IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MARK HALE, TODD SHADLE, and LAURIE LOGER, on behalf of themselves and all others similarly situated,

Plaintiffs

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, EDWARD MURNANE, and WILLIAM G. SHEPHERD,

Defendants.

Case No. 3:12-cv-00660-DRH-SCW

Judge David R. Herndon

Magistrate Judge Stephen C. Williams

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into this 4th day of September 2018, by and between Defendants State Farm Mutual Automobile Insurance Company ("State Farm"), Edward Murnane, and William G. Shepherd (collectively, the "Defendants"), and Class Representatives Mark Hale, Todd Shadle and Laurie Loger (collectively, "Class Plaintiffs"), for themselves and on behalf of the Class[1] in *Hale v. State Farm Mutual Automobile Insurance Co.*, No. 12-cv-00660-DRH-SCW (S.D. Ill.) (Herndon, J.). This Agreement is intended by the Settling Parties to fully, finally and forever resolve, discharge and settle the Released Claims, upon and subject to the terms and conditions hereof.

WHEREAS, Class Plaintiffs have alleged, among other things, in the Second Amended Class Action Complaint that Defendants (1) violated the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961 et seq., in particular, §§ 1962(c), (d); and 1964 for perpetrating a scheme through an enterprise specifically designed to defraud Plaintiffs and the Class out of a $1.05 billion judgment; (2) were unjustly enriched at Class Members' expense; and (3) these acts caused Class Members to incur monetary damages;

WHEREAS, Class Plaintiffs attach a copy of the Second Amended Class Action Complaint as Exhibit A to this Agreement;

WHEREAS, Defendants deny all of the allegations contained in Plaintiffs' claims asserted and have substantial legal and factual defenses to such claims, and in fact continue to deny (1) each and all of the claims and allegations of wrongdoing made by Class Members in the Action and maintain that they have meritorious defenses, including *Noerr-Pennington*, *Rooker-Feldman*, *res judicata*, collateral estoppel, causation, and statute of limitations; (2) all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or

[1] All capitalized terms shall have the meaning set forth herein in the text or in ¶ 1 of this Agreement.

omissions alleged, or that could have been alleged, in the Action, and contend that the factual allegations made in the Action relating to them are false and materially inaccurate; and (3) that Class Plaintiffs or any Class Member were harmed by any conduct of Defendants alleged in the Action or otherwise;

WHEREAS, Defendants, and each of them, deny liability, expressly deny any wrongdoing, deny they violated RICO or any other statute, deny that they committed any act the effect of which was to unjustly enrich the Defendants, consider Plaintiffs' claims to be without merit, consider they are settling under the unjust enrichment claim, and that the Settlement is made simply to end the entire litigation with the Class;

WHEREAS, Class Plaintiffs, for themselves and the Class, and Defendants agree that neither this Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be a concession as to any claim, an admission, or evidence of any violation of any statute or law or of any liability or wrongdoing by Defendants or of the truth of any of the claims or allegations alleged in the Action;

WHEREAS, arm's length settlement negotiations have taken place, through counsel, between Defendants and Class Plaintiffs and two mediators, one Court-appointed, and this Agreement embodies all of the terms and conditions of the Settlement between Defendants and Class Plaintiffs, both individually and on behalf of each Class Member; and

WHEREAS, Class Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the Action, the legal and factual defenses thereto and the applicable law, that (i) it is in the best interests of the Class to enter into this Agreement in order to avoid the uncertainties of litigation and to assure that the benefits reflected herein are obtained for the Class and (ii) the

Settlement set forth herein is fair, reasonable and adequate and in the best interests of Class Members,

NOW, THEREFORE, IT IS HEREBY AGREED by and among the Class Plaintiffs (for themselves and the Class) and Defendants, by and through their respective counsel or attorneys of record, that, subject to the approval of the Court, the Action as against Defendants shall be finally and fully settled and releases extended, as set forth below.

A. **Definitions**As used in this Agreement the following capitalized terms have the meanings specified below.

(a) "Action" means *Hale v. State Farm Mutual Automobile Insurance Co., No. 12-cv-00660-DRH-SCW (S.D. Ill.) (Herndon, J.)*, which is currently pending in the U.S. District Court for the Southern District of Illinois. A copy of the Second Amended Class Action Complaint is attached hereto as Exhibit A.

(b) "Agreement" means this Settlement Agreement, together with any exhibits attached hereto, which are incorporated herein by reference.

(c) "Authorized Claimant" means any Class Member who, in accordance with the terms of this Agreement, is entitled to a distribution from the Settlement Fund pursuant to any Distribution Plan or Order of this Court.

(d) "State Farm" means State Farm Mutual Automobile Insurance Company.

(e) "Claims Administrator" means the Notice and/or Claims Administrator(s) to be approved by the Court. The parties will propose that Epiq Class Action & Claims Solutions, Inc. serve as Claims Administrator.

(f) "Class" means the class previously certified by the Court in *Hale*, Dkt. Nos. 572 and 618, defined as:

> All persons in the United States, except those residing in Arkansas and Tennessee, who, in between July 28, 1987, and February 24, 1998, (1) were insured by a vehicle casualty insurance policy issued by Defendant State Farm and (2) made a claim for vehicle repairs pursuant to their policy and had non-factory authorized and/or non-OEM (Original Equipment Manufacturer) "crash parts" installed on or specified for their vehicles or else received monetary compensation determined in relation to the cost of such parts.
>
> Excluded from the class are employees of Defendant State Farm, its officers, its directors, its subsidiaries, and its affiliates. In addition, the following persons are excluded from the class: (1) All persons who resided or garaged their vehicles in Illinois and whose Illinois insurance policies were issued/executed prior to April 16, 1994, and (2) all persons who resided in California and whose policies were issued/executed prior to September 26, 1996.

(g) "Class Member" means a Person who is a member of the Class defined in ¶ 1(f) and has not timely and validly excluded himself or herself from the Class on or before August 14, 2018 in accordance with the procedure previously established by the Court.

(h) "Class Plaintiffs" means Mark Hale, Todd Shadle and Laurie Loger.

(i) "Class Counsel" means the law firms of Barrett Law Group, P.A.; Clifford Law Offices; Erwin Chemerinsky, Esq.; Hausfeld LLP; Law Offices of Gordon Ball; Lieff Cabraser Heimann & Bernstein, LLP; Much Shelist, P.C.; Pendley, Baudin & Coffin, LLP; and Thrash Law Firm, P.A.

(j) "Court" means the U.S. District Court for the Southern District of Illinois.

(k) "Defendants" means State Farm Mutual Automobile Insurance Company, Edward Murnane, and William G. Shepherd.

(l) "Distribution Plan" means the plan for allocation of the Net Settlement Fund to the Class. The Net Settlement Fund shall be distributed in equal, per-capita shares to Class Members. Payments will be made automatically – with no claim form requirement – to those Class Members for whom the Claims Administrator has a valid address (except for those in Arkansas and Tennessee who would need to submit claim forms if they were residents of another state during the Class Period). Because the class list used for notice includes fewer than all Class Members, other Class Members (as well as those with addresses in Arkansas and Tennessee) will be able to submit a claim form, either online or by mail, providing evidence of their membership in the Class and requesting payment. Only those Class Members for whom the Claims Administrator does not currently have a valid email or physical address will be asked to submit a claim form. Distribution to the Class will take place subsequent to the Effective Date. This Plan of Distribution is meant to maximize Class Member participation in the case.

(m) "Effective Date" means the first date by which all of the events and conditions specified in ¶ 18(a) or ¶ 18(b), below, have occurred.

(n) "Execution Date" means the date on which this Agreement is executed by the last party to do so.

(o) "Final" means, with respect to any order of a court, including, without limitation, the Judgment, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. An order becomes "Final" when: (i) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (ii) an appeal has been filed and either (a) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (b) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. For purposes of this paragraph, an "appeal" includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind. Any appeal or other proceeding pertaining solely to an order issued regarding the Fee and Expense Award pursuant to ¶ 16, below, shall not in any way delay or prevent the Judgment from becoming Final.

(p) "Final Approval Order" means the Court's approval of the Settlement following preliminary approval thereof, notice to the Class and a hearing on the fairness of the Settlement.

(q) "Gross Settlement Fund" means the Settlement Amount plus any interest that may accrue.

(r) "Judgment" means the order of judgment and dismissal of the Action with prejudice as to Defendants, the form of which shall be mutually agreed upon by the Settling Parties, and submitted to the Court for approval thereof.

(s) "Net Settlement Fund" means the Gross Settlement Fund, less the payments set forth in ¶ 9, below.

(t) "Notice" means the form of notice of the proposed Settlement to be provided to Class Members as provided in this Agreement and the Preliminary Approval Order.

(u) "Notice and Administrative Costs" means the costs of Notice and administration of the Settlement.

(v) "Person(s)" means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, municipality, state, state agency, any entity that is a creature of any state, any government or any political subdivision, authority, office, bureau or agency of any government, and any business or legal entity and any spouses, heirs, predecessors, successors, representatives or assignees of any of the foregoing.

(w) "Released Claims" means all manner of civil claims, demands, debts, obligations, rights, actions, suits, causes of action, whether class,

individual or otherwise in nature, fees, costs, penalties, damages whenever incurred, and liabilities of any nature whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, in law or in equity, which Releasors or any of them, whether directly, representatively, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have against Defendants, their predecessor entities, successor entities, assigns, past and present affiliates, parent entities, holding entities, direct and indirect subsidiaries, past and present employees, officers, directors, shareholders, members, owners or other equity interest holders, agents, and representatives, and as to the individual Defendants, heirs, administrators, executors, and the legatees, and the alleged unnamed co-conspirators and alleged members of the alleged RICO enterprise (including, without limitation, those identified in paragraphs 25-29 of Exhibit A), relating in any way to any conduct prior to the date of the Settlement and arising out of or related in any way to the factual predicate of the Action, or any amended complaint or pleading therein until the Effective Date. Class members will release the Defendants from all past, present and future claims relating to the subject matter of this lawsuit and the Action, including RICO claims and unjust enrichment claims, due process claims, and any and all claims, whether known or unknown, that were asserted or could have been asserted in this lawsuit or in the *Avery* lawsuit.

(x) "Releasees" means each Defendant, its predecessors, successors and assigns, its direct and indirect parents, subsidiaries, and affiliates, and its respective current and former officers, directors, employees, managers, members, partners, agents, shareholders (in their capacity as shareholders), attorneys, and legal representatives, and the predecessors, successors, heirs, executors, administrators, legatees and assigns of each of the foregoing, and the alleged unnamed co-conspirators and alleged members of the alleged RICO enterprise (including, without limitation, those identified in paragraphs 25-29 of Exhibit A). As used in this paragraph, "affiliates" means entities controlling, controlled by or under common control with a Releasee.

(y) "Releasors" means Class Plaintiffs and each and every Class Member on their own behalf and on behalf of their respective predecessors, successors and assigns, direct and indirect parents, subsidiaries and affiliates, their current and former officers, directors, employees, agents, and legal representatives, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing. As used in this paragraph, "affiliates" means entities controlling, controlled by or under common control with a Releasor.

(z) "Service Award(s)" means $25,000 U.S. Dollars that shall be paid, if approved by the Court, upon the Effective Date to each of the three named Class Plaintiffs.

(aa) "Settlement" means the settlement of the Released Claims set forth herein.

(bb) "Settlement Amount" means $250 million U.S. dollars. The Settlement Amount includes the amounts for the prior and future class notice, the cost of any settlement administration, service awards to the three named Class Plaintiffs, and any fees and expenses of Class Counsel.

(cc) "Settlement Fund" means the account that will hold the Settlement Amount after payment thereof by Defendant State Farm pursuant to the terms of this Agreement.

(dd) "Settling Parties" means Defendants and the Class Plaintiffs (for themselves and the Class).

(ee) "Settling Party" means any Defendants or any Class Plaintiff (for itself and on behalf the Class).

B. Preliminary Approval Order, Notice Order, and Final Fairness Hearing

2. **Best Efforts to Effectuate this Settlement.** The Settling Parties agree to cooperate with one another to the extent reasonably necessary to support, promote, and obtain court approval, finality, and implementation of the terms and conditions of this Agreement and to exercise their best efforts to accomplish the terms and conditions of this Agreement.

3. **Motion for Preliminary Approval.** On or before Wednesday, September 5, 2018, Class Counsel shall submit this Agreement to the Court and shall apply for entry of an order (the "Preliminary Approval Order") requesting, *inter alia*, preliminary approval of the Settlement and for a stay of all proceedings in the Action against the Releasees until the Court renders a final decision on approval of the Settlement. The motion shall include the proposed form of an order preliminarily approving the Settlement. On September 10, 2018, the Defendants shall cause the notification of the appropriate federal and state officials of this

Settlement as specified in 28 U.S.C. §§ 1715(a) & (b), and cause the filing of a notice advising the Court of same.

4. **Notice to Class.** In the event that the Court preliminarily approves the Settlement, Class Plaintiffs' Counsel shall, in accordance with Rule 23 of the Federal Rules of Civil Procedure and the Preliminary Approval Order, provide Class Members who previously received notice of class certification by mail or email, in accord with the notice plan submitted to the Court by Class Plaintiffs' Counsel and approved by the Court, with notice of the date of the hearing scheduled by the Court to consider the fairness, adequacy and reasonableness of the proposed Settlement (the "Settlement Hearing"). The Notice shall also include the general terms of the Settlement set forth in this Agreement, the general terms of the proposed Distribution Plan, the general terms of the Fee and Expense Award (as defined in ¶ 16, below), and a description of Class Members' rights to object to the Settlement and/or appear at the Settlement Hearing. The cost of prior and future class notice and settlement administration will be included in the Settlement Amount.

5. **Publication.** Class Counsel shall publish settlement notice through print and other means as proposed in the Notice Plan and approved by the Court, and in a manner consistent with the earlier class notice and media plan therein. Defendants shall not have any responsibility for approving or providing notice of this Settlement to Class Members, other than payment of reasonable notice costs as set forth herein from the Settlement Amount.

6. **Motion for Final Approval and Entry of Final Judgment.** Thirty (30) days prior to the Objection Deadline set by the Court in the Preliminary Approval Order, Class Counsel shall submit a motion for final approval of the Settlement by the Court, after notice to

Class Members of the Settlement Hearing, pursuant to ¶¶s 4 and 5 above, and the Settling Parties shall jointly seek entry of the Final Approval Order and Judgment:

(a) fully and finally approving the Settlement contemplated by this Agreement and its terms as being fair, reasonable and adequate within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation pursuant to its terms and conditions;

(b) finding that the Notice given to Class Members as contemplated in ¶¶s 4 and 5, above, constitutes the best notice practicable under the circumstances and complies in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process;

(c) directing that the Action be dismissed with prejudice as to Defendants and, except as provided for herein, without costs;

(d) discharging and releasing the Released Claims as to the Releasees;

(e) permanently barring and enjoining the institution and prosecution, by Class Plaintiffs and any Class Member, of any other action against the Releasees in any court asserting any of the Released Claims;

(f) reserving continuing and exclusive jurisdiction over the Settlement, including all future proceedings concerning the administration and enforcement of this Agreement;

(g) determining pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay and directing entry of a final judgment as to Defendants; and

(h) containing such other and further provisions consistent with the terms of this Agreement to which the Settling Parties expressly consent in writing.

Sufficiently before the Settlement Hearing, Class Counsel also will request that the Court approve the Fee and Expense Award (as defined in ¶ 16, below). Class Counsel request that the Court approve the proposed Distribution Plan contained herein.

7. The Settling Parties agree to collaborate in their presentations at both the preliminary approval hearing and the Settlement Hearing, because the Settling Parties believe that this Settlement is for the benefit of the Class and the Defendants.

C. Settlement Fund

8. **Payments made by Defendants.** The Settlement Amount is $250,000,000 U.S. dollars, and is inclusive of Notice and Administrative Costs, Service Awards, and any reasonable fees and expenses of Class Counsel (including prior notice to the Class). Within ten (10) business days of the Court entering the Preliminary Approval Order, State Farm shall deposit the Settlement Amount into a segregated escrow account, or its functional equivalent, at a bank located in the State of Illinois and agreed to by the Parties. Those monies, less costs of Notice advanced to the Class, shall remain in this segregated account until the Effective Date. During this period the account shall accrue interest. All accrued interest on the account shall belong to the Class upon the Effective Date of the Settlement; if the Settlement does not become effective, then the monies in the account shall be returned to State Farm, plus any interest accrued during the period in which the account held the

Settlement Amount. If any dispute arises regarding this account or its funding, the parties shall submit that dispute to the Court appointed mediator for resolution. Defendants Edward Murnane and William G. Shepherd will not be responsible for payment of any money pursuant to this Settlement. After the payments described herein are paid out of the Net Settlement Fund, no portion of the Net Settlement Fund shall revert to Defendant State Farm. Instead, if there is any money remaining in the Net Settlement Fund after payments to Class Members, and if Class Counsel determine that it is economically infeasible and/or otherwise impracticable to make an additional payment to Class Members, then Class Counsel shall apply to the Court, with notice to Defendants, for an equitable disposition of the remaining proceeds on behalf of the Class. Plaintiffs shall have no obligation to reimburse State Farm for any monies advanced in connection with the Notice Plan and Claims Administration if the Settlement does not become effective.

9. **Disbursements Prior to Effective Date.** Upon preliminary approval of the Settlement, Class Counsel shall establish and control a Notice and Claims Administration account. Costs of the Notice Plan and Claims Administration shall be paid from that account as incurred and invoiced by the Claims Administrator and Notice Provider. State Farm will advance payment to the Notice and Claims Administration account out of the Settlement Amount to pay for the costs of the Notice Plan and Claims Administration. Aggregate advances from State Farm to Notice and Claims Administration account to pay for the Notice Plan and Claims Administration shall not exceed $4.5 million.

10. **Releases.** Upon the Effective Date, the Releasors, and any other Person claiming against the Gross or Net Settlement Fund (now or in the future) through or on behalf of any Releasor, shall be deemed to have, and by operation of the Judgment shall have fully,

finally, and forever released, relinquished, and discharged all Released Claims against any and all of the Releasees and shall have covenanted not to sue any Releasee with respect to any such Released Claim, and shall be permanently barred and enjoined from instituting, commencing, or prosecuting any such Released Claim against the Releasees, and the Releasees shall be given full *res judicata* effect. Each Releasor shall be deemed to have released all Released Claims against the Releasees regardless of whether any such Releasor ever seeks or obtains by any means, any distribution from the Gross or Net Settlement Fund. Class Plaintiffs and Defendants acknowledge, and the Settlement Class members shall be deemed by operation of the Final Approval Order to have acknowledged, that the foregoing waiver and release was separately bargained for and a key element of the settlement of which this Release is a part.

11. **Unknown Claims/California Civil Code Section 1542.** The release set forth in ¶ 10, above, constitutes a waiver of Section 1542 of the California Civil Code (to the extent it applies to the Action), which provides:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The release set forth in ¶ 10, above, also constitutes a waiver of any similar provision, statute, regulation, rule or principle of law or equity of any other state or applicable jurisdiction. The Releasors acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of this Agreement, but that it is their intention to release fully, finally and forever all of the claims released in ¶ 10, above, and in furtherance of such intention, the release shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

D. Administration and Distribution of Gross Settlement Fund

12. **Distribution of Gross Settlement Fund.** The Claims Administrator, subject to such supervision and direction of the Court and/or Class Counsel as may be necessary or as circumstances may require, shall administer the claims submitted by Class Members and shall oversee distribution of the Net Settlement Fund to Authorized Claimants pursuant to the Distribution Plan.

Subject to the terms of this Agreement and any order(s) of the Court, the Gross Settlement Fund shall be applied as follows:

(a) to pay all Notice and Administrative Costs as defined above;

(b) to pay Service Awards to three Class Plaintiffs; and

(c) to pay the Fee and Expense Award.

13. **Distribution of Net Settlement Fund.** Upon the Effective Date and thereafter, and in accordance with the terms of this Agreement, the Distribution Plan, or such further order(s) of the Court as may be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to Authorized Claimants. Except as otherwise ordered by the Court, each Class Member who is not eligible for an automatic distribution and fails to submit a claim form within such period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments pursuant to this Agreement and the Settlement set forth herein, but shall in all other respects be subject to and bound by the provisions of this Agreement, the releases contained herein, and the Judgment;

(a) The Net Settlement Fund shall be distributed to Authorized Claimants substantially in accordance with the Distribution Plan. No funds from the Net Settlement Fund shall be distributed to Authorized Claimants until the Effective Date; and

(b) All Class Members shall be subject to and bound by the provisions of this Agreement, the releases contained herein, and the Judgment with respect to all Released Claims, regardless of whether such Class Members seek or obtain by any means any distribution from the Net Settlement Fund.

14. **No Liability for Distribution of Settlement Funds.** Neither the Releasees nor their counsel shall have any responsibility for, interest in, or liability whatsoever with respect to the investment or distribution of the Gross Settlement Fund, the Distribution Plan, the determination, administration, or calculation of claims, the distribution of the Net Settlement Fund, or any losses incurred in connection with any such matters. Effective immediately upon the Execution Date, the Releasors hereby fully, finally, and forever release, relinquish, and discharge the Releasees and their counsel from any and all such liability pursuant to this Paragraph. No Person shall have any claim against Class Counsel or the Claims Administrator based on the distributions made substantially in accordance with the Agreement and the Settlement contained herein, the Distribution Plan, or further orders of the Court.

15. **Balance Remaining in Net Settlement Fund.** If there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), and if it is economically infeasible and/or otherwise impracticable to make a further distribution to the Class, and if, after Class Counsel has applied to the Court for an equitable disposition of the remaining proceeds, there nonetheless remains monies in the Net Settlement Fund from checks that remain uncashed for 180 days or more, the final uncashed amounts will be deemed abandoned and available to the Claims Administrator to distribute to the states of residence of those Class Members who did not cash their final checks under an early custodial escheatment procedure.

E. Attorneys' Fees and Reimbursement of Expenses

16. **Payment of Fees and Expenses.** Class Counsel shall file their application for a Fee and Expense Award, and provide notice to the Class thereof, in accord with Seventh Circuit practice. Defendants shall leave the amount of any award to the discretion of the Court. The procedures for, and the allowance or disallowance by the Court of, the Fee and Expense Award are not part of the Settlement set forth in this Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this Agreement. Any order or proceeding relating to the Fee and Expense Award, or any other order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the Judgment and the Settlement of the Action as set forth herein. No order of the Court or modification or reversal on appeal of any order of the Court concerning any Fee and Expense Award or Distribution Plan contained in this Agreement shall constitute grounds for termination of this Agreement.

17. **No Liability for Fees and Expenses of Class Counsel.** The Releasees shall have no responsibility for, and no liability whatsoever with respect to, any payment(s) to Class Counsel pursuant to ¶ 16, above, and/or to any other Person who may assert some claim thereto, or any Fee and Expense Award that the Court may make in the Action.

F. Conditions of Settlement, Effect of Disapproval or Termination

18. **Effective Date.** The Effective Date of this Agreement shall be conditioned on the occurrence of the following events:

(a) the Court has finally approved the Settlement as described herein, following notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure, and has entered

the Judgment, if no such appeal is filed and the Judgment has become Final; or

(b) if an appeal of the Final Order and Judgment is filed, the date upon which all appellate courts with jurisdiction (including the United States Supreme Court by petition for certiorari) affirm such Final Order and Judgment, or deny any such appeal or petition for certiorari, such that no future appeal is possible.

If, for any reason, the Effective Date does not occur, all claims and defenses will revert to their status as of the day before preliminary settlement approval and Defendant State Farm will not be required to pay the remaining Settlement Amount.

19. **Occurrence of Effective Date**. Upon the occurrence of all of the events referenced in ¶ 18, above, State Farm shall, within five business days of the Effective Date, transfer the remaining Settlement Amount, plus all accrued interest, from the segregated account to an account to be established by Class Counsel (Robert A. Clifford or his designee) for the purpose of administering the Settlement and also paying any award of attorneys' fees and costs approved by the Court, as well as the Service Awards to Class Representatives. Upon the Effective Date, any and all remaining interest or right of Defendants in the Settlement Amount, Settlement Fund, Gross Settlement Fund, or Net Settlement Fund, if any, shall be absolutely and forever extinguished. Upon the Effective Date, the Claims Administrator, at the direction of Class Counsel, shall have authority to pay Authorized Claimants from the Net Settlement Fund.

20. **Failure of Effective Date to Occur**. If all of the conditions specified in ¶ 18 above, are not satisfied, then this Agreement shall be terminated, subject to and in

accordance with ¶ 22, below, unless the Settling Parties mutually agree in writing to continue with it for a specified period of time.

21. **Failure to Enter Proposed Preliminary Approval Order, Final Approval Order or Judgment**. If the Court does not enter the Preliminary Approval Order, the Final Approval Order, or the Judgment, or if this Court enters the Final Approval Order and the Judgment and appellate review is sought and, on such review, the Final Approval Order or the Judgment is finally modified or reversed, then this Agreement and the Settlement incorporated therein shall be terminated, unless all parties who are adversely affected thereby, in their sole discretion within thirty (30) days from the date of the mailing of such ruling to such parties, provide written notice to all other parties hereto of their intent to proceed with the Settlement under the terms of the Preliminary Approval Order, the Final Approval Order or the Judgment as modified by the Court or on appeal. Such notice may be provided on behalf of Class Plaintiffs and the Class by Class Counsel. No Settling Party shall have any obligation whatsoever to proceed under any terms other than substantially in the form provided and agreed to herein; provided, however, that no order of the Court concerning any Fee and Expense Award or Distribution Plan, or any modification or reversal on appeal of such order, shall constitute grounds for termination of this Agreement by any Settling Party. Without limiting the foregoing, Defendants shall have, in their sole and absolute discretion, the option to terminate the Settlement in its entirety in the event that the Judgment, upon becoming Final, does not provide for the dismissal with prejudice of the Action as to Defendants and full discharge of the Released Claims.

22. **Termination**. Unless otherwise ordered by the Court, in the event that the Effective Date does not occur or this Agreement should terminate, or be cancelled, or

otherwise fail to become effective for any reason, including, without limitation, in the event that the Settlement as described herein is not finally approved by the Court or the Judgment is reversed or modified following any appeal taken therefrom, then:

(a) Defendant State Farm will not be required to pay any remaining portion of the Settlement Amount, except previously expended Notice and Administrative Costs;

(b) the Settling Parties shall be restored to their respective positions in the Action as of the Execution Date, with all of their respective legal claims and defenses, preserved as they existed on that date;

(c) the terms and provisions of this Agreement shall be null and void and shall have no further force or effect with respect to the Settling Parties, and neither the existence nor the terms of this Agreement (nor any negotiations preceding this Agreement nor any acts performed pursuant to, or in furtherance of, this Agreement) shall be used in the Action or in any other action or proceeding for any purpose (other than to enforce the terms remaining in effect); and

(d) any Judgment or order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

G. No Admission of Liability

23. **Final and Complete Resolution.** The Settling Parties intend the Settlement as described herein to be a final and complete resolution of all disputes between them with respect to the Action, and it shall not be deemed an admission by any Settling Party as to the merits of any claim or defense or any allegation made in the Action. The Defendants/Releasees, and each of them, have and continue to expressly deny any violation of

RICO or other statutes alleged to have been violated and expressly deny they committed any act the effect of which was to unjustly enrich the Defendants.

24. **Use of Agreement as Evidence.** Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, of any allegation made in the Action, or of any wrongdoing or liability of Releasees; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any liability, fault or omission of the Releasees in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement shall be admissible in any proceeding for any purpose, except to enforce the terms of the Settlement, and except that the Releasees may file this Agreement and/or the Judgment in any action for any purpose, including, but not limited to, in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. The limitations described in this paragraph apply whether or not the Court enters the Preliminary Approval Order, the Final Approval Order or the Judgment.

H. Miscellaneous Provisions

25. **Third Party Communications.** The Settling Parties and their counsel have agreed on a joint press release regarding the settlement that will be disseminated to the media. In the spirit of cooperation and good faith essential to the approval of the Settlement, finality, and implementation of this resolution, the Settling Parties and their counsel, employees and affiliates shall avoid any media releases or comments that disparage or misrepresent the

case, the parties, their counsel, the courts, or the Settlement. All counsel agree to represent the Settlement fully and accurately and consistently with their joint press release and statements, and all public court filings.

26. **Voluntary Settlement.** The Settling Parties agree that the Settlement Amount and the other terms of the Settlement as described herein were negotiated in good faith under the supervision and with the assistance of court-appointed mediators by the Settling Parties, and reflect a Settlement that was reached voluntarily after consultation with competent legal counsel.

27. **Consent to Jurisdiction**. Defendants and each Class Member hereby consent to this Court's jurisdiction over the Settlement to a) resolve any disputes or controversies regarding the enforcement of the Settlement and b) to have ongoing and exclusive jurisdiction over Defendants and the Class to enforce all the terms of the Settlement and to effectuate, implement, allocate and distribute the Settlement Amount.

28. **Resolution of Disputes; Retention of Exclusive Jurisdiction**. Any disputes between or among Defendants and any Class Member or Members (or their counsel) concerning matters contained in this Agreement shall, if they cannot be resolved by negotiation and agreement, be submitted to the Court. The Court shall retain exclusive jurisdiction over the implementation and enforcement of this Agreement.

29. **Binding Effect**. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto. Without limiting the generality of the foregoing, each and every covenant and agreement herein by Class Plaintiffs, and Class Counsel shall be binding upon all Class Members.

30. **Authorization to Enter Settlement Agreement.** The undersigned representatives of Defendants represent that they are fully authorized to enter into and to execute this Agreement on behalf of Defendants. Class Counsel, on behalf of the Class Plaintiffs, represent that they are, subject to Court approval, expressly authorized to take all action required or permitted to be taken by or on behalf of this Class pursuant to this Agreement to effectuate its terms and to enter into and execute this Agreement and any modifications or amendments to the Agreement on behalf of the Class that they deem appropriate.

31. **Notices.** All notices to counsel under this Agreement shall be in writing. Each such notice shall be given either by (i) e-mail; (ii) hand delivery; (iii) registered or certified mail, return receipt requested, postage pre-paid; (iv) FedEx or similar overnight courier; or (v) facsimile and first class mail, postage pre-paid, and, if directed to any Class Member, shall be addressed to Class Counsel at their addresses set forth on the signature page hereof, and if directed to Defendants, shall be addressed to its attorneys at the address set forth on the signature pages hereof or such other addresses as Class Counsel or Defendants may designate, from time to time, by giving notice to all parties hereto in the manner described in this paragraph.

32. **No Conflict Intended.** The headings used in this Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement.

33. **No Party Deemed to Be the Drafter.** None of the parties hereto shall be deemed to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

34. **Choice of Law**. This Agreement and the exhibit(s) hereto shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of Illinois, and the rights and obligations of the parties to this Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Illinois without giving effect to that State's choice of law principles.

35. **Amendment; Waiver**. This Agreement shall not be modified in any respect except by a writing executed by all the parties hereto, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Agreement.

36. **Execution in Counterparts**. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the parties to this Agreement shall exchange among themselves original signed counterparts and a complete set of executed counterparts shall be filed with the Court.

37. **Integrated Agreement**. This Agreement constitutes the entire agreement between the Settling Parties and no representations, warranties or inducements have been made to any party concerning this Agreement other than the representations, warranties and covenants contained and memorialized herein.

38. **Reservation of Rights**. This Agreement does not settle or compromise any claims by Class Plaintiffs or any Class Member asserted in the Action against any Defendants or any potential Defendants other than the Releasees. All rights of any Class

Member against any other person or entity other than the Releasees are specifically reserved by Class Plaintiffs and the Class Members.

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have executed this Agreement as of the date set forth below.

Dated: 9/4/18

Robert A. Clifford (#6215773)
Clifford Law Offices
120 N. LaSalle Street, 31st Floor
Chicago, IL 60602

Class Counsel

Dated: 9/4/18

Robert (Barney) Shultz, Jr.
Vice President and Counsel
Designated Corporate Representative for
State Farm Mutual Automobile Insurance Company

Sheila L. Birnbaum
Dechert LLP
1095 Avenue of the Americas
New York, NY 10036
Tel: 212-612-3500

Counsel for Defendant State Farm Mutual Automobile Insurance Co.

Ronald S. Safer (#6186143)
Joseph A. Cancila, Jr. (#06193252)
Riley Safer Holmes & Cancila LLP
Three First National Plaza
70 W. Madison St., Ste. 2900
Chicago, IL 60602
Tel: 312-471-8700

Counsel for Defendant State Farm Mutual Automobile Insurance Co

Russell K. Scott (#02533642)
Greensfelder, Hemker & Gale P.C.
12 Wolf Creek Street, Suite 100
Belleville, IL 62226
Tel: 618-257-7308

Counsel for Defendant William G. Shepherd

Paul E. Veith #6204712
Sidley Austin, LLP
One South Dearborn St.
Chicago, IL 60603
Tel: 312-853-7000

Counsel for Defendant Edward Murnane

Exhibit A
SECOND AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

MARK HALE, TODD SHADLE, and LAURIE LOGER, on behalf of themselves and all others similarly situated, Plaintiffs, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, ED MURNANE and WILLIAM G. SHEPHERD, Defendants.	No. 3:12-cv-00600-DRH-SCW CJRA Track: D Trial Date: January 2016

SECOND AMENDED CLASS ACTION COMPLAINT

COME the Plaintiffs, Mark Hale, Todd Shadle, and Laurie Loger ("Plaintiffs"), on behalf of themselves and all others similarly situated, by and through the undersigned attorneys, and bring this Second Amended Class Action Complaint against Defendants State Farm Mutual Automobile Insurance Company, Ed Murnane and William G. Shepherd. Based upon personal knowledge with respect to their own acts, and as to all other matters based upon the investigation of counsel, for their Complaint, Plaintiffs state as follows:

I. INTRODUCTION AND NATURE OF ACTION

1. From 2003 to the present, State Farm, Murnane and Shepherd (collectively, "Defendants") created and conducted the RICO enterprise described below to enable State Farm to evade payment of a $1.05 billion judgment affirmed in favor of approximately 4.7 million State Farm policyholders by the Illinois Appellate Court.

2. Plaintiffs bring this class action for damages against Defendants for violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961 et seq., in particular, §§ 1962(c), (d); and 1964 for perpetrating a scheme through an enterprise specifically designed to defraud Plaintiffs and Class out of a $1.05 billion judgment.

3. Plaintiffs were each named plaintiffs, class representatives and class members in *Avery v. State Farm Mutual Automobile Insurance Company* ("*Avery Action*"), a class action litigated in the Illinois state court system. The *Avery Action* was certified as a class action, tried to jury verdict on a breach of contract claim, and tried to the Court on a claim under the Illinois Consumer Fraud Act ("ICFA"), resulting in a judgment of $1.18 billion.

4. The Illinois Appellate Court upheld a $1.05 billion judgment, sustaining the compensatory and punitive damages, and disallowing disgorgement damages as duplicative. *See Avery v. State Farm Mut. Auto. Ins. Co.*, 321 Ill. App. 3d 269, 275, 292 (Ill. App. Ct. 5th Dist. 2001). (A true copy of the *Avery* Appellate Court decision is attached hereto as Exhibit "A").

5. On October 2, 2002, the Illinois Supreme Court accepted State Farm's appeal. The appeal was fully-briefed, argued and submitted as of May 2003, yet the matter remained under submission without a decision until August 18, 2005.

6. From the fall of 2003 until November 2004, Trial Judge Lloyd Karmeier ("Karmeier") and Appellate Judge Gordon Maag waged a judicial campaign for a vacant seat on the Illinois Supreme Court, ultimately resulting in Karmeier's election. In January 2005, having received reliable information that State Farm had exerted financial and political influence to achieve Karmeier's election, the *Avery* plaintiffs moved to disqualify him from participating in the appeal of the *Avery Action*.

7. On or about January 31, 2005, State Farm filed its response to the disqualification motion, grossly misrepresenting the magnitude of State Farm's financial support (and the degree of participation by its executives, surrogates, lawyers and employees) of Karmeier's campaign.

8. Plaintiffs' motion was denied, and on August 18, 2005, with now-Justice Karmeier participating in the Court's deliberations and casting his vote in State Farm's favor, the Illinois Supreme Court issued a decision overturning the $1.05 billion judgment. *See Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill.2d 100, 835 N.E.2d 801 (Ill. 2005). (A true copy of this decision is attached hereto as Exhibit "B").

9. In December 2010, spurred in part by a recent United States Supreme Court decision vacating a West Virginia Supreme Court ruling in a case which featured similar facts, *i.e.*, involving a party's political and financial influence to elect a justice whose vote it sought for its appeal, Plaintiffs' counsel launched an investigation into State Farm's covert involvement in the Karmeier campaign. The investigation, led by a retired FBI Special Agent, uncovered evidence that to gain reversal of the $1.05 billion judgment in the *Avery Action*, State Farm - acting through Murnane, Shepherd and the Illinois Civil Justice League ("ICJL") - recruited Karmeier, directed his campaign, had developed a vast network of contributors and funneled as much as $4 million to the campaign. Then, after achieving Karmeier's election, State Farm deliberately concealed all of this from the Illinois Supreme Court while its appeal was pending.

10. On September 9, 2011, based on information uncovered in the Reece investigation, the *Avery* plaintiffs petitioned the Illinois Supreme Court to vacate its decision overturning the $1.05 billion judgment. Responding on September 19, 2011, State Farm again deliberately misrepresented its role in directing and financing Karmeier's campaign. On November 17, 2011, the Illinois Supreme Court denied Plaintiffs' petition, without comment.

11. Reece's investigation had revealed, among other things, that, having been ordered on April 5, 2001 by the Appellate Court to pay a $1.05 billion judgment to the *Avery* class, and having succeeded in persuading the Illinois Supreme Court to accept its appeal, State Farm had next developed an elaborate plan to obtain reversal of the judgment. The initial component of the plan was to recruit a candidate for the open Fifth District seat on the Illinois Supreme Court for the November 2004 election who would support State Farm once its appeal came before the Court for disposition. Of course, there was no guarantee for State Farm that the appeal would not be decided *before* the November 2004 election, but the risk – *a $2 to $4 million investment for a possible $1.05 billion return* – was sufficiently minimal to make it a worthwhile gamble.

12. Defendants' scheme was developed and implemented in two distinct but related phases. In the first phase, State Farm sought to recruit, finance, direct, and elect a candidate to the Illinois Supreme Court who, once elected, would vote to overturn the $1.05 billion judgment. As Plaintiffs describe below, Defendants ultimately succeeded in achieving this objective. Nine months after his election, Karmeier voted in favor of State Farm to overturn the $1.05 billion judgment of the Appellate Court.

13. Once the initial phase of the scheme had succeeded, the second phase featured two spirits of affirmative fraudulent activity, each furthered by use of the U.S. mails: the 2005 and 2011 written misrepresentations to the Illinois Supreme Court. Specifically, this phase consisted of: (a) a continuing concealment of these facts to permit Karmeier to participate in the deliberations and cast his vote to overturn the judgment in 2005 (this was accomplished, in part, by State Farm's January 31, 2005 filing), and (b) withholding information from the Illinois Supreme Court that would have conceivably led it to vacate the decision in 2011 (this was accomplished, in part, by State Farm's September 19, 2011 filing). Again, both filings were

made through the U.S. mail, having been mailed to the Clerk of the Illinois Supreme Court and to Plaintiffs' counsel in several states, including Illinois, Louisiana, Mississippi and Tennessee.

14. From its inception, Plaintiffs and other Class members in the *Avery Action* were the targets of and ultimate victims of the racketeering acts and the RICO enterprise - stripped of hundreds or even thousands of dollars each, seized of a class-wide judgment totaling $1.05 billion which compensated them for their losses - as a proximate result of Defendants' actions and the actions of the Enterprise participants.

15. In both the 2005 and 2011 filings, State Farm continued to hide and conceal its role in Karmeier's campaign, and deliberately misled the Court by omitting and concealing material facts regarding State Farm's role in Karmeier's campaign, which it directed through Shepherd, Murnane, the ICJL and Citizens for Karmeier, including: (a) recruiting Karmeier to be a candidate; (b) selecting Murnane to direct Karmeier's campaign; (c) creating Karmeier's judicial campaign contribution network; and (d) funding Karmeier's campaign.

16. To carry out and conceal this elaborate and covert scheme, Defendants created and conducted a continuing pattern and practice of activity through an association-in-fact Enterprise consisting of, among others, the following: Shepherd; Murnane; Murnane's non-profit organization, the ICJL; the Shepherd-led ICJL Executive Committee ("Executive Committee"); Citizens for Karmeier (the campaign committee of Karmeier); JUSTPAC (the ICJL's political action committee); and the United States Chamber of Commerce ("US Chamber").

17. The ICJL and Executive Committee, through Murnane and Shepherd, respectively, aided by Citizens for Karmeier, functioned collectively as State Farm's vehicle to: (a) recruit Karmeier as a candidate, (b) direct Karmeier's campaign, (c) lend credibility to that campaign via endorsement, and (d) assure that Karmeier's campaign was well-funded.

Campaign finance disclosures show that State Farm secretly funneled to Karmeier's campaign as much as $4 million (over 80%) of Karmeier's total $4.8 million campaign contributions. Led by Murnane and Shepherd, the ICJL and its Executive Committee were the "glue" that held together the many pieces of State Farm's judicial campaign contribution network.

18. The utilization of the U.S. mail throughout every stage of Defendants' scheme - to solicit, receive and direct contributions, to conduct conferences and disseminate communications and campaign strategies, and to conceal the extent of State Farm's role in Karmeier's campaign - was essential to the conduct of this Enterprise.

19. Various Enterprise participants and co-conspirators also used electronic mail to carry out the initial phase of Defendants' scheme throughout 2003-2004 to communicate details regarding the direction, management and financing of the campaign to fellow Enterprise participants.

20. As the following paragraphs illustrate, the motivation for this seven-year-long cover-up is both plausible and demonstrable. State Farm's misrepresentations and deception directed toward the Illinois Supreme Court by its mailed court-filings, and the continuing use of the mails by Defendants and Enterprise participants to carry out the scheme (to evade payment of the $1.05 billion judgment) constitutes a pattern and practice of knowing and deceptive conduct employed to effectuate and then to conceal State Farm's extraordinary support of Karmeier.

II. PARTIES

A. Plaintiffs

21. Mark Hale a citizen of the State of New York. Todd Shadle is a citizen of the State of Texas. Laurie Loger is a citizen of the State of Illinois. Plaintiffs are natural persons who were auto policyholders of State Farm, and named Plaintiffs and members of the Class of policyholders certified in the *Avery Action*.

B. Defendants

22. State Farm Mutual Automobile Insurance Company is a mutual non-stock company, organized and existing under the laws of the State of Illinois, and having its principal office at One State Farm Plaza, Bloomington, Illinois 61710.

23. William G. Shepherd is, upon information and belief, a citizen and resident of the State of Illinois, with his principal office at One State Farm Plaza, Corporate Law A3, Bloomington, Illinois 61710-0001. At all times relevant to this action, Shepherd was employed by State Farm. On information and belief, Shepherd violated 18 U.S.C. §§ 1962(c) and (d) by actively participating in State Farm's scheme to recruit, finance and elect Karmeier to the Illinois Supreme Court and fraudulently conceal State Farm's true role in Karmeier's campaign from the Illinois Supreme Court, which had the intended result of defrauding Plaintiffs and the Class and causing damage to their business and property.

24. Ed Murnane is, upon information and belief, a citizen and resident of the State of Illinois, residing at 436 S. Belmont Avenue, Arlington Heights, Illinois 60005 in Cook County, and having his principal office at 330 N. Wabash Street, Suite 2800, Chicago, Illinois 60611. At all times relevant to this action, Murnane was President of the Illinois Civil Justice League. On information and belief, Murnane violated 18 U.S.C. §§ 1962(c) and (d) by actively participating in the association-in-fact conducted by State Farm to recruit, finance and elect Karmeier to the Illinois Supreme Court and fraudulently conceal State Farm's true role in Karmeier's campaign from that Court, which had the intended result of defrauding Plaintiffs and the Class and causing damage to their business and property.

III. UNNAMED CO-CONSPIRATORS

25. Although not named as a party herein, the ICJL is a 501(c)(6) not-for-profit corporation, incorporated under the laws of the State of Illinois, with its principal place of

business in Arlington Heights, Illinois. On information and belief, the ICJL violated 18 U.S.C. §§ 1962(c) and (d) by actively participating in State Farm's scheme to recruit, finance and elect Karmeier and fraudulently conceal State Farm's role in Karmeier's campaign from the Illinois Supreme Court, which had the intended result of defrauding Plaintiffs and the Class and causing them damage to their business and property.

26. Although not named as a party herein, the US Chamber is a non-profit corporation incorporated under the laws of the District of Columbia with its principal place of business located at 1615 H High Street, NW, Washington, D.C. 20062-2000. For purposes of Plaintiffs' claims under 18 U.S.C. § 1962(c) and (d), the US Chamber participated in the enterprise through which Defendants conducted their racketeering activity.

27. Various other persons, firms, organizations, corporations and business entities, some unknown and others known, have participated as co-conspirators in the violations and conduct alleged herein and performed acts in furtherance of the conspiracy described herein.

IV. THE RICO ENTERPRISE

28. Defendants and their above-named co-conspirators conducted or actively participated in the conduct of an enterprise through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c). Alternatively, Defendants, co-conspirators and Enterprise participants identified herein, through an agreement to commit two or more predicate acts, conspired to conduct or participate in the conduct of an enterprise through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(d). The actions of Defendants, co-conspirators and Enterprise participants were in furtherance of the Enterprise and in violation of 18 U.S.C. § 1962(d).

29. The Enterprise is an association-in-fact of State Farm executives and employees, including Shepherd, as well as Murnane, Citizens for Karmeier, political operatives, a political action committee, political organizations, an Executive Committee of one such organization

which wields significant political influence in Illinois, a political campaign committee, insurance and business lobbyists and the US Chamber. The Enterprise is distinct from, albeit conducted by, State Farm, through Shepherd, Murnane and the ICJL, and has an ongoing existence. Specifically, participants in the Enterprise include:

- William G. Shepherd, a State Farm corporate lawyer and lobbyist. Shepherd helped found the ICJL, hired Ed Murnane as the ICJL's President, and is a member of the ICJL's "Executive Committee."

- Ed Murnane is the President of the ICJL and treasurer of JUSTPAC. He was hired by Shepherd and co-founding ICJL-member and Executive Committee member, Karen Melchert. Murnane recruited Karmeier as a candidate and directed all phases of the Karmeier campaign.

- The Illinois Civil Justice League describes itself as "a coalition of Illinois citizens, small and large businesses, associations, professional societies, not-for-profit organizations and local governments that have joined together to work for fairness in the Illinois civil justice system." Through Murnane and Shepherd, the ICJL played an essential and vital role in Karmeier's campaign as the conduit between State Farm and Karmeier.

- The ICJL Executive Committee vetted Karmeier as a candidate, then endorsed Karmeier's candidacy, and was the ICJL's governing committee during the 2004 campaign.

- JUSTPAC is the ICJL's PAC. It contributed $1,191,453 directly to Judge Karmeier's campaign. 90% of all contributions made to JUSTPAC in 2004 went to Karmeier's campaign. Dwight Kay, Karmeier's finance chair, equated a contribution to JUSTPAC with a contribution to Citizens for Karmeier.

- Citizens for Karmeier is the official political committee for Karmeier and the recipient of most of the cash campaign contributions.

- US Chamber is a non-profit corporation incorporated under the laws of the District of Columbia, targeted the Karmeier-Maag race in 2004 and contributed millions of dollars to elect Karmeier.

- Ed Rust is State Farm's CEO and played an important role in the US Chamber committee that targeted the Karmeier-Maag race in 2004 and steered millions of dollars to Illinois to help elect Karmeier.

- Al Adomite was hired by Murnane as consultant to Karmeier's campaign, paid by the campaign. Currently, he is Vice President and Director of Government Relations. Adomite confirmed Murnane's control over

Karmeier's campaign and that Murnane had provided a substantial portion of the funding for the campaign – $1.19 million – through JUSTPAC.

- Karen Melchert is Director of State Government Relations for CNA Insurance Companies ("CNA"). Along with Shepherd, she is a founding member of the ICJL Executive Committee, and partly responsible for hiring Murnane as ICJL President.

- Todd Maisch is an Executive Committee member of the ICJL and chairman of JUSTPAC.

- Kim Maisch is Illinois Director of the National Federation of Independent Businesses and served on the ICJL Executive Committee for many years, including during the 2004 election cycle.

- Dwight Kay was Karmeier's finance chairman in 2004.

- David Leuchtefeld was "chairman" of "Citizens for Karmeier" whose discarded emails evidence the inner-workings of the Karmeier campaign.

- Lloyd Karmeier was an Illinois trial judge recruited in 2003 by, among others, Murnane and Shepherd, to be the Republican candidate for the vacant seat on the Illinois Supreme Court in the 2004 election.

V. JURISDICTION

30. The subject matter jurisdiction of this Court is conferred and invoked pursuant to 28 § 1331, and the Racketeer Influenced and Corrupt Organizations Act ("RICO") 18 § 1961 et seq. (specifically 18 U.S.C. § 1964(c)).

31. This Court also has jurisdiction over this action as a class action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), providing for jurisdiction where, as here, "any member of a class of plaintiffs is a citizen of a State different from any defendant" and the aggregated amount in controversy exceeds five million dollars ($5,000,000), exclusive of interests and costs. See 28 U.S.C. §§ 1332(d)(2) and (6).

VI. VENUE

32. Venue is proper in this judicial district under 18 U.S.C. § 1965(a) and 28 U.S.C. § 1391(a), (b) and (c) because a substantial part of the events and omissions giving rise to this

action occurred in the Southern District of Illinois and because Defendants transacted business in this district.

33. The Enterprise was formed in the Southern District of Illinois and a substantial part of the conduct surrounding Defendants' scheme occurred in the Southern District of Illinois.

34. The Southern District of Illinois is the appropriate venue for this action because the *Avery Action*, brought in the Circuit Court for Williamson County, Illinois (situated within this district), was the genesis of the conduct described here. Also, the Fifth Appellate District of the State of Illinois, situated within the Southern District of Illinois, was the epicenter of the Citizens for Karmeier campaign. What's more, the foundation of the relationships between these Defendants, their co-conspirators and Enterprise participants was Karmeier's candidacy for the Fifth District seat on the Illinois Supreme Court. Finally, two acts of mail-fraud, separated by six years – the August 18, 2005 and the September 19, 2011 mailings by State Farm to the Illinois Supreme Court – were transacted in Edwardsville, Illinois, located in Madison County, also situated within the Southern District of Illinois. These circumstances are sufficient to demonstrate that a substantial part of the events or omissions giving rise to this action occurred in the Southern District of Illinois.

35. Venue is also proper in this district because Defendant State Farm is engaged in substantial business here and has minimum contacts with this district, such that it is subject to personal jurisdiction here.

36. Venue is proper in this district because the ends of justice require it.

VII. CLASS ACTION ALLEGATIONS

37. Under Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs bring this action on behalf of themselves and a Class defined as:

all persons who were members of the Certified Class in *Avery v. State Farm Mut. Auto. Ins. Co.*, No. 97-L-114 (First Jud. Cir. Williamson County, Ill.), more specifically described as:

> All persons in the United States, except those residing in Arkansas and Tennessee, who, in between July 28, 1987, and February 24, 1998, (1) were insured by a vehicle casualty insurance policy issued by Defendant State Farm and (2) made a claim for vehicle repairs pursuant to their policy and had non-factory authorized and/or non-OEM (Original Equipment Manufacturer) "crash parts" installed on or specified for their vehicles or else received monetary compensation determined in relation to the cost of such parts.
>
> Excluded from the class are employees of Defendant State Farm, its officers, its directors, its subsidiaries, and its affiliates. In addition, the following persons are excluded from the class: (1) All persons who resided or garaged their vehicles in Illinois and whose Illinois insurance policies were issued/executed prior to April 16, 1994, and (2) all persons who resided in California and whose policies were issued/executed prior to September 26, 1996.

38. The Class consists of approximately 4.7 million State Farm policyholders, geographically dispersed throughout the United States, making the Class so numerous that individual joinder is impractical under Rule 23(a)(1). The Class is ascertainable, being identical to the class previously defined, certified and notified in the *Avery Action*.

39. Numerous questions of law and fact exist that are common to Plaintiffs and the Class. The answers to these common questions are significant and will substantially advance the adjudication and resolution of this case, and predominate over any questions that may affect only individual Class members, thereby satisfying Rule 23(a)(2) and 23(b)(3). These common question/common answer issues include:

a. Whether State Farm misrepresented and concealed material information in its mailings to and filings with the Illinois Supreme Court concerning State Farm's support of Karmeier's campaign in 2005 and 2011;

b. Whether State Farm engaged in a fraudulent and/or deceptive scheme to deceive the Illinois Supreme Court;

c. Whether Defendants engaged in a pattern and practice of materially false information, misrepresentations, omissions and concealment regarding State Farm's support of Karmeier's campaign;

d. Whether this conduct continues to the present;

e. Whether Defendants' conduct injured Class members in their business or property within the meaning of the RICO statute;

f. Whether State Farm, Murnane, and Shepherd violated and conspired with others to violate RICO by the conduct of an association-in-fact Enterprise, through a pattern of racketeering activity involving mail fraud;

g. Whether Class members are entitled to compensatory damages and, if so, the nature and extent of such damages; and

h. Whether Class members are entitled to treble damages under Civil RICO.

40. The claims of the Plaintiffs are typical of the claims of the Class, as required by Rule 23(a)(3), in that Plaintiffs are persons or entities who, like all Class members, were members of the certified class in the *Avery Action* and "were insured by a vehicle casualty insurance policy issued by State Farm" and "made a claim for vehicle repairs pursuant to their policy and had non-factory authorized and/or non-OEM (Original Equipment Manufacturer) 'crash parts' installed on their vehicles or else received monetary compensation determined in relation to the cost of such parts." Plaintiffs, like all Class members, have been damaged by Defendants' misconduct, in that, among other things, they have lost the value and benefit of the $1.05 billion judgment entered against State Farm by the Illinois Appellate Court on April 5, 2001 as a direct result of Defendants' continuing pattern of fraudulent conduct.

41. The factual and legal bases of Defendants' misconduct are common to all members of the Class and represent a common thread of fraud, deceit, and other misconduct resulting in injury to Plaintiffs and Class members.

42. Plaintiffs will fairly and adequately represent and protect the interests of Class members, as required by Rule 23(a)(4). Plaintiffs have retained counsel with substantial

experience in the prosecution of nationwide class actions. Plaintiffs and their counsel are committed to the vigorous prosecution of this action on behalf of the Class and have the financial resources to do so. Neither Plaintiffs nor their counsel have interests adverse to the Class.

43. A class action is superior to other available methods for the fair and efficient adjudication of this controversy under Rule 23(b)(3). Absent a class action, most Class members would certainly find the cost of litigating their claims to be prohibitive, and would thus have no effective access to the courts or remedy at law. State Farm's wrongdoing in the underlying *Avery Action* (breach of contract and consumer fraud) was proved at a month-long trial through evidence, documentary proof, live testimony, and multiple experts' testimony. The dedication of time, effort, and money to the case was considerable, beyond the resources of any single class member. The *Avery Action* was economically feasible only as a class action. Typical damage to an individual Class member in the *Avery Action* ranged from several hundred to less than $2500, an amount that unfairly damaged each Class member, and enriched State Farm, but that would not warrant the substantive costs of an individual action. The same is true with respect to the efforts and expertise that have gone into tracing State Farm's subsequent cause of fraudulent conduct and its pattern of RICO-violative activity, by which Plaintiffs allege Defendants defrauded a Court and deprived the Class of its property. The class treatment of common questions of law and fact is thus superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants, makes access to the court and redress on the merits possible, and promotes consistency and efficiency of adjudication.

44. Plaintiffs seek the certification of a nationwide Class under their civil RICO claims, asserted for violations of 18 U.S.C. §1962(c) and 1962(d) under 1964(c) in this Complaint. All questions of law and fact are common to the civil RICO counts and predominate

over individual questions. This case also presents common issues of fact and law that are each appropriate for issue-class certification under Rule 23 (c)(4) and the management of this action may be facilitated through the certification of additional subclasses under Rule 23(c)(5), if necessary and appropriate.

VIII. PROCEDURAL ALLEGATIONS

A. Trial and Appellate Court Proceedings in the *Avery Action*

45. The named Plaintiffs in this action were also named plaintiffs in *Avery v. State Farm Mut. Auto. Ins. Co.*, 321 Ill. App. 3d 269, 275 (Ill. App. Ct. 5th Dist. 2001), the largest class action judgment in Illinois history. Plaintiffs in the *Avery Action* filed their class action complaint in July 1997. At trial, a Williamson County jury found that State Farm had breached its contracts with 4.7 million policyholders in 48 states by specifying the use of inferior non-OEM parts. The Trial Court agreed and issued its Judgment on October 4, 1999, confirming a total award of $456,636,180 in breach of contract damages. The Trial Court also found that State Farm had willfully violated the Illinois Consumer Fraud Act ("ICFA") and awarded punitive damages in the sum of $600,000,000 to the ICFA Class. The Trial Court also awarded disgorgement damages of $130,000,000. *See Avery*, 321 Ill. App. 3d at 275.

46. Following an appeal by State Farm, on April 05, 2001, the Illinois Appellate Court affirmed a $1.05 billion judgment, but disallowed, as duplicative of the damage award, the award of disgorgement damages.

B. Proceedings in Illinois Supreme Court from October 2, 2002 to August 18, 2005

47. On October 2, 2002, the Illinois Supreme Court granted State Farm leave to appeal. In May 2003, the Court heard oral argument. From May 2003 until August 2005, the *Avery* appeal lingered - without explanation - before the Court without a decision.

48. During this period, Trial Judge Lloyd Karmeier waged a campaign to be elected to the Illinois Supreme Court against Appellate Court Judge Gordon Maag. In November 2004, Karmeier was elected to the Illinois Supreme Court.

49. On January 26, 2005, plaintiffs in the *Avery Action* filed a "Conditional Motion for Non-Participation" asking Karmeier to recuse himself because an investigation by counsel had uncovered that about $350,000 of the $4.8 million he spent to get elected came directly from State Farm employees, lawyers, and others involved with State Farm and its appeal.

50. State Farm responded on January 31, 2005 in a court-filing opposing the motion for recusal, materially understating its support of Karmeier's campaign. *See* State Farm's Opposition to Plaintiffs-Appellees' Conditional Motion for Non-Participation, at pp. 10-18 (attached hereto as Exhibit C). State Farm represented (falsely) that its support of Karmeier consisted of "quite modest contributions" and characterized as "incorrect and meritless" the claim that State Farm had funneled $350,000 to Karmeier. *See* State Farm's Opposition, at pp. 12-13. State Farm denied (falsely) "engineering contributions" to Karmeier's campaign "for the purpose of impacting the outcome of this case" (*see* State Farm's Opposition, at p. 11) and downplayed the charge that it was responsible for $350,000 in direct contributions to Karmeier's campaign, suggesting that plaintiffs' counsel had presented "no evidence whatsoever to back up" their claim that those contributions were made by State Farm "front groups." *See* State Farm's Opposition, at p. 11.

51. However, State Farm failed to inform the Court that its own employee, Defendant Shepherd, was a founding member of the ICJL Executive Committee that recruited and "vetted" Karmeier, and, through Murnane and the ICJL, that State Farm had organized, directed and funded the Karmeier campaign.

52. State Farm's brief was rife with misleading statements and omissions. Most notably, State Farm failed to disclose the prominent role played by Shepherd in forming the ICJL, as a member of the ICJL Executive Committee (which engineered Karmeier's candidacy, endorsed him, and insured a substantial flow of cash from State Farm executives, employees, and corporate and political partners), and as a central figure in Karmeier's campaign.

53. Second, State Farm falsely denied Murnane's involvement in Karmeier's campaign and declared "Mr. Murnane . . . was not Karmeier's campaign manager or campaign finance chairman and was not employed by Karmeier's campaign . . . ." *See* State Farm's Opposition, at pp. 15-16.

54. On March 16, 2005, with Karmeier taking no action on the motion to recuse, the Illinois Supreme Court denied plaintiffs' motion, ruling that the subject of recusal was up to Karmeier, and not subject to further review by the Illinois Supreme Court.

55. On May 20, 2005, the Illinois Supreme Court issued still a second order, which stated that, because Karmeier had declined to recuse himself, the recusal motion was "moot."

56. On August 18, 2005, Karmeier cast a vote to overturn the $1.05 billion judgment. This vote was decisive. Absent Karmeier's participation, only those portions of the Illinois Supreme Court's opinion which were joined by one of the two dissenting Justices would have had the votes required by law to overturn the judgment, and at least part of the judgment would have stood. However, Karmeier's participation in the deliberations of the Court tainted every part of the Court's opinion.

57. On September 8, 2005, plaintiffs in the *Avery Action* moved for a rehearing and again challenged Karmeier's participation. However, on September 26, 2005, their petition was denied, without comment, with Karmeier participating.

58. Plaintiffs ultimately sought review by the U.S. Supreme Court, based upon information then available to them. On March, 2006, that Court denied the petition for certiorari.

59. As time would tell, a significant amount of evidence that would have buttressed Plaintiffs' 2005 claims was concealed and suppressed until recently.

C. Plaintiffs' Counsel's 2010 Investigation Into State Farm's Involvement in Karmeier's 2004 Campaign

60. In December 2010, prompted by a recent U.S. Supreme Court decision addressing due process concerns in a similar case, *see Caperton v. A.T. Massey Coal Co.*, 129 S. Ct. 2252 (2009), Plaintiffs' counsel enlisted the services of retired FBI Special Agent Daniel L. Reece ("Reece") to investigate State Farm's involvement in Karmeier's campaign.

61. Information obtained in that investigation, combined with previously known information, revealed the extent to which individuals and entities aided State Farm in enabling the election of Karmeier and in concealing its actions from the Illinois Supreme Court.

1. State Farm and CNA formed the ICJL

62. According to CNA's Karen Melchert, State Farm, through Shepherd, and CNA, through Melchert, organized the ICJL in the early 1990's. Together, Shepherd and Melchert hired Murnane in 1993 as President of the ICJL.

2. Recruitment of Lloyd Karmeier as State Farm's Candidate for the Illinois Supreme Court

63. A July 2003 *Forbes Magazine* article quoted Murnane as saying the Illinois Supreme Court is 4-3 "anti-business" and that the ICJL would target the 2004 Fifth District race to change the composition of the Court. The article cites the *Avery Action* – which was already pending before the Illinois Supreme Court. (*See* Forbes article, Exhibit D hereto). A second article from 2004 stated that Murnane viewed the *Avery* verdict against State Farm as part of the problem with courts in the Fifth District.

64. While State Farm's appeal was pending, Murnane evaluated possible candidates for the open Supreme Court seat. Working at the direction of Shepherd and the Executive Committee, Murnane served as the principal recruiter of Karmeier. Murnane, Shepherd and other members of the Executive Committee placed the considerable support of the State Farm-backed ICJL and its political action committee, JUSTPAC, behind Karmeier.

3. Campaign Emails Reveal Murnane and the ICJL's Involvement in the Management, Direction and Financing of the Campaign

65. E-mails generated within Karmeier's campaign organization unmistakably show that Murnane directed Karmeier's fund-raising, his media relations and his speeches.

66. In or about January 2004, Doug Wojcieszak was working for a group of trial lawyers involved in an appeal pending before the Illinois Supreme Court (*Price v. Philip Morris*). His company was doing background research on Illinois Republican State Senator David Luechtefeld, Karmeier's campaign chairman. An investigator routinely checked Sen. Luechtefeld's discarded outdoor trash for any papers relevant to their investigation. Several discarded emails surfaced which provide insight into the Karmeier campaign.

67. The emails also show: (1) Murnane was – by any reasonable account – fully in-charge of Karmeier's campaign; (2) the ICJL Executive Committee played a dominant role in recruiting Karmeier, vetting him and supporting his campaign; and (3) a contribution to the ICJL's PAC - JUSTPAC - was viewed as a contribution to Karmeier's campaign.

68. In one email, Murnane told Karmeier, "You've passed all the tryouts we need."

69. Another email by Murnane refers to the Executive Committee's support of Karmeier's candidacy from "Day One," as well as an endorsement by the Executive Committee.

70. Yet another email reveals that the Executive Committee endorsed Karmeier. That State Farm had a prominent seat on the Executive Committee (Shepherd) during its appeal when

the Executive Committee recruited and endorsed Karmeier is a strong and direct link between State Farm and Karmeier, a link State Farm concealed from the Illinois Supreme Court in its January 31, 2005 filing.

71. An April 29, 2004 e-mail from Murnane to Dwight Kay, Karmeier's finance chairman, shows Murnane telling Kay that it is not a "good idea" to send out press releases about fund-raising events. Kay deferred to Murnane, who was acting as *de facto* head of the campaign.

72. A March 15, 2004 email from Murnane to campaign aide Steve Tomaszewski and Kay, with a copy to Karmeier and others, refers to a direct-mail piece, and credits JUSTPAC. This email demonstrates the support – here, financing a direct mail piece – given to Karmeier's campaign by JUSTPAC.

73. An email dated January 22, 2004 from Kay says that a contributor "committed $5,000 to the judge today" and would "either send it directly to the campaign or to JUSTPAC," confirming that a contribution to JUSTPAC was viewed as a contribution to Karmeier.

74. A January 20, 2004 email from Murnane to Karmeier, Kay and Tomaszewski refers to two contributors, including JUSTPAC, and tells Karmeier, "close your eyes, Judge," in response to an email from Karmeier in which he writes about getting lawyers to contribute by not disclosing their names. This email shows that Murnane provided information to Karmeier regarding contributors.

4. State Farm's Financing of Karmeier's Campaign

75. During the course of the Reece investigation, three Illinois tort reform-insiders – Karmeier's 2004 campaign consultant, Al Adomite, and Executive Committee members Karen Melchert and Kim Maisch – told Reece that State Farm's support of Karmeier was "significant" and "tremendous."

76. Citizens for Karmeier's official campaign disclosure reports identified contributions and expenditures. The contributions – direct and in-kind – now known to have originated from State Farm or its political partners, include, as described below:

- $350,000 in contributions originally described by *Avery's* counsel in their January 2005 recusal motion, see Appellees' Conditional Motion for Non-Participation ("Recusal Motion"), pp. 11-21;
- $1,190,452.72 in contributions raised by the ICJL through its fundraising vehicle, JUSTPAC, to Citizens for Karmeier;
- $1,000,000 State Farm contribution to the U.S. Chamber; and
- $719,000 in undisclosed in-kind contributions from the ICJL to Citizens for Karmeier

a. State Farm Funnels Nearly $1.2 Million to Citizens for Karmeier Through JUSTPAC

77. Publicly-available records from the Illinois Board of Elections show that JUSTPAC provided nearly $1.2 million in reported contributions to Karmeier's campaign for the period beginning September 26, 2003 and ending October 27, 2004. In view of Shepherd's prominent role with the ICJL, those funds can now be attributed to State Farm, as it controlled the ICJL and JUSTPAC.

78. Shepherd's affiliation with the ICJL was not confirmed until September 19, 2011, when State Farm submitted and served its response to the petition to recall the mandate and vacate the August 18, 2005 judgment, admitting Shepherd's affiliation with the Executive Committee. (*See* State Farm's Response, ¶ 34, attached as Exhibit E). Plaintiffs' counsel did not know that Shepherd had helped choose Murnane – JUSTPAC's treasurer – as ICJL President until or about on or about December 2010, when it was uncovered by Reece.

79. State Farm steered JUSTPAC contributions to Citizens of Karmeier. State Farm and CNA founded the ICJL. Shepherd helped hire Murnane to head the ICJL and was State

Farm's representative on the Executive Committee. The Executive Committee recruited and vetted Karmeier, and the Executive Committee officially-endorsed and raised funds for him.

80. Karmeier's finance chairman, Dwight Kay, confirmed the connection between JUSTPAC and Karmeier in an email from January 22, 2004 in which he equated a contribution to JUSTPAC as a contribution to Karmeier.

b. State Farm Funnels $1 Million to Citizens for Karmeier through U.S. Chamber of Commerce

81. In deposition testimony in unrelated litigation, *Voters Educ. Comm. v. Washington State Pub. Disclosure Comm'n*, No. 04- 2-23551-1 (Wash. Super. Ct.), on January 11, 2005, Robert Engstrom, Jr., Vice President of Political Affairs for the US Chamber's Institute for Legal Reform, identified Edward Rust, State Farm CEO, as part of the US Chamber's leadership team that selected judicial campaigns to target in 2004. Illinois was prioritized as a "Tier I" race. The Karmeier-Maag race was the only major judicial race in Illinois that year, thus making that race the "Tier I" priority race.

82. State Farm contributed $1 million to the US Chamber, which then contributed $2.05 million to the Illinois Republican Party, which then contributed nearly twice that amount to Karmeier. Thus, State Farm's $1 million donation to the US Chamber in Washington DC wound up back in Illinois after the US Chamber contributed more than twice that sum to the Illinois Republican Party, which, in turn, promptly paid for nearly $2 million in media advertisements for Karmeier. Yet, the $1 million donation was never disclosed by State Farm as part of its "quite modest" support.

83. With State Farm's $1 million in-hand, on October 20, 2004, the US Chamber contributed another $950,000 to the Illinois Republican Party, followed by $350,000 two days

later. From September 30, 2004 to the end of the campaign, the Republican Party contributed $1,940,000 to Citizens for Karmeier, consisting of media "buys" in the St. Louis market.

84. In its September 19, 2011 filing with the Illinois Supreme Court, State Farm did not dispute that it gave the US Chamber $1 million or, for that matter, that the Chamber contributed that sum (and more) to the Illinois Republican Party. *See* State Farm's Response, at ¶¶ 42-44. While it may not have been a State Farm-endorsed check that wound up in the bank account of Citizens for Karmeier, $1 million of those funds originated from State Farm.

c. Murnane and the ICJL's unreported in-kind contribution of $718,965 to Citizens for Karmeier

85. While Murnane was "running the campaign" of Karmeier, and using his official ICJL e-mail address – emurnane@icjl.org – for campaign-related activities, his professional time and expenses were not reported or disclosed as in-kind contributions to the Karmeier campaign.

86. IRS Form 990 report from 2004 for the ICJL shows a grand total of $718,965 in expenditures, which included Murnane's salary, benefits, and expenses ($177,749), as well as media, advertising and fundraising, and other managerial expenses that almost exclusively benefitted the Karmeier campaign. None of the expenses were reported as in-kind donations by Citizens for Karmeier in the reports it mailed to and filed with the Board.

87. Including these unreported in-kind contributions from the ICJL to Karmeier's campaign increases the State Farm-influenced contributions to over $3.2 million.

d. Other State Farm-influenced contributions

88. State Farm-influenced contributions to Citizens for Karmeier exceed the $3,260,452 accounted for above. State Farm CEO Rust, in his US Chamber leadership post, was able to insure that State Farm's $1 million was steered back to Karmeier. Rust was also in a position to steer money from other corporate donors to the campaign, increasing the total State

Farm-related contributions to Karmeier to $4,200,417, or over ***eighty-seven percent (87%)*** of the $4,800,000 reportedly raised by the Karmeier campaign.

5. Karmeier Was Aware of State Farm's Support

89. Karmeier knew the sources of his contributions. First, Karmeier campaign aide Adomite stated that Murnane informed Karmeier of day-to-day campaign operations, along with its fund-raising, and that Karmeier was on the office e-mail list, very active in his campaign, and aware of campaign activities. Adomite concluded he did not see how Karmeier "could not have known the source of all campaign funds." Second, Karmeier is a prominent sender/recipient of several emails that discussed fundraising and/or expenditures. And third, State Farm conceded that the Illinois Judicial Ethics Committee has advised judges that it is "desirable" for them to know their contributors. *See* State Farm's Response, at ¶55.

IX. ONGOING PATTERN, FRAUDULENT CONCEALMENT AND EQUITABLE TOLLING OF STATUTES OF LIMITATIONS

90. Plaintiffs incorporate by reference all preceding paragraphs.

91. The pattern and practices of RICO violations are continuous and ongoing.

92. The Enterprise and Defendants' RICO violations – specifically, the concealment of State Farm's support of Karmeier - continue. Plaintiffs were not and could not have been aware of Defendants' pattern of misconduct before September 19, 2011, when State Farm submitted to the Illinois Supreme Court and served its response to the petition to recall the mandate and vacate the August 18, 2005 judgment.

93. From 2003 to the present, State Farm concealed the nature and extent of its support of Karmeier by lying to and misleading the Illinois Supreme Court about that support, first in January 2005 and again in September 2011.

94. From 2004 to the present, Citizens for Karmeier concealed the nature and extent of State Farm's support of Karmeier by submitting campaign finance disclosures which failed to list the direct and in-kind contributions for which State Farm was responsible, including, but not limited to, contributions from ICJL, JUSTPAC and Murnane.

95. As a result, Plaintiffs could not have discovered State Farm's conduct, its control of the Enterprise or the structure and success of that Enterprise, by exercising reasonable diligence.

96. Any applicable statutes of limitations have been tolled by Defendants' knowing, ongoing and active concealment and denial of the facts alleged herein. Plaintiffs and Class members were kept ignorant of vital information essential to pursue their claims, without any fault or lack of diligence on their part. Plaintiffs and Class members could not reasonably have discovered the nature of Defendants' conduct. Accordingly, Defendants are estopped from relying on any statute of limitations to defeat the claim asserted herein.

X. DEFENDANTS' MOTIVE, FRAUDULENT INTENT AND DAMAGES TO THE CLASS

97. Defendants' motive in conducting the Enterprise described herein with respect to the pattern and practice of affirmative fraud and the ongoing concealment of wrongdoing from 2004 to the present, was to deceive the Illinois Supreme Court into believing that State Farm's support of Karmeier's campaign was minimal. The scheme was designed and implemented for the purpose of recruiting a candidate, financing that candidate, electing that candidate and effectively concealing its support for the candidate. State Farm's efforts to escape liability to pay the $1.05 billion judgment rested on the continued success of every aspect of this scheme.

98. The scheme was designed to achieve, and did achieve, its intended result: approximately 4.7 million State Farm policyholders suffered damage to their business and property, seized of the rightful damages awarded to them by the *Avery Action* judgment.

XI. USE OF THE MAILS IN FURTHERANCE OF THE SCHEME TO DEFRAUD

State Farm's 2005 and 2011 Misrepresentations and Misleading Statements via the United States Mail to the Illinois Supreme Court and Plaintiffs' Counsel to Defraud Plaintiffs and the Class Out of the $1.05 Billion Judgment.

99. State Farm used the U.S. mail to create, execute and manage the second phase of the fraudulent scheme: concealing the true extent of its support of Karmeier from the Illinois Supreme Court. Specifically, State Farm, in 2005 and 2011, mailed documents to that Court for filing, serving them upon Plaintiffs' counsel, containing lies, misleading statements and material omissions representing that its support of Karmeier was minimal and that it exerted no control over Karmeier's candidacy, his campaign or his fundraising.

A. State Farm's January 31, 2005 Mailing and Court-Filing

100. On January 31, 2005, State Farm made a court-filing opposing Plaintiffs' motion for recusal which grossly understated its "tremendous" support of Karmeier's campaign. *See* State Farm's Opposition to Plaintiffs-Appellees' Conditional Motion for Non-Participation, at pp. 10-18. This brief was mailed to the Court from Edwardsville and served via U.S. mail on Plaintiffs' counsel in several states, including Illinois, Louisiana, Mississippi and Tennessee.

101. In the January 31, 2005 mailing and filing, State Farm falsely represented its support of Karmeier as consisting of "quite modest contributions" and characterized as "incorrect and meritless" Plaintiffs' claim that State Farm had funneled $350,000 to and peddled its enormous political influence to Karmeier's benefit. *See* State Farm's Opposition, at pp. 12-13. State Farm flatly denied "engineering contributions" to Karmeier's campaign "for the purpose of impacting the outcome of this case" (*see* State Farm's Opposition, at p. 11) and downplayed the

charge that it was responsible for $350,000 in direct contributions to Karmeier's campaign by suggesting that Plaintiffs' counsel had presented "no evidence whatsoever to back up" their claim that those contributions were made by State Farm "front groups." *See* State Farm's Opposition, at p. 11. State Farm also failed to inform the Court that its employee, Shepherd, was a member of the ICJL Executive Committee which recruited and vetted Karmeier, and, through Murnane, it had organized, funded and directed Karmeier's campaign.

102. In its January 31, 2005 mailing and filing, State Farm falsely denied that Murnane ran all phases of Karmeier's campaign. Not only did State Farm deny Murnane's involvement in Karmeier's campaign, but it also declared "Mr. Murnane . . . was not Karmeier's campaign manager or campaign finance chairman and was not employed by Karmeier's campaign . . . ." *See* State Farm's Opposition, at pp. 15-16.

B. State Farm's September 19, 2011 Mailing and Court-Filing

103. Plaintiffs asked the Illinois Supreme Court to recall the mandate of and vacate the August 18, 2005 judgment on September 9, 2011. Facing serious and unprecedented charges of unscrupulous conduct and that it had perpetrated a fraud on that Court in 2005, State Farm responded on September 19, 2011 in a 38-page, 75-paragraph brief mailed to Plaintiff's counsel.

104. In its brief, State Farm again denied Murnane's true role in Karmeier's campaign, *see* State Farm's Response, at ¶ 27 ("Murnane was not Karmeier's campaign manager . . . ."), and failed to produce evidence to counter Murnane's statement that "I'm running this campaign."

105. For the first time, however, State Farm conceded that Shepherd was a charter member of the Executive Committee, thus unveiling the missing connecting State Farm to the ICJL, to JUSTPAC, to Murnane, to the discarded emails, and finally, to Karmeier's campaign.

106. Shepherd's position explains Murnane's role in Karmeier's campaign, how State Farm was able to use the ICJL and JUSTPAC as vehicles to raise nearly $1.2 million and funnel

it to Citizens for Karmeier, and why the Executive Committee supported Karmeier's candidacy from "Day One" and gave him its "official endorsement," signaling other ICJL members that Karmeier was State Farm's choice.

107. Not only did State Farm fail to utter a single word about Shepherd's position on the Executive Committee until September 19, 2011, it also failed to explain why it did not do so.

XII. CLAIMS FOR RELIEF

A. COUNT ONE: VIOLATION OF 18 U.S.C. §1962(c)

108. Plaintiffs incorporate by reference all preceding paragraphs.

109. Section 1962(c) of RICO provides that "it shall be unlawful for any person employed by . . . any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity. . . ."

110. Defendants and their co-conspirators, as identified herein, are "persons" within the meaning of 18 U.S.C. § 1961(3), who conducted the affairs of the Enterprise through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c).

111. The Enterprise was engaged in, and the activities of the Enterprise affect, interstate commerce, as Class members in forty-eight (48) states were the ultimate beneficiaries of and claimants to the property targeted by Defendants: the $1.05 billion judgment in the *Avery Action*. Furthermore, a substantial part of the acts described herein, including the predicate acts of mailing and acts of various Enterprise participants, affected interstate commerce.

THE ENTERPRISE

112. The association-in-fact Enterprise consists of Defendants State Farm, Shepherd, and Murnane, along with the ICJL, JUSTPAC, the US Chamber, and their officers, employees, and agents, among others, as identified in Section IV of this Complaint. State Farm created,

controlled and conducted the Enterprise to develop and effectuate every aspect of its scheme, as alleged above. State Farm created and/or used this association-in-fact Enterprise – an ongoing organization functioning as a continuing unit – as a separate entity and tool to effectuate the pattern of racketeering activity that damaged the Class.

113. State Farm, acting through Shepherd and Murnane, exerted ongoing and continuous control over the Enterprise, and participated in the operation or management of the affairs of the Enterprise, through the following actions:

a. asserting direct control over false, deceptive, and misleading information disseminated to the Illinois Supreme Court regarding its support of Karmeier;

b. asserting direct control over the creation and operation of the elaborate cover-up scheme used to conceal its support of Karmeier from the Illinois Supreme Court;

c. placing employees and/or agents in positions of authority and control in the Enterprise; and

d. mailing documents containing misrepresentations and omissions to the Illinois Supreme Court on January 31, 2005 and September 19, 2011.

114. From its inception, the Enterprise had a clear decision-making hierarchy or structure, with State Farm, acting through Shepherd and Murnane, positioned at the top. State Farm paid Shepherd, not simply as an employee, but rather as a co-conspirator, intent on helping the Enterprise succeed in electing Karmeier to the Illinois Supreme Court and concealing, by misrepresentations and omissions, its extraordinary support of Karmeier's campaign.

115. Though State Farm, through Shepherd and Murnane, exercised and continues to exercise maximal control of the Enterprise, all of the Enterprise's members are distinct from the Enterprise and its activity and each exercised and continues to exercise control over various functions of the Enterprise.

116. The persons and entities comprising the Enterprise have associated together for the common purpose of allowing State Farm to evade the $1.05 billion judgment, plus post-judgment interest since October 1999 entered by the Appellate Court and defrauding Plaintiffs and the Class out of those funds.

117. The contribution network developed by State Farm, through Shepherd and Murnane, to advocate the election of Karmeier (*i.e.*, the first phase of State Farm's scheme to defraud the Plaintiffs and Class) and to conceal the breadth of State Farm's support of Karmeier (the second phase of the scheme to defraud the Plaintiffs and Class) was and is the passive instrument of Defendants' racketeering activity, and together, constitutes an alternative "enterprise" as that term is defined in 18 U.S.C. § 1961(4).

PATTERN OF RACKETEERING

118. This Complaint details the ongoing pattern of racketeering based on facts that are known to Plaintiffs and their counsel. It is filed without the benefit of discovery, which will likely uncover many more predicate acts and further demonstrate the breadth and scope of the Enterprise's racketeering.

119. The Enterprise - with State Farm at the hub, acting through Shepherd and Murnane - engaged in a pattern of racketeering activity. From approximately November 2003 at least through September 19, 2011, Defendants and the Enterprise, as well as others known or unknown, being persons employed by and associated with State Farm, the ICJL, JUSTPAC, Citizens for Karmeier, the US Chamber, and others identified herein, engaged in activities which affected and affect interstate commerce, unlawfully and knowingly conducted or participated, directly or indirectly, in the affairs of the Enterprise through a pattern of racketeering activity, that is, through the commission of two or more racketeering acts, as set forth herein.

120. The foregoing pattern of racketeering activity is distinct from the Enterprise itself, which does not solely engage in the above-described acts.

121. Defendants have conducted and participated in the affairs of the Enterprise through a pattern of racketeering activity that includes predicate acts indictable under 18 U.S.C. § 1341 (mail fraud), 18 U.S.C. § 1343 (wire fraud), and 18 U.S.C. § 1346 (deprivation of honest services through bribes and kickbacks) through the aforementioned actions.

122. In implementing the fraudulent scheme, State Farm was aware that the Illinois Supreme Court depended on the honesty of State Farm to represent truthfully the facts of its support of Karmeier.

123. As detailed above, the fraudulent scheme consisted of, inter alia: using mail fraud to enable State Farm (a) to obtain, exert, and deliberately misrepresent its control over and extraordinary financial support of Karmeier's campaign; and (b) suppress and conceal the level of such control and support from the Illinois Supreme Court.

124. The unlawful predicate acts of racketeering activity committed by Defendants had a common purpose, were related and had continuity. From its inception, Defendants' scheme depended upon concealing the breadth of State Farm's support of Karmeier from the Illinois Supreme Court. Without accomplishing that critical final component of the scheme, the scheme was doomed to fail in its purpose, as State Farm needed the Karmeier vote in order to gain reversal of the $1.05 billion judgment.

125. The Enterprise used the mail to create, execute and manage their scheme, acting in violation of 18 U.S.C. § 1341. By misrepresenting State Farm's support of Karmeier's campaign to the Illinois Supreme Court via the U.S. mail, the Enterprise perpetrated these unlawful predicate acts.

126. The predicate acts committed by the Enterprise were and are similar, continuous, and related. State Farm's support of Karmeier was "extraordinary" and "tremendous," rising to as much as $4 million. Nevertheless, State Farm actively concealed from the Illinois Supreme Court the true facts of its support. This consistent message - denying the breadth of its true involvement in Karmeier's campaign - illustrates how the predicate acts of mail fraud were similar, continuous, and related.

127. The scheme was calculated to ensure that Plaintiffs and the Class would not recover any of the $1.05 billion judgment entered in their favor. The targets of the Enterprise and the ultimate victims of State Farm's scheme and predicate acts of mail fraud number approximately 4.7 million.

128. Each of the fraudulent mailings constitutes "racketeering activity" within the meaning of 18 U.S.C. § 1961(1). Collectively, these violations, occurring over several years, are a "pattern of racketeering activity" within the meaning of 18 U.S.C. § 1961(5).

129. Each activity was related, had similar purposes, involved the same or similar participants and methods of commission, and had similar results affecting similar victims, including Plaintiffs and the Class.

130. All predicate acts committed by Defendants and the Enterprise are related and were committed with a common scheme in mind: to support and elect Karmeier to the Illinois Supreme Court and conceal that support to insure Karmeier participated in the *Avery* decision. The final part of the scheme was to use the U.S. mail to deliver court-filings to the Illinois Supreme Court and Plaintiffs' counsel on January 31, 2005 and September 19, 2011 in a continuing effort to conceal material facts related to State Farm's support for Karmeier, in violation of 18 U.S.C. § 1341.

131. Defendants' conduct of the Enterprise was designed to, and succeeded in, defrauding the Illinois Supreme Court and in ultimately depriving Plaintiffs and the Class of the individual and aggregate benefits of the $1.05 billion judgment awarded to them in the *Avery Action*, and enabling State Farm to evade its obligations to the Class.

B. COUNT TWO: VIOLATION OF 18 U.S.C. §1962(d) BY CONSPIRING TO VIOLATE 18 U.S.C. §1962(c)

132. Plaintiffs incorporate by reference all preceding paragraphs.

133. Section 1962(d) of RICO provides that it "shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b) or (c) of this section."

134. Defendants violated § 1962(d) by conspiring to violate 18 U.S.C. § 1962(c). The object of this conspiracy has been and is to conduct or participate in, directly or indirectly, the conduct of the affairs of the § 1962(c) Enterprise described previously through a pattern of racketeering activity. Defendants, co-conspirators and Enterprise participants agreed to join the conspiracy, agreed to commit and did commit the acts described herein, and knew that these acts were part of a pattern of racketeering activity.

135. Defendants and their co-conspirators have engaged in numerous overt and predicate fraudulent racketeering acts in furtherance of the conspiracy, including material misrepresentations and omissions designed to defraud Plaintiffs and the Class of money.

136. The nature of the above-described acts, material misrepresentations and omissions in furtherance of the conspiracy gives rise to an inference that Defendant, co-conspirators and Enterprise participants not only agreed to the objective of an 18 U.S.C. § 1962(d) violation of RICO by conspiring to violate 18 U.S.C. § 1962(c), but they were aware that their ongoing fraudulent acts have been and are part of an overall pattern of racketeering activity.

137. As a direct and proximate result of Defendants' overt acts and predicate acts in furtherance of violating 18 U.S.C. § 1962(d) by conspiring to violate 18 U.S.C. § 1962(c), Plaintiffs and the Class have been and are continuing to be injured in their business or property, as set forth more fully above.

C. COUNT THREE: UNJUST ENRICHMENT

138. Plaintiffs allege, on behalf of themselves and the Class ("Plaintiffs") under the laws of all states, that the Defendants have acted to unjustly retain a benefit to the Plaintiffs' detriment, and that Defendants' retention of the benefit violates the fundamental principles of justice, equity, and good conscience.

PRAYER

WHEREFORE, Plaintiffs and members of the Class demand judgment on each claim for relief, jointly and severally, as follows:

1. Authorizing directing and supervising the conduct of early and expedited discovery on the allegations of this Complaint;

2. Awarding Plaintiffs and the Class treble (three times) their actual damages on one or both of their RICO claims, together with costs and reasonable attorneys' fees;

3. Awarding Plaintiffs and the Class their costs and expenses in this litigation, including reasonable attorneys' fees and expert fees; and

4. Awarding Plaintiffs and the Class appropriate relief for Defendants' unjust enrichment.

4. Awarding Plaintiffs and the Class such other and further relief as may be just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all claims so triable.

Respectfully submitted, this 4th day of September, 2018.

By: */s/ Robert A. Clifford*

Robert A. Clifford #0461849
George S. Bellas
Clifford Law Offices
120 N. LaSalle Street, 31st Floor
Chicago, IL 60602
Tel: 312-899-9090

Gordon Ball (TN BPR# 1135)
Law Offices of Gordon Ball
7001 Old Kent Drive
Knoxville, TN 37919
Tel: 865-525-7028
Fax: 865-525-4679

John W. "Don" Barrett
Barrett Law Group, P.A.
404 Court Square North
P.O. Box 927
Lexington, MS 39095-0927
Tel: 662-834-2488

Steven P. Blonder #6215773
Much Shelist, P.C.
191 N. Wacker, Suite 1800
Chicago, IL 60606-2000
Tel: 312-521-2402

Patrick W. Pendley (LABA #10421)
Nicholas R. Rockforte (LABA #31305)
Pendley, Baudin & Coffin, L.L.P.
Post Office Drawer 71
24110 Eden Street
Plaquemine, LA 70765
Tel: 888-725-2477

Charles F. Barrett
Charles Barrett, P.C.
6518 Highway 100, Suite 210
Nashville, TN 37205
Tel: 615-515-3393

Thomas P. Thrash
Marcus N. Bozeman
Thrash Law Firm, P.A.
1101 Garland Street
Little Rock, AR 72201
Tel: 501-374-1058

Elizabeth J. Cabraser
Robert J. Nelson
Kevin R. Budner
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Tel: 415-956-1000

Brent W. Landau
Hausfeld, LLC
1604 Locust St., 2nd Floor
Philadelphia, PA 19103
Tel: 215-985-3273

Steven A. Martino
Richard Taylor
Lloyd Copeland
Taylor Martino, P.C.
51 Saint Joseph Street
Mobile, AL 36602
Tel: 251-433-3131