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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF LOS ANGELES

18 LISA KARNAN, on Behalf of Herself and all)
19 Others Similarly Situated,)

20 Plaintiff,)

21 vs.)

22 SAFECO INSURANCE COMPANY OF)
AMERICA, a Corporation,)
23 FIRST NATIONAL INSURANCE)
COMPANY OF AMERICA, a Corporation and)
24 DOES 1 through 50, inclusive,,)

25 Defendants)

Case No. BCC266219

CLASS ACTION

Assigned to: Judge Anthony J. Mohr

FIRST AMENDED COMPLAINT FOR
VIOLATIONS OF CALIFORNIA BUSINESS
& PROFESSIONS CODE SECTION 17200,
ET SEQ.

DATE: N/A

TIME: N/A

DEPT: 309

DATE ACTION FILED: 01/11/02

1 Plaintiff Lisa Karnan, by her attorneys, brings this action on behalf of herself and all other
2 similarly situated insureds of SAFECO Insurance Company of America (“SAFECO Insurance”), First
3 National Insurance Company of America (“First National”) and Does 1 through 50 (collectively,
4 “SAFECO” or “defendants”). Plaintiff makes the following allegations on knowledge, information and
5 belief, formed after an inquiry reasonable under the circumstances:

6 **NATURE OF ACTION AND WRONGFUL CONDUCT**

7 1. Plaintiff brings this action on behalf of herself and a class consisting of others, who
8 purchased automobile insurance through defendants and who were surcharged based on a lack of prior
9 or continuous coverage. Plaintiff seeks injunctive relief, restitution, disgorgement and the imposition of
10 a constructive trust under Cal. Bus. & Prof. Code §17200, *et seq.*

11 2. Plaintiff seeks redress from defendants’ unlawful, unfair and deceptive business practice
12 of approving underwriting and issuing automobile insurance policies in which either: (a) the absence of
13 prior automobile insurance coverage; or (b) the lack of continuous automobile insurance coverage is
14 unlawfully used as a rating factor to increase the amount of insurance premiums paid by California
15 consumers.

16 3. Use of either the absence of prior coverage or the lack of continuous coverage as a rating
17 factor for purposes of increasing the amount of automobile insurance premiums violates
18 Proposition 103. Proposition 103, codified at Ins. Code §1861.01, *et seq.*, was passed by the voters of
19 California in November 1988 to change certain industry underwriting and rating practices and to
20 provide for a “Good Driver Discount.” SAFECO’s underwriting and rating practices violate Ins. Code
21 §1861.02, subs. (a), (b) and (c), and also have the effect of making financial responsibility a
22 requirement for issuing automobile insurance coverage. By failing to report its true underwriting and
23 rating practices to the California Department of Insurance (“CDI”), SAFECO also violates Ins. Code
24 §1859.

1 **Section 1861.02(a)**

2 4. Insurance Code §1861.02(a) sets forth the factors insurers “shall” use in rating
3 automobile insurance in California.¹ Section 1861.02, subs. (a)(1)-(3) require insurers to use the
4 insured’s: (a) driving safety record, (b) mileage driven annually, and (c) years of driving experience.
5 Section 1861.02(a)(4) authorizes the Commissioner of the California Department of Insurance to adopt
6 by regulation additional rating factors which have a substantial relationship to the risk of loss. Pursuant
7 to § 1861.02(a)(4), the Commissioner has adopted certain additional rating factors, which are codified
8 at Cal. Code Regs., tit. 10, §2632.5.² SAFECO violates Ins. Code §1861.02(a) because it improperly
9 uses both the absence of prior coverage and the length of continuous coverage to determine premiums,
10 neither of which are included as authorized rating factors under either Ins. Code §1861.02(a) or Cal.
11 Code Regs., tit.10, §2632.5.³

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14 ¹ Section 1861.02(a) states:

15 (a) Rates and premiums for an automobile insurance policy, as described in
16 subdivision (a) of Section 660, shall be determined by application of the following
factors in decreasing order of importance:

- 17 (1) The insured’s driver safety record.
18 (2) The number of miles he or she drives annually.
19 (3) The number of years of driving experience the insured has had.

20 (4) Such other factors as the commissioner may adopt by regulation that
21 have a substantial relationship to the risk of loss. The regulations shall set forth the
22 respective weight to be given each factor in determining automobile rates and
premiums. Notwithstanding any other provision of law, the use of any criterion without
such approval shall constitute unfair discrimination.

23 ² One of the “optional” rating factors under Cal. Code Regs., tit. 10, §2632.5 is “persistence.” In
24 its Class Plans and Rating Manuals submitted to the CDI, SAFECO provides a “persistence discount”
25 for those SAFECO insureds who have maintained continuous automobile coverage with SAFECO
26 Insurance or First National and/or who have homeowners or other insurance coverage with SAFECO.
SAFECO’s improper use of the lack of continuous coverage as a rating factor is different than
“persistence” because SAFECO evaluates the discontinuity of coverage with any insurer, not just
SAFECO or First National.

27 ³ Use of the absence of prior coverage also violates Ins. Code §1861.02(c). See ¶7, below.
28

1 **Section 1861.02(b)**

2 5. In addition to violating Ins. Code §1861.02(a), SAFECO's practice of using a
3 consumer's absence of prior coverage, or lack of continuous coverage as rating factors to increase
4 premiums also violates §1861.02(b).

5 6. Insurance Code §1861.02(b)(1) provides, *inter alia*, that all persons who meet specified
6 criteria set forth in §1861.025 "shall be qualified to purchase a Good Driver Discount policy from the
7 insurer of his or her choice." Section 1861.025 does not require an insured to have had prior
8 automobile insurance coverage or continuous automobile insurance coverage in order to qualify for a
9 Good Driver Discount. Section 1861.02(b)(2) provides that the "rate charged for a Good Driver
10 Discount policy shall . . . be at least 20% below the rate the insured would have been charged for the
11 same coverage." By improperly increasing premiums to consumers who are eligible for the Good
12 Driver Discount but who do not have a record of prior coverage or continuous coverage, SAFECO
13 violates §1861.02, subds. (b)(1) and (b)(2), as well as §1861.02(a).

14 **Section 1861.02(c)**

15 7. SAFECO also violates Ins. Code §1861.02(c) by improperly using the consumer's
16 absence of prior automobile insurance coverage as a rating factor to increase insurance premiums.
17 Addressing the pre-1988 industry practice of using the absence of prior automobile insurance coverage
18 as a rating factor, §1861.02(c) provides that "[t]he absence of prior automobile insurance coverage, in
19 and of itself, shall not be a criterion for determining eligibility for a Good Driver Discount policy, or
20 generally for automobile rates, premiums or insurability." Therefore, SAFECO also violates
21 §1861.02(c) by improperly using the absence of prior insurance as a rating factor to increase insurance
22 premiums and to prevent an otherwise qualified insured from receiving a Good Driver Discount.

23 **Section 1859**

24 8. SAFECO knowingly and actively conceals its violations of Ins. Code §1861.02 from the
25 CDI, from its sales and agency force and from California consumers in direct violation of Ins. Code
26 §1859. That provision states:

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