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CASE NO: A-21-829914-B
Department 27

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DISTRICT COURT
CLARK COUNTY, NEVADA

HABAKKUIA MALONE, RICHARD MOYER,
individually and on behalf of all those similarly
situated,

Case No.:
Dept. No.:

Plaintiff,

vs.

COMPLAINT

**REQUEST FOR BUSINESS
COURT**

**EXEMPT FROM
ARBITRATION**

Jury Trial Demanded

DEPOSITORS INSURANCE COMPANY,
NATIONWIDE AFFINITY INSURANCE
COMPANY OF AMERICA, NATIONWIDE
ASSURANCE COMPANY, NATIONWIDE
GENERAL INSURANCE COMPANY,
NATIONWIDE INSURANCE COMPANY OF
AMERICA, NATIONWIDE MUTUAL
INSURANCE COMPANY, DOES 1 through 10,
Defendants.

Plaintiffs, Habakkuia Malone and Richard Moyer, by and through undersigned counsel and on behalf of themselves and all other similarly situated, hereby submits this Class Action

1 Complaint against Defendants, Depositors Insurance Company, Nationwide Affinity Insurance
2 Company of America, Nationwide Assurance Company, Nationwide General Insurance
3 Company, Nationwide Insurance Company of America, and Nationwide Mutual Insurance
4 Company (hereinafter collectively “Nationwide”), and DOES 1 through 10.

5
6 **I. INTRODUCTION**

7 1. This action seeks class-wide relief for Defendant Nationwide’s failure to provide and
8 charge a fair and appropriate insurance premium and to provide premium reduction to its Nevada
9 automobile insurance policyholders amid the COVID-19 pandemic.

10 2. Plaintiffs bring this action on behalf of themselves and on behalf of all Nevada residents
11 who held automobile insurance policies through Nationwide as of March 1, 2020, and who have
12 thereafter continued to be Nationwide automobile policyholders.

13 3. Plaintiffs and the class, along with everyone in this country, have faced substantial life
14 changes since March 1, 2020 because of the COVID-19 pandemic, including reduced driving
15 time and miles. The reduction of driving time and miles driven reduces the risk associated with
16 insuring Plaintiffs and the class members’ vehicles. Nationwide has not taken the appropriate
17 action to reduce Plaintiffs and the class members’ premiums to accurately reflect the decreased
18 risk.

19 **II. PARTIES**

20 4. Plaintiff, Habakkuia Malone, is a resident of the State of Nevada, and at all relevant times
21 was an automobile insurance policyholder of Nationwide.

22 5. Plaintiff, Richard Moyer, is a resident of the State of Nevada, and at all relevant times was
23 an automobile insurance policyholder of Nationwide.

24 6. Defendants Depositors Insurance Company, Nationwide Affinity Insurance Company of
25 America, Nationwide Assurance Company, Nationwide General Insurance Company,
26 Nationwide Insurance Company of America, and Nationwide Mutual Insurance Company, are
27 Ohio companies, with offices at One West Nationwide Boulevard, Columbus, Ohio, 43215.

1 7. Collectively, Defendants are all part of the Nationwide family of companies, licensed in
2 Nevada to sell automobile insurance policies within the State of Nevada.

3 8. Defendants DOE 1 through 10 are insurance companies that fall within the Nationwide
4 umbrella that provide policies of automobile insurance to Nevada residents.

5 9. That the true names and capacities, whether individual, corporate, associate, or otherwise,
6 of the Defendants herein designated as DOE are unknown to Plaintiffs at this time who therefore
7 sue said Defendants by fictitious names. Plaintiffs allege that each named Defendant herein
8 designated as DOE is negligently, willfully, contractually, or otherwise legally responsible for
9 the events and happenings herein referred to and proximately caused damages to Plaintiffs as
10 herein alleged. Plaintiffs will seek leave of Court to amend this Complaint to insert the true names
11 and capacities of such Defendants when same have been ascertained and will further seek leave
12 to join said Defendant in these proceedings. Plaintiffs believe each Defendant named as DOE was
13 responsible for contributing to Plaintiffs' damages as set forth herein.

14 **III. JURISDICTION AND VENUE**

15 10. That exercise of jurisdiction by this Court over each and every Defendant in this action is
16 appropriate because each and every Defendant has done, and continues to do business in the State
17 of Nevada, and contracted with Nevada residents, breached contracts with Nevada residents, and
18 violated Nevada laws.

19 11. Nationwide is an insurance company licensed in Nevada, and it sells automobile insurance
20 to Nevada residents and charges and collects premiums from those citizens.

21 12. Nationwide sold a Nevada insurance policy to Plaintiff, Habakkuia Malone, where he
22 resides in Clark County, Nevada.

23 13. Nationwide sold a Nevada insurance policy to Plaintiff, Richard Moyer, where he resides
24 in Clark County, Nevada.

25 14. That exercise of jurisdiction by this Court is further appropriate where Plaintiffs reside in
26 the County of Clark, State of Nevada.

27 15. That this Court has jurisdiction over the subject matter of this action. That exercise of the
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1 jurisdiction by this Court over Nationwide in this action is appropriate because Nationwide has
2 done, and continues to do, business in the State of Nevada, and committed the wrongdoings
3 alleged in this Complaint in the State of Nevada. Additionally, this Court has jurisdiction over
4 the claims alleged herein as they arise out of contracts entered into with Nevada residents and
5 Nationwide’s actions violate Nevada law.

6 **IV. FACTUAL BACKGROUND APPLICABLE TO THE PROPOSED CLASS**

7 16. Nationwide is a prolific underwriter of automobile insurance in Nevada.

8 17. On information and belief, and throughout the entirety of the COVID-19 pandemic,
9 Nationwide has enjoyed a substantial share of the auto insurance market in Nevada. At all times
10 relevant to this case, Nationwide has derived substantial revenues and profits from the sale of
11 automobile insurance to Nevada residents, including Plaintiffs, and all others similarly situated.
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13 **V. GENERAL ALLEGATIONS**

14 18. Coronavirus disease 2019 (“COVID-19”), is a novel, virus-borne, and potentially deadly
15 illness that impacts various systems within the body of those infected with the disease. Since its
16 emergence in late 2019, it has spread rapidly across the globe, reaching pandemic levels. On
17 January 20, 2020, it was declared a “public health emergency of international concerns” by the
18 World Health Organization. A week later, the U.S. Secretary of Health and Human Services
19 declared the virus a public health emergency in the United States.

20 19. COVID-19 is highly contagious and appears capable of spreading exponentially through
21 transmission by persons who are symptomatic, asymptomatic, or pre-symptomatic.

22 20. As of the date of this complaint, the U.S. Centers for Disease Control and Prevention has
23 recorded over 28 million cases of COVID-19, and over 497,000 COVID-related deaths in the
24 U.S. alone.

25 21. The State of Nevada suffered over 4,700 COVID-related deaths as of the date of this
26 Complaint.¹

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28 ¹ <https://nvhealthresponse.nv.gov/> (last visited February 22, 2021).

1 22. On March 12, 2020, Nevada Governor Steve Sisolak issued the Declaration of Emergency
 2 for COVID-19.² In that declaration, the Governor “determined that the State of Nevada is
 3 experiencing events that require a coordinated response for the health and safety of the public.”³
 4 The declaration “will remain in effect until the Chief Medical Officer notifies the Governor that
 5 the health event has been abated and the Governor issues an order terminating the emergency.”⁴

6 23. On March 15, 2020, Governor Sisolak issued the COVID-19 Declaration of Emergency
 7 Directive 001 closing all “public, community, and private K-12 schools in the state” until the
 8 Order is rescinded.⁵

9 24. On March 19, 2020, Governor Sisolak issued COVID-19 Declaration of Emergency
 10 Directive 002 closing all in-person gaming establishments.⁶

11 25. On March 20, 2020, Governor Sisolak issued COVID-19 Declaration of Emergency
 12 Directive 003 closing all “non-essential businesses” that promote social gatherings and prolonged
 13 interactions between individuals where risk of transmission is high.⁷ These businesses included
 14 recreation centers, clubhouses, nightclubs, movie theaters, massage parlors, adult entertainment
 15 establishments, brothels, live entertainment venues, gyms and studios, and aesthetic services (i.e.
 16 beauty shops, tanning salons, wax salons).⁸

17 26. On March 24, 2020, Governor Sisolak issued COVID-19 Declaration of Emergency
 18 Directive 007, which stated that “[t]he Nevada general public shall not gather in groups of ten or
 19 more in any indoor or outdoor area,” and directing local governments to limit the general public’s
 20 use of “recreational equipment, including, without limitation, playground equipment, basketball
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23 ² [https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-12 - COVID-19 Declaration of Emergency/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-12_-_COVID-19_Declaration_of_Emergency/) (last
 24 visited January 28, 2021).

25 ³ *Id.*

26 ⁴ *Id.*

27 ⁵ [https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-15 - COVID-
 19 Declaration of Emergency Directive 001/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-15_-_COVID-19_Declaration_of_Emergency_Directive_001/) (last visited January 28, 2021).

28 ⁶ [https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-18 - COVID-
 19 Declaration of Emergency Directive 002/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-18_-_COVID-19_Declaration_of_Emergency_Directive_002/) (last visited January 28, 2021).

⁷ [https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-20 - COVID-
 19 Declaration of Emergency Directive 003 \(Attachments\)/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-20_-_COVID-19_Declaration_of_Emergency_Directive_003_(Attachments)/) (last visited January 28, 2021).

⁸ *Id.*

1 courts, volleyball courts, baseball fields, beaches, or football fields, in a manner that causes the
2 congregation of ten or more persons.”⁹

3 27. On November 10, 2020, Governor Sisolak once again urged all Nevadans to restrict their
4 activities outside the home to only those essential activities for two (2) weeks, dubbed “Stay at
5 Home 2.0.” This request is a direct result of the rising numbers of COVID-19 infections within
6 the State. The Governor warned that, if the infection numbers do not decrease, the State will likely
7 be subject to another mandatory shut-down.

8 28. The practical effect of the COVID-19 crisis and the State of Nevada’s response thereto
9 has been to dramatically reduce the vehicle traffic on Nevada’s roads. With non-essential
10 businesses and schools closed as well as the limitation on the size of gatherings and people forced
11 to remain at home due to the public health crisis, Nevada residents have been driving less
12 frequently and shorter distances.

13 29. Vehicular traffic throughout Nevada has been greatly reduced during the COVID-19
14 pandemic. For example, in April 2020, the vehicular traffic at the Nevada-California border was
15 sixty-six percent (66%) lower than it was in April 2019. Traffic volumes decreased between sixty
16 percent (60%) to seventy percent (70%) compared to the same time periods in 2019. These
17 reductions have been statewide.

18 30. With fewer people driving fewer miles, there are fewer automobile accidents and,
19 therefore, fewer automobile insurance claims. The COVID-19 pandemic has thus led to a
20 dramatic reduction in automobile insurance claims by Nevada residents. For example, there was
21 a sixty percent (60%) reduction in automobile accidents in Southern Nevada in March 2020 from
22 the prior year. This significant drop in driving, collisions, and automobile insurance claims during
23 the pandemic will almost certainly continue for the foreseeable future, and for as long as the
24 COVID-19 crisis continues.

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28 ⁹ [https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-24 - COVID-19 Declaration of Emergency Directive_007_\(Attachments\)/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-24_-_COVID-19_Declaration_of_Emergency_Directive_007_(Attachments)/) (last visited January 28, 2021).

1 31. In particular, the COVID-19 pandemic has led to a dramatic reduction in the number of
 2 Nevada automobile insurance claims that have been submitted and will be submitted to
 3 Nationwide.

4 32. Insurance companies have provided varying forms of premium refunds or credits during
 5 the COVID-19 pandemic ranging from nothing at all to the 35% CHUBB provided to its insureds.
 6 These refunds or credits are arbitrary and inconsistent in amount and duration. In fact, the only
 7 consistency among the refunds or credits is that they are arbitrary and capricious, as well as
 8 insufficient to provide fair, actual, and meaningful relief to the insureds as illustrated in the
 9 following table:

Insurance Company	Quantity	Duration
Acuity	\$50 - \$100 one time refund (amount depends on the number of insured vehicles)	One time
Allstate	15% discount	2 months (April & May 2020)
Farmers Insurance	25% credit for 1 month and 15% for 1 month	2 months (April & May 2020)
Geico	15% credit	For an entire policy, but ONLY upon insurance renewal between April 8 – Oct 7, 2020.
Liberty Mutual	15% refund	2 months (April & May 2020)
Nationwide	\$50	One time
Progressive	20% credit	2 months (April & May 2020)
State Farm	25% credit	3 months (March – May 2020)
Travelers	15% credit	3 months (April - June 2020)
USAA	20% credit for 3 months then reduced to a 10% credit for 2 months	5 months (March – July 2020)

26 Though each insurance provider represented to its insureds that it understood the challenges
 27 individuals are facing during the COVID-19 pandemic and presented that fair refunds and credits
 28

1 were being issued, yet, none of them offered any meaningful relief that actually reflects the
2 reduction in cars on the road and reduced driving during the pandemic.

3 **A. Nationwide’s Wrongdoing**

4 33. Personal insurance rates are set to cover future expected claims and expenses. Auto
5 insurers, including the Defendants, develop such rates by extrapolating from recent historical
6 experience with premium payments, claims submitted, claim settlement expenses, and non-claim
7 selling and administrative expenses, and then projecting future claims and costs from that data.

8 34. Under Nevada law, Defendants may not charge an insurance premium that is excessive.

9 35. A premium is based, in part, upon what Defendants anticipate for future claims payments
10 both in severity and frequency, and premiums are calculated based upon the extent of the
11 insured’s normal driving routine.

12 36. As a result of COVID-19 restrictions, the frequency and severity of claims incurred by
13 Nationwide were dramatically reduced and significantly less than what was anticipated when the
14 premium was charged.

15 37. As a result of COVID-19 restrictions, Nationwide's insureds drove significantly less than
16 what was anticipated by Nationwide when it developed the premium. As an example, Plaintiffs’
17 driving time and mileage has been, and continues to be, greatly reduced because of the COVID-
18 19 pandemic.

19 38. As a result of COVID-19 restrictions, Nationwide has and will incur significantly less
20 expenses in claim payments than what was anticipated when the premium was charged.

21 39. As a result of COVID-19 restrictions, Nationwide has charged and collected an excessive
22 premium to its insureds in the past and into the future.

23 40. Nationwide is aware that it cannot charge an excessive premiums, and it has an affirmative
24 duty under law to return any excessive premiums that were collected.

25 41. Many auto insurers have provided what the industry refers as “premium relief” to their
26 policyholders, but the so-called “relief” is actually designed to allow insurers to retain excessive
27 premiums in light of COVID-19 restrictions.

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42. Nationwide knows that the premiums it charged and collected following COVID-19 restrictions is grossly excessive.

43. Specifically, in statements posted on its website (and still shown on the website as of the filing of this Complaint), Nationwide offered a one-time credit because the policy-holders “are making the right choice to stay off the road and remain home to flatten the curve.” Nationwide provided a one-time credit of fifty dollars (\$50.00), despite the fact that its policy-holders have been making the “right choice” by mostly staying off the roads for 11 months.

44. This premium credit is inadequate such that even if the credit is applied to Plaintiffs and those similarly situated, the Plaintiffs they have paid and will continue to pay a grossly excessive premium.

45. This premium credit is designed to allow Nationwide to retain a grossly excessive premiums and to continue charging grossly excessive premiums into the future.

46. Nationwide has and will continue to receive a windfall as a result of, the COVID-19 pandemic.

47. Nationwide has continued to retain the excessive premium Plaintiffs, and those similarly situated, have paid and will pay into the future.

VI. CLASS ACTION ALLEGATIONS

48. Habukkuai Malone and Richard Moyer bring this action on behalf of themselves and all others similarly situated, as representatives of the following proposed class: All Nevada residents who were automobile insurance policyholders of Defendants as of March 1, 2020, and who have thereafter continued to be Nationwide automobile insurance policyholders.

49. Numerosity: Upon information and belief, Plaintiffs allege that the total number of Class members is dispersed across the State of Nevada. Consequently, joinder of the individual Class members would be impracticable. While the exact number of Class members is unknown to Plaintiffs at this time, and can only be ascertained through appropriate discovery, Plaintiffs believe that there are thousands of members in the proposed Class such that the disposition of the

1 individual claims of the respective Class members through this Class action will benefit both the
2 parties and this Court, and will facilitate judicial economy.

3 50. Ascertainability: The Class is ascertainable because, on information and belief, each Class
4 member who holds a policy for automobile insurance through Nationwide that was active as of
5 March 1, 2020, is kept and stored in Nationwide’s electronic database and records.

6 51. Typicality: Plaintiffs’ claims are typical of the members of the Class. The claims of
7 Plaintiff and the members of the Class are based on the same legal theories and arise from the
8 same conduct. As such, the claims of the Plaintiffs and the Class rise and fall together and are
9 typical of one another;

10 52. Common Questions of Fact and Law Predominate: Judicial determination of the common
11 legal and factual issues essential to this case would be far more efficient and economical as a class
12 action than in piecemeal individual determinations. There is no plain, speedy, or adequate remedy
13 other than by maintenance of this lawsuit as a class action because individual actions for premium
14 refunds are relatively small, making it economically infeasible for Class Members to pursue
15 remedies individually. The prosecution of separate actions by individual Members of the Class,
16 even if theoretically possible, would create a risk of inconsistent or varying adjudications with
17 respect to the individual Class Members against Defendants and would establish incompatible
18 standards of conduct for the Defendants. There are several questions of law or fact common to
19 all Class members including, but not limited to:

- 20 a. Whether each member of the proposed class was a policyholder under an existing
21 Nationwide automobile insurance policy as of March 1, 2020, and has since
22 continued to be a Nationwide policyholder;
- 23 b. Whether Nationwide has charged each member an excessive premium following
24 COVID-19 restrictions;
- 25 c. Whether each member of the proposed class has been offered or provided with the
26 inadequate premium reduction described in paragraph 43 above;

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- d. Whether the fairness and/or reasonableness of Nationwide’s program of premium reduction, as described above, is governed by the terms of its automobile policies and Nevada law;
- e. Whether Nationwide’s offer or provision of premium reduction, as described in paragraph 43 above, constitutes an unfair or deceptive act or practice;
- f. Whether Nationwide implemented its offer of premium reduction, as described in paragraph 43 above, with the expectation that others would rely upon any misrepresentation, or any concealment or omission of material fact, subsumed within such offer;
- g. Whether Nationwide’s program of premium reduction, as described in paragraph 43 above, is unfair and/or unreasonable;
- h. Whether Nationwide’s program of premium reduction, as described in paragraph 43 above, constitutes a breach of the implied covenant of good faith and fair dealing contained in each of the company’s Nevada automobile insurance policies;
- i. Whether Nationwide’s program of premium reduction, as described in paragraph 43 above, results in a violation of Nevada law; and
- j. Whether Nationwide owes greater COVID-related premium reduction to its Nevada automobile insurance policyholders.

53. Adequacy of Representation: Plaintiffs are adequate representatives of the Class because their interests do not conflict with the interests of the other members of the Class. Plaintiffs will fairly, adequately, and vigorously represent and protect the interests of the members of the Class and have no interests antagonistic to the members of the Class. Plaintiffs have retained counsel who are competent and experienced in the prosecution of complex consumer class action litigation. Plaintiffs’ attorneys have the resources, expertise, and experience to prosecute this action, and do not have knowledge of any conflicts among the members of Plaintiffs’ Class, or any conflicts between the Class and Plaintiffs’ attorneys.

54. Superiority: The class action is superior to other available methods for the fair and efficient adjudication of this controversy because: (a) the prosecution of a multitude of separate

1 actions would be inefficient and wasteful of judicial resources; (b) the members of the Class may
2 be scattered throughout Nevada and are not likely to be able to enforce their rights unless this
3 action is maintained as a class action; (c) the issues raised can be more fairly and efficiently
4 resolved in the context of a single action rather than through piecemeal litigation in the context
5 of separate actions; (d) the resolution of litigation in a single forum will avoid the danger and
6 resultant confusion of possible inconsistent determinations; (e) the prosecution of separate actions
7 would create the risk of inconsistent or varying adjudications; (f) Defendants have acted and will
8 act on grounds applicable to all Class members; (g) individual Class members' premium refund
9 claims are relatively small and the expense and burden of individual litigation makes it impossible
10 for Class members to individually redress the wrongs done to them; and (h) questions of law
11 and/or fact common to the Class, especially on issues of liability, predominate over any individual
12 question.

13 **VII. CAUSES OF ACTION**

14 **FIRST CAUSE OF ACTION**

15 **Declaratory Relief Pursuant to NRS 30.040**

16 55. Plaintiffs, Habakkuia Malone and Richard Moyer, on behalf of themselves and all others
17 similarly situated, repeat and incorporate by reference the allegations set forth in paragraphs 1
18 through 54 above.

19 56. Nationwide has charged an excessive premium following COVID-19 restrictions.

20 57. Nationwide's program of premium reduction, as described in paragraph 43 above,
21 continues to unlawfully deprive its Nevada automobile insurance policyholders of the full and
22 fair COVID-related premium relief to which they are entitled.

23 58. Nationwide's program of premium reduction, as described in paragraph 43 above, is
24 designed to secure for Nationwide, and has secured and will continue to secure for Nationwide,
25 an unfair windfall at the expense of Nationwide's Nevada automobile insurance policyholders.

26 59. Nationwide's program of premium reduction, as described in paragraph 43 above, is
27 unlawful.
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1 60. An actual controversy of a justiciable nature exists regarding the contractual relationship
2 between the Plaintiffs, on behalf of themselves and all others similarly situated, and Nationwide,
3 concerning the parties' rights and obligations with respect to Nationwide's program of COVID-
4 related premium reduction.

5 61. The controversy is of sufficient immediacy to justify the entry of a declaratory judgment
6 regarding the contracts between the Plaintiffs, and all others similarly situated, and Nationwide.

7 62. An actual controversy of a justiciable nature exists regarding Nationwide's statutory
8 responsibilities to provide automobile insurance and to not charge excessive premiums.

9 63. An award of declaratory relief by this Court will terminate some or all the existing
10 controversy between the parties.

11
12 **SECOND CAUSE OF ACTION**

13 **Breach of Contract**

14 64. Plaintiffs, Habakkuia Malone and Richard Moyer, on behalf of themselves and all others
15 similarly situated, repeat and incorporate by reference the allegations set forth in paragraphs 1
16 through 63 above.

17 65. Plaintiffs, and Class members, each entered an insurance contract for automobile
18 insurance with Nationwide.

19 66. The insurance contracts are governed by Nevada law.

20 67. For the Plaintiffs, Nationwide agreed to charge a premium that was reasonable in relation
21 to the risk and was not excessive.

22 68. Nationwide considers several factors when determining the premiums charged to its
23 insureds, including driving history and accident risk.

24 69. Nationwide is aware of that the effects of the COVID-19 pandemic and restrictions
25 materially changed the nature of the risk being insured because there was a material decrease in
26 the claims frequency and severity.

27 70. In light of the change of the risk being insured, the pre-COVID-19 premium is excessive
28 in relation to the COVID-19 risks.

1 71. Plaintiffs, and those similarly situated, paid an excessive premium when they paid the
2 premium Nationwide charged.

3 72. Nationwide breached the insurance contract when it collected an excessive premium from
4 Plaintiffs and those similarly situated.

5 73. As a direct result of Nationwide’s breach of contract, Plaintiffs Habakkuia Malone and
6 Richard Moyer, on behalf of themselves and all others similarly situated, have been damaged
7 because they paid excessive premiums and will continue to pay excessive premiums into the
8 future.

9 74. As a direct and proximate result of the foregoing and as a result of the breach by
10 Defendants, Plaintiffs, and those similarly situated, have sustained damages in an amount
11 exceeding Fifteen Thousand Dollars (\$15,000.00).

12 75. It has been necessary for Plaintiffs to retain the services of counsel to represent them, and
13 those similarly situation, to bring this action, and Plaintiffs are entitled to recovery of attorneys’
14 fees and costs incurred herein.

15 **THIRD CAUSE OF ACTION**

16 **Breach of the Covenant of Good Faith and Fair Dealing (Contract)**

17 76. Plaintiffs, Habakkuia Malone and Richard Moyer, on behalf of themselves and all others
18 similarly situated, repeat and incorporate by reference the allegations set forth in paragraphs 1
19 through 75 above.

20 77. Each existing automobile insurance policy Nationwide has issued in the State of Nevada
21 contains an implied covenant of good faith and fair dealing.

22 78. Nationwide owes a duty of good faith and fair dealing to Plaintiffs and those similarly
23 situated, to act in a manner that is faithful to the purpose and spirit of the contract.

24 79. In order to fulfill the purpose and spirit of the contract, Nationwide must charge a premium
25 that is reasonable in relation to the risk insured against and is not excessive.

26 80. Nationwide is aware that the effects of the COVID-19 pandemic and restrictions
27 materially changed the nature of the risk being insured because there was a material decrease in
28 the claims frequency and severity.

1 81. In light of the change of the risk being insured, the pre-COVID-19 premium is excessive
2 in relation to the COVID-19 risks.

3 82. Plaintiffs, and those similarly situated, paid an excessive premium when they paid the
4 premium Nationwide charged.

5 83. Nationwide has deliberately contravened the intention and spirit of the contract by
6 collecting and retaining the excessive premium.

7 84. Nationwide breached its duty of good faith and fair dealing when it collected and retained
8 an excessive premium from Plaintiffs and those similarly situated.

9 85. As a direct result of Nationwide’s breach of contract, Plaintiffs Habakkuia Malone and
10 Richard Moyer, on behalf of themselves and all others similarly situated, have been damaged as
11 they paid excessive premiums and will continue to do so into the future.

12 86. As a direct and proximate result of the foregoing and as a result of the breach by
13 Defendants, Plaintiffs, and those similarly situated, have sustained damages in an amount
14 exceeding Fifteen Thousand Dollars (\$15,000.00).

15 87. It has been necessary for Plaintiffs to retain the services of counsel to represent them, and
16 those similarly situation, to bring this action, and Plaintiffs are entitled to recovery of attorneys’
17 fees and costs incurred herein.

18 **FOURTH CAUSE OF ACTION**

19 **Bad Faith**

20 88. Plaintiffs, Habakkuia Malone and Richard Moyer, on behalf of themselves and all others
21 similarly situated, repeat and incorporate by reference the allegations set forth in paragraphs 1
22 through 87 above.

23 89. Nationwide owes a duty of good faith and fair dealing to Plaintiffs, and all others similarly
24 situated insureds, and the duty is imposed by law.

25 90. As part of its duty of good faith and fair dealing, Nationwide has a fiduciary-like
26 relationship to Plaintiffs and all other similarly situated insureds.

27 91. Under the law, Plaintiffs, and all those similarly situated insureds, have the right to expect
28 trust and confidence in the integrity and fidelity of Nationwide.

1 92. Nationwide contracted with Plaintiffs, and all those similarly situated, to provide
2 protection, peace of mind, and security as it relates to their automobile insurance.

3 93. As set forth herein, Nationwide, as part of its fiduciary-like duties, cannot charge or retain
4 an excessive premium.

5 94. Nationwide has breached its duty of good faith and fair dealing by charging and collecting
6 from Plaintiffs, and all those similarly situated, an excessive premium.

7 95. Nationwide has acted unreasonably with knowledge there is no unreasonable basis for its
8 conduct.

9 96. Nationwide represented to its customers, including Plaintiffs, and all those similarly
10 situated, that it was taking measures to reduce costs to Plaintiffs, and all those similarly situated,
11 during the COVID-19 crisis.

12 97. Nationwide misrepresented the nature of any relief it may offer to its customers, including
13 Plaintiffs, and all those similarly situated.

14 98. Nationwide offered a one-time fifty dollar (\$50.00) premium credit for those who had
15 active policies as of March 31, 2020. Plaintiffs, and those similarly situated, have not received
16 any other reduction from Nationwide even though COVID-19 continues to wreak havoc in
17 Nevada 11 months after the emergency declaration and will continue for the foreseeable future.

18 99. According to Nationwide, the \$50.00 credit was a one-time credit equivalent to an average
19 fifteen percent (15%) credit across the entire auto customer base.

20 100. In so doing, Nationwide is taking advantage of its insureds, including Plaintiffs
21 and those similarly situated, by continuing to collect and charge excessive premiums despite the
22 greatly reduced risk and enjoying substantial profits as a result.

23 101. Nationwide has acted in bad faith in breaching the fiduciary responsibility it owes
24 to Plaintiffs and all those similarly situated.

25 102. Nationwide's actions were not keeping with the relationship of trust and
26 confidence with its insureds, including Plaintiffs and all those similarly situated.

27 103. As a direct and proximate result of the foregoing and as a result of the breach by
28 Defendants, Plaintiffs, and those similarly situated, have sustained damages as they have paid and

1 will continue to pay into the future in an amount exceeding Fifteen Thousand Dollars
2 (\$15,000.00).

3 104. Defendants made intentional misrepresentations to their insureds and acted with
4 conscious disregard to the rights of their insureds thus entitling Plaintiffs, and all those similarly
5 situated, to an award of punitive damages.

6 105. It has been necessary for Plaintiffs to retain the services of counsel to represent
7 them, and those similarly situation, to bring this action, and Plaintiffs are entitled to recovery of
8 attorneys' fees and costs incurred herein.

9
10 **FIFTH CAUSE OF ACTION**

11 **Violation of Nevada's Deceptive Trade Practices Act (NRS §§ 598.0903 to 598.0999)**

12 106. Plaintiff, Habakkuia Malone and Richard Moyer, on behalf of themselves and all
13 others similarly situated, repeat, and incorporate by reference the allegations set forth in
14 paragraphs 1 through 105 above.

15 107. At all times relevant herein, Defendants violated the Nevada Deceptive Trade
16 Practices Act, §§ 598.0903 to 598.0999, by representing to its automobile insurance
17 policyholders that they will receive premium rates based upon risk factors, offering an inadequate
18 premium reduction in light of the COVID-19 pandemic, and failing to take into consideration the
19 ongoing decrease in risk due to the decreased volume of vehicle traffic on all roads throughout
20 Nevada.

21 108. Defendants made false or misleading statements of fact concerning the price and
22 cost of its automobile insurance policies, as set forth above, in violation of NRS 598.0915(13)
23 and otherwise knowingly made false representations in its communications with automobile
24 insurance policyholders regarding the COVID-19 premium reduction described above.

25 109. In making its offer of premium reduction, Nationwide represented to its Nevada
26 automobile insurance policyholders (implicitly, if not explicitly) that such offer is fair and
27 reasonable, when in fact it is neither.

28

1 110. In making its offer of premium reduction, Nationwide concealed from its Nevada
2 automobile insurance policyholders, or omitted to share with such policyholders, the inadequacy
3 and unfairness of that offer. Nationwide engaged in such conduct with the intent that others rely
4 upon such concealment and/or omission.

5 111. In making its offer of premium reduction, Nationwide expressly represented that
6 it was “offering rapid relief at a time when drivers are making the right choice to stay off the road
7 and remain home to help flatten the curve.” This was a misrepresentation of Nationwide’s intent
8 as the premium credit was only provided once even though Governor Sisolak’s March 12, 2020
9 emergency declaration has been ongoing for 11 months and may continue for several months.

10 112. As a direct result of Nationwide’s conduct, Plaintiffs Habakkuia Malone and
11 Richard Moyer, on behalf of themselves and all others similarly situated, have been deprived of
12 fair and adequate premiums as well as COVID-related premium reduction to which they are fairly
13 and lawfully entitled.

14 113. As a direct and proximate result of the foregoing and as a result of the breach by
15 Defendants, Plaintiffs, and those similarly situated, have sustained damages in an amount
16 exceeding Fifteen Thousand Dollars (\$15,000.00).

17 114. Defendants made intentional misrepresentations to their insureds and acted with
18 conscious disregard to the rights of their insureds thus entitling Plaintiffs, and all those similarly
19 situated, to an award of punitive damages.

20 115. It has been necessary for Plaintiffs to retain the services of counsel to represent
21 them, and those similarly situation, to bring this action, and Plaintiffs are entitled to recovery of
22 attorneys’ fees and costs incurred herein.

23 **VIII. PRAYER FOR RELIEF**

24 **WHEREFORE**, Plaintiffs, and those similarly situated, pray for relief and damages as
25 follows, that the court:

- 26 A. Determine this action is a proper class action and appoint Plaintiffs' representatives of
- 27 the Class under Rule 23 of the Nevada Rules of Civil Procedure;
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- B. Declare the parties’ rights, duties, status, or other legal relations;
- C. Enter the judicial declarations sought by this complaint;
- D. Award compensatory damages to Plaintiffs, and all others similarly situated, for Nationwide’s wrongful conduct detailed above;
- E. Award punitive damages;
- F. Award to Plaintiffs, and all others similarly situated, all attorneys’ fees and costs; and
- G. Award such other and further relief as this Court deems just and appropriate.

DATED this 23rd day of February, 2021.

EGLET ADAMS

MATTHEW L. SHARP, LTD.



/s/ Matthew L. Sharp

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