

# SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

## NOTICE TO DEFENDANT:

### (AVISO AL DEMANDADO):

UNITED SERVICES AUTOMOBILE ASSOCIATION, an unincorporated association with members in every State; XACTWARE SOLUTIONS, INC., a Delaware Corporation; and DOES 1-100, inclusive,

### YOU ARE BEING SUED BY PLAINTIFF:

### (LO ESTÁ DEMANDANDO EL DEMANDANTE):

ROBERT A. BIVIN and KATRINA J. BIVIN, husband and wife; WILLIAM L. EDELEN III and ROXANNE G. EDELEN, as trustees for the WILLIAM L. EDELEN; "Additional Parties Attachment form is attached"

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

**¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

CASE NUMBER:  
(Número del Caso):

Superior Court of California, County of Sonoma  
600 Administration Drive  
Santa Rosa, California 95403-2818

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Michael J. Bidart #60582 Telephone: (909) 621-4935 Facsimile: (909) 625-6915

SHERNOFF BIDART ECHEVERRIA LLP

600 South Indian Hill Boulevard, Claremont, California 91711

DATE: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy  
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

## NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):  
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):
4. ☐ by personal delivery on (date):

SHORT TITLE: Bivin, et al. v. United Services Automobile Association, et al.	CASE NUMBER:
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**INSTRUCTIONS FOR USE**

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

**List additional parties** (Check only one box. Use a separate page for each type of party.):

☒ Plaintiff
 ☐ Defendant
 ☐ Cross-Complainant
 ☐ Cross-Defendant

and ROXANNE G. EDELEN TRUST; LAURA T. MILLS and PAUL R. KITZEROW, wife and husband; KENNETH L. MORSE and PATRICIA L. MORSE, husband and wife; LEO QUINN and MAUREEN QUINN, husband and wife; SCOTT STANFIELD, an individual; ANNE B. SHEPPERD and CHARLES SHEPPERD, wife and husband; STEVE DIEHL and NIESSIA DIEHL, husband and wife; LYNN VAN FLIET, an individual; ISAAC "SKIP" EPPERLY and MERRI BETH CALLENDER, husband and wife.

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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SONOMA

ROBERT A. BIVIN and KATRINA J. BIVIN,  
husband and wife; WILLIAM L. EDELEN  
III and ROXANNE G. EDELEN, as trustees  
for the WILLIAM L. EDELEN and  
ROXANNE G. EDELEN TRUST; LAURA T.  
MILLS and PAUL R. KITZEROW, wife and  
husband; KENNETH L. MORSE and  
PATRICIA L. MORSE, husband and wife;  
LEO QUINN and MAUREEN QUINN,  
husband and wife; SCOTT STANFIELD, an  
individual; ANNE B. SHEPPERD and  
CHARLES SHEPPERD, wife and husband;  
STEVE DIEHL and NIESSIA DIEHL,  
husband and wife; LYNN VAN FLIET, an  
individual; ISAAC "SKIP" EPPERLY and  
MERRI BETH CALLENDER, husband and  
wife;

Plaintiffs,

v.

UNITED SERVICES AUTOMOBILE  
ASSOCIATION, an unincorporated

CASE NO.

**COMPLAINT AND DEMAND FOR  
JURY TRIAL:**

1. BREACH OF IMPLIED COVENANT  
OF GOOD FAITH AND FAIR  
DEALING;
2. FRAUD—INTENTIONAL  
MISREPRESENTATION;
3. FRAUD—FALSE PROMISE;
4. NEGLIGENT  
MISREPRESENTATION;
5. NEGLIGENCE;
6. VIOLATION OF CALIFORNIA  
UNFAIR COMPETITION LAW;
7. REFORMATION

1 association with members in every State;  
2 XACTWARE SOLUTIONS, INC., a  
3 Delaware Corporation; and DOES 1-100,  
4 inclusive

5  
6 Defendants.

## 7 INTRODUCTION

8 1. Author George A. Moore said, "A man travels the world over in search of  
9 what he needs and returns home to find it." Thousands of California Wine Country  
10 residents, however, cannot return home. Worse yet, if they are insured by Defendant  
11 United Services Automobile Association ("USAA"), they are "underinsured"—meaning  
12 that they cannot replace or rebuild their homes to their pre-loss condition. Why?  
13 Because USAA, through its use of a home valuation software called "Xactware,"  
14 systematically under-estimated the replacement cost of its policyholders' homes,  
15 despite its representation that it was using an "outstanding" and dependable valuation  
16 tool. As a result, USAA policyholders were lulled into selecting USAA-recommended  
17 policy limits insufficient to cover the total replacement cost of their homes, despite  
18 having contracted with USAA for that specific purpose. As a result, USAA  
19 policyholders are underinsured and unprotected.

20 2. USAA knew, or should have known, that its recommended policy limits  
21 would be insufficient to cover the total replacement cost of its policyholders' homes,  
22 which set in motion an illusory coverage scheme. For example, USAA offered some  
23 insureds an endorsement called "Home Protector Coverage," which is fraught with  
24 problems. First, in order for an insured to receive the additional 25% extension in  
25 coverage, the insured must agree to insure the property for the full replacement cost at  
26 the time the policy is issued. Second, after paying the insured only the actual cash  
27 value of the loss—after depreciation—USAA requires the policyholder to go "out-of-  
28 pocket" and personally pay to repair or replace the home, before USAA actually pays  
back its insured under the extended coverage benefit. In other words, USAA

1 perpetuated a scheme whereby its policyholders were paying premiums for certain  
2 coverages that USAA, by its actions and omissions, generally prevents its policyholders  
3 from ever realizing. Therefore, by its conduct, USAA has and continues to reap  
4 enormous financial benefit to the detriment of its insureds.

5 3. By this Complaint, certain USAA policyholders who lost their homes as a  
6 result of the recent "Wine Country Wildfires" seek to have USAA adjust their claims  
7 without application of the inadequate limits set forth in their homeowners insurance  
8 policies.

9 **THE "WINE COUNTRY WILDFIRES"**

10 4. In October 2017, the State of California experienced the largest and most  
11 destructive fire season in its history. Beginning on October 8, 2017 and continuing  
12 throughout the month, 250 wildfires ripped across the state of California. The most  
13 destructive wildfires raged in the Northern California Wine Country, burning over  
14 245,000 acres and destroying approximately 8,900 structures. Over 11,000 firefighters  
15 battled the blazes. The wildfires forced over 100,000 people to evacuate their homes.  
16 Sadly, many of the evacuees returned to find their homes burned to the ground.

17 5. In Northern California, three major fires consumed the California Wine  
18 Country. The most destructive fire, the "Tubbs Fire," started on October 8, 2017. This  
19 fire burned between Calistoga and Santa Rosa, California, charring 36,807 acres,  
20 destroying 5,600 structures, and killing 22 people. Most of the structure damage  
21 occurred in three densely-populated areas of Santa Rosa, California: Coffey Park,  
22 Fountaingrove, and Larkfield-Wikiup.

23 6. The "Atlas Fire" also began on October 8, 2017. It burned over 51,600  
24 acres, destroyed over 800 structures, and claimed six lives. The Atlas Fire's destruction  
25 was concentrated in areas northeast of the city of Napa. Specifically, the Atlas Fire  
26 destroyed homes near Vichy Springs and the Silverado Resort and Spa.

27 7. The "Nuns Fire," a third fire that started on October 8, 2017, became the  
28 largest of the Wine Country Fires as it merged with several small fires and ultimately

1 burned over 56,000 acres. This fire spread between Sonoma County and Napa County,  
2 killing residents and destroying approximately 1,000 structures. The Nuns Fire did its  
3 most concentrated damage outside of Trione-Annadel State Park, a few miles east of  
4 Santa Rosa, and in the nearby Kenwood community.

5 8. These Wine Country Fires were some of the most destructive fires in this  
6 State's history. Once beautiful communities, surrounded by lush, green hillsides and  
7 sprawling vineyards, have been reduced to ash. Northern California residents,  
8 however, are determined to rebuild their homes and to begin anew. Their efforts,  
9 unfortunately, have been thwarted by insurance companies such as USAA, who  
10 through their negligence, misrepresentations, omissions, and greed have harmed  
11 policyholders and short-circuited the rebuilding process. Defendants' acts have  
12 resulted in unthinkable losses, made all the worse because those losses were entirely  
13 avoidable, absent Defendants' wrongdoing.

#### 14 JURISDICTION AND VENUE

15 9. This Court has both subject matter and personal jurisdiction in this case  
16 pursuant to California Code of Civil Procedure section 410.10.

17 10. Plaintiffs are residents of Sonoma and Napa Counties. California State  
18 law, as embodied in California common law and statutory authority, controls and  
19 governs Plaintiffs' conduct because of their presence in, and contacts with, California.

20 11. USAA is a domiciliary of the State of California for purposes of  
21 jurisdiction. USAA is an unincorporated association with members in California.  
22 USAA is authorized to do business in the State of California and continues to conduct  
23 the business of insurance in the State of California and contracts in the State of  
24 California. USAA insures properties located in Sonoma County and Napa County,  
25 California. Moreover, California state law, as embodied in California common law and  
26 statutory authority, controls and governs USAA's conduct because of its presence in,  
27 and contacts with, California.  
28



1           20. Plaintiff Scott Stanfield, at all times material to the allegations of the  
2 Complaint, is the property owner and resident of the property located at 3628 Hemlock  
3 Court, Santa Rosa, Sonoma, CA, 95403.

4           21. Plaintiffs Anne B. Shepperd and Charles Shepperd, wife and husband, at  
5 all times material to the allegations of the Complaint, are the property owners and  
6 residents of the property located at 1935 Lyon Court, Santa Rosa, Sonoma, CA 95403.

7           22. Plaintiffs Steve Diehl and Niessia Diehl, husband and wife, at all times  
8 material to the allegations of the Complaint, are the property owners and residents of  
9 the property located at 1612 Redwood Hill Road, Santa Rosa, Sonoma, CA 95404.

10          23. Plaintiff Lynn Van Fliet, at all times material to the allegations of the  
11 Complaint, is the property owner and resident of the property located at 2189 Vintage  
12 Circle, Santa Rosa, Sonoma, CA 95404.

13          24. Plaintiffs Isaac "Skip" Epperly and Merri Beth Callender, husband and  
14 wife, are the property owners and residents of the property located at 1986 W.  
15 Bristlecomb Court, Santa Rosa, Sonoma, CA 95403.

16          25. Plaintiffs are informed and believe and thereon allege that USAA is, and  
17 at all relevant times was, an unincorporated association with members in every State.  
18 At all relevant times, USAA was authorized to transact business in the State of  
19 California, and USAA was, and is, transacting the business of insurance in the State of  
20 California. USAA is headquartered in San Antonio, Texas, and has offices throughout  
21 the United States and Europe.

22          26. Plaintiffs are informed and believe and thereon allege that defendant  
23 Xactware, Inc. is a Delaware corporation with its principal place of business in Lehi,  
24 Utah. Xactware, Inc.'s software, Xactware, is utilized in the State of California for  
25 various purposes, including the purpose of estimating the rebuilding cost of a home  
26 and establishing policy limits at point of sale. (Hereinafter, Xactware Solutions, Inc. and  
27 its program Xactware will be referred to collectively as "Xactware.")  
28



1           27.     The true names and capacities of Does 1 through 100, inclusive, whether  
2 individual, corporate, associate, partnership, sole proprietorship, or otherwise, are  
3 currently unknown to Plaintiffs, who therefore sue said defendants by such fictitious  
4 names. Plaintiffs will seek leave of court to amend this Complaint to show their true  
5 names and capacities when the same has been ascertained, or according to proof at the  
6 time of trial.

7           28.     Plaintiffs are informed and believe and thereupon allege that at all times  
8 mentioned herein, each of the defendants was the agent of each of the remaining  
9 defendants and, in doing the things hereinafter alleged, was acting within the course  
10 and scope of such agency and with the permission and consent of its co-defendants.

11           **GENERAL ALLEGATIONS REGARDING PLAINTIFFS' CLAIMS**

12           29.     Plaintiffs are, and at all times were, the designated and named insureds  
13 under homeowners insurance policies issued by USAA. The policies were in full force  
14 and effect at all times relevant to the allegations contained herein. Plaintiffs are  
15 informed and believe and thereon allege that the policies provide coverage to Plaintiffs  
16 for losses sustained to their homes and other property as a result of wildfires.

17           30.     Since Plaintiffs first purchased their policies, Plaintiffs have paid  
18 premiums and performed each act required on their part to keep their policies in full  
19 force and effect.

20           31.     USAA is a purveyor of a vital service—insurance—which is a quasi-public  
21 service. As a supplier of a public service, USAA must give as much consideration to the  
22 interests of its policyholders as it does to its own interests. The obligations of USAA go  
23 beyond meeting reasonable expectations of coverage; the obligations of good faith and  
24 fair dealing encompass qualities of decency and humanity inherent in the  
25 responsibilities of an insurer. Indeed, insurers hold themselves out as fiduciaries and  
26 holders of the public's trust, and therefore, must perform their obligations in good faith.  
27 The relationship between USAA and its insured is thus, at very least, a quasi-fiduciary  
28 relationship which imposes fiduciary-like duties on the insurer.

32. Because it is well-recognized that the relationship between the insurer and insured is characterized by unequal bargaining power, where the balance of power rests with the insurer, insurers, such as USAA, are bound to “special” and “heightened” duties akin to fiduciary duties. This duty is relevant to the insurer’s conduct during the offer and sale of a policy or certificate, as recognized by California Insurance Code section 785, subd. (b) (“Section 785”).

33. Pursuant to Section 785, insurers, brokers, and agents owe a special duty of honesty, good faith, and fair dealing to prospective insureds who are 65 years old or older, in addition to any other express or implied duty owed.

34. USAA actively undertook the duty to assist Plaintiffs by fully insuring their homes against wildfires or other causes of catastrophic loss. For example, USAA informed Plaintiffs that it added the “Wildfire Response Program endorsement” to Plaintiffs’ policies “as a benefit to [Plaintiffs] at no additional cost.” **EXHIBIT A**. In the “Wildfire Response Program” letter to Plaintiffs, USAA acknowledged the severe wildfire threat in Sonoma County and Napa County: “[w]ildfire is a growing threat in your area” as a result of “[w]arm weather, continued drought conditions, and a greater number of homes being built in a natural environment away from towns.” *Id.* USAA further stated, “We want to make sure we’re doing our part to help you protect your home.” *Id.* In other words, USAA represented that it was knowledgeable of the conditions threatening Plaintiffs’ homes, and expressed a willingness to undertake certain duties and responsibilities to protect Plaintiffs’ homes by establishing adequate policy limits.

**Exhibit A**

**Your Home Characteristics**

Our mission at USAA is to help protect your financial security. One way we do this is by helping you determine if you’re adequately covered in the event of a loss. We can calculate the minimum rebuilding cost of your home based on your home characteristics, but only you can decide if this is enough coverage. Our estimates are based on average construction costs and labor costs for geographic areas and may not reflect the unique features of your home or the area you live in.

35. Within Plaintiffs' homeowners insurance policies, USAA represents that its "mission ... is to help protect [its policyholders'] financial security." **EXHIBIT B.** "One way [USAA does] this is by helping [its policyholders] determine if [they are] adequately covered in the event of a loss." *Id.* Accordingly, USAA offers to "calculate the minimum rebuilding cost of [its policyholders'] home[s] based on [their] home characteristics ...." *Id.* Furthermore, USAA states that "[its] estimates are based on average construction costs and labor costs for geographic areas." *Id.* These representations are clearly set forth in USAA's "Your Home Characteristics" document, a document that is part of Plaintiffs' policies.

**Exhibit B**

**WILDFIRE RESPONSE PROGRAM**

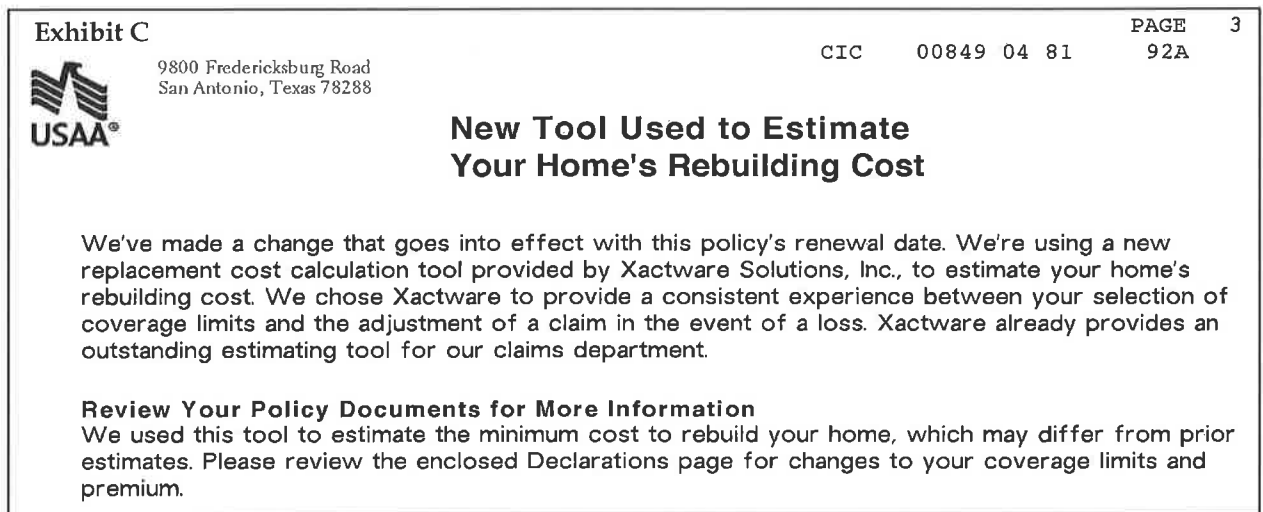
We have added Wildfire Response Program endorsement to your policy as a benefit to you at no additional cost.

Wildfire is a growing threat in your area. Warm weather, continued drought conditions and a greater number of homes being built in a natural environment away from towns contribute to higher risk of wildfire damage.

36. In the same "Your Home Characteristics" document, USAA provides a "total estimated rebuild cost" figure based on the summation of "labor, materials and supplies" costs; "contractors overhead & profit" costs; "permits and architects plans" costs; and "demolition and debris removal" costs. On the second page of the "Your Home Characteristics" document, USAA lists the following home characteristics: "year built"; "total square footage"; "number of stories"; "general shape and style"; "exterior finishes & features"; "interior finishes & features"; "kitchens and baths"; "exterior wall construction"; "foundation type"; "roof type"; "year roof installed/replaced"; "garage or carport type/style"; "floor covering materials"; "number of bathrooms"; "fireplaces"; and "chimneys". Accordingly, based on these delineated factors and as a result of USAA's affirmative acceptance of the duty to calculate appropriate policy limits, USAA purportedly calculates a total estimated rebuild cost figure for its policyholders' homes. USAA knows, or should have known, that its policyholders rely on the "total estimated

rebuild cost" figure it recommends when establishing the policy limits for its policyholders, such as Plaintiffs.

37. In Plaintiffs' policies, another document exists entitled "New Tool Used to Estimate Your Home's Rebuilding Cost." **EXHIBIT C**. In this document, USAA notified Plaintiffs of a "new tool used to estimate [Plaintiffs'] homes' rebuilding cost." *Id.* More specifically, USAA notified Plaintiffs that "[it] made [this] change," i.e., it was "using [this] new replacement cost calculation tool provided by Xactware Solutions, Inc., to estimate [Plaintiffs'] home[s'] rebuilding cost" because "Xactware [ ] provides an outstanding estimating tool for [its] claims department." *Id.* Furthermore, USAA informed Plaintiffs that Xactware provides a more "consistent experience" between coverage limits and the adjustment of claims. In other words, USAA assured Plaintiffs that Xactware would more accurately and dependably assist



policyholders, such as Plaintiffs, by accurately calculating replacement costs in such a way as to give policyholders comfort that they would not be underinsured in the event of a total loss.

38. Furthermore, USAA represented to Plaintiffs that it "used [Xactware] to estimate the minimum cost to rebuild [Plaintiffs'] home[s]." Thus, it set policy limits calculated to capture the true rebuild or replacement costs of Plaintiffs' homes so that Plaintiffs could restore their homes to pre-loss condition in the event of a loss. *Id.*

1           39. Plaintiffs reasonably relied on USAA's representation that Xactware was  
2 an "outstanding" and dependable valuation tool. Plaintiffs also reasonably relied upon  
3 USAA's representation that Xactware's valuation represented the true cost to rebuild or  
4 replace Plaintiffs' homes to pre-loss condition in the event of a loss. And from this  
5 reasonable reliance, Plaintiffs agreed to policy limits set by USAA. These policy limits,  
6 according to Defendants, would provide enough coverage such that Plaintiffs would be  
7 able to rebuild their homes to pre-loss condition in the event of a loss.

8           40. Furthermore, USAA informed Plaintiffs that should they "have questions  
9 about [their] coverage options, policy or updating [their] home characteristics,"  
10 Plaintiffs should contact USAA directly. *Id.*

11           41. On information and belief, whereas USAA represented to Plaintiffs that  
12 the reason it had adopted Xactware was to accurately calculate the total replacement  
13 cost of Plaintiffs' homes for the purpose of setting policy limits, USAA's actual reason  
14 for adopting Xactware was to systematically depress the value of adjusted claims made  
15 against USAA. USAA policies however, despite allegedly providing coverage for a  
16 total loss event, undervalue the true rebuild or replacement costs of Plaintiffs' homes,  
17 leaving Plaintiffs underinsured.

18           42. On information and belief, prior to establishing Plaintiffs' policy limits,  
19 USAA was aware that Xactware underestimates the actual rebuild cost of its  
20 policyholders' homes. Despite USAA having knowledge that Xactware's software  
21 inaccurately calculated the total rebuild cost of its policyholders' homes, USAA  
22 advertised to Plaintiffs that Xactware was "new" and "outstanding" at estimating the  
23 true rebuild cost of Plaintiffs' homes. In other words, on information and belief, USAA  
24 knew, or at the very least should have known, that its policyholders were underinsured  
25 and unprotected.

26           43. Because USAA knew that Xactware underestimates home values for claim  
27 purposes, it was also aware, or should have been aware, that Xactware would calculate  
28 lower policy limits by underestimating actual home rebuild and replacement costs.

1 Therefore, USAA and Xactware should have been aware—and at least warned  
2 Plaintiffs—that Xactware was likely to underestimate their actual home rebuild costs.  
3 Instead, USAA and Xactware represented that Xactware was capable of calculating the  
4 minimum replacement cost for the purpose of setting insurance policy limits. This  
5 lulled policyholders, like Plaintiffs, into relying on those representations when agreeing  
6 to the policy limits established by USAA, which should have been sufficient to cover the  
7 total loss of their homes.

8 44. As a result of USAA’s and Xactware’s misrepresentations and omissions,  
9 Plaintiffs are underinsured. Despite Plaintiffs contracting with USAA for the purpose  
10 of insuring that they could rebuild or replace their properties after a loss event, and  
11 despite Plaintiffs reliance on USAA and Xactware’s representations that their policy  
12 limit recommendations were sufficient to cover the total rebuild or replacement cost of  
13 Plaintiffs’ homes, Plaintiffs are substantially underinsured in an amount to be proven at  
14 trial.

15 45. Furthermore, USAA perpetuated a scheme of illusory homeowners  
16 coverage on its policyholders. USAA policyholders believed they were receiving  
17 premium home protection (i.e., coverage more than sufficient to compensate the  
18 policyholders for the total loss of their home *and then some*). In fact the policyholders (in  
19 this case, Plaintiffs) were paying premiums for coverage which the policyholders would  
20 never be able to receive as a result of USAA’s and Xactware’s failure to accurately  
21 calculate the minimum replacement cost for Plaintiffs’ homes. For example, some  
22 Plaintiffs paid “an additional premium” for “Home Protector Coverage,” which  
23 obligates USAA to “pay up to an additional 25% of the amount of insurance applying to  
24 the damaged building” if the policyholder “ha[s] exhausted the amount of insurance”  
25 available for the damaged building. **EXHIBIT D.** However, because of Defendants’  
26 unrealistically low policy limit recommendations, Plaintiffs were not paying for  
27 *additional* coverage beyond the minimum amount to rebuild or replace Plaintiffs’ homes,  
28 but were in fact paying for an additional 25% of coverage which still failed to cover

1 Plaintiffs for the actual rebuild or replacement cost of their homes. Thus, despite  
2 paying premiums for homeowners coverage purportedly sufficient to cover the full  
3 replacement or rebuild cost of Plaintiffs'  
4 home, plus an additional 25% coverage  
5 above the minimum replacement cost,  
6 USAA policyholders, such as Plaintiffs,  
7 were paying for coverage that could not  
8 cover the minimum replacement and/or  
9 rebuild cost of their homes.

10 46. Moreover, USAA's failure to  
11 accurately calculate policy limits sufficient  
12 to replace or rebuild Plaintiffs' homes after a  
13 loss event sabotages Plaintiffs' ability to  
14 access the additional "Home Protector  
15 Coverage," despite Plaintiffs paying  
16 premiums for that coverage. Plaintiffs are  
17 required to "exhaust" their insurance  
18 coverage before accessing "an additional  
19 25% of the amount of insurance applying to  
20 the damaged building" — what USAA terms "Home Protector Coverage."

21 To "exhaust" their insurance coverage, Plaintiffs must first rebuild or replace their  
22 homes. Only *after* the homes are replaced or rebuilt, will USAA issue a final check for  
23 the additional 25% of coverage. However, because Plaintiffs' USAA/Xactware-  
24 calculated policy limits are so low, the amount USAA advances to Plaintiffs to initiate  
25 the rebuilding process is insufficient to cover significant rebuilding costs. In addition,  
26 USAA only reimburses the "actual cash value" after the repairs are actually effected.  
27 The "actual cash value" is subject to a "deduction for deterioration, depreciation, and  
28 obsolescence" and is hence only a fraction of the true cost of rebuilding the home.

If you comply with these requirements and if as a result of a covered loss, you have exhausted the amount of insurance:

- (1) applying to buildings covered under Property We Cover – Dwelling Protection or Other Structures Protection ; or
- (2) provided under ADDITIONAL COVERAGES, Debris Removal; or
- (3) provided under ADDITIONAL COVERAGES, Building Ordinance or Law;

then, we will pay up to an additional 25% of the amount of insurance applying to the damaged building. The most we will pay for (1), (2), or (3), either singly or in any combination is 25% or the amount actually and necessarily spent to repair or replace the damaged building, whichever is less.

Except as specifically modified in this endorsement, all provision of the policy to which this endorsement is attached also apply to this endorsement.

Term Premium

INCLUDED

Exhibit D

1 Plaintiffs are therefore required to go "out-of-pocket" for the remaining amount  
2 required to rebuild or replace their home before receiving the final USAA check for the  
3 total cost to rebuild their homes. Unfortunately, the out-of-pocket amount is so high  
4 that Plaintiffs cannot afford to cover the shortfall. Thus, Plaintiffs cannot rebuild their  
5 homes, preventing them from receiving a final check, a requisite event to "exhausting"  
6 their coverage. As a result, Plaintiffs are barred from receiving either true rebuilding  
7 and/or replacement coverage, or the additional "Home Protector Coverage" because  
8 Plaintiffs can never, in reality, satisfy the conditions precedent in the USAA policy to  
9 access the Home Protector Coverage.

10 47. The same is true for those Plaintiffs with Replacement Cost policies who  
11 do not have the "Home Protector Coverage" with the extension, because they too must  
12 go "out-of-pocket" before ever realizing the full replacement cost benefit above the  
13 "actual cash value."

14 48. In short, by its conduct, USAA has reaped enormous financial benefit to  
15 the detriment of its insureds. USAA collects premiums on coverages that as a result of  
16 USAA's insufficient, yet recommended policy limits and other contradictory policy  
17 provisions, can never be accessed and applied to Plaintiffs' loss. Thus, USAA collects  
18 premiums for coverages with knowledge that USAA is immune from having to pay out  
19 on claims against that coverage. (Hereinafter, the events described in paragraphs 45-49  
20 will be referred to as the "Illusory Coverage Scheme.")

21 **FIRST CAUSE OF ACTION**

22 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

23 **(As to Defendant USAA and Does 1-100, inclusive)**

24 49. Plaintiffs repeat and reallege paragraphs 1 through 49 of this Complaint  
25 and incorporate them by reference, as though fully set forth herein.

26 50. Under California law, a covenant of good faith and fair dealing is implied  
27 in every contract, including Plaintiffs' homeowners insurance policies. The conduct of  
28 insurers, brokers, and agents prior to purchase must be conducted pursuant to the duty



1 of good faith and fair dealing. Moreover, insurers owe prospective insureds who are 65  
2 or over an additional duty of honesty, good faith and fair dealing prior to purchase.  
3 Cal. Ins. Code § 785(a).

4 51. USAA made representations to Plaintiffs, some of whom are 65 and older,  
5 through advertising, direct mailers, and its website that Xactware could accurately  
6 calculate the cost of replacing or rebuilding their homes prior to the time Plaintiffs  
7 purchased or renewed their USAA homeowners insurance policy. Plaintiffs relied on  
8 USAA's representations regarding Xactware and other pre-contractual conduct when  
9 determining to purchase or renew their USAA homeowners insurance policies.

10 52. Plaintiffs contracted with USAA for the purpose of obtaining coverage  
11 sufficient to cover the total replacement and/or rebuild cost of Plaintiffs' homes to pre-  
12 loss condition in the event of loss.

13 53. USAA agreed to calculate replacement costs in such a way as they would  
14 be reasonably accurate, and by doing so, provide policy limits sufficient to cover the  
15 total rebuild cost of Plaintiffs' homes in the event of loss. USAA affirmatively  
16 undertook the duty and responsibility of calculating the total rebuild cost of Plaintiffs'  
17 homes in the event of total loss and notified Plaintiffs that the total rebuild cost  
18 estimates USAA calculated were generated from an "outstanding" estimating tool and  
19 that the cost estimates were sufficient to cover the rebuild costs of Plaintiffs' homes in  
20 the event of total loss.

21 54. In other words, USAA recommended that Plaintiffs purchase policy limits  
22 consistent with the total rebuild cost figure generated by Xactware's software, as said  
23 policy limit represented, at least, the minimum amount needed to rebuild Plaintiffs'  
24 homes in the event of total loss. Consistent with this representation, Plaintiffs accepted  
25 the policy limits USAA recommended to them.

26 55. Plaintiffs have made claims to USAA to honor their promise to provide  
27 coverage sufficient to cover the total rebuild costs of Plaintiffs' homes. The amounts  
28

1 required to rebuild Plaintiffs' homes, however, exceed the amounts USAA represented  
2 were sufficient to rebuild Plaintiffs' homes to their pre-loss condition.

3 56. USAA has failed to pay out amounts sufficient to cover the total rebuild  
4 cost of Plaintiffs' homes, which is akin to denying Plaintiffs the benefit of their  
5 bargain—i.e., purchasing homeowners policies sufficient to cover the total rebuild  
6 and/or replacement cost of their homes in the event of total loss. At the very least,  
7 USAA should provide a calculation of replacement costs that policyholders could adopt  
8 that are sufficient to cover the total rebuild cost of Plaintiffs' homes to their pre-loss  
9 condition.

10 57. USAA's bad faith is further exhibited by its perpetuation of the Illusory  
11 Coverage Scheme, whereby Plaintiffs are prevented from accessing certain additional  
12 coverages, in addition to their standard coverages, despite paying premiums for both  
13 the standard and additional coverages.

14 58. USAA has no good faith reason for denying the reformation of Plaintiffs'  
15 policies to reflect the true cost to rebuild and/or replace Plaintiffs' homes. This is  
16 especially true here because USAA represented that the coverage amounts in the  
17 homeowners policies Plaintiffs purchased were sufficient to rebuild Plaintiffs' homes  
18 after a total loss. Indeed, it was USAA who recommended that Plaintiffs rely on the  
19 total rebuild cost figure that Xactware generated, as this "outstanding" estimating tool  
20 was designed to generate policy limits sufficient to rebuild Plaintiffs' homes to their  
21 pre-loss condition.

22 59. As a direct and proximate result of USAA's failure to provide coverage  
23 sufficient to cover the total rebuild cost of Plaintiffs' homes—the reason why Plaintiffs  
24 contracted with USAA in the first instance—Plaintiffs have suffered damages in an  
25 amount to be determined according to proof at the time of trial, plus interest and other  
26 foreseeable and incidental damages according to proof, in amounts to be determined at  
27 the time of trial.  
28

61. USAA's conduct described herein was despicable conduct carried on by USAA with a willful and conscious disregard of the rights of Plaintiffs, subjected Plaintiffs to cruel and unjust hardship in conscious disregard of Plaintiffs' rights, or was an intentional misrepresentation of a material fact known to USAA with the intention to deprive Plaintiffs of property or legal rights or to otherwise cause injury, such as to constitute malice, oppression or fraud under California Civil Code § 3294, thereby entitling Plaintiffs to punitive damages in an amount appropriate to punish or set an example of USAA and its conduct.

## SECOND CAUSE OF ACTION

**(Fraud—Intentional Misrepresentation)**

**(As to all Defendants and Does 1-100, inclusive)**

62. Plaintiffs repeat and reallege Paragraphs 1 through 49 of this Complaint  
and incorporate them by reference, as though fully set forth herein.

63. USAA represented that its use of Xactware allowed it to precisely  
calculate the cost of replacing Plaintiffs' homes given the specific characteristics of each  
home and that Xactware's policy limit calculations were the "minimum" required for  
replacing and/or rebuilding Plaintiffs' homes to pre-loss condition.

64. USAA and Xactware represented that Xactware could accurately calculate the replacement costs for each home, knowing that such representations would be communicated to and relied upon by Plaintiffs, or to USAA policyholders similarly situated, for the purpose of calculating what they represented as “minimum” rebuilding costs.

1           65. Based on information and belief, USAA and Xactware knew their  
2 representations were false when made or made these representations with reckless  
3 disregard for their truth. USAA is a large insurance company that provides insurance,  
4 completes underwriting, and performs claims adjustment for millions of policyholders.  
5 It knows that it cannot provide an estimate of rebuilding costs by inputting simplistic  
6 parameters of a home's characteristics while failing to fully and accurately account for  
7 the home's architecture, building materials, finishing, and other details that  
8 substantially determine rebuilding costs. USAA has been using Xactware since 1996.  
9 On information and belief, USAA has received many complaints that Xactware's  
10 calculations substantially underestimate rebuilding costs. USAA likewise represents on  
11 its website that other factors, such as "architecture costs," are essential data points for  
12 determining rebuilding costs, but nevertheless does not factor this in its computation  
13 for determining policy limits.

14           66. Xactware is a software company that, among other things, provides  
15 sophisticated tools to allow insurance companies to estimate claims costs by, for  
16 example, up-to-date pricing information and creating three-dimensional home sketches.  
17 Xactware knows that the meager information USAA inputs is utterly insufficient to  
18 calculate rebuilding costs and is aware that Plaintiffs will obtain and rely on its  
19 calculations.

20           67. Despite actual notice that Xactware did not and does not accurately  
21 estimate rebuilding costs, USAA and Xactware kept insisting and representing that  
22 Xactware can accurately and dependably calculate rebuilding costs before the loss  
23 occurs. USAA and Xactware knew that their claims regarding Xactware's software's  
24 reliability were manifestly false, but nevertheless continued to make these false  
25 representations in order to induce homeowners, including Plaintiffs, to buy or renew  
26 USAA insurance.

27           68. In fact, USAA and Xactware's representations were false at the time they  
28 were made. USAA and Xactware relied on insufficient data about home value and

1 rebuilding costs to create and recommend substantially insufficient policy limits to  
2 Plaintiffs and those similarly situated.

3 69. Defendants purposely included the false statements that Xactware  
4 accurately and reliably generated policy limits that would cover the cost of rebuilding  
5 Plaintiffs' homes to pre-loss condition with the intention that Plaintiffs would rely on  
6 the representations and purchase USAA insurance as a result. USAA, with the  
7 knowledge, understanding, and consent of Xactware, advertised this feature in  
8 advertising, direct mail, and policy language to induce Plaintiffs to rely on the  
9 representations and purchase their insurance. The false statements were intended to  
10 induce, and did induce, Plaintiffs to believe that if they purchased USAA insurance,  
11 they could be assured that USAA had correctly calculated and set policy limits  
12 sufficient to cover the complete loss of Plaintiffs' homes.

13 70. Plaintiffs purchased USAA insurance in substantial part because of  
14 USAA's and Xactware representations that they could and had accurately calculated the  
15 cost of rebuilding Plaintiffs' homes, and for the peace of mind of knowing that even if  
16 their home was completely destroyed, their insurance policy would compensate them  
17 for the full amount of their loss.

18 71. Plaintiffs reasonably relied on Defendants' false representations because  
19 of Defendants' own statements regarding the precision of the loss calculations; how  
20 long each company had been making these calculations; and because Defendants held  
21 themselves out as experts in establishing accurate policy limits. As any reasonable  
22 person would, Plaintiffs believed that a large insurance carrier and a large,  
23 sophisticated software company would, as they represented, be able to make accurate  
24 determinations about rebuilding costs.

25 72. Plaintiffs have been damaged by the falsity of these representations.  
26 Because Defendants' methods and algorithms profoundly underestimate the cost of  
27 rebuilding, Plaintiffs are unable to rebuild their homes to their pre-loss condition.  
28 Contrary to what its name implies, Xactware made calculations leading to the creation

1 of insufficient policy limits—policy limits substantially less than the true replacement  
2 and/or rebuild costs necessary to restore Plaintiffs’ homes to pre-loss condition. USAA  
3 also intentionally made misrepresentations in the Illusory Coverage Scheme to bolster  
4 USAA’s profits to the detriment of Plaintiffs and policyholders similarly situated.

5 73. As a proximate result of Plaintiffs’ reliance on Defendants’ false  
6 representations, Plaintiffs have suffered, and will continue to suffer damages, plus  
7 interest, and other economic and consequential damages, for a total amount to be  
8 shown at the time of trial.

9 74. As a further proximate result of Plaintiffs’ reliance on Defendants’ false  
10 representations, Plaintiffs have suffered anxiety, worry, mental and emotional distress,  
11 all to Plaintiffs’ general damages in a sum to be determined at the time of trial.

12 75. Defendants engaged in despicable conduct with a willful and conscious  
13 disregard of the rights of Plaintiffs, subjected Plaintiffs to cruel and unjust hardship in  
14 conscious disregard of Plaintiffs’ rights, or Defendants made intentional  
15 misrepresentations of material fact with the intention to deprive Plaintiffs of property or  
16 legal rights or to otherwise cause injury, such as to constitute malice, oppression or  
17 fraud under California Civil Code § 3294, thereby entitling Plaintiffs to punitive  
18 damages in an amount appropriate to punish or set an example of Defendants and their  
19 conduct.

### 20 **THIRD CAUSE OF ACTION**

#### 21 **(Fraud—False Promise)**

#### 22 **(As to Defendant USAA and Does 1-100, inclusive)**

23 76. Plaintiffs repeat and reallege paragraphs 1 through 49 of this Complaint  
24 and incorporate them by reference, as though fully set forth herein.

25 77. USAA represented to Plaintiffs that it would cover Plaintiffs’ costs of  
26 rebuilding their homes to pre-loss condition in the event of loss via Plaintiffs’ respective  
27 homeowners insurance policies and via representations that Xactware allowed USAA to  
28

1 calculate the total cost of replacing Plaintiffs' homes and to provide appropriate policy  
2 limits.

3 78. Instead, USAA has stated that it will only pay Plaintiffs amounts which do  
4 not permit Plaintiffs to rebuild and/or replace their homes. This result does not  
5 comport with USAA's promise to compensate Plaintiffs for an accurately-calculated  
6 replacement cost value in the case of a catastrophic loss. As such, USAA's promise to  
7 accurately calculate the true cost of rebuilding Plaintiffs' homes, and then compensate  
8 Plaintiffs for that amount, is false.

9 79. USAA knew these representations were false when made. Based on  
10 information and belief, USAA, despite its representations to the contrary, never  
11 intended to compensate Plaintiffs for the true cost of rebuilding their homes to pre-loss  
12 condition. USAA only intended to pay the grossly inadequate policy limits it calculated  
13 and recommended to Plaintiffs. Moreover, USAA knew when it made the promise that  
14 Xactware's software, Xactware, calculated policy limits that the software  
15 underestimated the true rebuild and replacement costs of Plaintiffs' homes. USAA's  
16 Illusory Coverage Scheme also ensured that Plaintiffs would not be able to access the  
17 benefit of USAA's promised coverage.

18 80. After the fires destroyed all or part of Plaintiffs' homes, the true extent of  
19 USAA's false promise became apparent. USAA now states that it will only compensate  
20 Plaintiffs up to their policy limits, leading Plaintiffs to realize that the policy limits  
21 USAA and Xactware calculated and recommended to Plaintiffs are substantially less  
22 than the true costs of rebuilding their homes to pre-loss condition.

23 81. USAA purposely included the false promise that the policy limit USAA  
24 calculated would compensate Plaintiffs for the actual cost of rebuilding for the purpose  
25 of inducing Plaintiffs to purchase and renew their USAA insurance policies. USAA  
26 knew that this promise would give Plaintiffs undue confidence in USAA's insurance  
27 policies, while the overall effect of using Xactware would also allow USAA to keep  
28 claim payouts low.

1           82. Plaintiffs purchased USAA insurance in substantial part because of  
2 USAA's representations that it would fully compensate Plaintiffs for the cost of  
3 rebuilding their homes in the event of loss and the peace of mind this afforded them.

4           83. Plaintiffs reasonably relied on USAA's false promise because of USAA's  
5 assurances that it would provide full coverage for Plaintiffs' loss. Plaintiffs believed  
6 USAA's representations that it would stand by its promise to assure a calculation of  
7 policy limits that would fully compensate Plaintiffs for their property losses. Plaintiffs  
8 also relied on USAA's assertions of superior knowledge regarding the calculation and  
9 establishment of sufficient policy limits. After all, USAA is a large insurer and has been  
10 making underwriting, costing, and claims calculations for millions of Americans.

11           84. Plaintiffs have been damaged by the falsity of USAA's promise. Instead of  
12 compensating Plaintiffs for the true cost of rebuilding, USAA will only pay Plaintiffs  
13 pursuant to their policy limits, which are insufficient to replace or rebuild Plaintiffs'  
14 homes to pre-loss condition. Plaintiffs' inability to cover the costs of rebuilding their  
15 homes stems directly from their reliance on USAA's false promises and Plaintiffs'  
16 consequent purchase of USAA insurance.

17           85. As a proximate result of Plaintiffs' reliance on USAA's false promise,  
18 Plaintiffs have suffered, and will continue to suffer in the future, damages, plus interest,  
19 and other economic and consequential damages, for a total amount to be shown at the  
20 time of trial.

21           86. As a further proximate result of Plaintiffs' reliance on USAA's false  
22 promise, Plaintiffs have suffered anxiety, worry, mental and emotional distress, all to  
23 Plaintiffs' general damages in a sum to be determined at the time of trial.

24           87. USAA's conduct described herein was despicable conduct carried on by  
25 USAA with a willful and conscious disregard of the rights of Plaintiffs, subjected  
26 Plaintiffs to cruel and unjust hardship in conscious disregard of Plaintiffs' rights, or was  
27 an intentional misrepresentation of a material fact known to USAA with the intention to  
28 deprive Plaintiffs of property or legal rights or to otherwise cause injury, such as to



1 constitute malice, oppression or fraud under California Civil Code § 3294, thereby  
2 entitling Plaintiffs to punitive damages in an amount appropriate to punish or set an  
3 example of USAA and its conduct.

4 **FOURTH CAUSE OF ACTION**

5 **(Negligent Misrepresentation)**

6 **(As to all Defendants and Does 1-100, inclusive)**

7 88. Plaintiffs repeat and reallege paragraphs 1 through 49 of this Complaint  
8 and incorporate them by reference, as though fully set forth herein.

9 89. USAA represented to Plaintiffs that using Xactware's software, Xactware,  
10 allowed USAA to precisely calculate the cost of replacing Plaintiffs' homes given the  
11 specific characteristics of each home.

12 90. USAA further represented that its policy limits, set by Xactware, were the  
13 "minimum" required for the cost of rebuilding Plaintiffs' homes.

14 91. Xactware represented that its software could accurately calculate the  
15 replacement and/or rebuild costs for each home, knowing that such representations  
16 would be communicated to and relied upon by Plaintiffs, or to USAA policyholders  
17 similarly situated, for the purpose of calculating what USAA represented as  
18 "minimum" rebuilding costs and as reflected in policy limits USAA recommended to  
19 Plaintiffs and those similarly situated.

20 92. Defendants had a duty to ensure that their representations regarding  
21 Xactware were accurate. Defendants represented themselves as possessing particular  
22 expertise in calculating rebuilding costs in case of property loss. Having undertaken  
23 this duty, and having made affirmative assertions that their calculations for rebuilding  
24 Plaintiffs' homes were accurate, Defendants were obliged to ensure that their  
25 representations that they had accurately determined rebuilding costs, and by extension,  
26 Plaintiffs' policy limits, were true because Plaintiffs, and any reasonable person in  
27 Plaintiffs' position, would foreseeably rely on the truth of those representations.  
28

1           93. Defendants' representations were not true. Xactware's software did not  
2 accurately calculate rebuilding costs, and thus denied Plaintiffs' the ability to replace or  
3 rebuild their homes to pre-loss condition. Plaintiffs' policy limits are based on  
4 Plaintiffs' reasonable reliance on Xactware's calculations, which systematically  
5 underestimated the true costs of replacing or rebuilding Plaintiffs' homes to pre-loss  
6 condition.

7           94. Defendants knew, or should have known, that the insufficient data it  
8 collected from homeowners, and the generalized assumptions that Xactware used to  
9 calculate loss did not provide an accurate approximation of the true costs, and did not  
10 provide a reasonable basis for calculating homeowners' policy limits. USAA also  
11 negligently made misrepresentations in the Illusory Coverage Scheme to bolster  
12 USAA's profits to the detriment of its policyholders. As such, Defendants knew, or  
13 should have known, that their representations were false when made.

14           95. After Plaintiffs' homes were destroyed in whole or in part by fire, the true  
15 extent of Defendants' false representations became apparent. USAA now states that it  
16 will only compensate Plaintiffs up to their policy limits, which Plaintiffs have now  
17 discovered are completely insufficient to replace or rebuild Plaintiffs' homes to their  
18 pre-loss condition.

19           96. Defendants purposely made these false representations intending that  
20 Plaintiffs would rely on them and for the purpose of inducing Plaintiffs to purchase and  
21 renew their USAA insurance policies.

22           97. Plaintiffs purchased USAA insurance in substantial part because of  
23 Defendants' false representations that Xactware satisfied Plaintiffs' desire that their  
24 policies have sufficient limits to fully compensate them in the event of total loss.

25           98. Plaintiffs reasonably relied on Defendants' false representations because  
26 Defendants held themselves out as experts in the field of loss estimation. As any  
27 reasonable person would, Plaintiffs believed that if a large insurance carrier and a large,  
28

sophisticated software company stated that Xactware could accurately calculate the costs of rebuilding, Plaintiffs could rely upon these statements.

99. Plaintiffs have been damaged by Defendants' false representations. Instead of compensating Plaintiffs for their rebuilding costs, USAA will only pay Plaintiffs up to their inadequate policy limits. Plaintiffs' inability to cover the costs of rebuilding their homes stems directly from, and was a substantial factor in, their reliance on Defendants' false representations and Plaintiffs' consequent purchase of USAA insurance.

100. As a proximate result of Plaintiffs' reliance on Defendants' false representations, Plaintiffs have suffered, and will continue to suffer in the future, damages, plus interest, and other economic, non-economic and consequential damages, for a total amount to be shown at the time of trial.

101. As a further proximate result of Plaintiffs' reliance on Defendants' false promise, Plaintiffs have suffered anxiety, worry, mental and emotional distress, all to Plaintiffs' general damages in a sum to be determined at the time of trial.

#### **FIFTH CAUSE OF ACTION**

##### **(Negligence)**

##### **(As to all Defendants and Does 1-100, inclusive)**

102. Plaintiffs repeat and reallege paragraphs 1 through 49 of this Complaint and incorporate them by reference, as though fully set forth herein.

103. Defendants represented to Plaintiffs that they had specialized knowledge and expertise regarding how to accurately calculate the costs of replacing or reconstructing Plaintiffs' homes following a loss event. Defendants knew, or should have known, that policyholders would rely on Defendants' assertions that they had expertise that allowed Defendants' to calculate the minimum policy limits that would enable Plaintiffs to replace or rebuild their homes in the event of loss. Defendants also knew that if Plaintiffs, or those in Plaintiffs' position, relied on Defendants' expertise, but the policy limits proved inadequate, Plaintiffs would be materially harmed and

1 unable to replace or rebuild their homes. Defendants also knew, or should have known,  
2 that Xactware was insufficient to calculate the specific rebuilding costs of each home.  
3 Defendants also knew, or should have known, that as a result of their failure to  
4 accurately calculate policy limits which reflected the minimum cost to rebuild or replace  
5 Plaintiffs' homes, in addition to other actions described herein regarding the Illusory  
6 Coverage Scheme, Plaintiffs were denied the ability to access additional home  
7 coverages, such as the Home Protector Coverage, despite Plaintiffs paying premiums  
8 for those coverages.

9 104. Defendants' affirmations that Xactware would accurately calculate policy  
10 limits for rebuilding each of Plaintiffs' homes, was, instead, made to induce policy sales  
11 and systematically depress claim reimbursements. Given the foreseeability of Plaintiffs'  
12 harm, the close connection between Defendants' wrongful acts and Plaintiffs' harm, and  
13 the morally bankrupt commercial motives for Defendants' wrongs, Defendants  
14 undertook a special duty to use reasonable care and to accurately set each of Plaintiffs'  
15 policy limits to fully compensate them for the cost of replacing or rebuilding their  
16 homes in the event of a loss.

17 105. Xactware likewise represented that its software could accurately calculate  
18 the replacement costs for each home, knowing that Plaintiffs, or USAA policyholders  
19 similarly situated, would consider and rely upon such representations for the purpose  
20 of calculating what is represented as "minimum" rebuilding costs. Xactware  
21 understood that Plaintiffs, or those in Plaintiffs' position, would foreseeably rely on its  
22 expertise in selecting policy limits.

23 106. Having undertaken this special duty, Defendants were obliged to use  
24 reasonable care to ensure that Plaintiffs' policy limits for replacing and/or rebuilding  
25 their homes to their pre-loss condition was adequate.

26 107. Defendants breached that duty because Xactware's software did not  
27 accurately calculate rebuilding costs. Instead, Plaintiffs' policy limits, as set by  
28 Xactware's calculations and Plaintiffs' adoption of USAA's recommendations,

1 substantially underestimates the true costs of replacing and/or rebuilding each of  
2 Plaintiffs' homes. USAA nevertheless states that it will only compensate Plaintiffs up to  
3 their policy limits, which Plaintiffs have now discovered are inadequate to restore  
4 Plaintiffs' homes to pre-loss condition.

5 108. Plaintiffs' policy limits, calculated by Xactware and recommended to  
6 Plaintiffs by defendant USAA, are inadequate to replace or rebuild Plaintiffs' homes to  
7 pre-loss condition. Plaintiffs relied on Defendants' representations that the policy limits  
8 they recommended to Plaintiffs were adequate. Given Defendants' representations of  
9 expertise, this was reasonable. Defendants' breach of their duty therefore was a  
10 substantial factor in causing Plaintiffs' harm.

11 109. As a proximate result of Defendants' breach, Plaintiffs have suffered, and  
12 will continue to suffer in the future, damages, plus interest, and other economic and  
13 consequential damages, for a total amount to be shown at the time of trial.

14 110. As a further proximate result of Defendants' breach, Plaintiffs have  
15 suffered anxiety, worry, mental and emotional distress, all to Plaintiffs' general  
16 damages in a sum to be determined at the time of trial.

17 111. Defendants' conduct described herein was intended by Defendants to  
18 cause injury to Plaintiffs or was despicable conduct Defendants pursued with a willful  
19 and conscious disregard of the rights of Plaintiffs, subjected Plaintiffs to cruel and  
20 unjust hardship in conscious disregard of Plaintiffs' rights, or was an intentional or  
21 negligent misrepresentation of a material fact known to Defendants with the intention  
22 to deprive Plaintiffs of property or legal rights or to otherwise cause injury, such as to  
23 constitute malice, oppression or fraud under California Civil Code § 3294, thereby  
24 entitling Plaintiffs to punitive damages in an amount appropriate to punish or set an  
25 example of Defendants and their conduct.  
26  
27  
28

**SIXTH CAUSE OF ACTION**

**(Violation of California Unfair Competition Law, Bus. & Prof. Code § 17200, et seq.)**

**(As to all Defendants and Does 1-100, inclusive)**

112. Plaintiffs repeat and reallege paragraphs 1 through 49 of this Complaint and incorporate them by reference, as though fully set forth herein.

113. Each Defendant is a “person” subject to the California Unfair Competition Law (“UCL”) pursuant to Business and Professions Code section 17201.

114. The UCL prohibits acts of “unfair competition,” including any “unlawful, unfair or fraudulent business act or practice.” Cal. Bus. & Prof. Code § 17200.

115. California Business & Professions Code § 17204 permits individuals, such as Plaintiffs, to institute an action on behalf of the general public to obtain injunctive and restitutionary relief against persons and entities that engage in unfair business practices and/or unfair competition.

116. Defendants’ acts and practices, including establishing Plaintiffs’ insurance policy limits and the Illusory Coverage Scheme, as alleged in this Complaint, constitute unlawful, unfair, and fraudulent business practices, in violation of the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 et seq.

117. Defendants’ acts and practices constitute unlawful business practices, as they violate 10 California Code of Regulations § 2695.183, Standards for Estimates of Replacement Value. Section 2695.183 provides that “no licensee shall communicate an estimate of replacement cost to an applicant or insured in connection with an application for or renewal of a homeowners’ insurance policy that provides coverage on a replacement cost basis” unless certain “requirements and standards” are met. Among these requirements and standards are “consideration of components and features of the insured structure,” including “at least” the following criteria:

- a. Type of foundation;
- b. Type of frame;
- c. Roofing materials and type of roof;

- d. Siding material and type of siding;
- e. Whether the structure is located on a slope;
- f. The square footage of the living space;
- g. Geographic location of property;
- h. Number of stories and any nonstandard wall heights;
- i. Materials used in, and generic types of, interior features and finishes, such as, where applicable, the type of heating and air conditioning system, walls, flooring, ceiling, fireplaces, kitchen, and bath(s);
- j. Age of the structure or the year it was built;
- k. Size and type of attached garage.

118. Defendants' method of calculating the replacement cost of Plaintiffs' homes materially failed to consider several of these components and features of Plaintiffs' insured structures. As a result, Plaintiffs are underinsured and unable to replace and/or rebuild their homes to their pre-loss condition.

119. Defendants' acts and practices, as alleged above, are substantially injurious to Plaintiffs and USAA policyholders; (ii) any claimed utility of Defendants' conduct is outweighed by the harm to Plaintiffs and USAA policyholders; and (iii) the injury is not one that consumers reasonably could have avoided.

120. Defendants' acts and practices constitute unfair, unlawful, and/or fraudulent business practices in that they are likely to deceive a reasonable consumer by causing policyholders, like Plaintiffs, to believe that USAA and Xactware had accurately calculated replacement costs in the event of a loss to their homes. Had Plaintiffs not been misled, Plaintiffs would have used alternative means of calculating the replacement costs of their homes, and would not have relied on Defendants' calculations and recommendations to adopt their policy limits.

121. Furthermore, USAA scribes "Settlement" on its insurance claims checks, thereby leading a reasonable policyholder to believe that he or she has waived the right

1 to request reformation and seek additional benefits under the homeowners policies that  
2 the policyholder, such as Plaintiffs, are entitled to, i.e., coverage for the total rebuild  
3 and/or replacement cost of the policyholder's home in the event of total loss.

4 122. Defendants represented themselves as experts regarding the calculation of  
5 replacement costs, and Plaintiffs could not reasonably be expected to learn or discover  
6 the true facts related to these calculations without accurate disclosure.

7 123. As a direct and proximate result of Defendants' unlawful, unfair, and  
8 fraudulent business practices, Plaintiffs have suffered injury in fact and lost money or  
9 property, in that they suffered monetary loss from having their policy limits set too low  
10 as a result of Defendants' unfair business practices.

11 124. Defendants' misrepresentations and omissions regarding the calculation  
12 of replacement value on Plaintiffs' homes were material and likely to deceive  
13 reasonable consumers such as Plaintiffs.

14 125. Pursuant to section 17203 of the California Business and Professions Code  
15 and available equitable powers, Plaintiffs are entitled to a preliminary and permanent  
16 injunction enjoining Defendants from continuing the unlawful and unfair business  
17 practices described above. This specifically includes Plaintiffs' demand to have USAA  
18 adjust their claims without respect to the policy limits set forth in their homeowners  
19 insurance policies. In addition, Plaintiffs are entitled to recover reasonable attorneys'  
20 fees pursuant section 1021.5 of the California Code of Civil Procedure.

21 **SEVENTH CAUSE OF ACTION**

22 **(Reformation)**

23 **(As to Defendant USAA and Does 1-100, inclusive)**

24 126. Plaintiffs repeat and reallege paragraphs 1 through 49 of this Complaint  
25 and incorporate them by reference, as though fully set forth herein.

26 127. Plaintiffs' respective insurance policies do not reflect the actual agreement  
27 of the parties. Whereas USAA and each respective Plaintiff agreed that USAA would  
28



1 provide policy coverage sufficient to cover the cost of rebuilding Plaintiffs' homes, the  
2 policy limit derived from Xactware's calculation is grossly inadequate.

3 128. This error came about through USAA's fraudulent representation that it  
4 and Xactware had accurately calculated the cost of rebuilding each Plaintiff's home, and  
5 its fraudulent promise to fully cover the rebuilding costs of each Plaintiff's home.

6 129. Alternatively, the incorrect policy limits came about through Plaintiffs'  
7 reliance on Defendants' negligent representation that Xactware had accurately  
8 calculated the cost of rebuilding each of Plaintiffs' homes. USAA had reason to know  
9 that Plaintiffs would and had believed its representations because it held itself out as an  
10 expert with special knowledge in the area of loss estimation.

11 130. Plaintiffs therefore request that their respective insurance policies are  
12 reformed to reflect the true intent of the parties, which is that their homeowners  
13 insurance policies compensate them for the true cost of rebuilding their homes,  
14 notwithstanding the stated policy limits.

15  
16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs pray for relief as follows:

- 18 1. For an award of Plaintiffs' past, present, and future general, special,  
19 actual, and compensatory damages as proven at the time of trial;
- 20 2. For reformation of Plaintiffs' insurance policies to mandate coverage for  
21 the true cost of rebuilding Plaintiffs' homes, notwithstanding the stated policy limits.
- 22 3. For attorneys' fees;
- 23 4. For punitive damages pursuant to California Civil Code § 3294;
- 24 5. For interest as allowed by law;
- 25 6. For injunctive relief enjoining USAA from adjusting claims by applying  
26 policy limits based on the use of Xactware, and all other continuing unlawful and unfair  
27 business practices;
- 28

1           7.       For such other and further relief which this Court deems just and proper.

2  
3       DATED: December 21, 2017

**LARSON O'BRIEN LLP**

4                               **and**

5                               **SHERNOFF BIDART ECHEVERRIA LLP**

6  
7  
8                               By:   
9                               Michael J. Bidart, Esq.  
10                              Attorneys for Plaintiffs

11  
12  
13                              **DEMAND FOR JURY TRIAL**

14  
15               Plaintiffs hereby demand a trial by jury on all claims.

16  
17       DATED: December 21, 2017

**LARSON O'BRIEN LLP**

18                               **and**

19                               **SHERNOFF BIDART ECHEVERRIA LLP**

20  
21  
22                               By:   
23                               Michael J. Bidart, Esq.  
24                              Attorneys for Plaintiffs

# **EXHIBIT A**

### **Your Home Characteristics**

Our mission at USAA is to help protect your financial security. One way we do this is by helping you determine if you're adequately covered in the event of a loss. We can calculate the minimum rebuilding cost of your home based on your home characteristics, but only you can decide if this is enough coverage. Our estimates are based on average construction costs and labor costs for geographic areas and may not reflect the unique features of your home or the area you live in.

On the back of this page, you'll find your home characteristics. If any of the information is incorrect, the rebuilding cost may be affected, so please revise any inaccuracies by:

- Logging on to [usaa.com](http://usaa.com), selecting your policy and then Home Characteristics, or
- Calling us at 210-531-USAA (8722), our mobile shortcut #8722 or 800-531-8722.

#### **Should I adjust the coverage on my flood or wind policy?**

- If you have a separate flood or wind policy for this property, please call your agent or insurer to confirm that your coverage is adequate. For flood or wind policies serviced by the USAA Insurance Agency, please call us at the numbers listed above. Wind coverage is available in Alabama, Florida, North Carolina, South Carolina, Texas and Mississippi.

PROPERTY ADDRESS: 2002 STONY OAK CT  
SANTA ROSA, CA, 95403

#### **Minimum Estimated Rebuild Cost as of 07-24-2017:**

LABOR, MATERIALS AND SUPPLIES: \$471,867  
CONTRACTORS OVERHEAD & PROFIT: \$103,524  
PERMITS & ARCHITECTS PLANS: \$28,999  
DEMOLITION AND DEBRIS REMOVAL: \$16,754  
ESTIMATED REBUILD COST: \$621,145

Note: The minimum estimated rebuild cost breakdown provided for your home may not reflect the annual inflation increase, and is rounded to the nearest thousand on the policy declaration.

**Your Home Characteristics**

YEAR BUILT: 1988  
\*TOTAL SQUARE FOOTAGE: 3482  
NUMBER OF STORIES: 2.0  
\*Total Square Footage:  
Includes: Additions and Finished Attic Space  
Excludes: Basements and Built-in or Attached Garages  
GENERAL SHAPE AND STYLE: CUSTOM  
EXTERIOR FINISHES & FEATURES: ABOVE AVERAGE  
INTERIOR FINISHES & FEATURES: ABOVE AVERAGE  
KITCHENS AND BATHS: STANDARD  
EXTERIOR WALL CONSTRUCTION: WOOD SHINGLE/SHAKE  
FOUNDATION TYPE: CRAWLSPACE  
ROOF TYPE: COMPOSITION - 3 TAB SHINGLE  
YEAR ROOF INSTALLED/REPLACED: 1988  
GARAGE OR CARPORT TYPE/STYLE: ATTACHED/BUILT-IN - 3 CAR  
FLOOR COVERING MATERIALS: CARPET, HARDWOOD - PLANK,  
TILE - CERAMIC  
NUMBER OF BATHROOMS: HALF 1, FULL 2,  
1.5 1  
FIREPLACES: 3  
CHIMNEYS: 3

# **EXHIBIT B**

## WILDFIRE RESPONSE PROGRAM

We have added Wildfire Response Program endorsement to your policy as a benefit to you at no additional cost.

Wildfire is a growing threat in your area. Warm weather, continued drought conditions and a greater number of homes being built in a natural environment away from towns contribute to higher risk of wildfire damage.

We want to make sure we're doing our part to help you protect your home. USAA has enlisted the help of Wildfire Defense Systems (WDS), a trusted association of professional wildland firefighters to provide the Wildfire Response Program endorsement.

WDS is a group of certified wildland firefighters with thousands of training hours and extensive experience battling wildfires. WDS employs certified wildland firefighters and has a fleet of wildfire engines with the right tools and equipment needed to fight wildfires.

If your home is threatened by an active wildfire, WDS will attempt to go into the evacuation zone to help protect your home and help you and your family through the event. WDS firefighters may try to close garage doors, move wood piles and debris away from your home, clear gutters and roof debris and monitor hot spots to prevent flare-ups.

During an event, WDS may call you to provide information about the wildfire. If WDS accesses your property during a wildfire, they'll leave a notice showing they've been there.

The Wildfire Response Program Endorsement authorizes Wildfire Defense Systems (WDS) to enter the grounds of your property to provide wildfire suppression and structural protection services. WDS will determine the most appropriate methods to mitigate fire loss to your home, which could include, but are not limited to, brush removal, fuel source mitigation, and closing of structure entryways.

Wildfire Defense Systems (WDS) will use their own judgment to determine the necessity, extent, or nature of the services provided. There may be instances when WDS will not be able to provide the services to your property, and there is no promise that services will be provided or will prevent damage.

If conditions become too dangerous for firefighters to enter the area or access your home, your USAA homeowners or rental property insurance will pay for any covered loss that may occur.

The Wildfire Response Program may be discontinued at any time without further notice.

# **EXHIBIT C**





9800 Fredericksburg Road  
San Antonio, Texas 78288

USAA 00084 93 80

PAGE 4  
91A

## New Tool Used to Estimate Your Home's Rebuilding Cost

We've made a change that goes into effect with this policy's renewal date. We're using a new replacement cost calculation tool provided by Xactware Solutions, Inc., to estimate your home's rebuilding cost. We chose Xactware to provide a consistent experience between your selection of coverage limits and the adjustment of a claim in the event of a loss. Xactware already provides an outstanding estimating tool for our claims department.

### Review Your Policy Documents for More Information

We used this tool to estimate the minimum cost to rebuild your home, which may differ from prior estimates. Please review the enclosed Declarations page for changes to your coverage limits and premium.

You may also notice some differences in your home characteristics. To see your current list of characteristics, refer to Your Home Characteristics flier included in your policy packet or log on to [usaa.com](http://usaa.com) and follow these steps:

1. In the My Accounts Summary, scroll down to the Insurance section.
2. From the Insurance section, select Homeowners.
3. Select the Review Home Characteristics tab on Account Summary.

If you have questions about your coverage options, policy or updating your home characteristics, please call us at 210-531-USAA (8722), our mobile shortcut #8722 or 800-531-8722.

# **EXHIBIT D**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**HOME PROTECTOR  
(HO-3R only)**

For an additional premium, the following is added to Section I – Conditions, 3. Loss Settlement:

**c. Home Protector Coverage**

**You agree:**

- (1) To insure your buildings, under Property We Cover – Dwelling Protection and Other Structures Protection, on the "residence premises" for the full replacement cost at the time this policy is issued; and
- (2) To accept any increase in coverage that results from the application of the Adjustment to Building Cost provision, if it is deemed necessary by us. You must pay for any added premium; and
- (3) To tell us within 90 days of the start of any additions or other physical changes to building on the "residence premises" which increases the value by the greater of:
  - (a) \$25,000; or
  - (b) 5% of the current Dwelling Protection amount of insurance.

You must pay any resulting premium.

If you comply with these requirements and if as a result of a covered loss, you have exhausted the amount of insurance:

- (1) applying to buildings covered under Property We Cover – Dwelling Protection or Other Structures Protection ; or
- (2) provided under ADDITIONAL COVERAGES, Debris Removal; or
- (3) provided under ADDITIONAL COVERAGES, Building Ordinance or Law;

then, we will pay up to an additional 25% of the amount of insurance applying to the damaged building. The most we will pay for (1), (2), or (3), either singly or in any combination is 25% or the amount actually and necessarily spent to repair or replace the damaged building, whichever is less.

Except as specifically modified in this endorsement, all provision of the policy to which this endorsement is attached also apply to this endorsement.

**Term Premium INCLUDED**

Copyright, USAA, 2008. All rights reserved.  
Includes copyrighted material of Insurance Services Office, Inc., with its permission.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Michael J. Bidart #60582</b> <b>SHERNOFF BIDART ECHEVERRIA LLP</b> <b>600 South Indian Hill Boulevard</b> <b>Claremont, California 91711</b> TELEPHONE NO.: (909) 621-4935 FAX NO.: (909) 625-6915		<b>FOR COURT USE ONLY</b>
ATTORNEY FOR (Name): <b>Plaintiffs, Robert A. Bivin, et al.</b>		
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA</b> STREET ADDRESS: <b>600 Administration Drive</b> MAILING ADDRESS: <b>- same -</b> CITY AND ZIP CODE: <b>Santa Rosa, 95403-2818</b> BRANCH NAME: <b>Hall of Justice</b>		
CASE NAME: <b>Bivin, et al. v. United Services Automobile Association, et al.</b>		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000)	<input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER:
		JUDGE:
		DEPT:

*Items 1–6 below must be completed (see instructions on page 2).*

1. Check one box below for the case type that best describes this case:

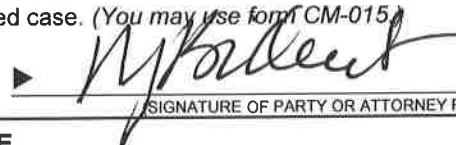
<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input checked="" type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 7
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: December 21, 2017

Michael J. Bidart

(TYPE OR PRINT NAME)

  
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

### NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

MICHAEL J. BIDART #60582  
RICARDO ECHEVERRIA #166049  
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Facsimile: (213) 623-2000

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SONOMA

ROBERT A. BIVIN and KATRINA J. BIVIN,  
husband and wife; WILLIAM L. EDELEN  
III and ROXANNE G. EDELEN, as trustees  
for the WILLIAM L. EDELEN and  
ROXANNE G. EDELEN TRUST; LAURA T.  
MILLS and PAUL R. KITZEROW, wife and  
husband; KENNETH L. MORSE and  
PATRICIA L. MORSE, husband and wife;  
LEO QUINN and MAUREEN QUINN,  
husband and wife; SCOTT STANFIELD, an  
individual; ANNE B. SHEPPERD and  
CHARLES SHEPPERD, wife and husband;  
STEVE DIEHL and NIESSIA DIEHL,  
husband and wife; LYNN VAN FLIET, an  
individual; ISAAC "SKIP" EPPERLY and  
MERRI BETH CALLENDER, husband and  
wife;

Plaintiffs,

v.

UNITED SERVICES AUTOMOBILE

Case No.:

NOTICE OF DEPOSIT OF JURY FEES

1 ASSOCIATION, an unincorporated  
2 association with members in every State;  
3 XACTWARE SOLUTIONS, INC., a  
4 Delaware Corporation; and DOES 1-100,  
5 inclusive

6  
7 Defendants.

8  
9 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

10 PLEASE TAKE NOTICE that plaintiffs deposited with the above-entitled court  
11 jury fee in the amount of \$150 on or about December 21, 2017.  
12

13 DATED: December 21, 2017

LARSON O'BRIEN LLP

and

SHERNOFF BIDART ECHEVERRIA LLP

14 By: 

15 Michael J. Bidart, Esq.  
16 Attorneys for Plaintiffs  
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