

IN THE CIRCUIT COURT OF THE 19TH
JUDICIAL CIRCUIT IN AND
FOR MARTIN COUNTY, FLORIDA

CASE NO.: 20-000409-CA-AX

TOWER HILL SIGNATURE INSURANCE
COMPANY, TOWER HILL PRIME
INSURANCE COMPANY, TOWER HILL
SELECT INSURANCE COMPANY; TOWER
HILL PREFERRED INSURANCE COMPANY
and OMEGA INSURANCE COMPANY,

Plaintiffs,

v.

SFR SERVICES, LLC and RICKY MCGRAW,
ELITE CLAIMS CONSULTANTS, LLC,
MATTHEW MCGRAW, JESSICA MCGRAW,
MCGRAW PROPERTY SOLUTIONS, LLC
and, MCGRAW ASSET MANAGEMENT, LLC,

Defendants.

_____ /

SFR SERVICES, LLC,

Counter-Plaintiff,

v.

TOWER HILL SIGNATURE INSURANCE
COMPANY, TOWER HILL PRIME
INSURANCE COMPANY, TOWER HILL
SELECT INSURANCE COMPANY, TOWER
HILL PREFERRED INSURANCE COMPANY,
OMEGA INSURANCE COMPANY, TOWER
HILL INSURANCE GROUP, LLC, INDIAN
HARBOR INSURANCE COMPANY, WILLIAM
SHIVELY, BLUEGRASS INSURANCE

MANAGEMENT, LLC, and U.S. FORENSIC,
LLC,

Counter-Defendants,

_____ /

SFR SERVICES, LLC’S VERIFIED COUNTERCLAIM AND JURY TRIAL DEMAND

COMES NOW, Counter-Plaintiff, SFR SERVICES, LLC (“SFR”), by and through its undersigned counsel and pursuant to Florida Rule of Civil Procedure 1.170, hereby files this Counterclaim against Counter-Defendants, TOWER HILL SIGNATURE INSURANCE COMPANY, TOWER HILL PRIME INSURANCE COMPANY, TOWER HILL SELECT INSURANCE COMPANY, TOWER HILL PREFERRED INSURANCE COMPANY, OMEGA INSURANCE COMPANY, INDIAN HARBOR INSURANCE COMPANY (collectively “Tower Hill”), WILLIAM SHIVELY (“Shively”), TOWER HILL INSURANCE GROUP, LLC, (“TH Group”), BLUEGRASS INSURANCE MANAGEMENT, LLC (“Bluegrass”), and U.S. FORENSIC LLC (“U.S. Forensic”), and alleges the following:

NATURE OF THE ACTION

1. Tower Hill – Florida’s largest residential insurer – has a history of intentionally undervaluing and denying legitimate claims of its policyholders in an effort to deceptively increase its profitability at the expense of its insureds.

2. SFR is a licensed Florida general and roofing contractor with vast experience restoring and repairing properties damaged by hurricanes, windstorms, floods and fire. SFR has obtained legally-binding Assignment of Benefits from over three hundred (300) named insureds of Tower Hill, whereby SFR has been assigned all benefits, proceeds, and causes of action associated with the named insured’s respective losses.

3. Florida Statute §§ 627.7152 and 627.7153 expressly authorize the assignment of insurance benefits and litigation against insureds, like Tower Hill, who wrongfully undervalue or deny claims.

4. SFR strongly advocates for its insured customers and demands strict compliance with the express terms of Tower Hill's insurance policies and applicable law. Where Tower Hill fails to meet its statutory or contractual duties, SFR will justifiably seek appraisal rights, if any, or file suit against Tower Hill for breach of the underlying insurance policy.

5. In an improper attempt to collaterally challenge SFR's claims and causes of action, as assignee, and to collaterally challenge the statutory framework authorizing the assignment of insurance benefits enacted by the Florida Legislature, Tower Hill and its co-conspirators engaged in a concerted effort to defame SFR and to severely restrict or completely eliminate its business, including, but not limited to, by (a) engaging in a scheme to defraud SFR, (b) participating in unfair claim settlement practices, (c) conspiring with insurance claims adjusters and engineers to wrongfully deny or undervalue all claims submitted on behalf of SFR, as assignee, (d) filing false and malicious claims against SFR with the Florida Department of Business and Professional Regulation, Lee County Code Enforcement and Lee County Contractor Licensing, and (e) misrepresenting SFR's qualifications, licensure and business practices to SFR's customers.

JURISDICTION, VENUE AND PARTIES

6. This is an action for damages in excess of \$30,000.00 exclusive of interest, attorneys' fees and costs.

7. Counter-Plaintiff, SFR, is a Florida limited liability company with its principal place of business in Martin County, Florida and is a licensed roofing contractor and general contractor.

8. Counter-Defendant, TOWER HILL SIGNATURE INSURANCE COMPANY (“TH Signature”), is a Florida insurance corporation authorized to conduct insurance business in Florida and maintains its principal place of business in Alachua County, Florida.

9. Counter-Defendant, TOWER HILL SELECT INSURANCE COMPANY (“TH Select”), is a Florida insurance corporation authorized to conduct insurance business in Florida and maintains its principal place of business in Alachua County, Florida.

10. Counter-Defendant, TOWER HILL PREFERRED INSURANCE COMPANY (“TH Preferred”), is a Florida insurance corporation authorized to conduct insurance business in Florida and maintains its principal place of business in Alachua County, Florida.

11. Counter-Defendant, TOWER HILL PRIME INSURANCE COMPANY (“TH Prime”), is a Florida insurance corporation authorized to conduct insurance business in Florida and maintains its principal place of business in Alachua County, Florida.

12. Counter-Defendant, OMEGA INSURANCE COMPANY (“Omega”), is a Florida insurance corporation authorized to conduct insurance business in Florida and maintains its principal place of business in Alachua County, Florida.

13. Counter-Defendant, TOWER HILL INSURANCE GROUP, LLC (“TH Group”), is a Florida limited liability company authorized to conduct insurance business in Florida and maintains its principal place of business in Alachua County, Florida

14. Counter-Defendant, INDIAN HARBOR INSURANCE COMPANY (“Indian Harbor”), is a Delaware insurance corporation authorized and licensed to transact insurance business and is currently transacting insurance business throughout the State of Florida.

15. Counter-Defendant, Shively, is an individual over the age of 18, *sui juris*, and resides in Alachua County, Florida, and is the CEO/Director/Chairman of TH Select, the CEO of Omega, President/Director of Bluegrass, and Executive Director of TH Group.

16. Counter-Defendant, Bluegrass, is a Kentucky limited liability company with its principal place of business in Lexington, Kentucky, is registered to transact business in Florida and is engaged in the business of insurance claim management services for Tower Hill in Martin County, Florida and throughout Florida

17. Counter-Defendant, U.S. Forensic, is a Florida limited liability company with its principal place of business in Metairie, Louisiana and performs engineering services for Tower Hill throughout Florida.

18. Venue is proper as this action is currently pending before this Court and the acts giving rise to this action occurred, in part, in Martin County, Florida.

19. All conditions precedent to the institution of this action have occurred, been performed, or have otherwise been waived.

GENERAL ALLEGATIONS

20. TH Group consists of a family of insurance companies including, but not limited to, Omega Insurance Company, Tower Hill Signature, Tower Hill Select, Tower Hill Preferred, Tower Hill Prime, and Indian Harbor Insurance Company.

21. Tower Hill insures a variety of properties including, but not limited to, single-family homes, condominiums, and commercial properties in the State of Florida.

22. Tower Hill is the largest residential insurer in the State of Florida and their residential policies provide comprehensive coverage for, *inter alia*, replacement costs, personal property, and other structures.

23. Similarly, Tower Hill offers commercial insurance policies that cover, *inter alia*, commercial residential properties and structures.

24. In or before 2015, Tower Hill faced unfavorable underwriting performance and financial losses.

25. Thus, in 2015, Tower Hill focused efforts on increasing its profitability through a concentrated effort to boost underwriting gains by denying or undervaluing insurance claims regardless of the coverage, cause or extent of its insured's property damage.

26. Tower Hill also improved its profitability through rate increases, inclusion of less favorable policy provisions for its insureds, and non-renewal of unprofitable business.

27. Tower Hill blamed its lack of profitability, in part, on purported losses incurred as a result of assignment of benefits. Notwithstanding Tower Hill's allegations, assignments of benefits protect consumers by allowing homeowners to hire contractors for repairs even where the homeowners do not have the resources to challenge an insurance company's fraudulent denial or undervaluation of their insurance claims.

28. In an effort to intimidate insureds into accepting Tower Hill's wrongful denials or undervaluation of claims, Tower Hill attempted to void its insured's assignment of benefits, claiming anti-assignment clauses and lost payment provisions in their policies

precluded assignment. However, the courts rejected Tower Hill's attempts and upheld well-settled case law allowing post-loss assignments of insurance claims.

29. In 2016, Tower Hill's underwriting gains were further offset by Hurricane Hermine and Hurricane Michael.

30. Then, Hurricane Irma made landfall in the Florida Keys on September 10, 2017 and continued on a northward track, with catastrophic impacts across Florida.

31. The insurance claims filed with Tower Hill resulting from Hurricane Irma, which were projected to exceed one billion dollars (\$1,000,000,000.00), further diminished Tower Hill's profitability.

32. In an effort to deceptively increase its profitability following years of increased weather-related insurance claims, Tower Hill devised a scheme to defraud its insureds, and assignees like SFR, in an attempt to obtain monies owed to homeowners or their assignees under the terms of applicable insurance policies and Florida law.

33. Specifically, Tower Hill developed, approved and directed a network of claims adjusters, engineers, and construction contractors to improperly deny and/or undervalue Hurricane Irma and wind damage claims so Tower Hill could deceptively maximize their profitability.

34. Tower Hill's related company, Bluegrass, shares common ownership and acts as an independent adjusting company retained by Tower Hill to inspect properties and write estimates for Tower Hill's insured's properties. Bluegrass is just one of many independent adjusters or independent adjusting companies that conspired with Tower Hill to fraudulently deny or undervalue SFR's legitimate claims.

35. Tower Hill routinely retained U.S. Forensic, an engineering firm, with the directive and agreement that U.S. Forensic would outright deny hurricane damage existed or assert minimal damage findings regardless of the source or extent of damage to the insured's property. U.S. Forensic is just one of many engineers and/or engineering firms that conspired with Tower Hill to fraudulently deny or undervalue SFR's legitimate claims.

36. Upon information and belief, Tower Hill engaged in other illegal and fraudulent conduct designed to defraud SFR, as assignee, with the intent to obtain monies belonging to SFR, as assignee, and in violation of Florida's Unfair Insurance Trade Practices Act.

37. The subject matter of the fraud and scheme to defraud by Tower Hill is uniquely within Tower Hill's and its co-conspirator's knowledge, possession, custody and/or control.

38. Upon information and belief, Tower Hill, Shively, TH Group, Bluegrass and U.S. Forensic have concealed, and continue to conceal, the extent and nature of their scheme to defraud and fraudulent claims settlement practices. In fact, Tower Hill is able to hide behind Florida's attorney-client and work-product privileges to conceal its course of conduct intended to defraud SFR, as assignee, and to conceal its deceptive acts or practices.

39. Tower Hill intentionally and in violation of Florida law collected insurance premiums with the intent to deny valid claims or significantly undervalue insurance claims in violation of the terms of the insured's policies.

40. Tower Hill adopted fraudulent and unfair claims settlement practices and scheme to defraud that was designed to undervalue and/or deny its insureds' claims in violations of the terms of the insured's policies.

I. Tower Hill Targeted SFR And SFR's Customers

41. SFR, as assignee, was specifically targeted by Tower Hill's scheme to defraud and improperly handle claims. In fact, Tower Hill has outright denied more than seventy-five (75%) percent of the claims filed by or on behalf of SFR, as assignee; and in connection with the limited claims not outright denied, Tower Hill misrepresented the cost of the necessary repairs in every single claim that was not denied for lack of coverage.

42. More specifically, Tower Hill in concert with Bluegrass and other independent adjusters submitted repair estimates and coverage determinations to SFR and/or SFR's customers far below the market value of the costs of the necessary repairs.

43. Tower Hill's obligation to pay post-loss insurance claims, or its right to deny payment, assigned to SFR is governed by the terms of the respective insurance policies, not the AOB as Tower Hill is not a party to the AOBs.

44. In its Second Amended Complaint, Tower Hill distorts the underlying facts in a specious attempt to demonize SFR, as assignee, for simply accepting statutorily approved AOBs and enforcing the terms of Tower Hill's insurance policies. Notwithstanding Tower Hill's hollow attempt to unilaterally assert lack of coverage and/or demand acceptance of its minimal actual cash value or replacement cost estimates, if any, by conspiring with paid independent adjusters and engineers to deny or devalue claims, SFR is not obligated under the terms of the underlying policy or law to blindly consent to Tower Hill's deceptive claims processing.

45. By virtue of Tower Hill's improper undervaluing and/or denial of claims, SFR, as assigned, has been forced to file breach of contracts actions against Tower Hill. Now, Tower Hill seeks to utilize SFR's due process rights to litigate the disputes between the SFR and Tower Hill – which are protected acts under the litigation privilege – to collaterally challenge SFR's assignment of benefits and to collaterally challenge actions that have already been adjudicated and/or were settled in other courts throughout this State.

46. When Tower Hill realized that it could not coerce SFR into blindly accepting its improper claims practices and fraudulent acts, Tower Hill directly contacted SFR's customers, making false statements and misrepresentations that SFR did not maintain the necessary licenses to complete the repairs for the damages caused by Hurricane Irma and making false statements and misrepresentations that SFR's AOBs were not binding.

47. By way of one example, in or around April of 2018, Carl Nemeth, a Special Investigations Unit Supervisor for TH Group, contacted SFR's customer, Theresa Shelby Moore, telephonically.

48. During the above-mentioned phone call, Carl Nemeth misrepresented to Theresa Shelby Moore that SFR did not have a Florida general contractors license and claimed any AOBs between SFR and its customers are void.

49. Prior to the above-mentioned telephone, SFR forwarded a copy of its contractor license to Tower Hill, and TH Group knew its defamatory statements against SFR were false.

50. Prior to the above-mentioned telephone call, Carl Nemeth knew SFR's AOB with its customers were not null or void.

51. Carl Nemeth, on behalf of TH Group, knowingly and intentionally made a false statement to its insured/customer of SFR, Theresa Shelby Moore, in order to induce Theresa Shelby Moore to cease her business relationship with SFR.

52. Multiple false statements concerning SFR's licensure status and validity of its AOBs were communicated to SFR's customers by Tower Hill.

53. TH Group's communication of false statements to SFR's customers became a pattern and practice of Tower Hill in an attempt to induce SFR's customers to cease their business relationship with SFR.

54. TH Group also made false, fictitious, and/or fraudulent statements concerning SFR to the Department of Business and Professional Regulation.

55. Specifically, on July 1, 2019, Kyle Abernathy, a Special Investigations Unit Investigator for TH Group, initiated a phone call with the Department of Business and Professional Regulation for the sole purpose of making false, fictitious, and/or fraudulent statements that SFR was engaged in money laundering.

56. Kyle Abernathy made these false, fictitious, and/or fraudulent statements against SFR with malice and without regard for the truth. Moreover, Kyle Abernathy and TH Group as well as its family of Tower Hill insurance companies caused these false, fictitious, and/or fraudulent statements to be made about SFR with the intent to stifle or end that portion of SFR's business which helps Florida homeowners challenge unscrupulous insurance giants, like Tower Hill, who routinely engage in a pattern or practice of criminal activity aimed at deceptively increasing its profitability.

57. The false information communicated by Kyle Abernathy, as a Special Investigations Unit Investigator for TH Group, became part of a Department of Business

and Professional Regulation (“DBPR”) Investigative Report, and therefore, the public records of the State of Florida.

58. SFR has never engaged in money laundering, and TH Group knew SFR was not engaged in money laundering.

59. At the time he made that false statement to the Department of Business and Professional Regulation, Kyle Abernathy did not have any evidence to suggest SFR had ever engaged in money laundering.

60. Kyle Abernathy’s false statements were part of Tower Hill and TH Group’s scheme to defraud its insureds and to get rid of SFR, who threatened its illegal profit-making scheme by demanding strict compliance with the underlying insurance policies and cost valuations sufficient to complete the necessary repairs to SFR’s customer’s homes.

61. When defaming SFR and initiating a DBPR investigation against SFR did not result in the desired outcome of putting SFR out of business, Tower Hill’s board of directors met to explore an alternative plan of attack against SFR for the sole purpose of intentionally interfering with and collaterally attack SFR’s business practices, contracts and relationships. Ultimately, Tower Hill’s board of directed concocted this baseless RICO action against SFR with the malicious and ulterior motive of negatively impacting SFR’s business in hopes of coercing SFR to refrain from advocating for its customers by requiring Tower Hill to pay all monies due and owing to its insureds who execute an AOB in favor of SFR.

62. This frivolous litigation against SFR is just one more, in a long line, of attempts made by Tower Hill to silence SFR and escape its duty to engage in fair

insurance trade practices. However, SFR will not be silenced and it brings this counterclaim against Tower Hill and its co-conspirators to shed light on the Tower Hill's pattern and practice of criminal activity including, but not limited to, by engaging in a scheme to defraud its insureds or their assignee.

II. ***Bluegrass' Participation In Tower Hill's Illegal Scheme***

63. Tower Hill contracted with Bluegrass through agreements under which Bluegrass received financial remuneration from Tower Hill for generating fraudulent estimates, cause and origin reports, and general loss statements.

64. At all material times hereto, Bluegrass was aware that the purpose of its engagement by Tower Hill was for Bluegrass to generate fraudulent estimates and inspection reports to form the basis of Tower Hill's fraudulent undervaluation or denial of legitimate claims in order to increase Tower Hill's profits.

65. After a claim was submitted by one of Tower Hill's insureds for damage caused by Hurricane Irma, at Tower Hill's request, Bluegrass would send field adjusters and engineers to inspect the covered damage.

66. Following the inspections, Bluegrass would generate, or caused to be generated, fraudulent and misleading estimates, cause and origin reports, and general loss statements.

67. The fraudulent and misleading estimates, cause and origin reports, and general loss statements are not the result of sound industry standard practices or ethical independent adjusting practices but are based on a predetermined outcome dictated by Tower Hill to increase its profitability.

68. Bluegrass would then send the fraudulent and misleading estimates, cause and origin reports, and general loss statements to Tower Hill.

69. Tower Hill would then knowingly base its claim decisions on the fraudulent and misleading estimates, cause and origin reports, and general loss statements in order to legitimize its wrongful and illegal undervaluation and/or denial of legitimate insurance claims.

70. Tower Hill used Bluegrass to conceal its illegal scheme of undervaluing and/or denying legitimate insurance claims in order to increase profitability by claiming it relied on the opinions and findings of third-party adjusters, i.e. Bluegrass.

71. Although Tower Hill's insurance policies generally require repair and replacement materials to be of like kind and quality with the materials utilized at the property at the time of loss or damage, Tower Hill in concert with Bluegrass submitted estimates to SFR and/or SFR's customers with costs for inferior quality materials in violation of the express terms of the underlying insurance policies.

72. In essence, even though Tower Hill and Bluegrass were aware of the language in their own insurance policies that required the products used in repairing or replacing covered roof damage or replacement to be of like kind and quality, Tower Hill and Bluegrass knowingly and intentionally submitted estimates to SFR and/or SFR's customers utilizing the cost of products inferior to the quality of products pre-existing on the roof.

73. Tower Hill sought out and directed the use of the fraudulent estimates cause and origin reports, and general loss statements from Bluegrass as a basis to deny and/or undervalue valid insurance claims.

74. Tower Hill benefitted from the fraudulent estimates, cause and origin reports, and general loss statements generated by Bluegrass because it minimized their liability on legitimate claims.

75. Tower Hill has similarly engaged other independent adjusters and independent adjusting companies for the sole purpose of obtaining fraudulent estimates, cause and origin reports, and general loss statements reports as a basis to deceptively and wrongfully deny SFR's, as assignee, claims.

76. More specifically, Tower Hill created established estimating guidelines and corresponding software macros and/or batches for its electronic estimating program that it required its internal and independent claims adjustors and preferred vendors to utilize in creating a cost estimate for repairs to property covered under its insurance policies.

77. Those software macros and/or batches specifically and deliberately utilized the costs associated with inferior kind and/or quality materials when estimating and evaluating claims filed by SFR, as assignee.

78. Tower Hill would further solicit preferred construction vendors with a known history of undervaluing claims when the insured homeowner engaged the assistance of a contractor, such as SFR, through the use of an AOB. Then, Tower Hill would mandate the preferred construction vendor utilize Tower Hill's deceptive, pre-selected macros and/or batches in formulating "their" estimate for repairs to the damaged properties.

79. Inevitably, due to Tower Hill's scheme to defraud through the use of deceptive, pre-selected macros and/or batches, the resulting estimates by Tower Hill's adjusters and preferred construction contractors were consistently, and deliberately, undervalued.

B. U.S. Forensic's Participation In Tower Hill's Illegal Scheme

80. Tower Hill contracted with U.S. Forensic through agreements under which U.S. Forensic received financial remuneration from Tower Hill for generating fraudulent cause and origin reports and engineer reports.

81. At all material times hereto, U.S. Forensic was aware that the purpose of its engagement by Tower Hill was for U.S. Forensic to generate fraudulent cause and origin reports and engineer reports to be utilized by Tower Hill to undervalue and/or deny legitimate claims in order to increase Tower Hill's profits.

82. After a claim was submitted by one of Tower Hill's insureds for damage caused by Hurricane Irma, Tower Hill would send U.S. Forensic to inspect the covered damage.

83. Following the inspections, U.S. Forensic would generate fraudulent and misleading cause and origin reports and engineering reports.

84. The fraudulent and misleading cause and origin reports and engineering reports are not the result of sound engineering methodology or practice but based on a predetermined outcome dictated by Tower Hill.

85. U.S. Forensic would then send the fraudulent and misleading cause and origin reports and engineering reports to Tower Hill.

86. Tower Hill would then utilize the fraudulent and misleading cause and origin reports and engineering reports to legitimize its wrongful and illegal undervaluing and/or denial of legitimate insurance claims.

87. Tower Hill used U.S. Forensic to conceal its illegal scheme of undervaluing and/or denying legitimate insurance claims for the purpose of profit by claiming it relied

on the opinions and findings of third-party adjusters and engineers, i.e. Bluegrass and U.S. Forensic.

88. Tower Hill sought out and relied upon the fraudulent engineer reports from U.S. Forensic in denying and/or undervaluing valid insurance claims.

89. Tower Hill benefitted from the fraudulent cause and origin reports and engineer reports generated by U.S. Forensic because it minimized their liability on legitimate claims that it undervalued and/or denied.

90. Tower Hill has similarly engaged other engineers and engineering firms for the sole purpose of obtaining fraudulent cause and origin reports and engineering reports as a basis to deceptively and wrongfully deny SFR's, as assignee, claims.

III. Effect of Tower Hill and Its Co-Conspirators' Unlawful Conduct

91. As a result of the fraudulent and unfair conduct, acts, and omissions of Tower Hill, TH Group, Bluegrass, U.S. Forensic and its other co-conspirator independent adjusters and engineers, SFR and its customers have incurred significant damages.

92. Tower Hill's insureds have been and continue to be deprived of insurance proceeds to which they are entitled to pursuant to the underlying insurance policies issued by Tower Hill.

93. SFR, as assignee, has been and continues to be deprived of benefits, proceeds, and causes of action associated with the named insured's loss.

94. SFR expended and continues to expend attorneys' fees and costs for litigating legitimate claims, as assignee of Tower Hill insureds, for claims Tower Hill illegally undervalued and/or denied as part of its profit-making scheme.

95. SFR has retained the law firm of Pike & Lustig, LLP in this action and has agreed to pay them a reasonable fee for their services.

COUNT I – VIOLATION OF FLORIDA’S RICO ACT
(Against All Counter-Defendants)

96. SFR re-alleges paragraphs __ through __ as if fully set forth herein.

97. TH Group is primarily held by majority owner and founder, Shively, and his family.

98. Shively retains an active role in TH Group as Executive Director.

99. Under Shively’s management and control Tower Hill has become the largest residential insurer in Florida.

100. TH Group is the Managing General Agent or Policy Administrator for and on behalf of TH Preferred, TH Prime, TH Select, TH Signature, Omega, and Indian Harbor.

101. As the Managing General Agent or Policy Administrator, TH Group maintains the detailed policy information, including premiums and claims activity for and on behalf of TH Preferred, TH Prime, TH Select, TH Signature, Omega, and Indian Harbor.

102. After seizing control of Florida’s residential insurance market with Tower Hill, Shively set his eyes on conquering the regional market by expanding Tower Hill throughout the United States.

103. In light of Tower Hill’s financial losses in or before 2015 and Shively’s hopes of making Tower Hill a regional insurer, Shively curated a plan to be implemented by TH Group, in concert with Tower Hill, to increase profits to be used to expand TH Group into a regional company.

104. Shively used his power and influence as founder and majority owner of TH Group to direct and command the implementation of his plan to increase profits, regardless of the tactics used to reach his goal.

105. The following business entities together constitute an enterprise under Fla. Stat. §§ 772.102(3) and 895.02(5), which is referred to herein as the “Tower Hill Enterprise”:

- a. TH Signature, TH Select, TH Preferred, TH Prime, Omega, Indian Harbor, Shively, TH Group, U.S. Forensic, and Bluegrass.

106. Counter-Defendants are a group of business entities and a single individual associated-in-fact although not, collectively, a legal entity.

107. While each Counter-Defendant has participated in and is a member of the Tower Hill Enterprise, each Counter-Defendant has an existence separate and distinct from the enterprise.

108. Since September of 2017, Counter-Defendants participated in the Tower Hill Enterprise by engaging in a course of conduct with the common purpose to establish and maintain the scheme of creating and utilizing fraudulent estimates and reports to undervalue and/or deny legitimate insurance claims in order to collectively increase profits, while at the same time concealing the scheme.

109. The illegal scheme was developed by Shively, for the purpose of increasing profits and to expand TH Group into a regional company.

110. The illegal scheme was then implemented by TH Group and Tower Hill at the direction of Shively and TH Group.

111. Counter-Defendants functioned and continue to function as a continuing unit in furtherance of the scheme.

112. Tower Hill, with the support and direction of Shively and TH Group, controlled and operated the Tower Hill Enterprise as follows:

- a. by contracting with Bluegrass, U.S. Forensic, and other independent adjusters and engineers to generate fraudulent estimates, cause and origin reports, general loss statements, and engineering reports;
- b. by soliciting fraudulent estimates, cause and origin reports, general loss statements, and engineering reports from Bluegrass, U.S. Forensic, and other independent adjusters and engineers;
- c. by knowingly basing its claim decisions on the fraudulent estimates, cause and origin reports, general loss statements, and engineering reports which it knew to be fraudulent;
- d. by undervaluing and/or denying legitimate claims based on inadequate and/or distorted estimating macros and/or batches manipulated by Tower Hill's employees and agents;
- e. by ignoring facts and considerations favorable to its insureds, leading to undervaluing and/or denying claims that were entitled to be honored;
- f. by failing to fairly and honestly adopt claim practices dictated by a fair and honest reading and evaluation of the claims in light of the policy language;
- g. by using its vastly superior bargaining power and hard-ball litigation tactics as weapons to undervalue and/or deny and/or settle claims below the true value of the claims;

- h. by targeting SFR and making false statements to SFR's customers that SFR did not have the necessary licenses to repair or replace damaged roofs in order to induce SFR's customers to cease their relationship with SFR so that Tower Hill could easily take advantage of its insureds without SFR's involvement; and
- i. by developing, participating in, and concealing a scheme to undervalue and/or deny legitimate insurance claims submitted to Tower Hill on behalf of SFR, as assignee, thereby engaging in fraudulent claims handling practices in order to increase profits.

113. Between 2017 and 2021, Tower Hill participated in a systematic, ongoing course of conduct with the intent to defraud SFR, and with the intent to obtain property from SFR by false or fraudulent pretenses, representations, or promises or willful misrepresentations of a future act.

114. Tower Hill, in violation of Fla. Stat. § 817.034, knew the fraudulent estimates, cause and origin reports, general loss statements and engineer reports were material and intended to mislead SFR.

115. In particular, Tower Hill engaged in a scheme to defraud and obtain property from SFR, subjecting Tower Hill to liability for organized fraud under Fla. Stat. § 817.034(4)(a).

116. Tower Hill undervalued and/or denied legitimate claims while knowingly relying upon fraudulent estimates, cause and origin reports, general loss statements, and/or engineer reports on a majority of insurance claims submitted on behalf of SFR, as assignee for Tower Hill insureds, and continues to do so today.

117. Each of these predicate acts is a separate and distinct violation of Fla. Stat. § 817.034(4)(a).

118. Tower Hill further engaged in the scheme to defraud and, in furtherance of the scheme, communicated and continues communicating with its insureds, SFR, TH Group, Bluegrass, and U.S. Forensics with the intent to obtain property from its insureds and SFR, subjecting Tower Hill to liability for communications fraud under Fla. Stat. § 817.034(4)(b) on a majority of insurance claims submitted on behalf of SFR, as assignee for Tower Hill insureds.

119. Each of these predicate acts is a separate and distinct violation of Fla. Stat. § 817.034(4)(b).

120. Tower Hill paid Bluegrass, U.S. Forensic, and other independent adjusters and engineers to generate fraudulent estimates, cause and origin reports, general loss statements, and engineering reports from which Tower Hill benefitted by using same to undervalue and/or deny legitimate claims resulting in an increase in profits.

121. By utilizing estimates, cause and origin reports, general loss statements, and/or engineer reports Tower Hill knew to be fraudulent, Tower Hill misrepresented the extent and severity of the covered damage, the cause of the covered damage, and the cost to repair the covered damage for hundreds of legitimate claims.

122. Therefore, the above-mentioned conduct by Tower Hill violated the Florida Communications Fraud Act, Fla. Stat. § 817.034 and constituted a predicate act under Florida's RICO statute.

123. Additionally, TH Group, in order to facilitate or further Tower Hill's violations of the Florida Communications Fraud Act, Fla. Stat. § 817.034, directed its investigator,

Kyle Abernathy, to knowingly provide false information that became part of a independent record's of the Department of Business and Professional Regulations in violation of Fla. Stat. § 817.155.

124. Counter-Defendants have engaged in a pattern of criminal activity, as defined under Fla. Stat. § 772.102(4), by committing well over two acts of criminal activity in violation of Chapter 817, Florida Statutes, within the past five years.

125. Each predicate act was related, had a similar purpose or common purpose, involved the same or similar participants and method of commission, had similar results, and impacted similar victims, including SFR.

126. This conduct did not arise out of a single contract or transaction against one or more related persons but was a pervasive scheme that injured separate but similarly situated persons, including SFR and its customers, over a period of several years.

127. The predicate acts specified above, which Counter-Defendants committed, conspired to, or otherwise aided and abetted in the commission of, were related and were conducted in furtherance of the scheme implemented by the Tower Hill Enterprise.

128. These acts were committed over such a long period of time (from at least 2017 through 2021) that they constitute in and of themselves a pattern of criminal activity.

129. Given the business structure of the Tower Hill Enterprise was to perpetrate criminal acts, the predicate acts posed a threat of continued illegal activity. Therefore, Counter-Defendants engaged in a pattern of criminal activity.

130. Counter-Defendants violated Fla. Stat. §§ 772.103(3) and 895.02(3) because each of them associated with the Tower Hill Enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of criminal activity.

131. Counter-Defendants are jointly liable for the actions complained of herein.

132. As a direct and proximate result of the actions of the Tower Hill Enterprise, SFR has been damaged.

WHEREFORE, Counter-Plaintiff, SFR, demands judgment against Counter-Defendants, TH Signature, TH Select, TH Preferred, TH Prime, Omega, Indian Harbor, Shively, TH Group, Bluegrass, and U.S. Forensic for damages in excess of \$30,000.00, treble damages under Fla. Stat. § 772.104, as well as attorneys' fees, costs, interest, and such further relief this Court deems just and proper.

COUNT II – CONSPIRACY TO VIOLATE FLORIDA'S RICO ACT
(Against All Counter-Defendants)

133. SFR re-alleges paragraphs ___ through ___ as if fully set forth herein.

134. TH Group is primarily held by majority owner and founder, Shively, and his family.

135. Shively retains an active role in TH Group as Executive Director.

136. Under Shively's management and control Tower Hill has become the largest residential insurer in Florida.

137. TH Group is the Managing General Agent or Policy Administrator for and on behalf of TH Preferred, TH Prime, TH Select, TH Signature, Omega, and Indian Harbor.

138. As the Managing General Agent or Policy Administrator, TH Group maintains the detailed policy information, including premiums and claims activity for and on behalf of TH Preferred, TH Prime, TH Select, TH Signature, Omega, and Indian Harbor.

139. After seizing control of Florida's residential insurance market with Tower Hill, Shively set his eyes on conquering the regional market by expanding Tower Hill throughout the United States.

140. In light of Tower Hill's financial losses in or before 2015, and Shively's hopes of making Tower Hill a regional insurer, Shively curated a plan to be implemented by TH Group, in concert with Tower Hill, in order to increase profits to be used to expand TH Group into a regional company.

141. Shively used his power and influence as founder and majority owner of TH Group to direct and command the implementation of his plan to increase profits, regardless of the tactics used to reach his goal.

142. Since September of 2017, Counter-Defendants engaged in a conspiracy with the common purpose to establish and maintain the scheme of creating and utilizing fraudulent estimates and reports to undervalue and/or deny legitimate insurance claims in order to collectively increase profits, while at the same time concealing the scheme.

143. The illegal scheme was developed by Shively, for the purpose of increasing profits and to expand TH Group into a regional company.

144. The illegal scheme was then implemented by Tower Hill at the direction of Shively and TH Group.

145. As alleged herein, between 2017 and 2021, Tower Hill and TH Group participated in a systematic, ongoing course of conduct with the intent to defraud SFR, and with the intent to obtain property from SFR by false or fraudulent pretenses, representations, or promises or willful misrepresentations of a future act.

146. Tower Hill, in violation of Fla. Stat. § 817.034, knew the fraudulent estimates, cause and origin reports, general loss statements, and engineer reports were material and intended to mislead its insureds and SFR.

147. In particular, Counter-Defendants engaged in a conspiracy to defraud and obtain property from SFR, subjecting Counter-Defendants to liability for organized fraud under Fla. Stat. § 817.034(4)(a).

148. Tower Hill undervalued and/or denied legitimate claims while knowingly relying upon fraudulent estimates, cause and origin reports, general loss statements, and/or engineer reports on a majority of insurance claims submitted on behalf of SFR, as assignee for Tower Hill insureds, and continues to do so today.

149. Each of these predicate acts is a separate and distinct violation of Fla. Stat. § 817.034(4)(a).

150. Tower Hill further engaged in the scheme to defraud and, in furtherance of the scheme, communicated and continues communicating with its insureds, SFR, Bluegrass, U.S. Forensics, and other independent adjusters and engineers with the intent to obtain property from its insureds and SFR, subjecting Tower Hill to liability for communications fraud under Fla. Stat. § 817.034(4)(b) on a majority of insurance claims submitted on behalf of SFR, as assignee for Tower Hill insureds.

151. Each of these predicate acts is a separate and distinct violation of Fla. Stat. § 817.034(4)(b).

152. By utilizing estimates, cause and origin reports, general loss statements, and/or engineer reports Tower Hill knew to be fraudulent, Tower Hill misrepresented the

extent and severity of the covered damage, the cause of the covered damage, and the cost to repair the covered damage for hundreds of legitimate claims.

153. Therefore, the above-mentioned conduct by Tower Hill violated the Florida Communications Fraud Act, Fla. Stat. § 817.034.

154. Upon information and belief, Bluegrass and U.S. Forensic conspired with Tower Hill to violate the Florida Communications Fraud Act, Fla. Stat. § 817.034, subjecting each of them to liability for conspiring to commit predicate acts, in violation of Fla. Stat. § 772.103.

155. In particular, Tower Hill paid Bluegrass and U.S. Forensic to generate fraudulent estimates, cause and origin reports, general loss statements, and engineering reports from which Tower Hill benefitted by using same to undervalue and/or deny legitimate claims resulting in an increase in profits.

156. Additionally, TH Group, in furtherance of the conspiracy and in order to facilitate or further Tower Hill's violation of the Florida Communications Fraud Act, Fla. Stat. § 817.034, directed its investigator, Kyle Abernathy, to knowingly provide false information that became part of a public record in violation of Fla. Stat. § 817.155.

157. As set forth above, Counter-Defendants violated Fla. Stat. §§ 772.103(4) and 895.03(4) because they conspired or otherwise endeavored to violate Fla. Stat. §§ 772.103(3) and 895.03(3).

158. Counter-Defendants are jointly liable for actions complained of herein.

159. As a direct and proximate cause of Counter-Defendants acts performed pursuant to the conspiracy, SFR has been damaged.

WHEREFORE, Counter-Plaintiff, SFR, demands judgment against Counter-Defendants, TH Signature, TH Select, TH Preferred, TH Prime, Omega, Indian Harbor, Shively, TH Group, Bluegrass, and U.S. Forensic for damages in excess of \$30,000.00, as trebled under Fla. Stat. § 772.104, as well as attorneys' fees, costs, interest, and such further relief this Court deems just and proper.

**COUNT III – STATUTORY VIOLATION OF UNFAIR INSURANCE TRADE
PRACTICES ACT, Fla. Stat. § 626.9541
(Against TH Signature)**

160. SFR re-alleges paragraphs __ through __ as if fully set forth herein.

161. TH Signature, in violation of Fla. Stat. § 626.9541(1)(i)(2), made misrepresentations to SFR, as assignee, for the purpose and with the intent of effecting settlement of numerous claims on less favorable terms than those provided in, and contemplated by the individual policies.

162. TH Signature, in violation of Fla. Stat. § 626.9541(1)(i)(3)(a), failed to adopt and implement standards for the proper investigation of claims. TH Signature's failure to adopt and implement standards for the proper investigation of claims was committed or performed with such frequency as to indicate that same was TH Signature's general business practice.

163. TH Signature, in violation of Fla. Stat. § 626.9541(1)(i)(3)(b), misrepresented pertinent facts or insurance policy provisions relating to coverages at issue. TH Signature's misrepresentation of pertinent facts or insurance policy provisions relating to coverages at issue was committed or performed with such frequency as to indicate that same was TH Signature's general business practice.

164. TH Signature, in violation of Fla. Stat. § 626.9541(1)(i)(3)(d), denied claims without conducting reasonable investigations based upon available information. TH Signature's denial of claims without conducting reasonable investigations based upon available information was committed or performed with such frequency as to indicate that same was TH Signature's general business practice.

165. SFR as a result of TH Signature's improper denial or undervaluation of SFR's claims, SFR filed suit against TH Signature for breach of contract in multiple, separate actions across the State of Florida.

166. After filing suit, TH Signature made payment on some of SFR's claims, and therefore, waived its coverage defenses as to those claims.

167. TH Signature's voluntary payment in those cases is the functional equivalent of a final determination of liability and damages against TH Signature.

168. Prior to the institution of this action, the Department of Financial Services and TH Signature were provided sixty (60) days written notice of the above-mentioned violations.

169. As a direct and proximate result of TH Signature's conduct and violations of the above-mentioned provisions, SFR has been damaged.

WHEREFORE, Counter-Plaintiff, SFR, demands judgment against Counter-Defendant, TH Signature, for damages in excess of \$30,000.00, costs, interest, and such further relief this Court deems just and proper.

**COUNT IV – STATUTORY VIOLATION OF UNFAIR INSURANCE TRADE
PRACTICES ACT, Fla. Stat. § 626.9541
(Against TH Select)**

170. SFR re-alleges paragraphs __ through __ as if fully set forth herein.

171. TH Select, in violation of Fla. Stat. § 626.9541(1)(i)(2), made misrepresentations to SFR, as assignee, for the purpose and with the intent of effecting settlement of numerous claims on less favorable terms than those provided in, and contemplated by the individual policies.

172. TH Select, in violation of Fla. Stat. § 626.9541(1)(i)(3)(a), failed to adopt and implement standards for the proper investigation of claims. TH Select's failure to adopt and implement standards for the proper investigation of claims was committed or performed with such frequency as to indicate that same was TH Select's general business practice.

173. TH Select, in violation of Fla. Stat. § 626.9541(1)(i)(3)(b), misrepresented pertinent facts or insurance policy provisions relating to coverages at issue. TH Select's misrepresentation of pertinent facts or insurance policy provisions relating to coverages at issue was committed or performed with such frequency as to indicate that same was TH Select's general business practice.

174. TH Select, in violation of Fla. Stat. § 626.9541(1)(i)(3)(d), denied claims without conducting reasonable investigations based upon available information. TH Select's denial of claims without conducting reasonable investigations based upon available information was committed or performed with such frequency as to indicate that same was TH Select's general business practice.

175. SFR as a result of TH Select's improper denial or undervaluation of SFR's claims, SFR filed suit against TH Select for breach of contract in multiple, separate actions across the State of Florida.

176. After filing suit, TH Select made payment on some of SFR's claims, and therefore, waived its coverage defenses as to those claims.

177. TH Select's voluntary payment in those cases is the functional equivalent of a final determination of liability and damages against TH Select.

178. Prior to the institution of this action, the Department of Financial Services and TH Select were provided sixty (60) days written notice of the above-mentioned violations.

179. As a direct and proximate result of TH Select's conduct and violations of the above-mentioned provisions, SFR has been damaged.

WHEREFORE, Counter-Plaintiff, SFR, demands judgment against Counter-Defendant, TH Select, for damages in excess of \$30,000.00, costs, interest, and such further relief this Court deems just and proper.

**COUNT V – STATUTORY VIOLATION OF UNFAIR INSURANCE TRADE
PRACTICES ACT, Fla. Stat. § 626.9541
(Against TH Preferred)**

180. SFR re-alleges paragraphs ___ through ___ as if fully set forth herein.

181. TH Preferred, in violation of Fla. Stat. § 626.9541(1)(i)(2), made misrepresentations to SFR, as assignee, for the purpose and with the intent of effecting settlement of numerous claims on less favorable terms than those provided in, and contemplated by the individual policies.

182. TH Preferred, in violation of Fla. Stat. § 626.9541(1)(i)(3)(a), failed to adopt and implement standards for the proper investigation of claims. TH Preferred's failure to adopt and implement standards for the proper investigation of claims was committed or

performed with such frequency as to indicate that same was TH Preferred's general business practice.

183. TH Preferred, in violation of Fla. Stat. § 626.9541(1)(i)(3)(b), misrepresented pertinent facts or insurance policy provisions relating to coverages at issue. TH Preferred's misrepresentation of pertinent facts or insurance policy provisions relating to coverages at issue was committed or performed with such frequency as to indicate that same was TH Preferred's general business practice.

184. TH Preferred, in violation of Fla. Stat. § 626.9541(1)(i)(3)(d), denied claims without conducting reasonable investigations based upon available information. TH Preferred's denial of claims without conducting reasonable investigations based upon available information was committed or performed with such frequency as to indicate that same was TH Preferred's general business practice.

185. SFR as a result of TH Preferred's improper denial or undervaluation of SFR's claims, SFR filed suit against TH Preferred for breach of contract in multiple, separate actions across the State of Florida.

186. After filing suit, TH Preferred made payment on some of SFR's claims, and therefore, waived its coverage defenses as to those claims.

187. TH Preferred's voluntary payment in those cases is the functional equivalent of a final determination of liability and damage against TH Preferred.

188. Prior to the institution of this action, the Department of Financial Services and TH Preferred were provided sixty (60) days written notice of the above-mentioned violations.

189. As a direct and proximate result of TH Preferred's conduct and violations of the above-mentioned provisions, SFR has been damaged.

WHEREFORE, Counter-Plaintiff, SFR, demands judgment against Counter-Defendant, TH Preferred, for damages in excess of \$30,000.00, costs, interest, and such further relief this Court deems just and proper.

**COUNT VI – STATUTORY VIOLATION OF UNFAIR INSURANCE TRADE
PRACTICES ACT, Fla. Stat. § 626.9541
(Against TH Prime)**

190. SFR re-alleges paragraphs __ through __ as if fully set forth herein.

191. TH Prime, in violation of Fla. Stat. § 626.9541(1)(i)(2), made misrepresentations to SFR, as assignee, for the purpose and with the intent of effecting settlement of numerous claims on less favorable terms than those provided in, and contemplated by the individual policies.

192. TH Prime, in violation of Fla. Stat. § 626.9541(1)(i)(3)(a), failed to adopt and implement standards for the proper investigation of claims. TH Prime's failure to adopt and implement standards for the proper investigation of claims was committed or performed with such frequency as to indicate that same was TH Prime's general business practice.

193. TH Prime, in violation of Fla. Stat. § 626.9541(1)(i)(3)(b), misrepresented pertinent facts or insurance policy provisions relating to coverages at issue. TH Prime's misrepresentation of pertinent facts or insurance policy provisions relating to coverages at issue was committed or performed with such frequency as to indicate that same was TH Prime's general business practice.

194. TH Prime, in violation of Fla. Stat. § 626.9541(1)(i)(3)(d), denied claims without conducting reasonable investigations based upon available information. TH Prime's denial of claims without conducting reasonable investigations based upon available information was committed or performed with such frequency as to indicate that same was TH Prime's general business practice.

195. SFR as a result of TH Prime's improper denial or undervaluation of SFR's claims, SFR filed suit against TH Prime for breach of contract in multiple, separate actions across the State of Florida.

196. After filing suit, TH Prime made payment on some of SFR's claims, and therefore, waived its coverage defenses as to those claims.

197. TH Prime's voluntary payment in those cases is the functional equivalent of a final determination of liability and damage against TH Prime.

198. Prior to the institution of this action, the Department of Financial Services and TH Prime were provided sixty (60) days written notice of the above-mentioned violations.

199. As a direct and proximate result of TH Prime's conduct and violations of the above-mentioned provisions, SFR has been damaged.

WHEREFORE, Counter-Plaintiff, SFR, demands judgment against Counter-Defendant, TH Prime, for damages in excess of \$30,000.00, costs, interest, and such further relief this Court deems just and proper.

**COUNT VII – STATUTORY VIOLATION OF UNFAIR INSURANCE TRADE
PRACTICES ACT, Fla. Stat. § 626.9541
(Against Omega)**

200. SFR re-alleges paragraphs __ through __ as if fully set forth herein.

201. Omega, in violation of Fla. Stat. § 626.9541(1)(i)(2), made misrepresentations to SFR, as assignee, for the purpose and with the intent of effecting settlement of numerous claims on less favorable terms than those provided in, and contemplated by the individual policies.

202. Omega, in violation of Fla. Stat. § 626.9541(1)(i)(3)(a), failed to adopt and implement standards for the proper investigation of claims. Omega's failure to adopt and implement standards for the proper investigation of claims was committed or performed with such frequency as to indicate that same was Omega's general business practice.

203. Omega, in violation of Fla. Stat. § 626.9541(1)(i)(3)(b), misrepresented pertinent facts or insurance policy provisions relating to coverages at issue. Omega's misrepresentation of pertinent facts or insurance policy provisions relating to coverages at issue was committed or performed with such frequency as to indicate that same was Omega's general business practice.

204. Omega, in violation of Fla. Stat. § 626.9541(1)(i)(3)(d), denied claims without conducting reasonable investigations based upon available information. Omega's denial of claims without conducting reasonable investigations based upon available information was committed or performed with such frequency as to indicate that same was Omega's general business practice.

205. SFR as a result of Omega's improper denial or undervaluation of SFR's claims, SFR filed suit against Omega for breach of contract in multiple, separate actions across the State of Florida.

206. After filing suit, Omega made payment on some of SFR's claims, and therefore, waived its coverage defenses as to those claims.

207. Omega's voluntary payment in those cases is the functional equivalent of a final determination of liability and damage against Omega.

208. Prior to the institution of this action, the Department of Financial Services and Omega were provided sixty (60) days written notice of the above-mentioned violations.

209. As a direct and proximate result of Omega's conduct and violations of the above-mentioned provisions, SFR has been damaged.

WHEREFORE, Counter-Plaintiff, SFR, demands judgment against Counter-Defendant, Omega, for damages in excess of \$30,000.00, costs, interest, and such further relief this Court deems just and proper.

**COUNT VIII – STATUTORY VIOLATION OF UNFAIR INSURANCE TRADE
PRACTICES ACT, Fla. Stat. § 626.9541
(Against Indian Harbor)**

210. SFR re-alleges paragraphs __ through __ as if fully set forth herein.

211. Indian Harbor, in violation of Fla. Stat. § 626.9541(1)(i)(2), made misrepresentations to SFR, as assignee, for the purpose and with the intent of effecting settlement of numerous claims on less favorable terms than those provided in, and contemplated by the individual policies.

212. Indian Harbor, in violation of Fla. Stat. § 626.9541(1)(i)(3)(a), failed to adopt and implement standards for the proper investigation of claims. Indian Harbor's failure to adopt and implement standards for the proper investigation of claims was committed or performed with such frequency as to indicate that same was Indian Harbor's general business practice.

213. Indian Harbor, in violation of Fla. Stat. § 626.9541(1)(i)(3)(b), misrepresented pertinent facts or insurance policy provisions relating to coverages at issue. Indian Harbor's misrepresentation of pertinent facts or insurance policy provisions relating to coverages at issue was committed or performed with such frequency as to indicate that same was Indian Harbor's general business practice.

214. Indian Harbor, in violation of Fla. Stat. § 626.9541(1)(i)(3)(d), denied claims without conducting reasonable investigations based upon available information. Indian Harbor's denial of claims without conducting reasonable investigations based upon available information was committed or performed with such frequency as to indicate that same was Indian Harbor's general business practice.

215. SFR as a result of Indian Harbor's improper denial or undervaluation of SFR's claims, SFR filed suit against Indian Harbor for breach of contract in multiple, separate actions across the State of Florida.

216. After filing suit, Indian Harbor made payment on some of SFR's claims, and therefore, waived its coverage defenses as to those claims.

217. Indian Harbor's voluntary payment in those cases is the functional equivalent of a final determination of liability and damages against TH Signature.

218. Prior to the institution of this action, the Department of Financial Services and Indian Harbor were provided sixty (60) days written notice of the above-mentioned violations.

219. As a direct and proximate result of Indian Harbor's conduct and violations of the above-mentioned provisions, SFR has been damaged.

WHEREFORE, Counter-Plaintiff, SFR, demands judgment against Counter-Defendant, Indian Harbor, for damages in excess of \$30,000.00, costs, interest, and such further relief this Court deems just and proper.

COUNT IX – DEFAMATION PER SE
(Against TH Group)

220. SFR re-alleges paragraphs __ through __ as if fully set forth herein.

221. Since 2018, TH Group, both verbally and in writing, has continuously and repeatedly made false and defamatory statements about SFR's conduct in operating its business, including multiple allegations that SFR engaged in criminal activity.

222. TH Group repeatedly made numerous false and defamatory statements about SFR with actual malice and/or with reckless disregard to the truth of those statements.

223. Specifically, in or around April of 2018, Carl Nemeth, on behalf of TH Group, contacted a customer of SFR, Theresa Shelby Moore, via telephone and stated that SFR did not have a Florida general contractors license so any AOBs between SFR and its customers are nullified.

224. Prior to the above-mentioned telephone call between Carl Nemeth and Theresa Shelby Moore, SFR forwarded its contractor license to Tower Hill.

225. Prior to the above-mentioned telephone call, TH Group knew SFR's AOBs with its customers were not null or void.

226. Carl Nemeth, on behalf of TH Group, knowingly and intentionally made a false statement to SFR's customer, Theresa Shelby Moore.

227. Multiple false statements concerning SFR's licensure status and AOBs were communicated to SFR's customers by TH Group.

228. TH Group's communication of false statements to SFR's customers became a pattern and practice of TH Group in an attempt to induce SFR's customers to cease their business relationship with SFR.

229. On or around April 11, 2019, Kyle Abernathy, on behalf of TH Group, initiated a phone call with the Chief Code Officer of Lee Code Enforcement and Contractor Licensing and made the false statement that SFR was engaging in work without the proper licenses.

230. On July 1, 2019, Kyle Abernathy, on behalf of TH Group, initiated a phone call with the Department of Business and Professional Regulation and made the false statement that SFR was engaged in money laundering.

231. SFR has never engaged in money laundering.

232. The statements made by TH Group are defamatory on their face and constitute defamation *per se*, as they falsely and maliciously accuse SFR of criminal conduct.

233. Moreover, SFR is in the business of restoring and repairing commercial and multi-family properties damaged by hurricanes, windstorms, floods, and fire. Thus, TH Group's false accusations go to the heart of SFR's business and constitute defamation *per se*.

234. TH Group's false and defamatory statements have damaged SFR's reputation, ability to conduct its business, and holds SFR up to disgrace and humiliation.

235. SFR has been and will continue to be damaged as a direct result of TH Group's defamatory statements.

WHEREFORE, Counter-Plaintiff, SFR, demands judgment against Counter-Defendant, TH Group, for damages in excess of \$30,000.00, costs, interest, and other such relief this Court deems just and proper.

DEMAND FOR JURY TRIAL

236. Counter-Plaintiff, SFR, demands trial by jury on all issues so triable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served via Florida's E-Filing Portal and via e-mail upon counsel on the attached service list on this 16th day of July, 2021.

/s/ Michael J. Pike
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VERIFICATION

SFR SERVICES, LLC

By: _____

Name: _____

Its: _____

STATE OF FLORIDA)

)

ss:

COUNTY OF _____)

_____, as _____ of SFR SERVICES, LLC, being duly sworn, deposes and says that the allegations within the foregoing Verified Counterclaim and Jury Trial Demand are true and correct to the best of my knowledge, information and belief.

Sworn to and subscribed before me this ____ day of _____, 2021.

PRINT NAME: _____

(SEAL)

NOTARY PUBLIC/STATE OF FLORIDA

COMMISSION NO.: _____

MY COMMISSION EXPIRES: _____

I relied upon the following form of identification _____, or the above named person is personally known _____.