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17 **UNITED STATES DISTRICT COURT**
18 **DISTRICT OF ARIZONA**

19 ELLIOTT AMBROSIO, on behalf of himself
20 and all others similarly situated,

21 Plaintiff,

22 v.

23 PROGRESSIVE PREFERRED INSURANCE
24 COMPANY,

25 Defendant.

CASE NO.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

26 **CLASS ACTION COMPLAINT**

27 Elliott Ambrosio (“Plaintiff”) brings this class action on behalf of himself and all others
28 similarly situated, by and through undersigned counsel, and for his Complaint against Progressive
Preferred Insurance Company (“Defendant” or “Progressive Preferred”) states and alleges as
follows:

INTRODUCTION

1. This is a class action on behalf of Plaintiff and all other similiarly situated claimants
in Arizona who received a payment for the loss of a totaled vehicle from Defendant, where

1 Defendant used valuation reports prepared by Mitchell International, Inc. (“Mitchell”) to determine
2 the actual cash value of the loss vehicles. By using these valuation reports, Defendant systemically
3 thumbs the scale when calculating the actual cash value of claimants’ loss vehicles by applying so-
4 called “Projected Sold Adjustments” that are: (a) deceptive and unexplained; (b) contrary to
5 appraisal standards and methodologies; (c) not based in fact, as they are contrary to the used car
6 industry’s market pricing and inventory management practices; (d) not applied by the major
7 competitor of Defendant’s vendor Mitchell; and (e) on information and belief, not applied by
8 Defendant and Mitchell to insureds in other states like California.

9 2. When valuing total loss claims for vehicles, it is improper for an automobile
10 insurance company, such as Progressive Preferred, to undervalue and underpay the claims by
11 manipulating the data used to determine the actual cash value of the vehicles. Specifically, under
12 their insurance policy terms and applicable Arizona law, Defendant has a duty to pay, and
13 represents that it will pay, the actual cash value of a loss vehicle when adjusting total loss claims.
14 Notwithstanding these obligations and representations, Defendant fails to fulfill this obligation by
15 using a valuation process that employs improper and unreasonable adjustments to reduce the value
16 of comparable vehicles specified in the valuation reports, which in turn reduces the valuation of the
17 total loss vehicles and the claim payment to the insured/claimant.

18 3. Specifically, Defendant, through Mitchell, systemically applies a so-called
19 “Projected Sold Adjustment” that results in a significant downward adjustment to the base values
20 of the comparable vehicles used to calculate the actual cash value of Plaintiff and Class members
21 total loss vehicles. This reduction is contrary to appraisal standards and methodologies and is not
22 based in fact, as it is contrary to the used car industry’s market pricing and inventory management
23 practices. The adjustment is applied to each of the comparable vehicles on top of adjustments for
24 differences such as mileage, options, and equipment. The only purported explanation for the
25 downward adjustment appears on the last page of the valuation reports and is a general, nondescript
26 statement claiming that the reduction is to “reflect consumer purchasing behavior (negotiating a
27 different price than the listed price).” Exhibit 1 at p. 8.

28

JURISDICTION AND VENUE

1
2 4. Minimal diversity exists under the Class Action Fairness Act (“CAFA”), 28 U.S.C.
3 §§ 1332(d), 1441(a)-(b), and 1453. Plaintiff and the proposed class members are citizens of the
4 State of Arizona. Defendant is an Ohio Corporation that has its corporate headquarters in Mayfield
5 Village, OH, and, at all relevant times hereto, Defendant was engaged in the business of marketing
6 and selling insurance policies and adjusting insurance claims in the State of Arizona.

7 5. Plaintiff estimates that there are more than 100 putative class members, and the
8 aggregate compensatory damages (in the amount of the Projected Sold Adjustments that were
9 deceptively deducted), claimed by Plaintiff and the Class are estimated in good faith to exceed
10 \$5,000,000.

11 6. Venue is proper in this District under 28 U.S.C. § 1391, as a substantial portion of
12 the conduct giving rise to Plaintiff’s claim occurred in this District, and Defendant transacts
13 business in this District.

PARTIES

14
15 7. Plaintiff Elliott Ambrosio resides in Maricopa County, Arizona. At all relevant
16 times, Plaintiff was contracted with Progressive Preferred for automobile insurance. On or about
17 September 10, 2020, Plaintiff Ambrosio was in a car wreck and Defendant deemed his vehicle to
18 be a total loss.

19 8. Defendant Progressive Preferred Insurance Company has its corporate headquarters
20 at 6300 Wilson Mills Rd, W33, Mayfield Village, OH 44143. Progressive Preferred issues
21 insurance policies in Arizona.

FACTUAL ALLEGATIONS

22
23 9. On September 10, 2020, Plaintiff Ambrosio was involved in a car wreck and
24 sustained physical damage to his vehicle. At the time of the car wreck, Plaintiff Ambrosio was
25 contracted with Progressive Preferred for automobile insurance.

26 10. Like all members of the putative Class, Plaintiff made a property damage claim to
27 Defendant.

28 11. Defendant declared Plaintiff’s vehicle to be a total loss and purported to offer

1 Plaintiff the actual cash value of his loss vehicle, as it promised and represented it would under the
2 provisions of its insurance policy and Arizona law.

3 12. When calculating its valuations and claims payments, Defendant systemically
4 employs a routine “total loss settlement process.” The process has no material differences relevant
5 to this action, regardless whether it involves first-party or third-party claimants. This process
6 involves obtaining a “Vehicle Valuation Report” from Mitchell and then using and relying upon
7 the valuation provided by Mitchell to determine the benefit payment under the policy. Defendant
8 provided a Mitchell Vehicle Valuation Report for Mr. Ambrosio on September 15, 2020. *See*
9 Exhibit 1.

10 13. The Mitchell Vehicle Valuation Report used by Defendant during the relevant
11 period followed the same process, provided and disclosed the same or substantially the same
12 material information, and presented that material information in the same or substantially the same
13 format. These valuation reports purport to contain values for comparable vehicles recently sold or
14 for sale in the claimant’s geographic area. The reports also contain a purported valuation for the
15 loss vehicle based upon advertisements for comparable vehicles listed in the report. The report then
16 adjusts the advertised prices of those comparable vehicles to account for differences in equipment,
17 mileage, and vehicle configuration. Exhibit 1 at p. 8.

18 14. In addition, however, the valuation report used by Defendant makes a further
19 adjustment to Plaintiff’s loss vehicle called a “Projected Sold Adjustment.” For Plaintiff Ambrosio,
20 Projected Sold Adjustments in the amounts of -\$807.00, -\$666.00, -\$761.00, -\$570.00, and -
21 \$808.00, respectively, were applied to each of the five comparable vehicles. Exhibit 1 at pp. 5-7.

22 15. Defendant provides no data specific to the comparable vehicles or any explanation
23 of industry practices in its valuation reports to support any Projected Sold Adjustment, much less
24 the specific downward adjustments used in Plaintiff’s valuation report. Instead, the only
25 explanation is buried on the last page of the report, stating in full: “Projected Sold Adjustment – an
26 adjustment to reflect consumer purchasing behavior (negotiating a different price than the listed
27 price).” Exhibit 1 at p. 8.

28 16. Defendant’s Projected Sold Adjustments are deceptive. As part of a deceptive

1 practice to lower the value of property claims, Defendant does not do what they say they will do –
2 pay actual cash value. Moreover, as described above, Defendant provides no explanation or
3 justification for the Projected Sold Adjustment, much less the specific amount applied, other than
4 the speculation that it “reflect[s] consumer behavior.” Exhibit 1 at p. 8.

5 17. In truth, Defendant’s Projected Sold Adjustments do not reflect market realities (the
6 context in which “consumer behavior” occurs) and run contrary to customary automobile dealer
7 practices and inventory management, where list prices are priced to market to reflect the intense
8 competition in the context of internet pricing and comparison shopping. A negotiated price discount
9 would be highly atypical and therefore is not proper to include in determining actual cash value.
10 The inclusion of this significant downward adjustment purportedly to “reflect consumer purchasing
11 behavior” is particularly improper in the context of this action—insureds who have suffered a total
12 loss of their vehicle and need to procure a replacement and have limited time to search out the
13 illusory opportunity to obtain the below-market deal Defendant assumes always exists without any
14 explanation or support.

15 18. Defendant’s Projected Sold Adjustments are contrary to appraisal standards. There
16 are multiple generally-recognized and acceptable methodologies for determining actual cash value,
17 including use of comparable vehicles. Defendant begins the process of valuing loss vehicles using
18 comparative methodology but improperly deviates from that process by thumbing the scales in
19 favor of Progressive Preferred. Defendant documents the loss vehicle’s and each comparable
20 vehicle’s mileage, options, and trim, which are compared in the report, and makes dollar
21 adjustments accordingly. Plaintiff does not challenge these documented adjustments. At this stage
22 of the process, Defendant abandons the comparative methodology and applies adjustments that are
23 contrary to proper appraisal methodologies for determining actual cash value. Appraisers use
24 advertised prices and only make adjustments based on observed and verifiable data; appraisal
25 standards do not permit arbitrary adjustments from the advertised price based upon undocumented
26 and unverifiable projections.

27 19. The impropriety and arbitrariness of Defendant’s Projected Sold Adjustments are
28 further demonstrated by the fact that Mitchell’s primary competitor in providing valuation reports

1 to insurance companies—CCC Intelligent Solutions—does not apply projected sold adjustments in
2 this manner. Instead, CCC Intelligent Solutions uses list prices.

3 20. On information and belief, the impropriety and arbitrariness of Defendant’s
4 Projected Sold Adjustments are further demonstrated by the fact that Progressive Group entities do
5 not apply these adjustments when valuing total losses in California. There is no justification for
6 applying these adjustments when valuing total losses in Arizona while not subjecting California
7 claimants to the same negative adjustments.

8 21. Plaintiff and each member of the class were damaged by Defendant’s application of
9 these Projected Sold Adjustments because they were not paid the actual cash value they would have
10 received had Defendant applied proper methodologies and appraisal standards.

11 22. Were it not for this deceptive and improper adjustment, the “Base Value” in
12 Plaintiff’s valuation report would have been higher, resulting in a higher “settlement value” and in
13 turn a higher payment by Defendant for actual cash value. Specifically, for Plaintiff Ambrosio,
14 were it not for this deceptive and improper adjustment, the payment of actual cash value by
15 Defendant would have been \$722.40 higher,¹ before adding the related increase in payments for
16 applicable sales taxes.

17 **CLASS ALLEGATIONS**

18 23. This action is brought by Plaintiff as a class action, on his own behalf and on behalf
19 of all others similarly situated, under Rule 23 of the Federal Rules of Civil Procedure, for damages,
20 plus interest, costs, and attorney’s fees. Plaintiff seeks certification of this action as a class action
21 on behalf of the following Class:

22 All persons who made a first-party claim on a policy of insurance issued by
23 Progressive Preferred to an Arizona resident who, from the earliest allowable time
24 through the date of resolution of this action, received compensation for the total loss
25 of a covered vehicle, where that compensation was based on a valuation report
prepared by Mitchell and the actual cash value was decreased based upon Projected
Sold Adjustments to the comparable vehicles used to determine actual cash value.

26 24. Plaintiff reserves the right to amend or modify the Class definitions.
27

28 ¹ \$722.40 is the average of the Projected Sold Adjustments applied to each of the five comparable vehicles in Plaintiff
Ambrosio’s valuation report.

1 25. Excluded from the proposed Class are: (a) Defendant and its agents, officers,
2 directors, parent companies, subsidiaries, and affiliates; (b) counsel representing Plaintiff and any
3 person employed by counsel; and (c) any judicial officers assigned to this case and their staff.

4 26. **Numerosity (Rule 23(a)(1)).** The exact number of the Class, as herein identified
5 and described, is not known, but it is estimated to be in the thousands if not tens of thousands.
6 Accordingly, the Class is so numerous that joinder of individual members herein is impracticable.

7 27. **Commonality (Rule 23(a)(2)).** There are common questions of law and fact in the
8 action that relate to and affect the rights of each member of the Class and the relief sought is
9 common to the entire class. In particular, the common questions of law and fact include:

- 10 a. Whether Defendant systemically used Mitchell's Vehicle Valuation Reports in
11 adjusting total loss claims to determine actual cash;
- 12 b. Whether the Mitchell Vehicle Valuation Reports included Projected Sold
13 Adjustments to the value of the comparable vehicles that reduced the base value,
14 and thus the claim amount paid by Defendant for the actual cash value of Plaintiff's
15 and Class members' total loss vehicles;
- 16 c. Whether representing to claimants that the Mitchell valuation equated with the total
17 loss vehicle's actual cash value was deceptive;
- 18 d. Whether Defendant's deceptive acts and improper practices injured Plaintiff and
19 members of the Class;
- 20 e. Whether Defendant's acts violated its obligations under the policy of insurance;
- 21 f. Whether Plaintiff and the Class are entitled to compensatory damages, and if so, the
22 calculation of damages; and
- 23 g. Whether Plaintiff and members of the Class are entitled to an injunction restraining
24 Progressive Preferred's future deceptive acts and practices.

25 28. **Typicality (Rule 23(a)(3)).** The claims of the Plaintiff, who is representative of the
26 Class herein, are typical of the claims of the proposed Class, in that the claims of all members of
27 the proposed Class, including the Plaintiff, depend on a showing of the acts of Progressive Preferred
28 giving rise to the right of Plaintiff to the relief sought herein. There is no conflict between the

1 individually named Plaintiff and the other members of the proposed Class with respect to this
2 action, or with respect to the claims for relief set forth herein.

3 29. **Adequacy (Rule 23(a)(4)).** The named Plaintiff is the representative party for the
4 Class, and is able to, and will fairly and adequately, protect the interests of the Class. The attorneys
5 for the Plaintiff and the Class are experienced and capable in complex civil litigation, insurance
6 litigation, and class actions.

7 30. **Predominance & Superiority (Rule 23(b)(3)).** Class certification is appropriate
8 under Rule 23 because the common questions of law and fact in this case predominate over
9 questions affecting only individual members of the Class, and a class action is the superior method
10 for fair and efficient adjudication of the controversy. The likelihood that individual members of the
11 Class will prosecute separate action is remote due to the time and expense necessary to conduct
12 such litigation. The class action procedure would permit a large number of injured persons to
13 prosecute their common claims in a single forum simultaneously, efficiently, and without
14 unnecessary duplication of evidence and effort. Class treatment also would permit the adjudication
15 of claims by class members who claims are too small and complex to individually litigate against
16 a large corporate defendant.

17 31. **Final Declaratory or Injunctive Relief (Rule 23(b)(2)).** Plaintiff also satisfies the
18 requirements for maintaining a class action under Rule 23(b)(2). Defendant has acted or refused to
19 act on grounds that apply generally to the proposed Class, making final declaratory or injunctive
20 relief appropriate with respect to the proposed Class as a whole.

21 32. **Particular Issues (Rule 23(c)(4)).** Plaintiff also satisfies the requirements for
22 maintaining a class action under Rule 23(c)(4). Plaintiff's claims consist of particular issues that
23 are common to all members of the Class and are capable of class-wide resolution that will
24 significantly advance the litigation.

25 **FIRST CAUSE OF ACTION**
26 **BREACH OF CONTRACT**
27 **(On Behalf of Plaintiff and the Breach of Contract Class)**

28 33. Plaintiff hereby repeats and realleges all preceding paragraphs contained herein.

34. This cause of action is asserted on behalf of Plaintiff Ambrosio, and members of the

1 Breach of Contract class against Progressive Preferred.

2 35. Plaintiff Ambrosio made a claim for property damage on his Progressive Preferred
3 insurance policy.

4 36. At the time of his claim, Plaintiff Ambrosio was party to an insurance contract
5 requiring Progressive Preferred to handle, adjust, and pay insureds the actual cash value of their
6 total loss claim.

7 37. Before making his claim, and in the time since, Plaintiff Ambrosio has performed
8 all obligations under his policy of insurance and was entitled to the benefits he contracted for in
9 that policy.

10 38. Through the use of improper and unfounded Projected Sold Adjustments in Mitchell
11 vehicle valuation reports, as detailed above, Defendant Progressive Preferred handled, adjusted,
12 and paid Plaintiff Ambrosio's claim, and the claims of the members of the proposed Breach of
13 Contract Class, for less than the actual cash value required by the insurance contract.

14 39. As a direct result of Defendant Progressive Preferred's breach, Plaintiff Ambrosio
15 and members of the Breach of Contract Class sustained actual damages. Plaintiff Ambrosio's
16 damages are at least \$722.40 (before calculation of additional sales tax benefits), plus pre-judgment
17 and post-judgment interest.

18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, Plaintiff individually and on behalf of all others similarly situated,
20 respectfully requests that this Court:

- 21 a) determine that this action may be maintained as a class action under Rule 23 of the
22 Federal Rules of Civil Procedure, certify the proposed Class for class treatment,
23 appoint Plaintiff as class representative for each class, and appoint undersigned
24 counsel as Class Counsel;
- 25 b) enter an order finding that Defendant's actions described herein constitute breaches
26 of the express terms of its policy of insurance;
- 27 c) award Plaintiff and members of the Class actual damages according to proof;
- 28

- 1 d) enter an injunction restraining Defendant's use of deceptive and unfounded
2 Projected Sold Adjustments in determining the actual cash value of total loss
3 vehicles;
4 e) award pre-judgment and post-judgment interest at the maximum rate permitted by
5 applicable law;
6 f) award reasonable attorney's fees and litigation costs and expenses pursuant to
7 applicable law; and
8 g) grant such such other legal and equitable relief as the Court may deem appropriate,
9 including specific performance as an alternative to damages.

10 **JURY DEMAND**

11 Plaintiff hereby demands a jury trial on all claims so triable.

12 Dated: March 4, 2022

Respectfully submitted,

13 **EDELSBERG LAW, P.A.**

14 By: /s/ Andrew J. Shamis

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