IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
Orlando Division

KIMBERLY PETERMAN, individually and on behalf of others similarly situated,

Case No. 6:15-cv-1803-Orl-40DAB

Plaintiff,

v.

USAA CASUALTY INSURANCE COMPANY,

Defendant.
_____/

CLASS ACTION COMPLAINT

Plaintiff, KIMBERLY PETERMAN ("Plaintiff" or "Ms. Peterman") brings this action on behalf of herself and on behalf of similarly situated military personnel, veterans, and their families, whose homes have been insured through USAA CASUALTY INSURANCE COMPANY ("USAA" or "Defendant") and alleges, as follows:

PRELIMINARY STATEMENT

1. This is a class action under Federal Rule of Civil Procedure 23, in which Plaintiff requests that the Court issue a declaratory judgment under Chapter 86, Florida Statutes, interpreting the contractual rights and duties of the parties under

Florida law and under the insurance Policies that Defendant issued to Plaintiff and Class Members that included coverage for sinkholes. Plaintiff also sues Defendant for breach of contract based on violation on the Policy terms and Florida law.

2. USAA CASUALTY INSURANCE COMPANY ("USAA" or "Defendant") is a for-profit private insurance company that caters to and regularly issues insurance policies to individuals who have served in the US military and their families, like Ms. Peterman and Class Members whose homes USAA has insured in Florida.

3. As with other insurance carriers, USAA issues standardized insurance policies ("Policies") to insureds that incorporate and are governed by Florida law. A sample or exemplar Policy, and the policy issued to Plaintiff, is attached hereto as Exhibit "A."

Background of the Controversy

4. Insurance covering losses due to sinkholes is critical for any insured homeowner in Florida, which has more sinkholes than any other state in the nation.[1] Insurers offering property insurance to homeowners in Florida have been required to offer coverage for damages resulting from sinkholes since 1981.

5. Losses from sinkholes are often catastrophic and can cost homeowners significantly—even cost them their entire homes. Thus, changes to a homeowner's

[1] http://www.floir.com/sections/pandc/sinkholepage.aspx.

sinkhole coverage terms and conditions of coverage, including those of Ms. Peterman and Class Members, understandably are and would be material when they may mean a substantial change to policy terms requiring insureds potentially to pay several thousands of dollars over what a previous policy required.

6. For changes to insurance policies to be implemented, Florida law has distinguished at times of policy renewal between policy changes constituting "renewal" policies—ones based on the same terms as prior policies—and "non-renewal" polices—ones containing material changes in terms and conditions from the prior policy.

7. For material changes to be implemented, the version of Florida Statutes applicable here required insurance carriers to issue notices of non-renewal, among other things, rather than just issuing an amended policy or endorsement. Through the non-renewal process and notice, Florida law afforded the policyholder the opportunity to obtain coverage elsewhere before the lapse in the policy period occurs. *See* § 627.4133(2), Fla. Stat. If an insurer failed to issue a notice of nonrenewal, the terms and conditions of the prior policy continued to remain in force. *Id.* The failure also rendered the new policy terms unenforceable. *Id.*

The Controversy

8. As a matter of standard practice, USAA ignored its obligations under the version of Section 627.4133(2), Florida Statutes, applicable here, to issue notices

of non-renewal and, instead, made fundamental, material changes to the sinkhole terms and conditions of its Policies simply by sending insureds (including Plaintiff and Class Members) a new Policy or endorsement including among other things amended Policy terms implementing changes, significantly increasing the amount of the deductible—typically from $500 or $1000 to 10% of the Policy dwelling limits.

9. As a result of these material Policy changes issued without proper notice and in violation of statutory requirements, sinkhole victims including Plaintiff and Class Members who made or make sinkhole claims under their Policies have faced or will face deductible obligations far in excess of what they should have been under their previous Policies, leaving them obligated to pay or paying thousands of dollars more than they should have, and resulting in a significant reduction in coverage and benefit payments.

10. Accordingly, on behalf of herself and others similarly situated, Plaintiff sues USAA for a declaration and corresponding injunctive relief as to the parties' rights, status, and duties under the Policy and whether USAA's practices violate the Policy and Florida Statutes. Plaintiff also sues USAA in contract for breach of the Policy, which incorporates and must comply with Florida law.

JURISDICTION, PARTIES AND VENUE

11. All conditions precedent to the filing of this action, if any, have been performed, have occurred, or have been waived.

12. This suit arises under Florida law and an insurance policy insuring properties located in Florida.

13. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2), because (a) at least one member of the putative class is a citizen of a state different from Defendant, (b) the amount in controversy exceeds $5,000,000, exclusive of interest and costs, and (c) none of the exceptions under the subsection apply to this action.

14. USAA CASUALTY INSURANCE COMPANY ("USAA" or "Defendant") is upon information and belief a for-profit private insurance company, incorporated in, and a citizen of, Texas, with its principal place of business located in San Antonio, Texas.

15. USAA provides homeowner multi-peril property insurance throughout the State of Florida, is registered with the Florida Secretary of State, Division of Corporations, as a foreign corporation to do business in Florida, is licensed by the State of Florida to transaction insurance in Florida, and transacts substantial business in this District, maintaining an office and representatives here from where it continues to transact insurance business.

16. At all times material, KIMBERLY PETERMAN ("Plaintiff" or "Ms. Peterman") has resided in Florida, has been a citizen of Florida, and is named as insured in one or more insurance Policies at issue in this case issued in Florida by USAA insuring Plaintiff's home located in Florida. The properties of Plaintiff or Class Members that USAA insures are located in Florida, including, but not limited to, in this District.

17. Venue is proper in this District because a substantial part of the events or omissions giving rise to the claims occurred here, and a substantial part of properties that are the subject of the action are situated here. This District is a superior venue because USAA has issued Policies and revised Policies making material changes to deductible amounts reducing sinkhole coverage in cities and locations spread all across this District.

18. USAA conducts its insurance business, issues and delivers the Policies at issue to insureds, and maintains agents or representatives throughout Florida, including Orange County.

19. All members of the "Class" or "Class Members" that Plaintiff seeks to represent in this litigation are Florida policyholders and are designated as insureds in one or more homeowner insurance Policies issued by USAA in Florida.

FACTS APPLICABLE TO ALL COUNTS

20. USAA caters to and regularly issues insurance policies to individuals who have served in the US military and their families like Ms. Peterman and Class Members. As a matter of course, for at the last ten years, USAA has regularly issued insurance policies ("Policies") insuring the homes of individuals, including Ms. Peterman and Class Members, located in Florida including within this District.

Florida's Sinkhole Problems

21. According to the US Geological Survey,[2] sinkhole collapses can range in size and severity. Sinkholes can vary from a few feet to hundreds of acres and from less than one to more than 100 feet deep. Sinkholes can have dramatic effects, especially in urban settings. They can contaminate water resources and have been seen to swallow up swimming pools, parts of roadways, and even buildings.

22. Historically, Florida homeowners in several parts of the Florida have suffered significant perils from sinkholes and sinkhole-related damage to their homes. Insurance covering losses due to sinkholes is thus critical for any insured homeowner in Florida, which has more sinkholes than any other state in the nation.

23. The Florida Legislature has responded to this significant peril through a series of enactments specifically addressing sinkhole coverage.

[2] http://www.usgs.gov/blogs/features/usgs_top_story/the-science-of-sinkholes/.

24. Florida first addressed the insurability of sinkholes in 1969, when a reinsurance facility was put in place to cover the peril of sinkhole loss. *See* Ch. 69-199, Laws of Florida.

25. Twelve years later in 1981, the Legislature created the sinkhole insurance law to require property insurers to make available coverage for sinkhole losses on any structure and personal property contents. *See* Ch. 81-280, Laws of Fla., (creating § 627.706, Florida Statutes). Since enactment of this law, insurers offering property insurance to homeowners in Florida have been required to offer coverage for damages resulting from sinkholes.

USAA's Insurance Policies

26. In accordance with Florida law, among other things, USAA has routinely included coverage for damage and losses relating to sinkholes under the Policy issued to Ms. Peterman and Class Members. An exemplar copy of the Policy ostensibly effective beginning in 2011, is attached hereto as Exhibit "A."

27. The relevant Policy and the Policies USAA issued are insurance contracts with Plaintiff and Class Members that provide USAA and its insureds certain benefits, duties and rights.

28. USAA Policies are governed by Florida law and are based on standardized forms whose versions, coverages, and endorsements are assigned uniform alphanumeric codes.

29. The Policy provisions and terms specifically relating to, among other things, sinkhole coverage issued to Ms. Peterman and Class Members have at all material times been standardized, preprinted, and uniform, applying uniformly to USAA's insureds including Ms. Peterman and Class Members.

30. Upon information and belief, at all times material to this action, USAA has tracked the claims and Policy forms and materials applicable to Ms. Peterman and each Class Member electronically and maintains associated electronic records that are searchable.

Plaintiff's and Class Members' Predicament

31. Losses from sinkholes are often catastrophic and can cost homeowners significantly—even cost them their entire homes. Thus, changes to sinkhole coverage terms and conditions of a homeowner, including Mrs. Peterman and Class Members, understandably are and would be material when they may mean a substantial change to policy terms requiring insureds potentially to pay several thousands of dollars over what a previous policy required. Accordingly, one consistently applicable requirement for sinkhole and other coverages in Florida has been that insurers issue adequate notice of material policy changes to their insureds.

32. Florida law has long recognized the distinction between the renewal and non-renewal of an insurance policy. A "renewal" policy is one based upon and subject to the same terms and conditions contained in the original policy. On the

other hand, a "nonrenewal" policy is a policy containing material changes in terms and conditions from the prior policy.

33. The distinction between nonrenewal and renewal policies have historically been reflected in types of notice insureds receive concerning policy changes: Florida Statutes historically have provided that changes to insurance policy terms can be momentous events and insurers must therefore put their insureds on notice of material changes in policy terms by non-renewing the policy with clear notice to afford the policyholder the opportunity to obtain coverage elsewhere before the lapse in the policy period occurs. *See* § 627.4133(2), Fla. Stat. (prior to Chapter 2011-39, Laws of Florida, effective May 17, 2011). The insurer (including USAA) was required to give the named insured written notice of nonrenewal, cancellation, or termination at least 100 days prior to the effective date of the nonrenewal, cancellation, or termination. *Id.* If an insurer did not comply with these requirements, the original terms and conditions of the previous policy remained in effect until such time as the proper notice was given. *Id.*

34. USAA made substantial material changes to numerous Policy provisions relating to Ms. Peterman's and Class Members' sinkhole insurance coverage via endorsements beginning, upon information and belief, in 2006-2007. These included among other things amended Policy terms implementing changes, significantly increasing the amount of the deductible—typically from $500 or $1000

to as much as 10% of the insured's Policy dwelling limits. Upon information and believe, prior to 2006-2007, all USAA insureds had deductibles ranging from $500 to $1000.

35. These material changes in Policy terms rendered the Policy a non-renewal policy triggering the notice requirements for non-renewal contained in Section 627.4133. In implementing these changes beginning in 2006-2007, however, USAA systematically simply sent Plaintiff and Class Members an attached endorsement containing the changes despite the clear requirements of Section 627.4133 in effect at the time requiring it to issue a notice of non-renewal.

36. Chapter 2011-39, Laws of Florida, effective May 17, 2011, which added Section 627.43141, Florida Statutes, began permitting a change in policy terms by notice rather than notice of non-renewal. USAA however attempted to materially change the Policy at issue *prior to* the effective date of this amendment, never issuing a notice of non-renewal as required under Florida law.

37. Upon information and belief, USAA has in truth and in fact *never* issued notices of non-renewal as required prior to May 17, 2011, up to including the present. It has only sought to implement material changes to its sinkhole coverage under the Policy through endorsement.

38. Because USAA made material changes to the Policy without following the proper non-renewal procedures, these changes are unenforceable as a matter of

law, and the versions of the Policy (including the applicable deductibles) in force prior to the significant increase in deductibles beginning to appear in Policies in 2006-2007, remain in force.

Facts Concerning Plaintiff Specifically

39. Ms. Peterman is named as an insured under the Policy at issue in this case.

40. USAA first issued its Policy providing insurance, including sinkhole coverage, for Ms. Peterman's home since she purchased it in 2006. The insured property is located in Florida.

41. Despite her best efforts, she has been unable to locate a copy of her original Policy version commencing in 2006. USAA currently has exclusive possession and/or control of its records that will likely contain a copy of this version of the Policy and will either voluntarily produce it or produce through discovery requests from Ms. Peterman. Ms. Peterman will produce it in the Court record when she receives it. The copy of the Policy attached hereto as Exhibit A is a more recent version of her Policy and contains the material changes at issue.

42. At all times material to this action, Ms. Peterman paid premiums and has otherwise kept the Policy in full force and effect.

43. After the initial policy was issued, USAA made substantial material changes to numerous Policy provisions relating to Ms. Peterman's sinkhole

insurance coverage via endorsements. These included among other things amended Policy terms implementing changes, significantly increasing the amount of the deductible to 10% of her Policy dwelling limits.

44. These material changes in Policy terms rendered the Policy a non-renewal policy triggering the notice requirements for non-renewal contained in Section 627.4133. Nevertheless, USAA simply sent the amended Policy to Ms. Peterman via endorsement containing the material changes including significantly increased deductible.

45. Ms. Peterman's insured property eventually exhibited signs of sinkhole-related activity and resulting damage that was covered under the Policy. She therefore made a claim to USAA for this sinkhole activity and resulting damage under the Policy, beginning in August 2012. USAA assigned August 15, 2012, as the date of loss for this claim and identified the claim by a reference number, 015807942-6.

46. To investigate Ms. Peterman's claim, USAA hired an engineering consultant to inspect the insured property to determine the cause of the damage Ms. Peterman reported to USAA.

47. This consultant submitted a report on the inspection of Ms. Peterson's home and damage. In correspondence dated December 12, 2012, USAA stated, based its review of the engineer's report and the Homeowner's policy, including the

Sinkhole Loss & Catastrophic Ground Cover Collapse endorsement, "that there [wa]s a covered sinkhole loss."

48. USAA thereafter received estimates on remediating the sinkhole damage, totaling over $130,000. But, the net claim USAA was willing to pay to Ms. Peterman required her to pay a deductible amounting to approximately $38,000, which approximated 10% of the total limit of amount of coverage on the dwelling. The deductible under the prior version of the Policy was however only $500.

49. Another estimate for cosmetic repairs to Ms. Peterman's home, totaling approximately $32,000, was also performed. USAA refused to pay any part of this amount because it was less than her deductible (under the amended Policy) of approximately $38,000.

50. To date, Ms. Peterman has been unable to have cosmetic repairs or sinkhole remediation performed on her insured property because she has been unable to pay the Policy deductible for these repairs. USAA has paid nothing to her for either remediation or repairs, even though USAA has admitted these items are covered under her Policy.

51. The foregoing deductible amount constituting 10% of the total amount of coverage on Ms. Peterman's dwelling was one of the material changes USAA implemented to Ms. Peterson's Policy in 2006 through 2007.

52. This deductible USAA has imposed and continues to impose on Ms.

Peterman is unenforceable, because USAA never issued Ms. Peterman a required notice of non-renewal. *See* §627.4133(2), Fla. Stat. (prior to amendments effective May 17, 2011).

53. Upon information and belief, USAA has never issued Ms. Peterman a notice of non-renewal; thus, her Policy currently in force is the Policy USAA issued to her prior to the material changes. Under that Policy version, her deductible for the sinkhole claim to which USAA assigned August 15, 2012, as the date of loss and a claim reference number, 015807942-6, therefore could only lawfully be $500.

Plaintiff and Class Members Suffered Common Injury

54. Ms. Peterman is not alone in her predicament. Since USAA's implementation of the material changes to its Policy beginning in 2006-2007, numerous insureds including other Class Members have made sinkhole claims under the Policy and/or been purportedly obligated to the same material changes suffering the same predicament and injury caused by USAA, namely:

a. USAA systematically imposed material Policy changes on sinkhole insureds and claimants including Plaintiff and Class Members without proper notice, in violation of Florida Statutes and the Policy;

b. Plaintiff and Class Members have been obligated to pay, paid, or will be obligated to pay deductibles of up to 10% of their Policy

dwelling limits for covered losses in excess of the significantly lower deductibles under their applicable Policies; and,

c. USAA has effectively denied benefits to and unlawfully reduced sinkhole coverage for Plaintiff and Class Members by imposing on them deductibles equal to a percentage of their Policy limits on dwelling coverage, when the deductibles should have been less under their versions of in-force Policies.

55. Upon information and belief, USAA's imposition of the foregoing changes and resulting injury and controversy is on going. USAA has in truth and in fact never issued notices of non-renewal as required prior to May 17, 2011, up to including the present. It only sought to implement material changes to its sinkhole coverage under the Policy through endorsement, despite the requirement that it issue notices of non-renewal during the prior renewal periods.

56. Consequently, USAA is currently bound by the terms and versions of the Policy in force prior to the material changes adding deductibles based on a percentage of Policy limits. Its imposition of these changes on Plaintiff and Class Members in the foregoing manner is on going and continues to be unlawful. Unless enjoined by the Court, USAA's conduct will continue to injure insureds, including Plaintiff and Class Members.

CLASS ACTION ALLEGATIONS

57. Plaintiff brings this class action against Defendant pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(2) and/or 23(b)(3), individually and as class representative on behalf of a class of individuals and entities, the "Class Members" or "Classes," defined as follows:

> Rule 23(b)(3) Class: Within the applicable statute of limitations, all citizens of Florida named as insureds under USAA's homeowners Policy and: (1) whose properties were insured under the Policy in force prior to May 17, 2011, which did not include a percentage-based deductible allowed by Chapter 2006–12, Laws of Fla.; (2) were never issued a notice of nonrenewal; (3) have submitted a claim for covered sinkhole losses to USAA; and (4) on whom USAA imposed a deductible of 1-10% of the limit of liability under Policy coverage on the insured's dwelling.
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> Rule 23(b)(2) Class: Within the applicable statute of limitations, all citizens of Florida named as insureds under USAA's homeowners Policy and: (1) whose properties were insured under the Policy in force prior to May 17, 2011, which did not include a percentage-based deductible allowed by Chapter 2006–12, Laws of Fla.; and (2) have never been issued a notice of nonrenewal.
>
> Excluded from the Classes are Defendant, and any person, parent, subsidiary, affiliate, firm, trust, corporation, or other entity related to or affiliated with Defendant, including persons or controlled persons of Defendant, and the immediate family member of any such person. Also excluded from the Classes are any persons who surrendered their Policies in return for tendering of Policy limits and executed a related release.

58. Numerosity (Rule 23(a)(1)). Plaintiff alleges, on information and belief, that the number of Class Members is so numerous that joinder of them is impractical. As of 2013, USAA reportedly maintained over 190,000 homeowners' policies in force in Florida. In 2014, USAA reportedly had written premiums on

homeowners' policies totaling over $277,000,000. The actual numbers of Class Members will be ascertained in discovery through Defendant's records as will the methods of ascertaining membership in the Classes.

59. Commonality and Predominance (Rule 23(a)(2) and Rule 23(b)(3)). Common questions of law and/or fact exist and predominate as to all members of the Classes because each Class Member's claim is derived from the same standardized insurance Policy, USAA's routine, systematic conduct, and provisions of Florida Statutes--namely:

a. Whether USAA made substantial material changes to Policy provisions relating to Ms. Peterman's and Class Members' sinkhole insurance coverage and the nature of those changes;

b. Whether material changes USAA made to its Policy triggered USAA's obligation to Ms. Peterman and Class Members to issue notices of nonrenewal under Section 627.4133(2), Florida Statutes;

c. Whether and when USAA has ever issued Plaintiff and Class Members notices of nonrenewal relating to material changes USAA made to its Policy;

d. Whether USAA's failure to issue notices of nonrenewal has rendered amended sinkhole coverage provisions unenforceable, and as such prior Policy provisions, including deductible amounts, have

remained in force;

e. Whether Plaintiff and Class Members are entitled to a declaratory and injunctive relief regarding their Policy benefits and rights under Florida law; and,

f. Whether Plaintiff and Class Members are entitled to damages and the measure of those damages.

60. Typicality (Rule 23(a)(3)). The claims of Plaintiff are typical of the claims that would be asserted by other members of the Classes in that, in proving her claims, Plaintiff will simultaneously advance the claims of all Class Members. Plaintiff, and each Class Member is or was insured under a standardized USAA homeowners Policy issued prior to May 17, 2011, covering sinkholes; their Policy version did not include a percentage-based deductible allowed by Chapter 2006–12, Laws of Fla.; USAA amended material terms in Policy sinkhole coverage via endorsement rather than notice of nonrenewal as was required at the time by Section 627.4133(2), Florida Statutes; each has been obligated to pay, paid, or will be obligated to pay deductibles of 1-10% of Policy limits on dwelling coverage; and based on the foregoing facts, Plaintiff and each Class Member has the same legal claim for violation of Florida Statutes and the Policy.

61. Adequacy (Rule 23(a)(4)). Plaintiff will fairly and adequately protect the interests of the Classes she represents because it is in her best interests to

prosecute the claims alleged herein to obtain full redress due to her for the illegal conduct of which she complains. Plaintiff has no interests that conflict with those of the members of the respective Classes because one or more questions of law and/or fact regarding Defendant's liability are common to all Class Members and by prevailing on her own claims, Plaintiff necessarily will establish Defendant's liability to other Class Members.

62. Plaintiff has retained counsel experienced in litigating complex class actions. Plaintiff's counsel are long-standing members of the Florida Bar, whose practices focus on consumer, insurance, and class litigation. Counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiff and her counsel are aware of their fiduciary responsibilities to Class Members and are determined to diligently discharge those duties by vigorously seeking the maximum possible recovery for the Classes defined above.

63. Superiority (Rule 23(b)(3)). A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this matter as a class action. The financial detriment suffered individually by Plaintiff and the other Rule 23(b)(3) Class Members is relatively small compared to the burden and expense that would be required to litigate their claims on an individual basis against Defendant, making it impractical for Rule 23(b)(3) Class Members to individually

seek redress for Defendant's wrongful conduct. Even if these Class Members could afford individual litigation, the court system could not. Individualized litigation creates the potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class-action device presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. It makes no sense for the same issues with respect to Defendant's Policy and Florida Statutes to be heard and decided by separate courts. Uniformity of decisions will be ensured through class treatment of this case.

64. Rule 23(b)(2). The prerequisites for maintaining the Class for injunctive and equitable relief pursuant to Federal Rule of Civil Procedure 23(b)(2) are satisfied because Defendant has acted or refused to act on grounds generally applicable to the Rule 23(b)(2) Class thereby making appropriate final injunctive and equitable relief with respect to the Class as a whole. The prosecution of separate actions by members of the Rule 23(b)(2) Class would create a risk of establishing incompatible standards of conduct for Defendant. For example, one court may decide the challenged actions are illegal and enjoin them; while another court may decide those same actions are not illegal. Moreover, individual actions may, as a practical matter, be dispositive of the interests of Rule 23(b)(2) Class Members, who would not be parties to those actions. Defendant's actions are generally applicable

to the Class as a whole and make equitable remedies, including declaratory relief, with respect to the Class as a whole appropriate.

COUNT I
BREACH OF CONTRACT

65. Paragraphs 1-64 are re-alleged and incorporated herein.

66. Plaintiff brings this action on behalf of herself and Rule 23(b)(3) Class Members.

67. USAA's Policies are contracts of insurance that give rise to rights, duties, and obligations of USAA and its insureds, including Plaintiff and Class Members. As other insurance contracts issued in Florida, USAA's Policies are governed by; incorporate; and are interpreted under Florida law.

68. Plaintiff and Class Members have paid their premiums and otherwise maintained their Policies in force, during all times material. USAA issued each one of their Policies and thereafter made substantial material changes to numerous provisions in their Policies including among other things amended Policy terms implementing changes, significantly increasing the amount of the deductible—from $500 or $1000 deductible, to a percentage of the total amount of coverage on the dwelling, typically from 1% to 10%.

69. As stated above, these material changes in Policy terms rendered the Policy a non-renewal policy triggering the notice requirements for non-renewal contained in Section 627.4133. In implementing these changes beginning in 2006-

2007, however, USAA systematically simply sent Plaintiff and Class Members an attached endorsement containing the changes despite the clear requirements of Section 627.4133 in effect at the time requiring it to issue a notice of non-renewal.

70. Because USAA made material changes to the Policy without following the proper non-renewal procedures, these changes are unenforceable as a matter of law, and the versions of the Policy in effect prior to the significant increase in deductibles, have remained in force.

71. Nevertheless, USAA has systematically imposed the percentage-based deductibles on Plaintiff and Class Members, forcing or requiring them to pay or obligating them to pay the deductible and reducing the coverage and benefits under the their Polices by the amount of the unlawful deductible.

72. By imposing the foregoing deductible on Plaintiff and Class Members, USAA has breached their insurance contracts.

73. As a direct and proximate result of the breach set forth herein, Plaintiff and all other similarly situated Class Members have suffered damages in an amount that will be proven at trial.

74. Plaintiff has retained the counsel set forth below and has agreed to reasonably compensate them for this action on her own behalf and on behalf of all Class Members.

WHEREFORE, Plaintiff for herself and on behalf of the Rule 23(b)(3) Class

defined above, under Federal Rule of Civil Procedure 23, demands the following relief:

a. An order certifying the Rule 23(b)(3) Class under Rule 23(b)(3), and appointing Plaintiff as class representative and her legal counsel to represent the Class;

b. An award of monetary relief against Defendant for Plaintiff and Class Members in the form of damages;

c. Pre and post judgment interest to the Rule 23(b)(3) Class, as allowed by law;

d. Reasonable attorneys' fees and costs to counsel for Plaintiff and the Rule 23(b)(3) Class; and,

e. Such other and further relief as is just and proper.

COUNT II
DECLARATORY AND INJUNCTIVE RELIEF

75. Paragraphs 1-64 are re-alleged and incorporated herein.

76. This is an action for declaratory relief brought pursuant to Chapter 86, Florida Statutes.

77. Plaintiff brings this action on behalf of herself and Rule 23(b)(2) Class Members, in addition to or in the alternative to Count I.

78. USAA's Policies are contracts of insurance that give rise to rights,

duties, and obligations of USAA and its insureds, including Plaintiff and Class Members. As other insurance contracts issued in Florida, USAA's Policies are governed by; incorporate; and are interpreted under Florida law.

79. Plaintiff and Class Members have paid their premiums and otherwise maintained their Policies in force, during all times material. USAA issued each one of their Policies and thereafter made substantial material changes to numerous provisions in their Policies including among other things amended Policy terms implementing changes, significantly increasing the amount of the deductible from $500 or $1000 to up to 10% of the total amount of coverage on the dwelling.

80. As stated above, USAA made the foregoing substantial material changes systematically via endorsement rather than via a notice of non-renewal required by Section 627.4133, Florida Statutes.

81. There is a *bona fide* actual, present, practical need for the Court to determine whether Defendant's failure to issue notices of nonrenewal regarding the foregoing changes was lawful and interpret what effect this failure has on the parties' rights and duties under the Policy.

82. The declaration requested deals with a present ascertainable state of facts as presented in the allegations set forth above.

83. Plaintiff and Class Members have actual, present, adverse and antagonistic interests to the interests of Defendant stemming from an on-going state

of controversy with Defendant regarding among other things the proper deductible amounts for sinkhole coverage.

84. Plaintiff, individually, and on behalf of other similarly situated Class Members are before this Court by proper process or class representation and the relief requested is not merely a request for advice or to answer their curiosities.

85. Plaintiff and Class Members are in doubt about the extent of the rights of each party under the foregoing Policy and Florida law. Plaintiff believes that because USAA never issued a notice of nonrenewal to implement the Policy changes stated above, her Policy deductible as originally issued is in force, not the percentage deductible contained in the Policy attached as Exhibit A hereto. She asserts the same is true for other Class Members. USAA disputes Plaintiff's position on the Policy.

86. Moreover, Defendant continues to impose the percentage-based deductibles on insureds as stated above and has upon information and belief never issued notices of nonrenewal. Thus, the injury detailed above will persist and remain unresolved unless Defendant is enjoined from continuing violation of Florida law, including Florida Statutes on notices of nonrenewal.

87. Any potential injury to Defendant attributable to an injunction of this course of conduct is outweighed by the irreparable injury that Plaintiffs and Class Members and the public will suffer if such injunction is not issued; Plaintiff has no adequate remedy at law; and such injunction would not be adverse to the public

interest, but in fact will serve it.

88. Plaintiff has retained the counsel set forth below and has agreed to reasonably compensate them for this action on her own behalf and on behalf of all Class Members.

WHEREFORE, Plaintiff, for herself and on behalf of the Rule 23(b)(2) Class defined above, under Federal Rule of Civil Procedure 23 and Chapter 86, Florida Statutes, requests that that Court:

a. Enter a declaratory judgment finding and determining that:

i. The USAA Policies originally issued to Plaintiff and Class Members, did not include a percentage-based deductible allowed by Chapter 2006–12, Laws of Fla.;

ii. USAA made a substantial material change to those Policies, including among other things amended Policy terms implementing changes, significantly increasing the amount of the deductible to 1-10% of the total amount of coverage on the dwelling;

iii. USAA was required to issue a notice of nonrenewal to implement the foregoing change under Section 627.4133, Florida Statutes, but did not;

iv. Thus, the deductibles applicable to Plaintiff's and Class

Members' Policies are those contained in their Policies in force prior to foregoing change in deductible, and the parentage-based deductible is unenforceable as a matter of law;

v. If the Court makes the foregoing declarations, further issuing an injunction requiring Defendant to issue notices of the Court's declaration; requiring Defendant to provide reasonable notice of the applicable deductibles to Plaintiff and Class Members; and requiring Defendant to cease applying higher percentage-of-coverage-based deductibles until notices of nonrenewal have been properly issued;

b. Award Plaintiff her attorney's fees and costs and those of the Class;

c. Certify this matter as a class action under Rule 23(b)(2);

d. Appoint the undersigned as class counsel;

e. Appoint Plaintiff as class representative; and,

f. Grant any other relief as may be just and proper.

JURY TRIAL DEMANDED

Plaintiff, on behalf of herself and all others similarly situated, hereby demand a trial by jury of all issues so triable in this cause.

Dated: October 22, 2015

Respectfully submitted,

/s/ Steven R. Jaffe
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