

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CHARLES MOONEY and BEVERLY
MOONEY, individually and on behalf of all
others similarly situated,

Plaintiffs

vs.

SELECTIVE INSURANCE COMPANY OF
AMERICA, and SELECTIVE INSURANCE
COMPANY OF SOUTHEAST,

Defendants

CIVIL ACTION NO.:

CLASS ACTION COMPLAINT

Plaintiffs CHARLES MOONEY and BEVERLY MOONEY, individually and on behalf of all others similarly situated (“Plaintiffs”), file this class action complaint against their insurance carrier, SELECTIVE INSURANCE COMPANY OF AMERICA and SELECTIVE INSURANCE COMPANY OF SOUTHEAST (together “Selective”), for damages and hereby state as follows:

INTRODUCTION

1. In October 2012 Hurricane Sandy decimated the New Jersey and New York coastlines, killing over 230 people and causing over \$68 billion in damages. Millions were left with no power, and thousands were left with no home.

2. Flood insurance provided the only lifeline to most of the property owners affected by this tragedy in those states.

3. On the evening of October 29, 2012, Hurricane Sandy made landfall in New Jersey and New York. It was the deadliest and most destructive hurricane of the 2012 Atlantic Hurricane season and the second costliest hurricane in United States history.

4. Hurricane Sandy ultimately affected twenty-four states but caused particularly severe damage in New Jersey and New York where its storm surge flooded cities and towns destroying or damaging thousands of homes and leaving many millions of people without power. The cost of the destruction in these two states alone is estimated to be in the billions of dollars.

5. In the state of New Jersey, over two million people lost power and approximately 346,000 homes were damaged, of which 22,000 were rendered uninhabitable. Thirty-seven people were killed as a result of this tragic storm.

6. By April 2013, about 39,000 New Jersey families statewide were still unable to return to their homes.

7. Sandy's impact also included the flooding of New York City and many suburban communities. Sandy's storm surge was approximately 14 feet above mean low water, flooding many tunnels and damaging electrical equipment. At least 53 people died in New York as a result of the storm. Thousands of homes and an estimated 250,000 vehicles were destroyed during the storm.

8. This action arises from a fraud perpetrated by Selective who sought to take advantage of Hurricane Sandy's victims during some of their most difficult hours.

9. Based upon information uncovered to date, it appears that the Defendants intentionally manipulated their internal insurance claims software (called "Xactimate") in order to withhold millions of dollars of desperately needed relief, in the form of required sales tax, from their own insureds, despite falsely representing to each property owner on their claims estimate that they would receive all such funds. This unfair practice appears to have been widespread among many other insurance companies that also process flood claims with Xactimate.

10. As a result, many policyholders have been left stranded without the ability fully restore and repair and return to their damaged homes.

11. Plaintiffs and the Class Members they seek to represent all purchased flood insurance policies through Selective.

12. These insurance policies were purchased by Plaintiffs and the Class members to provide peace of mind that their properties would be fully covered, and eventually repaired, in the event that flood damage occurs.

13. Hurricane Sandy's storm surges caused an unprecedented amount of this very flood damage that was covered by the policies issued by Selective.

14. In the wake of this national tragedy, instead of fulfilling their responsibility to fully pay for the insured claims, Selective systematically underpaid their insurance claims, by failing to include sales tax, while fraudulently representing to the policyholders that they would do so on their home repair estimates.

15. This case is brought to put an end to these egregious practices now and recover for Plaintiffs and the putative Class the full amounts that were due to be paid out on their insurance claims as damages.

PARTIES

Plaintiffs

16. Plaintiffs CHARLES MOONEY and BEVERLY MOONEY are citizens of the State of New Jersey who purchased a flood insurance policy through Selective Insurance Company of America. They are natural persons over the age of 21 and otherwise *sui juris*.

17. Plaintiffs, similar to all members of the putative class they seek to represent, were underpaid for a claim under their Selective insurance policy because the payment did not include the applicable sales tax, despite Defendants' representations to the contrary.

18. Defendant SELECTIVE INSURANCE COMPANY OF SOUTHEAST is an Indiana corporation with its principal place of business in North Carolina.

19. Defendant SELECTIVE INSURANCE COMPANY OF AMERICA is a New Jersey corporation with its principal place of business in Branchville, New Jersey.

20. Defendants Selective America and Selective Southeast are affiliated companies and subsidiaries of Selective Insurance Group. They are Write Your Own (WYO) flood insurance carriers authorized to sell and administer standard flood insurance policies under the National Flood Insurance Program (NFIP) in all fifty states. Selective Insurance Group markets itself as the sixth largest writer of flood insurance under the federal National Flood Insurance Program.

JURISDICTION AND VENUE

21. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4 (codified in various sections of 28 U.S.C.).

22. Plaintiffs are citizens of the State of New Jersey. Defendants are citizens of Indiana, and New Jersey, but are registered to do business in the aforementioned state. The amount in controversy exceeds \$5,000,000 and there are at least one hundred members of the putative class.

23. This Court has jurisdiction over Defendants because they are either New Jersey corporations or foreign corporations authorized to conduct business in New Jersey, are doing

business in New Jersey and have registered with the New Jersey Secretary of State, or do sufficient business in New Jersey, have sufficient minimum contacts with New Jersey, or otherwise intentionally avail themselves of the New Jersey consumer market through the promotion, marketing, sale, and service of insurance policies in New Jersey. This purposeful availment renders the exercise of jurisdiction by this Court over Defendants and their affiliated or related entities permissible under traditional notions of fair play and substantial justice.

24. In addition, this Court has subject-matter jurisdiction under CAFA because the amount in controversy exceeds \$5 million and diversity exists between Plaintiffs and the Defendants. 28 U.S.C. § 1332(d)(2). Further, in determining whether the \$5 million amount in controversy requirement of 28 U.S.C. § 1332(d)(2) is met, the claims of the putative class members are aggregated. 28 U.S.C. § 1332(d)(6).

25. Venue is proper in this forum pursuant to 28 U.S.C. § 1391 because Defendants transact business and may be found in this District. Venue is also proper here because at all times relevant hereto, Plaintiffs in the District of New Jersey and a substantial portion of the practices complained of herein occurred in the District of New Jersey.

26. All conditions precedent to this action have occurred, been performed, or have been waived.

FACTUAL BACKGROUND

27. Plaintiffs and the putative Class purchased flood insurance policies from Selective pursuant to the NFIP. These policies insured property owned by Plaintiffs and the Class against damage and destruction from flood.

28. Pursuant to the NFIP, WYO insurance carriers work with the Federal Emergency Management Agency (FEMA) to pay claims for flood damage. FEMA instructs insurance

carriers, like Selective here, that sales tax should be included in its estimates and claim payments.

29. Upon receiving a property owner's claim, Selective retained the services of CNC or another insurance adjusting firm to assist Selective in adjusting its customers flood damage claims.

30. In the process of adjusting insurance policy claims, CNC and the other adjusting firms prepare an estimate of the damage at the direction of Selective. (Plaintiffs' estimate is attached hereto as **Exhibit A**).

31. These estimates are prepared using estimating software and purport to come from Defendant Selective Insurance Company of Southeast.

32. Xactimate is one brand of estimating software that Defendants used to prepare estimates of flood damages caused by Hurricane Sandy.

33. The estimates provided to Plaintiffs and the Class members include line-item estimates for the repair and reconstruction of the flood damage to the insured's property. Above the list of line items, the estimate affirmatively states that **"SALES TAX IS INCLUDED IN EACH LINE ITEM NOT AS A TOTAL ON THE ESTIMATE."** (Ex. A at 2).

34. Until April 2013, however, all versions of the Xactimate software were incapable of including sales tax in the individual line items.¹

35. Instructions for these prior versions of the Xactimate software informed its users, here Selective, and CNC that sales tax **could not be included** in the line-item estimates.

¹ Version 28 of the Xactimate software, released in April 2013, was the first version that contained an option to included sales tax in the individual line items.

36. Estimates prepared on these versions of Xactimate could only include sales tax on the “Summary” page of the estimate and could only input tax on the entire amount of the estimate. (*See* Ex. A at 25).

37. The estimates provided to Plaintiffs and the Class members do not include a separate line item for sales tax nor do the line items themselves include sales tax. The estimates also fail to include sales tax on the Summary page.

38. Policyholders have no reasonable way of independently determining if the line items actually account for sales tax, nor did Defendants disclose to policyholders that the estimates or the claims payments would not include sales tax.

39. In order to completely exclude sales tax from a policyholder’s estimate, the user of Xactimate software has to manually elect not to include sales tax on the Summary page.

40. Further, printing “SALES TAX IS INCLUDED IN EACH LINE ITEM NOT AS A TOTAL ON THE ESTIMATE” on the policyholder’s printed estimate is not an automatic function or default of the Xactimate software, and had to be manually entered by the software user preparing the estimate.

41. Thus, Defendants intentionally entered this false statement into the estimate with the intent that its customers rely on it, not question why the sales tax was not included on the Summary page, and allow Defendants to systematically underpay each person who filed a flood damage claim.

42. Defendants also intentionally manipulated the Xactimate software to remove estimates for certain “base charges”² that should have been included. Removing the base

² These base charges can include items such as travel time or labor.

charges further reduced the amounts paid to Plaintiffs and the Class, including the total amount upon which the calculation of sales tax is based.

43. Defendants knowingly and intentionally included the false statement above in the estimate of Plaintiffs' and each Class members' insurance proceeds when they knew that sales tax was not actually included in each line item.

44. The Defendants intentionally included this misrepresentation in the estimates in an attempt to deceive Plaintiffs and the Class members and convince them that their claim was being properly paid.

45. The Defendants intentionally underpaid Plaintiffs' and the Class Members' claims by failing to pay for applicable sales tax.

46. Based upon evidence uncovered to date, it appears that Selective may have been motivated to carry out this scheme because underpaying these claims would help them to avoid any potential government audits (as was expanded after Hurricane Katrina), to avoid having to reimburse any funds for overpayments, and stood to benefit from increasing claims handling expenses due to the manner in which FEMA reimburses WYO carriers for their participation in the NFIP.

Plaintiffs Charles and Beverly Mooney

47. On or about October 29, 2012, at a time when Plaintiffs' flood insurance policy was in full force and effect, Plaintiffs' property suffered flood damages as a result of Hurricane Sandy.

48. Plaintiffs promptly and properly submitted claims to Defendant for the losses and damages that resulted from the flood.

49. Plaintiffs further properly and promptly submitted Sworn Statement in Proof of Loss as required by the policy.

50. Upon receiving the Plaintiffs' claim, Selective retained the services of CNC to assist Selective in adjusting the Plaintiffs' claim.

51. In the process of adjusting the Plaintiffs' claims, CNC prepared an estimate of the Plaintiffs' damage at the direction of Selective.

52. The estimate was prepared utilizing version 27 of the Xactimate estimating software.

53. The estimate was prepared by an agent of Defendants named Jim Wry.

54. The estimate is dated December 3, 2012 and is attached here as Ex. A.

55. The estimate utilized price list NJTR7X_DEC12.

56. Price list NJTR7X_DEC12 is the price list for the Toms River region in State of New Jersey for Xactimate version 27 with a pricing database for December 2012.

57. As for all putative Class members, the estimate affirmatively states that "SALES TAX IS INCLUDED IN EACH LINE ITEM NOT AS A TOTAL ON THE ESTIMATE."

58. The estimate does not include a separate line item for sales tax nor do the line items themselves include sales tax.

59. Similar to all putative Class members, the Defendants intentionally and fraudulently entered "SALES TAX IS INCLUDED IN EACH LINE ITEM NOT AS A TOTAL ON THE ESTIMATE" into the estimate for Plaintiffs.

60. When entering "SALES TAX IS INCLUDED IN EACH LINE ITEM NOT AS A TOTAL ON THE ESTIMATE" into the estimate, the Defendants knew or should have known that sales tax was, in fact, not included in each line item or as a total on the estimate.

61. Similar to all putative Class members, failing to include sales tax in the payment of Plaintiffs' claims resulted in damages in the form of underpayments.

CLASS ACTION ALLEGATIONS

A. Class Definitions

62. Plaintiffs bring this action against Defendants pursuant to Rules 23 of the Federal Rules of Civil Procedure on behalf of themselves and all other persons similarly situated. Plaintiffs seek to represent the following classes:

Nationwide Class:

All persons or entities who, within the applicable statutes of limitation, were insured by Selective and filed a flood claim where their payment for the claim for damages did not include all sales tax due.

New Jersey Subclass as to Count VI:

All persons or entities in the State of New Jersey, who, within the applicable statutes of limitation, were insured by Selective and filed a flood claim where their payment for the claim for damages did not include all sales tax due.

63. Excluded from the Classes are Defendants, any entity in which one or more of the Defendants has a controlling interest, any parent or subsidiary of Defendants, and Defendants' officers, directors, employees, affiliates, legal representatives, heirs, predecessors, successors, and assigns.

64. Defendants subjected Plaintiffs and the respective Class members to the same fraudulent, unfair, unlawful, and deceptive practices and harmed them in the same manner.

B. Numerosity

65. The proposed classes are so numerous that joinder of all members would be impracticable. Defendants sell and service thousands of insurance policies in the state of New Jersey, as well as nationwide. The individual class members are ascertainable, as the names and

addresses of all class members can be identified in the business records maintained by Defendants. The precise number of class members for each class numbers at least in the hundreds and can only be obtained through discovery, but the numbers are clearly more than can be consolidated in one complaint such that it would be impractical for each member to bring suit individually. Plaintiffs do not anticipate any difficulties in the management of the action as a class action.

C. Commonality

66. There are questions of law and fact that are common to Plaintiffs' and class members' claims. These common questions predominate over any questions that go particularly to any individual member of the Class. Among such common questions of law and fact are the following:

- a. Whether Defendants fraudulently and intentionally misrepresented that the estimates provided to Plaintiffs and the Class members included sales tax in each line item;
- b. Whether Selective breached the implied covenant of good faith and fair dealing by not including sales tax in the claims paid to Plaintiffs and the Class members but affirmatively stating that they would do so;
- c. Whether Defendants employed an unconscionable commercial practice, misrepresentation, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission in violation of the New Jersey Consumer Fraud Act;
- d. Whether Plaintiffs and the Class members are entitled to damages and/or injunctive relief for Defendants practice of systematically underpaying flood insurance damage claims by failing to pay sales tax.

D. Typicality

67. Plaintiffs are members of the Class they seek to represent. Plaintiffs' claims are typical of the respective classes' claims because of the similarity, uniformity, and common

purpose of the Defendants' unlawful conduct. Each class member has sustained, and will continue to sustain, damages in the same manner as Plaintiffs as a result of Defendants' wrongful conduct.

E. Adequacy of Representation

68. Plaintiffs are adequate representatives of the class they seek to represent and will fairly and adequately protect the interests of that class. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel, experienced in litigation of this nature, to represent them. There is no hostility between Plaintiffs and the unnamed class members. Plaintiffs anticipate no difficulty in the management of this litigation as a class action.

69. To prosecute this case, Plaintiffs have chosen the undersigned law firms, which are very experienced in class action litigation and have the financial and legal resources to meet the substantial costs and legal issues associated with this type of litigation.

F. Requirements of Fed. R. Civ. Proc. 23(b)(3)

70. The questions of law or fact common to Plaintiffs' and each Class member's claims predominate over any questions of law or fact affecting only individual members of the class. All claims by Plaintiffs and the unnamed class members are based on the payment of their flood insurance claims and the fraudulent misrepresentations made to each member of the Class.

71. Common issues predominate when, as here, liability can be determined on a class-wide basis, even when there will be some individualized damages determinations.

72. As a result, when determining whether common questions predominate, courts focus on the liability issue, and if the liability issue is common to the class as is the case at bar, common questions will be held to predominate over individual questions.

G. Superiority

73. A class action is superior to individual actions in part because of the non-exhaustive factors listed below:

- e. Joinder of all class members would create extreme hardship and inconvenience for the affected customers as they reside all across the states;
- f. Individual claims by class members are impractical because the costs to pursue individual claims exceed the value of what any one class member has at stake. As a result, individual class members have no interest in prosecuting and controlling separate actions;
- g. There are no known individual class members who are interested in individually controlling the prosecution of separate actions;
- h. The interests of justice will be well served by resolving the common disputes of potential class members in one forum;
- i. Individual suits would not be cost effective or economically maintainable as individual actions; and
- j. The action is manageable as a class action.

H. Requirements of Fed. R. Civ. Proc. 23(b)(1) & (2)

74. The prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the Class.

75. Defendants have acted or failed to act in a manner generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

COUNT I

Breach of Implied Covenant of Good Faith and Fair Dealing

76. Plaintiffs re-allege and incorporate paragraphs 1-61 above as if fully set forth herein and further allege as follows.

77. A covenant of good faith and fair dealing is implied in every contract and imposes

upon each party a duty of good faith and fair dealing in its performance. Common law calls for substantial compliance with the spirit, not just the letter, of a contract in its performance.

78. Where an agreement affords one party the power to make a discretionary decision without defined standards, the duty to act in good faith limits that party's ability to act capriciously to contravene the reasonable contractual expectations of the other party.

79. Plaintiffs and the Class members entered into contracts with Selective when they purchased Selective's flood insurance policies.

80. The insurance policies provided flood insurance coverage to Plaintiffs and the Class for physical damage to their premises caused by flood. Plaintiffs and the Class fully performed under the contract by paying all premiums owed.

81. Selective is afforded absolute discretion in choosing the insurance adjuster, here CNC or the other adjusting firms, and in preparing the estimate for payment of damages. Selective has an obligation to exercise the discretion afforded it in good faith, and not capriciously or in bad faith. Plaintiffs do not seek to vary the express terms of the mortgage contract, but only to insure that the Defendants exercise their discretion in good faith.

82. Pursuant to section VII.J.9. of FEMA's Standard Flood Insurance Policy, Selective also has discretion to accept an adjuster's report of a policyholder's loss. However, the implied covenant of good faith and fair dealing prohibits Selective from exercising this discretion capriciously or in bad faith and therefore prohibits Selective from accepting a report knowing that is fraudulent or without review. The implied covenant of good faith and fair dealing would also prohibit Selective from altering an accurate report and thereby rendering fraudulent.

83. Selective breached the implied covenant of good faith and fair dealing by

informing Plaintiffs and the Class that the payment due under their insurance policy accounted for sales tax that was due but in fact no such sales tax was included in the insurance payments.

84. As a direct, proximate, and legal result of the aforementioned breaches of the covenant of good faith and fair dealing, Plaintiffs and the Class have suffered damages.

WHEREFORE, Plaintiffs, on behalf of themselves and similarly situated Class members, seek a judicial declaration that the amounts paid to them under their insurance policies violate the duties of good faith and fair dealing. Plaintiffs also seek compensatory damages resulting from Selective's breach of the implied covenant. Plaintiffs further seek all relief deemed appropriate by this Court, including attorneys' fees and costs.

COUNT II
Fraudulent Misrepresentation

85. Plaintiffs re-allege and incorporate paragraphs 1-61 of this complaint as if fully set forth herein. Plaintiffs further allege as follows.

86. Selective fraudulently misrepresented that sales tax was included on the line item estimates they provided for claims of flood damage.

87. As described more fully above, Selective was operating a scheme to systematically underpay Plaintiffs and the Class members the amount of sales tax on flood damage claims under their insurance policies.

88. In furtherance of the scheme, Selective knowingly made the material false statement and representation that "SALES TAX IS INCLUDED IN EACH LINE ITEM NOT AS A TOTAL ON THE ESTIMATE." Neither the estimates nor the ultimate payments to Plaintiffs or the Class members included this sales tax.

89. For example, on January 29, 2013, Selective, through its agents CNC and Jim Wry, provided an estimate to Plaintiffs for the flood damage on their home. (Ex. A.)

90. The estimate provided to Plaintiffs contained the aforementioned fraudulent statement directly above the line item estimates indicating the repairs necessary for Plaintiffs' home.

91. Selective knew, however, that the version of the Xactimate software being used to create the estimate did not have the capability to include sales tax in each line item. The estimate also did not include the sales tax in the total payment.

92. The actual payment of \$108,913.04 made to Plaintiffs for the flood damage did not include the sales tax despite Selective's representation to the contrary.

93. Selective intended for Plaintiffs and Class members to rely on this knowingly false representation. Neither Selective nor the other Defendants ever disclosed to Plaintiffs (or any other Class member) that the estimates or their claim payments did not in fact contain sales tax.

94. Plaintiffs and the Class members had no way of reasonably knowing that the line items did not include sales tax and justifiably relied upon Selective's representations to their detriment.

95. As a direct and proximate result of Selective's false statement, Plaintiffs and the Class members have sustained damage.

WHEREFORE, Plaintiff requests judgment against Selective for compensatory damages, together with pre-judgment interest, court costs and such further relief as the Court deems proper.

COUNT III
Negligent Misrepresentation

96. Plaintiffs re-allege and incorporate paragraphs 1-61 of this complaint as if fully set forth herein. Plaintiffs further allege as follows.

97. Selective had a duty to exercise due care in the preparation of the estimates provided to Plaintiffs and the Class members.

98. As described above, Selective made false representations about material facts concerning the payment of flood damage claims under their insurance policies.

99. Selective knew, or should have known, that the statement regarding sales tax was false.

100. Selective knew, should have known, or could reasonably have foreseen, that the representation included on the estimate would be relied upon by Plaintiffs and the Class members and intended that Plaintiffs and the Class so relied.

101. As a result of Selective's negligent misrepresentation, Plaintiffs and the Class members have suffered damages in the form of underpaid flood insurance claims.

WHEREFORE, Plaintiff requests a judgment awarding damages in an amount to be determined at trial, pre-judgment interest and such other relief as the Court deems just and proper.

COUNT IV
Violation Of The New Jersey Consumer Fraud Act

102. Plaintiffs re-allege and incorporate paragraphs 1-61 of this complaint as if fully set forth herein. Plaintiffs further allege as follows.

103. The New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.*, prohibits the "use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation . . . in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby." N.J.S.A 56:8-

2.

104. Selective has engaged in, and continues to engage in, unconscionable commercial practices, deceptive acts and misrepresentations in the conduct of its trade and/or commerce in the State of New Jersey. Selective had a scheme to defraud Plaintiffs and the Class by representing to its flood insurance customers that claims for flood damage would properly include the sales tax when in fact the sales tax was not included and never paid to Plaintiffs and the Class.

105. Selective made the material misrepresentations in its estimates that “SALES TAX IS INCLUDED IN EACH LINE ITEM NOT AS A TOTAL ON THE ESTIMATE.” Selective knew, however, that the version of the software it was using was incapable of including the sales tax in each line item. This misrepresentation allowed Selective to carry out its fraudulent practices of eliminating the sales tax from the total estimate on the claim and never paying that sales tax to Plaintiffs and the Class. An estimate containing this misrepresentations is attached as Ex. A hereto.

106. The NJCFA further provides that “[a]ny person who suffers an ascertainable loss of moneys or property, real or personal, as a result of the use or employment by another person any method, act, or practice declared unlawful under the [NJCFA] may bring an action or assert a counterclaim therefore in any court of competent jurisdiction. N.J.S.A. 56:9-19.

107. Plaintiffs and the New Jersey Subclass are “person(s)” as that term is defined in N.J.S.A.56:8-1(d).

108. Plaintiffs and the New Jersey Subclass have suffered an ascertainable loss of moneys or property as a direct and proximate result of the Selective’s unfair and unconscionable practices. The estimates provided to Plaintiffs and the class indicated that they would be paid for

sales tax. In fact, class members were not properly compensated for the sales tax. Thus, as part of the scheme by Selective, Plaintiffs and the New Jersey Subclass were underpaid on their flood insurance claims for the sales tax amount due.

109. Plaintiffs and the New Jersey Subclass have a private right of action against Selective and it entitles them to recover, in addition to their actual damages, a threefold award of the damages sustained by any person, interest, as well as an award reasonable attorney's fees, filing fees and reasonable costs of suit. N.J.S.A 56:8-19.

110. Plaintiffs and the New Jersey Subclass relied upon the fraudulent statement in the estimates to their detriment and have suffered and will continue to suffer irreparable harm if Defendants continue to engage in such deceptive, unfair, and unreasonable practices.

WHEREFORE, Plaintiffs, on behalf of themselves and the New Jersey Subclass, demand judgment against Selective for compensatory damages, pre- and post-judgment interest, attorneys' fees, injunctive and declaratory relief, costs incurred in bringing this action, and any other relief as this Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all similarly situated individuals, demand judgment against Defendants as follows:

(1) Declaring this action to be a proper class action maintainable pursuant to Rule 23(a) and Rule 23(b)(1) and (2), or Rule 23(b)(3) of the Federal Rules of Civil Procedure and declaring Plaintiffs and their counsel to be representatives of the Class and the New Jersey Subclass;

(2) Enjoining Defendants from continuing the acts and practices described above;

(3) Awarding damages sustained by Plaintiffs and the Class as a result of Selective's breach of the implied covenant of good faith and fair dealing, together with pre-judgment interest;

(4) Awarding damages sustained by Plaintiffs and the Class as a result of Selective's fraudulent or negligent misrepresentations, together with pre-judgment interest;

(5) Awarding Plaintiffs and the Class costs and disbursements and reasonable allowances for the fees of Plaintiffs' and the Class's counsel and experts, and reimbursement of expenses;

(6) Awarding Plaintiffs and the New Jersey Subclass compensatory and treble damages, injunctive relief, declaratory relief, attorneys' fees, and costs under NJCFA

(7) Awarding such other and further relief the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiffs and the Class request a jury trial for any and all Counts for which a trial by jury is permitted by law.

Date: March 13, 2015

By: /s/ William F. Merlin, Jr.

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