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United States District Court  
Central District of California  
Western Division

LESTER I. SPIELMAN,

Plaintiff,

v.

UNITED SERVICES AUTOMOBILE  
ASSOCIATION, *et al.*,

Defendants.

CV 19-01359 TJH (MAAx)

Order

[128]

The Court has considered Plaintiff Lester I. Spielman’s motion for preliminary approval of class settlement, together with the moving and opposing papers.

Spielman filed this putative class action against Defendants United Services Automobile Association and USAA Casualty Insurance Company [collectively, “USAA”] for breach of contract and declaratory relief. The claims were based on USAA’s failure to pay sales tax to its insureds when their leased vehicles were deemed to be a total loss.

On December 9, 2021, the Court certified the class to include:

All individuals and entities in California insured by United Services

1 Automobile Association or USAA Casualty Insurance Company whose  
2 insurance covered or covers a leased vehicle with private-passenger  
3 physical damage coverage, including collision or physical damage other  
4 than collision coverage, who made a first-party claim, filed within four  
5 years of the date the lawsuit was filed through September 12, 2020, that  
6 was adjusted by United Services Automobile Association or USAA  
7 Casualty Insurance Company as a total loss and who received an actual  
8 cash value payment from United Services Automobile Association or  
9 USAA Casualty Insurance Company that did not include sales tax and/or  
10 Vehicle Title and Registration Fees.

11 Thereafter, the Ninth Circuit Court of Appeals denied USAA's interlocutory  
12 appeal of the certification order.

13 The parties have, now, reached a class-wide settlement. To effectuate the  
14 settlement, Spielman moved for leave to file a second amended complaint to, *inter alia*,  
15 add as defendants USAA Casualty Insurance Company, USAA General Indemnity  
16 Company, and Garrison Property and Casualty Insurance Company so tht USAA can  
17 resolve all of its California total-loss claims related to this class action. With those  
18 additional defendants, the class, now, contains approximately 3,710 members. By  
19 separate order, the Court approved the unopposed motion for leave to file a second  
20 amended complaint.

21 The proposed settlement calls for a gross settlement fund of \$3,050,000.00,  
22 which is approximately 31% of the potential total damages. The proposed settlement  
23 calls for the gross settlement fund to be reduced by \$5,000.00 as an incentive payment  
24 to Spielman, up to \$80,000.00 for settlement administration costs, up to \$30,000.00 for  
25 out-of-pocket costs incurred by class counsel, and up to \$1,016,565.00 for class  
26 counsel's fees. The proposed settlement calls for the net settlement fund to be  
27 distributed on a *pro rata* basis to the class members based on the value of their totaled  
28 lease vehicle, as determined by the valuation used to settle their respective claims.

1 As a result of this litigation, USAA has changed its claims practices and is, now,  
2 including sales tax in payments to insureds for leased vehicles that are deemed to be a  
3 total loss.

4 Spielman, now, moves for preliminary approval of the proposed class settlement.  
5

#### 6 **Preliminary Approval of the Proposed Settlement**

7 When considering whether to preliminarily approve a class settlement, the Court  
8 must determine whether the settlement is fundamentally fair, adequate, and reasonable.  
9 *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). The Court  
10 must weigh several factors, including the effectiveness of the claims processing  
11 method, as well as “the strength of plaintiffs’ case; the risk, expense, complexity, and  
12 likely duration of further litigation; the risk of maintaining class action status  
13 throughout the trial; the amount offered in settlement; the extent of discovery  
14 completed, the stage of the proceedings; the experience and views of counsel; the  
15 presence of a governmental participant; and the reaction of the class members to the  
16 proposed settlement.” *See Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003);  
17 *see also* Fed. R. Civ. P. 23(e)(2).

18 The gross amount of the proposed settlement is \$3,050,000.00. The Court must  
19 “put a good deal of stock in the product of an arms-length, non-collusive, negotiated  
20 resolution[.]” *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009);  
21 *see also* Fed. R. Civ. P. 23(e)(2)(B). A settlement that is but a small fraction of the  
22 maximum potential recovery may, indeed, be fair and adequate where there are  
23 difficulties in continuing litigation and proving the case. *See In re Mego Fin. Corp.*  
24 *Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000). Moreover, a settlement following  
25 sufficient discovery and genuine, arms-length negotiation is presumed to be fair. *See,*  
26 *e.g., Nat’l Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D.  
27 Cal. 2004).

28 Here, no state or federal court in California has held that insureds who lease a

1 vehicle are entitled, upon an insurer's total loss determination, to full payment of sales  
2 taxes from the insurer. The settlement was negotiated at arms length with the early  
3 assistance of an independent mediator. Class counsel opined that their view of the risk,  
4 expense, complexity, and likely duration of this case is reflected in the proposed gross  
5 settlement amount and after review of over 2,600 pages of documents as well as claims  
6 data and other information obtained via discovery. There is significant risk of  
7 continued litigation against the immediacy and certainty of the proposed settlement.  
8 *See In re Mego*, 213 F.3d at 458. And, there is no indication, at this point, that any  
9 putative class member objects to the proposed settlement.

10 Incentive awards are permitted if they are reasonable. *Staton*, 327 F.3d at 976,  
11 977. Incentive awards are "intended to compensate class representatives for work done  
12 on behalf of the class, to make up for financial or reputational risk undertaken in  
13 bringing the action." *Rodriguez*, 563 F.3d at 958-59. Here, the requested \$5,000.00  
14 incentive for Spielman is reasonable.


15 Further, the requested claims administration costs of up to \$80,000.00 appears  
16 to be reasonable.

17 Finally, Spielman requested attorneys' fees of \$1,016,565.00, which is 33.33 %  
18 of the proposed gross settlement fund. The requested fees exceed the 25 % rate that the  
19 Ninth Circuit has set as a benchmark for reasonable class action contingency awards.  
20 *See Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 273 (9th Cir. 1989).  
21 Spielman failed to explain why the Court should deviate from the presumptively  
22 reasonable 25 % rate. Consequently, the Court will award up to 25 % of the gross  
23 settlement fund - \$762,500.00 - for attorneys' fees. The Court will evaluate for  
24 reasonableness class counsel's out-of-pocket costs only after they submit a detailed  
25 breakdown of those costs.

26  
27 Accordingly,  
28

1           **It is Ordered** that the motion to preliminarily approve the proposed class  
2 action settlement be, and hereby is, **Granted** with reasonable attorneys' fees set at no  
3 more than 25% of the gross settlement fund.

4  
5 Date: September 28, 2022

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8 **Terry J. Hatter, Jr.**  
**Senior United States District Judge**

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

LESTER I. SPIELMAN, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

UNITED SERVICES AUTOMOBILE  
ASSOCIATION, USAA CASUALTY  
INSURANCE COMPANY, USAA  
GENERAL INDEMNITY COMPANY,  
and GARRISON PROPERTY AND  
CASUALTY INSURANCE  
COMPANY,

Defendants.

Case No. 2:19-cv-01359-TJH-MAAx

**ORDER GRANTING JOINT  
STIPULATION TO SET DATE  
FOR HEARING ON FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT [135]**

Hearing Requested

Hon. Terry J. Hatter Jr.


1 The Court, having considered the joint stipulation of Plaintiff Lester I. Spielman and  
2 Defendants United Services Automobile Association, USAA Casualty Insurance Company,  
3 USAA General Indemnity Company, and Garrison Property and Casualty Insurance  
4 Company for an order setting a date for the Final Approval Hearing,

5 IT IS HEREBY ORDERED AS FOLLOWS:

- 6 1. The Final Approval Hearing shall be held on **February 27, 2023 at 10:00**  
7 **AM.**

8  
9 **IT IS SO ORDERED.**

10 Dated: OCTOBER 12, 2022

11   
12 HON. TERRY J. HATTER JR.  
13 UNITED STATES DISTRICT  
14 JUDGE

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

LESTER I SPIELMAN, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

UNITED SERVICES AUTOMOBILE  
ASSOCIATION, USAA CASUALTY  
INSURANCE COMPANY, USAA  
GENERAL INDEMNITY COMPANY,  
and GARRISON PROPERTY AND  
CASUALTY INSURANCE COMPANY,

Defendants.

Case No. 2:19-cv-01359-TJH-MAA

**[PROPOSED] ORDER  
PRELIMINARILY APPROVING  
CLASS ACTION SETTLEMENT**



1 Plaintiff Lester I. Spielman (the “Named Plaintiff”), individually and as  
2 representative of the Settlement Class defined in Paragraph 21 below (collectively,  
3 “Plaintiffs”), and Defendants United Services Automobile Association (“USAA”), USAA  
4 Casualty Insurance Company (“CIC”), USAA General Indemnity Company (“GIC”), and  
5 Garrison Property and Casualty Insurance Company (“Garrison”) (collectively, the  
6 “USAA Entities”) have entered into a Class Action Settlement Agreement, including  
7 Exhibits 1-4 incorporated therein (the “Settlement Agreement”), to settle the above-  
8 captioned lawsuit (the “Action”).<sup>1</sup> The Settlement Agreement sets forth the terms and  
9 conditions for a proposed settlement and dismissal with prejudice of the Action.

10 The Court has carefully considered the Motion for Preliminary Approval and  
11 related papers, the Settlement Agreement, and the record in this case. The Court hereby  
12 gives its preliminary approval to the Settlement and the Settlement Agreement; finds that  
13 the Settlement and Settlement Agreement are sufficiently fair, reasonable, and adequate to  
14 allow dissemination of notice of the Settlement to the Settlement Class and to hold a Final  
15 Approval Hearing; orders that notice be sent to the Settlement Class in accordance with  
16 the Settlement Agreement; and schedules a Final Approval Hearing to determine whether  
17 the proposed Settlement is fair, reasonable, and adequate.

18 **BACKGROUND**

19 1. Lester I. Spielman filed this Action on February 22, 2019. He alleges that  
20 the USAA Entities failed to pay the full amount of sales/use tax and vehicle regulatory  
21 fees to people who insured their leased vehicles under a California Automobile Insurance  
22 Policy issued by the USAA Entities, who submitted a claim for physical damage under  
23 their comprehensive or collision coverage, and whose leased vehicles were determined to

24 \_\_\_\_\_  
25 <sup>1</sup> The Settlement Agreement is hereby incorporated by reference in this Order, and all  
26 terms and phrases used in this Order shall have the same meaning as in the Settlement  
27 Agreement.

1 be a total loss. The Named Plaintiff has brought claims for breach of contract (Count I)  
2 and declaratory relief (Count II). The USAA Entities deny these allegations and maintain  
3 that they fully complied with their obligations under California law and their auto  
4 insurance policies.<sup>2</sup>

5 2. The Parties vigorously litigated this Action for nearly three years, including  
6 engaging in extensive written discovery and depositions and conducting expert discovery.  
7 In addition, USAA produced to Class Counsel extensive data regarding the putative class  
8 members' claims. The parties also participated in a mediation before the Hon. Irma  
9 Gonzales (ret.). The parties extensively briefed class certification, and the Court certified  
10 a Litigation Class as described in Paragraph 3 below. Furthermore, Class Counsel have  
11 litigated many similar class actions across the country and have detailed their expertise in  
12 representing plaintiffs and class members in these type of suits. Accordingly, Class  
13 Counsel are sufficiently informed of the nature of the Settlement Class Members' claims  
14 to be able to evaluate the benefits and risks of settlement and continued litigation, and to  
15 determine whether the proposed Settlement is fair, reasonable, and adequate to Settlement  
16 Class Members.

17 3. On December 9, 2021, the Court certified a litigation class and later clarified  
18 the class definition pursuant to a January 12, 2022 Order (the "Litigation Class").<sup>3</sup> The

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19 <sup>2</sup> On January 6, 2020, Samantha Leitz joined this Action as a plaintiff in the First Amended  
20 Class Action Complaint against USAA and CIC, her insurer. Mr. Spielman leased the  
21 vehicle at issue in this Action, and Ms. Leitz owned her vehicle, On May 5, 2021, Ms. Leitz  
22 filed a Notice of Voluntary Dismissal and dismissed with prejudice her claims against  
23 USAA and CIC. (The Action since then has involved leased vehicles only.) CIC has been  
brought back into this Action for purposes of the Settlement.

24 <sup>3</sup> The Litigation Class was defined as follows:

25 All individuals and entities in California insured by United Services Automobile  
26 Association whose insurance covered or covers a leased vehicle with private-  
27 passenger physical damage coverage, including collision or physical damage other

1 Ninth Circuit subsequently denied USAA's Rule 23(f) petition. Notice was not sent to  
2 the Litigation Class because the Parties informed the Court that they were attempting to  
3 settle the Action. The Settlement Class is broader than the Litigation Class, so all Persons  
4 who were members of the Litigation Class are Settlement Class Members.

5 **OVERVIEW OF PROPOSED SETTLEMENT**

6 4. The proposed Settlement provides, among other things, for a Settlement  
7 Fund of \$3,050,000, from which will be paid (1) the Court-approved Attorneys' Fees and  
8 Expenses Award (up to a maximum of \$1,016,565.00), plus expenses of up to a maximum  
9 of \$30,000; (2) any Service Award to the Named Plaintiff, up to a maximum of \$5,000.00;  
10 (3) the reasonable costs of settlement notice and administration, including the CAFA  
11 Notice(s) (see Paragraph 35 below), up to a maximum of \$80,000; and (4) Settlement  
12 Claim Payments to Qualifying Class Members. The amounts in items (1)-(3) above shall  
13 be finally determined by the Court in the Final Approval Order (should the Court finally  
14 approve the Settlement). The Settlement Claim Payments will be calculated based on the  
15 Net Settlement Fund—i.e., the Settlement Fund reduced by the amounts of the payments  
16 of items (1)-(3) above as set forth in the Final Approval Order. Qualifying Settlement  
17 Class Members (as described below) will receive their pro rata share of the Net Settlement  
18 Fund based on the value of the Qualifying Settlement Class Member's leased vehicle at  
19 the time of the total loss (as reflected in the USAA Entities' records) and reduced by any  
20 amounts already paid for Sales Tax and/or Vehicle Regulatory Fees.

21 5. This is not a claims-made settlement. Qualifying Settlement Class Members

22 \_\_\_\_\_  
23 than collision coverage, who made a first-party claim, filed within four years of the  
24 date the lawsuit was filed through September 12, 2020, that was adjusted by United  
25 Services Automobile Association or USAA Casualty Insurance Company as a total  
26 loss and who received an actual cash value payment from United Services  
27 Automobile Association or USAA Casualty Insurance Company that did not  
28 include sales tax and/or Vehicle Title and Registration Fees.

1 can be either Current Policyholders or Former Policyholders.<sup>4</sup> Current Policyholders who  
2 do not exclude themselves from the Settlement will automatically receive a Settlement  
3 Claim Payment as described above (in the form of a check from the Settlement  
4 Administrator), without having to submit a claim form. Former Policyholders qualify for  
5 a Settlement Claim Payment (in the form of a check from the Settlement Administrator)  
6 if they do not exclude themselves from the Settlement and if they timely submit an  
7 Address Verification Form, as described below. The Address Verification Form is  
8 designed to ensure that Settlement Claim Payments are sent to the current addresses of  
9 Former Policyholders and will reach those Former Policyholders. (The USAA Entities  
10 already have the current mailing addresses of Current Policyholders.) There is no other  
11 difference in how Settlement Claim Payments are calculated or paid with respect to  
12 Current Policyholders and Former Policyholders.

13         6. The Settlement does not provide for a reversion to the USAA Entities. The  
14 Settlement also does not provide for a *cy pres* award, except that the amounts of checks for  
15 Settlement Claim Payments that are not cashed by the time of the Stale Date (180 days  
16 after issuance) shall, with the approval of the Court in the Final Order and Judgment, be  
17 part of a *cy pres* award to a charitable organization that assists military veterans (the Parties  
18 recommend the Tragedy Assistance Program for Survivors); provided, however, that  
19 exceptions may be made for checks that are not cashed by the time of the Stale Date for  
20 service members who are then deployed.

21         7. The Settlement Release is tailored to encompass the claims at issue in this

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22  
23 <sup>4</sup> A Current Policyholder is a Settlement Class Member who, as of the date this Preliminary  
24 Approval Order is entered, is a Policyholder under a California Automobile Insurance  
25 Policy issued by one of the USAA Entities. A Former Policyholder is a Settlement Class  
26 Member who, as of the date this Preliminary Approval Order is entered, is not a  
27 Policyholder under a California Automobile Insurance Policy issued by one of the USAA  
28 Entities.

1 Action. (*See* Settlement Agreement ¶¶ 43-47.)

2 8. Individual Mailed Notices, based on the form and content recommended by  
3 the Federal Judicial Center, will be sent to all Settlement Class Members. (The Mailed  
4 Notice to Former Policyholders shall also include an Address Verification Form.) All  
5 Settlement Class Members have 60 days after notice is mailed in which to exclude  
6 themselves from or object to the Settlement. Former Policyholders have 60 days after  
7 notice is mailed in which to submit Address Verification Forms. Furthermore, Class  
8 Counsel will file their petition for an award of attorneys' fees and costs and related papers  
9 no later than \_\_\_\_\_ (14 days after the Mailed Notice Date) to allow sufficient  
10 time for Settlement Class Members to evaluate their request.

11 9. The Settlement also provides for the creation of a content-neutral Settlement  
12 Website, maintained by the Settlement Administrator, with all relevant materials and  
13 information (including a mechanism for online submission of Address Verification  
14 Forms). In addition, the Settlement Administrator will set up an IVR/VRU telephone  
15 system containing recorded answers to frequently asked questions, along with an option  
16 permitting Settlement Class Members to speak to live operators during regular business  
17 hours or leave messages in a voicemail box.

18 10. In addition, as part of the Settlement, the USAA Entities have agreed to pay  
19 applicable Sales Tax and Title and Registration Fees on total loss vehicles in California  
20 without regard to whether the vehicle is leased or owned. The USAA Entities reserve the  
21 right to change their practices in the event of a change in California law, a change in the  
22 State of California's taxes or fees charged incidental to the transfer of ownership of motor  
23 vehicles titled and/or registered in California, or other changes in taxes and fees, or  
24 appropriate changes in the terms of the applicable insurance policies.

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1                   **FINDINGS AND CONCLUSIONS**

2           11. This Court has personal jurisdiction over all Settlement Class Members. The  
3 Court has subject matter jurisdiction to approve the Settlement Agreement and subject  
4 matter jurisdiction over this Action pursuant to the Class Action Fairness Act of 2005.  
5 There is CAFA diversity (the Named Plaintiff is a citizen of California, and the USAA  
6 Entities are all citizens of Texas); there are more than 100 class members; and the amount  
7 in controversy exceeds \$5,000,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d).

8           12. The Court preliminarily approves the Settlement Agreement and finds that  
9 the proposed Settlement, including but not limited to the Settlement Fund and Net  
10 Settlement Fund, the calculation of Settlement Claim Payments, the distribution of  
11 payments to Qualifying Settlement Class Members, the Mailed Notice, the Address  
12 Verification Form for Former Policyholders, the Settlement Website, the requirements  
13 for exclusions and objections, the Release, the Attorneys’ Fees and Expenses Award, and  
14 the Service Award, is sufficiently fair, reasonable, and adequate to warrant preliminary  
15 approval.

16           13. The Court therefore finds that notice is justified because the Parties have  
17 shown that the Court likely will be able to approve the Settlement under Rule 23(e)(2) and  
18 to certify the Settlement Class for purposes of judgment.<sup>5</sup> Because the Court previously

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19 <sup>5</sup> Rule 23(e)(2) provides:

20           (2) Approval of the Proposal. If the proposal would bind class members, the court  
21 may approve it only after a hearing and only on finding that it is fair, reasonable,  
22 and adequate after considering whether:

- 23           (A) the class representatives and class counsel have adequately represented the class;
- 24           (B) the proposal was negotiated at arm’s length;
- 25           (C) the relief provided for the class is adequate, taking into account:
  - 26                   (i) the costs, risks, and delay of trial and appeal;
  - 27                   (ii) the effectiveness of any proposed method of distributing relief to the  
28                   class, including the method of processing class-member claims;
  - (iii) the terms of any proposed award of attorney's fees, including timing of

1 certified the Litigation Class, the “higher standard of fairness” and “more probing inquiry  
2 than may normally be required under Rule 23(e),” *see, e.g., Dennis v. Kellogg Co.*, 697 F.3d  
3 858, 864 (9th Cir. 2012), does not apply. Nevertheless, the Court has applied this higher  
4 standard of review to determine whether the Settlement should be preliminarily approved.

5 14. The Settlement (1) appears to be the product of serious, informed, non-  
6 collusive negotiations; (2) does not grant improper preferential treatment to class  
7 representatives or other segments of the class; (3) falls within the range of possible  
8 approval; and (4) has no obvious deficiencies. *See, e.g., Patrick v. Volkswagen Grp. of Am.*,  
9 No. 8:19-cv-01908-MCS-ADS, 2021 WL 3616105, at \*1 (C.D. Cal. March 10, 2021).

10 15. First, the Settlement was the product of nearly three years of litigation.  
11 Furthermore, Class Counsel believe, based on their familiarity with the extensive  
12 production of documents and data spreadsheets relevant to this Action, the significant  
13 fact and expert discovery, and their institutional knowledge and experience related to total  
14 loss class action claims and the strengths and weaknesses thereof, that the settlement is  
15 fair, reasonable, and adequate.

16 16. Second, the Settlement does not grant preferential treatment to the Class  
17 Representative or other Members of the Settlement Class. Although the Named Plaintiff  
18 requests a Service Award of up to \$5,000, the Court is not obligated to award this amount,  
19 or any amounts, and will make that determination at final approval based on the evidence  
20 presented. Moreover, the Settlement treats all Settlement Class Members equally; the  
21 Settlement Claim Payments will be calculated based on the value of their vehicles, which  
22 is reasonably related to the amounts alleged to be owed for taxes and fees. The only  
23 difference in treatment among Settlement Class Members is that Former Policyholders

- 24 \_\_\_\_\_  
25 payment; and  
26 (iv) any agreement required to be identified under Rule 23(e)(3); and  
27 (D) the proposal treats class members equitably relative to each other.

1 must submit a simple Address Verification Form to help ensure that Settlement Claim  
2 Payments reach their current addresses. The Address Verification Form may be submitted  
3 by mail (a copy will be sent with the Mailed Notice to all Former Policyholders, and will  
4 also be available online) or online on the Settlement Website, and Former Policyholders  
5 have 60 days in which to do so. The Court finds that the Address Verification Form  
6 imposes no appreciable burden on Former Policyholders, and its use is justified to attempt  
7 to ensure that Settlement Claim Payments are mailed to Former Policyholders' current  
8 addresses so that they will receive them.

9 17. Third, the Settlement falls well within the range of possible approval.  
10 Settlement Class Members who do not exclude themselves are entitled to payments  
11 without having to submit a claim form. Furthermore, there is no reversion of the  
12 Settlement Fund to the USAA Entities; all of the Settlement Fund will go to pay for  
13 Settlement Claim Payments, after payments of fees and expenses, and the only potential  
14 for a *cy pres* award is with respect to uncashed checks. Class Counsel has sufficiently  
15 justified the amounts noted in Paragraph 4 for purposes of preliminary approval.

16 18. Finally, the Court finds that there are no obvious deficiencies in the  
17 Settlement. Among other things, the Settlement provides for robust individual notice,  
18 based on the model forms of the Federal Judicial Center; provides ample opportunity for  
19 Settlement Class Members to exclude themselves from or object to any element of the  
20 Settlement; and the Release is narrowly tailored to the Settlement Class Members' claims.

21 19. Accordingly, notice of the proposed Settlement shall be provided to the  
22 Settlement Class as set forth herein and in the Settlement Agreement.

23 **IT IS HEREBY ORDERED:**

24 20. The Court hereby vacates the Litigation Class and certifies the Settlement  
25 Class as set forth in Paragraph 21 below. Should this Settlement not become Final, the  
26 Parties will be returned to the *status quo ante* as of May 17, 2022, including that the Litigation  
27



1 Class shall automatically be recertified, as provided in Paragraph 49 below and the  
2 Settlement Agreement.

3 21. The Court preliminarily certifies, for settlement purposes only, the following  
4 Settlement Class pursuant to Federal Rules of Civil Procedure 23(b)(3) and (e):

5 All individuals and entities insured by the USAA Entities under a California  
6 automobile policy whose insurance covered or covers a leased vehicle under  
7 private-passenger physical damage coverage, including collision and physical  
8 damage other than collision coverage, and who made a first-party claim from  
9 February 22, 2015 through the date of preliminary approval, whose leased vehicle  
10 was determined by the USAA Entities to be a Total Loss, and who received a Total  
11 Loss Claim Payment from the USAA Entities for the value of the totaled vehicle  
12 that did not include the full amount of the Sales Tax and/or Vehicle Regulatory  
13 Fees.

14 Excluded from the Settlement Class are: (1) all officers, employees, and  
15 agents of the USAA Entities, Class Counsel, and their immediate family members,  
16 and (2) any members of the judiciary assigned to the Action and their immediate  
17 families.

18 22. The USAA Entities and the Released Persons shall retain all rights to assert  
19 that the Action may not be certified as a class action except for settlement purposes.

20 23. In accordance with the Settlement, the Named Plaintiff has moved for leave  
21 to file a Second Amended Complaint. The Court grants the motion. The USAA Entities  
22 are not obligated to answer or otherwise respond to the Second Amended Complaint. If  
23 the Settlement does not become Final, the Second Amended Complaint shall be  
24 withdrawn as further set forth in Paragraph 8 of the Settlement Agreement; the First  
25 Amended Complaint shall become the operative complaint (except that CIC shall remain  
26 dismissed from this Action, as provided in the May 5, 2021 Notice of Voluntary Dismissal,  
27 *see supra* note 2); and the Parties shall be returned to the *status quo ante* as of May 17, 2022.  
28 The Second Amended Complaint shall not be offered, received, or construed as an  
admission or as evidence by any Person for any purpose (in this Action or any other  
proceeding), including but not limited to an admission by the USAA Entities of liability  
or the truth of the allegations of the Second Amended Complaint or of the certifiability

1 of the Litigation Class or any litigation class.

2 24. The Court appoints Lester I. Spielman as Class Representative. The Court  
3 finds that Spielman will fairly and adequately represent the interests of the Settlement  
4 Class.

5 25. The Court appoints the following as Class Counsel:

6 Annick Persinger  
7 **TYCKO & ZAVAREEI LLP**  
8 10880 Wilshire Blvd., Suite 1101  
9 Los Angeles, CA 90024  
Telephone: (213) 425-3657  
Email: apersinger@tzlegal.com

10 Jason H. Alperstein  
11 Jeff Ostrow  
12 Jonathan Streisfeld  
13 **KOPELOWITZ OSTROW**  
14 **FERGUSON WEISELBERG GILBERT**  
15 One West Las Olas, Suite 500  
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ostrow@kolawyers.com  
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23 The Court finds that Class Counsel will fairly and adequately represent the interests of the  
24 Settlement Class. Class Counsel have demonstrated extensive knowledge of the facts and  
25 legal issues in this case, and have served as Class Counsel in many other similar class action  
26 suits across the country.

1           26. As noted above, the Court previously certified the Litigation Class. The  
2 Court finds, for purposes of preliminary approval and for settlement purposes only, that  
3 (a) Members of the Settlement Class are so numerous as to make joinder of all Settlement  
4 Class Members impracticable; (b) there are questions of law or fact common to Members  
5 of the Settlement Class; (c) the claims of the Named Plaintiff are typical of the claims of  
6 the Settlement Class Members; (d) the Named Plaintiff and Class Counsel will fairly and  
7 adequately protect the interests of the Settlement Class Members, and their interests are  
8 not in conflict with those of the Settlement Class Members; (e) questions of law or fact  
9 common to the Settlement Class Members predominate over questions affecting only  
10 individual Settlement Class Members; and (f) a class action is superior to other available  
11 methods for the fair and efficient adjudication of the controversy.

12           27. The Court appoints Epiq as the Settlement Administrator, which shall  
13 administer the Settlement in accordance with the terms and conditions of this Order and  
14 the Settlement Agreement.

15           28. Within fourteen (14) days after entry of this Preliminary Approval Order, the  
16 USAA Entities shall mail a check to Epiq in the amount of \$50,000.00 to cover the initial  
17 costs of settlement notice, the CAFA Notice(s), and settlement administration up through  
18 the Effective Date. This \$50,000 payment shall reduce the remaining Maximum Monetary  
19 Obligation of the USAA Entities to \$3,000,000. (In other words, the USAA Entities'  
20 Maximum Monetary Obligation under this Settlement shall never be any greater than  
21 \$3,050,000.) If the Settlement does not become Final for any reason, and the Settlement  
22 Administrator has not used all of the \$50,000 payment identified above for Settlement-  
23 related costs and fees by that point, the Settlement Administrator shall promptly return to  
24 the USAA Entities any unused amounts.

25           29. The Court has reviewed and approves the form and content of the Mailed  
26 Notice, which shall be without material alteration from Exhibit 2 to the Settlement  
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1 Agreement.

2       30. The Court has reviewed and approves the Address Verification Form  
3 (Exhibit 3 to the Settlement Agreement) to be mailed to Former Policyholders along with  
4 the Mailed Notice. To be considered timely, an Address Verification Form must be  
5 submitted by the Former Policyholder or that Settlement Class Member's Legally  
6 Authorized Representative so that it is postmarked and mailed to the Settlement  
7 Administrator by no later than \_\_\_\_\_ (60 days after the  
8 Mailed Notice Date) or submitted online on the Settlement Website by that date. Any  
9 Address Verification Form postmarked or submitted after this date shall be untimely and  
10 invalid, and the Former Policyholder will not be eligible for a payment under the  
11 Settlement.

12       31. The Court approves the Settlement's notice plan as set out in Paragraphs 11-  
13 14 of the Settlement Agreement. The Court finds that the notice plan constitutes  
14 reasonable and the best practicable notice under the circumstances and an appropriate and  
15 sufficient effort to locate current addresses for Settlement Class Members such that no  
16 additional efforts to do so shall be required.

17       32. As soon as practicable after entry of this Preliminary Approval Order, the  
18 USAA Entities shall make a reasonable search of their computer/electronic databases to  
19 ascertain the name and last-known address of each potential Settlement Class Member.  
20 Within forty-five (45) days after entry of this Order, the USAA Entities shall provide the  
21 Settlement Administrator and Class Counsel with a list of the names and addresses of the  
22 potential Settlement Class Members, as well as the Class Data described in Paragraphs 9-  
23 10 of the Settlement Agreement. Before mailing the Mailed Notice, the Settlement  
24 Administrator shall follow the procedures for updating the addresses as set out in  
25 Paragraph 14 of the Settlement Agreement. The Settlement Administrator may also  
26 perform such further reasonable search for a more-current name and/or address for the

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1 potential Settlement Class Member, as set out in Paragraph 14 of the Settlement  
2 Agreement.

3 33. The Settlement Administrator shall send a copy of the Mailed Notice by first-  
4 class mail to each potential Settlement Class Member identified as a result of the above-  
5 mentioned search(es). If any Mailed Notice mailed to any potential Settlement Class  
6 Member is returned to the Settlement Administrator as undeliverable, the Settlement  
7 Administrator shall follow the procedures in Paragraph 14 of the Settlement Agreement.  
8 In the event that any Mailed Notice is returned as undeliverable a second time, no further  
9 mailing shall be required.

10 34. The Settlement Administrator shall use its best efforts to complete the  
11 mailing of the Mailed Notice to potential Settlement Class Members within sixty (60) days  
12 after entry of the Preliminary Approval Order  
13 (\_\_\_\_\_ ) (the “Mailed Notice Date”). Other  
14 than the Website and the Mailed Notice, the USAA Entities shall not be obligated to  
15 provide any additional notice of this Settlement. The USAA Entities shall not be obligated  
16 to provide additional notice to any counsel who previously represented or currently  
17 represents a Settlement Class Member with regard to the claims at issue in this Settlement.

18 35. The Court finds that the Class Action Fairness Act of 2005 Notice(s) (the  
19 “CAFA Notice(s)”) to be sent by the Settlement Administrator as directed by the USAA  
20 Entities are in full compliance with 28 U.S.C. § 1715.

21 36. The Court directs the Settlement Administrator to establish the Website as  
22 described in Paragraph 14 of the Settlement Agreement. The Website shall include, at a  
23 minimum, copies of the Settlement Agreement, the Mailed Notice, the Address  
24 Verification Form (including a mechanism for online submission of the Address  
25 Verification Form), the preliminary approval motion and related papers, and this Order;  
26 shall identify important deadlines and provide answers to frequently asked questions; and  
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1 may be amended as appropriate during the course of the Settlement administration. Class  
2 Counsel's fee petition and related papers shall be promptly posted on the Website after  
3 they are filed. The Website shall be maintained for at least one hundred eighty (180) days  
4 after the Effective Date.

5 37. The Court finds that the notice to be provided to Settlement Class Members  
6 (i) is the best practicable notice under the circumstances; (ii) is reasonably calculated under  
7 the circumstances to apprise Settlement Class Members of the pendency of the Action  
8 and of their right to object to or exclude themselves from the proposed Settlement; (iii) is  
9 reasonable and constitutes due, adequate, and sufficient notice to all Persons entitled to  
10 receive notice; and (iv) meets all applicable requirements of Federal Rule of Civil  
11 Procedure 23, due process, California law, and any other applicable rules or laws.

12 38. The Court directs the Settlement Administrator to maintain a toll-free  
13 VRU/IVR telephone system containing recorded answers to frequently asked questions,  
14 along with an option permitting Settlement Class Members to speak to live operators  
15 during regular business hours or leave messages in a voicemail box, as provided in  
16 Paragraph 14 of the Settlement Agreement.

17 39. The Court approves the procedures set forth in the Settlement Agreement  
18 and the Mailed Notice for exclusions from and objections to the Settlement.

19 40. Any Settlement Class Members who wish to exclude themselves from the  
20 Settlement Class must comply with the terms set forth in the Settlement Agreement and  
21 the Mailed Notice. To be considered timely, a request for exclusion must be mailed to  
22 the Settlement Administrator postmarked no later than  
23 \_\_\_\_\_ (60 days after the Mailed Notice Date).

24 Requests for exclusion must be exercised individually by a Settlement Class Member, not  
25 as or on behalf of a group, class, or subclass, except that exclusion requests may be  
26 submitted on behalf of an individual Settlement Class Member by that Settlement Class  
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1 Member's Legally Authorized Representative.

2 41. The Settlement Administrator shall provide Class Counsel and the USAA  
3 Entities a copy of the Opt-Out List (which shall be a list of all Persons who timely and  
4 properly requested exclusion from the Settlement Class), no later than seven (7) days after  
5 the Opt-Out Deadline. The Settlement Administrator shall also file proof of completion  
6 of the Mailed Notice at least ten (10) days before the Final Approval Hearing, along with  
7 the Opt-Out List and an affidavit attesting to the accuracy of the Opt-Out List.

8 42. Any Settlement Class Member who does not submit a timely, written request  
9 for exclusion from the Settlement Class will be bound by all proceedings, orders, and  
10 judgments in the Action, even if the Settlement Class Member has previously initiated or  
11 subsequently initiates individual litigation or other proceedings encompassed by the  
12 Released Claims, and even if such Settlement Class Member never received actual notice  
13 of the Action or the proposed Settlement.

14 43. Each Settlement Class Member who has not submitted a timely request for  
15 exclusion from the Settlement Class and who wishes to object to the fairness,  
16 reasonableness, or adequacy of the Settlement Agreement or any term or aspect of the  
17 proposed Settlement, or to intervene in the Action, must provide to the Settlement  
18 Administrator (who shall forward it to Class Counsel and counsel for the USAA Entities)  
19 and file with the Court no later than \_\_\_\_\_ (60  
20 days after the Mailed Notice Date) a statement of the objection or motion to intervene, as  
21 well as the specific legal and factual reasons for each objection or motion to intervene,  
22 including any support the Settlement Class Member wishes to bring to the Court's  
23 attention and all evidence the Settlement Class Member wishes to introduce in support of  
24 his or her objection or motion, or be forever barred from objection or motion to  
25 intervene. The objection shall comply with the Settlement Agreement and Mailed Notice  
26 and contain at least the following: (1) a heading that refers to the Action by case name

1 and case number; (2) a statement of the specific legal and factual basis for each objection  
2 or intervention argument; (3) a statement whether the objecting or intervening Settlement  
3 Class Member intends to appear at the Final Approval Hearing, either in person or  
4 through counsel and, if through counsel, a statement identifying that counsel by name,  
5 bar number, address, and telephone number; (4) a description of any and all evidence the  
6 objecting Settlement Class Member may offer at the Final Approval Hearing, including  
7 but not limited to the names, addresses, and expected testimony of any witnesses; all  
8 exhibits intended to be introduced at the Final Approval Hearing; and documentary proof  
9 of the objecting Settlement Class Member's membership in the Settlement Class; and (5)  
10 a list of other cases in which the objector or intervenor or counsel for the objector or  
11 intervenor has appeared either as an objector or counsel for an objector in the last five  
12 years. Furthermore, any motion to intervene must comply with the Federal Rules of Civil  
13 Procedure and the Local Rules of the Court. All objectors shall make themselves available  
14 to be deposed by any Party in the county of the objector's residence within seven (7) days  
15 of service of his or her timely written objection.

16 44. Any attorney hired by, representing, or assisting (including, but not limited  
17 to, by drafting or preparing papers for a Settlement Class Member) a Settlement Class  
18 Member for the purpose of objecting to any term or aspect of the Settlement Agreement  
19 or to the proposed Settlement or intervening in the Action to provide to the Settlement  
20 Administrator (who shall forward it to Class Counsel and Counsel for the USAA Entities)  
21 and to file with the Clerk of the Court a notice of appearance no later than  
22 \_\_\_\_\_ (60 days after the Mailed Notice Date).

23 45. All objections to the proposed Settlement shall be signed by the Settlement  
24 Class Member (or his or her Legally Authorized Representative), even if the Settlement  
25 Class Member is represented by counsel. The right to object to the proposed Settlement  
26 or to intervene must be exercised individually by a Settlement Class Member and his or  
27 \_\_\_\_\_



1 her, and not as a member of a group, class, or subclass, except that such objections and  
2 motions to intervene may be submitted by a Settlement Class Member's Legally  
3 Authorized Representative.

4 46. Class Counsel shall file their petition for an award of attorneys' fees and costs  
5 and related papers no later than \_\_\_\_\_ (fourteen (14) days after the Mailed  
6 Notice Date) to allow sufficient time for Settlement Class Members to evaluate their  
7 request.

8 47. The Court preliminarily enjoins all Settlement Class Members and their  
9 Legally Authorized Representatives, unless and until they have submitted a timely request  
10 for exclusion from the Settlement Class, (i) from filing, commencing, prosecuting,  
11 intervening in, or participating as plaintiff, claimant, or class member in any other lawsuit  
12 or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on  
13 the Released Claims; (ii) from filing, commencing, or prosecuting a lawsuit or  
14 administrative, regulatory, arbitration, or other proceeding as a class action on behalf of  
15 any Settlement Class Members (including by seeking to amend a pending complaint to  
16 include class allegations or seeking class certification in a pending action), based on the  
17 Released Claims; and (iii) from attempting to effect an optout of a group, class, or subclass  
18 of individuals in any lawsuit or administrative, regulatory, arbitration, or other proceeding  
19 based on the Released Claims.

20 48. The Court directs the Settlement Administrator to rent a post office box to  
21 be used for receiving objections, notices of intention to appear, and any other settlement-  
22 related communications. Only the Settlement Administrator, Class Counsel, the USAA  
23 Entities, the USAA Entities' counsel, the Court, the Clerk of the Court, and their  
24 designated agents shall have access to this post office box, except as otherwise expressly  
25 provided in the Settlement Agreement. The Settlement Administrator shall promptly  
26 (within one business day of receipt) furnish Class Counsel and Counsel for the USAA

1 Entities copies of any and all objections, motions to intervene, notices of intention to  
2 appear, and other communications that come into its possession (except as otherwise  
3 expressly provided in the Settlement Agreement).

4 49. The Court orders that the preliminary certification of the Settlement Class  
5 and the preliminary approval of the proposed Settlement, and all actions associated with  
6 them, are undertaken on the condition that the certification and designations shall be  
7 automatically vacated if the Settlement Agreement is terminated or is disapproved in  
8 whole or in part by the Court, any appellate court, or any other court of review, or if the  
9 Settlement Agreement is revoked pursuant to Paragraphs 49-51 of the Settlement  
10 Agreement, or if the Settlement does not become Final in any way. If the Settlement does  
11 not become Final, the Parties shall be returned to the *status quo ante* as of May 17, 2022, as  
12 provided in the Settlement Agreement.

13 50. The Court further orders that the Settlement Agreement and the fact that it  
14 was entered into shall not be offered, received, or construed as an admission or as evidence  
15 for any purpose, including but not limited to an admission by any Party of liability or non-  
16 liability or of any misrepresentation or omission in any statement or written document  
17 approved or made by any Party, or of the certifiability of the Litigation Class or any  
18 litigation class, or otherwise be used by any Person for any purpose whatsoever, other  
19 than an action to enforce the Settlement Agreement, in the Actions or any other  
20 proceeding, as further provided in the Settlement Agreement.

21 51. The Court stays all proceedings in the Action until further order of Court,  
22 except that the Parties may conduct such limited proceedings as may be necessary to  
23 implement the proposed settlement or to effectuate the terms of the Settlement  
24 Agreement.

25 52. The Final Approval Hearing shall be held at \_\_\_\_ .m. on \_\_\_\_\_,  
26 \_\_\_\_\_, 2022, for the purposes of determining (a) whether the Settlement  
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1 is fair, reasonable, and adequate and should be finally approved by the Court; (b) the merit  
2 of any objections to the Settlement; (c) the requested Attorneys' Fees and Expenses Award  
3 to Class Counsel; (d) the requested Service Award to the Named Plaintiff; and (e) entry of  
4 the Final Approval Order and Judgment approving the Settlement.

5 53. The Court may, for good cause, extend any deadlines set forth in this Order  
6 without further notice to the Settlement Class.

7 Dated: \_\_\_\_\_

8 Judge Terry J. Hatter, Jr.

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