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County of Alameda

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

KASIAA THOMAS and TONI DURIO-
ADAMS, on behalf of themselves, the State
of California, and all Aggrieved Employees,

Plaintiffs,

vs.

RESERVE NATIONAL INSURANCE
COMPANY dba KEMPER NATIONAL
LIFE INSURANCE COMPANY, an
Oklahoma corporation; UNITED
INSURANCE COMPANY OF AMERICA,
an Illinois corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: **21CV001780**

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, et seq.)**

UNLIMITED CIVIL CASE

1 Plaintiffs Kasiaa Thomas and Toni Durio-Adams (hereinafter “Plaintiffs”), on behalf of
2 themselves, the State of California, and other aggrieved employees, hereby brings this
3 Representative Action Complaint (“Complaint”) against Reserve National Insurance Company
4 dba Kemper National Life Insurance Company, an Oklahoma corporation; United Insurance
5 Company of America, an Illinois corporation; and DOES 1 to 100, inclusive (collectively
6 “Defendants”), and on information and belief allege as follows:

7 **JURISDICTION**

8 1. Plaintiffs, on behalf of themselves, all other aggrieved employees, and the State of
9 California, hereby bring this Complaint for recovery of civil penalties under the Private Attorneys
10 General Act, Labor Code § 2698, *et seq.* (“PAGA”), and Industrial Welfare Commission Wage
11 Order 4 (“Wage Order 4”). The monetary damages that Plaintiffs seek exceed this Court’s
12 jurisdictional minimum.

13 **VENUE**

14 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
15 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
16 County of Alameda. Defendants own, maintain offices, transact business, have agent(s) within
17 the County of Alameda, and/or otherwise are found within the County of Alameda, and
18 Defendants are within the jurisdiction of this Court for purposes of service of process.

19 **PARTIES**

20 3. Plaintiffs are individuals over the age of eighteen (18). At all relevant times herein,
21 Plaintiffs were and currently are, California residents. Plaintiffs were employed by Defendants
22 within the statute of limitations periods applicable to each cause of action pled herein.

23 4. Plaintiffs are informed and believe, and based thereon allege, that during the
24 statute of limitations periods applicable to this action through the present, Defendants did (and
25 continue to do) business and employed Plaintiffs and other aggrieved employees within, among
26 other counties, Alameda County and the state of California and, therefore, were (and are) doing
27 business in Alameda County and the State of California.

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1 5. Plaintiffs do not know the true names or capacities, whether individual, partner, or
2 corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
3 defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to
4 amend this Complaint when such true names and capacities are discovered. Plaintiffs are informed
5 and believe, and based thereon allege, that each of said fictitious defendants, whether individual,
6 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
7 and proximately caused Plaintiffs and the other aggrieved employees to be subject to the unlawful
8 employment practices, wrongs, injuries and damages complained of herein.

9 6. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned
10 herein, Defendants were and are the employers of Plaintiffs and the other aggrieved employees.

11 7. At all times herein mentioned, each of said Defendants participated in the doing
12 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
13 Defendants, and each of them, were the agents, servants, and employees of each and every one of
14 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
15 were acting within the course and scope of said agency and employment. Defendants, and each
16 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
17 omissions complained of herein.

18 8. At all times mentioned herein, Defendants, and each of them, were members of
19 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
20 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
21 Plaintiffs allege that all Defendants were joint employers for all purposes of Plaintiffs and the
22 other aggrieved employees.

23 **REPRESENTATIVE ACTION ALLEGATIONS**

24 9. Defendants are in the business of selling insurance to individuals, families, and
25 business throughout the United States. Plaintiff Thomas has been employed by Defendants in the
26 position of “Insurance Agent” or “Territorial Manager” since approximately May 2015 to the
27 present. Plaintiff Adams has been employed by Defendants in the position of “Insurance Agent”
28 since approximately 2012 to the present. As insurance agents, Plaintiffs’ duties consist of selling

1 policies and other services to customers as well as contacting customers to collect on premiums
2 owed. In order to complete these duties, Plaintiffs are required to travel to and from customers'
3 homes using their personal vehicles.

4 10. During their employment with Defendants, Plaintiffs and other aggrieved
5 employees have been paid pursuant to a commission pay plan, whereby they are paid based on
6 the premiums collected and/or policies and services sold. Under Defendants' commission pay
7 plan, Plaintiffs, and other aggrieved employees generally are paid a one-time commission
8 whenever they sell a policy. If the policy lapses within a certain amount of time (i.e., the policy
9 is cancelled or the customer fails to pay), Defendants then deducts the amount of the previously-
10 paid commission from the employee's next paycheck. Upon information and belief, if the policy
11 was sold by a former employee and the policy was reassigned to a current aggrieved employee
12 such as Plaintiffs, Defendants deducts the amount of the commission from the employee who
13 inherited the policy. Because Plaintiffs and other aggrieved employees do not receive the one-
14 time commission when they inherit accounts and therefore earned no financial benefit from the
15 original sale, this practice of deducting commissions from the employee who inherited the account
16 constitutes an unlawful deduction from wages. *See Hudgins v. Neiman Marcus Grp., Inc.*, 34
17 Cal.App.4th 1109, 1123-24 (2007) (holding that employer could not deduct commissions from
18 employees for customer returns where it could not trace the return to the employee who made the
19 sale, and holding that conditions placed on earned commissions must relate to the sale that earns
20 the commission, and that "[an employer] cannot avoid a finding that its [commission deduction]
21 policy is unlawful simply by asserting that the deduction is just a step in its calculation of
22 commission income."); *Sciborski v. Pac. Bell Directory*, 205 Cal.App.4th 1152, 1168-69 (2012)
23 ("[A]n employer may not require an employee to agree to a wage deduction...based on conditions
24 that are unrelated to the sale...").

25 11. As a result of Defendants' unlawful deductions from wages, and Defendants'
26 resultant failure to pay all earned wages, Defendants failed to provide Plaintiffs and other
27 aggrieved employees with accurate itemized wage statements.

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12. Defendants also issued inaccurate wage statements to Plaintiffs and other aggrieved employees as a result of inaccurately reporting the commissions earned by their employees and/or by listing the incorrect inclusive dates of the pay period in violation of Labor Code § 226(a)(8). By way of example, for the pay period purportedly beginning on 1/25/21 and ending on 1/31/21, with a pay date of 1/29/21 (two days before the pay period ended), Plaintiff Thomas' wage statement reflects her earnings from the *prior* pay period of 1/18/21 to 1/24/21. This policy and/or practice of reporting the commissions earned by Plaintiffs, and other aggrieved employees from the prior pay period on the current wage statement has resulted in the issuance of inaccurate wage statements (including but not limited to including inaccurate inclusive dates of the pay period) and the untimely payment of wages.

13. As a result of Defendants' unlawful deductions from wages, and Defendants' resultant failure to pay all earned wages, Defendants also failed to pay its former employees all wages owed at the time of separation from employment.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEY GENERAL ACT

(AGAINST ALL DEFENDANTS)

14. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

15. Defendants have committed several Labor Code violations against Plaintiffs and other aggrieved employees. Plaintiffs are "aggrieved employees" within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of themselves and other aggrieved employees, bring this representative action against Defendants to recover the civil penalties due to Plaintiffs, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1

per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Unlawfully deducting Plaintiffs and other aggrieved employees earned wages from the wages paid in violation of Labor Code §§ 221-223, and 1198;
- b. Failing to reimburse Plaintiffs and other aggrieved employees all necessary business expenditures in violation of Labor Code §§ 2802, and 2804;
- c. Failing to provide Plaintiffs and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- d. Failing to pay aggrieved former employees all final wages due at the end of their employment in violation of Labor Code §§ 201-203;
- e. Failing to pay Plaintiffs and other aggrieved employees all earned wages at least twice each calendar month in violation of Labor Code § 204; and
- f. Failing to maintain accurate records in violation of Labor Code §§ 558, 1174 and 1198.

16. On or about August 12, 2021 Plaintiffs notified Defendants via certified mail and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiffs’ intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in Paragraph 15 (a)-(f). Now that sixty-five days have passed from Plaintiffs notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiffs have exhausted their administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

17. Based on the foregoing, Plaintiffs seek to represent themselves, the State of California, and all aggrieved employees, as defined by Labor Code § 2699(c), which includes all

current and former employees who worked for Defendants in California between the one year and 178 days prior to the submission of Plaintiffs' PAGA notice to the present.

18. Plaintiffs were compelled to retain the services of counsel to file this court action to protect themselves interest and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiffs have thereby incurred attorneys' fees and costs, which they are entitled to recover under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiffs pray for judgment for themselves and for all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

19. Upon the First Cause of Action, for civil penalties due to Plaintiffs, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699, including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to Labor Code § 2699(f);

20. On all causes of action, for attorney's fees and costs as provided by Labor Code § 2699(g) and Code of Civil Procedure § 1021.5; and

21. For such other and further relief the Court may deem just and proper.

Dated: November 4, 2021

Respectfully submitted,
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By: 
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Attorneys for Plaintiffs