

## **Exhibit 3**

SETTLEMENT COMMUNICATIONS  
JOFFE LAW P.C., HARRIS, ST. LAURENT & CHAUDHRY LLP NOVEMBER 17, 2017 DRAFTIN THE UNITED STATES DISTRICT COURT  
DISTRICT OF [\_\_\_\_\_]

TROY HUBBARD, MARCUS JOHNSON,	)	
MARTIN CONROY, LOUIS VARELA,	)	
GERARD McCARTHY, DEBBIE CORT,	)	
ANIBAL ALCANTARA JR., FREDERICK	)	
BAKER, and JULIO LEATY, on behalf of	)	
themselves and on behalf of of a Class of all	)	
other persons similary situated,	)	
	)	
Plaintiffs,	)	<b>CLASS COMPLAINT</b>
	)	
v.	)	<b>CIVIL ACTION NO.</b>
	)	
	)	
AFLAC, INCORPORATED, and AMERICAN	)	
FAMILY LIFE ASSURANCE COMPANY	)	
OF COLUMBUS,	)	
	)	
Defendants.	)	<b>JURY TRIAL DEMANDED</b>
	)	

Plaintiffs, former and current sales associates of Aflac, by their undersigned counsel, bring this class action against Aflac for fraud and other misconduct, and allege as follows.

**PRELIMINARY STATEMENT**

1. Each and every year, Aflac recruits *tens of thousands* of new sales associates by telling them that it is the “Most Ethical Company Globally” and one of the “100 Best Companies to Work for”; by promising them “a lot of money to be made at Aflac”; and by offering them an irresistibly lucrative compensation package, according to which new hires with no experience could start earning over \$125,000 in their first year at the Company:

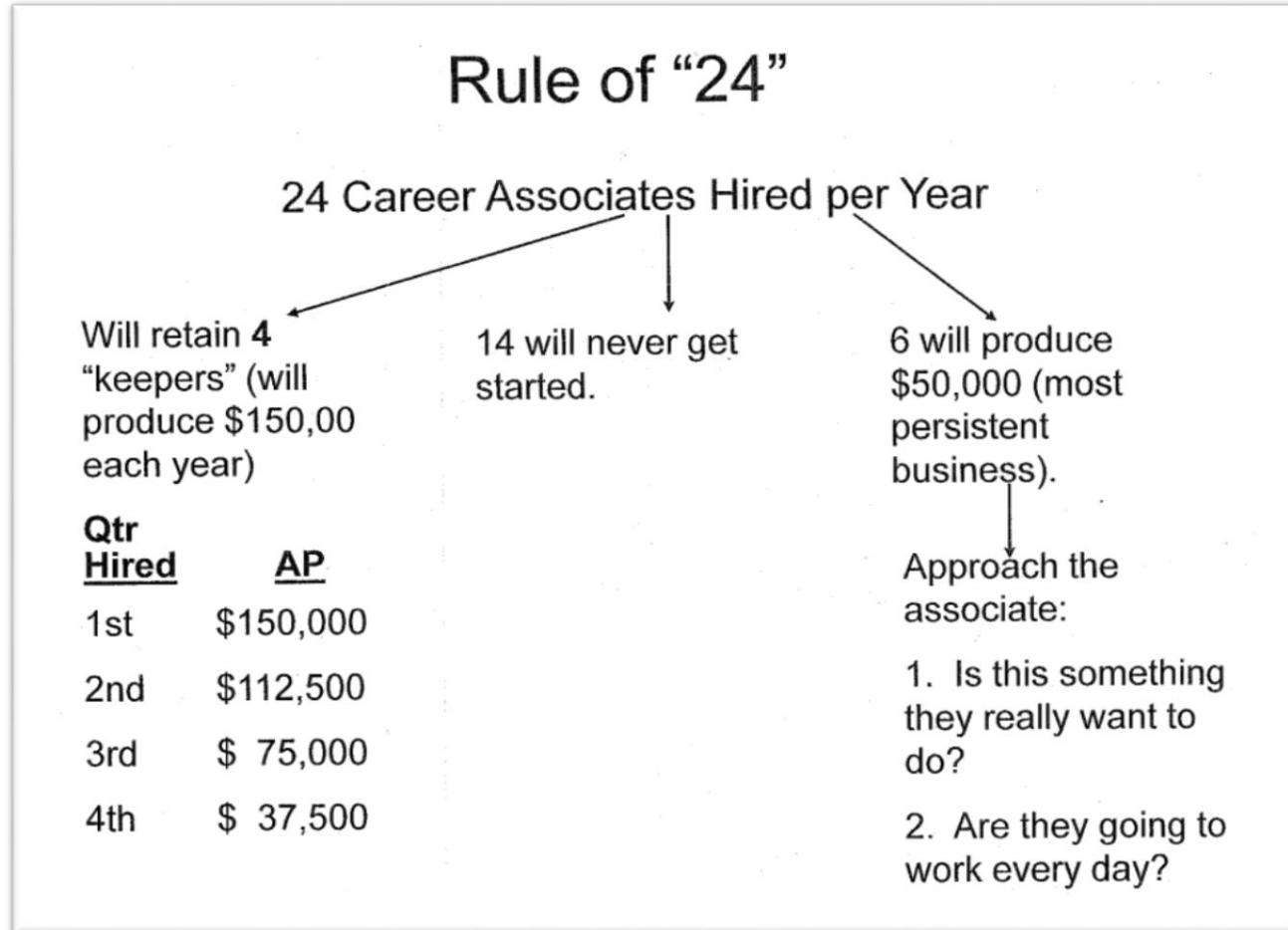


## Aflac 10 - Year Income Example

	Annual Production	Gross Commission	Renewals	Total Earnings	Accumulated Stock Bonus
Year 1	\$ 266,760	\$ 125,377	\$ -	\$ 125,377	\$ -
Year 2	\$ 266,760	\$ 125,377	\$ 7,500	\$ 132,877	\$ 5,000
Year 3	\$ 266,760	\$ 98,701	\$ 15,000	\$ 113,701	\$ 10,910
Year 4	\$ 266,760	\$ 98,701	\$ 32,500	\$ 131,201	\$ 21,501
Year 5	\$ 266,760	\$ 98,701	\$ 50,000	\$ 148,701	\$ 33,311
Year 6	\$ 266,760	\$ 98,701	\$ 67,500	\$ 166,201	\$ 46,478
Year 7	\$ 266,760	\$ 98,701	\$ 85,000	\$ 183,701	\$ 61,160
Year 8	\$ 266,760	\$ 98,701	\$ 102,500	\$ 201,201	\$ 77,530
Year 9	\$ 266,760	\$ 98,701	\$ 120,000	\$ 218,701	\$ 95,782
Year 10	\$ 266,760	\$ 98,701	\$ 137,500	\$ 236,201	\$ 116,134

2. Aflac's promises are lies, however, and the accolades bestowed upon it are wholly undeserved. The irresistible income figures in the "Aflac 10-Year Income Example" (attached as Exhibit A hereto and reproduced in part above) are all false, and each and every assumption underlying these figures is false too -- and Aflac knows it all very well.

3. Aflac's real treatment of its sales force is best summed up in its "Rule of 24," which is attached as Exhibit B hereto and speaks for itself:



4. Accordingly, the Company knows that the majority of its new recruits will sell no or a minimal amount of insurance policies and will leave Aflac shortly after joining, with a median length of stay at Aflac in the range of three months and a median amount of premiums sold in the range of \$5,000; Aflac will then keep whatever accounts they would have managed to open for itself as its “house accounts,” and will go on to draft another army of recruits next year to service its existing house accounts (without compensation) and to open new ones. Another, much smaller, percentage of recruits will make some headway, sell some reasonable number of policies, but not enough to make a living at it. They too, are quickly shown the door by Aflac. Finally, the smallest of the three groups, the “keepers,” will generate meaningful sales of insurance policies. But even those, the best of the Aflac’s new recruits, with their projected

“annual production” of \$150,000 will sell substantially less in premiums and earn considerably less than is promised in the “10 year income example.” But the recruits do not know any of that when they are being recruited by Aflac.

5. Once hired, however, the new sales associates quickly discover that the real Aflac is neither “the most ethical company” in the world nor one of “the best places to work.” The real Aflac that they discover:

- churns an army of sales associates every year, treating them as disposables, and leaving many in financial ruin after their brief careers at Aflac, with their houses foreclosed and cars repossessed, as happened to Plaintiff Johnson and many others – while keeping the accounts that they had managed to open during their short tenure at the Company for itself as “house accounts”;
- directs every aspect of what its Sales Associates do and how they do it – but misclassifies them as independent contractors rather than employees to avoid the need to pay payroll and unemployment insurance taxes on their behalf and to provide them with employment benefits, saddling them instead with business expenses and taxes;
- places an incredible pressure on its Sales Associates to meet unrealistic sales goals, which most of them cannot meet without resorting to improper or outright fraudulent underwriting techniques encouraged or condoned by Aflac, such as selling policies to customers without their knowledge, authorization or consent by forging their signatures; illicitly bundling stand-alone insurance policies; and falsifying applications in order to sell policies to unqualified customers;

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- ruthlessly retaliates against its associates who blow the whistle on these fraudulent practices and report them up the ladder to the very top of its hierarchy, as happened to Plaintiffs Conroy and Varela;
- deceives its shareholders and regulators by manipulating its key operational metrics and by cannibalizing its own pre-existing accounts in order to report “new” policies and to create an illusion of growth.

6. Accordingly, Plaintiffs bring this class action on behalf of themselves and all similarly situated former and current associates of Aflac (a) for unfair and deceptive business practices in connection with its fraudulent recruiting under the statutory and common laws of various states, and (b) for the employment and tax benefits they are rightly entitled to as the *de facto* employees of Aflac under the federal Employee Retirement Investment Securities Act (“ERISA”), the Federal Insurance Contributions Act (“FICA”), and the Federal Unemployment Tax Act (“FUTA”).

#### **JURISDICTION AND VENUE**

7. This action arises under the law of the United States, specifically 29 U.S.C. § 1132(a)(1)(B) (ERISA); 26 U.S.C. § 3101 et seq. (FICA); and 26 U.S.C. § 3301 (FUTA).

8. This action also alleges common law fraud as well as unfair and deceptive business practices in violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*; California’s False Advertising Law, Cal. Bus. & Prof. Code § 17500 *et seq.*; California’s Private Attorney General Act, Cal. Labor Code §§ 2698 *et seq.*; California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 et seq.; Arizona Consumer Fraud Act, Ariz. Rev. Stat § 44-1522; Arkansas Deceptive and Unconscionable Trade Practices Act, Ark. Code Ann. § 4-88-107; Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-101;

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Connecticut Unfair Trade Practices, Conn. Gen. Stat. Ann §42-110b; Delaware Consumer Fraud Act, 6 Del. Code § 2513; Delaware Deceptive Trade Practices Act, 6 Del. Code § 2532; Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201 *et seq.*; Florida's Misleading Advertising Law, Fla. Stat. § 817.41; Idaho Consumer Protection Act, Idaho Civ. Code § 48-603; Massachusetts Consumer Protection Act, Mass. Gen. Laws Ch. 93A; Minnesota Prevention of Consumer Fraud Act, Minn. Stat. § 325F. 69; Nebraska Consumer Protection Act, Neb. Rev. Stat. § 87-302; New Hampshire Consumer Protection Act, N.H. Rev. Stat § 358-A:1; New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8-2; New Mexico Unfair Trade Practices Act, N.M. Stat. Ann § 57-12-3; New York General Business Law, § 349; North Carolina Unfair & Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1; North Dakota Consumer Fraud Act, N.D. Cent. Code § 51-15-01; Oklahoma Consumer Protection Act, Okla. Stat. Tit.15 § 75; South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-20; South Dakota Deceptive Trade Practices & Consumer Protection Act., S.D. Code Ann. § 37-24-1; Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-104; Texas Deceptive Trade Practices, Tex. Bus. & Com. Code § 17.41; and Vermont Consumer Fraud Act, VT. Stat. ann. § 2453.

9. This Court accordingly has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1337.

10. This Court has personal jurisdiction over Aflac because Aflac does business within this jurisdiction.

11. Venue lies under 28 U.S.C. § 1391(b) and (c) because Aflac transacts business within this district and some of the facts forming the basis of this Complaint occurred within this district.

12. Plaintiffs demand a trial by jury.

**THE PARTIES**

13. Plaintiff Troy Hubbard began working for Aflac in February 2015 as a sales associate in Manteca, California. He gave up a home-based business at Aflac's request in order to work full-time for Aflac. Notwithstanding his diligent efforts to grow his business and network following the Aflac provided sales scripts and business plans, he was unable to support himself by working for Aflac. After giving Aflac notice of his intention to cease working full-time for the company in 2016, he was barred from contacting his clients and his accounts. Moreover, when those clients and accounts fail to continue their Aflac policies, Aflac demanded he repay a substantial amount of the commission income he had already earned. Mr. Hubbard is a resident of California.

14. Plaintiff Marcus Johnson was recruited by Aflac in February 2012 after posting his resume online. Like many other candidates, he was invited to an interview which turned out to be a group information session, where Aflac recruiters pitched a "lucrative" career at Aflac and gave him the irresistible "10-Year Income Example." Mr. Johnson then took insurance class, obtained his license, and started working for Aflac as a full-time employee, making hundreds of cold calls and door drops, and servicing house accounts given to him by his superiors. Mr. Johnson left in December 2014, having made less than \$25,000 during his stay at Aflac, and in financial ruin. During his brief tenure with the company, Mr. Johnson was promoted to a coordinator-in-training, but his main responsibility in that position was to recruit as many people as possible. Mr. Johnson recruited two of his friends, both of whom left the company in disgust shortly. Mr. Johnson is a resident of California.

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15. Plaintiff Martin Conroy began working for Aflac in 2004, became a District Sales Coordinator for Aflac in 2007, was honored as a President's Club Member, the highest honor Aflac bestows, four times, and received numerous state and national awards and recognitions during his successful career at Aflac. At the end of 2015, after Mr. Conroy reported a fraud whereby Aflac's regional representatives had been knowingly issuing policies to the New York City employees not qualified for such policies in violation of the state insurance regulations, he was stripped of team members and accounts and ultimately forced out of Aflac. Mr. Conroy is a resident of New York.

16. Plaintiff Gerard McCarthy joined Aflac in 2001 after 27 years of service for the City of Jersey City, where he served as the Director of the Police Department. Mr. McCarthy held numerous management positions, including those of a District Sales Coordinator and a Regional Sales Coordinator at Aflac; produced over \$25 million in premiums for the Company; and won nearly every award achievable on a state and national levels during his successful career with Aflac. In 2016, Mr. McCarthy suffered a severe loss of income and financial injury in connection with the improper conversion of several of his large accounts by Aflac. Mr. McCarthy is a resident of Florida.

17. Plaintiff Louis Varela joined Aflac three years ago as an associate and was actively producing for Aflac until his recent termination. Mr. Varela suffered financially when a number of his accounts were improperly converted and taken away from him by his Aflac supervisors. In May 2017, after the instant dispute commenced and Mr. Varela was identified as one of the potential plaintiffs, Aflac terminated his contract. Mr. Varela is a resident of New York.

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18. Plaintiff Debbie Cort joined Aflac in May 2015 and left in October 2016. Ms. Cort was working at a law firm immediately prior to joining Aflac but was fraudulently induced into leaving her employment there and becoming an associate with Aflac by the Company's recruiter who used a knowingly false "Aflac 10-Year Income Example" as a means of recruiting hundreds of new associates every year, most of whom would then quit before the year end. Furthermore, during Ms. Cort's stay at Aflac, the Company would purposely send her and other attractive young female associates to the New York City fire departments and other male-dominated environments around the city to sell Aflac insurance, where they would be solicited by employees to perform various favors of explicit sexual nature, making Ms. Cort extremely uncomfortable in her work. Ms. Cort is a resident of New York.

19. Plaintiff Anibal Alcantara, Jr., is an electric engineer by profession with sixteen years of corporate experience. He joined Aflac in March 2012 in reliance on Aflac's false representations made during his recruitment, and left in April 2013, when he realized that the statement made by Aflac to him were false. Despite his hard work for Aflac and his short stay, Aflac continues to dun Mr. Alcantara, claiming Aflac is owed money from the very small amount of commissions he was able to earn. Mr. Alcantara is a resident of New Jersey.

20. Plaintiff Frederick Baker was a bond trader for many years before being laid off in late 2014, when he was contacted by Aflac recruiters, invited for an interview – which turned out to be an information session that he attended with half a dozen other candidates with similar backgrounds – and given the "10-Year Income Example." Aflac recruiters also promised that Aflac would pay for his training. Mr. Baker soon discovered that Aflac's promises were very far from reality – neither he nor anyone else he met at Aflac ever made the commissions as represented in the "10-Year Income Example," and it turned out that Aflac would only reimburse

new associates for their training only upon their certain income targets, which were also unrealistic. Mr. Baker left the Company in March 2016, having made almost nothing from his 18 months with Aflac. Mr. Baker is a resident of New York.

21. Plaintiff Julio Leaty joined Aflac in March 2012 after a 30-year career at Merrill Lynch. Mr. Leaty was also shown and induced to rely upon “10-Year Income Example” in making his decision to join Aflac. Mr. Leaty worked very hard at Aflac, making hundreds of cold calls and door-to-door drops without making any money and without getting any support from Aflac, and, indeed, paying Aflac out of his own pocket for what little support he did receive. Despite all his hard work, Mr. Leaty ultimately made less than \$10,000 in his seven months at Aflac, the least he had ever made in his professional career, and left in disgust and frustration in October 2012. He recalls his short tenure at Aflac as a “purgatory” and “the worst time in his life,” and believes that his Aflac colleagues shared that sentiment. Notwithstanding his contributions, Aflac has been sending him monthly bills since that time, claiming that Mr. Leaty owes Aflac money for the policies canceled after his departure, and seeking to claw back the commission paid for these policies. Mr. Leaty is a resident of New York.

22. Defendant Aflac, Incorporated, a Fortune 500 company well-known for its Duck commercials, is the largest provider of supplemental insurance in the United States. Aflac, Incorporated, is a holding company for its U.S. wholly owned subsidiary Defendant Aflac Family Life Assurance Company of Columbus (together, “Aflac”), and its sister company Aflac Japan. Aflac is incorporated in Georgia with its principal place of business in Columbus, Georgia. Aflac is publicly traded on the New York Stock Exchange under ticker symbol AFL, and is a component of the Standard & Poors’ 500.

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23. Defendant Aflac Family Life Assurance Company of Columbus is an operating subsidiary of Aflac, Incorporated. Aflac Family Life Assurance Company of Columbus is incorporated in Nebraska and has its principal place of business in Columbus, Georgia.

## **FACTS**

### **A. Aflac and its business**

24. Aflac has been selling insurance in the United States since 1955. Approximately 98% of the policies it sells in the United States are payroll deduction-based supplemental insurance policies. The small-case market, *i.e.*, employer groups with fewer than 100 employees, represents 90% of Aflac accounts, and “has always been Aflac’s bread and butter.”

25. The majority of Aflac’s payroll deduction policies qualify under federal tax guidelines for pre-tax treatment. The ability of policyholders to pay for insurance policies with pre-tax money through payroll deductions is fundamental to Aflac’s business model because it is entirely beneficial for the policyholder’s employer, who is not responsible for paying the “employer’s share” of payroll taxes (generally around 7.5%) on the premiums paid by the policyholder through the employer’s payroll. These savings to the employers is one of the key reasons that Aflac salespersons are able to access the small business employees which make up the core of their consumer base.

26. Supplemental insurance policies, also known as voluntary insurance policies, are stand-alone insurance products that typically offer benefits in addition to and on top of existing insurance policies, hence the name supplemental. For example, one of its earliest insurance products was Aflac’s “cancer” policies that offered benefits specifically to those insured who were diagnosed with cancer in addition to and on top of any existing health of life insurance policies. Aflac also offers accident, hospital indemnity, vision and dental supplemental insurance policies, among others.

**B. Aflac's recruitment process**

27. Aflac has a relatively small workforce of persons it classifies as “full-time” employees, relying on a large number of employees denominated as “independent contractors” to sell its insurance products. The exact number of sales associates fluctuate from year to year depending on how successful Aflac’s recruitment has been in a particular year, with the average of approximately 50,000 Sales Associates (49,500 in 2016) in the United States annually.

28. A typical Sales Associate works for Aflac for less than one year and earn less than \$10,000 in commissions; only a small percentage of new Sales Associates at Aflac are able to make any meaningful return on their investment of time and money.

29. The investment of time and money initially required of Sales Associates is substantial. Newly recruited Sales Associates have to register and pay for a 40-hour minimum licensing course that can cost hundreds of dollars; pass the exam and obtain their licenses; spend scores of hours undergoing mandatory trainings from Aflac, and other preparatory work before they can even attempt to close a single sale. Furthermore, Aflac offers no assistance to new Sales Associates with their business expenses. These new Sales Associates must pay for the required insurance classes and licenses, rent, overhead, travel costs and other expenses out of their own pocket.

30. Moreover, because they are paid solely on commissions from premiums collected from “closed sales” of insurance policies, Sales Associates are not paid for weeks and frequently months after they sell insurance policies.

31. Even closing that first sale is a significant hurdle for beginning Sales Associates. First, the supplemental insurance market in the United States is saturated, with only smaller, newer, and generally less valuable accounts available for entry-level Sales Associates to get access to. The larger, more profitable accounts have all, with few exceptions, already been

exploited by previous Aflac personnel, who jealously guard those accounts and the stream of income that flows from them.

32. Second, Aflac has itself entered the market as a competitor to its own Sales Associates. Historically, Aflac almost exclusively sold its policies on an individual basis: individual employees of participating employers made the decision as to whether to purchase any Aflac policies at all and, if so, which policies to purchase. However, in 2009 Aflac acquired Continental American Insurance Company, which enabled Aflac to sell supplemental insurance on a group as well as an individual basis. Policies sold on a “group basis” through brokers are sold at a discount to the identical policies sold on an “individual” basis, and employees with group coverage no longer need such policies sold on an individual basis. Sales Associates, and particularly entry-level Sales Associates, are not offered the ability to sell group policies or profit from commissions earned on such policies. The replacement of these individual policies with nearly identical group policies cancels commissions for many long-standing associates and coordinators, all of whom were promised during their recruitment a “lifetime income” from the policies in place. The new group policies rarely pay the existing individual policy associates any commissions.

33. Third, Sales Associates are required to service existing Aflac “house accounts” with little opportunity to earn commission revenue from the sales of new policies. Aflac directs Sales Associates to provide customer service to an existing account, such as a school district. Both employers and policy holders expect such visits and the customer service that comes with them on at least an annual basis. During such customer service visits and open enrollment periods, new employees can sign up for policies, existing policy holders can cancel or add to their existing policies, and get answers about claims or payment of benefits under the policies.

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However, Sales Associates do not get paid for performing such services on existing accounts.

And while performing such servicing does offer the opportunity to Sales Associates to sell policies to new employees, such new employees are typically just a small fraction of the total group that Sales Associates are expected to service. Moreover, such “house accounts” frequently “belong” to other Aflac personnel who will take a substantial portion of any commission revenue earned by the Sales Associates if they are able to sell new Aflac insurance policies during such service calls through the manipulation of the so-called “situation codes” in Aflac’s compensation system.

34. Fourth, because the United States supplemental insurance market is largely saturated with Aflac products, ordinary cold-calling and door-to-door sales techniques are ineffective. Rather, entry-level Sales Personnel are encouraged to leverage their own personal networks to obtain entrée to small businesses owned by friends and relatives. However, what they are not told is that once those contacts are exhausted Aflac cannot and will not supply the kind of leads that will allow them to duplicate that success elsewhere – while promising the exact opposite at the time of recruitment. Accordingly, even Sales Associates who achieve some early success quickly become disillusioned and leave, often failing to remain the one year that Aflac requires for its Sales Associates to obtain a “trail” on renewal commissions from policies that were sold.

35. Largely as a result of these factors, the vast majority of Sales Associates are never able to make a living working full-time selling Aflac products. Many, perhaps even most, Sales Associates ultimately suffer a loss or make less than minimum wage on their investment of time and money into the opportunity offered by Aflac. A substantial part of Aflac’s yearly crop of new Sales Associates quit Aflac without ever earning a single dollar in commissions.

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36. For these reasons, Aflac suffers very high turnover among its Sales Associates, leading to a replacement rate of approximately 100% on an annual basis, among the highest of all Fortune 500 companies.<sup>1</sup>

37. Given that its sales model relies entirely on Sales Associates, and given the extremely fast rate at which they become disillusioned and separate from Aflac, Aflac must aggressively recruit tens of thousands of new bodies every year.

### **C. Aflac's fraud in the recruitment.**

38. The extremely high turnover rate among Aflac's Sales Associates and its causes are well-known to Aflac; yet, it continues to recruit tens of thousands of sales associates annually, using its fraudulent pitch publicly while adhering to its "Rule of 24" internally. See, e.g., a March 9, 2010 email from New Jersey State Sales Coordinator at the time, Albert Shust, to plaintiff Martin Conroy on the subject of recruiting: "Marty, I know it's early in the year and one of the goals I set for all DSCs is to have a minimum of 24 Recruits for the year. As you know, *recruiting is the life blood of our organization*. You currently have 3 recruits and you should have a minimum of 4 at this point. Make sure you are putting in the recruiting activity to get you back on PACE. *Remember the Rule of 24*" (emphasis added).

39. Knowing that very few, if any, recruits would agree to work for Aflac for little or no compensation that they actually earn while at the Company, Aflac engages in a coordinated effort to mislead and deceive the people it seeks to recruit.

40. "People want to make money, and when they get into sales, that's a big driving factor. I mean I don't think it should be the only thing, but *there is a lot of money to be made at*

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<sup>1</sup> According to a 2013 Business Insider survey, Aflac has the second-highest attrition rate among all Fortune 500 companies, <http://www.businessinsider.com/companies-ranked-by-turnover-rates-2013-7>.

*Aflac. I am not shy about it at all because it is a big part of bringing someone onboard.*” So said Aflac’s Market Director for New York Trevor Fennell in a video testimonial published on Aflac.com. (Aflac removed the video from its website after the current dispute commenced.)<sup>2</sup>

41. “Recruiting is one of the most important areas of focus for our career sales force. . . . Make no mistake – we will continue to focus on our recruiting, and must show marked improvement longer term, as *this is an important driver of our sales growth*,” as Teresa L. White, President of Aflac U.S., reported to analysts during Aflac’s Financial Analysts Briefing for 2015.

42. Making “a lot of money” at Aflac is indeed the key part of Aflac’s recruiting pitch for bringing new associates onboard, while the resulting number of “average weekly producers” is one of Aflac’s key operational metrics that the Company shared with the Company’s shareholders and analysts as an admittedly “important driver of [Aflac’s] sales growth.” (In 2017, after the Plaintiffs had alleged the “average weekly producer” metric to be fraudulent in communications with Aflac’s Board of Directors and its General Counsel and outside counsel, Aflac discontinued this reporting and deleted the metric from its annual reports, without any explanation.)

43. In other words, the large-scale recruiting is necessary for Aflac to grow its sales. And Aflac’s recruiting pitch, carefully developed with compelling charts and personal stories for recruiters to integrate into their pitches is based on a premise that Aflac knows to be false – *i.e.*, selling Aflac insurance could, with a reasonable amount of diligence, be financially rewarding career for those willing to put in the effort.

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<sup>2</sup> In 2017, after the current dispute had already commenced, Aflac undertook several other steps tacitly acknowledging that the Plaintiffs’ allegations were true, see Part   below.

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44. This pitch is repeated time and again in Aflac’s glossy recruitment brochures, recruitment letters and emails, and in Aflac’s recruiting videos posted on its website.

45. Aflac’s recruiters (including persons such as Jason Pastore, convicted in 2015 for IRS fraud), are paid \$20 per recruit to search for people who post their resumes on line, contact some of the most vulnerable segments of the population – kids fresh out of college, laid-off professionals desperate for work, unemployed with a college degree – tell them that they are being recruited for career opportunities at Aflac, and invite them for one of Aflac’s so-called “information sessions.”

46. Aflac’s sales coordinators (who are also generally Aflac associates and always treated as independent contractors but with more seniority and status in the organization) also participate in the Company’s recruiting efforts. For example, a form letter sent to recruits by New Jersey Regional Sales Coordinator Rick Whalen in July 2014 describes Aflac as “the # 1 in worksite/voluntary sales for 13 consecutive years” and states that **“our top 5,000 agents earn an average of \$173,000 annually”** (emphasis original).

47. During the information session, Aflac’s representatives make an inspiring presentation for new recruits, showing them a video promising glamorous lifestyle, travel opportunities, while at the same time emphasizing that Aflac is “one of the most honored companies across the globe, with distinctions including ‘World’s Most Ethical’ and ‘Most Admired Companies’”. At these presentations, they hand out to every recruit a glossy recruitment brochure, including a sheet of paper called “Aflac 10-Year Income Example.”

48. This “Aflac 10-Year Income Example” is how Aflac convinces the recruits that “there is a lot of money to be made at Aflac,” which is admittedly “a big part of bringing someone onboard.” The “10-Year Income Example” has been used for years by Aflac, and while

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the promised income amounts changed over time, the false assumptions underlying them did not. The most recent, 2016 version of the “10-Year Income Example,” is attached as Exhibit A hereto and reproduced below.

49. Here is what Aflac promises its recruits:



### Aflac 10 - Year Income Example

	Annual Production	Gross Commission	Renewals	Total Earnings	Accumulated Stock Bonus
Year 1	\$ 266,760	\$ 125,377	\$ -	\$ 125,377	\$ -
Year 2	\$ 266,760	\$ 125,377	\$ 7,500	\$ 132,877	\$ 5,000
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This is a ten year income example of a person who produces \$266,760 in new business.

- This assumes 48% 1st year commissions, 3% renewals, and a 2% stock bonus Years 1 - 2.
- In years 3 - 10 rates are 37% 1st year commissions, 7% renewals, and a 3.5% stock bonus on any policy that pays 13 months.
- An agent **must see** 83 employees monthly to be on track as a \$250,000 producer

*(45 employees x 12 months = 540 ee's @ 50% closing rate is 270 new sales 270 new sales x \$520 (avg. annual premium) x 1.9 policies (avg. enrollment per employee) = \$266,760 in new business )*

50. This document, used in recruiting presentations throughout the United States and throughout the Class Period, purports to provide potential recruits with the type of earnings they could achieve by working for Aflac. Recruits would see a six-figure income in year 1 and a steady upward progression in “Total Earnings” to Year 10 from \$125,377 per year to \$236,201

based on a combination of “Gross Commission” and “Renewals.” In addition, recruits were told that they could also earn the “Accumulated Stock Bonus”, amounting to more than \$100,000 by Year 10.

51. Recruits are understandably persuaded by the “10-Year Income Example” and the “hard sell” pitch by Aflac’s recruiters that comes with it. College graduates and those changing careers see the possibility of steady six-figure income starting immediately, if the agent could only “see [the] 83 employees monthly [needed] to be on track as a \$250,000 producer.”

52. Hundreds of thousands of recruits saw those income figures flowing from the single, and seemingly eminently do-able, requirement, and relied on them in their decision to join Aflac.

53. The new recruits induced by Aflac’s promise of “a lot of money to be made” exemplified by this “10-Year Income Example” then sign up for insurance classes, receive their insurance license in due course, sign a standard associate contract with Aflac, and commence working for the Company as its Sales Associates.

54. However, what the vast majority of them quickly discover is that they are not making anything close to the income represented by Aflac during the recruitment, not to mention that instead of glamorous opportunities they mostly do cold-calling and door drops trying to schedule appointments to see potential customers, and servicing Aflac’s existing accounts for no or very little compensation.

55. Many new associates, who are unsophisticated and new to the insurance business, blame themselves for their failure as they believe that the fault for not meeting the expectations lies with them; many, if not most, leave Aflac before the end of their first year as a result, leaving whatever accounts they had managed to open in the meantime with Aflac as “house” accounts,

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which Aflac's sales coordinators are then free to allocate to those associates they favor, but the associates who had opened them and left Aflac before the year-end do not receive the promised commission on those accounts, nor could they keep the accounts themselves.

56. The fault for not meeting the income expectations, however, does not lie with the new associates but with Aflac itself, because the expectations themselves are wholly unrealistic as they are based on the premises that Aflac knows to be false.

57. As a threshold matter, less than 2% of all Aflac associates nationwide – including not only the newly recruited ones but also the long-standing veterans and the brokers -- achieve the \$266,760 annual production number (or the \$250,000 used in prior year examples), and the vast majority of them produce significantly less than that. Among other things, it is virtually impossible for a new associate to “see 83 employees monthly to be on track as a \$250,000 producer,” such that the assumption of the \$250,000 annual production (let alone of \$266,760) is false in the vast majority of cases.

58. Because Aflac had already saturated the market with its supplemental insurance products, it was virtually impossible for Sales Associates to locate and present to the hypothetical “83 employees.” Most potential employers with any reasonable size of workforce were already associated with one or another Aflac associate or broker, meaning that most of the employees interested in purchasing Aflac products had already done so and, even for new employees or person newly deciding to purchase Aflac products, the previously involved Aflac associate or brokers would expect to take a substantial part of any commissions earned by Sales Associates on new sales. Accordingly, even if Sales Associates could present to “83 employees” under such circumstances, many of those employees either would have previously decided to purchase Aflac products (limiting the new Sales Associates's ability to earn commissions on new

sales, as commissions on new policies would be subject to division using “sit codes” as described above) or, having been informed of the availability of Aflac products, had declined to purchase them. For these reasons, Sales Associates would have to present to far more than “83” such employees monthly to generate the revenue described in the “10-Year Income Example.”

59. While smaller operations with fewer employees or newly formed businesses might not have already been “claimed” in this fashion, small businesses have small number of employees, and it takes as much time and effort for Sales Associates to set up and deliver a sales presentation to a room of 10 employees as it does a room of 100 employees. Moreover, because of the saturation of the U.S. marketplace described above, numerous Sales Associates are scrambling to get in front of and exploit the few “untapped” markets that exist, no matter how small.

60. As a result of all of the above, it is virtually impossible for Sales Associates on a monthly basis to get in front of the “83 employees” who have not previously purchased or considered purchasing Aflac insurance, who were not already associated with another Aflac agent, and who therefore presented a “clean field” of employees who were available and willing to consider the purchase of Aflac supplemental insurance.

61. But even if the associates were indeed producing \$250,000 or \$266,000 annually for Aflac, their own commissions from such annual production would be nowhere near the commissions as represented by Aflac in the “10-year Income Example,” for several reasons.

62. *First*, the “10-Year Income Example” assumes “48% 1<sup>st</sup> year commissions” which are higher than Aflac pays on all but two insurance products, and significantly higher than the average percentage in commissions an insurance agent could expect to earn on the policies that they sold, which generally average around 35%. Only two of the Aflac policies offer 1st year

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commission of 48%, while all the others range from 25% to 43%, according to the Aflac's own Compensation and Commissions schedules.

63. *Second*, on average approximately 22% of all policies are cancelled within the first year, and Sales Associates do not receive any commissions on cancelled policies, which significantly reduces their first year commission, but is not reflected in "10-Year Income Example".

64. *Third*, the "10-Year Income Example" states that "in years 3-10 rates are 37% 1st year commission, 7% renewals" – which is also false. According to Aflac's own Compensation and Commissions schedules, in year 3, Sales Associates default to the so-called "ACK" commission structure, under which only one policy – for cancer – carries 38% commission rate, and the rest of the policies are all well below 37%.

65. The same is true with regard to the projected "7% renewal" commission rate – only the Whole Life policy, which is rarely sold, offers this rate, while the rest of the policies carry substantially lower renewal rates.

66. *Fourth*, to the extent that Sales Associates do manage to close accounts, they do not receive the full commission as promised by Aflac, for several reasons. Thus, Sales Associates are not told during the recruitment that Aflac pays only 63% of the commission to which the Sales Associates is otherwise entitled upfront, and the rest is deferred and paid "as earned" through the rest of the year (by which time many Sales Associates leave and so do not get paid the balance). Furthermore, unbeknownst to them, sales coordinators higher up at Aflac split their commissions with other agents or brokers through manipulation of the "sit" codes to which they, but not the rank-and-file Sales Associates, have access, in a byzantine process of

apportioning territory, responsibility for accounts, and simple theft from newer, less experienced Sales Associates.

67. *Fifth*, Aflac also assures the new recruits that they will continue to be paid on the accounts they close as long as their licence and contract remain in good standing. As Aflac's glossy recruiting brochure promises among "the reasons you should switch to a career with Aflac": "level renewal commission paid for the lifetime of the policy, NOT 1st and 2nd year only." That promise is also false, however, as plaintiffs Martin Conroy and Gerard McCarthy and others have learned when their accounts and commissions on those accounts were taken away from them by Aflac.

68. Aflac makes these false representations in its recruiting materials, including the aforementioned "10-Year Income Example" and other documents included in Aflac's recruiting brochure, as well as other communications to prospective associates. For example, in a recruiting letter dated July 1, 2014, New York Regional Sales Coordinator Rick Whelan states: "Shouldn't your career work just as hard to deliver the income you deserve? At Aflac, it can. The #1 in the worksite/voluntary sales for 13 consecutive years, we help our agents reach their true earnings potential. In fact, **our top 5,000 agents earn on average of \$173,000 annually**" (emphasis original).

69. Aflac's recruiting manual (1999 edition) includes dozens of Aflac's "approved newspaper advertisements" to be used by coordinators, all of which framed in terms of perspective lucrative employment, promising the candidates the "potential to earn more than \$100,000 annually."

70. Sales Associates rely on these false representations to their severe detriment. In almost every case, because they have not previously been licensed as insurance agents, potential

Sales Associates were required to take classes, apply for and then pass the licensing exams required of insurance agents in each state. While each state has its own requirements, and those requirements are subject to exceptions, insurance agent exams often require 20 hours or more of instruction before a person is eligible to sit for it. Moreover, even if a person has passed the exam, the state can still refuse to issue the license, and, in any event, fees must be paid.

71. In addition, many Sales Associates were required to purchase Aflac products as a condition of joining Aflac. During the “Aflac Sales Academy” for new associates, Aflac required all new associates to purchase Aflac insurance (“You can’t sell Aflac if you yourself aren’t a policyholder.”) Aflac recruiters would explain that the Sales Associates would get “commissions on the policies they wrote on themselves,” which would result in “about a 40% discount,” and presented it as an “employee benefit.”

72. Accordingly, a significant commitment of time and money was required of Sales Associates before they could even sign an associates contract with Aflac and begin to attempt to sell Aflac’s products. These Sales Associates lost that time and money they spent on obtaining insurance licenses based on the false statements made by Aflac recruiters, and have foregone other potential opportunities to find employment elsewhere.

73. Moreover, most Sales Associates invested hundreds or even thousands of hours trying to sell Aflac products based on the misleading statements made by Aflac in the process of their recruitment. Virtually all of them ultimately became disillusioned and quit Aflac, having spent hundreds of dollars and hundreds or thousands of hours attempting, and failing, to sell Aflac products.

74. Each of the plaintiffs in this case was fraudulently recruited using the “10-Year Income Example,” and the false statements contained therein and in other Aflac’s recruiting materials.

75. Each of the Plaintiffs relied to their detriment on knowingly false statements made by agents of Defendant Aflac. The inducement of reliance by Aflac is cognizable under the common law and statutory laws of the several states prohibiting fraud and fraudulent and deceptive business practices.

**D. Aflac changes its recruiting campaign after Plaintiffs alleged fraud; the new campaign is still fraudulent; the “Rule of 24” is still alive and well.**

76. Plaintiffs first alleged fraud in the recruitment in their Dispute Notice to Aflac dated December 10, 2016. Plaintiffs also alleged at the time that Aflac further benefitted from its fraudulent recruitment program because it allowed Aflac to report the resulting (fake) number of its total sales associates to its shareholders as a “key operating metric” indicative of the Company’s position and growth prospects.

77. In particular, Aflac has been for years publishing its “average weekly producers” (“AWP”) and/or “average monthly producers” numbers as its key operational metrics in its periodic securities filings with the SEC, in its annual and quarterly reports to the shareholders, and in financial analyst presentations.

78. These numbers were all inflated, however, because they included the newly recruited associates as “producers” even though most of them did not produce anything during their short stay at the Company. In order to count them as “producers,” at the end of a reporting period Aflac falsely assigned a minimal amount of production – as low as \$1 – to these non-producing associates in order to count them towards the “average producer” metric by taking that production amount from other, producing associates.

79. Here is how this indisputably fraudulent practice appears in the following Q4 2014 example. On November 18, 2014, Benito Rotondi, State Training Coordinator in New York, sent an email to Ken Meier, Rick Peterson, and others at Aflac, stating: “Here is the Zero Producer Report that was promised you earlier today. As stated earlier we need another 63 Zero Producers by week 51. Please review this with your team and ***your help is greatly appreciated in getting at least \$1 of production to those who have zero next to their names*** that are still active with us.”

80. Mr. Peterson then sent a reminder to his district sales coordinators on December 10, 2014: “DSC’s, Just another reminder ***below is a list of our regions ‘0’ production producers. We need to get at least \$1 in production in there [sic] name. . . . I’m asking each of you to pull you [sic] weight here. The State really need [sic] this to happen*** and I gave my word we would all do are [sic] part.”

81. This \$1 trick would then allow the coordinators to receive an additional compensation because their bonus had the “average weekly producer” component to it; it also allows Aflac to report its “average weekly producers” or “average monthly producers” operational metrics inflated by hundreds if not thousands of “zero producers” with \$1 in fake production every reporting period.

82. It also demonstrates that Aflac could manipulate its bonus and compensation structure with the purpose and/or effect of incentivizing its sales associates to pad those numbers. In fact, Mr. Conroy as far back as in 2010 opposed the inclusion of the “average weekly producer” number as a component of the district sales coordinators’ bonus, because the number was too easily manipulated (witness the \$1 trick above).

83. Thus, in his email to Mr. Amos II of April 13, 2010, Mr. Conroy expressly stated:

***“Average Weekly Producers is, with all due respect, a ‘bull pucky’ number. There are too many ways to manipulate the figure.”***

84. Mr. Amos II responded: ***“I really like the DSC bonus and I think it aligns.”*** Mr. Amos II was right: the bonus structure with the “average weekly producer” component to it perfectly aligned the coordinators’ incentives to pad the AWP number for their own bonuses with the Company’s goal of reporting growth in this key operational metric, even though Mr. Amos II knew, having been expressly forewarned by Mr. Conroy, that this metric would be easily manipulated.

85. Indeed, Aflac then pressured and incentivized its Sales Associates to grow the AWP number: “AWP is the KEY!! Grow AWP by 1 in 2<sup>nd</sup> qtr make \$\$\$. Grow AWP by 2 in the 2<sup>nd</sup> qtr make \$\$\$\$.”

86. As Ms. White, President of Aflac U.S., assured investors during Aflac’s Financial Analysts Briefing for 2015, “we know that compensation is the most effective means of changing the activities of a sales force.” In the case of the AWP metric, it appears that Aflac purposely changed its compensation incentives to facilitate manipulation by the sales force.

87. These AWP metrics were identified in quarterly and annual filings as one of Aflac’s key measures of growth. (See, e.g., 2015 10-K dated February 25, 2016 at 50). They no doubt were intended to, and did, convince shareholders of Aflac’s financial well-being.

88. However, in 2017, after the Plaintiffs made those allegations: (a) Aflac decommissioned its “AWP” reporting and dropped the “AWP” from its list of “key operational metrics” published in its Annual Report, without any explanation; and (b) Paul Amos II, the

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CEO of the Company alleged to have been behind the “AWP” scheme, resigned from the Company and from its Board of Directors effective July 1, 2017.

89. Moreover, following Plaintiffs’ allegations and no doubt in response to them, Aflac has made other significant and revealing changes in its recruitment program, as follows.

90. *First*, the recruiting video referenced in ¶ \_\_ above (“there is a lot of money to be made at Aflac [which] is a big part of bringing someone onboard”) was deleted from Aflac’s website.

91. *Second*, Aflac’s recruitment emphasis has changed from the “unlimited earnings potential” (which was a mockery) into “the benefits of flexible working” as independent contractors.

92. *Third*, Aflac recently instructed its sales coordinators not to use the “10-Year Income Example” any longer. In particular, in April 2017, Aflac’s Vice President Adam Michaels held a number of conference calls with Aflac’s sales offices, telling the sales coordinators that they should not be lying about the \$125,000 first-year average income, and should start using the \$60,000 figure instead.

93. *Fourth*, at the very same time when Aflac decommissioned its AWP reports in January 2017, no doubt in response to Plaintiffs’ “\$1” trick allegations, it also abruptly changed its compensation plan for all levels of its Sales Associates including associates, District Coordinators, and Regional Sales Coordinators. The 2017 compensation plan, which had been rolled out just a few weeks earlier at the beginning of the year, was changed three weeks into the new sales year after AFLAC enjoyed a “banner year” in 2016. The new rules, for the first time, give the coordinators a bonus credit for dormant accounts: as Andy Glaub, Senior Vice President and Director of Sales, wrote the Market Directors, RSCs, and DSCs in the 3rd

week of 2017, “RSCs and DSCs will receive Q1 new account FAME credit when new policies are written in the first quarter in traditional accounts that have been dormant for 36 months or more.” Prior to this change, associates writing policies on dormant accounts did not count towards the coordinators’ bonus; under the new rules, the coordinators would receive credit towards their bonus for “producing” in these dormant accounts.

94. *Fifth*, in addition to this unprecedeted and rash change to the sales force’s compensation plan in just the 3rd week of the 2017 sales year, AFLAC also added a 5th bonus qualification metric for District and Regional Coordinators to its previous 4-metric bonus. As Mr. Glaub stated in the same email, “[e]xisting Account Premium for traditional accounts in the 3-249 size range has been ADDED as a Q1 Fame Qualification metric for DSC's and RSC's. This provides the opportunity to qualify in 3 out of 5 metrics rather than 3 our of 4.” This additional qualifying metric had the purpose and/or effect of compensating the coordinates for the loss of the “\$1” trick to pad the AWP numbers.

95. *Finally*, Aflac has published its new recruiting materials, where it now promises the average first-year commission of \$64,000 – which obviously puts a lie to the prior figure of \$125,000 and plainly shows that the “10-Year Income Example” was thoroughly false.

96. However, the new pitch is not much better as it too remains false and fraudulent. Thus, Aflac now promises its recruits that, on average, the Aflac sales associate closes two accounts a month (24 accounts a year) and earns \$64,000 in first-year commission. Both premises are false, and Aflac knows it because its own actual records of the number of accounts opened and the average commission earned by the sales associates are dramatically different.

97. According to Aflac’s own “*Leaders Report: New Accounts with 3 Policies Issued*,” (a) in 2014, only 41 out of 54,825 total active associates managed to close 24 or more

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accounts; (b) in 2015, only 54 out of 54,142 did, and (c) in 2016, only 52 out of 49,486.

Accordingly, less than 0.1% of Sales Associates manage to close 24 accounts per year -- a far cry from being the “average.”

98. Moreover, in the 52-week rolling average for Aflac’s North East operations from July 1, 2016 to June 30, 2017, Aflac recruited 3,792 sales associates, of which only 1,827 produced anything at all, and 1,964 are listed as “total career non producers” (meaning that they did not produce any premiums during that 52-week period). In total, the 3,792 associates closed 2,855 accounts a year and produced slightly over \$30 million – making the actual averages of 1.3 accounts a year and less than \$8000 in production per associate. Additionally, Aflac’s top-producing associate in this 52-week rolling average produced only \$187,408 in premiums, which translates into \$74,000 commissions at most (assuming generously a 40% commission rate and none of the deductions shown above).

**E. “Sell a dream”: Aflac promotes a pyramid recruiting scheme.**

99. Aflac’s recruiting scheme has all the features of an illegal pyramid scheme, *i.e.*, a scheme where participants earn their income based primarily on the recruitment of others into the scheme rather than on the participants’ actual sales of products or services. Indeed, the higher the participants advance in the Aflac sales hierarchy – from a sales associate to a coordinator-in-training, to a district sales coordinator, and to a regional sales coordinator – the more significant their recruiting responsibilities become, and the more their compensation depends on the number of the new associates they recruit rather than on their actual production.

100. *First*, starting at the bottom of the pyramid, Aflac incentivizes and encourages – but does not require -- its rank-and-file sales associates to recruit more people for Aflac. Thus, Aflac offers its associates to “recruit new sales associates and receive a quarterly check for 5% of

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the business produced by them during their first 52 weeks under contract,” and promises the sales associates that they will “increase [their] income significantly” through recruitment: “recruit as many quality new associates as you can. If you recruit four or five new associates, you could increase your annual earnings by \$15,000, \$20,000, \$25,000 . . . or more!”

101. Aflac further pressures its sales associates to recruit with the following sentiments seeking to shame them for not recruiting family and friends: “Sometimes, associates will say they don’t nominate recruits since they don’t know anyone who is looking for a job. Often, sales associates just isn’t comfortable approaching a family member, a friend, or acquaintance about a job opportunity. . . . *Have you ever thought that you actually may be offending your family and friends by not nominating them?*” (emphasis added).

102. The same instructions also offer a script for the associates to use in recruiting, which starts as follows: “I work with a company called American Family Assurance Company of Columbus. You probably know us as Aflac. We specialize in helping employers expand their current employee benefits. Basically, my job is really simple. I make great money, have significant pay increases every year, receives stock in the company, go on nice trips and have lots of fun! [All lies, according to Plaintiffs.] You should come in for an interview. I think you would be great!”

103. *Second*, when an associate is promoted to a coordinator-in-training, recruiting becomes their prime responsibility, as happened with Plaintiff Johnson.

104. *Third*, when an associate or a coordinator-in-training becomes a disctict sales coordinator, Aflac contractually requires him or her to “recruit and train associates for the sale of all Aflac insurance policies and coordinate the activities of the associates assigned to the DC [District Coordinator] in writing by Aflac,” according to the standard District Coordinator’s

Agreement (Aflac's standard Regional Sales Coordinator's Agreement has an identical provision). Aflac also incentivizes its district sales coordinators to recruit, for example by running quarterly recruiting contests with the following rules:



The graphic is a slide titled "3rd Qtr DSC Recruiting Contest". It features a stylized tree with a red pushpin in the top, and dollar signs (\$) for leaves. A white bird is at the base of the tree, blowing a stream of coins. Below the tree, the text reads: ***Recruit, Recruit, Recruit***, DSC Recruiting Expectation – 6 Career Recruits Per Qtr. Under "Contest Rules", it says: Do what is expected = Win \$500 (6 Career Recruits that come from your district). It also states: Exceed Expectations = \$100 for each additional recruit (7-11) •Max payout for contest is \$1000 per district.

105. Indeed, the duty to recruit is the only additional contractual duty required of Aflac's coordinators compared to Aflac's rank-and-file associates. The coordinators' compensation is based on their own annual production as well as on the number of the new recruits; in fact, 3 of the 5 qualifying criteria for the coordinators' bonus are based on the recruiting results. This means that the district sales coordinator could not qualify for a bonus, which is a significant component of the coordinator's income, without successfully recruiting new associates.

106. *Third*, the regional sales coordinators' ("RSC") income depends even more on the new recruits rather than on the sale of Aflac products. Like the district coordinators, RSCs are

contractually required to recruit, and their bonus is completely dependent on the recruiting success. The RSCs in turn pressure their DSC to recruit more by closely monitoring their quarterly recruiting numbers, with handwritten notes to the underperforming DSCs such as “must continue to pull increases,” or “needs improvement.”

107. Indeed, Aflac dedicates over 40 pages of its Participant Workbook to the subject of recruiting, stating in the beginning: “Recruiting new associates is . . . one of the regional sales coordinator’s primary responsibility; however, that does not relieve you as a DSC of your responsibility to recruit for your own team. As a matter of fact, we encourage everyone at AFLAC to recruit – even associates.” Elsewhere in the chapter on Recruiting, Aflac states that:

- “constant attention to recruiting must be part of your everyday activities”;
- “recruiting is a full-time job”;
- “continual recruiting activity is the most important factor in your success”;
- “Recruit all the time; there is always an ‘opening’ for a new associate!”
- “AFLAC will pay the recruiter bonus”;
- “Use **recruiting business cards (Form M-0805)** when meeting direct contacts.”

108. Accordingly, Aflac’s business depends on the constant recruitment of new bodies into its sales force; Aflac determines its associates’ compensation based in part on their recruitment success, and the higher in Aflac’s hierarchy the associates are, the more their income is based on recruitment rather than direct sales.

109. Finally, Aflac’s pyramid “Rule of 24” is very much alive and well, too. The Rule is known at Aflac by its full name -- “the Brad Jones’ Rule of 24” -- named after Aflac’s State Sales Coordinator who authored and popularized it in 2008. The handwritten notes by Aflac’s regional sales coordinator Michael Fornaro from one of Brad Jones’s “Rule of 24” presentations

includes the Rule itself, a pyramid depiction of that Rule, and notations such as “*sell the dream*,” “develop recruiting as a habit,” “training is no more than imitation,” and a sales pitch: “are you making the type of money that you only dream about?”

110. Even though he was demoted in 2015, Aflac continues to send Mr. Jones as its senior consultant around the country to teach his pyramid Rule to Aflac’s Sales Associates; indeed, Mr. Jones most recently taught the Rule at a June 14, 2017 meeting with sales coordinators in New Jersey and again in New York on July 12, 2017. On his lectures, Mr. Jones keeps assuring the sales associates that “all these years, the Rule of 24 has not been proven wrong.”

111. Indeed, in Aflac’s training video for recruiting, posted at the end of 2016, Andy Glaub, Aflac’s Senior Vice President and Director of Sales, with the assistance of a “recruiting coach” and two Aflac market directors, both successful recruiters, promoted the so-called “Volume Recruiting” as follows:

- “We have no risk to volume recruit, yet there is a tremendous risk if we don’t”;
- “A steady stream of new recruits is absolutely vital for keeping up with your Productive Recruit metric and FAME qualification”;
- “Volume recruiters,” “top volume recruiters”;
- “In the age-old argument of quantity over quality, quantity wins every day,” “quantity over quality”;
- “Volume recruiting from all sources”;
- “Apply lessons from Brad Jones and Andy Glaub”;
- “If DSCs don’t have volume of recruits, their whole area is not going to improve”; and
- “Top tips for driving volume recruiting.”

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112. This pyramid Rule fed by Volume Recruiting has worked well over the years for Aflac – but at the direct expense and to the severe detriment of 20 out of every 24 of its Sales Associates.

**F. Aflac misclassifies its Sales Associates as independent contractors.**

113. In a further effort to obtain a financial advantage for itself at the direct expense of its Sales Associates, Aflac illegally mischaracterized its Sales Associates, who constitute the vast majority of its workforce, as independent contractors -- even though the Company controls every aspect of their work as its *de facto* employees.

**(a) Sales Associates are “hired” to “work for” Aflac.**

114. To begin with, Aflac throughout the recruitment process identifies its Sales Associates as people who “work for” Aflac. For example, Aflac’s recruiting email of September 4, 2012, titled “Take Flight with a New, Rewarding Career at Aflac!!” does not mention “independent contractor” and reads as a recruiting offer for a full-time sales positions and an extensive “on-the-job” training:

Good afternoon,

My name is Samantha Gooler and I am the Regional Recruiter for Aflac in Northern New Jersey and Southern New York. The reason for my email is because our Coordinators came across your resume on CareerBuilder and/or Monster and are very interested in you as a possible candidate. Richard Whelan, our Regional Coordinator, would like to invite you in to discuss potentially becoming an Aflac Account Representative. We are looking to fill positions in our Elmwood Park, NJ, Fair Lawn, NJ and Pearl River, NY offices. At Aflac, you will have the opportunity to manage your own time and schedule, in a position with unlimited earnings potential, not including the incentives, stock bonuses and excellent support structure we have in place for our associates. We are looking for motivated, goal-oriented individuals with strong interpersonal, oral and written communication skills. Experience is preferred, but not required. We offer an extensive on-the-job training program for candidates we move forward with. Below you can find some information about Aflac and what we can offer.

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115. The email then goes on to describe the “Positions available,” “What Aflac can offer you,” and additional information about Aflac. What the recipient learns about Aflac is that it is:

- “Fortune Magazine’s list of the 100 Best Companies to Work for in America”;
- “Recognized three times by both Fortune Magazine’s listing of the Top Employer for Minorities and Working Mother Magazine’s listing of the 100 Best Companies for Working Mothers”;
- “100 Best Companies to Work For’ twelve consecutive years – Forbes Magazine”;
- “Top 125 Companies with Outstanding Workforce Development Programs for ten consecutive years – Training Magazine”

116. The email concludes: “If you’re interested in setting up an interview time, please reply back to me and I will be more than happy to set something up for you to meet with our Coordinators. Richard and his team look forward to meeting with you.”

117. The irony here is that the author of the email, Aflac’s Regional Recruiter Samantha Gooler, the Regional Coordinator himself, Richard Whelan, his team, and the prospective candidate for the “Aflac Account Representative” were (or would be) all “independent contractors” in Aflac’s classification, not employees as the recruiting email strongly suggests.

118. A similar email from another Aflac Regional Coordinator, Richard Peterson, dated March 17, 2014, is likewise framed in the terms of prospective employment as Aflac’s “sales representative” whom “we are looking to hire immediately,” and likewise nowhere mentions the “independent contractor” status (emphasis original):

Hello Michael,

I am the Queens Regional Coordinator for Aflac NY. I came across your resume and I’m very interested in you as a possible candidate. I would like

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to invite you in to learn about a *sales* position with potential for advancement. Aflac is a Fortune 500 Company and has been in Fortune magazine's list of America's Most Admired Companies, and Ethisphere magazine's list of the World's Most Ethical Companies for the past five years.

Aflac *sales representatives* work with employers to build our employee benefits packages. More than 95% of NY Metro area employers do not currently offer Aflac benefits to their employees. With growth potential and changes in healthcare reform, we are looking to hire immediately. This position is best fit for motivated, goal-oriented individuals who work well individually as well as part of a team, and have experience in the following backgrounds . . . .

Learn more about those who work for Aflac and why we do it. . . .

My staff and I know in this economy people are looking for opportunities for growth and development. There is no better company with such an offering than Aflac. If you would like to learn more about our sales representative position, you may use the following link to access my calendar and schedule a meeting time now that's convenient for you.

119. Again, according to Aflac, Mr. Peterson himself, his staff, and the would-be new hire were not employees of Aflac but all independent contractors – something that nobody would ever be able to discern or even suspect from reading Aflac's recruiting emails.

120. Likewise, Aflac's recruiting brochure lists among "the reason[s] you should switch to a career with Aflac" the following: "**Work** with the #1 in worksite/voluntary sales" (emphasis added). Testimonials published in the brochure include statements like "I wake up every day and frankly, love going to 'work.'"

121. This is typical of Aflac's recruiting pitches and materials and in no way limited to the few examples set out above. The fact that Sales Associates would be treated as independent contractors is entirely left out or disclosed only in the briefest, least noticeable ways, such as

appearing for a few fleeting moments in translucent type at the bottom of a recruiting video, or in a small opaque print at the bottom of some recruiting materials.<sup>3</sup>

122. As a result, most sales associates realize for the first time that their positions would be those of independent contractors when they sign an associate contract with the Company – after having already invested their time and money taking insurance classes, passing exams, and obtaining the required licenses.

**(b) Mandatory trainings and reporting**

123. The following Monday after the new associate is hired, Aflac enrolls him or her in its mandatory nationwide training for the new associates, conducted through its regional offices, with the following required topics:

Prospecting – Below are Mandatory to attend . . . .

Sales Product – Accident, Cancer & Short-Term Disability – Below are Mandatory Dates . . . .

Site Seller Review – Below are Mandatory to attend . . . .

Technology Day – Below are Mandatory to attend [this particular mandatory training takes from 10 am till 5 pm and includes 19 different topics]

124. “*The New Wall Street 2014 Recruiting Program*” for New York is a 4-week associate-in-training program “commencing Monday morning ***following the hire date***” and promising the newly hired associates “Company paid training,” “access to benefits at <https://nystateofhealth.ny.gov>,” “guaranteed income in addition to commissions and bonuses” (promises which are quickly proven false).

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<sup>3</sup> In 2017, after the instant dispute arose, Aflac completely revamped its recruiting pitch, dropping the “lucrative” aspect and emphasizing the lifestyle and flexible hours of its “independent contractors.”

125. The Program also places the following requirements on the newly “hired” associates – supposedly independent contractors all in Aflac’s misclassification:

- “AIT [associate-in-training] removed from program if scripts are not memorialized by start date; Given 1 chance to come back with scripts memorized”;
- “Must make 6 qualified appointments per week”;
- “All appointments must be logged into FMYI for AIT to be paid”;
- “At the end of 4 weeks if 24 appointment requirement is not met, AIT must continue to work without pay until 24 appointments are booked”;
- The Summary provides what the associate-in-training “must” do in each of the four weeks of training;

126. The Program also states that “DSC owns the 24 appointments made by AIT and can run them as they so choose.” This is true not only while the associates remain in training but throughout their careers at Aflac: as alleged above, the Company controls its sales associates’ main assets – accounts and commissions on those accounts – and can reassign them to anyone it wants at will.

127. Aflac’s FAQs regarding its nationwide “*Acting With Integrity – Ethics Training Course*,” the May 28, 2013 version, states the following about this mandatory training:

- Are new recruits contracted after the letter was sent required to take the course?

Those contracted after March 1st of any year will not be required to take the course for the first time until the next calendar year (e.g., those contracted after March 1, 2012, will be required to take the course in 2013 for the first time).

While new recruits are encouraged to take the course, they will not be required to complete it in the current year if they were contracted after March 1st.

- If I am terminated for not taking the course, will my Aflac Group contract be cancelled, too?

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Yes, contracts with Aflac, Aflac Group, and Aflac New York, will be cancelled if you do not take the test by August 31.<sup>4</sup>

128. The course is mandatory: an Aflac letter to all Sales Associates dated May 4, 2012, states: “you are required to complete Aflac’s online course, Acting With Integrity, annually. . . . If you fail to complete the course by [June 1, 2012], Aflac will suspend your contract on July 1, 2012. Remember, this means you will not be able to submit business and receive first-year commissions. And if you have not completed the course by August 31, 2012, your contract will be terminated.”

129. As Michael Fornaro, Aflac’s Regional Sales Coordinator for New Jersey, further explained, “all of our associates that are writing OR BEING PAID on business needs to take this class” under the penalty of termination. Aflac then circulated “list of those that are either terminated or being terminated for not completing the ‘Aflac integrity course.’” Accordingly, even the Sales Associates who were no longer actively producing for the Company but had a vested trail of renewal commissions from previously opened accounts could lose their contracts and the renewal commission stream if they fail to take Aflac’s course every year, which was another way for Aflac to benefit at the expense of its Sales Associates.

130. In addition to the mandatory nationwide training referenced above, Aflac’s local offices also conduct mandatory trainings for specific local clients, and require associates’ attendance at clients’ presentations and enrollments which Aflac has commitments to staff, even though the drafted associates frequently make no money for their required efforts. An October 2016 example includes requirements of such mandatory training and daily reporting (emphasis original):

We want to do a mid-season touch base on the schools and have another training to make sure everyone is continuing the best practices I have been

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<sup>4</sup> This course, too, was completely revised in 2017 after the instant dispute had commenced.

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sharing. Please forward this invite ASAP to those that are Actively going to be working the schools. . . . We have had an overflow of associates at training who are not actively assisting so please send this off to those who are to ensure their attendance.

Also, please make sure teams are REPORTING – instructions below and will be reviewed at this next session. Please remember to **report daily** on the State Website [www.nymli.net](http://www.nymli.net) >CRM>Accounts>Search name of account>Input info in FLEX ADMIN BOX.

131. As shown in the email above, the associates were also required to report back to Aflac on a daily basis. See also November 11, 2014 email from Timothy Cavazos titled “Power Weeks Underway” (emphasis original):

Team,

I can’t believe 4<sup>th</sup> quarter Power Weeks are already here and the end of the year fast approaching. As Ken mentioned at the kickoff meeting, we need to get rid of distractions and do what we do best – sell. This is why we come together, create goals, and work harder during these weeks. . . .

Please remember to communicate with your DSC on a **daily basis** as this helps us plan accordingly.

132. The Sales Associates were also required to participate in numerous conference calls initiated by their superiors, often during early morning ours, as in this example from April 3, 2012: “Attention all Coordinators! Al [State Sales Coordinator] has requested a conference call with all of you for this Thursday (4/5/12) @ 7:30 a.m.”

**(c) Mandatory service of house accounts with no compensation**

133. As noted above, Sales Associates are frequently required to service existing Aflac “house accounts” or accounts that belong to other Aflac representatives.

134. Thus, Section 2.3 of the standard Aflac Associate’s Agreement provides:

Associate may be requested to service Aflac’s payroll deduction accounts (hereinafter “Account(s)”) that are assigned to the Associate by Aflac. Associate hereby agrees that all such Accounts are, and shall remain, the property of Aflac exclusively. Aflac reserves the absolute right to reassign

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any Account for servicing and to designate who may solicit applications from persons in the Account in Aflac's sole discretion. Associate shall not service an Account or solicit within an Account without the authorization of Aflac or its designee.

135. Given that 98% of Aflac accounts are payroll deduction accounts, this requirement amounts to a very heavy burden on Sales Associates – and the corresponding amount of free labor for Aflac.

136. One example of such mandatory practice is reflected in the August 18, 2011 request from Albert Shust, State Sales Coordinator, titled “Gov’t/School accounts”:

Team [of presumably independent contractors],

I wanted to remind everyone that you **must** meet with all your school/government accounts to discuss using aflac's flex services to administer their mandatory FSA's. . . . Please go through your account list and identify all of these groups and set a plan to meet with them face to face.

137. In another example, Plaintiff Louis Varela was compelled by his Aflac superiors to attend a school enrollment because of Aflac's “commitments.” Specifically, the Aflac representative responsible for the Hawthorne Cedar Knolls School District account (in Westchester County, New York) wrote to her District Sales Coordinator, Patrick Hardie: “I am in desperate need of an agent to cover Hawthorne cedar knolls tomorrow 8-12 at little school and 12:30-4 in the admin building. The original scheduled agents cancelled today.” Mr. Hardie in turn directed Mr. Varela to attend; Mr. Varela did, and then wrote to Mr Hardie: “I just finished elmsford. Nothing, very disappointing.” Such dispatching of Sales Associates to service Aflac “commitments” were typical of Aflac sales practices, and resulted in little or no revenue to the Sales Associates required to service these accounts.

138. In a more egregious example of Aflac's control over how its Sales Associates perform their work, Aflac purposely sent attractive young female Sales Associates, including Plaintiff Debbie Cort, to its house accounts at the New York City fire departments and other

male-dominated environments to sell Aflac insurance, where they would be solicited to perform various favors of explicit sexual nature, making Ms. Cort extremely uncomfortable in her work.

139. In a more ridiculous example, Aflac required all Northeast territory sales coordinators to attend a mandatory meeting from Thursday to Saturday (and pay for their own attendance), with these instructions from New Jersey State Sales Coordinator Al Shust: “Everyone is expected to attend the meeting and stay the entire time. Also for the fund raiser night they usually have a costume party. This year is no different. We were assigned the era of the 60’s. Since we don’t do too much team building, I would like everyone to try to dress as 60’s as possible.”

**(d) Mandatory advertising rules**

140. Aflac strictly enforces its policy requiring its Sales Associates to represent themselves as Aflac employees when offering Aflac insurance products for sale. Here are some examples from Aflac’s mandatory scripts which “***must be memorized verbatim***” by the supposedly “independent contractors” (quotes taken from Aflac’s “*Employer Greeting Script*,” “*Telemarketing Script & Steamroller Objection*,” and “*Employer Objection Script*”):

**Gatekeeper Rebuttals:**

Gatekeeper: “Who are you?”

Aflac: “This is <your name> with Aflac.”

**Appointment Booking Script:**

Aflac: “This is <your name> . . . and I’m calling from Aflac and our Benefit Solution Program, which helps small businesses like yours offer Fortune 500 programs.”

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The below interaction will happen when the Employers comes [sic] out to greet you. Conversation – Step 1

Aflac: “My name is \_\_\_\_\_ and I’m with Aflac.”

141. Aflac required the use of only Aflac-approved sales materials, on pain of termination. The following quote comes from “*Field Force Advertising Guidelines – 2016*,” which was distributed to all Sales Associates:

Disciplinary Action: Use or distribution of any advertising material that have not received approval from Aflac’s Advertising Compliance department is a breach of your Associate’s Agreement with Aflac and will subject you to disciplinary action, up to and including termination. . . .

All agent advertising must be approved by both Aflac Marketing and Aflac Advertising Compliance before use. . . .

What are the guidelines for business cards?

- Agents can add titles to their business cards if those titles appear on their contracts.
- A business card does not have a form number on the card itself.
- The official Aflac agent email address, which ends in “@us.aflac.com,” must appear on business cards. . . .

In advertisements, Aflac agents may only use their Aflac-issued email address.

142. When the sales associates underperform, in Aflac’s view, the Company reprimands them as if they were its employees, as in the following email from Regional Sales Coordinator Timothy Cavazos titled “School District Concern,” dated November 20, 2014:

Team,

This week has been surprisingly disturbing to me. I have received a lot of negative feedback from numerous school districts with regards to our associates. They are essentially questioning our professionalism and ability to enroll properly. As I stated in the meeting held earlier this year, it was of utmost importance that we do particularly well during open enrollment because of Trevor’s absence. That being said, I ask anyone that does not want to enroll on these districts to please come forward. I fear that our

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standing has been diminished with certain districts and can't afford any further deterioration. I am currently vetting the idea of opening up some districts to other regions because of the lack of commitment from this one. If you have any questions, do not hesitate to contact me directly.

Best,

Tim

P.S. For those of you that have fulfilled your commitments, I applaud you for your efforts and sincerely appreciate your help this year.

143. When new recruits advance in their career and become District Sales

Coordinators, Aflac continues to treat them as independent contractors *de jure* but *de facto* as its employees. For example, Aflac's "*Payroll Marketing with L.E.A.S.E.*," a 17-page manual of instructions for sales associates, starts with the following note, framed in the terms of "must" and "required," to the District Sales Coordinator instructing the new associates, (all of whom are considered "independent contractors" according to Aflac's classification):

Note to DSC: By this time, your new associates should have a better understanding of how Aflac works and what it will take for them to be successful. We have shown them how to set their short- and long-range goals, and how to create a plan of action to reach them. Now it is time to get them prepared for a high-intensity Sales School. This Preparation Before Sales School section does exactly that by outlining prerequisites to attend Sales School. You must be involved in each step of the process to ensure that your new associates are prepared for their new learning experience. Five prerequisites are outlined in this section that must be met by you and your new associates or they will be turned away from Sales School and required to come back once they are better prepared.

144. Elsewhere, the manual provides the following instructions to the sales associates, telling them to represent themselves as from Aflac, notwithstanding their formal "independent contractor" status:

Approach to Receptionist

Personal Contact with Gatekeeper:

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Step 1: Good morning, maybe you could help me. My name is \_\_\_\_\_, and I just stopped by to schedule an appointment with [name]. Is he/she is? (Usually the receptionist will reply, “I’ll check” or will ask “Who are you with?”

Reply: American Family Life Assurance Company of Columbus. You may know us better as Aflac.

#### Approach to Small Business Owners

Step 1: Decision-maker: “Thanks for taking the time to greet me. My name is \_\_\_\_\_ and I’m with American Family Life Assurance Company of Columbus. You may know us better as Aflac.

145. The manual ends with the following: “Now is the time to take the next step forward by joining our associate in signing the professional partnership commitment form on the next page. This is where the rubber hits the road! The two of you will enter a journey of field training together, which will impact both you and your associate’s career.”

146. Then the District Sales Coordinator and its associate – both presumably independent contractors, in Aflac’s view – are required to sign “A Professional Partnership” form, with the DSC’s and the new associate’s exchanging their respective “commitments” to each other. All the Plaintiffs signed such documents as associates and Mr. Conroy and Mr. McCarthy signed them in their capacities as District and Regional (in Mr. McCarthy’s case) Sales Coordinators.

147. Furthermore, “*The Presidential Standard*,” an Aflac document for District Sales Coordinators, sets out “the quarterly DSC criteria” for meeting the “Presidential Standard,” and then prescribes a “Procedure when Presidential Standard is not met”:

1<sup>st</sup> Quarter – DSC **must submit business plan** to RSC [Regional Sales Coordinator, to whom the DSC reports in Aflac’s hierarchy] and State Office;

2<sup>nd</sup> Quarter – DSC **must attend CIT classes** for the quarter; DSC **must submit CIT Weekly Activity Report** to State Office;

3<sup>rd</sup> Quarter – DSC, RSC and SSC [State Sales Coordinator] will meet to discuss realignment strategy or change-in-status;

4<sup>th</sup> Quarter – DSC realigned to fit new account closing capacity and receives Presidential Award for promotion.

148. Both Messrs. McCarthy and Conroy received these instructions and other similar instructions during their times as Regional and District Sales Coordinators.

149. Sales coordinators are also required to attend numerous mandatory trainings and workshops. For example, a March 7, 2014 memo from Michael S. Chille, Aflac's Vice President, Northeast Territory Director, to "All Northeast Territory Training Coordinators and District Sales Coordinators [all 1099]," titled "STC and DSC Workshops," required:

The Northeast Territory is happy to announce that we are going to have a Training Workshop comprised of all Northeast Territory State Training Coordinators and District Sales Coordinators on April 30 and May 1, 2014 tentatively scheduled to start around noon (12:00pm) on April 30, 2014 and conclude on May 1, 2014 at 3:00pm.

All District Sales Coordinators, I know this is short notice; please make arrangements in your calendar to attend this meeting.

150. Such mandatory trainings were typical of those required of District Sales Coordinators. Mr. McCarthy and Mr. Conroy both received such notices and attended such trainings.

**(e) Mandatory recruitment duties**

151. Aflac also requires its Sales Associates in the coordinator's position to play an active role in its perpetual recruitment campaign, and punishes those who do not. For example, in a letter to all Northeast Territory Coordinators dated July 11, 2012, Aflac's Vice President Michael Chille wrote:

First and foremost, we must focus on a recruiting increase. Recruiting is our lifeblood, and with reduced recruiting numbers, many other variables are

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also affected. . . . Do you personally make an investment of your time with each person you are recruiting? Are you increasing your inventory of new accounts? Are you actively striving to add new accounts to your book of business?

152. In his October 1, 2014, Mr. Chille further explained that it was the coordinators' "job" to recruit for Aflac: "[W]e have to get back to what got us here, recruiting. We finished the third quarter with a 7.8% decrease, this marks our FIFTH consecutive quarter of decrease. In paragraph 3, titled 'Duties,' of both the RSC and DSC contract, it states: "The RC/DC shall recruit and train associates for the sale of all Aflac insurance policies . . . ? ***That is the job.*** All successful coordinators that I have seen in my 20 year career with Aflac have one thing in common, their ability to recruit and train associates effectively" (emphasis added).

153. Indeed, Aflac's standard District Sales Coordinator's Agreement provides in paragraph 3, titled "Duties," that the district coordinator "shall recruit and train associates for the sale of all Aflac insurance policies and coordinate the activities of the associates assigned to the DC [District Coordinator] in writing by Aflac. For the purpose of maximizing the sales efforts of Aflac, the DC should cooperate with the associates assigned to the DC, and the regional sales coordinator. The DC should also cooperate with the established Market Director of the Aflac state sales operation to which DC is assigned (the 'Aflac State')."

154. See also a March 9, 2010 email from New Jersey State Sales Coordinator at the time, Albert Shust, to Plaintiff Martin Conroy on the subject of recruiting: "Marty, I know it's early in the year and one of the goals I set for all DSCs is to have a minimum of 24 Recruits for the year. As you know, ***recruiting is the life blood of our organization.*** You currently have 3 recruits and you should have a minimum of 4 at this point. Make sure you are putting in the recruiting activity to get you back on PACE."

**(f) Aflac controls how its Sales Associates perform their work.**

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155. Aflac's standard Sales Associates agreements give Aflac an unlimited control and discretion over the manner in which they conduct their business, inconsistent with their purported "independent contractors" status.

156. Paragraph 4.2 of Aflac's standard Associate's Agreement states that "Aflac may in its sole and absolute discretion assign and/or reassign Associate to one or more sales coordinators. Associate shall have no right to change coordinators."

157. Paragraph 4 of Aflac's standard District Sales Coordinator's Agreement further provides:

Aflac may, at its sole discretion, assign and reassign associates to DC [District Sales Coordinator]. The DC shall be paid renewal override commissions on all Aflac insurance policies which are sold by associates while assigned in writing to the DC. The DC understands and agrees that he or she may be assigned to an Aflac State. The DC may be assigned to a regional state sales coordinator within the Aflac State for the purpose of assisting the DC in training, recruiting and marketing. The DC may be reassigned to a different regional sales coordinator or to a different Aflac State at Aflac's discretion.

158. Accordingly, Aflac has complete control over the work of its Sales Associates, all of them presumably independent contractors: Aflac controls who works for whom, who reports to whom, and where they all work.

159. Furthermore, Aflac controls the main assets of its Sales Associates – accounts and commissions on those accounts – and can reassign them at will. Aflac frequently exercise its control over associates and their assets, often to the severe detriment of the sales associates from whom Aflac takes away their accounts, including Plaintiffs. Moreover, when Sales Associates leave Aflac, their portfolio of accounts stays behind and becomes Aflac's "house account."

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160. In another example, in September 2016, Plaintiff Gerard McCarthy complained to Aflac's CEO Dan Amos about Aflac's transfers of his long-standing accounts with the City of Jersey City and Univision employees:

I have opened several large accounts including the City of Jersey City which was opened in August of 2002 as NB415 and NB417. These accounts later on in March of 2003 were moved under Columbus and became CL729 and CL730. Following this I opened Univision Communications, DA751, in March of 2003. Let's start with the Univision account.

Approximately June of 2015, I was notified by our Broker Division that they were assisting a Broker, AON, who was looking to provide Univision with Group policies (Continental). I was informed that I would receive a 30% commission on all policies. Aflac was billing this account, at this time, approximately \$600,000.00 annually. I had been servicing this account since 2003. What happens next is unbelievable.

They sent their representatives into this account as they were preparing for an online enrollment and informed Univision employees that they COULD NOT keep their existing Aflac policies but now had to purchase the Group "Aflac" policies. They also forced Univision to discontinue all payroll deductions effective that January 1, 2016. As you can imagine, I was inundated with calls and emails from our policy holders. I was subsequently warned by Aflac not to contact any existing policy holders or interfere in the AON enrollment. I was actually able to save some existing policies and get them onto Direct Bill. Following the hijacking of the account, AON did their enrollment which produced approximately \$100,000.00 in premium. I did not receive any split at all and Aflac suffered a loss of \$500,000.00. I really don't know if this is the what you would consider good business? I would be sure that our stockholders, of which I am one, would not approve? I have suffered a loss of income and have received no assistance from anyone? This is after I had protected and serviced this account for over fourteen years and produced millions of dollars for the Company. I would request that you have someone look into this and how this was allowed to happen.

161. The same Individual-to-Group Conversion occurred on the Medical Diagnostics Laboratories ("MDL") account handled by Plaintiff Martin Conroy. That was a long-standing Aflac account with individual policies assigned in 2007 to Mr. Conroy, who had managed to grow it to \$80,000 by 2010, when Mr. Conroy was instructed by Aflac Group and his superiors to convert it into the Aflac Group Texas policies that were similar to the MDL pre-existing

individual policies. Aflac Group also instructed Mr. Conroy to “domicile” MDL in Texas in order to facilitate the conversion, even though Aflac knew that MDL was headquartered in New Jersey. As a result, \$80,000 of pre-existing individual policies were converted into \$40,000 group policies, which Aflac then reported as “new premium.”

162. Upon information and belief, the individual-to-group conversion has become widespread in recent years, allowing Aflac to report “new” business that is nothing more than the old business cannibalized by Aflac to the severe detriment of its Sales Associates, and in deceit of its shareholders.

**(g) Mandatory contributions to Aflac’s Incentive Fund**

163. Furthermore, Aflac requires its sales associates with the titles of coordinators to contribute a part of their gross commissions to something called the “*Aflac Incentive Fund*,” which fund Aflac had the right to control. Thus, the document titled “*RSC/DSC Incentive Fund Deduction Authorization*” states:

I hereby authorize and direct [Aflac] to deduct \_\_\_\_% of the total gross premiums credited to me pursuant to the terms of my District / Regional (Circle One) Sales Coordinator’s Agreement from my Aflac Individual and Aflac Group Commissions Statement and to forward such deductions for deposit into the: Aflac Incentive Fund (hereinafter the “Fund”). These deductions are intended to be used by the Market-Director of the Aflac state sales operation to which I am assigned in the furtherance of sales, marketing and recruiting activities and incentives within said Aflac state.

As part of this authorization, I acknowledge and agree to the following: (1) Once a contribution is made, Aflac will monitor expenditures from the Fund (2) my contributions to the Fund are to be used by the Market Director in the furtherance of sales, marketing and recruiting activities and incentives within said Aflac state, (3) my contributions to the Fund are strictly voluntary and may be terminated by me upon written notice to Aflac to cease such deductions; and (4) the Form 1099 provided by Aflac Individual and Aflac Group will continue to include my contributions to the Fund as part of my gross commission income and I am solely responsible for determining whether I may be allowed under the current tax law to report as a business expense deduction those contribution amounts.

164. The participation in the Incentive Fund is not strictly mandatory (“strictly voluntary,” according to the Deduction Authorization itself); however, Aflac pressures its Sales Associates to participate in the Fund, and there are informal but well-known penalties for those who do not. For example, in December 2010, Plaintiff Martin Conroy received several requests from Aflac’s Market Coordinator Robert Devilla to execute the Deduction Authorization for \$150 per month, including “really need your Incentive Fund before close of business. Al said, no more support from the state office until we get this back from you.”

165. In response, Mr. Conroy wrote to Al Shust, State Sales Coordinator, stating: “just read it entirely for maybe the first time. I didn’t know that it was voluntary.” Here is what Mr. Shust wrote in response:

*As far as the incentive fund being voluntary. It technically is. From a Home Office standpoint, Aflac cannot force anyone to make contributions to the fund. From a State standpoint, I require it.* The \$150/month is a very small deduction for you and your team to have access to the state trainings, either sales school or other training, Kickoff, all state run contests, awards, etc. If Coordinator chooses not to contribute they will be excluding themselves and their team from all of the above. . . .

Please do not take any tone of this email. I am simply stating my view of the fund. By you signing and returning the form clearly shows that you are part of this team and you are looking for the best ways of maximizing the fund.

166. The Deduction Authorization is followed by the “*MD Incentive Fund Authorization*” form, which in turn states:

As Market Director of \_\_\_\_\_, I hereby direct Aflac, Aflac New York (hereinafter “Aflac Individual”) or CAIC (hereinafter “Aflac Group”) to forward and to deposit all contributions made by coordinators in my sales organization into the Aflac Incentive Fund (hereinafter the “Fund”). These contributions will be utilized in the furtherance of sales, marketing, and recruiting activities and incentives within said Aflac state sales operation of which I am assigned to direct. As evidenced by my signature below, I acknowledge that the DSCs and RSCs that contribute to the Fund are allowed to participate in the decision-making process when determining

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how best to effectuate the purposes for which those contributions are being made and I understand that all unused contributions will be used by my successor Market Director upon my termination as Market Director.

167. And then there is the “Incentive Fund Reimbursement Authorization” form. It is an unusual document – unlike virtually all other Aflac’s forms, including the Deduction Authorization and MD Authorization for the Incentive Fund, the Reimbursement Authorization form stands out as it does not mention Aflac by name and does not bear any Aflac logos, trademarks, contact information or any other Company descriptors or identifiers.

168. The Reimbursement Authorization form states:

1. Purpose of using Incentive Fund: \_\_\_\_\_
2. If the Incentive Fund is to be used for Chamber of Commerce Membership, you must submit a schedule of networking functions. Please provide dates of functions you will be attending. Must be approved by RSC before it is sent to the State Office.
3. Is this for a contest? (YES) or (NO). If yes, please attach the purpose of the contest.

NOTE: Check will be made out personally to the Coordinator requesting the monies unless other methods have been approved.

169. Finally, Aflac could use the Incentive Fund virtually for any purpose, with little required by way of backup or justification. Here is how Aflac’s Market Coordinator Colleen Meyers describes the issue in her “2014 Incentive Fund Reimbursement Update” dated March 19, 2015:

Hello gang!

Ok, so this whole Reimbursement of the Incentive Fund for 2014 has been an utter nightmare. First off, let’s keep in mind we are the only Market office that does this and it had to be approved by Aflac. That was only step one.

I did not know how to run this whole new set up until my call with the Budget Center on February 13th... a very tedious reporting process, I might add.

I have been going back and forth with them since my report was sent February 26th. There have been questions after questions and not knowing the exact way of filing for it...since ***it is a flat out reimbursement with basically no backup of “why” funds are being reimbursed*** (career fairs, recruiting, contests, etc...) Which forms were the right to use, were they compliant and so on?

170. Accordingly, the Incentive Plan gives Aflac the right to control how its sales coordinators spent part of their commission on promotional and other activities.

**(h) The near-exclusivity of Aflac’s Sales Associates**

171. Although formally the Sales Associates are not exclusively limited to selling Aflac’s products and could in theory sell other careers’ products, the contractual, practical and technological limitations that Aflac places on their ability to do so make them near-captive.

172. *First*, Aflac’s standard Associate’s Agreement provides in Article 8.4 that:

During the term of this Agreement and for a period of two (2) years after its termination for any reason, Associate covenants that Associate shall not, directly or indirectly, on Associate’s own behalf or on behalf of any other person or entity, solicit or induce, or attempt to solicit or induce, policyholders on Accounts of Aflac which, during the two (2) years prior to the termination of this Agreement, Associate solicited, sold, services or from which Associate received commissions on behalf of Aflac, to relinquish, cancel or surrender their Policies or terminate or adversely change in any way their Account; provided, however, that this Agreement shall not prohibit a direct, unsolicited contact of Associate by a policyholder or Account and a subsequent sale based on such unsolicited contacts.

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173. Accordingly, Aflac's contract severely limits its Sales Associates' ability to sell competing products from other insurance careers during their time with the Company (and for two years thereafter).

174. *Second*, in light of the unrealistic sales goals and expectations placed by Aflac on its Sales Associates in the saturated market – to “see 83 employees monthly” or to “open a minimum of 2 accounts per month” -- selling Aflac products is a full-time job as it is, requiring the Sales Associates to work 40-50 hours a week at a minimum, and leaving them no time or opportunity to sell other careers' products.

175. *Third*, Aflac's primary enrollement tool for years was its proprietary SmartApp Next Generation (“SNG”), which the Company explained to its analysts in a 2015 briefing as follows:

Our goal is to provide our career sales agents with easy-to-use technology that helps them to offer clients a full range of benefit plans and options that fit their needs. These tools also provide the opportunity for increased account penetration and increased policies per policyholder. While many agents still use our SNG® enrollment tool, we expect to incent our sales force to convert to using everwell for more enrollments, as it enables the agent to provide more of a comprehensive solution to health care needs. Although our experience with everwell is still somewhat limited, our results so far have demonstrated increased account penetration and increased policies per policyholder.

176. The SNG system, however, is exclusive to Aflac and does not permit the Sales Associates to enroll policyholders in competing policies from other careers.

177. The combination of these factors assures the near-captivity of Aflac's Sales Associates.

**(i) After Aflac converts part of its sales force into W-2s, “nothing really changes . . . except [ ] title.”**

178. In the third quarter of 2014, Aflac changed the status of its sales associates with the titles of state sales coordinators, state training coordinators and broker development

coordinators from Form 1099 to the W-2 status -- with **no** change whatsoever in their positions, daily activities, job description, responsibilities, or in the degree of control exercised by Aflac over their work.

179. Here is how Aflac itself described the changes in the words of the former Director of Sales, Senior V.P. Mike Tomlinson:

Effective Dec. 1, 2014, Aflac is eliminating the STC [state training coordinator] role. The company is creating a new salaried or W-2 Market Trainer role to work alongside the Market Director. The new role will be in collaboration with the Market Director to drive sales growth within the organization. With few exceptions, current STCs will likely be filling these new roles.

While the elimination of the STC role is straightforward, the elimination of the BDC [broker district coordinator] is part of a much larger change, or the Broker Consolidation Plan. . . . As the second part of the Broker Consolidation Plan, we are eliminating the BDC position in the field. All current BDCs may apply for one of three different W-2 roles in the new broker channel, for an open position or an open headquarters position.

180. Mr. Amos, Chairman and CEO of Aflac, portrayed the change in much more dramatic language. The article titled “*Aflac Chief: U.S. sales model is broken*,” published by Columbus Ledger-Enquirer on July 30, 2014, stated:

“He [Mr. Amos] said to the sales hierarchy management team: if I don’t see a turnaround soon, there’s going to be strategic measures taken that you haven’t seen around here before,” said Robin Wilkey, Aflac’s senior vice president of Investor and Rating Agency Relations. The CEO’s patience finally began to wear thin and earlier this year – with competitors’ business rebounding – he determined that Aflac’s U.S. sales model was not working. In fact, it was broken. . . .

“Dan has been doing this for 40 years and I’m sure it wasn’t an easy thing for him to come to grips with or make that decision lightly,” Wilkey said of the move to dump the firm’s system of commissioned-based state sales coordinators. The coordinators are being replaced by company-paid employees called market directors, who will be eligible for bonuses. . . . District sales coordinators and front-line sales associates will continue to be paid on commission as independent contractors. But Wilkey said Aflac will have more control over sales efforts by making the top management – the

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market directors – company employees and, thus, more accountable and responsive than their counterparts in the past. . . .

Wilkey, whose job it is to talk frequently with Wall Street analysts who follow the firm, as well as to those who own Aflac stock, said no one at the company should be taking this U.S. sales moves lightly.

Asked if this is one of the biggest changes in sales in the firm's nearly 60-year history, she said it is "THE" biggest she can remember.

"It certainly, in my 23 years with the company, is the largest change," she said. "I think Dan would agree with that. And he has been right in the middle of all of this, because he understands the sensitivity of making a change of this magnitude."

For the record, Aflac did amass \$5.8 billion in total revenue during the second quarter, down slightly from the year before. And it will pay a healthy quarterly third-quarter dividend of 37 cents per share later this year.

181. Thus, Aflac presented the 2014 switch to W-2s for part of its sales force publicly as a "strategic" and even dramatic restructuring – with Aflac's VP for Investor Relations almost advertising it as "THE biggest" change in Aflac's sales model, the one that "you haven't seen around here before," and not to be taken "lightly" by anyone at the company.

182. Yet, this is exactly how Aflac's insiders affected by the change themselves took it – very "lightly" indeed, and they had a very good reason for their nonchalance. Here is what Aflac's Vice President for the Northeast Ken Meier had to say about these grandiose moves in his email of September 26, 2014:

*I was going to go deep and say that I started with Aflac in 96 and my career as an independent contractor ends on Monday, so let's go out on top at 100% of MPI and a perfect career like Jeter. Fortunately nothing really changes on Monday except my title.*

183. Likewise, nothing "really change[d]" for the hundreds of Mr. Meier's colleagues whom Aflac finally formally admitted as its "employees": they have simply continued their duties as Aflac employees, which they had *de facto* been doing all along -- in Mr. Meier's case,

since 1996 – and did not suddenly become such on Monday, September 29, 2014, when only their titles changed to align them with the long-standing reality.

184. The Sales Associates below the W-2 converts in the Aflac sales hierarchy – such as the District Sales Coordinators and the rank-and-file agents – also continue to perform for Aflac as its *de facto* employees while remaining formally classified by Aflac as independent contractors.

185. In fact, the 2014 conversion was implemented shortly after a number of Aflac sales associates filed a lawsuit against the Company for misclassifying them as independent contractors rather than employees.

186. In a further tacit acknowledgement of the *de facto* employee status of its Sales Associates, Aflac has been offering them a “salary option,” which allows them to receive base salary as W-2 employees in lieu of a reduced percentage of their commission and other revenue streams, with no change in responsibilities, but only for a year.

187. Because they were misclassified as independent contractors, Sales Associates were denied the benefits of employment by Aflac, including the opportunity to participate in Aflac benefit programs to which they would otherwise have been entitled to participate, including: (a) Aflac Health Plan & Prescription Drug Benefits: Dental Plan Options: Vision Plan: Employee Assistance Plan: Short and Long Term Disability Coverage (from 1<sup>st</sup> day of employment); (b) Group Term Life Insurance: Accidental Death and Dismemberment Insurance: (after 30 days of employment); (c) Aflac 401(k) Plan (after receiving first Aflac paycheck); and (d) benefits of federally mandated unemployment insurance.

188. Sales Associates were likewise damaged by Aflac’s failure to pay the “employer share” of payroll taxes, including the FICA and FUTA taxes.

**CLASS ACTION ALLEGATIONS**

189. Plaintiffs bring this class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons and entities who were (a) recruited to become Sales Associates and relied to their detriment on Aflac's recruiting misrepresentations but who ultimately did not become Sales Associates; b) persons who were recruited to become and did in fact become Sales Associates in reliance on Aflac's recruiting misrepresentations, and were subsequently misclassified as independent contractors.

190. Plaintiffs propose that the class be certified with two subclasses: (a) a "recruiting only" subclass of potential candidates who suffered damages from Aflac fraud but who never signed an associate contract with Aflac and did not ultimately become Aflac's Sales Associates; (b) a Sales Associates subclass of persons who were fraudulently recruited and misclassified by Aflac as independent contractors.

191. This case is appropriate for treatment as a class action under Rule 23(b)(1)(A) because the prosecution of separate actions will create the risk of inconsistent or varying adjudications, thus establishing incompatible standards of conduct for Defendants.

192. This case also should be certified as an injunctive class under Rule 23(b)(2) because Defendants have acted, or failed to act, on grounds generally applicable to the putative class, thereby making appropriate final injunctive relief with respect to the Rule (b)(2) class as a whole.

193. This case also is appropriate for treatment as a damages class under Rule 23(b)(3) because common issues predominate over individual issues, and a class action resolving the claims of this putative damages class is superior to any other method of fair and efficient adjudication.

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194. The class is so numerous that joinder of all members would be impractical. Aflac has employed hundreds of thousands of Sales Associates and tens or hundreds of thousands of other persons relied on Aflac's fraudulent recruiting statements to their detriment but never became Aflac employees.

195. There are questions of law and fact common to the class that predominate over questions affecting only individual members, including the fraudulent recruiting methods and nation-wide policies for the misclassification of Sales Associates.

196. The claims of the class representative are typical of the claims of the class members.

197. The entire class will benefit from the remedial and monetary relief sought by the putative class representatives.

198. The class representatives will fairly and adequately protect the interests of the class. There are no conflicts of interest between the class representatives and the absent class members, and the class representatives will vigorously prosecute this action on behalf of the class.

199. Defendants have consistently acted and refused to act in ways generally applicable to the class.

200. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because: (a) the prosecution of thousands of separate actions would be inefficient and wasteful of legal resources; (b) the members of the class are scattered throughout the United States and beyond and are not likely to be able to vindicate and enforce their rights unless this action is maintained as a class action; (c) the issues raised can be more fairly and efficiently resolved in the context of a single class action than piecemeal in many

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separate actions; (d) the resolution of litigation in a single forum will avoid the danger and resultant confusion of possible inconsistent determinations; (e) the prosecution of separate actions would create the risk of inconsistent or varying adjudications with respect to individuals pursuing claims against Defendants which would establish incompatible standards of conduct for Defendants; (f) Defendants have acted and will act on grounds applicable to all class members, making final declaratory and injunctive relief on behalf of all members necessary and appropriate; and (g) questions of law and/or fact common to members of the class, especially on issues of liability predominate over any question, such as that of individual damages, that affect individual members.

201. There will be no extraordinary difficulty in the management of the class action.

202. This action follows.

#### **CAUSES OF ACTION**

##### **First Cause of Action: Violation of the Employee Retirement Investment Security Act, 29 U.S.C. § 1132(a)(1)(B)**

203. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

204. As described above, Aflac misclassified its Sales Associates as independent contractors despite the fact that they should have been classified as W-2 employees.

205. As a result, Sales Associates were not permitted to participate in the employee benefits programs that Aflac offered to its W-2 workforce, to their detriment.

206. Plaintiffs and Class Members suffered damages as a result of their misclassification in this manner in an amount to be determined at trial.

##### **Second Cause of Action: Violation of the Federal Insurance**

**Contributions Act, 26 U.S.C. § 3101 et seq. (“FICA”)**

207. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

208. As described above, Aflac misclassified Sales Associates as independent contractors despite the fact that they should have been classified as W-2 employees.

209. As a result, Sales Associates were required to pay self-employment tax and the obligation upon Aflac to pay the the “employer’s share” of FICA was substantially transferred to them.

210. Plaintiffs and Class Members suffered damages as a result of their misclassification in this manner in an amount to be determined at trial, likely approximating 7.5% of the gross pay they received from Defendants.

**Third Cause of Action: Violation of the Federal  
Unemployment Tax Act, 26 U.S.C. § 3301 (“FUTA”)**

211. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

212. As described above, Aflac misclassified Sales Associates as independent contractors despite the fact that they should have been classified as W-2 employees.

213. As a result, Aflac did not pay taxes under FUTA for Sales Associates, and accordingly, they did not receive the benefits of federal unemployment insurance that they would have received had they been properly categorized as employees by Aflac.

214. Plaintiffs and Class Members suffered damages as a result of their misclassification in this manner in an amount to be determined at trial.

**Fourth Cause of Action: Common Law Fraud**  
**(California Law)**

215. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

216. As described above, in the course of their recruiting campaign, Defendants made numerous statements regarding the Plaintiffs and Class Members' ability to earn certain commission selling Aflac's products, which statements were knowingly false. Aflac made those false and fraudulent statements with the intent to deceive Plaintiffs and Class Members and to induce them into entering in associate's agreement with Aflac. These representations were made in the course of Aflac's fraudulent recruitment campaign, including but not limited to the "10-Year Income Example" and the recruiting letters, emails, advertising materials, on Aflac's Internet portal and other communications to Plaintiffs and Class Members, who justifiably relied on those statements to their severe detriment.

217. These false statements constitute fraud as defined by the common law of the state of California and of various states as Aflac knew they were false at the time of their making.

218. Plaintiffs and Class Members suffered damages as a result of Defendants' fraudulent statements in an amount to be determined at trial.

**Fifth Cause of Action: Violations of the California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq**

219. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

220. The California Unfair Competition Law ("UCL") prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice" and "unfair, deceptive, untrue or misleading advertising." Cal. Bus. & Prof. Code § 17200.

221. As described above, Defendants have engaged in unfair, deceptive, untrue or misleading advertising by their conduct, statements and omissions described above, and Plaintiffs and Class Members suffered injury in fact and lost money or property as result.

222. Aflac committed at least some of the deceptive acts in California.

223. Plaintiffs and Class Members suffered damages as a result of Defendants' false advertising in this manner in an amount to be determined at trial.

**Sixth Cause of Action: Violations of the California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500 *et seq.***

224. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

225. California Bus. & Prof. Code § 17500 states: "It is unlawful for any . . . corporation . . . to make or disseminate or cause to be made or disseminated . . . from this state before the public in any state, in any newspaper or other publication, or any advertising device . . . or in any other manner or means whatever, including over the Internet, any statement . . . which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

226. As described above, the Defendants engaged in unfair, deceptive, untrue or misleading advertising and made and/or disseminated through California and the United States through advertising, marketing and other publications, statements that were untrue or misleading, and which were known, or which by the exercise of reasonable care should have been known to the Defendants to be true and misleading.

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227. Plaintiff and the other Class Members have suffered an injury in fact, including the loss of money or property as result of Defendants' misleading statements.

228. Aflac committed at least some of the deceptive acts in California.

229. Plaintiffs and Class Members suffered damages as a result of Defendants' unfair and deceptive advertising in this manner in an amount to be determined at trial.

**Seventh Cause of Action: Violations of the California Consumers Legal Remedies Act ("CLRA"), California Civil Code §§ 1750 et seq**

230. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

231. As described above, the Defendants engaged in unfair, deceptive, untrue or misleading advertising and otherwise made false statements and the Plaintiffs and Class Members suffered injury in fact and lost money or property as result.

232. Aflac committed at least some of the deceptive acts in California.

233. Plaintiffs and Class Members suffered damages as a result of Defendants' violations of the CLRA in this manner in an amount to be determined at trial.

**Eighth Cause of Action: Violations of the Arizona Consumer Fraud Act (Ariz. Rev. Stat. § 44-1521, et seq.)**

234. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

235. The Arizona Consumer Fraud Act proscribes "[t]he act, use or employment by any person of any deception, deceptive act or practice, fraud, false pretense, false promise,

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misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby.” Ariz. Rev. Stat. § 44-1522(A).

236. Plaintiffs, Class Members and Defendants are each “persons” as defined by Ariz. Rev. Stat. § 44-1521(6). ““Merchandise’ means any objects . . . intangibles, . . . or services.” A.R.S. § 44-1521(5).

237. Defendants made numerous statements regarding the Plaintiffs and Class Members’ ability to earn certain commission selling Aflac’s products, which statements were knowingly false. Aflac made those false and fraudulent statements with the intent to deceive Plaintiffs and Class Members and to induce them into entering in associate’s agreement with Aflac. By concealing and omitting material information from Plaintiffs and the Class Members and by making affirmative misrepresentations as described above, Defendants engaged in deceptive business practices prohibited by the Arizona Consumer Fraud Act, Ariz. Rev. Stat. § 44-1522(A). Aflac’s material omissions and misrepresentations were made with the intent that Plaintiffs and the Class Members would rely upon them, and Plaintiffs and the Class Members did in fact rely upon those material omissions and misstatements.

238. Aflac’s unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs and the Class Members. Aflac committed at least some of the deceptive acts in Arizona.

239. Plaintiffs and the Class Members sustained damages as a result of the Defendants’ unlawful acts and are, therefore, entitled to damages and other relief as provided under the Arizona Consumer Fraud Act.

240. Plaintiffs also seek court costs and attorneys' fees as a result of Defendants violation of the Arizona Consumer Fraud Act as provided in Ariz. Rev. Stat. § 12-341.01.

**Ninth Cause of Action: Violations of the Arkansas Deceptive Trade Practices Act (Ark. Code Ann. § 4-88-101 et seq.)**

241. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

242. The Arkansas Deceptive Trade Practices Act proscribes “[d]eceptive and unconscionable trade practices,” and “[t]he act, use or employment by any person of any deception, fraud or false pretense” or the “concealment, suppression or omission of any material fact with intent that others rely upon the concealment, suppression or omission” when done “in connection with the sale or advertisement of any goods, [or] services ....” Ark. Code Ann. §§ 4-88-107, 108.

243. Plaintiffs, members of the Class and Defendants are each “persons” as defined by Ark. Code Ann. § 4-88-102(5).

244. Defendants made numerous statements regarding the Plaintiffs and Class Members' ability to earn certain commission selling Aflac's products, which statements were knowingly false. Aflac made those false and fraudulent statements with the intent to deceive Plaintiffs and Class Members and to induce them into entering in associate's agreement with Aflac. By concealing and omitting material information from Plaintiffs and the Class Members and by making affirmative misrepresentations as described above, Defendants engaged in deceptive business practices prohibited by the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101, et seq. Aflac's material omissions and misrepresentations were made with the intent that Plaintiffs and the Class Members would rely upon them, and Plaintiffs and the Class did in fact rely upon those material omissions and misstatements.

245. Aflac's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs. Aflac committed at least some of the deceptive acts in Arkansas.

246. Plaintiffs and the Class Members sustained actual damages or injury as a result of the Defendants' unlawful acts and are, therefore, entitled to damages and other relief as provided under the Arkansas Deceptive Trade Practices Act.

247. Plaintiffs also seek court costs and attorneys' fees as a result of Defendant's violation of the Arkansas Deceptive Trade Practices Act as provided in Ark. Code Ann. § 4-88-113(f).

**Tenth Cause of Action: Violations of the Colorado Consumer Protection Act (Colo. Rev. Stat. § 6-1-101, et seq.)**

248. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

249. Colorado's Consumer Protection Act (the "CCPA") prohibits a person from engaging in a "deceptive trade practice," which includes failure "to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction." Colo. Rev. Stat. § 6-1-105(1)(b), (u). The CCPA further provides that a person engages in a "deceptive trade practice" when such person "contrives, prepares, sets up, operates, publicizes by means of advertisements, or promotes any pyramid promotional scheme" Colo. Rev. Stat. § 6-1-105(1)(l), (q). "Promoting a pyramid promotional scheme" means inducing one or more other persons to become participants, or attempting to so induce, or assisting another in promoting a pyramid promotional scheme by means of references or otherwise." Colo. Rev. Stat. § 6-1-102(7).

250. Aflac is a “person” within the meaning of the CCPA.

251. Defendants made numerous statements regarding the Plaintiffs and Class Members’ ability to earn certain commission selling Aflac’s products, which statements were knowingly false. Aflac made those false and fraudulent statements with the intent to deceive Plaintiffs and Class Members and to induce them into entering in associate’s agreement with Aflac. By concealing and omitting material information from Plaintiffs and the Class Members and by making affirmative misrepresentations as described above, Defendants engaged in unlawful trade practices prohibited by the Colorado Consumer Protection Act. Aflac committed at least some of the deceptive acts in Colorado.

252. Aflac’s conduct proximately caused injuries to Plaintiffs and the other Class Members. Plaintiffs were induced to act or refrain from acting by Aflac’s false and misleading statements and omissions.

253. Plaintiffs and the Class Members sustained actual damages or injury as a result of the Defendants’ unlawful acts and are, therefore, entitled to damages and other relief as provided under the CCPA.

**Eleventh Cause of Action: Violations of Connecticut Unfair Trade Practices Act (Conn. Gen. Stat. Ann. § 42-110A, et seq.)**

254. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

255. The Connecticut Unfair Trade Practices Act (“CUTPA”) provides that “[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Conn. Gen. Stat. Ann. § 42-110b(a). The CUTPA further provides a private right of action under Conn. Gen. Stat. Ann. § 42-110g(a).

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256. Defendants made numerous statements regarding the Plaintiffs and Class Members' ability to earn certain commission selling Aflac's products, which statements were knowingly false. Aflac made those false and fraudulent statements with the intent to deceive Plaintiffs and Class Members and to induce them into entering in associate's agreement with Aflac. By concealing and omitting material information from Plaintiffs and the Class Members and by making affirmative misrepresentations as described above, Defendants engaged in unlawful trade practices prohibited by the CUTPA. Aflac's material omissions and misrepresentations were made with the intent that Plaintiffs and the Class Members would rely upon them, and Plaintiffs and the Class did in fact rely upon those material omissions and misstatements.

257. Aflac's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs and the Class Members. Aflac committed at least some of the deceptive acts in Connecticut.

258. Plaintiffs and the Class Members sustained damages as a result of the Defendant's unlawful acts and are, therefore, entitled to damages and other relief as provided under the CUTPA.

259. Plaintiffs also seek court costs and attorneys' fees as a result of Defendants' violation of the CUTPA as provided in Conn. Gen. Stat. Ann. § 42-110g(d).

260. [A copy of this Complaint has been mailed to the Attorney General and the Commissioner of Consumer Protection of the State of Connecticut in accordance with Conn. Gen. Stat. Ann. § 42-110g(c).]

**Twelfth Cause of Action: Violations of the Delaware  
Consumer Fraud Act (6 Del. Code § 2513, et seq.)**

261. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

262. The Delaware Consumer Fraud Act (“CFA”) prohibits the “act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale, lease or advertisement of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby.” 6 Del. Code § 2513(a). “‘Merchandise’ means any objects . . . intangibles, . . . or services.”

263. Aflac is a person with the meaning of 6 Del. Code § 2511(7).

264. Defendants made numerous statements regarding the Plaintiffs and Class Members’ ability to earn certain commission selling Aflac’s products, which statements were knowingly false. Aflac made those false and fraudulent statements with the intent to deceive Plaintiffs and Class Members and to induce them into entering in associate’s agreement with Aflac. By concealing and omitting material information from Plaintiffs and the Class Members and by making affirmative misrepresentations as described above, Defendants engaged in deceptive business practices prohibited by the Delaware Consumer Fraud Act. Aflac’s material omissions and misrepresentations were made with the intent that Plaintiffs and the Class Members would rely upon them, and Plaintiffs and the Class Members did in fact rely upon those material omissions and misstatements.

265. Aflac’s actions as set forth above occurred in the conduct of trade or commerce. Aflac committed at least some of the deceptive acts in Delaware.

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266. Aflac's conduct proximately caused injuries to Plaintiffs and the Class Members.

267. Plaintiffs are entitled to recover damages, as well as costs and reasonable attorney fees as provided by the Delaware Consumer Fraud Act.

**Thirteenth Cause of Action: Violations of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), Fla. Stat. § 501.201 *et seq.***

268. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

269. The Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) makes unlawful “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

270. Defendants made numerous statements regarding the Plaintiffs and Class Members’ ability to earn certain commission selling Aflac’s products, which statements were knowingly false. Aflac made those false and fraudulent statements with the intent to deceive Plaintiffs and Class Members and to induce them into entering in associate’s agreement with Aflac. By concealing and omitting material information from Plaintiffs and the Class Members and by making affirmative misrepresentations as described above, Defendants engaged in unfair, deceptive, untrue or misleading advertising and otherwise made false statements prohibited by the FDUTPA.

271. Aflac committed at least some of the deceptive acts in Florida.

272. Plaintiffs and Class Members suffered damages as a result of Aflac’s violations of the FDUTPA in this manner in an amount to be determined at trial.

**Fourteenth Cause of Action: Violations of the Florida**

**Misleading Advertising Law, Fla. Stat. § 817.41**

273. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

274. The Florida Misleading Advertising Law (“MAL”), § 817.41 states: “It shall be unlawful for any person to make or disseminate or cause to be made or disseminated before the general public of the state, or any portion thereof, any misleading advertisement.” Pursuant to MAL § 817.40, “the phrase ‘misleading advertising’ includes any statements made, or disseminated, in oral, written, or printed form or otherwise, to or before the public, or any portion thereof, which are known, or through the exercise of reasonable care or investigation could or might have been ascertained, to be untrue or misleading, and which are or were so made or disseminated with the intent or purpose, either directly or indirectly, of selling or disposing of real or personal property, services of any nature whatever, professional or otherwise, or to induce the public to enter into any obligation relating to such property or services.”

275. As described above, the defendants engaged in misleading advertising and otherwise made false statements, and the Plaintiffs and Class Members suffered injury in fact and lost money or property as result.

276. Aflac committed at least some of the deceptive acts in Florida.

277. Plaintiffs and Class Members suffered damages as a result of Aflac’s violations of the MAL in this manner in an amount to be determined at trial.

**Fifteenth Cause of Action: Violations of the Idaho Consumer Protection Act (Idaho Civ. Code § 480, et seq.)**

278. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

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279. Defendants engaged in unfair methods and practices in the conduct of its trade or commerce in violation of the Idaho Consumer Protection Act (“ICPA”), Idaho Civ. Code § 48-603, including “(9) Advertising goods or services with intent not to sell them as advertised,” “(17) Engaging in any act or practice which is otherwise misleading, false, or deceptive to the consumer,” or “engaging in any unconscionable method, act or practice in the conduct of trade or commerce.” Defendants and Plaintiffs are “persons” under Idaho Civil Code § 48-602(1).

280. As set forth herein, Aflac engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of trade or commerce in violation of the ICPA. Defendants made numerous statements regarding the Plaintiffs and Class Members’ ability to earn certain commission selling Aflac’s products, which statements were knowingly false. Aflac made those false and fraudulent statements with the intent to deceive Plaintiffs and Class Members and to induce them into entering in associate’s agreement with Aflac. By concealing and omitting material information from Plaintiffs and the Class Members and by making affirmative misrepresentations as described above, Defendants violated the ICPA.

281. Aflac committed at least some of the deceptive acts in Idaho.

282. As a result of its violations of the ICPA detailed above, Defendant caused actual damage and ascertainable loss to Plaintiffs.

283. Aflac’s deliberate, widespread and systematic fraud was so egregious and carried out with such willful and conscious disregard of the rights of its Sales Associates that its conduct would outrage or offend the public conscience, and is therefore an unconscionable method, act or practice under the ICPA as provided in Idaho Civil Code § 48-603C.

284. Plaintiffs seek punitive damages against Defendant because its violations were repeated and flagrant, conducted over the course of many years, with knowledge of the illegality of the conduct, and therefore warrants the imposition of punitive damages under Idaho Civil Code § 48-608(1).

285. Plaintiffs further seek an order enjoining Defendants' unfair or deceptive acts or practices, punitive damages, costs of Court, attorney's fees under Idaho Civil Code § 48-608, and any other just and proper relief available under the ICPA.

**Sixteenth Cause of Action: Violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, et seq., and Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510/2**

286. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

287. Defendants engaged in unfair methods and practices in the conduct of its trade or commerce in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), which provides that "[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the 'Uniform Deceptive Trade Practices Act', approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby."

288. Defendants made numerous statements regarding the Plaintiffs and Class Members' ability to earn certain commission selling Aflac's products, which statements were

knowingly false. Aflac made those false and fraudulent statements with the intent to deceive Plaintiffs and Class Members and to induce them into entering in associate's agreement with Aflac. Defendants committed at least some of the deceptive acts in Illinois.

289. By concealing and omitting material information from Plaintiffs and the Class Members and by making affirmative misrepresentations as described above, Defendants engaged in practices prohibited by the ICFA.

290. Plaintiffs and the Class are entitled to actual damages, punitive damages, and reasonable attorneys' fees and costs, as well as any other relief the Court deems proper.

**Seventeenth Cause of Action: Violations of the Massachusetts Consumer Protection Act (Mass. Gen. Laws Ch. 93A, et seq.)**

291. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

292. The Massachusetts Consumer Protection Act ("MCPA") makes it unlawful to engage in any "[u]nfair methods of competition or deceptive acts or practices in the conduct of any trade or commerce." Mass. Gen. Laws Ch. 93A, § 2(1).

293. Defendants are corporations engaged in the conduct of trade or commerce. Plaintiffs and Class Members are persons engaged in the conduct of trade or commerce who suffered loss of money and property as a result of Defendants' unfair and deceptive acts or practices within the meaning of Section 11 of M.G.L. 93A.

294. Defendants made numerous statements regarding the Plaintiffs and Class Members' ability to earn certain commission selling Aflac's products, which statements were knowingly false. Aflac made those false and fraudulent statements with the intent to deceive Plaintiffs and Class Members and to induce them into entering in associate's agreement with Aflac. By concealing and omitting material information from Plaintiffs and the Class Members

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and by making affirmative misrepresentations as described above, Defendants engaged in practices prohibited by the MCPA.

295. Defendants' unfair and deceptive acts or practices occurred within the Commonwealth of Massachusetts where at least some of the complained-of misrepresentations occurred.

296. As a direct and proximate result of the Defendants' deceptive acts in violation of the MCPA, Plaintiffs and Class Members suffered damages in an amount to be determined at trial.

297. The Defendants committed their unfair and deceptive acts or practices willfully or knowingly, with reckless disregard for Plaintiffs' rights, entitling Plaintiff to up to three, but no less than two, times of the amount of its actual damages (to be determined at trial) suffered as a result of the Defendants' violation of the MCPA, as well as attorneys' fees and costs incurred in pursuit of this action.

**Eighteenth Cause of Action: Violations of the Minnesota Prevention of Consumer Fraud Act (Minn. Stat. § 325F.68-70)**

298. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

299. Plaintiffs, members of the Class and Defendants are each "persons" as defined by the Minnesota Prevention of Consumer Fraud Act ("MPCFA"), Minn. Stat. § 325F.68(2).

300. The MPCFA makes unlawful "[t]he act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby." Minn. Stat. § 325F.69(1). The MPCFA defines "merchandise" to mean "any objects, wares, goods,

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commodities, intangibles, real estate, loans, or services.” 325F.68(2). The MPCFA further provides that “any person injured by a violation of [the MPCFA] may bring a civil action and recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney's fees, and receive other equitable relief as determined by the court.” Minn. Stat. § 8.31(3a).

301. Defendants made numerous statements regarding the Plaintiffs and Class Members’ ability to earn certain commission selling Aflac’s products, which statements were knowingly false. Aflac made those false and fraudulent statements with the intent to deceive Plaintiffs and Class Members and to induce them into entering in associate’s agreement with Aflac. By concealing and omitting material information from Plaintiffs and the Class Members and by making affirmative misrepresentations as described above, Defendants engaged in deceptive business practices prohibited by the MPCFA. Aflac’s material omissions and misrepresentations were made with the intent that Plaintiffs and the Class Members would rely upon them, and Plaintiffs and the Class Members did in fact rely upon those material omissions and misstatements.

302. Aflac’s unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs. Aflac committed at least some of the deceptive acts in Minnesota.

303. Plaintiffs and the Class Members sustained damages as a result of the Defendant’s unlawful acts and are, therefore, entitled to damages and other relief as provided under the MPCFA.

**Nineteenth Cause of Action: Violations of the Nebraska**

**Consumer Protection Act (Neb. Rev. Stat. § 87-301, et seq.)**

304. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

305. The Nebraska Consumer Protection Act (“NCPA”) prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce.”

306. Defendants engaged in unfair methods and practices in the conduct of its trade or commerce in violation of the NCPA, under which a person commits a violation when it “(9) Advertises goods or services with intent not to sell them as advertised or advertises the price in any manner calculated or tending to mislead or in any way deceive a person,” or “(13) Uses or promotes the use of or establishes, operates, or participates in a pyramid promotional scheme in connection with the solicitation of such scheme to members of the public,” or “(16) Uses any scheme or device to defraud by means of: (i) Obtaining money or property by knowingly false or fraudulent pretenses, representations, or promises.”

307. Defendants made numerous statements regarding the Plaintiffs and Class Members’ ability to earn certain commission selling Aflac’s products, which statements were knowingly false. Aflac made those false and fraudulent statements with the intent to deceive Plaintiffs and Class Members and to induce them into entering in associate’s agreement with Aflac. By concealing and omitting material information from Plaintiffs and the Class Members and by making affirmative misrepresentations as described above, Defendants engaged in unlawful deceptive trade practices in the conduct of trade or commerce in violation of the NCPA.

308. Aflac’s actions as set forth above occurred in the conduct of trade or commerce. Aflac committed at least some of the deceptive acts in Nebraska.

309. Aflac’s actions impact the public interest because Plaintiffs were deceived, misled, and injured in exactly the same way as thousands of other Aflac’s recruits.

310. Plaintiffs and the Class Members were injured in their business or property as a result of Defendant's conduct.

311. Aflac's conduct proximately caused the injuries to Plaintiffs and the Class members, who are entitled to recover actual damages, as well as enhanced damages pursuant to § 59-1609.

**Twentieth Cause of Action: Violations of the New Hampshire Consumer Protection Act (N.H. Rev. Stat. § 358-A:1, et seq.)**

312. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

313. The New Hampshire Consumer Protection Act ("NHCPA") prohibits "any unfair or deceptive act or practice in the conduct of any trade or commerce."

314. "Trade or commerce" includes "the distribution of any services directly or indirectly affecting the people of this state."

315. Defendants made numerous statements regarding the Plaintiffs and Class Members' ability to earn certain commission selling Aflac's products, which statements were knowingly false. Aflac made those false and fraudulent statements with the intent to deceive Plaintiffs and Class Members and to induce them into entering in associate's agreement with Aflac. By concealing and omitting material information from Plaintiffs and the Class Members and by making affirmative misrepresentations as described above, Defendants engaged in unlawful deceptive trade practices in the conduct of trade or commerce in violation of the NHCPA.

316. Aflac's actions as set forth above occurred in the conduct of trade or commerce, and were committed willfully or knowingly. Aflac committed at least some of the deceptive acts in New Hampshire.

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317. Aflac's conduct proximately caused damage to Plaintiffs and the Class. Plaintiffs and the Class seek the recovery of actual damages, costs and attorney's fees pursuant to N.H. Rev. Stat. § 358-A:10-a.

**Twenty-First Cause of Action: Violations of the New Jersey Consumer Fraud Act (N.J. STAT. ANN. § 56:8-19, et seq.)**

318. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

319. The New Jersey Consumer Fraud Act ("NJCFA") makes unlawful "[t]he act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression or omission of any material fact with the intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby..." N.J. Stat. Ann. § 56:8-2. Pursuant to N.J. Stat. Ann. § 56:8-1, [t]he term 'merchandise' shall include any . . . services."

320. Aflac is a person within the meaning of the NJCFA. N.J. Stat. Ann. § 56:8- 1(d).

321. Defendants made numerous statements regarding the Plaintiffs and Class Members' ability to earn certain commission selling Aflac's products, which statements were knowingly false. Aflac made those false and fraudulent statements with the intent to deceive Plaintiffs and Class Members and to induce them into entering in associate's agreement with Aflac. By concealing and omitting material information from Plaintiffs and the Class Members and by making affirmative misrepresentations as described above, Defendants engaged in unlawful deceptive trade practices in the conduct of trade or commerce in violation of the NJCFA.

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322. Aflac committed at least some of the deceptive acts in New Jersey.

323. Plaintiffs and the Class Members suffered ascertainable loss of money or property caused by Aflac's unlawful practices, and are entitled to recover legal and/or equitable relief, treble damages, and reasonable attorneys' fees pursuant to N.J. Stat. Ann. § 56:8-19.

324. [Pursuant to N.J. Stat. Ann. § 56:8-20, Plaintiffs will mail a copy of this First Amended Consolidated Complaint to New Jersey's Attorney General within ten (10) days of filing it with the Court.]

**Twenty-Second Cause of Action: Violations of the New Mexico Unfair Trade Practices Act (N.M. Stat. Ann. § 57-12-1, et seq.)**

325. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

326. The New Mexico Unfair Trade Practices Act, N.M. Stat. Ann. §§ 57-12-1, et seq. ("New Mexico UTPA"), makes unlawful any "[u]nfair or deceptive trade practices and unconscionable trade practices in the conduct of any trade or commerce." N.M. Stat. Ann. § 57:12-3. Defendants are "persons" within the meaning of the New Mexico UTPA. N.M. Stat. Ann. § 57:12-2(A).

327. Defendants engaged in unfair methods and practices in the conduct of its trade or commerce in violation of the New Mexico UTPA. Defendants made numerous statements regarding the Plaintiffs and Class Members' ability to earn certain commission selling Aflac's products, which statements were knowingly false. Aflac made those false and fraudulent statements with the intent to deceive Plaintiffs and Class Members and to induce them into entering in associate's agreement with Aflac. By concealing and omitting material information from Plaintiffs and the Class Members and by making affirmative misrepresentations as

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described above, Defendants engaged in unfair and deceptive practices in violation of the New Mexico UTPA.

328. Aflac committed at least some of the deceptive acts in New Mexico.

329. Aflac took advantage of the lack of knowledge, ability, experience, and capacity of Plaintiffs and the Class Members to a grossly unfair degree. Defendant's actions constitute unconscionable conduct under § 57-12-2(E) of the New Mexico UTPA.

330. Plaintiffs and the Class Members lost money and sustained damages as a result of the Defendant's unlawful acts and are, therefore, entitled to damages and other relief provided for under § 57-12-10 of the New Mexico UTPA. Because Defendant's conduct was committed willfully, Plaintiffs and the Class seek treble damages, along with court costs and attorneys' fees.

**Twenty-Third Cause of Action: Violations of § 349 of New York's General Business Law**

331. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

332. As described above, the defendants engaged in unfair, deceptive, untrue or misleading advertising and otherwise made false statements and the plaintiffs suffered injury in fact and lost money or property as result.

333. Aflac committed at least some of the deceptive acts in New York.

334. Sales Associates and potential Sales Associates suffered damages as a result of Aflac's violations of Section 349 of the General Business Law in this manner in an amount to be determined at trial.

335. Plaintiffs waive the statutory minimum penalty under Section 349 to the extent necessary to maintain status a class action.

**Twenty-Fourth Cause of Action: Violations of The North**

**Carolina Unfair and Deceptive Trade Practices Act (N.C. Gen. Stat. § 75-1.1, et seq.)**

336. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

337. North Carolina's Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. §§ 75-1.1, et seq. ("NCUDTPA"), prohibits a person from engaging in "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce." The NCUDTPA provides a private right of action for any person injured "by reason of any act or thing done by any other person, firm or corporation in violation of" the NCUDTPA. N.C. Gen. Stat. § 75-16.

338. Defendants made numerous statements regarding the Plaintiffs and Class Members' ability to earn certain commission selling Aflac's products, which statements were knowingly false. Aflac made those false and fraudulent statements with the intent to deceive Plaintiffs and Class Members and to induce them into entering in associate's agreement with Aflac. By concealing and omitting material information from Plaintiffs and the Class Members and by making affirmative misrepresentations as described above, Defendants engaged in unfair and deceptive practices in violation of the NCUDTPA.

339. Aflac committed at least some of the deceptive acts in North Carolina.

340. Plaintiffs and the Class Members relied upon Aflac's false and misleading representations and omissions in deciding whether to enter into contracts with Aflac.

341. Aflac's conduct proximately caused injuries to Plaintiffs and the Class Members.

342. Plaintiffs and the other Class Members were injured as the direct and natural consequence of Aflac's misrepresentations and omissions.

343. Plaintiffs, individually and on behalf of the other Class members, seek treble damages pursuant to N.C. Gen. Stat. § 75-16, and an award of attorneys' fees pursuant to N.C. Gen. Stat. § 75-16.1.

**Twenty-Fifth Cause of Action: Violations of the North Dakota Consumer Fraud Act (N.D. Cent. Code § 51-15-01, et seq.)**

344. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

345. North Dakota's Consumer Fraud Act, N.D. Cent. Code §§ 51-15-01, et seq. ("NDCFA"), prohibits a person from engaging in "any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby." N.D. Cent. Code § 51-15-02. "'Merchandise' means any objects, wares, goods, commodities, intangibles, real estate, charitable contributions, or services." N.D. Cent. Code § 51-15-01(3).

346. The NDCFA provides a private right of action against any person who has acquired money or property "by means of any practice declared to be unlawful" by the NDCFA. N.D. Cent. Code § 51-15-09.

347. Defendants made numerous statements regarding the Plaintiffs and Class Members' ability to earn certain commission selling Aflac's products, which statements were knowingly false. Aflac made those false and fraudulent statements with the intent to deceive Plaintiffs and Class Members and to induce them into entering in associate's agreement with Aflac. Aflac committed at least some of the deceptive acts in North Dakota. By concealing and omitting material information from Plaintiffs and the Class Members and by making affirmative

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misrepresentations as described above, Defendants engaged in unfair and deceptive practices in violation of the NDCFA.

348. Aflac's conduct proximately caused injuries to Plaintiffs and the Class.

349. Plaintiffs and the other Class Members suffered a loss of money or property and were injured as the direct and natural consequence of Aflac's misrepresentations and omissions.

350. Aflac knowingly committed the conduct described above, and thus, under N.D. Cent. Code § 51-15-09, is liable to Plaintiffs and the Class for treble damages, as well as attorneys' fees, costs, and disbursements.

**Twenty-Sixth Cause of Action: Violations of the Oklahoma Consumer Protection Act (Okla. Stat. Tit. 15 § 751, et seq.)**

351. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

352. Oklahoma's Consumer Protection Act, Okla. Stat. Tit. 15 § 751, et seq. ("Oklahoma CPA"), makes it unlawful to commit unfair or deceptive trade practices. A deceptive trade practice "means a misrepresentation, omission or other practice that has deceived or could reasonably be expected to deceive or mislead a person to the detriment of that person. Such a practice may occur before, during or after a consumer transaction is entered into and may be written or oral." Okla. Stat. Tit. 15 § 752(13). An unfair trade practice "means any practice which offends established public policy or if the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers." Okla. Stat. Tit. 15 § 752(14).

353. Defendants made numerous statements regarding the Plaintiffs and Class Members' ability to earn certain commission selling Aflac's products, which statements were knowingly false. Aflac made those false and fraudulent statements with the intent to deceive Plaintiffs and Class Members and to induce them into entering in associate's agreement with

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Aflac. Aflac committed at least some of the deceptive acts in Oklahoma. By concealing and omitting material information from Plaintiffs and the Class Members and by making affirmative misrepresentations as described above, Defendants engaged in unfair and deceptive practices in violation of the Oklahoma CPA.

354. Aflac's misrepresentations could reasonably be expected to deceive or mislead a person to their detriment, and actually did deceive Plaintiffs and members of the Class.

355. Aflac's conduct described above offends established public policy and is immoral, unethical, oppressive, unscrupulous and substantially injurious to consumers and affect the public interest because Plaintiffs and members of the Class were injured in the same way as thousands of others through Aflac's generalized course of deception.

356. Aflac's conduct proximately caused injuries to Plaintiffs and the Class. Plaintiffs and the other Class members suffered a loss of money or property and were injured as the direct and natural consequence of Aflac's misrepresentations and omissions.

357. Aflac is liable to Plaintiffs and the Class for damages in amounts to be proven at trial, including attorneys' fees, costs, and treble damages.

**Twenty-Seventh Cause of Action: Violations of the South Carolina Unfair Trade Practices Act (S.C. Code Ann. § 39-5-10, et seq.)**

358. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

359. The South Carolina Unfair Trade Practices Act ("SCUTP") prohibits "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." S.C. Code Ann. § 39-5-20(a). Aflac is a person within the meaning of S.C. Code Ann. § 39-5-10(a).

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360. Trade or commerce as defined by the SCUTP includes the “sale or distribution of any services” and includes “any trade or commerce directly or indirectly affecting the people” of South Carolina. S.C. Code Ann. § 39-5-10(b).

361. Defendants made numerous statements regarding the Plaintiffs and Class Members’ ability to earn certain commission selling Aflac’s products, which statements were knowingly false. Aflac made those false and fraudulent statements with the intent to deceive Plaintiffs and Class Members and to induce them into entering in associate’s agreement with Aflac. Aflac committed at least some of the deceptive acts in South Carolina. By concealing and omitting material information from Plaintiffs and the Class Members and by making affirmative misrepresentations as described above, Defendants engaged in unfair and deceptive practices in violation of the SCUTP.

362. Aflac’s actions as set forth above occurred in the conduct of trade or commerce, and constitute deceptive trade practices under the SCUTP.

363. Plaintiffs and the Class were injured as a result of Aflac’s conduct, and suffered ascertainable monetary loss.

364. Plaintiffs seek an award of actual damages, treble damages, attorney’s fees and costs and permitted by the SCUTP. S.C. Code Ann. § 39-5-140.

**Twenty-Eighth Cause of Action: Violations of the South Dakota  
Deceptive Trade Practices and Consumer Protection Act (S.D.  
Code Ann. § 37-24-1, et seq.)**

365. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

366. The South Dakota Deceptive Trade Practices and Consumer Protection Act (“SDCPA”) makes it an unlawful, deceptive act or practice to “[k]nowingly and intentionally act, use, or employ any deceptive act or practice, fraud, false pretense, false promises, or

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misrepresentation or to conceal, suppress, or omit any material fact in connection with the sale or advertisement of any merchandise, regardless of whether any person has in fact been misled, deceived, or damaged thereby.” S.D. Codified Laws § 37-24-6. “Merchandise” is defined as “any object, wares, goods, commodity, intangible, instruction, or service.” S.D. Codified Laws § 37-24-1(7).

367. Defendants made numerous statements regarding the Plaintiffs and Class Members’ ability to earn certain commission selling Aflac’s products, which statements were knowingly false. Aflac made those false and fraudulent statements with the intent to deceive Plaintiffs and Class Members and to induce them into entering in associate’s agreement with Aflac. Aflac committed at least some of the deceptive acts in South Dakota. By concealing and omitting material information from Plaintiffs and the Class Members and by making affirmative misrepresentations as described above, Defendants engaged in unfair and deceptive practices in violation of the SDCPA.

368. Aflac’s actions as set forth above occurred in the conduct of trade or commerce, and constitute deceptive trade practices under the SDCPA.

369. Plaintiffs and the Class were injured as a result of Aflac’s conduct, and suffered ascertainable monetary loss.

370. Plaintiffs seek an award of actual damages, attorney’s fees and costs as permitted by the SDCPA. S.C. Code Ann. § 39-5-140.

**Twenty-Ninth Cause of Action: Violations of the Tennessee Consumer Protection Act (Tenn. Code Ann. § 47-18-101, et seq.)**

371. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

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372. The Tennessee Consumer Protection Act (“TCPA”) makes unlawful to commit unfair or deceptive acts or practices “affecting the conduct of any trade or conduct. Tenn. Code Ann. § 47-18-104(b). Unfair or deceptive practices under the TCPA include “(9) Advertising goods or services with intent not to sell them as advertised,” and “(20) Selling or offering to sell, either directly or associated with the sale of goods or services, a right of participation in a pyramid distributorship. .” Tenn. Code Ann. § 47-18-104(b).

373. Defendants made numerous statements regarding the Plaintiffs and Class Members’ ability to earn certain commission selling Aflac’s products, which statements were knowingly false. Aflac made those false and fraudulent statements with the intent to deceive Plaintiffs and Class Members and to induce them into entering in associate’s agreement with Aflac. Aflac committed at least some of the deceptive acts in Tennessee. By concealing and omitting material information from Plaintiffs and the Class Members and by making affirmative misrepresentations as described above, Defendants engaged in unfair and deceptive practices in violation of the TCPA.

374. Aflac’s actions as set forth above occurred in the conduct of trade or commerce, and constitute unfair or deceptive trade practices under the TCPA.

375. Plaintiffs and the Class were injured as a result of Aflac’s conduct, and suffered ascertainable monetary loss.

376. Plaintiffs seek an award of actual damages, treble damages, attorney’s fees and costs as permitted by the TCPA. Tenn. Code Ann. § 47-18-109.

**Thirtieth Cause of Action: Violations of the Texas Deceptive Trade Practices Act (Tex. Bus. & Com. Code § 17.41, et seq.)**

377. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

378. The Texas Deceptive Trade Practices Act (“TDTPA”) makes it unlawful to commit “[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce.” Tex. Bus. & Com. Code § 17.46. The prohibited practices include “(9) advertising goods or services with intent not to sell them as advertised”; “(21) promoting a pyramid promotional scheme,” and “(24) failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.” Id.

379. Defendants made numerous statements regarding the Plaintiffs and Class Members’ ability to earn certain commission selling Aflac’s products, which statements were knowingly false. Aflac made those false and fraudulent statements with the intent to deceive Plaintiffs and Class Members and to induce them into entering in associate’s agreement with Aflac. Aflac committed at least some of the deceptive acts in Texas. By concealing and omitting material information from Plaintiffs and the Class Members and by making affirmative misrepresentations as described above, Defendants engaged in unfair and deceptive practices in violation of the TDTPA.

380. [Plaintiffs will make a demand in satisfaction of Tex. Bus. & Com. CODE § 17.45(2), and may amend this Complaint to assert claims under the TDTPA once the required 60 days have elapsed.]

**Thirty-First Cause of Action: Violations of the Vermont Consumer Fraud Act (Vt. Stat. Ann. § 2451, et seq.)**

381. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

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382. The Vermont Consumer Fraud Act (“VCPA”) makes unlawful to commit “Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce.”

Vt. Stat. Ann § 2453(a). The VCPA provides a private right of action for “[a]ny consumer who contracts for goods or services in reliance upon false or fraudulent representations or practices ... or who sustains damages or injury as a result of any false or fraudulent representations or practices” prohibited by the VCPA. Vt. Stat. Ann. § 2461(b).

383. Defendants made numerous statements regarding the Plaintiffs and Class Members’ ability to earn certain commission selling Aflac’s products, which statements were knowingly false. Aflac made those false and fraudulent statements with the intent to deceive Plaintiffs and Class Members and to induce them into entering in associate’s agreement with Aflac. Aflac committed at least some of the deceptive acts in Vermont. By concealing and omitting material information from Plaintiffs and the Class Members and by making affirmative misrepresentations as described above, Defendants engaged in unfair and deceptive practices in violation of the Aflac’s actions as set forth above occurred in the conduct of trade or commerce, and constitute unfair or deceptive trade practices under the VCPA.

384. Plaintiffs and the Class were injured as a result of Aflac’s conduct, and suffered ascertainable monetary loss.

385. Plaintiffs seek an award of actual damages, treble damages, attorney’s fees and costs as permitted by the VCPA. Vt. Stat. Ann. § 2461(b).

#### **ALTERNATIVE THEORIES OF LIABILITY**

386. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 182 of this Complaint as if set forth fully herein.

387. As described above, Aflac is directly liable for the damages done to plaintiffs.

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388. In the alternative, to the extent that Aflac escapes direct liability, it is responsible for the actions of its employees, agents and assigns under theories of *respondeat superior*.

389. In the alternative, to the extent that Aflac escapes direct liability, it is responsible for the actions of its co-conspirators performing actions that could be reasonably anticipated to be done in furtherance of the conspiracy under civil conspiracy laws.

390. In the alternative, to the extent that Aflac escapes direct liability, it is responsible for the harms resulting from actions it knowingly aided and abetted.

**PRAYER FOR RELIEF**

Plaintiffs respectfully request a judgment:

- (a) Judgment against Defendant for three times the amount of damages the plaintiffs have sustained;
- (b) Equitable and injunctive relief necessary to conform Defendants' future conduct with the law;
- (c) Plaintiffs' attorneys' fees, costs, and expenses; and
- (d) Such other relief as the Court deems just and appropriate.

DATED: \_\_\_\_\_, 2017  
New York, New York

Respectfully submitted:

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DRAFT \_\_\_\_\_  
ATTORNEYS FOR PLAINTIFFS