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THE HONORABLE VICKI HOGAN

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF PIERCE

EDMOND JOHNSTON, JR. and JESSICA
LONERO, individually and as the
representatives of all persons similarly
situated,

No. 14-2-10507-5

~~PROPOSED~~ ORDER OF
PRELIMINARY APPROVAL OF
SETTLEMENT AND APPROVAL OF
NOTICE OF PENDENCY OF
SETTLEMENT OF CLASS ACTION TO
CLASS MEMBERS

Plaintiffs,

v.

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

Defendants.

FILED
DEPT. 5
IN OPEN COURT

MAY - 3 2016

Pierce County Clerk
By  DEPUTY

Plaintiffs Edmond Johnston, Jr. and Jessica Lonero have made a motion for preliminary approval of a Stipulation of Settlement, including Exhibits (the "Stipulation"), between Plaintiffs, the Class (as defined in Paragraph 4 below), and the "USAA Entities" (Defendants United Services Automobile Association ("USAA"), USAA Casualty Insurance Company ("CIC"), USAA General Indemnity Company ("GIC"), and Garrison Property and Casualty Insurance Company ("Garrison")).

This Court has carefully considered all filings relating to the Stipulation, the arguments of counsel, and the record in this case, and is otherwise advised in the premises. The Court hereby gives its preliminary approval to the Settlement and the Stipulation; finds that the Settlement is sufficiently fair, reasonable, and adequate to allow dissemination of

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Notice of the Settlement to the Class and to hold a Final Settlement Hearing; orders that the Individual Notice be sent to the Class in accordance with the Stipulation and this Order; and schedules a Final Settlement Hearing to determine whether the proposed Settlement is fair, reasonable, and adequate.

IT IS HEREBY ORDERED THAT:

1. The Stipulation is hereby incorporated by reference in this Order, and all terms and phrases used in this Order shall have the same meaning as in the Stipulation.

2. This Court has personal jurisdiction over all Class Members and subject matter jurisdiction to approve the Settlement.

3. The Court preliminarily approves the Settlement and finds that all aspects of the proposed Settlement, including but not limited to the Notice, the requirements for exclusions and objections, the claims process, and the calculation of Settlement Payments, are sufficiently fair, reasonable, and adequate to warrant preliminary approval. Accordingly, Notice of the proposed Settlement shall be provided to the Class as set forth herein and in the Stipulation.

4. The Court preliminarily certifies for settlement purposes only the following Class pursuant to CR 23(b)(3) and (e):

All insureds of the USAA Entities with Washington auto insurance Policies, where the insured's vehicle's damages from an automobile accident during the Class Period (July 1, 2008 through the date of preliminary approval) were covered under the UIM PD Coverage of those Policies, and

- 1. The repair estimates on the vehicle (including any supplements) totaled at least \$1,000; and
- 2. The vehicle was no more than six years old (model year plus five years), and had less than 90,000 miles on it, at the time of the accident; and

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3. The vehicle suffered structural (frame) damage and/or deformed sheet metal and/or required body or paint work.

Excluded from the Class are (a) claims involving leased vehicles or total losses, (b) current employees of the USAA Entities, and (c) the assigned judge, the judge's staff, and their family members.

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

5. For purposes of determining whether the terms of the proposed Settlement should be finally approved as fair, reasonable, and adequate, and contingent upon the Settlement being finally approved, Plaintiffs Edmond Johnston, Jr. and Jessica Lonero are appointed as Class Representatives and the following counsel are designated as counsel for the Class ("Class Counsel"):

Stephen M. Hansen
Law Offices of Stephen M. Hansen PS
1821 Dock Street, Ste. 103
Tacoma, WA 98402-4441
(253) 302 5955

Scott P. Nealey
Law Offices of Scott P. Nealey
71 Stevenson Street, Suite 400,
San Francisco, CA 94105
(415) 231-5311

Debra Brewer Hayes
The Hayes Law Firm, P.C.
700 Rockmead, Suite 210
Kingwood, TX 77339
(281) 815-4972

6. The Court finds, for purposes of preliminary approval and for settlement purposes only, that (a) Members of the Class are so numerous as to make joinder of all Class

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1 Members impracticable; (b) there are questions of law or fact common to Members of the
2 Class; (c) the claims of the Plaintiffs are typical of the claims of the Class Members; (d) the
3 Plaintiffs and Class Counsel will fairly and adequately protect the interests of the Class
4 Members, and their interests are not in conflict with those of the Class Members; (e) questions
5 of law or fact common to the Class Members predominate over questions affecting only
6 individual Class Members; and (f) a class action is superior to other available methods for the
7 fair and efficient adjudication of the controversy.

8 7. The Court appoints Dahl Administration LLC as the Claims Administrator,
9 which shall administer the Settlement in accordance with the terms and conditions of this
10 Order and the Stipulation.

11 8. Pending final determination of whether the proposed Settlement should be
12 approved, all proceedings in the Action shall be stayed until further order of the Court, except
13 such proceedings as may be necessary either to implement the Settlement or to comply with
14 or effectuate the terms of the Stipulation.

15 9. The Court has reviewed and approves the form and content of the Individual
16 Notice, which shall be without material alteration from Exhibit 2 to the Stipulation. The
17 Court also has reviewed and approves the form and content of the Claim Form, which shall be
18 without material alteration from Exhibit 3 to the Stipulation. The USAA Entities shall use
19 their best efforts to complete the mailing of the Individual Notice and Claim Form to each
20 Person on the Updated Class List by no later than sixty (60) days after the entry of this Order
21 (the "Notice Date"), as provided in the Stipulation; July 5, 2016 the Individual Notice shall be
22 mailed per the Stipulation using the Updated Class List. If any Individual Notice is returned
23 to the Claims Administrator as undeliverable, the Claims Administrator shall follow the
24 procedures in Paragraph 47 of the Stipulation. In the event that any Individual Notice is
25 returned as undeliverable a second time, no further mailing shall be required.

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10. The Court finds that the Notice plan set forth in the Stipulation and this Order constitutes reasonable and the best practicable notice under the circumstances and an appropriate and sufficient effort to locate current addresses for Class Members such that no additional efforts to do so shall be required. Other than the Individual Notice and the Settlement website, the USAA Entities shall not be obligated to provide any additional notice of this Settlement. The USAA Entities shall not be obligated to provide additional notice to any counsel who previously represented or currently represents a Class Member with regard to the issues raised in this Action. The Claims Administrator shall file proof of mailing of the Individual Notice at or before the Final Settlement Hearing.

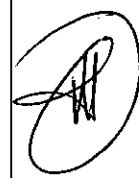
11. The Court preliminarily finds that the dissemination of the Notice under the terms and in the format provided for in this Order and the Stipulation constitutes the best notice practicable under the circumstances, is reasonably calculated to apprise Class Members of the pendency of this Action and of their right to object or to exclude themselves from the proposed Settlement, is due and sufficient notice for all purposes to all Persons entitled to such notice, and fully satisfies the requirements of CR 23, due process, Washington law, and all other applicable laws.

12. The Court directs the Claims Administrator to establish a content-neutral Website as described in the Stipulation. The website shall include, at a minimum, copies of the Stipulation, the Individual Notice, the preliminary approval motion and related papers, and this Order; identify important deadlines and provide answers to frequently asked questions; provide for online submission of Claim Forms; and may be amended as appropriate during the course of the Settlement administration. The website shall be maintained for at least one hundred eighty (180) days after the Effective Date.

13. The Final Settlement Hearing shall be held on SEPTEMBER 22, 2016 at 9:00 A.m. in Courtroom 2E* of the Superior Court of the State of Washington in

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* OR AS POSTED 



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1 and for the County of Pierce, as set forth in the Individual Notice, to determine whether the
2 proposed Settlement of this Action (including the payment of attorneys' fees and costs to
3 Class Counsel and the service awards to the Class Representatives) should be approved as
4 fair, reasonable, and adequate, and to determine whether final judgment approving the
5 proposed Settlement and dismissing all claims asserted in this Action on the merits, with
6 prejudice and without leave to amend, should be entered. The Final Settlement Hearing may
7 be postponed, adjourned, or rescheduled by order of the Court without further notice to the
8 Class Members.

9 14. To be considered timely, a Claim Form must be submitted by a Class Member
10 or that Class Member's Legally Authorized Representative so that it is postmarked and mailed
11 to the Claims Administrator (or submitted online on the Settlement website) by no later than
12 **October 3, 2016** (90 days after the Notice Date). Any Claim Form postmarked or submitted
13 after this date shall be untimely and invalid.

14 15. The Court approves the procedures set forth in the Stipulation and Individual
15 Notice for exclusion from and objections to the Settlement.

16 16. Objections to the Settlement shall be heard, and any papers or briefs submitted
17 in support of said objections shall be considered, by the Court only if they comply with the
18 objection procedures set forth in the Stipulation and Individual Notice (unless the Court in its
19 discretion shall otherwise direct). Specifically, Members of the Class who have not requested
20 exclusion from the Class must file a notice of intent to object to the Settlement and/or
21 intervene in the Action. The written notice of intent must be: (a) filed with the Clerk of the
22 Court no later than sixty (60) days after the Notice Date; **September 6, 2016**; and (b) sent by
23 first-class mail, postmarked no later than sixty (60) days after the Notice Date, to the Claims
24 Administrator and Class Counsel, in the manner set forth in the Individual Notice. Any Class
25 Member who does not so request to object waives the right to do so in the future, and shall be

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1 forever barred from making any objection to the Settlement, subject to this Court's discretion
2 to entertain the objection. Any notice of intent to object must contain: (a) a heading which
3 refers to the Action; (b) the name, address, telephone number, and signature of the Class
4 Member filing the objection; (c) a statement whether the objector intends to appear at the
5 Final Settlement Hearing, either in person or through counsel, and, if through counsel,
6 identifying counsel by name, address and phone number, and bar number; and (d) a detailed
7 statement of the specific legal and factual bases for each and every objection (including
8 photocopies of any and all exhibits that the objector may introduce at the Final Settlement
9 Hearing) and the names, addresses, and expected testimony of any witnesses), and if through
10 counsel, a legal memorandum in support of the objection. All objections to the proposed
11 Settlement shall be signed by the Class Member (or his or her Legally Authorized
12 Representative), even if the Class Member is represented by counsel. The right to object to
13 the Settlement must be exercised individually by an individual Class Member and his or her
14 attorney, not as a member of a group, class, or subclass, except that objections may be
15 submitted by a Class Member's Legally Authorized Representative. All objectors shall make
16 themselves available to be deposed by any Party in the county of the objector's residence
17 within seven (7) days of service of his or her timely written objection.

18 17. Class Counsel shall file their petition for attorneys' fees and costs and requests
19 for service awards to the Class Representatives by no later than **August 16, 2016** (21) days
20 before the objection deadline).

21 18. Any Class Members who wish to exclude themselves from the Class must
22 comply with the terms set forth in the Stipulation and the Individual Notice. To be considered
23 timely, a request for exclusion must be mailed to the Claims Administrator postmarked no
24 later than **September 6, 2016** (60 days after the Notice Date). Requests for exclusion must be
25 exercised individually by a Class Member, not as or on behalf of a group, class, or subclass,

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1 except that such exclusion requests may be submitted on behalf of an individual Class
2 Member by that Class Member's Legally Authorized Representative.

3 19. The Claims Administrator shall file proof of mailing of the Individual Notice
4 at or before the Final Settlement Hearing, along with the Opt-Out List, and an affidavit
5 attesting to the accuracy of the Opt-Out List.

6 20. Any Class Member who does not submit a timely, written request for
7 exclusion from the Class shall be bound by all proceedings, orders, and judgments in the
8 Action, including but not limited to the Final Approval Order and Judgment entered pursuant
9 to the Stipulation, even if the Class Member has previously initiated or subsequently initiates
10 individual litigation or other proceedings encompassed by the Released Claims, and even if
11 such Class Member never received actual notice of the Action or the proposed Settlement.
12 Such Class Members shall be barred and enjoined, now and in the future, from asserting any
13 and all of the Released Claims, as defined in the Stipulation, against the Released Persons, as
14 defined in the Stipulation, and any such Class Member shall be conclusively deemed to have
15 released any and all such Released Claims.

16 21. Class Counsel agree that any representation, encouragement, solicitation, or
17 other assistance, including but not limited to referral to other counsel, of or to any Opt Outs or
18 any other Person seeking to litigate with the USAA Entities over any of the claims covered
19 under the Release in this matter could place Class Counsel in an untenable conflict of interest
20 with the Class. Accordingly, Class Counsel and their respective firms agree (only to the extent
21 that it is otherwise not violative of any applicable rules governing the practice of law) not to
22 represent, encourage, solicit, or otherwise assist, in any way whatsoever (including but not
23 limited to referrals to other counsel), any Opt Out except that referring such Person to the
24 Individual Notice or suggesting to any such Person the option of obtaining separate counsel,
25 without specifically identifying options for such counsel, shall be permitted under the terms of

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1 this provision. Additionally, Class Counsel and their respective firms agree (only to the
2 extent that it is otherwise not violative of any applicable professional rules) not to represent,
3 encourage, solicit, or otherwise assist, in any way whatsoever, any Opt Out or any other
4 Person who seeks to represent any form of opt-out class, or any other Person, in any
5 subsequent litigation that Person may enter into with Released Persons regarding the Released
6 Claims or any related claims, except that suggesting to any such Person the option of
7 obtaining separate counsel, without specifically identifying options for such counsel, shall be
8 permitted under the terms of this provision.

9 22. The Court preliminarily enjoins all Class Members and their Legally
10 Authorized Representatives, unless and until they have submitted a timely request for
11 exclusion from the Class, (i) from filing, commencing, prosecuting, intervening in, or
12 participating as plaintiff, claimant, or class member in any other lawsuit or administrative,
13 regulatory, arbitration, or other proceeding in any jurisdiction based on the Released Claims;
14 (ii) from filing, commencing, or prosecuting a lawsuit or administrative, regulatory,
15 arbitration, or other proceeding as a class action on behalf of any Class Members (including
16 by seeking to amend a pending complaint to include class allegations or seeking class
17 certification in a pending action), based on the Released Claims; and (iii) from attempting to
18 effect an optout of a group, class, or subclass of individuals in any lawsuit or administrative,
19 regulatory, arbitration, or other proceeding based on the Released Claims.

20 23. The Court grants Plaintiffs leave to file the Second Amended Complaint. The
21 USAA Entities are not obligated to answer or otherwise respond to the Second Amended
22 Complaint. The Second Amended Complaint shall be withdrawn if this Settlement does not
23 become Final, and the Parties shall be returned to the status quo, as further set forth in
24 Paragraphs 26, 55, 57, and elsewhere in the Stipulation. The Second Amended Complaint
25 shall not be offered, received, or construed as an admission or as evidence by any Person for

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1 any purpose (in this Action or any other proceeding), including but not limited to an
2 admission by the USAA Entities of liability or the truth of the allegations of the Second
3 Amended Complaint or of the certifiability of a litigation class.

4 24. The Settlement falls within the range of possible final approval and is hereby
5 preliminarily approved, but the Settlement shall not be offered, received, or construed as an
6 admission or as evidence for any purpose in any pending or future civil, criminal, or
7 administration action or proceeding, including but not limited to an admission by any Party of
8 liability or non-liability or of any misrepresentation or omission in any statement or written
9 document approved or made by any Party, or wrongdoing or of any violation of law by the
10 USAA Entities and the Released Persons, of the certifiability of a litigation class, or otherwise
11 be used by any Person for any purpose whatsoever in this Action or any other proceeding,
12 other than in actions to enforce the Settlement, and except that the Released Persons may file
13 this Order and any other Settlement-related orders and papers in any action that may be
14 brought against them in order to support a defense or counterclaim based on principles of res
15 judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any
16 other theory of claim preclusion or issue preclusion or similar defense or counterclaim, as
17 further provided in the Stipulation.

18 25. The Court orders that the preliminary certification of the Class and the
19 preliminary approval of the proposed Settlement, and all actions associated with them, are
20 undertaken on the condition that the certification and designations shall be automatically
21 vacated if the Stipulation is terminated or is disapproved in whole or in part by the Court, any
22 appellate court, or any other court of review, or if the Stipulation is revoked pursuant to
23 Paragraphs 54-57 of the Stipulation. If the Settlement does not become Final, this Order shall
24 be vacated *ab initio*, the Parties shall be restored without prejudice to their respective
25 litigation positions as of April 26, 2016, and the Court shall enter a new scheduling order, all

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1 as further provided in Paragraphs 55, 57, and elsewhere in the Stipulation.

2 26. The Court may, for good cause, extend any of the deadlines set forth in this
3 Order without further notice to the Class.

4 **IT IS SO ORDERED.**

5 Dated this 3rd day of May, 2016.

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8 The Honorable VICKI HOGAN

9 Presented by:

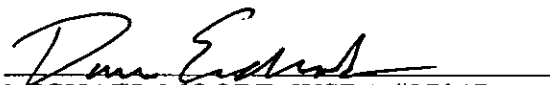
10 Law Offices of STEPHEN M. HANSEN


11 

12
13 STEPHEN M. HANSEN, WSBA #15642
14 Of Attorneys for Plaintiffs

15 Copy received; Approved as to form and
16 Content;

17 Corr Cronin Michelson
18 Baumgardner & Preece LLP

19 
20 MICHAEL MOORE, WSBA #27047
21 DAVID EDWARDS, WSBA #44680
22 Of Attorneys for Defendants
23
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