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IN THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

BC494213

JILL ROGERS, individually, and on behalf
of others similarly situated,

Plaintiff,

vs.

AUTOMOBILE CLUB OF SOUTHERN
CALIFORNIA; INTERINSURANCE
EXCHANGE OF THE AUTOMOBILE
CLUB; and DOES 1-100, inclusive,

Defendants.

Case No.:

CLASS ACTION COMPLAINT

**(1) UNLAWFUL BUSINESS PRACTICES,
California Business & Professions Code § 17200
et seq.**

**(2) UNFAIR BUSINESS PRACTICES,
California Business & Professions Code § 17200
et seq.**

(3) DECLARATORY RELIEF

1 Plaintiff, by her attorneys, brings this action on behalf of herself and all others similarly
2 situated against Automobile Club of Southern California (“ACSC”) and Interinsurance Exchange
3 of the Automobile Club (“Interinsurance Exchange”) (collectively, “Auto Club” or
4 “Defendants”). Plaintiff alleges the following on information and belief, except as to those
5 allegations that pertain to the named Plaintiff:

6 **NATURE OF THE ACTION**

7 1. Plaintiff, a former insurance agent employed by the Auto Club, brings this action
8 to challenge Auto Club’s policy of penalizing sales agents for selling new automobile insurance
9 policies to customers who do not have prior insurance coverage, in violation of Proposition 103.

10 2. Under Proposition 103, “[t]he absence of prior automobile insurance coverage, in
11 and of itself, shall not be a criterion for determining eligibility for a Good Driver Discount policy,
12 or generally for determining automobile rates, premiums, or insurability.” (Ins. Code §
13 1861.02(c).)

14 3. Auto Club is well aware of this prohibition. In 2002, Auto Club settled a lawsuit
15 brought by consumers who were unlawfully surcharged based on a lack of prior insurance at the
16 time they applied for coverage.

17 4. Auto Club now attempts an end-run around the mandates of Proposition 103
18 through its implementation of an employee compensation scheme that incentivizes sales agents to
19 turn away the drivers without prior insurance that Proposition 103 was enacted to protect.

20 5. Auto Club systematically disincentivizes the sale of policies to drivers without
21 prior insurance. All other characteristics being the same, an agent who sells a policy to someone
22 without prior insurance stands to make less - often hundreds of dollars less - than an agent who
23 sells that same exact policy to someone with prior coverage.

24 6. Auto Club’s compensation scheme has had its intended effect. The financial
25 deterrent for selling a new automobile policy to a person without prior insurance is so severe that
26 many agents refuse to sell policies to persons without prior insurance. Even if a sale is ultimately
27 made, Auto Club’s incentive program results in Auto Club and its agents providing inferior
28 service to these customers. For example, agents intentionally disconnect phone calls from

1 consumers upon learning from the caller that she is without prior insurance. Alternatively, agents
2 will instantly quote drivers without prior insurance inaccurately inflated premium rates so as to
3 quickly get them off the phone.

4 7. In Auto Club offices where agents sell policies directly to walk-in customers,
5 agents have been known to keep persons without prior insurance waiting for unusually long
6 periods of time so as to discourage the customer from filling out and submitting an application for
7 insurance.

8 8. By concocting and implementing a plan designed to refuse coverage to drivers
9 without prior insurance, Auto Club is using prior insurance as a criterion for determining
10 insurability, a direct violation of Proposition 103.

11 9. Proposition 103 also requires that insurers offer a “Good Driver Discount policy,”
12 to all drivers who have been licensed to drive for three years and whose driving safety record
13 meets specific criteria listed in the Insurance Code (“Good Drivers”). (Ins. Code §§ 1861.02(b),
14 1861.025.) A Good Driver Discount policy “shall be at least 20% below the rate the insured
15 would otherwise have been charged for the same coverage.” (*Ibid.*) Auto Club’s compensation
16 system also serves to violate this provision.

17 10. By financially discouraging agents from selling new policies to drivers who are
18 eligible for a Good Driver Discount policy but who do not have prior insurance, Auto Club
19 deprives otherwise qualified Good Drivers of the opportunity to purchase the discounted policies
20 to which they are entitled, in violation of section 1861.02, subdivisions (b) and (c).

21 11. Auto Club’s policies harm two groups of people: consumers and agents. Auto
22 Club turns away consumers who are obligated by law to purchase automobile insurance, denying
23 Good Drivers the coverage and discounts to which they are lawfully entitled. Moreover, Auto
24 Club agents who do sell insurance to customers without prior insurance are penalized with
25 significantly lower commissions. This action seeks to benefit both groups through an injunction
26 that will stop the Auto Club’s unlawful practices and an award of restitution that will compensate
27 Auto Club’s Agents for unlawful underpayment of commissions.

28 12. Plaintiff brings this action on behalf of herself and on behalf of all current and

1 former sales agents employed by Auto Club during the four years prior to the filing of this action
2 (“Class members”). Plaintiff and Class members assert claims against Defendants ACSC and
3 Interinsurance Exchange under the Unfair Competition Law (“UCL”), Business and Professions
4 Code section 17200 et seq., and seek declaratory relief under Code of Civil Procedure, section
5 1060. Plaintiff seeks an order enjoining ACSC’s and Interinsurance Exchange’s commission
6 practices that violate Insurance Code sections 1861.02, subdivisions (c) and (b).¹ Plaintiff and
7 Class members also seek restitution, equitable relief and appropriate attorneys’ fees and costs.

8 **THE PARTIES**

9 13. Plaintiff Jill Rogers is a resident of San Clemente, California. Ms. Rogers was
10 employed by Automobile Club of Southern California from March 2008 through June 2011,
11 where she held the title of Direct Sales Agent in Auto Club’s Costa Mesa, California office.
12 During the course of her employment, Ms. Rogers sold Auto Club memberships and insurance
13 products, including private passenger automobile insurance policies. On numerous occasions,
14 Ms. Rogers sold private passenger insurance policies to customers without prior insurance. Ms.
15 Rogers was compensated at a lower rate, and therefore lost money and property, each time she
16 sold a policy to a driver without prior insurance.

17 14. Defendant Automobile Club of Southern California is a corporation duly
18 organized and existing under the laws of the State of California. ACSC’s principal place of
19 business is located at 2601 S. Figueroa St., Los Angeles, California 90007. It is authorized as an
20 insurance agent licensed by the California Department of Insurance to transact and is transacting
21 the business of selling automobile insurance on behalf of Defendant Interinsurance Exchange of
22 the Automobile Club. Automobile Club of Southern California also sells memberships, which
23 provide services such as emergency roadside assistance, travel agency services, Department of
24 Motor Vehicle related services, financial services, and map distribution.

25 15. Defendant Interinsurance Exchange of the Automobile Club is a reciprocal
26 insurance exchange organized and existing under the laws of California with its principal place of
27 business located at 3333 Fairview Road, Costa Mesa, California 92626. It is authorized to

28 ¹ All statutory references herein are to the Insurance Code unless otherwise stated.

1 transact and is transacting the business of providing automobile, homeowners, watercraft and
2 personal excess liability insurance in the State of California. Interinsurance Exchange is an
3 unincorporated association of subscribers (policyholders) who exchange agreements to insure one
4 another. The Insurance Code governs the creation and operation of Interinsurance Exchange.
5 (See Ins. Code §§ 1300, 1301.)

6 16. The true names or capacities, whether individual, corporate, associate, or
7 otherwise, of Does 1 through 100, inclusive, are unknown to the representative Plaintiff, who
8 therefore sues said Defendants by such fictitious names. Representative Plaintiff is informed and
9 believes and thereon alleges that each of the Defendants sued herein as a Doe is legally
10 responsible in some manner for the events referred to herein, and will ask leave of this court to
11 amend his Complaint to insert their true names and capacities instead of the fictional names when
12 the same becomes known to the representative Plaintiff.

13 17. At all relevant times, Defendants, and each of them, were the agents and
14 employees of each of the remaining Defendants, and were at all times acting within the purpose
15 and scope of said agency and employment, and each defendant has ratified and approved said
16 agency and employment, and each defendant has ratified and approved the acts of its agent.

17 **JURISDICTION AND VENUE**

18 18. This Court has jurisdiction of this action under Article VI, section 10 of the
19 California Constitution and section 410.10 of the Code of Civil Procedure.

20 19. This Court has jurisdiction over ACSC because ACSC is a resident of the State of
21 California, ACSC has purposely availed itself of the privilege of conducting business activities in
22 California and because ACSC currently maintains systematic and continuous business contacts
23 with this State.

24 20. This Court has jurisdiction over Interinsurance Exchange because Interinsurance
25 Exchange is a resident of the State of California, Interinsurance Exchange has purposely availed
26 itself of the privilege of conducting business activities in California, and because Interinsurance
27 Exchange currently maintains systematic and continuous business contacts with this State.

28 21. Plaintiff does not assert any claims arising under the laws of the United States of

1 America. Federal jurisdiction does not exist because greater than two-thirds of the members of
2 the Class in the aggregate are citizens of California and both Defendants are citizens of
3 California. The principal injuries were incurred in California and arise from Defendants'
4 conduct, which occurred in California. To the best of Plaintiff's knowledge, during the three-year
5 period preceding the filing of this class action, no other class action was filed asserting the same
6 or similar factual allegations against either Defendant asserting the same or similar factual
7 allegations on behalf of the same or other persons.

8 22. Venue is proper in the County of Los Angeles because Defendant ACSC's
9 principal place of business is located in this County, a substantial amount of the transactions
10 complained of herein occurred in this County and Defendants are located and/or doing business in
11 this County and throughout California.

12 **BACKGROUND**

13 23. Prior to the 1988 passage of Proposition 103, "California ha[d] less regulation of
14 insurance than any other state, and in California automobile liability insurance [was] less
15 regulated than most other forms of insurance." (*20th Century Ins. Co. v. Garamendi* (1989) 8
16 Cal.4th 216, 240.) "Discriminatory treatment of the uninsured was ... of major significance prior
17 to the passage of Proposition 103." (*Foundation for Taxpayer and Consumer Rights v.*
18 *Garamendi* (2005) 132 Cal.App.4th 1354, 1359, fn. 3.)

19 **A. California's Mandatory Insurance Law**

20 24. In 1984, the California Legislature, concerned that too many drivers were on the
21 road without insurance, enacted the Robbins-McAlister Financial Responsibility Act ("Mandatory
22 Insurance Law") which imposed severe penalties on drivers who did not carry automobile
23 insurance. (Veh. Code § 16028.) The Legislature's goal was to make sure that every driver
24 involved in an accident, "whether negligent or not, was able to compensate for any harm they
25 caused while driving." (*King v. Meese* (1987) 43 Cal.3d 1217, 1220-21.)

26 **B. Insurer Practices Penalizing Persons Without Prior Insurance**

27 25. Unfortunately, uninsured motorists who tried to buy insurance to comply with the
28 law were faced with a "Catch-22": insurance companies often charged motorists much higher

1 premiums just because they did not already have insurance. (*Foundation for Taxpayer and*
2 *Consumer Rights v. Garamendi, supra*, 132 Cal.App.4th at 1359, fn. 3; National Insurance
3 Consumer Organization, *Insurance in California: A 1986 Status Report for the Assembly*, at IV-
4 32-24 (Oct. 1986).) In fact, many insurance companies refused to sell insurance at any price to
5 people who did not already have it. (*Foundation for Taxpayer and Consumer Rights v.*
6 *Garamendi, supra*, 132 Cal.App.4th at 1359, fn. 3.)

7 26. Surcharging, or refusing to sell insurance policies to, persons without prior
8 insurance “arbitrarily penalized uninsured motorists, leaving many unable to comply with
9 California’s mandatory insurance laws.” (*Foundation for Taxpayer and Consumer Rights v.*
10 *Garamendi, supra*, 132 Cal.App.4th at 1369, citation omitted.)

11 27. In 1985, responding to widespread public complaints, the California Department
12 of Insurance (“CDI”) issued an official bulletin urging insurance companies not to penalize
13 people without prior insurance:

14 It has been the position of this Department that lack of evidence of
15 prior insurance in itself is not a proper rating standard. There are
16 many reasons why an applicant may not have had prior insurance,
17 many of which have no bearing on the applicant’s future loss
18 potential. The carrier should review the specific conditions that led
19 to an applicant’s failure to carry insurance rather than apply a
20 blanket surcharge simply because the applicant has had no prior
21 insurance.

22 (California Department of Insurance, Bulletin 85-11, *Surcharging of Risks Which Have No*
23 *Evidence of Prior Insurance* (Jul. 31, 1985).)

24 28. A major effect of insurers surcharging or refusing to insure persons who lacked
25 prior insurance was to increase the number of uninsured motorists, who were therefore exposed to
26 the severe penalties imposed on drivers who did not carry proof of financial responsibility, or
27 automobile insurance, under California’s Mandatory Insurance Law.

28 29. In 1987, a group of citizens challenged the Mandatory Insurance Law in court,
arguing that it was not fair for government to require consumers to buy automobile insurance
without protections against insurers’ abusive practices. (*King v. Meese, supra*, 43 Cal. 3d 1217.)
The California Supreme Court acknowledged the problem faced by drivers without prior

1 insurance, but ultimately ruled that the judicial branch had no power to fix the problem, stating
2 that the citizens' "case should be made to the Legislature." (*Id.* at 1235.)

3 **C. Proposition 103 Prohibits Insurers from Penalizing Persons Without Prior**
4 **Insurance**

5 30. In 1988, California's voters enacted the insurance reform initiative Proposition
6 103, finding that "enormous increases in the cost of insurance have made it both unaffordable and
7 unavailable to millions of Californians." (Ballot Pamp., Gen. Elec. (Nov. 8, 1988), p. 99, Prop.
8 103, § 1 [uncodified preamble, "Findings and Declaration"].) The voters passed Proposition 103
9 "to protect consumers from arbitrary insurance rates and practices, to encourage a competitive
10 insurance marketplace ... and to ensure that insurance is fair, available, and affordable for all
11 Californians." (*Id.*, Prop. 103, ¶2 [uncodified preamble, "Purpose"].)

12 **i. *Prohibition on the Absence of Prior Insurance for Determining***
13 ***Insurability***

14 31. Aimed at protecting those drivers entering the market who have not previously
15 been insured, Proposition 103 mandates that "the absence of prior insurance coverage, in and of
16 itself, shall not be a criterion for determining eligibility for a Good Driver Discount Policy, or
generally for automobile rates, premiums, or insurability." (Ins. Code § 1861.02(c).)

17 **ii. *Good Driver Discount Policies***

18 32. Proposition 103 also enacted a mandatory Good Driver Discount. Section
19 1861.02, subdivision (b), provides that persons who have been licensed to drive a motor vehicle
20 for three years whose driving safety record meets the criteria specified in section 1861.025, "shall
21 be qualified to purchase a Good Driver Discount policy from the insurer of his or her choice. An
22 insurer shall not refuse to offer and sell a Good Driver Discount policy to any person who meets
23 the standards of this subdivision." (Ins. Code § 1861.02(b).) A Good Driver Discount policy
24 "shall be at least 20% below the rate the insured would otherwise have been charged for the same
25 coverage." (*Ibid.*)

26 33. Most drivers without prior insurance are considered "Good Drivers" under
27 California law. A 1998 Department of Insurance study showed that 87 percent of drivers without
28 prior insurance were "Good Drivers" under Proposition 103, and, of that 87 percent, only 20

1 percent had any tickets, 55 percent were employed, 13 percent were unemployed but looking for
2 work, 71 percent reported incomes less than \$20,000 per year and 66 percent were Hispanic,
3 Black, Asian or multicultural. (Cal. Department of Insurance, California's Uninsured (1998) p.
4 19.)

5 34. When insurance companies refrain from selling policies to drivers without prior
6 insurance, otherwise qualified “Good Drivers” are deprived of the Good Driver Discount and are
7 unable to obtain affordable coverage. This in turn harms all drivers in the form of higher
8 uninsured motorist premiums.

9 **D. Landers v. Interinsurance Exchange of the Automobile Club**

10 35. In 2002, Interinsurance Exchange policyholders filed a class action lawsuit against
11 the insurer for violating Proposition 103 by improperly surcharging drivers without prior
12 insurance and others who could not show proof of prior insurance when they applied for coverage
13 between 1999 and 2004. Auto Club trained its agents to ask prospective insureds whether they
14 currently had automobile insurance coverage and to uniformly provide higher premium quotes
15 based on a negative response to that question. Customers without prior insurance coverage who
16 bought new policies paid the higher premiums. The class action resulted in a settlement that
17 provided \$22.5 million for policyholders, an average refund of approximately \$187 per affected
18 policyholder. (See *Landers v. Interinsurance Exchange of the Automobile Club* (Super. Ct. Los
19 Angeles County, 2007, No. BC281759).)

20 **FACTUAL ALLEGATIONS**

21 **A. Auto Club’s Agent Commission**

22 36. Auto Club sells Interinsurance Exchange products such as automobile insurance
23 policies to Southern California residents. Auto Club employs “Direct Sales Agents,” who sell
24 policies to customers over the telephone and through inquiries made through Auto Club’s
25 website, and “Field Sales Agents,” who sell policies in person at local Auto Club offices
26 throughout Southern California (collectively, “Auto Club Agents”).

27 37. Auto Club Agents rely primarily on commission payments for their compensation.
28 Auto Club pays its agents a commission for every automobile insurance policy that they sell.

1 38. Auto Club calculates the agent's commission based on the characteristics of the
2 person purchasing the policy, including whether the customer has prior insurance.

3 39. The commission paid to an agent for selling a policy to a driver without prior
4 insurance is almost always less than the commission paid for selling a policy to someone with
5 prior insurance. In some cases, the commission paid for selling a policy to a driver without prior
6 insurance can be as little as one-fourth the commission paid to an agent who sells an identical
7 policy to someone with prior insurance.

8 **B. Auto Club Does Not Inform Agents About California's Insurance Laws**

9 40. Auto Club does not educate its agents about the requirements of California's
10 insurance laws.

11 41. The Auto Club never informed Plaintiff, and she was unaware, that California law
12 prohibits insurers from refusing to sell an automobile insurance policy to a person without
13 insurance on the grounds that the person is without prior insurance, or that insurance companies
14 are required by law to sell Good Driver Discount policies to all persons buying automobile
15 insurance that qualify as Good Drivers.

16 **C. Auto Club Agent Practices Towards Customers Without Prior Insurance**

17 42. Auto Club Agents know whether a potential customer has prior insurance within
18 the first two minutes of a telephone call or office visit. Auto Club instructs its agents to ask
19 potential customers whether they have prior insurance – it is the first question agents are trained
20 to ask potential customers, after obtaining their name and address.

21 43. Auto Club Agents are well aware of the harmful financial repercussions they
22 suffer when they sell a policy to a person without prior insurance.

23 44. Auto Club Agents are also aware that, when issuing policies to persons without
24 prior insurance, they must take extra care to ensure that all the information used to write the
25 policy is accurate. Failure to properly obtain accurate information results in further reductions to
26 commissions paid. The risks associated with innocent mistakes are amplified when issuing
27 policies to persons without prior insurance, as the company performs post-sale factual audits on
28 the sale of policies to people without prior insurance coverage.

1 45. In response to the Auto Club’s financial incentives, its agents have developed
2 tactics to avoid selling policies to people without prior insurance.

3 46. Auto Club Agents selling policies to customers over the telephone are trained to
4 ask, “Are you currently insured?” Agents who receive a negative response to the question will
5 sometimes intentionally disconnect the telephone call. By dropping the call, the agent does not
6 have to go through the time consuming process of providing a quote or writing a policy that earns
7 a commission that will be significantly lower than that earned on a caller who has prior insurance.

8 47. Additionally, Auto Club Agents provide applicants without prior insurance
9 fabricated quotes that are artificially inflated and not competitive with other insurers’ premiums.
10 This practice often causes the potential customer to voluntarily terminate the call.

11 48. In Auto Club offices where agents deal with walk-in customers, agents keep
12 people without prior insurance waiting for unusually long periods of time in an attempt to
13 discourage the customer from proceeding with an insurance application.

14 49. Commission driven agents have limited periods of time during which they can
15 field calls. These individuals realize that the comparatively meager commissions generated by
16 the sale of policies to drivers without prior insurance are not worth the time it takes to accurately
17 draw them up. Consequently, tactics are employed to enable Auto Club Agents to avoid
18 generating quotes to people without prior insurance.

19 50. Auto Club managers and supervisors are aware that agents adopt and utilize these
20 practices. They nonetheless have taken no action to ensure that Auto Club Agents do not
21 discriminate against persons without prior insurance.

22 **CLASS ALLEGATIONS**

23 51. This action is brought on behalf of the Plaintiff individually and on behalf of all
24 others similarly situated pursuant to Code of Civil Procedure section 382. Plaintiff seeks to
25 represent the following class:

26 All current and former Direct Sales Agents and Field Sales Agents
27 employed by Automobile Club of Southern California during the
28 four years prior to the filing of this action.

52. The proposed Class is composed of thousands of persons dispersed throughout the

1 State of California and joinder is impracticable. The precise number and identity of Class
2 members are unknown to Plaintiff but can be obtained from Defendants' records.

3 53. There are questions of law and fact common to the members of the Class, which
4 predominate over questions affecting only individual Class members.

5 54. Plaintiff is a member of the Class and Plaintiff's claims are typical of the claims of
6 the Class.

7 55. Plaintiff is willing and prepared to serve the Court and the proposed Class in a
8 representative capacity. Plaintiff will fairly and adequately protect the interests of the Class and
9 has no interests adverse to or conflicting with the interests of the other members of the Class.

10 56. The self-interest of Plaintiff is co-extensive with and not antagonistic to those of
11 absent Class members. Plaintiff will undertake to represent and protect the interests of absent
12 Class members.

13 57. Plaintiff has engaged the services of counsel indicated below who are experienced
14 in complex class litigation, will adequately prosecute this action, and will assert and protect the
15 rights of and otherwise represent Plaintiff and absent Class members.

16 58. The prosecution of separate actions by individual members of the Class would
17 create a risk of inconsistency and varying adjudications, establishing incompatible standards of
18 conduct for Defendants.

19 59. Defendants have acted on grounds generally applicable to the Class, thereby
20 making relief, including injunctive and declaratory relief, with respect to the members of the
21 Class as a whole appropriate.

22 60. A class action is superior to other available means for the fair and efficient
23 adjudication of this controversy. Prosecution of the complaint as a class action will provide
24 redress for individual claims too small to support the expense of complex litigation and reduce the
25 possibility of repetitious litigation.

26 61. Plaintiff anticipates no unusual management problems with the pursuit of this
27 Complaint as a class action.
28

FIRST CAUSE OF ACTION

Violation of Business & Professions Code Section 17200 et seq. –

Unlawful Business Acts and Practices

62. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth herein.

63. Business and Professions Code section 17200 et seq. prohibits acts of “unfair competition,” which is defined by Business and Professions Code section 17200 as including “any unlawful, unfair or fraudulent business act or practice....”

64. Auto Club’s conduct, and the conduct of Does 1 through 100, as described above, constitutes “unlawful” business acts and practices.

65. Auto Club and Does 1 through 100 have violated and continue to violate Business and Professions Code section 17200’s prohibition against engaging in “unlawful” business acts or practices, by, inter alia, violating Insurance Code sections 1861.02, subdivisions (c) and (b), as set forth herein.

66. In relevant part, section 1861.02, subdivision (c), provides that “[t]he absence of prior automobile insurance coverage, in and of itself, shall not be a criterion for determining eligibility for a Good Driver Discount policy, or generally for determining ... insurability.”

67. Auto Club has violated and continues to violate section 1861.02, subdivision (c), by establishing a compensation scheme for agents that is intended to, and does, penalize and discourage the sale of insurance to persons without prior insurance.

68. In relevant part, section 1861.02, subdivision (b), provides that all persons who meet specified criteria under section 1861.025 “shall be qualified to purchase a Good Driver Discount policy from the insurer of his or her choice. An insurer shall not refuse to offer and sell a Good Driver Discount policy [at a rate charged at least 20% below the rate the insured would have been charged for the same coverage] to any person who meets the standards of this subdivision.”

69. Auto Club has violated and continues to violate section 1861.02, subdivisions (b) and (c), by deterring Auto Club Agents, through substantially reduced commission, from selling

1 policies to drivers without prior insurance and depriving otherwise qualified drivers of Good
2 Driver Discount policies.

3 70. Plaintiff suffered injury in fact and lost money in the form of reduced commissions
4 as a result of Auto Club's unlawful business acts and practices when each of them were penalized
5 for selling policies to drivers without prior insurance.

6 71. As a result of Auto Club's violations of Business and Professions Code section
7 17200, Plaintiff and Class members are entitled to equitable relief in the form of full restitution of
8 all earned wages Auto Club withheld from Plaintiff and Class members through its unlawful
9 business acts and practices.

10 72. Plaintiff also seeks an order enjoining Auto Club from such future conduct.

11 **SECOND CAUSE OF ACTION**

12 **Violation Of Business & Professions Code Section 17200 et seq. –**

13 **Unfair Business Acts and Practices**

14 73. Plaintiff incorporates by reference each of the preceding paragraphs as though
15 fully set forth herein.

16 74. Auto Club's conduct, and the conduct of Does 1 through 100, as described above,
17 constitutes "unfair" business acts and practices.

18 75. Auto Club's conduct does not benefit competition or consumers. Indeed the injury
19 to competition and consumers is substantial.

20 76. Plaintiff and Class members could not have reasonably avoided the injury each of
21 them suffered.

22 77. The gravity of the consequences of Auto Club's conduct, as described above,
23 outweighs any justification, motive or reason therefore and is immoral, unethical, oppressive,
24 unscrupulous, and offends established public policy as delineated in Proposition 103, the
25 Insurance Code, and their underlying purposes. Auto Club's conduct results in an unfair
26 advantage that significantly harms competition in the automobile insurance marketplace.

27 78. Plaintiff suffered injury in fact and lost money in the form of reduced commissions
28 as a result of Auto Club's unfair business acts and practices when each of them were penalized

1 for selling policies to drivers without prior insurance.

2 79. As a result of Auto Club's violations of Business and Professions Code section
3 17200, Plaintiff and Class members are entitled to equitable relief in the form of full restitution of
4 all earned wages Auto Club withheld from Plaintiff and Class members through unfair business
5 acts and practices.

6 80. Plaintiff also seeks an order enjoining Auto Club from such future conduct.

7 **THIRD CAUSE OF ACTION**

8 **Declaratory Relief**

9 81. Plaintiff incorporates by reference each of the preceding paragraphs as though
10 fully set forth herein.

11 82. An actual controversy, over which this Court has jurisdiction, now exists between
12 Plaintiff, Class members, the general public, potential Auto Club customers and Auto Club
13 concerning their respective rights, duties and obligations for which Plaintiff desires a declaration
14 of rights with regard to Auto Club's illegal commission scheme. Specifically, Plaintiff and Class
15 members contend that Auto Club's commission scheme, which penalizes sales agents for selling
16 new automobile insurance policies to customers without prior insurance coverage, is prohibited
17 by Insurance Code section 1861.02, subdivisions (b) and (c). Auto Club contends its conduct was
18 proper.

19 83. Plaintiff requests a declaration of the rights and obligations of Plaintiff and the
20 Class, on the one hand, and ACSC and Interinsurance Exchange, on the other, with regard to
21 Auto Club's illegal commission scheme.

22 84. Plaintiff also requests an order declaring Auto Club is obligated to pay restitution
23 to all members of the Class as appropriate and pay all wages Auto Club wrongfully withheld
24 either directly or indirectly as a result of its illegal conduct.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff, on her own behalf and on behalf of the Class, prays for relief as
27 follows:

28 1. An Order certifying the proposed Class pursuant to Code of Civil Procedure

1 section 382 and appointing Plaintiff to represent the proposed Class and designating her counsel
2 as Class Counsel;

3 2. An injunction to prevent Automobile Club of Southern California and
4 Interinsurance Exchange of the Automobile Club from future engaging in future violations of
5 Insurance Code sections 1861.02 et seq. and Business and Professions Code section 17200 et
6 seq., as alleged herein;

7 3. An award of restitution to Plaintiff and the Class;

8 4. A declaration of the rights and obligations of Plaintiff and the Class, on the one
9 hand, and Automobile Club of Southern California and Interinsurance Exchange of the
10 Automobile Club, on the other, with regard to the business practice alleged;

11 5. An award Plaintiff attorneys' fees, expert witness fees and other costs and
12 expenses, including pre-judgment and post-judgment interest thereon; and

13 6. Such other relief as the Court deems proper.

14 DATED: October 24, 2012

Respectfully Submitted,

15
16 Harvey Rosenfield
17 Pamela Pressley
18 Laura Antonini
19 CONSUMER WATCHDOG

20 By:


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