

# **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”),<sup>1</sup> 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

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<sup>1</sup> 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:

SHAMIS & GENTILE, P.A.  
Andrew Shamis, Esq.  
14 NE 1<sup>st</sup> Avenue  
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Miami, FL 33132

HALL & LAMPROS LLP  
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20900 NE 30<sup>th</sup> Avenue

KARON LLC  
Daniel Richard Karon, Esq.  
Beau D. Hollowell, Esq.



Suite 417  
Aventura, FL 333180

700 W. St. Clair Ave., Ste. 200  
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 30<sup>th</sup> Ave., Suite 417  
Aventura, FL 33180  
scott@edelsberglaw.com

Notices to Defendant:

Kymberly Kochis  
**EVERSHEDS SUTHERLAND LLP**  
1114 6<sup>th</sup> 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

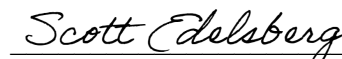


contained herein, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases and Released Claims, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases and Released Claims.

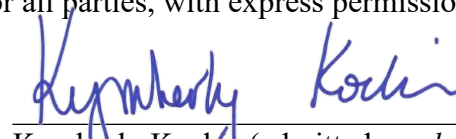
153. All discovery produced to Plaintiffs (including data, depositions, testimony and written discovery) will be returned to Defendants' outside counsel or destroyed within 15 days of a final and non-appealable Court order approving the Settlement. The Parties agree that Class Counsel or anyone associated 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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