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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

KRISTEN PEREZ, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

GEICO INDEMNITY COMPANY, a foreign
insurance company,

Defendant.

Case No.: _____

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 **CLASS ACTION COMPLAINT**

2 Plaintiff Kristen Perez (“Plaintiff”), on behalf of herself and all others similarly situated, files this
3 Class Action Complaint against GEICO Indemnity Company (“GEICO”), and in support thereof states
4 the following:

5 **INTRODUCTION**

6 1. This is a class action lawsuit brought by Plaintiff, the named insured under a GEICO
7 automobile policy issued for private passenger auto physical damage including comprehensive and
8 collision coverage (the “Policy”). Defendant’s Policy promises payment of “Actual Cash Value”
9 (“ACV”) in the event of a total loss of an insured vehicle. Pursuant to the terms of the Policy, ACV
10 includes, *inter alia*, State sales tax. GEICO acknowledges that its Policy includes these taxes: as part of
11 its ACV payment to insureds who *own* vehicles that have sustained a total loss, GEICO pays sales tax;
12 and as part of its ACV payment to *all* insureds. However, in violation of its Policy, GEICO refuses to
13 pay sales tax (or, in rare cases, underpays sales tax) when it purports to pay ACV to insureds who have
14 suffered a total loss of their *leased* (as opposed to owned or financed) insured vehicle.
15

16 2. Defendant GEICO is one of the largest passenger auto insurance carriers operating in the
17 State of California. One of the coverages GEICO sells to consumers is comprehensive and collision
18 coverage. GEICO systematically and uniformly underpaid Plaintiff and thousands of other putative Class
19 Members amounts owed its insureds who suffered the total loss of a vehicle insured with comprehensive
20 and collision coverage.

21 3. Pursuant to its standard Policy form language, GEICO is obligated to pay insureds sales
22 tax in making payment to insureds who suffer the total loss of an insured vehicle. The ACV of insured
23 property, including automobiles, is not based on the amount, if any, originally paid by the insured for the
24 total loss vehicle, nor on the amount, if any, paid by the insured to replace the total loss vehicle. Similarly,
25 the amount of sales tax owed is not based on the amount in sales tax, if any, originally paid by the insured
26 for the total loss vehicle, nor on the amount paid, if any, to replace the total loss vehicle; instead, the
27 amount of sales tax owed is based on the underlying adjusted vehicle value of the total loss vehicle *at the*
28 *time of loss* (“ACV sales tax”).

1 4. This lawsuit is brought by Plaintiff individually and on behalf of all other similarly
2 situated insureds who have suffered damages due to GEICO's practice of refusing to pay full ACV sales
3 tax to first-party total loss insureds on physical damage policies containing comprehensive and collision
4 coverages.

5 5. The failure to pay ACV sales tax on first-party total losses owed to GEICO insureds
6 pursuant to GEICO's uniform policy language constitutes a breach of the policy.

7 **THE PARTIES**

8 6. Plaintiff Kristen Perez is domiciled and resides in Monterey County, California, and is a
9 citizen of the State of California.

10 7. At all times material hereto, GEICO is and was a foreign corporation located in the State
11 of Maryland, incorporated in Maryland and with its principal place of business in Maryland, and
12 authorized to transact insurance in the State of California.

13 **JURISDICTION AND VENUE**

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

18 9. Venue is proper in this court because a substantial portion of the acts and course of conduct
19 giving rise to the claims alleged occurred within the district and Defendant is subject to personal
20 jurisdiction in this district.

21 **INTRADISTRICT ASSIGNMENT**

22 10. Assignment to the San Jose Division is proper under Civil Local Rules 3-2(c) and 3-2(e)
23 because a substantial part of the events giving rise to Plaintiff's claims occurred in Monterey County.

24 **AMOUNT IN CONTROVERSY**

25 11. GEICO paid out approximately \$450 million dollars in auto private passenger physical
26 damage claims in 2018.

1 18. “Loss” is defined as “direct and accidental loss of or damage to” the insured auto. *Id.* at
2 7.

3 19. The limit of liability is established as, *inter alia*, “the **actual cash value** of the property at
4 the time of the **loss.**” *Id.* at 9.

5 20. “Actual cash value” is defined as “the replacement cost of the auto or property less
6 **depreciation or betterment.**” *Id.* at 7. The ACV of the vehicle, the Policy continues, “will be determined
7 at the time of **loss** and will include an adjustment for **depreciation/betterment** of the property.” *Id.* at 9.

8 21. There is no difference, for purposes of Defendant’s duty to pay ACV on a first-party total
9 loss claim, between a collision total loss claim and a comprehensive total loss claim. *See generally id.*

10 22. There is no difference and no distinction in the Policy between owned, financed, and
11 leased vehicles. In fact, the Policy specifically asserts not only that “owned auto” includes *any* auto for
12 which a premium is paid—even if financed or leased—but also that owned autos *include* autos leased for
13 a period of over six months. *Id.* at 8.

14 23. Clearly, then, the policy language does not further define ACV as including, for example:
15 (1) any provision excluding sales tax from ACV; (2) any provision deferring payment of the ACV sales
16 tax for any purpose whatsoever; (3) any provision requiring an insured to obtain a replacement vehicle
17 at all; or (4) any provision linking the amount of ACV sales tax to amounts originally paid for the total
18 loss vehicle or amounts actually incurred in replacing the total loss vehicle. Instead, the Policy establishes
19 ACV as a *predictable amount* upon which both GEICO and the insured can rely.

20 24. The ACV of the insured vehicle is an independent amount. The ACV is the same whether
21 the insured paid nothing for the total loss vehicle, paid less than what the vehicle was worth, or paid more
22 than what the vehicle was worth. The ACV is the same whether the insured replaces the vehicle with a
23 more expensive vehicle, a less expensive vehicle, or chooses not to replace the vehicle at all.

24 25. The policy language applies to all covered autos irrespective of ownership interests—
25 whether owned, financed or leased, insured autos are considered “owned” or are treated and defined
26 identically for purposes of the policy.
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1 **B. Sales Tax is a Replacement Cost**

2 26. Sales tax is a mandatory cost imposed by the State of California on every vehicle purchase.
3 There is no exception to the imposition of sales tax for insureds replacing a total loss vehicle. It is
4 impossible to replace a total loss vehicle—or to purchase any vehicle under any circumstances—without
5 payment for sales tax.

6 27. As set forth above, GEICO promises to pay the ACV of an insured vehicle in the event
7 of, *inter alia*, a total loss; and defines ACV as the replacement cost of the insured vehicle, less
8 depreciation. Sales tax is incontrovertibly an element of the replacement cost of the vehicle, and is
9 therefore incontrovertibly an element of the ACV of the insured vehicle.

10 28. Thus, sales tax is inherently part of the costs to replace an insured property, including a
11 vehicle. *Johnson v. Hartford Cas. Ins. Co.*, 2017 WL 2224828, at *8 (N.D. Cal. May 22, 2017) (citing
12 *Tolar v. Allstate Texas Lloyd's Co.*, 772 F. Supp. 2d 825, 831-32 (N.D. Tex. 2011) (explaining that the
13 “ordinary meaning of replacement costs” in the context of ACV is “a composite of all reasonably
14 foreseeable repair or replacement costs, including . . . sales tax”); *Mills v. Foremost Ins. Co.*, 511 F.3d
15 1300, 1305 (11th Cir. 2008) (“[T]he cost to repair and replace property with new materials would
16 necessarily include the state and local taxes on the materials purchased to make the repairs.”)).

17 **C. GEICO Systematically Fails to Pay Sales Tax if the Total Loss Vehicle Was Leased**

18 29. Under the terms of the Policy, therefore, the ACV of a vehicle is the adjusted vehicle
19 value, *plus sales tax* calculated as a percentage of the adjusted vehicle value. Thus, the amount owed
20 insureds who suffer a total loss is the adjusted vehicle value, plus sales tax calculated as a percentage of
21 the adjusted vehicle value, less any applicable deductible and salvage retention value.

22 30. Indeed, in California, GEICO pays full sales tax—the applicable percentage of the
23 adjusted vehicle value—as part of the ACV replacement costs if the total loss vehicle was owned or
24 financed.

25 31. Such payments constitute an acknowledgement from GEICO that in the event of a total
26 loss, its Policy promises payment of sales tax as part of the ACV of the insured vehicle.
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1 32. Nevertheless, in California, GEICO uniformly does *not* pay the sales tax owed as a part
2 of the ACV replacement costs if the total loss vehicle was leased.³

3 33. GEICO’s Policy does not contain any provision or clause stating GEICO will pay only a
4 prorated or partial amount of the costs to replace the insured vehicle. Instead, GEICO simply promises
5 to pay the costs to replace the vehicle. Moreover, by excluding depreciation and actual condition from
6 the costs of replacement, GEICO further indicates that replacement costs *not* excluded would be paid. If
7 GEICO had wanted to exclude all or part of the replacement costs (like depreciation and condition), it
8 could have done so.

9 34. GEICO’s Policy does not distinguish between owned, financed, and leased vehicles;
10 instead, it explicitly treats them the same for purposes of ACV payments. It promises to pay precisely the
11 same amount—replacement costs of the insured vehicle minus depreciation—to every policyholder.⁴

12 35. GEICO’s Policy promises payment of full sales tax as part of the cost to replace the
13 vehicle, without taking into account, for example, what amount, if any, was previously paid for the
14 vehicle, nor what amount, if any, is actually incurred in replacing the vehicle. In fact, if the insured
15 received the vehicle as a gift and, therefore, paid no sales tax at all, the ACV of the insured vehicle,
16 according to the terms of the Policy, is nevertheless unaffected. If the insured *does not replace the total*
17 *loss vehicle at all*, the ACV of the vehicle is unaffected. GEICO’s Policy does not condition payment of
18 ACV on actual replacement. *See generally* Policy.

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22 ³ Upon information and belief, GEICO may purport to sometimes partially pay sales tax under some
23 limited factual circumstances. Even in that scenario, however, GEICO would still owe the difference
24 between the partial sales tax payment and the full ACV sales tax owed on the total-loss adjusted vehicle.

25 ⁴ These allegations should come as no surprise to Defendant, given that at least one court has already
26 found that similar conduct by GEICO constitutes a breach of contract. Specifically, in *Roth v. Geico*
27 *General*, the Court cogently held that GEICO’s procedure breached its (materially identical) contract by
28 failing to include in an ACV payment taxes and fees: “[A]s sales tax and title transfer fees are mandatory,
necessarily included in the replacement costs of a total loss vehicle, the Court concludes that they are
components of actual cash value under the Policy and are therefore due to be paid to the insured under
the Policy, regardless of whether the vehicle is owned, financed, or leased.” *Roth v. GEICO Gen. Ins.*
Co., No. 16-62942-CIV, 2018 WL 3412852, at *4 (S.D. Fla. June 14, 2018), attached as Exhibit D (Order
on Summary Judgment). Further, the Court found, “the Policy does not distinguish between the ACV
and replacement costs for owned, financed, or leased vehicles, and provides no notice to GEICO’s
insureds that their leased vehicles will be valued differently.” *Id.* at *3.

1 **D. Plaintiff's Total Loss Claims**

2 36. At all times material hereto, Plaintiff leased and insured a 2018 Honda Clarity Plug-In
3 Hybrid Touring, VIN # JHMZC5F31JC013156.

4 37. Plaintiff insured the 2018 Honda Clarity Plug-In Hybrid Touring, (the “insured vehicle”) under an insurance policy issued by Defendant. Exhibit A (Policy); Exhibit B (Decl. Sheet). Defendant
5 insured Plaintiff’s vehicle according to this Policy at all times material hereto.
6

7 38. On or about July 22, 2018, Plaintiff was involved in an accident while operating the
8 insured vehicle. As a result of said accident, Plaintiff filed a claim for property damage with Defendant,
9 claim number 037084128-0101-030.

10 39. Following the filing of said claim, GEICO determined that the adjusted value of the
11 insured vehicle was \$36,539.00. Exhibit C (Total Loss Settlement Letter).

12 40. GEICO added state and local regulatory fees of \$385.00, subtracted the deductible of
13 \$1,000, but did not include any amount for sales tax. *Id.*

14 41. GEICO then made a payment to Plaintiff for a total of \$35,924.00. *Id.*

15 42. The applicable sales tax based on Plaintiff’s residency was 7.5%. Specifically, Plaintiff
16 was owed sales tax in the amount of 7.25% state sales tax, plus local surtax of 0.25%, of the adjusted
17 vehicle value of her insured vehicle. Thus, the ACV sales tax owed as a part of the ACV of the insured
18 vehicle was \$2,769.30.

19 43. GEICO did not include sales tax in making its (purported) ACV payment to Plaintiff,
20 thereby breaching the terms of Plaintiff’s Policy.

21 44. Sales tax is a mandatory applicable cost that must be paid to replace or purchase any
22 vehicle in the State of California.

23 45. In breach of its contract with Plaintiff, GEICO did not include any sales tax in making the
24 ACV payment for Plaintiff’s total loss.

25 46. Plaintiff paid all premiums owed and otherwise satisfied all conditions precedent such that
26 her insurance policy was in effect and operational at the time of the accident. By paying the claim—albeit
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1 insufficiently—GEICO acknowledged that Plaintiff satisfied all conditions precedent required under the
2 Policy.

3 **CLASS ACTION ALLEGATIONS**

4 47. Plaintiff brings this action seeking representation of a class pursuant to Federal Rule of
5 Civil Procedure 23.

6 48. Plaintiff brings this action as class representative, individually and on behalf of all other
7 persons or entities similarly situated, more specifically defined as follows:

8 All individuals insureds under a California policy issued by GEICO
9 Indemnity Company with the same operative policy language covering a
10 leased vehicle with private-passenger auto physical damage coverage with
11 comprehensive or collision coverage, who made a first-party claim, whose
12 claim was determined to be, and adjusted as, a total loss under
13 comprehensive or collision coverage, and where the total loss payment did
14 not include full sales tax calculated as the applicable state and local
percentage of the adjusted vehicle value (“ACV Sales Tax”) within four
years prior to the date on which this lawsuit was filed through the date of
any certification order.

15 49. Certification of the above class is supported by the following considerations:

- 16 a. The relatively small amount of damages that members of the class
17 have suffered on an individual basis would not justify the
18 prosecution of separate lawsuits;
- 19 b. Counsel in this class action are not aware of any previously filed
20 litigation against GEICO in which any of the members of the class
is a party and which any question of law or fact in the subject action
can be adjudicated; and
- 21 c. No difficulties would be encountered in the management of
22 Plaintiff’s claim on a class action basis, because the class is readily
23 definable and the prosecution of this class action would reduce the
possibility of repetitious litigation.

24 50. Although the precise number of members of the Class are unknown to Plaintiff at this time
25 and can only be determined through appropriate discovery, Plaintiff understands Defendant to be one of
26 the largest motor vehicle insurers in the State of California—one that writes hundreds of millions of
27 dollars of physical damage coverage premiums. Thus, the class of persons affected by Defendant’s
28 unlawful practice alleged herein consists of thousands of individuals, or the class of persons effected are

1 otherwise so numerous that joinder of all class members is impractical. The unlawful practice alleged
2 herein is a systematic and uniform practice, employed by Defendant in violation of standardized and
3 uniform insurance policy language, which results in the retention by Defendant of insurance benefits and
4 monies properly owed to Plaintiff and the Class members.

5 51. The precise number of members of the Class can only be determined through discovery.
6 However, upon information and belief, including investigation by their attorneys and public information
7 concerning the statistical likelihood of total losses per premiums written, Plaintiff believes the Class is
8 comprised of approximately 8,000 members. Numerosity under Rule 23(a)(1) is established.

9 52. Rule 23(a)(2)'s commonality requirement is also satisfied. The central issues in this
10 litigation turn on the interpretation of materially identical policy provisions; thus, this case is well-suited
11 for class-wide adjudication. Defendant and all members of the Class, including Plaintiff, are bound by
12 materially identical policy terms.

13 53. As to the Class, common questions include (but are not limited to): (1) whether, under the
14 Defendant's standardized policy language, leased-vehicle insureds are owed sales tax upon the total loss
15 of an insured vehicle; (2) whether the Policy defines and treats leased, financed and owned vehicles in a
16 materially-similar manner; (3) whether GEICO makes the same promise as to leased, financed, and
17 owned vehicles; and (4) whether the ACV of a vehicle depends on whether it is owned, leased or financed.

18 54. Rule 23(a)(3)'s typicality requirement is satisfied because Plaintiff and members of the
19 Class were injured by Defendant's uniform misconduct. Further, Plaintiff and Class members' legal
20 claims arise from the same core practices: namely, the failure to pay the full ACV of insured vehicles on
21 first-party total loss claims. Plaintiff's claims are based upon the same legal theories as those of the
22 members of the Class. Plaintiff suffered the same harm as all other members of the Class: the coverage
23 for sales tax that Defendant failed to pay or underpaid its leased-vehicle insureds. Plaintiff is not subject
24 to any unique defenses nor does Plaintiff bring any unique claims.
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1 55. The relevant Policy provisions for each Class member are the same. The relevant law
2 relating to the interpretation and application of those Policy provisions for each Class member is the
3 same.

4 56. Rule 23(b)(3)'s predominance requirement is satisfied. The previously articulated
5 common issues of fact and law predominate over any question solely affecting individual Class members.
6 As to the Class, the critical common question—does Defendant's promise to pay the ACV of the total
7 loss vehicle obligate it to include ACV sales tax to leased-vehicle insureds—is identical for every
8 member of the Class. Other critical common questions, such as whether Defendant's Policy treats or
9 defines leased vehicles differently than owned or financed vehicles, are also identical for every member
10 of the Class.

11 57. Further, the measure of damages, if any, is the same for every member of the Class, and
12 any variances in damages will reflect only variances in underlying vehicle values (some vehicles are
13 more expensive than others, and thus the applicable ACV sales tax owed will be different), the application
14 of which is a purely ministerial function. Otherwise, there are no individualized questions of fact or law.

15 58. Further, Rule 23(b)(3)'s superiority requirement is met here: class treatment is superior to
16 any other alternative method of adjudication because the damages suffered by individual members of the
17 Class is relatively small, their interests in maintaining separate actions is questionable and the expense
18 and burden of individual litigation makes it impracticable for Class members to seek individual redress
19 for the wrongs done to them. Even if some members of the Class could afford individual litigation, the
20 court system could not. Thousands of individual cases asserting precisely the same claim that Plaintiff
21 asserts here would be uneconomical and would strain (indeed, likely overwhelm) judicial resources.

22 59. As to the Class, class treatment is superior because every claim—all based on uniform
23 conduct and a form contract—will be substantially determined by answering the single question of
24 whether Defendant's Policy obligates payment of sales tax. It is desirable to concentrate the litigation of
25 the Class members' claims in one forum, as it will conserve party and judicial resources and facilitate the
26 consistency of adjudications. No difficulty would be encountered in the management of this case that
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1 would preclude its maintenance as a class action. To the contrary, several other similar total loss class
2 actions against other insurers (including Defendant in a different state) were successfully treated as class
3 actions. *See, e.g., Roth v. Geico General*, Exhibit E.

4 60. Plaintiff and her counsel will fairly and adequately protect and represent the interests of
5 each member of the Class. Plaintiff possess no conflict with members of the Class. Plaintiff's claim does
6 not conflict with that of any member of the Class, and Plaintiff has no financial or any other interest
7 conflicting with those of the Class. Plaintiff fully intends to vigorously protect the interests of Class
8 members in prosecuting these claims.

9 61. Plaintiff is committed to the vigorous prosecution of this action and retained competent
10 counsel experienced in prosecuting and defending class actions. Moreover, Plaintiff's counsel has
11 successfully litigated other class action cases similar to that here, where insurers breached contracts with
12 insureds by failing to include ACV Sales Tax after total losses.

13
14 **FIRST CLAIM FOR RELIEF**
15 **BREACH OF CONTRACT FOR FAILURE TO PAY ACV SALES TAX**
16 **(By Plaintiff on Behalf of Plaintiff and the Class)**

17 62. Plaintiff incorporates by reference paragraphs 1-61 as though fully set forth herein.

18 63. Plaintiff was party to an insurance contract with Defendant as described herein. All Class
19 members were parties to insurance contracts with Defendant containing materially identical terms.

20 64. The interpretation of Plaintiff's and all Class members' Policies is governed by California
21 law.

22 65. Plaintiff and all Class members made a claim determined by Defendant to be a first-party
23 total loss under the insurance policy and determined by Defendant to be a covered claim.

24 66. Defendant, by paying the total loss claim, determined that Plaintiff and each Class
25 members complied with the terms of his or her insurance contract, and fulfilled all required duties and
26 conditions under the Policy for the insured to be paid on his or her total loss.

1 67. Pursuant to the aforementioned uniform contractual provisions, upon the total loss of
2 insured vehicles, Plaintiff and every Class member were owed the ACV of the vehicle, which, per the
3 terms of the Policies, includes sales tax calculated as a percentage of the adjusted vehicle value.

4 68. Defendant refused or otherwise failed to pay ACV Sales Tax as part of its purported ACV
5 payment to Plaintiff and every Class member, following Defendant’s determination that a vehicle was a
6 total loss.

7 69. Defendant’s failure to provide payment for the ACV sales tax constitutes a material breach
8 of contract with Plaintiff and every Class member.

9 70. As a result of said breaches, Plaintiff and the Class members are entitled, under
10 Defendant’s insurance Policies, to sums representing the benefits owed for ACV sales tax, as well as
11 costs, pre-judgment and post-judgment interest, injunctive relief and other relief as is appropriate.
12

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff, individually and on behalf of the Class, demands a trial by jury on all
15 triable issues and seek and pray for relief and judgment as follows:

- 16 a. For an Order certifying this action as a Class Action on behalf of the Class described
- 17 above;
- 18 b. For an award of compensatory damages for Plaintiff and members of the Class in amounts
- 19 owed under the Policies;
- 20 c. For all other damages according to proof;
- 21 d. For an award of attorney’s fees and expenses as appropriate pursuant to applicable law;
- 22 e. For pre- and post- judgment interests on any amounts awarded; and
- 23 g. For other and further forms of relief as this Court deems just and proper.

24 **JURY DEMAND**

25 Plaintiff demands a trial by jury on all issues so triable.

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28 DATED: October 23, 2020.

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For Plaintiff and the Putative Class

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