

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS**

MARK HALE, TODD SHADLE, and	)	
LAURIE LOGER, on behalf of themselves	)	
and all others similarly situated,	)	
	)	
	)	
Plaintiffs,	)	Case No. 3:12-cv-00660-DRH-SCW
	)	
v.	)	Chief Judge David R. Herndon
	)	
STATE FARM MUTUAL AUTOMOBILE	)	JURY TRIAL DEMANDED
INSURANCE COMPANY, ED MURNANE	)	
and WILLIAM G. SHEPHERD,	)	
	)	
Defendants.	)	

**STATE FARM’S ANSWER AND DEFENSES TO  
PLAINTIFFS’ SECOND AMENDED CLASS ACTION COMPLAINT**

Defendant State Farm Mutual Automobile Insurance Company (“State Farm”) hereby answers Plaintiffs’ Second Amended Class Action Complaint (“Complaint”)<sup>1</sup> as follows:

1. From 2003 to the present, State Farm, Murnane and Shepherd (collectively, “Defendants”) created and conducted the RICO enterprise described below to enable State Farm to evade payment of a \$1.05 billion judgment affirmed in favor of approximately 4.7 million State Farm policyholders by the Illinois Appellate Court.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

2. Plaintiffs bring this class action for damages against Defendants for violation of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1961 et seq., in particular, §§ 1962(c), (d); and 1964 for perpetrating a scheme through an enterprise specifically designed to defraud Plaintiffs and Class out of a \$1.05 billion judgment.

**ANSWER:** State Farm admits that the Complaint attempts to plead a RICO violation. State

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<sup>1</sup> Factual assertions in the headings found in the Complaint are not proper allegations and, thus, do not require a response. Accordingly, State Farm has not included the myriad headings from the Complaint in this Answer. To the extent any response to such assertions is required, they are denied.

Farm denies the remaining allegations of this paragraph of the Complaint.

3. Plaintiffs were each named plaintiffs, class representatives and class members in *Avery v. State Farm Mutual Automobile Insurance Company* (“*Avery Action*”), a class action litigated in the Illinois state court system. The *Avery Action* was certified as a class action, tried to jury verdict on a breach of contract claim, and tried to the Court on a claim under the Illinois Consumer Fraud Act (“ICFA”), resulting in a judgment of \$1.18 billion.

**ANSWER:** State Farm admits that, at various times, Mark Hale, Todd Shadle, and Laurie Loger were named Plaintiffs for the proposed class in *Avery*, but denies that any of the Plaintiffs were proper class representatives or members of any proper class in *Avery*. State Farm admits the remaining allegations of this paragraph of the Complaint.

4. The Illinois Appellate Court upheld a \$1.05 billion judgment, sustaining the compensatory and punitive damages, and disallowing disgorgement damages as duplicative. *See Avery v. State Farm Mut. Auto. Ins. Co.*, 321 Ill. App. 3d 269, 275, 292 (Ill. App. Ct. 5th Dist. 2001). (A true copy of the *Avery* Appellate Court decision is attached hereto as Exhibit “A”.)

**ANSWER:** State Farm admits the allegations of this paragraph of the Complaint.

5. On October 2, 2002, the Illinois Supreme Court accepted State Farm’s appeal. The appeal was fully-briefed, argued and submitted as of May 2003, yet the matter remained under submission without a decision until August 18, 2005.

**ANSWER:** State Farm admits the allegations of this paragraph of the Complaint.

6. From the fall of 2003 until November 2004, Trial Judge Lloyd Karmeier (“Karmeier”) and Appellate Judge Gordon Maag waged a judicial campaign for a vacant seat on the Illinois Supreme Court, ultimately resulting in Karmeier’s election. In January 2005, having received reliable information that State Farm had exerted financial and political influence to achieve Karmeier’s election, the *Avery* plaintiffs moved to disqualify him from participating in the appeal of the *Avery Action*.

**ANSWER:** State Farm admits that in 2003-04 there was a contested election between Judge, now Justice, Lloyd Karmeier and Justice Gordon Maag for a seat on the Illinois Supreme Court. State Farm also admits that in January 2005, the *Avery* plaintiffs moved to disqualify Justice Karmeier by way of a “Conditional Motion for Non-Participation.” State Farm denies the

remaining allegations of this paragraph of the Complaint.

7. On or about January 31, 2005, State Farm filed its response to the disqualification motion, grossly misrepresenting the magnitude of State Farm's financial support (and the degree of participation by its executives, surrogates, lawyers and employees) of Karameier's campaign.

**ANSWER:** State Farm admits that it opposed the *Avery* plaintiffs' motion to disqualify Justice Karameier, and that it filed its Opposition to Plaintiffs-Appellees' Conditional Motion for Non-Participation on January 31, 2005. State Farm denies the remaining allegations of this paragraph of the Complaint.

8. Plaintiffs' motion was denied, and on August 18, 2005, with now-Justice Karameier participating in the Court's deliberations and casting his vote in State Farm's favor, the Illinois Supreme Court issued a decision overturning the \$1.05 billion judgment. *See Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill.2d 100, 835 N.E.2d 801 (Ill. 2005). (A true copy of this decision is attached hereto as Exhibit "B".)

**ANSWER:** State Farm admits that the *Avery* plaintiffs' applications to disqualify Justice Karameier were denied and that on August 18, 2005, the Illinois Supreme Court issued its decision overturning the judgment against State Farm. State Farm denies the remaining allegations of this paragraph of the Complaint.

9. In December 2010, spurred in part by a recent United States Supreme Court decision vacating a West Virginia Supreme Court ruling in a case which featured similar facts, *i.e.*, involving a party's political and financial influence to elect a justice whose vote it sought for its appeal, Plaintiffs' counsel launched an investigation into State Farm's covert involvement in the Karameier campaign. The investigation, led by a retired FBI Special Agent, uncovered evidence that to gain reversal of the \$1.05 billion judgment in the *Avery Action*, State Farm – acting through Murnane, Shepherd and the Illinois Civil Justice League ("ICJL") – recruited Karameier, directed his campaign, had developed a vast network of contributors and funneled as much as \$4 million to the campaign. Then, after achieving Karameier's election, State Farm deliberately concealed all of this from the Illinois Supreme Court while its appeal was pending.

**ANSWER:** State Farm is without knowledge, information or belief sufficient to admit or deny allegations concerning the "investigation" Plaintiffs' counsel purportedly undertook that is

referred to in this paragraph of the Complaint. State Farm denies the remaining allegations of this paragraph of the Complaint.

10. On September 9, 2011, based on information uncovered in the Reece investigation, the *Avery* plaintiffs petitioned the Illinois Supreme Court to vacate its decision overturning the \$1.05 billion judgment. Responding on September 19, 2011, State Farm again deliberately misrepresented its role in directing and financing Karmeier's campaign. On November 17, 2011, the Illinois Supreme Court denied Plaintiffs' petition, without comment.

**ANSWER:** State Farm admits that on September 9, 2011, a number of the *Avery* plaintiffs filed in the Illinois Supreme Court a petition to recall mandate and vacate the *Avery* judgment, and that the petition was denied on November 17, 2011. Further answering, State Farm states that on November 17, 2011, the Illinois Supreme Court also entered Orders allowing State Farm's motions to strike the affidavits of Daniel L. Reece and Douglas B. Wojcieszak, which certain *Avery* plaintiffs had filed in support of their petition to recall mandate and vacate judgment. State Farm further states that these rulings reflect that neither Justice Karmeier nor Justice Thomas took any part in these November 17, 2011 rulings in *Avery*. State Farm denies the remaining allegations of this paragraph of the Complaint.

11. Reece's investigation had revealed, among other things, that, having been ordered on April 5, 2001 by the Appellate Court to pay a \$1.05 billion judgment to the *Avery* class, and having succeeded in persuading the Illinois Supreme Court to accept its appeal, State Farm had next developed an elaborate plan to obtain reversal of the judgment. The initial component of the plan was to recruit a candidate for the open Fifth District seat on the Illinois Supreme Court for the November 2004 election who would support State Farm once its appeal came before the Court for disposition. Of course, there was no guarantee for State Farm that the appeal would not be decided *before* the November 2004 election, but the risk – a \$2 to \$4 million investment for a possible \$1.05 billion return – was sufficiently minimal to make it a worthwhile gamble.

**ANSWER:** State Farm admits that its appeal to the Illinois Supreme Court, which was fully-briefed, argued and submitted as of May 2003, could have been decided before November 2004. State Farm denies the remaining allegations of this paragraph of the Complaint.

12. Defendants' scheme was developed and implemented in two distinct but related phases. In the first phase, State Farm sought to recruit, finance, direct, and elect a candidate to the Illinois Supreme Court who, once elected, would vote to overturn the \$1.05 billion judgment. As Plaintiffs describe below, Defendants ultimately succeeded in achieving this objective. Nine months after his election, Karmeier voted in favor of State Farm to overturn the \$1.05 billion judgment of the Appellate Court.

**ANSWER:** State Farm admits that Justice Karmeier joined the Illinois Supreme Court's opinion in favor of overturning the *Avery* judgment, but State Farm is without knowledge, information or belief sufficient to admit or deny allegations concerning the deliberations of the Illinois Supreme Court. State Farm denies the remaining allegations of this paragraph of the Complaint.

13. Once the initial phase of the scheme had succeeded, the second phase featured two spirals of affirmative fraudulent activity, each furthered by use of the U.S. mails: the 2005 and 2011 written misrepresentations to the Illinois Supreme Court. Specifically, this phase consisted of: (a) a continuing concealment of these facts to permit Karmeier to participate in the deliberations and cast his vote to overturn the judgment in 2005 (this was accomplished, in part, by State Farm's January 31, 2005 filing), and (b) withholding information from the Illinois Supreme Court that would have conceivably led it to vacate the decision in 2011 (this was accomplished, in part, by State Farm's September 19, 2011 filing). Again, both filings were made through the U.S. mail, having been mailed to the Clerk of the Illinois Supreme Court and to Plaintiffs' counsel in several states, including Illinois, Louisiana, Mississippi and Tennessee.

**ANSWER:** State Farm states that its January 31, 2005 and September 19, 2011 filings with the Illinois Supreme Court, as well the certificates of service accompanying those filings and reflecting the manner of service, speak for themselves. State Farm denies the remaining allegations of this paragraph of the Complaint.

14. From its inception, Plaintiffs and other Class members in the *Avery Action* were the targets of and ultimate victims of the racketeering acts and the RICO enterprise – stripped of hundreds or even thousands of dollars each, seized of a class-wide judgment totaling \$1.05 billion which compensated them for their losses – as a proximate result of Defendants' actions and the actions of the Enterprise participants.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

15. In both the 2005 and 2011 filings, State Farm continued to hide and conceal its role in Karameier's campaign, and deliberately misled the Court by omitting and concealing material facts regarding State Farm's role in Karameier's campaign, which it directed through Shepherd, Murnane, the ICJL and Citizens for Karameier, including: (a) recruiting Karameier to be a candidate; (b) selecting Murnane to direct Karameier's campaign; (c) creating Karameier's judicial campaign contribution network; and (d) funding Karameier's campaign.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

16. To carry out and conceal this elaborate and covert scheme, Defendants created and conducted a continuing pattern and practice of activity through an association-in-fact Enterprise consisting of, among others, the following: Shepherd; Murnane; Murnane's non-profit organization, the ICJL; the Shepherd-led ICJL Executive Committee ("Executive Committee"); Citizens for Karameier (the campaign committee of Karameier); JUSTPAC (the ICJL's political action committee); and the United States Chamber of Commerce ("US Chamber").

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

17. The ICJL and Executive Committee, through Murnane and Shepherd, respectively, aided by Citizens for Karameier, functioned collectively as State Farm's vehicle to: (a) recruit Karameier as a candidate, (b) direct Karameier's campaign, (c) lend credibility to that campaign via endorsement, and (d) assure that Karameier's campaign was well-funded. Campaign finance disclosures show that State Farm secretly funneled to Karameier's campaign as much as \$4 million (over 80%) of Karameier's total \$4.8 million campaign contributions. Led by Murnane and Shepherd, the ICJL and its Executive Committee were the "glue" that held together the many pieces of State Farm's judicial campaign contribution network.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

18. The utilization of the U.S. mail throughout every stage of Defendants' scheme – to solicit, receive and direct contributions, to conduct conferences and disseminate communications and campaign strategies, and to conceal the extent of State Farm's role in Karameier's campaign – was essential to the conduct of this Enterprise.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

19. Various Enterprise participants and co-conspirators also used electronic mail to carry out the initial phase of Defendants' scheme throughout 2003-2004 to communicate details regarding the direction, management and financing of the campaign to fellow Enterprise participants.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

20. As the following paragraphs illustrate, the motivation for this seven-year-long cover-up is both plausible and demonstrable. State Farm's misrepresentations and deception directed toward the Illinois Supreme Court by its mailed court-filings, and the continuing use of the mails by Defendants and Enterprise participants to carry out the scheme (to evade payment of the \$1.05 billion judgment) constitutes a pattern and practice of knowing and deceptive conduct employed to effectuate and then to conceal State Farm's extraordinary support of Karmeier.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

21. Mark Hale is a citizen of the State of New York. Todd Shadle is a citizen of the State of Texas. Laurie Loger is a citizen of the State of Illinois. Plaintiffs are natural persons who were auto policyholders of State Farm, and named Plaintiffs and members of the Class of policyholders certified in the *Avery Action*.

**ANSWER:** State Farm admits that, at various times, Mark Hale, Todd Shadle, and Laurie Loger were insured under State Farm auto policies and, at various times, were named plaintiffs for the proposed class in *Avery*. State Farm is without knowledge, information or belief sufficient to admit or deny the remaining allegations of this paragraph of the Complaint.

22. State Farm Mutual Automobile Insurance Company is a mutual non-stock company, organized and existing under the laws of the State of Illinois, and having its principal office at One State Farm Plaza, Bloomington, Illinois 61710.

**ANSWER:** State Farm admits the allegations of this paragraph of the Complaint.

23. William G. Shepherd is, upon information and belief, a citizen and resident of the State of Illinois, with his principal office at One State Farm Plaza, Corporate Law A3, Bloomington, Illinois 61710-0001. At all times relevant to this action, Shepherd was employed by State Farm. On information and belief, Shepherd violated 18 U.S.C. §§ 1962(c) and (d) by actively participating in State Farm's scheme to recruit, finance and elect Karmeier to the Illinois Supreme Court and fraudulently conceal State Farm's true role in Karmeier's campaign from the Illinois Supreme Court, which had the intended result of defrauding Plaintiffs and the Class and causing damage to their business and property.

**ANSWER:** State Farm admits the allegations of the first two sentences of this paragraph of the Complaint. State Farm denies the remaining allegations of this paragraph of the Complaint.

24. Ed Murnane is, upon information and belief, a citizen and resident of the State of Illinois, residing at 436 S. Belmont Avenue, Arlington Heights, Illinois 60005 in Cook County, and having his principal office at 330 N. Wabash Street, Suite 2800, Chicago, Illinois 60611. At all times relevant to this action, Murnane was President of the Illinois Civil Justice League. On information and belief, Murnane violated 18 U.S.C. §§ 1962(c) and (d) by actively participating in the association-in-fact conducted by State Farm to recruit, finance and elect Karmeier to the Illinois Supreme Court and fraudulently conceal State Farm's true role in Karmeier's campaign from that Court, which had the intended result of defrauding Plaintiffs and the Class and causing damage to their business and property.

**ANSWER:** State Farm is without knowledge, information or belief sufficient to admit or deny the allegations contained in the first two sentences of this paragraph of the Complaint regarding Mr. Murnane. State Farm denies the remaining allegations of this paragraph of the Complaint.

25. Although not named as a party herein, the ICJL is a 501(c)(6) not-for-profit corporation, incorporated under the laws of the State of Illinois, with its principal place of business in Arlington Heights, Illinois. On information and belief, the ICJL violated 18 U.S.C. §§ 1962(c) and (d) by actively participating in State Farm's scheme to recruit, finance and elect Karmeier and fraudulently conceal State Farm's role in Karmeier's campaign from the Illinois Supreme Court, which had the intended result of defrauding Plaintiffs and the Class and causing them damage to their business and property.

**ANSWER:** State Farm is without knowledge, information or belief sufficient to admit or deny the allegations contained in the first sentence of this paragraph of the Complaint regarding the ICJL. State Farm denies the remaining allegations of this paragraph of the Complaint.

26. Although not named as a party herein, the US Chamber is a non-profit corporation incorporated under the laws of the District of Columbia with its principal place of business located at 1615 H High Street, NW, Washington, D.C. 20062-2000. For purposes of Plaintiffs' claims under 18 U.S.C. § 1962(c) and (d), the US Chamber participated in the enterprise through which Defendants conducted their racketeering activity.

**ANSWER:** State Farm admits that the U.S. Chamber of Commerce is located at 1615 H Street, NW, Washington, DC 20062-2000. State Farm is without knowledge, information or belief sufficient to admit or deny the remaining allegations contained in the first sentence of this paragraph of the Complaint. State Farm denies the remaining allegations of this paragraph of the

Complaint.

27. Various other persons, firms, organizations, corporations and business entities, some unknown and others known, have participated as co-conspirators in the violations and conduct alleged herein and performed acts in furtherance of the conspiracy described herein.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

28. Defendants and their above-named co-conspirators conducted or actively participated in the conduct of an enterprise through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c). Alternatively, Defendants, co-conspirators and Enterprise participants identified herein, through an agreement to commit two or more predicate acts, conspired to conduct or participate in the conduct of an enterprise through a pattern of racketeering activity in violation of 18 U.S.C. §1962(d). The actions of Defendants, co-conspirators and Enterprise participants were in furtherance of the Enterprise and in violation of 18 U.S.C. §1962(d).

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

29. The Enterprise is an association-in-fact of State Farm executives and employees, including Shepherd, as well as Murnane, Citizens for Karmeier, political operatives, a political action committee, political organizations, an Executive Committee of one such organization which wields significant political influence in Illinois, a political campaign committee, insurance and business lobbyists and the US Chamber. The Enterprise is distinct from, albeit conducted by, State Farm, through Shepherd, Murnane and the ICJL, and has an ongoing existence. Specifically, participants in the Enterprise include:

- William G. Shepherd, a State Farm corporate lawyer and lobbyist. Shepherd helped found the ICJL, hired Ed Murnane as the ICJL's President, and is a member of the ICJL's "Executive Committee."
- Ed Murnane is the President of the ICJL and treasurer of JUSTPAC. He was hired by Shepherd and co-founding ICJL-member and Executive Committee member, Karen Melchert. Murnane recruited Karmeier as a candidate and directed all phases of the Karmeier campaign.
- The Illinois Civil Justice League describes itself as "a coalition of Illinois citizens, small and large businesses, associations, professional societies, not-for-profit organizations and local governments that have joined together to work for fairness in the Illinois civil justice system." Through Murnane and Shepherd, the ICJL played

an essential and vital role in Karmeier's campaign as the conduit between State Farm and Karmeier.

- The ICJL Executive Committee vetted Karmeier as a candidate, then endorsed Karmeier's candidacy, and was the ICJL's governing committee during the 2004 campaign.
- JUSTPAC is the ICJL's PAC. It contributed \$1,191,453 directly to Judge Karmeier's campaign. 90% of all contributions made to JUSTPAC in 2004 went to Karmeier's campaign. Dwight Kay, Karmeier's finance chair, equated a contribution to JUSTPAC with a contribution to Citizens for Karmeier.
- Citizens for Karmeier is the official political committee for Karmeier and the recipient of most of the cash campaign contributions.
- US Chamber is a non-profit corporation incorporated under the laws of the District of Columbia, targeted the Karmeier-Maag race in 2004 and contributed millions of dollars to elect Karmeier.
- Ed Rust is State Farm's CEO and played an important role in the US Chamber committee that targeted the Karmeier-Maag race in 2004 and steered millions of dollars to Illinois to help elect Karmeier.
- Al Adomite was hired by Murnane as consultant to Karmeier's campaign, paid by the campaign. Currently, he is Vice President and Director of Government Relations. Adomite confirmed Murnane's control over Karmeier's campaign and that Murnane had provided a substantial portion of the funding for the campaign -- \$1.19 million -- through JUSTPAC.
- Karen Melchert is Director of State Government Relations for CNA Insurance Companies ("CNA"). Along with Shepherd, she is a founding member of the ICJL Executive Committee, and partly responsible for hiring Murnane as ICJL President.
- Todd Maisch is an Executive Committee member of the ICJL and chairman of JUSTPAC.
- Kim Maisch is Illinois Director of the National Federation of Independent Businesses and served on the ICJL

Executive Committee for many years, including during the 2004 election cycle.

- Dwight Kay was Karmeier's finance chairman in 2004.
- David Leuchtefeld was "chairman" of "Citizens for Karmeier" whose discarded emails evidence the inner-workings of the Karmeier campaign.
- Lloyd Karmeier was an Illinois trial judge recruited in 2003 by, among others, Murnane and Shepherd, to be the Republican candidate for the vacant seat on the Illinois Supreme Court in the 2004 election.

**ANSWER:** State Farm denies the existence of the Enterprise referred to in this paragraph of the Complaint and any and all allegations pertaining to the purported Enterprise or State Farm's purported conduct in connection therewith. State Farm admits that William G. Shepherd was employed and is still employed by State Farm as one of its Counsel and is registered as a lobbyist, and that for a period of time he did participate on the Executive Committee of the ICJL. State Farm further admits that Ed Rust was previously State Farm's CEO. State Farm denies the remaining allegations of this paragraph of the Complaint pertaining to Messrs. Rust and Shepherd. State Farm admits that Justice Karmeier was the Republican candidate for a seat on the Illinois Supreme Court in 2004. State Farm further admits that the ICJL supported Justice Karmeier's candidacy for the Illinois Supreme Court. State Farm is without knowledge, information or belief sufficient to admit or deny the remaining allegations of this paragraph of the Complaint pertaining to the purported "participants" in the purported Enterprise.

30. The subject matter jurisdiction of this Court is conferred and invoked pursuant to 28 § 1331, and the Racketeer Influenced and Corrupt Organizations Act ("RICO") 18 § 1961 et seq. (specifically 18 U.S.C. §1964(c)).

**ANSWER:** This paragraph of the Complaint states a legal conclusion to which no response is required. To the extent any response to the allegations of this paragraph of the Complaint is required, such allegations are denied.

31. This Court also has jurisdiction over this action as a class action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), providing for jurisdiction where, as here, “any member of a class of plaintiffs is a citizen of a State different from any defendant” and the aggregated amount in controversy exceeds five million dollars (\$5,000,000), exclusive of interests and costs. See 28 U.S.C. §§ 1332(d)(2) and (6).

**ANSWER:** This paragraph of the Complaint states a legal conclusion to which no response is required or given.

32. Venue is proper in this judicial district under 18 U.S.C. § 1965(a) and 28 U.S.C. § 1391(a), (b) and (c) because a substantial part of the events and omissions giving rise to this action occurred in the Southern District of Illinois and because Defendants transacted business in this district.

**ANSWER:** To the extent this paragraph of the Complaint states a legal conclusion, no response is required. To the extent any response to the allegations of this paragraph of the Complaint is required, such allegations are denied. State Farm denies all factual allegations contained in this paragraph of the Complaint.

33. The Enterprise was formed in the Southern District of Illinois and a substantial part of the conduct surrounding Defendants’ scheme occurred in the Southern District of Illinois.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

34. The Southern District of Illinois is the appropriate venue for this action because the *Avery Action*, brought in the Circuit Court for Williamson County, Illinois (situated within this district), was the genesis of the conduct described here. Also, the Fifth Appellate District of the State of Illinois, situated within the Southern District of Illinois, was the epicenter of the Citizens for Karmeier campaign. What’s more, the foundation of the relationships between these Defendants, their co-conspirators and Enterprise participants was Karmeier’s candidacy for the Fifth District seat on the Illinois Supreme Court. Finally, two acts of mail-fraud, separated by six years – the August 18, 2005 and the September 19, 2011 mailings by State Farm to the Illinois Supreme Court – were transacted in Edwardsville, Illinois, located in Madison County, also situated within the Southern District of Illinois. These circumstances are sufficient to demonstrate that a substantial part of the events or omissions giving rise to this action occurred in the Southern District of Illinois.

**ANSWER:** To the extent this paragraph of the Complaint states a legal conclusion, no

response is required. To the extent any response to the allegations of this paragraph of the Complaint is required, such allegations are denied. State Farm denies all factual allegations contained in this paragraph of the Complaint.

35. Venue is also proper in this district because Defendant State Farm is engaged in substantial business here and has minimum contacts with this district, such that it is subject to personal jurisdiction here.

**ANSWER:** This paragraph of the Complaint states a legal conclusion to which no response is required. To the extent any response to the allegations of this paragraph of the Complaint is required, such allegations are denied, except that State Farm admits that it conducts business in this district.

36. Venue is proper in this district because the ends of justice require it.

**ANSWER:** This paragraph of the Complaint states a legal conclusion to which no response is required. To the extent any response to the allegations of this paragraph of the Complaint is required, such allegations are denied. State Farm denies all factual allegations contained in this paragraph of the Complaint.

37. Under Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs bring this action on behalf of themselves and a Class defined as:

all persons who were members of the Certified Class in *Avery v. State Farm Mut. Auto. Ins. Co.*, No. 97-L-114 (First Jud. Cir. Williamson County, Ill.), more specifically described as:

All persons in the United States, except those residing in Arkansas and Tennessee, who, between July 28, 1987, and February 24, 1998, (1) were insured by a vehicle casualty insurance policy issued by Defendant State Farm and (2) made a claim for vehicle repairs pursuant to their policy and had non-factory authorized and/or non-OEM (Original Equipment Manufacturer) 'crash parts' installed on their vehicles or else received monetary compensation determined in relation to the cost of such parts. Excluded from the class are employees of Defendant State Farm, its officers, its directors, its subsidiaries, or its affiliates.

The following persons are excluded from the class: (1) persons who resided or garaged their vehicles in Illinois and whose Illinois insurance policies were issued/executed prior to April 16, 1994, and (2) persons who resided in California and whose policies were issued/executed prior to September 26, 1996.

**ANSWER:** State Farm admits that the Complaint seeks certification of the referenced class. State Farm denies that certification of a class is warranted or appropriate. State Farm further states that the Illinois Supreme Court unanimously overturned the certification of the *Avery* class.<sup>2</sup>

38. The Class consists of approximately 4.7 million State Farm policyholders, geographically dispersed throughout the United States, making the Class so numerous that individual joinder is impractical under Rule 23(a)(1). The Class is ascertainable, being identical to the class previously defined, certified and notified in the *Avery Action*.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint. State Farm further states that the Illinois Supreme Court unanimously overturned the certification of the *Avery* class.

39. Numerous questions of law and fact exist that are common to Plaintiffs and the Class. The answers to these common questions are significant and will substantially advance the adjudication and resolution of this case, and predominate over any questions that may affect only individual Class members, thereby satisfying Rule 23(a)(2) and 23(b)(3). These common question/common answer issues include:

- a. Whether State Farm misrepresented and concealed material information in its mailings to and filings with the Illinois Supreme Court concerning State Farm's support of Karmeier's campaign in 2005 and 2011;
- b. Whether State Farm engaged in a fraudulent and/or deceptive scheme to deceive the Illinois Supreme Court;

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<sup>2</sup> State Farm raises the unanimity of the *Avery* decision for preservation purposes. State Farm acknowledges the Court's August 21, 2018 ruling excluding from trial evidence of the vote count in *Avery* as proof of how the Illinois Supreme Court Justices would have voted absent of Justice Karmeier's participation.

- c. Whether Defendants engaged in a pattern and practice of materially false information, misrepresentations, omissions and concealment regarding State Farm's support of Karmeier's campaign;
- d. Whether this conduct continues to the present;
- e. Whether Defendants' conduct injured Class members in their business or property within the meaning of the RICO statute;
- f. Whether State Farm, Murnane, and Shepherd violated and conspired with others to violate RICO by the conduct of an association-in-fact Enterprise, through a pattern of racketeering activity involving mail fraud;
- g. Whether Class members are entitled to compensatory damages and, if so, the nature and extent of such damages; and
- h. Whether Class members are entitled to treble damages under Civil RICO.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint. State Farm further states that the Illinois Supreme Court unanimously overturned the certification of the *Avery* class.

40. The claims of the Plaintiffs are typical of the claims of the Class, as required by Rule 12(a)(3), in that Plaintiffs are persons or entities who, like all Class members, were members of the certified class in the *Avery Action* and "were insured by a vehicle casualty insurance policy issued by State Farm" and "made a claim for vehicle repairs pursuant to their policy and had non-factory authorized and/or non-OEM (Original Equipment Manufacturer) 'crash parts' installed on their vehicles or else received monetary compensation determined in relation to the cost of such parts." Plaintiffs, like all Class members, have been damaged by Defendants' misconduct, in that, among other things, they have lost the value and benefit of the \$1.05 billion judgment entered against State Farm by the Illinois Appellate Court on April 5, 2001 as a direct result of Defendants' continuing pattern of fraudulent conduct.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint. State Farm further states that the Illinois Supreme Court unanimously overturned the certification of the *Avery* class.

41. The factual and legal bases of Defendants' misconduct are common to all members of the Class and represent a common thread of fraud, deceit, and other misconduct resulting in injury to Plaintiffs and Class members.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

42. Plaintiffs will fairly and adequately represent and protect the interests of Class members, as required by Rule 23(a)(4). Plaintiffs have retained counsel with substantial experience in the prosecution of nationwide class actions. Plaintiffs and their counsel are committed to the vigorous prosecution of this action on behalf of the Class and have the financial resources to do so. Neither Plaintiffs nor their counsel have interests adverse to the Class.

**ANSWER:** State Farm denies the allegations of the first and fourth sentence of this paragraph of the Complaint. State Farm is without knowledge, information or belief sufficient to admit or deny the remaining allegations of this paragraph of the Complaint.

43. A class action is superior to other available methods for the fair and efficient adjudication of this controversy under Rule 23(b)(3). Absent a class action, most Class members would certainly find the cost of litigating their claims to be prohibitive, and would thus have no effective access to the courts or remedy at law. State Farm's wrongdoing in the underlying *Avery Action* (breach of contract and consumer fraud) was proved at a month-long trial through evidence, documentary proof, live testimony, and multiple experts' testimony. The dedication of time, effort, and money to the case was considerable, beyond the resources of any single class member. The *Avery Action* was economically feasible only as a class action. Typical damage to an individual Class member in the *Avery Action* ranged from several hundred to less than \$2500, an amount that unfairly damaged each Class member, and enriched State Farm, but that would not warrant the substantive costs of an individual action. The same is true with respect to the efforts and expertise that have gone into tracing State Farm's subsequent cause of fraudulent conduct and its pattern of RICO-violative activity, by which Plaintiffs allege Defendants defrauded a Court and deprived the Class of its property. The class treatment of common questions of law and fact is thus superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants, makes access to the court and redress on the merits possible, and promotes consistency and efficiency of adjudication.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint. State Farm further states that the Illinois Supreme Court unanimously overturned the certification of the *Avery* class.

44. Plaintiffs seek the certification of a nationwide Class under their civil RICO claims, asserted for violations of 18 U.S.C. §§ 1962(c) and 1962(d) under 1964(c) in this Complaint. All questions of law and fact are common to the civil RICO counts and predominate over individual questions. This case also presents common issues of fact and law that are each appropriate for issue-class certification under Rule 23(c)(4) and the management of this action may be facilitated through the certification of additional subclasses under Rule 23(c)(5), if necessary and appropriate.

**ANSWER:** State Farm admits that Plaintiffs purport to seek certification of a nationwide class in respect to their asserted RICO claims. State Farm denies the remaining allegations of this paragraph of the Complaint.

45. The named Plaintiffs in this action were also named plaintiffs in *Avery v. State Farm Mut. Auto. Ins. Co.*, 321 Ill. App. 3d 269, 275 (Ill. App. Ct. 5th Dist. 2001), the largest class action judgment in Illinois history. Plaintiffs in the *Avery Action* filed their class action complaint in July 1997. At trial, a Williamson County jury found that State Farm had breached its contracts with 4.7 million policyholders in 48 states by specifying the use of inferior non-OEM parts. The Trial Court agreed and issued its Judgment on October 4, 1999, confirming a total award of \$456,636,180 in breach of contract damages. The Trial Court also found that State Farm had willfully violated the Illinois Consumer Fraud Act (“ICFA”) and awarded punitive damages in the sum of \$600,000,000 to the ICFA Class. The Trial Court also awarded disgorgement damages of \$130,000,000. *See Avery*, 321 Ill. App. 3d at 275.

**ANSWER:** State Farm admits that, at various times, Mark Hale, Todd Shadle, and Laurie Loger were named plaintiffs for the proposed class in *Avery*. The remainder of the paragraph of the Complaint relates information describing the Trial Court proceedings and judgment from the Illinois Appellate Court’s opinion in *Avery*, which was subsequently reversed by the Illinois Supreme Court. State Farm submits that the Appellate Court’s opinion and Trial Court judgment speak for themselves.

46. Following an appeal by State Farm, on April 05, 2001, the Illinois Appellate Court affirmed a \$1.05 billion judgment, but disallowed, as duplicative of the damage award, the award of disgorgement damages.

**ANSWER:** State Farm admits the allegations of this paragraph of the Complaint.

47. On October 2, 2002, the Illinois Supreme Court granted State Farm leave to appeal. In May 2003, the Court heard oral argument. From May 2003 until August 2005, the *Avery* appeal lingered – without explanation – before the Court without a decision.

**ANSWER:** State Farm admits the allegations of the first two sentences of this paragraph of the Complaint. State Farm further admits that the Illinois Supreme Court issued its ruling in *Avery* in August 2005. State Farm denies the remaining allegations of this Paragraph of the Complaint.

48. During this period Trial Judge Lloyd Karmeier waged a campaign to be elected to the Illinois Supreme Court against Appellate Court Judge Gordon Maag. In November 2004, Karmeier was elected to the Illinois Supreme Court.

**ANSWER:** State Farm admits that Justice Karmeier was elected to the Illinois Supreme Court in November 2004. State Farm is without knowledge or information sufficient to admit or deny the allegations pertaining to the length of the campaign for the Illinois Supreme Court Justice seat to which Justice Karmeier was elected.

49. On January 26, 2005, plaintiffs in the *Avery Action* filed a “Conditional Motion for Non-Participation” asking Karmeier to recuse himself because an investigation by counsel had uncovered that about \$350,000 of the \$4.8 million he spent to get elected came directly from State Farm employees, lawyers, and others involved with State Farm and its appeal.

**ANSWER:** State Farm admits that on January 26, 2005, the Plaintiffs in *Avery* filed a “Conditional Motion for Non-Participation,” by which motion Plaintiffs sought the recusal of Justice Karmeier, and which motion speaks for itself. State Farm denies the remaining allegations of this paragraph of the Complaint.

50. State Farm responded on January 31, 2005 in a court-filing opposing the motion for recusal, materially understating its support of Karmeier’s campaign. *See* State Farm’s Opposition to Plaintiffs-Appellees’ Conditional Motion for Non-Participation, at pp. 10-18 (attached hereto as Exhibit C). State Farm represented (falsely) that its support of Karmeier consisted of “quite modest contributions” and characterized as “incorrect and meritless” the claim that State Farm had funneled \$350,000 to Karmeier. *See* State Farm’s Opposition, at pp. 12-13. State Farm denied (falsely) “engineering contributions” to Karmeier’s

campaign “for the purpose of impacting the outcome of this case” (*see* State Farm’s Opposition, at p. 11) and downplayed the charge that it was responsible for \$350,000 in direct contributions to Karmeier’s campaign, suggesting that plaintiffs’ counsel had presented “no evidence whatsoever to back up” their claim that those contributions were made by State Farm “front groups.” *See* State Farm’s Opposition, at p. 11.

**ANSWER:** State Farm admits that on January 31, 2005, State Farm filed its Opposition to Plaintiffs-Appellees’ Conditional Motion for Non-Participation, which opposition speaks for itself. State Farm denies the remaining allegations of this paragraph of the Complaint.

51. However, State Farm failed to inform the Court that its own employee, Defendant Shepherd, was a founding member of the ICJL Executive Committee that recruited and “vetted” Karmeier, and, through Murnane and the ICJL, that State Farm had organized, directed and funded the Karmeier campaign.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint and further states that State Farm’s filings with the Illinois Supreme Court in *Avery* speak for themselves.

52. State Farm’s brief was rife with misleading statements and omissions. Most notably, State Farm failed to disclose the prominent role played by Shepherd in forming the ICJL, as a member of the ICJL Executive Committee (which engineered Karmeier’s candidacy, endorsed him, and insured a substantial flow of cash from State Farm executives, employees, and corporate and political partners), and as a central figure in Karmeier’s campaign.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint and further states that State Farm’s filings with the Illinois Supreme Court in *Avery* speak for themselves.

53. Second, State Farm falsely denied Murnane’s involvement in Karmeier’s campaign and declared “Mr. Murnane . . . was not Karmeier’s campaign manager or campaign finance chairman and was not employed by Karmeier’s campaign . . . .” *See* State Farm’s Opposition at pp. 15-16.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint and further states that State Farm’s filings with the Illinois Supreme Court in *Avery* speak for themselves.

54. On March 16, 2005, with Karmeier taking no action on the motion to recuse, the Illinois Supreme Court denied plaintiffs’ motion, ruling that the subject of recusal was up to Karmeier, and not subject to further review by the Illinois Supreme Court.

**ANSWER:** State Farm admits on March 16, 2005, the Illinois Supreme Court denied Plaintiff-Appellees' Motion for Conditional Non-Participation, and that the ruling reflects that Justice Karmeier took no part in that ruling. State Farm denies the remaining allegations of this paragraph of the Complaint and further states that the orders of the Illinois Supreme Court speak for themselves.

55. On May 20, 2005, the Illinois Supreme Court issued still a second order, which stated that, because Karmeier had declined to recuse himself, the recusal motion was "moot."

**ANSWER:** State Farm admits that the Illinois Supreme Court issued a second Order on May 20, 2005, denying as moot Plaintiffs-Appellees' motion to reconsider. State Farm further states that the orders of the Court speak for themselves.

56. On August 18, 2005, Karmeier cast a vote to overturn the \$1.05 billion judgment. This vote was decisive. Absent Karmeier's participation, only those portions of the Illinois Supreme Court's opinion which were joined by one of the two dissenting Justices would have had the votes required by law to overturn the judgment, and at least part of the judgment would have stood. However, Karmeier's participation in the deliberations of the Court tainted every part of the Court's opinion.

**ANSWER:** State Farm admits that Justice Karmeier joined the decision of the Illinois Supreme Court overturning the *Avery* judgment. State Farm is without knowledge, information or belief sufficient to admit or deny allegations concerning the deliberations of the Illinois Supreme Court. State Farm denies the remaining allegations of this paragraph of the Complaint.

57. On September 8, 2005, plaintiffs in the *Avery Action* moved for a rehearing and again challenged Karmeier's participation. However, on September 26, 2005, their petition was denied, without comment, with Karmeier participating.

**ANSWER:** State Farm admits the allegations of this paragraph of the Complaint.

58. Plaintiffs ultimately sought review by the U.S. Supreme Court, based upon information then available to them. On March, 2006, that Court denied the petition for certiorari.

**ANSWER:** State Farm is without knowledge, information or belief sufficient to admit or deny the allegation concerning what information was available to the Plaintiffs in *Avery* at the time the petition for certiorari was filed with the U.S. Supreme Court. State Farm admits the remaining allegations of this paragraph of the Complaint.

59. As time would tell, a significant amount of evidence that would have buttressed Plaintiffs' 2005 claims was concealed and suppressed until recently.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

60. In December 2010, prompted by a recent U.S. Supreme Court decision addressing due process concerns in a similar case, *see Caperton v. A.T. Massey Coal Co.*, 129 S. Ct. 2252 (2009), Plaintiffs' counsel enlisted the services of retired FBI Special Agent Daniel L. Reece ("Reece") to investigate State Farm's involvement in Karmeier's campaign.

**ANSWER:** State Farm is without knowledge, information or belief sufficient to admit or deny the allegations of this paragraph of the Complaint.

61. Information obtained in that investigation, combined with previously known information, revealed the extent to which individuals and entities aided State Farm in enabling the election of Karmeier and in concealing its actions from the Illinois Supreme Court.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

62. According to CNA's Karen Melchert, State Farm, through Shepherd, and CNA, through Melchert, organized the ICJL in the early 1990's. Together, Shepherd and Melchert hired Murnane in 1993 as President of the ICJL.

**ANSWER:** State Farm is without knowledge, information or belief sufficient to admit or deny the allegations of this paragraph of the Complaint.

63. A July 2003 *Forbes Magazine* article quoted Murnane as saying the Illinois Supreme Court is 4-3 "anti-business" and that the ICJL would target the 2004 Fifth District race to change the composition of the Court. The article cites the *Avery Action* – which was already pending before the Illinois Supreme Court. (*See Forbes* article, Exhibit D hereto.) A second article from 2004 stated that Murnane viewed the *Avery* verdict against State Farm as part of the problem with courts in the Fifth District.

**ANSWER:** State Farm is without knowledge, information or belief sufficient to admit or deny the allegations of this paragraph of the Complaint. State Farm further states that the referenced publications speak for themselves.

64. While State Farm's appeal was pending, Murnane evaluated possible candidates for the open Supreme Court seat. Working at the direction of Shepherd and the Executive Committee, Murnane served as the principal recruiter of Karameier. Murnane, Shepherd and other members of the Executive Committee placed the considerable support of the State Farm-backed ICJL and its political action committee, JUSTPAC, behind Karameier.

**ANSWER:** State Farm is without knowledge, information or belief sufficient to admit or deny the allegations of the first sentence of this paragraph of the Complaint. State Farm denies the remaining allegations of this paragraph of the Complaint.

65. Emails generated within Karameier's campaign organization unmistakably show that Murnane directed Karameier's fundraising, his media relations and his speeches.

**ANSWER:** State Farm is without knowledge, information or belief sufficient to admit or deny the allegations of this paragraph of the Complaint. State Farm further states that the referenced documents speak for themselves, and therefore denies Plaintiffs' characterizations of those emails.

66. In or about January 2004, Doug Wojcieszak was working for a group of trial lawyers involved in an appeal pending before the Illinois Supreme Court (*Price v. Philip Morris*). His company was doing background research on Illinois Republican State Senator David Luechtefeld, Karameier's campaign chairman. An investigator routinely checked Sen. Luechtefeld's discarded outdoor trash for any papers relevant to their investigation. Several discarded emails surfaced which provide insight into the Karameier campaign.

**ANSWER:** State Farm is without knowledge, information or belief sufficient to admit or deny the allegations of this paragraph of the Complaint.

67. The emails also show: (1) Murnane was – by any reasonable account – fully in charge of Karameier's campaign; (2) the ICJL Executive Committee played a dominant role in recruiting Karameier, vetting him and

supporting his campaign; and (3) a contribution to the ICJL's PAC – JUSTPAC – was viewed as a contribution to Karmeier's campaign.

**ANSWER:** State Farm is without knowledge, information or belief sufficient to admit or deny the allegations of this paragraph of the Complaint. State Farm further states that the referenced documents speak for themselves, and therefore denies Plaintiffs' characterizations of those emails.

68. In one email, Murnane told Karmeier, "You've passed all the tryouts we need."

**ANSWER:** State Farm is without knowledge, information or belief sufficient to admit or deny the allegations of this paragraph of the Complaint. State Farm further states that the referenced document speaks for itself, and therefore denies Plaintiffs' characterization of the email.

69. Another email by Murnane refers to the Executive Committee's support of Karmeier's candidacy from "Day One," as well as an endorsement by the Executive Committee.

**ANSWER:** State Farm is without knowledge, information or belief sufficient to admit or deny the allegations of this paragraph of the Complaint. State Farm further states that the referenced document speaks for itself, and therefore denies Plaintiffs' characterizations of that document.

70. Yet another email reveals that the Executive Committee endorsed Karmeier. That State Farm had a prominent seat on the Executive Committee (Shepherd) during its appeal when the Executive Committee recruited and endorsed Karmeier is a strong and direct link between State Farm and Karmeier, a link State Farm concealed from the Illinois Supreme Court in its January 31, 2005 filing.

**ANSWER:** State Farm states that the document referenced in the first sentence of this paragraph speaks for itself, and therefore denies Plaintiffs' characterization of that document. State Farm also denies the characterization of State Farm having a "prominent seat on the Executive Committee," and denies further that it had any role in the recruitment of Justice Karmeier to run for Illinois Supreme Court, that there "is a strong and direct link between State

Farm and [Justice] Karameier”, or that it improperly “concealed” information from the Illinois Supreme Court. State Farm is without knowledge, information or belief sufficient to admit or deny the remaining allegations of this paragraph of the Complaint.

71. An April 29, 2004 email from Murnane to Dwight Kay, Karameier’s finance chairman, shows Murnane telling Kay that it is not a “good idea” to send out press releases about fund-raising events. Kay deferred to Murnane, who was acting as *de facto* head of the campaign.

**ANSWER:** State Farm is without knowledge, information or belief sufficient to admit or deny the allegations of this paragraph of the Complaint. State Farm further states that the referenced documents speak for themselves, and therefore denies Plaintiffs’ characterizations of those documents.

72. A March 15, 2004 email from Murnane to campaign aide Steve Tomaszewski and Kay, with a copy to Karameier and others, refers to a direct-mail piece, and credits JUSTPAC. This email demonstrates the support – here, financing a direct mail piece – given to Karameier’s campaign by JUSTPAC.

**ANSWER:** State Farm is without knowledge, information or belief sufficient to admit or deny the allegations of this paragraph of the Complaint. State Farm further states that the referenced document speaks for itself, and therefore denies Plaintiffs’ characterizations of that document.

73. An email dated January 22, 2004 from Kay says that a contributor “committed \$5,000 to the judge today” and would “either send it directly to the campaign or to JUSTPAC,” confirming that a contribution to JUSTPAC was viewed as a contribution to Karameier.

**ANSWER:** State Farm is without knowledge, information or belief sufficient to admit or deny the allegations of this paragraph of the Complaint. State Farm further states that the referenced document speaks for itself, and therefore denies Plaintiffs’ characterizations of that document.

74. A January 20, 2004 email from Murnane to Karameier, Kay and Tomaszewski refers to two contributors, including JUSTPAC, and tells Karameier, “close your eyes, Judge,” in response to an email from Karameier in which he writes about getting lawyers to contribute by not disclosing their names. This email shows that Murnane provided information to Karameier regarding contributors.

**ANSWER:** State Farm is without knowledge, information or belief sufficient to admit or deny the allegations of this paragraph of the Complaint. State Farm further states that the referenced document speaks for itself, and therefore denies Plaintiffs' characterizations of that document.

75. During the course of the Reece investigation, three Illinois tort reform-insiders – Karmeier's 2004 campaign consultant, Al Adomite, and Executive Committee members Karen Melchert and Kim Maisch – told Reece that State Farm's support of Karmeier was "significant" and "tremendous."

**ANSWER:** State Farm is without knowledge, information or belief sufficient to admit or deny the allegations of this paragraph of the Complaint.

76. Citizens for Karmeier's official campaign disclosure reports identified contributions and expenditures. The contributions – direct and in-kind – now known to have originated from State Farm or its political partners, include, as described below:

- \$350,000 in contributions originally described by *Avery's* counsel in their January 2005 recusal motion, see Appellees' Conditional Motion for Non-Participation ("Recusal Motion"), pp. 11-21;
- \$1,190,452.72 in contributions raised by the ICJL through its fundraising vehicle, JUSTPAC, to Citizens for Karmeier;
- \$1,000,000 State Farm contribution to the U.S. Chamber; and
- \$719,000 in undisclosed in-kind contributions from the ICJL to Citizens for Karmeier.

**ANSWER:** State Farm is without knowledge, information or belief sufficient to admit or deny the allegations of this paragraph of the Complaint concerning the referenced disclosure reports or the contributions made by others to Citizens for Karmeier. State Farm further states that the referenced documents speak for themselves, and therefore denies Plaintiffs' characterization of those disclosure reports. State Farm further denies Plaintiffs' attribution and characterization of the contributions of others to State Farm. State Farm admits that it has from time to time made contributions to the U.S. Chamber or entities related to the U.S. Chamber, but denies that it has

done so for the purposes alleged in the Complaint or any improper purpose. State Farm denies the remaining allegations of this paragraph of the Complaint.

77. Publicly-available records from the Illinois Board of Elections show that JUSTPAC provided nearly \$1.2 million in reported contributions to Karameier's campaign for the period beginning September 26, 2003 and ending October 27, 2004. In view of Shepherd's prominent role with the ICJL, those funds can now be attributed to State Farm, as it controlled the ICJL and JUSTPAC.

**ANSWER:** State Farm is without knowledge, information or belief sufficient to admit or deny the allegations of the first sentence of this paragraph of the Complaint. State Farm further states that the referenced documents speak for themselves, and therefore denies Plaintiffs' characterizations of those documents. State Farm denies the allegations of the second sentence of this paragraph of the Complaint.

78. Shepherd's affiliation with the ICJL was not confirmed until September 19, 2011, when State Farm submitted and served its response to the petition to recall the mandate and vacate the August 18, 2005 judgment, admitting Shepherd's affiliation with the Executive Committee. (*See* State Farm's Response, ¶ 34, attached as Exhibit E). Plaintiffs' counsel did not know that Shepherd had helped choose Murnane – JUSTPAC's treasurer – as ICJL President until or about on or about December 2010, when it was uncovered by Reece.

**ANSWER:** State Farm is without knowledge, information or belief sufficient to admit or deny the allegations of the final sentence of this paragraph of the Complaint concerning what Plaintiffs' counsel supposedly knew and when. State Farm further states that the referenced filing speaks for itself. State Farm denies the remaining allegations of this paragraph of the Complaint.

79. State Farm steered JUSTPAC contributions to Citizens of Karameier. State Farm and CNA founded the ICJL. Shepherd helped hire Murnane to head the ICJL and was State Farm's representative on the Executive Committee. The Executive Committee recruited and vetted Karameier, and the Executive Committee officially endorsed and raised funds for him.

**ANSWER:** State Farm admits that, for a period of time, Shepherd participated on the ICJL

executive committee. State Farm denies the remaining allegations of this paragraph of the Complaint.

80. Karmeier's finance chairman, Dwight Kay, confirmed the connection between JUSTPAC and Karmeier in an email from January 22, 2004 in which he equated a contribution to JUSTPAC as a contribution to Karmeier.

**ANSWER:** State Farm is without knowledge, information or belief sufficient to admit or deny the allegations of this paragraph of the Complaint. State Farm further states that the referenced document speaks for itself, and therefore denies Plaintiffs' characterizations of that document.

81. In deposition testimony in unrelated litigation, *Voters Educ. Comm. v. Washington State Pub. Disclosure Comm'n*, No. 04-2-23551-1 (Wash. Super. Ct.), on January 11, 2005, Robert Engstrom, Jr., Vice President of Political Affairs for the US Chamber's Institute for Legal Reform, identified Edward Rust, State Farm CEO, as part of the US Chamber's leadership team that selected judicial campaigns to target in 2004. Illinois was prioritized as a "Tier I" race. The Karmeier-Maag race was the only major judicial race in Illinois that year, thus making that race the "Tier I" priority race.

**ANSWER:** State Farm is without knowledge, information or belief sufficient to admit or deny the allegations of this paragraph of the Complaint characterizing testimony reportedly given in another matter and the U.S. Chamber's purported prioritization of judicial campaigns in 2004. State Farm further states that the referenced deposition transcript speaks for itself, and therefore denies Plaintiffs' characterizations of that transcript.

82. State Farm contributed \$1 million to the US Chamber, which then contributed \$2.05 million to the Illinois Republican Party, which then contributed nearly twice that amount to Karmeier. Thus, State Farm's \$1 million donation to the US Chamber in Washington DC wound up back in Illinois after the US Chamber contributed more than twice that sum to the Illinois Republican Party, which, in turn, promptly paid for nearly \$2 million in media advertisements for Karmeier. Yet, the \$1 million donation was never disclosed by State Farm as part of its "quite modest" support.

**ANSWER:** State Farm admits that it has from time to time made contributions to the U.S. Chamber and its related entities, including the Institute for Legal Reform, but denies that it has done so for the purposes alleged in the Complaint or any improper purpose, and further denies

that any contribution that it made to the U.S. Chamber or its related entities was earmarked for any contribution thereafter to any other entity or any judicial or other campaign. State Farm further denies that any disclosure of contributions it made to the U.S. Chamber or its related entities was required. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph of the Complaint regarding contributions made by the U.S. Chamber to the Illinois Republican Party or contributions made by the Illinois Republican Party to Citizens for Karmeier. State Farm denies the remaining allegations of this paragraph of the Complaint.

83. With State Farm's \$1 million in-hand, on October 20, 2004, the US Chamber contributed another \$950,000 to the Illinois Republican Party, followed by \$350,000 two days later. From September 30, 2004 to the end of the campaign, the Republican Party contributed \$1,940,000 to Citizens for Karmeier, consisting of media "buys" in the St. Louis market.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint that relate to State Farm. State Farm is without knowledge, information or belief sufficient to admit or deny the remaining allegations of this paragraph of the Complaint.

84. In its September 19, 2011 filing with the Illinois Supreme Court, State Farm did not dispute that it gave the US Chamber \$1 million or, for that matter, that the Chamber contributed that sum (and more) to the Illinois Republican Party. *See* State Farm's Response, at ¶¶ 42-44. While it may not have been a State Farm-endorsed check that wound up in the bank account of Citizens for Karmeier, \$1 million of those funds originated from State Farm.

**ANSWER:** State Farm states that the referenced filing speaks for itself, and therefore denies Plaintiffs' characterization of that document. State Farm denies the remaining allegations of this paragraph of the Complaint.

85. While Murnane was "running the campaign" of Karmeier, and using his official ICJL email address – emurnane@icjl.org – for campaign-related activities, his professional time and expenses were not reported or disclosed as in-kind contributions to the Karmeier campaign.

**ANSWER:** State Farm is without knowledge, information or belief sufficient to admit or deny

the allegations of this paragraph of the Complaint.

86. IRS Form 990 report from 2004 for the ICJL shows a grand total of \$718,965 in expenditures, which included Murnane's salary, benefits, and expenses (\$177,749), as well as media, advertising and fundraising, and other managerial expenses that almost exclusively benefitted the Karneier campaign. None of the expenses were reported as in-kind donations by Citizens for Karneier in the reports it mailed to and filed with the Board.

**ANSWER:** State Farm is without knowledge, information or belief sufficient to admit or deny the allegations of this paragraph of the Complaint. State Farm further states that the referenced documents speak for themselves.

87. Including these unreported in-kind contributions from the ICJL to Karneier's campaign increases the State Farm-influenced contributions to over \$3.2 million.

**ANSWER:** State Farm denies the allegation of this paragraph of the Complaint.

88. State Farm-influenced contributions to Citizens for Karneier exceed the \$3,260,452 accounted for above. State Farm CEO Rust, in his US Chamber leadership post, was able to insure that State Farm's \$1 million was steered back to Karneier. Rust was also in a position to steer money from other corporate donors to the campaign, increasing the total State Farm-related contributions to Karneier to \$4,200,417, or over *eighty-seven percent (87%)* of the \$4,800,000 reportedly raised by the Karneier campaign.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

89. Karneier knew the sources of his contributions. First Karneier campaign aide Adomite stated that Murnane informed Karneier of day-to-day campaign operations, along with its fundraising, and that Karneier was on the office e-mail list, very active in his campaign, and aware of campaign activities. Adomite concluded he did not see how Karneier "could not have known the source of all campaign funds." Second, Karneier is a prominent sender/recipient of several emails that discussed fundraising and/or expenditures. And third, State Farm conceded that the Illinois Judicial Ethics Committee has advised judges that it is "desirable" for them to know their contributors. *See* State Farm's Response at ¶ 55.

**ANSWER:** State Farm is without knowledge, information or belief sufficient to admit or deny the allegations of this paragraph of the Complaint concerning what Justice Karneier knew or what Mr. Adomite stated. State Farm further states that the documents and filing referenced in

this paragraph of the Complaint speak for themselves. State Farm denies the allegations of the fifth sentence of this paragraph of the Complaint.

90. Plaintiffs incorporate by reference all preceding paragraphs.

**ANSWER:** State Farm incorporates by reference its responses to all preceding paragraphs.

91. The pattern and practices of RICO violations are continuous and ongoing.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

92. The Enterprise and Defendants' RICO violations – specifically, the concealment of State Farm's support of Karmeier – continue. Plaintiffs were not and could not have been aware of Defendants' pattern of misconduct before September 19, 2011, when State Farm submitted to the Illinois Supreme Court and served its response to the petition to recall the mandate and vacate the August 18, 2005 judgment.

**ANSWER:** State Farm denies the allegation of this paragraph of the Complaint.

93. From 2003 to the present, State Farm concealed the nature and extent of its support of Karmeier by lying to and misleading the Illinois Supreme Court about that support, first in January 2005 and again in September 2011.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

94. From 2004 to the present, Citizens for Karmeier concealed the nature and extent of State Farm's support of Karmeier by submitting campaign finance disclosures which failed to list the direct and in-kind contributions for which State Farm was responsible, including, but not limited to, contributions from ICJL, JUSTPAC and Murnane.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint that concern State Farm. State Farm is without knowledge, information or belief sufficient to admit or deny the remaining allegations of this paragraph of the Complaint.

95. As a result, Plaintiffs could not have discovered State Farm's conduct, its control of the Enterprise or the structure and success of that Enterprise, by exercising reasonable diligence.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

96. Any applicable statutes of limitations have been tolled by Defendants' knowing, ongoing and active concealment and denial of the facts alleged herein. Plaintiffs and Class members were kept ignorant of vital information essential to pursue their claims, without any fault or lack of diligence on their part. Plaintiffs and Class members could not reasonably have discovered the nature of Defendants' conduct. Accordingly, Defendants are estopped from relying on any statute of limitations to defeat the claim asserted herein.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

97. Defendants' motive in conducting the Enterprise described herein with respect to the pattern and practice of affirmative fraud and the ongoing concealment of wrongdoing from 2004 to the present, was to deceive the Illinois Supreme Court into believing that State Farm's support of Karmeier's campaign was minimal. The scheme was designed and implemented for the purpose of recruiting a candidate, financing that candidate, electing that candidate and effectively concealing its support for the candidate. State Farm's efforts to escape liability to pay the \$1.05 billion judgment rested on the continued success of every aspect of this scheme.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

98. The scheme was designed to achieve, and did achieve, its intended result: approximately 4.7 million State Farm policyholders suffered damage to their business and property, seized of the rightful damages awarded to them by the *Avery Action* judgment.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

99. State Farm used the U.S. mail to create, execute and manage the second phase of the fraudulent scheme: concealing the true extent of its support of Karmeier from the Illinois Supreme Court. Specifically, State Farm, in 2005 and 2011, mailed documents to that Court for filing, serving them upon Plaintiffs' counsel, containing lies, misleading statements and material omissions representing that its support of Karmeier was minimal and that it exerted no control over Karmeier's candidacy, his campaign or his fundraising.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

100. On January 31, 2005, State Farm made a court filing opposing Plaintiffs' motion for recusal which grossly understated its "tremendous" support of Karmeier's campaign. *See* State Farm's Opposition to Plaintiffs-Appellees' Conditional Motion for Non-Participation, at pp. 10-18. This brief was mailed to the Court from Edwardsville and served via U.S. mail on Plaintiffs' counsel in several states, including Illinois, Louisiana, Mississippi and Tennessee.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint. State Farm

further states that the referenced court filing, as well as the accompanying certificate of service reflecting the manner of service, speak for themselves.

101. In the January 31, 2005 mailing and filing, State Farm falsely represented its support of Karmeier as consisting of “quite modest contributions” and characterized as “incorrect and meritless” Plaintiffs’ claim that State Farm had funneled \$350,000 to and peddled its enormous political influence to Karmeier’s benefit. *See* State Farm’s Opposition, at pp. 12-13. State Farm flatly denied “engineering contributions” to Karmeier’s campaign “for the purpose of impacting the outcome of this case” (*see* State Farm’s Opposition, at p. 11) and downplayed the charge that it was responsible for \$350,000 in direct contributions to Karmeier’s campaign by suggesting that Plaintiffs’ counsel had presented “no evidence whatsoever to back up” their claim that those contributions were made by State Farm “front groups.” *See* State Farm’s Opposition, at p. 11. State Farm also failed to inform the Court that its employee, Shepherd, was a member of the ICJL Executive Committee which recruited and vetted Karmeier, and, through Murnane, it had organized, funded and directed Karmeier’s campaign.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint. State Farm further states that the referenced court filing speaks for itself.

102. In its January 31, 2005 mailing and filing, State Farm falsely denied that Murnane ran all phases of Karmeier’s campaign. Not only did State Farm deny Murnane’s involvement in Karmeier’s campaign, but it also declared “Mr. Murnane . . . was not Karmeier’s campaign manager or campaign finance chairman and was not employed by Karmeier’s campaign . . .” *See* State Farm’s Opposition at pp. 15-16.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint. State Farm further states that the referenced court filing speaks for itself.

103. Plaintiffs asked the Illinois Supreme Court to recall the mandate of and vacate the August 18, 2005 judgment on September 9, 2011. Facing serious and unprecedented charges of unscrupulous conduct and that it had perpetrated a fraud on that Court in 2005, State Farm responded on September 19, 2011 in a 38-page, 75-paragraph brief mailed to Plaintiff’s counsel.

**ANSWER:** State Farm admits that the referenced filings were made in the Illinois Supreme Court, which filings (including their accompanying certificates of service reflecting the manner of service) speak for themselves. State Farm denies the remaining allegation of this paragraph of the Complaint.

104. In its brief, State Farm again denied Murnane's true role in Karmeier's campaign, *see* State Farm's Response, at ¶ 27 ("Murnane was not Karmeier's campaign manager . . ."), and failed to produce evidence to counter Murnane's statement that "I'm running this campaign."

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint and disputes the suggestion that State Farm was obliged to present evidence concerning the operations of the campaign to elect Justice Karmeier. State Farm further states that the referenced court filing speaks for itself.

105. For the first time, however, State Farm conceded that Shepherd was a charter member of the Executive Committee, thus unveiling the missing connecting State Farm to the ICJL, to JUSTPAC, to Murnane, to the discarded emails, and finally, to Karmeier's campaign.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint. State Farm further states that the referenced court filing speaks for itself.

106. Shepherd's position explains Murnane's role in Karmeier's campaign, how State Farm was able to use the ICJL and JUSTPAC as vehicles to raise nearly \$1.2 million and funnel it to Citizens for Karmeier, and why the Executive Committee supported Karmeier's candidacy from "Day One" and gave him its "official endorsement," signaling other ICJL members that Karmeier was State Farm's choice.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

107. Not only did State Farm fail to utter a single word about Shepherd's position on the Executive Committee until September 19, 2011, it also failed to explain why it did not do so.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint. State Farm further states its court filings speak for themselves.

108. Plaintiffs incorporate by reference all preceding paragraphs.

**ANSWER:** State Farm incorporates by reference its responses to all preceding paragraphs.

109. Section 1962(c) of RICO provides that "it shall be unlawful for any person employed by . . . any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or

indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity . . . .”

**ANSWER:** This paragraph of the Complaint states a legal conclusion to which no response is required or given.

110. Defendants and their co-conspirators, as identified herein, are “persons” within the meaning of 18 U.S.C. § 1961(3), who conducted the affairs of the Enterprise through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c).

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

111. The Enterprise was engaged in, and the activities of the Enterprise affect, interstate commerce, as Class members in forty-eight (48) states were the ultimate beneficiaries of and claimants to the property targeted by Defendants: the \$1.05 billion judgment in the *Avery Action*. Furthermore, a substantial part of the acts described herein, including the predicate acts of mailing and acts of various Enterprise participants, affected interstate commerce.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

112. The association-in-fact Enterprise consists of Defendants State Farm, Shepherd, and Murnane, along with the ICJL, JUSTPAC, the US Chamber, and their officers, employees, and agents, among others, as identified in Section IV of this Complaint. State Farm created, controlled and conducted the Enterprise to develop and effectuate every aspect of its scheme, as alleged above. State Farm created and/or used this association-in-fact Enterprise – an ongoing organization functioning as a continuing unit – as a separate entity and tool to effectuate the pattern of racketeering activity that damaged the Class.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

113. State Farm, acting through Shepherd and Murnane, exerted ongoing and continuous control over the Enterprise, and participated in the operation or management of the affairs of the Enterprise, through the following actions:

- a. asserting direct control over false, deceptive, and misleading information disseminated to the Illinois Supreme Court regarding its support of Karmeier;
- b. asserting direct control over the creation and operation of the elaborate cover-up scheme used to conceal its support of Karmeier from the Illinois Supreme Court;

- c. placing employees and/or agents in positions of authority and control in the Enterprise; and
- d. mailing documents containing misrepresentations and omissions to the Illinois Supreme Court on January 31, 2005 and September 19, 2011.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

114. From its inception, the Enterprise had a clear decision-making hierarchy or structure, with State Farm, acting through Shepherd and Murnane, positioned at the top. State Farm paid Shepherd, not simply as an employee, but rather as a co-conspirator, intent on helping the Enterprise succeed in electing Karmeier to the Illinois Supreme Court and concealing, by misrepresentations and omissions, its extraordinary support of Karmeier's campaign.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

115. Though State Farm, through Shepherd and Murnane, exercised and continues to exercise maximal control of the Enterprise, all of the Enterprise's members are distinct from the Enterprise and its activity and each exercised and continues to exercise control over various functions of the Enterprise.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

116. The persons and entities comprising the Enterprise have associated together for the common purpose of allowing State Farm to evade the \$1.05 billion judgment, plus post-judgment interest since October 1999 entered by the Appellate Court and defrauding Plaintiffs and the Class out of those funds.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

117. The contribution network developed by State Farm, through Shepherd and Murnane, to advocate the election of Karmeier (*i.e.*, the first phase of State Farm's scheme to defraud the Plaintiffs and Class) and to conceal the breadth of State Farm's support of Karmeier (the second phase of the scheme to defraud the Plaintiffs and Class) was and is the passive instrument of Defendants' racketeering activity, and together, constitutes an alternative "enterprise" as that term is defined in 18 U.S.C. § 1961(4).

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

118. This Complaint details the ongoing pattern of racketeering based on facts that are known to Plaintiffs and their counsel. It is filed without the benefit of discovery, which will likely uncover many more predicate acts and further demonstrate the breadth and scope of the Enterprise's racketeering.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

119. The Enterprise – with State Farm at the hub, acting through Shepherd and Murnane – engaged in a pattern of racketeering activity. From approximately November 2003 at least through September 19, 2011, Defendants and the Enterprise, as well as others known or unknown, being persons employed by and associated with State Farm, the ICJL, JUSTPAC, Citizens for Karmeier, the US Chamber, and others identified herein, engaged in activities which affected and affect interstate commerce, unlawfully and knowingly conducted or participated, directly or indirectly, in the affairs of the Enterprise through a pattern of racketeering activity, that is, through the commission of two or more racketeering acts, as set forth herein.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

120. The foregoing pattern of racketeering activity is distinct from the Enterprise itself, which does not solely engage in the above-described acts.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

121. Defendants have conducted and participated in the affairs of the Enterprise through a pattern of racketeering activity that includes predicate acts indictable under 18 U.S.C. § 1341 (mail fraud), 18 U.S.C. § 1343 (wire fraud), and 18 U.S.C. § 1346 (deprivation of honest services through bribes and kickbacks) through the aforementioned actions.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

122. In implementing the fraudulent scheme, State Farm was aware that the Illinois Supreme Court depended on the honesty of State Farm to represent truthfully the facts of its support of Karmeier.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

123. As detailed above, the fraudulent scheme consisted of, inter alia: using mail fraud to enable State Farm (a) to obtain, exert, and deliberately misrepresent its control over and extraordinary financial support of Karmeier's campaign; and (b) suppress and conceal the level of such control and support from the Illinois Supreme Court.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

124. The unlawful predicate acts of racketeering activity committed by Defendants had a common purpose, were related and had continuity. From its inception, Defendants' scheme depended upon concealing the breadth of State Farm's support of Karmeier from the Illinois Supreme Court. Without accomplishing that critical final component of the scheme, the scheme was

doomed to fail in its purpose, as State Farm needed the Karmeier vote in order to gain reversal of the \$1.05 billion judgment.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

125. The Enterprise used the mail to create, execute and manage their scheme, acting in violation of 18 U.S.C. § 1341. By misrepresenting State Farm's support of Karmeier's campaign to the Illinois Supreme Court via the U.S. mail, the Enterprise perpetrated these unlawful predicate acts.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

126. The predicate acts committed by the Enterprise were and are similar, continuous, and related. State Farm's support of Karmeier was "extraordinary" and "tremendous," rising to as much as \$4 million. Nevertheless, State Farm actively concealed from the Illinois Supreme Court the true facts of its support. This consistent message – denying the breadth of its true involvement in Karmeier's campaign – illustrates how the predicate acts of mail fraud were similar, continuous, and related.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

127. The scheme was calculated to ensure that Plaintiffs and the Class would not recover any of the \$1.05 billion judgment entered in their favor. The targets of the Enterprise and the ultimate victims of State Farm's scheme and predicate acts of mail fraud number approximately 4.7 million.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

128. Each of the fraudulent mailings constitutes "racketeering activity" within the meaning of 18 U.S.C. § 1961(1). Collectively, these violations, occurring over several years, are a "pattern of racketeering activity" within the meaning of 18 U.S.C. § 1961(5).

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

129. Each activity was related, had similar purposes, involved the same or similar participants and methods of commission, and had similar results affecting similar victims, including Plaintiffs and the Class.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

130. All predicate acts committed by Defendants and the Enterprise are related and were committed with a common scheme in mind: to support and elect Karmeier to the Illinois Supreme Court and conceal that support to insure Karmeier participated in the Avery decision. The final part of the scheme was to use the U.S. mail to deliver court filings to the Illinois Supreme Court and

Plaintiffs' counsel on January 31, 2005 and September 19, 2011 in a continuing effort to conceal material facts related to State Farm's support for Karmeier, in violation of 18 U.S.C. § 1341.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

131. Defendants' conduct of the Enterprise was designed to, and succeeded in, defrauding the Illinois Supreme Court and in ultimately depriving Plaintiffs and the Class of the individual and aggregate benefits of the \$1.05 billion judgment awarded to them in the *Avery Action*, and enabling State Farm to evade its obligations to the Class.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

132. Plaintiffs incorporate by reference all preceding paragraphs.

**ANSWER:** State Farm incorporates by reference its responses to all preceding paragraphs.

133. Section 1962(d) of RICO provides that it "shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b) or (c) of this section."

**ANSWER:** This paragraph of the Complaint states a legal conclusion to which no response is required or given.

134. Defendants violated § 1962(d) by conspiring to violate 18 U.S.C. § 1962(c). The object of this conspiracy has been and is to conduct or participate in, directly or indirectly, the conduct of the affairs of the § 1962(c) Enterprise described previously through a pattern of racketeering activity. Defendants, co-conspirators and Enterprise participants agreed to join the conspiracy, agreed to commit and did commit the acts described herein, and knew that these acts were part of a pattern of racketeering activity.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

135. Defendants and their co-conspirators have engaged in numerous overt and predicate fraudulent racketeering acts in furtherance of the conspiracy, including material misrepresentations and omissions designed to defraud Plaintiffs and the Class of money.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

136. The nature of the above-described acts, material misrepresentations and omissions in furtherance of the conspiracy gives rise to an inference that Defendant, co-conspirators and Enterprise participants not only agreed to the objective of an 18 U.S.C. § 1962(d) violation of RICO by conspiring to violate 18

U.S.C. §1962(c), but they were aware that their ongoing fraudulent acts have been and are part of an overall pattern of racketeering activity.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

137. As direct and proximate result of Defendants' overt acts and predicate acts in furtherance of violating 18 U.S.C. § 1962(d) by conspiring to violate 18 U.S.C. § 1962(c), Plaintiffs and the Class have been and are continuing to be injured in their business or property, as set forth more fully above.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

138. Plaintiffs allege, on behalf of themselves and the Class ("Plaintiffs") under the laws of all states, that the Defendants have acted to unjustly retain a benefit to the Plaintiffs' detriment, and that Defendants' retention of the benefit violates the fundamental principles of justice, equity, and good conscience.

**ANSWER:** State Farm denies the allegations of this paragraph of the Complaint.

**GENERAL DENIAL AND RESPONSES TO ALL PRAYERS FOR RELIEF**

Responding to each and every claim in Plaintiffs' demands for relief, State Farm denies that it is liable to Plaintiffs in any way, either in law or equity. To the extent any paragraph, sentence, sub-paragraph, statement, or allegation in Plaintiffs' Complaint has not been expressly admitted by the foregoing responsive answers and defenses, the same is hereby expressly denied. Furthermore, State Farm specifically denies that Plaintiffs are entitled to any of the relief sought in the Complaint.

**ADDITIONAL DEFENSES**

In further support of its Answer, State Farm asserts the additional and/or affirmative defenses set forth below, and as factual support for each of those defenses alleges Paragraphs 1 through 14 below and incorporates its answers to Plaintiffs' allegations as set forth above.

1. Over seven years ago, in *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 835 N.E.2d 801 (2005), the Illinois Supreme Court rejected the effort by Plaintiffs and others to recover against State Farm in a proposed

nationwide class action challenging State Farm's alleged failure to pay for original equipment manufacturer ("OEM") parts. On numerous occasions, both before and after the Illinois Supreme Court issued its decision in *Avery*, Plaintiffs challenged Justice Karameier's participation in that case by arguing, as Plaintiffs do now, that State Farm's alleged support for his campaign for election to that Court required his recusal. Plaintiffs' assertions were consistently rejected. Having already been afforded a full hearing, Plaintiffs should not be permitted to belatedly recast their theories as a civil RICO suit. Plaintiffs' claims clearly are deficient, and are subject to numerous affirmative and other defenses that mandate judgment in favor of State Farm.

**The Proceedings on the Merits in *Avery***

2. Plaintiffs in this case, Mark Hale, Todd Shadle, and Laurie Loger, were among the named Plaintiffs and class members in *Avery*. The *Avery* class action lawsuit was filed against State Farm in July 1997, in the Circuit Court of Williamson County, asserting contract and ICFA claims based on State Farm's specification of non-OEM parts for the repair of its insureds' automobiles. *See Avery*, 216 Ill. 2d at 109-10, 835 N.E.2d at 810-11. The trial court certified a nationwide class of approximately 4.7 million State Farm policyholders (*id.*), and the class trial resulted in a judgment against State Farm of over \$1.1 billion. *Avery*, 216 Ill. 2d at 121, 835 N.E.2d at 817. The Illinois Appellate Court affirmed, but reduced the damages award to just over \$1.05 billion. *Avery v. State Farm Mut. Auto. Ins. Co.*, 321 Ill. App. 3d 269, 746 N.E.2d 1242 (5th Dist. 2001). On October 2, 2002, the Illinois Supreme Court granted State Farm leave to appeal, and the case was argued and submitted on May 14, 2003.

3. On August 18, 2005 – more than two years after State Farm's appeal was submitted for decision – the Illinois Supreme Court (with Justice Thomas not

participating) ruled unanimously that the trial court had erred in certifying a nationwide class. *See Avery*, 216 Ill. 2d at 135, 215, 835 N.E.2d at 824, 869.

4. The majority opinion authored by Chief Justice Mary Ann McMorrow held that variations in State Farm's insurance policies rendered class certification of the contract claim erroneous. *Id.* at 134-35, 835 N.E.2d at 824. The majority also held the plaintiffs had failed to establish a breach of *any* of the relevant policy forms, *id.* at 135-44, that none of the policies would be breached by the specification, in itself, of non-OEM parts, *id.* at 136-38, 141-42, and that the verdict could not be upheld with regard to any subclass, given, *inter alia*, the need for "individual examination of hundreds of thousands, if not millions, of vehicles" to determine if the cars had been restored to their pre-loss condition. *Id.* at 138, 835 N.E.2d at 826. Justices Freeman and Kilbride opined that differences in state contract law rendered a nationwide class unconstitutional, but would have remanded for a determination whether any subclasses were possible. *Id.* at 215, 232, 835 N.E.2d at 869-70, 879.

5. The Court also unanimously ruled that a nationwide class should not have been certified under ICFA because ICFA does not apply to transactions outside of Illinois. *Id.* at 189, 234, 835 N.E.2d at 855, 880. Accordingly, the Court unanimously reversed the ICFA judgment against State Farm and the \$600 million punitive award. *Id.* at 203, 234-35, 835 N.E.2d at 863, 880.

#### **Plaintiffs' Challenges to Justice Karmeier's Participation in *Avery***

6. Before filing their Complaint in this case, Plaintiffs challenged Justice Karmeier's participation in the *Avery* decision in five motions or petitions over a six-year period. Justice Karmeier was elected to the Illinois Supreme Court on November 4, 2004, and sworn in on December 6, 2004, approximately eighteen months after the *Avery*

appeal was submitted for decision.

7. Plaintiffs brought three motions in the Illinois Supreme Court seeking the non-participation of Justice Karneier in *Avery*, twice before the Court's reversal of the *Avery* judgment, and once in a rehearing petition. Like the present Complaint, Plaintiffs' motion for non-participation alleged that State Farm contributed to Justice Karneier's campaign through organizations such as the Illinois Civil Justice League ("ICJL"), JUSTPAC, the U.S. Chamber of Commerce, and a number of other organizations and corporations whose contributions Plaintiffs theorized were somehow connected to State Farm. Plaintiffs attributed more than \$1 million of such contributions to State Farm. As here, Plaintiffs also included allegations about the involvement of Mr. Murnane and Mr. Shepherd in the ICJL and about State Farm's alleged "connections" to Justice Karneier's campaign. Plaintiffs also submitted purported documentary evidence, including an affidavit of Douglas Wojcieszak. Mr. Wojcieszak is cited in Plaintiffs' present Complaint as the source of emails purloined from the Karneier campaign's trash, and he also provided an affidavit in support of Plaintiffs' 2011 Petition to Recall the Mandate.

8. On January 31, 2005, State Farm filed an opposition, showing that Plaintiffs' factual assertions contained serious inaccuracies and distortions of the evidence and did not provide a legal basis for Justice Karneier's non-participation. Plaintiffs filed a response memorandum, along with an additional affidavit and exhibits, again asserting that State Farm and its "agents" had "work[ed] hard to elect" Justice Karneier and that Justice Karneier had "extremely close ties" with State Farm through Ed Murnane. On March 16, 2005, the Illinois Supreme Court denied Plaintiffs' motion without opinion. Justice Karneier did not participate in that decision.

9. On March 22, 2005, Plaintiffs filed a motion for reconsideration, again seeking the recusal or disqualification of Justice Karneier, based on essentially the same allegations. On May 20, 2005, the Illinois Supreme Court vacated its March 16 Order, stating that under the Illinois Rules, disqualification was "a decision exclusively within the determination of the individual judge" and that Justice Karneier had "advised the court that he would not disqualify himself." Accordingly, the Court found that Plaintiffs' motion was moot and denied it a second time.

10. After the Illinois Supreme Court reversed the \$1.05 billion judgment against State Farm, Plaintiffs moved for rehearing, urging as the sole ground that Justice Karneier's participation was improper. Plaintiffs again repeated their allegations that State Farm, Mr. Shepherd, and Mr. Murnane were involved in various organizations (*e.g.*, ICJL, JUSTPAC, and the U.S. and Illinois Chambers of Commerce) that supported Justice Karneier's campaign and that State Farm had supported the campaign with "massive sums of money," both directly and indirectly. On September 26, 2005, the Illinois Supreme Court again rejected Plaintiffs' challenge to Justice Karneier's participation in *Avery*.

**Plaintiffs' Petition for Certiorari**

11. Plaintiffs again challenged Justice Karneier's participation in *Avery* in their Petition for a Writ of Certiorari to the United States Supreme Court. Plaintiff's Petition was based solely on State Farm's purported support for Justice Karneier's campaign and Justice Karneier's subsequent participation in *Avery*. State Farm opposed the Petition, which was denied on March 6, 2006. *See Avery v. State Farm Mut. Auto. Ins. Co.*, 547 U.S. 1003 (2006).

**Plaintiffs' 2011 Petition To Vacate the Avery Judgment**

12. Plaintiffs' fifth challenge to Justice Karameier's participation in *Avery* was filed in the Illinois Supreme Court just last September. Claiming that they had uncovered new evidence, Plaintiffs filed a petition asking the Illinois Supreme Court to vacate the 2005 judgment in State Farm's favor and reinstate the \$1.05 billion judgment of the Appellate Court. Plaintiffs again focused on the same allegations regarding "the extraordinary efforts and substantial funding made by State Farm to Justice Karameier's 2004 campaign." As in their present Complaint, Plaintiffs alleged that "State Farm deliberately lied to and misled th[e] [Illinois Supreme] Court, and concealed information from th[e] Court in 2005 in an effort to conceal its extraordinary support of Justice Karameier's campaign and to prevent Justice Karameier's disqualification." The Petition to Vacate was accompanied by two new affidavits: one from Wojcieszak (the same affiant relied on by Plaintiffs in their February 2005 motion); and another from retired FBI agent Daniel Reece, also described in Plaintiffs' Complaint here.

13. In response, State Farm showed that the Illinois Supreme Court had already rejected these same claims on multiple occasions and that Plaintiffs' attempt to overturn the judgment would contravene established judicial and public policies of the State of Illinois regarding the finality of judgments and chill First Amendment rights regarding participation in judicial elections. State Farm also established that the supposedly new evidence Plaintiffs proffered (which is the same "evidence" Plaintiffs describe here) was not new at all, but merely a recycled version of Plaintiffs' prior submissions. State Farm further established that Plaintiffs' assertions were not supported by Plaintiffs' purported evidence and moved to strike the affidavits and exhibits submitted by Plaintiffs as based on unreliable hearsay and improper speculative opinions

and as untimely.

14. On November 17, 2011, the Illinois Supreme Court, with Justices Karmeier and Thomas not participating, denied Plaintiffs' Motion to Vacate and granted State Farm's motions to strike Plaintiffs' affidavits. On May 24, 2012, Plaintiffs filed the instant action. State Farm incorporates by reference the foregoing paragraphs 1 to 14 of its additional defenses in each of the additional defenses listed below.

**Additional Defense No. 1**

Pursuant to the Rooker-Feldman doctrine, this Court lacks subject matter jurisdiction over the claims of Plaintiffs and the members of the putative class, and such claims are barred.

**Additional Defense No. 2**

The claims of Plaintiffs and the alleged members of the putative class are barred by the doctrines of res judicata and/or collateral estoppel as well the principles of comity.

**Additional Defense No. 3**

Plaintiffs and the alleged members of the putative class are not entitled to any recovery under RICO because their claims are time-barred.

**Additional Defense No. 4**

Plaintiffs and the alleged members of the putative class are not entitled to any recovery under RICO because they cannot satisfy RICO's requirements concerning proximate cause, a pattern of racketeering activity, a RICO enterprise, predicate acts of mail or wire fraud, or RICO conspiracy. Further, the alleged predicate acts here, asserted misrepresentations supposedly made in court filings, cannot constitute RICO predicate acts as a matter of law.

**Additional Defense No. 5**

The claims of Plaintiffs and the alleged members of the putative class are barred by the Noerr-Pennington doctrine<sup>3</sup>, the judicial deliberation privilege, and any other applicable litigation privilege.

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<sup>3</sup> State Farm acknowledges the Court's August 30, 2018 ruling that the Noerr-Pennington doctrine does not apply to State Farm's 2005 and 2011 *Avery* filings and raises the doctrine here for preservation purposes.

**Additional Defense No. 6**

Neither the Plaintiffs nor the alleged members of the putative class have identified any concrete and actual injury to business or property or a clear and definite amount of damages. Because Plaintiffs' and the alleged class members' interest in the \$1.05 billion judgment was contingent upon the outcome in the Illinois Supreme Court, that judgment was not property for purposes of RICO. Moreover, no Plaintiff or alleged class member was even determined to be entitled to a clear and definite amount of damages.

**Additional Defense No. 7**

The claims of Plaintiffs and the alleged members of the putative class are barred by applicable statutes of limitation or other prescriptive periods, whether general or specific, by contract or statute.

**Additional Defense No. 8**

Injury, if any, allegedly suffered by Plaintiffs and alleged members of the putative class did not result from and was not proximately caused by any wrongful conduct on the part of State Farm.

**Additional Defense No. 9**

The claims of Plaintiffs and alleged members of the putative class are barred by the doctrines of laches, waiver, estoppel, and/or unclean hands.

**Additional Defense No. 10**

The claims of Plaintiffs and alleged members of the putative class are barred in whole or in part by the doctrines of payment, accord and satisfaction, recoupment, set-off, and/or election of remedies.

**Additional Defense No. 11**

The claims of Plaintiffs and the alleged members of the putative class are barred by settlement and release.

**Additional Defense No. 12**

To the extent that Plaintiffs and the alleged members of the putative class have sustained any legally cognizable damages as a result of the matters alleged in the Complaint, which State Farm specifically denies, they have failed to mitigate those damages.

**Additional Defense No. 13**

At all times material herein, State Farm's actions were both reasonable and in compliance with the applicable laws, rules, and regulations.

**Additional Defense No. 14**

In order to determine what, if any, amount of damages the named Plaintiffs and the members of the putative class demand from State Farm, an assessment of their underlying individual claims in the *Avery* litigation must be made. State Farm therefore incorporates by reference its additional defenses alleged throughout the course of the *Avery* litigation, including its Answer to the Third Amended Complaint.

**Additional Defense No. 15**

The insurance policies issued by State Farm which underlie Plaintiffs' claims are the best evidence of the policy's contents and are pled herein as though copied in their entirety. State Farm specifically pleads, without limitation, all terms, conditions, and exclusions of the Plaintiffs' State Farm insurance policies. Further, State Farm specifically denies any allegations that tend to contradict, contravene, or enlarge upon the terms, conditions, exclusions, or limitations of Plaintiffs' contracts of insurance with State Farm.

**Additional Defense No. 16**

Some of the claims of the named Plaintiffs, and members of the putative class, are barred because (a) no non-OEM crash parts were installed on their vehicles, (b) they leased and did not own their cars, (c) they were paid fair market value for their vehicles after the repairs were completed, (d) they consented to, or directed, the use of non-OEM crash parts in their repairs, and/or (e) they have acquiesced in and ratified State Farm's practices with respect to non-OEM parts by renewing their insurance contracts with State Farm.

**Additional Defense No. 17**

The quality of non-OEM crash parts is affirmed by the passage and continuing applicability of state insurance regulations that acknowledge the existence of quality non-OEM parts and do not prohibit their use, and by the fact that many state insurance regulators receive few, if any, complaints about the use of the non-OEM crash parts and do not perceive a problem. Plaintiffs' action interferes with the regulation of insurance by the various states, and violates the McCarran Ferguson Act.

**Additional Defense No. 18**

This action may not be maintained as a class action because (a) Plaintiffs are not adequate class representatives and cannot fairly and adequately protect the interests of the purported class; (b) Plaintiffs' claims and the defenses applicable to those claims are not typical of those of the alleged members of the putative class; (c) there are no material questions common to the asserted class, and even if there were, individual issues of law or fact predominate over any common questions; (d) a class action is not a superior method for the fair and efficient adjudication of the controversy; and (e) other requirements of maintaining this action as a class action have not been met, e.g., a properly-defined and readily ascertainable proposed class. Further, any adjudication of Plaintiffs' claims and those of the alleged members of the putative class through purported generalized class-wide proof would violate State Farm's rights to Due Process and Trial by Jury under the United States Constitution and applicable state constitutions.

**Additional Defense No. 19**

This action may not be maintained as a class action because principles of res judicata, collateral estoppel and comity bar Plaintiffs' attempt to obtain certification of the same class for which certification was rejected in *Avery*.

**Additional Defense No. 20**

Plaintiffs lack standing to assert claims on behalf of some or all of the alleged members of the putative class, and the Court therefore lacks subject matter jurisdiction over those claims.

**Additional Defense No. 21**

The claims of Plaintiffs and the alleged members of the putative class are barred by the First Amendment to the United States Constitution, including without limitation the freedom of political speech and the freedom of association as articulated in *Citizens United v. Federal Election Commission* and *McCutcheon v. Federal Election Commission*, and under the *Noerr-Pennington* doctrine, and by similar provisions of any applicable state constitutions. Indeed, the pendency of this lawsuit chills the First Amendment rights of State Farm and others.

**Additional Defense No. 22**

The Complaint improperly seeks to impair the obligation of contracts in contravention of rights guaranteed to State Farm by the United States Constitution and applicable state constitutions.

**Additional Defense No. 23**

The Complaint improperly seeks to affect a taking without just compensation in contravention of rights guaranteed to State Farm by the United States Constitution and applicable state constitutions.

**Additional Defense No. 24**

The Complaint improperly seeks to effect a deprivation of liberty and property in contravention of rights guaranteed State Farm by the Due Process Clauses of the United States Constitution and applicable state constitutions.

**Additional Defense No. 25**

To the extent Plaintiffs' claims for damages are based upon a claimed entitlement to punitive damages, such claims are unconstitutional insofar as they violate the due process protections afforded by the United States Constitution, the excessive fines clause of the Eighth Amendment of the United States Constitution, the Commerce Clause of the United States Constitution, the Full Faith and Credit Clause of the United States Constitution, and similar provisions of any applicable state constitution. Any law, statute, or other authority purporting to permit the recovery of punitive damages in this case is unconstitutional, facially and as applied, to the extent that, without limitation, it: (1) lacks constitutionally sufficient standards to guide

and restrain the jury's discretion in determining whether to award punitive damages and/or the amount, if any; (2) is void for vagueness in that it failed to provide adequate advance notice as to what conduct would result in punitive damages; (3) unconstitutionally may permit recovery of punitive damages based on out-of-state conduct, conduct that complied with applicable law, or conduct that was not directed, or did not proximately cause harm, to Plaintiffs; (4) unconstitutionally may permit recovery of punitive damages in an amount that is not both reasonable and proportionate to the amount of harm, if any, to Plaintiffs and to the amount of compensatory damages, if any; (5) unconstitutionally may permit a jury to award punitive damages for harm to nonparties; (6) unconstitutionally may permit jury consideration of net worth or other financial information relating to State Farm; (7) lacks constitutionally sufficient standards to be applied by the trial court in post-verdict review of any punitive damages award; (8) lacks constitutionally sufficient standards for appellate review of punitive damages awards; and (9) otherwise fails to satisfy United States Supreme Court precedent, including, without limitation, *Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991), *TXO Production Corp. v. Alliance Resources, Inc.*, 509 U.S. 443 (1993), *BMW of North America, Inc. v. Gore*, 517 U.S. 599 (1996), *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003), and *Philip Morris USA v. Williams*, 549 U.S. 346 (2007).

#### **Additional Defense No. 26**

Any imposition of treble damages pursuant to 18 USC § 1964(c) under the circumstances of this case would be unconstitutional, insofar as it would violate the due process protections afforded by the United States Constitution, the excessive fines clause of the United States Constitution, the Commerce Clause of the United States Constitution, the Full Faith and Credit Clause of the United States Constitution, and similar provisions of any applicable state constitution. Any recovery of treble damages in this case would be unconstitutional to the extent that, without limitation, it (1) unconstitutionally may permit recovery of treble damages based on out-of-state conduct, conduct that complied with applicable law, or conduct that was not directed, or did not proximately cause harm, to Plaintiffs; (2) unconstitutionally may permit recovery of treble damages in an amount that is not both reasonable and proportionate to the amount of harm, if any, to Plaintiffs and to the amount of compensatory damages, if any; (3) unconstitutionally may permit an award of treble damages for harm to nonparties; (4) lacks constitutionally sufficient standards to be applied by the trial court in post-verdict review of any treble damages award; (5) lacks constitutionally sufficient standards for appellate review of treble damages awards; and (6) otherwise fails to satisfy United States Supreme Court precedent, including, without limitation, *Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991), *TXO Production Corp. v. Alliance Resources, Inc.*, 509 U.S. 443 (1993), *BMW of North America, Inc. v. Gore*, 517 U.S. 599 (1996), *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003), and *Philip Morris USA v. Williams*, 549 U.S. 346 (2007).

#### **Additional Defense No. 27**

State Farm affirmatively pleads all conditions precedent under all policies issued to Plaintiffs and alleged members of the putative class.

**Additional Defense No. 28**

Plaintiffs and alleged members of the putative class may not recover based upon claims for extra-contractual damages, including punitive damages, as there is insufficient evidence to meet the burden of proof necessary to sustain the underlying claims for damages under State Farm's policies at issue or otherwise, and without actual damages against State Farm, extra-contractual damages, including statutory or punitive damages, are not recoverable.

**Additional Defense No. 29**

The claims set forth in the Complaint interfere with the primary or exclusive jurisdiction of the State Insurance Commissioner.

**Additional Defense No. 30**

The claims of Plaintiffs and the alleged members of the putative class are barred because they failed to exhaust available administrative remedies.

**Additional Defense No. 31**

Some or all of the named Plaintiffs and members of the putative class (a) authorized repairs to their vehicles in accordance with State Farm estimates, (b) acknowledged satisfactory completion of repairs by their selected repair shops, and (c) authorized State Farm to disburse payment for those repairs, on their behalf, to their selected repair shops. Those Plaintiffs thereby waived any claims predicated on breach of contract on account of replacement parts used by their repair shop in the repair of their vehicles.

**Additional Defense No. 32**

Injury, if any, suffered by the named Plaintiffs, or members of the putative class, as a result of replacement parts used in the repair of their vehicles did not result from and was not proximately caused by any breach of contract or any other wrongful conduct on the part of State Farm, but rather, on information and belief, resulted from and was proximately caused by one or more of the following:

- (a) the failure of Plaintiffs' selected repair shops to obtain and use available quality replacement parts in the repair of Plaintiffs' vehicles;
- (b) negligent and improper installation of replacement parts by Plaintiffs' selected repair shops; or
- (c) the conduct of others.

**Additional Defense No. 33**

The construction of State Farm's policy forms that underlies Plaintiffs' theory of damages is contrary to public policy in that it (a) would result in the monopolization of a replacement part industry by original equipment manufacturers of replacement parts; (b) would

destroy competition in the replacement part industry and would enable original equipment manufacturers of replacement parts to set exceedingly high prices for those parts; and (c) would therefore injure consumers and State Farm insureds by raising costs to anti-competitive levels.

**Additional Defense No. 34**

This action is precluded, in whole or in part, by the Settlement Agreement and Final Approval Order entered by the Circuit Court of Cook County, Illinois in *Krusinski v. State Farm Mutual Automobile Insurance Company*, No. 87 CH 10253 and the Final Judgment and Order of Dismissal entered in 1995 by the Superior Court of California for the County of San Diego in *Krinsk v. State Farm Mutual Automobile Insurance Company*, No. 626512.

**Additional Defense No. 35**

This action is barred, in whole or in part, by the pendency of prior filed actions.

**Additional Defense No. 36**

To the extent Plaintiffs' alleged damages are based upon claims under the Illinois Consumer Fraud and Deceptive Business Practices Act, such claims fails to allege fraud with the particularity required under Illinois law.

**Additional Defense No. 37**

To the extent Plaintiffs' alleged damages are based upon claims under the Illinois Consumer Fraud and Deceptive Business Practices Act, such claims are deficient with respect to non-Illinois members of the putative class, because the Act cannot be invoked by non-Illinois residents under the circumstances presented here pursuant to Illinois choice of law principles, the legislative history of Illinois Consumer Fraud and Deceptive Business Practices Act, and the due process, full faith and credit, and commerce clauses of the United States Constitution.

**Additional Defense No. 38**

The Illinois Consumer Fraud and Deceptive Business Practices Act claims of the Illinois class members in *Avery* were rejected correctly by the Illinois Supreme Court because the Illinois Consumer Fraud and Deceptive Business Practices Act claim of the sole Illinois putative class representative Plaintiff was not supported by evidence of actionable misrepresentations, actual deception, causation, and damages. Accordingly, Illinois Plaintiff Loger cannot prevail on RICO claims based on the purported underlying ICFA claim in *Avery*, and the putative Illinois class members in this case cannot prevail on RICO claims or recover damages based on the purported underlying ICFA claim in *Avery*.

WHEREFORE, State Farm, having answered Plaintiffs' Second Amended Complaint, paragraph by paragraph, having denied each and every allegation that might impute liability, and having asserted certain defenses, and reserving the right to amend its answers or assert additional

defenses as warranted, respectfully requests that the Court dismiss the Second Amended Complaint filed against it and enter judgment in its favor, together with costs and fees.

**DEMAND FOR JURY TRIAL**

State Farm demands a trial by jury on all claims so triable.

Dated: September 18, 2018

Respectfully submitted,

/s/ Patrick D. Cloud

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*Attorneys for Defendant State Farm Mutual  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of State Farm's Answer and Defenses to Plaintiffs' Second Amended Class Action Complaint was served upon all counsel of record on September 18, 2018, via the Court's CM/ECF system.

Dated: September 18, 2018

/s/ Patrick D. Cloud  
Attorney for Defendant State Farm