

**VIVIAN AREVALO and MICAH SIMON,**

Plaintiffs,

v.

**USAA CASUALTY INSURANCE  
COMPANY, et al.,**

Defendants.

IN THE DISTRICT COURT

OF BEXAR COUNTY, TEXAS

285th JUDICIAL DISTRICT

**AGREED ORDER PRELIMINARILY APPROVING SETTLEMENT  
AND DIRECTING NOTICE TO THE CLASS**

The parties have reached a settlement in this case. Through an unopposed motion for preliminary approval of class settlement, they seek, among other things, that the Court (1) grant preliminary approval of the Class Action Settlement Agreement (“Agreement”); (2) preliminarily approve certification of and direct notice to the settlement class; and (3) set a final approval hearing. For the reasons stated below, the motion is granted.

Plaintiffs Vivian Arevalo and Micah Simon, individually and on behalf of the proposed Settlement Class, and Defendants United Services Automobile Association, Garrison Property & Casualty Company, USAA Casualty Insurance Company, and USAA General Insurance Company (collectively “USAA” or “Defendants”) have agreed, subject to approval by the Court, to settle this Action upon the terms and conditions in the Agreement, filed with the Court on April 18, 2023, as Exhibit A to Plaintiffs’ Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement; and

The Court has read and considered the Agreement and the exhibits thereto and has read and considered all other papers filed and proceedings had herein, and is otherwise fully informed, and with good cause appearing,

**IT IS HEREBY ORDERED:**

1. This Preliminary Approval Order incorporates by reference the definitions in the Agreement which are indicated herein by the capitalization of the first letters of their words.

2. The Court has jurisdiction over the subject matter of this Action and over all Parties to this Action, including the Named Plaintiffs, all Settlement Class Members, and USAA.

3. The Court preliminarily approves the Agreement, and preliminarily finds the Settlement to be within the range of possible approval as fair, reasonable, and adequate to the Settlement Class such that it is likely to be able to approve same pursuant to Texas Rule of Civil Procedure 42(e)(1)(A) and thus that notice of same should be directed to the Settlement Class. This finding is not to be deemed an admission of liability or fault by USAA or by any other Released Party, or a finding of the validity of any claims asserted in the Action or of any wrongdoing or of any violation of law by USAA. USAA retains all rights to assert that the Action may not be certified as a class action except for settlement purposes. Neither the Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by the Released Parties of the truth of any of the allegations made in the Action, or of any liability, fault, or wrongdoing of any kind whatsoever on

the part of the Released Parties, except that USAA may file this Order in any action that may be brought against it in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

4. The Court preliminarily certifies the Settlement Class for purposes of sending Class Notice to the Settlement Class, finding that it likely to be able to certify the Settlement Class for purposes of settlement pursuant to Texas Rule of Civil Procedure 42(a) & (b)(3) for the reasons set forth in Plaintiffs' Motion for Class Certification and Brief in Support. For the purposes of sending Class Notice, the Court preliminarily appoints Plaintiffs Vivian Arevalo and Micah Simon as Class Representatives and, pursuant to Texas Rule of Civil Procedure 42(g)(2)(A), appoints Roger L. Mandel and Scott R. Jeeves of Jeeves Mandel Law Group, P.C., Edmund Normand and Jacob Phillips of Normand PLLC, Andrew J. Shamis of Shamis & Gentile, P.A., and Scott Edelsberg and Christopher Gold of Edelsberg Law, P.A., as Interim Class Counsel.

5. The Court approves, as to form and content, the Class Notice.

6. All dates that are set forth in or that otherwise flow from this Preliminary Approval Order shall be added to the Class Notice before it is mailed to Class Members.

7. The Court finds the Class Notice constitutes the best notice practicable under the circumstances by providing individual notice to all Settlement Class Members who can be identified through reasonable effort and constitutes valid

and sufficient notice to all Persons entitled thereto, complying fully with the requirements of due process and Texas Rule of Civil Procedure 42(e)(1)(B).

8. The Court approves the form of the Class Notice, in substantially the form as Exhibits A-1 and A-2 to the Agreement, directs mailing of the Mailed Notices by first-class mail to the last-known address for each such Settlement Class Member as set forth in the Agreement, and, for Mailed Notices returned, directs the Settlement Administrator to follow the procedures set forth in the Agreement.

9. The Court approves the Claim Form, in substantially the form as Exhibit A-3 to the Agreement, and the Electronic Claim Form, in substantially the form as Exhibit A-4 to the Agreement, except for conversion to electronic format, for distribution to and/or use by Settlement Class Members.

10. The Claims Submission Deadline after which the Claim Forms and Electronic Claim Forms shall be deemed untimely shall be fifteen (15) days after the Final Approval Hearing.

11. The Court approves the settlement website as described in the Agreement, which may be amended during the Settlement period as appropriate and agreed to by the Parties, and which shall be maintained for at least 180 days after the Claims Submission Deadline.

12. The Court appoints Epiq, LLC as the Settlement Administrator.

13. The Court directs the Settlement Administrator to create, maintain, and establish the website described in the Agreement and approved herein. The Website shall be “live” or accessible on or before the Notice Date.

14. The Court directs the Settlement Administrator to maintain a toll-free VRU telephone system containing recorded answers to frequently asked questions, along with an option permitting potential Settlement Class Members to record a message to be returned by the Settlement Administrator. This telephone system shall be “live” or accessible on or before the Notice Date.

15. The Settlement Administrator shall file proof of mailing of the notice fifteen (15) days after the deadline for Settlement Class Members to timely submit opt-outs and objections, along with the Opt-Out List, which shall be a list of all Settlement Class Members who timely and properly requested exclusion from the Settlement Class, and an affidavit attesting to the accuracy of the Opt-Out List.

16. Each Settlement Class Member who wishes to exclude himself or herself from the Settlement Class must submit an appropriate, timely request for exclusion, postmarked no later than Forty-Five (45) days after the Notice Date, to the Settlement Administrator at the address in the Mailed Notice, and that complies with the requirements in the Agreement. Any exclusion must be exercised individually by a Settlement Class Member, not as or on behalf of a group, class, or subclass, except that such exclusion requests may be submitted by a Settlement Class Member’s legally authorized representative.

17. Any Settlement Class Member who does not submit a timely, written request for exclusion from the Settlement Class will be bound by all proceedings, orders, and judgments in the Action, even if such Settlement Class Member never received actual notice of the Action or this Proposed Settlement.

18. Each Settlement Class Member who has not submitted a timely request for exclusion from the Settlement Class, and who wishes to object to the fairness, reasonableness, or adequacy of this Agreement or any term or aspect of the Proposed Settlement or to Class Counsel's requested Fees and Costs or the Class Representatives' Service Awards must follow the procedures set forth in the Agreement.

19. The right to object to the Proposed Settlement must be exercised individually by a Settlement Class Member or his or her attorney, and not as a member of a group, class, or subclass, except that such objections may be submitted by a Settlement Class Member's legally authorized representative.

20. The Settlement Administrator shall receive requests for exclusion, objections, and any other settlement-related communications, and only the Settlement Administrator, the Court, the Clerk of the Court, and their designated agents shall have access to these documents, except as otherwise expressly provided in the Agreement.

21. The Settlement Administrator shall promptly furnish to Class Counsel and Counsel for Defendants copies of all objections, written requests for exclusion, and other communications that come into its possession, as set forth in the Agreement.

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

23. The Court notes that in the context of class litigation that there is a “strong judicial policy favoring the resolution of disputes through settlement.” *Hall v. Pedernales Elec. Coop., Inc.*, 278 S.W.3d 536, 549 (Tex. App.--Austin 2009, no pet.). For purposes of determining whether to approve a proposed class action settlement, the relevant factors are: (1) whether the settlement was negotiated at arms’ length; (2) the complexity, expense, and likely duration of the litigation absent settlement; (3) the stage of the proceedings, including the status of discovery; (4) the factual and legal obstacles that could prevent the plaintiffs from prevailing on the merits; (5) the possible range of recovery; (6) the respective opinions of class counsel, class representatives, and the absent class members. *General Motors Corp. v. Bloyed*, 916 S.W.2d 949, 955 (Tex. 1996).

24. Having considered the proposed Settlement, including the attorneys’ fees and costs to be sought by Class Counsel and the service awards to be sought by Class Representatives, and in light of the aforementioned factors, this Court finds as a preliminary matter that the terms of the Settlement are sufficiently fair, reasonable, and adequate such that it is likely to be able to approve the Settlement and thus that providing Class Notice to the Settlement Class and providing them the opportunity to respond and/or voice any objections is justified.

25. Pursuant to Texas Rule of Civil Procedure 42(e)(1)(C), a hearing shall be held on November 17 2023, at 9:00 a.m., <sup>in the 285th Dist. Court</sup> for the purpose of determining: (a) whether the Settlement Class should be certified for settlement purposes only; (b) whether the proposed Settlement as set forth in the Agreement is fair, reasonable and adequate and should be finally approved by the Court;

(c) whether a Final Judgment, granting final approval of the Agreement and dismissing the Action with prejudice should be entered; (d) whether the Class Representatives should receive Service Awards and in what amount; (e) whether Class Counsel should receive a Fees and Costs award and in what amount; and (f) such other matters as the Agreement contemplates and as the Court may deem just and proper.

26. Any application by Class Counsel for Fees and Costs, and all papers in support thereof, shall be filed with the Court no later than 75 days after the date of this Order.

27. All other papers in support of the Settlement or responding to objections or motions to intervene shall be filed no later than 15 days after the deadline to file objections or opt-outs (135 days after the date of this Order).

28. Unless otherwise ordered by the Court, any Settlement Class Member who does not make an objection in the manner provided for herein shall be deemed to have waived such objection and shall be foreclosed from making any objection to the foregoing matters or to the Settlement or to Class Counsel's requested Fees and Costs and Class Representatives' requested Service Awards.

29. The Court may adjourn the Final Approval Hearing from time to time and without further notice to the Settlement Class Members. The Court reserves the right to approve the Settlement at or after the Final Approval Hearing with such modifications as may be consented to by the Parties and without further notice to the Settlement Class Members. The Court further reserves the right to enter a Final Judgment, dismissing the Action with prejudice as to USAA and against the



Named Plaintiffs and the Settlement Class Members at or after the Final Approval Hearing and without further notice to the Settlement Class Members.

30. Pending final determination as to whether the Settlement, as set forth in the Agreement, should be approved, no Settlement Class Member shall commence, prosecute, pursue, or litigate any Released Claims against any Released Party, whether directly, representatively, or in any capacity, and regardless of whether or not any such Settlement Class Member has appeared in the action.

31. The following schedule is established to guide the Parties in conducting the Notice and claims administration process:

**PRELIMINARY SCHEDULE**

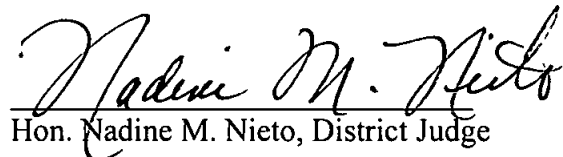
#	Action	Deadline
1	USAA will provide the data necessary to provide Class Notice	Forty-Five (45) days after the date of this Preliminary Approval Order ("PAO")
2	Deadline for Settlement Administrator to activate settlement website and toll-free telephone line, and begin mailing out direct mail notice ("Notice Date")	Seventy-Five (75) days after entry of the PAO
3	Deadline for Class Counsel to file the motion for award of Class Counsel Fees and Cost	Seventy-Five (75) days after entry of the PAO
4	Deadline for Settlement Class Members to opt-out of the Settlement	Forty-Five (45) days after Notice Date (120 days after entry of the PAO)
5	Deadline for submission of objections to the Settlement and/or the motion for award of Class Counsel Fees and Costs	Forty-Five (45) days after Notice Date (120 days after entry of the PAO)

6	Deadline for Settlement Class Members to file claims.	30 days after the Final Approval Hearing
7	Deadline for Class Counsel to file their Motion for Final Approval of the Settlement.	No later than 15 days after the deadline to file objections or opt-outs (135 days after the date of this Order)
8	Deadline for Settlement Administrator to file proof of completion of Notice, along with complete and accurate Opt-Out list	No later than 15 days after the deadline to file objections or opt-outs (135 days after the date of this Order)
9	Final Approval Hearing	_____, _____, at ___:___ -m. [At least 150 days after the date that this Preliminary Approval Order is entered]

IT IS SO ORDERED.

DATED: May 30, 2023.

**MAY 30 2023**

  
Hon. Nadine M. Nieto, District Judge

**Nadine M. Nieto  
285<sup>th</sup> District Court**

AGREED AS TO FORM AND SUBSTANCE:

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