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**ELECTRONICALLY
 FILED**
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF ORANGE
 CIVIL COMPLEX CENTER
Jun 18 2009
 ALAN CARLSON, Clerk of the Court
 by C. PEDRAZA

SUPERIOR COURT OF CALIFORNIA

JUDGE DAVID C. VELASQUEZ
 DEPT. CX101

**COUNTY OF ORANGE
 CIVIL COMPLEX CENTER**

THIS CASE IS SUBJECT TO
 MANDATORY ELECTRONIC FILING
 PURSUANT TO RULE 308 OF THE LOCAL RULES
 OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

16 AARON WOOD and BRIAN PHILP, on
 behalf of themselves and all others
 17 similarly situated,

18 Plaintiffs,

19 v.

20 FIRST AMERICAN TITLE COMPANY,
 a California Corporation; UNITED
 21 GENERAL TITLE INSURANCE
 COMPANY, a California Corporation;
 22 and DOES 1-100, inclusive,

23 Defendants

Case No. **30-2009-00277481**

**CLASS ACTION COMPLAINT FOR
 DAMAGES, INJUNCTIVE AND
 DECLARATORY RELIEF AND
 RESTITUTION**

- 1) FAILURE TO FULLY REIMBURSE
 EXPENSES (LAB. CODE §2802)
- 2) ILLEGAL COLLECTION OF WAGES
 PREVIOUSLY PAID (LAB. CODE §221)
- 3) UNFAIR BUSINESS PRACTICES (BUS. &
 PROF. CODE §§17200, ET SEQ.)

DEMAND FOR JURY TRIAL

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13 **SUPERIOR COURT OF CALIFORNIA**

14 **COUNTY OF ORANGE**
15 **CIVIL COMPLEX CENTER**

16 AARON WOOD and BRIAN PHILP, on
behalf of themselves and all others
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20 FIRST AMERICAN TITLE COMPANY,
a California Corporation; UNITED
21 GENERAL TITLE INSURANCE
COMPANY, a California Corporation;
22 and DOES 1-100, inclusive,
23
Defendants

Case No.
**CLASS ACTION COMPLAINT FOR
DAMAGES, INJUNCTIVE AND
DECLARATORY RELIEF AND
RESTITUTION**
1) FAILURE TO FULLY REIMBURSE
EXPENSES (LAB. CODE §2802)
2) ILLEGAL COLLECTION OF WAGES
PREVIOUSLY PAID (LAB. CODE §221)
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PROF. CODE §§17200, ET SEQ.)

DEMAND FOR JURY TRIAL

1 Plaintiffs AARON WOOD and BRIAN PHILP, individuals, on behalf of themselves and
2 all others similarly situated, and demanding a trial by jury, complain and plead upon information
3 and belief, as follows:

4 I.

5 INTRODUCTION

6 1. This is a class action seeking recovery of unreimbursed business-related expenses
7 incurred by employees in the performance of their job duties and of illegally collected wages,
8 plus interest, attorneys' fees, and costs under California Labor Code sections 2802 and 221.
9 Plaintiffs, on behalf of themselves and all other members of the class alleged herein, also bring
10 an action against Defendants for violations of California Business and Professions Code sections
11 17200, et. seq. This Complaint seeks full restitution and/or disgorgement of compensation
12 retained by Defendants as a result of their unlawful, fraudulent and unfair business practices.

13 2. This case arises out of the failure to fully reimburse employees for work-related
14 expenses to certain California employees of Defendants FIRST AMERICAN TITLE
15 COMPANY and UNITED GENERAL TITLE INSURANCE COMPANY, (hereinafter
16 collectively "First American" or "Defendants.") The proposed Plaintiff Class consists of persons
17 classified as Sales Executives, Sales Representatives, Outside Salespersons, and other similarly
18 situated employees of Defendants who, during the Class Period, incurred expenditures or losses,
19 and who were also subjected to Defendants' practice to require Plaintiff Class members to pay
20 back Defendants for any mileage expenses that exceeded Defendants' car allowance or were
21 incurred on certain days of the week (hereinafter "Illegal Collections").

22 3. As used herein, the term "Plaintiffs" includes AARON WOOD and BRIAN
23 PHILP, who are the named Plaintiff Class representatives; the term "Plaintiff Class" includes the
24 Plaintiffs and all Plaintiff Class members, and refers to the Plaintiffs and Plaintiff Class members
25 who incurred losses and expenditures as a result of their employment duties on not properly
26 reimbursed either Defendants and who were required to pay back Defendants for certain
27 expenses.

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III.
PARTIES

A. Plaintiff

7. Plaintiff AARON WOOD, during the relevant statutory period, worked in the position of "Sales Executive," (also referred to as "Sales Representative," "Outside Sales Representative," "Territory Representatives," and "Account Executives") while employed by Defendants within the State of California.

8. Plaintiff BRIAN PHILP, during the relevant statutory period, worked in the position of "Sales Executive," (also referred to as "Sales Representative," "Outside Sales Representative," "Territory Representatives," and "Account Executives") while employed by Defendants within the State of California.

9. At all times mentioned herein, the aforementioned Plaintiffs and the entirety of the class identified herein are/were current and former employees of Defendants who were not fully reimbursed for out-of-pocket expenses incurred in the performance of their job duties. Exemplar expenses include, but are not limited to, (1) transportation costs relating to mileage, parking and toll roads; (2) cellular and other telephone costs related to the selling of Defendants' products and/or services; (3) meals and entertainment expenses relating to client acquisition and client retention; and (4) marketing and/or advertising costs. Plaintiffs, and the members of the class alleged herein, are/were employed by Defendants as commissioned salespersons whose compensation was in the form of commissions for sales originated by class members.

10. At all times mentioned herein, Defendants directed and mandated the collection of amounts from class members for business expenses charged to Defendants' corporate credit cards over specified limits and Defendants wrongfully collected these amounts from Plaintiffs and Plaintiff Class members.

11. Defendants maintained policies which violate the spirit and letter of Labor Code sections 2802 and 221 by failing to fully reimburse employees for all business expenses incurred in their performance of job duties, and a policy of requiring Plaintiffs and Plaintiff Class members to pay back Defendants for certain expenses.

1 **B. Defendants**

2 12. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned
3 herein, Defendants and DOES 1 through 100, were and are corporations qualified to do business
4 and actually doing business in the State of California.

5 13. FIRST AMERICAN TITLE COMPANY owns and operates an industry,
6 business, and establishment in numerous separate geographic locations within the State of
7 California, with its principal place of business in Santa Ana, California, to provide title insurance
8 and related products, within the State of California. Thus, FIRST AMERICAN TITLE
9 COMPANY is subject to the California Labor Code in general, and specifically to California
10 Labor Code sections 2802 and 221, as well as California Business and Professions Code sections
11 17200, et. seq. (Unfair Competition Law).

12 14. UNITED GENERAL TITLE INSURANCE COMPANY owns and operates an
13 industry, business and establishment in numerous separate geographic locations within the State
14 of California to provide title insurance and related products, within the State of California. Thus,
15 UNITED GENERAL TITLE INSURANCE COMPANY is subject to the California Labor Code
16 in general, and specifically to California Labor Code sections 2802 and 221, as well as California
17 Business and Professions Code sections 17200, et. seq. (Unfair Competition Law).

18 15. Plaintiffs do not now know the true names or capacities, whether individual,
19 partner or corporate, of the Defendants sued herein as DOES 1 through 100, inclusive, and for
20 that reason, Defendants are sued under such fictitious names. Plaintiffs will seek leave from the
21 Court to amend this Complaint when such true names and capacities are discovered. Plaintiffs
22 are informed and believe, and thereupon allege, that each of said fictitious Defendants, whether
23 individual, partners or corporate, was and is responsible in some manner for the circumstances
24 alleged herein, and proximately caused Plaintiffs and those similarly situated be subject to the
25 unlawful employment and business practices, wrongs, injuries and damages complained of
26 herein.

27 16. At all times herein mentioned, each of said Defendants participated in the doing
28 of the acts alleged to have been done by the named Defendants; and furthermore, the Defendants,

1 and each of them, were the agents, servants and employees of each and every one of the other
2 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
3 acting within the course and scope of said agency and employment.

4 17. At all times mentioned herein, Defendants, and each of them, were members of,
5 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
6 and scope of, and in pursuance of said joint venture, partnership and common enterprise.

7 18. At all times herein mentioned, the acts and omissions of various Defendants, and
8 each of them, concurred with and contributed to the various acts and omissions of each and every
9 one of the other Defendants in proximately causing the complaints, injuries and damages alleged
10 herein.

11 19. At all times herein mentioned, Defendants, and each of them, approved of,
12 condoned and/or otherwise ratified each and every one of the acts or omissions complained of
13 herein. At all times herein mentioned, Defendants, and each of them, aided and abetted the acts
14 and omissions of each and every one of the other Defendants, thereby proximately causing the
15 damages as alleged.

16 III.

17 CLASS ACTION ALLEGATIONS

18 20. Plaintiffs bring this action on behalf of themselves and all others similarly
19 situated, as a class action pursuant to Code of Civil Procedure, section 382. The class which
20 Plaintiffs seek to represent is composed of and defined as follows:

21 All current and former California-based Sales Executives, Sales Representatives, Outside
22 Sales Representatives, Territory Representatives, Account Representatives, or other
23 similarly designated titles who have worked for Defendants from four years prior to the
24 filing of the Complaint through the date of trial.

25 21. The subclasses Plaintiff will seek to certify are currently composed of and defined
26 as follows:

27 a. All of Defendants' California-based employees during the relevant time
28

1 period, including but not limited to Sales Executives, Sales Representatives, Outside Sales
2 Representatives, Territory Representatives, Account Representatives and related employees to
3 whom Defendants failed to fully reimburse business related expenses as required under Labor
4 Code section 2802 (hereinafter, the "Reimbursement Subclass");

5 b. All of Defendants' California-based employees during the relevant time
6 period, including but not limited to Sales Executives, Sales Representatives, Outside Sales
7 Representatives, Territory Representatives, Account Representatives, and related employees
8 from whom Defendants illegally collected moneys for expenses that were charged to
9 Defendants' corporate credit cards and exceeded specified limits, but were incurred while
10 performing routine work duties, made unlawful by Labor Code section 221 (hereinafter, the
11 "Illegal Collections Subclass");

12 22. The Reimbursement Subclass and Illegal Collections Subclass are hereinafter
13 collectively referred to as the "Subclasses."

14 23. Plaintiffs, under Rule 3.765(b) of the California Rules of Court, hereby reserve
15 the right to amend and further modify the class described herein into divisions for particular
16 issues.

17 24. The members of the class are so numerous that joinder of all members would not
18 be feasible or practicable. The entire membership of the class is unknown to Plaintiffs at this
19 time; however, the class is estimated to be in excess of 500 individuals, and the identity of such
20 membership is readily ascertainable via inspection of Defendants' employment records.

21 25. There are common questions of law and fact as to all members of the class that
22 predominate over questions affecting only individual members. These common questions,
23 include, without limitation:

24 a) Whether Defendants violated Labor Code sections 2802 and 221 by:

25 i) Failing to reimburse Plaintiffs and Plaintiff Class members for out-
26 of-pocket expenses incurred by them in the performance of their job duties; and
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1 ii) Requiring Plaintiffs and Plaintiff Class members to pay Defendants
2 for business expenses charged to corporate credit cards and over a specific
3 amount.

4 b) Whether Defendants engaged in unfair business practices in violation of
5 the California Business & Professions Code, including Business & Professions Code
6 sections 17200, et seq.;

7 c) Whether Defendants violated sections 201-203 of the Labor Code by
8 failing to reimburse Plaintiffs and Plaintiff Class members for expenses incurred, Illegal
9 Collections, and wages due and owing at the time that any Class or Subclass Member's
10 employment with Defendants terminated;

11 d) The appropriate amount of monetary compensation allowed by the
12 California Labor Code, including Labor Code sections 2802 and 221;

13 e) The approximate amount of monetary restitution allowed by California
14 Business & Professions Code sections 17200, et seq.;

15 f) Whether Defendants participated in the alleged unlawful and/or tortious
16 conduct; and

17 g) Whether Defendants' conduct was willful, intentional or reckless.

18 26. The claims of the Plaintiffs are typical of the claims of the class. Plaintiffs, as the
19 representative parties, will fairly and adequately protect the interests of the class by vigorously
20 pursuing this suit through their attorneys, who are skilled and experienced in handling matters of
21 this type.

22 27. The nature of this action and the nature of laws available to the Plaintiffs and the
23 class identified make use of the class action format a particularly efficient and appropriate
24 procedure to afford relief to the Plaintiffs and the class for the wrongs alleged. Further, this case
25 involves larges corporate employer (Defendants) and a large number of individual employees
26 (Plaintiffs and the members of the class) with many relatively small claims with common issues
27 of law and fact. If each employee were required to file an individual lawsuit, Defendants would
28 necessarily gain an unconscionable advantage since they would be able to exploit and

1 client acquisition and client retention, and (4) advertising/marketing costs. Plaintiffs and the
2 members of the class they seek to represent were employed by Defendants in a sales capacity
3 which required them to incur said expenses in the performance of their job duties.

4 32. For the Class Period, Plaintiffs and the members of the class have been required
5 to personally incur and pay for these expenses in the discharge of their employment duties, all
6 without reimbursement from Defendants.

7 33. Defendants have policies of regularly and consistently refusing to fully reimburse
8 Plaintiffs and the members of the class for such expenses and to collect illegally sums of money
9 that were incurred by Plaintiffs and members of the class for work related expenses, in violation
10 of California law.

11 34. As a proximate result of the aforementioned violations, Plaintiffs and the
12 members of the class have been damaged in an amount according to proof at the time of trial, but
13 in an amount in excess of the minimum jurisdiction of this Court.

14 35. Pursuant to Labor Code section 2802, Plaintiffs and the members of the class are
15 entitled to recover from Defendants the full amount of the expenses they incurred in the
16 performance of their job duties, amounts illegally collected covering client costs, plus interest,
17 reasonable attorneys' fees and costs of suit.

18 **SECOND CAUSE OF ACTION**
19 **Illegal Collection of Wages**
20 **(On Behalf of Plaintiffs and Illegal Collections Subclass)**

21 36. Plaintiffs re-allege and incorporate by reference each and every one of the
22 allegations of this Complaint, as if fully set forth herein.

23 37. Pursuant to California Labor Code section 221, Defendants are prohibited from
24 collecting wages previously paid to employees. In violation of the Labor Code and other
25 provisions of law, Defendants improperly required Plaintiffs and members of the Class and
26 Illegal Collection Subclass to use their wages to pay Defendants for expenses incurred on
27 corporate credit cards over specified amounts and thus used these payments to defray the costs of
28 business. Plaintiffs and members of the Illegal Collection Subclass seek payment of such sums
collected in violation of California law.

