

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
COLUMBUS DIVISION**

JANET DAVIS, ANGEL RANDALL,
ALMA LEE RESENDEZ, MANDY
PHELAN, and TREY ROBERTS,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

GEICO CASUALTY COMPANY, a foreign
corporation, GEICO ADVANTAGE
INSURANCE COMPANY, a foreign
corporation, GEICO CHOICE INSURANCE
COMPANY, a foreign corporation, GEICO
GENERAL INSURANCE COMPANY, a
foreign corporation, and GEICO SECURE
INSURANCE COMPANY, a foreign
corporation,

Defendants.

Civil Action No.

2:19-cv-02477-GCS-EPD

District Judge Edmund A. Sargus, Jr.

Magistrate Judge Elizabeth Preston Deavers

**PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL
OF PROPOSED CLASS ACTION SETTLEMENT**

Plaintiffs Janet Davis, Angel Randall, Alma Lee Resendez, Mandy Phelan and Trey Roberts ("Plaintiffs") submit this unopposed Motion and respectfully request that the Court preliminarily approve the proposed class action settlement described in detail in the Class Action Settlement Agreement and exhibits thereto ("Agreement"), attached hereto as Exhibit 1 and incorporated by reference, between Plaintiffs and Defendants GEICO Casualty Company, GEICO Advantage Insurance Company, GEICO Choice Insurance Company, GEICO General Insurance Company, GEICO Secure Insurance Company and their related entities ("GEICO").

I. CONCISE STATEMENT OF THE RELIEF REQUESTED

Plaintiffs file this motion requesting that the Court preliminarily approve a class action settlement and certify the Settlement Class. Plaintiffs request that the Court grant preliminary approval of the proposed settlement and enter an order of preliminary approval that includes the content of the proposed order attached as Exhibit D to the Agreement.

The proposed preliminary approval order approves the form of notice to be given to the Settlement Class, establishes a schedule and process for the submission of any objections or requests for exclusion from the Settlement Class, and provides for a fairness hearing to be held by the Court. The parties will submit a motion requesting final approval of the Settlement in advance of the fairness hearing.

II. STATEMENT OF THE BASIS FOR THE REQUEST

The Parties reached the Agreement after four years of litigation, after completion of substantial discovery, after class certification was granted, after the parties' motions for summary judgment were granted in part and denied in part, and on the cusp of trial. The Agreement is the product of substantial, contentious negotiations between the parties through mediation facilitated by Rodney Man, and later Michael Unger, a well-respected and experienced mediator. *See* McLaughlin on Class Actions § 6:7 (12th ed.) (“A settlement reached after a supervised mediation receives a presumption of reasonableness and the absence of collusion.”); *City Partnership Co. v. Atlantic Acquisition Ltd. Partnership*, 100 F.3d 1041, 1043 (1st Cir. 1996) (“When sufficient discovery has been provided and the parties have bargained at arms-length, there is a presumption in favor of the settlement.”).

The Parties have reached a settlement agreement for the purpose of providing Settlement Class Members cash benefits of up to \$19,850,000.00 for Settlement Class Members who make a valid claim, which constitutes (i) payment of title and registration fees (“Transfer Fees”) of either

\$19.50 or \$21.00 (depending on date of loss); and (ii) sales tax equal to the Ohio state sales tax rate of 5.75% (“Sales Tax”) calculated as a percentage of the adjusted value of the totaled vehicle, less the amounts, if any, in Sales Tax and/or Transfer Fees GEICO included as part of the original claim payment. GEICO has also agreed to separately pay the costs to administer the settlement and to pay Sales Tax and Transfer Fees without requiring insureds to first prove they purchased a replacement vehicle, absent a change in insurance policy language or a change in Ohio law.

MEMORANDUM OF LEGAL AUTHORITY

a. Background

This case involves allegations that Defendants’ breached automobile insurance policies issued to Plaintiffs and members of the proposed Settlement Class by failing to include and/or underpaying Sales Tax and Transfer Fees in the settlement of first-party total loss claims. Exhibit 2 (“Phillips Decl.”) ¶¶ 3-5. Plaintiffs allege that GEICO’s insurance policies define actual cash value (“ACV”) as the “replacement cost” of the auto, less depreciation, and therefore require payment of the full amount of sales tax and regulatory fees applicable to the purchase of a replacement vehicle as part of ACV upon the total loss of a covered auto. Plaintiffs alleged that GEICO’s practice of failing to include and/or underpaying Sales Tax and Transfer Fees for all vehicles at the time of loss in ACV payments constitutes a breach of contract.

b. Litigation and Discovery History.

The class action has been hotly contested at every stage. The Parties fully briefed a Rule 12(b)(6) motion to dismiss and to compel appraisal, which this Court denied. Dkt. No. 25. The Parties fully briefed class certification, which this Court granted. Dkt. No. 123. And the Parties fully briefed summary judgment and Daubert motions, and this Court granted in part and denied

in part the Parties' motions for summary judgment. Dkt. No. 187; *see also* Phillips Decl. at ¶ 6. The Parties also fully briefed motions in limine and other pretrial submissions. (cite).

During the discovery period and prior to settlement, 14 depositions were conducted, four experts were retained and deposed, including an insurance industry expert, a data analysis expert, and a regulatory fees expert, and Plaintiffs served multiple rounds of discovery requests, secured and analyzed thousands of documents, including spreadsheets containing millions of data inputs, and engaged in extensive briefing of the merits. The data analysis was particularly time-intensive, meticulous, and complex: The data stretched back over a decade, GEICO changed its data systems and retention policies during that period. Class Counsel had to filter through millions of line of data to potentially identify whether Sales Tax and/or Transfer Fees were paid on over 80,000 total loss claims. *Id.* at ¶¶ 8-9.

c. The Proposed Settlement

In the Agreement, GEICO agrees, upon submission of a valid claim, to make (i) payment of Transfer Fees of either \$19.50 or \$21.00 (depending on date of loss); and (ii) Sales Tax equal to the Ohio state sales tax rate of 5.75% calculated as a percentage of the adjusted vehicle value, less the amount, if any, Transfer Fees and/or Sales Tax GEICO included as part of the original claim payment. Agreement at ¶¶ 80, 109. Settlement Class Member Payments will be reduced proportionally by the amount of any Class Counsel fee and cost award approved by the Court. (Cite). GEICO has also agreed to separately pay the costs of administration. *Id.* Finally, GEICO has changed its business practice to include Transfer Fees of \$21.00 and Sales Tax, calculated as the applicable state plus local percentage on the adjusted vehicle value of the total-loss vehicle, without precondition in its total-loss claim, and has agreed to maintain such business practice change absent a change in Ohio law or GEICO's policy wording.

1. Over \$19.95 Million Monetary Value

The proposed settlement provides for up to \$19.85 million in cash benefits. Determining the amount that was paid for sales tax on many of the claims may require a detailed review of the claim file to assess the basis for each payment that was made and what was included in that payment. The proposed settlement provides for GEICO to review the files of class members who make claims in the settlement to make these determinations, with confirmation and oversight from Class Counsel. The class member will have the opportunity to object to any determination and, if necessary, a neutral evaluator will arbitrate any disagreement. Agreement at ¶¶ 114.

Moreover, GEICO has agreed to separately pay the costs of settlement administration, which is estimated to be well over \$100,000.00. *Id.* at ¶ 80. Because this cost is not being borne by class members, it is properly considered part of the settlement value. *See Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269, 282 (6th Cir. 2016) (explaining that the total Class benefit is “the benefit to class members,” which includes the “costs of administration”); *Rikos v. Proctor & Gamble Co.*, No. 1:11-cv-226, 2018 U.S. Dist. LEXIS 72722, at *8 (S.D. Ohio Apr. 30, 2018) (to calculate total settlement benefits amount, “courts include all amounts benefitting the class, including those amounts typically borne by the class, such as...administration costs”). GEICO has also agreed to separately pay Service Awards approved by this Court up to \$7,500.00 per named plaintiff, which will also not reduce or impact payment amounts for Settlement Class Members. Phillips Decl. at ¶4. As such, the total settlement value exceeds \$19.95 million dollars.¹

2. Likelihood of Success is Uncertain

¹ This does not even include the significant value of GEICO’s change in business practice that occurred after this litigation commenced or GEICO’s agreement in the Settlement to continue such business practice.

If the case were to proceed through final judgment in this Court, and then an appeal to the Sixth Circuit, Plaintiffs and the Class Members would bear significant risk. Indeed, this Court found a triable issue on GEICO's potential accord and satisfaction affirmative defense, which could have impacted a significant number of absent class members and, according to GEICO, may lead to decertification of the Class. Even setting that aside, the putative class would bear the risk of recovering nothing if class certification were reversed on appeal, or if summary judgment in favor of the class was overturned on appeal. Phillips Decl. at ¶¶ 13-17. Notably, the Sixth Circuit recently ruled in favor of an insurance company on materially the same claim, albeit under different policy language. *Wilkerson v. Am. Family Ins. Co.*, 997 F.3d 666 (6th Cir. 2021). The Sixth Circuit specifically referenced the potential relevance of the applicable Ohio total loss regulation, but observed that "neither party cited this regulation or suggested that it should affect our interpretation of the insurance policy" and "[w]e thus need not consider the regulation." *Id.* at 673. The Court did not indicate either way whether it would have found that the regulation's permission to pay sales tax only upon proof of replacement governs had it considered the regulation. But the Seventh Circuit agreed with GEICO that an insurance regulation is incorporated into insurance policies and establishes the relevant standard for whether sales tax is owed on a total-loss claim (albeit under Illinois law). *Sigler v. Geico Cas. Co.*, 967 F.3d 658 (7th Cir. 2020); *see also* Phillips Dec. at ¶ 15.

Plaintiffs believe their claims are meritorious, and that this Court's legal rulings were correctly decided—but clearly, these cases and the fact that there is no guidance from the Ohio Supreme Court demonstrate the inherent risk of continuing litigation. Such risk strongly supports the proposed Settlement.

3. The Settlement Provides for a Limited Release, Robust Notice, and a Simple Claims Process

For the convenience of Settlement Class Members in submitting claims, GEICO will extract available information from its claim records to pre-fill relevant information on the claim forms. *See* Agreement at Exhibit A and B. Notice will be provided via direct mail on two separate occasions, including the pre-filled, postage-prepaid claim form, and by email on a third occasion. *Id.* at ¶¶ 86-89. The claim submission process is extremely simple, requiring merely that Class Members confirm the prefilled information, including their current address, is correct, sign the form, and drop the postage-prepaid form in the mail. The Settlement also provides for a website where insureds can make the same confirmation and submit a claim form electronically. *Id.* Additionally, the release is narrowly tailored to the precise claims alleged in this litigation relating to payment of sales tax and fees without precondition. Phillips Decl. at ¶¶ 24-26.

This type of settlement structure, under which class members need to submit claim forms if they wish to make a claim for payment in the settlement process, is regularly approved by federal courts. *See, e.g., Bastian v. United Servs. Auto. Ass'n*, 2017 U.S. Dist. LEXIS 180757 (M.D. Fla. Nov. 1, 2017) (approving similar claims-made settlement in class action concerning total-loss vehicles where USAA's internal procedure for payment of sales tax in Florida was materially identical to GEICO's procedure in Ohio); *Cook v. Gov't Emples. Ins. Co.*, No.: 6:17-cv-891-ORL-40KRS, 2020 U.S. Dist. LEXIS 111956 (M.D. Fla. Jun. 22, 2020) (same) *Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 783 (N.D. Oh. 2010) (approving settlement that required claim submissions to establish entitlement to settlement proceeds); *Gascho*, 822 F.3d 269 (affirming a claims-made class action settlement as fair and reasonable).

4. Attorneys' Fees Are Reasonable

The proposed settlement further provides that class counsel may make an application for attorneys' fees in the Court's discretion, not to exceed \$5,756,500.00 to be paid from the funds

available for Settlement Class Member Payments. Agreement at ¶ 80(d). This constitutes less than 29% of the settlement value, which is within the Sixth Circuit’s benchmark for attorneys’ fees. *Myres v. Hopebridge, LLC*, No. 2:20-cv-5390, 2023 U.S. Dist. LEXIS 41294 (S.D. Oh. Feb. 21, 2023) (in class action settlements, 33 1/3% “is reasonable and is a typical percentage” to award as attorneys’ fees); *Shanahan v. Keybank*, No. 1:19cv2477, 2021 U.S. Dist. LEXIS 50516, at *13 (N.D. Oh. Mar. 16, 2021) (approving fees of 33 1/3%); *Allison v. L Brands, Inc.*, 2023 U.S. Dist. LEXIS 16610, at *3 (S.D. Oh. Jan. 31, 2023) (same). This amount equates to Class Counsel’s lodestar, utilizing rates recently approved for each timekeeper in recent litigation, and including an estimated amount to administer the claim and settlement process and secure final approval, with a 2.1 multiplier. Phillips Decl. at ¶¶ 27-28. This is also comfortably within the range courts consistently find reasonable in class litigation. *See generally Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 517 (6th Cir. 1993) (approving 2.0 multiplier); *Bower v. MetLife, Inc.*, 2012 U.S. Dist. LEXIS 149117, at *23-24 (S.D. Oh. Oct. 17, 2012) (collecting cases demonstrating that multipliers ranging from 1.75 to 5.0 are considered reasonable in class litigation); *Swigart v. Fifth Third Bank*, 2014 U.S. Dist. LEXIS 94450, at *18 (S.D. Oh. Jul. 11, 2014) (holding that a multiplier of 2.57 “is consistent with other risk multipliers approved in complex class actions in this Circuit”).

As such, and as Plaintiffs will more fully demonstrate in the forthcoming fee petition, the attorneys’ fees amount is reasonable whether this Court uses the “percentage-of-the-fund” approach or the lodestar approach.

d. Class Certification Is Warranted

Plaintiffs submit that provisional certification of the proposed Settlement Class is appropriate. The Settlement Class is defined as follows:

All insureds under an Automobile Insurance Policy covering a vehicle with auto physical damage coverage for comprehensive or collision loss, who made a comprehensive or collision first-party claim, GEICO determined the claim was covered and that the vehicle was a total loss during the Class Period, and whose claim was adjusted and paid by GEICO as a total loss where GEICO did not pay all Sales Tax and/or Transfer Fees.

Excluded from the Class are:

GEICO, all present or former officers and/or directors of GEICO, the Neutral Evaluator, Class Counsel, and a Judge of this Court;

Claims for which GEICO received a valid and executed release;

Claims where GEICO paid full Sales Tax and Transfer Fees; and

Claims subject to binding appraisal and/or arbitration.

“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.” *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Although courts typically must analyze whether certification is appropriate when faced with a proposed class-wide settlement, this Court already granted class certification, and the proposed Settlement Class, *see* Agreement at ¶ 67, tracks the definition approved by this Court except that it includes two additional GEICO entities and runs for an additional 30-days through August 31, 2020 *See generally Harbin v. Emergency Coverage Corp.*, No. 3:16-CV-125-TRM-HBG, 2018 U.S. Dist. LEXIS 83283, at *6 (E.D. Tenn. Apr. 16, 2018) (finding it “unnecessary to conduct another Rule 23 analysis” in determining whether to approve a class settlement because the court had already granted class certification prior to the proposed settlement). The Advisory Committee to Rule 23(e) notes: “If the court has already certified a class, the only information ordinarily necessary is whether the proposed settlement calls for any change in the class certified.” Federal R. Civ. P. 23(e) advisory committee's note to 2018 amendment. The proposed Settlement Class

does not alter the certified Class except to change the relevant class period and add additional GEICO entities. As such, preliminary certification of the Settlement Class is appropriate.

e. Preliminary Approval Is Warranted

There is a strong federal policy “favoring settlement of class actions.” *UAW v. General Motors Corp.*, 497 F.3d 615, 633 (6th Cir. 2007). Preliminary approval—which permits Notice of the settlement to be provided to the Class—is a relatively limited inquiry where the court’s role is to “evaluate whether the proposed settlement appears to be the product of serious, informed, non-collusive negotiation, has no obvious deficiencies, does not improperly grant preferential treatment and falls within the range of possible approval.” *Hyland v. HomeServices of Am., Inc.*, No. 3:05-CV-612, 2012 U.S. Dist. LEXIS 4818, at *2 (W.D. Ky. Jan. 17, 2012) (cleaned up).

As will be set forth in greater detail in the Motion for Final Approval, and as demonstrated in the exhibits hereto, the Rule 23(e) factors favor approval. *See generally Cook v. Gov’t Emples. Ins. Co.*, No. 6:17-cv-891-ORL-40KRS, 2020 U.S. Dist. LEXIS 111956, at *16-17 (M.D. Fla. Jun. 22, 2020) (Rule 23 was amended to add textual factors relevant to approval of class settlements to focus litigants and courts on the “core concerns” of Rule 23, but not to displace factors prescribed by appellate courts). The factors outlined in *UAW*, 497 F.3d at 631—which remain relevant to the extent they do not overlap with the Rule 23(e) textual factors—also favor approval.

1. The Rule 23 Threshold Factors Favor Approval

Fed. R. Civ. P. 23(e)(2) contains two threshold or procedural requirements: adequate representation and arms-length negotiations. Both favor preliminary approval here.

The adequate representation analysis under Rule 23(e) “is distinct from Rule 23(a)(4) and...address[es] whether the class representatives possessed sufficient information and knowledge of the claims, issues, and defenses prior to negotiating and settling the claims.” *Cook*,

2020 U.S. Dist. LEXIS 111956, at *18. This overlaps with one of the *UAW* factors, i.e., “the amount of discovery engaged in by the parties[.]” 497 F.3d at 631. Here, Plaintiffs engaged in nearly four years of litigation, had completed discovery, secured partial summary judgment, and were on the cusp of trial. Phillips Decl. at ¶¶ 5-16. Plaintiffs served multiple rounds of discovery requests, secured and analyzed thousands of documents, including spreadsheets containing millions of data inputs, fully briefed summary judgment, and retained three expert witnesses. *Id.* at ¶¶ 8-10. This litigation also included fourteen depositions, including four expert depositions. Moreover, the undersigned have litigated numerous similar class actions, including against GEICO, and possess detailed knowledge about the strengths and weaknesses of the claims, as well as GEICO’s data systems, practices, and procedures. *Id.* at ¶ 10. The Rule 23 adequate representation factor and the *UAW* “amount of discovery” factor both clearly favor preliminary approval. *See generally Satterly v. Airstream, Inc.*, 2020 U.S. Dist. LEXIS 210868, at *16-17 (S.D. Oh. Sep. 25, 2020) (that plaintiffs had “exchanged written discovery and relevant information, engaged in further independent investigation, confirmed damages calculations with a third-party expert, and conducted additional legal research regarding the claims and defenses in the lawsuits” favored approving a class settlement).

Additionally, settlement was reached only with the assistance of Michael Ungar, an experienced and well-respected mediator. *See* Exhibit 3 (“Ungar Decl.”). The negotiations were unquestionably conducted at arms’ length. This Court has witnessed firsthand the extensive and hard-fought litigation prior to settlement. Thus, the Rule 23 “arms’ length” and the *UAW* “lack of fraud or collusion” factor both weigh in favor of preliminary approval. *See generally Bert v. AK Steel Corp.*, No. 1:02-CV-467, 2008 WL 4693747, at *2 (S.D. Ohio Oct. 23, 2008) (“The participation of an independent mediator in settlement negotiations virtually [e]nsures that the

negotiations were conducted at arm's length and without collusion between the parties"); *Brandenburg v. Cousin Vinny's Pizza, LLC*, No. 3:16-cv-516, 2019 U.S. Dist. LEXIS 204371, at *9 (S.D. Oh. Nov. 25, 2019) (lack of collusion demonstrated by the fact that "the record reflects this case was hotly contested for nearly two-and-a-half years" prior to settlement).

2. The Rule 23 Substantive Factors Favor Approval

Fed. R. Civ. P. 23(e)(2)(C)-(D) prescribe the factors relevant to determining whether a proposed Settlement is substantively adequate: the costs and risk of trial and appeal, the method of claim distribution, the terms of attorneys' fees, and whether class members are treated equitably vis a vi each other.

That the Agreement is beneficial to the Settlement Class can be seen between a comparison of the likelihood of ultimate success to the relief secured through the settlement.² *See In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 2016 U.S. Dist. LEXIS 130467, at *47-50 (N.D. Oh. Sep. 23, 2016) (analyzing the fairness of a proposed settlement by comparing the benefits provided by the settlement to the damages potentially available at trial in light of the odds of success); *see also In re Gen. Tire & Rubber Co. Sec. Litig.*, 726 F.2d 1075, 1086 (6th Cir. 1984) ("The most important of the factors to be considered in reviewing a [class] settlement is the probability of success on the merits. The likelihood of success, in turn, provides a gauge from which the benefits of the settlement must be measured."). Although Plaintiffs intend to explicate why the settlement is beneficial to the class in greater detail when moving for final approval, they briefly note that, as set forth above, the likelihood of success is uncertain. The Sixth Circuit

² Comparing the benefits secured through settlement with the benefits potentially available at trial divided by the chances of success is consistent both with Fed. R. Civ. P. 23(e)(2)(C)(i) and with two *UAW* factors, i.e., "the complexity, expense and likely duration of the litigation and the likelihood of success on the merits." 497 F.3d at 631 (cleaned up).

recently ruled against the insured alleging a similar theory, as did the Fifth and Seventh Circuits. The Seventh Circuit in particular adopted the argument GEICO advanced in this litigation, i.e., that the minimum regulatory requirements imposed by a state govern the relevant rights and obligations (albeit under Illinois law). Plaintiffs disagree with these decisions, and this Court rejected the Seventh Circuit's reasoning—but it remains the case that the Sixth Circuit court disagree or could find that class treatment is inappropriate. Phillips Decl. at ¶¶ 14-17. Clearly, continuing litigation through appeal presents significant risk.

Given this risk—and even absent it—the value of the settlement is significant and impressive. First, the Settlement provides damages in the amount of over 80% of what could have been secured if Plaintiffs prevailed entirely on the claim.³ Phillips Decl. at ¶¶ 22-23. This is far higher than settlements courts have found to be fair and reasonable under Rule 23(e)(2). *See In re Polyurethane Foam Antitrust Litig.*, 2015 U.S. Dist. LEXIS 23482, at *5 (N.D. Ohio Feb. 26, 2015) (“A settlement figure that equates to roughly 18 percent of the best-case-scenario classwide overcharges is an impressive result in view of these possible trial outcomes.”); *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, 2005 U.S. Dist. LEXIS 9705, at *9 (E.D. Pa. May 19, 2005) (11.4% of damages). Additionally, the Notice to which the Parties agreed is robust and comprehensive. Phillips Decl. at ¶ 24. GEICO agreed to send individual Notice twice by direct mail (including provisions to ensure any class member who changed addresses is located) and once

³ The Agreement provides for payment of Sales Tax in the amount of 5.75% of the adjusted vehicle value, which is the rate set by the State of Ohio during the Class Period. Plaintiffs also alleged that local surtax is a part of ACV Sales Tax—which can range in the amount of 0-2.25%. Taking into account the local surtax, the average overall sales tax rate in Ohio is approximately 7.22%. Thus, by securing benefits of Sales Tax in the amount of 5.75%, Plaintiffs secured, conservatively, approximately 80% of the damages in the form of ACV Sales Tax that could have been awarded at trial. Plaintiffs also secured 100% of the title and registration fee damages. Taken together, then, Plaintiffs secured over 80% of the total damages.

by email to anyone for whom GEICO possesses an email address, thereby providing significant assurance that Class Members will receive Notice. *See Braynen v. Nationstar Mortg., LLC*, 2015 U.S. Dist. LEXIS 151744, at *56 (S.D. Fla. Nov. 9, 2015) (robust notice plan is evidence terms of settlement are fair and reasonable).

Second, the “method of processing class-member claims” is simplicity itself: The Claim form is pre-filled, postage pre-paid, and Class Members must simply attest to the information and send the Claim form back (or, if necessary, correct the information). Agreement at ¶¶ 88-90, Exhibit A and B; *see Wilson v. EverBank*, 2016 U.S. Dist. LEXIS 15751, at *32-33 (S.D. Fla. Feb. 3, 2016) (finding significant that class members need not submit any additional evidence or documentation beyond merely “checking a box” which “should take no more than a few minutes for the average claimant to complete.”). Moreover, Class Members will be provided a ClaimantID that can be used to access a pre-filled electronic claim, requiring merely an electronic attestation and clicking a “Submit Claim” button. *Id.*⁴

Third, the terms of the attorneys’ fees award weigh in favor of approval of the proposed Settlement. *See Fed. R. Civ. P. 23(e)(2)(C)(iii)*. The analysis here is “distinct from the Rule 23(h)” analysis, which addresses whether the attorneys’ fees amount is reasonable on its own terms, and “instead addresses if and how the attorneys’ fees impacted the terms of the Settlement.” *Cook*, 2020 U.S. Dist. LEXIS 111956, at *24. Here, the attorneys’ fees amount did not impact the

⁴ In a recent case, the proposed settlement required class members to fill into the claim form their “address and contact information, the location of the Sonic location where they made their purchase, and the last four digits of the payment card number they used to make the purchase and whether the fraud occurred before February 28, 2018 (if applicable).” *In re Sonic Corp. Customer Data Sec. Breach Litig.*, 2019 U.S. Dist. LEXIS 135573, at *15 (N.D. Oh. Aug. 12, 2019). Even this process was considered simple enough to militate in favor of settlement. Here, the proposed Settlement contemplates a far simpler process, where class members merely attest to pre-filled information on a postage-prepaid (or electronic) claim.

substantive Settlement terms at all—indeed, the parties did not even discuss attorneys’ fees until after all other Settlement terms were finalized. Ungar Decl. at ¶ 7; Phillips Decl. at ¶ 19. As such, Rule 23(e)(2)(C)(iii) favors approval of the proposed Settlement.

Finally, class members are clearly treated equitably, in that they will receive the same Notice, the same claim process, are agreeing to precisely the same release, and are entitled to the same benefits: the state sales tax calculated as a percentage of their vehicle’s underlying value plus the state-mandated title and registration fee amounts.⁵

As such, all the Rule 23(e)(2)(C)-(D) factors militate in favor of approval.

3. The Remaining *UAW* Factors Favor Approval

The *UAW* factors that are independent of the Rule 23 factors—i.e., the opinions of class counsel and the public interest, *see* 497 F.3d at 631—also support approval of the proposed Agreement.⁶ Class Counsel possess extensive knowledge of GEICO’s procedures and data systems, as well as the relative strengths and weaknesses of the underlying claim, and it is their reasoned judgment that the proposed Settlement is in the best interests of the Class. Phillips Decl. at ¶¶ 10-12, 31-36; *see also Brent v. Midland Funding, LLC*, 2011 U.S. Dist. LEXIS 98763, at *49-50 (N.D. Oh. Sep. 1, 2011) (“The Court gives great weight to the recommendation of experienced counsel for the parties in evaluating the adequacy of the settlement.”). Moreover, “settlement fosters the goals of certainty, finality[,] and economy, which lie at the heart of our general preference for settlement of class actions.” *Berry v. School Dist.*, 184 F.R.D. 93, 106 (W.D.

⁵ While the Settlement provides for the Named Plaintiffs to petition for a Service Award, courts generally analyze Service Awards standing alone, and not within the rubric of Fed. R. Civ. P. 23(e)(2)(D). *See, e.g., In re Sonic Corp.*, 2019 U.S. Dist. LEXIS 135573, at *16-18 (analyzing Service Awards separately from Rule 23(e)(2)(D)). Whether the proposed Service Awards are reasonable will be addressed in the forthcoming fee petition.

⁶ The final factor is the response from the Class, is therefore irrelevant until the Hearing on Final Approval, after Notice is provided and Class Members are provided the opportunity to object.

Mich. 1998). And because of the valuable compensatory relief secured and the beneficial change in business practice, the proposed Settlement “does its best to ensure that Defendants can continue to provide valuable service to Settlement Class Members in an atmosphere that will foster trust and confidence.” *In re Dun & Bradstreet Credit Services Customer Litigation*, 130 F.R.D. 366, 372 (S.D. Oh. 1990).

For the reasons set forth herein, all the factors outlined in Rule 23(e) and in *UAW* militate in favor of preliminary approval of the proposed Settlement.

4. The Claims-Made Structure Does Not Undermine Approval

The settlement includes a claims-made structure, which does not impact the “fairness, reasonableness, or adequacy of proposed settlement.” *Hamilton v. SunTrust Mortg. Inc.*, 2014 U.S. Dist. LEXIS 154762, at *18 (S.D. Fla. Oct. 24, 2014). GEICO made clear it would not settle the claim absent the claims-made structure. And as courts have explained, whether a settlement compares favorably to a hypothetical settlement to which the parties did not agree is irrelevant. *See, e.g., Casey v. Citibank, N.A.*, 2014 U.S. Dist. LEXIS 156553, at *6 (N.D. N.Y. Aug. 21, 2014) (while direct payment may have resulted in more class members receiving some payment, “there is no reason to believe the defendants would agree to such terms” and thus the feasibility of direct payment “is irrelevant”) (citing *Uhl v. Thoroughbred Tech. & Telecomms., Inc.*, 309 F.3d 978, 986 (7th Cir. 2002) (because the inquiry into a proposed settlement structure “is limited to whether the settlement is lawful, fair, reasonable and adequate[,], . . . [an objector] must do more than just argue that she would have preferred a different settlement structure”)); *Montoya v. PNC Bank, N.A.*, 2016 U.S. Dist. LEXIS 50315, at *49 (S.D. Fla. Apr. 13, 2016) (claims-made settlement offered the best and “only real relief” possible in settlement because defendants “would not have agreed” to direct-pay structure). The question is not whether a claims-made settlement compares favorably

to a hypothetical, non-existent settlement, but rather whether the Settlement is fair and reasonable on its own terms. *See Casey*, 2014 U.S. Dist. LEXIS 156553 (“The Court does not have the authority to impose a preferred payment structure upon the settling parties”).

The Agreement removes the risk that the class will recover nothing due to an unfavorable ruling on class certification, summary judgment, or any appeal therefrom. Despite removing such risk, far from accepting a significant reduction in the potential damages, the Agreement provides over 80% of the total damages that could have been recovered at trial. For all such reasons, and as will be more fully explained in the Motion for Final Approval, Plaintiffs believe the Agreement is fair and reasonable to the Class.

Finally, for the convenience of the Court, below is a proposed preliminary schedule outlining the dates set forth in the Settlement Agreement, which comports with the Schedule outlined in the proposed Order preliminarily approving of the proposed Settlement, which is affixed as Exhibit D to the Settlement Agreement.

PROPOSED PRELIMINARY SCHEDULE

#	Action	Deadline
1	Website Notice Posted by Settlement Administrator	Thirty (30) days after the Court enters a Preliminary Approval Order (“PAO”)
2	Deadline for Settlement Administrator to mail out first direct mail notice (the “Notice Date”)	Thirty (30) days after entry of the PAO
3	Deadline for Settlement Class Members to opt-out of the Agreement	Thirty (30) days after Notice Date (sixty (60) days after entry of the PAO)
4	Deadline for submission of Notice of Intent to object to agreement	Thirty (30) days after Notice Date (sixty (60) days after entry of the PAO)
5	Deadline for Settlement Class Members to file claims.	Forty-five (45) days after Notice Date (seventy-five (75) days after entry of PAO)

6	Deadline for Class Counsel to file their application for attorneys' fees, costs and expenses, and for a service award for Plaintiff	Fifteen (15) days prior to Objection and Opt-Out deadline (forty-five (45) days after entry of PAO)
7	Deadline to file Motion for Final Approval and any papers in support thereof, including responses to any objections	45 days before the Final Approval Hearing
8	Deadline for Settlement Administrator to file proof of completion of Notice, along with complete and accurate Opt-Out list	Ten (10) days before Final Hearing
9	Final Approval Hearing	[Date, Year, at Time], which is at least ninety (90) days after entry of PAO

CONCLUSION

Plaintiff respectfully requests that the Court grant preliminary approval of the proposed settlement and enter an order of preliminary approval that includes the content of the proposed order attached as Exhibit D to the Agreement. The proposed preliminary approval order approves the form of notice to be given to the class, establishes a schedule and process for the submission of any objections or requests for exclusion from the class, and provides for a fairness hearing to be held by the Court. Plaintiff anticipates later requesting final approval of the settlement in advance of the fairness hearing.

Dated: June 15, 2023

Respectfully submitted,

/s/ Scott Edelsberg

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Attorneys for Plaintiffs & the Proposed Class

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 15th day of June 2023, a copy of the foregoing has been electronically filed with the Clerk of the Court using the CM/ECF system, which will cause a notice of electronic filing to be served on all counsel of record.

/s/ Scott Edelsberg
Scott Edelsberg (admitted *pro hac vice*)
Attorney for Plaintiffs

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
COLUMBUS DIVISION**

JANET DAVIS, ANGEL RANDALL,
ALMA LEE RESENDEZ, MANDY
PHELAN, and TREY ROBERTS, on behalf
of all other similarly situated,

Plaintiffs,

v.

GEICO CASUALTY COMPANY, a foreign
corporation, GEICO ADVANTAGE
INSURANCE COMPANY, a foreign
corporation, and GEICO CHOICE
INSURANCE COMPANY, a foreign
corporation, and GEICO GENERAL
INSURANCE COMPANY, a foreign
corporation, and GEICO SECURE
INSURANCE COMPANY, a foreign
corporation,

Defendants.

CASE NO.: 2:19 cv-02477-EAS-EPD

Judge: Edmund A. Sargus, Jr.

Magistrate Judge: Elizabeth Preston Deavers

CLASS ACTION

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement” or “Agreement”),¹ dated as of June 15, 2023, is entered into by Plaintiffs Janet Davis (“Davis”), Angel Randall (“Randall”), Alma Lee Resendez (“Lee Resendez”), Mandy Phelan (“Phelan”) and Trey Roberts (“Roberts”), individually and on behalf of the Settlement Class, and Defendants GEICO Casualty Company (“GEICO Casualty”), GEICO Advantage Insurance Company (“GEICO Advantage”), GEICO Choice Insurance Company (“GEICO Choice”), GEICO General Insurance Company (“GEICO

¹ All capitalized terms herein have the meanings ascribed to them in Section II or various places defined in the Agreement.

General”), GEICO Secure Insurance Company (“GEICO Secure”) and their related entities. Plaintiffs and Defendants are each individually a “Party” and are collectively the “Parties.” The Parties hereby agree to the following terms in full settlement of the Action, subject to Final Approval, as defined below, by the United States District Court for the Southern District of Ohio.

I. Recitals

1. On June 13, 2019, a putative class action Complaint was filed in the United States District Court for the Southern District of Ohio, Case No. 2:19cv2477, by Plaintiffs Janet Davis, Angel Randal, and Melissa Schaller against GEICO Casualty Company, GEICO Advantage Insurance Company and GEICO Choice Insurance Company. The Complaint alleged that the Defendants systematically underpays its Ohio insureds on auto insurance claims by excluding Sales Tax and Transfer Fees from the payment it makes when it declares a vehicle a Total Loss.

2. On August 19, 2019, Defendants filed a Motion to Compel Appraisal and Dismiss Plaintiffs’ Class Action Complaint.

3. On September 19, 2019, Plaintiffs filed their Response in Opposition to Defendants’ Motion to Compel Appraisal and Dismiss Plaintiffs’ Complaint.

4. On October 3, 2019, Defendants filed their Reply In Support of Its Motion to Compel Appraisal and Dismiss Plaintiffs’ Class Action Complaint.

5. On January 7, 2020, the Court issued an Order Denying Defendants’ Motion to Compel Appraisal and Dismiss Plaintiffs’ Class Action Complaint.

6. On February 6, 2020, Plaintiffs filed an Amended Complaint to add plaintiff Mandy Phelan and defendant GEICO General Insurance Company.

7. On February 24, 2020, Plaintiffs' Second Amended Complaint was filed. The Second Amended Complaint added plaintiff Trey Roberts and defendant GEICO Secure Insurance Company.

8. On March 9, 2020, Defendants filed their Answer to Plaintiffs' Second Amended Class Action Complaint.

9. On March 4, 2021, Plaintiffs filed their Third Amended Complaint, which removed Plaintiff Melissa Schaller and added Plaintiff Alma Lee Resendez.

10. On March 18, 2021, Defendants filed their Answer to Plaintiffs' Third Amended Complaint.

11. On August 13, 2021, Plaintiffs filed their Motion for Class Certification and Incorporated Memorandum of Law.

12. On September 27, 2021, Defendants filed their Response in Opposition to Plaintiffs' Motion for Class Certification.

13. On November 5, 2021, Plaintiffs filed their Reply in Support of Motion for Class Certification.

14. On December 13, 2021, the Court granted Plaintiffs' Motion for Class Certification.

15. On December 27, 2021, Defendants filed a petition for permission to appeal the Court's order granting certification pursuant to Federal Rule of Civil Procedure 23(f).

16. On January 6, 2022, Defendants filed their Motion to Stay Pending Rule 23(f) Petition.

17. On January 7, 2022, Plaintiffs filed their Response to Defendants' Motion to Stay Proceedings Pending Resolution of Rule 23(f) Petition.

18. On January 21, 2022, Defendants filed their Reply in Support of Motion to Stay Pending Rule 23(f) Petition.

19. On January 14, 2022, Defendants filed its Motion for Summary Judgment and Plaintiffs filed their Motion for Summary Judgment.

20. On February 18, 2022, Defendants filed its Response in Opposition to Plaintiffs' Motion for Summary Judgment and Response to Plaintiffs' Statement of Material Facts.

21. On February 18, 2022, Plaintiffs filed their Response in Opposition to Defendants' Motion for Summary Judgment and Response in Opposition to Defendants' Statement of Material Facts.

22. On June 7, 2022 the Parties attended mediation with mediator Rodney Max but were unable to reach an agreement for settlement.

23. On October 3, 2022, the Court approved Plaintiffs' Notice Plan to Class Members.

24. On March 2, 2023, the Court issued an Order denying as moot Defendants' motions to exclude expert testimony and reports; granting in part and denying in part Defendants' Motion for Summary Judgment; granting in part and denying in part Plaintiffs' Motion for Summary Judgment; denying as moot Defendants' Motion to Stay; and denying as moot Plaintiffs' extension request.

25. On March 15, 2023, Plaintiffs filed their Motion to Reconsider the March 2, 2023 Order as to Accord and Satisfaction

26. On March 17, 2023, Defendants filed a Motion for Reconsideration of the Court's March 2, 2023 order granting in part and denying in part the Parties' Motions for Summary Judgment.

27. On March 24, 2023, Defendants filed their Motion to Decertify the Class.

28. On March 27, 2023, Defendants filed its Response in Opposition to Plaintiffs' Motion to Reconsider March 2, 2023 Order As to Accord and Satisfaction and Motion in Limine to Preclude Evidence of Claims Previously Brought Against Defendants and to Bifurcate Trial.

29. Additionally, on March 27, 2023, Plaintiffs filed a Stipulation of Facts Between Plaintiffs & Defendants, Joint Proposed Jury Instructions, Omnibus Motion in Limine, and Second Motion in Limine.

30. On March 28, 2023, Plaintiffs filed their Response in Opposition to Defendants' Motion to Reconsider March 2, 2023 Order.

31. On April 12, 2023, the Parties attended mediation with mediator Mike Ungar, and ultimately agreed to settlement terms.

WHEREAS, the Plaintiffs and Class Counsel, while believing that the claims asserted in the Action are meritorious, have considered the risks associated with the continued prosecution of this complex and time-consuming litigation, the relief secured in this Agreement, as well as the likelihood of success at trial and on any appeal of this Action, and believe that, in consideration of all the circumstances, the proposed Settlement embodied in this Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class Members; and

WHEREAS, Defendants, while denying wrongdoing of any kind and without admitting liability, nevertheless agrees to enter into this Agreement to avoid further burden, expense and risk

of protracted litigation and to effect a full and final settlement of the claims asserted in this Action on the terms set forth below;

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree, subject to approval by the Court, as follows.

II. Definitions

In addition to the terms defined at various points within this Agreement, the following Defined Terms apply throughout this Agreement:

32. “Action” means *Davis, et al. v. Geico Casualty Company, et al.*, No. 2:19-CV-02477-GCS-EPD, United District Court for the Southern District of Ohio.

33. “Automobile Insurance Policy” means an Ohio personal automobile policy of insurance issued by GEICO in effect during the Class Period and providing first-party private-passenger automobile physical damage coverage.

34. “Cash Settlement Benefits” means the maximum amount of up to \$19,850,000.00 in cash that Defendants agree to make available to pay Settlement Class Members who timely submit a claim under the Settlement, and to pay any Class Counsel Fee Award. The Cash Settlement Benefits will be the maximum made available by Defendants for all Settlement Class Member Payments, Class Counsel Fees, and all other fees or costs of any kind, with the exception of settlement administration costs and Service Award, which Defendants will pay for separately.

35. “Claim Forms” mean the Court-approved claim forms, which may be electronic or physical paper, that a member of the Settlement Class must complete, sign and submit to the Settlement Administrator to be considered for payment under the Settlement. The Claim Forms shall be in substantially the same form as contained in Exhibits A and B.

36. “Claim Payment” means the payment issued by GEICO or the Settlement Administrator to Settlement Class Members who submit valid and timely claims.

37. “Claim Form Submission Process” means the process by which members of the Settlement Class will submit Claim Forms either by mail or electronically, which will then be reviewed for timeliness and completeness by the Settlement Administrator and validity by the Parties.

38. “Claimant” means anyone who timely submits a Claim Form in accordance with the Claim Form submission requirements in this Agreement.

39. “Claims Deadline” means the date by which Claim Forms must be dispatched for purposes of being considered timely. If the Claim Form is submitted by mail, compliance with the Claims Deadline shall be determined by the date in which the Claim Form is postmarked, and if electronically, the date the Claim Form is submitted online. The Claims Deadline shall be 45 days after the first Mailed Notice.

40. “Class Counsel” means:

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Daniel Richard Karon, Esq.
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Cleveland, OH 44113

41. “Class Counsel Fee Award” shall mean any Court-awarded attorneys’ fees, costs and expenses to Class Counsel. Class Counsel Fee Award shall be payable from the Cash Settlement Benefits available for payment to the Settlement Class Members.

42. “Class Data” means certain Settlement Class Member claim data for Covered Total Loss Claims.

43. “Class Period” means the period of January 1, 2009 through August 31, 2020.

44. “Class Representatives” means Janet Davis, Angel Randall, Alma Lee Resendez, Mandy Phelan and Trey Roberts.

45. “Court” means the United States District Court for the Southern District of Ohio.

46. “Covered Total Loss Claim” means any first-party private passenger auto property damage claim determined to constitute a Total Loss to an insured automobile that (a) occurred within the Class Period, (b) relates to an owned or leased vehicle, (c) was determined by GEICO or by a court or arbitrator of competent jurisdiction to be covered by an Automobile Insurance Policy, and (d) resulted in a Total Loss Claim Payment under either the insured’s comprehensive or collision coverages.

47. “Defendants” means GEICO Casualty, GEICO Advantage, GEICO Choice, GEICO General and GEICO Secure.

48. “Effective Date” means the fifth business day after which all of the following events have occurred:

a. This Agreement has been fully executed by the Parties and/or their counsel;

- b. No Party has terminated the Agreement;
- c. Orders have been entered by the Court certifying a Settlement Class, granting preliminary approval of this Agreement, and approving a form of notice and claims forms as provided in this Agreement;
- d. The Court has entered without material change the Final Approval Order and judgment releasing all Released Person from all Released Claims, and dismissing the Action with prejudice and without leave to amend, as provided in this Agreement;
- e. The Court has fully resolved any application made by Class Counsel for a Class Counsel Fee Award and Service Award; and
- f. The Final Approval Order has become Final as defined in Paragraph 50, below.

49. “Final Approval” means the date that the Court enters the Final Approval Order.

50. “Final” means that (a) the Final Approval Order is a final, appealable judgment and (b) either (i) no appeal has been taken from the Final Approval Order as of the date on which all times to appeal therefrom have expired, or (ii) an appeal or other review proceeding of the Final Approval Order having been commenced, such appeal or other review is finally concluded and no longer is subject to review by any court, whether by appeal, petitions for rehearing or reargument, petitions for rehearing *en banc*, petitions for writ of certiorari, or otherwise and such appeal or other review has been fully and finally resolved in such manner that affirms the Final Approval Order.

51. “Final Approval Hearing” means the hearing held before the Court wherein the Court will consider granting final approval to the Settlement and further determine the amount of fees awarded to Class Counsel and the amount of any Service Award to the Class Representatives.

52. “Final Approval Order” means the final order that the Court enters granting Final Approval to the Settlement, disposing of all claims asserted in the Action with prejudice, and settling and relasing all claims consistent with the terms of this Agreement. The proposed Final Approval Order shall be in a form agreed upon by the Parties and shall be substantially in the form attached as an exhibit to the Motion for Final Approval. Final Approval Order also includes the orders, which may be entered separately, determining the amount of fees awarded to Class Counsel and the amount of any Service Award to the Class Representatives.

53. “GEICO” means Defendants and their parents, subsidiaries, affiliates and related insurance companies including, but not limited to, Government Employees Insurance Company and GEICO Indemnity Company.

54. “Legally Authorized Representative” means an administrator/administratrix, personal representative, or executor/executrix of a deceased Settlement Class Member’s estate; a guardian, conservator, or next friend of an incapacitated Settlement Class Member; or any other legally appointed Person or entity responsible for handling the affairs of a Settlement Class Member. For purposes of completing a claim form, a surviving spouse of a deceased class member will be considered a Legally Authorized Representative for purposes of this agreement if no Estate has been opened, and no other person has legal authority for handling the affairs of the deceased Settlement Class Member.

55. “Long Form Notice” means the Court-approved long form notice, without material alteration from Exhibit C, to be made available on the Settlement Website.

56. “Notice Program” means the methods provided for in this Agreement for providing notice to potential Settlement Class Members.

57. “Objection Deadline” means the date no later than 30 days after the first Mailed Notice by which Settlement Class Members’ objections must be postmarked and mailed to the Settlement Administrator and filed with the Court. The Objection Deadline shall appear in the Notices.

58. “Opt-Out Deadline” means the date no later than 30 days after the first Mailed Notice by which Settlement Class Members requests to exclude themselves from the Settlement Class must be postmarked. The Opt-Out Deadline will be specified in the Notices.

59. “Plaintiffs” means Janet Davis, Angel Randall, Alma Lee Resendez, Mandy Phelan and Trey Roberts.

60. “Preliminary Approval” means the date that the Court enters, without material change, an order preliminarily approving the Settlement set forth in this Settlement Agreement as fair, adequate and within the range of possible final approval.

61. “Preliminary Approval Order” means the order granting Preliminary Approval of this Settlement substantially in the form as Exhibit D, attached hereto.

62. “Releases” means all the releases contained in Paragraphs 63-65 hereof.

63. “Released Claims” means and includes any and all known and unknown claims, rights, actions, suits or causes of action of whatever kind or nature, whether *ex contractu* or *ex delicto*, statutory, common law or equitable, including but not limited to breach of contract, bad faith or extracontractual claims, and claims for punitive or exemplary damages, or prejudgment or postjudgment interest, arising from or relating in any way to GEICO’s failure to pay sufficient title transfer fees and/or tag transfer fees and/or registration fees and/or sales tax to Plaintiffs and all

Settlement Class Members with respect to any Covered Total Loss Claim during the Class Period under an Automobile Insurance Policy.

64. “Releasing Parties” means Plaintiffs and all Settlement Class Members who do not timely opt-out of the Settlement Class, and each of their respective executors, representatives, heirs, predecessors, assigns, beneficiaries, successors, bankruptcy trustees, guardians, joint tenants, tenants in common, tenants by entireties, agents, attorneys, and all those who claim through them or on their behalf.

65. “Released Parties” means (a) GEICO; (b) all divisions, parent entities, affiliates, and subsidiaries of GEICO; (c) all past and present officers, directors, agents, attorneys, employees, stockholders, successors, assigns, independent contractors, insurers and reinsurers of GEICO; and (d) all of the heirs, estates, successors, assigns, and legal representatives of any of the entities or persons listed in this Paragraph.

66. “Sales Tax” means the mandatory 5.75% sales tax collected or assessed by the State of Ohio.

67. “Service Award” means the potential award to each of the Plaintiffs, if any, as determined by the Court, for serving as Class Representatives, which is in addition to any payment due Plaintiffs as a Settlement Class Member.

68. “Settlement Administrator” means JND Legal Administration (“JND”).

69. “Settlement Administration Costs” means all reasonable costs and fees of the Settlement Administrator regarding notice and settlement administration.

70. “Settlement Class” means all insureds under an Automobile Insurance Policy covering a vehicle with auto physical damage coverage for comprehensive or collision loss, who

made a comprehensive or collision first-party claim, GEICO determined the claim was covered and that the vehicle was a total loss during the Class Period, and whose claim was adjusted and paid by GEICO as a total loss where GEICO did not pay all Sales Tax and/or Transfer Fees.

Excluded from the Class are:

- (1) GEICO, all present or former officers and/or directors of GEICO, the Neutral Evaluator, Class Counsel, and a Judge of this Court;
- (2) Claims for which GEICO received a valid and executed release;
- (3) Claims where GEICO paid full Sales Tax and Transfer Fees; and
- (4) Claims subject to binding appraisal and/or arbitration.

71. “Settlement Class Member” means any member of the Settlement Class as set forth above.

72. “Settlement Website” means the website that the Settlement Administrator will establish as a means for the Settlement Class to obtain notice of and information about the settlement, through and including hyperlinked access to this Agreement, the Long Form Notice, access to a downloadable printable Claim Form, Motion for Preliminary Approval, Preliminary Approval Order, and such other documents as the Parties agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website and the Settlement Website shall remain online for 180 days following the Effective Date. The URL of the Settlement Website shall be agreed to by Class Counsel and Defendants. The Settlement Website shall not include any advertising and shall not bear or include the GEICO’s logo or GEICO’s trademarks. Ownership of the Settlement Website URL shall be transferred to Defendants within 10 days of the date on which operation of the Settlement Website ceases.

73. “Short Form Notice” means the notice which will be sent in two ways (1) via postcard, pre-paid postage, with a detachable claim form that is pre-filled with the claimant’s

information and served by direct mail to the policy or last known address of the insured, including skip trace remailing for any undelivered mail (“Mailed Notice”) and (2) via email, to the extent such addresses are kept by Defendants (“Email Notice”). The short form notices shall be substantially in the same form as Exhibits A and E.

74. “Total Loss” means an insured vehicle that sustained damage, was the subject of a covered first-party property damage comprehensive or collision claim submitted to GEICO, and for which GEICO issued a Total Loss Claim Payment.

75. “Total Loss Claim Payment” means a first-party property damage claim payment made by GEICO under Section III of GEICO’s Automobile Insurance Policy for a vehicle determined to be a Total Loss.

76. “Transfer Fees” means the \$15.00 title fee and \$4.50 or \$6.00 registration transfer fee assessed by the State of Ohio.

III. Preliminary Certification of the Settlement Class

77. Solely for the purpose of implementing this Agreement and effectuating the proposed Settlement, Defendants stipulate to entry of a Preliminary Approval Order (in the form of the proposed Order attached as Exhibit D or including the substance of the proposed Order attached as Exhibit D), preliminarily certifying the Settlement Class, appointing the Plaintiffs as representatives of the Settlement Class, and appointing Class Counsel to serve as counsel for the Settlement Class.

78. Upon execution of this Agreement by all Parties, Class Counsel shall promptly submit this fully executed Agreement to the Court, and shall request entry of the Preliminary Approval Order, without material alteration from Exhibit D, that specifically: (1) approves the

terms of the settlement as within the range of fair, adequate, and reasonable; (2) provisionally certifies the Settlement Class pursuant to Federal Rule of Civil Procedure 23 for settlement purposes only; (3) approves Claim Forms and Short Form Notices to be distributed to and/or used by Settlement Class Members, and set a Claims Deadline by which Claim Forms must be submitted in order to be deemed timely; (4) approves the settlement website described in Paragraph 72; (5) finds that the Class Action Fairness Act Notice to be made by the Settlement Administrator on behalf of GEICO as set forth in Paragraph 87 is in full compliance with 28 U.S.C. § 1715(b); (6) appoints JND as the Settlement Administrator; (7) determines that the Notice Program provided to potential Settlement Class Members (i) is the best practicable notice under the circumstances; (ii) is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and their right to object to or exclude themselves from the proposed Settlement; and (iii) constitutes due, adequate, and sufficient notice to all Persons entitled to receive notice; (8) approves the procedures set forth herein and below for members of the Settlement Class to exclude themselves from the Settlement Class or to object to the Settlement; (9) stay the Action pending Final Approval of the Settlement; and (10) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel, and counsel for Defendants, at which the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith, and determine whether to approve the Settlement and Class Counsel's application for Class Counsel Fee Award and for a Service Award to the Class Representatives.

79. In the event that the Settlement is not consummated for any reason, (a) the Parties and their attorneys shall proceed as though the Agreement had never been entered and the Parties and their Counsel shall not cite nor reference this Agreement (or negotiations relating to this

Agreement), (b) nothing in this Agreement and/or the fact that it was entered into and/or negotiations relating to this Agreement shall be offered, received or construed as an admission or as evidence for any purpose in any proceeding, including certification of a class, and (c) the Parties agree to jointly file a motion with the Court to vacate all orders entered pursuant to this Agreement.

80. For Settlement purposes only, Plaintiffs and Defendants agree to ask the Court to certify the Settlement Class under the Federal Rules of Civil Procedure.

IV. Settlement Consideration

81. Subject to approval by the Court, GEICO has agreed to the following Consideration:

- a. pay Settlement Class Members an aggregate of up to \$19,850,000 in Cash Settlement Benefits to be divided between Settlement Class Members as explained in detail in Section XI herein below;
- b. pay all reasonable Settlement Administration Costs;
- c. pay the Class Representatives any Court-awarded Service Award up to \$7,500.00 per Class Representative; and
- d. pay Class Counsel, from the Cash Settlement Benefits to Settlement Class Members, any Court-awarded fees and costs of up to \$5,756,500.00.

82. Non-Monetary Consideration: As part of the Settlement, the day following the signing of the Settlement Agreement:

- a. GEICO agrees to continue to pay applicable Sales Tax and Transfer Fees on total loss vehicles at the time of loss, without requiring the policyholder to provide proof that the policyholder purchased a replacement vehicle and without regard to whether the vehicle is leased or owned.
- b. GEICO reserve the right to change their practices in the event of a change

in Ohio law, a change in the state of Ohio's fees charged incidental to the transfer of vehicle ownership and/or registration or appropriate changes in the terms of the applicable insurance policies.

V. Discovery and Settlement Data

83. Class Counsel and Defendants already have engaged in significant discovery related to liability and damages. Additionally, for purposes of effectuating the Settlement, no later than 20 days after entry of the Preliminary Approval Order, Defendants will make available, subject to the terms of the protective order in this matter, to Class Counsel and the Settlement Administrator, any additional Class Data necessary to identify Settlement Class Members and/or effectuate notice.

VI. Settlement Administrator

84. The Parties agree to the appointment of JND as Settlement Administrator to perform the services described herein. Defendants shall be solely responsible for the payment of the Settlement Administrator's fees and costs relating to the effectuation of the Notice Program as described herein.

85. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph hereafter and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, effectuating the Notice Program and may distribute all or some of the Settlement Class Member Payments as provided herein.

86. The duties of the Settlement Administrator, in addition to other responsibilities that are described in the preceding paragraph and elsewhere in this Agreement, are as follows:

- a. Use the name and address information of the Settlement Class Members

provided by Defendants in connection with the Notice Program approved by the Court, for the purpose of distributing the Mailed Notice and Email Notice;

- b. Process Claim Forms and oversee the Claim Form Submission Process as described more fully herein and below;
- c. Establish and maintain a post office box for requests for exclusion or objections from Settlement Class Members;
- d. Provide to the Parties, within five (5) business days of receipt, copies of all objections, motions to intervene, notices of intention to appear, and requests for exclusion from the Settlement Class;
- e. Establish and maintain the Settlement Website;
- f. Establish and maintain an automated toll-free telephone line 24/7 for Settlement Class Members to call and leave messages regarding Settlement-related inquiries, and respond to questions of Settlement Class Members who call with or otherwise communicate such inquiries;
- g. Respond to any mailed Settlement Class Member inquiries;
- h. Process all requests for exclusion from the Settlement Class;
- i. Provide daily reports (as practicable) to Class Counsel and Defendants that summarize the number of Claim Forms received, requests for exclusion received, the total number of exclusion requests received to date, the number of objections received that week, the total number of objections received to date, and other pertinent information;
- j. In advance of the Final Approval Hearing, prepare an affidavit to submit to the Court confirming that the Notice Program was completed, describing how the Notice Program was completed, providing the names of each member of the Settlement Class who timely and properly requested

exclusion from the Settlement Class or served objections, detailing the number of Claim Forms that were timely and validly submitted, and other information as may be necessary to allow the Parties to seek and obtain Final Approval;

- k. Distribute and/or work with GEICO for it to distribute Claim Payments by check to Settlement Class Members;
- l. Provide to Plaintiffs' Counsel and Defendants a detailed list of Settlement Class Members who submitted timely and valid Claim Forms so that Defendants may review records to determine if the Claimant is entitled to payment,.
- m. Invoice Defendants for payment of Settlement Administration Costs, as provided in this Agreement; and
- n. Any other Settlement-administration-related function at the instruction of Class Counsel or Defendants.

VII. CAFA Notice

87. Pursuant to 28 U.S.C. § 1715(b), within 10 days after this Agreement is filed with the Court, the Settlement Administrator, on behalf of GEICO, will give notice to the Attorney General of the United States, Federal Reserve Board, the Chief Financial Officer of the State of Ohio, the Ohio Insurance Commissioner, and the primary insurance regulatory or supervisory official of each state and territory of the United States, serving on them the documents described in 28 U.S.C. § 1715(b)(1) through (8), as applicable.

VIII. Notice Program

88. GEICO represents that it will timely produce to effectuate the deadlines herein, email and mail addresses in its possession for Settlement Class Members.

89. Within 90 days of the Preliminary Approval of the Settlement, the Settlement Administrator shall implement the Notice Program provided herein, using the forms of Notice approved by the Court.

90. Notice shall be provided to the Settlement Class in two different ways: (a) Long Form Notice, which shall include a summary of the notice, made available upon request to the Settlement Administrator, and available on the Settlement Website; (b) Short Form Notice, which will be sent in two ways: (1) Mailed Notice sent via postcard, pre-paid postage, with a detachable Claim Form that is pre-filled with the claimant's information and served by direct mail on two occasions to the policy or last known address of the insured, including skip trace remailing for any undelivered mail and (2) Email Notice sent via email, to the extent such addresses are kept by GEICO. Within 90 days of the Preliminary Approval Order, JND shall initiate mailing of the first Mailed Notice and Claim Form. Mailed Notice shall be sent on two separate occasions, with the second Mailed Notice only being sent to Settlement Class Members that have not yet submitted a Claim Form. The second Mailed Notice will be sent approximately thirty (30) days after the Mailed Notice Date.

91. The Settlement Administrator shall perform reasonable address traces for any Mailed Notice returned as undeliverable. By way of example, a "reasonable" tracing procedure would be to run addresses of returned postcards through the Lexis/Nexis database that can be utilized for such purpose.

92. For each Settlement Class Member for whom GEICO provides an associated e-mail address, the Settlement Administrator shall send Email Notice. Email Notice shall be sent out on a date suggested by the Settlement Administrator, but not before the first Mailed Notice, and shall include a link to the Settlement Website.

93. Notices provided under or as part of the Notice Program shall not bear or include GEICO's logos or trademarks or the return address of GEICO, or otherwise be styled to appear to originate from GEICO.

94. The Settlement Administrator shall create the Settlement Website.

95. The Settlement Administrator shall also establish a toll-free number whereby the Settlement Class Members may call and leave messages regarding Settlement-related inquiries.

96. All costs related to the Notice Program shall be paid by Defendants.

IX. Requests for exclusion and objections

97. A member of the Settlement Class may opt-out of the Settlement Class at any time on or before the Opt-Out Deadline, provided the opt-out notice is postmarked no later than the Opt-Out Deadline. Any Settlement Class Member who does not timely and validly request to opt-out shall be bound by the terms of this Agreement.

98. Settlement Class Members who wish to exclude themselves from the Settlement Class must submit timely and written requests for exclusion. To be effective, such a request must include the Settlement Class Member's name and address, an unequivocal statement that the Settlement Class Member wishes to be excluded from the Settlement Class, and the signature of the Settlement Class Member or the Legally Authorized Representative of the Settlement Class Member. The request must be mailed to the Settlement Administrator at the address provided in the Short Form or Long Form Notices postmarked no later than thirty (30) days after the date of the first Mailed Notice. Requests for exclusion must be exercised individually by the Settlement Class Member and is only effective as to the individual Settlement Class Member requesting exclusion.

- a. Plaintiffs shall not elect or seek to opt out or exclude themselves from the Settlement Class, and any such attempt will be deemed a breach of this Agreement and sufficient to permit Defendants to terminate the Agreement.
- b. Class Counsel agree that representations, encouragements, solicitations or other assistance to any Person seeking exclusion from the Settlement Class or any other Person seeking to litigate with Released Persons over any of the Released Claims in this matter could place Class Counsel in a conflict of interest with the Settlement Class. Accordingly, Class Counsel and their respective firms agree not to represent, encourage, solicit, or assist any Person in requesting exclusion from the Settlement Class. Nothing in this paragraph shall preclude or prevent Class Counsel from answering inquiries from any potential Settlement Class Member. Class counsel agrees to utilize the recorded answers to frequently asked questions as agreed to by the Parties to respond to inquiries from potential Settlement Class Members. In the event a potential Settlement Class Member has a question that is not addressed by the Parties in the frequently asked questions, Class Counsel will contact GEICO's counsel and a response will be agreed to by the Parties.
- c. The Settlement Administrator shall promptly log and prepare a list of all Persons who properly requested exclusion from the Settlement Class (the "Opt-Out List") and shall submit an affidavit to the Court that includes and attests to the accuracy of the Opt-Out List no later than ten (10) days prior to the Final Approval Hearing set by the Court.
- d. All Settlement Class Members who do not timely and properly exclude themselves from the Settlement Class shall be bound by this Agreement, and all their claims shall be dismissed with prejudice and released as provided for herein pursuant to the terms of a Final Order and Judgment.

99. Settlement Class Members who do not request exclusion from the Settlement Class may object to the proposed Settlement. Settlement Class Members who choose to object to the proposed Settlement must file written notices of intent to object. Any Settlement Class Member who timely files an objection in compliance with this paragraph may appear at the Final Approval Hearing, in person or by counsel, and be heard to the extent and only if permitted by the Court. To be timely, the objection must be postmarked and mailed to the Settlement Administrator, and filed with the Court, by the Objection Deadline. The right to object to the proposed Settlement or to intervene in the Action must be exercised individually by a Settlement Class Member or his or her attorney or Legally Authorized Representative, and not as a member of a group, class, or subclass. To be effective, an objection must include all of the following information:

- a. The name of the case and case number;
- b. The Settlement Class Member's name, address, telephone number, and signature;
- c. The specific reasons why the Settlement Class Member is objecting to the terms of the proposed Settlement;
- d. The name, address, bar number, and telephone number of any attorney who represents the Settlement Class Member related to the intention to object to the terms of the Settlement;
- e. Whether the Settlement Class Member and/or his or her attorney intend to appear at the Final Approval Hearing and whether the Settlement Class Member and/or his or her attorney will request permission to address the Court at the Final Approval Hearing.

100. In addition, an objection must contain the following information, if the Settlement Class Member or his or her attorney requests permission to speak at the Final Approval Hearing:

- a. A statement of the legal and factual basis for each objection;
- b. A list of any and all witnesses the Settlement Class Member may seek to call at the Final Approval Hearing;
- c. A list of any legal authority the Settlement Class Member will present at the Final Approval Hearing; and
- d. Identify either the Settlement Class Member's class member number or full name and address when the total loss occurred.

101. Any Settlement Class Member who does not file a timely objection waives the right to object or to be heard at the Final Approval Hearing and is barred from making any objection to the proposed Settlement. Settlement Class Members have the right to exclude themselves from the proposed Settlement and pursue a separate and independent remedy against GEICO by complying with the exclusion provisions set forth herein. Settlement Class Members who object to the proposed Settlement shall remain Settlement Class Members and waive their right to pursue an independent remedy against GEICO. To the extent any Settlement Class Member objects to the proposed Settlement, and such objection is overruled in whole or in part, such Settlement Class Member will be forever bound by the Final Approval Order and Judgment of the Court. Settlement Class Members can avoid being bound by any judgment of the Court by complying with the exclusion provisions set forth herein. The Settlement Administrator shall provide Defendants and Class Counsel a copy of each objection received by the Settlement Administrator.

X. Final Approval Order and Judgment

102. Plaintiffs' Motion for Preliminary Approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur. Plaintiffs shall file their Motion for Final Approval of the Settlement, inclusive of Class Counsel's application for

a Class Counsel Fee Award, and for a Service Award for the Class Representative, no later than 45 days before the Final Approval Hearing. At the Final Approval Hearing, the Court will hear argument on Plaintiffs' Motion for Final Approval of the Settlement, Class Counsel's application for Class Counsel Fee Award, and for the Service Award for the Class Representatives. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Member (or their counsel) who object to the Settlement or to Class Counsel's application for Class Counsel Fee Award or the Service Award application, provided the objectors submitted timely objections that meet all of the requirements listed in the Agreement.

103. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order granting Final Approval of the Settlement and final judgment thereon, and whether to approve Class Counsel's request for Class Counsel Fee Award and Service Award. Such proposed Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, adequate and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice Program satisfied Due Process requirements;
- d. Find that the Class Action Fairness Act Notice provided by the Settlement Administrator on behalf of GEICO complied with 28 U.S.C. § 1715(b);
- e. Bar and enjoin all Releasing Parties from asserting any of the Released Claims; bar and enjoin all Releasing Parties from pursuing any Released Claims against the Released Parties, GEICO or its affiliates at any time, including during any appeal from the Final Approval Order; and retain jurisdiction over the enforcement of the Court's injunctions;
- f. Release GEICO and the Released Parties from the Released Claims; and

- g. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Defendants, all Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

XI. Claim Form Submission, Calculation and Distribution of Settlement Class Member Payments and Residual Funds

104. This settlement shall be a claims-made settlement. To receive a Claim Payment, Settlement Class Members must submit a Claim Form by the Claims Deadline. A Claim Form must be postmarked or received no later than the Claims Deadline or must be submitted electronically not later than midnight Eastern on the Claims Deadline, at which point the Settlement Administrator shall deactivate the ability to submit a claim form through the website.

105. Each known member of the Settlement Class for whom GEICO has a mailing address will receive a Claim Form as part of the Mailed Notice. To be eligible for the Settlement Class Member Payment, each member of the Settlement Class submitting a Claim Form by mail shall be required to sign a paper Claim Form and dispatch it in the mail with a postmark by the Claims Deadline. Thereafter, upon receipt, the Settlement Administrator will evaluate the Claim Form to make sure it was timely received and signed.

106. Members of the Settlement Class may alternatively submit Claim Forms online electronically by the Claims Deadline at the Settlement Website by providing at least one of the following: 1) the unique claim number assigned to the claim by the Settlement Administrator; or 2) the claim number associated with the Total Loss. The Settlement Website will include a button to "Submit a Claim" that will allow members of the Settlement Class to submit their claim form online. Only one Claim Form may be submitted per Total Loss.

107. If a Claim Form is unsigned or illegible or contains some other defect as agreed to by the Parties, the Settlement Administrator shall send the claimant a letter informing him or her of the defect and providing the claimant with thirty (30) days in which to cure the defect. If the claimant does not subsequently provide a Claim Form curing the defect and postmarked within thirty (30) days of the date of the Settlement Administrator's letter, that Claim Form shall be deemed defective and not eligible for payment, and the claimant shall not have an additional opportunity to cure the defect.

108. Within sixty (60) days after the later of the Claims Deadline or the Effective Date, GEICO shall begin to:

- a. inform Class Counsel and the Settlement Administrator of any claims (other than claims determined by the Settlement Administrator to be untimely) it believes are invalid; and
- b. For those claims that GEICO does not challenge as invalid, GEICO shall begin to provide the Settlement Administrator and Class Counsel the amount of payment, including interest, for each claim. Class Counsel will have ten days from the provision of the Claim Payment amount to dispute the amount of Claim Payment. GEICO and Class Counsel shall cooperate to resolve any dispute as to Claim Payment within ten days.

109. Within the later of ninety (90) days after the Effective Date or 15 days after a Class Member cures any deficiencies with the claim submission or raised by GEICO, GEICO and/or the Settlement Administrator shall begin making Claim Payments by mailing checks to Settlement Class Members whose submitted claims were not challenged as invalid, and for which Class Counsel did not dispute the amount of Claim Payment.

110. The calculation and implementation of allocations of the Cash Settlement Benefits contemplated by this section shall be done by Defendants for the purpose of compensating Settlement Class Members. The methodology provided for herein will be applied to the data as consistently, sensibly, and conscientiously as reasonably possible, recognizing and taking into consideration the nature and completeness of the data and the purpose of the computations.

111. The Parties have agreed that Defendants shall pay Settlement Class Members who were not previously paid full state sales tax on their Total Loss, Sales Tax based on the adjusted value of their totaled vehicle at the Ohio State Sales Tax rate of 5.75%. For Settlement Class Members who were not previously paid Transfer Fees on their Total Loss, Defendants will pay the applicable Transfer Fees of either \$19.50 or \$21.00. GEICO is permitted to reduce Claim Payments by amounts paid by GEICO for Sales Tax and/or Transfer Fees as part of the Total Loss.

112. Defendants also shall deduct from each and every Claim Payment the Settlement Class Member's percentage of Court-awarded fees and costs. To illustrate, if Class Counsel fees and costs approved by the Court total \$5,831,500.00, then Claim Payments will be reduced by 29.37% ($\$5,831,500/\$19,850,000$), so that if Settlement Class Member Payments total \$10,000,000.00 before the reduction, the maximum total Settlement Class Member Payments due to Settlement Class Members will be \$7,063,000.00.

113. The Settlement Administrator shall provide to Counsel for the Parties a list of all timely, valid claims received (i.e., claims submitted electronically by 11:59 pm Eastern on the Claims Deadline or post-marked on or before the Claims Deadline, and which contain the information required in Paragraphs 105 and 106 and are legible, signed, etc.). Defendants shall review their records of each timely claim submitted to determine if the Settlement Class Member was already paid full or partial Sales Tax or Transfer Fees. If GEICO previously paid the

Settlement Class Member Sales Tax or Transfer Fees, as applicable, GEICO shall inform Class Counsel and the Settlement Administrator and no payment will be made to that Settlement Class Member. Any underpayment (in contrast to no payment at all) of Sales Tax or Transfer Fees in the original total loss settlement shall reduce the Claim Payment.

114. Claim Payments will be made payable by check. Checks shall be valid for 180 days. Timely negotiation of checks is a condition of any Settlement Class Member's right to the Claim Payment.

115. Neither GEICO nor the Settlement Administrator shall have any obligation to re-issue checks that are not negotiated within 180 days of issuance.

116. Settlement Class Members may dispute the denial of their claim or payment amount by providing written notice of objection to the Settlement Administrator, along with any supporting documentation, within 30-days of mailing of the claim denial or claim payment by the Settlement Administrator, who shall provide copies of all objections and supporting documentation to Counsel for the Parties within 7 days of receipt. Defendants shall then have 30 days to respond to the objection, along with any supporting documentation, to Class Counsel and the Settlement Administrator. If the Parties do not agree on a resolution of the objection then the objection and any responses by Defendants shall be forwarded to a neutral evaluator, agreed upon by the Parties. The neutral evaluator shall issue a ruling upon all objections within 30 days of receipt, and all such rulings shall be final and binding upon Settlement Class Members and the Parties. Defendants shall pay all fees and costs of the neutral evaluator.

XII. Releases

117. As of the Court's entry of the Final Approval Order, Releasing Parties shall automatically be deemed to have fully and irrevocably released and forever discharged the

Released Parties of the Released Claims. The Court will dismiss the action with prejudice. Any and all claims not released are preserved.

118. Each Settlement Class Member is barred and permanently enjoined from bringing on behalf of themselves, or through any person purporting to act on their behalf or purporting to assert a claim under or through them, any of the Released Claims against the Released Parties in any forum, action, or proceeding of any kind.

119. Plaintiffs further agree that no liability shall attain in favor of Plaintiffs against any officer, director, member agent, or employee of GEICO, but rather, Plaintiffs shall look solely to the assets of GEICO for satisfaction of the Agreement.

120. Plaintiffs or any Settlement Class Member may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the claims released herein, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the entry of the Final Approval Order, he/she shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters described in or subsumed by herein. Further, each of those individuals agrees and acknowledges that he/she shall be bound by this Agreement, including by the release herein and that all of their claims in the Action shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he/she never receives actual notice of the Settlement and/or never receives a distribution of funds or credits from the Settlement. In addition to the releases made by Plaintiffs and Settlement Class Members above, Plaintiffs, including each and every one of their agents,

representatives, attorneys, heirs, assigns, or any other person acting on their behalf or for their benefit, and any person claiming through them, makes the additional following general release of all claims, known or unknown, in exchange and consideration of the Settlement set forth in this Agreement. These named Plaintiffs agree to a general release of the Released Parties from all claims, demands, rights, liabilities, grievances, demands for arbitration, and causes of action of every nature and description whatsoever, known or unknown, pending or threatened, asserted or that might have been asserted, whether brought in tort or in contract, whether under state or federal or local law.

XIII. Payment of Class Counsel Fees and Service Award

121. Class Counsel's entitlement, if any, to a Class Counsel Fee Award, and the Class Representative's entitlement, if any, to a Service Award, will be determined by the Court. The terms of any such awards, fees, costs, or expenses were not negotiated until after all material elements of the proposed Settlement were resolved and the terms of this proposed Settlement are not conditioned upon any maximum or minimum Class Counsel Fee Award or Service Award, except as explicitly stated herein.

122. Defendants agree not to oppose Class Counsel's request for attorneys' fees of up to \$5,756,500.00. The attorneys' fees request, is equal to approximately 29% of the maximum Cash Settlement Benefits. Any award of Class Counsel Fees shall be payable out of the Cash Settlement Benefits available to Settlement Class Members. The Parties agree that the Court's failure to approve, in whole or in part, any award for attorneys' fees or Class Counsel Fees shall not prevent the Agreement from becoming Effective, nor shall it be grounds for termination.

123. Provided that Plaintiffs have provided Defendants with instructions to pay by check or wire, a completed IRS Form W9 and cancelled check at least 7 days prior to the Effective Date,

then within 14 days after the Effective Date, Defendants shall pay a designated Class Counsel firm the Class Counsel Fee Award. Class Counsel shall be solely responsible for distributing each Class Counsel firm's allocated share of such fees to that firm. Defendants shall have no responsibility for any allocation, and no liability whatsoever to any person or entity claiming any share of the funds to be distributed for payment of Class Counsel Fees, Court-awarded costs, or any other payments from the Cash Settlement Benefits not specifically described herein.

124. Class Counsel will ask the Court to approve a Service Award to the Plaintiffs in the amount of \$7,500.00 each. The Service Award is to be paid by Defendants to the Class Representative within 7 days of the Effective Date. Defendants agree not to oppose Class Counsel's request for a Service Award. The Parties agree that the Court's failure to approve a Service Award, in whole or in part, shall not prevent the Agreement from becoming Effective, nor shall it be grounds for termination.

125. The Parties negotiated and reached agreement regarding Class Counsel Fee Award and the Service Award, only after reaching agreement on all other material terms of this Settlement.

XIV. Termination of Settlement

126. This Settlement may be terminated by either Class Counsel or Defendants by serving on counsel for the opposing Party and filing with the Court a written notice of termination within 15 days (or such longer time as may be agreed in writing between Class Counsel and Defendants) after any of the following occurrences:

- a. Plaintiffs and Defendants agree to termination;
- b. the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement;

- c. an appellate court vacates or reverses the Final Approval Order, and the Settlement is not reinstated and finally approved without material change by the Court on remand within 360 days after such reversal;
- d. any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, Final Approval Order, or the Settlement in a way that Class Counsel or Defendants seeking to terminate the Settlement reasonably considers material. Notwithstanding anything to the contrary, the reasoning or authority relied upon by any court in entering the Preliminary Approval Order or Final Approval Order shall not be considered material for termination of this Settlement;
- e. the Effective Date does not occur; or
- f. any other ground for termination provided for elsewhere in this Agreement.

XV. Effect of a Termination

127. The grounds upon which this Agreement may be terminated are set forth herein above. In the event of a termination, this Agreement shall be considered null and void; all of Plaintiffs', Class Counsel's, and Defendants' obligations under the Settlement shall cease to be of any force and effect; and the Parties shall return to the status *quo ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement rights, claims and defenses will be retained and preserved.

128. In the event of termination, Defendants shall have no right to seek reimbursement from Plaintiffs, Class Counsel, or the Settlement Administrator for Settlement Administration Costs paid by Defendants. Defendants shall however remain responsible for any Settlement Administrator invoices that were outstanding at the time of the termination.

129. The Settlement shall become effective on the Effective Date unless earlier terminated in accordance with the provisions hereof.

130. In the event the Settlement is terminated in accordance with the provisions of this Agreement, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made or filed with the Court.

XVI. No Admission of Liability

131. GEICO denies any fault, wrongdoing or liability to Plaintiffs or the Settlement Class Members for monetary damages or other relief. GEICO maintains it acted in accordance with the governing laws and regulations of the State of Ohio and abided by the terms of the applicable insurance policies. GEICO nonetheless has concluded that it is in its best interests that the Action be settled on the terms and conditions set forth in this Agreement. GEICO reached this conclusion after considering the factual and legal issues in the Action, the substantial benefits of a final resolution of the Action, and the expense that would be necessary to defend the Action through judgment, appeal, and any subsequent proceedings that may occur.

132. GEICO maintains that its defenses to judgment and to class certification are meritorious. Because of the costs, resources, and time that would be incurred, GEICO asserts that it would not have settled the Action except on a claims-made basis. As a result of the foregoing, GEICO enters into this Agreement without admitting, conceding, or acknowledging any fault, liability, or wrongdoing of any kind or that certification is appropriate. This Agreement shall not be construed as an admission or concession of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind. The terms of this Agreement, including the

claims-made nature of the Agreement, are material to GEICO's decision to settle the Action notwithstanding its belief that its defenses are meritorious and its chances of success on appeal are significant.

133. Class Counsel believes that the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel fully investigated the facts and law relevant to the merits of the claims, conducted significant informal discovery, and conducted independent investigation of the challenged practices. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class.

134. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

135. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiffs or the Settlement Class, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency, or other tribunal.

XVII. Vacatur of Summary Judgment Order

136. Within five business days of the filing of the Motion for Preliminary Approval Order, the Parties will jointly file a motion requesting that the Court enter an Order vacating and/or setting aside its previous Order granting in part and denying in part Summary Judgment (Dkt No. __). The Parties jointly moving to vacate the Summary Judgment order is a material term to this Agreement. Approval of the motion to vacate is not a material term to this Agreement.

XVIII. Miscellaneous Provisions

137. Gender and Plurals. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

138. Binding Effect. This Agreement shall be binding upon, and inure to for the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

139. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, uphold Court approval, and do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.

140. Obligation to Meet and Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have met and conferred in good faith to resolve the dispute.

141. Integration. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

142. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

143. Governing Law. Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the State of Ohio, without regard to the principles thereof regarding choice of law.

144. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.

145. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of the agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against GEICO or its affiliates at any time, including during any appeal from the Final Approval Order and judgment.

146. Notices. All notices to counsel provided for herein, shall be sent by email to:

Notices to Plaintiff:

Scott Edelsberg, Esq.
EDELSBERG LAW, PA
20900 NE 30th Ave., Suite 417
Aventura, FL 33180
scott@edelsberglaw.com

Notices to Defendant:

Kymberly Kochis
EVERSHEDS SUTHERLAND LLP
1114 6th Avenue
New York, New York 10036
kymberlykochis@eversheds-sutherland.com

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice program.

147. Modification and Amendment. This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and counsel for Defendants and, if the Settlement has been approved preliminarily by the Court, approved by the Court.

148. No Waiver. The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

149. Authority. Class Counsel (for the Plaintiffs and the Settlement Class Members), and counsel for Defendants (for GEICO), represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation or entity included within the definitions of Plaintiffs and Defendants to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and

warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

150. Agreement Mutually Prepared. Neither Defendants nor Plaintiffs, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

151. Independent Investigation and Decision to Settle. The Parties understand and acknowledge that they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. Defendants have provided and are providing information that Plaintiffs reasonably requests to identify members of the Settlement Class and the alleged damages they incurred. The Parties agree that this Settlement is reasonable and will not attempt to renegotiate or otherwise void or invalidate or terminate the Settlement irrespective of what any unexamined data later shows. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.


152. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the Releases and Released Claims

contained herein, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases and Released Claims, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases and Released Claims.

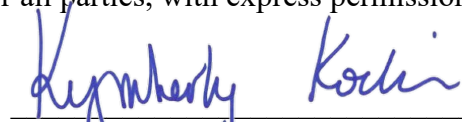
153. All discovery produced to Plaintiffs (including data, depositions, testimony and written discovery) will be returned to Defendants' outside counsel or destroyed within 15 days of a final and non-appealable Court order approving the Settlement. The Parties agree that Class Counsel or anyone associated with Class Counsel's firms shall not use of any of the discovery produced in this litigation in any other litigation, whether pending or future, unless independently obtained through discovery or other procedures in that litigation. Further, Plaintiffs and Class Counsel agree not to use any discovery (including data) produced in these actions to solicit in any way potential new class representatives.

154. No party or counsel (including counsel's law firms) is allowed to communicate with the press/media/reported/journalists, etc. or on social media regarding the settlement other than to say no comment or make a statement agreed to by all Parties.

Signed on June 15, 2023, by counsel of record for all parties, with express permission.

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Attorneys for Plaintiffs & the Proposed Class

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Kristine Maher, #98179

Bricker Graydon LLP

312 Walnut Street, Suite 1800
Cincinnati, OH 45202
Telephone: (513) 629-2893
Facsimile: (513) 651-3836
kmaher@brickergraydon.com

Attorneys for Defendants GEICO Casualty Company, GEICO Advantage Insurance Company, GEICO Choice Insurance Company, GEICO General Insurance Company and GEICO Secure Insurance Company

EXHIBIT A

Notice of Class Action Settlement

The Parties have agreed to settle *Davis, et al. v. Geico Casualty Company, et al.*, Case No. 2:19-cv-02477-EAS-EPD, United States District Court for the Southern District of Ohio

Why am I getting this Notice? You may have previously received a Notice informing you that you might be a class member in a class action against GEICO Casualty Company, GEICO Advantage Insurance Company, GEICO Choice Insurance Company, GEICO General Insurance Company and GEICO Secure Insurance Company (“Defendants”). The parties have agreed to settle this case. You have been identified as a potential “Settlement Class Member” from GEICO’s claims data because you may have submitted a physical damage claim with respect to your vehicle insured by GEICO during the class period that resulted in a Total Loss Claim Payment that may have not included full state sales tax (“Sales Tax”) or title and/or title and registration transfer fees (“Transfer Fees”).

What is this lawsuit about? The Settlement resolves a lawsuit claiming that Defendants breached their auto insurance policies by failing to pay sales tax and/or transfer fees to customers who submitted Ohio first-party total loss auto claims.

Settlement terms. Settlement class members who submit a valid timely claim are eligible to receive payment of Sales Tax of 5.75% based on the adjusted value of the total loss vehicle at the time of the loss and transfer fees (less any Sales Tax or Transfer Fees included in the original total loss claim payment and less each claimant’s proportional share of Class Counsel Fees and/or court-awarded costs). The total amount to be made available is \$19,850,000.00. Class Counsel will be seeking attorneys’ fees and costs of up to \$5,756,500.00 to be paid from the available settlement amount and \$7,500 Service Awards to the Class Representatives, with all amounts to be approved by the Court.

How do I receive Payment? To receive a payment, you must complete and mail the attached Claim Form or submit a Claim Form online at www.INSERTNAME.com. Paper Claim Forms must be postmarked by www.INSERTNAME.com, or electronic Claim Forms submitted on the Settlement Website, by 11:59pm EST on www.INSERTNAME.com, 20__.


Do I have any other options? If you do not want to be legally bound by the Settlement, you must exclude yourself by www.INSERTNAME.com, www.INSERTNAME.com, www.INSERTNAME.com. Unless you exclude yourself, you will not be able to sue or continue to sue GEICO for any claim made in this lawsuit or released by the Settlement Agreement. If you stay in the Settlement (i.e., don’t exclude yourself), you may object to it or ask for permission for you or your own lawyer to appear and speak at the hearing—at your own cost—but you don’t have to. Objections and requests to appear are due by www.INSERTNAME.com, www.INSERTNAME.com, www.INSERTNAME.com. The Long Form Notice, available at the Settlement Website, explains how to exclude yourself or object. The Court will hold a hearing on www.INSERTNAME.com, www.INSERTNAME.com, www.INSERTNAME.com to consider whether to finally approve the Settlement, Class Counsel’s request for attorneys’ fees and Service Awards for the Class Representatives. More details and the full terms of the proposed Settlement are available at www.INSERTNAME.com.

How do I get more information? Go to www.INSERTNAME.com or call toll-free www.INSERTNAME.com.

Davis Class Action
Settlement
PO BOX 0000
City, State, Zip Code

COURT ORDERED LEGAL NOTICE

**If you suffered a total loss on a
vehicle insured by
GEICO from 2009-2020,
you may be entitled
to a cash payment.**

**Complete and return the
enclosed Claim Form by

to receive a cash payment.**

**Class Member John Doe
123 ABC Street
Cleveland, Ohio 12345**

CLAIM FORM

Name & Address: [PREFILL]

Claim #: [PREFILL]

Date of Loss: [PREFILL]

1. ADDRESS (if different from above)

Primary Address[illegible]

Primary Address continued

[illegible]

City:

[illegible]

State:

--	--

Zip Code:

--	--	--	--	--

2. AFFIRMATION (required): By signing below, I certify that I am the person who made the insurance claim identified above or I am the legally authorized personal representative, guardian or trustee of the person who made the insurance claim identified above and that to the best of my knowledge, the information on this Claim form is true and correct.

Signature: _____ Dated _____

Name (please print): _____

<hr/> <hr/> <hr/>	postage prepaid mark
Davis Class Action Claims Administrator P.O. Box ____ [City], [State], [Zip]	

EXHIBIT B

EXHIBIT C

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
COLUMBUS DIVISION**

Davis, et al. v. Geico Casualty Company, et al.,
Case No. 2:19-cv-02477-EAS-EPD

IMPORTANT NOTICE OF CLASS ACTION SETTLEMENT

**A court authorized this Notice.
This is not a solicitation from a lawyer.
You are not being sued.**

PLEASE READ THIS NOTICE CAREFULLY

A settlement has been reached in the case *Davis, et al. v. Geico Casualty Company, et al.*, Case No. 2:19-cv-02477-EAS-EPD, entitling members of the Settlement Class who submit a valid and timely claim form to payment of state sales tax (“Sales Tax”) and title and registration transfer fees (“Transfer Fees”) for Covered Total Loss Claims. This Notice explains: 1) the terms of the Settlement; 2) who is a member of the Settlement Class; 3) how to submit a Claim Form for payment; 4) how to request exclusion from the Settlement; 5) how to object to the Settlement; and 6) how to get more information about the Settlement.

IF YOU ARE A SETTLEMENT CLASS MEMBER, THIS LEGAL PROCEEDING MAY AFFECT YOUR RIGHTS.

HELP IS AVAILABLE TO ASSIST YOUR UNDERSTANDING OF THIS NOTICE.
Call 1-###-###-#### toll free or visit [\[REDACTED\]](#) for more information.

What Is a Class Action?

A class action is a lawsuit in which one or more individuals bring claims on behalf of other persons or entities. These persons or entities are referred to as a class or class members. In a certified class action, the Court resolves certain issues, legal claims, and/or defenses for all class members in a single action, except for those persons or entities who ask in writing to be excluded from the class.

What Is this Class Action About?

Plaintiffs alleged that GEICO Casualty Company, GEICO Advantage Insurance Company, GEICO Choice Insurance Company, GEICO General Insurance Company and GEICO Secure Insurance Company (“Defendants”) breached their contracts (Automobile Insurance Policies) by failing to fully pay Plaintiffs and other Ohio insureds who submitted physical damage claims for their vehicles during the Class Period, and which resulted in a Total Loss Claim Payment. Specifically, Plaintiffs allege that Defendants failed to pay full Sales Tax and/or Transfer Fees following a total loss. Defendants maintain that they complied with the terms of the Automobile

Insurance Policies and applicable law and deny that they acted wrongfully or unlawfully and continue to deny all material allegations.

Settlement Terms

As a part of the Settlement, GEICO has agreed, upon Court approval, to pay Settlement Class Members who timely submit a valid Claim Form:

1. Sales Tax on the adjusted value of their totaled vehicle at the Ohio state sales tax rate of 5.75%,(less any amount in sales tax originally included in the total-loss claim payment) reduced by each claimant's proportional share of Class Counsel Fees and/or court-awarded costs; and
2. Applicable Transfer Fees (less any amount in Transfer Fees originally included in the total-loss claim payment), reduced by each claimant's proportional share of Class Counsel Fees and court-awarded costs.

Class Counsel is seeking Fees and Costs not to exceed \$5,756,500.00 from the Cash Settlement Benefits, and a Service Award not to exceed \$7,500.00 to each Class Representative, with all amounts to be approved by the Court.

In exchange, Plaintiffs and the Settlement Class Members who do not exclude themselves agree to give up any claim they have for payment of Sales Tax and/or Transfer Fees. If you are a member of the Settlement Class, you can submit a Claim Form to be eligible to be paid. Alternatively, you may, if you wish, request to be excluded from the Settlement Class, which means you are not eligible for payment, and you maintain your right to sue GEICO individually and separately for payment of Sales Tax and/or Transfer Fees. You may also object to the terms of the Settlement, if you comply with the requirements set forth below.

How Do I Know if I'm a Member of the Settlement Class?

You may be a member of the Settlement Class if you were an Ohio policyholder and insured by GEICO and submitted a Covered Total Loss Claim during the time period of January 1, 2009 through August 31, 2020.

If you already received full Sales Tax and/or Transfer Fees as part of your Total Loss Claim Payment, you are not part of the Settlement Class. You received this Notice because GEICO's records indicate you had a Total Loss claim and therefore may be a member of the Settlement Class.

If I Am a Class Member, What Are My Options?

If you are a Class Member, you have four options.

Option 1: Submit a Claim Form for Payment.

You may submit a Claim Form for payment of Sales Tax and/or Transfer Fees. The maximum amount Defendants have agreed to pay for all Settlement Class Member Payments, Counsel Fees, and Court-awarded costs total a maximum of \$19,850,000.00. You can submit a claim by signing the Claim Form you receive in the mail, carefully tearing at the perforation, and putting the Claim Form in the mail. You can call 1-800-XXX-XXXX or visit [www. \[REDACTED\].com](http://www. [REDACTED].com) and request that the Settlement Administrator send you a Claim Form (or a blank form that you will need to fill out).

You can also submit an Electronic Claim Form by visiting [www. \[REDACTED\].com](http://www. [REDACTED].com), clicking the SUBMIT A CLAIM button, and following the steps outlined for you. You will need the unique claimant ID number found on the Notices or the claim number associated with your Total Loss. You MUST submit at least one of these numbers, along with your name and address, or your claim will be rejected.

If you submit a Claim Form in the mail, it must be postmarked no later than [REDACTED]. If you submit an electronic Claim, you must do so by 11:59 p.m. EST on [REDACTED]. If the address you submit on your Claim Form changes, you must contact the Settlement Administrator to provide a current address or you may not receive your Settlement Class Member Payment.

Option 2. Exclude yourself from the Settlement.

You have the right to not be part of the Settlement by excluding yourself or “opting out” of the Settlement Class. If you wish to exclude yourself, you must do so on or before [REDACTED] as described below. You do not need to hire your own lawyer to request exclusion from the Settlement Class. If you exclude yourself from the Settlement Class, you give up your right to receive any benefits as part of this Settlement, and you will not be bound by any judgments or orders of the Court, whether favorable or unfavorable. However, you will keep your right to sue GEICO separately in another lawsuit if you choose to pursue one.

To exclude yourself from this lawsuit and/or preserve your right to bring a separate case, you must make a request to be excluded in writing and, with sufficient postage, mail the request to:

Davis Class Action Settlement

c/o NAME
ADDRESS
ADDRESS

A request for exclusion must be postmarked on or before [REDACTED].

Your request for exclusion must contain the following:

1. The name of the Action (Davis, et al. v. Geico Casualty Company, et al.)

2. Your full name;
3. Your current address;
4. A clear statement that you wish to be excluded from the Settlement Class, such as: “I request exclusion from the Settlement Class”; and
5. Your signature.

The Settlement Administrator will file your request for exclusion with the Court. If you are signing on behalf of a Settlement Class member as a legal representative (such as an estate, trust or incompetent person), please include your full name, contact information, and the basis for your authority. A request for exclusion must be exercised individually and not on behalf of a group.

IF YOU DO NOT EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY THE POSTMARK DEADLINE OF [REDACTED] OR ELECTRONIC CLAIM SUBMISSION DEADLINE OF 11:59PM EASTERN ON [REDACTED], YOU WILL REMAIN PART OF THE SETTLEMENT CLASS AND WILL BE BOUND BY THE ORDERS OF THE COURT IN THIS LAWSUIT AND BY THE TERMS OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT, EVEN IF YOU DO NOT SUBMIT A CLAIM FORM FOR PAYMENT. IF YOU DO NOT WISH TO BE BOUND BY THE DECISIONS OR SETTLEMENT IN THIS CASE, YOU MUST REQUEST EXCLUSION FROM THE CLASS ACTION.

The district court is conducting a FAIRNESS HEARING on [REDACTED] 2023, in [Court Address] to decide whether to grant final approval of the Proposed Settlement. The date of the FAIRNESS HEARING may change without further notice to the class. You should be advised to check the settlement website at www.INSERTNAME.com or the Court’s PACER website at [insert court website], to confirm that the date of the FAIRNESS HEARING has not been changed. Be advised that the hearing date may change without further notice to the Settlement Class.

Option 3: Object to the Terms of the Settlement.

The full terms of the Settlement can be found at [www.\[REDACTED\]](http://www.[REDACTED]). If you think the terms of the Settlement are not fair, reasonable, or adequate to the Class Members, you may file a Notice of Intent to object to the terms of the Settlement. If you object to the terms of the Settlement, you cannot request exclusion from the Settlement. If you object to the terms of the Settlement and your objection is overruled, you will be bound by the terms of the Settlement and all rulings and orders from the Court.

To properly object to the terms of the Settlement, you must send, with sufficient postage, a Notice of Intent to object to the terms of the settlement (described below) to the following:

Davis Class Action Settlement

PO BOX 0000

City, State, Zip Code

The Notice of Intent must include all of the following information:

1. The name of the case and case number;
2. Your name, address, telephone number, and signature;
3. The specific reasons why you object to the terms of the Proposed Settlement;
4. The name, address, bar number, and telephone number of any attorney who represents you related to your intention to object to the terms of the Settlement;
5. Whether you and/or your attorney intend to appear at the Fairness Hearing and whether you and/or your attorney will request permission to address the Court at the Fairness Hearing.

If you and/or your attorney intend to request permission to address the Court at the Fairness Hearing, your Notice of Intent must also include all of the following information:

1. A statement of the legal and factual basis for each objection;
2. A list of any and all witnesses the Settlement Class Member may seek to call at the Fairness Hearing;
3. A list of any legal authority the Settlement Class Member will present at the Fairness Hearing; and
4. Identify either your class member number or full name and address when the total loss occurred.

Notices of Intent to object must be postmarked by [REDACTED]. Any Notice of Intent that is not postmarked by the deadline set forth above or which does not comport with the requirements listed above may waive the right to be heard at the Fairness Hearing. If you file a Notice of Intent, you waive the right to request exclusion from the Class and will be bound by any decisions and orders from the Court and by the terms of the Settlement if it is approved by the Court. If you do not want to be bound by the decisions and rulings by the Court, you must file a request for exclusion and not a Notice of Intent.

Option 4. Do Nothing Now. Stay in the Case.

You have the right to do nothing. If you do nothing, you will be bound by the terms of the Settlement and will release any claim against GEICO for Sales Tax and/or Transfer Fees, even if you do not submit a Claim Form for payment. You will not receive a Settlement Class Member Payment if you do nothing.

Who Is Representing the Class?

The Court has preliminarily appointed Plaintiffs, JANET DAVIS, ANGEL RANDALL, ALMA LEE RESENDEZ, MANDY PHELAN, and TREY ROBERTS, to be the Class Representatives of the Settlement Class. The Court has also preliminarily appointed the following lawyers as Class Counsel for the Settlement Class:

SHAMIS & GENTILE, P.A.

Andrew Shamis, Esq.

14 NE 1st Avenue

Suite 1205

Miami, FL 33132

HALL & LAMPROS LLP

Chris B. Hall, Esq.

Kevin Hulick, Esq.

400 Galleria Parkway, Ste. 1150

Atlanta, GA 30309

NORMAND PLLC

Edmund Normand, Esq.

Jacob Phillips, Esq.

3165 McCrory

Pl #175

Orlando, FL 32803

EDELSBERG LAW

Scott Edelsberg, Esq.

Christopher Gold, Esq.

20900 NE 30th Avenue

Suite 417

Aventura, FL 333180

DAPEER LAW

Rachel Dapeer, Esq.

20900 NE 30th Avenue

Suite 417

Aventura, FL 333180

KARON LLC

Daniel Richard Karon, Esq.

Beau D. Hollowell, Esq.

700 W. St. Clair Ave., Ste. 200

44113

These lawyers are experienced in handling class action lawsuits, including actions on behalf of insured policyholders. More information about Class Counsel is available on their websites.

Class Counsel will be seeking attorneys' fees and costs of up to \$5,756,500 from the available Cash Settlement Benefits, with all amounts to be approved by the Court.

Class Counsel will also seek a Service Award for each Class Representative in the amount of \$7,500.00, subject to Court approval. The Service Award is designed to reward the Class Representatives for securing the recovery awarded to members of the Settlement Class and to acknowledge the time spent by the Plaintiffs participating in the case, and prosecuting the claims for the benefit of the Settlement Class. If awarded, Defendants have agreed to pay the Service Award to the Class Representatives up to the amount of \$7,500.00 per each Class Representative.

What Claim(s) Against GEICO Are Class Members Releasing?

As a part of the Settlement, Class Members agree not to sue GEICO by asserting any claim for payment of Sales Tax and/or Transfer Fees. Unless you request exclusion from the Settlement Class, you give up the right to individually sue GEICO and claim you are owed Sales Tax and/or

Transfer Fees as part of your Covered Total Loss Claim, even if you do not submit a Claim Form for payment as part of this Settlement. You are not releasing any other claim against GEICO. Full terms of the Released Claims and Released Parties can be found in the proposed Settlement Agreement at [www. \[REDACTED\].com](http://www. [REDACTED].com).

How Do I Find Out More About This Lawsuit?

If you have any questions about the lawsuit or any matter raised in this Notice, please call toll-free at **1-###-###-####** or go to [www. \[REDACTED\].com](http://www. [REDACTED].com).

This [www. \[REDACTED\].com](http://www. [REDACTED].com) website provides:

1. An electronic Claim Form submission and directions for how to submit;
2. The process for requesting a paper (non-electronic) pre-filled Claim Form;
3. The full terms of the Settlement;
4. Information and requirements for submitting a Claim Form, requesting exclusion, or filing an objection to the terms of the Settlement;
5. A copy of the Complaint filed by Plaintiffs and
6. Other general information about the class action.

You also may contact Class Counsel, whose contact information is provided above.

If the address you submit on your Claim Form changes, you must contact the Settlement Administrator to provide a current address or you may not receive your Settlement Class Member Payment.

PLEASE DO NOT TELEPHONE OR CONTACT THE COURT, THE CLERK OF THE COURT, OR DEFENDANTS OR DEFENDANTS' COUNSEL REGARDING THIS NOTICE.

DATED: ____ ##, 2023

EXHIBIT D

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
COLUMBUS DIVISION**

JANET DAVIS, ANGEL RANDALL,
ALMA LEE RESENDEZ, MANDY
PHELAN, and TREY ROBERTS,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

GEICO CASUALTY COMPANY, a foreign
corporation, GEICO ADVANTAGE
INSURANCE COMPANY, a foreign
corporation, GEICO CHOICE INSURANCE
COMPANY, a foreign corporation, GEICO
GENERAL INSURANCE COMPANY, a
foreign corporation, and GEICO SECURE
INSURANCE COMPANY, a foreign
corporation,

Defendants.

Civil Action No.

2:19-cv-02477-GCS-EPD

District Judge Edmund A. Sargus, Jr.

Magistrate Judge Elizabeth Preston Deavers

**ORDER PRELIMINARILY APPROVING SETTLEMENT
AND DIRECTING NOTICE TO THE CLASS [PROPOSED]**

Plaintiffs Janet Davis, Angel Randall, Alma Lee Resendez, Mandy Phelan and Trey Roberts (“Plaintiffs”) and Defendants GEICO Casualty Company, GEICO Advantage Insurance Company, GEICO Choice Insurance Company, GEICO General Insurance Company and GEICO Secure Insurance Company (“GEICO” or “Defendants”) (collectively, the “Parties”) have agreed, subject to approval by the Court, to settle this Action upon the terms and conditions in the Agreement (Dkt. No. __); and

Plaintiffs have filed an unopposed motion for preliminary approval of class settlement, seeking, among other things, that the Court (1) certify the proposed class for settlement purposes;

- (2) grant preliminary approval of the Agreement; (3) direct notice to the settlement class; and
- (4) set a final fairness hearing.

The Court has read and considered the Agreement and the exhibits thereto and has read and considered all other papers filed and proceedings had herein, and is otherwise fully informed, and for the reasons set forth below, the Court GRANTS Plaintiffs' motion for preliminary approval of the Agreement.

IT IS HEREBY ORDERED:

1. This Preliminary Approval Order incorporates by reference the definitions in the Agreement.
2. The Court has jurisdiction over the subject matter of this Action and over all Parties to this Action.
3. The Court preliminarily approves the Agreement, and preliminarily finds the Settlement to be fair, reasonable, and adequate to the Settlement Class. GEICO shall retain all rights to contest class certification and liability, including on appeal if the Agreement is not ultimately approved. Neither the Agreement, nor any of its terms or provisions, shall be construed as an admission or concession by GEICO of the truth of the allegations made in the Action, or of any liability, fault, or wrongdoing of any kind whatsoever, except that GEICO may file this Order in any action that may be brought against it in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.
4. The Court appoints Plaintiffs as Class Representatives, and Normand PLLC, Hall & Lampros, Edelsberg Law, P.A., Shamis & Gentile, P.A., and Dapeer Law, P.A. as Class Counsel.
5. The Court approves the Notice Program as to both form and content.

6. All dates that are set forth in or that otherwise flow from the Preliminary Approval Order shall be added to the Short Form Notice before it is sent to Settlement Class Members.

7. The Court finds the Notice Program constitutes the best notice practicable under the circumstances and constitutes valid and sufficient notice to all Persons entitled thereto, complying fully with the requirements of Fed. R. Civ. P. 23 and due process.

8. The Court finds that the Class Action Fairness Act Notice given by the Settlement Administrator on behalf of GEICO is in full compliance with 28 U.S.C. § 1715(b).

9. The Court approves the Notice Program and directs mailing of the Short Form Notice by first-class mail and by email as set forth in the Agreement and directs the Settlement Administrator to follow the procedures set forth the Agreement for delivery of notice.

10. The Court approves the Claim Forms, the content of which is without material alteration from Exhibits A and B to the Agreement,.

11. The Claims Submission Deadline after which the Claim Forms shall be deemed untimely shall be forty-five (45) days after the first Mailed Notice is first sent.

12. The Court approves the settlement website as described in the Agreement, which may be amended during the course of the settlement as appropriate and agreed to by the Parties, and which shall be maintained for at least 180 days after the Claims Deadline.

13. The Court appoints JND Legal Administration as the Settlement Administrator.

14. The Court directs the Settlement Administrator to create, maintain, and establish the website described in the Agreement and approved herein. The Website shall be accessible on or before the date on which the first Mailed Notice is sent.

15. The Court directs the Settlement Administrator to maintain a toll-free VRU telephone system containing recorded answers to frequently asked questions, along with an option permitting

potential Settlement Class Members to record a message to be returned by the Settlement Administrator.

16. The Settlement Administrator shall file proof of completion of the Notice Program on or before ten (10) days prior to the Final Approval Hearing, along with the list of all Persons who timely requested exclusion from the Settlement Class.

17. Each Settlement Class Member who wishes to exclude himself or herself from the Settlement Class must submit an appropriate, timely request for exclusion, postmarked no later than the Opt-Out Deadline, to the Settlement Administrator at the address in the notice, and that complies with the requirements in Paragraph 98 of the Agreement. Any exclusion must be exercised individually by a Settlement Class Member or his or her Legally Authorized Representative, not as or on behalf of a group, class, or subclass.

18. Any Settlement Class Member who does not submit a timely, written request for exclusion from the Settlement Class will be bound by all proceedings, orders, and judgments in the Action, even if such Settlement Class Member never received actual notice of the Action or this Proposed Settlement.

19. Each Settlement Class Member who has not submitted a timely request for exclusion from the Settlement Class, and who wishes to object to the fairness, reasonableness, or adequacy of this Agreement or to intervene in the Action, must follow the procedures set forth in Paragraphs 99 of the Agreement. The right to object to the Settlement must be exercised individually by a Settlement Class Member or his or her attorney or Legally Authorized Representative, and not as a member of a group, class, or subclass.

20. The Settlement Administrator shall receive requests for exclusion, objections, notices of intention to appear, and any other settlement-related communications, and only the Settlement

Administrator, the Parties, the Court, the Clerk of the Court, and their designated agents shall have access to these documents, except as otherwise expressly provided in the Agreement.

21. The Settlement Administrator shall promptly furnish to Class Counsel and Counsel for Defendants copies of any and all objections, written requests for exclusion, motions to intervene, notices of intention to appear, or other communications that come into its possession, as set forth in the Agreement.

22. The Court hereby stays all proceedings in the Action until further order of the Court, except that the Parties may conduct such limited proceedings as may be necessary to implement the Proposed Settlement or to effectuate the terms of this Agreement.

23. The Court previously granted class certification in this Action. The proposed Settlement Class tracks the class definition certified by this Court and, as such, it is unnecessary to conduct an additional Rule 23 analysis. *See* Federal R. Civ. P. 23(e) advisory committee's note to 2018 amendment ("If the court has already certified a class, the only information ordinarily necessary is whether the proposed settlement calls for any change in the class certified.").

24. Consistent with the Agreement, the Court conditionally approves the following Settlement Class:

All insureds, under an Automobile Insurance Policy covering a vehicle with auto physical damage coverage for comprehensive or collision loss, who made a comprehensive or collision first-party claim, GEICO determined the claim was covered and that the vehicle was a total loss between January 1, 2009 and August 31, 2020, and whose claim was adjusted and paid by GEICO as a total loss where GEICO did not pay all Sales Tax and/or Transfer Fees.

Excluded from the Class are:

- (1) GEICO, all present or former officers and/or directors of GEICO, the Neutral Evaluator, Class Counsel, and a Judge of this Court;
- (2) Claims for which GEICO received a valid and executed release;
- (3) Claims where GEICO paid full Sales Tax and Transfer Fees; and
- (4) Claims subject to binding appraisal and/or arbitration where full Sales Tax and Transfer

Fees were paid.

25. The Court notes that there is a strong federal policy “favoring settlement of class actions.” *UAW v. General Motors Corp.*, 497 F.3d 615, 633 (6th Cir. 2007). The Court finds that, for purposes of preliminary approval, both procedural or threshold requirements set forth in Fed. R. Civ. P. 23(e)(2) appear to be satisfied. First, this case was litigated through summary judgment and to the cusp of trial prior to settlement, thereby providing Plaintiffs and Class Counsel with sufficient information and knowledge of the claims, issues, and defenses prior to negotiating and settling the claims. *See generally Cook v. Gov't Emples. Ins. Co.*, No. 6:17-cv-891-ORL-40KRS, 2020 U.S. Dist. LEXIS 111956, at *18 (M.D. Fla. Jun. 22, 2020) (observing that the Rule 23(e)(2) adequacy requirement is meant to ensure the class representatives possessed an adequate information base prior to engaging in settlement). Second, the negotiations were conducted under the oversight of Michael Ungar, a well-respected mediator, and were clearly conducted at arm’s length. *See generally Bert v. AK Steel Corp.*, No. 1:02-CV-467, 2008 WL 4693747, at *2 (S.D. Ohio Oct. 23, 2008) (“The participation of an independent mediator in settlement negotiations virtually [e]nsures that the negotiations were conducted at arm’s length and without collusion between the parties”).

26. Two of the factors outlined in *UAW v. General Motors Corp.*, 497 F.3d 615 (6th Cir. 2007)—(i) lack of fraud or collusion and (ii) the amount of discovery occurring prior to settlement—overlap with the Rule 23(e)(2) factors addressed above, and therefore favor granting preliminary approval.

27. Fed. R. Civ. P. 23(e)(2)(C)-(D) prescribes four substantive factors relevant to the class settlement analysis: the costs and risk of trial and appeal, the method of claim distribution, the terms of attorneys’ fees, and whether class members are treated equitably vis a vi each other. For

purposes of preliminary approval, these factors weigh in favor of approval. Given the relative lack of guidance from the Sixth Circuit and the Ohio Supreme Court on the claims at issue, the likelihood of success absent settlement is uncertain. And given this uncertainty, the benefits secured through the Settlement Agreement are sufficiently fair and reasonable. Additionally, the claim-processing method, which requires Settlement Class Members merely to confirm the accuracy of a pre-filled, postage-prepaid Claim Form or to correct any mistakes, is simple and straightforward. Finally, the Parties did not discuss attorneys' fees until after agreement was reached concerning the substantive terms of the Agreement; and Class Members are treated identically for all material elements of the Agreement.

28. The factors set forth in *UAW*, 497 F.3d 615, that do not overlap with Fed. R. Civ. P. 23(e)(2)—the opinions of class counsel and the public interest—also weigh in favor of preliminary approval. Class Counsel are familiar with GEICO's data systems, business practices, and procedures, and have extensive experience and knowledge of the claims and defenses at issue, and their opinion is that the proposed Settlement is favorable to and in the best interest of the Settlement Class. *See generally Brent v. Midland Funding, LLC*, 2011 U.S. Dist. LEXIS 98763, at *49-50 (N.D. Oh. Sep. 1, 2011) ("The Court gives great weight to the recommendation of experienced counsel for the parties in evaluating the adequacy of the settlement."). Additionally, the public interest favors preliminary approval because "settlement fosters the goals of certainty, finality and economy, which lie at the heart of our general preference for settlement of class actions." *Berry v. School Dist.*, 184 F.R.D. 93, 106 (W.D. Mich. 1998).

29. A hearing shall be held on _____, 2023, at _____ .m., for the purpose of determining (a) whether the proposed Settlement is fair, reasonable and adequate and should be finally approved by the Court; (b) whether a Final Judgment granting approval of the Agreement

and dismissing the Action with prejudice should be entered; (c) whether the Class Representatives should receive an incentive award and in what amount; (d) whether Class Counsel should receive a fees and costs award and in what amount; and (e) any other matters the Court may deem just and proper.

30. Any application for Class Counsel Fee Award and Service Awards, shall be filed with the Court at least fifteen (15) days prior to the deadline to the Objection and Opt-Out Deadlines.

31. All other papers in support of the Settlement or responding to objections or motions to intervene shall be filed at least fifteen (15) days prior to the Final Approval Hearing.

32. The Court may adjourn the Final Approval Hearing from time to time and without further notice to the Settlement Class Members. The Court reserves the right to approve the Settlement at or after the Final Approval Hearing with such modifications as may be consented to by the Parties and without further notice to the Settlement Class Members. The Court further reserves the right to enter a Final Judgment, dismissing the Action with prejudice as to GEICO and against the Named Plaintiffs and the Settlement Class Members at or after the Final Approval Hearing and without further notice to the Settlement Class Members.

33. The following schedule is established to guide the Parties in conducting the Notice and claims administration process:

PROPOSED PRELIMINARY SCHEDULE

#	Action	Deadline
1	Website Notice Posted by Settlement Administrator	No later than 30 days from the date of this Order
2	Deadline for Settlement Administrator to mail out first mail notice (the "Notice Date")	No later than 30 days from the date of this Order
3	Deadline for Settlement Class Members to opt-out of the Agreement	No later than 60 days from the date of this Order and 30 days after the Notice Date

4	Deadline for submission of Notice of Intent to object to agreement	No later than 60 days from the date of this Order and 30 days after the Notice Date
5	Deadline for Settlement Class Members to file claims	45 days after the first mailed notice is sent (the Notice Date) and 75 days from the date of this Order
6	Deadline for Class Counsel to file their application for attorneys' fees, costs and expenses, and for a service award for each Plaintiff	No later than 15 days before the deadline to file objections or opt-outs and 45 days after the date of this Order
7	Deadline to file Motion for Final Approval and respond to any objections	45 days before the Final Approval Hearing
8	Deadline for Settlement Administrator to file proof of completion of Notice, along with complete and accurate Opt-Out list	No later than 10 days prior to the Fairness Hearing
9	Final Approval Hearing	Month, Day Year, at Time [At least 90 days after the date that a Preliminary Approval Order is entered]

The Parties may make reasonable adjustments to the notice deadlines without prior Court approval.

IT IS SO ORDERED.

DATED: _____

EXHIBIT E

EMAIL NOTICE

To:
From:
Subject: Claim Payment Pursuant to Class Action Settlement

Records show you may have suffered a total loss while insured with GEICO and you may be entitled to payment in a class action settlement.

***Davis, et al. v. Geico Casualty Company, et al.*, Case No. 2:19-cv-02477-EAS-EPD, United States District Court for the Southern District of Ohio**

Claim your potential cash payment from the Settlement by [Date].

TO MAKE A CLAIM: Click [here](#) or go to [www.XXXX.com](#) and click on Submit a Claim and enter your Claimant ID Number [\[insert Claimant ID Number\]](#)

Why am I getting this Notice? You may have previously received a Notice informing you that you might be a class member in a class action against GEICO Casualty Company, GEICO Advantage Insurance Company, GEICO Choice Insurance Company, GEICO General Insurance Company and GEICO Secure Insurance Company ("Defendants"). The parties have agreed to settle this case. You have been identified as a potential "Settlement Class Member" from GEICO's claims data because you submitted a physical damage claim between January 1, 2009 and August 31, 2020, with respect to a vehicle insured by GEICO that resulted in a Total Loss Claim Payment that did not include full state sales tax ("Sales Tax") and/or title and registration transfer fees ("Transfer Fees").

What is this lawsuit about? The Settlement resolves a lawsuit claiming that Defendants breached their auto insurance policies by failing to pay Sales Tax and Transfer Fees to Ohio insureds who submitted first-party total loss claims.

Settlement Terms. Defendants will pay Sales Tax of 5.75% based on the adjusted value of the insured's totaled vehicle at the time of the loss and Transfer Fees (less any Sales Tax or Transfer Fees included in the original total loss claim payment and less each claimant's proportional share of Class Counsel Fees and/or court-awarded costs). The total amount to be made available is \$19,850,000. Class Counsel will be seeking attorneys' fees and costs of up to \$5,756,500 from the available settlement amount and \$7,500 Service Awards to the Class Representatives, with all amounts to be approved by the Court.

To be eligible for payment, you must complete and mail the Claim Form attached to the postcard you received in the mail or submit a Claim Form online at [www.XXXX.com](#) using your Claimant ID or a valid claim number. Paper Claim Forms must be postmarked by [\[redacted\]](#), or electronic Claim Forms submitted on the Settlement Website, by 11:59pm EST on [\[redacted\]](#), 20[\[redacted\]](#).

What are my options? Unless you timely submit a Claim Form, you will not get a settlement payment and your rights will be affected. If you don't want to be legally bound by the Settlement, you must exclude yourself by [\[MONTH\]](#), [\[DAY\]](#), [\[YEAR\]](#). Unless you exclude yourself, you won't be able to sue or continue to sue GEICO for any claim made in this lawsuit or released by the Settlement Agreement. If you stay in the Settlement (i.e., don't exclude yourself), you may object to it or ask for permission for you or your own lawyer to appear and speak at the hearing—at your own cost—but you don't have to. Objections and requests to appear are due by [\[MONTH\]](#), [\[DAY\]](#), [\[YEAR\]](#), and must comply with all instructions for submission.

The Court will hold the Fairness Hearing at [\[redacted\]](#) m. on [\[INSERT\]](#) 2023, in Courtroom [\[redacted\]](#) of [\[Insert Court Address\]](#) to decide whether to grant final approval of the Settlement, consider Class Counsel's request for attorney's fees, costs and expenses, and consider the Class Representatives requests for service awards. You may attend. The date of the FAIRNESS HEARING may change without further notice to the class. You

should be advised to check the settlement websites at www.INSERTNAME.com or the Court's PACER website at [\[insert court website\]](#), to confirm that the date of the FAIRNESS HEARING has not been changed.

What do I do if I already made a claim by mail? You also should receive (or may have already received) a postcard notice (with the same information as in this email) with a detachable, postage-prepaid claim form to enable you to make a claim by mail. If you made a claim by mail, you do not need to submit a claim electronically.

How do I get more information? More details and the full terms of the Proposed Settlement are available at www.XXXX.com. You may also contact class counsel at [\[redacted\]](#). PLEASE DO NOT TELEPHONE THE COURT, GEICO OR THE CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
COLUMBUS DIVISION**

JANET DAVIS, ANGEL RANDALL,
ALMA LEE RESENDEZ, MANDY
PHELAN, and TREY ROBERTS, on behalf
of all other similarly situated,

Plaintiffs,

v.

GEICO CASUALTY COMPANY, a foreign
corporation, GEICO ADVANTAGE
INSURANCE COMPANY, a foreign
corporation, and GEICO CHOICE
INSURANCE COMPANY, a foreign
corporation, and GEICO GENERAL
INSURANCE COMPANY, a foreign
corporation, and GEICO SECURE
INSURANCE COMPANY, a foreign
corporation,

Defendants.

CASE NO.: 2:19 cv-02477-EAS-EPD

Judge: Edmund A. Sargus, Jr.

Magistrate Judge: Elizabeth Preston Deavers

CLASS ACTION

DECLARATION OF JACOB PHILLIPS

The undersigned, Jacob L. Phillips, declares as follows:

1. My name is Jacob Phillips. I am over the age of majority, provide this declaration voluntarily, and it is based on personal knowledge.
2. I am an attorney in the law firm Normand PLLC, and am one of the counsel of record representing the Plaintiffs in the above-styled lawsuit. This declaration is submitted in

support of the Plaintiffs' Unopposed Motion for Preliminary Approval of the Class Action Settlement Agreement.

3. This case involves the claim that GEICO breached their form insurance policies by not including ACV Sales Tax or title and registration transfer fees in its total-loss payments despite promising to pay the ACV of a totaled vehicle in the event of a total loss and defining ACV to mean the "replacement cost" of the vehicle minus depreciation.

4. Defendants' business practice was to condition payment of sales tax on the insured submitting proof they replaced the vehicle. Only if such proof was submitted, Defendants would reimburse sales tax in the amount incurred, up to the amount that would've been owed on the totaled vehicles. For example, if the underlying value of a totaled vehicle was \$20,000.00 and an insured did not present proof of replacement, GEICO would pay \$0.00 in sales tax. If the insured purchased a \$10,000.00 replacement vehicle and incurred \$525.00 in sales tax (and submitted proof thereof), GEICO would pay \$525.00 in sales tax. If the insured purchased a \$30,000.00 and incurred \$1,575.00 in sales tax, GEICO, assuming the insured lived in a county with no surtax, would pay \$1,050.00.

5. Plaintiffs' theory of liability is that no such precondition was expressed in the insurance policies, and therefore GEICO's extracontractual imposition of a precondition of submitting proof of replacement constituted a breach of contract. In August 2020, after this litigation commenced and after Judge Smith denied GEICO's Motion to Dismiss, finding Plaintiffs' interpretation and claims were, at minimum, plausible and reasonable, GEICO changed its business practice to begin including sales tax and title/registration fees in ACV payment without precondition, just as Plaintiffs alleged the Policy requires.

6. Briefing and discovery was extensive. The Parties fully briefed a dispositive motion to dismiss, which was denied, fully briefed class certification, which was granted (and a petition for interlocutory review was denied), fully briefed summary judgment, which was granted in part in favor of Plaintiffs and the certified Classes, and briefed motions to reconsider and to decertify the Class, which were pending at the time of settlement. This included multiple complex issues, including issues of first impression in Ohio, relating to appraisal, the interplay between insurance policies and insurance regulatory requirements, statutory and contract interpretation, insurance industry standards, sales tax and DMV fees regulations, data analysis stretching back over a decade, Article III standing, various affirmative defenses, applicability of statute of limitations including changes thereof over time, Rule 24 intervention, the claim-splitting doctrine and potential waiver, and complicated issues of class certification relating to typicality, adequacy, and predominance.

7. The facts outlined herein are based on extensive discovery and documents secured in this case and investigation by the Plaintiffs and Class Counsel.

8. Class Counsel served multiple sets of written discovery and reviewed tens of thousands of pages of documents responsive thereto and responsive to multiple public records requests. Class Counsel also analyzed data sets consisting of hundreds of thousands of separate claims, all of which contained numerous data fields (columns), and was comprised of tens of millions of data inputs. The data analysis in particular was extremely time-intensive and complex, as the data stretched back over a decade, GEICO changed its data systems during that time-period—meaning the data was not consistent for the entire claim period—and GEICO's primary defense to class certification was that the data did not allow for liability or damages to be calculated on a class-wide basis. Because GEICO generally did not include the sales tax or fees amount, if

any, that it was paying on any given claim—instead, it was typically issued as a subsequent, standalone payment not retained in its valuation data—and because virtually every claim included payment data for unrelated reasons (such as towing, car seat, storage, etc.), Class Counsel had to synthesize hundreds of thousands of individual payments matched with the valuation data to identify whether GEICO failed to pay or underpaid sales tax and/or fees.

9. Class Counsel also took or defended fourteen depositions occurring in five different states, including four expert depositions. Plaintiffs retained three experts—an insurance industry expert, a data analyst, and an Ohio DMV regulations expert—and prepared three expert reports addressing the numerous complicated issues in this litigation. Plaintiffs also extensively analyzed and tested the expert report submitted by GEICO and deposed GEICO’s expert.

10. Class Counsel has also litigated several other class actions and conducted extensive discovery against Defendants in other states, including Florida, Texas, California, and Georgia, and thus possess detailed knowledge concerning Defendants’ data systems, policies and procedures, and of the strengths and weaknesses of the claim relating both to class certification and the merits. Class Counsel have successfully litigated dozens of class actions asserting materially the same claim, including against GEICO, several of which went all the way to a contested final judgment in favor of a certified class and to appeal.

11. Notably, for much of this litigation, there was parallel litigation in the Northern District of Ohio asserting claims on behalf of a putative class that overlapped this Class here, which asserted the same claim at issue here (failure to pay sales tax and title fees) but also asserted two claims Plaintiffs declined to bring here (a claim for dealer fees and a claim that GEICO undervalued the underlying vehicle value). That parallel litigation is significant for two reasons. First, Judge Calabrese denied class certification. *Desai v. Geico Cas. Co.*, 574 F. Supp. 3d 507

(N.D. Oh. 2021). This demonstrates that Class Counsel’s extensive knowledge of the claim at issue, experience with GEICO’s data systems and policies and procedures, and skill at securing and presenting the evidence necessary to demonstrate the appropriateness of class treatment allowed them to succeed where counsel in *Desai* were unable to.¹

12. Second, the Northern District of Ohio dismissed the claim that GEICO undercalculated the underlying vehicle value as without merit. *Desai v. Geico Cas. Co.*, 478 F. Supp. 3d 609 (N.D. Oh. 2020). And while the claim for dealer fees survived the pleadings, Judge Calabrese denied class certification of the claim because dealer fees, at best, *may* be owed for some class members but will *not* be owed for others. This necessarily means that, at least according to Judge Calabrese, dealers fees, unlike sales tax and title/registration fees, are not always an element of ACV as a matter of law, but rather, at best, might be part of ACV in some circumstances. In other words, Judge Calabrese agreed with Class Counsel. In briefing class certification, we explained that the reason this case does not involve claims that the underlying vehicle value was underestimated or that ACV includes dealer fees is because such claims lack merit. In other words, Class Counsel’s extensive experience and knowledge of total-loss claims and contract interpretation—Hall & Lampros originated the theory that ACV includes sales tax without precondition even if the state regulation permits insurers to condition payment of sales tax on proof of replacement, and Normand PLLC originated the theory that ACV includes title and registration

¹ For example, Judge Calabrese noted that the named plaintiff did not show that GEICO’s data and business records could be used to identify those class members who were reimbursed title and registration fees (and thus there was no breach) and those who were not. Class Counsel, by contrast, given their familiarity and knowledge of GEICO’s data and data systems, were able to secure and evidence and utilize it to demonstrate to this Court that, in fact, such identification *is* possible—indeed, Class Counsel has done so in calculating damages following summary judgment against GEICO in cases in Florida.

fees—allowed them to counsel Plaintiffs to bring meritorious claims and not to bring claims that lack merit.

13. The legal and factual issues in this case are extensive, with several novel and complex issues of unsettled law. Both the Sixth and Seventh Circuits have rejected similar claims against other insurance companies (although Plaintiffs believe those cases are distinguishable and were analyzing different policy language). These issues also include issues related to class certification, which in turn required knowledge concerning complicated data systems and technological advances—all of which presented the possibility of litigation traps and pitfalls which needed to be meticulously avoided.

14. If a Settlement is not approved, the ensuing litigation would be extensive, time consuming, and the outcome would be uncertain. Defendants maintain they have strong defenses to the merits of the claim as well as to class certification, including that: (1) the Sixth Circuit might conclude that the Policy does not require payment of ACV because it is a limit on liability, not a promise to pay; (2) the Sixth Circuit might conclude that, per Ohio Admin. Code 3901-1-54(H)(7)(f), Defendants do not owe sales tax and/or title and registration fees unless the insured submits proof of replacement; (3) class certification could be overturned on appeal based on various factors including that individualized issues predominate, class treatment is unmanageable, or Plaintiffs' claims are not typical of Class claims; and (4) individualized claim file review is required to determine issues of liability and damages, as seen by the fact that this Court concluded that there was a triable issue on GEICO's accord and satisfaction affirmative defense.

15. The risk of continuing litigation can be seen by the fact that three federal courts of appeal have considered similar claims and ruled in favor of the insurers and against the plaintiffs. *See Singleton v. Elephant Ins. Co.*, 953 F.3d 334 (5th Cir. 2020); *Sigler v. Geico Cas. Co.*, 967

F.3d 658 (7th Cir. 2020); *Wilkerson v. Am. Family Ins. Co.*, 997 F.3d 666 (6th Cir. 2021). *Sigler* adopted the theory that state regulations are not (as Plaintiff contends) mere floors of liability, but rather set forth the governing standard, and, because they are controlling, insurers need only pay sales tax upon proof of replacement. While this decision was issued under Illinois law, the Sixth Circuit might conclude that the same logic applies in Ohio, which has a very similar regulation as Illinois. Indeed, *Wilkerson* explicitly noted it was declining to reach such issue because it was not raised in that case, and the Court did not indicate how it would have addressed the issue had it been raised. Plaintiffs believe that *Singleton*, *Sigler*, and *Wilkerson* were wrongly decided and/or are distinguishable. Clearly, however, they indicate a significant level of risk in continuing litigation.

16. Moreover, this Court found there exists a triable issue on GEICO's accord and satisfaction affirmative defense, which GEICO intended on using to argue that the class should be decertified, as such defense arguably was applicable to numerous absent class members.

17. Thus, absent the proposed Settlement, the question of Plaintiffs and class members' success on class certification and summary judgment, in this court and/or on appeal, is uncertain.

18. The Parties began considering potential settlement and participated in mediation on several occasions without success. After the Court's Order on summary judgment, the Parties re-engaged in mediation sessions with Michael Ungar, who is an experienced mediator and has mediated several similar total-loss class actions. Following that mediation session, the parties signed a term sheet with the understanding that continuing discussions would occur, under Mr. Ungar's supervision, to flesh out remaining details and full settlement terms.

19. With Plaintiffs' participation, the parties negotiated and resolved all issues involving the class, including damages, scope of release, notice, claim forms, scope of pre-filled

claim form information, data from which pre-filled claim form information would be derived, functionality of website, claim process integrity, and all other issues in the settlement agreement (“Settlement Agreement”). Only after these terms were reached, the parties negotiated attorneys’ fees, costs, and service awards.

SETTLEMENT AGREEMENT

20. The Settlement Agreement requires Defendants to pay Plaintiffs and members of the Settlement Class who submit a timely claim sales tax calculated as 5.25% of the underlying vehicle value, which is the state sales tax percentage, less the amount of sales tax (if any) included in the original claim payment.² Additionally, GEICO must pay title and registration fees of either \$19.00 or \$21.50, less the amount (if any) included in the original claim payment.³

21. Defendants have also agreed to continue its change in business practice to include ACV Sales Tax without precondition as part of the total-loss claim payment, just as Plaintiffs claim (and this Court held) the Policy requires. Defendants have agreed to maintain such change absent clear authority from, respectively, the Sixth Circuit, the Ohio Supreme Court, or the Ohio Department of Insurance.

² For example, assume the value of the totaled vehicle was \$20,000.00 and the insured replaced it with a \$12,000.00 in a county with a 1% surtax (meaning the total sales tax rate was 6.25%), which it submitted as proof of replacement. Defendants would have reimbursed sales tax of \$750.00. Per the Settlement, the insured would be entitled to \$300.00, which is \$1,050.00 ($\$20,000.00 \times 0.0525$) minus the original \$750.00 sales tax payment, plus title and registration fees. If GEICO did not include any amount in sales tax for the original total-loss claim, the insured would be entitled under the settlement to \$1,050.00 plus title and registration fees.

³ The fee amount to transfer title was \$15.00 throughout the Class Period. Prior to December 2019, the fee to transfer registration was \$4.50; since December 2019, the fee has been \$6.00. So, Class Members whose total loss occurred prior to December 2019 are entitled under the Settlement to \$19.50 in fees, while those whose total loss occurred in December 2019 or after are entitled to \$21.00.

22. GEICO has agreed to pay up to \$19,850,000.00 in cash benefits for Settlement Class Members. This is the estimated amount of sales tax and title and registration fees owed based on the number of class members and accounting for GEICO's full or partial sales tax payments to some class members. GEICO has also agreed to separately (or additionally) pay Settlement Administration costs, which are estimated to exceed \$100,000.00 and which will not reduce the payments to Settlement Class Members in any way. GEICO has also agreed to separately (or additionally) pay Service Awards of up to \$7,500.00 to each named Plaintiff if approved by this Court, which will not reduce the payments to Settlement Class Members in any way. As such, the total settlement value is more than \$19,950,000.00.

23. This represents the full state sales tax sought in this action. Local jurisdictions can also impose a local surtax of up to 2.25%. There are approximately 600 local tax jurisdictions in Ohio, and those rates vary over time. The average applicable tax, when including local surtax, is approximately 7.22%. As such, the Settlement benefits are approximately 80% of the total damages in sales tax that could have been secured at trial or pursuant to this Court's Order on summary judgment and 100% of the damages that could have been secured in title and registration fees at trial or pursuant to this Court's Order on summary judgment.

24. The Parties have agreed to multiple issuances of Notice and a simple claims process. Notice by direct mail will be provided, including a detachable postage-prepaid return mail form, on two occasions. Notice will be provided via email on an additional occasion to those insureds for whom Defendants possess an email address.

25. The claim form and electronic claim form will be pre-filled with vehicle, claim, and identifying information. No additional documentation is required other than each Settlement Class

members' declaration that the information is correct to the best of their knowledge (or to update or correct the address information).

26. Settlement Class Members can request exclusion from the Settlement Class or object to the Settlement. The Settlement Agreement requires that Defendants extract information from its claim records to pre-fill the information on the claim forms. Moreover, the Agreement provides a narrowly tailored release of claims, and clarifies that the res judicata effect of this case is limited specifically to the claim for sales tax and title/registration fees at issue.

27. The proposed settlement further provides that class counsel will not seek attorneys' fees and expenses exceeding \$5,756,500.00. This constitutes less than 29% of the Settlement value, even if the value of the change in business practice is not considered part of the overall Settlement value.

28. Class Counsel's lodestar, utilizing rates for each timekeeper that has been awarded in recent similar class action cases and including an estimated number of hours to be expended from this point on through final judgment, including overseeing and implementing the Notice and Claim process, assisting Settlement Class Members in submitting claims, calculating damages amounts to be delivered to Settlement Class Members, preparing the Motion for Final Approval and accompanying papers, attending the Final Fairness Hearing, etc., is approximately \$2,740,952.00. Applying a multiplier of approximately 2.1 would result in fees of \$5,756,500.00.

29. Class Counsel has exercised billing judgment and either did not include included or eliminated numerous hours that were arguably unnecessary or duplicative. For example, I did not include approximately 30 hours spent on communications with co-counsel and reviewing sections of various briefs that we filed; Mr. Normand subtracted 8 hours spent on review of filings, pleadings, and documents that were arguably unnecessary; Mr. Edelsberg subtracted 12 hours that

were arguably duplicative; Mr. Hall subtracted 5 hours spent on the response to GEICO's Rule 23(f) petition that were arguably unnecessary or duplicative; Mr. Shamis is not including numerous hours spent on client communication that arguably could have been handled by staff rather than an attorney; and so forth.

30. Prior to the fairness hearing, Plaintiffs will file a motion for the award of attorneys' fees, costs, and incentive awards.

31. I, along with the rest of Class Counsel, believe that securing approximately 80% of the total possible sales tax damages and 100% of the total possible title and registration fees damages is an excellent result for the Settlement Class, particularly given the robust Notice and simple claims process agreed to by Defendants, and given the inherent risk no recovery at all.

32. My opinion and that of Class Counsel is that the claims-made structure of the Settlement is supported by the following: (1) Defendants asserted that they would not settle absent a claims-made structure, and Plaintiffs secured significantly high relief, robust notice, an extremely simple claims process, and a narrow release; (2) settling on a non-claims made structure would be difficult, timely, and require significant costs which likely would have meant a lesser recovery for each individual Class Member; (3) the Notice—direct, individualized Notice to every class member on at least three occasion—is extremely robust, while the claims' submission process—which includes pre-filled information, prepaid postage return forms, and requires mere attestation—is extremely simple.

33. Because Notice is robust and the claims process is simple, class members will be afforded every opportunity to submit a claim and receive full payment of damages. Absent the robust notice, Class Counsel's opinion may be different. Absent the extremely simple claims process—signing a pre-filled, postage-prepaid claim form and dropping it in the mail or clicking

a button on a website—Class Counsel’s opinion may be different. But here, it is extremely likely that nearly every Class member will actually and physically receive and see the Notice, and see that submitting a claim will take a minute or two and absolutely no cost.

34. Class Counsel believe the risk of no recovery at all is arguably in the neighborhood of 40-50%, given that, although distinguishable, the only authority from the Sixth Circuit potentially at issue held that ACV does not include sales tax, the Sixth Circuit is silent on the question of whether the Ohio regulations provides the governing standard, this Court found a triable issue on accord and satisfaction, which may have implicated the possibility of decertification or, if GEICO succeeded on such defense, may have wiped out the potential recovery of a significant number of class members, and, even if not, class certification could have been overturned on appeal. It is certainly much higher than a 15% chance. As such, declining the settlement offer—which, accounting for both sales tax and title/registration fees, is for 85-90% of total potential damages—would have required intentionally choosing an economically irrational option merely because some Class members may not take the time to submit a pre-filled, postage-prepaid claim. Class Counsel believe choosing such option would have arguably been a dereliction of their duties to the Class.

35. I and other Class Counsel have been involved in similar class action settlement structures involving essentially the same claim, including against USAA in Ohio in a settlement recently approved in the Southern District of Ohio. As a part of those settlement processes, we have communicated not only with the named Plaintiffs in the various cases, but numerous class members both before and after settlement in those cases where settlement was reached. Every single class member with whom we interacted affirmed that they believed choosing to settle under this structure, rather than risking continuing litigation and rather than accepting a direct-pay model

for significantly less damages per class member (if that option were even available, which, here, it was not), would be the right choice and in their best interests.

36. Further the declarant sayeth naught.

Dated: September June 15, 2023

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Jake Phillips
Jacob Phillips, Esq.
Counsel for Plaintiffs

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
COLUMBUS DIVISION**

JANET DAVIS, ANGEL RANDALL,
ALMA LEE RESENDEZ, MANDY
PHELAN, and TREY ROBERTS, on behalf
of all other similarly situated,

Plaintiffs,

v.

GEICO CASUALTY COMPANY, a foreign
corporation, GEICO ADVANTAGE
INSURANCE COMPANY, a foreign
corporation, and GEICO CHOICE
INSURANCE COMPANY, a foreign
corporation, and GEICO GENERAL
INSURANCE COMPANY, a foreign
corporation, and GEICO SECURE
INSURANCE COMPANY, a foreign
corporation,

Defendants.

CASE NO.: 2:19 cv-02477-EAS-EPD

Judge: Edmund A. Sargus, Jr.

Magistrate Judge: Elizabeth Preston Deavers

CLASS ACTION

DECLARATION OF MEDIATOR MICHAEL UNGAR

I, Michael Ungar, pursuant to 28 U.S.C. §1746, declare as follows:

1. My name is Michael Ungar. I am over the age of 18 and I am competent to give testimony. The statements contained in this declaration are based upon my own personal knowledge and are true and correct.

I. BACKGROUND AND EXPERIENCE

2. I have mediated hundreds of complex cases, including many class actions. A link to my professional CV is found here: www.ulmer.com/attorneys/ungar-michael-n/

II. FAMILIARITY WITH THE PRESENT LITIGATION

3. I was retained by counsel for the parties in this matter for the specific purpose of mediating the case. In my capacity as mediator, I consider myself to be a neutral, representing neither plaintiffs nor defendants.
4. In preparing for this mediation on April 12, 2023 via Zoom, I asked the parties to provide me with a variety of information about the litigation. In addition, I conducted phone conferences with counsel before the mediation and facilitated discussions and negotiations between the parties during the mediation session, where both parties engaged in such discussions and responded to specific questions and clarifications. I studied multiple mediation submissions and selected court filings from the litigation.

III. THE MEDIATED SETTLEMENT NEGOTIATIONS

5. The mediation session involved many separate discussions with counsel for both sides and with representatives of those parties who were present, extended sessions with each side and multiple bi-lateral discussions where all counsel were present. The discussions allowed the parties to express their respective views of the strengths and weaknesses of the respective positions. I never witnessed or sensed any collusiveness between the parties. To the contrary, at each point during these negotiations, the settlement process was conducted at arm's length and, while professionally conducted, was adversarial. An agreement in principle was ultimately achieved following a mediation session with respect to all issues other than attorney's fees.

6. The relief for class members was the main focus of the mediation session. There were no discussions of attorneys' fees, costs, or incentive awards until the substantive terms of the settlement were negotiated and resolved.
7. The parties reached agreement on a settlement in principle shortly after the mediation session, with the exception of the issue of attorney's fees. The discussion regarding attorney's fees began after the other matters were concluded and continued after the mediation, with my oversight/involvement. The issue of attorney's fees was ultimately resolved to the satisfaction of all parties.
8. Counsel on both sides of the mediation were experienced and provided excellent representation for their clients. They were meticulous and detail-oriented in addressing every detail of the Settlement. And, at every step along the way, counsel for both sides acted with the utmost professionalism and were extremely helpful to the undersigned mediator.
9. A review of my records shows that, in total, I spent approximately 20 hours coordinating, preparing, pre-mediating and mediating the resolution of this case.
10. I am happy to answer any questions the court may have, and can best be reached at my office (216) 583-7002 or my mobile (216) 978-8197. I was appreciative of the opportunity to serve in this role.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 14th day of June, 2023.

A handwritten signature in dark ink, appearing to read 'Michael Ungar', with a stylized, flowing script.

Michael Ungar

Ulmer2020:201228553v1