

**IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT**

**JIM HOOD, ATTORNEY GENERAL FOR
THE STATE OF MISSISSIPPI, *ex rel.* THE
STATE OF MISSISSIPPI**

**PLAINTIFF
AND COUNTER-DEFENDANT**

V.

Civil Action No. 251-07-565 CIV

**STATE FARM FIRE AND
CASUALTY COMPANY**

**DEFENDANT
AND COUNTERCLAIMANT**

ANSWER, DEFENSES AND COUNTERCLAIM

COMES NOW STATE FARM FIRE AND CASUALTY COMPANY (“State Farm”) and for its Answer and Defenses to the Complaint exhibited against it, says:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE - ANSWER

For answer to the allegations of the Complaint, paragraph by paragraph, State Farm says:

1. Except as hereinafter expressly admitted or qualified, State Farm denies the allegations of paragraph 1 of the Complaint. State Farm admits, only, that Plaintiff Jim Hood is the duly elected Attorney General of Mississippi and that he purports to bring this action for an alleged breach of contract. State Farm expressly denies that Plaintiff has standing to maintain this action in *parens patriae*, or otherwise on behalf of individual residents of the State of Mississippi.
2. State Farm admits the allegations of paragraph 2 of the Complaint.
3. State Farm admits the allegations of paragraph 3 of the Complaint, but it denies any inference or implication that Plaintiff has a cause of action against it.
4. State Farm admits the allegations of paragraph 4 of the Complaint.
5. The allegations of paragraph 5 of the Complaint are conclusions of the pleader and do not

require any answer. To the extent any answer is required, State Farm denies the allegations of paragraph 5 for lack of information.

6. State Farm denies the allegations of paragraph 6 of the Complaint. State Farm admits that the contract at issue was signed in Hinds County, Mississippi; however; it denies that there has been any breach of the contract; and it denies that any alleged breach occurred in Hinds County or caused harm or injury to residents of Hinds County. No substantial act or omission occurred in Hinds County, Mississippi, as contemplated by §11-11-3 MCA.

7. State Farm admits the allegations of paragraph 7 of the Complaint.

8. State Farm admits the allegations of paragraph 8 of the Complaint, but it denies any inference or implication that all such alleged property loss, damage and destruction was caused by wind.

9. State Farm admits the allegations of paragraph 9 of the Complaint, but it denies any inference or implication that all such property owners sustained covered losses under any property insurance policy issued by State Farm.

10. State Farm denies the allegations of paragraph 10 of the Complaint as worded. State Farm states that it applied the terms and provisions of its policies of insurance as written to the claims submitted by policyholders in the three coastal counties on a case by case basis. State Farm specifically denies that it arrived at any policy interpretation “in response to . . . thousands of claims filed against it.”

11. State Farm denies the allegations of paragraph 11 of the Complaint except to admit, only, that the Attorney General filed a complaint in the Chancery Court of Hinds County (1st Judicial District) on or about September 15, 2005, against a number of property insurers and that Exhibit “A” is a copy of said complaint.

12. State Farm denies the allegations and characterizations contained in paragraph 12 of the Complaint and admits, only, that on or about January 23, 2007, its representatives and the Attorney General signed a Settlement Agreement, a copy of which is Exhibit “B” to the Complaint. The

Settlement Agreement speaks for itself as to what provisions it contains. For further answer, see paragraphs 3 through 38 of State Farm's Counterclaim.

13. State Farm denies the pleader's allegations about and characterizations of the terms of the Settlement Agreement contained in paragraph 13 of the Complaint. The Settlement Agreement, Exhibit "B" to the Complaint, speaks for itself. The Settlement Agreement, Exhibit "B" to the Complaint, contains no reference of any sort to a \$50 million aggregate payment. Rather, the \$50 million aggregate payment was a provision in the proposed class action settlement in *Woullard vs. State Farm Fire and Casualty Company*, Civil Action No. 1:06CV1057 (the "Woullard Agreement"), which was negotiated contemporaneously with Exhibit "B," and Attorney General Hood and/or his advisors participated in those negotiations (despite his current denial of any such involvement). For further answer, see paragraphs 3 through 38 of State Farm's Counterclaim.

14. Except as hereinafter expressly admitted, State Farm denies the allegations of paragraph 14 of the Complaint. State Farm admits, only, that the Settlement Agreement which is Exhibit "B" to the Complaint states that "[t]he Attorney General agrees to dismiss all claims against State Farm and to dismiss State Farm as a Defendant in . . . [the Chancery Court] matter" and that on January 23, 2007, the Complaint in the Chancery Court of Hinds County, Mississippi (1st Judicial District) was dismissed with prejudice as to State Farm by the Attorney General and that a copy of the Final Order of Dismissal is attached to the Complaint as Exhibit "C." The Settlement Agreement (Exhibit B) and the Final Order of Dismissal (Exhibit C) were filed by the Attorney General before or contemporaneously with submission of the *Woullard* Agreement.

15. Except as hereinafter expressly admitted, State Farm denies the allegations of paragraph 15 of the Complaint. State Farm admits, only, that on January 23, 2007 (not January 24, 2007, as alleged in the Complaint), a proposed Agreement of Compromise and Settlement of a putative settlement class action (the Woullard Agreement) was presented for preliminary approval to the United

States District Court for the Southern District of Mississippi (District Court), that the Woullard Agreement conformed in all material respects to Section III of the Settlement Agreement (Complaint Exhibit “B”), and that a copy of the Woullard Agreement (without its exhibits) is attached to the Complaint as Exhibit “D.” The Woullard Agreement, which was filed (together with its exhibits) via the District Court’s electronic filing system on January 24, 2007, speaks for itself as to what provisions it contains.

16. State Farm denies the allegations of paragraph 16 of the Complaint. State Farm further responds that (i) the Woullard Agreement was negotiated contemporaneously with the Settlement Agreement with the Attorney General, (ii) the Attorney General and/or his representatives participated in the negotiations of the Woullard Agreement, (iii) the Woullard Agreement conformed in all respects to the characteristics of the re-evaluation program described in Section III of the Settlement Agreement with the Attorney General, (iv) when the Settlement Agreement was entered into with the Attorney General, he was fully aware of the terms of the Woullard Agreement and knew that State Farm would be submitting it for approval to the District Court, and (v) the Attorney General was fully aware of the terms of the Woullard Agreement when he issued press releases on January 23 and January 25 endorsing it and encouraging other insurers to enter into class action settlement agreements like State Farm. For further answer, see paragraphs 3 through 38 of State Farm’s counterclaim.

17. State Farm denies the allegations and characterizations of paragraph 17 of the Complaint and admits, only, that the District Court entered an Order, without prejudice, on January 26, 2007, in the proposed class action and that Exhibit “E” is a copy of that Order, which speaks for itself as to what the Court said on that occasion.

18. Except as hereinafter expressly admitted, State Farm denies the allegations and characterizations of paragraph 18 of the Complaint. State Farm admits, only, that subsequent to entry of the January 26, 2007, Order (Exhibit E), the Attorney General asked State Farm to modify, renegotiate

or resubmit a proposal to the District Court different than that which was previously negotiated at arms' length with participation by the Attorney General, but State Farm denies any inference or implication that it had a legal duty to do so. State Farm responded to each of the Attorney General's requests.

19. State Farm denies the allegations of paragraph 19 of the Complaint.

20. Except as hereinafter expressly admitted, State Farm denies the allegations and characterizations of paragraph 20 of the Complaint. State Farm admits, only, that subsequent to entry of the January 26, 2007, Order (Exhibit E), the Attorney General filed a Motion for Leave to Intervene to Enforce Settlement Agreement (Exhibit F) in response to which State Farm filed a Response (Exhibit G). State Farm denies the implication that it had any duty whatever to support the Attorney General's Motion (Exhibit F), the fact being that the Attorney General was obligated, but failed, to support the Agreement of Compromise and Settlement (Exhibit D) submitted to the District Court for approval, since its terms were fully known to, negotiated (at least in part) by him, and publicly praised by the Attorney General immediately after it was submitted to the District Court for approval.

21. Except as hereinafter expressly admitted, State Farm denies the allegations and characterizations of paragraph 21 of the Complaint. State Farm admits that the District Court conducted a hearing on February 28, 2007; that State Farm submitted a Supplemental Memorandum in support of the proposed class action settlement; that a representative of the Attorney General and State Farm, as well as proposed class counsel and other persons, appeared and made presentations to the District Court; and that at the conclusion of the hearing the District Court took the matter under advisement.

22. Except as hereinafter expressly admitted, State Farm denies the allegations and characterizations of paragraph 22 of the Complaint. State Farm admits that on April 13, 2007, the Attorney General filed a Revised Motion to Intervene to Enforce State Court Settlement Agreement in the District Court and that Exhibit "H" is a copy of same. State Farm further states that such motion was filed after the plaintiffs in the putative settlement class action filed Plaintiffs' Notice of Withdrawal of

Plaintiffs' Motion for an Order Conditionally Certifying a Rule 23(b)(1)(A) and (b)(2) Class Action and Preliminarily Approving Settlement (Notice of Withdrawal). Such Notice of Withdrawal was filed without prior notice to or consent of State Farm. A true and correct copy of the Notice of Withdrawal is attached as Exhibit "1."

23. Except as hereinafter expressly admitted, State Farm denies the allegations and characterizations of paragraph 23 of the Complaint. State Farm admits that, subsequent to the February 28, 2007, hearing **and** subsequent to proposed class counsel's filing the Notice of Withdrawal, attached hereto Exhibit "1," State Farm concluded a settlement with the individual plaintiffs in said action and, by agreement, moved the Court to dismiss the Complaint, which Motion was ultimately granted by the District Court's Order of April 16, 2007 a copy of which is Exhibit "I" to the Complaint.

24. State Farm denies the allegations and characterizations of paragraph 24.

25. State Farm denies the allegations and characterizations of paragraph 25. State Farm specifically denies that it refused to establish a procedure contemplated by the Settlement Agreement (Exhibit B); denies that it otherwise breached the Settlement Agreement; and denies that any alleged breach was without any arguable, legitimate or justifiable basis.

26. For its response to the allegations of paragraph 26, State Farm adopts and reasserts by reference its answers, responses and defenses to paragraph 1-25.

27. State Farm denies the allegations of paragraph 27 of the Complaint, except to admit, only, that on January 23, 2007, as part of the Settlement Agreement (Exhibit B), the Attorney General dismissed the state court action against State Farm with prejudice.

28. State Farm denies the allegations of paragraph 28 of the Complaint.

29. Except as hereinafter expressly admitted, State Farm denies the allegations and characterizations of paragraph 29 of the Complaint. State Farm admits that there was a period of communication between the Attorney General and State Farm prior to the Attorney General's filing this

civil action and that copies of some (but not all) of the communications between State Farm and the Attorney General are attached to the Complaint as Exhibit “J.”

30. State Farm denies the allegations of paragraph 30 of the Complaint.

31. State Farm denies the allegations of paragraph 31 of the Complaint.

32. For its response to the allegations of paragraph 32, State Farm adopts and reasserts by reference its answers, responses and defenses to paragraph 1-31.

33. State Farm denies the allegations of paragraph 33 of the Complaint, and it denies any inference or implication that it was or is legally obligated to do anything more than it has with respect to the matters alleged in paragraph 33.

34. State Farm denies the allegations of paragraph 34 of the Complaint.

35. For its response to the allegations of paragraph 35, State Farm adopts and reasserts by reference its answers, responses and defenses to paragraph 1-34.

36. State Farm admits the existence of only those duties that arose pursuant to the terms of the Settlement Agreement (Complaint Exhibit “B”) and as a matter of law, but State Farm otherwise denies the allegations and characterizations of paragraph 36 of the Complaint. Further answering, State Farm states that it has not breached any duty owed to the Attorney General.

37. State Farm admits the existence of certain legal duties towards its policyholders in the State of Mississippi, but it denies the breach of any such duties and denies that the Attorney General has standing to make allegations about the performance, *vel non*, of contractual duties between State Farm and its policyholders. Every allegation of paragraph 37 that has not been admitted or denied is hereby denied.

38. State Farm denies the allegations of paragraph 38 of the Complaint.

39. For its response to the allegations of paragraph 39, State Farm adopts and reasserts by reference its answers, responses and defenses to paragraph 1-38.

40. State Farm denies the allegations of paragraph 40 of the Complaint and expressly denies that the Attorney General has any right or authority to bring or maintain this action on behalf of any other plaintiffs as implied by the allegations of paragraph 40.

41. State Farm denies the allegations of paragraph 41 of the Complaint and expressly denies that the Attorney General has any right or authority to seek damages or otherwise to maintain this action on behalf of any other plaintiffs as implied by the allegations of paragraph 41. State Farm denies that there is any method, other than pure speculation, to award or to apportion the alleged damages (for which State Farm is not liable) demanded by or sought on behalf of others for whom the Attorney General has no standing or authority to act.

42. State Farm denies the allegations of paragraph 42 of the Complaint and expressly denies that the Attorney General has any right or authority to seek damages or otherwise to maintain this action on behalf of any other plaintiffs as implied by the allegations of paragraph 42. State Farm denies that there is any method, other than pure speculation, to award or to apportion the alleged damages (for which State Farm is not liable) demanded by or sought on behalf of others for whom the Attorney General has no standing or authority to act.

43. State Farm denies the allegations of paragraph 43 of the Complaint, and it denies that the Attorney General is entitled to recover any attorney fees in this case in any event.

44. State Farm denies the allegations of paragraph 44 of the Complaint.

45. State Farm denies that the Attorney General is entitled to the relief demanded in the unnumbered paragraph and its sub-parts immediately following paragraph 44 of the Complaint, and denies that the Attorney General is entitled to any other relief whatsoever against State Farm.

THIRD DEFENSE

State Farm has fully complied with and performed its obligations under the Settlement Agreement (Complaint Exhibit "B").

FOURTH DEFENSE

In the alternative, only if the Court were to find that State Farm has not complied with and performed its obligations under the terms of the Settlement Agreement, State Farm has substantially complied with and performed the terms of the Settlement Agreement (Complaint Exhibit “B”), as a result of which the Attorney General is not entitled to any relief whatever from State Farm in this action.

FIFTH DEFENSE

Section III of the Settlement Agreement (Complaint Exhibit “B”) as characterized by the Attorney General in the Complaint – characterizations with which State Farm does not agree and disputes – is a contract to make a future contract, the terms of which are neither definite nor certain upon all subjects. For lack of definite and certain conditions as to all material aspects of the agreement alleged by the Plaintiff, the agreement is unenforceable and imposes no obligation upon State Farm. For this additional reason, the Complaint should be dismissed.

SIXTH DEFENSE

The Complaint does not state a claim for relief that this Court can grant, because it seeks damages (for which State Farm is not liable) as to which neither the amount of damage nor the identity of persons entitled to receive them can be reasonably determined. In fact, the amount or recipients of any such damages cannot be determined except by speculation, conjecture and guesswork neither permitted by law nor provided for or contemplated by the Settlement Agreement (Complaint Exhibit “B”) sought to be enforced by the Attorney General. Since there is no legally cognizable means by which either an amount of damages or the persons entitled to receive them can be ascertained consistent with the express terms of the Settlement Agreement, including the consideration bargained for by State Farm, the Court cannot award any relief to Plaintiff and the Complaint should be dismissed.

SEVENTH DEFENSE

The Plaintiff has no authority, under the doctrine of *parens patriae* or any other legal theory, to

act for the State Farm policyholders for whom he purports to assert claims, and he has no power, right or privilege under the authority of any law to change the terms of the Settlement Agreement or the policies of insurance between State Farm and its policyholders.

EIGHTH DEFENSE

The Plaintiff has suffered no damage for which State Farm has any legal responsibility.

NINTH DEFENSE

State Farm has performed, or substantially performed, the obligations for which it contracted in Section III of the Settlement Agreement. However, if it were found not to have performed or not to be capable of performing in the future any obligation under Section III of the Settlement Agreement, any such lack of past or future performance is legally excused by matters beyond the contemplation or control of State Farm that rendered complete performance in every detail impossible or impracticable.

TENTH DEFENSE

State Farm has performed, or substantially performed, the obligations for which it contracted in Section III of the Settlement Agreement. However, if it were found not to have performed or not to be capable of performing in the future any obligation under Section III of the Settlement Agreement, any such lack of past or future performance is legally excused by the doctrine of frustration recognized in Section 264, Restatement (Second) of Contracts.

ELEVENTH DEFENSE

State Farm has performed, or substantially performed, the obligations for which it contracted in Section III of the Settlement Agreement. However, if it were found not to have performed or not to be capable of performing in the future any obligation under Section III of the Settlement Agreement, any such lack of past or future performance is legally excused by the failure of a condition precedent to performance of the obligations of Section III of the Settlement Agreement.

TWELFTH DEFENSE

State Farm has performed, or substantially performed, the obligations for which it contracted in Section III of the Settlement Agreement. However, if it were found not to have performed or not to be capable of performing in the future any obligation under Section III of the Settlement Agreement, any such lack of past or future performance is legally excused by the Plaintiff's wrongful interference in State Farm's performance of same.

THIRTEENTH DEFENSE

State Farm is not guilty of any conduct which is of the requisite nature to permit submission of any issue of punitive damages to the jury or other finder of fact.

FOURTEENTH DEFENSE

Solely in the alternative, if there were any issue of punitive damages otherwise to be submitted to the jury or other finder of fact, no such issue may be presented in this case because the Attorney General does not come before this court with clean hands with respect to any alleged failure to perform by State Farm (which State Farm denies) for the reasons alleged in the Twelfth Defense and for other reasons to be shown at hearing of this action.

FIFTEENTH DEFENSE

Plaintiff's claims for punitive damages are unconstitutional insofar as they violate the due process protections afforded by the United States Constitution, the excessive fines clause of the Eighth Amendment of the United States Constitution, the Commerce Clause of the United States Constitution, the Full Faith and Credit Clause of the United States Constitution, and applicable provisions of the Constitution of Mississippi, including, without limitation, Article 3, Sections 14, 17, and 28. Any law, statute, or other authority purporting to permit the recovery of punitive damages in this case is unconstitutional, facially and as applied, to the extent that, without limitation, it: (1) lacks constitutionally sufficient standards to guide and restrain the jury's discretion in determining whether to

award punitive damages and/or the amount, if any; (2) is void for vagueness in that it failed to provide adequate advance notice as to what conduct would result in punitive damages; (3) unconstitutionally may permit recovery of punitive damages based on out-of-state conduct, conduct that complied with applicable law, or conduct that was not directed, or did not proximately cause harm, to Plaintiff; (4) unconstitutionally may permit recovery of punitive damages in an amount that is not both reasonable and proportionate to the amount of harm, if any, to Plaintiff and to the amount of compensatory damages, if any; (5) unconstitutionally may permit a jury to award punitive damages for harm to nonparties; (6) unconstitutionally may permit jury consideration of net worth or other financial information relating to State Farm Mutual; (7) lacks constitutionally sufficient standards to be applied by the trial court in post-verdict review of any punitive damages award; (8) lacks constitutionally sufficient standards for appellate review of punitive damages awards; and (9) otherwise fails to satisfy United States Supreme Court precedent, including, without limitation, *Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991), *TXO Production Corp. v. Alliance Resources, Inc.*, 509 U.S. 443 (1993), *BMW of North America, Inc. v. Gore*, 517 U.S. 599 (1996), *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003), and *Philip Morris USA v. Williams*, 127 S. Ct. 1057 (2007).

AND NOW, having answered the Complaint exhibited against it, State Farm Fire and Casualty Company makes the following Counterclaim against Plaintiff/Counter-Defendant.

COUNTERCLAIM FOR DECLARATORY JUDGMENT

State Farm Fire and Casualty Company files this Counterclaim for Declaratory Judgment against Jim Hood, in his official capacity as the Attorney General of the State of Mississippi, and in support thereof alleges as follows:

PARTIES

1. State Farm Fire and Casualty Company (“State Farm” or “Counterclaimant”) is a stock insurance company organized and existing under the insurance laws of the State of Illinois and has its principal place of business in Illinois. State Farm is a citizen solely of the State of Illinois.

2. Jim Hood (“Attorney General Hood” or “Counter-defendant”) is the Attorney General of the State of Mississippi and is counter-sued in his official capacity.

FACTS

3. On September 15, 2005, Attorney General Hood filed a civil action against State Farm and a number of other insurance companies, entitled *Jim Hood, Attorney General for the State of Mississippi ex rel. the State of Mississippi v. Mississippi Farm Bureau Insurance Company, et al.*, in the Chancery Court of Hinds County, Mississippi (1st Judicial District), bearing Cause No. G-2005-1642 on the court docket (the “Hood Suit”).

4. A true and correct copy of the Complaint in the Hood Suit is attached hereto as Exhibit 2.

5. The Hood Suit, among other things, sought to have certain provisions of State Farm’s homeowners insurance policy declared invalid following Hurricane Katrina.

6. On October 16, 2006, Dennis R. Woullard and S. Imana Woullard filed a Class Action Complaint, entitled *Dennis R. and S. Imani Woullard vs. State Farm Fire and Casualty Company*, in the United States District Court for the Southern District of Mississippi, Southern Division, bearing Civil Action No. 1:06CV1057 on the court docket (the “Woullard Suit”). The Woullard Suit sought certification of a class defined as follows: “All homeowners in Jackson, Harrison or Hancock Counties in Mississippi, (1) whose homes were damaged by Hurricane Katrina and (2) who were insured on August 29, 2005, by a State Farm ‘all risk’ Homeowners Policy of insurance containing the anti-concurrent cause clause . . . ; (3) whose claim was denied in whole or in part by applying the aforementioned anti-concurrent cause provision in adjusting the claim; (4) whose claim was not re-opened or re-adjusted after March 24, 2006; and (5) who have not filed or currently have litigation pending against State Farm concerning Hurricane Katrina losses.”

7. Among the relief sought in the Woullard Suit, the Woullard plaintiffs sought injunctive relief requiring State Farm to “[r]e-open and re-adjust the claims of every Class Member.”

8. A true and correct copy of the Class Action Complaint in the Woullard Suit is attached hereto as Exhibit 3.

9. State Farm entered into negotiations regarding a potential class action settlement of the

Woullard Suit with their attorneys, who were a group of law firms and attorneys who had formed a joint venture known as the Scruggs Katrina Group.

10. On or about November 8, 2006, settlement negotiations had progressed to the point where an outline of a proposed class action settlement agreement was exchanged. The parties contemplated a settlement that provided for a process of reevaluation of the claims of State Farm policyholders in Jackson, Harrison and Hancock Counties, followed by a settlement offer, which could be accepted or rejected by the policyholder, followed by binding arbitration if the policyholder rejected the settlement offer by State Farm.

11. While the class action settlement was being negotiated, State Farm was also engaged in negotiations with Attorney General Hood to resolve the civil proceedings brought by his office. State Farm was told by the Attorney General or his Assistants that Mike Moore, a former Attorney General for Mississippi, was advising Attorney General Hood and that such negotiations should be conducted through Mr. Moore.

12. During negotiations regarding the class action settlement, it was important to State Farm that the Attorney General and the Commissioner of Insurance be kept advised of the class action settlement negotiations. As a result, the class action settlement negotiations and negotiations with Attorney General Hood went forward contemporaneously. Attorney General Hood, through Mr. Moore, was kept fully apprised of the class action settlement negotiations and given an opportunity to comment on the proposed class action settlement.

13. On November 20, 2006, counsel for State Farm met with Attorney General Hood and others. Mr. Moore attended this meeting as an advisor to Attorney General Hood. The parties discussed a potential class action settlement pursuant to Federal Rule of Civil Procedure 23(b)(1) or (2) as a vehicle to re-evaluate certain claims.

14. On November 27, 2006, counsel for State Farm met with Attorney General Hood and his advisor Mike Moore in Ft. Lauderdale, Florida and discussed with him the terms of the class action settlement being negotiated.

15. On December 6, 2006, counsel for State Farm met with Mike Moore, in his capacity as

adviser to Attorney General Hood, in Chicago. A copy of the outline of the proposed class action settlement was provided to Mr. Moore at this meeting.

16. On December 14, 2006, counsel for State Farm met with Mr. Moore, in his capacity as adviser to Attorney General Hood, and with one of counsel for the Woullards, Richard Scruggs, in Jackson, Mississippi, to discuss the proposed class action settlement.

17. On December 19, 2006, Mr. Moore, in his capacity as adviser to Attorney General Hood, was provided a copy of the class action settlement agreement, the Guideline Tool that was an exhibit to the agreement, and all other draft exhibits to the settlement agreement. On that same day, counsel for State Farm also sent to Mr. Moore a proposed agreement with the Attorney General.

18. On December 20, 2006, Mr. Moore, in his capacity as adviser to Attorney General Hood, was provided with revisions to the proposed settlement agreement with Attorney General Hood.

19. On December 20, 2006, Lee Martin, an attorney in Mr. Moore's law firm, provided to counsel for State Farm a counterproposal from Attorney General Hood. His message read: "Attached is the proposed Settlement Agreement which AG Hood would like for State Farm to consider, and respond thereto."

20. On December 20, 2006, counsel for State Farm sent a letter to Mr. Moore responding to Attorney General Hood's proposed settlement agreement.

21. The Scruggs Katrina Group also copied Mr. Moore on their communications to counsel for State Farm commenting on the proposed class action settlement.

22. On or about December 21, 2006, counsel for State Farm met with the Scruggs Katrina Group in Jackson, Mississippi, regarding the proposed class action settlement. The next day, counsel for State Farm had a conference call and in-person meeting with Attorney General Hood regarding the settlement agreement with Attorney General Hood. Although State Farm was able to reach agreement with the Scruggs Katrina Group regarding the class action settlement agreement, no agreement was reached with Attorney General Hood at that time. Attorney General Hood was insisting upon terms that would have required changes to the class action settlement agreement. As a result, neither agreement was finalized.

23. There were additional meetings in Jackson, Mississippi on January 4 and 5, 2007, in an attempt to finalize the class action settlement agreement and the agreement with Attorney General Hood. On January 4, 2007, counsel for State Farm again met with the Scruggs Katrina Group. The same day, counsel for State Farm met with the Attorney General and with his advisors, including Danny Cupit and Special Assistant Attorney General Mary Jo Woods.

24. On January 5, 2007, counsel for State Farm sent to Attorney General Hood some proposed language that would be included in both the class action settlement agreement and the agreement with Attorney General Hood, in an effort to finalize both agreements. Once again, while agreement was reached with the Scruggs Katrina Group, no agreement was reached with Attorney General Hood and neither the class action settlement agreement nor the settlement agreement with Attorney General Hood was finalized.

25. On January 10, 2007, counsel for State Farm sent to Mr. Moore a red-lined draft of the proposed settlement agreement with Attorney General Hood. That same day, counsel for State Farm also sent Mr. Moore, Attorney General Hood's advisor, a current draft of the class action settlement agreement, with exhibits. In the e-mail sending the class action settlement drafts, counsel for State Farm noted: "Paragraph 1.14, which references the \$50 million minimum, was added to the agreement. Similar changes were made to the mailed notice, publication notice and summary."

26. On January 17, 2006, Special Assistant Attorney General Mary Jo Woods sent counsel for State Farm a revised draft of the proposed agreement with Attorney General Hood. Attorney General Hood and Mr. Moore were copied on her e-mail.

27. On January 17, 2006, counsel for State Farm responded to the Attorney General Hood's proposal with a letter and red-lined draft of the settlement agreement. In the letter to Attorney General Hood, counsel for State Farm stated: "For several months now, we have been engaged in ongoing discussions with your office in an attempt to reach a fair settlement for State Farm policyholders in Mississippi. In the course of these discussions, you have successfully obtained a significant increase in the amounts that State Farm will be paying to policyholders under the proposed settlement. If we are able to finalize the settlement, residents of Mississippi will receive at least \$50 million and probably

much more.” Significantly, the Settlement Agreement between Attorney General and State Farm does not contain any reference to a \$50 million figure. Only the class action settlement agreement that was being negotiated at the same time references a minimum amount to be paid of \$50 million.

28. As a result of the negotiations with Attorney General Hood and his advisor Mr. Moore, specific changes were made to the class action settlement. For example: (a) paragraphs 8.5 and 8.6 of the proposed class action settlement agreement were added, and then revised, as a result of negotiations with Attorney General Hood; (b) a separate category for foundation/pier only claims was added to the Guideline Tool that was part of the proposed class action settlement agreement; (c) the percentage amounts to be offered to foundation/pier only claims were increased and made minimums as a result of negotiations with Attorney General Hood; and (d) as a direct result of negotiations with Attorney General Hood, State Farm agreed to commit a minimum of \$50 million dollars, in payments to class members, to the class action settlement.

29. On January 22, 2007, counsel for State Farm met with Attorney General Hood and his representatives Danny Cupit and Special Assistant Attorney General Mary Jo Woods in Memphis, Tennessee, in a final attempt to finalize both the class action settlement agreement and the settlement agreement with Attorney General Hood. As a result of this meeting State Farm agreed to increase the percentage amounts to be offered to foundation/pier only claims in the class action settlement, pursuant to the Guideline Tool.

30. On January 23, 2007, counsel for State Farm and Attorney General Hood had telephone conferences to finalize their agreement. The agreement was finalized and signed at the offices of the Attorney General in Jackson, Mississippi. That same day, it was filed by Attorney General Hood in the Hood Suit. A true and correct copy of the file-stamped Settlement Agreement (the “Hood Agreement”) is attached hereto as Exhibit 4.

31. On January 23, 2007, Attorney General Hood also filed a Stipulation of Dismissal as to State Farm Fire and Casualty Company in the Hood Suit. A true and correct copy of the file-stamped Stipulation of Dismissal is attached hereto as Exhibit 5.

32. An agreed Final Order of Dismissal as to State Farm Fire and Casualty Company was

entered in the Hood Suit on January 23, 2007. A true and correct copy of the file-stamped Final Order of Dismissal is attached hereto as Exhibit 6.

33. The class action settlement agreement was revised to reflect the changes agreed to in the Memphis meeting with Attorney General Hood. A copy of the revised, and final, class action settlement agreement and Guideline Tool was sent to Special Assistant Attorney General Mary Jo Woods by e-mail on January 23, 2007. A true and correct copy of such e-mail, with attachments, is attached hereto as Exhibit 7.

34. Late on the afternoon of January 23, 2007, attorneys for State Farm and proposed class counsel appeared before Honorable L. T. Senter, United States District Judge for the Southern District of Mississippi. The proposed class action settlement (the "Woullard Agreement"), identical to the settlement agreement sent to Ms. Woods, was signed in the presence of Judge Senter and a copy delivered to him. It was electronically filed the next day by proposed class counsel. A true and correct copy of the class action settlement agreement is attached hereto as Exhibit 8.

35. In a statement on the class action settlement that appeared on the website of the Scruggs Katrina Group, proposed class counsel Richard Scruggs acknowledged the contribution of Attorney General Hood to the class action settlement:

On January 23, we presented a settlement proposal to a Federal Court that could positively impact more than 35,000 families on the Mississippi Gulf Coast. This settlement holds the promise to put hundreds of millions of dollars directly into the hands of State Farm policyholders to begin rebuilding their lives, homes and communities.

No case in my thirty-year legal career has been more personal or tougher to resolve than the insurance litigation resulting from Hurricane Katrina. The proposal we presented is the product of an enormous effort by public officials and private lawyers. No other state has accomplished anything like this after a large natural disaster and I am extremely proud to be a part of this settlement agreement.

I would like thank all members of the Scruggs Katrina Group, Mississippi Attorney General Jim Hood, the State Insurance Commissioner George Dale and State Farm.

A true and correct copy of this statement is attached hereto as Exhibit 9.

36. On January 23, 2007, the day that the proposed class action settlement was presented to the federal court for approval, Attorney General Hood, with full knowledge of the terms of the proposed

class action settlement, issued a press release which stated as follows:

“After months of heated negotiations, I am happy to announce that our office has reached a settlement agreement with State Farm in our state court litigation,” said Attorney General Jim Hood. “The settlement agreement will give Coastal policyholders an expedited alternative to waiting for a jury trial. In this litigation my goals were to require full disclosure of information in the claim files to the policyholders, change State Farm’s unfair claims handling practices, require the reevaluation of the claims without the use of adjusters and engineers previously used, make a minimum offer to the slab owners and a new offer to those with lesser damage, provide an administrative process of arbitration where the arbiters are chosen fairly by both sides, and preserve the option of policyholders to opt out of the process and file a suit in court.”

....

This administrative process will be carried out in a class action settlement under the supervision of the Honorable Judge L. T. Senter in the United States District Court for the Southern District of Mississippi. The process will require State Farm to send out a notice of the class, an opt out form, and a table showing the percentage of policy coverage limits a policyholder may receive based upon the amount of damage to the structure. The notice will clearly provide that the policyholder will receive \$200 for simply returning a registration form. The policyholder may opt out without the loss of any rights and pursue a remedy in court.

If the policyholder chooses to stay in the class, then State Farm will reevaluate the claim following the requirements set forth in our state court Settlement Agreement and make a new offer based upon the percentage of damage and the policy coverage limits. State Farm will not assert as a ground for the total denial of a claim that water contributed to the loss if wind damage occurred. State Farm will be required to show by a preponderance of the evidence that any damage denied was caused by an excluded peril. We believe that Judge Senter will enforce this standard based on his prior rulings.

Where only a slab or piers remain, then State Farm shall make a minimum offer of an amount equivalent to 50% of the structural policy limits. If the policyholder accepts the offer, then payment is made immediately. If the policyholder rejects the offer, then the case will quickly proceed to binding arbitration before fairly chosen arbiters. In cases where policyholders do nothing or fail to send back the opt out form, they will then be included in the class; however, they may later opt out, but lose their right to seek punitive damages.

State Farm has agreed to pay out a minimum \$50 million dollars to the members of the class. There is no cap on the amount that may be awarded. A rough estimate indicates that the minimum offers on the slabs alone will cost State Farm approximately \$80 million. State Farm will pay all costs associated with the arbitration process, except that policyholders will be required to pay their own expert and attorney fees.

“I hope that this settlement with State Farm will encourage other insurers to join the settlement, so that we can get a quick flow of capital into our Coastal Counties at this

critical time,” said Attorney General Hood. “This will help stabilize our economic recovery and the insurance market on our Coast, so that we can rebuild the lives, hopes and dreams of our beloved Coastal families and businesses. I just pray it all works quickly!”

A true and correct copy of such press release is attached hereto as Exhibit 10. Significantly, the Attorney General’s press release describes terms that are found only in the Woullard Agreement, not in the Hood Agreement.

37. On January 24, 2007, State Farm made a \$5 million payment to Attorney General Hood, pursuant to the Hood Agreement. Attorney General Hood, who had full knowledge of the terms of the Woullard Agreement, raised no objection to such class action settlement and, instead, accepted State Farm’s payment of \$5 million.

38. On January 25, 2007, the Attorney General issued another press release in which he called “on Allstate, Nationwide, Mississippi Farm Bureaus, USAA, and other Insurance Companies to Participate in Class Settlement.” This press release stated:

It has been 1½ years since Hurricane Katrina devastated the Mississippi Gulf Coast. Still, thousands of people are hurting and trying to put their lives back together. Attorney General Jim Hood believes a settlement agreement with State Farm this week is a first step in recovery for many. Today, he is urging Allstate, Nationwide, Mississippi Farm Bureau, USAA, and other insurance companies to do the right thing like State Farm and settle this litigation on the Mississippi Gulf Coast.

Attorney General Hood is quoted as saying: “Although the class settlement is not perfect, State Farm, a leader in the insurance industry did the right thing in agreeing to settle the litigation. State Farm has set an example for other insurance companies to do their part in rebuilding the lives of our families on our Gulf Coast.” A true and correct copy of such press release is attached hereto as Exhibit 11.

39. State Farm is informed and believes that throughout the negotiations of the Hood Agreement and Woullard Agreement, Attorney General Hood sought the advice of several other attorneys in addition to Mike Moore and Danny Cupit.

40. By order dated January 26, 2007, Judge L.T. Senter of the United States District Court for the Southern District of Mississippi, denied, without prejudice, the Woullard plaintiffs’ Motion to Certify Class and for Preliminary Approval of the Proposed Agreement of Compromise and Settlement, and State Farm’s Motion for Preliminary Approval of Proposed Class Action Settlement in the Woullard

Suit.

41. Following Judge Senter's order, on February 1, 2007, Attorney General Hood wrote the General Counsel of State Farm. In spite of the fact that the Attorney General and his advisers were fully apprised of the terms of the Woullard Agreement, which he praised and encouraged other insurers to do likewise on January 23 and January 25, the Attorney General wrote that he considered State Farm to be in breach of the Hood Agreement.

42. On February 5, 2007, State Farm responded to Attorney General Hood's February 1 letter. Counsel for State Farm noted that the Woullard Agreement submitted to Judge Senter included all of the provisions described in the Hood Agreement. He further noted that Judge Senter's January 26 order was without prejudice and that State Farm and proposed class counsel would continue to seek Judge Senter's approval.

43. Notwithstanding the extensive involvement of the Attorney General and his representatives in the class action settlement negotiations, and Attorney General Hood's praise for the Woullard Agreement on January 23 and January 25, Attorney General Hood continued his efforts to undermine the proposed class action settlement. Instead of supporting State Farm's efforts to address Judge Senter's concerns, on February 22, 2007, Attorney General Hood sought to intervene in the Woullard Suit. Representing to the federal court that "[t]he Attorney General was not a party to the proposed class action settlement and did not participate in the negotiations of its terms," he now criticized the proposed agreement.

44. On February 28, 2007, Judge Senter held a hearing on the proposed class action settlement in the Woullard Suit. At this hearing, Mike Moore, who had previously acted as an advisor to Attorney General Hood, joined the team of attorneys representing the proposed settlement class. Proposed class counsel Richard Scruggs, advised the court that "former Attorney General Mike Moore . . . had a very influential and wise hand in the crafting of this resolution" (*i.e.*, the Woullard Agreement).

45. At the hearing, Mr. Moore acknowledged the role of the Attorney General in the class action settlement negotiations, stating that he had helped to obtain State Farm's agreement to the \$50

million minimum and the minimum payment to slab claimants under the Woullard Agreement. Mr. Moore also acknowledged that he had acted as an advisor to the Attorney General in connection with the Hood Agreement. Explaining his role, and the role of the Attorney General, in the Woullard class action settlement negotiations, Mr. Moore stated to the Court:

[T]here's another document I want you to look at besides this document that says it clearer. The attorney general, which I was advis[ing] in working with a bunch of other lawyers in here, did an outstanding job of crafting a three- or four-page order that says in his order – and it's signed and agreed to by State Farm – that the minimum offer will be 50 percent of the coverage A limits, period.

....

... The truth of the matter is what I was interested in and what the attorney general was interested in – and believe me, this was not our starting point. The attorney general wanted to try to get as much as he could. And his number was 100 percent. These guys over here, their numbers were much larger too. We settled at 50 percent. That's as far as we could get.

Mr. Moore also explained to the District Court how the Guideline Tool, that was an exhibit to the Woullard Agreement, would work. Mr. Moore also stated: “It was *the attorney general* and it was the plaintiffs’ counsel who wanted to make sure that there was a minimum because we wanted the public to know that there was a least x amount of dollars that would be spent if only five people were in this class. They have to spend \$50 million.” (emphasis added). Significantly (and contrary to the allegations at paragraph 13 of the Complaint), the agreed upon \$50 million minimum aggregate payment is found only in the Woullard Agreement. It is not a provision of the Hood Agreement.

46. Danny Cupit, designated a special assistant attorney general, appeared at the February 28 hearing on behalf of Attorney General Hood. He stated that Attorney General Hood

wanted us to express his appreciation for the work of this court and the people in this courtroom who have negotiated this agreement. It's the view of the attorney general that the best and most expeditious way to resolve these claims is through a comprehensive global settlement and he wants to encourage that in every way he can.

And, while Mr. Cupit proposed certain modifications to the Woullard Agreement, he also stated “we think that this agreement in critical aspects is a reasonable agreement.”

47. On March 12, 2007, counsel for the Woullard plaintiffs unilaterally and without notice to State Farm withdrew their Motion to Certify Class and for Preliminary Approval of the Proposed

Agreement of Compromise and Settlement.

48. On March 19, 2007, State Farm reached an agreement with Commissioner of Insurance George Dale providing for the reevaluation of over 35,000 claims by State Farm policyholders in Jackson, Harrison and Hancock Counties. A true and correct copy of the Commissioner's press release announcing such agreement is attached hereto as Exhibit 12.

49. State Farm's agreement with the Mississippi Insurance Department was memorialized in a letter from State Farm to the Mississippi Insurance Department dated April 3, 2007. As stated in such letter, "State Farm will reevaluate all claims in the lower three coastal counties, upon request of the policyholder." The agreement contains the following provisions:

(a) "During this process, State Farm will not use any adjuster who was involved in the previous adjustment of said claim."

(b) "At a minimum, State Farm is voluntarily committing to the same monetary payments to policyholders that were part of the proposed class action settlement in *Woullard v. State Farm*."

(c) "Any offer made by State Farm to any policyholder following State Farm's reevaluation of his, her or its claim will be based upon the guideline tool attached as Exhibit 1, hereto."

(d) "State Farm agrees that on claims for foundation and pier only sites ("slab" claims), State Farm's offer will be in an amount which, in total, would have a value equivalent to no less than fifty percent (50%) of the Coverage A limits, subject to policy limits and subject to deduction for prior payments (including flood payment)."

(e) "During the reevaluation and mediation process, State Farm will not assert as a ground for the total denial of a settlement claim that water contributed to the policyholder's loss if wind damage occurred."

(f) "In addition to the minimum offer agreed to for foundation and pier only sites ("slab claims"), State Farm will not deny any policyholder's structural damage claim unless State Farm can show by a preponderance of the evidence that damage denied was caused by an

excluded peril.”

(g) “State Farm will continue to work with [the Mississippi Insurance Department] to assure that all claims are reevaluated in accordance with the mutually agreed guidelines herein.”

(h) “This entire process will be voluntary for the policyholder”

A true and correct copy of such letter is attached hereto as Exhibit 13. These terms mirror, substantially, the description in the Hood Agreement of the reevaluation process that was to be submitted to the federal court. This reevaluation process is already underway. Notices, approved by the Mississippi Insurance Department, have been sent to thousands of State Farm policyholders in the three coastal counties. Requests for reevaluation have been received and settlement offers extended. The process is ongoing.

50. On April 13, 2007, Attorney General Hood made a renewed motion to intervene in the Woullard Suit.

51. On April 16, 2007, the federal court dismissed the Woullard Suit and denied the Attorney General’s motion to intervene as moot.

52. On June 6, 2007, counsel for State Farm met with Attorney General Hood and his representatives. As a follow-up to this meeting, on June 8, 2007, counsel for State Farm sent a detailed letter to Special Assistant Attorney General Mary Jo Woods setting out the facts evidencing State Farm’s compliance with the Hood Agreement. The letter was also sent to Attorney General Hood with a cover letter from State Farm’s General Counsel urging Attorney General Hood to reconsider his plans to pursue litigation and stating: “We want to work with you. We are voluntarily trying to resolve cases and make it possible for more Mississippi policyholders to rebuild. Please support these efforts, and help create additional positive benefits to the citizens of Mississippi.” A true and correct copy of such letter is attached hereto as Exhibit 14.

53. Notwithstanding State Farm’s compliance with the Hood Agreement and its efforts to deal in good faith with Attorney General Hood, Attorney General Hood filed the above-captioned action on June 11, 2007.

COUNT I
DECLARATORY JUDGMENT THAT
STATE FARM HAS COMPLIED WITH THE HOOD AGREEMENT

54. State Farm incorporates by reference paragraphs 1 through 53 of this Counterclaim.

55. State Farm brings this counterclaim pursuant to Rule 57 of the Mississippi Rules of Civil Procedure, which provides that “[c]ourts of record within their respective jurisdictions may declare rights, status, and other legal relations regardless of whether further relief is or could be claimed.” Miss. R. Civ. P. 57(a). Rule 57 further provides that “[a] contract may be construed either before or after there has been a breach thereof.” Miss. R. Civ. P. 57(b)(2).

56. In Section III of the settlement agreement between State Farm and Attorney General Hood, entitled “Re-Evaluation of Claim” (hereafter “Section III”), State Farm “agreed to establish an administrative procedure to reevaluate claims of State Farm policyholders in Hancock, Harrison, and Jackson Counties who had residential or commercial policies in effect on August 29, 2005. This process will establish an orderly, fair, and prompt resolution of claims and will be submitted for approval to the United States District Court for the Southern District of Mississippi. The administrative procedure applies only to settlement class members as defined in the agreement to be submitted to the United States District Court for the Southern District of Mississippi.”

57. As discussed above, State Farm established the administrative procedure contemplated by Section III as part of the Woullard class action settlement agreement, which was submitted for approval to the United States District Court for the Southern District of Mississippi in accordance with Section III, after having been first approved by the Attorney General and his advisers.

58. As discussed above, Attorney General Hood was fully aware of the terms of the Woullard class action settlement agreement, participated in its negotiation both directly and through his advisor Mr. Moore, and knew, when he settled his claims with State Farm, that the Woullard settlement was the agreement that was going to be submitted to the federal court.

59. The material terms of the Woullard class action settlement agreement were summarized in paragraphs A through F of Section III, and the Woullard class action settlement agreement was fully consistent with such provisions of Section III.

60. By accepting payment of \$5 million dollars from State Farm, and by his public statements on January 23 and January 25 in support of the Woullard class action settlement, Attorney General Hood has admitted that State Farm complied with its obligations under Section III.

61. State Farm performed its obligations under Section III and is entitled to a declaratory judgment stating that by submitting the Woullard class action settlement to the United States District Court for the Southern District of Mississippi, State Farm has complied with Section III and no further performance by State Farm under that provision is due or owing.

62. While State Farm maintains that it completely fulfilled its obligations under Section III by submitting the Woullard class action settlement to the federal court, in the alternative, State Farm says that it has substantially complied with Section III by entering into the agreement with the Mississippi Department of Insurance, which provides for a reevaluation process that comports, in material respects, with the administrative process described in Section III.

COUNT II
DECLARATORY JUDGMENT THAT
ATTORNEY GENERAL HOOD HAS BREACHED THE HOOD AGREEMENT

63. State Farm incorporates by reference paragraphs 1 through 53 of this Counterclaim.

64. After January 26, 2007, the Attorney General failed to support the Woullard Agreement, failed to assist State Farm's efforts to obtain approval of the Woullard Agreement, and actively sought to undermine State Farm's efforts to obtain approval of the Woullard Agreement. In so doing, Attorney General Hood has breached his duty of good faith and fair dealing, implied in the Hood Agreement.

65. By instituting this groundless action, Attorney General Hood has also breached his obligations under the Hood Agreement.

66. State Farm is, therefore, entitled to a declaratory judgment, pursuant to Rule 57 of the Mississippi Rules of Civil Procedure that, Attorney General Hood has breached the Hood Agreement.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, based upon the facts alleged above, Counterplaintiff State Farm requests that this Court grant the following relief:

(1) A declaratory judgment that State Farm has performed, or alternatively has substantially

performed, its obligations under Section III of the January 23, 2007, settlement agreement between Attorney General Hood and State Farm;

- (2) A declaratory judgment that Attorney General Hood has breached his obligations under the January 23, 2007, settlement agreement between Attorney General Hood and State Farm;
- (3) An award of costs;
- (4) Such further, supplemental, alternative, different or additional equitable relief as may be appropriate under the premises.

AND NOW, having fully answered and asserted its Counterclaim, State Farm demands judgment dismissing the Complaint with prejudice, finding for the Defendant on its Counterclaim and awarding it its properly taxable costs.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, TIFFANEE WADE-HENDERSON, one of the attorneys for STATE FARM, hereby certify that I have this day served a copy of the Separate Answer, Defenses and Counterclaim of State Farm Fire and Casualty Company by causing same to be sent to the following counsel of record via 1st Class Mail with postage fully prepaid thereon and by e-mail:

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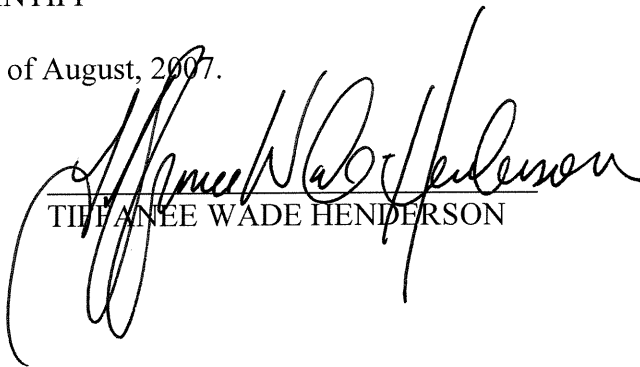
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SO CERTIFIED, this the 9th day of August, 2007.


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