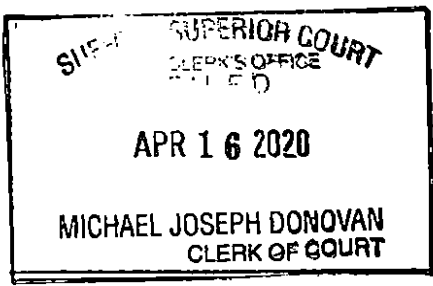


COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
DEPARTMENT OF THE TRIAL COURT  
BUSINESS LITIGATION SESSION  
CA No. 1984-CV-00977-BLS2

MICHELLE PUOPOLO, VICTOR  
PAGAN and JESSICA NOHMY on behalf  
of themselves and all others similarly  
situated,  
Plaintiffs,  
  
v.  
  
THE COMMERCE INSURANCE  
COMPANY,  
Defendant.



**PLAINTIFFS' THIRD AMENDED CLASS ACTION COMPLAINT  
AND DEMAND FOR JURY TRIAL**

**PRELIMINARY STATEMENT**

Plaintiffs, Michelle Puopolo ("Puopolo"), Victor Pagan ("Pagan") and Jessica Nohmy ("Nohmy") ( collectively "Plaintiffs") hereby bring this action on behalf of themselves, and all other similarly situated persons, against Defendant, The Commerce Insurance Company ("Commerce" or "Defendant") to recover damages for themselves, and a Class of similarly situated persons, as defined herein.

Plaintiffs' claims arise as a result of Commerce's unlawful practice of charging its own insureds a portion of the vehicle storage charges which Commerce previously paid to third-party storage facilities for the storage of the insured's vehicle following a collision.

Plaintiffs bring this action seeking monetary relief as well as injunctive relief by way of an order permanently enjoining Commerce from acting in the unlawful manner set forth herein.

## **THE PARTIES**

1. Plaintiff, Michelle Puopolo is a resident of Revere, Massachusetts. At all relevant times, Puopolo was eligible for automobile insurance benefits due under a Massachusetts automobile insurance policy issued by Commerce.
2. Plaintiff, Victor Pagan is a resident of Beverly, Massachusetts. At all relevant times, Pagan was eligible for automobile insurance benefits due under a Massachusetts automobile insurance policy issued by Commerce.
3. Plaintiff, Jessica Nohmy is a resident of Milton, Massachusetts. At all relevant times, Nohmy was eligible for automobile insurance benefits due under a Massachusetts automobile insurance policy issued by Commerce.
4. Defendant, Commerce, is an automobile insurance company, with a principal office located in Webster, Massachusetts. At all relevant times hereto, Commerce was in the business of providing personal automobile insurance to individual consumers throughout the Commonwealth of Massachusetts.

## **JURISDICTION AND VENUE**

5. This Court has personal jurisdiction over Commerce as it is an entity with a principal office located in Worcester County, Massachusetts. This Court also has personal jurisdiction over Commerce by virtue of its transactions, marketing, advertising and/or conducting trade/business throughout the Commonwealth at all times relevant hereto.
6. Upon information and belief, this Court has jurisdiction over the claims contained herein as they relate to Puopolo and the putative class because the claims for damages exceed twenty-five thousand dollars (\$25,000.00).

7. Venue in this matter is proper as Commerce conducts trade and business in Suffolk County, Massachusetts.

**FACTUAL ALLEGATIONS**

8. Massachusetts law requires all automobile insurance policies issued in Massachusetts to be filed and approved by the Commissioner of Insurance.

9. Commerce issues policies of automobile insurance to consumers throughout Massachusetts.

10. Commerce utilizes uniform automobile insurance policies, which provide potential benefits to Plaintiffs and the Class.

**FACTUAL ALLEGATIONS RELEVANT TO MICHELLE PUOPOLO**

11. On July 22, 2017, Puopolo was involved in a motor vehicle collision (“Puopolo Collision”), resulting in damage to Puopolo’s vehicle.

12. Commerce’s automobile policy with Puopolo required that Commerce pay reasonable expenses incurred in preventing further damage or loss to Puopolo’s automobile.

13. Commerce’s automobile policy with Puopolo required that Commerce pay reasonable expenses incurred in preventing further damage or loss to Puopolo’s automobile, including but not limited to towing and storage charges.

14. Puopolo’s vehicle was towed to Commonwealth Auto Body after the Puopolo Collision.

15. Puopolo’s vehicle was stored at Commonwealth Auto Body after the Puopolo Collision.

16. As a result of the Puopolo Collision, Puopolo made a collision claim under her policy of insurance with Commerce.

17. Following the Puopolo Collision, Commonwealth Auto Body charged Commerce \$970.00 for the storage of Puopolo’s vehicle.

18. Commerce paid Commonwealth Auto Body \$970.00 for the storage of Puopolo’s vehicle.

19. Prior to paying, Commerce did not inform Commonwealth Auto Body that it believed the storage charge sought was unreasonable.
20. Prior to paying, Commerce did not resist the storage charges imposed by Commonwealth Auto Body for the storage of Puopolo's vehicle.
21. Prior to paying, Commerce did not seek to have Commonwealth Auto Body's charges for the storage of Puopolo's vehicle reduced.
22. Prior to paying, Commerce did not challenge the reasonableness of storage charges that Commonwealth Auto Body imposed for the storage of Puopolo's vehicle.
23. Commerce paid Commonwealth Auto Body the full amount of \$970.00 for the storage of Puopolo's vehicle.
24. At the time of payment, Commerce purportedly believed the \$970.00 to be an unreasonable charge for the storage of Puopolo's vehicle.
25. Commerce did not pay Commonwealth Auto Body the \$970.00 under protest.
26. Commerce did not inform Puopolo that it believed the amount charged by Commonwealth Auto Body was unreasonable.
27. Commerce did not have Puopolo's express authority to pay Commonwealth Auto Body the \$970.00.
28. Commerce did not have Puopolo's express authority to settle any third-party liabilities that she may have had to Commonwealth Auto Body.
29. Following payment, Commerce did not inform Commonwealth Auto Body that it believed the storage charges sought were unreasonable.
30. Following payment, Commerce did not seek to have Commonwealth Auto Body's charges for the storage of Puopolo's vehicle refunded.

31. Following payment, Commerce did not challenge the reasonableness of storage charges that Commonwealth Auto Body imposed for the storage of Puopolo's vehicle.
32. Commerce was responsible to resist the storage charges if Commerce deemed said charges to be unreasonable.
33. Commerce was responsible to resist the storage charges if Commerce deemed said charges to be unreasonable, prior to making the storage payment to Commonwealth Auto Body.
34. Commerce was responsible to reduce the storage charges if Commerce deemed said charges to be unreasonable.
35. Commerce was responsible to reduce the storage charges if Commerce deemed said charges to be unreasonable, prior to making the storage payment to Commonwealth Auto Body.
36. Puopolo's Vehicle was deemed a total loss by Commerce.
37. Commerce and Puopolo agreed to a total loss value of her vehicle.
38. Commerce and Puopolo agreed that Puopolo's vehicle's total loss value was \$8,121.67.
39. Commerce and Puopolo agreed that the amount of sales tax due and owing to Puopolo as part of her total loss claim was \$507.60.
40. Commerce and Puopolo agreed that Puopolo's vehicle's total loss claim was valued at \$8,629.27.
41. Commerce reduced Puopolo's claim payment by \$1,000.00 to account for her policy deductible.
42. Commerce reduced Puopolo's claim payment for the total loss of her vehicle by \$485.00 to account for a portion of the purportedly unreasonable storage fee Commerce had already paid to Commonwealth Auto Body.
43. Under the terms of its automobile policy, Commerce was not entitled to reduce Puopolo's claim payment by \$485.00 to account for a portion of the purportedly unreasonable storage charges Commerce had already paid to Commonwealth Auto Body.

44. Under Massachusetts law, Commerce was not entitled to reduce Puopolo's claim payment by \$485.00 to account for a portion of the purportedly unreasonable storage charges Commerce had already paid to Commonwealth Auto Body.
45. Under Massachusetts regulations, Commerce was not entitled to reduce Puopolo's claim payment by \$485.00 to account for a portion of the purportedly unreasonable storage fee Commerce had already paid to Commonwealth Auto Body.
46. As a result of Commerce's acts and practices as described herein, Puopolo has suffered damages, including but not limited to, the amount of her claim payment, which was unlawfully withheld, with accruing interest thereon.

**FACTUAL ALLEGATIONS RELEVANT TO VICTOR PAGAN**

47. On October 14, 2019, Pagan was involved in a motor vehicle collision ("Pagan Collision"), resulting in damage to Pagan's vehicle.
48. Commerce's automobile policy with Pagan required that Commerce pay any reasonable expenses incurred in preventing further damage or loss to Pagan's automobile.
49. Commerce's automobile policy with Pagan required that Commerce pay any reasonable expenses for towing and storage of Pagan's vehicle.
50. Commerce's automobile policy with Pagan required that Commerce pay any reasonable expenses incurred in preventing further damage or loss to Pagan's automobile, including but not limited to towing and storage charges.
51. Commerce's automobile policy with Pagan required that Commerce pay any reasonable expenses incurred in preventing further damage or loss to Pagan's automobile, including but not limited to towing and storage charges.

52. Commerce's automobile policy with Pagan required that Commerce pay any reasonable and necessary expenses for towing, recovery and storage of your auto.
53. Pagan's vehicle was towed to J & G Transmission Auto Repair after the Pagan Collision.
54. Pagan's vehicle was stored at J & G Transmission Auto Repair after the Pagan Collision.
55. As a result of the Pagan Collision, Pagan made a collision claim under his policy of insurance with Commerce.
56. Following the Pagan Collision, J & G Transmission Auto Repair charged Commerce \$1,520.00 for the storage of Pagan's vehicle.
57. Commerce paid J & G Transmission Auto Repair \$1,520.00 for the storage of Pagan's vehicle.
58. Prior to paying, Commerce did not inform J & G Transmission Auto Repair that it believed the storage charge sought was unreasonable.
59. Prior to paying, Commerce did not resist the storage charges imposed by J & G Transmission Auto Repair for the storage of Pagan's vehicle.
60. Prior to paying, Commerce did not seek to have J & G Transmission Auto Repair's charges for the storage of Pagan's vehicle reduced.
61. Prior to paying, Commerce did not challenge the reasonableness of storage charges that J & G Transmission Auto Repair imposed for the storage of Pagan's vehicle.
62. Commerce paid J & G Transmission Auto Repair \$1,520.00 for the storage of Pagan's vehicle.
63. At the time of payment, Commerce purportedly believed the \$1,520.00 to be an unreasonable charge for the storage of Pagan's vehicle.
64. Commerce did not pay J & G Transmission Auto Repair the \$1,520.00 under protest.
65. Commerce did not inform Pagan that it believed the amount charged by J & G Transmission Auto Repair was unreasonable.

66. Commerce did not have Pagan's express authority to pay J & G Transmission Auto Repair the \$1,520.00.
67. Commerce did not have Pagan's express authority to settle any third-party liabilities that he may have had to J & G Transmission Auto Repair.
68. Following payment, Commerce did not inform J & G Transmission Auto Repair that it believed the storage charges sought were unreasonable.
69. Following payment, Commerce did not seek to have J & G Transmission Auto Repair's charges for the storage of Pagan's vehicle refunded.
70. Following payment, Commerce did not challenge the reasonableness of storage charges that J & G Transmission Auto Repair imposed for the storage of Pagan's vehicle.
71. Commerce was responsible to resist the storage charges if Commerce deemed said charges to be unreasonable.
72. Commerce was responsible to resist the storage charges if Commerce deemed said charges to be unreasonable, prior to making the storage payment to J & G Transmission Auto Repair.
73. Commerce was responsible to reduce the storage charges if Commerce deemed said charges to be unreasonable.
74. Commerce was responsible to reduce the storage charges if Commerce deemed said charges to be unreasonable, prior to making the storage payment to J & G Transmission Auto Repair.
75. Pagan's vehicle was deemed a total loss by Commerce.
76. Commerce and Pagan agreed to a total loss value of his vehicle.
77. Commerce and Pagan agreed that Pagan's vehicle's total loss value was \$3,255.50.
78. Commerce and Pagan agreed that the amount of sales tax due and owing to Pagan as part of his total loss claim was \$203.47.



79. Commerce and Pagan agreed that Pagan's vehicle's total loss claim was valued at \$3,458.97.
80. Commerce unilaterally reduced Pagan's claim payment for the total loss of his vehicle by \$960.00 to account for a portion of the purportedly unreasonable storage fee Commerce had already paid to J & G Transmission Auto Repair.
81. Commerce reduced Pagan's claim payment for the total loss of his vehicle by \$960.00 to account for a portion of the purportedly unreasonable storage fee Commerce had already paid to J & G Transmission Auto Repair.
82. Under the terms of its automobile policy, Commerce was not entitled to reduce Pagan's claim payment by \$960.00 to account for a portion of the purportedly unreasonable storage charges Commerce had already paid to J & G Transmission Auto Repair.
83. Under Massachusetts law, Commerce was not entitled to reduce Pagan's claim payment by \$960.00 to account for a portion of the purportedly unreasonable storage charges Commerce had already paid to J & G Transmission Auto Repair.
84. Under Massachusetts regulations, Commerce was not entitled to reduce Pagan's claim payment by \$960.00 to account for a portion of the purportedly unreasonable storage fee Commerce had already paid to J & G Transmission Auto Repair.
85. As a result of Commerce's acts and practices as described herein, Pagan has suffered damages, including but not limited to, the amount of his claim payment, which was unlawfully withheld, with accruing interest thereon.

**FACTUAL ALLEGATIONS RELEVANT TO JESSICA NOHMY**

86. On January 10, 2015, Nohmy was involved in a motor vehicle collision ("Nohmy Collision"), resulting in damage to Nohmy's vehicle.

87. Commerce's automobile policy with Nohmy required that Commerce pay any reasonable expenses incurred in preventing further damage or loss to Nohmy's automobile.
88. Commerce's automobile policy with Nohmy required that Commerce pay any reasonable expenses for towing and storage of Nohmy's vehicle.
89. Commerce's automobile policy with Nohmy required that Commerce pay any reasonable expenses incurred in preventing further damage or loss to Nohmy's automobile, including but not limited to towing and storage charges.
90. Commerce's automobile policy with Nohmy required that Commerce pay any reasonable and necessary expenses for towing, recovery and storage of Nohmy's vehicle.
91. Nohmy's vehicle was first towed by Biondi's Service Center.
92. Biondi's Service Center stored Nohmy's vehicle for four days.
93. Biondi's Service Center charged Commerce \$90.00 for towing Nohmy's vehicle.
94. Biondi's Service Center charged Commerce \$65.00/day for the storage of Nohmy's vehicle.
95. Biondi's Service Center charged Commerce \$50.00 for an administration
96. Commerce paid Biondi's Service Center \$140.00 for the towing and storing Nohmy's vehicle.
97. Commerce did not reduce Nohmy's total loss payment by amounts it paid to Biondi's Service Center.
98. Nohmy's vehicle was towed to Susi Auto Body, Inc. ("Susi Auto Body") from Biondi's Service Center to be repaired.
99. Nohmy's vehicle was stored at Susi Auto Body for ten days.
100. Susi Auto Body charged Commerce \$65.00/day for the storage of Nohmy's vehicle.
101. Susi Auto Body charged Commerce a \$50.00 administration fee for Nohmy's vehicle.
102. Susi's Auto Body charged Commerce a \$90.00 pull out fee for Nohmy's vehicle.

103. As a result of the Nohmy Collision, Nohmy made a collision claim under her policy of insurance with Commerce.
104. Following the Nohmy Collision, Susi Auto Body charged Commerce \$790.00 for the towing and storage of Nohmy's vehicle.
105. Commerce paid Susi Auto Body \$790.00 for the towing and storage of Nohmy's vehicle.
106. Prior to paying \$790.00 for towing and storage, Commerce did not inform Susi Auto Body that it believed the storage charge sought was unreasonable.
107. Prior to paying \$790.00 for towing and storage, Commerce did not resist the storage charges imposed by Susi Auto Body for the storage of Nohmy's vehicle.
108. Prior to paying \$790.00 for towing and storage, Commerce did not seek to have Susi Auto Body's charges for the storage of Nohmy's vehicle reduced.
109. Prior to paying \$790.00 for towing and storage, Commerce did not challenge the reasonableness of storage charges that Susi Auto Body imposed for the storage of Nohmy's vehicle.
110. Commerce paid Susi Auto Body \$790.00 for the towing and storage of Nohmy's vehicle.
111. At the time of payment to Susi Auto Body for storage of Nohmy's vehicle, Commerce believed the \$790.00 to be an unreasonable charge for the towing and storage of Nohmy's vehicle.
112. Commerce did not pay Susi Auto Body the \$790.00 under protest.
113. Commerce did not inform Nohmy that it believed the amount charged by Susi Auto Body was unreasonable.
114. Commerce did not have Nohmy's express authority to pay Susi Auto Body the \$790.00.
115. Commerce did not have Nohmy's express authority to settle any third-party liabilities that she may have had to Susi Auto Body.

116. Following payment of \$790.00 for towing and storage, Commerce did not inform Susi Auto Body that it believed the storage charges sought were unreasonable.
117. Following payment of \$790.00 for towing and storage, Commerce did not seek to obtain a refund for the storage of Nohmy's vehicle.
118. Following payment of \$790.00 for towing and storage, Commerce did not challenge the reasonableness of storage charges.
119. Commerce was responsible to resist the towing and storage charges if Commerce deemed said charges to be unreasonable.
120. Commerce was responsible to resist the towing and storage charges if Commerce deemed said charges to be unreasonable, prior to making the storage payment to Susi Auto Body.
121. Commerce was responsible to reduce the towing and storage charges if Commerce deemed said charges to be unreasonable.
122. Commerce was responsible to reduce the towing and storage charges if Commerce deemed said charges to be unreasonable, prior to making the towing and storage payment to Susi Auto Body.
123. Nohmy's vehicle was deemed a total loss by Commerce. .
124. Commerce and Nohmy agreed to a total loss value of her vehicle.
125. Commerce and Nohmy agreed that Nohmy's vehicle's total loss actual cash value was \$13,668.00.
126. Commerce and Nohmy agreed that the amount of sales tax due and owing to Nohmy as part of her total loss claim was \$854.25.
127. Commerce and Nohmy agreed that Nohmy's vehicle's total loss claim was valued at \$14,522.25.

128. Commerce unilaterally reduced Nohmy's claim payment for the total loss of her vehicle by \$350.00 to account for a portion of the purportedly unreasonable storage fee Commerce had already paid to Susi Auto Body.
129. Commerce agreed upon the amount that it would pay with Susi Auto Body.
130. Commerce did not discuss that fact with Nohmy.
131. Commerce paid Susi Auto Body without discussing the payment or the amount with Nohmy.
132. Commerce reduced Nohmy's claim payment for the total loss of his vehicle by \$350.00 to account for a portion of the purportedly unreasonable storage fee Commerce had already paid to Susi Auto Body.
133. Under the terms of its automobile policy, Commerce was not entitled to reduce Nohmy's claim payment by \$350.00 to account for a portion of the purportedly unreasonable storage charges Commerce had already paid to Susi Auto Body.
134. Under Massachusetts law, Commerce was not entitled to reduce Nohmy's claim payment by \$350.00 to account for a portion of the purportedly unreasonable storage charges Commerce had already paid to Susi Auto Body.
135. Under Massachusetts regulations, Commerce was not entitled to reduce Nohmy's claim payment by \$350.00 to account for a portion of the purportedly unreasonable storage fee Commerce had already paid to Susi Auto Body.
136. As a result of Commerce's acts and practices as described herein, Nohmy has suffered damages, including but not limited to, the amount of his claim payment, which was unlawfully withheld, with accruing interest thereon.

**FACTUAL ALLEGATIONS RELEVANT TO THE CLASS CLAIMS**

137. Commerce has unlawfully reduced numerous other insureds' claim payments to account for a portion of a purportedly unreasonable storage charge which Commerce already paid to a third-party for the storage of other insureds' vehicle in connection with collision loss claims.
138. Commerce has acted in a similar manner with regard to numerous other Commerce insureds.
139. As a result of Commerce's acts and practices as described herein, other Commerce insureds have suffered damages including, but not limited to, the amount of their claim payments, which were unlawfully withheld, with accruing interest thereon.
140. At all times relevant hereto, Commerce was engaged in trade and/or commerce as defined by M.G.L. c. 93A.
141. On or about October 18, 2017, Puopolo, through Counsel, sent Commerce the requisite M.G.L. c. 93A, § 9(3) class-wide demand.
142. Puopolo's M.G.L. c. 93A, § 9(3) class-wide demand sought relief for Puopolo and all other similarly situated first-party claimants from whom Commerce withheld claim payments to account for payments which Commerce made without protest for storage charges which Commerce deemed unreasonable.
143. On or about November 17, 2017, Commerce, through counsel, responded to the M.G.L. c. 93A, § 9(3) class-wide demand.
144. Commerce's response to the M.G.L. c. 93A, § 9(3) class-wide demand was unreasonable.
145. Commerce's response to the M.G.L. c. 93A, § 9(3) class-wide demand was made in bad faith.

146. Plaintiffs and other similarly situated individuals have been harmed and damaged by Commerce's claim settlement practices as described herein, including but not limited to: monies withheld from their claim payments for what Commerce alleged were unreasonable storage fees, which Commerce previously paid (and interest thereon).

### **CLASS ALLEGATIONS**

147. Plaintiffs bring this action as a class action pursuant Massachusetts Rule of Civil Procedure 23, and M.G.L. c. 93A, on behalf of herself and a Class consisting of ("Class" or "Class Members"):

All persons who made a claim or claims under the Limited Collision, Collision or Comprehensive provisions of their automobile insurance policy with Commerce and whose claim payments were reduced by any amount Commerce contends it paid to the storage facility in relation to the claim.

148. The members of the Class are so numerous that joinder of all members would be impracticable.

149. Plaintiffs' claims are typical of the claims of other members of the Class as all members of the Class have been similarly affected by Commerce's failure to pay the full amount of its insured's claims in the manner described herein.

150. Plaintiffs will fairly and adequately protect the interests of the Class and are represented by counsel experienced in complex class action litigation.

151. Common questions of law and fact exist and predominate over any questions of law or fact which may affect only individual Class Members.

152. Common questions of law and fact include:

- A. Whether Commerce was permitted to reduce its insured's claims by any amount Commerce contends it paid to a storage facility in relation to the claim;
- B. Whether Commerce's practice of reducing claims to account for purportedly unreasonable storage charges it already paid constitutes a breach of its obligations under the standard Massachusetts automobile insurance policy, Massachusetts common law, Massachusetts

statutory law and/or M.G.L. c. 93A; and

C. Whether Plaintiffs and Class Members are entitled to damages and if so the proper measure of damages.

153. A class action will cause an orderly and expeditious administration of the claims of the Class. A class action will foster economies of time, effort and expense to ensure uniformity of decisions, presenting the most efficient manner of adjudicating the claims set forth herein.

**COUNT I**  
**BREACH OF CONTRACT**

154. Plaintiffs repeat and re-allege the allegations set forth above.

155. The policies of automobile insurance between Plaintiffs and Commerce constituted legally enforceable and binding contracts.

156. Plaintiffs performed their duties in a manner which was in compliance with their policies of automobile insurance with Commerce.

157. Commerce's automobile policies with Plaintiffs required that Commerce pay any reasonable expenses incurred in preventing further damage or loss to their vehicles.

158. Commerce's automobile policy with Plaintiffs required that Commerce pay any reasonable expenses incurred in preventing further damage or loss to their vehicles, including but not limited to towing and storage charges.

159. Commerce was responsible to resist, challenge, and/or reduce the storage fees for Plaintiffs' vehicles if Commerce deemed them to be unreasonable.

160. Commerce was responsible to resist, challenge, and/or reduce the storage fees for Plaintiffs' vehicles if Commerce deemed them to be unreasonable, prior to making the payments to storage facilities.



161. Commerce failed and/or refused to challenge, resist, and/or reduce the storage fees for Plaintiffs' vehicles it deemed unreasonable, prior to making the payment to storage facilities.
162. Commerce's reduction of Plaintiffs' claims by amounts it purported to be unreasonable for storage charges constituted breaches of contract under the terms of the policy.
163. Members of the Class had policies of automobile insurance with Commerce.
164. The policies of automobile insurance between Class Members and Commerce constitute legally enforceable and binding contracts.
165. Class Members performed their duties in a manner which was in compliance with their respective policies of automobile insurance with Commerce.
166. Commerce's automobile policies with Class Members required that Commerce pay any reasonable expenses incurred in preventing further damage or loss to the insured's automobile.
167. Commerce's automobile policies with Class Members required that Commerce pay any reasonable expenses incurred in preventing further damage or loss to the insured's automobile, including but not limited to towing and storage charges.
168. Commerce was responsible to challenge, resist and/or reduce the storage fee for Class Members' vehicles if Commerce deemed them to be unreasonable, prior to making the storage payment to the storage facilities that stored their respective vehicles.
169. Commerce failed and/or refused to challenge, resist and/or reduce the storage fees for Class Members' vehicles it deemed unreasonable, prior to making the storage payment to the storage facilities that stored their respective vehicles.
170. Commerce's reduction of Class Members claims by an amount it purported to be an unreasonable storage charge constituted breaches of contract under the terms of Class Members' policies.

171. As a result of Commerce's acts and practices as described herein, Plaintiffs have suffered damages, including but not limited to, the amount, which was unlawfully withheld from their claim payments, with accruing interest thereon.

172. As a result of Commerce's acts and practices as described herein, Class Members have suffered damages, including but not limited to, the amount, which was unlawfully withheld from their claim payments, with accruing interest thereon.

**WHEREFORE**, Plaintiffs respectfully request that this Court enter Judgment against Commerce for its breaches of contract (the Policy) and award damages to adequately compensate Plaintiffs and the Class, and that the Court add thereto costs and attorneys' fees.

**COUNT II**  
**VIOLATIONS OF M.G.L. c. 93A, § 2**

173. Plaintiffs repeat and re-allege the allegations set forth above.

174. Commerce's automobile policies with Plaintiffs and Class Members required that Commerce pay any reasonable expenses incurred in preventing further damage or loss to their vehicles.

175. Commerce's automobile policies with Plaintiffs and Class Members required that Commerce pay storage charges for their vehicles until it made a reasonable offer to settle their claims.

176. Commerce's automobile policies with Plaintiffs and Class Members required that Commerce pay storage charges and expenses associated with their claims

177. Commerce's automobile policies with Plaintiffs and Class Members required that Commerce pay any reasonable expenses incurred in preventing further damage or loss to their vehicles, including, but not limited to towing and storage charges.

178. Nothing in Commerce's automobile policies with Plaintiffs and Class Members permitted Commerce to reduce Plaintiffs' and/or Class Members' collision claim payments without express authority of the insured.

179. Nothing in Commerce's automobile policies with Plaintiffs and Class Members permitted Commerce to reduce Plaintiffs' and/or Class Members' collision claim payments by any amounts that, according to Commerce, constituted unreasonable storage charges.

180. Nothing in the law permitted Commerce to reduce Plaintiffs' and/or Class Members' collision claim payments by any amounts that, according to Commerce, constituted unreasonable storage charges.

181. Commerce's reduction of Plaintiffs' and Class Members' collision claim payments by amounts Commerce purported to be unreasonable storage charges, constituted an unfair and deceptive business practice.

182. Commerce's reduction of Plaintiffs' and Class Members' claim by amounts Commerce purported to be unreasonable storage charges was committed willfully and/or knowingly and/or in bad faith.

183. As a result of Commerce's acts and practices as described herein, Plaintiffs have suffered damages, including but not limited to, the amount of the reduction of their collision claim payments, with accruing interest thereon.

184. As a result of Commerce's acts and practices as described herein, Class Members have suffered damages, including but not limited to, the amount of the reduction of their collision claim payments, with accruing interest thereon.

**WHEREFORE**, Plaintiffs respectfully request that this Court enter Judgment against Commerce for its violations of M.G.L. c. 93A and award multiple damages to adequately compensate Plaintiffs and the Class, and that the Court add thereto costs and attorneys' fees.

**COUNT III**  
**VIOLATIONS OF M.G.L. c. 93A, § 2**  
**Violations of the Commonwealth Automobile Reinsurers Regulations**

185. Plaintiffs repeat and re-allege the allegations set forth above.

186. M.G.L. c. 175, § 113H requires that Commonwealth Automobile Reinsurers (“CAR”) establish Performance Standards for claim handling for Massachusetts Private Passenger Motor Vehicle Insurance Policies.
187. The Commonwealth Automobile Reinsurer’s Private Passenger Claims Performance Standards for the Handling and Payment of Claims by Assigned Risk Companies (“CAR Regulations”) establish Performance Standards for claim handling for Massachusetts Private Passenger Motor Vehicle Insurance Policies.
188. Commerce is an Assigned Risk Company pursuant to the CAR Regulations.
189. Commerce is bound by the Performance Standards mandated by the CAR Regulations.
190. Commerce is required to institute and implement a plan to demonstrate that its staff has knowledge of and enforces all regulations applicable to towing and storage rates and conditions. See, Exhibit 1, p. 3 of 8 (*Private Passenger Claims Performance Standards*).
191. Commerce is required to institute and implement a plan to ensure that non-regulated towing and storage charges are reasonable, and Commerce is required to resist and reduce said charges if unreasonable. See, Exhibit 1, p. 3 of 8.
192. Commerce is required to institute and implement a plan to control storage costs including the prompt disposition of salvage. See, Exhibit 1, p. 3 of 8.
193. Pursuant to the CAR Regulations, Commerce was required to resist the Storage Charges for Plaintiffs’ and Class Members’ vehicles if Commerce deemed the charges to be unreasonable. See, Exhibit 1, p. 3 of 8.
194. Pursuant to the CAR Regulations, Commerce was required to challenge the storage charges for Plaintiffs’ and Class Members’ vehicles if Commerce deemed said charges to be unreasonable. See, Exhibit 1, p. 3 of 8.

195. Pursuant to the CAR Regulations, Commerce was required to have the storage charges reduced for Plaintiffs' and Class Members' vehicles if Commerce deemed said charges to be unreasonable. See, Exhibit 1, p. 3 of 8.
196. Pursuant to the CAR Regulations, Commerce was required to resist the storage charges for Plaintiffs' and Class Members' vehicles if Commerce deemed said charges to be unreasonable, prior to making Storage Charge payments to storage facilities. See, Exhibit 1, p. 3 of 8.
197. Pursuant to the CAR Regulations, Commerce was required to challenge the storage charges for Plaintiffs' and Class Members' vehicles if Commerce deemed said charges to be unreasonable, prior to making Storage Charge payments to storage facilities. See, Exhibit 1, p. 3 of 8.
198. Pursuant to the CAR Regulations, Commerce was required to have the storage charges reduced for Plaintiffs' and Class Members' vehicles if Commerce deemed said charges to be unreasonable, prior to making Storage Charge payments to storage facilities. See, Exhibit 1, p. 3 of 8.
199. Commerce failed to comply with its duties as set forth in the CAR Regulations.
200. Adjusting Plaintiffs' and Class Members' claims in a manner inconsistent with the mandates of the CAR Regulations constitutes an unfair and deceptive business practice.
201. Failing to institute and implement a claims handling practice mandated by the CAR Regulations with regard to towing and storage, in the manner set forth herein, constitutes an unfair and deceptive business practice.
202. The CAR Regulations are regulations meant for the protection of the public's health, safety, or welfare promulgated by the Commonwealth or any political subdivision thereof intended to provide the consumers of this Commonwealth protection.
203. Commerce has violated the CAR Regulations.
204. Commerce has knowingly and/or willfully and/or in bad faith violated the CAR Regulations.

205. A violation of the CAR Regulations constitutes a violation of M.G.L. c. 93A, § 2.
206. Commerce's violations of the CAR Regulations have caused Plaintiffs and Class Members harm, including financial harm.
207. As a result of Commerce's violations of the CAR Regulations, Plaintiffs have suffered damages, including but not limited to, the amount of the reduction of their collision claim payments, with accruing interest thereon.
208. As a result of Commerce's violations of the CAR Regulations, Class Members have suffered damages, including but not limited to, the amount of the reduction of their collision claim payments, with accruing interest thereon.

**WHEREFORE**, Plaintiffs respectfully request that this Court enter Judgment against Commerce for its violations of the CAR Regulations and M.G.L. c. 93A and award multiple damages to adequately compensate Plaintiffs and the Class, and that the Court add thereto costs and attorneys' fees.

**COUNT IV**  
**VIOLATIONS OF M.G.L. c. 93A, § 2**  
**Violations of M.G.L. c. 176D, § 3(9)(a)**

209. Plaintiffs repeat and re-allege the allegations set forth above.
210. M.G.L. c. 176D, § 3(9)(a) states that "[a]n unfair claim settlement practice shall consist of any of the following acts or omissions: (a) misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue".
211. Commerce has misrepresented that under the terms of the policy Plaintiffs are responsible for the payment of any portion of the Storage Charges associated with the loss.
212. Commerce has misrepresented that under the terms of the policy Class Members are responsible for the payment of any portion of the storage charges associated with their loss.

213. Commerce has misrepresented that under the terms of the policy Commerce was permitted to reduce Plaintiffs' collision claim payments in consideration for a portion of the Storage Charges associated with the loss.
214. Commerce has misrepresented that under the terms of the policy Commerce was permitted to reduce Class Members' collision claim payments in consideration for a portion of the storage charges associated with their loss.
215. Commerce has generally misrepresented the pertinent facts or insurance policy provisions relating to the coverage for the storage of Plaintiffs' and Class Members' vehicles.
216. Commerce's acts and omissions as set forth herein constitute violations of M.G.L. c. 176D, § 3(9)(a).
217. A violation of M.G.L. c. 176D, § 3(9)(a) is a *per se* violation of M.G.L. c. 93A, § 2.
218. Commerce's acts and practices as described herein were committed willfully and/or knowingly and/or in bad faith.
219. As a result of Commerce's violations of M.G.L. c. 176D, § 3(9)(a) and M.G.L. c. 93A, § 2 (as set forth herein) Plaintiffs and Class Members have been damaged.
220. Commerce's violations of M.G.L. c. 176D, § 3(9)(a) have caused Plaintiffs and Class Members harm, including financial harm.
221. As a result of Commerce's violations of M.G.L. c. 176D, § 3(9)(a) Plaintiffs have suffered damages, including but not limited to, the amount of the reduction of his collision claim payment, with accruing interest thereon.
222. As a result of Commerce's violations of M.G.L. c. 176D, § 3(9)(a), Class Members have suffered damages, including but not limited to, the amount of the reduction of their collision claim payments, with accruing interest thereon.

**WHEREFORE**, Plaintiffs respectfully request that this Court enter Judgment against Commerce for its violations of the M.G.L. c. 176D, § 3(9)(a) and M.G.L. c. 93A, § 2 and award multiple damages to adequately compensate Plaintiffs and the Class, and that the Court add thereto costs and attorneys' fees.

**COUNT V**  
**VIOLATIONS OF M.G.L. c. 93A, § 2**  
**Violations of M.G.L. c. 176D, § 3(9)(f)**

223. Plaintiffs repeat and re-allege the allegations set forth above.
224. M.G.L. c. 176D, § 3(9)(f) mandates that an insurance company effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.
225. Commerce's liability for Plaintiffs' collision claim was reasonably clear.
226. Commerce's liability for Class Members' collision claims were reasonably clear.
227. By reducing Plaintiffs' and Class Members' claims by an amount of purportedly unreasonable Storage Charges Commerce had paid to third-party storage facilities, Commerce failed to effectuate a prompt, fair, and equitable settlement of Plaintiffs' and Class Members' claims.
228. Commerce's acts and omissions as set forth herein constitute a failure to effectuate a prompt, fair, and equitable settlement of Plaintiffs' and Class Members' claims.
229. Commerce's acts and omissions as set forth herein constitute violations of M.G.L. c. 176D, § 3(9)(f).
230. A violation of M.G.L. c. 176D, § 3(9)(f) is a *per se* violation of M.G.L. c. 93A, § 2.
231. Commerce's acts and practices as described herein were committed willfully, knowingly and/or in bad faith.
232. As a result of Commerce's violations of M.G.L. c. 176D, § 3(9)(f) and M.G.L. c. 93A, § 2 (as set forth herein) Plaintiffs and Class Members have been damaged.



233. Commerce's violations of M.G.L. c. 176D, § 3(9)(f) have caused Plaintiffs and Class Members harm, including financial harm.

234. As a result of Commerce's violations of M.G.L. c. 176D, § 3(9)(f) Plaintiffs have suffered damages, including but not limited to, the amount of the reduction of their collision claim payments, with accruing interest thereon.

235. As a result of Commerce's violations of M.G.L. c. 176D, § 3(9)(f) Class Members have suffered damages, including but not limited to, the amount of the reduction of their collision claim payment, with accruing interest thereon.

**WHEREFORE**, Plaintiffs respectfully request that this Court enter Judgment against Commerce for its violations of the M.G.L. c. 176D, § 3(9)(f) and M.G.L. c. 93A, § 2 and award multiple damages to adequately compensate Plaintiffs and the Class, and that the Court add thereto costs and attorneys' fees.

**COUNT VI**  
**VIOLATIONS OF M.G.L. c. 93A, § 2**  
**Violations of M.G.L. c. 176D, § 3(9)(g)**

236. Plaintiffs repeat and re-allege the allegations set forth above.

237. M.G.L. c. 176D, § 3(9)(g) prohibits an insurer from compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds.

238. A violation on M.G.L. c. 176D, § 3(9)(g) constitutes an unfair and deceptive claims practice.

239. Without authority, Commerce reduced amounts due under Plaintiffs' and Class Members' insurance policies by making a settlement offer and deducting therefrom the payment of purportedly unreasonable Storage Charges.

240. Commerce's refusal to offer the full amounts due under Plaintiffs' and Class Members' insurance policies has forced Plaintiffs to institute litigation to recover the full amounts due and owing to them and other Class Members.
241. Commerce's acts and omissions as set forth herein constitute violations of M.G.L. c. 176D, § 3(9)(g).
242. A violation of M.G.L. c. 176D, § 3(9)(g) is a *per se* violation of M.G.L. c. 93A, § 2.
243. Commerce's acts and practices as described herein were committed willfully, knowingly and/or in bad faith.
244. As a result of Commerce's violations of M.G.L. c. 176D, § 3(9)(g) and M.G.L. c. 93A, § 2 (as set forth herein) Plaintiffs and Class Members have been damaged.
245. Commerce's violations of M.G.L. c. 176D, § 3(9)(g) have caused Plaintiffs and Class Members harm, including financial harm.
246. As a result of Commerce's violations of M.G.L. c. 176D, § 3(9)(g) Plaintiffs has suffered damages, including but not limited to, the amount of the reduction of their collision claim payments, with accruing interest thereon.
247. As a result of Commerce's violations of M.G.L. c. 176D, § 3(9)(g) Class Members have suffered damages, including but not limited to, the amount of the reduction of their collision claim payments, with accruing interest thereon.

**WHEREFORE**, Plaintiffs respectfully request that this Court enter Judgment against Commerce for its violations of the M.G.L. c. 176D, § 3(9)(g) and M.G.L. c. 93A, § 2 and award multiple damages to adequately compensate Plaintiffs and the Class, and that the Court add thereto costs and attorneys' fees.

**COUNT VII**  
**VIOLATIONS OF M.G.L. c. 93A, § 2**  
**Violations of M.G.L. c. 176D, § 3(9)(n)**

248. Plaintiffs repeat and re-allege the allegations set forth above.
249. M.G.L. c. 176D, § 3(9)(n) states that it is an unfair claim settlement practice to fail “to provide promptly a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.”
250. Commerce reduced Plaintiffs’ and Class Members’ claim payments in consideration for purported unreasonable Storage Charges without providing any explanation for the basis in the insurance policy in relation to the facts or applicable law for its offer of said compromised settlements.
251. Commerce’s acts and omissions as set forth herein constitute violations of M.G.L. c. 176D, § 3(9)(n).
252. A violation of M.G.L. c. 176D, § 3(9)(n) is a *per se* violation of M.G.L. c. 93A, § 2.
253. Commerce’s acts and practices as described herein were committed willfully, knowingly, and/or in bad faith.
254. As a result of Commerce’s violations of M.G.L. c. 176D, § 3(9)(n) and M.G.L. c. 93A, § 2 (as set forth herein), Plaintiffs and Class Members have been damaged.
255. Commerce’s violations of M.G.L. c. 176D, § 3(9)(n) have caused Plaintiffs and Class Members harm, including financial harm.
256. As a result of Commerce’s violations of M.G.L. c. 176D, § 3(9)(n) Plaintiffs have suffered damages, including but not limited to, the amount of the reduction of their collision claim payments, with accruing interest thereon.

257. As a result of Commerce's violations of M.G.L. c. 176D, § 3(9)(n) Class Members have suffered damages, including but not limited to, the amount of the reduction of their collision claim payments, with accruing interest thereon.

**WHEREFORE**, Plaintiffs respectfully request that this Court enter Judgment against Commerce for its violations of the M.G.L. c. 176D, § 3(9)(n) and M.G.L. c. 93A, § 2, and award multiple damages to adequately compensate Plaintiffs and the Class, and that the Court add thereto costs and attorneys' fees.

**COUNT VIII**  
**DECLARATORY RELIEF**

258. Plaintiffs repeat and re-allege the allegations set forth above.

259. There exists an actual controversy as to whether Commerce is required to challenge, reduce and/or resist unreasonable storage charges for its insured's vehicles before paying for the same.

260. There exists an actual controversy as to whether Commerce is permitted to reduce its insured's claims payments by an amount for storage it has already paid to a third party, that it later asserts were unreasonable.

261. There exists an actual controversy as to whether Commerce is allowed to settle a third-party liability of its insured, as set forth herein, without the express consent of the insured.

262. Plaintiffs and the Class are entitled to a declaration that Commerce was required to reduce and/or resist unreasonable storage charges on behalf of its insured's vehicles before paying for the same to the insured's vehicle's storage facility.

263. Plaintiffs and the Class are entitled to a declaration that Commerce is not permitted to reduce its insured's claims payments by an amount for storage it has already paid to a third party, that it asserts was unreasonable.

**WHEREFORE**, Plaintiffs requests that this Honorable Court set forth, by way of declaratory judgment, that Commerce's reduction of its insured's claims payments by an amount for storage it has already paid to a third party, that it asserts is unreasonable, constitutes a violation of Massachusetts law and/or the terms of the Policy.

**PRAYERS FOR RELIEF**

**WHEREFORE**, Plaintiffs, on behalf of herself and all others similarly situated, demand judgment against Commerce as follows:

- A. An order determining that this action is a proper class action and certifying Puopolo, Pagan, and Nohmy as representatives of the Class;
- B. An order appointing the Plaintiffs' attorneys as class counsel;
- C. An order determining that the acts of the Commerce set forth herein constitute breach(es) of contract;
- D. An order determining that the acts of Commerce set forth herein constitute violations of the CAR Regulations;
- E. An order determining that the acts of Commerce set forth herein constitute Violations of M.G.L. c. 176D, § 3(9)(a); M.G.L. c. 176D, § 3(9)(f); M.G.L. c. 176D, § 3(9)(g); and/or M.G.L. c. 176D, § 3(9)(n);
- F. An order determining that the acts of Commerce set forth herein constitute Violations of M.G.L. c. 93A, § 2;
- G. An order determining that the acts of Commerce set forth herein were committed willfully, knowingly, and/or in bad faith;
- H. An order awarding Plaintiffs declaratory relief as requested herein;
- I. An order awarding Plaintiffs and the Class damages, together with interest and costs;

- J. An order awarding Plaintiffs an appropriate stipends for acting as Class representatives;
- K. An order permanently enjoining Commerce from continuing the practices set forth herein;
- L. An order determining the appropriate statute of limitations applicable to this action; and
- M. An order awarding Plaintiffs and the Class such other and further relief as may be just and appropriate.

**JURY DEMAND**

Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand trial by jury on all counts of this Complaint which are triable by a jury.

Respectfully submitted,  
Plaintiffs,  
By their attorneys,

Dated: March 25, 2020

*/s/ Kevin J. McCullough*

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Kevin J. McCullough, Esq.  
BBO #644480  
[kmcullough@forrestlamothe.com](mailto:kmcullough@forrestlamothe.com)  
Michael C. Forrest, Esq.  
BBO #681401  
[mforrest@forrestlamothe.com](mailto:mforrest@forrestlamothe.com)  
David J. Relethford, Esq.  
BBO #691223  
[drelethford@forrestlamothe.com](mailto:drelethford@forrestlamothe.com)  
Forrest, LaMothe, Mazow,  
McCullough, Yasi & Yasi, P.C.  
2 Salem Green, Suite 2  
Salem, MA 01970  
(617) 231-7829