

ANSWER: State Farm Fire admits the allegations of this paragraph as to itself. State Farm Fire makes no answer to the extent the allegations of this Paragraph are directed to State Farm General.

Jurisdiction and Venue

3. This action was originally filed in the Circuit Court of Miller County, Arkansas on November 21, 2013. Defendants filed their Notice of Removal in this Court on January 2, 2014, asserting jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d).

ANSWER: State Farm Fire admits the allegations of this paragraph as to itself. State Farm Fire makes no answer to the extent the allegations of this Paragraph are directed to State Farm General.

4. This Court has personal jurisdiction over Defendants. Defendants have sufficient minimum contacts with the State of Arkansas, are authorized to conduct business in Arkansas, engage in continuous and systematic activities within the state, and have purposefully availed itself of the benefit of doing business in Arkansas.

ANSWER: As to itself, State Farm Fire admits that it is authorized to do business in Arkansas, has conducted business within the state, and is subject to personal jurisdiction in this Court. State Farm Fire denies the remaining allegations of this paragraph. State Farm Fire makes no answer to the extent the allegations of this Paragraph are directed to State Farm General.

5. Venue is proper in this forum pursuant to 28 U.S.C. §1391(b) in that a substantial part of the events and omissions giving rise to the claims alleged herein occurred in this District. Venue is also proper pursuant to 28 U.S.C. §1391(c) because Defendant is a corporation deemed to reside in this District.

ANSWER: State Farm Fire admits the allegations of this paragraph as to itself. State Farm Fire makes no answer to the extent the allegations of this Paragraph are directed to State Farm General.

6. Plaintiffs file this Second Amended Class Action Complaint pursuant to FED. R. CIV. P. 15(a)(2) to add Hood as a plaintiff and putative class representative to this action.

ANSWER: State Farm Fire admits that the Second Amended Class Actions Complaint added Hood as a plaintiff and as a putative class representative. State Farm Fire denies that class certification is warranted in this case and denies the remaining allegations of this paragraph.

Factual Background

6. Plaintiff Dennington contracted with State Farm for an insurance policy providing coverage for certain losses to a dwelling and other structures owned by Dennington located at 2545 East St., Texarkana, Arkansas 71854. At all times relevant to this action Dennington's property was insured under State Farm Policy No. 04-CW-5481-9.

ANSWER: Because Dennington's claims have been dismissed, no answer to the allegations of this paragraph is required or given.

7. On or about May 2, 2009, at a time when the above-described insurance policy was in full force and effect, Dennington suffered a covered loss to his property. He timely submitted a claim to Defendants requesting payment for his covered loss.

ANSWER: Because Dennington's claims have been dismissed, no answer to the allegations of this paragraph is required or given.

8. Defendants subsequently confirmed that Dennington had sustained a covered loss to his property, and that Defendants were contractually obligated to pay Dennington's claim for his covered loss pursuant to the terms of his insurance policy.

ANSWER: Because Dennington's claims have been dismissed, no answer to the allegations of this paragraph is required or given.

9. On or about May 5, 2009, Defendants sent an adjuster to inspect the damage to Dennington's property. As set forth in a written estimate and correspondence to Dennington, Defendants' adjuster determined that Dennington had suffered a covered loss in the amount of \$32,502.86. The estimate included the cost of materials and labor required to complete the repairs. A copy of the estimate and correspondence sent to Dennington is attached hereto as Exhibit "A."

ANSWER: Because Dennington's claims have been dismissed, no answer to the allegations of this paragraph is required or given.

10. In calculating their payment obligations to Dennington, Defendants subtracted from the adjuster's replacement cost value estimate the deductible provided for in the policy plus an additional \$4,179.34 for depreciation. Dennington then received an actual cash value ("ACV") payment of \$23,561.49 on his claim.

ANSWER: Because Dennington's claims have been dismissed, no answer to the allegations of this paragraph is required or given.

11. The estimate upon which the payment to Dennington was based indicates that Defendants depreciated both material costs and labor costs associated with repairs to the property. For example, Defendants estimated the cost of repairing damage to the wall or roof panel of Dennington's carport at \$2,252.80. Defendants then depreciated the total replacement cost estimate, which includes both materials and labor, by \$450.56 to arrive at an ACV of \$1,802.24. Similarly, Defendants estimated the total cost of repairing damage to Dennington's 6' chain link fence at \$3,158.40. Defendants depreciated the cost of both materials and labor by \$1,579.20 to arrive at an ACV of \$1,579.20.

ANSWER: Because Dennington's claims have been dismissed, no answer to the allegations of this paragraph is required or given.

12. Plaintiff Stuart contracted with State Farm for an insurance policy providing coverage for certain losses to a dwelling and other structures owned by Stuart located at 2585 Ridgeview Road, Camden, Arkansas 7170 I. At all times relevant to this action Stuart's property was insured under State Farm Policy No. 04-CN-0637-5.

ANSWER: State Farm Fire admits that Stuart insured the referenced structure under the referenced State Farm Fire policy. State Farm Fire denies the remaining allegations of this paragraph.

13. On or about April 25, 2011, at a time when the above-described insurance policy was in full force and effect, Stuart suffered a covered loss to his property. He timely submitted a claim to Defendants requesting payment for his covered loss.

ANSWER: State Farm Fire admits that on or about April 25, 2011, Stuart suffered a covered loss to the referenced property and timely made a claim under his State Farm Fire policy. State Farm Fire denies the remaining allegations of this paragraph.

14. Defendants subsequently confirmed that Stuart had sustained a covered loss to his property, and that Defendants were contractually obligated to pay Stuart's claim for his covered loss pursuant to the terms of his insurance policy.

ANSWER: State Farm Fire admits that it determined that Stuart had sustained a covered loss to his property and that it made payments under Stuart's policy for that loss. State Farm Fire denies all remaining allegations of this paragraph.

15. On or about July 12, 2011, Defendants sent an adjuster to inspect the damage to Stuart's property. As set forth in a written estimate and correspondence to Stuart, Defendants' adjuster determined that Stuart had suffered a covered loss in the amount of \$22,970.33. The estimate included the cost of materials and labor required to complete the repairs. A copy of the estimate and correspondence sent to Stuart is attached hereto as Exhibit "B."

ANSWER: State Farm Fire admits that its adjuster inspected the damage to Stuart's property, determined that the loss was covered, and prepared an estimate of the cost to repair or replace the damage to the property. State Farm Fire further admits that the estimate provided the estimated repair or replacement cost for the damaged part of the property, including the material, labor and other components reasonably likely to be required to complete repair or replacement of the damaged property. State Farm Fire further admits that Exhibit B is attached to the Complaint, which document speaks for itself. State Farm Fire denies the remaining allegations of this paragraph.

16. In calculating their payment obligations to Stuart, Defendants subtracted from the adjuster's replacement cost value estimate the \$2,000.00 deductible provided for in the policy plus an additional \$5,940.52 for depreciation. Stuart then received a net payment of \$15,011.81 on his claim.

ANSWER: State Farm Fire admits that it subtracted the referenced amounts when calculating the initial ACV payment(s) for Plaintiff's structural damage claim, and that Stuart

received a payment in the amount of \$15,011.81. State Farm Fire denies the remaining allegations of this paragraph.

17. Defendants depreciated both material costs and labor costs associated with repairs to the property. For example, Defendants estimated the cost of replacing 82.00 squares of composition roofing with felt at \$11,573.48. Defendants then depreciated the total replacement cost estimate, which includes both materials and labor, by \$3,857.83 to arrive at what they designate as an ACV of \$7,715.65. Similarly, Defendants estimated the total cost of removing and replacing four roof vents at \$369.92. Defendants depreciated the cost of both materials and labor by \$105.69 to arrive at an ACV of \$264.23.

ANSWER: State Farm Fire admits, as the estimate reflects, that State Farm Fire applied depreciation to various components of the replacement cost reflected in the referenced estimate, including material costs and labor costs embedded in unit pricing for repairs. State Farm Fire denies the remaining allegations of this paragraph to the extent they are inconsistent with the referenced estimate and denies all other allegations of this paragraph.

18. Plaintiff Stuart also contracted with State Farm for an insurance policy providing coverage for certain losses to a dwelling and other structures owned by Stuart located at 111 Camelot Pt., Hot Springs, Arkansas 71913. At all times relevant to this action Stuart's property was insured under State Farm Policy No. 04-BK-H548-6.

ANSWER: State Farm Fire admits Stuart insured the referenced property under the referenced policy. State Farm Fire denies all remaining allegations of this paragraph.

19. On or about June 6, 2013, at a time when the above-described insurance policy was in full force and effect, Stuart suffered a covered loss to his property. He timely submitted a claim to Defendants requesting payment for his covered loss.

ANSWER: State Farm Fire admits that on or about June 6, 2013, Stuart suffered a covered loss to his property and that he timely submitted a claim for such loss. State Farm Fire denies the remaining allegations of this paragraph.

20. Defendants subsequently confirmed that Stuart had sustained a covered loss to his property, and that Defendants were contractually obligated to pay Stuart's claim for his covered loss pursuant to the terms of his insurance policy.

ANSWER: State Farm Fire admits that it determined that Stuart had sustained a covered loss to his property and that payment was due to him pursuant to the terms of his insurance policy. State Farm Fire denies the remaining allegations of this paragraph.

21. On or about June 12, 2013, Defendants sent an adjuster to inspect the damage to Stuart's property. As set forth in a written estimate and correspondence to Stuart, Defendants' adjuster determined that Stuart had suffered a covered loss in the amount of \$27,893.73. The estimate included the cost of materials and labor required to complete the repairs. A copy of the estimate and correspondence sent to Stuart is attached as Exhibit "C."

ANSWER: State Farm Fire admits that its adjuster inspected the damage to Stuart's property, determined that the loss was covered, and prepared an estimate of the cost to repair or replace the damage to the property. State Farm Fire further admits that the estimate provided the estimated repair or replacement cost for the damaged part of the property, including the material, labor and other components reasonably likely to be required to complete repair or replacement of the damaged property. State Farm Fire further admits that Exhibit C is attached to the Complaint, which document speaks for itself. State Farm Fire denies the remaining allegations of this paragraph.

22. In calculating their payment obligations to Stuart, Defendants subtracted from the adjuster's replacement cost value estimate the \$2,000.00 deductible provided for in the policy, plus an additional \$3,049.89 for depreciation. Defendants also deducted from the replacement cost estimate a prior payment in the amount of \$10,999.81. Stuart then received a net payment of \$11,810.08 on his claim.

ANSWER: State Farm Fire admits that it subtracted the referenced deductible and prior payment amounts, and an amount for depreciation, when calculating the initial ACV payment(s) for Plaintiff's structural damage claim, and that Stuart received a payment in the amount of \$11,810.08. State Farm Fire denies the remaining allegations of this paragraph.

23. Defendants depreciated both material costs and labor costs associated with repairs to the property. For example, Defendants estimated the cost of replacing 133.56 square feet of wood flooring in Stuart's breakfast area at \$1,806.26. Defendants then depreciated the total replacement cost estimate, which includes both materials

and labor, by \$361.26 to arrive at what they designate as an ACV of \$1,445.00. Similarly, Defendants estimated the total cost of sealing and painting 31.32 linear feet of baseboard in the breakfast area at \$40.15. Defendants depreciated the cost of both materials and labor by \$26.76 to arrive at an ACV of \$13.39.

ANSWER: State Farm Fire admits, as the estimate reflects, that State Farm Fire applied depreciation to various components of the replacement cost reflected in the referenced estimate, including material costs and labor costs embedded in unit pricing for repairs. State Farm Fire denies the remaining allegations of this paragraph to the extent they are inconsistent with the referenced estimate and denies all other allegations of this paragraph.

24. Plaintiff Hood contracted with State Farm for an insurance policy providing coverage for certain losses to a dwelling and other structures owned by Hood located at 105 JT Lane, Hot Springs, Arkansas 71913. At all times relevant to this action Hood 's property was insured under State Farm Policy No. 04-BC-4920-3.

ANSWER: State Farm Fire admits that Hood insured the referenced property under the referenced policy. State Farm Fire denies all remaining allegations of this paragraph.

25. On or about May 21, 2013, at a time when the above-described insurance policy was in full force and effect, Hood suffered a covered loss to her property. She timely submitted a claim to Defendants requesting payment for her covered loss.

ANSWER: State Farm Fire admits that on or about May 21, 2013, Hood suffered a covered loss to her property and that she timely submitted a claim for such loss. State Farm Fire denies all remaining allegations of this paragraph.

26. Defendants subsequently confirmed that Hood had sustained a covered loss to her property, and that Defendants were contractually obligated to pay Hood's claim for her covered loss pursuant to the terms of her insurance policy.

ANSWER: State Farm Fire admits that it determined that Hood had sustained a covered loss to her property and that payment was due to her pursuant to the terms of her insurance policy. State Farm Fire denies that remaining allegations of this paragraph.

27. On or about May 23, 2013, Defendants sent an adjuster to inspect the damage to Hood's property. As set forth in a written estimate and correspondence to Hood, Defendants' adjuster determined that Hood had suffered a covered loss in the

amount of \$5,059.11. The estimate included the cost of materials and labor required to complete the repairs. A copy of the estimate and correspondence sent to Hood is attached hereto as Exhibit "D."

ANSWER: State Farm Fire admits that its adjuster inspected the damage to Hood's property, determined that the loss was covered, and prepared an estimate of the cost to repair or replace the damage to the property. State Farm Fire further admits that the estimate provided the estimated repair or replacement cost for the damaged part of the property, including the material, labor and other components reasonably likely to be required to complete repair or replacement of the damaged property. State Farm Fire further admits that Exhibit D is attached to the Complaint, which document speaks for itself. State Farm Fire denies the remaining allegations of this paragraph.

28. In calculating their payment obligations to Hood, Defendants subtracted from the adjuster's replacement cost value estimate the deductible provided for in the policy plus an additional \$1,607.36 for depreciation. Hood then received an ACV payment of \$2,951.75 on her claim. Defendants later paid Hood the erroneously withheld deductible, as Ms. Hood had already paid her deductible for this claim, in connection with services performed by Chenal Restoration for water clean-up prior immediately prior to the adjuster's inspection.

ANSWER: State Farm Fire admits that it subtracted the referenced amounts when calculating the initial ACV payment(s) for Plaintiff's structural damage claim, and that Hood received a payment in the amount of \$2,951.75. State Farm Fire further admits that it later made a payment of \$500.00 to Hood as a refund of the deductible applied to the earlier payment. State Farm Fire denies the remaining allegations of this paragraph.

29. Hood did not repair or replace her damaged property. State Farm never paid Hood the \$1,607.36 in depreciation that it withheld from her ACV payment.

ANSWER: State Farm Fire admits that as of the date of her deposition and inspection of her property, Hood had not repaired the damage to her property. State Farm Fire further admits

that Hood has not made a claim for replacement cost benefits and has not received further payment from State Farm Fire. State Farm Fire denies all remaining allegations of this paragraph.

30. Defendants depreciated both material costs and labor costs associated with repairs to Hood's property. For example, Defendants estimated the cost to glue down carpet in the bedroom at \$420.06. Defendants then depreciated the total replacement cost estimate, which includes both materials and labor, by \$336.04, or 80%, to arrive at an ACV of \$84.02. Similarly, Defendants estimated the total cost to paint the walls in the bedroom to be \$194.82. Defendants depreciated the cost of both materials and labor by \$48.70, or 25%, to arrive at an ACV of \$146.12.

ANSWER: State Farm Fire admits, as the estimate reflects, that State Farm Fire applied depreciation to various components of the replacement cost reflected in the referenced estimate, including material costs and labor costs embedded in unit pricing for repairs. State Farm Fire denies the remaining allegations of this paragraph to the extent they are inconsistent with the referenced estimate and denies all other allegations of this paragraph.

Policy Terms and Claims Settlement Practices

31. The policies of insurance Defendants issued to Plaintiffs and other members of the proposed class provide replacement cost value ("RCV") coverage for both total loss of and partial loss to covered dwellings and other structures.

ANSWER: State Farm Fire admits that the named Plaintiffs' respective insurance policies each provide for payment of replacement cost benefits for structural damage claims subject to the specific terms of said policies. State Farm Fire denies that Plaintiffs have accurately described the provisions of the policies referenced and denies the remaining allegations of this paragraph.

32. Under Defendants' policies, the insured is due the full ACV payment at the time of loss, which includes labor costs. Nonetheless, at all times relevant to this cause of action, in the event of a partial loss (i.e. a loss less than the policy limit) covered by an RCV policy, Defendants' practice has been to pay insureds an initial payment equivalent to what they purport to be the ACV of the claim, i.e., an amount that does not include labor costs. For purposes of this initial ACV payment, Defendants calculate the ACV by taking the RCV and then deducting depreciation (including depreciation for labor costs) and any applicable deductible.

ANSWER: State Farm Fire admits that its practice when calculating actual cash value payments for Arkansas structural damage claims during the period relevant to this suit was to estimate the cost to repair or replace the damaged portion of the property and apply depreciation, if any, to the material and labor components of that estimated cost. State Farm Fire denies that Plaintiffs have accurately quoted from or described State Farm Fire's obligations under their policies and denies all remaining allegations of this paragraph.

33. In order to obtain an additional payment representing the depreciation that was held back, i.e., the "holdback," and thereby recover the full RCV of the covered loss, the insured must repair, rebuild or replace the damaged property within a specified time frame and submit proof to Defendants that the repair or replacement was timely completed. Thus, the insured that elects not to repair or replace the damaged property--which is the insured's right under the policy--is never afforded the opportunity to recover the full ACV payment (including the wrongfully depreciated costs of labor) that was due and owing to the insured at the time of loss.

ANSWER: State Farm Fire denies that Plaintiffs have accurately quoted from or described State Farm Fire's obligations under their policies, denies that it in all instances requires insureds to complete repairs before replacement cost benefits will be paid, and denies all remaining allegations of this paragraph.

34. At all times relevant hereto, Defendants' methodology for calculating ACV has been to determine the cost of repairing or replacing the damaged property then deduct depreciation.

ANSWER: State Farm Fire admits that its practice when calculating actual cash value payments for Arkansas structural damage claims during the period relevant to this suit was to estimate the cost to repair or replace the damaged portion of the property and apply depreciation, if any, to the material and labor components of that estimated cost. State Farm Fire denies all remaining allegations of this paragraph.

35. 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) (emphasis added). Materials used in the repair or replacement of damaged property, e.g. roofing shingles, diminish 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. Conceptually, and practically, depreciation simply cannot be applied to labor costs.

ANSWER: State Farm Fire admits that materials diminish in value over time and are subject to depreciation when ACV is calculated for structural damage insurance claims. State Farm Fire further admits that Plaintiffs have quoted part of the definition of “depreciation” in Black’s Law Dictionary, but denies that the quote is complete and denies that the quoted definition arises “in the context of insurance law.” State Farm Fire denies that depreciation may never conceptually or practically be applied to labor costs, but acknowledges the holding in *Adams v. Cameron Mutual* and *Shelter v. Goodner* in respect to calculation of actual cash value in Arkansas. State Farm Fire denies all remaining allegations of this paragraph.

36. It is clear under Arkansas law that an insurer may not depreciate the cost of labor when determining the ACV of a covered claim.

ANSWER: The allegations of this paragraph improperly state legal conclusions. State Farm Fire acknowledges the holding in *Adams v. Cameron Mutual* and *Shelter v. Goodner* in respect to calculation of actual cash value in Arkansas and denies all allegations of this paragraph contrary to that decision.

37. Arkansas law is consistent with the universally accepted premise that the basic purpose of property insurance is to provide indemnity to policy holders. 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 extends the basic concept of indemnity to include coverage for repair and replacement costs that exceed the ACV of the loss.

ANSWER: State Farm Fire admits that the basic purpose of property insurance is to indemnify the insured in accordance with the contract of insurance, and denies any inconsistent allegations in this paragraph. State Farm Fire admits that Plaintiffs have attempted to summarize

a portion of APPLEMAN ON INSURANCE 2d, but denies that the summary is fair, accurate or complete. The remaining allegations of this paragraph improperly state legal conclusions without citation so that State Farm Fire lacks sufficient knowledge to admit or deny their accuracy, and State Farm Fire therefore denies them.

38. In order to recover the RCV of their covered losses, Plaintiffs and other Class Members are required to pay 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 Defendants. Defendants' failure to pay the full cost of the labor necessary to repair or replace Plaintiffs' and the other Class Members' damaged property in the ACV payment left Plaintiffs and the other Class Members under-indemnified and underpaid for their losses.

ANSWER: State Farm Fire admits that an insurer may lawfully depreciate the estimated cost for repair materials when calculating an ACV payment for a structural damage claim. State Farm Fire further admits that Plaintiffs' respective insurance policies each provide for initial payment of ACV for structural damage claims, subject to the additional terms of those policies. State Farm Fire denies that Plaintiffs have accurately described the provisions of the policies issued to them, denies that Plaintiffs have accurately described State Farm Fire's custom and practice in making ACV or replacement cost payments for structural damage claims, denies that all insureds were underpaid for actual cash value, and denies all remaining allegations of this paragraph.

39. Defendants materially breached their duty to indemnify Plaintiffs and other Class Members by depreciating labor costs associated with repairs to their property in the ACV payments, thereby paying Plaintiffs and other Class Members less than what they were entitled to receive under the terms of their insurance contracts.

ANSWER: State Farm Fire further admits that Plaintiffs' respective insurance policies each provide for initial payment of ACV for structural damage claims, subject to the additional terms of those policies. State Farm Fire denies that Plaintiffs have accurately described the provisions of the policies issued to them, denies that Plaintiffs have accurately described State Farm Fire's custom and practice in making ACV or replacement cost payments for structural

damage claims, denies that all insureds were underpaid for actual cash value, and denies all remaining allegations of this paragraph.

Class Action Allegations

40. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs bring this lawsuit as a class action on behalf of themselves and all others similarly situated. This action satisfies the FRCP 23(a) requirements of numerosity, commonality, typicality, and adequacy of representation, and the Rule 23(b) requirements of predominance and superiority.

ANSWER: State Farm Fire admits that Plaintiffs purport to sue on behalf of an alleged class. State Farm Fire denies that the requirements for class certification have been met, denies that certification of the proposed class could be granted, and denies the remaining allegations of this paragraph.

41. The proposed Class which Plaintiffs seek 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 or other structure located in the State of Arkansas, such payments arising from events that occurred within the ten years preceding the date of filing of the Class Action Complaint, 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) Plaintiffs’ counsel.

ANSWER: State Farm Fire admits that Plaintiffs purport to sue on behalf of an alleged class, as defined in this paragraph. State Farm Fire denies that the proposed class is properly defined, denies that the prerequisites for class certification are satisfied, denies that certification of the proposed class could be granted, and denies all other allegations in this paragraph.

42. The members of the Class are so numerous that joinder of all members is impracticable. Plaintiffs reasonably believe that hundreds if not thousands of people geographically dispersed across Arkansas have been damaged by Defendants’ actions. The names and addresses of the members of the Class are identifiable through records maintained by Defendants, and Class Members may be notified of the pendency of this action by mailed, published and/or electronic notice.

ANSWER: State Farm Fire denies that members of the proposed class are readily ascertainable, denies that the prerequisites for class certification are satisfied, denies that certification of the proposed class could be granted, and denies all other allegations of this paragraph.

42. Common questions of law and fact exist as to all Class Members and predominate over any questions affecting only individual Class Members. The questions of law and fact common to the Class include, but are not limited to:
- A. Whether Defendants' insurance policies allow Defendants to depreciate labor in calculating ACV payments for covered losses;
 - B. Whether Defendants' insurance policies are ambiguous concerning the depreciation of labor costs in calculating ACV payments, and if so, how Defendants' insurance policies should be interpreted;
 - C. Whether Defendants' depreciation of labor costs in making ACV payments for covered losses is a breach of the insurance contracts issued by Defendants to Plaintiffs and other Class Members;
 - D. Whether Plaintiffs and other Class Members have been damaged by Defendants' 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 Plaintiffs and other Class Members; and
 - E. Whether Defendants have been unjustly enriched by retaining money that should have been paid to Plaintiffs and other Class Members.

ANSWER: State Farm Fire denies that commonality, predominance, or any other requirements for class certification are met here, denies that certification of the proposed class could be granted, and denies all other allegations of this paragraph.

44. Plaintiffs' claims are typical of the claims of all Class Members, as they are all similarly affected by Defendants' custom and practice of unlawful and unjust conduct and their claims are based on such conduct. Further, Plaintiffs' claims are typical of the claims of all Class Members because their claims arise from the same underlying facts and are based on the same factual and legal theories. Plaintiffs are no different in any material respect from any other members of the Class.

ANSWER: State Farm Fire denies that claim typicality or any other requirements for class certification are met here, denies that certification of the proposed class could be granted, and denies all other allegations of this paragraph.

45. Plaintiffs and their counsel will fairly and adequately protect the interests of the members of the Class. Plaintiffs' interests do not conflict with the interests of the Class they seek to represent. Plaintiffs have retained counsel who are competent and experienced in class action litigation, including insurance-related cases. Plaintiffs and their counsel will prosecute this action vigorously.

ANSWER: State Farm Fire admits that Plaintiffs' counsel are experienced in class litigation, but denies that each attorney of record has demonstrated he will adequately protect the interests of the class. State Farm Fire denies that the named Plaintiffs are adequate representatives of the proposed class, denies that Plaintiffs' interests align with the interests of all putative class members, denies that certification of the proposed class could be granted, and denies all remaining allegations of this paragraph.

46. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Joining all 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 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.

ANSWER: State Farm Fire denies that predominance, superiority, or any other requirements for class certification are met here, denies that certification of the proposed class could be granted, and denies all other allegations of this paragraph.

47. 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 the rights of Plaintiffs and Class Members. These benefits would result from the comprehensive and efficient supervision of the litigation by a single court.

ANSWER: State Farm Fire denies that predominance, superiority, or any other requirements for class certification are met here, denies that certification of the proposed class could be granted, and denies all other allegations of this paragraph.

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

ANSWER: State Farm Fire denies the allegations of this paragraph.

Fraudulent Concealment

49. At all times relevant to the allegations set forth herein, Defendants owed a fiduciary duty to, and/or had a special relationship with, Plaintiffs and other Class Members.

ANSWER: State Farm Fire denies the allegations of this paragraph.

50. Plaintiffs and the other Class Members purchased insurance from Defendants in order to be indemnified for damages caused by covered perils.

ANSWER: State Farm Fire admits that Plaintiffs and other members of the proposed class purchased insurance from State Farm Fire and that, subject to the policy terms and applicable law, the policies provided for indemnification for damages caused by covered perils. State Farm Fire denies the remaining allegations of this paragraph.

51. Defendants value the covered losses by calculating the cost of repairing or replacing the damaged property. Defendants then make an initial payment to their insureds in the amount of the ACV of the covered loss, net of any applicable deductible. Plaintiffs and the Class Members cannot recover the RCV of a covered loss, and therefore cannot be fully indemnified, until they repair the damage or replace the damaged portion of their property. By depreciating the labor component of the initial ACV payment, Defendants are able to delay, and in many cases completely avoid, paying the RCV of the claim. Defendants are able to retain and use the holdback funds until the insured fully repairs or replaces the damage. Defendants have a pecuniary interest in keeping the initial ACV payment as low as possible, knowing that it will be able to use the hold back for a period of time, and may not have to pay it at all. By withholding the depreciated labor component of the initial ACV payment, Defendants place their pecuniary interest above their duty to indemnify their insureds.

ANSWER: State Farm Fire denies the allegations of this paragraph.

52. Throughout the claims process, Plaintiffs and other Class Members asked Defendants to pay them what they were entitled to receive as the ACV of their covered losses under the terms of their insurance policies. Defendants represented to Plaintiffs and other Class Members that their ACV payments were the full amount owed under their policies. However, Defendants knew that the initial ACV payments were not the full amounts owed because labor costs had been depreciated. Defendants represented that the initial ACV payments were the full amounts owed with the intent of having the insureds rely on those representations and accept the initial ACV payment.

ANSWER: State Farm Fire admits that Plaintiffs and other members of the proposed class made claims for structural losses to their respective properties to State Farm Fire, and that, among other payments, State Farm Fire made actual cash value payments in respect to structural damage claims. State Farm Fire denies the remaining allegations of this paragraph.

53. Plaintiffs and other Class Members justifiably and reasonably relied upon Defendants' representations that they had received all they were entitled to recover as ACV payments from Defendants under the terms of their policies.

ANSWER: State Farm Fire denies that it made any false statement or omission in respect to Plaintiffs or any putative class members, denies that Plaintiffs or members of the putative class relied on any such supposed misstatements or omissions to their detriment, and denies all remaining allegations of this paragraph.

54. Defendants had a duty to disclose to Plaintiffs and other Class Members that they were depreciating labor costs in their initial ACV payments. Defendants not only failed to disclose this information, they acted in a manner designed to conceal it from Plaintiffs and other Class Members. More specifically, Defendants generated and produced documents to Plaintiffs and other Class Members concerning their claims in which they failed to disclose the fact that they depreciated labor costs in calculating ACV. In addition, Defendants concealed both the fact and amount of such depreciation by combining the labor and materials components of depreciation into a single sum identified simply as "depreciation" in its adjusters' loss reports. This practice was peculiarly within the knowledge of Defendants. Plaintiffs and other Class Members could not have known they had been underpaid on their claims through the exercise of reasonable diligence.

ANSWER: State Farm Fire denies that it made any false statement or omission in respect to Plaintiffs or any putative class members, denies that Plaintiffs or members of the putative class

relied on any such supposed misstatements or omissions to their detriment, and denies all remaining allegations of this paragraph.

55. Defendants' fraudulent concealment tolls the running of any statute of limitations that may otherwise be applicable to the claims for relief asserted herein.

ANSWER: State Farm Fire denies that it made any false statement or omission in respect to Plaintiffs or any putative class members, denies that Plaintiffs or members of the putative class relied on any such supposed misstatements or omissions to their detriment, denies that tolling may apply, and denies all remaining allegations of this paragraph.

Causes of Action

Count I – Breach of Contract

56. Plaintiffs hereby incorporate by reference all preceding paragraphs as if fully set forth herein.

ANSWER: State Farm Fire hereby incorporates by reference its responses to all preceding paragraphs as if fully set forth herein.

57. Defendants entered into policies of insurance with Plaintiffs and other members of the proposed Class. These policies govern the relationship between Defendants, Plaintiffs and other Class Members, as well as the manner in which claims for covered losses are handled.

ANSWER: State Farm Fire admits that it issued policies of insurance to Plaintiffs. State Farm Fire further admits that the terms of its policies govern its relationship with and the obligations it owes to its insureds. State Farm Fire denies the remaining allegations of this paragraph.

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

ANSWER: State Farm Fire admits that it would be deemed the drafter of the insurance policies it has issued to Plaintiffs and members of the putative class insured by State Farm Fire. State Farm Fire states that the various forms of policies it issued in Arkansas that provided

structural damage coverage speak for themselves and denies the remaining allegations of this paragraph.

59. Plaintiffs and other Class Members complied with all material provisions and fulfilled their respective duties with regard to their policies.

ANSWER: State Farm Fire denies the allegations of this paragraph.

60. The policies of insurance Defendants issued to Plaintiffs and other members of the proposed Class state that in the event of a partial loss Defendants may fulfill its initial contractual obligation to an insured party by paying the ACV of the loss. At all times relevant hereto, Defendants have made such payments based upon Defendants' calculation of the ACV for the partial loss, net of any applicable deductible.

ANSWER: State Farm Fire admits that Plaintiffs' respective insurance policies each provide for initial payment of ACV for structural damage claims, and further provide for payment of replacement cost benefits for such claims subject to the specific terms of said policies. State Farm Fire denies that Plaintiffs have accurately described the provisions of the policies issued to them, denies that Plaintiffs have accurately described State Farm Fire's custom and practice in making ACV or replacement cost payments for structural damage claims, and denies the remaining allegations of this paragraph.

61. In making the ACV payment, Defendants breached their contractual duty to pay Plaintiffs and other Class Members the amount owed to them by depreciating labor costs.

ANSWER: State Farm Fire denies it breached Plaintiffs' policies or underpaid their claims and denies all remaining allegations of this paragraph.

62. Defendants' actions in breaching their contractual obligations to Plaintiffs and other Class Members benefitted, and continue to benefit, Defendants. Likewise, Defendants' actions damaged, and continue to damage, Plaintiffs and other Class Members.

ANSWER: State Farm Fire denies it breached Plaintiffs' policies or underpaid their claims and denies all remaining allegations of this paragraph.

63. Defendants' breach of their contractual obligations to Plaintiffs and other Class Members benefitted, and continues to benefit, Defendants. Likewise, Defendants' actions damaged, and continue to damage, Plaintiffs and other Class Members.

ANSWER: State Farm Fire denies it breached Plaintiffs' policies or underpaid their claims and denies all remaining allegations of this paragraph.

64. Defendants' actions in breaching their contractual obligations, as described herein, are the direct and proximate cause of damages to Plaintiffs and other Class Members.

ANSWER: State Farm Fire denies it breached Plaintiffs' policies or underpaid their claims and denies all remaining allegations of this paragraph.

65. In light of the foregoing, Plaintiffs and other Class Members are entitled to recover damages sufficient to make them whole for all amounts Defendants unlawfully withheld from their ACV payments as labor cost depreciation.

ANSWER: State Farm Fire denies it breached Plaintiffs' policies or underpaid their claims and denies all remaining allegations of this paragraph.

Count II – Unjust Enrichment

66. Plaintiffs hereby incorporates by reference all preceding paragraphs as if fully set forth herein. Plaintiffs assert a cause of action for unjust enrichment in the alternative.

ANSWER: State Farm Fire hereby incorporates by reference its responses to all preceding paragraphs as if fully set forth herein. State Farm Fire denies that Plaintiffs have asserted a valid cause of action for unjust enrichment.

67. Defendants' conduct as described above, and as more specifically alleged in this Count, also constitutes unjust enrichment, for which Plaintiffs and other Class Members are entitled to pursue equitable remedies in accordance with Arkansas law.

ANSWER: State Farm Fire denies that it has underpaid Plaintiffs' claims, denies it has been unjustly enriched at Plaintiffs' expense, and denies all remaining allegations of this paragraph.

68. Defendants made payments to Plaintiffs and other Class Members for covered losses to their property which ostensibly represented the ACV of their claims, net of deductibles. However, in calculating the ACV of such claims, Defendants wrongfully depreciated labor costs. As a result, the payments Plaintiffs and other Class Members received were less than the true ACV of their claims.

ANSWER: State Farm Fire admits that it made payments to Plaintiffs and other members of the proposed class. State Farm Fire denies that it has underpaid Plaintiffs' claims, denies it has been unjustly enriched at Plaintiffs' expense, and denies all remaining allegations of this paragraph.

69. Defendants' actions were unjust and inequitable in that they paid Plaintiffs and other Class Members less than they were entitled to receive for their claims.

ANSWER: State Farm Fire denies that it has underpaid Plaintiffs' claims, denies it has been unjustly enriched at Plaintiffs' expense, and denies all remaining allegations of this paragraph.

70. Defendants' actions were unjust and inequitable in that Defendants failed to disclose to Plaintiffs and other Class Members that they were receiving less than the true ACV of their claims.

ANSWER: State Farm Fire denies that it has underpaid Plaintiffs' claims, denies it has been unjustly enriched at Plaintiffs' expense, and denies all remaining allegations of this paragraph.

71. Defendants' actions were unjust and inequitable in that Defendants concealed from Plaintiffs and other Class Members that they were receiving less than the true ACV of their claims.

ANSWER: State Farm Fire denies that it has underpaid Plaintiffs' claims, denies it has been unjustly enriched at Plaintiffs' expense, and denies all remaining allegations of this paragraph.

72. Defendants' actions were unjust and inequitable in that Defendants owed a fiduciary duty to, and/or had a special relationship with, Plaintiffs and other Class Members.

ANSWER: State Farm Fire denies that it has underpaid Plaintiffs' claims, denies it has been unjustly enriched at Plaintiffs' expense, and denies all remaining allegations of this paragraph.

73. As a result of their unjust and inequitable actions, Defendants were unjustly enriched by receiving something of value they were not entitled to. More specifically, Defendants retained, and had the beneficial use of, money that Plaintiffs and other Class Members were entitled to and should have received in payment of their claims.

ANSWER: State Farm Fire denies that it has underpaid Plaintiffs' claims, denies it has been unjustly enriched at Plaintiffs' expense, and denies all remaining allegations of this paragraph.

74. As a result of their unjust and inequitable actions, Defendants were unjustly enriched by receiving money under such circumstances that, in equity and good conscience, they should not retain.

ANSWER: State Farm Fire denies that it has underpaid Plaintiffs' claims, denies it has been unjustly enriched at Plaintiffs' expense, and denies all remaining allegations of this paragraph.

75. In light of the foregoing, Plaintiffs and other Class Members are entitled to restitution and other equitable relief.

ANSWER: State Farm Fire denies that it has underpaid Plaintiffs' claims, denies it has been unjustly enriched at Plaintiffs' expense, and denies all remaining allegations of this paragraph.

ADDITIONAL DEFENSES

1. State Farm Fire repeats and reincorporates its answers and denials to the allegations in Paragraphs 1-75 of the Second Amended Complaint as if fully set forth herein.

2. The insurance policies issued by State Farm Fire provide that any payment obligation for structural damage claims shall not exceed the cost to repair or replace the damaged part of the property.

3. As to Plaintiff Hood, State Farm Fire paid an amount sufficient to cover the actual cash value of the damaged portion of her property when the proper scope of her loss, as identified by general contractor Michael Berryman, is taken into consideration. Calculated with that scope, and even without application of depreciation to labor costs, State Farm Fire's initial payment was sufficient. Hood accordingly suffered no injury due to State Farm Fire's calculation of actual cash value for her claim, no breach of her policy occurred, and she is not entitled to recover any damages of any kind.

4. As to Plaintiff Stuart, State Farm Fire paid the full cost to repair the damaged portions of both dwellings as to which Stuart made structural damage claims, as shown by the documentation for Stuart's losses, his deposition testimony herein, and the analysis of general contractor Michael Berryman. Stuart accordingly suffered no injury due to State Farm Fire's calculation of actual cash value for his claims, no breach of his policies occurred, and he is not entitled to recover any damages of any kind.

5. The amounts State Farm Fire paid for Plaintiffs' losses, respectively, was sufficient under the loss settlement provisions of their respective policies.

6. State Farm Fire has paid all it presently owes for Plaintiffs and asserted class members' structural damage claims.

7. State Farm Fire did not fail to make any payment to Plaintiffs outside the time allowed under his or her policy and, accordingly, no statutory penalty may be imposed for any such supposedly late payment.

8. The evidence presented by Plaintiffs and State Farm Fire on class certification shows that members of the putative class cannot be identified other than by individualized inquiry and examination of the claim information maintained by State Farm Fire and, in some instances, records solely within the possession of putative class members.

9. The evidence presented by Plaintiffs and State Farm Fire on class certification shows that one cannot identify who sustained injury in the form of a claim underpayment, or the damages (if any) any such individuals may be entitled to receive, other than by individualized inquiry and examination of the claim information maintained by State Farm Fire and, in some instances, records solely within the possession of putative class members.

FIRST ADDITIONAL DEFENSE

As set forth in State Farm Fire's affirmative allegations Nos. 1-9 (incorporated herein by reference), and for additional reasons, the Second Amended Complaint fails to state a claim for which relief may be granted as to Plaintiffs and some or all alleged members of the asserted Class.

SECOND ADDITIONAL DEFENSE

As set forth in State Farm Fire's affirmative allegations Nos. 1-9 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiffs and alleged members of the asserted Class are barred by the applicable statute of limitations for bringing suit against State Farm Fire.

THIRD ADDITIONAL DEFENSE

As set forth in State Farm Fire's affirmative allegations Nos. 1-9 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiffs and alleged members of the asserted 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 benefit assertedly owed, and/or failure to pay premiums as due.

FOURTH ADDITIONAL DEFENSE

As set forth in State Farm Fire's affirmative allegations Nos. 1-9 (incorporated herein by reference), and for additional reasons, the policies issued by State Farm Fire under which the individual and asserted class claims are asserted are the best evidence of the contents of each such policy. State Farm Fire specifically pleads, without limitation, all terms, conditions, and exclusions of each insured's policy as to that insured. Further, State Farm Fire 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.

FIFTH ADDITIONAL DEFENSE

As set forth in State Farm Fire's affirmative allegations Nos. 1-9 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiffs and alleged members of the asserted 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 costs incurred, by receiving payment of his or her fully policy limits less applicable deductible, or by completing repairs to the damaged property for less than the amount of the total payment received for the claim (less the applicable deductible).

SIXTH ADDITIONAL DEFENSE

As set forth in State Farm Fire's affirmative allegations Nos. 1-9 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiffs and alleged members of the asserted class are barred by the doctrines of accord and satisfaction.

SEVENTH ADDITIONAL DEFENSE

As set forth in State Farm Fire's affirmative allegations Nos. 1-9 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiffs and alleged members of the asserted class are barred by the individual's failure to mitigate damages.

EIGHTH ADDITIONAL DEFENSE

As set forth in State Farm Fire's affirmative allegations Nos. 1-9 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiffs and alleged members of the asserted class are barred by the individual's failure to comply with all requirements relating to the appraisal process for resolving disputes concerning claims under their respective policies.

NINTH ADDITIONAL DEFENSE

As set forth in State Farm Fire's affirmative allegations Nos. 1-9 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiffs and alleged members of the asserted class are barred by the doctrines of laches, waiver, estoppel, and/or unclean hands.

TENTH ADDITIONAL DEFENSE

As set forth in State Farm Fire's affirmative allegations Nos. 1-9 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiffs and alleged members of the asserted class are barred by settlement and release, including but not limited to the settlement and releases in *Chivers v. State Farm Fire and Casualty Co., State Farm Lloyds and State Farm General Insurance Co.*, Case No. CV-2010-251-3 (Ark. Cir. Ct.).

ELEVENTH ADDITIONAL DEFENSE

As set forth in State Farm Fire's affirmative allegations Nos. 1-9 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiffs and alleged members of the asserted class are barred by the doctrines of *res judicata* and/or collateral estoppel.

TWELFTH ADDITIONAL DEFENSE

As set forth in State Farm Fire's affirmative allegations Nos. 1-9 (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) Plaintiffs are not adequate class representatives and cannot fairly and adequately protect the interests of the purported Class; (b) Plaintiffs' claims are not typical of the claims of asserted class members; (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; (f) the asserted Class is not properly defined or readily ascertainable, and (g) trial of this matter on a class basis will deprive State Farm Fire of its due process right to present its defenses, as those defenses will require individualized evidence as to Plaintiffs and each putative class member. Further, any adjudication of Plaintiffs' individual claims or those of the asserted Class will require individualized inquiry on the questions of injury and damages, such that imposition of liability and any award of damages or other relief against State Farm Fire on the basis of "generalized class-wide proof" will not satisfy the requirements of Rule 23 and further would violate State Farm Fire's Due Process and other rights under the Arkansas and United States Constitutions.

THIRTEENTH ADDITIONAL DEFENSE

As set forth in State Farm Fire's affirmative allegations Nos. 1-9 (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) Plaintiffs are not adequate class representatives and/or some or all class counsel cannot fairly and adequately protect the interests of the purported classes; (b) Plaintiffs' claims are not typical of the claims of asserted class members; (c) adjudication of separate actions by individual class members would not be dispositive of other class members' interests or establish incompatible standards of conduct for State Farm Fire; (d) none of the other requirements for maintaining this action as a class action have been satisfied; (e) the asserted Class is not properly defined or readily ascertainable, and (f) trial of this matter on a class basis will deprive State Farm Fire of its due process right to present its defenses, as those defenses will require individualized evidence as to Plaintiffs and each putative class member. Accordingly, any adjudication of Plaintiffs' individual claims or those of the asserted class on the basis of "generalized class-wide proof" will not satisfy the requirements of Rule 23 and further would violate State Farm Fire's Due Process and other rights under the Arkansas and United States Constitutions.

FOURTEENTH ADDITIONAL DEFENSE

As set forth in State Farm Fire's affirmative allegations Nos. 1-9 (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) Plaintiffs are not adequate class representatives and/or some or all class counsel cannot fairly and adequately protect the interests of the purported classes; (b) Plaintiffs' claims are not typical of the claims of asserted class members; (c) none of the other requirements for maintaining this action as a class action have been satisfied; (d) the asserted class

is not properly defined or readily ascertainable, and (e) trial of this matter on a class basis will deprive State Farm Fire of its due process right to present its defenses, as those defenses will require individualized evidence as to Plaintiffs and each putative class member. Accordingly, any adjudication of Plaintiffs' individual claims or those of the asserted class on the basis of "generalized class-wide proof" will not satisfy the requirements of Rule 23 and further would violate State Farm Fire's Due Process and other rights under the Arkansas and United States Constitutions.

FIFTEENTH ADDITIONAL DEFENSE

As set forth in State Farm Fire's affirmative allegations Nos. 1-9 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiffs and alleged members of the asserted Class are barred because they improperly seek to impair the obligation of contracts in contravention of rights guaranteed to State Farm Fire by the Arkansas and United States Constitutions.

SIXTEENTH ADDITIONAL DEFENSE

As set forth in State Farm Fire's affirmative allegations Nos. 1-9 (incorporated herein by reference), and for additional reasons, Plaintiffs and alleged members of the asserted Class are not entitled to recover pre- or post-judgment interest for failure to demonstrate all prerequisites to recovery of such payments (e.g., liquidated damages), or at the rates or in the amounts asserted.

SEVENTEENTH ADDITIONAL DEFENSE

As set forth in State Farm Fire's affirmative allegations Nos. 1-9 (incorporated herein by reference), and for additional reasons, Plaintiffs and alleged members of the asserted Class have not sustained any injury and they lack standing to pursue any claim against State Farm Fire.

EIGHTEENTH ADDITIONAL DEFENSE

As set forth in State Farm Fire's affirmative allegations Nos. 1-9 (incorporated herein by reference), and for additional reasons, any allegations in respect to alleged fraud, deception by misstatement of fact or omission, and/or tolling fail for lack of any misstatement or omission by State Farm Fire.

NINETEENTH ADDITIONAL DEFENSE

As set forth in State Farm Fire's affirmative allegations Nos. 1-9 (incorporated herein by reference), and for additional reasons, Plaintiffs and alleged members of the asserted Class are not entitled to recovery of any penalties for late claim payments (whether for attorneys' fees, interest, or otherwise) because State Farm Fire's payments were timely made within the terms of the insured's policy.

Dated: April 19, 2016

Respectfully Submitted,

/s/ Heidi Dalenberg

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CERTIFICATE OF SERVICE

I, Heidi Dalenberg, attorney for defendants in the above-entitled cause, hereby certify that on April 19, 2016, copies of the foregoing document were filed and served through the Court's electronic filing system electronically using the Court's CM/ECF system, which will generate Notice to all counsel of record.

By: /s/ Heidi Dalenberg