

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA**

DANA BASS, individually and on behalf of  
others similarly situated,

Plaintiffs-Petitioners,

v.

IMPERIAL FIRE & CASUALTY  
INSURANCE COMPANY,

Defendants-Respondents.

Civil Action No.: 1:22-cv-00550

Judge: David C. Joseph

Magistrate Judge: Joseph H. L. Perez-Montez

**PLAINTIFF’S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS**

Plaintiff, Dana Bass (“Plaintiff”), individually and on behalf of all other similarly situated, files her Unopposed Motion for Preliminary Approval of Class Action Settlement and Certification of Settlement Class, and respectfully requests that the Court grant preliminary approval of the proposed class action Settlement Agreement (“Agreement”), attached hereto as **Exhibit 1**,<sup>1</sup> between Plaintiff and Defendant Imperial Fire and Casualty Insurance Company (“Imperial” or “Defendant”)<sup>2</sup>.

**I. FACTS AND BACKGROUND**

This is a Louisiana class action lawsuit on behalf of Imperial insureds who submitted covered first-party auto total-loss claims during the class period. ECF 1, Complaint (“Compl.”), at ¶¶ 6-8. Plaintiff alleges that vehicle sales taxes, title fees, registration fees, and applicable transfer fees (*i.e.*, title, handling, plate) must be paid in connection with a total loss settlement because, *inter alia*, it is inherently included within the actual cash value (“ACV”) of the vehicle. *Id.* at ¶ 37.

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<sup>1</sup> For purposes of this memorandum, capitalized terms have the meanings provided in the Agreement.

<sup>2</sup> Imperial as used herein shall refer to all those entities listed in Paragraph 12 of Exhibit F (Settlement Agreement).

Plaintiff alleges that Imperial failed to pay some or all of these fees in connection with total loss valuations and payments in the State of Louisiana. *Id.* at ¶¶ 37-44.

**A. Plaintiff’s Total Loss Claim and Imperial’s Alleged Breach.**

Plaintiff and Settlement Class Members entered into Louisiana automobile policy agreements to be insured by Imperial under terms contained in “form” policies (the “Policy” or “Policies”). Compl. at ¶¶ 6, 21; *see* Declaration of Edmund A. Normand (“Normand Decl.”) at ¶ 4, attached as **Exhibit 2**. Imperial’s Policy covered Plaintiff and Settlement Class Members based on standardized language with substantially similar material terms for collision and comprehensive coverage on first-party total loss physical damage claims. *Id.* at ¶¶ 5, 30, 59.

Plaintiff alleges that the Policy requires Imperial to pay the ACV, including reasonably necessary costs of sales tax (“Sales Tax”), title fees, including title transfer and handling fees, and license plate transfer fees (“Transfer Fees”) on total loss claims. *Id.* at ¶ 4. ACV is (1) defined as “the actual cost to purchase a comparable vehicle[,]” and (2) equal to the “replacement cost value less depreciation.” *Id.*, *see also* LSA-R.S. 22:1892B(5).

The policy incorporates the mandates of Louisiana Law. Compl. at ¶ at 58. Plaintiff alleges that, pursuant to Louisiana law: (1) an insured is required to pay Sales Tax and Transfer Fees when replacing a car to obtain new ownership and operate a vehicle;<sup>3</sup> and (2) Imperial is required to pay Sales Tax and Transfer Fees on total loss claims. *Id.* at ¶¶ 37-44.

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<sup>3</sup> There is a 4.45% State motor vehicle sales tax that applies to private passenger motor vehicles whether leased or owned. ECF 1., ¶ 10. In addition to the State sales tax, most parishes and many municipalities have a mandatory local sales tax ranging from 1.85 percent to 7 percent. *Id.* at ¶ 11. Registration and tag fees include: (1) \$3.00 for private passenger vehicle license plate transfer fee; (2) \$20.00 minimum for an annual License fee for private passenger vehicles; (3) \$3.00 for private passenger truck license plate transfer fee. *Id.* at ¶¶ 18-20. Title fees include: (1) \$68.50 for tag title fee; and (2) \$8.00 for title transfer handling fee. *Id.* at ¶ 20.

Plaintiff and Settlement Class Members made a claim under their Policy and suffered total losses of their Imperial insured vehicles. *Id.* at ¶¶ 22, 59, 70. Plaintiff alleges she and each Settlement Class Member were underpaid the full ACV replacement costs, including the Sales Tax and Transfer Fees owed under the Policy on their first-party total loss claims. *Id.* at ¶¶ 16-20, 23-26, 44, 50-57.

### **B. Procedural Background.**

The proposed Settlement was reached after a thorough investigation into and discovery of the legal and factual issues in this action. Class Counsel conducted an extensive pre-suit investigation into the factual underpinnings of the practices challenged in this action, as well as the applicable law. Ultimately, the Settlement is the result of many months of hard-fought litigation and negotiations.

On February 24, 2022, Plaintiff commenced this class action against Imperial in the Western District of Louisiana. Plaintiff alleged, individually and on behalf of all Class Members, that Imperial breached the terms of their auto insurance policies and violated Louisiana law when they failed to pay Plaintiff and the Settlement Class Members the full ACV replacement costs, including Sales Tax, Title Fees, Handling Fees and Tag Fees. *See* “Class Action Complaint” ECF 1.

Plaintiff served Defendant via the Louisiana Secretary of State on April 6, 2022 (ECF 5) and Defendant filed its *Ex Parte* Motion for Extension of Time to respond to the Complaint on April 13, 2022, which was granted by the Court on April 19, 2022. *See* “Order Granting [5] Mtn. for Ext. to File Response to Complaint” ECF 7

On May 23, 2022, Defendant sent Plaintiff a Demand Letter to Plaintiff, demanding appraisal of her vehicle. Plaintiff responded to Defendant’s Demand Letter on May 25, 2022,

declining the appraisal and stating that the appraiser is neither equipped nor permitted to resolve the legal disputes central to Plaintiff's claims.

On May 23, 2022, Defendant filed a Motion to Dismiss or in the Alternative to Compel Appraisal and Dismiss Pending Completion ("Motion to Dismiss"). ECF 9. In its Motion to Dismiss, Defendant argued that Plaintiff's claims were time barred by Louisiana's bodily injury statute of one year. *Id.* at p. 7.

On June 13, 2022, Plaintiff filed her Response in Opposition to Dismiss or in the Alternative to Compel Appraisal and Dismiss Pending Completion (ECF 13) and Response Brief in Opposition to Defendant's Motion ("Response Brief") on June 14, 2022. ECF 15. In Plaintiff's Response Brief, Plaintiff argued the contractual clause stating the statute of limitations from 10 years to one year was invalid because, *inter alia*, there is no statute of limitations for "bodily injury" in Louisiana, that the contract is ambiguous because there are many different claims and associated statutes of limitation for the variety of claims that "bodily injury" could apply to, and that Louisiana's statute of limitations for contract action is ten years. *Id.* at 6-7.<sup>4</sup>

Defendant moved the Court to file its Reply Brief in Support of its Motion to Dismiss under seal on June 20, 2022 (ECF 16), which was granted by the Court on June 28, 2022. ECF 17. Defendant filed its Reply Brief under seal on June 28, 2022. ECF 18.

From June 28, 2022 through December 12, 2023, the parties conducted extensive discovery, including extensive fact discovery and expert discovery. Class Counsel reviewed information and informal discovery to evaluate potential claims and defenses relating to Imperial. Plaintiff received data and information concerning insureds with substantially similar form policies

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<sup>4</sup> Ultimately, the Parties were able to agree to a two-year statute of limitations per the Confidential Settlement Term Sheet. The Class period runs from February 24, 2020 through the date of preliminary approval.

underwritten by Imperial. Plaintiff obtained numerous spreadsheets containing claim information for insureds who qualify as Class Members. Class Counsel ultimately reviewed and analyzed thousands of data entries to determine the ACV values, including replacement costs, Sales Tax, and Regulatory Fees for thousands of vehicles. Additionally, Plaintiff reviewed Plaintiff's insurance policy, report values, and filed a public records request to obtain title information. The document review and data analysis were particularly time-sensitive, meticulous, and complex. Normand Dec. at ¶16.

The Parties discussed settlement since the Motion to Dismiss had been pending for over a year. On August 11, 2023, the Parties filed a Joint Motion to Stay Pending Mediation or for Administrative Closure, in an effort to continue productive settlement negotiations by exploring prompt and cost-effective alternative resolution of the disputed issues to conserve the Parties' time and resources and promote judicial economy. ECF 27. On August 14, 2023, the Court Granted the Joint Motion to Stay Pending Mediation or for Administrative Closure with Consent and stayed the case pending the outcome of mediation. ECF 28.

On August 21, 2023, this Court entered an Order mootng the Motion to Dismiss for Failure to State a Claim (ECF 9), mootng the Motion to Compel (ECF 9), and issued a stay of proceedings. ECF 29. This Court then issued a Minute Order for Administrative Closure pending the outcome of mediation. ECF 31.

In preparation for mediation, Plaintiff hired experts to review all materials, complete data analysis on the Class claims, and provide expert testimony regarding damages. The Parties exchanged mediation submissions, discussing the strength and weaknesses of Plaintiff's allegations and damages, Defendant's potential defenses, and helped to further clarify the factual and legal issues. The parties also excluded data related to other insurance companies related to

Defendant and evaluated these claims for inclusion in this settlement. The Plaintiff hired damages experts on Louisiana State taxes and fees to estimate the Class damages. Prior to mediation, the Parties engaged in negotiations and shared Term Sheets to resolve the issues at mediation.

On December 12, 2023, the Parties attended formal mediation with Mike Ungar, a well-respected and experienced mediator. Normand Decl. at ¶ 21. The Parties engaged in a full day mediation including multiple phone conferences with each other, along with the assistance of Mr. Ungar. After many months of arms-length negotiations, with the assistance of Mr. Ungar, the Parties executed a Confidential Settlement Term Sheet.

After reaching an agreement on the scope of the proposed Settlement Class and the monetary benefits to Settlement Class Members, the Parties then separately, and with the assistance of Mr. Ungar, negotiated and reached an agreement concerning the payment of the costs of notice and administration, attorneys' fees, litigation expenses and costs, and service award payment to the Plaintiff.

Since mediation, the Parties have exchanged various drafts of the Settlement Agreement until they reached final agreement on all the terms. The Parties also engaged in negotiations regarding the Exhibits to the Settlement Agreement, including a Proposed Preliminary Approval Order, Proposed Final Order, Proposed Final Judgment, Claim Forms, and Notices. These negotiations were critical to ensure that Class Members receive effective notice, that they are adequately advised regarding the terms of the Settlement and their rights, and that they will be able to file claims with ease, including through pre-populated claim forms and electronically.

The Parties agreed to have Epiq Systems ("Epiq") serve as the Settlement Administrator because of their extensive experience administrating class action settlements and providing class

notice. The Parties further negotiated the content and format for electronic and paper claim forms, the content of the long form and summary class notices, and the settlement administration protocol.

The Settlement was fully executed by all parties on March [ ], 2024. There are no agreements between Plaintiff or Class Counsel and Defendants other than the Settlement.

## **II. TERMS OF THE SETTLEMENT**

### **A. The Settlement Class**

The Settlement Class is comprised of all individuals with personal automobile policies issued in Louisiana by Imperial and its subsidiaries or related insurance companies with the same operative policy language covering a vehicle with auto physical damage coverage for comprehensive or collision loss where such vehicle was declared a total loss, within the relevant time period and who are mailed class notice and do not timely opt out from the Settlement Class. The Settlement Class included insureds of subsidiary/related entities.

### **B. Monetary Benefits**

The Agreement provides that Imperial shall pay Settlement Class Members (1) the ACV Sales Tax for Settlement Class Members either at the applicable local rate based on the garage location and date of loss or the average sales tax rate for the state, whichever is administratively feasible and which must be applied uniformly for each policy period, (2) all applicable Transfer Fees (*i.e.*, title, handling, plate), less any prior payments for Sales Tax and Transfer Fees. Agreement at ¶ 66; Normand Decl. at ¶ 33. This represents 100% of the taxes and title and tag fees sought in this Action. *Id.* at ¶¶ 18, 36, 46, 63.

The Settlement did not include any claims related to the value of the total loss vehicle. Based on *Sampson v. United Servs Auto Ass'n*, 83 F.4th 414 (5th Cir. 2023), a valuation claim cannot be certified. As a result, this claim was not included in the Settlement. However, the

Settlement Agreement carves out for the release of any and all valuation claims so Class Members can pursue these claims individually if they so choose after they get 100% of the damages included in the Settlement Agreement for State Tax and Regulatory Fees.

As to the statute of limitations issues, Plaintiff and Defendant reached a compromise where the state of limitations of claims in State Tax and Regulatory Fees is for two years, not the one-year statute of limitations Defendant claimed applied. The Release leaves any insureds with a claim that was outside the two-year statute of limitations free to bring their claims. In other words, the Class goes back two years, one year longer than Defendant contended applied and anyone with a claim over two years is not in the class and is free to bring their claims.

Based upon information that Imperial produced to Class Counsel, and per the Settlement Term Sheet and Settlement Agreement, Plaintiff estimates the total exposure up to the date of settlement is \$3,740,706.00, which does not include any non-monetary relief. Agreement ¶ 68.

### **C. Attorneys' Fees, Costs, Expenses, and Plaintiff Service Award**

The Parties engaged in negotiations of attorneys' fees, expenses and costs, and a service award to Plaintiff only after agreement was reached for the Settlement Class to ensure that Settlement Class Members' benefits were not impacted by negotiations over attorneys' fees, costs, and expenses and a service award. The parties were able to reach an agreement regarding payment of a maximum amount of attorneys' fees, expenses and costs, and a service award to Plaintiff subject to approval by the Court.

Under the Settlement Agreement, Class Counsel will petition the Court, and Imperial agrees to pay, for attorneys' fees and costs up to \$795,000.00. *Id.* at ¶ 78. The Settlement further allows Plaintiff Dana Bass to seek a service award of \$5,000.00 for her service on behalf of the Settlement Class. *Id.* Ms. Bass has taken her obligations as a Class Representative seriously,

consistently engaging in the prosecution of the matter including by gathering and providing documents and information to counsel to be produced to Defendant in discovery, engaging in the per-suit investigation process by submitting documents and policies to Class Counsel to review, speaking with Class Counsel to discuss various questions, researching various facts about her policy and total loss valuation, seeing to understand what “class actions” are and what it means to be a fiduciary and a class representative, and reviewing various pleadings. Ms. Bass participated in the mediation, has conferred with Class Counsel regarding the propriety of the Settlement, and is committed to representing Settlement Class Members by ensuring that their interests are protected to the best of her ability. There is no evidence that Plaintiff possesses interest in conflict with the proposed Settlement Class.

Defendant’s payment of attorneys’ fees, costs and expenses, and a service award will be separate from and in addition to the monetary relief granted to the Settlement Class. Therefore, the Class Members get 100% of the benefits sued upon for State Tax and Regulatory Fees with all attorneys’ fees paid by Defendant. Any claims not in the Settlement are not released.

**D. Class Notice and Claims Process**

Defendant has agreed to bear the costs of providing notice and administration of the Settlement, including but not limited to processing Settlement Class Member claims and requests for exclusion.

The Parties agreed to multiple forms of Notice and a simple claims process. Because Imperial has with the last known physical street address for all Class Members, and the Parties expect Imperial’s records will also have last known email addresses for a majority of Settlement Class Members, Notice will be effected through direct, individual notice to Settlement Class Members. Direct notice will be provided within 90 days of the entry of a Preliminary Approval

Order by the mailing of the pre-filled postcard Class Notice and Claim Form, followed by two separate Email Class Notices. *Id.* at ¶¶ 43, 45. The Email Class Notices will have a hyperlink to an informational website, which provides access to a “Make a Claim” button permitting a Class Member to access a pre-filled electronic Claim Form. *Id.* at ¶ 46.

### **E. Non-Monetary Relief**

The Agreement also provides significant future non-monetary relief for insureds—as part of the settlement, Imperial agrees to pay “applicable Sales Tax and Transfer Fees on total loss vehicles at the time of loss based on the ACV of the vehicle, without requiring the policyholder to provide proof that the policyholder purchased a replacement vehicle and without regard to whether the vehicle is leased or owned.” *Id.* at ¶ 79. Imperial also agrees to pay applicable Sales Tax and Transfer Fees on total loss vehicles in the future.

In return, Settlement Class Members agree to release claims *only* for non-payment of ACV Sales Tax and Transfer Fees as part of total loss claim settlements. *Id.* at 23. Settlement Class Members do not release any claim for any other type of claim for vehicle valuation or any other type of claim underpayment. *Id.*

### **III. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS.**

In deciding whether to grant preliminary approval, courts must examine whether the class certification requirements of Fed. R. Civ. P. 23 are satisfied for settlement purposes. *See In re Chinese-Manufactured Drywall Products Liab. Litig.*, 424 F. Supp. 3d 456, 482 (E.D. La. 2020) (certifying settlement class and approving settlement agreement). These include numerosity, commonality, typicality and adequacy. *See* Fed. R. Civ. P. 23(a). If the foregoing criteria are satisfied, for a class seeking money damages, the Court must then consider the following certification requirements: (1) predominance—“that questions of law or fact common to the

members of the class predominate over any questions affecting only individual members”; and (2) superiority—“that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” See *In re Chinese-Manufactured Drywall*, 424 F. Supp. 3d at 482.

In applying the criteria for certification of a class action, “the court does not have the authority to conduct a preliminary inquiry into the merits of the case, and hence the substantive allegations contained in the complaint are accepted as true.” *In re Lease Oil Antitrust Litig. (No. II)*, 186 F.R.D. 403, 419 (S.D. Tex. 1999).

The proposed Settlement Class is defined as:

All Insureds, under any Louisiana automobile insurance policy issued by IMPERIAL FIRE AND CASUALTY INSURANCE COMPANY, and affiliated companies covering a vehicle with auto physical damage coverage for comprehensive or collision loss where such vehicle was declared a total loss, who made a first-party claim for total loss, and whose claim was adjusted as a total loss, within the relevant time period and who are mailed class notice and do not timely opt out from the settlement class.

Excluded from the Settlement Class are (1) Imperial, its agents, employees, subsidiaries, parents, and related entities, all present or former officers and/or directors of Imperial, the Settlement Administrator, the Mediator, Class Counsel, and any Judge of this Court and the Judge’s staff and employees; (2) Individuals with claims for which Imperial received a valid and executed release; (3) Individuals who are not on the Notice list and who did not submit a valid Claim Form or Electronic Claim Form for payment under this Settlement Agreement; (4) Individuals who request exclusion from the Class; and (5) Individuals with claims for first-party property damage as to which the individual process of appraisal or arbitration or a lawsuit has been completed or initiated at the time this Settlement Agreement is filed.

Here, each of the requirements for certification of the proposed Settlement Class under Fed. R. Civ. P. 23 are satisfied for settlement purposes. Indeed, many federal and state courts have certified very similar classes based on the exact same certification criteria as is applicable in this Court, including: *Angell v. GEICO Advantage Ins. Co.*, 67 F.4th 727 (5th Cir. 2023); *Sos v. State Farm Mut. Auto. Ins. Co.*, 21-11769, 2023 WL 5608014, at \*6 (11th Cir. Aug. 30, 2023);

*Buffington v. Progressive Advanced Ins. Co.*, 342 F.R.D. 66, 69 (S.D.N.Y. 2022); *Paris v. Progressive Am. Ins. Co.*, 19-21761-CIV, 2020 WL 7039018, at \*18 (S.D. Fla. Nov. 13, 2020); *Ostendorf v. Grange Indem. Ins. Co.*, 2:19-CV-1147, 2020 WL 5366380, at \*3 (S.D. Ohio Sept. 8, 2020); *Jones v. Gov't Employees Ins. Co.*, 6:17-CV-891ORL40LRH, 2019 WL 1490703, at \*4 (M.D. Fla. Apr. 4, 2019).

In fact, the undersigned is not aware of a single motion for certification that has been denied in any federal or state court based in similar insurance cases seeking sales tax or regulatory fees as part of ACV. This Court should follow the well-reasoned analyses of these courts and similarly grant class certification here of the Settlement Class.

**A. The Class is Numerous Such That Joinder is Impracticable.**

A class is sufficiently numerous where “joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). A “plaintiff need not show the precise number of [class members]” if the impracticability of joinder is clear. *In re Dynegey, Inc., Sec. Litig.*, 226 F.R.D. 263, 268 (S.D. Tex. 2005); *see Mullen v. Treasure Chest Casino, L.L.C.*, 186 F.3d 620, 624 (5th Cir. 1999) (finding 100-150 members is generally certifiable).

Here, Plaintiff has examined Defendant’s data for total loss claims, which reveals thousands of Settlement Class Members. Compl. ¶ 61, *See also* Normand Decl. ¶¶ at 50, 57. As such, the members of the Settlement Class are so numerous that individual joinder is impracticable. *See in re Chinese-Manufactured Drywall*, 424 F. Supp. 3d at 482 (finding numerosity satisfied for under 4,000 claimants).

**B. There are Questions of Law and Fact Common to the Class.**

The commonality requirement is satisfied when “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). Commonality “does not require that all questions of law or

fact raised in the litigation be common.” *In re Chinese-Manufactured Drywall*, 424 F. Supp. 3d at 482 (citing 1 WILLIAM B. RUBENSTEIN, ALBA CONTE, AND HERBERT B. NEWBERG, NEWBERG ON CLASS ACTIONS § 3:20 (4th ed. 2010)). Rather, “[t]he commonality requirement is satisfied if at least one issue’s resolution will affect all or a significant number of class members.” *Stewart v. Winter*, 669 F.2d 328, 335 (5th Cir. 1982); *see also Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011) (“even a single common question will do”). While the requirement may require common injurious conduct—here, failure to pay ACV—it does not require common damages. *See In re Deepwater Horizon*, 739 F.3d 790, 811 (5th Cir. 2014) (noting that although class members must raise “one contention that is central to the validity of each class member’s claims[,]” this “contention need not relate specifically to the damage component of the class members’ claims”). Given all the above, the Rule 23(a)(2) commonality “requirement is easily met in most cases.” *Stewart*, 669 F.2d at 335.

Here, commonality is satisfied because the issue of whether Imperial and its related companies breached the form Policies by failing to pay Sales Tax and/or Transfer fees on total-loss claims is a common question of law, and the interpretation of the Policy language will provide a common answer. *See, e.g., Angell*, 67 F.4th at 737 (commonality established where “[t]he common issue to be resolved is whether GEICO breached the form policies, underpaying ACV by withholding mandatory fees and/or leased sales tax); *Allapattah v. Exxon Corp.*, 333 F.3d 1248, 1261 (11th Cir. 2003) (commonality established where the court interpreted materially similar contracts); *Spegele v. USAA Life Ins. Co.*, 336 F.R.D. 537, 555, n.7 (W.D. Tex. 2020) (interpretation of form insurance contract is a common issue, because even if policy is ambiguous, it is interpreted against insured without resort to extrinsic evidence); *Steinberg v. Nationwide Mut. Ins. Co.*, 224 F.R.D. 67, 74 (E.D. N.Y. 2004) (commonality requirement satisfied where

“[a]djudication of the plaintiffs claim will require the Court to interpret...substantively similar, if not identical” terms across an insurer’s auto policies); *Burton v. Mt. W. Farm Bureau Mut. Ins. Co.*, 214 F.R.D. 598, 608 (D. Mon. 2003) (“One question common to [the class] is whether Mountain West’s failure or refusal to stack med-pay benefits...violated common provisions of the insurance policies”).

The policy language at issue is substantially similar for all Settlement Class Members, who were subject to the same business practices. Normand Decl. ¶ 40. This litigation raises questions of law and fact within the meaning of Fed. R. Civ. P. 23(a)(2) including whether ACV is properly interpreted to include Sales Tax and Regulatory Fees. Since a ruling on that issue “will affect all or a significant number of the putative class members,” commonality test is met. Compl. at ¶ 62; *Angell*, 67 F.4th at 737; *Marcus v. J.C. Penney Co., Inc.*, NO. 6:13-cv-736-MHS-KNM, 2016 WL 8604331, at \*3 (E.D. Tex. 2016), *R. & R. adopted*, 2017 WL 907996 (E.D. Tex. 2017).

Moreover, it makes no difference that some Settlement Class Members may be entitled to Sales Tax while others may be entitled to Transfer Fees. This is because whether either (or both) are owed will be determined in the same way; either ACV includes the costs necessary to replace property or it does not. *See Angell*, 67 F.4th 739-740; *Paxton v. Union Nat. Bank*, 688 F.2d 552, 561 (8th Cir. 1982) (The commonality requirement is satisfied “where the question of law linking the class members is substantially related to the resolution of the litigation even though the individuals are not identically situated”); *see Forbush v. J.C. Penney Co.*, 994 F.2d 1101, 1106 (5th Cir. 1993) (“[T]he necessity for even somewhat complex individual calculations [of damages] does not supply a basis for concluding that Forbush has not met the commonality requirement.”). Thus, the critical question in this litigation is how ACV should be interpreted, the resolution of which will resolve a substantial element of every Settlement Class Members’ claim.

It is for this reason that materially identical claims have been found to easily meet the commonality requirement. *See, e.g., Angell*, 573 F. Supp. 3d at 1159-60 (“[t]he common issue to be resolved is whether GEICO breached the form policies, underpaying ACV by withholding mandatory fees and/or leased sales tax); *Sos*, 2023 WL 5608014, at \*6 (“[t]he question of whether State Farm breached its contractual obligations to insureds by not paying full sales tax and fees is common to all putative class members”); *Paris*, 2020 WL 7039018, at \*18 (the questions of “whether the policy language requires Progressive to pay sales tax and transfer fees as part of the [ACV] of a vehicle[] are common to all [class members]”); *Jones* 2019 WL 1490703, at \*4 (same). Respectfully, there is no reason for this Court to deviate from these cogent and well-founded opinions. The commonality requirement is satisfied here.

### **C. Plaintiff’s Claims are Typical of the Class Claims.**

Rule 23(a) requires the claims of the representative party to be “typical” of class members’ claims. Fed. R. Civ. P. 23(a)(3). The analysis “focuses on the similarity between the named plaintiffs’ legal and remedial theories and the theories of those whom they purport to represent.” *Angell*, 67 F.4th at 736; *In re Dell Inc.*, A-06-CA-726-SS, 2010 WL 2371834, at \*4 (W.D. Tex. June 11, 2010) *aff’d sub nom., Dell*, 669 F.3d 632. “Typicality is satisfied when the named plaintiffs’ claims for relief arise from the same common nucleus of operative facts as the claims of [class members].” *Id.* “If the claims arise from a similar course of conduct and share the same legal theory, factual differences will not defeat typicality.” *James v. City of Dallas*, 254 F.3d 551, 571 (5th Cir. 2001).<sup>5</sup>

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<sup>5</sup> “The inherent logic of the typicality requirement is that a class representative will adequately pursue her own claims, and if those claims are ‘typical’ of those of the rest of the class, then her pursuit of her own interest will necessarily benefit the class as well.” *In re Chinese-Manufactured Drywall*, 424 F. Supp. 3d at 482 (citation omitted).

As discussed *supra* Part II(B), Imperial’s policies and practices described herein are uniform. Plaintiff’s and the Settlement Class Member’s claims arise from the same challenged conduct and are based on the same legal theory—Imperial materially breached their (identical) insurance contracts because ACV includes costs necessary in the cost to purchase a comparable motor vehicle without any precondition. *See Angell*, 67 F.4th at 737 (find typicality where plaintiffs and class alleged Geico underpaid ACV by failing to pay sales tax and transfer fees based on uniform policy); *see also James*, 254 F.3d at 571 (typicality analysis examines “whether the class representative’s claims have the same essential characteristics of those of the putative class”). Moreover, Plaintiff’s claims and the Settlement Class Members’ claims are subject to the same affirmative defenses. *See Volino v. Progressive Cas. Ins. Co.*, No. 21 Civ. 6243 (LGS), 2023 U.S. Dist. LEXIS 44666 (S.D.N.Y. Mar. 16, 2023), Rule 23(f) petition denied, ECF No. 234 (Mandate of 2d Cir. Case No. 23-0472) (rejecting insurance company’s challenges to typicality and finding that, “[c]ontrary to Progressive’s argument, the named Plaintiffs’ claims, and Progressive’s related defenses, are typical of the class as a whole.”). Indeed, even the presence of a unique defense or factual circumstance does not preclude a finding of typicality unless it is likely to be central to the litigation. *See Lehocky v. Tidel Techs., Inc.*, 220 F.R.D. 491, 502 (S.D. Tex. 2004) (“[T]he key typicality inquiry is whether a class representative would be required to devote considerable time to rebut Defendants’ claims.”) Here, there is no evidence of unique claims or defenses precluding a typicality finding.

Finally, it is significant that courts have found in virtually identical ACV class actions that the plaintiff’s claims were typical of class members’ claims. *See, e.g., Angell*, 67 F.4th at 737; *Jones*, 2019 WL 1490703 at \*5 (“Plaintiffs’ claims are typical of the putative class [because they] involve the alleged breach of identical contractual provisions pursuant to GEICO’s standard

practice[s]”); *Sos v. State Farm Mut. Auto. Ins. Co.*, 617CV890ORL40LRH, 2019 WL 3854761, at \*4 (M.D. Fla. May 2, 2019), *aff’d*, 21-11769, 2023 WL 5608014 (11th Cir. Aug. 30, 2023) (same as to sales tax and title fees); *Joffe v. GEICO Indem. Ins. Co.*, 18-61361-CIV, 2019 WL 5078228, at \*4 (S.D. Fla. July 31, 2019) (same). Typicality is similarly satisfied here.

**D. Plaintiff and Class Counsel are Adequate Representatives.**

Rule 23(a) requires that “the class representatives. . . fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). The purpose of the adequacy requirement is to ensure the plaintiffs “suffer the same injury” as class members and identify whether they have interests antagonistic to the class. *In re Deepwater Horizon*, 785 F.3d at 1015. “The central component of class representative adequacy is the absence of conflicts of interest between the proposed representatives and the class.” *In re Chinese-Manufactured Drywall*, 424 F. Supp. 3d at 482 (citation omitted). In contrast, “[a]dequacy of counsel asks whether the attorneys who seek to represent the class are competent to do the job.” *Id.* (citation omitted). With regard to the former, a court must consider whether any proposed class representative has an interest “materially adverse to some of the class” and whether he or she “is properly qualified to assume the role of class representative.” *Id.* (citation omitted). As to the latter requirement, “courts consider the competence and experience of Class Counsel, attributes which will most often be presumed in the absence of proof to the contrary.” *Id.* (citation omitted).

Here, Plaintiff is an adequate representative of the Class because her interests do not conflict with the interests of the other Settlement Class Members whom she seeks to represent. Moreover, she is committed to protecting the interests of the Class, as seen by her prosecution of the claim through the counsel she retained and engagement in the discovery process. *See Lehocky v. Tidel Techs., Inc.*, 220 F.R.D. 491, 503 (S.D. Tex. 2004) (engaging in discovery and “selection

of skilled counsel” are indicative of adequacy). Moreover, Plaintiff’s counsel is competent and experienced in complex class action litigation, including successfully litigating class action cases like this one, where insurers breached contracts with insureds in the calculation of the ACV of a total loss vehicle. Normand Decl. ¶¶ 51-56. Because Plaintiff and Class Counsel will protect Settlement Class Members’ interests, this Court should appoint Plaintiff as Class Representative and her counsel as Class Counsel.

**E. Common Issues Predominate over Individual Issues.**

The “predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at 623. The question is not whether plaintiffs and class members will prevail, but rather “whether they will fail or succeed together.” *Erica P. John Fund, Inc. v. Halliburton Co.*, 718 F.3d 423, 431 (5th Cir. 2013) *vacated and remanded on other grounds*, 134 S. Ct. 2398 (2014). Predominance does not require all questions of law and fact to be common, but only that the common question(s) predominate over individual questions. *See Robinson v. Tex. Auto. Dealers Assoc.*, 387 F.3d 416, 421 (5th Cir. 2004). The Fifth Circuit—and others—have helpfully explained that the analysis is primarily a question of how a trial would be conducted, and whether the proof offered would apply class-wide or only to individual class members. *See, e.g., Sandwich Chef of Tex., Inc. v. Reliance Nat’l Indem. Ins. Co.*, 319 F.3d 205, 218 (5th Cir. 2003) (“To decide whether common issues predominate, the district court must consider how a trial on the merits would be conducted if a class were certified.”); *Brown v. Electrolux Home Prods., Inc.*, 817 F. 3d 1225, 1234 (11th Cir. 2016) (courts should identify the elements of the parties’ claims and then “classify these issues as common questions or individual questions by predicting how” the elements will be proved). If the addition or subtraction of class members would not significantly impact the quantity or substance of proof, courts can be confident

that common issues predominate. *See Angell*, 67 F.4th at 739; *City of San Antonio v. Hotels.com*, No. SA-06-CA-381, 2008 U.S. Dist. LEXIS 58793, at \*31 (W.D. Tex. May 27, 2008)

Here, the predominance prong is easily satisfied because the common issues of law and fact, as stated above, predominate over any individual issues within the meaning of Fed. R. Civ. P. 23(b)(3). Compl. ¶ 65, *see also* Normand Decl. at ¶ 61. Indeed, courts routinely find common issues predominate in cases involving interpretation of uniform insurance policies. *See, e.g., Angell*, 573 F. Supp. 3d at 1160 (certifying class and finding predominance where case centered on whether insurer breached uniform insurance policy by paying less than the ACV); *Stuart v. State Farm Fire & Cas. Co.*, 910 F.3d 371, 375 (8th Cir. 2018) (affirming class certification where district court had found that whether the insurer breached the “form policies in plaintiffs’ insurance contracts” by paying less than ACV was a “common, predominating question of law”); *Hicksform v. State Farm Fire & Cas. Co.*, 965 F.3d 452, 459-60 (6th Cir. 2020) (“[W]hether State Farm breached Plaintiffs’ standard form contracts by deducting labor depreciation from their ACV payments” predominated over individualized calculations of damages); *Leszczyński v. Allianz Ins.*, 176 F.R.D. 659, 675 (S.D. Fla. 1997) (“A legal determination as to whether the [auto] policy in question covers claimants in this factual situation is the predominant question of interest among the class members.”); *Steinberg v. Nationwide Mut. Ins. Co.*, 224 F.R.D. 67, 79-80 (E.D. N.Y. 2004) (predominance met because the “automobile insurance contracts contain similar, if not identical, key terms pertinent to this litigation” and “claims arising out of form contracts are particularly appropriate” for class treatment); *Bally v. State Farm Life Ins. Co.*, 335 F.R.D. 288, 304 (N.D. Cal. 2020) (common question of whether insurer breached the insurance policies at issue predominated because “[t]he terms of the Policy are the same for all class members”).

Moreover, instructive here is an analysis of the “substantive issues” that will control the outcome of this litigation—including at trial, if necessary—and “assessing which issues will predominate, and then determining whether the issues are common to the class[.]” *Boles v. Moss Codilis, LLP*, SA-10-CV-1003-XR, 2012 WL 12861080, at \*12 (W.D. Tex. Jan. 17, 2012) (citation omitted). The questions that will control the outcome in this case are whether Imperial’s undervaluing of total loss vehicle property damage claims and Imperial’s failure to include Sales Tax and Transfer Fees as part of the ACV constitute violations of Louisiana law and/or breach of contract.<sup>6</sup> Not only does the answer to that question depend on form policy language equally applicable to all Class members, but it is also a legal question of contract interpretation that almost certainly will be resolved at summary judgment. *See Snelling & Snelling, Inc. v. Fed. Ins. Co.*, 205 F. App’x 199, 201 (5th Cir. 2006). Even in theory, the only triable issue is whether Sales Tax and/or Transfer Fees are *reasonably* necessary to replace a vehicle in Louisiana. *See Greenspoint Inv’rs, Ltd. v. Travelers Lloyds Ins. Co.*, CIV.A. H-10-4057, 2015 WL 965730, at \*5 (S.D. Tex. Mar. 3, 2015) (whether a cost is “reasonably likely to be incurred” is a factual question). If a trial were to be necessary, the proof that would be offered—testimony addressing the likelihood or necessity that Sales Tax and Transfer Fees will be incurred in replacing a vehicle in Louisiana—would apply equally to the Settlement Class Members.

Obviously, if the Court finds in favor of Imperial on the contract interpretation issue, the question of damages would be moot. *Cf. Erica P. John Fund, Inc.*, 718 F.3d at 431 (predominance inquiry is not whether class members will prevail, but whether they will prevail or fail together). If, however, the Court instead finds in favor of the Settlement Class, the calculation of damages—

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<sup>6</sup> In Louisiana, a breach of contract claim has three essential elements: “(1) the obligor’s undertaking an obligation to perform, (2) the obligor failed to perform the obligation (the breach), and (3) the failure to perform resulted in damages to the obligee.” *IberiaBank v. Broussard*, 907 F.3d 826, 835 (5th Cir. 2018) (citation omitted).

applicable Sales Tax plus applicable Transfer Fees less amounts thereof already paid—will be mechanical and formulaic. Thus, while the amount of damages may vary (because adjusted vehicle values vary and the amount of registration fees varies by county), the measure of damages is common, and it is the methodology that matters for purposes of predominance. *See* NEWBERG ON CLASS ACTIONS § 12:2 (“[A] common method for showing individual damages—a simple formula [that can] be applied to each class member’s ... records—[is] sufficient for the predominance and superiority requirements to be met.”); *see Morris v. Wachovia Sec., Inc.*, 223 F.R.D. 284, 299 (E.D. Va. 2004) (noting that “differences in damages among the potential class members do not generally defeat predominance if liability is common to the class.”). As the Fifth Circuit has explained, while calculating damages according to a mechanical formula prescribed by the Court requires a factual inquiry, such inquiry is based on objective criteria about which there cannot be a reasonable dispute and thus “[i]t [is not] necessary to hear evidence on each claim.” *Roper v. Conserve, Inc.*, 578 F.2d 1106, 1112 (5th Cir. 1978).

It is for this reason that courts addressing materially identical claims have found the predominance requirement to be easily met. *See, e.g., Angell*, 67 F.4th at 737; *Jones*, 2019 WL 1490703, at \*5; *Sos*, 2023 WL 5608014, at \*7 (because sales tax and title transfer fees could be applied formulaically across the class, “[p]redominance is easily met.”); *Paris*, 2020 U.S. Dist. LEXIS 212127, at \*26 (“The predominate issue . . . is whether Defendants’ policies include coverage for sales tax and transfer fees without precondition” and would be resolved through “interpretation of uniform contract language”). The same is true here: after adjudicating class-wide issues, all that will remain, if Plaintiff and the Class prevail, will be ministerial calculation of damages utilizing Defendant’s own records—certainly, there will be no need for individualized proof concerning all of the elements of the claim. Individual damages can then be calculated and

confirmed in a supervised post judgment process. *See Clower v. Wells Fargo Bank, N.A.*, 259 F.R.D. 253, 260 n.6 (E.D. Tex. 2009) (favorably citing authority that courts could appoint a magistrate to oversee individual calculation of damages according to method prescribed by court or jury).

**F. Class Treatment is Superior.**

In considering whether class treatment is a superior method of adjudication, courts consider the following non-exhaustive factors: A) class members' interests in individually controlling the prosecution; B) whether any litigation concerning the controversy already exists; C) the desirability of concentrating the litigation in the forum; and D) manageability. Fed. R. Civ. P. 23(b)(3).

The most important factor is the extent to which class members have an interest in individually controlling prosecution because, in the Fifth Circuit, the most compelling reason to find class treatment superior is where the litigation concerns “negative value suits.” *Mitchell v. State Farm Fire & Cas. Co.*, 327 F.R.D. 552, 564 (N.D. Miss. 2018). Negative value suits are where the cost to bring suit exceeds the stakes—or value—of the claim to class members. *See id.* Obviously, putative class members have little interest in individually prosecuting a claim if the cost to do so exceeds the amount he or she would secure if successful. *See id.*; *see also McCormick v. 7-Eleven, Inc.*, 3:06-CV-0127-N, 2009 WL 10704102, at \*8 (N.D. Tex. Mar. 12, 2009) (finding superiority because “given the minimal damages likely at stake for the vast majority of individual claimants, they are unlikely to pursue individual claims”).

Here, the typical class claim will be a few thousand dollars, which, to put it mildly, is relatively small when compared to the cost of litigating a breach of contract case against a large insurance company. *Angell*, 67 F.4th at 736. The fact that the costs of bringing individual actions

outweigh the expected recovery is often dispositive of superiority. *See, e.g., Pitt v. City of Portsmouth*, 221 F.R.D. 438, 445 (E.D. Va. 2004) (“The most compelling rationale for finding superiority in a class action [is] the existence of a negative value suit[,]” meaning that the expected individual damages are less than the costs to litigate the case) (quoting *Castano v. American Tobacco Co.*, 84 F.3d 734, 748 (5th Cir. 1996)). Since the cost to bring suit would far exceed the amount Settlement Class Members can individually secure if successful, this case is quintessentially a negative value suit. Thus, the most important factor weighs in favor of a finding of superiority. *See City of San Antonio v. Hotels.com*, SA-06-CA-381-OG, 2008 WL 2486043, at \*13 (W.D. Tex. May 27, 2008) (suit was “negative value” notwithstanding that damages ranged up \$50,000.00).

Further, Plaintiff and Class Counsel are unaware of any other Louisiana litigation against Defendant raising these claims—and even if there were, it would nevertheless be desirable to concentrate litigation of these claims into one court and in one action for purposes of efficiency and judicial economy. Normand Decl. at ¶ 44; *see Frey v. First Nat’l Bank Southwest*, 2013 U.S. Dist. LEXIS 37153, at \*22, n.5 (N.D. Tex. Feb. 20, 2013) (observing that “[n]o other proposed class plaintiff has filed suit”) (citation omitted). Concentrating litigation in a single forum is preferable because requiring individual trials would “require enormous redundancy of effort, including duplicative discovery, testimony by the same witnesses in potentially hundreds of actions, and relitigation of many similar, and even identical, legal issues.” *Gunnells v. Healthplan Services, Inc.*, 348 F.3d 417, 426 (4th Cir. 2003).

Finally, class treatment is manageable given that liability, which depends entirely on contract interpretation, will be resolved—as a matter of law at summary judgment—for all class members in a single stroke, and the only “individual” issues theoretically implicating

manageability can be resolved through mechanical application of the damages formula from the Court's ruling on liability. *See In re Catfish Antitrust Litig.*, 826 F. Supp. 1019, 1045 (N.D. Miss. 1993) (finding that "individual damage assessment" does not render class treatment unmanageable because the court can "employ reasonable means and methods to streamline" such proceedings, particularly in light of "the advantages of consolidated treatment of common issues of liability.>").

To be sure, class treatment is more manageable than managing thousands of individual cases, which is why manageability concerns rarely preclude class treatment. *In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d 124, 140 (2d Cir. 2001) ("[F]ailure to certify an action under Rule 23(b)(3) on the sole ground that it would be unmanageable is disfavored and should be the exception rather than the rule"); *accord Klay v. Humana, Inc.*, 382 F.3d 1241, 1272–73 (11th Cir. 2004) (explaining superiority is a comparative analysis and, thus, manageability concerns "will rarely, if ever, be in itself sufficient to prevent certification of a class"). In reality, there are no manageability concerns—identifying Class members is formulaic and based on objective, verifiable data in Defendant's records.

Class treatment adjudication is the superior method for resolving this dispute. Accordingly, preliminary certification of the Settlement Class is warranted for settlement purposes.

#### **IV. THE AGREEMENT IS FAIR, REASONABLE, AND ADEQUATE.**

A class settlement may be effectuated only with court approval, after notice to the class, pursuant to Fed. R. Civ. P. 23(e). "First, the court must preliminarily approve the settlement. Then, the members of the class must be given notice of the proposed settlement, and finally, after a hearing, the court must determine whether the proposed settlement is fair, reasonable, and adequate." *In re Shell Oil Refinery*, 155 F.R.D. 552, 555 (E.D. La. 1993). At the preliminary approval stage, "the settling parties bear the burden of demonstrating the settlement is fair,

reasonable, and adequate.” *Nelson v. Constant*, No. 17-14581, 2020 U.S. Dist. LEXIS 160726, at \*9 (E.D. La. Sept. 2, 2020) (citation omitted).

However, “the standards for granting preliminary approval are not as stringent as those applied to a motion for final approval: The questions are simpler, and the court is not expected to, and probably should not, engage in analysis as rigorous as is appropriate for final approval.” *Id.* at \*9 (citation omitted). Indeed, “[i]f the proposed settlement discloses no reason to doubt its fairness, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, does not grant excessive compensation to attorneys, and appears to fall within the range of possible approval, the court should grant preliminary approval.” *In re Pool Prods.*, 310 F.R.D. 300, 314–15 (E.D. La. 2015) (citations omitted).

This is because there is a “strong judicial policy favoring the resolution of disputes through settlement.” *Smith v. Crystian*, 91 Fed. Appx. 952, 955 (5th Cir. 2004) (quoting *Parker v. Anderson*, 667 F. 2d 1204, 1209 (5th Cir. 1982)). The “public interest favoring settlement is especially apparent in the class action context where claims are complex and may involve a large number of parties, which otherwise could lead to years of protracted litigation and sky-rocket expenses.” *Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830, 843 (E.D. La. 2007) (citation omitted).

To determine whether a settlement is fair, reasonable, and adequate, Rule 23(e) instructs courts to consider whether: (1) the class representatives and Class Counsel have adequately represented the class; (2) the proposal was negotiated at arm's length; (3) the relief provided for the class is adequate, taking into account (i) the costs, risks, and delay of trial and appeal, (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims, (iii) the terms of any proposed award of attorney's fees, including

timing of payment, and (iv) any agreement required to be identified under Rule 23(e)(3); and (3) the proposal treats class members equitably relative to each other.<sup>7</sup> In performing this analysis, courts in the Fifth Circuit consider the following factors: (1) the existence of fraud or collusion; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings; (4) plaintiffs' probability of success; (5) the range of possible recovery; and (6) the opinions of Class Counsel, class representatives, and absent class members. *Reed v. General Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983). Each of these factors support a finding that the class Agreement is fair, reasonable, and adequate.

#### **A. Procedural Factors Favor Approval**

First, Plaintiff and her counsel adequately represented the class. The adequacy requirement mandates an inquiry into “the zeal and competence of the representative[s]’ counsel and ... the willingness and ability of the representative[s] to take an active role in and control the litigation and to protect the interests of absentees.” *Berger v. Compaq Comput. Corp.*, 257 F.3d 475, 479-80 (5th Cir. 2001). Plaintiff (through counsel) engaged in extensive litigation and motion practice, serving discovery requests that elicited documents demonstrating the contours of the Settlement Class and Defendant’s practices and procedures that were used to enter into the Agreement. Thus, Plaintiff has been intimately involved with the litigation and strongly supports the Settlement. Normand Decl. ¶ at 37.

Moreover, Class Counsel is particularly experienced in litigation, certification, trial and settlement of class action cases across the nation involving the exact same issues. *Id.* at ¶ 51. Class

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<sup>7</sup> The first two “procedural” factors examine “the conduct of the litigation and of the negotiations leading up to the proposed settlement,” while the remaining “substantive” factors address “the terms of the proposed settlement.” Fed. R. Civ. P. 23 Advisory Committee’s Note.

Counsel thoroughly investigated and analyzed Plaintiff’s claims and engaged in motion practice, data analysis and negotiation. *Id.* at ¶ 32. Thus, Class Counsel was able to accurately evaluate the strengths, weaknesses and value of the case, ultimately obtaining the Agreement that recovers essentially 100% of the damages sought in the Complaint with all fees paid by the Defendant. *Id.* at ¶¶ 32, 36, 46-47, 63.

Second, the Agreement was negotiated at arm’s length between sophisticated counsel before an experienced mediator. *Id.* ¶¶ at 21, 25; *see also City Partnership Co. v. Atlantic Acquisition Ltd. Partnership*, 100 F.3d 1041, 1043 (1st Cir. 1996) (“When sufficient discovery has been provided and the parties have bargained at arms-length, there is a presumption in favor of the settlement.”). Moreover, prior to mediation, the parties extensively litigated the claims through a motion to dismiss, discovery, negotiations, and mediation. *See Diaz v. Hillsborough Cnty. Hosp. Auth.*, 8:90-CV-120-T-25B, 2000 WL 1682918, at \*6 (M.D. Fla. Aug. 7, 2000) (years of contested litigation prior to settlement demonstrates lack of collusion). The parties entered the proposed settlement agreement only “after a full-day mediation—which suggests the settlement was not the result of improper dealings.” *Celeste Neely*, 4:21-CV-307-SDJ, 2022 WL 17736350, at \*4 (E.D. Tex. Dec. 16, 2022) (quotation and citation omitted); *see Normand Decl.* ¶ 21. This is critical because “[a] settlement reached after a supervised mediation receives a presumption of reasonableness and the absence of collusion.” 2 MCLAUGHLIN ON CLASS ACTIONS § 6:7 (8th ed. 2011). Furthermore, there is no evidence of fraud or collusion. *See Welsh v. Navy Fed. Credit Union*, No. 16-CV-1062, 2018 U.S. Dist. LEXIS 227456, at \*33 (W.D. Tex. Aug. 20, 2018) (“The Court may . . . presume that no fraud or collusion occurred between opposing counsel in the absence of any evidence to the contrary.”).

## **B. Substantive Factors Favor Approval**

First, the relief is adequate given the complexity, expense and likely duration of this litigation. This is a complex and hotly contested litigation—Defendant continues to deny any fault or wrongdoing to the Plaintiff and Settlement Class Members. Defendant also contends that a one year statute of limitations applies. In pursuing this Action and considering settlement, Plaintiff contended with legal authority that was inconsistent to her claims. Specifically, numerous courts have held that sales tax and title and registration fees are not part of a totaled vehicle’s ACV, including the Fifth Circuit. *See, e.g., Singleton v. Elephant Ins. Co.*, 953 F.3d 334 (5th Cir. 2020); *Pieczonka v. Progressive Select Ins. Co.*, 840 Fed. Appx. 856 (6th Cir. 2021); *Thompson v. Progressive Universal Ins. Co.*, 420 F. Supp. 3d 867 (W.D. Wis. 2019). The Seventh Circuit affirmed dismissal of a claim that the ACV of a totaled vehicle includes sales tax and fees under very similar policy language. *Sigler v. Geico Cas. Co.*, 967 F.3d 658 (7th Cir. 2020). Obviously, Plaintiff believes these cases were wrongly decided and/or are distinguishable because they were based on state law materially different than Louisiana state law, but it is clear that this is a complex legal issue. As such, there is no guarantee that Plaintiff and the Settlement Class Members will succeed at trial, let alone (if necessary) on appeal. *See Cole v. Collier*, 4:14-CV-1698, 2018 WL 2766028, at \*4 (S.D. Tex. June 8, 2018) (“Absent settlement, the litigation would almost certainly have continued for years, with no assurance of as favorable a resolution. This factor weighs strongly in favor of approval of the Settlement.”).

Moreover, should litigation continue, Plaintiff and the Settlement Class Members will incur exorbitant costs going through class certification, expert discovery, dispositive motion practice, trial and (inevitably) post-trial appeal. Evidence and witnesses from across the country would have to be assembled for trial. For these reasons, Plaintiff and Class Counsel appropriately determined a settlement outweighs the gamble and costs of further litigation, especially where

claimants will receive 100% of the damages in the Complaint and all attorneys' fees and costs are paid by the Defendant. *See In re Educ. Testing Serv. Praxis Principles of Learning & Teaching, Grades 7-12 Litig.*, 447 F. Supp. 2d 612, 620 (E.D. La. 2006) (noting that, even for straightforward claims, approval of settlement is favored where settlement "avoids the risks and burdens of potentially protracted litigation."); *see Hays v. Eaton Grp Attys., LLC*, No. 17-88-JWD-RLB, 2019 U.S. Dist. LEXIS 17029, at \*25 (M.D. La. Feb. 4, 2019) (approving settlement where "Plaintiff is avoiding expense and delay and ensuring recovery for the Class."). Moreover, the immediate and considerable relief provided to the Settlement Class Members is more than adequate. *Hays*, 2019 U.S. Dist. LEXIS 17029, at \*25 (approving settlement where it "makes monetary and injunctive relief available to Class members in a prompt and efficient manner.").

Second, the "method of processing class-member claims" is simple. The Claim form is pre-filled, postage pre-paid, and internet notice. Under both forms of notice, Settlement Class Members must simply attest to the information and send the prefilled Claim form back. *See Agreement*, Ex. A and B; *see also Wilson v. EverBank*, 14-CIV-22264, 2016 WL 457011, at \*9 (S.D. Fla. Feb. 3, 2016) (finding significant that class members need not submit any additional evidence or documentation beyond merely "checking a box" which "should take no more than a few minutes for the average claimant to complete.").

Moreover, this type of settlement structure, where class members submit claim forms to make a claim for payment in the settlement process, is regularly approved by other courts. *See, e.g., Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269, 282 (6th Cir. 2016) (affirming a claims-made class action settlement as fair and reasonable); *Bastian v. United Servs. Auto. Ass'n*, Case No. 3:13-cv-1454, 2017 U.S. Dist. LEXIS 180757 (M.D. Fla. Nov. 1, 2017) (approving similar claims-made settlement in class action concerning total-loss vehicles where USAA's

internal procedure for payment of sales tax in Florida was materially identical to GEICO's procedure in Ohio); *Cook v. Gov't Emples. Ins. Co.*, No.: 6:17-cv-891-ORL- 40KRS, 2020 U.S. Dist. LEXIS 111956 (M.D. Fla. Jun. 22, 2020) (same); *Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 783 (N.D. Oh. 2010) (approving settlement that required claim submissions to establish entitlement to settlement proceeds).

Third, the terms of the attorneys' fees award weigh in favor of approval of the Agreement. The proposed Agreement provides that Class Counsel may apply for attorneys' fees and costs not to exceed \$795,000.00. Agreement at ¶ 82. Even if Class Counsel had not incurred a single dollar in costs—and, to be clear, Class Counsel incurred significant costs in litigating this Action—considering Plaintiff estimates the total exposure to be \$3,740,706.00 the attorneys' fee amount would constitute approximately 21.25% of the Class benefits. This falls comfortably within the benchmark set for attorneys' fees in the Fifth Circuit. Indeed, it is typical that “common benefit fees between 32-percent and 37-percent have been awarded.” *In re Chinese-Manufactured Drywall*, 424 F. Supp. 3d at 497–98. The Fifth Circuit has approved of district courts' “use of the percentage method cross-checked with the *Johnson* factors.” *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 644 (5th Cir. 2012).<sup>8</sup>

Courts have long recognized the common fund doctrine, under which attorneys who create a recovery benefitting a group of people may be awarded their fees and costs from the recovery. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The doctrine serves the “twin goals of removing a potential financial obstacle to a plaintiff's pursuit of a claim on behalf of a class and

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<sup>8</sup> The *Johnson* factors—intended to ensure “a reasonable fee”—are: (1) the time and labor required; (2) the novelty and difficulty of the issues; (3) the skill required to perform the legal service adequately; (4) the preclusion of other employment by the attorney because he accepted this case; (5) the customary fee for similar work in the community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717, 720 (5th Cir. 1974).

of equitably distributing the fees and costs of successful litigation among all who gained from the named plaintiff's efforts." *In re Gould Sec. Lit.*, 727 F. Supp. 1201, 1203 (N.D. Ill. 1989). This doctrine also ensures that those who benefit from a lawsuit are not "unjustly enriched." *Van Gemert*, 444 U.S. at 478. The Fifth Circuit has directed that the fee be based upon a percentage of the class benefit so long as a *Johnson* cross check is performed. *Union Asset Mgmt.*, 669 F.3d at 644. Courts have significant discretion in choosing the proper percentage. *See id.* The fee that Imperial agreed not to oppose or otherwise object to is significantly *less* than percentages routinely recognized as reasonable in the Fifth Circuit. *See In re Chinese-Manufactured Drywall*, 424 F. Supp. 3d at 498; *Di Giacomo v. Plains All Am. Pipeline*, CIV.A.H-99-4137, 2001 WL 34633373, at \*13 (S.D. Tex. Dec. 19, 2001) (approving fees of 30% in class action settlement and noting the advantages of using the percentage method and that 20-30% is typically the benchmark); *Regmund v. Talisman Energy USA, Inc.*, 4:16-CV-02960, 2021 U.S. Dist. LEXIS 92346 (S.D. Tex. May 12, 2021) (agreeing that exercising discretion to apply percentage-of-the-fund analysis was sensible, approving fees of 25%, and noting such percentage was "at the low end" of percentages typically approved within the Fifth Circuit).

Moreover, paying Class Counsel fees separate from the Settlement Amount ensures that Settlement Class Members who make timely and valid claims receive 100% of their claimed losses. Simply put, Settlement Class Members could not achieve a better result if they hired their own counsel and individually litigated outside of this settlement. Further, the attorneys' fees amount did not impact the substantive Settlement terms at all—parties did not even discuss attorneys' fees until after all other Settlement terms were finalized.

Fourth, Settlement Class Members are clearly treated equitably, in that they will receive the same Notice, the same claim process, are agreeing to precisely the same release, and are entitled to the similar benefits.

**C. The Additional *Reed* Factors Favor Approval.**

First, the state of the proceedings weighs in favor of approving the settlement. “This factor asks whether the parties have obtained sufficient information ‘to evaluate the merits of the competing positions.’” *In re Educ. Testing*, 447 F. Supp. 2d at 620 (quoting *Ayers v. Thompson*, 358 F.3d 356, 369 (5th Cir. 2004)). “[T]he question is not whether the parties have completed a particular amount of discovery, but whether the parties have obtained sufficient information about the strengths and weaknesses of their respective cases to make a reasoned judgment about the desirability of settling the case on the terms proposed . . . .” *Id.* at 620–21. “[W]hen the settlement proponents have taken affirmative steps to gather data on the claims at issue, and the terms of the settlement or settlement negotiations are not patently unfair, the Court may rely on counsel’s judgment that the information gathered was enough to support a settlement.” *Id.* at 621.

As previously mentioned, Plaintiff took substantial written discovery, reviewing and analyzing thousands of insured’s total loss data entries. Normand Decl., ¶ 16. Moreover, Class Counsel has extensive institutional knowledge of Imperial’s data systems and available information given they have litigated (almost to completion) multiple and virtually identical cases against other insurance providers in other states. *Id.* at ¶¶ 52,55. Through these efforts, the parties obtained sufficient information to make a reasoned determination on the desirability of settlement on the terms set forth in the Agreement. *Cf. Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 694 (S.D. Fla. 2014) (noting that class representatives can have sufficient information base even after a few months of litigation and even absent formal discovery). Class Counsel also hired

experts to evaluate the data and prepare detailed damages estimates Class Members in preparation for mediation.

Second, as discussed above, this case is subject to legitimate risk. “Litigation is inherently risky and full of impediments, even where a defendant ‘all but admitted’ and ‘the plaintiffs had a strong chance of proving’ liability.” *Hays*, 2019 U.S. Dist. LEXIS 17029, at \*25 (quoting *In re Educ. Testing Serv. Praxis*, 447 F. Supp. 2d at 620–21)). A trial in this case would invariably involve risks to Plaintiff on the questions of liability and damages. *See Hays*, 2019 U.S. Dist. LEXIS 17029, at \*25; *Singleton*, 953 F.3d 334; *Pieczonka*, 840 Fed. Appx. 856; *Sigler*, 967 F.3d 658. Proceeding without a settlement would require tremendous time and resources to litigate dispositive motions, prevail at trial, and prevail again on appeals to the Fifth Circuit. *See Reed*, 703 F.2d at 172 (“A district court faced with a proposed settlement must compare its terms with the likely rewards the class would have received following a successful trial of the case.”).

Third, the range of recovery obviously weighs in favor of approval since Plaintiff and the Settlement Class Members are receiving 100% of the damages sought in this action with all fees paid for by Defendant. Normand Decl., ¶¶ 32, 36, 46-47, 63; *cf Hays*, 2019 U.S. Dist. LEXIS 17029, at \*28 (“[A] settlement can be satisfying even if it amounts to a hundredth or even a thousandth of a single percent of the potential recovery.”) (quotation and citation omitted).

Fourth, Class Counsel supports the proposed settlement, lending further support to approval of the Agreement. *See Celeste*, 2022 WL 17736350, at \*7 (approving settlement after considering, *inter alia*, plaintiff’s counsel opinion). The Fifth Circuit has held that “absent fraud, collusion, or the like,” a court “should be hesitant to substitute its own judgment for that of counsel[.]” *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977).

## **V. THE COURT SHOULD APPROVE NOTICE.**

Under Rule 23(e)(1), in approving a class action settlement, the district court “must direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1)(B). For classes certified under Rule 23(b)(3), courts must further ensure that class members receive “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified by reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). With respect to substance, notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Here, the Notice Program satisfies all applicable requirements of law and Constitutional Due Process. For convenience of Settlement Class Members, Defendant will extract available information from their claim records to pre-fill relevant information on the claim forms. *See* Agreement, Ex. A. Moreover, the notices provided for in the Agreement—which includes a Postcard Notice (with detachable, pre-filled, pre-addressed Claim Forms), a Long Form Notice posted to the Settlement Website (with information about the Settlement and relevant documents), an Email Notice for those Members for whom Imperial possesses a valid email address, and a toll-free telephone number for those class members to submit questions and request information—are more than reasonable. *See Davis v. Mindshare Ventures LLC*, No. 4:19-cv-1961, 2020 U.S. Dist. LEXIS 105994, at \*5–6 (S.D. Tex. June 12, 2020) (finding notice—which “include[d] the postcard notice, the detachable claim form, and the question-and answer notice to appear on the dedicated settlement website”—met the requirements of Rule 23(c)(2)(B) and due process); *see Jenkins v.*

*Trustmark Nat'l Bank*, 300 F.R.D. 291, 301–02 (N.D. Miss. 2014) (approving notice program that included one postcard notice, a notice by publication, and a long form notice available on a settlement website).

Moreover, the proposed notice includes (i) the nature of the action; (ii) the class definition; (iii) the class claims; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; (vii) the binding effect of a class judgment on members, (viii) a clear explanation of the terms of the Settlement, (iv) the amount sought in attorneys' fees and service award, and (v) informs Settlement Class Members of their right to object to seek exclusion and the method by which to do so. *See* Agreement, Exhibit D.

Further, the Parties have selected and recommend Epiq as the Settlement Administrator to handle the notices and all aspects of the settlement administration. *See* Agreement at ¶ 27. Epiq is one of the leading notice administration firms in the United States. *See* Normand Decl. at ¶¶ 24, 41. The Settlement Administrator's duties include, but not limited to: (i) overseeing the provision of Notice to the Class; (ii) overseeing identification of addresses for any returned mail, and remaining notice; (iii) processing Claim Forms; (iv) contacting Settlement Class Members, if any, whose Claims Forms are deficient to attempt to obtain a cured form; (v) processing any cured Claim Forms; (vi) sending all Claim Forms to Imperial for payment or challenge and to Class Counsel; (vi) forwarding inquiries and questions to Class Counsel; (vii) providing a certification to the Court regarding the administration and processing of claims and, in the event that the Settlement Administrator issues checks, issuing the payments to the Claimants as set forth herein; and (viii) establishing and maintaining a settlement website and call center. Agreement at ¶ 40. Accordingly, the proposed Notice is reasonably calculated and comports with all applicable law.

For the convenience of the Court, below is a proposed preliminary schedule outlining the dates set forth in the Settlement Agreement, which comports with the Schedule outlined in the proposed Order preliminarily approving of the proposed Settlement, which is affixed as Exhibit F to the Settlement Agreement.

**PROPOSED PRELIMINARY SCHEDULE**

#	Action	Deadline
1	Deadline for Imperial to provide Settlement Administrator with Settlement Class Member contact information	No later than 20 days from the date of this Order
2	Website Notice Posted by Settlement Administrator	No later than 30 days from the date of this Order
3	Deadline for Settlement Administrator to mail first Postcard Notice and send first Email Notice	No later than 30 days from the date of this Order
4	Deadline for Settlement Administrator to send second Email Notice	No later than 15 days from the date the first Email Notice is sent
5	Deadline for Class Counsel to file the Motion for Attorneys' Fees, Costs, and Service Award	No later than 45 days before the deadline to file objections or opt-outs
6	Deadline for Settlement Class Members to opt-out of the Agreement	No later than 30 days prior to the Final Approval Hearing
7	Deadline for submission of Notice of Intent to object to agreement	No later than 30 days prior to the Final Approval Hearing
8	Deadline for Class Counsel to file their Motion for Final Approval of the Settlement	No later than 20 days before the Final Approval Hearing
9	Deadline for Settlement Administrator to file proof of completion of Notice, along with complete and accurate list of	No later than 10 days prior to the Final Approval Hearing

	Settlement Class Members requesting exclusion	
10	Final Approval Hearing	Month, Day Year, at Time [At least 90 days after the date that a Preliminary Approval Order is entered]
11	Deadline for Settlement Class Members to file claims	No later than 15 days after the Final Approval Hearing

### CONCLUSION

Plaintiff respectfully requests that the Court grant final approval of the proposed Settlement, enter an order of preliminary approval including, in substantially the same form, the content of the proposed Order attached as Exhibit F to the Agreement.

Dated April 16, 2024

Respectfully submitted,

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 Soren E. Gisleson  
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*\*Admitted Pro Hac Vice  
Attorneys for Plaintiff & Proposed Class*

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on April 16, 2024, a true and correct copy of the foregoing was electronically filed with the Court's CM/ECF system and was thus served automatically upon all counsel of record in this matter.

/s/ Soren E. Gisleson

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA**

<b>DANA BASS,</b>	)	<b>CASE NO: 1:22-cv-00550</b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>IMPERIAL FIRE AND</b>	)	
<b>CASUALTY INSURANCE</b>	)	
<b>COMPANY,</b>	)	
	)	
<b>Defendant.</b>	)	

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is made by and between the Named Class Plaintiff, Dana Bass, on behalf of herself and on behalf of all others similarly situated (“Plaintiff”), and Defendant, Imperial Fire and Casualty Insurance Company (“Defendant” or “Imperial,” as defined below), by and through their respective counsel.

**RECITALS**

WHEREAS, Plaintiff filed a Class Action Complaint, which is now pending in the United States District Court for the Western District of Louisiana (the “Court”), entitled *Bass v. Imperial Fire and Cas. Ins. Co.*, Case No. 1:22-cv-00550 (the “Action”), which, through this Settlement, will be accepted as a certified class

action, but for settlement purposes only, on behalf of the Settlement Class; and

WHEREAS, Plaintiff alleges she is or was an insured and first-party total loss claimant with respect to vehicles insured by a private passenger auto policy issued by Imperial (the “Policy”); and

WHEREAS, Plaintiff alleges that vehicle sales taxes, title fees, registration fees, and applicable transfer fees (*i.e.*, title, handling, plate) (collectively, “Sales Tax and Transfer Fees”) must be paid in connection with a total loss settlement because, among other things, it is allegedly inherently included within the actual cash value (“ACV”) of the vehicle, and that Imperial wrongfully failed to pay full Sales Tax and Transfer Fees in connection with total loss valuations and payments in the State of Louisiana; and

WHEREAS, the Action alleges, generally, that Imperial acted wrongfully by failing to pay the full ACV to Plaintiff and the putative class because the Total Loss Payments (as defined below) did not include Sales Tax and Transfer Fees, and also initially included allegations that Imperial wrongfully values total loss vehicles; and

WHEREAS, as part of this Settlement, the Complaint allegations of wrongful valuation of total loss vehicles will be dismissed, and the only remaining allegations will relate to the alleged wrongful failure to pay full Sales Tax and Transfer Fees, and therefore the Releases contemplated by this Settlement will not include the alleged wrongful total loss valuation issue; and

WHEREAS, Imperial has defended and intends to vigorously contest each and every claim in the Action, denies all material allegations of the Action, as to which Imperial asserts it has numerous merits and class defenses, and further maintains that it has consistently acted in accordance with governing laws at all times; and

WHEREAS, Plaintiff, through counsel, while believing that the claims asserted in the Action have substantial merit, examined the benefits to be obtained under the terms of the Proposed Settlement (as defined below), considered the risks associated with the continued prosecution and possible appeal of this complex and time-consuming litigation, and the likelihood of success on the merits of the Action, and believes that, in consideration of all the circumstances, the Proposed Settlement (as defined below) embodied in this Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class Members; and

WHEREAS, Imperial, while denying wrongdoing of any kind whatsoever, and without admitting liability, nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation, and to be completely free of any further controversy with respect to the claims which were asserted in the Action;

NOW, THEREFORE, IT IS HEREBY AGREED by and between the Parties, through their respective counsel, that the Action be settled and compromised as

between the Plaintiff, the Settlement Class, and Imperial upon approval of the Court after hearing as provided for in this Agreement, on the following terms and conditions:

## **I. DEFINITIONS**

In addition to the foregoing, the following terms shall have the meanings set forth below:

1. “Agreement” means this Settlement Agreement, including all exhibits thereto.

2. “Claim Form” means the document that Settlement Class Members must submit, as set forth in and subject to the provisions of this Agreement, to potentially obtain benefits from the Settlement, in the form attached as Exhibit A.

3. Claims Deadline means the last date for submitting a claim pursuant to this Settlement, which is 15 days after the Final Approval Hearing.

4. “Class Counsel” means:

SHAMIS & GENTILE, P.A.  
Andrew Shamis, Esq.  
14 N.E 1<sup>st</sup> Ave Ste. 705  
Miami, FL 33132

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3165 McCrory Place, Suite 175  
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20900 NE 30th Avenue, Suite 417  
Aventura, FL 33180

Soren E. Gisleson  
HERMAN HERMAN & KATZ, LLC  
820 O'Keefe Avenue  
New Orleans, Louisiana 70113

5. "Class Notice" means the notice of the preliminarily approved settlement, to be sent to all Settlement Class Members. A copy of the proposed Class Notice will include:

- i. a postcard notice with a detachable claim form, pre-filled with the claimant's information, with prepaid postage (in the form attached as Exhibit B);
- ii. an Email Notice (in the form attached as Exhibit C) to be sent by email on two dates suggested by the Settlement Administrator, which shall include a hyperlink to the Claim Form on the Settlement Website; and
- iii. a Long Form Notice (in the form attached as Exhibit D) to be on an informational settlement website.

6. "Class Period" means the period commencing February 24, 2020 through the date of the Preliminary Approval Order.

7. "Court" means the United States District Court for the Western District of Louisiana.

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

9. “Effective Date” means the 30th day after the entry of the “Final Judgment” as defined herein, as long as no appeals are filed. If any appeals of such Final Judgment are filed the Effective Date will occur when the judgment has been affirmed and/or is beyond appeal.

10. “Final Judgment” means the Court’s Final Approval Order and Final Judgment, that finally approves the Settlement and dismisses the Action with prejudice with respect to the Class Claims, which shall be substantially in the form attached as Exhibit E to this Agreement, without material alteration, except that Class Counsel may add substantive support and case law subject to the agreement of the parties, as further provided in Section X below.

11. “Final Approval Hearing” means the settlement approval hearing to be conducted by the Court in connection with the determination of the fairness, adequacy, and reasonableness of this Agreement, in accordance with the applicable Federal Rules of Civil Procedure.

12. “Imperial” means Imperial Fire and Casualty Insurance Company, and any of its past, present or future subsidiaries, controlled, affiliated, related and/or parent corporations, business entities or divisions, which include Adirondack Insurance Exchange, Agent Alliance Insurance Company, Direct General Insurance Company of Louisiana, Direct General Insurance Company of Mississippi, Direct General Insurance Company, Direct Insurance Company, Direct National Insurance Company, Encompass Home and Auto Insurance Company, Encompass Indemnity Company, Encompass Independent Insurance Company, Encompass Insurance Company, Encompass Insurance Company of America, Encompass Insurance Company of Massachusetts, Encompass Property and Casualty Company, Esurance Insurance Company, Esurance Property and Casualty Insurance Company, GMAC Insurance Company Online, Inc., Home State Mutual Insurance Company, Imperial Fire & Casualty Insurance Company, Integon Casualty Insurance Company, Integon General Insurance Corporation, Integon Indemnity Corporation, Integon National Insurance Company, Integon Preferred Insurance Company, MIC General Insurance Corporation, National Automotive Insurance Company, National Farmers Union Property and Casualty Company, National General Assurance Company, Old American County Mutual Fire Insurance Company, Personal Express Insurance Company and Safe Auto Insurance Company, and/or any other successors, assigns or legal representatives thereof.

13. “Initial Notice Date” means the date upon which the Class Notice is first mailed to Class Members pursuant to this Agreement, as further described below.

14. “Insureds,” as used in the Settlement Class definition, will include all insureds with leased or owned vehicles.

15. “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 business affairs of a Settlement Class Member.

16. “Named Plaintiff” means Dana Bass.

17. “Opt-Out Period” means the time period during which Settlement Class Members are permitted to exclude themselves from the Settlement Class, as set forth in Section XII.

18. “Parties” means the Settlement Class Members, including the Named Plaintiffs, and Imperial.

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

20. “Preliminary Approval Order” means the order that preliminarily approves the Proposed Settlement, which shall be in the form attached as Exhibit F

to this Agreement, without material alteration, as further provided in Section III below.

21. “Proposed Settlement” means the terms agreed to by the Parties as set forth in this Agreement, prior to final approval of the Settlement.

22. “Release” means those Releases set forth in Section XIV, which all Settlement Class Members who do not choose to exclude themselves from this Settlement will be deemed to have executed upon the finality of this Settlement.

23. “Released Claims” means and includes any and all known and Unknown Claims, rights, demands, allegations, actions, suits or causes of action of whatever kind or nature, whether *ex contractu* or *ex delicto*, debts, liens, liabilities, agreements, interests, costs, expenses, attorneys’ fees, losses or damages (whether actual, consequential or treble) statutory, common law or equitable, including but not limited to breach of contract, bad faith or extra-contractual claims, and claims for punitive or exemplary damages, or prejudgment or postjudgment interest, arising from or relating in any way to Imperial’s alleged failure to pay all Sales Tax and all Transfer Fees to Plaintiff and all Settlement Class Members with respect to any Settlement Class Member Claims for a total loss vehicle during the Class Period under an automobile insurance policy issued by Imperial based on any legal theory whatsoever relating to payment of Sales Tax and Transfer Fees to the fullest extent of the law and res judicata and/or claim preclusion protections. Released Claims do

not include any claim for enforcement of the contemplated Settlement Agreement and/or Final Order and Judgment. Released Claims also do not include any claims, actions, or causes of action alleging that Imperial failed to properly calculate the value of total loss vehicles except to the extent that such claims, actions, or causes of action relate to failure to pay any or sufficient Sales Tax and Transfer Fees.

24. “Released Persons” means Imperial, as defined above, and any of its members, parents, subsidiaries, affiliates, managers, past, present or future officers, stockholders, attorneys, insurers, reinsurers, excess insurers, directors, agents, employees and/or independent contractors, and/or any other successors, assigns, divisions, or legal representatives thereof, and any other Person or entity who or which might be liable on the basis of any conduct by any of the foregoing.

25. “Releasing Parties” means the Named Plaintiff and the Settlement Class Members who do not otherwise timely opt-out of the Settlement Class, and their heirs, predecessors, successors, assigns, family members, personal representatives, attorneys, officers, stockholders, shareholders, principals, owners, agents, fiduciaries, spouses, children, dependents, parents, creditors, judgment creditors, representatives, employees, employers, executors, administrators, conservators, receivers, subrogees, trusts, trustees, members, servants, independent contractors, lessors, lessees, executors, administrators, insurers, reinsurers, underwriters, directors and/or past, present and/or future parent, subsidiaries and/or

affiliated corporations, partnerships and/or other entities, and on behalf of any other Person or entity who or which could or might assert any claim under or through any of the foregoing.

26. “Settlement” means the terms and conditions of the Agreement reached by the Parties.

27. “Settlement Administrator” means the firm approved by the Court to administer all aspects of the Settlement. The Parties agree to mutually recommend Epiq Systems, a nationally recognized settlement administrator which has administered numerous similar settlements, to be the Settlement Administrator, which shall be supervised by Class Counsel.

28. “Settlement Class” means the class defined in Section II below.

29. “Settlement Class Members” means those Persons as defined in Section II below. Any person who submits a valid and timely written request to be excluded from the Settlement Class shall not be a Settlement Class Member.

30. The “Settlement Class Member Claims” means any first-party private passenger auto physical damage claim under a Louisiana policy issued by Imperial with a total loss during the period February 24, 2020 through the date of Preliminary Approval, that was adjusted by Imperial as a total loss claim, that resulted in payment by Imperial of a covered claim, and for which Sales Tax was not paid or was

insufficiently paid and Transfer Fees that were not paid or were insufficient on any and all total loss vehicle claims.

31. “Settlement Class Payment” means the payments to Settlement Class Members described in Section VI below.

32. “Total Loss Payment” means the payment issued by Imperial on a Total Loss.

33. “Unknown Claims” means any unknown Released Claims arising out of facts found hereafter to be other than or different from the facts now believed to be true and relating to Sales Tax and Transfer Fees to the full extent permitted by law and to the full extent of *res judicata* and/or claim preclusion protection.

34. “Sales Tax and Transfer Fees” means: (i) sales tax at the applicable local tax rate based on the garage location and date of loss or the average tax rate for the state, whichever is administratively feasible to Imperial, and consistently applied, and (ii) all applicable Transfer Fees (*i.e.*, title, handling, plate) fees reasonably necessary to be paid upon the purchase of a vehicle in Louisiana.

## **II. THE SETTLEMENT CLASS**

35. The “Settlement Class” means All Insureds, under any Louisiana automobile insurance policy issued by IMPERIAL FIRE AND CASUALTY INSURANCE COMPANY (“Defendant”), and its subsidiaries or related insurance companies with the same operative policy language covering a vehicle with auto

physical damage coverage for comprehensive or collision loss where such vehicle was declared a total loss, who made a first-party claim for total loss, and whose claim was adjusted as a total loss, within the relevant time period and who are mailed class notice and do not timely opt out from the settlement class (the “Settlement Class Members”). Excluded from the Settlement Class are (1) Imperial, its agents, employees, subsidiaries, parents, and related entities, all present or former officers and/or directors of Imperial, the Settlement Administrator, the Mediator, Class Counsel, and any Judge of this Court and the Judge’s staff and employees; (2) Individuals with claims for which Imperial received a valid and executed release; (3) Individuals who are not on the Notice list and who did not submit a valid Claim Form or Electronic Claim Form for payment under this Settlement Agreement; (4) Individuals who request exclusion from the Class; and (5) Individuals with claims for first-party property damage as to which the individual process of appraisal or arbitration or a lawsuit has been completed or initiated at the time this Settlement Agreement is filed.

### **III. PRELIMINARY CLASS CERTIFICATION**

36. Upon execution of this Agreement, the Parties shall submit this Agreement to the Court and request the Court to enter a Preliminary Approval Order, preliminarily approving the Proposed Settlement, which shall be substantially in the form set forth in Exhibit F.

37. For purposes of this Settlement only, the Parties stipulate and agree to the certification of the Settlement Class defined in this Agreement and that: (i) the proposed Settlement Class meets the requirements of Fed. R. Civ. P. 23(a) and (b)(3); (ii) the proposed Class Notice is the best and most practicable under the circumstances, and satisfies the requirements of Fed. R. Civ. P. 23 and Due Process; and (iii) the terms of the Settlement are fair, reasonable and adequate. For purposes of the Settlement, the Named Plaintiff is agreed upon as a suitable Class Representative.

38. Preliminary certification of the Settlement Class and appointment of the Settlement Class Representative and Class Counsel by the Court shall be binding only with respect to the Settlement of the Action. In the event this Agreement is terminated pursuant to its terms, or a Final Judgment approving the Settlement for any reason does not occur, the certification of the Settlement Class shall be nullified, and the Action shall proceed as though the Settlement Class had never been certified, without prejudice to the Court's consideration, on the merits, of any properly submitted Motion for Class Certification. The Named Plaintiff and Class Counsel agree that neither this Agreement, nor any pleading or other paper related in any way to this Agreement, nor any act or communication in the course of negotiating, implementing or seeking approval of this Agreement, shall be deemed an admission by the Named Plaintiff, Class Counsel, or Imperial in any other matter, whether or

not related in any manner thereto, or by Imperial that certification of any class is appropriate in this Action or any other litigation, or otherwise shall preclude Imperial from opposing or asserting any argument it may have with respect to the merits and/or certification of a class in this Action or any other matter.

39. Upon the Preliminary Approval of this Proposed Settlement by the Court, as evidenced by entry of the Preliminary Approval Order, all proceedings in the Action shall be stayed until further order of the Court, except such proceedings as may be necessary either to implement the Proposed Settlement or to comply with or effectuate the terms of this Agreement.

#### **IV. CLASS NOTICE, COSTS OF CLASS NOTICE, AND ADMINISTRATION OF SETTLEMENT**

40. The Parties agree to jointly select and supervise a suitable Settlement Administrator, which, as set forth above, shall be Epiq Systems, which entity will be designated as the “Settlement Administrator.” The duties of the Settlement Administrator shall include, but are not limited to (i) overseeing the provision of Notice to the Class; (ii) overseeing identification of addresses for any returned mail, and remaining notice; (iii) processing Claim Forms; (iv) contacting Settlement Class Members, if any, whose Claims Forms are deficient to attempt to obtain a cured form; (v) processing any cured Claim Forms; (vi) sending all Claim Forms to Imperial for payment or challenge and to Class Counsel; (vi) forwarding inquiries and questions to Class Counsel; (vii) providing a certification to the Court regarding the

administration and processing of claims and, in the event that the Settlement Administrator issues checks, issuing the payments to the Claimants as set forth herein; and (viii) establishing and maintaining a settlement website and call center. The Settlement Administrator shall be paid by Imperial for services rendered pursuant to this Agreement.

41. Notice of the pendency of the Action and of the Settlement shall be made by the Class Notice, which will be sent by the Settlement Administrator.

42. Within 60 days after the entry of the Preliminary Approval Order, Imperial shall make a reasonable search of its computer/electronic databases and provide the Settlement Administrator with the name and current or last-known address and email address of each potential Settlement Class Member and the date of loss.

43. Within 90 days of the entry of the Preliminary Approval Order, the Settlement Administrator shall initiate mailing of the postcard Class Notice and Claim Form, which will be in the form set forth in Exhibit A (Claim Form), and Exhibit B (Postcard Notice), for each Settlement Class Member Claim (if a Settlement Class Member has more than one claim, the Settlement Class Member will receive a Claim Form for each claim showing the date of loss) by first-class mail to each potential Settlement Class Member. The Claim Form will be detachable and return-addressed and shall be affixed with prepaid postage sufficient to mail back to

the Settlement Administrator. The Claim Form shall be pre-filled in the manner and method shown in the agreed Class Notice, and will require the Settlement Class Member to affirm, under oath, the good faith belief that the information on the Claim Form is true and correct and that the Class Member believes he or she is entitled to the relief requested on the Claim Form and has not previously been fully paid Sales Tax and Transfer Fees on the relevant total loss claim by Imperial. There shall be an affirmation on the Claim Form that the Class Member has not previously been paid for all Sales Tax and/or not paid for all Transfer Fees, and if the affirmation is not executed the claim will be denied. The Class Notice shall be sent only to Settlement Class Members, not to any of their attorneys, whether known or unknown, in connection with their original claim to Imperial or otherwise.

44. Prior to mailing the Notice which must be mailed, the Settlement Administrator shall run the physical mailing addresses through the National Change of Address Database (“NCOA”) to attempt to obtain a more current name and/or physical mailing address for each potential Settlement Class Member.

45. At a date and time suggested by the Settlement Administrator, after the mailing of the Mail Notice, the Settlement Administrator shall initiate two separate Email Class Notices (which notice is in addition to the postcard Class Notice Notice), which will be in the form set forth as Exhibit C.

46. The Email Class Notices shall have a hyperlink to an informational website, which provides access to a “Make A Claim” button permitting a Class Member to access a pre-filled electronic Claim Form in the form attached hereto. The parties agree that the website and domain name will be mutually agreed in writing by the parties.

47. If any e-mail is rejected, returned as undelivered, or the Settlement Administrator otherwise receives notice of a failure to transmit, the Settlement Administrator will send a second postcard Mail Notice to the Settlement Class Member.

48. The Settlement Administrator shall utilize best practices designed to avoid spam filters, blockers, or any tool designed to prevent receipt of e-mails, and to otherwise design and implement the sending of the e-mail to increase the chance that the E-Mail Notice will be successfully received into the inbox of Settlement Class Members. All E-Mail Notices must include the capability to click-through to the website to make a claim.

49. At a date and time recommended by the Settlement Administrator, a second reminder email notice, which will have the same format as Exhibit C except that it will not include a link to the claim form, will be sent to each Settlement Class Member.

50. Prior to the Class Notice mailing and emailing, the Settlement Administrator will create an informational website. The website will provide the Settlement Agreement, Mail Notice, Longform Notice, Claim Form, Preliminary Approval Order, and frequently asked questions.

51. The home page of the website shall reflect the case settlement and shall have a “Make A Claim” button permitting a Class Member to access a pre-filled Electronic Claim Form by providing a Claimant ID Number, with a method to submit the Electronic Claim Form online with an electronic signature, and a method to request that another copy of the paper Claim Form be mailed or emailed to the Settlement Class Member.

52. The website shall provide that a Settlement Class Member may submit a Claim Form without a Claimant ID Number by completing online a Blank Claim Form by entering the Settlement Class Member name, policy number or claim number, and address, and by signing and submitting the Blank Claim Form electronically. A copy of the proposed Blank Claim Form is attached hereto as Exhibit G.

53. If any Notice and/or Claim Form mailed to any potential Settlement Class Member is returned to the Settlement Administrator as undeliverable, the Settlement Administrator will promptly log each Notice and/or Claim Form that is returned as undeliverable and provide copies of the log to Imperial and Class

Counsel upon request. 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, the Settlement Administrator will use reasonable efforts, including potentially an Experian search or skip tracing, to attempt to obtain a new address and those mailings shall be forwarded to any new address obtained through such a search. If any Notice is returned as undeliverable a second time, no further mailing shall be required. It is agreed by the Parties that the procedures set forth in the preceding Paragraph and this Paragraph 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.

54. The Parties agree that a Longform Notice, without material alteration from Exhibit D, shall be posted to the website, and will be available upon request to Settlement Class Members.

55. The Notice and Claim Form will also be made available to all potential Settlement Class Members by request to the Settlement Administrator, who shall send via first-class U.S. mail any of these documents as requested by any potential Settlement Class Member. If a Claimant ID Number is not available to the Settlement Administrator for the potential Settlement Class Member, the Settlement Administrator shall provide a Blank Claim Form to the requester with instruction

that the Blank Claim Form must be mailed to the Settlement Administrator postmarked by the Claims Submission Deadline with the Settlement Class Member name, policy number or claim number, address, and signature.

56. The Settlement Administrator shall retain a record of all such Class Notice procedures and provide periodic updates to the Parties during the Class Notice period.

57. The Settlement Administrator shall maintain a toll-free IVR telephone system containing recorded answers to frequently asked questions and information with respect to how a Class Member may receive further assistance, along with an option permitting callers to punch request to reach a live operator. The recorded answers to frequently asked questions are to be agreed to by the Parties. The live operator(s) staffing the call center shall be able to answer Settlement Class Members' questions using an agreed upon script and further take name, address, and/or other relevant information to send out Class Notices.

58. The Settlement Administrator shall rent a post office box to be used for receiving requests for exclusion, objections, notices of intention to appear, and any other settlement-related communications. Only the Settlement Administrator, 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.

59. Neither Imperial, nor Plaintiff, nor any of the Released Persons, nor any of the Releasing Parties, nor any of their counsel, including Class Counsel, shall be liable for any act, or failure to act, of the Settlement Administrator.

#### **V. CLAIMS PROCEDURE**

60. To be eligible for payment under this Settlement, a Settlement Class Member or his or her Legally Authorized Representative must timely submit a valid Claim Form and must not have submitted a request for exclusion.

61. Settlement Class Members will be deemed Settlement Class Members unless they timely submit a written request for exclusion from the Settlement Class, postmarked no later than 30 days prior to the Final Approval Hearing.

62. To receive payment, a Settlement Class Member must submit a fully completed and signed Claim Form, postmarked or submitted online no later than the end of the Claim Deadline, as listed in the Class Notice. The Claim Form shall require, at a minimum, that the Settlement Class Member affirm the good faith belief that the information on the Claim Form is true and correct and that the Class Member believes he or she has not previously received full and complete Sales Tax and full and complete Transfer Fee payment from Imperial on the relevant total loss claim (subject to verification by Imperial). If Imperial made a previous payment toward the Sales Tax and Transfer Fee amount on a total loss claim, Imperial will only owe

the difference between the full Sales Tax and Transfer Fee amount and the previous payment.

63. The Settlement Administrator will promptly notify a Settlement Class Member if it deems that Person's Claim Form materially incomplete or deficient, and specify any additional information that must be submitted. Notification shall be by first-class mail unless the Settlement Class Member specifies another mode of notification. Such Settlement Class Members shall have 14 days from the date the notification is mailed, or until the expiration of the Claim Deadline, whichever is longer, to submit the requested information. If a deficiency notice is sent and no cure is made the Settlement Class Member's claim will be denied.

64. Settlement Class Payments shall be made on valid claims by check or electronic payment (in accordance with standard claims administration procedures) issued within 90 days following the Claims Deadline.

**VI. CALCULATION OF PAYMENT AND IMPERIAL'S MONETARY AND NON-MONETARY OBLIGATIONS UNDER THE SETTLEMENT.**

65. The calculation and implementation of payments contemplated by this section shall be done by Class Counsel and Imperial for the purpose of compensating Settlement Class Members. The methodology provided for herein will be applied to the data as consistently, sensibly, and conscientiously as reasonably possible,

recognizing and taking into consideration the nature and completeness of the data and the purpose of the computations.

66. The Parties have agreed that Imperial shall pay Settlement Class Members either Sales Tax at the applicable local rate based on the garage location and date of loss or the average sales tax rate for the state, whichever is administratively feasible, and consistently applied, along with applicable Transfer Fees (*i.e.*, title, handling, plate) less any prior payments for Sales Tax and Transfer Fees.

67. Insureds, as used in the Settlement Class definition, will include all insureds with leased or owned vehicles in the Settlement Class.

68. Plaintiff estimates that the total exposure up to the date of settlement is \$3,740,706.00, which does not include any non-monetary relief. Imperial does not object to this estimate.

69. As soon as practicable, but no later than 60 days from the Effective Date, Imperial shall send the Settlement Fund to the Settlement Administrator necessary to pay the full amount of the Settlement Class Member Payments.

70. All Settlement Class Members who submit completed Claim Forms by the Claims Deadline will be entitled, if the criteria set forth in Paragraph 63 above are met, to a payment and shall automatically receive their payment by check or

electronic payment issued by the Settlement Administrator within 90 calendar days following the Claims Deadline, assuming no appeals from the Final Judgment.

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

72. For any returned checks, the Settlement Administrator shall make a reasonable effort to locate a current mailing address for the Settlement Class Members whose checks were returned (such as by running addresses of returned checks through the NCOA database to effectuate delivery of such checks). For any such recipients for whom updated addresses are found, the Settlement Administrator shall make a single additional attempt to re-mail or re-issue a Settlement Class Member Payment to the updated address.

73. The check shall be valid for 180 days after the date of the check. No *cy pres* fund will be created, so any unclaimed checks revert to Imperial after the applicable time period for cashing of such checks.

74. To be potentially eligible for the Settlement Class Payment, a Settlement Class Member must have: (a) received a Total Loss Payment; and (b) submitted a timely and signed Claim Form.

75. The Parties acknowledge and agree that this Agreement does not and shall not constitute an admission by Imperial that its payment or nonpayment of Sales Tax and Transfer Fees on any individual claim or on any of the Settlement Class Members' claims was incorrect or improper.

76. The Settlement Class Payments set forth in this Section shall be the only payments to which any Settlement Class Member will be entitled.

77. The Settlement and Release contained therein shall be effective upon the finality of the Settlement, except that claims for non-payment of amounts due under this Settlement Agreement are not released until payments are made.

78. Imperial's liability under this Settlement shall be limited to: (a) paying the Settlement Class Payments to Eligible Settlement Class Members; (b) paying the costs of Class Notice and settlement administration, including the fees and costs of the Settlement Administrator; (c) paying any attorneys' fee and costs award awarded by the Court up to \$795,000.00 in fees and costs, as set forth below; and (d) and paying any Class Representative award to the Named Plaintiff awarded by the Court up to \$5,000.00, as set forth below. In no event shall Imperial be liable under this Settlement to pay any additional amounts than those set forth above.

79. Non-Monetary Consideration: As part of the Settlement, the next business day following the signing of the Settlement Agreement:

A. Within six months of the Effective Date, Imperial agrees to pay applicable Sales Tax and Transfer Fees on total loss vehicles at the time of loss based on the Adjusted Vehicle Value of the vehicle, without requiring the policyholder to provide proof that the policyholder purchased a replacement vehicle and without regard to whether the vehicle is leased or owned.

B. Imperial reserves the right to change its practices in the event of a change in Louisiana law, a change in the state of Louisiana's fees charged incidental to the transfer of ownership of motor vehicles titled and/or registered in Louisiana or appropriate changes in the terms of the applicable insurance policies.

## **VII. COMMUNICATIONS WITH THE CLASS**

80. The Class Notice shall list Class Counsel's addresses and telephone numbers. Communications relating to the Action or this Settlement with Persons receiving Class Notices and Settlement Class Members shall be handled through Class Counsel, and/or the Settlement Administrator, as necessary. Nothing in this Agreement shall be construed to prevent Imperial, its employees, attorneys, agents or representatives from communicating with Settlement Class Members in the

normal course of its business operations, from submitting notices or other documents relating to this Agreement directly to Settlement Class Members and/or from continuing to adjust and resolve pending or future claims, even if they otherwise fall within the scope of this Agreement, before this Agreement is finally approved.

81. Neither Imperial nor Class Counsel shall be responsible in any way for any attorneys' lien submitted by any prior counsel for any of the Settlement Class Members, nor shall any attorneys' lien be created by any of the efforts by the Parties to effectuate any of the terms of this Agreement, and this provision shall be incorporated into the Final Judgment.

#### **VIII. CLASS COUNSEL'S FEES AND COSTS AND CLASS REPRESENTATIVE FEES**

82. No compensation for Class Counsel was negotiated as part of this Settlement until all material terms were agreed upon. The Parties recognize that Class Counsel are entitled to seek an award of attorneys' fees and expenses for the work performed and the results obtained for the Class in the Action. Class Counsel intends to seek Court approval for a fee and costs award not to exceed \$795,000.00, with the approved amount to be paid within 15 days after the Effective Date. Imperial shall not oppose, either directly or indirectly, an attorneys' fee request that does not exceed this amount. Under no circumstances will Imperial be obligated to pay any costs or sums in excess of \$795, 000.00 for attorneys' fees and costs. The attorneys' fees and costs are separate from and not included in the payments to the

Settlement Class and payments to the Class Representative and are separate from and not included in the payments for class and claims administration. Class Counsel further agree that, to the extent a lesser amount of fees is awarded by the Court or any appellate court, it will not provide a basis for Class Counsel to terminate this Agreement. Class Counsel further agrees that unless an award of a lesser amount of attorneys' fees is overturned on appeal, Class Counsel will accept the lesser amount of fees and costs.

83. Additionally, the Parties agree that Class Counsel will request a Class Representative Service Award to the Named Plaintiff in the amount of \$5,000.00, in recognition of the risk and effort undertaken in prosecuting this case, to be paid by Imperial within 15 days of the Effective Date, which Imperial will not oppose.

**IX. CONDITIONS OF SETTLEMENT AND EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION OF AGREEMENT**

84. The Named Plaintiff, Settlement Class Members and Imperial consent to the entry of a Final Judgment substantially in the form attached as Exhibit E, without material alteration to those terms, with the understanding that the parties may include additional case law to support a final approval of the Settlement Agreement.

85. If the Court disapproves this Agreement, or if the Court enters the Final Judgment but it is reversed or vacated on appeal, this Agreement shall be null and

void and of no force and effect. If the Court materially modifies any provision of the Agreement or proposed Final Judgment, or if either is materially modified on appeal or remanded to the Court for modification, or if any of the terms of this Agreement are impaired in any material way, then Imperial shall have the option of terminating this Agreement and withdrawing its consent to the entry of the Final Judgment, in which case this Agreement shall be null and void and of no force and effect, and the Parties will return to their respective positions in the litigation prior to the filing of the Motion for Preliminary Approval Order. Imperial shall have 15 days from the event triggering its option to inform Class Counsel that it is exercising its option of terminating this Agreement.

86. If the Court does not finally approve the Settlement, all obligations of Imperial under this Agreement terminate, including but not limited to any obligation to pay attorneys' fees, and the Parties will return to their respective positions in the litigation prior to the filing of the Motion for Preliminary Approval Order. Additionally, the Parties agree that neither this Agreement, nor any pleading or other paper related in any way to this Agreement, nor any act or communication in the course of negotiating, implementing or seeking approval of this Agreement, shall be deemed an admission by Imperial that certification as a class is appropriate in any other litigation, or otherwise shall preclude Imperial from opposing or asserting any

argument it may have with respect to certification of a class in this Action if the Settlement is not consummated.

87. Imperial, in its sole discretion, may elect to terminate this Agreement if more than three percent (5%) of potential Class Members object to and/or Opt-Out of this Settlement or if the Named Plaintiff or any Settlement Class Member with an attorney client relationship to Class Counsel or their firms, opts out, excludes himself or herself from, or objects to the Settlement Class or this Settlement. Imperial must exercise this right within 30 calendar days of the last day of the Opt-Out Period. In the event of a termination pursuant to this paragraph, the parties will return to their respective positions in the litigation prior to the filing of the Motion for Preliminary Approval Order.

#### **X. FINAL APPROVAL OF SETTLEMENT**

88. Class Counsel will file a motion seeking the Court's Final Judgment as to the Proposed Settlement at a Final Approval Hearing to be held at a time, date, and location that will be stated in the Preliminary Approval Order and listed in the Class Notice. The Parties will request that the Final Approval Hearing be held at the earliest date, that is at least 130 days after the Preliminary Approval Order that the Court is available to hear the matter or as soon as possible thereafter. Class Counsel shall request the Court to enter a Final Judgment substantially in the form of the Final Order and Judgment Approving Settlement and Dismissing Action with

Prejudice attached hereto as Exhibit E, except for any substantive support or case law added by Class Counsel with the agreement of Counsel for Defendant, approving the Proposed Settlement without material alteration, and directing the Parties and their counsel to comply with and consummate the terms of this Agreement, as well as:

- a) Certifying the Settlement Class for settlement purposes;
- b) Finding that Class Counsel and the Named Plaintiff have adequately represented the Settlement Class;
- c) Finding that the Court has personal jurisdiction over the Named Plaintiff and all members of the Settlement Class for the purpose of this Settlement only, and that the Court has subject matter jurisdiction to approve the Agreement and all exhibits thereto;
- d) Finding that the terms of the Settlement are fair, reasonable, and adequate to the Settlement Class and in compliance with due process, federal and Louisiana law;
- e) Providing that each member of the Settlement Class who has not excluded him, her, or itself therefrom in accordance with the Court's prior orders shall be bound by the provisions of the Settlement, including the applicable Releases;

- f) Finding that the Class Notice implemented pursuant to this Settlement and approved by the Court was reasonable and the best practicable notice and satisfies the requirements of the Federal Rules of Civil Procedure, as well as all the requirements of due process under the Louisiana and United States Constitutions;
- g) Dismissing all claims in the Action, and as otherwise set forth in this Agreement, on the merits and with prejudice, and entering final judgment thereon with a finding that there is no just reason to delay enforcement or appeal;
- h) Approving the payment of the attorneys' fees and costs to Class Counsel, and the Class Representative Fee to the Named Plaintiff, in conformity with the provisions of the Settlement;
- i) Confirming that Class Counsel and their respective firms agree (only to the extent that it is otherwise not violative of any applicable rules governing the practice of law) not to represent, encourage, solicit or otherwise assist, in any way whatsoever (including, but not limited to referrals to other counsel) any opt out or any form of opt out class, except that referring such person to the Notice or suggesting to any such person the option of obtaining separate counsel, without specifically identifying options for such counsel will not violate this provision; and

j. Permanently barring and enjoining the Named Plaintiff and each and every Class Member, and their respective heirs, executors, administrators, partners, and agents, and the successors and assigns of each and any of them, from asserting, either directly or indirectly, individually, or in a representative capacity or on behalf of or as part of a class, and whether under State or Federal statutory or common law, any Released Claim against any Released Person; and

k) Retaining jurisdiction to enforce the Agreement and Final Judgment.

#### **XI. EFFECTIVE DATE**

89. The “Effective Date” of this Agreement means the 30<sup>th</sup> day after the entry of the “Final Judgment” as defined herein, as long as no appeals are filed. If any appeals of such Final Judgment are filed, the Effective Date will occur when the judgment has been affirmed and/or is beyond appeal.

#### **XII. OBJECTIONS AND REQUESTS FOR EXCLUSION**

90. Settlement Class Members who wish to exclude themselves from the Settlement Class must prepare a written request for exclusion, postmarked no later than 30 days prior to the Final Approval Hearing. Written requests for exclusion must be signed and include the Settlement Class Member’s name, address, and telephone number, and expressly state the desire to be excluded from the Settlement

Class. No Settlement Class Member may affect an exclusion of a class of individuals or represent such a class.

91. The Settlement Administrator shall promptly log each request for exclusion that it receives and provide copies of the log and all such requests for exclusion to counsel for the Parties.

92. Settlement Class Members who do not file a timely request for exclusion may file a notice of intent to object to the Proposed Settlement or intervene in the Action for the purpose of contesting the Proposed Settlement. The written notice of intent to object and/or intervene must be: (a) filed with the Clerk of the Court not later than 30 days prior to the Final Approval Hearing; and (b) sent by first-class mail, postmarked no later than 30 days before the date set for the Final Approval Hearing, to Class Counsel:

Adam Schwartzbaum  
Edelsberg Law  
20900 NE 30th Avenue, Suite 417  
Aventura, FL 33180.

And to Imperial's Counsel:

Mark L. Hanover  
DENTONS US LLP  
233 S. Wacker Dr.  
Suite 5900  
Chicago, IL 60606

93. Any Settlement Class Member who does not so request to object or intervene waives the right to do so in the future and shall be forever barred from intervening or making any objection to the Proposed Settlement or Final Judgment. Any Notice of Intent to Object or Intervene must contain the following: (a) the name of the Action; (b) the objector's full name, address and telephone number; (c) all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel; (d) the number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, along with the case name and number and the jurisdiction of the court for each said objection (if any); (e) the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application; (f) the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing; (g) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; (h) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and (i) the objector's signature (an attorney's signature is not sufficient). The Parties must file any briefs in response to any objection on or before 10 days prior to the date of the Final Approval Hearing. Class Counsel and/or Imperial may conduct discovery on any objector consistent with the Federal Rules

of Civil Procedure. Any Settlement Class Member who does not make his or her objections in the manner and by the Objection Deadline shall be deemed to have waived any objection(s) and shall be forever barred from raising such objections in this or any other action or proceeding, absent further order of the Court. However, the Court can, at its discretion, consider noncompliant objections if the Court finds the noncompliance was immaterial.

### **XIII. CONFIDENTIALITY OF PROPRIETARY INFORMATION**

94. Imperial asserts that the following constitutes highly confidential and proprietary business information of Imperial (the “Proprietary Information”): (a) any names, addresses, policy numbers, and other data concerning Settlement Class Members compiled by Imperial in effectuating the Proposed Settlement; and (b) any electronic data processing and other record keeping procedures and materials that may be utilized by Imperial in identifying the Settlement Class Members and effectuating Imperial’s other obligations under this Agreement and/or the Settlement. The confidentiality of all Proprietary Information provided to Class Counsel by Imperial shall be protected from disclosure by Class Counsel and/or other attorneys for the Named Plaintiffs in this Action, or any Settlement Class Member or their counsel, to any persons other than those described in Paragraph 95 below.

95. No persons other than Imperial, Imperial’s counsel, and clerical/administrative personnel employed by Imperial or Imperial’s counsel, Class

Counsel and clerical/administrative personnel employed by Class Counsel, the Settlement Administrator, if applicable, and such other persons as the Court may order, after hearing on notice to all counsel of record, shall be allowed access to any Proprietary Information.

96. Within 30 days after all of Imperial's obligations under this Settlement are effectuated, Class Counsel and/or other attorneys for the Named Plaintiff in this Action, or any Settlement Class Member or their counsel, shall destroy all Proprietary Information provided by Imperial to Class Counsel or anyone they employed or retained in this Action, either in discovery or in connection with this Agreement. Class Counsel shall deliver a letter to Imperial's counsel certifying their compliance with this Paragraph. Further, the parties agree that neither Class Counsel, nor anyone employed with, retained by, or otherwise associated with Class Counsel, nor any other attorney or Person who shall have access to this information, shall use any of this Proprietary Information in any other litigation or proceeding, current or future, or for any other purpose whatsoever.

97. Class Counsel and the Named Plaintiff shall not make any statements to the media, orally or in writing, about the Action, or this Agreement, other than statements which are fully consistent with this Agreement and the Class Notice, except in a *bona fide* court proceeding relating to the subject matter of the Action,

and shall not in any way make any statements disparaging of Imperial in any way related to the subject matter of the Action.

#### **XIV. DISMISSAL OF ACTION AND RELEASES**

98. Upon the Court's Final Approval of this Agreement and the Settlement set forth herein, the Final Judgment shall be entered providing for the dismissal, with prejudice and without leave to amend, of the Action, and the effectiveness of the Releases by the Releasing Parties, including the Named Plaintiff, and including their past, present or future agents, legal representatives, trustees, parents, relatives, estates, heirs, executors and administrators, of all Released Claims against the Released Persons.

99. Upon the Effective Date, by operation of the entry of the Final Judgment, the Releasing Parties, including the Named Plaintiff, and including their past, present or future agents, legal representatives, trustees, parents, relatives, estates, heirs, executors and administrators, shall be held to have fully released, waived, relinquished and discharged, to the fullest extent possible by law, the Released Persons from all the Released Claims.

100. Upon the Effective Date, the Releasing Parties, including the Named Plaintiff, and including their past, present or future agents, legal representatives, trustees, parents, relatives, estates, heirs, executors and administrators, expressly agree that they, acting individually or together, shall not seek to institute, maintain,

prosecute, sue, or assert causes of action or proceedings against any of the Released Persons asserting any of the Released Claims.

101. Notwithstanding the Court's entry of the Final Judgment, the Court shall retain ongoing jurisdiction over this Action for purposes of enforcing and interpreting this Agreement and Final Judgment, including entering such orders and injunctions to prevent any collateral litigation that may be filed by Settlement Class Members, if necessary, and/or enforcing the litigation bar as to the Released Claims provided for by this Settlement.

#### **XV. DENIAL OF LIABILITY**

102. Were it not for this Settlement, Imperial would have vigorously contested each and every claim in the Action. Imperial maintains that it has consistently acted in accordance with governing laws at all times. Imperial vigorously denies all the material allegations set forth in the Action. Imperial nonetheless has concluded that it is in its best interest that the Action be settled on the terms and conditions set forth in this Agreement. Imperial reached this conclusion after considering the factual and legal issues in the Action, the substantial benefits of a final resolution of the Action, the expense that would be necessary to defend the Action through trial and any appeals that might be taken, the benefits of disposing of protracted and complex litigation, and the desire of Imperial to conduct its business unhampered by the distractions of continued litigation. The settlement

of this matter by Imperial, including, but not limited to, the terms and provisions of this Agreement, and any steps taken in accordance therewith, shall not be used in any way as precedent in any pending or future actions, including any actions against any of the Released Persons.

103. As a result of the foregoing, the Released Persons enter into this Agreement without in any way acknowledging any fault, liability or wrongdoing of any kind. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by the Released Persons of the truth of any of the allegations made in the Action, or of any liability, fault, or wrongdoing of any kind whatsoever on the part of the Released Persons.

104. To the extent permitted by law, neither this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be utilized or offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceeding, for any purpose including to establish any liability or admission by the Released Persons, except in any proceedings brought to enforce the Agreement or the Final Judgment or otherwise with the written consent of Imperial at its sole discretion.

105. Neither this Agreement, nor any pleading or other paper related in any way to this Agreement, nor any act or communication in the course of negotiating,

implementing or seeking approval of this Agreement, shall be deemed an admission by Imperial that certification of a class or subclass is appropriate in any other litigation, or otherwise shall preclude Imperial from opposing or asserting any argument it may have with respect to certification of any class(es) or subclass(es) in any proceeding. Nor may this Agreement be construed in any fashion as precedent for any matter similar to the instant one, or used as evidence of any kind, by any person or entity, in any action or proceeding against the Released Parties, as this Agreement has been entered into based on the particular facts of this matter alone.

**XVI. REPRESENTATION OF OPT OUTS.**

106. Only to the extent that it is otherwise not violative of any applicable rules governing the practice of law, Class Counsel agree that any representation, encouragement, solicitation or other assistance, including, but not limited to, referral to other counsel, of any opt out or any other person seeking to litigate with any of the Released Persons over any of the Released Claims or to represent any form of opt-out class, could place Class Counsel in an untenable conflict of interest with the Class. Accordingly, Class Counsel and their respective firms agree (only to the extent that it is otherwise not violative of any applicable rules governing the practice of law) not to represent, encourage, solicit or otherwise assist, in any way whatsoever, (including, but not limited to, referrals to other counsel) any opt out or any form of opt-out class, except that referring such person to the Notice or suggesting to any

such person the option of obtaining separate counsel, without specifically identifying options for such counsel, shall be permitted under the terms of this provision.

**XVII. DECEASED CLASS MEMBERS**

107. Claims may be submitted, along with sufficient proof of representative status, by a Legally Authorized Representative on behalf of a deceased Settlement Class Member's estate.

**XVIII. INCAPACITATED CLASS MEMBERS**

108. Claims may be submitted by a Legally Authorized Representative on behalf of an incapacitated Settlement Class Member.

**XIX. TAX OBLIGATIONS**

109. Tax obligations which may arise by virtue of the Settlement Class Payments made pursuant to this Agreement, if any, are solely the responsibility of the Persons who receive such Settlement Class Payments and are not in any way the responsibility of Imperial or Class Counsel. The Parties to this Agreement do not in any way express any belief or opinion regarding the existence of such tax obligations and do not undertake to provide any advice to any Settlement Class Member regarding any tax obligations which may arise by virtue of any Settlement Class Payments made pursuant to this Agreement.

**XX. CLASS ACTION FAIRNESS ACT NOTICE**

110. Pursuant to 28 U.S.C. § 1715(b), within 10 days after this Agreement is filed with the Court, Imperial will give notice to the Attorney General of the United States and The Louisiana Department of Insurance, serving on them the documents described in 28 U.S.C. § 1715(b)(1) through (8), as applicable (the “Class Action Fairness Act Notice”).

111. Promptly after execution of this Agreement, the Parties shall submit this Agreement to the Court and request entry of the Proposed Preliminary Approval Order, without material alteration from Exhibit E.

**XXI. MISCELLANEOUS PROVISIONS**

112. The proposed Preliminary Schedule for class administration deadlines is attached as Exhibit H.

113. The Parties hereto agree to defend this Agreement against objections made to final approval of the Settlement or in any appeal of the Final Judgment or collateral attack on the Agreement or Final Judgment.

114. The undersigned counsel represent that they are fully authorized to execute and enter into the terms and conditions of this Agreement on behalf of their respective clients.

115. Except as otherwise provided, this Agreement contains the entire agreement between the Parties hereto and supersedes any prior agreements or

understandings between them. All terms of this Agreement are contractual and not mere recitals and 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 hereto, 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.

116. This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties hereto. Non-material amendments and modifications may be made without additional notice to the Settlement Class Members unless such notice is required by the Court.

117. This Agreement shall be subject to, governed by, construed, and enforced pursuant to the laws of the State of Louisiana.

118. The exhibits to this Agreement are an integral part of the Settlement and are hereby incorporated into and made a part of this Agreement.

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

120. This Agreement shall be deemed to have been executed upon the last date of execution by all the undersigned counsel.

121. This Agreement may be executed in counterparts, each of which shall constitute an original.

122. The Parties will request that the Court retain continuing jurisdiction for the specific purpose of any enforcement, suit, action, proceeding or dispute arising out of or relating to this Agreement and the Proposed Settlement embodied herein and maintain jurisdiction over all Settlement Class Members. Specifically, the Parties shall request that the Court retain jurisdiction for purposes of: (a) implementation, enforcement, and administration of the Settlement, including any Releases in connection therewith; (b) resolution of any disputes concerning Settlement Class membership or entitlement to benefits under the terms of the Settlement; (c) enforcing and administering the Settlement and the Final Judgment until each and every act agreed to be performed by the Parties has been performed pursuant to this Agreement; and (d) other matters related to the foregoing.


123. Titles of sections to this Agreement are illustrative only and are neither binding on the Parties nor to be considered any part of the drafting history or other means of interpreting this Agreement. This Agreement shall be deemed to have been drafted by all the Parties hereto and their counsel.

IN WITNESS HEREOF, the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on the date it is executed by all of the undersigned.

DATED this 11th day of April, 2024

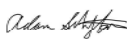
**SIGNATURES CONTINUED ON FOLLOWING PAGE**

For Plaintiff:


By:  05/04/2024  
Dana Bass  
Plaintiff

**APPROVED AS TO FORM AND SUBSTANCE**

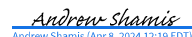
EDELSBERG LAW

By:  Apr 8, 2024  
Adam Schwartzbaum


NORMAND PLLC

By:  Apr 8, 2024  
Edmund A. Normand

SHAMIS & GENTILE, P.A

By:  Apr 8, 2024  
Andrew Shamis

HERMAN HERMAN & KATZ, LLC


By:  Apr 8, 2024  
Soren E. Gisleson

***Attorneys for Named Plaintiff  
and the Settlement Class***


**SIGNATURES CONTINUED ON FOLLOWING PAGE**

For Defendant

Imperial Fire and Casualty Insurance Company

By:   
\_\_\_\_\_  
Outside Counsel for Defendant  
Dentons U.S. LLP  
Signed with permission

DENTONS US LLP

By:   
\_\_\_\_\_  
Mark L. Hanover

*Attorneys for Defendant*



**EXHIBIT B**

**Notice of Class Action Settlement**

You may be a class member in a class action against Imperial Property and Casualty Insurance Company (“Imperial”). The Parties have agreed to settle the case. The case is *Bass v. Imperial Fire and Cas. Ins. Co.*, Case No. 1:22-cv-00550, United States District Court for the Western District of Louisiana.

**Why am I getting this Notice?** You have been identified as a “Settlement Class Member” from Imperial’s claims data, because you were a Louisiana policyholder and insured by an applicable Imperial entity and submitted a physical damage claim with respect to a covered vehicle that resulted in a total loss claim payment during the period commencing February 24, 2020 through \_\_\_\_\_, 2024.

**What is this lawsuit about?** The Settlement resolves a lawsuit claiming that Imperial breached its auto insurance policies by improperly failing to pay Sales Tax and Transfer Fees to insureds who submitted Louisiana first-party total loss auto claims.

**Settlement Terms.** Imperial will pay unpaid Sales Tax and Transfer Fees to eligible Settlement Class Members who submit a claim. The payment is the full amount sought in the case. Imperial also will not contest an application for payment of attorneys’ fees and costs of up to \$795,000, and \$5,000 as a service award to the Class Representative. These payments will not reduce the amount of money available to Settlement Class Members.

**How do I Receive Payment?** To receive a payment, you must complete and mail the attached Claim Form (no stamp needed - - return postage has been prepaid) or submit a Claim Form online at www.XXX.com. You also may make a claim online by visiting www.XXX.com, clicking “Make a Claim” and entering the Claimant ID Number that is on the attached claim form. Claim forms must be postmarked or submitted online by \_\_\_\_\_, 2024.

**Do I have any other options?** Unless you submit a Claim Form, you will not be eligible to get a Settlement payment and your rights will be affected. If you don’t want to be legally bound by the settlement, pursuant to which you will be giving a release of any claims asserted in the lawsuit, you must exclude yourself from it by [MONTH], [DAY], [YEAR]. Unless you exclude yourself, you won’t be able to sue or continue to sue Imperial for any claim made in this lawsuit or released by the Settlement Agreement. If you stay in the Settlement (i.e., don’t exclude yourself), you may object to it or ask for permission for you or your own lawyer to appear and speak at the hearing—at your own cost—but you don’t have to. Objections and requests to appear, which must comply with the procedures for such submissions, are due by [MONTH], [DAY], [YEAR]. Objections and requests to appear must include the following information: (a) the name of this Action; (b) your full name, address, and telephone number; (c) all grounds for the objection, accompanied by any legal support for the objection known to you or your counsel; (d) the number of times you have objected to a class action settlement within the five years preceding the date that you file the objection, including the case name and number and jurisdiction of the court for such objections (if any); (e) the identity of your counsel (if any), including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application; (f) the identity of all counsel (if any) representing you who will appear at the Final Approval Hearing; (g) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; (h) a statement confirming whether you intend to personally appear and/or testify at the Final Approval Hearing; and (i) your signature (an attorney’s signature is not sufficient). More details and the full terms of the Proposed Settlement are available at www.XXX.com

<u>COURT ORDERED LEGAL NOTICE</u>	Bass v. Imperial Class Action Settlement PO BOX 0000 City, State, Zip Code
<b>If you suffered a total-loss while insured by Imperial during the period commencing February 24, 2020 through _____, 2024, you may be entitled to a cash payment.</b>	<b>Class Member John Doe 123ABC Street New Orleans, LA 12345</b>
<b>Complete and return the enclosed form by</b>	





_____	postage prepaid mark	
_____		
_____		
Settlement P.O.	Box	Administrator _____
_____, _____		

## **EXHIBIT C**

EMAIL

To:  
From:  
Subject: Imperial Settlement-File a Claim

**Imperial's records show you suffered a total loss while insured with them and you may be entitled to payment for Sales Tax and Transfer Fees from the class action settlement in the case:**

**Bass v. Imperial Fire and Cas. Ins Co., Case No. 1:22-cv-00550  
United States District Court for the Western District of Louisiana**

**Claim your potential cash payment from the Settlement by [Date].**

TO MAKE A CLAIM: Click [here](#), or go to [www.XXXX.com](http://www.XXXX.com) and enter your Claimant ID Number [insert Claimant ID Number]

You have been identified as a "Settlement Class Member" from Imperial's claims data, because you were a Louisiana policyholder and insured by Imperial and submitted a physical damage claim with respect to a covered vehicle that resulted in a total loss claim payment during the period commencing February 24, 2020 through \_\_\_\_\_, 2024.

The Settlement resolves a lawsuit claiming that Imperial breached its auto insurance policies by improperly failing to pay Sales Tax and Transfer Fees to insureds who submitted Louisiana first-party total loss auto claims.

Imperial will pay for unpaid Sales Tax and Transfer Fees to eligible Settlement Class Members who submit a claim. This payment is the full amount sought in the case. Claim payments will be the full amount of Sales Tax based on the garage location and date of loss or the average tax rate for the state, whichever is administratively feasible to Imperial, and consistently applied, and all applicable Transfer Fees (i.e., title, handling, plate) reasonably necessary to be paid upon the purchase of a vehicle in Louisiana, less any Sales Tax and Transfer Fees previously paid to you by Imperial, as reflected in Imperial's records. Imperial has also agreed not to oppose attorneys' fees and costs up to \$795,000 and \$5,000 as a service award to the Class Representative. The attorneys' fees, costs and service award will not reduce the amount of money available to Settlement Class Members.

To be eligible for payment, you must complete and mail the Claim Form attached to the postcard you received in the mail, or submit a Claim Form online at [www.XXXX.com](http://www.XXXX.com) by using the above link and Claimant ID information. Claim Forms must be postmarked or submitted online by \_\_\_\_, 2024.

Unless you timely file a Claim Form, you will not get a Settlement payment and your rights will be affected. If you don't want to be legally bound by the Settlement, you must exclude yourself from it by **[MONTH], [DAY], [YEAR]**. Unless you exclude yourself, you won't be able to sue or continue to sue Imperial for any claim made in this lawsuit or released by the Settlement Agreement. If you stay in the Settlement (i.e., don't exclude yourself), you may object to it or ask for permission for you or your own lawyer to appear and speak at the hearing—at your own cost—but you don't have to. Objections and requests to appear are due by **[MONTH], [DAY], [YEAR]**, and must include the following information: (a) the name of this Action; (b) your full name, address, and telephone number; (c) all grounds for the objection, accompanied by any legal support for the objection known to you or your counsel; (d) the number of times you have objected to a class action settlement within the five years preceding the date that you file the objection, including the case name and number and jurisdiction of the court for such objections (if any); (e) the identity of your

counsel (if any), including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application; (f) the identity of all counsel (if any) representing you who will appear at the Final Approval Hearing; (g) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; (h) a statement confirming whether you intend to personally appear and/or testify at the Final Approval Hearing; and (i) your signature (an attorney's signature is not sufficient).

More details and the full terms of the Proposed Settlement are available at [www.XXXX.com](http://www.XXXX.com). You may also contact Class Counsel at \_\_\_\_\_.

**EXHIBIT D**

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA**

Bass v. Imperial Fire and Casualty Insurance Company  
Case No. 1:22-cv-00550

**IMPORTANT NOTICE OF CLASS ACTION SETTLEMENT**

**The Court authorized this Notice.  
This is not a solicitation from a lawyer.  
You are not being sued.**

**PLEASE READ THIS NOTICE CAREFULLY**

A Settlement has been reached in the case *Bass v. Imperial Fire and Cas. Ins. Co.*, Case No. 1:22-cv-00550, United States District Court for the Western District of Louisiana (the “Action”), entitling eligible Class Members who make a claim to payment of Sales Tax and Transfer Fees on total loss claims. This Notice explains: 1) the terms of the Settlement; 2) who is a member of the Class; 3) how to submit a claim for payment; 4) how to request exclusion from the Settlement; 5) how to object to the Settlement; and 6) how to get more information about the Settlement.

IF YOU ARE A CLASS MEMBER, THIS LEGAL PROCEEDING MAY AFFECT YOUR RIGHTS.

HELP IS AVAILABLE TO ASSIST YOUR UNDERSTANDING OF THIS NOTICE  
Call 1-###-###-#### toll free or visit [www.xyz.com](http://www.xyz.com) for more information.

**What is a Class Action?**

A class action is a lawsuit in which one or more individuals bring claims on behalf of other persons or entities. These persons or entities are referred to as a “Class” or “Class Members.” In a certified class action, the Court resolves certain issues, legal claims, and/or defenses for all Class Members in a single action, except for those persons or entities who ask in writing to be excluded from the Class.

**What is this Class Action About?**

Plaintiff alleges that Imperial and its applicable entities breached their contracts (insurance policies) by failing to pay Plaintiff and other Louisiana insureds who submitted physical damage claims for their vehicles during the class period, and which resulted in a total loss claim payment, the applicable Sales Tax and Transfer Fees. Imperial maintains that it complied with the terms of the insurance policies and applicable law, has numerous merits and class defenses, and denies that it acted wrongfully or unlawfully and continues to deny all material allegations.

You are receiving this Notice because a Settlement of the case has been reached between the Plaintiff, acting on behalf of the Class, and Imperial. The Court has preliminarily approved the Settlement, including the preliminary approval of a Settlement Class.

The Court is conducting a Final Approval Hearing on \_\_\_\_\_, 2024 to decide whether to grant final approval of the Proposed Settlement.

### **Settlement Terms**

As a part of the Settlement, Imperial Fire and Casualty Insurance Company, and its applicable entities (“Imperial” or “Defendant”), has agreed to:

1. pay eligible members of the Class for unpaid Sales Tax and Transfer Fees that Plaintiff alleged she and Class Members are owed; and
2. Separately pay attorneys’ fees and costs not to exceed \$795,000.00, and a Service Award not to exceed \$5,000.00 to the Class Representative, which will neither come from nor reduce any payment made to Settlement Class Members, with those amounts to be approved by the Court.

If you already were paid full Sales Tax and Transfer Fees on your total loss claim, or you are otherwise ineligible for a claim payment due to the existence of a prior release of such claims or for any other reason, including the filing of duplicative Claim Forms or failure to fully complete the Claim Form, you are not eligible for a payment.

In exchange, the Plaintiff and the members of the Class who do not exclude themselves from the Settlement agree to give up any claim they have for payment of Sales Tax and Transfer Fees. If you are a member of the Class, you can submit a claim to potentially be paid for Sales Tax and Transfer Fees. Alternatively, you may, if you wish, request to be excluded from the Settlement, which means you are not eligible for payment, and you maintain your right to sue Imperial individually and separately for payment of Sales Tax and Transfer Fees. You may also object to the terms of the Settlement if you comply with the requirements set forth below.

### **How Do I Know if I am a Member of the Class?**

You may be a member of the class action (a “Class Member”) against Imperial if you were a Louisiana policyholder and insured by Imperial and submitted a physical damage claim with respect to a covered vehicle during the period commencing February 24, 2020 through \_\_\_, 2024, that resulted in a total loss claim payment that did not include full Sales Tax and Transfer Fees. You received this Notice because Imperial’s records indicate you may be a member of the Class.

### **If I Am a Class Member, What Are My Options?**

If you are a Class Member, you have four options.

#### **Option 1: Submit a Claim Form for Payment.**

You may submit a Claim Form for potential payment of Sales Tax and Transfer Fees. If you received a Notice in the mail, the Notice included a pre-filled Claim Form. You can submit a claim by signing the Claim Form, carefully tearing at the perforation, and putting the Claim Form in the mail (the Claim Form is addressed and has necessary postage prepaid). You can call 1-8XX-XXX-XXXX or visit [www.xyz.com](http://www.xyz.com) and request that the Settlement Administrator send you a Claim Form as described above (or a blank form that you will need to fill out).

You can also submit an Electronic Claim Form by visiting [www.xyz.com](http://www.xyz.com), clicking the MAKE A CLAIM button, and following the steps outlined for you. An email relating to the Settlement also has been sent to Settlement Class Members for whom Imperial has email addresses. The email has a link to permit you to access the website to make a claim using a Claimant ID Number contained in the email and the Mailed Notice.

You can make a claim on [www.xyz.com](http://www.xyz.com) by clicking the MAKE A CLAIM button. You will need a Claimant ID Number (which was included in the Mailed Notice and Email Notice) or your last name and Policy number or claim number. If you do not know your Claimant ID Number, you can call 1-8XX-XXX-XXXX and provide your last name and seek assistance in determining your Claimant ID Number. You can also fill out the information in an electronic blank claim form.

If you submit a Claim Form in the mail, it must be postmarked no later than \_\_\_\_\_. If you submit an Electronic Claim, you must do so by 11:59 p.m. on \_\_\_\_\_.

**Option 2: Exclude yourself from the Case.**

You have the right to not be part of the Settlement by excluding yourself or “opting out” of the Class. If you wish to exclude yourself, you must do so on or before \_\_\_\_, 2024, as described below. You do not need to hire your own lawyer to request exclusion from the Class. If you exclude yourself from the Class, you give up your right to receive a payment for Sales Tax and Transfer Fees, or any other benefits as part of this Settlement, and you will not be bound by any judgments or orders of the Court, whether favorable or unfavorable. However, you will keep your right to sue Imperial on these issues separately in another lawsuit if you choose to pursue one.

To exclude yourself from this lawsuit and/or preserve your right to bring a separate case, you must make a request to be excluded in writing and, with sufficient postage, mail the request to:

Bass v. Imperial Fire and Casualty Insurance Company  
c/o NAME  
ADDRESS  
ADDRESS

A request for exclusion must be postmarked on or before \_\_, 2024.

Your request for exclusion must contain the following:

1. The name of the lawsuit (Bass v. Imperial Fire and Casualty Insurance Company);
2. Your full name;
3. Your current address;
4. A clear statement that you wish to be excluded from the Class, such as: “I request exclusion from the Class”; and
5. Your signature.

The Settlement Administrator will file information on your request for exclusion with the Court. If you are signing on behalf of a Class Member as a legal representative (such as an estate, trust or incompetent person), please include your full name, contact information, and the basis for your authority. A request for exclusion must be exercised individually and not on behalf of a group.

IF YOU DO NOT EXCLUDE YOURSELF FROM THE CLASS BY THE POSTMARK DEADLINE OF \_\_, 2024, YOU WILL REMAIN PART OF THE CLASS AND WILL BE BOUND BY THE ORDERS

OF THE COURT IN THIS LAWSUIT, AND BY THE TERMS OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT, EVEN IF YOU DO NOT SUBMIT A CLAIM FOR PAYMENT. IF YOU DO NOT WISH TO BE BOUND BY THE DECISIONS OR SETTLEMENT IN THIS CASE, YOU MUST REQUEST EXCLUSION FROM THE CLASS ACTION.

**Option 3: Object to the Terms of the Settlement.**

The full terms of the Settlement can be found at [www.xyz.com](http://www.xyz.com). If you think the terms of the Settlement are not fair, reasonable, or adequate to the Class Members, you can file a Notice of Intent to object to the terms of the Settlement. If you object to the terms of the Settlement, you cannot request exclusion from the Settlement. If you object to the terms of the Settlement and your objection is overruled, you will be bound by the terms of the Settlement and all rulings and orders from the Court. If you object to the terms of the Settlement, you may be subject to limited discovery consistent with the Federal Rules of Civil Procedure.

To properly object to the terms of the Settlement, you must send, with sufficient postage, a Notice of Intent to object to the terms of the Settlement and to appear at the Final Approval Hearing (described below) to the following:

Bass v. Imperial Fire and Casualty Insurance Company  
c/o NAME  
ADDRESS  
ADDRESS

The Notice of Intent must include the following:

1. The name of the Action (Bass v. Imperial Fire and Casualty Insurance Company);
2. The objector's full name, address, and telephone number;
3. All grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
4. The number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, along with the case name and number and the jurisdiction of the court for each said objection (if any);
5. The identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
6. The identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;
7. A list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;
8. A statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
9. The objector's signature (an attorney's signature is not sufficient).

If you and/or your attorney intend to request permission to address the Court at the Final Approval Hearing, your Notice of Intent must also include the following:

A list of any witnesses you may seek to call at the Hearing (subject to applicable rules of procedure and evidence and the discretion of the Court), with the address of each witness.

Notices of Intent to object must be postmarked by \_\_\_\_\_, 2024. If any Notice of Intent is not postmarked by the deadline set forth above or does not comport with the requirements listed above you will

waive the right to be heard at the Final Approval Hearing. If you file a Notice of Intent, you waive the right to request exclusion from the Class and will be bound by any decisions and orders from the Court and by the terms of the Settlement if it is approved by the Court. If you do not want to be bound by the decisions and rulings by the Court and the terms of the Settlement, you must file a request for exclusion, not a Notice of Intent.

**Option 4: Do Nothing Now. Stay in the Case.**

You have the right to do nothing. If you do nothing, you will be bound by the terms of the Settlement and will release any claim against Imperial for Sales Tax and Transfer Fees, even if you do not submit a Claim for payment. In other words, if you do nothing, you will give up your right to sue Imperial and receive nothing in return.

**Who Is Representing the Class?**

The Court has preliminarily appointed Dana Bass (the “Named Plaintiff” ) to be the representative of the Class. The Court has also preliminarily appointed the following lawyers as Class Counsel for those Class Members:

<p><b>NORMAND PLLC</b>                  Edmund Normand, Esq.                  ean@normandpllc.com                  3165 McCrory Place, Suite 175                  P.O. Box 140036                  Orlando, FL 32803                  Tel: 407-603-6031</p>	<p><b>EDELSBERG LAW, P.A.</b>                  Adam Schwartzbaum                  adam@edelsberglaw.com                  20900 NE 30<sup>th</sup> Avenue                  Suite 417                  Aventura, FL 3318                  Tel: 305-975-3320</p>
<p><b>SHAMIS &amp; GENTILE, P.A.</b>                  Andrew Shamis, Esq.                  ashamis@shamisgentile.com                  14 NE 1<sup>st</sup> Avenue                  Suite 705                  Miami, FL 33132                  305-479-2299</p>	<p><b>HERMAN HERMAN &amp; KATZ, LLC</b>                  Soren E. Gisleson                  sgisleson@hhklawfirm.com                  820 O’Keefe Avenue                  New Orleans, Louisiana 70113                  Tel: 504-581-4892</p>

These lawyers are experienced in handling class action lawsuits, including actions on behalf of insured policyholders. More information about Class Counsel is available on their websites listed above.

Class Counsel will file an application for attorneys’ fees and costs of no more than \$795,000 dollars, subject to approval by the Court. Imperial has agreed to pay Class Counsel that amount if approved by the Court. Payment of attorneys’ fees and costs has no impact on and does not affect or reduce in any way the amount of money that will be paid to Settlement Class Members. If the Court grants Class Counsel’s request, and in whatever amount the Court approves Class Counsel’s Request, the attorneys’ fees and costs will be paid separately by Imperial. If you submit a valid claim for payment, you will receive payment for Sales Tax and Transfer Fees, and that amount will not be reduced to pay Class Counsel fees and/or costs. You will

not be personally responsible for any fees, costs or expenses incurred by Class Counsel relating to the prosecution of this case.

Class Counsel will also seek a Class Representative Service Award to the Named Plaintiff in the amount of \$5,000, subject to Court approval. The award is designed to reward the Named Plaintiff for securing the recovery for members of the Class, which is the full amount of damages the Named Plaintiff alleged is owed to Class Members, and to acknowledge the time spent by the Named Plaintiff in providing discovery, participating in the case and mediation, and prosecuting the claim for the benefit of the Class. Imperial has agreed to pay the Class Representative Service Award to the Named Plaintiff up to the amount of \$5,000. Payment of the Class Representative Service Award has no impact on and does not affect in any way the amount of money that will be paid to Settlement Class Members. If the Court grants the request for a Class Representative Service Award, and in whatever amount the Court approves the request, the Class Representative Service Award will be paid separately by Imperial, and will not affect or reduce in any way the amount of money paid to Class Members. If you submit a valid claim for payment, you will receive payment for Sales Tax and Transfer Fees, and that amount will not be reduced to pay the Class Representative Award.

### **What Claim(s) Against Imperial Are Class Members Releasing?**

As a part of the Settlement, Class Members agree to release Imperial and not to sue Imperial for any and all known and Unknown Claims, rights, demands, allegations, actions, suits or causes of action of whatever kind or nature, whether *ex contractu* or *ex delicto*, debts, liens, liabilities, agreements, interests, costs, expenses, attorneys' fees, losses or damages (whether actual, consequential or treble) statutory, common law or equitable, including but not limited to breach of contract, bad faith or extra-contractual claims, and claims for punitive or exemplary damages, or prejudgment or postjudgment interest, arising from or relating in any way to Imperial's alleged failure to pay any Sales Tax (or sufficient Sales Tax on leased vehicles and retained total loss salvage vehicles) and insufficient payment of Transfer Fees to Plaintiff and all Settlement Class Members with respect to any Settlement Class Member Claims for a total loss vehicle during the Class Period under an automobile insurance policy issued by Imperial based on any legal theory whatsoever relating to payment of Sales Tax and Transfer Fees to the fullest extent of the law and res judicata and/or claim preclusion protections. Released Claims do not include any claim for enforcement of the contemplated Settlement Agreement and/or Final Order and Judgment. Released Claims also do not include any claims, actions, or causes of action alleging that Imperial failed to properly calculate the value of total loss vehicles except to the extent that such claims, actions, or causes of action relate to failure to pay any or sufficient Sales Tax and Transfer Fees.

### **How Do I Find Out More About This Lawsuit?**

If you have any questions about the lawsuit or any matter raised in this notice, please call toll-free at 1-###-###-#### or go to [www.XXX.com](http://www.XXX.com).

This website provides:

1. An electronic Claim Form submission option and directions for how to submit;
2. The process for requesting a paper (non-electronic) pre-filled Claim Form or blank claim form;
3. The full Settlement Agreement;
4. Information and requirements for submitting a claim, requesting exclusion, or filing a Notice of Intent to object to the terms of the Settlement;
5. A copy of the Complaint filed by Plaintiff and other important rulings and orders from the Court during the case prior to Settlement; and
6. Other general information about the class action.

You also may contact Class Counsel, whose addresses and website information are provided above.

Complete copies of the documents filed in this lawsuit that are not under seal may be examined and copied at any time during regular business hours at the Clerk of Court, United States District Court for the Western District of Louisiana, 800 Lafayette St., Suite 2100, Lafayette, LA 70501

PLEASE DO NOT TELEPHONE OR CONTACT THE COURT OR THE CLERK OF THE COURT REGARDING THIS NOTICE.

IT IS SO ORDERED, HONORABLE DAVID C. JOSEPH

DATED: \_\_\_\_\_ ##, 2024.

**EXHIBIT E**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA**

<b>DANA BASS,</b>	)	<b>CASE NO: 1:22-cv-00550</b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>IMPERIAL FIRE AND CASUALTY</b>	)	
<b>INSURANCE COMPANY,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

**[PROPOSED] ORDER APPROVING SETTLEMENT  
AND JUDGMENT OF DISMISSAL WITH PREJUDICE**

The Parties have reached a settlement in this case. Through an Unopposed Motion for Final Approval of Class Settlement, they seek, among other things, that the Court (1) certify the proposed Class for Settlement purposes; (2) approve the Class Action Settlement Agreement; (3) find that notice to the Settlement Class was fair, adequate, and comported with due process; and (4) enter an order finally approving the Settlement and an order of Final Judgment of Dismissal with Prejudice. For the reasons stated below, the Motion is granted.

Plaintiff, Dana Bass, individually and on behalf of the proposed Settlement Class, and Defendant, Imperial Fire and Casualty Insurance Company (“Imperial,” defined in the Settlement Agreement), have agreed, subject to approval by the Court, to settle this Action upon the terms and conditions in the Agreement; and

The Parties have made an application for approval of the Settlement of this Action, as set forth in the Agreement; and

On \_\_\_\_, 2024, the matter of the Court’s final approval of the Agreement submitted on \_\_\_\_, 2024 by the Motion for Order Preliminarily Approving Settlement, Approving Notice to Class Members, and Setting Date for Settlement Fairness Hearing, came before the Court for

consideration. Appearing on behalf of the Named Plaintiff and the Settlement Class was \_\_\_\_\_ (“Class Counsel”). Appearing on behalf of Defendant were \_\_\_\_\_ and Mark L. Hanover, Dentons US LLP, 233 South Wacker Drive, Suite 5900, Chicago, Illinois 60606.

WHEREAS, the Named Plaintiff, Dana Bass, on behalf of herself and the proposed Settlement Class, and Defendant, Imperial Fire and Casualty Insurance Company, individually and on behalf of all affiliated entities (collectively, “Imperial,” as defined in the Agreement), have executed and filed the Agreement with the Court on \_\_, 2024; and

WHEREAS, all capitalized terms used herein shall have the same meaning as set forth in the Agreement and are hereby incorporated by reference, and this Order incorporates by reference the definitions in the Agreement; and

WHEREAS, the Court, on \_\_\_\_\_, 2024, entered the Order Re: Preliminary Approval of Settlement and Approval of Notice of Pendency of Settlement of Class Action to Class Members (“Preliminary Approval Order”), preliminarily approving the Proposed Settlement and conditionally certifying this Action, for settlement purposes only, as a class action; and

WHEREAS, Dana Bass was approved in the Preliminary Approval Order as the Class Representative; and

WHEREAS, the Court, as part of its Preliminary Approval Order, directed that a plan for disseminating notice of the settlement (“Notice Plan”) be implemented, and scheduled a hearing to be held on \_\_\_\_\_, 2024, to determine whether the Proposed Settlement should be approved as fair, reasonable and adequate; and

WHEREAS, Imperial and Class Counsel have satisfactorily demonstrated to the Court that the Notice Plan was followed; and

WHEREAS, a Final Approval Hearing was held on \_\_\_\_\_ 2024, at which all interested persons were given an opportunity to be heard; and

The Court, having read and considered the Agreement and the Exhibits thereto, and having read and considered all other papers filed and proceedings had herein, and being otherwise fully informed, and with good cause appearing,

**IT IS HEREBY ORDERED:**

1. This Order incorporates by reference and utilizes the definitions in the Agreement.
2. The Court has jurisdiction over the subject matter of this Action and over all Parties to this Action.
3. The Complaint filed in this Action alleges generally that Imperial improperly failed to pay Sales Tax and Transfer Fees when adjusting total loss claims in Louisiana.
4. The Court approves the Agreement, and finds the Settlement to be fair, reasonable, and adequate to the Settlement Class, but such finding is not to be deemed an admission of liability or fault by Imperial or by any other Person, or a finding of the validity of any claims asserted in the Action or of any wrongdoing or of any violation of law by Imperial. The settlement of this matter by Imperial, including, but not limited to, the terms and provisions of the Agreement, and any steps taken in accordance therewith, shall not be used in any way as precedent in any pending or future actions, including any actions against Imperial or any of the Released Persons.
5. The Court appoints Dana Bass as Class Representative, and Normand PLLC, Edelsberg Law, P.A., Shamis & Gentile, P.A, and Herman Herman & Katz, LLC as Class Counsel.
6. The Court finds the Class Notice constituted the best notice practicable under the circumstances, by providing individual notice and email notice on two occasions to all Class Members who were identified through reasonable effort, and constituted valid and sufficient notice to all Persons entitled thereto, complying fully with the requirements of Fed. R. Civ. P. 23 and due process.
7. The Court reaffirms and reappoints Epiq Systems as the Settlement Administrator.
8. Consistent with the Agreement, the Court certifies for purposes of Settlement the following Settlement Class:

All Insureds, under any Louisiana automobile insurance policy issued by IMPERIAL FIRE AND CASUALTY INSURANCE COMPANY (“Defendants”), and its subsidiaries or related insurance companies with the same operative policy language covering a vehicle with auto physical damage coverage for comprehensive or collision loss where such vehicle was declared a total loss, who made a first-party claim for total loss, and whose claim was adjusted as a total loss, within the relevant time period and who are mailed class

notice and do not timely opt out from the settlement class (the “Settlement Class Members”). Excluded from the Settlement Class are (1) Imperial, its agents, employees, subsidiaries, parents, and related entities, all present or former officers and/or directors of Imperial, the Settlement Administrator, the Mediator, Class Counsel, and any Judge of this Court and the Judge’s staff and employees; (2) Individuals with claims for which Imperial received a valid and executed release; (3) Individuals who are not on the Notice list and who did not submit a valid Claim Form or Electronic Claim Form for payment under this Settlement Agreement; (4) Individuals who request exclusion from the Class; and (5) Individuals with claims for first-party property damage as to which the individual process of appraisal or arbitration or a lawsuit has been completed or initiated at the time this Settlement Agreement is filed.

9. For purposes of Settlement, the threshold requirements and Rule 23 requirements for class certification are met. Plaintiff possesses Article III standing and the proposed Settlement Class is adequately defined and clearly ascertainable. The Settlement Class is adequately defined because the class definition is clear and precise, is based on objective criteria, and, because it only includes insureds who also suffered redressable harm, and it is not overbroad.

10. For purposes of Settlement, the Class is sufficiently numerous, there are questions of law and fact common to the Settlement Class, Plaintiff’s claim is typical of the Settlement Class, and both Plaintiff and Class Counsel are adequate representatives of the Settlement Class. *See generally Cleven v. Mid-Am. Apartment Communities, Inc.*, 20 F.4th 171, 175 (5th Cir. 2021) *Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 560 (6th Cir. 2007) (to certify a class, Rule 23(a) requirements of numerosity, commonality, typicality, and adequacy must be satisfied).

11. For purposes of settlement, questions common to the class predominate over any individual questions, and class treatment is superior to alternative forms of adjudication. *See generally id.* (predominance and superiority requirements must be met to certify a class under Rule 23(b)(3)).

12. The Named Plaintiff and Imperial have entered into the Agreement which has been filed with the Court. The Agreement provides for the Settlement of this Action with Imperial on behalf of the Named Plaintiff and the Settlement Class Members, subject to approval by the Court of its terms. The Court scheduled a hearing to consider the approval of the Settlement and directed that the Class Notice be disseminated in accordance with the terms of the Preliminary Approval Order.

13. In accordance with the terms of the Settlement and the Preliminary Approval Order, the Parties implemented the Notice Plan approved by the Court. Imperial's counsel and Class Counsel have confirmed to the Court that the Parties complied with the Notice Plan.

14. The Court hereby finds that the Notice Plan and the Class Notice constituted the best notice practicable under the circumstances, and constituted valid, due and sufficient notice to members of the Settlement Class. The Named Plaintiff and Imperial have applied to the Court for final approval of the terms of the Proposed Settlement and for the entry of this Final Judgment. Pursuant to the Class Notice, a hearing was held before this Court, on \_\_\_\_\_ 2024, to determine whether the Proposed Settlement of the Action should be finally approved as fair, reasonable, and adequate, and whether the Final Judgment approving the Settlement and dismissing all claims in the Action on the merits, with prejudice and without leave to amend should be entered.

15. There is a strong federal policy favoring settlement of disputes, including class actions. *See, e.g., Smith v. Crystian*, 91 Fed. App'x 952, 955 (5th Cir. 2004). The Court finds that both procedural and threshold requirements set forth in Fed. R. Civ P. 23(e)(2) are satisfied. First, given the extensive discovery and dispositive motion litigation that occurred prior to settlement discussions, Plaintiff and Class Counsel possessed sufficient information and knowledge of the claims, issues, and defenses prior to negotiating and settling the claims.

16. Second, the negotiations were clearly conducted at arm's length. *See generally In re Chinese-Manufactured Drywall Prod. Liab. Litig.*, 424 F. Supp. 3d 456, 486 (E.D. La. 2020) (noting presumption in favor of settlement was warranted where, among other things, it was "the product of arms-length negotiations between sophisticated parties").

17. Fed. R. Civ. P. 23(e)(2)(C)-(D) establishes four substantive factors relevant to the class settlement analysis: the costs and risk of trial and appeal, the method of claim distribution, the terms of attorneys' fees, and whether class members are treated equitably vis a vis each other. These factors also weigh in favor of approval.

18. The claim-processing method is straightforward, requiring merely attesting to a pre-filled, postage-prepaid Claim Form. As such, Rule 23(e)(2)(C)(ii)—the method for “distributing relief” and “processing class-members claims”—weighs in favor of approval.

19. Additionally, the Parties did not discuss attorneys’ fees until after agreement was reached concerning the substantive terms of the Agreement and Imperial agreed to separately pay attorneys’ fees and costs—meaning Class Members’ recoveries will not be impacted or reduced in any way—which counsels in favor of approval.

20. In addition, there were \_\_\_\_\_ objections and \_\_\_\_\_ opt outs, which is strong evidence in support of the fairness and reasonableness of the Settlement terms.

21. As such, the Court **GRANTS FINAL APPROVAL OF** the Settlement, and the Parties are hereby directed to consummate the Settlement in accordance with its terms.

22. The Class Claims in this Action are dismissed in their entirety, on the merits, with prejudice and without leave to amend, and the Named Plaintiff and all members of the Settlement Class, the Releasing Parties, and any of their respective heirs, executors, administrators, partners, agents, and the successors and assigns of each of them, shall be forever barred and permanently enjoined from asserting, either directly or indirectly, individually, or in a representative capacity or on behalf of or as part of a class, and whether under State or Federal statutory or common law, any Released Claim against any Released Person.

23. As of the Effective Date, by operation of the entry of the Final Judgment, each Settlement Class Member shall be deemed to have fully released, waived, relinquished and discharged, to the fullest extent permitted by law, all Released Claims that the Released Parties may have against all the Released Persons.

24. “Released Claims” means and includes any and all known and Unknown Claims, rights, demands, allegations, actions, suits or causes of action of whatever kind or nature, whether *ex contractu* or *ex delicto*, debts, liens, liabilities, agreements, interests, costs, expenses, attorneys’ fees, losses or damages (whether actual, consequential or treble) statutory, common law or equitable, including but not limited to breach of contract, bad faith or extra-contractual claims, and

claims for punitive or exemplary damages, or prejudgment or postjudgment interest, arising from or relating in any way to Imperial's alleged failure to pay any Sales Tax (or sufficient Sales Tax on leased vehicles and retained salvage total loss vehicles) and insufficient payment of Transfer Fees to Plaintiff and all Settlement Class Members with respect to any Settlement Class Member Claims for a total loss vehicle during the Class Period under an automobile insurance policy issued by Imperial based on any legal theory whatsoever relating to payment of Sales Tax and Transfer Fees to the fullest extent of the law and res judicata and/or claim preclusion protections. Released Claims do not include any claim for enforcement of the contemplated Settlement Agreement and/or Final Order and Judgment. Released Claims also do not include any claims, actions, or causes of action alleging that Imperial failed to properly calculate the value of total loss vehicles except to the extent that such claims, actions, or causes of action relate to failure to pay any or sufficient Sales Tax and Transfer Fees.

25. "Released Persons" means Imperial, as defined above, and any of its members, parents, subsidiaries, affiliates, managers, past, present or future officers, stockholders, attorneys, insurers, reinsurers, excess insurers, directors, agents, employees and/or independent contractors, and/or any other successors, assigns, divisions, or legal representatives thereof, and any other Person or entity who or which might be liable on the basis of any conduct by any of the foregoing.

26. "Releasing Parties" means the Named Plaintiff and the Settlement Class Members who do not otherwise timely opt-out of the Settlement Class, and their heirs, predecessors, successors, assigns, family members, personal representatives, attorneys, officers, stockholders, shareholders, principals, owners, agents, fiduciaries, spouses, children, dependents, parents, creditors, judgment creditors, representatives, employees, employers, executors, administrators, conservators, receivers, subrogees, trusts, trustees, members, servants, independent contractors, lessors, lessees, executors, administrators, insurers, reinsurers, underwriters, directors and/or past, present and/or future parent, subsidiaries and/or affiliated corporations, partnerships and/or other entities, and on behalf of any other Person or entity who or which could or might assert any claim under or through any of the foregoing.

27. “Unknown Claims” means any unknown Released Claims arising out of facts found hereafter to be other than or different from the facts now believed to be true and relating to Sales Tax and Transfer Fees to the full extent permitted by law and to the full extent of *res judicata* and/or claim preclusion protection.

28. Within 30 days after all of Imperial’s obligations under this Settlement are effectuated, Class Counsel and/or other attorneys for the Named Plaintiff in this Action, or any Settlement Class Member or their counsel, shall destroy all Proprietary Information provided by Imperial to Class Counsel or anyone they employed or retained in this Action, either in discovery or in connection with this Agreement. Class Counsel shall deliver a letter to Imperial’s counsel certifying their compliance with this Paragraph. Further, the Parties agree that neither Class Counsel, nor anyone employed with, retained by, or otherwise associated with Class Counsel, nor any other attorney or Person who shall have access to this information, shall use any of this Proprietary Information in any other litigation or proceeding, current or future, or for any other purpose whatsoever.

29. The Agreement, the Settlement and this Final Judgment are not to be deemed admissions of liability or fault by Imperial, or a finding of the validity of any claims in the Action or of any wrongdoing or violation of law by Imperial. The Agreement and Settlement are not a concession by the Parties and, to the extent permitted by law, neither this Final Judgment nor the Settlement, nor any of its terms or provisions nor any of the negotiations or proceedings connected with it, shall be utilized or offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceeding, for any purpose including to establish any liability or admission by any of the Released Persons, except in any proceedings brought to enforce the Agreement or the Final Judgment otherwise with the written consent of Imperial at its sole discretion. Nor may this Agreement be construed in any fashion as precedent for any matter, or used as evidence of any kind, by any person or entity, in any action or proceeding against the Released Parties, as this Agreement has been entered into based on the particular facts of this matter alone. However, Imperial may use the Agreement or the exhibits thereto, and the

Settlement, and/or any related document, in any action that may be brought against it in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion relating to the Released Claims set out in the Agreement.

30. Only to the extent that it is otherwise not violative of any applicable rules governing the practice of law, Class Counsel agree that any representation, encouragement, solicitation or other assistance, including, but not limited to, referral to other counsel, of any opt out or any other person seeking to litigate with any of the Released Persons over any of the Released Claims or to represent any form of opt-out class, could place Class Counsel in an untenable conflict of interest with the Class. Accordingly, Class Counsel and their respective firms agree (only to the extent that it is otherwise not violative of any applicable rules governing the practice of law) not to represent, encourage, solicit or otherwise assist, in any way whatsoever (including, but not limited to referrals to other counsel), any opt out or any form of opt-out class, except that referring such person to the Notice or suggesting to any such person the option of obtaining separate counsel, without specifically identifying options for such counsel, shall be permitted. under the terms of this provision.

31. The Court has also considered the application for attorneys' fees and costs and for a service award to the Named Plaintiff.

32. Courts consider the following factors in analyzing the reasonableness of a requested fee amount: 1) the time and labor required; (2) the novelty and difficulty of the issues; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or circumstances; (8) the amount involved and results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) the award in similar cases. *Venable v. Am. Consulting & Testing Inc.*, No. 6:20-CV-01232, 2022 WL 595738, at \*4 n.

36 (W.D. La. Feb. 25, 2022) (citation omitted). The Court finds that the requests for attorneys' fees and costs, and the service award, are consistent with the application of these factors.

33. The totality of these factors supports the requested fee award of \$795,000.00 in attorneys' fees and costs, and a service award of \$5,000.00 to the Class Representative. Accordingly, the Court hereby **GRANTS** Plaintiff's Motion for Attorneys' Fees and Costs and a Service Award.

As such, it is hereby **ORDERED** and **ADJUDGED**:

34. The benefits of the Settlement are fair, reasonable, and adequate. Further, for purposes of settlement, the Settlement Class meets the requirements of Fed R. Civ. P. 23(a) and (b)(3), and the Court therefore certifies the Settlement Class as defined in the Settlement Agreement. Finally, the requested attorneys' fees, costs, and service award are reasonable.

35. All Releasing Parties are hereby barred and enjoined from asserting any Released Claims against Imperial at any time. Imperial and the Released Parties are released from the Released Claims. This Court reserves continuing and exclusive jurisdiction over the Parties to this Agreement, including Imperial and Settlement Class Members, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

36. In accordance with Fed. R. Civ. P. 54, this Final Order and Judgment is a final and appealable order. Specifically, this Final Judgment is a final order in the Action within the meaning and for the purposes of the Federal Rules of Civil Procedure as to all claims among Imperial on the one hand, and the Named Plaintiff and all Settlement Class Members, on the other, and there is no just reason to delay enforcement or appeal.

37. The Clerk of this Court is directed to enter a Final Judgment of Dismissal and close this case.

38. Without in any way affecting the finality of this Final Judgment, this Court shall retain continuing jurisdiction over this Action for purposes of:

(A) Enforcing this Final Judgment, the Agreement and the Settlement;

(B) Hearing and determining any application by any Party to the Settlement for a settlement bar order; and

(C) Any other matters related or ancillary to any of the foregoing.

IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

**EXHIBIT F**

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA**

<b>DANA BASS,</b>	)	<b>CASE NO: 1:22-cv-00550</b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>IMPERIAL FIRE AND CASUALTY</b>	)	
<b>INSURANCE COMPANY,</b>	)	
	)	
	)	
	)	

**PRELIMINARY APPROVAL ORDER**

The Court has reviewed Plaintiff Dana Bass’ Unopposed Motion for Preliminary Approval of the Settlement Agreement and Releases entered into between Plaintiff, individually, and on behalf of the proposed Settlement Class, and Defendant Imperial Fire and Casualty Insurance Company (“Imperial”) or (“Defendant”), as defined in the Settlement Agreement. Upon careful review, the Court finds as follows:

WHEREAS, this Preliminary Approval Order incorporates the Settlement Agreement and the terms used herein shall have the meaning and/or definitions given to them in that Agreement, as submitted to the Court with the Motion for Preliminary Approval.

NOW, THEREFORE, pursuant to Federal Rule of Civil Procedure 23(e), upon the agreement of the Parties, and after careful consideration,

IT IS HEREBY ORDERED as follows:

1. The Court preliminarily finds that the Agreement proposed by the Parties is fair, reasonable, and adequate and likely to be approved at a Final Approval Hearing such that giving Notice is justified. The representations, agreements, terms, and conditions of the Settlement, as

embodied in the Agreement, are preliminarily approved pending a Final Approval Hearing on the Settlement as provided herein. The Court preliminarily finds that the Settlement meets the considerations set forth in the amended Rule 23(e).

2. The Settlement was negotiated with the assistance of a mediator, and appears to be the result of extensive, arm's length negotiations between the Parties after Class Counsel and Imperial's Counsel had investigated the claims, litigated essential matters regarding the claims, and become familiar with the strengths and weaknesses of the claims. At this preliminary stage, the Court finds that the Settlement appears not to be collusive, to have no obvious defects, and to fall within the range of reasonableness.

3. The Court preliminarily finds that it will likely certify at the Final Approval stage a Settlement Class, for purposes of the Settlement only, consisting of:

All Insureds, under any Louisiana automobile insurance policy issued by IMPERIAL FIRE AND CASUALTY INSURANCE COMPANY ("Defendant"), and its subsidiaries or related insurance companies with the same operative policy language covering a vehicle with auto physical damage coverage for comprehensive or collision loss where such vehicle was declared a total loss, who made a first-party claim for total loss, and whose claim was adjusted as a total loss, within the relevant time period and who are mailed class notice and do not timely opt out from the settlement class (the "Settlement Class Members"). Excluded from the Settlement Class are (1) Imperial, its agents, employees, subsidiaries, parents, and related entities, all present or former officers and/or directors of Imperial, the Settlement Administrator, the Mediator, Class Counsel, and any Judge of this Court and the Judge's staff and employees; (2) Individuals with claims for which Imperial received a valid and executed release; (3) Individuals who are not on the Notice list and who did not submit a valid Claim Form or Electronic Claim Form for payment under this Settlement Agreement; (4) Individuals who request exclusion from the Class; and (5) Individuals with claims for first-party property damage as to which the individual process of appraisal or arbitration or a lawsuit has been completed or initiated at the time this Settlement Agreement is filed.

The Court preliminarily finds that this Settlement Class meets the relevant requirements of Federal Rules of Civil Procedure 23(a) and (b)(3) in that, for settlement purposes: (a) the number of Settlement Class Members is so numerous that joinder is impracticable; (b) there are questions of law and fact common to the Settlement Class Members; (c) the claims of the Class Representative

are typical of the claims of the Settlement Class Members; (d) the Class Representative is an adequate representative for the Settlement Class, and has retained experienced counsel to represent her; (e) the questions of law and fact common to the Settlement Class Members predominate over any questions affecting any individual Settlement Class Member; and (f) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy. The Court therefore preliminarily certifies the proposed Settlement Class.

4. For purposes of the Settlement only, the Court preliminarily finds and determines that it will likely find at the Final Approval stage, pursuant to Federal Rule of Civil Procedure Rule 23(a)(1), that Plaintiff Dana Bass will fairly and adequately represent the interests of the Settlement Class in enforcing their rights in the Action, and therefore appoints her as the Class Representative.

5. For purposes of the Settlement only, and pursuant to Federal Rule of Civil Procedure 23(a)(1), the Court appoints the following as Class Counsel to act on behalf of the Settlement Class and the Class Representative with respect to the Settlement:

**NORMAND PLLC**  
Edmund Normand, Esq.  
ean@normandpllc.com  
3165 McCrory Place, Suite 175  
P.O. Box 140036  
Orlando, FL 32803  
Tel: 407-603-6031

**HERMAN HERMAN & KATZ, LLC**  
Soren E. Gisleson  
sgisleson@hhklawfirm.com  
820 O'Keefe Avenue  
New Orleans, Louisiana 70113  
Tel: 504-581-4892

**EDELSBERG LAW, P.A.**  
Adam Schwartzbaum  
adam@edelsberglaw.com  
20900 NE 30<sup>th</sup> Avenue  
Suite 417  
Aventura, FL 3318  
Tel: 305-975-3320

**SHAMIS & GENTILE, P.A.**  
Andrew Shamis, Esq.  
ashamis@shamisgentile.com  
14 NE 1<sup>st</sup> Avenue  
Suite 705  
Miami, FL 33132  
305-479-2299

6. Epiq Systems is appointed as Settlement Administrator and shall abide by the terms and conditions of the Agreement that pertain to the Settlement Administrator.

7. Pursuant to Fed. R. Civ. P. 23(e), the terms of the Agreement (and the Settlement provided for therein) are preliminarily approved and likely to be approved at the Final Approval Hearing because:

- (A) the Class Representative and Class Counsel have adequately represented the class;
- (B) the Settlement was negotiated at arm's length;
- (C) the relief provided for the Class is adequate, taking into account:
  - (i) the costs, risks, and delay of trial and appeal;
  - (ii) the effectiveness of any proposed method of distributing relief to the Class, including the method of processing Class-Member claims, if required;
  - (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and
  - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the Settlement treats Class Members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

8. Having reviewed the proposed Notice Program submitted by the Parties, (hereinafter referred to collectively as "the Notices"), the Court approves, as to general form and content, such Notices for the purpose of notifying the Settlement Class as to the proposed Settlement, the Final Approval Hearing, and the rights of the members of the Settlement Class. Those Notices contain all of the essential elements necessary to satisfy the requirements of federal law, including the Federal Rules of Civil Procedure and federal and state due process provisions, including the class definition, the identities of the Parties and their counsel, a summary of the terms of the Settlement, information regarding the manner in which objections may be submitted and the deadline for doing so, information regarding opt-out procedures and deadlines, and the date and location of the Final Approval Hearing.

9. The Court directs the Settlement Administrator to effectuate Notice to the Settlement Class in accordance with the Notice Program. The Notices shall be updated by the Settlement Administrator to include the date and time of the Final Approval Hearing as set forth

below, and the specific claim, objection and opt-out deadlines keyed to that hearing date. The Court finds and determines that the Notices constitute the best notice practicable under the circumstances, constitute due and sufficient notice of the matters set forth in the Notices to all persons entitled to receive such Notices, and fully satisfy the requirements of due process, the Federal Rules of Civil Procedure, and all other applicable law and rules.

10. Any person falling within the definition of the Settlement Class may, upon request, be excluded or “opt-out” from the Settlement Class. In the event a Settlement Class Member wishes to be excluded from the Settlement and not to be bound by this Agreement, that Person must sign and mail a notice of intention to opt-out of the Settlement to the Settlement Administrator. The notice must be postmarked on or before the last day of the Opt-Out Deadline. Any member of the Settlement Class who timely and properly requests exclusion in compliance with these requirements will thereafter be excluded from the Settlement Class, not become a Settlement Class Member, will not have any rights under the Settlement, will not be entitled to receive a Settlement Class Member Payment, and will not be bound by the Agreement or the Final Approval Order. Any members of the Settlement Class who fail to submit a valid and timely opt-out request shall be bound by all terms of the Agreement and the Final Approval Order. If the Policyholder submits the opt-out request, then all insureds on the applicable Imperial automobile policy shall be deemed to have opted-out of the Settlement with respect to that policy, and the Policyholder and insured shall not be entitled to a payment under the Settlement.

11. Any Settlement Class Member who wishes to object to the Settlement, Class Counsel’s application for Class Counsel Fees or a Service Award for the Class Representative, or to appear at the Final Approval Hearing and show cause, if any, why the Settlement should not be approved as fair, reasonable, and adequate to the Settlement Class, or why a final judgment should not be entered thereon, may do so, as set forth in the Settlement Agreement. A valid objection

must include: (a) the name of the Action; (b) the objector's full name, address and telephone number; (c) all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel; (d) the number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, including the case name and number and jurisdiction of the court for such objections (if any); (e) the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application; (f) the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing; (g) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; (h) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and (i) the objector's signature (an attorney's signature is not sufficient). If an objector and/or their attorney intend to request permission to address the Court at the Final Approval Hearing, their Notice of Intent must also include a list of any witnesses they may seek to call at the Hearing (subject to applicable rules of procedure and evidence and the discretion of the Court), with the address of each witness. The Parties must file any briefs in response to any objection on or before 10 days prior to the date of the Final Approval Hearing. Class Counsel and/or Imperial may conduct limited discovery on any objector consistent with the Federal Rules of Civil Procedure. Any Settlement Class Member who does not make his or her objections in the manner set forth herein and by the Objection Deadline shall be deemed to have waived any objection(s) and shall be forever barred from raising such objections in this or any other action or proceeding.

12. Prior to the Final Approval Hearing, Class Counsel shall file with the Court and serve on all Parties a declaration of the Settlement Administrator certifying that the Notice Program was completed, describing how the Notice Program was completed, providing the names of each Settlement Class member who timely and properly requested exclusion from the Settlement Class or served objections, detailing the number of Claim Forms that were timely and

validly submitted, and other information as may be necessary to allow the Parties to seek and obtain Final Approval.

13. All pretrial proceedings in this action are stayed and suspended until further order of this Court, except such actions as may be necessary to implement the Agreement and this Preliminary Approval Order.

14. This Settlement, and any and all negotiations, statements, documents, and/or proceedings in connection with the Settlement, shall not be construed or deemed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiff or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or as any sort of precedent, or for any other purpose, in any other proceeding in any court, administrative agency, or other tribunal.

15. For the benefit of the Settlement Class and to protect this Court's jurisdiction, this Court retains continuing jurisdiction over the Settlement proceedings to ensure the effectuation thereof in accordance with the Settlement preliminarily approved herein and the related orders of this Court.

16. Class Counsel and Imperial's Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Preliminary Approval Order or the Agreement, including making, without the Court's further approval, minor form or content changes to the Notices they jointly agree are reasonable or necessary.

17. **An in-person Final Approval Hearing will be held in the Courtroom of Judge John W. DeGravelles, on \_\_\_\_\_, 2024 at \_\_\_\_\_,** to determine: (a) whether the Settlement should be approved as fair, reasonable, and adequate to the Settlement Class; (b) whether the Final Approval Order should be entered in substance materially the same as the Final Approval Order submitted by the Parties with the Motion for Final Approval; (c) whether to approve Class Counsel’s application for attorneys’ fees and costs, and for a Service Award for the Class Representative; and (d) any other matters that may properly be brought before the Court in connection with the Settlement. The Final Approval Hearing is subject to continuation or adjournment by the Court without further notice to the Settlement Class. The Court may approve the Settlement with such modifications as the Parties may agree to, if appropriate, without further notice to the Settlement Class.

18. The Parties must file all moving papers and briefs in support of Class Counsel’s application for attorneys’ fees and costs, and for a Service Award for the Class Representative, **no later than forty-five (45) days before the date set forth herein for the Final Approval Hearing.**

19. **Class Counsel must file a Motion for Final Approval no later than twenty (20) days before the date set forth herein for the Final Approval Hearing.**

20. The Court hereby sets the following schedule of events:

EVENT	PROPOSED DUE DATE
Send Mailed Notice and Email Notice	90 days after Preliminary Approval
Send Second Email Notice	At a date to be determined by the Settlement Administrator
Plaintiff’s Application for Attorney’s Fees and Costs, and for a Service Award for the Named Plaintiff	45 days before Final Approval Hearing
Plaintiff’s Motion for Final Approval	20 days before Final Approval Hearing
Opt-Out Deadline	30 days before Final Approval Hearing
Objection Deadline	30 days before Final Approval Hearing

Final Approval Hearing	_____, 2024 at ____ a.m. EST
Claims Deadline	15 days after Final Approval Hearing

**IT IS SO ORDERED.**

s/ \_\_\_\_\_.

UNITED STATES DISTRICT JUDGE

**DATED:** \_\_\_\_\_, 2024

**EXHIBIT G**

Blank Claim Form

**CLAIM FORM**

*Bass v. Imperial*

To submit a claim, please: (1) provide your full name; (2) provide *either* your Imperial policy number or your Imperial claim number for your total loss claim; (3) provide your address; (4) sign and date this form; and (5) submit the completed form online no later than \_\_\_ or mail the completed form postmarked on or before \_\_\_ to the following address:

Bass v. Imperial Settlement Claims Administrator  
P.O. Box \_\_\_  
City, State Zip

Name: \_\_\_\_\_

Imperial Policy Number: \_\_\_\_\_

**OR**

Imperial Total Loss Claim Number: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (city) (state) (zip)

**AFFIRMATION (required):** By signing below, I certify under oath that I am the person who made the insurance claim identified above or I am the legally authorized personal representative, guardian or trustee of the person who made the insurance claim identified above, that the information on this Claim Form is true and correct, that I am entitled to the relief requested in this Claim Form, and that I have not previously received a payment for all Sales Tax and/or for all Transfer Fees from Imperial on my underlying total loss claim (subject to verification by Imperial). If this affirmation is not signed your claim will be denied.

Signature: \_\_\_\_\_ Dated \_\_\_\_\_

Name (please print): \_\_\_\_\_

**To be considered, this Claim Form must be submitted online no later than \_\_\_ or mailed to the above address postmarked no later than \_\_\_\_\_.**

**EXHIBIT H**

<b>EVENT</b>	<b>PROPOSED DUE DATE</b>
Send Mailed Notice and Email Notice	90 days after Preliminary Approval
Send Second Email Notice	At a date to be determined by the Settlement Administrator
Plaintiff's Application for Attorney's Fees and Costs, and for a Service Award for the Named Plaintiff	45 days before Final Approval Hearing
Plaintiff's Motion for Final Approval	20 days before Final Approval Hearing
Opt-Out Deadline	30 days before Final Approval Hearing
Objection Deadline	30 days before Final Approval Hearing
Final Approval Hearing	_____, 2024 at ____ a.m. EST
Claims Deadline	15 days after Final Approval Hearing

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA**

DANA BASS,

CASE NO.: 1:22-CV-00550

Plaintiff,

v.

IMPERIAL FIRE AND CASUALTY  
INSURANCE COMPANY,

Defendant.

---

**DECLARATION OF EDMUND A. NORMAND IN SUPPORT OF PLAINTIFF'S  
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION  
SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS**

Edmund A. Normand hereby declares as follows:

1. My name is Edmund A. Normand. I am over the age of 18 and am competent to give testimony.
2. I have been a member of the Florida bar since October 1990.
3. I am Class Counsel for Plaintiff, Dana Bass("Plaintiff"), under the Settlement Agreement ("Agreement") with Defendant, Imperial Fire and Casualty Insurance Company ("Imperial" or "Defendant"), which is being presented to the Court for Preliminary Approval. I submit this declaration in support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Settlement and Certification of Settlement Class ("Motion").<sup>1</sup> I have personal knowledge of the facts set forth in this declaration and could testify competently as to them if called upon to do so.

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<sup>1</sup> The definitions and capitalized terms in the Agreement and Motion are hereby incorporated as though fully set forth in this declaration and shall have the same meanings attributed to them in those documents.

## **BACKGROUND AND PROCEDURAL HISTORY**

4. This is a class action lawsuit on behalf of Imperial<sup>2</sup> Insureds in Louisiana who submitted covered first-party auto total-loss claims for comprehensive and collision coverage during the class period. This Action is based on Defendant's alleged breach of its insurance policies. Defendant issues private party auto insurance policies with uniform policy language that applies in a total loss. Where the insured vehicle is totaled Defendant is not obligated to pay for the full cost to repair the vehicle if the cost to repair exceeds the vehicle value. Rather, the policies have a limitation of liability that instead limits Imperial to pay the Actual Cash Value ("ACV") of the insured total loss vehicle. Pursuant to Louisiana law, ACV requires Imperial to pay the actual cost to purchase a comparable motor vehicle. *See* LSA-R.S. 22:1892B(5). These costs of purchase include all reasonably necessary costs incurred in a purchase of a comparable motor vehicle including sales tax ("Sales Tax"), title fees, including title transfer and handling fees, and license plate transfer fees ("Transfer Fees"). Plaintiff alleges she and other Settlement Class Member were underpaid the full ACV replacement costs, including the Sales Tax and Transfer Fees owed under the policies on their first-party total loss claims.

5. Before filing suit, Class Counsel spent many hours investigating Plaintiff's claims against Defendant. Class Counsel gathered information about Defendant's conduct and the impact upon its insureds. Class Counsel obtained Plaintiff's total loss claim documents and compared the payouts to the policy language and the requirements of the Louisiana regulatory statutes. This information was essential to Class Counsel's ability to understand the nature of Defendant's conduct, the language of the insurance policies at issue, and potential remedies. All policies have substantially similar terms, procedures, and claims handling practices.

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<sup>2</sup> Imperial as used herein shall refer to all those entities listed in Paragraph 12 of Exhibit 1 (Settlement Agreement).

6. In addition, Class Counsel also expended significant resources researching and developing the legal claims at issue. Class Counsel is familiar with the claims as they have litigated and resolved several similar cases with the same factual and legal issues. Class Counsel has experience in understanding the damages at issue, what information is critical in determining class membership, and what data is necessary to calculate each Settlement Class Member's ("Settlement Class Members") respective damages.

7. On February 24, 2022, Plaintiff commenced this class action against Imperial in the Western District of Louisiana. Plaintiff alleged, individually and on behalf of all Class Members, that Imperial breached the terms of their auto insurance policies and violated Louisiana law when they failed to pay Plaintiff and the Settlement Class Members the full ACV replacement costs, including Sales Tax, Title Fees, Handling Fees and Tag Fees. Doc. 1.

8. On May 23, 2022, Defendant sent Plaintiff a Demand Letter to Plaintiff, demanding appraisal of her vehicle. Plaintiff responded to Defendant's Demand Letter on May 25, 2022, declining the appraisal and stating that the appraiser is neither equipped nor permitted to resolve the legal disputes central to Plaintiff's claims.

9. On May 23, 2022, Defendant filed a Motion to Dismiss or in the Alternative to Compel Appraisal and Dismiss Pending Completion ("Motion to Dismiss"). Doc. 9. In its Motion to Dismiss, Defendant argued that Plaintiff's claims were time barred by Louisiana's bodily injury statute of one year. *Id.* at p. 7.

10. On June 13, 2022, Plaintiff filed her Response in Opposition to Dismiss or in the Alternative to Compel Appraisal and Dismiss Pending Completion (Doc. 13) and Response Brief in Opposition to Defendant's Motion ("Response Brief") on June 14, 2022. Doc. 15. In Plaintiff's Response Brief, Plaintiff argued that the attempt to shorten the statute of limitations for breach of

contract to the statute of limitations for bodily injury was invalid, and that Louisiana's ten-year statute of limitations for contract action should apply.<sup>3</sup>

11. Defendant moved the Court to file its Reply Brief in Support of its Motion to Dismiss under seal on June 20, 2022 (Doc. 16), which was granted by the Court on June 28, 2022. Doc. 17. Defendant filed its Reply Brief under seal on June 28, 2022. Doc. 18.

12. As part of litigation, Class Counsel drafted initial pleadings that were complicated and fact intensive. Class Counsel engaged in extensive research and briefing on Defendant's Motions to Dismiss.

13. During this time, the 5th Circuit issued an opinion in *Sampson v. United Servs. Auto Ass'n*, 83 F.4th 414 (5th Cir. 2023), which essentially held that any claims related to the alleged undervaluation of the total loss vehicles cannot be certified. As a result, Plaintiff limited her claims to those that are certifiable – the Sales Tax and Regulatory Fees included in the cost to purchase a comparable motor vehicle. *See Angell v. GEICO Advantage Ins. Co.*, 67 F.4th 727 (5th Cir. 2023).

14. From June 28, 2022 through December 12, 2023, the parties conducted extensive discovery, including extensive fact discovery and expert discovery. Class Counsel reviewed information and informal discovery to evaluate potential claims and defenses relating to Imperial. Plaintiff received data and information concerning insureds with substantially similar form policies underwritten by Imperial. Plaintiff obtained numerous spreadsheets containing claim information for insureds who qualify as Class Members.

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<sup>3</sup> Ultimately, the Parties were able to agree to a two-year statute of limitations per the Confidential Settlement Term Sheet. The Class period runs from February 24, 2020 through the date of preliminary approval. Any claims that are outside the settlement two-year statute of limitations are not released. In effect, the settlement doubles the contract statute of limitations that Defendant contends and leaves any other claimants outside the two-year period free to bring a claim.

15. Such discovery elicited documents demonstrating the contours of the Settlement Class and Defendant's practices and procedures that were used to enter into the Agreement. The review of this information and data positioned Class Counsel to evaluate with confidence the strengths and weaknesses of Plaintiff's claims and prospects for success at class certification, summary judgment, and trial. Class counsel also hired experts in state tax law, statistics, and Louisiana vehicle transfer fees to estimate and prove individual and class damages.

16. Class Counsel ultimately reviewed and analyzed thousands of data entries to determine the ACV values, including replacement costs, Sales Tax, and Regulatory Fees for thousands of vehicles. Additionally, Plaintiff reviewed Plaintiff's insurance policy, report values, and filed a public records request to obtain title information. The document review and data analysis were particularly time-sensitive, meticulous, and complex.

17. On August 11, 2023, the Parties filed a Joint Motion to Stay Pending Mediation or for Administrative Closure, in an effort to continue productive settlement negotiations by exploring prompt and cost-effective alternative resolution of the disputed issues to conserve the Parties' time and resources and promote judicial economy. Doc. 27. On August 14, 2023, the Court Granted the Joint Motion to Stay Pending Mediation or for Administrative Closure with Consent and stayed the case pending the outcome of mediation. Doc. 28.

18. On August 21, 2023, this Court entered an Order mooted the Motion to Dismiss for Failure to State a Claim (Doc. 9), mooted the Motion to Compel (Doc. 9), and issued a stay of proceedings. Doc. 29. This Court then issued a Minute Order for Administrative Closure pending the outcome of mediation. Doc. 31.

19. In preparation for mediation, Plaintiff reviewed the data provided by Defendant with experts to calculate damages from unpaid and underpaid sales taxes, unpaid or underpaid title fees,

unpaid or underpaid tag fees, and other costs to purchase comparable motor vehicles. These calculations were further complicated because of the different ways in which Imperial would underpay some but not all of the taxes and fees in some cases and would not pay any of the required taxes and fees in other cases as part of total loss settlements.

20. Another issue that class counsel encountered and estimated with damages models related to vehicles where the insured retained the salvage vehicle (the post loss damaged vehicle). In some cases Imperial would retain the salvage vehicle and pay the insured the full ACV of the total loss vehicle, apart from the aforementioned underpayments of transfer fees and taxes. In the case of a vehicle where the insured kept the salvage, however, Imperial would not pay the sales tax on the value of the total loss vehicle despite that the insured has to replace the total loss vehicle whether it retains the salvage, total loss vehicle remnants. Plaintiffs used expert witnesses to estimate the totals of retained salvage vehicles and the associated damages from the failure to pay taxes and fees as part of ACV in retained salvage cases.

21. On December 12, 2023, the Parties attended formal mediation with Mike Ungar, a well-respected and experienced mediator. After many months of arm's length negotiations and a full day of mediation, the Parties, with the assistance of Mr. Unger, agreed to the material terms of the settlement. In accordance with ethical practices in this jurisprudence, there was no discussion of the prospect or amount of attorney's fees or class representative awards.

22. After reaching an agreement on the scope of the proposed Settlement Class and the monetary benefits to Settlement Class Members, the Parties then separately, and with the assistance of Mr. Unger, negotiated and reached an agreement concerning the payment of the costs of notice and administration, attorneys' fees, litigation expenses and costs, and service award payment to the Plaintiff.

23. Thereafter, the Parties exchanged various drafts of the Settlement Agreement until they reached final agreement on all the terms. The Parties also engaged in negotiations regarding the Exhibits to the Settlement Agreement, including a Proposed Preliminary Approval Order, Proposed Final Order, Proposed Final Judgment, Claim Forms, and Notices. These negotiations were critical to ensure that Class Members receive effective notice, that they are adequately advised regarding the terms of the Settlement and their rights, and that they will be able to file claims with ease, including through pre-populated claim forms and electronically.

24. The Parties agreed to have Epiq Systems (“Epiq”) serve as the Settlement Administrator because of their extensive experience administrating class action settlements and providing class notice. The Parties further negotiated the content and format for electronic and paper claim forms, the content of the long form and summary class notices, and the settlement administration protocol.

25. The Agreement in this case is the result of these intensive, arm’s-length negotiations between experienced attorneys who are familiar with class action litigation and with the legal and factual issues of this Action.

26. The Settlement was fully executed by all parties on April 11, 2024. There are no agreements between Plaintiff or Class Counsel and Defendants other than the Settlement.

27. A true and accurate copy of the Settlement Agreement and annexed exhibits is attached to this Declaration as Exhibit 1. Attached to the Settlement Agreement are the following:

- Exhibit A: Claim Form
- Exhibit B: Postcard Notice
- Exhibit C: Email Notice
- Exhibit D: Long Form Notice
- Exhibit E: [Proposed] Final Approval Order
- Exhibit F: [Proposed] Preliminary Approval Order
- Exhibit G: Blank Claim Form
- Exhibit H: [Proposed] Preliminary Schedule

### **THE PROPOSED SETTLEMENT**

28. The Settlement Class is comprised of all individuals with personal automobile policies issued in Louisiana by Imperial and its subsidiaries or related insurance companies with the same operative policy language covering a vehicle with auto physical damage coverage for comprehensive or collision loss where such vehicle was declared a total loss, within the relevant time period and who are mailed class notice and do not timely opt out from the Settlement Class.

29. Insureds, as defined by the Settlement Class definition, include all insureds with leased or owned vehicles in the Settlement Class.

30. Class Counsel confirmed that Plaintiff and every Settlement Class Member were and/or are insured under personal automobile policies containing substantially similar policy language.

31. Class Counsel's investigation and review shows that Plaintiff's claims are based on the same legal theory and "pattern or practice" as all Class Members' claims: that Defendant breached the policy when Defendant failed to pay full Sales Tax and Regulatory Fees included in the cost to purchase a comparable motor vehicle as required by Louisiana law and the Policy terms.

32. The record shows that the settlement agreement is fair. Plaintiff has investigated and litigated this Action for over two years. The Action has been hard-fought as the Parties have engaged in motion practice and extensive discovery, including having reviewed pertinent claims data to understand the scope of the damages at issue and sustained by Settlement Class Members. However, the factor that most highlights the Agreement's fairness is the fact that Settlement Class Members will recover 100% of the damages in the Complaint. In addition, Defendant will pay all of the attorneys' fees and costs resulting in Class Members receiving as much as they could for an individual lawsuit.

**TERMS OF THE SETTLEMENT AGREEMENT**

33. Pursuant to the Agreement, Imperial shall pay Settlement Class Members (1) the ACV Sales Tax for Settlement Class Members either at the applicable local rate based on the garage location and date of loss or the average sales tax rate for the state, whichever is administratively feasible and which must be applied uniformly for each policy period, (2) all applicable Transfer Fees (*i.e.*, title, handling, plate), less any prior payments for Sales Tax and Transfer Fees. Moreover, Imperial agrees to pay: (1) all settlement claims administration costs; (2) all court-awarded attorneys' fees and costs up to \$795,000.00; and (3) any Court-awarded Service Award of \$5,000.00 for the named Plaintiff.

34. The Agreement also provides significant future non-monetary relief for insureds—as part of the settlement, Imperial agrees to pay “applicable Sales Tax and Transfer Fees on total loss vehicles at the time of loss based on the ACV of the vehicle, without requiring the policyholder to provide proof that the policyholder purchased a replacement vehicle and without regard to whether the vehicle is leased or owned and whether or not the insured retained the salvage value.”

35. In return, Settlement Class Members agree to release claims *only* for non-payment of ACV Sales Tax and Transfer Fees as part of total loss claim settlements. Settlement Class Members do not release any claim for any other type of claim for vehicle valuation or any other type of claim underpayment. Nor is there a release of any claims outside of the class period's two-year statute of limitations.

36. Significantly, all of the attorneys' fees are paid by Defendant separately from and in addition to the Settlement Amount. The fees will not reduce the amounts to be paid to Settlement Class Members. Paying attorneys' fees separate from the Settlement Fund ensures that the Settlement Class Members receive 100% of their claimed losses. Moreover, the parties negotiated and reached an agreement regarding fees only after agreeing on all material terms of the Agreement. Such an award is

subject to this Court's approval and will serve to compensate for the time, risk and expense Plaintiff's counsel incurred pursuing claims on Settlement Class Members' behalf.

37. The \$5,000.00 service award for Plaintiff will compensate her for her time, effort and risk assumed in prosecuting the Action. Specifically, Plaintiff assisted Class Counsel in successfully prosecuting the Action and reaching the Agreement, including: (1) submitting to Class Counsel interviews; (2) forwarding documents and information to Class Counsel; (3) assisting Class Counsel in drafting and review of the Complaint; and (4) staying apprised of the case and conferring with Class Counsel. As such, the Plaintiff was integral to the case. The Service Award shall be paid separately by Defendant and will not dilute the amount of money set aside to pay Settlement Class Member Claims.

38. The proposed Notice will be sufficient notice to all persons entitled to notice and satisfy all applicable requirements of law. The proposed notice in this case is particularly rigorous and far in excess of the minimum due process requirements. For the convenience of Class Members, Defendant will extract available information from its claim records to pre-fill relevant information on the claim forms. Notice will be provided via direct mail (including the pre-filled, postage pre-paid claim form) and by email. The email has a simple hyperlink such that the Class Members need only click on the hyper link in the electronic notice, and they will be brought to a prefilled electronic claims form requiring an assent to the settlement terms. The postage Claim form is pre-filled, postage pre-paid, and Class Members must simply attest to the information and send the Claim form back.

39. The proposed Notice includes (i) the nature of the action; (ii) the class definition; (iii) the class claims; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; (vii) the binding effect of a class judgment on members, (viii) a clear explanation of the terms of the Agreement, (iv) the amount sought in attorneys' fees and service

award, and (v) informs Settlement Class Members of their right to object to seek exclusion and the method by which to do so.

40. All costs associated with Notice and the Settlement Administrator shall be paid by Defendant.

41. The Parties have selected and recommended Epiq Systems (“Epiq”) as the Settlement Administrator to handle the Notice and all aspects of the Claims administration. Epiq is one of the leading notice administration firms in the United States. Epiq has handled similar claims of this nature and is experienced in locating insured class members and in explaining the terms of settlement.

42. The Settlement Administrator will oversee the claims process and Notice, which is designed to provide the best notice practicable and is tailored to take advantage of the information Defendant has available about the Settlement Class Members.

43. To receive a Settlement Class Member Payment, Class Members must submit Claim Forms by the Claim Deadline after multiple notices to do so.

44. The Claim Form Submission Process is simple and easy to understand. A Claim Form is included with the Mailed Notice, is part of Email Notice, or may be submitted online.

### **RISKS OF CONTINUED LITIGATION**

45. Plaintiff and Class Counsel are confident in the strengths of their case but are also pragmatic in their awareness of the various defenses available to Defendant, both on the merits and as to certification of a litigation class, and the risks inherent to litigation of this magnitude.

46. Plaintiff concluded that the benefits of settlement in this case (100% of the damages sued upon plus all fees and costs paid by Defendant) outweigh the risks and uncertainties of continued litigation, as well as the attendant time and expenses associated with contested class certification proceedings, fact and expert discovery, dispositive motion practice, trial and (inevitably) post-trial

appeal. Although no claims for undervaluation of the vehicles are included in the Settlement Agreement, such claims are preserved for anyone who wants to bring such a claim. Therefore, even though the valuation claims cannot be certified pursuant to *Sampson*, Class Members are free to pursue these claims individually.

47. There are inherent risks of litigation and class certification, any of which by itself, could have impeded Plaintiff's and the Settlement Class Members' successful prosecution of these claims at trial and in an eventual appeal—resulting in zero benefit to the Settlement Class Members. Under the circumstances, Plaintiff and Class Counsel appropriately determined that the Agreement reached with Defendant outweighs the gamble of continued litigation. This Agreement provides Settlement Class Members who timely submit a Claim Form with 100% of their claimed losses in the Complaint and pays all of their attorney's fees.

48. The traditional means for handling claims like those at issue here would tax the court system, require a massive expenditure of public and private resources, and—given the relatively small value of the claims of the individual members of the Settlement Class Members—could be impracticable. The claims and defenses in this Action are complex, as is clear by the record. There is no doubt that continued litigation here would be difficult, expensive, and time consuming. Recovery by any means other than settlement would require additional years of litigation in this Court. Part of the reason for Rule 23 is to save court resources and to prevent repetitive, unnecessary litigation.

49. Plaintiff's settlement, along with Defendant's separate commitment to pay Claims Administration Costs, is outstanding given the complexity of the litigation and the significant barriers that would loom in the absence of settlement, including motions for class certification, summary judgment, trial and appeals after a verdict.

50. The Agreement provides immediate and substantial benefits to thousands of past, current, and future insureds. The proposed Agreement is the best vehicle for the Settlement Class Members to receive the relief to which they are entitled in a prompt and efficient manner.

### **PROPOSED CLASS COUNSEL**

51. Class Counsel has litigated all of these issues against most of the insurance companies in the United States including all of the major insurance companies.

52. As a result, Class Counsel is experienced in the litigation, certification, trial, and settlement of nationwide class action cases of this nature. In negotiating this Agreement, Class Counsel had the benefit of experience and a familiarity with the policy language, the claims practices of Defendant and used that knowledge to apply it to the facts of this case in alignment with cases involving similar claims handling practices by this Defendant, and other insurance carriers around the country, which are very similar to the practices at issue.

53. Class Counsel are experienced attorneys familiar with the legal and factual issues and worked out a settlement with the benefit of that knowledge and negotiated with the assistance of a well-respected mediator who himself has mediated similar cases across the country.

54. As stated previously, Class Counsel has significant experience in the litigation, certification, trial, and settlement of national class actions, including numerous claims against auto insurance carriers across the country, through their active roles in similar class actions throughout the country, many of which have settled. *See also* Firm Resumes of Class Counsel Normand PLLC, Edelsberg Law, P.A., and Shamis & Gentile, P.A., attached as **Exhibits 1-3**, respectively.

55. Class Counsel possesses extensive knowledge of and experience in prosecuting class actions in courts throughout the United States. Class Counsel has successfully litigated and resolved many other consumer class actions against major corporations. In recent years, however, they have

specialized in insurance class actions like the case at issue, recovering hundreds of millions of dollars for insureds. The experience, resources and knowledge Class Counsel brings to this Action is extensive and formidable.

**CLASS TREATMENT IS APPROPRIATE**

56. Class Counsel is Adequate. Counsel is qualified to represent the Settlement Class and will, along with the Class Representative, vigorously protect the interests of the Settlement Class. As stated previously, Class Counsel has significant experience litigating virtually identical class claims, through their active roles in similar class actions throughout the country. Class Counsel is experienced in both the litigation and settlement of class actions of this type. Class Counsel has conducted necessary liability and damages discovery confirming the amount of potential damages available to the class. Class Counsel believes the Agreement is fair, adequate, and reasonable.

57. Numerosity is present. Class Counsel has examined Defendant's data for total loss claims and it reveals potentially thousands of Class Members. As such, the members of the Settlement Class are so numerous that individual joinder is impracticable.

58. Commonality is satisfied because common issues of fact or law affect all the Settlement Class Members. The issue of whether ACV is properly interpreted to include Sales Tax and Transfer Fees is a common question of law, and the interpretation of the Policy language will provide a common answer. The policy language at issue is the same or substantially similar for all Settlement Class Members, who were subject to the same business practices.

59. Typicality is satisfied because each Settlement Class Member's claim arises from the same course of events and each Settlement Class Member makes similar legal arguments to prove Defendant's liability. Specifically, the form Policies contain substantially similar language, and the

practice that gave rise to the claim is uniform. As such, the claims arise from the same challenged conduct and share the same essential characteristics.

60. Plaintiff also satisfies the adequacy requirement because her interests do not conflict with the interests of the other Class Members whom she seeks to represent, and Plaintiff has retained counsel competent and experienced in complex class action litigation, including successfully litigating class action cases like this one, where insurers breached contracts with insureds in the calculation of the ACV of a total loss vehicle. The class representative is adequate, having participated in each part of the litigation and zealously defending the rights of class members.

61. Certification of the Settlement Class is further appropriate because questions of law or fact common to class members predominate over any questions affecting only individual members. For instance, the common question (i.e., whether Imperial's uniform policies include coverage for ACV Sales Tax and Transfer Fees after a total loss) dominates over individual questions. Moreover, a breach is established by common proof. Finally, the measure of damage here is common, mechanical and formulaic. It is simply multiplication or addition applied to the vehicle value already determined by Defendant.

62. Finally, classwide adjudication is the superior method for resolving this dispute because the costs of bringing individual actions outweigh the expected recovery, one class action promotes efficiency and judicial economy, and class treatment is more manageable than managing thousands of individual cases.

### **CONCLUSION**

63. Based on my experience, and taking into consideration the risks of continued litigation, including appeals, versus the substantial and concrete benefits to the Settlement Class Members, it is my opinion, as well as the opinion of the other proposed Class Counsel, that the Settlement is not only

fair, reasonable, and adequate, but also a very favorable result for the Settlement Class. The class period doubles the contractual statute of limitations clause from one year to two years. The Class Members get 100% of the Sales Tax and Regulatory Fees sought in the suit. As to the claims that cannot be entered under *Sampson*, Class Members can bring these claims individually. Finally, all attorneys' fees, costs, and administration fees are paid by the Defendant for each and every Class Member. Accordingly, I believe the proposed Settlement is in the best interest of the Settlement Class and merits preliminary approval by this Court.

On this 11th day on April, 2024, I declare under penalty of perjury that the foregoing is true and correct.

/s/ Edmund A. Normand  
Edmund A. Normand, Esq.  
Florida Bar No. 0866590  
NORMAND PLLC

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA**

DANA BASS,

Plaintiff,

CASE NO.: 1:22-CV-00550

v.

IMPERIAL FIRE and CASUALTY  
INSURANCE COMPANY,

Defendant.

\_\_\_\_\_ /

**DECLARATION OF MICHAEL N. UNGAR**

I, Michael N. Ungar, pursuant to 28 U.S.C. §1746, declare as follows:

1. My name is Michael N. Ungar. I am over the age of 18 years, and I am competent to give testimony. The statements contained in this Declaration are based upon my own personal knowledge and are true and correct. My statements and those of the parties during the mediation process are subject to a confidentiality agreement and Federal Rule of Evidence 408 and there is no intention by me or by the parties to waive confidentiality or the protections of Rule 408.

**I. BACKGROUND AND EXPERIENCE**

2. I have mediated hundreds of complex cases, including many class actions. A link to my professional curriculum vitae is available for review at <https://www.ubglaw.com/michael-n-ungar>.

**II. FAMILIARITY WITH THE PRESENT LITIGATION**

3. I was retained by counsel for the parties in the *Dana Bass, v. Imperial Fire and Casualty Insurance Company*, Case No. 1:22-CV-00550 (W.D. LA) in December of 2023, for the

specific purpose of mediating this case. In my capacity as mediator, I consider myself to be neutral, representing neither plaintiffs nor defendants.

4. In preparing for this mediation, which took place on December 12, 2023, I asked that the parties provide me with relevant background information about the lawsuit, and the parties fully complied with this request. I then facilitated extensive negotiations among the parties before, during, and after the mediation sessions, where all parties engaged in extensive discussions and responded to specific questions and clarifications. I studied multiple mediation submissions and selected court filings and rulings from the litigation.

### **III. THE MEDIATED SETTLEMENT NEGOTIATIONS**

5. The mediation session and negotiations were lengthy and, at times, frustrating for the parties and respective counsel. The live session involved discussions with all counsel and representatives of the parties who were present, bilateral discussions with counsel, and *ex parte* discussions with the parties concerning their various positions. I never witnessed or sensed any collusiveness among the parties. On the contrary, at each point during the negotiations, the settlement process was conducted at arm's length and, while professionally conducted, was quite adversarial. An agreement in principle was ultimately achieved following the mediation sessions with respect to all issues, except for attorneys' fees.

6. Relief for class members was the focus of the mediation session. There were no discussions of attorneys' fees, costs, or service award until the substantive terms of the settlement were resolved.

7. The parties eventually reached agreement on a settlement in principle -- subject to court approval -- after continued discussions following the mediation sessions. The discussion regarding attorneys' fees was initiated after all the other matters were concluded, and continued

after the mediation, with my oversight and involvement. The issue of attorneys' fees was ultimately resolved to the satisfaction of all involved parties, subject, of course, to court approval.

8. Counsel on all sides of this mediation were experienced and provided excellent representation on behalf of their clients. They were highly skilled, meticulous, and detail-oriented in addressing every aspect of the settlement. Counsel conducted themselves with the utmost professionalism and were extremely helpful to the undersigned mediator.

9. A review of my records indicates that, to date, I have spent approximately 8.5 hours coordinating, preparing, pre-mediating, and mediating the resolution of this action.

10. I am happy to answer any questions the Court may have regarding my role as mediator. I can be reached on my office telephone at (216) 583-7002 or on my mobile telephone at (216) 978-8197. I appreciated the opportunity to serve in this role.

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct.

Executed on this 4th day of April, 2024.

A handwritten signature in blue ink, appearing to read "M. Ungar", is written over a horizontal line.

Michael N. Ungar, Mediator

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