

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

KOSMOE MALCOM, et al., individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

GEICO INDEMNITY COMPANY,
GOVERNMENT EMPLOYEES INSURANCE
COMPANY, and GEICO GENERAL
INSURANCE COMPANY, Maryland
corporations,

Defendants.

CIVIL ACTION
FILE NO.: 5:20-cv-00165-MTT

**PLAINTIFFS' NOTICE OF FILING FIRST AMENDMENT
TO SETTLEMENT AGREEMENT AND RELEASE**

Plaintiffs file this Notice of Filing First Amendment to Settlement Agreement and Release.

The First Amendment to Settlement Agreement and Release is attached as exhibit 1.

This 4th day of December 2023.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day, December 4, 2023, I filed the foregoing Notice of

Filing on the Court's ECF to the below counsel:

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Christopher B. Hall

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FIRST AMENDMENT TO SETTLEMENT AGREEMENT AND RELEASE

This First Amendment to Settlement Agreement and Release (“First Amendment to Settlement Agreement”), is entered pursuant to Paragraph 184 of that Settlement Agreement and Release between the Parties hereto, dated October 16, 2023 (Doc. 192-1), by and between Plaintiffs Nicholus Johnson (“Johnson”), Kosmoe Malcom (“Malcom”), Aqueelah Coleman (“Coleman”), and Todra Washington (“Washington”), individually and on behalf of the Settlement Class, and Defendants GEICO Indemnity Company (“GEICO Indemnity”), GEICO General Insurance Company (“GEICO General”), Government Employees Insurance Company (“Government Employees”) and their related entities (collectively, “GEICO”).

I. INCORPORATION OF DEFINITIONS

Unless otherwise expressly modified by this Amendment, the Parties incorporate and utilize herein the defined terms contained in the Settlement Agreement, which appear herein with initial capital letters.

II. RECITALS

The Parties enter this First Amendment to Settlement Agreement to comport with revisions of the Court to the proposed Order Granting Preliminary Approval.

III. AGREEMENT

The Parties agreed that the Settlement Agreement and Release is amended only as follows:

1. Amend paragraph 65 to read as follows:

65. “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 second Mailed Notice.

2. Amend Paragraph 85 to read as follows:

85. “Objection Deadline” means the date no later than 30 days after the second 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.

3. Amend Paragraph 86 to read as follows:

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

4. Amend Paragraph 99 to read as follows:

99. “Settlement Class” means all insureds covered under an Automobile Insurance Policy issued by GEICO providing auto physical damage coverage for comprehensive or collision loss, who during the period April 29, 2014 through December 31, 2019 had a total loss and made a comprehensive or collision first-party claim that GEICO determined to be a covered total loss claim, whose claim was adjusted and paid as a total loss, and (1) whose total losses were of Vehicles That Had a Fair Market Value Listed in the TAVT Assessment Manual and who were not paid the full TAVT due on their claims based on fair market value in the TAVT Assessment Manual; or (2) whose total losses were not Vehicles That Had a Fair Market Value Listed in the TAVT Assessment Manual but whose total losses were Vehicles Listed in the DRIVES Assessment Manual Data and who were not paid the full TAVT due on their claims based on the fair market value in the DRIVES Assessment Manual Data.

5. Amend Paragraph 135 to read as follows:

135. 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 second 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 which 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.

6. Amend Paragraph 136 to read as follows:

136. 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 or motion to intervene must be postmarked and mailed to the Settlement Administrator, and filed with the Court, no later than thirty (30) days after the date of the second Mailed Notice. 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, a request for exclusion must include all of the following information:

1. The name of the case and case number;
2. Settlement Class Member's name, address, telephone number, and signature;

3. The specific reasons why the Settlement Class Member objects to the terms of the proposed Settlement;
4. The name, address, bar number, and telephone number of any attorney who represents the Settlement Class Member related to the Settlement Class Member's intention to object to the terms of the Settlement;
5. Whether the Settlement Class Member and/or Settlement Class Member's attorney intends to appear at the Final Approval Hearing and whether you and/or your attorney will request permission to address the Court at the Final Approval Hearing.

This 30th day of November 2023.

/s/ Kymberly Kochis

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