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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Daniel Capane, on behalf of himself and all  
others similarly situated,

Plaintiff,

v.

LM General Insurance Company, an Illinois  
corporation, Liberty Mutual Personal  
Insurance Company, a Massachusetts  
corporation; Liberty Insurance Underwriters  
Inc., a New York corporation; Liberty  
Mutual Fire Insurance Company, a  
Massachusetts corporation; Liberty Mutual  
Insurance Company, a Massachusetts  
corporation; Liberty Insurance Corporation,  
a Massachusetts corporation; LM Insurance  
Company, a Massachusetts corporation;  
State Auto Property & Casualty Insurance  
Company, an Ohio corporation; State  
Automobile Mutual Insurance Company, an  
Ohio corporation; Ohio Casualty Insurance  
Company, an Ohio corporation; Ohio  
Security Insurance Company, an Ohio  
corporation; American Economy Insurance  
Company, an Indiana corporation;

Defendants.

Case No. 2:24-cv-01095-PHX-SMB

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

**JURY TRIAL DEMANDED**

(Honorable Susan M. Brnovich)

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## I. INTRODUCTION

1. Under Arizona law, auto insurers must permit their customers to stack policies or coverages for uninsured and underinsured (“UM,” “UIM,” or “UM/UIM”) motor vehicle accident claims unless the insurers comply with two simple requirements: Insurers must both (1) “expressly and plainly limit stacking in the policy” with “unambiguous language plainly disavowing the possibility of stacking,” and (2) “satisfy the notice requirement [of A.R.S. § 20-259.01(H) by] informing the insured of their ‘right to select one policy or coverage’ either in the policy itself or in writing to the insured within thirty days after the insurer is notified of the accident.” *Franklin v. CSAA Gen. Ins. Co.*, 532 P.3d 1145, 1148 ¶ 11 (Ariz. 2023), *quoting* A.R.S. § 20-259.01(H). Here, Defendants failed to meet both requirements and yet failed to stack coverages, resulting in underpayments to Plaintiff and the class.

2. “Stacking” refers to “when an insured obtains coverages for several vehicles and then attempts to claim multiple [UM or] UIM coverages for the same accident.” *Am. Family Mut. Ins. Co. v. Sharp*, 277 P.3d 192, 196 ¶ 15 (Ariz. 2012).<sup>1</sup> UM/UIM coverage is a personal coverage—it covers the person, not the vehicle. When there are multiple vehicles insured under one or more policies, multiple UM/UIM coverages exist, and unless the insurer disclaims stacking. *See Franklin*, 532 P.3d at 1146, 1151, ¶¶ 2, 24. Those coverage limits can be added together to provide “stacked” benefits for a single claim. *Id.* In other words, each separate coverage limit can be accessed to provide benefits for the same covered loss. When stacking coverages, the aggregated (stacked) coverage limit is determined by adding together each vehicle’s UM or UIM coverage.

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<sup>1</sup> *See also Rashid v. State Farm Mut. Auto. Ins. Co.*, 162, Ariz. 270, 272 n.2, 787 P.2d 1066, 1068 n.2 (1990) (defining “stacking” as “combin[ing] the coverages of a single policy or multiple policies issued by a single insurer”); *State Farm Mut. Auto. Ins. Co. v. Arrington*, 192 Ariz. 255, 258-60, 963 P.2d 334, 337-39 (App. 1998) (stacking occurs when “all available policies are added together to create a larger pool from which the injured party may draw in order to compensate him for his actual loss where a single policy is not sufficient to make him whole;” the insureds’ “benefit of the bargain is the cumulative UIM limit . . . Thus, when their damages are higher than the limits of one policy, the other policies can be tapped to make up the difference”) (internal quotations omitted).

1           3.     The requirement that insurers inform each insured claimant of their right to  
2 select one policy or coverage empowers insured claimants to make informed choices about  
3 coverage. It ensures that insured claimants are fully aware of their options and rights,  
4 particularly in complex situations involving multiple policies and coverages.

5           4.     Beyond the obligations of A.R.S. § 20-259.01(H), when an insured is injured  
6 and presents a first-party claim, the duty of good faith and fair dealing requires an insurer  
7 to meet several crucial duties: For example, it must (1) reasonably investigate the claim  
8 and applicable law; (2) work to find all available coverage for the insured; (3) identify and  
9 fully disclose all pertinent benefits, coverages, and policy provisions; (4) inform the  
10 insured accurately about available coverages and benefits; (5) avoid misrepresenting or  
11 concealing any pertinent benefits, coverages, or policy provisions; (6) construe the policy  
12 in accordance with known law; (7) treat its insured fairly and reasonably; and (8) give the  
13 insured's interests equal consideration.

14           5.     In handling UM/UIM claims for Plaintiff and other insureds with multiple  
15 covered vehicles under the applicable policies, Defendants breached each of these duties  
16 as well as the insurance contracts themselves.

17           6.     Plaintiff brings this action on behalf of all insureds who were deprived of  
18 their right to stack benefits by Defendant LM General Insurance Company and other linked  
19 insurance companies under common management, sharing a common core of operations,  
20 or acting pursuant to common, communicated principles of policy interpretation and claims  
21 adjustment. Under A.R.S. § 20-259.01(H), "insurer" includes "every insurer within a group  
22 of insurers under a common management," thereby implicating all such insurers in the  
23 rights and duties set forth in the statute and allowing certain acts of one insurer to inure to  
24 the benefit of other insurers because they are under common management. Additionally,  
25 the Defendants share a common core of claims handling operations, procedures, and  
26 personnel that does not vary materially from one underwriting company to the next. The  
27 admitted and established relationship between Defendants in their management, legal, and  
28 operational relations—as well as the fact that their rights and duties intersect because they

are under “common management” for purposes of A.R.S. § 20-259.01(H)—establishes that the entities are “juridically related in a manner that suggests a single resolution of the dispute would be expeditious.” *Payton v. County of Kane*, 308 F.3d 673 (7th Cir. 2002), *cert. denied*, 540 U.S. 812 (2003) (quoting *La Mar v. H&B Novelty & Loan Co.*, 489 F.2d 461, 466 (9th Cir. 1973)).<sup>2</sup>

7. As a matter of uniform and standard practice and procedure, Defendant LM General Insurance Company applied a single UM/UIM coverage limit to Plaintiff’s claim even though Defendant LM General Insurance Company neither included clear and unambiguous language disavowing the customer’s ability to stack multiple coverages on the policy nor informed the class members of the right to select which coverage to apply to the accident by including that right in the policy or timely advising class members of that right in writing. Similarly, none of the other Defendants, for their respective insureds, complied with either of the statutory requirements of A.R.S. § 20-259.01. More precisely, no Defendant (1) included clear and unambiguous policy language disavowing the insured’s ability to stack multiple policies or coverages or (2) informed the customer of the right to select which coverage to apply to the accident under either of the methods prescribed by statute.

8. Plaintiff is an insured under a LM General Insurance Company policy purchased by him, and he brings this action pursuant to (a) 28 U.S.C. § 2201 & 2202 for a declaratory judgment regarding his rights and the rights of the Class under the applicable

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<sup>2</sup> See, e.g., Arizona Administrative Code § 20-6-801(D)(1) (“No insurer shall fail to fully disclose to first party claimants all pertinent benefits, coverages or other provisions of an insurance policy or insurance contract under which a claim is presented.”); *Nardelli v. Metro. Grp. Prop. and Cas. Ins. Co.*, 230 Ariz. 592, 603, 277 P.3d 789, 800 (App. 2012); *Sarchett v. Blue Shield of Cal.*, 233 Cal. Rptr. 76, 84-86, 729 P.2d 267, 275-77 (1987) (“important facet” of duty of equal consideration is “the duty reasonably to inform an insured of the insured’s rights and obligations under the insurance policy”); *State Farm Mut. Auto. Ins. Co. v. Shuman*, 175 Ind. App. 186, 370 N.E.2d 941 (1977) (sustaining punitive damages when insurer attempted to induce estate of insured decedent to settle claim without disclosing or explaining all benefits and estate representative “lacked the education and experience to understand the policy terms on her own”).

1 auto insurance policy or policies (“the Liberty Policy” or “the Liberty Policies”) and (b)  
2 state law based on diversity jurisdiction.

3 9. Regarding Plaintiff specifically, Defendant LM General Insurance Company  
4 was responsible for fully disclosing, applying, and paying UM/UIM coverage up to the  
5 stacked limits required by Arizona law and the properly construed insurance policy but  
6 failed to do so. Having failed to qualify for the anti-stacking opportunity permitted by law,  
7 having failed to disclose, provide, pay, and not conceal and misrepresent the existence of  
8 stacked coverages to its insureds, and having failed to notify the insured of his right to  
9 select, Defendant LM General Insurance Company breached its contractual, good faith,  
10 and legal duties to its customers, including underpaying the benefits due.

## 11 II. PARTIES

12 10. Plaintiff Daniel Capane is a resident and citizen of Arizona.

13 11. Defendant LM General Insurance Company (“LM General”) is an insurance  
14 company incorporated under the laws of Massachusetts, with its principal place of business  
15 in Massachusetts, but which does business in the state of Arizona.

16 12. The remaining Defendants (collectively with the above-referenced insurers,  
17 “Liberty”) are insurance companies selling property & casualty insurance in Arizona and,  
18 upon information and belief, they (1) rely upon the same claims handling operations,  
19 procedures, and personnel as LM General and (2) consider themselves to be under  
20 “common management” within the meaning of A.R.S. § 20-259.01(H) with respect to LM  
21 General and each other, comprising the following entities:

22 a. Liberty Mutual Personal Insurance Company, an insurance company  
23 incorporated under the laws of Massachusetts and domiciled in New Hampshire and  
24 doing business in Arizona;

25 b. Liberty Insurance Underwriters Inc., an insurance company  
26 incorporated under the laws of New York and domiciled in Illinois and doing  
27 business in Arizona;  
28

1 c. Liberty Mutual Fire Insurance Company, an insurance company  
2 incorporated under the laws of Massachusetts and domiciled in Wisconsin and doing  
3 business in Arizona;

4 d. Liberty Mutual Insurance Company, an insurance company  
5 incorporated under the laws of Massachusetts and domiciled in Massachusetts and  
6 doing business in Arizona;

7 e. Liberty Insurance Corporation, an insurance company incorporated  
8 under the laws of Massachusetts and domiciled in Illinois and doing business in  
9 Arizona;

10 f. LM Insurance Corporation, an insurance company incorporated under  
11 the laws of Massachusetts and domiciled in Illinois and doing business in Arizona;

12 g. State Auto Property & Casualty Insurance Company, an insurance  
13 company domiciled under the laws of Ohio and headquartered in Iowa and doing  
14 business in Arizona;

15 h. State Automobile Mutual Insurance Company, an insurance company  
16 incorporated under the laws of Ohio and domiciled in Ohio and doing business in  
17 Arizona;

18 i. Ohio Casualty Insurance Company, an insurance company  
19 incorporated under the laws of Ohio and domiciled in New Hampshire and doing  
20 business in Arizona;

21 j. Ohio Security Insurance Company, an insurance company  
22 incorporated under the laws of Ohio and domiciled in New Hampshire and doing  
23 business in Arizona; and

24 k. American Economy Insurance Company, an insurance company  
25 incorporated under the laws of Indiana and domiciled in Indiana and doing business  
26 in Arizona.

### III. JURISDICTION AND VENUE

13. Plaintiff is a citizen of Arizona. Defendants, respectively, are citizens of Massachusetts, New Hampshire, New York, Illinois, Ohio, Wisconsin and Indiana. Therefore, complete diversity exists.

14. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a) because the amount in controversy (including the value of both the disputed claim for \$75,000 in stacked coverage and attorneys' fees incurred to date) exceeds \$75,000, exclusive of costs and interest, and Plaintiff and the Defendants are citizens of different states. This Court also has jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because the proposed Class consists of 100 or more members; the amount in controversy exceeds \$5,000,000, exclusive of costs and interest, and minimal diversity exists.

15. Venue is proper pursuant to 28 U.S.C. § 1391 in that a substantial part of the events giving rise to claims described herein occurred within this District and the Liberty Policies were issued in this District.

16. Whenever it is alleged in this Complaint that Liberty did any act or thing, it is meant that Liberty and its agents, officers, servants, employees or representatives did such act or thing and when such act or thing was done, it was done with full authorization or ratification of Liberty or was done in the normal and routine course and scope of business, or with the actual, apparent and/or implied authority of Liberty and its officers, agents, servants, employees or representatives. Specifically, Liberty is liable for the actions of its affiliates, officers, agents, servants, employees, and representatives.

### IV. GENERAL ALLEGATIONS AS TO ARIZONA LAW

17. Arizona's statute governing UM/UIM coverage is A.R.S. § 20-259.01. It requires auto insurers to offer UM and UIM coverage on each insured vehicle and governs the terms of that coverage.

18. Insurance policy provisions that diverge from the explicit terms of A.R.S. § 20-259.01 are void. *See, e.g., Cundiff v. State Farm Mut. Auto. Ins. Co.*, 174 P.3d 270 (Ariz.



2008); *Sharp*, 277 P.3d 192, at 193, 197. The UMA has “a remedial purpose and must be construed liberally in favor of coverage.” *Id.* at 197 ¶ 18 (quoting *Taylor v. Travelers Indem. Co. of Am.*, 9 P.3d 1049 (Ariz. 2000)).

19. Subsection (H) of A.R.S. § 20-259.01, as amended in 1997, allows insurers to draft their policies to prohibit stacking of UIM coverages but prescribes a strict method for doing so. Insurers wishing to prohibit stacking must “expressly and plainly limit stacking in the policy” with “unambiguous language plainly disavowing the possibility of stacking.” *Franklin*, 532 P.3d at 1148 ¶ 11. In addition, they must either draft the policy to “contain a statement that informs the insured of the insured’s right to select one policy or coverage as required by this subsection,” or absent such policy language, “within thirty days after the insurer receives notice of an accident, . . . notify the insured in writing of the insured’s right to select one policy or coverage.” *Id.* at 1148 ¶¶ 10-11 (quoting A.R.S. § 20-259.01(H)).

20. Because Subsection (H) uses the word “may,” it is not self-executing; rather, it “permits” or “authorizes” an insurer to take affirmative steps so that only one “policy or coverage” applies. *Sharp*, 277 P.3d at 196; *see also Franklin*, 532 P.3d at 1148 ¶ 10 (“Insurers may limit stacking, but insurers must satisfy the statute’s notice requirement.”) (internal quotation omitted); *State Farm Mut. Auto. Ins. Co. v. Lindsey*, 897 P.2d 631, 633 (Ariz. 1995) (“this provision is not self-executing because its wording is merely permissive”); *Hanfelder v. GEICO Indem. Co.*, 422 P.3d 579, 581 ¶ 8 (Ariz. App. 2018) (“Subsection (H) is not self-executing; insurers must include policy language incorporating its limitations.”).

21. The phrase “multiple policies or coverages” in Subsection (H) applies only “when an insured obtains coverages for several vehicles and then attempts to claim multiple UIM coverages for the same accident.” *Sharp*, 277 P.3d at 196 ¶ 15.

22. Subsection (H) is not exclusively limited to circumstances where multiple policies exist; it applies to multiple policies or coverages, and therefore to the stacking of UM/UIM coverages under both multiple policies and a multi-vehicle insurance policy.

1 *Franklin*, 532 P.3d at 1153; *see also Heaton v. Metro. Grp. Prop. and Cas. Ins. Co.*, No.  
 2 2:21-CV-00442-SRB, at \*7 (D. Ariz. Oct. 19, 2021) (“[M]ultiple coverages exist when  
 3 multiple vehicles are insured under a single policy that contains UM/UIM coverage.”).

4 23. Under Subsection (H), an insurer cannot prevent stacking if it fails to include  
 5 plain, express, and unambiguous policy language that prohibits and disavows the  
 6 possibility of stacking. *Franklin*, 532 P.3d at 1148 ¶¶ 10-11.

7 24. Also, to limit stacking under Subsection (H), “insurers must . . . satisfy the  
 8 notice requirement [by]informing the insured of their ‘right to select one policy or  
 9 coverage’ either in the policy itself or in writing to the insured within thirty days after the  
 10 insurer is notified of the accident. *Id.* (quoting § 20-259.01(H)); *see also Heaton*, 2021 WL  
 11 6805629 at \*8 (“Having found that [plaintiffs] have multiple UM/UIM coverages under  
 12 the statute by virtue of insuring multiple vehicles, the Court concludes that both [plaintiffs]  
 13 may stack their available coverages because [the insurer] did not adhere to the requirements  
 14 of A.R.S. § 20-259.01(H) to prevent stacking.”); *Schwallie v. Am. Family Mut. Ins. Co.*,  
 15 No. CV-12-00681-PHX, 2013 WL 4478697, at \*2 (D. Ariz. Aug. 20, 2013) (denying  
 16 insurer’s effort to avoid stacking UIM coverages, and stating: “Failure to notify an insured  
 17 of his right to select which policy should apply in an anti-stacking provision in writing,  
 18 either in the policy itself or within 30 days of any claim, prevents an insurer from limiting  
 19 [stacking] coverage under Arizona law.”).

20 25. Implied in every insurance contract in Arizona is a covenant of good faith  
 21 and fair dealing owed to the insured. Under the contractual covenant of good faith and fair  
 22 dealing, an insurer must deal fairly with an insured, providing fair and honest treatment,  
 23 and giving in all matters equal consideration to the insured’s interests. *See, e.g., Rawlings*  
 24 *v. Apodaca*, 726 P.2d 565, 572-73 (Ariz. 1986).

25 26. Among other things: “The carrier has an obligation to immediately conduct  
 26 an adequate investigation, act reasonably in evaluating the claim, and act promptly in  
 27 paying a legitimate claim. It should do nothing that jeopardizes the insured’s security under  
 28 the policy. It should not force an insured to go through needless adversarial hoops to

1 achieve its rights under the policy.” *Zilisch v. State Farm Mut. Auto. Ins. Co.*, 995 P.2d  
2 276, 280 ¶ 21 (Ariz. 2000).

3 27. The duty of good faith and fair dealing, apart from the responsibility to  
4 promptly pay covered claims, also “encompasses some obligation to inform the insured  
5 about the extent of coverage and his or her rights under the policy and [must] do so in a  
6 way that is not misleading.” *Nardelli v. Metro. Grp. Prop. and Cas. Ins. Co.*, 277 P.3d 789,  
7 800 ¶ 54 (Ariz. App. 2012) (citing *Rawlings*, 726 P.2d at 572-73).

#### 8 **V. LIBERTY IMPROPERLY REFUSES TO DISCLOSE AND STACK** 9 **CAPANE’S COVERAGE**

10 28. On October 16, 2016, Zachary Phillips was operating a car that failed to yield  
11 and struck Plaintiff on his motorcycle.

12 29. Mr. Phillips was negligent in causing the accident, and he was the sole cause  
13 of the accident.

14 30. On October 19, 2016, Plaintiff’s counsel wrote to LM General Insurance  
15 Company to advise it that Mr. Capane was injured when his motorcycle collided with an  
16 automobile.

17 31. The same day, Plaintiff opened a claim against LM General, which was  
18 assigned a claim number of LA000-034781444-02.

19 32. As a result of the accident, Plaintiff sustained severe injuries, with medical  
20 specials exceeding \$235,000.00 around the time of the claim. LM General knew that Mr.  
21 Capane was admitted into Chandler Regional Hospital for evaluation and treatment of his  
22 accident injuries. He suffered a displaced pelvis fracture, a broken foot, and a fracture of  
23 the L-2 spine. He also experienced pain in his left shoulder and left fifth digit. Mr. Capane  
24 underwent surgery on his pelvis on October 18, 2016.

25 33. Given the severity of the injuries as a result of the accident, the insureds were  
26 underinsured as to Plaintiff Capane. *See* A.R.S. § 20-259.01(G).

1           34. Plaintiff's damages exceeded the amount of insurance available to the  
2 tortfeasor, and the tortfeasor's insurance offered and, at some point after December 15,  
3 2016, paid policy limits.

4           35. To protect himself and his guests and family members from uninsured or  
5 underinsured tortfeasors, Plaintiff had purchased UM/UIM insurance. At the time of loss,  
6 he was insured under a Liberty (specifically LM General) auto insurance policy that insured  
7 three cars: a 2015 Honda Civic, a 2015 Scion XB, and a 2016 Toyota Tundra. This policy  
8 number was AOS-268-356315-40 6 8.

9           36. Each vehicle's coverage provided Plaintiff with UIM benefits of \$100,000  
10 per person and \$300,000 per occurrence.

11           37. Plaintiff Capane's damages attributable to Mr. Phillip's fault exceeded the  
12 available amount of Mr. Phillip's bodily injury liability coverage, and the UIM coverages  
13 on the three vehicles insured under the Capane Liberty Policy.

14           38. In the "Underinsured Motorists Coverage - Arizona" endorsement to  
15 Plaintiff's policy, Liberty agreed to pay as follows:

16                   We will pay compensatory damages which an **insured** is  
17 legally entitled to recover from the owner or operator of an  
**underinsured motor vehicle** because of **bodily injury**: 1.  
18 Sustained by an **insured**; and 2. Caused by an accident.

19                   ...

20           39. In the "Uninsured Motorists Coverage - Arizona" endorsement to Plaintiff's  
21 policy, Liberty agreed to pay as follows:

22                   We will pay compensatory damages which an **insured** is  
23 legally entitled to recover from the owner or operator of an  
**uninsured motor vehicle** because of **bodily injury**: 1.  
24 Sustained by an insured; and 2. Caused by an accident.

25           40. On November 7, 2016, Plaintiff's counsel requested information on the UIM  
26 limit of Plaintiff's policy.

27           41. On December 15, 2016, Plaintiff advised Liberty that, "[b]ased upon the pain  
28 and suffering Mr. Capane has experienced, in addition to his medical expenses, we are

1 recommending that he accept no less than policy limits totaling \$300,000.00 as settlement  
2 for this claim.”

3 42. On January 10, 2017, Liberty sent a letter advising Plaintiff that only one of  
4 the three vehicles on the policy provides UIM coverage, and that Plaintiff’s policy, though  
5 it covered three vehicles, only provides UIM coverage with limits of \$100,000 “each  
6 person” and \$300,000 “each accident.”

7 43. It also advised him for the first time that it was going to pay him this policy  
8 limits based on the UIM limits applicable to the 2015 Honda Civic, unless Plaintiff “wishes  
9 the \$100,000 payment to be made under the UIM limit for one of the *other* vehicles covered  
10 by the policy....” (Emphasis in the original.)

11 44. Liberty had notice of the collision more than 30 days before it sent the  
12 January 10, 2017 letter. Liberty was advised of the accident no later than October 19, 2016,  
13 making Liberty’s letter at least 80 days late. The January 10, 2017 letter does not, therefore,  
14 satisfy the requirements of A.R.S. § 20-259.01(H).

15 45. On December 29, 2016, Plaintiff, through counsel, sent Liberty a letter for  
16 the second time demanding stacked benefits.

17 46. On January 10, 2017, Liberty informed Plaintiff that the applicable policy  
18 limit for the UIM claim was \$100,000.

19 47. Liberty did not notify Plaintiff or any other class member that if the required  
20 notice was not sent within thirty days of the accident, Liberty would, under Arizona law,  
21 owe to its insureds stacking of their various UM/UIM coverages unless the policy language  
22 itself satisfied the obligation owing under A.R.S. § 20-259.01(H), which is not the case  
23 here or for any other class member.

24 48. The Liberty Policy under which Plaintiff was insured is Liberty’s standard  
25 form Policy for personal (i.e., non-commercial) auto policies.

26 49. The Liberty Policy fails to include a statement informing the insureds of their  
27 “right to select one policy or coverage” as applicable to any one accident. As used herein,  
28 the “Liberty Policy” or the “Liberty Policies” means any personal auto policy issued to an

1 Arizona insured by any and all Liberty entities under common management. Every one of  
 2 these entities' policies fail to include a statement informing the insureds of their right to  
 3 select one UM/UIM coverage, as between multiple vehicles insured under their policies,  
 4 in the event of a covered accident.

5 50. The Liberty Policy does not comply with A.R.S. § 20-259.01(H) because  
 6 (a) it does not limit the UM/UIM coverage on each covered vehicle so only one "policy or  
 7 coverage" shall be applicable to any one accident, and (b) it does not inform the insured,  
 8 either in the policy itself or by letter within 30 days of notice of the insured event, of their  
 9 right to select one UM/UIM coverage, as between multiple vehicles insured under the  
 10 Policy, in the event of a covered accident. The applicable endorsement merely states that  
 11 the limit of liability for Uninsured and Underinsured Motorist Coverage is "shown in the  
 12 Declarations for each person for Underinsured Motorists Coverage," no matter how many  
 13 vehicles are listed:

14 The first paragraph of the Limit of Liability provision in the Underinsured Motorists  
 15 Coverage Endorsement is replaced by the following:

16 The limit of liability shown in the Schedule<sup>1</sup> or in the Declarations for each person for  
 17 Underinsured Motorists Coverage is our maximum limit of liability for all damages, including  
 18 damages for care, loss of services or death, arising out of "bodily injury" sustained by any one  
 19 person in any one accident. Subject to this limit for each person, the limit of liability shown in the  
 20 Schedule or in the Declarations for each accident for Underinsured Motorists Coverage is our  
 21 maximum limit of liability for all damages for "bodily injury" resulting from any one accident. This  
 is the most we will pay regardless of the number of:

1. "Insureds;"
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the accident.

22 51. Limit of Liability language, standing alone, does not preclude stacked  
 23 Underinsured Motorist coverage. *See Franklin*, 532 P.3d at 1146 ¶ 2; *Lindsey*, 897 P.2d at  
 24 633; *Heaton*, 2021 WL 6805629.

25 52. Elsewhere, the policy disavows stacking of multiple policies applicable to  
 26 the accident and permits a selection between policies, but it makes no mention of stacking  
 27 coverages for multiple vehicles under a single policy:  
 28



## TWO OR MORE AUTO POLICIES

If this policy and any other auto insurance policy issued to you by us apply to the same accident, only one of the policies will apply to the accident. You will select the one policy that will apply.

53. The declarations page of the Liberty policy also does not disavow stacking, nor does it inform the insured of their “right to select one policy or coverage.”

54. Liberty also did not, within 30 days of being notified of the October 16, 2016 accident at issue here, send Plaintiff or any other insured under the Policy any written notice of Plaintiff’s “right to select one policy or coverage.”

55. Accordingly, stacked Underinsured Motorist coverage for Plaintiff is permitted. *See* A.R.S. § 20-259.01(H); *Franklin*, 532 P.3d at 1146, 1148 ¶¶ 2, 11; *Heaton*, 2021 WL 6805629; *Schwallie*, 2013 WL 4478697.

56. Liberty failed to adequately investigate, reasonably evaluate, and promptly pay stacked Underinsured Motorist coverage to Plaintiff.

57. Liberty also failed to inform the Plaintiff of the availability of or potential for stacked Underinsured Motorist coverage in violation of Arizona law.

58. Liberty’s silence in that regard, its written statements to Plaintiff that “the plain language of the policy and Arizona law do not permit Mr. Capane to stack the UIM coverages applicable to the three vehicles covered by the policy,” and its Policy and notice practice that failed to comply with A.R.S. § 20-259.01(H), collectively and individually amount to a misrepresentation, failure to disclose, and/or concealment of the availability of or potential for stacked Underinsured coverage, in violation of Arizona law.

59. So doing, Liberty failed, as to stacked UM/UIM coverage, to identify and fully disclose all pertinent benefits, coverages, and policy provisions; failed to inform the insured accurately about available coverages and benefits; misled its insureds; and misrepresented and concealed pertinent benefits, coverages, or policy provisions.

60. Liberty also failed, as to stacked UM/UIM coverage, to work to find all available coverage for the insured; failed to reasonably investigate the claim and applicable

1 law; failed to construe the policy in accordance with known law; failed to treat its insured  
2 fairly and reasonably; failed to give the insured's interests equal consideration; and on  
3 information and belief, failed to conduct any investigation let alone undertake a reasonable  
4 coverage investigation of available coverage.

5 61. As a general practice, whenever Liberty fails to comply with its statutory  
6 obligation to advise its insureds in writing within 30 days after receiving notice of an  
7 accident that they have a right to select one policy or coverage, Liberty does not provide  
8 stacked benefits unless specifically requested by the insured to do so.

9 62. These were simple options—informing the insureds of their rights in the  
10 policy itself or by written notice within 30 days after notice of the accidents—and either  
11 approach would have precluded stacking the UM/UIM coverages on class members'  
12 vehicles covered under the Liberty Policies.

13 63. Liberty, having failed to avail itself of either option under Arizona law, must  
14 stack the UM/UIM coverages for multiple vehicles insured under the Liberty Policies.

15 64. Liberty never disclosed or provided stacked UIM coverages to Plaintiff.  
16 Liberty, therefore, has denied Plaintiff benefits to which he is entitled under the Liberty  
17 Policy and Arizona law.

18 65. As a general practice, Liberty does not disclose or provide stacked UM/UIM  
19 coverages to Plaintiff or class members under the Liberty Policies after a covered accident.  
20 Liberty has provided stacked limits to insureds who specifically requested it do so, in effect  
21 silencing the squeaky wheels while continuing to underpay Plaintiff and virtually all class  
22 members in violation of its contractual and legal duties as a first-party insurer.

23 66. Liberty knew or should have known that its policy interpretation and failures  
24 to disclose and pay stacked UM/UIM coverages violated Arizona law.

25 67. Liberty knew of the requirements of A.R.S. § 20-259.01(H), which have been  
26 in place since 1997.

27 68. Many other Arizona auto insurers (*e.g.*, Farmers, Bristol West, Progressive,  
28 USAA, State Farm, GEICO, Auto Owners and United) have drafted their auto policies



1 (including single and multi-vehicle policies) to notify their insureds in writing of the right  
2 to select which policy or coverage will apply. For example, the Bristol West policy  
3 provides:

4           The limit of liability under this Part C is not increased if more  
5           than one vehicle is covered under this policy.

6           In no event shall the limit of liability for two or more motor  
7           vehicles or two or more policies be added together, combined,  
8           or stacked to determine the limit of insurance coverage  
9           available as Uninsured Motorist Coverage or Underinsured  
10          Motorist Coverage benefits.

11          If multiple policies or coverages purchased from us by an  
12          insured person on different vehicles provide Uninsured  
13          Motorist Coverage or Underinsured Motorist Coverage to an  
14          accident or claim, then the insured person shall select one of  
15          these policies or coverages to apply. Only one coverage  
16          selected by the insured person shall apply.

17          69. Liberty knew or should have known of the efforts by other Arizona auto  
18          insurers to comply with A.R.S. § 20-259.01(H).

19          70. Liberty chose not to follow those practices.

20          71. Liberty on limited occasions in Arizona has acknowledged, tendered, or paid  
21          stacked UM or UIM limits when requested by the insured to do so.

22          72. Liberty failed to pay Plaintiff and the Class stacked UM/UIM coverages to  
23          which they were entitled.

24          73. Liberty failed, as to Plaintiff and the Class, to investigate, identify,  
25          acknowledge, and disclose the existence of stacked UM/UIM coverages under the Liberty  
26          Policies.

27          74. Liberty and its agents violated Administrative Code § 20-6-801(D)(1) and  
28          (D)(2) by failing to investigate, identify, acknowledge, and disclose stacked UM/UIM  
29          coverages under the Liberty Policies.

30          75. On information and belief, Liberty received legal advice that its policy  
31          language and failure to give proper notice violated Arizona law, but Liberty disregarded

1 the advice it received and willfully failed to investigate and inform itself on Arizona law  
2 on stacked UM/UIM coverages, as to Plaintiff and the Class.

3 76. On information and belief, Liberty received legal advice regarding its  
4 obligations to provide stacked UM/UIM coverages and was advised that its failures to pay  
5 stacked UM/UIM coverages likely violated Arizona law. Liberty disregarded that legal  
6 advice.

7 77. On information and belief, Liberty willfully concealed the existence of  
8 stacked UM/UIM coverages from Plaintiff and the Class.

9 78. Liberty has nonetheless failed to search and reopen its closed claim files to  
10 identify, adjust and pay stacked UM or UIM benefits it owes under Arizona law. Any  
11 insured who received the maximum amount of a single UM/UIM policy limit and who had  
12 other vehicles or policies providing UM/UIM coverage would be entitled to notice of the  
13 additional coverage available and doubtless entitled to additional benefits.

14 79. Liberty's failures are both unreasonable, intentional, and in conflict with  
15 well-established Arizona law.

16 80. Liberty's failures also violate its duty to find coverage, to reasonably  
17 investigate the claim, disclose the proper law and facts, and not misrepresent or conceal  
18 pertinent policy provisions and benefits available under its policies.

19 81. Liberty's concealment of its statutory obligation and its actual coverage  
20 limits, and its unreasonable and unlawful refusal to investigate, identify, acknowledge,  
21 disclose and pay stacked UM/UIM coverages, have led to underpaying Plaintiff's UIM  
22 claim, as well as the claims of hundreds or thousands of other UM/UIM claims, and thus  
23 to Liberty paying tens or hundreds of millions of dollars less for UM and UIM claims than  
24 its insureds are entitled to under the terms of their standardized policies and Arizona law.

## 25 **VI. DEFENDANTS' MISCONDUCT REGARDING STACKING IS SYSTEMIC**

26 82. Plaintiff's LM General policy is a standardized auto policy with the same or  
27 substantially similar provisions in relevant part as the auto policies used by all Liberty  
28 during the relevant time period ("the Liberty Policies").

1           83. The Liberty Policies do not comply with A.R.S. § 20-259.01(H) because (1)  
2 they contain no plain, express, and unambiguous disavowal of stacking and (2) they do not  
3 inform the insured claimants of their right to select one UM/UIM coverage as between  
4 multiple vehicles insured under the policy in the event of a covered accident. As used  
5 herein, the “Liberty Policies” means any auto policy issued to an Arizona insured by any  
6 and all Liberty entities under common management, sharing a common core of operations,  
7 or acting pursuant to common, communicated principles of policy interpretation and claims  
8 adjustment. Every one of these entities’ policies fail to include a statement informing the  
9 insureds of their right to select one UM/UIM coverage, as between multiple vehicles  
10 insured under their policies, in the event of a covered accident.

11           84. Liberty, as a standard practice for many years, also did not advise insured  
12 claimants, in writing within 30 days of receiving notice of the covered accident, of their  
13 “right to select one policy or coverage” as required by A.R.S. § 20-259.01(H).

14           85. Liberty, having failed to avail itself of either option under Arizona law, must  
15 stack the UM/UIM coverages for multiple vehicles insured under the Liberty Policies. *See*  
16 A.R.S. § 20-259.01(H); *Franklin*, 532 P.3d at 1146, 1148 ¶¶ 2, 11; *see also Heaton*, 2021  
17 WL 6805629; *Schwallie*, 2013 WL 4478697.

18           86. Liberty knew of the requirements of A.R.S. § 20-259.01(H), which have been  
19 in place since 1997.

20           87. As a standard practice, Liberty chose not to comply with those requirements.

21           88. As a standard practice, Liberty failed to adequately investigate and  
22 reasonably evaluate stacked UM/UIM coverage to which Plaintiff and the Class were  
23 entitled.

24           89. As a standard practice, Liberty failed to pay, promptly or otherwise, Plaintiff  
25 and the Class stacked UM/UIM coverage to which they were entitled.

26           90. As a standard practice, whenever Liberty failed to comply with its statutory  
27 obligation to advise its insureds in writing within 30 days after receiving notice of an  
28 accident that they have a right to select one policy or coverage, Liberty did not provide

1 stacked benefits except in the rare instance when specifically demanded by the insured  
2 claimant to do so.

3 91. Liberty on limited occasions in Arizona has acknowledged, tendered, or paid  
4 stacked UM or UIM limits in the rare circumstance when demanded by the insured  
5 claimant to do so.

6 92. Liberty did so voluntarily, having concluded the applicable Liberty Policies  
7 provided stacked UM/UIM coverage, and without issuing a reservation of rights or  
8 advising its insured that it did not believe stacked UM/UIM coverage was available.

9 93. Liberty effectively silenced the squeaky wheels while continuing to underpay  
10 the vast majority Class members in violation of its contractual, good faith, and legal duties  
11 as a first-party insurer.

12 94. As a matter of standard claims handling practice, if the insured claimant did  
13 not specifically request stacked Uninsured Motorist coverage or stacked Underinsured  
14 Motorist coverage, Liberty only paid the single vehicle UM or UIM limit rather than  
15 stacked UM/UIM coverage.

16 95. Liberty did not notify Plaintiff or any other Class member that its Policies  
17 did not comply with A.R.S. § 20-259.01(H) and that if the required notice was not sent  
18 within 30 days of the accident, Liberty would, under Arizona law, owe to its insured  
19 claimants stacked UM/UIM coverage.

20 96. Liberty knew or should have known that its failures to adequately investigate,  
21 reasonably evaluate, fully disclose, and promptly pay stacked UM/UIM coverage violated  
22 Arizona law.

23 97. Liberty has one of the largest market shares for private passenger automobile  
24 policies in Arizona and nationwide.

25 98. Liberty knew or should have known of the efforts by other major Arizona  
26 auto insurers to comply with A.R.S. § 20-259.01(H).

27 99. Liberty chose not to follow those practices for their personal auto policies.

28 100. On information and belief, Liberty received legal advice as to whether it was

1 complying with Subsection (H) and stacking rules as to private passenger automobile  
2 claims in Arizona.

3 101. On information and belief, Liberty received legal advice on whether it had  
4 any obligation to provide stacked UM/UIM coverage in Arizona.

5 102. On information and belief, Liberty received legal advice that its policy  
6 language violated Arizona law on stacking.

7 103. On information and belief, Liberty received legal advice that its failure to  
8 give proper notice violated Arizona law including Subsection (H).

9 104. On information and belief, Liberty received legal advice that its failure to  
10 pay stacked UM/UIM coverage likely violated Arizona law including Subsection (H).

11 105. Liberty disregarded the legal advice it received, except in the rare  
12 circumstance when the insured claimant demanded stacked UM/UIM coverage.

13 106. Alternatively, Liberty recklessly or willfully failed to investigate, evaluate,  
14 and inform itself on Arizona law on stacked UM/UIM coverage as to Plaintiff and the  
15 Class.

16 107. Alternatively, Liberty knew or should have known its policy interpretation  
17 as to stacked UM/UIM coverage violated Arizona law.

18 108. Liberty's standard practice was to not inform their insureds of the availability  
19 of or potential for stacked UM/UIM coverage.

20 109. Liberty did so despite (a) knowing, based on legal advice, that stacked  
21 UM/UIM coverage was available to its insureds under Arizona law, and (b) acknowledging  
22 the existence of stacked UM/UIM coverage for the rare insured who demanded it.

23 110. Liberty affirmatively misrepresented, failed to disclose, and/or concealed the  
24 availability of or potential for stacked UM/UIM coverage in communications with  
25 UM/UIM claimants.

26 111. In so doing, Liberty failed, as to stacked UM/UIM coverage, to identify and  
27 fully disclose all pertinent benefits, coverages, and policy provisions; failed to inform the  
28 insured accurately about available coverages and benefits; misled its insureds; and

1 misrepresented and concealed pertinent benefits, coverages, or policy provisions.

2 112. Liberty also failed, as to stacked UM/UIM coverage, to work to find all  
3 available coverage for the insured; failed to adequately investigate and reasonably evaluate  
4 the claim and applicable law; failed to construe the Liberty Policies in accordance with  
5 known law; failed to treat its insureds honestly, fairly and reasonably; forced insureds to  
6 go through needless adversarial hoops to achieve their rights under the policy; and failed  
7 to give the insureds' interests equal consideration.

8 113. Any insured claimant who received the maximum amount of a single  
9 UM/UIM policy limit and who had other vehicles providing UM/UIM coverage was  
10 entitled to notice of the additional coverage available and doubtless entitled to additional  
11 benefits.

12 114. Liberty and its agents violated Arizona Administrative Code ("AAC") § 20-  
13 6-801(D)(1) by failing to fully disclose to Plaintiff and the Class the availability of or  
14 potential for stacked UM/UIM coverage under the Liberty Policies.

15 115. On information and belief, Liberty has a standard practice of disclosing to  
16 insureds who have had an accident the availability of or potential for other policy benefits  
17 they may be entitled to, such as medical payments coverage, collision, rental car, or rental  
18 car.

19 116. Liberty and its agents violated AAC § 20-6-801(D)(2) by concealing from  
20 Plaintiff and the Class the availability of or potential for stacked UM/UIM coverage under  
21 the Liberty Policies.

22 117. Good faith claims handling required Liberty to implement a standard practice  
23 of always informing insured claimants to whom a single limit of UM or UIM coverage is  
24 tendered (a) the availability of or potential for stacked UM/UIM coverage under the Liberty  
25 Policies, (b) the insurer's practice of paying these claims when asked and supported by  
26 evidence, (c) additional monies may be owed to this claimant depending on the facts of  
27 their case, and (d) the claimant may submit additional documentation for that purpose,  
28 including medical bills and lost income.

118. Liberty does not have any such good faith standard practice.

119. To the contrary, Liberty had a standard practice of misrepresenting to Class members the potential for stacked UM/UIM coverage under the Liberty Policies.

120. Despite having paid stacking claims in Arizona and received legal advice on its stacking obligations in this State, Liberty has failed to search and reopen its closed claim files to investigate, evaluate, and pay stacked UM/UIM coverage benefits it owes under Arizona law.

121. Liberty knew or should have known that its standard claims handling practices as to stacking did not comply with Subsection (H).

122. Liberty's actions were unreasonable, intentional, knowing, in reckless disregard of its insureds' rights, and in conflict with well-established Arizona law.

123. Liberty's systemic misconduct described above has led to underpaying Plaintiff's UM and UIM claims and thousands of other UM/UIM claims, and thus resulted in Liberty paying tens or hundreds of millions of dollars less for UM and UIM claims than its insureds are entitled to under the terms of their standardized policies and Arizona law.

## **VII. CLASS ACTION ALLEGATIONS**

124. This action is brought and may properly be maintained as a class action, as it satisfies the numerosity, commonality, typicality, and adequacy requirements of Federal Rule of Civil Procedure 23. Plaintiff brings all claims herein individually and as a class action (for the class defined below), pursuant to Rule 23.

125. The "Class" consists of the following:

From the earliest possible date provided by law to the date of judgment, all persons who (1) were insured under at least one policy insuring multiple vehicles issued in Arizona by any Defendant, and (2) who experienced a covered loss where the insured person received UM or UIM benefits and either:

(1) the UM or UIM benefits were limited to the limits of coverage of a single vehicle, or

(2) the UM or UIM benefits were reduced due to apportionment among multiple claimants, with the collective



1 claim limited to the limits of coverage of a single vehicle.

2  
3 126. The “Bad Faith Subclass” consists of the following:

4 All Class members whose breach of contract claims for stacked  
5 UM/UIM coverage are found by the Court to be barred by  
6 A.R.S. § 12-555.

7 127. While the exact number of members cannot be determined, the class consists  
8 at least hundreds of Arizona residents. The members of the class are therefore so numerous  
9 that joinder of all members is impracticable. The exact number of class members can  
10 readily be determined by documents produced by Liberty.

11 128. There are questions of fact and law common to the class, including the  
12 following:

- 13 i. Whether the Liberty Policy complies with A.R.S. § 20-  
14 259.01, allowing Liberty to preclude stacking;
- 15 ii. Whether Liberty failed to send timely notice to its  
16 insureds after an accident of their right to select one  
17 UM/UIM policy or coverage;
- 18 iii. Whether Liberty failed to stack UM/UIM policies or  
19 coverages;
- 20 iv. Whether Liberty knew or should have known its failure  
21 to pay stacked UM/UIM coverage violated Arizona law;
- 22 v. Whether Liberty disregarded the legal advice it received  
23 about stacking;
- 24 vi. Whether Liberty recklessly or willfully failed to  
25 investigate, evaluate, and inform itself on Arizona law  
26 on stacked UM/UIM coverages;
- 27 vii. Whether Liberty or its agents systematically failed to  
28 fully disclose the availability of or potential for stacked  
UM/UIM coverage under the Liberty Policies;
- viii. Whether Liberty or its agents systematically  
misrepresented, failed to disclose, and/or concealed the  
availability of or potential for stacked UM/UIM  
coverage under the Liberty Policies in communications  
with insureds;
- ix. Whether, through the foregoing practice, Liberty  
breached its contracts with its insureds;



- x. Whether, through the foregoing practice, Liberty breached the implied covenant of good faith and fair dealing and violated statutes governing unfair claims settlement practices including A.R.S. § 20-461, and Arizona Administrative Code § 20-6-801(D)(1) and (D)(2);
- xi. Whether, through the foregoing practice, Liberty caused and will continue to cause harm to its insureds;
- xii. Whether Liberty is obligated to search or reopen its closed claim files to identify, adjust and pay stacked UM or UIM benefits they owe under Arizona law;
- xiii. Whether Plaintiff and the Class are entitled to declaratory relief;
- xiv. Whether Liberty's above-referenced conduct as to the Class warrants an award of compensatory damages;
- xv. Whether Liberty's above-referenced conduct as to the Class warrants an award of punitive damages; and
- xvi. Whether Plaintiff and the class are entitled to an award of attorney's fees.

129. There are additional questions of law and fact common to the Bad Faith Subclass, including the following:

Whether Class members whose claims for stacked UM/UIM coverage are held to be barred by A.R.S. § 12-555 may join in the class-wide request for relief because of Liberty's systematic concealment, misrepresentation, failure to fully disclose, and Liberty's misleading behavior as to stacked UM/UIM coverage.

130. Plaintiff has the same interests in this matter as all other members of the class, and his claims are typical of those of all members of the class. Plaintiff's claims are coincident with and not antagonistic to those of other class members he seeks to represent. Plaintiff and all class members have been harmed by Liberty's common course of conduct as outlined herein. The harm to each class member was caused by Liberty's wrongful conduct.

131. Plaintiff is committed to pursuing this action and has retained competent class counsel experienced in insurance litigation and class action litigation. Plaintiff will fairly and adequately represent the interests of the class members.

1           132. Class certification is appropriate under Federal Rule of Civil Procedure  
2 23(b)(1)(A) because separate actions by individual class members would create a risk of  
3 inconsistent or varying adjudications with respect to individual class members that would  
4 establish incompatible standards of conduct for the party opposing the class.

5           133. Class certification is appropriate under Federal Rule of Civil Procedure  
6 23(b)(2) because Liberty's actions are generally applicable to the class as a whole, and  
7 Plaintiff seeks, inter alia, equitable remedies with respect to the class as a whole.

8           134. Class certification is appropriate under Federal Rule of Civil Procedure  
9 23(b)(3) because the questions of law or fact common to class members predominate over  
10 any questions affecting only individual members, and a class action is superior to other  
11 available methods for fairly and efficiently adjudicating the controversy.

12           135. Class certification is appropriate under Federal Rule of Civil Procedure  
13 23(c)(4) because resolution of a key fact issue common to the Class—did Liberty comply  
14 with Subsection (H) and did Liberty's conduct constitute bad faith under Arizona law—  
15 will materially advance the litigation.

16           136. Absent a class action, most of the members of the class will remain ignorant  
17 of their rights and/or find the cost of litigating their claims prohibitive. Therefore, they will  
18 have no effective remedy. The class treatment of common questions of law and fact  
19 conserves the resources of the courts and the litigants and promotes consistency and  
20 efficiency of adjudication. Liberty has misrepresented, failed to disclose, and/or concealed  
21 the rights of Class members and those class members will remain ignorant of their potential  
22 claims against Liberty unless court-supervised notice is ordered.

23           137. Plaintiff will fairly and adequately represent and protect the interests of the  
24 Class. Plaintiff has retained counsel with substantial experience in prosecuting complex  
25 litigation and class actions involving the insurance industry. Plaintiff and his counsel are  
26 committed to vigorously prosecuting this action on behalf of other respective Class  
27 members and have the financial resources to do so. Neither Plaintiff nor his counsel have  
28 any interests adverse to those of other members of the Class.

**FIRST CLAIM FOR RELIEF  
(DECLARATORY JUDGMENT)**

138. Plaintiff incorporates by reference all prior allegations in this Complaint as if fully set forth herein.

139. Plaintiff and the Class have standing to seek this relief because there is an actual controversy between the parties as to the proper interpretation and enforceability of the Liberty Policies under Arizona law, the application of A.R.S. § 20-259.01(H) to this case, Liberty's obligation to disclose the existence of stacked UM/UIM coverages, and whether Plaintiff and the Class are entitled to stack UM/UIM coverages for multiple insured vehicles.

140. Under the circumstances, Plaintiff and the Class are entitled to a judicial declaration of their rights under the Liberty Policies, specifically that they are entitled to stacked UM/UIM coverage for multiple insured vehicles under the Liberty Policies; that Liberty is required to fully disclose the availability of or potential for stacked coverages to them; and that Liberty is required to search and reopen its closed claim files to adequately investigate, reasonably evaluate, and promptly pay stacked UM/UIM coverage benefits.

141. This claim arises out of contract and Plaintiff and the Class therefore are entitled to attorney's fees under A.R.S. § 12-341.01.

**SECOND CLAIM FOR RELIEF  
(BREACH OF CONTRACT)**

142. Plaintiff incorporates by reference all prior allegations in this Complaint as if fully set forth herein.

143. Each Class member (including Plaintiff) is a party to one or more of the standardized Liberty Policies.

144. Liberty breached those contracts by failing to pay stacked UM/UIM coverage to Plaintiff and the Class.

145. Liberty further breached those contracts by failing to investigate, evaluate, and inform itself on Arizona law on stacked UM/UIM coverage; failing to fully disclose

1 the availability of or potential for stacked UM/UM coverage under the Liberty Policies;  
 2 misrepresenting, failing to disclose, and/or concealing the availability of stacked UM/UM  
 3 coverage in its communications with the Plaintiff and Class members; and denying the  
 4 existence of any such stacked limits.

5 146. The Class (including Plaintiff) has been and continues to be damaged by  
 6 Liberty's breaches of contract.

7 147. This claim arises out of contract and Plaintiff and the Class therefore are  
 8 entitled to attorney's fees under A.R.S. § 12-341.01.

9 **THIRD CLAIM FOR RELIEF**  
 10 **(BAD FAITH AS TO THE CLASS)**

11 148. Plaintiff incorporates by reference all prior allegations in this Complaint as  
 12 if fully set forth herein.

13 149. Inherent and implied in the Liberty Policies is a covenant of good faith and  
 14 fair dealing owed to Plaintiff and the Class. Under the duty of good faith and fair dealing,  
 15 an insurer must deal fairly with an insured, giving equal consideration in all matters to the  
 16 insured's interests. See, e.g., Rawlings, 726 P.2d at 572-73.

17 150. The tort of bad faith arises when an insurer "intentionally denies, fails to  
 18 process or pay a claim without a reasonable basis." *Noble v. Nat'l Am. Life Ins. Co.*, 624  
 19 P.2d 866, 868 (Ariz. 1981); *Wood v. Allstate Mut. Fire Ins. Co.*, No. CV-11-2380-PHX-  
 20 GMS, 2012 WL 2798761, at \*2 (D. Ariz., July 09, 2012). "The appropriate inquiry is  
 21 whether there is sufficient evidence from which reasonable jurors could conclude that in  
 22 the investigation, evaluation, and processing of the claim, the insurer acted unreasonably  
 23 and either knew or was conscious of the fact that its conduct was unreasonable." *Zilisch*,  
 24 995 P.2d at 280 ¶ 22. Bad faith can be established by showing "(1) the absence of a  
 25 reasonable basis for denying benefits, and (2) the defendant's knowledge or reckless  
 26 disregard of the lack of a reasonable basis for denying the claim." *Wood*, 2012 WL  
 27 2798761, at \*2. In addition, under Arizona law, bad faith can be established by showing  
 28

1 that the insurer lacked a “founded belief” for its actions because of an inadequate  
2 investigation. *Rawlings*, 726 P.2d at 576.

3 151. Liberty breached the duty of good faith and fair dealing by failing to  
4 adequately investigate its stacking obligations, reasonably evaluate those obligations, and  
5 promptly pay stacked UM/UIM coverage to Plaintiff and Class members.

6 152. Liberty did so despite knowing of, recklessly disregarding, or failing to  
7 investigate, evaluate, and inform itself of its obligation to do so under Arizona law and  
8 considering its failure to comply with Subsection (H).

9 153. The tort of bad faith also arises, independent of a claim denial or failure to  
10 pay, when the insurer fails to properly “inform the insured about the extent of coverage  
11 and his or her rights under the policy and do so in a way that is not misleading.” *Nardelli*,  
12 277 P.3d at 800 ¶ 54, citing *Rawlings*, 726 P.2d at 572-573. *See also Deese v. State Farm*.  
13 *Mut. Auto. Ins. Co.*, 838 P.2d 1265, 1271 (Ariz. 1992) (Martone, J., concurring in the  
14 judgment) (describing *Rawlings* as follows: “In *Rawlings*, the contract claim was for fire  
15 insurance under the policy. The bad faith tort claim was for failing to disclose to the insured  
16 favorable information which would have helped the insured in a separate dispute with its  
17 neighbor. These were wholly different claims and thus Farmers’ payment of the contract  
18 claim was irrelevant to the assertion of the bad faith tort claim. In that context, the contract  
19 claim was not an essential ingredient of the tort claim.”) (internal citations omitted);  
20 *Zilisch*, 995 P.2d at 279 ¶ 20 (“if an insurer acts unreasonably in the manner in which it  
21 processes a claim, it will be held liable for bad faith without regard to its ultimate merits”)  
22 (internal quotation omitted).

23 154. For example: “No insurer shall fail to fully disclose to first party claimants  
24 all pertinent benefits, coverages or other provisions of an insurance policy or insurance  
25 contract under which a claim is presented.” AAC § 20-6-801(D)(1), quoted in *Nardelli*,  
26 277 P.3d at 800 ¶ 55.

27 155. As a second example: “No agent shall conceal from first party claimants  
28 benefits, coverages or other provisions of any insurance policy or insurance contract when

1 the benefits, coverages or other provisions are pertinent to a claim.” AAC § 20-6-  
2 801(D)(2), quoted in *Nardelli, supra*.<sup>3</sup>

3 156. Liberty breached the duty of good faith and fair dealing by failing to fully  
4 disclose the availability of or potential for stacked UM/UIM coverage under the Liberty  
5 Policies; misrepresenting, failing to disclose, and/or concealing stacked UM/UIM coverage  
6 in their communications with Plaintiff and Class members; and denying the existence of  
7 any such stacked limits.

8 157. Liberty did so, even though they knew of, recklessly disregarded, or failed to  
9 investigate, evaluate, and inform themselves of their failure to comply with Subsection (H).

10 158. Liberty, therefore, acted in bad faith toward Plaintiff and the Class.

11 159. Plaintiff and the Class seek as compensatory damages the value of their  
12 unpaid UM/UIM stacking benefits under Arizona law.

13 160. Liberty’s conduct as to Plaintiff and the Class was aggravated, outrageous  
14 and consciously disregarded an unjustifiably substantial risk of significant harm to its  
15 insureds who are Class members.

16 161. Liberty is, therefore, liable to Plaintiff and the Class for punitive damages,  
17 which can be proven with common evidence.

18 162. This claim arises out of contract and Plaintiff and the Class therefore are  
19 entitled to attorney’s fees under A.R.S. § 12-341.01.

## 20 PRAYER FOR RELIEF

21 **WHEREFORE**, Plaintiff, both individually and on behalf of the Class, demands a  
22 trial by jury on all claims so triable, and respectfully request that the Court (i) certify the  
23 proposed Class under Federal Rules of Civil Procedure 23(b)(2), (b)(3), and/or (c)(4) for

24  
25 <sup>3</sup> See also cases cited in *Nardelli*, 277 P.3d at 800 ¶ 55; *Sarchett v. Blue Shield of Cal.*,  
26 233 Cal. Rptr. 76, 84-86, 729 P.2d 267, 275-77 (1987) (“important facet” of duty of equal  
27 consideration is “the duty reasonably to inform an insured of the insured’s rights and  
28 obligations under the insurance policy”); *State Farm Mut. Auto. Ins. Co. v. Shuman*, 370  
N.E.2d 941 (Ind. App. 1977) (sustaining punitive damages when insurer attempted to  
induce estate of insured decedent to settle claim without disclosing or explaining all  
benefits and estate representative “lacked the education and experience to understand the  
policy terms on her own”).

1 declaratory relief, injunctive relief, damages, and/or the determination of common issues,  
2 (ii) designate Plaintiff as representative of the Class, (iii) appoint Robert Carey or Hagens  
3 Berman as Class Counsel, and (iv) enter judgment in Plaintiff's favor against Liberty  
4 including the following relief:

- 5       A.     A declaratory judgment that Plaintiff and the Class are entitled to stack  
6             UM/UIM coverages for multiple insured vehicles under the Liberty Policies;  
7             that Liberty is required to fully disclose the availability of or potential for  
8             stacked coverages to them; and that Liberty is required to search and reopen  
9             its closed claim files to adequately investigate, reasonably evaluate, and  
10            promptly pay stacked UM or UIM benefits.
- 11       B.     Compensatory damages for the Class in an amount to be proven at trial.
- 12       C.     Punitive damages as permitted by law.
- 13       D.     An award of Plaintiff's attorney's fees pursuant to any applicable authority  
14             including but not limited to A.R.S § 12-341.01.
- 15       E.     Statutory interest pursuant to A.R.S. § 20-462(A).
- 16       F.     Costs and expenses incurred herein to the maximum extent permitted by law.
- 17       G.     Pre-judgment and post-judgment interest to the maximum extent permitted  
18             by law.
- 19       H.     Such other relief as the Court deems just and proper.

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1 Dated: August 6, 2024

Respectfully submitted by,

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