

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 16-62942-Civ-DIMITROULEAS

KERRY ROTH, on behalf of herself and
all others similarly situated,

Plaintiff,

vs.

GEICO GENERAL INSURANCE
COMPANY; GOVERNMENT
EMPLOYEES INSURANCE COMPANY;
GEICO INDEMNITY COMPANY; and
GEICO CASUALTY COMPANY,

Defendants.

OMNIBUS ORDER

THIS CAUSE is before the Court on the Defendant's Motion to Decertify Class [DE 255] and Plaintiff's Request for Entry of Judgment [DE 262]. The Court has carefully considered the Motion, the Responses thereto [DE's 259, 265], and the record, as is otherwise fully advised in the premises.

This case arises from GEICO's failure to pay state and local sales tax and title transfer fees in the settlement of total loss claims on leased vehicles. On May 4, 2018, the Court entered an Order Granting Plaintiff's Motion for Class Certification. *See* [DE 165]. On May 18, 2018, the Court approved the form and manner of class notice. *See* [DE 211]. Plaintiff provided notice to the class by June 1, 2018, and requests to exclude were required to be postmarked no later than July 2, 2018. *See* [DE 234].

Both sides moved for summary judgment. *See* [DE's 151, 152]. On June 13, 2018, the Court entered an Order Granting Plaintiff's Motion for Summary Judgment; Denying Defendant's Motion for Summary Judgment. [DE 247]. Therein, the Court granted Plaintiff's summary judgment motion and denied Defendant's summary judgment motion, holding as follows:

Sales tax and title transfer fees are mandatory parts of the replacement cost under the GEICO Policy for Plaintiff Roth's (and the class members') leased total loss vehicle and therefore are components of "actual cash value" under the Policy. Accordingly, GEICO's failure to pay leased vehicle total loss insureds sale tax in the amount of 6% of the value of the vehicle (plus any local taxes) and title transfer fees in the amount of \$75.25 constitutes a breach of contract.

See [DE 247] at p. 10. The Court also ruled, in pertinent part:

3. Plaintiff Roth is entitled to damages in the amount of \$1,436.82 in sales tax, which is 6% of the value of Plaintiff's total loss vehicle; and the amount of \$75.25 in title transfer fees, which is the minimum amount of title transfer fees that are due on the purchase of a replacement vehicle.
4. Class members are entitled to damages in the amount of 6% of the value of Plaintiff's total loss vehicle (plus any applicable local taxes); and the amount of \$75.25 in title transfer fees.
5. Within sixty (60) days from the expiration of the July 2, 2018 deadline to opt out of the class, the parties shall jointly submit a proposed final judgment to the Court.

See [DE 247] at p. 11.

The parties failed to jointly submit a proposed final judgment to the Court as required. Instead, on August 27, 2018, Defendant filed a Motion to Decertify the Class. *See* [DE 255]. Therein, Defendant contends that the Court should decertify the class on the grounds that the review of Defendant's records for purpose of preparing the final judgment has been unduly time-consuming and resulted in a Plaintiff's class list of 3,329 class members, which was then reduced to 3,247 class members, which is both over-inclusive and under-inclusive, and therefore the class is not ascertainable. Defendant also argues that individual damages issues predominate because

each of the approximately 3,200 class members' claim files needed to be checked individually to determine whether Defendant has already paid either full or partial sales tax to that individual.

The Court rejects the arguments proffered by Defendant regarding decertification. It is clear that this action is appropriately resolved on a class-wide basis, as the Court's legal ruling in its summary judgment Order applies equally to Plaintiff and to all class members, the class members are readily identifiable, and the damages calculations as to each class member require simple arithmetic calculations to determine the amount of the underpaid sales tax and title transfer fee. Based on the Court's careful review of the parties' filings, the Court finds that an extremely small number of individuals compared to the size of the class were improperly identified by Plaintiff's counsel and that Plaintiff's counsel has been amenable to removing individuals from the final proposed judgment who were improperly included.

Moreover, the process of conferring between counsel to properly remove the very small percentage of individuals from the list who should not have been included because they did not have leased vehicles, and double-checking Defendant's files only with regard to the individuals on the proposed final class list to make sure those individuals have not already been paid either full or partial sales tax, was precisely the type of activity the Court contemplated when it provided the parties nearly three months to jointly submit a proposed final judgment to the Court. *See* [DE 247] at p. 11. The Court would have been agreeable to an extension of time to complete that process and submit a jointly proposed final judgment had the parties so requested.

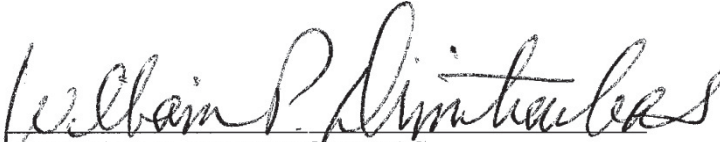
Based upon the Court's careful consideration of Plaintiff's Request for Entry of Judgment and the Defendant's Objections thereto, the Court finds that a simple back-and-forth process to vet the final list of class members and their damages amounts is not overly burdensome and will result in a final proposed judgment suitable for entry by the Court. The Court will refer this matter to the magistrate judge to supervise this process.

Finally, regarding the relatively small percentage of individuals that Defendant has identified as having been damaged by Defendant's breach of contract, *see* [DE 247], but who were not provided class notice, the Court will limit the final judgment to the final class list and exclude from the judgment those individuals who received no notice, thereby protecting the due process rights of insureds who were not sent and/or did not receive class notice.¹

Accordingly, it is hereby **ORDERED AND ADJUDGED** as follows:

1. Defendant's Motion to Decertify Class [DE 255] is **DENIED**;
2. Plaintiff's Request for Entry of Judgment [DE 262] is **DENIED WITHOUT PREJUDICE**;
3. Pursuant to 28 U.S.C. § 636 and the Magistrate Rules of the Local Rules of the Southern District of Florida, the Court **REFERS** this matter to United States Magistrate Judge Lurana S. Snow to oversee the back-and-forth process to vet the final list of class members and their damages amounts for the purpose of producing a final proposed judgment for entry by the Court.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida,
this 18th day of September, 2018.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies to:
Counsel of record

¹ The Court would also consider a motion for supplemental notice as to the additional potential class members that Defendant has identified.