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23CV427954  
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13  
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15 COUNTY OF SANTA CLARA  
16

17 TAYLOR STEVEN PULBROOK, an  
18 individual; MARTIN KOLKIN, an  
individual; CHRISTIAN ADAIR MAYS,  
19 an individual; EBONY WALLACE, an  
individual; THOMAS DRAWDY, an  
20 individual; and MACKENZIE LOVING,  
an individual, on behalf of themselves and  
21 all others similarly situated,

22 Plaintiffs,

23 v.

24 NATIONWIDE MUTUAL INSURANCE  
COMPANY, an Ohio corporation; and  
25 DOES 1 through 100, inclusive,

26 Defendants.  
27  
28

No. **23CV427954**

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 **COMPLAINT**

2 Plaintiffs Taylor Steven Pulbrook, Martin Kolkin, Christian Adair Mays, Ebony Wallace,  
3 Thomas Drawdy, and Mackenzie Loving, by and through their undersigned counsel, on their own  
4 behalf and on behalf of all other entities and persons similarly situated (residents of California only)  
5 (collectively, “Plaintiffs”), sue Nationwide Mutual Insurance Company (“Nationwide”) and DOES  
6 1 through 100 (“Doe Defendants”) (Nationwide and Doe Defendants are collectively referred to  
7 herein simply as the “Defendants”) and for this Complaint, allege upon information and belief, and  
8 based on the investigation to date of their counsel, as follows:

9 **INTRODUCTION**

10 1. This is a class action brought for the benefit and protection of Plaintiffs, and all other  
11 similarly situated consumers who are residents of California and who used, visited, and/or engaged  
12 in transactions via Nationwide’s website “nationwide.com” or the websites or mobile applications  
13 of Nationwide or any of its affiliates (the “Site”), which tells its visitors that “You can use the Site  
14 for online access to your personal accounts, our product information, educational content, our  
15 services, and self-help tools.”

16 2. By way of this action, Plaintiffs, and all others similarly situated, seek damages,  
17 civil penalties, injunctive relief, public injunctive relief, and other relief necessitated by  
18 Defendants’ unlawful and unfair actions in violation of California Civil Code section 1670.8.  
19 Plaintiffs on behalf of themselves and all others similarly situated seek an order permanently  
20 enjoining Defendants from engaging in these ongoing unlawful practices, and civil penalties and  
21 damages available under California law.

22 3. Because of the current power of the internet and social media platforms to publicize  
23 a company’s offerings of goods or services—and the potential harm to corporate interests when  
24 negative consumer statements “go viral”—Defendants have a significant incentive to minimize the  
25 negative publicity they receive, including in the form of negative online reviews and comments.  
26 Some companies have gone so far as to attempt to prohibit customers and potential customers from  
27 making negative statements about the goods or services they offer, to the detriment of consumers,  
28 potential consumers, and the public of the State of California. Fortunately, California Civil Code

1 section 1670.8 was enacted to protect the right of California consumers to voice their opinions,  
2 observations, and experiences about the products and services delivered or offered to California  
3 consumers, as well as the citizens of the State of California. The California Legislature reasonably  
4 and correctly determined that such freedom is important to keep the public informed and keep large  
5 corporations honest about the quality of the goods or services they offer to consumers.

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

14 5. In order to use and benefit from Defendants’ Site, visitors and users of the Site are  
15 informed that they must agree to Nationwide’s Terms and Conditions of Use (the “Terms”). The  
16 Terms specifically state that “When you access this Site, you are agreeing to these terms and  
17 conditions, plus any additional terms or conditions within the Site itself. The [Terms] are in  
18 addition to any other agreements between you and Nationwide. You agree to be bound to any  
19 changes to these [Terms] when you use the Site after any such change is posted.”

20 6. While conducting substantial business with California consumers, the Conditions  
21 Defendants impose upon Nationwide’s customers and prospective customers clearly violate  
22 Section 1670.8. By using the Site and agreeing to the Terms, Nationwide requires its customers  
23 and prospective customers to agree that any comments, statements or materials made on or posted  
24 to the Site by any customer or prospective customer “will not contain any content that  
25 is...**threatening, defamatory, derogatory, counter to Nationwide’s Privacy Policy, or**  
26 **otherwise injurious to Nationwide or third parties.**” The Site further forces users to agree not  
27 to use any of Nationwide’s product or brand names “in any manner that disparages or discredits  
28 Nationwide.” In doing so, Defendants seek to silence their customers or potential customers from

1 criticizing Defendants, their employees, their products or services, or any of their materials. This  
2 chilling activity is the precise conduct prohibited by Section 1670.8.

3 7. Defendants' conduct is unlawful, including among other reasons, because it is aimed  
4 to stifle California consumers' right to free speech, and the right of the California public to hear  
5 lawful discourse. Defendants' strong-arm tactics to silence injured parties were and continue to be  
6 intentionally exercised to protect Defendants' self-promoting public image for commercial and  
7 other benefits. Defendants' unlawful business practices, purposefully designed to maintain and  
8 increase its consumers and prop up its stock price, all while denying public, consumers, and  
9 potential consumers accurate information so that they may make informed decisions as consumers.

10 8. By way of these provisions, Defendants seek to have Site users waive their right as  
11 consumers to make negative statements regarding Defendants, or their employees, their products  
12 or services, or any of their materials. These unlawful restrictions—imposed by Defendants against  
13 their own customers and prospective customers—are an important component of Defendants'  
14 business strategy, which relies upon the popularity of their product and service offerings to generate  
15 significant revenues and profits. But Defendants' efforts to silence their customers and prospective  
16 customers is clearly prohibited by California law, thereby subjecting Defendants to significant  
17 penalties, as described herein.

18 **JURISDICTION AND VENUE**

19 9. This Court has jurisdiction over the claims and causes of action asserted herein  
20 because such claims arise solely and specifically out of Defendants' unlawful practices within the  
21 State of California, and relate to at least one statute—California Civil Code section 1670.8—that  
22 was designed to protect California's citizens, the application of which is exclusively a matter for  
23 the courts of this State.

24 10. Venue is proper in this Court because: Defendants transact business in California  
25 and in the County of Santa Clara based on Plaintiffs' use of the Site in this County. Defendants  
26 have committed unlawful acts in the County by and through the Site and associated business  
27 transactions within the County; and a substantial part of the events giving rise to the claims alleged  
28 herein occurred in this County, where at least one of the Plaintiffs resides.

**THE PARTIES**

1  
2 11. At all relevant times, Plaintiff Taylor Steven Pulbrook was and has been a citizen of  
3 the State of California and a resident of Santa Clara County. Mr. Pulbrook is an individual who  
4 used and completed transactions on the Site within the applicable limitations period in Santa Clara  
5 County in the State of California.

6 12. At all relevant times, Plaintiff Martin Kolkin was and has been a citizen of the State  
7 of California. Mr. Kolkin is an individual who used and completed transactions on the Site within  
8 the applicable limitations period in the State of California.

9 13. At all relevant times, Plaintiff Christian Adair Mays was and has been a citizen of  
10 the State of California. Mr. Mays is an individual who used and completed transactions on the Site  
11 within the applicable limitations period in the State of California.

12 14. At all relevant times, Plaintiff Ebony Wallace was and has been a citizen of the State  
13 of California. Ms. Wallace is an individual who used and completed transactions on the Site within  
14 the applicable limitations period in the State of California.

15 15. At all relevant times, Plaintiff Thomas Drawdy was and has been a citizen of the  
16 State of California. Mr. Drawdy is an individual who used and completed transactions on the Site  
17 within the applicable limitations period in the State of California.

18 16. At all relevant times, Plaintiff Mackenzie Loving was and has been a citizen of the  
19 State of California. Ms. Loving is an individual who used and completed transactions on the Site  
20 within the applicable limitations period in the State of California.

21 17. Defendants conduct business in the state of California with California citizens.  
22 Defendants develop, market, and disseminate a wide variety of insurance-related products and  
23 services. Defendants operate in California and generate revenue through the Site in the form of,  
24 among other things, marketing products and services to consumers and charging its customers,  
25 including Plaintiffs, to complete transactions on the Site.

26 18. The true names and/or capacities, whether individual, corporate, partnership,  
27 associate, governmental, or otherwise, of the Doe Defendants, inclusive, and each of them, are  
28 unknown to Plaintiffs at this time, who therefore sues said Doe Defendants by such fictitious names.

1 Plaintiffs are informed and believe, and thereon allege, that each defendant designated herein as a  
2 Doe Defendant caused injuries and damages proximately thereby to Plaintiffs as hereafter alleged,  
3 and that each Doe Defendant is liable to Plaintiffs for the acts and omissions alleged herein below,  
4 and the resulting injuries to Plaintiffs, and damages sustained by Plaintiffs. Plaintiffs will amend  
5 this Complaint to allege the true names and capacities of said Doe Defendants when that same is  
6 ascertained.

7 **FACTS COMMON TO ALL CLASS MEMBERS**

8 19. At all relevant times, Defendants were, and currently are, in the business of  
9 advertising, promoting, marketing, and selling insurance-related products and services through the  
10 Site. The Site is targeted to, and accessible by, the citizenry of California.

11 20. Defendants are well-aware that their public image is vital to maintaining and gaining  
12 customers. If the public sees content posted by Site users that may be insulting to Defendants  
13 and/or any of their employees, products or services, or materials, then their current customers  
14 and/or prospective customers may shift to a competitor, ultimately resulting in loss of business and  
15 loss of revenue.

16 21. Thus, in order to maintain a positive public image, Defendants have engaged in an  
17 intentional business strategy to silence each and every customer or potential customer by purporting  
18 to bind users to their Terms—immediately upon using the Site.

19 22. Specifically, Nationwide requires its customers and prospective customers to agree  
20 that any comments, statements or materials made on or posted to the Site by any customer or  
21 prospective customer “will not contain any content that is...**threatening, defamatory, derogatory,**  
22 **counter to Nationwide's Privacy Policy, or otherwise injurious to Nationwide or third**  
23 **parties.”** The Site further forces users to agree not to use any of Nationwide’s product or brand  
24 names “in any manner that disparages or discredits Nationwide.” In doing so, Defendants seek to  
25 silence their customers or potential customers from criticizing Defendants, their employees, their  
26 products or services, or any of their materials.

27 23. Site users use the Site to execute insurance-related transactions and consider for  
28 purchase a wide variety of insurance-related products and services.



1           32. Defendants possess objective evidence as to the identity of each Class member and,  
2 to a reasonable degree of certainty, the harm suffered by each Class member, including without  
3 limitation web traffic data evidencing visits to and/or transactions on the Site, sales receipts, phone  
4 numbers, names, rewards accounts data, credit card data, customer service complaint  
5 forms/emails/date, and other evidence which objectively identifies class members.

6           33. Class members may be notified of the pendency of this action by mail, publication  
7 and/or through the records of Defendants.

8           34. There are common questions of law and fact affecting Plaintiffs and Class members.  
9 Common legal and factual questions include, but are not limited to:

10           a. Whether each imposition of Defendants' Terms upon members of the Class constitutes a  
11 violation of the provisions of California Civil Code section 1670.8 and, if so, whether each such  
12 violation is a "willful, intentional, or reckless" violation;

13           b. Whether Defendants' Terms are unlawful, contrary to public policy, void and/or  
14 unenforceable;

15           c. Whether Class members are entitled to civil penalties; and

16           d. Whether, as a result of Defendants' misconduct alleged herein, Plaintiffs and Class  
17 members are entitled to injunctive, public injunctive, and/or monetary relief and, if so, the amount  
18 and nature of such relief.

19           35. Plaintiffs' claims are typical of the claims of the proposed Class because the rights  
20 of Plaintiffs and Class members were violated in the same manner by the same conduct.

21           36. Plaintiffs and Class members are all entitled to recover statutory penalties and other  
22 relief arising out of Defendants' violations of statutory law alleged herein.

23           37. Plaintiffs will fairly and adequately represent and protect the interests of the Class.

24           38. Plaintiffs' interests do not conflict with the interests of the Class they seek to  
25 represent. Plaintiffs have retained counsel competent and experienced in prosecuting class actions,  
26 and Plaintiffs intend to vigorously prosecute this action.

27           39. The class mechanism is superior to other available means for the fair and efficient  
28 adjudication of the claims of Plaintiffs and Class members.



1           40.     Given the relative value of statutory penalties available to any of the individual Class  
2 members, individual litigation is not practicable.

3           41.     Individual Class members will not wish to undertake the burden and expense of  
4 individual cases.

5           42.     In addition, individualized litigation increases the delay and expense to all parties  
6 and multiplied the burden on the judicial system. Individualized ligation also presents the potential  
7 for inconsistent or contradictory judgments.

8           43.     In contrast, the class action device presents far fewer management difficulties and  
9 provides the benefits of single adjudication, economy of scale, and comprehensive supervision by  
10 a single court.

11           44.     Questions of law and fact common to all Class members predominate over any  
12 questions affecting only individual Class members. Injuries sustained by Plaintiffs and Class  
13 members flow, in each instance, from a common nucleus of operative facts as set forth above.

14           45.     In each case, Defendants' actions caused harm to all Class members as a result of  
15 such conduct. The resolution of these central issues will be the focus of the litigation and  
16 predominate over any individual issues.

17           46.     Proposed Class counsel possesses the knowledge, experience, reputation, ability,  
18 skill, and resources to represent the Class and should be appointed lead counsel for the Class.

19                   **COUNT I— VIOLATION OF CIVIL CODE SECTION 1670.8**

20           47.     Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 43 of their  
21 Complaint. Plaintiffs assert this cause of action on behalf of themselves and all other similarly  
22 situated persons residing in California who used and/or completed transactions on the Site.

23           48.     Defendants are in the business of marketing and selling insurance-related products  
24 and services.

25           49.     Plaintiffs and Class members visited or used the Site or conducted transactions on  
26 the Site.

27           50.     Pursuant to the Terms, Nationwide requires its customers and prospective customers  
28 to agree that any comments, statements or materials made on or posted to the Site by any customer

1 or prospective customer “will not contain any content that is...**threatening, defamatory,**  
2 **derogatory, counter to Nationwide's Privacy Policy, or otherwise injurious to Nationwide or**  
3 **third parties.”** The Site further forces users to agree not to use any of Nationwide’s product or  
4 brand names “in any manner that disparages or discredits Nationwide.” In doing so, Defendants  
5 seek to silence their customers or potential customers from criticizing Defendants, their employees,  
6 their products or services, or any of their materials.

7 51. By simply using the Site, Defendants purport to have charged Plaintiffs and Class  
8 members with having read, understood, and agreed to be bound by the Terms.

9 52. By way of the restrictions alleged above, Defendants intentionally, willfully, or  
10 recklessly seek to have Plaintiffs and the Class members waive their right as consumers to make  
11 any disparaging statements regarding Defendants or their employees, products or services, or  
12 materials, which restriction is prohibited under California Civil Code 1670.8 and is contrary to  
13 public policy.

14 53. Defendants have repeatedly violated California Civil Code 1670.8 in relation to each  
15 of the Plaintiffs and Class members and their respective uses of or transactions on the Site.

16 54. Defendants’ conduct has caused Plaintiffs and Class members to suffer harm.

17 55. Plaintiffs and Class members are entitled to injunctive relief, including public  
18 injunctive relief.

19 56. Plaintiffs and Class members are also entitled to civil penalties for Defendants’  
20 violations of Civil Code 1670.8.

21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiffs, on behalf of themselves and the putative Class members, pray  
23 for judgment as follows:

- 24 a. Determining that this action is a proper class action and certifying the Class, as defined  
25 herein;
- 26 b. Appointing Plaintiffs as Class representatives;
- 27 c. Appointing the undersigned as Class counsel;
- 28 d. Finding Defendants liable to Plaintiffs and Class members for damages in such amount(s)

1 as the Court or Jury may determine;

2 e. Awarding statutorily provided damages to Plaintiffs and Class members as appropriate;

3 f. Awarding pre- and post-judgment interest;

4 g. Awarding injunctive relief, including public injunctive relief, as claimed herein or as the  
5 Court may deem proper;

6 h. Awarding Plaintiffs, Class members, and Subclass members attorney fees and all  
7 litigation costs as allowed by law; and

8 i. Awarding such other and further relief as may be just and proper.

9 **DEMAND FOR JURY TRIAL**

10 Plaintiffs hereby demand a trial by jury on all issues so triable.

11  
12 Dated: December 20, 2023

SINGLETON SCHREIBER, LLP

13  
14 By: 

\_\_\_\_\_  
Christopher R. Rodriguez  
Attorneys for Plaintiffs

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16  
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19  
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