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SAM MIKHAIL ON BEHALF OF QUALITY AUTO PAINTING CENTER OF ROSELLE, INC. d/b/a PRESTIGE AUTO BODY and BMR AUTOMOTIVE SERVICE, INC., on behalf of itself and others similarly situated, Plaintiffs, v. NEW JERSEY MANUFACTURERS INSURANCE COMPANY, Defendant.	SUPERIOR COURT OF NEW JERSEY UNION COUNTY- LAW DIVISION DOCKET NO. UNN-L- Civil Action **CLASS ACTION COMPLAINT AND JURY DEMAND**

Plaintiffs, Sam Mikhail, on behalf of the now dissolved Quality Auto Painting Center of Roselle, Inc. d/b/a Prestige Auto Body and BMR Automotive Service, Inc., on behalf of itself and others similarly situated, by way of this Complaint against Defendant, New Jersey Manufacturers Insurance Company, states:

PRELIMINARY STATEMENT

1. This action arises from Defendant New Jersey Manufacturers Insurance Company's ("NJM" or "Defendant") pattern and practice of refusing to negotiate with Quality Auto Painting Center of Roselle, Inc. d/b/a Prestige Auto Body ("Prestige") and BMR Automotive Service, Inc. ("Robbies" and with Prestige "Plaintiffs"), and other body shops in New Jersey, instead providing

"take it or leave it" price terms for all repair work performed by Plaintiffs and putative class members. Defendant's conduct is part of an institutionalized program consistently applied to each and every insured repair performed by New Jersey auto body shops.

2. Defendant further engaged in a pattern and practice of deceptive conduct to mislead customers into believing that they could not have their vehicles repaired at certain body shops. Defendants' conduct was part of an institutionalized program that was routinely applied to all consumer claimants who sought to have their vehicles repaired by Robbies and certain targeted body shops.

3. Plaintiffs and putative class members were and are directly injured by Defendant's conduct in the form of substantial underpayment for all repair work performed on vehicles insured by Defendant. Furthermore, Plaintiffs and putative class members were directly injured by Defendant's conduct because customers were misled into removing their vehicles from targeted body shops to competing repair shops who would "play ball" with Defendant's price setting requirements.

4. These efforts were directed at Plaintiffs and other targeted body shops to compel them to capitulate to Defendant's pricing model without negotiation while wresting customers away from those body shops who objected through false and misleading statements.

5. Defendant's misconduct results in improper and substandard repairs rendering vehicles unsafe creating a safety hazard on the State's roads.

PARTIES

6. Sam Mikhail is the owner of Prestige, a corporation formerly registered to do business within the State of New Jersey with a principal place of business located at 7 South Avenue, Garwood, New Jersey 07027.

7. Robbies is a limited liability company registered to do business within the State of New Jersey with a principal place of business located at 238 Route 46 East, Dover, New Jersey 07801.

8. Defendant is a corporation registered to do business within the State of New Jersey with its principal place of business located at 301 Sullivan Way, West Trenton, New Jersey 08628.

FACTUAL BACKGROUND

A. The Practice of Failing to Negotiate.

9. Pursuant to New Jersey State Department of Banking and Insurance regulations, an insurance company, insurance broker, insurance agent, or affiliated entity (the "Insurer") is required to negotiate with auto body shops performing repairs for automobile insurance policyholders (the "Insured") electing to have their vehicles repaired at a particular body shop.

10. N.J.A.C. § 11:3-10.3 reads, in pertinent part:

> (a) If the insurer intends to exercise its right to inspect, or cause to be inspected by an independent appraiser, damages prior to repair, the insurer shall have seven working days following receipt of notice of loss to ***inspect the insured's damaged vehicle, which is available for inspection, at a place and time reasonably convenient to the insured; commence negotiations; and make a good faith offer of settlement***.
>
> (b) ***Negotiations must be conducted in good faith, with the basic goal of promptly arriving at an agreed price***. Early in negotiations, the insurer must inform and confirm in writing to the insured or the insured's designated representative all deductions that will be made from the agreed price, including the amount of applicable deductible.
>
> (e) Subject to the requirements of (d) above, the insured may use any repair facility of his or her own choice. … ***The insurer must make all reasonable efforts to obtain an agreed price with the facility selected by the insured***.

N.J.A.C. § 11:3-10.3 (emphasis added).

11. The New Jersey Department of Banking and Insurance regulations ensure that Insurers must negotiate in good faith with body shops to arrive at an agreed upon price for repair services.

B. Defendant's Practice Of Failing to Negotiate.

12. Defendant engaged in a pattern and practice of refusing to negotiate in good faith with Plaintiffs.

13. Specifically, Defendant sets a fixed $50.00 per hour fee for all labor time when repairing a vehicle regardless of the skill or experience of the mechanic, the location of the repair shop, the degree of difficulty involved with the repair, or any other factors which impact the fee charged per hour for mechanic time.

14. Prestige generally charges $65.00 per hour of mechanic labor but is forced to cut its rate to $50.00 to meet Defendant's "take it or leave it" pricing model.

15. When painting a vehicle, Defendant pays $32.00 per hour for painting materials of any color, even though the paint cost varies based on the type and color of paint used.

16. Specifically, Prestige generally charges between $38.00 and $45.00 per hour as a flat rate for painting materials, with certain colors, such as red, costing as much as $64.00 per hour for painting materials.

17. Defendant refuses to negotiate with Prestige as to the cost of the paint materials per hour, insisting on $32.00 per hour regardless of actual material cost.

18. In order to comply with these requirements, many auto body shops need to cut corners to make a profit, including utilizing substandard paint or paint that is not designed for application to motor vehicles.

19. In lieu of accepting a deficient, flat-rate payment for paint materials, auto body shops can request that Defendant utilize its Computer Logic program ("Computer Logic") to calculate the purported "true cost" for paint materials.

20. Computer Logic is a proprietary program which apparently only one employee of Defendant is permitted to manipulate, therefore a request to utilize the Computer Logic program can delay payment for months.

21. Furthermore, the program incorrectly captures the cost of materials and the amount of materials reasonably needed to complete the repair, oftentimes leading to payments less than the flat rate payments noted above.

22. For instance, Defendant allows Prestige to charge exactly $1.82 per ounce for all types of paint yet Prestige on occasion will need to spend up to $4.00 per ounce for that exact same paint.

23. Computer Logic purports to calculate the precise number of ounces of paint needed -- down to the second decimal point -- to paint a vehicle of a particular size without accounting for any breakage, or the need for extra paint at the end of the job to ensure that the paint gun does not "spit air."

24. The Computer Logic program further fails to account for the difference in 2 stage and 3 stage painting techniques, affording body shops an insufficient volume of paint to complete the extra required paint application.

25. Therefore, Prestige always utilizes more paint than afforded by the Computer Logic program.

26. Prestige frequently cannot utilize leftover paint from one job on another vehicle before the paint expires and is no longer usable, thus saddling the auto body shop with the entire cost of the ordered paint while Defendant will only pay for the alleged Computer Logic amount.

27. Therefore, to the extent that Prestige is only compensated for the purported "needed" amount of paint, and because Prestige is required to purchase paint in round lots rather than to the second decimal point, any excess paint that cannot be utilized on another vehicle is wasted and the cost is borne solely by Prestige.

28. Defendant demands that Prestige utilize only aftermarket parts for repairs which do not always lead to a sufficient repair of the vehicle as aftermarket parts frequently lead to gaps and an improper fit of the part to the vehicle.

29. For instance, Defendant demands that Prestige utilize only aftermarket clear coat -- a substandard product -- because it costs between $100.00 and $125.00, and the full clear coat kit, which properly protects the vehicle, costs approximately $500.00.

30. It takes more time to install an aftermarket part to account for the gaps and fit issues attendant to installation of an aftermarket part.

31. Defendant does not compensate Prestige for the extra time attendant to installation of an aftermarket part.

32. Defendant will only permit payment for a regular part if an auto body shop first attempts and fails to install the aftermarket part.

33. It often takes months to secure a refund for the aftermarket part which could not be installed and to secure agreement for payment from Defendant, without accounting for the delay suffered by the consumer.

34. Defendant refuses to pay Prestige for the actual cost and amount of materials utilized in painting or repairing vehicles.

35. Repairing vehicles with aftermarket parts lowers the value of the vehicle because the vehicles contain inferior parts, paint, and materials.

36. Indeed, if Prestige or another body shop cuts corners to realize a profit based on Defendant's draconian payment model, or utilizes only aftermarket parts to repair a vehicle which do not sufficiently repair or replace the damaged portion, it is Prestige's reputation which will suffer, in addition to the consumers of the State at large who receive insufficient or improper vehicle repairs -- often rendering the vehicle unsafe creating a hazard on the State's roads.

C. Examples of Defendant's Failure to Negotiate.

37. In the below examples, Defendant completely refused to negotiate with Prestige adopting a take it or leave it approach to all of Defendant's claim settlement requests.

I. The Holandez Claim.

38. On or about January 25, 2016, Paulyn Holandez suffered a loss on her Toyota Corolla necessitating submission to Defendant of a claim for payment and repair (the "Holandez Claim").

39. The Holandez Claim involved many instances of Defendant refusing to pay Prestige the true cost for repair work done.

40. For instance, Prestige expended 1.7 hours to color, sand, and buff the Vehicle yet Defendant only paid 0.8 hours for that activity.

41. Defendant also underpaid Prestige's materials cost for the Holandez Claim.

42. Indeed, Defendant itself submitted differing estimates for the purported "true cost" of labor and materials, including one on March 20, 2017 for $459.55 which purported that Prestige should use exactly 22.59 ounces of base coat, 26.95 ounces of clear coat, 11.095 ounces of pre-

paint solvent, 6.28 ounces of adhesion promoter, 14.23 ounces of sealer, 1.45 pieces of coarse sand paper, 4.25 pieces of finesse sand paper, a 0.32 piece of foam polishing pad, 0.22 ounces of hardener, a 0.16 piece of a wool buff pad, and exactly 18.7 feet of 1 ½ to 2 inch wide tape.

43. Additionally, Defendant inordinately delayed payment for the Vehicle because Prestige pointed out the unfair charges, intentionally harming Prestige by requiring multiple supplements just to recoup amounts approaching fair value.

44. Specifically, the repairs were completed in or around April, 2016, yet Defendant waited approximately one year to remit its insufficient payment to Prestige.

II. The Orchard Claim.

45. On or about December 16, 2016, Karen Orchard suffered a loss on her Kia Sorrento necessitating submission to Defendant of a claim for payment and repair (the "Orchard Claim").

46. The Orchard Claim involved replacement of the rear bumper cover.

47. Prestige replaced the rear bumper cover at a cost of approximately $344.70.

48. Defendant paid Prestige only $290.00 for the replacement rear bumper cover.

49. Upon information and belief, $290.00 was the cost for an aftermarket rear bumper cover.

50. Although Prestige estimated that cost for labor and materials to paint the stripes was $125.00, Defendant paid only $10.00 for this work without any negotiation.

51. Defendant paid Prestige only $10.00 for labor and materials to replace the e-coat even though sufficient epoxy primer materials alone cost more than $10.00 before even accounting for the labor involved with the replacement.

52. Furthermore, Defendant paid for paint materials sufficient only to cover a single stage paint even though the car required a three stage paint.

53. Prestige attempted to obtain further payment for the above noted issues and others from Defendant, however, approximately two years after the repairs, Defendant continued to dispute, without basis, the extent and cost of Plaintiff's repairs for the Orchard Claim.

III. The Costello Claim.

54. On or about February 9, 2017, Jennifer Costello suffered a loss on her Honda CRV necessitating submission to Defendant of a claim for payment and repair (the "Costello Claim").

55. Defendant -- utilizing both Computer Logic and their own underestimates for how long certain activities should take -- substantially underpaid Prestige for the work performed as a result of the Costello Claim.

56. Defendant consistently estimated only $10.00 for flex additive with an estimate of two ounces per bumper even though each car requires differing amounts flex additive depending on factors such as size and color.

57. Defendant claimed that only 0.2 hours per section of the vehicle was necessary to cover the car for painting when it takes approximately 0.5 hours per section to properly cover the vehicle, since covering the car is extremely detailed work which must be done with great care to prevent paint from infiltrating the interior of the vehicle.

58. Defendant did not provide any materials payment for color tinting even though color matching requires utilization of paint materials.

59. Following painting a vehicle, it requires sanding of every single area with different levels of sandpaper, up to 3000 to 4000 grade fine sandpaper, to block down any specks and particulate trapped in the paint.

60. The industry guide for painting recommends that 30% of the painting time should be extended for sanding and buffing after completion of painting.

61. Defendant provided for only 2.8 hours of sanding and buffing on the Costello Claim even though it permitted a purported 23.8 hours for painting, as Defendant caps buffing at approximately 0.4 hours per section with an arbitrary hard cap of three hours for sanding and buffing.

62. Defendant provided only 0.5 hours of labor and no materials cost for epoxy application even though Prestige expended approximately two hours of labor and significant costs to purchase the epoxy primer.

63. Defendant paid only $7.00 for application of the undercoat even though Prestige charges $18.00 for the materials and required 0.5 hours of labor to apply to the undercoat.

64. Defendant paid only $10.88 for a purported 8.5 ounces of anti-corrosion primer even though it costs $350.00 a gallon. Therefore, even assuming Prestige used only precisely the amount budgeted by Defendant, the true cost of anti-corrosion primer is more than twice that amount, or $23.24.

65. In total Defendant paid only $19.98 for all primers when the actual cost of the primer to Prestige was in excess of $50.00.

66. Prestige charged one hour to clean the car for delivery even though it actually requires two to three hours of work from an experienced mechanic working at a brisk pace.

67. Defendant initially provided for a $15.00 cleaning fee before arbitrarily cutting the fee to $10.00 claiming that cleaning is not necessary.

68. Cleaning the vehicle before delivery is a critical task after painting because the vehicle is exposed to the shop elements throughout its housing there.

69. Furthermore, a newly painted vehicle cannot be cleaned at a car wash nor can wax be applied to the Vehicle, rendering it necessary for Prestige to clean the Vehicle prior to delivery.

70. Ultimately, although the actual materials cost to Prestige was in excess of $1,400.00, Defendant -- utilizing Computer Logic -- found that Plaintiff's materials cost should have allegedly been $955.28, a significant and unsubstantiated difference.

71. Additionally, Defendant utilized purported overlap deductions for both paint materials and labor, even though the materials -- and particularly the amount of paint -- does not change based on any purported common operation labor savings realized when painting a vehicle.

IV. The Nowak Claim.

72. On or about May 8, 2017, Margaret Nowak suffered a loss on her Chrysler 300 necessitating submission to Defendant of a claim for payment and repair (the "Nowak Claim").

73. The Nowak Claim involved replacement of the rear bumper cover.

74. Although Prestige paid approximately $452.00.00, Defendant contended without basis that the rear bumper cover should cost only $373.00 and paid that amount to Prestige.

D. The Practice of "Steering".

75. "Steering" is the practice by which an Insurer pressures an Insured to have a vehicle repaired at a particular body shop.

76. Steering is prohibited by the New Jersey State Department of Banking and Insurance's "Shop of Choice Rule," which provides, in pertinent part:

> (a) If the insurer intends to exercise its right to inspect, or cause to be inspected by an independent appraiser, damages prior to repair, the insurer shall have seven working days following receipt of notice of loss to inspect the insured's damaged vehicle, which is available for inspection, at a place and time reasonably convenient to the insured; commence negotiations; and make a good faith offer of settlement.
>
> (b) Negotiations must be conducted in good faith, with the basic goal of promptly arriving at an agreed price. Early in negotiations, the insurer must inform and confirm in writing to the insured or the insured's designated representative all deductions that will be made from the agreed price, including the amount of applicable deductible.

> (e) Subject to the requirements of (d) above, ***the insured may use any repair facility of his or her own choice.*** ... ***The insurer must make all reasonable efforts to obtain an agreed price with the facility selected by the insured.*** The insurer may recommend, ***and if the insured requests, must recommend*** a qualified repair facility at a location reasonably convenient to the insured's motor vehicle who will repair the damaged motor vehicle at the insurer's estimated cost of repairs, but in either event the provisions of (g) below apply.

N.J.A.C. § 11:3-10.3 (emphasis added).

77. The New Jersey Department of Banking and Insurance regulations ensure that Insurers do not (a) require that policyholders use repair shops in their repair programs, or (b) recommend a particular repair facility, except for claims solely involving window glass, unless requested by the policyholder.

78. Indeed, steering of Insureds has been disfavored as a matter of public policy for more than 50 years; particularly those practices which direct Insureds not to use a particular repair shop or advise Insureds that the carrier refuses to do business with a repair shop.

79. On October 23, 1963, the United States Department of Justice filed a Complaint (signed by Robert F. Kennedy) against certain associations representing the insurance industry.

80. The Complaint alleged, *inter alia*, that the industry engaged in a conspiracy to restrain trade by suppressing prices and limiting consumer choices in the marketplace -- as alleged here. On November 27, 1963, the Honorable Edward C. McLean, United States District Judge for the southern District of New York, entered a Final Judgment representing a consent decree between the parties.

81. Upon information and belief, Defendant, or its predecessor, is a party to the Consent Decree.

82. Among other things, the Judgment prohibits the insurance industry from "directing, advising, or otherwise suggesting that any person or firm do business or refuse to do business with…any independent or dealer franchised automotive repair shop with respect to the repair of damage to automotive vehicles."

83. This nationwide public policy substantiates all of Plaintiffs' claims that Defendant's steering activities are unlawful.

E. Defendant's Practice of Steering Customers Away From Plaintiffs.

84. Defendant engages in a pattern or practice of steering customers away from targeted body shops.

85. Specifically, when an Insured contacts Defendant concerning insurance coverage for a vehicle, Defendant knowingly and intentionally steers the Insured away from targeted shops to other auto repair facilities who will "play ball" with Defendant's draconian pricing models.

86. Defendant frequently recommends to Insureds auto body shops with poor reputations for quality work with the knowledge that it can save money by utilizing substandard auto repair facilities.

87. Upon information and belief, Defendant also frequently recommends to Insureds unlawful, unlicensed auto body shops with the knowledge that it can save money by utilizing substandard auto repair facilities.

88. Defendant knowingly and intentionally fails to advise Insureds that they are entitled to have their vehicle repaired at a body shop of their choice.

89. Defendant knowingly and intentionally refuses to recommend upon request a qualified repair facility at a location reasonably convenient to the insured's motor vehicle which will repair the damaged motor vehicle at the insurer's estimated cost of repairs.

90. Defendant knowingly and intentionally misrepresents to Insureds that Robbies' prices are unreasonably high.

91. Defendant knowingly and intentionally misrepresents to Insureds that they will be forced to pay the difference between what Defendant is willing to pay -- without any negotiation with the auto body shop -- and the cost of repair.

92. Defendant's unlawful conduct is motivated by self-interest and greed causing harm to Insureds and the consuming public at large.

93. Defendant knowingly and intentionally misrepresents to Insureds that Robbies and other targeted body shops are not on Defendant's "preferred list of shops" -- even though they are not permitted to have such a list and Insureds did not request a recommendation from Defendant.

C. Examples Of Defendant's Steering.

I. Insured #1.

94. Insured #1 sought to utilize Robbies to repair a Jeep Grand Cherokee after a covered loss.

95. Insured #1 decided to utilize Robbies for the repairs due to its sterling reputation for high quality vehicle repairs.

96. Defendant attempted to dissuade Insured #1 from utilizing Robbies, advising Insured #1 that Robbies charges more than Defendant pays for claim settlements and that Insured #1 would be responsible for any difference.

97. Although Insured #1 was concerned about continuing to utilize Robbies in light of those representations, Insured #1 proceeded to allow it to repair the vehicle.

98. Insured #1 was thrilled with the professionalism and quality of the work performed by Robbies.

99. Defendant contacted Insured #1 at the conclusion of the repair to advise that Insured #1 was not responsible for any difference in payment, establishing that Defendant's prior claim to the contrary was nothing more than a misrepresentation designed to steer Insured #1 away from a targeted body shop.

100. Insured #1 detailed Defendant's steering attempts in an e-mail to Robbies dated May 9, 2019. A true and correct copy of the e-mail is annexed hereto as **Exhibit A**.

II. Insured #2.

101. Insured #2 sought to utilize Robbies to repair a vehicle after a covered loss.

102. Defendant attempted to dissuade Insured #2 from utilizing Robbies, advising Insured #2 on at least two separate occasions that it was no longer on Defendants "preferred list of shops."

103. Defendant further claimed that Robbies charges more than Defendant pays for claim settlements and that Insured #2 would be responsible for any difference.

104. Defendant provided Insured #2 the name of an alternative body shop that Defendant attempted to compel Insured #2 to utilize.

105. Both Defendant's "intake department" and its claims adjuster Brittany made the above representations to Insured #2.

106. Insured #2 detailed Defendant's steering attempts in an e-mail to Robbies dated May 8, 2019. A true and correct copy of this e-mail is annexed hereto as **Exhibit B**.

III. Insured #3.

107. Insured #3 sought to utilize Robbies to repair a vehicle after a covered loss.

108. Insured #3 brought his vehicle to Robbies, at which point he contacted Defendant from Robbies' location.

109. Defendant advised Insured #3 that it would not pay Robbies' labor rates.

110. Although Insured #3 was prepared to leave his vehicle at Robbies, Defendant demanded that Insured #3 take the vehicle back to his home for an "inspection" by the adjuster.

IV. Insured #4.

111. Insured #4 sought to utilize Robbies to repair a vehicle after a covered loss.

112. Insured #4 indicated she was hesitant to utilize Robbies to repair the Vehicle because Defendant advised her that she would incur out of pocket costs in addition to the deductible if she used Robbies.

113. Ultimately, Insured #4 did not incur any additional out of pocket costs despite Defendant's misrepresentations to the contrary.

114. Insured 4 was extremely pleased with the repair to her vehicle and Robbies' explanation as to why the misrepresentation regarding the out of pocket costs was false.

V. Insured #5.

115. Insured #5 sought to utilize Robbies to repair a vehicle after a covered loss.

116. While Insured #5 was in Robbies' facility, Defendant attempted to steer Insured #5 to another auto body facility by falsely claiming that Body Shop #1 charges a $250.00 administration fee directly to insureds.

117. Robbies spoke with Defendant at that time, who admitted that a supervisor, [redacted], provided a list of fictitious charges to agents to provide to potential Insureds.

118. This conversation was captured on a voice recording.

119. These fictitious charges are not Robbies' charges and are utilized by Defendant to attempt to steer Insureds to other auto repair facilities.

VI. Insured #6.

120. Insured #6 sought to utilize Robbies to repair a vehicle after a covered loss.

121. On May 17, 2019, [redacted], an employee of Defendant, advised Insured #6 that Robbies charges "excessive labor rates" and that Insured #6 would need to pay the difference out of pocket.

122. [redacted] alleged that Robbies removed itself from Defendant's auto body shop "network."

123. [redacted] advised that if Robbies would accept Defendant's "take it or leave it" pricing than Insured #6 could utilize Robbies, otherwise Defendant would recommend another shop.

VII. Insured #7.

124. Insured #7 sought to utilize Robbies for repairs after a covered loss.

125. Defendant's representative [redacted] indicated that Robbies is not one of Defendant's "direct repair shops."

126. [redacted] stated that Robbies used to be a "direct repair shop" but no longer maintains that status.

127. [redacted] further informed Insured #7 that Robbies charges "a higher labor rate" and that Insured #7 could be responsible

128. [redacted] stated -- without first negotiating with Robbies -- that it would not obtain an agreed price with Robbies because Robbies does not always accept Defendant's unilateral price.

129. [redacted] further stated that "other insureds" informed Defendant that Robbies does not make repairs at the price Defendant demands.

130. [redacted] twice offered to provide Insured #7 with a list of "direct repair shops" if the Insured no longer wanted to work with Robbies in light of these representations.

131. [redacted]'s representations to Insured #7 were captured on a voice recording.

CLASS ALLEGATIONS

132. This action is brought and may properly proceed as a class action, pursuant to the provisions of Rule 4:32 of the New Jersey Court Rules. Plaintiffs bring this action on behalf of themselves and others similarly situated.

133. Plaintiffs seek certification of a Class initially defined as follows:

> All auto body shops incorporated in or having their principal place of business located within the State of New Jersey who are not on Defendant's preferred list of shops and provided auto repair services to a vehicle insured by Defendant at any time on or after six years prior to the date on which this Complaint was filed where Defendant refused to negotiate or refused to negotiate in good faith with the auto body shop for the cost of and quality of parts used for repairs.
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> Subclass #1
>
> All auto body shops incorporated in or having their principal place of business located within the State of New Jersey who are not on Defendant's preferred list of shops and sought to provide auto repair services to a vehicle insured by Defendant at any time on or after six years prior to the date on which this Complaint was filed where Defendant steered or attempted to steer insureds to another body shop.
>
> Subclass #2
>
> All auto body shops incorporated in or having their principal place of business located within the State of New Jersey who are not on Defendant's preferred list of shops and sought to provide auto repair services to a vehicle insured by Defendant at any time on or after six years prior to the date on which this Complaint was filed where Defendant made misrepresentations to Insured about the price or quality of the auto body shop's services.

134. The Class for whose benefit this action is brought is so numerous that joinder of all members is impracticable.

135. There are questions of law and fact common to the members of the Class that predominate over questions affecting only individuals.

136. These common questions include, but are not limited to:

a. Whether misrepresenting the price and quality of auto body shops to Insureds is a violation of N.J.S.A. § 56:8-2;

b. Whether misrepresenting to insureds that certain auto body shops are not on Defendant's "preferred list of shops" even though no such list is permitted and the Insureds did not request a recommendation is a violation of N.J.S.A. § 56:8-2;

c. Whether refusing to negotiate or refusing to negotiate in good faith with auto body shops for the costs of repairs is a violation of N.J.S.A. § 56:8-2;

d. Whether refusing to pay any more than the cost of after-market parts not warranted by manufacturers or which are not of like quality to manufacturer parts is a violation of N.J.S.A. § 56:8-2;

e. Whether refusing to pay for the additional labor attendant to installing after-market parts is a violation of N.J.S.A. § 56:8-2;

f. Whether purposefully steering Insureds away from body shops is a violation of N.J.S.A. § 56:8-2;

g. Whether demanding that Insureds take their vehicles to specific alternative body shops is a violation of N.J.S.A. § 56:8-2;

h. Whether any of the above described steering conduct is a violation N.J.S.A 56:9-3; and

i. Whether the above described conduct constitutes an unlawful criminal enterprise within the meaning of N.J.S.A. 2C:41-1.

137. Plaintiff's claims are typical of the claims of the members of the Class and Subclasses because all claims arise out of Defendant's standard policies and procedures in dealing with auto body shops.

138. Plaintiffs have no interest antagonistic to those of the Class.

139. The Class, of which Plaintiffs are a member is readily identifiable.

140. Plaintiffs will fairly and adequately protect the interests of the Class, and have retained competent counsel experienced in the prosecution of class action litigation.

141. Plaintiffs' attorneys have significant experience and expertise in litigation class actions.

142. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. While the economic

damages suffered by the individual members of the Class are significant, the amount is modest compared to the expense and burden of individual litigation.

143. The questions of law or fact common to the members of the Class predominate over any questions affecting only individual members.

144. Defendant acted, or refused to act, on grounds generally applicable to Plaintiffs and all class members, thereby making appropriate final declaratory relief with respect to the Class as a whole.

145. A class action will cause an orderly and expeditious administration of the claims of the Class, and will foster economies of time, effort and expense.

146. Plaintiffs do not anticipate any difficulty in the management of this litigation.

CLAIMS FOR RELIEF

I. INDIVIDUAL CLAIMS

FIRST CAUSE OF ACTION
(Injurious Falsehood)

147. Plaintiffs incorporate the facts alleged above as if fully incorporated herein.

148. Defendant knowingly and intentionally made false, misleading, and injurious statements concerning the integrity of Plaintiffs.

149. Defendant made these false, misleading, and injurious statements with malicious intent and with the desire to cause Plaintiffs harm.

150. As a direct and proximate result of Defendant's actions Plaintiffs have sustained, and continue to sustain, substantial damages in an amount to be proven at trial.

WHEREFORE, Plaintiffs demand judgment:

a) Awarding the following damages in amount to be determined at trial:

i. Actual damages;

ii. Punitive damages;

iii. Interest;

iv. Costs of suit;

v. Attorneys' fees; and

b) For such other and further relief the Court deems just and proper.

SECOND CAUSE OF ACTION
(Tortious Interference with Prospective Business Advantage)

151. Plaintiffs incorporate the facts alleged above as if fully incorporated herein.

152. Defendant knowingly and intentionally interfered with Plaintiffs' business relations with Insureds.

153. Defendant acted with the sole purpose of harming Plaintiffs.

154. For the reasons set forth in the Third Cause of Action, *infra*, Defendant's conduct violates N.J.A.C. sections 11:3-10.3 and 11:2-17.10 of the New Jersey Banking and Insurance Law.

155. Plaintiffs lost business as a result of Defendant's conduct.

156. As a direct and proximate result of Defendant's actions Plaintiffs have sustained, and continue to sustain, substantial damages in an amount to be proven at trial.

WHEREFORE, Plaintiffs demand judgment:

a) Awarding the following damages in amount to be determined at trial:

i. Actual damages;

ii. Punitive damages;

iii. Interest;

iv. Costs of suit;

v. Attorneys' fees; and

b) For such other and further relief the Court deems just and proper.

II. CLASS CLAIMS

THIRD CAUSE OF ACTION

(Violations of the Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1, *et seq.*)

157. Plaintiffs incorporate the facts alleged above as if fully incorporated herein.

158. Defendant has engaged in a pattern and practice of deceptive and unconscionable commercial conduct in violation of the CFA at N.J.S.A. 56:8-2, by misrepresenting the following facts:

(i) Plaintiffs and Class members are not on Defendant's "preferred list of shops" -- even though they are not permitted to have such a list and Insureds did not request a recommendation from Defendant;

(ii) Plaintiffs and Class members are not on Defendant's "preferred list of shops" -- although no such list is provided to Insureds at the time they obtain their insurance or make a claim;

(iii) Plaintiffs and Class members' prices are unreasonably high; and

(iv) Insureds will be forced to pay the difference between what Defendant is willing to pay, and the cost of repair without engaging in any negotiations with Plaintiffs and Class members.

159. Defendant has further engaged in a pattern and practice of deceptive and unconscionable commercial conduct in violation of the CFA at N.J.S.A. 56:8-2, by engaging in the following practices:

(i) Refusing to negotiate or refusing to negotiate in good faith with Plaintiffs and Class members for the cost of repairs;

(ii) Refusing to pay any more than the cost of after-market parts not warranted by manufacturers or which are not equivalent to original manufacturer parts in quality;

(iii) Refusing to pay for the additional labor attendant to installing after-market parts is a violation;

(iv) Purposefully steering Insureds from Plaintiffs and Class members to other body shops; and

(v) Demanding that Insureds take the vehicles to specific alternative body shops rather than Plaintiffs or Class members.

160. The above referenced misrepresentations, conduct, and omissions are violations of N.J.A.C. 11:3-10.3 and 11:2-17.10 of the New Jersey Banking and Insurance Law because Defendant refuses to:

(i) inspect an Insured's damaged vehicle, which is available for inspection, at a place and time reasonably convenient to the Insured;

(ii) commence negotiations with Plaintiff;

(iii) make a good faith offer of settlement;

(iv) negotiate in good faith, with the basic goal of promptly arriving at an agreed price;

(v) pay for aftermarket parts warranted by the manufacturer and which are equal in like kind and quality to original manufacturer replacement parts;

(vi) pay for additional labor attendant to installing aftermarket parts;

(vii) permit the Insured to choose the repair facility of his or her own choice;

(viii) make all reasonable efforts to obtain an agreed price with Plaintiff, the facility selected by the Insured; and

(ix) recommend a qualified repair facility at a location reasonably convenient to the Insured's motor vehicle who will repair the damaged motor vehicle at Defendants' estimated cost of repairs upon request by the Insured.

161. Defendant's misrepresentations, conduct, and omissions are willful and knowing and made with the intent to deceive.

162. Defendant's conduct in refusing to negotiate with Plaintiffs and Class members is intended to force them to accept deficient payment for work dutifully performed for Insureds.

163. Defendant's conduct in refusing to negotiate with Plaintiffs and Class members is intended to force them to use deficient replacement parts.

164. Defendant's misrepresentations, conduct, and omissions are intended to coerce Insureds to select body shops other than Plaintiffs and Class members.

165. Defendant's misrepresentations and omissions are intended to coerce Insureds to remove their vehicles from Plaintiffs and Class members and bring their vehicles to other body shops.

166. Defendant's misrepresentations and omissions are an unconscionable commercial practice in connection with the sale of auto repair services to the public.

167. As a direct and proximate result of Defendant's actions, Plaintiffs and Class members have sustained, and continue to sustain, substantial damages in an amount to be proven at trial.

WHEREFORE, Plaintiffs, on behalf of themselves and the putative class, demand judgment:

a) An order certifying this matter as a class action under Rule 4:32-1(b)(3), appointing Plaintiffs as the class representatives and their attorneys as class counsel;

b) Awarding equitable relief, pursuant to the CFA at N.J.S.A. § 56:8-19, including an injunction requiring Defendant to negotiate in good faith with Plaintiffs and Class members and ceasing from steering Insureds away from Plaintiffs and Class members.

c) Awarding the following damages in amount to be determined at trial:

   i. Actual damages;

   ii. Punitive damages;

   iii. Interest;

   iv. Treble damages pursuant to N.J.S.A. § 56:8-19;

   v. Attorneys' fees and costs of suit pursuant to N.J.S.A. § 56:8-19; and

d) For such other and further relief the Court deems just and proper.

FOURTH CAUSE OF ACTION

(Violations of the New Jersey Antitrust Act ("NJAA"), N.J.S.A. 56:9-3, *et seq.*)

168. Plaintiffs incorporate the facts alleged above as if fully incorporated herein.

169. Defendant entered into an agreement and conspiracy with other insurance companies constituting an illegal contract, combination, or conspiracy in restraint of trade or commerce in this State in violation of the New Jersey Antitrust Act, and more particularly N.J.S.A. 56:9-3.

170. As a result of said agreement and conspiracy, and the acts performed by Defendant in furtherance thereof, Plaintiffs and Class members have been injured.

171. Defendant purposefully steered Insureds away from Plaintiffs and Class members to shops willing to accept Defendant's take it or leave it pricing model.

172. Defendant took steps to exclude Plaintiffs and Class members from performing work for its Insureds even when Plaintiffs and Class members agreed to accept Defendant's take it or leave it pricing.

173. Defendant consistently refused to deal with Plaintiffs and Class members, including boycotting their shops.

174. In support of Defendant's efforts to steer customers away from Plaintiffs and Class members, it falsely denigrated Plaintiffs' businesses by falsely informing Insureds that Plaintiffs' prices were too high.

175. Pursuant to N.J.S.A. 56:9-12, Plaintiffs are entitled to recover from Defendant threefold the damage sustained by Plaintiffs from Defendant's violation of the law, including reasonable attorney's fees, filing fees, and costs of suit.

WHEREFORE, Plaintiffs, on behalf of themselves and the putative class, demand judgment:

a) An order certifying this matter as a class action under Rule 4:32-1(b)(3), appointing Plaintiffs as the class representatives and their attorneys as class counsel;

b) Awarding the following damages in amount to be determined at trial:

i. Actual damages;

ii. Punitive damages;

iii. Treble damages;

iv. Interest;

v. Costs of suit;

vi. Attorneys' fees; and

c) For such other and further relief the Court deems just and proper.

FIFTH CAUSE OF ACTION

(Violation of New Jersey Civil RICO ("RICO"), N.J.S.A. 2C:41-1, *et seq.*)

176. Plaintiffs incorporates the facts alleged above as if fully incorporated herein.

177. Defendant and its employees collectively constitute an enterprise within the meaning of N.J.S.A. 2C:41-1(c).

178. Defendant and its employees are all persons within the meaning of N.J.S.A. 2C:41-2(b).

179. Defendant and its employees participated, directly or indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity in violation of N.J.S.A. 2C:41-2(c) by engaging in racketeering activity under Title 18, U.S.C.S. 1961(1).

180. Defendant and its employees have, among other things, engaged in a pattern of racketeering, including criminal conduct that has the same or similar purposes, results, participants, victims, or methods of commission or are otherwise interrelated by distinguishing characteristics and are not isolated incidents.

181. The criminal conduct includes engaging in wire fraud in violation of 18 U.S.C. § 1343.

182. Defendant received income and proceeds directly from the pattern of racketeering activity.

183. Defendant and its employees have conspired with and amongst themselves and others to violate the provisions of N.J.S.A. 2C:41-2.

184. As a direct and proximate result of Defendant's actions Plaintiffs and Class members have sustained, and continue to sustain, substantial damages in an amount to be proven at trial.

WHEREFORE, Plaintiffs, on behalf of themselves and putative class members, demands judgment:

a) An order certifying this matter as a class action under Rule 4:32-1(b)(3), appointing Plaintiffs as the class representatives and their attorneys as class counsel;

b) Awarding the following damages in amount to be determined at trial:

   i. Actual damages;

   ii. Punitive damages;

   iii. Treble damages;

   iv. Interest;

   v. Costs of suit;

   vi. Attorneys' fees; and

c) For such other and further relief the Court deems just and proper.

SIXTH CAUSE OF ACTION
(Injunctive Relief)

185. Plaintiffs incorporate the facts alleged above as if fully incorporated herein.

186. Defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of Plaintiffs' and Class members' rights respecting the subject of the action.

187. Plaintiffs and Class members cannot be fully compensated in damages, and are without an adequate remedy at law, because the exact amount of damage to Plaintiffs and Class members is difficult to determine.

188. Plaintiffs and Class members are entitled to a judgment restraining Defendant from further engaging in the commission or continuation of the unlawful acts described above which, if permitted to continue, would produce immediate and irreparable injury, loss or damage to Plaintiffs and Class members.

JURY DEMAND

Plaintiffs herein demand a trial by jury on all issues subject to a jury trial.

Dated: Woodland Park, New Jersey
June 4, 2019

ANSELL GRIMM & AARON, P.C.

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Counsel to Plaintiffs

CERTIFICATION OF NO OTHER PARTIES/ACTIONS

I, Joshua S. Bauchner, Esq., attorney for the Plaintiffs in the within action hereby certify that to the best of my knowledge that the matter in controversy is not the subject of any other action pending in any court or any arbitration proceeding and no other action or arbitration proceeding is contemplated. Further, I know of no other party who should be joined in this action.

Dated: Woodland Park, New Jersey
June 4, 2019

Joshua S. Bauchner, Esq.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Joshua S. Bauchner, Esq., of Ansell Grimm & Aaron, is hereby designated as trial counsel for the within matter.

Dated: Woodland Park, New Jersey
June 4, 2019

Joshua S. Bauchner, Esq.

RULE 1:38-7 CERTIFICATION

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

Dated: Woodland Park, New Jersey
June 4, 2019

Joshua S. Bauchner, Esq.

NOTICE TO ATTORNEY GENERAL OF ACTION

A copy of the Complaint will be mailed to the Attorney General of the State of New Jersey within ten days after the filing with the Court, pursuant to N.J.S.A. 56:8-20.

Dated: Woodland Park, New Jersey
June 4, 2019

Joshua S. Bauchner, Esq.