

IN THE DISTRICT COURT OF PAYNE COUNTY
STATE OF OKLAHOMA

IN THE DISTRICT COURT OF
Payne County, Oklahoma
Filed

MAY 14 2019

LOWI ALLEN, Court Clerk
Deputy

John Rolaff and Harlene Rolaff,
husband and wife, for themselves and as
representatives of classes of similarly
situated individuals,

Plaintiffs,

v.

Farmers Insurance Company, Inc.;
Farmers Insurance Exchange;
Fire Insurance Exchange;
Truck Insurance Exchange;
Foremost Insurance Company;
Mid-Century Insurance Co.;
Farmers Group, Inc.;
Fire Underwriters Association;
Donan Engineering Co., Inc.;
Engineering, Inc.;
Ford Engineering;
The Structures Group, Inc.;
Nelson Forensics, LLC;
PT&C Forensic Consulting Services, P.A.;
Envista Forensics, LLC; and
Rimkus Consulting Group, Inc.

Defendants.

Civil Action No:

CJ-19-236.

**PLAINTIFFS' PETITION
AND REQUEST FOR CLASS CERTIFICATION**

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1. Plaintiffs JOHN ROLAFF and HARLENE ROLAFF, individually and on behalf of the Class of injured persons they represent—for their Petition against Defendants, Farmers Insurance Company, Inc.; Farmers Insurance Exchange; Fire Insurance Exchange; Truck Insurance Exchange; Foremost Insurance Company; Mid-Century Insurance Co.; Farmers Group, Inc.; Fire Underwriters Association; Donan Engineering Co., Inc.; Engineering, Inc.; Ford Engineering; The Structures Group, Inc.; Nelson Forensics, LLC; PT&C Forensic Consulting Services, P.A.; Envista Forensics, LLC; and Rimkus Consulting Group, Inc.—allege as follows:

I. INTRODUCTION

2. This action involves fraudulent schemes and conspiracy on the part of Farmers insurance companies and several engineering firms in Oklahoma, who developed a way to avoid costly payments to insureds for earthquake damage under valid insurance policies. Plaintiffs and Class Members are those insureds and policyholders who filed claims under valid earthquake coverage for damage to their property. Defendants are those Farmers insurance companies who denied claims in bad faith and in violation of Oklahoma insurance law, along with the engineering firms who drafted sham and/or pretextual reports showing “pre-existing damage” or other false reasons to justify the wrongful denials.

3. The Farmers Defendants wrongfully denied Plaintiffs’ and Class Members’ earthquake coverage claims in two ways:

- a. The Farmers Defendants¹ denied insureds’ earthquake coverage claims on the basis of pre-existing damage. However, those denials (in whole or in part) were not

¹ Throughout this Petition, reference to “Farmers Defendants” means Defendants, Farmers Insurance Company, Inc.; Farmers Insurance Exchange; Foremost Insurance Company; Fire Insurance Exchange; Truck Insurance Exchange; Mid-Century Insurance Co.; Farmers Group, Inc.; and Fire Underwriters Association.

supported by a legally-required prior inspection or survey, which must have been conducted prior to the inception of coverage under Oklahoma insurance law. Without that prior inspection or survey, any denial on the basis of a pre-existing condition was wrongful and unlawful.

- b. The Farmers Defendants procured sham engineering reports from the Engineering Defendants² for the sole purpose of justifying their denial of insureds' claims. These engineering reports ignore earthquake data that support coverage and instead find pre-existing damage or other reasons providing a pretext to deny the claim.

The Farmers Defendants wrongfully denied their insureds' claims using one or both of these schemes. They failed to disclose the unlawful basis of their coverage denial to their insureds, thereby breaching the duty they owe their insureds. This conduct is fraudulent and has padded the Farmers Defendants' pockets with ill-gotten gains—the indemnity payments they should have paid to their insureds under valid earthquake insurance policies—for years.

4. The Farmers Defendants entered the Oklahoma earthquake insurance market several decades ago. At the time and until recently, severe earthquakes were rare in Oklahoma. However, since approximately 2009, seismic activity in Oklahoma has measurably increased in frequency and severity. At first, while tremors were still relatively small and unremarkable, Farmers preyed on rising public concern as a unique marketing opportunity. The uptick in frequency and severity of earthquakes in the state, combined with consumers' nervousness about loss from earthquake damage, created the potential for great profit. The Farmers Defendants

² Throughout this Petition, reference to the “Engineering Defendants” means Donan Engineering Co., Inc.; Engineering, Inc.; Ford Engineering; The Structures Group, Inc.; Nelson Forensics, LLC; PT&C Forensic Consulting Services, P.A.; Envista Forensics, LLC; and Rimkus Consulting Group, Inc.

marketed their earthquake insurance products heavily in Oklahoma and generated significant profits as a result. However, the frequency and severity of earthquakes in Oklahoma continued to increase and subjected the Farmers Defendants to significant contractual liability based on claims under earthquake policies.

5. In 2016, the Oklahoma Department of Insurance issued a new order requiring insurers to justify rate increases with evidence (*i.e.*, claims paid).³ Before this order, the Farmers Defendants had increased premiums by 150% over two years but were paying relatively little in actual claims.

6. The Department of Insurance's order effectively destroyed what remained of the Farmers Defendants' profit machine; the Farmers Defendants' gamble in the Oklahoma earthquake market became a failed bet, and the Farmers Defendants were unwilling to honor their insurance policies at such a loss. They needed a way to extricate themselves from the untenable risks they faced *vis-à-vis* earthquake policies in Oklahoma.

7. First, the Farmers Defendants effectively abandoned Oklahoma; they stopped issuing new earthquake coverage and declined renewal of existing earthquake coverage for Oklahoma insureds after the Department of Insurance issued an order which prohibited the Farmers Defendants from arbitrarily increasing earthquake coverage premiums absent objective evidence, *i.e.*, paid claims. But the Farmers Defendants still needed a means to escape costly indemnity payments for claims under valid policies from existing policyholders.

8. Plaintiffs and Class Members are those policyholders—Oklahoma insureds under Farmers Defendants' policies of earthquake insurance coverage, which were valid and in effect

³ See Order In Re: Earthquake Insurance Rates, Case No. 16-0391-TRN (Jun. 5, 2016).

from January 1, 2009, to December 31, 2017.⁴ After incurring costly and significant property damage caused by earthquake(s), Plaintiffs and Class Members filed timely claims under their policies.

9. The Farmers Defendants denied these claims systematically, as they denied virtually *all* claims for coverage under earthquake policies in Oklahoma, using one or both of the aforementioned schemes. The Farmers Defendants reached their denial decisions—which they justified by claiming “pre-existing damage” falling outside the terms of the insurance policy—and issued notices of denial to its insureds in bad faith. These denials (in whole or in part) were not based on a pre-coverage engineering inspection or survey as required under Oklahoma insurance law. Many, in fact, were based on sham post-loss engineering reports, which the Farmers Defendants procured from the Engineering Defendants for the sole and express purpose of justifying this systematic bad faith denial of earthquake coverage claims. This course of fraudulent conduct allowed the Farmers Defendants to avoid costly contractual liability under its valid policies and extricate itself fully from the Oklahoma earthquake insurance market.

10. Evincing Defendants’ intent to defraud Plaintiffs and Class Members, the Farmers Defendants only utilized engineers from their pre-approved list and tracked every post-loss sham report they received from each Engineering Defendant.

11. The Class consists of thousands of individual Oklahomans insured by the Farmers Defendants, who fell victim to the Farmers Defendants’ company-wide scheme and pervasive practice of systematically denying homeowners’ claims without legally-required prior inspections or surveys and/or through pretextual use of biased engineers and their outcome-determinative

⁴ The Farmers Defendants canceled and/or removed from existing policies all earthquake coverage for Oklahoma insureds through December 31, 2017. The Farmers Defendants stopped writing new earthquake coverage on January 1, 2017.

reports. These schemes are orchestrated by the Farmers Defendants' most senior leadership to reduce indemnity payments due to its insureds and preserve its surplus (premium) at any cost.

II. PARTIES

A. Plaintiffs

12. Plaintiffs JOHN ROLAFF and HARLENE ROLAFF are natural persons residing in Cushing, Oklahoma, which is located in Payne County, Oklahoma. At all relevant times, Plaintiffs were parties to a valid contract for indemnity insurance for damage to their property caused by earthquake, which was issued, administered, and adjusted by the Farmers Defendants.

B. The Farmers Defendants

13. The "Farmers Defendants" are all part of a holding company group that uses the registered trademark "Farmers Insurance Group of Companies." The Farmers Defendants are Farmers Insurance Company, Inc., Farmers Insurance Exchange, Fire Insurance Exchange, Truck Insurance Exchange, Foremost Insurance Company, Mid-Century Insurance Co., Farmers Group, Inc., and Fire Underwriters Association. The Farmers Defendants are members of the Property & Casualty Group of the Farmers Insurance Group of Companies.

14. Defendant, Farmers Insurance Company, Inc. ("Defendant FIC") is a Kansas corporation authorized and admitted to write insurance in Arkansas, Texas and Oklahoma and other states with its principal place of business in Kansas. Defendant FIC may be served with process by and through the Oklahoma Insurance Commissioner, Five Corporate Plaza, 3625 NW 56th Street, Suite 100, Oklahoma City, Oklahoma 73112. *See* 36 O.S. § 36-621, 12 O.S. § 2004 (C)(1)(c)(3). Defendant FIC is a stock company that is owned by FIE (70.0%); Fire Insurance Exchange (20.0%) and Truck Insurance Exchange (10.0%), each of which is a reciprocal or inter-insurance exchange owned by its respective policyholders.

15. Defendant, Farmers Insurance Exchange (“Defendant FIE”) is an unincorporated association under the laws of California and is a reciprocal insurer or inter-insurance exchange authorized and admitted to write insurance in Arkansas, Texas, Oklahoma and other states with its principal place of business in California. Defendant FIE may be served with process by and through the Oklahoma Insurance Commissioner, Five Corporate Plaza, 3625 NW 56th Street, Suite 100, Oklahoma City, Oklahoma 73112. *See* 36 O.S. § 36-621, 12 O.S. § 2004 (C)(1)(c)(3). As an unincorporated association, Defendant FIE is owned by its policyholders and deemed to be a citizen of each state in which each of its members/policyholders reside, which includes Oklahoma. By and through this inter-insurance exchange, every aspect of the Farmers Defendants’ property claims organization are performed by Defendant FIE.

16. Defendant, Fire Insurance Exchange (“Defendant Fire Exchange”) is an unincorporated association under the laws of California and is a reciprocal insurer or inter-insurance exchange authorized and admitted to write insurance in Arkansas, Texas, Oklahoma and other states with its principal place of business in California. Defendant Fire Exchange may be served with process by and through the Oklahoma Insurance Commissioner, Five Corporate Plaza, 3625 NW 56th Street, Suite 100, Oklahoma City, Oklahoma 73112. *See* 36 O.S. § 36-621, 12 O.S. § 2004 (C)(1)(c)(3). As an unincorporated association, Defendant Fire Exchange is owned by its policyholders and deemed to be a citizen of each state in which each of its members/policyholders reside, which includes Oklahoma.

17. Defendant, Truck Insurance Exchange (“Defendant Truck Exchange”) is an unincorporated association under the laws of California and is a reciprocal insurer or inter-insurance exchange authorized and admitted to write insurance in Arkansas, Texas, Oklahoma and other states with its principal place of business in California. Defendant Truck Exchange may be

served with process by and through the Oklahoma Insurance Commissioner, Five Corporate Plaza, 3625 NW 56th Street, Suite 100, Oklahoma City, Oklahoma 73112. *See* 36 O.S. § 36-621, 12 O.S. § 2004 (C)(1)(c)(3). As an unincorporated association, Defendant Truck Exchange is owned by its policyholders and deemed to be a citizen of each state in which each of its members/policyholders reside, which includes Oklahoma.

18. Defendant, Foremost Insurance Company (“Defendant Foremost”) is a Michigan corporation authorized and admitted to write insurance in Arkansas, Texas, Oklahoma and other states with its principal place of business in Michigan. Defendant Foremost is a stock company that is owned by Defendant FIE (80.0%); Defendant Fire Exchange (10%) and Truck Insurance Exchange (10%), each of which is a reciprocal or inter-insurance exchange owned by its respective policyholders. Defendant Foremost has no employees and operates as a brand name within a business unit of Defendant FGI. Defendant Foremost may be served with process by and through the Oklahoma Insurance Commissioner, Five Corporate Plaza, 3625 NW 56th Street, Suite 100, Oklahoma City, Oklahoma 73112. *See* 36 O.S. § 36-621, 12 O.S. § 2004 (C)(1)(c)(3).

19. Defendant, Mid-Century Insurance Co. (“Defendant Mid-Century”) is a California corporation authorized and admitted to write insurance in Arkansas, Texas, Oklahoma and other states with its principal place of business in California. Defendant Mid-Century Insurance Co. may be served with process by and through the Oklahoma Insurance Commissioner, Five Corporate Plaza, 3625 NW 56th Street, Suite 100, Oklahoma City, Oklahoma 73112. *See* 36 O.S. § 36-621, 12 O.S. § 2004 (C)(1)(c)(3). Defendant Mid-Century is a stock company that is owned by Defendant FIE (80.0%); Defendant Fire Exchange (17.5%) and Truck Insurance Exchange (2.5%), each of which is a reciprocal or inter-insurance exchange owned by its respective policyholders.

20. Defendant, Farmers Group, Inc. (“Defendant FGI”) is a Nevada corporation with its principal place of business in California. Defendant FGI may be served with process by and through its registered agent, Doren E. Hohl, 4680 Wilshire Boulevard, Los Angeles, California 90010. Defendant FGI provides management services for Defendants FIC and Mid-Century Insurance Co. Further, Defendant FGI d/b/a Farmers Underwriters Association acts as the statutory attorney-in-fact for Defendant FIE. Defendant FGI has contractual relationships with all of the Defendants through its attorney in fact designations and under its management agreements. Pursuant to those contractual relationships, Defendant FGI has provided “management services” for all of the Defendants. The functions performed by Defendant FGI are those normally included within the executive and administrative functions of a corporation and include policy making and financial profitability, regulatory compliance, agency training and oversight, the setting of premiums, the underwriting and rating of insureds, and all other non-claims related matters. Every policyholder (including Plaintiffs) is required to appoint FGI as the attorney-in-fact and pay a percentage of premium to Defendant FGI.

21. Defendant, Fire Underwriters Association (“Defendant Fire Underwriters”) is a California corporation with its principal place of business in California. Defendant Fire Underwriters Association may be served with process by and through the Oklahoma Insurance Commissioner, Five Corporate Plaza, 3625 NW 56th Street, Suite 100, Oklahoma City, Oklahoma 73112. *See* 36 O.S. § 36-621, 12 O.S. § 2004 (C)(1)(c)(3). Defendant Fire Underwriters Association acts as the statutory attorney-in-fact for Defendant Fire Exchange. Defendant Fire Underwriters Association is a subsidiary of Defendant FGI.

22. The Farmers Defendants are part of a reciprocal inter-insurance exchange, in which they pool their business among other insureds and “exchange policies” within the Farmers Group

of Companies in accordance with the percentages contained in the pooling agreement and/or management agreements and share all premiums, expenses and losses. By and through this inter-insurance exchange, the Farmers Defendants owe their policyholders a fiduciary duty of care, and collectively through their subsidiaries and management agreements, Defendant FGI, directly or indirectly, controls the actions of Defendants FIE, FIC, Foremost and Mid-Century with respect to the setting of premiums, the underwriting and rating of insureds, decisions regarding the sending of all policy forms to all insureds of the Defendants, the evaluation of claims under policies of insurance, the use of engineers, the decision to abandon earthquake coverage in Oklahoma and the decisions to deny earthquake claims. Defendant Fire Underwriters acts as an attorney-in-fact for Defendant Fire Exchange. As such, the separation between the Farmers Defendants may be disregarded for the purposes of this Petition, and the Farmers Defendants can each be held liable for the causes of action asserted by Plaintiffs.

C. The Engineering Defendants

23. The Engineering Defendants are all providers of forensic engineering, structural engineering, and/or loss evaluation services in Oklahoma who contract with the Farmers Defendants to provide sham engineering reports to justify claim denials.

24. Defendant, Donan Engineering Co. Inc., is a limited liability corporation formed under the laws of Indiana with its principal place of business at 12450 Lake Station Place, Louisville, Kentucky 40299. Defendant may be served with process through its registered agent in Oklahoma, Corporation Service Company, at 10300 Greenbriar Place, Oklahoma City, Oklahoma 73159-7653.

25. Defendant, Engineering, Inc., is a corporation formed under the laws of Oklahoma. Defendant may be served with process through its registered agent in Oklahoma, Shawn M. Thompson, at 121 N. Mountain View Road, Edmond, Oklahoma 73034.

26. Defendant, Ford Engineering, is a corporation formed under the laws of Oklahoma with its principal place of business at 3337 S. Troost Street, Tulsa, Oklahoma 74105-2644. Alternatively, Ford Engineering is the trade name for William B. Ford, P.E., a natural person residing in Oklahoma who may be served with process at the same address.

27. Defendant, The Structures Group, Inc. is a corporation formed under the laws of Oklahoma. Defendant may be served with process through its registered agent in Oklahoma, Registered Agent Solutions, Inc., at 1406 Terrace Drive, Tulsa, Oklahoma, 74104.

28. Defendant, Nelson Forensics, LLC, is a limited liability corporation formed under the laws of Texas with its principal place of business at 2740 Dallas Parkway, Suite 220, Plano, Texas 75093-4856. Defendant may be served with process through its registered agent in Oklahoma, The Corporation Company, at 1833 South Morgan Road, Oklahoma City, Oklahoma, 73128.

29. Defendant, PT&C Forensic Consulting Services, P.A., is a limited liability corporation formed under the laws of Delaware. Defendant may be served with process through its registered agent in Oklahoma, The Corporation Company, at 1833 S. Morgan Road, Oklahoma City, Oklahoma 73128.

- a. PT&C|LWG Forensic Consulting was formed in December 2014, when Atlanta, GA based PT&C Forensics acquired Northbrook, IL based LWG Consulting.

b. PT&C|LWG Forensic Consulting announced on January 3, 2017, that the Company had changed its name to Envista Forensics. The name change was made effective January 1, 2017.

30. Defendant, Envista Forensics, LLC, is a limited liability corporation formed under the laws of Georgia with its principal place of business at 5565 Glenridge Connector, Suite 900, Atlanta, Georgia 30342. Defendant may be served with process through its registered agent in Oklahoma, The Corporation Company, at 1833 S. Morgan Road, Oklahoma City, Oklahoma 73128.

31. Defendant, Rimkus Consulting Group, Inc., is a corporation formed under the laws of Texas with its principal place of business at 8 Greenway Plaza, Suite 500, Houston, Texas 77046. Defendant maintains a service location at 2201 S. Fretz Avenue, Suite 110, Edmond, Oklahoma 73013. Defendant may be served with process through its registered agent in Oklahoma, The Corporation Company, at 1833 S. Morgan Road, Oklahoma City, Oklahoma 73128.

III. JURISDICTION AND VENUE

32. This Court has jurisdiction over the subject matter of this action, including the federal RICO claims. State courts have concurrent jurisdiction to consider civil claims arising under RICO. *Tafflin v. Levitt*, 493 U.S. 455, 467 (1990).

33. This Court may properly exercise personal jurisdiction over the Plaintiffs, who submit to this Court's exercise of jurisdiction over them for the purposes of this suit.

34. This Court may properly exercise jurisdiction over Defendants Engineering Inc., Ford Engineering, and The Structures Group, Inc., which are incorporated under the laws of Oklahoma and/or maintain their principal place of business in Oklahoma. They are thus "at home"

in Oklahoma and subject to this Court's jurisdiction over them for all claims, including those brought by Plaintiffs in this action.

35. This Court may properly exercise jurisdiction over all Farmers Defendants, as they continuously and systematically engaged, and continue to engage, in business in Oklahoma. Plaintiffs' claims arise out of those contacts. Each Farmers Defendant directly or indirectly sold earthquake insurance coverage to insureds in Oklahoma and/or conspired to commit RICO violations there, that were directed at and had the intended effect of causing injury to persons and entities residing in, located in, or doing business in Oklahoma.

36. This Court may properly exercise jurisdiction over all Engineering Defendants, as each hold an Oklahoma Certificate of Authorization to operate within Oklahoma and maintain offices in Oklahoma, and as such are continuously and systematically engaged, and continue to engage, in business in Oklahoma. 59 O.S. § 475.21. Plaintiffs' claims arise out of those contacts. Each of the Engineering Defendants performed forensic engineering inspections or loss evaluation services incident to a claim for earthquake coverage under a policy on the part of a Plaintiff and on behalf of a Farmers Defendant and/or conspired to commit RICO violations there, that were directed at, and had the intended effect of causing injury to, persons and entities residing in, located in, or doing business in Oklahoma.

37. This Court has personal jurisdiction over the Farmers Defendants by virtue of their continuous and systematic contacts with the state of Oklahoma, either directly or through an agent. Defendants FIE, FIC, Foremost, Mid-Century, Fire Exchange, Truck Exchange and Fire Underwriting are all amenable to service through the Oklahoma Department of Insurance as licensed insurance companies authorized to sell insurance in Oklahoma. 36 O.S. § 36-621, 12 O.S. § 2004 (C)(1)(c)(3). Defendant FGI is amenable to service under the Oklahoma long-arm statute

and the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice. 12 O.S. § 2004(F). All of the Defendants are subject to personal jurisdiction in the state of Oklahoma because of (a) their systematic and continuous contacts with the state of Oklahoma; (b) the systematic and continuous contacts of their agents and/or representatives with the state of Oklahoma; and/or (c) the systematic and continuous contacts of their parent, subsidiary, and affiliate entities with the state of Oklahoma.

38. Venue is proper pursuant to 12 O.S. § 137. Specifically, the events or commissions giving rise to Plaintiffs' claims occurred in Payne County, State of Oklahoma, which lies within this District, including: the sale and delivery of the subject homeowner's policy; the damage to the Plaintiffs' property; the claims adjustment; and entry onto the Plaintiffs' property for inspections. Plaintiffs incorporate by reference any and all facts alleged in this Petition for purposes of establishing venue in Payne County, Oklahoma under 12 O.S. § 137.

IV. LEGAL FRAMEWORK

A. Racketeer Influenced Corrupt Organization Act ("RICO"), 18 U.S.C. §§ 1961-68

39. This action arises under the Racketeer Influenced Corrupt Organization Act ("RICO"), 18 U.S.C. §§ 1961-68, which provides a cause of action for those injured in business or property by reason of prohibited racketeering activities. 18 U.S.C. § 1964(c). RICO's prohibitions include the following conduct:

It shall be unlawful for any person employed by or associated with 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 or collection of unlawful debt.

18 U.S.C. § 1962(c). RICO further makes it unlawful for any person to conspire to violate its provisions when a conspirator adopts the goal of furthering the enterprise, even if the conspirator does not commit a predicate act. *Id.* § 1962(d).

40. RICO provides several definitions relevant to Plaintiffs' claims. *See* 18 U.S.C. § 1961.

41. A RICO "person" includes any individual or entity capable of holding a legal or beneficial interest in property." 18 U.S.C. § 1961(3). A RICO person can be either an individual or a corporate entity. A defendant can be both a RICO "person" and part of another RICO "enterprise." Corporations are included in the Act's definition of a "person." *Id.*

42. RICO defines an enterprise as "any individual, partnership, corporation, association or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4).

43. RICO defines the "racketeering activity" sufficient to qualify as a predicate wrong to a RICO violation, which includes violations of 18 U.S.C. §§ 1341 (relating to mail fraud) and 1343 (relating to wire fraud). 18 U.S.C. § 1961(1).

44. A "pattern of racketeering activity" is one that is performed by at least two acts of racketeering activity, or violations of a "predicate" offense (an act "indictable under any of" certain provisions of" 18. U.S.C. § 1961(1)(D)). *See* 18 U.S.C. § 1961(5). A "pattern of racketeering activity" can be a past conduct that by its nature projects into the future with a threat of repetition. It can also be conduct over a closed period through a series of related predicates extending over a substantial period.

45. A person in a civil action who is found to have violated RICO is liable for treble damages, costs, and attorney's fees. *Id.* § 1964(c).

B. Earthquake Insurance in Oklahoma

46. Earthquake policies in Oklahoma insure against damage resulting from earth movement caused by: (a) "natural faulting of land masses" or (b) "convulsion of the earth's surface

caused by natural seismic forces” or (c) “displacement within the earth’s crust through release of strain associated with ‘tectonic processes’.”⁵

47. In general, earthquake insurance excludes loss due, in whole or part, to any “man-made” cause such as construction, mining, oil and gas exploration and production.

48. Earthquake policies exclude coverage of property damage which occurs, prior to the effective date of the policy and after termination of the policy. Insurers are responsible for covered loss which occurs during the policy period. To help protect themselves from fraudulent claims, insurers have a right to inspect the property as often as required to ascertain the condition of the property.

49. On March 3, 2015, John D. Doak, the Oklahoma Insurance Commissioner issued Earthquake Insurance Bulletin No. PC 2015-02 to all property and casualty insurers licensed in the State of Oklahoma. That notice provides:

Earthquake policies exclude coverage of property damage which occurs, prior to the effective date of the policy and after termination of the policy. Insurers understandably are only responsible for covered loss which occurs during the policy period. To help protect themselves from fraudulent claims, insurers have a right to inspect the property as often as required to ascertain the condition of the property.

In the case of frequent potential loss events, which may or may not result in a loss, it is important that the insurer know the condition of the insured property at inception of the coverage and remain cognizant of any damage that may have occurred during the policy period. In addition, since earthquake policies have a “single covered event clause” maintaining current knowledge of the insured property is essential to the proper application of deductibles.

As Commissioner, I have an obligation to enforce the insurance laws. Part of that responsibility is monitoring claims practices to determine whether insurers are employing fair claims practices and otherwise acting in conformity with the terms of their policies. **If an insurer intends to deny a claim, asserting pre-existing” [sic] damage, I expect that the insurer has inspected the property prior to**

⁵ Notice Issued to Protect Oklahomans Who Have Earthquake Insurance, Oklahoma Insurance Commissioner, Earthquake Insurance Bulletin PC 2015-02 (March 3, 2015).

inception of the coverage and maintained reasonably current information as to the condition of the insured property, prior to loss.⁶

Because of this bulletin, coverage denials based on pre-existing damage to property that are not supported by a prior inspection or survey are wrongful denials of coverage.

V. FACTUAL ALLEGATIONS

50. The Farmers Defendants entered the Oklahoma earthquake insurance market in search of easy profits. Consumer concern over earthquake damage, despite the relatively low frequency and severity of earthquakes in the region, created a highly profitable market for the Farmers Defendants. However, a dramatic increase in earthquake frequency and intensity in Oklahoma, which began in approximately 2009, dramatically increased the risk associated with earthquake coverage premiums. The Farmers Defendants faced an untenable and unprofitable risk of loss. After losing their ability to arbitrarily increase premiums on earthquake coverage, the Farmers Defendants developed an exit strategy to extricate themselves from the market and insulate themselves from costly claims from current insureds. This strategy involved two fraudulent schemes: (1) the denial of insureds' claims based on "pre-existing damages" when the Farmers Defendants lacked the legally-required pre-coverage inspection or survey to support such a denial; and (2) an unlawful agreement with the Engineering Defendants, who provided the Farmers Defendants with sham post-loss engineering reports for insured's property that falsely showed pre-existing damage and arbitrarily ruled out a covered loss. The Farmers Defendants then used these sham reports to deny coverage to its insureds under valid and enforceable insurance policies in bad faith.

⁶ *Id.* (emphasis added)

A. Facts Specific to Representative Plaintiffs

51. Plaintiffs are insureds through a policy issued by Defendant FIC.⁷ Specifically, Plaintiffs purchased their replacement-cost policy of insurance with an earthquake endorsement from FIC. The Farmers Defendants are insurance companies who sold earthquake coverage in Oklahoma. At all times mentioned herein, by virtue of their relationship as insurer to Plaintiff-insureds, the Farmers Defendants owed a fiduciary duty and/or special duty to Plaintiffs.

52. At all times mentioned herein, the Farmers Defendants were obligated to make payments to Plaintiffs for loss or damage to their residence, home, house, dwelling, and other structures (collectively “Dwelling”) occasioned by certain events.

53. Prior to issuance of the homeowners’ replacement cost insurance policy (with an earthquake endorsement), the Farmers Defendants were to independently verify the condition of the Dwelling to ensure said Dwelling met all of the underwriting requirements to obtain this additional earthquake coverage. The Farmers Defendants represented to Plaintiffs that the Dwelling met all underwriting requirements of the Farmers Defendants and stated the earthquake coverage would in fact protect the Dwelling from earthquake damage. However, the Farmers Defendants never performed a prior inspection or survey of Plaintiffs’ Dwelling prior to the inception of coverage, as required by the March 3, 2015, Earthquake Insurance Bulletin No. PC 2015-02, and as a result, were prohibited from denying Plaintiffs’ claim based on pre-existing damage.

⁷ Defendant FIC issued the policy. Defendant FGI performed all the underwriting and policy management (*i.e.*, every executive management function with the exception of claims). Defendant FIE is the property claims organization, which handled claims management for Plaintiffs’ claims. Defendants FIE and FGI are truly one entity under California law (and, thus Oklahoma law). Policies cannot be written without Defendant FGI.

54. The Farmers Defendants did not advise Plaintiffs at any time that their Dwelling had any “pre-existing” damage or that their Dwelling did not meet the underwriting guidelines of the Farmers Defendants. Rather, the Farmers Defendants issued a homeowners’ replacement cost insurance policy (with an earthquake endorsement), Policy No. 381009087276405 (the “Policy”) through FIC on their Dwelling.

55. The Farmers Defendants further represented to Plaintiffs that they would conduct themselves in accordance with Oklahoma law, including any applicable regulations or Oklahoma Department of Insurance Bulletins, and would fully and fairly investigate and pay claims. Plaintiffs relied on said representations.

56. From January 1, 2014, through December 31, 2014, roughly two-hundred (200) earthquakes occurred within thirty (30) miles of Cushing, Oklahoma. These earthquakes occurred almost daily. Remarkably, nearly thirty (30) of these earthquakes occurred within Cushing. Some exceeded 4.0 on the Richter scale.⁸ The last earthquakes in this sequence occurred just weeks before Plaintiffs submitted their claim, as follows: (a) on or about October 7, 2014, a 4.0 magnitude earthquake occurred 2.5 miles south of Cushing, Oklahoma, (b) on October 10, 2014, a 4.3 magnitude earthquake occurred 2.5 miles south of Cushing, Oklahoma, and (c) on November 9, 2014, a (i) 4.0 magnitude earthquake, (ii) a 3.1 magnitude earthquake, (iii) a 3.7 magnitude earthquake, and (iv) a 4.1 magnitude earthquake all occurred near Perkins, Oklahoma roughly twenty (20) miles west of Cushing.⁹

⁸ The Richter Scale is a numerical scale for expressing the magnitude of an earthquake on the basis of seismograph oscillations. The scale is logarithmic and a difference of one represents an approximate thirtyfold difference in magnitude.

⁹ USGS, Oklahoma Earthquake Map, Oklahoma Corporation Commission, available at <https://earthquakes.ok.gov/what-we-know/earthquake-map/> (last visited May 2, 2019).

57. Plaintiffs' Dwelling, which was insured by the subject Policy, is located roughly seven (7) miles east of the epicenter of the October 7 and 10, 2014, 4.0 and 4.3 magnitude earthquakes. Likewise, Plaintiffs' Dwelling was also within twenty (20) miles of four (4) earthquakes that occurred on November 9, 2014, and ranged from a 3.0 to 4.1 magnitude near Perkins, Oklahoma. Plaintiffs' Dwelling was significantly damaged as the direct result from one or more of these earthquakes.

58. Consequently, Plaintiffs properly and timely submitted a claim to the Farmers Defendants for the damage sustained to their Dwelling resulting from earthquake damage.¹⁰

59. Plaintiffs cooperated with any and all requests during the Farmers Defendants' loss investigation.

60. The Dwelling sustained significant damage as a result of the earthquake. Farmers Defendants confirmed the Dwelling was damaged. However, rather than paying Plaintiffs' claim, the Farmers Defendants conducted another investigation by and through Engineering Defendant Rimkus Consulting Group ("Rimkus").

61. Rimkus omitted any reference to the four (4) earthquakes that occurred on November 9, 2014, and ranged from a 3.0 to 4.1 magnitude, near Perkins, Oklahoma. Rimkus further disregarded the October 7 and 10, 2014, 4.0 and 4.3 magnitude Cushing earthquakes that occurred within seven (7) miles of the Plaintiffs' Dwelling. Instead, Rimkus downgraded the 4.1 magnitude earthquake to a 3.8 magnitude earthquake that occurred on November 9, 2014, near Perkins—a location that was conveniently the farthest from Plaintiffs' Dwelling. Rimkus

¹⁰ Under the Policy, one or more earthquakes occurring within a seventy-two hour period is considered a single earthquake.

affirmatively claimed this was the only causative seismic event in the area in a blatant attempt to limit Plaintiffs' recovery under the Policy.

62. From this, Rimkus concluded this 3.8 magnitude earthquake was of no consequence and that the damages to the Dwelling were not the result of an earthquake, but instead were caused by settlement and the close placement of trees to the Dwelling.

63. In January 2015, the Farmers Defendants wrongfully denied Plaintiffs' claim, contending the damages sustained to the Dwelling were not the result of an earthquake, but instead were the cause of settlement and the close placement of trees to the Dwelling.

64. Plaintiffs are entitled to insurance benefits because earthquakes are covered under the Policy for Plaintiffs' Dwelling.

65. The Farmers Defendants confirmed that Plaintiffs' Dwelling had in fact sustained loss and damage that was consistent with earthquake damage; however, paying earthquake claims was never part of the Farmers Defendants' business plan.

66. Although Plaintiffs fulfilled any and all obligations or promises imposed upon them, the Farmers Defendants wrongfully denied their claim pursuant to their company-wide scheme and pervasive practice of systematically denying homeowners' claims through pretextual use of biased engineers without adequately examining the validity of each individual claim. Further, pursuant to their handling of Plaintiffs' loss, the Farmers Defendants have a practice of not disclosing to Plaintiffs, and other Oklahoma customers of the Farmers Defendants, that virtually every earthquake claim was denied through hand-picked, pre-approved engineers (like Rimkus) to proffer scripted reports to rubber-stamp the Farmers Defendants' denial of Plaintiffs' claim. Finally, the Farmers Defendants did not disclose to Plaintiffs that the denial violated the Oklahoma Department of Insurance Bulletin because the Farmers Defendants had not inspected

the Plaintiffs' Dwelling before issuing coverage and/or maintaining current information as to the condition of the property prior to the loss.

67. The Farmers Defendants breached the Plaintiffs' insurance contract and their common law duties, including their fiduciary duty and the duty of good faith and fair dealing, by performing a biased investigation of Plaintiffs' claim and failing to pay all benefits owed under the contract.

B. Plaintiffs Are Farmers Defendants' Insureds under Policies of Insurance for Earthquake Coverage

68. Plaintiffs and Class Members are Farmers Defendants' insureds in Oklahoma who purchased insurance coverage for property damage resulting from earthquakes.

69. At all times relevant hereto, Plaintiffs and Class Members had a homeowners' insurance policy in full force and effect with the Farmers Defendants, which provided earthquake coverage. Plaintiffs have paid all premiums due and owing on the Policy.

70. Plaintiffs' Dwelling was damaged by an earthquake, which was a covered loss under Plaintiffs' Policy with the Farmers Defendants.

71. The Farmers Defendants received timely notice of this earthquake loss and Plaintiffs' request for insurance policy benefits. Plaintiffs cooperated with any and all requests from the Farmers Defendants for investigation of the loss.

72. Because the earthquake was a covered loss under Plaintiffs' insurance policy with the Farmers Defendants, Plaintiffs were entitled to benefits under their Policy. The Farmers Defendants never performed a prior inspection or survey of Plaintiffs' Dwelling prior to the inception of coverage, as required by the March 3, 2015, Earthquake Insurance Bulletin No. PC 2015-02, and as a result, were prohibited from denying Plaintiffs' claim based on pre-existing damage.

73. At all times relevant hereto, as the attorney-in-fact for FIE, FGI owes a fiduciary duty to Farmers' policyholders.

C. Farmers Defendants Entered the Oklahoma Earthquake Insurance Market in Search of Easy Profits

74. The Farmers Defendants entered the Oklahoma earthquake insurance market in search of easy profits. They perceived a nervousness on the part of Oklahoma consumers about the risk of earthquake-related loss. However, the frequency and intensity of earthquakes in Oklahoma, at the time, indicated a relatively low risk of loss. Given this historical infrequency and low intensity of earthquakes in the state, the Farmers Defendants perceived a highly profitable market with low risk of insured losses. In short, insuring Oklahoma consumers for earthquake coverage was a cash cow for the Farmers Defendants.

75. The Farmers Defendants began selling policies of insurance coverage for damage caused by earthquake in Oklahoma.

76. After the Farmers Defendants had capitalized off the fears of Oklahomans in the Oklahoma earthquake insurance market, the frequency and intensity of earthquakes in Oklahoma began to increase.¹¹ While the Oklahoma Geological survey recorded forty-one "magnitude 3+" earthquakes in 2010, it recorded 579 in 2014, 903 in 2015, 623 in 2016, and 304 in 2017.¹² This

¹¹ Seismicity—Office of the Secretary of Energy and Environment, available at <https://earthquakes.ok.gov/what-we-know/seismicity> (last visited Mar. 14, 2019).

"Seismicity refers to the relative frequency and distribution of earthquakes. Oklahoma's recorded seismic history dates back to 1882. The number of earthquakes felt in Oklahoma over the last five years is unusual as compared to historical seismicity trends in the state." Notice Issued to Protect Oklahomans Who Have Earthquake Insurance, Oklahoma Insurance Commissioner, Earthquake Insurance Bulletin No. PC 2015-02 (March 3, 2015) ("Since 2013, Oklahoma has seen a significant increase in earth tremors and other seismic phenomena.")

¹² "What we Know"—Office of the Secretary of Energy and Environment, available at <https://earthquakes.ok.gov/what-we-know/> (last visited Mar. 14, 2019).

included the largest earthquake in the State's record seismic history—a record dating back to 1882—on September 3, 2016.

D. Farmers Defendants Developed an Exit Strategy that Abandoned its Insureds and Insulated it from Costly Payments to Them

77. It is clear that the increase in both frequency and intensity of earthquakes in Oklahoma quickly turned the Farmers Defendants' foray into Oklahoma earthquake insurance into an untenable risk of loss. In turn, the Farmers Defendants devised an exit strategy to extricate themselves from the market.

78. This exit strategy consisted of three initiatives. The first two initiatives were predictable responses to eliminate future coverage risks: first, the Farmers Defendants stopped issuing new policies for earthquake insurance coverage. Second, the Farmers Defendants declined to renew existing policies for earthquake coverage. The Farmers Defendants effectively abandoned the Oklahoma earthquake market and its former insureds in the state. Having realized Oklahoma was no longer an easy hunting ground for earthquake insurance premiums, they folded up their tent and went home.

79. The Farmers Defendants' third initiative clearly violated the law. To reduce the impact of current covered—*i.e.*, costly earthquake indemnity payments to existing insureds—on its bottom line, the Farmers Defendants developed two unlawful schemes to summarily deny claims under valid and in force contracts for earthquake insurance coverage from its insureds. The Farmers Defendants issued these denials (in whole or in part) (1) while in violation of the Oklahoma Insurance Commissioner's expectation that they based denials for pre-existing damage

on pre-coverage inspections or surveys,¹³ and/or (2) on the basis of sham engineering reports from the Engineering Defendants.

1. Farmers Defendants Denied Coverage without Required Pre-Coverage Inspections or Surveys

80. To extricate themselves from the Oklahoma earthquake insurance coverage market, the Farmers Defendants began systematically denying Plaintiffs' and Class Members' earthquake coverage claims. The Farmers Defendants issued these denials (in whole or in part) on the grounds that the insureds submitted claims for damage that pre-existed the earthquake that supposedly caused it. As such, the Farmers Defendants argued the damage was not covered by the earthquake policy.

81. However, Oklahoma insurance law requires that an insurer who intends to deny a claim asserting pre-existing damage must have inspected the property prior to inception of the coverage and maintained reasonably current information as to the condition of the insured property, prior to loss.¹⁴

82. The Farmers Defendants conducted no prior inspections or surveys. Their denials premised on "pre-existing damage" were therefore unlawful.

2. Farmers Defendants Entered into an Unlawful Agreement with the Engineering Defendants to Produce False Reports of Pre-Existing Damage

83. To extricate themselves from the Oklahoma earthquake insurance coverage market, the Farmers Defendants devised a scheme to justify their denial of Plaintiffs' and Class Members' earthquake coverage claims.

¹³ Notice Issued to Protect Oklahomans Who Have Earthquake Insurance, Oklahoma Insurance Commissioner, Earthquake Insurance Bulletin PC 2015-02 (March 3, 2015)

¹⁴ *Id.*

84. The Farmers Defendants entered into an unlawful agreements with the Engineering Defendants. Through that agreement, the Farmers Defendants hired the Engineering Defendants to conduct post-loss engineering inspections or surveys of Plaintiffs' and Class Members' properties and then produce engineering reports. These reports followed a uniform format and conveyed uniformly false outcomes: Plaintiffs' and Class Members' claims for damages were based on pre-existing damage to their property and were not the result of a covered earthquake.

85. The Engineering Defendants owed Plaintiffs and Class Members a duty to perform their professional duties in a professional, competent, and ethical manner. Further, they owed a duty to refrain from committing fraud. It was foreseeable Plaintiffs and Class Members would be injured by the Engineering Defendants' authoring of sham reports, which were designed to rubber-stamp Farmers' denials inasmuch as earthquake damages bear directly on the structural soundness and safety of the property. The Engineering Defendants unlawfully jeopardized the safety and well-being of Plaintiffs and Class Members and thereby breached their duties by (among other actions and/or omissions):

- a. Failing to disclose in engineering reports the lack of a pre-coverage inspection or survey from Farmers;
- b. Failing to disclose in engineering reports that they were not provided with a copy of the relevant underwriting file;
- c. Failing to disclose the scope of investigation as dictated by Farmers;
- d. Failing to acknowledge in engineering reports that evidence from insureds regarding the condition of the property before the earthquake claim was not considered or accepted;
- e. Misstating property history provided by insureds in engineering reports;

- f. Omitting and/or failing to acknowledge in engineering reports that no pre-coverage history (e.g., prior inspections and/or photos) were provided by Farmers in advance of inspection;
- g. Skewing, misstating, and/or omitting facts in engineering reports to ensure the reports downplayed property damage to arbitrarily rule out coverage;
- h. Disregarding occurrence and proximity of earthquakes that occurred near an insured's property;
- i. Choosing and basing their engineering reports on seismic events that happened farther away from an insured's property than other more likely causative events so as to downgrade damage and support claim denial;
- j. Advising insureds that earthquakes in Oklahoma were simply not strong enough to cause damage to insureds' property while knowing such statements were false; and
- k. Failing to consider opinions from other knowledgeable tradesmen or engineers that are contrary to engineering report opinions.

86. The Farmers Defendants then used the Engineering Defendants' sham engineering reports to justify their denial of virtually all earthquake damage claims in Oklahoma in bad faith.

87. The Farmers Defendants thereby breached the subject insurance contract by performing a biased investigation of Plaintiffs' and Class Members' claims and by wrongfully denying Plaintiffs' and Class Members' claims for earthquake damage.

88. The Farmers Defendants breached the fiduciary duty they owed to Plaintiffs and Class Members by wrongfully denying their claims and failing to disclose to them (1) the sham nature of the Engineering Defendants' reports, and (2) their legal obligation to base denials on a pre-coverage inspection or survey.

89. Pursuant to their handling of Plaintiffs' and Class Members' claims, the Farmers Defendants have a company-wide scheme and pervasive practice of systematically denying homeowners' claims through pretextual use of biased engineers without adequately examining the validity of each individual claim. Further, pursuant to their handling of Plaintiffs' and Class Members' losses, the Farmers Defendants have a practice of not disclosing to Plaintiffs, and other Oklahoma customers of the Farmers Defendants, that virtually every earthquake claim was denied through hand-picked, pre-approved Engineering Defendants to proffer scripted reports to rubber-stamp the Farmers Defendants' denial of Plaintiffs' claim.

90. The Farmers Defendants violated Oklahoma insurance law by failing to ground their denial (in whole or in part) of coverage in a pre-loss inspection or survey of the insureds' property. The Farmers Defendants' use of an engineering report to support denial of coverage based on pre-existing damage—in the absence of a legally-required pre-coverage inspection or survey—is in itself bad faith. The Farmers Defendants knew they could not lawfully deny (in whole or in part) coverage without a pre-coverage inspection or survey. Despite this knowledge, they intentionally contracted with the Engineering Defendants, procured sham reports to show pre-existing damage, and used those reports to provide cover to their unlawful denial of their insureds' claims. The Farmers Defendants then issued those denials intentionally—in full knowledge that they lacked the legally-required pre-coverage inspections or surveys and in full knowledge of the falsity of the post-loss engineering reports they conspired to produce.

91. Upon information and belief, the Farmers Defendants could not execute this scheme on its own. The Farmers Defendants hired the Engineering Defendants to conduct post-claim engineering surveys of insured-claimants' properties in Oklahoma. The Farmers Defendants

then used those engineering reports as a basis for denial of coverage. This practice, which the Farmers Defendants employed in Oklahoma, constitutes bad faith.

92. Evincing the intent behind their fraud, the Farmers Defendants track which Engineering Defendants it uses for post-loss sham reports. They do this for one purpose only: to position themselves to leverage certain firms—the Engineering Defendants—to provide cover to their wrongful denial of their insureds' earthquake claims and thereby ensure that they avoid costly indemnity payments under those policies.

93. The inconsistencies in the Farmers Defendants' behavior belies any good faith attempt to investigate and properly service their insureds under their policies. The Farmers Defendants made a conscious decision to extricate themselves from the Oklahoma earthquake insurance market based on an untenable financial risk of loss. With regard to future coverage—i.e., the issuance of new earthquake coverage and the renewal of existing coverage—this was not necessarily improper (although it clearly evinces a willingness to abandon policyholders when the financial calculus changes). The Farmers Defendants, assumedly as rational economic actors, would have stayed in the market if they projected profit from the sale of earthquake insurance in Oklahoma. Instead, they decided to leave. However, the Farmers Defendants had denied virtually all earthquake damage claims in Oklahoma, which hardly indicates an unprecedented risk of loss on their part. In other words, if almost 100% of claims are invalid, why the concern with financial risk? Of course, the answer is that the claims were valid, but Farmers had to mop up those claims as they pulled out of the state.

VI. CLASS ACTION ALLEGATIONS

94. Plaintiffs bring this action individually and on behalf of all others similarly situated. Pursuant to 12 O.S. § 2023(A), Plaintiffs define the class as follows:

All persons who (1) either from January 1, 2009, to December 31, 2016, purchased earthquake coverage from the Farmers Defendants or from January 1, 2009, to December 31, 2017, maintained earthquake coverage from the Farmers Defendants for damage to Dwellings located in Oklahoma caused by earthquake, (2) filed claims for indemnity under that coverage, and (3) were denied coverage, in whole or in part, by the Farmers Defendants pursuant to an engineering report.

Excluded from the Class are: (1) Defendants and all directors, officers, employees, partners, principals, shareholders, and agents of Defendants; (2) persons or entities who timely opt-out of this proceeding using the correct protocol for “opting-out” that will be formally established by this Court; (3) any and all Federal, State, and/or Local Governments, including, but not limited to, their Departments, Agencies, Divisions, Bureaus, Boards, Sections, Groups, Councils and/or other subdivision, and any claims that such governmental entities may have directly or indirectly; (4) Any currently-sitting Oklahoma State Court Judge or Justice, and the current spouse and all other persons within the third-degree of consanguinity to such judge/justice; and (5) Plaintiffs’ Counsel.

Plaintiffs’ counsel estimates that the Class is so numerous that joinder of all members is impractical, as it will likely number in the hundreds, if not thousands of consumers.

A. Numerosity

95. The exact number and identity of Class Members is unknown to Plaintiffs but can easily be determined from Defendants’ records.

96. The Class is so numerous within the meaning of 12 O.S. § 2023(A)(1) that it would be impractical to join all Class Members.

97. All proposed Class Members seek relief under the same legal and remedial theories, so that the claims of the representative Plaintiffs are typical of the claims of all proposed Class Members.

B. Commonality

98. On behalf of the Class, the representative Plaintiffs bring claims that raise questions of law and fact common to all Class Members as contemplated by 12 O.S. § 2023(A)(2) and (B)(3).

Common issues include but are not limited to:

- a) Whether a fiduciary relationship and/or confidential relationship exists between Class Members and the Farmers Defendants;
- b) Whether the Farmers Defendants have a duty to disclose material facts and information to Class Members;
- c) Whether the Farmers Defendants failed to disclose to Class Members that they are not allowed to deny (in whole or in part) earthquake claims unless they performed a prior inspection or survey at the inception of coverage;
- d) Whether the Farmers Defendants failed to disclose to Class Members that they denied coverage for Class Members' earthquake claims on the basis of sham engineering reports;
- e) Whether the Farmers Defendants were obligated to make payments to Class Members for loss or damage to their property;
- f) Whether the Farmers Defendants were required to independently verify the condition of Class Members' property—by conducting inspections or surveys—prior to issuing coverage;
- g) Whether the Farmers Defendants failed to advise Class Members that their Dwellings had any “pre-existing” damage or that their Dwellings failed to meet underwriting guidelines;
- h) Whether the Farmers Defendants wrongfully denied Class Members' claims based on a pre-existing condition without conducting the requisite pre-coverage inspection or survey;
- i) Whether the Farmers Defendants concocted a scheme to deny Class Members' claims based on sham engineering reports finding pre-existing damage;
- j) Whether Defendants constitute RICO persons;
- k) Whether Defendants were employed by or associated with a RICO enterprise;
- l) Whether Defendants' RICO enterprise affects interstate commerce;

- m) Whether Defendants participated, directly or indirectly, in the conduct of the RICO enterprise's affairs;
- n) Whether Defendants engaged in a pattern of racketeering activity;
- o) Whether Defendants conspired to violate RICO;
- p) Whether the Engineering Defendants participated in that scheme by providing sham engineering reports;
- q) Whether the Engineering Defendants participated in the scheme by providing engineering reports that contained material misstatements, misrepresentations, or omissions;
- r) Whether the Farmers Defendants improperly retained for themselves monies that should have been paid to Class Members as indemnity payments for earthquake claims;
- s) Whether the Farmers Defendants notified Class Members of their policies and procedures regarding denial of coverage for earthquake insurance claims;
- t) Whether the Farmers Defendants acted as agents and servants of one another;
- u) Whether the Farmers Defendants violated their duty of good faith and fair dealing and/or their fiduciary duty to Class Members by failing to make indemnity payments for earthquake insurance claims;
- v) Whether the Farmers Defendants' conduct in connection with denial of coverage for earthquake claims constituted a fraud against Class Members;
- w) Whether the Farmers Defendants' conduct in connection with the denial of coverage for earthquake claims constituted a constructive fraud against Class Members;
- x) Whether the Farmers Defendants were unjustly enriched to the detriment of Class Members through the Farmers Defendants' retention of monies that should have been paid to Class Members as indemnity payments under earthquake insurance policies;

- y) Whether restitution is an appropriate remedy for Class Members;
- z) Whether disgorgement is an appropriate remedy to Class Members;
- aa) Whether Class Members are entitled to money damages for Defendants' wrongful conduct;
and
- bb) Whether Class Members are entitled to an injunction requiring the Farmers Defendants to disclose to all Class Members that they are entitled to submit a supplemental claim or additional request for indemnity under the earthquake insurance policy in connection with any previous loss or damage to a Dwelling.

C. Typicality

99. In accordance with the requirements of 12 O.S. § 2023(A)(3), the representative Plaintiffs' claims are typical of the claims of all other Class Members. The representative Plaintiffs have no interests which are adverse or antagonistic to the interests of the Class. The representative Plaintiffs' claims are typical of the claims of the Class because all such claims arise from a series of identical business practices, or a common course of conduct, involving the Farmers Defendants' use of engineering reports from the Engineering Defendants to justify unlawful denials of claims under Plaintiffs' and Class Members' valid earthquake insurance policies.

D. Adequacy

100. In accordance with the requirements of 12 O.S. § 2023 (A)(4), the representative Plaintiffs and their counsel will fairly and adequately represent and protect the interests of each member of the Class. The representative Plaintiffs and Class Members share common interests. The representative Plaintiffs have no conflicts which would prevent their adequate representation of all Class Members. The representative Plaintiffs are committed to the vigorous prosecution of this action.

101. The representative Plaintiffs have retained competent counsel experienced in class action litigation, other complex litigation, RICO actions, and complex insurance issues. Class counsel have no conflicts which would prevent their adequate representation of all Class Members.

E. Superiority

102. Section 2023 class action mechanism is superior to other available methods for the fair and efficient adjudication of the controversy. *See* 12 O.S. § 2023 (B)(3). Absent a class action, Class Members will continue to suffer damages without adequate recourse; the Farmers Defendants' violations of law will proceed without remedy; Defendants will continue to ignore their obligations under the law; and consumers will remain unaware of the violations of their rights and their potential avenues toward recovery.

103. Defendants have acted on grounds that apply generally to the class so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole. 12 O.S. § 2023(B)(2). If the Plaintiffs prove that Defendants systematically violated the RICO Act as alleged in this Petition or otherwise, the Court should enjoin the Defendants from continuing such behavior in the future.

104. Most individual Class Members have little ability to prosecute an individual action due to the complexity of issues involved in this litigation, the significant costs attendant to litigation on this scale, and the comparatively small—although significant—damages suffered by the individual Class Members.

105. This action will result in an orderly and expeditious administration of Class claims. The class action mechanism will afford litigants on both sides economies of time, effort, and expense, as well as uniformity of decision. Repetitive litigation on behalf of individual claimants

of the identical issues presented here would waste the resources of this Court and the parties to this action.

106. This action presents no difficulty that would impede its management by the Court as a class action under Section 2023. Upon the adjudication of the dispute, each individual Class Member's actual damages can be adequately determined.

107. The joinder of the tens of thousands of geographically diverse individual Class Members is impracticable, cumbersome, and unduly burdensome;

108. There is no special interest by Class Members in individually controlling the prosecution of separate actions;

109. Class Members' individual claims may be relatively modest compared with the expense of litigating the claim, making it impracticable, unduly burdensome and expensive, if not practicably impossible, to justify individual Class Members from redressing their loss;

110. When the Defendants' liability has been adjudicated, claims of all Class Members can be determined by the Court and administered efficiently and in a manner less onerous and burdensome than if attempted through the filing of individual lawsuits;

111. This Class Action will promote an orderly and expeditious adjudication and administration of Class claims and promote economies of time, effort, and resources;

112. Without this Class Action, Class Members will go without restitution or money damages;

113. Without this Class Action, no restitution, disgorgement, or damages will be ordered, and Defendants will be unjustly enriched and reap the benefits of the monies they have retained as a result of their wrongful and fraudulent conduct; and

114. The resolution of this controversy through this Class Action presents fewer management difficulties than individually filed lawsuits and conserves the resources of the parties and the judicial system while protecting the rights of each Class Member.

F. Predominance

115. The questions of fact common to the claims of each Class Member—relating to the Farmers Defendants’ (1) systematic denial of claims without a required pre-coverage inspection or survey and (2) systematic use of engineering reports from the Engineering Defendants to justify unlawful denials of claims under Plaintiffs’ and Class Members’ valid earthquake insurance policies—are uniform and predominate over any facts affecting only individual Class Members. Individual reliance is not a requirement to establish liability under RICO. *CGC Holding Co., Ltd. Liab. Co. v. Broad & Cassel*, 773 F.3d 1076, 1088-90 (10th Cir. 2014).

116. The questions of law common to the claims of each Class Member, relating to the Farmers Defendants’ use of engineering reports from the Engineering Defendants to justify unlawful denials of claims under Plaintiffs’ and Class Members’ valid earthquake insurance policies, predominate over any questions of law affecting only individual Class Members.

VII. FRAUDULENT CONCEALMENT

117. The Farmers Defendants had a duty to disclose to Plaintiffs and Class Members that they denied their claims on the basis of pre-existing damage without conducting the legally-required pre-coverage inspection or survey at the inception of coverage.

118. The Farmers Defendants had a duty to disclose to Plaintiffs and Class Members that they denied their claims on the basis of a sham engineering reports, which the Engineering Defendants prepared for the purpose of supporting denials.

119. The Engineering Defendants had a duty to disclose to Plaintiffs and Class Members that they were producing sham reports to be used by the Farmers Defendants to support denial of earthquake claims.

120. Rather than disclosing this information to Plaintiffs and Class Members, Defendants actively and fraudulently concealed their obligations.

121. Further, Defendants concealed their obligations through positive acts of fraud, including the transmittal of sham and/or pretextual engineering reports.

122. Defendants' fraudulent concealment tolls the running of any applicable statute of limitations.

VIII. MISCELLANEOUS

123. Any condition precedent to the institution of this lawsuit has been performed, has occurred, or has been waived.

124. By filing this lawsuit, Plaintiffs, for themselves and as representatives for the proposed Class, neither intend to, nor in fact do, waive or release any right, claim, action, cause of action, or defense, nor do Plaintiffs, for themselves and as representatives for the proposed Class, make any election of remedies they may or ever have, but rather, expressly reserve any such right, claim, action, cause of action, and/or defense.

IX. COUNTS

125. Plaintiffs' allegations against Defendants, for themselves and as representatives for the proposed Class, support the following causes of action: Violations of the Racketeer Influenced Corrupt Organization Act, 18 U.S.C. §§ 1961-68 (Count 1—against all Defendants); Bad Faith (Count 2—against the Farmers Defendants); Fraud (Count 3—against all Defendants); and Unjust Enrichment (Count 4—against the Farmers Defendants).

COUNT ONE
Violations of the Racketeer Influenced Corrupt Organization Act, 18 U.S.C. §§ 1961-68
Against All Defendants

126. Plaintiffs, for themselves and as representatives for the proposed Class, fully incorporate by reference all preceding paragraphs as if fully set forth herein.

i. The Common Elements of the Rico Act, 18 U.S.C. §§ 1961-68

127. RICO prohibits the following conduct:

It shall be unlawful for [1] any person [2] employed by or associated with [3] any enterprise [4] engaged in, or the activities of which affect, interstate or foreign commerce, [5] to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs [6] through a pattern of racketeering activity or collection of unlawful debt.

18. U.S.C. § 1961-68 (numbering added to text of statute). The facts as alleged herein establish that each of the requirements of RICO liability are met.

ii. All Defendants Are Rico "Persons"

128. Each Defendant named herein is a "person" for purposes of the RICO Act. A RICO "person" includes any individual or entity capable of holding a legal or beneficial interest in property." 18 U.S.C. § 1961(3). A RICO person can be either an individual or a corporate entity. As corporations, all Defendants are RICO persons.

iii. The RICO Enterprise

129. RICO defines an enterprise as "any individual, partnership, corporation, association or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4).

130. All Defendants have agreed among themselves, expressly or tacitly, to act in unison to produce or use sham engineering reports to justify unlawful denials of claims under Plaintiffs' and Class Members' valid earthquake insurance policies. All Defendants together have acted as

an “association-in-fact” for a common purpose, have and maintained relationships between and among each other (and nonparties), and the association-in-fact has a longevity sufficient to permit those associates to pursue the enterprise’s purpose—the unlawful denial of earthquake coverage claims based on sham engineering reports and in violation of Oklahoma insurance law.

131. Each Defendant has an existence that can be defined apart from the commission of the predicate acts constituting the pattern of racketeering activity. That is, each Defendant has a separate, legitimate existence as an individual or operating business entity.

132. A Defendant can be both a RICO “person” and part of another RICO “enterprise.” Corporations are included in the Act’s definition of a “person.” 18 U.S.C. § 1961(3). All Defendants systematically committed the RICO violations alleged herein with respect to Plaintiffs and Class Members and are thus also RICO “persons” separate from the RICO “enterprise” at issue here.

iv. All Defendants Are “Associated With” the RICO “Enterprise”

133. Under Section 1962(c), a defendant must be “employed by or associated with” the RICO enterprise. All Defendants are at least “associated with” the enterprise through their individual and collective actions, and/or in otherwise committing the systematic and consistent misrepresentations and predicate act RICO violations alleged here.

134. The Farmers Defendants contracted with the Engineering Defendants to produce sham engineering reports. The Farmers Defendants then used those sham engineering reports from the Engineering Defendants to justify unlawful denials of claims under Plaintiffs’ and Class Members’ valid earthquake insurance policies in violation of Oklahoma insurance law.

135. The Engineering Defendants contracted with the Farmers Defendants and produced sham engineering reports for the Farmers Defendants to be used in routine and systematic earthquake claims denial.

v. All RICO “Persons” are Distinct from the RICO “Enterprise”

136. The corporations described in this Petition are distinct from each other. The corporate defendants are distinct from their collective RICO enterprise because they are functionally separate, perform different roles within the enterprise or use their separate legal incorporation to facilitate racketeering activity. Each of the corporations has a distinct market share, has separate advertising, and is thus responsible for different activities in the scheme.

vi. The Defendants Engaged in Activities that Affect Interstate and Foreign Commerce

137. Each of the Defendants engaged in—and/or affected through their activities—interstate commerce by committing the RICO violations alleged here with respect to the unlawful denial of earthquake coverage claims based on sham engineering reports and in violation of Oklahoma insurance law.

138. The Farmers Defendants are incorporated in and maintain their principal places of business outside the territory of Oklahoma. Their issuance of policies of insurance, as well as their adjustment and claims practices—including the use of the Engineering Defendants’ sham and/or pretextual engineering reports—in Oklahoma implicates interstate commerce. The Farmers Defendants’ adjustment of Plaintiffs’ and Class Members’ claims utilized interstate communications, including telephones, email, the internet, facsimile machines, and the mail.

vii. The Defendants Participated in the Conduct of the Enterprise’s Affairs

139. Each of the Defendants conducted, or participated directly and indirectly, in the conduct of the RICO enterprise’s affairs.

140. The Farmers Defendants agreed and/or contracted with the Engineering Defendants for the production of sham engineering reports, which the Farmers Defendants intended to use in the wrongful denial of Plaintiffs' and Class Members' claims. The Farmers Defendants used those sham engineering reports from the Engineering Defendants to justify unlawful denials of claims under Plaintiffs' and Class Members' valid earthquake insurance policies in violation of Oklahoma insurance law.

141. The Engineering Defendants contracted with the Farmers Defendants and produced sham engineering reports for the Farmers Defendants to be used in routine and systematic earthquake claims denials.

viii. A "Pattern of Racketeering Activity" Over an Extended Period with Threat of Repetition

142. RICO requires a "pattern of racketeering activity." A "pattern of racketeering activity" is one that is performed by at least two acts of racketeering activity, or violations of a "predicate" offense (an act "indictable under any of" certain provisions of" 18. U.S.C. § 1961(1)(D)); *see* 18 U.S.C. § 1961(5). A "pattern of racketeering activity" can be a past conduct that by its nature projects into the future with a threat of repetition. It can also be conducted over a closed period through a series of related predicates extending over a substantial period. Both of these apply here.

143. The Farmers Defendants used their sham engineering reports from the Engineering Defendants to deny virtually all claims from their insureds under earthquake coverage in Oklahoma. Their scheme was systematic and pervasive.

144. From approximately January 1, 2009, through December 31, 2017, the Farmers Defendants systematically used their sham engineering reports from the Engineering Defendants

to deny virtually all claims from their insureds under earthquake coverage in Oklahoma. Their scheme spanned approximately nine (9) years.

ix. Defendants Used and Caused Fraudulent Mail and Wire Communications (18 U.S.C. § 1341 and 18 U.S.C. § 1343)

145. Defendants each used and caused to be used mail and wire means to both (1) send fraudulent communications, and (2) further their fraudulent scheme to unlawfully deny earthquake coverage claims based on sham engineering reports and in violation of Oklahoma insurance law. These uses of the mail and wires are an essential component of the scheme to defraud. Mail and wire fraud are enumerated predicate acts that constitute RICO “racketeering activity” under 18 U.S.C. § 1961(1)(D).

146. Mail fraud occurs when an individual devises a plot to defraud and subsequently uses the mail in furtherance of it. 18 U.S.C. § 1341. Wire fraud occurs when an individual devises a plot to defraud and subsequently uses wire means in furtherance of it. 18 U.S.C. § 1343.

147. The Farmers Defendants communicated with the Engineering Defendants by use of the mail and wire with regard to the contracting for and production of sham engineering reports to be used in unlawful claims denials.

148. Defendants transmitted sham and/or pretextual engineering reports and unlawful claims denials to each other, to Plaintiffs, and to Class Members by means of the mail and wire.

x. Intent and Scienter

149. Each Defendant acted with requisite intent to establish, perpetuate, and/or carry out the scheme to defraud. Each Defendant acted with either specific intent to defraud or with such recklessness with respect to the false or misleading information mailed or wired in furtherance of the enterprise or otherwise so as to constitute requisite *scienter* to commit mail and wire fraud. That *scienter* is demonstrated by, among other things, at least the following:

150. The Farmers Defendants made a conscious choice to abandon the Oklahoma earthquake insurance market and its insureds in Oklahoma.

151. The Farmers Defendant denied virtually all claims submitted under earthquake coverage policies in Oklahoma.

152. The Farmers Defendants tracked for each Engineering Defendant the number of reports it drafted.

153. The Farmers Defendants, who are charged with knowledge of applicable laws, rules, and regulations governing the Oklahoma insurance market, denied coverage under earthquake policies to its insureds despite lacking the legally-required pre-coverage property inspection or survey upon which valid denials must be based.

154. The Engineering Defendants routinely ignored earthquake data and reported only those earthquakes that supported denial of coverage. That is, the Engineering Defendants routinely based their reports on distant and less severe earthquakes while ignoring possible causative earthquakes in the insured's area.

xi. Defendants' Conduct Has Proximately Caused Plaintiffs' RICO Injury to Business or Property

155. Defendants are liable because Plaintiffs were injured in their business or property by reason of Defendants' violation of 18 U.S.C. § 1962. *See* 18 U.S.C. §1964(c). A "violation" of RICO is committed if "individuals and entities" use the mails or interstate wire facilities in the execution of "any scheme to defraud." 18 U.S.C. §§ 1341, 1343; Sections 1961(1)(B), 1962. Sections 1964 (a), (c), and (d) authorize persons "injured" in their "business or property," "by reason of" RICO's "violation" to sue for appropriate redress, including equitable relief, treble damages and attorneys' fees.

156. A plaintiff need not show that he or she relied on any allegedly fraudulent misrepresentations to state a claim under RICO. Establishing a proximate cause of a RICO “scheme to defraud” requires only showing use of the mail or wire in furtherance of a scheme to defraud and an injury proximately caused by that scheme. Proximate cause exists where there is some direct “relation between the injury asserted and the injurious conduct alleged.”¹⁵ Considerations of foreseeability, directness, and logic are parts of RICO-related proximate cause.

157. To the extent reliance is necessary to establish the proximate cause of Plaintiffs’ injuries, that reliance or proximate cause may be proven on a class-wide basis, without individualized proof. No rational person would procure earthquake insurance from the Farmers Defendants voluntarily, only to have claims for indemnity under that coverage summarily denied under the color of a report from the Engineering Defendants. Reliance may therefore be inferred and presumed from the very nature of the transaction. Further, the Farmers Defendants banked on the Plaintiffs’ and Class Members’ reliance on the Engineering Defendants’ sham reports.

158. Plaintiffs and the Class Members they represent each suffered the same injury—the unlawful denial of their claim for indemnity under a valid policy of insurance coverage against earthquake damage—that was directly foreseeable, indeed intended, by the Farmers Defendants and directly related to the scheme.

159. The precise amount lost by the class has not yet been determined but is believed to be tens of millions of dollars. The means of determining the loss is the same class-wide. Upon information and belief, the Farmers Defendants tracked, maintained, and accounted for claims submitted to them by insureds in Oklahoma, which they subsequently denied. Thus, the precise

¹⁵ *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 462, 126 S.Ct. 1991, 1999 (2006).

loss of every Class Member is easily capable of being ascertained in this litigation in the same manner, and the total business injury computed for the class.

xii. Violation of 18 U.S.C. §§ 1961(5), 1962(c)

160. Section 1962(c) makes it “unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate . . . commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity.”

161. Each Defendant has violated Section 1962(c) and is liable, jointly and severally, for the business injury caused to Plaintiffs and Class Members by their actions.

xiii. Violation of 18 U.S.C. §§ 1961(5), 1962(d)

162. Section 1962(d) makes it “unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.” Defendants have participated in a conspiracy to engage in the conduct referenced in Count One.

163. The Farmers Defendants entered into an agreement and/or contract with the Engineering Defendants for the purpose of producing sham engineering reports and then using those sham reports to justify unlawful denials of claims under Plaintiffs’ and Class Members’ valid earthquake insurance policies in violation of Oklahoma insurance law.

164. The Engineering Defendants entered into an agreement and/or contract with the Farmers Defendants to produce sham engineering reports for the Farmers Defendants to use in routine and systematic earthquake claims denial.

165. As stated above, each Defendant has participated in the scheme, and their participation is necessarily a combination of more than two individuals. Defendants’ creation, support, and/or maintenance of the fraudulent scheme is illegal. Defendants and others have

committed one or more overt acts to achieve or further the unlawful objects and purposes of the scheme detailed herein.

166. Each Defendant has violated Section 1962(c) and is liable, jointly and severally, for the business injury Defendants caused to Plaintiffs and Class Members.

COUNT TWO
Bad Faith
Against the Farmers Defendants

167. Plaintiffs, for themselves and as representatives for the proposed Class, incorporate by reference all preceding paragraphs as if fully set forth herein.

168. The Farmers Defendants owed a duty to Plaintiffs and the Class Members to deal fairly and in good faith.

169. The Farmers Defendants' obligations arise from both the express written terms of the policies and the Oklahoma Insurance Code. The Farmers Defendants' failure to implement and/or follow Oklahoma's statutory Insurance Code constitutes bad faith.

170. The Farmers Defendants breached their duty to deal fairly and in good faith by engaging in the following acts and omissions:

- a. Denying (in whole or in part) coverage to Plaintiffs and Class Members under their valid earthquake insurance policies on the basis of pre-existing damage without the support of a prior inspection or survey;
- b. Failing to disclose to Plaintiffs and Class Members their lack of compliance with Oklahoma insurance law in denying coverage to them on the basis of pre-existing damage without the support of a prior inspection or survey;

- c. Failing to disclose to Plaintiffs and Class Members the sham engineering reports serving as a basis for the denial of coverage under their valid earthquake insurance policies;
- d. Engaging in a scheme and/or conspiracy with the Engineering Defendants to deny claims based on sham and/or pretextual engineering reports.
- e. Failing to pay the full and fair amount for the property damage sustained by earthquake in accordance with the terms and conditions of their insurance policies;
- f. Failing to pay all additional coverages due and owing to Plaintiffs and Class Members under the terms and conditions of their insurance policies, thereby unfairly and without valid basis, reducing the fair amount of their claims;
- g. Withholding—purposefully, wrongfully, and repeatedly—pertinent benefits, coverages, and other provisions due to Plaintiffs and Class Members under the terms and conditions of their insurance policies in violation of Unfair Claims Settlement Practices Act, 36 O.S. §§1250.1-1250.16;
- h. Failing—purposefully, wrongfully, and repeatedly—to communicate all coverages and benefits applicable to Plaintiffs’ claims;
- i. Forcing Plaintiffs and Class Members to retain counsel to recover insurance benefits to which they were entitled under the terms and conditions of the insurance contracts;
- j. Failing to perform a fair and objective investigation of Plaintiffs’ and Class Members’ damages;

- k. Engaging—knowingly and intentionally—in a pattern and practice of utilizing the services of hand-picked, pre-approved engineers to proffer scripted reports to rubber-stamp its pretextual claims handling practices;
- l. Engaging in outcome-oriented investigations and claims handling practices;
- m. Engaging—knowingly and intentionally—in a pattern and practice of denying indemnity payments under valid earthquake insurance policy benefits;
- n. Failing—knowingly and intentionally—to inspect the insureds structure prior to inception of the coverage and/or maintaining current information as to the condition of each respective property prior to the loss;
- o. Failing to inform the insureds of their right to indemnity payments;
- p. Utilizing an arbitrary and capricious method to deny indemnity payments; and
- q. Failing—knowingly and intentionally—to engage in proper claims handling practices.

171. As a consequence of the Farmers Defendants' breach of the duty of good faith and fair dealing, Plaintiffs and Class Members have sustained damages, including deprivation of monies rightfully belonging to them, anger, stress, worry, physical and emotional suffering, attorneys' fees, and litigation costs.

172. The conduct of the Farmers Defendants, as described above, constitutes bad faith and is a material breach of the terms and conditions of the insurance contracts between the parties.

173. Plaintiffs and Class Members further allege Farmers enjoyed increased financial benefits and ill-gotten gains as a direct result of the wrongful conduct described above herein, which resulted in the injury to Plaintiffs and other similarly situated policyholders.

174. Farmers' actions were intentional, willful, malicious and in reckless disregard of the rights of Plaintiffs and Class Members and are sufficiently egregious in nature so as to warrant the imposition of punitive damages.

175. As a result of the Farmers Defendants' conduct, Plaintiffs and Class Members have sustained financial losses, mental and emotional distress and have been damaged in an amount to be determined at trial.

COUNT THREE
Fraud
Against All Defendants

176. Plaintiffs, for themselves and as representatives for the proposed Class, incorporate by reference all preceding paragraphs as if fully set forth herein.

177. The Farmers Defendants owed a fiduciary responsibility to Plaintiffs and Class Members. The Engineering Defendants owed a common law duty to Plaintiffs and Class Members to not engage in fraud.

178. Throughout the Farmers Defendants' adjustment of Plaintiffs' and Class Members' claims, the Farmers Defendants were aware of the fact that denial of their claims was unlawful because

- a. the Farmers Defendants denied Plaintiffs' and Class Members claims on the basis of pre-existing damage without the support of a legally-required prior inspection or survey; and
- b. the Farmers Defendants denied Plaintiffs' and Class Members' claims on the basis of sham engineering reports.

179. The Farmers Defendants knew Plaintiffs and Class Members fully performed all of their obligations under their insurance policies, suffered losses due to a covered peril, and were entitled to all benefits permitted under their policies.

180. Despite knowing the Plaintiffs and Class Members were entitled to indemnity, the Farmers Defendants, nevertheless, withheld such payment to them and took no further steps to inform or disclose to Plaintiffs and Class Members that they were entitled to indemnity or that the denial of their claims was unlawful.

181. The Farmers Defendants chose silence over a duty to inform Plaintiffs and Class Members of all applicable benefits and the unlawful basis of the denial of their claims. Because the Farmers Defendants knew their denial of Plaintiffs' and Class Members' claim were unlawful, their failure to speak constituted concealment and fraud.

182. As a result of the Farmers Defendants' concealment, they gained an advantage by misleading Plaintiffs and Class Members to believe they were not entitled to indemnity under their policies, which was a direct financial detriment to them.

183. Plaintiffs and Class Members conscientiously paid their insurance premiums believing the Farmers Defendants would fairly and honestly pay covered claims incurred during the life of their policies.

184. When the time came for the Farmers Defendants to pay on Plaintiffs' and Class Members' claims, however, they instead issued an unlawful denial.

185. Ultimately, Defendants defrauded Plaintiffs and Class Members through a scheme to systematically deny earthquake coverage claims by knowingly and intentionally basing those denials on (1) pre-existing damage without the support of a legally-required prior inspection or survey, and (2) sham engineering reports generated to support the pre-existing damage argument.

186. As a direct result of Defendants' fraudulent scheme, Plaintiffs' and Class Members' claims were wrongly and intentionally denied. Defendants' actions were intentionally designed to result in additional financial profits for Farmers.

187. Defendants, and each of them, made numerous express and implied representations and gave assurances to Plaintiffs and Class Members, including but not limited to the following:

a. The Farmers Defendants

- i. conducted their analysis and assessment of Plaintiffs' and Class Members' claims in good faith;
- ii. based their decision to deny Plaintiffs' and Class Members' claims on a valid prior inspection or survey from the time of inception of coverage as required by Oklahoma law; and
- iii. based their decision to deny Plaintiffs' and Class Members' claims on truthful, objective, and unbiased engineering reports.

b. The Engineering Defendants

- i. produced truthful, objective, and unbiased engineering reports;
- ii. based their engineering reports on the relevant underwriting files;
- iii. accepted and considered evidence from insureds regarding the condition of the property before the earthquake claim;
- iv. based their reports on pre-coverage history (*e.g.*, prior inspections and/or photos) from Farmers;
- v. accurately and truthfully stated the insured's property history as provided by the insured in their engineering reports;

- vi. considered the occurrence and proximity of all earthquakes that occurred near an insured's property; and
- vii. considered opinions from other knowledgeable tradesmen or engineers that contradicted the Engineering Defendants' opinions.

188. Defendants, and each of them, knowingly, purposefully, and fraudulently concealed and hid material facts and information from Plaintiffs and Class Members and failed to disclose material facts and information to them related to their earthquake coverage and claims, including but not limited to the following material facts and information that:

- a. Plaintiffs and Class Members were entitled to indemnity in connection with loss or damage to their Dwellings;
- b. The Farmers Defendants
 - i. had a coordinated policy and practice of not indemnifying insureds for earthquake claims in Oklahoma when it was owed;
 - ii. had a policy and practice of not disclosing to insured claimants the circumstances in which indemnity was payable pursuant to earthquake insurance coverage;
 - iii. had established procedures and policies regarding earthquake coverage claims denials that were not disclosed on Defendants' written policy, marketing and other materials provided to Plaintiffs or Class Members;
 - iv. based their denial of coverage on pre-existing damage to an insured's property without basing that decision on a legally-required prior inspection or survey;

- v. had a policy and practice of basing their denial of coverage on sham and/or pretextual engineering reports produced for the sole purpose of justifying unlawful denials of claims;

c. The Engineering Defendants

- i. knowingly produced (1) biased engineering reports and/or (2) sham and/or pretextual engineering reports;
- ii. failed to disclose in engineering reports the lack of a pre-coverage inspection or survey from Farmers;
- iii. failed to disclose in engineering reports that they were not provided with a copy of the relevant underwriting file;
- iv. failed to disclose scope of investigation as dictated by Farmers;
- v. failed to acknowledge in engineering reports that evidence from insureds regarding the condition of the property before the earthquake claim was not considered or accepted;
- vi. misstated property history provided by insured in engineering reports;
- vii. omitted and/or failed to acknowledge in engineering reports that no pre-coverage history (*e.g.*, prior inspections and/or photos) were provided by Farmers in advance of inspection;
- viii. skewed, misstated, and/or omitted facts in engineering reports to ensure the reports downplayed property damage to arbitrarily rule out coverage;
- ix. disregarded occurrence and proximity of earthquakes that occurred near an insured's property;

- x. chose and based their engineering reports on seismic events that happened farther away from an insured's property than other more likely causative events so as to downgrade damage and support claim denial;
- xi. advised insureds that earthquakes in Oklahoma were simply not strong enough to cause damage to insureds' property while knowing such statements were false; and
- xii. failed to consider opinions from other knowledgeable tradesmen or engineers that are contrary to engineering report opinions.

189. Defendants knew that receipt of such misrepresented and/or concealed and hidden information would have been important to Plaintiffs and Class Members and that receipt of such information would have caused them to seek and demand full indemnification under their earthquake insurance policy.

190. Defendants' misrepresentations constitute fraud, and their active concealment of their fraudulent practices tolls the running of any applicable statute of limitations.

191. Defendants' conduct was intentional, willful, malicious, and in reckless disregard of the rights of the Plaintiffs and Class Members, and/or was grossly negligent, and is sufficiently egregious in nature so as to warrant the imposition of punitive damages.

192. Defendants' fraudulent behavior is such that intent, although present, is not required because their acts and omissions also constitute constructive fraud.

193. Defendants enjoyed increased financial benefits and ill-gotten gains as a direct result of the wrongful conduct described above herein, which resulted in the injury to Plaintiffs.

194. Plaintiffs and Class Members further allege the Farmers Defendants enjoyed increased financial benefits and ill-gotten gains as a direct result of the wrongful conduct described above herein, which resulted in the injury to Plaintiffs and other similarly situated policyholders.

COUNT FOUR
Disgorgement/Unjust Enrichment
Against the Farmers Defendants

195. Plaintiffs, for themselves and as representatives for the proposed Class, incorporate by reference all preceding paragraphs as if fully set forth herein.

196. The Farmers Defendants' conduct in failing to indemnify Plaintiffs and Class Members for their timely claims under their valid earthquake insurance policies in the state of Oklahoma warrants a judgment disgorging the Farmers Defendants of any ill-gotten gains they have acquired from this wrongful and unethical business practice.

197. The Farmers Defendants failed to disclose to Plaintiffs and Class Members that the denial of their claims based on pre-existing damage did not rest on a legally-required prior inspection or survey. The Farmers Defendants' conduct in this respect is unfair, unjust, deceitful, wrongful, misleading, and/or fraudulent.

198. The Farmers Defendants failed to disclose to Plaintiffs and Class Members that the denial of their claims was premised on sham engineering reports, which the Engineering Defendants produced for the Farmers Defendants for the sole purpose of justifying a wrongful claim denial.

199. The Farmers Defendants concealed from Plaintiffs and Class Members that a loss or damage to their Dwelling entitled them to indemnity under their policy. The Farmers Defendants' conduct in this respect is unfair, unjust, deceitful, wrongful, misleading, and/or fraudulent.

200. Plaintiffs and Class Members were entitled to disclosures from the Farmers Defendants of their right to indemnity, the wrongful premises on which the Farmers Defendants based its denial of coverage, as well as to actual indemnity. The Farmers Defendants' conduct in this respect is unfair, unjust, deceitful, wrongful, misleading, and/or fraudulent.

201. The Farmers Defendants took unfair and/or undue advantage of Plaintiffs and Class Members by wrongfully denying their claims.

202. The Farmers Defendants fully appreciated the enrichment and benefit accorded to them by retaining monies that should have been paid to Plaintiffs and Class Members as indemnity payments.

203. The Farmers Defendants' retention of monies that should have been paid to Plaintiffs and Class Members as indemnity payments acted to benefit the Farmers Defendants at the express detriment of Plaintiffs and Class Members.

204. The Farmers Defendants' retention of monies that should have been paid to Plaintiffs and Class Members under the circumstances as set forth in this Petition not only constitutes an act of misconduct, but also is patently unfair, unjust, inequitable, dishonest, and fraudulent in relation to Plaintiffs and Class Members.

205. For all the above stated reasons, the Farmers Defendants, and each of them, were unjustly enriched to the express detriment and disadvantage of Plaintiffs and Class Members.

206. Despite the self-vaunted, sophisticated ability to identify, isolate, and track terabytes of information, Plaintiffs expect that the Farmers Defendants will assert that they have no way to determine which Class Members were not indemnified, rendering it difficult to identify sums due to Plaintiffs and Class Members.

207. If the Court finds the allegations contained in Paragraph 205, above, to be correct, then Plaintiffs and Class Members will have no adequate remedy at law.

208. The Farmers Defendants should not be allowed to retain any part of the amounts they should have paid to Plaintiffs and Class Members.

X. PRAYER FOR RELIEF

WHEREFORE, premises considered, Plaintiffs, individually and on behalf of the Class of similarly situated persons, respectfully pray for the following judgement in their favor and against Defendants, jointly and severally, as follows:

COUNT ONE RICO Violation Against All Defendants

On their first cause of action, Violations of the Racketeer Influenced Corrupt Organization Act, 18 U.S.C. §§ 1961-68, Plaintiffs request orders

- 1) certifying that the action may be maintained as a class action under 12 O.S. § 2023(A) and appointing Plaintiffs and Plaintiffs' counsel to represent the Class;
- 2) awarding actual damages, as appropriate under the law;
- 3) awarding statutory damages, as appropriate under the law;
- 4) awarding exemplary damages, as appropriate under the law;
- 5) assessing civil penalties, as appropriate under the law
- 6) awarding injunctive relief prohibiting Defendants from continuing the practices complained of herein.
- 7) awarding pre-judgement interest and post-judgement interest as permitted by law;
- 8) awarding attorneys' fees and costs; and/or
- 9) awarding such further legal and equitable relief as the Court deems appropriate.

COUNT TWO
Bad Faith
Against the Farmers Defendants

On their second cause of action, Bad Faith, Plaintiffs request orders

- 1) certifying that the action may be maintained as a class action under 12 O.S. § 2023(A) and appointing Plaintiffs and Plaintiffs' counsel to represent the Class;
- 2) awarding restitution to Plaintiffs and the proposed Class Members;
- 3) alternatively, awarding actual and punitive damages to Plaintiffs and the proposed Class Members in excess of \$75,000.00;
- 4) awarding Plaintiffs and the proposed Class Members an amount to be determined at trial and to be disgorged by the Farmers Defendants that represents the amount the Farmers Defendants have received in ill-gotten gains from their unlawful denial scheme;
- 5) awarding such equitable relief as permitted including an injunction requiring the Farmers Defendants to notify all Class Members that they are entitled to submit an additional or supplemental request for indemnity under their earthquake policy in connection with their prior loss or damage to their Dwelling and an injunction requiring the Farmers Defendants to disclose to customers in the future all material information regarding denial of claims and pre-existing damages;
- 6) awarding pre-judgment interest on any restitution or money damages paid to Plaintiffs or Class Members;
- 7) awarding attorneys' fees and costs; and
- 8) awarding such other and further relief as the Court deems just and proper; including punitive damages or any form of exemplary damages (such as double or triple damages) on behalf of Plaintiffs and Class Members.

COUNT THREE
Fraud
Against All Defendants

On their third cause of action, Fraud, Plaintiffs request orders

- 1) certifying that the action may be maintained as a class action under 12 O.S. § 2023(A) and appointing Plaintiffs and Plaintiffs' counsel to represent the Class;
- 2) awarding restitution to Plaintiffs and the proposed Class Members;

- 3) alternatively, awarding actual and punitive damages to Plaintiffs and the proposed Class Members in excess of \$75,000.00;
- 4) awarding Plaintiffs and the proposed Class Members an amount to be determined at trial and to be disgorged by Defendants that represents the amount Defendants have received from their unlawful denial scheme;
- 5) awarding such equitable relief as permitted including an injunction requiring Defendants to notify all Class Members that they are entitled to submit an additional or supplemental request for indemnity under their earthquake policy in connection with their prior loss or damage to their Dwelling and an injunction requiring Defendants to disclose to customers in the future all material information regarding denial of claims and pre-existing damage;
- 6) awarding pre-judgment interest on any restitution or money damages paid to Plaintiffs or Class Members;
- 7) awarding attorneys' fees and costs; and
- 8) awarding such other and further relief as the Court deems just and proper; including punitive damages or any form of exemplary damages (such as double or triple damages) on behalf of Plaintiffs and Class Members.

COUNT FOUR
Disgorgement/Unjust Enrichment
Against the Farmers Defendants

On their fourth cause of action, Disgorgement/Unjust Enrichment, Plaintiffs request orders

- 1) certifying that the action may be maintained as a class action under 12 O.S. § 2023(A) and appointing Plaintiffs and Plaintiffs' counsel to represent the Class;
- 2) awarding disgorgement/restitution to Plaintiffs and the proposed Class Members in an amount equal to the amount that should have been paid to Class Members;
- 3) alternatively, awarding Plaintiffs and the proposed Class Members an amount to be determined at trial that represents the amount by which the Farmers Defendants have been unjustly enriched as a result of their unlawful denial scheme;
- 4) alternatively, awarding Plaintiffs and the proposed Class Members an amount to be determined at trial and to be disgorged by the Farmers Defendants that represents the amount by which the Farmers Defendants have benefitted from their unlawful denial scheme;
- 5) awarding such equitable relief as permitted including an injunction requiring the Farmers Defendants to notify all Class Members that they are entitled to submit an additional or supplemental request for indemnity under their earthquake policy in connection with their

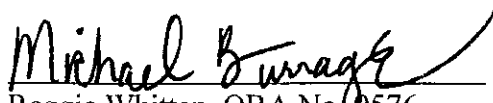
prior loss or damage to their Dwelling and an injunction requiring the Farmers Defendants to disclose to customers in the future all material information regarding denial of claims and pre-existing damage;

- 6) awarding pre-judgment interest to prevent the Farmers Defendants from receiving additional unjust enrichment from unlawful denial scheme;
- 7) awarding attorneys' fees and costs; and
- 8) awarding such other and further relief as the Court deems just and proper.

XI. JURY DEMAND

209. Pursuant to Okla. Const. Art, 2, §19, Plaintiffs, for themselves and on behalf of the Class, demand a trial by jury of their RICO Act claim and any other claims so triable asserted in this lawsuit.

Respectfully submitted,



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ATTORNEYS' LIEN CLAIMED
JURY TRIAL DEMANDED