

Exhibit 1 to Unopposed Motion for Preliminary Approval`

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DIANE MARTINEZ and ERIN MARTIN,
individually and on behalf of other similarly situated individuals,

Plaintiffs,

v.

No. 1:19-cv-00004-JHR-SCY

PROGRESSIVE PREFERRED INSURANCE COMPANY,
PROGRESSIVE CLASSIC INSURANCE COMPANY,
PROGRESSIVE CASUALTY INSURANCE COMPANY,
PROGRESSIVE DIRECT INSURANCE COMPANY,
PROGRESSIVE ADVANCED INSURANCE COMPANY,
PROGRESSIVE SPECIALTY INSURANCE COMPANY and
PROGRESSIVE NORTHERN INSURANCE COMPANY,

Defendants.

SETTLEMENT AGREEMENT

This Settlement Agreement, dated January 27, 2023, is made and entered into by and among Plaintiffs Diane Martinez and Erin Martin (“Plaintiffs” or “Class Representatives”) and Defendants Progressive Preferred Insurance Company, Progressive Classic Insurance Company, Progressive Casualty Insurance Company, Progressive Max Insurance Company, Progressive Specialty Insurance Company and Northern Insurance Company (together with the Released Parties, “Progressive”) (collectively, the “Parties”). The Settlement is intended to fully resolve the above-captioned litigation, subject to the approval of the Court and the terms and conditions set forth in this Settlement.

I. RECITALS/BACKGROUND

1. This lawsuit arises from Plaintiffs’ allegation that part of the Underinsured Motorist (“UIM”) coverage they purchased from Progressive was illusory because each had an accident and Progressive subtracted the at-fault drivers’ liability coverage payments from their respective combined Uninsured (“UM”) and UIM coverage limits pursuant to the offset described in *Schmick v. State Farm Mutual Automobile Insurance Co.*, 1985-NMSC-073, 103 N.M. 216, 704 P.2d 1092 (the “*Schmick* Offset”).

2. Ms. Martin carried \$25,000 per person in UM/UIM coverage and claims that the entire amount was illusory UIM, while Ms. Martinez carried \$75,000 per person in UM/UIM coverage (\$25,000 in coverage stacked for three vehicles) and claims that \$25,000 of that amount was illusory UIM. Plaintiffs claim those portions of UIM coverage were illusory because each had an accident and Progressive subtracted the at-fault drivers’ \$25,000 liability coverage payments from their respective UM/UIM coverage limits to pay nothing on Ms. Martin’s claim and only \$50,000 on Ms. Martinez’s claim.

3. On May 8, 2018, Plaintiffs sued Progressive in the Second Judicial District in the State of Mexico, County of Bernalillo. Progressive timely removed the case to this Court. Plaintiffs assert a variety of claims: (1) negligence, (2) violations of New Mexico's Unfair Trade Practices Act, (3) violations of New Mexico's Unfair Insurance Practices Act, (4) policy reformation, (5) breach of the implied duty of good faith and fair dealing, (6) unjust enrichment, (7) negligent misrepresentation, (8) declaratory judgment, and (9) injunctive relief. *See* Second Amended Complaint (Dkt. 17).

4. On February 1, 2019, Plaintiffs filed an opposed motion to stay this case in light of the certified question in *Crutcher*. On February 8, 2019, Defendants filed their 12(b)(6) motion to dismiss and an alternate motion to certify questions to the NMSC.

5. On July 8, 2019, this Court granted Plaintiffs' motion to stay and denied Defendants' respective motions.

6. Ten other lawsuits were also filed around the same time as this one against other insurance carriers. In one of those related cases—*Crutcher v. Liberty Mut. Ins. Co.*, No. 1:18-cv-00412-JCH-LF (D.N.M.)—the court certified the following questions to the New Mexico Supreme Court:

Under N.M. Stat. Ann. § 66-5-301, is underinsured motorist coverage on a policy that offers only minimum UM/UIM limits of \$25,000 per person/\$50,000 per accident illusory for an insured who sustains more than \$25,000 in damages caused by a minimally insured tortfeasor because of the offset recognized in *Schmick v. State Farm Mutual Automobile Insurance Company*, and, if so, may insurers charge a premium for that non-accessible underinsured motorist coverage?

Crutcher v. Liberty Mut. Ins. Co., No. 118CV00412JCHKBM, 2019 WL 12661166, at *4 (D.N.M. Jan. 9, 2019). Once this question was certified, this case, and all other active related cases were stayed pending ruling.

7. On January 25, 2022, the Court lifted the stay following the issuance of the *Crutcher* decision. Dkt. 41. On March 14, 2022, the Parties jointly requested that the Court stay the case pending the results of a mediation before nationally recognized class action and insurance mediator Rodney Max of Upchurch Watson White & Max. Dkt. 46. The Court then stayed the case again, pending the results of the mediation. Dkt. 49. To further settlement discussions, Progressive agreed to provide Plaintiffs with certain discovery, including data sampling regarding premiums/*Schmick* Offsets and a sampling of claims files.

8. On June 13, 2022, the Parties, through Rodney Max, engaged in good faith, arm's-length settlement negotiations. The Parties did not reach settlement at this mediation.

9. On June 30, 2022, the Parties attended a second mediation with Rodney Max, agreeing verbally on the key terms of the Settlement. The Parties thereafter worked with nationally recognized settlement administrators to finalize the terms of this Settlement Agreement and the proposed notice Exhibits attached hereto.

10. Plaintiffs, through class counsel, believe that the Settlement confers substantial benefits on the Settlement Class and is in the best interest of the Settlement Class. It is also understood that Plaintiffs, through class counsel, believe that their claims have substantial merit. Nonetheless, Plaintiffs, through class counsel recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Action against Progressive through motions practice, trial, and potential appeals. They have also considered the uncertain outcome and risks of further litigation, as well as the difficulties and delays inherent in such litigation. Class Counsel is experienced in insurance litigation and knowledgeable regarding the relevant claims, remedies, and defenses at issue generally in such litigation and specifically in this

Action. Class Counsel has determined that the Settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interest of the Settlement Class.

11. Progressive continues to deny each and all of the claims and contentions alleged against it in the Action. Progressive denies all charges of wrongdoing or liability as alleged, or which could be alleged, in the Action. However, Progressive has concluded that further litigation would be protracted and expensive. Progressive has considered the uncertainty and risks inherent in any litigation, and Progressive has therefore determined that it is desirable and beneficial that the Action be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is hereby agreed by the Class Representatives, individually and on behalf of the Settlement Class, and Progressive that, subject to the approval of the Court, the Action be forever resolved, settled, compromised, and dismissed with prejudice on the following terms and conditions:

II. DEFINITIONS

12. The terms used in this Settlement Agreement, and listed in this section, shall have the following meanings:

- a. “Action” means *Diane Martinez, et al. v. Progressive Preferred Ins. Co., et al.*, United States District Court for the District of New Mexico, Case No. 19-CV-00004-JHR-SCY.
- b. “Agreement,” “Settlement Agreement,” or “Settlement” means this Settlement Agreement, Exhibits, and the settlement terms embodied herein.

- c. “Claim” means a claim for Settlement Class Payments made under the terms of this Settlement Agreement.
- d. “Claim Form” means the document, which will be available on the Settlement Website for electronic completion or available to receive by mail for a mailed submission, that certain Settlement Class Members must submit to potentially receive a Settlement Class Payment, as set forth in and subject to the provisions of this Agreement. A copy of the Claim Form is attached hereto as Exhibit B.
- e. “Claimant” means a Settlement Class Member who makes a Claim for benefits under this Settlement Agreement.
- f. “Claim Deadline” means the final date by which a Settlement Class Member must submit a Claim for Settlement Class Payments. The Claim Deadline shall be ninety (90) days after the Notice Date.
- g. “Class Counsel” means Kedar Bhasker of Law Office of Kedar Bhasker, Corbin Hildebrandt of Corbin Hildebrandt P.C., and Geoffrey Romero of Law Offices of Geoffrey R. Romero.
- h. “Class Representatives” means the Plaintiffs.
- i. “Complaint” means the Second Amended Complaint filed on January 25, 2019 in the United States District Court for the District of New Mexico.
- j. “Court” means the United States District Court for the District of New Mexico.
- k. “Effective Date of Settlement” or “Effective Date” means the date upon which the Settlement in the Action shall become effective and final, and occurs when each and all of the following conditions have occurred:

- i. This Settlement Agreement has been fully executed by all Parties and their counsel;
 - ii. Orders have been entered by the Court certifying the Settlement Class, granting preliminary approval of this Settlement, and approving the Notice (described below);
 - iii. The Notice program has been executed in accordance with the Preliminary Approval Order;
 - iv. The Court has entered a Final Order and Judgment finally approving the Settlement; and
 - v. The Final Judgment, as defined in Paragraph 64 below, has been entered and all times to appeal therefrom have expired with (1) no appeal or other review proceeding having been commenced; (2) one (1) business day following entry of the Final Order and Judgment, if no parties have standing to appeal; or (3) an appeal or other review proceeding having been commenced, and such appeal or other review having been concluded such that it is no longer subject to review by any court, whether by appeal, petitions for rehearing or reargument, petitions for rehearing *en banc*, petitions for writ of certiorari, or otherwise, and such appeal or other review has been resolved in a manner that affirms the Final Judgment in all material respects.
1. “Evaluation Record” means the record described in Paragraphs 29 and 30, which Progressive shall use for adjusting Option 1 Claims.

- m. “Final Fairness Hearing” means the hearing to be conducted by the Court after the Notice Program is complete, at which time Class Counsel and Progressive’s Counsel will request that the Court grant final approval of the Settlement set forth herein.
- n. “Final Judgment” means a judgment entered by the Court, as discussed below.
- o. “Litigation” means all claims and causes of action asserted, including those asserted in the Action, or that could have been asserted, against Progressive and the Released Parties, including any and all appellate rights, as well as any other such actions by and on behalf of any other individuals or putative classes of individuals originating, or that may originate, in the jurisdictions of the United States against Progressive or the Released Parties relating to the Action.
- p. “Neutral Evaluation on Appeal” means the appeal of a Notice of Determination, to be decided by the neutral Referee.
- q. “Notice” means the mailed or emailed notice, substantially in the form as shown in Exhibit A hereto, to the Settlement Class Members, notifying them of the Settlement and inviting Settlement Class Members to make a Claim for Settlement Class Payments.
- r. “Notice Date” means the first date upon which the Notice is mailed or emailed to the Settlement Class Members.
- s. “Notice of Determination” means the notice sent by Progressive to a Settlement Class Member who makes a Claim pursuant to Option 1 (described in Paragraph 31) of Progressive’s determination of the adjustment of their Claim.

- t. “Notice of Determination Appeal” means an appeal by a Settlement Class Member to the Notice of Determination.
- u. “Parties” means (i) Class Representatives, on behalf of themselves, and the Settlement Class; and (ii) Progressive.
- v. “Plaintiffs” means Diane Martinez and Erin Martin.
- w. “Progressive’s Counsel” means Baker & Hostetler LLP and Allen Law Firm, LLC.
- x. “Preliminary Approval Order” means the proposed order preliminarily approving the Settlement and directing mailed and e-mailed Notice to the Settlement Class Members of the pendency of the Action and of the Settlement, to be entered by the Court.
- y. “Released Claims” means any and all past, present, and future claims and causes of action of every nature and description (including Unknown Claims), whether arising under federal, state, statutory, regulatory, common, foreign, or other law, that arise in any way from or relate to the Litigation against Progressive or any Released Party or the Action (other than claims to enforce the Settlement), and including, but not limited to, any and all claims for fees, costs, penalties, fines, debts, damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys’ fees and expenses, pre-judgment interest, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, and/or the appointment of a receiver, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, class or individual and any other form of legal or equitable relief that either has been asserted, was asserted,

or could have been asserted, by any Settlement Class Member against any of the Released Parties based on, relating to, concerning or arising out of the Action or the allegations, transactions, occurrences, facts, or circumstances alleged in or otherwise described in the Litigation. Released Claims shall not include the right of any Settlement Class Member or any of the Released Parties to enforce the terms of the Settlement contained in this Settlement Agreement and shall not include the claims of Persons who have timely excluded themselves from the Settlement Class.

- z. “Referee” means the designated neutral third party appointed by the Court who has been selected and agreed to by Class Counsel and Progressive, who will be assigned to resolve an Objection, if any, pursuant to the procedures set forth herein for the Neutral Evaluation on Appeal, if any.
- aa. “Released Parties” or “Released Party” means Progressive, all Progressive affiliated entities that underwrote New Mexico insurance policies with UM/UIM coverage from January 1, 2004 to March 22, 2022, including National Continental Insurance Company, Progressive Northwestern Insurance Company, and United Financial Casualty Company, their parents, current or former subsidiaries, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, officials, directors and shareholders, and independent agents of Progressive and their employees, and, any Person related to any such entities or individuals who is, was, or could have been named as a defendant in the Litigation.
- bb. “Settlement Administrator” shall mean Kroll Settlement Administration LLC, subject to Court approval.

- cc. “Settlement Class” means all Progressive policyholders and insureds between January 1, 2004 and March 22, 2022, who
- a. Resided in New Mexico; and
 - b. purchased an insurance policy with UM/UIM coverage, and/or
 - c. any non-Progressive policyholder insured who made a claim for UIM benefits and had benefits reduced or denied due to a *Schmick* Offset.
 - d. To identify the scope of the Settlement Class, Progressive agrees to search for:
 - i. Any Progressive policyholder who Resided in New Mexico with UM/UIM coverage from January 1, 2004 to March 22, 2022; and
 - ii. Any individual who Resided in New Mexico and made a UIM claim to Progressive from January 1, 2004 to March 22, 2022, and who has one of the following codes entered in Progressive’s electronic records: “OffsetOtherReductionAmt” or “ReductionForOtherOffsetsAmt”;
 - e. Progressive will de-duplicate the results of this search. The results of this search shall constitute the Settlement Class.

The Settlement Class specifically excludes 1) any claimant who has separately filed suit against Progressive up to the Notice Date, the subject of which suit includes the reduction or denial of benefits on the basis of a *Schmick* Offset; 2) any individual who has settled a claim for benefits reduced or denied on the basis of a *Schmick* Offset, whose claim was adjusted or readjusted without applying a *Schmick* Offset, and signed a final release prior to the Notice Date; 3) any claimant for whom, at claimant’s request, Progressive has already re-adjusted a claim for

benefits reduced or denied on the basis of the *Schmick* Offset prior to the Notice Date; 4) the Judge(s) presiding over this Action; and 5) Progressive and any employee of Progressive.

dd. “Settlement Class Member(s)” or “Member(s)” means a Person(s) who falls within the definition of the Settlement Class.

ee. “Settlement Class Payments” means payments to be made to Settlement Class Members, as described in Section III below.

ff. “Settlement Website” means the website where Settlement Class Members can receive information about the Action and Settlement, as well as receive and submit Claim Forms.

gg. “Valid Claims” means the Claims for Settlement Class Payments in an amount approved by Progressive or the Settlement Administrator, as described in Section V below.

III. SETTLEMENT CLASS PAYMENTS

13. **Automatic Payments to Eligible Settlement Class Members.** Progressive will readjust wrongful death claims for Settlement Class Members who suffered a fatality reported to Progressive between May 8, 2014 and March 22, 2022, had an offset coded in Progressive’s electronic records under “OffsetOtherReductionAmt” or “ReductionForOtherOffsetsAmt”, and whose UIM coverage benefits under an insurance policy were reduced, denied, or not paid by Progressive due to a *Schmick* Offset (the “Automatic Payments”). Progressive will determine these eligible Settlement Class Members by reviewing Progressive data and provide a list of eligible Settlement Class Members to the Settlement Administrator for a separate notice, including any requests for information required by law for a person to receive such benefits, including tax

forms. Any separate notice to this eligible Settlement Class Member population will be drafted by and approved by both Parties and the Settlement Administrator. Settlement Class Members eligible for these Automatic Payments shall not be required to submit a claim to receive these benefits.

14. **Other Payment Options.** Settlement Class Members who are not eligible for Automatic Payments may submit a claim for one of the following two options:

- a. Option 1: Progressive will readjust the claims for Settlement Class Members who make a Valid Claim for Option 1. To be a Valid Claim, the Settlement Class Member must have been in an accident between January 1, 2004 and March 22, 2022, and had or would have had UIM coverage benefits under an insurance policy reduced or denied by Progressive pursuant to a *Schmick* Offset. Readjusted payments will be equal to the amount of any *Schmick* Offset taken, subject to applicable UIM bodily injury or property damage limits.
- b. Option 2: Progressive will make a payment to all Progressive insureds who make a Valid Claim for Option 2 and who purchased UM/UIM coverage on an insurance policy between January 1, 2004 and March 22, 2022. The payment will equal 18 percent of the total premium paid by the Settlement Class Member for UM/UIM coverage, subject to a \$2,500,000 aggregate cap for all Settlement Class Members. If the value of aggregate, Valid Claims exceed \$2,500,000, Settlement Class Members who submit Valid Claims under this Option 2, shall be paid a pro rata share of \$2,500,000.

15. All Settlement Class Members who submit a Valid Claim, as approved through the Notice Program described in Section IV below, shall be eligible to receive Settlement Class Payments under one of the two options described above.

16. If any Settlement Class Member submits a Valid Claim for both Options 1 and 2, Progressive shall pay the higher amount.

IV. NOTICE PROGRAM

17. Notice of the pendency of the Lawsuit and of the Settlement (the “Notice Program”) shall be made as provided in this Section.

A. Sending the Notice

18. Within 60 days after the entry of the Preliminary Approval Order, the Class Notice, in the form substantially similar to that attached hereto as Exhibit A, shall be emailed to each Settlement Class Member’s last known email-address. If Progressive does not have a valid email address, notice shall be sent by first class mail to those Settlement Class Members’ last known address. The last known address shall be determined from information reasonably available in Progressive’ files, which will be run through the United States Postal Service’s national change of address database prior to mailing by the Settlement Administrator.

19. A copy of the Claim Form, substantially in the form attached hereto as Exhibit B, will be available on the Settlement Website identified in the Class Notice and can be requested to be received in the mail from the Settlement Administrator.

20. Progressive and the Settlement Administrator shall have no duty to perform any additional search for, or otherwise attempt to verify, email or mailing addresses of Settlement Class Members, including as to returned, undelivered Class Notices. However, any Class Notices that are returned with a listed forwarding email or mailing address shall then promptly be sent or mailed a Notice to the listed forwarding address. If an email notice is returned as undeliverable, the Settlement Administrator shall mail a Class Notice to the Settlement Class Member’s last known mailing address. However, the Claims Deadline shall not be adjusted due to re-mailing of

a Class Notice to a forwarding address or mailing of a Class Notice to Settlement Class Members whose emails were returned as undeliverable.

21. Unless otherwise ordered by the Court, or agreed by the Parties, the Class Notice will be sent solely to Settlement Class Members and not to any attorney or counsel who may represent them with regard to a UM/UIM claim or who have represented the Settlement Class Members with regard to any previous claim.

B. Toll Free Hotline and Website

22. Progressive, through the Settlement Administrator, will establish a toll-free telephone number with a live operator, which any Settlement Class Member may call to receive the Agreement, Class Notice and a Claim Form, as well as all information included on the Settlement Website. The Settlement Website shall contain information about this Agreement, including printable copies of the Agreement, the Notice, and the Claim Form, which shall be maintained by the Settlement Administrator. This Settlement Website shall also contain a list of Frequently Asked Questions to give further information regarding this Agreement. The toll-free number and Settlement Website referred to herein will be established and operational by a date no later than the date the Class Notice is initially mailed and will remain operational until 60 days after the Settlement Administrator has made final distribution of Settlement Class Payments to Settlement Class Members.

C. Costs Of Notice

23. Progressive shall pay all notice and administration costs in accordance with the terms of the Court's Preliminary Approval Order and without regard to whether the Court grants final approval of the Agreement. Costs of administration (including printing and mailing the Class Notice, providing the Settlement Website, establishing a toll-free telephone number,

printing and distributing Settlement Class Payments to Settlement Class Members and all postage relating to the foregoing) will be paid by Progressive and neither the Named Plaintiffs, Settlement Class Members, nor Class Counsel shall bear any responsibility for such costs. Under no circumstances shall Defendants be required under this Agreement to incur or pay any fees or expenses which they are not explicitly obligated to incur or pay hereunder.

V. ADMINISTRATION OF CLAIMS

A. Class Notice and Claims Deadline

24. Settlement Class Members must submit a Claim for Settlement Class Payments by the Claim Deadline, meaning all Settlement Class Members shall have ninety (90) days after the Notice Date to submit a Claim for Settlement Class Payments. All deadlines for Class Notice shall be determined based on postmark of communication or, for email Notice, the date the email is sent.

B. Claims Adjusting Process for Option 1 Claims

25. The process in this Subsection and Subsection C applies to Claims made under Option 1.

26. The Settlement Administrator will receive all Claims and make the initial determination of whether a Claim is a Valid Claim.

27. All Valid Claims under Option 1 will be processed by Progressive's claims department and shall be adjusted expeditiously, as it would be in the ordinary course of business.

28. Progressive will determine the dollar amount of UM/UIM benefits each Settlement Class Member who makes a Valid Claim under Option 1 would have been paid but for Progressive's reduction or denial of UM/UIM benefits based on a *Schmick* Offset, if any.

29. In adjusting claims for a Settlement Class Payment pursuant to this Agreement, Progressive shall consider: (i) any claim files or other documentation already in its possession pertaining to the applicable Settlement Class Member's claim for UM/UIM Benefits; (ii) the information or documentation, if any, provided by the Settlement Class Member in the Claim Form or with the Claim Form; and/or (iii) any additional information or documentation provided by the Settlement Class Member and/or requested or obtained by Progressive from the Settlement Class Member and/or third party sources during the claims adjustment process before the adjuster renders a determination pursuant to a Notice of Determination. The documents and information described in this Paragraph and Paragraphs 30 below, are referred to collectively as the "Evaluation Record."

30. In adjusting claims for a Settlement Class Payment pursuant to this Agreement, Progressive shall be entitled to request and receive from any Settlement Class Member, or obtain from any third-party source, any information or documentation Progressive reasonably determines will assist its review. The Settlement Class Member shall reasonably cooperate with Progressive by providing documents or information requested by Progressive, including, but not limited to, signing authorizations, such as medical and/or wage authorizations for release of medical and/or employment information, and allowing Progressive to obtain relevant information directly from health care providers, employers, or government entities. This includes, but is not limited to, information potentially relevant to liens or reimbursement claims or rights by, for example and without limitation, health insurers, medical providers, or government programs such as Medicare or Medicaid. Progressive shall promptly provide the Settlement Class Member with all information and/or documents obtained by Progressive from any third party. The Settlement Class member must submit the additional documents or materials no later than 30 days after any request

is made by Progressive. If Progressive does not receive a timely response, it may deny all or part of the claim on the basis of insufficient documentation.

31. Within the later of (1) 180 days after the Effective Date of this Agreement or (2) thirty days after Progressive has a complete Evaluation Record or (3) thirty days after Progressive has not timely received a response for documentation necessary for the Evaluation Record, Progressive or the Settlement Administrator shall advise the Settlement Class Member in writing of Progressive's claims adjustment determination (hereafter referred to as the "Notice of Determination"), which shall set forth: (i) the amounts (if any) of the Settlement Class Payment to be paid; (ii) where not otherwise obvious, a brief explanation of the calculation and basis for the determination of those amounts; and (iii) if any claims or dollar amounts are rejected, a brief explanation of the reasons for the rejection. If any Settlement Class Payment is determined by Progressive to be due, a payment by check will be included with the Notice of Determination unless the Settlement Class Member has elected for an alternative payment option. The Notice of Determination shall also inform the Settlement Class Member that he or she is free to immediately cash any check regardless of whether the Settlement Class Member plans to appeal the Notice of Determination to a Referee for a Neutral Evaluation on Appeal as provided in subsection C below, and that under no circumstances will the Settlement Class Member be required to reimburse Progressive for any of the money received as part of the Notice of Determination.

32. The Settlement Class Members hereby waive and release any challenge to the Settlement Claim Adjustment process and/or the Neutral Evaluation on Appeal process set forth herein, for any reason. Neither Progressive, nor any of their Counsel, nor any Released Parties, nor Class Counsel, nor the Named Plaintiffs, shall have any liability to any Settlement Class Member (including, but not limited to, allegations of breach of the implied covenant of good faith

and fair dealing, unfair claims handling practices or unfair trade practices), for the way in which any claim made pursuant to this Agreement is adjusted, determined or paid, beyond the amount of the Settlement Class Payment, if any, determined by Progressive and/or by the Referee.

C. Appeal to Notice of Determination for Option 1 Claims

33. A Settlement Class Member may appeal the Notice of Determination, but must do so according to the procedures described herein.

34. The Parties will request that as part of its order entering Final Judgment, the Court appoint a designated Referee, who is a neutral third party that has been selected and agreed to by both Class Counsel and Progressive. The Referee shall have a duty to recuse himself or herself upon learning of the existence of any grounds that would require the mandatory recusal of a judge under the New Mexico Code of Judicial Conduct. In the event the Referee recues himself or herself, Progressive and Class Counsel shall agree on an alternate Referee. Neither Progressive, nor the Named Plaintiffs, nor any of the Parties' counsel, shall be liable for any act, or failure to act, of the Referee(s).

35. To initiate an appeal, the Settlement Class member must, within 30 days from the date on which his or her Notice of Determination is postmarked or emailed, submit a demand for a Neutral Evaluation on Appeal in writing similar to the form to be provided with the Notice of Determination and attached hereto as Exhibit C (hereafter referred to as the "Notice of Determination Appeal") to the Settlement Administrator (at the address provided in the Class Notice).

36. The Notice of Determination Appeal must include a written statement providing all reasons and facts supporting the Settlement Class Member's assertion that Progressive' Notice of Determination is not an accurate adjustment of the Settlement Class Member's claim.

37. Within five days of receipt of a Notice of Determination Appeal, the Settlement Administrator shall provide the Notice of Determination Appeal to Progressive's Counsel and Class Counsel. Progressive's Counsel and Class Counsel will have fourteen days to meet and confer about a resolution of the Notice of Determination Appeal. If both Counsel agree on a resolution, Counsel shall submit the resolution to the Settlement Administrator. The Settlement Administrator shall then have fourteen days to notify the Settlement Class Member of such resolution, including any additional settlement amounts. This resolution of a Notice of Determination Appeal will be final and not appealable.

38. For any Notices of Determination Appeals that cannot be resolved by Counsel within fourteen days of receipt, the Settlement Administrator shall forward the Notice of Determination Appeal, and the Evaluation Record, to the Referee who will resolve it within thirty days, or any longer period as may be agreed upon by the Parties. The Referee shall have the discretion to contact Progressive, through Progressive's Counsel, or the Settlement Class Member submitting the Notice of Determination Appeal, at any time. The Referee shall not award any amount in excess of the policy limits less the amount of any prior payments by Progressive, nor shall the Referee award any amount for attorneys' fees, interests, costs or for bad faith, unfair claims practices, unfair trade practices, or other extra-contractual, statutory and/or punitive damages or fines based on or arising out of Progressive's conduct, including but not limited to, in handling claims submitted by Settlement Class Members, either previously or in conjunction with this Agreement. Any determination by the Referee shall be final and non-appealable. The Referee shall mail or email Progressive, the Settlement Administrator, and the Settlement Class Member of the Referee's decision. Progressive or the Settlement Administrator shall mail any additional

payments awarded to the Settlement Class Member by the Referee within 45 days of the date the Referee's decision is post-marked or emailed.

D. Payment of Automatic Payments and Option 2 Claims

39. All Valid Claims under Option 2 will be processed by the Settlement Administrator based on Progressive's data. All Valid Claims for Option 2 shall be paid within sixty (60) days of the Effective Date or the date the Settlement Administrator determines that the Claim for Option 2 is a Valid Claim, whichever is later. If all claims for Option 2, including potential Option 2 payments based on outstanding Option 1 adjustments, are more than \$2,500,000.00, then the Settlement Administrator will pay Option 2 benefits thirty (30) days after resolution of all Claims.

40. All Valid Claims for Automatic Payments shall be paid within sixty (60) days of the Effective Date or the date the Settlement Administrator and Progressive determine the Claim is a Valid Claim for a sum certain.

41. To be a Valid Claim for Automatic Payments, eligible Settlement Class Members must complete all required documentation requested by the Settlement Administrator.

E. General Payment Provisions

42. For the Automatic Payments, the Settlement Administrator shall mail and email, if any, any documentation requirements to the last known address (and email address, if any) of the Settlement Class Member's executor or similar representative and/or any known attorney with the Notice. Beginning no later than 45 days after the Notice Date, the Settlement Administrator also shall make at least two attempts to call both the Settlement Class Member's executor or similar representative and his or her known attorney at their last known telephone numbers to attempt to secure the required documentation and appropriate payment instructions. The Settlement Administrator shall notify Progressive's Counsel and Class Counsel if it is unsuccessful in any

attempt to notify a Settlement Class Member eligible for an Automatic Payment, and Class Counsel may perform additional measures to notify that Settlement Class Member of their eligibility for Automatic Payments within the Claim Period. If the eligible Settlement Class Member, or their appropriate designee, does not respond to the Notice attempts or requests for required documentation by the Claims Deadline, no further Notice obligations will exist and the Settlement Class Member will be bound by the terms of this Settlement Agreement, including the Release herein.

43. The Settlement Administrator or Progressive shall offer various options to receive a Settlement Class Payment. If a check is requested, cashing a settlement check is a condition precedent to any Settlement Class Member's right to receive Settlement Class Payments. All settlement checks shall be void one hundred and twenty (120) days after issuance and shall bear the language: "This check must be cashed within 120 days, after which time it is void." If a check becomes void, the Settlement Class Member shall have until one hundred and eighty (180) days after the Effective Date to request re-issuance. If no request for re-issuance is made within this period, the Settlement Class Member will have failed to meet a condition precedent to recovery of Settlement benefits, the Settlement Class Member's right to receive monetary relief shall be extinguished, the check shall be deemed never to have been the Settlement Class Members' property, and Progressive shall have no obligation to make payments to the Settlement Class Member for Settlement Class Payments or any other type of monetary relief. The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than one hundred and eighty (180) days from the Effective Date, requests for re-issuance need not be honored after such checks become void. If a check is returned with a forwarding address, the check shall be forwarded to that address. If no forwarding address exists, the check shall become

void. Progressive reserves the right, at its sole discretion, to reissue any check that is deemed void as provided in this Paragraph, and the reissuance of any such check is not a waiver of this Paragraph, nor does it require Progressive to reissue any other checks to other Settlement Class Members.

44. All Settlement Class Members who fail to timely submit a Valid Claim for Settlement Class Benefits, shall be forever barred from receiving any payments or benefits pursuant to the Settlement set forth within, but will in all other respects be subject to and bound by the provisions of the Settlement Agreement, the releases contained herein, and the Final Judgment.

F. Claim Status Reports

45. Progressive or the Settlement Administrator shall provide weekly reports to Progressive, Progressive's counsel, and Class Counsel indicating (1) the number of Claims received; (2) the Notice of Determination of any adjustment of Claims; and (3) any Notice of Determination Appeals.

VI. STIPULATED CLASS ACTION SETTLEMENT CERTIFICATION

46. Progressive does not consent to certification of any class for any purpose other than effectuating this Settlement and disputes that any class should or could be certified for any other purpose. Solely for the purposes of effectuating the Settlement, the Class Representatives, Class Counsel, and Progressive agree and stipulate to certification of the Settlement Class as defined in this Agreement. Class Representative, Class Counsel, and Progressive further agree and stipulate that, subject to Court approval, Class Counsel shall act as counsel for the Settlement Class. If the Court does not approve this Settlement, either preliminarily or finally, or the Settlement Agreement terminates as provided in Section XIII below, and the Parties do not otherwise reach an amended

agreement (i) this Agreement shall be automatically of no force or effect; (ii) any Preliminary Approval Order and all of its provisions shall be vacated; (iii) no term or draft of this Agreement, or any aspect of the Parties' settlement discussions, negotiations, documentation, or confirmatory discovery (including without limitation any declarations and briefs filed in support of the motions for preliminary and/or final approval) shall have any effect or be admissible into evidence for any purposes in this Litigation or any other proceeding.

47. The Class Representatives, Class Counsel, and Progressive agree and stipulate that the Settlement should be approved by the Court, and that the Court should make a determination that the Settlement is fair, reasonable, adequate and made in good faith.

VII. RELEASES

48. Upon the Effective Date, and without any further action, in exchange for amounts to be paid by Progressive, Plaintiffs' claims and Complaint against Progressive shall be released and dismissed with prejudice. Plaintiffs and the Settlement Class Members hereby release Progressive and all Released Parties from any and all claims, rights, demands, charges, complaints, causes of action, obligations or liability of any and every kind whether known or unknown that were asserted, or could have been asserted in the Litigation, including all such claims that arise out of the alleged facts, circumstances, and occurrences underlying the allegations as set forth in Plaintiffs' Second Amended Complaint, or any complaint, including any claim disputing the value of UM/UIM premiums based on a *Schmick* Offset and/or UIM benefits being reduced or denied due to a *Schmick* Offset, whether such allegations were or could have been based on common law or equity, statute, rule, regulation, order, or law, whether federal, state, or local, or on any grounds whatsoever, from January 1, 2004 to the date of preliminary approval by this Court. This Release

includes any claim for penalties arising from or relating to late payment, non-payment, or underpayment of benefits for UM/UIM claims.

49. The obligations incurred under this Settlement shall be in full and final disposition of the Action and of any and all Released Claims as against all Released Parties.

50. The Class Representatives further agree not to assist knowingly and voluntarily, in any way, any third party in commencing or maintaining any suit against the Released Parties relating to any Released Claim.

VIII. OPT-OUT PROCEDURES

51. Under the procedure set forth in the Notice, potential Settlement Class Members have the right and ability to exclude themselves from the Settlement Class as set forth in the proposed Preliminary Approval Order. In order to validly be excluded from the Settlement, the potential Settlement Class Member must send a letter that says he or she wants to be excluded from the Settlement in *Diane Martinez, et al. v. Progressive Preferred Ins. Co. et al.*, United States District Court of the District of New Mexico Case No. 19-CV-00004-JHR-SCY, to Progressive and Class Counsel at the addresses identified in the Notice and include his or her name, address, and signature by the date set by the Court and as outlined in the Notice, to be set for forty-five (45) days after the Notice Date. Class Counsel shall provide this information to the Court before the final approval hearing. If the opt-out is untimely or otherwise fails to comply with any of the provisions for a valid opt-out, it shall not be considered a valid opt-out.

52. Progressive shall have the right to terminate the Settlement if more than 200 persons opt out of the Settlement Class. If Progressive chooses to exercise this provision, the case will resume as if the Settlement never took place.

IX. OBJECTION PROCEDURES

53. The Notice will inform the Settlement Class Members that they may send in a written objection in this Action. To be valid, an objection must state: (a) the objector's full name, address, telephone number, and e-mail address (if any); (b) information identifying the objector as a Settlement Class Member; (c) a written statement of all grounds for the objection, accompanied by any legal support the objector cares to submit; (d) the identity of all lawyers (if any) representing the objector; (e) the identity of all of the objector's lawyers (if any) who will appear at the Final Fairness Hearing; (f) a list of all persons who will be called to testify at the Final Fairness Hearing in support of the objection; (g) a statement confirming whether the objector intends to personally appear and/or testify at the Final Fairness Hearing; and (h) the objector's signature or the signature of the objector's duly authorized lawyer or other duly authorized representative (along with documentation setting forth such representation).

54. In addition to the foregoing, objections should also provide the following information: (a) a list, by case name, court, and docket number, of all other cases in which the objector (directly or through a lawyer) has filed an objection to any proposed class action settlement within the last three (3) years; (b) a list, by case name, court, and docket number, of all other cases in which the objector's lawyer (on behalf of any person or entity) has filed an objection to any proposed class action settlement within the last three (3) years; and (c) a list, by case number, court, and docket number, of all other cases in which the objector has been a named plaintiff in any class action or served as a lead plaintiff or class representative.

55. The long form notice substantially in the form of Exhibit D hereto will further inform Settlement Class Members that to be considered timely, any valid objection in the appropriate form must be **filed** with the Clerk of the United States District Court for the District

of New Mexico, no later than the date set by the Court and outlined in the Notice, to be set at forty-five (45) days after Notice. The long form notice will inform Settlement Class Members that they must **mail** a copy of their objection to the following three different places postmarked no later than the date set by the Court and outlined in the Notice:

COURT	CLASS COUNSEL	PROGRESSIVE'S COUNSEL
US District Court District of New Mexico Pete V. Domenici U.S. Courthouse 333 Lomas Blvd NW, Suite 270 Albuquerque, NM 87102	Kedar Bhasker LAW OFFICE OF KEDAR BHASKER, LLC 2741 Indian School Rd. NE Albuquerque, NM 87106	Casie D. Collignon BAKER & HOSTETLER LLP 1801 California Street Suite 4400 Denver, CO 80202

56. The Parties agree that Plaintiffs will take the lead in drafting responses to any objections to the Settlement, including any appeals filed by the objectors. However, both Parties retain their rights to make any argument(s) in response to any objector.

X. ATTORNEYS' FEES AND EXPENSES AND PAYMENTS TO THE CLASS REPRESENTATIVES

57. The Parties did not discuss the payment of attorneys' fees, costs, expenses, and/or Incentive Award to Plaintiffs until after the substantive terms of the settlement had been agreed upon.

58. The Parties agree that, subject to Court approval, Attorneys' Fees will be paid by Progressive in an amount approved by the Court, but not to exceed \$2,500,000.00.

59. Progressive shall provide an Option 1 Settlement Class Payment in the amount of \$25,000.00 to Plaintiff Diane Martinez under Progressive policy number 80246262-8. This UIM coverage amount concerns the June 30, 2016 motor vehicle accident.

60. Progressive shall provide an Option 1 Settlement Class Payment in the amount of \$25,000.00 to Plaintiff Erin Martin under Progressive policy number 80904842. This UIM coverage amount concerns the April 13, 2015 motor vehicle accident.

61. Progressive shall also pay, upon Court approval, each Plaintiff an additional \$10,000.00 as an incentive or service award.

62. Payment of these fees shall be due thirty (30) days after the Effective Date.

XI. PRELIMINARY APPROVAL OF SETTLEMENT

63. As soon as practicable after the execution of the Settlement Agreement, or other date ordered by the Court, Class Counsel shall submit this Settlement Agreement to the Court and file a Motion for Preliminary Approval of the Settlement with the Court requesting entry of the Preliminary Approval Order attached to Plaintiff's Motion for Preliminary Approval, or an order substantially similar to such form, requesting, *inter alia*:

- a. Preliminary approval of the Settlement Agreement as set forth herein; and
- b. Approval of the Notice, which includes a notice to be individually mailed or emailed to the Settlement Class, addressed in Section IV.

XII. FINAL JUDGMENT

64. If the Preliminary Approval Order is entered by the Court, Class Counsel will move the Court for Final Approval, within the time frames contemplated by the Preliminary Approval Order, and an entry of a Final Judgment.

XIII. TERMINATION

65. If the Effective Date of Settlement does not occur, or if the Settlement is terminated or fails to become effective for any reason, then (a) the Parties shall be restored to their respective positions in the Action and shall jointly request that all scheduled litigation deadlines be reasonably

extended by the Court so as to avoid prejudice to any Party or Party's counsel; and (b) the terms and provisions of the Settlement Agreement and statements made in connection with seeking approval of the Agreement shall have no further force and effect with respect to Parties and shall not be used in the Action or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

XIV. NO ADMISSION OF WRONGDOING OR LACK OF MERIT

66. The terms of this Settlement (whether the Settlement becomes final or not), the negotiations leading up to this Settlement, the fact of the Settlement, and the proceedings taken pursuant to the Settlement, shall not: (a) be construed as an admission of liability or an admission of any claim or defense on the part of any Party, in any respect; (b) be construed as an admission by Progressive regarding the appropriateness of certification of any class other than the Settlement Class (defined above), solely for settlement purposes; (c) form the basis for any claim of estoppel by any third-party against any of the Released Parties; or (d) be admissible in any action, suit, proceeding, or investigation as evidence, or as an admission of any wrongdoing or liability whatsoever by any Party, or as evidence of the truth of any of the claims or allegations contained in the Complaint.

XV. INCAPACITATED SETTLEMENT CLASS MEMBERS

67. Claims may be submitted by any attorney or interested person on behalf of an incapacitated Settlement Class Member eligible for payment under Option 1.

XVI. DECEASED SETTLEMENT CLASS MEMBERS

68. Claims may be submitted by non-minor, non-incapacitated, asserted heirs of, or on behalf of the estate of, a deceased Settlement Class Member eligible for payment under Option 1.

XVII. PROVISION FOR MEDICAL OR ATTORNEYS' LIENS

69. All Settlement Class Members eligible for payment under Option 1 receiving a Settlement Class Payment pursuant to this Agreement shall be responsible for the discharge of: (i) any subrogation or reimbursement claim or lien for any medical treatment of that Settlement Class Member eligible for payment under Option 1 arising out of the Accident which is the subject of the Settlement Class Member's claim, including hospital or medical liens of any medical provider, plan, insurer, or governmental entity, including but not limited to, Medicare, CMS, or Medicaid, and/or (ii) any attorneys' lien arising out of the Accident which is the subject of the Settlement Class Member's claim, and the Settlement Class Member eligible for payment under Option 1 agrees to provide Progressive with written evidence of the discharge or satisfaction of such claims. Any Settlement Class Member receiving a Settlement Class Payment pursuant to this Agreement agrees to indemnify and hold harmless the Released Parties from the Settlement Class Member's failure to satisfy such claim or lien and any ensuing impairment action brought against the Released Parties by any entity. No medical or attorneys' liens shall be created by any of the Parties' efforts in attempting to effectuate the terms of this Agreement.

70. Defendants, Progressive's Counsel, and Class Counsel shall not be responsible in any way for attorneys' liens or medical lien(s) submitted for any of Settlement Class Members, nor shall any such lien(s) be created by any of the efforts of the Parties to effectuate any of the terms of this Agreement.

XVIII. CAFA NOTICE REQUIREMENTS

71. Progressive shall serve notice of the proposed settlement, in accordance with the requirements of 28 U.S.C. § 1715(b), on the appropriate representatives of the Attorney General of the United States and of the New Mexico Superintendent of Insurance. The Parties agree that for purposes of such notice it is not feasible to provide the names of all Settlement Class Members

pursuant to 28 U.S.C. § 1715(b)(7)(A) and, therefore, that the procedure set forth in 28 U.S.C. § 1715(b)(7)(B) will be utilized.

XIX. MISCELLANEOUS PROVISIONS

72. All of the Exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

73. The Parties to the Settlement intend and agree that the Settlement is a final and complete resolution of all disputes related to the Litigation by the Class Representatives and the Settlement Class Members.

74. The Parties agree that the benefits provided herein, and the other terms of the Settlement were negotiated at arm's length in good faith by the Parties to the Settlement with the assistance of an experienced and independent mediator and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

75. This Settlement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all Parties or their successors-in-interest.

76. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

77. The Parties hereby irrevocably submit to the continuing and exclusive jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to this Settlement as embodied in the Settlement or its applicability, and agree that they will not oppose the designation of such suit, action, proceeding, or dispute as a related case to the Action.

78. The Settlement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument, provided that

counsel for the Parties to the Settlement shall exchange among themselves original signed counterparts. Electronically transmitted signatures are valid signatures as of the date thereof.

79. The construction, interpretation, operation, effect, and validity of the Settlement, and all documents necessary to effectuate it, shall be governed by the laws of the State of New Mexico, without regard to conflicts of laws, except to the extent that federal law requires that federal law govern. The Parties understand and agree that any disputes arising out of the Settlement shall be governed and construed by and in accordance with the laws of the State of New Mexico, regarding reference or regard to choice-of-law principles.

80. The Settlement shall not be construed more strictly against one Party to the Settlement than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that the Settlement is the result of arm's-length negotiation between the Parties to the Settlement, and all Parties to the Settlement have contributed substantially and materially to the preparation of the Settlement.

81. Any and all counsel and Parties to the Settlement who execute the Settlement and any of the Exhibits hereto, or any related Settlement documents, represent that they have reviewed and understand those documents and have the full authority to execute the Settlement, and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Settlement to effectuate its terms.

82. Class Counsel and Progressive's Counsel agree to recommend approval of the Settlement by the Court and to undertake their best efforts and cooperate fully with one another in seeking Court approval of the Preliminary Approval Order and the Settlement and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement and the entry of the Final Judgment.

IN WITNESS WHEREOF, the Parties have, through their respective counsel, executed this Settlement as of the date first above written.

Approved as to form and content by counsel for Plaintiffs and the Settlement Class:

Date: January 27, 2023

By: /s/ Kedar Bhasker

Kedar Bhasker
Law Office of Kedar Bhasker, LLC
2741 Indian School Rd. NE
Albuquerque, NM 87106
Phone: 505 407-2088
kedar@bhaskerlaw.com

Corbin Hildebrandt
CORBIN HILDEBRANDT P.C.
2741 Indian School Road NE Albuquerque,
NM 87106
Phone: 505 998-6626
corbin@hildebrandtlawnm.com

and

Geoffrey Romero
LAW OFFICES OF GEOFFREY R. ROMERO
4801 All Saints Rd. NW Ste. A
Albuquerque, NM 87120
(505) 247-3338
geoff@geoffromerolaw.com

Attorneys for Plaintiffs

Approved as to form and content by counsel for Progressive:

Date: January 27, 2023

By: /s/ Casie D. Collignon
Casie D. Collignon (*pro hac vice*)
BAKER & HOSTETLER LLP
1801 California Street
Suite 4400

Denver, CO 80202-2662
Telephone: 303.861.0600
Facsimile: 303.861.7805
ccollignon@bakerlaw.com

Attorneys for Progressive

Exhibit A of Settlement Agreement

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

You may be eligible for a payment from a class action settlement if you purchased coverage or were in an automobile accident and denied underinsured motorist coverage (UIM) from Progressive in New Mexico

Si desea recibir esta notificación en español, llámenos o visite nuestra página web.

A settlement has been reached in a class action lawsuit brought against **Progressive Preferred, Progressive Classic, Progressive Casualty, Progressive Direct, Progressive Advanced, Progressive Specialty, and Progressive Northern Insurance Companies** (collectively with the Released Parties defined in the Settlement Agreement, “Progressive”) relating to allegations that Progressive violated New Mexico law by misrepresenting underinsured motorist coverage (“UIM”) and applying an offset due to the insurance coverage limits of third parties responsible for injuries or property damage (the “Lawsuit”). Progressive denies all claims in the Lawsuit and alleges that it did nothing wrong. The lawsuit is titled *Diane Martinez, et al. v. Progressive Preferred Ins. Co., et al.*, United States District Court for the District of New Mexico, Case No. 19-CV-00004-JHR-SCY.

WHO IS INCLUDED? Progressive’s records show that you purchased coverage or made a claim for underinsured motorist coverage from Progressive in New Mexico. Therefore, you are a “Settlement Class Member.”

SETTLEMENT BENEFITS. The settlement provides a variety of benefits to Settlement Class Members.

OPTION 1 – BODILY INJURY AND/OR PROPERTY DAMAGE CLAIM - If you believe you made or could have made a UIM claim to Progressive between January 1, 2004 and March 22, 2022 for an automobile accident and/or property damage that was subject to an offset in coverage due to the insurance coverage limits of a third party responsible for your injuries and/or property damage, then you can submit a settlement claim to have your claim readjusted or to make a new claim. This benefit could be valued at approximately **\$25,000** per class member for bodily injuries per class member if you qualify for Option 1 benefits. Progressive will process claims made under Option 1 through its ordinary claims process.

OPTION 2 – RETURN OF PREMIUMS - If you are a Progressive policyholder class member not eligible under Option 1, you may make a claim for a refund of **18% of all premium** paid for Uninsured/Underinsured Motorist (“UM/UIM”) benefits between January 1, 2004 and March 22, 2022. The amount of your benefit will be based on the amount of UM/UIM premium paid to Progressive during the class period. Benefits under Option 2 are subject to a \$2,500,000 aggregate cap for all valid claims. If the value of aggregate, valid claims made exceed \$2,500,000, Settlement Class Members who submit valid claims under this Option 2, shall be paid a pro rata share of \$2,500,000.

Progressive will also readjust certain wrongful death claims for Settlement Class Members who suffered a fatality reported to Progressive between May 8, 2014 and March 22, 2022, without the need to file a claim. This benefit is valued at approximately **\$25,000** per class member or may be more if you purchased more than minimum limits coverage or have stacked benefits. The Settlement Administrator will contact these Settlement Class Members’ representatives to obtain required tax forms.

YOU MUST FILE A CLAIM TO RECEIVE PAYMENTS UNDER OPTIONS 1 OR 2. To get a Claim Form, visit the website or call 1-XXX-XXX-XXXX. The claim deadline is **Month Day, 2023**.

OTHER OPTIONS. If you do nothing, you will remain in the class, you will not be eligible for benefits, and you will be bound by the decisions of the Court and give up your rights to sue Progressive for the claims resolved by this Settlement. If you do not want to be legally bound by the Settlement, you must exclude yourself by **Month Day, 2023**. If you stay in the Settlement, you may object to it by **Month Day, 2023**. A more detailed notice is available to explain how to exclude yourself or object. Please visit the website or call 1-XXX-XXX-XXXX for a copy of the more detailed notice. On **Month Day, 2023**, the Court will hold a Fairness Hearing to determine whether to approve the Settlement, Class Counsel’s request for attorneys’ fees, costs, and expenses not to exceed \$2,500,000 and an incentive award of \$10,000 for the two Representative Plaintiffs. The Motion for attorneys’ fees will be posted on the website after it is filed. You or your own lawyer, if you have one, may ask to appear and speak at the hearing at your own cost, but you do not have to. This is only a summary. For more information, call or visit the website below.

www.XXXXXXXXXX.com

1-XXX-XXX-XXXX

Martinez v. Progressive Claim Form

TO SUBMIT A VALID CLAIM THIS CLAIM FORM MUST BE POSTMARKED BY XXXXXXXXXXXX AND RETURNED TO:

**Martinez v. Progressive
 c/o Kroll Settlement Administration
 P.O. Box XXXXX
 New York, NY XXXXX-XXXX**

IF YOU WOULD LIKE TO RECEIVE YOUR PAYMENT VIA ZELLE, PAYPAL, VIRTUAL MASTERCARD OR VENMO, PLEASE SUBMIT YOUR CLAIM ONLINE AT WWW.XXXXXXXXXXXXXXXXXX.COM

All information listed below is required. We will use this information to contact you and process your claim. It will not be used for any other purpose. If any of the following information changes, you must promptly notify the Settlement Administrator using the contact section of the Settlement Website or by writing to the address above.

1. NAME:	First	Middle Initial	Last
2. MAILING ADDRESS:	Street Address:		
	Street Address 2:		
	City:		
	State:		
	Zip:		
3. PHONE NUMBER:			
4. EMAIL ADDRESS:			
5. SETTLEMENT OPTION	<p>Check the box below for one of the settlement benefit options. If you are unsure which type of claim you would like to make, please check both boxes and the Settlement Administrator will review your options and you will be entitled to the benefit that entitles you to the most Settlement benefits.</p> <p><input type="checkbox"/> Option 1 – Check this box if you believe you made or could have made an Underinsured Motorist (“UIM”) claim to Progressive between January 1, 2004 and March 22, 2022 for an automobile accident that may have been subject to an offset in coverage due to the insurance coverage limits of a third party responsible for your injuries or property damage.</p> <p><input type="checkbox"/> Option 2 – Check this box if you are not eligible for payments under Option 1 and you would like a refund of 18% of all premium paid to Progressive for Uninsured Motorist (“UM”)/UIM benefits you paid between January 1, 2004 and March 22, 2022.</p>		

6. Class Member ID* (on the notice mailed to you)	(Example: XXXXXXXXXXXXX) *Contact the Settlement Administrator at XXXXXXXXX if you cannot find or do not have a Class Member ID.
--	---

Signature

I affirm under the laws of the United States that the information supplied in this claim form is true and correct to the best of my knowledge and that any documents that I have submitted in support of my claim are true and correct copies of original documentation. I understand that I may be asked to provide more information by Progressive before my claim is complete.

Signature:	Dated:
Print Name:	

Exhibit C of Settlement Agreement

Martinez v. Progressive Neutral Evaluation on Appeal

TO REQUEST A NEUTRAL EVALUATION ON APPEAL BY A REFEREE OF PROGRESSIVE’S NOTICE OF DETERMINATION OF YOUR CLAIM FOR SETTLEMENT BENEFITS, THIS FORM MUST BE POSTMARKED WITHIN 30 DAYS FROM THE DATE ON WHICH YOUR NOTICE OF DETERMINATION WAS POSTMARKED OR EMAILED TO YOU. PLEASE MAIL THIS FORM TO:

Martinez v. Progressive
c/o Kroll Settlement Administration
P.O. Box XXXXX
New York, NY XXXXX-XXXX

All information listed below is required. We will use this information to contact you and process your appeal. It will not be used for any other purpose. If any of the following information changes, you must promptly notify the Settlement Administrator using the contact section of the Settlement Website or by writing to the address above.

1. NAME:	First	Middle Initial	Last
2. MAILING ADDRESS:	Street Address:		
	Street Address 2:		
	City:		
	State:		
	Zip:		
3. PHONE NUMBER:			
4. EMAIL ADDRESS:			
5. Class Member ID (on the notice mailed to you)	(Example: XXXXXXXXXXXXXXXX) *Contact the Settlement Administrator at XXXXXXXXXX if you cannot find or do not have a Class Member ID.		
Signature	Signature:		Dated:
	Print Name:		

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Notice of Class Action Settlement

*The United States District Court for the District of New Mexico has authorized this Notice.
This is not a solicitation from a lawyer.*

A settlement has been reached in a class action lawsuit brought against:

**Progressive Preferred Insurance Company,
Progressive Classic Insurance Company,
Progressive Casualty Insurance Company,
Progressive Direct Insurance Company,
Progressive Advanced Insurance Company,
Progressive Specialty Insurance Company, and
Progressive Northern Insurance Company**

(collectively with the Released Parties defined in the Settlement Agreement, “Progressive”) relating to allegations that Progressive violated New Mexico law by misrepresenting underinsured motorist (“UIM”) coverage and applying an offset due to the insurance coverage limits of third parties responsible for injuries or property damage (the “Lawsuit” or the “Litigation”).

PLEASE CAREFULLY READ THIS COURT-AUTHORIZED NOTICE.
ALL OF ITS TERMS MAY AFFECT YOUR RIGHTS.

- This Settlement establishes a process for certain individuals involved in automobile accidents that may have been caused, in whole or in part, by an underinsured driver to submit claims and **potentially receive a money payment**. This is true even if you:
 - (1) are no longer insured with Progressive;
 - (2) were not the named insured, but instead a passenger in, or an authorized driver of, a vehicle covered by Progressive;
 - (3) previously made a claim; or
 - (4) have never made a claim.
- For every Settlement Class Member who submits a claim, the Settlement entitles eligible Settlement Class Members to payment of additional uninsured/underinsured motorists UIM bodily injury and/or property damage benefits or a return of 18% of the premiums that were collected for UM/UIM bodily injury benefits.
- Progressive denies all allegations of wrongdoing and liability.

Questions? Go to www.xxxxxx.com or call xxx-xxx-xxxx

- This Notice explains: 1) the terms of the Settlement; 2) who is a member of the Class; 3) how to request exclusion from the Settlement; 5) how to object to the Settlement; and 6) how to get more information about the Settlement.

The Plaintiffs asserted claims for: (1) negligence, (2) violations of New Mexico's Unfair Trade Practices Act, (3) violations of the New Mexico Unfair Insurance Practices Act, (4) policy reformation, (5) breach of the implied duty of good faith and fair dealing, (6) unjust enrichment, (7) negligent misrepresentation, (8) declaratory judgment, and (9) injunctive relief. Progressive denies all of the claims and says it did not do anything wrong. The lawsuit is titled *Diane Martinez, et al. v. Progressive Preferred Ins. Co., et al.*, United States District Court for the District of New Mexico, Case No. 19-CV-00004-JHR-SCY.

You are a "Settlement Class Member" if you were mailed or emailed a Notice of Settlement by the Settlement Administrator. The Settlement provides the following settlement benefits to Settlement Class Members:

- Progressive will readjust certain wrongful death claims for Settlement Class Members who suffered a fatality reported to Progressive between May 8, 2014 and March 22, 2022, without the need to file a claim (the "Automatic Payments"). This benefit is valued at approximately \$25,000 per class member or may be more if you purchased more than minimum limits coverage or have stacked benefits.
- **Settlement Class Members not eligible for the above benefit, must file a claim to receive payment under one of two options:**

OPTION 1 – BODILY INJURY AND/OR PROPERTY DAMAGE CLAIM

- If you believe you made or could have made a UIM claim to Progressive between January 1, 2004 and March 22, 2022 for an automobile accident and/or property damage that was subject to an offset in coverage due to the insurance coverage limits of a third party responsible for your injuries and/or property damage, then you can submit a settlement claim to have your claim readjusted or to make a new claim. This benefit is valued at approximately **\$25,000** per class member for bodily injuries, or may be more if you purchased more than minimum limits coverage or have stacked benefits. The property damage value is the amount on your applicable declaration pages. Progressive will process claims made under Option 1 through its ordinary claims process.

OPTION 2 – RETURN OF PREMIUMS - If you are a Progressive policyholder class member not eligible under Option 1, you may make a claim for a refund of **18% of all premium** paid for Uninsured/Underinsured Motorist ("UM/UIM") benefits between January 1, 2004 and March 22, 2022. The amount of your benefit will be based on the amount of UM/UIM premium paid to Progressive during the class period. Benefits under Option 2 are subject to a \$2,500,000 aggregate cap for all valid claims. If the value of aggregate, valid claims made exceed \$2,500,000, Settlement Class Members who submit valid claims under this Option 2, shall be paid a pro rata share of \$2,500,000.

UIM Claim Re-Adjustment Progressive will process all Automatic Payments and Option 1 settlement claims received through its claims department. All Automatic Payments and Option 1 settlement claims shall be adjusted expeditiously, as they would be in the ordinary course of business. You must submit

Questions? Go to www.XXXX.com or call 1-XXX-XXX-XXXX

all reasonable, required supplemental documentation concerning your UIM claim in order to obtain any additional UIM benefit payment.

This Notice may affect your rights. Please read it carefully.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.

Your Legal Rights and Options		Deadline
SUBMIT A CLAIM FORM	<p>The only way to get Settlement benefits under Options 1 and 2 is to submit a claim form to the Settlement Administrator.</p> <p>If you do submit a claim form under Option 1, you may be contacted by Progressive concerning your claim. Progressive may request additional documentation concerning your UIM claim.</p> <p>You must submit all reasonable, required supplemental documentation concerning your UIM claim in order to obtain any additional UIM benefit payment.</p>	MONTH DD, 2022
EXCLUDE YOURSELF	<p>Get no Settlement benefits.</p> <p>Keep your right to file your own lawsuit against Progressive about the legal claims in this case.</p>	MONTH DD, 2022
OBJECT	<p>Tell the Court why you do not like the Settlement. You will still be bound by the Settlement if the Court approves it.</p> <p>You may still file a Claim Form.</p>	MONTH DD, 2022
DO NOTHING	<p>Get no Settlement benefits. Be bound by the Settlement.</p>	

The Court in charge of this case must still decide whether to approve the Settlement and the requested attorneys’ fees and expenses. No Settlement benefits or payments will be provided unless the Court approves the Settlement and it becomes final.

BASIC INFORMATION PAGE X

1. Why is this Notice being provided?
2. What is this lawsuit about?
3. Why is the lawsuit a class action?
4. Why is there a Settlement?

WHO IS INCLUDED IN THE SETTLEMENT?..... PAGE X

5. How do I know if I am part of the Settlement?
6. Are there exceptions to being included in the Settlement?
7. What if I am still not sure whether I am part of the Settlement?

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY..... PAGE X

8. What does the Settlement provide?
9. What am I giving up to receive Settlement benefits or stay in the Settlement Class?
10. What are the Released Claims?

Questions? Go to www.XXXX.com or call 1-XXX-XXX-XXXX

HOW TO GET BENEFITS FROM THE SETTLEMENT PAGE X

- 11. How do I make a claim for Settlement benefits?
- 12. What happens if my contact information changes after I submit a claim?
- 13. When will I receive my Settlement benefits?

THE LAWYERS REPRESENTING YOU PAGE X

- 14. Do I have a lawyer in this case?
- 15. How will Class Counsel be paid?

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BASIC INFORMATION

1. Why is this Notice being provided?

A United States District Court authorized this Notice because you have the right to know about the proposed Settlement of this class action lawsuit and about all of your rights and options before the Court decides whether to grant final approval to the Settlement. This Notice explains the Lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for the benefits, and how to get them.

Federal Judge Jerry H. Ritter of the United States District Court for the District of New Mexico is overseeing this class action. The case is known as *Diane Martinez, et al. v. Progressive Preferred Ins. Co., et al.*, United States District Court for the District of New Mexico, Case No. 19-CV-00004-JHR-SCY. The persons who filed this Lawsuit are called the “Plaintiffs” or “Class Representatives” and the companies they sued, Progressive Preferred Insurance Company, Progressive Classic Insurance Company, Progressive Casualty Insurance Company, Progressive Direct Insurance Company, Progressive Advanced Insurance Company, Progressive Specialty Insurance Company, and Progressive Northern Insurance Company, are called “Progressive” or the “Defendants.”

2. What is this lawsuit about?

Questions? Go to www.XXXX.com or call 1-XXX-XXX-XXXX

Plaintiffs allege that Progressive violated New Mexico law by misrepresenting underinsured motorist (“UIM”) coverage in their written materials and applying an offset due to the insurance coverage limits of third parties responsible for injuries or property damage (the “Lawsuit”). The Plaintiffs asserted a variety of claims: (1) negligence, (2) violations of New Mexico’s Unfair Trade Practices Act, (3) violations of New Mexico’s Unfair Insurance Practices Act, (4) policy reformation, (5) breach of the implied duty of good faith and fair dealing, (6) unjust enrichment, (7) negligence misrepresentation, (8) declaratory judgment, and (9) injunctive relief.

Progressive denies any wrongdoing, and no court or other entity has made any judgment or other determination of any wrongdoing, or that any law has been violated. Progressive denies these and all other claims made in the Litigation. By entering into the Settlement, Progressive is not admitting any wrongdoing.

3. Why is the lawsuit a class action?

In a class action, one or more people called Class Representatives sue on behalf of all people who have similar claims. Together all these people are called a Settlement Class or Settlement Class Members. One court resolves the issues for all Settlement Class Members, except for those Settlement Class Members who timely exclude themselves from the Settlement Class.

The proposed Class Representatives in this case are the Plaintiffs: Diane Martinez and Erin Martin.

4. Why is there a Settlement?

Plaintiffs and Progressive do not agree about the claims made in this Litigation. The Litigation has not gone to trial, and the Court has not decided in favor of Plaintiffs or Progressive. Instead, Plaintiffs and Progressive have agreed to settle the Litigation. Plaintiffs and the attorneys for the Settlement Class (“Class Counsel”) believe the Settlement is best for all Settlement Class Members because of the Settlement benefits and the risks and uncertainty associated with continued litigation and the nature of the defenses raised by Progressive.

WHO IS INCLUDED IN THE SETTLEMENT?

5. How do I know if I am part of the Settlement?

You are a Settlement Class Member if you received a Notice of Settlement. If the Settlement Administrator mailed or emailed you a notification, you are a Settlement Class Member.

6. Are there exceptions to being included in the Settlement?

Yes. Excluded from the Settlement Class are: 1) any claimant who has separately filed suit against Progressive up to the Notice Date, the subject of which suit includes the reduction or denial of benefits on the basis of the offset described in Section 2 above; 2) any individual who has settled a claim for benefits reduced or denied on the basis of the offset described in Section 2 above, whose claim was adjusted or readjusted without applying the offset described in Section 2 above, and signed a final release prior to the Notice Date; 3) any claimant for whom, at claimant’s request, Progressive has already re-adjusted a claim for benefits reduced or denied on the basis of the offset described in Section 2 above prior to the Notice Date; 4) the Judge(s) presiding over this Action; and 5) Progressive and any employee of Progressive.

7. What if I am still not sure whether I am part of the Settlement?

Questions? Go to www.XXXX.com or call 1-XXX-XXX-XXXX

If you are still not sure whether you are a Settlement Class Member, you may go to the Settlement Website at www.XXXX.com, call Progressive's toll-free number at 1-XXX-XXX-XXXX, or call Settlement Class Counsel at XXX-XXX-XXXX.

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

8. What does the Settlement provide?

The Settlement provides the following settlement benefits to Settlement Class Members:

- Progressive will readjust certain wrongful death claims for Settlement Class Members who suffered a fatality reported to Progressive between May 8, 2014 and March 22, 2022, without the need to file a claim (the “Automatic Payments”). This benefit is valued at approximately \$25,000 per class member or may be more if you purchased more than minimum limits coverage or have stacked benefits. The Settlement Administrator will contact these Settlement Class Members’ representatives to obtain required tax forms.
- **Settlement Class Members not eligible for the above benefit, must file a claim to receive payment under one of two options:**

OPTION 1 – BODILY INJURY AND/OR PROPERTY DAMAGE CLAIM

- If you believe you made or could have made a UIM claim to Progressive between January 1, 2004 and March 22, 2022 for an automobile accident and/or property damage that was subject to an offset in coverage due to the insurance coverage limits of a third party responsible for your injuries and/or property damage, then you can submit a settlement claim to have your claim readjusted or to make a new claim. This benefit is valued at approximately **\$25,000** per class member for bodily injuries, or may be more if you purchased more than minimum limits coverage or have stacked benefits. The property damage value is the amount on your applicable declaration pages. Progressive will process claims made under Option 1 through its ordinary claims process.

OPTION 2 – RETURN OF PREMIUMS - If you are a Progressive policyholder class member not eligible under Option 1, you may make a claim for a refund of **18% of all premium** paid for Uninsured/Underinsured Motorist (“UM/UIM”) benefits between January 1, 2004 and March 22, 2022. The amount of your benefit will be based on the amount of UM/UIM premium paid to Progressive during the class period. Benefits under Option 2 are subject to a \$2,500,000 aggregate cap for all valid claims. If the value of aggregate, valid claims made exceed \$2,500,000, Settlement Class Members who submit valid claims under this Option 2, shall be paid a pro rata share of \$2,500,000.

UIM Claim Re-Adjustment and Appeal Process. Progressive will process all Automatic Payments and Option 1 Settlement Claims received through its claims department. All Automatic Payments and Option 1 Settlement Claims shall be adjusted expeditiously, as they would be in the ordinary course of business. You must submit all reasonable, required supplemental documentation concerning your UIM claim in order to obtain any additional UIM benefit payment.

If you have made a claim under Option 1, Progressive shall send you a Notice of Determination, which shall set forth (i) the amounts (if any) of the Settlement Class Payment to be paid; (ii) where not

Questions? Go to www.XXXX.com or call 1-XXX-XXX-XXXX

otherwise obvious, a brief explanation of the calculation and basis for the determination of those amounts; and (iii) if any claims or dollar amounts are rejected, a brief explanation of the reasons for the rejection.

If you disagree with Progressive’s Notice of Determination, you may appeal to a court-appointed neutral Referee by mailing a demand for a Neutral Evaluation on Appeal to the Settlement Administrator at:

SETTLEMENT ADMINISTRATOR ADDRESS

The Neutral Evaluation on Appeal form is available at www.XXXX.com. With your demand, you must provide a check made out to XXXXXX for \$XXX to cover your portion of the Referee’s fee. Should you not prevail in your appeal, you may be required to pay an additional \$XXX to the Referee. Your demand must be post-marked within 30 days from the date on which the Notice of Determination was postmarked or email.

9. What am I giving up to receive Settlement benefits or stay in the Settlement Class?

Unless you exclude yourself, you are choosing to remain in the Settlement Class. If the Settlement is approved and becomes final, all of the Court’s orders will apply to you and legally bind you. You will not be able to sue, continue to sue, or be part of any other lawsuit against Progressive and Released Parties about the legal issues in this Litigation that are released by this Settlement. The specific rights you are giving up are called “Released Claims.”

10. What are the Released Claims?

The Settlement Agreement, in Section VI and Paragraph 10, describes the Release, Released Claims and the Released Parties in necessary legal terminology, so please read these sections carefully. The Settlement Agreement is available at www.XXXXX.com or in the public court records on file in this Lawsuit. For questions regarding Releases and what they mean, you can also contact one of the lawyers listed in Question XX for free, or you can, talk to your own lawyer at your own expense.

HOW TO GET BENEFITS FROM THE SETTLEMENT

11. How do I make a claim for Settlement benefits?

Settlement Class Members entitled to Automatic Payments do not need to make a claim to have their claim readjusted. However, they must submit the required tax documentation, available online at www.XXXXXX. If this tax documentation is not postmarked or submitted online by the Effective Date of the Settlement as defined in the Settlement Agreement, those Settlement Class Members will waive their right to automatic payments. These Settlement Class Members may submit their tax documentation online at www.XXXXXX or mail it to the address below.

To receive benefits under Options 1 or 2, you must complete and submit a valid Claim Form to the Settlement Administrator, postmarked or submitted online on or before **Month Day, 2022**. Claim Forms may be submitted online at www.XXXXX, or printed from the website and mailed to the Settlement Administrator at the address on the form. You must submit the required tax documentation, available online at www.XXXXX, with your Claim Form to receive benefits under Option 1. The quickest way to submit a claim is online. Claim Forms and tax documentation are also available by calling 1-XXX-XXX-XXXX or by writing to:

Settlement Administrator

Questions? Go to www.XXXX.com or call 1-XXX-XXX-XXXX

ADDRESS

ADDRESS

12. What happens if my contact information changes after I submit a claim?

If you change your mailing address or email address after you submit a Claim Form, it is your responsibility to inform the Settlement Administrator of your updated information. You may notify the Settlement Administrator of any changes by calling 1-XXX-xxx-XXXX or by writing to:

Claims Administrator

ADDRESS

ADDRESS

13. When will I receive my Settlement benefits?

If you make a Valid Claim, payment will be provided by the Settlement Administrator or Progressive after the Settlement is approved by the Court and becomes final, including the end of any dates to appeal the final approval of the Settlement. The date of payment will vary depending on which benefit you may receive, whether you are required to submit additional documentation to Progressive, and whether you appeal a determination under Option 1. Automatic Payments and payments under Option 2 will be paid within 60 days after the Settlement becomes final. Payment dates under Option 1 vary, but many Valid Claims should be paid within 180 days of the date the Settlement becomes final.

It may take time for the Settlement to be approved and become final. Please be patient and check www.XXXXX.com for updates.

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in this case?

Yes, the Court has appointed Kedar Bhasker of Bhasker Law (2741 Indian School Rd. NE, Albuquerque, NM 87106), Corbin Hildebrandt of Corbin Hildebrandt P.C. (2741 Indian School Rd. NE, Albuquerque, NM 87106), and Geoffrey Romero of Law Offices of Geoffrey R. Romero (4801 All Saints Rd. NW Ste. A, Albuquerque, NM 87120) as Class Counsel to represent you and the Settlement Class for the purposes of this Settlement. You may hire your own lawyer at your own cost and expense if you want someone other than Class Counsel to represent you in this Litigation.

15. How will Class Counsel be paid?

Class Counsel will file a motion asking the Court to award them attorneys' fees not to exceed \$2,500,000 to be paid by Progressive. They will also ask the Court to approve a \$10,000 service award to each of the two named Plaintiffs for participating in this Litigation and for their effort in achieving the Settlement. Plaintiffs also shall have their own UIM claims readjusted \$25,000 each (equivalent to what they would receive under Option 1) by Progressive as part of the Settlement. If awarded by the Court, Progressive will pay fees, costs, expenses, and incentive awards directly. The Court may award less than these amounts.

Questions? Go to www.XXXX.com or call 1-XXX-XXX-XXXX

Class Counsel’s application for attorneys’ fees, expenses, and service awards will be made available on the Settlement Website at www.XXXXX.com before the deadline for you to comment or object to the Settlement.

OPTING-OUT FROM THE SETTLEMENT

If you are a Settlement Class Member and want to keep any right you may have to sue or continue to sue Progressive or the Released Parties on your own based on the claims raised in this Litigation or released by the Released Claims, then you must take steps to get out of the Settlement. This is called excluding yourself from – or “opting out” of – the Settlement.

16. How do I get out of the Settlement?

To opt-out of the Settlement, you must mail written notice of a request for exclusion. The written notice must state that you want to be excluded from the Settlement in *Diane Martinez, et al. v. Progressive Preferred Ins. Co., et al.*, United States District Court for the District of New Mexico, Case No. 19-CV-00004-JHR-SCY. The written notice must be signed and clearly state that you wish to be excluded from the Settlement Class.

The exclusion request must be **postmarked** and sent to Progressive’s counsel and Class Counsel at the following addresses by **Month Day, 2022**:

CLASS COUNSEL	PROGRESSIVE’S COUNSEL
Kedar Bhasker BHASKER LAW 2741 Indian School Rd. NE Albuquerque, NM 87106	Casie D. Collignon BAKER & HOSTETLER LLP 1801 California Street Suite 4400 Denver, CO 80202

You cannot exclude yourself by telephone or by email.

17. If I opt-out can I still get anything from the Settlement?

No. If you exclude yourself, you are telling the Court you do not want to be part of the Settlement. You can only get Settlement benefits if you stay in the Settlement and, submit a valid Claim Form if requesting benefits under Options 1 or 2.

18. If I do not exclude myself, can I sue the Defendants for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Defendants and Released Parties for the claims this Settlement resolves relating to the Litigation. You must exclude yourself from this Litigation to start or continue with your own lawsuit or be part of any other lawsuit against the Defendants or any of the Released Parties. If you have a pending lawsuit, speak to your lawyer in that case immediately.

OBJECT TO THE SETTLEMENT

19. How do I tell the Court that I do not like the Settlement?

Questions? Go to www.XXXX.com or call 1-XXX-XXX-XXXX

If you are a Settlement Class Member, you can tell the Court you do not agree with all or any part of the Settlement or requested attorneys’ fees and expenses. You can also give reasons why you think the Court should not approve the Settlement or attorneys’ fees and expenses. To object, you must file timely written notice as provided below no later than **Month Day, 2022**, stating you object to the Settlement in *Diane Martinez, et al. v. Progressive Preferred Ins. Co., et al.*, United States District Court for the District of New Mexico, Case No. 19-CV-00004-JHR-SCY.

To be valid, an objection must state: (a) the objector’s full name, address, telephone number, and e-mail address (if any); (b) information identifying the objector as a Settlement Class Member; (c) a written statement of all grounds for the objection, accompanied by any legal support the objector cares to submit; (d) the identity of all lawyers (if any) representing the objector; (e) the identity of all of the objector’s lawyers (if any) who will appear at the Final Fairness Hearing; (f) a list of all persons who will be called to testify at the Final Fairness Hearing in support of the objection; (g) a statement confirming whether the objector intends to personally appear and/or testify at the Final Fairness Hearing; and (h) the objector’s signature or the signature of the objector’s duly authorized lawyer or other duly authorized representative (along with documentation setting forth such representation).

In addition to the foregoing, objections should also provide the following information: (a) a list, by case name, court, and docket number, of all other cases in which the objector (directly or through a lawyer) has filed an objection to any proposed class action settlement within the last three (3) years; (b) a list, by case name, court, and docket number, of all other cases in which the objector’s lawyer (on behalf of any person or entity) has filed an objection to any proposed class action settlement within the last three (3) years; and (c) a list, by case number, court, and docket number, of all other cases in which the objector has been a named plaintiff in any class action or served as a lead plaintiff or class representative.

To be timely, written notice of an objection in the appropriate form containing the case name and docket number (*Diane Martinez, et al. v. Progressive Preferred Ins. Co., et al.*, United States District Court for the District of New Mexico, Case No. 19-CV-00004-JHR-SCY) must be filed with the Clerk of the Court (address below) and mailed to the following:

COURT	CLASS COUNSEL	PROGRESSIVE’S COUNSEL
US District Court District of New Mexico Pete V. Domenici U.S. Courthouse 333 Lomas Blvd NW, Suite 270 Albuquerque, NM 87102	Kedar Bhasker LAW OFFICE OF KEDAR BHASKER, LLC 2741 Indian School Rd. NE Albuquerque, NM 87106 Corbin Hildebrandt CORBIN HILDEBRANDT, P.C. 2741 Indian School Rd. NE Albuquerque, NM 87106 Geoffrey Romero LAW OFFICERS OF GEOFFREY ROMERO 4801 All Saints Rd. Albuquerque, NM 87120	Casie D. Collignon BAKER & HOSTETLER LLP 1801 California Street Suite 4400 Denver, CO 80202

Any Settlement Class member who fails to comply with the requirements for objecting in Section VIII of the Settlement Agreement shall waive and forfeit any and all rights he or she may have to

Questions? Go to www.XXXX.com or call 1-XXX-XXX-XXXX

appear separately and/or to object to the Settlement Agreement and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Litigation.

20. What is the difference between objecting and asking to be excluded?

Objecting is simply telling the Court you do not like something about the Settlement or requested attorneys' fees and expenses. You can object only if you stay in the Settlement Class (that is, do not exclude yourself). Requesting exclusion is telling the Court you do not want to be part of the Settlement Class or the Settlement. If you exclude yourself, you cannot object to the Settlement.

THE FINAL FAIRNESS HEARING

21. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing on **Month Day, 2022, at X:XX a.m.** before Judge Jerry H. Ritter, United States District Court, Pete V. Domenici U.S. Courthouse, 333 Lomas Blvd NW, Suite 670, Albuquerque, NM 87102.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and decide whether to approve: the Settlement, Class Counsel's application for attorneys' fees, costs and expenses, and the incentive awards to Plaintiffs. If there are objections, the Court will consider them. The Court will also listen to people who have asked to speak at the hearing.

Note: The date and time of the Final Fairness Hearing are subject to change. The Court may also decide to hold the hearing via Zoom or by phone. Any change will be posted at www.XXXX.com.

22. Do I have to attend the Final Fairness Hearing?

No. Class Counsel will answer any questions the Court may have. However, you are welcome to attend at your own expense. If you send an objection, you do not have to come to Court to speak about it. As long as you file or mail your written objection on time the Court will consider it.

23. May I speak at the Final Fairness Hearing?

Yes, as long as you do not exclude yourself, you can (but do not have to) participate and speak for yourself in this Litigation and Settlement. This is called making an appearance. You also can have your own lawyer speak for you, but you will have to pay for the lawyer yourself.

If you want to appear, or if you want your own lawyer instead of Class Counsel to speak for you in this Litigation, you must follow all of the procedures for objecting to the Settlement listed in Section 19 above – and specifically include a statement whether you and your counsel will appear at the Final Fairness Hearing.

IF YOU DO NOTHING

24. What happens if I do nothing at all?

If you are a Settlement Class Member and you do nothing, you will not receive any Settlement benefits unless you are entitled to Automatic Payments. You will give up rights explained in the "Excluding Yourself from the Settlement" section of this Notice, including your right to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants or any of the Released Parties about

Questions? Go to www.XXXX.com or call 1-XXX-XXX-XXXX

the legal issues in this Litigation that are released by the Settlement Agreement relating to the Litigation.

GETTING MORE INFORMATION

25. How do I get more information?

This Notice summarizes the proposed Settlement. Complete details are provided in the Settlement Agreement. The Settlement Agreement and other related documents are available at www.XXXXX.com, by calling 1-XXX-xxx-XXXX or by writing to:

Settlement Administrator
ADDRESS
ADDRESS

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT'S CLERK OFFICE
REGARDING THIS NOTICE.**

Questions? Go to www.XXXX.com or call 1-XXX-XXX-XXXX