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15 **UNITED STATES DISTRICT COURT**

16 **EASTERN DISTRICT OF CALIFORNIA**

17 AMY FISHELL and JUSTIN  
18 FISHELL, on behalf of themselves  
19 and on behalf of all other similarly  
20 situated residents of the State of  
21 California,

22 Plaintiffs,

23 vs.

24 NATIONWIDE MUTUAL  
25 INSURANCE  
26 COMPANY, an Ohio corporation,

27 Defendant.

CASE NO.:

**CLASS ACTION**

**COMPLAINT FOR:**

- (1) Unfair Competition (Violation of Cal. Bus. & Prof. Code § 17200);
- (2) Breach of Contract;
- (3) Breach of Special Duty to Insured;
- (4) Breach of Covenant of Good Faith and Fair Dealing; and
- (5) Declaratory Relief

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Amy Fishell and Justin Fishell (“Plaintiffs”), individually and on  
2 behalf of all other similarly situated residents of the State of California, bring this  
3 action based upon personal knowledge as to themselves and their own acts, and as  
4 to all other matters upon information and belief, based upon, *inter alia*, the  
5 investigation of Plaintiffs and their attorneys.

6  
7 **JURISDICTION AND VENUE**

8 1. This Court has subject matter jurisdiction over the state law claims  
9 asserted in this Complaint pursuant to the Class Action Fairness Act, 28 U.S.C. §  
10 1332(d)(2), since all of the Class Members are citizens of a state (California) that is  
11 different from the state of citizenship of NATIONWIDE MUTUAL INSURANCE  
12 COMPANY (NATIONWIDE), an Ohio corporation, and because, at the time of the  
13 filing of this Complaint, there are more than 100 putative members of the Class as  
14 defined herein and the amount in controversy exceeds \$5 million.

15 2. This Court has personal jurisdiction over NATIONWIDE because  
16 NATIONWIDE engages in regular and continuous business activity in the State of  
17 California.

18 3. Venue is appropriate in this District court pursuant to 28 U.S.C. §  
19 1391(b) because, among other things: (a) NATIONWIDE conducts a significant  
20 amount of its business in this District; (b) NATIONWIDE directed its business  
21 activities at residents of this District; and (c) a substantial part of the acts and  
22 omissions by NATIONWIDE that give rise to Plaintiffs’ claims took place in this  
23 District.

24 **NATURE OF THE ACTION**

25 4. Defendant NATIONWIDE is the sixth leading writer of home  
26 insurance in the United States.

27 5. NATIONWIDE’s homeowner’s insurance policies provide coverage  
28 for direct physical loss to the insured’s “residence premises” on an “all-risk” basis.

1           6.       NATIONWIDE also provides coverage for Loss of Use when a  
2 covered loss renders the residence premises unfit to live in. Specifically, the  
3 “Additional Living Expense” coverage provides for the “necessary increase in  
4 living expenses incurred...so that your household can maintain its normal standard  
5 of living”.

6           7.       Additional Living Expenses covered include: reimbursement of rent  
7 for a temporary residence, during repairs to the residence premises; moving and  
8 storage costs; increased grocery or meals in restaurants when a kitchen is not  
9 available; and increased transportation costs when an insured must travel greater  
10 distances to work, school or other locations.

11           8.       In an effort to limit its financial responsibility to its insureds under its  
12 “Additional Living Expenses” coverage to homeowners compelled to relocate due  
13 to a covered loss, NATIONWIDE has engaged in and continues to engage in an  
14 unlawful and unfair business practice whereby NATIONWIDE arbitrarily limits the  
15 rate at which it reimburses its insureds who incur increased transportation costs  
16 resulting from increased mileage required for work, school, and other necessary  
17 travel. The reimbursement rate paid by NATIONWIDE is less than the industry  
18 practice, is less than the rate used and allowed by the United States Treasury in its  
19 IRS regulations, and does not fully compensate NATIONWIDE’s insureds for the  
20 increased costs incurred as provided by the policy. NATIONWIDE’s unfair and  
21 unlawful business practice shall be referred to herein as the “*relocation mileage*  
22 *reimbursement limitation.*”

23           9.       Plaintiffs, individually and on behalf of all other similarly situated  
24 residents of the State of California (hereinafter, “Class Members”), bring this  
25 lawsuit to challenge NATIONWIDE’s unfair and unlawful business practice.

26           10.      Plaintiffs and the Class Members are individuals who are  
27 NATIONWIDE homeowner insurance policy holders and who were subjected to  
28 the *relocation mileage reimbursement limitation* at any time during the four-year

1 period of time predating the filing of this lawsuit (“Class Period”).

2 11. Plaintiffs bring this action against NATIONWIDE to enjoin  
3 NATIONWIDE from engaging in the unfair competition alleged in this  
4 complaint, to require NATIONWIDE to restore all monies that NATIONWIDE  
5 has wrongfully obtained through its unfair competition, for compensatory  
6 damages attributable to the breach of the terms of its contracts with  
7 Plaintiffs and the Class Members and the breach of the covenant of good  
8 faith and fair dealing implied in NATIONWIDE’s contracts with Plaintiffs  
9 and the Class Members, for compensatory and punitive damages  
10 attributable to NATIONWIDE’s breach of the special duty that it owes to  
11 Plaintiffs and the Class Members, and for such other relief as allowed by law.

12 **THE PARTIES**

13 12. Plaintiff Amy Fishell is an individual who, at all times relevant to the  
14 claims alleged in this action, resided in the town of Paradise, California at 1846  
15 Bille Road, Paradise, Ca 95969-3636. Plaintiff is a NATIONWIDE homeowner  
16 insurance policyholder and was subjected to the *relocation mileage reimbursement*  
17 *limitation* during the Class Period.

18 13. Plaintiff Justin Fishell is an individual who, at all times relevant to the  
19 claims alleged in this action, resided in the town of Paradise, California. Plaintiff is  
20 a NATIONWIDE homeowner insurance policyholder and was subjected to the  
21 *relocation mileage reimbursement limitation* during the Class Period.

22 14. NATIONWIDE is an Ohio corporation with its principal place of  
23 business located in Columbus, Ohio. NATIONWIDE conducts business throughout  
24 the United States, including the State of California where it is authorized to do and is  
25 doing business.

26 **FACTUAL ALLEGATIONS RELATING TO NATIONWIDE’S CONDUCT**

27 15. NATIONWIDE, as it describes itself on its website, is one of the  
28 largest and most diversified insurance and financial services companies in the

1 United States. Its website provides the following information:

2 “Nationwide—one of the largest and most diversified insurance  
3 and financial services companies in the United States—reported  
4 2021 earnings results today that were the strongest in the Fortune  
5 100 company’s history. These results were achieved all while  
6 paying more than \$18 billion in claims and benefits payments to  
7 its members in a year marked by catastrophic storms, wildfires  
8 and continued economic disruption from the ongoing pandemic.”

9 16. NATIONWIDE’s slogan, perpetuated by slick commercials that are  
10 broadcast “nationwide”, is that “NATIONWIDE is on your side.”

11 17. Also, on its website, NATIONWIDE represents (in part) that:  
12 “Caring for your home and loved ones is crucial. That’s why we  
13 offer homeowners insurance you can depend on. From dwelling  
14 coverage to personal property protection, we provide homeowners  
15 insurance policies to suit your needs and budget. Homeowners’  
16 policies cover:

- 17 • Loss of use – Coverage for when an insured has to move out  
18 of the home while repairs are made as a result of damage  
19 caused by a covered loss.”

20 18. This coverage in the industry for loss of use includes: “additional  
21 living expenses” paid to homeowners compelled to relocate due to loss of fitness of  
22 their residence premises, as a result of a covered loss.

23 19. The coverage for “additional living expenses” includes  
24 reimbursement for increases in necessary travel resulting from the compelled  
25 relocation from the residence premises whose habitability has been impaired as the  
26 result of a covered occurrence. These payments are referred to as “relocation  
27 mileage expenses.”  
28

1           20. Industry practice for insurers reimbursing their policyholders for  
2 costs incurred for increased mileage under the “additional living expenses”  
3 coverage is based upon the annually published Internal Revenue Service (IRS)  
4 “Standard Mileage Rates” for business use.

5           21. However, deviating from industry practice, NATIONWIDE limits the  
6 rate at which it pays for increased mileage to which an insured is entitled by instead  
7 using the IRS Standard Mileage Rate for medical and moving purposes.

8           22. An independent contractor conducts an annual study for the IRS of  
9 the fixed and variable costs of operating an automobile to determine the standard  
10 mileage rates for business, medical, and moving use. The standard mileage rate for  
11 business use is based on the fixed and variable costs of operating an automobile.  
12 The rate for medical and moving purposes is based on the variable costs, only.

13           23. The IRS Standard Mileage Rate for business use is approximately  
14 three times higher than the IRS Standard Mileage Rate for medical and moving use,  
15 resulting in a substantial savings for NATIONWIDE.

16           24. NATIONWIDE’s use of the lower medical and moving use rate fails  
17 to compensate its policyholders for the fixed costs associated with operating an  
18 automobile and thus fails to fully indemnify them for their losses under the terms  
19 of their policies.

20           25. Nowhere in its policies does NATIONWIDE disclose to its insureds  
21 that they will be reimbursed for increased mileage under the “additional living  
22 expenses” coverage at the medical and moving use rate published by the IRS rather  
23 than the standard mileage rates published by the IRS for business use.

24           **FACTUAL ALLEGATIONS RELATING TO PLAINTIFFS**

25           26. Plaintiffs Amy and Justin Fishell were reimbursed for additional  
26 mileage resulting from displacement as the result of the Paradise Camp Fire at the  
27 IRS moving/medical rate rather than the business mileage rate. The circumstances  
28 surrounding their mileage reimbursement are as follows:

1 In 2018, they drove an additional 3459.2 miles and were reimbursed at  
2 the improper moving rate;

- 3 • In 2019, they drove an additional 25,346.80 miles and were reimbursed  
4 at the improper moving rate;
- 5 • In 2020, they drove an additional 10,887.9 miles and were reimbursed at  
6 the improper moving rate;
- 7 • In 2021, they drove an additional 16,612.8 miles and were reimbursed at  
8 the improper moving rate; and
- 9 • From January 1, 2022 until September 2, 2022, they drove an additional  
10 16,040 miles and were reimbursed at the improper moving rate.

11 **CLASS ACTION ALLEGATIONS**

12 27. Plaintiffs bring this action on their own behalf and on behalf of the  
13 Class, as defined herein, pursuant to Rule 23 of the *Federal Rules of Civil*  
14 *Procedure*.

15 28. Plaintiffs seek to represent a class (the “Class”) defined as follows:  
16 All individuals who are residents of the State of California who were/are  
17 NATIONWIDE homeowner insurance policyholders and who were subjected to the  
18 *relocation mileage reimbursement limitation* during the four-year period of time  
19 predating the filing of this Complaint.

20 29. Excluded from the Class are: (a) the officers, directors, and legal  
21 representatives of NATIONWIDE; and (b) the judge and the court personnel in this  
22 case as well as any members of their immediate families. Plaintiffs reserve the right  
23 to amend the definition of the Class if discovery, further investigation and/or rulings  
24 by the Court dictate that it should be modified.

25 30. *Numerosity*. Fed. R. Civ. P. 23(a)(1). The members of the Class are so  
26 numerous that the joinder of all members is impractical. While the exact number of  
27 Class Members is unknown to Plaintiffs at this time, given the number of  
28 NATIONWIDE homeowner insurance customers in California, it stands to reason



1 that the number of Class Members is at least in the thousands. The Class Members  
2 are readily identifiable from information and records in NATIONWIDE's  
3 possession, custody, or control, such as policy information.

4 31. *Commonality and Predominance.* Fed. R. Civ. P. 23(a)(2) and (b)(3).  
5 There are questions of law and fact common to Plaintiffs and all Class Members,  
6 which predominate over any questions affecting only individual Class Members.  
7 These common questions of law and fact include, without limitation:

- 8 a. Whether the *relocation mileage reimbursement limitation* that  
9 Plaintiffs and the Class Members were subjected to by NATIONWIDE  
10 constitutes an unfair and/or unlawful business practice in violation of  
11 *California Business and Professions Code* § 17200;
- 12 b. Whether, by subjecting Plaintiffs and the Class Members to the  
13 *relocation mileage reimbursement limitation*, NATIONWIDE  
14 breached the terms of its insurance contracts with Plaintiffs and the  
15 Class Members;
- 16 c. Whether, by subjecting Plaintiffs and the Class Members to the  
17 *relocation mileage reimbursement limitation*, NATIONWIDE  
18 breached the special duty that NATIONWIDE owes to Plaintiffs and  
19 the Class Members as insureds of NATIONWIDE;
- 20 d. Whether, by subjecting Plaintiffs and the Class Members to the  
21 *relocation mileage reimbursement limitation*, NATIONWIDE  
22 breached the covenant of good faith and fair dealing implied by law in  
23 the insurance contracts of Plaintiffs and the Class Members;
- 24 e. Whether NATIONWIDE should be enjoined from continuing to  
25 subject its insureds to the *relocation mileage reimbursement*  
26 *limitation*;
- 27 f. Whether Plaintiffs and the Class Members are entitled to a declaratory  
28 judgement under the Declaratory Judgment Act with respect to



1           NATIONWIDE's *relocation mileage reimbursement limitation*  
2           practice; and

3           g. Whether Plaintiffs and the Class Members are entitled to  
4           compensatory damages, punitive damages, and/or any other form of  
5           monetary relief.

6           32. *Typicality*. Fed. R. Civ. P. 23(a)(3). Plaintiffs' claims are typical of  
7           those of all other Class Members because Plaintiffs and each of the other Class  
8           Members are NATIONWIDE home insurance policyholders who were subjected to  
9           the *relocation mileage reimbursement limitation* during the Class Period.

10          33. *Adequacy of Representation*. Fed. R. Civ. P. 23(a)(4). Plaintiffs will  
11          fairly and adequately represent and protect the interests of the Class Members.  
12          Plaintiffs have retained competent counsel experienced in litigation of class actions,  
13          including consumer class actions, and Plaintiffs intend to prosecute this action  
14          vigorously. Plaintiffs and the Class Members have a unified and non-conflicting  
15          interest in pursuing the same claims and obtaining the same relief. Therefore, all  
16          Class Members will be fairly and adequately represented by Plaintiffs and their  
17          counsel.

18          34. *Superiority of Class Action*. Fed. R. Civ. P. 23(b)(3). A class action is  
19          superior to other available methods for the fair and efficient adjudication of the  
20          claims alleged in this Complaint. The adjudication of this controversy through a  
21          class action will avoid the possibility of inconsistent and potentially conflicting  
22          adjudications of the asserted claims. There will be no difficulty in the management  
23          of this action as a class action, and the disposition of the claims of Plaintiffs and the  
24          Class Members in a single action will provide substantial benefits to all parties and  
25          to the Court. Damages for any individual Class Member are likely insufficient to  
26          justify the cost of individual litigation so that, in the absence of class treatment,  
27          NATIONWIDE's violations of law inflicting substantial damages on Plaintiffs and  
28          the Class Members in the aggregate would go un-remedied.

1 35. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(2)  
2 because NATIONWIDE has acted or refused to act on grounds generally applicable  
3 to the Class Members, such that final injunctive relief or corresponding declaratory  
4 relief is appropriate as to the Class as a whole.

5 **FIRST CLAIM FOR RELIEF**

6 (Violation of *California Business and Professions Code* §17200 et. seq.)

7 36. Plaintiffs repeat and incorporate herein by reference each and every  
8 allegation contained in paragraphs 1 through 35, inclusive, of this Complaint as if  
9 set forth fully herein.

10 37. By its actions and conduct as alleged herein, NATIONWIDE has  
11 committed one or more acts of unfair competition within the meaning of *California*  
12 *Business and Professions Code* §17200 (“UCL”) that constitute unfair and/or  
13 unlawful business practices as those terms are defined under California law.

14 38. NATIONWIDE’s business practices are unfair under the UCL because  
15 NATIONWIDE has acted in a manner that is immoral, unethical, oppressive,  
16 unscrupulous and/or substantially injurious to Plaintiffs and the Class Members.

17 39. NATIONWIDE’s business practices are unlawful under the UCL  
18 because NATIONWIDE has violated, *inter alia*, *California Insurance Code* §  
19 1861.03(a), because NATIONWIDE has breached the special duty that  
20 NATIONWIDE owes to Plaintiffs and the Class Members as its insureds, and  
21 because NATIONWIDE has breached the covenant of good faith and fair dealing  
22 implied by law in the insurance contracts of Plaintiffs and the Class Members.

23 40. NATIONWIDE’s ongoing unfair and unlawful business practices  
24 have placed Plaintiffs and Class Members at an imminent, immediate, and  
25 continuing risk of harm from unauthorized activity.

26 41. Plaintiffs have suffered monetary injury in fact as a direct and  
27 proximate result of the acts of unfair competition committed by NATIONWIDE as  
28 alleged herein in an amount to be proven at trial but in excess of the minimum

1 jurisdictional requirement of this Court.

2 **SECOND CLAIM FOR RELIEF**

3 (Breach of Contract)

4 42. Plaintiffs repeat and incorporate herein by reference each and every  
5 allegation contained in paragraphs 1 through 35, inclusive, of this Complaint as if  
6 set forth fully herein.

7 43. Plaintiffs and the Class Members, on the one hand, and  
8 NATIONWIDE, on the other hand, entered into contracts in the form of insurance  
9 policies.

10 44. The terms of the insurance policies are substantially identical with  
11 respect to NATIONWIDE's obligation to provide Plaintiffs and the Class Members  
12 with "Additional Living Expense" coverage for the "necessary increase in living  
13 expenses incurred" by Plaintiffs and the Class Members in connection with a claim  
14 that is covered under the insurance policies.

15 45. The "Additional Living Expense" coverage under the insurance  
16 policies includes reimbursement for increases in necessary travel resulting from the  
17 compelled relocation from the residence premises whose habitability has been  
18 impaired as the result of a covered occurrence.

19 46. Plaintiffs and the Class Members have performed all obligations that  
20 were required of them under the terms of their insurance policies with the exception  
21 of those obligations, if any, which they were excused or prevented from performing.

22 47. NATIONWIDE breached the terms of its insurance policies with  
23 Plaintiffs and the Class Members by subjecting them to the *relocation mileage*  
24 *reimbursement limitation* and thereby failing to fully compensate Plaintiffs and the  
25 Class Members for their covered losses under their insurance policies.

26 48. As a direct and proximate result of NATIONWIDE's breach of its  
27 insurance policies with Plaintiffs and the Class Members, Plaintiffs and the Class  
28 Members have been damaged in an amount to be proven at trial but in excess of the

1 minimum jurisdictional requirement of this Court.

2 **THIRD CLAIM FOR RELIEF**

3 (Breach of Special Duty to Insured)

4 49. Plaintiffs repeat and incorporate herein by reference each and every  
5 allegation contained in paragraphs 1 through 35, inclusive, of this Complaint as if  
6 set forth fully herein.

7 50. California law recognizes that an insurer owes a special duty to its  
8 insureds that arises from the unequal bargaining power between the insurer and the  
9 insured. The relationship of insurer and insured is inherently unbalanced; the  
10 adhesive nature of insurance contracts places the insurer in a superior bargaining  
11 position. This inequality of bargaining power necessitates that the insured depend  
12 on the good faith and performance of the insurer.

13 51. The insurer's obligations to its insureds are rooted in its status as a  
14 purveyor of a vital service labeled quasi-public in nature. Suppliers of services  
15 affected with a public interest must take the public's interest seriously, where  
16 necessary placing it before their interest in maximizing gains and limiting  
17 disbursements. As a supplier of a public service rather than a manufactured product,  
18 the obligations of an insurer such as NATIONWIDE go beyond meeting reasonable  
19 expectations of coverage.

20 52. Because NATIONWIDE is in a legally recognized special relationship  
21 with Plaintiffs and the Class Members, NATIONWIDE has duties to Plaintiffs and  
22 the Class Members that clearly encompass forthright and affirmative disclosure of  
23 all material information to Plaintiffs and the Class Members including the forthright  
24 and affirmative disclosure to Plaintiffs and the Class Members of NATIONWIDE's  
25 *relocation mileage reimbursement limitation*.

26 53. NATIONWIDE breached the special duty that it owes to Plaintiffs and  
27 the Class Members as its insureds by implementing and applying the *relocation*  
28 *mileage reimbursement limitation* and/or by doing so: (a) without providing

1 adequate notice to Plaintiffs and the Class Members of the *relocation mileage*  
2 *reimbursement limitation*; and (b) without notifying Plaintiffs and the Class  
3 Members of their right to contest the *relocation mileage reimbursement limitation*  
4 pursuant to 10 CCR § 2695.7 and *California Insurance Code* § 790.034.

5 54. As a direct and proximate result of NATIONWIDE's breach of the  
6 special duty that it owes to Plaintiffs and the Class Members as its insureds,  
7 Plaintiffs and the Class Members have been damaged in an amount to be proven at  
8 trial but in excess of the minimum jurisdictional requirement of this Court.

9 55. In breaching the special duty that it owes to Plaintiffs and the Class  
10 Members as its insureds, NATIONWIDE has acted in a willful, wanton and  
11 malicious manner toward Plaintiffs and the Class Members, in callous, conscious  
12 and intentional disregard of the rights of Plaintiffs and the Class Members as its  
13 insureds, and with the intent to cause damage to Plaintiffs and the Class Members,  
14 thereby entitling Plaintiffs and the Class Members to an award of punitive and  
15 exemplary damages against NATIONWIDE, pursuant to *California Civil Code* §  
16 3294, in an amount according to proof at trial.

17 **FOURTH CLAIM FOR RELIEF**

18 (Breach of Covenant of Good Faith and Fair Dealing)

19 56. Plaintiffs repeat and incorporate herein by reference each and every  
20 allegation contained in paragraphs 1 through 35, inclusive, of this Complaint as if  
21 set forth fully herein.

22 57. California law implies a covenant of good faith and fair dealing in  
23 every contract. This implied covenant requires each contracting party to refrain  
24 from doing anything to injure the right of the other to receive the benefits to which  
25 the party is entitled under the contract.

26 58. In the case of a contract between an insurer (such as NATIONWIDE)  
27 and its insureds (such as Plaintiffs and the Class Members), in order to fulfill its  
28 implied obligation, an insurer must give at least as much consideration to the

1 interests of the insureds as it gives to its own interests.

2 59. A breach of the covenant of good faith and fair dealing by the insurer  
3 rises to the level of tortious conduct on the part of the insurer.

4 60. Plaintiffs and the Class Members contracted with NATIONWIDE,  
5 became insurance policyholders of NATIONWIDE, and thereby became insureds  
6 of NATIONWIDE.

7 61. Plaintiffs and Class Members performed all of their duties and  
8 obligations under their insurance policies with NATIONWIDE.

9 62. All of the conditions required for NATIONWIDE's performance  
10 under the insurance policies have occurred and/or been satisfied.

11 63. NATIONWIDE tortiously breached the covenant of good faith and fair  
12 dealing implied in its contracts with Plaintiffs and the Class Members by  
13 implementing and applying the *relocation mileage reimbursement limitation* and/or  
14 by doing so: (a) without providing adequate notice to Plaintiffs and the Class  
15 Members of the *relocation mileage reimbursement limitation*; and (b) without  
16 notifying Plaintiffs and the Class Members of their right to contest the *relocation*  
17 *mileage reimbursement limitation* pursuant to 10 CCR § 2695.7 and [California](#)  
18 [Insurance Code § 790.034](#).

19 64. As a direct and proximate result of NATIONWIDE's breach of the  
20 covenant of good faith and fair dealing implied in its insurance policies with  
21 Plaintiffs and the Class Members, Plaintiffs and the Class Members have been  
22 damaged in an amount to be proven at trial but in excess of the minimum  
23 jurisdictional requirement of this Court.

24 65. In breaching the covenant of good faith and fair dealing implied in its  
25 insurance policies with Plaintiffs and the Class Members, NATIONWIDE has acted  
26 in a willful, wanton and malicious manner toward Plaintiffs and the Class Members,  
27 in callous, conscious and intentional disregard of the rights of Plaintiffs and the  
28 Class Members, and with the intent to cause damage to Plaintiffs and the Class



1 Members, thereby entitling Plaintiffs and the Class Members to an award of  
2 punitive and exemplary damages against NATIONWIDE, pursuant to *California*  
3 *Civil Code* § 3294, in an amount according to proof at trial.

4 **FIFTH CLAIM FOR RELIEF**

5 (Declaratory Relief)

6 66. Plaintiffs repeat and incorporate herein by reference each and every  
7 allegation contained in paragraphs 1 through 35, inclusive, of this Complaint as if  
8 set forth fully herein.

9 67. Plaintiffs bring this claim for declaratory relief on behalf of themselves  
10 and the Class Members pursuant to the Declaratory Judgment Act, 28 U.S.C. §  
11 2201, et seq.

12 68. An actual controversy has arisen and now exists between Plaintiffs and  
13 the Class Members, on the one hand, and NATIONWIDE, on the other hand.

14 69. Plaintiffs and the Class Members contend that NATIONWIDE is  
15 engaging in an unfair and/or unlawful practice by implementing and applying the  
16 *relocation mileage reimbursement limitation* and/or by doing so: (a) without  
17 providing adequate notice to Plaintiffs and the Class Members of the *relocation*  
18 *mileage reimbursement limitation*; and (b) without notifying Plaintiffs and the Class  
19 Members of their right to contest the *relocation mileage reimbursement limitation*  
20 pursuant to 10 CCR § 2695.7 and *California Insurance Code* § 790.034.

21 70. NATIONWIDE denies that it is engaging in such a practice and/or  
22 contends that, to the extent that it engages in such a practice, its practice of doing  
23 so is fair and lawful.

24 71. A judicial declaration is necessary and appropriate at this time under  
25 the circumstances presented in order that the parties may ascertain their respective  
26 rights, duties and obligations with respect to whether the *relocation mileage*  
27 *reimbursement limitation* is lawful and permissible.

28 72. There is no adequate remedy other than a prompt declaratory judgment



1 by which the rights of the parties may be determined. Because this issue affects  
2 thousands of California residents, prompt resolution of this controversy is in the  
3 interest of the public, as well as the parties.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs, individually and on behalf of the Class, pray for  
6 relief as follows:

7 **On The First Claim For Relief**

8 For affirmative injunctive relief enjoining NATIONWIDE from continuing  
9 to apply its *relocation mileage reimbursement limitation* practice;

10 For an order requiring NATIONWIDE to disgorge and restore to Plaintiff  
11 and the Class Members all monies unlawfully retained by NATIONWIDE  
12 attributable to the *relocation mileage reimbursement limitation*; and

13 For an award of attorneys' fees as private attorneys general pursuant to  
14 *California Code of Civil Procedure* §1021.5 as authorized by *Walker v.*  
15 *Countrywide Home Loans, Inc.* (2002) 98 Cal.App.4<sup>th</sup> 1158, 1179.

16 **On The Second Claim For Relief**

17 For compensatory damages in an amount according to proof at trial.

18 **On The Third And Fourth Claims For Relief**

19 For compensatory damages in an amount according to proof at trial; and

20 For punitive and exemplary damages in an amount according to proof at trial.

21 **On The Fifth Claim For Relief**

22 For a declaration that NATIONWIDE is engaging in an unfair and/or  
23 unlawful practice by implementing and applying the *relocation mileage*  
24 *reimbursement limitation* and/or by doing so: (a) without providing adequate notice  
25 to Plaintiffs and the Class Members of the *relocation mileage reimbursement*  
26 *limitation*; and (b) without notifying Plaintiffs and the Class Members of their right  
27 to contest the *relocation mileage reimbursement limitation* pursuant to 10 CCR §  
28 2695.7 and *California Insurance Code* § 790.034.

**On All Claims For Relief**

For costs of suit, litigation expenses, and attorneys' fees pursuant to the common fund doctrine and/or the substantial benefit doctrine; and

For such other and further relief as this Court may deem just and proper.

Dated: January 6, 2022

**RIMON PC**

By \_\_\_\_\_/s/\_\_\_\_\_  
J. Paul Gignac  
*Attorney for Plaintiffs*

Date: January 6, 2023

**CENTURY LAW GROUP, LLP**

By \_\_\_\_\_/s/\_\_\_\_\_  
Edward O. Lear  
*Attorneys for Plaintiffs*

**DEMAND FOR JURY TRIAL**

Plaintiffs, on behalf of themselves and the Class, hereby demand a trial by jury on all claims for relief so triable.

Dated: January 6, 2023

**RIMON PC**

By \_\_\_\_\_ /s/  
J. Paul Gignac  
*Attorney for Plaintiffs*

Date: January 6, 2023

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