



MARKET CONDUCT:

**AUTO INSURER ACTIONS HARM CONSUMERS
AND AVOID MEANINGFUL OVERSIGHT**

**NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS
CHICAGO, IL AUGUST, 2024**

Erica. L. Eversman, J.D.

Automotive Education & Policy Institute

FAILURES TO UNDERSTAND (1)

POLICY REMEDIES

- Total Loss
 - *Pay insured Actual Cash Value (ACV)*
- Partial Loss
 - *Pay loss in money (write a check)*
 - *Elect to repair (take control, become general contractor, accept 100% liability for repair)*

FAILURES TO UNDERSTAND (2)

INSURED AND (THIRD-PARTY) CLAIMANT

- Insured (contract law)
 - *Policy terms and limitations*
 - Non-original parts
 - Rental car limits
 - Insurer remedy determination
- Third-Party Claimant (negligence law)
 - *No limitations*
 - on parts type/usage
 - on rental car/loss of use
 - *No insurer right to inspect vehicle prior/during repair*
 - *No remedy determination (except salvage law requirements)*

TOTAL LOSS ISSUES

■ SYSTEMATIC UNDERVALUATION OF ACV

- *Offers often \$3,000 -- \$4000 less than true value*
- *Consumers cannot replace vehicle for payout*
- *Use of comps with negative vehicle history*
- *Use of Buy Here/Pay Here dealer list prices*
 - *Dealer offers previously damaged and repaired cars*
 - *List price reflects negative vehicle history (i.e. lower)*
 - *High % financing is real incentive for dealer*
- *Manipulated software determinations*

RECENT EXAMPLE FROM OHIO:

- CCC One Market Value Report for March 2024 total loss of 2019 Ford Fiesta
 - *Identified Comparable Vehicles at:*

List Price	\$8,997	\$9,988	\$8,998
Adjusted Price	\$7,845	\$8,754	\$9,073

- Actual Sales Price of Each Comparable Vehicle
 - *Sourced from OH BMV Records on April 4, 2024*

Sales Price	\$10,997	\$12,648	\$10,198
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SYSTEMATIC ACV UNDERVALUATION

■ THIRD PARTY VALUATION SOFTWARE PROVIDERS

- *Not truly independent*
- *Develop “special” software for different insurers*
 - “Special” software produces lower valuations than the “public” version
 - “Some insurers require that bidders commit to spending \$ 500,000 to \$ 600,000 per year-to develop software that is unique to that customer.” *FTC v. CCC Holdings Inc.*, Defendants’ Post Trial Brief, 2009 U.S. Dist. Ct. Briefs LEXIS 377, *32
Case 1:08-cv-02043-RMC Document 80 Filed 02/11/2009 Page 23 of 56 (original source)
 - “That the insurers have enough sophistication and buying power to force CCC, Audatex, and Mitchell to produce customized products is another factor that cuts against the likelihood of coordination.” *Id.*, *ftnt 10*
<https://advance.lexis.com/api/permalink/bcdd1089-9d70-4c71-bee0-7a1cff2c2a99/?context=1000516>

COMPARABLE SOURCE LIMITS

■ INSURER REFUSAL TO CONSIDER COMPS FROM:

- CARMAX
- CARVANA
- CRAIGSLIST
- FACEBOOK MARKETPLACE
- KELLY BLUE BOOK
- VROOM
- ANY AUCTION SITES

Insurer email dated April 1, 2024

VANISHING APPRAISAL CLAUSE

- INSURERS SEEKING TO/HAVE REMOVED APPRAISAL CLAUSE FROM POLICY
 - *Valuation is issue of fact for Regulators*
 - *No Alternative Dispute Resolution Options without Appraisal Clause*
 - *Forced to file lawsuits to recover true ACV*

Insurers Forcing Consumers to Sue:

- Contrary to insurance regulations
- Lack of attorney representation for suit
 - *Gives insurer incentive to maintain lower claim payout*
- Small claims court limits
 - *Higher value claims beyond jurisdictional limit*
 - *Insurer may remove to general jurisdiction court*

LAWSUITS OVER ACV VALUATION

- *People of California v. The Progressive Corp., et al.*, Alameda Cty., CA Superior Ct. Case #24CV073476 (filed April, 2024)
 - *District Attorney Alameda County, CA sued:*
 - *For manipulating/using software designed to select vehicles not truly comparable in the loss marketplace, and impose opaquely determined adjustments reducing value*
 - Progressive entities
 - USAA entities
 - Mitchell International (valuation company)
 - CCC Intelligent Solutions entities (valuation companies)

- *Volino v. Progressive Casualty Ins. Co. et al*, Case 1:21-cv-06243 N.Y. Dist. Ct., S.D. (NY federal court)
 - *Class action over Mitchell's imposition of "projected sold adjustments" on every total loss valuation*
 - PSA justified as representing amount dealer would reduce list price for on used vehicle
 - Proposed settlement in NY State for \$48Million

HAPPENING ACROSS THE NATION

- Pattern and Business Practice
- Evidence strongly suggests insurers and software providers are engaged in conspiracy to defraud insureds/consumers



**CONSUMERS
NEED YOUR HELP**



PARTIAL LOSS ISSUES

- Conflicts between auto insurer demands and garagekeeper's policy requirements
- Use estimating software providers to justify "prevailing labor rates in market"
- Blanket use of imitation parts and/or salvage parts in offer to insured/claimant
- Negotiates prices nationwide for subcontractor work
- Demand claimant utilize own insurance in third-party claim

AUTO V. GARAGE INSURANCE

- Conflicts between auto insurer demands and garagekeeper's policy requirements
 - *OEM mandated procedures*
 - *Parts usage*
 - *Sublet*
 - *Indemnification*
- Auto Insurers prohibit network shops from disclosing terms of insurer's Direct Repair Program arrangements
 - *Repairers fail to obtain commitment from Garage carrier to cover repairer if shop complies with network terms*

JUSTIFYING “PREVAILING LABOR RATE”

Use estimating software providers to falsely create “prevailing labor rates in market”

- Deliberately hide increases in rate paid via “misc. adjustment(s)”
 - “Insurer and other insurance companies had a practice of masking the true effective labor rate it paid to repair shops by offering repair shops ‘labor rate concessions’ when it had difficulty reaching agreed prices with repair shops. These concessions— either in the form of lump sum payments or allotting additional labor hours for repairs—had the disguised effect of paying repair shops more money for labor, while maintaining the appearance (in estimates summaries and subrogation data) of paying the lower labor rate it included in its estimates to Garage.”
Nick's Garage v. Nationwide Mut. Ins. Co., 715 F. App'x 31, 35 (2d Cir. 2017)
- Use contract rates agreed to by network shops to justify rate imposed on all repair providers
 - “illogic of Insurer's proposition that the rate *it* can regularly command demonstrates the prevailing rate in the market”
Nick's Garage, Inc. v. Progressive Cas. Ins. Co., 875 F.3d 107, 121 (2d Cir. 2017)

IMITATION REPAIR PARTS

- Blanket use of imitation parts and/or salvage parts in offer to insured/claimant to settle
 - *Whether appropriate or not for repair*
 - *Adjusters' job reviews consider quotas of imitation parts written in estimates*
- Must meet STANDARDS for use
 - Laws permit insurers to use the cost of non-OEM parts in their estimates, *but* require that the part "shall equal or exceed the comparable OEM crash part in terms of fit, form, finish, quality and performance."
Nick's Garage, Inc. v. Progressive Cas. Ins. Co., 875 F.3d 107, 118 (2d Cir. 2017)
 - *Some parts subject to FMVSS (Fed. Mot. Veh. Safety Stnd.)*

JUNE PARTS DECERTIFICATION

CAPA 301 STANDARD - LIGHTING

Manufacturer	Application Description	Part Description	OEM		Partslink	
<u>Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>Number</u>	<u>Number</u>
346-4004R-AC	Audi Q5 on bumper, 18-20	Lamp, Fog Rear R	DEPO	20230807	80A945070A	AU2801123
20-9951-00-9	Chevrolet Equinox, 18	Headlamp, R	TYC Brother	2062310	84194564	GM2503470
20-16419-90-9	Ford F-150 XL Crew Cab Pickup, 18-19, Halogen	Headlamp, R	TYC Brother	2062310	JL3Z13008C	F02519145
20-16256-00-9	Honda Accord, 18-22, Sedan	Headlamp, L	TYC Brother	8212310	33150TVAA02	H02502187
317-1191R-ACN2	Honda Accord, 21-22, EX-L; Touring; Sedan	Headlamp Assy, R	DEPO	20230213	33100TVAA91	H02503201
20-9716-80-9	Honda Passport, 19-21, Halogen High Beam	Headlamp Assy, L	TYC Brother	4242310	33150TG7A21	H02502172
12-5418-00-9	Hyundai Kona Electric, 19-20	Lamp, Daytime Running L	TYC Brother	2272310	92207J9010	HY2562109
20-9993-90-9	Toyota Camry Hybrid LE Model, 21-21	Headlamp, R	TYC Brother	3212210	8111006G10	T02503277
312-11BDL-ACN9	Toyota Corolla Sedan SE Model, 20-21, w/Nightshade Edition, North America built	Headlamp Assy, L	DEPO	20230220	8115002P50	T02502304
312-11BHR-UC2	Toyota Corolla, 20-22, Sedan, Combination Lamp, L, LE Model, North America/ Japan Built	Headlamp, Lens/Housing R	DEPO	20220328	8114002S30	T02519197
20-16955-90-9	Toyota RAV-4 Hybrid LE Model, 19-21, North American built, w/o Adaptive Headlamps	Headlamp Assy, R	TYC Brother	1222410	811100R152	T02503274
20-16955-90-9	Toyota RAV-4 Hybrid LE Model, 19-21, North American built, w/o Adaptive Headlamps	Headlamp Assy, R	TYC Brother	5082310	811100R152	T02503274
20-17307-00-9	Toyota RAV-4 Hybrid; North America Built; Limited, XLE, XSE Model, 19-20	Headlamp Assy, R	TYC Brother	8072310	811100R160	T02503292

NEGOTIATE PRICES FOR SUBLET

- Negotiates prices nationwide for subcontractor work
 - *Imposes set prices on repair provider/insured*
 - Insurers demand use of insurer-selected subcontractor
 - Sets sublet negotiated price as maximum pay for work
- Repairer is liable for all sublet work, not insurer
- Use of:
 - *Safelite® for all glass repairs*
 - *AsTech diagnostic scanning tools*

CLAIMANT ISSUES

- Demand insured utilize own insurance in third-party claim
 - *Typically violates state insurance regulations*
 - *Denies consumer right to be “made whole”*
 - At fault driver insurer now gains benefits of policy contract limitations
 - Forces consumer to recover via contract law, not negligence law
 - More complicated to recover for Inherent Diminished Value and Loss of Use
 - Forces consumer to pay a deductible

Recommendations

- Investigate insurer use of total loss software
- Require insurers to notify insured in writing of remedy provision elected prior to repair
- Require insurers to notify consumers and pay to replace improper imitation parts:
- Require insurers to reflect increase in labor rate in labor rate field of estimating software
- Prohibit insurers from using network shop "contract" rates when determining "prevailing market rates"
- Prohibit insurers from including indemnification beyond negligence in network shop agreement
- Investigate demands to use claimant's insurance

QUESTIONS?

Erica. L. Eversman, J.D.



COMPARABLE VEHICLES

Options	Loss Vehicle	Comp 1	Comp 2	Comp 3
201a	x	x	✓	x
Odometer	71,156	71,251	72,874	90,246
Automatic Transmission	✓	✓	✓	✓
Power Steering	✓	✓	✓	✓
Power Brakes	✓	✓	✓	✓
Power Windows	✓	✓	✓	✓
Power Locks	✓	✓	✓	✓
Power Mirrors	✓	✓	✓	✓
Air Conditioning	✓	✓	✓	✓
Climate Control	✓	x	x	x
Tilt Wheel	✓	✓	✓	✓
Cruise Control	✓	✓	✓	✓
Rear Defogger	✓	✓	✓	✓
Intermittent Wipers	✓	✓	✓	✓
Console/Storage	✓	✓	✓	✓
Overhead Console	✓	✓	✓	✓
Entertainment Center	x	✓	✓	x
Keyless Entry	✓	✓	✓	✓
Telescopic Wheel	✓	✓	✓	✓
Message Center	✓	✓	✓	✓
Cloth Seats	✓	✓	✓	✓
Bucket Seats	✓	✓	✓	✓
Heated Seats	✓	x	x	x
AM Radio	✓	✓	✓	✓
FM Radio	✓	✓	✓	✓
Stereo	✓	✓	✓	✓
Search/Seek	✓	✓	✓	✓
CD Player	✓	✓	x	✓
Steering Wheel Touch Controls	✓	✓	✓	✓
Auxiliary Audio Connection	✓	✓	✓	✓
Satellite Radio	x	x	✓	x
Equalizer	✓	✓	✓	✓
Aluminum/Alloy Wheels	✓	✓	✓	✓
Drivers Side Air Bag	✓	✓	✓	✓
Passenger Air Bag	✓	✓	✓	✓
Anti-lock Brakes (4)	✓	✓	✓	✓
Front Side Impact Air Bags	✓	✓	✓	✓
Head/Curtain Air Bags	✓	✓	✓	✓
Backup Camera	✓	✓	✓	✓
Hands Free	✓	✓	✓	✓

Comp 1 Updated Date: 02/27/2024

2019 Ford Fiesta Se 4 1.6l Gasoline

Sequential Mpi

VIN 3FADP4BJ7KM129191

Dealership Great Lakes Kia

Telephone (833) 223-0549

Source Autotrader

Stock # 23K1767B

Distance from Westerville, OH

2 Miles - Columbus, OH

Comp 2 Updated Date: 03/19/2024

2019 Ford Fiesta Se 4 1.6l Gasoline

Sequential Mpi

VIN 3FADP4BJ4KM106936

Dealership Valley Ford

Telephone (614) 888-3333

Source Autotrader

Stock # CUN0147

Distance from Westerville, OH

15 Miles - Columbus, OH

Comp 3 Updated Date: 02/02/2024

2019 Ford Fiesta Se 4 1.6l Gasoline

Sequential Mpi

VIN 3FADP4BJ8KM146856

Dealership The Ricart Used Car Factory

Telephone (614) 808-4747

Source Autotrader

Stock # PRT47585A

Distance from Westerville, OH

17 Miles - Groveport, OH

Comparable vehicles used in the determination of the Base Vehicle Value are not intended to be replacement vehicles but are reflective of the market value, and may no longer be available for sale.

List Price is the sticker price of an inspected dealer vehicle and the advertised price for the advertised vehicle.

Distance is based upon a straight line between loss and comparable vehicle locations.

*The Condition Adjustment sets that comparable vehicle to Average Private condition, which the loss vehicle is also

 COMPARABLE VEHICLES

Options	Loss Vehicle	Comp 1	Comp 2	Comp 3
Alarm	✓	✓	✓	✓
Traction Control	✓	✓	✓	✓
Stability Control	✓	✓	✓	✓
Dual Mirrors	✓	✓	✓	✓
Heated Mirrors	✓	x	x	x
Tinted Glass	✓	✓	✓	✓
Fog Lamps	x	x	✓	x
Rear Spoiler	x	x	✓	x
Signal Integrated Mirrors	✓	x	x	x
Clearcoat Paint	✓	✓	✓	x
Metallic Paint	x	✓	✓	✓
Three Stage Paint	x	x	x	✓
California Emissions	✓	✓	✓	✓
List Price		\$ 8,997	\$ 9,988	\$ 8,998
Adjustments:				
Options		- \$ 88	- \$ 289	+ \$ 189
Mileage		+ \$ 7	+ \$ 126	+ \$ 957
Condition ¹		- \$ 1,071	- \$ 1,071	- \$ 1,071
Adjusted Comparable Value		\$ 7,845	\$ 8,754	\$ 9,073

compared to in the Vehicle Condition section.

An official State of Ohio site. Here's how you know 



#1

Year

2019

Make

FORD

Model

FIESTA

Mileage

71,311

Body Type

FOUR DOOR

Condition

GOOD

Mileage Brand

ACTUAL

VIN

3FADP4BJ7KM129191

Paper Title

Title Number

2517975905

Control Number

227291430

Issue Date

03/22/2024

Title Status

ACTIVE

County Of Residence

FRANKLIN

Purchase Price

\$10,997.00

An official State of Ohio site. Here's how you know 



#2

Year

2019

Make

FORD

Model

FIESTA

Mileage

73,021

Body Type

FOUR DOOR

Condition

GOOD

Mileage Brand

ACTUAL

VIN

3FADP4BJ4KM106936

Electronic Title

Title Number

2102120627

Control Number

EA4079309

Issue Date

03/28/2024

Title Status

ACTIVE

County Of Residence

SUMMIT

Purchase Price

\$12,648.00

An official State of Ohio site. Here's how you know 



#3

Year	2019
Make	FORD
Model	FIESTA
Mileage	90,266
Body Type	FOUR DOOR
Condition	GOOD
Mileage Brand	ACTUAL
VIN	3FADP4BJ8KM146856

Electronic Title

Title Number	2303613148
Control Number	EA3982091
Issue Date	02/12/2024
Title Status	ACTIVE
County Of Residence	FRANKLIN
Purchase Price	\$10,198.00

DECERTIFIED LOTS

Decertification means to withdraw or revoke certification. Part numbers or individual part lot numbers are decertified by CAPA only after they have been found to no longer comply with any of the requirement(s) of the applicable standard. Decertification, in itself, may not warrant a safety recall as governed by the Motor Vehicle Safety Act under NHTSA. In cooperation with repairers, insurers, distributors, and part manufacturers, CAPA continuously monitors and reviews the quality of parts certified to meet or exceed CAPA standards. The following list includes parts that no longer meet the CAPA standards to which they were originally certified and therefore the following parts have been decertified. CAPA would like to thank you for your support in reporting non-compliance variations, regardless of the significance. Your assistance assures repairers and consumers they can continue to expect quality collision replacement parts when they see the CAPA seal.

CAPA 101 STANDARD - METALS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
CVMR10FL1	Chevrolet Camaro Convertible, 11-15	Fender L	Gordon 12/20A	20943621	GM1240365
FD9410160-0L0C	Ford F-150 Pickup, 04-08, w/wheel opng mldg	Fender L	AP 07/22A	5L3Z16006BA	FO1240232
ZAP20073LQ	Ford F-150 Pickup, 04-08, w/wheel opng mldg	Fender L	San Wanpum 07/22A	5L3Z16006BA	FO1240232

CAPA 201 STANDARD - PLASTICS

JaNJ

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
Y-GMBP355CA	Chevrolet Impala ECO LS, 14	Bumper Cover, Front	Y.C.C. 06/23A	22990034	GM1000959
DG26-9908	Dodge Charger, 15-16, w/hood scoop	Bumper Cover, Front	Tran Hung 07/23A	5PP39TZZAC	CH1000A23
DG26-9908	Dodge Charger, 15-16, w/hood scoop	Bumper Cover, Front	Tran Hung 12/22A	5PP39TZZAC	CH1000A23
DG-04145BBQ	Dodge Charger, 15-17, w/o Hood Scoop	Bumper Cover, Front	Tong Yang 03/23A	68267765AB	CH1000A24
HN-04176BBQ	Hyundai Elantra Sedan, 17-18, 1.4L Turbo/2.0L, USA Built	Bumper Cover, Front	Tong Yang 04/23A	86510F3000	HY1000215
HN-04216BBQ	Hyundai Santa Fe, 19-20	Bumper Cover, Front	Tong Yang 05/23A	86511S2000	HY1000235
TY-04516BCQ	Toyota Camry Hybrid, 15-17	Bumper Cover, Front	Tong Yang 05/23A	5211907912	TO1000409

CAPA 202 STANDARD - NON-WOVEN FABRICS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE					

CAPA 301 STANDARD - LIGHTING

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
11-6975-00-9	Honda CR-V, North American Built, 17 - 19	Taillamp R	TYC Brother 5082310	33500TLAA01	HO2805113

CAPA 401 STANDARD - ATTACHMENT PARTS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE					

CAPA 402 STANDARD - FRONT SUPPORT PARTS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE					

CAPA 501 STANDARD - BUMPER PARTS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
FO1002430DSC	Ford Pickup F-150 XLT/Lariat/Platinum, w/Fog Lamps, 18-20	Bumper, Front	PBSI-DS 23187	JL3Z17757A	FO1002430

CAPA 701 STANDARD - MIRRORS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE					



MONTHLY DECERTIFICATION REPORT January 2024*

[Report: P8]
Monthly

CAPA 702 STANDARD - CAMERAS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE						

CAPA 703 STANDARD - AUTOMOTIVE SENSORS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE						

CAPA 801 STANDARD - AUTOMOTIVE GLASS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE						

*This report includes all decertifications from December 1, 2023 through December 31, 2023.

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In cooperation with repairers, insurers, distributors, and part manufacturers, CAPA continuously monitors and reviews the quality of parts certified to meet or exceed CAPA standards. The following list includes parts that no longer meet the CAPA standards to which they were originally certified and therefore the following parts have been decertified. CAPA would like to thank you for your support in reporting non-compliance variations, regardless of the significance. Your assistance assures repairers and consumers they can continue to expect quality collision replacement parts when they see the CAPA seal.

CAPA 101 STANDARD - METALS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
FDMT15HD1	Ford Mustang, 15-17, Convertible, w/o Hood Scoop	Hood	Gordon	09/22A	FR3Z16612A	FO1230312
TY2820150-000C	Toyota Corolla, 14-19	Hood	AP	06/23A	5330102270	TO1230232

CAPA 201 STANDARD - PLASTICS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
HD-04351BDQ	Acura MDX, 17, Sport Hybrid, w/o Parking Sensors	Bumper Cover, Rear	Tong Yang	09/22A	04715TZ5A70ZZ	AC1100178
CV-04176BDQ	Chevrolet Suburban 1500 LS/LT, 07-14, w/Object Sensor	Bumper Cover, Rear	Tong Yang	07/23A	20951791	GM1100787
CV-04302BCQ	Chevrolet Suburban, 15, w/o Parking aid sensors	Bumper Cover, Front	Tong Yang	05/23A	23142975	GM1000973
HD0910870-200C	Honda Civic Hybrid, 13-15	Bumper Cover, Rear Upper	AP-Procom	09/22A	04715TR3A50ZZ	HO1100278
HD-04300BBQ	Honda Pilot, 16-18	Bumper Cover, Rear	Tong Yang	04/22A	04715TG7A90ZZ	HO1114104
Y-HYBP021CA	Hyundai Elantra Sedan, 11-12 (USA)	Bumper Cover, Rear	Y.C.C.	03/23A	866113Y000	HY1100180
TY-04433BDQ	Lexus RX 350, 13-15, w/o F Sport pkg, Japan Built, w/ Parking Assist	Bumper Cover, Front	Tong Yang	01/23A	521190E916	LX1000248
Y-DSBP238CA	Nissan Altima, 13-15, Sedan	Bumper Cover, Front	Y.C.C.	06/23A	620223TA0H	NI1000285
SB-04034BBQ	Subaru Outback, 10-12	Bumper Cover, Front	Tong Yang	05/23A	57704AJ09A	SU1000165
TYB163NBQ	Toyota Corolla SE/XSE, 17-19, w/Sport	Bumper Cover, Front	Pro Fortune	10/22A	5211903908	TO1000424

CAPA 202 STANDARD - NON-WOVEN FABRICS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE						

CAPA 301 STANDARD - LIGHTING

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE						

CAPA 401 STANDARD - ATTACHMENT PARTS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE						

CAPA 402 STANDARD - FRONT SUPPORT PARTS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE						

CAPA 501 STANDARD - BUMPER PARTS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE						

CAPA 701 STANDARD - MIRRORS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
20240212JS						



MONTHLY DECERTIFICATION REPORT February 2024*

[Report: P8]
Monthly

<u>Number</u>	<u>Description</u>	<u>Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>Number</u>	<u>Number</u>
NONE						

CAPA 702 STANDARD - CAMERAS

<u>Manufacturer</u>	<u>Application</u>	<u>Part</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM</u>	<u>Partslink</u>
<u>Number</u>	<u>Description</u>	<u>Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>Number</u>	<u>Number</u>
NONE						

CAPA 703 STANDARD - AUTOMOTIVE SENSORS

<u>Manufacturer</u>	<u>Application</u>	<u>Part</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM</u>	<u>Partslink</u>
<u>Number</u>	<u>Description</u>	<u>Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>Number</u>	<u>Number</u>
NONE						

CAPA 801 STANDARD - AUTOMOTIVE GLASS

<u>Manufacturer</u>	<u>Application</u>	<u>Part</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM</u>	<u>Partslink</u>
<u>Number</u>	<u>Description</u>	<u>Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>Number</u>	<u>Number</u>
NONE						

*This report includes all decertifications from January 1, 2024 through January 31, 2024.

DECERTIFIED LOTS

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CAPA 101 STANDARD - METALS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partslink Number</u>
DJ-EA11401	Hyundai Elantra Coupe, 13-14	Hood	Da Juane	08/23A	664003X000	HY1230150

CAPA 201 STANDARD - PLASTICS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partslink Number</u>
BM-04137BFQ	BMW X5 E Hybrid F15, 16-18, w/o M Pkg, w/Luxury Pkg	Bumper Cover, Rear	Tong Yang	04/23A	51127384334	BM1100278
CV04351BBQ	Chevrolet Malibu ECO, 14	Bumper Cover, Front	TYG Products	23/06/05	23146557	GM1000962
HD-04358BBQ	Honda Accord, 18-20, Hybrid, Base Model	Bumper Cover, Rear	Tong Yang	05/23B	04715TVAA00ZZ	HO1100311
DS04424BBQ	Nissan Altima, 13-15, Sedan	Bumper Cover, Front	TYG Products	23/10/03	620223TA0H	NI1000285
DS-04390BBQ	Nissan Murano, 15-18	Bumper Cover, Front	Tong Yang	01/23B	620225AA0H	NI1000305

CAPA 202 STANDARD - NON-WOVEN FABRICS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partslink Number</u>
NONE						

CAPA 301 STANDARD - LIGHTING

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partslink Number</u>
20-15910-00-9	Chevrolet Silverado 1500, 16-17, HID w/Chrome Bezel	Headlamp Assy, L	TYC Brother	5152310	84064044	GM2502445
A34-1126L-ACN	Dodge RAM 1500 Pickup, 13	Headlamp Assy, L	DEPO	20230522	68096439AC	CH2502242

CAPA 401 STANDARD - ATTACHMENT PARTS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partslink Number</u>
NONE						

CAPA 402 STANDARD - FRONT SUPPORT PARTS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partslink Number</u>
NONE						

CAPA 501 STANDARD - BUMPER PARTS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partslink Number</u>
GM1130105DSC	Chevrolet Silverado, 19-21, 1500 Crew Cab, w/Towing Pkg (RPO-Z82)	Hitch, Tow	Grand HC	04/23A	84824766	GM1130105

CAPA 701 STANDARD - MIRRORS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partslink Number</u>
NONE						

CAPA 702 STANDARD - CAMERAS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partslink Number</u>
20240306JS						



MONTHLY DECERTIFICATION REPORT March 2024*

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<u>Number</u>	<u>Description</u>	<u>Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>Number</u>	<u>Number</u>
NONE						

CAPA 703 STANDARD - AUTOMOTIVE SENSORS

<u>Manufacturer</u>	<u>Application</u>	<u>Part</u>	<u>OEM</u>	<u>Partslink</u>
<u>Number</u>	<u>Description</u>	<u>Description</u>	<u>Number</u>	<u>Number</u>
NONE				

CAPA 801 STANDARD - AUTOMOTIVE GLASS

<u>Manufacturer</u>	<u>Application</u>	<u>Part</u>	<u>OEM</u>	<u>Partslink</u>
<u>Number</u>	<u>Description</u>	<u>Description</u>	<u>Number</u>	<u>Number</u>
NONE				

*This report includes all decertifications from February 1, 2024 through February 29, 2024.

DECERTIFIED LOTS

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CAPA 101 STANDARD - METALS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
JPGC10FR1	Jeep Grand Cherokee Laredo, Limited, Overland, 11-13	Fender R	Gordon	06/23A	55369596AC	CH1241272
NS49002LQ	Nissan Rogue Hybrid, 17-18	Fender L	Cobra King	09/23A	631016FL0A	NI1240212

CAPA 201 STANDARD - PLASTICS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
DG-04143BBQ	Dodge Challenger, 15-22, w/Fog Lamps	Bumper Cover, Front	Tong Yang	05/23B	68258730AB	CH1000A20
DG-04145BBQ	Dodge Charger, 15-17, w/o Hood Scoop	Bumper Cover, Front	Tong Yang	05/23A	68267765AB	CH1000A24
DGB100NDQ	Dodge Charger, 15-22, R/T, R/T Road & Track, Police, w/Park Assist	Bumper Cover, Rear	Pro Fortune	06/23A	5RK98TZZAD	CH1100A08
CV-04190BBQ	GMC Terrain, 10-11	Bumper Cover, Front	Tong Yang	04/23A	25961372	GM1000912
Y-HDBP159ACA	Honda Accord Sedan, 08-10 (4cyl)	Bumper Cover, Front	Y.C.C.	05/23A	04711TA0A90ZZ	HO1000254
HD-04370BCQ	Honda Civic, 19-20, Coupe, Paint to Match, EX, LX, Sport, Touring Model	Bumper Cover, Front	Tong Yang	04/23A	04711TBAA50ZZ	HO1000322
Y-HDBP207CA	Honda Odyssey, 18-20	Bumper Cover, Front	Y.C.C.	06/23A	04711THRA00ZZ	HO1000310
BZ-04140BJQ	Mercedes-Benz GLK-Class, 10-12, w/o HL washer	Bumper Cover, Front	Tong Yang	01/23A	2048851425	MB1000331
Y-DSBP251CA	Nissan Murano, 19-23	Bumper Cover, Front	Y.C.C.	06/23A	620229UF0H	NI1000326
SB-04084BBQ	Subaru Ascent, 19-22, Paint to match	Bumper Cover, Front	Tong Yang	12/22A	57704XC00A	SU1000188
TY20-9942OSH	Toyota Avalon, 13-15	Bumper Cover, Front	Tran Hung	05/22A	5211907910	TO1000396
TY-04714BBQ	Toyota Corolla Sedan, L/LE/XLE, North American built, 20-21	Bumper Cover, Front	Tong Yang	06/23A	52119F2921	TO1000459
Y-TYBP306CA	Toyota Highlander Hybrid, 14-19, w/o Rear Object Sensors	Bumper Cover, Rear Upper	Y.C.C.	10/23A	521590E911	TO1114100

CAPA 202 STANDARD - NON-WOVEN FABRICS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE						

CAPA 301 STANDARD - LIGHTING

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
20-6879-00-9	Honda Accord Sedan, 08-12	Headlamp Assy, R	TYC Brother	7262110	33100TA0A01	HO2503130
382-1103R-ACC	Mini Cooper Clubman R55, 08-13	Headlamp Assy, R	DEPO	20160509	63122751876	MC2503107
315-11BK-AC1	Nissan Rogue, 21-22	Headlamp, L	DEPO	20230828	260606RR0A	NI2802284
315-11BK-AC1	Nissan Rogue, 21-22	Headlamp, R	DEPO	20230828	260106RR0A	NI2803284
11-6559-00-9	Toyota Avalon Hybrid, 13-15, on body	Taillamp R	TYC Brother	8082210	8155007070	TO2805117
11-6331-01-9	Toyota Prius, 10-11	Taillamp R	TYC Brother	7262110	8155147111	TO2819146
312-11BER-UC1	Toyota RAV-4 Japan Built Adventure, Limited, Trail, XLE, XLE Premium Model, 19-20	Headlamp Assy, R	DEPO	20221031	8113042810	TO2519201

CAPA 401 STANDARD - ATTACHMENT PARTS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE						

CAPA 402 STANDARD - FRONT SUPPORT PARTS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
20240405JS						



MONTHLY DECERTIFICATION REPORT April 2024*

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Monthly

FD063009U-000C Ford Focus HB/Electric, 12-18

Radiator Support

AP-Procom

09/22A

CM5Z8A284ACP

FO1225214

CAPA 501 STANDARD - BUMPER PARTS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE					

CAPA 701 STANDARD - MIRRORS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE					

CAPA 702 STANDARD - CAMERAS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE					

CAPA 703 STANDARD - AUTOMOTIVE SENSORS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE					

CAPA 801 STANDARD - AUTOMOTIVE GLASS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE					

*This report includes all decertifications from March 1, 2024 through March 31, 2024.

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CAPA 101 STANDARD - METALS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer Lot</u>	<u>OEM Number</u>	<u>Partsink Number</u>
MD04001Q	Mazda CX-30, 20-22	Hood	Cobra King 10/23A	DAY15231X	MA1230181

CAPA 201 STANDARD - PLASTICS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer Lot</u>	<u>OEM Number</u>	<u>Partsink Number</u>
BM33-8551-WSWP	BMW 7-Series, 16-19, G11/G12, 740i, 750i, 750Li - W/M Pkg	Bumper Cover, Rear	Tran Hung 11/21A	51128064760	BM1100357
CLB064NCQ	Chevrolet Cruze, 11-16, w/o RS Pkg, w/o Blind Spot, w/o Parking Sensors	Bumper Cover, Rear	Pro Fortune 10/23B	95016694	GM1100876
Y-GMBP359CA	GMC Terrain, 10-11	Bumper Cover, Front	Y.C.C. 07/23A	25961372	GM1000912
HN-04150BBQ	Hyundai Sonata, 14	Bumper Cover, Front	Tong Yang 08/23A	865113Q700	HY1000200
KA-04213BBQ	Kia Seltos, 21-23, Prime	Cover, Upper Bumper	Tong Yang 08/23A	86511Q5300	KI1014113
KA-04213BBQ	Kia Seltos, 21-23, Prime	Cover, Upper Bumper	Tong Yang 10/23A	86511Q5300	KI1014113
Y-KABP040ACA	Kia Sportage, 20-21, w/o Parking Sensors	Bumper Cover, Front	Y.C.C. 08/23A	86511D9500	KI1000206
LG-70-346C	Mitsubishi Outlander, 19	Bumper Cover, Rear	CHL 04/22A	6410D738	MI1100309
DS-04390BBQ	Nissan Murano, 15-18	Bumper Cover, Front	Tong Yang 11/21A	620225AA0H	NI1000305
SB-04051BBQ	Subaru XV Crosstrek Hybrid, 13-15	Bumper Cover, Front	Tong Yang 08/23A	57704FJ011	SU1000172
TY-04212BBQ	Toyota 4Runner Limited, 03-05	Bumper Cover, Front	Tong Yang 11/21A	5211935901	TO1000260
TY-04517BCQ	Toyota Camry Hybrid, 15-17, w/o Park Assist	Bumper Cover, Rear	Tong Yang 09/23A	5215906989	TO1100315
TY-04330BCQ	Toyota Corolla Base/CE/L/LE/XLE, 09-10, North American Built	Bumper Cover, Rear	Tong Yang 07/23A	5215902963	TO1100264
TY-04714BBQ	Toyota Corolla Sedan, L/LE/XLE, North American built, 20-21	Bumper Cover, Front	Tong Yang 10/23A	52119F2921	TO1000459
Y-TYBP341CA	Toyota Corolla, 19-22, Hatchback	Bumper Cover, Front	Y.C.C. 03/22A	5211912994	TO1000446

CAPA 202 STANDARD - NON-WOVEN FABRICS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer Lot</u>	<u>OEM Number</u>	<u>Partsink Number</u>
NONE					

CAPA 301 STANDARD - LIGHTING

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer Lot</u>	<u>OEM Number</u>	<u>Partsink Number</u>
20-9741-81-9	Ford Explorer Base, 16-18	Headlamp Assy, R	TYC Brother 3212210	FB5Z13008AK	FO2519129
K30-1942L-UC	Ford F-Series LD Pickup, 09-11	Taillamp L	DEPO 20230821	AL3Z13405A	FO2818143
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother 9122210	55112707AC	CH2502295
20-9980-00-9	Mazda CX-5, 17-18, w/Adaptive Headlamps	Headlamp, L	TYC Brother 3132310	KB8B51041K	MA2518176

CAPA 401 STANDARD - ATTACHMENT PARTS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer Lot</u>	<u>OEM Number</u>	<u>Partsink Number</u>
NONE					

MONTHLY DECERTIFICATION REPORT May 2024*

[Report: P8]
Monthly

CAPA 402 STANDARD - FRONT SUPPORT PARTS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partslink Number</u>
NONE						

CAPA 501 STANDARD - BUMPER PARTS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partslink Number</u>
NONE						

CAPA 701 STANDARD - MIRRORS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partslink Number</u>
NONE						

CAPA 702 STANDARD - CAMERAS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partslink Number</u>
NONE						

CAPA 703 STANDARD - AUTOMOTIVE SENSORS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partslink Number</u>
NONE						

CAPA 801 STANDARD - AUTOMOTIVE GLASS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partslink Number</u>
NONE						

*This report includes all decertifications from April 1, 2024 through April 30, 2024.

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CAPA 101 STANDARD - METALS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
MD04001Q	Mazda CX-30, 20-22	Hood	Cobra King 10/23A	DAY15231X	MA1230181
SB11195ALH	Subaru Ascent, 19-23	Fender L	Hui Yih 07/23A	57120XC01A9P	SU1240153

CAPA 201 STANDARD - PLASTICS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
AD-04076BCQ	Audi A4, 17-19, Sedan; A4 w/S-Line Pkg w/o Parking Aid	Cover Assy, Rear	Tong Yang 06/23A	8W5807067CGRU	AU1100227
BM-04175BLQ	BMW 3-Series, 16-18, Hybrid (F30), Sport Line/Shadow Sport Edition, w/o M Sport Line, w/o Headlamp Washer	Bumper Cover, Front	Tong Yang 07/23A	51117445137	BM1000455
LG-70-243C	Honda Civic, 17-21, Hatchback, Sport, Sport Touring Model	Grille, Bumper	CHL 07/23A	71102TGA50	HO1036129
HN-04274BCQ	Hyundai Elantra, 21-23, Sedan, USA built, w/o Parking Sensors	Bumper Cover, Rear	Tong Yang 10/23B	86611AB000	HY1100243
HN-04216BBQ	Hyundai Santa Fe, 19-20	Bumper Cover, Front	Tong Yang 04/23A	86511S2000	HY1000235
AM04081BDQ	Jeep Grand Cherokee, 11-12, w/parking sensor, w/o blind spot detection	Bumper Cover, Rear	TYG Products 23/10/18	68085679AA	CH1100954
KA-04109BCQ	Kia Sedona from 8/22/14, w/Parking Assist, 15-18	Bumper Cover, Rear	Tong Yang 10/23A	86610A9020	KI1100198
KA-04197BCQ	Kia Telluride, 20-22, EX/LX/S	Bumper Cover, Front	Tong Yang 08/23A	86511S9000	KI1014106
LSB023NCQ	Lexus LS 460, 10-11, w/Sport Appearance Pkg w/Parking Assist	Bumper Cover, Front	Pro Fortune 09/21A	521195A915	LX1000201
BZ-04226BBQ	Mercedes-Benz E-Class, 17-19, Sedan, w/ Active Park Assist	Bumper Cover, Front	Tong Yang 09/23A	21388527009999	MB1000533
SB-04052BBQ	Subaru Crosstrek, 13-17, Paint to match	Bumper Cover, Rear	Tong Yang 10/23B	57704FJ041	SU1100171
Y-SBBP008CA	Subaru Impreza Sedan, 17-19	Bumper Cover, Front	Y.C.C. 08/23A	57704FL10A	SU1000185
SB-04068BCQ	Subaru Impreza, 17-23, Wagon; w/o object sensors	Bumper Cover, Rear	Tong Yang 10/23A	57704FL20A	SU1100185
SB-04034BBQ	Subaru Outback, 10-12	Bumper Cover, Front	Tong Yang 10/23A	57704AJ09A	SU1000165
SB-04090BCQ	Subaru Outback, 20-22, w/o Object Sensors	Bumper Cover, Lower	Tong Yang 10/23A	57704AN31A	SU1100197
TYB138NBQ	Toyota 4Runner, 14-21, 4.0L Eng, w/Chrome Trim	Bumper Cover, Rear	Pro Fortune 12/22A	5215935919	TO1100283
TY-04717BCQ	Toyota Highlander Hybrid LE/XLE, Bronze Edition Model; Paint to Match, 20-23	Bumper Cover, Rear	Tong Yang 10/23B	521590E922	TO1100354
TYB173NCQ	Toyota RAV-4, 19-20, Hybrid, Japan Built w/o Parking Sensors	Bumper Cover, Front	Pro Fortune 03/23B	521194A916	TO1000451
TYB173NCQ	Toyota RAV-4, 19-20, Hybrid, Japan Built w/o Parking Sensors	Bumper Cover, Front	Pro Fortune 10/23A	521194A916	TO1000451
TY-07565MAQ	Toyota Tundra, 14-21	Hood Scoop Assy	Tong Yang 04/22A	761800C020	TO1231100

CAPA 202 STANDARD - NON-WOVEN FABRICS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE					

CAPA 301 STANDARD - LIGHTING

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
346-4004R-AC	Audi Q5 on bumper, 18-20	Lamp, Fog Rear R	DEPO 20230807	80A945070A	AU2801123
20-9951-00-9	Chevrolet Equinox, 18	Headlamp, R	TYC Brother 2062310	84194564	GM2503470
20-16419-90-9	Ford F-150 XL Crew Cab Pickup, 18-19, Halogen	Headlamp, R	TYC Brother 2062310	JL3Z13008C	FO2519145
20-16256-00-9	Honda Accord, 18-22, Sedan	Headlamp, L	TYC Brother 8212310	33150TVA02	HO2502187
317-1191R-ACN2	Honda Accord, 21-22, EX-L; Touring; Sedan	Headlamp Assy, R	DEPO 20230213	33100TVA091	HO2503201



MONTHLY DECERTIFICATION REPORT June 2024*

[Report: P8]
Monthly

20-9716-80-9	Honda Passport, 19-21, Halogen High Beam	Headlamp Assy, L	TYC Brother	4242310	33150TG7A21	HO2502172
12-5418-00-9	Hyundai Kona Electric, 19-20	Lamp, Daytime Running L	TYC Brother	2272310	92207J9010	HY2562109
20-9993-90-9	Toyota Camry Hybrid LE Model, 21-21	Headlamp, R	TYC Brother	3212210	8111006G10	TO2503277
312-11BDL-ACN9	Toyota Corolla Sedan SE Model, 20-21, w/Nightshade Edition, North America built	Headlamp Assy, L	DEPO	20230220	8115002P50	TO2502304
312-11BHR-UC2	Toyota Corolla, 20-22, Sedan, Combination Lamp, L, LE Model, North America/ Japan Built	Headlamp, Lens/Housing R	DEPO	20220328	8114002S30	TO2519197
20-16955-90-9	Toyota RAV-4 Hybrid LE Model, 19-21, North American built, w/o Adaptive Headlamps	Headlamp Assy, R	TYC Brother	1222410	811100R152	TO2503274
20-16955-90-9	Toyota RAV-4 Hybrid LE Model, 19-21, North American built, w/o Adaptive Headlamps	Headlamp Assy, R	TYC Brother	5082310	811100R152	TO2503274
20-17307-00-9	Toyota RAV-4 Hybrid; North America Built; Limited, XLE, XSE Model, 19-20	Headlamp Assy, R	TYC Brother	8072310	811100R160	TO2503292

CAPA 401 STANDARD - ATTACHMENT PARTS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE						

CAPA 402 STANDARD - FRONT SUPPORT PARTS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE						

CAPA 501 STANDARD - BUMPER PARTS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE						

CAPA 701 STANDARD - MIRRORS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE						

CAPA 702 STANDARD - CAMERAS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE						

CAPA 703 STANDARD - AUTOMOTIVE SENSORS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE						

CAPA 801 STANDARD - AUTOMOTIVE GLASS

<u>Manufacturer Number</u>	<u>Application Description</u>	<u>Part Description</u>	<u>Manufacturer</u>	<u>Lot</u>	<u>OEM Number</u>	<u>Partlink Number</u>
NONE						

*This report includes all decertifications from May 1, 2024 through May 31, 2024.

DECERTIFIED LOTS

Decertification means to withdraw or revoke certification. Part numbers or individual part lot numbers are decertified by CAPA only after they have been found to no longer comply with any of the requirement(s) of the applicable standard. Decertification, in itself, may not warrant a safety recall as governed by the Motor Vehicle Safety Act under NHTSA.

In cooperation with repairers, insurers, distributors, and part manufacturers, CAPA continuously monitors and reviews the quality of parts certified to meet or exceed CAPA standards. The following list includes parts that no longer meet the CAPA standards to which they were originally certified and therefore the following parts have been decertified. CAPA would like to thank you for your support in reporting non-compliance variations, regardless of the significance. Your assistance assures repairers and consumers they can continue to expect quality collision replacement parts when they see the CAPA seal.

CAPA 101 STANDARD - METALS

Manufacturer Number	Application Description	Part Description	Manufacturer Lot	OEM Number	Partlink Number
JPGC10FL1	Jeep Grand Cherokee Laredo, Limited, Overland, 11-13	Fender L	Gordon 09/23A	55369597AC	CH1240272

CAPA 201 STANDARD - PLASTICS

Manufacturer Number	Application Description	Part Description	Manufacturer Lot	OEM Number	Partlink Number
DG-04143BBQ	Dodge Challenger, 15-23, w/Fog Lamps	Bumper Cover, Front	Tong Yang 10/23A	68258730AB	CH1000A20
HD-04249BBQ	Honda Accord Hybrid, 14-15	Bumper Cover, Front	Tong Yang 04/23A	04711T2AA90ZZ	HO1000288
HDB113NCQ	Honda Accord Sedan, 16-17, w/o Parking Sensors	Bumper Cover, Front	Pro Fortune 06/23A	71101T2FA50ZZ	HO1000302
HN-04261BBQ	Hyundai Sonata Limited/Ultimate Model, USA Built, 20-22	Bumper Cover, Front	Tong Yang 04/23A	86510L0420	HY1000243
AM-04102BAQ	Jeep Cherokee Latitude, Latitude Plus, North, Sport Model, w/o Advanced Park Assist System, w/o Park Assist Sensors, Black, 19-22	Bumper Cover, Rear	Tong Yang 08/23A	68287434AC	CH1100A45
NSB118NBQ	Nissan Sentra Sport, 13-15	Bumper Cover, Rear	Pro Fortune 06/23A	850223RM0J	NI1100291
Y-DSBP275CA	Nissan Sentra, 20-20	Bumper Cover, Rear	Y.C.C. 07/23A	850226LE4J	NI1100338
SB-04070BBQ	Subaru Crosstrek, 18-20	Bumper Cover, Front	Tong Yang 11/23A	57704FL010	SU1000187
SB-04070BBQ	Subaru Crosstrek, 18-20	Bumper Cover, Front	Tong Yang 12/23A	57704FL010	SU1000187
SB-04070BBQ	Subaru Crosstrek, 18-20	Bumper Cover, Front	Tong Yang 01/24A	57704FL010	SU1000187
TY-04383BBQ	Toyota Prius Plug In, 12-15	Bumper Cover, Rear	Tong Yang 10/23B	5215947905	TO1100280

CAPA 202 STANDARD - NON-WOVEN FABRICS

Manufacturer Number	Application Description	Part Description	Manufacturer Lot	OEM Number	Partlink Number
NONE					

CAPA 301 STANDARD - LIGHTING

Manufacturer Number	Application Description	Part Description	Manufacturer Lot	OEM Number	Partlink Number
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother 1032210	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother 1162310	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother 2062310	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother 2082110	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother 2132310	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother 2142210	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother 2202310	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother 2272310	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother 3062310	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother 3072210	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother 3152110	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother 3272310	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother 3292110	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother 4052110	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother 4102310	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother 4122110	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother 4192110	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother 4272010	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother 5292310	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother 6192310	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother 8302110	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother 9122210	55112706AD	CH2503295



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Monthly

20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother	9202110	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother	9262210	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother	10042110	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother	10052010	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother	10102210	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother	10242210	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother	11012110	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother	11072210	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother	11142210	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother	11162010	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother	11282210	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother	12052210	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother	12122210	55112706AD	CH2503295
20-9981-00-9	Jeep Compass, 17-18	Headlamp Assy, R	TYC Brother	12142010	55112706AD	CH2503295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	1032210	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	1092310	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	1162310	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	1302310	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	2062310	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	2082110	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	2132310	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	2202310	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	2282210	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	3062310	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	3132310	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	3142210	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	3152110	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	3222110	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	4102310	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	4122110	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	4182210	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	4272010	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	10052010	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	10102210	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	10112110	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	10242210	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	10312210	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	11072210	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	11162010	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	11212210	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	11282210	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	12142010	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	5022210	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	5032110	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	5232210	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	6202210	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	7032310	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	7042210	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	7252210	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	8022110	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	8082210	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	8152210	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	8292210	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	9132110	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	9252310	55112707AC	CH2502295
20-9982-00-9	Jeep Compass, 17-19	Headlamp Assy, L	TYC Brother	10042110	55112707AC	CH2502295
20-17304-00-9	Toyota Prius Prime, 17-19	Headlamp, L	TYC Brother	7032310	8118547800	TO2502252

CAPA 401 STANDARD - ATTACHMENT PARTS

Manufacturer Number	Application Description	Part Description	Manufacturer	Lot	OEM Number	Partlink Number
NONE						

CAPA 402 STANDARD - FRONT SUPPORT PARTS



MONTHLY DECERTIFICATION REPORT July 2024*

[Report: P8]
Monthly

Manufacturer Number	Application Description	Part Description	Manufacturer Lot	OEM Number	Partlink Number
NONE					

CAPA 501 STANDARD - BUMPER PARTS

Manufacturer Number	Application Description	Part Description	Manufacturer Lot	OEM Number	Partlink Number
GM1103147DSC	Chevrolet Silverado Hybrid, 09-13, w/o Rear Object Sensors	Bumper, Rear Assembly	Grand HC 10/23A	GM1103147	GM1103147

CAPA 701 STANDARD - MIRRORS

Manufacturer Number	Application Description	Part Description	Manufacturer Lot	OEM Number	Partlink Number
NONE					

CAPA 702 STANDARD - CAMERAS

Manufacturer Number	Application Description	Part Description	Manufacturer Lot	OEM Number	Partlink Number
NONE					

CAPA 703 STANDARD - AUTOMOTIVE SENSORS

Manufacturer Number	Application Description	Part Description	Manufacturer Lot	OEM Number	Partlink Number
NONE					

CAPA 801 STANDARD - AUTOMOTIVE GLASS

Manufacturer Number	Application Description	Part Description	Manufacturer Lot	OEM Number	Partlink Number
NONE					

*This report includes all decertifications from June 1, 2024 through June 30, 2024.

From:

Sent: Monday, April 1, 2024 2:23 PM

To:

Subject:

Good Afternoon ,

I have not been produced any comparable vehicles nor have spoken with you regarding the valuation from you nor anyone from your office, If you would like to submit comparable vehicles you are more than welcome to do so, please include the VIN number and where the comparable vehicles have come from.

Please follow the following guidelines when submitting comparable vehicles:

All comps must include the VIN number:

- Dealer quotations for a substantially similar motor vehicle
- Dealership name and address
- Advertisements for a substantially similar motor vehicle
- Any other source of valuation for a substantially similar motor vehicle

What is considered a comparable vehicle:

- Is same make and model as your vehicle
- Is same year as, or a more recent year than your vehicle
- Contains at least the same major options as your vehicle
- Is in a condition substantially similar to or better than the condition of your vehicle immediately before the damage occurred

Comparable vehicles from the following websites or vehicle listings WILL NOT considered as valid:

- CARMAX
- CARVANA
- CRAIGSLIST
- FACEBOOK MARKETPLACE
- KELLY BLUE BOOK
- VROOM
- ANY AUCTION SITES

Once your comparable vehicles are received, I will send them to the third party vendor CCC who assess the value of the vehicles to be reviewed.

If you have any questions please feel free to contact me, have a wonderful day.

Total Loss Claim Specialist

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DOMINICK VOLINO, ET AL.,
Plaintiff,

v.

PROGRESSIVE CASUALTY INSURANCE
COMPANY, ET AL.,
Defendants.

MICHAEL VERARDO, ET AL.,
Plaintiff,

v.

PROGRESSIVE CASUALTY INSURANCE
COMPANY, ET AL.,
Defendants.

Civil Action No. 1:21-cv-6243-LGS

Civil Action No. 1:22-cv-01714-LGS

**PLAINTIFFS' UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

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I. INTRODUCTION

Plaintiffs John Plotts, Zachary Goodier, James England, Kevin Lukasik, Lorenzo Costa, Michael Verardo, and Lori Lippa (“Plaintiffs” or “Settlement Class Representatives”) move unopposed for an order granting preliminary approval of the Class Action Settlement Agreement¹ (the “Settlement” or “Settlement Agreement”) they have reached with Defendants Progressive Advanced Insurance Company, Progressive Specialty Insurance Company, Progressive Max Insurance Company, and Progressive Casualty Insurance Company (collectively “Progressive” or “Defendants”). Plaintiffs brought this action alleging Defendants breached their insurance contract—specifically the provision that actual cash value (“ACV”) “is determined by the market value, age, and condition” of a vehicle at the time of loss—by applying Projected Sold Adjustments (“PSA”). Plaintiffs further allege that Progressive’s use of the PSA was deceptive or misleading under N.Y. Gen. Bus. Law § 349(a) because Progressive misled Plaintiffs and similarly situated claimants by representing that the PSA reflects actual consumer purchasing behavior of negotiating discounts off of list price in cash transactions.

The proposed Settlement will resolve all claims against Defendants in exchange for a sizable cash payment of \$48,000,000.00 (the “Settlement Fund”) for the benefit of the Settlement Classes, less payment of attorney’s fees, litigation expenses, settlement administration expenses, and service awards. This is an excellent result and represents a recovery of 70% of compensatory damages. 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

¹ Capitalized terms that are otherwise undefined have the same meaning as in the Settlement Agreement.

calculated consistent with Plaintiffs' damages model in this action.

The Settlement was made possible only through years of hard-fought litigation against a Fortune 100 company and settled only on the eve of trial. Progressive mounted a vigorous defense at each step of this action, requiring Plaintiffs to (i) defeat Defendants' motion to dismiss, (ii) achieve contested class certification, which included consultation of reports and testimony from experts in the fields of the automotive industry, statistics, and appraisal profession, (iii) fend off Progressive's petition for interlocutory review of the class certification order, (iv) defeat Progressive's motion for summary judgment; (v) defeat Progressive's motions to exclude their expert witnesses, and (vi) engage in significant pre-trial preparations and proceedings (including drafting and responding to motions in limine; submitting proposed voir dire questions, jury instructions, and a verdict form; preparing trial exhibit lists and objections to Defendants' exhibit list; and preparing witnesses to testify). With less than a month before the start of trial, the parties participated in extensive mediation efforts with well-respected mediators Mark Helm and Niki Mendoza of Phillips ADR Enterprises, P.C. Thus, by the time the Settlement was reached, Plaintiffs and their counsel were well informed about the strengths and weaknesses of their claims and Defendants' defenses.

The proposed Notice Program is designed to provide individualized notice to each Settlement Class Member identified through discovery and data from Defendants' claim files. Notice will be provided by email, when available, and postal mail, when email is not available, and will notify each Settlement Class Member of their anticipated recovery amount. Every Class Member who does not opt-out of the Settlement will be issued payment. No funds from the Settlement will revert to Defendants. Class Counsel will request attorneys' fees not to exceed one-

third of the Settlement Fund and reimbursement of litigation expenses not to exceed \$460,000. Plaintiffs and Class Counsel will also request each Settlement Class Representative be awarded a service award not to exceed \$15,000. Settlement administrative costs are estimated not to exceed \$236,000, which is less than 0.5% of the Settlement Fund.

Class Counsel believe that the Settlement is an excellent result for the Settlement Classes, and that the anticipated requests for attorneys' fees, litigation expenses, and costs are reasonable and in line with precedent in this district and the Second Circuit.

Moreover, certification of the Settlement Classes (which are the same as the classes previously certified except that the settlement class period extends through the date of preliminary approval) is appropriate for the reasons previously articulated by this Court in its prior orders. Similarly, the appointments of Plaintiffs as the Settlement Class Representatives and of Class Counsel as Class Counsel for the Settlement Classes are appropriate, and this Court should affirm these appointments for purposes of effectuating the Settlement.

In sum, the Settlement is fair, reasonable, and adequate, and Plaintiffs respectfully request that the Court enter an order: (1) preliminarily approving the Settlement, including all exhibits; (2) provisionally certifying the Settlement Classes; (3) appointing Plaintiffs John Plotts, Zachary Goodier, James England, Kevin Lukasik, Lorenzo Costa, Michael Verardo, and Lori Lippa as Settlement Class Representatives; (4) appointing Carney Bates & Pulliam, PLLC, Jacobson Phillips PLLC, Normand PLLC, Edelsberg Law, P.A., Shamis & Gentile, P.A., and Bailey Glasser LLP as Class Counsel for the Settlement Classes; (5) approving Epiq Class Action and Claims Solutions, Inc. as Settlement Administrator; (6) approving the form and manner of Class Notice to the Settlement Classes; (7) approving the proposed schedule of events; and (8) scheduling a Final

Fairness Hearing.

II. PROCEDURAL BACKGROUND

Plaintiffs Dominick Volino² and John Plotts filed this action in July 2021, alleging that Progressive breached its uniform insurance policy and violated New York General Business Law § 349 by applying Projected Sold Adjustments. *See generally*, ECF No. 1. This action was consolidated with the related case *Verardo, et al. v. Progressive Cas. Ins. Co., et al.*, (ECF No. 108) and Plaintiffs filed a consolidated class action complaint, (ECF No. 111).

Progressive moved to dismiss this complaint.³ As part of this motion, Progressive raised a potentially dispositive preemption defense: That Plaintiffs were preempted from challenging Progressive's use of Mitchell Reports because "the Superintendent [of Insurance] approved the use of the Mitchell Software under the regulatory framework established by New York Regulation 64." ECF No. 125 at 10. Following full briefing, the Court denied Progressive's motion. ECF No. 152.

The parties then fully briefed (1) Plaintiffs' motion for class certification, which the Court granted, and (2) Progressive's motions to exclude Plaintiffs' experts, which the Court denied. ECF No. 208. Following certification, Progressive petitioned the Second Circuit for an interlocutory review of this Court's certification order pursuant to Rule 23(f). Plaintiffs opposed the petition, and the Second Circuit denied it. ECF No. 234.

Following the Second Circuit's denial of Progressive's petition, Progressive filed a motion for summary judgment on all Plaintiffs' claims. ECF No. 243. The Court granted Progressive's

² Plaintiff Volino dismissed his claims prior to Class Certification.

³ Progressive previously had moved to dismiss the Amended Complaint and Second Amended Complaint, but those were denied as moot when each was superseded by an amended pleading.

motion pertaining to Plaintiffs' theory that application of PSAs violated Regulation 64, but otherwise denied Progressive's motion and set the case for trial on Plaintiffs' claims for breach of contract and violations of GBL § 349. ECF Nos. 298 & 299.

The parties mediated this case on June 11, 2024. By that time, the parties had completed nearly all pre-trial filings, including briefing all evidentiary motions and submitting their proposed voir dire questions, jury instructions, verdict forms, witness lists, and exhibit lists. Thus, this case was ready for trial at the time the parties engaged in mediation.

III. SUMMARY OF THE SETTLEMENT TERMS

A. The Settlement Classes Extend the Previously Certified Litigation Classes Through the Date of Preliminary Approval.

The Settlement defines the Settlement Classes as:

Breach of Contract Class: All persons who made a first-party claim on a policy of insurance issued by any Progressive Group entity to a New York resident who, from July 28, 2015 through the date of Preliminary Approval, received compensation from one of the Defendants for the total loss of a covered vehicle, where that compensation was based on an Instant Report prepared by Mitchell International, Inc. and the actual cash value was decreased based upon Projected Sold Adjustments to the comparable vehicles used to determine actual cash value.

GBL Class: All persons who made a claim on a policy of insurance issued by any Progressive Group entity to a New York resident who, from July 28, 2018, through the date of Preliminary Approval, received compensation from one of the Defendants for the total loss of a covered vehicle, where that compensation was based on an Instant 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.

Ex. 1 (Settlement Agreement) at ¶¶ 1.c.–d.⁴ Previously, on March 16, 2023, this Court entered an order (ECF No. 208) certifying two litigation classes: a Breach of Contract Class and a GBL Class,

⁴ All exhibits cited herein are to the contemporaneously filed Declaration of Hank Bates ("Bates Decl.").

each of which ran through the date the order granting class certification was entered. ECF No. 208 at p. 2. The only substantive change between the previously certified litigation classes and the Settlement Classes is that the Settlement Classes run to and through the date of the order granting Preliminary Approval.⁵ In addition, to simplify and streamline the Notice Program and the Plan of Allocation the subclasses specific to each Progressive entity have been eliminated. *Compare* Settlement Agreement at ¶¶ 1.c.–d. *with* ECF No. 208.

B. The Settlement Benefits: \$48,000,000 Common Fund with No Reverter.

Under the proposed Settlement, within fifteen business days after Preliminary Approval, Defendants will establish a cash Settlement Fund of \$48,000,000.00 for the benefit of Settlement Class Members, with no reverter to Defendants. Settlement Agreement at ¶¶ 7 & 10.b. This amount represents approximately 70% of the compensatory damages alleged by Plaintiffs under the damages model they were prepared to present at trial, or roughly 54% of damages plus pre-judgment interest. Bates Decl., at ¶ 21. 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.

The Settlement Agreement provides Class Counsel with the full authority to propose, for Court approval, both the notice plan and plan of allocating the cash fund among the Settlement Class Members. Settlement Agreement ¶ 10.b. Class Counsel's proposals are set forth below and in the Declaration of Hank Bates filed herewith.

⁵ The Settlement Classes do not include the 9 individuals who previously opted out of this Action, in response to the notice of class certification. *See* ECF No. 293.

C. The Notice Program.

As set forth in the Declaration of Cameron Azari⁶ and in paragraphs 27–34 of the Bates Declaration, Class Counsel propose that notice to Settlement Class Members be made by (1) emailing the Email Notice (substantially in the form attached as Exhibit 2 to the Bates Declaration) to those Settlement Class Members for whom an email address is available in Defendants’ records, and (2) mailing the Mail Notice (substantially in the form attached as Exhibit 3 to the Bates Declaration) by first-class US mail to those Settlement Class Members for whom an email address is not available in Defendants’ records. Skip tracing will be performed by the Settlement Administrator for all returned Mail Notices. To the extent it is reasonably able to locate a more current mailing address using skip tracing, the Settlement Administrator will re-mail the returned Mail Notice to the particular Settlement Class Member by first-class US mail.

The Email Notice and Mail Notice will include a tailored estimate of the individual recovery amount that each Settlement Class Member is anticipated to receive and instructions for submitting a change of address. Additionally, the Mail Notice will inform Settlement Class Members that, if they want to redeem their recovery through an electronic payment option, they need to visit the Settlement Website and follow the instructions for providing an email address to the Settlement Administrator. The Email Notice and Mail Notice will also include the following information: (1) a description of the class action and the proposed Settlement, (2) the rights of Settlement Class Members to request exclusion from the Settlement Classes or to object to the Settlement and instructions about how to exercise those rights, (3) specifics on the date, time and

⁶ Filed contemporaneously with this motion.

place of the Final Fairness Hearing, and (4) information regarding Class Counsel's anticipated fee application and the anticipated request for the Class Representatives' service awards.

Both the Email Notice and the Mail Notice will include a link to the Settlement Website, www.NYTotalLoss.com, which will include the following information: (1) a more detailed summary of the Settlement terms in the form attached as Exhibit 4 to the Bates Declaration ("Long Form Notice"); (2) a "Contact Us" page with the Settlement Administrator's contact information; (3) the Settlement Agreement, motions for approval and for attorneys' fees, and all other important documents in the case; (4) important case dates and deadlines, including the deadlines to opt out and object; (5) a summary of Settlement Class Members' options; and (6) the date, time, and location of the Final Fairness Hearing. Bates Decl. at ¶ 32. The Notice Program will also establish a toll-free telephone line with an interactive voice response ("IVR") system to provide Settlement Class Members with responses to frequently asked questions and provide essential information regarding the litigation that is accessible 24 hours a day, 7 days a week. *Id.* at ¶ 33.

The Parties have agreed, subject to Court approval, that Epiq Class Action and Claims Solutions, Inc. ("Epiq") will serve as Settlement Administrator. Settlement Agreement at ¶ 1.w.; Bates Decl. at ¶ 27. Epiq has ample experience in class action administration and was previously appointed by this Court as administrator of the court-approved notice program implemented in accord with this Court's Class Certification Order. *See*, Declaration of Cameron Azari; *see also* ECF No. 227.

D. Plan of Allocation.

Class Counsel proposes that, unless a Settlement Class Member submits a valid and timely Request for Exclusion, he or she automatically be issued a *pro rata* distribution from the Settlement Fund less any court-approved attorneys' fees, litigation expenses, service awards, and all costs

of notice and settlement administration (the “Distributable Settlement Amount”). Bates Decl. at ¶¶ 35–43. After payment of requested attorneys’ fees, litigation expenses, settlement administration expenses, and service awards, the Distributable Settlement Amount is estimated to be approximately \$31,300,000, yielding individual payments to the approximately 93,000 Settlement Class Members of approximately \$335 on average.⁷ See Declaration of Hank Bates at ¶ 36.

Class Counsel proposes that Settlement Class Members’ distributions be made under the following procedure, which tracks the damages model set forth in prior pleadings and that Class Counsel was prepared to present at trial. Under this procedure, each Settlement Class Member will be treated equitably, as each will receive the same pro rata percentage of their potential damages claim in this Action.

First, Class Counsel and their experts have determined from a review of the sample claim files in this Action and related actions involving Progressive entities that, on average, application of PSAs caused the Baseline Valuations of ACV in WCTL Instant Reports to be lowered by 6.5%. This is the “PSA Impact percentage.” To calculate the potential compensatory damages for each Settlement Class Member’s claim, the PSA Impact percentage will be multiplied by (a) the WCTL Baseline Valuation of ACV, (b) the Total Tax Settlement Amount, and (c) the Condition Adjustment documented in Progressive’s claims data for their insurance claim.⁸ To the sum of (a)–

⁷ It is currently estimated that the Settlement Classes include approximately 93,000 members, based on claims data produced by Defendants through May 17, 2024. See Bates Decl. at 36 n.6. The final size of the Settlement Classes will be ascertained once the updated Settlement Class data through the date of preliminary approval is obtained from Defendants in accord with the Settlement Agreement. *Id.*

⁸ Each of these amounts (WCTL Baseline Valuation, Total Tax Settlement Amount, and Condition

(c) is added prejudgment interest at a rate of 9%⁹ simple per annum from the date of valuation to arrive at each Settlement Class Member's Damages. ECF No. 174-5 at 23–25 & ECF No. 198-1 at Mitchell-Volino Subpoena 001701 (describing relationship of condition adjustment to base value).

Second, Class Counsel will calculate the sum of all Settlement Class Members' Damages, which will be the Aggregate Damages. Bates Decl. ¶ 39. *Third*, Class Counsel will divide the Distributable Settlement Amount by the Aggregate Damages to calculate the Pro Rata Ratio. *Id.* at ¶ 40. *Fourth*, the pro rata distribution to be paid to each Settlement Class Member will be calculated by multiplying the Pro Rata Ratio by each Settlement Class Member's Damages. *Id.* at ¶ 41.

E. Distribution of Payments to the Class.

Payments of each Settlement Class Members' pro rata portion of the Distributable Settlement Amount will be made within 90 days after the Final Judgment. Settlement Class Members for whom the Settlement Administrator does not have an email address will automatically be issued checks. Within 45 days after Final Judgment, each Settlement Class Member for whom the Settlement Administrator has an email address will be emailed a link they can follow to choose whether to receive their recovery electronically—through, e.g., Venmo, PayPal, or ACH transfer—or by check.¹⁰ This link will remain active for 30 days. At the end of that period, any Settlement Class Member who did not elect to receive their recovery via an

Adjustment) are maintained by Progressive in its records. ECF No. 174-6 at 16. This formulation tracks the damages calculations explained by plaintiffs' statistical expert Dr. Michelle Lacey in her expert reports. ECF No. 174-5 at 23–25.

⁹ N.Y. C.P.L.R. § 5004.

¹⁰ This process is designed to encourage a higher rate of electronic payments, which cost less than issuing physical checks and will result in higher payouts.

electronic payment option will be issued a check. To be clear, every Settlement Class Member will receive a recovery unless they submit a valid exclusion.

Checks that are not cashed within 90 days of issuance will be redistributed on a pro rata¹¹ basis to all Settlement Class Members who either cashed their initial checks or received electronic payments during the initial distribution. The Settlement Administrator will continue to make distributions to Settlement Class Members who either received their distribution electronically or who cashed the check sent in the prior distribution until Settlement Class Members receiving further distribution by check would receive less than \$5.00 or a further distribution would otherwise not be feasible. Once either event occurs, the remaining funds will be distributed on a pro rata basis to Settlement Class Members who received their payments electronically, thus depleting the Settlement Fund and ensuring all Settlement Funds directly benefit Settlement Class Members. No funds from the Settlement will revert to Defendants. Settlement Agreement at ¶ 10.b.

F. Release.

In exchange for the consideration from the Defendants, the Action will be dismissed with prejudice upon Final Approval of the Settlement, and the Settlement Class Members will thereby release all claims against Defendants and the Released Parties through the date that the Court enters the Final Judgment, relating to Progressive's settlement of a total-loss property claim. *See* Settlement Agreement at ¶¶ 12–13. Released Claims do not include (1) any claims for personal injury, medical payment, uninsured motorist or underinsured motorist, (2) the claims and rights of

¹¹ To determine the pro rata distribution in each subsequent distribution, the Settlement Administrator will, after first deducting any necessary settlement-administration expenses from such uncashed-check funds, re-run the calculations used in the initial distribution, using the modified Distributable Settlement Amount for only those Settlement Class Members who will receive the distribution.

any party in the settlement agreed to in *Buffington v. Progressive Advanced Insurance Co. et al.*, No. 20-cv-07408 (S.D.N.Y.), or (3) the claims being litigated in *Narcisse v. Progressive Casualty Insurance Company, et. al.*, No. 1:23-cv-04690-JGK (S.D.N.Y.). *See id.* at ¶ 12.

G. Applications for (i) Attorneys' Fees and Litigation Expenses, and (ii) Class Representatives' Service Awards.

The Settlement Agreement provides that, consistent with the common fund doctrine, Class Counsel may file a motion with the Court requesting an award of attorneys' fees and out-of-pocket litigation expenses to compensate them for all of the work already performed in this case, all of the work remaining to be performed in connection with this Settlement, and the risks undertaken in prosecuting this case. Settlement Agreement at ¶ 11. Class Counsel's requests for attorneys' fees will not exceed one-third of the Settlement Fund, and their request for litigation expenses will not exceed \$460,000. The enforceability of the Settlement Agreement is not contingent on the Court's approval of Class Counsel's application for an award of attorneys' fees or litigation expenses.

The Settlement Agreement further provides that Plaintiffs may request a service award for each Settlement Class Representative. *Id.* Plaintiffs' requests will not exceed \$15,000 per Settlement Class Representative or \$105,000 collectively. Bates Decl. at ¶ 47. These service awards, which amount in the aggregate to approximately 0.22% of the Settlement Fund, will be paid out of the Settlement Fund and will compensate Plaintiffs for their time and effort serving as the Settlement Class Representatives through almost three years of litigation and up to the eve of trial. *Id.*

IV. PROPOSED SCHEDULE OF EVENTS

Consistent with the provisions of the Settlement Agreement, Plaintiffs respectfully propose

the following schedule for the various Settlement events:

Event	Date
Deadline for Defendants to get updated Settlement Class List to Epiq	15 calendar days following entry of Preliminary Approval
Deadline for Settlement Website and IVR to go live	30 calendar days following entry of Preliminary Approval
Deadline to commence Notice Program (“Settlement Notice Date”)	45 calendar days following entry of Preliminary Approval
Deadline for applications for final approval, attorneys’ fees and expenses and service awards	30 calendar days following Settlement Notice Date
Deadline for opt outs and objections to be postmarked	45 calendar days following Settlement Notice Date
Deadline for Parties to file papers in response to any timely and valid objections	14 calendar days prior to Final Fairness Hearing
Final Fairness Hearing	At least 118 calendar days after entry of Preliminary Approval

V. APPLICABLE LEGAL STANDARDS

Federal Rule of Civil Procedure 23(e)(1) provides that preliminary approval should be granted where “the parties show[] that the Court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” *Id.* Rule 23(e)(2)—which governs final approval—requires courts to consider the following questions in determining whether a proposed settlement is fair, reasonable, and adequate:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

“In deciding whether the compromise is fair, reasonable, and adequate, the court must consider both the substantive terms of the settlement and whether the negotiating process by which the settlement was reached shows that the compromise is the result of arm’s-length negotiations.” *In re Synchrony Fin. Sec. Litig.*, No. 3:18-CV-1818-VAB, 2023 WL 4992933, at *3 (D. Conn. Aug. 4, 2023) (internal quotations omitted and cleaned up). In performing this analysis, courts in this Circuit supplement the Rule 23(e)(2) factors with the nine factors set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974). *See Soler v. Fresh Direct LLC*, 20 Civ. 3431, 2023 WL 2492977, at *2 n.3 (S.D.N.Y. Mar. 14, 2023) (“The advisory committee notes ... indicate that the ... Rule 23 factors were not intended to displace the *Grinnell* factors, but to focus courts on the core concerns of procedure and substance.” (internal quotation marks omitted)). The *Grinnell* factors are: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *Grinnell*, 495 F.2d at 463.

Finally, courts in this Circuit recognize a “strong judicial policy in favor of settlements, particularly in the class action context.” *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005); *Reyes v. Summit Health Mgmt., LLC*, No. 22-CV-9916 (VSB), 2024 WL 472841, at *1 (S.D.N.Y. Feb. 6, 2024) (same); *see also* Herbert B. Newberg & William B.

Rubenstein, *Newberg and Rubenstein on Class Actions* § 13:44 (6th ed. 2022) (hereinafter “Newberg”) (“Settlement is generally favored because it represents a compromise reached between the parties to the suit and relieves them, as well as the judicial system, of the costs and burdens of further litigation.”).

VI. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL

A. The Settlement Is Procedurally Fair.

The Court must first consider whether “the class representatives and class counsel have adequately represented the class” and whether “the proposal was negotiated at arm’s length.” Fed. R. Civ. P. 23(e)(2)(A)–(B); *see also Grinnell*, 495 F.2d at 463 (overlapping with the third *Grinnell* factor, *i.e.* the stage of the proceedings and the amount of discovery completed). In assessing adequacy of representation, courts focus on whether “1) plaintiff’s interests are antagonistic to the interest of other members of the class and 2) plaintiff’s attorneys are qualified, experienced and able to conduct the litigation.” *Cordes & Co. Fin Servs. v. A.G. Edwards & Sons, Inc.*, 502 F.3d 91, 99 (2d Cir. 2007).

Here, Plaintiffs’ interests are aligned with the interests of Settlement Class Members as all suffered the same alleged harms as a result of Progressive applying PSAs as part of its method of calculating the ACV of total loss vehicles. Plaintiffs and Settlement Class Members also share the same interests in securing relief for these injuries, which Plaintiffs have vigorously pursued throughout this litigation. Moreover, there are no conflicts between Plaintiffs and the members of the Settlement Classes. Indeed, as previously determined in this Court’s Class Certification Order, “[t]he named Plaintiffs thus share the interest of any potential absent class members who might similarly have multiple complaints about Progressive, and have no ‘interests antagonistic to the interests of other class members.’” ECF No. 208 at p. 13.

Similarly, it has already been shown in this litigation that Class Counsel are highly qualified, have extensive experience and knowledge in prosecuting similar consumer class actions, and have dedicated significant time and personnel to this litigation. ECF No. 208 at p. 23-24 (appointing CBP as Class Counsel); ECF No. 223 (appointing Normand PLLC, Edelsberg Law, P.A., and Shamis & Gentile Class Counsel along with CBP); ECF No. 356 (appointing Bailey Glasser as Class Counsel). Moreover, as demonstrated by the record in this action, Plaintiffs and Class Counsel performed significant work in identifying and litigating the claims of Plaintiffs and the Settlement Class Members prior to entering the Settlement, including: engaging in extensive factual investigation; drafting the initial and amended complaints; completing both fact and expert discovery and reviewing voluminous discovery materials; engaging in substantial motions practice (including Defendants' motion to dismiss, Plaintiffs' motion for class certification, competing motions for summary judgment, and various motions in limine); conducting pre-trial preparations and engaging in pre-trial proceedings; and participating in a full-day mediation. *See* Bates Decl. at ¶¶ 3–14. Indeed, effective settlement negotiations between the Parties only began on the eve of trial, which was scheduled to begin on July 8, 2024, after three years of hard-fought litigation. *Id.* at __. The adversarial posture and thoroughness of the proceedings, the substantial discovery taken, and the adequacy of representation all favor preliminary approval here. *See, e.g., Clark v. City of New York*, No. 18 CIV. 2334 (AT), 2024 WL 1855668, at *1 (S.D.N.Y. Apr. 29, 2024); *Matheson v. T-Bone Rest., LLC*, No. 09 Civ. 4214, 2011 WL 6268216, at *5 (S.D.N.Y. Dec. 13, 2011) (granting final approval where “Plaintiffs obtained sufficient discovery to weigh the strengths and weaknesses of their claims” and “[t]he parties’ participation in a day-long mediation allowed them to further explore the claims and defenses”).

In sum, Plaintiffs' interests are aligned with the interests of Settlement Class Members. Class Counsel had the ability to, and did, thoroughly and effectively represent the interests of the Settlement Classes throughout the adversarial litigation and the mediation process. As such, the Settlement satisfies Rule 23(e)(2)(A) and (B), as well as the third *Grinnell* factor, and is thus procedurally fair. *See In re Citigroup Inc. Bond Litig.*, 296 F.R.D. 147, 155 (S.D.N.Y. 2013) (settlement was procedurally fair where negotiations were overseen by a neutral mediator and parties engaged in "extensive and contested" discovery beforehand); *see also D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (recognizing mediator's involvement in "settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure").

B. The Settlement Is an Excellent Result for the Settlement Classes, and Consideration of the Risks of Continued Litigation, the Effectiveness of Proposed Distributions Methods, the Anticipated Application for Attorneys' Fees, and the Lack of any Side Agreement Favor Preliminary Approval.

Next, the Court must assess the Settlement's substantive fairness. Rule 23(e)(2)(C) enumerates four factors to be considered when assessing whether the relief provided to the Settlement Class is adequate: (i) "the costs, risks, and delay of trial and appeal," (ii) "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class member claims," (iii) "the terms of any proposed award of attorney's fees, including timing of payment," and (iv) "any agreement required to be identified under Rule 23(e)(3)." *See also Grinnell*, 495 F.2d at 463 (overlapping with *Grinnell* factors one, four through six, eight, and nine).

Recovering 70% of compensatory damages is an excellent result in any case in any context. It is particularly impressive in the class action context which adds significant procedural and legal complexity and risk at the pre-trial, trial and appellate stages.

1. The Complexity, Expense, and Duration of Litigation Through Trial and Appeal.

Rule 23(e)(2)(C)(i) first requires courts to consider “the costs, risks, and delay of trial and appeal.” This inquiry overlaps with *Grinnell* factors one (“complexity, expense, and likely duration of the litigation”) and four, five, and six (risks of establishing liability and damages and maintaining the class). See *Maddison v. Comfort Sys. USA (Syracuse), Inc.*, No. 517CV359LEKATB, 2023 WL 3251421, at *4 (N.D.N.Y. May 3, 2023); *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 36 (E.D.N.Y. 2019). The Court need not “decide the merits of the case,” “resolve unsettled legal questions,” or “foresee with absolute certainty the outcome.” *Fleisher v. Phoenix Life Ins. Co.*, No. 11-CV-8405 (CM), 2015 WL 10847814, at *8 (S.D.N.Y. Sept. 9, 2015) (cleaned up). “[R]ather, the Court need only assess the risks of litigation against the certainty of recovery under the proposed settlement.” *Id.* Courts recognize that “the complexity of Plaintiff’s claims ipso facto creates uncertainty.” *In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 123 (S.D.N.Y. 2009).

Continued litigation of this action would be “complex, expensive, and lengthy.” *In re Namenda Direct Purchaser Antitrust Litig.*, 462 F. Supp. 3d 307, 312 (S.D.N.Y. 2020); see also, e.g., *Stinson v. City of N.Y.*, 256 F. Supp. 3d 283, 289 (S.D.N.Y. 2017) (same); *Morris*, 859 F. Supp. 2d at 619. Litigation inherently involves risks and uncertainty, which is especially true where, as here, proof of liability and damages hinge on a battle between expert witnesses. See *In re Tenaris S.A. Sec. Litig.*, No. 18-CV-7059(KAM)(SJB), 2024 WL 1719632, at *8 (E.D.N.Y. Apr. 22, 2024) (recognizing expert discovery can “substantially increase costs to the settlement class and result in a costly ‘battle of the experts’ at trial”); *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000), *aff’d sub. nom. D’Amato v. Deutsche*

Bank, 236 F.3d 78 (2d Cir. 2001) (“Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them.”).

In addition to a battle of the experts, Plaintiffs face the risk of maintaining class certification through trial and appeal. *Nichols v. Noom, Inc.*, No. 20-CV-3677 (KHP), 2022 WL 2705354, at *9 (S.D.N.Y. July 12, 2022) (stating the risk attendant to defending any decertification motion supported approval of the settlement). Defendants have already demonstrated their willingness to seek the Second Circuit’s intervention, filing a petition for permission to appeal the Court’s Class Certification Order pursuant to Rule 23(f). Bates Decl. at ¶¶ 3–13. Thus, the risk of a motion for decertification, coupled by a likely appeal by Defendants of any judgment favorable to Plaintiffs, promised further expense and delay.

Though Plaintiffs believe in the merits of their case, by reaching a favorable settlement with the assistance of neutral mediators, Plaintiffs avoided significant expense and delay and the risks of trial and appeal and secured immediate benefits for the Settlement Classes. Consideration of these factors sharply weigh in favor of preliminary approval. *See Hicks v. Morgan Stanley & Co.*, 2005 WL 2757792, at *6 (S.D.N.Y. Oct. 24, 2005) (“Further litigation would necessarily involve further costs; justice may be best served with a fair settlement today as opposed to an uncertain future settlement or trial of the action.”).

2. The Effectiveness of Proposed Distributions Methods and the Lack of an Agreement Required to Be Identified Under 23(e)(3).

Rule 23(e)(2)(C)(ii) requires that the “proposed method of distributing relief to the class” be “effective,” while Rule 23(e)(2)(C)(iv) requires identification of any agreement under Rule 23(e)(3).

Here, there is no claims process. Thus, unless a Settlement Class Member opts out of the

Settlement, he or she will automatically receive a *pro rata* distribution from the Settlement Fund less any court-approved attorneys' fees, litigation expenses, service awards, and all costs of notice and settlement administration. The Settlement Fund of \$48,000,000.00 represents approximately 70% of the compensatory damages alleged by Plaintiffs. This means that after payment of attorneys' fees, litigation expenses, settlement administration expenses, and service awards, the Distributable Settlement Amount will be approximately \$31,300,000, which in turn will yield individual payments to Settlement Class Members of, on average, approximately \$335. *See* Bates Decl. at ¶ 36. No funds from the Settlement will revert to Defendants. Settlement Agreement at ¶ 10.b. Additionally, there are no additional agreements outside of the Settlement Agreement that require identification under Rule 23(e)(3). Accordingly, consideration of Rule 23(e)(2)(C)(ii) and (iv) weigh in favor of preliminary approval.

3. Class Counsel's Reasonable Fee Request Will Neither Impair nor Delay Relief to the Settlement Classes.

Under Rule 23(e)(2)(C)(iii), this Court is also to consider the "terms of any proposed award of attorney's fees, including timing of payment." As discussed above and disclosed in the Class Notice (*see* Bates Decl. at Exs. 2–4), the Settlement permits Class Counsel to apply for a percentage of the common fund fee award. Class Counsel's request will not exceed one third of the common fund which is reasonable in light of the work performed and the results obtained (*See* Bates Decl. at ¶ 46) and consistent with precedent in this district and the Second Circuit. *See, e.g., In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litig.*, 18 Md. 2819, 2020 WL 6193857, at *5-6 (E.D.N.Y. Oct. 7, 2020); *In re N. Dynasty Mins. Ltd. Sec. Litig.*, No. 20-CV-5917 (TAM), 2024 WL 308242, at *15 (E.D.N.Y. Jan. 26, 2024). Class Counsel will not receive any funds until the Court has entered an order addressing their fee request. Because the Settlement

Agreement provides only the opportunity to seek a reasonable attorneys' fee without any effect on the relief to Plaintiffs and the Settlement Classes, this factor favors approval.

C. The Settlement Treats Settlement Class Members Equitably.

Finally, the Settlement treats members of the Settlement Classes equitably relative to one another. *See* Fed. R. Civ. P. 23(e)(2)(D). As detailed above, each Settlement Class Member is entitled to automatically receive a *pro rata* distribution, which tracks the damages model in this action and is tailored to the value of their loss vehicle and their potential damages, unless they chose to opt out of the Settlement. Thus, there is no preferential treatment for any Settlement Class Members and the proposed Plan of Allocation treats members equitably relative to one another. *See Broockmann v. Bank of Greene Cnty.*, No. 122CV00390AMNATB, 2023 WL 7019273, at *11 (N.D.N.Y. Oct. 25, 2023) (finding that the requirement that class members be treated equitably relative to each other was satisfied where each class member was to receive a “pro rata share” of the net settlement fund or forgiveness of certain uncollected fees); *Christine Asia Co. v. Yun Ma*, No. 115MD02631CMSDA, 2019 WL 5257534, at *15 (S.D.N.Y. Oct. 16, 2019) (finding the settlement satisfied Rule 23(e)(2)(D) because under the proposed plan of allocation, “Authorized Claimants will receive their *pro rata* share of the Net Settlement Fund based on the amount of their Recognized Loss.”).

D. The Remaining *Grinnell* Factors Weigh in Favor of Preliminary Approval.

Under the seventh *Grinnell* factor, a court also considers “the ability of the defendants to withstand a greater judgment.” *Grinnell*, 495 F.2d at 463. Courts do not require that a defendant “empty its coffers before a settlement can be found adequate.” *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 191 (S.D.N.Y. 2012) (internal citation omitted). Rather, where, as here, “the other *Grinnell*

factors weigh heavily in favor of settlement,” a court “need not determine whether Defendants could have withstood a larger judgment, and may still approve the settlement agreement.” *In re Synchrony Fin. Sec. Litig.*, No. 3:18-CV-1818-VAB, 2023 WL 4992933, at *9 (D. Conn. Aug. 4, 2023) (finding the seventh Grinnell factor “weighs in favor of approval.”); *In re AOL Time Warner, Inc.*, 2006 WL 903236, at *12 (S.D.N.Y. Apr. 6, 2006) (“the mere ability to withstand a greater judgment does not suggest that the Settlement is unfair.”). Moreover, this is an excellent result, with the Settlement Fund represents a recovery of 70% of the compensatory damages related to the pending claims. Thus, this *Grinnell* factor favors preliminary approval.

Lastly, while not an official *Grinnell* factor, courts may also look to the scope of the release. *See Payment Card*, 330 F.R.D. at 42 n.41. Here, the scope of the release is not overly broad as Settlement Class Members will release only those property claims relating to Progressive’s settlement of a Settlement Class Members’ total-loss claim. *See* Settlement Agreement at ¶¶ 12–13. Released Claims do not include (i) any claims for personal injury, medical payment, uninsured motorist or underinsured motorist, (ii) the claims and rights of any party in the settlement agreed to in *Buffington v. Progressive Advanced Insurance Co. et al.*, No. 20-cv-07408 (S.D.N.Y.), and (iii) the claims being litigated in *Narcisse v. Progressive Casualty Insurance Company, et. al.*, No. 1:23-cv-04690-JGK (S.D.N.Y.). *See id.* Thus, the release is narrowly tailored and appropriate. *See Selby v. Principal Mut. Life Ins. Co.*, No. 98 CIV. 5283(RLC), 2003 WL 22772330, at *3 (S.D.N.Y. Nov. 21, 2003) (finding narrow release of class claims that allowed class members who believe they may have been injured by the alleged practice to pursue claims for monetary relief through individual or class suits weighed in favor of preliminary approval).

In sum, the applicable factors under Rule 23(e)(2) and *Grinnell* strongly support approval.

This Court should therefore find that it is likely to approve the Settlement.

VII. THE COURT SHOULD CONDITIONALLY CERTIFY THE SETTLEMENT CLASSES.

Plaintiffs respectfully request that the Court conditionally certify the Settlement Classes for purposes of effectuating the Settlement. As discussed above, on March 16, 2023, this Court entered an order (ECF No. 208) certifying two litigation classes: a Breach of Contract Class and a GBL Class, each of which ran through the date an order granting class certification was entered. ECF No. 208 at p. 2. The only substantive changes between the previously certified litigation classes and the Settlement Classes are that the Settlement Classes run to and through the date of Preliminary Approval and that the subclasses are being dropped. *Compare* Settlement Agreement at ¶¶ 1.c.–d. *with* ECF No. 208. Thus, for the same reasons previously determined by this Court in its Class Certification Order, the proposed Settlement Classes satisfy the Rule 23(a) requirements of numerosity, commonality, typicality, and adequacy, and the Rule 23(b)(3) of predominance and superiority:

- “The criteria for class membership -- whether a person submitted a claim, based on a policy issued by a Defendant to a New York resident, during a certain period, where the payment was based on a Mitchell Report, which included a PSA -- are ‘objective criteria that establish a membership with definite boundaries.’” (ECF No. 208 at p. 11);
- “Both classes . . . are so numerous that joinder of all members is impracticable.” (*see id.*);
- “[T]he named Plaintiffs’ claims, and Progressive’s related defenses, are typical of the class as a whole.” (*see id.* at p. 12);
- “[T]he representative parties will fairly and adequately protect the interests of the class.” (*see id.* at p. 13);
- “[T]he critical common questions identified by Plaintiffs predominate over those individual inquiries.” (*see id.* at p. 15); and
- “To the extent Progressive’s predominance arguments overlap with the superiority requirements, those arguments are unavailing for the reasons above.” (*see id.* at p. 22).

See also Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 613 (1997); *Newberg, supra*, § 13:18.

Thus, the Rule 23(a) and (b) requirements are met for settlement purposes, and Defendants consent

to provisional certification of the Settlement Classes to effectuate the Settlement.

Additionally, and for the reasons previously espoused by this Court, this Court should (i) appoint Plaintiffs John Plotts, Zachary Goodier, James England, Kevin Lukasik, Lorenzo Costa, Michael Verardo, and Lori Lippa as Representatives of the Settlement Classes (*see* ECF No. 208), and (ii) appoint Carney Bates & Pulliam, PLLC, Jacobson Phillips PLLC, Normand PLLC, Edelsberg Law, P.A., Shamis & Gentile, P.A., and Bailey Glasser LLP as Class Counsel (*see* ECF No. 208 at p. 23-24 (appointing CBP as Class Counsel); ECF No. 223 (appointing Normand PLLC, Edelsberg Law, P.A., and Shamis & Gentile Class Counsel along with CBP); ECF No. 356 (appointing Bailey Glasser as Class Counsel)).

VIII. THE NOTICE PROGRAM IS ADEQUATE AND FULFILLS ALL REQUIREMENT OF RULE 23 AND DUE PROCESS

“When a class settlement is proposed, the court ‘must direct to class members the best notice that is practicable under the circumstances.’” *Vargas v. Capital One Fin. Advisors*, 559 F. App’x 22, 26 (2d Cir. 2014) (summary order) (citing Fed. R. Civ. P. 23(c)(2)(B), (e)(1)). The notice must include: “(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who request exclusions; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).” Fed. R. Civ. P. 23(c)(2)(B). “There are no rigid rules to determine whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements; the settlement notice must ‘fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.’” *Visa*, 396 F.3d at 114. “Class notice need only describe the terms of the

settlement generally, which is a minimal requirement.” *George v. Shamrock Saloon II, LLC*, 2021 WL 3188314, at *7 (S.D.N.Y. July 28, 2021).

Here, the Class Notice meets all the requirements of Rule 23(c)(2)(B) by advising Settlement Class Members of the claims involved in the case; the essential terms of the Settlement, including the definition of the Settlement Classes and the estimated amount of recovery for each Settlement Class Member; the rights of Settlement Class Members to participate in the Settlement, to request exclusion from the Settlement Classes or to object to the Settlement, and specifics on the dates for exercising these rights; the requirements for opting out, for objecting, and for making an appearance at the Final Fairness Hearing; and the time and place of the Final Fairness Hearing. Thus, the Class Notice provides the necessary information for Settlement Class Members to make an informed decision regarding the proposed Settlement. The Class Notice also contains information regarding the anticipated amount of Class Counsel’s requests for attorneys’ fees and litigation expenses, and service awards for the Settlement Class Representatives.

Moreover, the proposed Settlement requires Plaintiffs to notify Settlement Class Members of the proposed Settlement by (1) emailing the Class Notice to those Settlement Class Members for whom an email address is available in Defendants’ records and was made available as part of the Class Data, and (2) mailing, by first-class US mail, the Class Notice to those Settlement Class Members for whom an email address is not available in Defendants’ records. Thus, Settlement Class Members have been identified from Defendants’ internal records and shall receive individual notice.

In addition to the emailed and mailed Class Notices, a Settlement Website will be established, which will provide access to the Class Notice, as well as other key documents related

to the Settlement, including the Settlement Agreement, the Court’s Preliminary Approval Order, and Class Counsel’s application for attorneys’ fees, litigation expenses, and service awards. Furthermore, Settlement Class Members are not required to submit claim forms in conjunction with the Settlement. Thus, every Settlement Class Member who does not exercise the right of exclusion will automatically receive a payment in accord with the terms of the Settlement.

Accordingly, the form and manner of notice proposed here fulfills all of the requirements of Rule 23 and due process. *See In re Synchrony Fin. Sec. Litig.*, No. 3:18-CV-1818-VAB, 2023 WL 4992933, at *5 (D. Conn. Aug. 4, 2023) (finding notice program that included direct notice and publication notice “satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, and provided the best notice practicable under the circumstances.”); *see also Christine Asia Co. v. Yun Ma*, No. 115MD02631CMSDA, 2019 WL 5257534, at *16 (S.D.N.Y. Oct. 16, 2019) (finding “the combination of Notice Packets sent individually by first-class mail and/or e-mail to those Class Members who could be identified with reasonable effort, combined with the print and Internet-based publication of Settlement documents was the best notice ... practicable under the circumstances.”).

IX. CONCLUSION

For these reasons, Plaintiffs respectfully request the Court enter an order: (1) preliminarily approving the Settlement, (2) provisionally certifying the Settlement Classes, (3) appointing Plaintiffs John Plotts, Zachary Goodier, James England, Kevin Lukasik, Lorenzo Costa, Michael Verardo, and Lori Lippa as Settlement Class Representatives, (4) appointing Carney Bates & Pulliam, PLLC, Jacobson Phillips PLLC, Normand PLLC, Edelsberg Law, P.A., Shamis & Gentile, and Bailey Glasser LLP as Class Counsel for the Settlement Classes, (5) approving Epiq

Class Action and Claims Solutions, Inc. as Settlement Administrator, (6) approving the form and manner of Class Notice to the Settlement Classes, (7) approving the proposed schedule of events, and (8) scheduling a Final Fairness Hearing. A proposed order granting this relief is attached as Exhibit 7 to the Bates Declaration and will be submitted in Word format to chambers via email.

Dated: July 1, 2024

Respectfully submitted,

/s/ Hank Bates

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Counsel for Plaintiffs and the Class

CERTIFICATE OF SERVICE

I certify that on July 1, 2024, I electronically transmitted the foregoing document with the Clerk of the Court using the CM/ECF system, which will provide electronic mail notice to all counsel of record.

/s/ Hank Bates

Hank Bates

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	:	X
	:	
DOMINICK VOLINO, ET AL.,	:	
Plaintiffs,	:	
	:	21 Civ. 6243 (LGS)
-against-	:	
	:	
PROGRESSIVE CASUALTY INSURANCE	:	
COMPANY, ET AL.,	:	
Defendants.	:	
-----	:	X
	:	
MICHAEL VERARDO, ET AL.,	:	
Plaintiffs,	:	
	:	22 Civ. 1714 (LGS)
-against-	:	
	:	
PROGRESSIVE CASUALTY INSURANCE	:	
COMPANY, ET AL.,	:	
Defendants.	:	X

CONSOLIDATED AMENDED CLASS ACTION COMPLAINT

John Plotts, Kevin Lukasik, Lorenzo Costa, Zachary Goodier, James England, Michael Verardo, and Lori Lippa (collectively, “Plaintiffs”) bring this class action on behalf of themselves and all others similarly situated, by and through undersigned counsel, and for their Consolidated Amended Complaint against Progressive Casualty Insurance Company (“Progressive Casualty”); Progressive Advanced Insurance Company (“Progressive Advanced”); Progressive Specialty Insurance Company (“Progressive Specialty”); and Progressive Max Insurance Company (“Progressive Max) (collectively “Defendants” or “Progressive”) state and allege as follows:

INTRODUCTION

1. This is a class action on behalf of Plaintiffs and all other similarly situated claimants in New York who received a payment for the loss of a totaled vehicle from Defendants, where

Defendants used valuation reports prepared by Mitchell International, Inc. (“Mitchell”) to determine the actual cash value of the loss vehicles. By using these valuation reports, Defendants systemically thumb the scale when calculating the actual cash value of claimants’ loss vehicles by applying so-called “Projected Sold Adjustments” (“PSA”) that are: (a) deceptive and unexplained; (b) contrary to appraisal standards and methodologies; (c) not based in fact, as they are contrary to the used-car industry’s market pricing and inventory management practices; (d) not applied by the major competitor of Defendants’ vendor Mitchell; (e) not applied by Defendants and Mitchell to insureds in other states like California and Washington; (f) calculated using a statistically invalid methodology; and (g) in breach of Progressive’s form insurance policy and violative of 11 NYCCR § 216.0 *et seq.* (“Regulation 64”).

2. When valuing total-loss claims for vehicles, it is improper for an automobile insurance company, such as Progressive, to undervalue and underpay claims by manipulating the data used to determine the actual cash value of insureds’ and claimants’ totaled vehicles. Specifically, under their insurance policy terms and applicable New York law, Defendants have a duty to pay, and represent that they will pay, the actual cash value of a loss vehicle when adjusting total-loss claims.

3. Notwithstanding these obligations and representations, Defendants systemically pay less than actual cash value by using a valuation process that employs improper, unreasonable, and statistically invalid adjustments for the sole purpose of reducing the value of comparable vehicles specified in the valuation reports, which in turn reduces the valuation of the total-loss vehicles and the claim payment to the insured or claimant.

4. Specifically, Defendants, through Mitchell, systemically apply the so-called “Projected Sold Adjustment” that results in a significant downward adjustment to the base values

of the comparable vehicles used to calculate the actual cash value of Plaintiffs’ and Class members’ total-loss vehicles. This reduction is contrary to appraisal standards and methodologies and is not based in fact, as it is contrary to the used car industry’s market pricing and inventory management practices. The adjustment is applied to each of the comparable vehicles on top of adjustments for differences such as mileage, options, and equipment. The only purported explanation for the downward adjustment appears on the last page of the valuation reports and is a general, nondescript statement claiming that the reduction is to “reflect consumer purchasing behavior (negotiating a different price than the listed price).” Exhibit 1 at p. 8.

5. [REDACTED]

[REDACTED]

[REDACTED] Worse than this complete lack of curiosity is that Defendants thumb the scale by [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Nevertheless, Progressive applies a PSA of [REDACTED] to the advertised (or listed) price of comparable vehicles when calculating the actual cash value of total-loss vehicles.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] To arrive at the PSA amount, however, Progressive, through third-party vendors and as set forth above,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

7. As explained herein, the used auto market is such that, given the ubiquity of Internet advertising and shopping and developments in sophisticated pricing software, car dealerships simply do not negotiate off of Internet advertised prices. Any difference between a list and sales price does not reflect a negotiation of the vehicle's *cash* value, but rather that a dealer shifted its profits to other components of the transaction: for example, profits made through financing or trade-in or ancillary products described above, or that the dealer applied a generally unavailable discount to the cash value of the vehicle (such as employee discount, loyalty discount, military discount, or friends/family discount). [REDACTED]

[REDACTED]

8. To arrive at its conclusion that consumers negotiate down the advertised price by [REDACTED] Progressive, through its vendors, [REDACTED]

JURISDICTION AND VENUE

11. Minimal diversity exists under the Class Action Fairness Act (“CAFA”), 28 U.S.C. §§ 1332(d), 1441(a)-(b), and 1453. Plaintiffs and the proposed class members are citizens of the State of New York. Defendants were all incorporated in Delaware and have their corporate headquarters in Mayfield Village, Ohio, and, at all relevant times, were engaged in the business of marketing and selling insurance policies and adjusting insurance claims in the State of New York.

12. There are more than [REDACTED] putative class members, and the aggregate compensatory damages (in the amount of the Projected Sold Adjustments that were deceptively deducted), claimed by Plaintiffs and the Classes [REDACTED].

13. Venue is proper in this District under 28 U.S.C. § 1391, as a substantial portion of the conduct giving rise to Plaintiffs’ claims occurred in this District, and Defendants transact business in this District.

PARTIES

14. Plaintiff John Plotts resides in Wayne County, New York. At all relevant times, Plaintiff Plotts was contracted with Progressive for automobile insurance. On or about September 22, 2020, Plaintiff Plotts was in a car wreck and Defendants deemed his vehicle to be a total loss.

15. Plaintiff Kevin Lukasik resides in Saratoga County, New York. At all relevant times, Plaintiff Lukasik was contracted with Progressive for automobile insurance. On or about February 27, 2019, Plaintiff Lukasik was in a car wreck and Defendants deemed his vehicle to be a total loss.

16. Plaintiff Lorenzo Costa resides in Suffolk County, New York. At all relevant times, Plaintiff Costa was contracted with Progressive for automobile insurance. On or about May 28, 2020, Plaintiff Costa was in a car wreck and Defendants deemed his vehicle to be a total loss.

17. Plaintiff Zachary Goodier resides in Niagara County, New York. At all relevant times, Plaintiff Goodier was contracted with Progressive for automobile insurance. On or about June 18, 2018, and again on February 8, 2019, Plaintiff Goodier was in a car wreck and Defendants deemed his vehicles to be total losses.

18. Plaintiff James England resides in Fulton County, New York. On or about June 20, 2020, Plaintiff England was in a car wreck with a Progressive insured, and Defendants deemed his vehicle to be a total loss.

19. Plaintiff Michael Verardo resides in Dutchess County, New York. At all relevant times, Plaintiff Verardo was contracted with Progressive for automobile insurance. On or about April 28, 2017, Plaintiff Verardo was in a car wreck and Defendants deemed his vehicle to be a total loss.

20. Plaintiff Lori Lippa resides in Monroe County, New York. At all relevant times, Plaintiff Lippa was contracted with Progressive for automobile insurance. On or about November 4, 2020, Plaintiff Lippa was in a car wreck and Defendants deemed her vehicle to be a total loss.

21. Defendant Progressive Casualty has its corporate headquarters located at 6300 Wilson Mills Rd, W33, Mayfield Village, OH 44143. According to the Progressive website¹, Progressive Casualty, in coordination with other affiliated entities within the Progressive Group, conducts business in New York and throughout the country under the brand Progressive, or the Progressive Group of Insurance Companies, underwriting auto insurance to over 20 million drivers countrywide. The 2019 Annual Report for Progressive Corporation reported \$37.6 billion in net premiums written by Progressive Corporation and its subsidiaries. Exhibit 9 at p. 2. In the state of New York, Progressive Casualty underwrites auto insurance in coordination with other

¹ <https://www.progressive.com/auto/>.

Progressive Group entities, all of which are registered with the New York Department of Financial Services under the same Group Number (155), Group Name (“Progressive Group”), with the same website (<https://www.progressive.com>), and the same address (6300 Wilson Mills Rd, W33, Mayfield Village, OH 44143). The Progressive Group entities issuing auto insurance policies in the State of New York include: Progressive Casualty Insurance Company, Progressive Advanced Insurance Company, Progressive Specialty Insurance Company, Progressive Max Insurance Company, Progressive Northwestern Insurance Company, Progressive Direct Insurance Company, and Progressive Northern Insurance Company.

22. Progressive Casualty performs all material insurance operations related to auto insurance policies underwritten by Progressive Group entities in the State of New York. Most relevant to this action, Progressive Casualty manages and implements the adjustment of total-loss automobile claims made on policies of insurance issued by it and other Progressive Group entities in New York, pursuant to the same policies and practices, by the same adjustor employees working in the same claims centers, utilizing a single website (www.progressive.com), and using the same address, telephone number, trademarks and letterhead on correspondence. Consistent with these common adjustment policies, practices, and employees, job postings at the Progressive website refer throughout to “Progressive” as the entity advertising for employment. Exhibit 10.

23. Progressive Casualty owns the website www.progressive.com.

24. Progressive Casualty provides marketing services for each Progressive Group entity.

25. Customers in New York can purchase from Progressive Casualty’s website a policy from any of the Progressive Group entities.

26. Progressive Casualty employs the adjusters who adjust auto insurance claims covered by a policy underwritten by each Progressive Group entity in the state of New York.

27. Through these adjusters, as detailed at the Progressive website, Progressive Casualty investigates, handles, and adjusts all insurance claims using the same policies and procedures, regardless which Progressive Group entities were identified or disclosed in the relevant policy. *See* Exhibit 11. These common policies and procedures, implemented by the same adjustor employees, apply specifically to the adjustment of claims for actual cash value when a total loss is covered by the policy. *Id.*

28. Progressive Casualty maintains the databases of claim information for all auto claims, regardless of which Progressive Group entity underwrote the insurance or issued the policy covering the claim. Progressive Casualty employed and paid the adjusters who adjusted Plaintiffs' and the putative Classes' total-loss claims.

[REDACTED]

[REDACTED]

[REDACTED]

30. Consistent with marketing, selling, and adjusting insurance under the same Progressive Casualty-owned brands and trademarks, out of the same corporate headquarters and regional offices, and via the same website (www.progressive.com), Progressive Casualty participate in drafting the other Defendants' policies and underwriting insurance policies with no material differences relevant to the claims in this action, regardless which Progressive Group entity may be identified on the insurance policy.

31. Consistent with these claims practices, each of the Plaintiffs' valuation reports refer only to the Progressive Group of Insurance Companies, without reference to any individual

Progressive Group entity. Exhibits 1-8. Similarly, each Plaintiff's Settlement Summary references only the Progressive Group of Insurance Companies. Exhibits 12-19.

32. Consistent with all the above, the terms of service for the Progressive website defines "Progressive" as Progressive Casualty Insurance Company and its affiliated companies;² Progressive Casualty is the owner of at least 207 trademarks utilized commonly by the Progressive Group entities, (Exhibit 20); and Progressive Casualty is the owner of at least 19 patents related to how it processes insurance claims and performs other insurance marketing and management functions on behalf of the Progressive Group entities, (Exhibit 21). Other Progressive Group entities utilize Progressive Casualty's brands and trademarks.

33. Defendant Progressive Advanced has its corporate headquarters located at 6300 Wilson Mills Rd, W33, Mayfield Village, OH 44143. Progressive Advanced issues insurance policies in New York and is registered with the New York Department of Financial Services under the same Group Number (155), Group Name ("Progressive Group"), with the same website (<https://www.progressive.com>), and the same address (6300 Wilson Mills Rd, W33, Mayfield Village, OH 44143) as Progressive Casualty, Progressive Max, and Progressive Specialty.

34. Defendant Progressive Max has its corporate headquarters located at 6300 Wilson Mills Rd, W33, Mayfield Village, OH 44143. Progressive Max issues insurance policies in New York and is registered with the New York Department of Financial Services under the same Group Number (155), Group Name ("Progressive Group"), with the same website (<https://www.progressive.com>), and the same address (6300 Wilson Mills Rd, W33, Mayfield Village, OH 44143) as Progressive Casualty, Progressive Advanced, and Progressive Specialty.

² <https://www.progressive.com/copyright/>

35. Defendant Progressive Specialty has its corporate headquarters located at 6300 Wilson Mills Rd, W33, Mayfield Village, OH 44143. Progressive Specialty issues insurance policies in New York and is registered with the New York Department of Financial Services under the same Group Number (155), Group Name (“Progressive Group”), with the same website (<https://www.progressive.com>), and the same address (6300 Wilson Mills Rd, W33, Mayfield Village, OH 44143) as Progressive Casualty, Progressive Advanced, and Progressive Max.

FACTUAL ALLEGATIONS

Defendants’ Systemic Application of Projected Sold Adjustments.

36. On September 22, 2020, Plaintiff Plotts was involved in a car wreck and sustained physical damage to his vehicle. At the time of the car wreck, Plaintiff Plotts was contracted with Progressive for automobile insurance through a policy underwritten by Progressive Advanced in coordination with Progressive Casualty.

37. On February 27, 2019, Plaintiff Lukasik was involved in a car wreck and sustained physical damage to his vehicle. At the time of the car wreck, Plaintiff Lukasik was contracted with Progressive Casualty for automobile insurance.

38. On May 28, 2020, Plaintiff Costa was involved in a car wreck and sustained physical damage to his vehicle. At the time of the car wreck, Plaintiff Costa was contracted with Progressive for automobile insurance through a policy underwritten by Progressive Specialty in coordination with Progressive Casualty.

39. On June 18, 2018, and again on February 8, 2019, Plaintiff Goodier was involved in a car wreck and sustained physical damage to his vehicles. At the time of each car wreck, Plaintiff Goodier was contracted with Progressive for automobile insurance through a policy underwritten by Progressive Advanced in coordination with Progressive Casualty.

40. On June 20, 2020, Plaintiff England was involved in a car wreck and sustained physical damage to his vehicle. The driver of the other vehicle had a policy of insurance issued by Progressive Specialty in coordination with Progressive Casualty.

41. On April 28, 2017, Plaintiff Verardo was involved in a car wreck and sustained physical damage to his vehicle. At the time of the car wreck, Plaintiff Verardo was contracted with Progressive for automobile insurance through a policy of insurance underwritten by Progressive Max in coordination with Progressive Casualty.

42. On November 4, 2020, Plaintiff Lippa was involved in a car wreck and sustained physical damage to her vehicle. At the time of the car wreck, Plaintiff Lippa was contracted with Progressive Casualty for automobile insurance.

43. Like all members of the putative Classes, each Plaintiff made a property damage claim to Defendants. Each claim submitted by Plaintiffs was determined by Progressive to be a covered claim, meaning Plaintiffs necessarily performed whatever preconditions were required to trigger entitlement to payment.

44. Pursuant to the same policies and procedures, Defendants declared each Plaintiff's vehicle to be a total loss and purported to offer each of them the actual cash value of their loss vehicles, as they promised and represented they would under the uniform provisions of their insurance policies and New York law.

45. When calculating their valuations and claims payments, Defendants systemically employ a routine "total loss settlement process." The process has no material differences relevant to this action, regardless of whether it involves first-party or third-party claimants or which Progressive entities were directly involved in the issuance of the relevant policy and/or adjustment of the claim. *See, e.g.*, Exhibit 5. This process involves obtaining a "Vehicle Valuation Report"

from Mitchell and then using and relying upon the valuation provided by Mitchell to determine the benefit payment under the policy. Defendants provided a Mitchell Vehicle Valuation Report for Mr. Plotts on September 28, 2020, (Exhibit 1); for Mr. Lukasik on March 1, 2019, (Exhibit 2); for Mr. Costa on June 24, 2020, (Exhibit 3); for Mr. Goodier on June 21, 2018, (Exhibit 4), and on February 25, 2019, (Exhibit 5); for Mr. England on June 22, 2020, (Exhibit 6); for Mr. Verardo on May 2, 2017, (Exhibit 7); and for Ms. Lipa on November 6, 2020, (Exhibit 8).

46. The Mitchell Vehicle Valuation Reports used by Defendants during the relevant period followed the same process, provided and disclosed the same or substantially the same material information, and presented that material information in the same or substantially the same format. The Vehicle Valuation Reports purport to contain values for comparable vehicles listed for sale (or, much less often, recently sold) in the claimant's geographic area. The reports also contain a purported valuation for the loss vehicle based upon these advertised prices for comparable vehicles that are listed in the report. The report adjusts the advertised prices of those comparable vehicles to account for differences in equipment, mileage, and vehicle configuration. Exhibit 1 at p. 8; Exhibit 2 at p. 7; Exhibit 3 at p. 9; Exhibit 4 at p. 10; Exhibit 5 at p. 7; Exhibit 6 at p. 7; Exhibit 7 at p. 8; Exhibit 8 at p. 8.

47. In this action, Plaintiffs do not dispute the accuracy of the advertised prices for the comparable vehicles; Plaintiffs do not dispute that the selected comparable vehicles are a fair representation of comparable vehicles in the relevant market area; Plaintiffs do not dispute that Progressive can adjust the comparable vehicles' prices based on differences (if any) in equipment, mileage, and vehicle configuration; Plaintiffs do not dispute that Progressive accurately identifies differences (if any) in equipment, mileage, and vehicle configuration; and Plaintiffs do not dispute

the amount of the adjustments Progressive applied to account for the differences (if any) in equipment, mileage, and vehicle configuration.

48. Said another way, aside from the PSA at issue, Plaintiffs do not challenge the Mitchell methodology for calculating the actual cash value of total-loss vehicles.

49. The valuation reports used by Defendants, however, make a further adjustment to virtually every comparable vehicle in calculating the actual cash value of the total-loss vehicle, which Progressive calls a “Projected Sold Adjustment.” For Plaintiff Plotts, the three comparable vehicles were reduced by PSA’s in the amounts of, respectively, \$801.00, \$680.00, and \$927.00, representing a reduction of 6.18% from the advertised prices. Exhibit 1 at pp. 5-6. For Plaintiff Lukasik, PSA’s in the amounts of -\$818.00, -\$643.00, and -\$819.00, respectively, were applied to the second, third, and fourth comparable vehicles, representing a reduction of 5.84% from the advertised prices. Exhibit 2 at pp. 5-6. For Plaintiff Costa, PSA’s in the amounts of -\$1,022.00, -\$1,336.00, and -\$1,247.00, respectively, were applied to each of the three comparable vehicles, representing a reduction of 4.6% from the advertised prices. Exhibit 3 at pp. 5-7. For Plaintiff Goodier’s first valuation report, PSA’s in the amounts of -\$928.00, -\$818.00, -\$819.00, -\$727.00, -\$868.00, -\$574.00, respectively, were applied to the fifth, sixth, seventh, eighth, ninth, and tenth comparable vehicles, representing a reduction of 7.9% from the advertised prices. Exhibit 4 at pp. 7-9. For Plaintiff Goodier’s second valuation report, Projected Sold Adjustment in the amount of -560.00 was applied to each of the comparable vehicles, representing a reduction of 11.2% from the advertised prices. Exhibit 5 at pp. 5-6. For Plaintiff England, Projected Sold Adjustments in the amounts of -\$535.00, -\$350.00, -\$374.00, and -\$385.00, respectively, were applied to each of the four comparable vehicles, representing a reduction of 11.7% from the advertised prices. Exhibit 6 at pp. 5-6. For Plaintiff Verardo, Projected Sold Adjustments in the amounts of -\$1,356.00,

-\$1,139.00, -\$991.00, and -\$1,360.00, respectively, were applied to each of the four comparable vehicles, representing a reduction of 4.7% from the advertised prices. Exhibit 7 at pp. 5-7. For Plaintiff Lippa, Projected Sold Adjustments in the amounts of -\$785.00, -\$611.00, and -\$611.00, respectively, were applied to the second, third, and fourth comparable vehicles, representing a reduction of 8.7% from the advertised prices. Exhibit 8 at pp. 5-6.

50. Defendants provide no data specific to the comparable vehicles or any explanation of industry practices in their valuation reports to support *any* Projected Sold Adjustment, much less the specific downward adjustments used in Plaintiffs' valuation reports. Instead, the *only* explanation is buried on the last page of each report, stating in full: "Projected Sold Adjustment – an adjustment to reflect consumer purchasing behavior (negotiating a different price than the listed price)." Exhibit 1 at p. 8; Exhibit 2 at p. 7; Exhibit 3 at p. 9; Exhibit 4 at p. 10; Exhibit 5 at p. 7; Exhibit 6 at p. 7; Exhibit 7 at p. 8; Exhibit 8 at p. 8.

Defendants' Projected Sold Adjustments are Deceptive and Invalid.

51. Defendants' Projected Sold Adjustments are deceptive. As part of a deceptive practice to lower the value of total-loss claims, Defendants do not do what they say they will do – pay actual cash value. Moreover, as described above, Defendants provide no explanation or justification for the Projected Sold Adjustment, much less the specific amount applied, other than that it "reflect[s] consumer behavior." Exhibit 1 at p. 8; Exhibit 2 at p. 7; Exhibit 3 at p. 9; Exhibit 4 at p. 10; Exhibit 5 at p. 7; Exhibit 6 at p. 7; Exhibit 7 at p. 8; Exhibit 8 at p. 8.

52. In truth, Defendants' Projected Sold Adjustments do not reflect market realities (the context in which "consumer behavior" occurs) and run contrary to customary automobile dealer practices and inventory management, where list prices are priced to market to reflect the intense competition in the context of Internet pricing and comparison shopping. Before the ubiquity of

online advertising and shopping, “advertised” prices had very little to do with eliciting car buyers to particular dealerships—instead, car buyers generally went to their local used car dealership that had the desired vehicle in stock for sale. The “advertised” price was simply whatever price was listed on the physical window. And consumers could not, as they can now, easily compare that price to Internet advertisements of the same vehicle offered by competitors.

53. As such, dealerships generally priced vehicles above market knowing that some consumers might be poor negotiators and they would realize an inflated profit on those sales. This above-market “window” price obviously allowed for negotiation, and a downward negotiation would often occur.

54. But during the Class Period, [REDACTED], that is simply no longer how the used car market operates. Now, given the need for Internet advertising, the prevalence of Internet shopping and consumer behavior, developments in sophisticated pricing software universally used by car dealerships, and the ease with which consumers can compare the advertised prices of identical vehicles across multiple competing dealerships, used car dealerships no longer price vehicles above market with room for—and the expectation of—negotiation. Instead, car dealerships use sophisticated pricing software—which provides the advertised prices of all competitors; the average “turn” of a given year, make and model; the amount for which vehicles have sold during a given time-period; etc.—and now price vehicles to market and do not negotiate from that price.

55. This makes sense, obviously, because if a car dealership priced a vehicle above market with room for negotiation, consumers would simply not go to that dealership. This is because consumers can easily compare advertised prices, and, would seek out the vehicle priced to market, rather than the same vehicle priced at a higher amount (i.e., above market). And

[REDACTED]

[REDACTED] In other words, it is not merely that Defendants make completely unverifiable, unverified, and arbitrary assumptions; far more problematically, Defendants [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

73. Moreover, examples abound demonstrating the glaring error of Defendants' [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

75. The advertised prices many dealerships publish on these websites include discounts that would not be available to the general public or that include discounts for consumers who are financing and providing a trade-in.

76. For example, the second comparable vehicle listed in Plaintiff Lippa's valuation report is from Garber Honda in Rochester, New York. Exhibit 8 at p. 5.

77. Exhibit 22 shows a Cars.com advertisement from Garber Honda where the advertised price for a 2019 Honda Civic is \$23,970.00.

78. If one views the listing for that same vehicle on the dealer's website, however, the dealer discloses the price of \$23,970 includes a \$500 discount for financing and a \$500 discount for providing a trade-in. Exhibit 23.

79. Thus, a consumer who was not financing the vehicle through the dealership and who was not trading in a vehicle—obviously, insureds who sustained a total loss almost certainly

are not trading in a vehicle when purchasing a replacement vehicle—would have to pay in cash \$1,000 *more* than the price listed on sources where [REDACTED]

[REDACTED].

80. Similarly, the second comparable vehicle listed in Plaintiff Verardo’s valuation report is from Blasius South in Stratford, Connecticut. Exhibit 7 at p. 6.

81. Listings from Blasius South make clear that “Posted internet prices include dealer finance discount of \$750. Discount not available for cash or outside finance deals.” Exhibit 24.

82. There are numerous other examples of dealers advertising prices that include discounts that would not be available to the cash buyer who brings the dealer no further profit opportunities.

83. In determining the actual *cash* value of Plaintiffs’ and class members’ totaled vehicle, there is no justification for Defendants [REDACTED]

[REDACTED]

84. As another example, the advertised price of a vehicle often assumes a “loyalty discount” that most consumers will not qualify for. For example, a vehicle’s advertised price might include a \$2,000.00 loyalty discount. A consumer who is not a repeat customer would need to pay \$2,000.00 more than the advertised price. *See, e.g.*, Exhibit 25. Such a discount is not accounted for in the list prices from [REDACTED] *See, e.g.*, Exhibit 26 (first advertisement).

85. Clearly, then, there are numerous reasons why vehicles sell for more than their advertised price. [REDACTED]

[REDACTED]

86. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

90. The impropriety and arbitrariness of Defendants’ Projected Sold Adjustments are further demonstrated by the fact that Mitchell’s primary competitor in providing valuation reports to insurance companies—CCC Intelligent Solutions—does not apply Projected Sold Adjustments. Instead, CCC Intelligent Solutions uses list prices.

91. The impropriety and arbitrariness of Defendants’ Projected Sold Adjustments are further demonstrated by the fact that Progressive Group entities do not apply these adjustments when valuing total losses in California or Washington.

92. Instead, in these states, Progressive Group entities use the exact same methodology, without the Projected Sold Adjustment line item, and represent that amount as the actual cash value of the insured’s totaled vehicle.

93. There is no justification for reducing New York claimants' payments by the Projected Sold Adjustment, while not subjecting California and Washington claimants to this same unsupportable line-item adjustment.

Defendants' Projected Sold Adjustments Violate Regulation 64.

94. The data and methodology that purportedly support the Projected Sold Adjustments in Mitchell's valuation reports are fundamentally flawed in a manner that both violates Regulation 64 and arbitrarily and improperly lowers the benefits paid to Plaintiffs and the members of the proposed classes for their total loss vehicles.

95. Regulation 64 provides the following criteria regarding "Adjustment of total losses:"

(1) If the insurer elects to make a cash settlement, its minimum offer, subject to applicable deductions, must be one of the following:

(i) The average of the retail values for a substantially similar vehicle as listed in two valuation manuals current at the date of loss and approved by this department. Manuals approved for use are--The Redbook, published by National Market Reports Inc., and The N.A.D.A. Official Used Care Guide, published by the National Automobile Dealers Used Car Guide Company...The insurer may deduct documented, reasonable dealer preparation charges, up to \$100, from the average of the retail values...

(ii) A quotation for a substantially similar vehicle, obtained by the insurer from a qualified dealer located reasonable convenient to the insured. A reasonable location shall be within 25 miles of the place of principal garagement of the motor vehicle...

(iii) A quotation obtained from a computerized database, approved by the superintendent, that produces *statistically valid* fair market values for a substantially similar vehicle, *within the local market area that meets all the following minimum criteria*:

(a) it shall produce values for at least 85 percent of all makes and models of private passenger automobiles, as defined in section 67.1(a) of this Title, for the last 15 model years, and shall take into account the values of all major options for such vehicles:

- (b) it shall rely upon values derived from licensed dealers, which have minimum sales of 100 motor vehicles per year in the local market area for all vehicles of seven model years or less of age, and be based upon the physical inventory of vehicles sold within the 90 days prior to the loss and vehicles which are available; and
- (c) it shall monitor the average retail price of private passenger automobiles when there is insufficient data or inventory available from licensed dealers to ensure statistically valid local market area values...

11 NYCCR § 216.7(c)(1)(i)-(iii) (Emphasis added).

96. These standards are incorporated into every automobile policy providing coverage for total losses. *Trizzano v. Allstate Ins. Co.*, 7 A.D.3d 783 (2d Dep’t 2004). In addition, 11 NYCRR § 216.10 (“Standards for prompt, fair and equitable settlement of third-party property damages claims arising under motor vehicle liability insurance contracts”) expressly makes § 216.7(c)(1) and numerous other subsections of § 216 applicable to third-party claims.

97. Defendants purport that the Mitchell valuation reports, and the Project Sold Adjustment, comply with the minimum criteria set forth subsection (iii) of section 216.7(c)(1). They are not compliant with these statutory requirements.

98. As subsection (iii) states, for an insurer to rely on data obtained from a computerized database, the data must produce “statistically valid fair market values” for comparable vehicles “within the local market.” Under Regulation 64, “Local market area shall mean a 100 mile radius, limited to within the United States, of the place of principal garagement of the insured’s motor vehicle.” 11 NYCRR § 216.7(a)(10).

99. Additionally, the valuation for the loss vehicle must rely on values derived from licensed dealers in the local market area and must be based upon the physical inventory of vehicles actually “sold” within 90 days prior to the loss and that are actually available.

100. Mitchell's methodology is not statistically valid. The data is not representative of the used car market in the relevant area [REDACTED].

101. *First*, as alleged above, the Projected Sold Adjustment is statistically invalid because Defendants [REDACTED] the data used for the methodology.

102. Specifically, data was excluded from calculations of the Projected Sold Adjustment [REDACTED]
[REDACTED]
[REDACTED]

104. *Second*, still today, Defendants [REDACTED]
[REDACTED]

105. Again, as alleged above, [REDACTED], as examples abound of dealers plainly disclosing on their websites that the Internet price includes financing, trade-in, and other discounts not available to the cash buyer. Without these discounts, the cash price of a vehicle will be more than the list price.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Despite recognizing that Internet prices [REDACTED]

[REDACTED] Mitchell presumes—

without investigation of the specific comparable or even the relevant dealer’s general practices and

without factual justification— [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Mitchell’s external marketing materials prepared for insurance companies like

Defendants [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

113. *Third*, [REDACTED]

[REDACTED]

114. *Fourth*, the Projected Sold Adjustment is calculated through misapplying [REDACTED]

115. The [REDACTED] for the Projected Sold Adjustment estimates [REDACTED]

[REDACTED]

[REDACTED] data J.D. Power produced pursuant to subpoena [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

118. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

120. Moreover, Defendants [REDACTED]

[REDACTED]

[REDACTED] The data utilized to calculate the Projected Sold Adjustments applied in the Mitchell valuation reports for Plaintiffs' loss vehicles demonstrate these flaws. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] For Plaintiff England, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

124. For Plaintiff Lukasik, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

125. For Plaintiff Plotts, [REDACTED]

[REDACTED]

[REDACTED]

126. For Plaintiff Costa, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] For Plaintiff Goodier, [REDACTED]

[REDACTED]

[REDACTED]

128. Thus, the data underpinning the Projected Sold Adjustment—an adjustment applied solely for the purpose of reducing the valuation of Defendants’ claimants’ vehicles—violates the requirements of Regulation 64 in a manner that damages Plaintiffs and Class members. Defendants have no justification for application of the Projected Sold Adjustments in the relevant local market areas, much less to the sales practices of the relevant dealers, much less to the Internet listings for the specific comparable vehicles utilized in their valuation reports.

Plaintiffs and each member of the Classes were damaged by Defendants’ application of Projected Sold Adjustments

129. Plaintiffs and each member of the classes were damaged by Defendants’ application of these Projected Sold Adjustments because they were not paid the actual cash value they would have received had Defendants applied proper methodologies and appraisal standards.

130. Were it not for this deceptive and improper adjustment, the “Base Value” in each valuation report would have been higher, resulting in a higher “settlement value” and in turn a higher payment by Defendants for actual cash value. Specifically, for Plaintiff Plotts, were it not for this deceptive and improper adjustment, the payment of actual cash value by Defendants would have been \$802.67 higher, before adding the related increase in payments for applicable sales taxes. For Plaintiff Lukasik, were it not for this deceptive and improper adjustment, the payment of actual cash value by Defendants would have been \$569.99 higher, before adding the related

increase in payments for applicable sales taxes. For Plaintiff Costa, were it not for this deceptive and improper adjustment, the payment of actual cash value by Defendants would have been \$1,201.66 higher, before adding the related increase in payments for applicable sales taxes. For Plaintiff Goodier's first claim, were it not for this deceptive and improper adjustment, the payment of actual cash value by Defendants would have been \$473.40 higher, before adding the related increase in payments for applicable sales taxes. For Plaintiff Goodier's second claim, were it not for this deceptive and improper adjustment, the payment of actual cash value by Defendants would have been \$560.00 higher, before adding the related increase in payments for applicable sales taxes. For Plaintiff England, were it not for this deceptive and improper adjustment, the payment of actual cash value by Defendants would have been \$411.00 higher, before adding the related increase in payments for applicable sales taxes. For Plaintiff Verardo, were it not for this deceptive and improper adjustment, the payment of actual cash value by Defendants would have been \$1,211.50 higher, before adding the related increase in payments for applicable sales taxes. For Plaintiff Lippa, were it not for this deceptive and improper adjustment, the payment of actual cash value by Defendants would have been \$501.75 higher, before adding the related increase in payments for applicable sales taxes³

CLASS ALLEGATIONS

131. This action is brought by Plaintiffs as a class action, on their own behalf and on behalf of all others similarly situated, under Rule 23 of the Federal Rules of Civil Procedure, for declaratory judgment and damages, plus interest, costs, and attorney's fees. Plaintiffs seek certification of this action as a class action on behalf of the following Classes:

³ The dollar amount of Defendants' underpayment to each Plaintiff was calculated as the difference in the "Base Value" without application of the improper Projected Sold Adjustments and the "Base Value" as calculated by Mitchell.

Breach of Contract Class (Against Progressive Casualty): All persons who made a first-party claim (which was assigned a Progressive Company Code of [REDACTED] [REDACTED]⁴ on a policy of insurance issued by any Progressive Group entity to a New York resident who, from July 28, 2015 through the date an order granting class certification is entered, received compensation for the total loss of a covered vehicle, where that compensation was based on an Instant 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.

Breach of Contract Subclass I (Against Progressive Casualty): All persons who made a first-party claim (which was assigned a [REDACTED] on a policy of insurance issued by any Progressive Group entity to a New York resident who, from July 28, 2015 through the date an order granting class certification is entered, received compensation for the total loss of a covered vehicle, where that compensation was based on an Instant 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.

Breach of Contract Subclass II (Against Progressive Casualty and Progressive Advanced): All persons who made a first-party claim (which was assigned a [REDACTED] on a policy of insurance issued by any Progressive Group entity to a New York resident who, from July 28, 2015 through the date an order granting class certification is entered, received compensation for the total loss of a covered vehicle, where that compensation was based on an Instant 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.

Breach of Contract Subclass III (Against Progressive Casualty and Progressive Specialty): All persons who made a first-party claim (which was assigned a [REDACTED] on a policy of insurance issued by any Progressive Group entity to a New York resident who, from July 28, 2015 through the date an order granting class certification is entered, received compensation for the total loss of a covered vehicle, where that compensation was based on an Instant 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.

Breach of Contract Subclass IV (Against Progressive Casualty and Progressive Max): All persons who made a first-party claim (which was assigned

⁴ Defendants process all claims and store all claims information in a central claims system maintained by Progressive Casualty. Internally, [REDACTED]

a [REDACTED] on a policy of insurance issued by any Progressive Group entity to a New York resident who, from July 28, 2015 through the date an order granting class certification is entered, received compensation for the total loss of a covered vehicle, where that compensation was based on an Instant 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.

Gen. Bus. Law § 349 Class (Against Progressive Casualty): All persons who made a claim (which was assigned a [REDACTED] on a policy of insurance issued by any Progressive Group entity to a New York resident who, from July 28, 2018 through the date an order granting class certification is entered, received compensation for the total loss of a covered vehicle, where that compensation was based on an Instant 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.

Gen. Bus. Law § 349 Subclass I (Against Progressive Casualty): All persons who made a claim (which was assigned a [REDACTED] on a policy of insurance issued by any Progressive Group entity to a New York resident who, from July 28, 2018 through the date an order granting class certification is entered, received compensation for the total loss of a covered vehicle, where that compensation was based on an Instant 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.

Gen. Bus. Law § 349 Subclass II (Against Progressive Casualty and Progressive Advanced): All persons who made a claim (which was assigned a [REDACTED]) on a policy of insurance issued by any Progressive Group entity to a New York resident who, from July 28, 2018 through the date an order granting class certification is entered, received compensation for the total loss of a covered vehicle, where that compensation was based on an Instant 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.

Gen. Bus. Law § 349 Subclass III (Against Progressive Casualty and Progressive Specialty): All persons who made a claim (which was assigned a [REDACTED]) on a policy of insurance issued by any Progressive Group entity to a New York resident who, from July 28, 2018 through the date an order granting class certification is entered, received compensation for the total loss of a covered vehicle, where that compensation was based on an Instant 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.

Gen. Bus. Law § 349 Subclass IV (Against Progressive Casualty and Progressive Max): All persons who made a claim (which was assigned a [REDACTED] on a policy of insurance issued by any Progressive Group entity to a New York resident who, from July 28, 2018 through the date an order granting class certification is entered, received compensation for the total loss of a covered vehicle, where that compensation was based on an Instant 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.

132. Plaintiffs reserve the right to amend or modify the Class definitions.

133. Excluded from the Classes are the Defendants, any parent, subsidiary, or control person of the Defendants, as well as the officers and directors of the Defendants and the immediate family members of any such person. Also excluded is any judge who may preside over this cause of action.

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

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

- a. Whether Defendants systemically used Mitchell's Vehicle Valuation Reports in adjusting total loss claims to determine actual cash value;
- b. Whether the Mitchell Vehicle Valuation Reports included Projected Sold Adjustments to the value of the comparable vehicles that reduced the base value, and thus the claim amount paid by Defendants for the actual cash value of Plaintiffs' and Class members' total loss vehicles;

- c. Whether the Mitchell Vehicle Valuation Reports violated Regulation 64;
- d. Whether the Projected Sold Adjustment is calculated using a statistically invalid methodology;
- e. Whether representing to claimants that the Mitchell valuation equated with the total loss vehicle's actual cash value was deceptive;
- f. Whether Defendants' deceptive acts and improper practices injured Plaintiffs and members of the Classes;
- g. Whether Defendants' acts violated their obligations under the policy of insurance;
- h. Whether Plaintiffs and the Classes are entitled to compensatory damages, and if so, the calculation of damages; and
- i. Whether Plaintiffs and members of the Classes are entitled to an injunction restraining Progressive's future deceptive acts and practices.

136. **Typicality (Rule 23(a)(3)).** The claims of the Plaintiffs, who are representative of the Classes herein, are typical of the claims of the proposed Classes, in that the claims of all members of the proposed Classes, including the Plaintiffs, depend on a showing of the acts of Progressive giving rise to the right of Plaintiffs to the relief sought herein. There is no conflict between the individually named Plaintiffs and the other members of the proposed Classes with respect to this action, or with respect to the claims for relief set forth herein.

137. **Adequacy (Rule 23(a)(4)).** The named Plaintiffs are the representative parties for the Classes, and are able to, and will fairly and adequately, protect the interests of the Classes. The attorneys for the Plaintiffs and the Classes are experienced and capable in complex civil litigation, insurance litigation, and class actions.

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

139. **Final Declaratory or Injunctive Relief (Rule 23(b)(2)).** Plaintiffs also satisfy the requirements for maintaining a class action under Rule 23(b)(2). Defendant has acted or refused to act on grounds that apply generally to the proposed Classes, making final declaratory or injunctive relief appropriate with respect to the proposed Classes as a whole.

140. **Particular Issues (Rule 23(c)(4)).** Plaintiffs also satisfy the requirements for maintaining a class action under Rule 23(c)(4). Their claims consist of particular issues that are common to all members of the Classes and are capable of class-wide resolution that will significantly advance the litigation.

FIRST CAUSE OF ACTION
BREACH OF CONTRACT

(ON BEHALF OF PLAINTIFFS PLOTTS, LUKASIK, COSTA, GOODIER, VERARDO,
LIPPA, AND MEMBERS OF THE BREACH OF CONTRACT CLASS AND THE BREACH
OF CONTRACT SUBCLASS I, SUBCLASS II, SUBCLASS III, AND SUBCLASS IV)

141. Plaintiffs hereby repeat and reallege all preceding paragraphs contained herein.

142. This cause of action is asserted on behalf of Plaintiffs Plotts, Lukasik, Costa, Goodier, Verardo, Lippa, and members of the Breach of Contract class against Progressive Casualty. This cause of action is asserted on behalf of Plaintiff Lukasik, Plaintiff Lippa, and members of the Breach of Contract Subclass I against Progressive Casualty. This cause of action is asserted on behalf of Plaintiff Plotts, Plaintiff Goodier, and members of the Breach of Contract Subclass II against Progressive Casualty and Progressive Advanced. This cause of action is asserted on behalf of Plaintiff Costa and members of the Breach of Contract Subclass III against Progressive Casualty and Progressive Specialty. This cause of action is asserted on behalf of Plaintiff Verardo and members of the Breach of Contract Subclass IV against Progressive Casualty and Progressive Max.

143. Plaintiffs Plotts, Lukasik, Costa, Goodier, Verardo, and Lippa each made a claim for property damage on his Progressive insurance policy.

144. At the time of his claim, Plaintiff Plotts was party to an insurance contract requiring Progressive Casualty and Progressive Advanced to handle, adjust, and pay insureds the actual cash value of their total loss claim.

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

146. At the time of his claim, Plaintiff Lukasik was party to an insurance contract requiring Progressive Casualty to handle, adjust, and pay insureds the actual cash value of their total loss claim.

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

148. At the time of his claim, Plaintiff Costa was party to an insurance contract requiring Progressive Casualty and Progressive Specialty to handle, adjust, and pay insureds the actual cash value of their total loss claim.

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

150. At the time of his claims, Plaintiff Goodier was party to an insurance contract requiring Progressive Casualty and Progressive Advanced to handle, adjust, and pay insureds the actual cash value of their total loss claim.

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

152. At the time of his claim, Plaintiff Verardo was party to an insurance contract requiring Progressive Casualty and Progressive Max to handle, adjust, and pay insureds the actual cash value of their total loss claim.

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

154. At the time of her claim, Plaintiff Lippa was party to an insurance contract requiring Progressive Casualty to handle, adjust, and pay insureds the actual cash value of their total loss claim.

155. Before making her claim, and in the time since, Plaintiff Lippa has performed all obligations under her policy of insurance and was entitled to the benefits he contracted for in that policy.

156. Through the use of improper and unfounded Projected Sold Adjustments in Mitchell vehicle valuation reports, as detailed above, Defendants Progressive Casualty, Progressive Advanced, Progressive Specialty, and Progressive Max handled, adjusted, and paid Plaintiff Plotts's claim, Plaintiff Lukasik's claim, Plaintiff Costa's claim, Plaintiff Goodier's claim, Plaintiff Verardo's claim, Plaintiff Lippa's claim, and the claims of the members of the proposed Breach of Contract Class and Subclasses, for less than the actual cash value required by the insurance contract.

157. As a direct result of Defendants Progressive Casualty's, Progressive Advanced's, Progressive Specialty's, and Progressive Max's breaches, Plaintiffs Plotts, Lukasik, Costa, Goodier, Verardo, Lippa, and members of the Breach of Contract Class and Subclasses sustained actual damages. Plaintiff Plotts's damages are at least \$802.67 (before calculation of additional sales tax benefits), plus pre-judgment and post-judgment interest. Plaintiff Lukasik's damages are at least \$569.99 (before calculation of additional sales tax benefits), plus pre-judgment and post-judgment interest. Plaintiff Costa's damages are at least \$1,201.66 (before calculation of additional sales tax benefits), plus pre-judgment and post-judgment interest. Plaintiff Goodier's damages are at least \$1,033.40 (before calculation of additional sales tax benefits), plus pre-judgment and post-judgment interest. Plaintiff Verardo's damages are at least \$1,211.50 (before calculation of

additional sales tax benefits), plus pre-judgment and post-judgment interest. Plaintiff Lippa's damages are at least \$501.75 (before calculation of additional sales tax benefits), plus pre-judgment and post-judgment interest.

SECOND CAUSE OF ACTION
VIOLATION OF N.Y. GEN. BUS. LAW § 349
(ON BEHALF OF PLAINTIFFS AND MEMBERS OF THE GEN. BUS. LAW § 349 CLASS
AND THE GEN. BUS. LAW § 349 SUBCLASS I, SUBCLASS II, SUBCLASS III, AND
SUBCLASS IV)

158. Plaintiffs hereby repeat and reallege all preceding paragraphs contained herein.

159. This cause of action is asserted on behalf of Plaintiffs and members of the Gen. Bus. Law § 349 Class against Progressive Casualty. This cause of action is asserted on behalf of Plaintiff Lukasik, Plaintiff Lippa, and members of the Gen. Bus. Law § 349 Subclass I against Progressive Casualty. This cause of action is asserted on behalf of Plaintiff Plotts, Plaintiff Goodier, and members of the Gen. Bus. Law § 349 Subclass II against Progressive Casualty and Progressive Advanced. This cause of action is asserted on behalf of Plaintiff Costa, Plaintiff England, and members of the Gen. Bus. Law § 349 Subclass III against Progressive Casualty and Progressive Specialty. This cause of action is asserted on behalf of Plaintiff Verardo and members of the Gen. Bus. Law § 349 Subclass IV against Progressive Casualty and Progressive Max.

160. Plaintiffs made claims for property damage to Progressive.

161. New York General Business Law § 349(a) provides: "Deceptive acts or practices in the conduct of any business, trade or commerce in the furnishing of any service in this state are hereby declared unlawful."

162. The acts and practices alleged herein are deceptive and were carried out in the conduct of Defendants' business. The use of unfounded and arbitrary Projected Sold Adjustments as a means of undervaluing claimants' total loss claims has the capacity to and does deceive and

injure consumers. Defendants do not do what their policies says they will do – pay actual cash value. Moreover, as described above, Defendants provide no explanation or justification for the Projected Sold Adjustment, much less the specific amount applied, other than the vague and unsupported speculation that it purportedly “reflect[s] consumer behavior.”

163. Moreover, this explanation is deceptive and misleading because Defendants [REDACTED] data that contradict the Projected Sold Adjustment but nonetheless “reflect[s] consumer purchasing behavior.”

164. Defendants used these unsupported misrepresentations about “consumer purchasing behavior” to systematically undervalue and, in turn, underpay Plaintiffs’ total loss claims as well as the total loss claims of members of the proposed Gen. Bus. Law § 349 Class and Subclasses.

165. Defendants used valuation reports that systematically misrepresent and undervalue the actual cash value of claimants’ loss vehicles. The reports make Projected Sold Adjustments that are arbitrary and unfounded. These adjustments are used to reduce the valuation of claimants’ loss vehicles. Defendants, in turn, use these reports as the basis for offering claimants what they, deceptively, purport to be the actual cash value of the totaled vehicles.

166. Here, Defendants misrepresented the actual cash value of each Plaintiffs totaled vehicle, paying, before calculation of additional sales tax benefits, Plaintiff Plotts at least \$802.67 less than the actual cash value to which he was entitled, Plaintiff Lukasik at least \$569.99 less than the actual cash value to which he was entitled, Plaintiff Costa at least \$1,201.66 less than the actual cash value to which he was entitled, Plaintiff Goodier at least \$1,033.40 less than the actual cash value to which he was entitled, Plaintiff England at least \$411.00 less than the actual cash value to which he was entitled, Plaintiff Verardo at least \$1,211.50 less than the actual cash value to which

he was entitled, and Plaintiff Lippa at least \$501.75 less than the actual cash value to which she was entitled.

167. As a result of Defendants' actions, Plaintiffs and members of the Gen. Bus. Law § 349 Class and Subclasses incurred damages, including actual damages in the amount their loss vehicle valuations were reduced through the use of Projected Sold Adjustments, applicable tax calculation adjustments, statutory damages under N.Y. Gen. Bus. Law § 349(h) where applicable, treble damages up to \$1,000 under N.Y. Gen. Bus. Law § 349(h) where applicable, and pre-judgment interest.

168. Plaintiffs and members of the N.Y. Gen. Bus. Law § 349 Class and Subclasses are entitled to reasonable attorney's fees upon prevailing pursuant to Gen. Bus. Law § 349(h).

THIRD CAUSE OF ACTION
DECLARATORY JUDGMENT
(ON BEHALF OF ALL PLAINTIFFS AND ALL CLASSES AND SUBCLASSES)

169. Plaintiffs hereby repeat and reallege all preceding paragraphs contained herein.

170. This cause of action is asserted on behalf of Plaintiffs Plotts, Lukasik, Costa, Goodier, Verardo, Lippa and members of the Breach of Contract class against Progressive Casualty. This cause of action is asserted on behalf of Plaintiff Lukasik, Plaintiff Lippa, and members of the Breach of Contract Subclass I against Progressive Casualty. This cause of action is asserted on behalf of Plaintiff Plotts, Plaintiff Goodier, and members of the Breach of Contract Subclass II against Progressive Casualty and Progressive Advanced. This cause of action is asserted on behalf of Plaintiff Costa and members of the Breach of Contract Subclass III against Progressive Casualty and Progressive Specialty. This cause of action is asserted on behalf of Plaintiff Verardo and members of the Breach of Contract Subclass IV against Progressive Casualty and Progressive Max. This cause of action is asserted on behalf of Plaintiffs and members of the

Gen. Bus. Law § 349 Class against Progressive Casualty. This cause of action is asserted on behalf of Plaintiff Lukasik, Plaintiff Lippa, and members of the Gen. Bus. Law § 349 Subclass I against Progressive Casualty. This cause of action is asserted on behalf of Plaintiff Plotts, Plaintiff Goodier, and members of the Gen. Bus. Law § 349 Subclass II against Progressive Casualty and Progressive Advanced. This cause of action is asserted on behalf of Plaintiff Costa, Plaintiff England, and members of the Gen. Bus. Law § 349 Subclass III against Progressive Casualty and Progressive Specialty. This cause of action is asserted on behalf of Plaintiff Verardo and members of the Gen. Bus. Law § 349 Subclass IV against Progressive Casualty and Progressive Max.

171. A dispute between Plaintiffs and the Classes and Progressive is before this Court under New York law concerning the construction of Regulation 64 and whether the methodology used to calculate Projected Sold Adjustments violates Regulation 64.

172. Defendants' unlawful common policy and general business practice as described herein are ongoing. Accordingly, as detailed above, Defendants have violated, and continue to violate, Regulation 64 by basing the calculation of Projected Sold Adjustments [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

173. Plaintiffs, therefore, seek a declaration on behalf of themselves and the Classes they represent that Defendants' application of Projected Sold Adjustments violates Regulation 64 and injunctive relief flowing from that declaration.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, respectfully request that this Court:

- a) determine that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, certify the proposed Classes for class treatment, appoint Plaintiffs as class representatives for each class, and appoint undersigned counsel as Class Counsel;
- b) enter an order finding that Defendants' actions described herein constitute breaches of the express terms of its policies of insurance;
- c) enter a declaratory judgment that the methodology used for calculating Projected Sold Adjustments violates Regulation 64 and appropriate injunctive relief flowing from that declaration;
- d) enter an order finding that Defendants' actions described herein constitute violations of N.Y. Gen. Bus. Law § 349;
- e) award Plaintiffs and members of the Classes actual damages according to proof;
- f) award Plaintiffs and members of the Gen. Bus. Law §349 Class and Gen. Bus. Law §349 Subclasses, alternatively, statutory damages and treble damages up to \$1,000 pursuant to N.Y. Gen. Bus. Law § 349(h);
- g) enter an injunction restraining Defendants' use of deceptive and unfounded Projected Sold Adjustments in determining the actual cash value of total loss vehicles;
- h) award pre-judgment and post-judgment interest at the maximum rate permitted by applicable law;
- i) award reasonable attorney's fees and litigation costs and expenses pursuant to applicable law, including N.Y. Gen. Bus. Law § 349(h); and

- j) grant such other legal and equitable relief as the Court may deem appropriate, including specific performance as an alternative to damages.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all issues so triable.

Dated: April 15, 2022

Respectfully submitted,

/s/ Hank Bates

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CERTIFICATE OF SERVICE

I certify that on April 15, 2022, I electronically transmitted the foregoing document with the Clerk of the Court using the CM/ECF system, which will provide electronic mail notice to all counsel of record.

/s/ Hank Bates

Hank Bates