32. Defendant, Crestbrook Insurance Company, (Crestbrook), NAIC
28 #18961 is an insurance company domiciled in the State of Ohio that, at times during

1 the Class Period, routinely conducted business and maintained a physical presence
2 in the State of California.

3 33. Defendant, Depositors Insurance Company, (Depositors), NAIC
4 #42587 is an insurance company domiciled in the State of Iowa that, at times during
5 the Class Period, routinely conducted business and maintained a physical presence
6 in the State of California.

7 34. Defendant, Nationwide Mutual Insurance Company, (NMIC), NAIC
8 #23787 is an insurance company domiciled in the State of Ohio that, at times during
9 the Class Period, routinely conducted business and maintained a physical presence
10 in the State of California.

11 35. Defendant, Titan Indemnity Company, (Titan), NAIC #13242 is an
12 insurance company domiciled in the State of Texas that, at times during the Class
13 Period, routinely conducted business and maintained a physical presence in the
14 State of California.

15 36. All Defendants are related and affiliated companies within the same
16 Control Group, Nationwide Corp. Group, NAIC Group #0140.

17 37. Defendant VFCC is owned by THI Holdings (Delaware), Inc.,
18 (“THI”). THI is owned by Nationwide Mutual Insurance Company. Except for
19 VFCC, all the Defendants’ Rate Filings, are under the same Common Class Plan.
20 However, during the Class Period, VFCC, has filed separate Rate Filings, with the
21 California Department of Insurance (“CDI”).

22 38. Each of the Defendant companies charge premiums and issued policies
23 to the Class member policyholders for PPA policies that are subject to the
24 California Insurance Code Provisions resulting from the passage of Proposition
25 103.

26 39. Control Group (Defendants) held themselves out as a single entity
27 when marketing their insurance products, offering, through their agents and
28 representatives, including company employee representatives for directly written

1 business, a GDD policy for California automobile policyholders. There was actual
2 and/or apparent agency among the Defendants with respect to the conduct,
3 including, but not limited to, the offering of personal lines Good Driver policies
4 through their agents and representatives, marketing of the policies, marketing of the
5 GDD and the resulting legal and contractual responsibilities of each of the
6 Defendant companies on behalf of the other named Defendant companies.

7 40. Throughout the Class Period, Defendants issued the same and/or
8 substantially similar personal lines policy forms and coverages, rate filings,
9 including required lower rates for Good Drivers, and marketing representations
10 with respect to Good Driver rates.

11 41. A common group of representatives, agents and/or employees of the
12 Nationwide Corp. Group (Defendants) directed and committed the wrongful acts
13 alleged here, including over charging Good Driver California policyholders for auto
14 insurance and failing to reimburse Plaintiffs and the Class for those overcharges.

15 42. The wrongful conduct was perpetrated by each of the Defendants as
16 members of the same Control Group (Nationwide Corp. Group) all acting in the
17 State of California.

18 **BACKGROUND**

19 43. Plaintiffs and the members of the Class were, during the Class Period,
20 Good Drivers as defined in Cal. Ins. Code §§ 1861.02 and 1861.025. Attached
21 herein as **Exhibit A** to this Complaint is a copy of Plaintiffs' Declaration Pages
22 which shows Plaintiffs' Good Driver status. Plaintiffs and each of the Class
23 members were also a Good Driver policyholder (the policy being defined as in Cal.
24 Ins. Code § 660), and entitled to be offered by Defendants' agents and
25 representatives, and sold Defendants' legally required lowest available Good Driver
26 premium rates from Defendants' Control Group, during the Class Period.

27 44. Defendants ratified its agents' and representatives' wrongful acts of
28 failing to offer the lowest Good Driver rate for that type of coverage to Plaintiffs

1 and putative class members. Defendants failed to sell the lowest GDD policy to
2 Plaintiffs and Class members from an insurer within the common ownership,
3 management or control group, which offers the lowest rates for that coverage.

4 **DEFENDANTS’ WRONGFUL PRACTICES**

5 45. California Law requires that insurance companies, writing automobile
6 coverage for liability, physical damage, collision or any combination thereof, for
7 defined private passenger vehicles, offer, through their agents or representatives, a
8 GDD to qualified drivers. (Cal. Ins. Code §§ 1861.02 and 1861.025). The statutory
9 language reads in part:

10 Cal. Ins. Code § 1861.02

11 * * *

12 Every person who meets the criteria of § 1861.025 shall
13 be qualified to purchase a Good Driver Discount policy
14 from the insurer of his or her choice. An insurer shall not
15 refuse to offer and sell a Good Driver Discount policy to
16 any person who meets the standards of this subdivision.”
17 Cal. Ins. Code § 1861.02(b)(1). “The rate charged for a
18 Good Driver Discount policy shall comply with
19 subdivision (a) and shall be at least 20% below the rate
20 the insured would otherwise have been charged for the
21 same coverage. Rates for Good Driver Discount policies
22 shall be approved pursuant to this article.

23 46. The requirements in Cal Ins. Code §§1861.02, 1861.025, and 1861.16
24 are mandatory regardless of the coverage offered. Such drivers are entitled to
25 purchase the policy with the lowest Good Driver rate for that type of coverage from
26 the Control Group of insurance companies with the lowest rate.

27 47. California Law requires an agent or representative of an insurer within
28 a Control Group to offer a qualified Good Driver the policy with the lowest rates for
that coverage offered by any of the insurers within the Control Group. This is

1 referred to as the “Cross-Company” offer requirement of Cal. Ins. Code §
2 1861.16(b). Cal. Ins. Code § 1861.16(b) provides in relevant part as follows:

3
4 An agent or representative representing one or more
5 insurers having common ownership or operating in
6 California under common management or control shall
7 offer, and the insurer shall sell, a Good Driver Discount
8 policy to a Good Driver from an insurer within that
9 common ownership, management or control group,
10 which offers the lowest rates for that coverage. This
11 requirement applies notwithstanding the underwriting
12 guidelines of any of those insurers or the underwriting
13 guidelines of the common ownership, management, or
14 control group.

12 As all Defendant companies had, during the Class Period, common
13 ownership, management or control, their Agents or representatives were required to
14 offer, and the Defendant insurers were required to sell, a Good Driver Discount
15 policy to a Good Driver, from the Defendant insurer with the lowest Good Driver
16 rate.

17 48. Cal. Ins. Code § 1861.16(b) provides a limited exception to the Cross-
18 Company offer requirement for insurers with common ownership, management or
19 control. To receive the exception, all insurers in the Control Group, must meet all
20 of the strict criteria establishing genuine and complete company independence
21 (“Separation Requirement”), from the other affiliated insurers in the Control Group.
22 This exception to the Cross Company offer requirement is known as the (“Super
23 Group Exemption”). The exception is detailed in Cal. Ins. Code §1861.16(c)(1). It
24 reads in relevant part:

25
26 Notwithstanding subdivision (b), insurers having common ownership
27 and operating in California under common control are not required to
28 sell Good Driver Discount policies issued by other insurers within the

1 common ownership group if the commissioner determines that the
2 insurer satisfies each of the following conditions:

- 3 (A) The business operations of the insurers are independently
4 managed and directed;
- 5 (B) The insurers do not jointly develop loss or expense
6 statistics or other data used in rate making, or in the
7 preparation of rating systems or rate filing;
- 8 (C) The insurers do not jointly maintain or share loss or
9 expense statistics, or other data used in rate making or in
10 the preparation of rating systems or rate filings. This
11 condition shall not apply if the data is generally available
12 to the industry through a non-affiliated third party and is
13 obtained from that third party;
- 14 (D) The insurers do not utilize each other's marketing sales,
15 or underwriting data;
- 16 (E) The insurers act independently of each other in
17 determining, filing, and applying base rates, factors, class
18 plans, and underwriting rules, and in the making of
19 insurance policy forms;
- 20 (F) The insurers' sales operations are separate;
- 21 (G) The insurers' marketing operations are separate; and,
- 22 (H) The insurers' policy service operations are separate.

23 Cal. Ins. Code § 1861.16(c)(1)

24 49. The limited Super Group Exemption, exempts insurers that are under
25 common ownership, management or control, from the Cross Company offer
26 requirement. However, all eight of the exemption criteria must be strictly adhered
27 to at all times, to permit the Control Groups' insurers, to operate with the Super
28 Group Exemption. This current version of Cal Ins. Code §1861.16(c)(1)[A-H],
became the law on January 1, 2005.

50. All of the aforementioned exception criteria outlined in Cal. Ins. Code
§1861.16(c)(1)[A-H] must be strictly met at all times. Otherwise, the Defendants'
agents and representatives must Cross-Company offer and the Defendants must sell,
to statutorily defined Good Drivers, the PPA policy from the Nationwide Corp.
Group, with the lowest Good Driver Discounted rate.

1 51. However, the Defendants, during the Class Period did not comply with
2 eight criteria enumerated in §1861.16(c)(1)[A-H], and therefore, Defendants were
3 not entitled to the Super Group Exemption. Among other things, as evidenced in
4 the sworn affidavit of former Nationwide “commercial auto product manager”
5 Harold Rummel (attached hereto as **Exhibit B**), Defendants conducted joint
6 marketing meetings and assisted each other in developing marketing and sales
7 channels including the sharing of agent lists and set-up of agent introduction for the
8 benefit of NMIC as a whole rather than the benefit of the individual company
9 providing assistance to its affiliate company. [**Exhibit B:** Affidavit of Harold
10 Rummel.] This coordination regularly occurred between Allied, Titan, and Victoria
11 in California. [**Exhibit B:** Affidavit of Harold Rummel.]. Accordingly, Defendants’
12 agents and representatives, were required to abide by the Cross-Company offer
13 requirement, and thus must offer the lowest GDD policy and the Defendants were
14 required to sell the lowest GDD policy which offered the lowest Good Driver rate
15 “for that coverage” from all the Defendants’ insurers, to the Plaintiffs and the Class
16 they purported to represent.

17 52. “For that coverage” is a term that refers to the same *general policy* type
18 of coverage for the three types of coverage listed (liability, physical damage and
19 collision) in Cal. Ins. Code §§ 660(a)-(d). Cal. Ins. Code §660 is referenced in
20 §1861.16(a) pertaining to the definition of a “policy” and thus relates to the same or
21 substantially similar coverage for the same general policy type.

22 53. As a result of the Defendants’ agents and representatives failing to
23 offer the lowest Good Driver rate for the coverages, and as a result of the
24 Defendants failing to sell the lowest Good Driver rate to the Plaintiffs and the Class
25 members, the Defendants, all within the same Control Group, charged excessive
26 premiums and continue to unlawfully retain the excessive premiums paid.

27 54. Although the Plaintiffs and the Class members they seek to represent,
28 were all Defendants’ insureds, that were qualified for, and entitled to receive, the

1 lowest Good Driver rate for that coverage, the contractually and legally required
2 lowest premium rate was not given to Plaintiffs or the members of the Class. The
3 charged policy premium amounts for personal lines automobile coverages were in
4 excess of Defendants' approved policy premiums contained in their regulatory rate
5 filings and/or in violation and breach of the expressed and/or implied marketing
6 representations of Defendants.

7 55. Defendants did not satisfy all of the eight conditions enumerated in
8 Cal. Ins. Code § 1861.16(c)(1)[A-H]. Therefore, Defendants did not qualify for the
9 Super Group Exemption. Absent the exemption, agents and representatives for the
10 Defendants must Cross Company offer and the Defendants were required to sell to
11 the Plaintiff and the Class Members the lowest Good Driver rate available among
12 all Defendant insurers. The company with the lowest Good Driver rate is from
13 VFCC. A PPA policy of insurance from VFCC, was not offered to the Plaintiffs or
14 Class Members, by the Agents and Representatives of the Defendants. Had it been
15 offered, Plaintiffs and the Class Members would have accepted the offer and
16 purchased a PPA policy of insurance from VFCC.

17 56. During the Class Period, Defendants filed "Exhibit 19s" with the
18 California Department of Insurance, (CDI) for each of the Defendant companies in
19 the Nationwide Corp. Group. In doing so, Defendants declared, under oath, that
20 they were, and would continue operating each individual Defendant insurer,
21 completely separate and independent, ("Separation Requirement"). The Separation
22 Requirement, (as set forth in §1861.16(c)), was an on-going duty that the
23 Defendants were required to maintain at all times in order to satisfy the Super
24 Group Exemption from the Cross Company offer requirement. Failing to meet any
25 of the eight requirements listed in Cal. Ins. Code §1861.16(c)[A-H] would
26 immediately result in the removal of the Defendants' Super Group Exemption.

27 57. Exhibit 19 is a form that must be included in a filing by an insurance
28 company to assert such facts as the insurer represents will qualify the insurer for the

1 Super Group Exemption from the restrictions of Cal. Ins. Code §1861.16, that are
2 placed upon an insurer that operates within a Control Group. However, the filing of
3 an Exhibit 19 is not a certification that an insurer qualifies for the Super Group
4 Exemption, rather it is merely an assertion and declaration under oath by the
5 insurer. Truthfulness in the Exhibit 19 and compliance with Cal. Ins. Code
6 §1861.16 are duties imposed by law upon the insurer submitting an Exhibit 19.
7 Defendant insurers had a duty to strictly maintain at any time and at all times, the
8 eight enumerated criteria in §1861.16(c)(1) for purposes of receiving and
9 maintaining a Super Group Exemption, from the Cross-Company offer requirement.

10 58. Filing an Exhibit 19 and/or the approval of a rate filing that includes
11 an Exhibit 19, does not grant an insurer a Super Group Exemption, or release an
12 insurer from their statutory obligation to comply with §1861.16(b). That exemption
13 is only earned through continuous compliance with § 1861.16(c)(1).

14 59. The Defendants declared, during the Class Period, that they satisfied
15 and would continue to satisfy each of the eight criteria outlined in Cal. Ins. Code
16 §1861.16(c)(1), presumably entitling the Defendants to the Super Group
17 Exemption. However, the Defendants failed to comply with several of the
18 Separation Requirements enumerated in §1861.16(c)(1). As evidenced in the sworn
19 affidavit of former Nationwide “commercial auto product manager” Harold
20 Rummel (attached hereto as **Exhibit B**), during the Class Period, Defendants failed
21 and continue to fail to meet the strict Separation Requirements of
22 §1861.16(c)(1)(A),(F),(G) and (H).

23 60. Accordingly, Defendants’ agents and representatives, all of whom
24 Defendants controlled for purposes of this Complaint, were and are legally
25 obligated to offer and the Defendants were legally obligated to sell the policies with
26 the lowest available Good Driver rates from any of the insurers in the Nationwide
27 Corp. Group, as set forth in §1861.16(b). In failing to do so, Defendants unlawfully
28

1 offered, charged and retained, excessive premiums from Plaintiffs and members of
2 the Class.

3 61. Plaintiffs and the members of the Class paid insurance premiums for
4 automobile insurance which Defendants' overcharged. Had the Defendants' agents
5 and representatives offered the lowest Good Driver rate available from the
6 Defendants' companies, and had the Defendants' sold the Plaintiffs the policies
7 with the lowest Good Driver rate, the Plaintiffs and the Class Members would have
8 accepted the lower Good Driver rate from the Defendants.

9 62. Defendants did not inform the overcharged Plaintiffs and members of
10 the Class of their right to be reimbursed for their premium overpayments and did
11 not make the required reimbursement when overcharges were discovered. Rather,
12 the Defendants maintained substantially uniform and systematic policies,
13 procedures and practices designed to conceal this wrongful conduct from the
14 Plaintiffs and the Class.

15 63. Defendants have denied to Plaintiff and the CDI that they violated the
16 eight separation requirements of the Supergroup exemption, have refused to turn
17 over and/or disclose documents demonstrating violation of the separation
18 requirements, and concealed information contained in those documents showing
19 Defendants' violations both in response to Plaintiffs' inquiries and the CDI's
20 investigation of Plaintiffs' Request for Assistance. Such concealment is evidenced
21 by newly acquired evidence including but not limited to the Affidavit of Harold
22 Rummel (**Exhibit B**). Because of the Defendants' act of concealment and ongoing
23 fraudulent actions, Plaintiffs and the Class were not reasonably able to discover the
24 Defendants' wrongful conduct and/or premium overcharges.

25 64 With regard to Plaintiffs, Francisco Rocha and Ester Rocha, they were
26 sold a policy by Defendant, AMCO, which is a company owned by NMIC and
27 controlled by Control Group, Nationwide Corp. Group. The policy of insurance
28 was offered by Schoolsfirst Insurance Services, an independent agent for the

1 Defendants. The offer from Defendants' agent was for Defendant AMCO to sell a
2 Good Driver discounted PPA policy to the Plaintiffs. As a result of the offer,
3 Plaintiffs accepted it and Defendants sold the policy to the Plaintiffs.

4 65. At no time during the Class Period, did Defendants' agents or
5 representatives, offer a PPA policy from Defendant VFCC. Had a policy of
6 insurance been offered by the Defendants' agents or representatives and sold by the
7 Defendants, the Plaintiffs would have accepted the policy from VFCC, which did
8 contain a lower Good Driver rate.

9 66. The policy of insurance offered by Defendants' agent and sold by
10 Defendants contained a GDD under the General Policy Information as indicated on
11 Page 1 of **Exhibit A** attached herein.

12 67. Page 3 of **Exhibit A** identifies the Defendants' agent- It reads in part:
13 "How to contact us...Your Allied agent--- SCHOOLSFIRST INSURANCE
14 SERVICES."

15 68. Page 3 of **Exhibit A** identifies the Defendant insurance company for
16 which the agent offered the policy. It reads in part: "Issued By: Amco Insurance
17 Company, ... By: Schoolsfirst Ins. Services."

18 69. Page 3 of **Exhibit A** provides the "Premium Summary." The "Total
19 Policy Premium" covering the six-month policy period is indicated as \$923.62. At
20 the same time, for the same policy period and for the same or substantially similar
21 coverages for the identical vehicles, Defendant VFCC had policies available which
22 also contained a Good Driver rate that should have been offered by Defendants'
23 agents or representatives and sold by Defendants to Plaintiffs, which would have
24 included a "Total Policy Premium" of \$817.75. The Defendants' Agents and
25 Representatives were required to offer and Defendants were required to sell to
26 Plaintiffs Francisco Rocha and Ester Rocha, a policy of insurance from VFCC for
27 \$105.87 less than what they were charged and paid for the same six-month period
28 from the AMCO policy.

1 70. At all times herein, Schoolsfirst Insurance Services was acting as an
2 agent and representative in its capacity on behalf of Defendant, AMCO and
3 Defendants’ Control Group (Nationwide Corp. Group). When the agent
4 fraudulently failed to offer to the Plaintiffs, the lowest Good Driver rate from the
5 Defendants’ insurers, the Defendants’ ratified the agent’s actions.

6 71. Schoolsfirst Insurance Services did not offer to sell and the Defendants
7 did not sell to the Plaintiffs, a policy of insurance from the Defendant insurer that
8 contained the lowest Good Driver rate, which would be from Victoria Fire and
9 Casualty Company, (VFCC).

10 72. As Defendants’ Control Group does not qualify for the Super Group
11 Exemption, Defendants’ agents and representatives were required to Cross
12 Company offer and the Defendants were required to sell a PPA from VFCC as it
13 had the lowest Good Driver rate from the Defendant companies that are under the
14 common ownership and control of NMIC and the Control Group.

15 73. The Plaintiffs would have accepted the lower Good Driver rate policy
16 had the Plaintiffs been offered it from the Defendants’ Agents or Representatives
17 and had the Defendants’ Control Group sold it to the Plaintiffs.

18 74. At all times, during the Class Period, the Defendants’, their Control
19 Group (Nationwide Corp. Group), and owner (NMIC) were not entitled to a Super
20 Group Exemption of the Cross-Company Offer requirement as outlined in Cal. Ins.
21 Code § 1861.16(c). Therefore, the Plaintiffs and the members of the Class expected
22 that Defendants, through their agents and representatives, would offer and
23 Defendants would sell, policies with the lowest available Good Driver rate “for that
24 coverage” as defined in Cal. Ins. Code §660.

25 75. Throughout the Class Period, Defendants engaged in the course of
26 conduct designed to conceal and or avoid the contractual, legal and equitable
27 obligations to policyholders who have been wrongfully denied the lowest Good
28 Driver rates for the coverages they were sold. Defendants did not inform

1 policyholders who had been overcharged of their right to be reimbursed for their
2 premium overpayments, and did not offer to or make the required reimbursement.

3 76. The Control Group (Defendants) maintained substantial uniform and
4 systematic policies, procedures and practices designed to conceal this wrongful
5 conduct from Plaintiffs and the Class.

6 77. By violating their contractual, legal and equitable obligations,
7 Defendants acted unreasonably, in bad faith, and in violation of their special
8 fiduciary duties including the implied covenant of Good Faith and Fair Dealing and
9 thereby significantly increased their profits at the expense of their policyholders.

10 **CLASS ALLEGATIONS**

11 78. This action is properly brought as a Class Action seeking certification
12 pursuant to Fed. R. Civ. P. 23(B)(2) and Rule 23(B)(3) for the reasons that this
13 action satisfies the numerosity, commonality, typicality, and adequacy
14 requirements.

15 The class is a Rule 23(B)(2) class and a Rule 23(B)(3) class defined as
16 follows:

17 ALL PERSONS OR ENTITIES IN THE STATE OF
18 CALIFORNIA WHO WERE (1) INSURED BY ANY
19 OF THE DEFENDANTS FOR MOTOR VEHICLE
20 COVERAGE ANYTIME FROM JANUARY 1, 2009
21 THROUGH THE LAST DATE TITAN AND
22 VICTORIA SOLD PERSONAL AUTO POLICIES IN
23 CALIFORNIA AND (2) WERE STATUTORILY
24 DEFINED GOOD DRIVERS PURSUANT TO CAL.
INS. CODE §660 AND (3) DID NOT RECEIVE THE
LOWEST GOOD DRIVER RATE FROM THE
DEFENDANT THAT HAD THE LOWEST GOOD
DRIVER DISCOUNT POLICY FOR THAT PERIOD.

25 79. **Numerosity.** The Class is numerous such that joinder of all Class
26 Members is impractical. Plaintiffs do not know the exact number and identity of
27 Class Members; however, the Class may contain thousands of Members.

28

1 Attempting to join and name each Class Member would be unreasonable and
2 impracticable.

3 80. **Commonality.** Common questions of law and fact exist as to all
4 Members of the Class and predominate over questions affecting only individual
5 Class Members. The common, legal and factual questions include, but are not
6 limited to the following:

- 7 (a) Whether agents and representatives of Defendants Control Group
8 failed to offer and Defendants Control Group failed to sell, Plaintiffs
9 and the Members of the Class, the California PPA with the lowest
10 Good Driver rate available among Defendants' Common Ownership,
11 Management or Control Group as contained in Defendants' rate
12 filings;
- 13 (b) Whether Defendants' failure to reimburse Plaintiffs in the Class for the
14 alleged overcharged premiums is a contractual breach and/or a
15 violation of Cal. Ins. Code § 483;
- 16 (c) Whether Defendants were required to inform Plaintiffs and the Class
17 who were good drivers, as statutorily defined, of the premium
18 overcharges;
- 19 (d) Whether Defendants' failure to inform and reimburse Plaintiffs and the
20 Class was a violation of their special fiduciary responsibilities
21 including the implied covenant of good faith and fair dealings;
- 22 (e) Whether Plaintiffs and the Class are entitled to restitution,
23 disgorgement, and other appropriate equitable relief;
- 24 (f) Whether Defendants have failed to disclose material facts the Plaintiffs
25 and the Class, through misrepresentation and/or concealment about the
26 policies available in their Control Group with the lowest available
27 Good Driver rates and their lowest available personal auto premium
28 charges/overcharges;

- 1 (g) Whether Defendants have engaged in an actionable course of conduct
2 designed to avoid and/or conceal their contractual and legal obligations
3 to Plaintiffs and the Class, including an obligation to reimburse the
4 Plaintiffs and the Class Members for the overcharges;
- 5 (h) Whether Defendants have engaged in acts of unfair competition
6 through either an Unlawful Business Practice, an Unfair Business
7 Practice, or a Fraudulent Business Practice;
- 8 (i) Whether the Plaintiffs and the Class have sustained damages and the
9 proper measure of those damages;
- 10 (j) Whether the Plaintiff and the Class are entitled to an award of Punitive
11 Damages against Defendants; and,
- 12 (k) Whether the Plaintiffs and the Class are entitled to recover their costs,
13 Attorneys' Fees and Prejudgment Interest.

14 81. **Adequacy.** The Plaintiffs will fairly and adequately represent the
15 interests of the Class. Plaintiffs have no interests that are antagonistic to those of
16 the Class. Plaintiffs have the ability to assist and adequately protect the rights and
17 interests of the Class during litigation. Further, Plaintiffs are represented by
18 Counsel who are competent and experienced in this type of Class Action Litigation.

19 82. The claims of the representative Plaintiffs are typical of the claims of
20 the Class. There are no conflicts of interest between the Plaintiffs and the Class. A
21 Class Action is an appropriate method for the effective adjudication of the
22 controversy because there is no benefit to Class Members individually controlling
23 the prosecution of separate actions. Furthermore, damages sustained by individual
24 Class Members are relatively small and the expense and burden of individual
25 litigation makes it impossible for the Class Members individually to redress the
26 wrongs done to them. When liability is determined, the claims of all Class
27 Members can be determined through routine mathematical calculations and thus,
28 can be determined by the Court and administered efficiently in a manner that is far

1 less erroneous, burdensome and expensive than if it were attempted through filing,
2 discovery and Trial of many individual cases. This Class Action will promote the
3 orderly, efficient, and expeditious and appropriate adjudication and administration
4 of Class Claims to promote economies of time and resources. This Class Action
5 will assure uniformity of decision among Class Members. The resolution of this
6 controversy, through this Class Action, presents fewer management difficulties than
7 individual claims filed in which the parties may be subject to varying adjudication
8 of their rights.

9 83. Common liability exists between Defendants and all the Members of
10 the Class. Thus, a Trial of the Plaintiffs' claims will decide liability issues for all
11 the Members of the defined Class.

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

18 **TOLLING AS A RESULT OF ONGOING CONCEALMENT**

19 85. Defendants knew and concealed from Plaintiffs, the Class, and the CDI
20 that Defendants' agents and representatives, all of whom Defendants controlled
21 with respect to the matters alleged in this Complaint, were not providing the
22 required Cross-Company offer for all companies in Defendants' Control Group and
23 that Defendants were overcharging premiums to the Plaintiffs and the Class.

24 86. Defendants' agents and representatives failed to offer and Defendants
25 failed to sell, the policies from their Control Group with the lowest Good Driver
26 rates that were legally required under applicable law, and/or contained in
27 Defendants' Control Group regulatory filings.

28

1 87. Defendants’ officers, management and other employees, knew since
2 2009, that they were violating the assertions and declarations made in their Exhibit
3 19 filing, wherein they declared under oath, that they were entitled to a Super
4 Group Exemption, and thus, not required to Cross-Company Offer the policy with
5 the lowest Good Driver rate from the various Defendants’ within the Control
6 Group.

7 88. For years, their concealed non-compliance with California Law
8 continued. In or around November 2017, Plaintiffs suspected they had been
9 overcharged for their insurance coverage because Defendants had not been entitled
10 to the Super Group Exemption since 2009 and at all times during the Class Period.
11 Accordingly, the Defendants’ agents and representatives were required to Cross-
12 Company offer the lowest Good Driver rate from the Control Group and the
13 Defendants were required to sell the lowest Good Driver rates to the Plaintiff and
14 Class Members from on or around January 1, 2009 until Victoria and Titan stopped
15 insuring California drivers under personal auto liability policies in approximately
16 2019.

17 89. It was discovered that the Defendants’ Exhibit 19’s contained false
18 direct and indirect representations of material fact. The Defendants claimed:

19 (i) The business operations of the insurers are independently managed and
20 directed; [§1861.16(c)(1)(A)]

21 (ii) The insurers’ sales operations are separate; [§1861.16(c)(1)(F)]

22 (iii) The insurers’ marketing operations are separate; [§1861.16(c)(1)(G)]
23 and,

24 (iv) The insurers’ policy service operations are separate.

25 [§1861.16(c)(1)(H)]

26 90. Because of Defendants’ act of concealment and ongoing fraudulent
27 actions as hereinafter explained, the Plaintiffs and the Class were not reasonably
28

1 able to discover Defendants' wrongful conduct and/or the premium overcharges for
2 the reasons more fully set forth in Count IV (Fraud) in this representation.

3 91. Defendants had, during all relevant times throughout the Class Period,
4 a special fiduciary and contractual duty to Plaintiffs and the Class to disclose the
5 improper premium charges and refund the overcharges.

6 92. As a result of Defendants' misrepresentations and fraudulent
7 concealment, the Defendants are equitably estopped from asserting a statute of
8 limitations defense.

9 **COUNT I**
10 **BREACH OF CONTRACT**

11 93. Plaintiffs reallege the allegations contained in the Paragraphs above as
12 if fully set forth herein.

13 94. Defendants entered into a Standard-Form Private Passenger Personal
14 Lines Automobile Insurance Contract with the Plaintiffs and the Class Members
15 they seek to represent. The policies of insurance are defined in Cal. Inc. Code §
16 660. These are binding contracts under which the rates were to be accurately
17 charged in accordance with Defendants fixed rate plans and applicable California
18 Law.

19 95. The premiums due for insurance coverage under these policies were to
20 be determined by applicable contractual understanding and/or regulatory filings
21 including qualified Good Driver rates pursuant to Cal. Inc. Code §§ 1861.02 and
22 1861.025.

23 96. Plaintiffs and the Class reasonably expected that Defendants would
24 comply with California Law and regulations by offering, through their agents and
25 representatives, and selling policies with the lowest Good Driver rates available in
26 Defendants' Control Group for each Class Member policyholder eligible for the
27 discount.
28

1 97. Plaintiffs were charged a “Total Policy Premium” of \$923.62 as
2 offered by Defendants’ agent, Schoolsfirst Insurance Services and sold by
3 Defendant AMCO. The policy period was May 4, 2016 through November 4,
4 2016, bearing policy number PPA 0026619177-3, as noted on Page 3 of **Exhibit A**
5 attached herein.

6 98. At this same time, for the same policy period and for the same or
7 substantially similar coverages, Defendant VFCC had a policy available that should
8 have been offered by Defendants’ agents and representatives and sold by
9 Defendants to Plaintiffs for a “Total Policy Premium” of \$817.75. Defendant
10 Control Group Companies’ agents and representatives were required to offer and
11 Defendants were required to sell, to the Plaintiffs a policy from VFCC for \$105.87
12 less for the six-month policy period than they were charged and paid.

13 99. Each policy holder in the Class was also overcharged for their
14 premiums shown on their policy Declarations Pages, which stated premium
15 amounts non-compliant with Cal. Ins. Code §§ 1861.02 and 1861.025, as they were
16 charged higher than the lowest Good Driver rates available from the companies
17 within Defendants’ Control Group.

18 100. Plaintiffs and the Class were issued the above described PPA policies
19 by Defendants, which required the payment of premiums that were billed by
20 Defendants and were required to be paid in order to obtain or maintain the coverage
21 promised in the policy contracts.

22 101. Each of the Class Members was a Good Driver policyholder as defined
23 in Cal. Ins. Code §§ 1861.02 and 1861.025 and entitled to be offered and sold
24 Defendants’ advertised, filed and legally required lowest available Good Driver
25 premium rates from the Control Group Defendant Companies at clearly
26 ascertainable times during the Class Period.

27 102. Defendants’ breached their policy contracts with Plaintiffs and the
28 Class by their agents and representatives’ failure to offer and Defendants

1 Companies' failure to sell, the lowest Good Driver rate from the Defendant
2 company that had the lowest available Good Driver rate in the Control Group.

3 103. Compliance with the Law in the business of insurance is a matter
4 recognized by the California Legislature in enacting the Private Enforcement
5 Authorization found in Cal. Ins. Code § 1861.03(a). A contractual provision
6 regarding legality is also recognized by the Defendant companies as indicated in the
7 Defendants' Standard Form Agreements issued to Plaintiffs and the Class. A
8 certified copy of Plaintiffs' policy has not been provided and currently not in the
9 possession of the Plaintiffs, rather, the policies are in the possession of the
10 Defendants.

11 104. California Vehicle Code ("CVC") §16058 provides that all California
12 PPA insurance policies containing liability coverage are subject to mandatory
13 electronic reporting, a type of legally required certification by insurance companies
14 of "Financial Responsibility" pertaining to their insureds. As such, the California
15 PPA policies issued to Plaintiffs and the Class are uniformly required by their
16 expressed terms to "comply with the law to the extent required." This contractual
17 promise to "comply with the law" drafted by Defendants and included in their
18 policies, was breached when the Defendant Control Group Companies violated the
19 provisions of Cal. Ins. Code §1861 as set forth above.

20 105. All conditions precedent have been performed by Plaintiffs and the
21 Class.

22 106. Defendants materially breached the contractual terms in their
23 advertised and marketed Good Driver rates as well as their advertised and marketed
24 promise, offered to Plaintiffs and the Class; rates that were presumed in law to be
25 legally compliant with the California Insurance Code requirement that the lowest
26 Good Driver rate policy for that coverage be offered by Defendants' agents and
27 representatives and sold by the Companies in the Control Group.

28

- 1 (c) Fully and promptly disclose any inaccuracies and overcharges at the
- 2 time they were discovered;
- 3 (d) Promptly resolve any premium overcharges that were inconsistent with
- 4 Defendants' expressed and/or implied representations made and/or
- 5 filed rate plans;
- 6 (e) Promptly reimburse policyholders for overcharges; and,
- 7 (f) Otherwise comply with governing law.

8 113. Defendants acted unreasonably, without proper cause and unlawfully
9 in relationship to the Plaintiffs and Class Members, including by:

- 10 (a) The failure of Defendants' agents and representatives to offer policies
- 11 with lowest Good Driver rates and premiums in compliance with their
- 12 contractual obligations, advertised representations, and/or rate filings
- 13 made by Defendants' California Licensed Companies within
- 14 Defendants' Control Group;
- 15 (b) Overcharging the Class by not selling the policy with the lowest Good
- 16 Driver rate for the coverages available from the Defendant Companies
- 17 in their Control Group, failing to disclose the overcharges and
- 18 withholding payment without proper cause;
- 19 (c) Failing to disclose and/or actively concealing material information
- 20 concerning the rates charged to Plaintiffs and the Class; and/or,
- 21 (d) Breaching their duties to Plaintiffs and the Class members.

22 112. Defendants' bad faith, unfair and deceptive conduct violated the
23 implied covenant of good faith and fair dealing.

24 113. Defendants knew their lack of disclosure, concealment of their conduct
25 and failure to reimburse premiums to Plaintiffs and the Class was unreasonable and
26 without justification, and/or Defendants deliberately acted in reckless disregard of
27 Plaintiffs' and Class Members' rights and in a manner that they knew would cause
28 them financial harm.

1 114. Defendants' bad faith, unfair, deceptive and unlawful conduct has
2 harmed the Plaintiffs and the Members of the Class. Plaintiffs and the Class are
3 therefore entitled to damages under the law in an amount to be established at Trial.

4 115. Defendants' bad faith, unfair, deceptive and unlawful conduct was
5 knowing, deliberate, wanton, willful, outrageous, malicious, and undertaking the
6 conscious disregard of and with reckless indifference to, the Plaintiffs' and the
7 Class Members' interests and otherwise of a character warranting the imposition of
8 Punitive Damages.

9 **COUNT III**
10 **FRAUD AND MISREPRESENTATION**

11 116. Plaintiffs reallege the allegations contained in the Paragraphs above as
12 if fully set forth herein.

13 117. Defendants were each authorized and licensed to write PPA insurance
14 policies in California since prior to the commencement of the January 1, 2009 Class
15 Period. Defendants AMCO, NICOA, Allied, VFCC, Crestbrook, Depositors, and
16 NMIC are members of the same Control Group of insurance companies,
17 (Nationwide Corp. Group) and same ownership, NMIC.

18 118. Throughout the Class Period, VFCC has filed separate and different
19 Rate Filings from the remaining Defendants. During this time, the remaining
20 Defendants filed the same Rate Filing (Common Class Plan).

21 119. The separate and different Rate Filing of VFCC, results in a lower
22 Good Driver rate than the Good Driver Discounted rates of the remaining
23 Defendants, for the Plaintiffs, for the same or substantially similar coverage, during
24 the same policy period and for the same vehicles.

25 120. However, as the Defendant Companies' agents and representatives
26 failed to Cross Company offer, and the Defendants failed to sell the PPA policy
27 with the lowest Good Driver rate to the Plaintiffs, the Plaintiffs were overcharged
28 \$105.87 for the six-month policy period.

1 21. During the Class Period, AMCO and the other Defendants, despite
2 having the same common ownership (NMIC), management or control, (Nationwide
3 Corp. Group), claimed by virtue of their filing of Exhibit 19's with the CDI, that
4 their agents, representatives and Defendants, had a Super Group Exemption, from
5 the Cross Company offer requirement.

6 22. However, the facts reveal that during the Class Period, NMIC, the
7 owner of Defendant insurers, and THI Holdings (Delaware), Inc. ("THI"), began an
8 illegal service plan for THI, the Holding Company for VFCC. NMIC began
9 providing in-depth, business, marketing and sales services for THI (VFCC), in
10 direct contravention of the Separation Requirements, which must be strictly adhered
11 to, pursuant to §1861.16(c)(1). Thus, the Defendants, began violating their own
12 declarations of their previously filed Exhibit 19's with the CDI. The Defendant
13 Control Group of companies, no longer had complete and genuine independence
14 from each other, and in fact often acted to facilitate sales by other affiliate
15 companies to the benefit of NMIC as a whole rather than the individual company,
16 which is a fraudulent, actionable and material misrepresentation, to the CDI.

17 23. The service plan that NMIC undertook for THI (VFCC) began in 2009
18 and continued throughout the Class Period. In 2009, NMIC began providing in-
19 depth marketing service, customer insights and analytics, financial analysis and
20 other business activities for THI (VFCC). Defendants purposefully concealed their
21 shared and combined business plan, from the CDI, Plaintiffs and the Class.

22 24. The CDI, Plaintiffs and the Class were never informed and never
23 became aware of, the fact that the Defendants, had begun a business model that
24 violated the Separation Requirements, detailed in Cal. Ins. Code §1861.16(c)(1).
25 These services were in direct violation of their Exhibit 19 filings with the CDI and
26 immediately removed their purported Super Group Exemption status, requiring the
27 Defendants to Cross Company offer the lowest Good Driver rate, among all
28 affiliated Defendant companies.

1 125. NMIC's services for THI (VFCC), also included the illegal
2 consultation and lead development and execution of the creative, tactical plan and
3 brand work for VFCC's strategy. In 2009 and throughout the Class Period, NMIC
4 also managed and budgeted various marketing initiatives and performed other
5 marketing related tasks, along with managing external agencies, all of which
6 violated the Separation Requirements the Defendants' testified to the CDI that they
7 would maintain, pursuant to their Exhibit 19 filings.

8 126. NMIC's services for THI (VFCC) also provided that NMIC consult
9 and assist VFCC in conducting market data analysis and market data research, and
10 provided marketing data management and customer information management
11 services. All of these services provided by NMIC for THI (VFCC) violated
12 §1861.16(c)(1).

13 127. NMIC's additional services for THI (VFCC), reveals that NMIC
14 provide marketing training sessions, information exchanges, employee-oversight,
15 and other similar activities, for THI (VFCC) all of which are in direct violation of
16 §1861.16(c)(1).

17 128. The aforementioned services provided by NMIC for THI (VFCC), as
18 outlined herein, was not conducted at arm's length. Rather, they were conducted at
19 the regional level by employees and teams since 2009 and throughout the Class
20 Period. The operations of NMIC and THI (VFCC) were not acting separate and
21 independent. Nor were the services provided a temporary arrangement, rather it
22 was a permanent and on-going agreement between NMIC and THI (VFCC),
23 throughout the Class Period.

24 129. Starting in 2009, and continuing throughout the Class Period, the
25 Defendants and THI (VFCC) concealed their illegal on-going fraudulent activity
26 from the Plaintiffs, Class members and the CDI.

27 130. Misrepresentations and omissions were made by Defendants
28 throughout the Class Period, through their agents and representatives, business

1 employees, marketing employees, sales employees including the Defendants’
2 business product producers that are authorized to transact business for the
3 Defendants.

4 131. In addition to the above, Defendants’ misrepresentations, omissions
5 and concealment, included the false and material misrepresentations made in the
6 Exhibit 19’s filed by the Defendants with the CDI since January 1, 2009 and
7 throughout the Class Period. The written misrepresentations include materially
8 false statements that: “all business operations, marketing, and sales operations and
9 activities of Defendants operate completely separate and independent from each
10 other, pursuant to 1861.16(c)(1).”

11 132 Plaintiffs and the Class did not become aware of the facts giving rise to
12 their causes of action and Defendants’ fraudulent concealment, until approximately
13 November 2017. Plaintiffs discovered through privileged communications with
14 their personal counsel during a review of their finances that began in October 2017,
15 the material misrepresentations and fraudulent conduct alleged throughout this
16 Complaint.

17 133. On or around January 1, 2009, and during the Class Period, Cecil
18 Autry, former Associate Vice President, Regional Counsel for NMIC, had an
19 obligation to make certain, that the implementation of all NMIC programs,
20 complied with all requirements of the California Insurance Code (CIC) and
21 California Law. Cecil Autry played a key role in the development and
22 implementation of an illegal service agreement between NMIC and THI (VFCC).
23 He acted in an actionable fraudulent fashion by continuing to conceal from the CDI,
24 Plaintiff and the Class, the illegal services between NMIC and THI (VFCC).

25 134. Since 2009, Cecil Autry had knowledge that Defendants, continued to
26 write PPA policies in California under a falsely claimed Super Group Exemption.
27 He became aware of these facts through his job duties with NMIC, which includes
28 the oversight of California Law and California Insurance Regulations pertaining to

1 the marketing and sales of PPA's. He knew that the CDI was not aware of the fact,
2 that NMIC was performing illegal services for the marketing, sales and business
3 operations for THI (VFCC). He knew that by NMIC performing the
4 aforementioned services for THI (VFCC), NMIC, no longer maintained the
5 Separation Requirement between insurers with common ownership, thus there were
6 no longer qualified for the Super Group Exemption and must Cross Company offer
7 the lowest Good Driver rate from among all the Defendants. He knew that the
8 Defendants were making a false claim to the CDI (i.e. that the Defendants were
9 acting with genuine and complete independence from each other.) He therefore
10 knew, that the Defendants were violating the Separation Requirements, made in
11 their statements pursuant to their Exhibit 19 filings.

12 135. Anne Saxon, is General Counsel for NMIC since before 2009. In her
13 role, she is responsible for the oversight of California Law and California Insurance
14 Regulations pertaining to the marketing and sales of PPA's. In 2009, Saxon was
15 informed of Defendants' non-compliance with Cal. Ins. Code §1861.16(c)(1).
16 Saxon was aware that during that time, Defendants continued to write PPA policies
17 in California under a falsely claimed Super Group Exemption. Saxon, thru her job
18 duties for NMIC, became aware of the illegal services, as outlined herein, between
19 the Defendants.

20 136. Anne Saxon, played a key role in the approval of the development and
21 implementation of the illegal service agreement between NMIC and THI (VFCC).

22 137. Saxon was informed of the non-compliance of §1861.16(b), requiring
23 companies that are not otherwise exempt, to Cross Company offer the PPA with the
24 lowest Good Driver rate, from among all the Defendant affiliated insurers. Saxon
25 concealed the Defendants' illegal activities, from the Plaintiffs, Class Members and
26 the CDI. Saxon never informed the CDI that since around January 1, 2009 and
27 throughout the Class Period, the Defendants were not operating with genuine and
28 complete independence, and thus were non-compliant with their filing of their

1 Exhibit 19's with the CDI, and thus, they were not entitled to the Super Group
2 Exemption, they purported to operate under.

3 138. Paul Ballew, Jen Hanley and Tony Gonsalves, under information and
4 belief, were all employees of NMIC since around 2009 and at times, during the
5 Class Period. All had significant roles in the subject matter of the services being
6 provided by NMIC for THI (VFCC) since it began on or around January 1, 2009.
7 All were involved in the illegal marketing efforts between NMIC and THI (VFCC).
8 They became aware through meetings, seminars, and various communications, of
9 the material misrepresentations, omissions, concealment and actionable conduct
10 being taken by the Defendants.

11 139. Ballew, Hanley and Gonsalves, were aware that the CDI was never
12 informed by the Defendants, Control Group or NMIC, or any affiliated entity, that
13 NMIC, in 2009, had begun the various illegal activities for THI (VFCC) as outlined
14 herein. All three were aware that the Defendants' conduct violated the Separation
15 Requirements of §1861.16(c)(1), and thus the Defendants were operating their
16 business illegally when they failed to Cross Company offer the PPA policy with the
17 lowest Good Driver rate, among all the Defendants' insurers.

18 140. Each of these officers, managers and employees, has knowledge of the
19 Defendants' material misrepresentations, omissions, fraudulent conduct and non-
20 compliance regarding the violations of the Separation Requirements. Thus, the
21 Defendants were not entitled to the Super Group Exemption status. Accordingly,
22 each of these officers, managers and employees are aware that since 2009, and
23 throughout the Class Period, the Defendants' were required to Cross Company offer
24 the PPA policy with the lowest Good Driver rate, among all the Defendant insurers.

25 141. Throughout the Class Period, each of these officers, managers and
26 employees, had knowledge that the Defendants concealed from the Plaintiff, Class
27 Member and CDI, the fact that NMIC was providing services for THI (VFCC),
28 which violated California Law, the CIC and the Defendants' Exhibit 19 filings.

1 142. At no time, did the CDI ever become aware that the services and
2 actions indicated in the Complaint, had begun, as between NMIC and THI (VFCC).

3 143. In or around July 2010, in an effort to conceal their illegal and
4 fraudulent services act, that had begun in 2009, the Defendants made a request to
5 the CDI, that the CDI ‘pre-approve’ a servicing plan between NMIC and THI
6 (VFCC). At no time, did the Defendants inform the CDI, that since 2009, NMIC
7 and THI (VFCC), had already been conducting the aforementioned illegal services
8 outlined in the Complaint herein.

9 144. Defendants, through fraudulent misrepresentation, omission and
10 concealment, purposefully mislead the CDI, that the services between NMIC and
11 THI (VFCC) outlined herein, was at the pre-approval stage, rather than the truth
12 that those services were currently being conducted by Officers, Managers and
13 employees of the Defendants. The Defendants illegal services, were also a
14 violation of CIC §1250.1 as no pre-approval or approval from the CDI for those
15 services was ever granted the Defendants

16 145. Due to the fact that the services requested by the Defendants and THI
17 clearly violated the Separation Requirements outlined in §1861.16(c)(1), coupled
18 with the fact that each Defendant had filed an Exhibit 19, claiming they are exempt
19 from the Cross Company offer requirement due to alleged independence between
20 Defendants, the CDI refused to approve the services request between NMIC and
21 THI (VFCC).

22 146. Despite the fact that the Defendants never had their illegal joint
23 servicing methods, or shared business model pre-approved or approved by the CDI,
24 the Defendants continued with their fraudulent, illegal services throughout the Class
25 Period.

26 147. The Defendants’, officers, managers and employees referenced herein,
27 acted in a fraudulent, actionable, manner. The conduct was done with malice and
28

1 intent, so as to conceal from the Plaintiffs and Members of the Class the clear
2 violations of the California Law, CIC and California Insurance Regulations.

3 148. With regard to Plaintiffs, Francisco Rocha and Ester Rocha, they were
4 sold a policy by Defendant, AMCO, with a stated “Total Policy Premium” of
5 \$923.62, as outlined on Page 3 of **Exhibit A**. At the same time, for the same policy
6 period and for the same or substantially the same coverages, Defendant VFCC had
7 policies available that should have been offered by the Defendant’s agents and
8 representatives, and sold by the Defendant VFCC for \$817.75. Defendants’, and
9 the Control Group, should have offered through their agents and representatives,
10 and the Defendants and the Control Group should have sold a policy to Francisco
11 and Ester Rocha from VFCC which is \$105.87 less than what they were charged
12 and paid for, in accordance with the Cross Company offer requirement.

13 149. Until 2016, Plaintiffs, did not have knowledge of, or the means to
14 determine, whether they were being offered the lowest Good Driver rate for their
15 policies. Due to Defendants’ on-going concealment, and fraudulent conduct, the
16 Plaintiffs could not have discovered until their counsel’s review of their personal
17 finances in 2017 that they were being continually overcharged their premiums, by
18 not being offered or sold the lowest Good Driver rate, throughout the Class Period.

19 150. Defendants’ wrongful conduct entitles Plaintiffs and the Class to
20 recover, in addition to their actual damages, punitive damages and attorneys’ fees.

21
22 **COUNT IV**
23 **VIOLATION OF §17200 OF THE CALIFORNIA BUSINESS AND**
24 **PROFESSIONS CODE**
25 **(Unlawful Business Practice)**

26 151. Plaintiffs reallege the paragraphs above, as if fully set forth herein.

27 152. California Business and Professions Code §17200 *et seq.* prohibits acts
28 of unfair competition, which includes unlawful business practices.

1 153. Defendants engaged in unlawful business practices by violating Cal.
2 Ins. Code §§1861.02, 1861.025.

3 154. Defendants engaged in unlawful business practices by violating Cal.
4 Ins. Code §1861.16.

5 155. Through the Class Period, the Defendants continued to engage in
6 unlawful business practices by violating Cal. Ins. Code §§1861.02, 1861.025 and
7 1861.16 and by failing to reimburse Plaintiffs and the members of the Class for
8 amounts in breach of the Cal. Ins. Code.

9 156. As a direct and proximate cause of Defendants' unlawful methods of
10 competition and unlawful acts or practices, Plaintiffs and the Class have lost money
11 through unlawfully excessive automobile insurance premiums.

12 157. As a direct and proximate result of these same unlawful acts or
13 practices, Defendants have been unjustly enriched and should be required to make
14 restitution to Plaintiffs and the Class pursuant to §§17203 and 17204 of the
15 California Business and Professions Code.

16
17 **COUNT V**
18 **VIOLATION OF §17200 OF THE CALIFORNIA BUSINESS AND**
19 **PROFESSIONS CODE**
20 **(Unfair Business Practice)**

21 158. Plaintiffs hereby incorporate by reference the allegations contained in
22 the preceding paragraphs.

23 159. Defendants' acts and practices as alleged in this Complaint constitute
24 unfair business practices that violate California Business and Professions Code
25 §17200 *et seq.*

26 160. The wrongful conduct alleged above and the unfair and unlawful
27 charging of excessive insurance premiums and the making of false representations
28 and/or concealments about the premiums charged violates public policy and creates
harm to Plaintiffs and the Class that vastly outweighs any utility of Defendants'

1 conduct (of which there is none.) Consumers, unaware of Defendants’
2 misrepresentations and misconduct, could not have reasonably avoided the harm.

3 161. Through the Class Period, Defendants have failed to disclose the facts
4 concerning their insurance premiums overcharges, facts that would be and are
5 material to Plaintiffs and the Class.

6 162. As a direct and proximate cause of Defendants’ unfair methods of
7 competition and unfair or deceptive acts or practices, Plaintiffs and the Class have
8 lost money through the payment of excessive insurance premiums.

9
10 **COUNT VI**
11 **VIOLATION OF §17200 OF THE CALIFORNIA BUSINESS AND**
12 **PROFESSIONS CODE**
13 **(Fraudulent Business Practice)**

14 163. Plaintiffs hereby incorporate by reference the allegations contained in
15 the preceding paragraphs.

16 164. Defendants’ acts and practices as alleged in the Complaint constitute
17 fraudulent business practices that violate the Unfair Competition Law, Cal. Bus. &
18 Prof. Code §17200 *et seq.* Defendants engaged in fraudulent business practices by
19 failing to disclose material facts concerning their automobile insurance rates,
20 including that their rates violated Cal. Ins. Code §1861.16, and by representing that
21 they provided to the statutory Good Drivers, the lowest rates within their Control
22 Group.

23 165. Defendants’ fraudulent practices were designed to induce Plaintiffs and
24 the Class to purchase and maintain automobile insurance at Defendants’ illegal rate
25 under circumstance where there was a likelihood of being deceived.

26 166. As a direct and proximate cause of Defendants’ fraudulent methods of
27 competition and deceptive acts or practices, Plaintiffs and the Class have lost money
28 by overpaying for automobile insurance at illegal rates.

COUNT VII

DECLARATORY RELIEF

1
2 167. Plaintiffs hereby incorporate by reference the allegations contained in
3 the preceding paragraphs.

4 168. An actual bona fide controversy exists between Plaintiffs and the
5 Proposed Class, on the one hand, and Defendants, on the other hand, that requires
6 judicial declaration by this Court of the parties' rights and duties.

PRAYER

7
8 169. WHEREFORE, the Plaintiffs request that the court enter judgment in
9 their favor and in the favor of the members of the Class and against Defendants
10 jointly and severally as follows:

- 11 a. Determining that the action is properly maintained as a Class Action;
12 Certifying the Class; Certifying the Plaintiffs as Class representatives
13 for the Class; and appointing the Plaintiffs' Counsel as Counsel for the
14 Class;
- 15 b. Awarding compensatory and punitive damages in excess of
16 \$5,000,000.00, plus Attorneys' fees and costs;
- 17 c. Awarding pre-judgment interest;
- 18 d. Awarding equitable, injunctive and declaratory relief;
- 19 e. Pursuant to Business and Professions Code Section 17203;
- 20 (i) permanently enjoining all Defendants, their employees, agents,
21 representatives, successors, assigns, and all persons who have
22 acted in concert with them from further committing the acts of
23 unfair competition alleged above;
- 24 (ii) requiring them to restore to the Plaintiffs and the Class the
25 money acquired by Defendants' illegal acts and practices
26 constituting unfair competition;
- 27 (iii) requiring them to offer replacement of the Plaintiff and the Class
28 members into Defendants' California licensed Control Group

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

companies with the lowest Good Driver rate for the coverage as required by California Law;

f. Providing such other and further relief as is just and appropriate.

Dated: September 30, 2021

KABATECK LLP

By: /s/ Shant A. Karnikian
Brian S. Kabateck
Shant A. Karnikian
Counsel for Plaintiffs and the Proposed Class

Dated: September 30, 2021

KISLING NESTICO & REDICK, LLC

By: /s/ John J. Reagan
John J. Reagan
Christopher J. Van Blargan
Counsel for Plaintiffs and the Proposed Class

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the Plaintiffs and the members of the Class hereby demand trial by jury on all eligible claims and issues.

Dated: September 30, 2021

KABATECK LLP

By: /s/ Shant A. Karnikian
Brian S. Kabateck
Shant A. Karnikian
Counsel for Plaintiffs and the Proposed Class

Dated: September 30, 2021

KISLING NESTICO & REDICK, LLC

By: /s/ John J. Reagan
John J. Reagan
Christopher J. Van Blargan
Counsel for Plaintiffs and the Proposed Class