

VIVIAN AREVALO and MICAH SIMON,

Plaintiffs,

v.

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

Defendants.

IN THE DISTRICT COURT

OF BEXAR COUNTY, TEXAS

166th JUDICIAL DISTRICT

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement” or “Agreement”),¹ dated as of March __, 2023, is entered into by Plaintiffs Vivian Arevalo and Micah Simon, individually and on behalf of the Settlement Class, and Defendants USAA Casualty Insurance Company (“USAA CIC”), Garrison Property & Casualty Insurance Company (“Garrison”), United Services Automobile Association (“United Services”), and USAA General Indemnity Company (“USAA GIC”) (collectively, “USAA” or “Defendants”). Plaintiffs and Defendants are each individually a “Party” and are collectively the “Parties.” The Parties hereby agree to the following terms in full settlement of the Action, subject to Final Approval, as defined below, by the 166th Judicial District Court of Bexar County, Texas.

I. Recitals

1. On August 26, 2020, a putative class action Complaint was filed in the 166th Judicial District Court of Bexar County, Texas, Case No. 2020-CI-16240, by the Plaintiffs Kelly Stewart, Vivian Arevalo and Micah Simon against Defendants USAA CIC and Garrison. The Complaint alleged that USAA CIC and Garrison systematically underpay their Texas insureds on

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

auto insurance claims by not paying or underpaying Sales Tax, Title Fees, Regulatory Fees, Inspection Fees, Transfer Fees, Dealer Fees and CRA as part of the payment they make when they declare a vehicle a Total Loss.

2. On October 16, 2020, Defendants filed their Answer to Plaintiffs' Complaint.
3. On November 3, 2020, Defendants filed their Motion to Compel Appraisal and Abate Lawsuit arguing that Defendants are entitled to appraisal under both the applicable policies and under controlling Texas law.
4. On December 8, 2020, Plaintiffs filed their Response to Defendants' Motion to Compel Appraisal and Abate Lawsuit disputing Defendants' arguments.
5. On January 14, 2021, a hearing was held on Defendants' Motion to Compel Appraisal and Abate Lawsuit, and the Court entered an order denying Defendants' Motion on January 20, 2021.
6. On April 5, 2021, the First Amended Complaint was filed.
7. On October 27, 2021, the Second Amended Complaint was filed, and Plaintiff Kelly Stewart was removed from the case.
8. On May 2, 2022, the Third Amended Complaint was filed.
9. On May 2, 2022, the Plaintiffs moved for Class Certification.
10. On August 5, 2020, Defendants filed their Response to Plaintiffs' Motion for Class Certification.
11. On October 12, 2022, Plaintiffs filed their Reply in Support of Class Certification.
12. On November 3, 2022, the parties engaged in mediation with well respected, neutral mediator Rodney A. Max.
13. On December 12, 2022, the parties reconvened in mediation and ultimately agreed to settle this action.

14. The Parties now agree to settle the Action in its entirety, without any admission of liability, with respect to all Released Claims of the Releasing Parties (definitions below). The Parties intend this Agreement to bind Plaintiffs, Defendants, and all Settlement Class Members.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree, subject to approval by the Court, as follows.

II. Definitions

In addition to the terms defined at various points within this Agreement, the following Defined Terms apply throughout this Agreement:

15. “Action” means *Arevalo et al., v. USAA Casualty Insurance Company, et al.*, No. 2020-CI-16240, District Court of Bexar County of Texas.

16. “Automobile Insurance Policy” means a Texas policy of insurance issued by one of the Defendants in effect during the Class Period and providing first-party private-passenger automobile physical damage coverage.

17. “Cash Settlement Benefits” means the maximum amount of up to \$13,597,625.00 in cash that Defendants agree to make available to pay Settlement Class Members who timely submit a claim under the Settlement. The Cash Settlement Benefits will be the maximum made available by Defendants for all Settlement Class Member Payments.

18. “Claim Form” means the Court-approved claim form, which may be electronic or physical paper, that a member of the Settlement Class must complete, sign, and submit to the Settlement Administrator to be considered for payment under the Settlement.

19. “Claim Form Submission Process” means the process by which members of the Settlement Class will submit Claim Forms either by mail or electronically, which will then be reviewed for timeliness and completeness by the Settlement Administrator.

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

21. “Claims Deadline” means the date by which Claim Forms must be dispatched for purposes of being considered timely. If the Claim Form is submitted by mail, compliance with the Claims Deadline shall be determined by the date on which the postcard is postmarked, and if electronically, the date the Claim Form is submitted online. The Claims Deadline shall be 30 days following Final Approval of the Settlement by the Court.

22. “Class Counsel” means:

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EDELSBERG LAW
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23. “Class Counsel Fees and Costs” shall mean any Court-awarded attorneys’ fees and costs payable by Defendants.

24. “Class Data” means all information regarding all potential Settlement Class Members and their Covered Total Loss Claims necessary to provide notice to and determine the amount to pay each Settlement Class Member, which Defendants shall provide to Plaintiffs and the Settlement Administrator no later than 45 days after entry of the Preliminary Approval Order.

25. “Class Period” means, for Settlement Class Member Covered Total Loss Claims paid

by Defendants, the following periods:

a. Sales Tax and CRA Sales Tax Class Period:

- i. September 30, 2018, through the date the motion for preliminary approval of the Settlement is granted. (USAA CIC, Garrison, United Services, USAA GIC).

b. Fees Class Period:

- i. August 25, 2016, through the date the motion for preliminary approval of the Settlement is granted. (USAA CIC and Garrison).
- ii. September 30, 2018, through the date the motion for preliminary approval of the Settlement is granted. (United Services and USAA GIC).

26. “Class Representatives” means Vivian Arevalo and Micah Simon.

27. “Confidential Information” means the names, addresses, policy numbers and all data provided by Defendants relating to potential Settlement Class Members, and any other proprietary business information of Defendants.

28. “Court” means the 166th Judicial District Court of Bexar County, Texas.

29. “Covered Total Loss Claim” means any first-party private passenger auto property damage claim to an insured automobile that (a) occurred within the Class Period, (b) relates to an owned or leased vehicle, (c) was determined by a Defendant or by a court or arbitrator of competent jurisdiction to be a total loss covered by an Automobile Insurance Policy issued by a Defendant, and (d) resulted in a Total Loss Claim Payment.

30. “CRA Coverage” means an optional feature offered by Defendants that pays an additional 20% of a Total Loss Vehicle’s actual cash value for a Covered Total Loss Claim.

31. “CRA Sales Tax” means an additional 20% of the mandatory sales tax collected or

assessed by the State of Texas when a vehicle is leased, purchased, or sold for Settlement Class Members who possessed CRA Coverage at the time of a Covered Total Loss Claim.

32. “Defendants” means USAA CIC, Garrison, United Services, and USAA GIC.

33. “Effective Date” means the fifth business day after which all the following events have occurred:

a. The Court has entered without material change the Final Approval Order and Judgment; and

b. The time for seeking rehearing or appellate or other review has expired, and no appeal or petition for rehearing or review has been timely filed; or the Settlement is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired and relief from a failure to file same is not available.

34. “Fees” means Title Fees, Regulatory Fees, Inspection Fees, Transfer Fees, Dealer Fees, or any other fees that Defendants allegedly failed to pay or underpaid Settlement Class Members who received Total Loss Claim Payments for Covered Total Loss Claims.

35. “Final Approval” means the date that the Court enters the Final Approval Order and Judgment.

36. “Final Approval Hearing” is the hearing held before the Court wherein the Court will consider certifying the Settlement Class, granting final approval of the Settlement and further determine the amount of Class Counsel Fees and Costs awarded to Class Counsel and the amount of any Service Awards awarded to the Class Representatives.

37. “Final Approval Order and Judgment” means the final order that the Court enters granting Final Approval of the Settlement and entering a final judgment in the case. The proposed Final Approval Order and Judgment shall be in a form agreed upon by the Parties and shall be

substantially in the form attached as an exhibit to the Motion for Final Approval. The Final Approval Order and Judgment also includes the orders, which may be entered separately, determining the amount of Class Counsel Fees and Costs and the amount of any Service Awards awarded to the Class Representatives.

38. “Notice” means each of the notices that the Parties will ask the Court to approve in connection with the Motion for Preliminary Approval of the Settlement.

39. “Notice Date” means the date by which the Settlement Administrator shall begin mailing out the Mailed Notice and have the Settlement Website and automated toll-free phones system fully operational, which shall be no later than 75 days after entry of the preliminary Approval Order.

40. “Notice Program” means the methods provided for in this Agreement for giving the Notice and consists of the Long Form Notice and the Mailed Notice (all defined herein below), which shall be substantially in the forms as the exhibits attached hereto, along with the Settlement Website and the automated toll-free telephone system.

41. “Objection Deadline” means 45 days after the Notice Date (120 days after entry of the Preliminary Approval Order). The Objection Deadline shall appear in the Notices.

42. “Opt-Out Deadline” means 45 days after the Notice Date (120 days after entry of the Preliminary Approval Order). The Opt-Out Deadline will be specified in the Notices.

43. “Plaintiffs” means Vivian Arevalo and Micah Simon.

44. “Preliminary Approval” means the date that the Court enters an order preliminarily approving the Settlement and approving of the sending of notice of the Settlement to the Settlement Class per the Notice Program and using the Notices, substantially in the form of the exhibits attached hereto.

45. “Preliminary Approval Order” means the order granting Preliminary Approval of this

Settlement and approving of the sending of notice of the Settlement to the Settlement Class per the Notice Program and using the Notices, substantially in the form of the exhibits attached hereto.

46. “Releases” means all the releases contained in Section XI hereof.

47. “Releasing Parties” means Plaintiffs and all Settlement Class Members, and each of their respective executors, representatives, heirs, predecessors, assigns, beneficiaries, successors, bankruptcy trustees, guardians, joint tenants, tenants in common, tenants by entireties, agents, attorneys, and all those who claim through them or on their behalf.

48. “Sales Tax” means the mandatory 6.25% sales tax collected or assessed by the State of Texas when a vehicle is leased, purchased, or sold.

49. “Service Awards” means any Court ordered payments to Plaintiffs for serving as Class Representatives, which is in addition to any payment due Plaintiffs as Settlement Class Members.

50. “Settlement Administrator” means Epiq, LLC. Class Counsel and Defendants may, by agreement, substitute a different organization as Settlement Administrator, subject to approval by the Court if the Court has previously approved the Settlement preliminarily or finally. In the absence of agreement, either Settlement Class Counsel or Defendants may move the Court to substitute a different organization as Settlement Administrator, upon a showing that the responsibilities of Settlement Administrator have not been adequately executed by the incumbent.

51. “Settlement Administration Costs” means all reasonable costs and fees charged by the Settlement Administrator for providing notice and settlement administration.

52. “Settlement Class” means all insureds covered under any Texas private passenger automobile insurance policy issued by USAA CIC, Garrison, United Services, or USAA GIC (collectively, “USAA”) with the same operative policy language covering a vehicle with auto physical damage coverage for comprehensive or collision loss who made a first-party claim which USAA paid as a total loss within the relevant time period and who do not timely opt-out of the

Settlement Class (the “Settlement Class Members”). “Insureds,” as used in the Settlement Class definition, includes both owners and lessees of insured vehicles. The total class size is approximately 165,562 class members.

53. “Settlement Class Member” means any member of the Settlement Class.

54. “Settlement Class Member Payment” means the cash distribution that will be made by Defendants to each Settlement Class Member who submits a valid and timely claim that is approved by the Settlement Administrator.

55. “Settlement Website” means the website that the Settlement Administrator will establish as a means for the Settlement Class to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Long Form Notice, access to a downloadable printable Claim Form, Motion for Preliminary Approval, Preliminary Approval Order, Class Counsel’s motion for an award of Class Counsel Fees and Costs, and such other documents as the Parties agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website and the Settlement Website shall remain online for 180 days following the Effective Date. The URL of the Settlement Website shall be TexasTotalLossClassActionSettlement.com, or such other URL as Class Counsel and Defendants agree upon in writing. The Settlement Website shall not include any advertising and shall not bear or include the Defendants’ logo or Defendants’ trademarks. Ownership of the Settlement Website URL shall be transferred to Defendants within 10 days of the date on which operation of the Settlement Website ceases.

56. “Total Loss” means an insured vehicle that sustained damage or was stolen, was the subject of a covered first-party property damage claim submitted to a Defendant, and for which that Defendant issued a Total Loss Claim Payment.

57. “Total Loss Claim Payment” means a first-party property damage claim payment

made by a Defendant under the Defendant's Automobile Insurance Policy for a vehicle determined by a Defendant to be a Total Loss.

58. "Total Loss Date" means the day, month, and year on which the event occurred that rendered an insured vehicle a Total Loss.

III. Certification of the Settlement Class

59. For Settlement purposes only, Plaintiffs and Defendants agree to ask the Court to certify the Settlement Class under Texas Rule of Civil Procedure 42.

IV. Settlement Consideration

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

- a. pay Settlement Class Members an aggregate of up to \$13,597,625.00 in Cash Settlement Benefits to be divided between Settlement Class Members as explained in detail below;
- b. pay all reasonable Settlement Administration Costs;
- c. from the Cash Settlement Benefits available to Settlement Class Members, pay the Class Representatives any Court-awarded Service Awards up to \$5,000.00 per Class Representative; and
- d. from the Cash Settlement Benefits available to Settlement Class Members, pay Class Counsel any Court-awarded Class Counsel Fees and Costs of up to \$4,079,287.50.

V. Settlement Approval

61. Upon execution of this Agreement by all Parties, Class Counsel shall promptly move the Court for an order granting Preliminary Approval of this Settlement. The proposed Preliminary Approval Order that will be attached to the motion shall be in a form agreed upon by Class Counsel and Defendants. The Motion for Preliminary Approval shall, among other things, request that the Court: (1) approve the terms of the Settlement as within the range of possible approval as fair,

adequate, and reasonable; (2) provisionally certify the Settlement Class pursuant to Texas Rule of Civil Procedure 42 for settlement purposes only; (3) approve the Notice Program and Claim Form procedures set forth herein and approve the form and content of the Notices and Claim Forms for the Settlement; (4) approve the procedures set forth herein below for members of the Settlement Class to exclude themselves from the Settlement Class or to object to the Settlement; (5) stay the Action pending Final Approval of the Settlement; and (6) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel, and counsel for Defendants, at which the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith, and determine whether to certify the Settlement Class, approve the Settlement, approve Class Counsel's application for Class Counsel Fees and Costs, and approve Service Awards to the Class Representatives.

VI. Discovery and Settlement Data

62. Class Counsel and Defendants already have engaged in significant informal discovery related to liability and damages. Additionally, for purposes of effectuating the Settlement, no later than 45 days after entry of the Preliminary Approval Order, Defendants will make available to Class Counsel and the Settlement Administrator, Class Data (subject to the protective order previously entered in the case) for the entirety of the Class Periods.

VII. Settlement Administrator

63. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph hereafter and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, effectuating the Notice Program, and distributing the Settlement Class Member Payments as provided herein.

64. The duties of the Settlement Administrator, in addition to other responsibilities that are described in the preceding paragraph and elsewhere in this Agreement, are as follows:

- a. Use the name and address information of the Settlement Class provided by Defendants in connection with the Notice Program approved by the Court for the purpose of distributing the Mailed Notice;
- b. Process Claim Forms and oversee the Claim Form Submission Process as described more fully herein below;
- c. Establish and maintain a post office box for requests for exclusion or objections from the Settlement Class;
- d. Establish and maintain the Settlement Website;
- e. Establish and maintain an automated toll-free telephone line for the Settlement Class to call and hear automated responses or request a copy of the Long Form Notice to be sent by mail;
- f. Respond to any mailed Settlement Class inquiries;
- g. Process all requests for exclusion from the Settlement Class;
- h. Provide weekly reports to Class Counsel and Defendants that summarize the number of claims received that week, the total number of claims received to date, the number of requests for exclusion received that week, the total number of exclusion requests received to date, the number of objections received that week, the total number of objections received to date, and other pertinent information;
- i. In advance of the Final Approval Hearing, prepare an affidavit to submit to the Court confirming that the Notice Program was completed, describing how the Notice Program was completed, providing the names of each member of the Settlement Class who timely and properly requested exclusion from the Settlement Class or served objections, detailing the number of Claim Forms that were timely and validly submitted, and other information as may be necessary to allow the Parties to seek and obtain Final Approval;

j. Distribute Settlement Class Member Payments by check to Settlement Class Members;

k. Provide to Plaintiffs' Counsel and Defendants a detailed list of Settlement Class Members who submitted timely and valid Claim Forms so that Defendants may review records to determine if the Claimant is entitled to payment and instruct Defendants to send the Settlement Administrator the funds necessary to deliver Settlement Class Member Payments in the form of checks to all Settlement Class Members.

l. Invoice Defendants for payment of Settlement Administration Costs, as provided in this Agreement; and

m. Any other Settlement-administration-related function at the instruction of Class Counsel or Defendants, including, but not limited to, verifying that the validly claimed Cash Settlement Benefits have been distributed.

VIII. Notice to the Settlement Class

65. Within 45 days of entry of the Preliminary Approval of the Settlement, Defendant will provide the Class Data, including all last-known physical addresses obtained from a reasonable search of its computer/electronic databases for all potential Settlement Class Members to the Settlement Administrator and to Class Counsel. Additionally, Defendants shall identify which Settlement Class Members are potentially entitled to Fees only, which are potentially entitled to Fees and Sales Tax, and which are potentially entitled to Fees, Sales Tax and CRA Sales Tax.

66. Within 75 days of the Preliminary Approval of the Settlement, the Settlement Administrator shall implement the Notice Program provided herein, using the forms of Notice approved by the Court. The Notice shall include, among other information: a description of the material terms of the Settlement; a date by which Settlement Class may exclude themselves from or "opt-out" of the Settlement Class; a date by which the Settlement Class may object to the Settlement;

the means by which the Settlement Class may submit Claim Forms and the date upon which Claim Forms must be submitted; the date upon which the Final Approval Hearing is scheduled to occur; and the address of the Settlement Website at which the Settlement Class may access this Agreement and other related documents and information. Class Counsel and Defendants shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. Notices provided under or as part of the Notice Program shall not bear or include the Defendants' logos or trademarks or the return address of Defendants or otherwise be styled to appear to originate from Defendants.

67. The Notice shall include the opt-out procedures. A member of the Settlement Class may opt-out of the Settlement Class at any time on or before the Opt-Out Deadline, provided the opt-out notice is postmarked no later than the Opt-Out Deadline. Any member of the Settlement Class who does not timely and validly request to opt-out shall be bound by the terms of this Agreement.

68. The Notice also shall include a procedure for the Settlement Class to object to the Settlement and/or to Class Counsel's application for Class Counsel Fees and Costs and/or the Service Awards for the Class Representatives. Objections to the Settlement, to the application for Class Counsel Fees and Costs and/or to the Service Awards must be mailed to the Settlement Administrator. For an objection to be considered by the Court, the objection must be submitted no later than the Objection Deadline, as specified in the Notice. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (*e.g.*, Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

69. Settlement Class Members who wish to exclude themselves from the Settlement Class must submit timely and written requests for exclusion. To be effective, such a request must include

the Settlement Class Member's name and address, an unequivocal statement that the Settlement Class Member wishes to be excluded from the Settlement Class, and the signature of the Settlement Class Member or the Legally Authorized Representative of the Settlement Class Member. The request must be mailed to the Settlement Administrator at the address provided in the Notice postmarked no later than the Opt-Out Deadline. Requests for exclusion must be exercised individually by Settlement Class Members and are only effective as to the individual Settlement Class Member requesting exclusion.

- a. Plaintiffs shall not elect or seek to opt out or exclude themselves from the Settlement Class, and any such attempt will be deemed a breach of this Agreement and sufficient to permit Defendant to terminate the Agreement.
- b. The Settlement Administrator shall promptly log and prepare a list of all Persons who properly requested exclusion from the Settlement Class (the "Opt-Out List") and shall submit an affidavit to the Court which includes and attests to the accuracy of the Opt-Out List no later than fifteen (15) days after the Opt-Out Deadline.
- c. All Settlement Class Members who do not timely and properly exclude themselves from the Settlement Class shall be bound by this Agreement, and all their claims shall be dismissed with prejudice and released as provided for herein pursuant to the terms of the Final Approval Order and Judgment.
- d. Settlement Class Members who do not request exclusion from the Settlement Class may object to the Proposed Settlement. Settlement Class Members who choose to object to the Proposed Settlement must file written objections. Any Settlement Class Member who timely submits an objection in compliance with this paragraph may appear at the Final Approval Hearing, in person or by counsel

and be heard to the extent and only if permitted by the Court.

- e. To be timely, any objection must be postmarked and mailed to the Settlement Administrator no later than the Objection Deadline.
- f. 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.
- g. To be effective, an objection must include all the following information:
 - 1. The name of the case and case number;
 - 2. The Settlement Class Member's current full name, address, telephone number, unique identifier number from the Notices, and signature;
 - 3. The specific reasons why the Settlement Class Member objects to the terms of the Proposed Settlement, Class Counsel's Fee and Cost Award and/or the Service Awards to the Class Representatives;
 - 4. The name, address, bar number, and telephone number of any attorney who represents the Settlement Class Member in connection with the objection; and
 - 5. Whether the Settlement Class Member and/or their attorney intends to appear at the Final Approval Hearing and whether they will request permission to address the Court at the Final Approval Hearing.

70. In addition, an objection must contain the following information if the Settlement Class Member or his or her attorney requests permission to speak at the Final Approval Hearing:

- a. A detailed statement of the legal and factual bases for each objection;
- b. A list of all witnesses the Settlement Class Member may seek to call at the Final Approval Hearing, with the address and phone number of each witness and a summary of his or her proposed testimony; and

- c. A list of any legal authorities the Settlement Class Member will present at the Final Approval Hearing.
- d. Any Settlement Class Member who does not file a timely objection may, in the discretion of the Court, waive the right to object or to be heard at the Final Approval Hearing and be barred from making any objection to the Proposed Settlement. Settlement Class Members have the right to exclude themselves from the Proposed Settlement and pursue a separate and independent remedy against Defendant by complying with the exclusion provisions set forth herein. Settlement Class Members who object to the Proposed Settlement shall remain Settlement Class Members and waive their right to pursue an independent remedy against Defendant. To the extent any Settlement Class Member objects to the Proposed Settlement, and such objection is overruled in whole or in part, such Settlement Class Member will be forever bound by the Final Approval Order and Judgment of the Court. Settlement Class Members can avoid being bound by any judgment of the Court by complying with the exclusion provisions set forth herein.
- e. The Settlement Administrator shall provide Defendant and Class Counsel a copy of each objection received by the Settlement Administrator.

71. Notice shall be provided to the Settlement Class in two different ways: (a) long form notice (“Long Form Notice”) which shall: include a summary of the notice on the first page, be mailed to the Settlement Class Member upon request to the Settlement Administrator, and be available on the Settlement Website, the form of which is attached as Exhibit A-1; (b) short form notice (“Mailed Notice”), which will be sent via postcard, pre-paid postage, with a detachable claim form that is pre-filled with the claimant’s information and served by direct mail to the Settlement Class Member at the last address for that person contained in Defendants’ records, the form of which

is attached hereto as Exhibit A-2. Any undelivered Mailed Notice shall be subject to skip tracing and re-mailing. Mailed Notice shall be sent on two occasions, on dates suggested by the Settlement Administrator. The Mailed Notice sent to Settlement Class members shall state whether they are potentially owed just Fees, Fees and Sales Tax, or Fees, Sales Tax and CRA Sales Tax. Notices shall advise the Settlement Class Members that they must update their addresses with the Settlement Administrator if they change addresses between the date they submit a Claim and 60 days following the Effective Date.

72. Defendants will make available to Class Counsel and the Settlement Administrator the Class Data which will include the list of the Settlement Class Members and their most recent known mailing addresses. The Class Data shall be provided to Class Counsel no later than 45 days after entry of the Preliminary Approval Order. Defendants will bear the expense of extracting the Class Data.

73. The Settlement Administrator shall run the mailing addresses provided by Defendants through the National Change of Address Database and shall, within 75 days of Preliminary Approval, begin mailing Mailed Notices to all such members of the Settlement Class.

74. The Settlement Administrator shall perform reasonable address traces for mailed Long Form Notices and Mailed Notices that are returned as undeliverable. By way of example, a “reasonable” tracing procedure would be to run addresses of returned postcards through the Lexis/Nexis database that can be utilized for such purpose. No later than 45 days after the Notice Date, the Settlement Administrator shall complete the re-mailing of the Long-Form Notice and Mailed Notices to those members of the Settlement Class whose new addresses were identified as of that time through address traces (“Notice Re-mailing Process”). The Settlement Website shall be established and live no later than the Notice Date.

75. No later than the Notice Date, the Settlement Administrator shall establish a toll-free

number whereby the Settlement Class may call and hear automated responses or request a copy of the Long Form Notice to be sent by mail.

76. The Notice Program (which is composed of the Long-Form Notice, Mailed Notices and the Notice Re-mailing Process) shall be completed no later than 45 days after the Notice Date.

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

78. Subject to the provisions set forth in this Section VIII, further specific details of the Notice Program shall be subject to the agreement of Class Counsel and Defendants.

IX. Final Approval Order and Judgment

79. Plaintiffs' Motion for Preliminary Approval of the Settlement will include a request to the Court to schedule a date on which the Final Approval Hearing will occur. Plaintiffs shall file their Motion for Final Approval of the Settlement, inclusive of Service Awards for the Class Representative, no later than 15 days after the Opt-Out and Objection Deadlines (135 days after entry of the Preliminary Approval Order). Class Counsel's application for Class Counsel Fees and Costs shall be filed no later than 75 days after the Preliminary Approval Order is entered. At the Final Approval Hearing, the Court will hear argument on Plaintiffs' Motion for Final Approval of the Settlement, including certification of the Settlement Class, and on Class Counsel's application for Class Counsel Fees and Costs, and on the Service Awards for the Class Representatives. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any member of the Settlement Class (or their counsel) who object to the Settlement or to Class Counsel's application for Class Counsel Fees and Costs or the Service Awards application, provided the objectors submitted timely objections that meet all the requirements listed in the Agreement.

80. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order and Judgment certifying the Settlement Class and granting Final Approval of the Settlement and final judgment thereon, and whether to approve Class Counsel's request for

Class Counsel Fees and Costs and to approve the Service Awards. Such proposed Final Approval Order and Judgment shall, among other things:

- a. Determine that the Settlement is fair, adequate and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice Program satisfied the requirements of Due Process and Tex. R. Civ. P. 42(e)(1)(B) ;
- d. Bar and enjoin all Releasing Parties from asserting any of the Released Claims against Defendants or its affiliates at any time, including during any appeal from the Final Approval Order and Judgment;
- e. Rule upon Class Counsel's application for Class Counsel Fees and Costs, including stating its findings of fact and conclusions of law in support of its ruling;
- f. Rule upon the Service Awards for the Class Representatives;
- g. Retain jurisdiction over the enforcement of the Court's injunctions;
- h. Release Defendants and the Released Parties from the Released Claims; and
- i. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Defendants, all Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

X. Claim Form Submission, Calculation and Distribution of Settlement Class Member Payments and Residual Funds

81. To receive a Settlement Class Member Payment, members of the Settlement Class must submit Claim Forms by the Claims Deadline. Each known member of the Settlement Class for whom Defendants have a mailing address will receive a Claim Form as part of the Mailed Notices. To be eligible for the Settlement Class Member Payment, each member of the Settlement Class submitting a Claim Form by mail shall be required to sign a paper Claim Form as attached hereto as Exhibit A-3, including providing at least one of the following in addition to their name and address:

1) the unique claim number found on the Notices; 2) the Automobile Insurance Policy number for the applicable policy on the Total Loss Date; 3) the claim number associated with the Total Loss; or 4) the vehicle identification number of the Total Loss, and dispatch it in the mail with a postmark by the Claims Deadline. Defendants shall have no obligation to investigate any submitted claim that does not contain at least one of these numbers. Thereafter, upon receipt, the Settlement Administrator will evaluate the Claim Form to make sure it was timely received and signed. Members of the Settlement Class may alternatively submit Claim Forms online electronically at the Settlement Website, TexasTotalLossClassActionSettlement.com by filling out the Electronic Claim Form as attached hereto as Exhibit A-4. The Settlement Website will include a button to “Submit a Claim” that will allow members of the Settlement Class to submit their Claim Form online. Online submission of Claim Forms must be submitted by the Claims Deadline, and Claimants will be asked to verify their identity online. Members of the Settlement Class who submit valid and timely Claim Forms shall be entitled to Settlement Class Member Payments. Only one Claim Form may be submitted per Total Loss.

82. The calculation and implementation of allocations of the Cash Settlement Benefits contemplated by this section shall be done by Defendants for the purpose of compensating Settlement Class Members. The methodology provided for herein will be applied to the data as consistently, sensibly, and conscientiously as reasonably possible, recognizing and taking into consideration the nature and completeness of the data and the purpose of the computations.

83. The Parties have agreed that to the extent USAA has not already paid the following in full, it will pay the difference between the following and the amount, if anything, it did pay: (a) Sales Tax – USAA will pay 6.25% sales tax of the adjusted vehicle value for all Total Loss Vehicles including leased and retained salvage vehicles; (b) CRA – for vehicles with Car Replacement Assistance Coverage (CRA), USAA will pay an additional 20% of the Sales Tax amount. The parties

estimate this amount of sales tax to be no more than \$3,250,000.00 for all Settlement Class Members, including unpaid CRA Sales Tax.

84. USAA will also pay \$62.50 per class member to compensate them for unpaid or underpaid Fees. The parties estimate this amount to be no more than \$10,347,625.

85. Defendants shall deduct from every Settlement Class Member Payment the Settlement Class Member's proportional share of Class Counsel Fees and Costs, and the Service Awards approved by the Court. For example, if the Court awards Class Counsel Fees and Costs and Service Awards totaling 25% of the Cash Settlement Benefits, then each Settlement Class Member Payment shall be reduced by 25%.

86. The Settlement Administrator shall forward to Counsel for the Parties copies of all timely, valid claims received (i.e., claims submitted electronically or post-marked prior to the Court-ordered deadlines, and which contain the information required herein). Defendants shall review their records related to each timely claim submitted to determine if the Settlement Class Member was already paid Sales Tax and/or CRA Sales Tax, in whole or in part. If Defendants previously paid the Settlement Class Member Sales Tax and/or CRA Sales Tax in whole or in part, Defendants shall inform Class Counsel and the Settlement Administrator. If Defendants did not previously pay 100% of the Sales Tax and/or CRA Sales Tax owed to a Settlement Class Member, Defendants shall inform Class Counsel of the adjusted vehicle value of the Settlement Class Member's Total Loss, and the amount of Sales Tax and/or CRA Sales Tax due the Claimant under the terms of this Agreement. Any underpayment (in contrast to no payment at all) of the Sales Tax and/or CRA Sales Tax in the original total loss settlement shall be leveled up to the amount set forth in Paragraph 82. Payment of \$62.50 in Fees will be made irrespective of the amount (if any) of Fees included in the original total-loss claim payment.

87. As soon as practicable, but no later than 60 days from the Effective Date, Defendants

shall send the Cash Settlement Benefits to the Settlement Administrator necessary to pay the full amount of the Settlement Class Member Payments along with a spreadsheet that includes the amount payable to each Settlement Class Member and the calculation of the amount payable (which spreadsheet shall also be provided to Class Counsel). Within 65 days from the Effective Date, the Settlement Administrator shall pay by check to Settlement Class Members their Settlement Class Member Payments. As part of the Settlement Administration Costs, Defendants shall pay all costs associated with sending the Settlement Class Member Payments to the Settlement Class Members.

88. Settlement Class Member Payments will be made payable by check and will be issued and mailed by the Settlement Administrator with an appropriate legend, in a form approved by Class Counsel and Defendants, to indicate that it is from the Settlement, and it will be sent to the addresses submitted on the Claim Forms that the Settlement Administrator identifies as valid. Checks shall be valid for 180 days. Timely negotiation of checks is a condition of any Settlement Class Member's right to the Settlement Class Member Payment.

89. In the event of any complications arising in connection with the issuance or cashing of a check, other than the Settlement Class Member's failure to timely deposit or cash the check, the Settlement Administrator shall provide written notice to Class Counsel and Defendants' Counsel. Absent specific instructions from Class Counsel and Defendants' Counsel, the Settlement Administrator shall proceed to resolve the dispute using its best practices and procedures to ensure that the funds are fairly and properly distributed to the Settlement Class Member entitled to the Settlement Class Member Payment.

90. For any returned checks, the Settlement Administrator shall make a reasonable effort to locate a current mailing address for the Settlement Class Members whose checks were returned (such as by running addresses of returned checks through the NCOA database to effectuate delivery of such checks). For any such recipients for whom updated addresses are found, the Settlement

Administrator shall make only one additional attempt to re-mail or re-issue a Settlement Class Member Payment to the updated address. Notwithstanding the above, should a Settlement Class Member change his or her address from that provided on the Claim Form between the date they submitted their Claim and 60 days after the Effective Date and not update his or her address with the Settlement Administrator, such Settlement Class Member may not receive payment.

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

92. In the event that any Claimant disputes the denial of his or her claim, or disputes the amount of the Settlement Class Member Payment determined by a Defendant, such Claimant may dispute the denial or payment amount by providing written notice of objection to the Settlement Administrator, along with any supporting documentation, within 30 days of the mailing of the claim denial or claim payment by the Settlement Administrator, which shall provide copies of all objections and supporting documentation to Counsel for the Parties within 7 days of receipt. Defendants shall then have 30 days to respond to the objection, along with any supporting documentation, to Class Counsel and the Settlement Administrator. The Settlement Administrator shall forward all objections and responses by Defendants to a neutral evaluator, agreed upon by the Parties and approved by the Court. The neutral evaluator shall issue a ruling upon all objections within 30 days of receipt, and all such rulings shall be final and binding upon Settlement Class Members and the Parties. Defendants shall pay all fees and costs of the neutral evaluator.

XI. Releases

93. As of the Effective Date, Releasing Parties shall automatically be deemed to have fully and irrevocably released and forever discharged Defendants and each of their present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns, and the present and former directors, officers, employees, agents, insurers, members, attorneys, advisors, consultants,

representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors and assigns of each of them (“Released Parties”), of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys’ fees, losses and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, based on contract, tort or any other theory, that result from, arise out of, are based upon, or relate to the conduct, omissions, duties or matters during the Class Period that were or could have been alleged in the Action, arising out of or relating to the Defendants’ non-payment or underpayment of only claims for Sales Tax, CRA, Title Fees, Regulatory Fees, Inspection Fees, Transfer Fees, Dealer Fees, or any and all other fees that arise out of or relate to Total Loss Claims in the Class Periods noted above and as identified in the Third Amended Complaint.

94. Each Settlement Class Member is barred and permanently enjoined from bringing on behalf of themselves, or through any person purporting to act on their behalf or purporting to assert a claim under or through them, any of the Released Claims against Defendants in any forum, action, or proceeding of any kind.

95. Plaintiffs further agree that no liability shall attain in favor of Plaintiffs against any officer, director, member agent, or employee of Defendants, but rather, Plaintiffs shall look solely to the assets of Defendants for satisfaction of the Agreement.

96. Plaintiffs or any Settlement Class Member may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the claims released herein, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he/she shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-

contingent claims with respect to all of the matters described in or subsumed by herein. Further, each of those individuals agrees and acknowledges that he/she shall be bound by this Agreement, including by the release herein and that all of their claims in the Action shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he/she never receives actual notice of the Settlement and/or never receives a distribution of funds or credits from the Settlement. In addition to the releases made by Plaintiffs and Settlement Class Members above, Plaintiffs, including each and every one of their agents, representatives, attorneys, heirs, assigns, or any other person acting on their behalf or for their benefit, and any person claiming through them, makes the additional following general release of all claims, known or unknown, in exchange and consideration of the Settlement set forth in this Agreement. These named Plaintiffs agree to a general release of the Released Parties from all claims, demands, rights, liabilities, grievances, demands for arbitration, and causes of action of every nature and description whatsoever, known or unknown, pending or threatened, asserted or that might have been asserted, whether brought in tort or in contract, whether under state or federal or local law.

XII. Payment of Class Counsel Fees and Service Awards

97. Defendants agree not to oppose Class Counsel's request for Class Counsel Fees and Costs of up to \$4,079,287.50. The attorneys' fees and costs request, which shall be paid by Defendants out of the Cash Settlement Benefits, is equal to approximately 30% of the maximum Cash Settlement Benefits. Any award of Class Counsel Fees and Costs shall be payable out of the Cash Settlement Benefits available to Settlement Class Members. The Parties agree that the Court's failure to approve, in whole or in part, any award for attorneys' fees and costs shall not prevent the Agreement from becoming Effective, nor shall it be grounds for termination.

98. Provided that Plaintiffs have provided Defendants with instructions to pay by check

and a completed IRS Form W9, then within 14 days after the Effective Date, Defendants shall pay a designated Class Counsel firm the Class Counsel Fees and Costs by check. Class Counsel shall be solely responsible for distributing each Class Counsel firm's allocated share of such fees and costs to that firm. Defendants shall have no responsibility for any allocation, and no liability whatsoever to any person or entity claiming any share of the funds to be distributed for payment of Class Counsel Fees and Costs, or any other payments from the Cash Settlement Benefits not specifically described herein.

99. Class Counsel will ask the Court to approve Service Awards to the Plaintiffs in the amount of \$5,000.00 each. The Service Awards shall be paid to the Class Representative in addition to Class Representative's Settlement Class Member Payment. Defendants agree not to oppose Class Representatives' requests for the Service Awards. Any Service Awards shall be payable out of the Cash Settlement Benefits available to Settlement Class Members. The Parties agree that the Court's failure to approve a Service Award, in whole or in part, shall not prevent the Agreement from becoming Effective, nor shall it be grounds for termination. Provided that Plaintiffs have provided Defendants with instructions to pay by check and a completed IRS Form W9, then within 14 days after the Effective Date, Defendants shall pay a designated Class Counsel firm the Service Awards by check. Class Counsel shall be solely responsible for distributing the Service Awards to the Class Representatives.

100. The Parties negotiated and reached agreement regarding Class Counsel Fees and Costs and the Service Awards only after reaching agreement on all other material terms of this Settlement.

XIII. Termination of Settlement

101. This Settlement may be terminated by either Class Counsel or Defendants by serving on counsel for the opposing Party and filing with the Court a written notice of termination within 15 days (or such longer time as may be agreed in writing between Class Counsel and Defendants) after

any of the following occurrences:

- a. Plaintiffs and Defendants agree to termination;
- b. the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement;
- c. an appellate court vacates or reverses the Final Approval Order and Judgment, and the Settlement is not reinstated and finally approved without material change by the Court on remand within 360 days after such reversal;
- d. any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, Final Approval Order and Judgment, or the Settlement in a way that Class Counsel or Defendants seeking to terminate the Settlement reasonably considers material. Notwithstanding anything to the contrary, the reasoning or authority relied upon by any court in entering the Preliminary Approval Order or Final Approval Order and Judgment shall not be considered material for termination of this Settlement;
- e. the Effective Date does not occur; or
- f. any other ground for termination provided for elsewhere in this Agreement.

XIV. Effect of a Termination

102. The grounds upon which this Agreement may be terminated are set forth herein above. In the event of a termination, this Agreement shall be considered null and void; all of Plaintiffs', Class Counsel's, and Defendants' obligations under the Settlement shall cease to be of any force and effect; and the Parties shall return to the status *quo ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all the Parties' respective pre-Settlement rights, claims and defenses will be retained and preserved.

103. In the event of termination, Defendants shall have no right to seek reimbursement from Plaintiffs, Class Counsel, or the Settlement Administrator, for Settlement Administration Costs paid

by Defendants. Defendants shall however remain responsible for any Settlement Administrator invoices that were outstanding at the time of the termination.

104. The Settlement shall become effective on the Effective Date unless earlier terminated in accordance with the provisions hereof.

105. In the event the Settlement is terminated in accordance with the provisions of this Agreement, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made or filed with the Court.

XV. No Admission of Liability

106. Defendants do not admit any liability or wrongdoing of any kind, by this Agreement or otherwise. Defendants have agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could possibly have been asserted in the Action.

107. Class Counsel believes that the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel fully investigated the facts and law relevant to the merits of the claims, conducted significant formal and informal discovery, and conducted independent investigation of the challenged practices. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class.

108. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in

connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

109. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiffs or the Settlement Class, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency, or other tribunal.

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

XIX. Miscellaneous Provisions

111. Effect of Judicial Non-Approval of Settlement. If the Settlement does not receive final and non-appealable Court approval, Defendants shall not be obligated to make any payments or provide any other monetary or non-monetary relief to Plaintiff or the Settlement Class Members, any attorneys' fees or costs to Class Counsel, or any Service Awards to the Plaintiffs.

112. Gender and Plurals. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

113. Binding Effect. This Agreement shall be binding upon, and inure to for the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

114. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, uphold Court approval, and do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.

115. Obligation to Meet and Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have met and conferred in good faith to resolve the dispute.

116. Integration. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

117. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

118. Governing Law. Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the State of Texas, without regard to the principles thereof regarding choice of law.

119. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.

120. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect

to the administration, consummation, and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of the agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against Defendants or its affiliates at any time, including during any appeal from the Final Approval Order and Judgment.

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

Notices to Plaintiff:

Scott Edelsberg, Esq.
EDELSBERG LAW, PA
20900 NE 30th Ave., Suite 417
Aventura, FL 33180
scott@edelsberglaw.com

Notices to Defendant:

Thomas E. Sanders
State Bar No. 00794589
tsanders@dykema.com
Neyma Figueroa
State Bar No. 24097684
nfigueroa@dykema.com
Priscila Mosqueda De La Garza
State Bar No. 24116792
pmosquedadelagarza@dykema.com
DYKEMA GOSSETT PLLC
112 East Pecan Street, Suite 1800
San Antonio, Texas 78205
(210) 554-5500 - Telephone
(210) 226-8395 - Telecopier

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of

objections, requests for exclusion, or other filings received as a result of the Notice Program.

122. Modification and Amendment. This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and counsel for Defendants and, if the Settlement has been approved preliminarily by the Court, approved by the Court.

123. No Waiver. The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

124. Authority. Class Counsel (for the Plaintiffs and the Settlement Class Members), and counsel for Defendants (for Defendants), represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation, or entity included within the definitions of Plaintiffs and Defendants to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all the terms and provisions of this Agreement.

125. Agreement Mutually Prepared. Neither Defendants nor Plaintiffs, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

126. Independent Investigation and Decision to Settle. The Parties understand and acknowledge that they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. Defendants have provided and are providing information that

Plaintiffs reasonably requests to identify members of the Settlement Class and the alleged damages they incurred. The Parties agree that this Settlement is reasonable and will not attempt to renegotiate or otherwise void or invalidate or terminate the Settlement irrespective of what any unexamined data later shows. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

127. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained herein, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

Signature Page to Follow

Dated: _____

VIVIAN AREVALO
Plaintiff

Dated: _____

MICAH SIMON
Plaintiff

Dated: _____

Scott Edelsberg
EDELSBERG LAW P.A.
Class Counsel

Dated: _____

Edmund Normand
NORMAND PLLC
Class Counsel

Dated: _____

Andrew Shamis
SHAMIS & GENTILE, P.A.
Class Counsel

Dated: _____

Roger L. Mandel
JEEVES MANDEL LAW GROUP, P.C.
Class Counsel

Dated: _____

USAA CIC, USAA GIC, Garrison, and United
Services

By: _____
ITS _____

Dated: _____

Thomas E. Sanders, Esq.
DYKEMA GOSSETT PLLC
*Counsel for USAA CIC, USAA GIC, Garrison, and
United Services*