

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY  
STATE OF MISSOURI**

MICHAEL PREGON, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

STATE FARM FIRE AND CASUALTY COMPANY,

Defendant.

Case No. 24SL-CC03130

JURY TRIAL DEMANDED

**DEFENDANT STATE FARM FIRE AND CASUALTY COMPANY'S  
ANSWER AND ADDITIONAL DEFENSES TO  
PLAINTIFF'S AMENDED CLASS ACTION PETITION AND JURY DEMAND**

Defendant State Farm Fire and Casualty Company ("State Farm") hereby submits its Answer and Additional Defenses to the Amended Class Action Petition (the "Petition") filed by Plaintiff Michael Pregon ("Plaintiff") as set forth below:

1. Plaintiff is an individual who held a State Farm policy of insurance.

**ANSWER:** Admitted.

2. Defendant is an insurance company organized and existing under the laws of Illinois with its principal place of business in Illinois. Defendant is licensed to sell homeowner's and commercial property insurance policies in the State of Missouri.

**ANSWER:** Admitted.

3. This Court has personal jurisdiction over Defendant because Defendant contracts to insure property and risks in Missouri, transacts business in Missouri, enters into contracts in Missouri, committed the acts at issue in this lawsuit in Missouri, and otherwise has sufficient minimum contacts with the State of Missouri.

**ANSWER:** State Farm admits that it regularly conducts business in Missouri by, among other things, the sale of insurance within Missouri. State Farm further admits that, based solely

upon the allegations made in this Petition, this Court has specific personal jurisdiction over State Farm for this matter. State Farm denies all remaining allegations in this paragraph.

4.     Venue is proper in this forum because Defendant has agents who sell Defendant's insurance policies in St. Louis County, Missouri.

**ANSWER:** State Farm admits that venue is proper in this forum. State Farm denies all remaining allegations in this paragraph.

5.     Plaintiff brings this case on behalf of himself and all others similarly situated, pursuant to Missouri Supreme Court Rule 52.08.

**ANSWER:** State Farm admits that Plaintiff purports to bring this action on behalf of himself and all other similarly situated individuals but denies that certification of a litigation class is proper under Missouri Supreme Court Rule 52.08. State Farm denies all remaining allegations in this paragraph.

6.     Defendant sells property insurance coverage for, *inter alia*, residential and commercial buildings in the State of Missouri.

**ANSWER:** Admitted.

7.     This lawsuit only concerns property coverage for buildings and structures, and not personal contents, such as furniture and clothes.

**ANSWER:** State Farm admits that Plaintiff purports to limit this lawsuit to property coverage for buildings and structures. State Farm denies all remaining allegations in this paragraph.

8.     Further, this lawsuit only concerns claims in which Defendant accepted coverage and then Defendant chose to calculate actual cash value ("ACV") pursuant to the replacement cost less depreciation methodology, as opposed to a fair market value approach.

**ANSWER:** State farm admits that Plaintiff purports to limit this lawsuit as described in this paragraph but denies that the purported limitation is in fact a limitation at all. State Farm denies all remaining allegations in this paragraph.

9. Plaintiff contracted with Defendant for an insurance policy providing coverage for certain losses to his property located at 800 Fall Crown Lane, Fenton, Missouri (“the Property”). The policy number was 25-LB-4488-4 (the “Policy”).

**ANSWER:** State Farm admits that it issued an insurance policy to Plaintiff (policy number 25- LB-4488-4) (the “Pregon Policy”), which provided structural damage coverage for structures as specified in that policy. State Farm denies all remaining allegations in this paragraph.

10. Plaintiff paid Defendant premiums in exchange for insurance coverage. The required premiums were paid at all times relevant to this Petition.

**ANSWER:** State Farm admits the first sentence in this paragraph and admits that, on the date of the covered loss forming the basis for this lawsuit, Plaintiff had paid the premiums as required by the Pregon Policy. State Farm denies all remaining allegations in this paragraph.

11. On or about April 3, 2014, the Property suffered structural damage covered by the Policy. The damage to the Insured Property required replacement and/or repair.

**ANSWER:** State Farm admits that Plaintiff’s property located at 800 Fall Crown Lane, Fenton, Missouri, suffered a covered loss on or about April 3, 2014, which required replacement and/or repair. State Farm denies all remaining allegations in this paragraph.

12. Plaintiff timely submitted a claim to Defendant requesting payment for the covered loss.

**ANSWER:** State Farm admits that Plaintiff made a claim under the Pregon Policy. State Farm denies all remaining allegations in this paragraph.

13. Defendant determined the loss to the Insured Property was covered by the terms of the Policy.

**ANSWER:** State Farm admits that Plaintiff's property sustained a covered loss. State Farm denies all remaining allegations in this paragraph.

14. At all relevant times, Defendant's sole methodology for calculating the ACV of structural damage losses in Missouri, including Plaintiff's loss, was to estimate the cost to repair or replace the damage with new materials (replacement cost value, or "RCV"), and then to subtract depreciation. In adjusting Plaintiff's claim, Defendant affirmatively and unilaterally chose to use this "replacement cost less depreciation" methodology to calculate Plaintiff's loss and to make its ACV payment. Defendant did not use any other methodology to calculate Plaintiff's ACV payment or the payments of the putative class members.

**ANSWER:** State Farm denies that Plaintiff has accurately described State Farm's obligations under its property insurance policies in Missouri or its claim handling practices thereunder, including with respect to Plaintiff's covered loss. State Farm denies all remaining allegations in this paragraph.

15. The Policy, and other property insurance forms issued by Defendant to similarly situated class members, does not permit the withholding of non-material depreciation, including future labor, as depreciation. "Labor" as used in this Petition, means intangible non-materials, specifically including both the future labor costs and the future laborers' equipment costs and contractors/laborers' overhead and profit necessary to restore property to its condition *status quo ante*, as well as the future removal costs to remove damaged property, under commercial claims estimating software. In contrast with the Policy, certain policies of insurance expressly allowed for the depreciation of labor as described herein. The type of form or endorsement will be referred to herein as a "labor permissive form." The Policy does not contain a labor permissive form.

**ANSWER:** State Farm denies the allegations in the first sentence of this paragraph. State Farm admits that Plaintiff purports to define "Labor" for purposes of this Petition but denies that such definition is relevant or applicable to the Pregon Policy at issue in this case. State Farm lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding what is "expressly allowed" by other unspecified "policies of insurance" referenced in the third sentence of this paragraph. State Farm denies that the allegations in this paragraph regarding a so-

called “labor permissive form” accurately state industry practice. State Farm denies that this paragraph accurately describes the terms of the Pregon Policy or State Farm’s obligations under the Pregon Policy. State Farm denies all remaining allegations in this paragraph.

16. After Plaintiff’s loss was reported, Defendant sent an adjuster to inspect the damage and estimate the ACV. Defendant uses commercially available computer software to estimate RCV, depreciation, and ACV. The software used to calculate the payment to Plaintiff is called Xactimate®.

**ANSWER:** State Farm admits that it sent an adjuster to inspect damage to Plaintiff’s Property after the loss was reported. State Farm admits that it has used Xactimate to estimate the cost of rebuilding damaged property and to apply depreciation to certain repair tasks on those estimates when estimating the ACV of that property and that State Farm used the Xactimate software with respect to Plaintiff’s claim (together with cost information supplied by Plaintiff’s roofing contractor). State Farm denies all remaining allegations in this paragraph.

17. As set forth in a written Xactimate® estimate provided to Plaintiff by Defendant and dated May 21, 2014, Defendant’s adjuster determined that Plaintiff had suffered a covered loss in the amount of \$9,188.88 (the RCV) to his property. The estimate included the cost of materials and future labor required to complete the repairs.

**ANSWER:** State Farm admits that its adjuster inspected the damage to Plaintiff’s property, determined that a loss was covered, and prepared an estimate of the cost to repair or replace the damage to Plaintiff’s property using the Xactimate software tool. State Farm further admits that its estimate reflected the total cost State Farm had estimated for repair or replacement of the damaged part of the property, including the material, labor, and applicable tax, as \$9,188.88 (the “RCV”). State Farm denies all remaining allegations in this paragraph.

18. In calculating its ACV payment obligations to Plaintiff, Defendant subtracted from the RCV estimate the deductible plus an additional amount of \$3,970.98 for

depreciation. Plaintiff was underpaid on his ACV claim as more fully described below.

**ANSWER:** State Farm admits that in calculating the initial ACV payment for Plaintiff's structural damage claim, it applied \$3,970.98 in depreciation and subtracted that amount and the amount of Plaintiff's deductible from the estimated replacement cost for Plaintiff's structural damage claim. State Farm denies all remaining allegations in this paragraph.

19. ACV coverage is paid by Defendant prospectively, before repairs are made.

**ANSWER:** State Farm admits that it made an initial ACV payment for Plaintiff's structural damage claim before repairs were made. State Farm denies all remaining allegations in this paragraph.

20. As it relates to ACV coverage, this lawsuit does *not* seek to address the propriety of depreciating any labor incorporated or embedded within a building or building product. Plaintiff does not dispute that both labor and materials incurred to build a structure, or create a building product, become integrated with the home or building and may be depreciated following a casualty loss as part of the calculation of ACV benefits.

**ANSWER:** State Farm admits that Plaintiff purports to limit the scope of the lawsuit as described in this paragraph but denies that the purported limitation is in fact a limitation at all. State Farm denies all remaining allegations in this paragraph.

21. However, when Defendant calculated Plaintiff's ACV benefits owed under the Policy, Defendant withheld costs for both the materials and future labor required to repair or replace the Plaintiff's building as depreciation, even though future labor does not "depreciate" before it has even been incurred. Defendant withheld future labor costs throughout its ACV calculations as depreciation.

**ANSWER:** Denied.

22. Like all property insurance claims estimating software, the specific commercial claims estimating software used by Defendant allows for the depreciation of materials only or the depreciation of both material and future labor costs in its depreciation option setting preferences.

**ANSWER:** State Farm admits that the Xactimate software has features that allow the user to apply depreciation to certain estimated costs associated with repair tasks identified on the estimate. State Farm further admits that if the estimated price of a particular line item repair task in Xactimate includes embedded labor costs, those costs may be subject to depreciation when the user determines that it is appropriate to apply depreciation to that particular line item repair task (a decision that is based on the user's judgment given the nature of the estimated repair task and the age and condition, among other considerations, of the damaged portion of the property). State Farm lacks sufficient knowledge to form a belief as to the truth of the allegations regarding the other unspecified "property insurance claims estimating software" referenced in this paragraph and therefore denies those allegations. State Farm denies all remaining allegations in this paragraph.

23. Defendant's withholding of future labor costs as depreciation associated with the repair or replacement of Plaintiff's property resulted in Plaintiff receiving payment for his loss in an amount less than he was entitled to receive under the Policy. Defendant breached its obligations under the Policy by improperly withholding the cost of future labor as depreciation.

**ANSWER:** Denied.

24. Plaintiff cannot determine the precise amount of future labor that has been withheld based only upon the written estimate provided. To determine the precise amount of future labor withheld, it is necessary to have access to the commercial property estimating program at issue (Xactimate®), as well as the electronic file associated with the estimate.

**ANSWER:** State Farm denies that Plaintiff is unable to determine what depreciation State Farm applied in estimating the ACV of his loss, as all such depreciation is shown on the estimate State Farm provided. State Farm is without information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies them.

25. While a property insurer may lawfully depreciate material costs when calculating the amount of an ACV payment owed to an insured, it may not lawfully withhold future repair labor as depreciation under the Policy.

**ANSWER:** State Farm denies that Plaintiff has accurately described State Farm's rights and obligations under the Pregon Policy. State Farm denies all remaining allegations in this paragraph.

26. Defendant's failure to pay the full cost of the future labor necessary to return Plaintiff's and the putative class members' structures to the *status quo ante* left Plaintiff and the putative class members under-indemnified and underpaid for their losses.

**ANSWER:** Denied.

27. Defendant materially breached its duty to indemnify Plaintiff by withholding future labor costs associated with repairing or replacing Plaintiff's property in its ACV payments as depreciation, thereby paying Plaintiff less than he was entitled to receive under the terms of the Policy.

**ANSWER:** Denied.

28. Plaintiff disputes whether portions of the agreed-to and undisputed amounts of future labor, as determined by Defendant itself, may be withheld by Defendant as "depreciation" from Defendant's ACV payment under the terms and conditions of the Policy, including but not limited to depriving Plaintiff of the time use of money resulting from the time periods of labor withholdings in the form of prejudgment interest.

**ANSWER:** State Farm admits that Plaintiff purports to summarize State Farm's rights and obligations under the Pregon Policy and his claims herein but denies that such summary is correct. State Farm denies all remaining allegations in this paragraph.

29. Pursuant to Missouri Supreme Court Rule 52.08(a), (b)(2) and (b)(3), Plaintiff brings this Count individually, and on behalf of all others similarly situated.

**ANSWER:** State Farm admits that Plaintiff purports to sue on behalf of an alleged class but denies that certification of a litigation class is proper under Missouri Supreme Court Rule 52.08. State Farm denies all remaining allegations in this paragraph.

30. Plaintiff seeks to define the following class, which is tentatively defined as:

All persons insured under a State Farm structural damage policy who: (1) made a structural damage claim for property located in Missouri with a date of loss on or after June 5, 2012; and (2) received an ACV Payment on that claim where either estimated Non-Material Depreciation or estimated General Contractor Overhead and Profit Depreciation was deducted, or who would have received an ACV Payment but for the deduction of estimated Non-Material Depreciation and/or estimated General Contractor Overhead and Profit Depreciation causing the calculated ACV figure to drop below the applicable deductible.

The class excludes all claims arising under State Farm policy forms (including endorsement form FE-3650) expressly permitting the “depreciation” of “labor” within the text of the policy form.

The class also excludes any claims in which State Farm’s ACV Payments exhausted the applicable limits of insurance.

The class period for the proposed class begins June 5, 2012 and ends in approximately October 2017.

The class also excludes any claims, or portions of claims, arising under labor depreciation permissive policy forms, *i.e.*, those forms and endorsements expressly permitting the “depreciation” of “labor” within the text of the policy form, unless the use of those forms violate the law of Missouri.

**ANSWER:** State Farm admits that Plaintiff purports to sue on behalf of an alleged class as defined in this paragraph but denies that certification of a litigation class is proper under Missouri Supreme Court Rule 52.08. State Farm denies all remaining allegations in this paragraph.

31. Plaintiff reserves the right to amend the definition of the proposed class through discovery. The following persons are expressly excluded from the class: (1) State Farm and its affiliates, officers, and directors; (2) all persons who make a timely

election to be excluded from the proposed Class; and (3) the Court to which this case is assigned and its staff; and Plaintiff's counsel.

**ANSWER:** State Farm admits that Plaintiff purports to reserve the right to amend his asserted class definition and to exclude the persons identified in this paragraph from that definition, but State Farm denies that certification of a litigation class is proper under Missouri Supreme Court Rule 52.08. State Farm denies all remaining allegations in this paragraph.

32. Plaintiff and members of the putative class as defined all suffered injury as all such persons and entities, at least initially, received lower claim payments than permitted under the policy. Certain amounts initially withheld as labor may be later repaid to some policyholders with replacement cost provisions in their policies, if any. However, policyholders who have been subsequently repaid for initially withheld labor still have incurred damages, at the least, in the form of the lost "time value" of money during the period of withholding, *i.e.*, statutory or common law prejudgment interest on the amounts improperly withheld, for the time period of withholding.

**ANSWER:** Denied.

33. The members of the proposed class are so numerous that joinder of all members is impracticable. Plaintiff reasonably believes that hundreds or thousands of people geographically dispersed across Missouri have been damaged by Defendant's actions. The names and addresses of the members of the proposed class are readily identifiable through records maintained by Defendant or from information readily available to Defendant.

**ANSWER:** State Farm admits that Plaintiff purports to believe there are hundreds or thousands of people in Missouri who fit within his asserted class definition but denies that the members of the alleged class can be conclusively identified without significant individualized file review, and denies that certification of a litigation class is proper under Missouri Supreme Court Rule 52.08. State Farm denies all other allegations in this paragraph.

34. The relatively small amounts of damage suffered by most members of the proposed class make filing separate lawsuits by individual members economically impracticable.

**ANSWER:** State Farm denies that its actions have caused “damage” as alleged in this paragraph and denies that certification of a litigation class is proper under Missouri Supreme Court Rule 52.08. State Farm denies all other allegations in this paragraph.

35. Defendant has acted on grounds generally applicable to the proposed class in that Defendant has routinely withheld labor costs as described herein in its adjustment of property damage claims under its policies of insurance. It is reasonable to expect that Defendant will continue to withhold labor to reduce the amount it pays to its insureds under its policies absent this lawsuit.

**ANSWER:** Denied.

36. Common questions of law and fact exist as to all members of the proposed class and predominate over any questions affecting only individual members. The questions of law and fact common to the proposed class include, but are not limited to:
  - a. Whether Defendant’s policy forms allow the withholding of labor costs in the calculation of ACV payments under the replacement cost less depreciation methodology;
  - b. Whether Defendant’s policy language is ambiguous;
  - c. Whether Defendant’s withholding of labor costs in the calculation of ACV payments breaches the Defendant’s insurance policy forms;
  - d. Whether Defendant has a custom and practice of withholding labor costs in the calculation of ACV payments;
  - e. Whether Plaintiff and members of the proposed class have been damaged as a result of Defendant’s withholding of labor costs in the calculation of ACV payments owed; and
  - f. Whether Plaintiff and members of the proposed class are entitled to declaratory relief.

**ANSWER:** State Farm denies that it has engaged in wrongdoing as to Plaintiff or proposed class members, denies that certification of a litigation class is proper under Missouri Supreme Court Rule 52.08, and denies all remaining allegations in this paragraph.

37. Plaintiff’s claims are typical of the claims of the proposed class members, as they are all similarly affected by Defendant’s customs and practices concerning the withholding of labor. Further, Plaintiff’s claims are typical of the claims of the proposed class members because Plaintiff’s claims arose from the same practices and course of conduct that give rise to the claims of the members of the proposed

class and are based on the same factual and legal theories. Plaintiff is not different in any material respect from any other member of the proposed class.

**ANSWER:** State Farm denies that it has engaged in wrongdoing as to Plaintiff or proposed class members, denies that certification of a litigation class is proper under Missouri Supreme Court Rule 52.08, and denies all remaining allegations in this paragraph.

38. Plaintiff and his counsel will fairly and adequately protect the interests of the members of the proposed class. Plaintiff's interests do not conflict with the interests of the proposed class it seeks to represent. Plaintiff has retained lawyers who are competent and experienced in class action and insurance litigation. Plaintiff and Plaintiff's counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiff and counsel are aware of their fiduciary responsibilities to the members of the proposed class and will diligently discharge those duties by vigorously seeking the maximum possible recovery for the proposed class while recognizing the risks associated with litigation. Plaintiff reserves the right to have unnamed class members join Plaintiff in seeking to be a class representative.

**ANSWER:** State Farm denies that it has engaged in wrongdoing as to Plaintiff or proposed class members, denies that certification of a litigation class is proper under Missouri Supreme Court Rule 52.08, and denies all remaining allegations in this paragraph.

39. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Joining all proposed members of the proposed class in one action is impracticable and prosecuting individual actions is not feasible. The size of the individual claims is likely not large enough to justify filing a separate action for each claim. For many, if not most, members of the proposed class, a class action is the only procedural mechanism that will afford them an opportunity for legal redress and justice. Even if members of the proposed class had the resources to pursue individual litigation, that method would be unduly burdensome to the courts in which such cases would proceed. Individual litigation exacerbates the delay and increases the expense for all parties, as well as the court system. Individual litigation could result in inconsistent adjudications of common issues of law and fact.

**ANSWER:** State Farm denies that it has engaged in wrongdoing as to Plaintiff or proposed class members, denies that certification of a litigation class is proper under Missouri Supreme Court Rule 52.08, and denies all remaining allegations in this paragraph.

40. In contrast, a class action will minimize case management difficulties and provide multiple benefits to the litigating parties, including efficiency, economy of scale, unitary adjudication with consistent results and equal protection of the rights of Plaintiff and members of the proposed class. These benefits would result from the comprehensive and efficient supervision of the litigation by a single court.

**ANSWER:** State Farm denies that it has engaged in wrongdoing as to Plaintiff or proposed class members, denies that certification of a litigation class is proper under Missouri Supreme Court Rule 52.08, and denies all remaining allegations in this paragraph.

41. Questions of law or fact common to Plaintiff and members of the proposed class, including those identified above, predominate over questions affecting only individual members (if any), and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Class action treatment will allow a large number of similarly situated consumers to prosecute their common claims in a single forum, simultaneously, efficiently, and without the necessary duplication of effort and expense that numerous individuals would require. Further, the monetary amount due to many individual members of the proposed class is likely to be relatively small, and the burden and expense of individual litigation would make it difficult or impossible for individual members of the proposed class to seek and obtain relief. On the other hand, a class action will serve important public interests by permitting consumers harmed by Defendant's unlawful practices to effectively pursue recovery of the sums owed to them, and by deterring further unlawful conduct. The public interest in protecting the rights of consumers favors disposition of the controversy in the class action form.

**ANSWER:** State Farm denies that it has engaged in wrongdoing as to Plaintiff or proposed class members, denies that certification of a litigation class is proper under Missouri Supreme Court Rule 52.08, and denies all remaining allegations in this paragraph.

### **COUNT I – BREACH OF CONTRACT**

45. Plaintiff restates and incorporates by reference the previous paragraphs as if fully stated in this Count.

**ANSWER:** State Farm restates and incorporates by reference its responses to and denials of the preceding allegations of the Petition as if fully set forth herein.

46. Defendant entered into policies of insurance with Plaintiff and members of the proposed class. These insurance policies govern the relationship between Defendant and Plaintiff, and members of the proposed class, as well as the manner in which claims for covered losses are handled.

**ANSWER:** State Farm admits that it entered into policies of insurance with Plaintiff and other policyholders in Missouri, and that the terms of those policies are binding on State Farm and the insured. State Farm denies all remaining allegations in this paragraph.

47. These policies of insurance are binding contracts under Missouri law and are supported by valid consideration in the form of premium payments in exchange for insurance coverage.

**ANSWER:** State Farm admits that, as a general matter, its insurance policies are binding contracts under Missouri law in accordance with all policy terms, and that an insured's payment of the required premium when due generally constitutes valid consideration. State Farm denies all remaining allegations in this paragraph.

48. Defendant drafted the insurance policies at issue, which are essentially identical in all respects material to this litigation concerning the withholding of labor as depreciation from ACV payments for structural loss when Defendant calculates ACV under a replacement cost less depreciation methodology.

**ANSWER:** State Farm admits that it drafts the insurance policies it issues, subject to requirements imposed by Missouri law and pertinent insurance regulations in Missouri. State Farm denies that its various property insurance forms are "essentially identical." Because Plaintiff has not specified the policy provisions he characterizes as "essentially identical," State Farm is without sufficient information to form a belief as to the truth of this characterization and therefore denies it. State Farm denies all remaining allegations in this paragraph.

49. In order to receive or be eligible to receive ACV claim payments in the first instance, Plaintiff and the putative class members complied with all material provisions and performed all of their respective duties with regard to their insurance policies.

**ANSWER:** State Farm admits that it issued an ACV payment to Plaintiff for his covered loss, and that the Pregon Policy was in effect as of the date of loss. State Farm denies all remaining allegations in this paragraph, and denies that, as a factual matter, Plaintiff could even know whether each putative class member complied with all material provisions of their policies and performed all of their respective duties with regard to them.

50. Defendant breached its respective contractual duties to pay Plaintiff and members of the proposed class the ACV of their claims by unlawfully withholding labor costs as described herein.

**ANSWER:** Denied.

51. Additionally, Defendant's actions in breaching its contractual obligations to Plaintiff and members of the proposed class benefitted and continues to benefit Defendant. Likewise, Defendant's actions damaged and continue to damage Plaintiff and members of the proposed class.

**ANSWER:** Denied.

52. Defendant's actions in breaching its contractual obligations, as described herein, are the direct and proximate cause of damages to Plaintiff and members of the proposed class.

**ANSWER:** Denied.

53. In light of the foregoing, Plaintiff and members of the proposed class are entitled to recover damages sufficient to make them whole for all amounts unlawfully withheld from their ACV payments, including prejudgment interest as may be allowed by law.

**ANSWER:** Denied.

54. By withholding repair labor costs as depreciation, Defendant breached its obligations to Plaintiff and the putative class members under their respective policies.

**ANSWER:** Denied.

55. As a direct and proximate result of Defendant's breach of the insurance contract, Plaintiff and the putative class members suffered damage. More specifically, Plaintiff and the putative class members received payment for their losses in an amount less than to which they were entitled to under the policy.

**ANSWER:** Denied.

56. Defendant's practice of withholding repair labor costs as depreciation in its calculation of ACV payments on property damage claims is a breach of Defendant's contractual obligations.

**ANSWER:** Denied.

57. Defendant materially breached its duty to indemnify Plaintiff and the putative class members by withholding labor costs from ACV payment as depreciation, thereby paying less than Plaintiff and the putative class members were entitled to receive under the terms of the Policy, including but not limited to depriving Plaintiff and the putative class members of the time use of money resulting from the time periods of labor withholdings in the form of prejudgment interest.

**ANSWER:** Denied.

## **COUNT II - DECLARATORY JUDGMENT AND RELIEF**

58. Plaintiff restates and incorporates by reference all preceding allegations.

**ANSWER:** State Farm restates and incorporates by reference its responses to and denials of the preceding allegations of the Petition as if fully set forth herein.

59. This Court is empowered by Missouri Supreme Court Rule 87 to declare the rights and legal relations of parties regardless of whether further relief is or could be claimed.

**ANSWER:** The allegations in this paragraph improperly state legal conclusions, and therefore State Farm denies them.

60. Justiciable controversies exist between Plaintiff and the putative class members and Defendant as to whether Defendant may withhold labor costs as depreciation from its insureds ACV payments.

**ANSWER:** Denied.

61. Plaintiff and the putative class members have a legally protectable interest in that they are insured under Defendant's policies and Defendant refused and continues to refuse to pay the full indemnity they are entitled to receive under the policy.

**ANSWER:** Denied.

62. Plaintiff and the putative class members have no adequate remedy at law.

**ANSWER:** Denied.

63. This matter is ripe for adjudication between Plaintiff and the putative class members and Defendant.

**ANSWER:** Denied.

64. A party may seek to have insurance contracts, before or after a breach, construed to obtain a declaration of rights, status, and other legal relations thereunder adjudicated.

**ANSWER:** The allegations in this paragraph improperly state legal conclusions without citation so that State Farm lacks sufficient knowledge to admit or deny their accuracy, and State Farm therefore denies them.

65. Plaintiff and members of the proposed class have all complied with all relevant conditions precedent in their contracts.

**ANSWER:** Denied.

66. Plaintiff seeks, individually and on behalf of the proposed class, a declaration that Defendant's property insurance contracts prohibit the withholding of future labor costs as described herein when adjusting losses under the methodology employed herein.

**ANSWER:** State Farm admits that, through this Petition, Plaintiff purports to seek declaratory relief. State Farm denies that Plaintiff is entitled to the relief that he seeks and denies all remaining allegations in this paragraph.

67. Plaintiff further seeks, individually and on behalf of the proposed class, any and all other relief available under the law arising out of a favorable declaration.

**ANSWER:** State Farm admits that, through this Petition, Plaintiff purports to seek declaratory relief. State Farm denies that Plaintiff is entitled to the relief that he seeks and denies all remaining allegations in this paragraph.

68. Plaintiff and members of the proposed class have and will continue to suffer injuries.

**ANSWER:** Denied.

WHEREFORE, Plaintiff Michael Pregon requests that this Court enter judgment against Defendant for an amount in excess of \$25,000, and to grant the following relief:

1. Enter an order certifying this action as a class action, appointing Plaintiff as the representative of the class, and appointing Plaintiff's attorneys as class counsel;

2. Enter a declaratory judgment, declaring that Defendant's withholding of labor costs as depreciation is contrary to and breaches the insurance policy issued to Plaintiff and members of the class;

3. Enter a declaration, and any preliminary and permanent injunction and equitable relief against Defendant and its officers, agents, successors, employees, representatives, and any and all persons acting in concert with it, from engaging in each of the policies, practices, customs, and usages complained of herein, as may be allowed by law;

4. Enter an order that Defendant specifically perform and carry out policies, practices, and programs that remediate and eradicate the effects of their past and present practices complained of herein;

5. Award compensatory damages for all sums withheld as labor costs under the policy, plus all applicable prejudgment interest on all such sums, to Plaintiff and members of the proposed class;

6. Award costs, expenses, and disbursements incurred herein by Plaintiff and members of the proposed class as may be allowed by law, including but not limited to amounts available under the common fund doctrine;

7. All applicable Pre- and Post-Judgment interest; and

8. Grant such further and additional relief as the Court deems necessary and proper.

**ANSWER:** State Farm denies that it has engaged in wrongdoing as to Plaintiff or any member of the proposed class and denies that certification of a litigation class is proper under Missouri Supreme Court Rule 52.08. State Farm denies all remaining allegations in this paragraph.

## **STATE FARM'S ADDITIONAL DEFENSES**

1. State Farm repeats and reincorporates its answers to and denials of Plaintiff's allegations in Paragraphs 1–68 and Prayer for Relief as if fully set forth herein.

### **Plaintiff's Individual Claim and Policy**

2. As of April 3, 2014, Plaintiff's home located at 800 Fall Crown Lane, Fenton, Missouri 63026-3960, was insured under a State Farm homeowners' policy, Policy No. 25-LB-4488-4 (the "Pregon Policy").

3. Following the damage to his home on April 3, 2014, Plaintiff made a claim under Coverage A of the Brown Policy for hail damage to the roof and exterior of the home.

4. As of the date of Plaintiff's loss, the "SECTION I – LOSS SETTLEMENT" provisions of the Pregon Policy provided in pertinent part as follows:

#### **1. A1 – Replacement Cost Loss Settlement – Similar Construction.**

a. We will pay the cost to repair or replace with similar construction and for the same use on the premises shown in the **Declarations**, the damaged part of the property covered under **SECTION I – COVERAGES, COVERAGE A – DWELLING**, except for wood fences, subject to the following:

(1) until actual repair or replacement is completed, we will pay only the actual cash value at the time of the loss of the damaged part of the property, up to the applicable limit of liability shown in the **Declarations**, not to exceed the cost to repair or replace the damaged part of the property;

(2) when the repair or replacement is actually completed, we will pay the covered additional amount you actually and necessarily spend to repair or replace the damaged part of the property, or an amount up to the applicable limit of liability shown in the **Declarations**, whichever is less

....

5. As of the date of Plaintiff's loss, the "SECTION I – CONDITIONS" portion of the Pregon Policy included the following provisions pertinent here:

2. **Your Duties After Loss.** After a loss to which this insurance may apply, you shall see that the following duties are performed: ...

\* \* \*

e. submit to us, within 60 days after the loss, your signed, sworn proof of loss which sets forth, to the best of your knowledge and belief: ...

\* \* \*

(5) specifications of any damaged building and detailed estimates for repair of the damage; ...

\* \* \*

6. **Suit Against Us.** No action shall be brought unless there has been compliance with the policy provisions. The action must be started within one year after the date of loss or damage.

\* \* \*

8. **Loss Payment.** We will adjust all losses with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss and:

- a. reach agreement with you;
- b. there is an entry of a final judgment; or
- c. there is a filing of an appraisal award with us.

6. An endorsement to the Pregon Policy amended the second sentence of the above-quoted Paragraph 6 from the "SECTION I – CONDITIONS" portion of the Pregon Policy to indicate that any action brought against State Farm must be started within "ten years" after the date of loss or damage.

7. As of the date of Plaintiff's loss, the "SECTION I AND SECTION II – CONDITIONS" portion of the Pregon Policy included the following provisions pertinent here:

4. **Waiver of Change of Policy Provisions.** A waiver or change of any provision of this policy must be in writing by us to be valid. Our request for an appraisal or examination shall not waive any of our rights.

8. Following Plaintiff's submission of his claim for the damage to his home, State Farm conducted an initial inspection of Plaintiff's loss on April 30, 2014. Plaintiff was present at the inspection. The inspection revealed that there was minor wind damage to the front slope of the roof but that there was no evidence of hail damage to the roof. Damage was found on the garage wrap, and minor interior damage was also found to the living room, which was located below a front slope area of the roof that was found to have been leaking for some time.

9. Eleven days later, Plaintiff requested a second inspection, which was performed by a different adjuster on May 21, 2014. Plaintiff and Plaintiff's roofing contractor, Jeff Held of Magnus Construction, attended the second inspection, during which additional damage was found on Plaintiff's roof and a few isolated items (e.g., gutters and downspouts).

10. Plaintiff's contractor agreed with the scope of repairs as identified by State Farm during the second inspection.

11. State Farm then prepared an Xactimate estimate of the cost to repair the exterior and interior damage to Plaintiff's home. The estimate to repair the damage was \$9,188.88. State Farm applied depreciation to certain repair line-items based on information obtained during the inspection, including information from Plaintiff regarding the pre-loss age and condition of the property. The resulting depreciation totaled \$3,970.98, all of which was shown on the estimate on a line-item-by-line-item basis. The resulting ACV estimate for Plaintiff's loss was \$3,730.90. After subtracting Plaintiff's \$1,487 deductible, State Farm issued a claim payment to Plaintiff in the amount of \$3,730.09. That payment was issued to Plaintiff on the same day as the inspection.

12. State Farm provided Plaintiff with a copy of its estimate and written documentation explaining that the Pregon Policy provided for replacement cost coverage and that Plaintiff could recover an estimated \$3,970.98 in replacement cost benefits by completing the estimated repairs

within two years of the date of loss, notifying State Farm within 30 days of the work's completion, and submitting appropriate documentation for the work. State Farm further explained to Plaintiff in writing that, without waiving these requirements, State Farm would consider paying replacement cost benefits before repairs were actually completed if Plaintiff presented a signed repair contract.

13. On June 10, 2014, Plaintiff's contractor provided to State Farm an invoice documenting costs associated with the replacement of damaged portions of Plaintiff's home that were attributable to the loss. A State Farm claim representative contacted Plaintiff that same day, and Plaintiff confirmed that all corresponding repair work had been completed.

14. On June 10, 2014, State Farm issued to Plaintiff a supplemental payment of \$3,970.98, representing the replacement cost benefits on Plaintiff's claim.

15. The total of all payments reflected in the claim file for Plaintiff's structural damage claim was \$7,701.88. State Farm owes nothing more for Plaintiff's structural damage claim.

#### **State Farm's Claim Practices**

16. As to insureds who may qualify for membership in Plaintiff's asserted class, State Farm had paid many of those insureds the full cost that the insured incurred to complete all loss-related repair or replacement of their insured, damaged structure less any applicable deductible (either through the insured's initial ACV payment, through payment of replacement cost up front, or through a combination of ACV and replacement cost benefits) long before Plaintiff's suit was filed, and before the insured submitted any proof of loss form.

17. State Farm does not require insureds to submit documentation showing their completion of repairs, or the cost for such repairs, unless the insured is requesting payment of replacement cost benefits.

18. Estimates prepared by State Farm adjusters for Missouri claims under State Farm property insurance policies often overstate the cost that insureds ultimately incur to complete some or all repairs for their damaged properties. An initial estimate may overstate the quantity of materials needed, may include amounts for repairs that later are determined to be unnecessary, and the like. Moreover, an estimate may understate the appropriate depreciation for the damaged portion of the insured property. In addition, from time to time, adjusters make errors in estimating (e.g., by making errors in measurements, including duplicative repairs on estimates, etc.).

19. Many members of the asserted class were able to complete some or all repairs for their damaged properties at an incurred cost equal to or below State Farm's estimated ACV for the loss.

#### **State Farm's Addition of Endorsement FE-3650**

20. Beginning on August 1, 2016, State Farm added Endorsement FE-3650 to certain forms of newly issued Missouri policies offering structural damage coverage.

21. Beginning on October 1, 2016, at the renewal date for existing insureds with certain forms of Missouri policies offering structural damage coverage, State Farm added Endorsement FE- 3650 to those policies.

22. State Farm filed Endorsement FE-3650 with the Missouri Department of Insurance before it began the roll-out of the Endorsement.

23. Endorsement FE-3650 defines the term "actual cash value" as follows:

The following is added to any provision which uses the term "actual cash value":

Actual cash value means the value of the damaged part of the property at the time of loss, calculated as the estimated cost to repair or replace such property, less a deduction to account for pre-loss depreciation. For this calculation, all components of this estimated cost including, but not limited to:

1. materials, including any tax;
2. labor, including any tax; and

3. overhead and profit;  
are subject to depreciation.

The depreciation deduction may include such considerations as:

1. age;
2. condition;
3. reduction in useful life;
4. obsolescence; and
5. any pre-loss damage including wear, tear, or deterioration; of the damaged part of the property.

All other policy provisions apply.

24. State Farm subsequently amended its Missouri policies offering structural damage coverage, after filing the same with the Missouri Department of Insurance, to include the same definition of “actual cash value.”

#### **The Eighth Circuit’s Decision in *In re: State Farm Fire and Casualty Co.***

25. In April 2015, a State Farm policyholder who suffered a covered loss to her property located in Missouri filed an asserted class action lawsuit against State Farm in the Circuit Court of Cole County, Missouri, captioned as *LaBrier v. State Farm Fire and Casualty Co.*, Case No. 15AC-CC00125. Following State Farm’s removal of the lawsuit to federal court, the case was designated as Case No. 2:15-cv-00493-NKL (W.D. Mo.).

26. The plaintiff’s liability theory in *LaBrier* was identical to the liability theory asserted by Plaintiff in this case. Additionally, the State Farm insurance policy at issue in *LaBrier* was identical to the Pregon Policy.

27. In November 2015, the district court in *LaBrier* denied State Farm’s motion to dismiss, holding that the plaintiff had stated a viable claim for breach of contract based on State Farm’s alleged practice of “labor depreciation.” *See Order at 3–17, LaBrier, Case No. 2:15-cv-00493-NKL (W.D. Mo. Nov. 30, 2015).*

28. The district court in *LaBrier* subsequently granted the plaintiff's motion for class certification. *See Order, LaBrier, Case No. 2:15-cv-00493-NKL* (W.D. Mo. July 25, 2016).

29. In September 2017, the U.S. Court of Appeals for the Eighth Circuit reversed both decisions. *See In re State Farm Fire and Cas. Co.*, 872 F.3d 567 (8th Cir. 2017), *reh'g denied* (Oct. 31, 2017).

30. The Eighth Circuit examined Missouri law and held that State Farm's alleged practice of depreciating the estimated cost of labor necessary to complete repairs when calculating ACV claim payments "does not breach" its Missouri homeowners insurance policy—the same policy at issue here. *Id.* at 572–73. The Eighth Circuit thus reversed the district court's denial of State Farm's motion to dismiss and directed that the case be "remanded with directions to dismiss LaBrier's complaint." *Id.* at 577.

31. The Eighth Circuit further held that because the reasonableness of any individual estimate of ACV can "only be determined based on all the facts surrounding a particular insured's partial loss, ... there are *no* predominant common facts at issue, and the decision certifying a class ... must be reversed." *Id.* at 577.

32. The Eighth Circuit's decision has not been overruled.

#### **FIRST ADDITIONAL DEFENSE**

As set forth in State Farm's affirmative allegations Nos. 1–32 (incorporated herein by reference), and for additional reasons, the Petition fails to state a claim for which relief may be granted as to Plaintiff and some or all members of the proposed class.

#### **SECOND ADDITIONAL DEFENSE**

As set forth in State Farm's affirmative allegations Nos. 1–32 (incorporated herein by reference), and for additional reasons, this Court lacks subject matter jurisdiction over this entire controversy due to Plaintiff's lack of standing and/or mootness of his claim.

### **THIRD ADDITIONAL DEFENSE**

As set forth in State Farm's affirmative allegations Nos. 1–32 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiff and other members of the proposed class fail for the individual's lack of standing and/or mootness of the individual's claims.

### **FOURTH ADDITIONAL DEFENSE**

As set forth in State Farm's affirmative allegations Nos. 1–32 (incorporated herein by reference), and for additional reasons, Plaintiff's claims and some or all of the claims of members of the proposed class are barred by the applicable statute of limitations.

### **FIFTH ADDITIONAL DEFENSE**

As set forth in State Farm's affirmative allegations Nos. 1–32 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiff and other members of the proposed class are barred for the individual insured's failure to comply with all duties, obligations and conditions precedent under his or her insurance policy, including without limitation failure promptly to report the insured's loss, failure to cooperate in the investigation of the claim, failure timely to commence repairs, failure to provide information necessary for adjustment of the insured's loss or for payment of any replacement cost or other benefits assertedly owed, failure to submit a proof of loss as to unpaid amounts allegedly due for the loss, and/or failure to pay premiums as due. State Farm specifically pleads, without limitation, all terms, conditions, and exclusions of each insured's policy as to that insured. Further, State Farm specifically denies any claims and/or allegations that contradict, contravene, or enlarge upon the terms, obligations, conditions, exclusions, or limitations of each individual insured's policy.

### **SIXTH ADDITIONAL DEFENSE**

As set forth in State Farm's affirmative allegations Nos. 1–32 (incorporated herein by reference), and for additional reasons, the policies issued by State Farm under which the individual

and asserted class claims are asserted are the best evidence of the contents of each such policy. State Farm specifically pleads, without limitation, all terms, conditions, and exclusions of each insured's policy as to that insured. Further, State Farm specifically denies any claims and/or allegations that contradict, contravene, or enlarge upon the terms, conditions, exclusions, or limitations of each individual insured's policy.

#### **SEVENTH ADDITIONAL DEFENSE**

As set forth in State Farm's affirmative allegations Nos. 1–32 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiff and other members of the proposed class are barred to the extent that the individual already has been fully compensated for his or her loss by, *inter alia*, voluntarily electing not to pursue repairs to the property, by receiving payment of all replacement cost benefits owed for the individual's cost to complete repairs (whether through the insured's initial ACV payment or in combination with replacement cost benefits), by receiving payment of his or her full policy limits less the applicable deductible, by receiving an ACV payment sufficient to cover the ACV of the damaged property (regardless of any depreciation applied to non-material components), and/or by completing repairs to the damaged property for less than the amount of the total payment already received for the claim (less the applicable deductible).

#### **EIGHTH ADDITIONAL DEFENSE**

As set forth in State Farm's affirmative allegations Nos. 1–32 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiff and other members of the proposed class are barred by the doctrine of accord and satisfaction.

### **NINTH ADDITIONAL DEFENSE**

As set forth in State Farm's affirmative allegations Nos. 1–32 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiff and other members of the proposed class are barred by the individual's failure to mitigate damages.

### **TENTH ADDITIONAL DEFENSE**

As set forth in State Farm's affirmative allegations Nos. 1–32 (incorporated herein by reference), and for additional reasons, some or all claims of members of the proposed class are barred for the individuals' failure to comply with all requirements relating to the appraisal process for resolving disputes concerning claims under their respective policies.

### **ELEVENTH ADDITIONAL DEFENSE**

As set forth in State Farm's affirmative allegations Nos. 1–32 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiff and other members of the proposed class are barred by the doctrines of laches, waiver, estoppel, and/or unclean hands.

### **TWELFTH ADDITIONAL DEFENSE**

As set forth in State Farm's affirmative allegations Nos. 1–32 (incorporated herein by reference), and for additional reasons, some or all claims of members of the proposed class are barred by prior appraisal and/or settlement and release.

### **THIRTEENTH ADDITIONAL DEFENSE**

As set forth in State Farm's affirmative allegations Nos. 1–32 (incorporated herein by reference), and for additional reasons, some or all claims of members of the proposed class are barred by the doctrines of *res judicata* and/or issue preclusion or collateral estoppel.

### **FOURTEENTH ADDITIONAL DEFENSE**

As set forth in State Farm's affirmative allegations Nos. 1–32 (incorporated herein by reference), all claims of Plaintiff and other members of the proposed class are barred by the Eighth

Circuit's decision in *In re State Farm Fire and Cas. Co.*, 872 F.3d 567 (8th Cir. 2017), reh'g denied (Oct. 31, 2017), which decision has not been overruled.

#### **FIFTHTEENTH ADDITIONAL DEFENSE**

As set forth in State Farm's affirmative allegations Nos. 1–32 (incorporated herein by reference), and for additional reasons, this action cannot be maintained as a litigation class action under Missouri Supreme Court Rule 52.08 because, among other things, individual issues of law or fact will predominate over any common questions at trial and, as a result, a litigation class action is not a superior method for the fair and efficient adjudication of the controversy. State Farm further pleads that any adjudication of Plaintiff's individual claims or those of other proposed class members will require individualized evidence as to Plaintiff and each putative class member. Further, any adjudication of Plaintiff's individual claims or those of other proposed class members will require individualized inquiry on the questions of injury, causation, and damages such that imposition of liability and any award of damages or other relief against State Farm on the basis of "generalized class-wide proof" will not satisfy the requirements of Missouri Supreme Court Rule 52.08 and further would violate State Farm's rights under the Missouri Constitution, including without limitation its right to have all fact issues tried to a single jury and its right to Due Process. State Farm specifically pleads that the asserted classes as pleaded in the Petition are barred by the Eighth Circuit's decision in *In re State Farm Fire and Cas. Co.*, 872 F.3d 567 (8th Cir. 2017), reh'g denied (Oct. 31, 2017), which decision has not been overruled.

#### **SIXTEENTH ADDITIONAL DEFENSE**

As set forth in State Farm's affirmative allegations Nos. 1–32 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiff and members of the proposed class are barred because they improperly seek to impair the obligation of contracts in contravention of rights guaranteed to State Farm by the Missouri Constitution.

### **SEVENTEENTH ADDITIONAL DEFENSE**

As set forth in State Farm's affirmative allegations Nos. 1–32 (incorporated herein by reference), and for additional reasons, Plaintiff and some or all members of the proposed class are not entitled to recover pre- or post-judgment interest for failure to demonstrate all prerequisites for recovery of such payments under their respective policies and/or Missouri law (including without limitation submission of a proof of loss and/or a definite amount owed or overdue).

### **EIGHTEENTH ADDITIONAL DEFENSE**

As set forth in State Farm's affirmative allegations Nos. 1-32 (incorporated herein by reference), and for additional reasons, State Farm is entitled to a credit, recoupment or setoff against any underpayment to Plaintiff and alleged members of the asserted class, including but not limited to a credit, recoupment or setoff for any overpayment by State Farm due to overestimate or a mistake of fact concerning the amount required to complete the repairs.

### **NINETEENTH ADDITIONAL DEFENSE**

As set forth in State Farm's affirmative allegations Nos. 1-32 (incorporated herein by reference), and for additional reasons, some or all claims of Plaintiff and alleged members of the asserted class are barred by reason of their filing for bankruptcy, their failure to disclose the claim against State Farm in the bankruptcy action, or a foreclosure on the property that is the subject of the claim at issue in this action.

### **TWENTIETH ADDITIONAL DEFENSE**

As set forth in State Farm's affirmative allegations Nos. 1–32 (incorporated herein by reference), and for additional reasons, Plaintiff's claimed damages or other relief, and the asserted damages or other relief sought by other members of the proposed class, including without limitation Plaintiff's request for a declaration that State Farm's policy language (or its form

endorsements) are contrary to Missouri law, are barred in whole or in part because they are improper and unavailable for the claims alleged.

**TWENTY-FIRST ADDITIONAL DEFENSE**

As set forth in State Farm's affirmative allegations Nos. 1-32 (incorporated herein by reference), and for additional reasons, Plaintiff has failed to join mortgagees and other obligees of putative class members as necessary parties who, under State Farm's policies of insurance, may be entitled to any direct payment of any losses.

\* \* \*

State Farm reserves the right to assert any further and additional defenses that may become applicable or apparent as to the claims raised by Plaintiff and/or any members of the proposed class as this action proceeds.

**JURY DEMAND**

State Farm demands a trial by jury.

Dated: September 11, 2025

Respectfully submitted,

By: /s/ Michael J. Kuhn

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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that the foregoing document was filed using the Court's electronic filing system, which will provide service to all counsel of record.

/s/Michael J. Kuhn