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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

EILEEN-GAYLE COLEMAN, and ROBERT CASTRO, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

UNITED SERVICES AUTOMOBILE ASSOCIATION and USAA GENERAL INDEMNITY COMPANY,

Defendants.

Case No. 3:21-cv-00217-CAB-LL

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES, EQUITABLE AND INJUNCTIVE RELIEF

1. Violation of the Unfair Competition Laws, Cal. Bus. & Prof. Code § 17200 *et seq.*

2. Violation of the Unruh Act, Cal. Civ. Code 51, *et seq.*

3. Violation of Cal. Mil. & Vet. Code § 394

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs Eileen-Gayle Coleman and Robert Castro bring this action on behalf of themselves and all others similarly situated against United Services Automobile Association ("United Services") and one of its wholly-owned subsidiaries, USAA General Indemnity Company ("USAA-GIC"). United Services and its property/casualty affiliates are referred to collectively as "USAA."

I. NATURE OF THE ACTION

1. USAA advertises, "We know what it means to serve." It claims to "respect[] and honor[] the men and women in our nation's military and their families who support them." But as shown by its pricing of automobile insurance policies, USAA respects and honors current and former military officers more than it does current and former enlisted personnel. USAA has violated the rights of enlisted personnel—those on active duty in pay grades E-1 through E-6 and veterans whose highest rank was in those grades (together, "Enlisted Policyholders")—in at least two ways.

2. First, Defendants charge Enlisted Policyholders with collision coverage who qualify as good drivers under California law more for auto insurance than they charge officers with collision coverage who qualify as good drivers, in

violation of California Insurance Code section 1861.16, subd. (b).[1] That section provides that an insurer within a commonly-controlled group of insurance companies "shall sell[]a good driver discount policy to a good driver from an insurer within that common ownership, management, or control group[] which offers the lowest rates for that coverage." Cal. Ins. Code § 1861.16(b). USAA-GIC's failure to sell good driver discount policies to Enlisted Policyholders with collision coverage who are statutory good drivers from the USAA company offering the least expensive good driver discount policy for policyholders with collision coverage—United Services—thus violates section 1861.16, subd. (b).

3. Third, USAA discriminates against enlisted military personnel and enlisted veterans by consigning them to its substandard insurance company, USAA-GIC, which charges higher base rates for automobile insurance than does United Services. United Services offers insurance to current and former military officers, but not to Enlisted Policyholders. By discriminating against Enlisted Policyholders, USAA has violated the Unruh Civil Rights Act ("Unruh Act"), Cal. Civ. Code § 51, *et seq.*, and Cal. Mil. & Vet. Code § 394 ("Military Non-Discrimination Act").

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[1] All statutory references are to the Insurance Code unless otherwise designated.

4. By violating the good driver protections of the California Insurance Code, the Unruh Act, and the Military Non-Discrimination Act, United Services and USAA-GIC also have violated the Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200 *et seq.*

5. Plaintiffs bring these claims on behalf of a class of Enlisted Policyholders with collision coverage and a subclass of Enlisted Policyholders with collision coverage who qualify as statutory good drivers, as more fully set out below.

II. PARTIES

Plaintiffs

6. Plaintiff Eileen-Gayle Coleman is a citizen of California residing in the City of Oceanside. She served as a Radio Operator in the United States Marine Corps, on active duty from 2013 to 2017, and then in the reserves for two years. She is currently insured by USAA-GIC and has been insured by USAA-GIC since 2015. Plaintiff Coleman is a statutory good driver. Her USAA policy includes collision coverage. She is a representative of the Enlisted Policyholder Class and the Enlisted Policyholder Good Driver Subclass.

7. Plaintiff Robert Castro is a citizen of California residing in the city of Banning. He served as a culinary specialist in the Army, stationed in Germany until 2012 and then at Fort Irwin in San Bernardino County. He was on active duty

until 2017, and then served in the National Guard until July 2020. He has been insured by USAA-GIC since 2009 and is currently insured by USAA-GIC. His USAA policy includes collision coverage. Plaintiff Castro is a statutory good driver. He is a representative of the Enlisted Policyholder Class and the Enlisted Policyholder Good Driver Subclass.

Defendants

8. According to its most recent Annual Statement filed with the California Department of Insurance, "United Services Automobile Association is a reciprocal interinsurance exchange domiciled in Texas." Its Annual Statement identifies "United States Automobile Association and its property and casualty affiliates" collectively as "USAA."[2]

9. USAA writes auto insurance through four different insurers that operate under common management and control. These four commonly managed and controlled insurers are the parent company, United Services Automobile

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[2] The Annual Statements of United Services and each of its affiliates contain the following phrase: "Membership in United Services Automobile Association and its property and casualty affiliates (USAA) is generally open to anyone who is currently serving in the U.S. military . . . ." United Services and its affiliates thus use the term "USAA" to refer collectively to both United Services and its property/casualty affiliates. The complaint thus uses the term "USAA" as United Services does—to refer collectively to United Services and its property/casualty affiliates—and the term "United Services" to refer solely to United Services Automobile Association.

Association ("United Services"); USAA General Indemnity Company ("USAA-GIC"); USAA Casualty Insurance Company ("USAA-CIC"); and Garrison Property and Casualty Insurance Company ("Garrison"). United Services owns 100% of the common stock of USAA-CIC and USAA-GIC. USAA-CIC owns 100% of the common stock of Garrison.

10. Each of the four USAA companies insures a different segment of the military or military family members. According to their underwriting guidelines, United Services insures commissioned officers as well as senior non-commissioned officers in pay grades E-7 or higher. USAA-CIC insures family members of those who qualify for United Services. Garrison insures military family members who do not qualify for USAA-CIC. And USAA-GIC insures enlisted people in pay grades E-1 through E-6. USAA-GIC's base rates are substantially higher than those charged by the other three USAA companies.

11. Defendant United Services—which is both the parent reciprocal interinsurance exchange and an insurance underwriting company—is organized under the laws of the State of Texas. Its principal place of business is at 9800 Fredericksburg Road, San Antonio, TX 78288.

12. Defendant USAA-GIC, a direct subsidiary of United Services, is organized under the laws of the State of Texas. Its principal place of business is at 9800 Fredericksburg Road, San Antonio, TX 78288.

III. JURISDICTION AND VENUE

13. This court has personal jurisdiction over Defendants because they have registered with the California Secretary of State; because they have purposely availed themselves of the privilege of conducting business in California; because they currently maintain systematic and continuous business contacts with this State; and because the events giving rise to Plaintiffs' claims arose out of those systematic and continuous business contacts with the State.

14. This Court has subject matter jurisdiction based on diversity of citizenship under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d). The aggregate amount in controversy exceeds $5 million, the proposed Class and Subclass each have at least 100 members, and both Plaintiffs have diverse citizenship from both Defendants.

15. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) because both Defendants reside in this judicial district for purposes of this lawsuit. Venue is proper in this District under section 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.

IV. STATUTORY BACKGROUND

A. The Good Driver Protection Provisions of Proposition 103

16. Proposition 103 added Article 10, "Reduction and Control of Insurance Rates," to the Insurance Code (§ 1861.01 *et seq.*) in 1988. Among other

things, it established an objective definition of a good driver under California law, Cal. Ins. Code §1861.025,[3] and mandated that insurers sell a good driver discount policy to anyone qualifying as a good driver at 20% less than he or she would otherwise pay. Cal. Ins. Code § 1861.02(b)(1). In addition, and fundamental to this case, after Proposition 103 was enacted the legislature amended Proposition 103 to require that when multiple affiliated insurers are under common management or control, any of those commonly controlled insurers must sell to a good driver a good driver discount policy from the commonly controlled insurer offering the lowest rates for that coverage. Cal. Ins. Code § 1861.16(b). Specifically, § 1861.16(b) provides that:

> an agent or representative representing one or more insurers having common ownership or operating in California under common management or control shall offer, and the insurer shall sell, a good driver discount policy to a good driver from an insurer within the common ownership, management, or control group, which offers the lowest rates for that coverage.

18. Section 1861.16(b) further specifies that the requirement that an insurer in a commonly controlled group of insurers sell a good driver discount policy from the commonly controlled insurer offering the lowest rates for good driver coverage applies "notwithstanding the underwriting guidelines" of either

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[3] With certain exceptions, a driver is a "good driver" if he or she has had no more than one violation point during the previous three years.

any individual commonly controlled insurer or the commonly controlled group of insurers as a whole.

B. The Unruh Civil Rights Act

19. The Unruh Civil Rights Act provides:

> All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

Cal. Civ. Code § 51(b).

20. Proposition 103 made the Unruh Act applicable to the business of insurance for the first time. Cal. Ins. Code § 1861.03(a). The Unruh Act's prohibition of discrimination therefore includes the prohibition of discrimination by insurance companies.

21. In enacting the Unruh Act, the California Legislature intended to prohibit all arbitrary discrimination by business establishments. Past judicial interpretations and legislative amendments have consistently reaffirmed that the Unruh Act's recitation of certain characteristics as prohibited bases of discrimination is illustrative rather than restrictive.

22. In Military and Veterans Code § 394, the California Legislature makes clear that one of the prohibited bases of discrimination under the Unruh Act is military status. As discussed below, Section 394 prohibits discrimination against

persons because of membership in the military. Subsection 394(h) states that "[t]he remedies provided for in this section are not intended to be exclusive but are in addition to the remedies provided for in other laws, including Sections 51 and 52 of the Civil Code [the Unruh Act]." If the Unruh Act did not protect military members from arbitrary discrimination, the last clause of that sentence would be incorrect.

D. Military and Veterans Code § 394(a)

23. Military and Veterans Code § 394(a) states:

> A person shall not discriminate against a member of the military or naval forces of the state or of the United States because of that membership. A member of the military forces shall not be prejudiced or injured by a person, employer, or officer or agent of a corporation, company, or firm in terms, conditions, or privileges with respect to that member's employment, position or status ….

24. Proposition 103 also made the Military and Veterans Code applicable to the business of insurance. Cal. Ins. Code § 1861.03(a).

E. The Application of the UCL to the Business of Insurance Through Cal. Ins. Code § 1861.03(a)

25. The UCL prohibits any unlawful business act or practice, and Section 1861.03(a) of Proposition 103 made the UCL applicable to the insurance industry for the first time. Therefore, violations of the good driver protection provisions of the Insurance Code, violations of the Unruh Act, and violations of the Military and Veterans Code are also violations of the UCL.

V. USAA'S UNLAWFUL CONDUCT

A. USAA-GIC's Failure to Sell Enlisted Good Drivers with Collision Coverage the Good Driver Discount Policies to Which They Are Entitled

26. That enlisted people with collision coverage pay more than officers with collision coverage is made clear by the difference between the collision base rates USAA has been charging to enlisted people, through USAA-GIC, and the collision base rates USAA has been charging to officers, through United Services. Since February 2017, those rates have been as follows:

USAA Collision Base Rates

Effective Date	United Services	USAA-GIC	Difference
02/18/2017[4]	$371.96	$583.49	56.9%
12/28/2017[5]	$365.99	$603.63	64.9%
10/01/2019[6]	$354.35	$584.69	65.0%
03/05/2020[7]	$354.62	$619.54	74.7%

[4] USAA Auto Class Plan Filing, SERFF Tracking #USAA-130660519, State Tracking #16-5274, February 18, 2017.
[5] *Id.*
[6] USAA Auto Class Plan Filing, SERFF Tracking #USAA-131769162, State Tracking #19-14, October 1, 2019.
[7] USAA Auto Class Plan Filing, SERFF Tracking #USAA-131983679, State Tracking # 19-2149, March 5, 2020.

27. More than 80% of USAA-GIC insureds have collision coverage. Of the standard six auto insurance coverages typically included in auto insurance policies—bodily injury liability (BI), property damage liability (PD), medical payments (MED), uninsured motorist (UM), comprehensive (COMP), and collision (COLL), collision accounts for more than 40% of the typical USAA-GIC premium. That is about the same percentage of the premium as BI and PD combined.

28. Because of the magnitude of the difference between the collision base rate for officers and the collision base rate for enlisted people, and the fact that the collision premium accounts for such a large part of the total premium, all enlisted people with collision coverage pay more than they would pay if they were officers, regardless of any other provision of their policy.

29. The only good driver discount policy USAA-GIC offers and sells to Enlisted Policyholders who qualify as statutory good drivers is a good driver discount policy written by USAA-GIC. While United Services offers and sells to officers who qualify as statutory good drivers a good driver discount policy that is less expensive than good driver discount policies offered by USAA-GIC, USAA-GIC does not offer or sell that United Services good driver discount policy to Enlisted Policyholders who are statutory good drivers.

30. The California Department of Insurance ("CDI") never approved USAA-GIC's conduct of failing to offer and sell to Enlisted Policyholders with collision coverage who are statutory good drivers a good driver discount policy from the insurer under common control with it that offers such policyholders the lowest rates for good driver coverage.

31. The CDI never approved USAA's conduct of failing to offer and sell to Enlisted Policyholders with collision coverage who are statutory good drivers a good driver discount policy from the insurer under common control with it that offers such policyholders the lowest rates for good driver coverage.

32. Insurance companies under common control are not required to sell good driver discount policies issued by other insurers under the same ownership or control if the Insurance Commissioner finds that such companies satisfy eight separate conditions. Cal. Ins. Code § 1861.16(c). Those conditions include being independently managed and directed, Cal. Ins. Code §1861.16(c)(1)(A), and having separate sales and marketing operations, §§ Cal. Ins. Code 1861.16(c)(1)(F), (G).

33. Neither USAA nor any of its commonly controlled insurers have ever asked the Commissioner to find that they do meet any of the Cal. Ins. Code § 1861.16(c) conditions, and the Commissioner has never so found.

C. USAA's Discriminatory Conduct with Respect to Enlisted Policyholders

34. By placing Enlisted Policyholders in its wholly owned substandard subsidiary, USAA-GIC, which charges substantially higher premiums to policyholders with collision coverage than those USAA charges to Officer Policyholders with collision coverage through United Services, Defendants discriminate against enlisted persons on the basis of military status.

35. Enlisted personnel have very few opportunities in the military to be promoted to an officer.

36. USAA continues to discriminate against enlisted people with collision coverage relative to officers with collision coverage after they leave the military: just as is the case with active-duty service members, USAA writes veterans who were enlisted through USAA-GIC and veterans who were officers through United Services.

37. Enlisted veterans have no ability to change their status after they leave the military.

38. No legitimate business interest justifies USAA's discrimination against enlisted men and women.

39. By charging enlisted policyholders with collision coverage more than it would charge them if they were officers, Defendants have intentionally discriminated against Enlisted Policyholders on the basis of their military status.[8]

VI. DEFENDANTS' UNLAWFUL CONDUCT TOWARD PLAINTIFFS

40. Plaintiff Coleman is an enlisted member of the military. USAA-GIC offered and sold her only a higher-priced USAA-GIC policy, not a lower-priced United Services policy.

41. Plaintiff Coleman has been insured by USAA for approximately five years and has always carried collision coverage. Plaintiff Coleman has continually qualified as a good driver pursuant to Cal. Ins. Code § 1861.025 while she has

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[8] Defendants' intentional discrimination on the basis of military status has a disparate impact by race: the percentage of enlisted service members who are Black or Hispanic is approximately twice the percentage of officers who are Black or Hispanic. For example, the percentages of active-duty Black enlisted members and officers by Service Branch in 2018 were as follows:

Service Branch	Enlisted	Officers
Army	23.6%	12.1%
Navy	19.0%	7.8%
Marine Corps	11.1%	5.7%
Air Force	18.8%	8.9%

Dep't of Defense, Profile of the Military Community, 2018 Demographics, at 26, available at https://download.militaryonesource.mil/12038/MOS/Reports/2018-demographics-report.pdf.

been insured by USAA-GIC, as shown in Exhibit B, but USAA-GIC has never offered nor sold her a good driver discount policy from United Services, the USAA insurer which offers the lowest rates for a good driver discount policy to drivers with collision coverage, as it is required to do by Cal. Ins. Code § 1861.16(b). Had Plaintiff Coleman been offered a good driver discount policy from United Services, she would have purchased it.

42. Plaintiff Castro is an enlisted member of the military. USAA offered him only a higher-priced USAA-GIC policy, not a lower-priced United Services policy.

43. Plaintiff Castro has been insured by USAA since 2009, except for 2012–2013. He has carried collision coverage during his entire time with USAA. Plaintiff Castro has continually qualified as a good driver pursuant to Cal. Ins. Code § 1861.025 while he has been insured by USAA-GIC, as shown in Exhibit C, but USAA-GIC has never offered nor sold him a good driver discount policy from United Services, the USAA insurer which offers the lowest rates for a good driver discount policy to drivers with collision coverage, as it is required to do by Cal. Ins. Code § 1861.16(b). Had Plaintiff Castro been offered a good driver discount policy from United Services, he would have purchased it.

44. Plaintiffs have taken all actions necessary to qualify for and obtain a good driver discount policy from the insurer within the USAA group offering the

lowest rates for their good driver coverage. By failing to offer and sell to Plaintiffs a good driver discount policy from United Services, Defendants caused Plaintiffs to pay substantially more for USAA auto insurance than they were legally obligated to pay.

VII. CLASS ALLEGATIONS

45. Plaintiffs, on behalf of themselves and all others similarly situated, bring this action pursuant to the Federal Rule of Civil Procedure 23. This action satisfies the numerosity, commonality, typicality, and adequacy requirements of Rule 23(a) and the predominance and superiority requirements of Rule 23(b)(3).

46. The proposed Enlisted Policyholder Class is defined as:

> All (a) enlisted persons in pay grades E-1 through E-6 or military veterans whose highest pay grade was in pay grades E-1 through E-6, (b) who at any time during the applicable statute of limitations periods had an automobile insurance policy including collision coverage from USAA General Indemnity Company ("USAA-GIC"), (c) who paid more for that policy than they would have paid under the premium pricing formula of United Services Automobile Association ("USAA"), and (d) at any time in which clauses (a) through (c) have been satisfied have been residents of the State of California or stationed in California.

47. The proposed Enlisted Policyholders Good Driver Subclass is defined as:

> All (a) enlisted persons in pay grades E-1 through E-6 or military veterans whose highest pay grade was in pay grades E-1 through E-6, (b) who at any time during the applicable statute of limitations periods had an automobile insurance policy including collision coverage from USAA General Indemnity Company ("USAA-GIC"), (c) who qualified as good drivers under Cal. Ins. Code 1861.025 and were not offered a good driver discount

policy from United Services Automobile Association ("United Services"), (d) who paid more for that policy than they would have paid under the premium pricing formula of United Services, and (e) at any time in which clauses (a) through (d) have been satisfied have been residents of the State of California or stationed in California..

48. Excluded from the Class and the Subclass are (1) all present and former directors, officers, and management employees of the Defendants; (2) any policyholders who filed a pending lawsuit or a lawsuit dismissed with prejudice involving any of the claims asserted here; (3) employees of Plaintiffs' Class Counsel and their immediate families, any judge assigned to this case and their staff, and Defendants' counsel of record, their employees, and their immediate families; and (4) all persons who timely execute a request for exclusion from the Class.

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

Numerosity

50. The Class and Subclass each contain many thousands of members. Joinder of all Class members is impracticable.

Commonality and Predominance

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

a. whether Defendants charged higher premiums to Class members than they did to similarly situated Officer Policyholders;

b. whether discrimination based on military status is actionable under the Unruh Act;

c. whether discrimination based on military status is actionable under Military and Veterans Code § 394(a);

d. whether Defendants' course of conduct in discriminating against Enlisted Policyholders was intentional and/or arbitrary;

e. whether Plaintiffs and Class members are entitled to injunctive relief;

f. whether Plaintiffs and Class members are entitled to an award of punitive damages against Defendants; and

g. whether Plaintiffs and Class members are entitled to recover their costs, attorneys' fees, and prejudgment interest.

52. Common questions of law and fact exist as to all members of the Subclass and predominate over questions affecting only individual Subclass

members. The common legal and factual questions include, but are not limited to, the following:

a. whether Defendants violated Cal. Ins. Code § 1861.16(b) by failing to offer and sell to Plaintiffs and Subclass members a good driver discount policy from United Services;

b. whether Defendants violated the unlawful practices provision of the UCL by violating Cal. Ins. Code § 1861.16(b);

c. whether Defendants violated the unfair practices provision of the UCL by violating Cal. Ins. Code § 1861.16(b);

d. whether Plaintiffs and Subclass members are entitled to injunctive relief;

e. whether Plaintiffs and Subclass members are entitled to an award of punitive damages against Defendants; and

f. whether Plaintiffs and Subclass members are entitled to recover their costs, attorneys' fees, and prejudgment interest.

<u>Typicality</u>

53. Plaintiffs' claims are typical of the claims of other members of the Class and Subclass. Their claims arise out of the same discrimination in rates between Enlisted Policyholders and Officer Policyholders and the same non-compliance with California law related to good driver discounts.

Adequacy of Representation

54. There are no conflicts of interest between Plaintiffs and members of the Class and Subclass. Plaintiffs are committed to this litigation and have retained counsel with the knowledge and resources to litigate insurance law class action claims.

Injunctive Relief

55. Defendants have acted, or refused to act, on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole, which can be granted under a class certified pursuant to Rule 23(b)(3) as well as to a class certified pursuant to Rule 23(b)(2).

56. Without a class action, Class and Subclass members will continue to suffer damages and Defendants' violations of law will proceed without remedy.

Superiority

65. Class and Subclass members have no interest in individually controlling the prosecution of separate actions.

66. The damages sustained by individual Class and Subclass members are relatively small and the expense and burden of individual litigation make it impracticable for the Class and Subclass members individually to redress the

wrongs done to them. But if they did file individual lawsuits, those lawsuits would be unduly burdensome in time and expense for the parties and Court.

67. Common liability issues exist between Defendants and all the members of the Class and Subclass. Thus, a summary judgment motion and/or trial of the Plaintiffs' claims will decide liability issues for all the members of the Class and Subclass. When Defendants' liability has been adjudicated, claims of all Class and Subclass Members can be determined formulaically and administered efficiently under the direction of or as determined by this Court.

68. This action will promote an orderly and expeditious administration and adjudication of the Class and Subclass claims, ensuring economies of time, effort, and resources, and will avoid the risk of inconsistent adjudications.

69. There will be no insurmountable difficulty in the management of this lawsuit as a Class action.

VIII. CAUSES OF ACTION

FIRST CAUSE OF ACTION
Violation of §17200 of the California Business and Professions Code—Unlawful Business Practice Based on Violation of §1861.16(b) On Behalf of Plaintiffs and Subclass Members

70. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs.

71. USAA-GIC's failure to sell enlisted people with collision coverage who are statutory good drivers a good driver discount policy from the USAA

insurer offering the lowest rates for that coverage—United Services—violates Cal. Ins. Code § 1861.16(b). Enlisted Policyholders with collision coverage who are statutory good drivers are legally entitled to obtain good driver discount policies from United Services, the USAA insurer which offers the lowest rate for such policies to statutory good drivers with collision coverage.

72. Cal. Bus. and Prof. Code § 17200 prohibits any "unlawful" business act or practice. USAA's violation of § 1861.16(b) thus also constitutes a violation of § 17200.

73. As a direct and proximate cause of Defendants' failure to offer enlisted policyholders with collision coverage who qualify as good drivers a good driver discount policy from United Services in violation of Cal. Ins. Code § 1861.16(b), Plaintiffs and the Subclass have lost money by paying unlawfully high automobile insurance premiums.

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

SECOND CAUSE OF ACTION
Violation of § 17200 of the California Business and Professions Code—
Unfair Business Practice Based on §1861.16(b)
On Behalf of Plaintiffs and Subclass Members

75. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs.

76. Defendants have, in the course of their business and in the course of trade or commerce, undertaken and engaged in unfair business acts and practices by refusing to sell to Enlisted Policyholders with collision coverage who are statutory good drivers a good driver discount policy from United Services, the USAA insurer which offers such policyholders the lowest rate for that coverage.

77. Defendants have also failed to inform Subclass Members of their right to the lowest California good driver rate available from any of Defendants' commonly controlled insurers.

78. Cal. Bus. and Prof. Code § 17200 *et seq*. prohibits any "unfair" business act or practice.

79. Defendants' refusal to sell to Enlisted Policyholders with collision coverage who are statutory good drivers a good driver discount policy from United Services is "unfair" within the meaning of the UCL because Defendants' conduct is unconscionable, immoral, deceptive, unfair, unethical, oppressive, and/or unscrupulous. Further, the gravity of Defendants' conduct outweighs any conceivable benefit of such conduct.

80. The above-described unfair business acts or practices present a threat and likelihood of harm and deception to members of the Subclass in that

Defendants have systematically perpetuated the unfair conduct upon them and other members of the public.

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

THIRD CAUSE OF ACTION
Violation of § 51 of the California Civil Code—
The Unruh Civil Rights Act
On Behalf of Plaintiffs and Class Members

82. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs.

83. The operative language of the Unruh Act provides that "[a]ll persons within the jurisdiction of this state are free and equal, and . . . are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." Cal. Civ. Code § 51(b). Defendants are business establishments within the meaning of the Unruh Act.

84. Past judicial interpretations and legislative amendments have made clear and consistently reaffirmed that the statute's recitation of certain characteristics as prohibited bases of discrimination is illustrative rather than restrictive. In enacting the Unruh Civil Rights Act, the California Legislature

intended to prohibit all arbitrary discrimination by business establishments. Under § 1861.03(a) of Proposition 103, which made the Unruh Act applicable to the business of insurance, the Unruh Act's prohibition of discrimination includes a prohibition on discrimination in the insurance industry.

85. Discrimination on the basis of military status constitutes arbitrary discrimination violative of the Unruh Act, and denies Plaintiffs full and equal accommodations, advantages, facilities, privileges, or services in insurance in violation of the Unruh Act. Subsection 394(h) of the Military and Veterans Code makes clear that the Unruh Act protects employees against discrimination because of their military status.

86. USAA knowingly maintains a subsidiary, USAA-GIC, to write insurance for enlisted persons with collision coverage at significantly higher rates than the rates USAA charges officers with collision coverage through United Services. USAA refuses to make the lower rates that are available to officers with collision coverage through United Services available to enlisted people with collision coverage.

87. The decision whether to treat current military personnel and veterans as enlisted or officers is based on their status, not their conduct. Military status is a personal characteristic that is extremely difficult for a servicemember to change

while in the military, and which is essentially impossible for a servicemember to change after leaving the military.

88. Defendants do not have a legitimate business interest in insuring officers through their preferred company, United Services, while insuring enlisted personnel through their substandard company, USAA-GIC.

89. The actions of Defendants constitute intentional discrimination against Class members under the Unruh Civil Rights Act.

90. Defendants' violation of the Unruh Act also constitutes unlawful and unfair conduct under the UCL.

91. As a result of Defendants' acts and omissions, Class members have suffered injuries, including, but not limited to, denial of full and equal accommodations, advantages, facilities, privileges, or services through their insurance coverage with Defendants.

92. Each Plaintiff and Class member seeks three times actual damages or $4,000, whichever is greater, together with injunctive and declaratory relief and attorneys' fees, costs, and litigation expenses reasonably expended to remedy these violations.

FOURTH CAUSE OF ACTION
Violation of Military and Veterans Code § 394(a)
On Behalf of Plaintiffs and Class Members

93. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs.

94. The operative language of Section 394(a) provides that "[a] person shall not discriminate against a member of the military or naval forces of the state or of the United States because of that membership. A member of the military forces shall not be prejudiced or injured by a person, employer, or officer or agent of a corporation, company, or firm in terms, conditions, or privileges with respect to that member's employment, position or status…."

95. Each Defendant is a "person" within the meaning of Section 394(a).

96. Each Plaintiff and Class member is a "member of the military" within the meaning of Section 394(a).

97. Defendants discriminated against members of the military—Plaintiffs and Class members—by charging them more than it charged to Officer policyholders for the same coverage.

98. Defendants prejudiced or injured members of the military—Plaintiffs and Class members—in the terms, conditions, and privileges associated with their automobile insurance by consigning them to a position or status within their commonly controlled family of insurance companies that was inferior to the position or status they would have occupied if they had been officers.

99. Defendants do not have a legitimate business interest in charging enlisted people with collision coverage more than they charge officers with collision coverage.

100. The actions of Defendants constitute both intentional and disparate impact discrimination against Class members under Section 394. Defendants' discriminatory conduct includes but is not limited to intentionally charging Enlisted Policyholders with collision coverage significantly higher rates than they charge Officers with collision coverage. Even if Defendants' actions were not intentional, they have had a disparate impact on Plaintiffs and Class members.

101. Defendants' violation of section 394 also constitutes unlawful and unfair conduct under the UCL.

102. As a result of Defendants' acts and omissions, Class members have suffered injuries in the higher amounts they have paid for insurance coverage with Defendants.

103. Each Plaintiff and Class member seeks their actual damages, together with injunctive and declaratory relief and attorneys' fees, costs, and litigation expenses reasonably expended to remedy these violations.

IX. PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs request that the Court enter judgment in their favor and in the favor of the members of the Class and Subclass and against Defendants jointly and severally as follows:

1) Finding that this action satisfies the prerequisites for maintenance as a class action under Federal Rule of Civil Procedure 23 and certifying the Class and Subclass defined herein;

2) Designating Plaintiffs as representatives of the Class and Subclass and their counsel as class counsel to each;

3) Declaring Defendants' practices described above to violate the Unruh Act, Section 394(a), the Insurance Code, and the UCL;

4) Granting equitable and/or injunctive relief to the Plaintiffs and Class and Subclass members, including but not limited to an order preventing Defendants from continuing to charge discriminatorily high premium rates to Enlisted Policyholders, and disgorgement of, restitution of, and/or imposing a constructive trust upon the ill-gotten gains derived by Defendants;

5) Awarding Plaintiffs and members of the Class and Subclass $4,000 or three times their compensatory damages, whichever is greater;

6) Awarding Plaintiffs and Class and Subclass members punitive damages;

7) Awarding Plaintiffs' reasonable attorneys' fees and non-taxable expenses;

8) Awarding Plaintiffs' taxable costs;

9) Awarding pre- and post-judgment interest at the maximum rate permitted by applicable law; and

10) Granting such further relief as the Court deems just.

JURY DEMAND

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

Dated: November 8, 2021

s/ Harvey Rosenfield

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