

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION

CHERYL SLADE, Individually and on  
behalf of others similarly situated

CASE NO.: 6:11-cv-02164

JUDGE TUCKER L. MELANCON

vs

PROGRESSIVE SECURITY INSURANCE  
COMPANY

MAGISTRATE JUDGE  
C. MICHAEL HILL

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**PROGRESSIVE’S ANSWER AND DEFENSES  
TO PLAINTIFF’S SECOND AMENDED PETITION**

Defendant Progressive Security Insurance Company (“Progressive”) submits its Answer and Defenses to the Second Amended Petition (“Petition”) filed by Plaintiff Cheryl Slade (“Plaintiff”).

**ANSWER**

Progressive denies all allegations contained in the headings and all unnumbered or introductory paragraphs in the Petition. Progressive answers the allegations in the numbered paragraphs in the Petition as follows:

1.

Progressive admits that Plaintiff purports to assert claims against Progressive on behalf of herself and a purported class. Progressive denies that Plaintiff’s claims have any merit, denies that this case is suitable for class treatment, and denies that Plaintiff or the purported class members are entitled to any relief whatsoever. Progressive denies that it is a “foreign insurance company,” but admits that it is “licensed to do and is doing business in the Parish of Lafayette, State of Louisiana.” Progressive denies any remaining allegations in Paragraph 1.

2.

Progressive denies the allegations in Paragraph 2.

3.

Progressive denies the allegations in Paragraph 3.

4.

Progressive admits that Plaintiff was a Progressive policyholder and that Plaintiff seeks to represent a putative class of Progressive policyholders. Progressive denies that the putative class is properly defined and denies that this case is suitable for class treatment. Progressive admits that it is authorized to do business in Louisiana and that it issues automobile insurance policies in Lafayette Parish, Louisiana.

5.

Progressive denies the allegations in Paragraph 5.

6.

Progressive admits that Plaintiff purports to assert claims against Progressive under Louisiana law on behalf of herself and a purported class. Progressive denies that Plaintiff's claims have any merit, denies that this case is suitable for class treatment, and denies that Plaintiff or the purported class members are entitled to any relief whatsoever. Progressive denies any remaining allegations in Paragraph 6.

7.

Progressive admits the allegations in Paragraph 7.

8.

Progressive admits the allegations in Paragraph 8.

9.

Progressive lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 9 and, therefore, denies them.

10.

Progressive admits that it used software sold and distributed by Mitchell International, Inc. to help determine the actual cash value of Plaintiff's claim and that the actual cash value of Plaintiff's vehicle was \$5,215.30. Progressive denies the remaining allegations in Paragraph 10.

11.

Progressive denies the allegations in Paragraph 11.

12.

Progressive denies the allegations in Paragraph 12.

13.

Progressive denies the allegations in Paragraph 13.

14.

Progressive denies the allegations in Paragraph 14.

15.

Progressive denies the allegations in Paragraph 15.

16.

Progressive denies the allegations in Paragraph 16.

17.

Progressive denies the allegations in Paragraph 17.

18.

Progressive denies the allegations in Paragraph 18, including subparagraphs (a) through (c).

19.

Progressive admits that Plaintiff purports to bring this action on behalf of herself and a putative class. Progressive denies that the putative class is properly defined, denies that this case is suitable for class treatment, and denies that Plaintiff or the putative class members are entitled to any relief whatsoever. Progressive denies any remaining allegations in Paragraph 19.

20.

Progressive admits that the putative class is described as set forth in Paragraph 20, but denies that the class is properly defined. Progressive denies any remaining allegations in Paragraph 20.

21.

Progressive denies the allegations in Paragraph 21.

22.

Progressive denies the allegations in Paragraph 22.

23.

Progressive denies the allegations in Paragraph 23.

24.

Progressive denies the allegations in Paragraph 24.

25.

Progressive denies the allegations in Paragraph 25.

26.

Progressive denies the allegations in Paragraph 26.

27.

The allegations in Paragraph 27 purport to characterize and quote from a written document that speaks for itself. Progressive denies the allegations in paragraph 27 to the extent they misquote, mischaracterize, or contradict the written document.

28.

Progressive denies the allegations in Paragraph 28.

29.

Progressive admits that Plaintiff paid her premiums and submitted a claim to Progressive. Progressive denies the remaining allegations in Paragraph 29.

30.

Progressive denies the allegations in Paragraph 30.

31.

Progressive denies the allegations in Paragraph 31.

32.

The allegations in Paragraph 32 purport to characterize and quote from a written document that speaks for itself. Progressive denies the allegations in paragraph 32 to the extent they misquote, mischaracterize, or contradict the written document. Progressive admits that Plaintiff purports to assert claims against Progressive relating to her Progressive insurance policy, but Progressive denies that Plaintiff's claims have any merit and denies that Plaintiff is entitled to any relief whatsoever. Progressive denies any remaining allegations in Paragraph 32.

33.

Progressive denies the allegations in Paragraph 33.

34.

Progressive denies the allegations in Paragraph 34.

35.

Progressive denies the allegations in Paragraph 35.

36.

Progressive denies the allegations in Paragraph 36.

37.

Progressive denies the allegations in Paragraph 37.

38.

Progressive denies the allegations in Paragraph 38.

39.

Progressive denies the allegations in Paragraph 39.

40.

Progressive denies the allegations in Paragraph 40.

41.

Progressive denies the allegations in Paragraph 41.

42.

The Court dismissed Plaintiff's claims to the extent they are predicated on this allegation and thus no response to this paragraph is required. To the extent a response is required, however, Progressive denies the allegations in Paragraph 42.

43.

Progressive denies the allegations in Paragraph 43.

44.

Progressive denies the allegations in Paragraph 44.

45.

Progressive denies the allegations in Paragraph 45.

Progressive denies that Plaintiff's claims have any merit, denies that this case is suitable for class treatment, and denies that Plaintiff or the purported class members are entitled to any relief whatsoever from Progressive, including but not limited to the relief requested in the paragraph beginning "Wherefore" following paragraph 45 of the Petition.

### **JURY TRIAL DEMAND**

Progressive hereby demands trial by jury on any and all Counts and defenses so triable.

Progressive denies all of the remaining allegations in the Petition not expressly herein admitted.

### **DEFENSES**

Without assuming the burden of proof where it otherwise rests with Plaintiff, Progressive further pleads the following defenses to both the individual and class claims alleged in the Petition:

#### **FIRST DEFENSE**

Plaintiff's Petition fails to state a claim upon which relief may be granted.

#### **SECOND DEFENSE**

Plaintiff's claims fail because the tool Progressive used to help determine the actual cash value of her vehicle is a "generally recognized used motor vehicle industry source," and the "valuation documents generated by the database [were] provided to" Plaintiff.

**THIRD DEFENSE**

Plaintiff's claims are barred because Plaintiff did not comply in all respects with the terms of her insurance policy.

**FOURTH DEFENSE**

Any damages allegedly suffered by Plaintiff were not proximately caused by the acts, conduct, or omissions of Progressive.

**FIFTH DEFENSE**

Plaintiff lacks standing to assert her claims because she cannot show that she incurred an injury-in-fact as a result of Progressive's alleged conduct.

**SIXTH DEFENSE**

Plaintiff's claims are barred because Plaintiff has not acted with reasonable diligence and has not mitigated her damages, if any.

**SEVENTH DEFENSE**

Plaintiff's claims are barred because any loss or damage claimed by Plaintiff is not the consequence of any actionable conduct by Progressive.

**EIGHTH DEFENSE**

Some or all of the alleged claims of the putative class members are barred by the applicable statute of limitations.

**NINTH DEFENSE**

Plaintiff's claims are barred to the extent she has failed to satisfy any condition precedent to suit.

**TENTH DEFENSE**

Plaintiff's claims are barred by waiver, estoppel, and/or unclean hands.



**ELEVENTH DEFENSE**

Plaintiff has failed to meet the requirements of the applicable class action rule, Federal Rule of Civil Procedure 23, as to the pleading or maintenance of a class action with regard to the matters set forth in Plaintiff's Petition, and, thus, the class allegations of the Petition should be dismissed.

**TWELFTH DEFENSE**

The causes of action or claims alleged in the Petition may not be properly certified or maintained as a class action. Plaintiff has failed to allege adequately all of the elements necessary to establish a valid class action under Rule 23 of the Federal Rules of Civil Procedure. Plaintiff is not an appropriate class representative because her claims are not common and/or typical of the claims of the other purported class members. Plaintiff's claims are inappropriate for class treatment because there are no common questions of law or fact, the alleged common questions do not predominate over individual issues raised by Plaintiff's claims, and Plaintiff would not adequately represent the members of the putative class.

**THIRTEENTH DEFENSE**

Progressive denies the material allegations of the Petition and demands strict proof thereof.

**FOURTEENTH DEFENSE**

Plaintiff is not entitled to any attorneys' fees, costs, or expenses.

**FIFTEENTH DEFENSE**

Progressive hereby gives notice that it intends to rely upon any other defense that may become available or appear during the proceedings in this case and hereby reserves its right to amend its Answer and Defenses to assert any such defense.

WHEREFORE, having fully answered Plaintiff's Petition, Progressive denies that the Plaintiff is entitled to judgment in any amount and prays that Plaintiff's Petition be dismissed with prejudice.

Respectfully submitted this 19th day of March, 2013.

/s/ William B. Gaudet

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**Counsel for Defendant Progressive Security Insurance Company**

**CERTIFICATE OF SERVICE**

I hereby certify that I presented the foregoing **PROGRESSIVE'S ANSWER AND DEFENSES TO PLAINTIFF'S SECOND AMENDED PETITION** to the Clerk of the Court for filing and uploading to the CM/ECF system which will automatically send a copy to the following attorney of record:

Kenneth D. St. Pé  
GUILLIOT & ST. PÉ, LLC  
428 Jefferson Street  
Lafayette, Louisiana 70501

ATTORNEY FOR PLAINTIFF

This 19th day of March, 2013.

/s/ Jeffrey S. Cashdan  
Jeffrey S. Cashdan