

TYCKO & ZAVAREEI LLP

Annick Persinger (CA Bar No. 272996)
Glenn E. Chappell (admitted *pro hac vice*)
10880 Wilshire Blvd., Suite 1101
Los Angeles, CA 90024
Telephone: (510) 254-6808
Email: apersinger@tzlegal.com
gchappell@tzlegal.com

EDELSBERG LAW, PA

Scott Edelsberg (CA Bar No. 330990)
20900 NE 30th Ave., Suite 417
Aventura, FL 33180
Telephone: (305) 975-3320
Email: scott@edelsberglaw.com

**KOPELOWITZ OSTROW
FERGUSON WEISELBERG GILBERT**

Jason H. Alperstein (admitted *pro hac vice*)
Jeff Ostrow (admitted *pro hac vice*)
Jonathan Streisfeld (admitted *pro hac vice*)
One West Las Olas, Suite 500
Fort Lauderdale, FL 33301
Telephone: (954) 525-4100
Email: alperstein@kolawyers.com
ostrow@kolawyers.com
streisfeld@kolawyers.com

SHAMIS & GENTILE, P.A.

Andrew J. Shamis (admitted *pro hac vice*)
14 NE 1st Avenue, Suite 400
Miami, FL 33132
Telephone: (305) 479-2299
ashamis@shamisgentile.com

**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,

Defendant.

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

**NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF**

Judge: Hon. Terry J. Hatter, Jr.

Place: Courtroom 9b

Hearing Date: August 1st, 2022

Hearing Time: UNDER SUBMISSION

1 **TO THE HONORABLE COURT, PARTIES, AND COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on August 1st, 2022, in the United States District
3 Court for the Central District of California, located at 350 W. 1st Street, Los Angeles
4 California, Courtroom 9b, before the Honorable Terry J. Hatter, Jr., Plaintiff Lester I.
5 Spielman will respectfully move this court to preliminarily approve the Settlement reached
6 in this case, the terms of which are more specifically described in the Memorandum and
7 Points of Authority filed in support of this Motion.

8 Plaintiff's Motion is based upon this Notice of Motion, the accompanying
9 Memorandum of Points and Authorities, the Settlement Agreement, the Declaration of
10 Annick M. Persinger, the pleadings and papers on file in this Action, and any other such
11 evidence and argument as the Court may consider. United Services Automobile
12 Association, USAA Casualty Insurance Company, USAA General Indemnity Company,
13 and Garrison Property and Casualty Insurance Company do not oppose the Motion.

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I. INTRODUCTION

Plaintiff Lester I. Spielman (“Plaintiff”), individually and on behalf of the proposed Settlement Class, respectfully moves for Preliminary Approval of the Settlement Agreement,¹ which will resolve all claims against United Services Automobile Association (“USAA” or “Defendant”), USAA Casualty Insurance Company (“CIC”), USAA General Indemnity Company (“GIC”), and Garrison Property and Casualty Insurance Company (“Garrison”) (collectively, the “USAA Entities”). Preliminary Approval should be granted because the Settlement provides substantial relief for the Settlement Class and the terms of the Settlement are well within the range of reasonableness and consistent with applicable case law. Indeed, the Settlement—which provides for the USAA Entities’ agreement to establish a Settlement Fund in the amount of \$3,050,000.00 for the benefit of Settlement Class Members—is an outstanding result for the Settlement Class. The Settlement satisfies all Ninth Circuit criteria for approval. Consequently, this Settlement is fair and reasonable and merits approval.

II. BACKGROUND

A. Plaintiff’s Claims and Allegations

This case involves allegations that USAA breached private passenger auto insurance policies issued to Plaintiff and similarly-situated insureds by failing to properly pay the full amount of sales tax and regulatory fees to insureds whose leased vehicles were determined to be total losses. Plaintiff alleges that USAA’s form insurance Policy, which provides collision coverage to all California insureds, obligates it to pay the full pre-loss Actual Cash Value (“ACV”) of a vehicle when that vehicle is determined to be a total loss, and that the Policy makes no distinction between leased and owned vehicles with respect to payment of

¹ Capitalized terms shall have the same meaning as those assigned to them in the Settlement Agreement, which is attached as **Exhibit A** to the Declaration of Annick M. Persinger in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Persinger Declaration”) and cited herein as “Agreement.” Unless otherwise stated, all Exhibits cited herein are attached to the Persinger Declaration.

1 ACV. Plaintiff also alleges that, as part of the ACV, USAA’s Policy requires the payment of
2 (a) sales tax based on the value of the lost vehicle, calculated as the applicable percentage of
3 the underlying adjusted vehicle value (“Sales Tax”); and (b) mandatory title and registration
4 fees needed to purchase a vehicle in the State of California (“Vehicle Regulatory Fees”).
5 Plaintiff further alleges that USAA’s practice of failing to include full Sales Tax and Vehicle
6 Regulatory Fees for leased vehicles in ACV payments constitutes a breach of contract. This
7 class action seeks the amount of underpaid Sales Tax and Vehicle Regulatory Fees on behalf
8 of USAA insureds with leased vehicles in California. The USAA Entities deny all allegations
9 and maintain that they have complied with their obligations under California law and the
10 terms of their insurance policies.

11 **B. Procedural History and Settlement Negotiations**

12 Plaintiff filed his Class Action Complaint against Defendant USAA on February 22,
13 2019, and a First Amended Class Action Complaint (“Amended Complaint”) against USAA
14 and CIC on January 6, 2020. Discovery commenced after USAA and CIC filed their Answer
15 to the Amended Complaint on February 5, 2020.² Persinger Decl. at ¶5. The Parties took
16 various depositions and exchanged expert reports. *Id.* at ¶6. Class Counsel has also reviewed
17 more than 2,600 pages of documents and large claims data spreadsheets produced by
18 USAA, documents in response to third-party subpoenas, and propounded interrogatories,
19 necessitating numerous meet and confers. *Id.* As part of the extensive briefing on class
20 certification, Plaintiff retained an expert who analyzed the data produced by USAA to
21 estimate the value of Plaintiff’s classwide claims and determine whether insureds were paid
22 Sales Tax and Vehicle Registration Fees with a high degree of accuracy. *Id.*

23 On March 9, 2021, the Parties attended a mediation with the Hon. Irma Gonzales

24 ² Former plaintiff Samantha Leitz joined the Amended Complaint, which also named
25 CIC, her insurer, as a defendant. On May 5, 2021, Leitz filed a Notice of Voluntary
26 Dismissal and dismissed with prejudice her claims against USAA and CIC. As part of the
27 Settlement, CIC, GIC, and Garrison have been added as Defendants in the Second
28 Amended Complaint attached to Plaintiff’s Unopposed Motion for Leave to File Second
Amended Class Action Complaint to Add Defendants, filed contemporaneously herewith.

1 (ret.). *Id.* at ¶7. Prior to mediation, USAA provided data to Plaintiff identifying potential
2 Class members and the amount of Sales Tax and Vehicle Regulatory Fees paid on their total
3 loss claims (to the extent such information was available). *Id.* The Parties did not settle at
4 mediation, but they continued their settlement discussions over the course of the following
5 months. *Id.*

6 On August 2, 2021, Plaintiff filed his Motion for Class Certification (Dkt. 84), which
7 the Court granted on December 9, 2021, certifying a litigation class (Dkt. 100). Pursuant to
8 the Court’s January 12, 2022 Order (Dkt. No. 103), the litigation class is defined as:

9 All individuals and entities in California insured by United Services Automobile
10 Association whose insurance covered or covers a leased vehicle with private-
11 passenger physical damage coverage, including collision or physical damage
12 other than collision coverage, who made a first-party claim, filed within four
13 years of the date the lawsuit was filed through September 12, 2020, that was
14 adjusted by United Services Automobile Association or USAA Casualty
15 Insurance Company as a total loss and who received an actual cash value
16 payment from United Services Automobile Association or USAA Casualty
17 Insurance Company that did not include sales tax and/or Vehicle Title and
18 Registration Fees (the “Litigation Class”).

19 On February 25, 2022, the United States Court of Appeals for the Ninth Circuit
20 denied USAA’s petition for permission to appeal the Court’s December 9, 2021 order
21 granting class certification. Settlement negotiations continued for several weeks, and the
22 Parties agreed to material terms of a settlement to resolve Plaintiff and Class Members’
23 claims against all USAA Entities on May 17, 2022. Persinger Decl. ¶10. On June 30, 2022,
24 the Parties finalized the Agreement. *Id.*

25 **B. Summary of the Settlement Terms**

26 **1. The Settlement Class**

1 The Settlement Class is a Federal Rule of Civil Procedure 23(b)(3) class, defined as
2 follows:

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

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

16 Agreement at ¶¶pp.³

17 **2. Relief for the Benefit of the Settlement Class**

18 a. Monetary Consideration and Plan of Allocation

19 The Settlement consists of an agreement to establish a Settlement Fund in the
20 amount of \$3,050,000.00 to pay (1) all Settlement Claim Payments to Qualifying Settlement
21 Class Members, (2) any Attorneys’ Fees and Expenses Award awarded by the Court; (3) any
22 Service Award to Plaintiff awarded by the Court, and (4) all costs and expenses for notice
23 and settlement administration. Agreement at ¶¶22.

24
25
26 ³ Solely for the purpose of implementing this Agreement and effectuating the Settlement,
27 the USAA Entities have stipulated to the entry of a preliminary approval order that vacates
28 the Litigation Class and allows for the filing of a Second Amended Complaint, and
preliminarily certifies the Settlement Class. Agreement at ¶¶3, 5.bb.

1 Qualifying Settlement Class Members will be eligible for a *pro rata* portion of the Net
2 Settlement Fund as calculated based on the value of their covered leased vehicle as
3 determined by the most recent valuation USAA Entities used in adjusting the claim, reduced
4 by any amounts already paid for Sales Tax and/or Vehicle Regulatory Fees (insofar as such
5 amounts may be determined from the USAA Entities' Class Data). Agreement at ¶23.

6 This is not a claims-made settlement. Qualifying Settlement Class Members can be
7 either Current Policyholders or Former Policyholders.⁴ Current Policyholders who do not
8 exclude themselves from the Settlement will automatically receive a Settlement Claim
9 Payment in the form of a check from the Settlement Administrator, without having to
10 submit a claim form. Former Policyholders qualify for a Settlement Claim Payment if they
11 do not exclude themselves from the Settlement and if they timely submit an Address
12 Verification Form (either by mail or online on the Settlement Website). The Address
13 Verification Form is a simple form designed to ensure that Settlement Claim Payments are
14 sent to the current addresses of Former Policyholders and will reach those Former
15 Policyholders (the USAA Entities already have the current mailing addresses of Current
16 Policyholders). There is no other difference in how Settlement Claim Payments are
17 calculated or paid with respect to Current Policyholders and Former Policyholders.
18 Agreement at ¶¶23, 27.

19 The Settlement does not provide for a reversion to the USAA Entities. The
20 Settlement also does not provide for a *cy pres* award, except that the amounts of checks for
21 Settlement Claim Payments that are not cashed by the time of the Stale Date (180 days after
22 issuance) shall, with the approval of the Court in the Final Order and Judgment, be part of
23 a *cy pres* award to a charitable organization that assists military families (the Parties
24

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

1 recommend the Tragedy Assistance Program for Survivors, an organization providing
2 services and compassionate care to those grieving the death of a military loved one);
3 provided, however, that exceptions may be made for checks that are not cashed by the time
4 of the Stale Date for service members who are then deployed. Agreement at ¶26.

5 b. Practice Changes

6 In addition, as part of the Settlement, the USAA Entities have agreed to pay
7 applicable Sales Tax and Vehicle Registration Fees on vehicles determined to be a total loss
8 in California without regard to whether the vehicle is leased or owned. Agreement at ¶2.
9 These practice changes eliminate the conduct challenged in this action and are a significant
10 benefit to Settlement Class Members and future customers of the USAA Entities. Persinger
11 Decl. ¶12.

12 **3. Releases**

13 In exchange for the benefits conferred by the Settlement, all Settlement Class
14 Members who do not exclude themselves from the Settlement will be deemed to have
15 released the USAA Entities from claims relating to the subject matter of the action.
16 Agreement at ¶45. The Releases are set forth in Section XIV of the Agreement.

17 **4. Class Notice and Settlement Administration**

18 As outlined below, the proposed Class notice will be sufficient for all Settlement
19 Class Members, and satisfies all applicable requirements of law, including Rule 23 and
20 Constitutional Due Process. Persinger Decl. ¶13. All costs associated with notice and the
21 Settlement Administrator shall be paid out of the Settlement Fund. Agreement at ¶11. The
22 Parties have agreed to use Epiq as the Settlement Administrator to handle all aspects of
23 Class notice and Settlement administration. *Id.* at ¶¶13, 18. Epiq is one of the leading notice
24 administration firms in the United States. Class Counsel estimate that the maximum amount
25 of notice and settlement administration costs will be approximately \$80,000.00. Persinger
26 Decl. ¶14.

1 The Settlement Administrator will oversee Class notice, which is designed to provide
2 the best notice practicable and is tailored to take advantage of the information USAA has
3 available about the Settlement Class. *Id.* USAA will make available to Class Counsel and the
4 Settlement Administrator the Class Data which, for each Settlement Class Member will: (1)
5 provide the Settlement Class Member's name, mailing address, and California Automobile
6 Insurance Policy number; (2) identify whether the Settlement Class Member is a Current
7 Policyholder or a Former Policyholder; and (3) provide the data fields from the USAA
8 Entities' databases from which the Settlement Class Member's Total Loss Claim Payment
9 may be calculated (to the extent possible using those fields). Agreement at ¶9.

10 Notice will consist of a Long-Form Mailed Notice (consistent in form and content
11 with the Federal Judicial Center's model notices) (Agreement, Ex. 2) and a Website created
12 by the Settlement Administrator for the purposes of publicizing and administering the
13 Settlement. *Id.* at ¶¶5, 14. The Settlement Administrator will set up a live call center during
14 regular business hours to answer Settlement Class Members' questions, and an IVR/VRU
15 call system containing recorded answers to frequently asked questions, along with an option
16 permitting callers to speak to live operators or to leave messages in a voicemail box. *Id.*
17 ¶14.h. The proposed notice is reasonably calculated to apprise Settlement Class Members
18 of: the material Settlement terms; the date and manner by which Settlement Class members
19 may exclude themselves from the Settlement Class; the date and manner by which
20 Settlement Class Members may object to the Settlement or intervene in the Action; the Final
21 Approval Hearing date; and the Settlement Website address where the Settlement Class may
22 access the Agreement and other related documents. *See* Agreement, Ex. 2; Persinger Decl.
23 at ¶¶13-14.

24 In addition, pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C.
25 § 1715, within 10 days after entry of the Preliminary Approval Order, Epiq will send CAFA
26 Notices to the United States Attorney General and the departments of insurance of the 50
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1 states and the District of Columbia. Persinger Decl. ¶14. The Parties will supplement the
2 preliminary approval papers with this information.

3 **5. Class Representative Service Award**

4 Class Counsel will seek a Service Award for Plaintiff (up to a maximum of \$5,000) in
5 addition to the Settlement Class Member Payment that Plaintiff will receive and will be paid
6 from the Settlement Fund. Agreement at ¶¶28, 30. The Service Award should compensate
7 Plaintiff for his time, effort, and risk assumed in prosecuting the Action. Persinger Decl.
8 ¶15. Specifically, he assisted Class Counsel to successfully prosecute the action through class
9 certification and reach the Settlement, including: (1) submitting to Class Counsel interviews;
10 (2) forwarding documents and information to Class Counsel; (3) assisting Class Counsel in
11 drafting and reviewing the complaints filed in this action; (4) providing deposition testimony
12 and a declaration in support of class certification; and (5) keeping apprised of the case and
13 conferring with Class Counsel. *Id.* In so doing, Plaintiff was integral to the case. *Id.*

14 **6. Attorneys' Fees and Reimbursement of Expenses**

15 Class Counsel have not been paid for their extensive efforts or reimbursed for
16 litigation costs. Pursuant to the Settlement, Class Counsel are entitled to request up to
17 \$1,016,565.00 in attorneys' fees and the amount of Plaintiff's actual out-of-pocket costs, up
18 to a maximum \$_____, as of the time the petition is filed. Agreement at ¶29; Persinger Decl.
19 ¶16. The Parties negotiated and reached an agreement regarding fees, and the Service
20 Award, only after agreeing on all material terms of the Settlement. *Id.* at ¶28; Persinger Decl.
21 ¶17. Such award is subject to this Court's approval and will serve to compensate Class
22 Counsel for the time, risk, and expense counsel incurred pursuing the claims herein. *Id.*

23 **7. Settlement Termination**

24 Either Party may terminate the Settlement if the Settlement is rejected or materially
25 modified by the Court or an appellate court. Agreement at ¶49.a.-c. In addition, in the event
26 that the Settlement does not become final for any reason, (a) the Settlement Class shall be
27 vacated and the Litigation Class shall automatically be re-certified; (b) the Second Amended
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1 Complaint shall be vacated and the First Amended Complaint shall become the operative
2 pleading (except that CIC shall remain dismissed from the Action); (c) all orders entered
3 regarding the Settlement shall be vacated; and (d) the Parties shall be restored to the *status*
4 *quo ante* as of May 17, 2022. *Id.* at ¶¶8, 48-51.

5 **III. ARGUMENT**

6 **A. The Settlement Should Be Preliminarily Approved**

7 Federal Rule of Civil Procedure 23(e) provides that “[t]he claims, issues, or defenses
8 of a certified class may be settled, voluntarily dismissed, or compromised only with the
9 court’s approval.” *Id.* “[S]trong judicial policy ... favors settlements, particularly where
10 complex class action litigation is concerned.” *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268,
11 1276 (9th Cir. 1992). “The purpose of Rule 23(e) is to protect the unnamed members of the
12 class from unjust or unfair settlements affecting their rights.” *In re Syncor ERISA Litig.*, 516
13 F.3d 1095, 1100 (9th Cir. 2008). “Review of the settlement is meant to be ‘extremely limited’
14 and should consider the settlement as a whole.” *Patrick v. Volkswagen Grp. Of Am.*, No. 8:19-
15 cv-01908-MCS-ADS, 2021 WL 3616105, at *1 (C.D. Cal. March 10, 2021) (citing *Hanlon v.*
16 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)).

17 “At the preliminary approval stage, the Court need only consider whether the
18 proposed settlement ‘(1) appears to be the product of serious, informed, non-collusive
19 negotiations; (2) has no obvious deficiencies; (3) does not improperly grant preferential
20 treatment to class representatives or segments of the class; and (4) falls within the range of
21 possible approval.’” *Patrick*, 2021 WL 3616105, at *1 (quoting *Harris v. Vector Mktg. Corp.*,
22 No. No. C-08-5198 EMC, 2011 WL 1627973, at *7 (N.D. Cal. Apr. 29, 2011)). All the
23 criteria for preliminary approval are met here.

24 **1. The Settlement Resulted From Arms-Length Negotiations**

25 A non-collusive settlement, negotiated by experienced class counsel with the
26 involvement of a respected mediator, is entitled to “a presumption of fairness.” *In re Toys*
27 *“R” Us-Del., Inc. FACTA Litig.*, 295 F.R.D. 438, 450 (C.D. Cal. 2014). The fact that the
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1 Parties participated in mediation before the Honorable Irma Gonzales (ret.), and that the
2 Parties did not reach an agreement as to the key terms of the Settlement until after the
3 mediation and following months of vigorous litigation and settlement negotiations,
4 demonstrates that the Settlement was not collusive. Persinger Decl. at ¶7-9; *see e.g., Grant v.*
5 *Capital Mgmt. Servs., L.P.*, No. 10-cv-2471-WQH BGS, 2014 WL 888665, at *5 (S.D. Cal.
6 Mar. 5, 2014) (“Participation of a mediator is not dispositive, but is a factor weighing in
7 favor of a finding of noncollusiveness.”) (internal quotation marks omitted); *Sandoval v.*
8 *Tharaldson Emp. Mgmt.*, No. EDCV 08-482-VAP(OP), 2010 WL 2486346, at *6 (C.D. Cal.
9 June 15, 2010) (“The assistance of an experienced mediator in the settlement process
10 confirms that the settlement is non-collusive”) (internal quotations omitted). Further
11 evidencing the non-collusive nature of the Settlement is the fact that it was only reached
12 after significant discovery and extensive briefing on class certification.

13 Second, it is the reasoned opinion of Class Counsel that this Settlement is an excellent
14 result and is in the best interests of Class Members given all pertinent factors, including: (1)
15 the complexity, expense, and likely duration of continuing litigation; (2) the benefits
16 conferred upon the Class pursuant to the Settlement Agreement; (3) the complicated merits-
17 based legal issues that remained either at the trial level or, ultimately, on appeal; and (4) the
18 likelihood of success, as discussed below. Persinger Decl. at ¶18. Class Counsel have
19 extensive experience litigating total-loss actions and in-depth knowledge of the issues with,
20 and relative strengths and weaknesses of, total-loss claims. *Id.* at ¶19. Their opinion is based
21 on extensive review of the complete production of all documents and spreadsheets relevant
22 to this litigation. *Id.* As such, this factor favors preliminary approval. *See Bower v. Cycle Gear,*
23 *Inc.*, No. 14-CV 02712-HSG, 2015 WL 13025767, at *6 (N.D. Cal. Dec. 8, 2015).

24 **2. The Settlement Does Not Grant Preferential Treatment**

25 Under this factor, the Court examines whether the Agreement provides preferential
26 treatment to any class member or the class representative. The proposed plan allocates the
27 Net Settlement Fund to Settlement Class Members equally on a *pro-rata* basis. The
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1 Settlement Claim Payments will be calculated based on the value of their vehicles, which is
2 reasonably related to the amounts alleged to be owed for taxes and fees. The only difference
3 in treatment among Settlement Class Members is that Former Policyholders must submit a
4 simple Address Verification Form to help ensure that Settlement Claim Payments reach
5 their current addresses. The Address Verification Form may be submitted by mail (a copy
6 will be sent with the Mailed Notice to all Former Policyholders, and will also be available
7 online) or online on the Settlement Website, and Former Policyholders have ample time—
8 60 days—in which to do so.

9 In addition, while the Agreement authorizes Plaintiff's counsel to seek a Service
10 Award for his role as Named Plaintiff in this lawsuit, as well as his expenses actually
11 incurred, "the Court will ultimately determine whether [he] is entitled to such an award and
12 the reasonableness of the amount requested," and "[t]he Ninth Circuit has recognized that
13 incentive awards to named plaintiffs in a class action are permissible and do not render a
14 settlement unfair or unreasonable." *Roe v. Frito-Lay, Inc.*, 14-CV-00751-HSG, 2016 WL
15 4154850, at *6 (N.D. Cal. Aug. 5, 2016) (citing *Stanton v. Boeing Co.*, 327 F.3d 938, 977 (9th
16 Cir. 2003)); *see also LAO Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 968-69 (9th Cir. 2009).

17 **3. The Settlement Amount Is Within the Range of Possible Approval**

18 To evaluate the range of possible approval criterion, courts primarily consider
19 "plaintiffs' expected recovery balanced against the value of the settlement offer." *Patrick*,
20 2021 WL 3616105, at *4 (internal quotations omitted). Here, the Settlement provides final
21 resolution and significant relief—approximately 31% of potential damages—for claims that
22 have uncertain prospects for success. Persinger Decl. at ¶20. Indeed, despite Plaintiff
23 obtaining class certification, no California court—state or federal—has held that insureds
24 who lease a vehicle are entitled, upon an insurer's total loss determination, to full payment
25 of sales tax notwithstanding that the sales tax necessary to lease a vehicle is different—and
26 less—than sales tax necessary to purchase a vehicle. *Id.* at ¶18. Plaintiff believes his claims
27 are meritorious and that he would ultimately prevail, but there is significant risk this Court

1 and/or the Ninth Circuit would rule against Plaintiff's claims at summary judgment, trial,
2 or on appeal. Such risk strongly supports the proposed Settlement. *Id.*

3 **4. The Settlement Does Not Suffer From Any Obvious Deficiencies**

4 Plaintiffs submit that far from containing any obvious deficiencies, the Agreement is
5 an outstanding result for the Class, both procedurally and substantively. The Settlement
6 provides for robust Notice—individual, direct Long-Form Mailed Notice (along with an
7 Address Verification Form sent to Former Policyholders), a Website, a 24/7 toll-free
8 telephone line available to answer questions from Settlement Class Members, and a call
9 center open during regular business hours to answer any questions. Agreement at ¶¶5, 14.
10 The Notices also inform Settlement Class Members of all relevant facts: the nature of the
11 claims, the benefits available, the released claims, and the processes for objecting, requesting
12 exclusion, and submitting claims. *Cf. Mata v. Manpower Inc.*, 2016 WL 7406989, at *8 (N.D.
13 Cal. Dec. 22, 2016) (listing examples of “obvious deficiencies,” including the failure to give
14 adequate notice). In addition, the Release is narrowly tailored to the exact claims alleged in
15 this litigation and preserves all other potential claims. *Cf. Johnson v. Quantum Learning Network,*
16 *Inc.*, 2016 WL 8729941, at *1-2 (N.D. Cal. Aug. 12, 2016) (an overly broad release is an
17 example of an obvious deficiency). And the Agreement provides significant benefits to the
18 Class—a \$3,050,000.00 common Settlement Fund and practice changes—particularly in
19 light of the uncertain nature of the claims and risk of no recovery at all.

20 **B. Settlement Class Certification is Warranted**

21 Provisional certification of a settlement class is a precondition of preliminary
22 approval. Each of the Rule 23(a) and Rule 23(b)(3) requisites are satisfied here for settlement
23 purposes. That the elements of Rule 23 are satisfied is demonstrated by Plaintiff's contested
24 motion for class certification, which the Court granted. *See Spielman v. United Servs. Auto.*
25 *Ass'n*, No. CV1901359TJHMAAX, 2021 WL 6104877 (C.D. Cal. Dec. 9, 2021). The only
26 difference is that the proposed Settlement Class also includes California individuals and
27 entities who insured their leased total loss vehicles with the additional USAA Entities. This,

1 however, does not change the certification analysis, given that the USAA Entities’ practices,
2 policy language, procedures, and data is identical across all entities. Persinger Decl. at ¶6.

3 **1. The Requirements of Rule 23(a) Are Satisfied**

4 Numerosity. The numerosity requirement of Rule 23(a)(1) is satisfied because the
5 Parties have identified approximately 3,710 Settlement Class Members. Persinger Decl. at
6 ¶20. *See Spielman*, 2021 WL 6104877, at *1 (“Here, numerosity is established because joining
7 approximately 800 putative class members would be impracticable.”).

8 Commonality. Rule 23(a)(2) requires a plaintiff to show that “there are questions of
9 law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). The claims must depend on a
10 common contention of which “its truth or falsity will resolve an issue that is central to the
11 validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338,
12 350 (2011). Here, such requirement is satisfied because there is a common question of law
13 concerning whether the USAA Entities’ uniform policy language is reasonably interpreted
14 to include Sales Tax and/or Vehicle Registration Fees for leased vehicles. This issue applies
15 to all claims of the Settlement Class Members, and its resolution would resolve an issue
16 central to each Settlement Class Member’s claim. *See Spielman*, 2021 WL 6104877, at *2
17 (“The primary question, here, common to the class is whether USAA, based on its standard
18 policy language, was obligated to include taxes and registration fees in ACV payments to
19 USAA insureds who had leased a vehicle that was deemed by USAA to be a totaled loss.”).

20 Typicality. Rule 23(a)(3) requires that the class representative’s claim(s) be typical of
21 the claims of the Settlement Class. Fed. R. Civ. P. 23(a)(3). It tests whether “other class
22 members have been injured by the same course of conduct” and sustained a similar injury
23 as the class representative. *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992).
24 Here, the typicality requirement is satisfied because Plaintiff was insured under the same
25 form insurance policy as all Settlement Class Members and their claims are based on the
26 same “practice and procedure” under the same legal theory. *See Spielman*, 2021 WL 6104877,
27

1 at *2 (“Spielman’s claims are typical of the class because they are reasonably coextensive
2 with those of the absent class members.”).

3 Adequacy. Rule 23(a)(4) requires that “the representative parties ... fairly and
4 adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). Representation is
5 adequate “when counsel for the class is qualified and competent, the representative’s
6 interests are not antagonistic to the interests of absent class members, and it is unlikely that
7 the action is collusive.” *Lloyd v. CVB Fin. Corp.*, No. CV1006256MMMPJWX, 2011 WL
8 13128303, at *6 (C.D. Cal. Jan. 21, 2011). This Court already found that “Spielman does not
9 appear [to] have a conflict of interest with the putative class, and there is no basis to
10 conclude that Spielman would not vigorously prosecute this case on behalf of the putative
11 class.” *Spielman*, 2021 WL 6104877, at *2 Indeed, Plaintiff has demonstrated his
12 commitment to this case through the inception of this litigation. Persinger Decl. at ¶15.
13 “Spielman will be an adequate class representative.” *Spielman*, 2021 WL 6104877, at *2. The
14 Court also found that “Spielman’s attorneys are adequate class counsel and satisfy the
15 requirements of Fed. R. Civ. P. 23(g).” *Id.* Indeed, counsel has substantial experience
16 litigating class actions, including specifically cases alleging breach of contract for failure to
17 pay sales tax and/or fees to total-loss insureds. *See* Persinger Decl. ¶19; Exs. B-D. Finally,
18 counsel have already committed and will continue to commit substantial resources to
19 litigating this case. *See id.* Any certified Class will be in capable and dedicated hands with
20 these firms. In short, Rule 23(a)’s adequacy requirement is handily met.

21 **2. The Requirements of Rule 23(b)(3) Are Also Satisfied**

22 Rule 23(b)(3) requires a finding that “questions of law or fact common to class
23 members predominate over any questions affecting only individual members” and that “a
24 class action is superior to other available methods for fairly and efficiently adjudicating the
25 controversy.” Fed. R. Civ. P. 23(b)(3).

26 Predominance. The common question of the proper interpretation of ACV as used
27 in the USAA Entities’ form Policy predominates over any individual questions. *See* Dkt. No.

1 84-1 at 3-18; *see also Ellsworth v. U.S. Bank, N.A.*, No. C 12-02506 LB, 2014 WL 2734953, at
2 *20 (N.D. Cal. Jun. 13, 2014) (“courts routinely certify class actions regarding breaches of
3 form contracts” like this one because “common questions predominate when, as here, they
4 involve form contracts and standardized policies and practices”). While in rare
5 circumstances determination of damages could require review or analysis of individual claim
6 files or documents in certain instances, the measure of damages is common, and class
7 treatment would not be foreclosed. *See* Dkt. No. 84-1 at 14; *see also Bias v. Wells Fargo & Co.*,
8 312 F.R.D. 528, 539 (N.D. Cal. 2015) (finding class was ascertainable “[e]ven if a file-by-file
9 review were required to identify” class members, because the identification would be based
10 on objective facts); *Martinez v. Knight Transp., Inc.*, 2018 WL 6308110 at *9-10 (E.D. Cal. Dec.
11 3, 2018) (finding that manual review of claim files to identify class members did not preclude
12 class treatment). Predominance is clearly established.

13 Superiority. “[T]he purpose of [Rule 23(b)(3)’s] superiority requirement is to assure
14 that the class action is the most efficient and effective means of resolving the controversy.”
15 *Wolin v. Jaguar Land Rover North America, LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010). Here,
16 common issues are central to the litigation, it is desirable and efficient to concentrate the
17 identical claims in this forum, individual actions are unrealistic given the relatively small
18 damages amounts and the USAA Entities’ vast resources, and class treatment of the
19 Settlement is manageable. Dkt. No. 84-1 at 25. Superiority is established.

20 **C. The Proposed Class Notice Should Be Approved**

21 Preliminary approval of the proposed Settlement permits notice to be given to
22 Settlement Class Members of a hearing on final settlement approval, at which they and the
23 settling parties may be heard with respect to final approval. *See Manual for Complex Litigation*,
24 Third, §23.14 (West ed. 1995). When certifying a settlement class under Rule 23(b)(3), the
25 substance of the notice to the settlement class must describe in plain language the nature of
26 the action, the definition of the class to be certified, and the class claims and defenses at
27 issue. Furthermore, the notice must explain that settlement class members may enter an

1 appearance through counsel if so desired, that class members may request to be excluded
2 from the settlement class, and that the effect of a class judgment shall be binding on all class
3 members. *See* Fed. R. Civ. P. 23(c)(2)(B).

4 The means and forms of notice proposed here, as detailed above, constitute valid
5 and sufficient notice to the Settlement Class, the best notice practicable under the
6 circumstances, and comply fully with the requirements of Rule 23 and due process. *See, e.g.,*
7 *In re Cement and Concrete Antitrust Litig.*, 817 F.2d 1435, 1440 (9th Cir. 1987), *rev'd on other*
8 *grounds*, 490 U.S. 93 (1989) (stating that “notice is satisfactory if it generally describes the
9 terms of the settlement in sufficient detail to alert those with adverse viewpoints to
10 investigate and to come forward and be heard”) (internal citation and quotations omitted);
11 *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1374 (9th Cir. 1993); *In re Equity Funding Corp.*
12 *of Am Sec. Litig.*, 603 F.2d 1353, 1361 (9th Cir. 1979) (directing that class notice must
13 “present a fair recital of the subject matter and proposed terms” and provide “an
14 opportunity to be heard to all class members”) (internal citation omitted). The proposed
15 Class notice should accordingly be approved.

16 **D. Plaintiff’s Counsel Should Be Appointed As Settlement Class Counsel**

17 Under Rule 23, “a court that certifies a class must appoint class counsel . . . [who]
18 must fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(1)(B).
19 In making this determination, the Court must consider counsel’s: (1) work in identifying or
20 investigating potential claims; (2) experience in handling class actions or other complex
21 litigation, and the types of claims asserted in the case; (3) knowledge of the applicable law;
22 and (4) resources committed to representing the class. *See* Fed. R. Civ. P. 23(g)(1)(A)(i-iv).

23 As discussed above, proposed Class Counsel have diligently investigated Plaintiff’s
24 claims and, through the vigorous prosecution of this action, obtained class certification.
25 Counsel has devoted, and will continue to devote, substantial time and resources to this
26 litigation. Additionally, proposed Class Counsel has in-depth knowledge of the law, having
27 been appointed class counsel in numerous, analogous consumer class actions, including

1 many other automotive total loss cases. Accordingly, the Court should appoint Plaintiff's
 2 counsel to serve as Class Counsel for the proposed Class pursuant to Rule 23(g).

3 **E. Proposed Schedule**

4 The key Settlement-related dates are based on when Preliminary Approval is granted
 5 and the Final Approval Hearing date. The dates are listed below, calculated consistent with
 6 the Agreement.

EVENT	PROPOSED DEADLINE
Deadline for Settlement Administrator to complete direct Mailed Notice (the "Mailed Notice Date"). In addition, Settlement Website, Call Center, and IVR go live.	60 days after entry of the Preliminary Approval Order
Deadline for Class Counsel to file their application for attorneys' fees, expenses and service award for Plaintiff	14 days after Mailed Notice Date
Deadline for Settlement Class Members to opt-out of the Agreement	60 days after Mailed Notice Date
Deadline for Settlement Class Members to object to the Agreement	60 days after Mailed Notice Date
Deadline for Settlement Class Members who are Former Policyholders to submit Address Verification Form	60 days after Mailed Notice Date
Deadline for Class Counsel to file Motion for Final Approval of Settlement	7 days after Objection Deadline
Deadline for Settlement Administrator to file Opt-Out List and affidavit of completion of notice	10 days before Final Approval Hearing
Final Approval Hearing	TBD

23 **V. CONCLUSION**

24 For the foregoing reasons, the Court should (1) preliminarily approve the proposed
 25 Settlement Agreement; (2) provisionally certify the Class for settlement purposes only; (3)
 26 appoint Lester I. Spielman as Class Representative; (4) appoint Annick Persinger and Glenn
 27 Chappell of Tycko & Zavareei LLP, Jason H. Alperstein of Kopelowitz Ostrow Ferguson

1 Weiselberg Gilbert, Scott Edelsberg of Edelsberg Law, PA, and Andrew J. Shamis of Shamis
2 & Gentile, P.A., as Class Counsel; (5) approve the form and dissemination of notice to
3 Settlement Class Members; and (6) schedule a Final Approval Hearing. Accordingly,
4 Plaintiff respectfully requests that the Court enter an order substantially in the form of the
5 accompanying [Proposed] Order Preliminarily Approving Class Action Settlement, which
6 is attached as Exhibit 1 to the Settlement Agreement and has been separately submitted to
7 the Court.

8 Dated: June 30, 2022

9 **TYCKO & ZAVAREEI LLP**
10 Annick Persinger (CA Bar No. 272996)
11 Glenn E. Chappell (admitted *pro hac vice*)
12 10880 Wilshire Blvd., Suite 1101
13 Los Angeles, CA 90024
14 Telephone: (213) 425-3657
15 Email: apersinger@tzlegal.com
16 gchappell@tzlegal.com

17 **KOPELOWITZ OSTROW**
18 **FERGUSON WEISELBERG GILBERT**
19 Jason H. Alperstein (admitted *pro hac vice*)
20 Jeff Ostrow (admitted *pro hac vice*)
21 Jonathan Streisfeld (admitted *pro hac vice*)
22 One West Las Olas, Suite 500
23 Fort Lauderdale, FL 33301
24 Telephone: (954) 525-4100
25 Email: alperstein@kolawyers.com
26 ostrow@kolawyers.com
27 streisfeld@kolawyers.com

28 **EDELSBERG LAW, PA**
Scott Edelsberg (CA Bar No. 330990)
20900 NE 30th Ave., Suite 417
Aventura, FL 33180
Telephone: (305) 975-3320
Email: scott@edelsberglaw.com

SHAMIS & GENTILE, P.A.
Andrew J. Shamis (admitted *pro hac vice*)
14 NE 1st Avenue, Suite 400
Miami, FL 33132
Telephone: (305) 479-2299
Email: ashamis@shamisgentile.com