

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

THE EICHHOLZ LAW FIRM, P.C., on )  
behalf of itself and all others similarly )  
situated, )

Case No. 1:24-cv-03403-TCB

Plaintiff, )

v. )

STATE FARM MUTUAL AUTOMOBILE )  
INSURANCE COMPANY, )

Defendant. )

**PLAINTIFF’S RESPONSE TO DEFENDANT STATE FARM MUTUAL  
AUTOMOBILE INSURANCE COMPANY’S MOTION TO DISMISS THE  
SECOND AMENDED COMPLAINT AND MEMORANDUM IN SUPPORT**

COMES NOW, Plaintiff, The Eichholz Law Firm, P.C. (“Plaintiff”) and hereby files this Response to Defendant State Farm Mutual Automobile Insurance Company’s (“State Farm”) Motion to Dismiss the Second Amended Complaint and Memorandum in Support, showing this honorable Court as follows:

**I. Introduction**

In this Court’s May 7, 2025 Order [Doc. 32], the Court order Plaintiff to file a Second Amended Complaint to sufficiently allege facts to establish Subject Matter Jurisdiction pursuant to the Class Action Fairness Act (“CAFA”) and to remove withdrawn claims. (Id.) In accordance with this May 7, 2025 Order,

Plaintiff filed its Second Amended Complaint on May 16, 2025. [Doc. 33].

As State Farm's previous motion to dismiss was denied as moot (see Doc. 32 at p. 6), Defendant filed its Motion to Dismiss the Second Amended Complaint [Doc. 34] and Memorandum in Support of its Motion to Dismiss the Second Amended Complaint [Doc. 34-1] on May 30, 2025. In its second motion, State Farm renews its arguments that the contractual one-year statute of limitations for actions brought against them bars this action despite engaging in conduct warranting a waiver of such provision. For the reasons stated below, Plaintiff respectfully requests that this Court deny the motion to dismiss.

## **II. Factual Background**

Prior to and on August 1, 2020, Plaintiff, having paid the premiums required thereunder, had an automobile insurance policy with Defendant State Farm. [Doc. 33 para. 16]. On August 1, 2020, Plaintiff's automobile, with less than 100,000 miles on it, was damaged and in need of repair. [Doc. 33 para. 17] State Farm accepted coverage for the claim, evaluated Plaintiff's property damage, determined the vehicle was not a total loss, and paid for repairs. [Doc.33 para. 18].

However, State Farm, nor anyone on its behalf, ever informed Plaintiff of its right to receive payment for the diminution in value the damaged vehicle. [Doc. 33 para. 19]. State Farm did not evaluate, pay, orr even offer to pay, for the

diminution in value of Plaintiff's vehicle. (Id.) This is despite the fact that Plaintiff's vehicle did in fact suffer diminution in value, and State Farm knew or should have known of such diminution. [Doc. 33 para. 20]. (See State Farm Mut. Auto Ins. Co. v. Mabry, 274 Ga. 498, 508 (2001)).

Notably, State Farm's claim remains open to this day. [Doc. 33 para. 24]. State Farm never denied coverage of Plaintiff's property damage claim, which inherently includes diminution in value. [Doc. 33 para. 22]. Defendant never indicated in anyway during the course of negotiations that a limitation period was approaching and/or ran until **after** this lawsuit was filed. [Doc. 33 para 23]. There is not dispute that Plaintiff has not been fully compensated as Defendant has offered a partial payment of the damages contained within Plaintiff's property damage claims and has continued to negotiate the diminished value payment to the present. [Doc. 33 para. 24].

Upon information and belief, Plaintiff believes this practice of State Farm consisting of not fully compensating Plaintiffs yet leaving their claim open is widespread, presumably seeking to protect themselves from suit yet not paying/fulfilling their obligation under Mabry (supra) unless prompted to do so. [Doc. 33 para 25].

### III. Argument and Citation of Authority

#### a. Standard For Motion to Dismiss

Dismissal is appropriate only “where it is clear that the plaintiff can prove no set of facts in support of the claims in the complaint.” Patel v. Specialized Loan Servicing, LLC, 904 F.3d 1314, 1321 (11th Cir. 2018) (quoting Marshall Cty. Bd. of Educ. v. Marshall Cty. Gas Dist., 992 F.2d 1171, 1174 (11th Cir. 1993)). In evaluating this motion, the court must accept as true all facts set forth in the complaint and draw all reasonable inferences in the light most favorable to the plaintiff. (See Randall v. Scott, 610 F.3d 701, 705 (11th Cir. 2010); Dusek v. JPMorgan Chase & Co., 832 F.3d 1243, 1246 (11th Cir. 2016); see also Hill v. White, 321 F.3d 1334, 1335 (11th Cir. 2003)).

This Court is “bound to apply the pleading standard articulated in Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007), and Ashcroft v. Iqbal, 555 U.S. 602, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009).” Ironworkers Local Union 68 & Participating Emplrs. Health & Welfare Funds v. AstraZeneca Pharms., LP, 634 F. 3d 1352, 1359 (11th Cir. 2011) (internal citations omitted). Under this standard, the complaint “must . . . contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.’” Id. at 1359. “A claim has facial plausibility when the plaintiff pleads

factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2007) (citing Twombly, 550 U.S. at 556); see also Chaparro v. Carnival Corp., 693 F.3d 1333, 1337 (11th Cir. 2012).

**b. This Court has Subject Matter Jurisdiction**

“CAFA grants federal district courts jurisdiction over class actions where (1) any member of the plaintiff class is a citizen of a state different from the state of citizenship of any defendant, (2) the aggregate amount in controversy exceeds \$5 million, and (3) the proposed plaintiff class contains at least 100 members.” Dudley v. Eli Lilly & Co., 778 F.3d 909, 911 (11th Cir. 2014). (See 28 U.S.C. § 1332(d)(2) & (5)(B)). “CAFA’s provisions should be read broadly, with a strong preference that interstate class actions should be heard in a federal court . . . [P]laintiff’s amount-in-controversy allegation is accepted if made in good faith.” Bland v. Urology of Greater Atlanta, LLC, 2024 U.S. Dist. LEXIS 118794, \*7 (N.D. Ga. Mar. 24, 2024).

Here, all three (3) requirements are adequately pled, not challenged by Defendant, and supported by permissible evidence. Plaintiff is a citizen of Georgia, and Defendant is a citizen of Illinois. [Doc. 33 para. 12]. The putative class is expected to be proposed of thousands of plaintiffs. [Doc. 33 para. 11].

This number is further bolstered by the Declaration of VanDerwerken, attached to Defendant's motion as Exhibit B [Doc. 34-3], establishing that there could be more than 33,000 class members just from those suffering property damage from July 2023 to the present. Id. Furthermore, the parties agree the amount in controversy exception is satisfied, though the parties reached this conclusion in different ways. In Morrison v. Allstate Indem. Co., 228 F.3d 1255, 1272 n. 16 (11th Cir. 2000), the 11th Circuit noted that surveys of diminished value of vehicles show typical claims range from \$2,500.00 to \$8,000. In the aggregate, the thousands of claims within this range will exceed \$5,000,000.00 - only requiring between 625 to 2,000 members. [Doc. 33 para. 11]. Additionally, even without relying on that 11<sup>th</sup> Circuit survey, State Farm, through VanDerwerken, has shown that Plaintiff has put \$20,075,180 in controversy per the allegations of its Second Amended Complaint, which exceeds the minimum amount required under CAFA.

**c. Plaintiff's Claims are not Time-Barred**

In its motion, State Farm argues that Plaintiff's claims are time-barred pursuant to the aforementioned insurance policy. [Doc. 34-2]. Defendant argues that Georgia courts "routinely" enforce such contractual statutes of limitation. However, the enforcement of such provisions is peculiarly fact dependent and varies depending on the actions of the insurer:

If the insurer never denied liability, but continually discussed the loss with its insured with a view toward negotiation and settlement without the intervention of a suit, whether or not this lulled the insured into a belief that the 12-month clause in the contract was waived by the insurer can become a disputed question of fact for the jury.

Ga. Farm Bureau Mut. Ins. Co. v. Pawlowski, 284 Ga. App. 183, 185 (2007)

(quoting Auto-Owners Ins. Co. v. Ogden, 275 Ga. 565, 567 (2002)).

Recently, a district court in the Middle District of Georgia found that an insurer could not be granted dismissal when it failed to deny liability prior to the one-year deadline. (See JSPS, Inc. v. First, 2020 U.S. Dist. LEXIS 207592 at \*8 (M.D. Ga. Sep. 30, 2020) (“In this case, Plaintiff plausibly alleges that Defendant waived the one-year limitations provision . . . letters indicate that Defendant never denied liability prior to the one-year deadline[.]”) This was true **despite the letter from the insurer explicitly stating “the ‘letter and our action . . . do not constitute a waiver of any policy provisions or defenses.’”** Id. (Emphasis added).

The JSPS, Inc. Court relied on a previous case in the Middle District which substantially tracked those facts. In Moss v. State Farm Fire & Cas. Co., 2010 U.S. Dist. LEXIS 157328 (M.D. Ga. Mar. 30, 2010), the court found a genuine issue of material fact as to whether the insurer lulled its insured into not filing suit

prior to the limitations period when the insured never denied the claim outright until after the deadline, sent partial payment prior to the deadline, and never mentioned the approaching deadline to its insured. Id. at \*4.

The Georgia Court of Appeals has reached similar conclusions. In Nee v. State Farm Fire & Cas. Co., 142 Ga. App. 744 (1977), the insured's house and property was damaged by a fire resulting from arson, and State Farm initially denied coverage as they were suspicious of the insured's involvement in the arson. Id. at 744. However, after the insured retained an attorney, State Farm admitted liability under the policy and sought to reach a settlement. Id. However, State Farm later attempted to avoid by liability by asserting that the insured failed to bring a legal action against it within the contractual limitation period. In rejecting this argument and rebuking the actions of State Farm, the Nee Court found:

At no time does it appear that State Farm has outrightly rejected Nee's claim, and, in fact, in its admissions and answers to interrogatories, **State Farm asserts that it never denied its liability until after the suit was filed**, and then denied payment only because the claim had not been filed within the 12-month period following the fire, as required by the contract.

Nee, 142 Ga. App. at 745. (Emphasis added).

The facts of JSPS, Inc., Moss, and Nee substantially mirror the facts of this case, especially at this stage of litigation when all of Plaintiff's well-pled factual

allegations are taken as true and all reasonable inferences are drawn in favor of Plaintiff. State Farm has never denied coverage of Plaintiff's claim for diminished value. [Doc. 33 para. 22]. State Farm never indicated that the limitation period was approaching or ran until after the filing of this lawsuit. [Doc. 33 para. 23]. State Farm offered Plaintiff a partial payment of his damages resulting from his claims, and the parties are indeed still negotiating said claim. [Doc. 33 para. 24].

Defendant attempts to distinguish recent offers to settle the claims raised in this action from offers to settle the property damage claim submitted by Plaintiff prior to the start of litigation, but this is just smoke and mirrors. The pre-suit offers attempted to settle the property damage claim by providing full compensation to the Plaintiff. This lawsuit was brought because Defendant failed to offer full compensation to Plaintiff for its property damage. Thus, the end goal of pre-suit and during-suit negotiations is to fully satisfy Plaintiff's property damage claim. There is no difference.

State Farm did not want to pay out the subject claim pre-suit, presumably seeking to hide behind the limitation period described above (i.e. like the defendant in Nee v. State Farm Fire & Cas. Co., 142 Ga. App. 744 (1977)), but have since attempted to pay out the claim to avoid costs and expenses imposed by this litigation.

As a final note, it is also telling that almost every case cited by Defendant in its motion on this issue was adjudicated at the summary judgment stage - after the introduction of evidence to prove/disprove the lulling effect of the insurers' actions.<sup>1</sup> As this case is styled and the allegations are pled, this issue is not ripe for adjudication at this stage as Plaintiff can prove a "set of facts in support of the claims in the complaint." Patel, 904 F.3d at 1321. (See JSPS, Inc. 2020 U.S. Dist. LEXIS 207592 at \*8. ("Accordingly, the policy's one-year limitations period **does not compel dismissal of this action at this stage.**") (Emphasis added).

Indeed, the declaration of VanDerwerken [Doc. 34-3] gives rise to the presumption that thousands of putative class members, within the last year even, have not had their first-party property damage claims adequately evaluated and/or paid. "The average diminished value payments in the 33,269 first-party claims for property damage to covered vehicles State Farm adjusted in Georgia during this

---

<sup>1</sup> Plaintiff notes that in this motion, Defendant has seemingly added "authority" not contained in its previous motion, but the additional case citations do not appear to be relevant. For example, on page 12 of the motion, Defendant cites Butler v. Nationwide Mut. Fire Ins. Co., No. 1:21-cv-2138-MLB, 2022 WL 684157, at \*1 (N.D. Ga. Mar. 8, 2022) as support for court's enforcing contractual limitation periods. While Butler (supra) did indeed concern a motion to dismiss, **it did not make any reference to a contractual limitation period.** The case was entirely focused on whether or not the plaintiff complied with 60-day demand provision prior to bringing suit in an underlying case in the subsequent bad faith action.

time period was \$603.42.” [Doc. 34-3 para. 9]. This low figure stands **thousands of dollars below** the \$2,500 - \$8,000 range found to be typical by the 11<sup>th</sup> Circuit in Morrison v. Allstate Indem. Co., 228 F.3d 1255, 1272 n. 16 (11th Cir. 2000). Further discovery will likely confirm the systemic practice of Defendant in failing to evaluate and pay these types of claims as well as the practice of lulling its insureds for a year then claiming immunity.

#### **IV. Conclusion**

For the reasons stated herein, Plaintiff respectfully requests that this Court **deny** Defendant’s Motion to Dismiss the Second Amended Complaint.

Respectfully submitted this 13th day of June, 2025.

/s/ Brent J. Savage  
Brent J. Savage  
Georgia Bar No. 627450  
Matthew R. Bradley

**SAVAGE TURNER PINCKNEY  
SAVAGE & SPROUSE**  
P.O. Box 10600  
Savannah, Georgia 31412  
(912) 231-1140  
[lwickline@savagelawfirm.net](mailto:lwickline@savagelawfirm.net)  
[mbradley@savagelawfirm.net](mailto:mbradley@savagelawfirm.net)

David S. Eichholz  
**THE EICHHOLZ LAW FIRM, P.C.**

Georgia Bar No. 502134  
319 Eisenhower Drive  
Savannah, Georgia 31406  
(912) 232-2791  
[david@thejusticelawyer.com](mailto:david@thejusticelawyer.com)

**LOCAL RULE 7.1D CERTIFICATION**

In accordance with L.R. 7.1D, the undersigned counsel hereby certifies that, consistent with L.R. 5.1C, the foregoing document was prepared in Times New Roman font, 14 point.

On this 13th day of June, 2025.

*/s/ Brent J. Savage*  
Brent J. Savage

### **CERTIFICATE OF SERVICE**

I, the undersigned, certify that on June 13, 2025, a true and correct copy of the foregoing was electronically filed through the Court's ECF system. Notice of this filing will be sent by operation of the Court's ECF system to all counsel of record.

*/s/ Brent J. Savage* \_\_\_\_\_  
Brent J. Savage