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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JEFF OLBERG, an individual, and CECILIA
ANA PALAO-VARGAS, an individual, on
behalf of themselves and all others similarly
situated,

Plaintiff,

v.

ALLSTATE INSURANCE COMPANY, an
Illinois Corporation,

Defendant.

No. 18-cv-00573

COMPLAINT

JURY DEMAND

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I. NATURE OF THE CASE

1
2 1. When a person’s vehicle is totaled in an accident, an automobile insurance
3 company must not underpay claims by manipulating the data used to value the vehicle.
4 Specifically, Washington law prohibits insurance companies from valuing a vehicle by
5 comparing it to vehicles of a different type. Washington law also prohibits insurance companies
6 from reducing claim values with arbitrary, unexplained, and unjustified adjustments to the
7 condition of comparable vehicles that bear no relation to actual cash value. An insurer must not
8 misstate or conceal material facts that bear upon its estimate of value.

9 2. In negotiating and settling total loss claims, Allstate Insurance Company
10 (Allstate) flagrantly violates these rules. First, when Allstate selects vehicles to compare with the
11 loss vehicle, it includes gray-market vehicles—vehicles manufactured for consumers in foreign
12 countries and imported into the U.S.—that are not comparable to the loss vehicle and are worth
13 less due to their gray-market status. Allstate misrepresents the gray-market vehicles as
14 comparable while failing to disclose their gray-market status, deceiving consumers and cheating
15 them on their claims.

16 3. Second, Allstate reduces the value of comparable vehicles by an arbitrary amount
17 that it deems a “condition adjustment” without itemizing or explaining the basis for the
18 adjustment as required by Washington law. Allstate applies a uniform “condition adjustment” to
19 multiple comparable vehicles involved in a valuation without even distinguishing one vehicle
20 from the next. These arbitrary and unjustified condition adjustments artificially and improperly
21 reduce claim payments by hundreds or thousands of dollars.

22 4. Allstate’s systematic under-valuations and underpayments violate its insurance
23 contracts as well as Washington statutes governing the adjustment of total loss claims. Allstate’s
24 actions also violate Washington prohibitions on consumer deception and settling insurance
25 claims in bad faith.

26 5. Plaintiffs bring this class action on behalf of all those insured under automobile
27 insurance policies issued in the State of Washington by Allstate Insurance whose claim
28 valuations were based in whole or in part upon the values of gray-market vehicles and those

1 whose claim valuations were based upon the values of comparable vehicles that were reduced by
2 artificial, unexplained “condition adjustments.”

3 6. Plaintiffs seek for themselves and the class compensatory damages, treble
4 damages, and attorney’s fees, as well as declaratory and injunctive relief.

5 **II. JURISDICTION**

6 7. This Court has jurisdiction pursuant to the Class Action Fairness Act of 2005, 28
7 U.S.C. § 1332(d), because the proposed Class consists of 100 or more members; the amount in
8 controversy exceeds \$5,000,000, exclusive of costs and interest; and minimal diversity exists.
9 Plaintiffs are citizens of Washington and Allstate is a citizen of Illinois (where it is incorporated
10 and has its principal place of business).

11 8. This Court has personal jurisdiction over Allstate because Allstate is a corporation
12 licensed and authorized to do business in Washington and has transacted business in King
13 County, Washington. This Court has personal jurisdiction over Plaintiffs because Plaintiffs
14 consent to this Court’s jurisdiction.

15 **III. VENUE**

16 9. Venue is proper in this District under 28 U.S.C. § 1391 because this is the District
17 in which Plaintiffs’ insurance benefits were denied and the cause of action arose.

18 **IV. PARTIES**

19 10. Plaintiffs Jeff Olberg and Cecilia Ana Palao-Vargas were at all relevant times
20 residents of the State of Washington.

21 11. At all times pertinent, Plaintiff Jeff Olberg was insured under a policy of
22 automobile insurance with Allstate that included coverage for the total loss of a vehicle.

23 12. At all times pertinent, Plaintiff Cecilia Ana Palao-Vargas was insured under a
24 policy of automobile insurance with Allstate that included coverage for the total loss of a vehicle.

25 13. Allstate Insurance Company is an Illinois corporation with its principal place of
26 business in Illinois.

V. FACTUAL ALLEGATIONS

A. Allstate relies on manipulated data to underpay total loss claims.

14. All allegations contained in previous paragraphs are incorporated herein by reference.

15. Allstate is the second-largest personal lines insurance company in the United States. Allstate issues automobile insurance policies to consumers in the State of Washington.

16. Allstate touts itself as a reliable and trustworthy source of insurance coverage. In its advertising campaigns, Allstate has adopted the motto, “You’re in good hands.” On its website, Allstate claims, “In every aspect of our business, we strive to do the right thing—for our customers, our employees, our communities and our world.” But when its customers’ cars are wrecked in life-changing accidents, Allstate betrays these principles, playing games and putting profits ahead of people. Allstate fudges the numbers to shortchange vulnerable consumers, who have often lost their primary car and are relying on Allstate to pay fair value so they can afford to buy a replacement.

17. Allstate’s standard form automobile policy provides coverage for the total loss of a vehicle in an accident.

18. For total loss claims, Allstate must base any cash settlement offer on the “actual cash value of a comparable motor vehicle.” WASH. ADMIN. CODE § 284-30-391(2).

19. In the event of a total loss, Allstate promises in its policy that it will pay the insured the “actual cash value” of the vehicle before the accident.

20. For total loss claims, Allstate must “[b]ase all offers on itemized and verifiable dollar amounts for vehicles that are currently available . . . using appropriate deductions or additions for options, mileage or condition when determining comparability.” WASH. ADMIN. CODE § 284-30-391(4)(b).

21. For total loss claims, “[a]ny additions or deductions from the actual cash value must be explained to the claimant and must be itemized showing specific dollar amounts.” WASH. ADMIN. CODE § 284-30-391(5)(d). The purpose of this requirement is to ensure that any

1 adjustments are reasonable and justified and to ensure that consumers have the ability to evaluate
2 and challenge any deductions that are improper.

3 22. Systemically, Allstate fails to offer and pay the actual cash value.

4 23. Allstate bases its offers and payments on manipulated data and reports that do not
5 meet Allstate's duties under Washington law, imposing arbitrary and unexplained "condition
6 adjustments" to artificially reduce the values of comparable vehicles and basing its valuations on
7 gray-market vehicles that are not comparable to the insured vehicle.

8 24. To calculate its offer and payment, Allstate obtains a valuation report from a
9 third-party company called CCC Information Services, Inc. ("CCC"). These reports purport to
10 contain values for comparable used vehicles recently sold or for sale in the geographic area of
11 the insured. The reports contain a purported valuation for the loss vehicle based upon the data in
12 the report. Allstate instructs CCC as to what specific data to include in the report as the basis for
13 the valuation, including whether to include condition adjustments to comparable vehicles and
14 whether to base the valuation on gray-market vehicles that are not comparable to the insured
15 vehicle.

16 25. Allstate offers its insureds a claim settlement equivalent to the valuation amount
17 found on the report.

18 26. The valuation reports also reduce the estimated values of comparable vehicles,
19 citing a "condition adjustment," but fail to itemize or explain the basis for these condition
20 adjustments. These condition adjustments are arbitrary and unjustified. Indeed, even though each
21 comparable vehicle has unique characteristics, the reports reduce the value of multiple
22 comparable vehicles by the same amount, down to the last dollar, without any itemization or
23 explanation for the amount. These blind and arbitrary reductions bear no relation to the actual
24 fair market value of the comparable vehicles or the loss vehicle. The application of an arbitrary
25 condition adjustment to reduce the value of comparable vehicles artificially reduces the valuation
26 of the loss vehicle to benefit the insurer at the expense of the insured.

27 27. The valuation reports base their calculations upon the values of gray-market
28 vehicles instead of vehicles that are comparable to the loss vehicle. Gray-market vehicles are

1 vehicles manufactured for markets outside the United States and later imported and offered for
2 sale in the United States.

3 28. Gray-market vehicles are disfavored in the marketplace and generally less
4 valuable than vehicles manufactured for the U.S. market. The prices of gray-market vehicles are
5 depressed for several reasons:

- 6 a. For a given year, make, and model, vehicles made for non-U.S. markets
7 such as Canada have different safety and environmental specifications
8 from vehicles made for the U.S. market and require modifications to
9 comply with U.S. law.
- 10 b. Gray-market vehicles frequently lack a clear chain of title, increasing the
11 risk that the vehicle has been stolen.
- 12 c. Gray-market vehicles are manufactured with an instrument panel and
13 odometer that uses kilometers instead of miles, and the conversion from
14 kilometers to miles creates a risk that the odometer has been manipulated.
- 15 d. The prices of gray-market vehicles are depressed by arbitrage. Because
16 vehicle supply and demand varies from one country to the next, the cost of
17 a gray-market vehicle is often lower than a vehicle of the same year,
18 make, and model made for and sold in the United States.

19 29. For these reasons, a gray-market vehicle is not “a comparable motor vehicle” for a
20 vehicle of the same year, make, and model made for the U.S. market. The use of gray-market
21 vehicles to calculate the value of the loss vehicle artificially reduces the valuation of the loss
22 vehicle to benefit the insurer at the expense of the insured.

23 **B. Allstate underpaid the total loss claims of Plaintiffs.**

24 30. Plaintiffs each owned a vehicle which was involved in an accident and damaged
25 so seriously as to be a total loss.

26 31. Plaintiffs made claims with Allstate for the total loss of the vehicles. Allstate
27 provided written settlement offers to each plaintiff.

28 32. Allstate based each settlement offer upon a valuation report obtained from third-
party CCC.

33. Plaintiff Jeff Olberg was the owner of a 2013 Ford Fusion Hybrid that was totaled
in an accident in 2016. Allstate offered to pay, and did pay, \$16,805.99 (minus deductible)

1 attributable to the value of the vehicle, citing its CCC valuation report. The valuation report
2 listed values of nine different comparable vehicles and applied a uniform condition adjustment of
3 \$775 to all nine of them without itemizing or explaining the basis of the adjustment as required
4 by Washington law. The report reduced the amount of these comparable vehicles by exactly the
5 same amount, regardless of any individual differences in the condition of the vehicles. These
6 blanket adjustments were arbitrary and unjustified, and they resulted in an underpayment of
7 \$775.

8 34. Plaintiff Cecilia Ana Palao-Vargas was the owner of a 2011 Hyundai Sonata that
9 was totaled in an accident in 2015. Allstate offered to pay, and did pay, \$15,034.93 (minus
10 deductible) attributable to the value of the loss vehicle, citing its CCC valuation report. The
11 valuation report listed values of nine different comparable vehicles and applied a uniform
12 condition adjustment of \$684 to all nine of them without itemizing or explaining the basis of the
13 adjustment as required by Washington law. The report reduced the amount of each comparable
14 vehicle by exactly the same amount, regardless of individual differences in the condition of the
15 vehicles. These blanket adjustments were arbitrary and unjustified, and they resulted in an
16 underpayment of \$684.

17 35. The valuation report for Plaintiff Palao-Vargas's claim also based its calculations
18 on the value of at least one gray-market vehicle instead of a comparable vehicle as required by
19 Washington law. The valuation report itself specifies on page 9 that Plaintiff's wrecked vehicle
20 is not a gray-market vehicle. At the same time, the valuation report misstates that the gray-
21 market vehicle is comparable to Plaintiff's vehicle and fails to disclose the gray-market status of
22 the gray-market vehicle. The use of a gray-market vehicle results in an underpayment to be
23 determined based upon the economic impact of using gray-market vehicles for vehicle pricing
24 analysis.

25 36. Through the valuation report, Allstate and CCC have the ability to determine
26 whether a vehicle is a gray-market vehicle and did in fact determine that Plaintiff Palao-Vargas's
27 vehicle was not a gray-market vehicle. Nonetheless, Allstate misstates that the gray-market
28 vehicle was comparable to the loss vehicle and never discloses that it is comparing the loss

1 vehicle to a gray-market vehicle. In 2017, Allstate based a settlement offer on a valuation report
2 that contained four gray-market vehicles.

3 37. Upon information and belief, Allstate has relied upon the values of other gray-
4 market vehicles in the settlement of both Plaintiffs' claims.

5 38. Allstate has acted with at least reckless disregard of the rights of others by
6 manipulating the numbers to settle total loss claims. Allstate has devised valuation methods that
7 are unfair, misleading, deliberately inconsistent, and calculated to confuse and deceive
8 consumers and their advocates in the settlement process.

9 39. Allstate's practices have cost consumers tens of millions of dollars in losses as
10 their claims go underpaid. Meanwhile, Allstate reaps millions in wrongful profits by betraying
11 the trust of its consumers.

12 VI. CLASS ACTION ALLEGATIONS

13 40. This action is brought and may properly be maintained as a class action, as it
14 satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority
15 requirements of Federal Rule of Civil Procedure 23. Plaintiffs bring all claims herein
16 individually and as a class action (for the classes defined below), pursuant to Federal Rule of
17 Civil Procedure 23.

18 41. The class consists of two subclasses as follows:

19 All individuals insured by Allstate under an Allstate private
20 passenger vehicle policy who, from the earliest allowable time to
the present,

21 (1) Received a first-party total loss settlement or settlement
22 offer based in whole or in part on the price of one or more
gray-market vehicles; or

23 (2) Received a first-party total loss settlement or settlement
24 offer based in whole or in part on the price of comparable
vehicles reduced by a "condition adjustment."

25 42. While the exact number of members cannot be determined, the class consists at a
26 minimum of thousands of persons located throughout the State of Washington. The members of
27 the class are therefore so numerous that joinder of all members is impracticable. The exact
28 number of class members can readily be determined by documents produced by Allstate.

- 1 43. There are questions of fact and law common to the class, including the following:
- 2 i. Whether Allstate used the values of gray-market vehicles to calculate the
- 3 values of loss vehicles;
- 4 ii. Whether Allstate applied arbitrary and unexplained condition adjustments to
- 5 comparable vehicles to calculate the value of loss vehicles;
- 6 iii. Whether, through each of the foregoing practices, Allstate breached its
- 7 contracts with its insureds;
- 8 iv. Whether, through each of the foregoing practices, Allstate committed a
- 9 breach of the common law duty of good faith and fair dealing;
- 10 v. Whether, through each of the foregoing practices, Allstate violated the
- 11 Insurance Fair Conduct Act, WASH. REV. CODE § 48.30.010 *et seq.*;
- 12 vi. Whether, through each of the foregoing practices, Allstate violated
- 13 regulations governing unfair claims settlement practices including WASH.
- 14 ADMIN. CODE § 284-30-330 *et seq.*;
- 15 vii. Whether, through each of the foregoing practices, Allstate violated the
- 16 Consumer Protection Act, WASH. REV. CODE § 19.86.020;
- 17 viii. Whether Allstate's use of gray-market vehicles and improper condition
- 18 adjustments to value loss vehicles caused injury to Plaintiffs and the class;
- 19 ix. Whether Allstate's actions were unreasonable, frivolous, or unfounded;
- 20 x. Whether Allstate's actions were reckless, malicious, or willful;
- 21 xi. Whether Plaintiffs and the class are entitled to an award of compensatory
- 22 damages;
- 23 xii. Whether Plaintiffs and the class are entitled to an award of treble damages;
- 24 xiii. Whether Plaintiffs and the class are entitled to an award of attorney's fees;
- 25 xiv. Whether Plaintiffs and the class are entitled to declaratory and injunctive
- 26 relief.

27 44. Plaintiffs have the same interests in this matter as all other members of the class,

28 and their claims are typical of those of all members of the class. Plaintiffs' claims are coincident with and not antagonistic to those of other class members they seek to represent. Plaintiffs and all class members have sustained damages arising out of Allstate's common course of conduct as outlined herein. The damages of each class member were caused by Allstate's wrongful conduct.

1 45. Plaintiffs are committed to pursuing this action and have retained competent class
2 counsel experienced in insurance litigation and class action litigation. Plaintiffs will fairly and
3 adequately represent the interests of the class members.

4 46. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(2)
5 because Allstate's actions are generally applicable to the class as a whole, and Plaintiffs seek,
6 *inter alia*, equitable remedies with respect to the class as a whole.

7 47. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3)
8 because the common questions of law and fact enumerated above predominate over questions
9 affecting only individual members of the class, and a class action is the superior method for fair
10 and efficient adjudication of the controversy. The likelihood that individual members of the class
11 will prosecute separate actions is remote due to the time and expense necessary to conduct such
12 litigation. Plaintiffs' counsel, highly experienced in insurance litigation and class action
13 litigation, foresees little difficulty in the management of this case as a class action.

14 **FIRST CAUSE OF ACTION**
15 **(Breach of Contract)**

16 48. Plaintiffs re-allege and incorporate the preceding paragraphs as if fully set forth
17 herein.

18 49. The Allstate insurance contract specifically provides for payment of the "actual
19 cash value" of a vehicle deemed a total loss as a result of an automobile accident.

20 50. Allstate has breached the contract by not offering to settle and by not settling
21 claims based upon the actual cash value of loss vehicles. Allstate departed from the use of actual
22 cash values by (1) basing its valuation and payment of the claim on values of comparable
23 vehicles that have been artificially reduced by an arbitrary and unjustified "condition
24 adjustment" that is not itemized or explained; and (2) basing its valuation and payment of the
25 claim upon values of gray-market vehicles, which by definition are not comparable to the loss
26 vehicle and artificially depress the valuation by virtue of their gray-market status.

27 51. Allstate's numerous breaches have resulted in a systematic failure to pay the
28 actual cash value of total loss vehicles as required by contract.

1 52. Allstate’s breaches and violations have caused damage to Plaintiffs and the class.

2 **SECOND CAUSE OF ACTION**
3 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

4 53. Plaintiffs reallege and incorporate the preceding paragraphs as if fully set forth
5 herein.

6 54. Allstate owed Plaintiffs and class members, as its insureds, a duty of good faith
7 and fair dealing at all times during the existence of the insurance contract and while providing
8 automobile insurance coverage, including when handling total loss claims for its insureds.

9 55. Allstate purposefully, in bad faith, and without regard to the rights of the
10 Plaintiffs and the class, failed to pay the actual cash value of total loss vehicles. Allstate’s actions
11 breached the insurance contract and were unreasonable, frivolous, and unfounded.

12 56. Allstate’s unfair acts and/or acts of bad faith include (1) basing its valuation and
13 payment of the claim on values of comparable vehicles that have been artificially reduced by an
14 arbitrary and unjustified “condition adjustment” that is not itemized or explained; and (2) basing
15 its valuation and payment of the claim upon values of gray-market vehicles, which by definition
16 are not comparable to the loss vehicle and artificially depress the valuation by virtue of their
17 gray-market status.

18 57. Allstate breached the covenant of good faith and fair dealing with the
19 aforementioned conduct.

20 58. Allstate’s breach of the obligation of good faith and fair dealing caused Plaintiffs
21 and class members to incur damages as more fully set forth below.

22 **THIRD CAUSE OF ACTION**
23 **(Consumer Protection Act—Violation of WASH. REV. CODE § 19.86.020)**

24 59. Plaintiffs reallege and incorporate the preceding paragraphs as if fully set forth
25 herein.

26 60. Allstate’s actions complained of herein are deceptive trade practices that have the
27 capacity to and do deceive consumers, as Allstate unreasonably denied payment of benefits to
28 Plaintiffs and the class and knowingly misrepresented the basis for its total loss valuations.

Allstate failed to adopt and implement reasonable standards for the investigation of claims.

1 Allstate failed to conduct a reasonable investigation regarding its claims payments. Allstate
2 further made false representations as to the characteristics and benefits of its total loss coverage
3 and insurance policies and represented that they were of a particular standard, quality, or grade,
4 knowing they were not.

5 61. Allstate's aforementioned conduct continues to occur in the course of Allstate's
6 business. Allstate's conduct is part of a generalized course of conduct repeated on thousands of
7 occasions, and thus has an impact on the public interest.

8 62. Allstate's aforementioned conduct is in violation of the Washington Consumer
9 Protection Act, in particular, but not limited to, WASH. REV. CODE § 19.86.020.

10 63. As a result of Allstate's actions, Plaintiffs and class members incurred damages as
11 more fully set forth below.

12 **FOURTH CAUSE OF ACTION**
13 **(Declaratory and Injunctive Relief)**

14 64. Plaintiffs re-allege and incorporate the preceding paragraphs as if fully set forth
15 herein.

16 65. Plaintiffs bring this cause of action for themselves and the class pursuant to
17 Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201 seeking a declaration that, for those
18 who maintain an auto insurance policy with Allstate, it is a violation of Washington law and the
19 insurance contract for Allstate to (1) base its valuation and payment of the claim on values of
20 comparable vehicles that have been artificially reduced by an arbitrary and unjustified "condition
21 adjustment" that is not itemized or explained; and (2) base its valuation and payment of the claim
22 upon values of gray-market vehicles.

23 66. This court has the power to declare the rights of said Allstate policyholders and
24 those who would be insured under such policies and who may suffer similar losses in the future,
25 as well as those who have suffered valuation-related losses.

26 67. Plaintiffs, for themselves and on behalf of the class, seek a declaration of their
27 rights under the Allstate policy, and seek a declaration of the rights and liabilities of the parties
28 herein.

1 68. With respect to Allstate’s continuing unlawful practices, Plaintiffs have no plain,
2 speedy, or adequate remedy at law, the interests of the parties favor an injunction, and an
3 injunction is in the public interest. Plaintiffs therefore seek an order permanently enjoining
4 Allstate from (1) basing its valuation and payment of the claim on values of comparable vehicles
5 that have been artificially reduced by an arbitrary and unjustified “condition adjustment” that is
6 not itemized or explained; and (2) basing its valuation and payment of the claim upon values of
7 gray-market vehicles.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs pray for the following judgment:

10 A. An Order certifying this action as a class action, including certifying each cause
11 of action under the appropriate subsection of Fed. R. Civ. P. 23;

12 B. An Order appointing Plaintiffs as class representatives and appointing the
13 undersigned counsel to represent the class;

14 C. Declaratory and injunctive relief, including an injunction requiring Allstate to
15 cease and desist from (1) basing its valuation and payment of the claim on values of comparable
16 vehicles that have been artificially reduced by an arbitrary and unjustified “condition
17 adjustment” that is not itemized or explained; and (2) basing its valuation and payment of the
18 claim upon values of gray-market vehicles;

19 C. Treble damages under common law and by statute, under WASH. REV. CODE
20 § 19.86.090;

21 D. Compensatory damages as warranted by Allstate’s breach of the contracts of
22 insurance, and its bad faith;

23 E. An award of attorney’s fees and costs, as provided by law and/or as would be
24 reasonable from any recovery of monies recovered for or benefits bestowed upon the class; and

25 F. Such other and further relief as this Court may deem just, equitable, or proper,
26 including a designation that any unclaimed monies may go to the next best use.

JURY DEMAND

Pursuant to Rule Local Rules W.D. Wash. LCR 38, Plaintiffs demand a trial by jury of all of the claims asserted in this complaint so triable.

Dated: April 18, 2018

Respectfully submitted,

HAGENS BERMAN SOBOL SHAPIRO LLP

By /s/ Steve W. Berman

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