EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

KEDDRICK BROWN, individually and on behalf of all others similarly situated, Plaintiff, v. PROGRESSIVE MOUNTAIN INSURANCE COMPANY, Defendant.	Consolidated Case No.: 3:21-cv-00175-TCB
MICHELLE BOST, individually and on behalf of all others similarly situated, Plaintiff, v. PROGRESSIVE PREMIER INSURANCE COMPANY OF ILLINOIS, Defendants.	

BRIEF IN SUPPORT OF PETITION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

I. INTRODUCTION

Class Counsel did excellent work in this litigation—through their advocacy, Plaintiffs' claims survived dispositive motions on the pleadings and at summary judgment, secured class certification, and successfully defended a Fed. R. Civ. P. 23(f) petition on appeal, all of which (particularly when taken together) is extremely rare in class litigation. Class Counsel achieved an excellent result by securing 49% of potential compensatory damages, and settlement funds will be paid in cash to class members with *no* need for a claim form—all of which independently (and thus particularly when taken together) are extremely rare in class settlements. Combine unusually skilled litigation with unusually advantageous benefits, and it is no surprise that Professor Brian Fitzpatrick, today's preeminent expert on attorneys' fees in class litigation, calls this one of the best settlements he has seen in his decades of analysis and academic, empirical work. *See* Exh. 2 to accompanying Motion, Declaration of Brian Fitzpatrick ("Fitzpatrick Decl.") at ¶ 6:

> [T]his is one of the top class action settlements I have seen in my nearly 20 years of studying them: it was reached after litigating all the way through summary judgment to the eve of trial; it recovers almost half of the class's potential damages; and it will be automatically distributed without the use of claim forms and with no funds (or, at worst, de minimus funds) reverting to the defendants. Settlements rarely recover such a significant portion of potential damages; class actions rarely are litigated to the eve of trial, through dispositive motions on the pleadings and at summary judgment, and after securing class certification and surviving a 23(f) petition on appeal; and

> settlements rarely provide compensation directly with no claim-submission process or action required by class members and with no remainder. Certainly, settlements that do *all three* are particularly rare.

Though this is an uncommonly successful and skilled representation and result, Class Counsel request a fee award of one-third of the cash settlement—the most common fee percentage in the Eleventh Circuit and the median fee since 2009, as shown by the empirical studies of Professor Fitzpatrick. *Id.* at ¶ 23 and Figures 1 and 2.

Class Counsel originated the theory of liability in this case—there was no case law addressing the theory of liability at the time this case was filed. And the theory Class Counsel originated is meritorious—it survived motions to dismiss and for summary judgment in this case and in other states. Class Counsel skillfully litigated that theory, securing class certification in this case and many others, and successfully defending against appeals in the Eleventh Circuit and others. It was not only skillfully litigated, but diligently so, all the way to the eve of trial. And then Class Counsel secured an extremely beneficial settlement of $43,000,000.00. If any case merits a median or common fee award, it is this one—indeed, as Professor Fitzpatrick put it, it cannot be argued that "the results here are anything short of spectacular." Fitzpatrick Decl. at ¶ 27. Yet Class Counsel requests the most common percentage rather than one at the upper range of acceptability. As such, for reasons more fully explained herein and in the declarations filed by Professor Fitzpatrick and

Jacob Phillips (Exhibit 3 to the accompanying Motion) ("Phillips Decl."), Class Counsel respectfully submit their request for $14,333,333.33 in attorneys' fees (one-third of the Settlement Fund) and $303,275.24[1] in litigation expenses, as well as Service Awards of $10,000.00 per Named Plaintiffs, should be granted.

II. LEGAL STANDARD

For settlements secured pursuant to Rule 23, courts may award "reasonable attorney's fees and nontaxable costs that are authorized by law or the parties' agreement." Fed. R. Civ. P. 23(h). The Supreme Court held that "a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The Eleventh Circuit has directed that the fee be based upon a percentage of the class benefit. *Camden Condominium Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774-75 (11th Cir. 1991). Courts have significant discretion in choosing the proper percentage. *Id*. at 774 ("There is no hard and fast rule…the amount of any fee must be determined upon the facts of each case."). Courts should look at factors such as the time at which settlement was reached, any substantial objections, the economics of class actions, the *Johnson* criteria, and any other "unique" circumstances, and that 50 percent is the upper limit. *Id*. at 774-75.

[1] This amount is significantly less than the $380,000.00 in litigation expenses provided in the Long-Form, Email and Postcard Notices. Phillips Decl. at ¶ 37.

Professor Fitzpatrick notes that in the Eleventh Circuit, 33.3% is the most common percentage awarded and, since 2009, is also the median percentage awarded. Fitzpatrick Decl. at ¶¶ 24–27.

The *Johnson* factors are: (1) the time and labor required; (2) the novelty and difficulty of the issues; (3) the skill required to perform the legal service adequately; (4) the preclusion of other employment by the attorney because he accepted this case; (5) the customary fee for similar work in the community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717, 720 (5th Cir. 1974). These factors support the requested fee here.

III. FACTUAL SUMMARY

A. The settlement benefits are unusually high and beneficial to Class Members.

The contours of the Settlement terms are set forth in the Motion for Preliminary Approval and accompanying declarations and exhibits, the concurrently filed Motion for Final Approval, and the declaration attached hereto by Jacob Phillips, all of which this petition incorporates by reference. In short, the Settlement establishes a $43,000,000.00 cash fund, which constitutes an incredible 49% of the

best-case compensatory damages that could have been secured at trial, and which will be distributed to Class Members on a pro rata basis without the need for *any* claiming process—instead, after deduction for attorneys' fees, expenses, and Service Awards, every single dollar will be distributed to Class Members (absent the unlikely event that direct electronic payment becomes, at some point, economically unfeasible). ECF No. 245 at ¶¶ 22–44.

This is *far* higher than other settlements that courts in the Eleventh Circuit have found to be fair and reasonable. *See, e.g.*, *Bennett*, 73 7 F.2d at 987 n.9 (approved settlement providing 5.6% of the potential recoverable damages); *In re Domestic Air*, 148 F.R.D. 297, 325 (N.D. Ga. 1993) (approving settlement equal to between 12.7% and 15.3% of the potential recovery before trebling); *Goodman v. Columbus Reg'l Healthcare Sys.*, 2024 U.S. Dist. LEXIS 104859, at *7, *12 (M.D. Ga. June 12, 2024) (approving settlement of between 23.8% and 26.7% of potential recovery) *Gevaerts v. TD Bank, N.A.*, 2015 U.S. Dist. LEXIS 150354, at *17 (S.D. Fla. Nov. 5, 2015) ("Approximately ten percent (10%) of the most probable sum Plaintiffs anticipated recovering at trial . . . constitutes a very fair settlement."). As Professor Fitzpatrick points out, "very few class action settlements recover anywhere near 49% of the class's best-case damages" and "the recovery here is multiples of what is typically recovered in a class action settlement." Fitzpatrick Decl. at ¶ 17. This is even more impressive because the *structure* of the settlement

is also unusually beneficial—a settlement where payments will be automatically distributed to class members without any claiming process is "rare." *Id*. at ¶ 20.

Given the significant money benefits and the procedural framework, Professor Fitzpatrick calls this Settlement "one of the top settlements" he has seen in 20 years of reviewing class action settlements and is a "spectacular" result. Fitzpatrick Decl. at ¶¶ 6, 17.

B. This case was successfully and extensively litigated.

Class Counsel were able to secure such an unusually successful and beneficial Settlement despite significant headwinds and risks. *First*, the claims in this action were novel and untested, based on a theory of liability originated by Class Counsel without *any* case law precedent or regulatory action. Phillips Decl. at ¶¶ 6–9. Professor Fitzpatrick points out that this is extremely significant:

> "[T]his was not a situation where [Class Counsel] piggybacked off a government investigation. Indeed, even after they discovered the violation, the government still has done nothing. In my opinion, this is the best of our system of private enforcement at work. SEE FITZPATRICK, SUPRA, AT 23, 30-47. Prior to their efforts—they are working to rectify the violation state by state—there was no case law at all on the theories of liability brought here and there was no path to follow: no briefs or discovery forms to use as templates, no deposition testimony to study, no case law to account for. Indeed, other class cases challenging total-loss valuations under different theories had failed. Achieving unusually excellent results should be rewarded even in the normal course of events, but to do so with an innovative and unprecedented theory of liability is even more worthy."

Fitzpatrick Decl. at ¶ 21.

Not only that, other actions contesting the actual cash value calculation of total-loss vehicles had been brought based on different theories of liability, and they almost universally failed, either on the merits or at class certification. Phillips Decl. at ¶¶ 9–10. Indeed, in several of the companion cases brought on the same theories of liability and record evidence as this case, class certification was denied. *Id*. ¶ 11. And these risks were compounded by the fact that in other similar cases, appellate courts are addressing the appropriateness of class certification—some of which were fully briefed with oral argument concluded—any of which could have (and may still) rule negatively towards plaintiffs, which would have increased the risk and possibility of a motion for decertification or a challenge to certification on appeal. Fitzpatrick Decl. at ¶¶ 18-19; Phillips Decl. at ¶ 11. So, the claims at issue were extremely risky and faced a significant chance of no recovery at all.

Second, not only were the claims risky and untested—they were also complex and technical. To prove the claims, Class Counsel retained and worked with experts in numerous fields, including statistics, data analysis, the used auto industry, and the appraisal industry. Phillips Decl. at ¶¶ 13–19. Proving the claims required securing extensive discovery, including spreadsheets containing hundreds of thousands of claims, millions of transactions, and tens of millions of individual data inputs, not to mention tens of thousands of physical documents. *Id*. Moreover, Class Counsel's job

was made more difficult still by the fact that Progressive's vendors had deleted or excluded (and failed to retain) millions of transactions where vehicles sold for list price or more. *Id*. at ¶¶ 16–17. Critically, although this practice had been ongoing for decades, Class Counsel were the *first in the country* to seek the underlying data in discovery and uncover the PSA deduction as a sham. *Id*.

Third, Plaintiffs' claims were also vigorously defended. Class Counsel successfully opposed motions to dismiss, successfully moved for class certification, defeated a Rule 23(f) appeal, and successfully defended a motion for summary judgment; undertook numerous depositions, including of three experts; litigated numerous motions, including Daubert motions (including successfully securing a partial exclusion of expert testimony); and fully completed pre-trial filings and briefing, exhibit lists, witness lists, and numerous pre-trial hearings, bringing this case to the very eve of trial, to the point where travel and lodging for trial had been booked. *Id*. at ¶ 12. All that remained was to try the case. Professor Fitzpatrick notes that this level and breadth of litigation is extremely rare in class action litigation. Fitzpatrick Decl. at ¶¶ 23 (noting that his forthcoming study shows that over 90% of class action settlements occur before certification).

Despite those headwinds, Class Counsel were able to secure a Settlement that Professor Fitzpatrick calls one of the best he has ever seen and a "spectacular" result. Fitzpatrick Decl. at ¶¶ 6, 27. If Class Counsel were bringing a case based on well-

trodden ground with case law precedent, preexisting regulatory action, and so forth, this would still be an excellent settlement. If Progressive had decided early in litigation to amicably resolve the claims through settlement, this would still be an excellent settlement. But neither is true—Class Counsel brought a novel and risky claim without any precedent, uncovered a practice (with vendors deleting and excluding vast swaths of data) that was previously unknown, and battled a Fortune 100 defendant that vigorously defended the claims all the way to trial. Yet Class Counsel was still able to secure excellent and beneficial settlement terms.

C. The Settlement Administrator is currently notifying Class Members of the precise amount that would be sought.

Class Members are in the process of being provided Notice of the precise amount Class Counsel would seek in attorneys' fees and costs and in Service Awards to Plaintiffs. ECF No. 244-1 through 5. Plaintiffs and Class Counsel will supplement this briefing when notice and the period for opting out and objecting concludes to address any potential objections and advise the Court concerning opt outs.

IV. ARGUMENT

A. The requested attorneys' fees of one-third are eminently reasonable.

1. Under the "percentage-of-the-fund" method, the requested fees are reasonable and align with percentages routinely awarded.

As previously explained, in the Eleventh Circuit, attorneys' fees sought from a common fund settlement are analyzed under the "percentage of the fund" method.

Camden I, 946 F.2d at 774–75. Under this method, "courts select a percentage of the settlement fund they believe is fair to class counsel, multiply the settlement amount by that percentage, and then award class counsel the resulting product." Fitzpatrick Decl. at ¶ 14. The percentage requested here of 33.3% is eminently reasonable, and consistent with percentages routinely awarded in this Circuit and across the country. *See, e.g.*, *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1295 (11th Cir. 1999) (approving fee of 33.3%); *Morefield v. NoteWorld, LLC*, 2012 WL 1355573, at *5 (S.D. Ga. Apr. 18, 2012) (same); *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 2012 WL 12540344, at *2 (N.D. Ga. Oct. 26, 2012) (same, and listing other cases awarding fees based on similar or higher percentages); *Wolff v. Cash 4 Titles*, 2012 WL 5290155, at *5–*6 (S.D. Fla. Sept. 26, 2012) (noting that fees in the Eleventh Circuit are "roughly one-third" of the benefit to the class and listing numerous cases awarding fees of 30 percent or higher); *see also Bessey v. Packerland Plainwell, Inc.*, No. 4:06-cv-95, 2007 U.S. Dist. LEXIS 79606, at *13 (W.D. Mich. Oct. 26, 2007) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery") (quoting *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F.Supp.2d 942, 972 (E.D. Tex. 2000)); *City of Providence v. Aeropostale, Inc.*, 11 Civ. 7132, 2014 WL 1883494, at *20 (S.D.N.Y. May 9, 2014) (approving fees of one-third of settlement fund, plus litigation expenses).

Professor Fitzpatrick's empirical research shows that a fee-award of one-third is smack dab in the middle of the most common fee percentage band (30–35%) awarded in the Eleventh Circuit. Fitzpatrick Decl. at ¶ 25. And for settlements since 2009, one-third is also the median fee awarded in the Eleventh Circuit. *Id*. at ¶ 24. So, the requested percentage of 33.3% of the common fund is eminently reasonable. After decades of analyzing class settlements and petitions for attorneys' fees and costs, Professor Fitzpatrick posits that this case represents "one of the top class action settlements" he has *ever* reviewed. *Id*. at ¶¶ 6, 27. Given that a fee award of one-third is the most common and median outcome in the Eleventh Circuit, and given that the results here were uncommonly excellent and, if anything, would merit an above-average award, Class Counsel respectfully submits the requested fees are reasonable.

2. The *Johnson* factors support the requested fee.

Not only is the requested percentage consistent with the level of fee most often awarded in the Eleventh Circuit, it is also proper under the *Johnson* factors, which are "appropriately used in evaluating, setting, and reviewing" the percentage awarded. *See Camden I*, 946 F.2d at 775 (citing *Johnson*, 488 F.2d at 714). Mr. Phillips and Professor Fitzpatrick provide detailed analysis of the *Johnson* factors and opine that they support the requested fees. Phillips Decl. at ¶¶ 13–35; Fitzpatrick

Decl. at ¶¶ 16–29. As set forth below, these factors strongly militate in favor of the requested fee.

i. The results obtained strongly favor the requested fee.

First, the results obtained strongly militate in favor of the requested fee. Professor Fitzpatrick asserts "this is one of the top class action settlements I have seen in my nearly 20 years of studying them." Fitzpatrick Decl. at ¶ 6. The empirical data supports his opinion. The settlement in this case is for approximately 49% of potential compensatory damages, Phillips Decl. at ¶ 5, which, from the existing data, "is *multiples* of what is typically recovered in a class action settlement." Fitzpatrick Dec. at ¶ 17. This is impressive even in a vacuum, as the average settlement is for far less than 49% of compensatory damages. *Id*. This excellent result "is critical," Professor Fitzpatrick opines, because "[f]rom a public policy perspective, perhaps the most important consideration is to reward attorneys for achieving excellent results. If an average settlement result merits an average fee award, then an excellent settlement result merits an above-average fee award." *Id*. at ¶ 20. Yet, as previously discussed, Class Counsel are not even seeking an "above-average fee award," but are instead seeking the most common and median fee award approved in this Circuit.

Indeed, other courts have held this factor favors the requested fee even where the settlement involved a lesser percentage of total potential damages. *See, e.g.*, *Morgan v. Public Storage*, 301 F. Supp. 3d 1237, 1255-56 (S.D. Fla. 2016)

(settlement for 20% of total potential damages weighed in favor of requested fees of 33 1/3% of settlement value); *Thorpe v. Walter Inv. Mgmt. Corp.*, 2016 U.S. Dist. LEXIS 144133, at *32 (S.D. Fla. Oct. 24, 2016) (upward adjustment was warranted where settlement provided 10% of total possible damages); *In re Polyurethane Foam Antitrust Litig.*, 2015 U.S. Dist. LEXIS 23482, at *17 (N.D. Oh. Feb. 26, 2015) ("A settlement figure that equates to roughly 18 percent of the best-case-scenario classwide overcharges is an impressive result in view of these possible trial outcomes."); *Erica P. John Fund*, 2018 U.S. Dist. LEXIS 69143, at *22 (approving fees constituting 33.3% of settlement benefits where settlement benefits constituted "11.8% to 42.9%" of potential damages).

The requested fee here is well within the normative amount assessed in private litigation and approved in the context of class action settlements. As such, this factor militates strongly in favor of approving the requested fee.

ii. The novelty and difficulty of the questions involved and the "undesirability" of the case—given the risks involved—support the requested fee.

The next factor is novelty and difficulty of the questions involved, which also militates in favor of the requested fee here. "[C]lass actions have a well deserved reputation as being most complex." *In re Nasdaq Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 477 (S.D.N.Y. 1998) (cleaned up); *see also Stoll v. Musculoskeletal Inst., Chtd.*, 2022 U.S. Dist. LEXIS 133514, at *7 (M.D. Fla. Jul. 27, 2022) (novelty

and difficulty supported requested fees because "class actions are inherently complex to prosecute because the legal and factual issues are complicated and uncertain in outcome").

Buttressing this point is that this was no ordinary class action. The theory of liability in this case was originated by Class Counsel. Phillips Decl. at ¶¶ 7–9. So, prior to Class Counsel bringing these cases, the question was entirely novel. *See generally Sos v. State Farm Mut. Auto. Ins. Co.*, No: 6:17-cv-890-PGB-LRH, 2021 U.S. Dist. LEXIS 52898, at *10 (M.D. Fla. Mar. 19, 2021) (agreeing an upward adjustment was called for in a case that involved "novel areas of law" and "[m]ultiple rounds of class certification briefing and summary judgment briefing, as well as extensive class, fact, and expert discovery"). There was no playbook to follow, no templates from previous cases to borrow, no case law precedent serving as a basis. Phillips Decl. at ¶¶ 7–11. On all discovery, briefing, appeals, and litigation, Class Counsel was starting from scratch. *Id*. As Professor Fitzpatrick put it, "[t]o achieve unusually excellent results should be rewarded even in the normal course of events—to do so with an innovative and unprecedented theory of liability and course of litigation is even more worthy." Fitzpatrick Dec. at ¶ 21.[2] As such, the novelty of this litigation strongly supports the requested fee percentage.

[2] As discussed in the next section, the novelty and unproven nature of the claims is also highly relevant to the "risks of litigation" factor.

So, too, does the complexity of the litigation. This case required detailed, extensive, and comprehensive analysis of expansive discovery, including dozens of spreadsheets containing hundreds of thousands of claims and millions of data inputs. Phillips Decl. at ¶¶ 13–20. Class Counsel had to comprehensively analyze significant forensic data, hundreds of thousands of documents, retain multiple experts and work with them in their analysis and opinions, and comprehend complicated data systems and topics of expertise including the used car market and appraisal standards. *Id*. Progressive also vigorously litigated this case. Class Counsel successfully briefed multiple motions to dismiss, class certification, a Rule 23(f) appeal, summary judgment, numerous *Daubert* motions, and extensive, comprehensive pre-trial filings. *Id*. at ¶ 13. And they had to do so without any preexisting playbook to follow. Yet, Class Counsel were able to navigate the litigation, successfully secure class certification and avoid summary judgment, successfully defend a Rule 23(f) appeal, litigate this case to the eve of trial, and then secure a highly favorable settlement. In other words, notwithstanding the novelty and difficulties of Plaintiffs' claims, Class Counsel, through extensive factual investigation and targeted discovery, were able to skillfully and efficiently negotiate a successful resolution on behalf of the Settlement Class.

This is particularly important given the attendant risks of litigation in this case were significant, which is relevant to the "undesirability of the case" factor, and, as

such, strongly favors the requested fee amount. Phillips Decl. at ¶¶ 7–12; Fitzpatrick Decl. at ¶¶ 16-18; *see generally Torres v. Bank of Am. (In re Checking Account)*, 830 F. Supp. 2d 1330, 1368 (S.D. Fla. 2011) (explaining that the undesirability of a case turns largely on the risks involved). Class Counsel undertook this case on a purely contingency basis, meaning that, if this litigation had been unsuccessful, Class Counsel would have earned no attorneys' fees at all, and, in fact, would have borne the significant costs of litigation. Phillips Decl. at ¶ 6. And this litigation carried *significant* risk of non-recovery. *Id*. at ¶¶ 7–12. Obviously, any case bringing a novel and untested theory of liability is inherently risky, as there is no case law precedent on which to rely. *Id*.; *see also* Fitzpatrick Decl. at ¶ 18-21; *accord Blondell v. Bouton*, No. 17 CV 372 (RRM)(RML), 2021 U.S. Dist. LEXIS 164292 (E.D. N.Y. Aug. 30, 2021) (observing that "[t]he risk of zero recovery" is "especially present" where there are numerous issues that are "novel and untested").

But beyond the inherent riskiness of novel and untested litigation, this case carried even more risks, given that cases contesting ACV calculations of total-loss vehicles under different theories of liability had been brought in various jurisdictions, and they almost universally failed, some on the merits and others at class certification (or both). Phillips Decl. at ¶¶ 9–11. Just as Class Counsel anticipated, Progressive relied heavily on these cases and argued they required this Court to, respectively, deny class certification and grant Progressive summary

judgment. *Id*. This Court was the second to rule on a motion to certify classes challenging PSA deductions. While most courts have agreed with this Court's analysis on class certification, other courts denied insureds' motions for class certifications. Phillips Decl. at ¶ 11 (citing cases). So, not only did Class Counsel have to litigate a complex, technical, and data-intensive case, but they did so knowing there was a significant risk—borne out in other cases—of non-recovery.

As such, these factors strongly favor approval of the attorneys' fees sought here. Fitzpatrick Decl. at ¶¶ 17–20.

iii. The skill requisite to perform the legal services and the experience, reputation and ability of the attorneys favor the requested fee.

The next factors courts consider are the skill required and the skill, experience, and expertise of the attorneys, which ovelap. *See Gevaerts v. TD Bank*, 2015 U.S. Dist. LEXIS 150354, at *12 (S.D. Fla. Nov. 5, 2015) ("In the private marketplace, counsel of exceptional skill commands a significant premium. So too should it here"). Given the previously discussed factors—the novel, complex, and risky nature of this litigation, as well as the complicated data analysis and need for numerous expert opinions—the "skill requisite" factor and the "experience, reputation, and ability of the attorneys" factor both counsel in favor of the requested fee. *Id*. at ¶ 28.

For many of the reasons set forth in the other factors outlined herein—*i.e.*, the risk involved, that this case was one of first impression, the complicated and

voluminous discovery and analysis related to class certification, the difficulties of bringing a class action case to the eve of trial—this case required class counsel who possessed high levels of energy, skill, and experience in class litigation. *See generally Sos*, 2021 U.S. Dist. LEXIS 52898, at *10 (explaining that this factor favored the requested fees because "[m]ultiple rounds of class certification briefing and summary judgment briefing, as well as extensive class, fact, and expert discovery, was necessary, and a skilled set of litigators was required"). It required counsel with the expertise to address the numerous and significant legal issues, often in underdeveloped areas of the law, and with the experience to manage the logistics inherent in a class comprised of hundreds of thousands of members.

Also relevant to this factor is the skill and experience of opposing counsel. *See Walco Invs., Inc. v. Thenen*, 975 F. Supp. 1468, 1472 (S.D. Fla. 1997) (stating that "[g]iven the quality of defense counsel from prominent national law firms, the Court is not confident that attorneys of lesser aptitude could have achieved similar results.") *BleachTech, LLC v. UPS, Inc.*, 2022 U.S. Dist. LEXIS 128736, at *25-26 (E.D. Mich. Jul. 20, 2022) ("[T]he skill of legal counsel should be commensurate with the novelty and complexity of the issues, as well as the skill of the opposing counsel"). Class Counsel achieved an exceptional result in this case while facing well-resourced and highly experienced defense counsel from King & Spalding. *See Ferron v. Kraft Heinz Foods Co.*, 2021 U.S. Dist. LEXIS 129955, at *61 (S.D. Fla.

Jul. 13, 2021) ("This class action case against Defendant required substantial advanced planning, strategic skills, imagination, resourcefulness, and management abilities to match a highly qualified, experienced, and formidable opposition."); Phillips Decl. at ¶ 12.

Finally, the results speak for themselves. The quality of representation is best seen in the success of the results obtained. And here, Professor Fitzpatrick opines that the Settlement here is "one of the top class action settlements" he has ever seen and is a "spectacular" result. Fitzpatrick Decl. at ¶¶ 6, 27. Put together, then, this case was novel, untested, and carried significant risks; the litigation involved extensive data and thousands of documents, requiring analysis of millions of data inputs; and Progressive vigorously defended the claims and the propriety of class certification through skillful and experienced defense counsel, all the way to the eve of trial. Yet, despite all that, Class Counsel secured a Settlement Agreement constituting an unusually high percentage of potential damages and a rare structure—with no claiming process—such that perhaps the preeminent class action expert in the world considers it "one of the top" settlements he has ever analyzed. Obviously, achieving this required skillful and experienced attorneys. As such, this factor also strongly favors the requested fee.

iv. Time and labor expended

Finally, the "time and labor expended" factor also supports the requested fee amount. Fitzpatrick Decl. at ¶ 23. As Professor Fitzpatrick points out, the vast majority of class actions are resolved or settled prior even to class certification—he notes that an upcoming study he has conducted will show that over 90% of class actions are resolved (whether via dismissal or settlement) prior to class certification. *Id*. Here, however, Class Counsel litigated the case through dispositive motion practice, class certification briefing, a Rule 23(f) petition, the entirety of the discovery period, summary judgment, and to the eve of trial.

To date, Class Counsel has expended nearly 6,000 hours litigating this case.[3] Phillips Decl. at ¶ 32. And this is despite that Class Counsel were careful to exercise billing judgment, carefully crafting a litigation plan and dividing up tasks and responsibilities amongst the various attorneys to avoid any duplicative or unnecessary time expenditure. *Id*. at ¶¶ 26–28. This time was spent on extensive litigation and discovery—this case was fully litigated from the pleadings, motions to dismiss, seven different experts, millions of data inputs and tens of thousands of documents, class certification briefing, an interlocutory appeal, summary judgment, all pre-trial filings, and to the very eve of trial. Moreover, Class Counsel's work is not finished—based on their experience and history in working on settlements and

[3] Also, this only includes hours devoted only to this case. Class Counsel also brought companion cases across the country, and the time devoted to those cases were interconnected and useful to this case as well. So, this time is *extremely* conservative. Phillips Decl. at ¶ 35.

final approval, Class Counsel estimate they will expend approximately 200 hours on the remaining tasks to be done in this litigation (including in preparing the motion for final approval, which is not counted in the hours submitted), assuming final approval is granted. *Id*. at ¶ 34. So, as Professor Fitzpatrick explains:

> Class counsel litigated this case much further than most class action lawyers would have. Very few non-securities class actions these days are settled after a contested class certification motion; almost all of them settle before certification and are certified for settlement purposes only…Even more exceptional, very few class actions survive both a motion to dismiss and summary judgment, and even fewer are litigated to the eve of trial. All of this offers strong support for class counsel's fee request. The reason is as follows: if class action lawyers receive the same fee percentage when they settle early as they do when they go all the way to the eve of trial, then they will never go to the eve of trial; they will settle early for less… This is why many clients in the market for contingency representation choose fee percentages that escalate as the litigation matures: to better incentivize their lawyers. Class members benefit from such incentivization as well. Thus, in my opinion, these factors strongly support class counsel's fee request as well.

Fitzpatrick Decl. at ¶ 23 (internal citation omitted).

As such, this factor strongly militates in favor of approving the requested amount in attorneys' fees.[4]

---

[4] The Eleventh Circuit arguably permits courts, in their discretion, to apply a lodestar cross-check. Yet *Camden* explicitly asserted that "[h]enceforth in this circuit, attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund…" Fitzpatrick Decl. at ¶ 15 (quoting *Camden I*, 946 F.2d at 774). Moreover, he cogently explains why the lodestar analysis is deficient, whether as a method or a crosscheck. Amongst other reasons, he explains that it encourages churning up hours rather than securing the best deal possible for the class, sets up a

v. The "customary fee" factor and "awards in similar cases" factor both favor the requested fee.

As set forth above, the one-third fee amount requested here matches the most common and median fee percentage awarded in the Eleventh Circuit. See Sec. IV(A)(1); *see also* Fitzpatrick Decl. at ¶¶ 24–27. These factors also militate in favor of the requested fee.

vi. The contingency nature of the fee arrangement favors the requested fee.

Class Counsel undertook this case on a purely contingency basis. Phillips Decl. at ¶ 6. Numerous courts have recognized that such risk deserves extra compensation and is a critical factor in determining the reasonableness of a fee. *See,*

---

conflict between the interests of the Class (which is to get the best deal possible) with that of the attorneys (which is to increase hours), and needlessly increases judicial workload. Fitzpatrick Decl. at ¶ 14. Moreover, if the lodestar is appropriate or desirable, it is only when a settlement's benefits are difficult or complicated to value, and, concomitantly, it is difficult to identify what a percentage of that fund (in attorneys' fees) would even be—which is not the case here, given there is no calculation or estimate necessary: Progressive has simply agreed to pay a specific, hard dollar amount, none of which will revert to Progressive.

In any event, the requested fee here is appropriate even with a lodestar crosscheck, were this Court inclined to apply one. Given the total lodestar of $4,611,220.30, the requested fees of $14.3 million would equate to a multiplier of approximately 3.11 (even if the expected 200 hours yet to be expended are not counted). This is well within the multipliers often approved in this Circuit. *See, e.g.*, *Manners*, 1999 WL 33581944, at *31 (finding that a multiplier of 3.8 was justified, noting that multipliers in similar litigation have ranged from 1 through 4, and collecting the relevant cases); *Behrens*, 118 F.R.D. at 549 (S.D. Fla. 1988) (determining that multipliers range from 2.26 to 4.5 with "three appear[ing] to be the average"); *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481 (S.D.N.Y. 2013) ("Courts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers."); *Craft v. City of San Bernardino*, 624 F. Supp. 2d 1113, 1125 (C.D. Cal. 2008) (allowing a multiplier of 5.2 because "there is ample authority for such awards resulting in multipliers in this range or higher").

e.g., *In re Dun & Bradstreet Credit Svcs. Cons. Lit.*, 130 F.R.D. 366, 373 (S.D. Ohio 1990); *Behrens v. Wometco Enterprises., Inc.*, 118 F.R.D. 534, 548 (S.D. Fla. 1988), aff'd, 889 F.2d 21 (11th Cir. 1990); *In re Cont. Ill, Sec. Lit.*, 962 F.2d 566, 569 (7th Cir. 1992). As the Supreme Court put it, "lawyers who are to be compensated only in the event of victory expect and are entitled to be paid more when successful than those who are assured of compensation regardless of result." *Ledbetter v. Jones*, 453 U.S. 950 (1981). And this is particularly notable given the aforementioned risks of litigation in a novel, untested theory of liability.

So, this also strongly supports the requested fee.[5]

B. The Service Awards request should be approved.

The Settlement Agreement also provides that Plaintiffs may make an application for Service Awards to each Named Plaintiff. Settlement Agreement at ¶ 11. In this diversity case involving a dispute of state contract law, state law applies to the question of service (or "incentive") awards. *See Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A*, L.P., 861 F.3d 1182, 1195 (10th Cir. 2017) (addressing whether to grant service award, and holding that "[w]e think it clear that . . . *Erie* requires us to apply Oklahoma law"). Indeed, the Northern District of Georgia has already agreed that state substantive law applies to the question of

[5] Class Counsel believe that the remaining *Johnson* factors—preclusion of other employment, time limitations imposed, and nature of the relationship with the client—either are neutral or overlap with the discussed factors.

service awards and that Georgia law permits service awards to class representatives. *Tims v. Lge Cmty. Credit Union*, 2023 U.S. Dist. LEXIS 241597, at *2 (N.D. Ga. Nov. 29, 2023).

The amount requested here of $10,000.00 is an eminently reasonable amount. *See, e.g.*, *Hinson II* (approving service awards of $15,000 per class representative); *In re Checking Account Overdraft Litig.*, 2014 WL 11370115, at **12-13 ($10,000 service awards to 12 named plaintiffs); *Spicer v. Chi. Bd. Options Exchange, Inc.*, 844 F. Supp. 1226, 1267-68 (N.D. Ill. 1993) (collecting cases approving awards ranging from $5,000 to $100,000, and awarding $10,000 to each named plaintiff). This is particularly the case given the amount of time expended by both named Plaintiffs and their contributions to the litigation and settlement discussions. Phillips Decl. at ¶ 38. Moreover, the Class Members are being provided notice that Plaintiffs would be seeking up to $10,000.00 in Service Awards, and any objections will be addressed at the fairness hearing. As such, Class Counsel respectfully submit this Court should approve the requested Service Awards of $10,000.00 to both Named Plaintiffs.

C. Costs

In addition to attorneys' fees, reimbursement of expenses to counsel to create a common fund is appropriate. *Waters,* 190 F.3d at 1298 (recognizing that class counsel entitled to expenses in addition to an award of fees). Class Counsel seek

reimbursement of litigation costs and expenses of $303,275.24. Phillips Decl. at ¶ 36. This is far less than the $380,000.00 that Class Members were informed Class Counsel may seek as costs and expense reimbursement in this Action. *Id*. at ¶ 37. Class Counsel aver that these costs were reasonable and necessary to the prosecution of this Action. *Id*. Moreover, such costs, which constitute just 0.03% of the Settlement Fund, are far less than the amount of costs that courts have deemed reasonably expended in other litigation, both as a raw number and as a percentage of the fund. *See, e.g.*, *Alaska Elec. Pension Fund v. Bank of Am. Corp.*, 14-CV-7126 (JMF), 2018 U.S. Dist. LEXIS 202526 (S.D. N.Y. Nov. 29, 2018) (approving costs and expenses of over $18 million); *In re Sadia S.A. Sec. Litig.*, 2011 U.S. Dist. LEXIS 149107, at *8 (S.D. N.Y. Dec. 28, 2011) (approving costs and expenses constituting 3% of the settlement fund as reasonable).

V. CONCLUSION

For the foregoing reasons, Plaintiffs and Class Counsel respectfully submit the Motion should be granted, and request this Court entered an Order that (i) approves attorneys' fees of $14,333,333.33, (ii) approves costs of $304,132.20, and (iii) approves a Service Award of $10,000.00 to both Plaintiff Bost and Plaintiff Brown.

Respectfully submitted this 31st day of March, 2025.

/s/ Jake Phillips
Jacob L. Phillips*

Joshua R. Jacobson*
JACOBSON PHILLIPS PLLC
478 E. Altamonte Dr., Ste. 108-570
Altamonte Springs, Florida 32701
Tel: (407) 720-4057
Email: jacob@jacobsonphillips.com
Email: joshua@jacobsonphillips.com

Hank Bates*
Lee Lowther*
CARNEY BATES & PULLIAM, PLLC
One Allied Drive, Suite 1400
Little Rock, Arkansas 72202
Tel: (501) 312-8500
Email: hbates@cbplaw.com
Email: llowther@cbplaw.com

Andrew J. Shamis
Georgia Bar No. 494196
SHAMIS & GENTILE, P.A.
14 NE 1st Avenue, Suite 705
Miami, Florida 33132
Tel: (305) 479-2299
Email: ashamis@shamisgentile.com

Scott Edelsberg
EDELSBERG LAW, P.A.
20900 NE 30th Ave., Suite 417
Aventura, Florida 33180
Tel: (786) 289-9471
Email: scott@edelsberglaw.com

James L. Kauffman*
Brian A. Glasser*
Patricia M. Kipnis*
Bailey & Glasser LLP
1055 Thomas Jefferson St., N.W.
Washington, DC 20007
202-463-2101
Email: jkauffman@baileyglasser.com

Email: bglasser@baileyglasser.com
Email: pkipnis@baileyglasser.com

R. Brent Irby
Georgia Bar No. 224232
IRBY LAW, LLC
2201 Arlington Avenue S
Birmingham, Alabama 35205
Tel: (205) 545-8334
Email: birby@mhcilaw.com

Michael J. Lober
Georgia Bar No. 455580
William Greg Dobson
Georgia Bar No. 237770
LOBER & DOBSON, LLC
Robert E. Lee Building, Suite 201
830 Mulberry Street
Macon, Georgia 31201
Tel: (478) 745-7700
Email: wgd@lddlawyers.com
Email: mjlober@lddlawyers.com

*Admitted *pro hac vice*

Counsel for Plaintiffs and the Classes

CERTIFICATE OF SERVICE

I, Jacob L. Phillips, hereby certify that on this 31st day of March, 2025, I electronically filed the foregoing via the Court's CM/ECF system, which will provide electronic notification to all counsel of record.

/s/Jake Phillips
Attorney for Plaintiffs