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11 Attorneys for Plaintiff

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 JOSEPH TARKETT, Individually and
on Behalf of All Others Similarly
15 Situated,

16 Plaintiff,

17 v.

18 USAA GENERAL INDEMNITY
COMPANY,

19 Defendant.

Case No. '23CV1724 H BLM

CLASS ACTION

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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1 Plaintiff Joseph Tarkett (“Plaintiff”) brings this class action complaint against
2 Defendant USAA General Indemnity Company (“USAA” or “Defendant”),
3 individually and on behalf of all others similarly situated, and alleges upon personal
4 knowledge as to Plaintiff’s acts and experiences, and, as to all other matters, upon
5 information and belief, including investigation conducted by Plaintiff’s attorneys.

6 **NATURE OF THE ACTION**

7 1. This is a class action arising out of USAA’s deceptive and unfair practice
8 of failing to pay its insureds the amount owed after it declares its insureds’ leased
9 vehicles a total loss.

10 2. Under USAA’s standard vehicle insurance contract, USAA pays out the
11 Actual Cash Value (“ACV”) of an insured vehicle if it is deemed a total loss after a
12 collision. Historically, with leased vehicles, the ACV was less than the amount owed
13 on the vehicle by a lessee under the lease agreement. That is because the value of a
14 new leased vehicle greatly declined the minute it was driven off the car lot.

15 3. However, in recent years, the automotive industry has experienced a
16 trend: used car prices have not only remained stable, but in some cases, steadily risen.
17 As used car prices have risen, the residual value of leased vehicles – the estimated
18 value of the car at the end of the lease term – has also increased. In many cases, this
19 has resulted in a leased vehicle’s value being higher than the amount owed under the
20 lease at the time of a total loss collision. That means that when a total loss accident or
21 collision occurs, not only is the remaining lease balance amount covered by insurance,
22 but a surplus amount remains. The surplus is related to the increased cost to the
23 insured to obtain a replacement vehicle given the rise in used vehicle prices.
24 Consequently, when the insurance payout is more than what insureds owe to their
25 leasing companies, the resulting surplus should rightfully be paid to the insureds as
26 owners and payees of the insurance policy. That way the insureds can pay off what
27 remains under the leasing agreement and use the remaining money to obtain a
28 replacement vehicle.

1 4. In breach of its standardized insurance policy and in violation of the laws
2 alleged herein, USAA does not provide the equity surplus amount to its insureds.
3 Instead, USAA unlawfully sends the entire insurance payout, including the equity
4 surplus amount, to the insureds' leasing companies even though the leasing
5 companies have no right to the surplus under the insurance contract, or otherwise.

6 5. In exchange for premiums paid by Plaintiff and its thousands of other
7 insureds, USAA provided standardized auto insurance coverage, promising to pay
8 them the ACV of their insured vehicles minus the applicable deductible in the event
9 of a total loss. Plaintiff and the other Class Members each experienced total loss
10 events involving their leased, insured vehicles. USAA accepted coverage, declared
11 the covered vehicles to be total losses, and calculated the ACV and applicable
12 deductibles for the vehicles. Based on USAA's calculations, the amount USAA owed
13 its insureds exceeded the amount of money its insureds owed their auto lenders.
14 USAA knew or should have known this fact, including because insurers typically:
15 (1) require copies of the lease agreement during the application process to underwrite
16 and assess the risks associated with the leased vehicle; and (2) receive the outstanding
17 lease balance from the leasing company when handling a total loss claim involving a
18 leased vehicle. However, USAA did not pay any of the loss payout amount, including
19 any of the equity surplus, to Plaintiff and the other Class Members. Instead, in breach
20 of the policy and in violation of the laws alleged herein, USAA sent the entire loss
21 payout amounts it owed under the insureds' policies to third-party lenders. To date,
22 USAA refuses to send any of that money to Plaintiff and the other Class Members.

23 6. As a result, Plaintiff now brings this action individually and on behalf of
24 all similarly situated insured persons and entities against USAA for its failure to honor
25 its duties and obligations under the Policy. Plaintiff and the Class allege claims for
26 breach of contract, violations of California's Unfair Competition Law, conversion,
27 and unjust enrichment. Plaintiff and Class Members are entitled to damages and
28 restitution arising from USAA's failure to pay them any portion of the loss payout,

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1 and also request declaratory and injunctive relief regarding the parties' obligations
2 under the Policy.

3 **JURISDICTION AND VENUE**

4 7. The Court has original jurisdiction under 28 U.S.C. § 1332(d)(2) because
5 the matter in controversy, exclusive of interest and costs, exceeds the sum or value of
6 \$5,000,000 and is a class action in which there are in excess of 100 class members,
7 and some of the members of the class are citizens of states different from Defendant.

8 8. This Court has personal jurisdiction over Defendant because Defendant
9 conducts business in California. Defendant has marketed, promoted, distributed, and
10 sold the Policy at issue in California, rendering exercise of jurisdiction by California
11 courts permissible.

12 9. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b)
13 because a substantial part of the events and omissions giving rise to Plaintiff's claims
14 occurred in this district. Venue also is proper under 18 U.S.C. § 1965(a) because
15 Defendant transacts substantial business in this district.

16 **PARTIES**

17 ***Plaintiff***

18 10. Plaintiff Joseph Tarkett is a citizen of the State of California, and, at all
19 times relevant to this action, resided in Bonita, California. Plaintiff, a combat-
20 wounded Marine Veteran, purchased an automobile insurance policy from USAA that
21 provides coverage for, *inter alia*, physical damage including comprehensive loss and
22 collision loss, to a 2021 BMW X5 that he leased. The policy was effective at the time
23 he leased the vehicle in 2021, and was most recently renewed for that vehicle for a
24 policy period of October 27, 2022 to April 27, 2023. Plaintiff timely and in full paid
25 the premiums associated with his insurance policy at issue.

26 11. On January 26, 2023, which was during the policy period, Plaintiff's
27 insured BMW X5 was involved in a traffic accident in San Diego, California, and
28 totaled as a result. USAA accepted coverage for this event, declared the vehicle to be

1 a total loss, and determined that it owed \$59,834.90 – the market value of the car –
2 under Plaintiff’s policy. At the time of the collision and total loss event, Plaintiff owed
3 \$37,595.06 to BMW under the vehicle lease. Accordingly, after subtracting the
4 amount Plaintiff owed under his lease from the amount USAA owed under the policy
5 and the \$1,000 Plaintiff had already paid for the deductible, an equity surplus of
6 \$21,239.84 remained. However, USAA paid to BMW both the lease balance owed by
7 Plaintiff and the equity surplus that was owed to Plaintiff for a total of \$58,834.90.
8 Other than reimbursing him \$1,000 for his deductible that was waived under the terms
9 of the policy, USAA refused to pay directly to Plaintiff any portion of the amount due
10 under his insurance policy. USAA’s conduct is in violation of the laws alleged herein
11 and Plaintiff has suffered injury in fact and has lost money as a result of USAA’s
12 conduct.

13 ***Defendant USAA General Indemnity Company***

14 12. United Services Automobile Association (“United Services”) is a
15 reciprocal interinsurance exchange. United Services’ annual statement identifies
16 “United States Automobile Insurance and its property and casualty affiliates”
17 collectively as “USAA.” United Services writes auto insurance through four different
18 insurers that operate under common management and control. These four commonly
19 managed and controlled insurers are the parent company, United Services Automobile
20 Association (“United Services”); USAA Casualty Insurance Company; Garrison
21 Property and Casualty Insurance Company; and the Defendant here, USAA General
22 Indemnity Company. United Services owns 100% of the common stock of Defendant
23 USAA General Indemnity Company.

24 13. Each of the four USAA companies insures a different segment of the
25 military or military family members. Upon information and belief, each of the four
26 USAA companies have issued the same Policy that is at issue in this action. According
27 to their underwriting guidelines, United Services insures commissioned officers as
28 well as senior noncommissioned officers in pay grades E-7 or higher. USAA Casualty

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1 Insurance Company insures family members of those who qualify for United
2 Services. Garrison Property and Casualty Insurance Company insures military family
3 members who do not qualify for USAA Casualty Insurance Company. And USAA
4 General Indemnity Company insures enlisted people in pay grades E-1 through E-6.

5 14. Defendant USAA General Indemnity Company, a direct subsidiary of
6 United Services, is organized under the laws of the State of Texas. Its principal place
7 of business is at 9800 Fredericksburg Road, San Antonio, TX 78288. USAA General
8 Indemnity Company advertises, markets, distributes, sells and/or issues auto
9 insurance to tens of thousands of consumers in California and throughout the United
10 States, including the Plaintiff.

11 **FACTUAL ALLEGATIONS**

12 **I. Leased Vehicles and Auto Insurance**

13 15. In recent years, due to an increase in inflation and issues in the
14 manufacturing and delivery of new vehicles, there has been a notable surge in demand
15 for used vehicles. This surge, in turn, has led to a rise in the market value of used
16 vehicles.

17 16. Given this inflationary phenomenon, the actual market value of leased
18 vehicles is now often higher than the residual value of a leased vehicle – the estimated
19 value of the car upon termination of the vehicle lease agreement.

20 17. When a leased vehicle is involved in an accident and is declared a total
21 loss by the insurance company, the market value assessed by the insurance company
22 is often higher than the remaining balance of the lease.

23 18. The lessees, here Plaintiff and the Class Members, were required to and
24 did purchase and maintain insurance on their leased vehicles as part of their lease
25 agreements. Leasing companies require insurance so that any insurance payment will
26 be applied towards what remains on a lease at the time of payout. As a result, their
27 right to any insurance payout is limited to their rights under the leasing agreement. To
28

1 the extent the lease has been paid off when the vehicle is deemed a total loss, the
2 leasing company has no right to any insurance payout.

3 19. This is similar to financed purchased vehicles where the financing
4 company requires a financed vehicle be insured while money is still owed on the
5 vehicle. This ensures that any insurance payout can be applied towards what is owed
6 under the purchase financing agreement. To the extent no money is owed under the
7 financing agreement at the time the vehicle is deemed a total loss, the financing
8 company has no right to any insurance payout.

9 20. Therefore, just as with purchased vehicles, lessees, as the insureds
10 paying for insurance, are entitled to the difference between the insurance payout and
11 the outstanding balance of the lease.

12 21. USAA's policy and practice with leased vehicles is contrary to that of its
13 competitors in the auto insurance industry. Unlike USAA, when the auto insurance
14 loss payout is more than what the named insured owes to the leasing company,
15 USAA's competitors pay the equity surplus directly to the named insured.

16 **II. The USAA Insurance Policy**

17 22. USAA sold Plaintiff and members of the Class standardized automobile
18 insurance policies (the "Policy"). *See* Exhibit A (the Policy).

19 23. Plaintiff and members of the Class paid premiums to USAA in exchange
20 for the coverages and benefits of the Policy.

21 24. Pursuant to the "AGREEMENT" section of the Policy, USAA agreed
22 that "In return for payment of the premium and subject to all the terms of this policy,
23 we will provide the coverages and limits of liability for which a premium is shown on
24 the Declarations." Exhibit A (USAA Policy) at Page 3.

25 25. At issue in this case is USAA's payment for total loss owed under the
26 "comprehensive loss" and "collision loss" provisions within the "Physical Damage
27 Coverage" part of the Policy.
28

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1 26. According to the Declarations of the Policy, USAA agreed to provide
2 “comprehensive loss” and “collision loss” coverages with limits of liability being the
3 insured vehicle’s “actual cash value” (“ACV”) less the insured’s deductible amount.
4 *See* Exhibit B (Policy Declarations) at Page 6.¹

5 27. The purpose of the total loss payment being the Actual Cash Value of
6 the car is to provide a fair and reasonable compensation to the insured party in the
7 event their vehicle is declared a total loss after an accident or other covered event.
8 The ACV represents the market value of the vehicle at the time of the loss, taking into
9 account factors such as the car’s age, mileage, condition, and depreciation. As defined
10 by USAA in the Policy, ACV “means the amount that it would cost, at the time of
11 loss, to buy a comparable vehicle. As applied to your covered auto, a comparable
12 vehicle is one of the same make, model, model year, body type, and options with
13 substantially similar mileage and physical condition.” *See* Exhibit A (USAA Policy)
14 at Page 17, Part D, Definition A.

15 28. Basing the total loss payout on the ACV serves several purposes.
16 Principal among these purposes is fair compensation. That is, the aim of ACV is to
17 provide a payment that reflects the true value of the vehicle at the time of the loss,
18 allowing the insured party to be fairly compensated for their loss. This allows the
19 insured party to potentially purchase a replacement vehicle that is similar to what they
20 had before the accident.

21 29. Despite agreeing to provide comprehensive and collision loss coverages,
22 USAA failed to provide coverage to Plaintiff and the Class under those provisions of
23 the Policy as further set forth below.

24 30. As stated in the Policy, USAA agreed to pay insureds for
25 “Comprehensive Coverage (excluding collision)”:

26 _____
27 ¹ However, as explained below, in the Policy section titled “Waiver of Collision
28 Deductible” USAA stated that any deductible would be waived under specified
collision loss circumstances.

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1 Physical damage. **We** will pay for **loss** caused by other than **collision** to
2 **your covered auto**, including its equipment, and personal property
3 contained in **your covered auto**, minus any applicable deductible shown
on the Declarations.

4 *See* Exhibit A (USAA Policy) at Page 18, Section A.1 of “Insuring Agreement”
5 section of the Physical Damage Coverage.²

6 31. As stated in the Policy, USAA also agreed to pay insureds for “Collision
7 Coverage”:

8 **We** will pay for **loss** caused by **collision** to **your covered auto**, including
9 its equipment, and your personal property contained in **your covered**
10 **auto**, minus any applicable deductible shown on the Declarations.

11 *See* Exhibit A (USAA Policy) at Page 18, Section B of “Insuring Agreement” section
12 of the Physical Damage Coverage.

13 32. As stated in the Policy, USAA’s “limit of liability under Comprehensive
14 Coverage and Collision Coverage is the **actual cash value** of the vehicle.” *See* Exhibit
15 A (USAA Policy) at Page 19, Section A.

16 33. As defined in the Policy, “**Actual cash value**” means:
17 [T]he amount that it would cost, at the time of **loss**, to buy a comparable
18 vehicle. As applied to **your covered auto**, a comparable vehicle is one
19 of the same make, model, model year, body type, and options with
substantially similar mileage and physical condition.

20 *See* Exhibit A (USAA Policy) at Page 17, Section A.

21 34. “**Loss**” is defined as “direct and accidental damage to the operational
22 safety, function, or appearance of...**your covered auto**...**Loss** includes a total
23 loss...” *Id.* at Section D.

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28 ² Bolded words or phrases quoted from the Policy that appear in this Complaint
are also bolded in the Policy to indicate that they are defined words or phrases.

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1 35. The Policy further states that “**We** will declare **your covered auto** to be
2 a total loss if, in **our** judgment, the cost to **repair** it would be greater than its **actual**
3 **cash value** minus its salvage value after the **loss.**” *Id.* at Page 19, Section A.2.³

4 36. USAA contractually agreed that under the Policy, Plaintiff was the
5 “owner” of the insured vehicle. *See* Exhibit A (USAA Policy) at Page 26 (section
6 titled “OWNERSHIP”).

7 37. USAA also defined “You” and “your” to mean Plaintiff and his spouse
8 only:

9 “**You**” and “**your**” refer to the “named insured” shown on the
10 Declarations and spouse or registered domestic partner if a resident of
11 the same household.

12 *See* Exhibit A (USAA Policy) at Page 3, Section A.

13 38. Under the Policy’s “Payment of Loss” section, USAA promised to “pay
14 for **loss** in money, or **repair** or replace the damaged or stolen property.” *See* Exhibit
15 A (USAA Policy) at Page 20 (section titled “PAYMENT OF LOSS”). In the same
16 section, the Policy specifies who USAA may settle the insured loss claim with: “**you**
17 or with the owner of the property.” *Id.* As stated above, both “you” and “the owner of
18 the property” as defined in the Policy refer to Plaintiff. Accordingly, USAA agreed to
19 settle the total loss insurance claim with Plaintiff.

20 39. Under the next section of the Policy, titled “Loss Payable Clause,”
21 USAA promised that “**Loss** or damage under this policy will be paid, as interest may
22 appear, to the named insured and the loss payee shown on the Declarations.” *See*
23 Exhibit A (USAA Policy) at Page 20 (section titled “LOSS PAYABLE CLAUSE”).
24 The Declarations referenced in the “Loss Payable Clause” of the Policy define
25 Plaintiff as both the named insured and the loss payee. Thus, USAA promised and
26

27 ³ The Policy defines “We,” “us,” and “our” as “the Company providing this
28 insurance” – here, USAA-GIC. *See* Exhibit A (USAA Policy) at Page 3, Section B.

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1 was obligated under the Policy to send the loss payout to “You,” “the owner of the
2 property,” “the named insured,” or “loss payee” – all of which were defined to mean
3 Plaintiff. In breach of the Policy, USAA failed to meet that obligation by not issuing
4 any of the loss payout, including the equity surplus, to Plaintiff.

5 40. USAA recognized that the only interest the leasing companies have in
6 the insurance is as lessors. For example, the Declarations for Plaintiff’s policy refers
7 to BMW Financial Services as “additional interest – lessor.” Exhibit B at Page 6.

8 41. Contrary to the plain terms of the Policy and in violation of the laws
9 alleged, USAA refuses to pay the loss payout amount, including the equity surplus to
10 Plaintiff and other Class Members. Instead, USAA wrongfully diverts and has paid
11 the full contractual loss payout amount to third-party lenders, regardless of the
12 lenders’ actual interest in the insurance payment, and not to its insureds, Plaintiff and
13 other Class Members who were entitled to some or all of the ACV-based payout
14 amount.

15 42. Plaintiff seeks, on his own behalf and on behalf of all other similarly
16 situated individuals, damages, restitution, and declaratory and injunctive relief to
17 define the parties’ rights and obligations and to stop USAA’s ongoing misconduct.

18 **CLASS DEFINITION AND ALLEGATIONS**

19 43. Plaintiff, pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3), brings this
20 action on behalf of the following classes (collectively, the “Class”):

21 All USAA insured persons and entities with comprehensive
22 loss or collision loss coverage for physical damage to their
23 covered leased vehicle under an insurance policy issued by
24 USAA General Indemnity Company, who suffered a total loss
25 of their vehicle, resulting in an equity surplus based on USAA’s
26 ACV payout calculation, and for which USAA General
Indemnity Company failed to pay them for all or a portion of
the covered loss.

27 44. Excluded from the Class is Defendant, its parents, subsidiaries, affiliates,
28 officers, and directors, all persons who make a timely election to be excluded from

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1 the Class, the judge to whom this case is assigned and any immediate family members
2 thereof, and those who assert claims for personal injury.

3 45. Certification of Plaintiff's claims for classwide treatment is appropriate
4 because Plaintiff can prove the elements of his claims on a classwide basis using the
5 same evidence as would be used to prove those elements in individual actions alleging
6 the same claims.

7 46. **Numerosity—Federal Rule of Civil Procedure 23(a)(1).** The members
8 of the Class are so numerous that individual joinder of all Class members is
9 impracticable. There are, at a minimum, thousands of members of the proposed Class.

10 47. **Commonality and Predominance—Federal Rule of Civil Procedure**
11 **23(a)(2) and 23(b)(3).** This action involves common questions of law and fact, which
12 predominate over any questions affecting individual Class Members, including,
13 without limitation:

- 14 (a) whether Plaintiff and other Class Members suffered a covered loss
- 15 under the common policy issued to the Class;
- 16 (b) whether Defendant was required to pay Plaintiff and other Class
- 17 Members directly for the entire amount of the total loss;
- 18 (c) whether Defendant was required to pay Plaintiff and other Class
- 19 Members directly for the equity surplus amount of the total loss;
- 20 (d) whether Defendant breached its contract of insurance by sending
- 21 payment for loss to the named insured's lending companies and
- 22 not the named insured's themselves;
- 23 (e) whether Defendant's conduct constitutes violations of the laws
- 24 asserted herein;
- 25 (f) whether Defendant's conduct constitutes a violation of Cal. Bus.
- 26 & Prof. Code § 17200, et seq.;
- 27 (g) whether Defendant's conduct violates public policy;
- 28

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- 1 (h) whether Plaintiff and other Class Members have been injured and
- 2 the proper measure of their losses as a result of those injuries;
- 3 (i) whether Plaintiff and other Class Members are entitled to an award
- 4 of punitive damages;
- 5 (j) whether Plaintiff and other Class Members are entitled to
- 6 injunctive, declaratory, or other equitable relief; and
- 7 (k) whether Plaintiff and other Class Members are entitled to an award
- 8 of reasonable attorneys' fees, interest, and costs.

9 48. **Typicality—Federal Rule of Civil Procedure 23(a)(3).** Plaintiff's
 10 claims are typical of the other Class Members' claims because, among other things,
 11 all Class Members were comparably injured through the uniform prohibited conduct
 12 described above.

13 49. **Adequacy of Representation—Federal Rule of Civil Procedure**
 14 **23(a)(4).** Plaintiff is an adequate representative of the Class because Plaintiff's
 15 interests do not conflict with the interests of the other Class Members that Plaintiff
 16 seeks to represent; Plaintiff has retained counsel competent and experienced in
 17 complex commercial and class action litigation; and Plaintiff intends to prosecute this
 18 action vigorously. The interests of the Class Members will be fairly and adequately
 19 protected by Plaintiff and his counsel.

20 50. **Declaratory and Injunctive Relief—Federal Rule of Civil Procedure**
 21 **23(b)(2).** Defendant has acted or refused to act on grounds generally applicable to
 22 Plaintiff and the other Class Members, thereby making appropriate final injunctive
 23 relief and declaratory relief, as described below, with respect to the Class as a whole.

24 51. **Superiority—Federal Rule of Civil Procedure 23(b)(3).** A class action
 25 is superior to any other available means for the fair and efficient adjudication of this
 26 controversy, and no unusual difficulties are likely to be encountered in the
 27 management of this class action. The damages or other financial detriment suffered
 28 by Plaintiff and the other Class Members are relatively small compared to the burden

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1 and expense that would be required to individually litigate their claims against
2 Defendant, so it would be impracticable for Class Members to individually seek
3 redress for Defendant's wrongful conduct. Even if Class Members could afford
4 individual litigation, the court system could not. Individualized litigation creates a
5 potential for inconsistent or contradictory judgments, and increases the delay and
6 expense to all parties and the court system. By contrast, the class action device
7 presents far fewer management difficulties, and provides the benefits of single
8 adjudication, economy of scale, and comprehensive supervision by a single court.

9 **CLAIMS ALLEGED**

10 **COUNT I**

11 **Breach of Contract**

12 **And the Implied Covenant of Good Faith and Fair Dealing**

13 52. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

14 53. Plaintiff brings this claim individually and on behalf of the Class.

15 54. The Policy owned by Plaintiff and other Class Members is an insurance
16 contract under which Defendant was paid premiums in exchange for its promises to
17 pay Plaintiff's and other Class Members' losses for claims covered by the Policy, and
18 in the amount and manner set forth in the Policy.

19 55. The Policy between Plaintiff and other Class Members on the one hand,
20 and Defendant on the other, includes the adhesionary comprehensive loss and
21 collision loss coverage provisions discussed in this Complaint. *See* Exs. A and B.

22 56. In the Policy, Defendant promised to pay for direct and accidental
23 damage to the operational safety, function, or appearance of, or theft of the damaged
24 vehicles, which under the circumstances at issue, it determined to be covered, total
25 loss events for which its payment obligation was the ACV of the insured vehicle less
26 any applicable deductible. *See* Exhibit A (USAA Policy) at Page 20 (section titled
27 "PAYMENT OF LOSS").
28

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1 57. The Policy specified that Defendant would settle the claim with the
2 owner of the vehicle, which it defined to be the named insureds, and that any total
3 loss payout under the Policy would be paid to the named insureds. *Id.* at Page 20
4 (sections titled “PAYMENT OF LOSS” and “LOSS PAYABLE CLAUSE”). But in
5 breach of the insurance agreement, Defendant did not settle the total loss claim with
6 Plaintiff and other Class Members or issue the loss payout amount to Plaintiff and
7 other Class Members – the named insureds.

8 58. Additionally, every contract contains an implied duty of good faith and
9 fair dealing. Defendant entered into and is bound by the Policy with Plaintiff and other
10 Class Members: valid and enforceable contracts that contain an implied duty of good
11 faith and fair dealing.

12 59. Defendant promised that in the event of a total loss incident involving
13 the vehicle, it would pay to Plaintiff and other Class Members the ACV of their
14 insured vehicles minus any applicable deductible. *See Exhibit A (Policy)* at Pages 17-
15 18. The contractual payout amounts pursuant to the Policy exceeded the amounts that
16 Plaintiff and other Class Members owed their leasing companies. Under the
17 circumstances, it was unconscionable and in breach of the implied covenant for
18 Defendant to pay the entire payout amount to its insureds’ leasing companies.

19 60. If the total loss payment is more than what the lessee owes to the leasing
20 company, the balance is the sole property of the lessee and should be paid to the lessee.
21 It is unreasonable and unfair for Defendant to make third-party leasing companies the
22 beneficiaries of money that goes beyond the leasing companies’ interest in the
23 insurance, which is the amount of money owed by Class Members to those companies
24 under their respective lease agreements. There is no reasonable contractual basis or
25 expectation for Defendant to believe that it is appropriate to provide third-party
26 leasing companies such a financial windfall. This is especially true because the
27 unintended financial gain for these companies results in a loss for Defendant’s named
28 insureds, the Class Members who are parties to the Policy. In exchange for substantial

1 premium payments, Defendant contracted with Class Members to provide them with
2 the ACV of their vehicles, which in the event of a total loss, represents a sum of money
3 equivalent to “the amount it would cost, at the time of loss, to purchase a comparable
4 vehicle.” *See* Exhibit A (Policy) at page 17, Section A (definition of “Actual Cash
5 Value”).

6 61. For several reasons, the purposes of the Policy and providing the ACV
7 (“the amount it would cost, at the time of loss, to purchase a comparable vehicle”) for
8 total loss in the case of collision and other accidents further supports the fact that
9 Defendant should send the equity surplus payout amount to the named insureds who
10 paid for the Policy rather than to the third-party companies that financed the vehicles:

11 (a) Ownership rights: The insured party is the one who purchased the
12 Policy and has been paying the premiums. They are the named insureds in the Policy
13 and hold the rights to the coverage benefits. Sending the equity surplus amount to the
14 insured ensures that they receive the fair compensation they are entitled to according
15 to the terms of their Policy.

16 (b) Fulfillment of financial obligations: When a total loss occurs, the
17 primary financial obligation of the insured party is to pay off the outstanding balance
18 owed to the company that financed the vehicle. Once that obligation is met, the
19 insured party should be entitled to any surplus from the insurance payout, as it
20 represents the remaining value of their asset.

21 (c) Incentive for responsible insurance purchase: By sending the
22 surplus amount to the insured, insurance companies encourage policyholders to
23 purchase adequate coverage for their vehicles. If the surplus were sent to the financing
24 company instead, policyholders may not see the full benefit of their insurance
25 coverage and may be less inclined to maintain appropriate coverage levels.

26 (d) Fair market value compensation: The purpose of insurance is to
27 put the insured party in a similar financial position they were in before the loss
28 occurred. By providing the insured with the surplus amount, they can replace their

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1 totaled vehicle with one of similar value, thus restoring their pre-loss financial
2 situation.

3 62. Insurance contracts are meant to protect insureds' reasonable expectation
4 of coverage where the insurer-drafter controls the language of the policy. It is unfair
5 and inequitable under the circumstances for the leasing company to receive the equity
6 surplus amount from Defendant where the Policy is meant to protect Plaintiff's and
7 other Class Members' – the named insureds – expectation of coverage and recovery
8 after a total loss event occurs. The leasing company's primary concern is recovering
9 the outstanding balance on the lease. Any equity surplus amount should belong to the
10 insured party who has borne the costs of the insurance premiums and should receive
11 the benefits of the coverage. Further, the insured party has been paying insurance
12 premiums to secure coverage for their vehicle. If the leasing company receives the
13 equity surplus amount, the insured party would bear the financial burden of the
14 insurance premiums without receiving the full benefits of their coverage.

15 63. By paying the equity surplus to the leasing companies, Defendant
16 unjustly enriched the leasing companies at the expense of the Plaintiff and other Class
17 Members. This action deprived the insured parties of the benefits they were entitled
18 to under the terms of the Policy and hindered their ability to replace their vehicles or
19 otherwise use the equity surplus amount rightfully owed to them.

20 64. Defendant's decision to pay the entire loss payout to the leasing
21 companies instead of Plaintiff and other Class Members does not have a reasonable
22 contractual basis or justification. The insured parties entered into contracts with
23 Defendant to receive the ACV in the event of a total loss, and Defendant's failure to
24 pay the equity surplus to the insured parties amounts to a breach of the implied
25 covenant of good faith and fair dealing.

26 65. Plaintiff and other Class Members paid money to Defendant for
27 insurance premiums to secure coverage for their leased vehicles with the
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1 understanding that in the event of a total loss, Defendant would issue a total loss
2 payout to Plaintiff and other Class Members in the amount determined by the Policy.

3 66. Plaintiff and other Class Members have suffered losses and incurred
4 expenses as a result of Defendant's failure to issue the loss payout to them – the named
5 insureds – as required by the Policy.

6 67. Plaintiff and the other Class Members have complied with all applicable
7 provisions of the Policy, including payment of premiums.

8 68. Defendant, without justification, breached the Policy and the implied
9 duty of good faith and fair dealing by, among other things, collecting insurance
10 premiums from Plaintiff and other Class Members to insure their leased vehicles
11 under the Policy and, after Defendant has declared those vehicles a total loss, failing
12 to pay Plaintiff and other Class Members the entire loss payout, including the
13 vehicle's ACV and any equity surplus.

14 69. As a direct and proximate result of Defendant's breach of the Policy and
15 its duty of good faith and fair dealing, as alleged herein, Plaintiff and other Class
16 Members have suffered actual and substantial damages for which Defendant is liable.

17 **COUNT II**

18 **Violation of the California Unfair Competition Law ("UCL")**

19 **Cal. Bus. & Prof. Code § 17200, et seq.**

20 70. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

21 71. Plaintiff brings this claim individually and on behalf of members of the
22 Class in California.

23 72. Plaintiff and Defendant are "persons" within the meaning of the UCL.
24 Cal. Bus. & Prof. Code § 17201.

25 73. The UCL defines unfair competition to include any "unlawful, unfair or
26 fraudulent business act or practice," as well as any "unfair, deceptive, untrue or
27 misleading advertising." Cal. Bus. Prof. Code § 17200.

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1 74. Unlawful Conduct: In the course of conducting business, as a result of
2 engaging in the conduct alleged in this complaint, including failing to pay its insureds
3 any portion of the loss payoff amounts at issue, USAA has violated Section 17200's
4 prohibition against engaging in unlawful acts and practices by virtue of its conduct,
5 which violates California Civil Code sections 1572, 1573, 1709, and 1711, California
6 Insurance Code sections 790.02 and 790.03, and constitutes a breach of contract,
7 breach of the implied covenant of good faith and fair dealing, breach of its fiduciary
8 duty to act in the best interest of its insureds including its duty to pay valid claims
9 promptly and fairly, conversion, unjust enrichment, and insurance bad faith.

10 75. Plaintiff reserves the right to allege other violations of law, which
11 constitute other unlawful business acts or practices. Such conduct is ongoing and
12 continues to this date.

13 76. Unfair Conduct: In the course of conducting business, Defendant
14 violated the UCL's proscription against "unfair" business practices by, among other
15 things, making the representations (which also constitute advertising within the
16 meaning of § 17200) and omissions of material facts by promising that USAA will
17 issue a total loss payout to the named insured pursuant to the Policy and failing to do
18 so.

19 77. There is no societal benefit from Defendant's misrepresentations and
20 omissions, which include promising to but failing to provide loss payouts in an
21 amount of an insured vehicle's ACV in breach of the Policy to the named insureds.
22 There is only harm from Defendant's conduct. While Plaintiff and other Class
23 Members were harmed by paying premiums and failing to receive the benefits
24 promised under the Policy, Defendant was unjustly enriched by its acts,
25 misrepresentations and omissions of material fact concerning the benefits it would
26 confer to Plaintiff and other Class Members under the Policy. As a result, Defendant's
27 conduct is "unfair," as it offended an established public policy. Further, Defendant
28 engaged in immoral, unethical, oppressive, and unscrupulous activities that are

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1 substantially injurious to consumers as the gravity of Defendant's conduct outweighs
2 any alleged benefits attributable thereto.

3 78. Further, as set forth in this Complaint, Plaintiff alleges violations of
4 consumer protection, unfair competition, and truth in advertising laws in California
5 and other states, resulting in harm to consumers. Defendant's acts and omissions also
6 violate and offend the public policy against engaging in false and misleading
7 advertising, unfair competition, and deceptive conduct towards consumers.
8 Defendant's conduct constitutes violations of the unfair prong of Business &
9 Professions Code § 17200, *et seq.*

10 79. There were reasonably available alternatives to further Defendant's
11 legitimate business interests, other than the conduct described herein.

12 80. Fraudulent Conduct: In the course of conducting business, Defendant has
13 violated the UCL's proscriptions against "fraudulent" business acts or practices by,
14 among other things, making false and misleading representations and omissions of
15 material fact about the benefits the Policy would confer on Plaintiff and other Class
16 Members in the event their insured vehicles were declared a total loss. Defendant's
17 actions, claims, omissions, and misleading statements, as more fully set forth above,
18 were false, misleading and/or likely to deceive the consuming public within the
19 meaning of Business & Professions Code § 17200, *et seq.*

20 81. USAA's conduct caused and continues to cause substantial injury to
21 Plaintiff and the other Class Members. Plaintiff and Class Members have suffered
22 injury in fact and have lost money as a result of USAA's unlawful, unfair, and
23 fraudulent conduct.

24 82. As a result of its unlawful, unfair, and fraudulent business practices,
25 Defendant was unjustly enriched by receiving insurance premium payments from
26 Plaintiff and other Class Members in return for providing Plaintiff and other Class
27 Members with the Policy that does not confer the advertised and contracted-for
28 benefits.

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1 83. Unless restrained and enjoined, Defendant will continue to engage in the
2 unlawful, unfair and fraudulent conduct described herein.

3 84. Accordingly, Plaintiff, individually and on behalf of all others similarly
4 situated, and on behalf of the general public, seeks restitution from Defendant of all
5 money obtained from Plaintiff and other Class Members collected as a result of
6 Defendant's unfair competition, and for an order and injunction prohibiting Defendant
7 from continuing and further engaging in its unlawful, unfair and fraudulent conduct,
8 and awarding all other relief this Court deems appropriate.

9 **COUNT III**

10 **Breach of Fiduciary Duty**

11 85. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

12 86. Plaintiff brings this claim individually and on behalf of the Class.

13 87. Defendant owed a fiduciary duty to Plaintiff and the Class Members as
14 their insurer under the auto insurance Policy.

15 88. The Policy required Defendant to pay to Plaintiff and other Class
16 Members the ACV of these insureds' vehicles (less any applicable deductible) in the
17 event of a total loss.

18 89. Despite this obligation, Defendant breached its fiduciary duty by paying
19 the entire amount of the loss payout to the insureds' vehicle leasing companies, who
20 were not the named insureds under the Policy, instead of paying it to the named
21 insureds – Plaintiff and the Class Members.

22 90. By paying the entire amount of the loss payout to the insureds' vehicle
23 leasing companies, Defendant failed to act in the best interests of its insureds, who
24 were entitled to be sent the loss payment, in whole or in part, under the terms of the
25 Policy.

26 91. Defendant's actions caused Plaintiff and other Class Members to suffer
27 damages, including financial harm and inconvenience, because they were deprived of
28 the funds they were entitled to receive under the Policy.

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1 92. Defendant's actions were intentional, reckless, and/or in bad faith, and
2 constituted a breach of its fiduciary duty to Plaintiff and other Class Members.

3 **COUNT IV**

4 **Conversion**

5 93. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

6 94. Plaintiff brings this claim individually and on behalf of the Class.

7 95. Plaintiff and other Class Members had a right to be sent a loss amount
8 equaling the ACV less any applicable deductible of their vehicles under the Policy.

9 96. Defendant wrongfully deprived Plaintiff and other Class Members of
10 their right to be sent the ACV less any applicable deductible by paying the entire loss
11 payout to the insureds' vehicle leasing companies, who were not entitled to receive
12 the payment under the terms of the Policy.

13 97. Defendant intentionally or recklessly converted Plaintiff's and Class
14 Members' property (i.e., all or part of the ACV less any applicable deductible) by
15 paying it to the insureds' vehicle leasing companies, rather than to Plaintiff and Class
16 Members directly.

17 98. The conversion caused Plaintiff and Class Members to suffer damages,
18 including the loss of their property and the value of the ACV payout that they were
19 entitled to receive under the Policy.

20 99. Defendant's conduct was done with knowledge of the wrongful taking
21 and with the intent to deprive Plaintiff and Class Members of their property rights in
22 the ACV amount.

23 100. Defendant's conduct was done without justification or excuse and
24 constituted a wrongful and intentional interference with Plaintiff's and Class
25 Members' rights to their property.

26 **COUNT V**

27 **For Declaratory Relief**

28 101. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

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1 102. Plaintiff brings this claim individually and on behalf of the Class.

2 103. Plaintiff's and Class Members' insurance coverage for their leased
3 vehicles, including their ability to recover the promised loss payout amounts was the
4 express purpose of the Policy.

5 104. Plaintiff's and Class Members' benefit of receiving insurance coverage
6 for their vehicles was the mutual purpose in the Policy, as Plaintiff and other Class
7 Members on the one hand and Defendant on the other understood at the time of
8 contracting, and but for their right to receive coverage and ability to recover the
9 promised loss payout amounts, Plaintiff and other Class Members would not have
10 purchased the Policy. When Plaintiff's and other Class Members' vehicles were
11 declared a total loss and Defendant failed to pay them all or a portion of the loss
12 payout amount, Defendant breached the Policy due to no fault of Plaintiff and other
13 Class Members, and Plaintiff and other Class Members were deprived of the
14 consideration they were to receive in exchange for paying USAA for the coverage
15 and represented benefits of the Policy.

16 105. Legal remedies available to Plaintiff and other Class Members are
17 inadequate to redress Defendant's continuing unlawful practices at issue.

18 106. Declaratory relief is proper regarding the subject matter of this action
19 because an actual controversy has arisen and now exists regarding Plaintiff's rights,
20 and Defendant's obligations, relating to the Plaintiff's and other Class Members'
21 rights to be paid all or a portion of the loss payout amounts under the standardized
22 insurance Policy contracts at issue. This Court has the power to declare the obligations
23 and duties of the parties and to give such other relief as may be necessary.

24 107. By virtue of the foregoing, there exists an actual, justiciable controversy
25 between the parties. Plaintiff contends that Defendant's issuing of the full loss payout
26 to his vehicle leasing company instead of him – the named insured – pursuant to the
27 Policy is unlawful. Defendant charged and collected and continues to charge and
28 collect insurance premiums under the Policy despite failing to issue loss payments to

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1 the proper parties after declaring Plaintiff's and other Class Members' vehicles a total
2 loss. Defendant received these insurance premium payments from Plaintiff and other
3 Class Members in exchange for the promise of issuing a loss payout in the event their
4 vehicles were declared a total loss, but Defendant failed to uphold that contracted-for
5 promise by failing to pay Plaintiff and Class Members. Defendant has not refunded
6 the money it received in the form of premium payments, or issued the loss payouts to
7 Plaintiff and Class Members – the named insureds – as required under the Policy.

8 108. Accordingly, Plaintiff requests a judicial determination of his rights and
9 duties, and the rights and duties of absent Class Members, and a declaration as to
10 whether USAA's insurance benefit payout practice is illegal or a breach of contract.
11 A declaration from the Court ordering USAA to stop its ongoing, illegal practices is
12 required.

13 **COUNT V**

14 **Unjust Enrichment**

15 109. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

16 110. Plaintiff brings this claim individually and on behalf of the Class.

17 111. The mutual purpose of the Policy, as understood by Plaintiff and other
18 Class Members on the one hand and Defendant on the other, was that in return for
19 payment of the premium due under the Policy, USAA would provide the coverages
20 promised under the Policy as shown on the Declarations. These coverages for which
21 premium payments were made to USAA by Plaintiff and the other Class Members
22 was for receiving ACV in the event of total loss.

23 112. When Plaintiff and other Class Members did not receive a loss payout
24 after Defendant declared their vehicles a total loss despite receiving insurance
25 premium payments from Plaintiff and other Class Members, Defendant violated the
26 Policy due to no fault of Plaintiff and other Class Members. Plaintiff and other Class
27 Members were deprived of the loss payout they – the named insureds – should have
28 received in exchange for the premiums they paid to Defendant under the Policy.

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1 113. Defendant received a benefit from Plaintiff and other Class Members.
2 Namely, Plaintiff and other Class Members paid insurance coverage premiums for
3 their vehicles in exchange for the promise that Defendant would issue to them a loss
4 payout in the event their covered vehicles were declared a total loss. Defendant failed
5 to uphold that contracted-for promise when it did not send them the loss payout, but
6 instead issued the loss payout to third-party vehicle leasing companies.

7 114. Defendant has thus been unjustly enriched by failing to issue all or some
8 of the loss payout to Plaintiff and other Class Members in violation of the terms of
9 the Policy at the expense of Plaintiff and other Class Members.

10 115. Defendant's retention of the insurance premium payments is unjust
11 because it violated the terms of the Policy under which Plaintiff and other Class
12 Members made such payments in exchange for the promise to receive coverage and
13 loss payout as stated and reasonably understood in the Policy.

14 116. Under principles of good conscience, Defendant should not be allowed
15 to retain the insurance premium payments that Plaintiff and other Class Members paid
16 to Defendant in exchange for Defendant's promise to provide them coverage and loss
17 payout as stated and reasonably understood in the Policy.

18 117. Plaintiff and other Class Members are entitled to full restitution of the
19 sums they paid as insurance premiums and as other consideration to Defendant for
20 the Policy, in an amount to be proven at trial.

21 **JURY DEMAND**

22 Plaintiff demands a trial by jury of all claims in this Complaint so triable.

23 **REQUEST FOR RELIEF**

24 WHEREFORE, Plaintiff, individually and on behalf of the other members of
25 the proposed Class, respectfully request that the Court enter judgment in Plaintiff's
26 favor and against Defendant as follows:
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A. Declaring that this action is a proper class action, certifying the Class as requested herein, designating Plaintiff as Class Representative and appointing the undersigned counsel as Class Counsel;

B. Ordering restitution and disgorgement of all profits and unjust enrichment that Defendant obtained from Plaintiff and other Class Members as a result of Defendant's unlawful, unfair and fraudulent business practices;

C. Ordering injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices as set forth herein;

D. Ordering damages for Plaintiff and the Class;

E. Ordering Defendant to pay attorneys' fees and litigation costs to Plaintiff and other Class Members;

F. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded; and

Ordering such other and further relief as may be just and proper.

Respectfully submitted,

Dated: September 18, 2023

BLOOD HURST & O'REARDON, LLP
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [USAA Refuses to Pay Lessees Proper Payout Amount for Totaled Cars, Class Action Says](#)
