

**WINDELS MARX LANE & MITTENDORF, LLP**

David F. Swerdlow, Esq. (dswerdlow@windelsmarx.com)  
Amanda A. Meehan, Esq. (ameehan@windelsmarx.com)  
120 Albany Street Plaza, 6th Floor  
New Brunswick, NJ 08901  
(732) 448-7600

**RILEY SAFER HOLMES & CANCELILA LLP**

A limited liability partnership formed in the State of Illinois  
Sandra L. Musumeci (smusumeci@rshc-law.com)  
Brian J. Neff (bneff@rshc-law.com)  
136 Madison Avenue, 6<sup>th</sup> Floor  
New York, New York 10016  
(212) 660-1000

Attorneys for Defendant  
State Farm Fire and Casualty Company

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

PAUL HAN, individually and on behalf of a class  
of similarly situated persons,  
  
Plaintiff,  
  
vs.  
  
STATE FARM FIRE AND CASUALTY  
COMPANY,  
  
Defendant.

Civil Action No.

**NOTICE OF REMOVAL**

**TO:** Clerk, United States District Court  
Martin Luther King Building & U.S. Courthouse  
50 Walnut Street  
Newark, NJ 07101

Jeffrey A. Bronster, Esq.  
17 Wendell Place  
Fairview, NJ 07022  
201-945-2566  
Attorney for Plaintiff  
jbronster@bronsterlaw.com

**PLEASE TAKE NOTICE** that defendant State Farm Fire and Casualty Company (“State Farm”), an Illinois corporation with its principal place of business at One State Farm Plaza, Bloomington, Illinois 61710, by its undersigned attorneys, has filed this Notice of Removal of this action from the Superior Court of New Jersey, Law Division, Bergen County, pursuant to (1) 28 U.S.C. §§ 1441, 1446, and 1332, and (2) the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. 109-2, 199 Stat. 4, codified in pertinent part at 28 U.S.C. §§ 1332(d) and 1453, with the Clerk of the United States District Court for the District of New Jersey.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to 28 U.S.C. § 1446(a), State Farm hereby sets forth a short and plain statement of the grounds for removal as follows:

**Plaintiff’s State Court Filings and  
Procedural Requirements For Removal**

1. On February 4, 2021, Plaintiff Paul Han (“Plaintiff”) commenced this action by filing a complaint asserting individual and proposed class claims against State Farm in the Superior Court of New Jersey, Law Division, Bergen County (Docket No. BER-L-794-21).

2. State Farm received service of the Complaint by mail on February 8, 2021. This Notice of Removal has been filed within 30 days thereafter, and it accordingly is timely. *See* 28 U.S.C. § 1446(b)(1).

3. Consistent with the requirements of 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders contained within the state court file (attached as Exhibit 1) and a printout of the state court’s docket (attached as Exhibit 2) are attached and filed herewith.

4. Venue is proper in this Court because the Superior Court of New Jersey, Law Division, Bergen County is located in the District of New Jersey. *See* 28 U.S.C. § 1441(a) (a state-filed action subject to federal jurisdiction may be removed “to the district court ... for the district and division embracing the place where such action is pending”).

5. As 28 U.S.C. § 1446(d) requires, a copy of this Notice of Removal is being served upon Plaintiff's counsel, and a copy is being filed with the Clerk of the Superior Court of New Jersey, Law Division, Bergen County.

### **Bases for Removal**

6. As set forth more fully below, removal is proper because this action satisfies both: (1) the traditional diversity requirements concerning diversity of citizenship and amount in controversy for Plaintiff's individual claims; and (2) the CAFA requirements of minimal diversity, asserted class size, and aggregate amount in controversy for the asserted class.

#### **I. The Substantive Requirements for Traditional Diversity Removal are Satisfied.**

7. Under 28 U.S.C. § 1332, this Court has diversity jurisdiction over any action between citizens of different states where the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a)(1).

8. Plaintiff alleges that he owns real property located at 46 Chateau Road, Palisades Park, Bergen County, New Jersey (Compl. ¶ 45), which State Farm's records reflect is Plaintiff's residence. Accordingly, plaintiff is presumed to be a citizen of New Jersey. *Swiger v. Allegheny Energy, Inc.*, 540 F.3d 179, 182 (3rd Cir. 2008).

9. State Farm "is a corporation organized under the laws of Illinois, with a principal place of business in Bloomington, Illinois." *Valley v. State Farm Fire and Cas. Co.*, 504 F. Supp. 2d 1, 3 (E.D. Pa. 2006). (*See also* Compl. ¶ 1.) State Farm is therefore a citizen of Illinois for purposes of federal jurisdiction. 28 U.S.C. § 1332(c)(1); *see also McCollum v. State Farm Ins. Co.*, 376 Fed. Appx. 217, 219 & n.1 (3rd Cir. 2010) (finding that because State Farm, incorrectly named as State Farm Insurance Company, is incorporated in Illinois and has its principal place of business there, "State Farm was a citizen of Illinois"); *Morrissey v. State Farm Fire and Cas. Co.*, 2014 WL 5780949, \*3 (E.D. Pa. Nov. 6, 2014) (finding that State Farm "is a citizen of Illinois").

10. Because Plaintiff is a citizen of New Jersey and State Farm is a citizen of Illinois, this is a matter between citizens of different states pursuant to 28 U.S.C. § 1332(a)(1).

11. Furthermore, the amount in controversy for Plaintiff's individual claims exceeds \$75,000, exclusive of interest and costs. In taking this position, State Farm does not concede that Plaintiff plausibly states a claim that he is entitled to recover any amount, but only that the amount placed in controversy by Plaintiff's individual claims exceeds the jurisdictional threshold.

12. Plaintiff alleges State Farm issued an insurance policy covering his property in Bergen County, New Jersey, and that the property sustained damage by fire on or about July 27, 2020 which "constituted a covered occurrence" under the State Farm policy. (Compl. ¶¶ 47-48.)

13. Plaintiff alleges that State Farm prepared an estimate of the damage to his property using a software program called Xactimate. (*Id.* ¶¶ 13, 51.) According to Plaintiff, the Xactimate program offers a choice of pricing repair costs "based on work in restoration, service, or remodeling environments" or "based on a new construction environment," and for most construction line items priced by Xactimate "the cost of that item for a reconstruction is higher than the pricing of the same item for new construction." (*Id.* ¶¶ 18, 22.)

14. Plaintiff claims that because the loss to his property was "a partial loss," it supposedly was "to be repaired through the process of reconstruction of the remaining structure, not as new construction from the foundation up," but State Farm "prepared an Exactimate [sic] estimate that was priced using the numbers for new construction rather than for reconstruction." (*Id.* ¶¶ 50, 51.)

15. Plaintiff further alleges that his public insurance adjuster "protested to State Farm the use of new construction numbers" in the adjustment of his "reconstruction loss," but State Farm did not change the estimate. (*Id.* ¶¶ 52, 53.)

16. Based on these allegations, Plaintiff asserts four causes of action on his own behalf: Breach of Contract (Count One); Tortious Bad Faith (Count Two); violation of the New Jersey Consumer Fraud Act (“NJCFA”) (Count Three) and Prima Facie Tort (Count Four). (*Id.* ¶¶ 44-73.) As relief, Plaintiff seeks consequential damages, treble damages (in Count Three), punitive damages (in Counts Two and Four), attorneys’ fees (in Counts Two, Three and Four), unspecified injunctive and declaratory relief, prejudgment interest, and costs of suit. (*Id.* at pp. 8-11.)

17. Where, as here, the complaint is silent as to the amount in controversy, the amount may be established based upon “a reasonable reading of the value of the rights being litigated,” *Angus v. Shiley Inc.*, 989 F.2d 142, 146 (3d Cir. 1993). A reasonable reading of the value of Plaintiff’s individual claims indicates that they place more than \$75,000 in controversy.

18. State Farm’s records reflect that the difference between the estimate prepared by Plaintiff’s public adjuster (approximately \$460,000) and the estimate prepared by State Farm (approximately \$301,000) is approximately \$159,000. It is clear then that the amount in dispute between the parties exceeds the \$75,000 threshold.

19. Indeed, the amount in controversy would be satisfied even if Plaintiff sought only a fraction of the difference between his public adjuster’s estimate and the estimate prepared by State Farm, given that Plaintiff seeks treble damages under the NJCFA in Count Three. *See Suber v. Chrysler Corp.*, 104 F.3d 578, 585 (3d Cir. 1997) (treble damages and attorneys’ fees are included in the amount in controversy where potentially allowed by statute). Plaintiff’s claims for attorneys’ fees and injunctive relief would increase that amount even more.

20. Independent of these claims, Plaintiff’s claim for punitive damages satisfies the amount in controversy requirement. The Third Circuit has instructed that claims for punitive damages “will generally satisfy the amount in controversy requirement.” *Huber v. Taylor*, 532

F.3d 237, 244 (3d Cir. 2008) (internal quotation marks omitted); *see also Wolfe v. Nobel Learning Communities, Inc.*, Civil No. 06-3921 (JBS), 2006 WL 3825137, \*1 n. 2 (D.N.J. Dec. 26, 2006) (finding that \$75,000 amount in controversy threshold was met because, among other things, plaintiffs sought “punitive damages on their common-law fraud claims, . . . which may amount to as much as \$350,000 per plaintiff, under New Jersey law.”).

21. Plaintiff alleges that he is entitled to punitive damages on his tortious bad faith claim (Count Two) and prima facie tort claim (Count Four) because State Farm’s conduct allegedly was “malicious, intentional, and outrageous.” (Compl. ¶ 68; *id.* ¶¶ 60, 61, 71, 72.) *See Daloisio v. Liberty Mut. Fire Ins. Co.*, 754 F. Supp. 2d 707, 710 (D.N.J. 2010) (punitive damages for bad faith requires “egregious circumstances and wantonly reckless or malicious conduct on the part of the insurer”). State Farm certainly denies that it engaged in such conduct, but for purposes of calculating the amount in controversy, Plaintiff’s claim that these allegations entitle him to punitive damages satisfies the diversity jurisdictional threshold.

22. Finally, because the Court has original diversity jurisdiction over the claims of the named Plaintiff, the Court appropriately may exercise supplemental jurisdiction over the claims of the putative class members of each of the proposed classes. *See Aldrich v. Univ. of Phoenix, Inc.*, 661 F. App’x 384, 389 (6th Cir. 2016) (holding that where district court had diversity jurisdiction over claims of named plaintiffs, “attaching the related claims of the class members was an appropriate exercise of the district court’s supplemental jurisdiction”).

## **II. The Substantive Requirements for CAFA Removal are Satisfied.**

23. This Court also independently has diversity jurisdiction over this asserted class action under CAFA. Plaintiff asserts claims on behalf of four sets of classes, divided into residents from New Jersey (Class A), New York (Class B), Pennsylvania (Class C), and all other states

(except for Texas, California and Florida) (Class D). (Compl. ¶¶ 75, 76, 80, 81, 82.)<sup>1</sup> This case meets the requirements for CAFA jurisdiction because it: (1) includes at least one class member who is a citizen of a state different from any defendant; (2) would have at least 100 putative class members; and (3) involves an aggregate amount in controversy of \$5,000,000 or more. *See* 28 U.S.C. §§ 1332(d)(2), (d)(5)-(6).

**A. There is Minimal Diversity.**

24. As noted above, Plaintiff himself is a citizen of New Jersey (¶ 8), while State Farm is a citizen of Illinois for purposes of federal jurisdiction (¶ 9), which not only satisfies traditional diversity, but also CAFA’s minimal diversity requirement under 28 U.S.C. § 1332(d)(2)(A).

**B. The Asserted Class Size Requirement is Satisfied.**

25. Plaintiff seeks to represent State Farm insureds nationwide who suffered a “partial loss” within six years prior to the filing of the Complaint “as to whom State Farm relied upon an Exactimate [sic] estimate based on new construction pricing rather than on reconstruction pricing.” (Compl. ¶¶ 75, 76.) As previously noted, the alleged classes include New Jersey residents (Class A), New York residents (Class B), Pennsylvania residents (Class C), and residents from other states (except for Texas, California and Florida) (Class D). (*Id.* ¶¶ 75, 76, 80, 81, 82.)

26. Plaintiff alleges that there are “at least thousands of insureds meeting the definition of each of the four classes identified.” (*Id.* ¶ 83.) State Farm is entitled to rely on that judicial admission for purposes of satisfying the minimum 100-putative class member requirement of CAFA. *See, e.g., Judon v. Travelers Prop. Cas. Co. of Am.*, 773 F.3d 495, 505 (3rd Cir. 2014)

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<sup>1</sup> The alleged classes are further divided “for the purpose of calculating and awarding damages” into subclasses of insureds who knew or did not know that the State Farm estimate used “new construction pricing” and insureds who demanded appraisal of their claims. (*Id.* ¶¶ 77, 78, 79, 80, 81, 82.)

(holding that defendant satisfied CAFA numerosity requirement based on plaintiff's allegation of class size).

**C. This Action Places More than \$5,000,000 in Controversy.**

27. A notice of removal, like a complaint, need only contain “a short and plain statement of the grounds for removal.” 28 U.S.C. § 1446. As the Supreme Court has explained, “Congress, by borrowing the familiar ‘short and plain statement’ standard from Rule 8(a), intended to ‘simplify the ‘pleading’ requirements for removal’ and to clarify that courts should ‘apply the same liberal rules [to removal allegations] that are applied to other matters of pleading.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 553 (2014) (quoting H.R. Rep. No. 100–889, p. 71 (1988)). In keeping with this approach, “a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Id.* at 554.

28. State Farm disputes that Plaintiff has stated any viable claims, or that any damages whatsoever are owed to Plaintiff or the asserted classes. But what matters to the jurisdictional inquiry is the amount the class *conceivably* could recover *assuming* Plaintiff succeeded in his suit. *See Frederico v. Home Depot*, 507 F.3d 188, 197 (3rd Cir. 2007) (concluding that it did not appear certain that plaintiff could not recover the jurisdictional amount). Where the complaint is silent or ambiguous as to the amount in controversy, the court may look to the notice of removal, which “serves the same function as the complaint would if filed in district court.” *Id.* Under this standard, Plaintiff’s proposed class claims would place more than \$5,000,000 in controversy.

29. Plaintiff’s Complaint asserts the same breach of contract, bad faith and prima facie tort claims on behalf of the proposed classes as he does individually. (Compl. Counts 5-72, ¶¶ 90-397.) The Complaint also asserts class claims for violation of the NJCFA (Class A), violation of



New York General Business Law Section 349(a) (Class B), violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law (Class C), “Deceptive Practices” under other “applicable consumer protection statutes” (Class D), and common law fraud (subclasses of Classes A, B, C and D). (*Id.*) The Complaint seeks compensatory damages and treble damages for each member of the proposed classes, along with punitive damages, attorneys’ fees and other relief. (*Id.*)

30. The named Plaintiff’s claims demonstrate that more than \$5,000,000 is placed in controversy by these class claims. Plaintiff alleges that his claims are typical of the class (*id.* ¶ 84), “and accordingly the Court must multiply the monetary value of Plaintiff’s claim by an approximation of the class size.” *Alegre v. Atl. Cent. Logistics*, No. 15-2342 SRC, 2015 WL 4607196, at \*6 (D.N.J. July 31, 2015) (citation omitted); *see also Napoli v. HSBC Mortgage Servs. Inc.*, No. 12-cv-222 (RMB), 2012 WL 3715936, at \*2 (D.N.J. Aug. 27, 2012) (“Because Plaintiffs’ claims are alleged to be typical of the class, it is reasonable for this Court to simply multiply their purported damages amount by the number of foreclosures alleged in the Complaint.”) (citation omitted).

31. As noted above, Plaintiff’s individual claims place well over \$159,000 in controversy (*supra* ¶¶ 11-21). Accordingly, CAFA’s \$5,000,000 threshold would be satisfied if there were only 32 members of the asserted class seeking a like amount of damages. Plaintiff alleges that there are “at least thousands of insureds meeting the definition of each of the four classes identified” (Compl. ¶ 83), easily surpassing the \$5,000,000 threshold. Indeed, if Plaintiff sought only \$5,000 in compensatory damages, that would satisfy CAFA’s jurisdictional requirement when multiplied by just 1,000 class members.

32. State Farm has obtained estimating data from Xactware (the vendor from which it licenses Xactimate estimating software) reflecting that over the past six years, State Farm estimated over \$90 million in repair damage replacement costs using “new construction” Xactimate settings for its insureds in New Jersey. If Plaintiff were to claim that the estimated amount should have been even 5% higher using “reconstruction” pricing instead, more than \$4,500,000 would be placed in controversy by Plaintiff’s class claims for compensatory damages just in New Jersey (Class A). Plaintiff’s asserted claims on behalf of insureds in numerous other states (Classes B, C and D) would increase that amount in controversy to far higher amounts.

33. Plaintiff’s request for statutory attorneys’ fees must also be considered in determining the amount in controversy. (*See supra* ¶ 19.) While State Farm does not concede that any such award would be merited, Plaintiff’s Complaint purports to seek statutory attorneys’ fees for each of the asserted classes. (*See Compl.* pp. 17, 34, 50, 67.) Courts in this District use an “average attorney fee recovery of 30%” to calculate the attorneys’ fees component of amount in controversy for CAFA jurisdiction, *Faltaous v. Johnson & Johnson*, No. CIV.A. 07-1572JLL, 2007 WL 3256833, at \*11 (D.N.J. Nov. 5, 2007), which adds \$1,350,000 to the amount in controversy, surpassing CAFA’s \$5,000,000 jurisdictional threshold just for Plaintiff’s asserted New Jersey class claims.

34. Finally, Plaintiff purports to seek treble damages for each class member under various state consumer protection laws (*Compl.* pp. 17, 34, 50, 67) as well as punitive damages for bad faith and prima facie tort (*id.* pp. 16, 19, 33, 36, 49, 51, 66, 68). While State Farm disputes that these damages are properly recoverable, they could also properly be considered a part of the amount in controversy. (*See supra* ¶¶ 19-21.) Trebling Plaintiff’s New Jersey class claims for

compensatory damages increases the amount in controversy to multiples of \$5,000,000, before accounting for Plaintiff's other alleged putative classes and requested class-wide relief.

35. In sum, considering the potential value of the asserted damages claims when extrapolated across thousands of potential class members, it is clear that the amount in controversy in this action far exceeds the minimum amount required for CAFA jurisdiction.

**Conclusion**

36. For all the foregoing reasons, State Farm has properly alleged all prerequisites for the Court to exercise traditional diversity jurisdiction and CAFA jurisdiction over this action.

**WHEREFORE**, State Farm hereby removes this action from the Superior Court of New Jersey, Law Division, Bergen County, to this Court. State Farm hereby specifically preserves and incorporates herein all defenses enumerated in Fed. R. Civ. P. 12(b)(1)-(6) and 12(h).

**WINDELS MARX LANE & MITTENDORF, LLP**  
-and-  
**RILEY SAFER HOLMES & CANCELIA LLP**  
A limited liability partnership formed in the State of  
Illinois

Attorneys for Defendant  
State Farm Fire and Casualty Company

By: /s/David F. Swerdlow  
David F. Swerdlow

Dated: March 5, 2021

# EXHIBIT 1

JEFFREY A. BRONSTER, ESQ.  
17 Wendell Place  
Fairview, New Jersey 07022  
(201) 945-2566  
Attorney ID# 049411988  
Attorney for Plaintiff

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<b>PAUL HAN</b> , individually and on behalf	:	SUPERIOR COURT OF NEW JERSEY
of a class of similarly situated persons,	:	LAW DIVISION: BERGEN COUNTY
	:	DOCKET NO. BER-L-
	:	
Plaintiff,	:	Civil Action
	:	
vs.	:	
	:	
<b>STATE FARM FIRE AND CASUALTY</b>	:	<b>COMPLAINT</b>
<b>COMPANY</b> ,	:	<b>(Class Action)</b>
	:	
Defendant.	:	
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The plaintiff, Paul Han, individually and on behalf a class of similarly situated persons, by way of Complaint against the defendant, hereby states as follows:

**GENERAL ALLEGATIONS**

**I. Introduction**

1. The State Farm family of companies, based in Bloomington, Illinois, is the largest insurer of automobiles, and the largest property and casualty insurer, in the United States.

2. State Farm Mutual Automobile Insurance Company, which was founded in 1922, is the parent company of numerous insurance and banking subsidiaries, including the defendant in this action, State Farm Fire and Casualty Company.

3. State Farm Fire and Casualty Company is the State Farm subsidiary that writes residential and commercial property and casualty insurance policies throughout the continental United States, with the exception Texas, California, and Florida, where such policies are written by other state-specific State Farm subsidiaries.

4. This action is specifically against the State Farm Fire and Casualty Company subsidiary, and hereinafter the name “State Farm” shall refer only to that subsidiary.

5. Beginning on an exact date unknown to the plaintiff, and continuing through the date of the filing of this Complaint, State Farm has been engaged in a scheme whereby it has attempted to defraud the holders of property and casualty policies by underpaying claims, as set forth herein.

6. Upon information and belief, State Farm is engaging in this conduct in the states of New Jersey, New York, and Pennsylvania, and possibly in other states not presently known to Plaintiff.

7. The purpose of the scheme is to undervalue property and casualty claims of its insured, potentially resulting in millions of dollars of underpaid claims.

## **II. The Xactimate Program**

8. Verisk Analytics Inc. (“Verisk”), having its principal place of business in Jersey City, New Jersey, was founded in 1971 as a privately-held company owned by various insurance companies.

9. In 2009, the insurance companies raised \$1.9 billion dollars through the public offering of Verisk, while still remaining the majority shareholders of the company.

10. Xactware Solutions Inc. (“Xactware”), founded in 1983, is a wholly-owned subsidiary of Verisk.

11. Xactware sells and services a software program known as “Xactimate”, which is widely used in the insurance industry to estimate the cost of damage caused by fire and other insured risks.

12. At the present time, 22 of the 25 largest property and casualty insurance companies use Xactimate to estimate property claims.

13. At all times relevant to this Complaint, State Farm has used Xactimate to estimate the cost of repairing property damaged by fire or other insured risks.

14. Through Xactware's ownership by Verisk, which in turn is owned primarily by insurance companies, the Xactimate program is controlled by the insurance industry.

15. The Exactimate program provides a specific cost for each line item of a construction estimate, and adjusts the costs based upon the geographic area in which the property is located.

16. Xactimate's figures are widely considered in the insurance and construction industries, by those other than the insurance companies themselves, to be below the reasonable cost of repairs.

17. However, for the purposes of this Complaint, Plaintiff does not assert that the Xactimate pricing scale is part of the fraudulent conduct alleged and assumes, for the limited and exclusive purpose of this Complaint, that Xactimate pricing at least represents a good faith attempt to estimate repair costs by insurance companies.

18. When an insurance company uses Xactimate, the program provides the user with a choice, which is described in the software advertising as follows: "Xactware price lists can show costs based on work in restoration, service, or remodeling environments or based on a new construction environment."

19. For purposes of this Complaint, the two options will be referred to respectively hereinafter as "new construction" and "reconstruction".

20. The definition of "new construction", both as used by Xactimate and in the insurance and construction industries at large, is a building that needs to be rebuilt in its entirety, from the foundation up, resulting from an actual or constructive total loss to the insured's property.

21. The definition of "reconstruction" in the context of an insurance loss, as used by Xactimate and in the insurance and construction industries at large, is a building of which some parts remain serviceable, subject to the rebuilding of the remainder of the property.

22. Consistent with the general practice in the insurance industry and in the construction industry, for virtually every construction line item priced by Xactimate, the cost of that item for a reconstruction is higher than the pricing of the same item for new construction.

23. There are many reasons why the cost of reconstruction is higher than new construction, including, for example only, the increased cost of demolition and preparation necessitated by the existing damage from a fire or other occurrence.

### **III. The State Farm Scheme**

24. The insurance industry standard for the use of the Xactimate program is that reconstruction jobs are priced using the program's reconstruction numbers, and new construction jobs are priced using the program's new construction numbers.

25. Upon information and belief, all other insurers that use Xactimate price reconstruction jobs using reconstruction pricing, and new construction jobs using new construction pricing.

26. Upon information and belief, for many years, prior to State Farm's initiation of its scheme to underpay claims as set forth herein, State Farm used the Xactimate program pricing for reconstruction to estimate reconstruction jobs, and used Xactimate's pricing for new construction to estimate new construction jobs.

27. Beginning on an exact date not presently known to the plaintiff, State Farm discarded the industry practice, and its own prior practice, and started estimating some or all reconstruction jobs using the Xactimate program's lower, new construction numbers.

28. For reasons detailed above, in every instance this scheme has resulted in generating an estimate that is lower than the estimate that would have been generated using the appropriate numbers for reconstruction.



29. As a result of this scheme, State Farm has routinely generated estimates that it knows full well to be below the fair and reasonable cost for the reconstruction of the insured's property.

30. The purpose of the scheme was to enable State Farm to save money at the expense of its insureds by underpaying claims.

#### **IV. The Effects of the Scheme**

31. In virtually every case in which State Farm engages in the conduct described above, the conduct creates some type of hardship and/or financial loss for the insured.

32. In many cases, the insured is not represented either by counsel or a public insurance adjuster and has little or no understanding of construction, or of the distinction between what is referred to as new construction as opposed to a reconstruction.

33. In many such cases, the insured settles his claim in reliance upon the construction figures provided by State Farm itself, the insured reasonably assuming that his insurance company is acting fairly and in good faith.

34. In some cases, generally when an insured is represented by an attorney or a public insurance adjuster, the insured's representative may recognize State Farm's conduct as being in bad faith, and insist on pricing on a reconstruction basis.

35. In some or all of such cases, State Farm persists in relying on its new construction figures, resulting in the adjustment being dragged out longer than necessary, and requiring the insured to either accept an offer below the true value of his claim, or to initiate litigation or other form of third party resolution of the dispute.

36. In some cases, rather than accept an unreasonably low offer, some such insureds demand appraisal pursuant to New Jersey statute and the provisions of their policy.

37. In at least some such cases, and upon information and belief in all such cases, State Farm's appraisers are directed to voluntarily agree to enter into an appraisal award on the basis of reconstruction pricing, rather than allowing the issue to be decided by a neutral umpire.

**V. The Violation of N.J.S.A. § 29:B-4**

38. N.J.S.A. § 29:B-4 is captioned, "Unfair methods of competition and unfair or deceptive acts or practices defined".

39. Subsection (9) of the statute, captioned "Unfair claim settlement practices", specifically relates to the conduct of insurance companies in settling the claims of their insureds.

40. Although the statute does not create a private cause of action, it does create a standard of conduct for insurance companies operating in the state of New Jersey, the violation of which "with such frequency as to indicate a general business practice" is defined by statute as being unfair and deceptive conduct.

41. Pursuant to N.J.S.A. § 29:B-4(9)(f), an insurance company violates the statute by "not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear".

42. Pursuant to N.J.S.A. § 29:B-4(9)(g), an insurance company violates the statute by "compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds".

43. The conduct of State Farm as set forth above, in instituting a scheme whereby insureds are offered the Xactimate value for new construction rather than reconstruction, despite having suffered only a partial loss of property, is in violation of the above-cited provisions of the statute.

**COUNT ONE**

**Breach of Contract - Han**

44. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

45. Plaintiff is the owner of real property located at 46 Chateau Road, Palisades Park, New Jersey 07650 (“the Property”).

46. At all times relevant to this Complaint, the Property was insured under a property and casualty insurance policy issued by State Farm, No. xxxxx8636 (being a redacted policy number).

47. On or about July 27, 2020, the Property was damaged by fire.

48. The fire constituted a covered occurrence under the insurance policy issued to the plaintiff by State Farm.

49. Plaintiff duly reported the occurrence to State Farm, which opened a claims file under Claim No. xxxxx36L (being a redacted claim number).

50. The loss to Plaintiff’s building was a partial loss only, and was accordingly to be repaired through the process of reconstruction of the remaining structure, not as new construction from the foundation up.

51. Nevertheless, State Farm prepared an Exactimate estimate that was priced using the numbers for new construction rather than for reconstruction.

52. Plaintiff’s public insurance adjuster protested to State Farm the use of new construction numbers in the adjustment of a reconstruction loss.

53. Nevertheless, State Farm refused to reconsider its decision or to revise its estimate, causing the adjustment of the claim to be unduly delayed.

54. Accordingly, Plaintiff was compelled to accept State Farm's offer as to the undisputed claim amount, and to pursue the payment of the additional amounts owed through litigation.

55. Through the aforesaid conduct, State Farm has breached the contractual provisions of the policy that govern the payment of a covered loss, whereby Plaintiff has been damaged.

**WHEREFORE**, Plaintiff demands judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Prejudgment interest;
- (5) Costs of suit;
- (6) Such further relief as the Court deems just and proper.

## **COUNT TWO**

### **Tortious Bad Faith - Han**

56. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

57. The policy of insurance issued to Plaintiff by State Farm constituted a contract.

58. The policy implicitly incorporated the covenants of good faith and fair dealing.

59. By insisting on adjusting the claim on the basis of new construction pricing even though the loss was a reconstruction, State Farm breached the aforesaid covenants.

60. State Farm's actions violated the standard of conduct established by the New Jersey Legislature in N.J.S.A. § 29:B-4(9)(f), in that it did not attempt in good faith to effectuate a prompt, fair, and equitable settlement of Plaintiff's claim, even though it had acknowledged liability.

61. State Farm's actions were in violation of the standard of set established by the New Jersey Legislature in N.J.S.A. § 29:B-4(9)(g), in that it has compelled Plaintiff to institute litigation policy by offering substantially less than the amount that it knew Plaintiff was entitled to recover.

62. By virtue of State Farm's breaches of the covenants of good faith and fair dealing, Plaintiff has been damaged.

**WHEREFORE**, Plaintiff demands judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

### **COUNT THREE**

#### **Consumer Fraud - Han**

63. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

64. New Jersey's Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.* ("the CFA") prohibits the use of any unconscionable commercial practice, deception, fraud, false pretense, false promise, or misrepresentation in connection with the sale of merchandise or with the subsequent performance thereof, whether or not any person has been misled, deceived or damaged thereby.

65. State Farm's practice of providing and relying upon Exactimate estimates based on the cost of new construction, knowing that the nature of the loss was such that it should be adjusted using the higher reconstruction pricing, constituted an unconscionable commercial practice, deception, fraud, false pretense, false promise, and misrepresentation in connection with the performance of its contract, all in violation of the CFA, whereby Plaintiff has been damaged.

66. Plaintiff has been damaged by State Farm's violation of the CFA through the delay of the adjustment of his claim, the underpayment of his claim, the costs associated with and incurred in connection with the filing of this litigation, and otherwise.

**WHEREFORE**, Plaintiff demands judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Treble damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

#### **COUNT FOUR**

##### **Prima Facie Tort - Han**

67. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

68. State Farm's use of new construction pricing constituted malicious, intentional, and outrageous conduct, designed to save money at the expense of the insured by underpaying his claim.

69. If Plaintiff's other causes of action are not sustained, Plaintiff will have no available cause of action to remedy the harm suffered as a result of State Farm's conduct.

70. If Plaintiff's cause of action for breach of contract is sustained, but his remaining causes of action are not, he will still have no available remedy for the tort damages to which he is entitled.

71. State Farm's conduct was outrageous, among other ways, in its violation of N.J.S.A. § 29:B-4(9)(f), in that it did not attempt in good faith to effectuate a prompt, fair, and equitable settlement of Plaintiff's claim, even though liability had been acknowledged by State Farm.

72. State Farm's conduct was outrageous, among other ways, in its violation of § 29:B-4(9)(g), in that it compelled Plaintiff to institute litigation to recover amounts due under the policy by offering substantially less than the amount that it knows Plaintiff is entitled to recover.

73. By virtue of State Farm's tortious conduct, Plaintiff has been damaged.

**WHEREFORE,** Plaintiff demands judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

### **CLASS ACTION GENERAL ALLEGATIONS**

74. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

75. This class action is brought on behalf of four classes of persons and entities to be described herein as “Class A” (New Jersey), “Class B” (New York), “Class C” (Pennsylvania) and “Class D” (other states), and such subclasses thereof as shall be defined herein.

76. Class A is defined as all State Farm property and casualty policyholders for real property located in the State of New Jersey, both individuals and business entities, who suffered a partial loss to real property as the result of a covered cause of action within six years prior to the filing of this lawsuit, and as to whom State Farm relied upon an Exactimate estimate based on new construction pricing rather than on reconstruction pricing.

77. Subclass A-1, which is differentiated for the purpose of calculating and awarding damages, consists of those members of Class A who settled their claims on the basis of State Farm’s estimate, not being cognizant of the implications of State Farm’s reliance upon new construction pricing instead of reconstruction pricing.

78. Subclass A-2, which is differentiated for the purpose of calculating and awarding damages, consists of those members of Class A who settled their claims on the basis of State Farm’s estimate knowing that it was underpriced because of State Farm’s reliance upon new construction pricing instead of reconstruction pricing but who lacked the ability, either due to a shortage of funds or otherwise, to pursue a third party remedy, such as litigation, against State Farm.

79. Subclass A-3, which is differentiated for the purpose of calculating and awarding damages, consists of those members of Class A who demanded appraisal of their claim as a result



of State Farm's reliance upon new construction pricing instead of reconstruction pricing and thereby sustained financial damages, including but not limited to the cost of an appraiser and an umpire.

80. The definition of Class B, including its subclasses B-1, B-2, and B-3, is identical to Class A and its subclasses, except the its members are policyholders for real property located in the State of New York.

81. The definition of Class C, including its subclasses C-1, C-2, and C-3, is identical to Class A and its subclasses, except the its members are policyholders for real property located in the State of Pennsylvania.

82. The definition of Class D, including its subclasses D-1, D-2, and D-3, is identical to Class A and its subclasses, except the its members are each policyholders for real property located in parts of the continental United States other than the states of New Jersey, New York, and Pennsylvania (and excluding the states of Texas, California, and Florida), which are expected to be identified in the course of discovery.

83. Upon information and belief, , there are at least thousands of insureds meeting the definition of each of the four classes identified above, such that each class is so numerous that the joinder of each individual member thereof is impractical, within the meaning of R. 4:32-1(a)(1).

84. There are issues of law and fact that are common to all members of each class within the meaning of R. 4:32-1(a)(2), the claims of the individual plaintiff are typical of the claims or defenses of each class within the meaning of R. 4:32-1(a)(3), and the individual plaintiff as representative of each class, will fairly and adequately protect the interests of the entire class within the meaning of R. 4:32-1(a)(4).

85. The prosecution of separate actions by individual members of each class would create a risk of inconsistent or varying adjudications with respect to individual members that would establish incompatible standards of conduct for State Farm.

86. The prosecution of separate actions by individual class members would create a risk of adjudications that matter would, with respect to other individual members of each class, substantially impair or impede their ability to protect their interests by creating unfavorable precedent.

87. State Farm has acted on grounds generally applicable to each class, such that final injunctive and declaratory relief with respect to each class as a whole is appropriate.

88. The questions of law and fact common to each class predominate over any such questions affecting only individual class members, within the meaning of R. 4:32-1(b)(3).

89. Based on all of the foregoing, a class action is superior to other available methods for the fair and efficient adjudication of the controversy, within the meaning of R. 4:32-1(b)(3).

## **COUNT FIVE**

### **Class A - Breach of Contract**

90. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

91. Class A consists of all State Farm property and casualty policyholders for real property located in the State of New Jersey within six years prior to the filing of this lawsuit, both individuals and business entities, who suffered a partial loss to real property as the result of a covered cause of loss, and as to whom State Farm relied upon an Exactimate estimate based on new construction pricing, rather than on reconstruction pricing.

92. Each insurance policy issued to the members of Class A constituted a contract.

93. Although each member of the class suffered only a partial loss, to be repaired through the process of reconstruction, State Farm prepared an Exactimate estimate as to each that was priced as new construction.

94. Through the aforesaid conduct, State Farm breached the contractual provisions of the respective policy of each class member, whereby each member of Class A has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Prejudgment interest;
- (5) Attorneys fees;
- (6) Costs of suit;
- (7) Such further relief as the Court deems just and proper.

### **COUNT SIX**

#### **Class A - Tortious Bad Faith**

95. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

96. The policy of insurance issued to each class member constituted a contract.

97. Each policy implicitly incorporated the covenants of good faith and fair dealing.

98. By adjusting the claims on the basis of new construction pricing despite the fact that each involved a reconstruction, State Farm breached the aforesaid covenants.

99. State Farm's actions were in violation of the standard of conduct established by the New Jersey Legislature in N.J.S.A. § 29:B-4(9)(f), in that State Farm did not attempt in good faith to effectuate a prompt, fair, and equitable settlement of the claims of the class members, even though liability had been acknowledged by State Farm.

100. State Farm's actions were in violation of the standard of conduct established by the New Jersey Legislature in N.J.S.A. § 29:B-4(9)(g), in that State Farm has compelled the class to institute litigation to recover amounts due under the policy by offering substantially less than the amount that State Farm knows each class member is entitled to recover.

101. By virtue of State Farm's breach of covenants, each class member has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

#### **COUNT SEVEN**

#### **Class A - Consumer Fraud**

102. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

103. New Jersey's Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.* ("the CFA") prohibits the use of any unconscionable commercial practice, deception, fraud, false pretense, false promise, or misrepresentation in connection with the sale of merchandise or with the subsequent performance thereof, whether or not any person has been misled, deceived or damaged thereby.

104. State Farm's practice of using Exactimate estimates based on new construction pricing for losses that should have been adjusted using reconstruction pricing constituted an unconscionable commercial practice, deception, fraud, false pretense, false promise, and misrepresentation in connection with the performance of the insurance contract, all in violation of the CFA, whereby each class member has been damaged.

105. Each class member has been damaged by State Farms's CFA violation through the delay of the adjustment of their claim, the underpayment of their claim, the costs associated with and incurred in connection with this litigation, and otherwise.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Treble damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

## COUNT EIGHT

### Class A - Prima Facie Tort

106. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

107. By the use of new construction pricing for a loss that was a reconstruction, State Farm engaged in conduct that was malicious, intentional, and outrageous, and was designed to save State Farm money at the expense of its insureds by underpaying their claims.

108. If the class members' other causes of action are not sustained, they will have no available cause of action to remedy the harm suffered.

109. If the class members' cause of action for breach of contract is sustained but their remaining causes of action are not, they will still have no available remedy for the tort damages to which they are entitled.

110. State Farm's conduct was outrageous, among other ways, in its violation of N.J.S.A. § 29:B-4(9)(f), in that it did not attempt in good faith to effectuate a prompt, fair, and equitable settlement of the claims of the class member, even though it had acknowledged liability.

111. State Farm's conduct was outrageous, among other ways, in its violation of § 29:B-4(9)(g), in that it compelled the class members to institute litigation to recover amounts due under the policy by offering substantially less than the amount that it knew they were entitled to recover.

112. By virtue of State Farm's tortious conduct, each class member has been damaged.

**WHEREFORE**, Plaintiff demands judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;

- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

### **COUNT NINE**

#### **Subclass A-1 - Breach of Contract**

113. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

114. Subclass A-1 consists of those members of Class A who settled their claims on the basis of State Farm's estimate, not being cognizant of the implications of State Farm's reliance upon new construction pricing instead of reconstruction pricing.

115. Each insurance policy issued to the members of the subclass constituted a contract.

116. Although each member of the subclass suffered a partial loss only, to be repaired through the process of reconstruction, State Farm prepared an Exactimate estimate as to each that was priced as new construction.

117. Through the aforesaid conduct, State Farm breached the contractual provisions of the respective policy of each member of the subclass, whereby each has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;

- (3) Consequential damages;
- (4) Prejudgment interest;
- (5) Attorneys fees;
- (6) Costs of suit;
- (7) Such further relief as the Court deems just and proper.

### **COUNT TEN**

#### **Subclass A-1 - Tortious Bad Faith**

118. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

119. The policy of insurance issued to each subclass member constituted a contract.

120. Each policy implicitly incorporated the covenants of good faith and fair dealing.

121. By adjusting the claims as new construction instead of reconstruction, State Farm breached the aforesaid covenants, whereby each member of the subclass has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.



**COUNT ELEVEN**

**Subclass A-1 - Consumer Fraud**

122. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

123. New Jersey's Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.* ("the CFA") prohibits the use of any unconscionable commercial practice, deception, fraud, false pretense, false promise, or misrepresentation in connection with the sale of merchandise or with the subsequent performance thereof, whether or not any person has been misled, deceived or damaged thereby.

124. State Farm's practice of using Exactimate estimates based on new construction pricing for losses that should have been adjusted using reconstruction pricing constituted an unconscionable commercial practice, deception, fraud, false pretense, false promise, and misrepresentation in connection with the performance of the insurance contract, all in violation of the CFA, whereby each subclass member has been damaged.

125. Each subclass member has been damaged by State Farms's violation of the CFA through the delay of the adjustment of their claim, the underpayment of their claim, the costs associated with and incurred in connection with this litigation, and otherwise.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Treble damages;
- (5) Prejudgment interest;

- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

## COUNT TWELVE

### Subclass A-1 - Prima Facie Tort

126. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

127. By the use of new construction pricing for a loss that was a reconstruction, State Farm engaged in conduct that was malicious, intentional, and outrageous, and was designed to save State Farm money at the expense of its insureds by underpaying claims, all as set forth heretofore.

128. If the subclass members' other causes of action are not sustained, they will have no available cause of action to remedy the harm suffered as a result of State Farm's conduct.

129. If the subclass members' cause of action for breach of contract is sustained but their remaining causes of action are not, they will still have no available remedy for the tort damages to which they are entitled.

130. By virtue of State Farm's tortious conduct, each subclass member has been damaged.

**WHEREFORE**, Plaintiff demands judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;

- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT THIRTEEN**

**Subclass A-1 - Fraud**

131. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

132. As to each member of the subclass, State Farm made a material misrepresentation of a presently existing fact, namely, that the State Farm estimate represented a fair pricing of the cost of reconstruction of the insured' property.

133. State Farm, having intentionally used new construction pricing despite the fact that it was lower than the applicable reconstruction pricing, made the said misrepresentations with knowledge of their falsity.

134. State Farm made the aforesaid material misrepresentations with the intention that each member of the subclass rely thereupon.

135. Each member of the subclass did in fact rely on State Farm's material misrepresentation in the settlement of the claim, in the erroneous belief that State Farm had honestly and accurately estimated the cost of the reconstruction of the property.

136. By virtue of all of the foregoing, each member of the subclass has been damaged.

**WHEREFORE**, Plaintiff demands judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;

- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

### **COUNT FOURTEEN**

#### **Subclass A-2 - Breach of Contract**

137. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

138. Subclass A-2 consists of those members of Class A who settled their claims on the basis of State Farm's estimate knowing that it was underpriced because of State Farm's reliance upon new construction pricing instead of reconstruction pricing but who lacked the ability, either due to a shortage of funds or otherwise, to pursue a third party remedy, such as litigation, against State Farm.

139. Each insurance policy issued to the members of the subclass constituted a contract.

140. Although each member of the subclass suffered a partial loss only, to be repaired through the process of reconstruction, State Farm prepared an Exactimate estimate as to each that was priced as new construction.

141. Through the aforesaid conduct, State Farm breached the contractual provisions of the respective policy of each member of the subclass, whereby each has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Prejudgment interest;
- (5) Attorneys fees;
- (6) Costs of suit;
- (7) Such further relief as the Court deems just and proper.

**COUNT FIFTEEN**

**Subclass A-2 - Tortious Bad Faith**

142. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

143. The policy of insurance issued to each subclass member constituted a contract.

144. Each policy implicitly incorporated the covenants of good faith and fair dealing.

145. By adjusting the claims as new construction instead of reconstruction, State Farm breached the aforesaid covenants, whereby each member of the subclass has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;

- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT SIXTEEN**

**Subclass A-2 - Consumer Fraud**

146. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

147. New Jersey's Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.* ("the CFA") prohibits the use of any unconscionable commercial practice, deception, fraud, false pretense, false promise, or misrepresentation in connection with the sale of merchandise or with the subsequent performance thereof, whether or not any person has been misled, deceived or damaged thereby.

148. State Farm's practice of using Exactimate estimates based new construction pricing for losses that should have been adjusted using reconstruction pricing constituted an unconscionable commercial practice, deception, fraud, false pretense, false promise, and misrepresentation in connection with the performance of the insurance contract, all in violation of the CFA, whereby each subclass member has been damaged.

149. Plaintiffs have been damaged by State Farms's violation of the CFA through the delay of the adjustment of their respective claims, the underpayment of each claim, the costs associated with and incurred in connection with this litigation, and otherwise.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;

- (3) Consequential damages;
- (4) Treble damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT SEVENTEEN**

**Subclass A-2 - Prima Facie Tort**

150. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

151. By the use of new construction pricing for a loss that was a reconstruction, State Farm engaged in conduct that was malicious, intentional, and outrageous, and was designed to save State Farm money at the expense of its insureds by underpaying claims, all as set forth heretofore.

152. If the subclass members' other causes of action are not sustained, Plaintiffs will have no available cause of action to remedy the harm suffered as a result of State Farm's conduct.

153. If the subclass members' cause of action for breach of contract is sustained but their remaining causes of action are not, they will still have no available remedy for the tort damages to which they are entitled.

154. By virtue of State Farm's tortious conduct, each subclass member has been damaged.

**WHEREFORE**, Plaintiff demands judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;

- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

### **COUNT EIGHTEEN**

#### **Subclass A-3 - Breach of Contract**

155. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

156. Subclass A-3 consists of those members of Class A who demanded appraisal of their claim as a result of State Farm's reliance upon new construction pricing instead of reconstruction pricing, and thereby sustained financial damages, including but not limited to the cost of an appraiser and an umpire.

157. Each insurance policy issued to the members of the subclass constituted a contract.

158. Although each member of the subclass suffered a partial loss only, to be repaired through the process of reconstruction, State Farm prepared an Exactimate estimate as to each that was priced as new construction.

159. Through the aforesaid conduct, State Farm breached the contractual provisions of the respective policy of each member of the subclass, whereby each has been damaged.

**WHEREFORE,** Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;



- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Prejudgment interest;
- (5) Attorneys fees;
- (6) Costs of suit;
- (7) Such further relief as the Court deems just and proper.

**COUNT NINETEEN**

**Subclass A-3 - Tortious Bad Faith**

160. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

161. The policy of insurance issued to each member of the subclass constituted a contract.

162. Each policy implicitly incorporated the covenants of good faith and fair dealing.

163. By adjusting the claims as new construction instead of reconstruction, State Farm breached the aforesaid covenants, whereby each member of the subclass has been damaged.

**WHEREFORE,** Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;

- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

## COUNT TWENTY

### Subclass A-3 - Consumer Fraud

164. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

165. New Jersey's Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.* ("the CFA") prohibits the use of any unconscionable commercial practice, deception, fraud, false pretense, false promise, or misrepresentation in connection with the sale of merchandise or with the subsequent performance thereof, whether or not any person has been misled, deceived or damaged thereby.

166. State Farm's practice of using Exactimate estimates based new construction pricing for losses that should have been adjusted using reconstruction pricing constituted an unconscionable commercial practice, deception, fraud, false pretense, false promise, and misrepresentation in connection with the performance of the insurance contract, all in violation of the CFA, whereby subclass member has been damaged.

167. Plaintiffs have been damaged by State Farms's violation of the CFA through the delay of the adjustment of their respective claims, the underpayment of each claim, the costs associated with and incurred in connection with this litigation, and otherwise.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;

- (4) Treble damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

### **COUNT TWENTY-ONE**

#### **Subclass A-3 - Prima Facie Tort**

168. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

169. By the use of new construction pricing for a loss that was a reconstruction, State Farm engaged in conduct that was malicious, intentional, and outrageous, and was designed to save State Farm money at the expense of its insureds by underpaying claims, all as set forth heretofore.

170. If the subclass members' other causes of action are not sustained, Plaintiffs will have no available cause of action to remedy the harm suffered as a result of State Farm's conduct.

171. If the subclass members' cause of action for breach of contract is sustained but their remaining causes of action are not, they will still have no available remedy for the tort damages to by offering substantially less than the amount that it knows Plaintiffs were entitled to recover.

172. By virtue of State Farm's tortious conduct, each subclass member has been damaged.

**WHEREFORE**, Plaintiff demands judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;

- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

### **COUNT TWENTY-TWO**

#### **Class B - Breach of Contract**

173. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

174. Class B consists of all State Farm property and casualty policyholders for real property located in the State of New York within six years prior to the filing of this lawsuit, both individuals and business entities, who suffered a partial loss to real property as the result of a covered cause of action, and as to whom State Farm relied upon an Exactimate estimate based on new construction pricing, rather than on reconstruction pricing.

185. Each insurance policy issued to the members of Class B constituted a contract.

186. Although each member of the class suffered only a partial loss, to be repaired through the process of reconstruction, State Farm prepared an Exactimate estimate as to each that was priced as new construction.

187. Through the aforesaid conduct, State Farm breached the contractual provisions of the respective policy of each class member, whereby each member of Class B has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Prejudgment interest;
- (5) Attorneys fees;
- (6) Costs of suit;
- (7) Such further relief as the Court deems just and proper.

**COUNT TWENTY-THREE**

**Class B - Tortious Bad Faith**

188. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

189. The policy of insurance issued to each class member constituted a contract.

190. Each policy implicitly incorporated the covenants of good faith and fair dealing.

191. By adjusting the claims on the basis of new construction pricing despite the fact that each involved a reconstruction, State Farm breached the aforesaid covenants.

192. By virtue of State Farm's breaches of covenants, each class member has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;

- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT TWENTY-FOUR**

**Class B - CPDAP**

193. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

194. As to all members of Class B, the conduct of State Farm, as forth in detail heretofore, constituted deceptive acts and practices in the conduct of its business and in the furnishing of services within the state of New York, in violation of NY GEN BUS § 349(a), whereby each member of Class B has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Treble damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT TWENTY-FIVE**

**Class B - Prima Facie Tort**

195. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

196. By the use of new construction pricing for a loss that was a reconstruction, State Farm engaged in conduct that was malicious, intentional, and outrageous, and was designed to save State Farm money at the expense of its insured by underpaying his claim, all as set forth heretofore.

197. If and to the extent that Plaintiffs' other causes of action are not sustained, Plaintiffs will have no available cause of action to remedy the harm suffered as a result of State Farm's conduct.

198. If and to the extent that Plaintiffs' cause of action for breach of contract is sustained, in the event that their remaining causes of action are not sustained they will still have no available remedy for the tort damages to which they are entitled.

199. State Farm's conduct was outrageous, among other ways, in that it did not attempt in good faith to effectuate a prompt, fair, and equitable settlement of class members' claims, even though it had acknowledged liability.

200. State Farm's conduct was outrageous, among other ways, in that it compelled the class members to institute litigation to recover amounts due under the policy by offering substantially less than the amount that it knew the class members were entitled to recover.

201. By virtue of State Farm's tortious conduct, each class member has been damaged.

**WHEREFORE**, Plaintiff demands judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;

- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

### **COUNT TWENTY-SIX**

#### **Subclass B-1 - Breach of Contract**

202. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

203. Subclass B-1 consists of those members of Class B who settled their claims on the basis of State Farm's estimate, not being cognizant of the implications of State Farm's reliance upon new construction pricing instead of reconstruction pricing.

204. Each insurance policy issued to the members of the subclass constituted a contract.

205. Although each member of the subclass suffered a partial loss only, to be repaired through the process of reconstruction, State Farm prepared an Exactimate estimate as to each that was priced as new construction.

206. Through the aforesaid conduct, State Farm breached the contractual provisions of the respective policy of each member of the subclass, whereby each has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;



- (3) Consequential damages;
- (4) Prejudgment interest;
- (5) Attorneys fees;
- (6) Costs of suit;
- (7) Such further relief as the Court deems just and proper.

**COUNT TWENTY-SEVEN**

**Subclass B-1 - Tortious Bad Faith**

207. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

208. The policy of insurance issued to each subclass member constituted a contract.

209. Each policy implicitly incorporated the covenants of good faith and fair dealing.

210. By adjusting the claims as new construction instead of reconstruction, State Farm breached the aforesaid covenants, whereby each member of the subclass has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT TWENTY-EIGHT**

**Subclass B-1 - CPDAP**

211. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

212. As to all members of the subclass, the conduct of State Farm, as forth in detail heretofore, constituted deceptive acts and practices in the conduct of its business, trade, and commerce, and in the furnishing of services within the state of New York, in violation of NY GEN BUS § 349(a), whereby each member of the subclass has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Treble damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT TWENTY-NINE**

**Subclass B-1 - Prima Facie Tort**

213. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

214. By the use of new construction pricing for a loss that was a reconstruction, State Farm engaged in conduct that was malicious, intentional, and outrageous, and was designed to save State Farm money at the expense of its insureds by underpaying claims, all as set forth heretofore.

215. If the subclass members' other causes of action are not sustained, they will have no available cause of action to remedy the harm suffered as a result of State Farm's conduct.

216. If the class member's cause of action for breach of contract is sustained but their remaining causes of action are not, they will still have no available remedy for the tort damages to which they are entitled.

217. By virtue of State Farm's tortious conduct, each subclass member has been damaged.

**WHEREFORE**, Plaintiff demands judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT THIRTY**

**Subclass B-1 - Fraud**

218. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

219. As to each member of the subclass, State Farm made a material misrepresentation of a presently existing fact, namely, that the State Farm estimate represented a fair pricing of the cost of reconstruction of the insured' property.

220. State Farm, having intentionally used new construction pricing despite the fact that it was lower than the applicable reconstruction pricing, made the said misrepresentations with knowledge of their falsity.

221. State Farm made the aforesaid material misrepresentations with the intention that each member of the subclass rely thereupon.

222. Each member of the subclass did rely on State Farm's material misrepresentation in the settlement of the claim, in the belief that State Farm had honestly and accurately estimated the cost of the reconstruction of the property.

223. By virtue of all of the foregoing, each member of the subclass has been damaged.

**WHEREFORE**, Plaintiff demands judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT THIRTY-ONE**

**Subclass B-2 - Breach of Contract**

224. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

225. Subclass B-2 consists of those members of Class B who settled their claims on the basis of State Farm's estimate knowing that it was underpriced because of State Farm's reliance upon new construction pricing instead of reconstruction pricing but who lacked the ability, either due to a shortage of funds or otherwise, to pursue a third party remedy, such as litigation, against State Farm.

225. Each insurance policy issued to the members of the subclass constituted a contract.

226. Although each member of the subclass suffered a partial loss only, to be repaired through the process of reconstruction, State Farm prepared an Exactimate estimate as to each that was priced as new construction.

228. Through the aforesaid conduct, State Farm breached the contractual provisions of the respective policy of each member of the subclass, whereby each has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Prejudgment interest;
- (5) Attorneys fees;
- (6) Costs of suit;
- (7) Such further relief as the Court deems just and proper.

**COUNT THIRTY-TWO**

**Subclass B-2 - Tortious Bad Faith**

229. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

230. The policy of insurance issued to each subclass member constituted a contract.

231. Each policy implicitly incorporated the covenants of good faith and fair dealing.

232. By adjusting the claims as new construction instead of reconstruction, State Farm breached the aforesaid covenants, whereby each member of the subclass has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT THIRTY-THREE**

**Subclass B-2 - CPDAP**

233. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

234. As to all members of the subclass, the conduct of State Farm, as forth in detail heretofore, constituted deceptive acts and practices in the conduct of its business, trade, and commerce, and in the furnishing of services within the state of New York, in violation of NY GEN BUS § 349(a), whereby each member of the subclass has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Treble damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT THIRTY-FOUR**

**Subclass B-2 - Prima Facie Tort**

235. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

236. By the use of new construction pricing for a loss that was a reconstruction, State Farm engaged in conduct that was malicious, intentional, and outrageous, and was designed to save State Farm money at the expense of its insureds by underpaying claims, all as set forth heretofore.

237. If the subclass members' other causes of action are not sustained, Plaintiffs will have no available cause of action to remedy the harm suffered as a result of State Farm's conduct.

238. If the subclass members' cause of action for breach of contract is sustained but their remaining causes of action are not, they will still have no available remedy for the tort damages to which they are entitled.

239. By virtue of State Farm's tortious conduct, each subclass member has been damaged.

**WHEREFORE**, Plaintiff demands judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT THIRTY-FIVE**

**Subclass B-3 - Breach of Contract**

240. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

241. Subclass B-3 consists of those members of Class B who demanded appraisal of their claim as a result of State Farm's reliance upon new construction pricing instead of reconstruction pricing, and thereby sustained financial damages, including but not limited to the cost of an appraiser and an umpire.

242. Each insurance policy issued to the members of the subclass B-3 constituted a contract.



243. Although each member of the subclass suffered a partial loss only, which was to be repaired through the process of reconstruction, State Farm prepared an Exactimate estimate as to each member that was priced as new construction.

244. Through the aforesaid conduct, State Farm breached the contractual provisions of the respective policy of each member of the subclass, whereby each has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Prejudgment interest;
- (5) Attorneys fees;
- (6) Costs of suit;
- (7) Such further relief as the Court deems just and proper.

**COUNT THIRTY-SIX**

**Subclass B-3 - Tortious Bad Faith**

245. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

246. The policy of insurance issued to each member of the subclass constituted a contract.

247. Each policy implicitly incorporated the covenants of good faith and fair dealing.

248. By adjusting the claims as new construction instead of reconstruction, State Farm breached the aforesaid covenants, whereby each member of the subclass has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT THIRTY-SEVEN**

**Subclass B-3 - CPDAP**

249. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

250. As to all members of the subclass, the conduct of State Farm, as set forth in detail heretofore, constituted deceptive acts and practices in the conduct of its business, trade, and commerce, and in the furnishing of services within the state of New York, in violation of NY GEN BUS § 349(a), whereby each member of the subclass has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Treble damages;

- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

### **COUNT THIRTY-EIGHT**

#### **Subclass B-3 - Prima Facie Tort**

251. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

252. By the use of new construction pricing for a loss that was a reconstruction, State Farm engaged in conduct that was malicious, intentional, and outrageous, and was designed to save State Farm money at the expense of its insureds by underpaying claims, all as set forth heretofore.

253. If the subclass members' other causes of action are not sustained, they will have no available cause of action to remedy the harm suffered as a result of State Farm's conduct.

254. If the class members' cause of action for breach of contract is sustained but their remaining causes of action are not, they will still have no available remedy for the tort damages to which they are entitled.

255. By virtue of State Farm's tortious conduct, each subclass member has been damaged.

**WHEREFORE,** Plaintiff demands judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;

- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

### **COUNT THIRTY-NINE**

#### **Class C - Breach of Contract**

256. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

257. Class C consists of all State Farm property and casualty policyholders for real property located in the State of Pennsylvania ,both individuals and business entities, who suffered a partial loss to real property as the result of a covered cause of action, and as to whom State Farm relied upon an Exactimate estimate based on new construction pricing, rather than on reconstruction pricing.

258. Each insurance policy issued to the members of Class C constitutes a contract.

259. Although each member of the class suffered a partial loss only, to be repaired through the process of reconstruction, State Farm prepared an Exactimate estimate as to each that was priced as new construction.

260. Through the aforesaid conduct, State Farm breached the contractual provisions of the respective policy of each class member, whereby each member of Class C has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;

- (4) Prejudgment interest;
- (5) Attorneys fees;
- (6) Costs of suit;
- (7) Such further relief as the Court deems just and proper.

#### **COUNT FORTY**

##### **Class C - Tortious Bad Faith**

261. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

262. The policy of insurance issued to each class member constituted a contract.

263. Each policy implicitly incorporated the covenants of good faith and fair dealing.

264. By adjusting the claims on the basis of new construction pricing despite the fact that each involved a reconstruction, State Farm breached the aforesaid covenants.

265. By virtue of State Farm's breaches of covenants, each class member has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT FORTY-ONE**

**Class C - UTPCPL**

266. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

267. As to all members of Class C, the conduct of State Farm, as forth in detail heretofore, was fraudulent and deceptive, and created a likelihood of confusion and of misunderstanding on the part of each of its insureds as to the fair and reasonable value of their claim, in violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, including 73 P.S. § 201-2(xxi), whereby each member of Class C has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Treble damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT FORTY-TWO**

**Class C - Prima Facie Tort**

268. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

269. By the use of new construction pricing for a loss that was a reconstruction, State Farm engaged in conduct that was malicious, intentional, and outrageous, and was designed to save State Farm money at the expense of its insured by underpaying his claim, all as set forth heretofore.

270. If the subclass members' other causes of action are not sustained, they will have no available cause of action to remedy the harm suffered as a result of State Farm's conduct.

271. If the subclass members' cause of action for breach of contract is sustained but their remaining causes of action are not, they will still have no available remedy for the tort damages to which they are entitled.

272. By virtue of State Farm's tortious conduct, each class member has been damaged.

**WHEREFORE**, Plaintiff demands judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT FORTY-THREE**

**Subclass C-1 - Breach of Contract**

273. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

274. Subclass C-1 is defined as those members of Class C who settled their claims on the basis of State Farm's estimate, not being cognizant of the implications of State Farm's reliance upon new construction pricing instead of reconstruction pricing.

275. Each insurance policy issued to the members of the subclass constituted a contract.

276. Although each member of the subclass B-1 suffered a partial loss only, to be repaired through the process of reconstruction, State Farm prepared an Exactimate estimate as to each that was priced as new construction.

277. Through the aforesaid conduct, State Farm breached the contractual provisions of the respective policy of each member of the subclass, whereby each has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Prejudgment interest;
- (5) Attorneys fees;
- (6) Costs of suit;
- (7) Such further relief as the Court deems just and proper.

**COUNT FORTY-FOUR**

**Subclass C-1 - Tortious Bad Faith**

278. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

279. The policy of insurance issued to each subclass member constituted a contract.



280. Each policy implicitly incorporated the covenants of good faith and fair dealing.

281. By adjusting the claims as new construction instead of reconstruction, State Farm breached the aforesaid covenants, whereby each member of the subclass has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT FORTY-FIVE**

**Subclass C-1 - UTPCPL**

282. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

283. As to all members of the subclass, the conduct of State Farm, as forth in detail heretofore, was fraudulent and deceptive, and created a likelihood of confusion and of misunderstanding on the part of each of its insureds as to the fair and reasonable value of their claim, in violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, including 73 P.S. § 201-2(xxi), whereby each member of the subclass has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Treble damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT FORTY-SIX**

**Subclass C-1 - Prima Facie Tort**

284. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

285. By the use of new construction pricing for a loss that was a reconstruction, State Farm engaged in conduct that was malicious, intentional, and outrageous, and was designed to save State Farm money at the expense of its insureds by underpaying claims, all as set forth heretofore.

286. If the subclass members' other causes of action are not sustained, they will have no available cause of action to remedy the harm suffered as a result of State Farm's conduct.

287. If the subclass members' cause of action for breach of contract is sustained but their remaining causes of action are not, they will still have no available remedy for the tort damages to which they are entitled.

288. By virtue of State Farm's tortious conduct, each subclass member has been damaged.

**WHEREFORE**, Plaintiff demands judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT FORTY-SEVEN**

**Subclass C-1 - Fraud**

289. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

290. As to each member of the subclass, State Farm made a material misrepresentation of a presently existing fact, namely, that the State Farm estimate represented a fair pricing of the cost of reconstruction of the insured' property.

291. State Farm, having intentionally used new construction pricing despite the fact that it was lower than the applicable reconstruction pricing, made the said misrepresentations with knowledge of their falsity.

292. State Farm made the aforesaid material misrepresentations with the intention that each member of the subclass rely thereupon.

293. Each member of the subclass did rely on State Farm's material misrepresentation in the settlement of the claim, in the belief that State Farm had honestly and accurately estimated the cost of the reconstruction of the property.

294. By virtue of all of the foregoing, each member of the subclass has been damaged.

**WHEREFORE**, Plaintiff demands judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT FORTY-EIGHT**

**Subclass C-2 - Breach of Contract**

295. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

296. Subclass C-2 consists of those members of Class C who settled their claims on the basis of State Farm's estimate knowing that it was underpriced because of State Farm's reliance upon new construction pricing instead of reconstruction pricing but who lacked the ability, either due to a shortage of funds or otherwise, to pursue a third party remedy, such as litigation, against State Farm.

297. Each insurance policy issued to the members of the subclass constituted a contract.

298. Although each member of the subclass suffered a partial loss only, to be repaired through the process of reconstruction, State Farm prepared an Exactimate estimate as to each that was priced as new construction.

299. Through the aforesaid conduct, State Farm breached the contractual provisions of the respective policy of each member of the subclass C-2, whereby each has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Prejudgment interest;
- (5) Attorneys fees;
- (6) Costs of suit;
- (7) Such further relief as the Court deems just and proper.

**COUNT FORTY-NINE**

**Subclass C-2 - Tortious Bad Faith**

300. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

301. The policy of insurance issued to each member of the subclass constituted a contract.

302. Each policy implicitly incorporated the covenants of good faith and fair dealing.

303. By adjusting the claims as new construction instead of reconstruction, State Farm breached the aforesaid covenants, whereby each member of the subclass has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT FIFTY**

**Subclass C-2 - UTPCPL**

304. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

305. As to all members of the subclass, the conduct of State Farm, as forth in detail heretofore, was fraudulent and deceptive, and created a likelihood of confusion and of misunderstanding on the part of each of its insureds as to the fair and reasonable value of their claim, in violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, including 73 P.S. § 201-2(xxi), whereby each member of the subclass has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;

- (4) Treble damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT FIFTY-ONE**

**Subclass C-2 - Prima Facie Tort**

306. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

307. By the use of new construction pricing for a loss that was a reconstruction, State Farm engaged in conduct that was malicious, intentional, and outrageous, and was designed to save State Farm money at the expense of its insureds by underpaying claims, all as set forth heretofore.

308. If the subclass members' other causes of action are not sustained, they will have no available cause of action to remedy the harm suffered as a result of State Farm's conduct.

309. If the subclass members' cause of action for breach of contract is sustained but their remaining causes of action are not, they will still have no available remedy for the tort damages to which they are entitled.

310. By virtue of State Farm's tortious conduct, each subclass member has been damaged.

**WHEREFORE**, Plaintiff demands judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;

- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

### **COUNT FIFTY-TWO**

#### **Subclass C-3 - Breach of Contract**

311. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

312. Subclass C-3 consists of those members of Class C who demanded appraisal of their claim as a result of State Farm's reliance upon new construction pricing instead of reconstruction pricing, and thereby sustained financial damages, including but not limited to the cost of an appraiser and an umpire.

313. Each insurance policy issued to the members of the subclass constituted a contract.

314. Although each member of the subclass suffered a partial loss only, to be repaired through the process of reconstruction, State Farm prepared an Exactimate estimate as to each member that was priced as new construction.

315. Through the aforesaid conduct, State Farm breached the contractual provisions of the respective policy of each member of the subclass, whereby each has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;



- (3) Consequential damages;
- (4) Prejudgment interest;
- (5) Attorneys fees;
- (6) Costs of suit;
- (7) Such further relief as the Court deems just and proper.

**COUNT FIFTY-THREE**

**Subclass C-3 - Tortious Bad Faith**

316. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

317. The policy of insurance issued to each member of the subclass constituted a contract.

318. Each policy implicitly incorporated the covenants of good faith and fair dealing.

319. By adjusting the claims as new construction instead of reconstruction, State Farm breached the aforesaid covenants, whereby each member of the subclass has been damaged.

**WHEREFORE,** Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT FIFTY-FOUR**

**Subclass C-3 - UTPCPL**

320. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

321. As to all members of the subclass, the conduct of State Farm, as forth in detail heretofore, was fraudulent and deceptive, and created a likelihood of confusion and of misunderstanding on the part of each of its insureds as to the fair and reasonable value of their claim, in violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, including 73 P.S. § 201-2(xxi), whereby each plaintiff has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Treble damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT FIFTY-FIVE**

**Subclass C-3 - Prima Facie Tort**

322. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

323. By the use of new construction pricing for a loss that was a reconstruction, State Farm engaged in conduct that was malicious, intentional, and outrageous, and was designed to save State Farm money at the expense of its insureds by underpaying claims, all as set forth heretofore.

324. If the subclass members' other causes of action are not sustained, they will have no available cause of action to remedy the harm suffered as a result of State Farm's conduct.

325. If the subclass members' cause of action for breach of contract is but their remaining causes of action are not sustained, they will still have no available remedy for the tort damages to which they are entitled.

326. By virtue of State Farm's tortious conduct, each subclass member has been damaged.

**WHEREFORE**, Plaintiff demands judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

XXXXXXXXXXXXXXXXXXXX

**COUNT FIFTY-SIX**

**Class D - Breach of Contract**

327. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

328. Class D consists of all State Farm property and casualty policyholders for real property located in the continental United States in states other than New Jersey, New York, and Pennsylvania (and excluding the states of Texas, California, and Florida), both individuals and business entities, who suffered a partial loss to real property as the result of a covered cause of action, and as to whom State Farm relied upon an Exactimate estimate based on new construction pricing, rather than on reconstruction pricing.

329. Each insurance policy issued to the members of Class D constituted a contract.

330. Although each member of the class suffered a partial loss only, to be repaired through the process of reconstruction, State Farm prepared an Exactimate estimate as to each that was priced as new construction.

331. Through the aforesaid conduct, State Farm breached the contractual provisions of the respective policy of each class member, whereby each member of Class B has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Prejudgment interest;
- (5) Attorneys fees;

- (6) Costs of suit;
- (7) Such further relief as the Court deems just and proper.

**COUNT FIFTY-SEVEN**

**Class D - Tortious Bad Faith**

332. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

333. The policy of insurance issued to each class member constituted a contract.

334. Each policy implicitly incorporated the covenants of good faith and fair dealing.

335. By adjusting the claims on the basis of new construction pricing despite the fact that each involved a reconstruction, State Farm breached the aforesaid covenants.

336. By virtue of State Farm's breaches of covenants, each class member has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT FIFTY-EIGHT**

**Class D - Deceptive Practices**

337. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

338. As to all members of the class, the conduct of State Farm, as forth in detail heretofore, was fraudulent and deceptive, and in violation of the applicable consumer protection statutes of each state in which members of the class are located, whereby each class member has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Treble damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT FIFTY-NINE**

**Class D - Prima Facie Tort**

339. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

340. By the use of new construction pricing for a loss that was a reconstruction, State Farm engaged in conduct that was malicious, intentional, and outrageous, and was designed to save State Farm money at the expense of its insured by underpaying his claim, all as set forth heretofore.

341. If the class members' other causes of action are not sustained, Plaintiffs will have no available cause of action to remedy the harm suffered as a result of State Farm's conduct.

342. If the class members' cause of action for breach of contract is sustained but their remaining causes of action are not, they will still have no available remedy for the tort damages to which they are entitled.

343. By virtue of State Farm's tortious conduct, each class member has been damaged.

**WHEREFORE**, Plaintiff demands judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT SIXTY**

**Subclass D-1 - Breach of Contract**

344. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.



345. Subclass D-1 is defined as those members of Class D who settled their claims on the basis of State Farm's estimate, not being cognizant of the implications of State Farm's reliance upon new construction pricing instead of reconstruction pricing.

346. Each insurance policy issued to the members of the subclass constituted a contract.

347. Although each member of the subclass suffered a partial loss only, to be repaired through the process of reconstruction, State Farm prepared an Exactimate estimate as to each that was priced as new construction.

348. Through the aforesaid conduct, State Farm breached the contractual provisions of the respective policy of each member of the subclass, whereby each has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Prejudgment interest;
- (5) Attorneys fees;
- (6) Costs of suit;
- (7) Such further relief as the Court deems just and proper.

**COUNT SIXTY-ONE**

**Subclass D-1 - Tortious Bad Faith**

349. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

350. The policy of insurance issued to each subclass member constituted a contract.

351. Each policy implicitly incorporated the covenants of good faith and fair dealing.

352. By adjusting the claims as new construction instead of reconstruction, State Farm breached the aforesaid covenants, whereby each subclass member has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT SIXTY-TWO**

**Subclass D-1 - Deceptive Practices**

353. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

354. As to each member of the subclass, the conduct of State Farm was fraudulent and deceptive, and in violation of the applicable consumer protection statutes of each state in which members of the class are located, whereby each subclass member has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;

- (3) Consequential damages;
- (4) Treble damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT SIXTY-THREE**

**Subclass D-1 - Prima Facie Tort**

355. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

356. By the use of new construction pricing for a loss that was a reconstruction, State Farm engaged in conduct that was malicious, intentional, and outrageous, and was designed to save State Farm money at the expense of its insureds by underpaying claims, all as set forth heretofore.

357. If the subclass members' other causes of action are not sustained, they will have no available cause of action to remedy the harm suffered as a result of State Farm's conduct.

358. If the subclass members' cause of action for breach of contract is sustained but their remaining causes of action are not, they will still have no available remedy for the tort damages to which they are entitled.

359. By virtue of State Farm's tortious conduct, each subclass member has been damaged.

**WHEREFORE**, Plaintiff demands judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;

- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

### **COUNT SIXTY-FOUR**

#### **Subclass D-1 - Fraud**

360. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

361. As to each member of the subclass, State Farm made a material misrepresentation of a presently existing fact, namely, that the State Farm estimate represented a fair pricing of the cost of reconstruction of the insured' property.

362. State Farm, having intentionally used new construction pricing despite the fact that it was lower than the applicable reconstruction pricing, made the said misrepresentations with knowledge of their falsity.

363. State Farm made the aforesaid material misrepresentations with the intention that each member of the subclass rely thereupon.

364. Each member of the subclass did rely on State Farm's material misrepresentation in the settlement of the claim, in the belief that State Farm had honestly and accurately estimated the cost of the reconstruction of the property.

365. By virtue of all of the foregoing, each member of the subclass has been damaged.

**WHEREFORE**, Plaintiff demands judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT SIXTY-FIVE**

**Subclass D-2 - Breach of Contract**

366. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

367. Subclass D-2 consists of those members of Class D who settled their claims on the basis of State Farm's estimate knowing that it was underpriced because of State Farm's reliance upon new construction pricing instead of reconstruction pricing but who lacked the ability, either due to a shortage of funds or otherwise, to pursue a third party remedy, such as litigation, against State Farm.

368. Each insurance policy issued to the members of the subclass constituted a contract.

369. Although each member of the subclass suffered a partial loss only, to be repaired through the process of reconstruction, State Farm prepared an Exactimate estimate as to each that was priced as new construction.

370. Through the aforesaid conduct, State Farm breached the contractual provisions of the respective policy of each member of the subclass, whereby each has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Prejudgment interest;
- (5) Attorneys fees;
- (6) Costs of suit;
- (7) Such further relief as the Court deems just and proper.

**COUNT SIXTY-SIX**

**Subclass D-2 - Tortious Bad Faith**

371. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

372. The policy of insurance issued to each member of the subclass constituted a contract.

373. Each policy implicitly incorporated the covenants of good faith and fair dealing.

374. By adjusting the claims as new construction instead of reconstruction, State Farm breached the aforesaid covenants, whereby each member of the subclass has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;

- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT SIXTY-SEVEN**

**Subclass D-2 - Deceptive Practices**

375. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

376. As to each member of the subclass, the conduct of State Farm was fraudulent and deceptive, and in violation of the applicable consumer protection statutes of each state in which members of the class are located, whereby each plaintiff has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Treble damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT SIXTY-EIGHT**

**Subclass D-2 - Prima Facie Tort**

377. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

378. By the use of new construction pricing for a loss that was a reconstruction, State Farm engaged in conduct that was malicious, intentional, and outrageous, and was designed to save State Farm money at the expense of its insureds by underpaying claims, all as set forth heretofore.

379. If the subclass members' other causes of action are not sustained, they will have no available cause of action to remedy the harm suffered as a result of State Farm's conduct.

380. If the class members' cause of action for breach of contract is sustained but their remaining causes of action are not, they will still have no available remedy for the tort damages to which they are entitled.

381. By virtue of State Farm's tortious conduct, each subclass member has been damaged.

**WHEREFORE**, Plaintiff demands judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.



**COUNT SIXTY-NINE**

**Subclass D-3 - Breach of Contract**

382. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

383. Subclass D-3 consists of those members of Class D who demanded appraisal of their claim as a result of State Farm's reliance upon new construction pricing instead of reconstruction pricing, and thereby sustained financial damages, including but not limited to the cost of an appraiser and an umpire.

384. Each insurance policy issued to the members of the subclass constituted a contract.

385. Although each member of the subclass suffered a partial loss only, to be repaired through the process of reconstruction, State Farm prepared an Exactimate estimate as to each that was priced as new construction.

386. Through the aforesaid conduct, State Farm breached the contractual provisions of the respective policy of each member of the subclass, whereby each has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Prejudgment interest;
- (5) Attorneys fees;
- (6) Costs of suit;
- (7) Such further relief as the Court deems just and proper.

**COUNT SEVENTY**

**Subclass D-3 - Tortious Bad Faith**

387. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

388. The policy of insurance issued to each member of the subclass constituted a contract.

389. Each policy implicitly incorporated the covenants of good faith and fair dealing.

390. By adjusting the claims on the basis of new construction instead of reconstruction, State Farm breached the aforesaid covenants, whereby each subclass member has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT SEVENTY-ONE**

**Subclass D-3 - Deceptive Practices**

391. The allegations of all preceding paragraphs of this Complaint are hereby realleged and incorporated as though fully set forth herein.

392. As to each member of the subclass, the conduct of State Farm was fraudulent and deceptive, and in violation of the applicable consumer protection statutes of each state in which members of the class are located, whereby each subclass member has been damaged.

**WHEREFORE**, Plaintiffs demand judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Treble damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**COUNT SEVENTY-TWO**

**Subclass D-3 - Prima Facie Tort**

393. The allegations of each preceding paragraph of this Complaint are hereby realleged and incorporated as though fully set forth herein.

394. By the use of new construction pricing for a loss that was a reconstruction, State Farm engaged in conduct that was malicious, intentional, and outrageous, and was designed to save State Farm money at the expense of its insureds by underpaying claims, all as set forth heretofore.

395. If the subclass members' other causes of action are not sustained, they will have no available cause of action to remedy the harm suffered as a result of State Farm's conduct.

396. If the subclass members' cause of action for breach of contract is sustained but their remaining causes of action are not, they will still have no available remedy for the tort damages to which they are entitled.

397. By virtue of State Farm's tortious conduct, each class member has been damaged.

**WHEREFORE**, Plaintiff demands judgment against State Farm for the following relief:

- (1) Such injunctive and declaratory relief as may be appropriate;
- (2) Compensatory damages;
- (3) Consequential damages;
- (4) Punitive damages;
- (5) Prejudgment interest;
- (6) Attorneys fees;
- (7) Costs of suit;
- (8) Such further relief as the Court deems just and proper.

**JURY DEMAND**

The plaintiffs hereby demand a trial by jury as to all issues asserted in the pleadings so triable as of right.

/s/ Jeffrey A. Bronster  
JEFFREY A. BRONSTER, ESQ.  
Attorney for the Plaintiff

Dated: February 4, 2021

**CERTIFICATION PURSUANT TO R. 4:5-1(b)(2) and (b)(3)**

I certify to the best of my knowledge and belief that the subject matter of this Complaint is not the subject of any other pending or contemplated lawsuit or proceeding; that no other persons should be named as parties hereto; and that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b). I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing is wilfully false I am subject to punishment.

/s/ Jeffrey A. Bronster  
JEFFREY A. BRONSTER

DATED: February 4, 2021

## Civil Case Information Statement

### Case Details: BERGEN | Civil Part Docket# L-000794-21

**Case Caption:** HAN PAUL VS STATE FARM FIRE & CA  
SUALTY CO

**Case Initiation Date:** 02/04/2021

**Attorney Name:** JEFFREY A BRONSTER

**Firm Name:** JEFFREY A. BRONSTER ESQ

**Address:** 17 WENDELL PLACE

FAIRVIEW NJ 07022

**Phone:** 2019452566

**Name of Party:** PLAINTIFF : Han, Paul

**Name of Defendant's Primary Insurance Company**  
(if known): Unknown

**Case Type:** CONTRACT/COMMERCIAL TRANSACTION

**Document Type:** Complaint with Jury Demand

**Jury Demand:** YES - 6 JURORS

**Is this a professional malpractice case?** NO

**Related cases pending:** NO

**If yes, list docket numbers:**

**Do you anticipate adding any parties (arising out of same  
transaction or occurrence)?** NO

**Are sexual abuse claims alleged by: Paul Han?** NO

### THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

**Do parties have a current, past, or recurrent relationship?** YES

**If yes, is that relationship:** Business

**Does the statute governing this case provide for payment of fees by the losing party?** NO

**Use this space to alert the court to any special case characteristics that may warrant individual  
management or accelerated disposition:**

**Do you or your client need any disability accommodations?** NO

**If yes, please identify the requested accommodation:**

**Will an interpreter be needed?** NO

**If yes, for what language:**

**Please check off each applicable category: Putative Class Action?** YES **Title 59?** NO **Consumer Fraud?** YES

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

02/04/2021

Dated

/s/ JEFFREY A BRONSTER

Signed

BERGEN COUNTY COURTHOUSE  
SUPERIOR COURT LAW DIV  
BERGEN COUNTY JUSTICE CTR RM 415  
HACKENSACK NJ 07601-7680

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (201) 221-0700  
COURT HOURS 8:30 AM - 4:30 PM

DATE: FEBRUARY 04, 2021  
RE: HAN PAUL VS STATE FARM FIRE & CA SUALTY CO  
DOCKET: BER L -000794 21

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 2.

DISCOVERY IS 300 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS  
FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON LISA PEREZ-FRISCIA

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 003  
AT: (201) 527-2600.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A  
CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.  
PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE  
WITH R.4:5A-2.

ATTENTION:

ATT: JEFFREY A. BRONSTER  
JEFFREY A. BRONSTER ESQ  
17 WENDELL PLACE  
FAIRVIEW NJ 07022

ECOURTS

**SUPERIOR COURT OF NEW JERSEY - eCOURTS CIVIL LAW**

The following clerk notice is being sent from eCourts:

Plaintiff Name: PAUL HAN  
Defendant Name: STATE FARM FIRE & CA SUALTY CO .  
Case Caption: HAN PAUL VS STATE FARM FIRE & CA SUALTY CO  
Case Number: BER L 000794-21  
Docket Text: **CLERK NOTICE:** re: Complaint LCV2021270957 -The data entered in eCourts (data) does not match the information contained in the document(s). In order to correct data, a motion must be made pursuant to R. 1:5-6.  
Transaction ID: LCV2021275375

**Notice has been electronically mailed to:**

Plaintiff Attorney	JEFFREY A BRONSTER	JBRONSTER@BRONSTERLAW.COM TABRAMO@BRONSTERLAW.COM
--------------------	--------------------	--

**Notice was not electronically mailed to:**

Defendant	STATE FARM FIRE & CA SUALTY CO .	00000
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Login to eCourts to view the Case Jacket. You will need a valid user ID (Bar ID) to view the submitted documents.

For questions, please contact the Superior Court of New Jersey Civil Division in county of venue.

This communication is for notification purposes only.

This email was sent from a notification-only address that cannot accept incoming mail. Please do not reply to this message.



## EXHIBIT 2

## Case Summary

**Case Number:** BER L-000794-21**Case Caption:** Han Paul Vs State Farm Fire & Ca Sualty Co**Court:** Civil Part**Venue:** Bergen**Case Initiation Date:** 02/04/2021**Case Type:** Contract/Commercial Transaction**Case Status:** Active**Jury Demand:** 6 Jurors**Case Track:** 2**Judge:** Lisa Perez-Friscia**Team:** 3**Original Discovery End Date:****Current Discovery End Date:****# of DED Extensions:** 0**Original Arbitration Date:****Current Arbitration Date:****# of Arb Adjournments:** 0**Original Trial Date:****Current Trial Date:****# of Trial Date Adjournments:** 0**Disposition Date:****Case Disposition:** Open**Statewide Lien:**

### Plaintiffs

Paul Han

**Party Description:** Individual**Attorney Name:** Jeffrey A Bronster**Address Line 1:****Address Line 2:****Attorney Bar ID:** 049411988**City:****State:** NJ**Zip:** 00000**Phone:****Attorney Email:** JBRONSTER@BRONSTERLAW.COM

### Defendants

State Farm Fire &amp; Casualty Co.

**Party Description:** Business**Attorney Name:****Address Line 1:****Address Line 2:****Attorney Bar ID:****City:****State:****Zip:** 00000**Phone:****Attorney Email:**

### Case Actions

Filed Date	Docket Text	Transaction ID	Entry Date
02/04/2021	Complaint with Jury Demand for BER-L-000794-21 submitted by BRONSTER, JEFFREY A, JEFFREY A. BRONSTER ESQ on behalf of PAUL HAN against STATE FARM FIRE & CASUALTY CO.	LCV2021270957	02/04/2021
02/05/2021	TRACK ASSIGNMENT Notice submitted by Case Management	LCV2021274068	02/05/2021
02/05/2021	CLERK NOTICE: re: Complaint [LCV2021270957] -The data entered in eCourts (data) does not match the information contained in the document(s). In order to correct data, a motion must be made pursuant to R. 1:5-6.	LCV2021275375	02/05/2021

**WINDELS MARX LANE & MITTENDORF, LLP**

David F. Swerdlow, Esq. (dswerdlow@windelsmarx.com)  
Amanda A. Meehan, Esq. (ameehan@windelsmarx.com)  
120 Albany Street Plaza, 6th Floor  
New Brunswick, NJ 08901  
(732) 448-7600

**RILEY SAFER HOLMES & CANCELILA LLP**

A limited liability partnership formed in the State of Illinois  
Sandra L. Musumeci (smusumeci@rshc-law.com)  
Brian J. Neff (bneff@rshc-law.com)  
136 Madison Avenue, 6<sup>th</sup> Floor  
New York, New York 10016  
(212) 660-1000

Attorneys for Defendant  
State Farm Fire and Casualty Company

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

PAUL HAN, individually and on behalf of a class of similarly situated persons,  Plaintiff,  vs.  STATE FARM FIRE AND CASUALTY COMPANY,  Defendant.	Civil Action No.          <b>CERTIFICATION OF SERVICE</b>
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David F. Swerdlow, Esq., hereby certifies as follows:

1. I am an attorney licensed to practice law in the State of New Jersey and a partner with the law firm of Windels Marx Lane & Mittendorf, LLP, attorneys for defendant State Farm Fire and Casualty Company (“State Farm”).
2. On this date, I caused the original of State Farm’s Notice of Removal and Civil Cover Sheet to be filed with the Clerk, United States District Court of New Jersey, by electronic filing.

3. On this date, I also caused a copy of the above-referenced documents to be served by email on plaintiff's counsel Jeffrey A. Bronster, Esq. (jbronster@bronsterlaw.com) and by electronic filing.

4. On this date, I also caused a copy of the Notice of Removal and the Certification of Service to be electronically filed with the Clerk of the Superior Court of New Jersey, Bergen County.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/David F. Swerdlow  
David F. Swerdlow

Dated: March 5, 2021

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This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims State Farm Uses 'New Construction' Numbers to Generate Lower Cost Estimates for Property Remodeling Jobs](#)

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