

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND, SOUTHERN DIVISION**

Walter Black, III
7502 Georgian Drive
Upper Marlboro, MD 20772
(Prince George's County)
**individually and on behalf of all others
similarly situated,**

Plaintiff,

Case No. 21-1581

VS.

CLASS ACTION COMPLAINT

USAA General Indemnity Company
USAA Building
9800 Frederick Road
San Antonio, TX 78288,

JURY TRIAL DEMANDED

and

**Garrison Property and Casualty
Insurance Company**
USAA Building
9800 Fredericksburg Rd., C-3-W
San Antonio, TX 78288,

and

United Services Automobile Association
USAA Building
San Antonio, TX 78288,

and

USAA Casualty Insurance Company
USAA Building
9800 Fredericksburg Road
San Antonio, TX 78288

Defendants.

Plaintiff, Walter Black III (“Plaintiff”), on behalf of himself and all others similarly situated, brings this Class Action Complaint against United Services Automobile Association, USAA General Indemnity Company, Garrison Property and Casualty Insurance Company, and USAA Casualty Insurance Company (collectively, “USAA” or “Defendants”), and alleges as follows upon personal knowledge as to himself and his own acts and experiences and, as to all other matters, upon information and belief.

NATURE OF THIS CASE

1. This class action is brought by Plaintiff on behalf of himself and all others similarly situated seeking redress for USAA’s failure to make consumers whole when it attempted to remedy its improper pricing practices that caused more than 130,000 USAA automobile insurance customers to be charged late fees illegally over an eight year period starting in 2011. In 2019, when USAA refunded the unlawfully collected late fees to its insureds, it wrongfully withheld the interest that had accrued over the eight years the money had been in its possession.

2. Defendant United Services Automobile Association is a reciprocal interinsurance exchange headquartered in San Antonio, Texas. United Services Automobile Association provides insurance and other financial services to members of the armed forces and their families, often through its subsidiaries.

3. Defendants Garrison Property and Casualty Insurance Company, USAA Casualty Insurance Company, and USAA General Indemnity Company are insurance companies headquartered in San Antonio, Texas. All three are subsidiaries of United Services Automobile Association that underwrite insurance policies requested by members of United Services Automobile Association.

4. Defendants are registered to issue insurance policies and indemnify risks in the state of Maryland in accordance with Maryland law.

5. Beginning in June 2011 until August 2018, USAA improperly charged approximately one-hundred-thirty-one-thousand (131,000) automobile insurance policyholders, or members, late fees totaling over \$8,163,969 without the legally required approval from the Maryland Insurance Commissioner (“MIC”). By doing so, USAA violated Maryland Insurance Article § 27-216(b)(3). While USAA corrected its practice of charging late fees to individuals with Maryland billing addresses on August 24, 2018, USAA continued to charge late fees to individuals with out-of-state billing addresses with policies insuring only risks in Maryland.

6. USAA filed new fee structures with the MIC effective on January 23, 2019, which allowed it to charge late fees to members for untimely payment. However, pursuant to Maryland Insurance Article §§ 27-216(b)(3)(i) and (b)(3)(ii)(2), such late fees cannot exceed \$10.00. From January 23, 2019 to September 30, 2019, USAA violated the Maryland Insurance Article by charging and collecting late fees in excess of \$10.00 from members holding policies insuring only Maryland risks but who used an out-of-state billing address.

7. USAA and MIC entered into an agreed Consent Order to remedy USAA’s violations of the Maryland Insurance Article. The Consent Order, which was executed on July 30, 2020, is attached hereto as **Exhibit A**.

8. Despite the MIC investigation and resulting Consent Order to address USAA’s Maryland Insurance Article violations, USAA failed to fully compensate the members who had been improperly charged late fees. USAA refunded the members the amount paid in late fees, but wrongfully withheld the accrued interest and increased time value of the monies.

9. Plaintiff, on behalf of the Class he seeks to represent, brings this lawsuit based on USAA's unlawful actions and practices for (i) money had and received, (ii) breach of contract, and (iii) unjust enrichment. Through its unlawful practices, USAA improperly charged the putative Class of more than 131,000 current and former members late fees and in doing so unlawfully obtained millions of dollars from those members. Upon discovery of the unlawful action, USAA failed to fully compensate the members for their damages as a result of its unlawful actions, specifically the interest accrued on the monies unlawfully held by USAA. Accordingly, this lawsuit seeks, *inter alia*, certification as a class, compensatory and consequential damages, and/or full restitution.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this action based on diversity jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d), because this is a class action involving more than 100 putative Class Members, the amount in controversy exceeds five million dollars (\$5,000,000), exclusive of interests and costs, and at least one Class Member is a citizen of a different state than Defendants.

11. This Court has personal jurisdiction over Defendants because (i) Defendants regularly conduct business or solicit business, engage in other persistent course of conduct and/or derive substantial revenue from products and/or services provided to individuals in the District and in this State and (ii) Defendants have purposefully established substantial, systematic, and continuous contacts with this District and expect or reasonably should expect to be hauled into court here. Thus, Defendants have sufficient minimum contacts with this District, and this Court's exercise of jurisdiction over Defendants will not offend traditional notions of fair play and substantial justice. Exercise of jurisdiction by this Court is just and proper because Defendants,

through their business operations, intentionally availed themselves of the markets within this District.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendants regularly do business in this District and are subject to personal jurisdiction in this District.

PARTIES

A. Plaintiff

13. Plaintiff Walter Black III (“Plaintiff”) is a natural person and a citizen of the State of Maryland and a resident of Prince George’s County.

14. Plaintiff obtained a USAA automobile insurance policy through USAA in 1978 and continues to be a policyholder. His automobile insurance policy is currently underwritten by Defendant USAA Casualty Insurance Company.

15. USAA improperly charged late fees to Plaintiff on August 5, 2013; September 5, 2013; and March 5, 2014.

16. Plaintiff received a statement dated March 27, 2020 that indicated thirty dollars (\$30.00) had been credited to his account. The credits were labeled “LATE FEE REVERSED.” The statement failed to provide any information as to the reason for reversal.

B. USAA Defendants

17. Defendant United Services Automobile Association, a self-described “diversified financial services group of companies,”¹ and its subsidiaries Defendants USAA General Indemnity

¹ https://www.usaa.com/inet/wc/newsroom_factsheets_main?akredirect=true

Company, Garrison Property and Casualty Insurance Company, and USAA Casualty Insurance Company are hereafter collectively referred to as “USAA.”

- a. **United Services Automobile Association (parent)** is a reciprocal interinsurance exchange with its principal place of business at 9800 Fredericksburg Road, San Antonio, Texas 78288. United Services Automobile Association has been authorized to issue insurance policies in Maryland since July 1, 1954 and continues to be so authorized. Individuals submit an application for insurance to United Services Automobile Association and the company determines whether to accept the risk and, if so, which of the Defendants will underwrite the policy.
- b. **USAA General Indemnity Company (subsidiary)** is an insurance company with its principal place of business at 9800 Fredericksburg Road, San Antonio, Texas 78288. USAA General Indemnity Company has been authorized to issue insurance policies in Maryland since November 6, 1987 and continues to be so authorized. USAA General Indemnity Company is a subsidiary company of United Services Automobile Association and underwrites insurance policies on United Services Automobile Association’s behalf.
- c. **Garrison Property and Casualty Insurance Company (subsidiary)** is an insurance company with its principal place of business at 9800 Fredericksburg Road, San Antonio, Texas 78288. Garrison Property and Casualty Insurance Company has been authorized to issue insurance policies in Maryland since May 24, 1918 and continues to be so authorized. Garrison Property and Casualty Insurance Company is a subsidiary company of United Services Automobile

Association and underwrites insurance policies on United Services Automobile Association's behalf.

- d. **USAA Casualty Insurance Company (subsidiary)** is an insurance company with its principal place of business at 9800 Fredericksburg Road, San Antonio, Texas 78288. USAA Casualty Insurance Company has been authorized to issue insurance policies in Maryland since August 11, 1980 and continues to be so authorized. USAA Casualty Insurance Company is a subsidiary company of United Services Automobile Association and underwrites insurance policies on United Services Automobile Association's behalf.

18. USAA provides insurance and other financial services to its individual "members." Membership is restricted to individuals currently serving in any branch of the armed forces, members of the National Guard, individuals serving in the Reserves, veterans who were not dishonorably discharged, spouses and children of the above individuals, and precommissioned officers. Non-members are ineligible to obtain policies, although in special circumstances they can hold USAA policies briefly.

19. USAA heavily advertises its dedication and commitment to serving individuals in the United States Military with integrity.

FACTS

A. The Maryland Insurance Article applies to USAA Policies insuring Maryland Risks.

20. At all relevant times, Defendants were authorized to operate as insurers in the state of Maryland. Maryland Insurance Article § 1-201 provides that "a person that engages in or transacts insurance business in the State, or performs an act relative to a subject of insurance

resident, located, or to be performed in the State, shall comply with each applicable provision of this article.”

21. USAA sells policies to individuals who they define as “members.”

22. To become a member, all an eligible individual must do is purchase a USAA insurance policy.

23. Maryland Insurance Article § 27-216(b)(3)(i) “does not prohibit an authorized insurer from charging and collecting, *if approved by the Commissioner* ... reasonable fees for late payment of premiums by policyholders.” (emphasis added).

24. In order for an insurance company to charge late fees, “[t]he Commissioner shall review administrative expenses submitted by an authorized insurer that are associated with late payments ... and may approve a late fee ... *not to exceed \$10*.” Maryland Insurance Article § 27-216(b)(3)(ii) (emphasis added).

B. USAA Violated the Maryland Insurance Article by Charging Impermissible Late Fees.

25. Prior to June 27, 2011, Defendants filed billing plans with the MIC that included and allowed them to charge a \$10 late fee when members failed to make the required timely payments under those billing plans.

26. On June 27, 2011 Defendants filed a new billing plan with the MIC that withdrew the previous filing. The new filing did not provide Defendants with authority to charge or collect late fees. The new billing plan took effect on August 27, 2011.

27. Because the most recent billing plan filed with the MIC did not provide for collection of late fees, USAA was not legally allowed to collect a late fee of any amount from individuals insuring Maryland risks pursuant to Maryland Insurance Article § 27-216(b)(3).

28. USAA was in violation of at least one provision of the Maryland Insurance Article at all times from August 27, 2011 through September 30, 2019. USAA's initial attempts to prevent the violations from occurring simply led to new violations.

29. USAA violated the Maryland Insurance Article § 27-216(b)(3)(i) from August 27, 2011 until August 24, 2018 by charging and collecting late fees from thousands of its members without MIC authorization.

30. In 2018, a USAA member filed a consumer complaint with the MIC regarding her policy termination. In response, the MIC opened a market conduct action (MCPC-1-2019-I) into Defendants' activities relating to their reported violation of Maryland Insurance Article § 27-216. The market conduct action led to a comprehensive investigation into Defendants' compliance with the Maryland Insurance Article.

31. This investigation findings included the discovery that Defendants' filings neither sought nor received authorization for continued collection of late fees and therefore, USAA had been collecting late fees from thousands of its insureds improperly and against Maryland law since August 2011.

32. As a result of this discovery, on August 24, 2018 Defendants stopped charging late fees to members if they had a Maryland mailing address.

33. From August 24, 2018 to January 23, 2019, Defendants continued, however, to unlawfully collect late fees from members who insured only risks in Maryland but used an out-of-state mailing address in violation of § 27-216(b)(3)(i) of the Maryland Insurance Article. When this violation was discovered, USAA discontinued the billing practice, effective with bills issued on January 23, 2019.

34. When USAA revised its billing protocols on January 23, 2019, it failed again to correct all of its violations. From January 23, 2019 to September 30, 2019, Defendants collected late fees greater than the \$10 permitted under § 27-216(b)(3)(ii)(2) of the Maryland Insurance Article from members with policies insuring only risks in Maryland but with out-of-state billing addresses.

C. USAA Enters into a Consent Order with the Maryland Insurance Commissioner.

35. In July 2020, Defendants entered into a Consent Order with the MIC. According to the Consent Order, the MIC “concluded that, during the period of August 27, 2011 to January 23, 2019, [Defendants] violated § 27-216(b)(3)(i) of the Insurance Article.” When USAA revised its billing practices to correct the violation, it created new violations. The Consent Order stated that “since January 23, 2019, [Defendants] violated § 27-216(b)(3)(i) and § 27-216(b)(3)(ii)(2) of the Insurance Article by imposing a late fee greater than \$10.00 on policyholders who only had a policy or policies insuring Maryland risks, but using an out-of-state mailing address as the billing address for the policy or policies.”

36. According to the Consent Order, Defendants paid “restitution” to the Members from whom Defendants had collected late fees unlawfully.

37. The MIC also required Defendants to pay a sixty-seven-thousand-five-hundred dollar (\$67,500) administrative penalty to the MIC.

38. The MIC further required Defendants to provide an accounting of all late fees over ten dollars (\$10) that had already been charged and refunded, implement a new billing system to prevent such late fees from being collected in the future, and provide an accounting of all such late fees that were charged and refunded from the date of the Consent Order until such time as the new billing system was implemented.

D. USAA Failed to Pay Any Accrued Interest on Unlawful Late Fees to its Members.

39. Members with active USAA accounts were issued a refund via USAA's usual billing practices. On the billing statements issued by Defendants to its members on or around March 20, 2020, Defendants provided a credit for late fees charged since August 27, 2011. The credit on the statement stated "LATE FEE REVERSED." No explanation was provided to members who had active policies with Defendants at the time the credit was issued.

40. Defendants reported to the MIC that a note was added to the file of each member who received a credit in the event that a member inquired. The note reportedly instructed USAA employees to tell inquiring members:

We recently conducted a review of Maryland policies and determined that between June 2011 and January 2019, some late fees were charged in error. If the member paid any such fees, and still has an account with us, a credit will be applied to their account balance. If they do not have an account balance, a check will be sent to the member.

41. Even had USAA representatives provided the scripted notice to members, it did not provide members with any details regarding USAA's violations or the circumstances of the refund. USAA's actions prevented, and continue to prevent, USAA members from knowing they are owed monies.

42. Former members with closed accounts who had been charged unlawful late fees between August 27, 2011 and January 23, 2019 were issued a check for the amount of the late fees charged. The check came with a notice stating:

We recently conducted a review of Maryland policies and determined that between June 2011 and January 2019, some late fees were charged in error. Please find attached a check with the amount of those late fees reversed. Please note the Maryland Insurance Administration is aware of this issue.

43. Former members with closed accounts to whom USAA determined it owed less than one dollar were not provided any notice or refund. This failure deprived those individuals of the ability to independently verify USAA's determination.

44. None of the payments issued by Defendants included interest that the Defendants unjustly gained as a result of unlawfully taking money from the putative Class Members and holding it for up to nine years.

45. Defendants collected unlawful late fees from their members and used that money in any way they deemed fit for nearly nine years. Defendants made additional money by using Plaintiff's and putative Class Members' money, including by generating additional revenue.

46. Because Defendants were wrongfully holding the money, Plaintiff and putative Class Members did not have use of their money. Plaintiff and putative Class Members were unable to earn interest on the money and/or increase its value through investment. They were unable to use that money to pay other bills, such as but not limited to high-interest credit cards, loans, and/or utilities. Defendants prevented Plaintiff and putative Class Members from increasing the value of their money and decreased their ability to pay debts.

47. When USAA collected the unlawful late fees, Plaintiff and putative Class Members lost more than the value of the late fee. For example, they lost the interest they needed to pay on credit card debt or other bills and the increased value they would have obtained by investing the money.

48. USAA was able to reinvest the late fees into its businesses and generate increased revenue. Such corporate growth inherently builds on itself, increasing the value to USAA exponentially.

CLASS ACTION ALLEGATIONS

49. Plaintiff brings this lawsuit as a class action, pursuant to Federal Rules of Civil Procedure 23(a) and 23 (b)(1)-(3), on behalf of himself and all others similarly situated as members of the proposed Class. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

50. The Class is defined as:

All individuals who, per the Consent Order of the Insurance Commissioner of the state of Maryland dated July 30, 2020 in Case No. MIC-2020-08-002, were ordered refunds of late fees charged by Defendants between August 27, 2011 and September 30, 2019 and were not paid interest on such late fee refunds.

51. Subject to additional information obtained through further investigation and discovery, the foregoing Class may be expanded or narrowed by amendment or amended complaint.

52. Specifically excluded from the Class are Defendants and any of their respective officers, directors, legal representatives, employees, successors, subsidiaries, and assigns. Also excluded from the Class are any judges, justices, or judicial officers presiding over this matter and the members of their immediate families and judicial staff, and persons who timely and properly exclude themselves from the Class. Any entity in which one or more Defendant had a controlling interest or which had a controlling interest in one or more Defendant is also excluded from the Class.

53. **Numerosity:** The members of the class are so numerous such that joinder is impracticable. Plaintiffs believe there are approximately one-hundred-thirty-one-thousand (131,000) Class Members whom USAA identified as being improperly charged late fees geographically dispersed through the state of Maryland or insuring risk in Maryland. The exact number is unknown to Plaintiffs at this time and can only be confirmed from information and records in the possession, custody, or control of Defendants.

54. **Commonality and Predominance:** There are numerous questions of law and fact common to the putative Class Members that predominate over any questions affecting only individual members of the Classes. The common questions in this case are capable of having common answers. If Plaintiff's claim that Defendants unlawfully and improperly withheld accrued interest on unlawfully assessed late fees owed to Plaintiff and putative Class Members is accurate, Plaintiff and putative Class Members will have identical claims capable of being efficiently adjudicated and administered in this case. Among the common questions of law and fact are:

A. Whether Defendants unlawfully withheld interest on late fees that they assessed in violation of the Maryland Insurance Article;

B. Whether, by withholding interest on unlawfully assessed late fees, Defendants breached their insurance policy contracts with Plaintiff and the putative Class Members;

C. Whether Defendants were unjustly enriched by their improper conduct;

D. Whether Defendants withheld information from members related to the violation, preventing putative Class Members from being aware they are owed money;

E. Whether Defendants refunded Plaintiff and members of the putative Class the interest accrued on unlawfully collected late fees; and

F. Whether the Defendants are liable for compensatory and/or consequential damages and/or restitution and the amount of such damages and/or restitution.

55. **Typicality:** Plaintiff's claims are typical of the claims of putative Class Members, as they are all based on the same factual and legal theories. The claims of Plaintiff and putative Class Members are all premised on USAA refunding the amount of money collected in late fees rather than the value the money provided to USAA over the time it improperly held the money, including improperly withheld interest. USAA wrongfully collected late fees from the Plaintiff

and then refunded an inadequate sum, thereby profiting from the wrong it committed against Plaintiff. Similarly, USAA wrongfully collected late fees from the putative Class Members and then refunded an inadequate sum, thereby profiting from the wrong it committed against the putative Class Members. Both Plaintiff and putative Class Members lost the increasing value of their money over time as a direct result of USAA's uniform wrongful conduct.

56. **Adequacy:** Plaintiff wilfully and adequately asserts and protects the interests of the putative Class, and has retained competent counsel. Plaintiff has obtained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the other respective members of the Classes and have the financial resources to do so. Plaintiff has no interests antagonistic to those of the putative Class, and there are no defenses unique to Plaintiff. Neither Plaintiff nor his counsel have any interests adverse to those of the other putative Class Members.

57. **Superiority:** A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the claims of all putative Class Members is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the putative Class are in the millions of dollars, individual damages incurred by each putative Class Member resulting from Defendants' wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual putative Class Members prosecuting their own separate claims is remote, and even if every putative Class Member could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

58. **Risks of Prosecuting Separate Actions:** The prosecution of separate actions by putative Class Members would create a risk of establishing inconsistent rulings and/or

incompatible standards of conduct for Defendants. For example, one court may determine damages should be calculated based on an average credit card rate, while another may determine damages should be based on an average investment rate. Additionally, individual actions may be dispositive of the interests of the putative Class as a whole, although certain putative Class Members are not parties to such actions.

59. **Policies Generally Applicable to the Class:** This case is appropriate for certification because Defendants have acted or refused to act on grounds generally applicable to the Plaintiff and the proposed Class as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward members of the Class. Defendants' practices challenged herein apply to and affect the members of the Class uniformly, and Plaintiff's challenge to those practices hinges on Defendants' conduct with respect to the proposed Class as a whole, not on individual facts or law applicable only to Plaintiffs.

CAUSES OF ACTION

COUNT I

MONEY HAD AND RECEIVED

(On behalf of Plaintiff and Class as a whole)

60. Plaintiff re-alleges and incorporates by reference all preceding allegations as if fully set forth herein.

61. As set forth above, and actually determined by the Maryland Insurance Commissioner, Defendants collected late fees in violation of §§ 27-216(b)(3)(i) and (b)(3)(ii)(2) of the Maryland Insurance Article, including late fees in amounts exceeding the rates that Defendants had filed with the Maryland Insurance Commissioner.

62. From August 27, 2011 to January 23, 2019, Defendants improperly assessed unapproved late fees to Plaintiff and putative Class Members in violation of § 27-216(b)(3)(i) of

the Insurance Article, which provides that late fees “must be approved by the insurance commissioner.”

63. From January 23, 2019 through September 30, 2019, Defendants also improperly assessed late fees in excess of \$10 to putative Class Members in violation of §§ 27-216(b)(3)(i) and (b)(3)(ii)(2) of the Maryland Insurance Article, which provides that late fees approved by the Maryland Insurance Commissioner must not exceed \$10.

64. Upon concluding that Defendants violated multiple provisions of the Maryland Insurance Article, the MIC ordered refunds of the unlawful late fees.

65. Due to these Insurance Article violations, Defendants received the benefit of the withheld accrued interest on unlawful late fees from Plaintiff and putative Class Members to which it had no right at law or in equity.

66. Defendants had access to all the interest accruing on the unlawful late fees and/or investment income from those monies. While Defendants were continuing to profit by using Plaintiff’s and putative Class Members’ monies, Plaintiff and putative Class Members were denied access to their monies, which prevented them from earning interest and/or investing those sums.

67. Defendants have failed to refund the interest accrued on the monies it unlawfully collected from Plaintiff and putative Class Members.

68. It would be inequitable for Defendants to retain any such interest on monies to which it had no right at law or in equity.

COUNT II
BREACH OF CONTRACT
(On behalf of Plaintiff and Class as a whole)

69. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 59 as if fully set forth herein.

70. The policies issued by Defendants to the Plaintiff and putative Class Members form the sole contract between the parties.

71. At all relevant times, including when the policies were purchased and contracts were formed, the Maryland Insurance Article stated in pertinent part:

(i) this subsection does not prohibit an insurer from charging and collecting, if approved by the Commissioner, reasonable installment fees or reasonable fees for late payment of premiums by policyholders or both.

(ii) The Commissioner:

2. may approve a late fee or installment fee not to exceed \$10.

MD. INS. ART. § 27-216(3)

72. As the law governing insurance policies, the statutory requirements are and were subsumed into the policy as if expressly referred to or incorporated.

73. The contract between USAA and its members incorporates this statutory language: “[i]f any of the terms of this policy conflict with state or local law, state or local law will apply.” Thus, these statutory requirements were incorporated into the contract both by operation of law and the terms of the contract itself.

74. Defendants breached their contract with Plaintiff and putative Class Members by collecting late fees in violation of the Maryland Insurance Article and by failing to meet its contractual obligation to comply with said law.

75. Defendants had a contractual obligation to exercise good faith and fair dealing in its implementation of the contract. Defendants collected impermissible fees under the contract. Further, Defendants “corrected” this error by refunding its members the precise dollar amount paid

by the member, even if that fee had been paid in 2011, while aware they should have also provided the increased value.

76. Defendants engage in a variety of financial operations that involve lending individuals money for a period of time. All USAA products require those individuals to pay back the money with interest. Defendants consistently demonstrate an awareness of the time value of money, but chose to ignore that knowledge when they refunded their members' monies.

77. Defendants breached their contractual duty of good faith and fair dealing when they decided in bad faith to refund Plaintiff and putative Class members only a portion of the monies owed to them.

78. Defendants' breach resulted in Defendants taking monies from Plaintiff and putative Class Members without cause and keeping those monies for an extended period of time. In addition to losing the actual value of said monies at time of payment, Plaintiff and putative Class Members also lost the ability to earn interest and/or investment income on the monies. This interest and/or investment income would have compounded over the years USAA withheld the funds.

79. Defendants have not compensated Plaintiff and Class Members for the harm caused by lost interest and/or investment income.

80. The policy, which serves as the sole contract between Defendants and Plaintiff and putative Class Members, does not provide for the calculation of damages in the event Defendants breach the contract.

81. Defendants informed the MIC that they collected around eight-million-one-hundred-sixty-three-thousand-nine-hundred-sixty-nine dollars (\$8,163,969) in unlawful late fees starting on August 27, 2011 and ending September 30, 2019. Defendants had use of the money to

invest and earn interest from the time it was collected. Defendants earned substantial income from the monies it unlawfully collected from Plaintiff and putative Class Members. If Defendants collected and invested that money at a steady rate since August 27, 2011, the current value would be over fifteen million dollars (\$15,000,000).²

82. Justice requires that Defendants provide any benefits they earned including investment and/or interest income to the Plaintiff and putative Class Members.

COUNT III
UNJUST ENRICHMENT *In the Alternative*
(On behalf of Plaintiff and Class as a whole)

83. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 59 as if fully set forth herein.

84. Plaintiff and putative Class Members have conferred a benefit on the Defendants as a result of Defendants improperly assessing late fees and collecting millions of dollars from Plaintiff and putative Class Members. Defendants refunded Plaintiff and putative Class Members only the dollar amount of the late fees assessed, without accounting for the interest Defendants had earned on the money. As a result of those actions, Defendants were unjustly enriched at the expense of the Plaintiff and putative Class Members.

85. Plaintiff and putative Class Members' detriment and Defendants' enrichment is the direct result of Defendants' illegal charging and collecting of late fees as described herein and providing a refund that omitted necessary interest.

² Assuming the \$8 million in late fees was collected at a consistent rate from August 27, 2011 through September 30, 2019, USAA collected roughly \$85,000 each month. The actual rate of collection can be easily determined. The average return on investment in the stock market for that time was 13.9%. According to the U.S. Securities and Exchange Commission's Compound Interest Calculator (available at www.investor.gov), an \$85,000 investment with a monthly contribution of \$85,000 that earned 13.9% interest compounded monthly would equal \$15,226,622.67.

86. Defendants have profited from their unlawful, unfair, and illegal practice at the expense of the Plaintiff and putative Class Members under circumstances in which it would be unjust for Defendants to be permitted to retain the benefit. It would be inequitable for Defendants to retain benefits, interest earned, earned income, and any other benefit obtained as a result of the conduct described herein. Moreover, Defendants deprived the putative Class Members of the knowledge that USAA owed them money.

87. Defendants informed the MIC that they collected approximately eight-million-one-hundred-sixty-three-thousand-nine-hundred-sixty-nine dollars (\$8,163,969) in unlawful late fees starting on August 27, 2011 and ending on September 30, 2019. Defendants had use of the money to invest and earn interest from the time it was collected. Defendants earned substantial income from the monies it unlawfully collected from Plaintiff and putative Class Members. If Defendants had invested that money at a steady rate since August 27, 2011, the current value would be over fifteen million dollars (\$15,000,000). *See supra*, footnote 2. The Defendants may have actually used that money in a way far more profitable and been unjustly enriched by an even greater sum.

88. If Defendants do not provide that increased value to the Plaintiff and putative Class Members from whom they collected the late fees, in proportion to the amount paid, then Defendants have profited from their unlawful actions.

89. Plaintiff and putative Class Members have been damaged as a direct and proximate result of Defendants' unjust enrichment.

90. Justice requires that Defendants provide that investment and/or interest income to the Plaintiff and putative Class Members.

RELIEF REQUESTED

91. Plaintiff, on behalf of all others similarly situated, request that the Court enter judgment against Defendants that:

- A. Determines that this matter may proceed as a class action and certifying the Class;
- B. Appoints Plaintiff as representative of the Class and appoints Plaintiff's counsel as Class counsel;
- C. Awards Plaintiff and the putative Class Members compensatory and consequential damages, as set forth above;
- D. Awards full restitution of all funds acquired and subsequently earned from Defendants unlawful collection of late fees, including disgorgement of profits;
- E. Awards pre-judgment and post-judgment interest, as provided by law or equity; and
- F. Such other relief as the Court may deem just and proper.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: June 25, 2021

Respectfully submitted,

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**Pro Hac Vice Application to be submitted*

Attorneys for Plaintiff and the Putative Class

EXHIBIT 1

MARYLAND INSURANCE COMMISSIONER *
200 ST. PAUL PLACE, SUITE 2700
BALTIMORE, MARYLAND 21202 *

V. *

USAA GENERAL INDEMNITY COMPANY *
(NAIC #18600)
GARRISON PROPERTY AND CASUALTY *
INSURANCE COMPANY (NAIC #21253)
UNITED SERVICES AUTOMOBILE *
ASSOCIATION (NAIC #25941)
USAA CASUALTY INSURANCE COMPANY *
(NAIC #25968)
9800 Fredericksburg Road *
San Antonio, Texas 78288

CASE NO.: MIA-2020-68-002

MCPC-1-2019-I

* * * * *

CONSENT ORDER

This Consent Order ("Order") is entered into by the Maryland Insurance Commissioner ("Commissioner") and USAA General Indemnity Company, Garrison Property and Casualty Insurance Company, United Services Automobile Association and USAA Casualty Insurance Company (collectively "Respondents") pursuant to §§ 2-108 and 2-204 of the Insurance Article, Md. Code Ann. (2017 Repl. Vol. & Supp.) ("Insurance Article"), to resolve the matter before the Maryland Insurance Administration ("Administration").

Findings

1. At all times relevant to this Order, Respondents have held and currently hold certificates of authority from the Administration to operate in the State as insurers.

2. Based on the results of a consumer complaint, the Administration initiated a market conduct action (MCPC-1-2019-I) into Respondents' activities regarding charging late payment fees to certain Maryland policyholders in violation of § 27-216 of the Insurance Article.

3. Prior to August 27, 2011, Respondents had filed with the Administration their billing plans and the \$10.00 late payment fee that Respondents charged when policyholders failed to make the required payments under those billing plans.

4. Because they were not charging installment fees for their billing plans, Respondents believed they did not have to have the billing plans filed with the Administration. On June 27, 2011, Respondents submitted a filing, SERFF number USAA-127294392, withdrawing the filing referenced in Paragraph 3 of this Order, effective August 27, 2011, inadvertently removing the \$10.00 late fee referenced on the same page of the filing.

5. By withdrawing this filing, Respondents were no longer permitted by law to charge a late fee.

6. Unaware of the inadvertent removal, Respondents continued to apply late payment fees after August 27, 2011, until this issue was discovered in August, 2018, while investigating the consumer complaint that had been filed with the Administration. Respondents then discontinued applying late fees on policies with a Maryland billing address effective August 24, 2018. A new filing containing late fees was submitted effective January 23, 2019, with SERFF number USAA-131653010, which was approved by the Administration.

7. The Administration directed, and in full cooperation, Respondents agreed to conduct a self-audit to identify policyholders who were improperly charged a late fee from August 27, 2011, to August 24, 2018.

8. The self-audit results provided to the Administration contained policyholder data from August 27, 2011, to January 23, 2019. In reviewing this data, it was discovered that Respondents continued to charge late fees after August 24, 2018, to policyholders

who had a policy or policies insuring only Maryland risks, but utilized an out of state mailing address as the billing address for the policy or policies. On March 26, 2020, Respondents completed restitution payments to the policyholders identified in this self-audit, including those who were charged a late fee during the period between August 25, 2018, and January 23, 2019, and have provided verification to the Administration.

9. During the self-audit, Respondents discovered and disclosed to the Administration a small group of policyholders who only have a policy or policies insuring Maryland risks, but utilize an out of state mailing address as the billing address for the policy or policies. From January 23, 2019, to September 30, 2019, Respondents inadvertently charged late fees greater than the \$10.00 permitted under its filings. Respondents are implementing a new billing system and anticipate having this issue corrected by the end of 2021 when the new billing system is fully implemented. In the interim, Respondents developed a process that was effective September 30, 2019, to refund any late fee charges greater than \$10.00 to affected policyholders. This process will continue monthly until the new billing system is fully implemented. Respondents refunded affected policyholders who were charged late fees greater than \$10.00 from January 23, 2019, to September 30, 2019, and have provided verification to the Administration.

Conclusions of Law

10. Based on the results of the market conduct action, the Administration concluded that, during the period of August 27, 2011, to January 23, 2019, Respondents violated § 27-216(b)(3)(i) of the Insurance Article. In addition, since January 23, 2019, Respondents violated §§ 27-216(b)(3)(i) and (b)(3)(ii)(2) of the Insurance Article by

imposing a late fee greater than \$10.00 on policyholders who only had a policy or policies insuring Maryland risks, but used an out of state mailing address as the billing address for the policy or policies.

11. Section 27-216 of the Insurance Article provides in pertinent part:

(3) (i) Subject to subparagraphs (ii), (iii), (iv), and (v) of this paragraph, paragraph (1) of this subsection does not prohibit an authorized insurer from charging and collecting, if approved by the Commissioner, reasonable installment fees or reasonable fees for late payment of premiums by policyholders or both.

(ii) The Commissioner:

* * * * *

2. may approve a late fee or installment fee not to exceed \$10.

Order

WHEREFORE, for the reasons set forth above, it is **ORDERED** by the Commissioner and consented to by Respondents, that

A. Respondents shall pay an administrative penalty to the State of Maryland for the violations stated herein in the amount of sixty-seven thousand, five hundred dollars (\$67,500.00) contemporaneously with Respondents' execution of this Order. Administrative penalties shall be made payable to the Maryland Insurance Administration and shall identify the case by number. Unpaid penalties will be referred to the Central Collection Unit for collections.

B. By August 15, 2020, and encompassing the period from October 1, 2019, to June 30, 2020, Respondents shall provide to the Administration an accounting of the late fees over \$10.00 that were manually refunded to policyholders who only have a policy or policies insuring Maryland risks that utilize an out of state billing address. This accounting shall be presented in Excel format that contains at least the following

information: Name of Insurer, Name of Policyholder, Policy Number, Late Fee Charged, Refund Amount, and Date Refund Issued.

C. Beginning July 1, 2020, and continuing until the new billing system is fully operational, Respondents shall provide the Administration with a quarterly accounting of the manual refunds credited to policyholders who only have a policy or policies insuring Maryland risks that utilize an out of state billing address. These accountings shall be presented in Excel format that contains at least the following information: Name of Insurer, Name of Policyholder, Policy Number, Late Fee Charged, Refund Amount, and Date Refund Issued. The accounting shall be provided no more than forty-five (45) business days from the last day of the previous quarter and include a certification, signed by an authorized of Respondents, certifying that the information is true and accurate.

D. By December 31, 2021¹, Respondents shall complete the needed system changes so that the policyholders who only have a policy or policies insuring Maryland risks that utilize an out of state billing address are no longer assessed a late fee greater than \$10.00. Failure to meet this completion date will subject Respondents to an additional administrative penalty in the amount of twenty-five thousand dollars (\$25,000.00) payable to the Maryland Insurance Administration no later than January 31, 2022.

E. By March 1, 2022, Respondents shall confirm in a letter to the Commissioner that the violations noted in this Order have been corrected. This letter shall set forth the measures that have been taken to ensure that the conditions that led to the violations have been addressed so that the same violations do not occur in the future.

¹ If any policyholder in the group named in Paragraph 9 of this Order is placed on a special payment arrangement past December 31, 2021 due to COVID-19 state issued requirements, Respondents will identify those persons to the Administration prior to the deadline of December 31, 2021 and those persons will continue to be manually monitored until their accounts will allow for movement to the new billing system.

Other Provisions

F. Respondents agree that no amounts paid pursuant to Paragraphs A, B, and D of this Order shall be included in or recoverable as expenses in any rate filing filed with the Administration or any other regulatory authority.

G. The executed Order, any administrative penalties, and the items required by Paragraphs A, B, C, D, and E of this Order shall be sent to the attention of: Erica J. Bailey, Associate Commissioner, Compliance & Enforcement Unit, 200 St. Paul Place, Suite 2700, Baltimore, MD 21202. The checks required by Paragraphs A and D shall include the market conduct action number of MCPC-1-2019-I.

H. For the purposes of the Administration and for any subsequent administrative or civil proceedings concerning Respondents, whether related or unrelated to the foregoing paragraphs, and with regard to requests for information about Respondents made under the Maryland Public Information Act, or properly made by governmental agencies, this Order will be kept and maintained in the regular course of business by the Administration. For the purposes of the business of the Administration, the records and publications of the Administration will reflect this Order.

I. The parties acknowledge that this Order resolves all matters relating to the factual assertions and agreements contained herein and are to be used solely for the purposes of this proceeding brought by or on behalf of the Administration. Nothing herein shall be deemed a waiver of the Commissioner's right to proceed in an administrative action or civil action for violations not specifically identified in this Order, including, but not limited to, specific consumer complaints received by the Administration, nor shall anything herein be deemed a waiver of the right of Respondents to contest other

proceedings by the Administration. This Order shall not be construed to resolve or preclude any potential or pending civil, administrative, or criminal action or prosecution by any other person, entity or governmental authority, including, but not limited to, the Insurance Fraud Division of the Administration, regarding any conduct by Respondents including the conduct that is the subject of this Order.

J. Respondents have had the opportunity to have this Order reviewed by legal counsel of their choosing, and are aware of the benefits gained and obligations incurred by the execution of the Order. Respondents waive any and all rights to any hearing or judicial review of this Order to which they would otherwise be entitled under the Insurance Article with respect to any of the determinations made or actions ordered by this Order.

K. This Order contains the entire agreement between the parties relating to the administrative actions addressed herein. This Order supersedes any and all earlier agreements or negotiations, whether oral or written. All time frames set forth in this Order may be amended or modified only by subsequent written agreement of the parties.

L. This Order shall be effective upon signing by the Commissioner or her designee, and is a Final Order of the Commissioner under § 2-204 of the Insurance Article.

M. Failure to comply with the terms of this Order may subject Respondents to further legal and/or administrative action.

KATHLEEN A. BIRRANE
Insurance Commissioner

signature on file with original

By: Erica J. Bailey
Associate Commissioner
Compliance & Enforcement

Date: 7/30/2020

RESPONDENTS' CONSENT

RESPONDENTS hereby CONSENT to the representations made in, and to the terms of, the above Consent Order. On behalf of Respondents, the undersigned hereby affirms that he or she has taken all necessary steps to obtain the authority to bind Respondents to the obligations stated herein and does, in fact, have the authority to bind Respondents to the obligations stated herein resolving market conduct action number MCPC-1-2019-I.

Name: Daniel Dilley

signature on file with original

Signature: _____

Title: AVP, Insurance Compliance

Date: July 19, 2020

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Walter Black, III
7502 Georgian Drive, Upper Marlboro, MD 20772

(b) County of Residence of First Listed Plaintiff Prince George's County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jonathan P. Kagan & Heather K. Yeung
Kagan Stern Marinello & Beard, LLC
238 West Street, Annapolis, MD 21401 410-216-7900

DEFENDANTS

USAA General Indemnity Company, Garrison Property and Casualty Insurance Company, United Services Automobile Association, and USAA Casualty Insurance Company

County of Residence of First Listed Defendant n/a - Texas
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:
failure to pay interest on wrongfully withheld late fees

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

06/25/2021

SIGNATURE OF ATTORNEY OF RECORD

/s/ Jonathan P. Kagan, Esq. Bar No. 23181

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.