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**ARIZONA SUPERIOR COURT**  
**MARICOPA COUNTY**

Jason Wilhelm and Melissa Kay Armstrong  
Wilhelm, husband and wife,

Plaintiffs,

vs.

State Farm Mutual Automobile Insurance  
Company, an Illinois corporation, John and  
Jane Does I-X, fictitious individuals, and  
ABC Corporations I-X, fictitious corporate  
entities,

Defendants.

Case No. CV2019-012558

**ANSWER**

(Honorable Roger Brodman)

Defendant State Farm Mutual Automobile Insurance Company ("State Farm") answers  
Plaintiffs' Complaint ("Complaint") as follows:

1. Upon information and belief, State Farm admits Plaintiffs are residents of Maricopa County, Arizona. State Farm further denies that the acts and occurrences alleged in Plaintiff's Complaint occurred as Plaintiff has described, but State Farm admits that, as alleged, these acts and occurrences occurred in Maricopa County, Arizona.
2. State Farm admits that it is a foreign corporation authorized to engage in the business of insurance in the State of Arizona. Other than matters specifically admitted, it denies that it caused the alleged events to occur in Maricopa County, Arizona.

3. Paragraph 3 of the Complaint does not make any allegations of fact to which State Farm must respond.
4. State Farm admits that the amount in controversy exceeds the jurisdictional requirements of this Court and that venue in Maricopa County is proper.
5. State Farm agrees that this matter should be assigned to discovery tier 2.
6. Paragraph 6 of the Complaint does not make any allegations of fact to which State Farm must respond.
7. Upon information and belief, State Farm admits that Plaintiffs are the owners of a 2013 Nissan Pathfinder (the "Vehicle") and that the Vehicle was insured by State Farm insurance policy number [REDACTED] (the "Insurance Contract").
8. Upon information and belief, State Farm admits that the Vehicle was involved in an automobile collision and that the time of that collision occurred during the policy period of the Insurance Contract.
9. Upon information and belief, State Farm admits that Plaintiffs took the Vehicle to Coach Works Auto Body ("Coach Works").
10. State Farm denies that Coach Works prepared an estimate of the cost to restore the Vehicle to its pre-loss condition.
11. Upon information and belief, State Farm admits that Plaintiffs were unable to resolve a property damage claim with the insurance carrier for the driver that was allegedly at fault in the December 8, 2017 motor vehicle collision and that Plaintiff Melissa Wilhelm notified State Farm of her intent to have State Farm handle her claim concerning vehicle damage.
12. State Farm denies the allegations in Paragraph 12 of the Complaint.
13. State Farm denies the allegations in Paragraph 13 of the Complaint. State Farm further alleges that Plaintiff Melissa Armstrong stated the following in a letter to State Farm: "As per my policy to protect consumers, please accept this letter as my notice to you of evoking my appraisal clause at this time."
14. State Farm denies the allegations in Paragraph 14 of the Complaint.

- 1 15. State Farm denies the allegations in Paragraph 15 of the Complaint.
- 2 16. State Farm denies the allegations in Paragraph 16 of the Complaint.
- 3 17. State Farm denies the allegations in Paragraph 17 of the Complaint.
- 4 18. State Farm incorporates by this reference all responses made in the previous paragraphs of  
5 this Answer.
- 6 19. State Farm denies the allegations in Paragraph 19 of the Complaint.
- 7 20. State Farm denies the allegations in Paragraph 20 of the Complaint.
- 8 21. State Farm denies the allegations in Paragraph 21 of the Complaint.
- 9 22. State Farm denies the allegations in Paragraph 22 of the Complaint. State Farm alleges that  
10 it is entitled to recover its reasonable attorneys' fees incurred in this action from Plaintiffs  
11 pursuant to A.R.S. § 12-341.01.
- 12 23. State Farm incorporates by this reference all responses made in the previous paragraphs of  
13 this Answer.
- 14 24. State Farm denies the allegations in Paragraph 24 of the Complaint.
- 15 25. State Farm denies the allegations in Paragraph 25 of the Complaint.
- 16 26. State Farm denies the allegations in Paragraph 26 of the Complaint.
- 17 27. State Farm denies the allegations in Paragraph 27 of the Complaint.
- 18 28. State Farm denies the allegations in Paragraph 28 of the Complaint.
- 19 29. State Farm denies the allegations in Paragraph 29 of the Complaint.
- 20 30. State Farm denies the allegations in Paragraph 30 of the Complaint.
- 21 31. State Farm denies the allegations in Paragraph 31 of the Complaint.
- 22 32. State Farm denies the allegations in Paragraph 32 of the Complaint.
- 23 33. State Farm incorporates by this reference all responses made in the previous paragraphs of  
24 this Answer.
- 25 34. State Farm denies the allegations in Paragraph 34 of the Complaint.
- 26 35. State Farm denies each and every allegation of Plaintiffs' Complaint not specifically  
27 admitted in this Answer.
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- 1 36. State Farm alleges that Plaintiffs have failed to state a claim upon which relief can be  
2 granted.
- 3 37. State Farm alleges that Plaintiffs have failed to comply with the applicable terms and  
4 conditions of the contract of insurance.
- 5 38. State Farm alleges that Plaintiffs' damages, if any, are the direct and proximate result of its  
6 own comparative fault or the conduct of their agents.
- 7 39. State Farm alleges that Plaintiffs have failed, in whole or in part, to mitigate their damages.
- 8 40. State Farm alleges that Plaintiffs' damages, if any, are a direct and proximate result of a  
9 person or entity not a party to the lawsuit. Therefore, the relative degree of fault of  
10 Plaintiffs and all other parties and non-parties must be determined and apportioned as a  
11 whole at one time by the trier of fact pursuant to A.R.S. §§ 12-2503 and 12-2506. State  
12 Farm is entitled to an allocation of fault provided by the applicable comparative fault  
13 statutes and by the doctrine of comparative fault under Arizona law.
- 14 41. State Farm alleges that Plaintiffs have waived, or is estopped from asserting, one or more  
15 of its claims for damages.
- 16 42. State Farm alleges that Plaintiffs' claims, to the extent they seek exemplary or punitive  
17 damages, violate State Farm's rights to procedural due process under the Fourteenth  
18 Amendment of the United States Constitution and the Constitution of the State of Arizona,  
19 and therefore fail to state a claim upon which either punitive or exemplary damages can be  
20 awarded.
- 21 43. State Farm alleges that Plaintiffs' claims, to the extent they seek exemplary or punitive  
22 damages, violate State Farm's rights to substantive due process under the Fifth and  
23 Fourteenth Amendments of the United States Constitution and the Constitution of the State  
24 of Arizona, and therefore fail to state a claim upon which either punitive or exemplary  
25 damages can be awarded.
- 26 44. State Farm alleges that Plaintiffs' claims, to the extent they seek exemplary or punitive  
27 damages, violate State Farm's rights to equal protection under the law and under the United  
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1 States Constitution and the Constitution of the State of Arizona, and therefore fail to state a  
2 claim upon which either punitive or exemplary damages can be awarded.

3 45. State Farm alleges that Plaintiffs' claims, to the extent they seek exemplary or punitive  
4 damages, violate State Farm's rights to protection against excessive fines under the  
5 Constitution of the State of Arizona, and therefore fail to state a claim upon which either  
6 punitive or exemplary damages can be awarded.

7 46. To avoid waiver, and to the extent not otherwise asserted, State Farm asserts all defenses  
8 available to it pursuant to Ariz.R.Civ.Pro. 12(b).

9 47. State Farm further reserves the right to assert, and does assert to avoid any allegation of  
10 waiver, all additional defenses or affirmative defenses of which State Farm becomes aware  
11 during the discovery phase of this lawsuit. State Farm reserves the right to allege the  
12 following defenses and affirmative defenses should additional facts be discovered while  
13 this lawsuit is pending: that the Complaint is or may be barred in whole or in part, and the  
14 alleged damages may be reduced in whole or in part by the doctrine of accord and  
15 satisfaction, arbitration and award, assumption of risk, abandonment, comparative  
16 negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud,  
17 illegality, inequitable conduct, laches, license, failure to mitigate damages, mistake,  
18 payment, release, res judicata, statute of frauds, statute of limitations, waiver, or any other  
19 matter constituting an avoidance or affirmative defense.

20 **HAVING FULLY ANSWERED Plaintiffs' Complaint, State Farm requests entry of judgment:**

- 21 (1) Dismissing Plaintiffs' Complaint, with prejudice, and ordering the Plaintiffs to take  
22 nothing by it;
- 23 (2) Awarding State Farm its costs, pursuant to A.R.S. § 12-241;
- 24 (3) Awarding State Farm its reasonable attorneys' fees, pursuant to A.R.S. § 12-341.01; and
- 25 (4) Awarding any other relief the Court finds just and proper.

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1 SUBMITTED November 15, 2019.

2 CHRISTIAN DICHTER & SLUGA, P.C.

3 By: /s/ David M. Bell

4 David M. Bell

5 Daniel B. Bernardone

6 *Attorneys for Defendant*

7  
8 ORIGINAL e-filed November 15, 2019  
9 with the Clerk of Superior Court and

10 COPY served through TurboCourt  
11 and email, this same date, to:

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