

1 Manfred Muecke, CA State Bar No. 222893

2 mmuecke@manfredapc.com

3 **MANFRED, APC**

4 600 West Broadway, Suite 700

5 San Diego, CA 92101

6 Telephone: (619) 550-4005

7 Facsimile: (619) 550-4006

8 *Additional Attorneys Listed on Signature Page*

9 Attorneys for Plaintiff Philip Johnson,  
10 and the putative class

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

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

16 Plaintiff,

17 v.

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

27 Defendants.

Case No.: '22CV518 TWRJLB

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

**(1) Breach of Contract**

**(2) Unjust Enrichment**

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

1 **CLASS ACTION COMPLAINT**

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

8 **PRELIMINARY STATEMENT**

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

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

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

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

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

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

14 **JURISDICTION**

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

19 **VENUE**

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

23 **PARTIES**

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

28 10. Defendant USAA Casualty Insurance Company is a Texas

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

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

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

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

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

24  
25 \_\_\_\_\_  
26 <sup>1</sup> See *Management Discussion and Analysis* in 2020 Annual Financial Statements  
27 at  
<https://interactive.web.insurance.ca.gov/companyprofile/companyprofile?event=companyProfile&doFunction=getCompanyProfile&eid=3288> (last accessed April  
28 11, 2022)

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

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

17 /  
 18 /

---

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

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

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

1 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

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

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

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

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

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

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

21 22. In the time since Governor Newsom first instituted the stay-at-home  
22 order, California’s progress toward reopening has been halting, and additional  
23 stay-at-home orders were imposed in response to the spread of COVID cases.  
24  
25

26 <sup>5</sup> Executive Order N-33-20 (Mar. 19, 2020), [https://www.gov.ca.gov/wp-](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf)  
27 [content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf)  
28 [ORDER.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf) (last accessed April 11, 2022)

<sup>6</sup> *Id.* ¶ 1.

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

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

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

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

17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25  
 26 <sup>7</sup> See Center for Economic Justice & Consumer Federation of America, Personal  
 27 Auto Insurance Premium Relief in the COVID-19 Era at 5 (May 7, 2020)  
 (“CEJ/CFA Report”), [https://consumerfed.org/wp-](https://consumerfed.org/wp-content/uploads/2020/05/Auto-Insurance-Refunds-COVID-19-Update-Report-5-7-20.pdf)  
 28 [content/uploads/2020/05/Auto-Insurance-Refunds-COVID-19-Update-Report-5-](https://consumerfed.org/wp-content/uploads/2020/05/Auto-Insurance-Refunds-COVID-19-Update-Report-5-7-20.pdf)  
[7-20.pdf](https://consumerfed.org/wp-content/uploads/2020/05/Auto-Insurance-Refunds-COVID-19-Update-Report-5-7-20.pdf) (last accessed April 11, 2022)

<sup>8</sup> See *id.* at 6-8.

1 Upon information and belief, decreases in pre-COVID miles traveled continued  
2 through the end of 2020 and well into 2021.<sup>9</sup>

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

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

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

22 <sup>9</sup> See *id.* at 2; see also Center for Economic Justice & Consumer Federation of  
23 America, Auto Insurance Refunds Needed as New Data Show Crashes Remain  
24 Well Below Normal Due to Pandemic (Dec. 22, 2020),  
[https://consumerfed.org/press\\_release/auto-insurance-refunds-needed-as-new-  
25 data-show-crashes-remain-well-below-normal-due-to-pandemic-23-fewer-  
accidents-in-september-and-october/](https://consumerfed.org/press_release/auto-insurance-refunds-needed-as-new-data-show-crashes-remain-well-below-normal-due-to-pandemic-23-fewer-accidents-in-september-and-october/) (last accessed April 11, 2022)

26 <sup>10</sup> Fraser Shilling and David Waetjen, *Special Report: Impact of COVID19*  
27 *Mitigation on Numbers and Costs of California Traffic Crashes*, Road Ecology  
Center, UC Davis, Apr. 1, 2020 (updated Apr. 15, 2020),  
[https://roadecology.ucdavis.edu/sites/g/files/dgvnsk8611/files/files/COVID\\_CHI  
28 Ps\\_Impacts\\_report2.pdf](https://roadecology.ucdavis.edu/sites/g/files/dgvnsk8611/files/files/COVID_CHI_Ps_Impacts_report2.pdf) (last accessed April 11, 2020)

<sup>11</sup> CEJ/CFA Report, *supra*, at 4.



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

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

5           28. According to conservative calculations by the Center for Economic  
6 Justice and the Consumer Federation of America based on motor vehicle accident  
7 data, at least a 30% minimum average premium refund to consumers would be  
8 required to correct the unfair windfall to auto insurance companies, including  
9 USAA, just for the time period from mid-March through the end of April 2020.<sup>12</sup>

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

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

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

23 \_\_\_\_\_  
24 <sup>12</sup> CEJ/CFA Report, *supra*, at 12-13.

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **CLASS ACTION ALLEGATIONS**

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

25 44. The proposed class is defined as follows:

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

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

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

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

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

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

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

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

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

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

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

23 **CAUSES OF ACTION**

24 **COUNT I**

25 **Breach of Contract –**

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

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

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

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

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

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

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

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

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

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

1 public interest, adhesion, and fiduciary responsibility.

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

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

10 **COUNT II**

11 **Unjust Enrichment/Quasi-Contract**

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

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

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

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

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

21 **COUNT III**

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

17                               **PRAYER FOR RELIEF**

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

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

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

**DEMAND FOR JURY TRIAL**

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

17 Dated: April 14, 2022

By: s/Manfred P. Muecke

18 Manfred Muecke (CA SBN: 222893)  
 19 mmuecke@manfredapc.com  
**MANFRED, APC**  
 20 600 West Broadway, Suite 700  
 21 San Diego, CA 92101  
 Telephone: (619) 550-4005  
 22 Facsimile: (619) 550-4006

23 Matthew H. Morgan\*  
 morgan@nka.com  
 24 Robert L. Schug (CA SBN: 249640)  
 schug@nka.com  
 25 Chloe A. Raimey  
 craimey@nka.com  
**NICHOLS KASTER, PLLP**  
 26 4700 IDS Center  
 27 80 S. 8th Street  
 28 Minneapolis, MN, 55402

1 Telephone: (612) 256-3200  
2 Facsimile: (612) 338-4878

3 Ryan F. Stephan\*  
4 rstephan@stephanzouras.com  
5 James B. Zouras\*  
6 jzouras@stephanzouras.com  
7 Teresa M. Becvar\*  
8 tbecvar@stephanzouras.com  
9 Paige L. Smith\*  
10 psmith@stephanzouras.com

11 **STEPHAN ZOURAS, LLP**  
12 100 N. Riverside Plaza, Suite 2150  
13 Chicago, IL 60606  
14 Telephone: (312) 233-1550  
15 Facsimile: (312) 233-1560

16 David A. Neiman\*  
17 dneiman@rblaw.net  
18 **ROMANUCCI & BLANDIN LLC**  
19 321 N. Clark Street, Suite 900  
20 Chicago, IL 60654  
21 Telephone: (312) 458-1000  
22 Facsimile: (312) 458-1004

23 Asaf Agazanof, Esq.  
24 Asaf@Lawasaf.com  
25 **ASAF LAW APC**  
26 2330 Westwood Blvd., Second Floor  
27 Los Angeles, CA 90064  
28 Tel: (424) 254-8870  
Fax: (888) 254-0651

George Thomas Martin, III,  
tom@mblawapc.com  
Nicholas J Bontrager  
nick@mblawapc.com  
**MARTIN AND BONTRAGER APC**  
4605 Lankershim Boulevard, Suite 535  
Toluca Lake, CA 91602  
Tel: 323-940-1700  
Fax: 323-328-8095

*\*Pro hac vice application forthcoming*

Attorneys for Plaintiff Philip Johnson, and the putative 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