UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Taqueria El Primo LLC, Victor Manuel Delgado Jimenez, María Isabel Martínez Mondragón, Mitchelle Chavez Solis, El Chinelo Produce, Inc., Virginia Sanchez-Gomez, Jonathan Duran, Benjamin Tarnowski, on behalf of themselves and others similarly situated,

Plaintiffs,

v.

Farmers Group, Inc.,
Truck Insurance Exchange,
Farmers Insurance Company, Inc.,
Farmers Insurance Exchange,
Illinois Farmers Insurance Company, and
Mid-Century Insurance Company.

Defendants.

Case No. 19-CV-03071 (JRT/BRT)

SECOND AMENDED COMPLAINT

Demand for Jury Trial

I. INTRODUCTION

1. This lawsuit arises from the actions of Farmers Group, Inc., Truck Insurance Exchange, Farmers Insurance Exchange, Farmers Insurance Company, Inc., Illinois Farmers Insurance Company, and Mid-Century Insurance Company (acting collectively as "Farmers" or "Defendants") to unlawfully restrict the choice of medical providers[1] available to Farmers' insureds following auto accidents.

[1] As used herein, the term "health care provider" or "provider" means an individual or business entity authorized to provide services defined as medical expense benefits under Minn. Stat. § 65B.44, subd. 2.

2. As a matter of corporate policy, Farmers has limited the treatment options available to its insureds in Minnesota by entering contracts with health care providers under which the providers effectively agree not to treat any person eligible for coverage under a policy issued by Farmers and affiliated insurance companies. These contracts are not disclosed to Farmers' policyholders or to the public.

3. Not only is Farmers' network of excluded providers never disclosed, but Farmers' policies promise that, following an automobile accident, Farmers will pay for any treatment that is covered under the policy terms, regardless of the provider.

4. Farmers' conduct therefore is fraudulent, deceptive, and in violation of the terms of Farmers' policies, because Farmers' policies promise coverage for any necessary treatment following an accident, regardless of the provider, when—in reality—Farmers has entered agreements to limit the providers who will treat Farmers' insureds.

5. Accordingly, on behalf of themselves and others similarly situated, Plaintiffs seek the following relief: (a) an order declaring that any contractual provision that limits the rights of Farmers' insureds to select the provider of his or her choice is void and not enforceable; (2) an injunction preventing Farmers from enforcing no-bill agreements in the future; and (3) monetary payments to class members in the form of either damages to recover the benefits of their bargains or equitable remedies.

II. JURISDICTION

6. This civil action was brought in the State of Minnesota's Fourth Judicial District under the Minnesota Consumer Fraud Act ("MCFA"), Minn. Stat. §§ 325F.68–.70, and the Minnesota Uniform Deceptive Trade Practices Act ("UDTPA"), Minn. Stat.

§§ 325D.43–.48, and removed by Defendants to the United States District Court for the District of Minnesota under the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d)(2).

7. Additionally, this court has supplemental jurisdiction over Plaintiffs' claims under the Minnesota Consumer Fraud Act pursuant to the Private Attorney General statute, Minn. Stat. § 8.31, subd. 3a, which permits private civil actions to recover damages, costs, and disbursements, including reasonable attorney's fees and other equitable relief, for violations of the MCFA and the UDTPA.

III. PARTIES

A. Plaintiffs

8. Plaintiff Taqueria El Primo LLC is a Minnesota limited liability corporation formed under the laws of Minnesota. Taqueria El Primo operates a food truck business in Minneapolis, Minnesota and is the insurance policyholder.

9. Defendant Truck Insurance Exchange issued Policy No. [redacted]61-74 to Plaintiff Taqueria El Primo LLC (the "Taqueria El Primo Policy"), which purports to provide auto insurance pursuant to Minnesota law.

10. Plaintiff Victor Manuel Delgado Jimenez purchased the Taqueria El Primo Policy on behalf of the corporation, and both Plaintiff Jimenez and Plaintiff María Isabel Martínez Mondragón fall within the definition of "Insureds" contained in the Taqueria El Primo Policy because they sustained bodily injuries while occupying a vehicle insured under the Taqueria El Primo Policy.

11. Plaintiff Mitchelle Chavez Solis purchased Policy No. [redacted]35-13 (the "Chavez Policy") from Defendants in or around December 7, 2016, which purports to provide auto insurance pursuant to Minnesota law. Defendant Illinois Farmers Insurance Company issued the Chavez Policy.

12. Plaintiff El Chinelo Produce, Inc. is a Minnesota corporation that purchased Policy No. [redacted]5985 (the "El Chinelo Policy") from Defendant Mid-Century Insurance Company to provide insurance for vehicles owned by the corporation.

13. Plaintiff Virginia Sanchez-Gomez is an owner of Plaintiff El Chinelo Produce and purchased the insurance coverage on behalf of the corporation.

14. Plaintiffs Virginia Sanchez-Gomez and Jonathan Durand are both "Insureds" under the El Chinelo Policy, and both sustained injuries while using a vehicle insured under the El Chinelo Policy.

15. Benjamin Tarnowski is a Minnesota resident who purchased Policy No. [redacted]67-32 (the "Tarnowski Policy") from Defendants, which purports to provide auto insurance pursuant to Minnesota law. Farmers Insurance Exchange issued the Tarnowski Policy.

16. The Taqueria El Primo Policy, Chavez Policy, El Chinelo Policy, and Tarnowski Policy all are referred to herein jointly as "the Policies."

B. Defendants

17. Defendant Farmers Insurance Exchange and Defendant Truck Insurance Exchange both are inter-insurance exchanges organized and existing under the laws of the State of California, and both underwrite insurance in Minnesota. Defendant Farmers

Insurance Exchange owns Illinois Farmers Insurance Company, but Illinois Farmers Insurance Company underwrites policies itself and also issues policies in Minnesota.

18. Plaintiff Farmers Insurance Company, Inc. is a corporation incorporated under the laws of California with its principal place of business in California. Farmers Insurance Company, Inc. claims to be authorized to conduct business and to issue policies of automobile insurance in the State of Minnesota.

19. In past legal proceedings, representatives from Farmers Group, Inc. have testified that neither Farmers Insurance Exchange nor Truck Insurance Exchange have any employees of their own. Rather, Farmers Group, Inc. issues policies on behalf of the two exchanges, and acts as representatives of the exchanges.

20. Similarly, in past litigation, Farmers Insurance Exchange and Truck Insurance Exchange have jointly brought suit with Farmers Group, Inc.[2] as plaintiffs for injuries they allegedly suffered jointly after a former insurance agent allegedly breached a single contract with the collection of Farmers entities by allegedly taking trade secrets owned collectively by the Farmers entities, some of which were held in a single repository.

IV. FACTUAL ALLEGATIONS

A. Minnesota's No-Fault Act prohibits limitations on provider choice.

21. In Minnesota, automobile insurance is governed by the Minnesota No-Fault Automobile Insurance Act, Minn. Stat. §§ 65B.41–.71 ("the No-Fault Act"). The No-Fault Act "is a comprehensive and highly-detailed statutory scheme that governs the

[2] *See generally Farmers Ins. Exch. v. Myung*, Case No. 19-cv-01606 PAM/ECW (D. Minn.).

compensation of persons injured in automobile accidents." *Stout v. AMCO Ins. Co.*, 645 N.W.2d 108, 112 (Minn. 2002).

22. The purposes of the No-Fault Act include "encourag[ing] appropriate medical and rehabilitation treatment of the automobile accident victim by assuring prompt payment for such treatment." Minn. Stat. § 65B.42(3). The No-Fault Act also prohibits an insurer from providing benefits that are less than those provided for by the Act, or "that involve any preestablished limitations on the benefits." Minn. Stat. § 65B.44, subd. 1(b).

23. To those ends, the No-Fault Act requires companies that offer automobile insurance to provide basic economic loss and medical expense benefits when an insured suffers a loss arising out of the use or maintenance of an automobile. Insurers must reimburse all reasonable medical expenses for, among other things, necessary medical, surgical, chiropractic, x-ray, optical, dental, and rehabilitative services.

24. The No-Fault Act does not allow automobile insurers to limit the providers from whom its insureds may seek treatment following an accident. The No-Fault Act also does not permit an insurer to limit the amount a particular provider may bill for care provided to injured persons. To the contrary, subject to statutory limits, the Act guarantees that "a person entitled to basic economic loss benefits under this chapter is entitled to the full medical expense benefits . . . and may not receive medical expense benefits that are in any way less than those provided for [by the Act], or that involve any preestablished limitations on the benefits." Minn. Stat. § 65B.44, subd. 1(b).

25. The statute further prohibits any "reparation obligor"—i.e., automobile insurance company—from entering into any contract that "provides, or has the effect of

providing, managed care services to no-fault claimants." Minn. Stat. § 65B.44, subd. 1(c). "Managed care services" means "any program of medical services that uses health care providers managed, owned, employed by, or under contract with a health plan company." *Id.*

26. The No-Fault Act identifies only one instance when a provider may be excluded from coverage: when the provider is convicted of insurance fraud under the criminal code. *See* Minn. Stat. § 65B.44, subd. 2a.

27. In almost all circumstances, no-fault coverage is primary, which means that no other type of insurance coverage will pay for medical treatment related to an automobile accident until all no-fault benefits are exhausted. *See* Minn. Stat. § 65B.61, subd. 1. As a result, a no-fault insurer has a duty to pay benefits to reimburse an injured person's loss, even if the injured person is entitled to compensation for the same loss from a different source.

28. Moreover, a no-fault insurer is required to pay the full amount charged for treatment provided to a patient even if the provider does not bill the patient that amount. For example, if the provider discounts charges for treatment, the No-Fault Act requires the no-fault insurer to reimburse the provider for the total amount of treatment without the discount.

29. Claims for no-fault benefits belong to individual insureds, like Plaintiffs. Therefore, a provider cannot simply agree not to charge for treatment provided to patients insured by certain no-fault insurers or "reparation obligors," because the patient still can recover the costs of treatment from the no-fault insurer. If a health care provider agrees not

to bill a no-fault carrier for treatment provided to its insureds, it has effectively agreed not to treat any patient insured by that no-fault carrier.

B. Farmers markets and administers policies uniformly in Minnesota.

30. Defendants present themselves to the public as one entity—under the name "Farmers"—and in fact operate as a single entity. All the defendants share agents and management, including a Special Investigations Unit ("SIU"). Individuals acting on behalf of all the defendants acted to create and carry out the fraudulent scheme described in this Amended Complaint.

31. In policy and marketing materials, Defendants refer to themselves jointly as "Farmers Insurance Group of Companies."

32. As such, the "Farmers Insurance Group of Companies" jointly markets policies to consumers in Minnesota, and provides common representations to all Minnesota consumers regarding the scope of coverage available under policies issued by one or more of the "Farmers Insurance Group of Companies."

33. For example, Plaintiff Jimenez purchased the Taqueria El Primo Policy, issued by Truck Insurance Exchange, from agent Miguel Medrano Rodriguez to insure Taqueria El Primo. Mr. Medrano Rodriguez advertises himself and holds himself out as an agent of Farmers Insurance, which—according to Mr. Medrano Rodriguez's materials—encompasses all the Defendants and other corporate entities.

34. Even though the Taqueria El Primo Policy was issued by Truck Insurance Exchange, the Taqueria El Primo Policy purports to come from "Farmers Insurance," the policy declaration indicated that the Policy was issued by "Farmers Insurance" and "Truck

Insurance Exchange, Member of the Farmers Insurance Group of Companies" and correspondence contained within the Taqueria El Primo Policy comes from Bryan Murphy, who represented himself as President of Business Insurance at "Farmers Group Inc." and "Vice President, Truck Underwriting Association."

35. Similarly, Plaintiff El Chinelo Produce's policy was issued by Defendant Mid-Century Insurance Company, but Plaintiff Sanchez also purchased the policy through the same agent, Miguel Medrano Rodriguez. Again, Mr. Medrano Rodriguez held himself out as an agent of "Farmers Insurance" even though the El Chinelo Policy was issued by a different legal entity, and the policy materials provided with the El Chinelo Policy refer to "Farmers" broadly.

36. Plaintiff Chavez Solis had the same experience with a different Farmers agent. Plaintiff Chavez Solis purchased automobile insurance from Defendants in 2016, through an insurance agent named Carmen Garcia. Ms. Garcia held herself out as an agent of "Farmers" without distinction between corporate entities that issued the Chavez Solis Policy (which was Illinois Farmers) and entities that sent correspondence to Chavez Solis (including, for example, correspondence on December 8, 2016 from "Farmers Insurance Group").

37. Plaintiff Tarnowski purchased automobile insurance under a policy issued by Farmers Insurance Exchange from agent Duane Palmer who held himself out as an agent for "Farmers Insurance." The Tarnowski Policy contained representations from all Defendants under a notice that purportedly comes from the "Farmers Insurance Group of Companies."

38. Farmers thus operates a common marketing scheme using the same agents to sell policies throughout Minnesota and making representations to insureds for all Farmers' entities regarding the scope of coverage available under policies issued by any individual Defendant.

C. Farmers developed a scheme to deceive consumers regarding the scope of coverage.

39. Farmers has developed a scheme to limit the medical treatment available to its insureds. Farmers' scheme operates to create a secret network of excluded providers despite the requirements of the No-Fault Act and the terms of Farmers' policies.

40. Farmers' scheme starts by identifying medical providers that have increased their billing to Farmers. Farmers then approaches the providers, accuses them of improper conduct, and demands the providers agree not to bill Farmers in the future.

41. Farmers operates its scheme, in part, through a Special Investigation Unit ("SIU") and through outside legal counsel who work with its SIU.

42. One of Farmers' SIU representatives located in Minnesota, Timothy Blegen, has boasted about Farmers' strategy of targeting disfavored providers for exclusion. This strategy allegedly has been authorized directly by Farmers' upper management, which has instructed Farmers' SIU, along with legal counsel working alongside SIU, to eliminate future billing from certain providers.

43. To carry out this corporate directive, Farmers' outside legal counsel and Farmers' SIU investigators identify and threaten the disfavored providers with legal action, licensing-board complaints, and the negative publicity that comes with either. Farmers tells

these providers that, regardless of the merits of these complaints, the expense and negative publicity associated with the complaints will destroy their businesses and careers.

44. After raising the possibility of career-ending litigation, negative publicity, and action against their licenses, Farmers tells the providers they can avoid these consequences by agreeing not to bill Farmers in the future.

45. If Farmers truly believed these providers were engaged in illegal or unprofessional conduct, Farmers could report the providers to law enforcement or to the relevant licensing board. But Farmers is not actually interested in stopping any allegedly wrongful conduct; in fact, wrongful conduct usually does not exist. Farmers is actually interested in stopping certain providers from billing Farmers.

46. Farmers' tactics thus intentionally undermine the availability of benefits under insurance policies issued by Farmers and the purposes of the No-Fault Act itself. Farmers is interested only in reducing the number of providers in the community who bill Farmers for treatment.

47. Farmers' efforts to limit the number of providers available to bill Farmers has apparently succeeded in reducing the number of Minnesota claims submitted to Farmers. Mr. Blegen told one provider that more than forty providers entered agreements not to bill Farmers in or around 2014. Mr. Blegen further indicated that Farmers' corporate leadership was pleased and emboldened by the fact that now many providers would not be billing Farmers in the future.

D. Farmers fraudulently conceals the secret network of excluded providers.

48. Farmers has not publicly disclosed and does not disclose to consumers in Minnesota that there are providers who have agreed not to submit claims to Farmers in the future.

49. When Plaintiffs purchased the Policies, Farmers (including its agents) did not disclose to Plaintiffs that Farmers had contrived to avoid being billed by certain providers.

50. Similarly, the terms of the Policies do not disclose the secret network of excluded providers. To the contrary, each of the Policies expressly provides that Farmers will pay personal injury protection benefits for bodily injury sustained by an insured person caused by an accident arising out of the operation or use of a motor vehicle.

51. Among the "Personal Injury Protection benefits" identified by each of the Policies are "Medical Expenses," defined by the policy to include "all reasonable expenses incurred for necessary . . . Medical, surgical, x-ray, optical, dental, chiropractic, and rehabilitative services, including prosthetic devices."

52. The Policies all contain a section titled "Exclusions" and additional sections titled "Limit Of Insurance." None of the exclusions or limitations allows Farmers to restrict Plaintiffs' access to certain health care providers or to require Plaintiffs to seek care from preferred providers.

E. Plaintiffs discover the secret network of excluded providers when they cannot seek treatment from their primary health care provider.

53. On May 8, 2017, Plaintiffs Jimenez and Mondragón were in the food truck owned by Taqueria El Primo at the intersection of Fourth Avenue and Lake Street in

Minneapolis. The food truck was hit by a drunk driver, and Plaintiffs Jimenez and Mondragón both suffered injuries in the collision.

54. Because Jimenez and Mondragón were in the food truck owned by Taqueria El Primo and because Farmers' insurance is primary, Jimenez and Mondragón were required to go through Farmers to receive payment for treatment of injuries related to the accident.

55. Jimenez and Mondragón sought treatment from their longtime chiropractor, Dr. Josey Perez of Premier Health in Minneapolis.

56. At the time of their accident, Jimenez and Mondragón considered Dr. Perez to be their primary health care provider. Jimenez and Mondragón are native Spanish speakers and appreciated that Dr. Perez also speaks Spanish.

57. But when Jimenez and Mondragón sought treatment from Dr. Perez following their accident, they discovered that Dr. Perez could not treat them because they were insured by Farmers.

58. Dr. Perez could have treated Jimenez and Mondragón if the accident had involved Mr. Jimenez's personal vehicle (insured by Progressive). The only reason Jimenez and Mondragón could not be treated by Dr. Perez was because the accident involved the business vehicle insured by Farmers.

59. Similarly, Plaintiff Chavez Solis was injured in an accident on January 21, 2017.

60. On January 26, 2017, Chavez Solis received a letter from Illinois Farmers Insurance Company employee Amy Gonzalez, which expressly promised that Chavez Solis could receive treatment from any provider of her choice.

61. But when Chavez Solis sought treatment from Dr. Perez after January 26, 2017, Chavez Solis discovered that Dr. Perez could not treat her because she was insured by Farmers.

[redacted]

63. According to Farmers' representative, there are dozens of health care providers in Minnesota that have entered into agreements not to bill Farmers. Information about the precise number of providers, and the identities of these providers, is exclusively within Farmers' control.

64. In creating these restrictions, Farmers acted jointly to (a) make false representations and material omissions to consumers, including Plaintiffs, and (b) enter

into contracts to limit providers who will provide treatment to persons insured under policies issued or administered by all Defendants.

F. Neither Plaintiffs nor any other consumers were aware of Farmers' secret network of excluded providers when they purchased automobile insurance from Farmers.

65. Farmers did not disclose its agreements not to treat Farmers' insureds at the time that any Plaintiff purchased or renewed a Minnesota No-Fault Automobile Insurance policy with one of the Defendants.

66. For Plaintiffs and class members with current insurance policies issued by one of the Defendants, Plaintiffs' harm is ongoing as they still cannot seek treatment from certain health care providers.

67. If Plaintiffs had known about Farmers' secret agreements with health care providers, they would not have purchased insurance from Farmers.

68. Plaintiffs are representative of the class of all Minnesota consumers, in that there is no way for any consumer in Minnesota to know that Farmers has created limitations on patient choice. Plaintiffs are representative in that the Policies are materially identical to policies issued by Defendants throughout Minnesota that provide personal injury protection, and nothing in the Policies disclosed that Farmers created a secret network of excluded providers, or that a consumer's ability to seek treatment from providers of their choosing would be significantly limited by Farmers' agreements.

69. In fact, the Policies each expressly state that Farmers will pay health care providers for treatment provided to Plaintiffs. Among the benefits available to all Plaintiffs are coverage for "Medical Expenses," defined uniformly among all the Policies to include

"all reasonable expenses incurred for necessary . . . Medical, surgical, x-ray, optical, dental, chiropractic, and rehabilitative services, including prosthetic devices."

70. This representation is false. Farmers will not pay reasonable expenses incurred for necessary health care services provided by providers with whom Farmers has secret agreements.

71. This is a material limitation in the coverage provision of the policy. It is not disclosed to Plaintiffs or any consumer in Minnesota.

72. Because of the limitations, Plaintiffs, and every other person who purchased insurance from Farmers, did not receive the full services they were promised by the Policies and guaranteed under Minnesota law.

73. In addition, Plaintiffs Mondragón and Duran were harmed indirectly because they could not seek treatment from the provider of their choice due to Farmers' conduct.

V. CLASS ACTION ALLEGATIONS

74. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure 23 and seek to represent a class of:

> All persons in Minnesota who purchased, renewed, or were insured under a policy providing benefits under the Minnesota No-Fault Automobile Insurance Act issued by one of the Defendants since January 2013 to the present.

75. The requirements for class certification under Federal Rule of Civil Procedure 23 are met as follows:

a. Plaintiffs are informed and believe, and on that basis allege, that between January 24, 2013 and the present (the "Class Period,") there are thousands

of persons who have purchased automobile insurance policies issued by one of the Defendants. As such, the members of the Class are so numerous that joinder of all members in one proceeding would be impracticable.

b. There are common questions of law and fact common to the Class, including without limitation:

i. Whether Farmers falsely represented the scope of coverage provided under Farmers' insurance policies by omitting material information with terms identical or similar to the Policies;

ii. Whether Farmers committed fraud by failing to disclose that insurance policies issued in Minnesota would not pay benefits for services provided by certain providers, despite the promise of coverage in the policy terms;

iii. Whether the members of the Class are entitled to damages and equitable relief, including injunctive and monetary relief.

c. The claims of the Plaintiffs are typical of the claims of the members of the Class, who purchased automobile insurance policies from Farmers and did not receive the coverage required by Minnesota law and promised by the terms of the policies. Instead, the coverage available to Plaintiffs and all members of the Class was materially limited by Farmers' secret agreements with health care providers.

d. The Plaintiffs will fairly and adequately represent the members of the Class and have retained counsel who are competent and experienced in class action and complex litigation.

76. The requirements of Rule 23(b)(2) are met as described below in Plaintiffs' request for injunctive relief.

77. The requirements of Rule 23(b)(3) are met in that:

a. The questions of law common to the members of the Class predominate over any questions affecting only individual members.

b. A class action is superior to other methods for the fair and efficient adjudication of this controversy. Because the damages suffered by many individual members of the Class may be relatively small in relation to the costs of litigation, the expense and burden of individual litigation make it difficult, if not impossible, for members of the Class to redress the wrongs done to them individually. Furthermore, many of the members of the Class may be unaware that claims exist against Farmers.

c. Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action. The names and addresses of the members of the Class are available from Farmers. Notice will be provided to the members of the Class via first class mail and/or by the use of techniques and a form of notice similar to those customarily used in class actions.

VI. CAUSES OF ACTION

COUNT I
DECLARATORY JUDGMENT

78. A justiciable controversy exists between Plaintiffs and Farmers relating to Plaintiffs' rights to receive medical treatment under Farmers' policies from the provider or providers of each patient's choosing.

79. The Court has the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed under 28 U.S.C. § 2201.

80. Plaintiffs may obtain declaratory relief relating to a party's rights under a contract.

81. Plaintiffs hereby request the Court adjudicate this dispute between the parties and enter a judgment declaring:

a. The policies issued by Farmers allow Plaintiffs to receive coverage for treatment from any provider of Plaintiffs' choice, consistent with the No-Fault Act and policy terms, regardless of any contract between Farmers and any medical provider; and

b. To the extent a contract between Farmers and any medical provider restricts or limits the provider's ability to treat Plaintiffs or another person insured by Farmers, such a contract is void.

COUNT II
MINNESOTA CONSUMER FRAUD ACT (Minn. Stat. §§ 325F.68–.70)
CLAIM FOR MONETARY RELIEF

82. Plaintiffs incorporate by reference each and every paragraph above as though fully set forth herein.

83. Each Defendant is a "person" under the definition of Minn. Stat. § 325F.68, subd. 3.

84. Farmers engaged in fraud and misrepresentation in the sale of its automobile insurance policies. Therefore, Farmers is in violation of the Minnesota Consumer Fraud Act.

85. When Farmers sold automobile insurance policies to consumers, including Plaintiffs, Farmers falsely stated that each policy would provide coverage for medical expenses incurred following an accident when, in fact, Farmers knew it had created a secret network of health care providers that would not treat individuals under those policies. Farmers' policies contain unlawful limitations that undermine the purposes and express provisions of the Farmers Policy.

86. Farmers' insurance policies are fraudulent because (a) the Policies contain false statements that they will cover medical expenses when they do not, and (b) the Policies make false statements by omission by not disclosing the existence of a secret network of providers that have been excluded and from whom policyholders and insureds cannot seek treatment.

87. Further, the creation of the secret network of excluded providers itself is a deceptive practice because it conceals a material fact from consumers who are selecting an automobile insurance policy.

88. Farmers intended that consumers would rely on these false statements at the time consumers decided to purchase or renew a policy from Farmers, and consumers actually relied on Farmers' false statements. Farmers actively concealed the existence of providers that could not bill Farmers in the future by requiring those providers to agree the agreements would be confidential and not disclosed to any person, including current and potential patients. Farmers also intentionally did not disclose or refer to the agreements in any public document.

89. Farmers' scheme also damaged Plaintiffs who did not purchase a policy directly from Farmers, but whose treatment options were limited by exclusion agreements with providers.

90. Plaintiffs reasonably believed that Farmers' policies would provide coverage as stated in the policies at the time they purchased them. Plaintiffs would not have purchased insurance from Farmers if they had known that Farmers had created a secret network of excluded providers which, but for their own investigation, Plaintiffs never would have discovered. Indeed, consumers in Minnesota still do not know about Farmers' secret network because Farmers has not publicly disclosed which providers are excluded from providing treatment to them.

91. Plaintiffs were damaged when they relied on the misrepresentations contained in their automobile insurance policies and their coverage was subject to unlawful provider limitations.

92. Plaintiffs are therefore entitled to seek and receive damages they sustained as a result of Farmers' fraudulent conduct under Minn. Stat. § 8.31, subd. 3a.

93. Plaintiffs also are entitled to recover equitable relief as determined by the Court including but not limited to disgorgement of profits.

94. Plaintiffs are also further entitled to an award of attorney's fees, costs, and disbursements pursuant to Minn. Stat. § 8.31, subd. 3a.

COUNT III
MINNESOTA CONSUMER FRAUD ACT (Minn. Stat. §§ 325F.68–.70)
CLAIM FOR INJUNCTIVE RELIEF

95. Plaintiffs incorporate by reference each and every paragraph above as though fully set forth herein.

96. Each Defendant is a "person" under the definition of Minn. Stat. § 325F.68, subd. 3.

97. Farmers engaged in fraud and misrepresentation in the sale of its automobile insurance policies. Therefore, Farmers is in violation of the Minnesota Consumer Fraud Act.

98. When Farmers sold automobile insurance policies to consumers, including Plaintiffs, Farmers falsely stated that each policy would provide coverage for medical expenses incurred following an accident when, in fact, Farmers knew it had created a secret network of health care providers that would not treat individuals under those policies. Farmers' policies contain unlawful limitations that undermine their purposes and express provisions. Therefore, the representations in Farmers' policies are false.

99. Farmers' insurance policies are fraudulent because (a) the policies contain false statements that Farmers will cover medical expenses when it will not, and (b) the

policies make false statements by omission by not disclosing the existence of a secret network of providers that have been excluded from coverage.

100. Further, the creation of the secret network of excluded providers itself is a deceptive practice because it conceals a material fact from consumers who are selecting an automobile insurance policy.

101. At the time it sold policies to Plaintiffs, Farmers knew its policies did not comply with the No-Fault Act because it knew there were agreements in place limiting the universe of providers from whom its insureds could receive treatment.

102. Farmers intended that consumers would rely on these false statements at the time consumers decided to purchase a policy from Farmers, and consumers actually relied on Farmers' false statements. Farmers actively concealed the existence of providers that could not bill Farmers in the future by requiring those providers to agree the agreements would be confidential and not disclosed to any person, including current and potential patients. Farmers also intentionally did not disclose or refer to the agreements in any public document.

103. Plaintiffs reasonably believed that Farmers' policies would provide coverage as stated in the policies at the time they purchased them.

104. On behalf of themselves and Class Members, Plaintiffs are therefore entitled to seek and receive injunctive relief requiring Farmers to comply with the terms of the Farmers Policy and prohibiting Farmers from enforcing limitations in its policies that are contrary to the policy terms and not disclosed to consumers.

105. Plaintiffs are also further entitled to an award of attorney's fees, costs, and disbursements pursuant to Minn. Stat. § 8.31, subd. 3a.

COUNT IV
UNIFORM DECEPTIVE TRADE PRACTICES ACT
(Minn. Stat. §§ 325D.43–.48)

106. Plaintiffs incorporate by reference each and every paragraph above as though fully set forth herein.

107. Farmers engaged in deceptive trade practices when selling automobile insurance policies by making representations about compliance with the No-Fault Act that deceived consumers. Farmers' conduct created a likelihood of confusion or misunderstanding because its automobile insurance policies did not identify any limitation on providers for medical benefits under the No-Fault Act and also affirmatively stated that they complied with the No-Fault Act.

108. Plaintiffs had no knowledge of the network of excluded providers created by Farmers, nor could Plaintiffs have known that Farmers created unlawful limitations on coverage under the No-Fault Act. Plaintiffs purchased their Farmers' automobile policies and paid premiums on the policies without knowing about any limitations on providers.

109. Plaintiffs are therefore entitled to seek and receive injunctive relief and monetary damages they sustained as a result of Defendants' fraudulent conduct under Minn. Stat. § 8.31, subd. 3a.

110. Plaintiffs are also further entitled to an award of attorney's fees, costs and disbursements pursuant to Minn. Stat. § 8.31, subd. 3a.

COUNT V
BREACH OF CONTRACT

111. Plaintiffs incorporate by reference each and every paragraph above as though fully set forth herein.

112. Plaintiffs and the members of the Class entered into valid and binding written contracts during the relevant time period with Defendants for the purchase of automobile insurance policies.

113. Farmers' policies state that, under the policy, Farmers "will pay, in accordance with the Minnesota No-Fault Automobile Insurance Act, Personal Injury Protection benefits incurred with respect to 'bodily injury' sustained by an 'insured' caused by an 'accident' arising out of the maintenance or use of a 'motor vehicle' as a vehicle." Among the "Personal Injury Protection benefits" identified by the Farmers Policy are "Medical Expenses," defined by the policy to include "all reasonable expenses incurred for necessary . . . Medical, surgical, x-ray, optical, dental, chiropractic, and rehabilitative services, including prosthetic devices."

114. For the reasons alleged above, Farmers breached these provisions of the policies issued to Plaintiffs and members of the Class.

115. Plaintiffs and the members of the Class have performed all conditions precedent to the application of the policies.

116. Plaintiffs and members of the Class suffered damages as a direct and proximate result of Farmers' breach of contract.

117. Every contract contains an implied covenant of good faith and fair dealing.

118. Farmers' conduct—including failing to provide accurate information regarding their secret "no-bill" practice, failing to provide a full network of providers to allow for all necessary and reasonable treatment as required under the Minnesota No-Fault Act, and collecting premiums while failing to provide the full coverage that the No-Fault Act affords—violated the implied covenant of good faith and fair dealing.

119. As a result of the foregoing, Plaintiffs and the members of the Class are entitled to:

a. An order requiring Farmers to perform their contracts as they agreed to do; and

b. Benefit-of-the-bargain compensatory damages to Plaintiffs and the members of the Class in a sum equivalent to performance of the contracts that places Plaintiff and the members of the Class in the positions they would have occupied had the contracts been fulfilled to the terms of the contract, rather than breached.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court enter the following judgment, in Plaintiffs' favor:

1. A declaratory judgment that any contractual provision limiting coverage guaranteed under the Farmers Policy and/or the No-Fault Act is void;

2. A permanent injunction enjoining Farmers from further violations of the Minnesota Consumer Fraud Act and the Minnesota Uniform Deceptive Trade Practices Act;

3. An award of damages to Plaintiffs for Breach of Contract and monetary relief for violations of Minnesota Consumer Fraud Act and the Minnesota Uniform Deceptive Trade Practices Act, in an amount to be established at trial;

4. An award of costs, fees, expenses, and pre-judgment and other statutory interest as permitted by law; and

5. Such other relief as is just and equitable.

JURY TRIAL DEMANDED

Plaintiffs demand a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

Respectfully submitted,

Dated: June 4, 2020

/s/ David W. Asp

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