

EXHIBIT A

FILED
2ND JUDICIAL DISTRICT COURT
Bernalillo County
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CLERK OF THE COURT
Catherine Chavez

STATE OF NEW MEXICO
COUNTY OF BERNALLILO
SECOND JUDICIAL DISTRICT COURT

JEREMY PECK, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

CAUSE NO.

PROGRESSIVE NORTHERN INSURANCE COMPANY,
PROGRESSIVE ADVANCED INSURANCE COMPANY,
PROGRESSIVE CASUALTY INSURANCE COMPANY,
PROGRESSIVE CLASSIC INSURANCE COMPANY,
PROGRESSIVE COMMERCIAL CASUALTY COMPANY,
PROGRESSIVE DIRECT INSURANCE COMPANY,
PROGRESSIVE MAX INSURANCE COMPANY,
PROGRESSIVE NORTHWESTERN INSURANCE COMPANY,
PROGRESSIVE PREFERRED INSURANCE COMPANY,
PROGRESSIVE SPECIALTY INSURANCE COMPANY,
PROGRESSIVE WEST INSURANCE COMPANY,
NATIONAL CONTINENTAL INSURANCE COMPANY, and
UNITED FINANCIAL CASUALTY COMPANY,

Defendants.

**CLASS ACTION COMPLAINT FOR DAMAGES
FOR VIOLATION OF THE TRADE PRACTICES AND FRAUDS ACT, BREACH OF
CONTRACT, BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR
DEALING AND INSURANCE BAD FAITH, VIOLATION OF THE UNFAIR TRADE
PRACTICES ACT, CIVIL CONSPIRACY TO VIOLATE THE TRADE PRACTICES
AND FRAUDS ACT, VIOLATION OF THE UNFAIR TRADE PRACTICES ACT, AND
CONTRACTUAL AND COMMON LAW DUTIES, UNJUST ENRICHMENT,
INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, AND PUNITIVE DAMAGES**

Plaintiff Jeremy Peck, through undersigned counsel, for himself and on behalf of all others
similarly situated, files his Class Action Complaint for Damages against PROGRESSIVE
NORTHERN INSURANCE COMPANY, PROGRESSIVE ADVANCED INSURANCE
COMPANY, PROGRESSIVE CASUALTY INSURANCE COMPANY, PROGRESSIVE
CLASSIC INSURANCE COMPANY, PROGRESSIVE COMMERCIAL CASUALTY

COMPANY, PROGRESSIVE DIRECT INSURANCE COMPANY, PROGRESSIVE MAX INSURANCE COMPANY, PROGRESSIVE NORTHWESTERN INSURANCE COMPANY, PROGRESSIVE PREFERRED INSURANCE COMPANY, PROGRESSIVE SPECIALTY INSURANCE COMPANY, PROGRESSIVE WEST INSURANCE COMPANY, NATIONAL CONTINENTAL INSURANCE COMPANY, and UNITED FINANCIAL CASUALTY COMPANY.

This action arises out of a policy of insurance purchased by Plaintiff Jeremy Peck that included stacked uninsured/underinsured motorist (“UM/UIM”) on a single vehicle policy for which Mr. Peck paid a higher premium, without any corresponding benefit compared to unstacked single vehicle UM/UIM coverage.

1. Plaintiff was, at all times material to this matter, a resident of the county of Bernalillo, state of New Mexico.

2. On information and belief, Defendant Progressive Northern Insurance Company was and is an insurer as defined by New Mexico law that is organized and existing under the laws of a state other than New Mexico, and at all material times, was licensed to conduct the business of insurance in New Mexico and is engaging in the business of insurance in New Mexico.

3. On information and belief, Defendant Progressive Advanced Insurance Company was and is an insurer as defined by New Mexico law that is organized and existing under the laws of a state other than New Mexico, and at all material times, was licensed to conduct the business of insurance in New Mexico and is engaging in the business of insurance in New Mexico.

4. On information and belief, Defendant Progressive Casualty Insurance Company was and is an insurer as defined by New Mexico law that is organized and existing under the laws

of a state other than New Mexico, and at all material times, was licensed to conduct the business of insurance in New Mexico and is engaging in the business of insurance in New Mexico.

5. On information and belief, Defendant Progressive Classic Insurance Company was and is an insurer as defined by New Mexico law that is organized and existing under the laws of a state other than New Mexico, and at all material times, was licensed to conduct the business of insurance in New Mexico and is engaging in the business of insurance in New Mexico.

6. On information and belief, Defendant Progressive Commercial Casualty Company was and is an insurer as defined by New Mexico law that is organized and existing under the laws of a state other than New Mexico, and at all material times, was licensed to conduct the business of insurance in New Mexico and is engaging in the business of insurance in New Mexico.

7. On information and belief, Defendant Progressive Direct Insurance Company (formerly Progressive Halcyon) was and is an insurer as defined by New Mexico law that is organized and existing under the laws of a state other than New Mexico, and at all material times, was licensed to conduct the business of insurance in New Mexico and is engaging in the business of insurance in New Mexico.

8. On information and belief, Defendant Progressive Max Insurance Company was and is an insurer as defined by New Mexico law that is organized and existing under the laws of a state other than New Mexico, and at all material times, was licensed to conduct the business of insurance in New Mexico and is engaging in the business of insurance in New Mexico.

9. On information and belief, Defendant Progressive Northwestern Insurance Company was and is an insurer as defined by New Mexico law that is organized and existing under the laws of a state other than New Mexico, and at all material times, was licensed to conduct the business of insurance in New Mexico and is engaging in the business of insurance in New Mexico.

10. On information and belief, Defendant Progressive Preferred Insurance Company was and is an insurer as defined by New Mexico law that is organized and existing under the laws of a state other than New Mexico, and at all material times, was licensed to conduct the business of insurance in New Mexico and is engaging in the business of insurance in New Mexico.

11. On information and belief, Defendant Progressive Specialty Insurance Company was and is an insurer as defined by New Mexico law that is organized and existing under the laws of a state other than New Mexico, and at all material times, was licensed to conduct the business of insurance in New Mexico and is engaging in the business of insurance in New Mexico.

12. On information and belief, Defendant Progressive West Insurance Company was and is an insurer as defined by New Mexico law that is organized and existing under the laws of a state other than New Mexico, and at all material times, was licensed to conduct the business of insurance in New Mexico and is engaging in the business of insurance in New Mexico.

13. On information and belief, Defendant National Continental Insurance Company was and is an insurer as defined by New Mexico law that is organized and existing under the laws of a state other than New Mexico, and at all material times, was licensed to conduct the business of insurance in New Mexico and is engaging in the business of insurance in New Mexico.

14. On information and belief, Defendant United Financial Casualty Company was and is an insurer as defined by New Mexico law that is organized and existing under the laws of a state other than New Mexico, and at all material times, was licensed to conduct the business of insurance in New Mexico and is engaging in the business of insurance in New Mexico.

15. Each of the Defendants is part of the Progressive Group of companies and, upon information and belief, operate in concert in implementation of certain policies, procedures,

directives, strategies, training, guidance, and the like. Unless otherwise specifically identified, the Defendants shall be referred to collectively as “Progressive.”

16. Progressive issued a policy of insurance to Jeremy Peck covering his recreational motor vehicle, Policy No. 37482601. The policy was underwritten by Progressive Northern Insurance Company. Progressive offered and sold Mr. Peck stacked UM/UIM coverage on his single vehicle covered under the policy. Progressive charged Mr. Peck a higher premium for stacked single-vehicle UM/UIM coverage than the premium offered for unstacked single-vehicle UM/UIM coverage.

17. Jurisdiction and venue are proper in this Court.

General Allegations

Progressive’s Sale to Mr. Peck of Stacked UM/UIM Coverage on a Single-Vehicle Policy

18. Mr. Peck had purchased a motor vehicle insurance policy from Progressive for his motor home. The motor home was and is the only motor vehicle insured under the policy. Progressive offered Mr. Peck UM/UIM coverage in stacked and unstacked variations. The premium for the stacked coverage was and is higher than the unstacked coverage. Mr. Peck selected the stacked single vehicle coverage.

19. Mr. Peck has paid and continues to pay for stacked single vehicle UM/UIM coverage.

20. “Stacking” permits an insured to stack or aggregate the UM/UIM coverages on all vehicles insured under a policy (intra-policy stacking).

21. Stacked UM/UIM coverage on a policy insuring a single vehicle is illusory, as there is nothing to stack.

22. Progressive charges a full premium for UM/UIM coverage on a single vehicle policy (unstacked).

23. Progressive charges a higher premium for stacked UM/UIM coverage on a single-vehicle policy than it charges for unstacked UM/UIM coverage on a single-vehicle policy.

24. Progressive provides no benefit to the insured who pays the additional premium charge for stacked UM/UIM coverage on a policy insuring a single vehicle.

25. Progressive does not disclose any benefit to the insured for paying the additional premium charge for stacked UM/UIM coverage on a single vehicle policy.

26. Progressive does not provide notice to its insureds of the consequence of selecting non-stacked UM/UIM coverage on a single vehicle policy for insureds who later add vehicles to the policy.

27. There is no legitimate basis for Progressive to require insureds to select non-stacking of UM/UIM coverage on a single vehicle policy or requiring them to pay a higher premium for stacked coverage if they do not reject stacking.

28. Progressive willfully violated New Mexico law, including NMSA 1978, Section 59A-16-24(A), in collecting a premium or charge for insurance that was not then provided.

29. Progressive charges and collects a higher premium for stacked single-vehicle UM/UIM coverage, without giving insureds any additional coverage in exchange for the additional premium cost.

30. Upon information and belief, the offering of stacked UM/UIM coverage on a single-vehicle policy is a practice engaged in by each of the named Defendants pursuant to a scheme or plan of collective action, or per a collective directive, guidance, policy, procedure, strategy, plan, etc.

31. Under New Mexico law, insurance carriers are required to provide insureds with the premium costs for each available level of UM/UIM coverage in order to allow insureds to contract for the exact amount of coverage they can afford and want to purchase.

32. On a single-vehicle policy, there is only one UM/UIM coverage limit that applies under any circumstances. On a non-stacked policy, the UM/UIM coverage available on a single-vehicle policy is exactly the same as the stacked UM/UIM coverage available on a single-vehicle policy—only a single limit of UM/UIM coverage is ever available in a single-vehicle policy. Thus, there is nothing to stack.

33. Progressive offers a coverage, stacked UM/UIM on a single-vehicle policy, and promises to provide such coverage. Progressive does so as if such coverage exists and collects a premium for such coverage and misrepresents that such additional coverage or benefit exists.

34. Progressive does not explain or disclose that stacked single vehicle coverage does not provide any additional benefit beyond unstacked single vehicle coverage and does not explain or disclose that the payment of a higher premium for stacked single vehicle coverage is payment for nothing.

Class Action Allegations

35. Plaintiff incorporates by reference each and every allegation contained in all preceding paragraphs, as though fully set forth herein.

36. Upon information and belief, Progressive is comprised of related companies under common control or direction and offers similar products to the driving public in New Mexico.

37. Upon information and belief, Progressive offers and sells stacked UM/UIM coverage on single vehicle policies to the motoring public.

38. Upon information and belief, Progressive offers and sells stacked UM/UIM coverage on single-vehicle policies to the motoring public at premiums higher than the premiums charged for non-stacked UM/UIM coverage on a single-vehicle policy. Progressive has acted pursuant to a common goal, purpose, agreement, etc., to sell coverage and collect premiums on coverage that does not exist, in violation of the law prohibiting such conduct. Progressive has failed to disclose that it collects premiums in exchange for no additional benefit or coverage and has failed to disclose that it sells non-existent coverage.

39. This action is properly maintainable as a class action pursuant to Rule 1-023 NMRA. This Class is defined as:

All New Mexico residents, who are or were policyholders of any of the Defendants and who were offered and bought or otherwise obtained stacked UM/UIM coverage on a single-vehicle policy and paid premiums to any of the Defendants for stacked, single-vehicle UM/UIM coverage, whether through original purchase, renewal, or change in number of vehicles insured to a single vehicle.

40. Excluded from the Class are officers, directors, and employees of all Defendants, including spouses, children, heirs, and assigns. Also excluded are Plaintiff's counsel and employees of their firms, as well as defense counsel and employees.

41. The proposed Class is precisely defined, objective and presently ascertainable, and it is administratively feasible for the Court to determine whether a particular individual is a member.

42. The proposed Class is properly maintainable as a class action as the prerequisites to certification under Rule 1-023, NMRA, are met.

43. The members of the proposed Class are so numerous that joinder of all members is impracticable. The various Progressive entities have upon information and belief approximately 300,000 policyholders in the state of New Mexico. While the Class definition covers only a portion

of the total number of Progressive policyholders in New Mexico, even a small portion of the total number represents a significant number of members of the Class.

44. There are questions of law and fact common to the members of the Class and which predominate over individual issues. Such common questions of law or fact include but are not limited to:

- a. Whether Defendants have offered and sold stacked UM/UIM coverage on single-vehicle policies.
- b. Whether Defendants have offered and sold stacked UM/UIM coverage on single-vehicle policies at premiums higher than premiums they charge for unstacked UM/UIM coverage on single-vehicle policies.
- c. The amount of premiums collected and retained by Defendants for stacked UM/UIM coverage on single-vehicle policies.
- d. Whether stacked UM/UIM coverage on a single-vehicle policy is a non-existent or illusory coverage.
- e. Whether stacked coverage can apply only where there are multiple vehicles insured under a policy.
- f. Whether the conduct of Defendants violates the TPFA by collecting premiums for coverage not delivered (*i.e.*, non-existent or illusory stacked UM/UIM coverage under single-vehicle policies).
- g. Whether the conduct of Defendants violates the UTPA.
- h. Whether the conduct of Defendants in collecting higher premiums for stacked coverage on single vehicle policies without providing any benefit constitutes a breach of the insurance policy.

i. Whether the Defendants failed to explain or disclose to policyholders selecting stacked UM/UIM coverage under a single-vehicle policy that they were paying premiums for non-existent coverage.

j. Whether it is fair for Defendants to retain premiums collected for non-existent or illusory coverage.

k. Whether the Defendants acted in concert or in furtherance of a common goal to sell and charge premiums for non-existent or illusory coverage.

l. The measure of damages and the method of damages calculations for the harm caused by Defendants' conduct.

m. The source and origin of Defendants' creation of its non-existent/illusory insurance product (*i.e.*, stacked UM/UIM coverage on single-vehicle policies) and the decision to sell such policies and collect premiums for such coverage.

n. The determination, origin, calculation, creation, etc., of the premium rates for stacked UM/UIM coverage on single-vehicle policies and for unstacked UM/UIM coverage on single-vehicle policies.

o. The legal and/or factual applicability of affirmative defenses that may be alleged by Defendants.

p. The willful nature of Defendants' conduct in collecting premiums for non-existent/illusory coverage.

45. The claims of Mr. Peck are typical of the Class he seeks to represent. Mr. Peck's claims arising out of his payment of premiums for non-existent/illusory coverage, including that Defendants' acts and practices are breaches of common and statutory law, and that Defendants

acted in concert in furtherance of their civil conspiracy, are typical of the claims of the members of the Class.

46. Mr. Peck will fairly and adequately represent and protect the interests of the Class he seeks to represent. There are no conflicts between Mr. Peck and the members of the putative Class and Mr. Peck is aware of his duties and responsibilities to the Class. Mr. Peck's attorneys are qualified, experienced, and able to conduct the proposed class action litigation.

47. The Class should be certified under Rule 1-023(B)(3) because the questions of law or fact common to members of the Class predominate over any questions affecting only individual members, and a class action is superior to all other available methods for the fair and efficient adjudication of the controversy. In this action:

- a. Common or generalized proof will predominate with respect to the essential elements of the claims at issue.
- b. The common questions of law or fact that pertain to the Class predominate over any individual questions and any individual issues do not overwhelm the common ones.
- c. No member of the Class has a substantial interest in individually controlling the prosecution of a separate action, but, if any member or members wish to do so, they may exclude themselves from the Class upon receipt of notice under Rule 1-023(C)(2) NMRA.
- d. Upon information and belief, there are no pending lawsuits by members of the Class who may be similarly situated and which may potentially affect the matters raised in this action.
- e. It is desirable to concentrate the litigation of these cases in this forum. The

determination of the claims of all members of the Class in a single forum and in a single proceeding would be a fair, efficient, and superior means of resolving the issues raised in this litigation as between the Defendants and their policyholders; there are substantial common issues with respect to Progressive's standardized policies and general business practices.

f. Any difficulty encountered in the management of the proposed class can be handled reasonably, especially when weighed against the impossibility of affording adequate relief to the members of the Class through numerous independent actions.

COUNT I
VIOLATION OF THE TRADE PRACTICES AND FRAUDS ACT

48. Plaintiff incorporates by reference each and every allegation contained in all preceding paragraphs, as though fully set forth herein.

49. There was in effect at all times material a state statute commonly known in the Insurance Code as the Trade Practices and Frauds Act ("TPFA"), NMSA 1978, Sections 59A-16-1 through -30 (1984, as amended). In particular, the TPFA contains the following provision:

No person shall wilfully collect any sum as premium or charge for insurance or other coverage, which insurance or coverage is not then provided or in due course to be provided (subject to acceptance of the risk by the insurer) by a policy issued by an insurer as authorized by the Insurance Code.

NMSA 1978, Section 59A-16-24(A).

50. The actions of Defendants, as set forth above, in collecting premiums for non-existent coverage, constitute an illegal trade practice prohibited by Section 59A-16-24(A), willfully committed.

51. NMSA 1978, Section 59A-16-20 (1997), subsection (A), prohibits the following unfair claims practice by an insurer: "misrepresenting to insureds pertinent facts or policy

provisions relating to coverages at issue.” Defendants committed an illegal trade practice prohibited by 59A-16-20(A) by misrepresenting and misleading insureds into believing that they are getting a benefit for single vehicle stacked coverage, and misrepresenting and misleading insureds when they are getting no additional coverage in exchange for the payment of higher premiums.

52. Defendants’ acts, omissions, policies, and conduct in violating the New Mexico Trades Practices and Frauds Act, and the New Mexico Insurance Code, have damaged Plaintiff and the members of the Class in an amount to be proven at trial.

**COUNT II
BREACH OF CONTRACT**

53. Plaintiff incorporates by reference each and every allegation contained in all preceding paragraphs, as though fully set forth herein.

54. In issuing insurance policies to Plaintiff and the Class, Progressive agreed to provide coverage and benefits for the premiums collected, but instead collected premiums for coverage not provided, that is the illusory coverage of a stacked single vehicle policy.

55. In undertaking the wrongful acts described herein, Progressive caused damage to Plaintiff and the Class by collecting premiums for coverage that could and would never be provided, in an amount to be proven at trial.

**COUNT III
BREACH OF THE IMPLIED COVENANT OF GOOD FAITH
AND FAIR DEALING AND INSURANCE BAD FAITH**

56. Plaintiff incorporates by reference each and every allegation contained in all preceding paragraphs, as though fully set forth herein.

57. In issuing insurance policies to Plaintiff and the Class, Progressive had and has a

duty to act in good faith and to treat its policyholders in a fair manner, and to act honestly, both in fact and in law in these dealings, and to avoid placing its interests above those of its insureds.

58. In undertaking the wrongful acts described herein, Progressive breached its duty of good faith and fair dealing, causing damage to Plaintiff and the class in an amount to be proven at trial, and warranting the imposition of punitive damages as permitted by law.

**COUNT IV
VIOLATION OF THE UNFAIR TRADE PRACTICES ACT**

59. Plaintiff incorporates by reference each and every allegation contained in all preceding paragraphs, as though fully set forth herein.

60. There was in effect at all times material a state statute commonly known as the New Mexico Unfair Trade Practices Act (“UPA”), NMSA 1978, Sections 57-12-1 to -22 (1967, as amended), including but not limited to those subsections in Section 57-12-2(D)(7), (D)(15), (D)(17), and Section 57-12-2(E), which prohibits a person selling insurance from engaging in unfair or deceptive trade practices:

a. “unfair or deceptive trade practice” means an act specifically declared unlawful pursuant to the Unfair Trade Practices Act [Chapter 57, Article 12 NMSA 1978], a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services or in the extension of credit or in the collection of debts by a person in the regular course of his trade or commerce, which may, tends to or does deceive or mislead and includes but is not limited to:

(7) representing that the goods or services are of a particular standard, quality or grade or that goods are of a particular style or model if they are of another;

* * *

(15) stating that a transaction involves rights, remedies or obligations that it does not involve;

* * *

(17) failure to deliver the quality or quantity of goods or services contracted for; and

b. “unconscionable trade practice” means an act or practice in connection with offering for sale, lease, rental or loan, of any goods or services, including services provided by licensed professionals, or in the extension of credit or in the collection of debts which to a person’s detriment:

(1) takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree; or

(2) results in a gross disparity between the value received by a person and the price paid.

61. Progressive failed to deliver the quality or quantity of services contracted for by its conduct, including but not limited to, charging a higher premium for stacked single vehicle coverage than non-stacked single vehicle coverage, thereby representing that stacked single vehicle coverage provided more coverage or benefit than non-stacked single vehicle coverage, failed to disclose that it was selling non-existent/illusory coverage, failed to disclose that it was charging a premium for no additional coverage or benefit.

62. Defendants, acting through their agents, adjusters, and employees, as set forth above, knowingly and willfully engaged in unfair trade practices prohibited under Section 57-12-3, including but not limited to those subsections in Section 57-12-2(D)(7), (D)(15), (D)(17), and Section 57-12-2(E).

63. Defendants' practices as described herein have resulted in damages to Plaintiff and the Class in an amount to be proven at trial.

COUNT V
CIVIL CONSPIRACY TO VIOLATE
THE TRADE PRACTICES AND FRAUDS ACT, THE UNFAIR TRADE PRACTICES
ACT, AND CONTRACTUAL AND COMMON LAW DUTIES

64. Plaintiff incorporates by reference each and every allegation contained in all preceding paragraphs, as though fully set forth herein.

65. A civil conspiracy is described as "achieving an unlawful purpose or using unlawful means to achieve a lawful goal." *Ettenson v. Burke*, 130 N.M. 67, 72, 17 P.3d 440 (2000).

66. The actions of Defendants, as set forth above, in collecting premiums for non-existent coverage, constitute an illegal trade practice prohibited by Section 59A-16-24(A), willfully committed.

67. The actions of Defendants, as set forth in this complaint, including but not limited to, failing to disclose that insureds buying stacked single vehicle coverage are getting no benefit for higher premiums, in selling policies with illusory coverage, etc., violates the UPA, and common law and contractual duties, including good faith duties, and were willfully committed.

68. The Defendants are all related companies, under the Progressive Group of companies, who upon information and belief, offer and sell stacked UM/UIM coverage on single-vehicle policies in the state of New Mexico.

69. The Defendants are all related companies, under the Progressive Group of companies, who upon information and belief, offer and sell stacked UM/UIM coverage on single-vehicle policies in the state of New Mexico at premiums higher than the amount for non-stacked UM/UIM coverage on a single-vehicle policy.

70. Upon information and belief, all Defendants have acted in concert to offer and sell stacked UM/UIM coverage on a single-vehicle policy in the state of New Mexico.

71. Upon information and belief, all Defendants have acted in concert to offer and sell stacked UM/UIM coverage on a single-vehicle policy in the state of New Mexico at premiums higher than the amount for non-stacked UM/UIM coverage on a single-vehicle policy.

72. Upon information and belief, all Defendants are acting and have acted in conformance with an agreed-upon course of conduct or together with directives of other, unnamed co-conspirators.

73. Upon information and belief, all Defendants are acting and have acted in a common way and for a common purpose borne of an agreed-upon course of behavior in collecting premiums for stacked, single vehicle UM/UIM coverage and doing so willfully.

74. Upon information and belief, all Defendants are engaged in the collective or agreed-upon conduct, knowing that the conduct violates the Insurance Code, in particular, Section 59-16-24(A), the UPA, and common law and contractual duties.

75. In furtherance of the conspiracy, Progressive offered and sold stacked UM/UIM coverage on a single-vehicle policy to Mr. Peck and collected premiums for such stacked violation, knowing that no such coverage does or can exist, and failed to disclose this.

76. Mr. Peck has suffered damages as a result of Progressive's conduct in conformity with and in furtherance of the conspiracy.

77. All Defendants, as members of the conspiracy, are jointly and severally liable for the wrongful acts of any of its members.

78. Defendants' conduct, as set forth herein, has resulted in damages to Plaintiff and the members of the Class in an amount to proven at trial.

**COUNT VI
UNJUST ENRICHMENT**

79. Plaintiff incorporates by reference each and every allegation contained in all preceding paragraphs, as though fully set forth herein.

80. Defendant Progressive willfully has collected premiums for a non-existent coverage and continues to do so.

81. Defendant Progressive has retained those premiums and provides nothing in return, in violation of the TPFA, the UPA, and the common law.

82. It is unjust and unfair for Defendant Progressive to collect premiums where there is no coverage provided (*i.e.*, collecting higher premiums for stacked UM/UIM coverage on a single-vehicle policy when no such coverage exists).

83. Plaintiff and the members of the Class have been harmed by Defendant Progressive's retention of monies obtained and retained in violation of the law in an amount to be proven at trial.

**COUNT VII
INJUNCTIVE RELIEF**

84. Plaintiff incorporates by reference each and every allegation contained in all preceding paragraphs, as though fully set forth herein.

85. Plaintiff and the Class are entitled to injunctive relief requiring that Defendants be enjoined from continuing practices that violate the duties as well as the contractual and legal obligations owed to the Plaintiff and the Class.

86. Defendants must be compelled to stop the practice of selling stacked UM/UIM coverage on single vehicles, of charging more for stacked coverage on a single vehicle than unstacked coverage on a single vehicle, to stop failing to disclose that stacked single vehicle

coverage at a higher premium does not provide any additional benefit or coverage than unstacked single vehicle coverage at a lower premium, to stop collecting premiums for stacked single vehicle coverage, and inducing insureds to signing rejections of stacking on single vehicle policies, and from otherwise failing to disclose the full truth and options to insureds and prospective insureds.

**COUNT VIII
DECLARATORY JUDGMENT**

87. Plaintiff incorporates by reference each and every allegation contained in all preceding paragraphs, as though fully set forth herein.

88. An actual controversy exists between the parties thereby rendering declaratory relief proper pursuant to Rule 1-057 NMRA and the New Mexico Declaratory Judgment Act, NMSA 1978, Sections 44-6-1 through -15 (1975).

89. Plaintiff and the Class are entitled to a declaratory judgment establishing the respective rights and obligations of the parties with respect to the claims set forth herein.

**COUNT IX
PUNITIVE DAMAGES**

89. Plaintiff re-alleges the above paragraphs as if fully set forth herein.

90. Progressive's conduct, acts and omissions in charging premiums for non-existent coverage, in the misrepresentations and non-disclosures, and other conduct described herein was willful, wanton, reckless and in conscious disregard of Plaintiff's rights and the rights of the Class members, warranting an award of punitive damages against these Defendants in order to punish them for their conduct and in order to deter them and others from such conduct in the future.

WHEREFORE, for Counts I through IX, Plaintiff prays for judgment as follows:

A. Certifying the Class and awarding compensatory damages to Plaintiff and the Class members for the damages done to them by Defendants in an amount to be proven at trial;

