UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

KOSMOE MALCOM, et al., individually and on behalf of all others similarly situated,

Plaintiffs,

v.

GEICO INDEMNITY COMPANY, GOVERNMENT EMPLOYEES INSURANCE COMPANY, and GEICO GENERAL INSURANCE COMPANY, Maryland corporations,

Defendants.

CIVIL ACTION
FILE NO.: 5:20-cv-00165-MTT

FINAL ORDER AND JUDGMENT
GRANTING FINAL APPROVAL OF CLASS SETTLEMENT

Plaintiffs Nicholus Johnson ("Johnson"), Kosmoe Malcom ("Malcom"), Aqueelah Coleman ("Coleman"), and Todra Washington ("Washington") (collectively "Plaintiffs"), individually and on behalf of the proposed Settlement Class, and Defendants GEICO Indemnity Company ("GEICO Indemnity"), GEICO General Insurance Company ("GEICO General"), and Government Employees Insurance Company ("Government Employees") (collectively, "GEICO" or "Defendants"), have agreed, subject to Court approval, following sending of the Class Notice to the Settlement Class, and a hearing, to settle this Action upon the terms and conditions in the Class Action Settlement Agreement dated October 16, 2023 (Doc. 192-1) as amended (Doc. 194-1) (the "Settlement Agreement" or the "Agreement"), which together with the Exhibits attached thereto, set forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice upon the terms and conditions

set forth therein.

The Court has read and considered the Settlement Agreement; and

WHEREAS, good cause has been shown, and the Court having considered the record and arguments of counsel, and being otherwise fully advised in the premises,

WHEREAS, this Court granted preliminarily approval (Doc. 195) of the Settlement Agreement on December 5, 2023 (including the attachments thereto), and directed that Notice be provided in accordance with the terms of the Agreement thereby providing the opportunity for Class Members to evaluate the Agreement's terms and to submit a claim, request exclusion, or submit an objection, and set a final approval Fairness Hearing for June 6, 2024;

WHEREAS, this Court ordered that Notice be directed to Class Members pursuant to the terms of the Settlement Agreement;

WHEREAS, the Parties have demonstrated that the Notice plan was completed in accordance with the terms of the Settlement Agreement and pursuant to this Court's Order;

WHEREAS, in accordance with the Notice, a final fairness Hearing was conducted on June 6, 2024, during which this Court considered (1) the fairness, adequacy, and reasonableness of the Settlement Agreement terms under Fed. R. Civ. P. 23(e), (2) whether certification of the Settlement Class was proper under Rule 23; and (3) whether the attorneys' fees, costs, and individual settlements sought were fair and reasonable under Rule 23(h);

WHEREAS, the Motion for Attorneys' Fees, Costs, and Approval of Individual Settlements were filed on April 18, 2024 (Doc. 197), fifteen days before the deadline to object to the Settlement;

WHEREAS, there were no objections to the Settlement by any party, Class Member,

or non-Class Member;

WHEREAS, this Court has fulfilled its duty to analyze the fairness, reasonableness, and adequacy of the proposed Settlement Agreement and the Motion for Attorneys' Fees, Costs, and Individual Settlements by considering not only the filings and arguments of Plaintiffs, Class Counsel, and Defendants, but also by independently evaluating the Settlement Agreement and Class Counsel's Motion for Fees, Costs, and Approval of Individual Settlements;

WHEREAS, by performing this independent analysis of the Motion for Final Approval, the Settlement Agreement as well as Class Counsel's Motion for Attorneys' Fees, Costs, and Approval of Individual Settlements, the Court considered and protected the interests of all absent Settlement Class Members under Fed. R. Civ. P. 23;

WHEREAS, the Mailed Notices and a Settlement Website advised Settlement Class Members of the method by which Class Members could opt out from the proposed Settlement and Settlement Class, and independently pursue an individual legal remedy against Defendants;

WHEREAS, pursuant to the Settlement Agreement and this Court's Order, all Settlement Class Members maintained the absolute right to request exclusion and pursue an individual lawsuit against Defendants;

WHEREAS, any Settlement Class Member who failed to request exclusion under the terms of the Settlement Agreement and as explained in the Mailed and Longform Notices voluntarily waived the right to pursue an independent remedy against Defendants;

WHEREAS, the Mailed and Longform Notices advised Settlement Class Members of

the method by which Class Members could file objections to the Settlement Agreement, including the terms of the Agreement or the amount of attorneys' fees, costs, or individual settlements, and any timely objectors could request to be heard at the final Fairness Hearing;

WHEREAS, no Class Members or non-Class Members have filed any objections at any time or as to any issue;

NOW, THEREFORE, based upon the Settlement Agreement, all files, records, and proceedings herein, statements of counsel, including those set forth in the Motion for Final Approval and the Motion for Attorneys' Fees, Costs, and Approval of Individual Settlements, along with the declarations affixed thereto, and upon the Hearing conducted on June 6, 2024, this Court finds and concludes as follows:

1. The Settlement Agreement (including its Exhibits) is hereby incorporated by reference in this Order, and all terms defined in the Agreement have the same meanings in this Order.
2. This Court possesses jurisdiction over the subject matter of this Action and over all Parties to this Action, including the Named Plaintiffs and all Settlement Class Members.
3. On December 5, 2023, this Court entered an Order certifying the Settlement Class, in which this Court found that (1) the negotiations prior to the Agreement occurred at arm's length, (2) prior to settlement, Class Counsel and Defendants' Counsel had investigated the claims, litigated essential matters regarding the claims, and tested the strengths and weaknesses of the claims through extensive litigation, and (3) the proponents of the Settlement Agreement were experienced in similar litigation. The

Court preliminarily approved the Agreement (including Exhibits), and found the proposed Agreement was sufficiently fair, reasonable, and adequate to warrant providing notice to the Settlement Class.

4. As set forth in the Order of preliminary approval (Doc. 195) the Court certified the following class:

> All insureds covered under an Automobile Insurance Policy issued by GEICO providing auto physical damage coverage for comprehensive or collision loss, who during the period April 29, 2014 through December 31, 2019 had a total loss and made a comprehensive or collision first-party claim that GEICO determined to be a covered total loss claim, whose claim was adjusted and paid as a total loss, and (1) whose total losses were of Vehicles That Had a Fair Market Value Listed in the TAVT Assessment Manual and who were not paid the full TAVT due on their claims based on fair market value in the TAVT Assessment Manual; or (2) whose total losses were not Vehicles That Had a Fair Market Value Listed in the TAVT Assessment Manual but whose total losses were Vehicles Listed in the DRIVES Assessment Manual Data and who were not paid the full TAVT due on their claims based on the fair market value in the DRIVES Assessment Manual Data.

5. The Court finds that, for purposes of settlement, the Named Plaintiffs possessed Article III standing and that the Class was adequately defined and clearly ascertainable, that the Rule 23(a) prerequisites were satisfied, and that the Rule 23(b)(3) factors favored certification of the Settlement Class.

6. The Court hereby reaffirms this definition of the Settlement Class for purposes of this Final Order and Judgment and certifies this Action, for settlement purposes only, as a Class Action. The Settlement Class as defined above is adequately defined and clearly ascertainable, and record evidence demonstrates the numerosity, commonality, typicality, and adequacy prerequisites are satisfied, common questions of law and fact

predominate over any individual questions, and class treatment is superior to any alternative method of adjudication.

7. Such finding should not be deemed an admission by GEICO of liability or fault or a finding of the validity of claims asserted in the Action or of any wrongdoing by GEICO. Neither the terms and provisions of the Agreement nor any of the negotiations or proceedings connected with it shall be construed as an admission or concession by the Released Persons of the truth of the allegations made in the Action, or of any liability, fault, or wrongdoing on the part of the Released Persons.

8. Plaintiffs have sufficiently demonstrated Article III standing and satisfied Rule 23(a)(4)'s adequacy prerequisite, and are appointed representatives of the Settlement Class ("Class Representatives").

9. Having also satisfied the adequacy prerequisite prescribed by Rule 23(a)(4), the following attorneys are appointed as counsel for the Settlement Class ("Class Counsel"):

HALL & LAMPROS LLP
Christopher B. Hall, Esq.
Gordon Van Remmen, Esq.
300 Galleria Parkway
Suite 300
Atlanta, GA 30339

EDELSBERG LAW
Scott Edelsberg, Esq.
Christopher Gold, Esq.
20900 NE 30th Avenue
Suite 417
Aventura, FL 333180

SHAMIS & GENTILE, P.A.
Andrew Shamis, Esq.
14 NE 1st Avenue
Suite 1205
Miami, FL 33132

LINDSEY & LACY, PC
W. Thomas Lacy, Esq.
200 Westpark Drive, Suite 280
Peachtree City, GA 30269

NORMAND PLLC
Edmund Normand, Esq.
Jacob Phillips, Esq.
3165 McCrory
Pl #175
Orlando, FL 32803

BAYUK PRATT
Bradley W. Pratt, Esq.
4401 Northside Parkway
Suite 390
Atlanta, GA 30327

10. This Order shall not be used as evidence or be interpreted in any way to be relevant to whether litigation classes or the previously certified Classes should be or should have been certified for class treatment.

11. On December 5, 2023, the Court approved the Notice Program, including the Mail Notice Form and Claim Form, Email Notice, Longform Notice, and Electronic Claim Form, submitted to the Court as Exhibits C, D, and E to the Motion for Preliminary Approval (Doc. 192), and directed that the Notices and Claim Forms be sent in the manner set forth in the Agreement, including the procedures for Notices returned as undelivered or due to an incorrect address.

12. Before the final hearing, the Parties submitted evidence that the Notice plan and the settlement website, which informed Settlement Class members of the terms of the proposed Settlement Agreement and of their right and opportunity to request exclusion from the Settlement Class and to object to the terms of the Agreement, were disseminated and posted pursuant to and in compliance with the Order granting preliminary approval.

13. As such, and as confirmed based on review of the evidence submitted and arguments asserted by counsel, the Court finds that the notice provided to Settlement Class Members (i) was the best practicable notice under the circumstances; (ii) was calculated to apprise Settlement Class Members of the pendency of the Action and their right to

object to or seek exclusion from the Proposed Settlement and to appear at the final Fairness Hearing; and (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice. *See* Fed. R. Civ. P. 23(c)(2).

14. Additionally, the Court finds and concludes that the Notice plan set forth in the Preliminary Approval Order and effectuated by the Parties complied with the requirements of Fed. R. Civ. P. 23, along with the due process requirements prescribed by the Georgia and United States Constitutions. The Court further finds that the notice campaign stated in plain, easily understood language, *inter alia*, (a) the nature of the action; (b) the Settlement Class definition; (c) the claims and defenses at issue; (d) that Settlement Class Members could object to the proposed Settlement Agreement and could participate in person or through counsel; (e) the method by which Settlement Class Members could elect to be excluded from the proposed Settlement Agreement and Settlement Class, and that the Court will exclude any Class Members who timely and properly requested exclusion; and (f) the binding effect of final judgment on Settlement Class Members who did not request exclusion from the Settlement Class.

15. For these reasons, the Notice as disseminated is finally approved as fair, reasonable, and adequate.

16. The Court finds that the Class Action Fairness Act Notice provided on behalf of GEICO by the Settlement Administrator complied with 28 U.S.C. § 1715(b). None of the agencies to whom notice was provided objected to the settlement, which supports the fairness of the Settlement Agreement. *See, e.g.*, *Hamilton v. SunTrust Mortg, Inc.*, No. 13-60749, 2014 U.S. Dist. LEXIS 154762, at *4 (S.D. Fla. Oct. 24, 2014) (finding that

where "not a single state attorney general or regulator submitted an objection…such facts are overwhelming support for the settlement").

17. The Fairness Hearing and the evidence before the Court support a finding that the Agreement was entered in good faith between the Plaintiffs and Defendants. Specifically, the Court affirms its findings in the Order granting preliminary approval that negotiations occurred at arm's length, that there was sufficient and extensive discovery prior to settlement, and that the Settlement Agreement is fair, reasonable, and adequate to Settlement Class Members, based on, *inter alia*, the absence of any objections.

18. Based on the terms and conditions set forth in the Settlement Agreement, and given the benefits conferred by the Settlement Agreement to Settlement Class Members compared to the risks of continued prosecution and appeal, settlement of this Action is finally approved as fair, reasonable, adequate, and in the best interest of Settlement Class Members.

19. Where a proposed settlement class complies with the Rule 23 requirements, this Circuit expresses a strong preference towards settlement of class litigation, and as such class settlements should be approved if the terms are "fair, adequate, reasonable, and not the product of collusion." *Leverso v. SouthTrust Bank*, 18 F.3d 1527, 1530 (11th Cir. 1994).

20. The textual requirements for approval of proposed settlements are set forth in Rule 23(e)(2), under which settlements may be approved if (i) the Class was adequately represented and the settlement was negotiated at arm's length, and (ii) the relief

provided is adequate under the factors outlined in Rule 23(e)(2)(C). The Court finds that these requirements are satisfied here.

21. Rule 23 is intended to "focus the court and the lawyers on the core concerns" of whether a settlement is fair and reasonable, but not to eliminate the various circuits' governing law on class action settlements. Fed. R. Civ. P. 23(e)(2) Committee Notes on Amendment – 2018. As such, the factors prescribed by *Bennett v. Behring Corp.*, 737 F.2d 982 (11th Cir. 1984) for courts to consider when evaluating the terms of a proposed settlement remain relevant. *See In re S. Co. Shareholder Derivative Litig.*, No. 1:17-CV-725-MHC, 2022 WL 4545614, at *5 (N.D. Ga. June 9, 2022) (applying the *Bennett* factors). These factors are: (1) likelihood of success at trial; (2) range of potential recovery; (3) the point on the range at which a settlement is fair, adequate, and reasonable; (4) complexity, expense, and duration of litigation; (5) nature of any opposition to the settlement; and (6) stage of proceedings when settlement occurred. *Bennett*, 737 F.2d at 986.

22. The Rule 23(e)(2) threshold requirements – adequate representation and arm's length negotiations – weigh in favor of settlement here. First, the question of adequate representation concerns whether the class representatives secured the information and knowledge of the relevant claims and defenses necessary to make an intelligent assessment of the pros and cons of potential settlement terms. Fed. R. Civ. P. 23(e)(2)(A); *see also Williams v. New Penn Fin., LLC*, Case No.: 3:17-cv-570-J-25JRK, 2019 U.S. Dist. LEXIS 106268, at * (M.D. Fla. May 8, 2019) (adequacy

requirement addresses whether class representatives had "adequate information base" to evaluate potential settlement terms).[1]

23. The stage of the proceedings and amount of discovery completed support settlement. This case went right up until trial, with Plaintiffs filing pretrial disclosures on June 20, 2023 (Doc. 183), with a July 17, 2023 trial date (Doc. 156). The parties propounded extensive discovery in this case, took multiple party depositions and third-party depositions, engaged in third-party written discovery, substituted class representatives, and engaged in extensive motion practice. Plaintiffs engaged in sophisticated data analysis and relied upon multiple expert witnesses. Plaintiffs' counsel have extensive experience analyzing GEICO data, having resolved class action cases against GEICO in the past. Plaintiffs' counsel's experience in analyzing complex and voluminous claims data was aided by substantial experience litigating total loss claims. *Davis v. GEICO*, No. 2:19-cv-02477(S.D. OH) (auto sales tax and fees); *Roth v. GEICO*, No. 16-cv- 62942 (S.D. Fla., filed 2016) (same); *Jones v. GEICO*, Case No.: 6:17-cv-891-Orl-40 (M.D. Fla., filed 2017) (same). The complexity of the case, including complex data and class certification issues, required Plaintiffs to secure a statistics/data expert Jeffrey Martin, and expert Greg Elton who worked for the Georgia Department of

---

[1] As other courts have noted, this requirement essentially overlaps with the *Bennett* "stage of proceedings" factor, *see Cook v. Gov't Emples. Ins. Co.,* 2020 U.S. Dist. LEXIS 111956, at *18 (M.D. Fla. Jun. 22, 2020) (citations omitted), which is also intended "to ensure that Plaintiffs had access to sufficient information to adequately evaluate the merits of the case and weigh the benefits of settlement against further litigation." *Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1324 (S.D. Fla. 2005).

Revenue relating to the TAVT program. Plaintiffs and their counsel gained a complete understanding of all issues in this litigation.

24. Record evidence demonstrates that the Class Counsel evaluated voluminous discovery and data. The Class Representatives and Counsel were well-versed in the information necessary to evaluate the merits and benefits of settlement compared to the risk of further litigation.

25. As such, the Court finds that the Class Representatives have satisfied the Rule 23(e)(2)(A) "adequacy of representation" requirement, and further finds that the *Bennett* "stage of proceedings" weighs in favor of approving the Settlement Agreement.

26. Additionally, the record evidence demonstrates the "arm's length negotiations" requirement prescribed by Rule 23(e)(2)(A) is also satisfied here, particularly given that settlement occurred after extensive negotiations and at mediation with an experienced mediator.

27. The Court therefore finds that the Rule 23(e)(2)(a) "arm's length negotiations" procedural requirement is satisfied here.

28. Turning to whether the substantive terms of the Settlement Agreement are fair and reasonable, Rule 23(e)(2)(C) prescribes the following factors for courts to analyze in evaluating a settlement's terms: the risk of non-settlement, the method for processing claims and distributing relief, and the terms of attorneys' fees. *See* Fed. R. Civ. P. 23(e)(2)(C)(i)-(iii).

29. The first factor – the "costs, risks, and delay of trial and appeal" – overlaps with the first four *Bennett* factors: (1) likelihood of success, (2) range of potential recovery, (3) where, on the range of potential recovery, the amount to which Class Members are entitled falls, and (4) the duration and length of litigation. *See, e.g.*, *Williams v. New Penn Fin., LLC*, 2019 U.S. Dist. LEXIS 106268, at *11 (M.D. Fla. May 8, 2019). The question under Rule 23(e)(2)(C)(i) and the first four *Bennett* factors is whether class members' potential recovery if ultimately successful on the merits, taking into account the risks of losing outright, is consistent with the relief provided by the proposed settlement agreement. *See Cook v. Gov't Emples. Ins. Co.,* 2020 U.S. Dist. LEXIS 111956, at *20 (M.D. Fla. Jun. 22, 2020) ("[C]ourts should estimate the potential recovery if ultimately successful versus the risks of losing outright and determine whether the relief provided comports therewith."). The question is not the amount of relief in a vacuum, but "whether that relief is reasonable when compared with the relief 'plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing.'" *Burrow v. Forjas Taurus S.A.*, Case No. 16-21606-Civ-TORRES, 2019 U.S. Dist. LEXIS 151734, at *9 (S.D. Fla. Sep. 6, 2019) (citations omitted).
30. The Agreement provides 100% of the unpaid TAVT. Agreement at ⁋ 148. Defendants will pay approximately $158 per claim. The Settlement does not provide payment for license plate transfer fees, but the limited release preserves all license plate transfer fee claims and all other conceivable claims against Defendants other than relating to tax. Thus, potential recovery ranges from $0.00 (were Class Members to lose outright) to

complete payment of TAVT. The Settlement Agreement provides the high end of potential damages to every Settlement Class Member who submits a claim.

31. As such, the place "on the range of potential recovery" in which the relief afforded falls is clearly adequate, as it exceeds the top of that range. *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"); *cf. Bennett*, 737 F.2d at 987 n. 9 (approved settlement providing 5.6% of the potential recoverable damages).

32. The Court notes that no court has ruled whether an insurer must pay TAVT based on the fair market value determined in the TAVT Assessment Manual (as opposed to percentage of appraised value or some other method), or which Assessment Manual should be used.

33. Thus, the Court finds that Rule 23(e)(2)(C)(i) weighs in favor of approving the Settlement Agreement.

34. The next substantive factor relevant to the terms of proposed settlement agreements is the method for "distributing relief" and "processing class-members claims." Fed. R. Civ. P. 23(e)(2)(C)(ii). Here, the claims' process and forms approved by the Court and implemented by the Parties was simple and straightforward. GEICO provided the information necessary to pre-fill the settlement claim forms, meaning that Settlement Class Members needed only to attest that the information was correct to the best of their knowledge (or update their address in the event they had moved). *See Cook*, 2020 U.S. Dist. LEXIS 111956, at **22-23 (finding that similar method for claim processing

weighed in favor of approval because it was "simple, streamlined, and straightforward) (citing *Wilson v. Everbank*, 2016 U.S. Dist. LEXIS 15751, 2016 WL 457011, at *9 (S.D. Fla. Feb. 3, 2016) (finding significant that claim process "should take no more than a few minutes for the average claimant to complete")).

35. It is well-established in this Circuit that a claims-made structure does not undermine the reasonableness of a settlement. *See Poertner v. Gillette Co.*, 618 F. App'x 624 (11th Cir. 2015) (confirming approval of class settlement with less than 1% claims rate); *see also, e.g.*, *Hamilton v. SunTrust Mortg. Inc.*, 2014 WL 5419507, at *6 (S.D. Fla. Oct. 24, 2014) (a claims-made structure does not impact the "fairness, reasonableness, or adequacy of proposed settlement."); *Bastian v. United Servs. Auto. Ass'n*, 2017 U.S. Dist. LEXIS 180757 (M.D. Fla. Nov. 1, 2017) (approving similar claims-made settlement in class action concerning total-loss vehicles); *Montoya v. PNC Bank, N.A.*, 2016 WL 1529902 (S.D. Fla. Apr. 13, 2016). This Court agrees with Judge Goodman that "[n]egotiating for a smaller amount to go to Class Members would, in effect, unfairly reward some Class Members for their own indifference at the expense of those who would take the minimal step of returning the simple Claim Form to receive the larger amount." *Lee v. Ocwen Loan Servicing, LLC*, Case No. 14-cv-60649-GOODMAN, 2015 WL 5449813, at *18 (S.D. Fla. Sep. 14, 2015).

36. The Court notes that GEICO made clear it would not have settled the case on a direct pay model and would instead have appealed class certification to the Eleventh Circuit. *See Montoya v. PNC Bank, N.A.*, 2016 U.S. Dist. LEXIS 50315, at *49 (S.D. Fla. Apr. 13, 2016) (claims-made settlement offered the best and "only real relief" possible in

settlement because defendants "would not have agreed" to direct pay structure). As such, the question is not whether the claims-made structure is fair and reasonable when compared to a hypothetical direct-pay structure – the question is whether the claims-made settlement is fair and reasonable when compared to no settlement at all. *See Casey v. Citibank, N.A.*, 2014 WL 4120599, at *3 (N.D. N.Y. Aug. 21, 2014) (while direct payment may have resulted in more class members receiving some payment, "there is no reason to believe the defendants would agree to such terms" and thus the feasibility of direct payment "is irrelevant").

37. Thus, this Court finds that Rule 23(e)(2)(C)(ii) favors approval of the Settlement Agreement.

38. The next factor is the "terms of any proposed award of attorney's fees[.]" Fed. R. Civ. P. 23(e)(2)(C)(iii). Class Counsel filed an Unopposed Motion for Attorneys' Fees, Costs and Approval of Individual Settlements on April 18, 2024. (Doc. 197). The Motion seeks $1,504,500.00 in attorneys' fees ($1,392,929.50 lodestar fee amount with a 1.08 multiplier) and costs of up to $86,000.00. *Id.* at 18; Agreement at ⁋ 114. Case costs are $89,644.67 (including class administration fees to be paid) at the time Plaintiffs filed the motion for fees and costs (before final damages analysis of all claims). *See* Hall Declaration of 4/18/24 (Doc. 197-1) at ⁋⁋ 38.

39. Because this is a claims-made class action settlement, the attorneys' fees are determined by a lodestar analysis. *In re Home Depot Inc.*, 931 F.3d 1065, 1078-85 (11th Cir. 2019); *Drazen v. Pinto*, 2024 WL 2122466, at *31-33 (11th Cir. May 13, 2024). The $1,504,500.00 in attorneys' fees and $86,000.00 in costs sought by Class

Counsel are reasonable. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *Bivins v. Wrap It Up, Inc.*, 548 F.3d 1348, 1350 (11th Cir. 2008). Class Counsel spent over 2,000 hours litigating this case at hourly rates of $400—$750. Doc. 200 at 3. Class Counsel's paralegals' hourly rates are $95—$225. *Id.* Based on Class Counsel's declarations, timesheets, experience, and reputation and the Court's experience, and considering the relevant Middle District of Georgia legal community,[2] this Court finds that the hours and hourly rates requested are reasonable. *Norman v. Hous. Auth. of the City of Montgomery*, 836 F.2d 1292, 1299 (11th Cir. 1988) ("A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation."); *Caplan v. All Am. Auto Collision, Inc.*, 36 F.4th 1083, 1090 (11th Cir. 2022) ("[A] district court may consider its own knowledge and experience concerning reasonable and proper fees."); Docs. 200-1 ¶ 6; 200-2 ¶ 7; 200-6 ¶ 6; 200-7 ¶ 6. This is a "rare" and "exceptional" case warranting the 1.08 multiplier based on the time and labor expended and the novelty, risks, and complexity of the case, noted in paragraphs 23 and 32, and because Class Counsel worked on a contingency basis. *See Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 772 (11th Cir. 1991); *In re Home Depot Inc.*, 931 F.3d at 1090.

40. Thus, this Court finds that Rule 23(e)(2)(C)(iii) favors approval of the Agreement.

---

[2] The Court recognizes that the pool of experienced and qualified attorneys in the Middle District willing to represent plaintiffs in complex class action litigation is not deep. Thus, it is common that lawyers from outside the Middle District legal community typically appear before the Court in such matters. *See United States ex rel. Zediker v. OrthoGeorgia*, 407 F. Supp. 3d. 1330, 1342-1344 (M.D. Ga. 2019), *aff'd*, 857 F. App'x 600 (11th Cir. 2021).

41. The final Rule 23 substantive factor addresses whether the Settlement Agreement equitable treats class members. *See* Fed. R. Civ. P. 23(e)(2)(D). Under the Settlement Agreement, Settlement Class Members are treated identically – every Class Member was to receive the same Notice, the same pre-filled Claim Form, and the same measure of damages. *See Cook*, 2020 U.S. Dist. LEXIS 111956, at *24 (finding that Rule 23(e)(2)(D) favored settlement because "Settlement Class Members are treated identically insofar as it relates to Notice, Claim Forms, damages, and all other material ways."). Additionally, the scope of the release identically impacts all Class Members. *See* Rule 23(e)(2)(D), Committee Notes on Rules - 2018 Amendment (courts should evaluate whether "the scope of the release may affect class members in different ways"). As such, this Court finds that Rule 23(e)(2)(D) weighs in favor of approval of the Settlement.

42. Finally, the Court notes that the two *Bennett* factors not subsumed within Rule 23 – *i.e.*, the opposition to the settlement terms and the opinions of the Class Representatives – weigh in favor of settlement. First, no class members lodged an objection, and only one class member requested exclusion. Pursuant to the Settlement Agreement and prior to the Final Approval Hearing, the Class administrator submitted an affidavit to the Court confirming that the Notice Program was completed, describing how the Notice Program was completed, providing the names of each member of the Settlement Class who timely and properly requested exclusion from the Settlement Class or served objections, and detailing the number of Claim Forms that were timely and validly submitted. Doc. 202-1. These numbers strongly support the fairness, adequacy, and

reasonableness of the Settlement Agreement. *See Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 694 (S.D. Fla. 2014) ("[L]ow resistance to the settlement [through opt- outs and objections] ... weighs in favor of approving the settlement."); *Morgan v. Public Storage*, 301 F. Supp. 3d 1237, 1252 (S.D. Fla. 2016) (one objection out of "hundreds of thousands class members" indicates strong satisfaction with settlement).

43. Second, the opinions of Class Counsel and the Named Plaintiffs favor approval of the settlement. Class Counsel are experienced class action litigators with excellent reputations, and this Court is inclined to give weight to their opinions. *See Thompson v. State Farm Fire & Cas. Co.*, 2019 U.S. Dist. LEXIS 6137, at *14-15 (M.D. Ga. Jan. 14, 2019) (relying on opinion of Class Counsel because "[a]bsent fraud, collusion, or the like, the district court should be hesitant to substitute its own judgment for that of counsel.") (quotations omitted); *Cook*, 2020 U.S. Dist. LEXIS 111956, at *26 (finding that the undersigned are "experienced and well-regarded class action litigators" and taking note of their opinions).

44. Thus, this Court finds that the remaining *Bennett* factors favor approval of the Settlement Agreement.

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED THAT

45. The Court possesses subject matter jurisdiction over this Action and to approve the Settlement Agreement, and has personal jurisdiction over the Named Plaintiffs, Defendants, and all Settlement Class Members. The Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs, and Approval of Individual Settlements (Doc. 197) and

Unopposed Motion for Final Approval of Class Action Settlement (Doc. 198) are **GRANTED**.

46. The Court finds that all Rule 23(a) prerequisites for certification of a settlement class under have been satisfied and that the Rule 23(b)(3) factors favor certification. As such, the Court confirms certification of the Settlement Class for settlement purposes only.

47. The Court finds that the terms of the Settlement Agreement are fair, reasonable, and adequate and consistent with due process requirements, and are in the best interests of the Settlement Class. The Settlement Agreement, including all terms and provisions, is approved in all respects, and the Parties are directed to effectuate the Agreement in accordance with its terms.

48. The Court finds that, in negotiating, entering, and implementing the Settlement Agreement, Class Counsel and the Named Plaintiffs adequately, appropriately, and fairly represented and protected the interests of Settlement Class Members. As such, the Court reconfirms its appointment of the Named Plaintiffs and Class Counsel as Class Representatives, as set forth above.

49. The Opt Out list is: Gail Burgos of Upatoi, Georgia. All other Settlement Class Members are adjudged to be members of the Settlement Class and are bound by this Final Order and Judgment and by the terms of the Settlement Agreement, including the terms and provisions of the Release set forth therein.

50. This Action is **DISMISSED WITH PREJUDICE** in its entirety on the merits, without leave to amend and without additional fees or costs except those expressly provided in

this Final Order and Judgment granting the Motion for Attorneys' Fees, Costs, and Approval of Individual Settlements.

51. Upon entry of this Final Order and Judgment, each Settlement Class Member (unless excluded by the Court), as well as their heirs, estates, trustees, executors, administrators, agents, beneficiaries, successors, assigns, and representatives, and/or anyone acting or purporting to act for them or on their behalf, regardless of whether they have submitted a Claim Form, shall be conclusively deemed to have fully released and discharged all Released Claims against all Released Parties as defined and set forth in the Settlement Agreement.

52. Other than Defendants, Defendants' counsel and their clerical/administrative personnel, Class Counsel and clerical/administrative personnel employed by Class Counsel, the Settlement Administrator and any clerical/administrative personnel employed by the Settlement Administrator, and such other persons as the Court finds necessary and may order after hearing or notice to counsel of record, no persons shall be permitted to access any Confidential Information, as defined and set forth in the Settlement Agreement. Class Counsel shall return to Defendants all Confidential Information pursuant to and in accordance with the terms of the Settlement Agreement.

53. This Final Order and Judgment incorporates the remaining terms of the Settlement Agreement, including all provisions addressing jurisdiction to enforce the terms and provisions of the Settlement Agreement, admissibility of the Settlement Agreement, as well as the requirements for properly and timely submitting claims.

54. Plaintiffs have requested that the Court approve attorneys' fees of $1,504,500.00 and costs not to exceed $86,000.00. Agreement (Doc. 192-1) at ¶ 114.
55. The attorneys' fees and costs sought by Class Counsel are reasonable for the reasons set forth in paragraph 39.
56. Plaintiffs supported the request and petition with declarations from counsel. *See* Docs. 197-1; 200-1; 200-2; 200-3; 200-4; 200-5; 200-6; 200-7.
57. This Court has reviewed all declarations and evidence submitted in support thereof, and agrees that the fees and costs sought by Plaintiffs are reasonable under the analysis prescribed by Eleventh Circuit law and under Rule 23(h).
58. After negotiating the class settlement, the parties considered a more expansive release of claims by Plaintiffs. The Parties reached an agreement for more expansive release (beyond the release for claims relating to TAVT) for $5,000.00. *See* Doc. 197-1 at exhibit 2. The $5,000 individual settlement funds do not come from the common class fund and do not reduce any payments to or available to class members. Hall Decl. of 5/7/24 at ⁋ 40; Agreement at ⁋ 114. Although the Eleventh Circuit held incentive or service awards that compensate a class representative solely for their time and for bringing a lawsuit unlawful, here Plaintiffs are being paid $5,000.00 not as "a salary, a bounty, or both," but in exchange for agreeing to a broader (separate) release of claims than the release applicable to the other class members. *See Black v. USAA Casualty Insurance Company*, 1:2021-cv-01363 (N.D. Ga.) (Doc. 69 at ⁋ 57) (12/14/23) (final approval order approving separate release to representative plaintiff that was not a

salary, bounty, or both);[3] *Sinkfield v. Persolve Recoveries, LLC*, No. 2023 WL 511195, at *3 n.2 (S.D. Fla. Jan. 26, 2023)("Because the Plaintiff is being paid this $1,500.00, not as "a salary, a bounty, or both," but in exchange for agreeing to a broader of claims than the release the other Class Members have given, this payment doesn't violate the strictures of *Johnson v. NPAS Solutions, LLC*, 975 F.3d 1244, 1258 (11th Cir. 2020)."); *Broughton v. Payroll Made Easy, Inc.*, No. 2:20-CV-41-NPM, 2021 WL 3169135, at *4 (M.D. Fla. July 27, 2021) (same). The Settlement Agreement provides that if the Court does not approve the payment, Plaintiffs have agreed that the individual release and payment will be null and void. Agreement at ⁋ 161. Moreover, the Plaintiffs' individual releases provided that they would withdraw any claim to the individual settlement funds if there is an objection. Doc. 197-1 (individual releases at pages 32-47).

59. The Notice informed the Settlement Class Members of the attorneys' fees, costs, and the payment for individual settlement. (Doc. 192-3, Postcard Notice, 192-4, Email Notice, and Doc. 192-5, Longform Notice). Plaintiffs publicly filed their Motion for Attorneys' Fees, Costs, and Approval of Individual Settlement 15 days before the objection deadline. (Doc. 197). There were no objections.

60. The Court grants Plaintiffs' Motion for Attorneys' Fees, Costs, and Approval of Individual Settlements. The Court reaffirms its appointment of JND Legal Administration as the Settlement Administrator.

[3] *Black v. USAA* was filed after the present case and also alleges failure to properly calculate TAVT. The Hall, Lacy, Edelsberg, and Shamis firms were class counsel in *Black* and also are class counsel here.

61. Without in any way affecting the finality of this Final Judgment, and without affecting the jurisdiction of any other court to enforce the Settlement Agreement as appropriate, this Court shall retain continuing jurisdiction over this Action for purposes of: (a) enforcing the terms and provisions of the Settlement Agreement, (b) hearing and resolving any application by a Party for a settlement bar order, and/or (c) any other matter related or ancillary to any of the foregoing.

62. In accordance with Fed. R. Civ. P. 54, this Final Order and Judgment is a final and appealable order.

SO ORDERED, this 10th day of June, 2024.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT