

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION

ANNIE ARNOLD, individually, *
and on behalf of all others similarly *
situated, *

Plaintiff, *

vs. * Case No.: 2:17-CV-148-WS-C

STATE FARM FIRE AND CASUALTY *
COMPANY, *

Defendant.

STATE FARM'S ANSWER AND ADDITIONAL DEFENSES

Defendant State Farm Fire and Casualty Company ("State Farm") respectfully submits its Answer and Additional Defenses in response to Plaintiff's Class Action Complaint With Jury Demand, Dkt. 1-2.

ANSWER AND FIRST DEFENSE

1. Defendant State Farm Fire and Casualty Company ("State Farm") is currently, or at a point in time relevant to this action was, licensed to sell property and casualty insurance in the State of Alabama.

Response: Admitted.

2. On or about June 5, 2013, Arnold's house located at 798 Mweyne Street, Selma, Alabama (the "Insured Property") suffered damage covered by Policy No. 01-48-1214-5 (the "Policy"), issued to Arnold by State Farm. The damage to the Insured Property required replacement and/or repair.

Response: Admitted.

3. While State Farm did compensate Arnold for certain damage to her property, as alleged in detail below, under its actual cash value ("ACV") calculation, State Farm systematically and improperly depreciated the cost of the labor required to repair the damage to the Insured Property. As a result, State Farm underpaid Arnold's claim, thus leaving her under-indemnified.

Response: State Farm admits that it issued an ACV payment for Plaintiff's loss. State Farm denies that the payment was calculated improperly, denies that Plaintiff's claim was underpaid in any respect or that she was under-indemnified, and denies all remaining allegations of this Paragraph.

4. By underpaying Plaintiff's claim, State Farm denied Plaintiff access to funds necessary to pick up the pieces during a period of great need and tremendous stress. This is directly contrary to the purpose of insurance – to protect insureds when they are in such need.

Response: State Farm admits that it is obligated pay losses in accordance with the terms of the insured's policy. State Farm denies that it underpaid Plaintiff's claim in any respect and denies all remaining allegations of this Paragraph.

5. State Farm's systematic underpayment of claims is not limited to Plaintiff's claim. On information and belief, State Farm consistently depreciates the cost of labor from its ACV calculations for structural damage claims made throughout Alabama and has been doing so at all times relevant to the allegations of this Complaint. This includes payments to victims of natural disasters such as tornado and other wind storms, victims of fire, and those who have suffered from any other form of covered real property loss.

Response: State Farm denies that there is a relevant time for this action due to this Court's lack of jurisdiction. State Farm further denies that Plaintiff has accurately characterized its method for calculating actual cash value payments, denies that its calculation method is improper or results in systematic underpayment of its insureds' covered claims in Alabama, and denies all remaining allegations of this Paragraph.

6. Alabama law allows an insurer to depreciate the value of building materials, but does not allow the depreciation of the cost of labor. As a result, and as detailed below, by depreciating labor costs from its ACV calculations throughout Alabama, State Farm has engaged, and continues to engage, in a systematic and unlawful pattern of underpayment of insurance claims.

Response: State Farm admits that in Alabama, the materials component of estimated replacement cost is subject to depreciation when calculating ACV. State Farm denies that remaining components of estimated replacement cost (including the labor component thereof) are

exempt from depreciation in Alabama when calculating ACV, denies that it underpaid Plaintiff's claim or under-indemnified her in any respect under her Policy, denies that Plaintiff has accurately described State Farm's claim payment practices or that they result in systematic underpayment of covered claims in Alabama, and denies all remaining allegations of this Paragraph.

Parties

7. Plaintiff Annie Arnold is a resident of Dallas County, Alabama.

Response: Admitted.

8. Defendant State Farm is an insurance company domiciled in the State of Illinois and is believed to be licensed to do business in the State of Alabama. Defendant can be served through its service of process agent, CSC-Lawyers Incorporating Service, Inc., 150 South Perry Street, Montgomery, AL 36104.

Response: Admitted.

Jurisdiction and Venue

9. Subject matter jurisdiction is proper in this Court because this Court is a Court of general jurisdiction.

Response: Denied. This Court is an Article III Court and lacks jurisdiction in this matter due to Plaintiff's lack of standing and/or mootness of Plaintiff's attempted claims.

10. In determining the amount in controversy, Plaintiff clarifies that she is not seeking the aggregate amount of depreciated labor costs for herself and all proposed class members throughout the proposed class period. Instead, depreciated labor costs for ACV payments are sometimes later paid to policyholders upon further adjustment of their claims. If amounts for depreciated labor are later repaid to a policyholder, those amounts would not be included in the damages sought by Plaintiff on behalf of herself and the proposed class members.

Response: State Farm admits that it pays replacement cost benefits to insureds and that Plaintiff does not seek recovery of those amounts. State Farm denies that its method for calculating actual cash value is improper, denies that Plaintiff or members of the proposed class are entitled to any relief herein, and denies all remaining allegations of this Paragraph.

11. This Court has personal jurisdiction over State Farm as State Farm is licensed to do business in the State of Alabama and has had more than minimum contacts with the State of Alabama and has availed itself of the privilege of conducting business in this state.

Response: State Farm admits that this Court would have personal jurisdiction over it but for this Court's lack of jurisdiction over Plaintiff's suit due to Plaintiff's lack of standing and/or mootness of Plaintiff's attempted claims. State Farm denies all remaining allegations of this Paragraph.

12. Venue is proper in this Court because the claims asserted herein arise out of transactions between Plaintiff and State Farm that occurred in Dallas County.

Response: State Farm admits that venue would be proper here but for Plaintiff's lack of standing and/or mootness of Plaintiff's attempted claims. State Farm denies all remaining allegations of this Paragraph.

Factual Background

13. At all times relevant to this action, the Insured Property was insured under State Farm Policy No. 01-48-1214-5. A true and correct copy of the insurance policy is attached hereto as Exhibit A.

Response: State Farm denies that there is a relevant time for this action due to this Court's lack of jurisdiction. State Farm admits the remaining allegations of this Paragraph.

14. On or about June 5, 2013, the Insured Property suffered damage covered by the Policy. The damage to the Insured Property required replacement and/or repair. Plaintiff timely submitted a claim to State Farm requesting payment for the covered loss.

Response: State Farm admits that Plaintiff's property sustained a covered loss on the date specified, and that Plaintiff made a claim under her Policy for that loss. State Farm denies all remaining allegations of this Paragraph.

15. State Farm subsequently confirmed that Plaintiff had sustained a covered loss to the Insured Property, and that State Farm was obligated to pay Plaintiff's claim for her covered loss pursuant to the terms of her Policy.

Response: State Farm admits that Plaintiff's property sustained a covered loss and that it has paid Plaintiff all that was owed for her claim. State Farm denies all remaining allegations of this Paragraph.

16. Soon after the June 5, 2013 loss, State Farm sent an adjuster to inspect the damage to the Insured Property. As set forth in written estimates and correspondence to Plaintiff, State Farm's adjuster determined that Plaintiff had suffered a covered loss in the amount of \$95,719.54 to the Insured Property. The estimate included the cost of materials and labor required to complete the removal of damaged materials and subsequent repairs. A copy of the estimate provided to Plaintiff is attached as Exhibit B.

Response: State Farm admits that a claim specialist inspected Plaintiff's damaged property, prepared an estimate of the total cost to repair or replace the property (including labor and materials), calculated \$95,719.54 as that total estimated cost, and provided the estimate to Plaintiff. State Farm further admits that a copy of the estimate prepared for Plaintiff's loss is attached to the Complaint. State Farm denies all remaining allegations of this Paragraph.

17. In calculating its payment obligations to Plaintiff, State Farm subtracted from the adjuster's replacement cost determination the \$2,000.00 deductible provided for in the policy plus an additional \$21,486.26 for depreciation. This resulted in a net ACV payment of \$72,233.28.

Response: State Farm admits that for Plaintiff's initial ACV claim payment of \$72,233.28, State Farm subtracted her \$2,000 deductible and a total of \$21,486.26 for depreciation. State Farm denies all remaining allegations of this Paragraph.

18. The estimate upon which State Farm's ACV payment for the Insured Property was based indicates that State Farm depreciated both material costs and labor costs associated with removal of damaged materials and repairs to the house. For example, State Farm estimated the cost of removing and replacing gutter and downspouts to be \$106.20. State Farm then depreciated from the total replacement cost estimate to remove and replace the gutter and downspouts, which constitutes labor and materials, \$42.49 to arrive at what it designates as an "ACV" of \$63.71.

Response: State Farm admits that certain labor and material costs were subject to depreciation when it calculated Plaintiff's initial ACV payment. State Farm denies the allegations

of this Paragraph in respect to the referenced “gutter and downspouts” to the extent they are inconsistent with the referenced Estimate and denies all remaining allegations of this Paragraph.

Policy Terms and Claims Settlement Practices

19. The policy of insurance State Farm issued to Arnold and other members of the proposed class provides replacement cost value (“RCV”) coverage for both total loss of and partial loss to covered dwellings and other structures and, in some cases, ACV coverage.

Response: State Farm admits that its homeowners policy form in Alabama provides for payment of ACV and replacement cost benefits in accordance with the terms of the policy. State Farm denies that Plaintiff has accurately described her homeowners policy or State Farm’s obligations thereunder, denies that all of its property insurance forms in Alabama are identical, and denies all remaining allegations of this Paragraph.

20. At all time relevant to this cause of action, State Farm’s custom and practice has been to pay its RCV policy holders the ACV of covered loss claims, net of any applicable deductible. In order to qualify for additional payment and recover the full RCV of the covered loss where RCV coverage is available under the insurance policy, the insured party must repair, rebuild, or replace the damaged property within a specific time frame and submit proof to State Farm that the repair or replacement was timely completed. Costs that exceed the amount of the ACV payment are the responsibility of the policy holder.

Response: State Farm denies that Plaintiff has accurately described State Farm’s obligations under its property insurance policies in Alabama or its claim payment practices thereunder, and denies all remaining allegations of this Paragraph.

21. At all times relevant hereto, State Farm’s methodology for calculating ACV has been to determine the cost of removal of damaged materials and repair or replacement of the damaged materials, and then deduct depreciation.

Response: State Farm denies that there is a relevant time for this action due to this Court’s lack of jurisdiction. State Farm further denies that Plaintiff has accurately described State Farm’s method for calculating ACV and denies all remaining allegations of this Paragraph.

22. In the context of insurance law, “depreciation” is defined as “[a] decline in an asset’s value because of use, wear, obsolescence, or age.” BLACK’S LAW DICTIONARY 506 (9th ed. 2009). Materials used in the repair or replacement of damaged property e.g. roofing shingles or metal, diminished (sic) in value over time due to use, wear, obsolescence and age. As such these are assets that can be depreciated. In contrast, labor is not susceptible to aging or wear. Its value does not diminish over time. Depreciation simply cannot be applied to labor costs.

Response: State Farm admits that Plaintiff purports to quote a definition from BLACK’S LAW DICTIONARY and denies the allegations of this Paragraph to the extent they are inconsistent with that reference. State Farm admits that in Alabama, the materials component of estimated replacement cost is subject to depreciation when calculating ACV. State Farm denies that remaining components of estimated replacement cost (including the labor component thereof) are exempt from depreciation in Alabama when calculating ACV, denies that it underpaid Plaintiff’s claim or under-indemnified her in any respect under her Policy, denies that Plaintiff has accurately described State Farm’s claim payment practices, and denies all remaining allegations of this Paragraph.

23. The basic purpose of property insurance is to provide indemnity to policyholders. To indemnify means to put the insured back in the position he or she enjoyed before the loss – no better and no worse. A policy that provides for payment of the ACV of a covered loss is an indemnity contract because the purpose of the ACV payment is to make the insured whole but not to benefit him or her because a loss occurred. See APPLEMAN ON INSURANCE 2d § 3823. An RCV policy expands the basic concept of indemnity to include coverage for repairs and replacement costs that exceed the ACV of the loss.

Response: State Farm admits that consistent with the principles of indemnity, ACV pays the value, at the time of loss, of insured property damaged by a covered cause of loss, with due consideration of depreciation and in accordance with and as provided by the terms of the insured’s policy. State Farm further admits that replacement cost benefits pay the cost to repair or replace insured property damaged by a covered cause of loss in accordance with and as provided by the terms of the policy. State Farm also admits that Plaintiff purports to cite to APPLEMAN ON

INSURANCE 2d § 3823, and that an ACV payment is not intended to provide an insured with a profit because a loss has occurred. State Farm denies all remaining allegations of this Paragraph.

24. In order to recover the RCV of their covered losses, Plaintiff and other proposed class members are required to pay the (sic) out of pocket the difference between the cost of materials and labor necessary to repair or replace the damaged property and the depreciated ACV payment they received from Defendant. While an insurer may lawfully depreciate material cost in calculating the amount of an ACV payment owed to an insured, it may not depreciate labor costs. Defendant's failure to pay the full cost of the labor necessary to repair or replace Plaintiff's damaged property in the ACV payments left Plaintiff under-indemnified and underpaid for her losses.

Response: State Farm admits that in Alabama, the materials component of estimated replacement cost is subject to depreciation when calculating ACV. State Farm denies that remaining components of estimated replacement cost (including the labor component thereof) are exempt from depreciation in Alabama when calculating ACV, denies that it underpaid Plaintiff's claim or under-indemnified her in any respect under her Policy, denies that Plaintiff has accurately described State Farm's claim payment practices, and denies all remaining allegations of this Paragraph.

25. Defendant materially breached its duty to indemnify Plaintiff by depreciating labor costs associated with repairs to the Insured Properties (sic) in the ACV payments (sic), thereby paying Plaintiff less than what they (sic) were entitled to receive under the terms of the insurance contract.

Response: Denied.

Class Action Allegations

26. Pursuant to Rule 23 of the Alabama Rules of Civil Procedure, Plaintiff brings this action on her own behalf and on behalf and (sic) all others similarly situated. This action satisfies the Rule 23 requirements of commonality, numerosity, and superiority.

Response: State Farm admits that Plaintiff purports to represent a class of individuals. State Farm denies that any prerequisites for class certification under Fed. R. Civ. P. 23 are satisfied, denies that any class may properly be certified herein, and denies all remaining allegations of this Paragraph.

27. The proposed class which Plaintiff seeks to represent is defined as follows:

All persons and entities that received “actual cash value” payments, directly or indirectly, from State Farm for loss or damage to a dwelling, business, or other structure located in the State of Alabama, such payments arising from events that occurred from March 1, 2007 through the date of trial of this Action, where the cost of labor was depreciated. Excluded from the Class are: (1) all persons and entities that received payment from State Farm in the full amount of insurance shown on the declarations page; (2) State Farm and its affiliates, officers, and directors; (3) members of the judiciary and their staff to whom this action is assigned; and (4) Plaintiff’s counsel.

Response: State Farm admits that Plaintiff purports to represent a class of individuals.

State Farm denies that Plaintiff can serve as a class representative, denies that any class may properly be certified herein for any time period, denies that it has engaged in wrongdoing as to Plaintiff or proposed class members, and denies all remaining allegations of this Paragraph.

28. The members of the proposed class are so numerous that joinder of all members is impractical. Plaintiff reasonably believes that hundreds if not thousands of people geographically dispersed across Alabama have been damaged by Defendant’s actions. The names and addresses of the members of the proposed class are identifiable through records maintained by Defendant, and proposed class members may be notified of the pendency of this action by mailed, published and/or electronic notice.

Response: State Farm admits that during the time period identified in Paragraph 27 of the Complaint, State Farm has issued ACV payments to thousands of policyholders under property insurance policies for damage sustained to insured properties located in Alabama. State Farm further admits that it has address information for current policyholders. State Farm denies that any prerequisites for class certification are satisfied here, denies that proposed class would satisfy the standard for ascertainability under Fed. R. Civ. P. 23, denies that this action may be maintained as a class action, denies that it has engaged in wrongdoing as to Plaintiff or proposed class members, and denies all remaining allegations of this Paragraph.

29. Common questions of law and fact exist as to all proposed class members and predominate over any questions affecting only individual proposed class members. The questions of law and fact common to the proposed class include, but are not limited to:

- A. Whether Defendant's insurance policies allow Defendant to depreciate labor in calculating ACV payments for covered losses;
- B. Whether Defendant's insurance policies are ambiguous concerning the depreciation of labor costs in calculating ACV payments, and if so, how Defendant's insurance policies should be interpreted;
- C. Whether Defendant's depreciation of labor costs in making ACV payments for covered losses is a breach of the insurance contracts issued by Defendant to Plaintiff and other proposed class members.
- D. Whether Plaintiff and other proposed class members have been damaged by Defendant's breaches, as alleged herein, and if so:
 - 1. What is the nature and extent of those damages; and
 - 2. What relief should be awarded to Plaintiff and other proposed class members.

Response: State Farm denies that the purported questions Plaintiff has identified are common and predominating questions of fact or law; denies that any prerequisites for class certification are satisfied here, denies that this action may be maintained as a class action, denies that it has engaged in wrongdoing as to Plaintiff or proposed class members, and denies all remaining allegations of this Paragraph.

30. Plaintiff's claim is typical of the claims of all the proposed class members, as they are all similarly affected by Defendant's custom and practice of unlawful and unjust conduct and their claims are based on such conduct. Further, Plaintiff's claims are typical of the claims of all proposed class members because their claims arise from the same or similar underlying facts and are based on the same factual and legal theories. Plaintiff is no different in any material respect from any other member of the proposed class – all members of the proposed class had labor unlawfully depreciated by State Farm.

Response: State Farm denies that this Court has jurisdiction over this suit due to Plaintiff's lack of standing and/or mootness of Plaintiff's attempted claims. State Farm further denies that any prerequisites for class certification are satisfied here, denies that this action may be maintained as a class action, denies that it has engaged in wrongdoing as to Plaintiff or proposed class members, and denies all remaining allegations of this Paragraph.

31. Plaintiff and her counsel will fairly and adequately protect the interests of the members of the proposed class. Plaintiff's interests do not conflict with the interests of the class she seeks to represent. Plaintiff has retained counsel who are competent and experienced in class litigation and complex insurance-related cases and will fairly and adequately represent the interests of the proposed class. Plaintiff and her counsel will prosecute this action vigorously.

Response: State Farm denies that this Court has jurisdiction over this suit due to Plaintiff's lack of standing and/or mootness of Plaintiff's attempted claims. State Farm further denies that any prerequisites for class certification are satisfied here, denies that this action may be maintained as a class action, denies that it has engaged in wrongdoing as to Plaintiff or proposed class members, and denies all remaining allegations of this Paragraph.

32. A class is superior to all available methods for the fair and efficient adjudication of this controversy. Joining all proposed class members in one action is impracticable, and prosecuting individual actions is not feasible. The size of the individual claims is likely not large enough to justify filing a separate action for each claim. For many, if not most class members, a class action is the only procedural mechanism that will afford them an opportunity for legal redress and justice. Even if proposed class members had the resources to pursue individual litigation, that method would be unduly burdensome to the courts in which such cases would proceed. Individual litigation exacerbates the delay and increases the expense for all parties, as well as the court system. Moreover individual litigation could result in inconsistent adjudications of common issues of law and fact.

Response: State Farm denies that this Court has jurisdiction over this suit due to Plaintiff's lack of standing and/or mootness of Plaintiff's attempted claims. State Farm further denies that any prerequisites for class certification are satisfied here, denies that this action may be maintained as a class action, denies that it has engaged in wrongdoing as to Plaintiff or proposed class members, and denies all remaining allegations of this Paragraph.

33. In contrast, a class action will minimize case management difficulties and provide multiple benefits to the litigating parties, including efficiency, economy of scale, unitary adjudication with consistent results and equal protection of rights of Plaintiff and proposed class members. These benefits would result from the comprehensive and efficient supervision of the litigation by a single court.

Response: State Farm denies that this Court has jurisdiction over this suit due to Plaintiff's lack of standing and/or mootness of Plaintiff's attempted claims. State Farm further denies that any prerequisites for class certification are satisfied here, denies that this action may be maintained as a class action, denies that it has engaged in wrongdoing as to Plaintiff or proposed class members, and denies all remaining allegations of this Paragraph.

34. No unusual difficulties are anticipated in the management of this case as a class action.

Response: State Farm denies that this action would be manageable if certified, denies that any other prerequisites for class certification are satisfied here, denies that this action may be maintained as a class action, and denies that it has engaged in wrongdoing as to Plaintiff or proposed class members. State Farm further denies that this Court has jurisdiction over this suit due to Plaintiff's lack of standing and/or mootness of Plaintiff's attempted claims, and denies all remaining allegations of this Paragraph.

35. Class certification is further warranted because Defendant has acted or refused to act on grounds that apply generally to the proposed class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the proposed class as a whole.

Response: State Farm denies that this Court has jurisdiction over this suit due to Plaintiff's lack of standing and/or mootness of Plaintiff's attempted claims. State Farm further denies that any prerequisites for class certification are satisfied here, denies that this action may be maintained as a class action, denies that it has engaged in wrongdoing as to Plaintiff or proposed class members, denies that there is a basis to award injunctive relief or any other relief herein, and denies all remaining allegations of this Paragraph.

36. At all times relevant to the allegations set forth herein, Defendant owed a fiduciary duty to, and/or had a special relationship with, Plaintiff and other proposed class members.

Response: State Farm denies that there is a relevant time for this action due to this Court's lack of jurisdiction. State Farm further denies that Plaintiff has accurately described its legal

relationship and obligations to its policyholders under Alabama law, denies that it has engaged in wrongdoing as to Plaintiff or proposed class members, and denies all remaining allegations of this Paragraph.

37. Throughout the claims process, Plaintiff and other proposed class members asked Defendant to pay them what they were entitled to receive as the ACV of their covered losses under the terms of the applicable insurance policy. Defendant affirmatively responded to Plaintiff and other proposed class members that their ACV payments were the full amount owed under policies and that no additional money was owed under the ACV calculation:

Response: State Farm denies that Plaintiff has accurately described State Farm's communications with Plaintiff or other insureds, denies that it made any misrepresentations or engaged in any other wrongdoing as to Plaintiff or proposed class members, and denies all remaining allegations of this Paragraph.

38. Throughout the claims process, Defendant affirmatively responded to Plaintiff and other class members by providing them with worksheets purporting to detail any and all deductions for depreciation assessed in determining the ACV calculation pursuant to Alabama Department of Insurance Administrative Code Chapter 4821-125-.09(2). However, in violation of its duty under Alabama Department of Insurance Administrative Code Chapter 4821-125-.09(2) to detail any and all depreciation deductions, Defendant failed to detail, or even disclose, its depreciation of labor costs.

Response: State Farm denies that it failed to disclose depreciation applied on estimates it generated or when calculating ACV payments to Plaintiff or proposed class members, denies that it failed to comply with Alabama Department of Insurance Administrative Code Chapter 4821-125-.09(2) in any respect, denies that it made any misrepresentations or omissions or engaged in any other wrongdoing as to Plaintiff or proposed class members, and denies all remaining allegations of this Paragraph.

39. Neither Defendant's insurance policies in force during the proposed class period nor its adjuster's worksheets disclose that State Farm depreciates labor costs. Given State Farm's practice of depreciating labor costs, the insurance policies and adjuster worksheets are thus materially misleading.

Response: Denied.

40. Plaintiff and other proposed class members justifiably and reasonably relied upon Defendant's representations that they had received all they were entitled to recover as ACV payments from Defendant under the terms of their policies. Plaintiff and other proposes (sic) class members likewise justifiably and reasonably relied upon Defendant's insurance policies and adjuster worksheets, neither of which disclosed that State Farm depreciated labor costs in determining the ACV of claims.

Response: State Farm denies that Plaintiff has accurately described State Farm's policies and/or its communications with its insureds, including the estimates it provides for repair or replacement of damaged property and depreciation applied for State Farm's actual cash value calculations. State Farm further denies that it failed to comply with Alabama Department of Insurance Administrative Code Chapter 4821-125-.09(2) in any respect, denies that it made any misrepresentations or omissions or engaged in any other wrongdoing as to Plaintiff or proposed class members, and denies all remaining allegations of this Paragraph.

41. Defendant had a duty to disclose to Plaintiff and other proposed class members that they were entitled to recover the full cost of labor necessary to remove damaged materials and repair or replace their property in their ACV payments. Defendant not only failed to disclose this information, but they also, by failing to disclose that it was depreciating labor costs in in (sic) its insurance policies and adjuster worksheets, acted in a manner designed to conceal its practice of labor depreciation from Plaintiff and other proposed class members. Because of Defendant's actions, Plaintiff and other proposed class members could not have known they had been underpaid on their claims through the exercise of due diligence.

Response: State Farm denies that Plaintiff has accurately described State Farm's policies and/or its communications with its insureds, including the estimates it provides for repair or replacement of damaged property and depreciation applied for State Farm's actual cash value calculations. State Farm further denies that it failed to fulfill any duty owed to Plaintiff or members of the proposed class, or that it failed to comply with Alabama Department of Insurance Administrative Code Chapter 4821-125-.09(2) in any respect. State Farm denies that it made any misrepresentations or omissions or engaged in any other wrongdoing as to Plaintiff or proposed class members, and denies all remaining allegations of this Paragraph.

42. As the party to the insurance policy with superior knowledge, Defendant intended, or at least expected, that its conduct in concealing the depreciation of labor expenses in determining ACV would be acted upon by, or influence, Plaintiff and other proposed class members.

Response: State Farm denies that it failed to fulfill any duty owed to Plaintiff or members of the proposed class, or that it failed to comply with Alabama Department of Insurance Administrative Code Chapter 4821-125-.09(2) in any respect. State Farm further denies that it made any misrepresentations, concealment, or omissions or engaged in any other wrongdoing as to Plaintiff or proposed class members, and denies all remaining allegations of this Paragraph.

43. At all times throughout the proposed class period, Defendant knew that it was depreciating labor costs in determining ACV.

Response: Admitted.

44. Given Defendant's concealment of its depreciation of labor costs in determining ACV, Plaintiff and other proposed class members lacked knowledge, or the means to know, that Defendant was depreciating labor costs in determining ACV.

Response: State Farm denies that it made any misrepresentations, concealment, or omissions or engaged in any other wrongdoing as to Plaintiff or proposed class members, denies that Plaintiff or other proposed class members lacked knowledge or the means to learn of, inquire about, or understand State Farm's ACV calculations for their respective losses, and denies all remaining allegations of this Paragraph.

45. At all times during the proposed class period, Plaintiff and other proposed class members relied in good faith upon the conduct and statements of Defendant.

Response: State Farm denies that it made any misrepresentations, concealment, or omissions or engaged in any other wrongdoing as to Plaintiff or proposed class members, denies that Plaintiff or other proposed class members lacked knowledge or the means to learn of, inquire about, or understand State Farm's ACV calculations for their respective losses, and denies all remaining allegations of this Paragraph.

46. Defendant's fraudulent concealment of its depreciation of labor costs prevented Plaintiff and other proposed class members from promptly challenging Defendant's conduct.

Response: State Farm denies that it made any misrepresentations, concealment, or omissions or engaged in any other wrongdoing as to Plaintiff or proposed class members, denies that Plaintiff or other proposed class members lacked knowledge or the means to learn of, inquire about, or understand State Farm's ACV calculations for their respective losses, and denies all remaining allegations of this Paragraph.

47. Defendant's fraudulent concealment tolls the running of any statute of limitations or contractual attempt to shorten a statute of limitations that may otherwise be applicable to the claims for relief asserted herein.

Response: State Farm denies that it engaged in fraudulent concealment, denies that it engaged in any wrongdoing as to Plaintiff or any member of the proposed class, denies that tolling would apply even if a viable claim for relief had been alleged as to Plaintiff or any proposed class member, and denies all remaining allegations of this Paragraph.

Count I – Breach of Contract

48. Plaintiff hereby incorporates by reference all preceding paragraphs as if fully set forth herein.

Response: State Farm repeats and incorporates by reference its responses to the preceding allegations of the Complaint as if fully set forth herein.

49. Defendant entered into policies of insurance with Plaintiff and other members of the proposed class. These policies govern the relationship between Defendant and Plaintiff and other proposed class members, as well as the manner in which claims for covered losses are handled.

Response: State Farm admits that the policy it has issued to a particular policyholder, along with applicable state law and regulations, govern State Farm's relationship with and obligations to the policyholder. State Farm denies all remaining allegations of this Paragraph.

50. The insurance policies at issue were drafted by Defendant and are essentially identical in all respects material to this litigation.

Response: State Farm admits that it drafts the insurance policies it issues, and that insureds are free to select certain coverage options. State Farm denies that differing forms of its policies are identical. Because Plaintiff has not specified the policies or policy provisions she characterizes as “essentially identical,” State Farm is without information sufficient to form a belief as to the truth or falsity of her characterization and therefor denies it. State Farm denies all remaining allegations of this Paragraph.

51. Plaintiff and other proposed class members complied with all material provisions and fulfilled their respective duties with regard to their policies.

Response: State Farm admits that some members of the proposed class have complied with all material provisions of their policies and satisfied duties owed thereunder with respect to payments already received. State Farm denies that Plaintiff has a viable claim for relief due to her lack of standing and/or mootness. State Farm denies all remaining allegations of this Paragraph.

52. The policies of insurance Defendant issued to Plaintiff and other proposed class members state that in the event of a loss Defendant may fulfill their initial contractual obligation to an insured party by paying the ACV of the loss. At all times relevant hereto, Defendant’s custom and practice has been, and is, to make such payments based on Defendant’s calculation of the ACV for the loss, net of any applicable deductible.

Response: State Farm admits that under certain of its policies, it may satisfy its contractual obligation to pay for a covered loss by making an ACV payment. State Farm further admits that an insured’s deductible for a structural damage claim may be applied to the initial claim payment for the loss. State Farm also admits that its ACV payments are based on its calculation of ACV, but states that computation of ACV generally is done with input from the insured and, in some instances, with input from the insured’s repair contractor. State Farm denies that there is a relevant

time for this action due to this Court's lack of jurisdiction and denies all remaining allegations of this Paragraph.

53. Defendant breached its contractual duty to pay Plaintiff and other proposed class members the ACV of their claims by unlawfully depreciating labor costs.

Response: Denied.

54. Defendant's actions in breaching its contractual obligations to Plaintiff and other proposed class members benefitted, and continue to benefit, Defendant. Likewise, Defendant's actions damaged, and continue to damage, Plaintiff and other proposed class members.

Response: State Farm denies that it breached its contractual obligations to Plaintiff or any other member of the proposed class, denies that Plaintiff or any member of the proposed class has sustained damage as a result of any wrongful act by State Farm, and denies all remaining allegations of this Paragraph.

55. Defendant's actions in breaching its contractual obligations, as described herein, are the direct and proximate cause of damages to Plaintiff and other proposed class members.

Response: Denied.

56. Accordingly, Plaintiff and other proposed class members are entitled to recover damages sufficient to make them whole for the amounts Defendant unlawfully withheld from their ACV payments as labor cost depreciation.

Response: Denied.

Demand for Relief

WHEREFORE, Plaintiff individually and on behalf of all others similarly situated, request (sic) that the Court grant the following relief:

- A. Certify that this lawsuit may be prosecuted as a class action pursuant to Rule 23 of the Alabama Rules of Civil Procedure;
- B. Appoint Plaintiff and Plaintiff's counsel to represent the proposed class;
- C. Declare that Defendant has breached its contractual obligations to the Plaintiff and the proposed class by depreciating labor costs;

- D. Award Plaintiff and the proposed class damages in an amount equal to the total amount of depreciated costs withheld on Plaintiff's and proposed class members' claims that has not been paid to Plaintiff and proposed class members;
- E. Award Plaintiff and the proposed class prejudgment and post-judgment interest on its (sic) liquidated and unliquidated damages;
- F. Enjoin Defendant from engaging in the unlawful and unjust conduct complained of herein;
- G. Award the proposed class all expenses and costs of this action, and require Defendant to pay the costs and expenses of class notice and claims administration;
- H. Trial by Jury; and
- I. Any and all other relief to which Plaintiff and the other proposed class members appear to be entitled.

Response: State Farm denies that this Court has jurisdiction over this suit due to Plaintiff's lack of standing and/or mootness of Plaintiff's attempted claims. State Farm further denies that it has engaged in wrongdoing as to Plaintiff or any member of the proposed class, and denies that Plaintiff or any member of the proposed class is entitled to any damages, injunctive or declaratory relief, costs, pre- or post-judgment interest, or any other relief whatsoever. State Farm also denies that any prerequisites for class certification are satisfied here, denies that this action may be maintained as a class action, and denies that it should be required to bear any costs associated with certification of any class. State Farm denies all remaining allegations of this Paragraph.

ADDITIONAL DEFENSES

1. State Farm repeats and reincorporates its answers and denials to Plaintiffs' allegations in Paragraphs 1-56 and Prayer for Relief as set forth in the "Class Action Complaint With Jury Demand," Dkt. 1-2, as if fully set forth herein.
2. As of June 5, 2013, Plaintiff's home located at 798 Mweyne Street, Selma, Alabama (the "Home"), was insured under State Farm Policy No. 01-48-1214-5 (the "Policy").

3. Following the damage to the Home on June 5, 2013, Plaintiff made a structural damage claim under Coverage A of her Policy.

4. As of the date of Plaintiff's loss, the "SECTION I – LOSS SETTLEMENT" provisions of her Policy provided in pertinent part as follows:

1. **A1 – Replacement Cost Loss Settlement – Similar Construction.**

a. We will pay the cost to repair or replace with similar construction and for the same use on the premises shown in the **Declarations**, the damaged part of the property covered under **SECTION I – COVERAGES, COVERAGE A – DWELLING**, except for wood fences, subject to the following:

- (1) until actual repair or replacement is completed, we will pay only the actual cash value at the time of the loss of the damaged part of the property, up to the applicable limit of liability shown in the **Declarations**, not to exceed the cost to repair or replace the damaged part of the property;
- (2) when the repair or replacement is actually completed, we will pay the covered additional amount you actually and necessarily spend to repair or replace the damaged part of the property, or an amount up to the applicable limit of liability shown in the **Declarations**, whichever is less;
- (3) to receive any additional payments on a replacement cost basis, you must complete the actual repair or replacement of the damaged part of the property within two years after the date of loss, and notify us within 30 days after the work has been completed.

See Dkt. 1-2 at p. 28.

5. As of June 5, 2013, the **SECTION 1 – CONDITIONS** portion of the Policy included the following provisions pertinent here:

6. **Suit Against Us.** No action shall be brought unless there has been compliance with the policy provisions. . . .

* * *

8. **Loss Payment.** We will adjust all losses with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss and:

- a. reach agreement with you;
- b. there is an entry of a final judgment; or
- c. there is a filing of an appraisal award with us.

See Dkt. 1-2 at p. 31.

6. As of June 5, 2013, the “**SECTION I AND SECTION II – CONDITIONS**” provision of Plaintiff’s Policy provided as follows:

4. Waiver or Change of Policy Provisions. A waiver or change of any provision of this policy must be in writing by us to be valid. Our request for an appraisal or examination shall not waive any of our rights.

See Dkt. 1-2 at p. 36.

7. Following Plaintiff’s submission of her structural damage claim for her June 5, 2013, loss, Chris Robinson prepared a State Farm estimate of the cost to repair or replace the damaged portions of the Home. A copy of that estimate, which was provided to Plaintiff at or about the time it was prepared, is attached as an exhibit to Plaintiff’s Complaint. *See* Dkt. 1-2 at pp. 59-112.

8. State Farm initially estimated the full cost to repair or replace Plaintiff’s home as \$95,719.54. State Farm obtained information regarding the pre-loss age and condition of portions of the property from Plaintiff. State Farm calculated the ACV of Plaintiff’s loss after applying depreciation to certain repair tasks identified in the estimate, applied her deductible, and issued an initial claim payment in the amount of \$72,233.28. That payment was issued to Plaintiff and her mortgage lender on or about July 3, 2013.

9. Plaintiff accepted State Farm’s July 3, 2013 payment of \$72,233.28 for the ACV of her loss and did not contest it, challenge it, or complain that it was inadequate until she filed suit here.

10. Plaintiff did not submit a proof of loss for her claim at any time.

11. On or about July 3, 2013, Plaintiff informed State Farm that she was considering the purchase of a replacement home (“Replacement Residence”) rather than repairing her Home.

12. When an insured purchases a replacement dwelling rather than repairing the insured residence, State Farm will pay the insured’s actual, incurred cost to acquire the replacement property (excluding its lot value), less the insured’s deductible and without depreciation, up to and not exceeding State Farm’s total estimate of the cost to repair the original insured structure without depreciation.

13. Plaintiff submitted to State Farm documentation showing a \$43,000 purchase price for the Replacement Residence she purchased, along with signed repair contracts for that structure totaling \$57,594. Based on that documentation, her total cost for the Replacement Residence was \$100,594, with \$6,000 of that amount attributable to the lot for the Replacement Residence. Plaintiff sought replacement cost benefits based on that documentation. The total replacement cost benefits owed for Plaintiff’s loss, based on the documentation she submitted and her representations, was \$92,594 (the cost for the Replacement Property less the \$6,000 lot value and less her \$2,000 deductible). That amount did not exceed State Farm’s estimate of the total cost to repair her insured Home.

14. Based on Plaintiff’s submission, State Farm should have calculated Plaintiff’s replacement cost payment by subtracting from \$100,594 the \$6,000 lot value, her \$2,000, and the claim payment she already received, for a total payment of \$20,360.72. Due to a computation error unrelated to depreciation, however, State Farm issued its first supplemental payment for replacement cost benefits to Plaintiff in the amount of \$15,486.26. From the issuance of this payment on or about March 21, 2014 (approximately three years before she filed suit), Plaintiff’s claim was handled on a replacement cost basis, without consideration or application of

depreciation. Plaintiff did not submit a proof of loss complaining that this payment was insufficient.

15. Plaintiff filed suit on March 8, 2017. Thereafter, State Farm identified its earlier calculation error for Plaintiff's replacement cost payment. State Farm accordingly issued a further supplemental payment of replacement cost benefits on April 13, 2017 in the amount of \$4,874.46. With that payment, State Farm's Coverage A payment for Plaintiff's structural damage claim totaled \$92,594.

16. State Farm owes nothing more for Plaintiff's structural damage claim, and further owes no prejudgment or post-judgment interest on any amount.

FIRST ADDITIONAL DEFENSE

As set forth in State Farm's affirmative allegations Nos. 1-16 (incorporated herein by reference), and for additional reasons, the Class Action Complaint With Jury Demand fails to state a claim for which relief may be granted as to Plaintiff and some or all members of the proposed Class.

SECOND ADDITIONAL DEFENSE

As set forth in State Farm's affirmative allegations Nos. 1-16 (incorporated herein by reference), and for additional reasons, this Court lacks subject matter jurisdiction over this entire controversy due to Plaintiff's lack of standing and/or mootness of her claim.

THIRD ADDITIONAL DEFENSE

As set forth in State Farm's affirmative allegations Nos. 1-16 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiff and other members of the proposed class fail for the individual's lack of standing and/or mootness of the individual's claims.

FOURTH ADDITIONAL DEFENSE

As set forth in State Farm's affirmative allegations Nos. 1-16 (incorporated herein by reference), and for additional reasons, some or all claims of members of the proposed class are barred by the applicable statute of limitations, as to which tolling cannot apply due to the individual's inability to demonstrate any basis therefor (including without limitation any fraudulent conduct by State Farm, or an inability to ascertain that the individual might have a dispute with State Farm in respect to payments for a covered structural damage loss).

FIFTH ADDITIONAL DEFENSE

As set forth in State Farm's affirmative allegations Nos. 1-16 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiff and other members of the proposed class are barred for the individual insured's failure to comply with all duties, obligations, and conditions precedent under his or her insurance policy, including without limitation failure promptly to report the insured's loss, failure to cooperate in the investigation of the claim, failure timely to commence repairs, failure to provide information necessary for adjustment of the insured's loss or for payment of any replacement cost or other benefits assertedly owed, failure to submit a proof of loss as to unpaid amounts allegedly due for the loss, and/or failure to pay premiums as due.

SIXTH ADDITIONAL DEFENSE

As set forth in State Farm's affirmative allegations Nos. 1-16 (incorporated herein by reference), and for additional reasons, the policies issued by State Farm under which the individual and asserted class claims are asserted are the best evidence of the contents of each such policy. State Farm specifically pleads, without limitation, all terms, conditions, and exclusions of each insured's policy as to that insured. Further, State Farm specifically denies any claims and/or

allegations that contradict, contravene, or enlarge upon the terms, conditions, exclusions, or limitations of each individual insured's policy.

SEVENTH ADDITIONAL DEFENSE

As set forth in State Farm's affirmative allegations Nos. 1-16 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiff and other members of the proposed class are barred to the extent that the individual already has been fully compensated for his or her loss by, *inter alia*, voluntarily electing not to pursue repairs to the property, by receiving payment of all replacement cost benefits owed the individual's cost to complete repairs, by receiving payment of his or her full policy limits less the applicable deductible, and/or by completing repairs to the damaged property for less than the amount of the total payment already received for the claim (less the applicable deductible).

EIGHTH ADDITIONAL DEFENSE

As set forth in State Farm's affirmative allegations Nos. 1-16 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiff and other members of the proposed class are barred by the doctrines of accord and satisfaction.

NINTH ADDITIONAL DEFENSE

As set forth in State Farm's affirmative allegations Nos. 1-16 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiff and other members of the proposed class are barred by the individual's failure to mitigate damages.

TENTH ADDITIONAL DEFENSE

As set forth in State Farm's affirmative allegations Nos. 1-16 (incorporated herein by reference), and for additional reasons, some or all claims of members of the proposed class are barred for the individual's failure to comply with all requirements relating to the appraisal process for resolving disputes concerning claims under their respective policies.

ELEVENTH ADDITIONAL DEFENSE

As set forth in State Farm's affirmative allegations Nos. 1-16 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiff and other members of the proposed class are barred by the doctrines of laches, waiver, estoppel, and/or unclean hands.

TWELFTH ADDITIONAL DEFENSE

As set forth in State Farm's affirmative allegations Nos. 1-16 (incorporated herein by reference), and for additional reasons, some or all claims of members of the proposed class are barred by settlement and release.

THIRTEENTH ADDITIONAL DEFENSE

As set forth in State Farm's affirmative allegations Nos. 1-16 (incorporated herein by reference), and for additional reasons, some or all claims of members of the proposed class are barred by the doctrines of *res judicata* and/or collateral estoppel.

FOURTEENTH ADDITIONAL DEFENSE

As set forth in State Farm's affirmative allegations Nos. 1-16 (incorporated herein by reference), and for additional reasons, this action cannot be maintained as a class action under Fed. R. Civ. p. 23(b)(3) because (a) Plaintiff is not an adequate class representative and cannot fairly and adequately protect the interests of the proposed class; (b) Plaintiff's claims are not typical of the claims of other members of the proposed class; (c) individual issues of law or fact predominate over any common questions; (d) a class action is not a superior method for the fair and efficient adjudication of the controversy; (e) none of the other requirements for maintaining this action as a class action have been satisfied; and (f) the proposed class is not properly defined or readily ascertainable. Further, any adjudication of Plaintiff's individual claims or those of other proposed class members will require individualized inquiry on the questions of injury, causation and damages, such that imposition of liability and any award of damages or other relief against State

Farm on the basis of “generalized class-wide proof” will not satisfy the requirements of Rule 23 and further would violate State Farm’s Due Process and other rights under the Alabama and United States Constitutions.

FIFTEENTH ADDITIONAL DEFENSE

As set forth in State Farm’s affirmative allegations Nos. 1-16 (incorporated herein by reference), and for additional reasons, this action cannot be maintained as a class action under Fed. R. Civ. p. 23(b)(1) because (a) Plaintiff is not an adequate class representative and cannot fairly and adequately protect the interests of the proposed class; (b) Plaintiff’s claims are not typical of the claims of proposed class members; (c) adjudication of separate actions by individual members of the proposed class would not be dispositive of others’ interests or establish incompatible standards of conduct for State Farm; (d) none of the other requirements for maintaining this action as a class action have been satisfied; and (e) the proposed class is not properly defined or readily ascertainable. Accordingly, any adjudication of Plaintiff’s individual claim or those of members of the proposed class on the basis of “generalized class-wide proof” will not satisfy the requirements of Rule 23 and further would violate State Farm’s Due Process and other rights under the Alabama and United States Constitutions.

SIXTEENTH ADDITIONAL DEFENSE

As set forth in State Farm’s affirmative allegations Nos. 1-16 (incorporated herein by reference), and for additional reasons, this action cannot be maintained as a class action under Fed. R. Civ. p. 23(b)(2) because (a) Plaintiff is not an adequate class representative and cannot fairly and adequately protect the interests of the proposed class; (b) Plaintiff’s claims are not typical of the claims of asserted class members; (c) Plaintiff lacks standing to sue for injunctive relief in her own right or on behalf of the proposed class; (d) the injunctive relief Plaintiff seeks is not permissible under Rule 65 of the Federal Rules of Civil Procedure; (e) neither the final injunctive

relief sought nor any other final injunctive relief is appropriate respecting the proposed class as a whole; (f) neither Plaintiff nor the members of the proposed class can demonstrate inadequacy of monetary relief or redressability in respect to injunctive relief; (g) none of the other requirements for maintaining this action as a class action have been satisfied; and (h) the proposed class is not properly defined or readily ascertainable. Accordingly, any adjudication of Plaintiff's individual claim or those of the proposed class members on the basis of "generalized class-wide proof" will not satisfy the requirements of Rule 23 and further would violate State Farm's Due Process and other rights under the Alabama and United States Constitutions.

SEVENTEENTH ADDITIONAL DEFENSE

As set forth in State Farm's affirmative allegations Nos. 1-16 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiff and members of the proposed class are barred because they improperly seek to impair the obligation of contracts in contravention of rights guaranteed to State Farm by the Constitutions of the United States and of Alabama.

EIGHTEENTH ADDITIONAL DEFENSE

As set forth in State Farm's affirmative allegations Nos. 1-16 (incorporated herein by reference), and for additional reasons, Plaintiff and some or all members of the proposed class are not entitled to recover pre- or post-judgment interest for failure to demonstrate all prerequisites for recovery of such payments under their respective policies and/or Alabama law (including without limitation submission of a proof of loss and/or a definite amount owed and overdue).

NINETEENTH ADDITIONAL DEFENSE

As set forth in State Farm's affirmative allegations Nos. 1-16 (incorporated herein by reference), and for additional reasons, Plaintiff's claimed damages or other relief, and the asserted damages or other relief sought by other members of the proposed class, are barred in whole or in part because they are improper and unavailable for the claims alleged.

State Farm reserves the right to assert any further and additional defenses that may become applicable or apparent as to Plaintiff and/or any members of the proposed class as this action proceeds.

Dated: August 17, 2017

Respectfully submitted,

/s/ Heidi Dalenberg

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

This 17th day of August, 2017.

/s/ Heidi Dalenberg