Exhibit A3

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. PROGRESSIVE PREFERRED INSURANCE COMPANY; PROGRESSIVE CLASSIC INSURANCE COMPANY; PROGRESSIVE CASUALTY INSURANCE COMPANY; PROGRESSIVE MAX INSURANCE COMPANY; PROGRESSIVE DIRECT INSURANCE COMPANY; PROGRESSIVE ADVANCED INSURANCE COMPANY; PROGRESSIVE SPECIALITY INSURANCE COMPANY; and PROGRESSIVE NORTHERN INSURANCE COMPANY, Defendants.	No. 19-CV-00004-JHR-KBM

SECOND AMENDED CLASS ACTION COMPLAINT

1. Plaintiffs Diane Martinez and Erin Martin, for themselves and on behalf of the Class and Subclass defined herein, brings this Second Amended Class Action Complaint and state as follows:

PARTIES

2. Plaintiff Diane Martinez is, and was at all material times, a resident of Bernalillo County, New Mexico.

3. Plaintiff Erin Marin is, and was at all material times, a resident of Bernalillo County, New Mexico.

4. Defendant Progressive Preferred Insurance Company is a foreign for-profit corporation conducting business, including marketing and sale of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

5. Defendant Progressive Classic Insurance Company is a foreign for-profit corporation conducting business, including marketing and sale of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

6. Progressive Casualty Insurance Company is a foreign for-profit corporation conducting business, including marketing and sale of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

7. Defendant Progressive Max Insurance Company is a foreign for-profit corporation conducting business, including the sales and solicitations for the sales of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

8. Progressive Direct Insurance Company is a foreign for-profit corporation conducting business, including marketing and sale of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

9. Progressive Advanced Insurance Company is a foreign for-profit corporation conducting business, including marketing and sale of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

10. Progressive Specialty Insurance Company is a foreign for-profit corporation conducting business, including marketing and sale of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

11. Progressive Northern Insurance Company is a foreign for-profit corporation conducting business, including marketing and sale of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

12. Defendant Progressive Preferred Insurance Company is a foreign for-profit corporation conducting business, including marketing and sale of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

13. Progressive Direct Insurance Company is a foreign for-profit corporation conducting business, including marketing and sale of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

JURISDICTION AND VENUE

14. This Court has jurisdiction under 28 U.S.C. §§ 1332(a) and 1332(d)(2).

15. Venue is proper under 28 U.S.C. § 1391(b)(2) or, in the alternative, 28 U.S.C. § 1391(b)(3).

16. Defendants are real parties in interest and proper parties to this action.

17. This Court has personal jurisdiction over the Defendants. The acts complained of herein occurred in the District of New Mexico.

FACTUAL ALLEGATIONS

Martin purchased an underinsured motorist policy from Progressive.

18. In 2013, Progressive issued Martin a motor vehicle insurance policy, which she had applied for and purchased. *See* Ex. 1, Martin App.

19. On March 3, 2015, Progressive renewed the insurance policy that it had issued to Martin. Ex. 2, Martin Declarations Page.

20. The policy that Progressive issued and which was in effect at the time of Martin's loss was Policy No. 80904842, effective from April 6, 2015 to October 6, 2015 ("Martin Policy"). *Id.*

21. The Martin Policy provided liability coverage on one vehicle in the amount of $25,000 per person/$50,000 per accident, per vehicle. *Id.*

22. The Martin Policy also purportedly provided uninsured and underinsured motorist coverage in the amount of up to $25,000.00 per person/$50,000.00 per accident, per vehicle. *Id.*

23. Progressive collected a premium of $79 for the uninsured and underinsured motorist coverage that Progressive purportedly offered for the sixth months from April 6, 2015 to October 6, 2015. *Id.*

24. Progressive collected from Martin premiums for uninsured and underinsured motorist coverage that it purportedly sold her since 2013.

Progressive's application and policy misrepresented the true value of minimal-limits underinsured motorist coverage and failed to properly inform Martin that the underinsured motorist coverage for which she had paid a premium was illusory.

25. Progressive's application and the Martin Policy failed to properly inform Martin about the offset described in *Schmick v. State Farm Mutual Automobile Insurance Company*, 704 P.2d 1092 (1985) (the *Schmick* offset), and did not meet Martin's reasonable expectations of being properly insured in the event she sustained significant injuries.

26. When Martin purchased automobile coverage, Progressive did not properly inform her of how underinsured motorist coverage is illusory in the event of a covered occurrence involving an underinsured driver.

27. Progressive failed to properly inform Martin of the extremely limited scenarios in which she might benefit from the purchase of minimum limits underinsured motorist coverage.

28. Progressive failed to properly inform Martin that she would most likely not benefit from paying a premium for minimal underinsured motorist coverage that was equal to the amount of a tortfeasor's liability coverage because, pursuant to the *Schmick* offset, Martin's recovery of underinsured motorist benefits would be offset by the amount of the tortfeasor's liability coverage.

29. The application and the Martin Policy did not contain clear, unambiguous language regarding the effects of the *Schmick* offset.

30. Progressive failed to properly inform Martin about combined premium costs

corresponding to the available levels of coverage and failed to offer Martin a fair opportunity to reconsider the decision to select a higher amount of liability and underinsured motorist coverage or reject such coverage altogether.

31. Progressive's application and application process did not alert Martin, nor make clear to the ordinarily and similarly situated insured, the fact that the *Schmick* offset drastically and materially diminished payment of benefits arising from a covered occurrence under the policy for accidents involving underinsured motorists.

32. Progressive's application did not alert Martin that she would be billed a premium for underinsured motorists coverage on a minimum limits policy, where there was no likelihood of her ever being able to recover the full amount of underinsured motorists coverage for which she was billed and a high likelihood she would be unable to collect any underinsured motorist coverage for which she was charged a premium.

33. Progressive's application and policy and statements by Progressive and its agents misrepresented the true value of the illusory minimal-limits underinsured motorist coverage that it advertised and sold to Martin and for which Progressive collected premiums.

Martin was injured in a collision with an underinsured motorist.

34. On April 13, 2015, Martin sustained bodily injuries and other damages arising from an automobile collision that occurred at the intersection of Unser Blvd and Tierra Pintada NW, in Albuquerque, New Mexico, when an underinsured motorist, travelling at a high-rate of speed, ran a traffic signal and collided into Martin's vehicle.

35. Martinez was not at fault for the collision.

36. At the time of the collision, Martin was abiding by New Mexico and Albuquerque traffic laws.

37. As a result of the collision, Martin was transported to Presbyterian Hospital, and

she suffered serious bodily injuries and other damages.

38. Martin suffered total damages well in excess of $50,000.00.

39. At the time of the collision, Martin was insured by the Martin Policy, which provided her with uninsured and underinsured motorist insurance coverage in the amount of up to $25,000.00 per person/$50,000.00 per accident.

40. After the collision, Martin made a claim with the tortfeasor's insurer and received $25,000, the full extent of liability coverage from the tortfeasor's insurer.

41. Like Martin, the tortfeasor also carried the minimum required liability insurance with limits of $25,000.00 per person, $50,000.00 per accident.

Martin makes a claim that Progressive denies.

42. Before the collision at issue, Progressive collected a premium for automobile coverage pursuant to the Martin Policy, under which Martin had a reasonable expectation that she carried underinsured motorist coverage of $25,000.00 per person, $50,000.00 per accident.

43. At the time of the collision, Martin was under the belief and had a reasonable expectation that she was entitled to underinsured motorist benefits pursuant to the application she had made and the insurance policy that Progressive had issued her.

44. After the collision, Martin reported the collision to Progressive and, through counsel, made a claim on the underinsured motorist coverage for which she had paid a premium.

45. Progressive, under a standardized business practice, opened a claim, assigned claim number 15-2516928, and randomly assigned the adjustment of the matter to one of its adjusters. Ex. 3, Progressive's Denial of Martin's Claim.

46. Martin, through counsel, demanded Progressive provide her with the underinsured motorist benefits that Progressive contracted with Martin to provide and for which she had paid a premium. Ex. 4, Martin's June 15, 2018 Demand.

47. Progressive denied Martin's underinsured motorist coverage claim in its entirety. *See* Ex. 3.

48. Progressive denied Martin's claim because (i) Progressive deducted from the coverage it owed Martin any sums paid by the tortfeasor's insurer and (ii) the tortfeasor's liability coverage limits equaled Martin's underinsured motorist coverage limits. *See id.*

49. Martin received nothing from Progressive, her underinsured motorist policy carrier.

50. Martin had a reasonable expectation that she would benefit from the insurance premiums Progressive collected from her. In fact, however, under her policy there were virtually no underinsured motorist benefits.

Martinez purchased an underinsured motorist policy from Progressive.

51. In 2003, Progressive issued Martinez a motor vehicle insurance policy, which she had applied for and purchased through the Manuel Lujan agency.

52. On May 10, 2016, Progressive renewed the insurance policy that it had issued. *See* Ex. 5, Martinez Declarations Page.

53. The policy that Progressive issued and which was in effect at the time of Martinez's loss was Policy No. 80246262-8, effective from May 10, 2016 to May 10, 2017 ("Martinez Policy"). *Id.*

54. The Martinez Policy provided liability coverage on three vehicles in the amount of $25,000 per person/$50,000 per accident, per vehicle. *Id.*

55. The Martinez Policy also purportedly provided uninsured and underinsured motorist coverage in the amount of up to $25,000.00 per person/$50,000.00 per accident, per vehicle, stackable for total uninsured and underinsured motorist coverage in the amount of up to $75,000.00 per person/$150,000.00. *Id.*

56. Progressive collected premium of $475 for the uninsured and underinsured

motorist coverage that Progressive purportedly offered from May 10, 2016 to May 10, 2017. *Id.*

57. Progressive collected premiums for uninsured and underinsured motorist coverage since 2003.

Progressive's application and policy misrepresented the true value of minimal-limits underinsured motorist coverage and failed to properly inform Martinez that part of the underinsured motorist coverage for which she had paid a premium was illusory.

58. Progressive's application and the Martinez Policy failed to properly inform Martinez about the offset described in *Schmick v. State Farm Mutual Automobile Insurance Company*, 704 P.2d 1092 (1985) ("the *Schmick* offset"), and did not meet Martinez's reasonable expectations of being properly insured in the event she sustained significant injuries.

59. When Martinez purchased automobile coverage, Progressive did not properly inform her of how underinsured motorist coverage is illusory in the event of a covered occurrence involving an underinsured driver.

60. Progressive failed to properly inform Martinez that she would most likely not receive the full benefit from paying a premium for minimal underinsured motorist coverage on each of her vehicles because, pursuant to the *Schmick* offset, Martinez's recovery of underinsured motorist benefits would be offset by the amount of the tortfeasor's liability coverage.

61. The application and the Martinez Policy did not contain clear, unambiguous language regarding the effects of the *Schmick* offset.

62. Progressive failed to properly inform Martinez about combined premium costs corresponding to the available levels of coverage and failed to offer Martinez a fair opportunity to reconsider the decision to select a higher amount of liability and underinsured motorist coverage or reject such coverage altogether.

63. Progressive's application and application process did not alert Martinez, nor make

clear to the ordinarily and similarly situated insured, the fact that the *Schmick* offset significantly and materially diminished payment of benefits arising from a covered occurrence under the policy for accidents involving underinsured motorists.

64. Progressive's application did not alert Martinez that she would be billed a premium for underinsured motorists coverage on the minimum limits policies corresponding to each of her covered vehicles, where there was no likelihood of her ever being able to recover the full amount of underinsured motorists coverage for which she was charged and paid a premium.

65. Progressive's application and policy and statements by Progressive and its agents misrepresented the true value of the underinsured motorist coverage that it advertised and sold to Martinez and for which she paid premiums.

Martinez was injured in a collision with an underinsured motorist.

66. On July 30, 2016, Martinez sustained bodily injuries and other damages arising from an automobile collision that occurred on Zuni Drive SE, in Albuquerque, New Mexico, when an underinsured motorist, travelling at a high-rate of speed, collided into the rear of Martinez's vehicle.

67. Martinez was not at fault for the collision.

68. At the time of the collision, Martinez was abiding by New Mexico and Albuquerque traffic laws.

69. As a result of the collision, Martinez suffered serious bodily injuries and other damages, including traumatic brain injury, which caused memory loss and adversely affected her ability to speak and process her thoughts.

70. Martinez sustained total actual damages well in excess of $75,000.00.

71. At the time of the collision, Martinez was insured by the Martinez Policy, which provided her with stacked uninsured and underinsured motorist insurance coverage in the amount

of up to $75,000.00 per person/$150,000.00 per accident.

72. After the collision, Martinez made a claim with the tortfeasor's insurer and received $25,000.00, the full extent of liability coverage from the tortfeasor's insurer.

73. Like Martinez's liability coverage for each of the vehicles covered by the Martinez Policy, the tortfeasor also carried the minimum required liability insurance with limits of $25,000.00 per person, $50,000.00 per accident.

Martinez makes a claim that Progressive denies.

74. Before the collision at issue, Martinez had paid a premium for automobile coverage under Progressive's policy and had a reasonable expectation that she carried three minimum limits underinsured motorist coverage policies for each of her vehicles, stackable for a total amount of underinsured motorist coverage of $75,000.00 per person/$150,000.00 per accident.

75. At the time of the collision, Martinez was under the belief and had a reasonable expectation that she was entitled to underinsured motorist benefits pursuant to the application she had made and the insurance policy that Progressive had issued her.

76. After the collision, Martinez reported the collision to Progressive and, through counsel, made a claim on the underinsured motorist coverage for which she had paid a premium. *See* Ex. 6, Martinez's Demand for full UIM benefits.

77. Progressive, under a standardized business practice, opened a claim, assigned claim number 16-2439017, and randomly assigned the adjustment of the matter to one of its adjusters. *See* Ex. 7, Progressive's Denial of Martinez's Claim.

78. Martinez, through counsel, demanded Progressive provide her with the amount of $75,000.00 in underinsured motorist benefits that Progressive contracted with Martinez to provide and for which she had paid a premium. *See* Ex. 6, Martinez's Demand for full UIM

benefits.

79. Progressive denied Martinez's underinsured motorist coverage claim for $75,000.00 and provided Martinez with $50,000 in underinsured motorist benefits only. Ex. 7, Progressive's Denial of Martinez's Claim.

80. Progressive denied Martinez's claim for $75,000.00 in underinsured motorist benefits because Progressive deducted from the coverage it owed Martin any sums paid by the tortfeasor's insurer. *Id.*

81. Martinez did not receive the full $75,000.00 in underinsured motorist benefits from Progressive, her underinsured motorist policy carrier. *Id.*

82. Martinez had a reasonable expectation that she would benefit from the insurance premiums Progressive collected. In fact, however, under her policy $25,000.00 of those purported benefits were illusory.

CLASS ACTION ALLEGATIONS

83. This action is properly maintainable as a class action pursuant to Rule 1-023 NMRA. The Class is defined as follows:

> All persons (and their heirs, executors, administrators, successors, and assigns) who paid a premium for an underinsured motorist coverage on a policy that was issued or renewed in New Mexico by Progressive and that purported to provide the statutorily required UM/UIM minimum limits of $25,000 per person/$50,000 per accident, but which effectively provides no underinsured motorists coverage, because of the statutory offset recognized in *Schmick v. State Farm Mutual Automobile Insurance Company*, 704 P.2d 1092 (1985).

84. Excluded from the Class are all of Defendants' present and former officers and directors, "Referees" serving the Evaluation Appeal process proposed below, Class counsel and their resident relatives, and Defendant's counsel of record and their resident relatives.

85. Pursuant to Rule 1-023(C(4(b, the Class properly includes a Subclass:

> All Class Members (and their heirs, executors, administrators, successors, and assigns who paid a premium for an underinsured motorist coverage on a policy

that was issued or renewed in New Mexico by Progressive and that purported to provide the statutorily required UM/UIM minimum limits of $25,000 per person/$50,000 per accident, but which in fact provides no underinsured motorists coverage, because of the statutory offset recognized in *Schmick v. State Farm Mutual Automobile Insurance Company*, 704 P.2d 1092 (1985), and who sustained damages in excess of an insured tortfeasor's policy limits, received the extent of all bodily injury liability limits available and would be denied those benefits by Progressive due to the *Schmick* offset.

86. The proposed class and subclass definitions are precise, objective, and presently ascertainable, and it is administratively feasible for the Court to ascertain whether a particular individual is a member of the Class.

87. The members of the Class are so numerous that joinder of all members of the Class is impracticable.

88. Martin's and Martinez's claims are typical of the claims of members of the Class and Subclass.

89. Certification of the Class and Subclass is desirable and proper, because there are questions of law and fact in this case common to all members of the Class. Such common questions of law and fact include, but are not limited to:

a. Whether Progressive breached contractual obligations owed to their New Mexico policyholders;

b. Whether Progressive breached duties owed to New Mexican insureds under the implied covenant of good faith and fair dealing;

c. Whether Progressive violated NMSA 1978, §§ 59A-16-1 to -30;

d. Whether Progressive failed to disclose one or more material facts in connection with the marketing or sale of the insurance policies at issue;

e. Whether Progressive misled or deceived their policyholders in connection with the marketing or sale of the policies at issue;

f. How properly to construe Progressive's standard application forms and other

standard form documents relative to the *Schmick* offset;

g. What remedies are available to Martin, Martinez, and Class Members in light of the answers to the foregoing questions; and

h. Whether and to what extent there may be merit in any affirmative defenses that Progressive might claim.

90. These common questions of law or fact common to members of the Class predominate over any questions affecting only individual members, and a class action is superior to all other available methods for the fair and efficient adjudication of the controversy. In this action:

91. Common or generalized proof will predominate with respect to the essential elements of the nine claims at issue.

92. The common questions of law or fact that pertain to the Class predominate over any individual questions and any individual issues do not overwhelm the common ones.

93. If any member or members of the Class has an individually controlling interest to prosecute a separate action, they may exclude themselves from the Class upon receipt of notice under Rule 1-023(C)(2).

94. The determination of the claims of all members of the Class in a single forum and in a single proceeding would be a fair, efficient and superior means of resolving the issues raised in this litigation.

95. Any difficulty encountered in the management of the proposed Class is reasonably manageable, especially when weighed against the impossibility of affording adequate relief to the members of the Class through numerous independent actions.

96. The need for proof of Martin's, Martinez's and Class members' damages will not cause individual issues to predominate over common questions. The amounts of losses can be

efficiently demonstrated either at trial or as part of routine claims administration through accepted and court-approved methodologies with the assistance of court-appointed personnel, including Special Masters. Certain types or elements of damage are subject to proof using aggregate damage methodologies or simply rote calculation and summation.

97. The particular common issues of liability and the quantum of punitive damages or ratio of punitive damages to actual harm, are common to Class Members no matter what type of harm or injury was suffered by each Class Member.

98. Progressive has acted or refused to act on grounds generally applicable to Class Members, thereby making appropriate injunctive relief and corresponding declaratory relief with respect to Class Members. Martin and Martinez seek to establish the rights and obligations of the parties with respect to the claims at issue in this case and to enjoin Progressive from continuing to engage in those practices that violate the duties, contractual, and legal obligations owed to Martin, Martinez, and Class Members under New Mexico statutory and common law.

99. A class action is superior to maintenance of these claims on a claim-by-claim basis when all actions arise out of the same circumstances and course of conduct. A class action allows the Court to process all rightful claims in one proceeding. Class litigation is manageable considering the opportunity to afford reasonable notice of significant phases of the litigation to Class Members and permit distribution of any recovery. The prosecution of separate actions by individual Class Members, or the individual joinder of all Class Members in this action, is impracticable and would create a massive and unnecessary burden on the resources of the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of each Class Members, should that be determined to be appropriate.

100. The conduct of this action as a class action conserves the resources of the parties and the court system, protects the rights of each member of the class, and meets all due process

requirements.

101. Certification of the Class with respect to particular common factual and legal issues concerning liability, as well as the necessary and appropriate quantum of punitive damages, or ratio of punitive damages to actual harm, is appropriate under Rule 1-023.

102. Certification of the Class is desirable and proper, because Martin and Martinez will fairly and adequately protect the interests of the Class that they seek to represent. There are no conflicts of interest between Martin's and Martinez's claims and those other members of the Class. Martin and Martinez are cognizant of their duties and responsibilities to the Class. Martin's and Martinez's attorneys are qualified, experienced, and able to conduct the proposed class action.

CLAIM 1
NEGLIGENCE

103. Martin and Martinez and Class Members incorporate by reference the preceding paragraphs as if they were fully stated herein.

104. Progressive had a duty to ensure Martin and Martinez and Class Members would be offered and obtain the maximum benefit of underinsured coverage and would not be sold illusory underinsured coverage.

105. Progressive had a duty to provide Martin and Martinez and Class Members coverage for which a premium was charged and collected.

106. It was reasonably foreseeable that the underinsured coverage sold to Martin and Martinez and Class Members was, in large part, illusory and that Progressive materially misrepresented the terms of underinsured coverage, and charged a premium for such illusory coverage.

107. A reasonably prudent insurance company exercising ordinary care would offer and sell underinsured coverage that was not illusory and would not materially misrepresent the

terms of underinsured coverage by properly informing its insured of the coverage they were purchasing and obtaining a written waiver acknowledging its insured consent to the purchase of illusory underinsured motorist coverage.

108. A reasonably prudent insurer would not charge a premium for coverage it intended to deny or did not provide.

109. Progressive's actions and inactions, through its agents, employees, or others on its behalf, were negligent in that they breached the standard of care required of an insurance company issuing auto policies in New Mexico.

110. As a result of Progressive's negligence, Martin and Martinez and Class Members, sustained actual damages for which Progressive is liable. Martin and Martinez and Class Members are entitled to punitive damages for actions of Progressive that were willful, reckless and wanton, and in bad faith.

CLAIM 2
VIOLATIONS OF THE NEW MEXICO UNFAIR TRADE PRACTICES ACT

111. Martin and Martinez and Class Members incorporate by reference the preceding paragraphs as if they were fully stated herein.

112. There was in effect, at all times material, a New Mexico statute commonly known as the New Mexico Unfair Trade Practices Act, N.M.S.A.1978, § 57-12-2 to 58-12-10 ("UPA"), including but not limited to Sections 57-12-2(D)(7), (D)(l4), (D)(15), (D)(l7) and Section 57-12-2(E), which prohibits a person selling insurance from engaging in unfair or deceptive trade practices:

> D. "unfair or deceptive trade practice" means an act specifically declared unlawful pursuant to the Unfair Trade Practices Act [Chapter 57, Article 12 NMSA 1978], a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services or in the extension of credit or in the

> collection of debts by a person in the regular course of his trade or commerce, which may, tends to or does deceive or mislead and includes but is not limited to:
>
> > (7) representing that the goods or services are of a particular standard, quality or grade or that goods are of a particular style or model if they are of another;
> >
> > (14) using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive;
> >
> > (15) stating that a transaction involves rights, remedies or obligations that it does not involve;
> >
> > (17) failure to deliver the quality or quantity of goods or services contracted for;
>
> E. "unconscionable trade practice" means an act or practice in connection with the sale, lease, rental or loan, or in connection with the offering for sale, lease, rental or loan, of any goods or services, including services provided by licensed professionals, or in the extension of credit or in the collection of debts which to a person's detriment: takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree; or results in a gross disparity between the value received by a person and the price paid.

113. Progressive failed to deliver the quality or quantity of services applied for and purchased and paid for by Martin and Martinez and other insureds by failing to provide insurance applications and policies containing sufficient information to properly inform a reasonably prudent person purchasing underinsured insurance, to which Martin and Martinez were under the reasonable belief that such coverage existed, and to pay claims for insurance benefits sold and solicited by Progressive.

114. In the regular course of its business, Progressive or its agents made knowingly made oral and written statements that were false and misleading in connection with the sale of underinsured motorist insurance in New Mexico.

115. These false and misleading representations may, tend to, and do deceive or mislead persons into believing that minimal-limits underinsured motorist coverage has a value that it does not have and into contracting for and paying premiums for underinsured motorist

policies that are illusory and do not provide the underinsured motorist coverage and benefits and Progressive's customers reasonably expected to receive.

116. In the regular course of its business, Progressive or its agents took advantage of its customers' lack of knowledge, ability, experience or capacity to a grossly unfair degree by marketing, advertising, selling, and receiving premium payments for illusory underinsured motorist coverage.

117. Since the New Mexico Supreme Court's opinion in *Progressive Northwest Insurance Co. v. Weed Warrior Services*, 2010-NMSC-050, 149 N.M. 157, 245 P.3d 1209, Progressive has been on notice that underinsured motorist policies provide no coverage at minimal limits, yet Progressive markets, advertises, sells, and received premiums for minimal limits underinsured motorist policies to and from customers, such as Martin and Martinez and Class Members, who do not know and do not understand that, if they purchase minimal limits underinsured motorist coverage, they are vanishingly unlikely to receive any underinsured motorist coverage.

118. Progressive's actions resulted in a gross disparity between the value of the illusory underinsured motorist coverage received by Martin and Martinez and Class Members and the price of the premiums that Martinez and Martin and Class Members paid for illusory underinsured motorist coverage.

119. Progressive, acting through its agents, adjusters, and employees, as set forth above, knowingly and willfully engaged in unfair trade practices in violation of Section 57-12-3, including but not limited to Sections 57-12-2(D)(7), (D)(l4), (D)(I5), (D)(17) and Section 57-12-2(E).

CLAIM 3
VIOLATIONS OF THE NEW MEXICO UNFAIR INSURANCE PRACTICES ACT

120. Martin and Martinez and Class Members incorporate by reference the preceding paragraphs as if they were fully stated herein.

121. There was in effect at all times material a New Mexico statute commonly known as the Insurance Code New Mexico Unfair Insurance Practices Act, NMSA 1978, §§ 59A-16-1 to 59A-16-30 ("UIPA").

122. The UIPA provides a private right of action to any person covered by the UIPA who has suffered damages as a result of a violation of that statute by an insurer or agent is granted a right to bring an action in district court to recover actual damages.

123. Martin and Martinez and Class Members were insured under the policy issued and adjusted by the Progressive.

124. Progressive owed Martin and Martinez and Class Members the duties of good faith, fair dealing, and the accompanying fiduciary obligations.

125. In the sale and provision of insurance, and in the handling of the underinsured motorist claim, Progressive failed to exercise good faith, unreasonably delayed payment, and failed to give the interests of Martin and Martinez and of Class Members the same consideration it gave their own interests.

126. Progressive's failure to pay anything on Martin's and Martinez's and Class Members' first $25,000.00 level of underinsured motorist claims was unfounded, unreasonable, and in bad faith.

127. Progressive misrepresented the terms of the policy sold and provided to Martin and Martinez and Class Members, and/or failed to disclose material facts reasonably necessary to

prevent other statements from being misleading and failed to implement and follow reasonable standards in the sale and provision of insurance.

128. Progressive's acts and failures to act were in reckless disregard of Martin's and Martinez's and Class Members' rights as an insured under the subject policy.

129. Progressive's acts and practices took advantage of the lack of knowledge and experience of Martin and Martinez and Class Members to a grossly unfair degree.

130. Progressive failed to abide by its statutory duties under the UIPA, and such violations constitute negligence per se.

131. Progressive misrepresented to Martin and Martinez and Class Members pertinent facts or policy provisions relating to coverages at issue, in violation of NMSA 1978, § 59A-16-20(A).

132. Progressive compelled Martin and Martinez and Class Members to institute litigation to recover amounts due under the policies by offering substantially less (i.e., nothing on the first level of $25,000.00 of UIM coverage withheld based on the *Schmick* offset) than the amounts claimed by Martin and Martinez and Class Members that will ultimately be recovered in actions brought by Martin and Martinez, in violation of NMSA 1978, § 59A-16-20(G).

133. Progressive failed to promptly provide Martin and Martinez and Class Members with a reasonable explanation of the basis relied upon in the policy in relation to the facts and the applicable law for denial of her claims, in violation of NMSA 1978, § 59A-16-20(N).

134. Progressive's failure to act in good faith and Progressive's violations of the Insurance Code and Trade Practices Act are proximate causes of damages sustained by Martin and Martinez and Class Members.

135. Progressive's conduct was in bad faith, malicious, willful, wanton, fraudulent and/or in reckless disregard of Martin's and Martinez's and Class Members' rights.

136. Martin and Martinez and Class Members are entitled to attorneys' fees and costs pursuant to NMSA 1978, §§ 59A-16-30 and 39-2-1. As a direct and proximate result of Defendants' acts, omissions policies, and conduct in violating UIPA, as set forth above, Martin and Martinez and Class Members have sustained damages, in addition to the damages common to all counts of this complaint, including but not limited to the actual damages incurred, the cost of prosecution of this lawsuit, attorneys' fees, and interest on the sums owed under the policy. These injuries and damages are ongoing, permanent, and are expected to continue in the future.

CLAIM 4
REFORMATION OF INSURANCE POLICY

137. Martin and Martinez and Class Members incorporate by reference the preceding paragraphs as though they were stated fully herein.

138. Martin and similarly situated Class Members mistakenly believed that, by paying a premium for minimal limits underinsured motorist coverage, they would receive underinsured motorist coverage at minimal limits.

139. Martinez and similarly situated Class Members mistakenly believed that, by paying a premium for minimal limits underinsured motorist stacked coverage, they would receive the underinsured motorist coverage up to the limits they had purchased.

140. Progressive and its agents knew that, because of the operation of the offset described in *Schmick*, Martin and similarly-situated Class Members were vanishingly unlikely to receive the minimal-limits underinsured motorist benefits that they contracted for and for which Progressive collected premiums.

141. Progressive and its agents also knew that, because of the operation of the offset described in *Schmick*, Martinez and similarly-situated Class Members were vanishingly unlikely to receive the first tier of underinsured motorist benefits, *i.e.*, $25,000 per person, $50,000 per accident, that they contracted for and for which Progressive collected premiums.

142. At the time of contract formation, Progressive and its agents inequitably misrepresented the value of minimal-limits underinsured motorist coverage and failed to inform Martin and similarly-situated Class Members that, because of the operation of the offset described in *Schmick*, they were vanishingly unlikely to receive the minimal-limits underinsured motorist benefits that they contracted for and for which Progressive collected premiums.

143. At the time of contract formation, Progressive and its agents also knew that, because of the operation of the offset described in *Schmick*, Martinez and similarly-situated Class Members were vanishingly unlikely to receive the first tier of minimal-limits underinsured motorist benefits, *i.e.*, $25,000 per person, $50,000 per accident, that they contracted for and for which Progressive collected premiums.

144. The inequitable failure of Progressive and its agents to inform Martin and similarly-situated Class Members that they were vanishingly unlikely to receive the minimal-limits underinsured motorist coverage caused Martin and similarly-situated Class Members to believe that, by paying a premium for minimal limits underinsured motorist coverage, they would receive underinsured motorist coverage at minimal limits.

145. The inequitable failure of Progressive and its agents to inform Martinez and similarly-situated Class Members that they were vanishingly unlikely to receive the first tier of minimal-limits underinsured motorist benefits, *i.e.*, $25,000 per person, $50,000 per accident, caused Martinez and similarly-situated Class Members to believe that, by paying a premium for non-minimal limits underinsured motorist coverage, they would receive the underinsured motorist coverage up to the limits they had purchased.

146. The insurance contracts respectively entered between Progressive and its agents, on the one hand, and Martin and Martinez and Class Members, on the other hand, do not express the intentions and reasonable beliefs of Martin and Martinez and Class Members that they would

receive the underinsured motorist coverage that they contracted for and for which they paid premiums.

147. The court should reform the insurance contracts respectively entered between Progressive and its agents, on the one hand, and Martin and Martinez and Class Members, on the other hand, to conform to the intentions and reasonable beliefs of Martin and Martinez and Class Members that they would receive the underinsured motorist coverage that they contracted for and for which Progressive collected premiums.

CLAIM 5
BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

148. Martin and Martinez and Class Members incorporate by reference the preceding paragraphs as though they were stated fully herein.

149. A special relationship exists between Progressive, on the one hand, and Martin and Martinez and Class Members, respectively, on the other hand, sufficient to impose a duty of good faith and fair dealing on Progressive owed to Martin and Martinez and Class Members.

150. Implicit in the contract of insurance between Martin and Martinez and Class Members, on the one hand, and Progressive on the other was the covenant that Defendants would, at all times, act in good faith and deal honestly and fairly with Martin and Martinez and Class Members.

151. Progressive breached the implied covenant of good faith and fair dealing, in one or more of the following ways, including but not limited to:

a. Failing to properly inform Martin and Martinez and Class Members of the illusory coverage it solicited and sold;

b. Charging a premium for coverage that was not provided;

c. Failing and refusing to disclose, admit and acknowledge some amount of underinsured motorist coverage;

d. Failing and refusing to fairly investigate, process, determine and decide Martin's and Martinez's and Class Members' claims under the policies referenced above; and

e. Failing and refusing to mediate, resolve, and settle Martin's and Martinez's and Class Members' underinsured motorist claims.

152. As a direct and proximate result of Progressive's acts and omissions alleged herein, Martin and Martinez and Class Members have suffered damages in an amount to be proven at trial.

153. Progressive's acts and omissions alleged herein and breach of the implied covenant of good faith and fair dealing were done intentionally, willfully, wantonly, grossly and/or with reckless disregard for the rights of Martin and Martinez and Class Members.

154. Accordingly, Martin and Martinez and Class Members are entitled to recover punitive damages in an amount to be determined by the jury and sufficient to punish Progressive for its misconduct and to deter others from similar conduct in the future.

CLAIM 6
UNJUST ENRICHMENT

155. Martin and Martinez and Class Members incorporate by reference the preceding paragraphs as though they were stated fully herein.

156. Progressive has applied the *Schmick* offset to its insureds' claims and denied the first level of underinsured motorist coverage in New Mexico since 1985. Progressive misled, deceived, and acted in an unfair manner for decades and retained benefits (*i.e.*, the payment of proper claims, and retained premium charges which were unearned) from thousands of New Mexico insureds for years, including Martin and Martinez and Class Members. The benefits Progressive denied their insureds allowed them to invest and enjoy the benefits of their deceptive and intentional conduct.

157. Martin and Martinez and Class Members are entitled to the value of the underinsured motorist benefits and out-of-pocket expenses under the equitable theory of unjust enrichment.

158. Progressive should be ordered to disgorge of the value of the underinsured motorist benefits it retained, the UIM premiums it received, and the unjust profit that it derived therefrom.

CLAIM 7
NEGLIGENT MISREPRESENTATION

159. Martin and Martinez and Class Members incorporate by reference the preceding paragraphs as though they were stated fully herein.

160. A special relationship exists between Progressive, on the one hand, and Martin and Martinez and Class Members, respectively, on the other hand, sufficient to impose a duty on Progressive to disclose accurate information to Martin and Martinez and Class Members.

161. As early as 1985, when the New Mexico Supreme Court published its decision in *Schmick v. State Farm*, Progressive knew that underinsured motorist coverage would be illusory under circumstances similar to those experienced by Martin and Martinez and Class Members.

162. Progressive, however, withheld this information from Martin and Martinez and Class Members and hid from them the fact that the underinsured motorist coverage as impacted by the *Schmick* offset is illusory.

163. From 1985 through the present, Progressive failed to disclose material facts and made material misrepresentations to Martin and Martinez and Class Members regarding illusory underinsured motorist coverage.

164. Progressive, by their failures and omissions, misrepresented underinsured motorist coverages through their standard and uniform applications and policies used by Martin

and Martinez and Class Members, which Progressive knew or should have known, were misleading and contained material misrepresentations.

165. Progressive's material omissions and misrepresentations were made to induce Martin and Martinez and Class Members to purchase underinsured motorist coverage that Progressive knew was illusory.

166. Martin and Martinez and Class Members relied on Progressive's material omissions and misrepresentations when deciding to purchase underinsured motorist coverage at the level of coverage they respectively purchased.

167. As a result of Progressive's misrepresentations and omissions, Progressive is liable to Martin and Martinez and Class Members for their damages flowing from those misrepresentations and omissions.

168. As a direct and proximate result of Progressive's negligent misrepresentations, Martin and Martinez and Class Members suffered economic loss, including the lost benefits of underinsured motorist coverage and out-of-pocket expenses. Martin and Martinez and Class Members seek the full measure of damages allowed under applicable law.

CLAIM 8
DECLARATORY JUDGMENT

169. Martin and Martinez and Class members incorporate by reference the preceding paragraphs as though they were stated fully herein.

170. An actual controversy exists between the parties thereby rendering declaratory relief proper under the New Mexico Declaratory Judgment Act, NMSA 1978, Sections 44-6-1 through 44-6-15.

171. Martin and Martinez and Class Members are entitled to a declaratory judgment establishing their respective rights and obligations of the parties with respect to the claims set forth herein.

INJUNCTIVE RELIEF

172. Martin and Martinez and Class Members incorporate by reference the preceding paragraphs as though they were stated fully herein.

173. Martin and Martinez and Class Members are entitled to injunctive relief under the claims they have pled because Martin and Class Members would suffer an irreparable injury that monetary damages at a later time would not adequately compensate them for the injury of paying a premium for worthless coverage.

174. Progressive should be enjoined from continuing practices that violate the duties, contractual, and legal obligations owed to Martin and Martinez and Class Members.

175. Progressive must be compelled to stop their practice of collecting premiums for the sale of illusory underinsured motorist coverage and failing to provide underinsured motorist coverage benefits equal to the limits of liability coverage where they failed to properly inform Martin and Martinez and Class Members throughout the application and policy underwriting process.

REQUEST FOR RELIEF

Martin and Martinez and Class Members request a jury trial and the following relief:

i. An order certifying this action to proceed as a class action, authorizing Martin and Martinez to represent the interests of the Class Members as appropriated and appointing undersigned counsel to represent the class.

ii. Awarding compensatory damages to Martin and Martinez and Class Members for the damages done to them by Progressive in an amount to be proven at trial;

iii. Awarding Martin and Martinez and Class Members damages from Progressive as a result of its violations of the UIPA, in an amount to be determined at trial for attorneys' fees and costs;

iv. Awarding disgorgement of the value of the underinsured motorist benefits retained by Progressive, the UIM premiums received by Progressive, the unjust profit that Progressive derived therefrom, and any other amounts to which Martin and Martinez and Class Members are equitably entitled under the theory of unjust enrichment;

v. Awarding treble damages in accordance with NMSA 1978, Sections 57-12-10(B) and any and all damages pursuant to NMSA 1978, Sections 57-12-1 through -26, which will deter Progressive and others from such unfair trade practices and wrongful conduct in the future and will punish them for the conduct set forth herein;

vi. Granting declaratory relief that establishes the rights and obligations of the parties with respect the claims set forth herein;

vii. Granting injunctive relief requiring Progressive to properly inform Martin and Martinez and Class Members throughout the application and policy underwriting process of the true value of the underinsured motorist benefits that are being advertised and sold;

viii. Awarding Martin and Martinez and Class Members their costs and expenses incurred in these actions, including reasonable attorney's fees, experts' fees, and costs; and

ix. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ *Kedar Bhasker*
Kedar Bhasker
BHASKER LAW
1400 Central Ave. SE, Suite 2000
Albuquerque, NM 87106
Phone: 505 720-2113
Fax: 505 998-6628
Kedar@bhaskerlaw.com

CORBIN HILDEBRANDT
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1400 Central Ave. SE, Suite 2000
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20 First Plaza Center NW, Suite 700
Albuquerque, NM 87102
P: (505) 842-9960
daf@fbdlaw.com
jdf@fbdlaw.com

Counsel for the Plaintiff

Application for Insurance

Please review and sign where indicated

PROGRESSIVE DIRECT

Policy Number: 80904842-0
Policyholder:
Erin H Martin
April 6, 2013

Policy and premium information for policy number 80904842-0

Insurance company:	Progressive Direct Insurance Co PO Box 31260 Tampa, FL 33631
Named insured:	Erin H Martin 2105 St. Croix Dr NW Albuquerque, NM 87120 Home: 1-505-730-9523
Financial responsibility vendor:	EXPERIAN 1-888-397-3742
Policy period:	Apr 6, 2013 - Oct 6, 2013
Effective date and time:	Apr 6, 2013 at 01:50 P.M. ET
Total policy premium:	$557.00
Initial payment required:	$92.86
Initial payment received:	$92.86
Payment plan:	6 payments

Drivers and resident relatives

You, your spouse, and all resident relatives 15 years of age or older, all regular drivers of the vehicles described in this application, and all children who live away from home who drive these vehicles, even occasionally, are listed below. Your total policy premium can be affected by all persons of driving age. While designating drivers as List Only or Excluded may increase policy premium, the violation and accident history of Excluded and List Only drivers does not affect premium.

Name	Date of birth	Sex	Marital status	Relationship
Erin H Martin Driver status: Rated Education level: Vocation/trade degree/military training Occupation: Assistant/Technician/Therapist	Nov 30, 1970	Female	Married	Insured
Titus L Martin Driver status: Rated Education level: College degree Occupation: Customer Service Representative	Dec 26, 1969	Male	Married	Spouse

Total residents: 3

The total number of residents currently residing in your household, including listed drivers, young children, roommates or anyone else living in the home for 60 days or more during the next 12 months.

Policy Number: 80904842-0
Erin H Martin

Outline of coverage

Your insurance policy and any policy endorsements contain a full explanation of your coverage. The policy limits shown for a vehicle may not be combined with the limits for the same coverage on another vehicle, unless the policy contract or endorsements indicate otherwise.

2007 MITSUBISHI RAIDER CREW PICKUP
VIN: **1Z7HT28K47S161742**
Garaging ZIP Code: 87120
Primary use of the vehicle: Commute
This vehicle is currently enrolled in the Snapshot℠ Program.

	Limits	Deductible	Premium
Liability To Others			$178
Bodily Injury Liability	$25,000 each person/$50,000 each accident		
Property Damage Liability	$25,000 each accident		
Uninsured Motorist			56
Bodily Injury	$25,000 each person/$50,000 each accident		
Property Damage	$10,000 each accident	$250	
Comprehensive	Actual Cash Value	$1,000	27
Collision	Actual Cash Value	$1,000	70
Total premium for 2007 MITSUBISHI			**$331**

2000 HONDA CR-V 4 DOOR WAGON
VIN: **JHLRD2844YC003947**
Garaging ZIP Code: 87120
Primary use of the vehicle: Commute
This vehicle is currently enrolled in the Snapshot℠ Program.

	Limits	Deductible	Premium
Liability To Others			$176
Bodily Injury Liability	$25,000 each person/$50,000 each accident		
Property Damage Liability	$25,000 each accident		
Uninsured Motorist			50
Bodily Injury	$25,000 each person/$50,000 each accident		
Property Damage	$10,000 each accident	$250	
Total premium for 2000 HONDA			**$226**
Total 6 month policy premium			**$557.00**

Premium discounts

Policy	
80904842-0	Five-Year Accident Free, Three-Year Safe Driving, Continuous Insurance: Platinum, Online Quote, Paperless, Home Owner, Multi-Car, Electronic Funds Transfer (EFT) and Online Signature - First Policy Period Only
Vehicle	
2007 MITSUBISHI RAIDER	Passive Anti-Theft Device

Driving history

Progressive uses driving history to determine your rate. There are no accidents or violations for drivers on this policy.

Risk tier information

Prior insurance:	Yes
Prior insurance carrier:	Farmers Insurance Exchange
Bodily injury limits:	State Minimum Limits
Comp claims:	0
Not at-fault accidents:	0

Lienholder information

Vehicle	Lienholder
2007 MITSUBISHI RAIDER 1Z7HT28K47S161742	WELLS FARGO AUTO(LN) CORAOPOLIS, PA 15108

Application agreement

Verification of content

I declare that the statements contained herein are true to the best of my knowledge and belief and do agree to pay any surcharges applicable under the Company rules which are necessitated by inaccurate statements. I declare that no persons other than those listed in this application regularly operate the vehicle(s) described in this application. I declare that none of the vehicles listed in this application will be used to carry persons or property for compensation or a fee, or for retail or wholesale delivery, including, but not limited to, the pickup, transport, or delivery of magazines, newspapers, mail, or food. I understand that this policy may be rescinded and declared void if this application contains any false information or if any information that would alter the Company's exposure is omitted or misrepresented.

ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO CIVIL FINES AND CRIMINAL PENALTIES.

Notice of information practices

I understand that to calculate an accurate price for my insurance, the Company may obtain information from third parties, such as consumer reporting agencies that provide driving, claims and credit histories. The Company may use a credit-based insurance score based on the information contained in the credit history. The Company or its affiliates may obtain new or updated information to calculate my renewal premium or service my insurance. I may access information about me and correct it if inaccurate. In some cases, the law permits the Company to disclose the information it collects without authorization. However, the Company will not share personal information with nonaffiliated companies for their marketing purposes without consent. Complete details are in the Company's Privacy Policy, which will be provided with this insurance policy and upon request.

Acknowledgement and agreement

- If I make my initial payment by electronic funds transfer, check, draft, or other remittance, the coverage afforded under this policy is conditioned on payment to the Company by the financial institution. If the transfer, check, draft, or other remittance is not honored by the financial institution, the Company shall be deemed not to have accepted the payment and this policy shall be void.
- If I make my initial payment by credit card, the coverage afforded under this policy is conditioned on payment to the Company by the card issuer. I understand that if the Company is unable to collect my initial payment from the card issuer, the Company shall be deemed not to have accepted the payment and this policy shall be void. I also understand that if I authorize a credit card transaction for any payment other than the initial payment, this policy will be subject to cancellation for nonpayment of premium if the Company is unable to collect payment from the card issuer. The Company is deemed "unable to collect" in the following instances: (1) when I reach my credit limit on my credit card and the card issuer refuses the charge; (2) when the card issuer cancels or revokes my credit card; or (3) when the card issuer does not pay the Company, for any reason whatsoever, upon the Company's request.
- I acknowledge that insurance prices and products are different when purchased directly from Progressive or through agents/brokers.

Other charges

I understand that if I cancel this policy or if cancellation is due to non-payment of premium, any refund due will be computed on a ninety percent (90%) of daily pro rata basis. This is a daily, accelerated method of calculating short-rate earned premium on cancellations. When I renew this policy, I understand that the Company will refund premium following a cancellation on a daily pro rata basis.

I agree to pay the installment fees shown on my billing statement that become due during the policy term and each renewal policy term in accordance with the payment plan I have selected. I understand that the amount of these fees may change upon policy renewal or if I change my payment plan. Any change in the amount of installment fees will be reflected on my payment schedule.

I understand that a returned payment fee of $20.00 will be assessed to the balance due on my policy if any check offered in payment is not honored by my bank or other financial institution. Imposition of such charge shall not deem the Company to have accepted the check unconditionally.

I agree to pay a late fee of $10.00 when the payment for the minimum amount due is not received or postmarked by the premium due date. The amount of this fee may change upon policy renewal.

Applicant signature

I represent that I, Erin H Martin, am the person identified as the named insured and the first driver in the Drivers and Resident Relatives section of this application. I acknowledge and agree to the statements contained within this application.

I also acknowledge and agree that by typing my name in the designated boxes on the screen below this form and clicking "Continue", I am electronically signing this application, which will have the same legal effect as the execution of this document by a written signature and shall be valid evidence of my intent and agreement to be bound by its terms.

I understand that my name already appears in the signature line below because I chose to electronically sign this application.

Signature of named insured	**Date**
X Erin H Martin	April 6, 2013

PROGRESSIVE
P.O. BOX 31260
TAMPA, FL 33631

PROGRESSIVE DIRECT

Policy Number: 80904842
Underwritten by:
Progressive Direct Insurance Co
March 3, 2015
Policy Period: Apr 6, 2015 - Oct 6, 2015

progressive.com
Online Service
Make payments, check billing activity, update policy information or check status of a claim.

1-800-776-4737
For customer service and claims service, 24 hours a day, 7 days a week.

ERIN H MARTIN
2105 ST CROIX DR NW
ALBUQUERQUE, NM 87120

Auto Insurance Coverage Summary

This is your Renewal Declarations Page

The coverages, limits and policy period shown apply only if you pay for this policy to renew.

Your coverage begins on April 6, 2015 at 12:01 a.m. This policy expires on October 6, 2015 at 12:01 a.m.

Your insurance policy and any policy endorsements contain a full explanation of your coverage. The policy contract is form 9610D NM (02/07). The contract is modified by forms Z538 (10/08), 4884 (10/08) and A037 NM (01/14).

The contract is modified by form 2702 NM if the limits of Uninsured Motorist coverage appearing below are less than the Limits of Liability To Others coverage or if Uninsured Motorist coverage is rejected entirely.

Drivers and household residents

	Additional information
Erin H Martin	Named insured

Outline of coverage

General policy coverage	Limits	Deductible	Premium
Uninsured Motorist - Stacked			$79
Bodily Injury	$25,000 each person/$50,000 each accident		
Property Damage	$25,000 each accident	$250	
Total general policy coverage			**$79**

2012 FORD MUSTANG
VIN 1ZVBP8AM8C5201122
Primary use of the vehicle: Commute

	Limits	Deductible	Premium
Liability To Others			$339
Bodily Injury Liability	$25,000 each person/$50,000 each accident		
Property Damage Liability	$25,000 each accident		
Comprehensive	Actual Cash Value	$1,000	70
Collision	Actual Cash Value	$1,000	188
Total premium for 2012 FORD			**$597**
Total 6 month policy premium			**$676.00**

Continued

Exhibit 2

Premium discounts

Policy	
80904842	Electronic Funds Transfer (EFT), Home Owner, Online Quote, Continuous Insurance: Platinum, Paperless, Three-Year Safe Driving and Five-Year Accident Free

Lienholder information

We send certain notices such as coverage summaries and cancellation notices to the following:

Vehicle	Lienholder
2012 FORD MUSTANG 1ZVBP8AM8C5201122	U.S. Nm Fed Cu Albuquerque, NM 87103

Company officers

Secretary

PROGRESSIVE CLAIMS
4041 JEFFERSON PLAZA NE
SUITE 250
ALBUQUERQUE, NM 87109

PROGRESSIVE®

Underwritten By:
Progressive Direct Insurance Company

Claim Number: 15-2516928
Loss Date: April 13, 2015
Document Date: June 21, 2018
Page 1 of 1

LAW OFFICE OF KEDAR BHASKER
KEDAR BHASKER
1400 CENTRAL AVE SE
SUITE 2000
ABQ, NM 87106

claims.progressive.com
Track the status and details of your claim, e-mail your representative or report a new claim.

Claim Information

Your Client: Erin Martin

Please be advised that the UIM claim for Erin Martin has been reassigned to me. Please update your records to reflect my contact information.

This will acknowledge receipt of your demand.

Enclosed is a copy of your client's policy declarations. UM/UIM coverage is 25,000 per person 50,000 each accident, there is one vehicle on the Progressive policy.

As the UM/UIM limits are equal to the tortfeasor bodily injury limits, there does not appear to be an exposure to this policy.

Please advise if your client has additional UM/UIM coverage in the household that would make the Progressive policy primary. Enclosed is a declaration of vehicles in the household. Please complete and return with the applicable declarations page of any additional coverage available.

Please contact me if you have any questions.

Sincerely,

SHAUN PETERSON
Claims Department
1-505-346-8528
1-800-PROGRESSIVE (1-800-776-4737)
Fax: 1-505-344-2868
Form Z587 XX (01/08) NM

Exhibit 3

FILED
2nd JUDICIAL DISTRICT COURT
Bernalillo County
11/16/2018 12:13 PM
James A. Noel
CLERK OF THE COURT
Dawna Jarvis

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

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

Plaintiffs,

v.

PROGRESSIVE PREFERRED INSURANCE COMPANY; PROGRESSIVE CLASSIC INSURANCE COMPANY; PROGRESSIVE CASUALTY INSURANCE COMPANY; PROGRESSIVE DIRECT INSURANCE COMPANY; PROGRESSIVE ADVANCED INSURANCE COMPANY; PROGRESSIVE SPECIALITY INSURANCE COMPANY; and PROGRESSIVE NORTHERN INSURANCE COMPANY,

Defendants.

No. D-202-CV-2018-03583

AMENDED CLASS ACTION COMPLAINT

1. Plaintiffs Diane Martinez and Erin Martin, for themselves and on behalf of the Class and Subclass defined herein, bring this Amended Class Action Complaint under Rule 1-023 NMRA to recover damages from 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 "Progressive") and state as follows:

JURISDICTION AND VENUE

2. This Court has jurisdiction under Article VI, Section 13 of the New Mexico Constitution.

3. Venue is proper under NMSA 1978, § 38-3-1(B).

PARTIES

4. Plaintiff Diane Martinez is, and was at all material times, a resident of Bernalillo County, New Mexico.

5. Plaintiff Erin Marin is, and was at all material times, a resident of Bernalillo County, New Mexico.

6. Defendant Progressive Preferred Insurance Company is a foreign for-profit corporation conducting business, including marketing and sale of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

7. Defendant Progressive Classic Insurance Company is a foreign for-profit corporation conducting business, including marketing and sale of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

8. Progressive Casualty Insurance Company is a foreign for-profit corporation conducting business, including marketing and sale of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

9. Progressive Direct Insurance Company is a foreign for-profit corporation conducting business, including marketing and sale of insurance policies, throughout the State of

New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

10. Progressive Advanced Insurance Company is a foreign for-profit corporation conducting business, including marketing and sale of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

11. Progressive Specialty Insurance Company is a foreign for-profit corporation conducting business, including marketing and sale of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

12. Progressive Northern Insurance Company is a foreign for-profit corporation conducting business, including marketing and sale of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

FACTUAL ALLEGATIONS

Martin purchased an underinsured motorist policy from Progressive.

13. In 2013, Progressive issued Martin a motor vehicle insurance policy, which she had applied for and purchased. *See* Ex. 1, Martin App.

14. On March 3, 2015, Progressive renewed the insurance policy that it had issued to Martin. Ex. 2, Martin Declarations Page.

15. The policy that Progressive issued and which was in effect at the time of Martin's loss was Policy No. 80904842, effective from April 6, 2015 to October 6, 2015 ("Martin Policy"). *Id.*

16. The Martin Policy provided liability coverage on one vehicle in the amount of $25,000 per person/$50,000 per accident, per vehicle. *Id.*

17. The Martin Policy also purportedly provided uninsured and underinsured motorist coverage in the amount of up to $25,000.00 per person/$50,000.00 per accident, per vehicle. *Id.*

18. Progressive collected a premium of $79 for the uninsured and underinsured motorist coverage that Progressive purportedly offered for the sixth months from April 6, 2015 to October 6, 2015. *Id.*

19. Progressive collected from Martin premiums for uninsured and underinsured motorist coverage that it purportedly sold her since 2013.

Progressive's application and policy misrepresented the true value of minimal-limits underinsured motorist coverage and failed to properly inform Martin that the underinsured motorist coverage for which she had paid a premium was illusory.

20. Progressive's application and the Martin Policy failed to properly inform Martin about the offset described in *Schmick v. State Farm Mutual Automobile Insurance Company*, 704 P.2d 1092 (1985) (the *Schmick* offset), and did not meet Martin's reasonable expectations of being properly insured in the event she sustained significant injuries.

21. When Martin purchased automobile coverage, Progressive did not properly inform her of how underinsured motorist coverage is illusory in the event of a covered occurrence involving an underinsured driver.

22. Progressive failed to properly inform Martin of the extremely limited scenarios in which she might benefit from the purchase of minimum limits underinsured motorist coverage.

23. Progressive failed to properly inform Martin that she would most likely not benefit from paying a premium for minimal underinsured motorist coverage that was equal to the amount of a tortfeasor's liability coverage because, pursuant to the *Schmick* offset, Martin's

recovery of underinsured motorist benefits would be offset by the amount of the tortfeasor's liability coverage.

24. The application and the Martin Policy did not contain clear, unambiguous language regarding the effects of the *Schmick* offset.

25. Progressive failed to properly inform Martin about combined premium costs corresponding to the available levels of coverage and failed to offer Martin a fair opportunity to reconsider the decision to select a higher amount of liability and underinsured motorist coverage or reject such coverage altogether.

26. Progressive's application and application process did not alert Martin, nor make clear to the ordinarily and similarly situated insured, the fact that the *Schmick* offset drastically and materially diminished payment of benefits arising from a covered occurrence under the policy for accidents involving underinsured motorists.

27. Progressive's application did not alert Martin that she would be billed a premium for underinsured motorists coverage on a minimum limits policy, where there was no likelihood of her ever being able to recover the full amount of underinsured motorists coverage for which she was billed and a high likelihood she would be unable to collect any underinsured motorist coverage for which she was charged a premium.

28. Progressive's application and policy and statements by Progressive and its agents misrepresented the true value of the illusory minimal-limits underinsured motorist coverage that it advertised and sold to Martin and for which Progressive collected premiums.

Martin was injured in a collision with an underinsured motorist.

29. On April 13, 2015, Martin sustained bodily injuries and other damages arising from an automobile collision that occurred at the intersection of Unser Blvd and Tierra Pintada

NW, in Albuquerque, New Mexico, when an underinsured motorist, travelling at a high-rate of speed, ran a traffic signal and collided into Martin's vehicle.

30. Martinez was not at fault for the collision.

31. At the time of the collision, Martin was abiding by New Mexico and Albuquerque traffic laws.

32. As a result of the collision, Martin was transported to Presbyterian Hospital, and she suffered serious bodily injuries and other damages.

33. Martin suffered total damages well in excess of $50,000.00.

34. At the time of the collision, Martin was insured by the Martin Policy, which provided her with uninsured and underinsured motorist insurance coverage in the amount of up to $25,000.00 per person/$50,000.00 per accident.

35. After the collision, Martin made a claim with the tortfeasor's insurer and received $25,000, the full extent of liability coverage from the tortfeasor's insurer.

36. Like Martin, the tortfeasor also carried the minimum required liability insurance with limits of $25,000.00 per person, $50,000.00 per accident.

Martin makes a claim that Progressive denies.

37. Before the collision at issue, Progressive collected a premium for automobile coverage pursuant to the Martin Policy, under which Martin had a reasonable expectation that she carried underinsured motorist coverage of $25,000.00 per person, $50,000.00 per accident.

38. At the time of the collision, Martin was under the belief and had a reasonable expectation that she was entitled to underinsured motorist benefits pursuant to the application she had made and the insurance policy that Progressive had issued her.

39. After the collision, Martin reported the collision to Progressive and, through counsel, made a claim on the underinsured motorist coverage for which she had paid a premium.

40. Progressive, under a standardized business practice, opened a claim, assigned claim number 15-2516928, and randomly assigned the adjustment of the matter to one of its adjusters. Ex. 3, Progressive's Denial of Martin's Claim.

41. Martin, through counsel, demanded Progressive provide her with the underinsured motorist benefits that Progressive contracted with Martin to provide and for which she had paid a premium. Ex. 4, Martin's June 15, 2018 Demand.

42. Progressive denied Martin's underinsured motorist coverage claim in its entirety. *See* Ex. 3.

43. Progressive denied Martin's claim because (i) Progressive deducted from the coverage it owed Martin any sums paid by the tortfeasor's insurer and (ii) the tortfeasor's liability coverage limits equaled Martin's underinsured motorist coverage limits. *See id.*

44. Martin received nothing from Progressive, her underinsured motorist policy carrier.

45. Martin had a reasonable expectation that she would benefit from the insurance premiums Progressive collected from her. In fact, however, under her policy there were virtually no underinsured motorist benefits.

Martinez purchased an underinsured motorist policy from Progressive.

46. In 2003, Progressive issued Martinez a motor vehicle insurance policy, which she had applied for and purchased through the Manuel Lujan agency.

47. On May 10, 2016, Progressive renewed the insurance policy that it had issued. *See* Ex. 5, Martinez Declarations Page.

48. The policy that Progressive issued and which was in effect at the time of Martinez's loss was Policy No. 80246262-8, effective from May 10, 2016 to May 10, 2017 ("Martinez Policy"). *Id.*

49. The Martinez Policy provided liability coverage on three vehicles in the amount of $25,000 per person/$50,000 per accident, per vehicle. *Id.*

50. The Martinez Policy also purportedly provided uninsured and underinsured motorist coverage in the amount of up to $25,000.00 per person/$50,000.00 per accident, per vehicle, stackable for total uninsured and underinsured motorist coverage in the amount of up to $75,000.00 per person/$150,000.00. *Id.*

51. Progressive collected premium of $475 for the uninsured and underinsured motorist coverage that Progressive purportedly offered from May 10, 2016 to May 10, 2017. *Id.*

52. Progressive collected premiums for uninsured and underinsured motorist coverage since 2003.

Progressive's application and policy misrepresented the true value of minimal-limits underinsured motorist coverage and failed to properly inform Martinez that part of the underinsured motorist coverage for which she had paid a premium was illusory.

53. Progressive's application and the Martinez Policy failed to properly inform Martinez about the offset described in *Schmick v. State Farm Mutual Automobile Insurance Company*, 704 P.2d 1092 (1985) ("the *Schmick* offset"), and did not meet Martinez's reasonable expectations of being properly insured in the event she sustained significant injuries.

54. When Martinez purchased automobile coverage, Progressive did not properly inform her of how underinsured motorist coverage is illusory in the event of a covered occurrence involving an underinsured driver.

55. Progressive failed to properly inform Martinez that she would most likely not receive the full benefit from paying a premium for minimal underinsured motorist coverage on

each of her vehicles because, pursuant to the *Schmick* offset, Martinez's recovery of underinsured motorist benefits would be offset by the amount of the tortfeasor's liability coverage.

56. The application and the Martinez Policy did not contain clear, unambiguous language regarding the effects of the *Schmick* offset.

57. Progressive failed to properly inform Martinez about combined premium costs corresponding to the available levels of coverage and failed to offer Martinez a fair opportunity to reconsider the decision to select a higher amount of liability and underinsured motorist coverage or reject such coverage altogether.

58. Progressive's application and application process did not alert Martinez, nor make clear to the ordinarily and similarly situated insured, the fact that the *Schmick* offset significantly and materially diminished payment of benefits arising from a covered occurrence under the policy for accidents involving underinsured motorists.

59. Progressive's application did not alert Martinez that she would be billed a premium for underinsured motorists coverage on the minimum limits policies corresponding to each of her covered vehicles, where there was no likelihood of her ever being able to recover the full amount of underinsured motorists coverage for which she was charged and paid a premium.

60. Progressive's application and policy and statements by Progressive and its agents misrepresented the true value of the underinsured motorist coverage that it advertised and sold to Martinez and for which she paid premiums.

Martinez was injured in a collision with an underinsured motorist.

61. On July 30, 2016, Martinez sustained bodily injuries and other damages arising from an automobile collision that occurred on Zuni Drive SE, in Albuquerque, New Mexico,

when an underinsured motorist, travelling at a high-rate of speed, collided into the rear of Martinez's vehicle.

62. Martinez was not at fault for the collision.

63. At the time of the collision, Martinez was abiding by New Mexico and Albuquerque traffic laws.

64. As a result of the collision, Martinez suffered serious bodily injuries and other damages, including traumatic brain injury, which caused memory loss and adversely affected her ability to speak and process her thoughts.

65. Martinez sustained total actual damages well in excess of $75,000.00.

66. At the time of the collision, Martinez was insured by the Martinez Policy, which provided her with stacked uninsured and underinsured motorist insurance coverage in the amount of up to $75,000.00 per person/$150,000.00 per accident.

67. After the collision, Martinez made a claim with the tortfeasor's insurer and received $25,000.00, the full extent of liability coverage from the tortfeasor's insurer.

68. Like Martinez's liability coverage for each of the vehicles covered by the Martinez Policy, the tortfeasor also carried the minimum required liability insurance with limits of $25,000.00 per person, $50,000.00 per accident.

Martinez makes a claim that Progressive denies.

69. Before the collision at issue, Martinez had paid a premium for automobile coverage under Progressive's policy and had a reasonable expectation that she carried three minimum limits underinsured motorist coverage policies for each of her vehicles, stackable for a total amount of underinsured motorist coverage of $75,000.00 per person/$150,000.00 per accident.

70. At the time of the collision, Martinez was under the belief and had a reasonable expectation that she was entitled to underinsured motorist benefits pursuant to the application she had made and the insurance policy that Progressive had issued her.

71. After the collision, Martinez reported the collision to Progressive and, through counsel, made a claim on the underinsured motorist coverage for which she had paid a premium. *See* Ex. 6, Martinez's Demand for full UIM benefits.

72. Progressive, under a standardized business practice, opened a claim, assigned claim number 16-2439017, and randomly assigned the adjustment of the matter to one of its adjusters. *See* Ex. 7, Progressive's Denial of Martinez's Claim.

73. Martinez, through counsel, demanded Progressive provide her with the amount of $75,000.00 in underinsured motorist benefits that Progressive contracted with Martinez to provide and for which she had paid a premium. *See* Ex. 6, Martinez's Demand for full UIM benefits.

74. Progressive denied Martinez's underinsured motorist coverage claim for $75,000.00 and provided Martinez with $50,000 in underinsured motorist benefits only. Ex. 7, Progressive's Denial of Martinez's Claim.

75. Progressive denied Martinez's claim for $75,000.00 in underinsured motorist benefits because Progressive deducted from the coverage it owed Martin any sums paid by the tortfeasor's insurer. *Id.*

76. Martin did not receive the full $75,000.00 in underinsured motorist benefits from Progressive, her underinsured motorist policy carrier. *Id.*

77. Martin had a reasonable expectation that she would benefit from the insurance premiums Progressive collected. In fact, however, under her policy $25,000.00 of those purported benefits were illusory.

CLASS ACTION ALLEGATIONS

78. This action is properly maintainable as a class action pursuant to Rule 1-023 NMRA. The Class is defined as follows:

> All persons (and their heirs, executors, administrators, successors, and assigns) who paid a premium for an underinsured motorist coverage on a policy that was issued or renewed in New Mexico by Progressive and that purported to provide the statutorily required UM/UIM minimum limits of $25,000 per person/$50,000 per accident, but which effectively provides no underinsured motorists coverage, because of the statutory offset recognized in *Schmick v. State Farm Mutual Automobile Insurance Company*, 704 P.2d 1092 (1985).

79. Excluded from the Class are all of Defendants' present and former officers and directors, "Referees" serving the Evaluation Appeal process proposed below, Class counsel and their resident relatives, and Defendant's counsel of record and their resident relatives.

80. Pursuant to Rule 1-023(C)(4)(b), the Class properly includes a Subclass:

> All Class Members (and their heirs, executors, administrators, successors, and assigns) who paid a premium for an underinsured motorist coverage on a policy that was issued or renewed in New Mexico by Progressive and that purported to provide the statutorily required UM/UIM minimum limits of $25,000 per person/$50,000 per accident, but which in fact provides no underinsured motorists coverage, because of the statutory offset recognized in *Schmick v. State Farm Mutual Automobile Insurance Company*, 704 P.2d 1092 (1985), and who sustained damages in excess of an insured tortfeasor's policy limits, received the extent of all bodily injury liability limits available, made a claim with Progressive for underinsured motorist benefits and were denied those benefits by Progressive.

81. The proposed class and subclass definitions are precise, objective, and presently ascertainable, and it is administratively feasible for the Court to ascertain whether a particular individual is a member of the Class.

82. The members of the Class are so numerous that joinder of all members of the Class is impracticable.

83. Martin's and Martinez's claims are typical of the claims of members of the Class and Subclass.

84. Certification of the Class and Subclass is desirable and proper, because there are questions of law and fact in this case common to all members of the Class. Such common questions of law and fact include, but are not limited to:

a. Whether Progressive breached contractual obligations owed to their New Mexico policyholders;

b. Whether Progressive breached duties owed to New Mexican insureds under the implied covenant of good faith and fair dealing;

c. Whether Progressive violated NMSA 1978, §§ 59A-16-1 to -30;

d. Whether Progressive failed to disclose one or more material facts in connection with the marketing or sale of the insurance policies at issue;

e. Whether Progressive misled or deceived their policyholders in connection with the marketing or sale of the policies at issue;

f. How properly to construe Progressive's standard application forms and other standard form documents relative to the *Schmick* offset;

g. What remedies are available to Martin, Martinez, and Class Members in light of the answers to the foregoing questions; and

h. Whether and to what extent there may be merit in any affirmative defenses that Progressive might claim.

85. These common questions of law or fact common to members of the Class predominate over any questions affecting only individual members, and a class action is superior to all other available methods for the fair and efficient adjudication of the controversy. In this action:

86. Common or generalized proof will predominate with respect to the essential elements of the nine claims at issue.

87. The common questions of law or fact that pertain to the Class predominate over any individual questions and any individual issues do not overwhelm the common ones.

88. If any member or members of the Class has an individually controlling interest to prosecute a separate action, they may exclude themselves from the Class upon receipt of notice under Rule 1-023(C)(2).

89. The determination of the claims of all members of the Class in a single forum and in a single proceeding would be a fair, efficient and superior means of resolving the issues raised in this litigation.

90. Any difficulty encountered in the management of the proposed Class is reasonably manageable, especially when weighed against the impossibility of affording adequate relief to the members of the Class through numerous independent actions.

91. The need for proof of Martin's, Martinez's and Class members' damages will not cause individual issues to predominate over common questions. The amounts of losses can be efficiently demonstrated either at trial or as part of routine claims administration through accepted and court-approved methodologies with the assistance of court-appointed personnel, including Special Masters. Certain types or elements of damage are subject to proof using aggregate damage methodologies or simply rote calculation and summation.

92. The particular common issues of liability and the quantum of punitive damages or ratio of punitive damages to actual harm, are common to Class Members no matter what type of harm or injury was suffered by each Class Member.

93. Progressive has acted or refused to act on grounds generally applicable to Class Members, thereby making appropriate injunctive relief and corresponding declaratory relief with respect to Class Members. Martin and Martinez seek to establish the rights and obligations of the parties with respect to the claims at issue in this case and to enjoin Progressive from continuing to engage in those practices that violate the duties, contractual, and legal obligations owed to Martin, Martinez, and Class Members under New Mexico statutory and common law.

94. A class action is superior to maintenance of these claims on a claim-by-claim basis when all actions arise out of the same circumstances and course of conduct. A class action allows the Court to process all rightful claims in one proceeding. Class litigation is manageable considering the opportunity to afford reasonable notice of significant phases of the litigation to Class Members and permit distribution of any recovery. The prosecution of separate actions by individual Class Members, or the individual joinder of all Class Members in this action, is impracticable and would create a massive and unnecessary burden on the resources of the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of each Class Members, should that be determined to be appropriate.

95. The conduct of this action as a class action conserves the resources of the parties and the court system, protects the rights of each member of the class, and meets all due process requirements.

96. Certification of the Class with respect to particular common factual and legal issues concerning liability, as well as the necessary and appropriate quantum of punitive damages, or ratio of punitive damages to actual harm, is appropriate under Rule 1-023.

97. Certification of the Class is desirable and proper, because Martin and Martinez will fairly and adequately protect the interests of the Class that they seek to represent. There are no conflicts of interest between Martin's and Martinez's claims and those other members of the Class. Martin and Martinez are cognizant of their duties and responsibilities to the Class. Martin's and Martinez's attorneys are qualified, experienced, and able to conduct the proposed class action.

CLAIM 1
NEGLIGENCE

98. Martin and Martinez and Class Members incorporate by reference the preceding paragraphs as if they were fully stated herein.

99. Progressive had a duty to ensure Martin and Martinez and Class Members would be offered and obtain the maximum benefit of underinsured coverage and would not be sold illusory underinsured coverage.

100. Progressive had a duty to provide Martin and Martinez and Class Members coverage for which a premium was charged and collected.

101. It was reasonably foreseeable that the underinsured coverage sold to Martin and Martinez and Class Members was, in large part, illusory and that Progressive materially misrepresented the terms of underinsured coverage, and charged a premium for such illusory coverage.

102. A reasonably prudent insurance company exercising ordinary care would offer and sell underinsured coverage that was not illusory and would not materially misrepresent the

terms of underinsured coverage by properly informing its insured of the coverage they were purchasing and obtaining a written waiver acknowledging its insured consent to the purchase of illusory underinsured motorist coverage.

103. A reasonably prudent insurer would not charge a premium for coverage it intended to deny or did not provide.

104. Progressive's actions and inactions, through its agents, employees, or others on its behalf, were negligent in that they breached the standard of care required of an insurance company issuing auto policies in New Mexico.

105. As a result of Progressive's negligence, Martin and Martinez and Class Members, sustained actual damages for which Progressive is liable. Martin and Martinez and Class Members are entitled to punitive damages for actions of Progressive that were willful, reckless and wanton, and in bad faith.

CLAIM 2
VIOLATIONS OF THE NEW MEXICO UNFAIR TRADE PRACTICES ACT

106. Martin and Martinez and Class Members incorporate by reference the preceding paragraphs as if they were fully stated herein.

107. There was in effect, at all times material, a New Mexico statute commonly known as the New Mexico Unfair Trade Practices Act, N.M.S.A.1978, § 57-12-2 to 58-12-10 ("UPA"), including but not limited to Sections 57-12-2(D)(7), (D)(l4), (D)(15), (D)(l7) and Section 57-12-2(E), which prohibits a person selling insurance from engaging in unfair or deceptive trade practices:

> D. "unfair or deceptive trade practice" means an act specifically declared unlawful pursuant to the Unfair Trade Practices Act [Chapter 57, Article 12 NMSA 1978], a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services or in the extension of credit or in the

> collection of debts by a person in the regular course of his trade or commerce, which may, tends to or does deceive or mislead and includes but is not limited to:
>
> > (7) representing that the goods or services are of a particular standard, quality or grade or that goods are of a particular style or model if they are of another;
> >
> > (14) using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive;
> >
> > (15) stating that a transaction involves rights, remedies or obligations that it does not involve;
> >
> > (17) failure to deliver the quality or quantity of goods or services contracted for;
>
> E. "unconscionable trade practice" means an act or practice in connection with the sale, lease, rental or loan, or in connection with the offering for sale, lease, rental or loan, of any goods or services, including services provided by licensed professionals, or in the extension of credit or in the collection of debts which to a person's detriment: takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree; or results in a gross disparity between the value received by a person and the price paid.

108. Progressive failed to deliver the quality or quantity of services applied for and purchased and paid for by Martin and Martinez and other insureds by failing to provide insurance applications and policies containing sufficient information to properly inform a reasonably prudent person purchasing underinsured insurance, to which Martin and Martinez were under the reasonable belief that such coverage existed, and to pay claims for insurance benefits sold and solicited by Progressive.

109. In the regular course of its business, Progressive or its agents made knowingly made oral and written statements that were false and misleading in connection with the sale of underinsured motorist insurance in New Mexico.

110. These false and misleading representations may, tend to, and do deceive or mislead persons into believing that minimal-limits underinsured motorist coverage has a value that it does not have and into contracting for and paying premiums for underinsured motorist

policies that are illusory and do not provide the underinsured motorist coverage and benefits and Progressive's customers reasonably expected to receive.

111. In the regular course of its business, Progressive or its agents took advantage of its customers' lack of knowledge, ability, experience or capacity to a grossly unfair degree by marketing, advertising, selling, and receiving premium payments for illusory underinsured motorist coverage.

112. Since the New Mexico Supreme Court's opinion in *Progressive Northwest Insurance Co. v. Weed Warrior Services*, 2010-NMSC-050, 149 N.M. 157, 245 P.3d 1209, Progressive has been on notice that underinsured motorist policies provide no coverage at minimal limits, yet Progressive markets, advertises, sells, and received premiums for minimal limits underinsured motorist policies to and from customers, such as Martin and Martinez and Class Members, who do not know and do not understand that, if they purchase minimal limits underinsured motorist coverage, they are vanishingly unlikely to receive any underinsured motorist coverage.

113. Progressive's actions resulted in a gross disparity between the value of the illusory underinsured motorist coverage received by Martin and Martinez and Class Members and the price of the premiums that Martinez and Martin and Class Members paid for illusory underinsured motorist coverage.

114. Progressive, acting through its agents, adjusters, and employees, as set forth above, knowingly and willfully engaged in unfair trade practices in violation of Section 57-12-3, including but not limited to Sections 57-12-2(D)(7), (D)(l4), (D)(I5), (D)(17) and Section 57-12-2(E).

CLAIM 3
VIOLATIONS OF THE NEW MEXICO UNFAIR INSURANCE PRACTICES ACT

115. Martin and Martinez and Class Members incorporate by reference the preceding paragraphs as if they were fully stated herein.

116. There was in effect at all times material a New Mexico statute commonly known as the Insurance Code New Mexico Unfair Insurance Practices Act, NMSA 1978, §§ 59A-16-1 to 59A-16-30 ("UIPA").

117. The UIPA provides a private right of action to any person covered by the UIPA who has suffered damages as a result of a violation of that statute by an insurer or agent is granted a right to bring an action in district court to recover actual damages.

118. Martin and Martinez and Class Members were insured under the policy issued and adjusted by the Progressive.

119. Progressive owed Martin and Martinez and Class Members the duties of good faith, fair dealing, and the accompanying fiduciary obligations.

120. In the sale and provision of insurance, and in the handling of the underinsured motorist claim, Progressive failed to exercise good faith, unreasonably delayed payment, and failed to give the interests of Martin and Martinez and of Class Members the same consideration it gave their own interests.

121. Progressive's failure to pay anything on Martin's and Martinez's and Class Members' first $25,000.00 level of underinsured motorist claims was unfounded, unreasonable, and in bad faith.

122. Progressive misrepresented the terms of the policy sold and provided to Martin and Martinez and Class Members, and/or failed to disclose material facts reasonably necessary to

prevent other statements from being misleading and failed to implement and follow reasonable standards in the sale and provision of insurance.

123. Progressive's acts and failures to act were in reckless disregard of Martin's and Martinez's and Class Members' rights as an insured under the subject policy.

124. Progressive's acts and practices took advantage of the lack of knowledge and experience of Martin and Martinez and Class Members to a grossly unfair degree.

125. Progressive failed to abide by its statutory duties under the UIPA, and such violations constitute negligence per se.

126. Progressive misrepresented to Martin and Martinez and Class Members pertinent facts or policy provisions relating to coverages at issue, in violation of NMSA 1978, § 59A-16-20(A).

127. Progressive failed to acknowledge and act reasonably and promptly upon communications with respect to claims from Martin and Martinez and Class Members, arising under the policy, in violation of NMSA 1978, § 59A-16-20(B).

128. Progressive failed to adopt and implement reasonable standards for the prompt investigation and processing of Martin's and Martinez's and Class Members' claims arising under the policy, in violation of NMSA 1978, § 59A-16-20(C).

129. Progressive failed to properly affirm and pay the coverage for claims of its insured within a reasonable period of time after proof of loss requirements under the policy was completed and submitted by Martin and Martinez and Class Members in violation of NMSA 1978, § 59A-16-20(D).

130. Martinez and Martin and Class Members incorporate and adopt ¶¶ 135–143 of this Complaint as though fully stated herein and, therefore, allege that Progressive did not

attempt in good faith to effectuate prompt, fair and equitable settlement of Martin's and Martinez's and Class Members' claims in which liability has become reasonably clear, in violation of NMSA 1978, § 59A-16-20(E).

131. Progressive compelled Martin and Martinez and Class Members to institute litigation to recover amounts due under the policies by offering substantially less (i.e., nothing on the first level of $25,000.00 of UIM coverage withheld based on the *Schmick* offset) than the amounts claimed by Martin and Martinez and Class Members that will ultimately be recovered in actions brought by Martin and Martinez, in violation of NMSA 1978, § 59A-16-20(G).

132. Progressive failed to promptly provide Martin and Martinez and Class Members with a reasonable explanation of the basis relied upon in the policy in relation to the facts and the applicable law for denial of her claims, in violation of NMSA 1978, § 59A-16-20(N).

133. Progressive's failure to act in good faith and Progressive's violations of the Insurance Code and Trade Practices Act are proximate causes of damages sustained by Martin and Martinez and Class Members.

134. Progressive's conduct was in bad faith, malicious, willful, wanton, fraudulent and/or in reckless disregard of Martin's and Martinez's and Class Members' rights.

135. Martin and Martinez and Class Members are entitled to attorneys' fees and costs pursuant to NMSA 1978, §§ 59A-16-30 and 39-2-1. As a direct and proximate result of Defendants' acts, omissions policies, and conduct in violating UIPA, as set forth above, Martin and Martinez and Class Members have sustained damages, in addition to the damages common to all counts of this complaint, including but not limited to the actual damages incurred, the cost of prosecution of this lawsuit, attorneys' fees, and interest on the sums owed under the policy. These injuries and damages are ongoing, permanent, and are expected to continue in the future.

CLAIM 4
REFORMATION OF INSURANCE POLICY

136. Martin and Martinez and Class Members incorporate by reference the preceding paragraphs as though they were stated fully herein.

137. Martin and similarly-situated Class Members mistakenly believed that, by paying a premium for minimal limits underinsured motorist coverage, they would receive underinsured motorist coverage at minimal limits.

138. Martinez and similarly-situated Class Members mistakenly believed that, by paying a premium for minimal limits underinsured motorist stacked coverage, they would receive the underinsured motorist coverage up to the limits they had purchased.

139. Progressive and its agents knew that, because of the operation of the offset described in *Schmick*, Martin and similarly-situated Class Members were vanishingly unlikely to receive the minimal-limits underinsured motorist benefits that they contracted for and for which Progressive collected premiums.

140. Progressive and its agents also knew that, because of the operation of the offset described in *Schmick*, Martinez and similarly-situated Class Members were vanishingly unlikely to receive the first tier of underinsured motorist benefits, *i.e.*, $25,000 per person, $50,000 per accident, that they contracted for and for which Progressive collected premiums.

141. At the time of contract formation, Progressive and its agents inequitably misrepresented the value of minimal-limits underinsured motorist coverage and failed to inform Martin and similarly-situated Class Members that, because of the operation of the offset described in *Schmick*, they were vanishingly unlikely to receive the minimal-limits underinsured motorist benefits that they contracted for and for which Progressive collected premiums.

142. At the time of contract formation, Progressive and its agents also knew that, because of the operation of the offset described in *Schmick*, Martinez and similarly-situated Class Members were vanishingly unlikely to receive the first tier of minimal-limits underinsured motorist benefits, *i.e.*, $25,000 per person, $50,000 per accident, that they contracted for and for which Progressive collected premiums.

143. The inequitable failure of Progressive and its agents to inform Martin and similarly-situated Class Members that they were vanishingly unlikely to receive the minimal-limits underinsured motorist coverage caused Martin and similarly-situated Class Members to believe that, by paying a premium for minimal limits underinsured motorist coverage, they would receive underinsured motorist coverage at minimal limits.

144. The inequitable failure of Progressive and its agents to inform Martinez and similarly-situated Class Members that they were vanishingly unlikely to receive the first tier of minimal-limits underinsured motorist benefits, *i.e.*, $25,000 per person, $50,000 per accident, caused Martinez and similarly-situated Class Members to believe that, by paying a premium for non-minimal limits underinsured motorist coverage, they would receive the underinsured motorist coverage up to the limits they had purchased.

145. The insurance contracts respectively entered between Progressive and its agents, on the one hand, and Martin and Martinez and Class Members, on the other hand, do not express the intentions and reasonable beliefs of Martin and Martinez and Class Members that they would receive the underinsured motorist coverage that they contracted for and for which they paid premiums.

146. The court should reform the insurance contracts respectively entered between Progressive and its agents, on the one hand, and Martin and Martinez and Class Members, on the

other hand, to conform to the intentions and reasonable beliefs of Martin and Martinez and Class Members that they would receive the underinsured motorist coverage that they contracted for and for which Progressive collected premiums.

CLAIM 5
BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

147. Martin and Martinez and Class Members incorporate by reference the preceding paragraphs as though they were stated fully herein.

148. A special relationship exists between Progressive, on the one hand, and Martin and Martinez and Class Members, respectively, on the other hand, sufficient to impose a duty of good faith and fair dealing on Progressive owed to Martin and Martinez and Class Members.

149. Implicit in the contract of insurance between Martin and Martinez and Class Members, on the one hand, and Progressive on the other was the covenant that Defendants would, at all times, act in good faith and deal honestly and fairly with Martin and Martinez and Class Members.

150. Progressive breached the implied covenant of good faith and fair dealing, in one or more of the following ways, including but not limited to:

a. Failing to properly inform Martin and Martinez and Class Members of the illusory coverage it solicited and sold;

b. Charging a premium for coverage that was not provided;

c. Failing and refusing to disclose, admit and acknowledge some amount of underinsured motorist coverage;

d. Failing and refusing to fairly investigate, process, determine and decide Martin's and Martinez's and Class Members' claims under the policies referenced above; and

e. Failing and refusing to mediate, resolve, and settle Martin's and Martinez's and Class Members' underinsured motorist claims.

151. As a direct and proximate result of Progressive's acts and omissions alleged herein, Martin and Martinez and Class Members have suffered damages in an amount to be proven at trial.

152. Progressive's acts and omissions alleged herein and breach of the implied covenant of good faith and fair dealing were done intentionally, willfully, wantonly, grossly and/or with reckless disregard for the rights of Martin and Martinez and Class Members.

153. Accordingly, Martin and Martinez and Class Members are entitled to recover punitive damages in an amount to be determined by the jury and sufficient to punish Progressive for its misconduct and to deter others from similar conduct in the future.

CLAIM 6
UNJUST ENRICHMENT

154. Martin and Martinez and Class Members incorporate by reference the preceding paragraphs as though they were stated fully herein.

155. Progressive has applied the *Schmick* offset to its insureds' claims and denied the first level of underinsured motorist coverage in New Mexico since 1985. Progressive misled, deceived, and acted in an unfair manner for decades and retained benefits (*i.e.*, the payment of proper claims, and retained premium charges which were unearned) from thousands of New Mexico insureds for years, including Martin and Martinez and Class Members. The benefits Progressive denied their insureds allowed them to invest and enjoy the benefits of their deceptive and intentional conduct.

156. Martin and Martinez and Class Members are entitled to the value of the underinsured motorist benefits and out-of-pocket expenses under the equitable theory of unjust enrichment.

157. Progressive should be ordered to disgorge of the value of the underinsured motorist benefits it retained, the UIM premiums it received, and the unjust profit that it derived therefrom.

CLAIM 7
NEGLIGENT MISREPRESENTATION

158. Martin and Martinez and Class Members incorporate by reference the preceding paragraphs as though they were stated fully herein.

159. A special relationship exists between Progressive, on the one hand, and Martin and Martinez and Class Members, respectively, on the other hand, sufficient to impose a duty on Progressive to disclose accurate information to Martin and Martinez and Class Members.

160. As early as 1985, when the New Mexico Supreme Court published its decision in *Schmick v. State Farm*, Progressive knew that underinsured motorist coverage would be illusory under circumstances similar to those experienced by Martin and Martinez and Class Members.

161. Progressive, however, withheld this information from Martin and Martinez and Class Members and hid from them the fact that the underinsured motorist coverage as impacted by the *Schmick* offset is illusory.

162. From 1985 through the present, Progressive failed to disclose material facts and made material misrepresentations to Martin and Martinez and Class Members regarding illusory underinsured motorist coverage.

163. Progressive, by their failures and omissions, misrepresented underinsured motorist coverages through their standard and uniform applications and policies used by Martin

and Martinez and Class Members, which Progressive knew or should have known, were misleading and contained material misrepresentations.

164. Progressive's material omissions and misrepresentations were made to induce Martin and Martinez and Class Members to purchase underinsured motorist coverage that Progressive knew was illusory.

165. Martin and Martinez and Class Members relied on Progressive's material omissions and misrepresentations when deciding to purchase underinsured motorist coverage at the level of coverage they respectively purchased.

166. As a result of Progressive's misrepresentations and omissions, Progressive is liable to Martin and Martinez and Class Members for their damages flowing from those misrepresentations and omissions.

167. As a direct and proximate result of Progressive's negligent misrepresentations, Martin and Martinez and Class Members suffered economic loss, including the lost benefits of underinsured motorist coverage and out-of-pocket expenses. Martin and Martinez and Class Members seek the full measure of damages allowed under applicable law.

CLAIM 8
DECLARATORY JUDGMENT

168. Martin and Martinez and Class members incorporate by reference the preceding paragraphs as though they were stated fully herein.

169. An actual controversy exists between the parties thereby rendering declaratory relief proper under the New Mexico Declaratory Judgment Act, NMSA 1978, Sections 44-6-1 through 44-6-15.

170. Martin and Martinez and Class Members are entitled to a declaratory judgment establishing their respective rights and obligations of the parties with respect to the claims set forth herein.

CLAIM 9
INJUNCTIVE RELIEF

171. Martin and Martinez and Class Members incorporate by reference the preceding paragraphs as though they were stated fully herein.

172. Martin and Martinez and Class Members are entitled to injunctive relief requiring that Progressive be enjoined from continuing practices that violate the duties, contractual, and legal obligations owed to Martin and Martinez and Class Members.

173. Progressive must be compelled to stop their practice of failing to provide underinsured motorist coverage benefits equal to the limits of liability coverage where they failed to properly inform Martin and Martinez and Class Members throughout the application and policy underwriting process.

REQUEST FOR RELIEF

Martin and Martinez and Class Members request a jury trial and the following relief:

i. An order certifying this action to proceed as a class action, authorizing Martin and Martinez to represent the interests of the Class Members as appropriated and appointing undersigned counsel to represent the class.

ii. Awarding compensatory damages to Martin and Martinez and Class Members for the damages done to them by Progressive in an amount to be proven at trial;

iii. Awarding Martin and Martinez and Class Members damages from Progressive as a result of its violations of the UIPA, in an amount to be determined at trial for attorneys' fees and costs;

iv. Awarding disgorgement of the value of the underinsured motorist benefits retained by Progressive, the UIM premiums received by Progressive, the unjust profit that Progressive derived therefrom, and any other amounts to which Martin and Martinez and Class Members are equitably entitled under the theory of unjust enrichment;

v. Awarding treble damages in accordance with NMSA 1978, Sections 57-12-10(B) and any and all damages pursuant to NMSA 1978, Sections 57-12-1 through -26, which will deter Progressive and others from such unfair trade practices and wrongful conduct in the future and will punish them for the conduct set forth herein;

vi. Granting declaratory relief that establishes the rights and obligations of the parties with respect the claims set forth herein;

vii. Granting injunctive relief requiring Progressive to properly inform Martin and Martinez and Class Members throughout the application and policy underwriting process of the true value of the underinsured motorist benefits that are being advertised and sold;

viii. Awarding Martin and Martinez and Class Members their costs and expenses incurred in these actions, including reasonable attorney's fees, experts' fees, and costs; and

ix. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,
/s/ *Kedar Bhasker*
Kedar Bhasker
BHASKER LAW
1400 Central Ave. SE, Suite 2000
Albuquerque, NM 87106
Phone: 505 720-2113
Fax: 505 998-6628
Kedar@bhaskerlaw.com

Corbin Hilderbrandt
CORBIN HILDEBRANDT P.C.
Attorney for Plaintiff
1400 Central Ave. SE, Suite 2000
Albuquerque, NM 87106
Phone: 505 998-6626
Fax: 505 998-6628
corbin@hildebrandtlawnm.com

David Freedman
Jeremy D. Farris
FREEDMAN BOYD HOLLANDER
GOLDBERG URIAS & WARD, P.A.
20 First Plaza Center NW, Suite 700
Albuquerque, NM 87102
P: (505) 842-9960
daf@fbdlaw.com
jdf@fbdlaw.com

Counsel for the Plaintiffs

Application for Insurance

Please review and sign where indicated

PROGRESSIVE DIRECT

Policy Number: 80904842-0
Policyholder:
Erin H Martin
April 6, 2013

Policy and premium information for policy number 80904842-0

Insurance company:	Progressive Direct Insurance Co PO Box 31260 Tampa, FL 33631
Named insured:	Erin H Martin 2105 St. Croix Dr NW Albuquerque, NM 87120 Home: 1-505-730-9523
Financial responsibility vendor:	EXPERIAN 1-888-397-3742
Policy period:	Apr 6, 2013 - Oct 6, 2013
Effective date and time:	Apr 6, 2013 at 01:50 P.M. ET
Total policy premium:	$557.00
Initial payment required:	$92.86
Initial payment received:	$92.86
Payment plan:	6 payments

Drivers and resident relatives

You, your spouse, and all resident relatives 15 years of age or older, all regular drivers of the vehicles described in this application, and all children who live away from home who drive these vehicles, even occasionally, are listed below. Your total policy premium can be affected by all persons of driving age. While designating drivers as List Only or Excluded may increase policy premium, the violation and accident history of Excluded and List Only drivers does not affect premium.

Name	Date of birth	Sex	Marital status	Relationship
Erin H Martin Driver status: Rated Education level: Vocation/trade degree/military training Occupation: Assistant/Technician/Therapist	Nov 30, 1970	Female	Married	Insured
Titus L Martin Driver status: Rated Education level: College degree Occupation: Customer Service Representative	Dec 26, 1969	Male	Married	Spouse

Total residents: 3

The total number of residents currently residing in your household, including listed drivers, young children, roommates or anyone else living in the home for 60 days or more during the next 12 months.

Policy Number: 80904842-0
Erin H Martin

Outline of coverage

Your insurance policy and any policy endorsements contain a full explanation of your coverage. The policy limits shown for a vehicle may not be combined with the limits for the same coverage on another vehicle, unless the policy contract or endorsements indicate otherwise.

2007 MITSUBISHI RAIDER CREW PICKUP
VIN: **1Z7HT28K47S161742**
Garaging ZIP Code: 87120
Primary use of the vehicle: Commute
This vehicle is currently enrolled in the Snapshot℠ Program.

	Limits	Deductible	Premium
Liability To Others			$178
Bodily Injury Liability	$25,000 each person/$50,000 each accident		
Property Damage Liability	$25,000 each accident		
Uninsured Motorist			56
Bodily Injury	$25,000 each person/$50,000 each accident		
Property Damage	$10,000 each accident	$250	
Comprehensive	Actual Cash Value	$1,000	27
Collision	Actual Cash Value	$1,000	70
Total premium for 2007 MITSUBISHI			**$331**

2000 HONDA CR-V 4 DOOR WAGON
VIN: **JHLRD2844YC003947**
Garaging ZIP Code: 87120
Primary use of the vehicle: Commute
This vehicle is currently enrolled in the Snapshot℠ Program.

	Limits	Deductible	Premium
Liability To Others			$176
Bodily Injury Liability	$25,000 each person/$50,000 each accident		
Property Damage Liability	$25,000 each accident		
Uninsured Motorist			50
Bodily Injury	$25,000 each person/$50,000 each accident		
Property Damage	$10,000 each accident	$250	
Total premium for 2000 HONDA			**$226**
Total 6 month policy premium			**$557.00**

Premium discounts

Policy	
80904842-0	Five-Year Accident Free, Three-Year Safe Driving, Continuous Insurance: Platinum, Online Quote, Paperless, Home Owner, Multi-Car, Electronic Funds Transfer (EFT) and Online Signature - First Policy Period Only
Vehicle	
2007 MITSUBISHI RAIDER	Passive Anti-Theft Device

Driving history

Progressive uses driving history to determine your rate. There are no accidents or violations for drivers on this policy.

Risk tier information

Prior insurance:	Yes
Prior insurance carrier:	Farmers Insurance Exchange
Bodily injury limits:	State Minimum Limits
Comp claims:	0
Not at-fault accidents:	0

Lienholder information

Vehicle	Lienholder
2007 MITSUBISHI RAIDER 1Z7HT28K47S161742	WELLS FARGO AUTO(LN) CORAOPOLIS, PA 15108

Application agreement

Verification of content

I declare that the statements contained herein are true to the best of my knowledge and belief and do agree to pay any surcharges applicable under the Company rules which are necessitated by inaccurate statements. I declare that no persons other than those listed in this application regularly operate the vehicle(s) described in this application. I declare that none of the vehicles listed in this application will be used to carry persons or property for compensation or a fee, or for retail or wholesale delivery, including, but not limited to, the pickup, transport, or delivery of magazines, newspapers, mail, or food. I understand that this policy may be rescinded and declared void if this application contains any false information or if any information that would alter the Company's exposure is omitted or misrepresented.

ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO CIVIL FINES AND CRIMINAL PENALTIES.

Notice of information practices

I understand that to calculate an accurate price for my insurance, the Company may obtain information from third parties, such as consumer reporting agencies that provide driving, claims and credit histories. The Company may use a credit-based insurance score based on the information contained in the credit history. The Company or its affiliates may obtain new or updated information to calculate my renewal premium or service my insurance. I may access information about me and correct it if inaccurate. In some cases, the law permits the Company to disclose the information it collects without authorization. However, the Company will not share personal information with nonaffiliated companies for their marketing purposes without consent. Complete details are in the Company's Privacy Policy, which will be provided with this insurance policy and upon request.

Acknowledgement and agreement

- If I make my initial payment by electronic funds transfer, check, draft, or other remittance, the coverage afforded under this policy is conditioned on payment to the Company by the financial institution. If the transfer, check, draft, or other remittance is not honored by the financial institution, the Company shall be deemed not to have accepted the payment and this policy shall be void.
- If I make my initial payment by credit card, the coverage afforded under this policy is conditioned on payment to the Company by the card issuer. I understand that if the Company is unable to collect my initial payment from the card issuer, the Company shall be deemed not to have accepted the payment and this policy shall be void. I also understand that if I authorize a credit card transaction for any payment other than the initial payment, this policy will be subject to cancellation for nonpayment of premium if the Company is unable to collect payment from the card issuer. The Company is deemed "unable to collect" in the following instances: (1) when I reach my credit limit on my credit card and the card issuer refuses the charge; (2) when the card issuer cancels or revokes my credit card; or (3) when the card issuer does not pay the Company, for any reason whatsoever, upon the Company's request.
- I acknowledge that insurance prices and products are different when purchased directly from Progressive or through agents/brokers.

Other charges

I understand that if I cancel this policy or if cancellation is due to non-payment of premium, any refund due will be computed on a ninety percent (90%) of daily pro rata basis. This is a daily, accelerated method of calculating short-rate earned premium on cancellations. When I renew this policy, I understand that the Company will refund premium following a cancellation on a daily pro rata basis.

I agree to pay the installment fees shown on my billing statement that become due during the policy term and each renewal policy term in accordance with the payment plan I have selected. I understand that the amount of these fees may change upon policy renewal or if I change my payment plan. Any change in the amount of installment fees will be reflected on my payment schedule.

I understand that a returned payment fee of $20.00 will be assessed to the balance due on my policy if any check offered in payment is not honored by my bank or other financial institution. Imposition of such charge shall not deem the Company to have accepted the check unconditionally.

I agree to pay a late fee of $10.00 when the payment for the minimum amount due is not received or postmarked by the premium due date. The amount of this fee may change upon policy renewal.

Applicant signature

I represent that I, Erin H Martin, am the person identified as the named insured and the first driver in the Drivers and Resident Relatives section of this application. I acknowledge and agree to the statements contained within this application.

I also acknowledge and agree that by typing my name in the designated boxes on the screen below this form and clicking "Continue", I am electronically signing this application, which will have the same legal effect as the execution of this document by a written signature and shall be valid evidence of my intent and agreement to be bound by its terms.

I understand that my name already appears in the signature line below because I chose to electronically sign this application.

Signature of named insured	**Date**
X Erin H Martin	April 6, 2013

PROGRESSIVE
P.O. BOX 31260
TAMPA, FL 33631

PROGRESSIVE DIRECT

Policy Number: 80904842
Underwritten by:
Progressive Direct Insurance Co
March 3, 2015
Policy Period: Apr 6, 2015 - Oct 6, 2015

progressive.com
Online Service
Make payments, check billing activity, update policy information or check status of a claim.

1-800-776-4737
For customer service and claims service, 24 hours a day, 7 days a week.

ERIN H MARTIN
2105 ST CROIX DR NW
ALBUQUERQUE, NM 87120

Auto Insurance Coverage Summary

This is your Renewal Declarations Page

The coverages, limits and policy period shown apply only if you pay for this policy to renew.

Your coverage begins on April 6, 2015 at 12:01 a.m. This policy expires on October 6, 2015 at 12:01 a.m.

Your insurance policy and any policy endorsements contain a full explanation of your coverage. The policy contract is form 9610D NM (02/07). The contract is modified by forms Z538 (10/08), 4884 (10/08) and A037 NM (01/14).

The contract is modified by form 2702 NM if the limits of Uninsured Motorist coverage appearing below are less than the Limits of Liability To Others coverage or if Uninsured Motorist coverage is rejected entirely.

Drivers and household residents

	Additional information
Erin H Martin	Named insured

Outline of coverage

General policy coverage	Limits	Deductible	Premium
Uninsured Motorist - Stacked			$79
Bodily Injury	$25,000 each person/$50,000 each accident		
Property Damage	$25,000 each accident	$250	
Total general policy coverage			**$79**

2012 FORD MUSTANG
VIN 1ZVBP8AM8C5201122
Primary use of the vehicle: Commute

	Limits	Deductible	Premium
Liability To Others			$339
Bodily Injury Liability	$25,000 each person/$50,000 each accident		
Property Damage Liability	$25,000 each accident		
Comprehensive	Actual Cash Value	$1,000	70
Collision	Actual Cash Value	$1,000	188
Total premium for 2012 FORD			**$597**
Total 6 month policy premium			**$676.00**

Continued

Exhibit 2

Premium discounts

Policy	
80904842	Electronic Funds Transfer (EFT), Home Owner, Online Quote, Continuous Insurance: Platinum, Paperless, Three-Year Safe Driving and Five-Year Accident Free

Lienholder information

We send certain notices such as coverage summaries and cancellation notices to the following:

Vehicle	Lienholder
2012 FORD MUSTANG 1ZVBP8AM8C5201122	U.S. Nm Fed Cu Albuquerque, NM 87103

Company officers

Secretary

PROGRESSIVE CLAIMS
4041 JEFFERSON PLAZA NE
SUITE 250
ALBUQUERQUE, NM 87109

PROGRESSIVE®

Underwritten By:
Progressive Direct Insurance Company

Claim Number: 15-2516928
Loss Date: April 13, 2015
Document Date: June 21, 2018
Page 1 of 1

LAW OFFICE OF KEDAR BHASKER
KEDAR BHASKER
1400 CENTRAL AVE SE
SUITE 2000
ABQ, NM 87106

claims.progressive.com
Track the status and details of your claim, e-mail your representative or report a new claim.

Claim Information

Your Client: Erin Martin

Please be advised that the UIM claim for Erin Martin has been reassigned to me. Please update your records to reflect my contact information.

This will acknowledge receipt of your demand.

Enclosed is a copy of your client's policy declarations. UM/UIM coverage is 25,000 per person 50,000 each accident, there is one vehicle on the Progressive policy.

As the UM/UIM limits are equal to the tortfeasor bodily injury limits, there does not appear to be an exposure to this policy.

Please advise if your client has additional UM/UIM coverage in the household that would make the Progressive policy primary. Enclosed is a declaration of vehicles in the household. Please complete and return with the applicable declarations page of any additional coverage available.

Please contact me if you have any questions.

Sincerely,

SHAUN PETERSON
Claims Department
1-505-346-8528
1-800-PROGRESSIVE (1-800-776-4737)
Fax: 1-505-344-2868
Form Z587 XX (01/08) NM

LAW OFFICE OF KEDAR BHASKER
1400 Central Avenue, SE
Suite 2000
Albuquerque, NM 87106

Kedar Bhasker, esq.
T: 505-720-2113
F: 505-998-6628
kedar@bhaskerlaw.com
bhaskerlaw.com

June 15, 2018

VIA US Mail

Progressive Insurance
Attn: Laura Negri
2155 West Pinnacle Peak
Suite 210
Phoenix, AZ 85027

My Client:	Erin Martin
Your Insured:	Erin Martin
Claim No:	152516928
Policy No.:	80904842-0
Date of Loss:	04/13/2015

Re: Policy limits demand – Rule 408 Confidential Settlement Communication

Dear Ms. Negri,

Please be advised that this office represents Ms. Erin Martin for injuries she sustained as a result of a motor vehicle accident on April 13, 2015. Ms. Martin demands the full limits of her underinsured motorist coverage.

Ms. Martin sustained serious injuries when she an at-fault driver ran a red light causing a hard-hitting impact. See Exhibit 1, Police Report. Mr. Vernon Ortiz recklessly and negligently drove the vehicle that was minimally insured and Ms. Martin was able to collect the bodily injury policy limits of $25,000.00. See Exhibit 2, Release.

As a result of Mr. Ortiz's careless driving, Ms. Martin sustained a SLAP tear of her left shoulder and requires surgery. See Exhibit 3, Medical Records and Bills (Bates Number Erin Martin000039). She also sustained right hip, back, and neck pain. Ms. Martin was also a surgical technician for over 13 years and had to quit her job due to her injuries. Her wage loss, around the time of the incident, was approximately $3,600.00. See Exhibit 4, Wage Loss.

At the time of the crash, Ms. Brown carried underinsured motorist coverage in the limits of $25,000.00 per person and $50,000.00 per accident.

Ms. Martin was not fully compensated for her injuries and future damages. Should Ms. Martin undergo surgery she would incur, at a conservative amount, up to $20,000.00 in medical costs.

To date, Ms. Martin incurred approximately $8,500.00 in medical bills. See Exhibit 3.

It is clear, considering that Ms. Martin requires shoulder surgery, that she is entitled to the underinsured motorist coverage policy limits of $25,000.00, as described on the face of her declaration page. Please let me know if you need any additional information to reach a conclusion on this claim.

Thank you for your attention to this matter and please do not hesitate to contact me.

Sincerely,

Kedar Bhasker, esq.

Cc: Erin Martin

Enclosures: One CD containing the following:

1. Police Report
2. Release (Allstate)
3. Medical Records and Bills
4. Wage Loss

HUB INTL INS SRVCS
PO BOX 90756
ALBUQUERQUE, NM 87199

PROGRESSIVE AUTO

Policy Number: 80246262
Underwritten by:
Progressive Preferred Insurance Co
April 6, 2016
Policy Period: May 10, 2016 - May 10, 2017

DIANE MARTINEZ-VILLA
6404 DENNISON SW
ALBUQUERQUE, NM 87121

1-505-828-4000
HUB INTL INS SRVCS
Contact your agent for personalized service.

progressiveagent.com
Online Service
Make payments, check billing activity, update policy information or check status of a claim.

1-800-274-4499
To report a claim.

Auto Insurance Coverage Summary

This is your Renewal Declarations Page

The coverages, limits and policy period shown apply only if you pay for this policy to renew.

Your coverage begins on May 10, 2016 at 12:01 a.m. This policy expires on May 10, 2017 at 12:01 a.m.

Your insurance policy and any policy endorsements contain a full explanation of your coverage. The policy limits shown for a vehicle may not be combined with the limits for the same coverage on another vehicle, unless the policy contract or endorsements indicate otherwise. The policy contract is form 9610A NM (02/07). The contract is modified by forms Z538 (10/08), 4884 (10/08) and A037 NM (01/14).

The contract is modified by form 2702 NM if the limits of Uninsured Motorist coverage appearing below are less than the Limits of Liability To Others coverage or if Uninsured Motorist coverage is rejected entirely.

Drivers and resident relatives

	Additional information
Diane Martinez-Villa	Named insured
Nicolas Villa	

Outline of coverage

General policy coverage	Limits	Deductible	Premium
Uninsured Motorist - Stacked			$475
Bodily Injury	$25,000 each person/$50,000 each accident		
Property Damage	$25,000 each accident	$250	
Total general policy coverage			**$475**

1997 BUICK SKYLARK 4 DOOR SEDAN
VIN: **1G4NJ52T3VC441971**
Garaging ZIP Code: 87121
Primary use of the vehicle: Commute

	Limits	Deductible	Premium
Liability To Others			$272
Bodily Injury Liability	$25,000 each person/$50,000 each accident		
Property Damage Liability	$25,000 each accident		
Total premium for 1997 BUICK			**$272**

1998 CHEVROLET C1500/K1500 CLUB CAB PICKUP
VIN: **2GCEC19R4W1102886**
Garaging ZIP Code: 87121
Primary use of the vehicle: Commute

	Limits	Deductible	Premium
Liability To Others			$336
Bodily Injury Liability	$25,000 each person/$50,000 each accident		
Property Damage Liability	$25,000 each accident		
Total premium for 1998 CHEVROLET			**$336**

2008 CHEVROLET EQUINOX 4 DOOR WAGON
VIN: **2CNDL63F886343620**
Garaging ZIP Code: 87121
Primary use of the vehicle: Commute

	Limits	Deductible	Premium
Liability To Others			$412
Bodily Injury Liability	$25,000 each person/$50,000 each accident		
Property Damage Liability	$25,000 each accident		
Comprehensive	Actual Cash Value	$500	160
Collision	Actual Cash Value	$500	305
Total premium for 2008 CHEVROLET			**$877**
Total 12 month policy premium			**$1,960.00**

Premium discounts

Policy	
80246262	Five-Year Accident Free, Five-Year Claim Free, Electronic Funds Transfer (EFT), Home Owner, Multi-Car, Continuous Insurance: Diamond, Paperless and Three-Year Safe Driving

Company officers

Secretary

CORBIN HILDEBRANDT, P.C.
Attorney at Law

Sycamore Square, Suite 2000
1400 Central Avenue S.E.
Albuquerque, New Mexico 87106
Telephone (505) 998-6626 Facsimile (505) 998-6628
e-mail: corbin@hildebrandtlawnm.com

February 5, 2018

RULE 408 COMMUNICATION – FOR POSSIBLE SETTLEMENT PURPOSES ONLY

BY EMAIL
Valina Hamilton
Progressive Insurance
2540 N. Telshor Blvd. Suite A
Las Cruces, NM 88011

Re: My Client: Diane Martinez
Policy No.: 80246262-8
Claim No.: 16-2439017
Date of Injury: July 30, 2016

Dear Ms. Hamilton:

Based on recent developments, on behalf of my client and your insured, Diane Martinez, I am making a claim for the underlying first $25,000.00 of UIM coverage for her catastrophic injuries occurring on July 30, 2016. We had sent you a Rule 408 Communication/Demand package about this case with details and associated case materials on February 2, 2017. Thank you.

Sincerely,

Corbin Hildebrandt

cc: Diane Martinez-Villa and Nicolas Villa

Exhibit 6

PROGRESSIVE CLAIMS
4041 JEFFERSON PLAZA NE
SUITE 250
ALBUQUERQUE, NM 87109

PROGRESSIVE®

Underwritten By:
Progressive Preferred Insurance Company

CORBIN HILDEBRANDT, P.C.
CORBIN HILDEBRANDT
1400 CENTRAL AVENUE SE
SUITE 2000
ALBUQUERQUE, NM 87106

Claim Number: 16-2439017
Loss Date: July 30, 2016
Document Date: February 19, 2018
Page 1 of 1

claims.progressive.com
Track the status and details of your claim, e-mail your representative or report a new claim.

Claim Information

Via fax and US Mail: 505-998-6628

Your Client: Diane Martinez-Villa

In response to your fax dated February 14, 2018.

In New Mexico, Underinsured Motorist Bodily Injury (UIM BI) is gap coverage. The total amount of coverage is reduced by the amount of the tort's limits.

Ms. Martinez-Villa had $75,000.00 in UIM BI coverage and she received $25,000.00 from the tort. As such, her total available coverage for this loss was $50,000.00.

Punitive damages are covered under UIM BI and we have paid the full benefits of $50,000.00 after the tort offset.

This is not new case law. Please advise us if you are in disagreement that New Mexico is a gap state.

TRACIE LAUBERT
Claims Department
1-505-346-8525
1-800-PROGRESSIVE (1-800-776-4737)
Fax: 1-505-344-2868

Form Z587 XX (01/08) - NM

Exhibit 7

HUB INTL INS SRVCS
PO BOX 90756
ALBUQUERQUE, NM 87199

PROGRESSIVE AUTO

Policy Number: 80246262
Underwritten by:
Progressive Preferred Insurance Co
April 6, 2016
Policy Period: May 10, 2016 - May 10, 2017

DIANE MARTINEZ-VILLA
6404 DENNISON SW
ALBUQUERQUE, NM 87121

1-505-828-4000
HUB INTL INS SRVCS
Contact your agent for personalized service.

progressiveagent.com
Online Service
Make payments, check billing activity, update policy information or check status of a claim.

1-800-274-4499
To report a claim.

Auto Insurance Coverage Summary

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The contract is modified by form 2702 NM if the limits of Uninsured Motorist coverage appearing below are less than the Limits of Liability To Others coverage or if Uninsured Motorist coverage is rejected entirely.

Drivers and resident relatives

	Additional information
Diane Martinez-Villa	Named insured
Nicolas Villa	

Outline of coverage

General policy coverage	Limits	Deductible	Premium
Uninsured Motorist - Stacked			$475
Bodily Injury	$25,000 each person/$50,000 each accident		
Property Damage	$25,000 each accident	$250	
Total general policy coverage			**$475**

1997 BUICK SKYLARK 4 DOOR SEDAN
VIN: **1G4NJ52T3VC441971**
Garaging ZIP Code: 87121
Primary use of the vehicle: Commute

	Limits	Deductible	Premium
Liability To Others			$272
Bodily Injury Liability	$25,000 each person/$50,000 each accident		
Property Damage Liability	$25,000 each accident		
Total premium for 1997 BUICK			**$272**

Continued

1998 CHEVROLET C1500/K1500 CLUB CAB PICKUP
VIN: **2GCEC19R4W1102886**
Garaging ZIP Code: 87121
Primary use of the vehicle: Commute

	Limits	Deductible	Premium
Liability To Others			$336
Bodily Injury Liability	$25,000 each person/$50,000 each accident		
Property Damage Liability	$25,000 each accident		
Total premium for 1998 CHEVROLET			**$336**

2008 CHEVROLET EQUINOX 4 DOOR WAGON
VIN: **2CNDL63F886343620**
Garaging ZIP Code: 87121
Primary use of the vehicle: Commute

	Limits	Deductible	Premium
Liability To Others			$412
Bodily Injury Liability	$25,000 each person/$50,000 each accident		
Property Damage Liability	$25,000 each accident		
Comprehensive	Actual Cash Value	$500	160
Collision	Actual Cash Value	$500	305
Total premium for 2008 CHEVROLET			**$877**
Total 12 month policy premium			**$1,960.00**

Premium discounts

Policy	
80246262	Five-Year Accident Free, Five-Year Claim Free, Electronic Funds Transfer (EFT), Home Owner, Multi-Car, Continuous Insurance: Diamond, Paperless and Three-Year Safe Driving

Company officers

Secretary

CORBIN HILDEBRANDT, P.C.
Attorney at Law

Sycamore Square, Suite 2000
1400 Central Avenue S.E.
Albuquerque, New Mexico 87106
Telephone (505) 998-6626 Facsimile (505) 998-6628
e-mail: corbin@hildebrandtlawnm.com

February 5, 2018

RULE 408 COMMUNICATION – FOR POSSIBLE SETTLEMENT PURPOSES ONLY

BY EMAIL
Valina Hamilton
Progressive Insurance
2540 N. Telshor Blvd. Suite A
Las Cruces, NM 88011

Re: My Client: Diane Martinez
Policy No.: 80246262-8
Claim No.: 16-2439017
Date of Injury: July 30, 2016

Dear Ms. Hamilton:

Based on recent developments, on behalf of my client and your insured, Diane Martinez, I am making a claim for the underlying first $25,000.00 of UIM coverage for her catastrophic injuries occurring on July 30, 2016. We had sent you a Rule 408 Communication/Demand package about this case with details and associated case materials on February 2, 2017. Thank you.

Sincerely,

Corbin Hildebrandt

cc: Diane Martinez-Villa and Nicolas Villa

Exhibit 6

FILED
2nd JUDICIAL DISTRICT COURT
Bernalillo County
11/16/2018 12:13 PM
James A. Noel
CLERK OF THE COURT
Dawna Jarvis

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

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

Plaintiffs,

v.

PROGRESSIVE PREFERRED INSURANCE COMPANY; PROGRESSIVE CLASSIC INSURANCE COMPANY; PROGRESSIVE CASUALTY INSURANCE COMPANY; PROGRESSIVE DIRECT INSURANCE COMPANY; PROGRESSIVE ADVANCED INSURANCE COMPANY; PROGRESSIVE SPECIALITY INSURANCE COMPANY; and PROGRESSIVE NORTHERN INSURANCE COMPANY,

Defendants.

No. D-202-CV-2018-03583

AMENDED CLASS ACTION COMPLAINT

1. Plaintiffs Diane Martinez and Erin Martin, for themselves and on behalf of the Class and Subclass defined herein, bring this Amended Class Action Complaint under Rule 1-023 NMRA to recover damages from 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 "Progressive") and state as follows:

JURISDICTION AND VENUE

2. This Court has jurisdiction under Article VI, Section 13 of the New Mexico Constitution.

3. Venue is proper under NMSA 1978, § 38-3-1(B).

PARTIES

4. Plaintiff Diane Martinez is, and was at all material times, a resident of Bernalillo County, New Mexico.

5. Plaintiff Erin Marin is, and was at all material times, a resident of Bernalillo County, New Mexico.

6. Defendant Progressive Preferred Insurance Company is a foreign for-profit corporation conducting business, including marketing and sale of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

7. Defendant Progressive Classic Insurance Company is a foreign for-profit corporation conducting business, including marketing and sale of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

8. Progressive Casualty Insurance Company is a foreign for-profit corporation conducting business, including marketing and sale of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

9. Progressive Direct Insurance Company is a foreign for-profit corporation conducting business, including marketing and sale of insurance policies, throughout the State of

New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

10. Progressive Advanced Insurance Company is a foreign for-profit corporation conducting business, including marketing and sale of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

11. Progressive Specialty Insurance Company is a foreign for-profit corporation conducting business, including marketing and sale of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

12. Progressive Northern Insurance Company is a foreign for-profit corporation conducting business, including marketing and sale of insurance policies, throughout the State of New Mexico. Process is properly served on it via its registered agent, the Office of Superintendent of Insurance.

FACTUAL ALLEGATIONS

Martin purchased an underinsured motorist policy from Progressive.

13. In 2013, Progressive issued Martin a motor vehicle insurance policy, which she had applied for and purchased. *See* Ex. 1, Martin App.

14. On March 3, 2015, Progressive renewed the insurance policy that it had issued to Martin. Ex. 2, Martin Declarations Page.

15. The policy that Progressive issued and which was in effect at the time of Martin's loss was Policy No. 80904842, effective from April 6, 2015 to October 6, 2015 ("Martin Policy"). *Id.*

16. The Martin Policy provided liability coverage on one vehicle in the amount of $25,000 per person/$50,000 per accident, per vehicle. *Id.*

17. The Martin Policy also purportedly provided uninsured and underinsured motorist coverage in the amount of up to $25,000.00 per person/$50,000.00 per accident, per vehicle. *Id.*

18. Progressive collected a premium of $79 for the uninsured and underinsured motorist coverage that Progressive purportedly offered for the sixth months from April 6, 2015 to October 6, 2015. *Id.*

19. Progressive collected from Martin premiums for uninsured and underinsured motorist coverage that it purportedly sold her since 2013.

Progressive's application and policy misrepresented the true value of minimal-limits underinsured motorist coverage and failed to properly inform Martin that the underinsured motorist coverage for which she had paid a premium was illusory.

20. Progressive's application and the Martin Policy failed to properly inform Martin about the offset described in *Schmick v. State Farm Mutual Automobile Insurance Company*, 704 P.2d 1092 (1985) (the *Schmick* offset), and did not meet Martin's reasonable expectations of being properly insured in the event she sustained significant injuries.

21. When Martin purchased automobile coverage, Progressive did not properly inform her of how underinsured motorist coverage is illusory in the event of a covered occurrence involving an underinsured driver.

22. Progressive failed to properly inform Martin of the extremely limited scenarios in which she might benefit from the purchase of minimum limits underinsured motorist coverage.

23. Progressive failed to properly inform Martin that she would most likely not benefit from paying a premium for minimal underinsured motorist coverage that was equal to the amount of a tortfeasor's liability coverage because, pursuant to the *Schmick* offset, Martin's

recovery of underinsured motorist benefits would be offset by the amount of the tortfeasor's liability coverage.

24. The application and the Martin Policy did not contain clear, unambiguous language regarding the effects of the *Schmick* offset.

25. Progressive failed to properly inform Martin about combined premium costs corresponding to the available levels of coverage and failed to offer Martin a fair opportunity to reconsider the decision to select a higher amount of liability and underinsured motorist coverage or reject such coverage altogether.

26. Progressive's application and application process did not alert Martin, nor make clear to the ordinarily and similarly situated insured, the fact that the *Schmick* offset drastically and materially diminished payment of benefits arising from a covered occurrence under the policy for accidents involving underinsured motorists.

27. Progressive's application did not alert Martin that she would be billed a premium for underinsured motorists coverage on a minimum limits policy, where there was no likelihood of her ever being able to recover the full amount of underinsured motorists coverage for which she was billed and a high likelihood she would be unable to collect any underinsured motorist coverage for which she was charged a premium.

28. Progressive's application and policy and statements by Progressive and its agents misrepresented the true value of the illusory minimal-limits underinsured motorist coverage that it advertised and sold to Martin and for which Progressive collected premiums.

Martin was injured in a collision with an underinsured motorist.

29. On April 13, 2015, Martin sustained bodily injuries and other damages arising from an automobile collision that occurred at the intersection of Unser Blvd and Tierra Pintada

NW, in Albuquerque, New Mexico, when an underinsured motorist, travelling at a high-rate of speed, ran a traffic signal and collided into Martin's vehicle.

30. Martinez was not at fault for the collision.

31. At the time of the collision, Martin was abiding by New Mexico and Albuquerque traffic laws.

32. As a result of the collision, Martin was transported to Presbyterian Hospital, and she suffered serious bodily injuries and other damages.

33. Martin suffered total damages well in excess of $50,000.00.

34. At the time of the collision, Martin was insured by the Martin Policy, which provided her with uninsured and underinsured motorist insurance coverage in the amount of up to $25,000.00 per person/$50,000.00 per accident.

35. After the collision, Martin made a claim with the tortfeasor's insurer and received $25,000, the full extent of liability coverage from the tortfeasor's insurer.

36. Like Martin, the tortfeasor also carried the minimum required liability insurance with limits of $25,000.00 per person, $50,000.00 per accident.

Martin makes a claim that Progressive denies.

37. Before the collision at issue, Progressive collected a premium for automobile coverage pursuant to the Martin Policy, under which Martin had a reasonable expectation that she carried underinsured motorist coverage of $25,000.00 per person, $50,000.00 per accident.

38. At the time of the collision, Martin was under the belief and had a reasonable expectation that she was entitled to underinsured motorist benefits pursuant to the application she had made and the insurance policy that Progressive had issued her.

39. After the collision, Martin reported the collision to Progressive and, through counsel, made a claim on the underinsured motorist coverage for which she had paid a premium.

40. Progressive, under a standardized business practice, opened a claim, assigned claim number 15-2516928, and randomly assigned the adjustment of the matter to one of its adjusters. Ex. 3, Progressive's Denial of Martin's Claim.

41. Martin, through counsel, demanded Progressive provide her with the underinsured motorist benefits that Progressive contracted with Martin to provide and for which she had paid a premium. Ex. 4, Martin's June 15, 2018 Demand.

42. Progressive denied Martin's underinsured motorist coverage claim in its entirety. *See* Ex. 3.

43. Progressive denied Martin's claim because (i) Progressive deducted from the coverage it owed Martin any sums paid by the tortfeasor's insurer and (ii) the tortfeasor's liability coverage limits equaled Martin's underinsured motorist coverage limits. *See id.*

44. Martin received nothing from Progressive, her underinsured motorist policy carrier.

45. Martin had a reasonable expectation that she would benefit from the insurance premiums Progressive collected from her. In fact, however, under her policy there were virtually no underinsured motorist benefits.

Martinez purchased an underinsured motorist policy from Progressive.

46. In 2003, Progressive issued Martinez a motor vehicle insurance policy, which she had applied for and purchased through the Manuel Lujan agency.

47. On May 10, 2016, Progressive renewed the insurance policy that it had issued. *See* Ex. 5, Martinez Declarations Page.

48. The policy that Progressive issued and which was in effect at the time of Martinez's loss was Policy No. 80246262-8, effective from May 10, 2016 to May 10, 2017 ("Martinez Policy"). *Id.*

49. The Martinez Policy provided liability coverage on three vehicles in the amount of $25,000 per person/$50,000 per accident, per vehicle. *Id.*

50. The Martinez Policy also purportedly provided uninsured and underinsured motorist coverage in the amount of up to $25,000.00 per person/$50,000.00 per accident, per vehicle, stackable for total uninsured and underinsured motorist coverage in the amount of up to $75,000.00 per person/$150,000.00. *Id.*

51. Progressive collected premium of $475 for the uninsured and underinsured motorist coverage that Progressive purportedly offered from May 10, 2016 to May 10, 2017. *Id.*

52. Progressive collected premiums for uninsured and underinsured motorist coverage since 2003.

Progressive's application and policy misrepresented the true value of minimal-limits underinsured motorist coverage and failed to properly inform Martinez that part of the underinsured motorist coverage for which she had paid a premium was illusory.

53. Progressive's application and the Martinez Policy failed to properly inform Martinez about the offset described in *Schmick v. State Farm Mutual Automobile Insurance Company*, 704 P.2d 1092 (1985) ("the *Schmick* offset"), and did not meet Martinez's reasonable expectations of being properly insured in the event she sustained significant injuries.

54. When Martinez purchased automobile coverage, Progressive did not properly inform her of how underinsured motorist coverage is illusory in the event of a covered occurrence involving an underinsured driver.

55. Progressive failed to properly inform Martinez that she would most likely not receive the full benefit from paying a premium for minimal underinsured motorist coverage on

each of her vehicles because, pursuant to the *Schmick* offset, Martinez's recovery of underinsured motorist benefits would be offset by the amount of the tortfeasor's liability coverage.

56. The application and the Martinez Policy did not contain clear, unambiguous language regarding the effects of the *Schmick* offset.

57. Progressive failed to properly inform Martinez about combined premium costs corresponding to the available levels of coverage and failed to offer Martinez a fair opportunity to reconsider the decision to select a higher amount of liability and underinsured motorist coverage or reject such coverage altogether.

58. Progressive's application and application process did not alert Martinez, nor make clear to the ordinarily and similarly situated insured, the fact that the *Schmick* offset significantly and materially diminished payment of benefits arising from a covered occurrence under the policy for accidents involving underinsured motorists.

59. Progressive's application did not alert Martinez that she would be billed a premium for underinsured motorists coverage on the minimum limits policies corresponding to each of her covered vehicles, where there was no likelihood of her ever being able to recover the full amount of underinsured motorists coverage for which she was charged and paid a premium.

60. Progressive's application and policy and statements by Progressive and its agents misrepresented the true value of the underinsured motorist coverage that it advertised and sold to Martinez and for which she paid premiums.

Martinez was injured in a collision with an underinsured motorist.

61. On July 30, 2016, Martinez sustained bodily injuries and other damages arising from an automobile collision that occurred on Zuni Drive SE, in Albuquerque, New Mexico,

when an underinsured motorist, travelling at a high-rate of speed, collided into the rear of Martinez's vehicle.

62. Martinez was not at fault for the collision.

63. At the time of the collision, Martinez was abiding by New Mexico and Albuquerque traffic laws.

64. As a result of the collision, Martinez suffered serious bodily injuries and other damages, including traumatic brain injury, which caused memory loss and adversely affected her ability to speak and process her thoughts.

65. Martinez sustained total actual damages well in excess of $75,000.00.

66. At the time of the collision, Martinez was insured by the Martinez Policy, which provided her with stacked uninsured and underinsured motorist insurance coverage in the amount of up to $75,000.00 per person/$150,000.00 per accident.

67. After the collision, Martinez made a claim with the tortfeasor's insurer and received $25,000.00, the full extent of liability coverage from the tortfeasor's insurer.

68. Like Martinez's liability coverage for each of the vehicles covered by the Martinez Policy, the tortfeasor also carried the minimum required liability insurance with limits of $25,000.00 per person, $50,000.00 per accident.

Martinez makes a claim that Progressive denies.

69. Before the collision at issue, Martinez had paid a premium for automobile coverage under Progressive's policy and had a reasonable expectation that she carried three minimum limits underinsured motorist coverage policies for each of her vehicles, stackable for a total amount of underinsured motorist coverage of $75,000.00 per person/$150,000.00 per accident.

70. At the time of the collision, Martinez was under the belief and had a reasonable expectation that she was entitled to underinsured motorist benefits pursuant to the application she had made and the insurance policy that Progressive had issued her.

71. After the collision, Martinez reported the collision to Progressive and, through counsel, made a claim on the underinsured motorist coverage for which she had paid a premium. *See* Ex. 6, Martinez's Demand for full UIM benefits.

72. Progressive, under a standardized business practice, opened a claim, assigned claim number 16-2439017, and randomly assigned the adjustment of the matter to one of its adjusters. *See* Ex. 7, Progressive's Denial of Martinez's Claim.

73. Martinez, through counsel, demanded Progressive provide her with the amount of $75,000.00 in underinsured motorist benefits that Progressive contracted with Martinez to provide and for which she had paid a premium. *See* Ex. 6, Martinez's Demand for full UIM benefits.

74. Progressive denied Martinez's underinsured motorist coverage claim for $75,000.00 and provided Martinez with $50,000 in underinsured motorist benefits only. Ex. 7, Progressive's Denial of Martinez's Claim.

75. Progressive denied Martinez's claim for $75,000.00 in underinsured motorist benefits because Progressive deducted from the coverage it owed Martin any sums paid by the tortfeasor's insurer. *Id.*

76. Martin did not receive the full $75,000.00 in underinsured motorist benefits from Progressive, her underinsured motorist policy carrier. *Id.*

77. Martin had a reasonable expectation that she would benefit from the insurance premiums Progressive collected. In fact, however, under her policy $25,000.00 of those purported benefits were illusory.

CLASS ACTION ALLEGATIONS

78. This action is properly maintainable as a class action pursuant to Rule 1-023 NMRA. The Class is defined as follows:

> All persons (and their heirs, executors, administrators, successors, and assigns) who paid a premium for an underinsured motorist coverage on a policy that was issued or renewed in New Mexico by Progressive and that purported to provide the statutorily required UM/UIM minimum limits of $25,000 per person/$50,000 per accident, but which effectively provides no underinsured motorists coverage, because of the statutory offset recognized in *Schmick v. State Farm Mutual Automobile Insurance Company*, 704 P.2d 1092 (1985).

79. Excluded from the Class are all of Defendants' present and former officers and directors, "Referees" serving the Evaluation Appeal process proposed below, Class counsel and their resident relatives, and Defendant's counsel of record and their resident relatives.

80. Pursuant to Rule 1-023(C)(4)(b), the Class properly includes a Subclass:

> All Class Members (and their heirs, executors, administrators, successors, and assigns) who paid a premium for an underinsured motorist coverage on a policy that was issued or renewed in New Mexico by Progressive and that purported to provide the statutorily required UM/UIM minimum limits of $25,000 per person/$50,000 per accident, but which in fact provides no underinsured motorists coverage, because of the statutory offset recognized in *Schmick v. State Farm Mutual Automobile Insurance Company*, 704 P.2d 1092 (1985), and who sustained damages in excess of an insured tortfeasor's policy limits, received the extent of all bodily injury liability limits available, made a claim with Progressive for underinsured motorist benefits and were denied those benefits by Progressive.

81. The proposed class and subclass definitions are precise, objective, and presently ascertainable, and it is administratively feasible for the Court to ascertain whether a particular individual is a member of the Class.

82. The members of the Class are so numerous that joinder of all members of the Class is impracticable.

83. Martin's and Martinez's claims are typical of the claims of members of the Class and Subclass.

84. Certification of the Class and Subclass is desirable and proper, because there are questions of law and fact in this case common to all members of the Class. Such common questions of law and fact include, but are not limited to:

a. Whether Progressive breached contractual obligations owed to their New Mexico policyholders;

b. Whether Progressive breached duties owed to New Mexican insureds under the implied covenant of good faith and fair dealing;

c. Whether Progressive violated NMSA 1978, §§ 59A-16-1 to -30;

d. Whether Progressive failed to disclose one or more material facts in connection with the marketing or sale of the insurance policies at issue;

e. Whether Progressive misled or deceived their policyholders in connection with the marketing or sale of the policies at issue;

f. How properly to construe Progressive's standard application forms and other standard form documents relative to the *Schmick* offset;

g. What remedies are available to Martin, Martinez, and Class Members in light of the answers to the foregoing questions; and

h. Whether and to what extent there may be merit in any affirmative defenses that Progressive might claim.

85. These common questions of law or fact common to members of the Class predominate over any questions affecting only individual members, and a class action is superior to all other available methods for the fair and efficient adjudication of the controversy. In this action:

86. Common or generalized proof will predominate with respect to the essential elements of the nine claims at issue.

87. The common questions of law or fact that pertain to the Class predominate over any individual questions and any individual issues do not overwhelm the common ones.

88. If any member or members of the Class has an individually controlling interest to prosecute a separate action, they may exclude themselves from the Class upon receipt of notice under Rule 1-023(C)(2).

89. The determination of the claims of all members of the Class in a single forum and in a single proceeding would be a fair, efficient and superior means of resolving the issues raised in this litigation.

90. Any difficulty encountered in the management of the proposed Class is reasonably manageable, especially when weighed against the impossibility of affording adequate relief to the members of the Class through numerous independent actions.

91. The need for proof of Martin's, Martinez's and Class members' damages will not cause individual issues to predominate over common questions. The amounts of losses can be efficiently demonstrated either at trial or as part of routine claims administration through accepted and court-approved methodologies with the assistance of court-appointed personnel, including Special Masters. Certain types or elements of damage are subject to proof using aggregate damage methodologies or simply rote calculation and summation.

92. The particular common issues of liability and the quantum of punitive damages or ratio of punitive damages to actual harm, are common to Class Members no matter what type of harm or injury was suffered by each Class Member.

93. Progressive has acted or refused to act on grounds generally applicable to Class Members, thereby making appropriate injunctive relief and corresponding declaratory relief with respect to Class Members. Martin and Martinez seek to establish the rights and obligations of the parties with respect to the claims at issue in this case and to enjoin Progressive from continuing to engage in those practices that violate the duties, contractual, and legal obligations owed to Martin, Martinez, and Class Members under New Mexico statutory and common law.

94. A class action is superior to maintenance of these claims on a claim-by-claim basis when all actions arise out of the same circumstances and course of conduct. A class action allows the Court to process all rightful claims in one proceeding. Class litigation is manageable considering the opportunity to afford reasonable notice of significant phases of the litigation to Class Members and permit distribution of any recovery. The prosecution of separate actions by individual Class Members, or the individual joinder of all Class Members in this action, is impracticable and would create a massive and unnecessary burden on the resources of the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of each Class Members, should that be determined to be appropriate.

95. The conduct of this action as a class action conserves the resources of the parties and the court system, protects the rights of each member of the class, and meets all due process requirements.

96. Certification of the Class with respect to particular common factual and legal issues concerning liability, as well as the necessary and appropriate quantum of punitive damages, or ratio of punitive damages to actual harm, is appropriate under Rule 1-023.

97. Certification of the Class is desirable and proper, because Martin and Martinez will fairly and adequately protect the interests of the Class that they seek to represent. There are no conflicts of interest between Martin's and Martinez's claims and those other members of the Class. Martin and Martinez are cognizant of their duties and responsibilities to the Class. Martin's and Martinez's attorneys are qualified, experienced, and able to conduct the proposed class action.

CLAIM 1
NEGLIGENCE

98. Martin and Martinez and Class Members incorporate by reference the preceding paragraphs as if they were fully stated herein.

99. Progressive had a duty to ensure Martin and Martinez and Class Members would be offered and obtain the maximum benefit of underinsured coverage and would not be sold illusory underinsured coverage.

100. Progressive had a duty to provide Martin and Martinez and Class Members coverage for which a premium was charged and collected.

101. It was reasonably foreseeable that the underinsured coverage sold to Martin and Martinez and Class Members was, in large part, illusory and that Progressive materially misrepresented the terms of underinsured coverage, and charged a premium for such illusory coverage.

102. A reasonably prudent insurance company exercising ordinary care would offer and sell underinsured coverage that was not illusory and would not materially misrepresent the

terms of underinsured coverage by properly informing its insured of the coverage they were purchasing and obtaining a written waiver acknowledging its insured consent to the purchase of illusory underinsured motorist coverage.

103. A reasonably prudent insurer would not charge a premium for coverage it intended to deny or did not provide.

104. Progressive's actions and inactions, through its agents, employees, or others on its behalf, were negligent in that they breached the standard of care required of an insurance company issuing auto policies in New Mexico.

105. As a result of Progressive's negligence, Martin and Martinez and Class Members, sustained actual damages for which Progressive is liable. Martin and Martinez and Class Members are entitled to punitive damages for actions of Progressive that were willful, reckless and wanton, and in bad faith.

CLAIM 2
VIOLATIONS OF THE NEW MEXICO UNFAIR TRADE PRACTICES ACT

106. Martin and Martinez and Class Members incorporate by reference the preceding paragraphs as if they were fully stated herein.

107. There was in effect, at all times material, a New Mexico statute commonly known as the New Mexico Unfair Trade Practices Act, N.M.S.A.1978, § 57-12-2 to 58-12-10 ("UPA"), including but not limited to Sections 57-12-2(D)(7), (D)(l4), (D)(15), (D)(l7) and Section 57-12-2(E), which prohibits a person selling insurance from engaging in unfair or deceptive trade practices:

> D. "unfair or deceptive trade practice" means an act specifically declared unlawful pursuant to the Unfair Trade Practices Act [Chapter 57, Article 12 NMSA 1978], a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services or in the extension of credit or in the

> collection of debts by a person in the regular course of his trade or commerce, which may, tends to or does deceive or mislead and includes but is not limited to:
>
> > (7) representing that the goods or services are of a particular standard, quality or grade or that goods are of a particular style or model if they are of another;
> >
> > (14) using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive;
> >
> > (15) stating that a transaction involves rights, remedies or obligations that it does not involve;
> >
> > (17) failure to deliver the quality or quantity of goods or services contracted for;
>
> E. "unconscionable trade practice" means an act or practice in connection with the sale, lease, rental or loan, or in connection with the offering for sale, lease, rental or loan, of any goods or services, including services provided by licensed professionals, or in the extension of credit or in the collection of debts which to a person's detriment: takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree; or results in a gross disparity between the value received by a person and the price paid.

108. Progressive failed to deliver the quality or quantity of services applied for and purchased and paid for by Martin and Martinez and other insureds by failing to provide insurance applications and policies containing sufficient information to properly inform a reasonably prudent person purchasing underinsured insurance, to which Martin and Martinez were under the reasonable belief that such coverage existed, and to pay claims for insurance benefits sold and solicited by Progressive.

109. In the regular course of its business, Progressive or its agents made knowingly made oral and written statements that were false and misleading in connection with the sale of underinsured motorist insurance in New Mexico.

110. These false and misleading representations may, tend to, and do deceive or mislead persons into believing that minimal-limits underinsured motorist coverage has a value that it does not have and into contracting for and paying premiums for underinsured motorist

policies that are illusory and do not provide the underinsured motorist coverage and benefits and Progressive's customers reasonably expected to receive.

111. In the regular course of its business, Progressive or its agents took advantage of its customers' lack of knowledge, ability, experience or capacity to a grossly unfair degree by marketing, advertising, selling, and receiving premium payments for illusory underinsured motorist coverage.

112. Since the New Mexico Supreme Court's opinion in *Progressive Northwest Insurance Co. v. Weed Warrior Services*, 2010-NMSC-050, 149 N.M. 157, 245 P.3d 1209, Progressive has been on notice that underinsured motorist policies provide no coverage at minimal limits, yet Progressive markets, advertises, sells, and received premiums for minimal limits underinsured motorist policies to and from customers, such as Martin and Martinez and Class Members, who do not know and do not understand that, if they purchase minimal limits underinsured motorist coverage, they are vanishingly unlikely to receive any underinsured motorist coverage.

113. Progressive's actions resulted in a gross disparity between the value of the illusory underinsured motorist coverage received by Martin and Martinez and Class Members and the price of the premiums that Martinez and Martin and Class Members paid for illusory underinsured motorist coverage.

114. Progressive, acting through its agents, adjusters, and employees, as set forth above, knowingly and willfully engaged in unfair trade practices in violation of Section 57-12-3, including but not limited to Sections 57-12-2(D)(7), (D)(l4), (D)(I5), (D)(17) and Section 57-12-2(E).

CLAIM 3
VIOLATIONS OF THE NEW MEXICO UNFAIR INSURANCE PRACTICES ACT

115. Martin and Martinez and Class Members incorporate by reference the preceding paragraphs as if they were fully stated herein.

116. There was in effect at all times material a New Mexico statute commonly known as the Insurance Code New Mexico Unfair Insurance Practices Act, NMSA 1978, §§ 59A-16-1 to 59A-16-30 ("UIPA").

117. The UIPA provides a private right of action to any person covered by the UIPA who has suffered damages as a result of a violation of that statute by an insurer or agent is granted a right to bring an action in district court to recover actual damages.

118. Martin and Martinez and Class Members were insured under the policy issued and adjusted by the Progressive.

119. Progressive owed Martin and Martinez and Class Members the duties of good faith, fair dealing, and the accompanying fiduciary obligations.

120. In the sale and provision of insurance, and in the handling of the underinsured motorist claim, Progressive failed to exercise good faith, unreasonably delayed payment, and failed to give the interests of Martin and Martinez and of Class Members the same consideration it gave their own interests.

121. Progressive's failure to pay anything on Martin's and Martinez's and Class Members' first $25,000.00 level of underinsured motorist claims was unfounded, unreasonable, and in bad faith.

122. Progressive misrepresented the terms of the policy sold and provided to Martin and Martinez and Class Members, and/or failed to disclose material facts reasonably necessary to

prevent other statements from being misleading and failed to implement and follow reasonable standards in the sale and provision of insurance.

123. Progressive's acts and failures to act were in reckless disregard of Martin's and Martinez's and Class Members' rights as an insured under the subject policy.

124. Progressive's acts and practices took advantage of the lack of knowledge and experience of Martin and Martinez and Class Members to a grossly unfair degree.

125. Progressive failed to abide by its statutory duties under the UIPA, and such violations constitute negligence per se.

126. Progressive misrepresented to Martin and Martinez and Class Members pertinent facts or policy provisions relating to coverages at issue, in violation of NMSA 1978, § 59A-16-20(A).

127. Progressive failed to acknowledge and act reasonably and promptly upon communications with respect to claims from Martin and Martinez and Class Members, arising under the policy, in violation of NMSA 1978, § 59A-16-20(B).

128. Progressive failed to adopt and implement reasonable standards for the prompt investigation and processing of Martin's and Martinez's and Class Members' claims arising under the policy, in violation of NMSA 1978, § 59A-16-20(C).

129. Progressive failed to properly affirm and pay the coverage for claims of its insured within a reasonable period of time after proof of loss requirements under the policy was completed and submitted by Martin and Martinez and Class Members in violation of NMSA 1978, § 59A-16-20(D).

130. Martinez and Martin and Class Members incorporate and adopt ¶¶ 135–143 of this Complaint as though fully stated herein and, therefore, allege that Progressive did not

attempt in good faith to effectuate prompt, fair and equitable settlement of Martin's and Martinez's and Class Members' claims in which liability has become reasonably clear, in violation of NMSA 1978, § 59A-16-20(E).

131. Progressive compelled Martin and Martinez and Class Members to institute litigation to recover amounts due under the policies by offering substantially less (i.e., nothing on the first level of $25,000.00 of UIM coverage withheld based on the *Schmick* offset) than the amounts claimed by Martin and Martinez and Class Members that will ultimately be recovered in actions brought by Martin and Martinez, in violation of NMSA 1978, § 59A-16-20(G).

132. Progressive failed to promptly provide Martin and Martinez and Class Members with a reasonable explanation of the basis relied upon in the policy in relation to the facts and the applicable law for denial of her claims, in violation of NMSA 1978, § 59A-16-20(N).

133. Progressive's failure to act in good faith and Progressive's violations of the Insurance Code and Trade Practices Act are proximate causes of damages sustained by Martin and Martinez and Class Members.

134. Progressive's conduct was in bad faith, malicious, willful, wanton, fraudulent and/or in reckless disregard of Martin's and Martinez's and Class Members' rights.

135. Martin and Martinez and Class Members are entitled to attorneys' fees and costs pursuant to NMSA 1978, §§ 59A-16-30 and 39-2-1. As a direct and proximate result of Defendants' acts, omissions policies, and conduct in violating UIPA, as set forth above, Martin and Martinez and Class Members have sustained damages, in addition to the damages common to all counts of this complaint, including but not limited to the actual damages incurred, the cost of prosecution of this lawsuit, attorneys' fees, and interest on the sums owed under the policy. These injuries and damages are ongoing, permanent, and are expected to continue in the future.

CLAIM 4
REFORMATION OF INSURANCE POLICY

136. Martin and Martinez and Class Members incorporate by reference the preceding paragraphs as though they were stated fully herein.

137. Martin and similarly-situated Class Members mistakenly believed that, by paying a premium for minimal limits underinsured motorist coverage, they would receive underinsured motorist coverage at minimal limits.

138. Martinez and similarly-situated Class Members mistakenly believed that, by paying a premium for minimal limits underinsured motorist stacked coverage, they would receive the underinsured motorist coverage up to the limits they had purchased.

139. Progressive and its agents knew that, because of the operation of the offset described in *Schmick*, Martin and similarly-situated Class Members were vanishingly unlikely to receive the minimal-limits underinsured motorist benefits that they contracted for and for which Progressive collected premiums.

140. Progressive and its agents also knew that, because of the operation of the offset described in *Schmick*, Martinez and similarly-situated Class Members were vanishingly unlikely to receive the first tier of underinsured motorist benefits, *i.e.*, $25,000 per person, $50,000 per accident, that they contracted for and for which Progressive collected premiums.

141. At the time of contract formation, Progressive and its agents inequitably misrepresented the value of minimal-limits underinsured motorist coverage and failed to inform Martin and similarly-situated Class Members that, because of the operation of the offset described in *Schmick*, they were vanishingly unlikely to receive the minimal-limits underinsured motorist benefits that they contracted for and for which Progressive collected premiums.

142. At the time of contract formation, Progressive and its agents also knew that, because of the operation of the offset described in *Schmick*, Martinez and similarly-situated Class Members were vanishingly unlikely to receive the first tier of minimal-limits underinsured motorist benefits, *i.e.*, $25,000 per person, $50,000 per accident, that they contracted for and for which Progressive collected premiums.

143. The inequitable failure of Progressive and its agents to inform Martin and similarly-situated Class Members that they were vanishingly unlikely to receive the minimal-limits underinsured motorist coverage caused Martin and similarly-situated Class Members to believe that, by paying a premium for minimal limits underinsured motorist coverage, they would receive underinsured motorist coverage at minimal limits.

144. The inequitable failure of Progressive and its agents to inform Martinez and similarly-situated Class Members that they were vanishingly unlikely to receive the first tier of minimal-limits underinsured motorist benefits, *i.e.*, $25,000 per person, $50,000 per accident, caused Martinez and similarly-situated Class Members to believe that, by paying a premium for non-minimal limits underinsured motorist coverage, they would receive the underinsured motorist coverage up to the limits they had purchased.

145. The insurance contracts respectively entered between Progressive and its agents, on the one hand, and Martin and Martinez and Class Members, on the other hand, do not express the intentions and reasonable beliefs of Martin and Martinez and Class Members that they would receive the underinsured motorist coverage that they contracted for and for which they paid premiums.

146. The court should reform the insurance contracts respectively entered between Progressive and its agents, on the one hand, and Martin and Martinez and Class Members, on the

other hand, to conform to the intentions and reasonable beliefs of Martin and Martinez and Class Members that they would receive the underinsured motorist coverage that they contracted for and for which Progressive collected premiums.

CLAIM 5
BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

147. Martin and Martinez and Class Members incorporate by reference the preceding paragraphs as though they were stated fully herein.

148. A special relationship exists between Progressive, on the one hand, and Martin and Martinez and Class Members, respectively, on the other hand, sufficient to impose a duty of good faith and fair dealing on Progressive owed to Martin and Martinez and Class Members.

149. Implicit in the contract of insurance between Martin and Martinez and Class Members, on the one hand, and Progressive on the other was the covenant that Defendants would, at all times, act in good faith and deal honestly and fairly with Martin and Martinez and Class Members.

150. Progressive breached the implied covenant of good faith and fair dealing, in one or more of the following ways, including but not limited to:

a. Failing to properly inform Martin and Martinez and Class Members of the illusory coverage it solicited and sold;

b. Charging a premium for coverage that was not provided;

c. Failing and refusing to disclose, admit and acknowledge some amount of underinsured motorist coverage;

d. Failing and refusing to fairly investigate, process, determine and decide Martin's and Martinez's and Class Members' claims under the policies referenced above; and

e. Failing and refusing to mediate, resolve, and settle Martin's and Martinez's and Class Members' underinsured motorist claims.

151. As a direct and proximate result of Progressive's acts and omissions alleged herein, Martin and Martinez and Class Members have suffered damages in an amount to be proven at trial.

152. Progressive's acts and omissions alleged herein and breach of the implied covenant of good faith and fair dealing were done intentionally, willfully, wantonly, grossly and/or with reckless disregard for the rights of Martin and Martinez and Class Members.

153. Accordingly, Martin and Martinez and Class Members are entitled to recover punitive damages in an amount to be determined by the jury and sufficient to punish Progressive for its misconduct and to deter others from similar conduct in the future.

CLAIM 6
UNJUST ENRICHMENT

154. Martin and Martinez and Class Members incorporate by reference the preceding paragraphs as though they were stated fully herein.

155. Progressive has applied the *Schmick* offset to its insureds' claims and denied the first level of underinsured motorist coverage in New Mexico since 1985. Progressive misled, deceived, and acted in an unfair manner for decades and retained benefits (*i.e.*, the payment of proper claims, and retained premium charges which were unearned) from thousands of New Mexico insureds for years, including Martin and Martinez and Class Members. The benefits Progressive denied their insureds allowed them to invest and enjoy the benefits of their deceptive and intentional conduct.

156. Martin and Martinez and Class Members are entitled to the value of the underinsured motorist benefits and out-of-pocket expenses under the equitable theory of unjust enrichment.

157. Progressive should be ordered to disgorge of the value of the underinsured motorist benefits it retained, the UIM premiums it received, and the unjust profit that it derived therefrom.

CLAIM 7
NEGLIGENT MISREPRESENTATION

158. Martin and Martinez and Class Members incorporate by reference the preceding paragraphs as though they were stated fully herein.

159. A special relationship exists between Progressive, on the one hand, and Martin and Martinez and Class Members, respectively, on the other hand, sufficient to impose a duty on Progressive to disclose accurate information to Martin and Martinez and Class Members.

160. As early as 1985, when the New Mexico Supreme Court published its decision in *Schmick v. State Farm*, Progressive knew that underinsured motorist coverage would be illusory under circumstances similar to those experienced by Martin and Martinez and Class Members.

161. Progressive, however, withheld this information from Martin and Martinez and Class Members and hid from them the fact that the underinsured motorist coverage as impacted by the *Schmick* offset is illusory.

162. From 1985 through the present, Progressive failed to disclose material facts and made material misrepresentations to Martin and Martinez and Class Members regarding illusory underinsured motorist coverage.

163. Progressive, by their failures and omissions, misrepresented underinsured motorist coverages through their standard and uniform applications and policies used by Martin

and Martinez and Class Members, which Progressive knew or should have known, were misleading and contained material misrepresentations.

164. Progressive's material omissions and misrepresentations were made to induce Martin and Martinez and Class Members to purchase underinsured motorist coverage that Progressive knew was illusory.

165. Martin and Martinez and Class Members relied on Progressive's material omissions and misrepresentations when deciding to purchase underinsured motorist coverage at the level of coverage they respectively purchased.

166. As a result of Progressive's misrepresentations and omissions, Progressive is liable to Martin and Martinez and Class Members for their damages flowing from those misrepresentations and omissions.

167. As a direct and proximate result of Progressive's negligent misrepresentations, Martin and Martinez and Class Members suffered economic loss, including the lost benefits of underinsured motorist coverage and out-of-pocket expenses. Martin and Martinez and Class Members seek the full measure of damages allowed under applicable law.

CLAIM 8
DECLARATORY JUDGMENT

168. Martin and Martinez and Class members incorporate by reference the preceding paragraphs as though they were stated fully herein.

169. An actual controversy exists between the parties thereby rendering declaratory relief proper under the New Mexico Declaratory Judgment Act, NMSA 1978, Sections 44-6-1 through 44-6-15.

170. Martin and Martinez and Class Members are entitled to a declaratory judgment establishing their respective rights and obligations of the parties with respect to the claims set forth herein.

CLAIM 9
INJUNCTIVE RELIEF

171. Martin and Martinez and Class Members incorporate by reference the preceding paragraphs as though they were stated fully herein.

172. Martin and Martinez and Class Members are entitled to injunctive relief requiring that Progressive be enjoined from continuing practices that violate the duties, contractual, and legal obligations owed to Martin and Martinez and Class Members.

173. Progressive must be compelled to stop their practice of failing to provide underinsured motorist coverage benefits equal to the limits of liability coverage where they failed to properly inform Martin and Martinez and Class Members throughout the application and policy underwriting process.

REQUEST FOR RELIEF

Martin and Martinez and Class Members request a jury trial and the following relief:

i. An order certifying this action to proceed as a class action, authorizing Martin and Martinez to represent the interests of the Class Members as appropriated and appointing undersigned counsel to represent the class.

ii. Awarding compensatory damages to Martin and Martinez and Class Members for the damages done to them by Progressive in an amount to be proven at trial;

iii. Awarding Martin and Martinez and Class Members damages from Progressive as a result of its violations of the UIPA, in an amount to be determined at trial for attorneys' fees and costs;

iv. Awarding disgorgement of the value of the underinsured motorist benefits retained by Progressive, the UIM premiums received by Progressive, the unjust profit that Progressive derived therefrom, and any other amounts to which Martin and Martinez and Class Members are equitably entitled under the theory of unjust enrichment;

v. Awarding treble damages in accordance with NMSA 1978, Sections 57-12-10(B) and any and all damages pursuant to NMSA 1978, Sections 57-12-1 through -26, which will deter Progressive and others from such unfair trade practices and wrongful conduct in the future and will punish them for the conduct set forth herein;

vi. Granting declaratory relief that establishes the rights and obligations of the parties with respect the claims set forth herein;

vii. Granting injunctive relief requiring Progressive to properly inform Martin and Martinez and Class Members throughout the application and policy underwriting process of the true value of the underinsured motorist benefits that are being advertised and sold;

viii. Awarding Martin and Martinez and Class Members their costs and expenses incurred in these actions, including reasonable attorney's fees, experts' fees, and costs; and

ix. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,
/s/ *Kedar Bhasker*
Kedar Bhasker
BHASKER LAW
1400 Central Ave. SE, Suite 2000
Albuquerque, NM 87106
Phone: 505 720-2113
Fax: 505 998-6628
Kedar@bhaskerlaw.com

Corbin Hilderbrandt
CORBIN HILDEBRANDT P.C.
Attorney for Plaintiff
1400 Central Ave. SE, Suite 2000
Albuquerque, NM 87106
Phone: 505 998-6626
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David Freedman
Jeremy D. Farris
FREEDMAN BOYD HOLLANDER
GOLDBERG URIAS & WARD, P.A.
20 First Plaza Center NW, Suite 700
Albuquerque, NM 87102
P: (505) 842-9960
daf@fbdlaw.com
jdf@fbdlaw.com

Counsel for the Plaintiffs

Application for Insurance

Please review and sign where indicated

PROGRESSIVE DIRECT

Policy Number: 80904842-0
Policyholder:
Erin H Martin
April 6, 2013

Policy and premium information for policy number 80904842-0

Insurance company:	Progressive Direct Insurance Co PO Box 31260 Tampa, FL 33631
Named insured:	Erin H Martin 2105 St. Croix Dr NW Albuquerque, NM 87120 Home: 1-505-730-9523
Financial responsibility vendor:	EXPERIAN 1-888-397-3742
Policy period:	Apr 6, 2013 - Oct 6, 2013
Effective date and time:	Apr 6, 2013 at 01:50 P.M. ET
Total policy premium:	$557.00
Initial payment required:	$92.86
Initial payment received:	$92.86
Payment plan:	6 payments

Drivers and resident relatives

You, your spouse, and all resident relatives 15 years of age or older, all regular drivers of the vehicles described in this application, and all children who live away from home who drive these vehicles, even occasionally, are listed below. Your total policy premium can be affected by all persons of driving age. While designating drivers as List Only or Excluded may increase policy premium, the violation and accident history of Excluded and List Only drivers does not affect premium.

Name	Date of birth	Sex	Marital status	Relationship
Erin H Martin Driver status: Rated Education level: Vocation/trade degree/military training Occupation: Assistant/Technician/Therapist	Nov 30, 1970	Female	Married	Insured
Titus L Martin Driver status: Rated Education level: College degree Occupation: Customer Service Representative	Dec 26, 1969	Male	Married	Spouse

Total residents: 3

The total number of residents currently residing in your household, including listed drivers, young children, roommates or anyone else living in the home for 60 days or more during the next 12 months.

Policy Number: 80904842-0
Erin H Martin

Outline of coverage

Your insurance policy and any policy endorsements contain a full explanation of your coverage. The policy limits shown for a vehicle may not be combined with the limits for the same coverage on another vehicle, unless the policy contract or endorsements indicate otherwise.

2007 MITSUBISHI RAIDER CREW PICKUP
VIN: **1Z7HT28K47S161742**
Garaging ZIP Code: 87120
Primary use of the vehicle: Commute
This vehicle is currently enrolled in the Snapshot℠ Program.

	Limits	Deductible	Premium
Liability To Others			$178
Bodily Injury Liability	$25,000 each person/$50,000 each accident		
Property Damage Liability	$25,000 each accident		
Uninsured Motorist			56
Bodily Injury	$25,000 each person/$50,000 each accident		
Property Damage	$10,000 each accident	$250	
Comprehensive	Actual Cash Value	$1,000	27
Collision	Actual Cash Value	$1,000	70
Total premium for 2007 MITSUBISHI			**$331**

2000 HONDA CR-V 4 DOOR WAGON
VIN: **JHLRD2844YC003947**
Garaging ZIP Code: 87120
Primary use of the vehicle: Commute
This vehicle is currently enrolled in the Snapshot℠ Program.

	Limits	Deductible	Premium
Liability To Others			$176
Bodily Injury Liability	$25,000 each person/$50,000 each accident		
Property Damage Liability	$25,000 each accident		
Uninsured Motorist			50
Bodily Injury	$25,000 each person/$50,000 each accident		
Property Damage	$10,000 each accident	$250	
Total premium for 2000 HONDA			**$226**
Total 6 month policy premium			**$557.00**

Premium discounts

Policy	
80904842-0	Five-Year Accident Free, Three-Year Safe Driving, Continuous Insurance: Platinum, Online Quote, Paperless, Home Owner, Multi-Car, Electronic Funds Transfer (EFT) and Online Signature - First Policy Period Only
Vehicle	
2007 MITSUBISHI RAIDER	Passive Anti-Theft Device

Driving history

Progressive uses driving history to determine your rate. There are no accidents or violations for drivers on this policy.

Risk tier information

Prior insurance:	Yes
Prior insurance carrier:	Farmers Insurance Exchange
Bodily injury limits:	State Minimum Limits
Comp claims:	0
Not at-fault accidents:	0

Lienholder information

Vehicle	Lienholder
2007 MITSUBISHI RAIDER 1Z7HT28K47S161742	WELLS FARGO AUTO(LN) CORAOPOLIS, PA 15108

Application agreement

Verification of content

I declare that the statements contained herein are true to the best of my knowledge and belief and do agree to pay any surcharges applicable under the Company rules which are necessitated by inaccurate statements. I declare that no persons other than those listed in this application regularly operate the vehicle(s) described in this application. I declare that none of the vehicles listed in this application will be used to carry persons or property for compensation or a fee, or for retail or wholesale delivery, including, but not limited to, the pickup, transport, or delivery of magazines, newspapers, mail, or food. I understand that this policy may be rescinded and declared void if this application contains any false information or if any information that would alter the Company's exposure is omitted or misrepresented.

ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO CIVIL FINES AND CRIMINAL PENALTIES.

Notice of information practices

I understand that to calculate an accurate price for my insurance, the Company may obtain information from third parties, such as consumer reporting agencies that provide driving, claims and credit histories. The Company may use a credit-based insurance score based on the information contained in the credit history. The Company or its affiliates may obtain new or updated information to calculate my renewal premium or service my insurance. I may access information about me and correct it if inaccurate. In some cases, the law permits the Company to disclose the information it collects without authorization. However, the Company will not share personal information with nonaffiliated companies for their marketing purposes without consent. Complete details are in the Company's Privacy Policy, which will be provided with this insurance policy and upon request.

Acknowledgement and agreement

- If I make my initial payment by electronic funds transfer, check, draft, or other remittance, the coverage afforded under this policy is conditioned on payment to the Company by the financial institution. If the transfer, check, draft, or other remittance is not honored by the financial institution, the Company shall be deemed not to have accepted the payment and this policy shall be void.
- If I make my initial payment by credit card, the coverage afforded under this policy is conditioned on payment to the Company by the card issuer. I understand that if the Company is unable to collect my initial payment from the card issuer, the Company shall be deemed not to have accepted the payment and this policy shall be void. I also understand that if I authorize a credit card transaction for any payment other than the initial payment, this policy will be subject to cancellation for nonpayment of premium if the Company is unable to collect payment from the card issuer. The Company is deemed "unable to collect" in the following instances: (1) when I reach my credit limit on my credit card and the card issuer refuses the charge; (2) when the card issuer cancels or revokes my credit card; or (3) when the card issuer does not pay the Company, for any reason whatsoever, upon the Company's request.
- I acknowledge that insurance prices and products are different when purchased directly from Progressive or through agents/brokers.

Other charges

I understand that if I cancel this policy or if cancellation is due to non-payment of premium, any refund due will be computed on a ninety percent (90%) of daily pro rata basis. This is a daily, accelerated method of calculating short-rate earned premium on cancellations. When I renew this policy, I understand that the Company will refund premium following a cancellation on a daily pro rata basis.

I agree to pay the installment fees shown on my billing statement that become due during the policy term and each renewal policy term in accordance with the payment plan I have selected. I understand that the amount of these fees may change upon policy renewal or if I change my payment plan. Any change in the amount of installment fees will be reflected on my payment schedule.

I understand that a returned payment fee of $20.00 will be assessed to the balance due on my policy if any check offered in payment is not honored by my bank or other financial institution. Imposition of such charge shall not deem the Company to have accepted the check unconditionally.

I agree to pay a late fee of $10.00 when the payment for the minimum amount due is not received or postmarked by the premium due date. The amount of this fee may change upon policy renewal.

Applicant signature

I represent that I, Erin H Martin, am the person identified as the named insured and the first driver in the Drivers and Resident Relatives section of this application. I acknowledge and agree to the statements contained within this application.

I also acknowledge and agree that by typing my name in the designated boxes on the screen below this form and clicking "Continue", I am electronically signing this application, which will have the same legal effect as the execution of this document by a written signature and shall be valid evidence of my intent and agreement to be bound by its terms.

I understand that my name already appears in the signature line below because I chose to electronically sign this application.

Signature of named insured	**Date**
X Erin H Martin	April 6, 2013

PROGRESSIVE
P.O. BOX 31260
TAMPA, FL 33631

PROGRESSIVE DIRECT

Policy Number: 80904842
Underwritten by:
Progressive Direct Insurance Co
March 3, 2015
Policy Period: Apr 6, 2015 - Oct 6, 2015

progressive.com
Online Service
Make payments, check billing activity, update policy information or check status of a claim.

1-800-776-4737
For customer service and claims service, 24 hours a day, 7 days a week.

ERIN H MARTIN
2105 ST CROIX DR NW
ALBUQUERQUE, NM 87120

Auto Insurance Coverage Summary

This is your Renewal Declarations Page

The coverages, limits and policy period shown apply only if you pay for this policy to renew.

Your coverage begins on April 6, 2015 at 12:01 a.m. This policy expires on October 6, 2015 at 12:01 a.m.

Your insurance policy and any policy endorsements contain a full explanation of your coverage. The policy contract is form 9610D NM (02/07). The contract is modified by forms Z538 (10/08), 4884 (10/08) and A037 NM (01/14).

The contract is modified by form 2702 NM if the limits of Uninsured Motorist coverage appearing below are less than the Limits of Liability To Others coverage or if Uninsured Motorist coverage is rejected entirely.

Drivers and household residents

	Additional information
Erin H Martin	Named insured

Outline of coverage

General policy coverage	Limits	Deductible	Premium
Uninsured Motorist - Stacked			$79
Bodily Injury	$25,000 each person/$50,000 each accident		
Property Damage	$25,000 each accident	$250	
Total general policy coverage			**$79**

2012 FORD MUSTANG
VIN 1ZVBP8AM8C5201122
Primary use of the vehicle: Commute

	Limits	Deductible	Premium
Liability To Others			$339
Bodily Injury Liability	$25,000 each person/$50,000 each accident		
Property Damage Liability	$25,000 each accident		
Comprehensive	Actual Cash Value	$1,000	70
Collision	Actual Cash Value	$1,000	188
Total premium for 2012 FORD			**$597**
Total 6 month policy premium			**$676.00**

Continued

Premium discounts

Policy	
80904842	Electronic Funds Transfer (EFT), Home Owner, Online Quote, Continuous Insurance: Platinum, Paperless, Three-Year Safe Driving and Five-Year Accident Free

Lienholder information

We send certain notices such as coverage summaries and cancellation notices to the following:

Vehicle	Lienholder
2012 FORD MUSTANG 1ZVBP8AM8C5201122	U.S. Nm Fed Cu Albuquerque, NM 87103

Company officers

Secretary

PROGRESSIVE CLAIMS
4041 JEFFERSON PLAZA NE
SUITE 250
ALBUQUERQUE, NM 87109

PROGRESSIVE®

Underwritten By:
Progressive Direct Insurance Company

Claim Number: 15-2516928
Loss Date: April 13, 2015
Document Date: June 21, 2018
Page 1 of 1

LAW OFFICE OF KEDAR BHASKER
KEDAR BHASKER
1400 CENTRAL AVE SE
SUITE 2000
ABQ, NM 87106

claims.progressive.com
Track the status and details of your claim, e-mail your representative or report a new claim.

Claim Information

Your Client: Erin Martin

Please be advised that the UIM claim for Erin Martin has been reassigned to me. Please update your records to reflect my contact information.

This will acknowledge receipt of your demand.

Enclosed is a copy of your client's policy declarations. UM/UIM coverage is 25,000 per person 50,000 each accident, there is one vehicle on the Progressive policy.

As the UM/UIM limits are equal to the tortfeasor bodily injury limits, there does not appear to be an exposure to this policy.

Please advise if your client has additional UM/UIM coverage in the household that would make the Progressive policy primary. Enclosed is a declaration of vehicles in the household. Please complete and return with the applicable declarations page of any additional coverage available.

Please contact me if you have any questions.

Sincerely,

SHAUN PETERSON
Claims Department
1-505-346-8528
1-800-PROGRESSIVE (1-800-776-4737)
Fax: 1-505-344-2868
Form Z587 XX (01/08) NM

LAW OFFICE OF KEDAR BHASKER
1400 Central Avenue, SE
Suite 2000
Albuquerque, NM 87106

Kedar Bhasker, esq.
T: 505-720-2113
F: 505-998-6628
kedar@bhaskerlaw.com
bhaskerlaw.com

June 15, 2018

VIA US Mail

Progressive Insurance
Attn: Laura Negri
2155 West Pinnacle Peak
Suite 210
Phoenix, AZ 85027

My Client:	Erin Martin
Your Insured:	Erin Martin
Claim No:	152516928
Policy No.:	80904842-0
Date of Loss:	04/13/2015

Re: Policy limits demand – Rule 408 Confidential Settlement Communication

Dear Ms. Negri,

Please be advised that this office represents Ms. Erin Martin for injuries she sustained as a result of a motor vehicle accident on April 13, 2015. Ms. Martin demands the full limits of her underinsured motorist coverage.

Ms. Martin sustained serious injuries when she an at-fault driver ran a red light causing a hard-hitting impact. See Exhibit 1, Police Report. Mr. Vernon Ortiz recklessly and negligently drove the vehicle that was minimally insured and Ms. Martin was able to collect the bodily injury policy limits of $25,000.00. See Exhibit 2, Release.

As a result of Mr. Ortiz's careless driving, Ms. Martin sustained a SLAP tear of her left shoulder and requires surgery. See Exhibit 3, Medical Records and Bills (Bates Number Erin Martin000039). She also sustained right hip, back, and neck pain. Ms. Martin was also a surgical technician for over 13 years and had to quit her job due to her injuries. Her wage loss, around the time of the incident, was approximately $3,600.00. See Exhibit 4, Wage Loss.

At the time of the crash, Ms. Brown carried underinsured motorist coverage in the limits of $25,000.00 per person and $50,000.00 per accident.

Ms. Martin was not fully compensated for her injuries and future damages. Should Ms. Martin undergo surgery she would incur, at a conservative amount, up to $20,000.00 in medical costs.

To date, Ms. Martin incurred approximately $8,500.00 in medical bills. See Exhibit 3.

It is clear, considering that Ms. Martin requires shoulder surgery, that she is entitled to the underinsured motorist coverage policy limits of $25,000.00, as described on the face of her declaration page. Please let me know if you need any additional information to reach a conclusion on this claim.

Thank you for your attention to this matter and please do not hesitate to contact me.

Sincerely,

Kedar Bhasker, esq.

Cc: Erin Martin

Enclosures: One CD containing the following:

1. Police Report
2. Release (Allstate)
3. Medical Records and Bills
4. Wage Loss

HUB INTL INS SRVCS
PO BOX 90756
ALBUQUERQUE, NM 87199

PROGRESSIVE AUTO

Policy Number: 80246262
Underwritten by:
Progressive Preferred Insurance Co
April 6, 2016
Policy Period: May 10, 2016 - May 10, 2017

DIANE MARTINEZ-VILLA
6404 DENNISON SW
ALBUQUERQUE, NM 87121

1-505-828-4000
HUB INTL INS SRVCS
Contact your agent for personalized service.

progressiveagent.com
Online Service
Make payments, check billing activity, update policy information or check status of a claim.

1-800-274-4499
To report a claim.

Auto Insurance Coverage Summary

This is your Renewal Declarations Page

The coverages, limits and policy period shown apply only if you pay for this policy to renew.

Your coverage begins on May 10, 2016 at 12:01 a.m. This policy expires on May 10, 2017 at 12:01 a.m.

Your insurance policy and any policy endorsements contain a full explanation of your coverage. The policy limits shown for a vehicle may not be combined with the limits for the same coverage on another vehicle, unless the policy contract or endorsements indicate otherwise. The policy contract is form 9610A NM (02/07). The contract is modified by forms Z538 (10/08), 4884 (10/08) and A037 NM (01/14).

The contract is modified by form 2702 NM if the limits of Uninsured Motorist coverage appearing below are less than the Limits of Liability To Others coverage or if Uninsured Motorist coverage is rejected entirely.

Drivers and resident relatives

	Additional information
Diane Martinez-Villa	Named insured
Nicolas Villa	

Outline of coverage

General policy coverage	Limits	Deductible	Premium
Uninsured Motorist - Stacked			$475
Bodily Injury	$25,000 each person/$50,000 each accident		
Property Damage	$25,000 each accident	$250	
Total general policy coverage			**$475**

1997 BUICK SKYLARK 4 DOOR SEDAN
VIN: **1G4NJ52T3VC441971**
Garaging ZIP Code: 87121
Primary use of the vehicle: Commute

	Limits	Deductible	Premium
Liability To Others			$272
Bodily Injury Liability	$25,000 each person/$50,000 each accident		
Property Damage Liability	$25,000 each accident		
Total premium for 1997 BUICK			**$272**

1998 CHEVROLET C1500/K1500 CLUB CAB PICKUP
VIN: **2GCEC19R4W1102886**
Garaging ZIP Code: 87121
Primary use of the vehicle: Commute

	Limits	Deductible	Premium
Liability To Others			$336
Bodily Injury Liability	$25,000 each person/$50,000 each accident		
Property Damage Liability	$25,000 each accident		
Total premium for 1998 CHEVROLET			**$336**

2008 CHEVROLET EQUINOX 4 DOOR WAGON
VIN: **2CNDL63F886343620**
Garaging ZIP Code: 87121
Primary use of the vehicle: Commute

	Limits	Deductible	Premium
Liability To Others			$412
Bodily Injury Liability	$25,000 each person/$50,000 each accident		
Property Damage Liability	$25,000 each accident		
Comprehensive	Actual Cash Value	$500	160
Collision	Actual Cash Value	$500	305
Total premium for 2008 CHEVROLET			**$877**
Total 12 month policy premium			**$1,960.00**

Premium discounts

Policy	
80246262	Five-Year Accident Free, Five-Year Claim Free, Electronic Funds Transfer (EFT), Home Owner, Multi-Car, Continuous Insurance: Diamond, Paperless and Three-Year Safe Driving

Company officers

Secretary

CORBIN HILDEBRANDT, P.C.
Attorney at Law

Sycamore Square, Suite 2000
1400 Central Avenue S.E.
Albuquerque, New Mexico 87106
Telephone (505) 998-6626 Facsimile (505) 998-6628
e-mail: corbin@hildebrandtlawnm.com

February 5, 2018

RULE 408 COMMUNICATION – FOR POSSIBLE SETTLEMENT PURPOSES ONLY

BY EMAIL
Valina Hamilton
Progressive Insurance
2540 N. Telshor Blvd. Suite A
Las Cruces, NM 88011

Re: My Client: Diane Martinez
Policy No.: 80246262-8
Claim No.: 16-2439017
Date of Injury: July 30, 2016

Dear Ms. Hamilton:

Based on recent developments, on behalf of my client and your insured, Diane Martinez, I am making a claim for the underlying first $25,000.00 of UIM coverage for her catastrophic injuries occurring on July 30, 2016. We had sent you a Rule 408 Communication/Demand package about this case with details and associated case materials on February 2, 2017. Thank you.

Sincerely,

Corbin Hildebrandt

cc: Diane Martinez-Villa and Nicolas Villa

Exhibit 6

PROGRESSIVE CLAIMS
4041 JEFFERSON PLAZA NE
SUITE 250
ALBUQUERQUE, NM 87109

PROGRESSIVE®

Underwritten By:
Progressive Preferred Insurance Company

CORBIN HILDEBRANDT, P.C.
CORBIN HILDEBRANDT
1400 CENTRAL AVENUE SE
SUITE 2000
ALBUQUERQUE, NM 87106

Claim Number: 16-2439017
Loss Date: July 30, 2016
Document Date: February 19, 2018
Page 1 of 1

claims.progressive.com
Track the status and details of your claim, e-mail your representative or report a new claim.

Claim Information

Via fax and US Mail: 505-998-6628

Your Client: Diane Martinez-Villa

In response to your fax dated February 14, 2018.

In New Mexico, Underinsured Motorist Bodily Injury (UIM BI) is gap coverage. The total amount of coverage is reduced by the amount of the tort's limits.

Ms. Martinez-Villa had $75,000.00 in UIM BI coverage and she received $25,000.00 from the tort. As such, her total available coverage for this loss was $50,000.00.

Punitive damages are covered under UIM BI and we have paid the full benefits of $50,000.00 after the tort offset.

This is not new case law. Please advise us if you are in disagreement that New Mexico is a gap state.

TRACIE LAUBERT
Claims Department
1-505-346-8525
1-800-PROGRESSIVE (1-800-776-4737)
Fax: 1-505-344-2868

Form Z587 XX (01/08) - NM

Exhibit 7