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KEVIN STOCK  
COUNTY CLERK  
NO: 18-2-06616-1

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON

IN AND FOR PIERCE COUNTY

ANOUSACK SANITH, individually and as the  
representative of all persons similarly situated,

Plaintiff,

v.

STATE FARM FIRE AND CASUALTY  
COMPANY,

Defendant.

NO.

**CLASS ACTION COMPLAINT FOR  
DAMAGES FOR BREACH OF  
CONTRACT**

COMES NOW, ANOUSACK SANITH (“Plaintiff”), Plaintiff in the above-entitled matter and files this, his original class action complaint, as the proposed Representative of a Class to be comprised of certain insureds of STATE FARM FIRE AND CASUALTY COMPANY (hereafter “STATE FARM F&C” or “Defendant”) with policies issued in the State of Washington, and in support hereof would respectfully show the Court as follows:

**I. INTRODUCTION**

1.1 This action seeks to recover damages suffered by Plaintiff and the members of the Class, all of whom are STATE FARM F&C insureds within the State of Washington, as a result of STATE FARM F&C’s breach of its standard form policy of insurance and its failure to assess and pay covered losses.

1.2 STATE FARM F&C advertised, solicited, and sold automobile insurance policies providing Underinsured Motorist coverage (“UIM PD”) in the State of

1 Washington. These policies, identical to the policy sold to Plaintiff, offered to  
2 pay for legally recoverable losses and damage to insured vehicles under the UIM  
3 PD Coverage. The policies promise as follows: “*We* will pay compensatory  
4 damages for *property damage* an *insured* is legally entitled to recover from the  
5 owner or driver of an *underinsured motor vehicle*.” (Bolding and italics in  
6 original).

7  
8 1.3 It is long established that the compensatory damages one can recover from an at-  
9 fault driver in this State includes what the law refers to as “Diminished Value.”  
10 See *Moeller v. Farmers Ins. Co. of Wa.*, 173 Wn.2d 264, 267 P.3d 998 (2011).  
11 As WPI 30.12 states the “compensatory damages” recoverable under  
12 Washington law include “The reasonable value of necessary repairs to any  
13 property that was damaged plus the difference between the fair cash market  
14 value of the property immediately before the occurrence and its fair cash market  
15 value after it is repaired.”

16  
17 1.4 Plaintiff claims that when certain automobiles—those within the proposed Class  
18 (vehicles owned by the insured, which are no more than five model years old,  
19 and with less than 90,000 miles at the time of the accident) — sustain certain  
20 types of damage to their structural systems and bodies, they cannot be repaired to  
21 their pre-accident condition and are, as a result, tangibly and identifiably  
22 different than they were pre-accident. This causes the vehicles to suffer a loss in  
23 value at the time of the accident because there will remain a “difference between  
24 the fair cash market value of the property immediately before the occurrence and  
25 its fair cash market value after it is repaired” without regards to the repairs.  
26

1 Plaintiff's expert has identified and calculated this market value loss via  
2 regression analysis on the auction sale prices of vehicles that are undamaged  
3 compared to those on which properly repaired accident damage was found to  
4 exist.

5  
6 1.5 STATE FARM F&C's UIM PD coverage language is similar to that in the policy  
7 interpreted in the *Moeller* decisions. Notably, unlike in *Moeller*, there is no  
8 possible claim that diminished value is excluded from the UIM PD coverage of  
9 STATE FARM MUTUAL's common policy. There is no exclusionary or  
10 limiting language limiting the coverage obligation listed above. This is in sharp  
11 contrast to the separately listed comprehensive and collision coverages where  
12 STATE FARM F&C has expressly removed diminished value from coverage for  
13 the cost of repair under the "**Comprehensive Coverage and Collision**  
14 **Coverage**" with language stating "[t]he cost to repair the covered vehicle does  
15 not include any reduction in the value of the covered vehicle after it has been  
16 repaired, as compared to its value before it was damaged."

17  
18 1.6 Despite knowing that diminished value was a covered, non-excluded loss,  
19 STATE FARM F&C did not adjust UIM PD claims to include any losses due to  
20 diminished value. Instead, STATE FARM F&C failed to adjust the loss and to  
21 make payment for diminished value in settling first party UIM PD claims.

22  
23 1.7 On July 15, 2017, Plaintiff's vehicle was rear-ended by a hit-and-run driver.  
24 Plaintiff filed a police report. Plaintiff was insured by Defendant STATE FARM  
25 F&C under his UIM PD coverage for this loss. Plaintiff's vehicle was a 2017  
26

1 Toyota Tacoma SR5, which had only 8,278 miles at the time of the accident.

2 Police cited the at-fault motorist for operating a motor vehicle without insurance.

3 1.8 Plaintiff's vehicle suffered severe damage as a result of the collision:



13 Repairs of the vehicle included extensive frame/unibody repairs and body work  
14 and painting on extensive areas of the vehicle. The total repair cost was  
15 \$17,735.79.

16  
17 1.9 Like others in the proposed Class, Mr. Sanith's claim was classified and adjusted  
18 by STATE FARM F&C under the UIM PD coverage, and he was charged the  
19 UIM PD deductible on his claim. As it does on every case with UIM PD  
20 exposure, STATE FARM F&C conducted an investigation, determining that the  
21 other party was at fault and that the at-fault party was uninsured (or could not be  
22 identified), triggering UIM PD coverage. STATE FARM F&C recorded the  
23 results of its investigation in the claims file, and further determined and recorded  
24 the fault percentage for its insured and the other partie(s). While on information  
25 and belief, Ms. Sanith was found to have no fault by STATE FARM F&C, where  
26

1 a percentage of fault is found by STATE FARM F&C it is then applied by  
2 STATE FARM F&C to any losses paid under the UIM PD coverage.

3 1.10 As a result of the damage it sustained in the accident, Plaintiff's vehicle was  
4 worth less after it was repaired than it was before the accident. Since the areas of  
5 and the fact of repaired damage are detectable, knowledgeable buyers know that  
6 after the accident the vehicle lacks the attributes of an undamaged vehicle, and  
7 the vehicle is worth less (it has "diminished value") as a result of the accident,  
8 irrespective of any repairs that were done to the vehicle. While poor repairs  
9 might further reduce a vehicle's market value (a loss Plaintiff does not seek) the  
10 market value loss of Plaintiff – and other members of the proposed Classes' –  
11 vehicles due to "diminished value" can be determined by looking at the actual  
12 market value of vehicles with properly repaired accident damage, allowing the  
13 calculation of the amount of diminished value.

14  
15  
16 1.11 Like other members of the proposed Class, Plaintiff presented his vehicle to  
17 STATE FARM F&C to have his property loss adjusted and paid. Following its  
18 usual practice, STATE FARM F&C inspected the vehicle, determined if any  
19 prior damage existed on the vehicle, documenting any such in the claims file,  
20 and estimated the cost to properly repair (i.e. following industry standards) the  
21 vehicle. However, in doing so, STATE FARM F&C did not adjust the loss to  
22 include the further diminished value loss.

23  
24 1.12 Due to the severity of damage compared to the vehicle's pre-loss value, Plaintiff  
25 requested that his vehicle be declared a total loss. In a telephone conversation, a  
26

1 representative of STATE FARM F&C told Plaintiff that he could present a claim  
2 for the resulting loss in value once his vehicle had been repaired.

3 1.13 Plaintiff then hired an appraiser and Licensed Public Adjuster to appraise the loss  
4 in value and to present a claim for the loss in value. In response, STATE FARM  
5 F&C denied Plaintiff's claim with what appears to have been a form letter stating  
6 in relevant part that:  
7

8 Diminished value is the alleged difference between a vehicle's  
9 value before an accident and its value after proper repairs are  
10 completed. We believe that the documentation which has been  
11 provided to date does not substantiate that the value of your  
12 vehicle has been reduced due to the damage sustained from the  
13 auto accident.

14 ....

15 The repairs paid were preformed according to professional repair  
16 specifications. There is no evidence the repair work was below  
17 repair industry standards. Please contact Carstar Collision Clinic-  
18 Bellevue if there are any issues with the repairs.

19 It is the duty of the insurer to adjust claims fairly. Believing that STATE FARM  
20 F&C has not acted in accordance with its legal obligations to him and other  
21 similarly situated, in not paying, or (in the rare case where diminished value is  
22 paid, and not rejected via a form letter) underplaying diminished value losses,  
23 Plaintiff brings this action to enforce his legal remedies, and the remedies of the  
24 proposed class members.

25 1.13 Although Plaintiff took the appropriate measures to receive compensation from  
26 STATE FARM F&C in presenting his vehicle for inspection by State Farm, State  
Farm found UIM PD coverage to apply, coverage which includes coverage for  
diminished value, and then at State Farm's request, and at his own expense,

1 obtaining an estimate of the covered loss in market value of his vehicle, STATE  
2 FARM F&C has failed to compensate Plaintiff for his diminution of value loss.

3 1.14 Plaintiff alleges that STATE FARM F&C's failure to pay for this type of loss  
4 fully and fairly under its standard Washington insurance policy's UIM PD  
5 coverage has breached its standard contract with its policyholders.  
6

7 **II. JURISDICTION AND VENUE**

8 2.1 The claims asserted herein per Class member exceed the minimum jurisdictional  
9 amount of this Court, but are less than \$75,000, even were statutory damages and  
10 attorney's fees (neither of which is sought or plead) recoverable.

11 2.2 STATE FARM F&C transacts business in Pierce County, Washington. Venue is  
12 therefore proper pursuant to RCW 4.12.025 section (1) and (3)(d) as the county in  
13 which the Defendant transacts business.

14 2.3 Plaintiff is a citizen of Washington. All members of the proposed Class are  
15 insured under policies issued in and for the State of Washington for vehicles  
16 registered in the State of Washington. As a result, nearly all proposed Class  
17 members are Washington residents and citizens. Less than one percent (1%) of  
18 the members of the proposed Class will be citizens of other States, but  
19 nonetheless will be connected to Washington State via their vehicles and  
20 insurance policies. As a result, the principal injuries resulting from the alleged  
21 misconduct and any related conduct of STATE FARM F&C occurred, and all  
22 damages were incurred, in Washington.  
23  
24

25 2.4 On information and belief, based upon the Class sizes in prior UIM PD classes  
26 having the exact same Class definition, where a Class lists were provided by the

1 defendants for purposes of paying claims, and that list and how it was generated  
2 was subjected to confirmatory discovery, and STATE FARM F&C's market  
3 share in Washington during the proposed Class period, the proposed Class will  
4 include approximately 830 claims as of the time of filing.

5  
6 2.5 Additionally, average diminished value loss damages have been calculated in  
7 other actions, most recently in another proposed Class also involving UIM PD  
8 claims covering a similar time period to the proposed Class. Based upon this,  
9 average loss—before accounting for prior damage—is about \$1,182.00 per  
10 claim. However, a deduction of 2.015% to Class wide damages to account for  
11 those Class members with vehicles having prior accidents (whose damages are as  
12 a result less) leaves \$1,158 per claim on average.

13  
14 2.6 These figures determine that the total amount sought in compensatory damages  
15 in this action is approximately \$961,140, as neither prospective injunctive relief,  
16 nor treble damages, is currently sought or plead. Further, at this time Plaintiff  
17 pleads only for the \$200.00 statutory fee award to the prevailing party per RCW  
18 4.84.080. Therefore, jurisdiction under the Class Action Fairness Act of 2005  
19 (“CAFA”) does not exist, as the amount in controversy is far less than  
20 \$5,000,000.00.

### 21 **III. THE PARTIES**

22  
23 3.1 Plaintiff, ANOUSACK SANITH, is an adult citizen of Washington.

24 3.2 STATE FARM F&C is headquartered in Bloomington, Illinois. STATE FARM  
25 F&C does business throughout the State of Washington.  
26



1                            **IV. COMMON COURSE OF CONDUCT BY STATE FARM F&C**

2        4.1      STATE FARM F&C solicits and advertises for consumers to purchase UIM PD  
3                            coverage for their vehicles.

4        4.2      The policy that STATE FARM F&C issued to all members of the proposed Class  
5                            promised as follows: "***We*** will pay compensatory damages for ***property damage***  
6                            an *insured* is legally entitled to recover from the owner or driver of an  
7                            ***underinsured motor vehicle***." (Bolding and italics in original).

8        4.3      STATE FARM F&C determined the loss to be covered under the UIM PD  
9                            coverage having found that the at fault driver was underinsured. The language in  
10                            the policies falling provided diminished value coverage. Despite having not  
11                            excluded diminished value in the UIM PD portion of the policy as a loss, STATE  
12                            FARM F&C neither adjusted UIM PD claims to address the damage which  
13                            results from diminished value, nor paid full and fair diminished value damages  
14                            on UIM PD claims.  
15

16                            **V. CLASS ACTION ALLEGATIONS**

17        5.1      This action is brought as a class action under Superior Court Civil Rule 23.  
18                            STATE FARM F&C's conduct has been systematic and continuous and has  
19                            affected large numbers of STATE FARM F&C policyholders over time in  
20                            Washington. Plaintiff brings this class action to secure redress for STATE  
21                            FARM F&C's uniform and common practice of adjusting vehicle losses so that  
22                            STATE FARM F&C fails to restore them to their pre-loss condition, including  
23                            value, by leaving the vehicles with unavoidable tangible differences after repair,  
24                            which result in loss in fair market value. STATE FARM F&C further uniformly  
25  
26

1 has failed adequately to inform its policyholders of their diminished value loss  
2 and fully to adjust their loss. STATE FARM F&C's conduct has been uniform  
3 throughout the Class Period.

4 5.2 All members of the proposed Class have fully complied with all pertinent policy  
5 provisions to receive payment under their policies from STATE FARM F&C.  
6 STATE FARM F&C has found UIM PD coverages to apply to each member of  
7 the proposed Class' accident, and STATE FARM F&C has found all of the  
8 requirements for such coverage to have been fulfilled by the Class Members, in  
9 fact paying part of the claim under this coverage. Each member of the proposed  
10 Class has presented their claim and vehicle to STATE FARM F&C or its agents  
11 to have their losses fully adjusted, and STATE FARM F&C failed to adjust their  
12 claim to include diminished value, or to pay the loss fully. No further  
13 performance is required by any member of the proposed Class to secure all  
14 available coverages and benefits provided by the STATE FARM F&C UIM PD  
15 policy.  
16

17  
18 5.3 Plaintiff seeks certification of the following Class:

19 All STATE FARM F&C insureds with Washington policies issued in  
20 Washington State, where the insureds' vehicle's damages were covered under  
21 the Underinsured Motorist coverage, and

- 22 1. the repair estimates on the vehicle (including any supplements) totaled at  
23 least \$1,000; and
- 24 2. the vehicle was no more than six years old (model year plus five years)  
25 and had less than 90,000 miles on it at the time of the accident; and
- 26 3. the vehicle suffered structural (frame) damage and/or deformed sheet  
metal and/or required body or paint work.

1 Excluded from the Class are (a) claims involving leased vehicles or total losses,  
2 and (b) the assigned judge, the judge's staff and family.

3 5.4 Membership in the Class is so numerous as to make it impractical to bring all  
4 Class members before the Court. The exact number of Class members is  
5 unknown, but can be readily determined from the records maintained by STATE  
6 FARM F&C, as shown in numerous prior cases and through discovery in prior  
7 cases. Plaintiff believes there are approximately 830 claims and based on a  
8 similar, but slightly smaller, number of STATE FARM F&C insureds (some  
9 Class members may have more than one qualifying accident) a slightly smaller  
10 number of Class members.  
11

12 5.5 Plaintiff is a typical member of the Class. He purchased a STATE FARM F&C  
13 automotive policy, paid premiums for his UIM PD coverage, and made a claim  
14 for loss when his insured automobile was damaged in an accident. He filed a  
15 claim, and he made his vehicle available to STATE FARM F&C for  
16 determination and payment of his loss. STATE FARM F&C then failed to adjust  
17 the loss to include diminished value or to inform him of what proof that STATE  
18 FARM F&C would find sufficient to recover for his diminished value loss.  
19 Although, Plaintiff took all possible and appropriate measures to receive  
20 compensation from STATE FARM F&C for the damages he incurred, STATE  
21 FARM F&C denied Plaintiff's claim. Plaintiff's interests are identical to those of  
22 other unnamed members of the Class, with the only difference being the amount  
23 of diminished value they were not paid or underpaid.  
24

25 5.6 As in *Moeller v. Farmers*, where many common issues were resolved, there are  
26 numerous and substantial questions of law and fact common to all of the

1 members of the proposed Class which predominate over any individual issues.

2 Included within the common questions of law and fact are:

- 3 a. Whether STATE FARM F&C was contractually obligated to provide  
4 coverage for diminished value to its UIM PD insureds;
- 5 b. Whether Plaintiff and the members of the proposed Class had any further  
6 obligations before having their UIM PD losses adjusted by STATE  
7 FARM F&C to include diminished value, other than – as they did –  
8 making the vehicles available for adjustment of the loss;
- 9 c. Whether STATE FARM F&C breached its contracts of insurance with  
10 the Class by failing to pay diminished value on UIM PD claims;
- 11 d. Whether STATE FARM F&C breached its contracts of insurance with  
12 the Class by failing to adjust losses to include diminished value;
- 13 e. The best and most appropriate measure of market value loss due to  
14 diminished value; and
- 15 f. The amount of market value loss owed to the Class.

16 5.7 Plaintiff has no interests adverse to the interests of other members of the  
17 proposed Class, and he will fairly and adequately protect the interests of the  
18 Class.

19 5.8 Plaintiff has retained the undersigned counsel, who are experienced and  
20 competent in the prosecution of class actions and complex litigation and have  
21 extensive experience with litigation involving diminished value. These counsel  
22 have the resources and experience necessary to prosecute this case.

23 5.9 A class action is superior to other available methods for the fair and efficient  
24 adjudication of this controversy. Absent a class action, due to the refusal of  
25 STATE FARM F&C to fairly adjust and pay the loss, the Class members will  
26 continue to suffer damage and/or be forced into expensive and ultimately

1                   unsuccessful efforts to obtain diminished value, and STATE FARM F&C's  
2                   ongoing conduct will proceed without effective remedy.

3                   5.10 Individual members of the proposed Class have little interest or ability to  
4                   prosecute an individual action due to the complexities of the issues involved, the  
5                   costs of assembling proof of the amount of diminished value, the time required,  
6                   and the relatively small, although significant (likely averaging around \$1,182.00  
7                   per accident for those w/o any prior overlapping vehicle damage) damages  
8                   suffered by each member of the proposed Class.

9  
10                  5.11 This action will allow the orderly, fair, and expeditious administration of Class  
11                  claims; economics of time, effort, and expense will be fostered; and uniformity  
12                  of decisions will be ensured. As with prior diminished value cases in this  
13                  country, collective adjudication will allow sufficient proof and expertise to be  
14                  assembled to determine the market value loss fairly and to prove the losses at  
15                  issue. It will allow a proper and common adjudication of Class wide methods of  
16                  determining the amount of diminished value loss, as compared to the common  
17                  scheme used by STATE FARM F&C to avoid paying the claims in question.

18  
19                  5.12 This action will present no difficulties which would impede its management by  
20                  this Court as a class action, and a class action is the best available means by  
21                  which Plaintiff and the members of the proposed Class can seek redress for the  
22                  harm caused to them by STATE FARM F&C.  
23  
24  
25  
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1 **VI. PLAINTIFF'S CAUSE OF ACTION AGAINST STATE FARM F&C:**  
2 **BREACH OF CONTRACT**

3 6.1 Plaintiff realleges the allegations contained in the previous paragraphs as if fully  
4 set forth therein.

5 6.2 Plaintiff and members of the proposed Class entered into contracts with STATE  
6 FARM F&C which were identical in all material respects. They paid all  
7 required consideration in the form of premium for the coverage afforded by the  
8 STATE FARM F&C policy. They complied with all conditions precedent under  
9 the STATE FARM F&C policies and presented their claims for adjustment of  
10 their losses. As to each claim, before paying to repair the vehicle, STATE  
11 FARM F&C found coverage to exist and to apply and all conditions precedent to  
12 payment to be satisfied, and fully inspect the vehicle in question.

13 6.3 The UIM PD coverage in STATE FARM F&C's policy includes diminished  
14 value loss and does not exclude the loss. There is no exclusion or limitation for  
15 diminished value in the UIM PD section of the policy. There is no exclusion or  
16 limitation for diminished value in the policy, except the one added to the  
17 Collision and Comprehensive portion of the policy. However, that exclusion  
18 does not apply to the UIM PD coverage or to any member of the proposed Class.  
19 Accordingly, STATE FARM F&C was obligated to cover and pay diminished  
20 value damages on these losses.

21 6.4 STATE FARM F&C breached the express provisions of the policy and its  
22 contract with Plaintiff and members of the Class by not restoring vehicles to their  
23 pre-loss value and then not paying for the resulting diminished value on those  
24  
25  
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1 vehicles (such as those within the Class) that had, or would have, tangible  
2 differences after repair resulting in reduced fair market value.

3 6.5 As a direct and foreseeable consequence of the foregoing, Plaintiff and the  
4 members of the Class have been damaged by receiving less (in the form of the  
5 difference in the pre-accident fair market value of the vehicle and its fair market  
6 value as a vehicle repaired to industry standards) than they would have received  
7 had STATE FARM F&C paid the amounts Plaintiff and members of the Class  
8 have contracted for, in an amount to be determined at trial.

9  
10 **VII. PRAYER FOR RELIEF**

11 7.1 Plaintiff and the members of the proposed Class have been injured as a result of  
12 STATE FARM F&C's wrongful conduct as described above. As a result,  
13 Plaintiff and the members of the proposed Class are entitled to and pray for the  
14 following relief:

- 15
- 16 1. Payment of the difference between the insured vehicle's pre-loss fair market  
17 value and its fair market value as a repaired vehicle after the accident, together  
18 with pre-judgment interest from the date the automobile was damaged until the  
19 date of judgment;
  - 20 2. Statutory costs;
  - 21 3. Post-judgment interest on the judgment at the rate provided by law from the date  
22 of judgment until paid; and
  - 23 4. For such other relief as is deemed just, equitable and necessary to effectuate the  
24 Court's Orders and Judgment.  
25  
26

1 WHEREFORE, THE FORGOING BEING CONSIDERED, Plaintiff respectfully  
2 requests that the Court certify this case as a Class Action and that judgment be entered for the  
3 Plaintiff and members of the proposed Class against STATE FARM F&C for the damages  
4 described above, and for any orders necessary to effectuate this Court's Judgment.  
5

6 DATED this 23 day of March, 2018.

7 Law Offices of STEPHEN M. HANSEN, P.S.

8  A handwritten signature in black ink, appearing to read 'S M H', with a horizontal line extending to the right.

9  
10 STEPHEN M. HANSEN, WSBA # 15642

11 SCOTT P. NEALEY

12 (*pro hac vice* to be applied for)

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