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Attorneys for Plaintiff Leif's Auto Collision Centers, LLC

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

(Portland Division)

LEIF'S AUTO COLLISION CENTERS, LLC, an
Oregon corporation,

Plaintiff,

v.

GOVERNMENT EMPLOYEES INSURANCE
COMPANY, a Maryland corporation,

Defendant.

Civil No. 3:17-cv-1822

**COMPLAINT (Action for Sherman
Antitrust Act Violations and
Intentional Interference with
Economic Advantage)**

DEMAND FOR JURY TRIAL

For its Complaint against Defendant Government Employees Insurance Company

("GEICO"), Plaintiff Leif's Auto Collision Centers, LLC ("Leif's"), alleges as follows:

INTRODUCTION

1. This case involves an unlawful agreement entered into by GEICO with a small group of auto collision repair shops in the Portland, Oregon metropolitan statistical area to boycott Leif's. GEICO's ultimate goal has been to maximize its own profits by minimizing the amount it must reimburse repair shops for their services to GEICO's policyholders. GEICO goes about this scheme by causing its automobile policyholders to accept unsafe and incomplete repairs and confusing policyholders into falsely believing (1) that exercising their right to choose the repair shop they prefer will result in a less favorable repair, (2) that GEICO's preferred repair shops are affiliated with GEICO and are GEICO repair shops, and (3) that the policyholders are receiving complete repairs and being fully compensated for their loss when in fact the GEICO preferred repair shops have agreed with GEICO to provide less than complete repairs in return for a promise of a consistent stream of repair referrals.

2. As a result of GEICO's anticompetitive and deceptive practices, GEICO's policyholders have less choice and less information when it comes to auto collision repairs; the market for auto collision repairs in the Portland metropolitan statistical area has been harmed; and Leif's has been harmed individually in its business and property by having to choose between performing shoddy repair work for GEICO's policyholders or receiving no referrals and only partial reimbursements from GEICO. Leif's seeks damages and injunctive relief to cure these harms.

PARTIES

3. Leif's is an Oregon limited liability company, whose members are citizens of the state of Oregon.

4. GEICO is a foreign corporation with its principal place of business in Chevy Chase, Maryland. It is licensed by the Oregon Department of Consumer and Business Services to conduct business and sell insurance products in Oregon.

JURISDICTION AND VENUE

5. This action arises under the laws of the United States and, in particular, the Sherman Antitrust Act, 15 U.S.C. § 1, and the Clayton Act, 15 U.S.C. § 15. This Court has federal question jurisdiction under 28 U.S.C. § 1331. This Court also has diversity jurisdiction over the state law claims under 28 U.S.C. § 1332 in that complete diversity exists between Leif's and GEICO and the amount in controversy exceeds \$75,000, exclusive of interest and costs. This Court also has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367(a) in that the federal and state claims are so related that they arise from the same nucleus of operative facts to form the same case or controversy. Venue is proper in this district under 28 U.S.C. § 1391(b) because a substantial part of the acts and events giving rise to Leif's claims occurred here.

FACTS COMMON TO ALL CLAIMS

6. GEICO sells car insurance, including coverage for collision repair, to drivers in Portland, Oregon, and the surrounding area. Over the course of several years, beginning no later than 2014, GEICO has conspired with several auto collision repair shops to illegally control and depress auto collision repair costs to Leif's detriment and GEICO's substantial benefit.

7. GEICO exerts control over the market for auto collision repair services through its program for preferred auto collision repair shops. After a car accident, GEICO's policyholders contact GEICO to report the accident and select an auto collision repair shop to

use for vehicle repairs. GEICO has ongoing business relationships with preferred auto collision repair shops, known as Auto Repair Xpress (ARX) partners, in the Portland, Oregon metropolitan statistical area. GEICO insurance adjusters recommend ARX partners to policyholders. Policyholders who use the ARX partners instead of non-partner auto collision repair shops receive certain benefits, such as the option to receive Priority Passes for rental cars while their cars are being serviced.

8. GEICO has auto damage adjusters on site at each ARX partner location and supplies the shops with GEICO desks and signs. GEICO wants ARX partners to look, feel, and act as if the shops are affiliated with GEICO. GEICO's Auto Damage Manager, Michael Rasmussen, has told ARX partners that the shops must display GEICO signage and paraphernalia "[a]lmost to the point that the customer believes GEICO owns the place."

9. GEICO also expects ARX partners to answer to GEICO management for the quality, cost, and nature of repairs. Rasmussen has gone so far as to tell ARX partners that when GEICO partners with a shop "that shop becomes an extension of [his] management responsibilities." In return, GEICO assures ARX partners that they will receive referrals of GEICO policyholders; or as Rasmussen puts it, ARX partners will receive "consistent volume."

10. GEICO insists that ARX partners sign a written agreement that they will charge certain fixed maximum prices for labor and materials. The written agreement also contains an acknowledgment that GEICO's accountants and auditors will have the right periodically to inspect ARX partners' books and records. It also includes GEICO's promise that, in exchange for following GEICO's mandates, ARX partners will receive referrals under GEICO's Guaranteed Repair Shop Program.

11. Once repair shops have signed on as ARX partners in the Guaranteed Repair Shop Program, GEICO pressures the shops to reduce repair costs. For example, GEICO has identified several metrics, such as average number of hours per repair, to rate its ARX partners and enforce low prices. GEICO reports to each ARX partner how others are performing in comparison. GEICO tells its ARX partners that it uses the metrics to identify which auto collision repair shops it needs to cut from the Guaranteed Repair Shop Program. Local GEICO supervisors regularly meet with ARX partners to discuss these metrics and coerce compliance with GEICO's policy of keeping the labor rate at the fixed maximum and the average number of hours per repair as low as possible.

12. Rasmussen has threatened to "just let cars go to the field" instead of referring them to an ARX partner whose average labor hours were too high. Additionally, if an ARX partner requests to use additional parts, materials, or labor for a repair, GEICO tells the shop that it is the only shop doing so and threatens to strip the shop's title as an ARX partner and remove it from the Guaranteed Repair Shop Program. GEICO assures each ARX member that GEICO has agreements with all other ARX members holding them to the same standards so that no ARX member is disadvantaged.

13. GEICO will not reimburse any auto collision repair shops for more than the maximum labor rate charged by ARX partners. This labor rate is lower than the average labor rate charged for collision repairs in the Portland, Oregon metropolitan statistical area. By threatening to punish ARX partners who charge more than the agreed maximum labor rate or spend more time on a repair and limiting reimbursements, GEICO controls the cost of repairs to GEICO policyholders' cars.

14. GEICO also refuses to reimburse any auto collision repair shop for electronic scans before and after collision repairs. These scans use software to test for diagnostic trouble codes that identify potential damage and help ensure a safe and complete repair. In cars with advanced driver assistance systems, electronic scans ensure proper calibration after repairs. The scans cost roughly \$100.00. In 2016, Nissan, Honda, Toyota, and General Motors, among other manufacturers, issued public statements requiring or recommending that auto collision repair shops use electronic scans before and after repairing cars. The Automotive Service Association, an independent organization dedicated to advancing the automotive repair industry, also released a public statement endorsing electronic system scanning. But even after these public statements, GEICO has maintained a policy that it will not reimburse for pre- or post-repair scans unless a manufacturer issues an official document requiring scans for the particular make, model, and year of the cars being repaired. No such official documents exist.

15. Leif's has done business at various times over the course of years with GEICO's policyholders by providing policyholders with auto collision repair services. Most of Leif's business comes from customers for whom insurance providers such as GEICO are responsible for paying repair costs.

16. Leif's charges the average labor rate for the Portland, Oregon metropolitan statistical area and insists on performing electronic scans to ensure safe and complete collision repairs. GEICO has refused to reimburse Leif's for labor costs that exceed the rates agreed to by its ARX partners. GEICO has also refused to reimburse Leif's for pre- or post-repair electronic scans. GEICO steers its policyholders away from Leif's because Leif's (1) fairly pays its mechanics for their labor and (2) insists on performing pre- or post-repair scans, which are necessary to comply with manufacturer and industry standards and safely and thoroughly

complete repairs. Leif's is not an ARX partner, and GEICO has not provided Leif's with resources provided to ARX partners, or offered policyholders the same benefits if they use Leif's services. GEICO has also made numerous inaccurate representations about the quality of Leif's services to its policyholders in an effort to drive policyholders to ARX partners that follow GEICO's mandates. Because Leif's refuses to follow GEICO's mandates and perform incomplete and unsafe repairs, Leif's suffers financial losses and other negative repercussions.

17. The relevant service market in this case is the market for collision repairs to GEICO policyholders' cars. Once a policyholder has an accident, the policyholder is locked into its insurer for coverage, because the policyholder has no option to change insurers to cover the accident. Insurers such as GEICO exert substantial control over collision repairs made to GEICO-insured cars. It is thus proper to regard the market for repairing GEICO cars as a separate service market. Alternatively, the relevant service market in this case is the market for all automobile collision repairs. The relevant geographic market is the Portland, Oregon metropolitan statistical area, because in almost all circumstances collision repairs are performed close to where the owner lives.

18. GEICO exerts market power in the relevant market. GEICO is able to enforce anticompetitive agreements that ARX partners will not charge more than fixed maximum rates for labor or spend more than a certain maximum number of hours on repairs. In this way, GEICO controls the cost of repairs for its policyholders' vehicles. GEICO also enforces agreements that ARX partners will not perform pre- or post-repair electronic scans that manufacturers require or strongly recommend. GEICO successfully steers policyholders away from auto collision repair shops, such as Leif's, that do not concede to GEICO's demands.

19. By enforcing these agreements, GEICO has orchestrated a conspiracy with and among competitors, the ARX partners, that they will not charge more than a fixed maximum rate for repairs, will not spend more than a certain number of labor hours on repairs, and will not perform pre- or post-repair electronic scans on policyholders' cars. This arrangement involves vertical agreements between GEICO and ARX partners and a hub-and-spoke horizontal agreement between ARX partners that they will adhere to GEICO's terms. The ARX partners would not go along with GEICO's terms under individual vertical agreements absent an understanding, and express assurances from GEICO including promises of enforcement, that other ARX partners reached the same agreement with GEICO.

20. The conspiracy has the effect of denying Leif's access to GEICO's guaranteed referrals and GEICO policyholders' business.

21. GEICO's conduct harms both Leif's, GEICO's policyholders, and the market. GEICO is forcing Leif's into an unacceptable choice of sacrificing quality in repairs for GEICO policyholders or not servicing GEICO customers because GEICO will steer them elsewhere. GEICO's conduct harms its policyholders by denying them access to safer, more thorough services and meaningful choice between auto collision repair shops. Finally, the market is harmed because GEICO's conduct suppresses competition to supply safe, thorough repair services.

22. Leif's will be irreparably harmed if GEICO does not allow its policyholders freely to choose Leif's service and allow Leif's to perform the amount of labor it deems necessary, at a fair price, and run electronic scans to ensure that repairs are performed safely and completely. Leif's cannot be completely compensated by a damages award for multiple reasons. It is impossible to know the true scope of auto collision repairs for GEICO

policyholders until the work is performed, and Leif's likely will not be able to prove how much damages it will incur from its inability perform complete repair work on GEICO policyholders' cars. GEICO's anticompetitive conduct will stifle competition to provide high quality, safe, complete repairs in a way that cannot be compensated fully in measurable losses. GEICO's anticompetitive conduct also threatens the jobs of employees in Leif's repair facilities.

23. GEICO's conduct has affected interstate commerce by influencing the quality of repairs and thereby the safety of cars that are used to travel between states, including cars involved in collisions across the border in southwest Washington.

FIRST CLAIM FOR RELIEF

(Price Fixing, Sherman Act § 1 – Per Se Violation)

24. Leif's realleges paragraphs 1 through 23 of this Complaint.

25. "Horizontal price fixing is a per se violation regardless of whether the prices set are minimum or maximum." *Knevelbaard Dairies v. Kraft Foods, Inc.*, 232 F.3d 979, 988 (9th Cir. 2000). This is so because horizontal price fixing, in all its forms, causes antitrust injury, *i.e.* suppressed competition and distorted prices. *Id.* "[T]he [per se] rule is violated by a price restraint that tends to provide the same economic rewards to all practitioners regardless of their skill, their experience, their training, or their willingness to employ innovative and difficult procedures in individual cases. Such a restraint also may discourage entry into the market and may deter experimentation and new developments by individual entrepreneurs." *Arizona v. Maricopa Cty. Med. Soc.*, 457 U.S. 332, 348 (1982).

26. Beginning no later than 2014, and continuing to date, GEICO and its ARX partners have engaged in a horizontal conspiracy and agreement to unlawfully fix maximum prices for collision repairs, a per se violation of Section 1 of the Sherman Act.

27. The conspiracy and agreements consist of an understanding and concert of action among GEICO and the ARX partners to fix maximum labor rates and average hours per repair to end competition for providing higher quality repairs among auto collision repair shops. Cheaper, faster, lower quality repairs maximize GEICO's profits because it limits the amounts it must reimburse auto collision repair shops for services to its policyholders' cars.

28. For purposes of effectuating this agreement to fix maximum prices, GEICO:

- a. Requires ARX partners to sign written agreements that they will not charge more than a set maximum labor rate;
- b. Sets metrics, such as a standard average number of hours per repair, to rate its ARX partners and enforce low prices;
- c. Reports to each ARX partner how others are performing in comparison;
- d. Ensures ARX partners that it holds other partners to the same standards;
- e. Threatens to cease referring policyholders to ARX partners and end the ARX partners' membership in the Guaranteed Repair Shop Program if they charge more than the agreed maximum labor rate, spend more than the standard average number of hours per repair, perform pre- or post-repair electronic scans, or otherwise do not meet goals for low costs; and
- f. Will not reimburse any auto collision repair shop for more than the agreed maximum labor rate or for performing pre- or post-repair electronic scans.

29. Leif's claimed injury flows directly from that which makes GEICO's conduct unlawful and is the type of injury that antitrust laws were intended to prevent. GEICO has orchestrated an agreement that ARX partners will not charge more than a fixed maximum price for collision repairs, work more than a set maximum average number of hours per repair, or perform pre- or post-repair electronic scans. This price restraint has prevented Leif's from offering the quality of services it believes GEICO policyholders deserve and that manufacturers require.

30. Leif's is entitled to treble damages under Section 4 of the Clayton Act, 15 U.S.C. § 15, in an amount to be proven at trial.

31. Leif's is entitled to preliminary and permanent injunctions restraining GEICO from engaging in the price fixing activities alleged above, pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26.

SECOND CLAIM FOR RELIEF

(Group Boycott, Sherman Act § 1 – Per Se Violation)

32. Leif's realleges paragraphs 1 through 31 of this Complaint.

33. Beginning no later than 2014, and continuing to date, GEICO and its ARX partners have engaged in a horizontal conspiracy and agreement to unlawfully boycott Leif's. The United States Supreme Court has repeatedly held that certain group boycotts constitute per se violations Section 1 of the Sherman Act, 15 U.S.C. § 1.

34. GEICO's conspiracy and agreement constitute a per se violation of Section 1 of the Sherman Act. GEICO has engaged, and continues to engage, in group boycotting activity with a price fixing element. For purposes of effectuating the agreement to boycott Leif's, GEICO:

- a. Requires ARX partners to sign written agreements that they will not charge more than a set maximum labor rate;
- b. Sets metrics, such as a standard average number of hours per repair, to rate its ARX partners and enforce low prices;
- c. Reports to each ARX partner how others are performing in comparison;
- d. Ensures ARX partners that it holds other partners to the same standards;
- e. Threatens to cease referring policyholders to ARX partners and end the ARX partners' membership in the Guaranteed Repair Shop Program if they charge more than the agreed maximum labor rate, spend more than the standard average number of hours per repair, perform pre- or post-repair electronic scans, or otherwise do not meet goals for low costs;
- f. Will not reimburse any auto collision repair shop for more than the agreed maximum labor rate or for performing pre- or post-repair electronic scans;
- g. Makes inaccurate representations to policyholders in order to cause them to falsely believe that exercising their right to choose the repair shop they prefer will result in a less favorable repair;
- h. Withholds information about ARX partners and Leif's in order to cause policyholders to falsely believe they are receiving complete repairs and being fully compensated for their loss when the ARX shops have agreed with GEICO to provide less than complete repairs in return for a promise of a consistent stream of repair referrals; and

i. Misleads customers, through signs and other GEICO paraphernalia, that ARX partners are affiliated with GEICO and are GEICO repair shops that provide superior service compared to non-partner repair shops.

35. In this way, GEICO and ARX partners deny Leif's access to policyholders, a system of referrals, and other resources necessary to compete in the market for repairs to GEICO policyholders' cars.

36. GEICO effectuates the conspiracy through its dominant market position, evidenced by its market power and control over cost and quality of repairs to GEICO policyholders' cars.

37. The agreements between and among GEICO and its ARX partners are specifically designed to have the anticompetitive effect of forcing Leif's to comply with maximum-price limitations and cease providing higher quality repair options for GEICO policyholders. This is one of the classic types of group boycotts: one powerful firm threatens to withhold business or benefits from a group of competitors in order to injure a rival or disfavored firm. *See NYNEX Corp. v. Discon, Inc.*, 525 U.S. 128, 135 (1998).

38. GEICO's and the ARX partners' conspiracy directly, intentionally, and foreseeably injures Leif's, which stands in the way of GEICO's ability to suppress the amounts it must reimburse auto collision repair shops and thereby maximize its own profits. Leif's receives less business because GEICO steers customers toward ARX partners and away from Leif's by making inaccurate representations about Leif's and concealing the reasons for lower, faster repairs at ARX partner shops. Moreover, in order to receive reimbursement from GEICO for repairing GEICO policyholders' cars, Leif's would be forced to refrain from performing electronic scans and reduce the quality of its repairs in the same way as ARX partners.

39. The boycotting activity also harms GEICO policyholders and the overall market by suppressing and destroying competition with respect to the package of services available for collision repairs to GEICO policyholders' cars. By steering GEICO policyholders' away from Leif's services for false reasons, GEICO's practices make it more burdensome for policyholders to obtain information needed to evaluate and choose the type of collision repair services they would like to receive. The boycotting activity has adversely impacted, and will continue to adversely impact, consumer choice and the quality of collision repair services throughout the relevant geographic market.

40. Leif's is entitled to treble damages under Section 4 of the Clayton Act, 15 U.S.C. § 15, in an amount to be proven at trial.

41. Leif's is entitled to preliminary and permanent injunctions restraining GEICO from engaging in the boycotting activities alleged above, pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26.

THIRD CLAIM FOR RELIEF

(Group Boycott, Sherman Act § 1 – Violation of the Rule of Reason)

42. Leif's realleges paragraphs 1 through 41 of this Complaint.

43. To the extent that GEICO does not have market power or Leif's has not stated a claim for a per se violation of Section 1 of the Sherman Act, GEICO's boycotting activities violate the rule of reason.

44. To the extent that GEICO does not have market power or Leif's has not stated a claim for a per se violation of Section 1 of the Sherman Act, GEICO's boycotting activities violate the rule of reason. GEICO's conspiracy and agreement with its ARX partners is an unreasonable restraint of trade that suppresses and destroys competition for the package of

services available for collision repairs to GEICO policyholders' cars. By steering GEICO policyholders away from Leif's services for false reasons, GEICO's practices makes it more burdensome for policyholders to obtain information needed to evaluate and choose the type of collision repair services they would like to receive. The boycotting activity has adversely impacted, and will continue to adversely impact, consumer choice and the quality of collision repair services throughout the relevant geographic market.

45. Leif's is entitled to treble damages under Section 4 of the Clayton Act, 15 U.S.C. § 15, in an amount to be proven at trial.

46. Leif's is entitled to preliminary and permanent injunctions restraining GEICO from engaging in the acts of group boycott and price fixing, pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26.

FOURTH CLAIM FOR RELIEF

(Intentional Interference with Economic Relations, Oregon Law)

47. Leif's realleges paragraphs 1 through 46 of this Complaint.

48. Intentional interference with economic relations occurs when a defendant engages in a wrongful act that interferes with or acts with intent to interfere with and injure the business of another.

49. GEICO has knowingly made inaccurate statements about the quality of Leif's repair services to its policyholders that have discouraged policyholders from choosing to use or continuing to use Leif's for their collision repair needs. These misrepresentations prevented Leif's from realizing prospective economic advantage that would have resulted from doing business with GEICO policyholders who otherwise would have elected to use Leif's for collision repairs.

50. GEICO has also knowingly and unlawfully steered its policyholders away from Leif's. In addition, GEICO has caused its policyholders to falsely believe GEICO preferred repair shops will provide better repair services than Leif's. GEICO has propagated this mistaken belief by using signs and GEICO paraphernalia to make ARX partner shops appear to be owned by GEICO.

51. In making misrepresentations about Leif's and unlawfully steering policyholders away from Leif's, GEICO acted through improper means and with the improper purpose of injuring Leif's business and preventing Leif's from offering a higher-quality repair option to GEICO policyholders. Providing its policyholders with complete and safe repairs threatens GEICO's model of limiting reimbursements for collision repairs to its policyholders' cars.

52. GEICO has caused significant damage to Leif's. As a direct result of GEICO's conduct, Leif's has been unable to effectively market its services to GEICO policyholders who have been steered away from Leif's and primed by GEICO to believe Leif's offers inferior, over-priced repairs.

53. Leif's has been damaged in an amount not less than \$75,000, the precise amount to be proven at trial.

54. Because of the reckless and wanton nature of GEICO's interference, and the significant harm to Leif's, Leif's is entitled to an award of punitive damages against GEICO.

RELIEF REQUESTED

WHEREFORE, Leif's demands judgment as follows:

1. Awarding Leif's preliminary and permanent injunctive relief;
2. Declaring GEICO's conduct to be in violation of the Sherman Act;

3. Awarding Leif's treble damages under the Sherman Act in an amount in excess of \$75,000, the precise amount to be proven at trial;
4. Awarding Leif's damages under its intentional interference claim;
5. Awarding Leif's punitive damages under its intentional interference claim;
6. Awarding Leif's its costs, disbursements, and attorney fees in the prosecution of this action; and
7. Such other and further relief as this Court deems just and equitable.

JURY TRIAL DEMAND

Leif's demands a jury trial.

DATED: November 14, 2017.

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