

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ANYSA NGETHPHARAT and  
JAMES KELLEY,

Plaintiffs,

v.

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant.

Case No. 2:20-cv-00454-MJP

**DEFENDANT’S ANSWER AND  
AFFIRMATIVE DEFENSES**

**JURY DEMAND**

Defendant State Farm Mutual Automobile Insurance Company (“State Farm”) answers Plaintiff’s First Amended Class Action Complaint for Breach of Contract, Violation of Washington Consumer Protection Act & Declaratory Relief (“Complaint”), and admits, denies, and avers as follows:

**PRELIMINARY STATEMENT**

State Farm objects that the Complaint violates Fed. R. Civ. P. 8(d) because the allegations are not “simple, concise, and direct.” The Complaint contains a litany of run-on “allegations” that mix factual assertions, legal conclusions, and opinions of counsel that make it difficult, if not impossible, for State Farm to form a response. Throughout the Complaint (and in its many footnotes), Plaintiffs also include argumentative commentary regarding their claims. Despite these shortcomings, State Farm endeavors to respond to Plaintiffs’ run-on allegations and footnotes.

**ANSWER**

Regarding Plaintiffs’ first unnumbered paragraph, State Farm admits that Plaintiffs purport to bring this action as “proposed Class Representatives” for the listed causes of action against State Farm. State Farm denies that Plaintiffs’ action can be properly certified as a class action. State Farm further denies that Plaintiffs can satisfy the requirements of numerosity, commonality, typicality, adequacy, predominance, and superiority.

**I. INTRODUCTION<sup>1</sup>**

1.1. State Farm admits that Plaintiffs purport to bring this action to recover damages on behalf of themselves and members of a putative class. State Farm denies that Plaintiffs or any putative class member are entitled to any of the relief requested in the Complaint. State Farm denies that Plaintiffs’ action can be properly certified as a class action. State Farm further denies that Plaintiffs can satisfy the requirements of numerosity, commonality, typicality, adequacy, predominance, and superiority. State Farm denies that Autosource valuation reports “determine what STATE FARM then stated to its insured was the value of the totaled vehicle as of the date of the loss.” State Farm is without information sufficient to form a belief as to the truth of, and on that basis denies, the allegation in footnote 1, including the unattributed quotation. State Farm denies any remaining allegations.

1.2. State Farm denies that it uses Autosource Reports “on nearly every total loss settlements by STATE FARM.” State Farm is without information sufficient to form a belief as to the truth of, and on that basis denies, the allegations in footnote 2 premised on what “Plaintiffs’ investigation shows.” The rest of footnote 2 appears to concern Plaintiffs’ views regarding the scope of Plaintiffs’ proposed class definition and does not require a response. To the extent Plaintiffs’ views require a response, State Farm denies that the putative class is properly defined, and it denies that Plaintiffs’ action can be properly certified as a class action.

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<sup>1</sup> State Farm mimics the Complaint’s headings for ease of reference. To the extent the Complaint’s headings contain factual allegations, State Farm denies them.

1 State Farm is without information sufficient to form a belief as to the truth of, and on that basis  
2 denies, Plaintiffs' allegations that "approximately 75% of Autosource reports . . . took an  
3 unsupported deduction for 'typical negotiation,'" and "[t]his deduction . . . results in an average  
4 6.5% reduction in the total loss valuation." State Farm denies any remaining allegations.

5 1.3. State Farm admits that it is a foreign insurance company authorized to do  
6 business in the State of Washington, that it is doing business in the State of Washington, and  
7 that it issues insurance policies in the State of Washington. Paragraph 1.3 also references  
8 written documents that speak for themselves. State Farm denies any allegation in Paragraph 1.3  
9 that contradicts, or is not 100% consistent with, those documents. State Farm denies any  
10 remaining allegations.

11 1.4. Paragraph 1.4 references written documents that speak for themselves. State  
12 Farm denies any allegation in Paragraph 1.4 that contradicts, or is not 100% consistent with,  
13 those documents. Paragraph 1.4 also references statutory provisions that speak for themselves.  
14 State Farm denies any allegation in Paragraph 1.4 that contradicts, or is not 100% consistent  
15 with, those statutory provisions. State Farm denies any remaining allegations.

16 1.5. Paragraph 1.5 references statutory provisions that speak for themselves. State  
17 Farm denies any allegation in Paragraph 1.5 that contradicts, or is not 100% consistent with,  
18 those statutory provisions. State Farm denies any remaining allegations.

19 1.6. Paragraph 1.6 references statutory provisions that speak for themselves. State  
20 Farm denies any allegation in Paragraph 1.6 that contradicts, or is not 100% consistent with,  
21 those statutory provisions. State Farm denies any remaining allegations.

22 1.7. State Farm admits that a 2014 Subaru Forrester listed on Plaintiff Ngethpharat's  
23 insurance policy was damaged in an automobile accident on or about December 19, 2019, that  
24 a claim was made under her insurance policy with State Farm, and that the vehicle was  
25 determined to be a total loss. State Farm admits that it investigated the facts of the claim and  
26 that it recorded information about the claim in the claim file. State Farm denies that it

1 “determined fault, and any comparative liability.” Rather, any fault and comparative liability  
2 were “determined” by the facts giving rise to the claim, in light of applicable policy provisions.  
3 State Farm denies that “the claim was determined to be a UMPD claim.” The remaining  
4 allegations in Paragraph 1.7 contain legal conclusions to which no response is required. To the  
5 extent a response is required, State Farm denies the allegations. State Farm denies any  
6 remaining allegations.

7 1.8. State Farm admits that it provided Plaintiff Ngethpharat State Farm’s estimate of  
8 the actual cash value of her total-loss vehicle, as well as the underlying support for that  
9 estimate. State Farm avers that it also provided Plaintiff Ngethpharat an estimate based on  
10 dealer quotes, not comparable vehicles. State Farm avers further that Plaintiff Ngethpharat also  
11 demanded appraisal under her insurance policy. State Farm denies “any common policy and  
12 practice” of “not providing the underlying report used to obtain [the] value” to its insureds.  
13 State Farm denies that Plaintiff Ngethpharat “was only able to obtain it from STATE FARM  
14 once a lawyer requested the underlying valuation report.” The remainder of Paragraph 1.8  
15 references written documents that speak for themselves. State Farm denies any allegation in  
16 Paragraph 1.8 that contradicts, or is not 100% consistent with, those documents. State Farm  
17 denies any remaining allegations.

18 1.9. State Farm denies Plaintiffs’ characterization that Plaintiff Kelley’s “experience  
19 was identical in material respects to” Plaintiff Ngethpharat’s. State Farm admits that a 2020  
20 Ford Explorer listed on Plaintiff Kelley’s insurance policy was damaged in an automobile  
21 accident on or about January 16, 2020, that a claim was made under his insurance policy with  
22 State Farm, and that the vehicle was determined to be a total loss. State Farm admits that it  
23 investigated the facts of the claim and that it recorded information about the claim in the claim  
24 file. State Farm denies that it “determined fault, and any comparative liability.” Rather, any  
25 fault and comparative liability were “determined” by the facts giving rise to the claim, in light  
26 of applicable policy provisions. The remaining allegations in Paragraph 1.9 contain legal

1 conclusions to which no response is required. To the extent a response is required, State Farm  
2 denies the allegations. State Farm denies any remaining allegations.

3 1.10. State Farm admits that it provided Plaintiff Kelley State Farm's estimate of the  
4 actual cash value of his total-loss vehicle, as well as the underlying support for that estimate.  
5 The remainder of Paragraph 1.10 references written documents that speak for themselves. State  
6 Farm denies any allegation in Paragraph 1.10 that contradicts, or is not 100% consistent with,  
7 those documents. State Farm denies any remaining allegations.

8 1.11. State Farm denies that the "report . . . is not in the usual course provided to the  
9 insured." Paragraph 1.11 references written documents that speak for themselves. State Farm  
10 denies any allegation in Paragraph 1.11 that contradicts, or is not 100% consistent with, those  
11 documents. The remainder of Paragraph 1.11 contains legal conclusions and legal argument to  
12 which no response is required. To the extent a response is required, State Farm denies the  
13 allegations. State Farm denies any remaining allegations.

14 1.12. Paragraph 1.12 references written documents that speak for themselves. State  
15 Farm denies any allegation in Paragraph 1.12 that contradicts, or is not 100% consistent with,  
16 those documents. State Farm denies any amount of "savings," and it denies the existence of a  
17 "common claims practice." State Farm denies any remaining allegations.

18 1.13. Paragraph 1.13 references written documents that speak for themselves. State  
19 Farm denies any allegation in Paragraph 1.13 that contradicts, or is not 100% consistent with,  
20 those documents. State Farm denies that it "undercompensate[d] Plaintiff." State Farm is  
21 without information sufficient to form a belief as to the truth of, and on that basis denies,  
22 whether "an insured would have no way to even know a deduction was being taken." State  
23 Farm denies any remaining allegations.

24 1.14. State Farm denies the allegations in Paragraph 1.14.

25 1.15. State Farm denies the allegations in Paragraph 1.15, including all sub-parts.  
26

1.16. Paragraph 1.16 references written documents that speak for themselves. State Farm denies any allegation in Paragraph 1.16 that contradicts, or is not 100% consistent with, those documents. State Farm denies any remaining allegations.

1.17. State Farm admits that it provided Plaintiff Ngethpharat State Farm's estimate of the actual cash value of her total-loss vehicle, as well as the underlying support for that estimate. State Farm admits that Plaintiff Ngethpharat objected to State Farm's estimate of the actual cash value of her total-loss vehicle, and State Farm avers that it then provided Plaintiff Ngethpharat an estimate based on dealer quotes, not comparable vehicles. State Farm avers further that Plaintiff Ngethpharat also demanded appraisal under her insurance policy. State Farm denies the allegations in Paragraph 1.17.

1.18. State Farm admits that Plaintiffs purport to make certain allegations regarding State Farm's total-loss processes. State Farm denies the allegations in Paragraph 1.18.

## II. JURISDICTION AND VENUE

2.1. On information and belief, State Farm admits that the proposed Class consists of 100 or more members, that the amount in controversy exceeds \$5,000,000, and that minimal diversity exists. State Farm admits, on information and belief, that Plaintiffs are citizens of Washington. State Farm admits that it is headquartered in Illinois and is a citizen of Illinois. State Farm denies the allegations in footnote 6.

2.2. State Farm admits that venue is proper in this District. State Farm denies that "Plaintiffs' insurance claims were underpaid."

2.3. State Farm admits, on information and belief, that Plaintiffs are citizens of the State of Washington. State Farm is without information sufficient to form a belief as to the truth of, and on that basis denies, the allegation that Plaintiffs "reside in King County."

## III. THE PARTIES

3.1. State Farm admits, on information and belief, that Plaintiffs are citizens of the State of Washington. State Farm is without information sufficient to form a belief as to the

1 truth of, and on that basis denies, the allegation that Plaintiffs “reside in King County.” State  
 2 Farm admits the second sentence of Paragraph 3.1. State Farm denies the third sentence of  
 3 Paragraph 3.1.

4 3.2. State Farm admits that it is a foreign insurance company authorized to do  
 5 business in the State of Washington, that it is doing business in the State of Washington, and  
 6 that it issues insurance policies in the State of Washington. State Farm admits that its principal  
 7 place of business is in Bloomington, Illinois, and that it has offices and agents in the State of  
 8 Washington. Plaintiffs’ allegation that State Farm “conducts substantial and ongoing business”  
 9 is a legal conclusion to which no response is required. To the extent a response is required,  
 10 State Farm denies the allegation. State Farm denies any remaining allegations.

#### 11 **IV. THE COMMON COURSE OF CONDUCT BY STATE FARM**

12 4.1. State Farm admits that it is a foreign insurance company authorized to do  
 13 business in the State of Washington, that it is doing business in the State of Washington, and  
 14 that it issues insurance policies in the State of Washington. State Farm admits that it advertises  
 15 in the State of Washington. State Farm denies any remaining allegations.

16 4.2. Paragraph 4.2 references written documents that speak for themselves. State  
 17 Farm denies any allegation in Paragraph 4.2 that contradicts, or is not 100% consistent with,  
 18 those documents. State Farm denies any remaining allegations.

19 4.3. State Farm denies the allegations in Paragraph 4.3.

#### 20 **V. CLASS ACTION ALLEGATIONS**

21 5.1. State Farm admits that Plaintiffs purport to bring this action as a class action  
 22 under Rule 23. State Farm denies that Plaintiffs’ action can be properly certified as a class  
 23 action. State Farm further denies that Plaintiffs can satisfy the requirements of numerosity,  
 24 commonality, typicality, adequacy, predominance, and superiority. State Farm denies that it has  
 25 engaged in “systematic and continuous” conduct, denies that it has engaged in a “uniform and  
 26

1 common practice of underpaying” its insureds, and denies that it has “fail[ed] to comply with  
2 §391.” State Farm denies any remaining allegations.

3 5.2. State Farm is without information sufficient to form a belief as to the truth of,  
4 and on that basis denies, allegations regarding “[a]ll” and “any” “members of the proposed  
5 Class.” State Farm denies any remaining allegations.

6 5.3. State Farm admits that Plaintiffs purport to seek certification of a putative class  
7 as defined in the Complaint. State Farm denies that the putative class is properly defined. State  
8 Farm denies that Plaintiffs’ action can be properly certified as a class action. State Farm further  
9 denies that Plaintiffs can satisfy the requirements of numerosity, commonality, typicality,  
10 adequacy, predominance, and superiority.

11 5.4. State Farm admits that Plaintiffs purport to exclude certain groups from their  
12 putative class definition. State Farm denies that the putative class is properly defined. State  
13 Farm denies that Plaintiffs’ action can be properly certified as a class action. State Farm further  
14 denies that Plaintiffs can satisfy the requirements of numerosity, commonality, typicality,  
15 adequacy, predominance, and superiority.

16 5.5. State Farm denies the allegations in Paragraph 5.5. State Farm denies that the  
17 putative class is properly defined. State Farm denies that Plaintiff’s action can be properly  
18 certified as a class action. State Farm further denies that Plaintiffs can satisfy the requirements  
19 of numerosity, commonality, typicality, adequacy, predominance, and superiority. State Farm  
20 denies any remaining allegations.

21 5.6. State Farm admits that Plaintiffs purchased State Farm automobile insurance  
22 policies and admits that they made a claim for loss. State Farm denies that “Plaintiffs are  
23 typical of members of the Class.” State Farm denies that it “underpaid the losses,” denies that  
24 its conduct “was not permitted under STATE FARM’s contractual obligations” and denies that  
25 Plaintiffs’ interests “are identical to those of other unnamed members of the Class.” State Farm  
26 denies any remaining allegations.



1           5.7. State Farm denies the allegations in Paragraph 5.7. State Farm denies that  
 2 Plaintiff's action can be properly certified as a class action. State Farm further denies that  
 3 Plaintiffs can satisfy the requirements of numerosity, commonality, typicality, adequacy,  
 4 predominance, and superiority. State Farm denies any remaining allegations.

5           5.8. State Farm is without information sufficient to form a belief as to the truth of,  
 6 and on that basis denies, the allegations in Paragraph 5.8.

7           5.9. State Farm is without information sufficient to form a belief as to the truth of,  
 8 and on that basis denies, the allegations in Paragraph 5.9.

9           5.10. State Farm denies the allegations in Paragraph 5.10. State Farm denies that  
 10 Plaintiff's action can be properly certified as a class action. State Farm further denies that  
 11 Plaintiffs can satisfy the requirements of numerosity, commonality, typicality, adequacy,  
 12 predominance, and superiority. State Farm denies any remaining allegations.

13           5.11. State Farm denies the allegations in Paragraph 5.11. State Farm denies that  
 14 Plaintiff's action can be properly certified as a class action. State Farm further denies that  
 15 Plaintiffs can satisfy the requirements of numerosity, commonality, typicality, adequacy,  
 16 predominance, and superiority. State Farm denies any remaining allegations.

17           5.12. State Farm denies the allegations in Paragraph 5.12. State Farm denies that  
 18 Plaintiff's action can be properly certified as a class action. State Farm further denies that  
 19 Plaintiffs can satisfy the requirements of numerosity, commonality, typicality, adequacy,  
 20 predominance, and superiority. State Farm denies any remaining allegations.

21           5.13. State Farm denies the allegations in Paragraph 5.13. State Farm denies that  
 22 Plaintiff's action can be properly certified as a class action. State Farm further denies that  
 23 Plaintiffs can satisfy the requirements of numerosity, commonality, typicality, adequacy,  
 24 predominance, and superiority. State Farm denies any remaining allegations.

#### 25                                   **COUNT I – BREACH OF CONTRACT**

26           6.1. State Farm incorporates by reference all preceding paragraphs.

6.2. State Farm is without information sufficient to form a belief as to the truth of, and on that basis denies, allegations regarding “members of the proposed Class.” State Farm denies any remaining allegations.

6.3. Paragraph 6.3 contains legal conclusions to which no response is required. To the extent a response is required, State Farm denies the allegations. State Farm denies that it “breached its contract with Plaintiffs and members of the Class.” State Farm denies any remaining allegations.

6.4 State Farm denies the allegations in Paragraph 6.4.

## **COUNT II – VIOLATION OF CONSUMER PROTECTION ACT**

7.1. State Farm denies the allegations in Paragraph 7.1.

7.2. State Farm denies the allegations in Paragraph 7.2.

7.3. State Farm denies the allegations in Paragraph 7.3.

7.4. State Farm denies the allegations in Paragraph 7.4.

7.5. State Farm denies the allegations in Paragraph 7.5.

## **COUNTS III & IV DECLARATORY & INJUNCTIVE RELIEF**

8.1. The Court dismissed Plaintiffs’ cause of action for injunctive relief. (Order on Motions to Dismiss, Dkt. No. 49, at 16.) Accordingly, no response is required. To the extent a response is required (or the allegation concerns Plaintiffs’ cause of action for declaratory relief), State Farm denies the allegations and denies that Plaintiff or “the class” are entitled to any relief.

8.2. The Court dismissed Plaintiffs’ cause of action for injunctive relief. (Order on Motions to Dismiss, Dkt. No. 49, at 16.) Accordingly, no response is required. To the extent a response is required (or the allegation concerns Plaintiffs’ cause of action for declaratory relief), State Farm denies the allegations and denies that Plaintiff or any “policyholders” are entitled to any relief.

7.1. [sic] State Farm denies that the allegations in Paragraph 7.1, including sub-parts 1 through 8, and denies that Plaintiff or “members of the proposed Class” are entitled to any relief.

Each and every allegation not expressly admitted is denied.

State Farm designates all of its denials of material allegations, and all of its averments of material facts, as defenses to the extent necessary to provide a complete defense. The following defenses are set forth for the purpose of providing Plaintiffs notice of those defenses State Farm may assert against their claims for relief.

1. State Farm denies all allegations not expressly admitted and, to the extent not specified below, reserves all affirmative or other defenses that it may have against the putative class.

2. Plaintiffs' Complaint fails to state claims upon which relief can be granted.

3. Plaintiffs' Complaint does not satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure or any class-action procedural mechanism.

4. Plaintiffs' claims, and the claims of members of the putative class, may be barred, in whole or in part, by the terms, provisions, conditions, definitions, limitations, and exclusions in their insurance policies.

1           5.       Plaintiffs' claims, and the claims of members of the putative class, may be  
2 barred, in whole or in part, by their failure to comply with requirements of their insurance  
3 policies, or other prerequisites for bringing suit in their insurance policies.

4           6.       Plaintiffs' claims, and the claims of members of the putative class, may be  
5 barred, in whole or in part, because they breached their insurance policies.

6           7.       Plaintiffs' claims, and the claims of members of the putative class, may be  
7 barred, in whole or in part, by their failure to comply with one or more conditions precedent to  
8 recovery of the benefits or remedies they seek in connection with the subject matter of their  
9 claims, on account of their conduct in connection with the subject matter of their claims.

10          8.       State Farm acted at all times alleged in the Complaint in compliance with the  
11 insurance policies and with Washington law, and in good faith.

12          9.       Plaintiffs and members of the putative class have not suffered any injury in fact.

13          10.      Plaintiffs and members of the putative class have not suffered any actual damage  
14 or loss.

15          11.      Plaintiffs and members of the putative class have failed to mitigate their  
16 damages, if any.

17          12.      Plaintiffs' alleged damages, and the alleged damages of members of the putative  
18 class, may be subject to an offset of any and all amounts recovered by Plaintiffs or any member  
19 of the putative class through any claims or lawsuits for which they seek recovery from State  
20 Farm.

21          13.      To the extent that any part of the Complaint may be construed as alleging or  
22 seeking recovery of punitive or exemplary damages, the Complaint fails to state a claim for  
23 punitive or exemplary damages.

24          14.      State Farm's actions have not caused Plaintiffs or any member of the putative  
25 class any damages, loss, or injury.  
26

1           15. Any damages sustained by Plaintiffs or any member of the putative class were  
2 proximately caused and occasioned by the actions and omissions of Plaintiffs or putative class  
3 members or others, and these acts and omissions were the sole causes of Plaintiffs' or any  
4 putative class member's alleged damages. Accordingly, State Farm pleads independent,  
5 intervening, or superseding acts and omissions of Plaintiffs and others as a complete bar to this  
6 action.

7           16. Plaintiffs' claims, and the claims of members of the putative class, may be  
8 barred, in whole or in part, by applicable statutes of limitations or repose and/or the time  
9 limitation on suit in the insurance policy.

10          17. Plaintiffs' claims, and the claims of members of the putative class, may be  
11 barred, in whole or in part, by the defenses of estoppel, laches, and waiver.

12          18. Plaintiffs' claims, and the claims of members of the putative class, may be  
13 barred, in whole or in part, by the doctrine of unclean hands.

14          19. Plaintiffs' claims, and the claims of members of the putative class, may be  
15 barred, in whole or in part, by a valid accord and satisfaction, compromise, or other settlement,  
16 including an offer and acceptance of complete relief, reached with State Farm.

17          20. Plaintiffs' claims, and the claims of members of the putative class, may be  
18 barred, in whole or in part, due to Plaintiffs' and any putative class member's spoliation of  
19 evidence.

20          21. Plaintiffs' claims are barred, in whole or in part, by the Due Process and Equal  
21 Protection Clauses of the Fifth and Fourteenth Amendments and the Seventh Amendment's  
22 guarantee of a jury trial under the United States Constitution, to the extent that Plaintiffs seek to  
23 extrapolate liability, causation, or damages on a classwide basis, instead of proving liability,  
24 causation, and damages for each individual putative class member.

25           State Farm reserves the right to add or abandon defenses as additional facts become  
26 known through the course of discovery and further investigation.

**JURY DEMAND**

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

**PRAYER FOR RELIEF**

State Farm respectfully requests that this Court:

1. Deny any request to certify this action as a class action;
2. Enter judgment against Plaintiffs and in favor of State Farm;
3. Dismiss Plaintiffs' claims with prejudice;
4. Award State Farm all costs and attorney fees permitted by applicable law; and
5. Order any such further relief that this Court may determine is proper.

1  
2 Dated: November 30, 2020

WHEELER TRIGG O'DONNELL LLP

3  
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