UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

KENNETH OKONSKI, et al., individually and on behalf of all others similarly situated, Plaintiffs, vs. Progressive CASUALTY INSURANCE COMPANY, Defendant.	)	Case No. 1:23-cv-01548-PAG Hon. Judge Patricia A. Gaughan

PRELIMINARY APPROVAL ORDER

Before the Court is Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (ECF Nos. 42) (the "Motion"), the accompanying Memorandum of Law in Support thereof (ECF No. 43), and the proposed Settlement Agreement between Plaintiffs Kenneth Okonski, Bradley Okonski, Edward Reis, Tosif Khan, Kulsoom Tosif, Eduardo Barbosa, Rebecca Johnson, Stephen Johnson, Roxanne Trigg, Giovanni Madaffari, and Dodie Waden (collectively, "Plaintiffs") and Defendant Progressive Casualty Insurance Company ("Progressive" or "Defendant") (together with Plaintiffs, the "Parties"), attached as Exhibit 1 to the Declaration of William B. Federman in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (ECF No. 43) (the "Settlement Agreement").[1] The Motion is ripe for adjudication.

[1] Unless otherwise stated, all capitalized terms shall have the definitions set forth in the Settlement Agreement attached as Exhibit 1 to the Declaration of William B. Federman in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (ECF No. 44-1). Citations to the Settlement Agreement will be abbreviated as "SA, ¶ ___."

I. FACTUAL AND PROCEDURAL HISTORY

This is a class action arising from a data security incident. On May 19, 2023, Progressive received written notification from one of its third-party call centers that an undisclosed number of the call center's employees improperly shared their Progressive access credentials with unauthorized individuals who purportedly performed the employees' call center job duties (the "Security Incident"). (Consolidated Amended Class Action Complaint ("Compl."), ¶ 3, ECF No. 27). The information potentially accessed without authorization during the Security Incident included personally identifiable information ("PII") such as, first and last names, dates of birth, driver's license numbers, email addresses, phone numbers, financial account numbers, routing numbers, financial institution names, credit/debit card numbers, expiration dates, and Social Security numbers. (*Id.* ¶ 6). Plaintiffs received formal notice of the Security Incident on or around August 1, 2023, and commenced this class action litigation, alleging Defendant failed to sufficiently protect their PII. (*Id.* ¶¶ 2, 8).

After months of litigation and several weeks of settlement negotiations, the Parties reached a proposed Settlement. The Settlement provides a non-reversionary Settlement Fund of $3,250,000.00 that will: (1) reimburse Settlement Class Members for up to $5,000.00 for Documented Losses (SA, ¶ 28(b)); and (2) provide three (3) years of Credit Monitoring and Insurance Services ("CMIS") (*id.* ¶ 29). Additionally, and in lieu of receiving a reimbursement for Documented Losses, Settlement Class Members may elect to receive a Cash Award, which is a pro rata cash payment from the Net Settlement Fund after payment of all valid CMIS claims and Documented Loss Payments. (*Id.* ¶¶ 28(a), 30).

II. DISCUSSION

Having fully considered the Motion (ECF No. 42), the accompanying Memorandum of Law (ECF No. 43), the Declaration of William B. Federman (ECF No. 44), and the Settlement Agreement (ECF No. 44-1), the Court hereby **GRANTS** the Motion and **ORDERS** as follows:

A. Jurisdiction.

The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) and personal jurisdiction over the parties before it. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

B. Class Certification for Settlement Purposes Only.

"While the district court has broad discretion in certifying class actions, it must exercise that discretion within the framework of Rule 23." *Coleman v. Gen. Motors Acceptance Corp.*, 296 F.3d 443, 446 (6th Cir. 2002) (citing *Cross v. Nat'l Tr. Life Ins. Co.*, 553 F.2d 1026, 1029 (6th Cir. 1977)). As the moving party, Plaintiffs bear the burden of proof to establish that certification is proper. *See In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1079 (6th Cir. 1996) (6th Cir. 1996) (citing *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 161 (1982); *Senter v. Gen. Motors Corp.*, 532 F.2d 511, 522 (6th Cir. 1976)). Fed. R. Civ. P. 23(a) dictates requirements of numerosity, commonality, typicality, and adequacy for all class action lawsuits, and a court must conduct "a rigorous analysis[] that the prerequisites of Rule 23(a) have been satisfied." Fed. R. Civ. P. 23(a); *Falcon*, 457 U.S. at 161. If all of these requirements are not satisfied, certification must be denied. *See Ball v. Union Carbide Corp.*, 385 F.3d 713, 727 (6th Cir. 2004) (citing *Sprague v. Gen. Motors Corp.*, 133 F.3d 388, 397 (6th Cir. 1998) (en banc)).

The same requirements apply in the context of a settlement, and a court should apply the Fed. R. Civ. P. 23 analysis separate from a fairness analysis. *See Amchem Prods., Inc. v. Windsor*,

521 U.S. 591, 620–22 (1997). Thus, in addition to Fed. R. Civ. P. 23(a), the moving party "must demonstrate that the class fits under one of the three subdivisions of Rule 23(b)." Fed. R. Civ. P 23(b); *Coleman*, 296 F.3d at 446.

1. Rule 23(a) Requirements.

a. Numerosity.

The first requirement for class certification is that "the class is so numerous that joinder of all members is impracticable . . . ." Fed. R. Civ. P. 23(a)(1). As the Sixth Circuit has explained:

> There is no automatic cut-off point at which the number of plaintiffs makes joinder impractical, thereby making a class-action suit the only viable alternative. However, sheer number of potential litigants in a class, especially if it is more than several hundred, can be the only factor needed to satisfy Rule 23(a)(1).

Bacon v. Honda of Am. Mfg., Inc., 370 F.3d 565, 570 (6th Cir. 2004) (internal citation omitted) (citation omitted); *see also In re Am. Med Sys.*, 75 F.3d at 1079 ("There is no strict numerical test for determining impracticability of joinder." (citation omitted)).

In this instance, the proposed class is defined as:

> The individuals in the United States who Progressive identified as potentially having their personal information viewed by an unauthorized individual because of the security event experienced by TTEC, one of Progressive's third-party call center vendors, from May 2021 to May 2023.

Excluded from the Class are: (1) Defendant, any entity in which Defendant has a controlling interest, and Defendant's affiliates, parents, subsidiaries, officers, directors, legal representatives, successors, and assigns; (2) any judge, justice, or judicial officer presiding over the Litigation and the members of their immediate families and judicial staff; and (3) any individual who timely and validly excludes themselves from the Settlement.

The Parties represent in the Settlement Agreement that the Class is comprised of approximate 350,000 individuals. (SA, ¶ 14(aaa)). Therefore, the Rule 23(a)(1) numerosity requirement is satisfied.

b. Commonality.

The second requirement is that "there are questions of law or fact common to the class . . . ." Fed. R. Civ. P. 23(a)(2). "Although Rule 23(a)(2) speaks of 'questions' in the plural, . . . there need only be one question common to the class." *Sprague*, 133 F.3d at 397 (citing *In re Am. Med Sys.*, 75 F.3d at 1080). "It is not every common question that will suffice, however; at a sufficiently abstract level of generalization, almost any set of claims can be said to display commonality. What [courts] are looking for is a common issue the resolution of which will advance the litigation." *Id.*

The Settlement Class Members allege their injuries all arise from Defendant's failure to maintain adequate data security and utilize appropriate third-party call centers. As a result, the common issue at trial would be the sufficiency of Progressive's data security practices and its failure to secure customers' PII. Therefore, the commonality requirement in Fed. R. Civ. P. 23(a)(2) is satisfied.

c. Typicality

Third, a court must consider whether "the claims or defenses of the representative parties are typical of the claims or defenses of the class . . . ." Fed. R. Civ. P. 23(a)(3). "Typicality determines whether a sufficient relationship exists between the injury to the named plaintiff and the conduct affecting the class, so that the court may properly attribute a collective nature to the challenged conduct." *Sprague*, 133 F.3d at 399 (quoting *In re Am. Med. Sys.*, 75 F.3d at 1082). "A claim is typical if 'it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory.'" *Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 561 (6th Cir. 2007) (quoting *In re Am. Med. Sys.*, 75 F.3d at 1082). "[A] representative's claim need not always involve the same facts or law, provided there is a common element of fact or law." *Senter*, 532 F.2d at 525 n.31 (citation omitted). "On the other hand, . . . the typicality requirement is not satisfied when a plaintiff can prove his own

claim but not 'necessarily have proved anybody's else's claim.'" *Beattie*, 511 F.3d at 561 (quoting *Sprague*, 133 F.3d at 399).

The claims alleged by Plaintiffs are typical of the Class in that the claims all arise from the Security Incident and involve allegations that Progressive failed to adequately protect PII. The Class Members will have suffered nearly identical injuries with the only notable difference being the type and amount of the damages requested. The Court finds that the typicality requirement of Fed. R. Civ. P. 23(a)(3) is also satisfied.

d. Adequacy of Representation.

The fourth consideration is whether "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "There are two criteria for determining whether the representation of the class will be adequate: 1) [t]he representative must have common interests with unnamed members of the class, and 2) it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel." *Senter*, 532 F.2d at 524, 525 (citing *Gonzales v. Cassidy*, 474 F.2d 67, 73 (5th Cir. 1973)).

i. Class Representatives.

"The adequacy inquiry under Rule 23(a)(4) serves to uncover conflicts of interest between named parties and the class they seek to represent. '[A] class representative must be part of the class and "possess the same interest and suffer the same injury" as the class members.'" *Amchem Prods.*, 521 U.S. at 625–26 (alteration in original) (internal citation omitted) (citation omitted). As part of the proposed Settlement Agreement, Plaintiffs Kenneth Okonski, Bradley Okonski, Edward Reis, Tosif Khan, Kulsoom Tosif, Eduardo Barbosa, Rebecca Johnson, Stephen Johnson, Roxanne Trigg, Giovanni Madaffari, and Dodie Waden have been designated to serve as class representatives. The injuries alleged by the class representatives are substantially the same as their injuries arising from the same Security Incident and Progressive's alleged failure to adequately

protect their PII. For these reasons, Plaintiffs Kenneth Okonski, Bradley Okonski, Edward Reis, Tosif Khan, Kulsoom Tosif, Eduardo Barbosa, Rebecca Johnson, Stephen Johnson, Roxanne Trigg, Giovanni Madaffari, and Dodie Waden share common interests with the members of the proposed class, and they can be appointed as class representatives.

ii. Class Counsel.

The other requirement under Fed. R. 23(a)(4) dictates that a court consider the adequacy of the representative plaintiffs' representation "to determine whether class counsel are qualified, experienced and generally able to conduct the litigation . . . ." *Stout v. J.D. Byrider*, 228 F.3d 709, 717 (6th Cir. 2000) (citation omitted). A plaintiff's choice of counsel "should negatively impact [a court's] determination of adequacy at this early stage only if the proposed lead counsel is 'so deficient as to demonstrate that it will not fairly and adequately represent the interests of the class.'" *In re Vicuron Pharms., Inc. Sec. Litig.*, 225 F.R.D. 508, 511–12 (E.D. Pa. 2004) (citation omitted).

The Court finds that Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman and William B. Federman of Federman & Sherwood will likely satisfy the requirements of Rule 23(e)(2)(A) and should be appointed as Class Counsel pursuant to Rule 23(g)(1). These attorneys and their firms have significant experience with class-action litigation, and data breach cases in particular, therefore they appear qualified to adequately represent the interests of the proposed class.

2. Rule 23(b) Requirements.

Besides Fed. R. Civ. P. 23(a), "[the] parties seeking class certification must show that the action is maintainable under Rule 23(b)(1), (2), or (3)." *Amchem Prods.*, 521 U.S. at 614. In their motion Plaintiffs seek preliminary approval pursuant to Fed. R. Civ. P. 23(b)(3). Under this

provision, a class action may be maintained if "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). The predominance requirement of Fed. R. Civ. P. 23(b)(3) is like Fed. R. Civ. P 23(a)(2)'s commonality requirement "in that both require that common questions exist, but subdivision (b)(3) contains the more stringent requirement that common issues 'predominate' over individual issues." *In re Am. Med. Sys., Inc.*, 75 F.3d at 1084 (citation omitted). The central question is whether the questions common to the class "[are] at the heart of the litigation." *Powers v. Hamilton Cnty. Pub. Def. Comm'n*, 501 F.3d 592, 619 (6th Cir. 2007). "The predominance requirement is satisfied unless it is clear that individual issues will overwhelm the common questions and render the class action valueless." *In re Cardizem CD Antitrust Litig.*, 200 F.R.D. 297, 307 (E.D. Mich. 2001) (quoting *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 169 F.R.D. 493, 517 (S.D.N.Y. 1996)). "Common questions need only predominate: they need not be dispositive of the litigation." *Id*. (internal quotation marks omitted) (quoting *In re Potash Antitrust Litig.*, 159 F.R.D. 682, 693 (D. Minn. 1995)).

In this instance, a class action is superior to adjudicating the controversy. Common questions of fact and law predominate over any potential individual issues for class members. Class members' claims all relate to whether Progressive failed to adequately protect PII, in violation of state and federal law. The proof that each class member would need to prove his or her claims would be similar in kind to the nature of the proof that all other members of the class would rely upon in pursuing claims against Progressive.

A class action lawsuit is also a superior method of fairly and efficiently adjudicating this case. The amount of damages incurred by each class member would likely not justify pursuing

individual lawsuits against Progressive or the other parties to be released under the proposed Settlement Agreement. *See Pfaff v. Whole Foods Mkt. Grp. Inc.*, No. 1:09-CV-02954, 2010 WL 3834240, at *7 (N.D. Ohio Sept. 29, 2010) ("The 'most compelling rationale for finding superiority in a class action' is the existence of a 'negative value suit.' A negative value suit is one in which the costs of enforcement in an individual action would exceed the expected individual recovery." (quoting *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330, 351 (N.D. Ohio 2001)). In sum, the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3) support the certification of the proposed class as defined in the proposed Settlement Agreement. Plaintiffs' Motion is granted, and the Settlement Class as defined in the Settlement Agreement is preliminarily certified for the purposes of settlement.

C. Appointment of Class Counsel.

Fed. R. Civ. P. 23 also provides that "a court that certifies a class must appoint class counsel." Fed. R. Civ. P. 23(g). In making that appointment, a court must consider:

> (i) the work counsel has done in identifying or investigating potential claims in the action;
> (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
> (iii) counsel's knowledge of the applicable law; and
> (iv) the resources that counsel will commit to representing the class . . . ."

Fed. R. Civ. P. 23(g)(1)(A).

As noted above, the proposed class counsel is Federman and Milberg. This matter was filed in 2023, and the parties have conducted informal discovery. As a result of the mediation and ongoing discussions between counsel, the Parties have entered into the Settlement Agreement. Federman and Milberg and their respective law firms have significant experience in class actions and data breach cases of similar size, scope, and complexity. (*See* ECF No. 44). As reflected by their representation in this case, Federman and Milberg have shown their willingness to devote

substantial time and resources to representing the claims of the class members. Accordingly, these attorneys satisfy the requirements of Fed. R. Civ. P. 23(g), Federman and Milberg are designated as counsel for the certified settlement class.

D. Preliminary Approval of the Proposed Settlement Agreement.

Having been presented with the Settlement Agreement, the Court must determine whether to grant preliminary approval pursuant to Fed. R. Civ. P. 23(e). The approval process involves two stages: (i) "[t]he judge reviews the proposal preliminarily to determine whether it is sufficient to warrant public notice and a hearing"; and (2) "[i]f so, the final decision on approval is made after the hearing." Federal Judicial Center, *Manual for Complex Litigation* § 13.14 (4th ed. 2004); *see also Thacker v. Chesapeake Appalachia, L.L.C.*, 259 F.R.D. 262, 270 (E.D. Ky. 2009). "At the stage of preliminary approval, the questions are simpler, and the court is not expected to, and probably should not, engage in analysis as rigorous as is appropriate for final approval." *Spine & Sports Chiropractic, Inc. v. ZirMed, Inc.*, No. 3:13-CV-00489, 2015 WL 1976398, at *1 (W.D. Ky. May 4, 2015) (quoting Federal Judicial Center, *supra*, § 21.662). Courts apply a degree of scrutiny to proposed settlement agreements sufficient to avoid "rubberstamp[ing]" a proposed settlement agreement, while still being "mindful of the substantial judicial processes that remain to test the assumptions and representations upon which the parties' motion[] [is] premised." *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. at 338.

To approve the Settlement Agreement reached by the parties, the Court must determinate whether it is "fair, reasonable, and adequate." *Whitlock v. FSL Mgmt., LLC*, 843 F.3d 1084, 1093 (6th Cir. 2016); Fed. R. Civ. P. 23(e)(2). Fed. R. Civ. P. 23(e)(2) outlines the factors courts are to consider in making that determination. As the advisory committee notes explain, the addition of these factors was not intended "to displace any factor, but rather to focus the court and the lawyers

on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2018 amendments. Therefore, this Court must analyze both the Fed. R. Civ. P. 23(e) factors and the factors articulated by the Sixth Circuit. *See Peck v. Air Evac EMS, Inc.*, No. 5:18-615-DCR, 2019 WL 3219150, at *5 (E.D. Ky. July 17, 2019).

Upon preliminary review, the Court finds the Settlement is fair, reasonable, and adequate to warrant providing notice of the Settlement to the Settlement Class and accordingly is preliminarily approved. In making this determination, the Court has considered the monetary and non-monetary benefits provided to the Settlement Class through the Settlement, the specific risks faced by the Settlement Class in prevailing on their claims, the good faith, arms' length negotiations between the Parties and absence of any collusion in the Settlement, the effectiveness of the proposed method for distributing relief to the Settlement Class, the proposed manner of allocating benefits to Settlement Class Members, the Settlement's equitable treatment of the Settlement Class Members, and all of the other factors required by Rule 23.

Furthermore, the Court also preliminarily finds that the Settlement satisfies the Six Circuit's factors, as set forth in *Whitlock v*, 843 F.3d at 1093 (citation omitted):

> (1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest.

The Settlement was the result of informed, non-collusive, arm's length negotiations between Parties represented by knowledgeable and experienced counsel. The Parties' negotiations were overseen by Hon. Wayne R. Andersen (Ret.), who ensured that the negotiations proceeded at arm's length. The complexity, expense, and likely duration of the litigation favors preliminary approval of the Settlement, especially considering the volatile nature of data privacy litigation. The Court

finds the Parties engaged in sufficient informal discovery that informed their settlement negotiations. The Settlement also provides favorable relief, such as monetary relief and credit monitoring services, which are particularly beneficial when weighed against the uncertain likelihood of success on the merits. As another court observed in finally approving a settlement with similar class relief, "[d]ata breach litigation is evolving; there is no guarantee of the ultimate result . . . [they] are particularly risky, expensive, and complex"). *Fox v. Iowa Health Sys.*, 2021 WL 826741, at *5 (W.D. Wis. Mar. 4, 2021). The reaction of the Settlement Class cannot be discerned at this time because notice of the Settlement has not yet been disseminated to the Settlement Class, thus the Court will review this factor upon making a determination of final approval of the Settlement. Lastly, the Court preliminarily finds that the Settlement is in the public's best interest because data privacy litigation is notoriously complex. Accordingly, the Settlement falls within the range of preliminary approval under each of the Sixth Circuit's factors, and the Court orders notice be issued to the Class.

E. Notice to the Class.

As a result of the Court's preliminary approval, the Court "must direct notice in a reasonable manner to all class members who would be bound by the proposal . . . ." Fed. R. Civ. P. 23(e). This notice "must clearly and concisely state in plain, easily understood language" the following:

> (i) the nature of the action;
> (ii) the definition of the class certified;
> (iii) the class claims, issues, or defenses;
> (iv) that a class member may enter an appearance through an attorney if the member so desires;
> (v) that the court will exclude from the class any member who requests exclusion;
> (vi) the time and manner for requesting exclusion; and
> (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B).

"The notice provided to class members must include enough information to allow the class members to make an informed choice of whether to approve or disapprove the settlement." *Bowling v. Pfizer, Inc.*, 143 F.R.D. 141, 160 (S.D. Ohio 1992) (citing *Weinberger v. Kendrick*, 698 F.2d 61, 71 (2d Cir. 1982)).

The Court finds that the proposed form, content, and method of giving Notice to the Settlement Class as described in the Notice program and the Settlement Agreement and its exhibits: (1) will constitute the best practicable notice to the Settlement Class; (2) are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Litigation, the terms of the proposed Settlement, and their rights under the proposed Settlement, including, but not limited to, their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (3) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; (4) meet all applicable requirements of law, including Federal Rule of Civil Procedure 23(c); and (5) and meet the requirements of the Due Process Clause(s) of the United States and Ohio Constitutions. The Court further finds that the Notice provided for in the Settlement Agreement is written in plain language, uses simple terminology, and is designed to be readily understandable by Settlement Class Members.

The Court appoints Kroll Settlement Administration LLC as the Settlement Administrator, with responsibility for class notice and settlement administration. The Settlement Administrator is directed to perform all tasks the Settlement Agreement requires. The Settlement Administrator's fees will be paid pursuant to the terms of the Settlement Agreement. The Settlement Administrator is directed to carry out the Notice program in conformance with the Settlement Agreement.

Accordingly, the proposed notice program set forth in the Settlement Agreement and Claim Form and the Notices attached to the Settlement Agreement as Exhibits A, B, and C are hereby approved. The Notices comply with Fed. R. Civ. P. 23(c)(2)(B). Non-material modifications to these Exhibits may be made by the Settlement Administrator in consultation and agreement with the Parties, but without further order of the Court.

F. CAFA Notice.

Within ten (10) days after the filing of this Settlement Agreement with the Court, the Settlement Administrator acting on behalf of Defendant shall have served or caused to be served a notice of the proposed Settlement on appropriate officials in accordance with the requirements under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715(b).

G. Claims Process.

Settlement Class Counsel and Defendant have created a process for Settlement Class Members to claim benefits under the Settlement. The Court preliminarily approves this process and directs the Settlement Administrator to make the Claim Form or its substantial equivalent available to Settlement Class Members in the manner specified in the Notice.

The Settlement Administrator will be responsible for effectuating the claims process. Settlement Class Members who qualify for and wish to submit a Claim Form shall do so in accordance with the requirement and procedures specified in the Notice and the Claim Form. If the Final Order and Judgment is entered, all Settlement Class Members who qualify for any benefit under the Settlement but fail to submit a claim in accordance with the requirements and procedures specified in the Notice and the Claim Form shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Final Order and Judgment, including the releases contained therein.

H. Exclusions from the Class.

Any Settlement Class Member who wishes to be excluded from the Settlement Class must (1) identify the case name and number of this Litigation (*Kenneth Okonski, et al. v. Progressive Casualty Insurance Company*, Case No. 1:23-cv-01548-PAG); (2) state the Settlement Class Member's full name, address, email address, and telephone number; (3) contain the Settlement Class Member's personal and original signature; (4) state unequivocally the Settlement Class Member's intent to be excluded from the Settlement Class, and; (5) request exclusion only for that one Settlement Class Member whose personal and original signature appears on the request. Requests for exclusion shall be mailed to the Settlement Administrator. To be effective, such requests for exclusion must be postmarked no later than the Opt-Out Date, which is no later than sixty (60) days from the date on which the notice program commences, and as stated in the Notice.

If Defendant voids the Settlement Agreement according to its terms, Defendant will be obligated to pay all settlement expenses already incurred, excluding any attorneys' fees, costs, and expenses of Class Counsel and the Service Award to the Class Representative and shall not, at any time, seek recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation.

The Settlement Administrator shall promptly furnish to Class Counsel and to Defendant's counsel a complete list of all timely and valid requests for exclusion (the "Opt-Out List").

If a Final Order and Judgment is entered, all Persons falling within the definition of the Settlement Class who do not request to be excluded from the Settlement Class shall be bound by the terms of this Settlement Agreement and the Final Order and Judgment. All Persons who submit valid and timely notices of their intent to be excluded from the Settlement Class shall not receive any cash benefits of and/or be bound by the terms of the Settlement Agreement.

I. Objections and Appearances.

A Settlement Class Member (who does not submit a timely written request for exclusion) desiring to object to the Settlement Agreement may submit a timely written notice of his or her objection by the Objection Date and as stated in the Notice. The Long Notice and the Settlement Website shall instruct Settlement Class Members who wish to object to the Settlement Agreement to file their objections with this Court. The Notice shall advise Settlement Class Members of the deadline for submission of any objections—the "Objection Date" – which is no later than sixty (60) days after the Notice Date. Any such notices of an intent to object to the Settlement Agreement must be written and must include all of the following: (1) include the case name and number of the Litigation (*Kenneth Okonski, et al. v. Progressive Casualty Insurance Company*, Case No. 1:23-cv-01548-PAG), (2) set forth the Settlement Class Member's full name, current address, telephone number, and email address; (3) contain the Settlement Class Member's personal and original signature; (4) contain a statement affirming that the Settlement Class Member is a member of the Settlement Class because he or she received the August 1, 2023 Notice of Security Incident letter from Defendant; (5) state that the Settlement Class Member objects to the Settlement, in whole or in part; (6) set forth a statement of the legal and factual basis for the Objection; (7) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position; (8) identify any attorney representing the Settlement Class Member with respect to, or who provided assistance to the Settlement Class Member in drafting, his or her Objection, if any; (9) contain the signature, name, address, telephone number, and email address of the Settlement Class Member's attorney, if any; (10) contain a list, including case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement in the past three (3) years; (11) state whether the objection

applies only to the Settlement Class Member, to a specific subset of the Settlement Class, or to the entire Settlement Class, and (12) state whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing, and if so, whether personally or through an attorney.

Any objecting Class Member intending to appear at the Final Approval Hearing with counsel must direct his/her attorney to file a notice of appearance with the Court prior to the Final Approval Hearing, and must also (1) identify the attorney(s) who will appear at the Final Approval Hearing and include the attorney(s) name, address, phone number, e-mail address, state bar(s) to which counsel is admitted, as well as associated state bar numbers; (2) identify any witnesses who the Class Member intends to call to testify; and (3) include a description of any documents or evidence that the Class Member intends to offer.

Any Settlement Class Member who fails to comply with the requirements for objecting shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the Litigation. The provisions stated in the Settlement Agreement shall be the exclusive means for any challenge to the Settlement Agreement. Any challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the Final Order and Judgment to be entered upon final approval shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

J. Termination of the Settlement.

This Preliminary Approval Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing before the Court entered this Preliminary Approval Order and before they entered the Settlement Agreement, if: (1) the Court does not enter this Preliminary Approval Order; (2) Settlement is not

finally approved by the Court or is terminated in accordance with the Settlement Agreement; (3) there is no Effective Date; or (4) otherwise consistent with the terms of the Settlement Agreement. In such event, (i) the Parties shall be restored to their respective positions in the Litigation and shall jointly request that all scheduled Litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Party or Party's counsel; (ii) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and (iii) any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc.*

K. Use of this Order.

This Preliminary Approval Order shall be of no force or effect if the Final Order and Judgment is not entered or there is no Effective Date and shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, or liability. Nor shall this Preliminary Approval Order be construed or used as an admission, concession, or declaration by or against the Class Representatives or any other Settlement Class Member that his or her claims lack merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claims they may have in this Litigation or in any other lawsuit.

L. Continuance of Hearing.

The Court reserves the right to adjourn or continue the Final Fairness Hearing and related deadlines without further written notice to the Settlement Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the Settlement Website maintained

by the Administrator. The Court may approve the Settlement, with such modifications as may be agreed upon by the Parties, if appropriate, without further notice to the Settlement Class.

M. Stay of the Litigation.

All proceedings in the Litigation, other than those related to approval of the Settlement Agreement, are hereby stayed. Further, any actions brought by Settlement Class Members concerning the Released Claims are hereby enjoined and stayed pending Final Approval of the Settlement Agreement.

N. Final Approval Hearing.

A Final Approval Hearing shall be held on February 25, 2025, at 9:30 a.m. at the Carl B. Stokes United States Court House, 801 West Superior Avenue, Courtroom 19B, Cleveland, Ohio, where the Court will determine, among other things, whether: (1) this Litigation should be finally certified as a class action for settlement purposes pursuant to Fed. R. Civ. P. 23(a) and (b)(3); (2) the Settlement should be approved as fair, reasonable, and adequate, and finally approved pursuant to Fed. R. Civ. P. 23(e); (3) this Litigation should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (4) Settlement Class Members (who have not timely and validly excluded themselves from the Settlement) should be bound by the releases set forth in the Settlement Agreement; (5) the application of Class Counsel for an award of Attorneys' Fees, Costs, and Expenses should be approved pursuant to Fed. R. Civ. P. 23(h); and (6) the application of the Class Representatives for a Service Award should be approved.

III. SCHEDULE AND DEADLINES

The Court orders the following schedule of dates for the specified actions/further proceedings:

Grant of Preliminary Approval	
Defendant provides list of Settlement Class Members to the Settlement Administrator	30 days after Preliminary Approval

Settlement Administrator to Provide CAFA Notice Required by 28 U.S.C. § 1715(b)	Within 10 days of filing of the Preliminary Approval Motion
Notice Date	60 days after Preliminary Approval.
Class Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Award	14 days before Objection and Opt-Out Deadlines
Objection Deadline	60 days after Notice Date
Opt-Out Deadline	60 days after Notice Date
Claims Deadline	90 days after Notice Date
Final Approval Hearing	150 days after Preliminary Approval Order (at minimum)
Motion for Final Approval	14 days before Final Approval Hearing Date
Settlement Administrator Provide Notice of Opt-Outs and/or Objections	14 days before Final Approval Hearing Date

SO ORDERED THIS 19th DAY OF September, 2024.

/s/ Patricia A. Gaughan
Hon. Patricia A. Gaughan
United States District Court Judge