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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
DEPARTMENT OF THE TRIAL COURT  
BUSINESS LITIGATION SESSION  
CA No. 1784-CV-02089-BLS2

JARRETT MCGILLOWAY and  
LINDA ESTRELLA, on behalf of  
themselves and all others similarly  
situated,

Plaintiffs,

vs.

SAFETY INSURANCE COMPANY,

Defendant.

SUFFOLK SUPERIOR COURT  
CIVIL CLERK'S OFFICE  
22 OCT 14 PM 2:35  
MICHAEL JOSEPH DONOVAN  
CLERK / MAGISTRATE

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

Plaintiffs, Jarrett McGilloway (hereafter "McGilloway") and Linda Estrella (hereafter "Estrella") (collectively, "Plaintiffs") hereby bring this action on behalf of themselves and all others similarly situated, against Defendant, Safety Insurance Company (hereafter "Safety" or "Defendant") to recover damages for themselves and the Class, as defined herein, arising from Safety's willful and knowing unlawful practice and policy of refusing and failing to tender amounts to third-party claimants for diminution in value damages to their automobiles, in violation of Massachusetts Law.

**THE PARTIES**

1. Plaintiff, Jarrett McGilloway, is a resident of Danvers, Massachusetts.
2. Plaintiff, Linda Estrella, is a resident of Beverly, Massachusetts.
3. Defendant, Safety Insurance Company, is an insurance company with a principal office located in Boston, Massachusetts and a registered agent located at 155 Federal Street, Suite 700, Boston, Massachusetts. At all relevant times hereto, Safety was in the business of providing professional and

personal insurance to individual consumers throughout Massachusetts.

### **MCGILLOWAY'S FACTUAL ALLEGATIONS**

3. On August 20, 2016, McGilloway's 2013 Jeep Grand Cherokee Laredo was involved in an accident involving a Safety insured, Ultimate Parking, LLC.
4. The August 20, 2016, collision caused McGilloway's vehicle to sustain property damage.
5. At the time of the motor vehicle collision Ultimate Parking, LLC was insured under a policy of insurance issued by Safety, which included indemnity benefits available to pay for third-party property damage.
6. McGilloway made a demand for payment to Safety in relation to his property damage claim against Safety's insured.
7. McGilloway submitted to Safety all information necessary for Safety to fully adjust McGilloway's property damage claim.
8. McGilloway submitted to Safety all information necessary for Safety to fully adjust McGilloway's property damage claim, including information sufficient to determine the proper compensation for the diminished value of McGilloway's vehicle.
9. Safety determined that its insured was liable for the damage to McGilloway's vehicle.
10. Safety adjusted/processed McGilloway's third-party claim.
11. Safety examined and appraised McGilloway's vehicle.
12. Safety assessed the damages suffered by McGilloway's vehicle.
13. McGilloway cooperated with and complied with all requests made by Safety in connection with McGilloway's claim.
14. Safety collected, retained and stored all information necessary to fully adjust McGilloway's claim.

15. A vehicle that has been involved in a collision and has suffered damage (even if subsequently repaired) is worth less in the resale market than a comparable vehicle that has not suffered such damage.
15. The concept of a damaged and repaired vehicle being worth less than a non-damaged vehicle is known as diminished value.
17. Inherent Diminished Value damage ("IDV") is an aspect of a property damage claim that an insurer must adjust upon presentment of a claim.
18. Safety was required to tender/pay to McGilloway monies for all property damage caused to McGilloway's vehicle as a result of its insured's liability.
19. Safety was required to tender/pay, on behalf of its insured, all sums the insured would become legally obligated to tender/pay as damages for destruction of property, including diminution in value, caused by the collision.
20. Safety was required to tender/pay to McGilloway for all damages suffered by McGilloway due to Safety's insured's negligent acts.
21. Safety was required to tender/pay all damages suffered by McGilloway due to Safety's insured's negligent acts that are recoverable under the terms and provisions of the insurance policy provided by Safety to its insured(s).
22. Safety was required to tender/pay McGilloway for the diminution in value of his vehicle under Massachusetts statutory and/or regulatory law.
23. Safety was required to tender/pay McGilloway for the diminution in value of his vehicle under the provisions of the policy it issued to its insured.
24. Safety was required to tender/pay McGilloway for the diminution in value of his vehicle under Massachusetts common-law.

25. Safety accepted its liability to perform and make third-party property damage claims payments under the policy of insurance issued to its liable insured.
26. Safety paid McGilloway an amount purportedly in full consideration for the damages suffered by McGilloway's vehicle in the amount of \$5,717.78.
27. Safety's tender to McGilloway did not include any consideration for the diminution in value his vehicle suffered as a result of the August 20, 2016 collision.
28. Due to the subject collision, McGilloway's vehicle is now worth less in the resale market than a comparable vehicle that has not suffered such damage from a collision.
29. IDV is calculated as the difference between the market value of an automobile immediately before a collision, and its market value after a collision and repair.
30. Safety was required to pay McGilloway damages for the diminution in value to his vehicle.
31. Safety was required to pay McGilloway damages for the diminution in value to his vehicle at the time Safety paid for the damage and repairs.
32. Safety had and has all information necessary for Safety to fully adjust McGilloway's IDV property damage claim.
33. Safety purposefully concealed the diminution in value damage from McGilloway.
34. Safety purposefully refused to pay McGilloway diminution in value despite its reasonably clear liability to make payments for the same.
35. Safety failed to tender/pay McGilloway the diminution in value his vehicle suffered.
36. Safety violated Massachusetts law by failing to determine and/or tender diminution in value damages owed to McGilloway.
37. Safety violated the terms of the policy issued to its insured by failing to determine and/or tender diminution in value damages owed to McGilloway.

38. Safety's acts and omissions as outlined herein were committed willfully, knowingly and in bad faith.
39. Safety has engaged in substantially similar single course of conduct, failing to determine and tender diminution in value damages, with respect to numerous similarly situated individuals.
40. Safety accepted its liability to perform and make third-party property damage claims payments to all putative Class Members as defined herein.
41. Safety accepted its liability to perform and make third-party property damage claims payments to all putative Class Members under the terms of its policies issued to its insureds when it paid a portion of the property damage claim to said putative Class Members.
42. Safety had, and has, all information necessary for Safety to fully adjust Class Member's IDV property damage claims.
43. Safety has engaged in substantially similar violations of Massachusetts law as described herein with respect to numerous similarly situated individuals.
44. Safety has engaged in substantially similar violations of its insurance policies as described herein with respect to numerous similarly situated individuals.
45. Safety fails to pay/tender diminution in value damages to third-party claimants even after it determines that its insureds are liable for damages to the vehicles of the third-party claimants.
46. The Massachusetts Supreme Judicial Court affirmed that third-party IDV damages are payable under Part 4 of the Standard Massachusetts Automobile Policy in McGilloway v. Safety Ins. Co., 488 Mass. 610 (2021).
47. Safety is now estopped from denying payments under its subject insureds' policies, as it has already begun performance under the same.

48. It was reasonable for McGilloway and putative Class Members to rely upon Safety's implicit acceptance of liability for the underlying collisions as evidenced by partial property damage payments under its insureds Policies.
49. Safety's liability for the subject property damage payments became absolute when the subject losses occurred.
50. Safety's liability for the subject IDV payments became absolute when the subject losses occurred.
51. Safety's liability for the subject IDV payments became absolute when Safety began to make payments under the subject policies to McGilloway and every putative Class Member.
52. A judgment against Safety's insureds was not a condition precedent required for liability to have been imputed upon Safety under the subject Policies of its insureds.
53. Safety purposefully refused to pay McGilloway and the putative Class the fair market value of the diminution in value their vehicles sustained despite reasonably clear liability to make payments for the same.
54. McGilloway and other similarly situated individuals have been harmed and damaged by Safety's claims settlement practices as described herein, including, but not limited to: monies owed to third-party claimants for diminution in value to their vehicles (with interest thereon).

#### **ESTRELLA'S FACTUAL ALLEGATIONS**

55. Estrella repeats and re-alleges the allegations set forth above.
56. On February 15, 2017, Estrella's 2015 Chevy Impala Limited ("Estrella's Vehicle") was involved in a collision involving Nicholas Farmer, an individual insured with Safety.
57. At the time of the motor vehicle collision Nicholas Farmer was insured under a policy of insurance issued by Safety, which included indemnity benefits available to pay for third-party property damage.

58. As a result of the collision, Estrella asserted a third-party property damage claim against Safety's insured.
59. The claim, submitted to Safety contained all information necessary for Safety to fully adjust the property damage claim, including the computation of damages in consideration for the diminished value of Estrella's Vehicle.
60. Safety determined that its insured was liable for the damage to Estrella's Vehicle.
61. At the time Safety determined her vehicle was repairable, Safety had all the information necessary to evaluate Estrella's diminution of value claim.
62. Estrella cooperated with, and complied with, all requests made by Safety in connection with her claim.
63. Safety collected, retained and stored all information necessary for Safety to fully adjust Estrella's claim.
64. Safety was required to tender/pay to Estrella monies for all property damage to Estrella's vehicle as a result of its insured's liability.
65. Safety was required to tender/pay, on behalf of its insured, all sums the insured would become legally obligated to tender/pay as damages for destruction of property, including diminution in value, caused by the collision.
66. Safety was required to tender/pay to Estrella for all damages suffered by Estrella's vehicle due to Safety's insured's acts.
67. Safety was required to tender/pay all damages suffered by Estrella due to Safety's insured acts that are recoverable under the terms and provisions of the insurance policy provided by Safety to its insured(s).

68. Safety was required to tender/pay Estrella for the diminution in value of her vehicle under Massachusetts statutory and/or regulatory law.
69. Safety was required to tender/pay Estrella for the diminution in value of her vehicle under the provisions of the policy it issued to its insured.
70. Safety was required to tender/pay Estrella for the diminution in value of her vehicle under Massachusetts common-law.
71. Safety failed and refused to make any equitable offer in relation to the diminution in value portion of Estrella's third-party property damage claim.
72. On September 26, 2017, Estrella's attorney forwarded a demand for the diminution in value that her vehicle suffered as a result of Safety's insured's negligence.
73. Despite reasonably clear liability for the inherent diminished value Estrella's Vehicle sustained, on October 16, 2017, Safety responded with an inequitable counteroffer.
74. Safety was required to pay Estrella damages for the diminution in value to her vehicle.
75. Safety was required to pay Estrella damages for the diminution in value to her vehicle at the time Safety pays for the damage and repairs.
76. Safety failed to pay Estrella damages for the diminution in value to her vehicle at the time Safety paid for the repairs.
77. Safety purposefully concealed the diminution in value damage from Estrella.
78. Safety purposefully refused to pay Estrella an equitable amount of diminution in value despite reasonably clear liability to make payments for the same.
79. Safety failed to tender/pay Estrella the diminution in value her vehicle suffered.
80. Safety violated Massachusetts law by failing to determine and/or tender diminution in value damages owed to Estrella.



81. Safety violated the terms of the policy issued to its insured by failing to determine and/or tender diminution in value damages owed to Estrella.
82. Safety's acts and omissions as outlined herein were committed willfully, knowingly and in bad faith.
83. Safety has engaged in a substantially similar single course of conduct in failing to determine and/or tender diminution in value damages, with respect to numerous similarly situated individuals.
84. Safety has engaged in substantially similar violations of Massachusetts law as described herein with respect to numerous similarly situated individuals.
85. Safety has engaged in substantially similar violations of its insurance policies as described herein with respect to numerous similarly situated individuals.
86. Safety fails to pay/tender to third-party claimants' diminution in value damages even after it determines that its insured is liable for damages to the vehicle of the third-party claimant.
87. Estrella and other similarly situated individuals have been harmed and damaged by Safety's claims settlement practices as described herein, including but not limited to: monies owed to third-party claimants for diminution in value to their vehicles (with interest thereon).

#### **CLASS ALLEGATIONS**

88. Plaintiffs, on behalf of themselves and others similarly situated, bring this action as a class action in accordance with Massachusetts Rule of Civil Procedure 23 and M.G.L. c. 93A.
89. At all times relevant hereto, Safety was engaged in trade and/or commerce as defined by M.G.L. c. 93A.
90. On or about March 4, 2022, Estrella and McGilloway, through Counsel, sent Safety the requisite M.G.L. c. 93A, § 9(3) class-wide demand.

91. Estrella's M.G.L. c. 93A, § 9(3) class-wide demand sought relief for Estrella, McGilloway, and all other similarly situated third-party property damage claimants for whom Safety failed to determine and tender equitable diminution in value damages.
92. On or about March 29, 2022, Safety, through counsel, responded to Estrella's and McGilloway's M.G.L. c. 93A, § 9(3) class-wide demand.
93. Safety's response to the M.G.L. c. 93A, § 9(3) class-wide demand was unreasonable.
94. Safety's response to the M.G.L. c. 93A, § 9(3) class-wide demand was made in bad faith.
95. Safety was required to pay Plaintiffs and the putative Class equitable damages for the diminution in value to their vehicles at the same time it makes payment on the repair costs portion of the property damage claim.
96. Safety was required to tender/pay Plaintiffs and the putative Class for the diminution in value of their vehicles under Massachusetts statutory and/or regulatory law at the same time it made payment on the repair costs portion of their property damage claims.
97. Safety was required to tender/pay Plaintiffs and the putative Class for the diminution in value of their vehicles under Massachusetts common-law at the same time it made payment on the repair costs portion of their property damage claims.
98. Safety was required to tender/pay Plaintiffs and the putative Class for the diminution in value of their vehicles under the policies issued to its insureds at the same time it made payment on the repair costs portion of their property damage claims.
99. Safety failed to tender/pay Plaintiffs and the putative Class for the diminution in value their vehicles suffered.
100. Safety has a business practice wherein it purposefully refused to pay diminution in value damages despite reasonably clear liability to make payments for the same.

101. Safety has a business practice of failing to tender diminution in value damages.
102. Safety has a business practice of knowingly and intentionally utilizing a method to evaluate and quantify diminution in value damages that are less than the actual diminution in value damages.
103. Safety has a business practice of refusing to offer or offering significantly less than the diminution in value damages suffered by class members.
104. Safety has a business practice of knowingly and intentionally failing to offer class members' damages and/or compensation for diminution in value.
105. Safety has a business practice of requiring that claimants to make a separate demand, in addition to the property damage claim, for diminution in value damages before extending any offers of settlement to class members for the diminution in value damages.
106. Safety violated Massachusetts law by failing to determine and tender diminution in value damages owed to Plaintiffs and the putative Class as required by law.
107. Safety violated the terms of the policies issued to its insureds by failing to determine and tender diminution in value damages owed to Plaintiffs and the putative Class.
108. Safety's acts and omissions as outlined herein were committed willfully, knowingly and in bad faith.
109. Plaintiffs and the putative Class include:
- All individual third-party claimants who:
    - A. Suffered a property damage loss as a result of a Safety Insured or Safety Insured vehicle driver;
    - B. Safety determined that its insured (or insured vehicle driver) was/were legally liable for the property damage loss to the claimant's automobile;
    - C. Safety has already paid the third-party property damage claim, either to the claimant, the repair shop or subrogating insurer (or other person or entity);
    - D. The claimant vehicle suffered structural damage as a result of the collision, and/or the cost to repair the claimant vehicle was in an amount in excess of \$500.00; and
    - E. Safety has not paid said claimant IDV damages associated with the subject loss.

**Excluded from the Class:** All individuals who presently have a civil action pending against Safety regarding the subject dispute (excepting the Plaintiffs) or possessed a leased vehicle at the time of the subject collision.

110. The members of the putative Class are so numerous that joinder of all members would be impracticable.
111. The members of the putative Class are readily ascertainable, as Safety collects, maintains and stores all information related to third-party property damage claims that Safety receives.
112. Plaintiffs' claims are typical of the claims of other members of the putative Class, as all members of the putative Class have been similarly affected by Safety's unlawful single course of conduct arising under uniform contracts; failure to tender and/or pay diminution in value damages on third-party property damage claims.
113. Plaintiffs' will fairly and adequately protect the interests of the putative Class and are represented by counsel experienced in complex class action litigation.
114. Common questions of law and fact exist and predominate over any questions of law or fact which may affect only individual putative Class Members. Common questions of law and fact include:
  - A. Whether Safety's failure to assess, evaluate, tender and/or pay diminution in value damages on third-party claims constitutes a violation of, *inter alia*: M.G.L. c. 93A, § 2; M.G.L. c. 176D, § 3(9)(c); M.G.L. c. 176D, § 3(9)(d); and/or M.G.L. c. 176D, § 3(9)(n), and if so whether such acts were committed willfully and/or knowingly;
  - B. Whether Safety's failure to tender and/or pay diminution in value damages to third-party property damage claimants violates its duties under the terms of the policies it issued to its insureds;
  - C. Whether Safety's failure to tender and/or pay diminution in value damages to third-party property damage claimants violates other Massachusetts Statutory and/or regulatory law;
  - D. What applicable statute of limitations to be determined on any or all of the successful causes of action;
  - E. Whether Safety should be permanently enjoined from continuing the practice which is the subject matter of this civil action; and

F. Whether Plaintiffs and/or the putative Class are entitled to damages, and if so the proper measure of damages.

115. A class action will cause an orderly and expeditious administration of the claims of the Class.

116. 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**  
**(Plaintiffs and Class Members v. Safety)**

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

118. The policy of insurance issued by Safety to Ultimate Parking, LLC, constituted a contract.

119. The policy of insurance issued by Safety to Nicholas Farmer, constituted a contract.

120. The policies of insurance issued by Safety to all insureds (against whom putative Class members made property damage claims) constitute contracts.

121. Safety's insurance policies include an obligation to pay Plaintiffs and putative Class Members, when Safety's insureds are found to be liable, the damages and amounts that a third-party claimant would be legally entitled to collect.

122. Safety's insurance policies include an obligation to pay Plaintiffs and putative Class Members, when Safety's insureds are found to be liable, the damages and amounts that a third-party claimant would be legally entitled to collect, which includes diminution in value damages.

123. IDV damage is an aspect of a property damage claim that an insurer must adjust upon presentment of a claim.

124. IDV damages are covered under Safety's insured's policies of insurance.

125. Plaintiffs and Class Members were intended third-party beneficiaries of the insurance policies issued by Safety to its insureds (against whom putative Class members made property-damage claims).

126. Safety accepted its duty to perform under the subject policies of insurance when it made partial property damage payments to McGilloway, Estrella and all putative Class Members under the same.
127. Safety's partial payments to Plaintiffs and putative Class Members constituted recognition that Plaintiffs and Class Members were the intended beneficiaries of the policies of insurance issued by Safety to its insureds.
128. Safety was required to pay diminution in value damages to Plaintiffs and putative Class Members in accordance with the terms of the policies issued to its insureds.
129. Safety did not pay diminution in value damages to Plaintiffs and putative Class Members in accordance with the terms of the policies issued to its insureds.
130. Safety's failure to pay diminution in value damages to Plaintiffs and putative Class Members in accordance with the terms of the policies issued to its insureds constituted breach(es) of contract.
131. Plaintiffs and putative Class Members have suffered damages as a result of Safety's breach(es) of contract, including, but not necessarily limited to, all unpaid diminution in value damages, with interest thereon.

**WHEREFORE**, Plaintiffs respectfully request that this Court enter Judgment against Safety for its breach(es) of contract and award damages to adequately compensate Plaintiff and the putative Class.

**COUNT II**  
**VIOLATIONS OF M.G.L. c. 93A**  
**(Plaintiffs and Class Members v. Safety)**

132. Plaintiffs repeats and re-allege the allegations set forth above.
133. Plaintiffs allege that the acts and omissions of Safety, as set forth herein, were committed willfully, knowingly and/or in bad faith.

134. IDV damage is an aspect of a property damage claim that an insurer must adjust upon presentment of a claim.
135. Safety was required to pay Plaintiffs damages for the diminution in value to their vehicle as a result of the subject collisions.
136. Safety failed to tender to Plaintiffs and other putative Class Members the fair market value of the diminution of value damages their vehicles sustained as a result of the negligent acts of Safety's insureds.
137. Safety has a business policy and practice of not adjusting diminution in value claims when adjusting third-party property damage claims, unless specifically demanded to do so by the third-party claimant.
138. Requiring that a third-party claimant make a separate demand for the IDV aspect of their property damage claim is unfair and deceptive.
139. Failing to determine diminution in value damages to third-party damage claimants, as set forth herein, is an unfair and deceptive business practice.
140. Failing to tender diminution in value damages to third-party damage claimants, as set forth herein, is an unfair and deceptive business practice.
141. Failing to determine diminution in value damages to third-party damage claimants, in accordance with the requirements of its policies of insurance is an unfair and deceptive business practice.
142. Failing to tender diminution in value damages to third-party damage claimants, in accordance with the requirements of its policies of insurance is an unfair and deceptive business practice.
143. As a result of Safety's failure to determine, and tender, the fair market value of the diminution of value damages suffered by Plaintiffs and the putative Class, Plaintiffs and putative Class Members have been damaged.

144. As a result of Safety's failure to determine, and tender, diminution in value damages in connection with their third-party property damage claims, Plaintiffs and putative Class Members have suffered damages, including but not limited to, the fair market value of the diminution in value sustained by the subject vehicles, with interest thereon.

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

**COUNT III**  
**VIOLATIONS OF M.G.L. c. 93A**  
**(For Violations of M.G.L. c. 176D, § 3(9)(c))**  
**(Plaintiffs and Class Members v. Safety)**

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

146. Plaintiffs allege that the acts and omissions of Safety, as set forth herein, were committed willfully, knowingly and/or in bad faith.

147. IDV damage is an aspect of a property damage claim that an insurer must adjust upon presentment of a claim.

148. Pursuant to M.G.L. c. 176D, § 3(9)(c), Safety was required, *inter alia*, to adopt and implement reasonable standards for the prompt investigation of claims arising under its insurance policies.

149. Safety failed to adopt and implement reasonable standards for the prompt investigation of all aspects of third-party property damages claims, including but not limited to, reasonably assessing Plaintiffs' and putative Class Members' respective IDV damages.

150. Refusing to proactively adjust the IDV aspect of a Property Damage Claim, once a property damage claim is made, violates M.G.L. c. 176D, § 3(9)(c).

151. By failing to adopt and implement reasonable standards for the prompt investigation of all aspects of Plaintiffs' property damage claim, including the fair market value of the diminution in value



damage their vehicles sustained, Safety failed to tender Plaintiffs or the putative Class the fair market value of the diminution in value damage that their vehicles sustained.

152. Safety's acts and omissions as set forth herein constitute violations of M.G.L. c. 176D, § 3(9)(c).

153. As a result of Safety's violations of M.G.L. c. 176D, § 3(9)(c) and M.G.L. c. 93A, § 2 (as set forth herein), Plaintiffs and putative Class Members have been damaged.

154. As a result of Safety's violations of M.G.L. c. 176D, § 3(9)(c) and M.G.L. c. 93A, § 2 (as set forth herein), Plaintiffs and putative Class Members have suffered damages, including but not limited to, the unpaid fair market value of the diminution in value damage that their vehicles sustained, with interest thereon.

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

**COUNT IV**  
**VIOLATIONS OF M.G.L. c. 93A**  
**(For Violations of M.G.L. c. 176D, § 3(9)(d))**  
**(Plaintiffs and Class Members v. Safety)**

155. Plaintiffs repeats and re-allege the allegations set forth above.

156. Plaintiffs allege that the acts and omissions of Safety, as set forth herein, were committed willfully, knowingly and/or in bad faith.

157. IDV damage is an aspect of a property damage claim that an insurer must adjust upon presentment of a claim.

158. Pursuant to M.G.L. c. 176D, § 3(9)(d), Safety was not permitted to, *inter alia*, fail and/or refuse to pay the subject claims without conducting a reasonable investigation based upon all available information.

159. Pursuant to M.G.L. c. 176D, § 3(9)(d), Safety was not permitted to, *inter alia*, fail and/or refuse to pay Plaintiffs and Class Members third-party property damage claims, including the fair market value of the diminution in value damages that their vehicles sustained, without conducting a reasonable investigation based upon all available information.
160. Safety did not conduct a reasonable investigation based upon all available information with respect to Plaintiffs' and the putative Class's diminution in value damages their vehicles sustained.
161. Requiring that a claimant make a separate or subsequent demand for the IDV aspect of the property damage claim before conducting a reasonable investigation based upon all available information is a violation of M.G.L. c. 176D, § 3(9)(d).
162. Safety's acts and omissions as set forth herein constitute violations of M.G.L. c. 176D, § 3(9)(d).
163. As a result of Safety's violations of M.G.L. c. 176D, § 3(9)(d) and M.G.L. c. 93A, § 2 (as set forth herein), Plaintiffs and putative Class Members have been damaged.
164. As a result of Safety's violations of M.G.L. c. 176D, § 3(9)(d) and M.G.L. c. 93A, § 2 (as set forth herein), Plaintiffs and putative Class Members have suffered damages, including but not limited to, the unpaid fair market value of the diminution in value damage that their vehicles sustained, with interest thereon.

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

**COUNT V**  
**VIOLATIONS OF M.G.L. c. 93A**  
**(For Violations of M.G.L. c. 176D, § 3(9)(n))**  
**(Plaintiffs and Class Members v. Safety)**

165. Plaintiffs repeat and re-allege the allegations set forth above.
166. Plaintiffs allege that the acts and omissions of Safety, as set forth herein, were committed willfully,

knowingly and/or in bad faith.

167. IDV damage is an aspect of a property damage claim that an insurer must adjust upon presentment of a claim.

168. Safety was/is aware of its legal duty to pay Plaintiffs and putative Class Members the fair market value of the diminution in value damages as part of their respective third-party property damage claims.

169. M.G.L. c. 176D, § 3(9)(n) mandates 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.”

170. Safety failed to offer Plaintiffs and the Class the reasonable compensation for the diminution in value damages due and owing; and further, did not provide any reasonable explanation for the basis in the insurance policy in relation to the facts or applicable law for its offer of a compromised settlement.

171. Safety’s acts and omissions as set forth herein constitute violations of M.G.L. c. 176D, § 3(9)(n).

172. As a result of Safety’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.

173. As a result of Safety’s violations of M.G.L. c. 176D, § 3(9)(n) and M.G.L. c. 93A, § 2 (as set forth herein), Plaintiffs and putative Class Members have suffered damages, including but not limited to, the unpaid fair market diminution in value that their vehicles sustained, with interest thereon.

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

**COUNT VI**  
**DECLARATORY JUDGMENT**

174. Plaintiffs repeat and re-allege the allegations set forth above.
175. There exists an actual controversy as to whether Safety, pursuant to Massachusetts statutory, common law, and/or under the terms of its insurance policies, is required to include the fair market value of diminution in value damages when it tenders/pays third-party property damage repair claims.
176. There exists a controversy as to when Safety must adjust and tender the IDV aspect of a third-party's property damage claim.
177. Plaintiffs and the putative Class are entitled to a declaration as to what monies Safety is legally required to pay third-party claimants when Safety has determined that its insured is liable for the associated third-party property damage claim.
178. Plaintiffs and the putative Class are entitled to a declaration that all diminution in value damages should be, and are required to be, paid and/or tendered to third-party claimants once Safety has determined its insured is liable for the associated third-party property damage claim.

**WHEREFORE**, Plaintiffs and putative Class Members demand that this Honorable Court declare that Massachusetts law and the applicable provisions of the policies of insurance issued to its insureds required that Safety include in any and all tenders and/or payments to third-party claimants the requisite diminution in value damages as set forth herein.

**PRAYERS FOR RELIEF**

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

- A. An order determining that this action is a proper class action and certifying Plaintiffs as representatives of the putative class;

- B. An order appointing Plaintiffs' counsel as competent legal representatives of the putative class in this action;
- C. An order determining that the acts of Safety as described herein constitute violations of any or all of the following statutes and regulations: M.G.L. c. 93A, § 2; M.G.L. c. 176D, § (3)(9)(c); M.G.L. c. 176D, § (3)(9)(d); and/or M.G.L. c. 176D, § 3(9)(n);
- D. An order determining that the acts of Safety as described herein constituted breaches of contract;
- E. An order determining that Plaintiffs and other putative Class Members were the intended third-party beneficiaries of the policies of insurance at issue in this claim;
- F. An order awarding Plaintiffs and the putative Class damages, together with interest, costs, and reasonable attorneys' fees;
- G. An order determining the appropriate statute of limitations applicable to this action;
- H. An order determining that the acts and omissions of Safety as set forth herein were committed willfully, knowingly and/or in bad faith;
- I. An order permanently enjoining Safety from continuing the unlawful practice which is the subject matter of this action;
- J. An order awarding Plaintiffs an appropriate stipend for acting as class representatives; and
- K. An order awarding Plaintiffs and the class any 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,

Is/ *Kevin J. McCullough*

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DATED: May 9, 2022



**Forrest, Mazow,  
McCullough, Yasi & Yasi, P.C.**

Consumer Advocacy and Class Action Litigation



October 12, 2022

Suffolk Superior Court  
Civil Clerk's Office  
3 Pemberton Square  
Boston, MA 02108

**RE: MCGILLOWAY, on behalf of himself and  
all others similarly situated  
v.  
SAFETY INSURANCE COMPANY  
Civil Action No. SUCV1784-CV-02089A**

SUFFOLK SUPERIOR COURT  
CIVIL CLERK'S OFFICE  
22 OCT 14 PM 2:35  
MICHAEL JOSEPH DONOVAN  
CLERK / MAGISTRATE

Dear Sir or Madam:

Pursuant to the September 28, 2022 Order allowing Plaintiffs' Motion to Amend the Operative Complaint, regarding the above-referenced matter, enclosed for filing please find the following:

- *Plaintiffs' Third Amended Complaint and Demand for Jury Trial.*

Please file the same in the usual manner. If you have any questions or concerns, please do not hesitate to contact me. Thank you in advance for your assistance.

Sincerely

*1st Michael C. Forrest*

Michael C. Forrest, Esq.

MCF:jgc  
Enclosures

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PLEASE ADDRESS ALL  
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