

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
NORTHWESTERN DIVISION**

LAUREN REYNOLDS and LAURI  
PENN, *individually and on behalf of  
others similarly situated,*

Plaintiffs,

v.

PROGRESSIVE DIRECT INSURANCE  
COMPANY and PROGRESSIVE  
SPECIALTY INSURANCE COMPANY,

Defendants.

Case No. 5:22-cv-503-LCB

**CLASS ACTION SETTLEMENT AGREEMENT**

This Class Action Settlement Agreement (“Agreement” or “Settlement Agreement”) is made and entered into as of this 12<sup>th</sup> day of May, 2025, by and between (1) Lauren Reynolds and Lauri Penn (hereinafter referred to as “Plaintiffs”), on behalf of themselves and as representatives of the Settlement Classes defined below, and (2) Defendant Progressive Direct Insurance Company and Defendant Progressive Specialty Insurance Company (hereinafter referred to as “Defendants” or “Progressive”).

Plaintiffs, the Settlement Classes, and Defendants are referred to collectively as the “Parties” and individually as a “Party.”<sup>1</sup>

WHEREAS, Plaintiffs allege in this Action that the total-loss software licensed by Defendants, Mitchell International, Inc.’s (“Mitchell”) WorkCenter Total Loss (“WCTL”), applies an improper adjustment called the projected sold adjustment (“PSA”) in settling total-loss claims, resulting in an underpayment of claims in breach of Defendants’ Alabama automobile insurance policies;

WHEREAS, the Parties wish to resolve all claims asserted and all claims that could have been asserted in the Action concerning Progressive’s use of the Mitchell WCTL software in settling total-loss claims;

WHEREAS, counsel for the Parties have engaged in arm’s-length negotiations on the terms of this Agreement, as defined below, and this Agreement embodies all of the terms and conditions of this Settlement;

WHEREAS, Class Counsel has conducted investigation and completed discovery relating to the claims brought against Defendants, has analyzed the legal issues in this case, and has engaged in substantial motion practice and trial preparation over three years of litigation. Class Counsel believes that this settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class and that

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<sup>1</sup> All terms with initial capitalization shall have the meanings set forth in Section 1 below or as otherwise defined herein.

this Settlement Agreement should be approved by the Court under Federal Rule of Civil Procedure 23(e);

WHEREAS, Defendants deny and continue to deny all material allegations in the Action and maintain they complied with the automobile insurance policies and all applicable laws. Still, without admitting liability or that the Action is suitable for class treatment, and without waiving any argument on liability or decertification, Defendants agree to enter into this Agreement to avoid the costs, expenses, and uncertainties of this complex litigation;

NOW THEREFORE, in consideration of the foregoing, the terms and conditions set forth below, and other good and valuable consideration, it is agreed by and among the Parties that the Class claims be settled and compromised, and dismissed on the merits with prejudice, subject to the terms and conditions set forth herein and further subject to Court approval:

1. Definitions. The following terms shall have the following meanings for purposes of this Agreement.
  - a. “Action” means the above-captioned action, *Reynolds v. Progressive Direct Ins. Co.*, Case No. 5:22-cv-503 (N.D. Ala.).
  - b. “Attorneys’ Fee Award” means the Court-determined award of attorneys’ fees, costs, and expenses to Class Counsel.

- c. “Approved Claim” means a Valid Claim that is either: (1) not challenged by Progressive; or (2), challenged by Progressive but where that challenge is overruled, as set forth in Paragraph 9.
- d. “Automobile Insurance Policy” means an Alabama policy of insurance issued by Progressive in effect during the Class Period and providing first-party private-passenger automobile physical damage coverage.
- e. “Blank Claim Form” shall mean a claim form that is not pre-filled with the Settlement Class Member name, date of loss, or Claim ID.
- f. “Claim Form” means the Court-approved paper (not electronic) claim form that a Settlement Class Member may submit to be considered for payment under the Final Settlement.
- g. “Claim Payment” means the payment issued by Progressive to the Settlement Administrator who will deliver the payment to Settlement Class Members who submit Approved Claims, as set forth in Paragraph 7.
- h. “Claims Submission Deadline” means the date by which Claim Forms must be postmarked or Electronic Claim Forms must be electronically submitted to be considered timely. The Claims Submission Deadline, proposed to the Court, shall be no later than thirty (30) days after the Final Approval Hearing.

- i. “Class Counsel” shall mean the law firms Carney Bates & Pulliam, PLLC; Jacobson Phillips PLLC; Normand PLLC; Edelsberg Law, P.A.; Shamis & Gentile; and Bailey Glasser LLP.
- j. “Class Period” means the period from April 20, 2016 through the date a Preliminary Approval Order is entered.
- k. “Court” means the United States District Court for the Northern District of Alabama, Northeastern Division.
- l. “E-mail Notice Date” means the two dates on which the E-Mail notice is e-mailed to potential Settlement Class Members, as provided in Paragraphs 6(e) and 6(g).
- m. “E-mail Notice” means the Court-approved electronic notice forms, to be e-mailed to the Settlement Class Members for whom Progressive has reasonably accessible e-mail addresses, as provided in Paragraphs 6(e) and 6(g).
- n. “Effective Date” means the date on which all of the following conditions have been met:
  - i. This Agreement has been fully executed by the Parties and their counsel;
  - ii. No Party has terminated the Agreement;

- iii. Orders have been entered by the Court certifying a Settlement Class and granting preliminary approval of this Agreement, and approving a form of notice and claim forms as provided in this Agreement;
- iv. The Court has entered the Final Order and Judgment approving this Agreement and releasing all Released Persons from all Released Claims, and dismissing the Action with prejudice and without leave to amend, as provided in this Agreement;
- v. The Claims Submission Deadline has passed;
- vi. The Court has fully resolved any application made by Class Counsel for an Attorneys' Fee Award; and
- vii. The Final Order and Judgment has become Final as defined in Paragraph 1(r) below.
- o. "Electronic Claim Form" means the Court-approved pre-filled electronic (not paper) claim form that a Settlement Class Member may submit electronically to be considered for payment under the Final Settlement.
- p. "Eligible Class Member" means a Settlement Class Member who timely submits a valid and complete Claim Form or Electronic Claim Form and satisfies the eligibility criteria stated in Paragraph 8 below.

- q. “Escrow Account” means the escrow account established by the Settlement Administrator under terms acceptable to all Parties at a depository institution insured by the Federal Deposit Insurance Corporation to receive and maintain funds contributed on behalf of Progressive for the benefit of the Settlement Classes. The Escrow Account shall be maintained by the Settlement Administrator.
- r. “Final” means that (a) the Final Order and Judgment is a final, appealable judgment and (b) either (i) no appeal has been taken from the Final Order and Judgment and the date on which all times to appeal therefrom have expired, or (ii) an appeal or other review proceeding of the Final Order and Judgment having been commenced, such appeal or other review is finally concluded and no longer is 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 fully and finally resolved in such manner that affirms the Final Order and Judgment.
- s. “Final Approval Hearing” means the hearing before the Court at or after which the Court will make a final decision whether to approve the Proposed Settlement set forth herein as fair, reasonable and adequate.

- t. “Final Order and Judgment” means that the Court has issued an order approving the Settlement Agreement, disposing of all claims asserted in the Action with prejudice, and settling and releasing all claims consistent with the terms of this Agreement, and the time in which to appeal any such Order has passed.
- u. “Final Settlement” means the settlement approved by the Court in the Final Order and Judgment as fair, reasonable, and adequate.
- v. “Mail Notice” means the Court-approved short form notice (i.e., postcard notice). The Mail Notice will include a Claim Form that will be detachable, return-addressed, and shall be affixed with prepaid postage sufficient to mail back to the Settlement Administrator as provided in Paragraphs 6(b) and 6(d).
- w. “First Mail Notice” means the Court-approved short form notice (i.e., postcard notice) mailed via first-class mail with detachable prepaid postage claim form to potential Settlement Class Members, as provided in Paragraph 6(b).
- x. “First Mail Notice Date” means the date that the initial mailing of the First Mail Notice to potential Settlement Class Members as set forth in Paragraph 6(b) is completed.

- y. “Legally Authorized Representative” means an administrator/administratrix, personal representative, or executor/executrix of a deceased Settlement Class Member’s estate; a guardian, conservator, or next friend of an incapacitated Settlement Class Member; or any other legally appointed Person or entity responsible for handling the affairs of a Settlement Class Member. For purposes of completing a Claim Form or Electronic Claim Form, a surviving spouse of a deceased class member will be considered a legally authorized representative for purposes of this agreement if no Estate has been opened, and no other person has legal authority for handling the affairs of the deceased Settlement Class Member.
- z. “Longform Notice” means the Court-approved long-form notice.
- aa. “Notice and Administrative Costs” means the costs and expenses associated with effectuating and implementing Class Notice and the costs and expenses for filing of tax returns and payment of taxes. Notice and Administrative Costs shall not include the cost associated with the optional third Mail and/or E-mail Notice described in Paragraph 6(i).
- bb. “Opt-Out List” means the list of valid and timely requests for exclusion from the Settlement Class compiled by the Settlement Administrator, as set forth in Paragraph 17(b).

cc. “Policyholder” means any Person who was an insured under a Progressive Alabama automobile insurance policy.

dd. “Preliminary Approval” means a ruling by the Court to preliminarily approve this Agreement and the Proposed Settlement pursuant to Federal Rule of Civil Procedure 23.

ee. “Proposed Class Notice Plan” shall mean the proposed method of disseminating notice of this Settlement to Settlement Class Members.

ff. “Proposed Settlement” means the settlement described in this Agreement, before final approval by the Court.

gg. “Released Claims” shall have the meaning set forth in Paragraphs 15 and 16 of this Agreement.

hh. “Releasing Party” or “Releasing Parties” means: (a) Plaintiffs; and (b) Settlement Class Members who do not otherwise timely exclude themselves from the Settlement Class (regardless of whether or not such members submitted a Claim Form or Electronic Claim Form) as set forth in Paragraph 17, and their respective present, former, or subsequent assigns, heirs, successors, attorneys, predecessors, parents, subsidiaries, officers, directors, shareholders, members, managers, partners, principals, representatives, agents, employees and anyone working on their behalf.

- ii. “Released Parties” means (a) Defendants; (b) all divisions, parent entities, affiliates, and subsidiaries of Defendants; (c) all past and present officers, directors, agents, attorneys, employees, stockholders, successors, assigns, independent contractors, insurers and reinsurers of any of the entities or Persons listed in this Paragraph; and (d) all of the heirs, estates, successors, assigns, and legal representatives of any of the entities or Persons listed in this Paragraph. As used in this Paragraph, “affiliates” means entities controlling, controlled by or under common ownership or control with, in whole or in part, any of the Released Persons.
- jj. “Second Mail Notice” means the Court-approved short form notice (i.e., postcard notice) mailed via first-class mail with detachable prepaid postage claim form to potential Settlement Class Members, as provided in Paragraph 6(d).
- kk. “Second Mail Notice Date” means the date the Second Mail Notice to potential Settlement Class Members as set forth in Paragraph 6(d) is completed.
- ll. “Settlement Administrator” means the settlement administration company agreed to by the Parties and approved by the Court, pursuant to Paragraph 4.

- mm. “Settlement Classes” shall mean the following:
- i. “Progressive Direct Class”: All persons who made a first-party claim on a policy of personal automobile insurance issued by Progressive Direct Insurance Company to an Alabama resident where the claim was submitted from April 20, 2016, through the date an order granting Preliminary Approval is entered, and Progressive determined that the vehicle was a total loss and based its claim payment on an Instant Report from Mitchell where a Projected Sold Adjustment was applied to at least one comparable vehicle.
  - ii. “Progressive Specialty Class”: All persons who made a first-party claim on a policy of personal automobile insurance issued by Progressive Specialty Insurance Company to an Alabama resident where the claim was submitted from April 20, 2016 through the date an order granting Preliminary Approval is entered, and Progressive determined that the vehicle was a total loss and based its claim payment on an Instant Report from Mitchell where a Projected Sold Adjustment was applied to at least one comparable vehicle.
  - iii. Excluded from the Settlement Classes are:

1. Progressive, all present or former officers, directors, employees or legal representatives, Class Counsel, and the Honorable Judge Liles C. Burke and any member of his immediate family;
2. Policyholders who timely opt-out of the Settlement Class, as detailed in Paragraph 18.

nn. “Settlement Class Member” means any person encompassed by the definition of the Settlement Classes and not excluded from the Classes as set forth above.

oo. The “Settlement Payment” is the total of all Claim Payments sought by Settlement Class Members who submit Approved Claims, as detailed in Paragraph 9.

pp. “Valid Claim” means a complete Claim Form or Electronic Claim Form for a Settlement Class Member who has not submitted a request for exclusion, that meets all of the criteria set forth in Paragraph 8.

2. Litigation Standstill. Upon execution of this Agreement, the Parties shall cease all litigation activities related to the prosecution or defense of the claims in this Action.
3. Motion for Preliminary Approval. No later than May 12, 2025, Plaintiffs, through Class Counsel, shall submit to the Court a motion for Preliminary

Approval of this Agreement. The Preliminary Approval motion shall include: (a) a proposed form of, method for, and date of dissemination of notice of this Settlement; (b) a proposed schedule for the filing of any motion for fees and expenses, the filing of a motion to approve finally this Agreement, and a fairness hearing; and (c) a proposed form of order preliminarily approving this Agreement. The items referred to in clauses (a) through (c) above shall be proposed by Plaintiffs, through Class Counsel, subject to the agreement of Defendants, which agreement shall not be unreasonably withheld. The Parties shall take all reasonable actions as may be necessary to obtain Preliminary Approval of this Agreement.

4. Settlement Administrator. Class Counsel shall solicit cost bids from no fewer than three potential Settlement Administrators. Class Counsel shall select the Settlement Administrator, subject to consent from Progressive and the Court. Class Counsel shall oversee the Settlement Administrator, subject to a reasonable and customary process under which Progressive can challenge potentially non-compliant claims. The Settlement Administrator shall retain and record all notice and settlement administration procedures and provide periodic updates to the Parties until notice and settlement administration is completed.

5. Class Data. No later than fifteen (15) days after Preliminary Approval is granted by the Court, Progressive shall deliver to the Settlement Administrator data identifying Settlement Class Members to the extent Progressive has such data in its possession and it is reasonably accessible. The data shall include the categories of information reflected in the spreadsheet produced in the Action at PGR\_REYNOLDS\_0029689, as well as any reasonably accessible e-mail address associated with each Settlement Class Member in Progressive's possession.
6. Class Notice. The dissemination of notice of this Settlement ("Class Notice") shall be provided in accordance with a notice plan as approved by the Court. Class Counsel shall submit the Proposed Class Notice Plan, including the form of all proposed notices, for the Court's approval in connection with the motion for Preliminary Approval.
  - a. The Proposed Class Notice Plan shall include dates for the dissemination of a minimum of two (2) Mail Notices and two (2) E-mail Notices to each Settlement Class Member.
  - b. The First Mail Notice shall be in a form approved by the Court. Claim Forms provided with the First Mail Notice will be pre-filled with a unique Claim ID, the Settlement Class Member Name, and the claim Date of Loss.

- c. Prior to First Mail Notice, the Settlement Administrator shall run physical mailing addresses through the National Change of Address Database (“NCOA”) for any addresses that Progressive does not have or are incomplete and/or for any addresses the Settlement Administrator knows to be invalid based on previous notice mailings that took place in this Action.
- d. After the First Mail Notice, the Settlement Administrator shall mail the Second Mail Notice on a date suggested by the Settlement Administrator (but, in any event, no later than thirty (30) days after the First Mail Notice is sent) to all Settlement Class Members who, according to the Settlement Administrator’s records, have not made a claim, requested to opt out, or made an objection. The Second Mail Notice shall be in a form approved by the Court.
- e. For each Settlement Class Member for whom Progressive provides an associated e-mail address, the Settlement Administrator shall send a first E-Mail Notice with a hyperlink to the settlement website, where a Settlement Class Member can access an Electronic Claim Form pre-filled with the Settlement Class Member’s Claim ID. The first E-Mail Notice shall occur on a date suggested by the Settlement Administrator,

but no more than forty-five (45) days after entry of the Order of Preliminary Approval and shall be in a form approved by the Court.

- f. Prior to sending the first E-mail Notice to any Settlement Class Members, the Settlement Administrator shall perform a skip trace for current e-mail addresses provided to the Settlement Administrator by Progressive to determine the most current e-mail addresses for Settlement Class Members. The Settlement Administrator shall send E-mail Notices to both the e-mail addresses in Progressive's records and any e-mail addresses identified by skip trace.
- g. The Settlement Administrator shall send a second E-Mail Notice with a hyperlink to the settlement website, where a Settlement Class Member can access an Electronic Claim Form pre-filled with the Settlement Class Member's Claim ID to all Settlement Class Members who, according to the Settlement Administrator's records, have not made a claim, requested to opt out, or made an objection. The second E-Mail Notice shall occur on the same day as the Second Mail Notice and shall be in a form approved by the Court.
- h. The Settlement Administrator shall utilize best practices designed to avoid spam filters, blockers, or any tool designed to prevent receipt of e-mails, and to otherwise design and implement the sending of the e-

mail to increase the likelihood that the E-Mail Notice will be successfully received into the e-mail inboxes of Settlement Class Members. All E-Mail Notices must include the capability to click-through to the settlement website to make a claim.

- i. Class Counsel may, at their option, send one (1) additional Mail Notice and one (1) additional E-Mail Notice to Settlement Class Members. The costs associated with administering any such third Mail Notice or E-mail Notice shall be the sole responsibility of Class Counsel. Progressive bears no obligation of any kind to pay any expenses associated with administering additional Mail Notice or additional E-Mail Notice, beyond that First Mail Notice, the Second Mail Notice, the First E-mail Notice, and the Second E-Mail Notice.
- j. Settlement Class Members for whom Progressive maintains a physical address and reasonably accessible e-mail address shall be sent both Mailed Notice and E-Mail Notice.
- k. Each Settlement Class Member will be provided an opportunity to submit, at his or her option, either a Claim Form or an Electronic Claim Form requesting a Claim Payment.
- l. The Settlement Administrator shall create a website (the “settlement website”) and post the Settlement Agreement, short-form notice,

Longform Notice, Claim Form, Electronic Claim Form, Preliminary Approval Order, and frequently asked questions. The settlement website may be amended from time to time, subject to agreement of the Parties. The settlement website shall also contain Spanish translations of the Mail Notice, Longform Notice, and Claim Form. The Settlement Administrator shall maintain the settlement website for at least 180 days after expiration of the Claims Submission Deadline.

- m. The home page of the settlement website shall reflect the case settlement and shall have a “Make A Claim” button permitting a Settlement Class Member to access a pre-filled Electronic Claim Form by providing a Claim ID, with a method to submit the Electronic Claim Form with an electronic signature, a method to request that another copy of the Claim Form and notices be mailed or emailed to the Settlement Class Member, and a method to request a Blank Claim Form.
- n. If any notice and/or Claim Form mailed to any potential Settlement Class Member is returned to the Settlement Administrator as undeliverable, the Settlement Administrator will promptly log each notice and/or Claim Form that is returned as undeliverable and provide copies of the log to Progressive and Class Counsel upon request. If the

mailing is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator shall forward the mailing to that address. For the remaining returned mailings, the Settlement Administrator will use reasonable efforts, including potentially skip tracing, to attempt to obtain a new address and those mailings shall be forwarded to any new address obtained through such a search. If any notice is returned as undeliverable a second time, no further mailing shall be required. It is agreed by the Parties that the procedures set forth in the preceding Paragraph and this Paragraph constitute reasonable and the best practicable notice under the circumstances and an appropriate and sufficient effort to locate current addresses for Settlement Class Members such that no additional efforts to do so shall be required.

- o. The Parties agree that a Longform Notice, as approved by the Court, shall be posted to the settlement website, and will be available upon request to Settlement Class Members.
- p. The Claim Form will also be made available to all potential Settlement Class Members by request to the Settlement Administrator, who shall send via first-class U.S. mail or e-mail any of these documents as requested by any potential Settlement Class Member. If a Claim ID is not available to the Settlement Administrator for the potential

Settlement Class Member, the Settlement Administrator shall provide a Blank Claim Form to the requester with instruction that the Blank Claim Form must be mailed to the Settlement Administrator postmarked by the Claims Submission Deadline with the Settlement Class Member name (including name at the time the person was insured by Progressive, if different), policy number or claim number, address, and signature.

- q. The Settlement Administrator shall maintain a toll-free IVR telephone system containing recorded answers to frequently asked questions. The recorded answers to frequently asked questions are to be agreed to by the Parties. In the event a Settlement Class Member has a question that is not addressed by the Parties in the frequently asked questions, the Settlement Administrator is to contact counsel for both Parties and a response will be agreed to by the Parties.
- r. The Settlement Administrator shall rent a post office box to be used for receiving requests for exclusion, objections, notices of intention to appear, and any other settlement-related communications. Only the Settlement Administrator, the Court, the Clerk of the Court, and their designated agents shall have access to this post office box, except as otherwise expressly provided in this Agreement.

7. Claim Payments. Progressive will pay one-hundred percent (100%) of the PSA Impact Amount to Settlement Class Members who submit a Valid Claim pursuant to Paragraph 8 below.

- a. For the Progressive Direct Class and the Progressive Specialty Class, the PSA Impact Amount is 4.31% of the Actual Cash Value of each Settlement Class Member's total loss vehicle. That Actual Cash Value Amount is reflected in Progressive's data under the column "Valuation\_ACVAmt." The total PSA Impact Amount that is available to be claimed by the Progressive Direct Class and the Progressive Specialty Class is estimated to be \$30,748,947.
- b. Each Eligible Class Member for either case who submits a valid, timely, and complete Claim Form or Electronic Claim Form will be entitled to the PSA Impact Amount applicable to his or her Class.
- c. The Claim Payment described herein is the only payment to which Settlement Class Members are entitled under this Agreement. The payments are deemed to be inclusive of any claims for any potentially applicable penalties and/or interest and/or fees. The payments shall be in full and final disposition of the Action, and in consideration for the release of any and all Released Claims as against any and all Released Persons.

8. Claim Submissions. To be eligible for a Claim Payment under this settlement, a Settlement Class Member or his or her Legally Authorized Representative must timely submit a Valid Claim. The Settlement Administrator shall establish procedures for receiving and processing Claim Forms and Electronic Claim Forms. Valid Claims shall comply with the following:

- a. Settlement Class Members must submit a valid Claim Form or Electronic Claim Form by the Claims Submission Deadline to receive a Claim Payment as described in Paragraph 7.
- b. A valid Claim Form and Electronic Claim Form will only require that the recipient confirm that he or she is the Policyholder or is otherwise entitled to a Claim Payment.
- c. A Claim Form submitted for a Settlement Class Member who has more than one claim shall constitute a Claim Form for all covered claims of the Settlement Class Member.
- d. To be eligible to receive a Claim Payment, a Claim Form must be postmarked no later than the Claims Submission Deadline or must be submitted electronically no later than the Claims Submission Deadline, at which point the Settlement Administrator shall deactivate the Electronic Claim Form.

- e. If not pre-populated by the Settlement Administrator, a Settlement Class Member must include in a Blank Claim Form (i) the name and current address of the Settlement Class Member (and the name and/or address at the time of the total loss, if different from the current name and/or address) and (ii) the claim number associated with the total-loss claim or the Settlement Class Member's policy number at the time of the total-loss claim. The name, address, and claim/policy number must match Progressive's records in order for the claimant to be eligible for a Claim Payment.

9. The Settlement Payment.

- a. Claim Forms and Electronic Claim Forms that are timely submitted to the Settlement Administrator shall be processed as follows:
  - i. If a timely submitted Claim Form or Electronic Claim Form is unsigned, illegible, or does not include the Claim Number or policy number involved in the claim, the Settlement Administrator shall send the claimant a letter, after consultation with Progressive and Class Counsel, informing of the defect and providing the claimant with thirty (30) days to cure the defect. If the claimant does not subsequently provide a Claim Form or Electronic Claim Form curing the defect and postmarked within

thirty (30) days of the date of the Settlement Administrator's letter, that Claim Form or Electronic Claim Form shall be deemed defective and not eligible for payment, and the claimant shall not have an additional opportunity to cure the defect.

- ii. No later than thirty (30) days after the Claims Submission Deadline, the Settlement Administrator shall provide Progressive and Class Counsel electronic copies of all Valid Claims. Within thirty (30) days of receipt of those copies, Progressive shall inform Class Counsel and the Settlement Administrator of any claims (other than those already determined to be invalid by the Settlement Administrator) it believes are invalid and, as to each such claim, include the Settlement Class Member name, claim number, and a brief description of why Progressive believes the claim to be invalid.
- iii. Upon receipt of a challenge to a Claim Form or Electronic Claim Form from Progressive, the Settlement Administrator shall have fifteen (15) days to determine the validity of a challenged Claim Form or Electronic Claim Form.
- iv. Progressive may appeal the findings of the Settlement Administrator with respect to a challenged Claim Form or

Electronic Claim Form to the Court, and the Court shall make a final ruling as to the validity of any challenged Claim Form or Electronic Claim Form. Any challenge of a Claim Form or Electronic Claim Form appealed to the Court shall not further delay completion of the requirements of this Settlement Agreement with respect to Approved Claims, except that Progressive shall not be required to pay any claim that is appealed to the Court unless and until the Court resolves the appeal in favor of the claimant who submitted the challenged Claim Form or Electronic Claim Form.

- b. No later than sixty (60) days after the Claims Submission Deadline, the Settlement Administrator shall provide Progressive with a spreadsheet reflecting the names and claim numbers of all Settlement Class Members who submitted Approved Claims, the amount of the Claim Payment owed to each Settlement Class Member who submitted an Approved Claim, and the total amount of Claim Payments owed for all Approved Claims.
- c. No later than thirty (30) days after the later of the Effective Date or the receipt of the information described in the preceding paragraph,

Progressive shall pay the total amount of Claim Payments owed for all Approved Claims into the Escrow Account (the “Settlement Payment”).

- d. No later than forty-five (45) days after the later of the Effective Date or the receipt of the Settlement Payment, the Settlement Administrator shall issue payment to Settlement Class Members that submitted Approved Claims. Settlement Class Members may select their preferred method by which to receive their Claim Payment in the Claim Form or Electronic Claim Form. Unless the Settlement Class Member requests payment via an electronic payment method, timely and valid claims will be paid via physical check within sixty (60) days after the Effective Date. Checks shall be valid for one-hundred-eighty (180) days from their issuance, after which they will be void (the “Void Date”). Checks shall be reissued if, within thirty (30) days of the Void Date, the Settlement Class Member requests another check be issued. Otherwise, all uncashed checks will be permanently voided thirty-one (31) days after the Void Date and any residual funds remaining in the Escrow Account due to uncashed checks shall be returned to Defendants.

10. Qualified Settlement Fund. Upon deposit into the Escrow Account, the Parties agree to treat the Settlement Payment as being at all times a “Qualified

Settlement Fund” within the meaning of Treas. Reg. § 1.468B-1, and to that end, the Parties shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. In addition, the Settlement Administrator shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph 9, including the relation-back election (as defined in Treas. Reg. § 1.468B-1(j)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Settlement Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. All provisions of this Agreement shall be interpreted in a manner that is consistent with the Settlement Funds being a “Qualified Settlement Fund” within the meaning of Treasury Regulation § 1.468B-1. The Settlement Administrator shall timely and properly file all information and other tax returns necessary or advisable with respect to the Settlement Funds (including without limitation the returns described in Treas. Reg. § 1.468B-2(k), (1)). Such returns shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the Settlement Funds shall be paid out

of the Settlement Funds. Defendants shall not be responsible for the filing or payment of any taxes or expenses connected to the Qualified Settlement Fund.

11. Notice and Administrative Costs. After Final Judgment has been entered, and with Court approval, all Notice and Administrative Costs will be paid by Progressive. All expenses and costs incurred by the Settlement Classes and Class Counsel shall be reimbursed and indemnified by Progressive, as provided by an order of the Court. Defendants and the Released Parties shall not be liable for the cost associated with the optional third Mail and/or E-mail Notice described in Paragraph 6(i).

12. Attorneys' Fees and Costs. Class Counsel's entitlement, if any, to an Attorneys' Fee Award will be determined by the Court. The terms of any such awards, fees, costs, or expenses were not negotiated until after all material elements of the Proposed Settlement were resolved, and the terms of this Proposed Settlement are not conditioned upon any attorneys' fee award.

- a. Payment of any attorneys' fees and costs award, and of the costs of the administration of this settlement, are separate from and in addition to the payments available to Settlement Class Members. The amount owed and/or paid to Settlement Class Members will not be adjusted or reduced at all as a result of any payments made for attorneys' fees, costs, Service Awards, or the costs of administration and notice. The

lawsuit costs and expenses are separate from and in addition to the settlement administration costs and expenses that Progressive shall pay pursuant to Paragraph 11.

- b. Class Counsel shall seek no more than twenty-two-and-a-half percent (22.5%) of the total amount of funds made available to the Settlement Classes (“Maximum Attorneys’ Fees Award”) for attorneys’ fees, subject to approval by the Court. Class Counsel shall seek no more than \$90,000 in costs (“Maximum Costs Award”), subject to approval by the Court.
- c. Class Counsel shall provide Progressive with a draft of their motion requesting an award of attorneys’ fees, costs, and expenses prior to filing. Progressive agrees to pay the Attorneys’ Fee Award or any lesser amount the Court may award. Plaintiffs and Class Counsel will not seek to enforce or recover any Attorneys’ Fee Award and/or Costs Award in excess of the Maximum Attorneys’ Fee Award and/or Maximum Costs Award.
- d. The procedure for and the denial or allowance by the Court of the Attorney’s Fees Award and the Service Awards are considered by the Court separately from the Court’s consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or

proceeding relating to the applications for any Attorneys' Fees Award or Service Awards, or any appeal from any order relating thereto or the reversal or modification thereof, will not operate to terminate or cancel this Agreement, or affect or delay the finality of the Final Judgment approving the Agreement and the Settlement. No order of the Court or modification or reversal on appeal of any order of the Court concerning any Attorneys' Fees Award or Service Awards shall constitute grounds for cancellation or termination of this Agreement.

- e. If there is a timely objection to the Settlement, any Attorneys' Fees Award entered by the Court must be paid by Progressive to Class Counsel no later than seven (7) days after the later of the Effective Date or, if issued in a separate order, a final Order approving or awarding the Attorneys' Fee Award, meaning the Order is a final, appealable judgment and either the time in which to appeal such an Order has expired or, if any appeal or other review proceeding of the Order has been commenced, such appeal or other review is finally concluded and no longer is 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 fully and finally resolved in such manner that affirms the Order.

If there is no timely objection to the Settlement, any Attorneys' Fees Award entered by the Court must be paid by Progressive to Class Counsel within 20 days of the Court's final approval of the Settlement and the Court's entry of an Attorney's Fee Award.

13. Service Award. Plaintiff Reynolds and Plaintiff Penn's entitlement, if any, to a service award will be determined by the Court. The terms of any such awards were not negotiated until after all material elements of the Proposed Settlement were resolved and the terms of this Proposed Settlement are not conditioned upon any service award.

- a. Class Counsel shall seek a service award of no more than \$10,000 for Plaintiff Reynolds, subject to approval by the Court.
- b. Class Counsel shall seek a service award of no more than \$10,000 for Plaintiff Penn, subject to approval by the Court.
- c. If there is a timely objection to the Settlement, any Service Award entered by the Court must be paid by Progressive no later than seven (7) days after the later of the Effective Date or, if issued in a separate order, a final Order approving or awarding the Service Award, meaning the Order is a final, appealable judgment and either the time in which to appeal such an Order has expired or, if any appeal or other review proceeding of the Order has been commenced, such appeal or other

review is finally concluded and no longer is 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 fully and finally resolved in such manner that affirms the Order. If there is no timely objection to the Settlement, any Service Award entered by the Court must be paid by Progressive to Class Counsel within 20 days of the Court's final approval of the Settlement and the Court's entry of any Service Award.

14. Motion for Final Approval and Entry of Final Judgment. If the Court grants Preliminary Approval of this Agreement, Plaintiffs, through Class Counsel, shall—in accordance with the schedule set forth in the Court's Preliminary Approval order—submit to the Court a separate motion for Final Approval of this Agreement by the Court. The motion for Final Approval shall seek entry of an order and Final Judgment:

- a. finally approving the Settlement as being a fair, reasonable, and adequate settlement for the Classes within the meaning of Federal Rule of Civil Procedure 23, and directing the implementation of the Settlement pursuant to the terms and conditions set forth in this Agreement;

- b. dismissing the Action, with prejudice;
- c. discharging and releasing the Released Parties from all Released Claims; and
- d. reserving continuing and exclusive jurisdiction over the Settlement for all purposes.
- e. The Final Approval of this Agreement, and the items referred to in subparagraphs (a) through (d) above shall be proposed by Plaintiffs, through Class Counsel, subject to the agreement of Defendants, which agreement shall not be unreasonably withheld. The Parties shall take all reasonable actions as may be necessary to obtain Final Approval of this Agreement.

15.Release. Upon Final Judgment and in consideration of payment of the Settlement Payment set forth in Paragraph 9, and for other valuable consideration, the Released Parties shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature (whether or not any Settlement Class Member participates in the Settlement Funds, whether directly, representatively, derivatively or in any other capacity) that the Releasing Parties ever had, now have, or hereafter can, shall, or may ever have, that exist as of the date of Final Judgment, on account of, or in any way

arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries, damages, and the consequences thereof in any way arising out of or relating in any way to the facts and circumstances alleged in the Action, including without limitation any claims arising out of Progressive's settlement of a total loss claim ("Released Claims"). Notwithstanding the preceding, Released Claims shall not include any claims for personal injury, medical payment, uninsured motorist or underinsured motorist. Upon the Effective Date, the Releasing Parties will be bound by the Final Order and Judgment and conclusively deemed to have fully released, acquitted, and forever discharged all Released Parties from all Released Claims.

16. Further Release. In addition to the provisions of Paragraph 15, the Releasing Parties hereby expressly waive and release, solely with respect to the Released Claims, upon Final Judgment, any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which states:

CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. Each Releasing Party may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims which are released pursuant to the provisions of Paragraph 15, but each Releasing Party hereby expressly waives and fully, finally, and forever settles and releases, upon Final Judgment, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that the Releasing Parties have agreed to release pursuant to Paragraph 15 and 16, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

17. Requests for Exclusion and Objections. Settlement Class Members who wish to exclude themselves from the Settlement Classes must submit timely and written requests for exclusion. To be effective, such a request must include the Settlement Class Member's name and address, an unequivocal statement that the Settlement Class Member wishes to be excluded from the Settlement Class, and the signature of the Settlement Class Member or the Legally Authorized Representative of the Settlement Class Member. The request must be mailed to the Settlement Administrator at the address provided in the notice postmarked no later than thirty (30) days before the Final Approval Hearing.

A request for exclusion must be exercised individually by the Settlement Class Member and is only effective as to the individual Settlement Class Member requesting exclusion. Settlement Class Members may not opt out of specific aspects of the Proposed Settlement while still participating for other aspects of the Proposed Settlement.

- a. Plaintiffs Reynolds and Penn shall not elect or seek to opt out or exclude themselves from the Settlement Class, and any such attempt will be deemed a material breach of this Agreement and sufficient to permit Progressive to terminate the Agreement.
- b. The Settlement Administrator shall promptly log and prepare a list of all persons who properly requested exclusion from the Settlement Class and shall submit an affidavit to the Court, which includes and attests to the accuracy of the Opt-Out List no later than ten (10) days prior to the Final Approval Hearing set by the Court.
- c. All Settlement Class Members who do not timely and properly exclude themselves from the Settlement Class shall be bound by this Agreement, irrespective of whether they submit a valid Claim Form or Electronic Claim Form, and this Action shall be dismissed with prejudice and all of the Settlement Class Members' Released Claims shall be released as provided for herein.

- d. Settlement Class Members who do not request exclusion from the Settlement Classes may object to the Proposed Settlement. Settlement Class Members who choose to object to the Proposed Settlement must file written notices of intent to object. Any Settlement Class Member who timely files an objection in compliance with this paragraph may appear at the Final Approval Hearing, in person or by counsel, and be heard to the extent and only if permitted by the Court.
- e. To be timely, any objection or motion to intervene must be filed with the Court by the deadline set in the Preliminary Approval Order. Plaintiffs will propose a deadline of forty-five (45) days after the First Mail Notice Date.
- f. The right to object to the Proposed Settlement or to intervene in the Action must be exercised individually by a Settlement Class Member or his or her attorney or a Settlement Class Member's Legally Authorized Representative, and not as a member of a group, class, or subclass.
- g. To be effective, a notice of intent to object to the Proposed Settlement must:
  - i. Include the name of the case and case number;

- ii. Provide the name, address, telephone number, and signature of the Settlement Class Member filing the objection;
  - iii. Indicate the specific reasons why the Settlement Class Member objects to the Proposed Settlement;
  - iv. Contain the name, address, bar number, and telephone number of the objecting Settlement Class Member's counsel, if any, and any such attorney must comply with all applicable rules of the Court; and
  - v. State whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing, either in person or through counsel.
- h. If the Settlement Class Member or his or her attorney requests permission to speak at the Final Approval Hearing, a notice of intent to object must also contain the following information:
- i. A detailed statement of the legal and factual basis for each objection;
  - ii. A list of any and all witnesses the Settlement Class Member may seek to call at the Final Approval Hearing (subject to applicable rules of procedure and evidence and at the discretion of the

Court), with the address of each witness and a summary of his or her proposed testimony;

iii. A list of any legal authority the Settlement Class Member will present at the Final Approval Hearing; and

iv. Documentary proof of membership in the Settlement Class.

i. Any Settlement Class Member who does not file a timely notice of intent to object waives the right to object or to be heard at the Final Approval Hearing and is barred from making any objection to the Proposed Settlement and filing any appeal. Settlement Class Members have the right to exclude themselves from the Proposed Settlement and pursue a separate and independent remedy against Progressive by complying with the exclusion provisions set forth herein. Settlement Class Members who object to the Proposed Settlement shall remain Settlement Class Members and waive their right to pursue an independent remedy against Defendants and Released Parties. To the extent any Settlement Class Member objects to the Proposed Settlement, and such objection is overruled in whole or in part, such Settlement Class Member will be forever bound by the Final Order and Judgment of the Court. Settlement Class Members can avoid being

bound by any judgment of the Court by complying with the exclusion provisions set forth herein.

- j. The Settlement Administrator shall timely provide Progressive and Class Counsel a copy of each notice of intent to object received by the Settlement Administrator.

18. Denial of Liability. Progressive maintains it acted in accordance with the governing laws and regulations of the State of Alabama and abided by the terms of the applicable insurance policies. Progressive nonetheless has concluded that it is in its best interests that the Action be settled on the terms and conditions set forth in this Agreement. Progressive reached this conclusion after considering the factual and legal issues in the Action, the substantial benefits of a final resolution of the Action, and the expense that would be necessary to defend the Action through judgment, appeal, and any subsequent proceedings that may occur.

- a. Progressive believes that it stands a reasonable chance of success in appeals in related cases as to the merits and as to class certification. Progressive maintains that its defenses to judgment and to class certification are meritorious. Because of the costs, resources, and time that would be incurred, Progressive asserts that it would not have settled the Action except on a claims-made basis.

- b. As a result of the foregoing, Progressive enters into this Agreement without admitting, conceding, or acknowledging any fault, liability, or wrongdoing of any kind or that certification is appropriate. This Agreement shall not be construed as an admission or concession of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind. The terms of this Agreement, including the claims-made nature of the Agreement, are material to Progressive's decision to settle the Action notwithstanding its belief that its defenses are meritorious and its chances of success on appeal in related cases are significant.
- c. Whether or not Final Judgment is entered, or this Agreement is terminated, the Parties expressly agree that this Agreement and its contents, and any and all statements, negotiations, documents, and discussions associated with it, are not and shall not be deemed or construed to be an admission or evidence of any violation of any statute, regulation or law or of any liability or wrongdoing by Defendants or any of the Released Parties, or that the Action is suitable for class treatment.
- d. Nothing in this Agreement shall affect the application of Federal Rule of Evidence 408 in any instance where it would otherwise apply.

19.Dismissal of Action. Upon entry of the Final Order and Judgment, the Action will be dismissed with prejudice as to Progressive, the Plaintiffs, and all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Opt-Out List. It is the intent of the Parties to this Settlement Agreement that dismissal of the claims with prejudice and release of the claims shall have the *res judicata* effect of dismissal and release of only those claims expressly identified herein as Released Claims. It is the intent of the Parties that this Settlement Agreement and the Action's dismissal will not operate as a bar to any Class Member from pursuing any claim that is not a Released Claim.

20.Consent to Jurisdiction. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and all Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied herein.

21.Retention of Records. The Settlement Administrator and Class Counsel shall retain copies or images of all returned notices, Claim Forms, Electronic Claim Forms (and/or data resulting therefrom) and correspondence relating thereto, for a period of up to two (2) years after the Effective Date. After this time, the Settlement Administrator and Class Counsel shall destroy any documentary records in their possession.

22. Authorization to Enter this Agreement. Each Party to this Agreement warrants that he, she, or it is fully authorized to enter into this Agreement, and is acting upon his, her, or its independent judgment and upon the advice of his, her, or its counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other party, other than the warranties and representations expressly made in this Agreement.

23. Calculation of Time. Unless otherwise noted, all references to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal or state legal holiday, such date or deadline shall be on the first business day thereafter.

24. Class Action Fairness Act. Defendants, at their sole expense, shall submit all materials required to be sent to appropriate Federal and State officials pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

25. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the successors, assigns, and heirs of the Parties, Settlement Class Members, the Releasing Parties, and the Released Parties. Without limiting the generality of the foregoing, upon the Effective Date, each and every covenant and agreement herein by the Plaintiffs shall be binding upon all Class Members and Releasing Parties who have not validly excluded themselves from the Settlement Classes.

26. No Third-Party Beneficiaries. No provision of this Agreement shall provide any rights to, or be enforceable by, any person or entity that is not a Released Party, Plaintiff, Settlement Class Member, or Class Counsel.
27. No Party is the Drafter. None of the Parties hereto shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.
28. Choice of Law. All terms of this Agreement and the other documents contemplated herein shall be governed by and interpreted according to the substantive laws of the State of Alabama, without regard to its choice-of-law or conflict-of-laws principles.
29. Amendment and Waiver. This Agreement shall not be modified in any respect except by a writing executed by the Parties, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving Party. The waiver by any Party of any particular breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous with this Agreement. This Agreement does not waive or otherwise limit the Parties' rights and remedies for any breach of this Agreement. Any breach of this Agreement may result in irreparable damage to a Party for which such Party will not have an adequate

remedy at law. Accordingly, in addition to any other remedies and damages available, the Parties acknowledge and agree that the Parties may immediately seek enforcement of this Agreement by means of specific performance or injunction, without the requirement of posting a bond or other security.

30. Termination of Agreement. If the Court does not grant Preliminary Approval of this Agreement in all material respects, or if the Court does not enter a Final Order and Judgment approving this Agreement, or if any Final Order and Judgment approving this Agreement is materially modified or set aside on appeal, or if all of the conditions for Final Judgment do not occur as set forth in Paragraph 1(r) of this Agreement, then this Agreement may be cancelled and terminated. A Party must provide written notice of its intent to terminate this Agreement no later than ten (10) business days after the triggering event. If cancelled and terminated, this Agreement shall become null and void, and Progressive shall not be obligated to make the Settlement Payment or any Claim Payments or to provide any other monetary or non-monetary relief to Plaintiffs or the Settlement Class Members, any attorneys' fees or other expenses to Class Counsel, or any Service Award to Plaintiffs. The Parties shall be returned to their respective positions in the Action as if this Agreement had never been entered into without prejudice to any claims, rights or defenses of the Parties, and the Release (set forth in Paragraphs 15 and 16) shall be

voided and shall be of no force or effect, any dismissal with prejudice of the Action or Final Order and Judgment shall be of no force or effect, and Plaintiffs Reynolds and Penn (on behalf of the Certified Classes) shall be entitled to have any Final Judgment vacated and have their claims alleged in the Class Action Complaint reinstated as if they had never been dismissed or compromised, with all statutes of limitation deemed tolled between the time of dismissal and re-instatement, and without the need to re-serve any Defendant with process. The Parties and the Settlement Classes expressly reserve all of their rights if a Final Order and Judgment is not entered in accordance with the terms of this Agreement.

31. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement. Facsimile or Electronic Mail signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Agreement and filed with the Court.

32. Integrated Agreement. This Agreement comprises the entire agreement between the Parties and the terms of this Agreement are contractual and are not a mere recital. The Parties agree that this Agreement may be modified only by a written instrument signed by the Parties and that no Party will assert any

claim against another based on any alleged agreement affecting or relating to the terms of this Agreement not in writing and signed by the Parties.

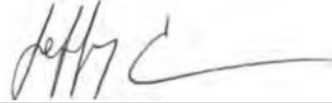
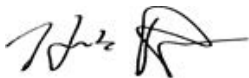
33. Voluntary Settlement. The Parties agree that this Agreement and the Settlement were negotiated in good faith by the Parties and reflect a Settlement that was reached voluntarily after consultation with competent counsel and the participation of neutral mediators.

34. Non-Disclosure. The Parties and their counsel will not affirmatively contact the news media, issue any press release, or hold press conferences in any media to publicize, promote, or characterize the Settlement.

IN WITNESS WHEREOF, the Parties, individually or through their duly authorized representatives, enter into this Agreement on the date first above written.

Plaintiffs and the Settlement Classes:

Defendants:



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Lee Lowther  
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