

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

CASE NO. 18-cv-61361-DPG

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| MARIANNE JOFFE, DEBBE SCHERTZER, |) |
| and STEPHANIE RODRIGUEZ, individually |) |
| and on behalf of all others similarly situated, |) |
| |) |
| Plaintiff, |) |
| |) |
| v. |) |
| |) |
| GEICO INDEMNITY INSURANCE |) |
| COMPANY, GOVERNMENT EMPLOYEES |) |
| INSURANCE COMPANY and GEICO |) |
| GENERAL INSURANCE COMPANY, |) |
| |) |
| Defendants. |) |
| |) |

**DEFENDANTS’ ANSWER TO PLAINTIFFS’ CLASS ACTION COMPLAINT FOR
DAMAGES, INJUNCTIVE RELIEF, AND DEMAND FOR JURY TRIAL**

Defendants GEICO INDEMNITY INSURANCE COMPANY, GOVERNMENT EMPLOYEES INSURANCE COMPANY and GEICO GENERAL INSURANCE COMPANY (“GEICO” or “Defendants”) hereby respond to Plaintiffs’ Class Action Complaint for Damages, injunctive relief, and demand for jury trial (“Complaint”) as follows:

I. NATURE OF THE ACTION

1. This is a Class Action lawsuit by Plaintiffs Joffe, Schertzer, and Rodriguez, who insured their leased vehicles under GEICO Indemnity’s, Government Employees Insurance Company’s, and GEICO General’s private passenger auto (“PPA”) insurance policies (the “Policies”) providing coverage for PPA physical damage.

Answer: GEICO denies each and every allegation contained in paragraph 1 of the Complaint except admits that Plaintiffs each had a Florida Family Automobile Insurance Policy providing physical damage coverage for their insured leased vehicles at the time of their total loss

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physical damage claims with either GEICO Indemnity Company, Government Employees Insurance Company or GEICO General Insurance Company and that Plaintiffs purport to bring a class action lawsuit.

2. The allegations in this lawsuit are similar to the allegations, and include the same legal issues, raised in *Roth v. GEICO General Insurance Company*, Case No. 16-CV-62942-WPD, United States District Court for the Southern District of Florida, Fort Lauderdale Division. In *Roth*, the Court certified a class of leased vehicle insureds with total losses occurring during the five year period before the August 30, 2016 filing of that lawsuit, and granted summary judgment in favor of plaintiff and the class and against GEICO General. The present claims against GEICO General are only for the period *after* August 30, 2016 (which claims are *not* included in the *Roth* lawsuit). The claims in this lawsuit against GEICO Indemnity and Government Employees Insurance Company are for the period five years before the filing of this lawsuit through and including the date that a class is certified for insureds of those Defendants.

Answer: No response is required to paragraph 2 of the Complaint to the extent that it states Plaintiffs' contentions and conclusions of law. GEICO further states that the orders issued in *Roth v. GEICO General Insurance Company*, Case No. 16-CV-62942-WPD, speak for themselves. GEICO admits that Plaintiffs purport to bring a class action lawsuit against GEICO General for the period *after* August 30, 2016 through certification of a class, and against GEICO Indemnity and Government Employees Insurance Company for the period five years before the filing of this lawsuit through certification of a class.

3. Defendants are affiliated insurance companies that utilize the same insurance policy forms, provide the same coverages, and adjust total loss claims with the same practices and procedures.

Answer: GEICO denies each and every allegation contained in paragraph 3 of the Complaint except admits that GEICO General Insurance Company is a wholly-owned subsidiary of Government Employees Insurance Company, GEICO Indemnity Company and Government Employees Insurance Company are wholly-owned subsidiaries of GEICO Corporation, and GEICO General Insurance Company, GEICO Indemnity Company and Government Employees

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Insurance Company each issue GEICO's Florida Family Automobile Insurance Policies utilizing GEICO's A-30FL (03-11) policy form.

4. The insurance policies at issue in this lawsuit are form policies known as form A-30FL (03-11), attached as Exhibit A, and form A-70 FL (03-11), attached as Exhibit B (together, the "Policies" or "Policy"). These two form policies (Exhibits A and B) are materially identical in all respects relevant to this lawsuit. All Policy terms that are relevant to this lawsuit are contained in these two policy forms.

Answer: No response is required to paragraph 4 of the Complaint to the extent that 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 except admits that the terms, exclusions and conditions contained in Section III of GEICO's Florida Family Automobile Insurance Policy, "PHYSICAL DAMAGE COVERAGES," are generally the same in GEICO's A-30(FL) (03-11) and A-70(FL) (03-11) policy forms.

5. The GEICO Indemnity policy form covering Plaintiff Joffe's total loss leased vehicle was either a form A-30FL (03-11) (Exhibit A) or form A-70 FL (03-11) (Exhibit B).

Answer: GEICO denies each and every allegation in paragraph 5 of the Complaint except admits that Plaintiff Joffe was insured under a Florida Family Automobile Insurance Policy with GEICO Indemnity Company utilizing policy form A-30(FL) (03-11), policy number 4297846505, with a policy term of August 5, 2016 through February 5, 2017.

6. The GEICO General policy form covering Plaintiff Rodriguez's total loss leased vehicle was either a form A-30FL (03-11) (Exhibit A) or form A-70 FL (03-11) (Exhibit B).

Answer: GEICO denies all allegations contained in paragraph 6 of the Complaint except admits that Plaintiff Rodriguez was insured under a Florida Family Automobile Insurance Policy with GEICO General Insurance Company utilizing policy form A-30(FL) (03-11), policy number 4313520068, with a policy term of June 30, 2017 through December 30, 2017.

7. The Government Employees Insurance Company's policy form covering Plaintiff

Schertzer's total loss leased vehicle for PPA physical damage is form A-30FL (03-11) (Exhibit A).

Answer: GEICO admits that Plaintiff Schertzer was insured under a Florida Family Automobile Insurance Policy with Government Employees Insurance Company utilizing policy form A-30(FL) (03-11), policy number 4270500574, with a policy term of June 8, 2014 through December 8, 2014.¹

8. The Policies require payment of Actual Cash Value ("ACV") on first-party total loss physical damage claims.

Answer: GEICO denies each and every allegation contained in paragraph 8 of the Complaint, and specifically states that the terms, conditions, exclusions and limitations of GEICO's Florida Family Automobile Insurance Policies, policy forms A-70FL (03-11) and A-30FL (03-11), speak for themselves.

9. The Policies define ACV as "the **replacement cost** of the auto or property less depreciation or betterment." (Ex. A, Policy form, at 12) (Ex. B, Policy form, at 13) (original emphasis removed; new emphasis added.)

Answer: GEICO admits that its Florida Family Automobile Insurance Policies, policy forms A-30FL (03-11) and A-70FL (03-11), define "***Actual Cash Value***" as "the replacement cost of the auto or property less ***depreciation*** or ***betterment***." GEICO further states that the allegations contained in paragraph 9 of the Complaint quote one excerpt from its Florida Family Automobile Insurance Policies, policy forms A-70FL (03-11) and A-30FL (03-11), the complete terms, conditions, exclusions and limitations of which speak for themselves.

10. Under Florida law, sales tax is a mandatory fee involved with the purchase of any vehicle, and therefore part of the replacement cost of any vehicle. Defendants pay sales tax on first-party total loss PPA physical damage claims for vehicles that are owned outright or financed because sales tax is part of ACV under the Policies.

¹ At the time of the loss at issue, the named insured on policy 4270500574 was Debbe E. Faunce.

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Answer: No response is required to paragraph 10 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 10.

11. Defendants do not pay sales tax on first-party total loss PPA physical damage claims for leased vehicles in Florida.

Answer: GEICO denies each and every allegation contained in paragraph 11 of the Complaint.

12. Defendants' failure to pay sales tax on first-party total loss PPA physical damage claims for leased vehicles violates the terms of Defendants' Policies (contracts) with Plaintiffs.

Answer: No response is required to paragraph 12 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 12.

13. All covered vehicles are defined as an "owned auto" under the Policies.

Answer: GEICO denies each and every allegation contained in paragraph 13 of the Complaint and states that the terms, exclusions and limitations of its Florida Family Automobile Insurance Policies, A-70FL (03-11) and A-30FL (03-11), speak for themselves.

14. Sales tax will necessarily be incurred as part of the replacement cost of the auto for all leased (as well as owned and financed) vehicles, and thus, sales tax is covered under the Policies' definition of ACV.

Answer: GEICO denies each and every allegation contained in paragraph 14 of the Complaint.

15. Under Florida law, title transfer fees are mandatory fees involved with the replacement of the auto for all leased (as well as owned and financed) vehicles, and, thus, part of the replacement cost of a leased vehicle.

Answer: No response is required to paragraph 15 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 15 of the Complaint.

16. Defendants do not pay title transfer fees on first-party total loss claims involving leased vehicles in Florida.

Answer: GEICO denies each and every allegation contained in paragraph 16 of the Complaint except admits that it is generally GEICO's practice not to include title transfer fees in the settlement of first party leased vehicle total loss physical damage claims. GEICO further states that, although it is GEICO's general practice to not include title transfer fees in total loss settlement payments made with respect to leased vehicles, there may be individual claims in which title transfer fees were paid.

17. Defendants' failure to pay title transfer fees violates Defendants' Policies (contracts) with Plaintiffs and applicable state law.

Answer: No response is required to paragraph 17 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 17.

18. This lawsuit is brought on behalf of (1) Plaintiffs Joffe, Schertzer, and Rodriguez, and a Monetary Relief Class of class members who were not paid sales tax and title transfer fees on their covered leased vehicle first-party total loss claims; and (2) Plaintiffs Joffe, Schertzer, and Rodriguez, and an Injunctive Class of class members who are insureds under PPA physical damage policies for leased vehicles.

Answer: No response is required to paragraph 18 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 18 except admits that Plaintiffs purport to bring an action based on GEICO's alleged failure to pay sales tax and title transfer fees as part of total loss settlement payments on leased vehicles on behalf of monetary and injunctive relief classes.

II. JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction over all of Plaintiffs' claims pursuant to

28 U.S.C. § 1332(d)(2). This is a class action in which the matter in controversy exceeds the sum of \$5,000,000.00, exclusive of interest and costs. Plaintiffs are Florida citizens and Defendants are citizens of a state different from Plaintiffs. There are more than 100 members of the Florida Class sought to be certified.

Answer: GEICO admits the allegations contained in paragraph 19 of the Complaint.

20. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

Answer: GEICO admits the allegations contained in paragraph 20 of the Complaint.

III. THE PARTIES

A. **Named Plaintiffs**

21. Plaintiff Joffe is an adult who, at all relevant times, resided in and was domiciled in Broward County, Florida, with an intent to stay. Plaintiff Joffe is a citizen of Florida. Plaintiff Joffe's individual claims in this lawsuit arise from a policy of insurance issued by GEICO Indemnity.

Answer: GEICO denies each and every allegation contained in paragraph 21 of the Complaint except admits that Plaintiff Joffe was insured under a Florida Family Automobile Insurance Policy with GEICO Indemnity Company, policy number 4297846505, with a policy term of August 5, 2017 through February 3, 2017 and denies knowledge or information sufficient to form a belief as to the truth or falsity of Plaintiff Joffe's residence, domicile or citizenship.

22. Plaintiff Schertzer is an adult who, at all relevant times, resided in and was domiciled in Collier County, Florida, with an intent to stay. Plaintiff Schertzer is a citizen of Florida. Plaintiff Schertzer's individual claims arise from a policy of insurance issued by Government Employees Insurance Company.

Answer: GEICO denies each and every allegation contained in paragraph 22 of the Complaint except admits that Plaintiff Schertzer was insured under a Florida Family Automobile Insurance Policy with Government Employees Insurance Company, policy number 4270500574, with a policy term of June 8, 2014 through December 8, 2014 and denies knowledge or information sufficient to form a belief as to the truth or falsity of Plaintiff Schertzer's residence, domicile or

citizenship.

23. Plaintiff Rodriguez is an adult who, at all relevant times, resided in and was domiciled in Miami-Dade County, Florida, with an intent to stay. Plaintiff Rodriguez is a citizen of Florida. Plaintiff Rodriguez's individual claims arise from a policy of insurance issued by GEICO General.

Answer: GEICO denies each and every allegation contained in paragraph 23 of the Complaint except admits that Plaintiff Rodriguez was insured under a Florida Family Automobile Insurance Policy with GEICO General Insurance Company, policy number 4313520068, with a policy term of June 30, 2017 through December 30, 2017 and denies knowledge or information sufficient to form a belief as to the truth or falsity of Plaintiff Rodriguez's residence, domicile or citizenship.

B. GEICO Indemnity

24. Defendant GEICO Indemnity is an insurance company incorporated in Maryland. Its principal place of business is 5260 Western Avenue, Chevy Chase, MD, 20815. Its Florida registered agent is Chief Financial Officer, 200 East Gaines Street, Tallahassee, Florida, 32399.

Answer: GEICO admits the allegations contained in paragraph 24 of the Complaint.

25. GEICO Indemnity is the fourth largest PPA insurer in Florida, with total annual Florida premiums of over \$1,141,172,170. (*See* Florida Office of Insurance 2017 Annual Report, attached as Exhibit C.)

Answer: GEICO admits that the 2017 Florida Office of Insurance Regulation Annual Report by the Florida Office of Insurance Regulation listed GEICO Indemnity as the fourth largest private passenger automobile insurer in Florida with total annual premiums written of \$1,141,172,170 and states that Exhibit C to the Complaint speaks for itself.

C. Government Employees Insurance Company

26. Defendant Government Employees Insurance Company is an insurance company incorporated in Maryland. Its principal place of business is 5260 Western Avenue, Chevy Chase, MD, 20815. Its Florida registered agent is Chief Financial Officer, 200 East Gaines Street, Tallahassee, Florida, 32399.

Answer: GEICO admits the allegations contained in paragraph 26 of the Complaint.

27. Government Employees Insurance Company is the seventh largest PPA insurer in Florida, with total annual premiums of over \$599,829,400. (See Florida Office of Insurance 2017 Annual Report.)

Answer: GEICO admits that the 2017 Florida Office of Insurance Regulation Annual Report by the Florida Office of Insurance Regulation listed Government Employees Insurance Company as the seventh largest private passenger automobile insurer in Florida with total annual premiums written of \$599,829,400 and states that Exhibit C to the Complaint speaks for itself.

D. GEICO General

28. Defendant GEICO General is an insurance company incorporated in Maryland. Its principal place of business is 5260 Western Avenue, Chevy Chase, MD, 20815. Its Florida registered agent is Chief Financial Officer, 200 East Gaines Street, Tallahassee, Florida, 32399.

Answer: GEICO admits the allegations in paragraph 28 of the Complaint.

29. GEICO General is the second largest PPA insurer in Florida, with total annual premiums of over \$2,211,145,214. (See Florida Office of Insurance 2017 Annual Report.)

Answer: GEICO admits that the 2017 Florida Office of Insurance Regulation Annual Report by the Florida Office of Insurance Regulation listed GEICO General Insurance Company as the second largest private passenger automobile insurer in Florida with total annual premiums written of \$2,211,145,214 and states that Exhibit C to the Complaint speaks for itself.

E. Corporate affiliations

30. Defendants Government Employees Insurance Company, GEICO Indemnity, and GEICO General are all affiliated corporate entities. Defendants, along with other affiliated companies, market collectively under the GEICO trademark and brand. (See *GEICO, Corporate Information, Links and Resources* <https://www.geico.com/about/corporate/corporate-ownership/> (last visited 6/15/2018).)

Answer: GEICO denies each and every allegation contained in paragraph 30 of the Complaint except admits that GEICO General Insurance Company is a wholly-owned subsidiary

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of Government Employees Insurance Company, GEICO Indemnity Company and Government Employees Insurance Company are wholly-owned subsidiaries of GEICO Corporation, which is an indirect, wholly-owned subsidiary of Berkshire Hathaway, Inc. and states that the webpage found at <https://www.geico.com/about/corporate/corporate-ownership/> speaks for itself.

31. Government Employees Insurance Company is sometimes referred to as GEICO. However, for purposes of clarity, the term GEICO will be used to reference all of the companies that market collectively under the GEICO trademark and brand. (*Id.*) GEICO is an indirect, wholly owned subsidiary of Berkshire Hathaway, Inc. (*Id.*)

Answer: GEICO denies each and every allegation contained in paragraph 31 of the Complaint except admits that GEICO Government Employees Insurance Company is a wholly-owned subsidiary of GEICO Corporation, which is an indirect, wholly-owned subsidiary of Berkshire Hathaway, Inc. and states that the webpage found at <https://www.geico.com/about/corporate/corporate-ownership/> speaks for itself.

32. GEICO affiliated insurance companies consist of Government Employees Insurance Company, GEICO General Insurance Company, GEICO Indemnity Company, GEICO Casualty Company, GEICO Advantage Insurance Company, GEICO Choice Insurance Company, GEICO Secure Insurance Company, GEICO County Mutual Insurance Company and GEICO Marine Insurance Company. (*See* Berkshire Hathaway, Inc. 2017 Annual Report, at 34, attached as Exhibit D.) These companies offer primarily PPA insurance to individuals in all 50 states and the District of Columbia. (*Id.*)

Answer: GEICO denies each and every allegation contained in paragraph 32 of the Complaint except admits that GEICO General Insurance Company is a wholly-owned subsidiary of Government Employees Insurance Company, GEICO Indemnity Company and Government Employees Insurance Company are wholly-owned subsidiaries of GEICO Corporation, which is an indirect, wholly-owned subsidiary of Berkshire Hathaway, Inc. and states that Exhibit D to the Complaint speaks for itself.

33. GEICO companies are private companies that do not provide separate financial results. GEICO wrote \$30.5 billion in PPA premiums in 2017 (including GEICO Indemnity,

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Government Employees Insurance Company, and GEICO General) and \$26.3 billion in premiums in 2016. (See Berkshire Hathaway, Inc. 2017 Annual Report, at 66.) GEICO has assets of more than \$32 billion dollars. (See *Geico, Corporate Information, Links and Resources* <https://www.geico.com/about/corporate/financial-strength/> (last visited 6/15/2018).)

Answer: GEICO denies each and every allegation contained in paragraph 33 of the Complaint except admits that GEICO General Insurance Company is a wholly-owned subsidiary of Government Employees Insurance Company, GEICO Indemnity Company and Government Employees Insurance Company are wholly-owned subsidiaries of GEICO Corporation, which is an indirect, wholly-owned subsidiary of Berkshire Hathaway, Inc. and states that Exhibit D to the Complaint and the webpage found at <https://www.geico.com/about/corporate/financial-strength/> speak for themselves.

34. In 2017, GEICO reported that it had increased its voluntary policies in force by 41% over the prior five years. (See Berkshire Hathaway, Inc. 2017 Annual Report, at 35.)

Answer: GEICO denies each and every allegation contained in paragraph 34 of the Complaint and states that Exhibit D to the Complaint speaks for itself.

IV. FACTUAL ALLEGATIONS

A. Plaintiffs Were Issued Form A-30FL (03-11) or A-70FL (03-11) Policies.

35. Plaintiff Joffe entered a policy agreement to be insured by GEICO Indemnity under policy form A-30FL (03-11) or A-70FL(03-11) which was in full force and effect on September 6, 2016. The Policy provided physical damage coverage for her leased 2016 Kia Optima Hybrid, VIN KNAGM4ADXG5093017 (the “Joffe Insured Vehicle”).

Answer: GEICO denies each and every allegation in paragraph 35 of the Complaint except admits that Plaintiff Joffe insured a leased 2016 Kia Optima, VIN KNAGM4ADXG5093017, under a Florida Family Automobile Insurance Policy, policy form A-30FL (03-11), with GEICO Indemnity Company, policy number 4297846505, providing physical damage coverage under Section III “PHYSICAL DAMAGE COVERAGES,” with a policy term of August 5, 2017 through

February 5, 2017.

36. Plaintiff Schertzer entered a policy agreement to be insured by Government Employees Insurance Company under policy form A-30FL (03-11) with a policy period of July 8, 2014, through December 18, 2014. The policy provided physical damage coverage for her leased Mazda MX-5 Miata, VIN JMINC2LFXC0226706 (the “Schertzer Insured Vehicle”).

Answer: GEICO denies each and every allegation contained in paragraph 36 of the Complaint except admits that Plaintiff Schertzer insured a leased Mazda MX-5 Miata, VIN JMINC2LFXC0226706, under a Florida Family Automobile Insurance Policy, policy form A-30FL (03-11), with Government Employees Insurance Company, policy number 4270500574, providing physical damage coverage under Section III “PHYSICAL DAMAGE COVERAGES,” with a policy term of June 8, 2014 through December 8, 2014.

37. Plaintiff Rodriguez entered a policy agreement to be insured by GEICO General under policy form A-30FL (03-11) with a policy period of June 30, 2017, through December 30, 2017. The policy provided physical damage coverage for her leased Volkswagen Jetta, VIN 3VWD07AJXFM212991 (the “Rodriguez Insured Vehicle”).

Answer: GEICO admits that Plaintiff Rodriguez insured a leased Volkswagen Jetta, VIN 3VWD07AJXFM212991, under a Florida Family Automobile Insurance Policy, policy form A-30FL (03-11), with GEICO General Insurance Company, policy number 4313520068, providing physical damage coverage under Section III “PHYSICAL DAMAGE COVERAGES,” with a policy term of June 30, 2017 through December 30, 2017.

38. Upon information and belief, Defendants have issued Florida PPA physical damage policies under policy form A-30FL (03-11) and policy form A-70FL (03-11) since August 2011.

Answer: GEICO denies each and every allegation in paragraph 38 of the Complaint, except admits Defendants Government Employees Insurance Company and GEICO General Insurance Company have issued Florida Family Automobile Insurance Policies providing physical damage coverage, using the A-30FL and A-70FL policy forms, in Florida since at least August

2011 and that Defendant GEICO Indemnity Company has issued Florida Family Automobile Insurance Policies providing physical damage coverage, using the A-30FL policy form, in Florida since at least August 2011.

39. Policy forms A-30FL (03-11) and A-70FL (03-11) have identical material terms relating to the PPA physical damage coverages at issue here.

Answer: GEICO denies each and every allegation in paragraph 39 of the Complaint except admits the terms, exclusions and conditions contained in Section III of Defendant's Florida Family Automobile Insurance Policy, "PHYSICAL DAMAGE COVERAGES," are generally the same in GEICO's A-30FL (03-11) and A-70FL (03-11) policy forms.

B. The Policies Required Defendants to Pay the Replacement Cost of the Totaled Automobile on Total Loss Claims.

40. The Policies provided comprehensive and collision coverage with a coverage limit of ACV.

Answer: GEICO states that the terms, conditions, exclusions and limitations in GEICO's Florida Family Automobile Insurance Policies, policy forms A-70FL (03-11) and A-30FL (03-11), speak for themselves.

41. The Policies define ACV as follows:

1. ***Actual cash value*** is the replacement cost of the auto or property less ***depreciation*** or ***betterment***.
 - a. ***Betterment*** is improvement of the auto or property to a value greater than its pre-loss condition.
 - b. ***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.

(Ex. A, Policy form at 12; Ex. B, Policy form at 13.)

Answer: GEICO denies each and every allegation in paragraph 41 of the Complaint and states that the terms, conditions, exclusions and limitations of its Florida Family Automobile

Insurance Policies policy forms A-30FL (03-11) and A-70FL (03-11) speak for themselves.

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

- A. Comprehensive Coverage (excluding **collision**).
 1. We will pay for each **loss**, less the applicable deductible, caused other than by **collision** to the **owned** or **non-owned auto**. This includes glass breakage. No deductible will apply to **loss** to windshield glass. At the option of the **insured**, breakage of glass caused by **collision** may be paid under the Collision coverage, if included in the policy.
 2. We will pay, up to \$200 per occurrence, less the applicable deductible, for **loss** to personal effects due to:
 - a) Fire;
 - b) Lightning;
 - c) Flood;
 - d) Falling objects;
 - e) Earthquake;
 - f) Explosion; or
 - g) Theft of the entire automobile.The property must be owned by **you** or a **relative**, and must be in or upon an **owned auto**.
 3. **Losses** arising out of a single occurrence shall be subject to no more than one deductible.
- B. Collision Coverage.
 1. We will pay for **collision loss** to the **owned auto** for the amount of each **loss** less the applicable deductible and to the **non-owned auto** for the amount of each **loss** less the applicable deductible when driven by **you** or a **relative**.
 2. We will pay up to \$200 per occurrence, less the applicable deductible, for **loss** to personal effects due to a **collision**. The property must be owned by **you** or a **relative**, and must be in or upon an **owned auto**.
 3. **Losses** involving one **owned auto**, arising out of a single occurrence shall be subject to no more than one deductible.
 4. If more than one **owned auto** or **non-owned auto** is involved in a **collision loss**, any deductible will apply separately to each **owned auto** or **non-owned auto**.

(Exhibit A at 13-14; Exhibit B at 14.)

Answer: GEICO admits that the language quoted in paragraph 42 of the Complaint appears in its Florida Family Automobile Policies, policy forms A-30FL (03-11) and A-70FL (03-

11) and states that the allegations in paragraph 42 of the Complaint excerpt from its Florida Family Automobile Insurance Policies, policy forms A-70FL (03-11) and A-30FL (03-11), the complete terms, conditions, exclusions and limitations of which speak for themselves.

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

1. **Loss** means direct and accidental loss of or damage to:
 - a) An *owned* or *non-owned* auto, including its equipment; or
 - b) Other property insured under this section.

(Exhibit A at 13; Exhibit B at 14.) The Policies' definition of **Loss** applies to both collision and comprehensive coverage.

Answer: GEICO admits the allegations contained in paragraph 43 of the Complaint and further states that the allegations in paragraph 43 of the Complaint quote one excerpt from its Florida Family Automobile Insurance Policies, policy forms A-70FL (03-11) and A-30FL (03-11), the complete terms, conditions, exclusions and limitations of which speak for themselves.

44. There is no difference, for purposes of the duty to pay ACV on a first-party total loss claim, between a collision total loss claim and a comprehensive total loss claim.

Answer: GEICO denies each and every allegation contained in paragraph 44 of the Complaint and states that to the extent Paragraph 44 contains legal conclusions and general opinions, no response is required.

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

LIMIT OF LIABILITY

The limit of our liability for *loss*:

1. Is the *actual cash value* of the property at the time of the *loss*;
2. Will not exceed the prevailing competitive price to repair or replace the property at the time of *loss*, or any of its parts, including parts from non-original equipment manufacturers, with other of like kind and quality and will not include compensation for any diminution of value that is claimed

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to result from the *loss*. Although *you* have the right to choose any repair facility or location, the limit of liability for repair or replacement of such property is the prevailing competitive price which is the price we can secure from a competent and conveniently located repair facility. At *your* request, we will identify a repair facility that will perform the repairs or replacement at the prevailing competitive price;

3. To personal effects arising out of one occurrence is \$200;
4. To a *trailer* not owned by *you* is \$500;
5. 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.

Actual cash value or **betterment** of property will be determined at the time of the loss and will include an adjustment for **depreciation/betterment** and for the physical condition of the property.

6. If this policy covers two or more autos or trailers any deductibles will apply separately to each.

(Exhibit A at 14-15; Exhibit B at 15.)

Answer: GEICO admits that the language quoted in paragraph 45 of the Complaint appears in its Florida Family Automobile Policies, policy forms A-30FL (03-11) and A-70FL (03-11) and further states that the allegations in paragraph 45 of the Complaint quote one excerpt from its Florida Family Automobile Insurance Policies, policy forms A-70FL (03-11) and A-30FL (03-11), the complete terms, conditions, exclusions and limitations of which speak for themselves.

46. The Policy defines owned, financed, and leased vehicles as owned vehicles. Specifically, the Physical Damage section of the policies defines “Owned Auto” as follows: “Any vehicle described in this policy for which a specific premium charge indicates there is physical damage coverage.” (Exhibit A at 3, 12; Exhibit B at 3, 13.)

Answer: GEICO denies each and every allegation in paragraph 46 of the Complaint and states that the allegations in paragraph 46 of the Complaint quote one excerpt from its Florida Family Automobile Insurance Policies, policy forms A-70FL (03-11) and A-30FL (03-11), the complete terms, conditions, exclusions and limitations of which speak for themselves.

47. The Plaintiff’s leased vehicles were all described under their Policies and had

specific premiums charged indicating there was physical damage coverage.

Answer: GEICO denies each and every allegation contained in paragraph 47 of the Complaint.

C. The Replacement Cost For A Total Loss Vehicle Includes Applicable Sales Tax and Title Transfer Fees.

48. The Policies define ACV as “replacement cost of the auto or property less *depreciation* or *betterment*.” (Ex. A, Policy form at 12; Ex. B, Policy form 13.) Sales tax and title transfer fees are each mandatory applicable fees that must be paid with the replacement of any vehicle under Florida law.

Answer: GEICO denies each and every allegation contained in paragraph 48 of the Complaint except states that to the extent Paragraph 48 contains legal conclusions and general opinions, no response is required and that the terms of its policy forms A-70FL (03-11) and A-30FL (03-11) speak for themselves.

49. Florida law requires that a minimum of 6% sales tax be paid on every motor vehicle purchased, with the option for counties to charge an additional local tax of up to 2% on the first \$5,000 of the motor vehicle cost.

Answer: GEICO denies each and every allegation contained in paragraph 49 of the Complaint except states that to the extent Paragraph 49 contains legal conclusions and general opinions, no response is required.

50. Florida law requires that all vehicles operated on state roadways have the title of the vehicle registered with the State. *See, e.g.*, Fla. Stat. Ann. § 320.02 (“every owner or person in charge of a motor vehicle that is operated or driven on the roads of this state shall register the vehicle in this state.”). The cost in Florida to transfer title to a purchased replacement vehicle is a minimum of \$75.25.

Answer: GEICO denies each and every allegation contained in paragraph 50 of the Complaint except states that to the extent Paragraph 50 contains Plaintiffs’ legal conclusions and general opinions, no response is required and that Fla. Stat. Ann. § 320.02 speaks for itself.

51. As a consequence, under Florida law, an insured vehicle cannot be replaced without

payment of applicable sales tax and title transfer fees. These costs are, quite literally, part of the replacement cost of all totaled vehicles.

Answer: GEICO denies each and every allegation contained in paragraph 51 of the Complaint except states that to the extent Paragraph 51 contains Plaintiffs' legal conclusions, contentions and general opinions, no response is required.

52. Florida law provides that sales tax is a part of actual cash value (and replacement cost) unless unambiguously excluded from the insurance policy. *Mills v. Foremost Ins. Co.*, 511 F.3d 1300, 1305 (11th Cir. 2008) (applying Florida law and holding that ACV includes sales tax because sales tax was not unambiguously excluded from policy definition); *see also Bastian v. USAA et al*, 150 F. Supp. 3d 1284 (M.D. Fla. 2015) (same).

Answer: GEICO denies each and every allegation contained in paragraph 52 of the Complaint except states that to the extent Paragraph 52 contains Plaintiffs' legal conclusions and general opinions, no response is required.

D. GEICO Tells the Public That It Pays Sales Tax and Title Fees on Total Loss Claims.

53. GEICO maintains a Claims Center and claims information website for the purpose of informing insureds of their rights when they suffer a total loss. Through this website, GEICO and its affiliates, including GEICO Indemnity, Government Employees Insurance Company, and GEICO General made, and continue to make, false statements about coverage for sales tax and title fees on total losses to the general public.

Answer: GEICO denies each and every allegation contained in paragraph 53 of the Complaint except GEICO admits that it maintains a Claims Center website (www.geico.com/claims) that contains general claims related information.

54. In the GEICO Claims Center website publication, "Car Is Totaled: Learn About The Total Loss Process" (www.geico.com/claims/claimsprocess/total-loss-process/) (last visited 6/15/18), GEICO states: "If your policy covers a total loss, GEICO will: pay the actual cash value of the vehicle (plus applicable state fees and taxes) less any deductible."

Answer: GEICO denies each and every allegation contained in paragraph 54 of the Complaint and states that its Claims Center website (www.geico.com/claim) does not currently contain any publication titled "Car Is Totaled: Learn About The Total Loss Process" in which

GEICO states: “If your policy covers a total loss, GEICO will: pay the actual cash value of the vehicle (plus applicable state fees and taxes) less any deductible.”

55. Sales tax and title transfer fees are “applicable” to the replacement of any Florida vehicle because a vehicle cannot be replaced without payment of sales tax and title transfer fees.

Answer: GEICO denies each and every allegation contained in paragraph 55 of the Complaint except states that to the extent Paragraph 55 contains legal conclusions, contentions and general opinions, no response is required.

56. Contrary to the statement on its website, GEICO, including its affiliates GEICO Indemnity, Government Employees Insurance Company, and GEICO General, does not pay sales tax and title fees to its total loss insureds in the State of Florida for an insured leased vehicle.

Answer: GEICO denies each and every allegation contained in paragraph 56 of the Complaint.

E. Plaintiff Joffe Suffered a Total Loss and Was Not Paid Full Sales Tax and Title Fees As Required by the Policy and State Law.

57. On or about September 13, 2016, Plaintiff Joffe’s Insured Vehicle was involved in a collision that rendered the vehicle a total loss.

Answer: GEICO denies each and every allegation contained in paragraph 57 of the Complaint except admits that Plaintiff Joffe reported a loss to GEICO resulting in a claim, claim number 0467024670101043, under her Policy, policy number 4297846505, for physical damage to a 2016 Kia Optima, VIN KNAGM4ADXG5093017, arising out of an accident occurring on or about September 13, 2016, and that following the assessment of damages to Plaintiff Joffe’s vehicle, GEICO determined that the vehicle was a total loss.

58. Plaintiff Joffe was entitled to recovery of ACV for her total loss under the Policy with GEICO Indemnity.

Answer: GEICO denies each and every allegation contained in paragraph 58 of the Complaint except states that to the extent Paragraph 58 contains Plaintiffs’ legal conclusions and

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general opinions, no response is required

59. GEICO Indemnity, through its adjuster Frank Roesse issued a Total Loss Settlement Explanation indicating the Joffe Insured Vehicle was a total loss. (Ex. E, Joffe Total Loss Settlement Explanation.)

Answer: GEICO denies each and every allegation contained in paragraph 59 of the Complaint except admits that it issued a Total Loss Settlement Explanation form, form CL-30, with respect to Plaintiff Joffe's claim, claim number 0467024670101043.

60. The Total Loss Settlement Explanation identifies the settlement calculations:

| | | |
|---------------------------------|----|---------------|
| Base Value | | \$24,249.00 |
| Condition Adjustment | | \$00.00 |
| Pre Tax Adjustment | | \$0.00 |
| Tax | | <u>\$0.00</u> |
| Total Value | | \$24,249.00 |
| State and Local Regulatory Fees | | \$0.00 |
| Post Tax Adjustment | | \$0.00 |
| Less Deductible | | \$500.00 |
| Less Percent Negligent | 0% | \$0.00 |
| Less Retention Amount | | <u>\$0.00</u> |
| Net Settlement Amount | | \$23,749.00 |
| Towing Charges | | \$0.00 |
| Storage Charges | | \$0.00 |

(Ex. E, Joffe Total Loss Settlement Explanation.)

Answer: GEICO states that the Total Loss Settlement Explanation form, form CL-30, issued with respect to Plaintiff Joffe's claim, claim number 0467024670101043, speaks for itself.

61. As shown by the Settlement Explanation, GEICO Indemnity did not pay sales tax on the total loss vehicle, nor did it pay any State and Local Regulatory Fees, such as title transfer fees.

Answer: GEICO denies each and every allegation contained in paragraph 61 of the Complaint.

62. GEICO Indemnity thus failed to pay the full ACV on Plaintiff Joffe's claim.

Answer: GEICO denies each and every allegation contained in paragraph 62 of the Complaint.

63. Plaintiff Joffe has been damaged in the minimum amount of \$1,530.19 (\$1,454.94 sales tax and \$75.25, at minimum, in title transfer fees) by GEICO Indemnity's failure to pay these replacement costs on her total loss as required by the Policy.

Answer: GEICO denies each and every allegation contained in paragraph 63 of the Complaint except states that to the extent Paragraph 63 contains legal conclusions and general opinions, no response is required.

F. Plaintiff Schertzer Suffered a Total Loss and Was Not Paid Sales Tax and Title Fees As Required by the Policy and State Law.

64. On or about September 10, 2017, Plaintiff Schertzer suffered a total loss to the 2012 Mazda MX-5 Miata insured under her policy.

Answer: GEICO denies each and every allegation contained in paragraph 64 of the Complaint except admits that Plaintiff Schertzer reported a loss to GEICO resulting in a claim, claim number 0447804130101047, under her Policy, policy number 4270500574, for physical damage to a 2012 Mazda MX-5 Miata, VINJM1NC2LFXC0226706, arising out of an accident occurring on or about June 18, 2016, and that following the assessment of damages to Plaintiff Schertzer's vehicle, GEICO determined that the vehicle was a total loss.

65. Plaintiff Schertzer was entitled to recovery of ACV for the total loss under her Policy with Government Employees Insurance Company.

Answer: GEICO denies each and every allegation contained in paragraph 65 of the Complaint.

66. Government Employees Insurance Company had a market evaluation report prepared by its vendor, CCC One, and that valuation summary provided as follows:

| | |
|------------------------|--------------|
| Base Value | \$ 17,867.00 |
| Condition Adjustment | \$ 720.00 |
| Adjusted Vehicle Value | \$ 18,587.00 |

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| | |
|--|--------------|
| Vehicular Sales Tax 6.00% | \$ 1,115.22 |
| Sales Tax reflects all applicable state, county and municipal taxes License/Fees (if applicable) | \$ _____ |
| Value before Deductible | \$ 19,702.22 |
| Deductible | \$ -500.00 |
| Total | \$ 19,202.22 |

(Ex. F, CCC One Market Valuation Summary for Schertzer.)

Answer: GEICO denies each and every allegation contained in paragraph 66 of the Complaint except admits that a CCC One Market Valuation Report was prepared in relation to Plaintiff Schertzer's claim, claim number 0447804130101047, and that the CCC One Market Valuation Report prepared in relation to Plaintiff Schertzer's claim, claim number 0447804130101047, speaks for itself.

67. Upon information and belief, Government Employees Insurance Company issued only a single payment to Chase Auto Finance in the amount of \$18,087.00. Government Employees Insurance Company did not make any payment for sales tax or title transfer fees.

(Ex. G, November 8, 2017 letter from GEICO employee Amber Floyd.)

Answer: GEICO admits that it paid \$18,087.00 to Chase Auto Finance in settlement of Plaintiff Schertzer's claim, claim number 0447804130101047, and the payment did not include an amount for sales tax or title transfer fees.

68. Government Employees Insurance Company thus failed to pay the full ACV on the claim.

Answer: GEICO denies each and every allegation contained in paragraph 68 of the Complaint.

69. Plaintiff Schertzer has been damaged in the minimum amount of \$1,190.47 (\$1,115.22 sales tax and \$75.25, at minimum, in title transfer fees) by Government Employees Insurance Company's failure to pay these replacement costs.

Answer: GEICO denies each and every allegation contained in paragraph 69 of the

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Complaint except states that to the extent Paragraph 69 contains Plaintiffs' legal conclusions and general opinions, no response is required.

G. Plaintiff Rodriguez Suffered a Total Loss and Was Not Paid Sales Tax and Title Fees As Required by the Policy and State Law.

70. On or about September 5, 2017, Plaintiff Rodriguez suffered a total loss to the 2015 Volkswagen Jetta insured under her policy.

Answer: GEICO denies each and every allegation contained in paragraph 70 of the Complain except admits that Plaintiff Rodriguez reported a loss to GEICO resulting in a claim, claim number 0478148490101078-01, under her Policy, policy number 4313520068, for physical damage to the 2015 Volkswagen Jetta, VIN 3VWD07AJXFM212991, arising out of an accident occurring on or about September 5, 2017, and that following the assessment of damages to Plaintiff Rodriguez's vehicle, GEICO determined that the vehicle was a total loss.

71. Plaintiff Rodriguez was entitled to recovery of ACV for the total loss under her Policy with GEICO General.

Answer: GEICO denies each and every allegation contained in paragraph 71 of the Complaint.

72. GEICO General had a market evaluation report prepared by its vendor, CCC One, which provides the following valuation summary:

| | |
|-------------------------|--------------|
| Base Value | \$ 12,262.00 |
| Condition Adjustment | \$ -433.20 |
| Adjusted Vehicle Value | \$ 11,828.80 |
| Value before Deductible | \$ 11,828.80 |
| Deductible | \$ -500.00 |
| Total | \$ 11,328.80 |

(Ex. H, CCC One Market Valuation Summary for Rodriguez.)

Answer: GEICO denies each and every allegation contained in paragraph 72 of the Complaint except admits that a CCC One Market Valuation Report was prepared in relation to

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Plaintiff Rodriguez's claim, claim number 0478148490101078-01, and states that the CCC One Market Valuation Report prepared in relation to Plaintiff Rodriguez's claim, claim number 0478148490101078-01, speaks for itself.

73. Upon information and belief, GEICO General paid only \$11,328.80 on the total loss claim. GEICO General did not make any payment for sales tax or title transfer fees.

Answer: GEICO denies each and every allegation in paragraph 73 of the Complaint except admits that it did not include sales tax or title fees in the settlement payment made with respect to Plaintiff Rodriguez's claim, claim number 0478148490101078-01.

74. GEICO General thus failed to pay the full ACV on the claim. Plaintiff Rodriguez has been damaged in the minimum amount of \$784.98 (\$709.73 sales tax and \$75.25, at minimum, in title transfer fees) by GEICO General's failure to pay these replacement costs.

Answer: GEICO denies each and every allegation contained in paragraph 74 of the Complaint except states that to the extent Paragraph 74 contains Plaintiffs' legal conclusions and general opinions, no response is required.

V. JURISDICTIONAL AMOUNT IS MET

75. The amount in controversy in this lawsuit exceeds \$5 million for each of GEICO Indemnity, Government Employees Insurance Company, and GEICO General.

Answer: Based on the allegations contained in the Complaint, GEICO admits that the damages Plaintiffs' seek could exceed \$5,000,000.

76. GEICO publicly asserts that in the five year period from August 30, 2011 through August 30, 2016, there were approximately 136,032 total loss claims made on Florida automobile policies issued by four GEICO entities (GEICO General Insurance Company, Government Employees Insurance Company, GEICO Indemnity Company and GEICO Casualty Company) resulting in total loss claim payments of approximately \$1,396,814,777. (See Roth v. GEICO General Insurance Company, Case No. 16-CV-62942-WPD, S.D. Fla., Doc. 1, Notice of Removal.)² Of these 136,032 total loss claims, GEICO publicly maintains approximately 7.4 % are estimated to be leased vehicles. *Id.* This amounts to 10,066 total loss lease claims for that time period. On average, this amounts to 2,032 total loss lease claims per year through August 2016, under GEICO's proposed conservative numbers.

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Answer: GEICO states that the notice of removal filed in *Roth v. GEICO General Insurance Company*, Case No. 16-CV-62942-WPD, speaks for itself.

77. Since August, 2016, GEICO's written Florida PPA premium has increased by approximately 25 percent per year.

Answer: GEICO denies each and every allegation contained in paragraph 77.

78. GEICO estimated that the average total loss payment is \$21,000 for the five year period through August, 2016. *Id.* GEICO estimated that, if damages accrued against the four collective GEICO entities based solely on failure to pay sales tax on all total loss leased vehicles, the damages for unpaid sales tax for the period August 30, 2011 to August 30, 2016 would be \$13 million. *Id.*

Answer: GEICO states that the notice of removal filed in *Roth v. GEICO General Insurance Company*, Case No. 16-CV-62942-WPD, speaks for itself.

79. GEICO's asserted \$13 million amount in controversy was based solely on an alleged failure to pay sales tax for the five-year period ending August 30, 2016. During this five year period, the average annual premium written in Florida was \$2.7 billion for the Defendants. The average annual premium for the period June 15, 2013 through June 15, 2018 is \$3.7 billion. Adjusting the \$13 million amount in controversy to the increased premium written since August 30, 2016, the amount in controversy for the alleged failure to pay sales tax for the five years prior to June 15, 2018 is \$17.8 million.

Answer: GEICO denies each and every allegation in paragraph 79 of the Complaint.

80. Florida Office of Insurance Regulation shows that the Defendants' percentage of the total PPA insurance written in Florida are: 56% for GEICO General; 29% for GEICO Indemnity; and 16% for Government Employees Insurance Company.

Answer: GEICO denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 80 of the Complaint.

81. The amount in controversy against GEICO Indemnity for failure to pay sales tax for the period June 15, 2013 through the present is \$5.16 million (\$17.8 million x 29%). The amount in controversy for the injunctive relief for three years increases the amount in controversy to \$13.35 million. Thirty percent in attorneys' fees increases the amount in controversy to \$19.07 million.

Answer: GEICO denies each and every allegation contained in paragraph 81 of the

Complaint.

82. The amount in controversy against Government Employees Insurance Company for failure to pay sales tax for the period June 15, 2013 through the present is \$2.85 million (\$17.8 million x 16%). The amount in controversy for the injunctive relief for three years increases the amount in controversy \$7.38 million. Thirty percent in attorneys' fees increases the amount in controversy to \$10.54 million.

Answer: GEICO denies each and every allegation contained in paragraph 82 of the Complaint.

83. The amount in controversy against GEICO General for failure to pay sales tax for the period August 31, 2016 through the present requires a slightly different calculation. If the GEICO General claim in this lawsuit was for a five-year period, the amount in controversy for failure to pay sales tax would be \$10 million (\$17.8 million x 56%). But because the claim against GEICO General only goes back to August 31, 2016, the amount in controversy should be adjusted to account only for the estimated total loss claims during that period. During the period August 31, 2016 through the present, GEICO General wrote 50% of the total premium that it had written for the previous five years. Allocating the amount in controversy to account only for this percentage of premium results in an amount in controversy for GEICO General of over \$5 million. The amount in controversy for the injunctive relief for three years increases the amount in controversy to \$24.88 million. Thirty percent in attorneys' fees increases the amount in controversy to \$35.54 million.

Answer: GEICO denies each and every allegation contained in paragraph 83 of the Complaint.

84. The above claims are conservative and do not account for the amount in controversy relating to Defendants' failure to pay title transfer fees.

Answer: GEICO denies each and every allegation contained in paragraph 84 of the Complaint.

VI. CLASS ACTION ALLEGATIONS

A. The Monetary Relief Class.

85. Pursuant to Fed. R. Civ. P. 23, Plaintiffs assert claims for breach of contract on behalf of a Florida Monetary Relief Class ("Monetary Relief Class"), as defined as follows:

All persons insured by Defendant Government Employees Insurance Company, Defendant GEICO Indemnity Company, or Defendant GEICO General Insurance Company under a Florida insurance policy for private passenger auto ("PPA")

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physical damage coverage who suffered a first-party total loss of a covered leased vehicle (1) at any time during the five years prior to the filing of this lawsuit up to the date of any order granting class certification (as to Defendant Government Employees Insurance Company and Defendant GEICO Indemnity Company), and (2) at any time from August 31, 2016 up to the date of any order granting class certification (as to Defendant GEICO General Insurance Company), whose claims were adjusted by one of the Defendants as total loss claims, whose claims resulted in payment by one of the Defendants of covered claims, and who were not paid the full total loss vehicle value (“TLVV”) sales tax and/or title fees.

Excluded from the Monetary Relief Class are all officers and employees of GEICO, GEICO Indemnity, Government Employees Insurance Company, GEICO General, and all of their affiliates, parents, and subsidiaries; all persons who make a timely election to be excluded from the Class; government entities; and the judges to whom this case is assigned and their immediate family and court staff.

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 in paragraph 85 of the Complaint except admits that Plaintiffs seek to certify the putative class described in paragraph 85 of the Complaint.

86. The Monetary Relief Class meets the criteria for class certification under Fed. R. Civ. P. 23(a), (b)(1), (b)(3), and (c)(4).

Answer: GEICO denies each and every allegation contained in paragraph 86 of the Complaint and specifically denies that class treatment is appropriate.

Fed. R. Civ. P. 23(a).

87. **Numerosity.** The members of the Monetary Relief Class are so numerous that separate joinder of each member is impracticable. Fed. R. Civ. P. 23(a)(1). GEICO Indemnity is the fourth largest PPA insurer in the state of Florida, collecting over \$1.14 billion in premiums in 2016. Government Employees Insurance Company is the seventh largest PPA insurer in the state of Florida, collecting over \$599 million in premiums in 2016. GEICO General is the second largest PPA insurer in the state of Florida, collecting over \$2.2 billion in premiums in 2016. Upon information and belief, there are over 5,000 members of the Monetary Relief Class.

Answer: GEICO denies each and every allegation contained in paragraph 87 of the Complaint except admits that as of the 2017 Florida Office of Insurance Regulation Annual Report,

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the Florida Office of Insurance Regulation listed GEICO General Insurance Company as the second largest private passenger automobile insurer in Florida with total annual premiums written of \$2,211,145,214, GEICO Indemnity as the fourth largest private passenger automobile insurer in Florida with total annual premiums of \$2,211,145,214, and Government Employees Insurance Company as the seventh largest private passenger automobile insurer with total annual premiums of \$599,829,400. GEICO specifically denies that class treatment is appropriate.

88. The members of the Monetary Relief Class are ascertainable and readily identifiable from information and records in Defendants' possession, control, or custody. Upon information and belief, GEICO Indemnity, Government Employees Insurance Company, and GEICO General maintain records of all total loss claims made by its insureds and paid by the Defendants. These records include data that itemizes what categories of costs were and were not paid as part of ACV. These categories include sales tax and title transfer fees.

Answer: GEICO denies each and every allegation contained in paragraph 88 and specifically denies that class treatment is appropriate.

89. **Commonality.** Common questions of law and fact exist and predominate over any question affecting only individual Monetary Relief Class Members. Fed. R. Civ. P. 23(a)(2). Because the central issues in this case turn on the interpretation of materially identical policy provisions, this case is especially well-suited to class adjudication. Defendants and all members of the Monetary Relief Class are bound by the same material terms of policy forms A-30FL and A-70FL, and the central issues in the case all involve interpretation of the same material and controlling terms. The common questions include:

- a. Whether Policy language "actual cash value," defined as the "replacement cost for an auto," includes sales tax;
- b. Whether Policy language "actual cash value," defined as the "replacement cost for an auto," includes title transfer fees;
- c. Whether Defendants are required under the Policy to pay full sales tax to first-party total loss claimants on leased vehicles; and
- d. Whether Defendants are required under the Policy to pay full title transfer fees to first-party total loss claimants on leased vehicles.

Answer: GEICO denies each and every allegation contained in paragraph 89 of the Complaint and specifically denies that class treatment is appropriate.

90. **Typicality.** Plaintiffs' claims and defenses are typical of the claims of the Monetary

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Relief Class. Fed. R. Civ. P. 23(a)(3). Plaintiffs and Monetary Relief Class Members were injured through GEICO Indemnity's, Government Employee Insurance Company's, and GEICO General's uniform misconduct and their legal claims arise from the same core GEICO practices, namely, the failure to pay full ACV, including sales tax and title transfer fees, for first-party total loss leased vehicle claims. Plaintiffs' claims are based upon the same legal theories as those of the Monetary Relief Class Members. The Plaintiffs suffered the same harm as all the other Monetary Relief Class Members: the coverage for sales tax and title transfer fees that Defendants failed to pay its insureds.

Answer: GEICO denies each and every allegation contained in paragraph 90 of the Complaint and specifically denies that class treatment is appropriate.

91. Adequacy. Plaintiffs are adequate representatives of the proposed class because their interests do not conflict with the interests of the Monetary Relief Class Members they seek to represent, and Plaintiffs will fairly and adequately protect the interests of the Monetary Relief Class. Fed. R. Civ. P. 23(a)(4). Plaintiffs' counsel are experienced in litigating consumer class actions and complex disputes, and have specific experience successfully litigating similar disputes as class counsel. Plaintiffs' counsel do not have any conflict with the interests of the class.

Answer: GEICO denies each and every allegation contained in paragraph 91 of the Complaint and specifically denies that class treatment is appropriate.

92. Superiority. A class action is superior to all other available methods of fairly and efficiently adjudicating this dispute. The injury sustained by each Monetary Relief Class Member, while meaningful on an individual basis, is not of such magnitude that it is economically feasible to prosecute individual actions against GEICO Indemnity, Government Employees Insurance Company, and GEICO General. Even if it were economically feasible, requiring thousands of injured plaintiffs to file individual suits would impose an undue burden on the court system and almost certainly lead to inconsistent judgments. By contrast, class treatment will present far fewer management difficulties and provide the benefits of a single adjudication, economies of scale, and comprehensive supervision by a single court.

Answer: GEICO denies each and every allegation contained in paragraph 92 of the Complaint and specifically denies that class treatment is appropriate.

Fed. R. Civ. P. 23(b)(1).

93. Plaintiffs' claims are maintainable on behalf of the Monetary Relief Class pursuant to Fed. R. Civ. P. 23(b)(1) because the prosecution of separate claims or defenses by or against individual Monetary Relief Class Members would create a risk of: (A) inconsistent or varying adjudications with respect to individual Monetary Relief Class Members that would establish incompatible standards of conduct for the party opposing the Class; and (B) adjudications with

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respect to individual Monetary Relief Class Members that, as a practical matter, would be dispositive of the interests of other Monetary Relief Class Members who are not parties to the adjudications, or would substantially impair or impede their ability to protect their interests.

Answer: GEICO denies each and every allegation contained in paragraph 93 of the Complaint and specifically denies that class treatment is appropriate.

94. The relevant Policy provisions for each Monetary Relief Class Member are the same. The relevant law relating to the interpretation and application of those Policy provisions for each Monetary Relief Class Member is the same. There is the potential for inconsistent or varying adjudications concerning individual Monetary Relief Class Members. Without a single adjudication as to the application of relevant law to the relevant policy provisions, different courts may reach different conclusions relating to the same legal and factual issues.

Answer: GEICO denies each and every allegation contained in paragraph 94 of the Complaint and specifically denies that class treatment is appropriate.

95. Allowing the issues to be adjudicated in a piecemeal fashion likely would result in certain Monetary Relief Class Members who are not parties to individual adjudications having their rights impaired or impeded without notice or adequate representation.

Answer: GEICO denies each and every allegation contained in paragraph 95 of the Complaint and specifically denies that class treatment is appropriate.

Fed. R. Civ. P. 23(b)(3).

96. There are questions of law and fact common to the Monetary Relief Class that under Fed. R. Civ. P. 23(b)(3) predominate over any questions solely affecting individual members of the Monetary Relief Class, including but not limited to those common questions of law and fact identified in paragraph 89. A class action is superior to other available methods for fairly and efficiently adjudicating the controversy for the reasons identified in paragraph 92.

Answer: GEICO denies each and every allegation contained in paragraph 96 of the Complaint and specifically denies that class treatment is appropriate.

Fed. R. Civ. P. 23(c)(4).

97. Particular issues under Rule 23(c)(4) are appropriate for certification because such claims present only particular, common issues, the resolution of which would advance the disposition of this matter and the parties' interests therein. Such particular issues include, but are not limited to, the same issues identified in paragraph 89.

Answer: GEICO denies each and every allegation contained in paragraph 97 of the Complaint and specifically denies that class treatment is appropriate.

B. The Injunctive Relief Class.

98. Pursuant to Fed. R. Civ. P. 23, Plaintiffs seek injunctive relief on behalf of a Florida Injunctive Relief Class (“Injunctive Relief Class”), as defined as follows:

All persons insured by Defendant Government Employees Insurance Company, Defendant GEICO Indemnity Company, or Defendant GEICO General Insurance Company under Florida insurance policy form A-30FL (03-11) or form A-70 FL (03-11) for private passenger auto (“PPA”) physical damage coverage for a leased vehicle.

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 except admits that Plaintiffs seek to certify the putative class described in paragraph 98 of the Complaint. GEICO specifically denies that class treatment is appropriate.

99. Excluded from the Injunctive Relief Class are all officers and employees of GEICO, GEICO Indemnity, Government Employees Insurance Company, GEICO General and all of their affiliates, parents, and subsidiaries; all persons who make a timely election to be excluded from the Class; government entities; and the judges to whom this case is assigned and their immediate family and court staff.

Answer: No response is required to paragraph 99 of the Complaint to the extent that it states Plaintiffs’ contentions, opinions and conclusions of law. GEICO denies all other allegations in paragraph 99 of the Complaint, and specifically denies that class treatment is appropriate.

100. The Injunctive Relief Class meets the criteria for certification under Fed. R. Civ. P. 23(a), and (b)(2).

Answer: GEICO denies each and every allegation contained in paragraph 100 of the Complaint and specifically denies that class treatment is appropriate.

Fed. R. Civ. P. 23(a).

101. **Numerosity.** The members of the Injunctive Relief Class are so numerous that separate joinder of each member is impracticable. Fed. R. Civ. P. 23(a)(1). Upon information and belief, there are over 5,000 members of the Injunctive Relief Class.

Answer: GEICO denies each and every allegation contained in paragraph 101 of the Complaint and specifically denies that class treatment is appropriate.

102. **Commonality.** Common questions of law and fact exist and predominate over any question affecting only individual Injunctive Relief Class Members. Fed. R. Civ. P. 23(a)(2). Because the central issues in this case turn on the interpretation of identical policy provisions, this case is especially well-suited to class adjudication. Defendant and all members of the Injunctive Relief Class are bound by the same material terms of policy forms A-30FL and A-70FL, and the central issues in the case all involve interpretation of the same material and controlling terms. The common questions include:

- a. Whether Policy language “actual cash value,” defined as the “replacement cost for an auto,” includes sales tax;
- b. Whether Policy language “actual cash value,” defined as the “replacement cost for an auto,” includes title transfer fees;
- c. Whether Defendants are required under the Policy to pay full sales tax to first-party total loss claimants on leased vehicles; and
- d. Whether Defendants are required under the Policy to pay full title transfer fees to first-party total loss claimants on leased vehicles.

Answer: GEICO denies each and every allegation contained in paragraph 102 of the Complaint and specifically denies that class treatment is appropriate.

103. **Typicality.** Plaintiffs’ claims and defenses are typical of the claims of the Injunctive Relief Class. Fed. R. Civ. P. 23(a)(3). Plaintiffs and Injunctive Relief Class Members have insurance Policies with identical material terms. Plaintiffs’ injunctive relief claims are based upon the same legal theories as those of the Injunctive Relief Class Members.

Answer: GEICO denies each and every allegation contained in paragraph 103 of the Complaint and specifically denies that class treatment is appropriate.

104. **Adequacy.** Plaintiffs are adequate representatives of the proposed class because their interests do not conflict with the interests of the Injunctive Relief Class Members they seek to represent, and Plaintiffs will fairly and adequately protect the interests of the Injunctive Relief Class. Fed. R. Civ. P. 23(a)(4). Plaintiffs’ counsel are experienced in litigating consumer class actions and complex disputes, and have specific experience successfully litigating similar disputes

as class counsel. Plaintiffs' counsel do not have any conflict with the interests of the class.

Answer: GEICO denies each and every allegation contained in paragraph 104 of the Complaint and specifically denies that class treatment is appropriate.

105. **Superiority.** A class action is superior to all other available methods of fairly and efficiently adjudicating this dispute. This liability issue will be contested by Defendants, and is of such importance for so many class members that it is not economically feasible to prosecute individual actions against GEICO Indemnity, Government Employees Insurance Company, or GEICO General.

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

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

106. Plaintiffs' claims also are maintainable on behalf of the Injunctive Relief Class pursuant to Fed. R. Civ. P. 23(b)(2) because Defendants have acted, and refused to act, on grounds that apply generally to all the Injunctive Relief Class Members, thereby making final injunctive relief appropriate with respect to the Injunctive Relief Class as a whole. Defendants have created and implemented a uniform claims handling practice based on policy language that is applicable to all Injunctive Relief Class Members. Defendants' practice of failing to pay full ACV, including sales tax and title transfer fees, for first-party total loss claims where the total loss leased vehicle claims applies generally to all Injunctive Relief Class Members and is ongoing.

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

107. Defendants' breach of Policy provisions requiring them to pay full ACV on total loss claims is a continuing breach and violation of Policy terms. Injunctive relief is necessary to stop these repeat and continued violations, which are likely to continue, repeat, and cause damages to Plaintiffs and the Injunctive Relief Class in the future.

Answer: GEICO denies each and every allegation contained in paragraph 107 of the Complaint and specifically denies that class treatment is appropriate.

VII. COUNTS

Count 1 – Breach of Contract

108. Plaintiffs Joffe, Schertzer, and Rodriguez incorporate by reference all allegations

of all prior paragraphs as though fully set forth herein.

Answer: GEICO repeats and reiterates its response to each and every allegation contained in paragraphs 1 through 107 of the Complaint as though fully set forth herein.

109. This Count is brought by Plaintiffs on behalf of themselves and class members against all Defendants.

Answer: No response is required to paragraph 109 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 109 of the Complaint.

110. Plaintiffs were parties to an insurance contract with Defendants.

Answer: GEICO admits the allegations contained in paragraph 110 of the Complaint.

111. Each Class Member was a party to PPA insurance contract with a Defendant under Policy Form A-30FL (03-11) or Policy form A-70 FL (03-11).

Answer: GEICO states that a class has not been certified in this action, and therefore denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 111 of the Complaint except admits that Plaintiffs were each a named insured under a GEICO Family Automobile Insurance Policy utilizing policy form A-30FL (03-11).

112. The material provisions of Policy Form A-30(03-11) and Policy Form A-70 FL (03-11) are identical.

Answer: No response is required to paragraph 112 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 112 of the Complaint except admits that the terms, exclusions and conditions contained in Section III of GEICO's Florida Family Automobile Insurance Policy, "PHYSICAL DAMAGE COVERAGES," are generally the same in GEICO's

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A-30(FL) (03-11) and A-70(FL) (03-11) policy forms.

113. The interpretation of Plaintiffs and all Class Members' insurance Policies is governed by Florida law.

Answer: No response is required to paragraph 113 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 113 of the Complaint.

114. Plaintiffs and each Class Member made a claim determined by Defendants to be a first-party total loss under their insurance contract, and determined by Defendants to be a covered claim.

All Defendants, by paying the total loss claim, determined that each Plaintiff and each Class Member complied with the terms of their insurance contracts, and fulfilled all of their duties and conditions under the Policies for each Plaintiff to be paid on his or her total loss.

Answer: No response is required to paragraph 114 of the Complaint because it states Plaintiffs' contentions and conclusions of law. GEICO further states that a class has not been certified in this action, and therefore denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 114 of the Complaint except admits that Plaintiffs each submitted claims under their respective policies, which after investigation were adjusted and settled by GEICO as total losses.

115. Plaintiffs and each Class Member's insurance contract required all Defendants to pay full ACV, including sales tax and title transfer fees.

Answer: GEICO denies each and every allegation contained in paragraph 115 of the Complaint.

116. All Defendants refused to pay Plaintiffs and Class Members full ACV (including sales tax and title transfer fees), and in so doing Defendant breached its insurance contracts with Plaintiffs and each Class Member.

Answer: GEICO denies each and every allegation contained in paragraph 116 of the Complaint.

117. Plaintiffs and the Class Members have suffered monetary damages caused by all Defendants' insurance contract breaches.

Answer: GEICO denies each and every allegation contained in paragraph 117 of the Complaint.

Count 2 – Attorneys' Fees

118. Plaintiffs Joffe, Schertzer, and Rodriguez incorporate by reference all allegations of all prior paragraphs as though fully set forth herein.

Answer: GEICO repeats and reiterates its response to each and every allegation contained in paragraphs 1 through 117 of the Complaint as though fully set forth herein.

119. Upon the rendition of a judgment or decree by this Court against Defendants and in favor of Plaintiffs or Class Members, applicable law (including Fla. Stat. § 627.428) requires that this Court shall adjudge or decree against Defendants and in favor of Plaintiffs and/or Class Members, a reasonable sum as attorneys' fees, expenses, and costs for their attorneys prosecuting the suit in which the recovery is had.

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.

120. Such compensation or fees of the attorneys shall be included in the judgment or decree rendered in the case. See, e.g., Fla. Stat. § 627.428(3).

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 each and every allegation contained in paragraph 120 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.

AFFIRMATIVE 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 AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' and putative class members' grievances should be addressed by the Florida Office of Insurance Regulation and therefore this court lacks jurisdiction.

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE 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 Florida Office of Insurance Regulation and court opinions interpreting the applicable insurance laws and regulations.

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to identify any breached contract provisions.

TWELFTH AFFIRMATIVE 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 AFFIRMATIVE 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 AFFIRMATIVE 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 AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

The claims of some putative class members may be barred by res judicata and/or collateral estoppel.

SEVENTEENTH AFFIRMATIVE DEFENSE

The claims of some putative class members may be barred by their lack of standing to bring the claims alleged in the Complaint.

EIGHTEENTH AFFIRMATIVE DEFENSE

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

NINETEENTH AFFIRMATIVE DEFENSE

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

TWENTIETH AFFIRMATIVE DEFENSE

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

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

TWENTY-THIRD AFFIRMATIVE 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 AFFIRMATIVE DEFENSE

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

TWENTY-FIFTH AFFIRMATIVE 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 GEICO Indemnity Company, GEICO General Insurance Company and Government Employees Insurance Company 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: August 8, 2018

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By: s/ Annette Urena Tucker

Annette Urena Tucker

Kaplan Zeena LLP

2 South Biscayne Boulevard, Suite 3050

Miami, FL 33131

Telephone: (305) 530-0800

Facsimile: (305) 530-0801

annette.tucker@kaplanzeena.com

Kymerly Kochis (*pro hac vice*)

Alexander Fuchs (*pro hac vice*)

EVERSHEDS SUTHERLAND (US) LLP

The Grace Building, 40th Floor

1114 Avenue of the Americas

New York, New York 10036

Telephone: (212) 389-5068

Facsimile: (212) 389-5099

kymberlykochis@eversheds-sutherland.com

alexfuchs@eversheds-sutherland.com

Attorneys for Defendant

GEICO INDEMNITY INSURANCE COMPANY,

GOVERNMENT EMPLOYEES INSURANCE

COMPANY and GEICO GENERAL INSURANCE

COMPANY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Defendant's Answer to Plaintiff's Class Action Complaint for Damages, Injunctive Relief, and Demand for Jury Trial was served via the Court's CM/ECF system on August 8, 2018 on all counsel or parties of record on the service list.

s/ Annette Tucker

SERVICE LIST

Edmund A. Normand
Jacob Phillips
Normand Law PLLC
P.O. Box 140036
Orlando, FL 32814
Telephone: (407) 603-6031
Facsimile: (888) 974-2175
Ed@EdNormand.com
jacob@ednormand.com

Christopher J. Lynch
Christopher J. Lynch, P.A.
6915 Red Road, Suite 208
Coral Gables, FL 33143
Telephone: (305) 443-6200
Facsimile: (305) 443-6204
Clynch@hunterlynchlaw.com
Lmartinez@hunterlynchlaw.com

Bradley W. Pratt
Pratt Clay, LLC
4401 Northside Parkway, Suite 520
Atlanta, GA 30327
Telephone: (404) 949-8118
Facsimile: (404) 949-8159
bradley@prattclay.com

Tracy L. Markham
Avolio & Hanlon, PC
2800 N. 5th Street, Suite 302
St. Augustine, FL 32084
Telephone: (904) 794-7005
Facsimile: (904) 794-7007
tmarkham@gmail.com

Andrew Lampros
Hall & Lampros, LLP
1230 Peachtree Street, NE, Suite 950
Atlanta, GA 30309
Telephone: (404) 879-8100
Facsimile: (404) 876-3477
alampros@hallandlampros.com
chall@hallandlampros.com

Attorneys for Plaintiffs