UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MILIND DESAI, *individually, and on behalf of all others similarly situated*,	)	Case No.: 1:19 CV 2327
Plaintiff	)	JUDGE SOLOMON OLIVER, JR.
v.	)	
GEICO CASUALTY COMPANY,	)	
Defendant	)	ORDER

Currently pending before the court in the above-captioned case is Defendant Geico Casualty Company's ("Defendant" or "Geico") Motion to Dismiss for Failure to State a Claim ("Motion") (ECF No. 12). For the reasons that follow, Defendant's Motion is granted in part and denied in part.

I. BACKGROUND

A. Factual Background

On March 19, 2017, Plaintiff Milind Desai ("Plaintiff" or "Desai") was involved in a motor vehicle accident that rendered his 2014 Audi A6 Premium Plus Quattro 4D ("Audi") a "total loss." (Compl. ¶ 33, ECF No. 1-1.) At the time of this accident, Plaintiff's vehicle was insured under an insurance policy (the "Policy") that was issued to Plaintiff by Geico. (*Id.*) Thus, Plaintiff made a claim with Geico for payment based on the total loss of his Audi. (*Id.* ¶ 34.) Geico subsequently confirmed collision coverage for the Audi, and offered $29,039 to Desai. (*Id.*) In arriving at this settlement amount, Geico's CCC Report, which was created from its CCC System, showed that the

Audi's "base vehicle value" was $27,693, and that a "condition adjustment" of $1,446 was added. (Compl. ¶¶ 34–35.)

The CCC System calculated the settlement amount by averaging the adjusted prices of twelve comparable advertised vehicles, which ranged in price from $24,899 to $37,995. (*Id.* ¶ 35.) The CCC System adjusted the advertised prices of the comparable vehicles, and Desai's vehicle, based on the condition of each vehicle. (*Id.*) Plaintiff maintains that the CCC System undervalued his Audi by approximately $161.00 because a National Auto Dealer's Association ("NADA") report showed that the clean retail or dealer value of his Audi was $29,300. (*Id.* ¶ 36.) Plaintiff also maintains that the settlement amount failed to include additional adjustments for sales taxes, licence fees, title fees, dealer fees. (*Id.*) Nevertheless, Plaintiff accepted the $29,039 settlement amount.

B. Procedural History

On September 6, 2019, Plaintiff filed his Complaint in state court. (*See* ECF No. 1-1.) Geico removed the case to this court on October 4, 2019, under 28 U.S.C. § 1332. (ECF No. 1.) In the Complaint, Plaintiff brings claims on behalf of himself and all other similarly situated Geico current and former policyholders. (ECF No. 1-1.) Specifically, Plaintiff seeks declaratory judgment finding that Geico's use of the CCC System violated Ohio Admin. Code § 3901-1-54(H) and the Policy, and that under the Policy Geico is required to pay license fees, title fees, and dealer fees ("Count One"). Plaintiff also alleges that Geico breached its contract with Plaintiff and the putative class members by failing to pay license fees ("Count Two"); breached its contract with Plaintiff and the putative class members by failing to pay title fees ("Count Three"); breached its contract with Plaintiff and the putative class members by using the CCC System ("Count Four"); and breached its contract with Plaintiff and the putative class members by failing to pay dealer fees ("Count Five"). (Compl.

¶¶ 55–79, ECF No. 1-1.)

Defendant filed the Motion considered herein on November 5, 2019. (ECF No. 12.) On December 5, 2019, Desai filed his Response in Opposition. (ECF No. 24.) Thereafter, on December 19, 2019, Geico filed its Reply. (ECF No. 31.)

II. LEGAL STANDARD

The court examines the legal sufficiency of a plaintiff's claims under Federal Rule of Civil Procedure 12(b)(6). The United States Supreme Court clarified the law regarding what a plaintiff must plead in order to survive a motion made pursuant to Rule 12(b)(6) in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).When determining whether the plaintiff has stated a claim upon which relief can be granted, the court must construe the complaint in the light most favorable to the plaintiff, accept all factual allegations as true, and determine whether the complaint contains "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. The plaintiff's obligation "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* at 555. Even though a complaint need not contain "detailed" factual allegations, its "[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the Complaint are true." *Id.* A court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986).

The Court, in *Iqbal*, further explained the "plausibility" requirement, stating that "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." 556 U.S. at 678. Furthermore, "[t]he plausibility standard is not akin to a 'probability requirement,' but it asks for

more than a sheer possibility that a defendant has acted unlawfully." *Id.* This determination is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679.

Generally, when ruling on a Rule 12(b)(6) motion, the court is limited to the allegations of the complaint. *See Weiner v. Klais & Co.*, 108 F.3d 86, 88 (6th Cir. 1997) ("Matters outside of the pleadings are not to be considered by a court in ruling on a 12(b)(6) motion to dismiss."). Thus, when a defendant attaches matters outside of the pleadings to his 12(b)(6) motion, the court may treat the motion as one for summary judgment to be disposed of under Federal Rule of Civil Procedure 56, after providing all parties a reasonable opportunity to present all material pertinent to the motion. *Greenberg v. Life Ins. Co.*, 177 F.3d 507, 514 (6th Cir. 1999). However, a document that is attached to a defendant's 12(b)(6) motion can be considered as part of the pleadings, thereby precluding the conversion of the motion to one for summary judgment, if the document is referred to in the complaint and central to the plaintiff's claim. *Id.*; *see also Amini v. Oberlin College*, 259 F.3d 493, 502 (6th Cir. 2001). This exception inhibits "a plaintiff with a legally deficient claim" from "surviv[ing] a motion to dismiss simply by failing to attach a dispositive document on which it relied." *Weiner*, 108 F.3d at 89.

III. LAW AND ANALYSIS

Defendant requests the court to dismiss Plaintiff's class action Complaint in its entirety. (Mot. at PageID #209, ECF No. 12.) Plaintiff counters that dismissal is not appropriate. (Opp'n at PageID #326–27, ECF No. 24.) The court will address each of their arguments in turn.

A. Counts Two, Three, and Five

In Counts Two, Three, and Five, Plaintiff asserts breach of contract claims against Geico alleging that, under the Policy, Geico is required to pay license fees, title fees, and dealer fees as part of the "actual cash value" (or "ACV") owed to policyholders for the total loss of their vehicles.[1] (Compl. ¶¶ 5–8, ECF No. 1-1.) Plaintiff also seeks a declaratory judgment finding that Geico is required to pay these fees. (*Id.* ¶¶ 5, 66–67.) In particular, Plaintiff maintains that the Policy requires Geico to pay the "replacement cost" of a total loss vehicle, which includes license fees, title fees, and dealer fees because policyholders are reasonably likely to incur these fees in replacing their vehicles. (Opp'n at PageID #328–32, ECF No. 24.) Plaintiff also argues that Ohio Admin. Code § 3901-1-54(H)(7) requires Geico to pay license fees, title fees, and dealer fees. (*Id.* at PageID #337–38.) Defendant argues that Plaintiff's breach of contract claims fail because, among other reasons, (1) Ohio Admin. Code § 3901-1-54(H) does not (i) create a private right of action or (ii) require insurers to pay title fees, license fees, and dealer fees; and (2) the Policy does not require it to pay license fees, title fees, and dealer fees. (Mot. at PageID #216–17, ECF No. 12.)

In order to survive Defendant's Motion to Dismiss, Plaintiff's breach of contract claims must be supported by the Policy. To establish a prima facie breach of contract claim, a plaintiff must show: (1) the existence of a contract; (2) plaintiff's performance under the contract; (3) defendant's

---

[1] In his Opposition, Plaintiff also alleges that Geico is required to pay sales taxes under the Policy. (Opp'n at PageID #328–29, ECF No. 24.) Desai maintains that he will seek leave of court to assert a claim that Geico breaches the Policy by not paying sales taxes. (*Id.* at PageID #337.) Because Plaintiff brings no claim regarding sales taxes in the Complaint, the court does not address this argument. *See Alexander v. Eagle Mfg. Co., LLC*, 714 F. App'x 504, 511 (6th Cir. 2017) ("As we have previously recognized, '[a] request for leave to amend[,] almost as an aside, to the district court in a memorandum in opposition to the defendant's motion to dismiss is . . . not a motion to amend.'").

failure to perform under the contract; and (4) damages resulting from defendant's failed performance. *See Pavlovich v. Nat'l City Bank*, 435 F.3d 560, 565 (6th Cir. 2006); *MMK Grp., LLC v. SheShells Co., LLC*, 591 F. Supp. 2d 944, 963 (N.D. Ohio 2008). The court must view the allegations within the complaint in the light most favorable to the plaintiff. *Mayer v. Mylod*, 988 F.2d 635, 638 (6th Cir. 1993).

In determining whether Plaintiff's claims survive Defendant's Motion to Dismiss, the court starts with the language of the Policy. In pertinent part, the Policy provides:

> **DEFINITIONS**
> **1.** ***Actual cash value*** is the replacement cost of the auto or property less ***depreciation*** or ***betterment***.
> . . .
> **7.** ***Loss*** means direct and accidental loss of or damage to:
> (a) the auto including its equipment; or
> (b) other insured property.
> . . .
> **LOSSES WE WILL PAY FOR YOU**
> . . .
> ***Collision***
> **1.** We will pay for ***collision loss*** to the ***owned*** or ***non-owned auto*** for the amount of each loss less the applicable deductible.
> . . .
> **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***;
> . . .
> ***Actual cash value*** 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.
> . . .
> 7. PAYMENT OF ***LOSS***
> We may at our option:
> (a) pay for the ***loss***; or
> (b) repair or replace the damaged or stolen property.

(Policy at PageID #247–50, ECF No. 12-1.)

As relevant here, the Policy provides that Geico will pay the insured for loss, which means the "direct or accidental loss of or damage to" the covered vehicle, and the Policy limits liability to the "actual cash value" of the vehicle at the time of the loss. (*Id.* at PageID #247, 249.) The Policy defines "actual cash value" as the "replacement cost" less depreciation or betterment, (*see id.*), but does not define "replacement cost." Plaintiff maintains that the "replacement cost" includes license fees, title fees, and dealer fees because Geico should reasonably expect an insured to incur these fees in replacing a total loss vehicle. (Opp'n at PageID #328–30, ECF No. 24.)

Defendant argues that the Policy does not require it to pay license fees, title fees, and dealer fees because such fees are "collateral fees" that do not constitute "loss of or damage to" the vehicle. (Mot. at PageID #223–25, 232–33, ECF No. 12; Reply at PageID #456, ECF No. 31.) Geico also highlights the fact that there is no language in the Policy that requires the payment of license fees, title fees, and dealer fees. (Mot. at PageID #223–24, 232; Reply at PageID #456.) Defendant's argument is not well-taken. Indeed, though it is true that there is no express language in the Policy that requires Geico to pay license fees, title fees, and dealer fees, many courts have concluded that "actual cash value" includes these disputed fees. *See*, *e.g.*, *Parkway Assocs., LLC v. Harleysville Mut. Ins. Co.*,, 129 F. App'x 955, 962–63 (6th Cir. 2005) ("[r]epair or replacement costs logically and necessarily include any costs that an insured reasonably would be expected to incur in repairing or replacing the covered loss"); *Sos v. State Farm Mut. Auto. Ins. Co.*, 396 F. Supp. 3d 1074, 1081 (M.D. Fla. 2019) (the insurer's failure to pay sales tax and transfer fees constituted breach of contract for promise to pay actual cash value under Florida law); *Lukes v. Am. Family Mut. Ins. Co.*, 455 F. Supp. 2d 1010, 1015 (D. Ariz. 2006) (finding that actual cash value would include necessarily-incurred replacement costs such as sales tax); *Ghoman v. N.H. Ins. Co.*, 159 F. Supp.

2d 928, 934 (N.D. Tex. 2001) (finding "actual cash value" means "any cost that an insured is reasonably likely to incur in repairing or replacing a covered loss" and "sales tax clearly fits this definition").[2]

Furthermore, the court finds persuasive two decisions from the Southern District of Ohio, which concern facts and issues similar to those presented in this case. In *Ostendorf v. Grange Indem. Ins. Co.*, No. 2:19-CV-1147, 2020 WL 134169, at *2 (S.D. Ohio 2020), a plaintiff sued the defendant insurance company for failing to include the cost of a title transfer, tag transfer, and 6% sales tax in the "actual cash value" calculation under the policy for reimbursements of total losses. Unlike the Policy in this case, the policy in *Ostendorf* did not define loss or actual cash value. *Id.* As such, the court found that the term "actual cash value" was ambiguous and thus, could include payment of sales taxes and various vehicle fees. *Id.* at *3.

Similarly, in *Davis v. GEICO Cas. Co.*, No. 2:19-CV-2477, 2020 WL 68573, at *1 (S.D. Ohio Jan. 7, 2020), the plaintiffs sued the defendant for failing to pay the actual cash value sales tax, title-transfer fees, and registration fees at the time of the loss. Like the Policy in this case, the policy in *Davis* defined loss as "direct and accidental loss of or damage to" the insured vehicle. *Id.* The court concluded that "there [wa]s some question as to whether the actual cash value at the time of the loss, which is the specific language included in the [] policy, actually includes sales tax,

---

[2] Plaintiff also argues that Geico is required to pay license fees, title fees, and dealer fees regardless of whether an insured incurs these expenses by actually replacing their vehicle. (Opp'n at PageID #330–31, ECF No. 24.) The court agrees. Indeed, as the Sixth Circuit held in *Parkway*, calculating the actual cash value of a loss does not require actual repair or replacement of damaged property. 129 F. App'x at 962–63. Thus, contrary to Geico's assertion, Plaintiff's breach of contract claims are not dependent on whether Desai actually incurred license fees, title fees, and/or dealer fees. (*See* Mot. at PageID #219, 230–33, ECF No. 12.)

title-transfer fees, and registration fees." *Id.* at *6. Thus, the court held that the plaintiffs sufficiently pleaded a claim for breach of contract relative to sales tax, title transfer fees, and registration fees. *Id.*

This court also finds that the term "actual cash value" as used in the Policy is ambiguous because it does not define "replacement cost." This conclusion is bolstered by the persuasive force of the Southern District of Ohio cases, particularly *Davis*. Thus, because Desai's interpretation is reasonable, the court finds that he has sufficiently pleaded breach on contract claims pertaining to Defendant's alleged failure to pay license fees, title fees, and dealer fees. Therefore, the court declines Defendant's request to dismiss Counts Two, Three, and Five. On this same basis, the court declines to dismiss Plaintiff's declaratory judgment claim (Count One) to the extent that it concerns his request for a finding that Defendant is required, under the Policy, to pay license fees, title fees, and dealer fees.

As a final matter, because the court has determined that Plaintiff has sufficiently alleged its breach of contract claims under the express language of the Policy, the court need not, and does not address whether Ohio Admin. Code § 3901-1-54(H)(7) requires Defendant to pay license fees, title fees, and dealer fees.

B. Count Four

In Count Four, Plaintiff asserts a breach of contract claim against Geico, alleging that Geico's use of the CCC System, which determines the settlement value of total loss vehicles, violates Ohio Admin. Code § 3901-1-54(H) and the Policy. (Compl. ¶¶ 74–76, ECF No. 1-1.) Plaintiff also seeks a declaratory judgment finding that Geico's use of the CCC System violates Ohio Admin. Code § 3901-1-54(H)(7) and the Policy. (*Id.* ¶¶ 5, 66–67.) The court will address each of

these arguments in turn.

1. Whether the CCC System Violates Ohio Admin. Code § 3901-1-54(H)(7)

First, Plaintiff maintains that Ohio Admin. Code § 3901-1-54(H)(7) mandates that insurers, like Geico, use one of the regulation's specified methods to calculate the settlement value for total loss vehicles. (Opp'n at PageID #327, ECF No. 24.) In this regard, Plaintiff maintains that Defendant's CCC System purports to fall under Ohio Admin. Code § 3901-1-54(H)(7)(d)(i), but does not comply with its requirements. (Compl. ¶ 27, ECF No. 1-1; Opp'n at PageID #327.) Desai also asserts that Defendant's CCC System does not comply with Ohio Admin. Code § 3901-1-54(H)(7)(a) because it uses adjusted advertised prices of comparable vehicles rather than actual sales prices. (Compl. ¶¶ 25, 28; Opp'n at PageID #327.) In its Motion, Defendant maintains that the CCC System complies with Ohio Admin. Code §§ 3901-1-54(H)(7)(a) and (d), and thus requests the court to dismiss Plaintiff's claim. (Mot. at PageID #226–28, ECF No. 12.)

In pertinent part, Ohio Admin. Code § 3901-1-54(H)(7) provides:

> In settlement of claimants' automobile total losses on the basis of actual cash value or replacement of the automobile with another of like kind and quality, an insurer which elects to offer a cash settlement to claimant shall base the offer upon the actual cost to purchase a comparable automobile less any applicable deductible amount contained in the policy, and/or deduction for betterment as contained in paragraph (H)(2) of this rule. The settlement value *may be derived from*:
>
> (a) The average cost of two or more comparable automobiles in the local market area if comparable automobiles are or were available to consumers within the last ninety days; or . . .
>
> (d) The cost as determined from a generally recognized used motor vehicle industry source such as: (i) An electronic database if the pertinent portions of the valuation documents generated by the database are provided by the insurer to the claimant upon request[.]

Ohio Admin. Code §§ 3901-1-54(H)(7)(a) and (d) (emphasis added).

Notably, the phrase "may be derived from" indicates that this regulation is permissive and thus, does not require Defendant to use any one of the listed methods in calculating the settlement value. *See Isle Royale Boaters Ass'n v. Norton*, 330 F.3d 777, 783 n.1 (6th Cir. 2003) (holding that in statutory construction the Sixth Circuit "assume[s] that 'may' is using its 'common-sense' permissive definition unless the context of the statute suggests otherwise" (internal citations omitted)); *see also Davis v. GEICO Cas. Co.*, No. 2:19-CV-2477, 2020 WL 68573, at *3 (S.D. Ohio Jan. 7, 2020) (noting that "[i]n contract construction, the word 'may' is generally permissive," but "can also be read as mandatory where the context suggests the parties so intended"). In the instant case, there is nothing to suggest that the listed methods were intended to be anything more than voluntary options for insurers. Despite this, Plaintiff would render the permissive "may be derived from" as a mandatory "must be derived from." But Plaintiff has not shown that the Legislature intended that insurers be required to calculate settlement values solely using the methods listed in Ohio Admin. Code § 3901-1-54(H)(7). Thus, the court finds that the methods listed in Ohio Admin. Code § 3901-1-54(H)(7) relative to how an insurer calculates settlement values are optional. Consequently, Geico was not required to use any one of those methods in deriving the settlement value for Plaintiff's vehicle, and thus, could use its CCC System.

In any event, the court finds that Defendant's CCC System does comply with the Ohio Administrative Code. As provided in Ohio Admin. Code § 3901-1-54(H)(7)(a), the CCC System uses "the average cost of two or more comparable automobiles in the local market area if comparable automobiles are or were available to consumers within the last ninety days." *See* Ohio Admin. Code § 3901-1-54(H)(7)(a). In calculating Desai's settlement value, the CCC System used

compared 12 vehicles that were available within the preceding 84 days and were found within 17 miles of Plaintiff. (Compl. ¶ 35, ECF No. 1-1; Exhibit B at PageID #54–61, ECF No. 1-1; Mot. at PageID #226, ECF No. 12.) These vehicles ranged in price from $24,899 to $37,995 and were used by Defendant in valuing Plaintiff's vehicle at $29,039. (*See* Exhibit B at PageID #47–66.) Thus, the court finds that Geico's CCC System complies with Ohio Admin. Code § 3901-1-54(H)(7)(a).

Moreover, Plaintiff's argument that the CCC System fails to comply with Ohio Admin. Code § 3901-1-54(H)(7)(a) because it uses advertised prices of vehicles as opposed to actual sales prices is unavailing. (Opp'n at PageID #339, ECF No. 24.) Ohio Admin. Code § 3901-1-54(H)(7)(a) clearly states that an insurer may use the average cost of comparable vehicles that "are or were" available to customers. Certainly, vehicles that are available to customers would encompass vehicles that are advertised for sale. And Plaintiff has not shown that Ohio Admin. Code § 3901-1-54(H)(7)(a) requires insurers to only use actual sales prices or otherwise prohibits the use of advertised prices in calculating settlement values. Thus, the court finds that the CCC System's use of advertised prices does not violate Ohio Admin. Code § 3901-1-54(H)(7)(a).[3]

Furthermore, regardless of whether or not the CCC System meets the requirement of Ohio Admin. Code § 3901-1-54(H)(7), as Defendant points out, Ohio Admin. Code § 3901-1-54 provides no private cause of action for an alleged violation. (Mot. at PageID #226–27, ECF No. 12.) Indeed, the Ohio Administrative Code clearly states that it shall not "be construed to create or imply a private cause of action for violations of th[e] rule[s]" therein. Ohio Admin. Code § 3901-1-54(A).

---

[3] Because the court has determined that the CCC System complies with Ohio Admin. Code § 3901-1-54(H)(7)(a), the court need not address the parties' arguments as to whether the CCC System also complies with Ohio Admin. Code § 3901-1-54(H)(7)(d)(i).

Thus, Plaintiff's declaratory judgment claim on this basis fails. *See Michigan Corr. Org. v. Michigan Dep't of Corr.*, 774 F.3d 895, 907 (6th Cir. 2014) ("[n]o private right of action means no underlying lawsuit, [n]o underlying lawsuit means no jurisdiction," and "no jurisdiction means no declaratory relief") (internal citation omitted). Simply put, the statute's express preclusion of a private cause of action defeats Plaintiff's claims that are based on violations of Ohio Admin. Code § 3901-1-54. *See Furr v. State Farm Mut. Auto. Ins. Co.*, 716 N.E.2d 250, 257 (Ohio Ct. App. 1998) (finding the Ohio Administrative Code does not create a private right of action because it "clearly states '[n]othing in this rule shall be construed to create or imply a private cause of action for violation of this rule'"); *Wright v. State Farm Fire & Cas. Co.*, No. 2:12-409, 2013 WL 2354048, at *3 (S.D. Ohio May 29, 2013), aff'd, 555 F. App'x 575 (6th Cir. 2014) (holding that the plaintiffs argument that the defendant was required to replace their entire roof failed in part because Ohio Admin Code § 3901-1-54 does not create a private right of action).

As a result, all of Plaintiff's claims and allegations that are based on Defendant's alleged violation of Ohio Admin. Code § 3901-1-54(H) must be dismissed for failure to state a claim.

2. Whether the CCC System Violates the Policy

As noted above, Plaintiff asserts that Geico's use of the CCC System to calculate the value of total loss vehicles violates the Policy. Notably, Plaintiff does not allege that Geico's use of the CCC System violates the Policy on its face, but instead argues that the CCC System violates the Policy because the Policy incorporates Ohio Admin. Code §§ 3901-1-54(H)(2)[4] and (H)(7). (*See*

[4] Ohio Admin. Code § 3901-1-54(H)(2) provides: "[i]f an insurer reduces a claim amount because of betterment, depreciation or comparative negligence, it shall maintain all information pertaining to the reduction in the claim file. Such deductions shall be itemized and specified on the written estimate as to dollar amount and shall be appropriate for the amount of deductions."

Opp'n at PageID #343, ECF No. 24.) In so arguing, Desai maintains that these provisions are incorporated into the Policy under the Policy's provision that states: "[a]ny terms of this policy in conflict with the *statutes* of Ohio are amended to conform to those statutes." (Compl. ¶¶ 55–67, 74–76, ECF No. 1-1; Policy at PageID #256, ECF No. 12-1.) Given the fact that the court has already determined that Geico's use of the CCC System does not violate Ohio Admin. Code § 3901-1-54(H)(7)(a), even if the provision is incorporated into the Policy such that it has independent legal force under the Policy, Plaintiff's claim would fail. That is to say, Defendant's use of the CCC System does not violate the Policy. Furthermore, because Plaintiff points to no other provision in the Policy that precludes Geico from using the CCC System to calculate the settlement value of vehicles, Plaintiff's breach of contract claim fails. To the extent that Plaintiff seeks a declaratory judgment finding that Defendant's use of the CCC System violates the Policy, his claim fails for the same reason. Consequently, the court grants Defendant's request to dismiss Count Four.

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion (ECF No. 12) is granted in part and denied in part. The court hereby denies Defendant's Motion to dismiss Counts Two, Three, and Five. In addition, the court grants Defendant's Motion to dismiss Count One to the extent that it seeks a declaratory judgment finding that Geico violated Ohio Admin. Code § 3901-1-54(H), and grants Defendant's Motion to dismiss Count Four in its entirety.

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE

August 11, 2020