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County of Alameda

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9
10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

11 **COUNTY OF ALAMEDA**

12 DALE LONG, individually and on behalf of all
13 others similarly situated,

14 Plaintiff,

15 v.

16 NATIONWIDE MUTUAL INSURANCE
COMPANY, an Ohio corporation; and DOES 1
17 through 100,

18 Defendants.
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Case No.: **24CV066752**

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Dale Long (“Plaintiff”), on behalf of himself and all other persons similarly situated,
2 files this Complaint against Defendants Nationwide Mutual Insurance Company (“Nationwide”) and
3 Does 1 through 100 (“Doe Defendants”) (Nationwide and Doe Defendants are collectively referred to
4 herein as the “Defendants”). Plaintiff’s allegations are based upon information and belief and upon
5 investigation of Plaintiff’s counsel, except for allegations specifically pertaining to Plaintiff, which are
6 based on Plaintiff’s personal knowledge.

7 **NATURE OF THE ACTION**

8 1. This is a class action brought for the protection and benefit of Plaintiff, and all other
9 similarly situated consumers who are residents of California and have visited or used Defendants’
10 websites and mobile applications, including but not limited to: nationwide.com (the “Platforms”).

11 2. Modern society is marked by the pervasive presence and power of the internet and social
12 media, and corporations are no stranger to this reality. In fact, businesses lean into the availability of the
13 internet and social media as a resource to publicize the company’s offerings of goods or services to the
14 fullest extent. However, the benefits afforded to companies by the internet and social media platforms
15 are coupled with associated pitfalls, namely the potential harm to corporate interests when a consumer
16 publicizes a negative review or statement. Such a negative consumer statement can proliferate through
17 the internet and various social media platforms, thus affecting the company’s brand name, potential
18 customer pool, and business opportunities.

19 3. Defendants have a significant incentive to minimize the negative publicity they receive,
20 including that which comes in the form of negative online reviews and comments. For this reason, some
21 companies have resorted to contractually prohibiting customers and potential customers from posting
22 negative online reviews and comments about the goods or services they offer, to the detriment of the
23 consuming public and the State of California.

24 4. California Civil Code Section 1670.8 was enacted to combat and prevent the negative
25 side-effects of this business practice by protecting the right of consumers to voice their opinions,
26 observations, and experiences about the products or services delivered by a company. As stated by
27 former Speaker of the California State Assembly (and the author of Assembly Bill 2365 codified as
28 California Civil Code Section 1670.8), John A. Perez: “[C]onsumers should not unknowingly or

1 unwillingly give up this right to speak freely about their on line retail experience. Such non-
2 disparagement clauses go beyond an embargo on business-oriented ‘trade secrets,’ but instead represent
3 an unreasonable limitation on individual freedom.”¹ Thus, the California Legislature correctly
4 determined that the freedom of speech and expression is especially important in the consumer context
5 to keep the public informed and hold corporations accountable for the quality of the goods or services
6 offered.

7 5. Section 1670.8(a) specifically provides that: “(1) A contract or proposed contract for the
8 sale or lease of consumer goods or services may not include a provision waiving a consumer’s right to
9 make any statement regarding the seller or lessor or its employees or agents, or concerning the goods or
10 services” and “(2) It shall be unlawful to threaten or seek to enforce a provision made unlawful under
11 this section, or to otherwise penalize a consumer for making any statement protected under this section.”
12 A contract provision that is inconsistent with Section 1670.8(a) is considered “contrary to public policy,
13 and is void and unenforceable.”

14 6. Visitors and users of the Platforms are informed that by accessing the Platforms, they are
15 agreeing to Defendants’ Terms and Conditions of Use (“Conditions”).

16 7. Despite conducting substantial business with California consumers, the Conditions
17 imposed on Nationwide’s actual and prospective customers directly contradict and violate Section
18 1670.8. Specifically, pursuant to the Conditions, Nationwide prohibits visitors and users of the Platforms
19 from mentioning Nationwide or any of its trademarked brand names “in any manner that disparages or
20 discredits Nationwide.”² The Conditions lists “Marks” that users are prohibited from commenting on,
21 which include “Nationwide, the Nationwide N & Eagle Logo, On Your Side, and other names, graphics,
22 slogans, logos, sounds, trade dress, and other source identifiers.”

23 8. The Conditions imposed by Nationwide on actual and prospective customers are aimed
24 at stifling Californians’ right to free speech and, relatedly, the right of the California public to receive
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27 ¹ Contracts: unlawful contracts, AB 2365 Assembly Bill, Senate Judiciary Committee (June 24, 2014),
28 available at http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_2351-2400/ab_2365_cfa_20140623_162145_sen_comm.html.

² <https://www.nationwide.com/personal/about-us/terms-conditions>. (last accessed March 6, 2024)

1 such lawful discourse and remain informed. Defendants' business practice is unlawful and is intended
2 to unilaterally protect Defendants' self-promoting public image and maximize commercial profits at the
3 expense of the public's right to make informed decisions as consumers.

4 9. Defendants' conduct is precisely the business practice that the California Legislature
5 intended to prohibit. By forcing consumers to waive their right to make negative statements regarding
6 Nationwide and its Marks, and penalizing consumers for voicing such statements, Defendants
7 impermissibly chill the free speech of their actual and prospective customers in violation of Section
8 1670.8. Thus, Defendants are subject to the significant penalties prescribed by Section 1670.8.

9 10. By way of this action, Plaintiff, on behalf of himself and all others similarly situated in
10 the State of California, seeks damages, restitution, injunctive relief, public injunctive relief, and all other
11 relief available under California law for Defendants' unlawful and unfair actions in violation of
12 California Civil Code Section 1670 and, consequently, of California Business and Professions Code
13 Section 17200. To prevent the imposition of further injury on actual and prospective users of
14 Nationwide, Plaintiff also seeks an order enjoining Defendants from engaging in these ongoing unlawful
15 and unfair practices.

16 **PARTIES**

17 ***Plaintiff Dale Long***

18 11. At all relevant times, Plaintiff Dale Long was and has been a citizen of the State of
19 California and resident of Oakland.

20 12. Plaintiff is an individual who accessed or used the Platforms within the applicable statute
21 of limitations period in the State of California.

22 ***Defendants***

23 13. Nationwide is one of the largest online insurance and financial services companies in the
24 United States whose business includes domestic property and casualty insurance, life insurance and
25 retirement savings, asset management, and strategic investments. As a result, Nationwide transacts
26 business in the State of California with California citizens.

1 14. Nationwide describes its vision as “[o]ur focus on people helps make us great,” and goes
2 on to assert that “[o]ver the past 90 years, focusing on customers and valuing people have helped
3 Nationwide become one of the largest insurance and financial services companies in the world.”³

4 15. The true names and/or capacities, whether individual, corporate, partnership, associate,
5 governmental, or otherwise, of the Doe Defendants, inclusive, and each of them, are unknown to
6 Plaintiff at this time, who therefore sues said Doe Defendants by fictitious names. Plaintiff is informed
7 and believes, and thereon alleges, that each Defendant designated as a Doe is liable to Plaintiff for the
8 acts and omissions alleged herein below, which proximately caused injuries and damages to Plaintiff as
9 hereafter alleged. When the true names and capacities of the Doe Defendants are ascertained, Plaintiff
10 will amend the Complaint accordingly.

11 **JURISDICTION AND VENUE**

12 16. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction
13 limits of the Superior Court and will be established according to proof at trial.

14 17. This Court has jurisdiction over the matter pursuant to the California Constitution, Article
15 VI, Section 10. The statutes under which this action is brought do not specify any other basis for
16 jurisdiction.

17 18. This Court has jurisdiction over all Defendants because each defendant is either a citizen
18 of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of
19 the California market so as to render the exercise of jurisdiction over it by the California courts
20 consistent with traditional notions of fair play and substantial justice.

21 19. Venue is proper in this Court because, upon information and belief, Defendants transact
22 substantial business in the County of Alameda, evidenced in part by Plaintiff’s use of the Platforms in
23 this County; Defendants have committed and continue to commit unlawful acts in the County by and
24 through the Platforms and associated business transactions within the County; and a substantial part of
25 the events giving rise to the claims alleged herein occurred in this County, where the Plaintiff resides.

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28 ³ *Company Overview*, NATIONWIDE, available at: <https://www.nationwide.com/personal/about-us/company-overview/> (last accessed on March 6, 2024).

FACTUAL ALLEGATIONS

California Civil Code Section 1670.8

20. Under Article I, Section 2 of the California Constitution, “every person may freely speak, write, and publish his or her sentiments on all subjects, being responsible for the abuse of this right.”

21. Between 2013 and 2014, the California Legislature became increasingly aware of corporations adding non-disparagement clauses in form contracts, barring consumers from making truthful public postings on the internet and various social media platforms about sellers of consumer goods and services.

22. Accordingly, the California Legislature proposed Assembly Bill 2365, which “provides that a contract or proposed contract for the sale or lease of consumer goods or services is unlawful if it includes a provision requiring the consumer to waive his or her right to make any statement regarding the consumer’s experience with the seller or lessor of consumer goods or services.” “[A]ny person who violates this bill shall, as proposed to be amended, be subject to a civil penalty of up to \$2,500 for the first violation and \$5,000 for each subsequent violation, to be assessed and collected in a civil action brought by the consumer, by the Attorney General, or by the district attorney of the county or city in which the violation occurred.” Any civil penalty assessed “shall be payable, as appropriate to the consumer or the general fund of whichever governmental entity brought the action to assess the civil penalty.”

23. The presenter of the bill, former Speaker of the California State Assembly, John A. Pérez, commented during the Assembly Committee Hearing on April 22, 2014, that “I have been disturbed to learn that non-disparagement clauses are finding their way into various on-line contracts, such [as] those for vacation home rentals on websites such as VRBO.com.” He went on to state, “[h]onest feedback is crucial to assure consumer confidence in the on-line retail environment. Therefore consumers should not unknowingly or unwillingly give up this right to speak freely about their on-line retail experience. Such non-disparagement clauses go beyond an embargo on business-oriented ‘trade secrets,’ but instead represent an unreasonable limitation on individual freedom. AB 2365 helps to ensure that this free flow of communication occurs.”

1 24. Shortly thereafter, on September 8, 2014, the Governor of the State of California signed
2 into law Assembly Bill 2365, which is codified as California Civil Code Section 1670.8.

3 **Nationwide’s Unlawful Non-Disparagement Provision**

4 25. At all relevant times, Nationwide was and currently is in the business of advertising,
5 promoting, marketing, selling, and distributing consumer services and products through the Platforms,
6 which are targeted to, and accessible by, the citizens of California.

7 26. Nationwide is not naïve to the reality that public image is vital to acquiring and
8 maintaining profit-generating customers. An actual or prospective customer who views and relies upon
9 negative content about Nationwide, or any of its related persons or entities, may decide to forego
10 business with Defendants or, even worse, opt to contract with competitors of Nationwide.

11 27. Thus, to protect and maintain its public image, Nationwide engaged in an intentional
12 business practice to contractually silence actual and potential customers by binding users to the
13 Conditions immediately upon accessing any of its Platforms.

14 28. In so doing, Nationwide’s Conditions broadly and ambiguously prohibit users of all the
15 Platforms from mentioning Nationwide or any of its several trademarked brand names “in any manner
16 that disparages or discredits Nationwide ... unless first approved in writing.”

17 29. Moreover, Nationwide’s Conditions direct any user to send an inquiry regarding the
18 above restriction to “Nationwide - Office of the Chief Legal Officer, Intellectual Property Legal Team.”
19 In other words, the Conditions require a user to first obtain written approval from Nationwide’s in-house
20 legal department before posting a negative review of their products or services. Such a requirement is
21 obviously prohibitive and chilling on consumers’ right to free speech.

22 30. The intended result of Nationwide’s non-disparagement provision is to prevent any
23 customer who has purchased, will purchase, or even considers purchasing goods or services from
24 Nationwide through its Platforms from making any negative statement relating to Nationwide, or its
25 Marks.

26 31. Nationwide’s inclusion of the aforementioned non-disparagement provision in its
27 Conditions constitutes unlawful and unfair conduct that is contrary to public policy and violates
28 California Civil Code Section 1670.8 and California Business and Professions Code Section 17200.

1 32. Plaintiff, and millions more similarly situated persons in the State of California, visited
2 the Platforms—either as consumers or potential consumers—and have, thus, been subjected to the
3 unlawful Agreement.

4 **CLASS ALLEGATIONS**

5 33. Plaintiff brings this action on behalf of himself and the following class:

6 **Nationwide Class**

7 All persons in the United States who visited or used the Platforms within the applicable
8 statute of limitations period.

9 34. Alternatively, or in addition to the Nationwide Class, Plaintiff seeks to represent the
10 following state class:

11 **California Class**

12 All persons residing in California who visited or used the Platforms within the applicable
13 statute of limitations period.

14 35. The Nationwide Class and California Class are collectively referred to as the “Class.”
15 Excluded from the Class are the Defendants and their affiliates, parents, subsidiaries, officers, agents,
16 and directors, all persons who make a timely election to be excluded from the Class, the judge(s)
17 presiding over this matter and any immediate family members thereof, the clerks of said judge(s), as
18 well as the attorneys who enter their appearance in this action.

19 36. Plaintiff reserves the right to amend the Class definitions as appropriate.

20 37. Certification of Plaintiff’s claims for class-wide treatment is appropriate because Plaintiff
21 can prove the elements of his claims on a class-wide basis using the same evidence as would be used to
22 prove those elements in individual actions alleging the same claims.

23 38. **Numerosity**: The Class members are so numerous that joinder of all Class members is
24 impracticable. Based on information and belief, Plaintiff estimates the Class number to be at least
25 hundreds of thousands of individuals. While the precise number of Class members is unknown to
26 Plaintiff at this time, the identification of Class members is objectively ascertainable and will be
27 determined through appropriate discovery and other readily available means.

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1 39. Defendants possess objective evidence as to the identity of each Class member and, to a
2 reasonable degree of certainty, the harm suffered by each Class member, including without limitation
3 web and mobile application data evidencing access to and use of the Platforms, sales receipts, phone
4 numbers, names, membership account data, credit card data, customer service complaint forms, and
5 other evidence which objectively identifies Class members.

6 40. **Typicality**: Plaintiff's claims are typical of the claims of the proposed Class because
7 Plaintiff and Class members were injured by the same wrongful acts, practices, and omissions
8 committed by Defendants, as described herein. Plaintiff's claims therefore arise from the same practices
9 or course of conduct that give rise to the claims of all Class members.

10 41. **Adequacy**: Plaintiff will fairly and adequately protect the interests of the Class members.
11 Plaintiff is an adequate representative of the Class in that he has no interests adverse to, or in conflict
12 with, the Class he seeks to represent. Plaintiff has retained counsel with substantial experience and
13 success in the prosecution of complex consumer protection class actions of this nature.

14 42. **Superiority**: A class action is superior to any other available means for the fair and
15 efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the
16 management of this class action. The damages and other financial detriment suffered by Plaintiff and all
17 other Class members are relatively small compared to the burden and expense that would be required to
18 individually litigate their claims against Defendants, so it would be impracticable for Class members to
19 individually seek redress from Defendants' wrongful conduct. Even if Class members could afford
20 individual litigation, the court system could not. Individualized litigation creates a potential for
21 inconsistent or contradictory judgments and increases the delay and expense to all parties and the court
22 system. By contrast, the class action device presents far fewer management difficulties and provides the
23 benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

24 43. **Commonality and Predominance**: Common questions of law and fact exist as to all
25 Class members and predominate over any potential questions affecting only individual Class members.
26 Such common questions of law or fact include, *inter alia*:

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- 1 • Whether the imposition of Defendants’ Conditions upon members of the Class
- 2 constitutes a violation of California Civil Code Section 1670.8, *et seq.*, and, if so, whether
- 3 each violation is a “willful, intentional, or reckless” violation;
- 4 • Whether Defendants’ Conditions are unlawful, contrary to public policy, void, and/or
- 5 unenforceable;
- 6 • Whether by misconduct set forth in this Complaint, Defendants engaged and continue to
- 7 engage in unfair, fraudulent, or unlawful business practices;
- 8 • Whether the Class is entitled to recover statutory attorneys’ fees;
- 9 • Whether Class members are entitled to civil penalties; and
- 10 • Whether, as a result of Defendants’ misconduct as alleged herein, Plaintiff and Class
- 11 members are entitled to restitution, injunctive, public injunctive, and/or monetary relief
- 12 and, if so, the amount and nature of such relief.

13 44. Defendants engaged in a common course of conduct giving rise to the legal rights sought
14 to be enforced by Plaintiff on behalf of himself and all other class members. Individual questions, if any,
15 pale in comparison, in both quantity and quality, to the numerous common questions that dominate this
16 action.

17 **CAUSES OF ACTION**
18 **COUNT I**

19 **VIOLATION OF CALIFORNIA CIVIL CODE SECTIONS 1670.8, *et seq.***

20 45. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set
21 forth herein.

22 46. California Civil Code section 1670.8 provides “[a] contract or proposed contract for the
23 sale or lease of consumer goods or services may not include a provision waiving the consumer’s right
24 to make any statement regarding the seller or lessor or its employees or agents, or concerning the goods
25 or services.” Civ. Code § 1670.8(a)(1). It is further “unlawful to threaten or to seek to enforce a provision
26 made unlawful under this section, or to otherwise penalize a consumer for making any statement
27 protected under this section.” § 1670.8(a)(2).

28 47. “Any person who violates this section shall be subject to a civil penalty not to exceed
two thousand five hundred dollars (\$2,500) for the first violation, and five thousand dollars (\$5,000) for

1 the second and for each subsequent violation, to be assessed and collected in a civil action brought by
2 the consumer, by the Attorney General, or by the district attorney or city attorney of the county or city
3 in which the violation occurred. When collected, the civil penalty shall be payable, as appropriate, to
4 the consumer or to the general fund of whichever governmental entity brought the action to assess the
5 civil penalty.” § 1670.8(c).

6 48. Section 1670.8(d) further states “for a willful, intentional, or reckless violation of this
7 section, a consumer or public prosecutor may recover a civil penalty not to exceed ten thousand dollars
8 (\$10,000).”

9 49. Plaintiff and the Class members are consumers of goods and services provided by
10 Defendants and entered an agreement with Defendants containing a non-disparagement agreement that
11 violated Cal. Civ. Code § 1670.8.

12 50. Defendants proposed a contract for the sale of consumer services that waived Plaintiff’s
13 and the Class members’ rights to make any statement regarding Nationwide or any of its Marks.
14 Accordingly, Plaintiff and the other Class members seek to enforce important rights affecting the public
15 interest within the meaning of California Code of Civil Procedure Section 1021.5.

16 51. Defendants’ violations were willful and intentional. Defendants intentionally proposed
17 the contracts with the non-disparagement provisions. While Nationwide made partial changes to its
18 consumer contracts over the years, the non-disparagement provisions remained the same.

19 52. As a direct and foreseeable result of Defendants’ repeated and continuing violations of
20 Cal. Civ. Code Section 1670.8, Plaintiff and the Class members suffered injury in that their rights to
21 free speech were infringed.

22 53. Plaintiff and Class members are entitled to restitutionary and injunctive relief, including
23 public injunctive relief.

24 54. Plaintiff and Class members are also entitled to civil penalties for Defendants’ violations
25 of Cal. Civ. Code Section 1670.8.

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COUNT II
VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE
SECTIONS 17200, *et seq.*

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3 55. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set
4 forth herein.

5 56. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et seq.*,
6 proscribes acts of unfair competition, including "any unlawful, unfair or fraudulent business act or
7 practice and unfair, deceptive, untrue or misleading advertising."

8 57. The acts, omissions, and conduct of the Defendants as alleged constitute a "business
9 practice" within the meaning of the UCL.

10 58. Defendants' practices, as alleged herein, are in violation of the "unlawful" prongs of the
11 UCL because they violate Plaintiff's and Class members' constitutional rights to freedom of speech and
12 expression and Cal. Civ. Code § 1670.8.

13 59. Defendants' practices, as alleged herein, are in violation of the "unfair" prongs of the
14 UCL because they offend public policy; are immoral, unethical, oppressive, outrageous, unscrupulous,
15 and substantially injurious; and caused substantial harm, including from Defendants' infringement and
16 impairment of consumers' freedom of speech and expression and, by association, the public's right to
17 make informed consumer decisions. Defendants' practice is and was also contrary to legislatively
18 declared and public policy and the harm it caused, and continues to cause, to consumers outweighs its
19 utility, if any.

20 60. A violation of the UCL may be predicated on the violation of any state or federal law.

21 61. Defendants' practices, as alleged herein, are violations of California law and, thus,
22 constitute unlawful business acts and practices under the UCL.

23 62. As a direct and proximate result of Defendants' unlawful and unfair business practices,
24 Plaintiff and Class members have experienced, and continue to experience, injury in fact and have lost,
25 and will continue to lose, money and/or property.

26 63. Defendants acted intentionally, knowingly, and maliciously to violate the UCL in
27 reckless disregard to Plaintiff's and Class members' rights.
28

1 **PRAYER FOR RELIEF**

2 Plaintiff, individually and on behalf of the Class members, by and through his undersigned
3 counsel, respectfully requests that the Court grant the following relief:

- 4 A. Certify this case as a class action and appoint Plaintiff as Class Representative and
5 undersigned counsel as Class Counsel;
- 6 B. Award Plaintiff and the Class appropriate monetary relief, including actual damages,
7 statutory damages, punitive damages, restitution, and disgorgement;
- 8 C. Award Plaintiff and the Class equitable, injunctive, and declaratory relief, as may be
9 appropriate. Plaintiff, on behalf of himself and the Class, seeks appropriate injunctive
10 relief designed to prevent Defendants from continuing to include a non-disparagement
11 provision in the Conditions that contractually obligates actual and prospective customers
12 to withhold negative comments relating to Defendants' business, services, partners,
13 employees, and other agents, and penalizing them for conduct Defendants unilaterally
14 deem to violate such a non-disparagement provision.
- 15 D. Award Plaintiff and the Class pre-judgment and post-judgment interest to the maximum
16 extent allowable;
- 17 E. Award Plaintiff and the Class reasonable attorneys' fees, costs, and expenses, as
18 allowable; and
- 19 F. Award Plaintiff and the Class such other favorable relief as allowable under law.

20 **JURY TRIAL DEMANDED**

21 Plaintiff hereby demands a trial by jury on all issues so triable.

22
23 Dated: March 7, 2024

Respectfully submitted,

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