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Gretchen M. Nelson, SBN 112566
gnelson@nflawfirm.com
Gabriel S. Barenfeld, SBN 224146
gbarenfeld@nflawfirm.com
NELSON & FRAENKEL LLP
601 S. Figueroa St., Suite 2050
Los Angeles, CA 90017
Telephone No.: (844) 622-6469
Facsimile No.: (213) 622-6019

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Superior Court of California
County of Los Angeles

OCT 29 2019

Sherri R. Carter, Executive Officer/Clerk of Court
By: Isaac Lovo, Deputy

Attorneys for Plaintiffs
[Names and Address of Additional Counsel for Plaintiffs on Signature Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

IRENE PARRY, individually and on behalf of)
all others similarly situated; JEANETTE)
O’SULLIVAN, individually and on behalf of)
all others similarly situated,)

Plaintiffs,

vs.

FARMERS INSURANCE EXCHANGE;)
TRUCK INSURANCE EXCHANGE; FIRE)
INSURANCE EXCHANGE; and FARMERS)
GROUP INC., and DOES 1 through 100,)

Defendants.

Case No. BC683856
Hon. Amy Hogue, SS Dept. 007

CLASS ACTION

**PLAINTIFFS’ FIRST AMENDED CLASS
ACTION COMPLAINT FOR
VIOLATIONS OF:**

- 1. Labor Code Section 2802 - Failure To Reimburse For Necessary Expenditures Incurred;**
- 2. Unfair Competition Law, Business & Professions Code Section 17200**
- 3. Labor Code Section 2753 – Willful Misclassification**

DEMAND FOR JURY TRIAL

1 Plaintiffs Irene Parry and Jeanette O'Sullivan, individually and on behalf of all others
2 similarly situated, alleges as follows upon personal knowledge and upon information and belief
3 based upon the investigation of counsel:

4 **I. SUMMARY OF THE ACTION**

5 1. The Defendants, affiliated insurance companies selling insurance under the Farmers'
6 brand, are a group of affiliated insurance companies that rely on a common network of captive
7 insurance agents working in Farmers insurance agencies to sell the majority of their auto, home,
8 business and life insurance in the State of California.

9 2. Defendants classify their captive agents in California as independent contractors and
10 portray them to the public as "entrepreneurs" and "small business owners" who own their Farmers'
11 agencies. And since Defendants consider the captive agents to be independent contractor small
12 business owners who own their Farmers' agencies, Defendants require their captive agents to pay
13 all the expenses of running the Farmers' agencies, such as rent, office staff, and office equipment
14 and supplies.

15 3. A Farmers' captive agent, however, does not really own a Farmers agency.
16 Defendants' representations otherwise are false and misleading and are simply part of its scheme to
17 misclassify its California captive agents as independent contractors when they are, in fact,
18 employees under California law.

19 4. Defendants' requirement that captive agents pay all expenses for running the
20 Farmers' agencies is a violation of the California Labor Code and an unlawful or unfair business act
21 or practice that violates California's Unfair Competition Law (UCL).

22 5. The advice offered to treat the captive agents as independent contractors to avoid
23 employee status is also a violation of the California Labor Code making the advising Defendant
24 Farmers Group, Inc. jointly and severally liable.

25 6. Through this lawsuit, Plaintiffs seek to end these unlawful and unfair business
26 activities, recover these expenses paid by Plaintiffs and the Class during the relevant period, and
27 other equitable relief Plaintiffs and the Class are entitled to under the law.
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1 **II. PARTIES**

2 7. Defendant Farmers Insurance Exchange is an insurance company organized under
3 the laws of the State of California having both its statutory home office and main administrative
4 office located at 6301 Owensmouth Avenue, Woodland Hills, California.

5 8. Defendant Truck Insurance Exchange is an insurance company organized under the
6 laws of the State of California having both its statutory home office and main administrative office
7 located at 6301 Owensmouth Avenue, Woodland Hills, California.

8 9. Defendant Fire Insurance Exchange is an insurance company organized under the
9 laws of the State of California having both its statutory home office and main administrative office
10 located at 6301 Owensmouth Avenue, Woodland Hills, California.

11 10. Defendant Farmers Group, Inc. d/b/a Farmers Underwriters Association (“FGI”) is
12 an insurance holding company organized under the laws of State of Nevada and whose principal
13 place of business, chief executive officer, chief financial officer, and secretary are located at 6301
14 Owensmouth Avenue, Woodland Hills, California. Truck Underwriters Association and Fire
15 Underwriters Association are wholly owned subsidiaries of FGI, which, in turn, is a wholly owned
16 subsidiary of Zurich Insurance Group Ltd, a Swiss holding company.

17 11. The Defendants named in paragraphs 7 through 10 above and DOES 1 through 100
18 are collectively referred to in this complaint as the “Farmers Defendants” or “Defendants.”

19 12. FGI owns 100% of Farmers New World Life Insurance Company. Defendants
20 Farmers Insurance Exchange, Fire Insurance Exchange and Truck Insurance Exchange own 80%,
21 12.5% and 7.5%, respectively, of Mid-Century Insurance Company.

22 13. FGI provides administrative and management services for Defendants Farmers
23 Insurance Exchange, Fire Insurance Exchange, and Truck Insurance Exchange (collectively, the
24 “Exchanges”).

25 14. For these services, FGI receives management fees from the Exchanges. In 2018, FGI
26 reported management fees received in the amount of \$2,891,630,667, the vast majority of which
27 was paid by the Exchanges.
28

1 15. FGI maintains authority and control over virtually all material aspects of the
2 Exchanges' insurance business in the State of California. Indeed, as relevant here, FGI manages the
3 Exchanges' captive agents – i.e., Plaintiffs and other putative class members – in California.

4 16. While the Exchanges are each purportedly governed by a Board of Governors, the
5 Principal Officers of the Exchanges are FGI employees and the Exchanges and FGI have the same
6 business address and headquarters in California. For example, the President and Chief Executive
7 Officer of Farmer Insurance Exchange is Jeffrey John Dailey. Mr. Dailey is also the Chief
8 Executive Officer of FGI.

9 17. At all relevant times, the Defendants were engaged in selling insurance in California,
10 including in this County.

11 18. Plaintiff Irene Parry is a citizen of the State of California who was a captive agent for
12 Farmers from 1984 to June 2019 and worked at a Farmers' agency located at 6B Liberty, No. 150,
13 Aliso Viejo, CA 92656.

14 19. Plaintiff Jeanette O'Sullivan is a citizen of the State of California who has been a
15 captive agent for Farmers since 1994 and works at a Farmers' agency located at 6B Liberty, No.
16 150, Aliso Viejo, CA 92656.

17 20. Plaintiffs are unaware of the true names and capacities of the remaining defendants
18 sued in this action by the fictitious names DOES 1 through 100. Plaintiffs will amend this
19 complaint when those names and/or capacities become known to Plaintiffs. Plaintiffs are
20 informed and believe that each of the fictitiously named defendants is in some manner
21 responsible for the events and allegations set forth in this complaint.

22 21. Defendants, and each of them, including DOES 1-100, were the agents, servants,
23 employees, independent contractors, co-conspirators, management companies, subsidiaries, and/or
24 joint venturers, of the remaining Defendants, and each of them, and were at all times material
25 hereto, acting within the authorized course, scope, and purpose of said agency, employment or
26 relationship, and/or that all said acts were subsequently performed with knowledge, acquiescence,
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1 ratification and consent of the respective principals, and the benefits thereof accepted by said
2 principals.

3 **III. JURISDICTION AND VENUE**

4 22. The Court has personal jurisdiction over all Defendants as they reside and do
5 business in the State of California and in this county.

6 23. This is a class action brought pursuant to Code of Civil Procedure, § 382, and this
7 Court has jurisdiction over the Plaintiffs' claims because the amount in controversy exceeds this
8 court's jurisdictional minimum.

9 24. Federal jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d), is
10 lacking because two-thirds or more of the members of the proposed plaintiff class in this case in the
11 aggregate, and the primary defendants, are citizens of the State of California. 28 U.S.C. §
12 1332(d)(4)(B). Alternatively, federal jurisdiction under the Class Action Fairness Act is lacking
13 because greater than two-thirds of all the proposed plaintiff class members are citizens of
14 California; at least one of the defendants from whom significant relief is and whose alleged conduct
15 forms a significant basis for the claims, is a citizen of California; the principal injuries resulting
16 from the alleged conduct or any related conduct of each defendant were incurred in California; and
17 no other class action has been filed asserting the same or similar factual allegations against any of
18 the defendants on behalf of the same or other persons during the 3-year period preceding the filing
19 of this case. 28 U.S.C. § 1332(d)(4)(A).

20 25. Venue is proper under Code of Civil Procedure, §§ 395, subd. (a) and 395.5 because
21 the defendants reside in this county and a substantial part of the events or omissions giving rise to
22 the claims asserted in this complaint occurred in this county, to wit, the decision to intentionally
23 misclassify Plaintiff and the Class as independent contractors, and the decision to not reimburse
24 Plaintiff and the Class for all of their necessary expenditures.
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1 **IV. FACTS**

2 **A. Farmers relies on captive agents for the majority of its business.**

3 26. The Exchanges are a group of affiliated insurance companies that sell property,
4 casualty and life insurance throughout the state of California.

5 27. Farmers Insurance Exchange, Fire Insurance Exchange, Truck Insurance Exchange
6 and Mid-Century Insurance Company primarily sell personal automobile, homeowners, business
7 insurance, and personal lines specialty products. Farmers New World Life Insurance Company
8 concentrates its sales activities on individual life insurance policies.

9 28. FGI controls the sales goals and objectives of Farmers Insurance Exchange, Fire
10 Insurance Exchange, Truck Insurance Exchange, Mid-Century Insurance Company, and Farmers
11 New World Life Insurance Company, and thus the sales goals and objectives of the Exchanges'
12 captive agents. FGI also owns the Farmers brand name and logo used to market all of their
13 insurance products.

14 29. FGI benefits directly from the Exchanges' sale of insurance as the management fees
15 it receives from the Exchanges is calculated based on the premiums the Exchanges receive for the
16 policies sold. Thus, while FGI does not sell insurance, it has a direct financial interest in whether
17 the Exchange captive agents it manages sell more or less insurance.

18 30. As reflected in its filings with state insurance regulators, the Farmers Defendants sell
19 the majority of its insurance in California using a common network of thousands of captive
20 insurance agents. (*See e.g.* 2016 Combined Management Discussion and Analysis prepared for the
21 Farmers Insurance Exchange and its Affiliated Property and Casualty Insurers, at p. 4 ["The
22 majority of Farmers' policies are marketed through a captive agency force, mainly in the western
23 and mid-western United States."].)

24 31. Captive insurance agents sell exclusively for one company. Indeed, the Farmers
25 Defendants' captive agents must sell Defendants' products in Farmers' agencies that the Plaintiffs
26 and other Class members do not own. Thus, for example, if a Farmers Defendants' captive agent
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1 cannot sell a potential customer a Farmers' product because the quote is too high, the Defendants'
2 captive agent cannot offer the customer other options from different insurance companies.

3 32. By contrast, independent insurance agents contract with multiple insurers to sell
4 policies, they own and run their own insurance agencies, and they can offer their customers
5 different options from different insurance companies.

6 33. The Farmers Defendants also sell insurance through independent insurance agents
7 and direct sales representatives (individuals work in call centers where they sell insurance to people
8 who call Farmers directly), but these sales account for just a fraction of their overall business.

9 34. Instead, the Farmers Defendants' business is built on its captive agents, who are
10 responsible for the majority of Defendants' business, including the billions in direct written
11 premiums from California residents in 2016 alone.

12 35. The Farmers Defendants require its captive agents to sign a standardized form
13 entitled Farmers Insurance Group of Companies Agent Appointment Agreement (the
14 "Agreement")—the terms of which are drafted by Defendants and are non-negotiable—as a
15 mandatory condition of employment. The Agreement purports to be an agreement between the
16 captive agent and Farmers Insurance Exchange, Truck Insurance Exchange, Fire Insurance
17 Exchange, Mid-Century Insurance Company and Farmers New World Life Insurance Company. A
18 copy of the Agreement for Plaintiff Parry is attached hereto as **Exhibit 1** (confidentiality
19 designation lifted by agreement on June 11, 2019). Plaintiff O'Sullivan signed a form Agreement
20 substantially identical to Plaintiff Parry.
21

22 36. Although the captive agents sign an agreement with the Exchanges, FGI manages the
23 captive agents and has a direct financial interest in whether the captive agents it manages sell more
24 insurance.

25 37. FGI also advises the Exchanges to treat captive agents as independent contractors to
26 avoid employee status.
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1 38. The terms of the Agreement between each member of the Class and Farmers are the
2 same in all material respects, and the Agreement for Plaintiffs is representative of the Agreements
3 between Farmers and each member of the Class.

4 **B. No prior experience is required to be a Farmers' agent.**

5 39. A person needs no specialized knowledge or expertise to be hired as a captive agent
6 for Defendants and does not have to know how to sell insurance, run an insurance agency, or
7 service customers.

8 40. The Farmers Defendants do not regularly contract with established or experienced
9 independent insurance agents who have their own insurance agency to become their captive agents.

10 41. In fact, the Farmers Defendants regularly recruit people having no prior experience
11 as an insurance agent, or a license to sell insurance, to be its captive agents. Indeed, the Defendants
12 website states that after meeting with a Farmers' recruiter, the potential recruit will go through a
13 background check and can then take classes to obtain their insurance license.

14 42. For example, Plaintiff Parry briefly worked as a mortgage broker before starting with
15 Farmers as a captive agent. She did not have any prior work experience in the insurance industry
16 before Farmers taught her how to sell insurance and run a Farmers' agency.

17 43. Because no prior experience is required to be a captive agent for Defendants, the
18 Farmers Defendants require all its new captive agents to go through a mandatory training process
19 that can last for up to nine months, including training at the "University of Farmers" facility in
20 California.

21 44. This mandatory training is for more than just complying with California state laws
22 regulating insurance. Instead, the Farmers Defendants provides new captive agents in-depth training
23 on all aspects of selling insurance and servicing customers, the Farmers' products, and how to run
24 and grow a Farmers' insurance agency.

25 45. The Farmers Defendants even reassures prospective customers on their website that
26 "Farmers agents undergo a rigorous training program before they are able to sell their first policy."
27 (Exhibit 2 ["Farmers Insurance Agents", reproduced from <https://www.farmers.com/agents/>].)
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1 46. By contrast, insurance companies, including Farmers, expect independent agents to
2 secure whatever training they deem important on their own. Insurers may offer independent agents
3 training on the products they offer, but they do not provide training on how to run an agency, sell
4 insurance or service customers, as they expect the independent agent to have this professional
5 knowledge.

6 **C. A Farmers' agent is a career position that Farmers can terminate at-will.**

7 47. Like any other employee, individuals must apply with the Farmers Defendants for
8 the position of a captive agent. In fact, the Farmers Defendants use district managers to recruit new
9 captive agents and employ career recruiters whose full-time job is to recruit captive agents for
10 Defendants and staff for the Farmers' agencies.

11 48. The Farmers Defendants require every new agent to agree that they are an
12 "independent contractor." Nonetheless, the Agreement places no limit on the duration of the
13 relationship, and a person can spend their entire career as a captive agent working for the Farmers
14 Defendants.

15 49. The Farmers Defendants also retain the right to terminate captive agents at-will and
16 without cause, and they regularly exercise that right.

17 50. The Farmers Defendants also require captive agents to sign a non-compete
18 agreement that bars the captive agent from soliciting for one year after termination any customer of
19 the Farmers' agency in which that captive agent worked.

20 **D. Defendants mislead captive agents into believing they own a Farmers' agency.**

21 51. The principal asset of a Farmers' agency, or any insurance agency, is its book of
22 business, which includes the policies, list of names, expirations, and other customer information that
23 both generates commission income and is used to make additional sales.

24 52. Independent agents own the rights to their book of business, and if an insurer
25 terminates a relationship with an independent agent, the book of business stays with the independent
26 agent.
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1 53. Defendants' captive agents, however, have no ownership rights in the book of
2 business. The Farmer Defendants own and control the book of business, and if Defendants
3 terminate their captive agent, the book of business stays with Defendants. In fact, the Farmers
4 Defendants' form Agreement requires its captive agents to agree that the book of business is
5 Defendants' "confidential property" that the agent will not retain following termination of the
6 Agreement. (See **Exhibit 1** at ¶ I.)

7 54. A Farmers Defendants' captive agent also has no rights to any other interests
8 obtained incidental to the Agency, including the telephone numbers and any leased or rented office
9 location, as Defendants have the right to require the captive agents to assign all these interests to the
10 Defendants upon termination.

11 55. Further, when a Farmers' captive agent terminates or retires, the book of business
12 and, if requested, the interests obtained incidental to the Agency revert automatically to the Farmers
13 Defendants because Defendants actually own these assets and have no obligation to purchase them
14 from the captive agent.

15 56. Also, unlike independent agents who own and operate their own agencies, a
16 Farmers' captive agent cannot sell his or her agency.

17 57. Defendants tell their captive agents that they can sell their so-called "service and
18 commission rights" to a third-party at any time, but Defendants reserve the right to control all of the
19 terms and conditions of any sale and can block the sale for any reason or no reason at all. The
20 Farmers Defendants created this illusion to mask how it is really just a transaction aimed at
21 relieving Defendants from making any of the so-called "Contract Value payments" they would
22 otherwise owe to the captive agent upon termination of the Agreement.

23 58. Defendants also tell captive agents that they can pass the Farmers' agency to their
24 family members, but in reality, the Farmers Defendants reserve the right to control all aspects of
25 any such transaction and can block it for any reason or no reason at all.
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1 59. Instead, when Defendants terminate a captive agent, they leave the former captive
2 agent only with the debt associated with the Farmers' agency he or she worked in, such as
3 obligations to pay rent or any loans taken out to run a Farmers' agency they no longer work in.

4 60. Indeed, the Farmers Defendants use their ownership rights, and right to terminate the
5 agent at-will and leave them with nothing, to exercise substantial control over their captive agency
6 force.

7 **E. Defendants have the right to unilaterally reduce the captive agents' pay.**

8 61. In general, Defendants pay its captive agents by commission. These commissions are
9 not always based on policies sold by the agent, however, as the Farmers Defendants can assign
10 policies sold by one Farmers' captive agent to another Farmers' captive agent. For example, when
11 Defendants terminate an agent, if Defendants decide to not service those policies in-house they can
12 assign those policies to another Farmers' captive agent.

13 62. Defendants pay bonuses to their captive agents, including signing bonuses, based on
14 language abilities or prior military service.

15 63. Defendants also retain the right to reduce the commissions paid to its captive agents
16 for any reason, or no reason at all, and Farmers' captive agents have no option but to accept the
17 Farmers Defendants' unilateral reduction in commissions. For example, Defendants recently cut
18 their captive agents' pay on auto policies by 10%, and then cut their captive agents' pay on fire
19 policies by 29% in July 2018.

20 64. Because Defendants owns the Farmers' agencies, the Farmers Defendants also
21 provide captive agents with subsidies (loans) to start-up the Farmers' agencies.

22 **F. Defendants provide their captive agents with employee benefits.**

23 65. Defendants provides their captive agents a tax-deferred plan that allows any full-time
24 agent who has completed six months of service to defer up to 50% of their new automobile policy
25 commissions into a deferred compensation program.

26 66. Defendants also provide captive agents with a group health plan.
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1 **G. Defendants' captive agents are part of an integrated sales force and are managed as**
2 **such.**

3 67. Far from each agent running truly "independent" businesses, Farmers' captive agents
4 are simply a part of Defendants' sales force and are nothing more than employees that the Farmers
5 Defendants refer to as independent contractors when they are not. The captive agents are wholly
6 integrated into Defendants' business.

7 68. Indeed, the Farmers Defendants have established a top-down hierarchy of managers
8 whose full-time job is to supervise the Farmers' captive agents, including their sales activities, in
9 order to drive the agency force production and meet Defendants' sales goals.

10 69. For example, each captive agent reports to a District Manager, who reports to
11 another Farmers' manager, all of whom are part of a hierarchy of Defendants' managers who
12 ultimately report to an officer of Farmers Group, Inc.

13 70. Defendants' integrated sales force dedicated to supervising the captive agents either
14 exercises control over, or has the right to exercise control over, any aspect of how the Defendants'
15 captive agent sells insurance, runs the agencies, and services the Farmers Defendants' customers.

16 For example:

- 17
- 18 a. Defendants have the right to approve the location of the Farmers' agency and
19 where agents share an office, and Defendants control whom they can share an
20 office with.
 - 21 b. Defendants have the right to control the hours that the Farmers' agency is
22 open for business. For example, the Farmers Defendants currently require
23 captive agents to have the Farmers' agencies open for no less than 45 hours
24 each week.
 - 25 c. Defendants have the right to control the appearance of the agency, both inside
26 and its exterior, to ensure the Farmers' brand is prominently displayed and
27 the appearance meets Farmers' expectations of "professional appearance."
28

- 1 d. Defendants maintain a standardized agency website for each captive agent on
2 the Farmers' website and has employees whose job is to "drive product
3 strategy across Farmers digital assets," including the agent sites.
4 e. Defendants can require captive agents, particularly new agents, to submit
5 business plans to Defendants' managers stating the various sales activities
6 they intend to pursue.
7 f. Defendants also have yearly meetings with the captive agents where they lay
8 out written sales plans Defendants expect the agents to follow and then
9 monitors the captive agent's progress.

10 71. The Farmers Defendants also monitor the captive agents' sales activities, not just
11 production (premiums). For example, Defendants can monitor the agents' quoting activity, cross-
12 sales, or the number of personal insurance reviews done by each agent, which it calls Farmers
13 Friendly Reviews, a sales technique where the agent reviews a customer's personal situation to try
14 and identify additional sales opportunities. Defendants even advertise "Farmer Friendly Reviews"
15 on their website and encourage customers to contact one of their captive agents to request a review.

16 72. The Farmers Defendants also implement programs, such as its "Smart Office"
17 program, where Defendants' managers evaluate the Farmers' captive agents based on the number of
18 office staff per policies in force, the size of the office, and the office appearance. Captive agents
19 whom Defendants deem to not be "Smart Office compliant" can be threatened with termination.

20 73. Defendants hire employees whose full-time job is to monitor the captive agents and
21 drive captive agent production. As but one example, Defendants created employee positions such as
22 "Agency Distribution Sales Specialist," whose job duties include "Reviews and evaluates the results
23 obtained by agents," "consults with the agent to implement action to remedy weaknesses utilizing
24 available resources," "[i]dentifies deteriorating or unprofitable agencies and recommends corrective
25 actions to Agency Distribution Manager," and "[c]oordinates training and agency start-up activities
26 to ensure profitable policies-in-force growth and attainment of agency objectives."
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1 74. In fact, Defendants compensate their District Managers based solely on the
2 production of the agents in their district and can terminate District Managers for failing to meet the
3 production goals set by Defendants, thereby incentivizing District Managers to supervise and
4 control the captive agents in their district.

5 75. By contrast, and upon information and belief, Defendants do not discipline their
6 District Managers when they exercise control over Plaintiffs and the Class or even train their
7 District Managers on how to manage the captive agents' independent contractors.

8 76. In reality, Farmers' captive agents simply have a job running Farmers' agencies to
9 sell policies and service policyholders "credited" to their account in order to meet Farmers' sales
10 goals.

11 **H. Examples of the Expenses Defendants require the captive agents to bear.**

12 77. Defendants require their captive agents to pay, without reimbursement, the expenses
13 necessary to run a Farmers' agency.

14 78. For example, a Farmers' captive agent cannot work from a home office. Defendants'
15 require the captive agents to work in a Farmers' agency and either lease or purchase office space for
16 the Farmers' agency. Defendants do not reimburse their captive agents for this expense.

17 79. Defendants require their captive agents to brand the interior of the Farmers' agency
18 with signs advertising the Farmers' brand. Defendants do not reimburse the captive agents for this
19 expense.

20 80. Defendants require their captive agents to keep the Farmers' agency open and staffed
21 during normal business hours Monday through Friday, and at least 45 hours per week. Defendants
22 do not reimburse the captive agents for this expense.

23 81. Defendants require their captive agents to have a licensed and appointed staff
24 member available in the Farmers' agency during normal business hours. Defendants do not
25 reimburse the captive agents for this expense.

26 82. Defendants require and expect their captive agents to pay these expenses to grow the
27 Farmers Defendants' books of business and service the Farmers Defendants' customers and
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1 otherwise benefit Defendants' business. Accordingly, they are expenses for which Defendants are
2 obligated to reimburse their captive agents, but have not done so.

3
4 **V. CLASS ALLEGATIONS**

5 83. Class Definition: Plaintiffs bring this action on behalf of themselves and the
6 following Classes pursuant to Section 382 of the Code of Civil Procedure:

7 All individuals who signed a Farmers' Agent Appointment Agreement and who worked as a
8 Farmers' captive agent in the State of California.

9 For claims against the Exchanges, the Class Period is the four years immediately preceding the
10 filing of the Original Complaint (filed November 16, 2017) until such time as notice is mailed to the
11 Class. For claims against FGI and DOES 1 through 100, the Class period is the four years
12 immediately preceding the filing of this Amended Complaint until such time as notice is mailed to
13 the Class.¹ Excluded from the Class are any judge, justice or judicial officer presiding over this
14 matter and members of their immediate families and judicial staff.

15 84. Numerosity/Ascertainability: The members of the Class are so numerous that joinder
16 of all members would be unfeasible and not practicable. The exact number of Class members is
17 unknown to Plaintiffs at this time; however, it is estimated that there are more than one thousand
18 (1000) individuals in the Class. The identity of such membership is readily ascertainable from
19 Defendants' records.

20 85. Common Questions of Law and Fact Predominate/Well Defined Community of
21 Interest: There are common questions of law and fact as to Plaintiffs and all other similarly situated
22 employees, which predominate over questions affecting only individual members including, without
23 limitation to:

- 24 a. Whether Defendants misclassified its captive agents in California as
25 independent contractors;
26

27
28 ¹ Plaintiffs further reserve the right to assert any subclasses, as appropriate, at the time of class certification.

- 1 b. Whether the Exchange Defendants are an employer of the captive agents or a
2 joint employer with Defendant FGI;
- 3 c. Whether Defendant FGI is an employer of the captive agents or a joint
4 employer with the Exchanges;
- 5 d. Whether Defendants' misclassification was intentional, in violation of
6 California Labor Code § 226.8;
- 7 e. Whether Defendants violated Cal. Labor Code § 2802 by failing to reimburse
8 Plaintiffs and the Class for all necessary expenditures or losses incurred by
9 them in direct consequence of the discharge of their duties;
- 10 f. Whether Defendants violated California's Unfair Competition Law ("UCL"),
11 Business and Professions Code, § 17200 *et seq.*, by: (a) failing to reimburse
12 Plaintiffs and the Class for all reasonable work expenditures; (b)
13 misrepresenting to Plaintiffs and the Class that they own their Farmers'
14 agencies, and (c) intentionally misclassifying Plaintiffs and the Class as
15 independent contractors; and
- 16 g. Whether FGI violated Cal. Labor Code § 2753 by knowingly advising the
17 Exchanges to treat an individual as an independent contractor to avoid
18 employee status for that individual.

19
20 86. Predominance of Common Questions: Common questions of law and fact
21 predominate over questions that affect only individual members of the Class. The common
22 questions of law set forth above are numerous and substantial and stem from Defendants' policies
23 and/or practices applicable to each individual Class member. As such, these common questions
24 predominate over individual questions concerning each individual Class member's showing as to
25 his or her eligibility for recovery or as to the amount of his or her damages.

26 87. Typicality: Plaintiffs' claims are typical of the claims of the Class because Plaintiffs
27 were and still are employed by Defendants as captive agents in California during the relevant period
28 applicable to each cause of action pled in this Complaint. As alleged herein, Plaintiffs, like the

1 members of the Classes, were misclassified by Defendants as independent contractors and not
2 reimbursed for all necessary work expenditures Defendants required them to incur.

3 88. Adequacy of Representation: Plaintiffs are fully prepared to take all necessary steps
4 to represent fairly and adequately the interests of the members of the Class. Moreover, Plaintiffs'
5 attorneys are ready, willing and able to fully and adequately represent the members of the Class and
6 Plaintiffs. Plaintiffs' attorneys are experienced in prosecuting class actions and employee
7 misclassification cases and are committed to vigorously prosecuting this action on behalf of the
8 members of the Class.

9 89. Superiority: The California Labor Code is broadly remedial in nature and serves an
10 important public interest in establishing minimum working conditions and standards in California.
11 These laws and labor standards protect the average working employee from exploitation by
12 employers who have the responsibility to follow the laws and who may seek to take advantage of
13 superior economic and bargaining power in setting onerous terms and conditions of employment.
14 The nature of this action and the format of laws available to Plaintiffs and members of the Class
15 make the class action format a particularly efficient and appropriate procedure to redress the
16 violations alleged herein. If each employee/captive agent were required to file an individual lawsuit,
17 Defendants would necessarily gain an unconscionable advantage since they would be able to exploit
18 and overwhelm the limited resources of each individual plaintiff with their vastly superior financial
19 and legal resources. Moreover, requiring each member of the Class to pursue an individual remedy
20 would also discourage the assertion of lawful claims by employees, many of whom who would be
21 disinclined to file an action against their former and/or current employer for real and justifiable fear
22 of retaliation and permanent damages to their careers at subsequent employment. Further, the
23 prosecution of separate actions by the individual Class members, even if possible, would create a
24 substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual
25 Class members against Defendants herein; would establish potentially incompatible standards of
26 conduct for Defendants; and/or create inconsistent legal determinations with respect to individual
27 Class members which would, as a practical matter, be dispositive of the interest of the other Class
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1 members or which would substantially impair or impede the ability of the Class members to protect
2 their interests. Further, the claims of the individual members of the Class are not sufficiently large
3 to warrant vigorous individual prosecution considering all of the concomitant costs and expenses
4 attendant thereto.

5 90. As such, the Class is maintainable under Section 382 of the Code of Civil Procedure.

6 **COUNT ONE**

7 **FOR VIOLATION OF LABOR CODE SECTION 2802 - FAILURE TO REIMBURSE FOR**
8 **NECESSARY EXPENDITURES INCURRED**

9 **(AGAINST ALL DEFENDANTS, INCLUDING DOES 1 THROUGH 100)**

10 91. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs as
11 though fully set forth herein.

12 92. By misclassifying Plaintiffs and the Class as independent contractors, Defendants
13 required Plaintiffs and the Class to incur expenses, such rent for leasing office space or hiring office
14 staff, to list but a few examples, without reimbursing them for such necessary work expenditures.

15 93. At all relevant times herein, Defendants were subject to Labor Code, § 2802, which
16 states that “an employer shall indemnify his or her employees for all necessary expenditures or
17 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his
18 or her obedience to the directions of the employer.” The expenses that Defendants have failed to
19 reimburse Plaintiffs and the Class for are expenditures or losses under Labor Code section 2802.

20 94. At all relevant times herein, Defendants were subject to Labor Code, § 2804, which
21 states that “any contract or agreement, express or implied, made by any employee to waive the
22 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
23 employee or his personal representative of any right or remedy to which he is entitled under the
24 laws of this State.

25 95. As a proximate result of Defendants’ policies and/or practices in violation of Labor
26 Code, §§ 2802 and 2804, and Wage Order 9-2001, Plaintiffs and members of the Class were
27 damaged in sums, which will be shown according to proof.
28

1 102. Defendants' utilization of these unlawful or unfair business practices deprived and
2 continues to deprive Plaintiffs and the members of the Class of reimbursement for expenditures
3 incurred by Plaintiffs and the Class in direct consequence of the discharge of their duties, or of their
4 obedience to the directions of the Defendants. Plaintiffs and the Class are legally entitled to such
5 reimbursement plus interest thereon pursuant to Labor Code section 2802, and Defendants' failure
6 to reimburse such expenditures constitutes unfair and/or unlawful competition, and provides an
7 unfair advantage over Defendants' competitors who have been and/or are currently employing
8 workers and attempting to do so in honest compliance with California laws.

9 103. Because Plaintiffs are victims of Defendants' unfair and/or unlawful conduct alleged
10 herein, Plaintiffs and the members of the Class, seek full restitution of monies, as necessary and
11 according to proof, and restoration of any and all monies withheld, acquired and/or converted by the
12 Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

13 104. The acts complained of herein occurred within the last four years immediately
14 preceding the filing of the Complaint in this action.

15 105. Plaintiffs have suffered an injury in fact, including the loss of money or property, as
16 a result of Defendants' unfair and unlawful practices. Among other things, Defendants have
17 willfully failed to reimburse Plaintiffs and the Class for expenditures that Plaintiffs and the Class
18 incurred on Defendants behalf in direct consequence of the discharge of their duties, or of their
19 obedience to the directions of the Defendants.

20 106. All of the wrongful conduct alleged herein occurred, and continues to occur, in the
21 conduct of Defendants' business. Defendants' wrongful conduct is a part of a pattern of generalized
22 course of conduct that is still perpetuated and repeated in the State of California.

23 107. Plaintiffs request that this Court enter such orders or judgments as may be necessary
24 to enjoin Defendants from continuing their unfair, unlawful and/or deceptive practices, and to
25 restore to Plaintiffs and the Class the monies that Defendants owe Plaintiffs, including restitution
26 and/or restitutionary disgorgement, unjust enrichment and for such other relief as may be
27 appropriate.
28

JURY TRIAL DEMAND

Plaintiffs hereby demand a trial by jury on all claims.

Dated: 10-29-19

NELSON & FRAENKEL LLP

By: Samuel Barenfeld
Gretchen M. Nelson, SBN 112566
gnelson@nflawfirm.com
Gabriel S. Barenfeld, SBN 224146
gbarenfeld@nflawfirm.com
601 S. Figueroa St., Suite 2050
Los Angeles, CA. 90017
Telephone No.: (844) 622-6469
Facsimile No.: (213) 622-6019

CRUEGER DICKINSON LLC

Charles J. Crueger, Esq. (PHV)
Erin K. Dickinson, Esq. (PHV)
Krista K. Baisch, Esq. (PHV)
Benjamin Kaplan (PHV)
4532 North Oakland Avenue
Whitefish Bay, WI 53211
Tel.: (414) 210-3868
Email: cjc@cruegerdickinson.com
Email: ekd@cruegerdickinson.com

WEXLER WALLACE LLP

Edward A. Wallace (PHV)
Kara A. Elgersma (PHV)
55 West Monroe Street, Suite 3300
Chicago, IL 60603
Tel.: (312) 346-2222
Email: eaw@wexlerwallace.com
Email: kae@wexlerwallace.com

GREG COLEMAN LAW

Greg F. Coleman, Esq. (PHV)
800 S. Gay Street, Suite 1100
Knoxville, TN 37929
Tel.: (865) 247-0080
Email: greg@gregcolemanlaw.com

Attorneys for Plaintiffs

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PROOF OF SERVICE

I, the undersigned, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 601 S. Figueroa St., Suite 2050, Los Angeles, California 90017.

On October 29, 2019 I served the foregoing documents described as follows:

PLAINTIFFS' FIRST AMENDED CLASS ACTION COMPLAINT FOR VIOLATIONS

on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as stated on the attached service list, and in the manner stated below:

 BY MAIL:

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

 BY PERSONAL SERVICE: I caused to be delivered such envelope by hand to the offices of:

 BY FEDERAL EXPRESS OR OVERNIGHT CARRIER

 X BY ELECTRONIC SERVICE


served by e-mail through Case Anywhere: I attached a true and correct copy of the above-entitled document(s) to Case Anywhere by electronic transfer for service on all counsel of record by electronic service pursuant to the Order Authorizing Electronic Service. This service complies with C.C.P. §1010.6.

 X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

 (Federal) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed October 29, 2019 at Los Angeles, California.

 Alex Ho
(Type of Print Name)


(Signature)

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SERVICE LIST
PARRY v FARMERS INSURANCE EXCHANGE
Case No. BC 683856

<p>Charles J. Crueger Erin K. Dickinson Krista K. Baisch Benjamin Kaplan Jamie Tilton CRUEGER DICKINSON LLC 4532 North Oakland Avenue Whitefish Bay, WI 53211 Telephone: (414) 210-3868 Email: cjc@cruegerdickinson.com ekd@cruegerdickinson.com kkb@cruegerdickinson.com bak@cruegerdickinson.com jlt@cruegerdickinson.com</p>	<p>Attorneys for Plaintiffs</p>
<p>Edward A. Wallace Kara A. Elgersma WEXLER WALLACE LLP 55 West Monroe Street, Suite 3300 Chicago, IL 60603 Telephone: (312) 346-2222 Facsimile: (312) 346- 0222 Email: eaw@wexlerwallace.com kae@wexlerwallace.com</p>	<p>Attorneys for Plaintiffs</p>
<p>Greg F. Coleman GREG COLEMAN LAW 800 S. Gay Street, Suite 1100 Knoxville, TN 37929 Telephone: (865) 247-0080 Facsimile: (865) 522-0049 Email: greg@gregcolemanlaw.com</p>	<p>Attorneys for Plaintiffs</p>

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<p>Nina Huerta Jonevin Sabado Jordan Ferguson LOCKE LORD LLP 300 South Grand Ave, Suite 2600 Los Angeles, CA 90071 Telephone: (213) 687- 6707 Facsimile: (213) 341-6707 Email: nhuerta@lockelord.com Email: jonevin.sabado@lockelord.com Email: Jordon.ferguson@lockelord.com</p> <p>Kevin Kelly LOCKE LORD LLP 111 South Wacker Drive Suite 4100 Chicago, IL 60606 Telephone: 312-443-0217 Email: kkelly@lockelord.com</p>	<p>Attorney for Defendants</p>
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