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11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14
15 LESTER I SPIELMAN, individually and
on behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 UNITED SERVICES AUTOMOBILE
ASSOCIATION, USAA CASUALTY
19 INSURANCE COMPANY, USAA
GENERAL INDEMNITY COMPANY,
20 and GARRISON PROPERTY AND
CASUALTY INSURANCE COMPANY,

21 Defendants.
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Case No. 2:19-cv-01359-AB-MAA

**SECOND AMENDED CLASS
ACTION COMPLAINT**

TRIAL BY JURY DEMANDED

1 Defendants fail to include sales tax and/or vehicle title transfer and vehicle registration
2 fees (“Vehicle Title and Registration Fees”) in their calculation of ACV when paying
3 FTLP to its insureds.

4 5. Defendants’ failure to pay FTLP to first-party total losses owed to its
5 insureds and to condition payments on actions not required by the policy itself, such as
6 purchase of a new vehicle, is a breach of the policy agreement and a clear breach of
7 contract.

8 **JURISDICTION AND VENUE**

9 6. This Court has jurisdiction over the subject matter of this action pursuant
10 to 28 U.S.C. § 1332(d)(2)(A), because at least one member of the Class is a citizen of a
11 different state than Defendants, there are more than 100 members of the Class, and
12 upon information and belief the aggregate amount in controversy exceeds \$5,000,000.00
13 exclusive of interest and costs.

14 7. This Court has personal jurisdiction over Defendants because they
15 conduct business in this District and in the State of California.

16 8. Venue is also proper in this Court because Plaintiff resides in this District
17 and a substantial part of the events or omissions giving rise to the claims occurred in
18 this District. The policy at issue was sold in the State of California, as well as throughout
19 the country.

20 **PARTIES**

21 9. At all times material hereto, Plaintiff Spielman resided in Los Angeles,
22 California.

23 10. At all times material hereto, Defendant USAA was, and is, a reciprocal
24 interinsurance exchange organized under the laws of the State of Texas with its
25 headquarters and principal place of business in San Antonio, Texas, and is licensed to
26 do business in the State of California.

27 11. At all times material hereto, Defendant USAA Casualty was, and is, is a
28 wholly-owned subsidiary of Defendant USAA and is a Texas corporation licensed to do

1 business in the State of California, whose headquarters and principal place of business is
2 located in San Antonio, Texas.

3 12. At all times material hereto, Defendant GIC was, and is, a wholly-owned
4 subsidiary of Defendant USAA and is a Texas corporation licensed to do business in
5 the State of California, whose headquarters and principal place of business is located in
6 San Antonio, Texas.

7 13. At all times material hereto, Defendant Garrison is a wholly-owned
8 subsidiary of Defendant CIC and is a Texas corporation licensed to do business in the
9 State of California, whose headquarters and principal place of business is located in San
10 Antonio, Texas.

11 **FACTUAL ALLEGATIONS**

12 **A. USAA’s Policy Requires the Payment of Actual Cash Value for Total Loss**
13 **Vehicles**

14 14. Defendants’ standardized automobile insurance policy¹ (“Insurance
15 Policy” or the “Policy”) includes language as to physical damage coverage, including
16 collision or physical damage other than collision coverage, for ACV of total loss
17 vehicles.

18 15. The Policy language applies to all covered autos irrespective of ownership
19 interests – whether owned, financed or leased.

20 16. Under the Insurance Policy and applicable state law, an insured is entitled
21 to ACV for a total loss of a covered vehicle. Further, under the Insurance Policy and
22 applicable state law, ACV includes an obligation to pay sales tax and Vehicle Title and
23 Registration Fees for total loss vehicle collision or physical damage other than collision
24 coverage (full total loss payment or FTLP). Specifically, the USAA Policy defines
25 “Actual Cash Value” for physical damage coverage as “the amount it would cost, at the
26

27 ¹ The USAA Policy and the automobile insurance policies issued to California
28 insureds by Defendants CIC, CGI, and Garrison are substantially similar in all material
aspects.

1 time of loss, to buy a vehicle of the same make, model, body type, model year, and
2 equipment, with substantially similar mileage and physical condition.” *See* Exhibit A at
3 14. The policy definition of ACV does not exclude: (1) sales taxes; or (2) Vehicle Title
4 and Registration Fees from ACV. Rather, the only limitation on ACV is that it be the
5 amount to buy a comparable vehicle at the time of the loss.²

6 17. The policy definition also does not condition payments on actions not
7 required by the policy itself. For example, the policy delineates that ACV is the “amount
8 it would cost” to purchase a new vehicle and does not state that such payments are
9 conditioned on the purchase of a new vehicle. *Id.* at 14 (emphasis added).

10 18. The State of California requires the payment of taxes, and that vehicles be
11 properly titled and registered and that vehicles have proper license plates (or tags).
12 Thus, the ACV of damaged or stolen vehicles—that is, the amount it would cost to
13 purchase a new vehicle—includes Vehicle Title and Registration Fees.

14 19. But, as demonstrated by Plaintiff’s experiences, Defendants do not include
15 sales tax or Vehicle Title and Registration Fees when determining and paying the ACV
16 to insureds. Rather, contrary to its obligations to pay insureds the full amount of the
17 total loss of an insured’s vehicle, Defendants deduct sales tax from the ACV settlement
18 amount and do not include Vehicle Title and Registration Fees.

19 **B. Plaintiff Spielman’s Experience**

20 20. On or about October 7, 2017, Spielman’s USAA-Insured Vehicle, a 2017
21 Genesis G80 RWD, was destroyed in a collision. In other words, Plaintiff Spielman’s
22 car was a “total loss” under the Insurance Policy, entitling him to a payment of the
23 actual cash value of his Insured Vehicle. Plaintiff Spielman filed a claim total loss of the
24 Insured Vehicle with Defendant USAA (claim reference number
25 0045500123000000024001).

26
27 _____
28 ² The Policy further provides that the only limitation of liability “for total losses” is the “actual cash value of your covered auto.” *Id.* at 15.

1 21. Following the filing of Plaintiff Spielman’s claim, Defendant USAA
2 determined that the ACV was \$45,295.00—an amount that did not include sales tax or
3 Vehicle Title or Registration Fees. While the Total Less Settlement includes \$4,303.03 in
4 sales taxes, Defendant USAA performed a “Manager Adjustment” and declined to
5 include that sales tax from the final Settlement Amount.

6 22. Defendant USAA also declined to include the Collision Deductible (\$500)
7 for a total Settlement Amount of \$44,795.00.

8 23. The ACV was calculated by an independent vehicle valuation company
9 (“CCC One”), which bases vehicles valuations on the cost to purchase similar vehicles
10 with similar conditions and mileage.

11 24. CCC One created a Market Valuation Report, which did not include an
12 amount for sales tax or Vehicle Title and Registration Fees. See Exhibit B.

13 25. Defendant USAA breached its Insurance Policy with Plaintiff Spielman by
14 excluding sales tax and Vehicle Registration Fees when calculating and paying Plaintiff
15 Spielman the ACV of his total loss. Defendant USAA’s Insurance Policy expressly
16 states that it will pay the cost to buy a comparable vehicle for a total loss. The cost to
17 buy a comparable vehicle includes sales taxes, and Vehicle Title and Registration Fees.
18 The Policy does not state that these sales taxes and Vehicle Title and Registration Fees
19 will be paid only if Plaintiff Spielman meets certain conditions after the vehicle is
20 determined a total loss.

21 26. By not including amounts for sales tax and Vehicle Title and Registration
22 Fees in its calculation of ACV paid to insureds, as well as by, on information and belief,
23 conditioning future payment of these amounts on actions not required by the Insurance
24 Policy, Defendant USAA limits the amount it is required to pay insureds, including
25 Plaintiff Spielman, in breach of Defendant USAA’s Insurance Policy.

26 27. Plaintiff Spielman and all members of the putative class paid all premiums
27 owed and otherwise satisfied all conditions precedent, or such conditions precedent
28 were waived or excused.

CLASS ALLEGATIONS

1
2 28. Plaintiff brings this action on behalf of himself and a class of all others
3 similarly situated. This action is brought and is properly maintained as a class action
4 pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3).

5 29. Plaintiff seeks to represent a class (“Class”) defined as follows:

6 All individuals and entities insured by USAA, CIC,
7 GIC, or Garrison (“the USAA Entities”) under a California
8 automobile policy whose insurance covered or covers a leased
9 vehicle under private-passenger physical damage coverage,
10 including collision and physical damage other than collision
11 coverage, and who made a first-party claim from February 22,
2015, whose leased vehicle was determined by the USAA
Entities to be a total loss, and who received a total loss claim
payment from the USAA Entities for the value of the totaled
vehicle that did not include the full amount of the Sales Tax
and/or Vehicle Regulatory Fees.

12 Excluded from the Class are: (1) all officers, employees,
13 and agents of the USAA Entities, Class Counsel, and their
14 immediate family members, and (2) any members of the
judiciary assigned to the Action and their immediate families.

15 30. Plaintiff reserves the right to modify or amend the definition of the
16 proposed Class and/or to add subclasses if necessary before this Court determines
17 whether certification is appropriate.

18 **A. Numerosity**

19 31. Although the precise number of members for the Class are unknown to
20 Plaintiff at this time and can only be determined through appropriate discovery, Plaintiff
21 believes that because Defendants are a large, national insurer and write hundreds of
22 millions of dollars of private-passenger physical damage coverage policies, the Class
23 affected by Defendants’ unlawful practice consists of thousands of insureds or the class
24 is otherwise so numerous that joinder of all Class members is impractical. The unlawful
25 practice alleged herein is a standardized and uniform practice, employed by Defendants
26 pursuant to standardized Insurance Policy language, and results in the retention by
27 Defendants of insurance benefits properly owed to Plaintiff and the Class members.
28 The Class definition will permit the court to reasonably ascertain whether any individual

1 or entity is a member of the class as any individual who is an insured of one of the
2 Defendants in the class period and received an ACV that did not include sales tax
3 and/or Vehicle Title and Registration Fees will be a member of the Class.

4 32. Upon information and belief, Defendants uniformly fail to pay (or
5 underpays) sales tax and Vehicle Title and Registration Fees in total loss cases and/or
6 conditions payment of such amounts on conditions not included in the Policy.
7 Accordingly, the Class consists of many thousands, if not thousands, of Defendants'
8 insureds who were not paid in breach of their insurance policies. Thus, pursuant to
9 Fed. R. Civ. P. 23(a)(1), the large size of the Class renders the Class so numerous that
10 joinder of all individual members is impracticable.

11 **B. Commonality**

12 33. Defendants' conduct towards the Class raises common questions of law
13 and fact that predominate, as Defendants failed to unconditionally pay sales tax and/or
14 Vehicle Title and Registration Fees in total loss cases.

15 34. Plaintiff shares a common interest with all members of the putative Class
16 in the objects of the action and the relief sought. Plaintiff satisfies Fed. R. Civ. P.
17 23(a)(2)'s commonality requirement because his claims arise from a practice which
18 Defendants apply to all its similarly situated Class members and are based on the same
19 legal theories as all other members of the putative class, that failing to pay sales tax
20 and/or Vehicle Title and Registration Fees in total loss cases violates the insurance
21 policies. Because Defendants' conduct of underpaying ACV was the same as to all Class
22 members, the material elements of Plaintiff's claims and those of absent class members
23 are subject to common proof, and the outcome of Plaintiff's individual actions will be
24 dispositive for the Class. The common questions include, but are not limited to, the
25 following: (a) whether, under the Defendants' standardized policy language, Plaintiff
26 and the Class members are owed ACV sales tax and Vehicle Title and Registration Fees
27 upon the total loss of an insured vehicle; and (b) whether the Defendants have breached
28 their insurance contracts with the Plaintiff and the Class members by failing to pay the

1 full ACV, including sales tax and Vehicle Title and Registration Fees, upon the total loss
2 of an insured vehicle.

3 **C. Typicality**

4 35. Pursuant to Fed. R. Civ. P. 23(a)(3), Plaintiff's claims are typical of the
5 claims of all other members of the Class because all such claims arise from the
6 Defendants' failure to pay full sales tax and Vehicle Title and Registration Fees on total
7 loss claims of insured vehicles.

8 36. Plaintiff's and Class members' legal claims arise from the same core
9 practices, namely, the failure to pay full ACV, including sales tax and Vehicle Title and
10 Registration Fees, for first-party total loss claims on leased vehicles. The material facts
11 underlying the claims of each putative class member are the same material facts as those
12 supporting the Plaintiff's claims alleged herein and require proof of the same material
13 facts.

14 **D. Adequacy**

15 37. Plaintiff can and will adequately represent the putative class and its
16 interests are common to, and coincident with, those of all absent class members. By
17 proving its individual claims, Plaintiff will necessarily prove the claims of the Class and
18 prove Defendants' liability to the Class. Plaintiff has no known conflicts of interest with
19 any members of the Class; its interests and claims are not antagonistic to those of any
20 other Class members; nor are its claims subject to any unique defenses.

21 38. The representative Plaintiff therefore can and will fairly and adequately
22 protect and represent the interests of the Class under the criteria set forth in Fed. R.
23 Civ. P. 23(a)(4).

24 39. Plaintiff's counsel has extensive experience in complex commercial
25 litigation, class actions, and have adequate financial resources to ensure that the interests
26 of the Class will not be harmed.

27 40. If appointed class representative, Plaintiff is aware of, and committed to
28 faithfully uphold, his fiduciary duties to absent class members. Plaintiff and his counsel

1 are committed to the vigorous prosecution of this action and will allocate the
2 appropriate time and resources to ensure that the class is fairly represented.

3 41. Plaintiff and his counsel will therefore fairly and adequately assert and
4 protect the interest of the Class.

5 **E. Predominance and Superiority**

6 42. A class action provides a fair and efficient method for the adjudication of
7 this controversy under the criteria set forth in Fed. R. Civ. P. 23(b)(3). Class treatment is
8 a superior form of adjudication than the prosecution of individual claims and provides a
9 substantial benefit to the court and litigants by avoiding a multiplicity of suits, and the
10 risk of inconsistent results.

11 43. Because Defendants' conduct was uniform with respect to all prospective
12 Class members, common questions of law and fact predominate over individual
13 questions.

14 44. Because the Class encompasses thousands of claims, a single class action is
15 plainly more efficient than thousands of individual lawsuits, each requiring the same
16 discovery and proof. Given the relatively small amount of the claim(s) of each putative
17 Class member, it is likely that absent class representation, such claims would not be
18 brought, and the Class would never have appropriate redress for Defendants' improper
19 conduct. A class action is superior and more efficient to other available methods for the
20 fair and efficient adjudication of this controversy.

21 45. Class treatment ensures uniformity and consistency in results, enables the
22 many small claims of Class members as well as claims for class-wide declaratory relief to
23 be brought efficiently, and will provide optimum relief to Class members for their past
24 and future injuries, as well as deter Defendants and other similar businesses from
25 engaging in such wrongful conduct in the future.

26 46. In addition, the expense and burden of individual litigation effectively
27 makes it a practical impossibility for individual Class members to seek redress for the
28 wrongs alleged herein.

1 47. The advantages of maintaining this action as a class suit far outweigh the
2 expense and waste of judicial effort that would result from thousands of separate
3 adjudications or the unfairness of none at all, which is the likely outcome if the small
4 individual claims at issue are not aggregated as a class.

5 48. There are also no unusual difficulties likely to be encountered in the
6 maintenance of this action as a class suit, and this Court can effectively manage the class
7 action.

8 49. The Class is not so large that it would be unmanageable, and no difficulties
9 are foreseen providing notice to individual claimants because Defendants keep records
10 of insurance policies and claims of prospective Class members during the class period,
11 including records of total loss vehicles. Therefore, both the membership of the Class
12 and the amount of individual damages is readily ascertainable from Defendants' records.

13 **F. Declaratory Relief Under Fed. R. Civ. 23(b)(2)**

14 50. Pursuant to Fed. R. Civ. 23(b)(2), class treatment is warranted because
15 Defendants have acted or refused to act on grounds generally applicable to all the
16 members of the Class, thereby making final declaratory relief concerning the Class as a
17 whole appropriate.

18 51. Because declaratory relief is sought, class treatment ensures uniformity and
19 consistency in results, enables the many small claims of Class members as well as claims
20 for class-wide declaratory relief to be brought efficiently, and will provide optimum
21 relief to class members for their past and future injuries, as well as deter Defendants and
22 other similar businesses from engaging in such wrongful conduct in the future.

23 52. Because Defendants have acted consistently towards all members of the
24 Class, declaratory relief is appropriate with respect to both the Class and Plaintiff's
25 claims and is likewise subject to common proof and adjudication.

26 53. Based on the foregoing, class treatment is the most fair and efficient form
27 of adjudication for this matter.
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