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.

MICHELLE BOST, individually and on behalf of all others similarly situated,

Plaintiff,

v.

PROGRESSIVE PREMIER INSURANCE COMPANY OF ILLINOIS,

Defendants.

Consolidated Case No.:
3:21-cv-00175-TCB

PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 23, the Class Action Settlement Agreement (the "Settlement") (ECF No. 245-1), and this Court's Preliminary Approval Order (ECF No. 246), Plaintiffs Keddrick Brown and Michelle Bost move for an order granting final approval of the Settlement they have reached with Defendants Progressive Mountain Insurance Company and Progressive Premier Insurance Company of Illinois (collectively, "Progressive"). The Settlement is fair, reasonable, and adequate, and this Court should grant it final approval.

The proposed Settlement resolves all claims against Progressive in exchange for a cash payment of $43,000,000.00 (the "Settlement Fund") for the benefit of the Settlement Classes, less payment of attorneys' fees, litigation expenses, and service awards. The Settlement and distribution plan are designed so that every dollar of the Settlement Fund will be used for the benefit of Settlement Class Members. This represents approximately 49% of compensatory damages that could have been awarded at trial. There is no claims process. Instead, each Settlement Class Member who does not opt out will automatically receive a pro rata distribution tailored to the value of their loss vehicle and calculated consistent with Plaintiffs' damages model. Frankly, this is an excellent result for the Settlement Classes. Indeed, Professor Brian T. Fitzpatrick, one of the preeminent class action scholars and experts, calls it, both substantively (total amount of recovery) and procedurally (settlement structure),

"one of the top class action settlements" he has ever seen. Declaration of Brian T. Fitzpatrick ("Fitzpatrick Dec."), filed contemporaneously with this Motion, ¶ 6.

The Settlement was achieved through years of hard-fought litigation against a Fortune 100 company and settled on the eve of trial. In the months leading up to trial, the parties participated in extensive mediation efforts with well-respected mediators at Phillips ADR Enterprises, P.C., and reached an agreement only days before the first day of trial. Thus, by the time the Settlement was reached, Plaintiffs and their counsel were well informed about the strengths and weaknesses of their claims and Progressive's defenses.

The notice program is well underway. The Order of preliminary approval requires direct notice be provided by March 31, 2025. (ECF No. 246 at 14). Since preliminary approval was granted, the Settlement Administrator has obtained records for Settlement Class Members with contact information, deduplicated those records, and is prepared to initiate notice to 151,485 unique Settlement Class Members. Declaration of Cameron R. Azari, Esq., on Commencement of Settlement Notice Plan, ("Azari Dec."), filed contemporaneously with this brief, at ¶¶ 9–10. The settlement website and toll-free number previously established for class certification notice efforts have been updated with information regarding the Settlement to ensure Settlement Class Members' have all the information they need to fully understand the Settlement.

In sum, the Settlement is an excellent result for Settlement Class Members and easily satisfies the criteria for final approval. Plaintiffs thus respectfully request the Court: (1) grant final approval of the Settlement as fair, reasonable, and adequate; (2) certify the Settlement Classes for purposes of judgment; (3) find that the Notice Plan satisfies the requirements of Federal Rule of Civil Procedure 23(c) and due process and constitutes the best notice practicable under the circumstances; and (4) enter final judgment.

II. PROCEDURAL BACKGROUND

Plaintiffs incorporate by reference the procedural background set forth in their Brief in Support of Motion for Preliminary Approval of Class Action Settlement. (ECF No. 244-1, at 4–5 (the "PA Brief")). The only procedural development since that date is that, on February 18, 2025, the Court entered its Order Granting Preliminary Approval of Class Action Settlement. (ECF No. 246).

III. SUMMARY OF THE SETTLEMENT TERMS

A. Overview

Plaintiffs incorporate by reference the Summary of Settlement Terms set forth in the PA Brief. (ECF No. 244-1, at 6–14).

In short, the preliminarily approved settlement provides for the creation of a $43,000,000.00 cash fund for the benefit of Settlement Class Members. Settlement Agreement at ¶ 7. This amount represents approximately 49% of the compensatory

damages alleged by Plaintiffs under the damages model they were prepared to present at trial. (ECF No. 245, Bates Dec, at ¶ 22). There is no claims process. Instead, each Settlement Class Member who does not opt out will automatically receive a pro rata distribution tailored to the value of their loss vehicle and calculated consistent with Plaintiffs' damages model in this action.

B. The Notice Plan is Being Successfully Implemented

Pursuant to the Court's Order granting preliminary approval, the parties and Settlement Administrator began implementing the notice plan. To date, the Settlement Administrator has received, deduplicated, and rolled-up Settlement Class Member records to prepare to issue notice on March 31, 2025. Azari Dec., ¶ 9. Through these efforts, 151,485 unique Settlement Class Members have been identified. *Id.* On March 31, 2025, Notice will be issued (1) by email to each Settlement Class Member for whom a facially valid email address is available, and (2) by direct mail to each Settlement Class Member for whom a valid email address is not available or where the Email Notice is undeliverable after several attempts. *Id.* ¶¶ 11, 13. To ensure maximum reach, the Settlement Administrator will follow industry best practices to ensure the Email Notice is delivered (past SPAM filters and to garner recipients' attention) and to "ensure readership to the fullest extent reasonably practicable." *Id.* ¶ 11. Comparable efforts will be taken with respect to the Direct Mail Notice—*i.e.*, consultation of the National Change of Address

("NCOA") database and similar systems, using postal forwards, and skip-tracing where postcards are returned as undeliverable—to ensure maximum reach. *Id.* ¶¶ 13–14. The Notice Program preliminarily approved by the Court (ECF No. 246, at 7–8) is designed "to reach the greatest practicable number of Settlement Class Members" and fully apprise members of the terms of the settlement, potential benefits, and the ability to exercise other options. Azari Decl., ¶ 19.

The Administrator updated the class website for this case with additional information regarding the Settlement. Specifically, Settlement Class Members may access from the website the Long Form Notice, Settlement Agreement, and the Preliminary Approval Order. Azari Dec., ¶ 15. The Settlement Administrator will add to the available documents this Motion and Brief as well as Class Counsel's application for attorneys' fees, litigation expenses, and service awards. *Id.* The settlement website also includes updated relevant dates, answers to frequently asked questions, information regarding Settlement Class Members' rights, instructions for how they may opt-out (request exclusion) from or object to the Settlement, contact information for the Settlement Administrator, and how to obtain other case-related information. The settlement website address was displayed prominently on all Notice documents.

The existing toll-free telephone number that was established for the class certification notice efforts was updated with additional information regarding the

Settlement. *Id.* ¶ 16. Callers can hear an introductory message, have the option to learn more about the Settlement in the form of recorded answers to FAQs, and request that a Long Form Notice be mailed to them. *Id.* The automated telephone system is available 24 hours per day, 7 days per week. *Id.* The toll-free telephone number was prominently displayed on all Notice documents. *Id.*

The existing post office box that was established for the class certification notice efforts for correspondence continues to be available, allowing Settlement Class Members to contact the Settlement Administrator by mail with any specific requests or questions. *Id.* ¶ 17. The deadline to request exclusion from, or object to, the Settlement is April 30, 2025.[1] *Id.* ¶ 18.

As noted above, the Notice Plan is ongoing—when it is complete, Plaintiffs will provide the Court with a "comprehensive Notice Plan implementation declaration" from the Settlement Administrator, "which will include all notice implementation details, notice and administration statistics, confirm the delivered reach of the Notice Plan as implemented, and provide a final report of all opt-outs." Azari Decl., ¶ 19.

[1] The Notice Plan is ongoing, and the deadline for requests for exclusion and objections is April 30, 2025. On or before May 8, 2025, Plaintiffs and Class Counsel will provide an update on the implementation of the Notice Plan, any additional requests for exclusions and any objections that may be received.

IV. CERTIFICATION OF THE SETTLEMENT CLASSES IS WARRANTED

Before granting final approval of a settlement, a class must first be certified under Fed. R. Civ. P. 23(a) and one of the Rule 23(b) subsections. As explained in the Motion for Preliminary Approval, in amending Rule 23 in 2018, the Advisory Committee clarified that when considering a proposed Settlement Agreement for members of a class already certified by a court, "the only information ordinarily necessary is whether the proposed settlement calls for any change in the class certified, or of the claims, defenses, or issues regarding which certification was granted." *See* Fed. R. Civ. P. 23(e)(l)(B), Committee Notes on Rules-2018 Amendment. There are no material differences between the certified litigation classes and the Settlement Classes, other than the relevant Class Period. (ECF No. 244-1, at 6). As such, certification is appropriate as to the proposed Settlement Classes.

V. FINAL APPROVAL IS WARRANTED

A. Legal Standard

Consistent with the Eleventh Circuit's strong preference for class settlements, a court should approve a class action settlement under Rule 23 if it is "fair, adequate, reasonable, and not the product of collusion." *Leverso v. SouthTrust Bank*, 18 F.3d 1527, 1530 (11th Cir. 1994). Rule 23(e)(2) specifies that settlements may be approved if the settlement class was adequately represented, the settlement was

negotiated at arm's length, and the relief provided is adequate, accounting for factors such as the risk of litigation, method for distributing relief to class members, and agreements concerning attorneys' fees. Fed. R. Civ. P. 23(e)(2). In the Eleventh Circuit, the Rule 23(e) analysis considers *Bennett v. Behring Corp.*, 737 F.2d 982 (11th Cir. 1984), which outlined factors relevant to determining whether a settlement is fair and reasonable:[2]

> Specifically, the court made findings of fact that there was no fraud or collusion in arriving at the settlement and that the settlement was fair, adequate and reasonable, considering (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.

Id. at 986. A court's determination concerning whether to approve a settlement as fair, adequate, and reasonable is discretionary. *Id.* at 987.

B. The Procedural Requirements for Final Approval are Satisfied

Rule 23(e)(2)'s procedural requirements and *Bennett*—*i.e.*, lack of collusion, arm's length negotiations, and adequate representation—are satisfied here.[3] First, there was no fraud or collusion in the Settlement, and the lengthy negotiations were

[2] At the time *Bennett* was decided and set forth the standard for whether settlement agreements are "fair, reasonable, and adequate," there were no textual factors from Rule 23(e) guiding the analysis. In 2018, the Rule was amended to add the referenced textual factors.

[3] According to the Advisory Committee, the 2018 amendments to Rule 23(e)(2) can be categorized as "procedural factors" and "substantive factors." *See* Fed. R. Civ. P. 23(e)(2), Committee Notes on Rules – 2018 Amendment. The "procedural" factors are 23(e)(2)(A)–(B) (adequate representation and arm's-length negotiations), while the "substantive factors" are (c)(i)-(iv). *Id.*

conducted at arm's length with assistance of an experienced and well-respected mediators over multiple full-day mediation sessions and then through continued negotiations via phone and email. ECF No. 245, Bates Decl., ¶ 14; *see also*, *e.g.*, *Cornelius v. Deere Credit Servs.*, No. 4:24-cv-25-RSB-CLR, 2025 U.S. Dist. LEXIS 26422, at *3 (N.D. Ga. Feb. 13, 2025) ("These negotiations were presided over by an experienced mediator, underscoring the fairness of the settlement reached."); McLaughlin on Class Actions § 6:7 (12th ed.) ("A settlement reached after a supervised mediation receives a presumption of reasonableness and the absence of collusion."); *City P'ship Co. v. Atlantic Acquisition Ltd. P'ship*, 100 F.3d 1041, 1043 (1st Cir. 1996) ("When sufficient discovery has been provided and the parties have bargained at arms-length, there is a presumption in favor of the settlement.").

Moreover, the Settlement occurred only after years of extensive, hotly-contested litigation with class certification granted, summary judgment overcome, a successful affirmative *Daubert* motion and successful defense of Plaintiffs' experts' opinions, and trial looming, a strong indication of no collusion. See, e.g., *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 693 (N.D. Ga. 2001) (court had "no doubt that this case has been adversarial, featuring a high level of contention between the parties"); *In re Motorsports Merchan. Antitrust Litig.*, 112 F. Supp. 2d 1329, 1338 (N.D. Ga. 2000) ("This was not a quick settlement, and there is no suggestion of collusion").

Second, the class was adequately represented by the Class Representatives and Class Counsel. Fed. R. Civ. P. 23(e)(2)(A). This requirement—distinct from the Rule 23(a)(4) "adequacy" requirement—was added in 2018 and, as one court explained, addresses "whether class counsel and plaintiffs had an adequate information base before negotiating and entering into the settlement." *Burrow v. Forjas Taurus S.A.*, 2019 WL 4247284, at *7 (S.D. Fla. Sep. 6, 2019) (internal quotations omitted). This overlaps with the preexisting *Bennett* "stage of proceedings" factor. *See, e.g.*, *Cook*, 2020 U.S. Dist. LEXIS 111956, at *18 ("The Court agrees ... that the Rule 23(e)(2)(B) 'adequacy' requirement overlaps with the preexisting *Bennett* 'stage of proceedings' factor."); *see also Luse v. Sentinel Offender Servs.*, No. 2:16-CV-30-RWS, 2017 U.S. Dist. LEXIS 235820, at *22 (N.D. Ga. Aug. 21, 2017) ("stage of proceedings" requirement ensures plaintiffs have sufficient information to "to adequately evaluate the merits of the case and weigh the benefits of settlement against further litigation").

Here, the record demonstrates Plaintiffs and Class Counsel possessed an adequate information base to evaluate the merits of the case such that the Settlement Classes were adequately represented. Settlement was achieved at an advanced stage of litigation, following extensive litigation and on the eve of trial. Through fulsome discovery, Plaintiffs and Class Counsel secured voluminous discovery and data, conducted numerous corporate and third-party depositions, and became well-versed

in the information necessary to evaluate the merits of the complicated issues presented in this litigation, and to assess the benefits of settling versus the risks of further litigation. *See Cook*, 2020 U.S. Dist. LEXIS 111956, at *18–*19 (adequacy requirement "clearly" met where settlement was achieved after "voluminous discovery and data and . . . numerous depositions" and after "numerous contested issues of class certification, discovery, and summary judgment were extensively briefed and litigated."); *cf. Ingram*, 200 F.R.D. at 191 (holding class representatives had sufficient information to make a reasoned judgment about the merits of the case after fourteen months of litigation and discovery). Accordingly, the Rule 23(e)(2)(A) prerequisites are satisfied.

C. The Rule 23(e)(2)(C) Substantive Factors Favor Approval

The substantive Rule 23(e)(2)(C) factors addressing whether a settlement's terms are "adequate" – *i.e.*, the risk of non-settlement, the method for processing claims and distributing relief, and the terms of attorneys' fees – favor granting final approval of the Settlement. In amending Rule 23(e)(2) in 2018, the Advisory Committee clarified that while it did not intend to "displace" various circuit's laws – like *Bennett* in the Eleventh Circuit – it sought to "focus the court and the lawyers on the core" or "central concerns" of Rule 23(e)(2). Fed. R. Civ. P. 23(e)(2)(C), Committee Notes on Rules - 2018 Amendment.

The first factor is the "costs, risks, and delay of trial and appeal." Fed. R. Civ. P. 23(e)(2)(C)(i). This factor is analogous to the first four *Bennett* factors (*i.e.*, (1) likelihood of success, (2) range of potential recovery, (3) where on the range of potential recovery at trial the amount provided to class members by the settlement falls, and (4) duration and length of litigation). *See Williams v. New Penn Fin., LLC*, 2019 WL 2526717, at *4 (M.D. Fla. May 8, 2019); Thus, under both Rule 23(e)(2)(C)(i) and *Bennett*, the question is not necessarily the amount of relief in a vacuum, but "whether that relief is reasonable when compared with the relief 'plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing.'" *Burrow*, 2019 WL 4247284, at *9 (citations omitted). "[C]ourts should estimate the potential recovery if ultimately successful versus the risks of losing outright, and determine whether the relief provided comports therewith." *Roth v. Geico Gen. Ins. Co.*, No. 16-cv-62942WPD, 2021 U.S. Dist. LEXIS 23105, at *22 (S.D. Fla. Feb. 8, 2021); *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 693 (S.D.N.Y. 2019) ("courts may need to forecast the likely range of possible class wide recoveries and the likelihood of success in obtaining such results").

Here, analysis of Rule 23(e)(2)(C)(i), consistent with the *Bennett* factors, favors final approval. First, the range of potential recovery is determinable. The bottom of the range is of course $0 because of the significant risk that Plaintiffs and the Classes could lose at trial or, even if initially successful, on appeal. Measuring

potential compensatory damages as the difference between what each Class Member received in ACV benefits and what they would have received if no PSA were applied, the proposed Settlement represents approximately 49% of the potential recovery had Plaintiffs prevailed completely at trial. Bates Decl., ¶ 22. This robust recovery supports final approval. Securing 49% of potential damages is drastically more favorable than percentages other courts in this Circuit and beyond have found to be fair and adequate. *See 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*, 2015 U.S. Dist. LEXIS 150354, at *19 ("Approximately ten percent (10%) of the most probable sum Plaintiffs anticipated recovering at trial . . . constitutes a very fair settlement."); *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 324 (3rd Cir. 2011) (affirming settlement that "represented [as little as] 10.93%" of damages recoverable at trial).

This analysis is buttressed by the risk of no recovery at all if Progressive prevailed at trial or on appeal. The legal issues presented as to both class certification and the merits dispute are complex, and the parties have undergone great expense

and will continue to do so if litigation were to continue through trial and appeal. Moreover, the outcome of this case has been uncertain from the outset. If the settlement were disapproved, complex, risky, and uncertain litigation would continue, likely for years, "in this Court and others, including appellate courts." *See Gevaerts v. TD Bank, N.A.*, 2015 U.S. Dist. LEXIS 150354, at *17 (S.D. Fla. Nov. 5, 2015); *In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992) (noting protracted litigation render "meaningful relief increasingly elusive").

The second factor is the method for "distributing relief" and "processing class-members claims." Fed. R. Civ. P. 23(e)(2)(C)(ii). The above-described extremely straightforward process means this factor favors Final Approval. *See Goodman*, 2024 U.S. Dist. LEXIS 104859, at *12–*13 (holding method of distributing relief efficient and appropriate where "[n]o action [was] required on the part of Class Members to receive a settlement payment" and "each Class Member [would] receive [their] pro rata share of the net settlement proceeds"); *accord Orin v. Cal. Del. U.S.A. Inc.*, No. 23-3404 FMO (KSx), 2024 U.S. Dist. LEXIS 214466, at *11–*12 (C.D. Cal. Nov. 25, 2024) (approving settlement distribution plan whereby, "without having to submit a claim form, each class member will be entitled to a share of the net settlement amount" tailored to the extent of their injury). The distribution method envisioned by the proposed Settlement is designed to, and will, "get as much of the available damages remedy to class members as possible and in as simple and

expedient a manner as possible." *See* 4 Newberg and Rubenstein on Class Actions, § 13:53 (6th ed.).

The next factor is the "terms of any proposed award of attorney's fees[.]" Fed. R. Civ. P. 23(e)(2)(C)(iii). Whether the attorneys' fees are reasonable on their own terms is a separate Rule 23(h) analysis.[4] By contrast, under Rule 23(e), the analysis is not of the fee amount in a vacuum, but rather whether attorneys' fees impacted the other settlement terms. The analysis is focused on whether "the attorneys' fees arrangement shortchanges the class." *McKinney-Drobnis v. Oreshack*, 16 F. 4th 594, 607 (9th Cir. 2021).

In making this determination, courts are to consider whether settlements include "subtle signs" that class counsel have put their own interests before those of the class they represent, including: "(1) when counsel receive[s] a disproportionate distribution of the settlement; (2) when the parties negotiate a clear-sailing arrangement, under which the defendant agrees not to challenge a request for an agreed-upon attorney's fee; and (3) when the agreement contains a kicker or reverter clause that returns unawarded fees to the defendant, rather than the class." *Briseño v. Henderson*, 998 F.3d 1014, 1023 (9th Cir. 2021). Here, each factor favors approval because Class Counsel have sought a reasonable fee; the Agreement does not include

[4] *See* Motion for Attorneys' Fees, Costs and Service Awards addressing the Rule 23(h) analysis, which is being filed contemporaneous herewith.

a clear-sailing arrangement; and the Settlement and distribution plan are designed to pay Class Members the entirety of the Settlement Fund. Only when the Settlement Administrator determines an additional distribution is non-economical, and Class Counsel agrees with that determination, will any residual funds be disbursed to Progressive. *See id.*

The final substantive factor is whether the Settlement treats class members equitably vis-à-vis each other. Fed. R. Civ. P. 23(e)(2)(D). Here, each Settlement Class Member is treated equitably. Each will receive—without the need to make a claim or request payment—a pro rata distribution from the Settlement Fund commensurate with the amount of PSA applied while valuing their insurance claim. *See Goodman*, 2024 U.S. Dist. LEXIS 104859, at *14–*15 (holding class members were treated equitably relative to each other where each class member would receive a pro rata distribution from the settlement fund commensurate with their level of damages). Moreover, the release is the same for all Settlement Class Members and is narrowly tailored to the specific claims for which Defendants are providing relief. *See* Rule 23(e)(2)(D), Committee Notes on Rules – 2018 Amendment (courts to consider the extent to which "the scope of the release may affect class members in different ways"). This fact also favors Final Approval.

D. Opinions of Counsel and Representatives[5]

The remaining *Bennett* factor not subsumed within Rule 23—the opinions of the Class Representatives and Class Counsel—also favors the Settlement. Class Counsel and the Class Representatives support Settlement approval. It is the reasoned opinion of Class Counsel, experienced in complex class action litigation, and the Class Representatives that the Settlement is in the interest of the Settlement Classes given the future litigation risks. Bates Decl. ¶¶ 23–27. Plaintiffs and Class Counsel have also determined the Settlement's terms and conditions are fair, adequate, and reasonable, a factor that is particularly significant here given Class Counsel's wealth of experience in litigating total-loss class actions. See, e.g., *Lunsford v. Woodforest Nat'l Bank*, No. 1:12-cv-103-CAP, 2014 U.S. Dist. LEXIS 200716, at *26 (N.D. Ga. May 19, 2014) ("The Court should give great weight to the recommendations of counsel for the parties, given their considerable experience in this type of litigation." (internal quotation omitted)); *Greco v. Ginn Dev. Co., LLC*, 635 F. App'x 628, 632 (11th Cir. 2015) (per curiam) ("Absent fraud, collusion, or

[5] The final element is the amount and substance of opposition to the proposed settlement. That factor cannot be analyzed until after Notice is provided and Settlement Class Members are given the opportunity to lodge such opposition, if any. Pursuant to the Order of preliminary approval, March 31, 2025, is the deadline to commence the Notice Program and objections and opt-outs are due April 30, 2025. After the Notice Program is complete and the objection deadline passes, Plaintiffs will submit a supplemental brief addressing the amount and substance of opposition to the proposed settlement.

the like, the district court should be hesitant to substitute its own judgment for that of counsel") (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977))).

As explained elsewhere, several courts addressing materially identical practices from Progressive under materially identical Policy language have held challenges to PSAs incapable of class certification. The putative class members in those actions recovered nothing. Here, the Settlement accords substantial relief to the Settlement Classes and mitigates future litigation risk.

For the reasons set forth herein, Plaintiffs respectfully submit that the proposed Settlement is eminently fair, reasonable and adequate.

VI. CONCLUSION

For these reasons, Plaintiffs respectfully request the Court enter an order:

(1) Certifying the Settlement Classes for settlement purposes only;

(2) Finding the terms of the Settlement are fair, reasonable, and adequate to the Settlement Class Members;

(3) Appointing Plaintiffs Michelle Bost and Keddrick Brown as Settlement Class Representatives;

(4) Reaffirming previously appointed counsel in the Preliminary Approval Order as Class Counsel;

(5) Finding that Notice set forth in the Agreement (i) constituted the best practicable Notice under the circumstances; (ii) was reasonably calculated

to apprise potential Settlement Class members of the pendency of the actions, their right to object to or exclude themselves from the Settlement, and to appear at the Final Approval Hearing; and (iii) constituted due, adequate, and sufficient process and notice to all Persons entitled to receive notice;

(6) Approving the proposed Settlement and directing Class Counsel, Plaintiffs and Progressive to implement and consummate the Settlement Agreement pursuant to its terms and conditions;

(7) Finding that the Opt-Out List—to be provided after the opt-out deadline in an updated declaration from the Settlement Administrator—is a complete list of all members of the Settlement Class who have timely opted-out of the Settlement Classes and, accordingly, neither share in nor are bound by the Final Order and Judgment;

(8) Reaffirming Epiq Class Action & Claims Solutions, Inc. as the Settlement Administrator;

(9) Approving the Claims Process outlined in the Settlement Agreement;

(10) Providing that the named Plaintiffs, all Settlement Class Members, and their heirs, estates, trustees, executors, administrators, principals, beneficiaries, representatives, attorneys, agents, assigns, and successors, and/or anyone claiming through them or acting or purporting to act for

them or on their behalf, regardless of whether they have received actual notice of the proposed Settlement, have conclusively compromised, settled, discharged, and released all Released Claims against Defendants and the Released Persons, and are bound by the provisions of this Final Judgment and Order;

(11) Dismissing all claims in the Action on the merits and with prejudice, and without fees or costs except as provided herein and in the contemporaneously-filed fee petition;

(12) Entering Final Judgment, retaining jurisdiction over the Parties, Settlement Class Members, and Progressive to implement, administer, consummate, and enforce the Settlement and this Final Order and Judgment.

Respectfully submitted this 31st day of March, 2025.

/s/Jake Phillips
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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