

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR COUNTY OF WASHTENAW**

ANGELA PERRY and MICHAEL PETERSON,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

PROGRESSIVE MICHIGAN INSURANCE
CO., a Michigan corporation, and
PROGRESSIVE MARATHON INSURANCE
CO., a Michigan corporation,

Defendants.

Judge Archie C. Brown

Case No. 22-000971-CK

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Marathon Insurance Co. and Progressive
Michigan Insurance Co.*

**DEFENDANTS PROGRESSIVE MARATHON INSURANCE COMPANY AND
PROGRESSIVE MICHIGAN INSURANCE COMPANY'S ANSWER
AND DEFENSES TO PLAINTIFFS' CLASS ACTION COMPLAINT**

Defendants Progressive Marathon Insurance Company (“Progressive Marathon”) and Progressive Michigan Insurance Company (“Progressive Michigan”), through counsel, state for their Answer with Separate Defenses to Plaintiffs’ Class Action Complaint as follows:

NATURE OF THE ACTION

1. Progressive Marathon and Progressive Michigan admit that Plaintiffs’ lawsuit is based on their respective automobile liability insurance contracts that set forth the terms and conditions for payment of physical damage to their automobiles. To the extent Plaintiffs purport to characterize or restate the information contained in their automobile liability insurance contracts, the contracts are the best evidence of their content and Progressive Marathon and Progressive Michigan deny any inconsistent characterization of the same. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 1 of the Complaint.

2. Progressive Marathon and Progressive Michigan admit they are carriers for private passenger auto insurance in Michigan and offer comprehensive and collision coverage. Progressive Marathon and Progressive Michigan neither admit nor deny that they are “large” carriers with “15.05% of the market share” in Michigan because they lack knowledge or information sufficient to form a belief as to the truth of the allegations. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 2 of the Complaint.

3. Progressive Marathon and Progressive Michigan admit Plaintiffs have brought this lawsuit on behalf of themselves and a purported class of similarly situated insureds. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 3 of the Complaint.

4. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 4 of the Complaint.

PARTIES, JURISDICTION, AND VENUE

5. Progressive Marathon and Progressive Michigan admit Plaintiffs have filed a class action for damages and declaratory relief. Progressive Marathon and Progressive Michigan deny that the claims or allegations are proper, and further deny that class certification is appropriate. Progressive Marathon and Progressive Michigan neither admit nor deny the remaining allegations in Paragraph 5 of the Complaint because they lack knowledge or information sufficient to form a belief as to the truth of the allegations.

6. Progressive Marathon and Progressive Michigan neither admit nor deny the allegations in Paragraph 6 of the Complaint because they lack knowledge or information sufficient to form a belief as to the truth of the allegations.

7. Progressive Marathon and Progressive Michigan neither admit nor deny the allegations in Paragraph 7 of the Complaint because they lack knowledge or information sufficient to form a belief as to the truth of the allegations.

8. Progressive Marathon and Progressive Michigan neither admit nor deny the allegations in Paragraph 8 of the Complaint because they lack knowledge or information sufficient to form a belief as to the truth of the allegations.

9. Progressive Michigan admits that it is a Michigan corporation with its principal place of business in the State of Ohio and that it is authorized to transact business in the State of Michigan. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 9 of the Complaint.

10. Progressive Marathon admits that it is a Michigan corporation with its principal place of business in the State of Ohio and that it is authorized to transact business in the State of

Michigan. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 10 of the Complaint.

11. The allegations in Paragraph 11 of the Complaint assert legal conclusions to which no response is required. To the extent a response is required, Progressive Marathon and Progressive Michigan admit the allegations contained in Paragraph 11 of the Complaint.

12. The allegations in Paragraph 12 of the Complaint assert legal conclusions to which no response is required. To the extent a response is required, Progressive Marathon and Progressive Michigan admit the allegations contained in Paragraph 12 of the Complaint.

13. The allegations in Paragraph 13 of the Complaint assert legal conclusions to which no response is required. To the extent a response is required, Progressive Marathon and Progressive Michigan admit that they are Michigan corporations and that Plaintiffs do not allege a claim under federal law. Progressive Marathon and Progressive Michigan neither admit nor deny the remaining allegations in Paragraph 13 of the Complaint because they lack knowledge or information sufficient to form a belief as to the truth of the allegations.

FACTUAL ALLEGATIONS

14. Progressive Marathon and Progressive Michigan admit they have form coverages in the personal automobile insurance policies they issue for Michigan. Answering further, Progressive Marathon and Progressive Michigan aver that individual insureds can negotiate individualized coverage through endorsements and that they issue other types of auto insurance in Michigan, besides personal auto insurance. Accordingly, Progressive Marathon and Progressive Michigan deny the categorical allegation that the same standardized language is present in every Progressive Marathon and Progressive Michigan auto policy they issue in Michigan. Moreover, to the extent Plaintiffs purport to characterize or restate information contained in Progressive Marathon's or Progressive Michigan's form automobile insurance policies for Michigan, or the

specific policies for each Michigan insured, the policies are the best evidence of their content and Progressive Marathon and Progressive Michigan deny any inconsistent characterization of the same. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 14 of the Complaint.

15. Progressive Marathon and Progressive Michigan admit they have form coverages in the personal automobile insurance policies they issue for Michigan. Answering further, Progressive Marathon and Progressive Michigan aver that individual insureds can negotiate individualized coverage through endorsements and that they issue other types of auto insurance in Michigan, besides personal auto insurance. Accordingly, Progressive Marathon and Progressive Michigan deny the categorical allegation that the same standardized language is present in every Progressive Marathon and Progressive Michigan auto policy they issue in Michigan. Moreover, to the extent Plaintiffs purport to characterize or restate information contained in Progressive Marathon's or Progressive Michigan's form automobile insurance policies for Michigan, or the specific policies for each Michigan insured, the policies are the best evidence of their content and Progressive Marathon and Progressive Michigan deny any inconsistent characterization of the same. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 15 of the Complaint.

16. Progressive Michigan admits that Perry owned a 2009 Pontiac G6 Sedan with VIN 1G2ZG57B894153582. Progressive Marathon and Progressive Michigan neither admit nor deny the remaining allegations in Paragraph 16 of the Complaint because they lack knowledge or information sufficient to form a belief as to the truth of the allegations.

17. Progressive Michigan admits that Perry purchased an Automobile Insurance Policy from Progressive Michigan, Policy No. 952075984, (the "Perry Policy") effective from September 3, 2021, to March 3, 2022, and that the insured vehicle was a covered auto under the Perry Policy.

Progressive Michigan admits that Exhibit A to the Complaint appears to be a copy of the Declarations Page and Perry Policy. Progressive Marathon and Progressive Michigan neither admit nor deny the remaining allegations in Paragraph 17 of the Complaint because they lack knowledge or information sufficient to form a belief as to the truth of the allegations.

18. Progressive Michigan admits that Perry submitted a first-party total loss claim for an accident that occurred on or about February 13, 2022, which was assigned claim number 22-4311575-01. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 18 of the Complaint.

19. Progressive Michigan admits that a third-party vendor, Mitchell International, calculated the total base value of the vehicle to be \$4,731.35, applied a condition adjustment of -\$321.13, and made an aftermarket parts adjustment of \$85.00. Progressive Michigan further admits that the calculated Market Value of Perry's auto was \$4,495.22, and that no amount for sales tax, title, or registration fees was included. Progressive Michigan further admits that Exhibit B to the Complaint appears to be a copy of the Mitchell Vehicle Valuation Report for Perry's claim. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 19 of the Complaint.

20. Progressive Michigan admits that Perry's \$100 deductible was subtracted from the Market Value, and the Settlement Value was calculated to be \$4,395.22. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 20 of the Complaint.

21. Progressive Michigan admits that no amount for sales tax, title fees, or registration fees was included in the total payment amount. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 21 of the Complaint.

22. Progressive Marathon admits that Peterson owned a 2008 Toyota Tundra with VIN 5TFDV54158X068431. Progressive Marathon and Progressive Michigan neither admit nor deny the remaining allegations in Paragraph 22 of the Complaint because they lack knowledge or information sufficient to form a belief as to the truth of the allegations.

23. Progressive Marathon admits that Peterson purchased an Automobile Insurance Policy from Progressive Marathon, Policy No. 950713497, (the “Peterson Policy”) effective from January 12, 2022, to July 12, 2022, and that the insured vehicle was a covered auto under the Perry Policy. Progressive Marathon admits that Exhibit C to the Complaint appears to be a copy of the Declarations Page and Peterson Policy. Progressive Marathon and Progressive Michigan neither admit nor deny the remaining allegations in Paragraph 23 of the Complaint because they lack knowledge or information sufficient to form a belief as to the truth of the allegations.

24. Progressive Marathon admits that Peterson submitted a first-party total loss claim for an accident that occurred on or about March 28, 2022, which was assigned claim number 22-6273946-01. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 24 of the Complaint.

25. Progressive Marathon admits that a third-party vendor, Mitchell International, calculated the total base value of the vehicle to be \$13,186.97, applied a condition adjustment of -\$1,062.19, and an aftermarket parts adjustment of \$135.00. Progressive Marathon further admits that the calculated Market Value of Peterson’s auto \$12,259.78 and that no amount for sales tax, title, or registration fees was included. Progressive Marathon further admits that Exhibit D to the Complaint appears to be a copy of the Mitchell Market Survey Report for Peterson’s claim. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 25 of the Complaint.

26. Progressive Marathon admits that Peterson's \$500.00 deductible was subtracted from the Market Value, and the Settlement Value was calculated to be \$11,759.78. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 26 of the Complaint.

27. Progressive Marathon admits that no amount for sales tax, title fees, or registration fees was included in the total payment amount. Progressive Michigan neither admits nor denies the allegations in Paragraph 27 of the Complaint because it lacks knowledge or information sufficient to form a belief as to the truth of the allegations. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 27 of the Complaint.

28. The allegations in Paragraph 28 of the Complaint assert legal conclusions to which no response is required. To the extent a response is required, Progressive Marathon and Progressive Michigan admit that Michigan law imposes a 6% sales tax on the purchase of a vehicle. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 28 of the Complaint.

29. The allegations in Paragraph 29 of the Complaint assert legal conclusions to which no response is required. To the extent a response is required, Progressive Marathon and Progressive Michigan admit that all vehicles in Michigan must be properly registered and titled, and that sales tax is imposed on purchase transactions involving vehicles. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 29 of the Complaint.

30. The allegation in Paragraph 30 of the Complaint assert legal conclusions to which no response is required. To the extent a response is required, Progressive Marathon and Progressive Michigan admit that Michigan law requires vehicles to be properly titled. Progressive

Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 30 of the Complaint.

31. The allegations in Paragraph 31 of the Complaint assert legal conclusions to which no response is required. To the extent a response is required, Progressive Marathon and Progressive Michigan admit that Michigan law requires vehicles to be properly registered. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 31 of the Complaint.

32. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 32 of the Complaint.

33. Progressive Marathon and Progressive Michigan admit that Plaintiffs paid all premiums owed. Answering further, Progressive Marathon and Progressive Michigan neither admit nor deny the remaining allegations in Paragraph 33 of the Complaint because they lack knowledge or information sufficient to form a belief as to the truth of the allegations.

THE PROGRESSIVE INSURANCE POLICY

34. Progressive Marathon and Progressive Michigan admit that the Perry Policy and Peterson Policy contain sections entitled “Part IV, Damage to Vehicle.” Answering further, Progressive Marathon and Progressive Michigan state that to the extent Plaintiffs purport to characterize or restate information contained in the Perry Policy or Peterson Policy, the Perry Policy and Peterson Policy are the best evidence of their content and Progressive Marathon and Progressive Michigan deny any inconsistent characterization of the same. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 34 of the Complaint.

35. Progressive Marathon and Progressive Michigan admit that the Perry Policy and Peterson Policy explain what a “collision” means. Answering further, Progressive Marathon and

Progressive Michigan state that to the extent Plaintiffs purport to characterize or restate information contained in the Perry Policy or Peterson Policy, the Perry Policy and Peterson Policy are the best evidence of their content and Progressive Marathon and Progressive Michigan deny any inconsistent characterization of the same. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 35 of the Complaint.

36. Progressive Marathon and Progressive Michigan admit that the Perry Policy and Peterson Policy explain what “comprehensive” means. Answering further, Progressive Marathon and Progressive Michigan state that to the extent Plaintiffs purport to characterize or restate information contained in the Perry Policy or Peterson Policy, the Perry Policy and Peterson Policy are the best evidence of their content and Progressive Marathon and Progressive Michigan deny any inconsistent characterization of the same. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 36 of the Complaint.

37. Progressive Marathon and Progressive Michigan admit that the Perry Policy and Peterson Policy contain sections entitled “Limits of Liability.” Answering further, Progressive Marathon and Progressive Michigan state that to the extent Plaintiffs purport to characterize or restate information contained in the Perry Policy or Peterson Policy, the Perry Policy and Peterson Policy are the best evidence of their content and Progressive Marathon and Progressive Michigan deny any inconsistent characterization of the same. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 37 of the Complaint.

38. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 38 of the Complaint.

39. Progressive Marathon and Progressive Michigan state that to the extent Plaintiffs purport to characterize or restate information contained in the Perry Policy or Peterson Policy, the Perry Policy and Peterson Policy are the best evidence of their content and Progressive Marathon

and Progressive Michigan deny any inconsistent characterization of the same. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 39 of the Complaint.

40. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 40 of the Complaint.

41. Progressive Marathon and Progressive Michigan admit that a leased vehicle can be a covered auto under the Perry Policy or Peterson Policy. Answering further, Progressive Marathon and Progressive Michigan state that to the extent Plaintiffs purport to characterize or restate information contained in the Perry Policy or Peterson Policy, the Perry Policy and Peterson Policy are the best evidence of their content and Progressive Marathon and Progressive Michigan deny any inconsistent characterization of the same. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 41 of the Complaint.

PAYMENT OF MANDATORY TAXES AND FEES

42. The allegations in Paragraph 42 of the Complaint assert legal conclusions to which no response is required. To the extent a response is required, Progressive Marathon and Progressive Michigan admit that Paragraph 42 purports to characterize *State Farm Mutual Automobile Insurance Co v Enterprise Leasing Co*, 54 NW2d 345 (Mich 1996); that decision is the best evidence of its content and Progressive Marathon and Progressive Michigan deny any inconsistent characterization of the same. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 42 of the Complaint.

43. The allegations in Paragraph 43 of the Complaint assert legal conclusions to which no response is required. To the extent a response is required, Progressive Marathon and Progressive Michigan admit that Michigan law requires the payment of sales tax on the purchase

of vehicles, and that vehicles be titled and registered. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 43 of the Complaint.

44. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 44 of the Complaint.

45. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 45 of the Complaint.

CLASS ALLEGATIONS

46. Progressive Marathon and Progressive Michigan admit that Plaintiffs purport to bring a class action under MCR 3.501 and seek to represent a class as defined in Paragraph 46 of the Complaint. Progressive Marathon and Progressive Michigan deny that class certification is appropriate under MCR 3.501.

47. The allegation in Paragraph 47 does not require a response. To the extent a response is required, Progressive Marathon and Progressive Michigan deny the allegation contained in Paragraph 47 of the Complaint.

48. Progressive Marathon and Progressive Michigan neither admit nor deny the allegations in Paragraph 48 of the Complaint because they lack knowledge or information sufficient to form a belief as to the truth of the allegations.

A. Numerosity

49. Progressive Marathon and Progressive Michigan admit they write “millions of dollars” of physical damage coverage and that the precise number of individuals who would meet the definition in Plaintiff’s proposed Class is presently unknown, but deny that class certification is appropriate under MCR 3.501. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 49 of the Complaint.

50. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 50 of the Complaint.

B. Commonality

51. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 51 of the Complaint.

52. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 52 of the Complaint.

53. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 53 of the Complaint.

C. Typicality

54. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 54 of the Complaint.

55. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 55 of the Complaint.

D. Adequacy

56. Progressive Marathon and Progressive Michigan neither admit nor deny the allegations in Paragraph 56 of the Complaint because they lack knowledge or information sufficient to form a belief as to the truth of the allegations.

57. Progressive Marathon and Progressive Michigan neither admit nor deny the allegations in Paragraph 57 of the Complaint because they lack knowledge or information sufficient to form a belief as to the truth of the allegations.

58. Progressive Marathon and Progressive Michigan neither admit nor deny the allegations in Paragraph 58 of the Complaint because they lack knowledge or information sufficient to form a belief as to the truth of the allegations.

59. Progressive Marathon and Progressive Michigan neither admit nor deny the allegations in Paragraph 59 of the Complaint because they lack knowledge or information sufficient to form a belief as to the truth of the allegations.

60. Progressive Marathon and Progressive Michigan neither admit nor deny the allegations in Paragraph 60 of the Complaint because they lack knowledge or information sufficient to form a belief as to the truth of the allegations.

E. Predominance and Superiority

61. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 61 of the Complaint.

62. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 62 of the Complaint.

63. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 63 of the Complaint.

64. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 64 of the Complaint.

65. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 65 of the Complaint.

66. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 66 of the Complaint.

67. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 67 of the Complaint.

68. The allegations in Paragraph 68 of the Complaint assert legal conclusions to which no response is required. To the extent a response is required, Progressive Marathon and Progressive Michigan admit that Paragraph 68 purports to characterize *Paris v Progressive*

American Insurance Co, No. 19-21761, 2020 WL 7039018 (S.D. Fla. Nov. 13, 2020) (certifying a class under Federal Rule of Civil Procedure 23(a) and 23(b)(3)), *Paris v Progressive American Insurance Co*, 558 F Supp 3d 1245 (S.D. Fla. 2021) (granting plaintiffs summary judgment under Florida law), and *Roth v Geico General Insurance Co*, Case No. 16-62942-Civ-DIMITROULEAS, 2018 WL 3412852 (S.D. Fla. June 14, 2018) (granting plaintiffs summary judgment under Florida law), *vacated*, 2020 WL 5507208 (Aug. 27, 2020); these decisions are the best evidence of their content and Progressive Marathon and Progressive Michigan deny any inconsistent characterization of the same. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 68 of the Complaint.

69. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 69 of the Complaint.

F. Declaratory Relief Under MCR 3.501(A)(2)(b)

70. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 70 of the Complaint.

71. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 71 of the Complaint.

72. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 72 of the Complaint.

73. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 73 of the Complaint.

**COUNT I
BREACH OF CONTRACT**

74. Progressive Marathon and Progressive Michigan re-allege and reincorporate by reference their responses to Paragraphs 1 through 73 of the Complaint as set forth above.

75. Progressive Marathon and Progressive Michigan admit that Plaintiffs purport to bring a class action on behalf of themselves and of all putative Class members. Progressive Marathon and Progressive Michigan deny that class certification is appropriate under MCR 3.501. Progressive Marathon and Progressive Michigan deny the remaining allegations contained in Paragraph 75 of the Complaint.

76. Progressive Michigan admits it issued a Policy to Perry. Progressive Marathon admits it issued a Policy to Peterson. Progressive Marathon and Progressive Michigan neither admit nor deny the remaining allegations in Paragraph 76 of the Complaint because they lack knowledge or information sufficient to form a belief as to the truth of the allegations.

77. Progressive Marathon and Progressive Michigan admit that the Perry Policy and Peterson Policy are governed by Michigan law. Progressive Marathon and Progressive Michigan neither admit nor deny the allegations contained in Paragraph 77 of the Complaint because they lack knowledge or information sufficient to form a belief as to the truth of the allegations.

78. Progressive Michigan admits that Perry submitted a first-party total loss claim under the Perry Policy for an accident that occurred on or about February 13, 2022, which was assigned claim number 22-4311575-01. Progressive Marathon admits that Peterson submitted a first-party total loss claim under the Peterson Policy for an accident that occurred on or about March 28, 2022, which was assigned claim number 22-6273946-01. Progressive Marathon and Progressive Michigan neither admit nor deny the remaining allegations in Paragraph 78 of the Complaint because they lack knowledge or information sufficient to form a belief as to the truth of the allegations.

79. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 79 of the Complaint.

80. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 80 of the Complaint.

81. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 81 of the Complaint.

82. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 82 of the Complaint.

83. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 83 of the Complaint.

84. Progressive Marathon and Progressive Michigan deny the allegations contained in Paragraph 84 of the Complaint.

**COUNT II
DECLARATORY RELIEF**

85. Progressive Marathon and Progressive Michigan re-allege and reincorporate by reference their responses to Paragraphs 1 through 84 of the Complaint as set forth above.

86. Progressive Marathon and Progressive Michigan admit that Plaintiffs purport to seek declaratory relief under MCR 2.605. Progressive Marathon and Progressive Michigan deny that declaratory relief is appropriate under MCR 2.605.

87. Progressive Marathon and Progressive Michigan admit that Plaintiffs purport to seek declaratory relief on behalf of themselves and all putative Class members. Progressive Marathon and Progressive Michigan deny that declaratory relief is appropriate under MCR 2.605.

88. Progressive Michigan admits that it issued a policy to Perry. Progressive Marathon admits it issued a policy to Peterson. Progressive Marathon and Progressive Michigan neither admit nor deny the remaining allegations in Paragraph 88 of the Complaint because they lack knowledge or information sufficient to form a belief as to the truth of the allegations.

89. Progressive Marathon and Progressive Michigan admit that Plaintiffs purport to seek a declaratory judgment that an insured is entitled to tax, title, and registration fees in a first-party total loss claim. Progressive Marathon and Progressive Michigan deny that Plaintiffs have any basis in law or fact to maintain this action. Progressive Marathon and Progressive Michigan neither admit nor deny the remaining allegations in Paragraph 89 of the Complaint because they lack knowledge or information sufficient to form a belief as to the truth of the allegations.

90. Progressive Marathon and Progressive Michigan admit that Plaintiffs purport to seek a declaratory judgment that an insured is entitled to tax, title, and registration fees in a first-person total loss claim. Progressive Marathon and Progressive Michigan deny that Plaintiffs have any basis in law or fact to maintain this action. Progressive Marathon and Progressive Michigan neither admit nor deny the remaining allegations in Paragraph 90 of the Complaint because they lack knowledge or information sufficient to form a belief as to the truth of the allegations.

91. Progressive Marathon and Progressive Michigan neither admit nor deny the allegations in Paragraph 91 of the Complaint because they lack knowledge or information sufficient to form a belief as to the truth of the allegations.

92. Progressive Marathon and Progressive Michigan deny the allegations in Paragraph 92 of the Complaint.

93. Progressive Marathon and Progressive Michigan deny the allegations in Paragraph 93 of the Complaint.

94. Progressive Marathon and Progressive Michigan deny the allegations in Paragraph 94 of the Complaint.

95. Progressive Marathon and Progressive Michigan neither admit nor deny the allegations in Paragraph 95 of the Complaint because they lack knowledge or information sufficient to form a belief as to the truth of the allegations.

96. Progressive Marathon and Progressive Michigan deny the allegations in Paragraph 96 of the Complaint.

PRAYER FOR RELIEF

In response to Plaintiffs' Prayer for Relief, Progressive Marathon and Progressive Michigan admit that Plaintiffs seek the relief requested. Progressive Marathon and Progressive Michigan deny that Plaintiffs, on behalf of themselves or any alleged class, are entitled to any relief against Progressive Marathon or Progressive Michigan.

SEPARATE OR AFFIRMATIVE DEFENSES

Progressive Marathon and Progressive Michigan have undertaken in good faith to list all of the defenses that they may have with respect to insurance coverage under the applicable insurance policies. Progressive Marathon and Progressive Michigan reserve the right, however, to re-evaluate, re-state, and/or delete defenses and/or to assert additional defenses as further information and documentation is obtained. Further, by characterizing the following as defenses, Progressive Marathon and Progressive Michigan do not admit they bear the burden of proof on any of the issues raised by such defenses. Under MCR 2.113(C), Progressive Marathon and Progressive Michigan state that the Perry Policy and Peterson Policy are in Plaintiffs' possession and copies of those documents were attached to Plaintiffs' Complaint.

Subject to and without waiving the foregoing limitations and reservations, Progressive Marathon and Progressive Michigan identify the following defenses upon which they may rely in this action:

1. The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.
2. Plaintiffs' claims and those of the proposed Class members are barred, in whole or in part, by the terms, definitions, conditions, exclusions, and limitations contained in their respective Progressive Marathon and/or Progressive Michigan policies.
3. Plaintiffs lack standing to assert the claims for relief alleged in the Complaint on their own behalfs or on behalf of the proposed Class members.
4. Plaintiffs' Complaint fails to meet the criteria for class action certification under MCR 3.501.
5. Plaintiffs' causes of action and those of the proposed Class members are barred, in whole or in part, because they have not suffered any injury as result of the acts alleged in the Complaint.
6. Plaintiffs and the proposed Class members failed to comply with the terms and conditions of their respective policies.
7. Recovery, if any, by Plaintiffs and the proposed Class members is barred or reduced by their failure to mitigate their alleged damages.
8. Plaintiffs' and the proposed Class members' cause of action are barred, in whole or in part, by the applicable statute of limitations.
9. Plaintiffs' and the proposed Class members' causes of action are barred, in whole or in part, by statutes of repose and the doctrines of estoppel, waiver, release, set-off, payment, laches, and/or unclean hands.
10. Plaintiffs' and the proposed Class members' causes of action are barred, in whole or in part, by the doctrine of accord and satisfaction.

11. Plaintiffs' and the proposed Class members' causes of action are barred because another action was already initiated involving overlapping class members and substantially the same claim against Progressive.

12. Progressive Marathon and Progressive Michigan reserve all rights under any insurance Policy issued to either Plaintiff or to the proposed Class members. This includes any right to enforce all policy provisions, conditions, and exclusions, and to demand arbitration under the terms of the Policies.

13. Progressive Marathon and Progressive Michigan reserve their rights to raise such further and additional defenses as may be available upon the facts to be developed in discovery and under other applicable substance of law.

DATED: September 2, 2022

Respectfully submitted

/s/Elaine M. Pohl

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CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2022, a copy of the foregoing *Defendants Progressive Marathon Insurance Co.'s and Progressive Michigan Insurance Co.'s Answer and Separate or Affirmative Defenses to Plaintiff's Class Action Complaint* was served on the following counsel of record by operation of the Court's e-filing system.

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