

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION AT CLEVELAND**

CHARLES CRANFIELD, for himself)	
and all others similarly situated,)	Case No. 1:16-cv-01273
)	
and)	Hon. Christopher A. Boyko
)	
THE CONDOMINIUMS AT)	
NORTHPOINTE ASSOCIATION, for)	
itself and all others similarly situated,)	
)	
and)	
)	
CHRISTINA ERMIDIS, for herself)	
and all others similarly situated.)	
1075 E. 64th Street)	
Cleveland, OH 44103)	
)	
Plaintiffs,)	
-vs-)	
)	
STATE FARM FIRE & CASUALTY)	
COMPANY,)	
)	
Defendant.)	

**STATE FARM FIRE AND CASUALTY COMPANY’S ANSWER
TO FOURTH AMENDED CLASS ACTION COMPLAINT,
ADDITIONAL DEFENSES, AND JURY DEMAND**

Defendant State Farm Fire and Casualty Company (“State Farm”) hereby submits its Answer and Additional Defenses to the Fourth Amended Class Action Complaint (the “Complaint”) filed by Plaintiffs Charles Cranfield (“Cranfield”), The Condominiums at Northpointe Association (“Northpointe”), and Christina Ermidis (“Ermidis”) hereinafter referred to collectively as “Plaintiffs.” While Plaintiffs filed the Fourth Amended Complaint at the Court’s direction, *see* Dkt. 135 at 14, the filing does not impact State Farm’s pending Motion for Summary Judgment (Dkt. 130) as to the claims asserted by Cranfield and Northpointe in this case. The Court

previously expressed an intention to rule upon State Farm's Motion notwithstanding its order granting leave for Plaintiffs to file the Fourth Amended Complaint. *See* Dkt. 135 at 14. For the avoidance of doubt, State Farm reasserts and incorporates its arguments from the briefing on its pending Motion for Summary Judgment (Dkt. Nos. 130, 137) as against the claims of Cranfield and Northpointe that appear in Plaintiffs' Fourth Amended Complaint. State Farm's Answer and Additional Defenses to the specific allegations in the Fourth Amended Complaint are set forth below:

1. Defendant State Farm Fire and Casualty Company ("State Farm" or "Defendant") is a foreign corporation in good standing licensed to sell property and casualty insurance in the State of Ohio.

ANSWER: Admitted.

2. Defendant is, or at a point in time relevant to this case was, licensed to sell property and casualty insurance in the State of Ohio.

ANSWER: Admitted.

3. Defendant maintains numerous offices in Ohio for the conduct of its usual and customary business, including the sale of insurance policies.

ANSWER: State Farm admits that it conducts business in Ohio, including the sale of insurance policies. State Farm denies all remaining allegations of this paragraph.

PARTIES

4. Plaintiffs Cranfield and Ermidis are residents and citizens of the State of Ohio. Plaintiff The Condominiums at Northpointe Association (hereafter sometimes "Northpointe") is a not for profit corporation organized and existing under the laws of the State of Ohio.

ANSWER: State Farm admits that Cranfield and Ermidis are residents and citizen of the State of Ohio. State Farm lacks knowledge of information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph that Northpointe is a not for profit corporation organized and existing under the laws of the State of Ohio, and therefore denies those allegations.

State Farm denies all remaining allegations of this paragraph.

5. Defendant is organized under the laws of the State of Illinois and headquartered in Northbrook, Illinois. Defendant is authorized to sell property insurance policies in the State of Ohio and is engaged in the insurance business in the State of Ohio, including Cuyahoga County.

ANSWER: State Farm admits that it is organized under the laws of the State of Illinois; that it is authorized to sell property insurance policies in the State of Ohio; and that it is engaged in the insurance business in the State of Ohio, including Cuyahoga County. State Farm denies that it is headquartered in Northbrook, Illinois.

JURISDICTION AND VENUE

6. Subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. §1332(d)(2). There are more than 100 members in the proposed class, at least one member of the proposed class has state citizenship that is different than Defendant's, and the matter in controversy exceeds \$5,000,000, exclusive of interest and costs.

ANSWER: State Farm admits that, based solely on Plaintiffs' allegations, this Court has subject matter jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2) ("CAFA"), in that Plaintiffs' allegations satisfy the jurisdictional requirements under CAFA. State Farm denies that a class can properly be maintained in this action under Rule 23 of the Federal Rules of Civil Procedure or that the asserted class is entitled to any damages.

7. This Court has personal jurisdiction over Defendant as Defendant has sufficient minimum contacts with the state of Ohio, is authorized to do business in Ohio and has availed itself of the privilege of conducting business in the State of Ohio.

ANSWER: State Farm admits that it is authorized to do business in Ohio; that it has conducted business within the state; and that it is subject to personal jurisdiction in this Court. State Farm denies all remaining allegations of this paragraph.

8. Venue is proper in this forum pursuant to 28 U.S.C. §1391(b) because Defendant has its agent for service of process in this District, for conducting business in this state, including the conduct alleged in this complaint. 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 admits that venue is proper in this forum pursuant to 28 U.S.C. §1391(b); that at least some of the acts at issue in this lawsuit occurred in this District; and that venue is also proper pursuant to 28 U.S.C. §1391(c) because State Farm is a corporation deemed to reside in this District. State Farm denies all remaining allegations of this paragraph.

THE WRONGFUL CONDUCT

9. This case involves systematic adjusting practices used by Defendant to understate, and under-pay, the actual cash value of property damage suffered by its insureds, thereby denying its insureds (including Cranfield and Northpointe) the full amount of indemnity to which they are entitled.

ANSWER: Denied.

10. Defendant intentionally and fraudulently made affirmative misrepresentations to its insureds to conceal its unlawful claims adjusting practices from its policyholders so as to avoid lawsuits of this nature, and in the hope of running out the clock on claims under Defendant's contractual time limit in Defendant's standard insurance policy.

ANSWER: Denied.

11. Defendant routinely understates actual cash value by depreciating the labor component of repair costs, instead of only the physical item that is subject to wear, tear, and obsolescence, and also depreciates contractor overhead and profit even though those items are not subject to wear, tear, and obsolescence.

ANSWER: Denied.

12. Defendant lies to its policyholders by affirmatively telling them that only physical "items" that suffer wear and tear are being depreciated, while Defendant surreptitiously deducts unlawful labor depreciation and fraudulently conceals it from its policyholders.

ANSWER: Denied.

13. Traditionally, and prior to the advent of the computerized property insurance claims estimating software programs, property insurance adjusters adjusting structural damage claims were taught only to depreciate materials, and not depreciate labor, when calculating ACV. *See, e.g., Don Wood et al., Insurance Recovery After Hurricane Sandy: Correcting the Improper Depreciation of Intangibles Under Property Insurance Policies*, 42 TORTS, INS. & COMPENSATION L.J. 19, 24 (Winter 2013) ("I was taught many years ago that depreciation, when it was applied, must be done on a line-by-line, item-by-item basis.... I obtained charts of the

average lifespans of materials. A few sample pages from the National Association of Home Builders is attached. Material lifespans shown in the attachment were derived from reports of product manufacturers. Nowhere in any of the lists of materials is any labor item mentioned ...”); Chip Merlin, *Few Judges and Insurance Regulators Worked In Property Claims: Understanding New Insurance Rulings*, PROP. INS. COV. LAW BLOG (August 16, 2017) (“when I was starting out, an older and experienced GAB [General Adjustment Bureau] adjuster told me they never depreciated labor”).

ANSWER: State Farm states that the above references sources, from which Plaintiffs purport to quote, speak for themselves, requiring neither admission nor denial. State Farm denies that that applying depreciation to all components of replacement cost is a “new” or improper practice and denies all remaining allegations of this paragraph.

14. In contrast to the traditional property insurance industry approach, and in the past ten to fifteen years, commercially available claims estimating software programs provided property insurers with the option to withhold, as “depreciation,” a portion of the labor needed to repair a structure, at the same time the program calculated the actual depreciation arising from the physical deterioration of building materials. This new option was created as property insurers, and their computer programmers, realized that withholding labor as “depreciation” could dramatically lower ACV payments.

ANSWER: Denied.

15. The computer programs that provide an insurance company with the option to withhold labor as depreciation include not only the software program used by Defendant— Xactimate, but also most of the prevalent claims estimating software programs used today.

ANSWER: State Farm admits that it has used the Xactimate estimating software and that Xactimate has features that allow the user to estimate the cost of various repairs in different ways and to apply depreciation to certain estimated costs associated with those repairs. State Farm lacks knowledge of information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph concerning the most prevalent claims estimating program used today, and therefore denies those allegations. State Farm denies all remaining allegations of this paragraph.

16. These claims estimating software programs all provide for the option of withholding of labor as depreciation by simply checking or unchecking a box with

a computer mouse.

ANSWER: State Farm admits that the current version of the Xactimate estimating software has features that allow the user to apply depreciation to certain estimated costs associated with repair tasks identified on the estimate, and that the current “Depreciation Options” are as follows: Depreciate Material, Depreciate Non-Material, Depreciate Removal, Depreciate Overhead and Profit, and Depreciate Sales Tax. State Farm lacks knowledge of information sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph. Accordingly, State Farm denies all remaining allegations of this paragraph.

17. For example, the below screenshot from the Xactimate program shows that an insurer can choose to select or de-select “Depreciate Non-Material” and “Depreciate Removal,” both of which are labor items.



Exhibit 1 attached hereto includes similar screenshots from the other primary valuation software platforms: Powerclaim®, Simsol®, and Symbility®. Like Xactimate®, each allow the insurance company user the option to choose whether or not to depreciate items which are NOT traditional subjects of depreciation, that is, which are not items that decrease in value due to age, usage, and the like. In fact, Powerclaim® states that “Tax and Labor can be optionally depreciated. Choose the appropriate setting for defaults.” *Id.*

ANSWER: State Farm admits that the images contained in this paragraph and in Exhibit 1 purport to be screenshots from the referenced software platforms; that Plaintiffs purport to quote from the Powerclaim software; that Xactimate has features that allow the user to estimate the cost of various repairs in different ways and to apply depreciation to certain estimated costs associated with those repairs; and that the current “Depreciation Options” in the version of Xactimate used by State Farm are as follows: Depreciate Material, Depreciate Non-Material, Depreciate Removal,

Depreciate Overhead and Profit, and Depreciate Sales Tax. State Farm lacks knowledge of information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph concerning software programs other than Xactimate and therefore denies those allegations. State Farm denies all remaining allegations of this paragraph.

18. Insurance companies such as Defendant typically issue company and state-wide directives, to all their property adjusters, instructing them uniformly to either depreciate non-materials or not, or making that choice for them by default settings in the estimating system.

ANSWER: State Farm lacks knowledge of information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph concerning other insurance companies and therefore denies those allegations. State Farm denies all remaining allegations of this paragraph.

19. Those companies choosing to depreciate non-materials make that choice because such depreciation results in a tremendous difference (lessening) in the amount a property insurer will pay for the ACV of claims.

ANSWER: State Farm lacks knowledge of information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph concerning other insurance companies, and therefore denies those allegations. State Farm denies all remaining allegations of this paragraph.

20. In 2011, the Ohio Department of Insurance referred to the practice of *not* depreciating labor as traditional insurance industry practice. *See Market Conduct Examination of Sandy and Beaver Valley Farmers Mutual Ins. Co. as of June 30, 2011*, Ohio Dep't of Insurance, at 6 (May 21, 2012) ("Sandy and Beaver Valley Exam") (insurer should not depreciate labor on ACV claims "in order to be consistent with the industry practice of not depreciating labor").

ANSWER: State Farm states that the referenced Market Conduct Examination Report of Sandy and Beaver Valley Farmers Mutual Insurance Company, prepared by an examiner at the Ohio Department of Insurance, is a document that speaks for itself, requiring neither admission nor denial. State Farm denies all remaining allegations of this paragraph and specifically denies that the Ohio Department of Insurance has disapproved the practice of applying depreciation to all estimated replacement costs, including labor costs, when calculating depreciation for actual cash

value payments.

21. As the largest property insurer in Ohio, Defendant knew or should have known of the existence of the *Sandy and Beaver Valley* examination report.

ANSWER: Denied.

22. Despite the Ohio Department of Insurance's position articulated in the Sandy and Beaver Valley Exam, Defendant continued to withhold labor depreciation from actual cash value payments without any disclosure of that practice in its policies or on the claim estimates provided to policyholders and continued to purposely withhold that key information from the named plaintiffs, the putative class, and the general public.

ANSWER: Denied.

23. By at least 2011 then, Defendant was aware of or should have been aware that the Ohio Department of Insurance took a position against the depreciation of labor.

ANSWER: Denied.

24. To make matters worse, Defendant lied to policyholders on loss estimates by describing depreciation as only applying to physical "property," representing the "decrease in the value of property over a period of time due to wear, tear, condition, and obsolescence," thus fraudulently misrepresenting and intentionally concealing its depreciation of labor with the intent to deceive its policyholders and prevent them from discovering Defendant's breach of contract.

ANSWER: Denied.

25. When calculating Plaintiffs' and putative class members' ACV benefits, Defendant withheld a portion of the labor costs necessary to repair or replace its policyholders' properties under coverage forms that did not permit labor depreciation. In doing so, however, Defendant did not inform Plaintiffs it had done so, and nothing in the policy, estimate or any other document would allow Plaintiffs to know defendant was doing so.

ANSWER: Denied.

26. Defendant surreptitiously depreciated costs associated with non-materials throughout its ACV calculations, without revealing this material fact to plaintiffs, the class members, or the public, and concealing same intentionally from them by purposely selecting the setting that conceals, and does not print, the lines showing that labor has been depreciated.

ANSWER: Denied.

27. The Xactimate program used by Defendant determines the amount of non-material depreciation being withheld and can reflect that on the estimate to the customer, so Defendant could have easily and honestly disclosed that information to the customer.

ANSWER: Denied.

28. Defendant's withholding of labor costs associated with the repair or replacement of the insured properties resulted in Plaintiffs and putative classmembers receiving payment for their losses in an amount less than they were entitled to receive under policies that never included a form authorizing the practice.

ANSWER: Denied.

29. Defendant's conduct also resulted in the Plaintiffs and the putative class being misled that they were receiving proper payment, and misled into believing their contract was being followed, when those were untrue.

ANSWER: Denied.

a. Cranfield transaction.

30. The residential home owned by Cranfield located at 2519 Richmond Road, Beachwood, Ohio ("the Home"), suffered substantial storm damage on or about October 14, 2014.

ANSWER: State Farm admits that Cranfield's home located at 2519 Richmond Road, Beachwood, Ohio, suffered a covered loss due to storm damage on or about October 14, 2014. State Farm denies all remaining allegations of this paragraph.

31. Much of the Home was damaged and required repair and restoration.

ANSWER: State Farm admits that Cranfield's home suffered damage which required repair and/or restoration. State Farm denies all remaining allegations of this paragraph.

32. At the time of the loss the Home was insured by State Farm policy no. 70- N6-7546-3. A copy of the policy is attached as **Exhibit 2**.

ANSWER: State Farm admits the first sentence of this paragraph; and admits that the documents attached as Exhibit 2 include the records of the terms and conditions of State Farm policy no. 70-N6-7546-3 including any endorsements, in place from August 15, 2014 to August

15, 2016 (hereinafter “Cranfield’s Policy”). State Farm denies all remaining allegations of this paragraph.

33. The policy included, among other coverages, indemnity coverage for physical damage to the Home caused by perils other than those specifically excluded under the policy.

ANSWER: State Farm admits that Cranfield’s Policy provided structural damage coverage for Cranfield’s home, pursuant to the terms of the Policy, and also contained certain exclusions. State Farm denies all remaining allegations of this paragraph.

34. Cranfield submitted a claim to Defendant and requested payment for the damage to the Home.

ANSWER: State Farm admits that Cranfield submitted a property insurance claim to State Farm for damage to his home that he reported had occurred on October 14, 2014. State Farm denies all remaining allegations of this paragraph.

35. Defendant confirmed that the Home had sustained damage due to a covered peril and that Defendant had an obligation and duty to pay Cranfield for the repair or replacement of the damaged portions of the Home pursuant to the terms of his insurance policy.

ANSWER: State Farm admits that it determined that at least some portion of the damage suffered by Cranfield’s home was a covered loss under Cranfield’s Policy and that it made claim payments to Cranfield for that covered loss. State Farm denies all remaining allegations of this paragraph.

36. On or about March 23, 2015, a State Farm adjuster inspected the damage to the Home for purposes of preparing an estimate of the cost to repair or replace the damaged property.

ANSWER: Admitted

37. On January 7, 2016, the State Farm adjuster submitted a final estimate for repair of the damage to the Home, a copy of which is attached hereto as **Exhibit 3**.

ANSWER: State Farm admits that, on or about January 7, 2016, after Cranfield’s public

adjuster notified State Farm in November 2015 that he disputed the sufficiency of State Farm's March 25, 2015 repair cost estimate and accompanying ACV payment, State Farm provided Cranfield (care of his public adjuster) with a revised repair cost estimate. State Farm further admits that Exhibit 3 includes portions of State Farm's January 7, 2016 repair-cost estimate for Cranfield's home. State Farm denies all remaining allegations of this paragraph.

38. The adjuster's estimate found that Cranfield had suffered loss and damage to the Home in the amount of \$4,044.86.

ANSWER: State Farm admits that its estimate dated January 7, 2016 reflects a total estimated replacement cost of \$4,044.86. State Farm denies all remaining allegations of this paragraph.

39. The repair costs estimated by the Defendant adjuster included costs for material and labor to repair the Home, and sales tax on materials.

ANSWER: State Farm admits its estimate dated January 7, 2016 included all estimated costs to repair the property damage, including material and labor costs, and including sales tax on the material costs. State Farm denies all remaining allegations of this paragraph.

40. Defendant's policy contains no definition of actual cash value ("ACV") and provides that Defendant will only pay the ACV of a loss to the insured until the repair or replacement of the damaged property is completed.

ANSWER: State Farm admits that Cranfield's Policy does not define "actual cash value," but denies that either the Policy or the term "actual cash value" is ambiguous. Further answering, State Farm admits that Cranfield's Policy provides, in part, that until repair or replacement of the damaged part of the property is completed, State Farm will pay only the ACV of the damaged part of the property in an amount not to exceed the cost to repair or replace the damaged part of the property. State Farm denies that Plaintiffs have accurately described all of the pertinent provisions of Cranfield's Policy or State Farm's practices under said provisions. State Farm denies all remaining allegations in this paragraph.

41. Defendant's estimate provided to Cranfield calculated ACV as repair or replacement cost of the damaged part of the property less depreciation.

ANSWER: State Farm admits that in calculating the initial ACV payment that it made to Cranfield on March 25, 2015, State Farm applied depreciation to the certain of the costs it estimated would be required to repair or replace the damaged part of Cranfield's home. State Farm denies all remaining allegations of this paragraph.

42. Defendant's policy contains no definition of depreciation, but 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).

ANSWER: State Farm admits that Cranfield's Policy does not define the term "depreciation," but denies that either the Policy or the term "depreciation" is ambiguous. State Farm states that the referenced source from which Plaintiffs purport to quote speaks for itself and requires neither admission nor denial. To the extent this paragraph contains legal conclusions, State Farm denies that Plaintiffs have correctly and fully stated the law. State Farm denies all remaining allegations of this paragraph.

43. In calculating ACV, State Farm reduced the amount it would pay Cranfield by \$1,348.57 for depreciation.

ANSWER: State Farm admits that in calculating the initial ACV payment of \$360.72 that it made to Cranfield on March 25, 2015, it applied \$1,348.57 in depreciation, and subtracted that amount and the amount of Cranfield's deductible from the estimated replacement cost for Cranfield's structural damage claim. State Farm denies all remaining allegations of this paragraph.

44. After subtracting a deductible of \$1,854.00, State Farm made a Net ACV payment of \$842.29 to Cranfield. Cranfield received no further payments from State Farm.

ANSWER: State Farm admits that in calculating the initial ACV payment of \$360.72 that it made to Cranfield on March 25, 2015, it applied \$1,348.57 in depreciation, and subtracted that amount and Cranfield's deductible of \$1,854.00 from the estimated replacement cost for

Cranfield's structural damage claim. State Farm further admits that it calculated and issued a supplemental ACV payment to Cranfield on January 7, 2016 in the amount of \$481.57, bringing the total amount paid to Cranfield for ACV to \$842.29. State Farm further admits that Cranfield, following his receipt of the supplemental ACV payment of \$481.57, did not seek replacement cost benefits payments from State Farm, which were potentially available to Cranfield for repair costs he actually and necessarily incurred beyond State Farm's ACV payments. State Farm denies all remaining allegations of this paragraph.

45. In making its ACV calculation, but unknown to Cranfield, Defendant depreciated the labor required to repair the Home; but unlike a physical "asset," labor does not depreciate over time.

ANSWER: State Farm admits that, as is reflected on its estimate, certain labor and material costs were subject to depreciation when it calculated Cranfield's initial ACV payment. State Farm denies all remaining allegations of this paragraph.

46. For example, State Farm estimated the cost of repairing the Home's kitchen to be \$891.49, which included materials and labor to make repairs to drywall and painting walls. The estimate does not mention labor. State Farm depreciated that \$891.49 by \$340.73, which it now admits included non-material depreciation.

ANSWER: State Farm admits that, as is reflected on the referenced estimate, certain labor and material costs were subject to depreciation when it calculated Cranfield's initial ACV. State Farm further admits that the referenced estimate, dated January 7, 2016, estimated a total replacement cost of \$891.49 for the structural damage to Cranfield's kitchen, and that certain of those estimated costs were subject to depreciation. State Farm denies all remaining allegations of this paragraph to the extent they are inconsistent with the referenced estimate and denies all other allegations of this paragraph.

b. The Condominium at Northpointe transaction.

47. The Condominium at Northpointe owns a condominium complex in Newark, Ohio (the "Complex"), and was insured under condominium insurance policy issued by

Defendant, policy number 95-KB-8359-4. A copy of the policy is attached as Exhibit 4.

ANSWER: State Farm admits that it issued Businessowners Policy # 95-KB-8359-4 to The Condominium at Northpointe (hereinafter “the Northpointe Policy”) and that Exhibit 4 appears to include some portions of the records of the Northpointe Policy, but states that Exhibit 4 is largely an incomplete record of the Northpointe Policy. State Farm admits that the Northpointe Policy insured Northpointe against property damage for the condominium buildings referenced in the declarations of that Policy. State Farm denies the remaining allegations of this paragraph.

48. The Complex suffered substantial storm damage on or about April 2, 2016.

ANSWER: State Farm admits that the Complex suffered a covered loss on or about April 2, 2016. State Farm denies all remaining allegations of this paragraph.

49. The policy included, among other coverages, indemnity coverage for physical damage to the Complex caused by perils other than those specifically excluded under the policy.

ANSWER: State Farm admits that Northpointe’s Policy provided structural damage coverage for the Complex, pursuant to the terms of the Policy, and also contained certain exclusions. State Farm denies all remaining allegations of this paragraph.

50. Northpointe submitted a claim to Defendant and requested payment for the damage to the Complex.

ANSWER: State Farm admits that Northpointe, acting through its counsel, submitted a property insurance claim to State Farm for damage to the Complex. State Farm denies all remaining allegations of this paragraph.

51. Defendant confirmed that the Complex had sustained damage due to a covered peril and that Defendant had an obligation and duty to pay Northpointe for the repair or replacement of the damaged portions of the Complex pursuant to the terms of his insurance policy.

ANSWER: State Farm admits that it determined that at least some portion of the damage

suffered by the Complex was a covered loss under Northpointe's Policy and that it made one or more payments to Northpointe for that covered loss. State Farm denies all remaining allegations of this paragraph.

52. A State Farm adjuster inspected the damage to the Complex for purposes of preparing an estimate of the cost to repair or replace the damaged property.

ANSWER: Admitted.

53. The State Farm adjuster submitted an estimate for repair of the damage to the Complex, a copy of which is attached hereto as Exhibit 5.

ANSWER: State Farm admits that, after discussions with Northpointe's counsel, State Farm eventually sent to Northpointe's counsel an estimate dated June 6, 2016 of the cost to repair the damaged portion of the Complex. State Farm further admits that the June 6, 2016 estimate is attached as Exhibit 5. State Farm denies all remaining allegations of this paragraph.

54. The adjuster's estimate found that Northpointe had suffered loss and damage to the Complex in the amount of \$452,594.61.

ANSWER: Denied.

55. The repair costs estimated by the Defendant adjuster included costs for material and labor to repair the Complex, and sales tax on materials.

ANSWER: State Farm admits that its replacement cost estimate dated June 6, 2016 included all estimated costs to repair the property damage to the Complex, including material and labor costs, and including sales tax on the material costs. State Farm denies all remaining allegations of this paragraph.

56. Defendant's policy contains no definition of actual cash value ("ACV") and provides that Defendant will only pay the ACV of a loss to the insured until the repair or replacement of the damaged property is completed.

ANSWER: State Farm admits that Northpointe's Policy does not define "actual cash value," but denies that either the Policy or the term "actual cash value" is ambiguous. Further answering, State Farm admits that Northpointe's Policy provides, in part, that the policyholder

may make a claim for the ACV of a covered loss and that, in that instance, State Farm will not pay for the loss on a replacement cost basis until the damaged property is actually repaired or replaced, but denies that Plaintiffs have accurately described all of the pertinent provisions of Northpointe's Policy or State Farm's practices under said provisions. State Farm denies all remaining allegations in this paragraph.

57. Defendant's estimate provided to Northpointe calculated ACV as repair or replacement cost of the damaged part of the property less depreciation.

ANSWER: State Farm admits that in calculating the initial ACV payment that it made to Northpointe on June 6, 2016, State Farm applied depreciation to the certain of the costs it estimated would be required to repair or replace the damaged part of the Complex. State Farm denies all remaining allegations of this paragraph.

58. Defendant's policy contains no definition of depreciation, but 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).

ANSWER: State Farm admits that Northpointe's Policy does not define the term "depreciation," but denies that either the Policy or the term "depreciation" is ambiguous. State Farm states that the referenced source from which Plaintiffs purport to quote speaks for itself and requires neither admission nor denial. To the extent this paragraph contains legal conclusions, State Farm denies that Plaintiffs have correctly and fully stated the law. State Farm denies all remaining allegations of this paragraph.

59. In calculating ACV State Farm reduced the amount it would pay Northpointe by \$209,626.09 for depreciation.

ANSWER: State Farm admits that in calculating the initial ACV payment of \$173,957.22 that it made to Northpointe on June 6, 2016, it applied \$209,626.09 in depreciation, which amount was subtracted from the estimated replacement cost for Northpointe's structural damage claim. State Farm denies all remaining allegations of this paragraph.

60. After subtracting a deductible, State Farm made a Net ACV payment of \$173,957.22 to Northpointe.

ANSWER: State Farm admits that in calculating the initial ACV payment of \$173,957.22 that it made to Northpointe on June 6, 2016, it also subtracted Northpointe's deductible from the estimated replacement cost for Northpointe's structural damage claim. State Farm denies all remaining allegations of this paragraph.

61. In making its ACV calculation, but unknown to Northpointe, Defendant depreciated the labor required to repair the Complex; but unlike a physical "asset," labor does not depreciate over time.

ANSWER: State Farm admits that, as is reflected on its estimate, certain labor and material costs were subject to depreciation when it calculated Northpointe's initial ACV payment. State Farm denies all remaining allegations of this paragraph.

c. Ermidis transaction

62. The residential home owned by Ermidis located at 1075 E. 64th Street, Cleveland, Ohio ("the Ermidis Home"), suffered storm damage on or about March 8, 2017.

ANSWER: State Farm admits that Ermidis's home located at 1075 E. 64th Street, Cleveland, Ohio 2519 Richmond Road, Beachwood, Ohio, suffered a covered loss due to wind damage on or about March 8, 2017. State Farm denies all remaining allegations of this paragraph.

63. Much of the Ermidis Home was damaged and required repair and restoration.

ANSWER: State Farm admits that the roofs on Ermidis's home, garage and shed suffered damage that required repair and/or restoration. State Farm denies all remaining allegations of this paragraph.

64. At the time of the loss the Ermidis Home was insured by State Farm policy no. 70-N5-7285-6, with the same base policy form as Mr. Cranfield.

ANSWER: Admitted.

65. The policy included, among other coverages, indemnity coverage for physical damage to the Ermidis Home caused by perils other than those specifically excluded

under the policy.

ANSWER: State Farm admits that Ermidis's Policy provided structural damage coverage for Ermidis's home, pursuant to the terms of the Policy, and also contained certain exclusions. State Farm denies all remaining allegations of this paragraph.

66. Ermidis submitted a claim to Defendant and requested payment for the damage to the Ermidis Home.

ANSWER: State Farm admits that Ermidis, through Metro Public Adjustment, Inc., submitted a property insurance claim to State Farm for damage to her home. State Farm denies all remaining allegations of this paragraph.

67. Defendant confirmed that the Ermidis Home had sustained damage due to a covered peril and that Defendant had an obligation and duty to pay Ermidis for the repair or replacement of the damaged portions of the Ermidis Home pursuant to the terms of his insurance policy.

ANSWER: State Farm admits that it determined that at least some portion of the damage suffered by Ermidis's home was a covered loss under Ermidis's Policy and that it made a claim payment to Ermidis for that covered loss. State Farm denies all remaining allegations of this paragraph.

68. On or about April 13, 2017, a State Farm adjuster inspected the damage to the Ermidis Home for purposes of preparing an estimate of the cost to repair or replace the damaged property.

ANSWER: Admitted.

69. The State Farm adjuster submitted a final estimate for repair of the damage to the Ermidis Home, a copy of which is attached hereto as **Exhibit 6**.

ANSWER: State Farm admits that it provided Ermidis (care of her public adjuster) with a repair cost estimate. State Farm further admits that Exhibit 6 includes the repair-cost estimate that State Farm provided for Ermidis's home. State Farm denies all remaining allegations of this paragraph.

70. The adjuster's estimate found that Ermidis had suffered loss and damage to the Ermidis Home in the amount of \$16,126.89.

ANSWER: State Farm admits that its estimate dated April 13, 2017 reflects a total estimated replacement cost of \$16,126.89. State Farm denies all remaining allegations of this paragraph.

71. The repair costs estimated by the Defendant adjuster included costs for material and labor to repair the Ermidis Home and sales tax on materials.

ANSWER: State Farm admits its estimate dated April 13, 2017 included all estimated costs to repair the property damage, including material and labor costs, and including sales tax on the material costs. State Farm denies all remaining allegations of this paragraph.

72. Defendant's estimate provided to Ermidis calculated ACV as repair or replacement cost of the damaged part of the property less depreciation.

ANSWER: State Farm admits that in calculating the ACV payment that it made to Ermidis on April 13, 2017, State Farm applied depreciation to the certain of the costs it estimated would be required to repair or replace the damaged part of Ermidis's home. State Farm denies all remaining allegations of this paragraph.

73. In calculating ACV, State Farm reduced the amount it would pay Ermidis by \$5,334.24 for depreciation.

ANSWER: State Farm admits that in calculating the ACV payment of \$9,792.65, it applied \$5,334.24 in depreciation, and subtracted that amount and the amount of Ermidis's deductible from the estimated replacement cost for Ermidis's structural damage claim. State Farm denies all remaining allegations of this paragraph.

74. After subtracting a deductible of \$1,000, State Farm made a Net ACV payment of \$9,792.65 to Ermidis. Ermidis received no further payments from State Farm.

ANSWER: State Farm admits that in calculating the ACV payment of \$9,792.65, it applied \$5,334.24 in depreciation, and subtracted that amount and Ermidis's deductible of

\$1,000.00 from the estimated replacement cost for Ermidis's structural damage claim. State Farm further admits that Ermidis, following her receipt of the ACV payment, did not seek replacement cost benefits payments from State Farm, which were potentially available to Ermidis for repair costs she actually and necessarily incurred beyond State Farm's ACV payments. State Farm denies all remaining allegations of this paragraph.

75. In making its ACV calculation, but unknown to Ermidis, Defendant depreciated the labor required to repair the Home, but unlike a physical "asset," labor does not depreciate over time.

ANSWER: State Farm admits that, as is reflected on its estimate, certain labor and material costs were subject to depreciation when it calculated Ermidis's ACV payment. State Farm denies all remaining allegations of this paragraph.

76. State Farm intentionally concealed from Plaintiffs the fact that the depreciation not only included materials, but also included depreciation of labor, and Plaintiffs could not know this was done based on the policy, or the papers from State Farm.

ANSWER: Denied.

77. State Farm depreciated costs associated with labor throughout its ACV calculations. However, each and every time it did so, it did not disclose that fact to Plaintiffs, and it misrepresented the nature of the depreciation taken from Plaintiffs' ACV payment.

ANSWER: State Farm admits that, as is reflected on the referenced estimates, certain labor and material costs were subject to depreciation when it calculated Plaintiffs' initial ACV payments. State Farm denies the remaining allegations of this paragraph.

78. Plaintiffs were damaged by State Farm's breach of its contractual obligations.

ANSWER: Denied.

79. State Farm purposely concealed from and misrepresented that material fact to Plaintiffs, including by intentionally selecting settings on its software that concealed the fact that labor was being depreciated.

ANSWER: Denied.

80. The Ohio Department of Insurance has indicated that it is inappropriate and contrary to industry practice to depreciate labor.

ANSWER: Denied.

81. In its ACV calculation, Defendant did not depreciate pure items of labor, for example, Defendant did not depreciate the cost of “Content Manipulation.” This furthered the impression that Defendant was not depreciating labor, when in fact it was secretly subtracting depreciation from certain labor costs.

ANSWER: State Farm admits that, as is reflected on its estimates for Plaintiffs’ losses, certain labor and material costs were subject to depreciation when it calculated Plaintiffs’ initial and supplemental ACV payments, and certain other labor and material costs were not subject to depreciation. State Farm further admits that it did not apply depreciation to the cost of “Content Manipulation,” when that task was separately itemized on the referenced estimates. State Farm denies all remaining allegations of this paragraph to the extent they are inconsistent with the referenced estimates and denies all other allegations of this paragraph.

82. Defendant intentionally and with the intent to fraudulently conceal and misrepresent its wrongful conduct hid and misstated the fact that it was depreciating labor, and in doing so it withheld the truthful, detailed breakdown of the material and labor components of the repair items.

ANSWER: Denied.

83. The Xactimate program used by Defendant to prepare Plaintiffs’ estimate and those of all of the class members includes user controlled settings that determine how much detail is shown on the estimate, and enabled Defendant to either disclose or misrepresent and conceal the fact that it was depreciating labor; Defendant chose to set the software to misrepresent and conceal its labor depreciation from Plaintiffs and the class members.

ANSWER: Denied.

84. Defendant’s depreciation of labor costs resulted in Plaintiffs receiving an ACV payment in an amount less than they were contractually entitled to under the insurance policies.

ANSWER: Denied.

85. Defendant breached its obligations under the policies by improperly depreciating

the cost of labor and contractor overhead and profit.

ANSWER: Denied.

86. As a direct and proximate result, Plaintiffs suffered damage in an amount greater than \$100.00.

ANSWER: Denied.

COUNT I
BREACH OF CONTRACT

87. Plaintiffs restate and incorporate by reference all preceding allegations.

ANSWER: State Farm restates and incorporates herein by reference all of its responses to and denials of the preceding allegations.

88. By depreciating labor and other non-material costs in the calculation of Plaintiffs' ACV payments, Defendant breached its obligations to Plaintiffs under the insurance policies.

ANSWER: State Farm acknowledges the Sixth Circuit's decision reversing this Court's grant of its Motion to Dismiss, applying the decision in *Perry v. Allstate Indem. Co.*, 953 F.3d 417 (6th Cir. 2020). State Farm otherwise denies the allegations of this paragraph.

89. Plaintiffs and all plaintiff class members satisfied or discharged all conditions precedent to Defendant's obligations under the contract.

ANSWER: Denied.

90. As a direct and proximate result of Defendant's breach of its obligations under the policies, Plaintiffs and the class members have received payment for their losses in amounts less than they were entitled to under their insurance policies.

ANSWER: Denied.

91. Defendant's practice of depreciating non-materials including labor and contractor overhead and profit in the calculation of ACV payments made in connection with property damage claims under Defendant's Ohio insurance policies is a breach of Defendant's obligations under those policies.

ANSWER: State Farm acknowledges the Sixth Circuit's decision reversing this Court's grant of its Motion to Dismiss, applying the decision in *Perry v. Allstate Indem. Co.*, 953 F.3d 417

(6th Cir. 2020). State Farm otherwise denies the allegations of this paragraph.

CLASS ACTION ALLEGATIONS

A. Class Definition

92. Plaintiffs seek to represent the following classes:

All policyholders under any policies issued by Defendant who made: (1) a structural damage claim for property located in the State of Ohio; and (2) which resulted in an actual cash value payment from which “non-material depreciation” was withheld from the policyholder; or which should have resulted in an actual cash value payment but for the withholding of “non- material depreciation” causing the loss to drop below the applicable deductible.

- a. In this definition, “non-material depreciation” means application of either the “depreciate removal,” “depreciate non-material” and/or “depreciate O&P” option settings within Xactimate software.
- b. The class period for the proposed class is the maximum time period as allowed by applicable law.
- c. The class excludes all claims arising under policy forms expressly permitting the “depreciation” of “labor” within the text of the policy form and any claims in which the initial actual cash value payment exhausted the applicable limits of insurance.
- d. Excluded from the Class are: (1) Defendant and its affiliates, officers or directors; (2) members of the judiciary and their staff to whom this action is assigned; and (3) Plaintiffs’ counsel.

ANSWER: State Farm admits that Plaintiffs bring this lawsuit as a proposed class action. State Farm denies that the stated class definition is appropriate, denies that any of the prerequisites for class certification are met here, denies that State Farm engaged in any wrongdoing in respect to Plaintiffs or the asserted class, denies that certification of the proposed class should be granted, and denies all remaining allegations of this paragraph.

B. Class certification under Civil Rule 23(b)(3).

93. The relatively small amounts of damage suffered by each class member make filing separate suits by each class member economically unfeasible.

ANSWER: Denied.

94. Plaintiffs are similarly situated to the members of the class and will fairly and adequately represent all members of the class.

ANSWER: Denied.

95. Plaintiffs have no relationship with Defendant other than as an adverse party in this case.

ANSWER: Denied.

96. Plaintiffs' claim is typical of the class claims.

ANSWER: Denied.

97. Common questions of law and fact apply to Plaintiffs' claims and the claims for the class, and those common questions predominate over individualized questions.

ANSWER: Denied.

98. These common questions that are amenable to class wide resolution include:

- a. Whether Defendant's policy language allows Defendant to depreciate non-materials in the calculation of ACV payments;
- b. Whether Defendant's depreciation of non-materials in calculation of ACV payments breaches the insurance policy;
- c. Whether the term "actual cash value" as used in the Defendant homeowner's insurance policy is ambiguous and susceptible to more than one reasonable interpretation, including an interpretation that permits depreciation of material only and not non-materials;
- d. Whether Defendant has a custom and practice of depreciating non-materials in the calculation of ACV payments;
- e. Whether Defendant made fraudulent misrepresentations to the class members to conceal its unlawful practice relating to depreciation;
- f. Whether Defendant engaged in a course of conduct designed to misrepresent or fraudulently conceal its depreciation practices costs from the class members; and,
- g. Whether Plaintiffs and the putative class have suffered damage because of Defendant's depreciation non-materials in calculation of ACV payments.

ANSWER: State Farm denies that the questions posed above are "common" within the

meaning of Fed. R. Civ. P. 23(a), denies that it has engaged in any wrongdoing in respect to Plaintiffs or the asserted class, denies that any prerequisites for class certification are satisfied, denies that certification of the proposed class should be granted, denies that Plaintiffs or members of the asserted class are entitled to any relief whatsoever, and denies all remaining allegations of this paragraph.

99. Proposed counsel for the proposed class, James A. DeRoche of Garson Johnson LLC, Daniel Goetz and Eric Kennedy of Weisman, Kennedy & Berris Co., LPA, Patrick J. Perotti of Dworken & Bernstein, Co., LPA, Erik D. Peterson of Mehr, Fairbanks & Peterson and Stephen G. Whetstone of Whetstone Legal, LLC are knowledgeable and experienced in class and insurance litigation and will fairly and adequately represent the interests of the proposed class as class counsel.

ANSWER: State Farm lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph regarding the knowledge and experience of proposed class counsel and therefore denies them. State Farm further denies that it has engaged in any wrongdoing in respect to Plaintiffs or the asserted class, denies that any prerequisites for class certification are satisfied, denies that certification of the proposed class should be granted, denies that Plaintiffs or members of the asserted class are entitled to any relief whatsoever, and denies all remaining allegations in this paragraph.

100. The questions of law and fact common to members of the proposed class predominate over any individual questions of law or fact affecting any member of the class and a class action is superior to other available methods for the fair and efficient resolution of this controversy.

ANSWER: Denied.

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

ANSWER: Denied.

102. The proposed class consists of more than 100 individuals.

ANSWER: State Farm admits the allegations in this paragraph but denies that the

numerosity requirement under Fed. R. Civ. P. 23(a) is satisfied.

C. The class period is defined considering Defendant's fraudulent concealment and material misrepresentation.

103. The maximum length of the putative class period depends on the accrual of the causes of action for breach of contract, including but not limited to inherent discoverability of the breach, and Defendant's intentional misrepresentations and fraudulent concealment of its unlawful practice of depreciating labor.

ANSWER: To the extent this paragraph contains legal conclusions, State Farm denies that Plaintiffs have correctly and fully stated the law. State Farm denies all remaining allegations of this paragraph.

104. In addition, any affirmative defenses Defendant may assert seeking to limit the length of the putative class period are subject to judicial doctrines concerning the accrual of the putative class members' claims and Defendant's intentional misrepresentation and fraudulent concealment of those claims.

ANSWER: To the extent this paragraph contains legal conclusions, State Farm denies that Plaintiffs have correctly and fully stated the law. State Farm denies all remaining allegations of this paragraph.

105. Defendant fraudulently concealed and intentionally misrepresented its practice of withholding labor as depreciation from both state regulators and putative class members.

ANSWER: Denied.

106. At all times relevant hereto, Defendant's insurance policies neither addressed nor called for non-materials to be withheld as depreciation.

ANSWER: State Farm admits that Plaintiffs' Policies do not explicitly discuss the depreciation of estimated labor costs in estimating the ACV of damaged properties but denies that the Policies are misleading or ambiguous. State Farm denies all remaining allegations of this paragraph.

107. Similarly, Defendant's marketing materials did not address this practice, and consumers were not told of this practice when purchasing Defendant's property insurance products.

ANSWER: Denied.

108. To further conceal and misrepresent its practice of withholding labor as depreciation, and to avoid any disputes with policyholders who made claims, Defendant used the settings on its claim estimating software to conceal from and misrepresent its practice to policyholders.

ANSWER: Denied.

109. Like most property insurers, Defendant used a product called Xactimate to determine the amount of depreciation to apply to a claim. Xactimate is used by both insurers and contractors to calculate the cost of rebuilding or repairing damaged property. Xactimate uses “line item” pricing to determine repair costs.

ANSWER: State Farm lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph concerning the practices of other insurers or contractors. State Farm admits that it has used Xactimate to estimate the cost of rebuilding or repairing damaged property and to apply depreciation to certain repair tasks on those estimates when estimating the ACV of that property. State Farm further admits that Xactimate allows users to estimate the cost of individual, “line item” repair tasks by employing estimated pricing for those tasks. State Farm denies all remaining allegations of this paragraph.

110. For all line items, Xactimate allows an insurer to depreciate labor by toggling on or off depreciation settings called “depreciate removal” and “depreciation non-material.” If both settings are toggled on, then the estimate can show that items other than materials are being withheld as depreciation.

ANSWER: State Farm admits that the Xactimate software has features that allow the user to apply depreciation to certain estimated costs associated with repair tasks identified on the estimate, and that the current “Depreciation Options” are as follows: Depreciate Material, Depreciate Non-Material, Depreciate Removal, Depreciate Overhead and Profit, and Depreciate Sales Tax. State Farm further admits that if the estimated price of a particular line item repair task in Xactimate includes embedded labor costs, those costs may be subject to depreciation when the “Depreciate Removal” and “Depreciate Non-Material” options are selected and the user

determines that it is appropriate to apply depreciation to that particular line item repair task (a decision that is based on the user's judgment given the nature of the estimated repair task and the age and condition, among other consideration, of the damaged portion of the property). State Farm denies all remaining allegations of this paragraph.

111. Defendant affirmatively hid and misrepresented its use of its non-material depreciation settings in Xactimate from policyholder claimants by concealing its depreciation option settings in the estimates provided to policyholders (which concealment the Xactimate setting allows) and by affirmatively misrepresenting what it was depreciating.

ANSWER: Denied.

112. Defendant did not disclose and affirmatively misrepresented on the paperwork accompanying the Xactimate estimate whether it was depreciating labor. Other property insurers can and do disclose whether they are engaging in the practice of withholding labor as depreciation in the policy and/or in the paperwork accompanying the Xactimate estimate.

ANSWER: State Farm lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph concerning the practices of other insurers. State Farm denies all remaining allegations of this paragraph.

113. This is readily available because Xactimate has printing options that allow the user to print the depreciation option settings used on the estimate, specifically including whether non-materials are being depreciated. Other property insurers can and do print this key and material information on Xactimate estimates provided to policyholders.

ANSWER: State Farm lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph concerning the practices of other insurers. State Farm lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph and therefore denies those allegations.

114. State Farm sets its system so it would NOT provide this information to its policyholders. Further, it affirmatively misrepresented same by falsely describing depreciation to fraudulently deceive its policyholders.

ANSWER: Denied.

115. As a result, Defendant took multiple affirmative steps to prevent an ordinary consumer (including Plaintiffs) from knowing that Defendant depreciated labor, and not merely materials, when making ACV payments to policyholders.

ANSWER: Denied.

116. Defendant used this trick or contrivance to hide its non-material depreciation, preventing policyholders from timely asserting claims.

ANSWER: Denied.

117. At all times relevant hereto, Defendant was under an affirmative duty to fairly and fully disclose the way it calculated ACV payments to policyholders. In addition, when providing estimates to Plaintiffs and similarly situated policyholders, Defendant was under a duty to be truthful, and to not deceive by omission, concealment or by affirmative misrepresentation.

ANSWER: State Farm admits that it was obligated to handle the claims of Plaintiffs and asserted class members in accordance with the terms of their respective policies and Ohio law. To the extent this paragraph contains legal conclusions, State Farm denies that Plaintiffs have correctly and fully stated the law. State Farm denies all remaining allegations of this paragraph and specifically denies that it was untruthful or deceived its policyholders in any way.

118. Defendant lied to and committed fraud by omission and commission against its policyholders to prevent them from pursuing the claim asserted herein.

ANSWER: Denied.

119. Defendant was in a superior position over policyholders to know that it was depreciating non-materials through Xactimate.

ANSWER: Because this allegation appears to improperly allege facts concerning thousands of distinct transactions, State Farm lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph and therefore denies those allegations.

120. Defendant's typical policyholders are not sophisticated in insurance claims handling procedures like Defendant.

ANSWER: Because the allegations of the first sentence of this paragraph appear to

improperly allege facts concerning thousands of distinct transactions, State Farm lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of the first sentence of this paragraph, and therefore denies those allegations. State Farm denies all remaining allegations of this paragraph.

121. The policyholders were not reasonably able to discern that Defendant was depreciating labor, from the ACV calculations provided by Defendant.

ANSWER: Denied.

122. Defendant's false and deceptive description of depreciation deceived policyholders and prevented them from discovering Defendant's wrongful conduct.

ANSWER: Denied.

123. Finally, Defendant controlled the settings for the software, which expressly permit a company to properly limit depreciation to materials only. Policyholders do not have access to Defendant's software to determine whether it was used to depreciate non-material costs. Without such access, and due to Defendant's affirmative steps taken to conceal and misrepresent its depreciation of non-material costs, Defendant's policyholders lacked the same access to information enjoyed by Defendant, and were provided false information by Defendant, and could not reasonably determine that Defendant was depreciating labor and other non-material costs.

ANSWER: State Farm admits that it applied settings within the Xactimate software for the adjustment of Ohio property damage claims but denies that it "controlled" any Xactimate settings or that the settings could not be modified for particular estimates. Because the allegations of the second two sentences of this paragraph appear to improperly allege facts concerning thousands of distinct transactions, State Farm lacks knowledge or information sufficient to form a belief as to the truth or falsity of those allegations and therefore denies them. State Farm denies all remaining allegations of this paragraph.

124. Defendant's unlawful practice of depreciating labor was not disclosed in the insurance policy, in the claim estimate, in the form cover letter accompanying the estimate, in the marketing materials, or in Defendant's regulatory filings.

ANSWER: Denied.

125. The facts Defendant affirmatively misrepresented and fraudulently concealed are material to the cause of action for breach of the insurance contract and are facts that a reasonable person would have considered important in knowing that a breach had occurred and in making a claim for breach of the policy in a timely manner.

ANSWER: Denied.

126. Defendant's affirmative misrepresentations and fraudulent concealment of material information in estimates and other statements was intended to deceive policyholders, in that policyholders would not know that their claim payments were actually diminished by the withholding of repair labor through the unfair manipulation of the Xactimate software and that policyholders would not contest the concealed practice in court or through regulatory action.

ANSWER: Denied.

127. Estimates from State Farm to its policyholders that depreciated non-materials look identical to estimates that did not depreciate non materials. Neither indicate whether non-materials are being depreciated.

ANSWER: Denied.

128. State Farm underpaid the claims Plaintiffs made under their State Farm insurance policies.

ANSWER: Denied.

129. Plaintiffs did not know there was an underpayment.

ANSWER: State Farm lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph concerning what Plaintiffs knew and therefore denies those allegations. State Farm denies that Plaintiffs were underpaid.

130. Plaintiffs and the class members rely on State Farm to properly calculate ACV payments, and State Farm knows of this reliance and encourages such reliance.

ANSWER: Denied.

131. State Farm never issued any denial to plaintiffs of any portion of their claim.

ANSWER: Denied.

132. Plaintiffs did not know, and had no reason to know or discover, that the amount they received was an underpayment.

ANSWER: State Farm lacks knowledge or information sufficient to form a belief as to

the truth or falsity of the allegations in this paragraph concerning what Plaintiffs knew and therefore denies those allegations. However, State Farm denies that Plaintiffs were unaware of the application of non-material depreciation given the fact that they were represented in their claims by a public adjuster (and consulting expert to plaintiffs' counsel) and one of the plaintiffs' counsel. State Farm further denies there was any underpayment and denies all remaining allegations of this paragraph.

133. It would be that knowledge that would raise the 'bars' that State Farm now seeks to employ.

ANSWER: State Farm admits that the claims asserted by both Plaintiffs in this case are barred by the contractual limitations provisions in their respective policies. To the extent this paragraph contains legal conclusions, State Farm denies that Plaintiffs have correctly and fully stated the law, and State Farm denies all remaining allegations of this paragraph.

134. The gross depreciation amount taken on any item is listed in the estimate, but whether that number is based on a 'calculation method' that includes, or does not include, depreciation of non-materials is not contained in the estimate, correspondence, policy, or anywhere.

ANSWER: Denied.

135. State Farm did not fully inform, or inform plaintiffs at all, of the method that was used to calculate ACV as to whether that method depreciated labor.

ANSWER: Denied.

136. State Farm breached its policy at the time it issued its estimate and based thereon, its payment.

ANSWER: Denied.

137. State Farm did not issue its final estimate for Cranfield until more than one year after the loss.

ANSWER: Denied.

138. State Farm did not indicate at any time before one year past the date of loss, and not until after suit was filed, that it was disputing any portion of Cranfield's claim

(i.e. that it had withheld payment of labor.).

ANSWER: Denied.

139. State Farm did not indicate at any time before one year past the date of loss that it would fail to pay the amount contractually required for Cranfield's loss.

ANSWER: State Farm denies that it failed to pay the amounts due under its policy with Cranfield for his loss. State Farm denies all remaining allegations in this paragraph.

140. State Farm acknowledged liability for Plaintiffs' ACV claims, and at no time informed Plaintiffs that it changed that position.

ANSWER: State Farm admits that it determined that at least a portion of the damage to Plaintiffs' respective properties qualified as covered losses under Plaintiffs' policies and that it made one or more payments to Plaintiffs for those covered losses. State Farm denies all remaining allegations of this paragraph.

141. By its acts, State Farm evidenced a recognition of liability under the Policy for Plaintiffs' ACV claims.

ANSWER: State Farm admits that it determined that at least a portion of the damage to Plaintiffs' respective properties qualified as covered losses under Plaintiffs' policies and that it made one or more payments to Plaintiffs for those covered losses. State Farm denies all remaining allegations of this paragraph.

142. State Farm never issued a specific denial of liability on the policy for Plaintiffs' ACV claims, either totally or in part.

ANSWER: Denied.

143. State Farm never denied that it would pay the full amount due at that time under the policies for Plaintiffs' ACV claims.

ANSWER: State Farm denies that it paid Plaintiffs anything less than the amount that it was required to pay for ACV under their policies, denies that State Farm misled Plaintiffs in any way, and denies all remaining allegations of this paragraph.

144. Because State Farm did not take any action within one year from the date of loss, in the form of issuing a denial of the claim, Plaintiffs did not know, and could not know, there was any reason to bring suit against State Farm.

ANSWER: Denied.

145. Some or all of these foregoing actions by State Farm delayed Plaintiffs from bringing any action on the policy.

ANSWER: Denied.

146. The conduct of State Farm implicitly led Plaintiffs to believe that State Farm would be liable for the ACV claim, and had not issued any denial thereon. Those facts constitute a waiver by State Farm of reliance on any contractual limitation on commencement of suit provision.

ANSWER: Denied.

147. If State Farm had intended to rely on the limitations provision for one year commencement of suit, it should have informed Plaintiffs it was denying the full amount due for ACV under the policy; that it intended to pay, and was paying, less than that amount due under the policy for ACV; and it should have instructed plaintiffs that any challenge to that conduct must be brought within one year of the date of loss. State Farm did none of these.

ANSWER: Denied.

148. State Farm did not admit partial liability for ACV here; issue a check to cover only that partial liability; and deny further liability.

ANSWER: Denied.

149. The one-year contractual limitation for commencement of suit in State Farm's policy is in derogation of the eight-year time period fixed by the Ohio legislature for bringing such actions.

ANSWER: Denied.

150. The insurance contract containing that provision is an adhesion contract where the insured had no involvement bargaining for that provision, or the overall language of the contract.

ANSWER: Denied.

151. The written materials Plaintiffs received contained the false statement that depreciation being applied is for the decrease in value of property over a period of time, due to wear, tear, condition and obsolescence.

ANSWER: Denied.

152. The manner in which State Farm operates its claims' adjusting practices is regulated by various statutes, rules, regulations or policies that are not identical in every state.

ANSWER: Admitted.

153. The insurance policies issued by State Farm, and the language they contain are not identical in every state.

ANSWER: State Farm admits that in some instances the terms within and endorsements applicable to its insurance policies may vary in some respects from state to state. State Farm denies all remaining allegations of this paragraph.

154. Those policies vary from state to state in the provisions they contain.

ANSWER: State Farm admits that in some instances the terms within and endorsements applicable to its insurance policies may vary in some respects from state to state. State Farm denies all remaining allegations of this paragraph.

155. State Farm's practices of claims adjustment and claims evaluation also are not identical from state to state.

ANSWER: State Farm admits that in some instances its claims adjustment and claims evaluation practices may vary in some respects from state to state. State Farm denies all remaining allegations of this paragraph.

156. Knowing that State Farm follows a particular approach in handling a particular type of claim in one state, does not tell an insured in another state whether State Farm's practice in that other state is the same.

ANSWER: State Farm lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph and therefore denies those allegations.

157. A reasonable person could expect that State Farm's practices would comply with the law of the state in which that person's policy was issued.

ANSWER: State Farm lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph and therefore denies those allegations.

158. A reasonable person could expect that although State Farm might engage in a practice in one state, on the basis that the practice is legal in that state, State Farm would not engage in that practice in the state where the person's policy was issued if the practice was not legal in the person's state.

ANSWER: State Farm lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph and therefore denies those allegations.

159. Plaintiffs were specifically aware of the amount of State Farm's payment and relied on that amount being the true and honest valuation of their ACV payment in accordance with law and the insurance policies.

ANSWER: State Farm lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph and therefore denies those allegations.

160. Put another way, Plaintiffs relied on State Farm to be honest in issuing Plaintiffs their ACV payments.

ANSWER: State Farm lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph and therefore denies those allegations.

161. Plaintiffs did not ask State Farm whether it was paying a deficient amount for ACV, because there was nothing in the estimate, or any other written materials provided to Plaintiffs, by which Plaintiffs would know, or have reason to know, that State Farm was paying a deficient amount by depreciating labor, or by another other breach of its contract.

ANSWER: Denied.

162. Plaintiffs were not aware at the time of their claim, and is still not aware today, of how State Farm applies or calculates depreciation.

ANSWER: Denied.

DEMAND FOR JUDGMENT

Plaintiffs Charles Cranfield, The Condominiums at Northpointe, and Christina Ermidis, both individually and on behalf of each member of the proposed class, request that the Court grant the following relief:

- a. Enter an order, pursuant to Rule 23 of the Federal Rules of Civil Procedure, certifying this action as a class action for a class defined above;

- b. Enter an order appointing James A. DeRoche of GarsonJohnson LLC, Daniel Goetz and Eric Kennedy of Weisman Kennedy & Berris Co., LPA, Patrick J. Perottiof Dworken & Bernstein, Co., LPA, Erik D. Peterson ofMehr, Fairbanks & Peterson and Stephen G. Whetstone of Whetstone Legal, LLC as counsel for the plaintiffs class, and appointing Plaintiffs as the representative Plaintiff for the class;
- c. Enter judgment in favor of plaintiffs and the plaintiff class for their actual damages, being the amount that Defendant reduced actual cash value payments to each class member by depreciating the cost of non-materials and contractor overhead and profit, and interest as provided by law;
- d. Award the named Plaintiffs and the plaintiff class all expenses of this action, and requiring Defendant to pay the costs and expenses of class notice and claim administration; and
- e. Award such other or further relief in law or equity in favor of plaintiffs and the plaintiff class and against Defendant as the Court finds just and appropriate

ANSWER: State Farm denies that it has engaged in wrongdoing as to Plaintiffs or any member of the proposed class, and denies that Plaintiffs or any member of the proposed class is entitled to any damages, costs, 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.

STATE FARM'S ADDITIONAL DEFENSES

1. State Farm repeats and reincorporates its answers and denials to the allegations in Paragraphs 1-162 of the Complaint, as well as its submissions in support of its Motions to Dismiss (Docs. 8, 14, 66, 70), its submissions in support of its Motion to Strike Class Allegations (Docs. 75, 85), its filings in opposition to Plaintiffs' Motion for Leave to Amend (Doc. 79) and Motion for Class Certification (Doc. 109), and its filings in support of State Farm's Motion for Summary Judgment (Doc. 130, 137), as if fully set forth herein.

The Cranfield Claim

2. As of October 14, 2014, Cranfield's home located at 2519 Richmond Road, Beachwood, Ohio (the "Home"), was insured under State Farm Policy No. 70-N6-7546-3 (the "Policy").

3. On or about March 13, 2015, Cranfield contacted State Farm to report that wind had caused roof damage and interior leaking to his Home on October 14, 2014. Also on or about March 13, 2015, State Farm was contacted by Metro Public Adjustment, Inc. ("Metro"), who informed State Farm that Metro was representing Cranfield with respect to the reported loss.

4. Written notice of Cranfield's claim was provided to State Farm by "Letter of Notification and Property Loss Notice" ("Letter Notification") from Metro to State Farm dated March 12, 2015, and received by State Farm at some point thereafter. The Letter Notification stated that the "Date of Loss" was October 14, 2014, that the "Cause of Loss" was "Wind & Rain," and that the loss consisted of "Several leaks in ceiling damaging ceilings and walls after rainstorm." Metro advised State Farm that Metro was representing Cranfield for the loss in question and requested that all further communications and correspondence regarding Cranfield's claim be directed to Metro. An enclosed Letter of Engagement signed by Cranfield confirmed Cranfield's retention of Metro as his representative for the loss that occurred on October 14, 2014.

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

COVERAGE A – DWELLING

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 ..., the damaged part of the property ... 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;

Doc. 8-2, PageID#: 183.

6. As of the date of Cranfield's loss, the "SECTION I – CONDITIONS" portion of Cranfield's Policy included the following provisions pertinent here:

2. **Your Duties After Loss.** After a loss to which insurance may apply, you shall see that the following duties are performed: ...

- e. submit to us, within 60 days after the loss, your signed, sworn proof of loss which sets forth, to the best of your knowledge and belief: ...

- (5) specifications of any damaged building and detailed estimates for repair of the damage; .

..

6. **Suit Against Us.** No action shall be brought unless there has been compliance with the policy provisions. The action must be started within one year of the date of the loss or damage.

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.

Id., PageID#: 185-186.

7. As of the date of Cranfield's loss, the "SECTION I AND SECTION II – CONDITIONS" portion of Cranfield's Policy included the following provisions pertinent here:

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

Id., PageID#: 191.

8. After State Farm received notification of Cranfield's loss, its claims adjuster, Alice Sandvick ("Sandvick"), inspected the damage to Cranfield's Home on March 23, 2015. Also in attendance were Cranfield and Metro Adjuster Mark Jacoby ("Jacoby"). Sandvick inspected the exterior of the home and found no evidence of any storm damage to the exterior or roofing that could be seen. Upon inspection of the interior of the Home, Sandvick found that there was some damage to the ceiling drywall and small areas of the walls in several rooms, which Jacoby advised was caused by ice dams. Sandvick concluded that other damage found in the interior of the home, such as damage to certain parts of the flooring and in the kitchen, was not caused by back up of ice but instead likely resulted from maintenance issues and other causes not covered under Cranfield's Policy, such as mold, rot, leakage, seepage from the refrigerator (acknowledged by Jacoby during the inspection to have occurred), and squirrels in the attic (as told to Sandvick, also during the inspection, by Cranfield).

9. Sandvick prepared an estimate based on her inspection of the Home, which broke out the necessary repairs into multiple line-item repair tasks. Sandvick estimated a total

replacement cost for the covered damage, including material sales tax, of \$3,563.29. She applied depreciation to certain repair line-items based on her observations and information she received from Cranfield and/or Jacoby, totaling \$1,348.57, producing an initial estimate of ACV of \$2,214.72. All depreciation that Sandvick applied when estimating the ACV for Cranfield's loss was shown on the estimate on a line-item-by-line-item basis. After subtracting the deductible of \$1,854.00 from the ACV amount, Sandvick issued a payment to Cranfield in the amount of \$360.72.

10. Sandvick transmitted State Farm's initial payment of \$360.72 to Cranfield, care of Metro, via letter dated March 25, 2015. The letter identified those portions of the damage that State Farm had determined were not covered under Cranfield's Policy and enclosed a copy of State Farm's initial estimate of replacement costs. The letter also informed Cranfield that the \$1,348.57 in depreciation shown on the estimate was available to Cranfield for "Replacement Cost Benefits and may be claimed upon completion of the Repairs." Finally, the letter referred Cranfield to certain relevant provisions in her Policy and quoted those provisions.

11. Among other things, the letter quoted language from Cranfield's Policy regarding the policyholder's obligation to "submit to us, within 60 days after the loss, your signed, sworn proof of loss which sets forth, to the best of your knowledge and belief: . . . (5) specifications of any damaged building and detailed estimates for repair of the damage" In addition, the letter quoted in full the provision entitled "Suit Against Us," which states: "No action shall be brought unless there has been compliance with the policy provisions. The action must be started within one year after the date of loss or damage."

12. No further interactions occurred between State Farm and Cranfield (and/or Cranfield's representative, Metro) related to Cranfield's claim until approximately eight months

later, when, on or about November 16, 2015, State Farm received a letter from Metro (dated November 3, 2015) demanding without further explanation an appraisal of Cranfield's loss.

13. Upon receipt of the letter, State Farm contacted Metro seeking clarification regarding the appraisal request, explaining that items not approved due to lack of coverage would not qualify for an appraisal. Rather, State Farm explained, the appraisal process outlined in Cranfield's Policy only applied if Cranfield's dissatisfaction with State Farm's estimate related to the amount of a covered loss. State Farm sent a written request for clarification to Cranfield, in care of Metro, on or about November 17, 2015, which reiterated the distinction between covered losses that could be subject to appraisal and uncovered losses, which could not be, as previously explained in communications between Metro and State Farm.

14. By letter dated December 18, 2015, but not received by State Farm until on or about December 28, 2015, Metro informed Sandvick that Cranfield was disputing the amount estimated by State Farm as replacement costs for the covered items of damage, including a claim that the amount of depreciation taken for paint was "unfair" given that Cranfield had reported that the damaged paint had been recently applied.

15. By letter sent to Cranfield, in care of Metro, on or about January 6, 2016, State Farm informed Cranfield that it was unable to qualify the loss for appraisal because Cranfield had failed to provide State Farm with a detailed estimate from Cranfield's contractor of choice listing the scope and operations to be performed for all areas of covered damage. Nevertheless, State Farm thereafter provided Cranfield with a revised estimate that approved some additional line-item repair tasks for the covered replacement costs, bringing the new estimate of replacement costs, including sales tax, to \$4,044.86. The applied depreciation to certain repair line-items remained the same at \$1,348.57, producing a revised estimate of ACV of \$2,696.29. After

subtracting the deductible of \$1,854.00 and State Farm's prior claim payment of \$360.72 from that amount, StateFarm issued a supplemental payment of \$481.57.

16. Sandvick sent the revised estimate with a check for the supplemental payment of \$481.57 to Cranfield, in care of Metro, once again advising Cranfield that the \$1,348.57 depreciation amount subtracted from State Farm's revised replacement cost estimate was "recoverable" in the form of "replacement cost benefits." State Farm further advised Cranfield that if he still felt additional reconciliation was needed, he should forward a detailed estimate of necessary repairs from his contractor of choice for State Farm's review.

The Northpointe Claim

17. As of April 2, 2016, Northpointe's complex of properties located on Northpointe Lane in Newark, Ohio, was insured under State Farm Businessowners Coverage Policy No. 95-KB-8359-4 (the "Northpointe Policy").

18. On April 20, 2016, Northpointe, through its attorney Stephen G. Whetstone, submitted a claim for a loss at its condominium residences at 32-88 Northpointe Lane, Newark, Ohio. The claim was reported as wind damage caused by a storm on April 2, 2016 to roof shingles of some of the units in eleven buildings at the condominium complex.

19. On April 21, 2016, a State Farm representative called Attorney Whetstone, who stated that he was hired by the policyholder or property manager for Northpointe to handle the claim. Attorney Whetstone submitted a letter of representation to State Farm on April 22, 2016.

20. As of the date of Northpointe's loss, the "SECTION I — CONDITIONS" portion of Northpointe's Policy included the following provisions pertinent here:

1. Property Loss Conditions

c. Duties In the Event of Loss

- (1) You must see that the following are done in the event of loss to Covered Property:

- (e) At our request, give us complete inventories of the damaged and undamaged property, include quantities, costs, values and amount of loss claimed.

- (g) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request....

d. Legal Action Against Us

No one may bring a legal action against us under this insurance unless:

- (1) There has been full compliance with all of the terms of this insurance; and
- (2) The action is brought within 2 years after the date on which the accidental direct physical loss occurred.

e. Loss Payment.

In the event of loss covered by this policy:

- (1) At our option, we will either:
- (a) Pay the value of lost or damaged property;
 - (b) Pay the cost of repairing or replacing the lost or damaged property;
 - (c) Take all or any part of the property at an agreed or appraised value; or
 - (d) Repair, rebuild or replace the property with other property of like kind and quality.

We will determine **e.(1)(a)** in accordance with the applicable terms of Paragraph **e.(4)** below or any applicable provision which amends or supersedes

the terms of Paragraph e.(4) below.

(4) Except as provided in Paragraphs (b) through (e) below, we will determine the value of Covered Property as follows:

- (a) At replacement cost without deduction for depreciation, as of the time of loss, subject to the following:
 - i. We will pay the cost to repair or re-place, after application of the deductible and without deduction for depreciation, but not more than the least of the following amounts:
 - 1) The Limit Of Insurance under **SECTION I**
— **PROPERTY** that applies to the lost or damaged property;
 - 2) The cost to replace, on the described premises, the lost or damaged property with other property of comparable material, quality and used for the same purpose; or
 - 3) The amount that you actually spend that is necessary to repair or replace the lost or damaged property.

- ii. You may make a claim for loss covered by this insurance on an actual cash value basis instead of on a re-placement cost. In the event you elect to have loss settled on an actual cash value basis, you may still make a claim on a replacement cost basis if you notify us of your intent to do so within 180 days after the loss.
- iii. We will not pay on a replacement cost basis for any loss:
 - 1) Until the lost or damaged property is actually repaired or replaced; and

- 2) Unless the repairs or replacement are made as soon as reasonably possible after the loss.

Doc. 109-15, PageID#: 4456-57.

21. As of the date of Northpointe's loss, the "SECTION I AND SECTION II — COMMON POLICY CONDITIONS" portion of Northpointe's Policy included the following provisions pertinent here:

1. Changes

- a. This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

Id., PageID#: 4476.

22. A State Farm claim representative inspected the damage to Northpointe's multi-building complex on May 13, 2016. Attorney Whetstone and a contractor from Restoration Resources were present at the property inspection. State Farm's claim representative and Attorney Whetstone discussed the scope of damages and other issues during the inspection. State Farm's claim representative determined that the roofs of the buildings at the complex were approximately 17-19 or more years in age and in poor condition.

23. The file correspondence reflects that Northpointe's contractor, The Restoration Lady LLC, submitted to State Farm a repair estimate dated May 14, 2016. In the cover email, The Restoration Lady LLC's representative stated, in pertinent part, "[o]nce we are in agreement with the Association and State Farm we will enter into the agreed contract and release all funds up front." On May 16, 2016, Attorney Whetstone forwarded to State Farm via email a copy of The Restoration Lady LLC's email and the attached estimate.

24. There was a large difference in price between a draft estimate State Farm had prepared and the estimate submitted from The Restoration Lady LLC. The differences included the following: (1) removal and replacement of roof metals; (2) the amount of roof squares; (3) starter row and ridge cap shingles; (4) step flashing; (5) building code upgrades; and (6) hiring of a general contractor to coordinate and supervise the repairs. State Farm personnel discussed those differences with Attorney Whetstone.

25. A State Farm Team Manager reviewed the claim and instructed the State Farm claim representative to proceed with a reconciliation of estimates, including general contractors overhead and profit, and prepare an authority request file note. The purpose of reconciling the estimates is to attempt to resolve the disagreements between State Farm's estimate and the estimate submitted by the insured's contractor (here, The Restoration Lady LLC).

26. On May 28, 2016, State Farm's claim representative completed a revised estimate and made a request for authority for estimated replacement cost of \$453,594.61. The total depreciation calculated for the loss was \$209,626.09.

27. On June 3, 2016, a State Farm Claim Section Manager reviewed the file and raised the settlement authority on the claim to correspond to the amount of State Farm's revised estimate (\$453,594.61).

28. On June 6, 2016, State Farm's claim representative contacted Attorney Whetstone to advise of the new claim total, and forwarded to him a copy of the revised estimate.

29. State Farm agreed with Attorney Whetstone to keep State Farm's claim open for a few days to allow Attorney Whetstone to review the revised estimate with the contractor and Northpointe.

30. On June 6, 2016, Attorney Whetstone called State Farm to advise of his

acceptance on behalf of Northpointe of the claim settlement offered by State Farm. State Farm's claim file notes indicate that Attorney Whetstone "advised [that] he had discussed the settlement w[ith] the board for The Condominium and stated they are in agreement and ok to issue settlement."

31. On June 6, 2016, State Farm printed a "settlement package" which included (i) a letter to Attorney Whetstone as counsel for Northpointe; (ii) the State Farm's revised estimate; and (iii) the initial settlement payment for \$173,957.22. State Farm's letter to Attorney Whetstone stated that, while State Farm had agreed to issue the initial settlement payment, "All policy provisions apply to your claim."

32. The file notes reflect that, on July 20, 2016, Attorney Whetstone submitted via email to State Farm a copy of the "Contract for Services" from The Restoration Lady LLC for the repairs to be performed on Northpointe's buildings, with an estimated completion date of July 25, 2016. The file notes reflect that Attorney Whetstone stated in the email, in pertinent part, "[p]lease find, *attached*, the contract my client entered into with their GC for the work once we had agreed on initial scope and pricing."

33. On July 25, 2016, Attorney Whetstone called State Farm and advised that the work had been completed, the contract with The Restoration Lady, LLC was signed, and the final, total cost of repairs was \$453,594.61.

34. On July 25, 2016, State Farm issued a supplemental replacement cost benefits payment for \$278,637.39 to Northpointe and subsequently mailed the payment to Attorney Whetstone's office with a cover letter.

35. The total of all payments reflected in the claim file for Northpointe's structural damage claim was \$452,594.61. Therefore, Northpointe has received payment for all amounts

owed under its policy, as agreed to by its attorney, Stephen G. Whetstone. This amount included all recoverable depreciation.

The Ermidis Claim

36. As of March 8, 2017, Ermidis's home located at 1075 East 64th Street, Cleveland, Ohio (the "Home"), was insured under State Farm Policy No. 70-N5-7285-6 (the "Policy").

37. On or about March 13, 2017, State Farm was contacted by Metro Public Adjustment, Inc. ("Metro"), who informed State Farm that Metro was representing Ermidis with respect to a claimed loss to the shingles of the roof of the Home as a result of wind.

38. On April 13, 2017, State Farm adjuster Matthew Schultz ("Schultz") conducted an inspection of the Home. Present for that inspection was Ermidis, as well as Metro Adjuster Mark Jacoby ("Jacoby").

39. Jacoby has served as a labor depreciation consulting expert for certain of Plaintiffs' counsel since in or around March of 2016.

40. Schultz prepared an estimate based on his inspection of the Home, which broke out the necessary repairs into multiple line-item repair tasks. Schultz estimated a total replacement cost for the covered damage, including material sales tax, of \$16,126.89. He applied depreciation to certain repair line-items based on his observations and information he received from Ermidis and/or Jacoby, totaling \$5,334.24. Subtracting that amount, as well as the \$1,000 deductible, produced an initial estimate of ACV of \$9,792.65.

41. On April 13, 2017, Schultz spoke with Jacoby, explaining State Farm's ACV estimate. Jacoby indicated he understood and requested that State Farm send the ACV payment.

42. By letter dated April 13, 2017, State Farm issued a payment to Ermidis, care of Metro, in the amount of \$9,792.65.

43. State Farm's letter also enclosed a copy of State Farm's initial estimate of replacement costs. The letter informed Ermidis that the \$5,334.24 in depreciation shown on the estimate was available to Ermidis for "Replacement Cost Benefits and may be claimed upon completion of the Repairs." The letter directed Ermidis to review the "Explanation of Building Replacement Cost Benefits" form that was enclosed with the estimate to understand the requirements for receiving Replacement Cost Benefits. That form, among other things, informed Ermidis that, notwithstanding State Farm's issuance of a initial claim payment, "All policy provisions apply to your claim."

44. There was no further activity on the claim until April 9, 2020. By letter of that date from Metro to State Farm, Metro requested that State Farm "recalculate the depreciation properly without deduction for depreciation on the labor aspect of the estimate and send a supplemental payment immediately."

45. On April 16, 2020, State Farm advised Metro that State Farm would not be making a supplemental payment.

46. The Ermidis Policy includes the same provisions as the Cranfield Policy provisions quoted above.

47. Ermidis failed to bring suit against State Farm within one year of the date of her loss.

State Farm's Claim Practices.

48. As to insureds who may qualify for membership in Plaintiffs' asserted class, State Farm had paid many of those insureds the full cost that the insured incurred to complete all loss- related repair or replacement of their insured, damaged structure less any applicable deductible (either through the insured's initial ACV payment, through payment of replacement

cost up-front, or through a combination of ACV and replacement cost benefits) long before Plaintiffs' suit was filed, and before the insured submitted any proof of loss form.

49. State Farm does not require insureds to submit documentation showing their completion of repairs, or the cost for such repairs, unless the insured is requesting payment of replacement cost benefits.

50. Estimates prepared by State Farm adjusters for Ohio claims under State Farm property insurance policies often overstate the cost that insureds incur to complete some or all repairs for their damaged properties. An initial estimate may overstate the quantity of materials needed, may include amounts for repairs that later are determined to be unnecessary, and the like. Moreover, an estimate may understate the appropriate depreciation for the damaged portion of the insured property. In addition, from time to time, adjusters make errors in estimating (*e.g.*, by making errors in measurements, including duplicative repairs on estimates, *etc.*).

51. Many members of the asserted class were able to complete some or all repairs for their damaged properties at an incurred cost equal to or below State Farm's estimated ACV for the loss.

State Farm's Addition of Endorsement FE-3650

52. Beginning on June 1, 2016, State Farm added Endorsement FE-3650 to certain forms of newly issued Ohio policies offering structural damage coverage.

53. Beginning on August 1, 2016, at the renewal date for existing insureds with certain forms of Ohio policies offering structural damage coverage, State Farm added Endorsement FE-3650 to those policies.

54. State Farm filed Endorsement FE-3650 with the Ohio Department of Insurance

before it began the roll-out of the Endorsement.

55. Endorsement FE-3650 defines the term “actual cash value” as follows:

The following is added to any provision which uses the term “actual cash value”:

Actual cash value means the value of the damaged part of the property at the time of loss, calculated as the estimated cost to repair or replace such property, less a deduction to account for pre-loss depreciation. For this calculation, all components of this estimated cost including, but not limited to:

1. materials, including any tax;
 2. labor, including any tax; and
 3. overhead and profit;
- are subject to depreciation.

The depreciation deduction may include such considerations as:

1. age;
2. condition;
3. reduction in useful life;
4. obsolescence; and
5. any pre-loss damage including wear, tear, or deterioration; of the damaged part of the property.

All other policy provisions apply.

56. State Farm subsequently amended its Ohio policies offering structural damage coverage, after filing the same with the Ohio Department of Insurance, to include the same definition of “actual cash value.”

57. The asserted class, as presently defined, includes individuals whose policies included FE-3650 or otherwise included the above-referenced definition of “actual cash value” as of the insured’s claimed date of loss.

FIRST ADDITIONAL DEFENSE

As set forth in State Farm's affirmative allegations Nos. 1-57 (incorporated herein by reference), and for additional reasons including those set forth in State Farm's filings, the 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's affirmative allegations Nos. 1-57 (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, or under the applicable contractual limitations period, for bringing suit against State Farm. State Farm specifically pleads that Plaintiff Cranfield's claim is barred by the contractual limitations period in his Policy and that the class- action tolling recognized in *American Pipe & Construction Co. v. Utah*, 414 U.S. 538, 554 (1974), does not apply to extend the relevant limitations periods for the claims of Plaintiff Northpointe, Plaintiff Ermidis and other alleged members of the asserted Class and/or would have ended in any event when the Court dismissed Plaintiff Cranfield's original complaint with prejudice, making those claims barred as well by the applicable contractual limitations period.

THIRD ADDITIONAL DEFENSE

As set forth in State Farm's affirmative allegations Nos. 1-57 (incorporated herein by reference), and for additional reasons including those set forth in State Farm's filings, some or all claims of members of the proposed class, including Plaintiff Northpointe, fail for 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. 1-57 (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 their insurance policy, including without limitation failure promptly to report the insured's loss, failure to cooperate in the investigation of the claim, failure to keep an accurate record of repair expenditures, 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. 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, obligations, conditions, exclusions, or limitations of each individual insured's policy.

FIFTH ADDITIONAL DEFENSE

As set forth in State Farm's affirmative allegations Nos. 1-57 (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*, receiving payment of the insured's full, incurred cost to complete all necessary repairs (whether through the insured's initial ACV payment or in combination with replacement cost benefits), receiving payment of his or her full policy limits less applicable deductible, receiving an ACV payment sufficient to cover the ACV of the damaged property (regardless of labor depreciation), and/or 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's affirmative allegations Nos. 1-57 (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's affirmative allegations Nos. 1-57 (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's affirmative allegations Nos. 1-57 (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.

NINTH ADDITIONAL DEFENSE

As set forth in State Farm's affirmative allegations Nos. 1-57 (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's affirmative allegations Nos. 1-57 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiffs and alleged members of the asserted class are barred by prior appraisal and/or settlement and release.

ELEVENTH ADDITIONAL DEFENSE

As set forth in State Farm's affirmative allegations Nos. 1-57 (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 claim preclusion or *res judicata* and/or issue preclusion or collateral estoppel.

TWELFTH ADDITIONAL DEFENSE

As set forth in State Farm’s affirmative allegations Nos. 1-57 (incorporated herein by reference), and for additional reasons, this action cannot be maintained as a class action under any provision of Fed. R. Civ. P. 23 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) 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 asserted class is not properly defined or readily ascertainable. Further, any adjudication of Plaintiffs’ individual claims or those of other proposed class members 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, 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 rights under the Ohio and United States Constitutions, including without limitation its right to have all fact issues tried to a single jury and its right to Due Process.

THIRTEENTH ADDITIONAL DEFENSE

As set forth in State Farm’s affirmative allegations Nos. 1-57 (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 the rights guaranteed to State Farm by the Ohio and United States Constitutions.

FOURTEENTH ADDITIONAL DEFENSE

As set forth in State Farm’s affirmative allegations Nos. 1-57 (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 under their respective policies and/or Ohio law (including without limitation submission of proof of loss and/or a definite amount owed and overdue).

FIFTEENTH ADDITIONAL DEFENSE

As set forth in State Farm’s affirmative allegations Nos. 1-57 (incorporated herein by reference), and for additional reasons, State Farm is entitled to a credit, recoupment or setoff against any underpayment to Plaintiffs and alleged members of the asserted class, including but not limited to a credit, recoupment or setoff for any overpayment by State Farm due to overestimate or a mistake of fact concerning the amount required to complete the repairs.

SIXTEENTH ADDITIONAL DEFENSE

As set forth in State Farm’s affirmative allegations Nos. 1-57 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiffs and alleged members of the asserted class are barred by reason of their filing for bankruptcy, their failure to disclose the claim against State Farm in the bankruptcy action, or a foreclosure on the property that is the subject of the claim at issue in this action.

* * *

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

State Farm demands a trial by jury.

Dated: September 15, 2021

Respectfully submitted,

/s/ Jacob L. Kahn

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*Attorneys for Defendant State Farm Fire
and Casualty Company*

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2021, I filed a copy of the foregoing **STATE FARM FIRE AND CASUALTY COMPANY'S ANSWER TO FOURTH AMENDED COMPLAINT, ADDITIONAL DEFENSES, AND JURY DEMAND** electronically using the Court's CM/ECF system, which will automatically generate notice of this filing to all counsel of record. Parties may access this filing using the Court's CM/ECF system.

Dated: September 15, 2021

/s/ Jacob L. Kahn