

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS**

STEVEN BROWN, PHILIP ANGELL,  
TONNIE BECK, TAMMY MORRIS, and  
DAWN BURNHAM, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

GEICO ADVANTAGE INSURANCE  
COMPANY, GEICO INDEMNITY  
COMPANY, GOVERNMENT  
EMPLOYEES INSURANCE COMPANY,  
GEICO COUNTY MUTUAL INSURANCE  
COMPANY and GEICO CHOICE  
INSURANCE COMPANY,

Defendants.

Case No.: 4:20-cv-00799

**DEFENDANTS' AMENDED ANSWER TO SECOND AMENDED  
CLASS ACTION COMPLAINT FOR DAMAGES**

Defendants GEICO ADVANTAGE INSURANCE COMPANY, GEICO INDEMNITY COMPANY, GOVERNMENT EMPLOYEES INSURANCE COMPANY, GEICO COUNTY MUTUAL INSURANCE COMPANY and GEICO CHOICE INSURANCE COMPANY (“GEICO” or “Defendants”) hereby file this amended answer to Plaintiffs’ Second Amended Class Action Complaint (“Complaint”) for damages dated June 26, 2020 as follows:

**NATURE OF THE ACTION**

1. This is a class action lawsuit by Plaintiffs who were named insureds under separate (but materially identical) Texas GEICO private passenger auto policies (the “Policies”) issued for physical damage including comprehensive and collision coverage. The Policies required payment of “actual cash value” (“ACV”) in the event of a total loss. GEICO systematically underpaid Plaintiffs and thousands of other putative class members amounts owed to its insureds pursuant to their promise to pay the ACV of total loss vehicles insured with comprehensive and collision coverage.

**Answer:** GEICO denies each and every allegation contained in paragraph 1 of the Complaint except admits that Plaintiffs were each insured under GEICO’s Texas Personal Auto Insurance Policy, policy forms A30TX (10-14) or CC50 (10-14) (the “Policies”) issued by either GEICO Indemnity Company, GEICO Advantage Insurance Company, GEICO County Mutual Insurance Company, GEICO Choice Insurance Company or Government Employees Insurance Company.

2. The Policies of all GEICO Defendants insuring Plaintiffs and all putative class members have identical material language relating to all claims in this lawsuit. All of the GEICO Defendants’ Texas policies define ACV as “the replacement cost of the auto or property less depreciation and/or betterment.” Plaintiffs attach, as Exhibit A, a GEICO Texas private passenger auto policy form that contains the material policy language providing coverage on first-party physical damage total loss claims. (Policy form, at 10<sup>1</sup>). The material Policy language is in all of the Policies, and is materially the same with regard to all claims against all Defendants alleged herein.

**Answer:** GEICO denies each and every allegation contained in paragraph 2 of the Complaint except admits that the Policies define “*Actual cash value*” as “the replacement cost of the auto or property less *depreciation* or *betterment*.” GEICO further states that the complete terms, conditions, exclusions and limitations of the Policies speak for themselves.

3. GEICO has breached its Policies on first-party total loss claims by failing to pay the “replacement costs” mandated by Texas law, including sales tax, title transfer fees (“Title Fees”), and fees for registration, inspection, and emissions (“Registration Fees”).

**Answer:** No response is required to paragraph 3 of the Complaint because it states Plaintiffs’ contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 3 of the Complaint.

4. Plaintiffs do not dispute the adjusted vehicle values (which do not include replacement costs of sales tax, Title Fees, and Registration Fees) that GEICO determined for their total loss vehicles. At issue in this lawsuit is the coverage determination of whether GEICO must pay sales tax, Title Fees, and Registration Fees on the total loss claims.

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<sup>1</sup> All page cites to the Policy form are to exhibit A to the original complaint (Doc. 1-1)

**Answer:** No response is required to paragraph 4 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 4 of the Complaint

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2), because: (a) the Plaintiffs are members of the putative class, which consists of at least 100 members and Plaintiffs and/or putative class members and Defendants are citizens of different states; (b) the amount-in-controversy exceeds \$5 million dollars exclusive of interest and costs; and (c) none of the exceptions under § 1332 apply to this claim.

**Answer:** GEICO denies knowledge or information sufficient to form a belief as to the truth of Plaintiffs' and putative class members' citizenship. GEICO admits the remaining allegations contained in paragraph 5 of the Complaint.

6. Venue is proper in this Court because a substantial portion of the acts and course of conduct giving rise to the claims alleged occurred within the district and the Defendants are subject to personal jurisdiction in this district.

**Answer:** GEICO denies knowledge or information sufficient to form a belief as to the truth of where the alleged events or omissions giving rise to the claims occurred. GEICO admits the remaining allegations contained in paragraph 6 of the Complaint.

### **THE PARTIES**

7. At all times material hereto, Plaintiff Steven Brown is and was a person domiciled and residing in Travis County, Texas, and a citizen of the State of Texas. Plaintiff Brown's total loss claim was insured by GEICO Indemnity.

**Answer:** GEICO denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 7 of the Complaint except admits that Plaintiff Brown was a named insured under a Texas personal automobile insurance policy issued by GEICO Indemnity Company.

8. At all times material hereto, Plaintiff Philip Angell is and was a person domiciled and residing in Harris County, Texas, and a citizen of the State of Texas. Plaintiff Angell's total loss claim was insured by GEICO Advantage.

**Answer:** GEICO denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 8 of the Complaint except admits that Plaintiff Angell was a named insured under a Texas personal automobile insurance policy issued by GEICO Advantage Insurance Company.

9. At all times material hereto, Plaintiff Tonnie Beck is and was a person domiciled and residing in Harris County, Texas, and a citizen of the State of Texas. Plaintiff Beck's total loss claim was insured by Government Employees.

**Answer:** GEICO denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 9 of the Complaint except admits that Plaintiff Beck was a named insured under a Texas personal automobile insurance policy issued by Government Employees Insurance Company.

10. At all times material hereto, Plaintiff Tammy Morris is and was a person domiciled and residing in Harris County, Texas, and a citizen of the State of Texas. Plaintiff Morris's total loss claim was insured by GEICO County.

**Answer:** GEICO denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 10 of the Complaint except admits that Plaintiff Morris was a named insured under a Texas personal automobile insurance policy issued by GEICO County Mutual Insurance Company.

11. At all times material hereto, Plaintiff Dawn Burnham is and was a person domiciled and residing in Travis County, Texas, and a citizen of the State of Texas. Plaintiff Burnham's total loss claim was insured by GEICO Choice.

**Answer:** GEICO denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 11 of the Complaint, except admits that Plaintiff

Burnham was a named insured under a Texas personal automobile insurance policy issued by GEICO Choice Insurance Company.

12. At all times material hereto, GEICO Advantage is and was a foreign corporation domiciled in the State of Nebraska and authorized to transact insurance in the State of Texas. GEICO Advantage's principal place of business and headquarters are both located in the State of Maryland.

**Answer:** GEICO denies each and every allegation contained in paragraph 12 of the Complaint except admits that GEICO Advantage is an insurance company incorporated in Nebraska with its principal place of business in Maryland and that it is authorized to write private passenger auto insurance in the state of Texas.

13. At all times material hereto, GEICO Indemnity is and was a foreign corporation domiciled in the State of Maryland and authorized to transact insurance in the State of Texas. GEICO Indemnity's principal place of business and headquarters are both located in the State of Maryland.

**Answer:** GEICO denies each and every allegation contained in paragraph 13 of the Complaint except admits that GEICO Indemnity is an insurance company incorporated in Maryland with its principal place of business in Maryland and that it is authorized to write private passenger auto insurance in the state of Texas.

14. At all times material hereto, Government Employees is and was a foreign corporation domiciled in the State of Maryland and authorized to transact insurance in the State of Texas. Government Employees's principal place of business and headquarters are both located in the State of Maryland.

**Answer:** GEICO denies each and every allegation contained in paragraph 14 of the Complaint except admits that Government Employees Insurance Company is an insurance company incorporated in Maryland with its principal place of business in Maryland and that it is authorized to write private passenger auto insurance in the state of Texas.

15. At all times material hereto, GEICO County is and was a corporation domiciled in the State of Texas and authorized to transact insurance in the State of Texas. GEICO County's principal place of business and headquarters are both located in the State of Texas.

**Answer:** GEICO denies each and every allegation contained in paragraph 15 of the Complaint except admits that GEICO County Mutual Insurance Company is an insurance company incorporated in Texas with its principal place of business in Texas and that it is authorized to write private passenger auto insurance in the state of Texas.

16. At all times material hereto, GEICO Choice is and was a foreign corporation domiciled in the State of Nebraska and authorized to transact insurance in the State of Texas. GEICO Choice's principal place of business and headquarters are both located in the State of Maryland.

**Answer:** GEICO denies each and every allegation contained in paragraph 16 of the Complaint except admits that GEICO Choice is an insurance company incorporated in Maryland with its principal place of business in Maryland and that it is authorized to write private passenger auto insurance in the state of Texas.

### **FACTUAL ALLEGATIONS**

17. Defendants' insured Plaintiffs and all putative class members during the class period under Texas private passenger auto insurance policies providing coverage for physical damage.

**Answer:** GEICO denies each and every allegation contained in paragraph 17 of the Complaint except admits that Plaintiffs were each a named insured under a Texas personal auto insurance policy issued by a Defendant. The policies issued to Plaintiffs (the "Policies") provided physical damage coverages subject to the terms, conditions and limitations set forth in the Policies.

18. All of the Policies during the class period have policy terms with materially identical policy provisions relating to the physical damage coverage provided on total loss claims.

**Answer:** GEICO denies each and every allegation contained in paragraph 18 of the Complaint except admits that Plaintiffs were each a named insured under a Texas personal auto

insurance policy issued by a Defendant providing coverage for physical damage during the class period. GEICO further states that the complete terms, conditions, exclusions and limitations of the Policies speak for themselves.

19. The policy language insuring the total losses of Plaintiffs and every putative Class Member is the same in all material respects.

**Answer:** GEICO denies each and every allegation contained in paragraph 19 of the Complaint except admits that Plaintiffs were each named insureds under a Texas personal auto insurance policy issued by a Defendant providing coverage for physical damage during the class period. GEICO further states that the complete terms, conditions, exclusions and limitations of the Policies speak for themselves.

20. GEICO Indemnity, GEICO Advantage, GEICO Choice, and GEICO County are all subsidiaries of Government Employees. All Defendants operate under the GEICO brand, insure under the same policy forms, and have the same practices and procedures with regard to insuring and adjusting total loss claims.

**Answer:** GEICO denies each and every allegation contained in paragraph 20 of the Complaint except admits that GEICO's practices with respect to the payment of sales tax, title fees and/or registration fees as part of claim settlement payments made with respect to physical damage claims under applicable Texas personal auto insurance policies in which the vehicle has been determined to be a total loss do not vary based on the GEICO insuring entity.

**I. TOTAL LOSS DETERMINATION.**

21. When insureds suffer damage (or loss) to a vehicle caused by a covered peril, GEICO determines the costs necessary to repair the damage to the vehicle, which might include replacement of component parts of the vehicle, paint, repair labor, and other expenses.

**Answer:** GEICO denies each and every allegation contained in paragraph 21 of the Complaint and states that GEICO adjusts each claim on an individual, claim-by-claim, basis according to its unique circumstances.

22. If the amount required to repair the vehicle (plus any salvage value) exceeds the value of the vehicle *prior to the loss* (or as if the loss had not occurred at all), GEICO determines the vehicle to be a “total” or complete loss.

**Answer:** GEICO denies each and every allegation contained in paragraph 22 of the Complaint.

23. The Policies require GEICO to cover first-party total loss claims by paying the ACV of the total loss vehicle, which is “the replacement cost of the auto or property less *depreciation* and/or *betterment*.” (Policy form, at 10) (emphasis added.)

**Answer:** GEICO denies each and every allegation contained in paragraph 23 of the Complaint except admits that the Policies define “*Actual cash value*” as “the replacement cost of the auto or property less *depreciation* or *betterment*.” GEICO further states that the complete terms, conditions, exclusions and limitations of the Policies speak for themselves.

24. In Texas, the costs necessary to replace a vehicle includes the adjusted vehicle value of the vehicle plus sales tax, Title Fees, and Registration Fees.

**Answer:** No response is required to paragraph 24 of the Complaint because it states Plaintiffs’ contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 24 of the Complaint.

25. GEICO pays the underlying value of the total loss vehicle as part of the ACV payment to insureds. GEICO determines the underlying vehicle by determining the cost to purchase a similar vehicle. GEICO thus acknowledges that the underlying value is, at minimum, reasonably necessary replacement costs.

**Answer:** GEICO denies each and every allegation contained in paragraph 25 of the Complaint.

26. GEICO pays Title Fees on many claims as part of the ACV payment to total loss insureds, evidencing GEICO’s acknowledgement that Title Fees are, at minimum, reasonably necessary replacement costs. GEICO determines the location or residence of the insured, and includes either \$28 or \$33 in Title Fees, depending on the county.

**Answer:** GEICO denies each and every allegation contained in paragraph 26 of the Complaint except admits that as part of claim settlement payments made with respect to first-party



physical damage claims under Texas personal auto insurance policies where the vehicle is determined to be a total loss, GEICO's practice is to include Title Fees in the amount of \$28 or \$33, depending on the county.

27. On many claims, GEICO pays sales tax as part of the ACV payment to insureds, indicating GEICO's acknowledgement that sales tax is, at minimum, a reasonably necessary replacement cost. GEICO determines the location or residence of the insured, and applies sales tax at the applicable rate depending on the county (state rate plus any local or county surtax) to the adjusted vehicle value of the total loss vehicle.

**Answer:** GEICO denies each and every allegation contained in paragraph 27 of the Complaint.

28. In some claims, however, GEICO does not include sales tax as part of the ACV payment to insureds, even though the exact same Policy language applies to all insureds, and even though the Policy does not include any language permitting it to distinguish between vehicles for purposes of its contractual obligations.

**Answer:** GEICO denies each and every allegation contained in paragraph 28 of the Complaint.

29. Moreover, GEICO does not pay Registration Fees as part of the ACV payment to insureds, even though Registration Fees are necessary to replace a vehicle in the same way as underlying value, sales tax, and Title Fees.

**Answer:** No response is required to paragraph 29 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 29 of the Complaint except admits that as part of claim settlement payments made with respect to first-party physical damage claims under Texas auto insurance policies where the vehicle is determined to be a total loss, GEICO's practice is not to include amounts for registration fees.

30. GEICO's failure to pay sales tax, Title Fees, and/or Registration Fees is a breach of the Policy obligation to pay replacement costs (less depreciation/betterment) to insureds who suffer a total loss of their insured vehicle.

**Answer:** GEICO denies each and every allegation contained in paragraph 30 of the Complaint.

31. GEICO's failure is part of a uniform business practice applicable to all putative class members.

**Answer:** No response is required to paragraph 31 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 31 of the Complaint.

## II. THE GEICO INSURANCE POLICY.

32. The Policies include the following coverage provisions applicable to all claims asserted herein.

**Answer:** GEICO denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 32 as no coverage provisions are reflected in paragraph 32 of the Complaint.

33. The Policies provide comprehensive and collision coverage with a coverage limit of ACV.

**Answer:** GEICO denies each and every allegation contained in paragraph 33 of the Complaint except admits the Policies provide comprehensive and collision coverage when those coverages are selected by an insured and applicable premiums paid.

34. The Policies define ACV, betterment, and depreciation as follows:

1. "***Actual cash value*** is the replacement cost of the auto or property less ***depreciation*** and/or ***betterment***."

2. "***Betterment*** is improvement of the auto or property to a value greater than its pre-loss condition."

...

6. "***Depreciation*** means a decrease or loss in value to the auto or property because of use, disuse, physical wear and tear, age, outdatedness, or other causes."

(Policy form at 10.)<sup>2</sup>

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<sup>2</sup> All bold and/or italics are in the original Policy.

**Answer:** GEICO denies each and every allegation contained in paragraph 34 of the Complaint except admits that the quoted language appears in the Policies. GEICO further states that the complete terms, conditions, exclusions and limitations of the Policies speak for themselves.

35. The Policies provide as follows relating to PPA physical damage comprehensive and collision coverage:

3. **Collision** means the upset of **your covered auto** or **non-owned auto**; or collision with another object including an attached vehicle.
4. **Comprehensive** means **loss** caused other than by **collision** and includes but is not limited to the following causes:
  - a. Missiles or falling objects;
  - b. Fire;
  - c. Theft or larceny;
  - d. Explosion or earthquake;
  - e. Windstorm;
  - f. Hail, water or flood;
  - g. Malicious mischief or vandalism;
  - h. Riot or civil commotion;
  - i. Contact with bird or animal; or
  - j. Breakage of glass.If breakage of glass is caused by a **collision** or if **loss** is caused by contact with a bird or animal, **you** may elect to have it considered a **loss** caused by **collision**.

**Answer:** GEICO denies each and every allegation contained in paragraph 35 of the Complaint except admits that the quoted language appears in the Policies. GEICO further states that the complete terms, conditions, exclusions and limitations of the Policies speak for themselves.

36. The Policies provide the following limit of liability for PPA physical damage coverage:

**LIMIT OF LIABILITY**

1. Our limit of liability for **loss** will be the lesser of the:
  - a. **Actual cash value** of the stolen or damaged property;
  - b. Amount necessary to repair or replace the property with other of like kind and quality; or
2. Our limit of liability for **loss** to a **trailer** not owned by **you** is \$500.
3. Our limit of liability for **loss** to personal effects arising out of one occurrence is

\$200.

4. Our limit of liability for glass repair or replacement is limited to the prevailing competitive price. Although *you* have the right to choose any glass repair facility or location, the limit of liability for *loss* to window glass is the cost to repair or replace such glass but will not exceed the prevailing competitive price. This is the price we can secure from a competent and conveniently located glass repair facility. At *your* request, we will identify a glass repair facility that will perform the repairs at the prevailing competitive price. We will not apply the applicable deductible if the glass *loss* is repaired rather than replaced.
5. Our limit of liability for *custom parts or equipment* is limited to the *actual cash value* of the *custom parts or equipment*, not to exceed the *actual cash value* of the vehicle.

Our payment for *loss* will be reduced by any applicable deductible shown in the Declarations.

(*Id.* At 11.) ACV is thus part of loss (otherwise it would not be within the limits of liability for loss) and is the only “loss” provision in the Policy that includes and permits deductions for depreciation or betterment.

**Answer:** No response is required to paragraph 36 of the Complaint because it states Plaintiffs’ contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 36 of the Complaint. GEICO further states that the complete terms, conditions, exclusions and limitations of the Policies speak for themselves.

37. GEICO deducts for depreciation and betterment on total losses, which evidences that GEICO pays ACV on the total loss claims. GEICO trains its adjusters that it pays ACV on total losses, which permits the reduction in coverage for depreciation and betterment. GEICO’s auto damage adjuster’s handbook instructs its adjusters that GEICO pays ACV on total loss claims.

**Answer:** GEICO denies each and every allegation contained in paragraph 37 of the Complaint.

38. The Policies define **Loss** as follows:

**DEFINITIONS**

...

8. **Loss** means direct and accidental loss of or damage to:
  - a. The auto, including its equipment; or
  - b. Other insured property.

(*Id.* at 10.) The Policies’ definition of **Loss** applies to both collision and comprehensive coverage.

**Answer:** GEICO denies each and every allegation contained in paragraph 38 of the Complaint except admits that the quoted language appears in the Policies. GEICO further states

that the complete terms, conditions, exclusions and limitations of the Policies speak for themselves.

39. The Policies define **covered auto** as follows:

**DEFINITIONS SECTION**

...

10. **Your covered auto** means:

- (a) Any vehicle shown in the Declarations;
- (b) Any **trailer you** own.
- (c) **Temporary substitute auto**
- (d) Any of the following types of vehicles on the date **you** became the owner or enter into a lease for a term of six months or more during the policy period:
  - 1. A **private passenger auto**; or
  - 2. A utility type vehicle, with a G.V.W. of 25,000 lbs. or less, of the pickup body, sedan delivery, panel truck, van type and multi-use type, not used for the delivery or transportation of goods, materials or supplies other than samples; unless,
    - i. The delivery of goods, materials or supplies is not the primary usage of the vehicle; or
    - ii. Used for farming or ranching;

(*Id.* at 3.)

**Answer:** GEICO denies each and every allegation contained in paragraph 39 of the Complaint except admits that the quoted language appears in the Policies. GEICO further states that the complete terms, conditions, exclusions and limitations of the Policies speak for themselves.

40. The Policies do not define “total loss” but ACV is part of loss (otherwise it would not be within the limitations of liability).

**Answer:** GEICO denies each and every allegation contained in paragraph 40 of the Complaint except admits that “total loss” is not defined in the Policies. GEICO further states that the complete terms, conditions, exclusions and limitations of the Policies speak for themselves.

41. The Policies do not expressly reference the mandatory vehicle replacement costs of adjusted vehicle value, sales tax, Title Fees, or Registration Fees, but such replacement costs fall within the definition of ACV.

**Answer:** No response is required to paragraph 41 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 41 of the Complaint.

42. The Policies require GEICO to provide the same coverage for total losses under both comprehensive and collision coverage provisions.

**Answer:** No response is required to paragraph 42 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 42 of the Complaint.

43. The Policy contains no provision excluding sales tax or state and local regulatory fees from ACV.

**Answer:** No response is required to paragraph 43 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 43 of the Complaint. GEICO further states that the complete terms, conditions, exclusions and limitations of the Policies speak for themselves.

44. The Policy defines "covered auto" as any vehicle listed in the declaration without distinction whether owned or leased. Policy at 3. The Policies coverage provisions are the same for all covered autos, regardless of whether the covered auto is owned without lien, financed, or leased.

**Answer:** GEICO denies each and every allegation contained in paragraph 44 of the Complaint. GEICO further states that the complete terms, conditions, exclusions and limitations of the Policies speak for themselves.

45. Texas law requires payment of sales tax, Title Fees, and Registration Fees on all vehicles, regardless of whether the vehicle is owned without lien, financed, or leased.

**Answer:** No response is required to paragraph 45 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 45 of the Complaint.

46. Texas law is clear that ACV includes costs reasonably likely to be incurred in property replacement. *Tolar v. GEICO Tex. Lloyd's Co.*, 772 F. Supp. 2d 825 (N.D. Tex. 2011) (noting that Texas courts define ACV as “cost of replacement minus depreciation” and holding that it is “settled law” that insurers may not deduct sales tax from ACV payments).

**Answer:** No response is required to paragraph 46 of the Complaint because it states Plaintiffs’ contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 46 of the Complaint.

47. The GEICO policies at issue in the following matters involved the same material terms with regard to the payment of “loss,” including “actual cash value” on total loss claims as the Texas Policies in the present case. *Roth v. GEICO Gen. Ins. Co.*, 16-62942-CIV, 2018 WL 3412852, at \*4 (S.D. Fla. June 14, 2018); at \*4 (GEICO policy requires GEICO to pay ACV on total loss claims: “Plaintiff asserts that sales tax and title transfer fees are mandatory, necessarily included in the replacement costs of a total loss vehicle, and therefore are components of [ACV] under the Policy. The Court agrees.”); *Davis v. GEICO Cas. Co.*, 2:19-CV-2477, 2020 WL 68573, at \*6 (S.D. Ohio Jan. 7, 2020) (denying motion to dismiss Plaintiff’s allegations that the actual cash value provisions of the policy required GEICO to pay sales tax, title transfer fees, and registration fees); *Jones v. Govt. Employees Ins. Co.*, 617CV1755ORL40LRH, 2019 WL 3254207, at \*3–4 (M.D. Fla. July 19, 2019) (GEICO policy requires GEICO to pay ACV, including title and registration transfer fees); *Moses v. Geico Ins. Co.*, 43 N.Y.S.3d 630, 631 (N.Y. App. Div. 4th Dept. 2016) (holding on total loss claim that with same relevant policy provisions as present case, “Under the clear and unambiguous terms of the insurance policy, defendant promised to pay plaintiff the “actual cash value,” less a deductible, for loss. . . .”); *see also McDivitt v. Govt. Employees Ins. Co.*, 1 CA-CV 15-0732, 2017 WL 631621, at \*3– 4 (Ariz. App. 1st Div. Feb. 16, 2017) (citing GEICO interrogatory responses that it uses CCC when determining “actual cash value” on total losses);

**Answer:** No response is required to paragraph 47 of the Complaint because it states Plaintiffs’ contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 47 of the Complaint.

**A. Sales Tax Is A Mandatory Replacement Cost, Even for Leased Vehicles.**

48. Sales tax is imposed on every vehicle transaction and is reasonably likely to be incurred upon replacement of the total loss vehicle. It is for this reason that GEICO pays sales tax on the large majority of its total loss claims, which involve non-leased vehicles.

**Answer:** No response is required to paragraph 48 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 48 of the Complaint.

49. GEICO does not pay sales tax on leased vehicle total loss claims, however, even though (1) sales tax is a mandatory cost for the replacement of any leased vehicle; (2) the Policies treat leased and non-leased vehicles the same; (3) GEICO charges the same premiums for leased and non-leased vehicles, and; (4) GEICO provides no notice to leased vehicle insureds that they will receive substantially less in coverage on their total loss claims (compared with non-leased vehicles) while paying the same premiums as non-leased vehicles.

**Answer:** No response is required to paragraph 49 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 49 of the Complaint.

50. Texas imposes a sales tax of 6.25% on every leased vehicle. As such, sales tax is part of the replacement cost of leased vehicles, as well as non-leased vehicles. The Policies thus require payment of sales tax on leased vehicle total loss claims.

**Answer:** No response is required to paragraph 50 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 50 of the Complaint.

**B. Title Fees are a Mandatory Replacement Cost.**

51. Texas law imposes a mandatory title fee of either \$28.00 or \$33.00 (depending on the county) on the purchase of any vehicle, including, necessarily, the purchased replacement of a total loss vehicle. Tex. Stat. § 501.138(a). It is illegal in Texas to drive a vehicle on the road until the owner has applied for title and paid the fee imposed thereon. Tex. Stat. § 501.022. GEICO appears to properly pay title fees as part of ACV on most total loss claims because such fees are a mandatory replacement cost.

**Answer:** No response is required to paragraph 51 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 51 of the Complaint. GEICO further states that Tex. Stat. § 501.138(a) and Tex. Stat. § 501.022 speak for themselves.



**C. Registration Fees are a Mandatory Replacement Cost.**

52. Texas law also makes it illegal to drive a vehicle without proper registration or tag. When a vehicle is sold, any existing registration expires, and the buyer must secure new registration. Texas imposes a fee of \$50.75 on the registration, and various counties impose additional fees ranging from \$10.00 to \$31.50.

**Answer:** No response is required to paragraph 52 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 52 of the Complaint.

53. Every vehicle in Texas must pass a yearly inspection (which must be proved prior to registration) for safety and, in some counties, for emissions, which range from \$7.50 to \$14.25.

**Answer:** No response is required to paragraph 53 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 53 of the Complaint.

54. When a vehicle is damaged, resulting in a total loss, the valid registration and inspection on the vehicle is terminated. When insureds replace their total loss vehicles from a dealer, they must pay new Registration Fees rather than transferring the (now void) registration and inspection confirmations from the total loss vehicle, the amounts of which are the previously-mentioned flat rates imposed by state and county depending on location. When insureds replace their total loss vehicles from a non-dealer private citizen, the insureds may pay a \$2.50 fee to transfer the existing registration paid for by the seller into the consumer's own name, if the car is properly registered (otherwise, the consumer must pay the previously-mentioned Registration Fees to register and inspect the vehicle).

**Answer:** No response is required to paragraph 54 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 54 of the Complaint.

55. Many insurers, including State Farm, pay the Title Fees and Registration Fees on Texas first-party total loss claims because such fees are in fact part of the replacement cost on a total loss vehicle. GEICO pays no amounts for registration fees in violation of the Policies.

**Answer:** No response is required to paragraph 55 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies

knowledge or information sufficient to form a belief as to the truth of the allegations regarding the practices of State Farm and other “insurers.” GEICO denies the remainder of the allegations in paragraph 55 of the Complaint.

**D. Plaintiffs’ Total Loss Claims.**

**i. Plaintiff Brown.**

56. Plaintiff Steven Brown insured his 2016 Toyota Tacoma SR5 under a Policy issued by GEICO Indemnity.

**Answer:** GEICO admits that Plaintiff Brown insured a 2016 Toyota Tacoma, VIN # 5TFCZ5AN0GX009759, under a Texas Personal Auto Insurance Policy with GEICO Indemnity, policy number 4127-69-50-31, with a policy term of June 2, 2018 through December 2, 2018 (the “Brown Policy”) providing physical damage coverages.

57. On or about July 16, 2018, Plaintiff Brown’s insured vehicle was involved in a collision, after which he filed a claim for property damage with GEICO Indemnity, claim number 0345758350101173-01.

**Answer:** GEICO denies each and every allegation contained in paragraph 57 of the Complaint except admits a loss was reported under the Brown Policy, claim number 034575835 0101173, for physical damage to a 2016 Toyota Tacoma, Vin # 5TFCZ5AN0GX009759, arising out of an accident occurring on or about July 16, 2018.

58. GEICO Indemnity determined that the vehicle was a total loss with an adjusted vehicle value of \$21,731.95. The adjusted vehicle value was based on the cost to purchase a replacement vehicle (but not including mandatory fees such as sales tax, Title Fees, and Registration Fees).

**Answer:** GEICO denies each and every allegation contained in paragraph 58 of the Complaint except admits that following submission of Plaintiff Brown’s claim, claim number 0345758350101173, Plaintiff Brown’s 2016 Toyota Tacoma, Vin # 5TFCZ5AN0GX009759, was determined to be a total loss. GEICO further admits that a CCC Information Services Market Valuation Report was generated with respect to Plaintiff Brown’s claim, claim number 034575835

0101173, which reflected a base value of \$27,501.00 and a value before deductible of \$21,731.95 following a \$476.00 positive condition adjustment and a deduction of \$6,245.05 for prior damage.

59. GEICO Indemnity issued payment on Plaintiff Brown's claim of \$21,264.95, which included Title Fees of \$33.00, and a subtracted deductible of \$500.00, for a total of \$21,264.95.

**Answer:** GEICO denies each and every allegation contained in paragraph 59 of the Complaint except admits that following a deduction of \$500 for Plaintiff Brown's deductible, GEICO Indemnity paid Plaintiff Brown \$21,264.95 in relation to Plaintiff's claim, claim number 034575835 0101173, which included \$33 in title fees.

60. GEICO Indemnity breached the Policy by not including any amount for replacement costs of sales tax or Registration Fees in its ACV payment.

**Answer:** No response is required to paragraph 60 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 60 of the Complaint.

61. GEICO Indemnity thus did not pay Plaintiff Brown the full ACV of his insured vehicle.

**Answer:** No response is required to paragraph 61 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 61 of the Complaint.

62. Plaintiff Brown did not receive what he bargained for and what was owed due to the total loss of the insured vehicle.

**Answer:** No response is required to paragraph 62 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 62 of the Complaint.

63. GEICO Indemnity's underpayment constituted a breach of the insurance contract.

**Answer:** No response is required to paragraph 63 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 63 of the Complaint.

64. Plaintiff Brown paid all premiums owed and otherwise satisfied all conditions precedent such that the insurance policy was in effect and operational at the time of the collision.

**Answer:** No response is required to paragraph 64 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 64 of the Complaint except admits that the Brown Policy was in effect at the time of Plaintiff's loss on or about July 16, 2018.

**ii. Plaintiff Angell.**

65. Plaintiff Angell insured a 2015 Lexus RC 350 under the Policy issued by GEICO Advantage.

**Answer:** GEICO admits that Plaintiff Angell insured a 2015 Lexus RC 350, VIN # JTHHE5BC0F5002625, under a Texas Personal Auto Insurance Policy with GEICO Advantage, policy number 4325120642, with a policy term of May 1, 2017 through November 1, 2017 (the "Angell Policy") providing physical damage coverages.

66. On or about August 27, 2017, Plaintiff Angell's insured vehicle was involved in a collision, after which Plaintiff Angell filed a claim for property damage with GEICO Advantage, claim number 0486329120101023-01.

**Answer:** GEICO denies each and every allegation contained in paragraph 66 of the Complaint except admits a loss was reported under the Angell Policy, claim number 0486329120101023, for physical damage to a 2105 Lexus RC 350, Vin # JTHHE5BC0F5002625, arising out of an loss occurring on or about August 27, 2017.

67. GEICO Advantage determined that Plaintiff Angell's insured vehicle was a total loss with an adjusted vehicle value of \$40,580.00. The adjusted vehicle value was based on the cost to purchase a replacement vehicle (but not including mandatory fees such as sales tax, Title Fees, and Registration Fees).

**Answer:** GEICO denies each and every allegation contained in paragraph 67 of the Complaint except admits that following submission of Plaintiff Angell's claim, claim number 0486329120101023, Plaintiff Angell's 2015 Lexus RC 350, Vin # JTHHE5BC0F5002625, was determined to be a total loss. GEICO further admits that a CCC Information Services Market Valuation Report was generated with respect to Plaintiff Angell's claim, claim number 0486329120101023, which reflected a base value of \$39,239.00 and a value before deductible of \$42,902.75.

68. GEICO Advantage added sales tax and \$33.00 in Title Fees, while subtracting the deductible of \$500.00, in making the payment for the total loss.

**Answer:** GEICO denies each and every allegation contained in paragraph 68 of the Complaint except admits that following a deduction of \$500 for Plaintiff Angell's deductible GEICO Advantage paid Plaintiff Angell \$42,402.75 in relation to Plaintiff's claim, claim number 0486329120101023, which included \$2,521.75 in sales tax and \$33 in title fees. GEICO further admits that its payment did not include amounts for registration fees.

69. GEICO Advantage did not include any amount for Registration Fees in making the ACV payment to Plaintiff Angell, notwithstanding that Registration Fees are reasonably necessary to replace a vehicle in Texas.

**Answer:** GEICO denies each and every allegation contained in paragraph 69 of the Complaint except admits that GEICO's payment with respect to Plaintiff Angell's claim, claim number 0486329120101023, did not include amounts for registration fees.

70. By not paying the full ACV of the insured vehicle, GEICO Advantage breached its contract with Plaintiff Angell.

**Answer:** No response is required to paragraph 70 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 70 of the Complaint.

71. Plaintiff Angell paid all premiums owed and otherwise satisfied all conditions precedent such that the insurance policy was in effect and operational at the time of the collision.

**Answer:** No response is required to paragraph 71 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 71 of the Complaint.

72. Plaintiff Angell also insured a 2007 Lexus Rx 350 under the Policy issued by GEICO Advantage.

**Answer:** No response is required to paragraph 72 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 72 of the Complaint.

73. On or about August 27, 2017, Plaintiff Angell's insured vehicle was involved in an accident, after which Plaintiff Angell filed a claim for property damage with GEICO Advantage, claim number 0486329120101015-01.

**Answer:** GEICO denies each and every allegation contained in paragraph 73 of the Complaint except admits a loss was reported under the Angell Policy, claim number 0486329120101015-01, for physical damage to a 2007 Lexus RX 350, Vin # 2T2GK31U27C017325, arising out of an accident occurring on or about August 27, 2017.

74. GEICO Advantage determined that Plaintiff Angell's insured vehicle was a total loss with an adjusted vehicle value of \$14,395.00. The adjusted vehicle value was based on the cost to purchase a replacement vehicle (but not including mandatory fees such as sales tax, Title Fees, and Registration Fees).

**Answer:** GEICO denies each and every allegation contained in paragraph 74 of the Complaint except admits that following submission of Plaintiff Angell's claim, claim number 0486329120101015-01, Plaintiff Angell's 2007 Lexus RX 350, Vin # 2T2GK31U27C017325, was determined to be a total loss. GEICO further admits that a CCC Information Services Market Valuation Report was generated with respect to Plaintiff Angell's claim, claim number

0486329120101015-01, which reflected a base value of \$13,951.00 and a value before deductible of \$15,327.69.

75. GEICO Advantage added and included in its payment \$889.69 in sales tax and \$33.00 in Title Fees, while subtracting the deductible of \$500.00, for a total of \$14,827.69.

**Answer:** GEICO admits that following a deduction of \$500 for Plaintiff Angell's deductible GEICO Advantage paid Plaintiff Angell \$14,827.69 in relation to Plaintiff's claim, claim number 0486329120101015-01, which included \$889.69 in sales tax and \$33 in title fees.

76. GEICO Advantage did not include any amount for Registration Fees in making the ACV payment to Plaintiff Angell, notwithstanding that Registration Fees are reasonably necessary to replace a vehicle in Texas.

**Answer:** GEICO denies each and every allegation contained in paragraph 76 of the Complaint except admits that GEICO's payment with respect to Plaintiff's claim, claim number 0486329120101015-01, did not include an amount for registration fees.

77. By not paying the full ACV of the insured vehicle, GEICO Advantage breached its contract with Plaintiff Angell.

**Answer:** No response is required to paragraph 77 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 77 of the Complaint.

78. Plaintiff Angell paid all premiums owed and otherwise satisfied all conditions precedent such that the insurance policy was in effect and operational at the time of the collision.

**Answer:** No response is required to paragraph 78 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 78 of the Complaint, except admits that the Angell Policy was in effect on the date of Plaintiff Angell's loss on or about August, 27, 2017.

**iii. Plaintiff Beck.**

79. Plaintiff Beck insured a 2015 Ford Escape under the policy issued by Government Employees.

**Answer:** GEICO admits that Plaintiff Beck insured a 2015 Ford Escape, VIN # 1FMCU0F78FUC88174, under a Texas Personal Auto Insurance Policy with GEICO Government Employees Insurance Company, policy number 4150-28-84-15, with a policy term of July 5, 2017 through January 5, 2018 (the “Beck Policy”) providing physical damage coverages.

80. On or about August 29, 2017, Plaintiff Beck’s insured vehicle was involved in a collision, after which Plaintiff Beck filed a claim for property damage with Government Employees, claim number 0362137210101061-01.

**Answer:** GEICO denies each and every allegation contained in paragraph 80 of the Complaint except admits a loss was reported under the Beck Policy, claim number 036213721-0101-061, for physical damage to a 2015 Ford Escape, Vin # 1FMCU0F78FUC88174, arising out of a loss occurring on or about August 29, 2017.

81. Government Employees determined that the vehicle was a total loss with an adjusted vehicle value of \$12,445.00. The adjusted vehicle value was based on the cost to purchase a replacement vehicle (but not including mandatory fees such as sales tax, Title Fees, and Registration Fees).

**Answer:** GEICO denies each and every allegation contained in paragraph 81 of the Complaint except admits that following submission of Plaintiff Beck’s claim, claim number 036213721-0101-061, Plaintiff Beck’s 2015 Ford Escape, Vin # 1FMCU0F78FUC88174, was determined to be a total loss. GEICO further admits that a CCC Information Services Market Valuation Report was generated with respect to Plaintiff Beck’s claim, claim number 036213721-0101-061, which reflected a base value of \$12,513.00 and a value before deductible of \$12,722.81.

82. Government Employees then added sales tax of \$777.81 and Title Fees \$33.00, while subtracting the deductible of \$500.00, for a total of \$12,755.81.

**Answer:** GEICO admits that following a deduction of \$500 for Plaintiff Beck’s deductible, GEICO Employees paid Plaintiff Beck \$12,755.81 in relation to Plaintiff’s claim, claim number 036213721-0101-061, which included \$777.81 in sales tax and \$33 in title fees.



83. Government Employees did not include any amount for Registration Fees in making the ACV payment to Plaintiff Beck, notwithstanding that Registration Fees are reasonably necessary to replace a vehicle in Texas.

**Answer:** GEICO denies each and every allegation contained in paragraph 83 of the Complaint except admits that GEICO's payment with respect to Plaintiff's claim, claim number 036213721-0101-061, did not include an amount for registration fees.

84. By not paying the full ACV of the insured vehicle, Government Employees breached its contract with Plaintiff Beck.

**Answer:** No response is required to paragraph 84 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 84 of the Complaint.

85. Plaintiff Beck paid all premiums owed and otherwise satisfied all conditions precedent such that the insurance policy was in effect and operational at the time of the collision.

**Answer:** No response is required to paragraph 85 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 85 of the Complaint except admits that the Beck Policy was in effect at the time of Plaintiff's loss on or about August 29, 2017.

**iv. Plaintiff Morris.**

86. Plaintiff Morris insured a 2007 BMW 550I under the policy issued by GEICO County.

**Answer:** GEICO admits that Plaintiff Morris insured a 2007 BMW 5 Series, VIN # WBANB53507CP04886, under a Texas Personal Auto Insurance Policy with GEICO County, policy number 4425-76-86-13, with a policy term of August 3, 2016 through February 3, 2017 (the "Morris Policy") providing physical damage coverages.

87. On or about August 14, 2016, Plaintiff Morris's insured vehicle was involved in a collision, after which Plaintiff Morris filed a claim for property damage, with GEICO County, claim number 055430122-0101-051.

**Answer:** GEICO denies each and every allegation contained in paragraph 87 of the Complaint except admits a loss was reported under the Morris Policy, claim number 0554301220101051-01, for physical damage to a 2007 BMW 5 Series, Vin # WBANB53507CP04886, arising out of a loss occurring on or about August 14, 2016.

88. Following the filing of said claim, GEICO County determined that the vehicle was a total loss with an adjusted vehicle value of \$9,212.00. The adjusted vehicle value was based on the cost to purchase a replacement vehicle (but not including mandatory fees such as sales tax, Title Fees, and Registration Fees).

**Answer:** GEICO denies each and every allegation contained in paragraph 88 of the Complaint except admits that following submission of Plaintiff Angell's claim, claim number 0554301220101051-01, Plaintiff Angell's 2007 BMW 5 Series, Vin # WBANB53507CP04886, was determined to be a total loss. GEICO further admits that a CCC Information Services Market Valuation Report was generated with respect to Plaintiff Angell's claim, claim number 0554301220101051-01, which reflected a base value of \$9,212.00 and an adjusted vehicle value of \$9,212.00.

89. GEICO County then added sales tax of \$575.75 and Title Fees \$33.00, while subtracting the deductible of \$501.00, for a total of \$9,319.75.

**Answer:** GEICO admits that following a deduction of \$500 for Plaintiff Angell's deductible, GEICO County paid Plaintiff Angell \$9,319.75 in relation to Plaintiff's claim, claim number 0554301220101051-01, which included \$575.75 in sales tax and \$33 in title fees.

90. However, GEICO County did not include any amount for Registration Fees in making the ACV payment to Plaintiff Morris, notwithstanding that Registration Fees are reasonably necessary to replace a vehicle in Texas.

**Answer:** GEICO denies each and every allegation contained in paragraph 90 of the Complaint except admits that GEICO's payment with respect to Plaintiff's claim, claim number 0554301220101051-01, did not include an amount for registration fees.

91. By not paying the full ACV of the insured vehicle, GEICO County breached its contract with Plaintiff Morris.

**Answer:** No response is required to paragraph 91 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 91 of the Complaint.

92. Plaintiff Morris paid all premiums owed and otherwise satisfied all conditions precedent such that the insurance policy was in effect and operational at the time of the collision.

**Answer:** No response is required to paragraph 92 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 92 of the Complaint, except admits that the Morris Policy was in effect at the time of Plaintiff's loss on or about August 14, 2016.

**v. Plaintiff Burnham.**

93. Plaintiff Burnham insured a 2012 Chevrolet Cruze LS under the policy issued by GEICO Choice.

**Answer:** GEICO admits that Plaintiff Burnham insured a 2012 Chevrolet Cruze LS, VIN # 1G1PC5SH0C7152306, under a Texas Personal Auto Insurance Policy with GEICO Choice, policy number 4333-36-41-25, with a policy term of December 22, 2016 through June 22, 2017 (the "Burnham Policy") providing physical damage coverages.

94. On or about April 21, 2017, Plaintiff Burnham's insured vehicle was involved in a collision, after which Plaintiff Burnham filed a claim for property damage with GEICO Choice, claim number 0274966150101054-01.

**Answer:** GEICO admits a loss was reported under the Burnham Policy, claim number 0274966150101054-01, for physical damage to a 2012 Chevrolet Cruze LS, VIN # 1G1PC5SH0C7152306, arising out of an accident occurring on or about April 21, 2017.

95. GEICO Choice determined that the vehicle was a total loss with an adjusted vehicle value of \$9,026.50. The adjusted vehicle value was based on the cost to purchase a replacement vehicle (but not including mandatory fees such as sales tax, Title Fees, and Registration Fees).

**Answer:** GEICO denies each and every allegation contained in paragraph 95 of the Complaint except admits that following submission of Plaintiff Angell's claim, claim number 0274966150101054-01, Plaintiff Burnham's 2012 Chevrolet Cruze LS, VIN # 1G1PC5SH0C7152306, was determined to be a total loss. GEICO further admits that a CCC Information Services Market Valuation Report was generated with respect to Plaintiff Angell's claim, claim number 0274966150101054-01, which reflected a base value of \$8434.00 and a value before deductible of \$9,623.66.

96. GEICO Choice then added sales tax of \$564.16 and Title Fees \$33.00, while subtracting the deductible of \$500.00, for a total of \$9,123.66.

**Answer:** GEICO admits that following a deduction of \$500 for Plaintiff Burnham's deductible, GEICO Choice paid Plaintiff Burnham \$9,123.66 in relation to Plaintiff's claim, claim number 0274966150101054-01, which included \$564.16 in sales tax and \$33 in title fees.

97. However, GEICO Choice did not include any amount for Registration Fees in making the ACV payment to Plaintiff Burnham, notwithstanding that Registration Fees are reasonably necessary to replace a vehicle in Texas.

**Answer:** GEICO denies each and every allegation contained in paragraph 97 of the Complaint except admits that GEICO's payment with respect to Plaintiff's claim, claim number 0274966150101054-01, did not include an amount for registration fees.

98. By not paying the full ACV of the insured vehicle, GEICO Choice breached its contract with Plaintiff Burnham.

**Answer:** No response is required to paragraph 98 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 98 of the Complaint.

99. Plaintiff Burnham paid all premiums owed and otherwise satisfied all conditions precedent such that the insurance policy was in effect and operational at the time of the collision.

**Answer:** No response is required to paragraph 99 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 99 of the Complaint, except admits that the Burnham Policy was in effect at the time of Plaintiff's loss on or about April 21, 2017.

100. GEICO's practices and procedures are to not pay all of sales tax, Title Fees, and Registration Fees on Texas first-party total loss claims.

**Answer:** No response is required to paragraph 100 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 100 of the Complaint.

101. The aforementioned breaches of contract triggers an obligation by Defendants to pay 18% interest on all unpaid amounts paid on the claim under Section 542 of the Texas Insurance Code, plus attorneys' fees.

**Answer:** No response is required to paragraph 101 of the Complaint as Plaintiffs' Texas Prompt Payment of Claims Act claims were dismissed on October 22, 2020. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 101 of the Complaint.

### **CLASS ALLEGATIONS**

102. Plaintiffs bring this action seeking representation of the below-defined class pursuant to Fed. R. Civ. P. 23(a) and (b)(3).

**Answer:** No response is required to paragraph 102 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation in paragraph 102 of the Complaint except admits that Plaintiffs purport to bring this action as a class action. GEICO specifically denies that class treatment is appropriate.

103. Plaintiffs are members of and seek to represent the following class ("Class"):  
All insureds, under any Texas policy issued by GEICO with the same material operative policy language covering a vehicle with auto physical damage coverage, who 1) made a first-party auto property damage claim

during the time period of 4 years prior to the filing of this Complaint to the date on which an Order certifying the class is entered, 2) where such vehicle was declared a total loss, 3) whose claim was adjusted as a total loss, and 4) where the total loss payment was for an amount less than the adjusted vehicle value, plus sales tax calculated as the applicable percentage of the adjusted vehicle value, applicable Title Fees, and applicable Registration Fees, less any applicable deductible and salvage-retained value.

**Answer:** No response is required to paragraph 103 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation in paragraph 103 of the Complaint except admits that Plaintiffs seek to certify the putative class described in paragraph 103 of the Complaint. GEICO specifically denies that class treatment is appropriate.

104. Plaintiffs are members of the Class, because a) each Plaintiff made a claim under a Texas Policy issued by the respective GEICO Defendant, all of which contained the same operative policy language and which included auto physical damage coverage, b) each Plaintiff made a first-party claim during the relevant time period, c) each Plaintiff's vehicle was declared to be and adjusted as a total loss, and d) each Plaintiff received a total loss payment for less than the adjusted vehicle value, plus sales tax on the adjusted vehicle value, applicable Title Fees, and applicable Registration Fees, less applicable deductible and salvage-retained value.

**Answer:** No response is required to paragraph 104 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation in paragraph 104 of the Complaint. GEICO specifically denies that class treatment is appropriate.

105. **Numerosity:** Although the precise number of members of the class are unknown to Plaintiffs at this time and can only be determined through appropriate discovery, Plaintiffs believe that because GEICO (and each Defendant individually) are large motor vehicle insurers in the State of Texas and write tens of millions of dollars of annual physical damage coverage premiums, the class of persons affected by Defendants' unlawful practice consists of tens of thousands of Class members (and thousands of class members for each Defendant. The Class for each Defendant is so numerous that joinder of all class members is impractical. The unlawful practice alleged herein is a standardized and uniform practice, employed by GEICO pursuant to standardized insurance policy language, and results in the retention by GEICO of insurance benefits and monies properly owed to Plaintiffs and the Class Members. Thus, numerosity under Rule 23(a)(1) is established.

**Answer:** GEICO denies each and every allegation contained in paragraph 105 of the Complaint and specifically denies that class treatment is appropriate.

106. **Commonality:** Plaintiffs' claims raise questions of law and fact common to all members of the Class under Rule 23(a)(2). Said common questions include, but are not limited to, the following: (a) whether, under Defendants' standardized policy language, Plaintiffs and the Class Members are owed full sales tax, Title Fees and Registration Fees necessary to replace a total loss insured vehicle; (b) whether such amounts are elements of ACV, defined as the "replacement cost" less depreciation and/or betterment of the insured vehicles; and (c) whether GEICO breached its insurance contracts with the Plaintiffs and every member of the Class by failing to pay such amounts.

**Answer:** GEICO denies each and every allegation contained in paragraph 106 of the Complaint and specifically denies that class treatment is appropriate.

107. The central issues in this litigation turn on interpretation of materially identical policy provisions; thus, this case is well-suited for class-wide adjudication. GEICO and all members of the Class are bound by materially identical policy terms.

**Answer:** No response is required to paragraph 107 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation in paragraph 107 of the Complaint and specifically denies that class treatment is appropriate.

108. **Typicality:** Plaintiffs' claims are typical to those of members of the respective Class under the meaning of Rule 23(a)(3) because members of the Class are similarly affected by GEICO's failure to pay full ACV of the insured vehicles. The material and relevant policy terms for each Class Member are substantially identical to the terms of Plaintiffs' policies. Plaintiffs' claims are not unique from those of the members of the Class, nor are they subject to unique affirmative defenses. By pressing their own claims, Plaintiffs necessarily press the substantively- identical claims of Class Members.

**Answer:** GEICO denies each and every allegation contained in paragraph 108 of the Complaint and specifically denies that class treatment is appropriate.

109. Plaintiffs' claims are typical of the claims of all Class Members because all such claims arise from the allegedly improper failure by Defendant to pay all of sales tax, Title Fees, and Registration Fees upon the total loss of insured vehicles. Plaintiffs and Class Members were injured through Defendants' uniform misconduct. Plaintiffs' claims are based upon the same legal



theories as those of the Class Members. Plaintiffs suffered the same harm as all the other Class Members: the coverage for sales tax and regulatory fees that Defendants failed to pay its insureds.

**Answer:** GEICO denies each and every allegation contained in paragraph 109 of the Complaint and specifically denies that class treatment is appropriate.

110. **Adequacy:** Plaintiffs and their counsel will fairly and adequately protect and represent the interests of each member of the class, pursuant to Rule 23(a)(4). Plaintiffs do not possess any interest adverse to those of the Class Members. Plaintiffs are committed to the vigorous prosecution of this action and retained competent counsel experienced in prosecuting and defending class actions. Plaintiffs are committed to zealously protecting the interests of the members of the Class.

**Answer:** GEICO denies knowledge or information sufficient to form a belief as to the truth or falsity of the adequacy of Plaintiffs' counsel or Plaintiffs' commitment to vigorous prosecution of this action. GEICO denies the remainder of the allegations contained in paragraph 110 of the Complaint and specifically denies that class treatment is appropriate.

111. Plaintiffs' counsel are also adequate representatives under the meaning of Rule 23(a)(4). The undersigned counsel collectively litigated thousands of first-party insurance claims under the Texas Insurance Code. Plaintiffs' counsel also associated other counsel (who intend to apply for admission *pro hac vice*) who successfully litigated class action cases similar to that here, where insurers breached contracts with insureds by failing to include sales tax, Title Fees, and/or Registration Fees.

**Answer:** GEICO denies knowledge or information sufficient to form a belief as to the truth or falsity of the adequacy of Plaintiffs' counsel. GEICO denies the remainder of the allegations contained in paragraph 111 of the Complaint and specifically denies that class treatment is appropriate.

112. **Superiority:** Pursuant to Rule 23(b)(3), a class action is superior to the other available methods for a fair and efficient adjudication of the controversy because, among other reasons, it is desirable to concentrate the litigation of the Class Members' claims in one forum, as it will conserve party and judicial resources and facilitate the consistency of adjudications. Furthermore, because the damages suffered by individual Class Members is relatively small, their interests in maintaining individual actions is questionable and the expense and burden of individual litigation makes it impracticable for Class Members to seek individual redress for the wrongs done to them. Plaintiffs know of no difficulty that would be encountered in the management of this case that would preclude its maintenance as a class action.



**Answer:** GEICO denies each and every allegation contained in paragraph 112 of the Complaint and specifically denies that class treatment is appropriate.

113. The issues related to Plaintiffs' claims do not vary from the issues relating to the claims of the other Class Members, such that a class action provides a more efficient vehicle to resolve this claim than through a myriad of separate lawsuits.

**Answer:** GEICO denies each and every allegation contained in paragraph 113 of the Complaint and specifically denies that class treatment is appropriate.

114. Certification of the above class is also supported by the following considerations:
- a. The relatively small amount of damages that members of the class have suffered on an individual basis would not justify the prosecution of separate lawsuits;
  - b. Counsel in this class action is not aware of any previously filed litigation against the Defendants in which any of the members of the class are a party and where any question of law or fact in the subject action can be adjudicated; and
  - c. No difficulties would be encountered in the management of the claim on a class action basis, because the class is readily definable and the prosecution of this class action would reduce the possibility of repetitious litigation.

**Answer:** GEICO denies each and every allegation contained in paragraph 114 of the Complaint and specifically denies that class treatment is appropriate.

115. **Predominance**: Rule 23(b)(3)'s predominance requirement is also met because the previously articulated common issues of fact and law predominate over any question solely affecting individual Class Members. Resolution of the common questions in this litigation will resolve virtually all substantive questions critical to individual class member claims in a single stroke. Whether the materially-identical Policy language requires payment of sales tax, Title Fees, and/or Registration Fees is the dispositive question in this litigation, the answer to which is the same for all Class Members.

**Answer:** GEICO denies each and every allegation contained in paragraph 115 of the Complaint and specifically denies that class treatment is appropriate.

116. While damages for individual Class Members may be in different numerical amounts<sup>3</sup> the measure of damages is the same for all members of Class and for Plaintiffs, the application of which is a purely ministerial matter.

**Answer:** GEICO denies each and every allegation contained in paragraph 116 of the Complaint and specifically denies that class treatment is appropriate.

**COUNT I: Claim for Breach of Contract Against GEICO Indemnity  
(brought by Plaintiff Brown on behalf of GEICO Indemnity Insureds)**

117. All allegations in paragraphs Nos. 1 - 116 are incorporated in this Count I by reference.

**Answer:** GEICO repeats and reiterates its response to each and every allegation contained in paragraphs 1 through 116 of the Complaint as though fully set forth herein.

118. This count is brought by Plaintiff Brown, individually and on behalf of the Class of persons whose total loss claims were insured by GEICO Indemnity (“GEICO Indemnity Class Members”).

**Answer:** No response is required to paragraph 118 of the Complaint because it states Plaintiffs’ contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 118 of the Complaint except GEICO denies knowledge or information sufficient to form a belief as to class members’ claims as no class has been certified in this action. GEICO admits Plaintiff Brown was a named insured under the Brown Policy issued by GEICO Indemnity.

119. Plaintiff Brown was party to an insurance contract with GEICO Indemnity as described herein. All GEICO Indemnity Class Members were parties to an insurance contract with GEICO Indemnity containing materially identical terms.

**Answer:** No response is required to paragraph 119 of the Complaint because it states Plaintiffs’ contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 119 of the Complaint except GEICO denies

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<sup>3</sup> This is because, taking Sales Tax as an example, 6.25% of 2017 Ferrari is likely a higher amount than 6.25% of a 1990 Honda.

knowledge or information sufficient to form a belief as to class members' policies as no class has been certified in this action. GEICO admits Plaintiff Brown was insured under the Brown Policy issued by GEICO Indemnity.

120. The interpretation of Plaintiff Brown's and all GEICO Indemnity Class Members' insurance Policies is governed by Texas law.

**Answer:** No response is required to paragraph 120 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies knowledge or information sufficient to form a belief as to class members' policies as no class has been certified in this action.

121. Plaintiff Brown and all GEICO Indemnity Class Members made a claim determined by GEICO Indemnity to be a first-party total loss under the insurance policy, and determined to be a covered claim.

**Answer:** No response is required to paragraph 121 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 121 of the Complaint except GEICO denies knowledge or information sufficient to form a belief as to class members' claims as no class has been certified in this action.

122. By paying the total loss claims, GEICO Indemnity determined that Plaintiff Brown and each Class Member complied with the terms of their insurance contracts, and fulfilled all duties and conditions under the Policies for each insured to be paid on his or her total loss.

**Answer:** No response is required to paragraph 122 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 122 of the Complaint except GEICO denies knowledge or information sufficient to form a belief as to class members' claims as no class has been certified in this action.

123. Pursuant to the aforementioned uniform contractual provisions, upon the total loss of insured vehicles, Plaintiff Brown and every GEICO Indemnity Class Member were owed the ACV of the vehicle, which is the adjusted vehicle value, sales tax calculated as a percentage of the full adjusted vehicle value, applicable Title Fees (depending on their readily-identifiable location), applicable Registration Fees (depending on their readily-identifiable location), minus any applicable deductible and salvage-retained value.

**Answer:** No response is required to paragraph 123 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies knowledge or information sufficient to form a belief as to class members' claims as no class has been certified in this action. GEICO denies the remainder of the allegations contained in paragraph 123 of the Complaint.

124. GEICO Indemnity failed to pay the aforementioned amount to Plaintiff Brown and failed to pay the aforementioned amount to every GEICO Indemnity Class Member. At minimum, GEICO Indemnity failed to pay any Registration Fees at all, and thus necessarily failed to pay the required amount for that reason alone. In some cases, GEICO Indemnity also failed to pay sales tax calculated as the applicable sales tax rate as a percentage of the full adjusted vehicle value and Title Fees.

**Answer:** No response is required to paragraph 124 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies knowledge or information sufficient to form a belief as to class members' claims as no class has been certified in this action. GEICO denies the remainder of the allegations contained in paragraph 124 of the Complaint.

125. GEICO Indemnity materially breached the Policies of Plaintiff Brown and GEICO Indemnity Class Members by failing to provide coverage for the full ACV of insured vehicles.

**Answer:** No response is required to paragraph 125 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 125 of the Complaint.

126. As a result of said breaches, Plaintiff Brown and the GEICO Indemnity Class Members were damaged and are entitled under the Policy to sums representing the benefits owed for the full ACV of the insured vehicle (offset by partial amount already paid), as well as costs,

prejudgment and post judgment interest, injunctive and/or declaratory relief and other relief as is appropriate.

**Answer:** No response is required to paragraph 126 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 126 of the Complaint.

127. In addition, Plaintiff Brown and GEICO Indemnity Class Members are entitled to an award of attorneys' fees and costs.

**Answer:** No response is required to paragraph 127 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 127 of the Complaint.

**COUNT II: Claim for Breach of Contract Against GEICO Advantage  
(brought by Plaintiff Angell on behalf of GEICO Advantage Insureds)**

128. All allegations in paragraphs Nos. 1 - 116 are incorporated into this Count II by reference.

**Answer:** GEICO repeats and reiterates its response to each and every allegation contained in paragraphs 1 through 116 of the Complaint as though fully set forth herein.

129. This count is brought by Plaintiff Angell, individually and on behalf of the Class of persons whose total loss claims were insured by GEICO Advantage (GEICO Advantage Class Members).

**Answer:** No response is required to paragraph 129 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 129 of the Complaint except GEICO denies knowledge or information sufficient to form a belief as to class members' claims as no class has been certified in this action. GEICO admits Plaintiff Angell was a named insured under the Angell Policy issued by GEICO Advantage.

130. Plaintiff Angell was party to an insurance contract with GEICO Advantage as described herein. All GEICO Advantage Class Members were parties to an insurance contract with GEICO Advantage containing materially identical terms.

**Answer:** No response is required to paragraph 130 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 130 of the Complaint except GEICO denies knowledge or information sufficient to form a belief as to class members' policies as no class has been certified in this action. GEICO admits Plaintiff Angell was insured under the Angell Policy issued by GEICO Advantage.

131. The interpretation of Plaintiff Angell and all GEICO Advantage Class Members' insurance Policies is governed by Texas law.

**Answer:** No response is required to paragraph 131 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies knowledge or information sufficient to form a belief as to class members' policies as no class has been certified in this action.

132. Plaintiff Angell and all GEICO Advantage Class Members made a claim determined by GEICO Advantage to be a first-party total loss under the insurance policy, and determined to be a covered claim.

**Answer:** No response is required to paragraph 132 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 132 of the Complaint except GEICO denies knowledge or information sufficient to form a belief as to class members' claims as no class has been certified in this action.

133. By paying the total loss claims, GEICO Advantage determined that Plaintiff Angell and each Class Member complied with the terms of their insurance contracts, and fulfilled all duties and conditions under the Policies for each insured to be paid on his or her total loss.

**Answer:** No response is required to paragraph 133 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 133 of the Complaint except GEICO denies knowledge or information sufficient to form a belief as to class members' claims as no class has been certified in this action.

134. Pursuant to the aforementioned uniform contractual provisions, upon the total loss of insured vehicles, Plaintiff Angell and every GEICO Advantage Class Member were owed the ACV of the vehicle, which is the adjusted vehicle value, sales tax calculated as a percentage of the full adjusted vehicle value, applicable Title Fees (depending on their readily-identifiable location), applicable Registration Fees (depending on their readily-identifiable location), minus any applicable deductible and salvage-retained value.

**Answer:** No response is required to paragraph 134 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies knowledge or information sufficient to form a belief as to class members' claims as no class has been certified in this action. GEICO denies the remainder of the allegations contained in paragraph 134 of the Complaint.

135. GEICO Advantage failed to pay the aforementioned amount to Plaintiff Angell and failed to pay the aforementioned amount to every GEICO Advantage Class Member. At minimum, GEICO Advantage failed to pay any Registration Fees at all, and thus necessarily failed to pay the required amount for that reason alone. In some cases, GEICO Advantage also failed to pay sales tax calculated as the applicable sales tax rate as a percentage of the full adjusted vehicle value and Title Fees.

**Answer:** No response is required to paragraph 135 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies knowledge or information sufficient to form a belief as to class members' claims as no class has been certified in this action. GEICO denies the remainder of the allegations contained in paragraph 135 of the Complaint.

136. GEICO Advantage materially breached the Policies of Plaintiff Angell and GEICO Advantage Class Members by failing to provide coverage for the full ACV of insured vehicles.

**Answer:** No response is required to paragraph 136 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 136 of the Complaint.

137. As a result of said breaches, Plaintiff Angell and the GEICO Advantage Class Members were damaged and are entitled under the Policy to sums representing the benefits owed for the full ACV of the insured vehicle (offset by partial amount already paid), as well as costs, prejudgment and post judgment interest, injunctive and/or declaratory relief and other relief as is appropriate.

**Answer:** No response is required to paragraph 137 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 137 of the Complaint.

138. In addition, Plaintiff Angell and GEICO Advantage Class Members are entitled to an award of attorneys' fees and costs.

**Answer:** No response is required to paragraph 138 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 138 of the Complaint.

**COUNT III: Claim for Breach of Contract Against Government Employees  
(brought by Plaintiff Beck on behalf of Government Employees Insureds)**

139. The allegations in paragraphs Nos. 1 - 116 are incorporated into this Count III by reference.

**Answer:** GEICO repeats and reiterates its response to each and every allegation contained in paragraphs 1 through 116 of the Complaint as though fully set forth herein.

140. This count is brought by Plaintiff Beck, individually and on behalf of the Class of persons whose total loss claims were insured by Government Employees (Government Employees Class Members).

**Answer:** No response is required to paragraph 140 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies



each and every allegation contained in paragraph 140 of the Complaint except GEICO denies knowledge or information sufficient to form a belief as to class members' claims as no class has been certified in this action. GEICO admits Plaintiff Beck was a named insured under the Beck Policy issued by GEICO Employees Insurance Company.

141. Plaintiff Beck was party to an insurance contract with Government Employees. All Government Employees Class Members were parties to an insurance contract with Government Employees containing materially identical terms.

**Answer:** No response is required to paragraph 141 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 141 of the Complaint except GEICO denies knowledge or information sufficient to form a belief as to class members' policies as no class has been certified in this action. GEICO admits Plaintiff Beck was a named insured under the Beck Policy issued by Government Employees Insurance Company.

142. The interpretation of Plaintiff Beck and all Government Employees Class Members' insurance Policies is governed by Texas law.

**Answer:** No response is required to paragraph 142 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies knowledge or information sufficient to form a belief as to class members' policies as no class has been certified in this action.

143. Plaintiff Beck and all Government Employees Class Members made a claim determined to be a first-party total loss under the insurance policy, and determined to be a covered claim. By paying the total loss claims, Government Employees determined that Plaintiff Beck and each Class Member complied with the terms of their insurance contracts, and fulfilled all duties and conditions under the Policies for each insured to be paid on his or her total loss.

**Answer:** No response is required to paragraph 143 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 143 of the Complaint except GEICO denies

knowledge or information sufficient to form a belief as to class members' claims as no class has been certified in this action.

144. Pursuant to the aforementioned uniform contractual provisions, upon the total loss of insured vehicles, Plaintiff Beck and every Government Employees Class Member were owed the ACV of the vehicle, which is the adjusted vehicle value, sales tax calculated as a percentage of the full adjusted vehicle value, applicable Title Fees (depending on their readily-identifiable location), applicable Registration Fees (depending on their readily-identifiable location), minus any applicable deductible and salvage-retained value.

**Answer:** No response is required to paragraph 144 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies knowledge or information sufficient to form a belief as to class members' policies as no class has been certified in this action. GEICO denies the remainder of the allegations contained in paragraph 144 of the Complaint.

145. Government Employees failed to pay the aforementioned amount to Plaintiff Beck and failed to pay the aforementioned amount to every Government Employees Class Member. At minimum, Government Employees failed to pay any Registration Fees at all, and thus necessarily failed to pay the required amount for that reason alone. In some cases, Government Employees also failed to pay sales tax calculated as the applicable sales tax rate as a percentage of the full adjusted vehicle value and Title Fees.

**Answer:** No response is required to paragraph 145 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies knowledge or information sufficient to form a belief as to class members' claims as no class has been certified in this action. GEICO denies the remainder of the allegations contained in paragraph 145 of the Complaint.

146. Government Employees materially breached the Policies of Plaintiff Beck and Government Employees Class Members by failing to provide coverage for the full ACV of insured vehicles.

**Answer:** No response is required to paragraph 146 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 146 of the Complaint.

147. As a result of said breaches, Plaintiff Beck and the Government Employees Class Members were damaged and are entitled under the Policy to sums representing the benefits owed for the full ACV of the insured vehicle (offset by partial amount already paid), as well as costs, prejudgment and post judgment interest, injunctive and/or declaratory relief and other relief as is appropriate.

**Answer:** No response is required to paragraph 147 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 147 of the Complaint.

148. In addition, Plaintiff Beck and Government Employees Class Members are entitled to an award of attorneys' fees and costs.

**Answer:** No response is required to paragraph 148 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 148 of the Complaint.

**COUNT IV: Claims for Breach of Contract Against GEICO County  
(brought by Plaintiff Morris on behalf of GEICO County Insureds)**

149. The allegations in paragraphs Nos. 1 - 116 are incorporated into this Count IV by reference.

**Answer:** GEICO repeats and reiterates its response to each and every allegation contained in paragraphs 1 through 116 of the Complaint as though fully set forth herein.

150. This count is brought by Plaintiff Morris, individually and on behalf of the Class of persons whose total loss claims were insured by GEICO County (GEICO County Class Members).

**Answer:** No response is required to paragraph 150 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 150 of the Complaint except GEICO denies

knowledge or information sufficient to form a belief as to class members' claims as no class has been certified in this action. GEICO admits Plaintiff Morris was a named insured under the Morris Policy issued by GEICO County.

151. Plaintiff Morris was party to an insurance contract with GEICO Advantage as described herein. All GEICO County Class Members were parties to an insurance contract with GEICO County containing materially identical terms.

**Answer:** No response is required to paragraph 151 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 151 of the Complaint except GEICO denies knowledge or information sufficient to form a belief as to class members' policies as no class has been certified in this action. GEICO admits Plaintiff Morris was a named insured under the Morris Policy issued by GEICO County.

152. The interpretation of Plaintiff Morris and all GEICO County Class Members' insurance Policies is governed by Texas law.

**Answer:** No response is required to paragraph 152 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies knowledge or information sufficient to form a belief as to class members' policies as no class has been certified in this action.

153. Plaintiff Morris and all GEICO County Class Members made a claim determined to be a first-party total loss under the insurance policy, and determined to be a covered claim.

**Answer:** No response is required to paragraph 153 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 153 of the Complaint except GEICO denies knowledge or information sufficient to form a belief as to class members' claims as no class has been certified in this action.

154. By paying the total loss claims, GEICO County determined that Plaintiff Morris and each Class Member complied with the terms of their insurance contracts, and fulfilled all duties and conditions under the Policies for each insured to be paid on his or her total loss.

**Answer:** No response is required to paragraph 154 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies knowledge or information sufficient to form a belief as to class members' policies as no class has been certified in this action. GEICO denies the remainder of the allegations contained in paragraph 154 of the Complaint.

155. Pursuant to the aforementioned uniform contractual provisions, upon the total loss of insured vehicles, Plaintiff Morris and every GEICO County Class Member were owed the ACV of the vehicle, which is the adjusted vehicle value, sales tax calculated as a percentage of the full adjusted vehicle value, applicable Title Fees (depending on their readily-identifiable location), applicable Registration Fees (depending on their readily-identifiable location), minus any applicable deductible and salvage-retained value.

**Answer:** No response is required to paragraph 155 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies knowledge or information sufficient to form a belief as to class members' claims as no class has been certified in this action. GEICO denies the remainder of the allegations contained in paragraph 155 of the Complaint.

156. GEICO County failed to pay the aforementioned amount to Plaintiff Morris and failed to pay the aforementioned amount to every GEICO County Class Member. At minimum, GEICO County failed to pay any Registration Fees at all, and thus necessarily failed to pay the required amount for that reason alone. In some cases, GEICO County also failed to pay sales tax calculated as the applicable sales tax rate as a percentage of the full adjusted vehicle value, and Title Fees.

**Answer:** No response is required to paragraph 156 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies knowledge or information sufficient to form a belief as to class members' claims as no class has

been certified in this action. GEICO denies the remainder of the allegations contained in paragraph 156 of the Complaint.

157. GEICO County materially breached the Policies of Plaintiff Morris and GEICO County Class Members by failing to provide coverage for the full ACV of insured vehicles.

**Answer:** No response is required to paragraph 157 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 157 of the Complaint.

158. As a result of said breaches, Plaintiff Morris and the GEICO County Class Members were damaged and are entitled under the Policy to sums representing the benefits owed for the full ACV of the insured vehicle (offset by partial amount already paid), as well as costs, prejudgment and post judgment interest, injunctive and/or declaratory relief and other relief as is appropriate.

**Answer:** No response is required to paragraph 158 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 158 of the Complaint.

159. In addition, Plaintiff Morris and GEICO County Class Members are entitled to an award of attorneys' fees and costs.

**Answer:** No response is required to paragraph 159 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 159 of the Complaint.

**COUNT V: Claim for Breach of Contract Against GEICO Choice  
(brought by Plaintiff Burnham on Behalf of GEICO Choice Insureds)**

160. The allegations in paragraphs Nos. 1 - 116 are incorporated into this Count V by reference.

**Answer:** GEICO repeats and reiterates its response to each and every allegation contained in paragraphs 1 through 116 of the Complaint as though fully set forth herein.

161. This count is brought by Plaintiff Burnham, individually and on behalf of the Class of persons whose total loss claims were insured by GEICO Choice (GEICO Choice Class Members).

**Answer:** No response is required to paragraph 161 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 161 of the Complaint except GEICO denies knowledge or information sufficient to form a belief as to class members' claims as no class has been certified in this action. GEICO admits Plaintiff Burnham was a named insured under the Burnham Policy issued by GEICO Choice.

162. Plaintiff Burnham was party to an insurance contract with GEICO Choice as described herein. All GEICO Choice Class Members were parties to an insurance contract with GEICO Choice containing materially identical terms.

**Answer:** No response is required to paragraph 162 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 162 of the Complaint except GEICO denies knowledge or information sufficient to form a belief as to class members' policies as no class has been certified in this action. GEICO admits Plaintiff Burnham was a named insured under the Burnham Policy issued by GEICO Choice.

163. The interpretation of Plaintiff Burnham and all GEICO Choice Class Members' insurance Policies is governed by Texas law.

**Answer:** No response is required to paragraph 163 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies knowledge or information sufficient to form a belief as to class members' policies as no class has been certified in this action.

164. Plaintiff Burnham and all GEICO Choice Class Members made a claim determined to be a first-party total loss under the insurance policy, and determined to be a covered claim.

**Answer:** No response is required to paragraph 164 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 164 of the Complaint except GEICO denies knowledge or information sufficient to form a belief as to class members' claims as no class has been certified in this action.

165. By paying the total loss claims, GEICO Choice determined that Plaintiff Burnham and each Class Member complied with the terms of their insurance contracts, and fulfilled all duties and conditions under the Policies for each insured to be paid on his or her total loss.

**Answer:** No response is required to paragraph 165 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies knowledge or information sufficient to form a belief as to class members' policies as no class has been certified in this action. GEICO denies the remainder of the allegations contained in paragraph 165 of the Complaint.

166. Pursuant to the aforementioned uniform contractual provisions, upon the total loss of insured vehicles, Plaintiff Burnham and every GEICO Choice Class Member were owed the ACV of the vehicle, which is the adjusted vehicle value, sales tax calculated as a percentage of the full adjusted vehicle value, applicable Title Fees (depending on their readily-identifiable location), applicable Registration Fees (depending on their readily-identifiable location), minus any applicable deductible and salvage-retained value.

**Answer:** No response is required to paragraph 166 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies knowledge or information sufficient to form a belief as to class members' claims as no class has been certified in this action. GEICO denies the remainder of the allegations contained in paragraph 166 of the Complaint.

167. GEICO Choice failed to pay the aforementioned amount to Plaintiff Burnham and failed to pay the aforementioned amount to every GEICO Choice Class Member. At minimum, GEICO Choice failed to pay any Registration Fees at all, and thus necessarily failed to pay the required amount for that reason alone. In some cases, GEICO Choice also failed to pay sales tax



calculated as the applicable sales tax rate as a percentage of the full adjusted vehicle value and Title Fees.

**Answer:** No response is required to paragraph 167 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies knowledge or information sufficient to form a belief as to class members' claims as no class has been certified in this action. GEICO denies the remainder of the allegations contained in paragraph 167 of the Complaint.

168. GEICO Choice materially breached the Policies of Plaintiff Burnham and GEICO Choice Class Members by failing to provide coverage for the full ACV of insured vehicles.

**Answer:** No response is required to paragraph 168 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 168 of the Complaint.

169. As a result of said breaches, Plaintiff Burnham and the GEICO Choice Class Members were damaged and are entitled under the Policy to sums representing the benefits owed for the full ACV of the insured vehicle (offset by partial amount already paid), as well as costs, prejudgment and post judgment interest, injunctive and/or declaratory relief and other relief as is appropriate.

**Answer:** No response is required to paragraph 169 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 169 of the Complaint.

170. In addition, Plaintiff Burnham and GEICO Choice Class Members are entitled to an award of attorneys' fees and costs.

**Answer:** No response is required to paragraph 170 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 170 of the Complaint.

**COUNT VI: Violation of Prompt Payment of Claims Statute  
(brought by All Plaintiffs on behalf of all Class Members)**

171. The allegations in paragraphs Nos. 1 - 170 are incorporated into this Count VI by reference.

**Answer:** GEICO repeats and reiterates its response to each and every allegation contained in paragraphs 1 through 170 of the Complaint as though fully set forth herein.

172. The failure by GEICO to pay the full amount owed and/or to follow the statutory time guidelines for paying claims as set forth herein constitutes a violation of Section 542.051 *et seq.* of the Texas Insurance Code.

**Answer:** No response is required to paragraph 172 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 172 of the Complaint.

173. Pursuant to the aforementioned uniform contractual provisions, upon the total loss of insured vehicles, Plaintiffs and every GEICO Class Member were owed the ACV of the vehicle, which is the adjusted vehicle value, sales tax calculated as a percentage of the full adjusted vehicle value, applicable Title Fees (depending on their readily-identifiable location), applicable Registration Fees (depending on their readily-identifiable location), minus any applicable deductible and salvage-retained value.

**Answer:** No response is required to paragraph 173 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 173 of the Complaint.

174. GEICO failed to pay the full ACV to each of the Plaintiffs and failed to pay the aforementioned amount to every Class Member.

**Answer:** GEICO denies each and every allegation contained in paragraph 174 of the Complaint.

175. GEICO's failure to pay the full ACV including all taxes and Registration Fees violated Section 542.003(b)(1) of the Texas Prompt Payment of Claims Act ("TPPCA"). GEICO knowingly misrepresented to Plaintiffs and Class Members pertinent facts or policy provisions relating to coverage at issue – namely, that ACV include by definition replacement costs such as the aforementioned sales tax and fees.

**Answer:** No response is required to paragraph 175 of the Complaint as Plaintiffs' Texas Prompt Payment of Claims Act claims were dismissed on October 22, 2020.

176. GEICO's failure to pay the aforementioned taxes and fees violated Section 542.003(b)(4) of the TPPCA. GEICO did not attempt in good faith to effect a prompt, fair, and equitable settlement of Plaintiffs' and Class Members' claims submitted in which liability has become reasonably clear – namely by failing to pay the aforementioned sales tax and fees required as components of ACV under the Policy.

**Answer:** No response is required to paragraph 176 of the Complaint as Plaintiffs' Texas Prompt Payment of Claims Act claims were dismissed on October 22, 2020.

177. GEICO's failure to pay the aforementioned taxes and fees violated Section 542.003(b)(5) of the TPPCA. GEICO compelled Plaintiffs and Class Members, who were policyholders, to institute this suit to recover an amount due under a policy by GEICO offering substantially less than the amount ultimately recovered in a suit brought by the policyholders – namely, by failing to pay the aforementioned sales tax and fees required as components of ACV under the Policy, such that the payments actually made were substantially less than what was owed.

**Answer:** No response is required to paragraph 177 of the Complaint as Plaintiffs' Texas Prompt Payment of Claims Act claims were dismissed on October 22, 2020.

178. GEICO has also violated the TPPCA by failing to promptly pay the full value of a claim in violation of Section 542.058, which requires full payment within 60 days of the claim. Here, GEICO failed to pay Plaintiffs and Class Members the aforementioned sales tax and fees owed as components of ACV under the Policy, and has never paid those amounts due (including within 60 days as required by the TPPCA).

**Answer:** No response is required to paragraph 178 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 178 of the Complaint.

179. Plaintiffs and all other Class Members, therefore, in addition to the claim for damages, are entitled to 18% interest and attorneys' fees as set forth in Section 542.060 of the Texas Insurance Code.

**Answer:** No response is required to paragraph 179 of the Complaint because it states Plaintiffs' contentions and conclusions of law. To the extent a response is required, GEICO denies each and every allegation contained in paragraph 179 of the Complaint.

The remaining allegations in the Complaint are prayers for relief to which no response is necessary. To the extent a response is required, GEICO denies that Plaintiffs are entitled to any

relief.

All allegations in the Complaint not hereto admitted, denied or otherwise explained are specifically denied as though set forth individually and separately denied.

### **DEFENSES**

GEICO sets forth the following affirmative and other defenses to Plaintiffs' Complaint. GEICO does not intend to assume the burden of proof with respect to any matters as to which Plaintiffs bear the burden under applicable law.

#### **FIRST DEFENSE**

Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

#### **SECOND DEFENSE**

Plaintiffs' and putative class members' claims are barred by the doctrine of unclean hands.

#### **THIRD DEFENSE**

The granting of Plaintiffs' demand in the Complaint would result in unjust enrichment.

#### **FOURTH DEFENSE**

Plaintiffs' and putative class members' grievances should be addressed by the Texas Department of Insurance and therefore this Court lacks jurisdiction.

#### **FIFTH DEFENSE**

The alleged conduct of GEICO is permitted under the laws and regulations of the State of Texas.

#### **SIXTH DEFENSE**

GEICO, at all times, complied with and fulfilled all of its obligations under any and all insurance laws and regulations, including the applicable guidance issued by the Texas Department of Insurance and court opinions interpreting the applicable insurance.

#### **SEVENTH DEFENSE**

Plaintiffs' and putative class members' claims are barred in whole or in part by the appraisal provision in GEICO's insurance policies.

#### **EIGHTH DEFENSE**

Plaintiffs' and putative class members' claims are barred because they did not sustain any ascertainable losses or damages.

**NINTH DEFENSE**

Plaintiffs and putative class members are not entitled to attorneys' fees.

**TENTH DEFENSE**

GEICO at all times complied with its contractual obligations and did not breach any contract provisions.

**ELEVENTH DEFENSE**

Plaintiffs fail to identify any breached contract provisions.

**TWELFTH DEFENSE**

Plaintiffs and putative class members have failed, refused, and/or neglected to mitigate or avoid the damages complained of in the Complaint, if any.

**THIRTEENTH DEFENSE**

Plaintiffs and putative class members have failed to timely and completely exhaust the requisite administrative remedies, statutory and/or contractual remedies, and/or policy conditions precedent available to them prior to commencing this action.

**FOURTEENTH DEFENSE**

Plaintiffs' and putative class members' claims are barred because, without admitting (and specifically denying) GEICO owed any duty to Plaintiffs or putative class members, any duty or obligation owed was fully performed, satisfied, and/or discharged.

**FIFTEENTH DEFENSE**

Plaintiffs' and putative class members' claims may be barred by the doctrine of collateral estoppel.

**SIXTEENTH DEFENSE**

The claims of Plaintiffs and some putative class members may be barred by res judicata.

**SEVENTEENTH DEFENSE**

The claims of Plaintiffs and some putative class members may be barred by their lack of

standing to bring the claims alleged in the Complaint.

**EIGHTEENTH DEFENSE**

The claims of Plaintiffs and some putative class members may be barred by set-off and/or recoupment.

**NINETEENTH DEFENSE**

The claims of Plaintiffs and some putative class members may be barred by release.

**TWENTIETH DEFENSE**

The claims of Plaintiffs and some putative class members are barred by accord and satisfaction.

**TWENTY-FIRST DEFENSE**

The claims of Plaintiffs and some putative class members may be barred by statute of limitations, waiver, and/or laches.

**TWENTY-SECOND DEFENSE**

The claims of Plaintiffs and putative class members may be barred by discharge in bankruptcy.

**TWENTY-THIRD DEFENSE**

This suit may not be properly maintained as a class action because: (1) Plaintiffs have failed to plead, and cannot establish, the necessary procedural elements for class treatment; (2) a class action is not an appropriate method for the fair and efficient adjudication of the claims described in the Complaint; (3) common issues of fact or law do not predominate; to the contrary, individual issues predominate; (4) Plaintiffs' claims are not representative or typical of the claims of the putative class; (5) Plaintiffs are not proper class representatives; (6) counsel for Plaintiffs and the putative class are not adequate representatives; (7) Plaintiffs cannot satisfy any of the requirements for class action treatment, and class action treatment is neither appropriate nor constitutional; (8) there is not a well-defined community of interest in the questions of law or fact affecting Plaintiffs and the members of the putative class; and (9) the putative class is not ascertainable, nor are its members identifiable.

**TWENTY-FOURTH DEFENSE**

GEICO opposes class certification and disputes the propriety of class treatment.

**TWENTY-FIFTH DEFENSE**

GEICO expressly reserves its right to assert additional defenses as may be warranted by facts obtained during the course of its investigation and/or discovery in this litigation.

WHEREFORE, having fully answered, Defendants pray that judgment be entered against Plaintiffs, that the Complaint be dismissed with prejudice, along with any other relief as this Court may deem just, proper, and equitable.

Dated: December 3, 2020

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 3, 2020, 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, including the following:

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