

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

TIANA CRUZ-SANTIAGO, individually and  
on behalf of all others similarly situated,

CASE NO.: 19-CA-006930

Plaintiff,

v.

AMICA MUTUAL INSURANCE  
COMPANY, a Rhode Island corporation,

Defendant.

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**CLASS ACTION SETTLEMENT AGREEMENT**

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## **EXHIBITS**

1. Proposed Preliminary Approval Order
2. Postcard Notice, including detachable Claim Form
3. Electronic Claim Form
4. Blank Claim Form
5. Longform Notice

This Class Action Settlement Agreement (“Agreement”) is made by and between Plaintiff Tiana Cruz-Santiago (“Plaintiff”) and Defendant Amica Mutual Insurance Company (“Amica” or “Defendant”). Plaintiff and Defendant are referred to collectively as “the Parties.”

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

### **RECITALS**

WHEREAS, on July 2, 2019, Plaintiff Cruz-Santiago filed a Class Action Complaint against Defendant Amica in the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Case No. 19-CA-006930; and

WHEREAS, on August 14, 2019, Defendant filed its Answer and Affirmative Defenses to Plaintiff’s Complaint; and

WHEREAS, on August 16, 2019, Plaintiff moved for leave to file and attached an Amended Complaint to add a claim for declaratory relief pursuant to Fla. Stat. Chapter 86; and

WHEREAS, on August 21, 2019, this Court granted such request; and

WHEREAS, on August 21, 2019, Plaintiff served her first Requests for Production and first set of Interrogatories, seeking extensive and encompassing discovery necessary to elicit information on the merits and class-wide claims; and

WHEREAS, on September 20, 2019, Defendant filed its Answer and Affirmative Defenses to Plaintiff’s Amended Complaint; and

WHEREAS, on September 20, 2019, Defendant filed its answers and objections to Plaintiff’s discovery requests; and

WHEREAS, on December 11, 2019, Defendant filed a Motion for Summary

Judgement, arguing that there is nothing in the Policy that suggests Amica contractually agreed to provide coverage or reimbursement for title and registration transfer fees; and

WHEREAS, on December 19, 2019, Plaintiff filed Motions to Compel better responses and answers to her discovery requests;

WHEREAS, on December 27, 2019, Plaintiff filed a Response to Defendant's Motion for Summary Judgment;

WHEREAS, the Court has yet to rule on Defendant's Motion for Summary Judgment;

WHEREAS, Defendant provided information and confirmatory discovery that it generally does not include title and registration transfer fees as part of total-loss payments, and generally pays sales tax in the amount incurred by insureds in replacing a total-loss vehicle, up to the amount that would be paid on a vehicle of the same underlying value as the total-loss vehicle; and

WHEREAS, on March 5, 2020, the Parties engaged in arm's length settlement negotiations at mediation before mediator David Lichter;

WHEREAS, Defendant continues to deny all material allegations of the Action, maintains it acted in accordance with the insurance policies and all applicable laws or regulations and abided by all its contractual and statutory obligations, and would appeal this Action should it continue and should final judgment be entered. The Defendant is resolving this claim, inter alia, to avoid the costs, burdens, and inherent uncertainties associated with this litigation; and

WHEREAS, Plaintiff and Class Counsel, while believing that the claims asserted in the Action are meritorious, have considered the risks associated with the continued prosecution of this complex and time-consuming litigation, the risk associated with currently-pending appeals

on the same or similar issues in other cases (including an appeal before the Eleventh Circuit), the relief secured in this Agreement, as well as the likelihood of success on the appeal of this Action, and belief that, in consideration of all the circumstances, the Proposed Settlement embodied in this Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class Members; and

WHEREAS, Defendant, while denying wrongdoing of any kind and without admitting liability, nevertheless agrees to effectuate a full and final settlement of the claims asserted in this Action on the terms set forth below;

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

## **I. DEFINITIONS**

The following terms shall be defined as set forth below:

- a. “Actual Cash Value” has the meaning assigned to it by Plaintiff’s Amended Complaint.
- b. “Actual Cash Value Payment” means the original payment made by Defendant on a first-party property damage total-loss claim based on the estimated value of a comparable vehicle, i.e., a vehicle of the same make, model, model year, body type, and options with substantially similar mileage and physical condition, based on a listing of comparable vehicles in the relevant market and on the individual physical condition of the total-loss vehicle at the time of loss, minus any applicable deductible.
- c. “Adjusted Vehicle Value” means the value of the total-loss vehicle (at the time immediately preceding the loss) as determined by Defendant, taking into account the actual condition of the total-loss vehicle.
- d. “Attorneys’ Fee Award” means the Court-determined award of attorneys’ fees, costs, and expenses to Class Counsel.
- e. “Automobile Insurance Policy” means a Florida policy of insurance issued

by Defendant in effect during the Class Period and providing first-party private-passenger automobile physical damage coverage.

- f. “Base Value” means the value of the total-loss vehicle as determined by Defendant prior to adjustment for physical condition of the total-loss vehicle, before any adjustments due to the actual condition of the total-loss vehicle prior to the loss;
- g. “Blank Claim Form” shall mean a claim form that is not pre-filled with the Settlement Class Member name, date of loss, or Claim ID.
- h. “Claim Form” means the Court-approved paper (not electronic) claim form, without material alteration from Exhibit 2, that a Settlement Class Member may submit to be considered for payment under the Final Settlement.
- i. “Claim Payment” means the payment issued by Defendant to Settlement Class Members who submit valid and timely claims.
- j. “Claims Submission Deadline” means the date by which Claim Forms must be postmarked or Electronic Claim Forms must be submitted to be considered timely.
- k. “Class Counsel” means the attorneys approved and appointed by the Court to represent the Settlement Class Members.
- l. “Court” means the Thirteenth Judicial Circuit in and for Hillsborough County, Florida.
- m. “Covered Total Loss Claim” means any first-party property damage claim determined to constitute a Total Loss to an automobile that (a) occurred within the Class Period, (b) was determined by Defendant or by a court or arbitrator of competent jurisdiction to be covered by an Automobile Insurance Policy issued by Defendant, and (c) resulted in an Actual Cash Value Payment.
- n. “Effective Date” means the thirtieth (30<sup>th</sup>) day after entry of the “Final Order and Judgment” as defined herein.
- o. “Electronic Blank Claim Form” means an electronic claim form that is not pre-filled with the Settlement Class Member’s name, claim date of loss, or Claimant ID. An Electronic Claim Form may be submitted and signed electronically by a Settlement Class Member.
- p. “Electronic Claim Form” means the Court-approved electronic (not paper) claim form, without material alteration from Exhibit 3 except those alterations necessary to convert to electronic format with the functionality described herein, that a Settlement Class Member may submit electronically to be considered for payment under the Final Settlement.

- q. “Eligible Class Member” means a Settlement Class Member who timely submits a Claim Form or Electronic Claim Form.
- r. “Fairness Hearing” means the fairness hearing conducted by the Court to consider final approval of this Agreement.
- s. “Final Order and Judgment” means a Final Order from the Court approving the Settlement Agreement, disposing of all claims asserted in the Action, and settling and releasing all claims consistent with the terms of this Agreement.
- t. “Final Settlement” means the settlement approved by the Court in the Final Order and Judgment as fair, reasonable, and adequate.
- u. “Service Award” means the potential award to Plaintiff, if any, as determined by the Court.
- v. “Legally Authorized Representative” means an administrator/administratrix, personal representative, or executor/executrix of a deceased Settlement Class Member’s estate; a guardian, conservator, or next friend of an incapacitated Settlement Class Member; or any other legally appointed Person or entity responsible for handling the affairs of a Settlement Class Member. For purposes of completing a claim form, a surviving spouse of a deceased class member will be considered a legally authorized representative for purposes of this agreement if no Estate has been opened, and no other person has legal authority for handling the affairs of the deceased Settlement Class Member.
- w. “Longform Notice” means Notice without material change from Exhibit 5.
- x. “Postcard Notice” means the Court-approved short form notice (i.e., postcard notice), without material alteration from Exhibit 2, mailed via first-class mail to potential Settlement Class Members.
- y. “Notice Date” means the date that the initial mailing of the Postcard Notice to potential Settlement Class Members is completed.
- z. “Opt-Out List” means the list of valid and timely requests for exclusion from the Settlement Class compiled by the Settlement Administrator.
- aa. “Person” means any natural person, individual, corporation, association, partnership, trust, or any other type of legal entity.
- bb. “Proposed Preliminary Approval Order” means the proposed order attached hereto as Exhibit 1.
- cc. “Proposed Settlement” means the settlement described in this Agreement,

before final approval by the Court.

- dd. “Release” shall have the meaning given such term in Paragraphs 52-53.
- ee. “Released Claims” means claims, rights, actions, or causes of action that Defendant failed to pay, Title Transfer Fees and/or Tag Transfer Fees (as defined herein) to a Settlement Class Member with respect to any Covered Total Loss Claim during the Class Period under an Automobile Insurance Policy. Released Claims do not include any claim for enforcement of the contemplated Settlement Agreement and/or Final Order and Judgment. Released Claims do not include any claims, actions, or causes of action alleging that Defendant failed to properly calculate the Base Value or Adjusted Vehicle Value of total loss vehicles. Released Claims do not include any claims, actions, cause of actions, or suits of any kind or nature for failure to pay dealer fees, document fees, ready-to-go fees, dealer prep fees, stamp fees, or any fee incidental to transfer or replacement of a vehicle other than Title Transfer Fees and Tag Transfer Fees. The examples provided in this Definition of claims or potential claims that are not included within the definition of Released Claims are only examples, and are not intended to consist of a complete list of claims that are not Released, and these examples have no bearing or impact on whether any specific claim not listed is or is not a Released Claim.
- ff. “Released Persons” means (a) Defendant and Amica Property and Casualty Company; (b) all divisions, parent entities, affiliates, and subsidiaries of Defendant; (c) all past and present officers, directors, agents, attorneys, employees, stockholders, successors, assigns, independent contractors, and representatives of the entities or Persons listed in this Paragraph; and (d) all of the heirs, estates, successors, assigns, and legal representatives of any of the entities or Persons listed in this Paragraph.
- gg. “Settlement Administrator” means Angeion Group.
- hh. “Settlement Class” is defined as

All insureds, under any Florida automobile insurance policy issued by Amica Mutual Insurance Company or Amica Property and Casualty Company (“Amica”) 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 five year time period to the date on which this lawsuit was filed until the date of any certification order and who are mailed class notice and do not timely opt out from the settlement class (the “Settlement Class Members”).

Excluded from the Class are Defendant and all other Released Persons, Class

Counsel, and any judge, deputy, and/or employee of the Court.

- ii. “Settlement Class Member” means any Person encompassed by the definition of the Settlement Class and not excluded from the class as set forth above.
- jj. “Total Loss” means an insured vehicle that sustained damage, was the subject of a first-party property claim submitted to Defendant, and for which Defendant issued an Actual Cash Value Payment to its insured.

## II. PRELIMINARY CERTIFICATION OF THE SETTLEMENT CLASS

- 1. Solely for the purpose of implementing this Agreement and effectuating the Proposed Settlement, Defendant stipulates to entry of a Preliminary Approval Order (in the form of the proposed Order attached as Exhibit 1 or including the substance of the proposed Order attached as Exhibit 1), preliminarily certifying the Settlement Class, appointing the Plaintiff as representative of the Settlement Class, and appointing the following as Class Counsel for the Settlement Class:

NORMAND PLLC Edmund Normand.  
Jacob Phillips  
3165 McCrory Place, Suite 175  
Orlando, FL 32803  
Telephone: (407) 603-6031  
Facsimile: (888) 974-2175  
Ed@ednormand.com  
Jacob.phillips@normandpllc.com

EDELSBERG LAW, P.A.  
Scott Edelsberg, Esq.  
20900 NE 30<sup>th</sup> Avenue, Suite 417  
Aventura, FL 33180  
Telephone: (305) 975-3320  
[scott@edelsberglaw.com](mailto:scott@edelsberglaw.com)

SHAMIS & GENTILE, P.A.  
Andrew J. Shamis, Esq.  
14 NE 1<sup>st</sup> Avenue, Suite 1205  
Miami, FL 33132  
Telephone: (305) 479-2299  
[ashamis@shamisgentile.com](mailto:ashamis@shamisgentile.com)

DAPEER LAW, P.A.  
Rachel Dapeer, Esq.  
300 S. Biscayne Blvd, #2704  
Miami, FL 33131  
Telephone: (305) 610-5223

2. The Parties stipulate that, based from the estimate already provided by Angeion for its services in this action, Angeion shall be appointed by the Court as Settlement Administrator.
3. Plaintiff shall submit this fully executed Agreement to the Court, and request entry of the Proposed Preliminary Approval Order, without material alteration from Exhibit 1, or an Order that includes the substance of the Proposed Preliminary Approval Order, and specifically that:
  - (a) preliminarily approves this Agreement;
  - (b) finds that the Court possesses personal jurisdiction over all Settlement Class Members and possesses subject matter jurisdiction to preliminarily approve this Agreement;
  - (c) preliminarily certifies the Settlement Class, approves the Plaintiff as class representative of the Settlement Class, and appoints Class Counsel as counsel for the Settlement Class;
  - (d) finds that the Proposed Settlement is sufficiently fair, reasonable, and adequate to warrant providing Notice to the Settlement Class;
  - (e) approves the Notice Plan;
  - (f) approves the Claim Form and Electronic Claim Form to be distributed to and/or used by Settlement Class Members, and sets a Claims Submission Deadline by which the Claim Forms and Electronic Claim Forms must be submitted in order to be deemed timely (on the thirtieth (30<sup>th</sup>) day following the Final Approval Hearing);
  - (g) approves the settlement website as described herein, which may be amended during the course of the settlement as appropriate and agreed to by the Parties, and which shall be maintained for at least 180 days after the Claims Submission Deadline;
  - (h) appoints Angeion as the Settlement Administrator;
  - (i) directs the Settlement Administrator to maintain a toll-free IVR telephone system containing recorded answers to frequently asked questions, along with an option permitting potential Settlement Class Members to leave messages in a voicemail box;
  - (j) determines that the Notice provided to potential Settlement Class Members (i) is the best practicable notice under the circumstances; (ii)

is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and their right to object to or exclude themselves from the Proposed Settlement; and (iii) constitutes due, adequate, and sufficient notice to all Persons entitled to receive notice;

- (k) schedules the Fairness Hearing to consider the fairness, reasonableness, and adequacy of the Proposed Settlement and whether it should be finally approved by the Court on a date not sooner than 105 days after entry of the Preliminary Approval Order;
- (l) requires the Settlement Administrator to file proof of completion of Notice at least ten (10) days prior to the Fairness Hearing, along with the Opt-Out List, which shall be a list of all Persons who timely and properly requested exclusion from the Settlement Class, and an affidavit attesting to the accuracy of the Opt-Out List;
- (m) requires each Settlement Class Member who wishes to exclude himself or herself from the Settlement Class to submit an appropriate, timely request for exclusion, postmarked no later than forty-five (45) days after the Notice Date.
- (n) orders that any Settlement Class Member who does not submit a timely, written request for exclusion from the Settlement Class will be bound by all proceedings, orders, and judgments in the Action;
- (o) requires each Settlement Class Member who does not submit a timely request for exclusion from the Settlement Class and wishes to object to the fairness, reasonableness, or adequacy of this Agreement or to intervene in the Action, to follow the procedures set forth in Paragraphs 38-47 of this Agreement, including those requirements applicable to any attorney representing the Settlement Class Member;
- (p) directs the Settlement Administrator to rent a post office box to which requests for exclusion, objections, notices of intention to appear, and any other settlement-related communication may be sent, and provides that only the Settlement Administrator, the Court, the Clerk of the Court, and their designated agents shall have access to this post office box, except as otherwise expressly provided in this Agreement;
- (q) directs the Settlement Administrator to promptly provide copies of all objections, requests for exclusion, motions to intervene, notices of intention to appear, or other communications that come into its possession to Class Counsel and Defendant's counsel;
- (r) stays all proceedings in the Action until further order of the Court,

except that the Parties may conduct proceedings necessary to implement the Proposed Settlement or effectuate the terms of this Agreement; and

- (s) implements or orders any other provisions or directives or procedures not contemplated by the Parties, if necessary to comply with governing law and/or binding precedent and if such provisions do not materially alter the substantive terms of this Agreement.
4. In the event that the Proposed Settlement is not consummated for any reason, (a) the Parties and their attorneys shall proceed as though the Agreement had never been entered and the Parties and their Counsel shall not cite nor reference this Agreement (except as necessary in filings or briefings in this Action only); and (b) nothing in this Agreement may be used as an admission or offered into evidence in any proceeding.

### **III. CLASS NOTICE**

5. Defendant will pay all costs of effectuating and implementing the Class Notice set forth herein.
6. Within 10 days of the Preliminary Approval Order, Defendant will provide all last-known physical addresses it possesses for Settlement Class Members to Angeion.
7. Within 30 days of the Preliminary Approval Order, Angeion shall initiate mailing of the Postcard Notice and Claim Form for each covered total loss claim (if a Settlement Class Member has more than one claim, the Settlement Class Member will receive a Claim Form for each claim showing the date of loss) by first-class mail to each potential Settlement Class Member. The Claim Form will be detachable, return-addressed, and shall be affixed with prepaid postage sufficient to mail back to the Settlement Administrator.
8. The Postcard Notice and Claim Form shall be in the same form as Exhibit 2. Claim Forms will be pre-filled with a unique Claimant ID, the Settlement Class Member Name, and the claim Date of Loss (“DOL”) as set forth in Exhibits 2 and 3. Defendant will provide data to the Settlement Administrator to be used to enable Claim Forms and Electronic Claim Forms to be pre-filled with the Class Member Name and DOL.
9. Prior to Postcard Notice, the Settlement Administrator shall run physical mailing addresses through the National Change of Address Database (“NCOA”) to attempt to obtain a more current name and/or physical mailing address for each potential Settlement Class Member.
10. The Settlement Administrator shall initiate and continue to maintain the website [www.amicatotallosssettlement.com](http://www.amicatotallosssettlement.com) and post the Settlement

Agreement, Notice, Longform Notice, Claim Form, Electronic Claim Form, Preliminary Approval Order, and frequently asked questions. The website may be amended from time to time as agreed to by the Parties. The website shall also contain Spanish translations of the Mail Notice, Longform Notice, and Claim Form. The Settlement Administrator shall maintain the website for at least 180 days after expiration of the Claims Submission Deadline.

11. The home page of the website shall reflect the case settlement and shall have a “Make A Claim” button permitting a Class Member to access a pre-filled Electronic Claim Form by providing Claimant ID, with a method to submit the Electronic Claim Form with an electronic signature, and a method to request that another copy of the paper Claim Form be mailed or emailed to the Settlement Class Member.
12. The website shall provide that a Settlement Class Member may submit a Claim Form without a Claimant ID by completing an Electronic Blank Claim Form by entering the Settlement Class Member name, policy number or claim number, and address, and by signing and submitting the Electronic Blank Claim Form electronically.
13. If any Notice and/or Claim Form mailed to any potential Settlement Class Member is returned to the Settlement Administrator as undeliverable, the Settlement Administrator will promptly log each Notice and/or Claim Form that is returned as undeliverable and provide copies of the log to Defendant and Class Counsel upon request. If the mailing is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator shall forward the mailing to that address. For the remaining returned mailings, the Settlement Administrator will use reasonable efforts, including potentially an Experian search or skip tracing, to attempt to obtain a new address and those mailings shall be forwarded to any new address obtained through such a search. If any Notice is returned as undeliverable a second time, no further mailing shall be required. It is agreed by the Parties that the procedures set forth in the preceding Paragraph and this Paragraph constitute reasonable and the best practicable notice under the circumstances and an appropriate and sufficient effort to locate current addresses for Settlement Class Members such that no additional efforts to do so shall be required.
14. The Parties agree that the Longform Notice, without material alteration from Exhibit 5, shall be posted to the website as set forth below, and will be available upon request to Settlement Class Members.
15. The Notice and Claim Form will also be made available to all potential Settlement Class Members by request to the Settlement Administrator, who shall send via first-class U.S. mail any of these documents as requested by any potential Settlement Class Member. If a Claim ID is not available to the Settlement Administrator for the potential Settlement Class Member, the

Settlement Administrator shall provide a Blank Claim Form to the requester with instruction that the Blank Claim Form must be mailed to the Settlement Administrator postmarked by the claims submission deadline with the Settlement Class Member name, policy number or claim number, address, and signature.

16. The Settlement Administrator shall maintain a toll-free IVR telephone system containing recorded answers to frequently asked questions, along with an option permitting callers to leave messages in a voicemail box.
17. The Settlement Administrator shall rent a post office box to be used for receiving requests for exclusion, objections, notices of intention to appear, and any other settlement-related communications. Only the Settlement Administrator, the Court, the Clerk of the Court, and their designated agents shall have access to this post office box, except as otherwise expressly provided in this Agreement.

#### **IV. SETTLEMENT ADMINISTRATOR**

18. The Parties agree to the appointment of Angeion as Settlement Administrator to perform the services described herein. Defendant shall be solely responsible for the payment of the Settlement Administrator's fees and costs. Payments to Settlement Class Members will not be impacted or affected in any way due to Defendant's agreement to pay the fees and costs of the Settlement Administrator.
19. The Settlement Administrator shall assist with the various administrative tasks set forth herein and any others necessary to implement the terms of this Agreement and the Proposed Settlement as preliminarily approved, including (i) mailing or arranging for the mailing of the Postcard Notice described above and submitting to the Parties and Court an affidavit offering proof thereof; (ii) handling mail returned as not delivered and making additional mailings required under the terms of the Agreement; (iii) responding, as necessary, to inquiries from Settlement Class Members; (iv) providing to the Parties, within five (5) business days of receipt, copies of all objections, motions to intervene, notices of intention to appear, and requests for exclusion from the Settlement Class; (v) preparing a list of all Persons who timely requested exclusion from the Settlement Class and submitting to the Court the Opt-Out List and supporting affidavit ten (10) days before the Fairness Hearing scheduled by the Court; (vi) preparing a list of all Persons who submitted objections to the settlement and submitting an affidavit testifying to the accuracy of that list; (vii) preparing a list of all Persons who make a timely claim; (viii) implementing procedures for processing and handling Claims submissions; and (viii) promptly responding to requests for information and documents from Class Counsel, Defendant, and/or Defendant's Counsel.
20. As set forth herein, the Settlement Administrator shall set up, coordinate,

maintain and/or implement (a) the post office box described in Paragraph 17; (b) the website described in Paragraph 10-12; and (c) the toll-free IVR number described in Paragraph 16.

## **V. CLAIMS PAYMENTS**

21. To be eligible for a Claim Payment under this settlement, a Settlement Class Member or his or her Legally Authorized Representative must timely submit a Claim Form or Electronic Claim Form and must not have submitted a request for exclusion.
22. As to Transfer Fees, the Claim Payment paid to Eligible Class Members who submit timely and valid claims will be for \$79.85. This amount includes \$75.25 for title transfer fees and \$4.60 for registration (tag) transfer fees.
23. The Settlement Administrator shall establish procedures for receiving and processing Claim Forms and Electronic Claim Forms.
24. The payment described herein is the only payment to which Settlement Class Members, other than Plaintiff, are entitled under this Agreement. The payments shall be in full and final disposition of the Action, and in consideration for the release of any and all Released Claims as against any and all Released Persons. Any rights to settlement claim payments under this Agreement shall inure solely to the benefit of Class Members and are not transferable or assignable to others.

## **VI. CLAIM SUBMISSIONS**

25. The Claim Form shall be without material alteration from Exhibit 4, and the Electronic Claim Form shall be without material alteration from Exhibit 3 except for changes necessary for conversion to electronic format.
26. Each Settlement Class Member will be provided an opportunity to submit, at his or her option, either a Claim Form or an Electronic Claim Form requesting a payment calculated in accordance with Paragraphs 21-24.
27. A Claim Form submitted for a Settlement Class Member who has more than one claim shall constitute a Claim Form for all covered claims of the Settlement Class Member.
28. To be considered for payment, a Claim Form must be postmarked no later than thirty (30) days after the Fairness Hearing. Electronic Claim Forms must be submitted electronically no later than the thirtieth day after the Fairness Hearing, at which point the Settlement Administrator shall deactivate the Electronic Claim Form.

29. If not pre-populated as set forth above, a Settlement Class Member must include in a Blank Claim Form (i) the name and current address of the Settlement Class Member and (ii) the claim number or the Settlement Class Member's policy number at the time of the claim. The Claim Form also must contain a signature, or in the case of a Blank Electronic Claim Form, an electronic signature, certifying the claim under penalty of perjury.

## **VII. CLAIMS ADMINISTRATION**

30. Claim Forms that are timely mailed to the correct address shall be processed as follows:
- (a) If a Claim Form is unsigned, illegible, or does not include the Member Number or policy number involved in the claim, the Settlement Administrator shall send the claimant a letter, with a copy to Defendant and Class Counsel, informing him or her of the defect and providing the claimant with thirty (30) days in which to cure the defect. If the claimant does not subsequently provide a Claim Form curing the defect and postmarked within thirty (30) days of the date of the Settlement Administrator's letter, that Claim Form shall be deemed defective and not eligible for payment, and the claimant shall not have an additional opportunity to cure the defect.
  - (b) Within sixty (60) days after the later of the Claims Submission Deadline or the Final Order and Judgment, Defendant shall:
    - (1) inform Class Counsel and the Settlement Administrator of any claims (other than claims determined by the Settlement Administrator to be untimely) it believes are invalid and, as to each such claim, include the Settlement Class Member name, claim number, and a brief description as to why Defendant believes the claim to be invalid; and
    - (2) For those claims that Defendant does not challenge as invalid, Defendant will review its records, claims files, and data, and shall provide the Settlement Administrator and Class Counsel the amount of Claim Payment for each claim. Class Counsel will have ten days from the provision of the Claim Payment amount to dispute the amount of Claim Payment. Defendant and Class Counsel shall cooperate to resolve any dispute as to Claim Payment within ten days. Any dispute the Parties are unable to resolve will be submitted to the Settlement Administrator for determination, and such decision shall be binding as to Defendant and the Settlement Class Member.
  - (c) Within one hundred (100) days after the later of the Claims

Submission Deadline or the Final Order and Judgment, the Settlement Administrator shall mail a check for the full amount of Claim Payment to all Settlement Class Members whose submitted claims were not challenged as invalid, and for which Class Counsel did not dispute the amount of Claim Payment. Defendant shall provide sufficient funding to the Settlement Administrator to enable the Settlement Administrator to timely make the payments identified in this subparagraph.

- (d) Within thirty (30) days after resolution of Class Counsel's disputes of the amount of Claim Payments as provided in Paragraph 32(b)(2), the Settlement Administrator shall mail a check for the resolved full amount of Claim Payment to all Settlement Class Members on whose claims Class Counsel disputed the amount of Claim Payment. Defendant shall provide sufficient funding to the Settlement Administrator to enable the Settlement Administrator to timely make the payments identified in this subparagraph.
- (e) Within thirty (30) days of receiving Defendant's determinations in Paragraph 32(b)(1), the Settlement Administrator shall mail an Explanation Letter to all Settlement Class Members who submitted claims challenged by Defendant as invalid an explanation of why Defendant deemed the claim to be invalid. The explanation will include the process by which the defect may be cured and inform the Settlement Class Member that it may re-submit a Claim Form correct the deficiency, or, if Defendant determined in its opinion that the defect is not curable, will inform the Settlement Class Member that they may contest the determination by mailing a written explanation as to why Defendant's determination was incorrect. The mailing contesting Defendant's determination must be postmarked no later than thirty (30) days after the Explanation Letter to be deemed timely.
- (f) Within thirty (30) days of receiving any re-submissions or contestations from Settlement Class Members as set forth in Subparagraph (e), the Settlement Administrator will determine whether the Claim, as originally submitted or as re-submitted, constitutes a valid Claim. The decision by the Settlement Administrator shall be binding on Defendant and any Settlement Class Member. The Settlement Administrator shall provide an explanation of any decision to Defendant and Class Counsel. Within ten (10) days of the Settlement Administrator's determination, the Settlement Administrator will mail a payment to any Settlement Class Members determined to have submitted or re-submitted a valid claim, and the Settlement Administrator shall mail an explanation to any Settlement Class Member it determined submitted an invalid claim. Defendant shall provide sufficient funding to the Settlement Administrator to enable the Settlement Administrator to timely make the payments

identified in this subparagraph.

- (g) Claim Forms that are not timely postmarked, as determined by the Settlement Administrator, will not be considered for payment, and the Settlement Class Members whose Claim Forms are deemed untimely will be provided written notice thereof.

## **VIII. ATTORNEYS' FEES AND COSTS AWARD AND SERVICE AWARDS**

31. Class Counsel's entitlement, if any, to an Attorneys' Fee Award, costs and expenses, and the Plaintiff's entitlement, if any, to a Service Award, will be determined by the Court. The terms of any such awards, fees, costs, or expenses were not negotiated until after all material elements of the Proposed Settlement were resolved and the terms of this Proposed Settlement are not conditioned upon any maximum or minimum Attorneys' Fee Award or Service Award, except as explicitly stated herein.
32. Class Counsel will file a motion with the Court prior to the Fairness Hearing requesting an award of attorneys' fees payable to Class Counsel in a total amount that shall not exceed \$204,000.00 ("Maximum Attorneys' Fees Award"), consisting of \$200,000 for legal fees and up to \$4,000 in verifiable non-legal fee costs, and incentive awards to Plaintiff not to exceed \$3,500.00 ("Maximum Service Award"). Payment of any attorneys' fees and costs award and/or service awards, and of the costs of the administration of this settlement, are separate from and in addition to the payments available to Settlement Class Members. The amount owed and/or paid to Settlement Class Members will not be adjusted or reduced at all as a result of any payments made for attorneys' fees, costs, Service Awards, or the costs of administration and notice.
33. Defendant will not oppose or object to a motion requesting an award of attorneys' fees, costs, and expenses to be paid to Class Counsel in an amount not exceeding the Maximum Attorneys' Fees Award. Defendant will not oppose or object to a motion requesting Service Award to the Plaintiff in an amount not exceeding the Maximum Service Award. Defendant agrees to pay these Attorneys' Fee and Service Awards or any lesser amount the Court may award. Plaintiff and Class Counsel will not seek to enforce or recover any Attorneys' Fee and/or Costs Award in excess of the Maximum Attorneys' Fee Award and/or Maximum Costs Award, or any Service Award in excess of the Maximum Service Award. Defendant will not oppose or object to the payment of Settlement Administration Costs as separate costs and expenses that are in addition to the Maximum Attorneys' Fees and Costs Award.
34. Any Attorneys' Fees Award and Service Award made by the Court must be paid by Defendant to Class Counsel no later than five (5) days after the the Final Order and Judgment.

## **IX. FINAL APPROVAL OF THE PROPOSED SETTLEMENT**

35. Within fifteen (15) days after the deadline for seeking exclusion from the Settlement Class and/or for filing objections to the Proposed Settlement as provided herein, Class Counsel will file a motion seeking the Court's final approval of the Proposed Settlement at the Fairness Hearing to be held at a time, date, and location as set by the Court and that will be stated in the Notice. The Motion shall request, at minimum, the Court to enter a Final Order and Judgment that:
- (a) certifies the Settlement Class for settlement purposes only;
  - (b) finds the Court has personal jurisdiction over all Settlement Class Members and subject matter jurisdiction to approve this Agreement and all Exhibits thereto;
  - (c) gives final approval to the Proposed Settlement and directs the Parties and counsel to comply with and consummate the terms of the Agreement;
  - (d) finds that Class Counsel and the Plaintiff adequately represented the Settlement Class;
  - (e) finds that the terms of this Agreement are fair, reasonable, and adequate to the Settlement Class Members;
  - (f) finds that the Notice set forth in this Agreement (i) constituted the best practicable notice under the circumstances; (ii) was reasonably calculated to apprise potential Settlement Class Members of the pendency of the Action, their right to object to or exclude themselves from the Proposed Settlement, and to appear at the Fairness Hearing; and (iii) constituted due, adequate, and sufficient process and notice to all Persons entitled to receive notice;
  - (g) finds that the Opt-Out List is a complete list of all Settlement Class Members who have timely requested exclusion from the Settlement Class and, accordingly, neither share in nor are bound by the Final Order and Judgment;
  - (h) provides that the Plaintiff, all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Opt- Out List, and their heirs, estates, trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and/or anyone claiming through them or acting or purporting to act for them or on their behalf, regardless of whether they have submitted a Claim Form or Electronic Claim Form, and

regardless of whether they have received actual notice of the Proposed Settlement, have conclusively compromised, settled, discharged, and released all Released Claims against Defendants and the Released Persons, and are bound by the provisions of this Agreement;

- (i) dismisses all claims in the Action on the merits and with prejudice, and without fees or costs except as provided herein, and entering final judgment thereon;
- (j) determines the amount of the Attorneys' Fees and Costs Award to Class Counsel, and the Service Award to the Plaintiff; and
- (k) appoints Angeion as the Settlement Administrator;

Defendant will not oppose final approval of the settlement as set forth herein.

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

- 36. Settlement Class Members who wish to exclude themselves from the Settlement Class must submit timely and written requests for exclusion. To be effective, such a request must include the Settlement Class Member's name and address, an unequivocal statement that the Settlement Class Member wishes to be excluded from the Settlement Class, and the signature of the Settlement Class Member or the Legally Authorized Representative of the Settlement Class Member. The request must be mailed to the Settlement Administrator at the address provided in the Notice postmarked no later than forty-five (45) days after the Notice Date. Requests for exclusion must be exercised individually by the Settlement Class Member and is only effective as to the individual Settlement Class Member requesting exclusion.
- 37. Plaintiff shall not elect or seek to opt out or exclude themselves from the Settlement Class, and any such attempt will be deemed a breach of this Agreement and sufficient to permit Defendant to terminate the Agreement.
- 38. The Settlement Administrator shall promptly log and prepare a list of all Persons who properly requested exclusion from the Settlement Class (the "Opt-Out List") and shall submit an affidavit to the Court which includes and attests to the accuracy of the Opt-Out List no later than ten (10) days prior to the Final Fairness Hearing set by the Court.
- 39. All Settlement Class Members who do not timely and properly exclude themselves from the Settlement Class shall be bound by this Agreement, and all their claims shall be dismissed with prejudice and released as provided for herein pursuant to the terms of a Final Order and Judgment.
- 40. Settlement Class Members who do not request exclusion from the Settlement

Class may object to the Proposed Settlement. Settlement Class Members who choose to object to the Proposed Settlement must file written notices of intent to object. Any Settlement Class Member who timely files an objection in compliance with this paragraph may appear at the Fairness Hearing, in person or by counsel, and be heard to the extent and only if permitted by the Court.

41. To be timely, the objection or motion to intervene must be postmarked and mailed to the Settlement Administrator, and filed with the Court, no later than forty-five (45) days after the Mailed Notice Date.
42. The right to object to the Proposed Settlement or to intervene in the Action must be exercised individually by a Settlement Class Member or his or her attorney, and not as a member of a group, class, or subclass, except that such objections may be submitted by a Settlement Class Member's Legally Authorized Representative.
43. To be effective, a notice of intent to object to the Proposed Settlement must:
  - (a) Include the name of the case and case number;
  - (b) Provide the name, address, telephone number, and signature of the Settlement Class Member filing the objection;
  - (c) Indicate the specific reasons why the Settlement Class Member objects to the Proposed Settlement;
  - (d) Contain the name, address, bar number, and telephone number of the objecting Settlement Class Member's counsel, if any, and any such attorney must comply with all applicable rules of the Court; and
  - (e) State whether the objecting Settlement Class Member intends to appear at the Fairness Hearing, either in person or through counsel.
44. In addition, a notice of intent to object must contain the following information, if the Settlement Class Member or his or her attorney requests permission to speak at the Fairness Hearing:
  - (a) A detailed statement of the legal and factual basis for each objection;
  - (b) A list of any and all witnesses the Settlement Class Member may seek to call at the Fairness Hearing (subject to applicable rules of procedure and evidence and at the discretion of the Court), with the address of each witness and a summary of his or her proposed testimony;
  - (c) A list of any legal authority the Settlement Class Member will present at the Fairness Hearing; and

(d) Documentary proof of membership in the Settlement Class.

45. Any Settlement Class Member who does not file a timely notice of intent to object may, in the discretion of the Court, waive the right to object or to be heard at the Fairness Hearing and be barred from making any objection to the Proposed Settlement. Settlement Class Members have the right to exclude themselves from the Proposed Settlement and pursue a separate and independent remedy against Defendant by complying with the exclusion provisions set forth herein. Settlement Class Members who object to the Proposed Settlement shall remain Settlement Class Members and waive their right to pursue an independent remedy against Defendants. To the extent any Settlement Class Member objects to the Proposed Settlement, and such objection is overruled in whole or in part, such Settlement Class Member will be forever bound by the Final Order and Judgment of the Court. Settlement Class Members can avoid being bound by any judgment of the Court by complying with the exclusion provisions set forth herein.
46. The Settlement Administrator shall provide Defendant and Class Counsel a copy of each notice of intent to object received by the Settlement Administrator.

## **XI. DENIAL OF LIABILITY**

47. Defendant maintains it acted in accordance with the governing laws and regulations of the State of Florida and abided by the terms of the applicable insurance policies. Defendant nonetheless has concluded that it is in its best interests that the Action be settled on the terms and conditions set forth in this Agreement. Defendant reached this conclusion after considering the factual and legal issues in the Action, the substantial benefits of a final resolution of the Action, and the expense that would be necessary to defend the Action through judgment, appeal, and any subsequent proceedings that may occur.
48. Defendant believes that it stands a reasonable chance of success in any appeal as to the merits of this case and as to the certification of the Class. Defendant maintains that its defenses to summary judgment and to class certification are meritorious. Because of the costs, resources, and time that would be incurred, Defendant asserts that it would not have settled this Action except on a claims-made basis.
49. As a result of the foregoing, Defendant enters into this Agreement without admitting, conceding, or acknowledging any fault, liability, or wrongdoing of any kind. This Agreement shall not be construed as an admission or concession of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind. The terms of this Agreement, including the claims-made nature of the Agreement, are material to Defendant's decision to settle this Action notwithstanding its' belief that its' defenses are meritorious and

its' chances of success on appeal are significant.

## **XII. DISMISSAL OF ACTION AND RELEASE OF CLAIMS**

50. Upon the Effective Date, the Plaintiff, all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Opt-Out List, and their heirs, estates, trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and/or anyone claiming through them or acting or purporting to act for them or on their behalf, regardless of whether they have submitted a Claim Form or Electronic Claim Form, will be bound by the Final Order and Judgment and conclusively deemed to have fully released, acquitted, and forever discharged all Released Persons from all Released Claims. The Released Claims shall include title transfer fees, registration transfer fees and registration tag transfer fees that arise out of or relate to Total Loss Claims in the Class Period and as identified in the operative Compliant.
51. The entry of the Final Order and Judgment, the Action will be dismissed with prejudice as to Defendant, the Plaintiff, and all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Opt-Out List, and will release all Released Persons from Released Claims.

## **XIII. RETENTION OF RECORDS**

52. The Settlement Administrator, Class Counsel, and Defendant shall retain copies or images of all returned Notices, Claim Forms, Electronic Claim Forms (and/or data resulting therefrom) and correspondence relating thereto, for a period of up to two (2) years after the Effective Date. After this time, upon Defendant's request, Class Counsel shall destroy any documentary records in their possession.

## **XIV. MISCELLANEOUS PROVISIONS**

53. Defendant will pay all costs incurred to implement and effectuate this Settlement, including, but not limited to, administrative costs, notice costs, claims handling cost, postage, website maintenance, costs to email, and all other costs necessary to comport with this Agreement. These costs are separate from, and not included within, the lawsuit costs and expenses Defendant has agreed to pay, if Ordered by the Court, as part of Plaintiff's Attorneys' Fee Award.
54. After entry of a Preliminary Approval Order, Defendant agrees to include title transfer fees of (at minimum) \$75.25, registration (tag) transfer fees of (at minimum) \$4.60, in ACV payments under Florida Automobile Insurance Policies, without precondition of incurring such costs, unless and until: (1) Defendant implements a change in their Florida Automobile Insurance

Policies explicitly specifying that such fees are excluded from coverage or other conditioned on incurring such costs; or (2) the Florida Supreme Court or a Florida District Court of Appeals, The Eleventh Circuit Court of Appeals (applying Florida law) or another binding legal authority issues a decision after the execution of this Agreement on a contested issue holding that such costs are not covered by Policies utilizing language substantially similar to Defendant's Policy language.

55. Each Party to this Agreement warrants that he, she, or it is fully authorized to enter into this Agreement, and is acting upon his, her, or its independent judgment and upon the advice of his, her, or its counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other party, other than the warranties and representations expressly made in this Agreement.
56. The Parties and undersigned counsel agree to undertake best efforts to effectuate this Agreement and the terms of the Proposed Settlement, including taking all steps and efforts contemplated by this Agreement, and any other reasonable steps and efforts which may become necessary by order of the Court or otherwise.
57. The headings and captions contained in this Agreement are for reference purposes only and in no way define, extend, limit, describe, or affect the scope, intent, meaning, or interpretation of this Agreement.
58. Unless otherwise noted, all references to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal or state legal holiday, such date or deadline shall be on the first business day thereafter.
59. Except as otherwise provided in a written amendment executed by the Parties or their counsel, this Agreement contains the entire agreement of the Parties hereto and supersedes any prior agreements or understandings between them. All terms of this Agreement shall be construed as if drafted by all parties hereto. The terms of this Agreement are and shall be binding upon each of the Parties and their agents, attorneys, employees, successors, and assigns, and upon all other Persons claiming any interest in the subject matter hereof through any of the parties hereto, including any Settlement Class Member.
60. This Agreement may be amended or modified only by a written instrument signed by all Parties.
61. This Agreement shall be subject to, governed by, construed, and enforced pursuant to the laws of the State of Florida, without regard to principles of conflicts of law.

- 62. The exhibits to this Agreement are integral parts of the settlement and are hereby incorporated and made part of this Agreement.
- 63. To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to any action, suit, or other proceeding which may be instituted, prosecuted, or attempted in breach of this Agreement.
- 64. This Agreement shall be deemed to have been executed upon the last date of execution by all the undersigned Parties and/or counsel.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by themselves or by their duly authorized representatives:

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
*Plaintiff and Class Representative*

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
 Scott A. Edelsberg  
 Rachel Dapeer  
 Andrew J. Shamis  
 Ed Normand  
*Counsel for Plaintiff and the Settlement Class*

Dated: 3/27/2020 Amica Mutual Insurance Company  
 By:   
 Name: Steven M. Peloquin  
 Title: Sr. Claims Examiner, Claims Executive Dept.

Dated: 3-27-2020 By:   
*Counsel for Defendant*