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18 **SUPERIOR COURT OF CALIFORNIA**  
19 **COUNTY OF LOS ANGELES**  
20 **CENTRAL DISTRICT**

21 **Coordination Proceeding**  
22 **Special Title (Rule 1550(b))**  
23  
24 **CNA INSURANCE OVERTIME CASES**  
25  
26 Included Actions:  
27 Samora v. CNA  
28 Wenzel v. Galway Insurance Co.

**Judicial Council Coordination Proceeding No. 4230**  
  
Superior Court of California County of Los Angeles No. BC 242 487  
  
Superior Court of California County of Orange County No. BC 01CC 08868  
  
**FIRST CONSOLIDATED CLASS ACTION COMPLAINT FOR:**  
  
(1) Failure to Pay Overtime Wages  
(2) Violation of Business & Professions Code §17200 and 17203  
  
Judge: Hon. Victoria G. Chaney  
Dept: 311

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**THIS IS A CLASS ACTION LAWSUIT**

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1. This is a class action brought on behalf of all persons who, at any time from December 28, 1996, up to and including the date of entry of judgment after trial, are or were employed by CNA or its controlled affiliates or subsidiaries as salaried claims representatives in California. These employees did not receive overtime compensation and are similarly situated under California Code of Civil Procedure §382. Plaintiffs seek to recover unpaid overtime compensation, penalties, interest, attorney's fees and costs. To the extent that the improper conduct alleged herein violates California Business and Professions §17200 et seq., this action is also brought by the plaintiffs on behalf of the public.

**I**

**JURISDICTION AND VENUE**

2. This class action is brought pursuant to §382 of the California Code of Civil Procedure. The monetary damages sought by plaintiffs exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. The monetary damages sought on behalf of each and every member of the class and as aggregate class damages exceed those jurisdictional limits as well. However, plaintiff alleges on information and belief that the claims of many class members are under the \$75,000 jurisdictional threshold for federal court. For example, a class member who was or has been employed for a relatively brief period could not reasonably be expected to receive a recovery of \$75,000 or more. Further, there is no federal question at issue, as exempt status issues and remedies relating thereto are based solely on California statutes including the Labor Code, Civil Code, Code of Civil Procedure, and the Business & Professions Code.

3. Venue is proper in the Los Angeles Superior Court because the defendants have their headquarters in Woodland Hills and because many of the wrongful acts complained of

1 occurred in that county. Venue is proper in the Central District of Los Angeles County because  
2 this suit is a class action.

3 4. To the extent any class member entered into any arbitration agreement with any  
4 defendant and such agreement purported to require arbitration of wage or employment disputes,  
5 any such agreement is and was void and unenforceable. Any such agreement was one of  
6 adhesion, was executed under duress, lacked consideration and mutuality, and was otherwise void  
7 under the recent California Supreme Court case of Armendariz v. Foundation Health Psychcare  
8 Services, Inc.

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## II

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### PARTIES

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5. The named defendants in this action are all related and legally affiliated insurance entities that are licenced in California or do business in California. They advertise themselves as "CNA" in California and refer to themselves variously as part of "CNA," the "CNA Insurance Group" or the "CNA Insurance Companies". The named defendants are: CNA, an insurance company; CNA Insurance Group; CNA Insurance Companies; CNA Financial Corporation; CNA Casualty of California; American Casualty Company; Boston Old Colony Insurance Company; Continental Assurance Company; Continental Casualty Company; Continental Reinsurance Corporations; Fireman's Insurance Company of Newark, New Jersey; Kansas City Fire & Marine Insurance Company; Galway Insurance Company; National Fire Insurance Company of Hartford; Niagara Fire Insurance Company; Pacific Insurance Company; The Continental Insurance Company; The Fidelity & Casualty Insurance Company of New York; The Glen Falls Insurance Company; the Mayflower Insurance Company, Ltd., Transcontinental Insurance Company; Valley Forge Insurance Company; Valley Forge Life Insurance Company.

1           6.       The primary business of CNA is the issuance of insurance policies and the  
2 processing of claims on those policies.

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5           7.       At all times relevant to this complaint, the wage and hour policies and all related  
6 employee compensation policies of claims representatives are and were dictated by, controlled by,  
7 and ratified by CNA.

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9           8.       The true names and capacities of defendants named herein as DOES 1 through 20  
10 inclusive, whether individual, corporate, associate, or otherwise, are unknown to plaintiffs who  
11 therefore sue such defendants under fictitious names pursuant to California Code of Civil  
12 Procedure §474. Plaintiffs are informed and believe, and thereon allege, that these defendants,  
13 DOES 1 through 20, are in some manner or capacity, and to some degree, legally responsible and  
14 liable for the wrongs of which plaintiffs complain. Plaintiffs will amend their complaint to allege  
15 the true names and capacities of these DOE defendants once they are ascertained. On information  
16 and belief, plaintiffs make all allegations contained in this complaint against all defendants,  
17 including DOES 1 through 20, inclusive.

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19           9.       For purposes of this complaint, all of the CNA companies, as well as the DOE  
20 defendants, will hereinafter collectively be referred to as "CNA".

21

22           10.      At all times relevant, CNA has operated offices in California that process insurance  
23 claims made by and against its insureds. Such claims are normally processed by employees  
24 variously referred to as "claims representatives," "claims adjusters," "claims specialists," "litigation  
25 managers," "claims examiners," "general adjusters" or simply "claims people." The type of work  
26 done by these individuals is very similar in nature. For purposes of this complaint, all of these

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1 various job titles will hereinafter collectively be referred to as "claims representatives". CNA  
2 employs over 200 salaried claims representatives in California at the present time.

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4 11. At all times herein mentioned, each defendant was an agent, servant, employee  
5 and/or joint venturer of each of the remaining defendants, and was at all times acting within the  
6 course and scope of such agency, service, employment, and/or joint venture, and each defendant  
7 has ratified, approved, and authorized the acts of each of the remaining defendants with full  
8 knowledge of said acts.

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10 12. The plaintiff Ernestine Samora was employed by CNA during the class period as a  
11 salaried claims representative at CNA's San Bruno office in California.

12

13 13. The plaintiff Brian Wenzel was employed by Galway Insurance Company as a  
14 claims adjuster in California. Plaintiff's employment with said defendant commenced in April,  
15 1997 and ended in or about May, 1999.

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17 14. Because of their assigned caseloads, the named plaintiffs and every other claims  
18 representative of CNA were routinely required throughout the class period to work in excess of  
19 eight hours per day and/or forty hours per week without receiving overtime compensation.  
20 Plaintiffs bring this action on their own behalf and on behalf of all other such current and former  
21 employees similarly situated. With respect to the cause of action asserting a violation of Business  
22 and Professions Code §17200 et seq., plaintiffs also bring this action on behalf of the California  
23 public.

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### III

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### FACTUAL ALLEGATIONS

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2           15.     This is a class action brought on behalf of all claims representatives employed by  
3 CNA in California since December 28, 1996 who were improperly classified as salaried exempt  
4 employees and not paid overtime as required by the California Labor Code.

5

6           16.     Pursuant to CNA's standard employment policies, claims representatives are  
7 classified as "exempt" and paid a set salary, irrespective of the hours they actually work. A claims  
8 representative actually works five or six days a week regardless of how he or she is scheduled and  
9 often works ten or more hours per day, a policy that requires work well in excess of eight (8) hours  
10 in a day and far in excess of forty (40) hours in a week. Claims representatives have routinely  
11 worked well in excess of fifty (50) hours per week throughout the class period. Throughout the  
12 class period, CNA's claims representatives have had a very heavy workload. There has  
13 consistently been a shortage of claims representatives and support staff. Given CNA's standards  
14 for processing claims and the number of claims assigned to its representatives, a forty hour week  
15 was never realistic. Plaintiffs and other class members routinely worked fifty hour weeks.

16

17           17.     Claims representatives at CNA offices in California have spent and consistently  
18 spend more than 50% of their working hours performing tasks that are neither that of an  
19 administrator nor a manager. The majority of their time is not and has not been spent in  
20 supervision or other administrative activity. Instead, the majority of their time is spent in routinely  
21 processing claims under guidelines and procedures decreed by CNA or the State of California.  
22 Claims representatives have authority limits set by CNA and set written criteria within which that  
23 authority must be used. CNA's claims representatives do not exercise discretion or judgment that  
24 is independent." As a result, claims representatives have not been primarily engaged in  
25 performing exempt work as defined by IWC Wage Orders. Claims representatives at CNA do not  
26 and have not planned or implemented the company's corporate strategies, policies or control;

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1 rather, they have been production workers routinely processing claims.

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3 18. Labor Code §1174(d) and the IWC Orders (section 7) provide that every employer  
4 shall keep accurate information with respect to each employee including time records showing  
5 when the employee begins and ends each work period. CNA, as a uniform practice, failed to keep  
6 such time records with respect to their claims representatives. When an employer fails to keep  
7 such records, employees may establish the hours worked solely by their testimony and the burden  
8 of overcoming such testimony shifts to the employer. Hernandez v. Mendoza (1988) 199  
9 Cal.App.3d 721, 245 Cal.Rptr. 36.

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11 19. However, some evidence generally reflecting the number of excess hours worked  
12 by the claims representatives and the compensation rates for the relevant work periods are in the  
13 possession of CNA. While plaintiffs are unable to state at this time the exact amount owing to the  
14 class, plaintiffs propose to obtain such information by appropriate and focused discovery  
15 proceedings to be taken promptly in this action, and requests that damages or restitution be  
16 awarded accordingly to proof thus obtained and presented to the court.

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#### IV

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#### CLASS ACTION ALLEGATIONS

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21 20. Plaintiffs bring this action individually and as a class action on behalf of the class  
22 consisting of:

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24 All persons who, from December 28, 1996, up to and including the date of entry of  
25 judgment after trial, are or were employed as a salaried claims representative by  
26 CNA in the state of California and are or were classified as exempt and not paid

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1 overtime.

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3 21. Plaintiffs' claims are typical of the claims of the class because plaintiffs and all the  
4 class members were harmed in a similar fashion by CNA's failure to pay overtime as required by  
5 California law. CNA's policies with respect to the hours worked are and were uniform throughout  
6 California and its offices are and were operated under uniform written procedures.

7

8 1. Plaintiffs are representative parties who will fully and adequately protect the  
9 interests of the class members. They have retained counsel who are competent in both class action  
10 and employment litigation. Plaintiffs have no interests which are contrary to or in conflict with  
11 those of the class they seek to represent.

12

13 22. The number of class members is believed to exceed five hundred people which  
14 makes it impracticable to bring all members of the class individually before the court. The  
15 identities of the members of the class are determinable from the records of CNA, as are the days  
16 worked and the regular rate of pay for each class member.

17

18 23. A class action is superior to other available means for the fair and efficient  
19 adjudication of this lawsuit. Even if any class member could afford individual litigation against a  
20 large business like CNA, it would be unduly burdensome to the court system. Individual litigation  
21 magnifies the delay and expense to all parties. By contrast, a class action presents far fewer  
22 management difficulties and affords the benefits of unitary adjudication, economies of scale, and  
23 comprehensive supervision by a single court. Concentrating this litigation in one forum will  
24 promote judicial economy and parity among the claims of individual class members and judicial  
25 consistency. Notice of the pendency of this action and of any resolution can be provided to class  
26 members by mail, print, broadcast, internet, and/or multimedia publication.

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2           24.     This type of case is uniquely well suited for class treatment since the employer's  
3 practices were uniform and the burden is on the employer to prove any exemption and to disprove  
4 the hours of overtime claimed by the employees, a near impossibility since the employer failed to  
5 keep the time records required by statute.

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7           25.     Many issues of law or fact are common and they predominate over any individual  
8 questions. These common issues include:

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- 10           1.     Whether CNA's claims representatives were classified as salaried exempt, in  
                  violation of California Labor Code and applicable IWC wage orders;
- 11           2.     Whether CNA failed to pay plaintiffs and class members overtime compensation by  
12                   virtue of its uniform designation of employees as "salaried exempt" in violation of  
13                   the California Labor Code and applicable IWC Wage Orders;
- 14           3.     Whether plaintiffs and class members were expected to and/or mandated to  
15                   regularly work overtime;
- 16           4.     The correct statute of limitations for plaintiffs' and class members' claims;
- 17           5.     Whether CNA failed to keep adequate records of hours worked by plaintiffs and  
18                   class members;
- 19           6.     The correct method of calculating back overtime pay;
- 20           7.     Whether CNA's conduct constitutes unfair competition within the meaning of  
21                   California Business & Professions Code §17200 and 17203;
- 22           8.     Whether CNA's conduct constitutes unfair business practices within the meaning of  
23                   California Business & Professions Code §17200 and 17203;
- 24           9.     Whether plaintiffs and class members are entitled to compensatory damages, and if  
25                   so, the means of measuring such damages;
- 26           10.    Whether class members are entitled to injunctive relief prohibiting CNA from  
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1 requiring claims representatives who do not meet the statutory and/or regulatory  
2 guidelines for exemption from working more than eight hours per day or 40 hours a  
week in any work week without payment of overtime wages;

- 3 11. Whether plaintiffs and class members are entitled to restitution;  
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5 12. Whether CNA is liable for punitive damages;  
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7 13. Whether CNA is liable for pre-judgment interest;  
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9 14. Whether CNA is liable for attorney's fees and costs;  
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11 15. Whether plaintiffs and class members are entitled to waiting time penalties.  
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V

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**GENERAL ALLEGATIONS**

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**AS TO CLASS REPRESENTATIVES**

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21 26. During the class period plaintiffs were employed by CNA as claims representatives  
22 in California and were classified as "salaried exempt." Plaintiffs regularly worked more than 8  
23 hours per day and in excess of 40 hours a week without payment of overtime wages.

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25 27. During their employment by CNA, plaintiffs spent over 50% of their working hours  
26 performing work that is neither that of an administrator nor of a manager. This non-  
27 administrative work was routinely processing insurance claims under the strict guidelines and  
28 procedures decreed by CNA and under strict authority limitations placed upon them and all  
other claims representatives.

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1 of pay.

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3 32. Pursuant to California Labor Code §§ 218 and 1194(a), plaintiffs may bring a civil  
4 action for overtime wages directly against the employer without first filing a claim with the  
5 Division of Labor Standards Enforcement (hereinafter "DLSE") and may recover such wages,  
6 together with interest thereon, penalties, attorney's fees and costs.

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8 33. At all times relevant hereto, CNA has failed to pay to plaintiffs and all persons  
9 similarly situated wages when due as required by California Labor Code §204.

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11 34. California Labor Code §1194 provides as follows:  
12 "Notwithstanding any agreement to work for a lesser wage, any employee receiving  
13 less than...the legal overtime compensation applicable to the employee is entitled to  
14 recover in a civil action the unpaid balance of the full amount of this...overtime  
15 compensation, including interest thereon, reasonable attorney's fees, and costs of  
16 suit." (Emphasis added.)

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16 35. Pursuant to California Labor Code §1198, it is unlawful to employ persons for  
17 longer than the hours set by the IWC or under conditions prohibited by the applicable IWC Wage  
18 Orders without the payment of overtime compensation. IWC Wage Order No. 4-01 and its  
19 predecessors apply to CNA's claims representatives. Those wage orders provide for payment of  
20 overtime wages equal to one and one-half (1 ½) times an employee's regular rate of pay for all  
21 hours worked in excess of 8 hours in a day or 40 hours in a work week. They also provide for  
22 payment of overtime wages equal to two times an employee's regular rate of pay under certain  
23 circumstances.

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25 36. At all times relevant hereto, CNA has treated plaintiffs and others similarly situated  
26 as "salaried exempt" employees and as "administrators" or "managers," exempt from the  
27 protections of the California Labor Code. Despite this classification, CNA has willfully violated the  
28 California Labor Code with respect to the duty and activities components of that exemption. CNA  
has willfully and wrongfully designated certain employees, including plaintiffs, as "exempt" claims

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1 representatives in California to avoid payment of overtime wages and other benefits in violation of  
2 the California Labor Code and the orders issued by the IWC.

3 37. The employees designated as claims representatives for CNA are not or were not  
4 "exempt" employees pursuant to IWC Wage Order No. 4-01 and its predecessors because:

5 A. CNA's claims representatives do not satisfy the criteria for the executive,  
6 administrative nor professional exemption;

7 B. In excess of 50% of their time is spent performing non-exempt duties, including,  
8 but not necessarily limited to, evaluating and summarizing claims and making  
9 recommendations to CNA as to the handling of such claims;

10 C. Claims representatives do not "customarily and regularly" exercise any discretion  
11 or independent judgment because they must follow company guidelines and state  
12 law. In addition, they do not make decisions that effect the company as a whole;

13 D. CNA has writings that dictate policy, thereby eliminating all independent  
14 authority, judgment and discretion of the claims representatives;

15 E. Claims representatives cannot act in any manner that may bind or affect CNA  
16 except under specific grants of authority.

17 38. CNA owes plaintiffs and the class overtime wages according to proof at the time of  
18 trial and prejudgment and/or statutory interest thereon.

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20 39. Plaintiffs are informed and believe, and thereon alleges, that CNA knew or should  
21 have known that the claims representatives did not qualify as exempt employees and purposely  
22 elected not to pay them for their overtime labor. Plaintiffs, individually and on behalf of all  
23 employees similarly situated, request recovery of overtime compensation according to proof,  
24 penalty wages, interest, attorney's fees and costs pursuant to Labor Code §§203, 216, and 1194(a),  
25 as well as the assessment of any other statutory penalties against these defendants, and each of  
26 them, in a sum as provided by the Labor Code and/or other statutes.

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**VII**  
**SECOND CAUSE OF ACTION**  
**VIOLATION OF BUSINESS & PROFESSIONS CODE §§17200 and 17203**  
**(As Against All Defendants)**

40. Plaintiffs hereby reallege and incorporate by reference all paragraphs above as though fully set forth in detail herein. In asserting this cause of action plaintiffs also sue on behalf of the public.

41. Since December 28, 1996, by and through the conduct described herein, CNA has engaged and continues to engage in unfair, unlawful, and fraudulent business practices in violation of California Business & Professions Code §17200. These acts constitute a continuing and ongoing unlawful activity prohibited by Business & Professions Code §17200 and justify the issuance of an injunction, restitution, and other equitable relief pursuant to Business & Professions Code §17203.

42. CNA has wrongfully designated claims representatives as "exempt" to avoid the payment of overtime wages and other benefits in violation of Labor Code §200 et seq., Labor Code §500 et seq., Labor Code §1100 et seq., Penal Code §§484 and 532 (theft of labor and false pretenses), the California Code of Regulations, and the guidelines set forth by the IWC.

43. CNA has under-reported to federal and state authorities wages earned by its claims representatives and therefore has underpaid state and federal taxes, employer matching funds, unemployment premiums, social security, medicare and worker compensation premiums. The aforesaid conduct is also unlawful and subjects CNA to sanctions, fines and imprisonment, and is actionable under Business & Professions Code §§17200 and 17203.

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2           44.     The conduct of CNA is inimical to the public welfare since it transgresses both  
3 civil and criminal statutes of this state designed to protect workers from exploitation.

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5           45.     CNA's conduct in misclassifying plaintiffs and other members of the class and  
6 failing to pay overtime was also unfair within the meaning of §17200 because it was against  
7 established public policy and has been pursued to attain an unjustified monetary advantage for  
8 CNA by creating personal disadvantage and hardship to its employees. As such, CNA's business  
9 practices and acts have been immoral, unethical, oppressive and unscrupulous.

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11           46.     The said conduct was also fraudulent within the meaning of §17200 because it was  
12 intended by CNA to deceive employees, prospective employees and other members of the public  
13 into believing that claims representatives were not entitled to overtime, a deceit likely to be believed  
14 by such persons.

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17           47.     By and through its unfair, unlawful, and/or fraudulent business practices and acts  
18 described herein, CNA has obtained valuable services from plaintiffs and all persons similarly  
19 situated and has deprived plaintiffs and all persons similarly situated of valuable rights and benefits  
20 guaranteed by law, all to their detriment.

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22           48.     Plaintiffs, and all persons similarly situated, and all persons in interest, are entitled  
23 to and do seek such relief as may be necessary to restore to them the money and property which  
24 CNA has acquired, or of which plaintiffs and class members have been deprived by means of the  
25 herein described unfair, unlawful, and/or fraudulent business practices.

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