UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

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

PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS

Plaintiff Dana Bass ("Plaintiff"), individually and on behalf of the Settlement Class, files this Unopposed Motion for Final Approval of Class Action Settlement and Certification of Settlement Class ("Motion"). Defendant Imperial Fire and Casualty Insurance Company ("Imperial") does not oppose this Motion. The Settlement Agreement ("Agreement") was filed at ECF No. 37-1..[1]

I. FACTS

As set forth in the Motion for Preliminary Approval, ECF No. 37, this is a class action lawsuit on behalf of Louisiana insureds of Imperial and related entities who submitted covered first-party auto total-loss claims with dates of loss during the class period. *See* ECF No. 1 ("Compl.") ¶¶ 6–8. All Settlement Class Members were insured under form insurance policies. *Id.* ¶ 21; ECF. No. 37-2 ("Normand Decl.") ¶ 4. Plaintiff alleges Imperial failed to pay the mandatory fees required by Louisiana law to buy a replacement vehicle. Compl. ¶¶ 37–44.

[1] Capitalized terms have the meanings provided in the Agreement.

A. Plaintiff's Total Loss Claim and Imperial's Alleged Breach

Plaintiff and Settlement Class Members entered into Louisiana private passenger auto policy agreements to be insured by Imperial under terms contained in form policies (the "Policies") with material total loss physical damage terms that were the same for Plaintiff and all Settlement Class Members. Compl. ¶¶ 6, 21; Normand Decl. ¶ 4. The Policies provided physical damage coverage for Plaintiffs and class members' total loss vehicles. Compl. ¶¶ 13–16. Plaintiff alleges the Policy requires Imperial to pay the ACV of totaled vehicles, including necessary costs of sales tax ("Sales Tax"), along with title fees, including title transfer and handling fees, and license plate transfer fees ("Transfer Fees"). Normand Decl. ¶ 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 Louisiana law. Compl. ¶ 58.

Plaintiff alleges that: (1) an insured is required to pay Sales Tax and Transfer Fees when replacing a car to obtain new ownership and operate a vehicle;[2] and (2) Imperial is required to pay Sales Tax and Transfer Fees on total-loss claims. *Id.* ¶¶ 37–44. Plaintiff alleges Settlement Class Members were underpaid the full ACV owed to them under the Policy given the omission of Sales Tax and Transfer Fees in total-loss ACV payments. *Id.* ¶¶ 16–20, 22–26, 44, 50–57.

[2] There is a 4.45% State motor vehicle sales tax that applies to private passenger motor vehicles whether leased or owned. Compl. ¶ 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.* ¶ 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.* ¶¶ 18–20. Title fees include: (1) $68.50 for tag title fee; and (2) $8.00 for title transfer handling fee. *Id.* ¶ 20.

B. Class Member Claims.

Discovery established that approximately 5,132 class members submitted first-party total-loss claims during the class period and were not paid the Transfer Fees owed under the Policies. *See* Exhibit 1, Declaration of Ricky Borges ("Borges Decl.") ¶ 5. The total claimed underpayments estimated by Plaintiff upon data review produced in discovery is approximately $3,740,706.00. Agreement ¶ 68.

C. Procedural Background.

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

On February 24, 2022, Plaintiff commenced this action against Imperial in the Western District of Louisiana. Plaintiff alleged Imperial breached the terms of Class Members' auto insurance policies and violated Louisiana law when it 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 generally* Compl. Plaintiff served Defendant on April 6, 2022 (ECF No. 5) and Defendant filed its ex parte Motion for Extension of Time to respond to the Complaint on April 13, 2022, which the Court granted on April 19, 2022. ECF No. 7.

On May 23, 2022, Defendant sent Plaintiff a Letter invoking the Policy's appraisal clause. Plaintiff responded to Defendant's Demand Letter on May 25, 2022, declining appraisal and stating the appraiser is neither equipped nor permitted to resolve the legal disputes central to her claims. On that same date, Defendant filed a Motion to Dismiss or in the Alternative to Compel

Appraisal and Dismiss Pending Completion. ECF No. 9. Therein, Defendant argued Plaintiff's claims were time barred by Louisiana's bodily injury statute. *Id.* at 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 No. 13) and Response Brief in Opposition to Defendant's Motion. ECF No. 15. 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, 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 Louisiana's statute of limitations for contract action is ten years. *Id.* at 6–7.[3]

Defendant moved the Court to file its Reply Brief in Support of its Motion to Dismiss under seal on June 20, 2022 (ECF No. 16), which was granted by the Court on June 28, 2022. ECF No. 17. Defendant filed its Reply Brief under seal on June 28, 2022. ECF No. 18.

From June 28, 2022, through December 12, 2023, the parties engaged in an extensive discovery process, including fact and expert discovery. Normand Decl. ¶¶ 14–15. Class Counsel reviewed information and informal discovery to evaluate the potential claims and defenses. *Id.* Plaintiff received data and information concerning insureds with substantially similar form policies underwritten by Imperial and obtained spreadsheets containing claim information for Class Members. *Id.* at 14–16. Class Counsel analyzed thousands of data entries to determine the ACV values, including replacement costs, Sales Tax, and Regulatory Fees. *Id.*

[3] In the proposed Settlement, the Parties agreed to a two-year statute of limitations. The Class period runs from February 24, 2020, through the date of preliminary approval. Agreement ¶ 6.

On August 11, 2023, the Parties filed a Joint Motion to Stay Pending Mediation or for Administrative Closure, to continue 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 No. 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 mediation. ECF No. 28.

On August 21, 2023, this Court entered an Order mooting the Motion to Dismiss for Failure to State a Claim (ECF No. 9), mooting the Motion to Compel (ECF No. 9), and issued a stay of proceedings. ECF No. 29. This Court then issued a Minute Order for Administrative Closure pending the outcome of mediation. ECF No. 31.

In preparation for mediation, Plaintiff hired experts to review all materials, provide data analysis on the Class claims, and offer testimony regarding damages. Normand Decl. ¶¶ 15, 19. The Parties exchanged mediation submissions, discussing the strength and weaknesses of Plaintiff's allegations and damages, Defendant's potential defenses, and clarify the factual and legal issues. 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.

On December 12, 2023, the Parties attended a full-day mediation with Mike Ungar, a highly regarded and experienced mediator and ultimately agreed to the material terms of the Agreement. *Id.* ¶ 21. After agreeing to the scope of the proposed Settlement Class and the monetary benefits to Settlement Class Members, the Parties separately, and with Mr. Ungar's assistance, negotiated and reached an agreement concerning the payment of the costs of notice and administration, attorneys' fees, litigation expenses and costs, and service award.

The Agreement was fully executed by all parties on May 4, 2024. There are no agreements between Plaintiff or Class Counsel and Defendant other than the Agreement.

D. The Agreement Provides 100% Payment of Sales Tax and Transfer Fees Sought.

As Plaintiff explained in seeking preliminary approval, the proposed Agreement provides payment of 100% of ACV Sales Tax and Transfer Fees (minus a set off for fees already paid, if any, to the claimant) of the amount sought by Plaintiff and Settlement Class Members who submit a valid claim. Normand Decl. ¶ 33; Agreement ¶ 66. Louisiana imposes regulatory fees associated with the titling or registration of a vehicle. *See* Compl. ¶¶ 37–44. The title fee is $68.50 for vehicles purchased from July 1, 2015, through the present, and $18.50 prior to July 1, 2015. *Id.*; *see also* La. R.S. § 32:728. The State imposes a $8.00 handling fee for vehicle titling and registration as well as license plate transfer fees. Compl. ¶ 40; *see also* La. R.S. § 32:412.1.

The cash benefit available to Class Members per the Agreement is approximately $3,740,706.00. Agreement ¶ 68. Under the Agreement, attorneys' fees, administrative expenses, and the class representative service award are to be paid by Defendant separately, meaning these costs will not reduce the amount to be paid to Settlement Class Members who submit valid claims. *Id.* ¶ 82; Normand Decl., ¶¶ 36–37. The Agreement secured significant future non-monetary relief for Imperial insureds: As part of the settlement, Imperial agreed to pay title and handling fees in Louisiana moving forward. Agreement, ¶ 79.

E. The Agreement Provided Robust Notice and Easy Claim Submission.

The Agreement, and this Court's Order directing the Notice Plan be effectuated as set forth in the Agreement, provided robust notice and a simple claim submission process. Pursuant to paragraph 43 of the Agreement and paragraphs 9 and 20 of the Preliminary Approval Order, Epiq mailed Postcard Notices—which included a detachable Claim Form, pre-populated with the

claimant's information and prepaid postage—via U.S. first-class mail to 5,132 potential Settlement Class Members. Borges Decl. ¶¶ 11–17 & Ex. B thereto. The Claim Form (Ex. A to the Agreement) attached to the Postcard Notice did not require the insured to provide any information other than to sign the claim form and provide a corrected address if needed. The Postcard Notice also directed recipients to a Settlement Website, which was established by the Claims Administrator, and included information about the Agreement and links to documents related to the lawsuit and Agreement. Agreement ¶ 51.

Pursuant to paragraph 45 of the Agreement and paragraphs 9 and 20 of the Preliminary Approval Order, email notice was sent to Settlement Class Members for whom an email address was included in the class data. Borges Decl. ¶¶ 6–10 and Ex. A thereto; Agreement ¶ 45. The email had a simple hyperlink such that the Settlement Class Members needed only to click on the hyperlink, which brought to a prefilled electronic claims form requiring an assent to the settlement terms. Agreement ¶ 46.

The Agreement required a second reminder email notice in the same form that also included a hyperlink to submit a prefilled electronic claim, which the Settlement Administrator confirmed was delivered in accordance with the Agreement and this Court's Order. Agreement ¶ 49; Borges Decl. ¶ 18. The comprehensive nature of the Notice Plan is seen in that a fantastic *99.5% of Settlement Class Members* received direct, actual Notice. Borges Decl. ¶ 17; *cf. In re Integra Realty Res., Inc.*, 262 F.3d 1089, 1110-11 (10th Cir. 2001) (holding Rule 23 and due process requisites satisfied where the record indicated only 77% of class members received notice of the settlement).

The Agreement required a Long Form Notice and other important case documents to be available to class members on the Settlement Website. Agreement ¶¶ 50, 54.

Settlement Class Members were provided the alternative option of downloading a claim form online that was either blank or pre-filled. *Id.* ¶¶ 51–52. The website allowed Settlement Class Members to submit a claim without a Claimant ID Number by accessing a Blank Claim Form and entering their name, policy number or claim number, and address, and signing and electronically submitting the Claim Form. *Id.* ¶¶ 52; Borges Decl. ¶¶ 19–20.

The Agreement provided for a toll-free number for class members to submit questions and request additional information. Agreement ¶ 57; Borges Decl. ¶ 21. *See Braynen v. Nationstar Mortg., LLC*, 2015 WL 6872519, at *18 (S.D. Fla. Nov. 9, 2015) (robust notice plan is evidence that the terms of settlement are fair and reasonable).

F. The Agreement Provides a Limited Release.

The release is narrow. Agreement ¶ 23. Class members release claims only based on non-payment "of Sales Tax and Transfer Fees." *Id.* They do not release any claim for any other types of alleged under-valuation of vehicles or other types of claim underpayment. *Id.* And any insured with a claim outside the two-year statute of limitations contemplated in the Agreement is not part of the Settlement Class and is not releasing potential claims. *Id.*

G. The Agreement Resolves a Case with Unsettled Legal Issues.

In pursuing the Sales Tax and Transfer Fees sought in this Action, Plaintiff contended with legal authority inconsistent with her claims. Specifically, Louisiana appellate courts have held that sales tax is not an element of ACV owed by an insurer in the event of a total loss. *State Farm Mut. Auto. Ins. Co. v. Berthelot*, 98-1011 (La. 4/13/99), 732 So. 2d 1230, 1235; *Clark v. Clarendon Ins. Co.*, 2002-1314 (La. App. 3d Cir. 3/26/03), 841 So. 2d 1039. The reasoning of these opinions might have precluded Plaintiff from obtaining the relief sought here. Other courts have also ruled against insureds on similar claims. *See, e.g.*, *Wilkerson v. Am. Family Ins. Co.*, 997 F.3d 666 (6th

Cir. 2021); *Sigler v. Geico Cas. Co.*, 967 F.3d 658 (7th Cir. 2020). Plaintiff believes these cases are distinguishable and/or were wrongly decided, but these authorities demonstrate the risk of continuing litigation.

As to the Louisiana cases in particular, Plaintiff disputes the applicability of these decisions given the enactment in 2010 of La. Rev. Stat. § 22:1892(B)(5), which provides in part that settlement payments of total loss motor vehicle claims based on ACV should be "based on the actual cost to purchase a comparable motor vehicle." *See* 2010 La. H.B. 1011. Nevertheless, there are no Louisiana appellate courts who have addressed this issue and the conflicting authority raises genuine uncertainty as to how the case would be decided on the merits (to say nothing class certification). The Agreement resolves these issues in favor of the Settlement Class.

H. The Agreement Provides Reasonable Attorneys' Fees.

This was a highly contested lawsuit relating to a novel legal theory without precedent relating to the payment of certain Sales Tax and Transfer Fees pursuant to a statute that had not been applied to similar facts. The proposed Agreement provides that Class Counsel may apply for attorneys' fees and costs not to exceed $795,000.00. Agreement ¶ 82; Normand Decl. ¶ 33. This percentage for attorneys' fees (21%) falls within the benchmarks set for attorneys' fees in other Louisiana District Courts. The reasonableness of attorneys' fees and costs are set forth in the previously filed Motion for Attorneys' Fees and Costs and Service Award (ECF No. 42-1).

II. 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). Whether a proposed agreement is sufficiently fair and reasonable is analyzed under a six-factor test: (1) the existence of any fraud or collusion; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery; (4) the probability of success; (5) the range of possible recovery; and (6) the opinions of the counsel, class representatives, and absent class members. *Reed v. Gen. Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983)

The Agreement should be approved because it is fair, reasonable, and adequate, and is not the subject of collusion. Fed. R. Civ. P. 23(e)(2); *In re Shell Oil Refinery*, 155 F.R.D. 552, 555 (E.D. La. 1993); Normand Decl. ¶¶ 15–26 (explaining arms-length negotiations). Critically, after robust Notice, not a single class member objected to the terms of the proposed Agreement or requested exclusion therefrom.

In addition to or consistent with the *Reed* factors, to determine whether a settlement is fair, reasonable, and adequate, Rule 23(e) instructs courts to consider whether:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal 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;
> >
> > (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
>
> (D) the proposal treats class members equitably relative to each other.

Each of these factors support finding the class Agreement is fair, reasonable, and adequate.

i. Arm's Length Negotiations, Fraud, and Collusion

The Agreement is not the product of fraud or collusion as it was rigorous, hard fought, and the product of arm's length negotiation between sophisticated counsel. *See* Normand Decl. ¶¶ 15–26. "The parties entered the proposed settlement agreement after a full-day mediation—which 'suggests the settlement was not the result of improper dealings.'" *Celeste v. Intrusion Inc.*, 2022 U.S. Dist. LEXIS 226841, at *12 (E.D. Tex. Dec. 16, 2022) (quotation omitted); Normand Decl. ¶ 21. 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.").

ii. The Relief is Adequate Given the Complexity, Expense, and Likely Duration of Litigation

By reaching a settlement, "Plaintiff is avoiding expense and delay and ensuring recovery for the Class." *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). Even for straightforward claims, settlement approval is favored where the settlement "avoids the risks and burdens of potentially protracted litigation." *In re Educ. Testing Serv. Praxis Principles of Learning & Teaching, Grades 7-12 Litig.*, 447 F. Supp. 2d 612, 620 (E.D. La. 2006).

Defendant's Motion to Dismiss was fully briefed, and the issues presented to the Court were complex. There were risks to both sides relating to the Motion to Dismiss and the decision on class certification. Moreover, an ultimate trial of this case involving extensive data would be lengthy, burdensome, and exceedingly costly in both time and resources of the parties and the Court. A judgment would likely be appealed thereby extending the litigation and forestalling relief for potential class members. "The settlement, on the other hand, makes monetary and injunctive

relief available to Class members in a prompt and efficient manner." *Hays*, 2019 U.S. Dist. LEXIS 17029, at *25. This factor thus supports approval of the Agreement.

iii. The Stage of the Proceedings

"This factor asks whether the parties have obtained sufficient information 'to evaluate the merits of the competing positions.'" *In re Educ. Testing Serv. Praxis Principles of Learning*, 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.

This proceeding had advanced to the point of full briefing on Defendant's Motion to Dismiss and the parties took extensive discovery and engaged in lengthy arm's-length settlement negotiations. Normand Decl. ¶¶ 5–19. Plaintiff has taken substantial discovery and consulted with expert witnesses regarding entitlement to and computation of alleged damages. *Id.* 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. *Id.*

iv. The Factual and Legal Obstacles to Prevailing on the Merits

This case is subject to significant 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 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." *Reed*, 703 F.2d at 172.

A trial would invariably involve risks to Plaintiff and the Settlement Class on both liability and damages. *See Hays*, 2019 U.S. Dist. LEXIS 17029, at *25. Plaintiff risked grant of the Motion to Dismiss or denial of class certification; and of course, appellate review of decisions on class treatment are difficult to predict. Proceeding without a settlement would require tremendous time and resources to litigate class certification, *Daubert*, and dispositive motions, prevail at trial, and prevail again on appeal of class certification, liability, and damages. *See id.* And this case is subject to an added dimension of legal obstacles as the theory pressed by Plaintiff is novel and arguably contradicted by opinions from Louisiana appellate courts which have not been overturned, as well as arguably persuasive opinions (albeit addressing the laws of different states) rejecting claims like Plaintiff's. *See Wilkerson*, 997 F.3d 666; *Sigler*, 967 F.3d 658.

v. The Possible Range of Recovery and Certainty of Damages

Approval should not be withheld merely because the settlement amounts to less than the full *potential* recovery. "[A] settlement can be satisfying even if it amounts to a hundredth or even a thousandth of a single percent of the potential recovery." *Hays*, 2019 U.S. Dist. LEXIS 17029, at *28 (quoting *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir. 1990)); *see also City of Detroit v. Grinnell Corp.*, 356 F. Supp. 1380, 1386 (S.D.N.Y. 1972), *aff'd in part*, *rev'd on other grounds*, 495 F.2d 448 (2d Cir. 1974) (a recovery of 3.2% to 3.7% of the amount sought is "well within the ball park").

Here, Imperial agreed to a settlement in which Settlement Class Members who make a timely claim are entitled to **100%** of the Sales Tax and Transfer Fees sought in this action.

Agreement ¶ 66; Normand Decl. ¶ 32. This recovery achieves the maximum possible recovery for Settlement Class Members who make a valid claim. It is *far* higher than amounts other courts have easily found to be fair and reasonable. *See, e.g.*, *Jenkins v. Trustmark Nat'l Bank*, 300 F.R.D. 291, 304-05 (S.D. Miss. 2014) (approving damages of 46.5% of potential recovery and noting that "A satisfactory settlement could amount to a hundredth or even a thousandth part of a single percent of the potential recovery") (cleaned up) (citing *Parker v. Anderson*, 667 F.2d 1204, 1210 n.6 (5th Cir. 1982)); *In re Polyurethane Foam Antitrust Litig.*, 2015 U.S. Dist. LEXIS 23482, at *5 (N.D. Ohio Feb. 26, 2015) ("A settlement figure that equates to roughly 18 percent of the best-case-scenario classwide overcharges is an impressive result in view of these possible trial outcomes."); *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, 2005 U.S. Dist. LEXIS 9705, at *9 (E.D. Pa. May 19, 2005) (11.4% of damages). Accordingly, this factor favors approval of the Settlement.

vi. The Opinions of Class Counsel and the Class Representative

The parties and Class Counsel unanimously support the proposed settlement, lending further support to approval. *See Celeste*, 2022 U.S. Dist. LEXIS 226841, at *21; *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977) (noting that "absent fraud, collusion, or the like," the Court "should be hesitant to substitute its own judgment for that of counsel"); Normand Decl. ¶¶ 37, 46. After robust and comprehensive Notice, *not a single Class Member objected or opted out*. This is an excellent result, indicating overwhelming (indeed, unanimous) approval of the proposed Agreement, which strongly favors approval. *See generally, e.g.*, *In re Oil Spill*, 295 F.R.D. 112, 150 (E.D. La. 2013) (noting that "one indication of the fairness of a settlement is the lack of or small number of objections"); *Quintanilla v. A & R Demolition Inc.*, No. H-04-CV-1965, 2008 U.S. Dist. LEXIS 37449, 2008 WL 9410399, *5 (S.D. Tex. May 7, 2008) ("If only a small number

of objections are received, that fact can be viewed as indicative of the adequacy of the settlement."); *Thacker v. Chesapeake Appalachia, L.L.C.*, 695 F. Supp. 2d 521, 527 (E.D. Ky. 2010) (finding that 12 objections out of a class of approximately 8,000 was "within the range of reasonableness" and militated in favor of approval); *Amos v. PPG Indus.*, No. 2:05-cv-70, 2019 U.S. Dist. LEXIS 139021, at *30 (S.D. Oh. Aug. 16, 2019) ("[N]o objections were filed, which creates the inference that all or most of the class members had no concerns about the proposed settlement. This positive response weighs in favor of approving the settlement.").

It is not that a "small number" of objections were filled—there were *none*. The importance of this cannot be overstated: Typically, if the Parties believe they have a favorable Settlement and so does a court, notice is provided to absent class members so they can review the proposed terms and identify any alleged weaknesses or deficiencies, with the main purpose of the final Fairness Hearing—assuming the Parties disagree and choose not to modify the proposed terms in light of the objections—being to resolve such objections. Here, there are *no objections to resolve*. There is, in other words, no opposition whatsoever, notwithstanding a robust and comprehensive Notice program. This *strongly* militates in favor of approving the proposed Agreement.

III. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS.

The Plaintiffs seek to certify a Settlement Class 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.

Agreement ¶ 35. Rule 23's certification requirements "generally apply when certification is for settlement purposes." *In re Pool Prods. Distrib.*, 310 F.R.D. at 308. As shown below and as the Court already agreed, each Rule 23 requirement is met for purposes of Settlement.

While Defendant agrees that this case is appropriate for a settlement class, it maintains its position that the case would not have been appropriate for a litigation class, and reserves all rights in this regard.

A. The Class Meets All of the Requirements of Fed. R. Civ. P. 23(a)

i. The Class is so numerous that joinder is impracticable.

A class is sufficiently numerous where "joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Here, the Class is comprised of 5,132 total-loss insureds. Borges Decl. ¶ 5. As such, numerosity is easily met. *See Nolan v. Exxon Mobil Corp.*, 2015 U.S. Dist. LEXIS 62619 *11 (M.D. La. May 13, 2015) (proving numerosity requires merely "some evidence or reasonable estimate of the number of purported class members.") (internal quotations omitted); *see also Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 624 (5th Cir. 1999) (holding 100-150 members is generally certifiable).

ii. Questions of law and fact are common to the Class.

Rule 23(a)(2)'s commonality requirement is satisfied when "there are questions of law or fact common to the class." The plaintiff must show "at least one issue, the resolution of which will affect all or a significant number of the putative class members." *A.A. v Phillips*, 2021 U.S. Dist. LEXIS 98189, at *30 (M.D. La May 25, 2021). Commonality is satisfied "where a question of law

linking class members is substantially related to the resolution of the litigation." *Hays v. Eaton Grp Attorneys, LLC*, 2019 U.S. Dist. LEXIS 17029, at *12 (M.D. La. Feb. 4, 2019). While the requirement may require common injurious conduct—here, failure to pay ACV Sales Tax and Transfer Fees—it does not require common damages. *In re Deepwater Horizon*, 739 F.3d at 811.

Commonality is satisfied because whether Imperial breached the form Policies by failing to pay cost necessary to replace a total-loss vehicle, and thus failed to properly pay ACV, is a common question of law, for which interpretation of uniform Policy language would provide a common answer. *See, e.g.*, *Allapattah v. Exxon Corp.*, 333 F.3d 1248, 1261 (11th Cir. 2003) (finding commonality established where the court interpreted materially similar contracts); *In re Oil Spill by Oil Rig Deepwater Horizon*, 910 F.Supp.2d 891, 927–28 (E.D. La 2012) (concluding claims arising from standardized contracts satisfy commonality requirement because "the contracts at issue are functionally identical"). Rule 23(a)(2) is satisfied here.

iii. Plaintiff's claim is typical of Settlement Class Members.

Rule 23(a)(3) requires "claims or defenses of the representative parties [be] typical of the claims or defenses of the class." The threshold for showing typicality is not demanding, and it focuses on the general similarity of the legal and remedial theories behind plaintiffs' claims. *Lightbourn v. Cnty. of El Paso, Tex.*, 118 F.3d 421, 426 (5th Cir. 1997). Thus, "many courts have found typicality if the claims or defenses of the representatives and the members of the class stem from a single event or a unitary course of conduct, or if they are based on the same legal or remedial theory." 7A Wright & Miller, Federal Practice and Procedure § 1764 (2014).

Imperial's practices described herein are allegedly uniform and Plaintiff's claims are based on the same legal theory—her identical insurance contracts with Imperial were materially breached because ACV includes costs reasonably likely to be incurred. *See James v. City of Dallas*, 254

F.3d 551, 571 (5th Cir. 2001). Plaintiff's claims are also subject to the same affirmative defenses as absent Class Members. But even the presence of a unique defense or factual circumstance does not preclude a finding of typicality unless it is likely to overwhelm the litigation. *See Plaza 22, LLC v. Waste Mgmt. of La., LLC*, 2015 U.S. Dist. LEXIS 30405 *14 (M.D. La. Mar. 12, 2015) (quotations omitted) (a key inquiry to the typicality analysis is whether the class representative or other plaintiffs would be "dominated by individual evidence"). Typicality is satisfied here.

iv. The named Plaintiff is an adequate representative.

Rule 23(a) requires that class representatives "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The purpose of this requirement is to ensure the plaintiffs "suffer the same injury" as class members and identify whether they have interests antagonistic to the class. *See In re Deepwater Horizon*, 785 F.3d at 1015.

Plaintiff is committed to protecting the interests of the Class, as seen by her prosecution of the claim through the counsel she retained and her engagement in the discovery process, as well as the favorable terms she secured on behalf of Settlement Class Members. Normand Decl. ¶ 37, 60; *see Doiron v. Conseco Health Ins. Co.*, 240 F.R.D. 247, 253 (M.D. La. 2007) (finding the hiring of "qualified" class counsel that provide "diligent and competent representation" as they participle in the litigation is evidence of adequacy), *vacated on other grounds*, 2008 U.S. App. LEXIS 11376 (5th Cir. La., May 28, 2008). There is no suggestion that any conflict of interest exists nor any threat this litigation could benefit some Settlement Class Members while harming others. *See generally Valley Drug Co. v. Geneva Pharms., Inc.*, 350 F.3d 1181, 1189 (11th Cir. 2003) (a conflict precluding adequacy occurs only if it is "fundamental," meaning that some class members would be "harmed by the same conduct that benefitted other[s]").

Further, Plaintiff's counsel is experienced in litigating class actions and complex litigation, have successfully litigated class actions asserting the same claims as presented here, and have the resources necessary to prosecute the claim. Normand Decl. ¶¶ 51–55; *see* Fed. R. Civ. P. 23(g) (listing factors relevant to appointing class counsel); *Mays v. Nat. Bank of Com.*, 1998 U.S. Dist. LEXIS 20698, at *22–23 (N.D. Miss. Nov. 19, 1998) (counsel's adequacy shown by their "substantial experience with class litigations as well as familiarity with particular issues in the case"); *Carmen v. R.A. Rogers, Inc.*, 2018 U.S. Dist. LEXIS 174461, at *10–11 (W.D. Tex. Apr. 25, 2018) (concluding counsel's adequacy demonstrated by ability to devote resources to the litigation). The adequacy requirement is thus met.

B. The Putative Class Should be Certified Pursuant to Fed. R. Civ. P. 23(b)(3).

i. Common questions of law and Fact predominate over any questions affecting only individual Settlement Class Members.

To satisfy predominance, "common issues must constitute a significant part of the individual cases." *Mullen*, 186 F.3d at 626. The predominance inquiry "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Unger v. Amedisys Inc.*, 401 F.3d 316, 320 (5th Cir. 2005) (quoting *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 622–23 (1997)). The inquiry should focus on "how resolution of an allegedly common question of law or fact will decide an issue central to an element or defense of each of the class members' claims at once." *In re Pool Prods. Distrib.*, 310 F.R.D. at 311. "Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial." *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

Here, Plaintiff contends the predominance prong is easily satisfied. Indeed, courts routinely find common issues predominate in cases involving interpretation of uniform insurance policies.

See, e.g., *Mitchell v. State Farm Fire & Cas. Co.*, 954 F.3d 700, 710 (5th Cir. 2020); *Stuart v. State Farm Fire & Cas. Co.*, 910 F.3d 371, 375 (8th Cir. 2018); *Hicks v. State Farm Fire & Cas. Co.*, 965 F.3d 452, 459-60 (6th Cir. 2020). The allegedly predominating issue in this litigation is whether Imperial's policies include coverage for Sales Tax and Transfer Fees as components of ACV due after a total loss, and this identical policy language governs every Settlement Class Member. Plaintiff contends the uniform policy to not include regulatory fees in ACV payments breached the Policy for *every* Class member in precisely the same way. *See* ECF No. 1 ¶¶ 37–44. Not only does the answer to this question depend on form policy language equally applicable to all Settlement Class Members, but it is also a legal question of contract interpretation devoid of factual inquiry that might generate individual issues. *See Snelling & Snelling, Inc. v. Fed. Ins. Co.*, 205 F. App'x 199, 201 (5th Cir. 2006).

ii. This Class Action is the Superior Method of Adjudication.

"The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor." *Amchem*, 521 U.S. at 617. The Supreme Court's reasoning in *Amchem* is applicable here, since the amount at stake for any plaintiff individually would make a lawsuit uneconomical. Certifying this action as a class action for settlement purposes will allow final resolution of many claims through an efficient mechanism.

C. The Claims-Made Structure Does Not Undermine Approval

As Plaintiff previously explained in the Motion for Preliminary Approval, as this Court agreed in granting preliminary approval, and as Settlement Class Members apparently agree in that

not even one objected to the proposed terms of the Settlement, the claims-made structure does not impact the "fairness, reasonableness, or adequacy of proposed settlement." *Hamilton v. SunTrust Mortg. Inc.*, 2014 U.S. Dist. LEXIS 154762, at *18 (S.D. Fla. Oct. 24, 2014); ECF No. 37, pp. 29–30. And as courts have explained, whether a settlement compares favorably to a hypothetical settlement to which the parties did not agree is irrelevant. *See, e.g.*, *Casey v. Citibank, N.A.*, 2014 U.S. Dist. LEXIS 156553, at *6 (N.D. N.Y. Aug. 21, 2014) (while direct payment may have resulted in more class members receiving some payment, "there is no reason to believe the defendants would agree to such terms" and thus the feasibility of direct payment "is irrelevant") (citing *Uhl v. Thoroughbred Tech. & Telecomms., Inc.*, 309 F.3d 978, 986 (7th Cir. 2002) (because the inquiry into a proposed settlement structure "is limited to whether the settlement is lawful, fair, reasonable and adequate[,] . . . [an objector] must do more than just argue that she would have preferred a different settlement structure")). The question is not whether a claims-made settlement compares favorably to a hypothetical, non-existent settlement, but rather whether the Settlement is fair and reasonable on its own terms. *See Casey*, 2014 U.S. Dist. LEXIS 156553 ("The Court does not have the authority to impose a preferred payment structure upon the settling parties").

The Agreement removes the risk that the Class will recover nothing due to an unfavorable ruling on the Motion to Dismiss, class certification, summary judgment, or any appeal therefrom. Despite removing such risk, far from accepting a significant reduction in the potential damages, the Agreement provides, to those Settlement Class Members who submit a valid claim, 100% of the total damages that could have been recovered at trial. Normand Decl. ¶¶ 32, 36. For all these reasons, Plaintiff believes the Agreement is fair and reasonable to the Class.

CONCLUSION

Plaintiff respectfully requests that the Court grant final approval of the proposed Agreement and enter an order that includes the content of the proposed order attached as Exhibit 2 hereto, which the Parties agreed upon as part of the settlement documentation in this matter and previously submitted to the Court in draft form.

Respectfully submitted this 21st day of November, 2024.

/s/ Soren E. Gisleson
Soren E. Gisleson, La. Bar No. 26302
HERMAN KATZ GISLESON & CAIN, LLC
909 Poydras St., Ste. 1860
New Orleans, LA 70112
Tel: (504) 581-4892
Fax: (504) 561-6024
sgisleson@hhklawfirm.com

Edmund A. Normand*
Florida Bar No.: 865590
NORMAND PLLC
3165 McCrory Place, Ste. 175
Orlando, FL 32803
Tel: 407-603-6031
E-Mail: ed@normandpllc.com
E-Mail: ean@normandpllc.com

Adam A. Schwartzbaum*
Florida Bar No.: 093014
EDELSBERG LAW, P.A.
20900 NE 30th Ave., Suite 417
Aventura, FL 33180
Tel: 305-725-1245
E-Mail: adam@edelsberglaw.com

Andrew Shamis, Esq.*
Florida Bar No.: 101754
SHAMIS & GENTILE, P.A.
14 NE 1st Avenue, Suite 705
Miami, FL 33132
Telephone: 305-479-2299

E-mail: ashamis@shamisgentile.com

Attorneys for Plaintiff

**admitted pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of November, 2024, I electronically filed a true and exact copy of the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

/s/ Soren E. Gisleson
Attorney for Plaintiff

EXHIBIT 1

STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

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

DECLARATION OF RICKY BORGES REGARDING
IMPLEMENTATION OF NOTICE AND SETTLEMENT ADMINISTRATION

I, RICKY BORGES, hereby declare and state as follows:

1. I am a Senior Client Services Manager employed by Epiq Class Action & Claims Solutions, Inc. ("Epiq"). I have 20 years of experience handling all aspects of settlement administrations. The statements of fact in this declaration are based on my personal knowledge and information provided to me by my colleagues in the ordinary course of business, and if called on to do so, I could and would testify competently thereto.

2. Epiq was appointed as the Settlement Administrator pursuant to Paragraph 6 of the Court's Preliminary Approval Order, dated April 18, 2024 (the "Order"), and in accordance with Section IV.40 of the Settlement Agreement, dated April 17, 2024 (the "Settlement Agreement").[1] I submit this declaration in order to advise the Parties and the Court regarding the implementation of the Court-approved Class Notice program and to report on Epiq's handling to date of the Settlement administration, in accordance with the Order and the Settlement Agreement.

[1] All capitalized terms not otherwise defined in this document shall have the same meanings ascribed to them in the Settlement Agreement.

3. Epiq was established in 1968 as a client services and data processing company. Epiq has administered bankruptcies since 1985 and settlements since 1993. Epiq has routinely developed and executed notice programs and administrations in a wide variety of mass action contexts including settlements of consumer, antitrust, products liability, and labor and employment class actions, settlements of mass tort litigation, Securities and Exchange Commission enforcement actions, Federal Trade Commission disgorgement actions, insurance disputes, bankruptcies, and other major litigation. Epiq has administered more than 4,500 settlements, including some of the largest and most complex cases ever settled. Epiq's class action case administration services include administering notice requirements, designing direct-mail notices, implementing notice fulfillment services, coordinating with the United States Postal Service ("USPS"), developing and maintaining notice websites and dedicated telephone numbers with recorded information and/or live operators, processing exclusion requests, objections, claim forms and correspondence, maintaining class member databases, adjudicating claims, managing settlement funds, and calculating claim payments and distributions. As an experienced neutral third-party administrator working with settling parties, courts, and mass action participants, Epiq has handled hundreds of millions of notices, disseminated hundreds of millions of emails, handled millions of phone calls, processed tens of millions of claims, and distributed hundreds of billions in payments.

DATA TRANSFER

4. On June 3, 2024, Counsel for Defendant provided Epiq with an electronic file containing name, address and email information for 5,236 potential Settlement Class Member records (the "Class Data").

5. Epiq loaded the Class Data into a database created for the purpose of administration of the Settlement and assigned unique identifiers to all the records it received in order to maintain the ability to track them throughout the Settlement administration process. Epiq analyzed the Class Data, checked for exact duplicate records, and determined that there were 5,132 unique Class Member records with complete and mailable addresses (the "Class List").

DISSEMINATION OF CLASS NOTICE BY EMAIL

6. Pursuant to Section IV.45 of the Settlement Agreement and Paragraph 9 of the Order, Epiq was to cause the Court-approved Class Notice to be formatted for electronic distribution by email to Settlement Class Members for whom an email address was included in the Class List. Attached hereto as **Exhibit A** is a template of the Class Notice that Epiq electronically disseminated by email (the "Email Notice").

7. The Email Notice, which was formatted for distribution using imbedded html text, provided Settlement Class Members with a link to the Settlement website. The Email Notice was formatted with easy to read text without graphics, tables, images and other elements that would increase the likelihood that the message could be blocked by Internet Service Providers and/or SPAM filters. Epiq also followed standard email protocols, including utilizing "unsubscribe' links and Epiq's contact information in the Email Notice.

8. Before sending the Email Notice, Epiq caused all potential Settlement Class Member email addresses in the Class List to be validated by contacting the internet service providers ("ISPs") associated with each email address to confirm that the email address still existed and was valid. Upon reaching out and completing the validation process with each of the ISPs, Epiq received positive confirmation that 4,496 email addresses in the Class List were potentially valid.

9. On July 17, 2024, Epiq sent the Email Notice to the 4,496 potentially valid email addresses contained in the Class List. Each Email Notice was transmitted with a unique message identifier. If the receiving e-mail server could not deliver the message, a "bounce code" was returned along with the unique message identifier.

10. For all Settlement Class Members with potentially valid email addresses in the Class List, Epiq closely monitored all deliverability attempts of the Email Notice throughout the Email Notice campaign. A total of 4,139 Email Notices were delivered. Of the 357 Email Notices that could not be delivered, 294 of them were undeliverable because the email address no longer existed, the email account was closed, or the email address had a bad domain name or address error (collectively, "Hard Bouncebacks"). After three attempts, the remaining 63 Email Notices could not be delivered due to an inactive or disabled account, the recipient's mailbox was full, technical auto-replies, or the recipient server was busy or unable to deliver (collectively, "Soft Bouncebacks"). Ultimately, Epiq was able to deliver direct Email Notice to 92.1% of the email addresses provided in the Class List.

DISSEMINATION OF CLASS NOTICE BY MAIL

11. Pursuant to Section IV.43 of the Settlement Agreement and Paragraph 9 of the Order, Epiq was responsible for sending the Class Notice in double postcard format (the "Postcard Notice") to all potential Settlement Class Members contained in the Class List via U.S. First Class Mail. The Postcard Notice included a detachable Claim Form, pre-populated with the claimant's information, with prepaid postage. Attached hereto as **Exhibit B** is a template of the Postcard Notice that Epiq disseminated by mail.

12. Prior to mailing the Postcard Notice to the Class List, all mailing addresses were checked against the National Change of Address ("NCOA") database maintained by the USPS.[2] In addition, the addresses were processed via the Coding Accuracy Support System ("CASS") to ensure the quality of the zip code, and verified through Delivery Point Validation ("DPV") to verify the accuracy of the addresses. To the extent that any Settlement Class Member had filed a USPS change of address request, and the address was certified and verified, the current address listed in the NCOA database was used in connection with the Postcard Notice mailing. This address updating process is standard for the industry and for the majority of promotional mailings that occur today. A total of 468 records in the Class List sent through the USPS NCOA, CASS, and DPV process were updated with new addresses.

13. Prior to commencing any mailings for this matter, Epiq established a dedicated post office box to mail notice from and to allow Settlement Class Members to contact the Settlement Administrator or submit documents by mail. Epiq has and will continue to maintain the post office box throughout the administration process.

14. On July 17, 2024, Epiq mailed 5,132 Postcard Notices via U.S. First Class Mail to potential Settlement Class Members on the Class List with a valid mailing address. In addition, a Long Form Notice and paper Claim Form ("Claim Package") has been mailed via U.S. First Class Mail to all persons who submitted a request for one. As of November 18, 2024, three (3) Claim Packages have been mailed as a result of such requests.

[2] The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms and lists submitted to it are automatically updated with any reported move based on a comparison with the person's name and last known address.

15. The return address on the Postcard Notice is the post office box maintained by Epiq. As of November 18, 2024, two (2) Postcard Notices have been returned by the USPS with forwarding information and promptly re-mailed to the forwarding address.

16. As of November 18, 2024, a total of 74 Postcard Notices have been returned to Epiq without forwarding address information. As a result of skip trace searches performed by Epiq using a third-party lookup service, a total of 47 addresses were updated and 47 Postcard Notices were re-mailed to the updated addresses.

17. As of November 18, 2024, Epiq has sent direct notice to 5,132 Settlement Class Members, with notice to 27 unique Settlement Class Members currently known to be undeliverable, which is a 99.5% deliverable rate.

DISSEMINATION OF REMINDER NOTICE BY EMAIL

18. Pursuant to Section IV.49 of the Settlement Agreement, Epiq was to send a reminder notice by email to Settlement Class Members who had not yet submitted a Claim Form, and for whom an Email Notice was not returned as undeliverable during the initial Email Notice campaign. On October 3, 2024, Epiq sent a reminder Email Notice to 3,812 Settlement Class Members. Attached hereto as **Exhibit C** is a template of the reminder Email Notice that Epiq electronically disseminated by email (the "Reminder Email Notice").

SETTLEMENT WEBSITE

19. Pursuant to Section IV.50 of the Settlement Agreement, on July 16, 2024, Epiq launched a website, www.BassAutoLossSettlement.com, that potential Settlement Class Members could visit to obtain additional information about the Settlement, as well as important documents, including the Long Form Notice, Claim Form, Settlement Agreement, Order, and any other relevant information that the Parties agree to provide or that the Court may require (the "Settlement

Website"). The Settlement Website contains a summary of options available to Settlement Class Members, deadlines to act, and provides answers to frequently asked questions. Settlement Class Members are also able to file a Claim Form via the website, or download a paper Claim Form, which they can then file by mail. References to the Settlement Website were prominently displayed in the Class Notice.

20. As of November 18, 2024, the Settlement Website has been visited by 545 unique visitors and 1,375 website pages have been viewed. Epiq has maintained and will continue to maintain and update the Settlement Website throughout the administration of the Settlement.

TOLL-FREE INFORMATION LINE

21. Pursuant to Section IV.57 of the Settlement Agreement, Epiq established and is maintaining a toll-free interactive Voice Response Unit ("VRU"), 1 (888) 963-2321, to provide information and accommodate inquiries from Settlement Class Members. Callers hear an introductory message and then are provided with scripted information about the Settlement in the form of recorded answers to frequently asked questions. Callers also have the options of requesting a Claim Package by mail or speaking to a live operator during normal business hours. The toll-free number was included in the Class Notice sent to Settlement Class Members and the automated telephone system is available 24 hours per day, seven (7) days per week.

22. As of November 18, 2024, the toll-free number has received 41 calls representing 288 total minutes, and call center representatives have handled 25 inbound calls representing 237 minutes of use. Epiq has and will continue to maintain and update the VRU throughout the Settlement administration process.

REQUESTS FOR EXCLUSION

23. Pursuant to Section XII.90 of the Settlement Agreement and Paragraph 10 of the Order, Settlement Class Members who wished to be excluded from the Settlement were required to mail written requests for exclusion to Epiq postmarked on or before November 11, 2024. As of November 18, 2024, Epiq has not received any requests for exclusion.

OBJECTIONS

24. Pursuant to Section XII.92 of the Settlement Agreement and Paragraph 11 of the Order, Settlement Class Members who wished to object to the Settlement were required to submit written objections to the Clerk of the Court, Counsel for Defendant, and Class Counsel on or before the objection deadline of November 11, 2024. As of November 18, 2024, Epiq has not received and is not aware of any written objections to the Settlement.

CLAIMS

25. Pursuant to Section V of the Settlement Agreement, Settlement Class Members who wish to be considered for payment under the Settlement are required to submit a Claim Form to Epiq either through the Settlement Website or by mail, submitted or postmarked no later than December 26, 2024. As of November 18, 2024, Epiq has received 525 potentially valid Claim Forms.

26. As Epiq continues to receive, process and review claims, we will determine and report to the Parties as to whether each claimant has submitted a valid Claim Form, pursuant to the provisions set forth in Section V of the Settlement Agreement.

I declare under penalty of perjury under the laws of the United States and the State of Louisiana that the foregoing is true and correct and that this declaration was executed on November 20, 2024 in Portland, Oregon.

Ricky Borges

Ricky Borges
Senior Client Services Manager
Epiq

EXHIBIT A

From: Bass v. Imperial Fire Settlement Administrator <noreply@bassautolosssettlement.com> Subject: Bass v. Imperial Fire Class Action Settlement

Click here to view this message in a browser window.

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 December 26, 2024.

TO MAKE A CLAIM: Click here, or go to www.BassAutoLossSettlement.com and enter your Unique ID Number and PIN:

$$VariableData$$

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 April 18, 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.BassAutoLossSettlement.com by using the above link and Unique ID information. Claim Forms must be postmarked or submitted online by **December 26, 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 **November 11, 2024.** 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 **November 11, 2024** 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.BassAutoLossSettlement.com. You may also contact Class Counsel at:

NORMAND PLLC
Edmund Normand, Esq.
ean@normandpllc.com
3165 McCrory Place, Suite 175
P.O. Box 140036

HERMAN, HERMAN, AND KATZ, LLC
Soren E. Gisleson
sgisleson@hhklawfirm.com
909 Poydras ST, Suite 1860
New Orleans, LA 70112

Orlando, FL 32803
Tel: 407-603-6031

Tel: 504-581-4892

EDELSBERG LAW, P.A.,
Adam Schwartzbaum
adam@edelsberglaw.com
20900 NE 30th Avenue
Suite 417
Aventura, FL 33180
Tel: 786-289-9471

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

AK151_v06

Copyright © 2024 {{Account.COMPANY}}
Our address is {{Account.BIZ_ADDRESS}}

If you do not wish to receive future email, click here.
(You can also send your request to **Customer Care** at the street address above.)

EXHIBIT B

Bass v. Imperial Settlement Administrator
PO BOX 2810
Portland, OR 97208-2810

COURT ORDERED LEGAL NOTICE

If you suffered a total-loss while insured by Imperial during the period commencing February 24, 2020 through April 18, 2024, you may be entitled to a cash payment.

Complete and return the enclosed form by December 26, 2024 to potentially receive a cash payment.

<<MAILID>>
<<NAME1>>
<<NAME2>>
<<ADDRESS1>>
<<ADDRESS2>>
<<ADDRESS3>>
<<ADDRESS4>>
<<ADDRESS5>>
<<CITY, STATE ZIPCODE>>
<<COUNTRY>>

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 April 18, 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.BassAutoLossSettlement.com. You also may make a claim online by visiting www.BassAutoLossSettlement.com, clicking "Make a Claim" and entering the Claim ID Number that is on the attached claim form. Claim forms must be postmarked or submitted online by **December 26, 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 **November 11, 2024**. 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 **November 11, 2024**. 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.BassAutoLossSettlement.com.

<<MailID>>

CLAIM FORM

<<Name>>
<<Address Line 1>>
<<Address Line 2>>
<<Address Line 3>>
<<Address Line 4>>

Unique ID: <<Col17>>
PIN: <<Col18>>

Imperial Total Loss Claim Number: <<Imperial Total Loss Claim Number>>
Date of Loss: <<Date of Loss>>

1. ADDRESS (if different from above)

Primary Address:

Primary Address continued:

City: State: ZIP Code:

2. 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.

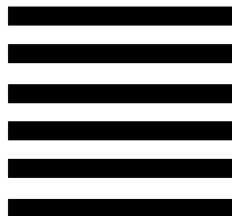
Signature: Date: MM – DD – YYYY

Name (please print):

To be considered, this Claim Form must be submitted online by December 26, 2024 or mailed to the return address with a postmark of December 26, 2024.

AK1483 v.08

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES



BUSINESS REPLY MAIL

FIRST-CLASS MAIL PERMIT NO. 581 PORTLAND, OR

POSTAGE WILL BE PAID BY ADDRESSEE

BASS V. IMPERIAL FIRE
SETTLEMENT ADMINISTRATOR
C/O EPIQ
PO BOX 2810
PORTLAND OR 97208-9722

EXHIBIT C

From: Bass v. Imperial Fire Settlement Administrator <noreply@bassautolosssettlement.com> Subject: Bass v. Imperial Fire Class Action Settlement Reminder

Click here to view this message in a browser window.

REMINDER NOTICE – OUR RECORDS INDICATE THAT YOU HAVE NOT YET FILED 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

This is a REMINDER NOTICE to claim your potential cash payment from the Settlement by December 26, 2024.

TO MAKE A CLAIM: go to www.BassAutoLossSettlement.com and enter your Unique ID Number and PIN:

{{VariableData}}

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 April 18, 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.BassAutoLossSettlement.com by using the above link and Unique ID information. Claim Forms must be postmarked or submitted online by **December 26, 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 **November 11, 2024.** 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 **November 11, 2024** 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.BassAutoLossSettlement.com. You may also contact Class Counsel at:

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

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

EDELSBERG LAW, P.A.,
Adam Schwartzbaum
adam@edelsberglaw.com
20900 NE 30th Avenue
Suite 417
Aventura, FL 33180
Tel: 786-289-9471

AK601_v01

Copyright © 2024 {{Account.COMPANY}}
Our address is {{Account.BIZ_ADDRESS}}

If you do not wish to receive future email, click here.
(You can also send your request to **Customer Care** at the street address above.)

EXHIBIT 2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

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

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 December 10, 2024, the matter of the Court's final approval of the Agreement submitted on April 17, 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 Soren E. Gisleson, 909 Poydras St #1860, New Orleans, LA 70112, and Edmund A. Normand, 3165 McCrory Pl Suite 175, Orlando, FL 32803 ("Class Counsel"). Appearing on behalf of Defendant were Janelle Sharer, Barrasso, Usdin, LLC, 909 Poydras Street Suite 2350, New Orleans, Louisiana 70112 and Steven M. Levy, 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 April 17, 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 April 18, 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 December 10, 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 December 10, 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"). 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 December 10, 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 zero objections and zero 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, may be used in any action that may be brought against it 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