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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-AB-MAA

**DECLARATION OF ANNICK M.
PERSINGER IN SUPPORT OF
PLAINTIFF’S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Judge: Hon. Terry J. Hatter, Jr.

Place: Courtroom 9b

Hearing Date: August 1st, 2022

Hearing Time: UNDER SUBMISSION

1 I, Annick M. Persinger, declare as follows:

2 1. I am an attorney at the law firm of Tycko & Zavareei LLP, and I am licensed
3 and admitted to practice before all courts of the State of California, the United States
4 District Court for the Central, Eastern, and Northern Districts of California, and the Ninth
5 Circuit Court of Appeals.

6 2. My firm and I, together with Kopelowitz Ostrow Ferguson Weiselberg
7 Gilbert; Edelsberg Law, PA; and Shamis & Gentile, P.A. are counsel of record for Plaintiff
8 in this action against Defendant United Services Automobile Association (“USAA”). I am
9 one of the attorneys designated as Class Counsel for Plaintiff under the Settlement
10 Agreement (“Settlement” or “Agreement”) entered into with USAA, USAA Casualty
11 Insurance Company (“CIC”), USAA General Indemnity Company (“GIC”), and Garrison
12 Property and Casualty Insurance Company (“Garrison”) (collectively, the “USAA Entities”)
13 (together with Plaintiff, the “Parties”). I submit this declaration in support of Plaintiff’s
14 Motion for Preliminary Approval of Class Action Settlement.

15 3. Except as otherwise noted, I have personal knowledge of the facts set forth in
16 this declaration and could testify competently to them if called upon to do so.

17 4. This case involves allegations that USAA breached private passenger auto
18 insurance policies issued to Plaintiff and similarly-situated insureds by failing to properly
19 pay the full amount of sales tax and regulatory fees to insureds whose leased vehicles were
20 determined to be total losses. Plaintiff further alleges that USAA’s practice of failing to
21 include full Sales Tax and Vehicle Regulatory Fees for leased vehicles in ACV payments
22 constitutes a breach of contract.

23 5. Plaintiff filed his Class Action Complaint against Defendant USAA on
24 February 22, 2019, and a First Amended Class Action Complaint against USAA and CIC
25 on January 6, 2020. Discovery commenced after USAA and CIC filed their Answer to the
26 Amended Complaint on February 5, 2020.

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1 6. The Parties took various depositions and exchanged expert reports. Class
2 Counsel has also reviewed more than 2,600 pages of documents as well as large claims data
3 spreadsheets produced by USAA, documents in response to third-party subpoenas, and
4 propounded interrogatories, necessitating numerous meet and confers. As part of the
5 extensive briefing on class certification, Plaintiff retained an expert who analyzed the data
6 produced by USAA to estimate the value of Plaintiff's classwide claims and determine
7 whether insureds were paid Sales Tax and Vehicle Registration Fees with a high degree of
8 accuracy. Discovery also confirmed that the USAA Entities' practices, policy language,
9 procedures, and data is identical across all entities.

10 7. On March 9, 2021, the Parties attended a mediation with the Hon. Irma
11 Gonzales (ret.). Prior to mediation, USAA provided data to Plaintiff identifying potential
12 Class members and the amount of Sales Tax and Vehicle Regulatory Fees paid on their total
13 loss claims (to the extent such information was available). The Parties did not settle at
14 mediation, but they continued their settlement discussions over the course of the following
15 months.

16 8. On August 2, 2021, Plaintiff filed his Motion for Class Certification (Dkt. No.
17 84), which the Court granted on December 9, 2021, certifying a litigation class, as clarified
18 by the Court's January 12, 2022 Order (Dkt. No. 103).

19 9. On February 25, 2022, the United States Court of Appeals for the Ninth
20 Circuit denied USAA's petition for permission to appeal the Court's December 9, 2021
21 order granting class certification.

22 10. Settlement negotiations continued for several weeks and the Parties agreed to
23 material terms of a settlement to resolve Plaintiff and Class Members claims against all
24 USAA Entities on May 17, 2022. On June 30, 2022, the Parties finalized the Agreement.

25 11. The Settlement consists of an agreement to establish a Settlement Fund in the
26 amount of \$3,050,000.00 to pay (1) all Settlement Claim Payments to Qualifying Settlement
27 Class Members, (2) any Attorneys' Fees and Expenses Award awarded by the Court; (3) any
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1 Service Award to Plaintiff awarded by the Court, and (4) all costs and expenses for notice
2 and settlement administration.

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

8 13. Class notice will be sufficient for all Settlement Class Members, and satisfies
9 all applicable requirements of law, including Rule 23 and Constitutional Due Process. The
10 proposed notice is reasonably calculated to apprise Settlement Class Members of: the
11 material Settlement terms; the date and manner by which Settlement Class members may
12 exclude themselves from the Settlement Class; the date and manner by which Settlement
13 Class Members may object to the Settlement or intervene in the Action; the Final Approval
14 Hearing date; and the Settlement Website address where the Settlement Class may access
15 the Agreement and other related documents.

16 14. The Parties have agreed to use Epiq as the Settlement Administrator to handle
17 all aspects of Class notice and Settlement administration. Epiq is one of the leading notice
18 administration firms in the United States. Class Counsel estimate that the maximum amount
19 of notice and settlement administration costs will be \$80,000.00. The Settlement
20 Administrator will oversee Class notice, which is designed to provide the best notice
21 practicable and is tailored to take advantage of the information USAA has available about
22 the Settlement Class. In addition, within 10 days after entry of the Preliminary Approval
23 Order, Epiq will send CAFA Notices to the United States Attorney General and the
24 departments of insurance of the 50 states and the District of Columbia.

25 15. Class Counsel will seek a Service Award for Plaintiff (up to a maximum of
26 \$5,000) to compensate Plaintiff for his time, effort, and risk assumed in prosecuting the
27 Action. Specifically, he assisted Class Counsel to successfully prosecute the action through
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1 class certification and reach the Settlement, including: (1) submitting to Class Counsel
2 interviews; (2) forwarding documents and information to Class Counsel; (3) assisting Class
3 Counsel in drafting and reviewing the complaints filed in this action; (4) providing
4 deposition testimony and a declaration in support of class certification; and (5) keeping
5 apprised of the case and conferring with Class Counsel. In so doing, Plaintiff was integral
6 to the case.

7 16. Class Counsel have not been paid for their extensive efforts or reimbursed for
8 litigation costs. Pursuant to the Settlement, Class Counsel are entitled to request up to
9 \$1,016,565.00 in attorneys' fees and the amount of Plaintiff's actual out-of-pocket costs, up
10 to a maximum \$30,000.00 as of the time the petition is filed.

11 17. The Parties negotiated and reached an agreement regarding fees, and the
12 Service Award, only after agreeing on all material terms of the Settlement. Such award is
13 subject to this Court's approval and will serve to compensate Class Counsel for the time,
14 risk, and expense counsel incurred pursuing the claims herein.

15 18. It is the reasoned opinion of Class Counsel that this Settlement is an excellent
16 result and is in the best interests of Class Members given all pertinent factors, including: (1)
17 the complexity, expense, and likely duration of continuing litigation; (2) the benefits
18 conferred upon the Class pursuant to the Settlement Agreement; (3) the complicated merits-
19 based legal issues that remained either at the trial level or, ultimately, on appeal; and (4) the
20 likelihood of success. Indeed, despite Plaintiff obtaining class certification, no California
21 court—state or federal—has held that insureds who lease a vehicle are entitled, upon an
22 insurer's total loss determination, to full payment of sales tax notwithstanding that the sales
23 tax necessary to lease a vehicle is different—and less—than sales tax necessary to purchase
24 a vehicle. Class Counsel believes Plaintiff's claims are meritorious and that he would
25 ultimately prevail, but there is significant risk this Court and/or the Ninth Circuit would
26 rule against Plaintiff's claims at summary judgment, trial, or on appeal.

27 19. Class Counsel have extensive experience litigating total-loss actions and have
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1 in-depth knowledge of the issues and relative strengths and weaknesses of total-loss claims.
2 Class Counsel's opinion based on extensive review of the complete production of all
3 documents and data spreadsheets relevant to this litigation.

4 20. The data shows there are approximately 3,710 Settlement Class Members and
5 that their potential total damages recoverable at trial is approximately \$9,900,000. Thus, the
6 Settlement represents approximately 31% of potential total damages.

7 21. Attached hereto as **Exhibit A** is a true and correct copy of the Agreement.

8 22. Attached hereto as **Exhibit B** is the firm resume of Edelsberg Law, P.A.

9 23. Attached hereto as **Exhibit C** are the resumes of the lawyers from Tycko &
10 Zavareei LLP who are working on this case.

11 24. Attached hereto as **Exhibit D** is the firm resume of Kopelowitz Ostrow
12 Ferguson Weiselberg Gilbert.

13 25. Attached hereto as **Exhibit E** is the firm resume of Shamis & Gentile, P.A.

14 I declare under penalty of perjury under the laws of the United States and the State of
15 California that the foregoing is true and correct. Executed on June 30, 2022 at Los Angeles,
16 California.

17
18 Dated June 30, 2022

/s/ Annick M. Persinger
Annick M. Persinger