

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

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement” or “Agreement”),¹ dated as of October 16, 2023, is entered into by 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”). 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 Middle District of Georgia.

I. Recitals

1. On April 29, 2020, Malcom and former Plaintiffs Tamara Ewing (“Ewing”), and

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

Kwanze Gardner (“Gardner”) filed a putative class action Complaint in the United States District Court for the Middle District of Georgia, Case No. 5:2020-cv-00165 against GEICO Indemnity, GEICO General, and Government Employees (together “Defendants”). The Complaint alleged that GEICO underpaid the title ad valorem tax (“TAVT”) and license plate transfer fees to its Georgia insureds on auto insurance total loss claims. Doc. 1.

2. On June 30, 2020, Defendants filed a Motion to Dismiss. Doc. 20.

3. On July 21, 2020, Plaintiffs Ewing, Malcom, and Gardner filed a First Amended Complaint. Doc. 23.

4. On August 3, 2020, Defendants filed a Motion to Dismiss the First Amended Complaint. Doc. 28.

5. On August 24, 2020, Ewing, Malcom, and Gardner filed a response in opposition to the Motion to Dismiss. Doc. 29.

6. On September 8, 2020, Defendants filed a reply in support of the Motion to Dismiss. Doc. 30.

7. On October 9, 2020, the Court granted in part and denied in part the Motion to Dismiss. Doc. 31.

8. On October 23, 2020, Defendants filed an Answer to the First Amended Complaint. Doc. 33.

9. On January 19, 2021, Plaintiffs filed a Motion for Leave to File Second Amended Complaint. Doc. 37.

10. On February 9, 2021, Defendants filed a response and took no position on Plaintiffs’ Motion for Leave to File Second Amended Complaint. Doc. 40.

11. On February 10, 2021, the Court granted leave for Plaintiffs to file a Third Amended Complaint. Doc. 41.
12. On February 16, 2021, Plaintiffs filed their Third Amended Complaint. Doc. 42.
13. On March 18, 2021, Defendants filed their Answer to Plaintiffs' Third Amended Complaint. Doc. 43.
14. On August 23, 2021, Plaintiffs filed their Motion for Class Certification and Incorporated Memorandum of Law. Doc. 51.
15. On September 9, 2021, Defendants filed their Response in Opposition to Plaintiffs' Motion for Class Certification. Doc. 56.
16. On March 11, 2022, Defendants filed a Notice of Supplemental Authority relating to the Motion for Class Certification. Doc. 83.
17. On March 16, 2022, Response in Opposition to Defendants' Supplemental Authority (Doc. 83)). Doc. 84.
18. On May 19, 2022, the Court granted Plaintiffs' Consolidated Motion to Certify the Class. Doc. 89.
19. On June 2, 2022, GEICO filed a Motion for Reconsideration of the Order certifying the class. Doc. 91.
20. On June 16, 2022, Plaintiffs filed a Response in Opposition of GEICO's Motion for Reconsideration. Doc. 94.
21. On June 23, 2022, the Parties filed a Joint Notice of Filing Proposed Notice Plan. Doc. 96.
22. On July 6, 2022, Plaintiffs filed a response to motion for reconsideration seeking leave to amend the Third Amended Complaint to add a new party. Doc. 98

23. On July 18, 2022, Defendants filed a response in opposition to Plaintiffs' request to amend the complaint and add a party. Doc. 103.

24. On July 25, 2022, Plaintiffs filed a reply in support of their request to amend the complaint and add a party. Doc 104.

25. On July 29, 2022, Defendants filed a Motion for Limited Reopening of discovery. Doc. 105.

26. On August 3, 2022, the Court held a hearing on the Motion for Reconsideration of the Order on motion to certify the class. Doc. 106.

27. On August 5, 2022, the Court granted Plaintiffs' Motion to Amend or Substitute Party and granted Defendants' Motion for Limited Reopening of Discovery. Doc. 107.

28. On August 25, 2022, Ewing, Malcom, Gardner, Coleman, and Washington filed their Third Amended Complaint adding Plaintiff Nicholus Johnson ("Johnson"). Doc. 108.

29. On August 25, 2022, Defendants filed an Answer to the Third Amended Complaint. Doc. 110.

30. On October 11, 2022, the Court dismissed Gardner with prejudice. Doc. 123.

31. On October 11, 2022, the Court denied Defendants' Motion for Reconsideration of the Order granting class certification. Doc. 124.

32. On October 11, 2022, Defendants filed a Motion for Summary Judgment. Doc. 127.

33. On October 11, 2022, Plaintiffs filed a Motion for Summary Judgment. Doc. 129.

34. On October 25, 2022, the Court entered an Order Amending the Order granting Consolidated Motion for Class Certification only on the issue of Ewing, and substituting Johnson as a designed class representative for Ewing. Doc. 133.

35. On November 11, 2022, Defendants filed a response in opposition to Plaintiffs' Motion for Summary Judgment. Doc. 137.

36. On November 11, 2022, Plaintiffs filed a response in opposition to Defendants' Motion for Summary Judgment. Doc. 139.

37. On November 15, 2022, Defendants filed a reply in support of Defendants' Motion for Summary Judgment. Doc. 146.

38. On November 15, 2022, Plaintiffs filed a reply in support of Plaintiffs' Motion for Summary Judgment. Doc. 149.

39. On November 18, 2022, the parties filed a joint motion to amend/correct notice (Doc. 151), which the Court granted on December 5, 2022. Doc. 153.

40. On December 12, 2022, the United States Court of Appeals for the Eleventh Circuit denied Defendants' petition for permission to appeal the order on class certification pursuant to Fed. R. Civ. P. 23(f). Doc. 155.

41. On January 24, 2023, the Court set the matter for trial on July 17, 2023. Doc. 156.

42. On April 14, 2023, Plaintiffs filed an emergency motion to amend order on motion to certify class. Doc. 159

43. On May 9, 2023, Defendants filed a motion to decertify the class and motion to exclude the testimony of Plaintiffs' expert Jeffrey Martin. Docs. 166 and 167.

44. On May 9, 2023, the Court denied Plaintiffs' emergency motion to amend. Doc. 168.

45. On May 19, 2023, Defendants filed a motion for clarification of the Court's Order denying Plaintiffs' Emergency Motion to Amend. Doc. 169.

46. On May 19, 2023, the Court granted the motion for clarification. Doc. 171.

47. On May 30, 2023, Plaintiffs filed a response in opposition to the motion to decertify the class, and to exclude the testimony of expert Jeffrey Martin. Docs. 173 and 174.

48. On June 12, 2023, Plaintiffs gave Notice of provision of class notice. Doc. 177.

49. On June 13, 2023, Defendants filed replies in support of motion to decertify the class

and to exclude expert Jeffrey Martin. Docs. 178 and 179.

50. On June 13, 2023, Defendants filed a motion for leave to file supplement relating to pending motions. Doc. 180.

51. On June 16, 2023, Plaintiff filed a response in opposition to GEICO's motion for leave to file supplement relating to pending motions. Doc. 181.

52. On June 20, 2023, the Court denied Defendants' motion for leave to file a supplement relating to pending motions. Doc. 182.

53. On June 20, 2023, Plaintiffs filed pretrial disclosures. Doc. 183.

54. On June 27, 2023, the Parties filed a Joint Motion to Hold in Abeyance Rulings on Pending Motions due to scheduled mediation. Doc. 184.

55. On June 28, 2023, the Court granted the motion to hold in abeyance. Doc. 185.

56. On July 18, 2023, the Parties filed a motion to stay the case pending settlement.

57. On July 20, 2023, the Court granted the motion to stay.

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, GEICO, 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:

58. “Action” means *Malcom, et al. v. GEICO Indemnity Co., et al.*, No 5:20-cv-00165-MTT, United States District Court for the Middle District of Georgia.

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

60. “Cash Settlement Benefits” means the maximum amount of up to \$5,100,000.00 in cash that Defendants agree to make available to pay Settlement Class Members who timely submit a claim under the Settlement, and to pay Class Counsel Fees. The Cash Settlement Benefits will be the maximum made available by GEICO for all Settlement Class Member Payments, Class Counsel Fees, and all other fees or costs of any kind, with the exception of settlements to class representatives for more expanded releases, and settlement administration costs, which GEICO will pay for separately.

61. “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 Exhibits 1 through 3.

62. “Claim Payment” means the Settlement Class Member Payment issued by GEICO or the Settlement Administrator to Settlement Class Members who submit valid and timely claims as set forth in Paragraph 148.

63. “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.

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

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 first Mailed Notice.

66. “Class Counsel” means:

SHAMIS & GENTILE, P.A.
Andrew Shamis, Esq.
14 NE 1st Avenue
Suite 1205
Miami, FL 33132

LINDSEY & LACY, PC
Tom Lacy
200 Westpark Dr.
Suite 280
Peachtree City, GA 30269

NORMAND PLLC
Edmund Normand, Esq.
Jacob Phillips, Esq.
3165 McCrory
Pl #175
Orlando, FL 32803

HALL & LAMPROS LLP
Chris B. Hall, Esq.
300 Galleria Parkway, Ste. 300
Atlanta, GA 30339

EDELSBERG LAW
Scott Edelsberg, Esq.
Christopher Gold, Esq.
20900 NE 30th Avenue
Suite 417
Aventura, FL 333180

BAYUK PRATT
Bradley W. Pratt, Esq.
4401 Northside Parkway
Suite 390
Atlanta, GA 30327

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

68. “Class Data” means certain Settlement Class Member claims data for Covered Total Loss Claims.

69. “Class Period” means, the period of April 29, 2014 through December 31, 2019.

70. “Class Representatives” means Nicholus Johnson, Kosmoe Malcom, Aqueelah Coleman, and Todra Washington.

71. “Court” means the United States District Court for the Middle District of Georgia.

72. “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.

73. “Defendants” means GEICO Indemnity Company, GEICO General Insurance Company, and Government Employees Insurance Company.

74. “DRIVES Assessment Manual Data” means the Georgia Department of Revenue Title Ad Valorem Assessment Manual data produced in the lawsuit in Excel format by the Georgia Department of Revenue (“DOR”) and certified by the DOR at Doc. 94-1.

75. “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 Order and Judgment releasing all Released Person from the 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 Class Counsel Fee Awards and Expanded Release payments; and

f. The Final Approval order has become Final as defined in Paragraph 78, below.

76. "Expanded Release Payment" means any payment to a Class Representative in consideration for executing an expanded general release of all possible claims. Any Expanded Release Payment is a separate payment that does not reduce payments to Settlement Class Members.

77. "Final Approval" means the date that the Court enters the Final Order.

78. "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 Expanded Release Payment to the Class Representatives.

79. "Final" means that (a) the Final Order is a final, appealable judgment and (b) either (i) no appeal has been taken from the Final Order as of the date on which all times to appeal therefrom have expire, or (ii) an appeal or other review proceeding of the Final Order having been commenced, such appeal or other review is finally concluded and no long 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 other and such appeal or other review has been full and finally resolved in such manner that affirms the Final Order.

80. "Final 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 releasing all claims consistent with the terms of this Agreement. The proposed Final 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 Order also includes the orders, which may be entered separately, determining the amount of fees awarded to Class Counsel and the amount of any Expanded Release Payment to the Class Representatives.

81. “GEICO” means GEICO Indemnity Company, GEICO General Insurance Company, and Government Employees Insurance Company, and their subsidiaries, affiliates or related insurance companies.

82. “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.

83. “Long Form Notice” means the Court-approved long form notice, without material alteration from Exhibit 3, to be made available on the Settlement Website.

84. “Notice Program” means the methods provided for in this Agreement for providing notice to potential Settlement Class Members and consists of Long Form Notice, Short Form Notice, and Email Notice, which shall be substantially in the forms as exhibits 1-3.

85. “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.

86. “Opt-Out Deadline” means the date no later than 30 days after the first 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.

87. “Plaintiffs” means Nicholus Johnson, Kosmoe Malcom, Aqueelah Coleman, and Todra Washington.

88. “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,

89. “Preliminary Approval Order” means the order granting Preliminary Approval of this Settlement substantially in the form as Exhibit 4, attached hereto.

90. “Releases” means all the releases contained in Section XII hereof.

91. “Released Claims” means and includes any and all known and unknown claims, existing or potential, suspected or unspecified, liquidated or unliquidated, rights, liabilities, demands, 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, tort, bad faith or extracontractual claims, and claims for punitive or exemplary damages, attorneys’ fees, costs, losses, remedies or prejudgment or post judgment interest, based on, arising from or relating in any way to conduct, omissions, duties or matters arising out of GEICO’s non-payment or underpayment of TAVT and/or sales tax to Plaintiffs and Settlement Class Members during the Class Period.

92. “Releasing Parties” means Plaintiffs and all Settlement Class Members who do not otherwise timely opt-out of the Settlement Class, and each of their respective executors, representatives, heirs, predecessors, Legally Authorized Representatives, 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.

93. “Released Parties” means (a) GEICO; (b) all divisions, parent entities, affiliates, predecessors, successors, and subsidiaries of GEICO; (c) all past and present officers, directors, agents, attorneys, employees, stockholders, successors, members, advisors, consultants, representatives, assigns, partners, joint venturers, independent contractors, distributors, retailers, insurers and reinsurers; and (d) all of the heirs, estates, successors, assigns, and legal representatives of any of the entities or Persons listed in this Paragraph.

94. “Title Ad Valorem Tax” and “TAVT” mean title ad valorem tax collected or assessed by the State of Georgia during the Class Period. TAVT shall be determined by applying the applicable TAVT Percentage Rates to the fair market value of the total loss vehicle as it appears in the TAVT Assessment Manual (or as it appears in the DRIVES Assessment Manual Data if the total loss vehicle fair market value is not in the TAVT Assessment Manual).

95. “TAVT Percentage Rates” means the percentage rate to be applied to fair market value pursuant to O.C.G.A. § 48-5C-1 in the following amounts for the following time periods:

<u>Time Period</u>	<u>Rate</u>
4/29/14 – 12/31/2014	6.75%
1/1/15 – 12/31/2019	7.00%

96. “TAVT Assessment Manual” means the Georgia Department of Revenue TAVT Assessment Manual prepared by the Georgia Department of Revenue (“DOR”) and available for each year in the class period in pdf format at <https://dor.georgia.gov/13georgia-motor-vehicle-assessment-manual-title-ad-valorem-tax>.

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

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

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; and (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.

100. Excluded from the Class are:

- a. GEICO, all present or former officers and/or directors of GEICO, the Neutral Evaluator, Class Counsel, and a Judge of this Court;
- b. Claims for which GEICO received a valid and executed release;
- c. Claims where GEICO paid full TAVT; and
- d. Claims subject to binding appraisal and/or arbitration.

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

102. “Settlement Class Member Payment” means the cash distribution provided in Paragraph 148 that will be made by GEICO and/or the Settlement Administrator to each Settlement Class Member who submits a valid and timely claim that is approved by the Settlement Administrator.

103. “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 GaAutoLossClass.com, or such other URL as Class Counsel and Defendants agree upon in writing. 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.

104. "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, with postage paid and return address, and served by direct mail to the 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 1 and 2.

105. "Total Loss" means an insured vehicle that sustained damage, was the subject of a covered first-party property damage claim submitted to GEICO, and for which GEICO issued a Total Loss Claim Payment.

106. "Total Loss Claim Payment" means a first-party physical damage claim payment made by GEICO under Section III of GEICO's Automobile Insurance Policy for a vehicle determined to be a Total Loss.

107. "Total Loss Date" means the day, month, and year on which the event occurs rendering a vehicle a Total Loss.

108. "Vehicles That Had a Fair Market Value Listed in the TAVT Assessment Manual" means those vehicles that had a partial Vehicle Identification Number and associated make and model

are identified in the TAVT Assessment Manual.

109. “Vehicles That Had a Fair Market Value Listed in the DRIVES Assessment Manual Data” means those vehicles that had a partial Vehicle Identification Number and associated make and model that are not identified in the TAVT Assessment Manual, but are identified in the DRIVES Assessment Manual Data.

III. Preliminary Certification of the Settlement Class

110. Solely for the purpose of implementing this Agreement and effectuating the proposed Settlement, GEICO stipulates to entry of a Preliminary Approval Order (in the form of the proposed Order attached as Exhibit 4 or including the substance of the proposed Order attached as Exhibit 4), 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.

111. 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 4, 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 sets a Claims Deadline by which Claim Forms must be submitted in order to be deemed timely; (4) approves the settlement website described in Paragraphs 103 and 128; (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 119 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 below for members of the Settlement Class to exclude themselves from the Settlement Class or to object to the Settlement; (9) stays the Action pending Final Approval of the Settlement; and (10) schedules 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 Expanded Release Payment.

112. 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.

113. 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

114. Subject to approval by the Court, Defendants have agreed to the following Consideration:

a. pay Settlement Class Members an aggregate of up to \$5,100,000.00 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 an Expanded Release payment of up to \$5,000.00 per Class Representative; and
- d. pay Class Counsel, from the Cash Settlement Benefits to Settlement Class Members, any Court-awarded fees, expenses, and costs of up to \$1,590,500.00.

V. Discovery and Settlement Data

115. 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. Defendants agree to re-run (downloaded again) the relevant total loss claims data for the entire Class Period in an additional measure to ensure that all Settlement Class Members are identified.

VI. Settlement Administrator

116. The Parties agree to the appointment of JND as Settlement Administrator to perform the services described herein. GEICO 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.

117. 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.

118. 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 provided by Defendants in connection with the Notice Program approved by the Court, for the purpose of distributing 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 the Settlement Class;
- 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 the Settlement Class to call and leave messages regarding Settlement-related inquiries, and respond to questions of the Settlement Class 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 weekly reports (as practicable) to Class Counsel and Defendants that summarize the number of Claim Forms received, requests for exclusion received that week, 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 Settlement Class Member Payments to Settlement Class Members;

l. Provide to Plaintiffs' Counsel and GEICO's counsel 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. Class Action Fairness Act Notice

119. 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 Georgia, the Georgia 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

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

121. 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.

122. 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 Settlement Class Members' information and served by direct mail to the last known address, including skip trace remailing for any undelivered mail and (2) Email Notice sent via email, to the extent such addresses are kept by GEICO.

123. Mailed Notice shall be sent on two occasions, with the second Mailed Notice to be sent approximately thirty (30) days after the first Mailed Notice.

124. Email Notice shall be sent to each Settlement Class Member for whom GEICO has an email address on two occasions after the first Mailed Notice is sent and on dates suggested by the Settlement Administrator and shall include a hyperlink to the Claim Form on the Settlement Website.

125. The Claim Form on the website shall be prepopulated when accessed through the Email Notice.

126. Settlement Class members, for whom the Defendants maintain physical addresses and Email addresses, shall be sent both Mailed Notice and Email Notice.

127. The Settlement Administrator shall perform reasonable address traces for Mailed Notices that are 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.

128. The Settlement Website shall contain important information and documents, including

an online claim form and ability to submit the claim form through that portal if a valid claim number or claimant ID is entered.

129. An IVR call center shall be available 24/7 with a person who will answer Settlement Class members' questions using an agreed upon script and can further take name, address and relevant information to send out Long Form Notices

130. 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.

131. Within 30 days of Preliminary Approval, the Settlement Administrator shall create the Settlement Website.

132. Within 30 days of Preliminary Approval, the Settlement Administrator shall establish a toll-free number whereby the Settlement Class may call talk to a person who will answer Settlement Class members questions using an agreed upon script or request a copy of the Long Form Notice to be sent by mail.

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

IX. Requests for Exclusion and Objections.

134. A Settlement Class Member 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.

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 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 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.

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 first 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.

137. In addition, a notice of intent to object 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 your class member number or full name and address when the total loss occurred.

138. 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 Defendants 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 Defendants. 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 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 notice of intent to object received by the Settlement Administrator.

X. Final Order and Judgment

139. 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 Class Counsel Fee Award, and for an Expanded Release Payment for the Class Representative, no later than 15 days before the objections deadline. At the Final Approval Hearing, the Court will hear argument on Plaintiffs' Motion for Final Approval of the Settlement, and on Class Counsel's application for a Class Counsel Fee Award, and for the separate payment to those Class Representatives who sign and individual more expansive release. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any member of the Settlement Class (or their counsel) who object to the Settlement or to Class Counsel's application for Class Counsel Fee Award, or the Expanded Release Payment to Class Representatives who sign a more expansive release, provided the objectors submitted timely objections that meet all of the requirements listed in the Agreement.

140. At or following the Final Approval Hearing, the Court will determine whether to enter the Final 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 Expanded Release Payment. Such proposed Final 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, including GEICO and its affiliates, at any time, including during any appeal from the Final Order; and retain jurisdiction over the enforcement of the Court's injunctions;
- f. Release 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

141. This settlement shall be a claims-made settlement. To receive a Claim Payment, members of the Settlement Class 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 11:59 pm Eastern on the Claims Deadline, at which point the Settlement Administrator shall deactivate the ability to submit a claim form through the Settlement Website.

142. Each Settlement Class Member for whom GEICO has a mailing address will receive a Claim Form as part of the Notice Program. 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.

143. Members of the Settlement Class may alternatively submit Claim Forms online electronically at the Settlement Website, GaAutoLossClass.com, by providing at least one of the following which will then pre-fill the remaining required information: 1) the unique claim number found on the Notices; 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.

144. 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 Settlement Class Member a letter informing him or her of the defect and providing the Settlement Class Member 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 Settlement Class Member shall not have an additional opportunity to cure the defect.

145. Within sixty (60) days after the later of the Claims Deadline or the Final Order and Judgment, GEICO shall make good faith efforts 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 provide the Settlement Administrator and Class Counsel the amount of payment, 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.

146. 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 a check for the full amount of Claim Payment or, if authorized to do so, make an electronic transfer of funds for the full amount of Claim Payment to all Settlement Class Members whose submitted claims were not challenged as invalid, and for which Class Counsel did not dispute the amount of Claim Payment. The check shall be valid for 180 days after the date of the check.

147. 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.

148. The Parties have agreed that the Defendants shall pay Settlement Class Members who submit a valid and timely claim that is approved by the Settlement Administrator and who were not previously paid full TAVT on their Total Loss, a Claim Payment calculated as the TAVT at the applicable statutory rate based on the fair market value of the total loss vehicle identified by the TAVT Assessment Manual (or the DRIVES Assessment Manual Data only if the total loss vehicle fair market value is not in the TAVT Assessment Manual) minus the amount in TAVT GEICO paid on the total loss claim (the “TAVT Underpayment”). GEICO is permitted to reduce Claim Payments by amounts paid by GEICO for TAVT as part of the Total Loss.

149. 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 \$1,590,500.00, then Settlement Class Member Payments will be reduced by 31% ($\$1,590,500/\$5,100,000$).

150. 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 Claim Deadline or post-marked on or before the Claims Deadline, and which contain the information required in Paragraphs 142-144, and which are legible, signed, etc.). Defendants shall review their records of each timely claim submitted to determine if the Settlement Class Member was already paid TAVT. If GEICO previously paid the Settlement Class Member full TAVT, as applicable, GEICO shall inform Class Counsel and the Settlement Administrator and no payment will be made to that Settlement Class Member. Any partial payment (in contrast to no payment at all) of TAVT in the original total loss settlement shall reduce the Claim Payment.

151. Settlement Class Member Payments will be made payable by check or electronic transfer. 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.

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

153. 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

154. As of the Effective Date, 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.

155. As such time, each Settlement Class Member will be 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.

156. Plaintiffs further agree that no liability shall attach 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.

157. 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 Effective Date, 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 the payment or failure to pay TAVT. 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 Expanded Release Payment

158. Class Counsel's entitlement, if any, to a Class Counsel Fee Award, and the Class Representative's entitlement, if any, to an Expanded Release Payment 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 Expanded Release Payment, except as explicitly stated herein.

159. Defendants agree not to oppose Class Counsel's request for attorneys' fees of up to \$1,504,500.00. The attorneys' fees request, which shall be paid out of the Cash Settlement Benefits, is equal to approximately 29.5% 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 shall not prevent the Agreement from becoming Effective, nor shall it be grounds for termination.

160. Provided that Plaintiffs have provided Defendants with instructions to pay by check or wire and 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 Fees and Court-awarded costs. 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.

161. Class Counsel will ask the Court to approve the Expanded Release Payment to Class Representatives who execute a more broad individual settlement providing a more expansive general release of claims, up to \$5,000.00 per Class Representative. Such payment 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 the payment. The Parties agree that the Court's failure to approve a separate payment for \$5,000.00 to Class Representatives, in whole or in part, shall not prevent the Agreement from becoming Effective, nor shall it be grounds for termination.

162. The Parties negotiated and reached agreement regarding attorneys' fees and the individual payments, only after reaching agreement on all other material terms of this Settlement.

XIV. Termination of Settlement

163. 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 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 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 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

164. 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.

165. 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.

166. The Settlement shall become effective on the Effective Date unless earlier terminated

in accordance with the provisions hereof.

167. 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

168. 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 Georgia and abided by the terms of the applicable insurance policies. GEICO nonetheless has concluded that the proposed Settlement herein is desirable in order to avoid the further significant burden, expense, risk, and inconvenience of protracted litigation, and the distraction and diversion of its personnel and resources. Neither this Agreement nor the negotiations concerning it may be used, offered or admitted as evidence of liability or for any purpose or filed with the Court for any reason.

169. 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.

170. 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 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.

171. 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.

172. 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.

173. In addition to any other defenses Class Counsel may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted, prosecuted, or attempted in breach of this Agreement or the Releases and

Released Claims contained herein.

XIX. Miscellaneous Provisions

174. 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.

175. 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.

176. 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.

177. 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.

178. 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.

179. 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.

180. 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 Georgia, without regard to the principles thereof regarding choice of law.

181. 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.

182. 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 Order and judgment.

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

Notices to Plaintiff:

Christopher B. Hall
HALL & LAMPROS, LLP
300 Galleria Pkwy, Suite 300,
Atlanta, GA 30339
chall@hallandlampros.com

Notices to Defendants:

Kymerly Kochis
EVERSHEDS SUTHERLAND LLP
1114 6th Avenue
New York, New York 10036
kymerlykochis@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.

184. 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.

185. 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.

186. 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.

187. 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.

188. 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.

189. 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.

190. 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.

191. 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 both parties.

This 16th day of October 2023.

/s/Kymerly Kochis

Kymerly Kochis (pro hac vice)
Alexander P. Fuchs (pro hac vice)
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Attorneys for Plaintiffs

This October 16, 2023,



Nicholus Johnson

This October 16, 2023,



Kosmoe Malcom

This October 16, 2023,

Aqueelah Coleman

Aqueelah Coleman

This October 16, 2023,





Todra Washington

Todra Washington

Title	Settlement Agreement and Release for Nicholus Johnson,.....
File name	content
Document ID	4427dd32256b7717fc7ee47532a31a8627ab0d31
Audit trail date format	MM / DD / YYYY
Status	● Signed

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 SENT	10 / 16 / 2023 15:28:00 UTC	Sent for signature to Nicholus Johnson (nicholus82@hotmail.com), Kosmoe Malcom (bridgeton61@gmail.com), Aqueelah Coleman (brownhonda1991@yahoo.com) and Todra Washington (todra.washington@yahoo.com) from gpalacios@shamisgentile.com IP: 134.56.254.34
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Document ID	4427dd32256b7717fc7ee47532a31a8627ab0d31
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 SIGNED	10 / 16 / 2023 17:33:05 UTC	Signed by Nicholus Johnson (nicholus82@hotmail.com) IP: 174.199.165.60
 COMPLETED	10 / 16 / 2023 17:33:05 UTC	The document has been completed.

EXHIBIT 1

**UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF GEORGIA
Malcom v. GEICO Indemnity, Case No. 5:2020-cv-00165-MTT**

A class action settlement has been reached in the above referenced lawsuit against GEICO Indemnity Company, GEICO General Insurance Company, and Government Employees Insurance Company (collectively, "GEICO") entitling members of the Settlement Class, who make a claim, to payment of any unpaid Title Ad Valorem Tax ("TAVT") on their first party total loss auto insurance claims. This Notice is being sent to provide you information about your rights. GEICO denies all liability in this case.

Why am I getting this Notice? You have been identified as a potential "Settlement Class Member" from GEICO's claims data because you were a Georgia GEICO insured and submitted a physical damage claim with respect to a covered vehicle during the period April 29, 2014 through December 31, 2019, that resulted in a Total Loss Claim Payment that may not have included all of the TAVT Plaintiffs allege was due on the claim.

What is this lawsuit about? The Settlement resolves a lawsuit claiming that GEICO breached its auto insurance policies by failing to pay (or underpaying) TAVT to customers who submitted Georgia first-party total loss auto claims.

Settlement Terms. GEICO will pay TAVT to eligible Settlement Class Members who were not already paid the full TAVT as part of their Total Loss Claim Payments. If GEICO underpaid TAVT, GEICO will pay the correct amount of TAVT per the terms of the Settlement. The maximum available Cash Settlement Benefits totals \$5,100,000 for all Settlement Class Members. Class Counsel will seek attorneys' fees and costs of up to \$1,590,500 to be paid out of the Cash Settlement Benefits and a \$5,000 Payment to the Class Representatives. Each Settlement Class Member Payment will be reduced by each Settlement Class Member's proportional share of Class Counsel Fees and Costs.

How do I Receive Payment? To receive a payment, you must timely complete and mail the attached Claim Form or submit a Claim Form online at www.XXXX.com. If you submit a claim online, you will need the unique Claim ID found on the Claim Form attached to this Notice or the claim number associated with the Total Loss. If you submit online, you MUST submit at least one of these numbers, along with your name and address, or your claim will be rejected. Claim Forms must be postmarked or submitted online by [REDACTED].

Do I have any other options? Unless you file 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 request to be excluded from the Class by [MONTH], [DAY], [YEAR]. Unless you exclude yourself, you won't be able to sue or continue to sue GEICO for claims for unpaid TAVT that are 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]. Objections and requests for exclusion must be mailed to Settlement Administrator, PO BOX 0000, City, State, Zip Code. More details and the full terms of the Proposed Settlement are available at www.XXXX.com.

COURT ORDERED LEGAL NOTICE

**If you suffered a total-loss
while insured by
GEICO, you may be
entitled
to a cash payment.**

**Complete and return the
attached form by**

to receive a cash payment.

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

**Class Member John Doe
123 ABC Street
Miami, FL 12345**

CLAIM FORM

Name & Address: [PREFILL]

CLAIM ID: [PREFILL]

Date of Loss: [PREFILL]

1. ADDRESS (if different from above)

Primary Address

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Primary Address continued

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

City:

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

State:

--	--

Zip Code:

--	--	--	--	--	--

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

Signature: _____ Dated _____

Name (please print): _____

postage
prepaid
mark

Claims Administrator
P.O. Box ____
XXXX, XX

EXHIBIT 2

EMAIL NOTICE

To:

From:

Subject: Notice of 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.

***Malcom v. GEICO Indemnity Co.*, Case No. 5:2020-cv-00165-MTT,
United States District Court for the Middle District of Georgia**

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 Indemnity Company, Government Employees Insurance Company, and GEICO General Insurance Company (collectively “GEICO”). 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 April 29, 2014 and December 31, 2019, with respect to a vehicle insured by GEICO that resulted in a Total Loss Claim Payment that may not have included full title ad valorem tax (“TAVT”).

What is this lawsuit about? The Settlement resolves a lawsuit claiming that GEICO breached their auto insurance policies by failing to pay the full amount of TAVT to Georgia insureds who submitted first party total loss claims.

Settlement Terms. For Settlement Class Members who were underpaid the TAVT owed on their total loss claim, GEICO will pay the full TAVT at the applicable statutory rate based on the fair market value of the total loss vehicle set by the Georgia Department of Revenue on the date of the loss minus any amount in TAVT GEICO already paid on the total loss claim.

The total amount to be made available is \$5,100,000. Class Counsel will be seeking attorneys’ fees and costs of up to \$1,590,500.00 from the available settlement amount. GEICO also agrees to pay separately, if approved by the Court, \$5,000.00 to the Class Representatives who execute a general release of all claims.

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 from your total loss. Paper Claim Forms must be postmarked by _____, or electronic Claim Forms submitted on the Settlement Website, by 11:59pm EST on ___, 20__.

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 ____m. on [INSERT] 2023, in Courtroom [____] 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.XXXX.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 _____.

Final Approval Hearing: The Court has scheduled a hearing to consider granting final approval of the settlement. The hearing is scheduled for _____, at _____ in courtroom ____ before the Honorable Marc T. Treadwell, Chief United States District Judge, at the William A. Bootle Federal Building & US Courthouse, 475 Mulberry Street, Macon, GA 31201.

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

EXHIBIT 3

**UNITED STATES DISTRICT COURT
Middle District of Georgia**

Malcom v. GEICO Indemnity Co.

Case No. 5:2020-cv-00165-MTT

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 *Malcom v. GEICO Indemnity Co.*, Case No. 5:2020-cv-00165-MTT, entitling Settlement Class Members to payment of Title Ad Valorem Tax (“TAVT”). 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 allege that Defendants GEICO Indemnity Company, Government Employees Insurance Company, and GEICO General Insurance Company (collectively, “GEICO”) breached their contracts (Automobile Insurance Policies) by failing to fully pay Plaintiffs and other Georgia 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 GEICO failed to properly calculate and pay Title Ad Valorem Tax (“TAVT”). GEICO maintains that it 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 making a claim who were not previously paid full TAVT on their total loss, TAVT at the applicable statutory rate based on the fair market value of the total loss vehicle as set by the Georgia Department of Revenue (“DOR”) on the date of the loss minus the amount in TAVT GEICO paid on the total loss claim.

The Settlement provides payment of up to \$5,100,000.00 in unpaid (or underpaid) TAVT to Settlement Class Members who make a claim. Any payment by GEICO will be reduced by the amount of TAVT already paid to Settlement Class Members. Settlement Class Members who already were paid as part of their total loss claim the full TAVT will not receive payment. In exchange, Plaintiffs and the Settlement Class Members who do not exclude themselves from the Settlement agree to give up any claim they have for payment of TAVT on their total loss claim. 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, which means you are not eligible for payment, and you maintain your right to sue GEICO individually and separately for payment of TAVT. 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 are a member of the Settlement Class if you were a Georgia policyholder and insured by GEICO or one of its affiliates and had a covered total loss auto claim during the period April 29, 2014 through December 31, 2019 that resulted in a total loss payment by GEICO and the total loss payment did not include a full payment for TAVT. TAVT is determined by applying the applicable TAVT percentage rate to the fair market value of the Total Loss Vehicle set by the DOR for TAVT at the time of the loss.

You received this Notice because GEICO’s records indicate you 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 TAVT. The maximum amount GEICO has agreed to pay for all Settlement Class Member Payment, Counsel Fees, Court-awarded costs, and Service Awards totals a maximum of \$5,100,000.00. You can submit a claim by signing the Claim Form, which was mailed to you, carefully tearing at the perforation, and putting the Claim Form in the mail. You can call **1-800-XXX-XXXX** or visit www.XXXX.com and request that the Settlement Administrator send you a Claim Form as described above (or a blank form that you will need to fill out).

You can also submit an Electronic Claim Form by visiting www.XXXX.com, clicking the SUBMIT A CLAIM button, and following the steps outlined for you. You will need the unique Claim ID found on the Notices or the claim number associated with the 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. Eastern on [REDACTED]. If the address you submit on your Claim Form changes up until 60 days after the Effective Date of the Settlement, 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:

Malcom et al. v. GEICO Indemnity Co., et al.

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 (Malcom v. GEICO Indemnity Co.);
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], 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.

Option 3: Object to the Terms of the Settlement.

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 to the Settlement Administrator. 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 your 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 submit a Notice of Intent to object, 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 submit a request for exclusion and not a Notice of Intent to object.

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 TAVT even if you do not submit a Claim 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 Nicholus Johnson, Kosmoe Malcom, Aqueelah Coleman, and Todra Washington to be the Class Representative 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
www.sflinjuryattorneys.com

EDELSBERG LAW
Scott Edelsberg, Esq.
20900 NE 30th Avenue
Suite 417
Aventura, FL 333180
www.edelsberglaw.com

HALL & LAMPROS LLP
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Atlanta, GA 30339
www.hallandlampros.com

LINDSEY & LACY, PC
W. Thomas Lacy
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Peachtree City, GA 30269
tlacy@llptc.com

NORMAND PLLC
Edmund Normand, Esq.
Jacob Phillips, Esq.
3165 McCrory
Pl #175
Orlando, FL 32803
www.normandpllc.com

BAYUK PRATT
Bradley W. Pratt, Esq.
4401 Northside Parkway
Suite 390
Atlanta, GA 30327
www.bayukpratt.com

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](#) above.

Class Counsel will file an application for attorneys' fees and costs of no more than \$1,590,500.00, subject to approval by the Court. GEICO has agreed to pay Class Counsel up to that amount if approved by the Court. Payment of attorneys' fees and costs will be paid from the Cash Settlement Benefits.

Class Counsel will also seek a payment for the Class Representative in the amount of \$5,000.00 each, subject to Court approval. As further consideration for such payment, Plaintiffs will execute a broader release of claims than the other Class Members.

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

As a part of the Settlement, Class Members release and agree not to sue GEICO for any claim for payment of TAVT. Unless you request exclusion from the Settlement Class, you give up the right to individually sue GEICO and claim you are owed TAVT as part of your Covered Total Loss Claim, even if you do not submit a Claim 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 and Release at www.XXXX.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-###-###-####](tel:1-###-###-####) or go to www.XXXX.com.

This www.XXXX.com website provides:

1. An electronic Claim Form submission and directions for how to submit;
2. The full terms of the Settlement;
3. Information and requirements for submitting a Claim Form, requesting exclusion, or filing an objection to the terms of the Settlement;
4. A copy of the Complaint filed by Plaintiffs and other important rulings and orders from the Court during the case prior to Settlement; and
5. Other general information about the class action.

You also may contact Class Counsel, whose contact information and websites are provided above.

Final Approval Hearing

The Court has scheduled a hearing to consider granting final approval of the settlement. The hearing is scheduled for _____, at _____ in courtroom ____ before the Honorable Marc T. Treadwell, Chief United States District Judge, at the William A. Bootle Federal Building & US Courthouse, 475 Mulberry Street, Macon, GA 31201.

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

EXHIBIT 4

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

TAMARA EWING, KOSMOE MALCOM,
KWANZA GARDNER, AQUEELAH
COLEMAN, and TONDRA WASHINGTON,
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

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL

The Court has reviewed Plaintiffs' Unopposed Motion for Preliminary Approval of the Settlement Agreement and Releases entered into between Plaintiffs, individually, and on behalf of the proposed Settlement Class, and Defendants GEICO Indemnity Company, Government Employees Insurance Company, and GEICO General Insurance Company ("Defendants"). Upon careful review, the Court finds as follows:

WHEREAS, this Preliminary Approval Order incorporates the Settlement Agreement and the terms used herein shall have the meaning and/or definitions given to them in that Agreement, as submitted to the Court with the Motion for Preliminary Approval.

NOW, THEREFORE, pursuant to Federal Rule of Civil Procedure 23(e), upon the agreement of the Parties, and after careful consideration,

IT IS HEREBY ORDERED as follows:

1. The Court incorporates the definitions in the Settlement Agreement.

2. The Court preliminarily finds that the Agreement proposed by the Parties is fair, reasonable, and adequate and likely to be approved at a Final Approval Hearing such that giving Notice is justified. The representations, agreements, terms, and conditions of the Settlement, as embodied in the Agreement, are preliminarily approved pending a Final Approval Hearing on the Settlement as provided herein. The Court preliminarily finds that the Settlement meets the considerations set forth in the amended Rule 23(e)

3. The Settlement was negotiated with the assistance of a mediator, and appears to be the result of extensive, arm's length negotiations between the Parties after Class Counsel and Defendants' Counsel had investigated the claims, litigated essential matters regarding the claims, and tested the strengths and weaknesses of the claims through extensive litigation. At this preliminary stage, the Court finds that the Settlement appears not to be collusive, nor to have no obvious defects; and falls within the range of reasonableness.

4. The Court preliminarily finds that it will likely certify at the Final Approval stage a Settlement Class, for purposes of the Settlement only, consisting of:

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; and (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.

The Court preliminarily finds that this Settlement Class meets the relevant requirements of Federal Rules of Civil Procedure 23(a) and (b)(3) in that, for settlement purposes: (a) the number of Settlement Class Members is so numerous that joinder is impracticable; (b) there are questions of

law and fact common to the Settlement Class Members; (c) the claims of the Class Representatives are typical of the claims of the Settlement Class Members; (d) the Class Representatives are adequate representatives for the Settlement Class, and has retained experienced counsel to represent her; (e) the questions of law and fact common to the Settlement Class Members predominate over any questions affecting any individual Settlement Class Member; and (f) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy. The Court therefore preliminarily certifies the proposed Settlement Class.

5. For purposes of the Settlement only, the Court preliminarily finds and determines that it will likely find at the Final Approval stage, pursuant to Federal Rule of Civil Procedure Rule 23(a)(1), that Plaintiffs will fairly and adequately represent the interests of the Settlement Class in enforcing their rights in the Action, and therefore appoints them as Class Representatives.

6. For purposes of the Settlement only, and pursuant to Federal Rule of Civil Procedure 23(a)(1), the Court appoints the following as Class Counsel to act on behalf of the Settlement Class and the Class Representatives with respect to the Settlement:

SHAMIS & GENTILE, P.A.
Andrew Shamis, Esq.
14 NE 1st Avenue
Suite 1205
Miami, FL 33132

LINDSEY & LACY, PC
Tom Lacy
200 Westpark Dr.
Suite 280
Peachtree City, GA 30269

NORMAND PLLC
Edmund Normand, Esq.
Jacob Phillips, Esq.
3165 McCrory
Pl #175
Orlando, FL 32803

HALL & LAMPROS LLP
Chris B. Hall, Esq.
300 Galleria Parkway, Ste. 300
Atlanta, GA 30339

EDELSBERG LAW
Scott Edelsberg, Esq.
Christopher Gold, Esq.
20900 NE 30th Avenue
Suite 417
Aventura, FL 333180

BAYUK PRATT
Bradley W. Pratt, Esq.
4401 Northside Parkway
Suite 390
Atlanta, GA 30327

7. JND Legal Administration is appointed as Settlement Administrator and shall abide by the terms and conditions of the Agreement that pertain to the Settlement Administrator.

8. Pursuant to Fed. R. Civ. P. 23(e), the terms of the Agreement (and the Settlement provided for therein) are preliminarily approved and likely to be approved at the Final Approval Hearing because:

(A) the Class Representatives and Class Counsel have adequately represented the class;

(B) the Settlement was negotiated at arm's length;

(C) the relief provided for the Class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the Class, including the method of processing Class-Member claims, if required;

(iii) the terms of any proposed award of attorneys' fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the Settlement treats Class Members equitably relative to each other. Fed. R. Civ. P. 23(e)(2).

9. Having reviewed the proposed Notice Program submitted by the Parties, (hereinafter referred to collectively as "the Notices"), the Court approves, as to general form and content, such Notices for the purpose of notifying the Settlement Class as to the proposed Settlement, the Final Approval Hearing, and the rights of the members of the Settlement Class. Those Notices contain all of the essential elements necessary to satisfy the requirements of federal law, including the Federal Rules of Civil Procedure and federal and state due process provisions, including the class definition, the identities of the Parties and their counsel, a summary of the terms of the Settlement, information regarding the manner in which objections may be submitted

and the deadline for doing so, information regarding opt-out procedures and deadlines, and the date and location of the Final Approval Hearing.

10. The Court directs the Settlement Administrator to effectuate Notice to the Settlement Class in accordance with the Notice Program. The Notices shall be updated by the Settlement Administrator to include the date and time of the Final Approval Hearing as set forth below. The Court finds and determines that the Notices constitute the best notice practicable under the circumstances, constitute due and sufficient notice of the matters set forth in the notices to all persons entitled to receive such notices, and fully satisfy the requirements of due process, the Federal Rules of Civil Procedure, and all other applicable law and rules.

11. Any person falling within the definition of the Settlement Class may, upon request, be excluded or “opt-out” from the Settlement Class. In the event a Settlement Class member wishes to be excluded from the Settlement and not to be bound by this Agreement, that person must sign and mail a notice of intention to opt-out of the Settlement to the Settlement Administrator. The notice must be postmarked on or before the last day of the Opt-Out Deadline. Any member of the Settlement Class who timely and properly requests exclusion in compliance with these requirements will thereafter be excluded from the Settlement Class, not become a Settlement Class Member, will not have any rights under the Settlement, will not be entitled to receive a Settlement Class Member Payment, and will not be bound by the Agreement or the Final Approval Order. Any members of the Settlement Class who fail to submit a valid and timely opt-out request shall be bound by all terms of the Agreement and the Final Approval Order. If the Policyholder submits the opt-out request, then all insureds on the GEICO automobile policy shall be deemed to have opted-out of the Settlement with respect to that policy, and the Policyholder and insured shall not be entitled to a payment under the Settlement.

12. Any Settlement Class Member who wishes to object to the Settlement, Class Counsel's application for Class Counsel Fees or a Payment for an Expanded Release for the Class Representative, or to appear at the Final Approval Hearing and show cause, if any, why the Settlement should not be approved as fair, reasonable, and adequate to the Settlement Class, or why a final judgment should not be entered thereon, may do so, as set forth in the Settlement Agreement. A valid objection must include: (a) the name of the Action; (b) the objector's full name, address and telephone number; (c) all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel; (d) the identity of all counsel who represent the objector; (e) the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing; (f) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; (g) a statement as to whether the objector or counsel intent to appear at the Final Approval Hearing and whether they will request permission to address the Court at the Final Approval Hearing; and (h) the objector's signature. The Parties must file any briefs in response to any objection on or before 10 days prior to the date of the Final Approval Hearing. Class Counsel and/or GEICO may conduct limited discovery on any objector consistent with the Federal Rules of Civil Procedure if approved by this Court upon written motion showing good cause to conduct such discovery. Any Settlement Class Member who does not make his or her objections in the manner and by the Objection Deadline shall be deemed to have waived any objection(s) and shall be forever barred from raising such objections in this or any other action or proceeding, absent further order of the Court.

13. The Notices shall be updated by the Settlement Administrator to include the specific Opt-Out Deadline, Claim Deadline and Objection Deadline.

14. Prior to the Final Approval Hearing, Class Counsel shall file with the Court and

serve on all Parties a declaration of the Settlement Administrator certifying that the Notice Program was completed, describing how the Notice Program was completed, providing the names of each Settlement Class member 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.

15. All pretrial proceedings in this action are stayed and suspended until further order of this Court, except such actions as may be necessary to implement the Agreement and this Preliminary Approval Order.

16. This Settlement, and any and all negotiations, statements, documents, and/or proceedings in connection with the Settlement, shall not be construed or deemed 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. 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 Settlement Class members, 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 as any sort of precedent, or for any other purpose, in any proceeding in any court, administrative agency, or other tribunal.

17. For the benefit of the Settlement Class and to protect this Court's jurisdiction, this Court retains continuing jurisdiction over the Settlement proceedings to ensure the effectuation thereof in accordance with the Settlement preliminarily approved herein and the related orders of

this Court.

18. Class Counsel and Defendant's Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Preliminary Approval Order or the Agreement, including making, without the Court's further approval, minor form or content changes to the Notices they jointly agree are reasonable or necessary.

19. An in-person Final Approval Hearing will be held in the Courtroom of Chief Judge Marc T. Treadwell, Georgia, on _____, 2024 at _____ a.m. EST, to determine: (a) whether the Settlement should be approved as fair, reasonable, and adequate to the Settlement Class; (b) whether the Final Approval Order should be entered in substance materially the same as the Final Approval Order submitted by the Parties with the Motion for Final Approval; (c) whether to approve Class Counsel's application for attorneys' fees, and for a Service Award for the Class Representative; and (d) any other matters that may properly be brought before the Court in connection with the Settlement. The Final Approval Hearing is subject to continuation or adjournment by the Court without further notice to the Settlement Class. The Court may approve the Settlement with such modifications as the Parties may agree to, if appropriate, without further notice to the Settlement Class.

20. The Parties must file all moving papers and briefs in support of Class Counsel's application for attorneys' fees, and for a Separate Payment for an Expanded Release to the Class Representatives, no later than fifteen (15) days before the objection deadline.

21. Class Counsel must file a Motion for Final Approval no later than forty-five (45) days before the date set forth herein for the Final Approval Hearing.

22. The Court hereby sets the following schedule of events:

EVENT	PROPOSED DEADLINE
Send Mailed Notice and Email Notice	90 days after Preliminary Approval Order
Send Second Mailed Notice and Second Email Notice	30 days after First Mailed Notice
Plaintiff’s Application for Attorney’s Fees, Costs, and Expenses, and for Payments to Named Plaintiffs for Expanded Releases	15 days before the Objections Deadline
Plaintiff’s Motion for Final Approval	30 days before Final Approval Hearing
Opt-Out Deadline	30 days after First Mailed Notice
Objection Deadline	30 days after First Mailed Notice
Claims Deadline	45 days after First Mailed Notice
Final Approval Hearing	_____, 2024 at ____ a.m. EST

IT IS SO ORDERED.

DATED: _____, 2023

CHIEF JUDGE MARC T. TREADWELL