



2. The Texas Farm Bureau Defendants admit that Plaintiffs were not paid any base salary as agents and that they were paid commissions while contracted with the Texas Farm Bureau Defendants. The Texas Farm Bureau Defendants further admit that new insurance agents were able to participate in a limited-time financing plan that offsets some of the risks of commission work, that agents could be on the plan for at most a year, and that not all agents participated in the plan for a full year. The Texas Farm Bureau Defendants further admit that they did not pay Plaintiffs or other insurance agents an overtime premium for any hours worked in excess of 40 in a week. Paragraph 2 contains a legal conclusion to the extent it refers to “similarly situated agents” and not a factual allegation to which admission or denial is required. The Texas Farm Bureau Defendants deny the remaining allegations contained in Paragraph 2 of the First Amended Complaint.

3. The Texas Farm Bureau Defendants deny the allegations in Paragraph 3 of the First Amended Complaint.

4. Paragraph 4 contains legal conclusions and not factual allegations to which admission or denial is required. To the extent Paragraph 4 alleges that the Texas Farm Bureau Defendants participated in any illegal or wrongful conduct or that the Texas Farm Bureau Defendants violated any statutes, those allegations are denied. The Texas Farm Bureau Defendants further deny that Plaintiffs are proper collective action representatives or that collective action treatment is appropriate.

#### **SUBJECT-MATTER JURISDICTION AND VENUE**

5. Paragraph 5 of the First Amended Complaint contains jurisdictional allegations and legal conclusions, and not factual allegations to which admission or denial is required. To the extent Paragraph 5 alleges that the Texas Farm Bureau Defendants participated in any illegal

or wrongful conduct or that the Texas Farm Bureau Defendants violated any statutes, those allegations are denied. The Texas Farm Bureau Defendants further deny that Plaintiffs are proper collective action representatives or that collective action treatment is appropriate.

6. Paragraph 6 of the First Amended Complaint contains jurisdictional allegations and legal conclusions, and not factual allegations to which admission or denial is required. To the extent Paragraph 6 alleges that the Texas Farm Bureau Defendants participated in any illegal or wrongful conduct or that the Texas Farm Bureau Defendants violated any statutes, those allegations are denied. The Texas Farm Bureau Defendants further deny that Plaintiffs are proper collective action representatives or that collective action treatment is appropriate.

7. The Texas Farm Bureau Defendants admit that a case involving some of the same defendants is pending in the Western District of Texas, *Ferguson v. Texas Farm Bureau, et al.*, Cause No. 6:17-cv-111-RP, and that the case involves an agency manager alleging that he and other agency managers were misclassified as exempt independent contractors. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 7 of the First Amended Complaint. To the extent Paragraph 7 alleges that the Texas Farm Bureau Defendants participated in any illegal or wrongful conduct or that the Texas Farm Bureau Defendants violated any statutes, those allegations are denied. The Texas Farm Bureau Defendants further deny that Plaintiffs are proper collective action representatives or that collective action treatment is appropriate.

#### **PARTIES AND PERSONAL JURISDICTION**

8. The Texas Farm Bureau Defendants are without information sufficient to admit or deny the allegation in Paragraph 8 related to Heather English's current residence. The Texas

Farm Bureau Defendants admit that a document purporting to be a consent form signed by Heather English has previously been filed.

9. The Texas Farm Bureau Defendants are without information sufficient to admit or deny the allegation in Paragraph 9 related to Joe Hawley's current residence. The Texas Farm Bureau Defendants admit that a document purporting to be a consent form signed by Joe Hawley has previously been filed.

10. The Texas Farm Bureau Defendants admit that Robin Broussard is an individual residing in Jefferson, County, Texas. The Texas Farm Bureau Defendants admit that a document purporting to be a consent form signed by Robin Broussard has previously been filed.

11. The Texas Farm Bureau Defendants admit that the portion of the Texas Farm Bureau Insurance website, titled "Careers," states as follows: "We employ over 820 individuals in the three companies—Texas Farm Bureau, Texas Farm Bureau Business Corporation and Texas Farm Bureau Casualty Insurance Company." The Texas Farm Bureau Defendants further admit that the "Company Information" page of the Texas Farm Bureau Insurance website states: "The Texas Farm Bureau Insurance Companies Include \* Texas Farm Bureau Mutual Insurance Company \* Texas Farm Bureau Underwriters \* Texas Farm Bureau Casualty Insurance Company \* Farm Bureau County Mutual Insurance Company of Texas," followed by a hyperlink to the website for Southern Farm Bureau Life Insurance Company. The Texas Farm Bureau Defendants admit that they sometimes use letterhead with "Texas Farm Bureau Insurance" and a list of the foregoing five companies. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 11 of the First Amended Complaint.

12. The Texas Farm Bureau Defendants admit that the Texas Farm Bureau Insurance website states "Headquartered in Waco, Texas," and "[l]argest Texas-based insurance provider

of auto, home/property, farm/ranch, life, and health insurance.” The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 12 of the First Amended Complaint.

13. Defendant Texas Farm Bureau Casualty Insurance Company admits that it is a Texas insurance company that offers insurance policies in Texas (including auto insurance), maintains a presence and corporate address in Waco, McLennan County, Texas, and has entered an appearance in this case. Defendant Texas Farm Bureau Casualty Insurance Company denies the remaining allegations in Paragraph 13 of the First Amended Complaint.

14. Defendant Texas Farm Bureau Mutual Insurance Company admits that it is a Texas insurance company that offers insurance policies in Texas (including home/property), maintains a presence and corporate address in Waco, McLennan County, Texas, and has entered an appearance in this case. Defendant Texas Farm Bureau Mutual Insurance Company denies the remaining allegations in Paragraph 14 of the First Amended Complaint.

15. Defendant Texas Farm Bureau Underwriters is an unincorporated association that offers insurance policies in Texas and maintains a presence in Waco, McLennan County, Texas and has entered an appearance in this case. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 15 of the First Amended Complaint.

16. Defendant Farm Bureau County Mutual Insurance Company admits that it is a Texas insurance company that offers insurance policies in Texas, maintains a presence and corporate address in Waco, McLennan County, Texas, and has entered an appearance in this case. Defendant Farm Bureau County Mutual Insurance Company denies the remaining allegations in Paragraph 16 of the First Amended Complaint.

17. The Texas Farm Bureau Defendants admit that public records reflect that Defendant Southern Farm Bureau Life Insurance Company (“SFBLIC”) has an attorney for

service registered with the Texas Department of Insurance in Waco, Texas, and has previously entered an appearance in this case.

**DEFENDANTS FORM A SINGLE ENTERPRISE<sup>1</sup>**

18. The Texas Farm Bureau Defendants deny the allegations in Paragraph 18 of the First Amended Complaint.

19. The Texas Farm Bureau Defendants admit that they engage in at least some activity relating to selling or servicing insurance policies that are marketed in connection with the “Texas Farm Bureau Insurance” brand. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 19 of the First Amended Complaint.

20. The Texas Farm Bureau Defendants admit that they sometimes use letterhead with “Texas Farm Bureau Insurance” and a list of the following companies (a) Texas Farm Bureau Casualty Insurance Company; (b) Texas Farm Bureau Mutual Insurance Company; (c) Texas Farm Bureau Underwriters; (d) Farm Bureau County Mutual Insurance Company of Texas, and (e) Southern Farm Bureau Life Insurance Company. The Texas Farm Bureau Defendants admit that they are engaged in the selling and servicing of insurance policies in Texas. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 20 of the First Amended Complaint.

21. The Texas Farm Bureau Defendants admit that they primarily operate out of 7420 Fish Pond Road, Waco, Texas, 76710. The Texas Farm Bureau Defendants admit that they keep some records relating to each company at this location. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 21 of the First Amended Complaint.

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<sup>1</sup> The section headings in the First Amended Complaint are quoted here for clarity and convenience only. The inclusion of those headings in this Original Answer should not be construed as an admission by the Texas Farm Bureau Defendants. Any and all allegations contained in such headings are expressly denied.

22. The Texas Farm Bureau Defendants admit that they share several officers and directors, including Russell W. Boening, President; and Cyndi Gerik, Comptroller/Chief Financial Officer. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 22 of the First Amended Complaint.

23. The Texas Farm Bureau Defendants admit that they work cooperatively with each other to offer different kinds of insurance in the Texas market in connection with the “Texas Farm Bureau Insurance” brand. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 23 of the First Amended Complaint.

24. The Texas Farm Bureau Defendants admit that their businesses were in certain respects complementary and in certain respects operationally interdependent. The Texas Farm Bureau Defendants further admit that insurance agents had contracts with all of the Defendants and sold insurance lines from all of the Defendants. The Texas Farm Bureau Defendants further admit that some agents advertised their insurance products using the Texas Farm Bureau Insurance logo. The Texas Farm Bureau Defendants also admit that agents had @txfb-ins.com email addresses and, when they first became independent contractors, were issued business cards. Finally, the Texas Farm Bureau Defendants admit that they cooperated in different ways so that insurance agents could offer different lines of insurance in connection with the “Texas Farm Bureau Insurance” brand. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 24 of the First Amended Complaint.

25. The Texas Farm Bureau Defendants deny the allegations in Paragraph 25 of the First Amended Complaint.

**DEFENDANTS ARE JOINT EMPLOYERS OF PLAINTIFFS**

26. The Texas Farm Bureau Defendants deny the allegations in Paragraph 26 of the

First Amended Complaint.

27. The Texas Farm Bureau Defendants admit that District Sales Managers employed by Texas Farm Bureau Casualty Insurance Company reviewed the performance of Plaintiffs and other insurance agents under their contracts with the Texas Farm Bureau Defendants. The Texas Farm Bureau Defendants admit that District Sales Managers sometimes communicated corporate initiatives, procedures, and guidelines to the Plaintiffs and other insurance agents. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 27 of the First Amended Complaint.

28. The Texas Farm Bureau Defendants admit that they each entered into independent contractor agreements with Plaintiffs and other agents pursuant to which the agents agreed to sell insurance. Plaintiffs' and other agents' independent contractor agreements with the Texas Farm Bureau Defendants provided that the agents agree to follow all guidelines and instructions contained in the Texas Farm Bureau Defendants' rate books, Farm Bureau Insurance Companies Agents' Manual, advertising guidelines, and underwriting guidelines. The Texas Farm Bureau Defendants further admit that either party to the agreement could terminate the contract following the provision of 10 days' notice. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 28 of the First Amended Complaint.

29. The Texas Farm Bureau Defendants deny the allegations in Paragraph 29 of the First Amended Complaint.

30. The Texas Farm Bureau Defendants admit that they sometimes use letterhead with "Texas Farm Bureau Insurance" and a list of the following companies (a) Texas Farm Bureau Casualty Insurance Company; (b) Texas Farm Bureau Mutual Insurance Company; (c) Texas Farm Bureau Underwriters; (d) Farm Bureau County Mutual Insurance Company of



Texas, and (e) Southern Farm Bureau Life Insurance Company. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 30 of the First Amended Complaint.

31. The Texas Farm Bureau Defendants admit that they share several officers and directors, including Russell W. Boening, President; and Cyndi Gerik, Comptroller/Chief Financial Officer. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 31 of the First Amended Complaint.

32. The Texas Farm Bureau Defendants deny the allegations in Paragraph 32 of the Amended Complaint.

33. The Texas Farm Bureau Defendants admit that insurance agents received commissions from the sale of insurance policies on their behalf and that certain equipment was leased by Defendant Texas Farm Bureau Mutual Insurance Company to some insurance agents pursuant to an Agent Equipment Agreement and, in some instances, an Additional Equipment Addendum. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 33 of the First Amended Complaint.

#### **SPECIFIC EMPLOYMENT ALLEGATIONS**

34. The Texas Farm Bureau Defendants deny the allegations in Paragraph 34 of the First Amended Complaint.

35. The Texas Farm Bureau Defendants admit that the Plaintiffs sold insurance on behalf of the Texas Farm Bureau Defendants. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 35 of the First Amended Complaint.

36. The Texas Farm Bureau Defendants deny the allegations in Paragraph 36 of the First Amended Complaint.

37. The Texas Farm Bureau Defendants deny the allegations in Paragraph 37 of the First Amended Complaint.

38. The Texas Farm Bureau Defendants deny the allegations in Paragraph 38 of the First Amended Complaint.

39. The Texas Farm Bureau Defendants admit that they entered into independent contractor agreements with Plaintiffs and other agents. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 39 of the First Amended Complaint.

40. Plaintiffs' independent contractor agreements with the Texas Farm Bureau Defendants provide that the Plaintiffs agree to follow all guidelines and instructions contained in the Texas Farm Bureau Defendants' rate books, Farm Bureau Insurance Companies Agents' Manual, advertising guidelines, and underwriting guidelines. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 40 of the First Amended Complaint.

41. The Texas Farm Bureau Defendants admit that either party to the independent contractor agreement had the right to terminate the contract following the provision of 10 days' notice. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 41 of the First Amended Complaint.

42. The Texas Farm Bureau Defendants admit that they reserve control over commission rates pursuant to their agreements with Plaintiffs and retain discretion to modify rate schedules. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 42 of the First Amended Complaint.

43. The Texas Farm Bureau Defendants deny the allegations in Paragraph 43 of the First Amended Complaint.

### FLSA COVERAGE

44. Texas Farm Bureau Casualty Insurance Company admits the allegations in Paragraph 44 with respect to its own respective business but denies that it employed or employs Plaintiffs or any insurance agents. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 44 of the First Amended Complaint.

45. The Texas Farm Bureau Defendants deny the allegations in Paragraph 45 of the First Amended Complaint.

46. The Texas Farm Bureau Defendants deny the allegations in Paragraph 46 of the First Amended Complaint.

47. The Texas Farm Bureau Defendants deny the allegations in Paragraph 47 of the First Amended Complaint.

48. Texas Farm Bureau Casualty Insurance Company admits the allegations in Paragraph 48 with respect to its own respective business but denies that it employed or employs Plaintiffs or any insurance agents. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 48 of the First Amended Complaint.

49. The Texas Farm Bureau Defendants deny the allegations in Paragraph 49 of the First Amended Complaint.

50. Paragraph 50 of the Amended Complaint is vague and ambiguous with respect to the term “gross business volume.” For that reason, the Texas Farm Bureau Defendants deny the allegation in Paragraph 50 of the First Amended Complaint.

51. The Texas Farm Bureau Defendants deny the allegations in Paragraph 51 of the First Amended Complaint.

## FACTS

52. The Texas Farm Bureau Defendants deny the allegations in Paragraph 52 of the First Amended Complaint.

53. Texas Farm Bureau Casualty Insurance Company admits that it operates a business enterprise that offers insurance-related products, including auto insurance. Texas Farm Bureau Mutual Insurance Company admits that it operates a business enterprise that offers insurance-related products, including home/property and farm/ranch insurance. Texas Farm Bureau Underwriters admits that it is a business enterprise that offers insurance-related products. Farm Bureau County Mutual Insurance Company of Texas admits that it is a business enterprise that offers insurance-related products. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 53 of the First Amended Complaint.

54. The Texas Farm Bureau Defendants admit that one of the Plaintiffs' main obligations under their contracts was soliciting customers for the insurance products offered by the Texas Farm Bureau Defendants. The Texas Farm Bureau Defendants deny the remaining allegations of Paragraph 54 of the First Amended Complaint.

55. The Texas Farm Bureau Defendants deny the allegations in Paragraph 55 of the Amended Complaint.

56. The Texas Farm Bureau Defendants admit that Plaintiff Heather English signed contracts with each of them effective February 2015 and those contracts terminated about November 2017, that Plaintiff Joe Hawley signed contracts with each of them effective November 2011 and those contracts terminated in June 2016, and that Robin Broussard signed contracts with each of them effective November 2004 and is still under contract. The Texas Farm Bureau Defendants further admit that, when Plaintiffs signed contracts with them, the

Texas Farm Bureau Defendants did not anticipate a specific termination date for the contracts. The Texas Farm Bureau Defendants deny the remaining allegations in paragraph 56 of the First Amended Complaint.

57. The Texas Farm Bureau Defendants deny the allegations of Paragraph 57 of the First Amended Complaint.

58. The Texas Farm Bureau Defendants admit that they provided business cards to Plaintiffs when they first became independent contractors with the name and logo of Texas Farm Bureau Insurance, which identified each Plaintiff as an “Agent.” The Texas Farm Bureau Defendants deny the remaining allegations of Paragraph 58 of the First Amended Complaint.

59. The Texas Farm Bureau Defendants deny the allegations in Paragraph 59 of the First Amended Complaint.

60. The Texas Farm Bureau Defendants admit that they provided Plaintiffs with email addresses. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 60 of the Complaint.

61. The Texas Farm Bureau Defendants admit that their contracts with insurance agents determined what insurance policies the insurance agents, including Plaintiffs, could sell on behalf of each of them. The Texas Farm Bureau Defendants further admit that each approved what policies contracted insurance agents could sell. The Texas Farm Bureau Defendants deny the remaining allegations of Paragraph 61 of the First Amended Complaint.

62. The Texas Farm Bureau Defendants admit that they set the price of their insurance policies sold by Plaintiffs and other contracted insurance agents. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 62 of the First Amended Complaint.

63. The Texas Farm Bureau Defendants admit that they reviewed the content of some, but not all, advertising by Plaintiffs for legal and branding guidelines compliance. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 63 of the First Amended Complaint.

64. The Texas Farm Bureau Defendants each admit that they could remove a policy from one agent and assign it to another agent for business reasons, and that such an action could impact an agent's commission. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 64 of the First Amended Complaint.

65. The Texas Farm Bureau Defendants admit that they required newly contracted insurance agents, including Plaintiffs, to attend training sessions. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 65 of the First Amended Complaint.

66. The Texas Farm Bureau Defendants admit that their financial investment in the overall systems for underwriting, administering, and paying claims of insurance products sold by Plaintiffs exceeded the individual financial investments by Plaintiffs in those systems. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 66 of the First Amended Complaint.

67. The Texas Farm Bureau Defendants admit that Plaintiff English was contracted with the Defendants for over two years, Plaintiff Hawley was contracted with the Defendants for over four years, Plaintiff Broussard has been contracted with the Defendants for over a decade, and some other insurance agents have been contracted with the Defendants for years or decades. The Texas Farm Bureau Defendants deny the remaining allegations of Paragraph 67 of the First Amended Complaint.

68. The Texas Farm Bureau Defendants deny the allegations in Paragraph 68 of the First Amended Complaint.

69. The Texas Farm Bureau Defendants deny the allegations in Paragraph 69 of the First Amended Complaint.

70. The Texas Farm Bureau Defendants deny the allegations in Paragraph 70 of the First Amended Complaint.

71. The Texas Farm Bureau Defendants admit that insurance agents are paid in part through commissions and are not paid a base salary. The Texas Farm Bureau Defendants admit that when they first become independent contractors, agents participate in a limited-time financing plan that offsets some of the risks of commission work and that agents could be on the plan for at most a year, although some agents participated in the plan for less than a year. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 71 of the First Amended Complaint.

72. The Texas Farm Bureau Defendants admit that they did not make payroll tax withholdings from any commissions paid to Plaintiffs and other contracted insurance agents and deny that they had any obligation to do so since agents were not employees. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 72 of the First Amended Complaint.

73. The Texas Farm Bureau Defendants deny the allegations in Paragraph 73 of the First Amended Complaint.

74. The Texas Farm Bureau Defendants admit that they contracted with Plaintiffs and other agents to provide services at certain offices, and set commission rates. The Texas Farm

Bureau Defendants deny the remaining allegations in Paragraph 74 of the First Amended Complaint.

75. The Texas Farm Bureau Defendants deny the allegations in Paragraph 75 of the First Amended Complaint.

76. The Texas Farm Bureau Defendants deny the allegations in Paragraph 76 of the First Amended Complaint.

77. The Texas Farm Bureau Defendants deny the allegations in Paragraph 77 of the First Amended Complaint.

78. The Texas Farm Bureau Defendants deny the allegations in Paragraph 78 of the First Amended Complaint.

79. The Texas Farm Bureau Defendants admit that they had the right to contract with, and terminate contracts with, insurance agents. The Texas Farm Bureau Defendants further admit that each of the named Plaintiffs was contracted with the Texas Farm Bureau Defendants for at least a year, and one for approximately thirteen years. Defendant Texas Farm Bureau Mutual Insurance Company admits that it leased computers to its contracted insurance agents pursuant to an Agent Equipment Agreement, and, in some instances, an Additional Equipment Addendum. The Texas Farm Bureau Defendants further admit that they contracted with agents to provide services at certain offices. The Texas Farm Bureau Defendants further each admit that they approved the price of their insurance policies sold by Plaintiffs and other contracted insurance agents. The Texas Farm Bureau Defendants further admit that they reviewed some, but not all, of the advertising of their insurance products sold by its contracted insurance agents for legal and branding guidelines compliance. The Texas Farm Bureau Defendants further admit that some customers made some payments directly to the Texas Farm Bureau Defendants for



purchased products, rather than to contracted insurance agents. The Texas Farm Bureau Defendants further admit that they provided business cards when the agents first became independent contractors and provided email addresses to Plaintiffs and other contracted insurance agents. The Texas Farm Bureau Defendants further admit that their recent contracts with insurance agents contained a clause that authorized termination of certain payments to agents selling insurance within 50 miles of the area where they previously provided services for two years following the termination of their contract with the Texas Farm Bureau Defendants, with certain exceptions. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 79 of the Complaint.

80. The Texas Farm Bureau Defendants deny the allegations in Paragraph 80 of the First Amended Complaint.

81. The Texas Farm Bureau Defendants deny the allegations in Paragraph 81 of the First Amended Complaint.

82. The Texas Farm Bureau Defendants deny the allegations in Paragraph 82 of the First Amended Complaint.

**VIOLATION OF 29 U.S.C. § 207**

83. Paragraph 83 is an incorporation paragraph and does not contain any factual allegations to which admission or denial is required. The Texas Farm Bureau Defendants incorporate by reference their responses to Paragraphs 1-82 above.

84. The Texas Farm Bureau Defendants deny the allegations in Paragraph 84 of the First Amended Complaint.

85. The Texas Farm Bureau Defendants deny the allegations in Paragraph 85 of the First Amended Complaint.

**VIOLATION OF 29 U.S.C § 211(c)**

86. Paragraph 86 is an incorporation paragraph and does not contain any factual allegations to which admission or denial is required. The Texas Farm Bureau Defendants incorporate by reference their responses to Paragraphs 1-85 above.

87. The Texas Farm Bureau Defendants deny the allegations in Paragraph 87 of the First Amended Complaint.

88. Paragraph 88 of the First Amended Complaint contains a legal conclusion and not factual allegations to which admission or denial is required. To the extent Paragraph 88 alleges that the Texas Farm Bureau Defendants participated in any illegal or wrongful conduct or that the Texas Farm Bureau Defendants violated any statutes, those allegations are denied.

89. The Texas Farm Bureau Defendants deny the factual allegations in Paragraph 89 of the First Amended Complaint. Paragraph 89 of the First Amended Complaint also contains legal conclusions rather than factual allegations to which admission or denial is required. To the extent Paragraph 89 alleges that the Texas Farm Bureau Defendants participated in any illegal or wrongful conduct or that the Texas Farm Bureau Defendants violated any statutes, those allegations are denied.

**WILLFULLNESS**

90. The Texas Farm Bureau Defendants deny the allegations in Paragraph 90 of the First Amended Complaint.

91. Defendant Texas Farm Bureau Casualty Insurance Company admits that it has been aware of the requirements of the FLSA with respect to overtime pay of employees. To the extent Paragraph 91 alleges that the Texas Farm Bureau Defendants participated in any illegal or wrongful conduct or that the Texas Farm Bureau Defendants violated any statutes, those

allegations are denied. The Texas Farm Bureau Defendants deny the remaining allegations of Paragraph 91 of the First Amended Complaint.

92. The Texas Farm Bureau Defendants admit that they were aware of the general responsibilities of the insurance agents who contracted with them. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 92 of the First Amended Complaint.

93. The Texas Farm Bureau Defendants deny the allegations in Paragraph 93 of the First Amended Complaint.

94. The Texas Farm Bureau Defendants deny the allegations in Paragraph 94 of the First Amended Complaint.

95. The Texas Farm Bureau Defendants deny the allegations in Paragraph 95 of the First Amended Complaint.

#### **COLLECTIVE-ACTION ALLEGATIONS**

96. Paragraph 96 is an incorporation paragraph and does not contain any factual allegations to which admission or denial is required. The Texas Farm Bureau Defendants incorporate by reference their responses to Paragraphs 1-95 above.

97. The Texas Farm Bureau Defendants deny the allegations in Paragraph 97 of the First Amended Complaint.

98. The Texas Farm Bureau Defendants admit that they contracted with insurance agents other than Plaintiffs during the three years before suit and paid those agents primarily through commissions. The Texas Farm Bureau Defendants deny the remaining allegations in Paragraph 98 of the First Amended Complaint.

99. The Texas Farm Bureau Defendants deny the allegations in Paragraph 99 of the First Amended Complaint.

100. The Texas Farm Bureau Defendants deny the allegations in Paragraph 100 of the First Amended Complaint.

101. The Texas Farm Bureau Defendants deny the allegations in Paragraph 101 of the First Amended Complaint.

102. The Texas Farm Bureau Defendants deny the allegations in Paragraph 102 of the First Amended Complaint.

103. The Texas Farm Bureau Defendants deny the allegations in Paragraph 103 of the First Amended Complaint.

104. The Texas Farm Bureau Defendants deny the allegations in Paragraph 104 of the First Amended Complaint.

105. The Texas Farm Bureau Defendants deny the allegations in Paragraph 105 of the First Amended Complaint.

106. The Texas Farm Bureau Defendants are without information sufficient to admit or deny the allegations in Paragraph 106 of the First Amended Complaint. To the extent Paragraph 106 of the Complaint alleges that collective action treatment is appropriate in this case, those allegations are denied.

#### **DAMAGES AND ATTORNEY'S FEES SOUGHT**

107. The Texas Farm Bureau Defendants deny the allegations in Paragraph 107 of the First Amended Complaint.

108. The Texas Farm Bureau Defendants deny the allegations in Paragraph 108 of the First Amended Complaint.

109. The Texas Farm Bureau Defendants deny the allegations in Paragraph 109 of the First Amended Complaint.

### **JURY DEMAND**

110. Paragraph 110 of the First Amended Complaint contains a demand for relief and not factual allegations to which admission or denial is required.

### **PRAYER**

111. The Texas Farm Bureau Defendants deny that collective action treatment is appropriate in this case, that Plaintiffs or any alleged collective action members are entitled to recovery of judgment in this case, or that Plaintiffs or any alleged collective action members are entitled to any of the relief requested in the Prayer of the First Amended Complaint.

### **DEFENSES**

The Texas Farm Bureau Defendants raise the following defensive matters in response to Plaintiffs' claims, whether such claims have been asserted on behalf of the Plaintiffs individually or the alleged collective action members. The Texas Farm Bureau Defendants do not concede that the following defensive matters are true affirmative defenses for which the Texas Farm Bureau Defendants bear the burden proof:

1. Plaintiffs fail to state claims upon which relief may be granted.
2. The claims of others for whom Plaintiffs purport to assert collective action claims are barred, in whole or in part, by the applicable statute of limitations.
3. Any and all claims for liquidated damages are barred because the Texas Farm Bureau Defendants' actions, if any, with regard to Plaintiffs and any alleged collective action members were at all times in good faith, for good cause, without any intent to wrongfully deprive Plaintiffs or any alleged collective action member of any wages and/or compensation owed to him/her, and/or were based on a reasonable belief that the Texas Farm Bureau

Defendants were and are in compliance with all applicable wage and compensation requirements.

4. To the extent applicable, any claims for compensation of Plaintiffs and others for whom Plaintiff purports to assert collective claims are barred by the doctrines of acquiescence, settlement, consent, ratification, res judicata, and/or accord and satisfaction.

5. To the extent applicable, Plaintiffs and others for whom Plaintiffs purport to assert collective claims are precluded from recovering any amounts from the Texas Farm Bureau Defendants because the Texas Farm Bureau Defendants have paid them all sums legally due, if any.

6. To the extent applicable, the Texas Farm Bureau Defendants are entitled to a recoupment, offset, or credit for any overpayment of compensation to Plaintiffs or alleged collective action members.

7. Pending further investigation, some or all of the claims of Plaintiffs or others for whom Plaintiffs purport to assert collective claims are barred by the doctrines of laches, waiver, estoppel, and/or unclean hands due to unreasonable delay in presenting their claims of unpaid overtime to the disadvantage and prejudice of the Texas Farm Bureau Defendants and/or misrepresentations concerning the scope and types of activities performed pursuant to their contracts with the Texas Farm Bureau Defendants.

8. In the alternative, to the extent Plaintiffs or the alleged collective action members worked overtime without the actual or constructive knowledge of the Texas Farm Bureau Defendants and without their consent, Plaintiffs and the alleged collective action members are not entitled to compensation for any such overtime hours worked.

9. In the alternative, Plaintiffs and some or all of the alleged collective action members qualify for the exemption for outside sales employees under 29 C.F.R. Section 541, Subpart F.

10. Because liability or damages, if any, to each member of the group Plaintiffs purport to represent may not be determined by a single jury or on a group-wide basis, allowing this action to proceed as a collective action would violate the Texas Farm Bureau Defendants' rights under the Seventh and Fourteenth Amendments to the United States Constitution.

11. Plaintiffs are not similarly situated to other potential members of the group they purport to represent, so Plaintiffs are inadequate representatives of the alleged group that they purport to represent.

**PRAYER FOR RELIEF**

WHEREFORE, the Texas Farm Bureau Defendants pray for the following relief:

- a. That the First Amended Complaint be dismissed in its entirety with prejudice and without costs, fees, or interest of any kind assessed against the Texas Farm Bureau Defendants;
- b. That the Texas Farm Bureau Defendants be awarded reasonable expenses incurred in defending against the First Amended Complaint, including costs and attorneys' fees; and
- c. That the Texas Farm Bureau Defendants be granted such other and further relief as this Court deems just and equitable.

Respectfully submitted,

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**BUREAU MUTUAL INSURANCE COMPANY,**

**TEXAS FARM BUREAU UNDERWRITERS,**

**AND FARM BUREAU COUNTY MUTUAL**

**INSURANCE COMPANY OF TEXAS**



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record herein by way of:

- U.S. Mail, First Class
- Certified Mail
- Facsimile
- Federal Express
- Hand Delivery
- ECF (electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants)

on this 5th day of February 2018, to wit:

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