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Attorneys for Plaintiff Blaise Williams
And the Proposed Class

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

1 BLAISE WILLIAMS, individually,
2 and on behalf of all others similarly
3 situated,

4 Plaintiffs,

5 v.

6 PROGRESSIVE COUNTY MUTUAL
7 INSURANCE COMPANY,
8 PROGRESSIVE CORPORATION,
9 PROGRESSIVE CASUALTY
10 INSURANCE
11 COMPANY, and MITCHELL
12 INTERNATIONAL, INC.;

13 Defendants.

CASE NO. **'17CV2282 AJB BGS**

CLASS ACTION COMPLAINT FOR
BREACH OF CONTRACT,
TORTIOUS INTERFERENCE WITH
CONTRACT, VIOLATIONS OF
TEXAS INSURANCE CODE,
BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH AND
FAIR DEALING, CIVIL
CONSPIRACY and DECLARATORY
AND INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

13 Plaintiff BLAISE WILLIAMS, individually and on behalf of all other
14 similarly situated individuals, hereby complains against Defendants
15 PROGRESSIVE COUNTY MUTUAL INSURANCE COMPANY,
16 PROGRESSIVE CORPORATION, and PROGRESSIVE CASUALTY
17 INSURANCE COMPANY, (collectively “Progressive”), and MITCHELL
18 INTERNATIONAL, INC. (“Mitchell”); Progressive and Mitchell are collectively
19 referred to herein as “Defendants,” and allege as follows:

20 **PRELIMINARY STATEMENT**

21 1. Progressive bills itself as a fair and honest company. Progressive
22 spends millions of dollars advertising its insurance. In those advertisements,
23 Progressive holds itself out as an expert in the insurance industry, including
24 automobile insurance, and touts itself as the “No. 1 commercial auto insurer.”

25 2. Progressive, however, is not fair and honest.

26 3. When Progressive determines that damage to an insured’s vehicle
27 exceeds the cost to repair, the vehicle is deemed a “total loss,” and the insured is

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1 entitled to recover for the actual cash value of the vehicle at the time of the loss
2 reduced by the applicable deductible.

3 4. Progressive has outsourced its duty to Mitchell to determine the actual
4 cash value of its insureds' total loss vehicles. Since at least 2010, Progressive and
5 Mitchell have implemented a scheme to artificially deflate the value of "total loss
6 claims."

7 5. Progressive and Mitchell engage in unlawful, unfair, and deceptive
8 business practices which facilitate and enable them to present lowball valuations to
9 Progressive's insureds once a vehicle has been declared a total loss.

10 6. In their scheme to unlawfully, unjustifiably, and artificially reduce the
11 actual cash values paid to the insureds for their total loss vehicles, Progressive and
12 Mitchell employ methods contrary to their contractual obligations, the Texas
13 Insurance Code, and the common law.

14 **PARTIES**

15 7. Plaintiff Blaise Williams is an individual over 18 years of age. He is,
16 and at all relevant times was, a resident of Houston, Texas.

17 8. Defendants Progressive County Mutual and Progressive Casualty
18 Insurance Company are a group of insurance companies operating under the
19 umbrella of The Progressive Corporation. The Progressive Corporation is
20 incorporated in Ohio and its headquarters and principal place of business is located
21 at 6300 Wilson Mills Road, Mayfield Village, Ohio.

22 9. Defendant Mitchell International, Inc. provides third-party
23 administrative services for Progressive including claims administration and
24 adjusting services relating to the valuation of total loss vehicles for insureds
25 covered by Progressive's Texas Auto Policy. Mitchell is a Delaware Corporation.
26 Mitchell's headquarters and principal place of business is located at 6200
27 Greenwich Drive, San Diego, California.

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JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1332(d) because at least one Class Member is diverse from at least one defendant, the amount in controversy exceeds \$5,000,000, exclusive of interests and costs, and there are more than 100 Class Members.

11. This Court has personal jurisdiction over Defendant Mitchell because it is at home in the forum state.

12. This Court has personal jurisdiction over Defendant Progressive because it has had more than minimum contacts with the State of California, has purposefully availed itself of the privilege of conducting business in this state, and has purposefully directed and targeted business in this state, specifically by contracting with Mitchell, a California citizen, to provide claims administration and adjusting valuation services for vehicles.

13. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(b)(1) because, for venue purposes, Mitchell and Progressive are residents of this state and judicial district. Moreover, venue in this judicial district is proper pursuant to 28 U.S.C. §1391(b)(2) because a substantial part of the events or omissions giving rise to this action occurred in this district.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

14. Attached to this Complaint as Exhibit A is a true and correct copy of Progressive’s Texas Auto Policy setting forth the terms of Progressive’s insuring agreement (“the Policy” or “Texas Policy”).

15. At all relevant times, the Policy included the following relevant clauses:

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**INSURING AGREEMENT - COMPREHENSIVE
COVERAGE**

If **you** pay the premium for this coverage, **we** will pay for sudden, direct and accidental loss to a:

- 1. **covered auto**, including an attached **trailer**; or
- 2. **non-owned auto**;
and its **custom parts or equipment**, that is not caused by **collision**.

A loss not caused by **collision** includes:

- 1. contact with an animal (including a bird);
- 2. explosion or earthquake;
- 3. fire;
- 4. malicious mischief or vandalism;
- 5. missiles or falling objects;
- 6. riot or civil commotion;
- 7. theft or larceny;
- 8. windstorm, hail, water or flood; or
- 9. breakage of glass not caused by **collision**.¹

LIMITS OF LIABILITY

- 1. The limit of liability for loss to a **covered auto**, **non-owned auto**, or **custom parts or equipment** is the lowest of:
 - a. the actual cash value of the stolen or damaged property at the time of the loss reduced by the applicable deductible;
 - b. the amount necessary to replace the stolen or damaged property reduced by the applicable deductible;
 - c. the amount necessary to repair the damaged property to its pre-loss condition reduced by the applicable deductible; or
 - d. the Stated Amount shown on the **declarations page** for that **covered auto**.

2. Payments for loss to a **covered auto**, **non-owned auto**, or **custom parts or equipment** are subject to the following provisions:

- f. The actual cash value is determined by the market value, age, and condition of the vehicle at the time the loss occurs.²

PAYMENT OF LOSS

We may, at **our** option:

- 1. pay for the loss in money; or
- 2. repair or replace the damaged or stolen property.³

¹ Ex. A at p. 17 (emphasis in original).

² Ex. A at pp. 21-22 (emphasis in original).

³ Ex. A at p. 22 (emphasis in original).

1 **SETTLEMENT OF CLAIMS**

2 **We** may use estimating, appraisal, or injury evaluation systems
3 to assist **us** in adjusting claims under this policy and to assist
4 **us** in determining the amount of damages, expenses, or loss
5 payable under this policy. Such systems may be developed by
6 **us** or a third party and may include computer software,
7 databases, and specialized technology.⁴

8 16. In the Policy, Progressive represents that the actual cash value is
9 determined by the market value, age and condition of the vehicle at the time the
10 loss occurs.

11 17. The actual cash value offered to Progressive’s insureds is not,
12 however, based on the market value, age, and condition of the vehicle at the time
13 the loss occurs.

14 18. Instead, Progressive and Mitchell employ a system to calculate actual
15 cash value in a manner which allows them to reduce the calculated value they pay
16 for “total loss vehicles.”

17 19. Prior to 2010, Progressive determined the actual cash value of total
18 loss vehicles in Texas by using the National Automobile Dealers Association
19 (“NADA”) Guidebook.

20 20. In 2010, Progressive began using a proprietary product called Work
21 Center Total Loss (“WCTL”) licensed from Mitchell to determine the “actual cash
22 values” of total loss vehicles.

23 21. The WCTL methodology is different from the methodology used by
24 NADA. WCTL provides total loss valuations automatically based on purported
25 comparable vehicle data contained in its computer system and objective loss vehicle
26 data provided to it by Progressive inspectors, called Manage Repair Representatives
27 (“MRR”), through a computer interface.

28 22. Included among the data provided by Progressive’s MRRs to
 Mitchell’s WCTL system are the Vehicle Identification Number (VIN)—which

⁴ Ex. A at pp. 28-29 (emphasis in original).

1 includes the vehicle make, model, configuration (e.g. extras) and year—as well as
2 the mileage and license plate number.

3 23. Comparable vehicles referenced by Mitchell’s WCTL may be in a
4 wide variety of conditions.

5 24. Mitchell’s WCTL system has no information as to the condition of the
6 comparable vehicles and does not take such information into consideration in
7 determining the base price.

8 25. Progressive’s MRRs also assign a numerical value between 1 and 5 to
9 reflect the overall vehicle condition as to each of thirteen characteristics listed in the
10 Valuation Report, including Interior, Exterior, Mechanical and Tire.

11 26. WCTL uses weighted averages of the condition values to arrive at an
12 overall condition score between 1 and 5.

13 27. Although Progressive’s records contain descriptions of the vehicles’
14 conditions which Progressive MRRs consider and use in the assignment of the
15 overall condition value, Mitchell’s WCTL computer system does not take this
16 information into account, relying only on the numerical condition characteristics
17 when reaching its value determination.

18 28. Relying on the loss valuation numerical value only, Mitchell’s WCTL
19 system locates vehicles comparable to the loss vehicle by searching a collection of
20 vehicles being offered for sale by a dealer located as close as possible to the loss
21 vehicle’s zip code.

22 29. A marketing presentation by Mitchell to prospective insurance
23 company clients stated that the average market value as determined by WCTL was
24 \$6,780, as compared to an average value of \$7,680 under NADA.

25 30. Thus, Mitchell’s WCTL system assigns actual cash values for total
26 loss vehicles in an amount that is significantly lower than those assigned by
27 published and publicly available valuation models like NADA.

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1 Auto Policy that covered the 2016 GMC Yukon, and included full comprehensive
2 coverage for his 2016 GMC Yukon.

3 38. On or about August 26, 2017, Mr. Williams' 2016 GMC Yukon
4 sustained a sudden, direct and accidental loss resulting from Hurricane Harvey and
5 the associated severe flooding.

6 39. Shortly after the hurricane, Mr. Williams filed a claim for the property
7 damages relating to the 2016 GMC Yukon.

8 40. Progressive accepted the claim by Blaise Williams.

9 41. On or about September 20, 2017, Progressive inspected the 2016 GMC
10 Yukon and notified him the vehicle had been declared a "total loss."

11 42. When Mr. Williams asked Progressive how it determined his vehicle
12 to be a "total loss," Progressive stated that it was declaring any vehicle that got any
13 amount of water into it from Hurricane Harvey to be a "total loss."

14 43. Approximately four to five days later, Progressive notified Mr.
15 Williams that the vehicle's condition was rated three on a scale from one to three
16 for all aspects of the car.

17 44. Progressive told Mr. Williams that, based on Mitchell's valuation
18 system, the actual cash value of the 2016 GMC Yukon at the time of the loss was
19 \$38,109.27 and made a full and final offer to settle the claim for \$40,341.34, which
20 represented the valuation of \$38,109.27, less the deductible of \$245, plus taxes and
21 fees.

22 45. After Mr. Williams questioned the valuation, a Progressive supervisor
23 contacted Mr. Williams on October 1, 2017 and told him that Mitchell had checked
24 and verified that the valuation of his vehicle was true and correct.

25 46. Using Mitchell's valuation system again, Progressive made a final
26 offer to settle Mr. Williams' claim in the amount of \$42,112.17, based on
27 Defendants' valuation of \$39,775.92, taxes in the amount of \$2,486, fees in the
28 amount of \$95.25, minus the deductible of \$245.

1 47. In fact, the actual cash value – based on the market value, age, and
2 condition – of Mr. Williams’s vehicle at the time of the flood was \$44,025,
3 significantly higher than the amount Progressive paid on Mr. Williams’s claim.

4 48. The Mitchell valuation used by Progressive was fundamentally flawed
5 because it included false adjustments to the comparable vehicles identified in
6 Mitchell’s valuation report. Mitchell and Progressive knew or should have known
7 that the cash value assigned to Plaintiff’s vehicle did not reflect the actual market
8 value, age, and condition of the vehicle because the specific conditions of the
9 comparable vehicles could be verified through an online search for those vehicles
10 by VIN number.

11 49. If Progressive had made accurate determinations about the actual cash
12 value of the vehicle, Mr. Williams would have recovered a significantly higher
13 amount from Progressive pursuant to the automobile Policy.

14 50. Progressive and Mitchell operate on an unequal playing field,
15 compared to its customers and insureds, including Mr. Williams.

16 51. Progressive contracted to pay Mr. Williams the actual cash value for
17 his total loss vehicle, but in reality, Progressive worked with Mitchell in
18 implementing a system designed to pay him less than the actual cash value.

19 **CLASS ACTION ALLEGATIONS**

20 52. Pursuant to FRCP 23(a), (b)(2) and (b)(3), Plaintiff brings this action
21 on his own behalf and on behalf of a proposed Class of all other similarly situated
22 persons in Texas consisting of:

23 *All insureds under Progressive’s Texas Auto Policy whose vehicles*
24 *were declared total losses by Progressive and were valued utilizing*
25 *Mitchell’s WCTL system (“the Class”)*

26 53. Excluded from the Class are: (a) federal, state, and/or local
27 governments, including, but not limited to, their departments, agencies, divisions,
28 bureaus, boards, sections, groups, counsels, and/or subdivisions; (b) any entity in

1 which any Defendant has a controlling interest, to include, but not limited to, their
2 legal representative, heirs, and successors; (c) all persons who are presently in
3 bankruptcy proceedings or who obtained a bankruptcy discharge in the last three
4 years; and (d) any judicial officer in the lawsuit and/or persons within the third
5 degree of consanguinity to such judge.

6 54. Upon information and belief, the Class consists of thousands of
7 consumers. Accordingly, it would be impracticable to join all Class Members
8 before the Court.

9 55. There are numerous and substantial questions of law or fact common
10 to all of the members of the Class and which predominate over any individual
11 issues. Included within the common question of law or fact to be shown through
12 common evidence are:

- 13 a. Whether Progressive's Texas Policy required it to pay actual
14 cash value to its Texas insureds;
- 15 b. Whether Progressive failed to pay actual cash value to its Texas
16 insureds;
- 17 c. Whether Progressive's contract disclosed all relevant
18 information relating to its calculation of actual cash value of
19 vehicles declared a total loss;
- 20 d. Whether Mitchell's WCTL system's valuation represents the
21 actual cash value of vehicles at the time of the loss;
- 22 e. Whether Progressive's Texas Policy misrepresents a material
23 fact or policy provision;
- 24 f. Whether Progressive's Texas Policy fails to disclose material
25 facts;
- 26 g. Whether Progressive's Texas Policy is misleading with respect
27 to material facts;

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- 1 h. Whether Progressive and Mitchell had an agreement or
- 2 understanding on how to calculate the actual cash value of
- 3 vehicles declared a total loss; and
- 4 i. Whether Progressive and Mitchell had an agreement or
- 5 understanding to artificially assess the market value, age and
- 6 condition of a vehicle at the time of loss in order to reduce the
- 7 actual cash value.

8 56. Plaintiff's claims are typical of the claims of Class Members, in that he
9 shares the above-referenced facts and legal claims or questions with Class
10 Members, there is a sufficient relationship between the damage to Plaintiff and
11 Defendants' conduct affecting Class Members, and Plaintiff has no interests
12 adverse to the interests other Class Members.

13 57. Plaintiff will fairly and adequately protect the interests of Class
14 Members and has retained counsel experienced and competent in the prosecution of
15 complex class actions.

16 58. Defendants have acted or refused to act on grounds generally
17 applicable to the Class, thereby making appropriate final injunctive relief or
18 corresponding declaratory relief with respect to the Class as a whole.

19 59. The questions of law and fact common to the members of the Class
20 predominate over any questions affecting only individual members, if any.

21 60. Defendants' use of valuation systems to artificially reduce the actual
22 cash value of total loss vehicles will be shown through common evidence.

23 61. A class action is superior to other methods for the fair and efficient
24 adjudication of this controversy because (1) there has been no interest shown of
25 members of the class in individually controlling the prosecution of separate actions;
26 (2) Plaintiff is aware of no other litigation concerning the controversy already
27 commenced by any member of the class; (3) it is desirable to concentrate the

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1 litigation in this forum; and (4) there are no difficulties likely to be encountered in
2 the management of this class action.

3 **FIRST CAUSE OF ACTION**

4 **BREACH OF CONTRACT – PROGRESSIVE**

5 62. Plaintiff incorporates each of the foregoing paragraphs as though fully
6 set forth herein, and further alleges as follows.

7 63. Progressive agreed to pay Plaintiff and Class Members for the actual
8 cash value determined by the market value, age, and condition of the vehicle at the
9 time the loss occurred if it was deemed a total loss vehicle by Progressive.

10 64. Progressive breached this contract by failing to pay the actual cash
11 value.

12 65. As a result, Plaintiff and Class Members were paid for their claims in
13 an amount less than the actual cash value, as contractually required.

14 WHEREFORE, Plaintiff prays for relief as set forth below.

15 **SECOND CAUSE OF ACTION**

16 **TORTIOUS INTERFERENCE WITH CONTRACT – MITCHELL**

17 66. Plaintiff incorporates each of the foregoing paragraphs as though fully
18 set forth herein, and further alleges as follows.

19 67. The Texas Policy was a valid contract between Plaintiff and Class
20 Members and Progressive. Under the Texas Policy, Progressive agreed to pay
21 Plaintiff and Class Members for the actual cash value of their covered autos
22 determined by the market value, age, and condition of the vehicles at the time the
23 loss occurred if they were declared total loss vehicles.

24 68. In licensing or otherwise contracting the use of its WCTL system to
25 Progressive, Mitchell had knowledge of the terms of the Policy between Plaintiff
26 and Class Members and Progressive or had knowledge of facts and circumstances
27 that would lead a reasonable person to know about the Texas Auto Policy,
28 including its provisions for actual cash value on total loss vehicles.

1 69. Mitchell willfully and intentionally interfered with the contract by
2 falsely representing the actual cash value of vehicles in its WCTL system such that
3 Plaintiff and Class Members would never be paid based on actual market value,
4 age, and condition of the vehicle.

5 70. Mitchell’s WCTL system further contributed to or induced
6 Progressive’s failure to pay Plaintiff and Class Members the actual cash value for
7 total loss vehicles and hindered the ability of Plaintiff and Class Members to
8 receive the actual value for total loss vehicles.

9 71. Mitchell took an active part in interfering with Progressive’s promise
10 to pay the actual cash value with a total loss vehicle, proximately causing harm to
11 Plaintiff and Class Members.

12 72. As a proximate result of Mitchell’s wrongful conduct, Plaintiff and
13 Class Members were damaged and denied the actual cash value for the total loss
14 vehicles.

15 WHEREFORE, Plaintiff prays for relief as set forth below.

16 **THIRD CAUSE OF ACTION**

17 **VIOLATIONS OF TEXAS INSURANCE CODE – PROGRESSIVE**

18 73. Plaintiff incorporates each of the foregoing paragraphs as though fully
19 set forth herein, and further alleges as follows.

20 74. Plaintiff and Class Members are “persons” within the meaning of the
21 Insurance Code § 541.002(2).

22 75. Plaintiff and Class Members were injured by Progressive’s unfair
23 practices in the business of insurance. Tex. Ins. Code § 541.151.

24 76. Progressive committed these violations of the Texas Insurance Code
25 knowingly. Tex. Ins. Code § 541.152(b).

26 77. Progressive incorporated into the Policy the requirements of the Texas
27 Insurance Code, Sections 541.060 and 541.061 relating to unfair and deceptive
28 actions or practice in the business of insurance.

1 78. Progressive breached Texas Insurance Code Section 541.060(a) by:

2 (1) misrepresenting to Plaintiff and Class Members a material fact
3 or policy provision relating to coverage at issue;

4 (2) failing to attempt in good faith to effectuate a prompt, fair, and
5 equitable settlement of:

6 (A) Claims with respect to which the insurer's liability has
7 become reasonably clear.

8 79. Progressive breached Texas Insurance Code Section 541.061 by:

9 (1) making an untrue statement of material fact;

10 (2) failing to state a material fact necessary to make other
11 statements made not misleading, considering the circumstances
12 under which the statements were made; and

13 (3) making a statement in a manner that would mislead a reasonably
14 prudent person to a false conclusion of a material fact.

15 80. Progressive misrepresented that it would pay actual cash value and
16 failed to state the material fact that the estimates, appraisal, and insurance
17 evaluation systems used by Progressive in the settlement of claims were structured
18 to artificially reduce the model value, age, and condition of the vehicles at the time
19 of the loss.

20 81. As a proximate result of Progressive's wrongful conduct, Plaintiff and
21 Class Members were damaged and denied the actual cash value for the total loss
22 vehicles.

23 WHEREFORE, Plaintiff prays for relief as set forth below.

24 **FOURTH CAUSE OF ACTION**

25 **VIOLATIONS OF TEXAS INSURANCE CODE – MITCHELL**

26 82. Plaintiff incorporates each of the foregoing paragraphs as though fully
27 set forth herein, and further alleges as follows.

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1 83. Plaintiff and Class Members are “persons” within the meaning of the
2 Insurance Code § 541.002(2).

3 84. Mitchell is an agent of Progressive under the Texas Insurance Code
4 because Mitchell examines into, adjusts, or aids in adjusting a loss for or on behalf
5 of Progressive. Tex. Ins. Code § 4001.051(b)(9).

6 85. Plaintiff and Class Members were injured by Mitchell’s unfair
7 practices in the business of insurance. Tex. Ins. Code § 541.151.

8 86. Mitchell breached Texas Insurance Code Section 541.060(a) by:

- 9 (1) misrepresenting to Plaintiff and Class Members a material fact
10 or policy provision relating to coverage at issue;
11 (2) failing to attempt in good faith to effectuate a prompt, fair, and
12 equitable settlement of:
13 (A) Claims with respect to which the insurer's liability has
14 become reasonably clear.

15 87. Mitchell breached Texas Insurance Code Section 541.061 by:

- 16 (1) making an untrue statement of material fact;
17 (2) failing to state a material fact necessary to make other
18 statements made not misleading, considering the circumstances
19 under which the statements were made; and
20 (3) making a statement in a manner that would mislead a reasonably
21 prudent person to a false conclusion of a material fact.

22 88. Mitchell misrepresented the actual cash value of total loss vehicles and
23 failed to state the material fact that its WCTL system was structured to artificially
24 reduce the model value, age, and condition of the vehicles at the time of the loss.

25 89. As a proximate result of Mitchell’s wrongful conduct, Plaintiff and
26 Class Members were damaged and denied the actual cash value for the total loss
27 vehicles.

28 WHEREFORE, Plaintiff prays for relief as set forth below.

1 **FIFTH CAUSE OF ACTION**
2 **BREACH OF IMPLIED COVENANT OF GOOD FAITH**
3 **AND FAIR DEALING – PROGRESSIVE**

4 90. Plaintiff incorporates each of the foregoing paragraphs as though fully
5 set forth herein, and further alleges as follows.

6 91. Texas law recognizes a duty of good faith and fair dealing in the
7 insurance context. *Arnold v. Nat’l Cnty. Mut. Fire Ins. Co.*, 725 S.W.2d 165, 167
8 (Tex. 1987). The duty arises from the special relationship that is created by the
9 contract between the insurer and the insured. *Id.*; see also *Viles v. Security Nat’l Ins.*
10 *Co.*, 788 S.W.2d 566, 567 (Tex. 1990) (recognizing that the duty arises “not from
11 the terms of the insurance contract, but from an obligation imposed in law” as a
12 result of the special relationship).

13 92. At all times herein mentioned, Progressive knew, or in the exercise of
14 good faith reasonably should have known that Plaintiff and Class Members were
15 legally entitled to recover the actual cash value of their vehicles, and that
16 Progressive was obligated to provide Plaintiff and Class Members with the actual
17 cash value for vehicles declared a total loss.

18 93. Once it declared Plaintiff and Class Member’s vehicles a total loss,
19 Progressive knew that its liability for the actual cash value was reasonably clear
20 under the terms of the Policy.

21 94. Progressive denied and delayed payment when liability was reasonably
22 clear.

23 95. As a proximate result of Progressive’s wrongful conduct, Plaintiff and
24 Class Members were damaged and denied the actual cash value for the total loss
25 vehicles.

26 WHEREFORE, Plaintiff prays for relief as set forth below.

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SIXTH CAUSE OF ACTION

CONSPIRACY – PROGRESSIVE AND MITCHELL

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96. Plaintiff incorporates each of the foregoing paragraphs as though fully set forth herein, and further alleges as follows.

97. Progressive and Mitchell were members of a combination of two or more persons acting to further the common purpose of a conspiracy to implement a system to artificially reduce and falsely represent the actual cash value of vehicles declared total losses.

98. The object of the combination was to accomplish the unlawful purpose of defrauding and misleading Plaintiff and Class Members regarding the actual cash value of their vehicles.

99. In the alternative, the object of the combination was to accomplish the lawful purpose of estimating and appraising vehicles declared total losses by unlawful means, including use of the fraudulent WCTL system.

100. Progressive and Mitchell had an agreement or understanding about how to artificially reduce the actual cash value of vehicles declared total losses.

101. Both Progressive and Mitchell, in developing, licensing, and utilizing the WCTL system, committed unlawful and overt acts in furtherance of their conspiracy. In addition, Progressive committed the overt act of misrepresenting the actual cash value of the damaged and total loss vehicles.

102. As a proximate result of Progressive’s and Mitchell’s wrongful conduct, Plaintiff and Class Members were damaged and denied the actual cash value for the total loss vehicles.

WHEREFORE, Plaintiff prays for relief as set forth below.

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PRAYER FOR RELIEF

Plaintiff respectfully prays for relief as follows:

1. For an order certifying the proposed class;
2. For an order finding and declaring that Progressive’s and Mitchell’s acts and practices as challenged herein are unlawful, unfair and fraudulent;
3. For an order preliminarily and permanently enjoining Progressive
 - a. from using Mitchell’s valuation reports because Mitchell’s reports rely on falsified, deceptive or misleading factors and data in the practices challenged herein and do not represent actual cash values; or
 - b. from future violations of Texas law and mandating they disclose the use of Mitchell and that its value is lower than actual cash value;
4. For all damages authorized by law, including treble damages under Texas Insurance Code § 541.152(b);
5. For an accounting;
6. For pre-judgment interest to the extent permitted by law;
7. For an award of attorneys’ fees, costs and expenses incurred in the investigation, filing and prosecution of this action under any applicable provision of law;
8. For interest provided by law;
9. For declaratory relief; and
10. For such other and further relief as the Court deems proper.

Respectfully Submitted,

s/ Kimberly D. Neilson, Esq.
FRISELLA LAW, APC
Attorneys for Plaintiff

1 **DEMAND FOR JURY TRIAL**

2 Pursuant to Federal Rule of Civil Procedure 38, Plaintiff demands a trial by
3 jury of all triable claims asserted in this Complaint.

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5 Dated: November __, 2017

Respectfully Submitted,

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s/ Kimberly D. Neilson, Esq.
FRISELLA LAW, APC
Attorneys for Plaintiff

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

WILLIAMS, BLAISE, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Houston, TX (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

see attachment

DEFENDANTS

PROGRESSIVE COUNTY MUTUAL INSURANCE COMPANY et al and MITCHELL INTERNATIONAL, INC.

County of Residence of First Listed Defendant Mayfield Village, OH (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'17CV2282 AJB BGS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(d)

Brief description of cause: Class action breach of contract

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE

11/08/2017

SIGNATURE OF ATTORNEY OF RECORD

s/Kimberly D. Neilson, Esq.

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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Attorneys for Plaintiff Blaise Williams
And the Proposed Class

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Texas Man Claims Progressive Undervalues Totaled Vehicles](#)
