IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

JOHNNY SANDRAS, COASTAL DUST CONTROL, INC. D/B/A SANICO, LLC **PLAINTIFFS**

v. **CIVIL ACTION NO.: 1:24-cv-5-HSO-RPM**

STATE FARM FIRE AND CASUALTY COMPANY **DEFENDANT**

DEFENDANT STATE FARM FIRE AND CASUALTY COMPANY'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, ALTERNATIVELY, PARTIAL SUMMARY JUDGMENT

COMES NOW, the Defendant, **STATE FARM FIRE AND CASUALTY COMPANY** (hereinafter "State Farm"), by and through its attorneys and serves this its Memorandum in Support of Motion for Summary Judgment or, Alternatively, Partial Summary Judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure, and would show unto the Court as follows:

INTRODUCTION

This lawsuit arises from insurance claims related to a commercial fire loss. The fire occurred at an industrial laundry processing facility owned by Johnny Sandras and operated by Coastal Dust Control. Sandras is also the owner of Coastal Dust Control. Sandras insured the property and the business under separate insurance policies issued by State Farm. Following the fire, Sandras submitted claims to State Farm under the two policies under several coverages, resulting in State Farm issuing payments exceeding $2.8 million. State Farm submits that it has met all contractual obligations to Sandras and Coastal Dust Control and is entitled to summary judgment on all claims. Alternatively, the Court should find that State

Farm is entitled to summary judgment on the claims for extracontractual and punitive damages. In the face of two complex claims involving multiple coverages, State Farm performed a good faith investigation and acted reasonably throughout.

BACKGROUND

Johnny Sandras insured an industrial laundry processing facility located at 4438 A Avenue in Long Beach, Mississippi under policy number 99-BV-M021-1 (the "Building Policy"). (Ex. A – Building Policy). Sandras and his wife are the owners of Coastal Dust Control, Inc. ("CDC"), a dry-cleaning business that rented and operated in the building. State Farm insured CDC under policy number 99-BW-G458-2 (the "Business Policy). (Ex. B – Business Policy). Sandras described CDC as operating in the textile rental industry, whereby it would rent various products such as mats and towels to businesses. (Ex. C – Sandras Depo. at pp. 16-17, 24-25). CDC would clean the products, deliver them, pick them up, and begin the cycle again. (*Id.*).

On March 13, 2023, the building caught fire, prompting Sandras to report a claim to State Farm. (Ex. D – Building Claim Notes at p. 21; Ex. E – Business Claim Notes at p. 31). State Farm immediately opened two claims: the "building claim" (Claim No. 24-46T1-82K) and the "business claim" (Claim No. 24-46T1-95H) under the respective policies. On March 14, 2023, State Farm Claim Specialist Paul Cummins contacted Sandras, who advised that the fire started on the night of March 13th at approximately 10:30 p.m. (Ex. E – Business Claim Notes at p. 31). Sandras advised that the walls of the building were still standing but the roof had collapsed. (*Id.*). Cummins scheduled an inspection for the following morning, at which time he

reviewed the applicable coverages. (*Id*. at pp. 28-29). He advised that Claim Specialist Tracy Spelce would address the business interruption component of the claims. (*Id*.).

State Farm immediately began investigating the cause of loss, as well was requesting financial documentation to investigate the business interruption claim. (Ex. D – Building Claim Notes at pp. 19-20; Ex. E – Business Claim Notes at pp. 27-29; Ex. F – Spelce 3.22.23 Email). On March 24, 2023, Sandras called and explained that he is continuing to run his dry-cleaning business and that he had not "missed a beat," but he had incurred extra expenses in maintaining operations. (Ex. E – Business Claim Notes at p. 27). During this time, the laundry that had been processed at the Long Beach facility was being processed as Sandras's Sanico Clanton facility in Cottondale, Alabama. (Ex. C – Sandras Depo. at pp. 20-24). Notably, at this point, Sandras had been introduced to representatives of Cintas for the sale of CDC. (Ex. G – Cintas Introduction). The introduction came through a business associate who was also in the process of selling his laundry business to Cintas. (Ex. C – Sandras Depo. at pp. 73-76).

On March 30, 2023, Rimkus Consulting Group, Inc. ("Rimkus") provided a preliminary opinion that the fire originated in the back of the building due to the rags and towels containing fatty residue igniting after going through the drying process. (Ex. D – Building Claim Notes at p. 18). Upon receipt of this information, Cummins contacted Sandras and informed him that he could proceed with demolition of the building. (*Id*.).

On April 4, 2023, State Farm received a letter of representation from public adjuster Luke Irwin of Irwin and Associates. (Ex. H – Letter of Representation). State Farm advised Irwin that no payments had been issued at that point and that it would send Irwin a copy of the policies. (Ex. I – State Farm 4.4.23 Letter).

On April 10, 2023, Rimkus contacted State Farm and reported that a lab report found traces of fatty acids typical of vegetable oil in the rags where the fire started, and the origin and cause of the fire was likely the self-heating of the drying rags. (Ex. D – Building Claim Notes at p. 16). State Farm ultimately received the Rimkus report on June 14, 2023. (Ex. J – Rimkus Report). Nonetheless, on April 18, 2023, State Farm issued payment to Sandras for $1,223,824.00 for the building claim, which is the building limit less the applicable deductible. (Ex. K – Summary of Loss 82K). State Farm Team Manager Randy Caillouet explained that in a total loss situation such as the one at hand, Mississippi's Valued Policy Law applies, triggering payment for policy limits.[1] (Ex. L – Caillouet Depo. at pp. 28-29). Notably, it applies only to the structure claim, not to personal property. (*Id*. at pp. 29-31). Caillouet also explained that the deductible was ultimately returned because claims under other coverages exceeded the applicable limits (*Id*. at pp. 50-53).

State Farm also advised Sandras that he may be entitled to another $10,000.00 for debris removal, if incurred. (Ex. A – Building Policy at pp. 23-24; Ex. D – Building

[1] *See* Miss. Code Ann. § 83-13-5 ("When buildings and structures are insured against loss by fire and, situated within this state, are totally destroyed by fire, the company shall not be permitted to deny that the buildings or structures insured were worth at the time of the issuance of the policy the full value upon which the insurance is calculated, and the measure of damages shall be the amount for which the buildings and structures were insured.") (emphasis added).

Claim Notes at p. 15). Through his public adjuster, Sandras subsequently presented documentation of costs incurred for demolition and debris removal. (Ex. M – Irwin Debris Removal Letter). State Farm promptly issued payment for the limit of $10,000.00 and explained the coverage to Sandras. (Ex. N – Cummins 5.24.23 Letter).

State Farm also again advised that if CDC paid rent to Sandras for the building, Sandras should submit a tax return outlining the income and expenses generated from the building (rent) and the approximate period of restoration. (Ex. O – Spelce 4.18.23 Email; Ex. P – Spelce 4.18.23 Follow-Up Email). Sandras ultimately provided this information, claiming $3,050.00 in monthly lost rent, and State Farm paid Sandras for a full twelve-month period of lost rent. (Ex. K – Summary of Loss 82K; Ex. Q – 82K Loss Calculator).

On April 25, 2023, Irwin wrote to State Farm, outlining expected extra expenses to continue operations and the estimated period of restoration. (Ex. R – Irwin 4.25.23 Letter). He estimated ten-to-fourteen months for "completion of overall rebuild." (*Id.*). Significantly, on the same day, Sandras signed a letter of intent with Cintas for the sale of CDC. (Ex. S – Cintas LOI). In the letter, Sandras agreed to sell CDC's assets – namely, its customers – to Cintas for over $8 million. (*Id.*). Sandras and Cintas thereafter engaged in contract negotiations and due diligence for several months, until closing on the sale in August 2023. (Ex. T – Cintas APA Emails; Ex. U – Cintas Due Diligence Emails; Ex. V – Cintas Customer Emails; Ex. W – Cintas August Emails).

On April 28, 2023, State Farm issued CDC an advance for extra expenses in the amount of $50,000.00. (Ex. E – Business Claim Notes at p. 22; Ex. X – Summary of Loss 95H). State Farm provided the advance even though Sandras had not provided the income information needed to calculate extra expenses. (Ex. E – Business Claim Notes at pp. 23-23). State Farm thereafter continued to request the necessary income information to calculate extra expenses. (Ex. Y – Spelce 5.9.23 Email; Ex. Z – Spelce 5.15.23 Email). By May 19, 2023, State Farm determined that CDC was owed at least an additional $217,253.08 for extra expenses, and it tendered a payment in that amount. (Ex. E – Business Claim Notes at pp. 16-20; Ex. X – Summary of Loss 95H).

On or about May 24, 2023, State Farm received a letter from Irwin disputing State Farm's calculation of extra expenses. (Ex. AA – Irwin Letter). Irwin stated, "[t]he policyholder has not claimed loss of business income, but rather has requested payment for extra expenses associated with continued operations." (*Id.*). He then asked for clarification on why "the payment for expenses is limited to the lessor of the loss of income at full suspension of operations or the extra expense." (*Id.*).

Kathryn Kaufhold, who had been assigned to the business interruption claim, responded to Irwin. (Ex. BB – Kaufhold 6.6.23 Email). She highlighted the applicable policy language defining "extra expense" as being recoverable "to the extent it reduces the amount of loss that otherwise would have been payable under this coverage or 'Loss of Income' coverage." (Ex. B – Business Policy at p. 90; Ex. BB – Kaufhold 6.6.23 Email). On June 15, 2023, Kaufhold spoke with Irwin and explained the coverage in

detail. (Ex. E – Business Claim Notes at p. 12). She explained, "Extra Expenses are reimbursable up to the amount they reduce the amount otherwise payable under this coverage, which is a full shutdown calculation." (*Id.*). State Farm's corporate representative, Alicia Kroneman, testified that this is a correct application of the policy. (Ex. CC – Kroneman Depo. at pp. 31-35). Forensic accountant Chris Dailey also testified that, while he deferred to State Farm's policy interpretation, it is an interpretation he has seen throughout his career. (Ex. DD – Dailey Depo. at pp. 16-17, 28-39). He explained that where extra expenses are not limited to the extent they reduce loss of income, those policies contain a separate dollar limit. (*Id.* at pp. 36-39).

State Farm's Operation Guide also discusses the policy's calculation of extra expenses. (Ex. EE – Operation Guide). The "general information" provision states:

> Loss of Income indemnifies insureds for loss of business income resulting from a necessary suspension of their business operations caused by an insured loss to property at the described premises. In addition, coverage is extended for extra expenses the insured incurs to avoid or minimize the suspension of operations <u>to the extent these extra expenses reduce the amount of business income loss</u>.

(*Id.* at pp. 1-2) (emphasis added). In the portion of the Operation Guide discussing Extra Expenses, it explicitly provides that State Farm will only pay for extra expense "to the extent the expenses reduce the 'business income' loss that otherwise would have been payable." (*Id.* at p. 5).

Kaufhold explained this policy provision to Irwin on multiple occasions. (Ex. E – Business Claim Notes at pp. 9-12). She also offered to hire a forensic accountant to calculate the covered extra expenses, and Irwin ultimately agreed. (*Id.* at p. 10). Kaufhold engaged Dailey the next day. (*Id.* at p. 9). At the same time, Kaufhold

issued payment to CDC in the amount of $227,951.15 for extra expenses incurred through June 10, 2023. (*Id.*).

Along with seeking extra expenses, CDC also submitted a claim for personal property damaged by the fire. (Ex. E – Business Claim Notes at p. 15). On March 14, 2023, Cummins sent Sandras State Farm's XactContents Collaboration online application, which is used to collect and analyze information for personal property claims. (Ex. L – Caillouet Depo. at pp. 61-62; Ex. FF – XC Link). On or about May 12, 2023 – which was two months later – Irwin submitted an extensive personal property inventory in a different format. (Ex. E – Business Claim Notes at p. 15; Ex. GG – Irwin Contents Inventory). The inventory does not provide age information, although it includes a flat depreciation rate of 15%. (Ex. GG – Irwin Contents Inventory). It also includes specialized laundry processing equipment. (*Id.*). On or about May 25, 2023, Irwin provided receipts for the claimed contents. (Ex. HH – Irwin 5.25.23 Letter).

On June 3, 2023, Cummins discussed the inventory with Irwin and, on June 12, 2023, Cummins assigned the investigation of the contents claim to State Farm's contents collaboration team ("CCT"). (Ex. E – Business Claim Notes at pp. 12-14; Ex. L – Caillouet Depo. at pp. 61-65). Caillouet explained at his deposition that information is needed from the insured to determine the amount of the contents potentially owed. (Ex. L – Caillouet Depo. at pp. 29-31). He further explained that it can be difficult to verify the pricing on industrial equipment. (*Id.* at pp. 74-75).

On July 7, 2023, even though CCT had not yet completed inputting the contents data, Cummins requested authority to pay the Coverage B claim. (Ex. II – Authority Notes at p. 2). Cummins observed that given the amount of the claimed loss, the claim appeared to exceed CDC's Coverage B limit. (Ex. II – Authority Notes at p. 2). By July 19, 2023, Cummins' Team Manager, Caillouet, reviewed the authority request and forwarded it to his Section Manager for review. (Ex. JJ – Manager Comments at p. 9). On July 24, 2023, the Section Manager responded with several questions, seeking clarification regarding various line items. (*Id*. at p. 12). On July 27, 2023, Cummins answered the questions and provided the requested clarification. (Ex. II – Authority Notes at pp. 1-2).

On August 1, 2023, the clarified Coverage B authority request was submitted and, due to a typographical error, it was resubmitted on August 7, 2023. (Ex. JJ – Manager Comments at pp. 4-6, 13). Two days later, on August 9, 2023, authority was granted for Coverage B policy limits. (Ex. JJ – Manager Comments at p. 13). State Farm overnighted the payment to Irwin, which included the policy limits of $667,182.00 for personal property and $25,000.00 under the Inland Marine Computer Form. (Ex. KK – Brent 8.9.23 Letter; Ex. LL – State Farm Contents Inventory; Ex. MM – Summary of Loss 8.7.23).

In August 2023, Sandras communicated information through Irwin and his State Farm agent, Brad Day, regarding the status of his business. In one email, Sandras claimed that he had exactly eight days of operating funds available "due to the delay in our contents check and lack of business interruption funding." (Ex. NN

– Sandras August Emails). He further asserted that CDC's last day of business would be August 18, 2023 "if State Farm does not act in good faith and make funds readily available per our policy." (*Id.*). Day similarly relayed a conversation where Sandras claimed that "he is having to sell his business because State Farm will not fully pay out his claim." (Ex. OO – Day August Emails). He added, "[Sandras] said that the only choice would be for him to sell his home or his business and the money that he received from State Farm on the building has been used to keep the business running and has all but run out due to the contents coverage not paying out yet." (Ex. C – Sandras Depo. at pp. 125-128; Ex. OO – Day August Emails).

As noted previously, Sandras entered a letter of intent to sell his business to Cintas in April 2023. (Ex. S – Cintas LOI). He actively engaged in due diligence from that point, prepared disclosure statements, and negotiated agreements for the transaction. (Ex. U – Cintas Due Diligence Emails). As of July 21, 2023, Cintas and Sandras tentatively agreed to a closing date of August 11, 2023. (Ex. PP – Cintas 7.21.23 Email). Through early August, the parties actively worked on transitioning information to Cintas's IT department. (Ex. QQ – Cintas IT Emails). On August 25, 2023, Sandras closed on the sale to Cintas for more than $7.7 million. (Ex. RR – Cintas APA; Ex. SS – Cintas Closing Memorandum). Sandras testified that he received fair market value for the sale. (Ex. C – Sandras Depo. at pp. 70-72). Significantly, no documentation produced by Cintas[2] or Sandras indicates that,

[2] State Farm obtained transaction-related documents directly from Cintas through a subpoena duces tecum. *See* Subpoena Returns [Docs. 21 & 22].

following entry of the letter of intent in April 2023, Sandras ever considered not moving forward with the transaction.

Sandras's claim that a lack of funds from State Farm forced him to sell the business is also undercut by financial records. Bank statements from Cadence Bank show that on April 24, 2023, Sandras deposited the State Farm payment of $1,223,824.00 for the structure claim. (Ex. TT – Cadence Statements at p. 4). That account's ending balance for July 2023 was $636,671.44. (*Id*. at p. 14). As of August 9, 2023, which was when Sandras was complaining about a lack of operating funds, his account balance was $573,671.44. (*Id*. at 17). Dailey examined additional financial records and found that, across the four accounts for which records were obtained, Sandras's collective ending balance in July 2023 was $785,225.61. (Ex. UU – Dailey Financial Report at p. 5).

Sandras's claim that he invested the funds paid by State Farm back into CDC is also belied by the available documentation. For example, from the funds paid by State Farm for the structure, Sandras withdrew $470,296.82 on August 31, 2023. (Ex. TT – Sandras Cadence Statements at p. 17). That same day, he made a payment for the same amount to payoff a loan for a building he owns in Alabama. (Ex. UU – Dailey Financial Report; Ex. VV – Cadence Account Information; Ex. WW – Promissory Note; Ex. XX – Mortgage). In short, Sandras used the funds paid by State Farm for purposes other than continuing CDC's operations.

On July 27, 2023, the Team Manager for Sandras's extra expense claim remarked that all extra expenses had been paid through June 10, 2023, and he noted

to continue to monitor the file for new documentation. (Ex. E – Business Claim Notes at p. 6). On August 18, 2023, Irwin submitted additional documents related to the extra expense claim, which State Farm forwarded to Dailey. (Ex. YY – Irwin 8.18.23 Email). Dailey began preparing a preliminary analysis and sought additional information from Irwin regarding the claimed expenses. (Ex. E – Business Claim Notes at pp. 3-5; Ex. ZZ – Dailey 9.8.23 Email; Ex. AAA – Dailey 9.14.23 Email). Dailey testified that he analyzed the submitted documentation to determine which expenses qualified as extra expenses under the policy. (Ex. DD – Dailey Depo. at pp. 17-20).

On September 19, 2023, Dailey submitted to State Farm his preliminary analysis of the claimed extra expenses. (Ex. BBB – Preliminary Analysis). He calculated CDC's loss avoided through August 2023 at $906,941.00. (Ex. DD – Dailey Depo. at p. 21; Ex. BBB – Preliminary Analysis). In other words, this is the amount of income CDC would have lost through August 2023 had it ceased operations after the fire. (Ex. DD – Dailey Depo. at p. 23). As such, under the policy, this is most CDC could recover for extra expenses. (Ex. B – Business Policy at p. 90). Unfortunately for Sandras, he spent more than this amount to continue operations. (Ex. DD – Dailey Depo. at p. 28; Ex. BBB – Dailey Preliminary Analysis at p. 3). Based on Dailey's analysis, State Farm promptly issued payment to Sandras for $411,736.77.[3] (Ex. E –

[3] This amount is Dailey's total of $906,941.00, less the 4/28/23 advance, the 5/19/23 payment, and the 6/26/23 payment. (Ex. DDD – Summary of Loss 9.26.23). Notably, State Farm overpaid Sandras, as Dailey originally calculated the loss of income through August 31, 2023. (Ex. BBB – Preliminary Analysis). After Dailey learned that Sandras sold the business on August 25, 2023, the business income loss mitigated calculation was reduced to $884,428.00. (Ex. LLL – Dailey Expert Report). Sandras confirmed at his deposition that he is seeking extra expenses through August 25, 2023. (Ex. C – Sandras Depo. at pp. 53-55).

Business Claim Note at p. 3; Ex. CC – Kroneman Depo. at pp. 30-31, 43; Ex. CCC – Kaufhold 9.27.23 Letter; Ex. DDD – Summary of Loss 9.26.23).

On October 17, 2023, State Farm received a letter of representation from Sandras's attorney, which State Farm immediately acknowledged. (Ex. E – Business Claim Notes at p. 2; Ex. EEE – Traxler 10.13.23 Letter; Ex. FFF – Cummins 10.17.23 Letter). On October 30, 2023, Sandras's attorney sent a letter disputing State Farm's interpretation of the policy in relation to extra expenses. (Ex. GGG – Traxler 10.30.23). By letter dated November 29, 2023, State Farm responded, citing the applicable policy language. (Ex. HHH – Kaufhold 11.29.23 Letter). During this period, State Farm continued paying Sandras for loss of income for loss rent at the property location, ultimately paying for a full year of lost rents. (Ex. K – Summary of Loss 82K; Ex. III – Loss of Rent Calculation).

On January 11, 2024, Sandras filed his Complaint on behalf of himself and CDC, asserting claims for negligence, breach of contract, and bad faith and gross negligence, and seeking extra-contractual and punitive damages. *See* Compl. [Doc. 1]. By the time State Farm was served with the lawsuit, State Farm had issued the following payments to Sandras:

Date	**Payment Description**	**Amount**
4/18/23	Policy building limit less $2500.00 deductible	$1,223,824.00
4/28/23	Extra expense advance	$50,000.00
5/19/23	Extra expense through 4/30/23 less $50k advance	$217,253.08
5/19/23	Loss of Rent through June 2023	$9,024.31
5/24/23	Debris Removal limit	$10,000.00
6/26/23	Extra expense from 5/1/23 through 6/10/23	$227,951.15
7/17/23	July loss of rent	$2,497.80

8/9/23	September loss of rent	$4,995.60
8/9/23	Contents and computer equipment limits	$667,182.00
8/9/23	Contents and computer equipment limits	$25,000.00
9/27/23	Extra expense from 6/11/23 through 8/31/23	$411,736.77
10/5/23	October loss of rent	$2,497.80
10/5/23	Deductible reimbursement	$2,500.00
11/8/23	November loss of rent	$2,856.35
1/12/24	December and January loss of rent	$5,078.86
	Building Claim Payments:	**$1,263,274.72**
	Business Claim Payments:	**$1,599,123.00**
	Total:	**$2,862,397.72**

After being served with the lawsuit, State Farm timely paid the remaining loss of rent payments to Sandras. (Ex. III – Loss of Rent Calculation). Based on information obtained during discovery, State Farm also issued payment to Sandras for $50,000.00 under the coverage for Business Property of Others. (Ex. JJJ – Gurtler Payment). Sandras asserts he was invoiced for this equipment after his facility in Lake, Mississippi burned down. (Ex. C – Sandras Depo. at pp. 20-21, 108-120). The fire at the Lake facility occurred on July 4, 2024, which was after Sandras increased his insurance limits but shortly before a fire suppression system was installed. (*Id.* at pp. 108-112). $50,000.00 is the applicable policy limit for Property of Others. (Ex. B – Business Policy at p. 4).

ARGUMENT

The Court should grant summary judgment in favor of State Farm. State Farm paid all amounts owed under both the Building Policy and the Business Policy. The Court should find that State Farm has met all its obligations under the policies and grant summary judgment as to the Plaintiffs' contractual claims. Should the Court find that State Farm is not entitled to summary judgment on the contractual

claims, the Court should nonetheless find that State Farm is entitled to partial summary judgment on the claims for punitive and other extracontractual damages. Sandras and CDC cannot meet their heavy burden on summary judgment to demonstrate that State Farm lacked reasonable bases for its decisions, and they cannot present evidence of actual malice by State Farm in evaluating their claims.

I. Standards governing summary judgment.

Federal Rule of Civil Procedure 56(a) provides that summary judgment is warranted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "There is no genuine dispute if the record, taken as a whole, could not lead a rational trier-of-fact to find for the non-moving party." *Kariuki v. Tarango*, 709 F.3d 495, 501 (5th Cir. 2013) (citation omitted). To overcome a factually supported motion for summary judgment, the opposing party must present "significant probative evidence" showing that there exists a genuine issue of material fact. *Hamilton v. Segue Software, Inc.*, 232 F.3d 473, 477 (5th Cir. 2000).

Where "a defendant moves for summary judgment and correctly points to an absence of evidence to support the plaintiff's claim on an issue as to which plaintiff would bear the burden of proof at trial, then summary judgment should be granted for the defendant unless the plaintiff produces summary judgment evidence sufficient to sustain a finding in plaintiff's favor on that issue." *Kovacic v. Villarreal*, 628 F.3d 209, 212 (5th Cir. 2012) (citations omitted). A plaintiff's failure to produce such evidence indicates that no genuine issue as to any material fact exists, as a complete

failure of proof concerning one element of the plaintiff's case necessarily renders all other facts immaterial. *Dunn v. State Farm Fire & Cas. Co.*, 927 F.2d 869, 872 (5th Cir. 1991) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

II. Coastal Dust Control cannot meet its burden to demonstrate State Farm owes it additional payments under the Business Policy.

State Farm is entitled to summary judgment on CDC's contractual claims. State Farm paid all amounts owed for extra expenses. Additionally, State Farm paid the applicable limits for personal property. The Court should find that CDC cannot meet its burden to show it is owed any additional payments under the Business Policy and grant summary judgment in favor of State Farm.

A. State Farm is entitled to a declaratory judgment on the policy's definition of Extra Expense.

Pursuant to Rules 56 and 57 of the Federal Rules of Civil Procedure, State Farm seeks summary judgment and a declaration as to the Business Policy's definition of Extra Expense. Specifically, State Farm seeks a declaration that the "to the extent" qualifier in the "Extra Expense" definition in Form CMP-4705.2 applies to Sections 1.a., 1.b., and 1.c. of the definition.

"In construing an insurer's duties under an insurance policy in a declaratory judgment action, a federal court applies state substantive law." *St. Paul Fire & Marine Ins. Co. v. Renegade Super Grafix, Inc.*, 209 F. Supp. 3d 895, 903 (S.D. Miss. 2016). In *St. Paul Fire & Marine Ins. Co.*, this Court discussed:

> In interpreting an insurance policy, a court utilizes the same rules that apply to the interpretation of a contract. *Southern Healthcare Servs., Inc. v. Lloyd's of London*, 110 So.3d 735, 744 (Miss.2013). At the

> summary judgment stage, a court should first determine whether a policy is ambiguous. *Id.* at 744 n.3. "Mere disagreement as to the meaning of a policy provision does not render the policy ambiguous." *Id.* at 744 (citation omitted). "[W]hen a contract is clear and unambiguous to [sic] its wording, its meaning and effect are matters of law." *Farmland Mut. Ins. Co. v. Scruggs*, 886 So.2d 714, 717 (Miss.2004). "Like any other contract, if an insurance contract is plain and unambiguous, it should be construed as written." *Id.* (citations omitted).

Id. at 904.

The subject policy language reads as follows:

DEFINITIONS

1. "Extra Expense" means expense incurred:

a. To avoid or minimize the "suspension" of business and to continue "operations":

(1) At the described premises; or

(2) At replacement premises or at temporary locations, including relocation expenses, and costs to equip and operate the replacement or temporary locations;

b. To minimize the "suspension" of business if you cannot continue "operations"; or

c. To:

(1) Repair or replace any property; or

(2) Research, replace or restore the lost information on damaged "valuable papers and records"

to the extent it reduces the amount of loss that otherwise would have been payable under this coverage or "Loss Of Income" coverage.

(Ex. B – Business Policy at p. 90).[4] In State Farm's 30(b)(6) deposition, State Farm's representative Alicia Kroneman testified that the "to the extent" qualifier applies to all three sections of the definition. (Ex. CC – Kroneman Depo. at pp. 32-35). This

[4] Compare to the definition of "Extra Expense" in the Inland Marine Computer Property Form, which ties the "to the extent" qualifier directly to extra expenses incurred to repair or replace property. (Ex. B – Business Policy at p. 105). In contrast, the Loss of Income and Extra Expense endorsement applies the "to the extent" qualifier to all three sections of Extra Expense definition. (*Id.* at p. 90).

interpretation is consistent with State Farm's Operation Guide, which provides an example illustrating that extra expenses are only recoverable to the extent they reduce the business income loss. (Ex. EE – Operation Guide at pp. 5-6).

Sandras appears to contend that the "to the extent" qualifier only applies to Section 1.c. of the Extra Expense definition. If that were the case, then only extra expenses incurred to "repair or replace any property" or "research, replace or restore the lost information on damaged 'valuable papers and records'" (*See* Section 1.c.) would be limited by the amount of CDC's loss of income. According to Sandras, extra expenses incurred to "avoid or minimize the 'suspension' of business and to continue 'operations'" (*See* Section 1.a.) and "minimize the 'suspension' of business if you cannot continue operations" (*See* Section 1.b.) would not be limited by the amount of CDC's loss of income.

What is the difference in the two positions? State Farm anticipates Sandras will say $1,467,371.00, which is the net calculated extra expense incurred by CDC as calculated by Dailey. (Ex. LLL – Dailey Expert Report). Dailey testified that all the extra expenses claimed by CDC fell under Sections 1.a. and 1.b. of the definition of Extra Expense. (Ex. DD – Dailey Depo. at pp. 34-38). As such, according to Sandras, if the "to the extent" qualifier only applies to Section 1.c. of the definition, CDC's extra expenses are not limited by its loss of income otherwise payable. Acceptance of this theory would result in the net calculated extra expenses of $1,467,371.00 not being limited to the amount of CDC's loss of income otherwise payable.

In support of his position, State Farm anticipates Sandras will cite *Midwest Regional Allergy v. Cincinnati Insurance Company*, 795 F.3d 853 (8th Cir. 2015), where the Eighth Circuit applied Missouri law to a materially different insurance policy. Analyzing the policy's definition of "extra expense," the court found that the "to the extent" qualifier applied only to the last section. *Midwest Regional*, 795 F.3d at 857-58. The court found that there was no "connecting language" between the "to the extent" qualifier and the first two sections of the definition. *Id*. at 858. It added, "[t]here is no connecting language between [the three sections], and therefore they are each construed independently." *Id*. Significantly, the policy in that case read as follows:

(2) Extra Expense means expense you incur:

(a) To avoid or minimize the "suspension" of business and to continue "operations":

1) At the "premises"; or

2) At a replacement location or a temporary location, including:

a) Relocation expenses; and

b) Costs to equip and operate the replacement or temporary location;

(b) To minimize the "suspension" of business if you cannot continue "operations";

(c) To:

1) Repair or replace any property; or

2) Research, replace or restore the lost information on damaged "valuable papers and records";

to the extent it reduces the amount of loss that otherwise would have been payable under this Additional Coverage or **SECTION I - PROPERTY, A. Coverages, 5. Additional Coverages, c. Business Income.**

If any property obtained for temporary use during the "period of restoration" remains after the resumption of normal "operations", the salvage value of that property shall be taken into consideration in the adjustment of the loss.

(Ex. MMM – Midwest Addendum).

Comparing the two policies reveals at least two material distinguishing features. First, in the *Midwest Regional* policy, there is no "or" following Section

(2)(b). In contrast, CDC's Business Policy contains an "or" connecting Sections 1.a., 1.b., and 1.c. of the Extra Expense definition. (Ex. B – Business Policy at p. 90). Second, in the *Midwest Regional* policy, the "to the extent" language is aligned under Section (2)(c). In contrast, in CDC's Business Policy, the "to the extent" qualifier is aligned on the left margin of the definition, such that it encompasses all three sections of the definition.

Against the forgoing, the *Midwest Regional* court's finding that the policy lacked "connecting" language offers no aid to Sandras. The policies are materially different, and the State Farm policy unambiguously contains "connecting" language, such that the "to the extent" qualifier applies to all three sections of the Extra Expense definition. State Farm accordingly seeks summary judgment and a declaratory judgment that the "to the extent" qualifier applies to all three sections of the Extra Expense definition. The unambiguous intent of the policy is that the "to the extent" qualifier applies to all three sections of the Extra Expense definition.

B. State Farm is entitled to summary judgment on Coastal Dust Control's claim for Extra Expenses and Loss of Income.

Along with seeking a declaration as to the interpretation of the policy, State Farm seeks summary judgment on CDC's contractual claim for Extra Expenses and Loss of Income. State Farm has paid all amounts owed under the Business Policy under such coverage, and Sandras and CDC cannot demonstrate entitlement to any additional payments.

"Under Mississippi law, the plaintiff bears the burden of proving his right to recover under an insurance policy." *Parker v. State Farm Fire & Cas. Co.*, 2023 WL

4425599, *3 (S.D. Miss. May 22, 2023) (citation omitted). "That basic burden never shifts from the plaintiff." *Id*. (citation omitted). "In considering an insurance policy, the Court must 'render a fair reading and interpretation of the policy by examining its express language and applying the ordinary and popular meaning to any undefined terms.'" *Id*. (citation omitted). "In Mississippi, insurance policies are contracts, and as such, they are to be enforced according to their provisions." *Id*. (citation omitted).

As outlined above, the policy only covers Extra Expenses "to the extent it reduces the amount of loss that otherwise would have been payable under this coverage or 'Loss of Income' coverage." (Ex. B – Business Policy at p. 90). Courts have found that such provisions embody an insured's common law duty to mitigate damages. *Welspun Pipes, Inc. v. Liberty Mut. Fire Ins. Co.*, 891 F.3d 351, 357 (8th Cir. 2018) (affirming summary judgment for insurer where policy limited extra expenses to those "that reduces your loss of business income."). Indeed, it is well recognized that:

> Under a business interruption insurance policy or endorsement making the insurer liable for expenses incurred by the insured to reduce the loss, expenses incurred by the insured for the purpose of resuming business operations are recoverable only to the extent that they, in fact, reduce the loss.

Business interruption insurance, 37 A.L.R.5th 41, § 42 (1996); Couch on Insurance 3d. § 185.10 (2024) ("Under a business interruption policy, an insured may be entitled to recover the additional production expenses necessitated by mitigation efforts when the expenses are less than the damages would otherwise have been."); *Howard Stores Corp. v. Foremost Ins. Co.*, 441 N.Y.S.2d 674, 676-77 (N.Y. App. Div. 1981)

("Expenditures in mitigation of damages must be made in the reasonable expectation of reducing the recovery below the amount of the loss; expenditures which result in an increased loss cannot be justified.").

The forgoing cases and sources support State Farm's position that CDC is only entitled to recover extra expenses to the extent they reduce its loss of income. State Farm has paid CDC $906,941.00 under the Extra Expense coverage, which represents CDC's loss mitigated through August 31, 2023. (Ex. X – Summary of Loss 95H). This amount actually constitutes an overpayment, as ending the calculation on August 25, 2023, which is when Sandras sold the business, results in a loss mitigated of $884,428.00. (Ex. LLL – Dailey Expert Report). Considering State Farm has overpaid CDC what is owed under this coverage provision, the Court should grant summary judgment for State Farm. *Trapani v. Treutel*, 87 So. 3d 1096, 1102 (Miss. Ct. App. 2012) (affirming directed verdict where insureds were fully compensated for their losses).

Having established that CDC is only entitled to extra expenses "to the extent" they "would have been payable under this coverage or 'Loss Of Income' coverage," to survive summary judgment, CDC must demonstrate that, had it shut down from the time of the fire until August 25, 2023, it would have sustained a loss of income exceeding $906,941.00, which is the amount paid by State Farm. This figure is based on Dailey's calculation of the projected full shutdown loss of income through the end of August 2023 (Ex. DD – Dailey Depo. at pp. 11-14, 21-23). To date, Sandras and CDC have not provided any calculations or documentation disputing this figure, nor

have they retained an expert to refute this figure. *Healy v. AT&T Services, Inc.*, 362 So. 3d 14, 21 (Miss. 2023) (finding that the plaintiff failed to identify a "clear methodology" and "documentation" supporting a claim for lost profits). Dailey's loss of income calculations are based on the data provided by Sandras, and the Court should find that CDC has not and cannot show that CDC is owed additional payments. *See Work v. Commercial Underwriters Ins. Co.*, 61 Fed. Appx. 120, 2003 WL 342314 (5th Cir. 2003) (reversing denial of motion for directed verdict where insured failed to prove lost income).

The Court should grant State Farm summary judgment on CDC's Loss of Income and Extra Expense claim. State Farm has paid all amounts owed under this coverage provision. In fact, State Farm overpaid this portion of CDC's claim by paying for a full shutdown through the end of August 2023, even though Sandras sold the business on August 25, 2023.

C. State Farm is entitled to summary judgment on Coastal Dust Control's claim for Personal Property coverage.

The Court should grant State Farm summary judgment on CDC's personal property claim, as CDC cannot show that it is entitled to additional payments under this coverage. The Business Policy establishes a limit of $632,400.00. (Ex. B – Business Policy at p. 2). State Farm issued payment to Sandras in the amount of $667,182.00 under this coverage. (Ex. X – Summary of Loss 95H; Ex. KK – Brent 8.9.23 Letter). At his deposition, Sandras agreed that he had been paid the policy limit for personal property. (Ex. C – Sandras Depo. at pp. 51-53). The Court should accordingly grant State Farm summary judgment on this component of CDC's breach

of contract claim. *Howard v. American Bankers Ins. Co. of Florida*, 106 F. Supp. 3d 793, 797 (S.D. Miss. 2015). CDC cannot show entitlement to additional payments for personal property.

D. State Farm is entitled to summary judgment on Coastal Dust Control's claim for Inland Marine Computer Property coverage.

The Court should similarly grant State Farm summary judgment on CDC's breach of contract claim as it relates to computer property under the Inland Marine Computer Property coverage. The Business Policy establishes a $25,000.00 limit on such coverage. (Ex. B – Business Policy). State Farm paid CDC the limit of $25,000.00. (Ex. X – Summary of Loss 95H). Sandras testified that he received the limit of this coverage. (Ex. C – Sandras Depo. at p. 53). The Court should accordingly find that State Farm is entitled to summary judgment to the extent CDC alleges that State Farm beached this coverage provision under the Business Policy.

E. State Farm is entitled to summary judgment on Coastal Dust Control's claim for Business Property of Others coverage.

The Court should also grant State Farm summary judgment on CDC's breach of contract claim under the Business Policy's coverage for Business Property of Others. The Business Policy establishes a limit of $50,000.00 for such coverage. (Ex. B – Business Policy at p. 4). On the day of his deposition, Sandras produced an invoice from Gurtler Industries in the amount of $70,000.00. (Ex. C – Sandras Depo. at pp. 116-120). After he provided additional supporting documentation, State Farm issued payment for the available limit of $50,000.00. (Ex. JJJ – Gurtler Payment). Because State Farm has paid all amounts owed under this coverage, the Court should grant

summary judgment for State Farm on CDC's breach of contract claim under this coverage.

F. State Farm is entitled to summary judgment on all remaining claims asserted by Coastal Dust Control.

To the extent CDC is seeking other contractual damages, the Court should find that State Farm is entitled to summary as to such claims. At his deposition, Sandras testified that CDC's claims under the Business Policy were limited to claims for personal property and loss of income and extra expense. (Ex. C – Sandras Depo. at pp. 51-52). As such, to the extent Sandras is seeking coverage under the Building Policy under coverages not addressed herein, he failed to identify those claims and should be precluded from pursuing them at this juncture.

Additionally, if State Farm is entitled to summary judgment on CDC's contractual claims, it naturally follows that State Farm is entitled to summary judgment on its remaining claims for punitive and other extracontractual damages. *Mitchell v. State Farm Fire and Cas. Co.*, 799 F. Supp. 2d 680 (N.D. Miss. 2011) (explaining that if contractual benefits are not owed, there cannot be a claim for punitive or extracontractual benefits); *Mullen v. Nationwide Mut. Ins. Co.*, 2013 WL 228074, *4 (S.D. Miss. Jan. 18, 2013) ("Without a breach of contract, plaintiffs' claims failed as a matter of law."). The Court should accordingly grant summary judgment to State Farm and dismiss CDC's claims – including all contractual and extracontractual claims – with prejudice.

III. Johnny Sandras cannot meet his burden to show that he is entitled to additional payments under the Building Policy.

State Farm is entitled summary judgment as to Sandras's contractual claims under the Building Policy. State Farm has paid the limits on Sandras's claim under the building coverage and debris removal coverage. Additionally, State Farm has paid all amounts owed for his loss of income claim as the landlord to CDC. As State Farm has paid all applicable coverages in full, the Court should find that Sandras cannot meet his burden to show he is entitled to additional payments under the Building Policy.

A. State Farm is entitled to summary judgment on Johnny Sandras's claim for building coverage.

The Court should grant State Farm summary judgment on Sandras's breach of contract claim under the Building Policy's building coverage (Coverage A). The Building Policy establishes a limit of $1,164,600.00 for the building. (Ex. A – Building Policy at p. 3). On April 18, 2023, State Farm issued payment in the amount of $1,223,824.00 for the building limit, less the deductible. (Ex. K – Summary of Loss 82K). When Sandras's claims under other coverages exceed the applicable limits, State Farm returned the deductible to Sandras. (Ex. L – Caillouet Depo. at pp. 32, 49-50; Ex. NNN – Kaufhold 10.5.23 Letter; Ex. OOO – Summary of Loss 10.5.23). Sandras testified that he understood that State Farm paid him the limit on the building coverage. (Ex. C – Sandras Depo. at pp. 49-50). Because State Farm paid Sandras all amounts owed for the building coverage under the Building Policy, the

Court should grant summary judgment for State Farm on this coverage. *Trapani v. Treutel*, 87 So. 3d at 1102.

B. State Farm is entitled to summary judgment on Johnny Sandras's claim for Debris Removal coverage.

The Court should grant summary judgment to State Farm to the extent Sandras is seeking additional payments under the Building Policy's debris removal coverage. Sandras contends that additional payments are owed under this coverage. (Ex. C – Sandras Depo. at p. 50). Because State Farm has paid the applicable limit, however, the Court should grant summary judgment for State Farm on this portion of Sandras's claim. (Ex. A – Building Policy; Ex. K – Summary of Loss 82K).

The Building Policy includes Section I – Extensions of Coverage, which states, in pertinent part:

> **c.** Subject to the exceptions in Paragraph **d.** the following provisions apply:
>
> > **(1)** The most we will pay for the total of accidental direct physical loss plus debris removal expenses is the Limit Of Insurance applicable to the Covered Property that has sustained loss.
> >
> > **(2)** Subject to Paragraph **(1)** above, the amount we will pay for debris removal expenses is limited to 25% of the sum of the deductible plus the amount that we pay for accidental direct physical loss to the Covered Property that has sustained loss.
>
> **d.** We will pay up to an additional $10,000 for debris removal expense, for each described premises, in any one occurrence of accidental direct physical loss to Covered Property, if one or both of the following circumstances apply:
>
> > **(1)** The total of the actual debris removal expense plus the amount we pay for accidental direct physical loss exceeds the Limit Of Insurance on the Covered Property that has sustained loss.

> **(2)** The actual debris removal expenses exceeds 25% of the sum of the deductible plus the amount that we pay for accidental direct physical loss to the Covered Property that has sustained loss.
>
> Therefore, if Paragraphs **d.(1)** and/or **d.(2)** apply, our total payment for accidental direct physical loss and debris removal expense may reach but will never exceed the Limit Of Insurance on the Covered Property that has sustained loss, plus $10,000.

(Ex. – Building Policy at pp. 23-24) (emphasis added).

Pursuant to this language, State Farm paid Sandras the additional coverage of $10,000.00 for debris removal. (Ex. K – Summary of Loss 82K). Sandras contends that he is owed additional amounts, up to 25% of the amount of the covered loss. (Ex. PPP – Traxler Letter 11.7.23). As outlined by Cummins, however, because State Farm paid the Coverage A limit for the building, the most Sandras can recover for debris removal is an additional $10,000.00. (Ex. QQQ – Cummins 11.8.23 Letter).

The Court should find that State Farm correctly applied the policy in finding that Sandras is only entitled to the additional $10,000.00 in debris removal coverage. The Extension of Coverage for Debris Removal provides that the terms of Paragraph c. are subject to those contained in Paragraph d. Paragraph c.(1) provides that "[t]he most we will pay for the total of accidental direct physical loss plus debris removal expenses is the Limit Of Insurance applicable to the Covered Property that has sustained loss." State Farm paid the policy limit on the Covered Property, meaning that debris removal under Paragraph c. is unavailable. Nonetheless, Paragraph c. is subject to Paragraph d., which provides additional coverage for debris removal. Under Paragraph d., where the actual debris removal expense plus the amount paid

for the loss to the building exceeds the limit for the building, State Farm will pay an additional $10,000.00 for debris removal. And, that is what State Farm did here.

The Court should find that State Farm appropriately paid $10,000.00 for debris removal and that Sandras is not entitled to additional payments for debris removal. Courts throughout the country have upheld this application of similar language, and this Court should do the same. *Strowing Properties, Inc. v. American States Ins. Co.*, 80 P.3d 72 (Kan. Ct. App. 2003) (finding that, where limits were paid for the building, only an additional limit was owed for debris removal); *Whitt Mach., Inc. v. Essex Ins. Co.*, 377 Fed. Appx. 492, 498-99 (6th Cir. 2010) (same); *Bona Fide Partnership v. Regent Ins. Co.*, 2013 WL 3376958, *5 (Ill. Ct. App. 2013) ("[T]he total loss exceeded policy limits, so the 25% payment for debris removal is not available because it would further exceed the insurance limit under the policy. Instead, plaintiff is entitled to just the $10,000 defendants paid for debris removal."). State Farm accordingly requests that the Court grant summary judgment in its favor on Sandras's debris removal claim and find that State Farm has paid all amounts owed under the Building Policy for debris removal.

C. State Farm is entitled to summary judgment on Johnny Sandras's claim for Loss of Income coverage.

The Court should grant summary judgment in favor of State Farm on Sandras's claim for Loss of Income coverage under the Building Policy. Sandras claims that he leased the Long Beach facility to CDC at a monthly rate of $3,050.00. (Ex. C – Sandras Depo. at pp. 30-32, 68-70). For loss of income coverage, the Business Policy generally provides for twelve months of the actual loss sustained. (Ex. A –

Building Policy at p. 6, 64-67). Sandras contends that State Farm did not pay him for a full twelve months of lost rent for the building. (Ex. C – Sandras Depo. at pp. 50-51). Specifically, Sandras does not contend that State Farm failed to pay the correct monthly amount; rather, he contends that State Farm did not pay for all twelve months. (*Id*.). Because State Farm, in fact, paid him for a full twelve months of loss of income, the Court should grant summary judgment for State Farm.[5] (Ex. III – Loss of Rent Calculation).

D. State Farm is entitled to summary judgment on all remaining claims asserted by Johnny Sandras.

Sandras testified that his claims under the Building Policy were limited to the structure, debris removal, and lost of income coverages. (Ex. C – Sandras Depo. at pp. 48-49). As outlined above, State Farm paid these claims in full. To the extent Sandras is seeking coverage under the Building Policy under coverages not addressed herein, he failed to identify those claims and should be precluded from pursuing them at this juncture.

Further, if State Farm is entitled to summary judgment on Sandras's contractual claims under the Building Policy, it naturally follows that State Farm is entitled to summary judgment on his remaining claims for punitive and other

[5] State Farm appropriately included depreciation as a noncontinuing expense in its calculations, as the policy only covers "net income." (Ex. A – Building Policy at p. 66). *Cohen Furniture Co. v. St. Paul Ins. Co. of Ill.*, 573 N.E.2d 851 (Ill. Ct. App. 1991) ("We believe the defendant properly deducted the depreciation charge because it was a charge which became unnecessary during the business interruption."); *Business interruption insurance*, 37 A.L.R.5th 41, § 38(d) (1996) (collecting cases holding that "depreciation taken by the insured on property damaged or destroyed by a covered peril was determined to be a noncontinuing expense for which recovery could not be allowed.").

extracontractual damages. *Mitchell v. State Farm Fire and Cas. Co.*, 799 F. Supp. 2d 680 (N.D. Miss. 2011) (explaining that if contractual benefits are not owed, there cannot be a claim for punitive or extracontractual benefits); *Mullen v. Nationwide Mut. Ins. Co.*, 2013 WL 228074, *4 (S.D. Miss. Jan. 18, 2013) ("Without a breach of contract, plaintiffs' claims failed as a matter of law."). The Court should accordingly grant summary judgment to State Farm and dismiss Sandras's claims – including all contractual and extracontractual claims – with prejudice.

IV. State Farm is entitled to summary judgment on Coastal Dust Control's and Johnny Sandras's claims for extracontractual and punitive damages.

Should the Court find that State Farm is not entitled to summary judgment on CDC's and Sandras's contractual claims, the Court should nonetheless find that State Farm is entitled to partial summary judgment on their claims for punitive and other extracontractual damages. CDC and Sandras assert claims for negligence, "bad faith," and gross negligence, in which they seek extracontractual and punitive damages. *See* Compl. [Doc. 1] at ¶¶ 104-128. Importantly, however, CDC and Sandras cannot meet their heavy burden on summary judgment to demonstrate that State Farm lacked reasonable bases for its decisions, negating their claims for punitive and other extracontractual damages. Further, their inability to present evidence of actual malice by State Farm forecloses their claim for punitive damages.

A. Standards applicable to punitive and other extracontractual damages.

The Mississippi Supreme Court has held that "punitive damages are allowed only with caution and within narrow limits" and they are "not ordinarily recoverable

in cases involving breach of contract[.]" *Caldwell v. Alfa Ins. Co.*, 686 So. 2d 1092, 1095 (Miss. 1996) (citing *Blue Cross & Blue Shield v. Maas*, 516 So. 2d 495, 496 (Miss. 1987)). Applying Mississippi law, the Fifth Circuit has instructed that a plaintiff must prove three elements before he or she can hope to recover punitive damages against an insurer for bad-faith refusal to pay a claim or for refusal to honor an obligation under an insurance policy. *Essinger v. Liberty Mut. Fire Ins. Co.*, 529 F.3d 264, 271 (5th Cir. 2008) (citing *Caldwell*, 686 So. 2d at 1095)). The insured must demonstrate the following: (1) that a claim or obligation was in fact owed; (2) that the insurer had no arguable reason to refuse to pay the claim or to perform its contractual obligation; and (3) that the insurer's breach of the insurance contract "results from an intentional wrong, insult, or abuse as well as from such gross negligence as constitutes an intentional tort." *Id.* (quoting *Caldwell*, 686 So. 2d at 1095; *JSI Commc'ns v. Travelers Cas. & Sur. Co. of Am.*, 717 Fed. Appx. 382, 388-9 (5th Cir. 2017) (emphasizing that to advance a claim for punitive damages, an insured must show both the lack of an arguable basis *and* that the insurer acted with malice).

As to the second element, "[a]rguable reason is defined as nothing more than an expression indicating the act or acts of the alleged tortfeasor do not rise to the heightened level of an independent tort." *Caldwell*, 686 So. 2d at 1096 (citations and punctuation omitted). "The insurer need only show that it had reasonable justifications, either in fact or law, to deny payment." *U.S. Fidelity & Guar. Co. v. Wigginton*, 964 F.2d 487, 492 (5th Cir. 1992) (citations omitted). Once the insurer articulates an arguable reason for delaying payment, the insured bears the "heavy

burden" of demonstrating that the insurer had no arguable reason. *Caldwell*, 686 So. 2d at 1097; *Reed v. State Farm Fire & Cas. Co.*, 2022 WL 4474177, *5 (S.D. Miss. Sept. 26, 2022). "The plaintiff's burden in this respect likewise exists at the summary judgment stage where the insurance company presents an adequate prima facie showing of a reasonably arguable basis for denial so as to preclude punitive damages." *Id*. at 1097 n. 1.

As to the third element, CDC and Sandras must prove by "clear and convincing evidence that [State Farm] 'acted with actual malice, gross negligence which evidences a willful, wanton or reckless disregard for the safety of others, or committed actual fraud.'" *Reed*, 2022 WL 4474177 at *5. The third element cannot be proven when "the record reveals nothing other than a legitimate pocketbook dispute between the parties as to the amount that was due [to the insured]." *State Farm Mut. Auto Ins. Co. v. Roberts*, 379 So. 2d 321, 322 (Miss. 1980) (citations omitted); *see also Briggs v. State Farm Fire & Cas. Co.*, 673 Fed. Appx. 389, 392 (5th Cir. 2016) (affirming judgment as a matter of law for insurer where evidence reflected the existence of a "pocketbook dispute."). As explained by the Mississippi Supreme Court, "these differences of opinion d[o] not rise to the level of wanton, gross or intentional conduct in the nature of an independent tort." *Roberts*, 379 So. 2d at 322; *see also Lewis v. Safeway Ins. Co.*, 1999 WL 33537167, *1 (N.D. Miss. July 7, 1999) (granting insurer's motion for partial summary judgment on punitive damages where insured and insurer were engaged in a "pocketbook dispute").

B. State Farm possesses reasonable and arguable bases for the decisions it made with respect to Coastal Dust Control and Johnny Sandras's insurance claims, and State Farm performed a reasonable investigation.

The evidence in this case demonstrates that State Farm possesses reasonable, arguable bases for its decisions on Sandras's and CDC's insurance claims. The evidence further demonstrates that State Farm performed a reasonable and diligent investigation. State Farm timely paid Sandras and CDC all amounts owed under the two policies, and the Court should accordingly find that Sandras and CDC are not entitled to extracontractual or punitive damages.

At the outset, it warrants emphasis that State Farm met all contractual obligations owed to Sandras and CDC. As a result, they cannot satisfy the second element of their claim for extracontractual and punitive damages – *i.e.*, the failure to perform a contractual obligation. *Mullen*, 2013 WL 228074 at *4; *Mitchell*, 799 F. Supp. 2d at 696-697. The Court should accordingly grant summary judgment for State Farm on Sandras's and CDC's claims for extracontractual and punitive damages.

With respect to the reasonableness of its investigation, State Farm anticipates Sandras and CDC will argue that State Farm delayed payment on CDC's personal property claim. Addressing these types of allegations, Mississippi courts have found:

> Obviously, some delay in evaluating claims is inevitable, legitimate, and socially useful. Insurers are entitled, and in fact legally obligated, to investigate fully the legitimacy of claims, and some skepticism in evaluating claims is appropriate. Since an insurer has an obligation under Mississippi law to investigate claims, discharging that duty is not bad faith. However, an inadequate investigation of a claim may create a jury question on the issue of bad faith.

Liberty Ins. Corp. v. Tutor, 309 So. 3d 493, 514 (Miss. Ct. App. 2019) (citation omitted). Additionally, an insurer cannot be charged for a delay where the insured fails to timely provide necessary information. *Jackson v. State Farm Fire & Cas. Co.*, 2024 WL 1183670, **9-11 (S.D. Miss. Mar. 19, 2024); *Soares v. State Farm Mut. Auto. Ins. Co.*, 2019 WL 2719800, **5-6 (S.D. Miss. June 28, 2019) (discussing how insured delayed investigation).

As outlined in the Background section of this Memorandum, on March 14, 2023, State Farm sent Sandras the XactContents Collaboration online application, which is used to collect and analyze information for personal property claims. (Ex. L – Caillouet Depo. at pp. 61-62; Ex. FF – XC Link). Nearly two months later, on or about May 12, 2023, Irwin submitted an extensive personal property inventory in a different format. (Ex. E – Business Claim Notes at p. 15; Ex. GG – Irwin Contents Inventory). The inventory included a flat depreciation rate of 15% for all the property and included specialized laundry process equipment. (Ex. GG – Irwin Contents Inventory). About two weeks later, Irwin provided receipts for the claimed contents. (Ex. HH – Irwin 5.25.23 Letter).

On June 3, 2023, Cummins discussed the inventory with Irwin and, on June 12, 2023, Cummins assigned the investigation of the contents claim to State Farm's contents collaboration team ("CCT"). (Ex. E – Business Claim Notes at pp. 12-14; Ex. L – Caillouet Depo. at pp. 61-65). Caillouet explained at his deposition that information is needed from the insured to determine the amount of the contents

potentially owed. (Ex. L – Caillouet Depo. at pp. 29-31). He further explained that it can be difficult to verify the pricing on industrial equipment. (*Id.* at pp. 74-75).

On July 7, 2023, even though CCT had not yet completed inputting the contents data, Cummins requested authority to pay the Coverage B claim. (Ex. II – Authority Notes at p. 2). Cummins observed that given the amount of the claimed loss, the claim appeared to exceed CDC's Coverage B limit. (Ex. II – Authority Notes at p. 2). By July 19, 2023, Cummins' Team Manager, Caillouet, reviewed the authority request and forwarded it to his Section Manager for review. (Ex. JJ – Manager Comments at p. 9). On July 24, 2023, the Section Manager responded with several questions, seeking clarification regarding various line items. (*Id.* at p. 12). On July 27, 2023, Cummins answered the questions and provided the requested clarification. (Ex. II – Authority Notes at pp. 1-2). On August 1, 2023, the clarified Coverage B authority request was submitted and, due to a typographical error, it was resubmitted on August 7, 2023. (Ex. JJ – Manager Comments at pp. 4-6, 13). Two days later, on August 9, 2023, authority was granted for Coverage B policy limits. (Ex. JJ – Manager Comments at p. 13). State Farm overnighted the payment to Irwin, which included the policy limits of $667,182.00 for personal property and $25,000.00 under the Inland Marine Computer Form. (Ex. KK – Brent 8.9.23 Letter; Ex. LL – State Farm Contents Inventory; Ex. MM – Summary of Loss 8.7.23).

The Court should find that the forgoing timeline evidences a reasonable and timely investigation. Irwin did not submit receipts for the claimed personal property until more than two months after the fire. Despite having been provided a template

by State Farm for submitting the personal property itemization, he used a different format that slowed the investigation. Nonetheless, State Farm continued investigating the claim, which included unique, specialized equipment. Nothing in the record suggests that State Farm acted unreasonably in investing the personal property claim, and the Court should accordingly find that State Farm's investigation of the personal property claim cannot serve as a basis for extracontractual or punitive damages.

State Farm also anticipates that Sandras and CDC will argue that State Farm acted unreasonably in its interpretation of the Business Policy's Loss of Income and Extra Expense endorsement and its calculation of the payments due thereunder. As to the interpretation of the policy, for the reasons outlined above, State Farm's interpretation is correct. The policy limits recovery for extra expenses "to the extent" they reduce the loss of income. (Ex. B – Business Policy at p. 90).

Indeed, even if the Court were to disagree with State Farm's interpretation of the Business Policy, it does not follow that Sandras and CDC would be entitled to extracontractual or punitive damages. *Allstate Ins. Co. v. Simpson*, 2018 WL 4054331, *12 (S.D. Miss. Aug. 24, 2018) ("A denial of a claim based upon an erroneous interpretation of policy language does not automatically equate to bad faith, if there was an arguable or legitimate basis for the denial or if the insurer had relied upon advice of counsel.") (citation omitted). To State Farm's knowledge, no Mississippi court has interpreted the Extra Expense definition in the Loss of Income and Extra Expense endorsement at issue, underscoring its entitlement to summary judgment

on the claims for extracontractual and punitive damages. *See McGlothin v. State Farm Mutual Insurance Company*, 297 F. Supp. 3d 635, 638-39 (S.D. Miss. 2018), *vacated on other grounds*, 925 F.3d 741 (5th Cir. 2019) (granting summary judgment on claims for extracontractual and punitive damages where dispute involved an issue of first impression); *Dunn v. State Farm Fire & Cas. Co.*, 711 F. Supp. 1362, 1365 (N.D. Miss. 1988) ("An insurer is entitled to have a court determine an undecided question of law to determine its liability without being punished for referring the question to a court."). While State Farm maintains its interpretation of the policy is correct, even if it were not, the Court should still find that State Farm's interpretation is reasonable and grant summary judgment on Sandras's and CDC's claims for extracontractual and punitive damages.

With respect to State Farm's calculation of extra expenses, the Court should also find that State Farm acted reasonably. State Farm issued payment to CDC for $906,941.00 for extra expenses. This amount was based on forensic accountant, Christopher Dailey's, report. State Farm's 30(b)(6) representative Alicia Kroneman testified:

> Q: Okay. So I'm going to take you right to the Loss Mitigated section. And there is a statement that – there's [a] statement there where Mr. [Dailey] is talking about his analysis. And he states, "This yields a potential business interruption loss at $1,621,128 for a 12-month shutdown, and $906,941 through August 31st of 2023." Do you see where he says that?
> A: Yes.
> Q: And the $906,000 – $906,941 is what State Farm paid to its insured for the loss of business income?
> A: Yes.
> Q: And that was based upon the work that Mr. [Dailey] did?
> A: Correct.

…

Q: Is that the amount of the loss of income that Mr. [Dailey] calculated?

A: Yeah. It's calculated loss if – for full shutdown.

(Ex. CC – Kroneman Depo. at pp. 26-27). That State Farm relied on Dailey's calculations provides State Farm an arguable basis for paying the amount calculated by Dailey. *Hans Const. Co., Inc. v. Phoenix Assur. Co. of N.Y.*, 995 F.2d 53, 55 (5th Cir. 1993). The Court should accordingly find that State Farm possesses reasonable and arguable bases for the amount it paid for extra expenses under the Business Policy.

The Court should find that State Farm possesses reasonable, legitimate, and arguable bases for its claim decisions in this matter. State Farm performed a reasonable investigation and timely paid all amounts owed under the subject policies. The Court should accordingly grant summary judgment for State Farm on Sandras's and CDC's claims for extracontractual and punitive damages.

C. Coastal Dust Control and Johnny Sandras have not and cannot produce any evidence demonstrating that State Farm acted with actual malice in the handling of their claims.

The Court should grant summary judgment in favor of State Farm as to Sandras's and CDC's claim for punitive damages as they have not and cannot put forth any evidence demonstrating the State Farm acted with actual malice. State Farm made timely payments to the insureds, advanced payments when warranted, hired a forensic accountant to assist with its investigation, and communicated reasonably the insureds and their representatives. The Court should find that State

Farm's conduct is far from the type that would warrant consideration of punitive damages.

Whether State Farm acted with malice is a question of law to be decided by the Court. *Jenkins v. Ohio Cas. Ins. Co.*, 794 So. 2d 228, 233 (Miss. 2001). "[A] delay in investigating a claim will not support an award for punitive damages unless it is so unreasonable as to constitute an independent tort or amount to a constructive denial of the claim, made without an arguable reason and in bad faith." *Ferrara Land Management Miss., LLC v. Landmark American Ins. Co.*, 2021 WL 5053526, *9 (S.D. Miss. July 7, 2021) (citation and punctuation omitted). "An insurer is not guilty of bad faith simply because it refuses to pay a claim under a policy; substantial evidence of the insurer's deliberate refusal to pay in the face of knowledge that it could not reasonably expect to succeed on any claimed defense must be presented." *Ferrara Land Management*, 2021 WL 5053526 at *9 (citation and punctuation omitted). "The totality of the circumstances and the aggregate conduct of the defendant must be examined before punitive damages are appropriate." *Dey v. State Farm Mut. Auto. Ins. Co.*, 789 F.3d 629, 633 (5th Cir. 2015).

The background of this case and State Farm's claim handling is outlined in detail in this Memorandum. As demonstrated, State Farm made timely and correct claims decisions in investigating the claims submitted by Sandras and CDC. State Farm reasonably and correctly interpreted and applied the policies, and it communicated the bases for its claim decisions to the insured and their representatives. Viewing the "totality of the circumstances," the Court should find

that Sandras and CDC cannot survive summary judgment on their claims for punitive damages.

D. State Farm is entitled to partial summary judgment on Coastal Dust Control and Johnny Sandras's claims for extracontractual damages.

As outlined in detail above, State Farm is entitled to summary judgment on Sandras's and CDC's claims for extracontractual damages. The Mississippi Supreme Court has explained that "[e]xtracontractual damages, such as awards for emotional distress and attorneys' fees, are not warranted where the insurer can demonstrate 'an arguable, good-faith basis for denial of a claim.'" *United Servs. Auto. Ass'n (USSA) v. Lisanby*, 47 So. 3d 1172, 1178 (Miss. 2010) (collecting cases); *Essinger v. Liberty Mut. Fire Ins. Co.*, 534 F.3d 450, 451 (5th Cir. 2008) (explaining that extracontractual damages "may be appropriate where the insurer lacks an arguable basis for delaying or denying a claim, but the conduct was not sufficiently egregious to justify the imposition of punitive damages."). In *Lisanby*, the court reversed an award of extracontractual damages for the infliction of emotional distress, attorneys' fees, and litigation expenses "because the plaintiffs failed to demonstrate that the defendant acted in bad faith when it denied their claim." *Id*.

State Farm is entitled to dismissal of CDC and Sandras's claims for extracontractual damages because, as argued extensively throughout this Memorandum, State Farm possesses arguable bases for its claim handling decisions. State Farm's claim handling decisions were timely and correct, wholly undercutting Sandras's and CDC's claims for extracontractual damages. The Court should

accordingly find that State Farm is entitled to summary judgment their claims for extracontractual damages.

CONCLUSION

The Court should grant summary judgment in favor of State Farm. State Farm has paid all contractual amounts owed to Sandras and CDC under the applicable policies, entitling State Farm to summary judgment on their contractual claims. With respect to their claims seeking extracontractual and punitive damages, State Farm's claim decisions were timely and correct. Further, State Farm performed a reasonable investigation. And, Sandras and CDC wholly fail to present any evidence of malice by State Farm. The Court should accordingly grant summary judgment on Sandras's and CDC's claims for extracontractual and punitive damages.

WHEREFORE, State Farm requests the Court grant summary judgment in its favor or, alternatively, grant it partial summary judgment on Plaintiffs' claims for punitive and other extracontractual damages.

DATED: May 2, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, **MICHAEL R. MOORE**, one of the attorneys for the Defendant, **STATE FARM FIRE AND CASUALTY COMPANY**, do hereby certify that I have this date electronically filed the foregoing Memorandum in Support of Motion for Summary Judgment or, Alternatively, Partial Summary Judgment with the Clerk of Court using the ECF system which sent notification of such filing to all counsel of record.

DATED: May 2, 2025

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