

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

OMAR JONES, individually and
on behalf of all others similarly situated,

CASE NO.: D01CI200009724

Plaintiff,

v.

USAA GENERAL INDEMNITY
COMPANY,

Defendant.

**PLAINTIFF’S MOTION FOR CERTIFICATION OF A SETTLEMENT-ONLY CLASS,
AND PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT**

Plaintiff Omar Jones and Shannon Whitehead (“Plaintiffs”),¹ individually and on behalf of all others similarly situated, hereby submit this Unopposed Motion for Certification of a Settlement-Only Class, and Preliminarily Approve the Class Action Settlement between Plaintiffs, the Settlement Class, and Defendants USAA General Indemnity Company, Garrison Property & Casualty Insurance Company, United Services Automobile Association, and USAA Casualty Insurance Company along with related entities and subsidiaries (collectively, “USAA”).

I. MEMORANDUM OF LEGAL AUTHORITY

¹ Shannon Whitehead filed a substantively identical class action complaint against Garrison in Douglas County. Discovery has shown that the relevant practices and procedures, form policy language, and all elements of the claim are substantially the same as it pertains to the *Whitehead* case and this case. As such, Plaintiff Jones is concurrently seeking leave to file an Amended Complaint adding Ms. Whitehead as a Plaintiff, and other USAA companies as Defendants, to conduct settlement proceedings in a single proceeding. As part of this proposed Settlement, Ms. Whitehead has voluntarily dismissed her lawsuit. (See **Exhibit C**). This brief refers to Mr. Jones and Ms. Whitehead as “Plaintiffs,” and all the USAA companies as “USAA” or “Defendants.”

a. Terms of the Settlement

Attached as **Exhibit A** hereto is the Settlement Agreement signed by the parties. As set forth therein, the settlement requires USAA to make payment to all settlement class members who submit timely claims for (i) Sales Tax,² (ii) Vehicle Regulatory Fees, and (iii) for Class Members who possessed additional Car Replacement Assistance (“CRA”) coverage, CRA Sales Tax in the amount of an additional 20% of Sales Tax, not to exceed the amount of \$3,125,000.00. If USAA included sales tax and/or regulatory fees in the original total-loss claim payment, the amount owed pursuant to the proposed Settlement will be reduced by the amount originally included in the total-loss claim payment. The Settlement also requires USAA to pay—separately and apart from and not to reduce payment to Settlement Class Members—attorneys’ fees and costs in an amount not to exceed \$850,000.00 and a Service Award of \$5,000.00 to Mr. Jones and Ms. Whitehead, as well as the costs of the Settlement Administration. *See, generally, **Exhibit A**.*

b. Certification of the Settlement-Only Class Is Warranted

Under Neb. R. Civ. P. § 25-319, a case is maintainable as a class action where there is a “question is one of a common or general interest of many persons, or when the parties are very numerous, and it may be impracticable to bring them all before the court[.]” Class treatment is appropriate here for the Settlement Class defined as:

All individuals and entities insured by the USAA Entities under a Nebraska automobile insurance policy whose insurance covered or covers an owned or leased vehicle under private-passenger physical damage coverage, including collision and physical damage other than collision coverage, and who made a first-party claim during the Applicable Class Period, whose vehicle was determined by the

² “Sales Tax” is defined as any mandatory sales or use tax collected or assessed by the State of Nebraska and any of its counties, cities, or political subdivisions when a vehicle is purchased, leased, sold, titled, or registered.

USAA Entities to be a total loss, and who received a total loss payment from the USAA Entities for the value of the totaled vehicle, but who did not receive (1) Sales Tax; and/or (2) CRA Sales Tax for those who possessed CRA Coverage on the date their vehicle was declared a total loss; and/or (3) applicable Vehicle Regulatory Fees.

Excluded from the Settlement Class are (i) all officers, employees, and agents of the USAA Entities, Class Counsel, and their immediate family members, and (ii) any members of the judiciary assigned to the Action and their immediate families.

According to USAA's records, there are more than 7,700 class members, which more than satisfies the requirement that there the parties be "very numerous." *See Gant v. Lincoln*, 225 N.W.2d 549, 551 (Neb. 1975) (class of only 400 members satisfied numerosity requirement where "the amounts due each were relatively small thus discouraging and rendering impractical the bringing of individual suits"). Moreover, all class members make precisely the same claim—the actual cash value ("ACV") of a totaled vehicle includes sales tax and regulatory fees without precondition of replacement—pursuant to precisely the same form insurance policy language, which easily satisfies the commonality requirement. *See Hoiengs v Cnty. of Adams*, 516 NW 2d 223, 241 (Neb. 1994) (commonality requirement satisfied where the named plaintiff "has the power as a member of the class to satisfy a judgment on behalf of all members of the class"); *see also Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) ("Commonality is satisfied where Plaintiff's and Class members' claims "depend upon a common contention," "capable of class wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke" and noting that "even a single common question will do"); *Kleiner v. First Nat'l Bank*, 97 F.R.D. 683, 692 (N.D. Ga. 1983) (claims arising out of form contract interpretation present the "classic case" for class treatment);

Davis v. Geico Cas. Co., No. 2:19-cv-2477, 2021 U.S. Dist. LEXIS 237288, at *1 (S.D. Ohio Dec. 13, 2021) (certifying class and finding commonality satisfied for case alleging substantively identical claims); *Paris v. Progressive Am. Ins. Co.*, No. 19-21761-CIV, 2020 U.S. Dist. LEXIS 212127 (S.D. Fla. Nov. 12, 2020) (same); *Jones v. Gov't Emples. Ins. Co.*, 2019 U.S. Dist. LEXIS 58201, at *8-9 (M.D. Fla. Apr. 4, 2019).

Finally, although § 25-319 does not mention adequacy of representation, such requirement is “an application of the equitable doctrine of virtual representation” and it is implicit that “there must be no conflict of interest between the representative and those represented.” *Blankenship v. Omaha Public Power Dist.*, 237 N.W.2d 86, 89–90 (Neb. 1976). Under this same umbrella, other jurisdictions also inquire whether class counsel is qualified, experienced, and generally able to conduct the litigation. *Paxton v. Union National Bank*, 688 F.2d 552, 562-63 (8th Cir. 1982) (citing *Gonzales v. Cassidy*, 474 F.2d 67, 72 (6th Cir. 1973)). Here, Plaintiffs’ interests do not conflict with those of the other Class members: Plaintiffs and Class members assert the same liability theory arising from Defendants’ alleged practice of not including payment of sales tax in ACV total-loss settlements. There is no suggestion that any conflict of interest exists nor any threat this litigation could benefit some Class members while harming others. *See generally Blankenship*, 237 N.W.2d at 175–6 (where “any party included in the class stands to suffer an economic loss as the result of his inclusion” there is a conflict of interest between the representative and the class and the “class suit must therefore fail”). Moreover, Class Counsel have extensive experience in litigating class actions, including cases alleging materially identical claims, and have achieved significant success in those actions. **Exhibit B**, Judkins Decl. at ¶¶ 5–11.

Thus, certification of the Settlement Class is warranted.

c. The Proposed Notice Is the Best Practicable Notice and Comports with Due Process Requirements

While Neb. Rev. Stat. § 25-319, the governing statute on class actions in Nebraska, remains silent as to the requirement of notice in a class action suit, Nebraska courts have held that notice is required so as not to offend due process protections as guaranteed by the Nebraska Constitution. *Hoiengs v. Cnty. of Adams*, 245 Neb. 877, 906-07 (Neb. 1994). Nebraska courts have recognized that while Nebraska lacks a rule addressing notice requirements in class actions, it still adheres to the general rule that notice should be provided in representative actions. *Gant*, 193 Neb. at 112 (Neb. 1975).

Here, the Parties agree to send direct, individual Notices by mail through both long form notice and postcard notice. Moreover, the Notice provides a clear explanation of the terms of the Settlement, the amount sought in attorneys' fees and service award (and that such fees and costs did not reduce the payment amount to class members), informs class members of their right to object to seek exclusion and the method by which to do so, and provides an opportunity to be heard at a Fairness Hearing to be scheduled after the Notice period and before final approval. *See, generally*, Agreement (and Notice exhibits attached thereto). In addition, USAA has agreed to fund a settlement website containing information regarding the Settlement and online claim forms.

The Notice and other protections provided to Settlement Class Members exceeds any requirement under Nebraska law and should be found to be more than adequate.

d. The Terms of the Settlement are Fair and Reasonable

Although there is little guidance on what constitutes a fair and reasonable settlement from Nebraska state courts, federal courts generally consider four factors in making a determination that a settlement is fair, reasonable, and adequate: (1) the merits of the plaintiff's case weighed against

the terms of the settlement; (2) the defendant's financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the settlement. *See In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 931 (8th Cir. 2005). A court may also consider procedural fairness to ensure the settlement is “not the product of fraud or collusion.” *Id.* at 934. The experience and opinion of counsel on both sides may be considered, as well as whether a settlement resulted from arm's length negotiations. *See DeBoer v. Mellon Mortgage Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995). A court may also consider the settlement's timing, including whether discovery proceeded to the point where all parties were fully aware of the merits. *See City P'ship Co. v. Atlantic Acquisition Ltd. P'ship*, 100 F.3d 1041, 1043 (1st Cir. 1996).

As will be set forth in greater detail in the Motion for Final Approval—and as demonstrated by the attached Agreement—all factors used by courts to evaluate the fairness and adequacy of a settlement favor approval here. There was no fraud or collusion in the settlement, which was entered into after arms-length negotiations and with the assistance of an experienced and well-respected mediator Michael Ungar. *See* Judkins Decl. at ¶ 19; *see also* McLaughlin on Class Actions § 6:7 (12th ed.) (“A settlement reached after a supervised mediation receives a presumption of reasonableness and the absence of collusion.”).

Moreover, this litigation is complex and expensive, as confirmed by the initial motion practice and extensive discovery, where Plaintiff elicited data demonstrating the contours of the putative Class and USAA's practices and procedures, including thousands of documents and data spreadsheets containing millions of data inputs. Judkins Decl. at ¶ 21. Given that there was no authority in Nebraska on the question of whether ACV includes sales tax without precondition, the likelihood of success was uncertain, putting it mildly, and yet Plaintiffs and their counsel were

able to secure the full damages sought, representing 100% of the amount sought in the Complaints. *See generally See Lee v. Ocwen Loan Servicing, LLC*, 2015 U.S. Dist. LEXIS 121998, at *7 (S.D. Fla. Sep. 14, 2015) (settlements that “provide near-complete relief to class members on a claims-made basis” are an “extraordinary result”).

Plaintiffs and their counsel believe the proposed Settlement constitutes an excellent result for the class. For all these reasons, Plaintiffs respectfully submit that there are no obvious deficiencies to the Settlement Agreement precluding preliminary approval—indeed, the Settlement provides Class Members who submit a claim with virtually the full damages sought in the Complaint.

e. The Attorneys’ Fees and Costs and Service Awards are Reasonable

In class litigation, attorneys’ fees are typically awarded based on a percentage-of-the-fund analysis, i.e., the “common fund” doctrine. *Blankenship v. OPPD*, 195 Neb. 170, 179, 237 N.W.2d 86, 91 (1976); *Gant v. City of Lincoln*, 193 Neb. 108, 109, 225 N.W.2d 549, 550 (1975); *Swedish Hospital Corp. v. Shalala*, 303 U.S. App. D.C. 94, 1 F.3d 1261 (D.C. Cir. 1993) (in class actions, percentage of the fund is the only allowable method for determining attorneys’ fees); *Camden I Condominium Assoc., Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991) (same). Generally, courts award between 20%-35% of the benefits secured for the Class. *See, e.g., Caligiuri v. Symantec Corp.*, 855 F.3d 860, 865–66 (8th Cir. 2017) (noting courts regularly award between 25%-35% in attorneys’ fees); *Waters v. Int’l Precious Metals Corp.*, 190 F.3d 1291, 1295 (11th Cir. 1999) (approving fee of 33 and 1/3%); *Morefield v. NoteWorld, LLC*, 2012 WL 1355573, at *5 (S.D. Ga. Apr. 18, 2012) (same).

Here, Class Counsel seek attorneys’ fees constituting, at most, 27.2% of the of the Class

benefits.³ Notably, USAA agreed to separately pay attorneys’ fees and costs, meaning an award of attorneys’ fees will have **no impact** and will not in any way reduce the payments to Class Members. Judkins Decl. at ¶ 24. *See, e.g., Altamonte Springs Imaging, L.C. v. State Farm Mut. Auto. Ins. Co.*, 12 So. 3d 850, 857 (Fla. 3d DCA 2009) (“Importantly, the payments to [the] class representative [] and to the attorneys for the plaintiffs [] were paid by State Farm and not from the sums recoverable by class members. While the trial court and this court must review the fees for reasonableness, it is highly significant that the class members bear no part of that particular burden”). The same is true of the Service Awards, which are regularly approved in class actions and in amounts far more than the \$5,000.00 USAA agreed to pay and that Plaintiffs are seeking here. *See, e.g., Caligiuri v. Symantec Corp.*, 855 F.3d 860, 867-68 (8th Cir. 2017) (noting that “courts in this circuit regularly grant service awards of \$10,000 or greater” and holding that service awards are appropriate to compensate named plaintiffs for the “time and effort expended in pursuing litigation,” for taking the time and energy to bring a claim so as to benefit Class Members, and to “promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits”) (citations and quotations omitted). As will be set forth in greater detail in the motion for final approval and after Class Members have been provided Notice and the

³ It is actually a much lesser percentage. Courts agree that where attorneys’ fees, costs, and notice administration costs are paid separately by defendants and not out of the Class benefits, those amounts are then added to the “pot,” so to speak, and attorneys’ fees are calculated as a percentage of the total benefits. *Manual for Complex Litigation* § 21.7 at 335 (4th ed.) (“If an agreement is reached on the amount of a settlement fund and a separate amount for attorney’s fees and expenses... the sum of the two amounts ordinarily should be treated as a settlement fund for the benefit of the class”); *Thut v. Life Time Fitness, Inc. (In re Life Time Fitness, Inc., Tel. Consumer Prot. Act Litig.)*, 847 F.3d 619, 623 (8th Cir. 2017) (settlement administration costs paid separately by defendants properly included as part of the “settlement fund” calculation). For simplicity’s sake, however, Plaintiff is not including those amounts in the fund against which the attorneys’ fees percentage is calculated.

opportunity to object, the attorneys’ fees and costs and the service awards sought here are fair and reasonable.

For the convenience of the Court, Plaintiffs submit the following proposed schedule, which is also reflected in the Proposed Order submitted for the Court’s consideration:

PROPOSED SCHEDULE

#	Action	Deadline
1	Deadline for Settlement Administrator to mail out Long-Form Notice (“Mailed Notice Date”). Settlement Website goes “live.”	Sixty (60) days after entry of the Preliminary Approval Order
2	Deadline for Class Counsel to file petition for attorneys’ fees, service awards	Thirty (30) days after Mailed Notice Date
3	Deadline for sending Short-Form Notice	Thirty (30) days after Mailed Notice Date
4	Deadline for Settlement Class Members to opt-out of the Settlement (“Opt-Out Deadline”)	Sixty (60) days after Mailed Notice Date
5	Deadline for submission of objections to Settlement, including motions to intervene (“Objection Deadline”)	Sixty (60) days after Mailed Notice Date
6	Deadline for Class Counsel to file Motion for Final Approval of Settlement	Ten (10) days before Fairness Hearing
7	Deadline for Settlement Administrator to file proof of completion of Notice, along with complete and accurate Opt-Out list	Ten (10) days before Fairness Hearing

8	Fairness Hearing	_____ at _: __.m. (to be set no sooner than 21 days after Objection Deadline)
9	Deadline for Settlement Class Members to file claims.	Thirty (30) days after Fairness Hearing

CONCLUSION

Plaintiffs respectfully request that the Court grant preliminary approval of the proposed Settlement, and enter the proposed Order attached as Exhibit 1 to the Class Action Settlement Agreement.

Dated December 22, 2022

Respectfully submitted,

By: */s/ Shane C. Mecham*
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Pro Hac Vice

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of December 2022, I electronically filed the foregoing with the Clerk of the Court which will send notice of electronic filing to all counsel of record.

/s/ Shane C. Mecham
Shane C. Mecham
NE #26529

EXHIBIT A

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

OMAR JONES, individually and
on behalf of all others similarly situated,

CASE NO.: D01CI200009724

Plaintiff,

v.

USAA GENERAL INDEMNITY
COMPANY,

Defendant.

CLASS ACTION SETTLEMENT AGREEMENT

EXHIBITS

- 1. Preliminary Approval Order**
- 2. Long-Form Mailed Notice**
- 3. Short-Form Mailed Notice**
- 4. Claim Form**
- 5. Final Order and Judgment**

This Class Action Settlement Agreement, including Exhibits 1-5 (“Agreement”), is made by and between Omar Jones (“Jones”) and Shannon Whitehead (“Whitehead”) (collectively, “Plaintiffs” or “Class Representatives”), on behalf of themselves and as the representatives of the putative Settlement Class defined in Paragraph II(kk) below, and (2) the USAA Entities (United Services Automobile Association (“USAA”), USAA Casualty Insurance Company (“CIC”), USAA General Indemnity Company (“GIC”), and Garrison Property and Casualty Insurance Company (“Garrison”) (collectively, the “USAA Entities”). Plaintiffs and the USAA Entities are referred to collectively as “the Parties.”

This Agreement effects a full and final settlement and dismissal with prejudice of all Released Claims against all Released Persons relating to the above-captioned lawsuit (the “Action,” or sometimes the “*Jones* Action”) and the *Whitehead* Action identified below (sometimes collectively, the “Actions”) on the terms and to the full extent set forth below, subject to the approval of the Court.

I. RECITALS

WHEREAS, on November 23, 2020, Omar Jones filed a Class Action Complaint against GIC in the District Court of Douglas County, Nebraska, Case No. D01CI200009724 (the “*Jones* Action”);

WHEREAS, on March 25, 2022, Shannon Whitehead filed a Class Action Complaint against Garrison in the District Court of Douglas County, Nebraska, Case No. D01CI220002154 (the “*Whitehead* Action”);

WHEREAS, as part of the Settlement, before the filing of the preliminary approval papers in the *Jones* Action, Whitehead will dismiss without prejudice the *Whitehead* Action, as described more fully in Paragraphs 4(d) and 5, a material term of this Settlement being that all individual

and class claims in the *Whitehead* Action will be fully and finally resolved in the *Jones* Action as part of this Settlement;

WHEREAS, as part of the Settlement, and concurrently with the filing of the preliminary approval papers, Omar Jones will file an Amended Class Action Complaint in the *Jones* Action adding Shannon Whitehead as a plaintiff and USAA, CIC, and Garrison as defendants, and amending the class definition and otherwise conforming the Amended Class Action Complaint to this Settlement (as described in Paragraph 5 below);

WHEREAS, on May 26, 2022, the Parties attended a mediation with Michael Ungar;

WHEREAS, the USAA Entities have denied and continue to deny all material allegations of the Actions; deny that they are liable to Plaintiffs and the Settlement Class; maintain that they have numerous meritorious class and merits defenses; maintain that they have acted in accordance with the insurance policies and all applicable laws and regulations and abided by all their contractual and statutory obligations, and would appeal any judgment against them; and deny that a litigation class properly could be certified in the Actions.

WHEREAS, Plaintiffs and Class Counsel, while believing that the claims asserted in the Actions are meritorious, have considered the risks associated with the continued prosecution of this complex and time-consuming litigation, and the relief secured in this Agreement, and believe that, in consideration of all the circumstances, the Settlement embodied in this Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class Members; and

WHEREAS, the USAA Entities, while denying wrongdoing of any kind and without admitting liability, nevertheless agree to enter into this Agreement to avoid further burden, expense, and risk of protracted litigation and to affect a full and final settlement of the claims asserted in the Actions on the terms set forth below;

NOW, THEREFORE, IT IS HEREBY AGREED by and among the Parties, through their respective counsel, that the Action be settled and compromised by Plaintiffs, the Settlement Class, and the USAA Entities on the following terms and conditions, subject to the approval of the Court after hearing:

II. ADDITIONAL DEFINITIONS

In addition to the terms defined elsewhere in this Agreement, the following terms shall be defined as set forth below:

a. **“Amended Class Action Complaint”** means the amended complaint that Jones will file concurrently with moving for preliminary approval, and which shall be deemed to be filed at preliminary approval, as further described in Paragraphs 4(z) and 5.

b. **“Applicable Class Period”** means (1) for GIC insureds, November 23, 2015 through the date of preliminary approval, and (2) for USAA, CIC, and Garrison insureds, March 25, 2017 through the date of preliminary approval.

c. **“Attorneys’ Fees and Expenses Award”** means the Court-determined award of attorneys’ fees, costs, and expenses to Class Counsel, as further provided in Paragraphs 26-28.

d. **“Car Replacement Assistance (or CRA) Coverage”** means the optional feature offered by the USAA Entities that pays an additional 20% of the total loss vehicle’s actual cash value for a Covered Total Loss Claim.

e. **“Claim Form”** means the claim form, without material variation from Exhibit 4, that a Settlement Class Member must properly and timely submit to be eligible for a Settlement Claim Payment, and that is enclosed with the Long-Form Mailed Notice and Short-Form Mailed Notice, except that the postage pre-paid card (pages 2-3 of Exhibit 4 hereto) shall be included only with the Short-Form Mailed Notice.

f. **“Claims Deadline”** is the final date by which a Claim Form must be postmarked in order for a Settlement Class Member to be eligible to receive a Settlement Claim Payment, as set forth in this Agreement. The Claims Deadline shall be thirty (30) days after the Fairness Hearing.

g. **“Class Counsel”** means the attorneys approved and appointed by the Court to represent the Settlement Class Members, as further provided in Paragraph 2.

h. **“Class Data”** means certain Settlement Class Member claims data for Covered Total Loss Claims, as further provided in Paragraphs 8-9.

i. **“Confidential Information”** shall have the meaning given such term in Paragraph 52.

j. **“Court”** means the District Court of Douglas County, Nebraska.

k. **“Court-Approved Opt-Out List”** is the Opt-Out List approved by the Court in the Final Order and Judgment as the list of all Settlement Class Members who timely and properly requested exclusion from the Settlement Class, as further set forth in Paragraph 29(h).

l. **“Covered Total Loss Claim”** means any first-party private passenger auto property damage claim determined to constitute a Total Loss to an insured automobile that (a) occurred within the Applicable Class Period, (b) relates to an owned or leased vehicle, (c) was determined by one of the USAA Entities or by a court or arbitrator of competent jurisdiction to be covered by a Nebraska Automobile Insurance Policy issued by one of the USAA Entities, and (d) resulted in a Total Loss Claim Payment under either the insured’s comprehensive or collision coverages.

m. **“CRA Sales Tax”** means an additional 20% of the mandatory Sales Tax collected or assessed when a vehicle is purchased, leased, or sold for Settlement Class Members who

possessed CRA Coverage at the time of a covered total loss claim.

n. **“Effective Date”** means the date when all of the following conditions have been met:

- (1) This Agreement has been fully executed by the Parties and their counsel;
- (2) No Party has terminated the Agreement;
- (3) Orders have been entered by the Court preliminarily certifying a Settlement Class, granting preliminary approval of this Agreement, and approving a form of notice as provided in this Agreement, as provided in Exhibit 1 and Paragraph 4;
- (4) The Court has entered the Final Order and Judgment approving this Agreement and releasing all Released Persons from all Released Claims, and dismissing the Action with prejudice and without leave to amend, as provided in this Agreement; and
- (5) The Final Order and Judgment has become Final, as provided in Paragraphs II(p) and 29.

o. **“Fairness Hearing”** or **“Final Approval Hearing”** means the fairness hearing conducted by the Court to consider final approval of the Settlement.

p. **“Final”** means that (a) the Final Order and Judgment is a final, appealable judgment and (b) either (i) no appeal has been taken from the Final Order and Judgment as of the date on which all times to appeal therefrom have expired, or (ii) an appeal or other review proceeding of the Final Order and Judgment having been commenced, such appeal or other review is finally concluded and no longer is subject to review by any court, whether by appeal, petitions for rehearing or reargument, petitions for rehearing *en banc*, petitions for writ of certiorari, or otherwise, and such appeal or other review has been fully and finally resolved in such manner that affirms the Final Order and Judgment.

q. **“Final Order and Judgment”** means the order from the Court, without material variation from Exhibit 5, that finally approves the Settlement Agreement and Settlement, disposes of all claims asserted in the Action, and settles and releases all claims consistent with the terms of this Agreement.

r. **“Legally Authorized Representative”** means an administrator/ administratrix, personal representative, or executor/executrix of a deceased Settlement Class Member’s estate; a guardian, conservator, or next friend of an incapacitated Settlement Class Member; or any other legally appointed Person or entity responsible for handling the affairs of a Settlement Class Member.

s. **“Long-Form Mailed Notice”** means the Long-Form mailed notice sent to potential Settlement Class Members, without material change from Exhibit 2, and as further provided in Paragraph 12.

t. **“Mailed Notice Date”** means the date that the initial mailing of the Long-Form Mailed Notice to potential Settlement Class Members as set forth in Paragraph 12 is completed.

u. **“Mailed Notice(s)”** means the Long-Form and/or Short-Form mailed notices sent to potential Settlement Class Members.

v. **“Nebraska Automobile Insurance Policy”** means a Nebraska policy of insurance issued by the USAA Entities in effect during the Applicable Class Period and providing first-party private-passenger automobile physical damage coverage to an owned or leased vehicle.

w. **“Objection Deadline”** means the final date by which a Settlement Class Member may object to the Settlement or move to intervene in the Action pursuant to Paragraphs 34-39 of this Agreement and the Preliminary Approval Order. The Objection Deadline shall be sixty (60) days after the Mailed Notice Date.

x. **“Opt-Out Deadline”** means the final date by which Settlement Class Members may exclude themselves from the Settlement pursuant to Paragraphs 30-33 and the Preliminary Approval Order. The Opt-Out Deadline shall be sixty (60) days after the Mailed Notice Date.

y. **“Opt-Out List”** means the list of valid and timely requests for exclusion from the Settlement Class compiled by the Settlement Administrator, as set forth in Paragraph 32.

z. **“Person”** means any natural person, individual, corporation, association, partnership, trust, or any other type of legal entity.

aa. **“Preliminary Approval Order”** means the order preliminarily approving the Settlement, without material variation from Exhibit 1, and as further set forth in Paragraph 4.

bb. **“Qualifying Settlement Class Member”** means a Settlement Class Member who has not submitted an exclusion request and who is otherwise eligible to receive a Settlement Claim Payment as provided in Paragraphs 18-25.

cc. **“Release”** shall have the meaning given such term in Paragraphs 42-47.

dd. **“Released Claims”** shall have the meaning given such term in Paragraph 44.

ee. **“Released Persons”** shall have the meaning given such term in Paragraphs 43.

ff. **“Releasing Persons”** shall have the meaning give such term in Paragraphs 43.

gg. **“Sales Tax”** means any mandatory sales or use tax collected or assessed by the State of Nebraska and any of its counties, cities, or political subdivisions when a vehicle is purchased, leased, sold, titled, or registered.

hh. **“Service Award(s)”** means the potential award, if any, to Plaintiffs, as determined by the Court, as further provided in Paragraphs 26-28.

ii. **“Settlement”** means the settlement described in this Agreement.

jj. **“Settlement Administrator”** means JND Legal Administration (“JND”), which

shall be approved by the Court and shall perform the tasks set forth in Paragraphs 16-17 of this Agreement as well as other tasks reasonably necessary for the administration of the Settlement, as agreed to by the Parties.

kk. **“Settlement Class”** means the settlement class, to be certified for settlement purposes only, defined as follows:

All individuals and entities insured by the USAA Entities under a Nebraska automobile insurance policy whose insurance covered or covers an owned or leased vehicle under private-passenger physical damage coverage, including collision and physical damage other than collision coverage, and who made a first-party claim during the Applicable Class Period, whose vehicle was determined by the USAA Entities to be a total loss, and who received a total loss payment from the USAA Entities for the value of the totaled vehicle, but who did not receive (1) Sales Tax; and/or (2) CRA Sales Tax for those who possessed CRA Coverage on the date their vehicle was declared a total loss; and/or (3) applicable Vehicle Regulatory Fees.

Excluded from the Settlement Class are: (i) all officers, employees, and agents of the USAA Entities, Class Counsel, and their immediate family members, and (ii) any members of the judiciary assigned to the Action and their immediate families.

ll. **“Settlement Class Member”** means a member of the Settlement Class.

mm. **“Settlement Claim Payment”** means the payment that Qualifying Settlement Class Members are eligible to receive under the Settlement, as further provided in Paragraphs 18-25.

nn. **“Settlement Fund”** means the maximum amount of \$3,125,000.00 that will be made available by the USAA Entities for Settlement Claim Payments to Qualifying Settlement Class Members who submit a valid and timely claim, as further described in Paragraphs 18-25. The Settlement does not require the USAA Entities to pay more than the Maximum Monetary Obligation, as further provided in Paragraph 1, and the Settlement does not provide for the payment of any “residue” other than the amounts of the checks to Qualifying Settlement Class Members that are uncashed after the Stale Date, as further provided in Paragraph 25.

oo. **“Short-Form Mailed Notice”** means the Short-Form mailed notice sent to potential Settlement Class Members, without material change from Exhibit 3, and as further provided in Paragraphs 11e and 12.

pp. **“Stale Date”** means the date by which the checks for Settlement Claim Payments are no longer valid, which shall be one hundred eighty (180) days after the date of issuance of the check, as further provided in Paragraph 25.

qq. **“Total Loss”** means an insured vehicle that sustained damage, was the subject of a covered first-party property damage claim submitted to one of the USAA Entities under a Nebraska Automobile Insurance Policy, and for which the USAA Entity issued a Total Loss Claim Payment.

rr. **“Total Loss Claim Payment”** means a first-party property damage claim payment made by one of the USAA Entities for an owned or leased vehicle determined to be a Total Loss.

ss. **“Vehicle Regulatory Fees”** means the mandatory fees collected or assessed by the State of Nebraska and any of its counties, cities, or political subdivisions when a vehicle is purchased, leased, sold, titled, or registered.

tt. **“Website”** means the website created by the Settlement Administrator for the purposes of publicizing and administering the Settlement, as further described in Paragraph 12.

III. SETTLEMENT CONSIDERATION

1. The USAA Entities’ Maximum Monetary Obligation under this Settlement shall be limited to (a) paying Settlement Claim Payments to Qualifying Settlement Class Members, up to a maximum amount of three million one hundred twenty-five thousand dollars (\$3,125,000.00) (the “Settlement Fund”); (b) paying the reasonable costs of settlement administration and notice; (c) paying the Court-ordered Attorneys’ Fees and Expenses Award, up to a maximum of

\$850,000.00; and (d) paying any Court-ordered Service Awards, up to a maximum of \$5,000.00 to each Plaintiff. The USAA Entities shall not be responsible for any other payments under this Settlement, as further provided in Paragraph 25. No liability with respect to this Agreement shall attain in favor of Plaintiffs, the Settlement Class, or Class Counsel as against any officer, director, member, agent, or employee of the USAA Entities, but rather, Plaintiffs, the Settlement Class, and Class Counsel shall look solely to the assets of the USAA Entities for satisfaction of this Agreement. In no event shall the USAA Entities be obligated to make any additional payments under this Settlement, and they shall not be obligated to make any payments for Settlement Claim Payments, the Attorneys' Fees and Expenses Award, and the Service Awards before the deadlines agreed to by the Parties, and in no event before the Effective Date of the Settlement.

IV. FILING OF AMENDED COMPLAINT, DISMISSAL OF *WHITEHEAD* ACTION, PRELIMINARY CERTIFICATION OF THE SETTLEMENT CLASS, APPOINTMENT OF A SETTLEMENT ADMINISTRATOR, AND THE PRELIMINARY APPROVAL ORDER

2. Solely for the purpose of implementing this Agreement and effectuating the Settlement, the USAA Entities stipulate to entry of the Preliminary Approval Order (without material alteration from Exhibit 1), preliminarily certifying the Settlement Class, appointing Plaintiffs as Class Representatives of the Settlement Class, and appointing the following as Class Counsel for the Settlement Class:

LEVY CRAIG LAW FIRM
Shane C. Mecham NE #26529
smecham@levycraig.com
4520 Main Street, Suite 1600
Kansas City, Missouri 64111
(816) 474-8181

Amy L. Judkins
Florida Bar No.: 125046
NORMAND PLLC
3165 McCrory Place, Ste. 175
Orlando, FL 32803

Tel: 407-603-6031
amy.judkins@normandpllc.com

3. The USAA Entities and the Released Persons shall retain all rights to assert that neither the *Jones* Action nor the *Whitehead* Action may be certified as a class action except for settlement purposes. Solely for the purposes of implementing this Agreement and effectuating the Settlement, the Parties stipulate that JND shall be the Settlement Administrator.

4. Promptly after execution of this Agreement, Plaintiffs shall submit this fully executed Agreement to the Court, and request entry of the Preliminary Approval Order, without material variation from Exhibit 1, and in which the Court specifically:

- a. preliminarily approves this Agreement;
- b. finds that the Court possesses personal jurisdiction over all Settlement Class Members and possesses subject matter jurisdiction to preliminarily approve this Agreement;
- c. preliminarily certifies the Settlement Class, approves Plaintiffs as Class Representatives of the Settlement Class, and appoints Class Counsel as counsel for the Settlement Class;
- d. confirms that the *Whitehead* Action has been voluntarily dismissed and that such dismissal is a material term of the Settlement;
- e. provides that the USAA Entities shall retain all rights to assert that the Action may not be certified as a class action except for settlement purposes;
- f. finds that the Settlement is sufficiently fair, reasonable, and adequate to warrant providing notice to the Settlement Class;
- g. approves the Long-Form and Short-Form Mailed Notices, the content of which is without material alteration from Exhibits 2 and 3, respectively, to be sent to the

Persons described in Paragraph 12; directs their mailing by first-class mail to the last-known address for each Person as set forth in Paragraphs 12(a)-(d) and, for Long-Form Mailed Notices returned, directs the Settlement Administrator to follow the procedures set forth in Paragraph 12(f); and finds that these procedures constitute reasonable and the best practicable notice under the circumstances and an appropriate and sufficient effort to locate current addresses for Settlement Class Members such that no additional efforts to do so shall be required;

- h. approves the Settlement Website as described in Paragraph 12(g), which may be amended during the course of the Settlement as appropriate and agreed to by the Parties, and which shall be maintained for at least 180 days after the Effective Date;
- i. appoints JND as the Settlement Administrator;
- j. directs the Settlement Administrator to maintain a toll-free IVR/VRU telephone system containing recorded answers to frequently asked questions, along with an option permitting callers to punch through to a live operator (during regular business hours), who will answer Settlement Class Members' questions using a script agreed upon by the Parties, or to leave a voicemail message;
- k. determines that the notice provided to potential Settlement Class Members (i) is the best practicable notice under the circumstances; (ii) is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and their right to object to or exclude themselves from the Settlement; (iii) constitutes due, adequate, and sufficient notice to all Persons entitled to receive notice; and (iv) meets all applicable requirements of due process, Nebraska Rules of Civil Procedure, Nebraska law, and any other applicable rules or laws.

- l. schedules the Fairness Hearing to consider the fairness, reasonableness, and adequacy of the Settlement and whether it should be finally approved by the Court, on a date convenient to the Court and the Parties, and not sooner than 21 days after the Objection Deadline.
- m. requires the Settlement Administrator to provide Class Counsel and the USAA Entities a copy of the Opt-Out List (which shall be a list of all Persons who timely and properly requested exclusion from the Settlement Class), no later than seven (7) days after the Opt-Out Deadline, and to file proof of completion of the Mailed Notice at least ten (10) days prior to the Fairness Hearing, along with the Opt-Out List and an affidavit attesting to the accuracy of the Opt-Out List;
- n. requires each Settlement Class Member who wishes to exclude himself or herself from the Settlement Class to submit an appropriate, timely request for exclusion, postmarked no later than sixty (60) days after the Mailed Notice Date and which complies with the requirements in Paragraphs 30-33, including requiring that any exclusion 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;
- o. orders that any Settlement Class Member who does not submit a timely, written request for exclusion from the Settlement Class in accordance with this Agreement will be bound by all proceedings, orders, and judgments in the Action, even if such Settlement Class Member never received actual notice of the Actions or this Settlement and even if the Settlement Class Member has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by

the Released Claims;

- p. requires each Settlement Class Member who does not submit a timely request for exclusion from the Settlement Class and wishes to object to the fairness, reasonableness, or adequacy of this Agreement or any term of the Settlement or to intervene in the Action, to file with the Court no later than Objection Deadline a statement of the objection or motion to intervene, as well as the specific legal and factual reasons for each objection or motion to intervene, including any support the Settlement Class Member wishes to bring to the Court's attention and all evidence the Settlement Class Member wishes to introduce in support of his or her objection or motion, or be forever barred from objection or motion to intervene, as provided in Paragraphs 34-39;
- q. requires any attorney hired by, representing, or assisting (including, but not limited to, by drafting or preparing papers for a Settlement Class Member) a Settlement Class Member for the purpose of objecting to any term or aspect of this Agreement or to the proposed Settlement or intervening in the Action to file with the Clerk of the Court a notice of appearance no later than sixty (60) days after the Mailed Notice Date, as further provided in the Agreement;
- r. provides that all objections to the Settlement shall be signed by the Settlement Class Member (or his or her Legally Authorized Representative), even if the Settlement Class Member is represented by counsel;
- s. provides that the right to object to the Settlement or to intervene must be exercised individually by a Settlement Class Member or his or attorney, and not as a member of a group, class, or subclass, except that such objections and motions to intervene

may be submitted by a Settlement Class Member's Legally Authorized Representative;

- t. directs the Settlement Administrator to rent a post office box to which requests for exclusion and any other Settlement-related communication may be sent, and provides that only the Settlement Administrator, Class Counsel, the USAA Entities, the USAA Entities' counsel, the Court, the Clerk of the Court, and their designated agents shall have access to this post office box, except as otherwise expressly provided in this Agreement;
- u. directs the Settlement Administrator to provide to Class Counsel and counsel for the USAA Entities copies of all objections, requests for exclusion, motions to intervene, notices of intention to appear within one (1) business day of receipt, and also to provide promptly to Class Counsel and counsel for the USAA Entities any other communications that come into its possession;
- v. provides that certification and all actions associated with certification are undertaken on the condition that the certification and designations shall be automatically vacated if this Agreement is terminated or is disapproved in whole or in part by the Court, any appellate court, or any other court of review, or if the agreement to settle is revoked pursuant to Paragraphs 49-51, and elsewhere in the Agreement, or if the Settlement does not become Final in any way;
- w. provides that in the event the Settlement does not become Final, the Parties shall be returned to the *status quo ante* as of June 22, 2022, as provided in Paragraphs 7, 51, and elsewhere in the Agreement;
- x. provides that this Agreement and the fact that it was entered into shall not be

offered, received, or construed as an admission or as evidence for any purpose, including but not limited to an admission by any Party of liability or non-liability or of any misrepresentation or omission in any statement or written document approved or made by any Party, or of the certifiability of a litigation class in the Actions.

- y. preliminarily enjoins all Settlement Class Members and their Legally Authorized Representatives, unless and until they have submitted a timely request for exclusion from the Settlement Class, (i) from filing, commencing, prosecuting, intervening in, or participating as plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on the Released Claims; (ii) from filing, commencing, or prosecuting a lawsuit or administrative, regulatory, arbitration, or other proceeding as a class action on behalf of any Settlement Class Members (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on the Released Claims; and (iii) from attempting to effect an optout of a group, class, or subclass of individuals in any lawsuit or administrative, regulatory, arbitration, or other proceeding based on the Released Claims;
- z. allows the filing of the Amended Complaint; provides that the USAA Entities are not obligated to answer or otherwise respond to the Amended Complaint; provides that the Amended Complaint shall be withdrawn if this Settlement does not become Final, and the original Complaint shall be the operative complaint; and provides that the Amended Complaint shall not be offered, received, or construed as an admission or as evidence for any purpose, including but not limited to an admission

by the USAA Entities of liability or of the truth of the allegations of the Amended Complaint or of the certifiability of a litigation class, as further provided in Paragraphs 3, 5, 40-41, and elsewhere in the Agreement;

- aa. stays all proceedings in the Action until further order of the Court, except that the Parties may conduct proceedings necessary to implement the Settlement or effectuate the terms of this Agreement;
- bb. contains any additional provisions agreeable to the Parties that might be necessary to implement the terms of this Agreement and the Settlement.

5. Concurrently with seeking preliminary approval, and solely for the purposes of implementing this Agreement and effectuating the Settlement, Class Counsel shall file a motion for leave to amend with a proposed Amended Complaint to be deemed filed at preliminary approval, approved in advance by the USAA Entities, but such approval shall not be deemed to be an admission of the truth of the allegations of the Amended Complaint. The Amended Complaint shall conform to the terms of this Settlement (including amending the class definition to conform to the Settlement Class definition, limiting the class claims as consistent with the Settlement, adding CIC, USAA, and Garrison as defendants, adding Whitehead as a plaintiff, and other terms). The USAA Entities shall not be obligated to respond to the Amended Complaint. The Amended Complaint shall be withdrawn if the Settlement does not become Final, as further provided in Paragraph 51 and elsewhere in this Agreement. In addition, with the filing of the preliminary approval papers, Class Counsel shall include documentation regarding the voluntary dismissal of the *Whitehead* Action, including the order dismissing the *Whitehead* Action.

6. Upon the preliminary approval of this Agreement and the proposed Settlement as provided in Paragraph 4, all proceedings in the Action shall be stayed until further order of the

Court; provided, however, that the Parties may conduct such limited proceedings as may be necessary to implement the proposed Settlement or to effectuate the terms of this Agreement.

7. In the event that the Settlement does not become Final for any reason, whether due to a termination of this Agreement in accordance with its terms, a failure or refusal of the Court to approve the proposed Settlement, or a reversal or modification of the Court's approval of the proposed Settlement on appeal, or for any other reason, then (a) Whitehead may re-file the complaint in the *Whitehead* Action; (b) the Amended Complaint in the *Jones* Action shall be vacated; (c) the original Complaint in the *Jones* Action shall become the operative pleading; (d) all orders entered regarding the Settlement shall be vacated; and (e) the Parties shall be restored to the *status quo ante* as of June 22, 2022. In such case, (aa) the Parties and their attorneys shall proceed as though the Agreement had never been entered, and the Parties and their Counsel shall not cite nor reference this Agreement except as necessary to inform the Court, and (bb) nothing in this Agreement and/or the fact that it was entered into shall be offered, received, or construed as an admission or as evidence for any purpose in any proceeding, as further provided in this Agreement.

V. DATA PRODUCTION RELATING TO THE CLASS

8. Within forty-five (45) days after the Court's entry of the Preliminary Approval Order, the USAA Entities shall provide to the Settlement Administrator a list of putative Settlement Class Members to whom the Long-Form Mailed Notice shall be sent (the "Mailed Notice List"). For each Settlement Class Member, the USAA Entities shall (1) provide the Settlement Class Member's name, mailing address, and Nebraska Automobile Insurance Policy number; and (2) provide the necessary fields from the USAA Entities' databases applicable to the Settlement Class Member's Total Loss Claim Payment.

9. Class Counsel and Defendants have engaged in significant discovery related to liability and damages, including the production of data relating to putative Settlement Class Members' claims. Accordingly, no further confirmatory discovery is necessary or shall be taken.

VI. CLASS NOTICE

10. All notice and administration costs shall be paid separately and apart from the Settlement Fund.

11. JND will serve as the Settlement Administrator, subject to approval by the Court.

12. The Long-Form Mailed Notice and Short-Form Mailed Notice shall be without material variation from Exhibits 2 and 3, respectively, and as further provided in Paragraph IIe, and shall be sent to potential Settlement Class Members as follows:

- a. The USAA Entities shall make a reasonable search of their computer/electronic databases to ascertain the name and last-known address of each potential Settlement Class Member. Within 45 days after entry of the Preliminary Approval Order, the USAA Entities shall provide to the Settlement Administrator a list of putative Settlement Class Members to whom the Long-Form Mailed Notice shall be sent, and the Class Data, as further described in Paragraph 8.
- b. Prior to sending the Mailed Notice, the Settlement Administrator shall run the mailing addresses once through the National Change of Address Database ("NCOA") to attempt to obtain a more-current name and/or mailing addresses for each potential Settlement Class Member. The Settlement Administrator may also perform such further reasonable search for a more-current name and/or mailing address for the potential Settlement Class Member, including potentially a search

of the Lexis/Nexis name and address database or other database, as agreed to by the Parties.

- c. The Settlement Administrator shall mail the Long-Form Mailed Notice to potential Settlement Class Members by first-class mail within sixty (60) days after entry of the Preliminary Approval Order. Upon request, the Settlement Administrator shall make available the Long-Form Mailed Notice and Claim Form in Spanish and shall also post Spanish versions of these documents on the Settlement Website.
- d. The Short-Form Mailed Notice will be sent via a postcard notice, pre-paid postage, served by direct mail to those on the Mailed Notice list within 30 days after the Mailed Notice Date.
- e. Other than the Website and the Mailed Notices, the USAA Entities shall not be obligated to provide any additional notice of this proposed Settlement. The USAA Entities shall not be obligated to provide additional notice to any counsel who previously represented or currently represents a Settlement Class Member with regard to the issues raised by the Action.
- f. If any Long-Form Mailed Notice mailed to any potential Settlement Class Member in accordance with Paragraph 12(c) is returned to the Settlement Administrator as undeliverable, the Settlement Administrator will promptly log each such Long-Form Mailed Notices and provide copies of the log to the USAA Entities and Class Counsel as requested. If the mailing is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator shall forward the mailing to that address. For the remaining returned mailings, if a non-NCOA database search was not previously conducted for those mailings as set forth in Paragraph

12(b), such a search shall be conducted and those mailings shall be forwarded to any new address obtained through such a search, as agreed to by the Parties. In the event that any Long-Form Mailed Notices are returned as undeliverable a second time, no further mailing shall be required. It is agreed by the Parties that the procedures set forth in Paragraph 12 constitute reasonable and the best practicable notice under the circumstances and an appropriate and sufficient effort to locate current addresses for Settlement Class Members such that no additional efforts to do so shall be required. The USAA Entities shall not be obligated to make re-mailings of the Short-Form Mailed Notice.

- g. The Settlement Administrator shall create and maintain the Website (www.JonesTotalLossSettlement.com), and shall post the Agreement, Long-Form Mailed Notice, Preliminary Approval Order, preliminary approval papers and fee petitions, important dates, and frequently asked questions. The Settlement Administrator shall also post the Motion for Final Approval after it is filed, and also post the Final Order and Judgment and any other significant orders relating to the Settlement. The website shall go “live” on the Mailed Notice Date. The Website may be amended from time to time as agreed to by the Parties. The Website shall also contain Spanish translations of the home page, frequently asked questions, and Mailed Notices. The Settlement Administrator shall maintain the Website for at least 180 days after the Effective Date. The Settlement Website shall not include any advertising and shall not bear or include the USAA Entities’ logo or trademarks.

- h. The Settlement Administrator shall set up a live call center during regular business hours to answer Settlement Class Members' questions, using a script agreed upon by the Parties. In addition, the Settlement Administrator shall set up an IVR/VRU call system containing recorded answers to frequently asked questions, along with an option permitting callers to speak to live operators or to leave messages in a voicemail box, as agreed upon by the Parties.
 - i. The Settlement Administrator shall retain and record of all such notice procedures and provide periodic updates to the Parties.
13. The Opt-Out Deadline and Objection Deadline shall be 60 days after the Mailed Notice Date.
14. The Settlement Administrator shall rent a post office box to be used for receiving requests for exclusion, objections, notices of intention to appear and/or intervene, and any other Settlement-related communications. Only the Settlement Administrator, Class Counsel, the USAA Entities, counsel for the USAA Entities, the Court, the Clerk of the Court, and their designated agents shall have access to this post office box, except as otherwise expressly provided in this Agreement.
15. The Fairness Hearing date and time shall be set at the convenience of the Court and Parties, shall be no earlier than 21 days after the Opt-Out Deadline and Objection Deadline.

VII. SETTLEMENT ADMINISTRATOR

16. The Parties agree to the appointment of JND as Settlement Administrator to perform the services described herein. The costs of Settlement notice, claims administration, and any other fees and costs relating to the effectuation of the Settlement shall be paid separately and apart from the Settlement Fund.

17. The Settlement Administrator shall assist with the various administrative tasks set forth herein and any others necessary to implement the terms of this Agreement and the Settlement as preliminarily approved, including (i) mailing the Long-Form Mailed Notice and Short-Form Mailed Notice and submitting to the Parties and Court an affidavit offering proof thereof; (ii) handling mail returned as not delivered and making additional mailings required under the terms of the Agreement; (iii) responding, as necessary, to inquiries from Settlement Class Members; (iv) providing to the Parties, within one (1) business day of receipt, copies of all objections, motions to intervene, notices of intention to appear, and requests for exclusion from the Settlement Class; (v) preparing a list of all Persons who timely requested exclusion from the Settlement Class and submitting to the Court the Opt-Out List and supporting affidavit ten (10) days before the Fairness Hearing scheduled by the Court; (vi) preparing a list of all Persons who submitted objections to the settlement and submitting an affidavit testifying to the accuracy of that list; and (vii) promptly responding to requests for information and documents from Class Counsel, the USAA Entities, and/or the USAA Entities' counsel.

VII. SETTLEMENT FUND, SETTLEMENT CLAIM PAYMENTS, AND DISTRIBUTION

18. In exchange for the mutual promises and covenants in this Agreement, including, without limitation, the Releases and the dismissal with prejudice of the *Jones* Action and the *Whitehead* Action, the USAA Entities shall pay Qualifying Settlement Class Members their Settlement Claim Payments, as set forth in this Agreement.

19. The USAA Entities will make available up to \$3,125,000.00, to pay all Settlement Claim Payments to Qualifying Settlement Class Members, as further provided in Paragraphs 18-25.

20. To be eligible for monetary relief, the Settlement Class Member must not have filed an exclusion request, and must properly and fully fill out and timely submit to the Settlement Administrator by U.S. Mail the Claim Form (Exhibit 4), which Claim Form must be postmarked by the Claims Deadline — i.e., no later than thirty (30) days after the Fairness Hearing.

21. Settlement Claim Payments to Qualifying Settlement Class Members shall be calculated as follows:

a. Sales Tax: Each Qualifying Settlement Class Member shall be paid the Sales Tax on the value of his or her total loss vehicle, in the amount identified in the USAA Entities' data column "SLE_TAX_USD_AMT," to the extent not already paid by the USAA Entities.

b. CRA Sales Tax: Each Qualifying Settlement Class Member who possessed CRA coverage at the time of the total loss claim shall be paid an additional 20% of the amount identified in the USAA Entities' data column "SLE_TAX_USD_AMT," to the extent not already paid by the USAA Entities.

c. Vehicle Regulatory Fees: Each Qualifying Settlement Class Member shall be paid the Vehicle Regulatory Fees, to the extent not already paid by the USAA Entities.

22. The USAA Entities shall use their best efforts to send to the Settlement Administrator within ninety (90) days after the Effective Date the amount necessary to pay the Settlement Claim Payments to Qualifying Settlement Class Members.

23. The USAA Entities shall calculate the Settlement Claim Payment for each Qualifying Settlement Class Member. The methodology provided for herein shall be applied to the data as reasonably possible, recognizing and taking into consideration the nature and completeness or incompleteness of the data and the purposes of the computation. Before the

Settlement Claim Payments are made, counsel for the USAA Entities shall provide to Class Counsel the USAA Entities' calculation of each Settlement Claim Payment (if any) to Qualifying Settlement Class Members.

24. The Settlement Administrator will use its best efforts to mail checks to Qualifying Settlement Class Members within one hundred five (105) days after the Effective Date. Checks will be issued and mailed by the Settlement Administrator with an appropriate legend, in a form approved by Class Counsel and the USAA Entities, to indicate that the check is from the Settlement. The accompanying letter shall also state that the amount of the Settlement Claim Payment is final, binding, and nonappealable. Checks shall be valid for 180 days. Timely negotiation of checks is a condition of any Settlement Class Member's right to a Settlement Claim Payment.

25. The funds from any checks for Settlement Claim Payments that are not cashed by the time of the Stale Date may be distributed to the Legal Aid and Services Fund pursuant to Neb. Rev. Stat. 25-319.01. This Settlement does not provide and shall not be interpreted to provide for any other residual or *cy pres* distribution.

IX. ATTORNEYS' FEES AND EXPENSES AWARD AND SERVICE AWARD

26. Class Counsel's entitlement, if any, to an Attorneys' Fees and Expenses Award, and Plaintiffs' entitlement, if any, to Service Awards, will be determined by the Court. The terms of any such awards, fees, costs, or expenses were not negotiated until after all material elements of the Settlement were resolved, and the terms of this Settlement are not conditioned upon any maximum or minimum Attorneys' Fees and Expenses Award or Service Awards.

27. Within thirty (30) days after the Mailed Notice Date, Class Counsel will file a Petition for Attorneys' Fees and Costs, in which Class Counsel agree not to seek more than

\$850,000.00 in attorneys' fees and costs. Any award of attorneys' fees and costs to Class Counsel shall be payable separate and apart from the Settlement Fund available to Qualifying Settlement Class Members for Settlement Claim Payments. The Parties agree that the Court's failure to approve, in whole or in part, any award for attorneys' fees shall not prevent the Settlement Agreement from becoming Final or effective, nor shall it be grounds for termination.

28. Class Counsel will ask the Court, and Defendants will not oppose, to approve Service Awards to the Plaintiffs in the amount of not more than \$5,000.00 to each Plaintiff. The Service Awards shall be paid to the Class Representatives in addition to Class Representatives' Settlement Claim Payments.

X. FINAL APPROVAL OF THE SETTLEMENT

29. Within ten (10) days before the Final Approval Hearing, Class Counsel will file a motion, subject to the USAA Entities' prior review and comment, seeking the Court's final approval of the Settlement at the Fairness Hearing to be held at a time, date, and location as set by the Court and that will be stated in the Mailed Notices. The Motion shall request, at minimum, the Court to enter the Final Order and Judgment, without material variation from Exhibit 5, that, among other things:

- a. grants final approval of the certification of the Settlement Class for settlement purposes only;
- b. reconfirms that the Court has personal jurisdiction over all Settlement Class Members and subject matter jurisdiction to approve this Agreement;
- c. gives final approval to the Settlement and directs the Parties and counsel to comply with and consummate the terms of the Agreement;
- d. finds that Class Counsel and Plaintiffs adequately represented the Settlement Class;

- e. finds that the terms of this Agreement are fair, reasonable, and adequate to the Settlement Class Members;
- f. finds that the notice set forth in this Agreement, including the Mailed Notices and Website, (i) constituted the best practicable notice under the circumstances; (ii) was reasonably calculated to apprise potential Settlement Class Members of the pendency of the Action, their right to object to or exclude themselves from the Settlement, and to appear at the Fairness Hearing; (iii) constituted due, adequate, and sufficient process and notice to all Persons entitled to receive notice; and (iv) met all applicable requirements of due process, Nebraska Rules of Civil Procedure, Nebraska law, and any other applicable rules or law;
- g. without affecting the finality of the Final Order and Judgment for purposes of appeal, reserves jurisdiction over the USAA Entities, Plaintiffs, and the Settlement Class as to all matters relating to the administration, consummation, enforcement, and interpretation of the terms of the Settlement and the Final Order and Judgment, and for any other necessary purposes;
- h. approves the Opt-Out List and determines that the Opt-Out List is a complete list of all Settlement Class Members who have timely requested exclusion from the Settlement Class and, accordingly, shall neither share in nor be bound by the Final Order and Judgment (the “Court-Approved Opt-Out List”);
- i. provides that as of the Effective Date, Plaintiffs, all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Court-Approved Opt-Out List, and their heirs, estates, trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, successors, employees,

employers, companies, partnerships, corporations, professional services corporations, limited liability companies, members, owners, officers, directors, partners, joint venturers, managing agents, affiliates, subsidiaries, predecessors, successors, and/ or anyone claiming through them or acting or purporting to act for them or on their behalf, regardless of whether they have received actual notice of the proposed Settlement and regardless of whether they previously initiated or subsequently initiate individual litigation or other proceedings encompassed by the Released Claims, have conclusively compromised, settled, discharged, and released all Released Claims against the USAA Entities and the Released Persons, and are bound by the provisions of this Agreement, as further provided in Paragraphs 42-47;

- j. declares this Agreement and the Final Order and Judgment to be binding on, and have res judicata and preclusive effect in, all pending and future lawsuits or other proceedings encompassed by the Released Claims maintained by or on behalf of Plaintiffs and all other Settlement Class Members who have not been excluded from the Settlement Class as provided in the Court-Approved Opt-Out List, their heirs, estates, trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, assignees, assignors, successors, employees, employers, companies, partnerships, corporations, professional services corporations, limited liability companies, members, owners, officers, directors, partners, joint venturers, managing agents, affiliates, subsidiaries, predecessors, and/or anyone claiming through them or acting or purporting to act for them or on their behalf, regardless of whether they have received actual notice of the proposed

Settlement and regardless of whether they previously initiated or subsequently initiate individual litigation or other proceedings encompassed by the Released Claims, as set forth in this Agreement;

- k. dismisses the Action (including all individual and class claims presented thereby) on the merits and with prejudice, and without fees or costs except as provided herein, and entering final judgment thereon, and noting that all claims in the *Whitehead* Action will become released and barred with prejudice as a result of this Settlement;
- l. determines the amount of the Attorneys' Fees and Expenses Award to Class Counsel, and the Service Awards to Plaintiffs; and
- m. reconfirms the appointment of JND as the Settlement Administrator and finds that JND has complied with its duties under the Settlement;
- n. determines that the Agreement and the Settlement provided for herein, and any proceedings taken pursuant thereto, are not, and should not in any event be offered, received, or construed as evidence of, a presumption, concession, or an admission by any Party of liability or non-liability or the certifiability or non-certifiability of a litigation class, or of any misrepresentation or omission in any statement or written document approved or made by any Party; provided, however, that reference may be made to this Agreement and the Settlement provided for herein in such proceedings as may be necessary to effectuate the provisions of this Agreement, as further set forth in this Agreement;
- o. permanently enjoins Plaintiffs, and all other Settlement Class Members who have not been excluded from the Settlement Class as provided in the Court-Approved

Opt-Out List, from (i) filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on the Released Claims and (ii) organizing Settlement Class Members into a separate group, class, or subclass for purposes of pursuing as a purported class action any lawsuit or administrative, regulatory, arbitration, or other proceeding (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) based on the Released Claims;

- p. orders that the certification of the Settlement Class and final approval of the Settlement, and all actions associated with them, are undertaken on the condition that they shall be vacated if the Agreement is terminated or disapproved in whole or in part by the Court, or any appellate court and/or other court of review, or if any of the Parties invokes the right to withdraw from the Settlement as provided in Paragraphs 49-51 of the Agreement, in which event the Agreement and the fact that it was entered into shall not be offered, received, or construed as an admission or as evidence for any purpose, including but not limited to an admission by any Party of liability or non-liability or of any misrepresentation or omission in any statement or written document approved or made by any Party, or of the certifiability or non-certifiability of a litigation class;
- q. approves the termination and withdrawal procedures in Paragraphs 49-51, and orders that if the Settlement does not become Final, the Parties shall be returned to the *status quo ante* as of June 22, 2022, as provided in Paragraphs 7, 51, and elsewhere in the Agreement;

- r. makes the requisite findings and orders under Neb. Rev. Stat. § 25-319.01; and
- s. authorizes the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansions of this Agreement and all Exhibits hereto as (i) shall be consistent in all material respects with the Final Order and Judgment and (ii) do not limit the rights of Settlement Class Members.

XI. REQUESTS FOR EXCLUSION AND OBJECTIONS

30. 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 Long-Form Mailed Notice postmarked no later than sixty (60) days after the Mailed Notice Date. Requests for exclusion must be exercised individually by the Settlement Class Member and are only effective as to the individual Settlement Class Member requesting exclusion, and may not be on behalf of a group, class, or subclass.

31. 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 the USAA Entities to terminate the Agreement.

32. The Settlement Administrator shall promptly log and prepare a list of all Persons who properly requested exclusion from the Settlement Class and shall submit an affidavit to the Court which includes and attests to the accuracy of the Opt-Out List no later than ten (10) days prior to the Fairness Hearing set by the Court.

33. The Settlement Administrator, in its sole discretion, shall determine whether a request for exclusion was timely submitted. The Settlement Administrator's decision on this issue shall be final, binding, and nonappealable.

34. All Settlement Class Members who do not timely and properly exclude themselves from the Settlement Class shall be bound by this Agreement, and this Action shall be dismissed with prejudice and all Settlement Class Members' Released Claims shall be released as provided for herein, even if they never received actual notice of the Actions or this proposed Settlement and regardless of whether they previously initiated or subsequently initiate individual litigation or other proceedings encompassed by the claims in the Actions. Settlement Class Members who do not request exclusion from the Settlement Class may object to the Settlement or move for leave to intervene in the Action. Settlement Class Members who choose to object to the Settlement must do so in writing. The objection or motion to intervene must contain the specific legal and factual reasons, if any, for each objection or motion, including any support the Settlement Class Member wishes to bring to the Court's attention and all evidence the Settlement Class Member wishes to introduce in support of the objection or motion to intervene, or be forever barred from objection or intervention.

35. If a Settlement Class Member files a timely written objection, the Settlement Class Member may, but is not required to, appear at the Fairness Hearing, either in person or through the Settlement Class Member's own attorney. If a Settlement Class Member appears through his or her own attorney, the Settlement Class Member is responsible for hiring and paying that attorney.

36. Objections must provide the name, address, and signature of the Settlement Class Member filing the objection, and must contain the name, address, bar number, and telephone number of the objecting Settlement Class Member's counsel, if any. All written objections and

supporting papers must be sent to the Settlement Administrator and (a) clearly identify the case name and number; (b) be submitted to the Court either by mailing them to the Clerk of Court for the District Court of Douglas County, Nebraska, or by filing them in person at any location of the District Court of Douglas County, Nebraska; (c) be filed or postmarked on or before sixty (60) days after the Mailed Notice Date; and (d) contain (i) a statement of the specific legal and factual basis for each objection or intervention argument, (ii) a statement whether the objecting or intervening Settlement Class Member intends to appear at the Fairness Hearing, either in person or through counsel, (iii) a description of any and all evidence the objecting Settlement Class Member may offer at the Fairness Hearing, including but not limited to the names, addresses, and expected testimony of any witnesses, all exhibits intended to be introduced at the Fairness Hearing, and a list of other cases in which the objector or intervenor or counsel for the objector or intervenor has appeared either as an objector or counsel for an objector in the last five years. All objections shall be signed by the objecting Settlement Class Member (or his or her Legally Authorized Representative), even if the Settlement Class Member is represented by counsel. Any motion to intervene must further comply with the Nebraska Rules of Civil Procedure and any other rules and requirements of the Court. Furthermore, all objectors shall make themselves available to be deposed by any Party in the county of the objector's residence within seven (7) days of service of his, her, or its timely written objection.

37. The right to object to the Settlement or to intervene in the Action must be exercised individually by a Settlement Class Member or his or her attorney or Legally Authorized Representative, and not as a member of a group, class, or subclass.

38. Any Settlement Class Member who does not file a timely notice of intent to object in accordance with this Agreement shall waive the right to object or to be heard at the Fairness

Hearing and shall be forever barred from making any objection to the proposed Settlement, subject to the Court's discretion to hear such objections. Settlement Class Members who object to the proposed Settlement shall remain Settlement Class Members, and shall be deemed to have voluntarily waived their right to pursue an independent remedy against the USAA Entities. 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 Order and Judgment.

39. In the event that any Settlement Class Member objects to or opposes this proposed Settlement, or attempts to intervene in or otherwise enter the Action, the Parties agree to use their best efforts to cooperate in the defense of the Settlement. Notwithstanding the foregoing, it shall be Class Counsel's sole responsibility to respond to any objections made with respect to any application for the Attorneys' Fees and Expenses Award and Service Awards.

XII. NO ADMISSION OF LIABILITY

40. The USAA Entities have denied and continue to deny all material allegations of the Actions; deny that they are liable to Plaintiffs and the Settlement Class; maintain that they have numerous meritorious class and merits defenses; maintain that they have acted in accordance with the insurance policies and all applicable laws and regulations and abided by all their contractual and statutory obligations, and would appeal any judgment against them; and deny that a litigation class properly could be certified in the Actions.

41. As a result of the foregoing, the USAA Entities enter into this Agreement without admitting, conceding, or acknowledging any fault, liability, or wrongdoing of any kind on the part of the Released Persons, or of the propriety of certifying a litigation class. This Agreement shall not be construed as an admission or concession of the truth of any of the allegations in the Actions,

or of any liability, fault, or wrongdoing of any kind, or of the validity of certifying a litigation class. The terms of this Agreement are material to the USAA Entities' decision to settle the Actions notwithstanding their belief that their defenses are meritorious and their chances of success are significant. This Agreement and the Settlement, and the proceedings taken pursuant thereto, are not and shall not be offered, received, or construed as evidence in any action or proceeding in any court, administrative proceeding, or other tribunal as an admission or concession of liability or wrongdoing on the part of the USAA Entities or the Released Persons, or as an admission or concession that the *Jones* Action, the *Whitehead* Action, or any other action could properly be certified as a litigation class action; provided, however, that reference may be made to the Settlement Agreement and the Settlement provided for herein in such proceedings as may be necessary to effectuate the provisions of this Agreement, and further provided that the Released Persons shall be free to use the Settlement Agreement, all Orders of this Court regarding the Settlement, and any related documents in any action or claim that may be brought against them in order to support a defense or counterclaim based on res judicata, collateral estoppel, release, settlement, accord, judgment bar or reduction, or any other theory relating to this Settlement.

XIII. DISMISSAL OF ACTION AND RELEASE OF CLAIMS

42. Plaintiffs, and all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Court-Approved Opt-out List, shall be bound by this Agreement, and all of their claims, as provided under this Agreement, shall be dismissed with prejudice and released, even if they never received actual notice of the Actions or the Settlement.

43. Upon the Effective Date, Plaintiffs, all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Court-Approved Opt-Out List, and their heirs, estates, trustees, executors, administrators, principals, beneficiaries, representatives,

agents, assigns, successors, employees, employers, companies, partnerships, corporations, professional services corporations, limited liability companies, members, owners, officers, directors, partners, joint venturers, managing agents, affiliates, subsidiaries, predecessors, and/or anyone claiming through them or acting or purporting to act for them or on their behalf, regardless of whether they received actual notice of the proposed Settlement and regardless of whether they previously initiated or subsequently initiate individual litigation or other proceedings encompassed by the Released Claims (the “Releasing Persons”), will be bound by the Final Order and Judgment and shall be conclusively deemed to have fully released and discharged the USAA Entities and all of the USAA Entities’ (a) past, present, and future parents, subsidiaries, divisions, and affiliates, and (b) past, present, and future officers, directors, members, agents, employees, servants, stockholders, insurers, attorneys, representatives, successors, assigns, and independent contractors of the entities in part (a) above (the “Released Persons”), of and from all Released Claims, and agree that they shall not now or hereafter initiate, maintain, or assert any Released Claims against the Released Persons in any other court action or before any administrative body (including any state department of insurance or other regulatory entity or organization), tribunal, arbitration panel, or other adjudicating body. Without in any way limiting the scope of the Release described in Paragraphs 42-47, this Release covers, without limitation, any and all claims for attorneys’ fees, costs, or disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or Settlement Class Members, or by the Plaintiffs or Settlement Class Members, or any of them, in connection with or related in any manner to the Actions, the settlement of the Actions, the administration of such Settlement, and/or the Released Claims except to the extent otherwise specified in the Agreement.

44. “Released Claims” means and includes any and all known and unknown claims, rights, actions, suits or causes of action of whatever kind or nature, whether *ex contractu* or *ex delicto*, statutory, common law or equitable, including but not limited to breach of contract, bad faith, extracontractual claims or claims for statutory violations, and claims for punitive or exemplary damages, or prejudgment or postjudgment interest, arising from or relating in any way to the USAA Entities’ alleged failure to pay sufficient Sales Tax, Vehicle Regulatory Fees, and CRA Sales Tax to Plaintiffs and the Settlement Class Members. Released Claims do not include any claim for enforcement of this Agreement and/or the Final Order and Judgment. Released Claims do not include any claims, actions, or causes of action alleging that the USAA Entities failed to properly calculate the base or adjusted value of total loss vehicles except to the extent that such claims, actions, or causes of action relate to failure to pay sufficient Sales Tax, Vehicle Regulatory Fees, and CRA Sales Tax.

45. Without in any way limiting the scope of the Release described in Paragraphs 42-47, the Plaintiffs, and all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Court-Approved Opt-Out List, also acknowledge that they are familiar with the principles of law such as Section 1542 of the Civil Code of the State of California and the laws of other states, which provide:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS [OR HER] FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM [OR HER] MUST HAVE MATERIALLY AFFECTED HIS [OR HER] SETTLEMENT WITH THE DEBTOR.

To the extent that, notwithstanding the choice of law provisions in the Agreement, California or other law may be applicable, Plaintiffs, and the Settlement Class Members who have not been excluded from the Settlement Class as provided in the Court-Approved Opt-Out List, hereby

expressly agree that the provisions, rights, and benefits of Section 1542 of the Civil Code of the State of California and all similar federal or state laws, rights, rules, or legal principles of any other jurisdiction which may be applicable herein are hereby knowingly and voluntarily waived and relinquished by Plaintiffs and the Settlement Class Members to the fullest extent permitted by law solely in connection with Unknown Claims (as described in this Paragraph 45) constituting Released Claims, and Plaintiffs and the Settlement Class Members hereby agree and acknowledge that this is an essential term of this Release. In connection with this Release, Plaintiffs and the Settlement Class Members acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true with respect to the matters released herein. Nevertheless, Plaintiffs and the Settlement Class Members acknowledge that a portion of the consideration received herein is for a Release with respect to future damages and complaints, whether resulting from known injuries and consequences or from unknown injuries or unknown consequences of known or unknown injuries, and state that it is the intention of Plaintiffs and the Settlement Class Members in executing this Release fully, finally, and forever to settle and release all matters, known or otherwise, and all claims relating thereto, which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action) relating in any respect, without limitation, to the Released Claims.

46. Nothing in Paragraphs 42-47 shall preclude any action to enforce the terms of the Agreement, including participation in any of the processes detailed therein.

47. Upon entry of the Final Order and Judgment, the Action will be dismissed with prejudice as to the USAA Entities, Plaintiffs, and all Settlement Class Members who have not been

excluded from the Settlement Class as provided in the Court-Approved Opt-Out List, and will release all Released Persons from Released Claims.

XIV. RETENTION OF RECORDS

48. The Settlement Administrator (and Class Counsel and the USAA Entities, to the extent they are sent copies of the following documents) shall retain copies or images of all returned Notices (and/ or data resulting therefrom) and correspondence relating thereto, for a period of up to two (2) years after the Effective Date. After this time, upon written request by counsel for the USAA Entities, Class Counsel and the Settlement Administrator shall destroy any documentary records in their possession. Except as expressly stated above, nothing in this Agreement shall be construed to require the USAA Entities to retain records beyond their discretionary record retention policies.

XV. WITHDRAWAL FROM SETTLEMENT; FAILURE OF SETTLEMENT TO BECOME EFFECTIVE

49. Within fifteen (15) days of the occurrence of any of the following events, and upon written notice to counsel for the other Party, any Party shall have the right to withdraw from the Settlement:

- (a) if the Court fails to approve the Agreement, or if on appeal the Court's approval is reversed or modified in a material respect; or
- (b) if the Court or any court materially alters any of the terms of the Agreement; or
- (c) if the Preliminary Approval Order, or the Final Order and Judgment, is not entered by the Court, or is reversed or modified on appeal in any material respect, or otherwise fails for any reason.

Notwithstanding the foregoing, Plaintiffs may not terminate this Agreement because of the amount of the Attorneys' Fees and Expenses Award or Service Award approved by the Court or any appellate court(s), or the failure of the Court or any appellate court(s) to approve any provision of Paragraphs 26-28 of this Agreement.

50. The USAA Entities shall have the right to withdraw from the Settlement if (i) one or both Plaintiffs attempt to exclude themselves from the Settlement Class; (ii) one or more overlapping classes are certified over the USAA Entities' objection in other cases at any time before the Effective Date of the settlement, or (iii) if the number of Settlement Class Members who exclude themselves from the Settlement Class equals or exceeds 250 potential Settlement Class Members. If the USAA Entities choose to exercise this right, they must do so within fifteen (15) days of such class certification(s), or within five (5) days of receipt of the Opt-Out List by the Settlement Administrator, by providing written notice to Class Counsel. The USAA Entities will promptly provide Class Counsel with notice of any lawsuits with one or more overlapping Subclasses.

51. In the event of a withdrawal pursuant to Paragraphs 49-51, this Agreement, all settlement negotiations, and all proceedings that have taken place with regard to this Agreement shall be without prejudice to the rights and contentions of the Parties with respect to the Actions. Furthermore, in the event of a withdrawal pursuant to Paragraphs 49-51, all Orders entered in connection with the Settlement, including the certification of the Settlement Class, shall be vacated without prejudice to any Party's position on the issue of class certification or any other issue, in the Actions, or any other action; Plaintiffs shall withdraw the Amended Complaint, and the *Jones* original Complaint shall be the operative complaint; and the Parties shall be restored to their litigation positions existing on June 22, 2022. Furthermore, in the event of a withdrawal pursuant to Paragraphs 49-51, the fact of this Agreement or settlement having been made shall not be admissible or entered into evidence for any purpose; this Agreement and all documents, orders, and other evidence relating to the Agreement and settlement shall not be offered, received, or construed as evidence of a presumption, concession, or an admission by any Party of liability or

non-liability, or of the certifiability of a litigation class, or of any misrepresentation or omission in any statement or written document approved or made by any Party; and all of the Parties' obligations under this Agreement shall cease to be of any force and effect (provided, however, that the USAA Entities shall be liable to pay the Settlement Administrator for all notice and settlement administration costs incurred before the withdrawal). Furthermore, in the event of a withdrawal by the USAA Entities, Plaintiffs and Class Counsel agree that the USAA Entities shall retain the right to assert any and all defenses and claims in the Actions (including all defenses to the certifiability of a litigation class) and that Plaintiffs and Class Counsel shall not argue that the USAA Entities are barred from asserting those defenses or claims due to waiver, estoppel, or similar arguments.

XVI. CONFIDENTIAL INFORMATION AND DISCOVERY

52. The following constitutes Confidential Information: (a) the names, addresses, policy and/or member numbers, and other data concerning potential Settlement Class Members compiled by the USAA Entities and/or the Settlement Administrator in effectuating the proposed Settlement; (b) the electronic data processing and other recordkeeping procedures and materials to be utilized by the USAA Entities and/or the Settlement Administrator in identifying the potential Settlement Class Members and effectuating the USAA Entities' other obligations under the proposed Settlement; and (c) the documents and information designated as confidential by the Parties during the course of the litigation of the Action. The confidentiality of all Confidential Information shall be protected from disclosure by Class Counsel, Plaintiffs, and the USAA Entities and their counsel to any Persons other than those described in Paragraph 53.

53. No Persons other than the USAA Entities' counsel and clerical/administrative personnel employed by the USAA Entities, Class Counsel and clerical/administrative personnel

employed by Class Counsel, the Settlement Administrator, and any clerical/administrative personnel employed by him, the Court and such other Persons as the Court may order, after hearing on notice to all counsel of record, shall be allowed access to the Confidential Information defined in Paragraph 52.

54. Within thirty (30) days after the Effective Date, Class Counsel and/or other attorneys for Plaintiffs and/or the Settlement Class in the Action, and counsel for the USAA Entities, shall return to the producing party all Confidential Information defined in Paragraph 52(c) and also shall deliver a letter to the other party certifying their compliance with this Paragraph and, in the event that Confidential Information has already been destroyed, confirming that the Confidential Information was destroyed. All other discovery produced to Plaintiffs (including, but not limited to, data, deposition testimony, and written discovery) in the Action will be returned to the USAA Entities' outside counsel or destroyed within 15 days of a written request. Further, the Parties agree that neither Class Counsel nor counsel for the USAA Entities, nor anyone employed with, retained by, or otherwise associated with their firms, shall use any of this Confidential Information or confidential material in any other litigation, current or future, unless independently obtained through discovery or other procedures in such other litigation.

55. Within thirty (30) days of the resolution of the last claim in this Settlement as provided in Paragraphs 18-25, Class Counsel shall return to counsel for the USAA Entities all remaining Confidential Information in Paragraph 52 and also shall deliver a letter to counsel for the USAA Entities certifying compliance with this Paragraph and, in the event the Confidential Information has already been destroyed, confirming that the Confidential Information was destroyed.

56. The Parties agree that Class Counsel or anyone associated with Class Counsel's firms shall not use of any of the Confidential Information in any other litigation, whether pending or future, unless independently obtained through discovery or other procedures in that litigation. This material may not be used in any other actions. Further, Plaintiffs and their counsel agree not to use any discovery (including data) produced in the Action to solicit in any way potential new class representatives.

XVII. MISCELLANEOUS PROVISIONS

57. Each Party to this Agreement warrants that he, she, or it is fully authorized to enter into this Agreement, and is acting upon his, her, or its independent judgment and upon the advice of his, her, or its counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other party, other than the warranties and representations expressly made in this Agreement.

58. The headings and captions contained in this Agreement are for reference purposes only and in no way define, extend, limit, describe, or affect the scope, intent, meaning, or interpretation of this Agreement.

59. Unless otherwise noted, all references to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal or state legal holiday, such date or deadline shall be on the first business day thereafter.

60. Except as otherwise provided in a subsequent written amendment executed by the Parties and their counsel, this Agreement contains the entire agreement of the Parties hereto with respect to the Settlement and supersedes any prior agreements or understandings between them. The Parties further agree that this Agreement contains the entire understanding between the Parties with respect to the transaction contemplated herein, that there is no representation, agreement or

obligation regarding the Settlement which is not expressly set forth in this Agreement, and that no representation, inducement, promise, or agreement not expressly set forth in the text of this Agreement shall be of any force or effect. All terms of this Agreement shall be construed as if drafted by all Parties hereto. The terms of this Agreement are and shall be binding upon each of the Parties and their agents, attorneys, employees, successors, and assigns, and upon all other Persons claiming any interest in the subject matter hereof through any of the Parties hereto, including any Settlement Class Member.

61. This Agreement may be amended or modified only by a written instrument signed by all Parties.

62. This Agreement shall be subject to, governed by, construed, and enforced pursuant to the laws of the State of Nebraska, without regard to principles of conflicts of law.

63. The Exhibits to this Agreement are integral parts of the Settlement and are hereby incorporated and made parts of this Agreement.

64. To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to any action, suit, or other proceeding which may be instituted, prosecuted, or attempted in breach of this Agreement.

65. This Agreement shall be deemed to have been executed upon the last date of execution by all the undersigned Parties and/ or counsel.

66. Class Counsel agree that representations, encouragements, solicitations, or other assistance to any Person seeking exclusion from the Settlement Class or any other Person seeking to litigate with Released Persons over any of the Released Claims in this matter could place Class Counsel in a conflict of interest with the Settlement Class. Accordingly, Class Counsel and their respective firms agree not to represent, encourage, solicit, or assist any Person in requesting

exclusion from the Settlement Class. Nothing in this paragraph shall preclude or prevent Class Counsel from answering inquiries from any potential Settlement Class Member.

67. No Party or counsel (including counsel's law firms) is allowed to communicate with the press/media/reporters/journalists, etc. or on social media regarding the settlement other than to say no comment or make a statement agreed to by the Parties.

68. The Long-Form Notice shall list the address, telephone number, e-mail address, Website address, and other contact information of the Settlement Administrator and Class Counsel. Other than as provided in this Agreement, communications with Settlement Class Members relating to the Actions or this Settlement shall be handled through Class Counsel and the Settlement Administrator; provided, however, that nothing in this Agreement shall be construed to prevent the USAA Entities from communicating orally, electronically, or in writing with Settlement Class Members in the ordinary course of business.

69. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and all Parties and Settlement Class Members shall submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied herein.

70. This Settlement Agreement is deemed to have been prepared by counsel for all Parties, as a result of arms'-length negotiations among the Parties with the aid of a neutral mediator. Whereas all Parties have contributed substantially and materially to the preparation of this Settlement Agreement, it shall not be construed more strictly against one Party than another.

71. This Agreement may be signed in counterparts, each of which shall constitute a duplicate original, but all of which together shall constitute one and the same instrument.

72. The Parties hereto shall execute all documents and perform all acts necessary and proper to effectuate the terms of this Agreement.

73. The Parties reserve the right, subject to the Court's approval, to make any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement. Such extensions must be in writing to be enforceable.


By Plaintiffs:

DATED: December 15, 2022



Omar Jones

DATED: December 15, 2022



Shannon Whitehead

By Counsel for Plaintiffs:

DATED: December 16, 2022



Shane C. Mecham
LEVY CRAIG LAW FIRM

DATED: December Amy, 2022



Amy Judkins
NORMAND PLLC

By USAA Entities:

DATED: December __, 2022

David C. Nelson
Principal Attorney, Enterprise Litigation

By Counsel for USAA Entities:

DATED: December __, 2022

Jay Williams
ARENTFOX SCHIFF LLP

72. The Parties hereto shall execute all documents and perform all acts necessary and proper to effectuate the terms of this Agreement.

73. The Parties reserve the right, subject to the Court’s approval, to make any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement. Such extensions must be in writing to be enforceable.

By Plaintiffs:

DATED: December __, 2022

Omar Jones

DATED: December __, 2022

Shannon Whitehead

By Counsel for Plaintiffs:

DATED: December __, 2022

Shane C. Mecham
LEVY CRAIG LAW FIRM

DATED: December __, 2022

Amy Judkins
NORMAND PLLC

By USAA Entities:

DATED: 12/19/2022

DocuSigned by:
David R. Nelson
C0D763EF839143A...

David R. Nelson
Associate General Counsel, Principal, USAA

By Counsel for USAA Entities:

DATED: December __, 2022

Jay Williams
ARENTFOX SCHIFF LLP

72. The Parties hereto shall execute all documents and perform all acts necessary and proper to effectuate the terms of this Agreement.

73. The Parties reserve the right, subject to the Court's approval, to make any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement. Such extensions must be in writing to be enforceable.

By Plaintiffs:

DATED: December __, 2022

Omar Jones

DATED: December __, 2022

Shannon Whitehead

By Counsel for Plaintiffs:

DATED: December __, 2022

Shane C. Mecham
LEVY CRAIG LAW FIRM

DATED: December __, 2022

Amy Judkins
NORMAND PLLC

By USAA Entities:

DATED: December __, 2022

David R. Nelson
Associate General Counsel, Principal, USAA

By Counsel for USAA Entities:

DATED: December __, 2022



Jay Williams
ARENTFOX SCHIFF LLP

EXHIBIT 1

EXHIBIT 1 TO SETTLEMENT AGREEMENT

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

OMAR JONES and SHANNON
WHITEHEAD, individually and
on behalf of all others similarly situated,

CASE NO.: D01CI200009724

Plaintiffs,

v.

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

Defendants.

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

Plaintiffs Omar Jones and Shannon Whitehead (“Plaintiffs” or “Class Representatives”), individually and as representatives of the Settlement Class defined below, and Defendants United Services Automobile Association (“USAA”), USAA Casualty Insurance Company (“CIC”), USAA General Indemnity Company (“GIC”), and Garrison Property and Casualty Insurance Company (“Garrison”) (collectively, the “USAA Entities” or “Defendants”), have entered into a Class Action Settlement Agreement, including Exhibits 1-5 incorporated therein (the “Settlement Agreement”), to settle the above-captioned lawsuit (the “Action” or the “*Jones Action*”).¹ The Settlement Agreement sets forth the terms and conditions for a proposed Settlement and dismissal with prejudice of the Action.

¹ The Settlement Agreement is hereby incorporated by reference in this Order, and all terms and phrases used in this Order shall have the same meaning as in the Settlement Agreement.

EXHIBIT 1 TO SETTLEMENT AGREEMENT

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

BACKGROUND

1. Omar Jones filed this Action against GIC on November 23, 2020. On March 25, 2022, Plaintiff Whitehead filed a putative class action against Garrison in the District Court of Douglas County, Nebraska, Case No. D01CI220002154 (the “*Whitehead Action*”). As a material part of this Settlement, Whitehead dismissed the *Whitehead Action* on _____, and Jones moved for leave to file an Amended Complaint in this Action, which, among other things, added Whitehead as a Plaintiff and added USAA, CIC, and Garrison as Defendants. The intent of the Settlement is to resolve all individual and class claims in this Action and the *Whitehead Action*. As noted below, the Court grants Jones’ motion for leave to file the Amended Complaint. The Amended Complaint alleges that the USAA Entities failed to pay the full amount of Sales/Use Tax, Vehicle Regulatory Fees, and CRA Sales Tax to people who insured their vehicles under a Nebraska Automobile Insurance Policy issued by the USAA Entities, who submitted a claim for physical damage under their comprehensive or collision coverage, and whose vehicles were determined to be a total loss. The USAA Entities deny these allegations and maintain that they fully complied with their obligations under Nebraska law and their auto insurance policies.

EXHIBIT 1 TO SETTLEMENT AGREEMENT

2. The Parties vigorously litigated this Action for nearly two years, including engaging in substantial written discovery and depositions. In addition, Defendants produced to Class Counsel extensive data regarding the putative class members' claims. The parties also participated in a mediation with Michael Ungar. Furthermore, Class Counsel have litigated many similar class actions across the country and have detailed their expertise in representing plaintiffs and class members in these type of suits. Accordingly, Class Counsel are sufficiently informed of the nature of the Settlement Class Members' claims to be able to evaluate the benefits and risks of settlement and continued litigation, and to determine whether the proposed Settlement is fair, reasonable, and adequate to Settlement Class Members.

OVERVIEW OF PROPOSED SETTLEMENT

3. The USAA Entities' Maximum Monetary Obligation under this Settlement shall be limited to (a) paying Settlement Claim Payments to Qualifying Settlement Class Members, up to a maximum amount of three million one hundred twenty-five thousand dollars (\$3,125,000.00) (the "Settlement Fund"); (b) paying the reasonable costs of settlement administration and notice; (c) paying the Court-ordered Attorneys' Fees and Expenses Award, up to a maximum of \$850,000.00; and (d) paying any Court-ordered Service Awards, up to a maximum of \$5,000.00 to each Plaintiff. The USAA Entities shall not be responsible for any other payments under the Settlement. The Settlement does not require the USAA Entities to pay more than the Maximum Monetary Obligation, as further provided in Paragraphs 1 and 25 of the Settlement Agreement, and the Settlement does not provide for the payment of any "residue" other than the amounts of the checks to Qualifying Settlement Class Members that are uncashed after the Stale Date, as further provided in the Settlement Agreement and Paragraph 5 below. No liability with respect to the Agreement shall attain in favor of Plaintiffs, the Settlement Class, or Class Counsel as against

EXHIBIT 1 TO SETTLEMENT AGREEMENT

any officer, director, member, agent, or employee of the USAA Entities, but rather, Plaintiffs, the Settlement Class, and Class Counsel shall look solely to the assets of the USAA Entities for satisfaction of the Agreement.

4. Settlement Claim Payments to Qualifying Settlement Class Members shall be calculated as follows:

a. Sales Tax: Each Qualifying Settlement Class Member shall be paid the Sales Tax on the value of his or her total loss vehicle, in the amount identified in the USAA Entities' data column "SLE_TAX_USD_AMT," to the extent not already paid by the USAA Entities.

b. CRA Sales Tax: Each Qualifying Settlement Class Member who possessed CRA coverage at the time of the total loss claim shall be paid an additional 20% of the amount identified in the USAA Entities' data column "SLE_TAX_USD_AMT," to the extent not already paid by the USAA Entities.

c. Vehicle Regulatory Fees: Each Qualifying Settlement Class Member shall be paid the Vehicle Regulatory Fees, to the extent not already paid by the USAA Entities.

5. This is a claims-made settlement. Qualifying Settlement Class Members must submit a valid Claim Form to receive payment. The funds from any checks for Settlement Claim Payments that are not cashed by the time of the Stale Date (180 days after issuance) may be distributed by this Court to the Legal Aid and Services Fund pursuant to Neb. Rev. Stat. § 25-319.01. The Settlement does not provide for any other residual or *cy pres* distribution.

6. The Settlement Release is tailored to encompass the claims at issue in this Action and the *Whitehead* Action.

7. Individual Mailed Notices, based on the form and content recommended by the

EXHIBIT 1 TO SETTLEMENT AGREEMENT

Federal Judicial Center, will be sent to all Settlement Class Members. All Settlement Class Members have 60 days after the Long-Form Mailed Notice (Exhibit 2 to the Settlement Agreement) is mailed (the “Mailed Notice Date”) in which to exclude themselves from or object to the Settlement. Within 30 days after the Mailed Notice Date, a “Short-Form Mailed Notice” (Exhibit 3 to the Settlement Agreement) will be sent to those same Settlement Class Members reminding them of the upcoming deadlines. Furthermore, Class Counsel will file their petition for an award of attorneys’ fees and costs and related papers no later than thirty (30) days after the Mailed Notice Date to allow sufficient time for Settlement Class Members to evaluate their request.

8. The Settlement also provides for the creation of a content-neutral Settlement Website, maintained by the Settlement Administrator, with all relevant materials and information. In addition, the Settlement Administrator will set up an IVR/VRU telephone system containing recorded answers to frequently asked questions, along with an option permitting Settlement Class Members to speak to live operators during regular business hours or leave messages in a voicemail box.

FINDINGS AND CONCLUSIONS

9. This Court has personal jurisdiction over all Settlement Class Members and subject matter jurisdiction to approve the Settlement Agreement.

10. The Court preliminarily approves the Settlement Agreement and finds that the proposed Settlement, including but not limited to the Settlement Fund, the calculation of Settlement Claim Payments, the distribution of payments to Qualifying Settlement Class Members, the Mailed Notices, the Settlement Website, the requirements for exclusions and objections, the Release, the Attorneys’ Fees and Expenses Award, and the Service Awards, is

EXHIBIT 1 TO SETTLEMENT AGREEMENT

sufficiently fair, reasonable, and adequate to warrant preliminary approval.

11. The Court therefore finds that notice is justified because the Parties have shown that the Court likely will be able to approve the Settlement.

12. The Court has considered (1) the merits of Plaintiffs' case weighed against the terms of the settlement; (2) Defendants' financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the settlement. *See In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 932 (8th Cir. 2005). Moreover, the Court has considered the procedural fairness to ensure the Settlement is "not the product of fraud or collusion." *Id.* at 934.

13. First, the Settlement was the product of nearly two years of litigation. Furthermore, Class Counsel believe, based on their familiarity with the extensive production of documents and data spreadsheets relevant to this Action, the significant discovery, and their institutional knowledge and experience related to total loss class action claims and the strengths and weaknesses thereof, that the settlement is fair, reasonable, and adequate. *See DeBoer v. Mellon Mortgage Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995) (the opinion of experienced counsel is relevant to the fairness of a proposed settlement).

14. Second, the Settlement falls well within the range of possible approval. Settlement Class Members who submit valid Claim Forms are entitled to the full amount of damages sought in this Action, which is particularly notable given the Parties' dispute over whether actual cash value includes sales tax without precondition, and given the likely costs of continuing litigation in this Action.

15. Third, the Court finds that there are no obvious deficiencies in the Settlement. Among other things, the Settlement provides for robust individual notice and ample opportunity

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for Settlement Class Members to exclude themselves from or object to any element of the Settlement, and the Release is narrowly tailored to the Settlement Class Members' claims.

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

IT IS HEREBY ORDERED:

17. The Court preliminarily certifies, for settlement purposes only, the following Settlement Class:

All individuals and entities insured by the USAA Entities under a Nebraska automobile insurance policy whose insurance covered or covers an owned or leased vehicle under private-passenger physical damage coverage, including collision and physical damage other than collision coverage, and who made a first-party claim during the Applicable Class Period, whose vehicle was determined by the USAA Entities to be a total loss, and who received a total loss payment from the USAA Entities for the value of the totaled vehicle, but who did not receive (1) Sales Tax; and/or (2) CRA Sales Tax for those who possessed CRA Coverage on the date their vehicle was declared a total loss; and/or (3) applicable Vehicle Regulatory Fees.

Excluded from the Settlement Class are: (i) all officers, employees, and agents of the USAA Entities, Class Counsel, and their immediate family members, and (ii) any members of the judiciary assigned to the Action and their immediate families.

“Applicable Class Period” means (1) for GIC insureds, November 23, 2015 through the date of preliminary approval, and (2) for USAA, CIC, and Garrison insureds, March 25, 2017 through the date of preliminary approval.

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

19. Should this Settlement not become Final, the Parties will be returned to the *status quo ante* as of June 22, 2022, as provided below and in Paragraphs 7, 51, and elsewhere in the Settlement Agreement.

20. In accordance with the Settlement, Plaintiff Jones has moved for leave to file an

EXHIBIT 1 TO SETTLEMENT AGREEMENT

Amended Complaint. The Court grants the motion. The USAA Entities are not obligated to answer or otherwise respond to the Amended Complaint. If the Settlement does not become Final, the Amended Complaint shall be withdrawn as further set forth in Paragraph 5 of the Settlement Agreement; the original *Jones* Complaint shall become the operative complaint; and the Parties shall be returned to the *status quo ante* as of June 22, 2022. The Amended Complaint shall not be offered, received, or construed as an admission or as evidence by any Person for any purpose (in this Action or any other proceeding), including but not limited to an admission by the USAA Entities of liability or the truth of the allegations of the Amended Complaint or of the certifiability of a litigation class. Furthermore, the USAA Entities shall retain the right to assert any and all defenses and claims in this Action and the *Whitehead* Action (including all defenses to the certifiability of a litigation class), and Plaintiffs and Class Counsel shall not argue that the USAA Entities are barred from asserting those defenses or claims due to waiver, estoppel, or similar arguments.

21. The Court appoints Omar Jones and Shannon Whitehead as Class Representatives. The Court finds that Jones and Whitehead will fairly and adequately represent the interests of the Settlement Class.

22. The Court appoints the following as Class Counsel:

LEVY CRAIG LAW FIRM
Shane C. Mecham NE #26529
smecham@levycraig.com
4520 Main Street, Suite 1600
Kansas City, Missouri 64111
(816) 474-8181

Amy L. Judkins
Florida Bar No.: 125046
NORMAND PLLC
3165 McCrory Place, Ste. 175
Orlando, FL 32803

EXHIBIT 1 TO SETTLEMENT AGREEMENT

Tel: 407-603-6031
amy.judkins@normandpllc.com

The Court finds that Class Counsel will fairly and adequately represent the interests of the Settlement Class. Class Counsel have demonstrated extensive knowledge of the facts and legal issues in this case, and have served as Class Counsel in many other similar class action suits across the country.

23. The Court finds, for purposes of preliminary approval and for settlement purposes only, that Neb. Rev. Stat. § 25-619 has been satisfied, in that (a) Members of the Settlement Class are so numerous as to make joinder of all Settlement Class Members impracticable; (b) there are questions of law or fact common to Members of the Settlement Class that predominate over individual questions; and (c) Plaintiffs and Class Counsel have represented and will adequately represent the interests of absent Settlement Class Members, and there are no conflicts between Plaintiffs and Settlement Class Members or among Settlement Class Members.

24. The Court appoints JND Legal Administration as the Settlement Administrator, which shall administer the Settlement in accordance with the terms and conditions of this Order and the Settlement Agreement.

25. The USAA Entities shall use their best efforts to send to the Settlement Administrator the amount necessary to pay the full amount of the Settlement Claim Payments to Qualifying Settlement Class Members within ninety (90) days after the Effective Date. The Settlement Administrator shall use its best efforts to mail checks to Qualifying Settlement Class Members within one hundred five (105) days after the Effective Date.

26. The Court has reviewed and approves the form and content of the Long-Form Mailed Notice and Short-Form Mailed Notice, which shall be without material alteration from Exhibits 2 and 3, respectively, to the Settlement Agreement.

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

28. The Court has reviewed and approves the Claim Form, which shall be without material alteration from Exhibit 4 to the Settlement Agreement, and finds that the Claim Forms, the requirements for submitting valid claims, and the calculation of Settlement Claim Payments are fair and reasonable.

29. As soon as practicable after entry of this Preliminary Approval Order, the USAA Entities shall make a reasonable search of their computer/electronic databases to ascertain the name and last-known address of each potential Settlement Class Member. Within forty-five (45) days after entry of this Order, the USAA Entities shall provide the Settlement Administrator and Class Counsel with a list of the names and addresses of the potential Settlement Class Members, as well as the Class Data described in Paragraph 8 of the Settlement Agreement. Before mailing the Mailed Notices, the Settlement Administrator shall follow the procedures for updating the addresses as set out in Paragraph 12 of the Settlement Agreement. The Settlement Administrator may also perform such further reasonable search for a more-current name and/or address for the potential Settlement Class Member, as set out in Paragraph 12 of the Settlement Agreement.

30. The Settlement Administrator shall send a copy of the Long-Form Mailed Notice by first-class mail to each potential Settlement Class Member identified as a result of the above-mentioned search(es). If any Long-Form Mailed Notice mailed to any potential Settlement Class Member is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall follow the procedures in Paragraph 12(f) of the Settlement Agreement. In the event that any

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Long-Form Mailed Notice is returned as undeliverable a second time, no further mailing shall be required. The Short-Form Mailed Notice will be sent via a postcard notice, pre-paid postage (as set out in Exhibit 3 to the Settlement Agreement), by direct mail to those on the Mailed Notice List within 30 days after the Mailed Notice Date. The USAA Entities shall not be obligated to make re-mailings of the Short-Form Mailed Notice.

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

32. The Court directs the Settlement Administrator to establish the Website as described in Paragraph 12(g) of the Settlement Agreement. The Website shall include, at a minimum, copies of the Settlement Agreement, the Mailed Notices, the preliminary approval motion and related papers, and this Order; shall identify important deadlines and provide answers to frequently asked questions; and may be amended as appropriate during the course of the Settlement administration. Class Counsel’s fee petition and related papers shall be promptly posted on the Website after they are filed. The Website shall be maintained for at least one hundred eighty (180) days after the Effective Date.

33. The Court finds that the notice to be provided to Settlement Class Members (i) is the best practicable notice under the circumstances; (ii) is reasonably calculated under the circumstances to apprise Settlement Class Members of the pendency of the Action and of their

EXHIBIT 1 TO SETTLEMENT AGREEMENT

right to object to or exclude themselves from the proposed Settlement; (iii) is reasonable and constitutes due, adequate, and sufficient notice to all Persons entitled to receive notice; and (iv) meets all applicable requirements of Nebraska Rules of Civil Procedure, due process, Neb. Rev. Stat. § 25-319, Nebraska law, and any other applicable rules or laws.

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

35. The Court approves the procedures set forth in the Settlement Agreement and the Mailed Notices for exclusions from and objections to the Settlement.

36. Any Settlement Class Members who wish to exclude themselves from the Settlement Class must comply with the terms set forth in the Settlement Agreement and the Mailed Notices. To be considered timely, a request for exclusion must be mailed to the Settlement Administrator postmarked no later than _____ (60 days after the Mailed Notice Date). Requests for exclusion must be exercised individually by a Settlement Class Member, not as or on behalf of a group, class, or subclass, except that exclusion requests may be submitted on behalf of an individual Settlement Class Member by that Settlement Class Member's Legally Authorized Representative.

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

EXHIBIT 1 TO SETTLEMENT AGREEMENT

the accuracy of the Opt-Out List.

38. 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 the Settlement Class Member has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Released Claims, and even if such Settlement Class Member never received actual notice of the Action or the proposed Settlement.

39. 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 the Settlement Agreement or any term or aspect of the proposed Settlement, or to intervene in the Action, must provide to the Settlement Administrator (who shall forward it to Class Counsel and counsel for the USAA Entities) and file with the Court no later than _____ (60 days after the Mailed Notice Date) a statement of the objection or motion to intervene, as well as the specific legal and factual reasons for each objection or motion to intervene, including any support the Settlement Class Member wishes to bring to the Court's attention and all evidence the Settlement Class Member wishes to introduce in support of his or her objection or motion, or be forever barred from objection or motion to intervene. The objection shall comply with Paragraphs 34-39 of the Settlement Agreement and the Long-Form Mailed Notice and contain at least the following: (1) a heading that refers to the Action by case name and case number; (2) a statement of the specific legal and factual basis for each objection or intervention argument; (3) a statement whether the objecting or intervening Settlement Class Member intends to appear at the Final Approval Hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, bar number, address, and telephone number; (4) a description of any and all evidence the objecting Settlement

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Class Member may offer at the Final Approval Hearing, including but not limited to the names, addresses, and expected testimony of any witnesses; all exhibits intended to be introduced at the Final Approval Hearing; and documentary proof of the objecting Settlement Class Member's membership in the Settlement Class; and (5) a list of other cases in which the objector or intervenor or counsel for the objector or intervenor has appeared either as an objector or counsel for an objector in the last five years. Furthermore, any motion to intervene must comply with the Nebraska Rules of Civil Procedure and the Local Rules of the Court. All objectors shall make themselves available to be deposed by any Party in the county of the objector's residence within seven (7) days of service of his or her timely written objection.

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

41. All objections to the proposed Settlement shall be signed by the Settlement Class Member (or his or her Legally Authorized Representative), even if the Settlement Class Member is represented by counsel. The right to object to the proposed Settlement or to intervene must be exercised individually by a Settlement Class Member and his or her, and not as a member of a group, class, or subclass, except that such objections and motions to intervene may be submitted by a Settlement Class Member's Legally Authorized Representative.

42. Class Counsel shall file their petition for an award of attorneys' fees and costs and

EXHIBIT 1 TO SETTLEMENT AGREEMENT

related papers no later than thirty (30) days after the Mailed Notice Date.

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

44. The Court directs the Settlement Administrator to rent a post office box to be used for receiving objections, notices of intention to appear, and any other settlement-related communications. Only the Settlement Administrator, Class Counsel, the USAA Entities, the USAA Entities' counsel, the Court, the Clerk of the Court, and their designated agents shall have access to this post office box, except as otherwise expressly provided in the Settlement Agreement. The Settlement Administrator shall promptly (within one business day of receipt) furnish Class Counsel and Counsel for the USAA Entities copies of any and all objections, motions to intervene, notices of intention to appear, and other communications that come into its possession (except as otherwise expressly provided in the Settlement Agreement).

45. The Court orders that the preliminary certification of the Settlement Class and the preliminary approval of the proposed Settlement, and all actions associated with them, are

EXHIBIT 1 TO SETTLEMENT AGREEMENT

undertaken on the condition that the certification and designations shall be automatically vacated if the Settlement Agreement is terminated or is disapproved in whole or in part by the Court, any appellate court, or any other court of review, or if the Settlement Agreement is revoked pursuant to Paragraphs 49-51 of the Settlement Agreement, or if the Settlement does not become Final in any way. If the Settlement does not become Final, the Parties shall be returned to the *status quo ante* as of June 22, 2022, as provided in the Settlement Agreement.

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

47. The Court stays all proceedings in the Action until further order of 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 Settlement Agreement.

48. The Fairness Hearing shall be held at _____.m. on _____, _____, 2023, for the purposes of determining (a) whether the Settlement is fair, reasonable, and adequate and should be finally approved by the Court; (b) the merit of any objections to the Settlement; (c) the requested Attorneys' Fees and Expenses Award to Class Counsel; (d) the requested Service Awards to Plaintiffs; and (e) entry of the Final Approval Order and Judgment approving the Settlement.

49. The Court may, for good cause, extend any deadlines set forth in this Order without

EXHIBIT 1 TO SETTLEMENT AGREEMENT

further notice to the Settlement Class.

Dated: _____
District Court Judge

EXHIBIT 2

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

If You Insured a Vehicle Under a USAA Nebraska Auto Insurance Policy and Did Not Receive Payment for Sales Tax, Vehicle Regulatory Fees, or CRA Sales Tax After the Vehicle Was Totaled, you may be eligible for a payment under a class action settlement.

A court authorized this Notice. This is not a solicitation from a lawyer. You are not being sued.

If you are a Class Member, your legal rights are affected whether you act or don't act.

PLEASE READ THIS NOTICE CAREFULLY

- This Notice provides information about a proposed Settlement of a class action lawsuit regarding the payment of Nebraska Sales/Use Tax, Vehicle Regulatory Fees, and CRA (“Car Replacement Assistance”) Sales Tax for leased or owned vehicles that were totaled and were insured under a Nebraska Automobile Insurance Policy issued by a USAA company. The lawsuit generally alleges that the USAA companies failed to pay the full amount of Sales/Use Tax, Vehicle Regulatory Fees, or CRA Sales Tax on leased or owned vehicles.
- The USAA companies deny any wrongdoing and maintain that they have complied with and exceeded their obligations under Nebraska law and their insurance policies. The Court has not ruled on the merits of the claims.
- Under the Settlement, the USAA companies will pay up to \$3.125 million to pay Qualifying Settlement Class Members their Claims Payments. The USAA companies will separately pay attorneys’ fees and expenses not to exceed \$850,000, and Service Awards not to exceed \$5,000 to each of the Class Representatives, which must be approved by the Court, and will not come from or reduce any payment made to Settlement Class Members.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM	The only way to get a payment. A Claim Form is enclosed with this Notice.
EXCLUDE YOURSELF	Get no payment. This is the only option that allows you to ever be a part of any other lawsuit against the USAA companies about the legal claims in this case.
OBJECT	Write to the Court about why you don't like the Settlement.
GO TO A HEARING	Ask to speak in Court about the fairness of the Settlement.
DO NOTHING	Get no payment. Give up rights.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve this Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

QUESTIONS? CALL 1-877-415-0640 TOLL-FREE, OR VISIT www.JonesTotalLossSettlement.com.
 PARA UNA NOTIFICACIÓN EN ESPAÑOL, LLAMAR 1-877-415-0640,
 O VISITAR www.JonesTotalLossSettlement.com.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

- 1. Why did I get this Notice?
- 2. Who are the Parties?
- 3. What is this lawsuit about?
- 4. Why is this a class action? What is a class action?
- 5. Why is there a Settlement?

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- 6. How do I know if I am part of the Settlement? What is the Class definition?
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- 8. What does the proposed Settlement provide?
- 9. How much will my payment be?

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- 10. How can I get a payment?
- 11. What is a “Legally Authorized Representative”? What does a Legally Authorized Representative need to do to file a Claim for a Class Member?
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EXCLUDING YOURSELF (“OPTING OUT”) FROM THE SETTLEMENT

- 14. How do I get out of the Settlement?
- 15. If I don't exclude myself, can I sue the USAA companies for the same thing later?
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- 17. Do I have a lawyer in this case?
- 18. How will the lawyers be paid? What is the Class Representatives' Service Awards?

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THE COURT'S FINAL APPROVAL HEARING

- 21. When and where will the Court decide whether to approve the Settlement?
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IF YOU DO NOTHING

- 24. What happens if I do nothing at all?

GETTING MORE INFORMATION.....

- 25. How do I get more information about the Settlement?

QUESTIONS? CALL 1-877-415-0640 TOLL-FREE, OR VISIT www.JonesTotalLossSettlement.com.
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BASIC INFORMATION

1. Why did I get this Notice?

The Court authorized sending you this Notice because you may be a Class Member. You have a right to know about a proposed Settlement of a class action, and about all of your options, before the Court decides whether to give “final approval” to the Settlement. If the Court approves the Parties’ Class Action Settlement Agreement, and after any objections and appeals are resolved, an administrator appointed by the Court will make the payments that the Settlement allows.

This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available under the Settlement, who is eligible for them, and how to get them.

The Court in charge of the case is the District Court of Douglas County Nebraska, Judge Leigh Ann Retelsdorf presiding. More information on the lawsuit is in Question 3 below.

2. Who are the Parties?

The people who sued are called the “Plaintiffs,” and the companies they sued are called “Defendants.” The Plaintiffs in this case are Omar Jones and Shannon Whitehead. The Defendants are United Services Automobile Association (“USAA”), USAA Casualty Insurance Company (“USAA CIC”), USAA General Indemnity Company (“USAA GIC”), and Garrison Property and Casualty Insurance Company (“Garrison”). These USAA companies are also sometimes called “Defendants” or the “USAA Entities.”

3. What is this lawsuit about?

This case is *Jones, et al. v. USAA General Indemnity Company, et al.*, Case No. D01CI200009724 (Dist. Ct. Douglas Cty.).

The lawsuit alleges that the USAA companies failed to pay the full amount of Sales/Use Tax, Vehicle Regulatory Fees, and CRA Sales Tax to people who insured their vehicles under a Nebraska Automobile Insurance Policy, who submitted a claim for physical damage under their comprehensive or collision coverage, and whose vehicle was determined to be a total loss, during the Applicable Class Period. (See Question 6 below for more information on the Class definition.)

The USAA companies deny that they did anything wrong and maintain that they have complied with and exceeded their obligations under Nebraska law and their insurance policies. The Parties, however, have agreed to settle the lawsuit to avoid the cost, delay, and uncertainty of continued litigation.

4. Why is this a class action? What is a class action?

In a class action lawsuit, one or more people, called “Class Representatives,” sue on behalf of people who have similar claims. All these people together are a “Class” or “Class Members.” One court resolves the issues for all Class Members, except for those who choose to exclude themselves from the Class.

5. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or Defendants. Instead, both sides agreed to a settlement to avoid the cost, delay, and uncertainty of further litigation, and the people affected will get compensation. The USAA companies have denied all liability in the lawsuit. The Class Representatives and Class Counsel think that the Settlement is in the best interests of Class Members.

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WHO IS IN THE SETTLEMENT

To see if you are affected by the proposed Settlement, you first have to determine if you are a Class Member.

6. How do I know if I am part of the Settlement? What is the Class definition?

The Settlement Class is defined as follows:

All individuals and entities insured by the USAA Entities under a Nebraska automobile insurance policy whose insurance covered or covers an owned or leased vehicle under private-passenger physical damage coverage, including collision and physical damage other than collision coverage, and who made a first-party claim during the Applicable Class Period, whose vehicle was determined by the USAA Entities to be a total loss, and who received a total loss payment from the USAA Entities for the value of the totaled vehicle, but who did not receive (1) Sales Tax; and/or (2) CRA Sales Tax for those who possessed CRA Coverage on the date their vehicle was declared a total loss; and/or (3) applicable Vehicle Regulatory Fees.

Excluded from the Settlement Class are: (i) all officers, employees, and agents of the USAA Entities, Class Counsel, and their immediate family members, and (ii) any members of the judiciary assigned to the Action and their immediate families.

“Sales Tax” means any mandatory sales or use tax collected or assessed by the State of Nebraska and any of its counties, cities, or political subdivisions when a vehicle is purchased, leased, sold, titled, or registered.

“Vehicle Regulatory Fees” means the mandatory fees collected or assessed by the State of Nebraska and any of its counties, cities, or political subdivisions when a vehicle is purchased, leased, sold, titled, or registered.

“CRA” means “Car Replacement Assistance.” CRA coverage is an optional coverage available for an additional premium that pays an additional 20% of a car’s actual cash value in the event of a total loss. You may or may not have CRA coverage on your car. You do not need to have CRA coverage to be a Member of the Settlement Class.

“CRA Sales Tax” means an additional 20% of the mandatory Sales Tax collected or assessed when a vehicle is purchased, leased, or sold for Settlement Class Members who possessed CRA Coverage at the time of a covered total loss claim.

The “Applicable Class Period” is as follows: (1) for GIC insureds, November 23, 2015 through _____ [the date of preliminary approval], and (2) for USAA, CIC, and Garrison insureds, March 25, 2017 through _____ [the date of preliminary approval].

7. I’m still not sure if I am included.

If you are still not sure whether you are included, you can get free help. You can call the Settlement Administrator toll-free at 1-877-415-0640; send an e-mail to info@JonesTotalLossSettlement.com; or visit the website, www.JonesTotalLossSettlement.com for more information. You may also contact any of the Class Counsel listed in Question 17 below. You are not required to pay anyone to assist you in obtaining information about or a payment from the Settlement.

THE SETTLEMENT BENEFITS—WHAT YOU GET

8. What does the proposed Settlement provide?

USAA will pay up to \$3.125 million (\$3,125,000) in claim payments to Qualifying Settlement Class Members. A Qualifying Settlement Class Member means a Settlement Class Member who has not submitted an exclusion request and who is otherwise eligible to receive a Settlement Claim Payment.

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O VISITAR www.JonesTotalLossSettlement.com.

EXHIBIT 2 TO SETTLEMENT AGREEMENT

If the Settlement becomes final, the lawsuit will be dismissed with prejudice, and the USAA companies will receive a complete release and discharge of the claims asserted in the lawsuit. (See Question 13 below for more details.)

9. How much will my payment be?

At this time, we don't know what your individual payment will be. Settlement Claim Payments to Qualifying Settlement Class Members shall be calculated as follows:

- i. **Sales Tax:** Each Qualifying Settlement Class Member shall be paid the Sales Tax on the value of his or her total loss vehicle as found in the USAA Entities' records, to the extent not already paid by the USAA Entities.
- ii. **CRA Sales Tax:** Each Qualifying Settlement Class Member who possessed CRA coverage at the time of the total loss claim shall be paid an additional 20% of the Sales Tax amount as found in the USAA Entities' records, to the extent not already paid by the USAA Entities.
- iii. **Vehicle Regulatory Fees:** Each Qualifying Settlement Class Member shall be paid the Vehicle Regulatory Fees, to the extent not already paid by the USAA Entities.

HOW YOU GET A PAYMENT

10. How can I get a payment?

To be eligible for payment, (1) you must fit the Class definition in Question 6 above, (2) you must not have filed an exclusion request, and (3) you must submit a timely and valid Claim Form. A Claim Form is enclosed with this Notice.

Read the instructions on the Claim Form carefully, fill out the Claim Form, and sign it. For your Claim Form to be timely, you must mail it to the Settlement Administrator at the address below so that it is **postmarked by** _____:

Jones Total Loss Settlement
c/o JND Legal Administration
P.O. Box 91209
Seattle, WA 98111

Do not send your Claim Form to the Court, the Judge, or the USAA companies.

Note that only a Class Member or his or her "Legally Authorized Representative" can submit a claim. See Question 11 below for an explanation of that term.

11. What is a "Legally Authorized Representative"? What does a Legally Authorized Representative need to do to file a Claim for a Class Member?

A Legally Authorized Representative means an administrator/administratrix, personal representative, or executor/executrix of a deceased Class Member's estate; a guardian, conservator, or next friend of an incapacitated Class Member; or any other legally appointed person or entity responsible for handling the business affairs of a Class Member. A Legally Authorized Representative of a Class Member can, for example, submit a Claim Form (Question 10 above), an exclusion request (see Question 14 below), or an objection (see Question 19 below) on behalf of the Class Member.

If you believe that you are a Legally Authorized Representative of a Class Member, and you wish to submit a Claim Form on behalf of that Class Member, you should fill out and sign the enclosed Claim Form per the instructions on the Claim Form and also provide additional information and documentation, including whether you are (1) the personal representative of a deceased Class Member. (2) the guardian, conservator, or attorney in fact of an incapacitated Class

QUESTIONS? CALL 1-877-415-0640 TOLL-FREE, OR VISIT www.JonesTotalLossSettlement.com.

PARA UNA NOTIFICACIÓN EN ESPAÑOL, LLAMAR 1-877-415-0640,
O VISITAR www.JonesTotalLossSettlement.com.

EXHIBIT 2 TO SETTLEMENT AGREEMENT

Member, or (3) the legally appointed representative of the Class Member (for example, through a power of attorney). You will also need to provide documentation establishing that you are the Class Member's Legally Authorized Representative (for example, estate documents, powers of attorney, death certificates, etc.). Please contact the Settlement Administrator if you need help.

12. When will I get my payment?

The exact date that Qualifying Settlement Class Members will receive payment is not known at this time. Payments will be made after the Court grants "final approval" of the Settlement and any appeals are resolved.

The Court will hold a hearing on _____ at _____ .m. **Central time** to decide whether to approve the Settlement. If the Court approves the Settlement (see the section "The Court's Final Approval Hearing," below), there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them can take time. Please be patient. Please check the Settlement website, www.JonesTotalLossSettlement.com, for updates and other important information about the Settlement, or call 1-877-415-0640 toll-free or send an e-mail to info@JonesTotalLossSettlement.com to learn the status of the Settlement.

13. What am I giving up to get a payment or stay in the Class?

Unless you exclude yourself from the Settlement, you are staying in the Class, and that means that you can't sue or be part of any other lawsuit against the USAA companies about the legal issues in this case. It also means that all of the Court's orders will apply to you and legally bind you.

If you stay in the Class, you will agree to "release and discharge" the USAA companies and the "Released Persons" from all "Released Claims," as described in Paragraphs 42-47 of the Settlement Agreement. You can get a copy of the Settlement Agreement on the Settlement website or by contacting the Settlement Administrator.

The Settlement Agreement specifically describes the Released Claims in legal terminology. Talk to Class Counsel (see the section on "The Lawyers Representing You") or your own lawyer if you have questions about the Released Claims or what they mean.

EXCLUDING YOURSELF ("OPTING OUT") FROM THE SETTLEMENT

If you don't want a payment from the Settlement, and instead you want to keep the right to sue the USAA companies on your own about the legal issues in the case, then you must take steps to get out of the Settlement. This is called excluding yourself—or is sometimes referred to as "opting out" of the Class.

14. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must mail a letter to the Settlement Administrator with a clear statement that you want to be excluded from the *Jones v. USAA Settlement*.

Be sure to include your name, address, and signature. If you are sending the request to be excluded as the "Legally Authorized Representative" of a Class Member (see Question 11 above for the definition of that term), you must include any information or documents that confirm your appointment or status as a Legally Authorized Representative. Requests for exclusion must be submitted individually by a Class Member or his or her Legally Authorized Representative, and not on behalf of a group or class of persons. If you have a personal lawyer, your lawyer may assist you with your exclusion request, but you must sign the exclusion request, unless the lawyer is also your Legally Authorized Representative.

You must mail your exclusion request **postmarked no later than** _____ to the following:

Jones Total Loss Settlement
c/o JND Legal Administration
P.O. Box 91209

QUESTIONS? CALL 1-877-415-0640 TOLL-FREE, OR VISIT www.JonesTotalLossSettlement.com.

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EXHIBIT 2 TO SETTLEMENT AGREEMENT

Seattle, WA 98111

You can't exclude yourself on the phone, by e-mail, or on the website. If you ask to be excluded, you will not get any money from the Settlement, and you cannot object to the Settlement or intervene in the case. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) the USAA companies. If you have a pending lawsuit against the USAA companies involving the same legal issues in the Settlement, speak to your lawyer in that case immediately.

15. If I don't exclude myself, can I sue the USAA companies for the same thing later?

No. Unless you exclude yourself from the Settlement, you give up any right to sue the USAA companies for the claims that are resolved by Settlement. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately.

Remember, the exclusion deadline is _____.

16. If I exclude myself, can I get a payment from the Settlement?

No. If you exclude yourself, do not send in a Claim Form to ask for money. You will not be able to get any money from the Settlement, and you cannot object to the Settlement. You will not be legally bound by anything that happens in the Settlement.

THE LAWYERS REPRESENTING YOU

17. Do I have a lawyer in this case?

Yes. The Court has appointed the following law firms and attorneys to represent you and other Class Members in the Settlement:

LEVY CRAIG LAW FIRM

Shane C. Mecham NE #26529
smecham@levycraig.com
4520 Main Street, Suite 1600
Kansas City, Missouri 64111
(816) 474-8181

Amy L. Judkins
Florida Bar No.: 125046

NORMAND PLLC
3165 McCrory Place, Ste. 175
Orlando, FL 32803
Tel: 407-603-6031
amy.judkins@normandpllc.com

These lawyers are called Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

18. How will the lawyers be paid? What is the Class Representative's Service Award?

Class Counsel will ask the Court to approve a payment of up to \$850,000 for attorneys' fees and costs. If the Court approves those payments, they will be paid separately and apart from the Settlement Fund. Class Counsel will also ask for a payment of up to \$5,000 each to Omar Jones and Shannon Whitehead for their services as Class Representatives (the "Class Representatives Service Awards"), to be paid separately and apart from the Settlement Fund. The Court may award less than these amounts. The costs of settlement administration will also be paid by the Defendants separately from the Settlement Fund.

QUESTIONS? CALL 1-877-415-0640 TOLL-FREE, OR VISIT www.JonesTotalLossSettlement.com.

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O VISITAR www.JonesTotalLossSettlement.com.

OBJECTING TO THE SETTLEMENT

If you are a Class Member and do not exclude yourself, you can tell the Court that you don't agree with the Settlement or some part of it. You can't ask the Court for a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no settlement payments will be sent out, and the lawsuit will continue. If that is what you want to happen, you must object.

19. How do I tell the Court that I don't like the Settlement?

If you're a Class Member (or a Class Member's Legally Authorized Representative), you can object to the Settlement if you don't like it, or you may try to intervene in the case. However, you cannot object if you have excluded yourself from the Settlement. In other words, you must stay in the case as a Class Member in order to object to or intervene in the Settlement.

You can object if you don't like any part of the proposed Settlement, including but not limited to the payments to Class Members, the request for the Attorneys' Fees and Expenses Award, the request for Service Awards to the Class Representatives, or any other part of the Settlement. You can give reasons why you think the Court should not approve any or all of these items. The Court will consider your views if you comply with the requirements for objecting.

To object, you must (a) **mail** your objection to the Settlement Administrator **and** (b) **file** it with the Court. To be timely, your objection must be mailed to the Settlement Administrator so that it is **postmarked** by _____, and must be **filed** with the Court by no later than _____, at the following addresses:

Address of Settlement Administrator:

Jones Total Loss Settlement
c/o JND Legal Administration
P.O. Box 91209
Seattle, WA 98111

Address of Court:

Jones v. USAA Class Action Settlement
District Court of Douglas County, Nebraska
1701 Farnam St F2
Omaha, NE 68183

Note: You may mail your objection to the Court, but it must be **received** by the Court **and filed** by _____. See www.JonesTotalLossSettlement.com for more information on how to object to or intervene in the Settlement.

Your objection should (a) contain a heading which includes the name of the case and case number *Jones v. USAA General Indemnity Company, et al.*, Case No. D01CI200009724 (Dist. Ct. Douglas Cty.); (b) provide your full name, address, telephone number, and signature; (c) indicate the specific reasons why you object to the Settlement; (d) contain the name, address, bar number, and telephone number of your counsel, if you're represented by an attorney; if you are represented by an attorney, he or she must comply with all applicable laws and rules for filing documents; (e) provide a list of other cases in which you or your counsel has appeared either as an objector or counsel for an objector in the last five years; and (f) state whether you intend to appear at the Final Approval Hearing, either in person or through counsel. All objections must be signed by the objecting Class Member (or his or her Legally Authorized Representative), even if the Class Member is represented by counsel.

If you intend to appear at the Final Approval Hearing (also known as the Fairness Hearing) to object to the Settlement, you must also provide with your written objection a detailed statement of the specific legal and factual basis for each objection, a list of any witnesses you will call at the Hearing with each witness' address and summary of the witness' testimony, a description of all evidence you will offer at the Hearing with copies of the exhibits attached, and documentary proof of your membership in the Class. You or your lawyer may appear at the Final Approval Hearing if you have filed a written objection as provided above. (See the section on the "Court's Final Approval Hearing" below.) If you have a lawyer file an objection for you, he or she must follow all rules, and you must list the attorney's name, address, bar number, and telephone number in the written objection filed with the Court.

If you want to intervene as a party to the case, you must file a motion to intervene with the Court by _____

QUESTIONS? CALL 1-877-415-0640 TOLL-FREE, OR VISIT www.JonesTotalLossSettlement.com.

PARA UNA NOTIFICACIÓN EN ESPAÑOL, LLAMAR 1-877-415-0640,

O VISITAR www.JonesTotalLossSettlement.com.

so that the Parties can respond to the motion.

Please note that any objections or motions must be submitted by an individual Class Member or his, her, or its attorney, not as a member of a group, class, or subclass. The only exception is that an objection may be submitted on behalf of a Class Member by the Legally Authorized Representative (see Question 11 above for a definition of that term).

20. What's the difference between objecting and excluding yourself?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object to the Settlement only if you stay in the Settlement. Excluding yourself is telling the Court that you don't want to be part of the Settlement. If you exclude yourself, you have no basis to object, because the case no longer affects you. If you object, and the Court approves the Settlement anyway, you will still be legally bound by the result.

THE COURT'S FINAL APPROVAL HEARING

The Court will hold a hearing called a "Final Approval Hearing" (also known as a "Fairness Hearing") to decide whether to approve the Settlement. If you haven't excluded yourself from the Settlement, you may attend the Final Approval Hearing and may ask to speak to the Court, but you don't have to.

21. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing to decide whether to finally approve the proposed Settlement. You may attend and you may ask to speak, but you don't have to do either one.

The Final Approval Hearing will be on _____, at _____.m. Central time before Judge Leigh Ann Retelsdorf. PLEASE NOTE that due to the COVID-19 pandemic, the Court may conduct the Final Approval Hearing by video conference. Please check the Settlement website, the Court's website, or call the Settlement Administrator for current information. Also, the Final Approval Hearing may be moved to a different date or time without additional notice, so you should check the Settlement website, the Court's website, or call the Settlement Administrator before making travel plans.

At the Hearing, the Court will consider whether the proposed Settlement and all of its terms are adequate, fair, and reasonable. If there are objections, the Court will consider them. The Court may listen to people who have asked for permission to speak at the Hearing. The Court may also decide how much to award Class Counsel for fees and expenses for representing the Class (the Attorneys' Fees and Expense Awards) and whether and how much to award the Class Representatives for representing the Class (the Service Awards).

At or after the Final Approval Hearing, the Court will decide whether to finally approve the proposed Settlement. There may be appeals after that. There is no set timeline for either the Court's final approval decision, or for any appeals that may be brought from that decision, so it is impossible to know exactly when the Settlement will become final.

The Court may change deadlines listed in this Notice without further notice to the Class. To keep up on any changes in the deadlines, please contact the Settlement Administrator, the Settlement website, or the Court's docket.

22. Do I have to come to the Final Approval Hearing?

No. Class Counsel will answer any questions asked by the Court. But you are welcome to come at your own expense. If you intend to have a lawyer appear on your behalf at the Final Approval Hearing, your lawyer must enter a written notice of appearance of counsel with the Clerk of the Court no later than _____, and you must comply with all of the requirements explained in Question 21 above.

If you send an objection, you don't have to come to Court to talk about it. So long as you mailed your written objection on time and complied with the other requirements for a proper objection, the Court will consider it. You may also pay another lawyer to attend, but it's not required.

QUESTIONS? CALL 1-877-415-0640 TOLL-FREE, OR VISIT www.JonesTotalLossSettlement.com.

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O VISITAR www.JonesTotalLossSettlement.com.

23. May I speak at the Final Approval Hearing?

Yes. If you submitted a proper written objection to the Settlement, you or your lawyer acting on your behalf may speak at the Final Approval Hearing. To do so, you must send a Notice of Intention to Appear and follow the procedures set out in Question 21 above. Your Notice of Intention to Appear must be mailed to the Settlement Administrator so that it is **postmarked no later than** _____, and it must be **filed** with the Clerk of the Court by that same date. See Question 19 above for the addresses of the Settlement Administrator and the Court. You cannot speak at the Final Approval Hearing if you excluded yourself.

IF YOU DO NOTHING**24. What happens if I do nothing at all?**

If you do nothing, you will get no money from this Settlement. But unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the USAA companies about the legal issues in this case, ever again. To receive a payment you must submit a qualifying Claim Form. (See Question 10.)

GETTING MORE INFORMATION**25. How do I get more information about the Settlement?**

This Notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement, which is available at www.JonesTotalLossSettlement.com; the Settlement website also contains additional information about the Settlement. You may also get information by contacting the Settlement Administrator as noted below; by contacting Class Counsel (see Question 16); by accessing the Court docket in this case, for a fee; or by visiting the office of the Clerk of the Court, as noted below.

- Settlement Administrator: Call toll-free at 1-877-415-0640; email at info@JonesTotalLossSettlement.com; or write to the Settlement Administrator at the following address:

Jones Total Loss Settlement
c/o JND Legal Administration
P.O. Box 91209
Seattle, WA 98111

- Clerk of the Court: You may review legal documents that have been filed with the Clerk of Court at the address noted in Question 19 during regular office hours. Please note that due to the COVID-19 pandemic, you may need to make other arrangements to view court documents. Please contact the Clerk's Office for information on accessing court documents, but the Clerk will NOT answer questions about the Settlement.

PLEASE DO NOT CALL THE JUDGE OR THE COURT CLERK TO ASK QUESTIONS ABOUT THE LAWSUIT, THE SETTLEMENT, OR THIS NOTICE.

THE COURT WILL NOT RESPOND TO LETTERS OR TELEPHONE CALLS. IF YOU WISH TO ADDRESS THE COURT, YOU MUST FILE AN APPROPRIATE PLEADING OR MOTION WITH THE CLERK OF THE COURT IN ACCORDANCE WITH THE COURT'S USUAL PROCEDURES.

PLEASE DO NOT CONTACT USAA ABOUT THIS SETTLEMENT.

QUESTIONS? CALL 1-877-415-0640 TOLL-FREE, OR VISIT www.JonesTotalLossSettlement.com.

PARA UNA NOTIFICACIÓN EN ESPAÑOL, LLAMAR 1-877-415-0640,
O VISITAR www.JonesTotalLossSettlement.com.

EXHIBIT 3

REMINDER OF CLASS ACTION SETTLEMENT DEADLINES

You should have received a Notice a few weeks ago informing you that you may be a Settlement Class Member in a proposed class action Settlement involving United Services Automobile Association, USAA Casualty Insurance Company, USAA General Indemnity Company, and Garrison Property and Casualty Insurance Company (together, the “USAA companies”). The case is *Jones v. USAA*, Case No. D01CI200009724, and it is pending in the District Court of Nebraska, Douglas County. If you already submitted a claim, a request for exclusion, or an objection, you do not need to take any action in response to this Notice.

The earlier Notice provides the details on the proposed Settlement, including important deadlines. You should review the earlier Notice and the settlement website, www.JonesTotalLossSettlement.com, for important information; you may also contact the Settlement Administrator toll-free at 1-877-415-0640 or info@JonesTotalLossSettlement.com. **Please do not contact USAA about this Settlement or the lawsuit.**

1. What is this lawsuit about? The lawsuit involves the payment of Nebraska Sales/Use Tax, Vehicle Regulatory Fees, and CRA (“Car Replacement Assistance”) Sales Tax for owned or leased vehicles that were totaled and were insured under a Nebraska Automobile Insurance Policy issued by a USAA company. The lawsuit alleges that the USAA companies failed to pay the full amount of those taxes and fees. The USAA companies deny all liability, and the Parties have agreed to settle the case.

2. Settlement Terms. Under the Settlement, the USAA companies agree to pay Sales/Use Tax, Vehicle Regulatory Fees, and CRA Sales Tax to those Class Members who did not already receive such payments as part of their insurance claim, and if they submit a timely and valid Claim Form. The USAA companies will pay up to \$3.125 million to pay those qualifying Settlement Class Members their Claims Payments. The USAA companies will separately pay attorneys’ fees and expenses not to exceed \$850,000, and Service Awards not to exceed \$5,000 to each of the Class Representatives, which must be approved by the Court.

3. How do I receive a payment? To be eligible for a payment, you must send a valid Claim Form to the Settlement Administrator so that it is **postmarked by** _____ and sent to the following address:

Jones Total Loss Settlement
c/o JND Legal Administration
P.O. Box 91209
Seattle, WA 98111

A Claim Form was included with the earlier Notice, and is also included here again. **If you already submitted a Claim Form, PLEASE DO NOT SUBMIT ANOTHER ONE.**

4. Do I have any other options? The earlier Notice set out your options and the deadlines: (a) submit a claim (_____); (b) exclude yourself from the Settlement (_____); (c) object to the Settlement (_____); (d) go to the Fairness Hearing on _____. Please consult the earlier Notice and/or the settlement website, or contact the Settlement Administrator for more information.

EXHIBIT 4

POSTAGE-PREPAID POSTCARD CLAIM FORM

TO BE INCLUDED ONLY WITH THE SHORT-FORM MAILED NOTICE:

COURT ORDERED LEGAL NOTICE

If you suffered a total loss on a vehicle insured by a USAA company under a Nebraska auto policy, you may be entitled to a cash payment.

Complete and return the enclosed Claim Form by

_____.

Jones Total Loss Settlement
c/o JND Legal Administration
P.O. Box 91209
Seattle, WA 98111

Class Member John Doe
123 ABC Street
Omaha, NE 12345

postage
prepaid
mark

Jones Total Loss Settlement
c/o JND Legal Administration
P.O. Box 91209
Seattle, WA 98111

EXHIBIT 5

EXHIBIT 5 TO SETTLEMENT AGREEMENT

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

OMAR JONES and SHANNON
WHITEHEAD, individually and
on behalf of all others similarly situated,

CASE NO.: D01CI200009724

Plaintiffs,

v.

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

Defendants.

**[PROPOSED] FINAL ORDER AND JUDGMENT APPROVING
CLASS ACTION SETTLEMENT**

This matter is before the Court on the Motion for Final Order and Judgment Approving Class Action Settlement. The matter came before the Court on _____, 2022, for a hearing pursuant to Neb. Rev. St. § 25-319 (the “Final Approval Hearing” or “Fairness Hearing”) as to the fairness, reasonableness, and adequacy of the Parties’ proposed Settlement of this Action preliminarily approved by the Court on _____, 2022. All interested Persons were provided with notice and the opportunity to be heard regarding the proposed Settlement.

The Court has again reviewed the Settlement Agreement (including Exhibits) (the “Settlement Agreement”) and all papers submitted in connection with the proposed Settlement, and has considered all arguments of counsel. The Court finds that the Parties have demonstrated

EXHIBIT 5 TO SETTLEMENT AGREEMENT

full compliance with the Preliminary Approval Order, and that there are substantial and sufficient grounds for entering this Final Order and Judgment Approving Class Action Settlement (“Order” or “Final Order and Judgment”). The Court therefore directs the Parties and their counsel to implement and consummate the Settlement Agreement and directs the administration of the Settlement in accordance with the terms and provisions of the Settlement.¹

BACKGROUND

1. On _____, 2022, this Court entered the Preliminary Approval Order. This Final Order and Judgment incorporates the provisions, findings, and conclusions in the Preliminary Approval Order unless specifically stated otherwise in this Order.

2. After entry of the Preliminary Approval Order, the Parties proceeded to implement the terms of the Preliminary Approval Order and the Settlement.

3. On _____, 2023, the Settlement Administrator, JND Legal Administration (“JND”), mailed the Long-Form Mailed Notice to all Settlement Class Members after updating the mailing addresses provided by the USAA Entities, in accordance with the terms of the Preliminary Approval Order and Settlement Agreement. In the initial mailing, JND mailed _____ Long-Form Notices. _____ Long-Form Mailed Notices were returned as undeliverable. On _____, 2023, the Settlement Administrator, JND, mailed the Short-Form Mailed Notice to all Settlement Class Members. In this mailing, JND mailed _____ Short-Form Notices. _____ Short-Form Mailed Notices were returned as undeliverable. With respect to those returned Long-Form Mailed Notices with a forwarding addresses, JND remailed such Long-Form Mailed Notices to those forwarding addresses; with respect to returned Long-

¹ The Settlement Agreement is hereby incorporated by reference in this Order, and all terms and phrases used in this Order shall have the same meaning as in the Settlement Agreement.

EXHIBIT 5 TO SETTLEMENT AGREEMENT

Form Mailed Notices without a forwarding address, JND attempted to obtain a current mailing address using the methods specified in the Settlement Agreement. In all, ____ of the ____ Long-Form Mailed Notices were mailed and not returned as undeliverable, and therefore are presumed delivered, representing a ____% “reach rate.”²

4. In addition, JND, established a Settlement Website, also in accordance with the Settlement Agreement and Preliminary Approval Order. The Website provided pertinent information on the Settlement, including Important Dates, Frequently Asked Questions, and relevant documents.

5. JND also set up a 24-hour IVR/VRU telephone system, which provided answers to frequently asked questions. The IVR/VRU also permitted callers to “punch through” to a live Call Center during regular business hours.

6. The Website, IVR/VRU, and Call Center went “live” on the Mailed Notice Date.

7. Settlement Class Members were given until _____, or 60 days after the Mailed Notice Date, in which to exclude themselves or object to the Settlement.

8. On _____, Class Counsel filed their petition for an Attorneys’ Fees and Expenses Award (up to a maximum of \$850,000.00) and for Service Awards to Plaintiffs, up to a maximum of \$5,000.00 to each Plaintiff.

9. On _____, the Settlement Administrator submitted an Affidavit detailing the notice and settlement administration activities, and also submitted for the Court’s consideration the Opt-Out List, which is the list of all Settlement Class Members who timely excluded themselves from the Settlement.

² The affidavit of the Settlement Administrator provides detailed information regarding the course and scope of post-Preliminary Approval Order notice and settlement administration activities.

EXHIBIT 5 TO SETTLEMENT AGREEMENT

10. _____ Settlement Class Members are on the Opt-Out List. The Court-Approved Opt-Out List is attached hereto as Exhibit 1.

11. [Note and discuss any objections.]

FINDINGS AND CONCLUSIONS

12. This Court re-confirms that it has personal jurisdiction over all Settlement Class Members, and subject matter jurisdiction over this Action and to approve the Settlement Agreement.

13. The Court approves the Settlement Agreement and finds that the proposed Settlement, including but not limited to the Settlement Fund, the calculation of Settlement Claim Payments, the distribution of payments to Qualifying Settlement Class Members, the Mailed Notices, the Settlement Website, the requirements for exclusions and objections, the Release, the Attorneys' Fees and Expenses Award, and the Service Awards, is sufficiently fair, reasonable, and adequate to warrant entry of this Final Order and Judgment. The Court gives final approval to the Settlement and finds that the Settlement is fair, reasonable, and adequate as to each of the Parties and the Settlement Class Members, and consistent and in compliance with all requirements of Nebraska Rules of Civil Procedure, due process, Neb. Rev. Stat. § 25-319, and all other applicable laws as to, and in the best interests of, the Settlement Class Members. The Court further finds that the Settlement is the result of good-faith, non-collusive, and arm's-length negotiations by the Parties. The Court directs the Parties and their counsel to implement and consummate the Settlement Agreement in accordance with its terms and provisions.

14. The Court confirms its previous findings in the Preliminary Approval Order that, for settlement purposes only, all requirements of Nebraska law, including Neb. Rev. Stat. § 25-319, have been satisfied in that (a) Members of the Settlement Class are so numerous as to make

EXHIBIT 5 TO SETTLEMENT AGREEMENT

joinder of all Settlement Class Members impracticable; (b) there are questions of law or fact common to Members of the Settlement Class that predominate over individual questions; and (c) Plaintiffs and Class Counsel have represented and will adequately represent the interests of absent Settlement Class Members, and there are no conflicts between Plaintiffs and Settlement Class Members or among Settlement Class Members..

15. The Court has considered (1) the merits of Plaintiff's case weighed against the terms of the settlement; (2) Defendants' financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the settlement. *See In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 932 (8th Cir. 2005). Moreover, the Court has considered the procedural fairness to ensure the settlement is "not the product of fraud or collusion." *Id.* at 934. The Court confirms its preliminary findings in the Preliminary Approval Order, as set forth below.

16. First, the Settlement was the product of nearly two years of litigation. Furthermore, Class Counsel believe, based on their familiarity with the extensive production of documents and data spreadsheets relevant to this Action, the significant fact and expert discovery, and their institutional knowledge and experience related to total loss class action claims and the strengths and weaknesses thereof, that the settlement is fair, reasonable, and adequate. *See DeBoer v. Mellon Mortgage Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995) (the opinion of experienced counsel is relevant to the fairness of a proposed settlement).

17. Second, the Settlement falls well within the range of possible approval. Class Members who submit valid Claim Forms are entitled to the full amount of damages sought in this Action, which is particularly notable given the Parties' dispute over whether actual cash value includes sales tax without precondition, and given the likely costs of continuing litigation in this

EXHIBIT 5 TO SETTLEMENT AGREEMENT

case.

18. Third, the Court finds that there are no obvious deficiencies in the Settlement. Among other things, the Settlement provides for robust individual notice, provides ample opportunity for Settlement Class Members to exclude themselves from or object to any element of the Settlement, and the Release is narrowly tailored to the Settlement Class Members' claims.

19. The Court confirms its findings in the Preliminary Approval Order that Class Counsel and Plaintiffs have fairly and adequately represented the Settlement Class. In making this determination, the Court has considered consider Class Counsel's (1) work in identifying or investigating potential claims; (2) experience in handling class actions or other complex litigation, and the types of claims asserted in the case; (3) knowledge of the applicable law; and (4) resources committed to representing the class. *See, e.g.*, Fed. R. Civ. P. 23(g).

20. The Court finds that Class Counsel have diligently investigated the claims of the Settlement Class and through the vigorous prosecution of this Action obtained class certification. Class Counsel also have demonstrated an in-depth knowledge of the law, having been appointed class counsel in numerous analogous consumer class actions, including many other automotive total loss cases. In addition, as noted below, the amounts sought by Class Counsel for their Attorneys' Fees and Expenses Award are fair and reasonable given the work that Class Counsel have devoted to the Action as well as the results obtained for the Settlement Class.

21. The Court further finds that Mr. Jones and Ms. Whitehead have adequately represented the Settlement Class. The Court finds that Plaintiffs' request for Service Awards of \$5,000.00 each is fair and justified, given Plaintiffs' work on the case. Plaintiffs shall also be entitled to receive a Settlement Claim Payment on the same terms as any other Qualified Settlement Class Member.

EXHIBIT 5 TO SETTLEMENT AGREEMENT

22. The Court also finds that the Settlement does not grant preferential treatment to Plaintiffs, and that the Settlement treats Settlement Class Members equally.

23. The Court further confirms its findings in the Preliminary Approval Order that the Settlement was negotiated at arm's length and was not collusive.

24. The Court finds that the relief provided to the Settlement Class is more than fair, reasonable, and adequate, taking into account the costs, risks, and delays of trial and appeal; the effectiveness of the proposed relief and the manner of distributing the relief to the Settlement Class, including the method for allocating the Settlement Fund among Qualifying Settlement Class Members; and the timing and payment of the Attorneys' Fees and Expenses Award and the Service Awards.

25. Pursuant to Neb. Rev. Stat. § 25-319.01, the Court finds that the total amount of Settlement Claims Payments that will be payable to Qualifying Settlement Class Members, at an estimated claim-in rate of ___%, is \$_____. By _____, the Parties shall submit a report regarding the total amount that actually was paid to Qualifying Settlement Class Members who timely cashed their checks (i.e., within the 180-day Stale Date). After the report is received, the Court will determine whether the amounts of uncashed checks (if any) shall be paid to the Legal Aid and Services Fund as the Settlement's unpaid residue. The Settlement does not provide for any other residual or *cy pres* distribution.

26. The Court also has considered the Settlement Class Members' expected recovery balanced against the value of the Settlement. The Court agrees with Class Counsel's analysis that the Settlement provides significant relief to Settlement Class Members for claims that have uncertain prospects of success.

27. The Court further finds that Class Counsel's request for the Attorneys' Fees and

EXHIBIT 5 TO SETTLEMENT AGREEMENT

Expenses Award is fair and reasonable, given the significant work that Class Counsel have devoted to this Action (including the Settlement).

28. The Court finds JND has performed all its duties under the Settlement.

29. The Court also finds that the notice to the Settlement Class complied with all requirements of Nebraska law and due process. The Mailed Notices were clearly and accurately conveyed to Settlement Class Members all material terms of the Settlement. Furthermore, the individual Mailed Notices reached ____% of the Settlement Class Members, which is more than sufficient to meet all legal requirements.

30. The Settlement Website, IVR/VRU telephone system, and the Call Center also supplemented the Mailed Notices provided to Settlement Class Members. The Website relevant materials and information. The IVR/VRU telephone system contained recorded answers to frequently asked questions, along with an option permitting Settlement Class Members to speak to live operators during regular business hours or leave messages in a voicemail box. In short, the notice provided to Settlement Class Members in this matter was robust, accurate, readily understandable, and comprehensive.

31. Accordingly, the Court finds that the Parties have implemented and complied with the notice plan as provided in the Preliminary Approval Order. The Court finds that the Mailed Notices, Website notice, and the notice methodology implemented pursuant to the Settlement Agreement (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, and their right to exclude themselves from or object to the proposed Settlement and to appear at the Final Approval Hearing; (iii) were reasonable and constituted due, adequate, and sufficient notice to all Persons entitled to receive notice; and (iv) met all applicable requirements

EXHIBIT 5 TO SETTLEMENT AGREEMENT

of Nebraska Rules of Civil Procedure, due process, and any other applicable rules or law.

32. The Settlement also provided ample opportunity for Settlement Class Members to exclude themselves from or object to any element of the Settlement.

33. Furthermore, the Release is narrowly tailored to the Settlement Class Members' claims.

IT IS HEREBY ORDERED:

34. The Motion for Final Order and Judgment Approving Class Action Settlement is granted. The Court grants final approval to the Parties' Settlement, as set forth in the Settlement Agreement.

35. The Court gives final approval to the Settlement and finds that the Settlement is fair, reasonable, and adequate as to each of the Parties and the Settlement Class Members, and consistent and in compliance with all requirements of due process, Nebraska law, and any other applicable law, as to, and in the best interests of, the Settlement Class Members. The Court further finds that the Settlement is the result of good-faith, non-collusive, and arm's-length negotiations by the Parties, including a mediation session before Michael Ungar. The Court directs the Parties and their counsel to implement and consummate the Settlement Agreement in accordance with its terms and provisions.

36. The Court grants final approval of the certification of the Settlement Class, for settlement purposes only, and confirms its previous certification of the following Settlement Class:

All individuals and entities insured by the USAA Entities under a Nebraska automobile insurance policy whose insurance covered or covers an owned or leased vehicle under private-passenger physical damage coverage, including collision and physical damage other than collision coverage, and who made a first-party claim during the Applicable Class Period, whose vehicle was determined by the USAA Entities to be a total loss, and who received a total loss payment from the USAA Entities for the value of the totaled vehicle, but who did not receive (1) Sales Tax; and/or (2) CRA Sales Tax for those who possessed CRA Coverage on the date their

EXHIBIT 5 TO SETTLEMENT AGREEMENT

vehicle was declared a total loss; and/or (3) applicable Vehicle Regulatory Fees.

Excluded from the Settlement Class are: (i) all officers, employees, and agents of the USAA Entities, Class Counsel, and their immediate family members, and (ii) any members of the judiciary assigned to the Action and their immediate families.

“Applicable Class Period” means (1) for GIC insureds, November 23, 2015 through _____ [the date of preliminary approval], and (2) for USAA, CIC, and Garrison insureds, March 25, 2017 through _____ [the date of preliminary approval].

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

38. No liability with respect to the Settlement shall attain in favor of Plaintiffs, the Settlement Class, or Class Counsel as against any officer, director, member, agent, or employee of the USAA Entities, but rather, Plaintiffs, the Settlement Class, and Class Counsel shall look solely to the assets of the USAA Entities for satisfaction of the Settlement.

39. The Court re-confirms the appointment of JND as Settlement Administrator and finds that JND has complied with its duties under the Preliminary Approval Order and the Settlement Agreement. The USAA Entities shall pay JND, separate and apart from the Settlement Fund.

40. The Court dismisses the Action on the merits as to the USAA Entities with prejudice and without fees or costs except as provided in this Final Order and Judgment. As a result of this Final Order and Judgment, all claims in the *Whitehead* Action will become released and barred with prejudice.

41. The Court approves the Opt-Out List submitted by the Settlement Administrator (Exhibit 1 hereto) (the “Court-Approved Opt-Out List”) and determines that the Court-Approved Opt-Out List is the complete list of all Settlement Class Members who have timely requested

EXHIBIT 5 TO SETTLEMENT AGREEMENT

exclusion from the Settlement Class and, accordingly, shall neither share in nor be bound by the Final Order and Judgment. All other Settlement Class Members shall be bound by the terms of the Settlement.

42. The Court approves the distribution plan set forth in Paragraphs 18-25 of the Settlement Agreement. The Settlement Administrator shall use its best efforts to mail Settlement Claim Payment checks to Qualifying Settlement Class Members within one hundred five (105) days after the Effective Date.

43. Without affecting the finality of the Final Order and Judgment for purposes of appeal, the Court reserves jurisdiction over the USAA Entities, Plaintiffs, and the Settlement Class as to all matters relating to the administration, consummation, enforcement, and interpretation of the terms of the Settlement and the Final Order and Judgment, and for any other necessary purposes.

44. The Court finds and adjudges that, as of the Effective Date, Plaintiffs, all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Court-Approved Opt-Out List, and their heirs, estates, trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, successors, employees, employers, companies, partnerships, corporations, professional services corporations, limited liability companies, members, owners, officers, directors, partners, joint venturers, managing agents, affiliates, subsidiaries, predecessors, successors, and/ or anyone claiming through them or acting or purporting to act for them or on their behalf, regardless of whether they have received actual notice of the proposed Settlement and regardless of whether they previously initiated or subsequently initiate individual litigation or other proceedings encompassed by the Released Claims, have conclusively compromised, settled, discharged, and released all Released Claims against the

EXHIBIT 5 TO SETTLEMENT AGREEMENT

USAA Entities and the Released Persons, and are bound by the provisions of the Settlement Agreement, as further provided in Paragraphs 42-47 of the Settlement Agreement.³

3

42. Plaintiffs, and all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Court-Approved Opt-out List, shall be bound by this Agreement, and all of their claims, as provided under this Agreement, shall be dismissed with prejudice and released, even if they never received actual notice of the Actions or the Settlement.

43. Upon the Effective Date, Plaintiffs, all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Court-Approved Opt-Out List, and their heirs, estates, trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, successors, employees, employers, companies, partnerships, corporations, professional services corporations, limited liability companies, members, owners, officers, directors, partners, joint venturers, managing agents, affiliates, subsidiaries, predecessors, and/or anyone claiming through them or acting or purporting to act for them or on their behalf, regardless of whether they received actual notice of the proposed Settlement and regardless of whether they previously initiated or subsequently initiate individual litigation or other proceedings encompassed by the Released Claims (the “Releasing Persons”), will be bound by the Final Order and Judgment and shall be conclusively deemed to have fully released and discharged the USAA Entities and all of the USAA Entities’ (a) past, present, and future parents, subsidiaries, divisions, and affiliates, and (b) past, present, and future officers, directors, members, agents, employees, servants, stockholders, insurers, attorneys, representatives, successors, assigns, and independent contractors of the entities in part (a) above (the “Released Persons”), of and from all Released Claims, and agree that they shall not now or hereafter initiate, maintain, or assert any Released Claims against the Released Persons in any other court action or before any administrative body (including any state department of insurance or other regulatory entity or organization), tribunal, arbitration panel, or other adjudicating body. Without in any way limiting the scope of the Release described in Paragraphs 42-47, this Release covers, without limitation, any and all claims for attorneys’ fees, costs, or disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or Settlement Class Members, or by the Plaintiffs or Settlement Class Members, or any of them, in connection with or related in any manner to the Actions, the settlement of the Actions, the administration of such Settlement, and/or the Released Claims except to the extent otherwise specified in the Agreement.

44. “Released Claims” means and includes any and all known and unknown claims, rights, actions, suits or causes of action of whatever kind or nature, whether *ex contractu* or *ex delicto*, statutory, common law or equitable, including but not limited to breach of contract, bad faith, extracontractual claims or claims for statutory violations, and claims for punitive or exemplary damages, or prejudgment or postjudgment interest, arising from or relating in any way to the USAA Entities’ alleged failure to pay sufficient Sales Tax, Vehicle Regulatory Fees, and CRA Sales Tax to Plaintiffs and the Settlement Class Members. Released Claims do not include any claim for enforcement of this Agreement

and/or the Final Order and Judgment. Released Claims do not include any claims, actions, or causes of action alleging that the USAA Entities failed to properly calculate the base or adjusted value of total loss vehicles except to the extent that such claims, actions, or causes of action relate to failure to pay sufficient Sales Tax, Vehicle Regulatory Fees, and CRA Sales Tax.

45. Without in any way limiting the scope of the Release described in Paragraphs 42-47, the Plaintiffs, and all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Court-Approved Opt-Out List, also acknowledge that they are familiar with the principles of law such as Section 1542 of the Civil Code of the State of California and the laws of other states, which provide:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS [OR HER] FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM [OR HER] MUST HAVE MATERIALLY AFFECTED HIS [OR HER] SETTLEMENT WITH THE DEBTOR.

To the extent that, notwithstanding the choice of law provisions in the Agreement, California or other law may be applicable, Plaintiffs, and the Settlement Class Members who have not been excluded from the Settlement Class as provided in the Court-Approved Opt-Out List, hereby expressly agree that the provisions, rights, and benefits of Section 1542 of the Civil Code of the State of California and all similar federal or state laws, rights, rules, or legal principles of any other jurisdiction which may be applicable herein are hereby knowingly and voluntarily waived and relinquished by Plaintiffs and the Settlement Class Members to the fullest extent permitted by law solely in connection with Unknown Claims (as described in this Paragraph 45) constituting Released Claims, and Plaintiffs and the Settlement Class Members hereby agree and acknowledge that this is an essential term of this Release. In connection with this Release, Plaintiffs and the Settlement Class Members acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true with respect to the matters released herein. Nevertheless, Plaintiffs and the Settlement Class Members acknowledge that a portion of the consideration received herein is for a Release with respect to future damages and complaints, whether resulting from known injuries and consequences or from unknown injuries or unknown consequences of known or unknown injuries, and state that it is the intention of Plaintiffs and the Settlement Class Members in executing this Release fully, finally, and forever to settle and release all matters, known or otherwise, and all claims relating thereto, which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action) relating in any respect, without limitation, to the Released Claims.

46. Nothing in Paragraphs 42-47 shall preclude any action to enforce the terms of the Agreement, including participation in any of the processes detailed therein.

47. Upon entry of the Final Order and Judgment, the Action will be dismissed with prejudice as to the USAA Entities, Plaintiffs, and all Settlement Class Members who

EXHIBIT 5 TO SETTLEMENT AGREEMENT

45. The Court declares the Settlement Agreement and this Final Order and Judgment to be binding on, and have res judicata and preclusive effect in, all pending and future lawsuits or other proceedings encompassed by the Released Claims maintained by or on behalf of Plaintiffs and all other Settlement Class Members who have not been excluded from the Settlement Class as provided in the Court-Approved Opt-Out List, their heirs, estates, trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, assignees, assignors, successors, employees, employers, companies, partnerships, corporations, professional services corporations, limited liability companies, members, owners, officers, directors, partners, joint venturers, managing agents, affiliates, subsidiaries, predecessors, and/or anyone claiming through them or acting or purporting to act for them or on their behalf, regardless of whether they have received actual notice of the proposed Settlement and regardless of whether they previously initiated or subsequently initiate individual litigation or other proceedings encompassed by the Released Claims, as set forth in the Settlement Agreement.

46. Accordingly, upon the Effective Date, Plaintiffs, and all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Court-Approved Opt-Out List, and all Persons claiming through them or acting or purporting to act for them or on their behalf, shall be barred from asserting any Released Claims against the USAA Entities and the other Released Persons, and such Settlement Class Members shall have released any and all Released Claims as against the USAA Entities and the other Released Persons, as provided in the Settlement Agreement.

47. The Court hereby awards the following for the Attorneys' Fees and Expenses

have not been excluded from the Settlement Class as provided in the Court-Approved Opt-Out List, and will release all Released Persons from Released Claims.

EXHIBIT 5 TO SETTLEMENT AGREEMENT

Award, to be paid separate and apart from the Settlement Fund: \$ _____.

48. The Court hereby awards the following for the Service Awards, to be paid separate and apart from the Settlement Fund: \$ _____.

49. As noted above in Paragraph 25, pursuant to Neb. Rev. Stat. § 25-319.01, the Parties shall submit a report by _____ regarding the total amount that actually was paid to Qualifying Settlement Class Members who timely cashed their checks (i.e., within the 180-day Stale Date). After the report is received, the Court will determine whether the amounts of uncashed checks (if any) shall be paid to the Legal Aid and Services Fund as the Settlement's unpaid residue. The Settlement does not provide for any other residual or *cy pres* distribution.

50. The Settlement Agreement and the Settlement provided for therein, and any proceedings taken pursuant thereto, are not, and should not in any event be offered, received, or construed as evidence of, a presumption, concession, or an admission by any Party of liability or non-liability or of the certifiability or non-certifiability of the Class, or any litigation class, or of any misrepresentation or omission in any statement or written document approved or made by any Party; provided, however, that reference may be made to the Settlement Agreement and the Settlement provided for therein in such proceedings as may be necessary to effectuate the provisions of the Settlement Agreement, as further set forth in that Agreement.

51. The Court permanently enjoins Plaintiffs, and all other Settlement Class Members who have not been excluded from the Settlement Class as provided in the Court-Approved Opt-Out List, from (i) filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on the Released Claims and (ii) organizing Settlement Class Members into a separate group, class, or subclass for purposes of pursuing as a purported class

EXHIBIT 5 TO SETTLEMENT AGREEMENT

action any lawsuit or administrative, regulatory, arbitration, or other proceeding (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) based on the Released Claims.

52. The Court orders that certification of the Settlement Class and final approval of the Settlement, and all actions associated with them, are undertaken on the condition that they shall be vacated if the Settlement Agreement is terminated or disapproved in whole or in part by the Court, or any appellate court and/or other court of review, or if any of the Parties invokes the right to withdraw from the Settlement as provided in Paragraphs 49-51 of the Settlement Agreement, in which event the Agreement and the fact that it was entered into shall not be offered, received, or construed as an admission or as evidence for any purpose, including but not limited to an admission by any Party of liability or non-liability or of any misrepresentation or omission in any statement or written document approved or made by any Party, or of the certifiability of a litigation class, as further provided in the Settlement Agreement.

53. The Court approves the termination and withdrawal procedures in Paragraphs 49-51 of the Settlement Agreement. If the Settlement does not become Final for any reason (whether due to a termination of the Settlement Agreement in accordance with its terms, a failure or refusal of the Court to approve the proposed Settlement, or a reversal or modification of the Court's approval of the proposed Settlement on appeal, or for any other reason), the Parties shall be returned to the status *quo ante* as of June 22, 2022, as further provided in Paragraph 7 and elsewhere in the Settlement Agreement. In that event, (a) Plaintiff Whitehead may refile the complaint in the *Whitehead* Action; (b) the Amended Complaint in the *Jones* Action shall be vacated; (c) the original Complaint in the *Jones* Action shall become the operative pleading; (d) all orders entered regarding the Settlement shall be vacated; (e) the Parties and their attorneys shall

EXHIBIT 5 TO SETTLEMENT AGREEMENT

proceed as though the Settlement Agreement had never been entered, and the Parties and their Counsel shall not cite nor reference that Agreement except as necessary to inform the Court, and nothing in the Agreement and/or the fact that it was entered into shall be offered, received, or construed as an admission or as evidence for any purpose in any proceeding, as further provided in Paragraphs 49-51 of the Settlement Agreement; (f) Plaintiffs and Class Counsel shall not argue that the USAA Entities are barred from asserting defenses on the merits and as to class certification as a result of the proposed Settlement; and (g) nothing in the Settlement may be used as an admission or offered into evidence in any proceeding involving the USAA Entities whatsoever, as further provided in the Settlement Agreement. Furthermore, in the event of a withdrawal pursuant to Paragraphs 49-51, the fact of this Agreement or settlement having been made shall not be admissible or entered into evidence for any purpose; this Agreement and all documents, orders, and other evidence relating to the Agreement and settlement shall not be offered, received, or construed as evidence of a presumption, concession, or an admission by any Party of liability or non-liability, or of the certifiability of a litigation class, or of any misrepresentation or omission in any statement or written document approved or made by any Party. Furthermore, in the event of a withdrawal by the USAA Entities, Plaintiffs and Class Counsel agree that the USAA Entities shall retain the right to assert any and all defenses and claims in the Action (including all defenses and appellate rights to certification of a litigation class) and that Plaintiffs shall not argue that the USAA Entities are barred from asserting those defenses or claims due to waiver, estoppel, or similar arguments.

54. The Court approves the confidentiality provisions in Paragraphs 52-56 of the Settlement Agreement and orders the Parties to proceed in accordance with those provisions regarding the Confidential Information.

EXHIBIT 5 TO SETTLEMENT AGREEMENT

55. The Court authorizes the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansions of the Settlement Agreement and all Exhibits thereto as (i) shall be consistent in all material respects with the Final Order and Judgment and (ii) do not limit the rights of Settlement Class Members.

Dated: _____
District Court Judge

EXHIBIT 5 TO SETTLEMENT AGREEMENT

EXHIBIT 1: COURT-APPROVED OPT-OUT LIST

Title	Confidential Settlement Agreement for Omar Jones and Shannon...
File name	content
Document ID	fe89f88c4b6ebf66e47717ab39774e1163017dc8
Audit trail date format	MM / DD / YYYY
Status	● Signed

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IP: 107.77.199.64



SIGNED

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Signed by Omar Jones (omar.r.jones@gmail.com)
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Viewed by Shannon Whitehead (whitehead7717@gmail.com)
IP: 104.28.104.129

Title	Confidential Settlement Agreement for Omar Jones and Shannon...
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Status	● Signed

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Exhibit B

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

OMAR JONES, individually and on behalf
of all others similarly situated,

CASE NO. D01CI200009724

Plaintiffs,

v.

USAA GENERAL INDEMNITY,

Defendants.

AFFIDAVIT OF AMY L. JUDKINS

1. My name is Amy L. Judkins. I am one of the attorneys representing Plaintiff in this matter. I am over 18 years of age and make this declaration freely and voluntarily and based on my personal knowledge of the facts set forth herein.

2. This declaration is submitted in support of the Plaintiffs' Unopposed Motion for Preliminary Approval of the Class Action Settlement Agreement.

3. I am a member of the Federal Bar, the Florida, Bar, and am certified to practice in the 11th and 5th Circuits, the Middle Southern, and Northern Districts of Florida, and numerous other federal district courts *pro hac vice*.

4. In 2016, I graduated *magna cum laude* from the Florida A&M College of Law. While in law school, I served as a judicial intern for the Chief Judge of the United States District Court of the Middle District of Florida, the Honorable Anne C. Conway. After law school, I clerked for the Honorable Paul G. Byron of the Middle District of Florida.

5. Ed Normand (founder of Normand PLLC and senior partner) and I have extensive experience successfully litigating class actions, including ones similar to the present case. Cases in which Normand PLLC has been appointed class counsel include *Roth v. GEICO*, Case No. 16-

cv- 62942-WPD (S.D. Fla., filed 2016), a case in which final judgment was entered in favor of a certified class of 3,677 members, and which was the first total-loss case concerning leased vehicles to claim sales tax and the first one to one to allege it was a breach of contract to fail to pay title transfer fees as part of ACV; *Joffe v. GEICO Indemnity Co.*, No. 18-cv-61361-WPD (S.D. Fla.) (Dimitrouleas, J.) (consolidated for settlement with Roth and involving over 8,000 class members); *Sos v. State Farm Mutual Insurance Company*, Case No. 6:17-cv-890-orl-18KRS (M.D. Fla., filed 2017) (Byron, J.), in which a class of approximately 3,000 insureds was certified and summary judgment entered in favor of the named plaintiff (final judgment is yet to be filed), and which also concerned leased-vehicle total- loss insureds claiming failure to pay sales tax and title transfer fees; and *Jones v. Geico*, Case No.: 6:17-cv-891-Orl-40KRS (M.D. Fla., filed 2017) (Byron, J.), in which summary judgment was entered in favor of a certified class of over 220,000 total-loss insureds for GEICO's failure to pay title and tag transfer fees after a total-loss (and the case subsequently settled and final approval and judgment was granted in July, 2020). Recently, Normand PLLC was named as class counsel in three similar cases as that at issue here, one in the Southern District of New York (*Buffington v. Progressive*, Southern District of Texas (*Angell v. Geico Advantage Ins. Co.*, No. 4:20-CV-0799 2021 U.S. Dist. LEXIS 2287343 (S.D. Tex. Nov. 30, 2021)), and the other in the Eastern District of Ohio (*Davis v. GEICO Casualty Co.*, Case No. 2:19-cv-2477, 2021 U.S. Dist. LEXIS 237288 (E.D. Ohio, Dec. 13, 2021)).

6. In another case, *Venerus v. Avis Budget*, Case No. 6:13-CV- 921-CEM-GJK (M.D. Fla., filed 2013), Normand PLLC was appointed class counsel for a certified class of over 200,000 foreign renter customers of Avis Budget who rented a vehicle in Florida. In that case, summary judgment was entered in favor after Plaintiff proved his allegations that Avis Budget solicited premiums of \$14.43 per day in exchange for the promise to procure an insurance policy from a

licensed insurance company, but instead pocketed the premiums and never purchased the insurance policy. Also in that case, our firm successfully secured a reversal by the 11th Circuit of a denial of class certification; upon remand, this Court certified the aforementioned class.

7. Mr. Normand was certified class counsel of a settlement class in *Parker v. Universal Studios*, Case No. 6:16-cv-01193-CEM- DAB (M.D. Fla., filed 2017) (Mendoza, J.), and secured final approval of a settlement exceeding \$19 million for a class of hundreds of thousands of consumers illegally sent telemarketing text messages in violation of the TCPA.

8. In Nebraska, I was certified as class counsel of a settlement class based on similar allegations for failure to pay sale tax on total loss claims in the case *Wagner v. Safeco*, Case No. D041C1200010735 (Douglas County, Neb.).

9. Normand PLLC has been class counsel in approximately 20 total-loss litigated or settlement classes since 2016 and have secured settlement values or summary judgment in such cases in excess of \$100 million.

10. Plaintiff has also retained Shane C. Mecham, of the law firm Levy Craig, to serve as local counsel. Mr. Mecham has is a highly experienced trial attorney, with a particular expertise in complex litigation and insurance cases.

11. Counsel for the Plaintiff have extensive and significant experience in class litigation, complex business litigation, appellate litigation, insurance litigation, and hundreds of trials in numerous contexts. Moreover, counsel has the resources and is committed to expending whatever resources are necessary to litigate this case and protect the interests of Class Members. Proposed Class Counsel have expended hundreds of thousands of dollars in other cases prosecuting claims on behalf of class members, and expended thousands of hours of attorney time pursuing those claims.

12. On November 23, 2020, Plaintiff Omar Jones filed a class action complaint against USAA General Indemnity Company alleging USAA breached form insurance policies issued to Plaintiff and other Nebraska insureds by failing to include sales tax in total-loss payments as part of the actual cash value of totaled vehicles.

13. On March 3, 2021, Defendant USAA filed a Motion for Judgment on the Pleadings, arguing that Plaintiff's claims were barred by a written release entered in a related case for unpaid medical claims.

14. On June 3, 2021, the Court denied USAA's Motion for Judgment on the Pleadings, holding that Plaintiff's release of medical claims did not release any claims for property damage.

15. On August 13, 2021, early in discovery, USAA filed a Motion for Summary Judgment arguing that its Policy did not require the payment of sales tax under Nebraska law.

16. That motion was likewise denied by the Court on December 2, 2021, which held that it was entirely reasonable to interpret USAA's policy as providing coverage for sales tax under Nebraska law.

17. On February 10, 2022, Plaintiff filed a Motion for Class Certification, seeking to certify a class of similarly situated individuals who were not paid sales tax with their total-loss claims.

18. On March 25, 2022, Plaintiff Whitehead filed a class action complaint against Defendant Garrison Property & Casualty Insurance Company alleging the same allegations, namely that Defendant Garrison failed to include sales tax on total-loss claims.

19. After the Whitehead complaint was filed, the parties began discussing settlement of both cases. Following a mediation with mediator Michael Ungar, the parties signed a term sheet and agreement to settle. There was no fraud or collusion in the agreement to settle.

20. As part of the settlement, the parties agreed to dismiss the Whitehead action and consolidate the two cases for purposes of completing the class-action settlement.

21. The legal and factual issues in the consolidated cases are extensive, and included novel and complex issues of unsettled law. If a Settlement is not achieved and approved, the ensuing litigation is likely to be time consuming with an uncertain outcome. USAA contends and maintains that it has strong defenses to the merits of the claim as well as to class certification.

22. Both parties performed extensive discovery following the commencement of this action, which has allowed each side to fully explore the strengths and weaknesses of its positions. This included discovery directed to the merits of Plaintiffs' underlying claims, individual and class-wide damages, and potential defenses to class certification. The discovery included the exchange of voluminous interrogatories and requests for production, which resulted in extensive documents being produced and reviewed, including voluminous data spreadsheets, expert testimony, requests for admission, and other forms of discovery. Depositions were taken of Plaintiff Omar and Defendant's representatives, which related to Defendants' claim-handling practices and procedures, data storage and retention, damages, and the merits of the claims.

23. The risk of continuing litigation can be seen by the fact that several federal courts of appeal have considered similar claims, and have ruled in favor of the insurers and against the plaintiffs. *See Singleton v. Elephant Ins. Co.*, 953 F.3d 334 (5th Cir. 2020); *Sigler v. Geico Cas. Co.*, 967 F.3d 658 (7th Cir. 2020); *Wilkerson v. Am. Family Ins. Co.*, 997 F.3d 666 (6th Cir. 2021). Plaintiffs believe that *Singleton*, *Sigler*, and *Wilkerson* were wrongly decided and do not apply under Nebraska law. Clearly, however, they indicate a significant level of risk in continuing litigation. And while the majority of district courts analyzing similar claims have found in favor of insureds, a strong minority have ruled in favor of the insurers.

24. The Settlement Agreement requires USAA to pay both Plaintiffs and each member of (1) the applicable sales tax calculated as a percentage of the total loss vehicle's underlying vehicle value, as originally calculated by USAA, (2) vehicle regulatory fees, and (3) for Class Members who possessed Car Replacement Assistance ("CRA") coverage, CRA Sales Tax in the amount of an additional 20% of ACV Sales Tax.

25. The Settlement Agreement also requires USAA to pay attorneys' fees and costs in an amount not to exceed \$850,000.00 and a Service Award of \$5,000.00 to Mr. Jones and Ms. Whitehead, as well as the costs of the Settlement Administration. USAA has agreed that it will not oppose the application for attorneys' fees and costs, and agreed that it will pay any attorney fee and service awards separately and apart from its payment to Class Members. The attorneys' fees that may be requested are well below the benchmark for attorneys' fees percentage in class actions cases.

26. The Settlement Agreement secures full relief for the Class. This is an excellent result for the Settlement Class.

Further declarant sayeth not.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated this 15th day of November, 2022.

A handwritten signature in blue ink, appearing to read 'AJ', is written over a horizontal line. The signature is stylized and cursive.

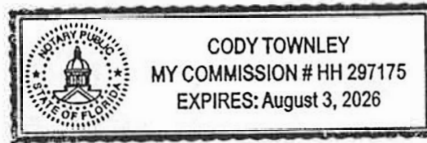
Amy L. Judkins, Esq.

VERIFICATION PAGE

STATE OF Florida

COUNTY OF Orange

The foregoing Answers to Interrogatories were acknowledged before me this 15 day of December, 2022, by Amy Lynn Jenkins, who is personally known to me, or who has produced FLDL, as identification, and who did/did not take an oath.



Signature of Officer taking acknowledgment 

Cody Townley
Name of Officer taking acknowledgment

HH297175
Commission number, if any

Exhibit C

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

SHANNON WHITEHEAD, individually and
on behalf of others similarly situated,

Plaintiff,

v.

GARRISON PROPERTY and CASUALTY
INSURANCE COMPANY,

Defendant.

CIVIL ACTION NO.: CI 22-2154

**PLAINTIFFS' NOTICE OF
VOLUNTARY DISMISSAL**

Pursuant to Neb. Rev. Stat. § 25-601(1), plaintiff Shannon Whitehead, on behalf of herself and others similarly situated, hereby voluntarily dismisses the above-captioned cause of action. Defendant has not filed a counterclaim, setoff, or answer.

SHANNON WHITEHEAD, Plaintiff

By: /s/ Shane C. Mecham

Shane C. Mecham
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Attorneys for Plaintiff & Proposed Class

Dated this 21st day of December 2022.

CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2022, I electronically filed the foregoing document with the Clerk of the Court by using the Nebraska Justice online docketing system, which will send a notice of electronic filing to all counsel of record.

/s/ Shane C. Mecham
Shane C. Mecham

Certificate of Service

I hereby certify that on Wednesday, December 21, 2022 I provided a true and correct copy of the Notice-Dismisal to the following:

Garrison Property & Casualty Ins. represented by Brooke McCarthy (Bar Number: 25077)
service method: Electronic Service to brooke.mccarthy@kutakrock.com

Signature: /s/ MECHAM, SHANE C (Bar Number: 26529)

Certificate of Service

I hereby certify that on Thursday, December 22, 2022 I provided a true and correct copy of the Motion to the following:

USAA General Indemnity Company represented by Brooke McCarthy (Bar Number: 25077)
service method: Electronic Service to brooke.mccarthy@kutakrock.com

Signature: /s/ MECHAM, SHANE C (Bar Number: 26529)