

**IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA**

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

CASE NO.: D01CI200009724

Plaintiffs,

v.

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

Defendants.

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**FINAL ORDER AND JUDGMENT APPROVING  
CLASS ACTION SETTLEMENT**

This matter is before the Court on the Motion for Final Order and Judgment Approving Class Action Settlement. The matter came before the Court on June 28, 2023, for a hearing pursuant to Neb. Rev. St. § 25-319 (the “Final Approval Hearing” or “Fairness Hearing”) as to the fairness, reasonableness, and adequacy of the Parties’ proposed Settlement of this Action preliminarily approved by the Court on February 6, 2023. All interested Persons were provided with notice and the opportunity to be heard regarding the proposed Settlement.

The Court has again reviewed the Settlement Agreement (including Exhibits) (the “Settlement Agreement”) and all papers submitted in connection with the proposed Settlement, including the Declaration of Heather Follensbee (with JND Legal Administration (“JND”)) Regarding Notice and Settlement Administration, and has considered all arguments of counsel. The Court finds that the Parties have demonstrated full compliance with the Preliminary Approval Order, and that there are substantial and sufficient grounds for entering this Final Order and

Judgment Approving Class Action Settlement (“Order” or “Final Order and Judgment”). The Court therefore directs the Parties and their counsel to implement and consummate the Settlement Agreement and directs the administration of the Settlement in accordance with the terms and provisions of the Settlement.<sup>1</sup>

### **BACKGROUND**

1. On February 6, 2023, this Court entered the Preliminary Approval Order. This Final Order and Judgment incorporates the provisions, findings, and conclusions in the Preliminary Approval Order unless specifically stated otherwise in this Order.

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

3. On April 7, 2023, the Settlement Administrator, JND, mailed the Long-Form Mailed Notice to all potential Settlement Class Members after updating the mailing addresses provided by the USAA Entities, in accordance with the terms of the Preliminary Approval Order and Settlement Agreement. In the initial mailing, JND mailed 6,597 Long-Form Notices to Settlement Class Members. (There were 7,750 insurance claims submitted by 6,597 unique potential Settlement Class Members; some Settlement Class Members had more than one insurance claim.) 254 Long-Form Mailed Notices were initially returned to JND. With respect to those returned Long-Form Mailed Notices with a forwarding addresses, JND remailed such Long-Form Mailed Notices to those forwarding addresses; with respect to returned Long-Form Mailed Notices without a forwarding address, JND attempted to obtain a current mailing address using the methods specified in the Settlement Agreement. In all, 6,465 of the 6,597 Long-Form

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

Mailed Notices were mailed and not returned as undeliverable, and therefore are presumed delivered, representing a 98% “reach rate.”<sup>2</sup>

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

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

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

7. Settlement Class Members were given until June 6, 2023, or 60 days after the Mailed Notice Date, in which to exclude themselves or object to the Settlement.

8. On May 8, 2023, Class Counsel filed their petition for an Attorneys’ Fees and Expenses Award (up to a maximum of \$850,000.00) and for Service Awards to Plaintiffs, up to a maximum of \$5,000.00 to each Plaintiff.

9. On June 19, 2023, the Settlement Administrator submitted a Declaration detailing the notice and settlement administration activities, and also submitted for the Court’s consideration the Opt-Out List, which is the list of all Settlement Class Members who timely excluded themselves from the Settlement.

10. Three Settlement Class Members are on the Opt-Out List. There were no untimely

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<sup>2</sup> The Declaration of the Settlement Administrator provides detailed information regarding the course and scope of post-Preliminary Approval Order notice and settlement administration activities.

requests for exclusion. The Court-Approved Opt-Out List is attached hereto as Exhibit 1.

11. There were no objections to the Settlement, timely or untimely.

### **FINDINGS AND CONCLUSIONS**

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

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

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

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

15. The Court has considered (1) the merits of Plaintiff's case weighed against the terms of the settlement; (2) Defendants' financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the settlement. *See In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 932 (8th Cir. 2005). Moreover, the Court has considered the procedural fairness to ensure the settlement is "not the product of fraud or collusion." *Id.* at 934. The Court also notes that no Settlement Class Member has objected to the Settlement. Accordingly, the Court confirms its preliminary findings in the Preliminary Approval Order, as set forth below.

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

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

case.

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

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

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

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

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

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

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

25. Pursuant to Neb. Rev. Stat. § 25-319.01, the unpaid residue in this Settlement—if any—will consist of the amount of checks to Qualifying Settlement Class Members who failed to timely cash their checks (i.e., within the 180-day Stale Date). The Claims Deadline is July 28, 2023, and the Settlement Administrator is to use its best efforts to mail checks to Qualifying Settlement Class Members within 105 days of the Effective Date. Accordingly, by May 22, 2024, the Parties are to submit to this Court a report of the total amount that was paid to Qualifying Settlement Class Members who timely cashed their checks (i.e., within the 180-day Stale Date), along with the amounts of the checks that were not timely cashed. After the report is received, the Court will determine whether the amounts of uncashed checks (if any) shall be paid to the Legal Aid and Services Fund as the Settlement's unpaid residue. The Settlement does not provide for any other residual or *cy pres* distribution.

26. The Court also has considered the Settlement Class Members' expected recovery balanced against the value of the Settlement. The Court agrees with Class Counsel's analysis that

the Settlement provides significant relief to Settlement Class Members for claims that have uncertain prospects of success.

27. The Court further finds that Class Counsel's request for the Attorneys' Fees and Expenses Award is fair and reasonable, given the significant work that Class Counsel have devoted to this Action (including the Settlement).

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

29. The Court also finds that the notice to the Settlement Class complied with all requirements of Nebraska law and due process. The Mailed Notices were clearly and accurately conveyed to Settlement Class Members all material terms of the Settlement. Furthermore, the individual Mailed Notices reached 98% of the Settlement Class Members, which is more than sufficient to meet all legal requirements.

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

31. Accordingly, the Court finds that the Parties have implemented and complied with the notice plan as provided in the Preliminary Approval Order. The Court finds that the Mailed Notices, Website notice, and the notice methodology implemented pursuant to the Settlement Agreement (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the



Action, and their right to exclude themselves from or object to the proposed Settlement and to appear at the Final Approval Hearing; (iii) were reasonable and constituted due, adequate, and sufficient notice to all Persons entitled to receive notice; and (iv) met all applicable requirements of Nebraska Rules of Civil Procedure, due process, and any other applicable rules or law.

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

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

**IT IS HEREBY ORDERED:**

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

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

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

All individuals and entities insured by the USAA Entities under a Nebraska automobile insurance policy whose insurance covered or covers an owned or leased

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

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

“Applicable Class Period” means (1) for GIC insureds, November 23, 2015 through February 6, 2023, and (2) for USAA, CIC, and Garrison insureds, March 25, 2017 through February 6, 2023.

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

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

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

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

41. The Court approves the Opt-Out List submitted by the Settlement Administrator (Exhibit 1 hereto) (the “Court-Approved Opt-Out List”) and determines that the Court-Approved Opt-Out List is the complete list of all Settlement Class Members who have timely requested exclusion from the Settlement Class and, accordingly, shall neither share in nor be bound by the Final Order and Judgment. All other Settlement Class Members shall be bound by the terms of the Settlement.

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

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

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

of the proposed Settlement and regardless of whether they previously initiated or subsequently initiate individual litigation or other proceedings encompassed by the Released Claims, have conclusively compromised, settled, discharged, and released all Released Claims against the USAA Entities and the Released Persons, and are bound by the provisions of the Settlement Agreement, as further provided in Paragraphs 42-47 of the Settlement Agreement.<sup>3</sup>

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<sup>3</sup> 42. Plaintiffs, and all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Court-Approved Opt-out List, shall be bound by this Agreement, and all of their claims, as provided under this Agreement, shall be dismissed with prejudice and released, even if they never received actual notice of the Actions or the Settlement.

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

44. “Released Claims” means and includes any and all known and unknown claims, rights, actions, suits or causes of action of whatever kind or nature, whether *ex contractu* or *ex delicto*, statutory, common law or equitable, including but not limited to breach of contract, bad faith, extracontractual claims or claims for statutory violations, and

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claims for punitive or exemplary damages, or prejudgment or postjudgment interest, arising from or relating in any way to the USAA Entities' alleged failure to pay sufficient Sales Tax, Vehicle Regulatory Fees, and CRA Sales Tax to Plaintiffs and the Settlement Class Members. Released Claims do not include any claim for enforcement of this Agreement and/or the Final Order and Judgment. Released Claims do not include any claims, actions, or causes of action alleging that the USAA Entities failed to properly calculate the base or adjusted value of total loss vehicles except to the extent that such claims, actions, or causes of action relate to failure to pay sufficient Sales Tax, Vehicle Regulatory Fees, and CRA Sales Tax.

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

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

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

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

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

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

47. Upon entry of the Final Order and Judgment, the Action will be dismissed with prejudice as to the USAA Entities, Plaintiffs, and all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Court-Approved Opt-Out List, and will release all Released Persons from Released Claims.

Settlement Agreement.

47. The Court hereby awards the following for the Attorneys' Fees and Expenses Award, to be paid separate and apart from the Settlement Fund: \$850,000.00.

48. The Court hereby awards the following for the Service Awards, to be paid separate and apart from the Settlement Fund: \$5,000.00 to each Plaintiff.

49. As noted above in Paragraph 25, pursuant to Neb. Rev. Stat. § 25-319.01, the Parties shall submit a report by May 22, 2024 regarding the total amount that actually was paid to Qualifying Settlement Class Members who timely cashed their checks (i.e., within the 180-day Stale Date), and the total amount of the checks that were not timely cashed (if any). After the report is received, the Court will determine whether the amounts of uncashed checks (if any) shall be paid to the Legal Aid and Services Fund as the Settlement's unpaid residue. The Settlement does not provide for any other residual or *cy pres* distribution.

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

51. The Court permanently enjoins Plaintiffs, and all other Settlement Class Members who have not been excluded from the Settlement Class as provided in the Court-Approved Opt-Out List, from (i) filing, commencing, prosecuting, intervening in, or participating (as class

members or otherwise) in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on the Released Claims and (ii) organizing Settlement Class Members into a separate group, class, or subclass for purposes of pursuing as a purported class action any lawsuit or administrative, regulatory, arbitration, or other proceeding (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) based on the Released Claims.

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

53. The Court approves the termination and withdrawal procedures in Paragraphs 49-51 of the Settlement Agreement. If the Settlement does not become Final for any reason (whether due to a termination of the Settlement Agreement in accordance with its terms, a failure or refusal of the Court to approve the proposed Settlement, or a reversal or modification of the Court's approval of the proposed Settlement on appeal, or for any other reason), the Parties shall be returned to the status *quo ante* as of June 22, 2022, as further provided in Paragraph 7 and elsewhere in the Settlement Agreement. In that event, (a) Plaintiff Whitehead may refile the




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

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

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

Dated: June 28, 2023

  
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District Court Judge

**EXHIBIT 1: COURT-APPROVED OPT-OUT LIST**

	<b>JND ID #</b>	<b>Name</b>	<b>City/State</b>	<b>Postmark Date</b>
1.	DNKJ7TS8PY	William E. Humm	Bellevue, NE	04/17/2023
2.	D927ZQLW4K	Dwayne A. Snyder	Humboldt, NE	05/02/2023
3.	D4HTSBEYJM	Charles F. Luke, Jr.	Omaha, NE	05/22/2023

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