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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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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14 <sup>1</sup> 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 <sup>2</sup> 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 <sup>3</sup> 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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1 No person, insurer or organization shall wilfully withhold information from, or  
2 knowingly give false or misleading information to, the commissioner or to any rating  
3 organization, advisory organization, insurer or group, association or other organization  
of insurers, which will affect the rates, rating systems or premiums for the classes of  
insurance to which the provisions of this chapter are applicable.

4 9. In its submissions to the Commissioner, including its Class Plan and Ratings Manuals,  
5 SAFECO violates Ins. Code §1859 by failing to disclose its practice of using the absence of prior  
6 automobile insurance coverage or the lack of continuous coverage as criteria for determining premiums,  
7 eligibility for insurance and eligibility for the Good Driver Discount. Because SAFECO knowingly and  
8 actively withholds material information concerning its actual underwriting and rating practices, as well  
9 as related violations of law described above, plaintiff and the general public of the State of California  
10 were likewise all unaware that SAFECO's underwriting practices were unlawful. Plaintiff and the  
11 general public could not have reasonably discovered SAFECO's violations of law due to SAFECO's  
12 knowing and active concealment of the illegal nature of its wrongful underwriting practices.

13 10. SAFECO engages in a uniform and systematic course of conduct and deceptive practice  
14 which deprives California consumers who do not have a history of prior or continuous automobile  
15 insurance coverage of the benefits of Proposition 103, including qualification for the Good Driver  
16 Discount, by improperly increasing their automobile insurance premiums. Plaintiff is informed and  
17 believes, and based thereon alleges, that this premium increase or surcharge is part of a policy  
18 implemented by SAFECO to circumvent the law prohibiting insurance carriers from considering a  
19 person's prior insurance coverage as a factor in determining premiums or eligibility for insurance.

20 11. This action seeks redress and equitable relief for the common course of conduct and  
21 deceptive practices implemented by SAFECO to underwrite and issue automobile insurance in violation  
22 of Ins. Code §§1859 and 1861.02. The general public unwittingly purchased automobile insurance  
23 from SAFECO based on this practice, paid (and continue to pay) inflated premiums and/or surcharges  
24 in excess of 20% of what they otherwise qualified for under law and were harmed thereby.

### 25 JURISDICTION AND VENUE

26 12. This Court has jurisdiction over all causes of action asserted herein pursuant to the  
27 California Constitution, Article VI, §10, because this case is a cause not given by statute to other trial  
28 courts.



1 mentioned a business enterprise engaged in the business of writing automobile insurance and is doing  
2 business in the County of Los Angeles, in the State of California.

3 18. The true names and capacities of the defendants sued herein as Does 1 through 50 are  
4 presently unknown to plaintiff, who therefore sues them by such fictitious names. Plaintiff will amend  
5 this Complaint to allege the true names and capacities of these defendants when they have been  
6 determined. Each of the fictitiously named defendants is responsible in some manner for the conduct  
7 alleged herein. The Doe defendants are private individuals, associations, partnerships, corporations or  
8 institutions who participated in the wrongful conduct alleged herein in ways which are unknown to  
9 plaintiff at this time. Some or all of the Doe defendants may be residents of the State of California.

10 **DEFENDANTS' CONCEALMENT OF THEIR ILLEGAL PRACTICES**

11 19. In its submissions to the Commissioner, including its Class Plan and Ratings Manuals,  
12 SAFECO fails to disclose its practice of using the absence of prior automobile insurance coverage or  
13 the lack of at least one year of continuous coverage as criteria for determining premiums, eligibility for  
14 insurance and eligibility for the Good Driver Discount. Because SAFECO knowingly and actively  
15 withholds this material information concerning its determination of premiums, as well as the related  
16 violations of law described above, plaintiff and the Class were likewise all unaware that SAFECO's  
17 practices were unlawful. Plaintiff and the general public could not have reasonably discovered  
18 SAFECO's violations of law due to SAFECO's knowing and active concealment of the illegal nature of  
19 its wrongful underwriting practices.

20 20. Plaintiff and the Class were unaware of SAFECO's violations of law and that SAFECO  
21 had knowingly failed to disclose material information regarding its premium calculations practices,  
22 Plaintiff and the Class reasonably relied on the regulatory approval process and other relevant  
23 representations, and also relied on information provided by SAFECO, without having knowledge of  
24 SAFECO's omissions and acted on them to their detriment by (a) purchasing reduced automobile  
25 insurance coverage from SAFECO; and (b) paying the improper and inflated premiums on that  
26 insurance. Plaintiff and the Class were unaware of SAFECO's material misrepresentations and  
27 nondisclosures, and could not have discovered them through reasonable diligence as a result of  
28 SAFECO's conduct in fraudulently and actively concealing their wrongdoing.

