STATE OF LOUISIANA, EX REL JAMES D. "BUDDY" CALDWELL, ATTORNEY GENERAL

VS.

STATE FARM FIRE AND CASUALTY COMPANY, STATE FARM GENERAL INSURANCE COMPANY, AND STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

DIV. SEC. 26 DOCKET NO. 632829

19th JUDICIAL DISTRICT COURT

EAST BATON ROUGE PARISH

STATE OF LOUISIANA

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PETITION FOR INJUNCTIVE RELIEF AND RESTITUTION

NOW INTO COURT, through the undersigned counsel, comes the State of Louisiana through the Honorable James D. "Buddy" Caldwell, Attorney General, who respectfully represents:

1.

This action is brought in the public interest to seek injunctive relief, restitution, and civil penalties against Defendants State Farm Fire and Casualty Company, State Farm General Insurance Company, and State Farm Mutual Automobile Insurance Company (collectively referred to herein as "State Farm") from engaging in conduct, activities, or proposed actions in violation of the Louisiana Unfair Trade Practices Act, LSA-R.S. 51:1401 *et seq.* and of the Monopolies Law, LSA-R.S. 51:121 *et seq.*

2.

Defendant State Farm Fire and Casualty Company is registered with the Louisiana Department of Insurance as a Louisiana insurance company licensed to do business in the state, and is doing business in the state of Louisiana.

3.

Defendant State Farm General Insurance Company is registered with the Louisiana Department of Insurance as a Louisiana insurance company licensed to do business in the state, and is doing business in the state of Louisiana.

4.

Defendant State Farm Mutual Automobile Insurance Company is registered with the Louisiana Department of Insurance as a Louisiana insurance company licensed to do business in the state, and is doing business in the state of Louisiana.

5.

In 2012, Defendant State Farm Mutual Automobile Insurance Company wrote 33.63% of the private passenger and commercial automobile liability and physical damage policies in the state of Louisiana for a total of $1,020,766,673 in premiums.

JURISDICTION AND VENUE

6.

Defendants are subject to the jurisdiction of this court pursuant to LSA R.S. 51:1418 (A).

7.

Venue is proper before this court pursuant to LSA R.S. 51:1407.

STATUTORY BACKGROUND

8.

Pursuant to LSA-R.S. 51:1405, unfair methods of competition and unfair or deceptive acts and practices in the conduct of any trade or business are unlawful.

9.

Pursuant to LSA-R.S. 51:1407, whenever the Attorney General has reason to believe that someone is violating, or is about to violate, the Louisiana Unfair Trade Practices Act, he may bring an action to enjoin the conduct and seek injunctive relief, and may include restitution to remedy the unfair and deceptive acts as well as civil penalties. Such restraining orders or injunctions shall be issued without bond.

10.

Pursuant to LSA-R.S. 51:122, every contract or conspiracy in restraint of trade or commerce in this state is illegal.

11.

Pursuant to LSA-R.S. 51:123, no person shall monopolize or attempt, combine or conspire with another to monopolize any part of trade or commerce within this state.

12.

Pursuant to LSA-R.S. 51:128, the Attorney General may bring suit in district court to prevent or restrain any violation of the Monopolies Law, LSA-R.S. 51:121 *et seq.*

1963 CONSENT DECREE

13.

In 1963 the United States Department of Justice filed a complaint and entered into a consent decree with three defendant trade associations, whose members constituted the vast majority of insurers in existence at the time. [See Appendix A].

14.

The complaint alleged that through the defendant trade associations and related committees, automobile property insurers conspired to "depress and control automobile material damage repair costs." [Appendix A, p. 8, para. 17].

15.

The complaint described a system by which appraisers were controlled by defendants and related entities, and forced to follow a plan that strived to (1) repair rather than replace damaged parts; (2) replace damaged parts by used rather than new parts; (3) obtain discounts on new replacement parts; (4) establish strict labor time allowances by the sponsored appraisers; and (5) obtain the lowest possible hourly rate. [Appendix A, p. 9, para. 19].

16.

Furthermore, appraisers were required to enlist a number of repair shops who would agree to make automobile material damage repairs based upon the appraiser's estimate and to steer repairs towards those shops who would agree to such practices. [Appendix A, p. 9, para. 20].

17.

Pursuant to those allegations, defendants entered into a consent decree with the United States Department of Justice for violations of Section 1 and 3 of the Sherman Act. Under the consent decree, defendants were ordered to terminate their established plans to control the automobile material damage repair industry and depress its related costs, and were enjoined from placing into practice any future plans or programs which would have those effects. [Appendix B, p. 2].

PRESENT-DAY PRACTICES

18.

In contrast with practices in 1963, State Farm and most other current-day insurance companies directly employ their own claims adjusters and damage appraisers, obviating the need

for a specific plan or system through which to exert control upon those facets of the automobile material repair process.

19.

Most current-day insurance companies, including State Farm, utilize collision repair estimation software programs and databases, such as ADP, CCC and Mitchell. These repair estimation databases generate standardized labor times and materials.

20.

Most current-day insurance companies, including State Farm, utilize programs commonly known as "direct repair programs," or DRPs. In a DRP, automobile repairers enter into contracts with insurers in order to be placed upon a list of preferred repair providers recommended by the insurance company.

21.

Together, these factors—total control of adjusters and appraisers, utilization of software to generate standard labor times and rates, and implementation of DRPs—create an environment in the automobile collision repair industry that is nearly identical in practice to that which led to the 1963 Consent Decree.

STATE FARM'S AUTOMOBILE COLLISION REPAIR PRACTICES

22.

State Farm utilizes a program called "Select Service," and the participating repairers enter into a "Select Service Agreement" in order to be placed upon State Farm's list of preferred and/or recommended repair shops.

23.

Pursuant to the "Select Service Agreement," participating repair shops are required to engage in certain pricing structures dictated by State Farm for parts and labor rates.

24.

State Farm purports to use a survey process to determine recent and/or market labor rates.

25.

Upon information and belief, State Farm manipulates this survey process in a manner that artificially decreases the recent and/or market labor rates paid pursuant to the Select Service Agreement.

26.

Pursuant to the Select Service Agreement, State Farm's Select Service Providers are required to utilize an automated replacement parts locating service called Parts Trader.

27.

The Parts Trader software platform was developed for and funded by State Farm.

28.

The use of the Parts Trader software platform removes the ability of the repair facility to freely select replacement parts that are most appropriate for a specific repair.

29.

Upon information and belief, State Farm adjusters have become increasingly involved in the everyday tasks performed by repair facilities, including but not limited to locating specific replacement parts and mandating that repair facilities use the specific parts identified by the adjuster, even when the repair shop believes that such use is neither safe nor appropriate.

30.

The implementation of the Parts Trader program has given State Farm a platform through which to carefully monitor and control parts usage by participating repairers and has resulted in an increase in the practices described in paragraph 29.

31.

Pursuant to the Select Service Agreement, State Farm requires participating repair facilities to limit their use of supplemental damage estimates and to restrict their estimate upload activity to an initial estimate and final repair bill whenever possible.

32.

Upon information and belief, such restriction unduly pressures participating repair facilities to forgo repairs that are visually imperceptible prior to the disassembly of the vehicle and the initial estimate, but which a prudent repair facility would deem necessary.

33.

Pursuant to the Select Service Agreement, State Farm may limit the number of participating repair facilities and may rate or index the facilities based on a variety of factors using any available data.

34.

State Farm provides little or no explanation to participating facilities regarding their rank or index, which determines the order in which the facilities are recommended to consumers.

35.

Upon information and belief, State Farm has removed or demoted repair facilities who have no consumer complaints, no issues identified on their State Farm audits, and complete compliance with repair cycle times and efficiency requirements.

36.

Upon information and belief, the ranking system utilized by State Farm creates increased pressure upon participating repairers to adhere to repair standards that are dictated by State Farm and are wholly based upon repair costs, rather than consumer safety and those safety and performance standards dictated by the vehicle manufacturers.

EFFECT OF INSURER PRACTICES

37.

Pursuant to the Select Service Agreement and similar DRP contracts, repair facilities bill directly to and are paid directly by the insurer for the repairs performed on a consumer's vehicle.

38.

As a result of this payment arrangement, the insurer provides the approval and/or authorization for the repairs, and customarily the individual consumer is not meaningfully informed regarding the types of repairs made and the types and/or quality of replacement parts used until the entire repair process is complete.

39.

Each automobile manufacturer publishes guidelines for the appropriate repair of its vehicles, including the types of replacement parts and specific repair processes that should be used in order to make repairs that comply with the existing safety and performance standards associated with the vehicle.

40.

Pursuant to the Select Service Agreement and similar DRP contracts, insurers are able to exert a great degree of influence over the specific repairs performed by participating repair

facilities, including but not limited to mandating the use of specific used, recycled, or non-OEM replacement parts.

41.

Upon information and belief, insurers exert specific influence and control over participating repair facilities which directly results in the performance of repairs and utilization of parts that do not adhere to the manufacturer guidelines for specific vehicles.

42.

The estimation software systems used by the insurers generate standardized repair times that are based upon repairs to undamaged vehicles, using only original equipment manufacturer ("OEM") parts.

43.

In practice, participating facilities perform repairs on damaged vehicles and are frequently required and/or pressured by the insurers to utilize used, recycled, or non-OEM replacement parts.

44.

The actual time required by a repair facility to complete a necessary repair frequently exceeds the time generated by the estimation software.

45.

Insurers utilize the Select Service Agreement and similar DRP contracts to deny payment to participating facilities for repair times in excess of those generated by the estimation software.

46.

The influence exerted by insurers over the participating repair facilities—control of labor rates, of repair times, over the types and quality of replacement parts and over specific repair processes—operates to decrease repair costs to the insurers.

47.

The influence exerted by insurers over the participating repair facilities interferes with the judgment of the collision repairers as to the manner, parts, techniques and necessary procedures to safely and properly repair consumers' vehicles to pre-loss conditions.

48.

Upon information and belief, insurers systematically attempt to divert customers from collision repairers that are not participating DRP facilities, including State Farm's Select Service

Program, through misrepresentations to the consumer regarding their freedom to have their repairs performed by any repair facility of their choice.

49.

Upon information and belief, insurers systematically attempt to divert customers from collision repairers that are not participating DRP facilities, including State Farm's Select Service Program, by making misrepresentations to consumers regarding "problems" with non-participating repair facilities.

50.

Upon information and belief, insurers systematically attempt to divert customers from collision repairers that are not participating DRP facilities, including State Farm's Select Service Program, by making misrepresentations to consumers that they will be responsible for increased costs with non-participating repair facilities.

51.

Upon information and belief, insurers systematically attempt to divert customers from collision repairers that are not participating DRP facilities, including State Farm's Select Service Program, by misrepresenting to consumers that they will "guarantee" the work done by participating repair facilities, but that no such "guarantee" exists for work done by non-participating repair facilities.

52.

In truth and in fact, State Farm itself does not provide a "guarantee" of any sort for any work done by a participating repair facility.

53.

Upon information and belief, insurers systematically attempt to divert customers from collision repairers that are not participating DRP facilities, including State Farm's Select Service Program, by creating delays to repairs performed by non-participating repair facilities by failing to promptly and timely dispatch adjusters and appraisers to those facilities.

54.

Upon information and belief, insurers attempt to exert influence and control over non-participating repair facilities by subjecting them to the same terms and conditions as participating facilities through control of repair costs and denial of claims.

55.

Upon information and belief, insurers underpay claims made by non-DRP facilities by providing initial estimates based only upon visible damage, denying supplemental claims, and refusing to pay for procedures required by the manufacturer guidelines and the estimating companies' procedure pages.

56.

Upon information and belief, these practices by State Farm and other insurance companies lead to consumer vehicle repairs that are performed with cost-savings as the primary determining factor rather than safety and reliability.

SAFETY IMPLICATIONS

57.

Auto manufacturers design vehicles to absorb the impact of a collision. Many component parts of those vehicles must work together to maintain the integrity of the vehicle and to protect its occupants.

58.

The supplemental restraint systems installed by those manufacturers, including air bags and deployment sensors, must work together with the component parts of the vehicle in order to provide proper timing for air bag deployment.

59.

Typical airbag deployment occurs in approximately twenty to fifty milliseconds (0.02 – 0.05), from the initial crash detection until the airbag is fully inflated. The airbag then immediately deflates. The whole airbag deployment process, from detection to deflation, lasts approximately one tenth (0.1) of a second.

60.

Vehicle manufacturers engage in extensive engineering and rigorous testing to ensure that airbag deployment occurs at the exact moment in which the maximum safety benefits to the vehicle's passengers will be achieved.

61.

Variations to the types of component parts used in vehicle repair can directly result in improper timing of airbag deployment in a subsequent crash.

62.

Through the pressure and control they exert upon repair facilities, the practices of State Farm and other insurers lead to the use of non-OEM parts in repairs, directly affecting the timing of airbag deployment so that the repaired vehicle no longer meets the manufacturer's safety specifications.

63.

State Farm and other insurers routinely refuse to pay for procedures necessary to make complete repairs pursuant to the manufacturer guidelines and the procedure pages published by the estimation companies.

64.

Specifically, claims for necessary paint procedures such as feather, block and prime are routinely denied by State Farm and other insurance companies.

65.

Upon information and belief, the refusal of State Farm and other insurers to cover payments for costs associated with certain painting procedures that are necessary to make a complete repair often leads to repair facilities taking measures to cut costs associated with painting repaired vehicles.

66.

Upon information and belief, such cost-cutting measures include methods which result in airbag deployment sensors being painted over or otherwise compromised during the painting process.

67.

Through the pressure and control they exert upon repair facilities, the practices of State Farm and other insurers lead to the use of inappropriate procedures in repairs, including painting, directly affecting the timing of airbag deployment so that the repaired vehicle no longer meets the manufacturer's safety specifications.

68.

The use of front or rear repair "clips" involves replacing an entire section of a vehicle with a similar section from a donor vehicle.

69.

Many automobile manufacturers have publicly stated that they do not approve of the use of "clip" repairs, believe that they pose safety risks, and are not confident that such repairs return vehicles to pre-accident condition.

70.

Through the pressure and control they exert upon repair facilities, the practices of State Farm and other insurers lead to the use of "clip" repairs, which causes the repaired vehicle to no longer meet the manufacturer's safety specifications.

71.

Many automobile manufacturers have publicly stated that they do not approve of any repairs to aluminum wheels that involve welding, bending, straightening, reforming or adding new material, and that only those repairs to aluminum wheels which are strictly cosmetic are approved.

72.

Non-cosmetic repairs to aluminum wheels can result in an increased loss of vehicle control, vehicle rollover, personal injury and death.

73.

Use of non-recommended tires and wheels can cause steering, suspension, axle or transfer case/power unit failure.

74.

Upon information and belief, State Farm and other insurers routinely refuse to pay costs associated with OEM wheels and encourage repair facilities to recondition wheels or use non-OEM replacement parts.

75.

Through the pressure and control they exert upon repair facilities, the practices of State Farm and other insurers lead to the use of reconditioned and non-OEM replacement aluminum wheels, which causes the repaired vehicle to no longer meet the manufacturer's safety specifications.

76.

State Farm and other insurers routinely dictate the use of non-OEM aftermarket parts in a variety of repairs, and mandate that such parts must be Certified Automotive Parts Association (CAPA) certified.

77.

In truth and in fact, the CAPA certification process does not involve any actual safety testing of parts whatsoever.

78.

Non-OEM replacement parts, though CAPA certified, are frequently ill-fitting and inappropriate for the use in which they are marketed.

79.

Through the implementation of the Parts Trader program, State Farm has been able to source an increased volume of CAPA-certified parts and mandate their use in repairs.

80.

In addition to a complete lack of any safety testing and failure to meet manufacturer specifications, these CAPA-certified parts generate longer repair times due to issues with fit and finish.

81.

Insurers, including State Farm, routinely refuse to pay additional labor times associated with the use of CAPA-certified parts, while mandating their use.

82.

The systematic and repeated refusal to pay repair facilities for necessary parts, procedures and repair times induces repair facilities to seek other methods to minimize repair costs in ways which are unsafe and unfair to consumers.

CLAIMS FOR RELIEF

I. Violations of Monopolies statutes, LSA-R.S. 51:121 *et seq.*

83.

Plaintiff realleges and incorporates herein allegations in paragraphs 1 through 82.

84.

In the course of their business practices regarding their control over the automobile repair industry, Defendants have violated the provisions of LSA-R.S. 51:121 *et seq.*

85.

Defendants' repeated and continuing violations of the monopolies statutes include:

a. Intentionally and falsely leading consumers to believe that they cannot bring their vehicle to the repair facility of their choice;

b. Systematically attempting to divert customers away from repair facilities that do not participate in their direct repair programs (DRPs);

c. Falsely informing consumers that they have encountered problems working with certain non-participating repair facilities in the past;

d. Falsely representing to consumers that they will be liable for additional costs if they use a non-participating repair facility;

e. Falsely representing to consumers that the work will not be guaranteed by Defendants if performed by a non-participating repair facility, falsely insinuating that such a guarantee exists if performed by a participating facility;

f. Providing artificially low estimates on vehicles repaired at non-DRP facilities;

g. Failing to timely evaluate supplemental claims submitted by non-DRP facilities;

h. Denying many supplemental claims made by non-DRP facilities, including refusing payment requested for procedures required by manufacturer guidelines and procedure pages published by the estimation companies;

i. Manipulating their "survey" system to artificially lower and control labor rates;

j. Denying payment for labor rates to any repair facility that differs from the labor rates set and controlled by Defendants;

k. Using standardized labor times for repairs and refusing to pay for additional time necessary to actually complete such repairs; and

l. Using "miscellaneous" entries on estimates to account for any increases in labor rates or labor times allowed, so that such increases are not readily apparent and the labor rates and permitted labor times still appear "fixed."

86.

Defendants' continuing and systematic business practices meant to control and manipulate the automobile repair industry constitute a contract, combination or conspiracy in restraint of trade or commerce in this state in violation of LSA-R.S. 51:122.

87.

Defendants' continuing and systematic business practices meant to control and manipulate the automobile repair industry constitute an attempt to monopolize to conspire to monopolize any part of trade or commerce within this state in violation of LSA-R.S. 51:123.

88.

Pursuant to LSA-R.S. 51:128, the Attorney General has the right to seek injunctive relief to restrain Defendants' violations of the Monopolies statutes.

II. Violations of Louisiana Unfair Trade Practices Act, LSA-R.S. 51:1401 *et seq.*

89.

Plaintiff realleges and incorporates herein allegations in paragraphs 1 through 88.

90.

In the course of their business practices relative to the manipulation of the automotive repair industry, defendants have engaged in unfair and deceptive acts and practices in trade or commerce in violation of LSA-R.S. 51:1401 *et seq.* through the following actions:

a. Plaintiff realleges and incorporates herein allegations in paragraph 85;
b. Interfering with the judgment of collision repairers as to the manner, parts, techniques and necessary requirements to safely and properly repair consumers' vehicles;
c. Demanding the use of non-OEM parts that directly conflict with automobile manufacturer repair recommendations or guidelines;
d. Utilizing adjusters and appraisers with little or no background in automotive repair to evaluate the necessity of certain repairs, determine the types of parts to be used in repairs, and locate specific parts to be used in repairs and demand their usage;
e. Systematically underpaying claims made by non-DRP facilities so that such facilities are forced to file "short-pay" claims against them in order to collect for the full amount owed for the repair;

f. Systematically creating a procedure by which the consumer is removed from the repair decision-making process and is never given the opportunity to meaningfully evaluate the proposed repairs or give informed consent for those repairs that fall outside of the manufacturer guidelines; and

g. Manipulating the automobile repair process in a way that compromises safety not only for policyholders, but for all other consumers who travel on the roadways in proximity to such repaired vehicles.

91.

All actions described herein constitute deception to consumers, who are led to believe that they have little or no choice regarding the repair process and who are led to believe that the insurance companies have their best interests in mind with regards to automobile repairs.

92.

All actions described herein result in financial harm to consumers through the loss of value to their vehicles and material changes to vehicles which could void existing warranties or lead to further necessary repairs.

93.

All actions described herein create potential for further bodily and financial harm by placing into the stream of commerce vehicles whose repairs no longer meet the safety specifications of the vehicle manufacturer.

94.

The practices alleged in paragraph 90 constitute a pattern of unfair and deceptive trade practices in violation of LSA-R.S. 51:1405.

95.

Pursuant to LSA-R.S. 51:1407(A), the Attorney General has the right to seek injunctive relief to restrain Defendants' violations of the Louisiana Unfair Trade Practices Act.

96.

Pursuant to LSA-R.S. 51:1407(B) and (C), the Attorney General has the right to seek civil penalties for each violation, including enhanced civil penalties for violations committed against any elder or disabled person.

97.

Pursuant to LSA-R.S. 51:1407(E), the Attorney General may seek an award of restitution for consumer victims.

PRAYER FOR RELIEF

WHEREFORE, PETITIONER PRAYS that, in due course, the Court issue a permanent injunctive order against Defendants, including any employees, agents, contractors and those persons in active concert or participation with them, to restrain, enjoin and prohibit Defendants from:

1. Engaging in any activity in violation of the Louisiana Monopolies statutes, LSA-R.S. 51:121 *et seq.;*
2. Engaging in any activity in violation of the Louisiana Unfair Trade Practices and Consumer Protection Law, LSA-R.S. 51:1401 *et seq.;* or
3. Engaging in any activity that would be a violation of the 1963 Consent Decree;

Through their use of direct repair programs and other methods of controlling and manipulating the automobile repair industry, including but not limited to the specific allegations herein.

Plaintiff further prays that, in due course, the Court issue an Order that Defendants pay restitution to all consumers who have incurred a loss due to the conduct of the Defendants through any manner deemed practicable by the Court.

Plaintiff further prays that, in due course, the Court issue an Order requiring Defendants to reimburse the Office of the Attorney General for all costs and expenses incurred in the investigation and prosecution of this action.

Plaintiff further prays for all civil penalties as allowed under LSA-R.S. 51:1407 and LSA-R.S. 51:1722.

Plaintiff further prays for trial by jury on all issues that may be tried by a jury.

Plaintiff further prays that this court grant any further relief that this Court finds that justice may require or is otherwise equitable.

Respectfully submitted,

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