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19 *Attorneys for Plaintiff*

20 **UNITED STATES DISTRICT COURT**  
21 **NORTHERN DISTRICT OF CALIFORNIA**

22 TISHA HILARIO, individually and on  
23 behalf of a class of all others similarly  
24 situated

25 Plaintiff,

26 v.

27 ALLSTATE INSURANCE COMPANY

28 Defendant.

No. 3:20-cv-05459-WHO

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

Judge: William H. Orrick

29 Plaintiff Tisha Hilario, individually and on behalf of a class of all others similarly situated,  
30 by and through their attorneys, Shane Law and Hart McLaughlin & Eldridge, LLC, hereby bring  
31 a First Amended Class Action Complaint at Law against Allstate Insurance Company. Plaintiff  
32 alleges as follows based on personal knowledge as to her own acts and experiences, and as to all  
33

1 other matters, upon information and belief, including the investigation of Plaintiff's counsel and  
2 consultants, unless stated otherwise.

3 **I. NATURE OF ACTION**

4 1. Many, if not most, homeowners in the state of California have homeowners  
5 insurance. To purchase a homeowners insurance policy, a homeowner must pay a "premium" to  
6 an insurance company. One of the factors used to calculate the premium amount for homeowners  
7 insurance is the square footage of the home being insured. Generally speaking, and with all else  
8 being equal, the greater the square footage of home, the higher the premium.

9 2. Since at least March 2019, Allstate has been artificially inflating the square footage  
10 of homes that it insures and, thereby, inflating the premiums charged to its policyholders. More  
11 specifically, since at least March 2019, Allstate has been double-counting the square footage of  
12 garage space in its premium calculations. As a result, Allstate policyholders have been paying  
13 Allstate higher premiums than they would be if the correct garage square footage was used.

14 3. Allstate is well-aware that it has been inflating the square footage by double-  
15 counting garage space, but has failed to rectify its practices and, instead, has elected to continue  
16 taking unjust and unwarranted overcharges from its unwitting policyholders. While discovery  
17 will reveal the full amount of money Allstate has misappropriated, Plaintiff reasonably believes it  
18 to be well in the range of \$10,000,000.00.

19 4. Plaintiff brings this action on behalf of herself and all others similarly situated for  
20 legal and equitable remedies resulting from the wrongful actions of Allstate. This is a class action  
21 brought on behalf of other similarly situated home insurance policyholders who have been  
22 harmed by Allstate.

23 **II. PARTIES**

24 5. Plaintiff Tisha Hilario is, and at all times alleged in this First Amended Class Action  
25 Complaint was, a resident of San Francisco County, California located in the Northern District of  
26 California. Plaintiff is a policyholder of an Allstate homeowners insurance policy for property  
27 located in San Francisco County, California. At all material times, Plaintiff had homeowners  
28

1 insurance that was produced and underwritten by Allstate and sold to her through Allstate agents  
2 managed, supervised, and controlled by Allstate.

3 6. Defendant Allstate is, and at all times alleged in this First Amended Class Action  
4 Complaint was, an Illinois corporation, having its principal place of business in Northbrook,  
5 Illinois. Allstate has been and is authorized to do business in the State of California. At all relevant  
6 times, Allstate has been and is transacting the business of insurance in the State of California and  
7 the basis of this suit arises out of said conduct.

8 **III. JURISDICTION AND VENUE**

9 7. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(d),  
10 as modified by the Class Action Fairness Act of 2005, because: (i) there are more than 100 members  
11 of the Class; (ii) the aggregate amount in controversy exceeds the sum or value of \$5,000,000,  
12 exclusive of interest and costs; (iii) at least one plaintiff and defendant are citizens of different  
13 states; and (iv) none of the exceptions under the subsection apply to this action.

14 8. This court has personal jurisdiction over Allstate because Allstate is registered to  
15 do business in California, has sufficient minimum contacts in California, and otherwise  
16 intentionally avails itself of the markets within California through its business activities, such that  
17 the exercise of jurisdiction by this Court is proper and necessary. Moreover, the claims of Plaintiff  
18 and all of the class members in this case, who are current or former Allstate policyholders subject  
19 to Allstate's conduct alleged herein, arise out of and directly relate to Allstate's contacts with  
20 California.

21 9. Venue is proper in this Court under 28 U.S.C. §1391 because a substantial part of  
22 the events or omissions giving rise to the claims occurred in this District and the substantial part  
23 of the property that is subject to the action is situated in this District.

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1           **IV.    FACTUAL BACKGROUND**

2                   **A. Allstate’s Methodology for Premium Calculations**

3           10.     Allstate is one of the largest insurers in the United States with almost \$40 billion in  
4 revenues in 2018 with 16 million customers. Specific to California, Allstate insured 666,580  
5 dwellings in California in 2018.<sup>1</sup>

6           11.     For a homeowners policy in California, Allstate agrees to provide coverage for the  
7 policyholder in exchange for the payment of a premium. Allstate defines an insurance premium  
8 as “the amount you pay to your insurer regularly to keep a policy in force.”<sup>2</sup>

9           12.     Allstate’s premium calculation for homeowners insurance is based, in part, on the  
10 square footage of the “Total Living Area” of the property. The square footage of the “Total Living  
11 Area” is determined by adding the square footage for the “Total Finished Living Area” and the  
12 square footage of the Built-In Garage space (if any). Thus, in general, Allstate’s square footage  
13 calculation equation should be:

14                           *Total Finished Living Area + Built-In Garage = Total Living Area*

15           13.     While there are several factors that go into a premium calculation, as a general  
16 matter, the larger the square footage of the “Total Living Area,” the higher the premium is  
17 charged. As a result, inflated square footage measurements for the either the Total Finished Living  
18 Area or Built-In Garage will cause policyholders to pay inflated premiums for their Total Living  
19 Area.

20           14.     Allstate does not physically go to its California insureds’ homes and measure the  
21 square footage of garages. Nor does Allstate rely on its policyholders or even ask its policyholders  
22 how many square feet their garage is. Instead, Allstate determines how many cars a homeowner’s  
23 garage holds and applies the standard assumption that each car requires 288 square feet. Thus, for  
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25 <sup>1</sup> [https://www.allstatesustainability.com/wp-content/uploads/materials/reports/2018\\_Allstate\\_CR\\_CA.pdf](https://www.allstatesustainability.com/wp-content/uploads/materials/reports/2018_Allstate_CR_CA.pdf)  
(last accessed July 29, 2020)

26 <sup>2</sup> <https://www.allstate.com/tr/insurance-basics/premium-limit-deductible.aspx> (last accessed January 19,  
27 2021)

1 a one-car garage, Allstate applies 288 square feet; for a two-car garage, Allstate applies 576 square  
2 feet; for a three-car garage, Allstate applies 864 square feet; and so on.<sup>3</sup>

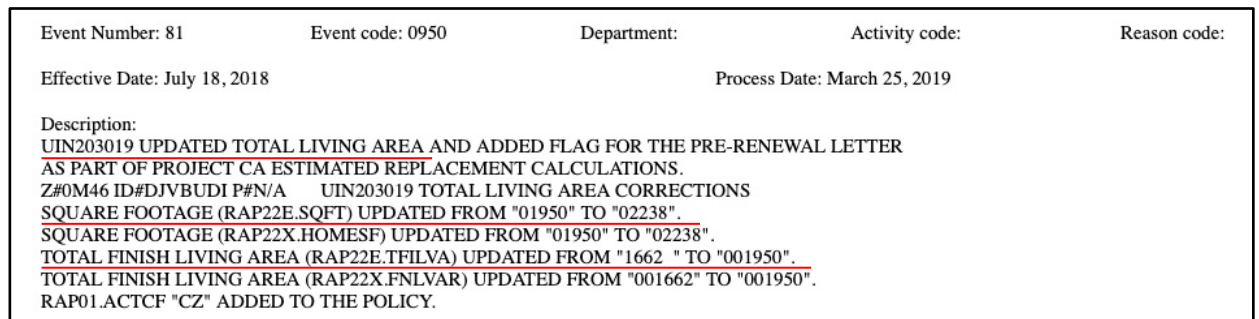
3 15. Thus, for example, Allstate’s premium calculation for a home with 1000 square feet  
4 of Total Finished Living Area and a one-car built in garage should be based on 1288 square feet.

5 **B. In or Before March 2019, Allstate Began Double-Counting Garage Space**  
6 **in its Premium Calculations**

7 16. Since at least March 2019, Allstate has been double-counting the square footage of  
8 Built-In Garage space. Consequently, Allstate policyholders in California have been and continue  
9 to pay Allstate artificially inflated premiums.

10 17. Upon information and belief, this double-counting began in March 2019 when  
11 Allstate implemented a program titled “UIN203019 Total Living Area Corrections.”<sup>4</sup>

12 18. The below system screenshots – which are for two different Allstate policyholders  
13 (not Ms. Hilario) – reveal that Allstate’s program caused Built-In Garage space to be counted twice.  
14 (The red underlining is added for reference to the key information).



26 *Image 1*

27 19. Image 1 depicts the double-counting that occurred when Program UIN203019 was  
28 implemented for a home with a one-car garage.

- The Total Finished Living Area on this home was adjusted from 1662

3 <sup>3</sup> The assumptions applied by Allstate are themselves inflated, as the standard sizes for one, two, and three  
4 car garages are less than the figures Allstate uses.

5 <sup>4</sup> Discovery may reveal that this problem started earlier than March 2019, in which case Plaintiff would seek  
6 leave to amend her pleading accordingly.

1 square feet to 1950 square feet, an increase of 288 square feet. Garage space,  
2 however, is not supposed to be included within Total *Finished* Living Area,  
3 so the addition of 288 square feet to that line item is inflated; it should have  
4 remained 1662 square feet.

- 5 • Image 1 then shows that another 288 square feet was applied on to the  
6 square footage for the Total Living Area. Instead of using the correct Total  
7 Finished Living Area (1662 square feet) in the calculation, the program  
8 used the aforementioned inflated amount (1950 square feet) and then  
9 added another 288 square feet on top of that.
- 10 • The proper calculation for the Total Living Area on this home is: **1662**  
11 **square feet (Total Finished Living Area) + 288 square feet (Built-In**  
12 **Garage) = 1950 square feet (Total Living Area)**. By adding the one-car  
13 garage space (288 square feet) to both the Total Finished Living Area and  
14 the Total Living Area, Allstate double-counted the garage and artificially  
15 inflated this home's square footage by 288 square feet.
- 16 • As a result, the homeowners were charged a premium for 2238 square feet  
17 of living space when their premium should have been based on 1950  
18 square feet of living space.

15 Effective Date: November 23, 2018 Process Date: March 25, 2019  
16 Description:  
17 UIN203019 UPDATED TOTAL LIVING AREA AND ADDED FLAG FOR THE PRE-RENEWAL LETTER  
18 AS PART OF PROJECT CA ESTIMATED REPLACEMENT CALCULATIONS.  
19 Z#0M46 ID#DJVBUDI P#N/A UIN203019 TOTAL LIVING AREA CORRECTIONS  
20 SQUARE FOOTAGE (RAP22E.SOFT) UPDATED FROM "02776" TO "03352".  
21 SQUARE FOOTAGE (RAP22X.HOMESF) UPDATED FROM "02776" TO "03352".  
22 TOTAL FINISH LIVING AREA (RAP22E.TFILVA) UPDATED FROM "2200 " TO "002776".  
23 TOTAL FINISH LIVING AREA (RAP22X.FNLVAR) UPDATED FROM "002200" TO "002776".  
24 RAP01.ACTCF "CZ" ADDED TO THE POLICY

19 *Image 2*

20 20. Image 2 depicts the double-counting that occurred when Program UIN203019 was  
21 implemented for another home, this one with a two-car garage.

- 22 • The Total Finished Living Area on this home was adjusted from 2200  
23 square feet to 2776 square feet, an increase of 576 square feet. As above,  
24 however, garage space is not supposed to be included within Total  
25 *Finished* Living Area. Therefore, the addition of 576 square feet to that line  
26 item is inflated; it should have remained 2200 square feet.
- 27 • Image 2 then shows that another 576 square feet was applied on to the  
28 square footage for the Total Living Area. Instead of using the correct Total  
Finished Living Area (2200 square feet) in the calculation, the program

1 used the used the aforementioned inflated amount (2776 square feet) and  
2 then added another 576 square feet on top of that.

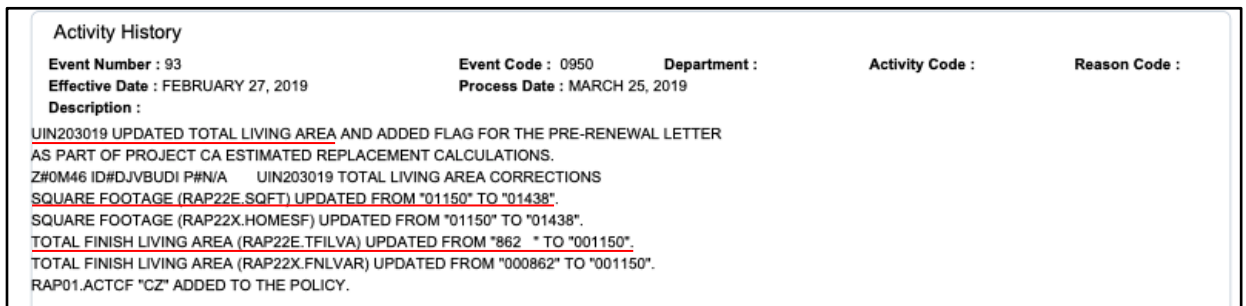
- 3 • The proper calculation for Total Living Area on this home is: **2200 square**  
4 **feet (Total Finished Living Area) + 576 square feet (Built-In Garage) =**  
5 **2776 square feet (Total Living Area).** By adding the two-car garage space  
6 (576 square feet) to both the Total Finished Living Area and the Total  
7 Living Area, Allstate double-counted the garage and artificially inflated  
8 this home's square footage by 576 square feet.
- 9 • As a result, the homeowners were charged a premium for 3352 square feet  
10 of living space when their premium should have been based on 2776  
11 square feet of living space.

### 12 C. Allstate Double-Counted Plaintiff's Built-In Garage

13 21. Plaintiff Tisha Hilario has an Allstate homeowners insurance policy (Policy No. 914  
14 140 656) for a home located at 128 Gambert Street, San Francisco, California 94134.

15 22. The Total Finished Living Area of Plaintiff's home is approximately 862 square feet  
16 and it has a one-car garage. Thus, if Allstate was applying the proper formula, Plaintiff's premium  
17 would be calculated as 1150 square feet:  $862 + 288 = 1150$ .

18 23. On or around March 25, 2019, unbeknownst to Plaintiff, Allstate double-counted  
19 the garage space in calculating Total Living Area of the home.



21 *Image 3*

22 24. Image 3, from Allstate Gateway and not made accessible to Plaintiff at the time,  
23 depicts the double-counting that occurred when Program UIN203019 was implemented for  
24 Plaintiff's home.

- 25 • The Total Finished Living Area on this home was adjusted from 862 square  
26

1 feet to 1150 square feet, an increase of 288 square feet. Garage space,  
2 however, is not supposed to be included within Total *Finished* Living Area,  
3 so the addition of 288 square feet to that line item is inflated; it should have  
remained 862 square feet.

- 4 • Image 3 then shows that another 288 square feet was applied on to the  
5 square footage for the Total Living Area. Instead of using the correct Total  
6 Finished Living Area (862 square feet) in the calculation, the program used  
7 the used the aforementioned inflated amount (1150 square feet) and then  
8 added another 288 square feet on top of that.
- 9 • The proper calculation for the Total Living Area on Plaintiff's home is: **862**  
10 **square feet (Total Finished Living Area) + 288 square feet (Built-In**  
11 **Garage) = 1150 square feet (Total Living Area)**. By adding the one-car  
garage space (288 square feet) to both the Total Finished Living Area and  
the Total Living Area, Allstate double-counted Plaintiff's garage and  
artificially inflated Plaintiff's home's square footage by 288 square feet.
- 12 • As a result, Plaintiff was charged a premium for 1438 square feet of living  
13 space when her premium should have been based on 1150 square feet of  
14 living space.

15 25. The above calculation was not based upon information provided by Plaintiff to  
16 Allstate. Plaintiff was never asked by Allstate to provide the square footage for the Total Finished  
17 Living Area, the Built-In Garage, or the Total Living Area. Nor, of course, did Plaintiff instruct or  
18 authorize Allstate to double-count the garage.

19 26. Due to the double-counting of the garage, Plaintiff paid an increased premium of  
20 \$141.00 (from \$680.00 to \$821.00). Allstate received that inflated premium amount and has  
21 retained that amount. Even after the filing of Plaintiff's lawsuit, Allstate did not offer to refund  
22 the inflated premium it has collected and retained.

23 **D. Neither Plaintiff nor the Putative Class Would Reasonably Know About**  
24 **Allstate's Double-Counting**

25 27. While Allstate discloses the total square footage covered under a given insurance  
26 policy to its policyholders, it does not disclose to policyholders how it arrives at that calculation.  
27 In other words, Allstate does not inform its policyholders that it double-counts garage space, nor  
28

1 does Allstate “show its math” as to how square footage is calculated.

2 28. While an ordinary homeowner may have knowledge about the square footage of  
3 their living area, ordinary homeowners do not generally know the square footage of their garage  
4 or, more importantly, whether or to what extent a garage is included in the insurance company’s  
5 square footage calculation.

6 29. Further, the fact that Allstate discloses the total of square footage insured is not  
7 particularly informative to ordinary homeowners because, among reasons, an ordinary  
8 homeowner would not know whether Allstate’s square footage calculation includes such things  
9 as a garage, a crawl space, a basement, a storage space, or an improvement.

10 30. Notably, Allstate’s square footage calculation differs from the square footage  
11 calculation used in the real estate industry, which is what homeowners would generally be more  
12 familiar with. In the real estate industry, a garage is not considered in a square footage calculation.<sup>5</sup>

13 31. While Allstate could disclose the details of its square footage calculation to  
14 policyholders, it elects not to. Without Allstate disclosing to policyholders the various elements  
15 that comprise the total square footage calculation, a homeowner does not have a way to either  
16 confirm or refute Allstate’s figures. This is one of the reasons there is a “special relationship”  
17 between insurers and insureds; the relationship is inherently imbalanced such that an insured is  
18 vulnerable.

19 32. Additionally, upon information and belief, Allstate does not inform its  
20 policyholders that the total square footage of a home and more specifically, a garage, impact the  
21 premium calculation.

22 33. The screenshots depicted in Images 1, 2, and 3 are internal screenshots available to  
23 Allstate agents. Neither Plaintiff nor the general public has access to such information.

24 34. Had Allstate disclosed to its policyholders that it was double-counting garage

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25 <sup>5</sup> <https://www.zillow.com/blog/how-to-measure-your-homes-square-footage-92175/> (last accessed January  
26 22, 2021). Notably, this Zillow guidance leads with the observation that, “measuring the square footage of  
27 a home is complicated . . .”

1 space in its premium calculations, policyholders would understandably reject that calculation or  
2 ask that their premium calculation be properly recalculated.

3 35. As shown in Image 3 (above), Allstate's March 2019 premium calculation for  
4 Plaintiff's home double-counted the one-car garage.

5 36. When Plaintiff paid her 2019 premium for this home, she did not know that Allstate  
6 had double-counted the garage nor did she know that the reported total of 1438 square footage of  
7 insured space was an inflated figure.

8 37. Allstate could have, but did not, inform Plaintiff of the "UIN203019 Total Living  
9 Area Correction" or that Allstate double-counted the built-in garage. This information was not  
10 obvious to Plaintiff and, relative to Allstate, Plaintiff was at an informational disadvantage.

11 38. Plaintiff did not learn that she had been charged and paid an inflated premium  
12 until after she paid the renewal for the February 27, 2020 to February 27, 2021 policy period.

13 **E. Allstate Knows About its Double-Counting But has Done Nothing to**  
14 **Address It and Continues to Charge Inflated Premiums to Policyholders**

15 39. After Allstate implemented Program UIN203019, it knew or clearly should have  
16 known that it was double-counting garage space because, among other reasons, it is readily  
17 apparent in the internal system software (screenshots of which are depicted above).

18 40. Additionally, this was specifically brought to Allstate's attention through its Senior  
19 Product Consultant, Shelly Talaini, by one of Allstate's agents/brokers, Steve Mahoney, in late-  
20 March 2019. In response, on March 29, 2019, Ms. Talaini advised via e-mail that "we are aware  
21 many policies where [sic] changed incorrectly," and that "corrections will begin with the 5/29/19  
22 renewal for these homes with built in garages." She further advised in the e-mail that, "I'm hoping  
23 they will be sending out communication on the correction project but I haven't seen it yet."

24 41. About one month later, on April 24, 2019, Ms. Talaini was presented via email with  
25 specific policies where Program UIN203019 caused garage space to be double-counted, and was  
26 told, "every policy that I looked at is screwed up." Ms. Talaini responded via e-mail that "they  
27 [Allstate] feel the project is working correctly."  
28

1           42.     On May 29, 2019, Allstate’s Territorial Project Manager, Jeff Thomas, was advised  
2 via e-mail of the same problem and was presented with one of the very screenshots above (Image  
3 1). Mr. Thomas was specifically told: “they changed the house from 1662 square feet to 1950 square  
4 feet and then bumped it up again to 2238 square feet. In essence they added the built in garage  
5 twice . . . this process is not working correctly.”

6           43.     Weeks later, on June 14, 2019, Jeff Thomas was advised via e-mail that, “[t]his is the  
7 kind of error that leads to a class action lawsuit if we make the wrong customer upset.”

8           44.     Months later, on October 4, 2019, Jeff Thomas was asked via e-mail: “[i]s there any  
9 update on when the built in garage problem will be fixed? It’s still happening on almost every  
10 renewal I have that has a built in garage.” Mr. Thomas was presented with another of the  
11 screenshots above (Image 2), which shows the double-counting of garage space. That same day,  
12 Mr. Thomas responded via e-mail, in relevant part, “[t]here isn’t a ‘fix’ for this project” in reference  
13 to the “40k+plus homes with built-in garages in the state.”

14           45.     Thereafter, upon information and belief, the issue was so widespread in California  
15 that Allstate had created a specific internal code for this problem: “UIN203019 AUDIT ERROR.”

16           46.     Notwithstanding the above, including Allstate’s acknowledgement that it was  
17 aware that “many policies were changed incorrectly,” Allstate did not notify Plaintiff or its  
18 policyholders that it was double-counting garage space in premium calculations. And even  
19 though Allstate previously indicated that “corrections will begin with the 5/29/19 renewal,” upon  
20 information and belief, no corrections have been implemented to date.

21           47.     While at first Allstate said they “think the project is working correctly,” six months  
22 later they shifted gears and took the position that, “there isn’t a ‘fix’ for this project.” But whether  
23 Allstate can find a technological fix is not the issue. The issue is that Allstate has been charging  
24 and collecting inflated premiums from policyholders, Allstate has known this has been the case  
25 for almost two years now, and Allstate has neither informed its policyholders that they have been  
26 overcharged nor has Allstate reimbursed them.

27           48.     Allstate’s overcharges may “only” amount to low three-figures per policyholder  
28

1 per year, but in the aggregate, with what Plaintiff believes to be more than 40,000 policies at  
2 issue, Allstate has been unjustly enriched in the range of \$5,000,000 per policy year.

3 **V. CLASS ALLEGATIONS**

4 49. Pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), 23(b)(3), and 23(c)(4)  
5 Plaintiff brings this action against Allstate on behalf of herself and all others similarly situated, as  
6 a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. The proposed **Class** is  
7 defined as follows:

8 **All Allstate California policyholders from 2019 to the present**  
9 **with at least one built-in garage who paid premiums for**  
10 **homeowners or renters insurance to Allstate.<sup>6</sup>**

11 50. Excluded from the Class is Allstate, any entity in which Allstate has a controlling  
12 interest, and Allstate's officers, directors, legal representatives, successors, subsidiaries, and  
13 assigns. Also excluded from the Class are any judge, justice or judicial officer presiding over this  
14 matter and the members of their immediate families and judicial staff.

15 51. Discovery into Allstate's practices, communications, and systems will show how  
16 long ago the double-counting commenced and will help determine if the class goes even further  
17 past 2019.

18 52. Plaintiff reserves the right to propose subclasses of the above class or to narrow or  
19 expand the above class and/or future subclass definitions based on the evidence adduced in  
20 discovery, or as necessary and appropriate.

21 53. This action has been brought and may properly be maintained as a class action  
22 against Allstate pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure  
23 because there is a well-defined community of interest in the litigation and the proposed Class is  
24 readily ascertainable.

25 54. **Numerosity:** Pursuant to Federal Rule of Civil Procedure 23(a)(1), the Class is so

26 \_\_\_\_\_  
27 <sup>6</sup> In the event Plaintiff learns that the wrongdoing dates back prior to 2019 in the course of discovery, Plaintiff  
28 will seek leave to amend the class definition accordingly.

1 numerous that joinder of all members is impracticable. While the exact number of class members  
2 cannot be determined without discovery, the Class is believed to consist of at least thousands of  
3 Allstate homeowner policyholders. The exact number of class members can readily be ascertained  
4 upon review of policy information and other records maintained by Allstate. The disposition of  
5 the claims in a class action rather than in individual actions will benefit the parties and the courts.

6 55. Commonality: Pursuant to Federal Rule of Civil Procedure 23(a)(2), there are  
7 questions of law or fact common to the Class. Common questions of law and fact exist as to the  
8 claims of Plaintiff and the other class members. Common questions of the Class include, but are  
9 not limited to, the following:

- 10 a. Whether Allstate engaged in the conduct alleged;
- 11 b. Whether Allstate calculated Finished Living Area by including square footage for  
12 built-in garages in the calculation;
- 13 c. Whether Allstate calculated Total Living Area by including square footage for  
14 built-in garages *more than once*;
- 15 d. Whether Allstate calculated, charged, received and/or retained premiums based  
16 upon Total Finished Living Area;
- 17 e. Whether Allstate calculated, charged, received and/or retained premiums based  
18 upon Total Living Area;
- 19 f. Whether Allstate employed a program titled "UIN203019 Total Living Area  
20 Corrections," which led to the artificial inflation of the total finished living area and  
21 square footage of properties by double counting the built-in garage space;
- 22 g. Whether Allstate had actual or constructive knowledge of the premium  
23 overcharges resulting from the double counting of the garage space;
- 24 h. Whether Allstate committed unfair business practices in its handling of the  
25 premium calculation, charging, receipt and retention;
- 26 i. Whether Allstate committed fraudulent business practices in its handling of the  
27 premium calculation, charging, receipt and retention;
- 28

- 1 j. Whether Allstate owed a duty of due care in calculating the premium for its
- 2 policyholders;
- 3 k. Whether Allstate has a special relationship with its policyholders;
- 4 l. Whether Allstate was negligent in its handling of the premium calculation,
- 5 charging, receipt and retention;
- 6 m. Whether Plaintiff and the members of the Class are entitled to compensatory,
- 7 declaratory and/or injunctive relief.

8 56. Typicality: Pursuant to Federal Rule of Civil Procedure 23(a)(3), the claims or  
9 defenses of the representative parties are typical of the claims or defenses of the Class. Plaintiff's  
10 claims are typical of the claims of the Class they seek to represent because the factual and legal  
11 bases of Allstate's liability to Plaintiff and the other class members is the same, and because  
12 Allstate's conduct has resulted in similar injuries to Plaintiff and to the Class. The legal theories  
13 under which the Plaintiff seeks relief are the same or similar to those on which all members of the  
14 Class will rely, and the harms suffered by Plaintiff is typical of the harms suffered by the members  
15 of the Class.

16 57. Adequacy: Pursuant to Federal Rule of Civil Procedure 23(a)(4), the representative  
17 parties will fairly and adequately protect the interests of the class. Plaintiff will fairly and  
18 adequately represent and protect the interests of the other members of the Class she seeks to  
19 represent. Their interests are the same as those of the other members of the Class. Plaintiff has  
20 retained competent counsel with substantial experience in prosecuting complex litigation and  
21 class actions in state and federal court. Plaintiff and her counsel are committed to vigorously  
22 prosecuting this action on behalf of the other members of the Class and have the financial  
23 resources to do so. Neither Plaintiff nor her counsel have any interest adverse to any member of  
24 the Class.

25 58. Superiority: There is no plain, speedy or adequate remedy other than by  
26 maintenance of this class action. Class action treatment will permit a large number of similarly  
27 situated persons to prosecute their common claims in a single forum simultaneously, efficiently,  
28

1 and without the unnecessary duplication of effort and expense that numerous individual actions  
2 would engender. The class treatment of common questions of law and fact is also superior to  
3 multiple individual actions or piecemeal litigation in that it conserves the resources of the courts  
4 and the litigants and promotes consistency and efficiency of adjudication. Furthermore, as the  
5 damages suffered by each individual Class Member may be relatively small, the expenses and  
6 burden of individual litigation would make it difficult or impossible for individual members of  
7 the class to redress the wrongs done to them, while an important public interest will be served by  
8 addressing the matter as a class action. Moreover, upon information and belief, many members of  
9 the Class are not aware of the fact that Allstate committed legal wrongs and that they have the  
10 right to seek legal remedies.

11 59. The elements of Federal Rule of Civil Procedure 23(b)(2) are met. The prosecution  
12 of separate actions by the individual members of the proposed Class would create a risk of  
13 inconsistent or varying adjudications, which could establish incompatible standards of conduct  
14 for Allstate. The prosecution of individual actions could result in adjudications, which as a  
15 practical matter, would be dispositive of the interests of non-party class members or which would  
16 substantially impair their ability to protect their interests. Absent injunctive relief, Allstate will  
17 continue to commit the violations alleged. Allstate has acted on grounds that apply generally to  
18 class members so that final injunctive relief or corresponding declaratory relief is appropriate for  
19 the Class.

20 60. The elements of Federal Rule of Civil Procedure 23(b)(3) are met. Questions of law  
21 or fact common to the respective members of the Class predominate over any questions affecting  
22 only individual members. This predominance makes class litigation superior to any other method  
23 available for the fair and efficient adjudication of these claims including consistency of  
24 adjudications. Absent a class action it would be highly unlikely that the members of the Class  
25 would be able to protect their own interests because the cost of litigation through individual  
26 lawsuits might exceed the expected recovery. The class action is a superior method for the  
27 adjudication of the controversy in that it will permit a larger number of claims to be resolved in a  
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1 single forum simultaneously, efficiently and without the unnecessary hardship that would result  
2 from the prosecution of numerous individual actions and the duplication of discovery, effort,  
3 expense and the burden of courts that individual actions would create. The benefits of proceeding  
4 as a class action, including providing a method for obtaining redress for claims that would not be  
5 practical to pursue individually, outweigh any difficulties that might be argued with regard to the  
6 management of the class action.

7 61. In the alternative, Plaintiff seeks class certification as to particular issues permitted  
8 under Federal Rule of Civil procedure 23(c)(4). Plaintiff seeks certification as to the common  
9 questions listed in Paragraph 55 *supra*. Plaintiff respectfully maintains that class certification as to  
10 those issues is appropriate because certification as to particular issues is superior to any alternative  
11 means of adjudication as it eliminates the possibility of duplicative, inefficient litigation of  
12 identical issues. Resolution of these matters would materially advance the litigation.

13 **VI. CAUSES OF ACTION**

14 **COUNT I**

15 **UNFAIR AND FRAUDULENT BUSINESS PRACTICES**

16 **UNDER CAL. BUS. & PROF. CODE § 17200, et seq.**

17 62. Plaintiff re-alleges and incorporates by reference the allegations in Paragraphs 1 –  
18 61 as if fully set forth herein. Plaintiff brings this claim individually and on behalf of the members  
19 of the Class.

20 63. California’s Unfair Competition Law, as codified by California Business &  
21 Professions Code sections 17200, *et seq.*, protects both consumers and competitors by promoting  
22 fair competition in commercial markets for goods and services. California’s Unfair Competition  
23 Law is interpreted broadly and provides a cause of action for any unlawful, unfair, or fraudulent  
24 business act or practice. Any unlawful, unfair, or fraudulent business practice that causes injury  
25 to consumers falls within the scope of California’s Unfair Competition law.

26 64. By reason of the conduct described herein, Allstate has engaged in unfair and  
27 fraudulent business practices within the meaning of California Business and Professions Code  
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1 sections 17200, *et seq.*

2 65. Allstate's practices are unfair. Allstate's acts: (i) offend public policy; (ii) are  
3 immoral, unethical, oppressive and unscrupulous; and (iii) cause substantial injury to the  
4 policyholders that outweigh the benefits of the acts.

5 66. Allstate is knowingly double-counting the garage space of California policyholders  
6 to unjustifiably inflate the premiums charged to consumers who fail to notice the errors on their  
7 policies.

8 67. It is immoral, unethical, oppressive and unscrupulous to charge a policyholder an  
9 inflated premium based upon a knowing error committed by the insurer.

10 68. This conduct offends public policy.

11 69. The harm to the policyholder of paying an inflated premium outweighs any benefit  
12 – to the extent any such benefit could possibly exist – for the insurer double-counting the square  
13 footage of the built-in garage of the policyholder. There is no utility to an insurer overcharging  
14 policyholders.

15 70. Allstate's practices are fraudulent. Specifically, Allstate (the "who") artificially  
16 increased the premiums (the "what") as early as March 2019 (the "when") for any policyholders  
17 in California (the "where") by internally double-counting the square footage of built-in garages  
18 through adding the square footage to *both* the total finished living area and the total living area  
19 (the "how"). This is fraudulent because Allstate knew it was doing so and concealed that  
20 information from its policyholders.

21 71. Allstate, as opposed to Plaintiff, possesses full information concerning the facts of  
22 its unfair and fraudulent practices. Discovery will determine when Allstate first started double-  
23 counting the built-in garages and when Allstate first knew or should have known it had done so.

24 72. Allstate is on notice that its misconduct of double-counting built-in garage space  
25 and thereby artificially increasing the square footage and premium charged to policyholders was  
26 unfair and fraudulent. Even worse, Allstate has not disclosed and instead actively concealed these  
27 unfair and fraudulent practices since, at the very least, March 2019.

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1           73.     Despite having the exclusive knowledge and being aware that Allstate had  
2 artificially increased square footage by double-counting built-in garages as early as March 2019,  
3 Allstate did not disclose to policyholders that Allstate had done so. Allstate misled Plaintiff and  
4 the Class that Allstate was calculating premiums based upon actual square footage of the property  
5 when it was not.

6           74.     Despite knowledge that the policies were “screwed up” and that it had improperly  
7 changed the policies resulting in errors warranting correction, Allstate did not correct the policies  
8 and did not disclose the errors to the policyholders. Instead, Allstate concealed and suppressed  
9 the errors, which were material facts.

10          75.     Allstate did not disclose to Plaintiff or the Class that an increased premium was  
11 caused by double-counting the built-in garage space. Allstate concealed and suppressed this  
12 material fact despite having the duty to disclose it. Allstate did so with the intent to defraud and  
13 induce reliance by the policyholders who were unaware of Allstate’s wrongdoing, reasonably and  
14 justifiably relied upon Allstate to accurately and correctly calculate the premium, and would not  
15 have agreed to pay increased premiums caused by Allstate’s wrongful acts.

16          76.     Plaintiff and any other reasonable policyholder would attach importance to the fact  
17 that Allstate had artificially increased the square footage of the policyholder’s property and  
18 charged the policyholder a higher premium for square footage that the policyholder did not even  
19 own. Plaintiff and any other reasonable policyholder would attach importance to this in  
20 determining whether or not to procure and/or continue insurance coverage and premium  
21 payments with the insurer.

22          77.     As a result of Allstate’s unfairness and fraud, Allstate has reaped unjust revenue.  
23 This revenue represents monies given to Allstate or benefits which Plaintiff and the Class have an  
24 ownership interest in and which Allstate has taken. Plaintiff and the Class have been deprived  
25 money to which they have a cognizable claim and entered into a transaction paying an inflated  
26 premium based upon an inflated square footage that would otherwise have been unnecessary.

27          78.     Restitution is, therefore, appropriate and Plaintiff asks that this Court order  
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1 restitution. Further, unless restrained and enjoined, Allstate will continue to engage in the above-  
2 described conduct. Accordingly, injunctive relief is appropriate.

3 79. Allstate perpetrated these acts and practices against Plaintiff and the members of  
4 the Class, and as direct and proximate result of the foregoing, Plaintiff and the members of the  
5 Class have suffered and continued to suffer damages in a sum which is, as of yet, unascertained.

6 80. The practice of improperly double-counting garage space is the direct cause of the  
7 economic injury of overpaying insurance premiums. There is a clear causal connection between  
8 Allstate's unfair and fraudulent practices and the economic injury to Plaintiff and the Class.

9 81. Pursuant to California Business and Professions Code section 17203, Plaintiff and  
10 the members of the Class are entitled to restitution of all the monies paid to Allstate for retaining  
11 benefits that were due and owing to Plaintiff and the members of the Class (with interest thereon),  
12 to disgorgement of all Allstate's revenue arising out of its wrongful conduct (with interest  
13 thereon), and to be paid benefits due to Plaintiff and the members of the Class under the policy  
14 that Allstate wrongfully retained by means of its wrongful business practices.

15 82. Pursuant to California Code of Civil Procedure section 1021.5, Plaintiff and the  
16 members of the Class are entitled to recover their reasonable attorney's fees in connection with  
17 their claims, the substantial benefit doctrine and/or the common fund doctrine.

18 83. Equity requires that Allstate refund the portion of the premium attributed to the  
19 square footage of Finished Living Area that did not exist.

20 84. Plaintiff has suffered and is threatened with a concrete, particularized legal harm  
21 and there is sufficient likelihood Plaintiff will again be wronged in a similar way. There is a real  
22 and immediate threat of repeated injury.

23 85. Allstate does not provide a readily and verifiable way to show that it calculates its  
24 premium based upon the real - as opposed to inflated, artificial, and/or fraudulent - attributes of  
25 the insured premises.

26 86. Allstate fails to "shows its math" in how it specifically calculates the premium for  
27 the policyholder. Currently, the inflated premium calculation would not be apparent to a  
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1 policyholder because Allstate does not show how it calculates the premium. It is not easily  
2 discernable for a policyholder to know if Allstate appropriately calculated a premium given that  
3 Allstate does not disclose how it specifically does so.

4 87. Insurance is meant to offer a sense of security for the insured. An insured does not  
5 procure insurance seeking profit but instead seeks security and peace of mind through protection  
6 against calamity for the property that the insured actually owns.

7 88. If Allstate's practice of concealing how it calculates the premium and concealing its  
8 activity history continues, then this undermines the sense of security for the insured. If Allstate's  
9 practice continues then it is not providing the necessary assurance and peace of mind to the  
10 insured. Rather, it is taking advantage of the insured by providing false protection for square  
11 footage that does not even exist.

12 89. Plaintiff would continue to faithfully pay premiums with Allstate and renew her  
13 policy with Allstate if Allstate was correctly calculating premiums rather than calculating  
14 premiums based upon deceit. Allstate should not conceal or mislead but instead clearly and  
15 specifically detail and show how Allstate calculates the premium figure for policyholders.  
16 Without injunctive relief, Plaintiff could never rely with confidence on Allstate to accurately and  
17 correctly calculate premiums.

## 18 **COUNT II**

### 19 **NEGLIGENCE**

20 90. Plaintiff re-alleges and incorporates by reference the allegations in Paragraphs 1 –  
21 61 as if fully set forth herein. Plaintiff brings this claim individually and on behalf of the members  
22 of the Class.

23 91. Allstate owed a duty to use due care in its calculation, charging, receipt, and  
24 retention of the premium for its policyholders including Plaintiff.

25 92. A special relationship exists between the insurer Allstate and its policyholders  
26 including Plaintiff.

27 93. The relationship between an insurer such as Allstate and insureds such as Plaintiff  
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1 is characterized by unequal bargaining power in which the insured must depend on the  
2 reasonable performance by the insurer.

3 94. An insurer such as Allstate has a special relationship to its insured such as Plaintiff  
4 and has special duties that inhere in the great disparity in their respective economic situations and  
5 bargaining abilities.

6 95. The special relationship between Allstate and Plaintiff alternatively exists as based  
7 upon: (i) the extent to which the transaction was intended to affect Plaintiff; (ii) the foreseeability  
8 of harm to Plaintiff; (iii) the degree of certainty that Plaintiff suffered injury; (iv) the closeness of  
9 the connection between Allstate's conduct and the injury suffered; (v) the moral blame attached  
10 to Allstate's conduct; and (vi) the policy of preventing future harm.

11 96. The purpose of Allstate using due care in its calculation, charging, receipt, and  
12 retention of a premium is to ensure the premium calculation is based upon the actual  
13 characteristics of an insured's property and that an insured is charged a premium that is accurately  
14 and reasonably calculated. This process is intended to affect policyholders, including Plaintiff.

15 97. It is foreseeable that Allstate's failure to use care in the calculation, charging,  
16 receipt, and retention of a premium would harm policyholders, including Plaintiff. Here, by not  
17 using due care and instead inaccurately and unreasonably double-counting built-in garage space,  
18 Allstate unreasonably increased the premium charged to Plaintiff. Plaintiff paid this inflated  
19 premium and Allstate retained these funds even after it knew or should have known that it had  
20 charged inflated premiums to policyholders. It is foreseeable that Allstate's conduct here would  
21 harm Plaintiff by causing Plaintiff to pay a higher premium.

22 98. It is certain that Plaintiff suffered an injury because Allstate overcharged and  
23 Plaintiff paid an inflated premium.

24 99. The connection between Allstate's double-counting of the garage and overcharging  
25 Plaintiff and Plaintiff paying an inflated premium is a direct and close one.

26 100. There is extensive moral blame attached to Allstate's conduct. Allstate holds  
27 unequal bargaining power over Plaintiff and there is great disparity in their respective economic  
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1 situations and bargaining abilities. Allstate has the resources and wherewithal to accurately and  
2 reasonably calculate the premiums for policyholders without double-counting built-in garage  
3 space. Allstate likewise has the resources and wherewithal to determine if it has wrongfully  
4 retained funds received from overcharged premiums.

5 101. The policy to prevent future harm is fulfilled by holding Allstate responsible for its  
6 calculation, charging, receipt, and retention of inflated premiums.

7 102. Allstate knew or reasonably should have known that it did not accurately or  
8 reasonably calculate the premium for its policyholders, including Plaintiff.

9 103. Allstate breached its duty of due care by double-counting the garage space and  
10 thereby improperly inflating the premium charged to Plaintiff, which Allstate then wrongfully  
11 received and retained.

12 104. Allstate's negligent conduct proximately caused injury to Plaintiff including  
13 causing Plaintiff to pay an inflated premium.

14 105. Plaintiff has sustained actual loss or damage resulting from Allstate's negligence.  
15

16 **VII. REQUEST FOR RELIEF**

17 106. Plaintiff Tisha Hilario, individually and on behalf of the members of the Class,  
18 demands the following relief on behalf of herself and all others similarly situated:

19 a. An order certifying this action as a class action under Federal Rule of Civil  
20 Procedure 23, specifically:

21 i. A damages/restoration class pursuant to Federal Rule of Civil Procedure  
22 23(b)(3) or, in the alternative, an issues class pursuant to Federal Rule of  
23 Civil Procedure 23(c)(4);

24 ii. An injunctive and declaratory relief class pursuant to Federal Rule of Civil  
25 Procedure 23(b)(2);

26 b. An order appointing Plaintiff as class representatives and appointing the  
27 undersigned as class counsel to represent the Class pursuant to Federal Rule of  
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1 Civil Procedure 23(g);

2 c. An order declaring that:

3 i. Allstate has wrongfully overcharged policyholders for premiums;

4 ii. Allstate has wrongfully retained money paid by policyholders that were  
5 overcharged for premiums;

6 d. An order enjoining Allstate from:

7 i. Wrongfully overcharging premiums to Plaintiff and the Class;

8 ii. Wrongfully retaining the money received for overcharging premiums to  
9 Plaintiff and the Class;

10 e. An injunctive order requiring Allstate to show the elements of its premium  
11 calculations on homeowners policies to all policyholders or prospective  
12 policyholders;

13 f. An order for an award of reasonable attorneys' fees and expenses;

14 g. An order for an award of prejudgment and postjudgment interest;

15 h. An order for all such other relief that the Court deems just and equitable  
16

17 **VIII. JURY DEMAND**

18 107. Plaintiff Tisha Hilario, individually and on behalf of the members of the Class,  
19 demands the following relief on behalf of herself and all others similarly situated  
20

21 Dated: January 22, 2021

Respectfully submitted,

22 **SHANE LAW**

23 By: /s/ David Shane  
24 David R. Shane, Esq.

25 **HART McLAUGHLIN & ELDRIDGE LLC**

26 By: /s/ Brian Eldridge  
27 Brian Eldridge, Esq.  
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**CERTIFICATE OF SERVICE**

I hereby certify that on January 22, 2021, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to all counsel of record.

/s/ Brian Eldridge  
Brian Eldridge, Esq.