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6 Attorneys for Defendants,
7 TRAVELERS COMMERCIAL
8 INSURANCE COMPANY, TRAVELERS PROPERTY
9 CASUALTY INSURANCE COMPANY,
10 THE STANDARD FIRE INSURANCE COMPANY

11 **UNITED STATES DISTRICT COURT**

12 **CENTRAL DISTRICT OF CALIFORNIA**

13 KRISTINA KRPEKYAN, individually
14 and on behalf of similarly situated
15 insureds, ARAM BASMAGYAN,
16 individually and on behalf of similarly
17 situated insureds, RICHARD
18 BASMAGYAN, a minor acting by and
19 through his guardian ad litem Kristina
20 Krpekyan, ANDRE BASMAGYAN, a
21 minor acting by and through his guardian
22 ad litem Kristina Krpekyan,

23 Plaintiff,

24 v.

25 TRAVELERS; TRAVELERS
26 COMMERCIAL INSURANCE
27 COMPANY; TRAVELERS PROPERTY
28 CASUALTY INSURANCE COMPANY;
THE STANDARD FIRE INSURANCE
COMPANY; UNIVERSAL 1ST
INSURANCE SERVICES; and DOES 1-
500; inclusive,

Defendants.

CASE NO. 2:18-CV-2166

**NOTICE OF REMOVAL OF
STATE COURT ACTION
ASSERTING CLASS ACTION
COMPLAINT, PURSUANT TO 28
U.S.C. § 1332(d), 1441(b) AND
1453(b) BY DEFENDANTS,
TRAVELERS COMMERCIAL
INSURANCE COMPANY,
TRAVELERS PROPERTY
CASUALTY COMPANY, THE
STANDARD FIRE INSURANCE
COMPANY; EXHIBITS "1-3"**

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1 **TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

2 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446
3 and 1453(b), Defendants Travelers Commercial Insurance Company, Travelers
4 Property Casualty Insurance Company, and The Standard Fire Insurance Company¹
5 (collectively, the “Travelers Defendants”) hereby remove to this Court the action
6 captioned as *Kristina Krpekyan, et al., v. Travelers, et al.*, Case No. BC680135, on
7 the docket of the Superior Court of the State of California for the County of Los
8 Angeles (“State Action”). Travelers Defendants remove this action to the Central
9 District of California because the State Action was pending in the Los Angeles
10 County Superior Court located in the Central District.

11 In support of this Notice of Removal, the Travelers Defendants respectfully
12 allege:

13 1. On or about October 17, 2017, Plaintiffs commenced the captioned
14 action by filing their Complaint in the State Action. A true and correct copy of the
15 Complaint, including exhibits/attachments, filed in the State Action is attached as
16 Exhibit “1” hereto.

17 2. The Summons and the Complaint were served on Corporation Service
18 Company, as agent for service of process for the Travelers Defendants, on February
19 14, 2018. This Notice of Removal is filed within 30 days of service of process, and is
20 therefore timely under 28 U.S.C. §§ 1446(b) and 1453(b). True and correct copies of
21 the Summons served on each of the Travelers Defendants are attached as Exhibit “2”
22 hereto.

23 3. This Court has jurisdiction under the Class Action Fairness Act of 2005
24 (“CAFA”), 28 U.S.C. § 1332(d), because this lawsuit is a “class action,” as defined by
25 CAFA, in which there is minimal diversity of citizenship, and the amount in

26 _____
27 ¹ The Complaint also names “Travelers” as a defendant but there is no existing legal
28 entity by that name, and therefore, “Travelers” cannot be considered for removal
purposes or otherwise make an appearance in this action.

1 controversy exceeds \$5 million, as explained further below. This Court also has
2 jurisdiction under 28 U.S.C. § 1453(b) because this lawsuit is a “class action” as
3 defined by CAFA.

4 **PARTIES**

5 4. Plaintiffs, Kristina Krpekyan, Aram Basmagyan, Richard Basmagyan,
6 and Andre Basmagyan (collectively, the “Plaintiffs”) are, and at all relevant times
7 were, citizens of the State of California. (Berube Decl. at ¶ 2, Exhibit “4”.)

8 5. Defendant Travelers Commercial Insurance Company is, and at all
9 relevant times was, a corporation organized under the laws of Connecticut, with its
10 principal place of business in Hartford, Connecticut. (Berube Decl. at ¶ 3, Exhibit
11 “5”)

12 6. Defendant Travelers Property Casualty Insurance Company is, and at all
13 relevant times was, a corporation organized under the laws of Connecticut, with its
14 principal place of business in Hartford, Connecticut. (Berube Decl. at ¶ 4, Exhibit
15 “6”)

16 7. Defendant The Standard Fire Insurance Company is, and at all relevant
17 times was, a corporation organized under the laws of Connecticut, with its principal
18 place of business in Hartford, Connecticut. (Berube Decl. at ¶ 5, Exhibit “7”)

19 8. Defendant Universal 1st Insurance Services is a fictitious business name
20 of Universal 1st Financial Group, Inc., a corporation organized under the laws of
21 California, with its principal place of business in Glendale, California. (Berube Decl.
22 at ¶ 6, Exhibit “8”.)

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PLAINTIFFS' ALLEGATIONS²

1
2 9. Plaintiffs filed this case as a putative class action under Section 382 of
3 the California Code of Civil Procedure and Section 1781 of the California Civil Code.
4 Complaint ¶ 78.

5 10. Plaintiffs allege that they own or owned a residential property located at
6 14624 Adobe Place in Victorville, California (the "Property"). Complaint ¶ 6.
7 Plaintiffs further allege that they purchased a property insurance policy covering the
8 Property from the Travelers Defendants.³ Complaint ¶ 11. Plaintiffs also allege that
9 Universal 1st Insurance Services advised and assisted Plaintiffs in procuring that
10 insurance policy. Complaint ¶ 8. Plaintiffs contend that, on November 2, 2014, the
11 Property was damaged by a covered loss. Complaint ¶ 17. Plaintiffs further allege
12 that the Travelers Defendants "denied the claim on specious and bad faith grounds,
13 including that Plaintiffs all allegedly engaged in fraud, in the application process,
14 when in fact they did not." Complaint ¶ 20. In the putative class allegations,
15 Plaintiffs contend that the Travelers Defendants have purportedly sold Plaintiffs and
16 other California residents property insurance policies containing appraisal provisions
17 that violate Section 2071 of the California Insurance Code and "suit against us"
18 provisions that are contrary to California case law. Complaint ¶ 78.

19 11. In Counts 1 through 8 of the Complaint, Plaintiffs assert causes of action
20 for breach of the implied covenant of good faith and fair dealing, breach of contract,
21 fraud, negligent misrepresentation, negligence, procurement of money under false

22
23 ² The Travelers Defendants do not admit the underlying facts as alleged by Plaintiffs
24 or as summarized herein. The Travelers Defendants expressly deny any liability to
25 Plaintiffs or the putative class. The Travelers Defendants reserve their rights to
26 challenge the legal sufficiency of the allegations in the Complaint. This notice is
being filed for purposes of establishing jurisdiction only and does not constitute an
admission of liability.

27 ³ In fact, the policy was issued by Travelers Commercial Insurance Company, which
28 is the only potentially properly named defendant in this lawsuit.

1 pretenses, and intentional infliction of emotional distress. Complaint ¶¶ 29-76.
2 Plaintiffs assert the causes of action in Counts 1 through 8 individually, on their own
3 behalf only. *Id.*

4 12. In Count 9 of the Complaint, Plaintiffs assert a claim for breach of
5 Section 17200, et seq., of the California Business and Professions Code. Plaintiffs
6 assert this claim on behalf of themselves and “all other similarly situated persons who
7 received an insurance policy issued by [the Travelers Defendants] for property located
8 in the State of California.” Complaint ¶ 78. More specifically, the class is defined as:

9 A. All persons or entities who received a residential insurance policy
10 issued by the TRAVELERS DEFENDANTS for property located in the
11 State of California in the last four years, which contained an “appraisal”
12 provision identical to the one contained in SUBJECT POLICY [i.e.,
13 Plaintiffs’ Policy], which did not conform with the mandatory language
14 of Insurance Code Section 2071;

15 B. All persons or entities who received a residential insurance policy
16 issued by the TRAVELERS DEFENDANTS for property located in the
17 State of California in the last four years, which contained an [sic] “suit
18 against us” provision identical to the one contained in the SUBJECT
19 POLICY, which did not conform with the California Supreme Court
20 opinion in Prudential-LMI Com. Insurance v. Superior Court (1990) 51
21 Cal.-3d 674, 678-79.

22 *Id.*

23 13. In Count 9, Plaintiffs seek, on behalf of themselves and the putative
24 class, statutory penalties in the amount of \$2,500 for “each statutory violation” as well
25 as restitution, injunctive relief and disgorgement of “ill gotten gains.” Complaint ¶¶
26 86-88. The requested injunctive relief includes an order requiring the Travelers
27 Defendants to make changes to the appraisal and “suit against us” provisions in the
28

1 insurance policies, and reopening and readjusting claims involving those provisions.
2 *Id.* ¶ 88.

3 14. In Count 10 of the Complaint, Plaintiffs assert a claim for unjust
4 enrichment. Plaintiffs assert this claim on behalf of the same proposed class defined
5 above. Complaint ¶¶ 89-90. Plaintiffs allege that the Travelers Defendants were
6 unjustly enriched by “issuing non-conforming policies cutting back the rights and
7 options of the insureds” and by “charging a premium for a conforming policy”
8 *Id.* ¶ 89. On behalf of themselves and the putative class, Plaintiffs seek that the
9 Travelers Defendants be required to “return the amounts that said Plaintiffs overpaid
10 for the non-conforming policy.” *Id.* ¶ 90.

11 15. The Complaint also seeks punitive damages on behalf of the proposed
12 class. Complaint ¶¶ 26, 28, 77, 89, Prayer for Relief.

13 **JURISDICTION UNDER CAFA**

14 16. Removal is proper under CAFA, 28 U.S.C. § 1332(d)(2), where, as here,
15 a putative class action involves minimal diversity of citizenship and an aggregate
16 amount in controversy exceeding \$5 million. Removal is also proper under 28 U.S.C.
17 § 1453(b) because this lawsuit is a “class action” as defined by CAFA.

18 17. CAFA applies “to any class action before or after the entry of a class
19 certification order by the court with respect to that action.” 28 U.S.C. § 1332(d)(8).
20 This case is a “class action” under CAFA because it was brought under a state statute
21 or rule, namely Section 382 of the California Code of Civil Procedure and Section
22 1781 of the California Civil Code, authorizing an action to be brought by one or more
23 representative persons as a class action. *See* 28 U.S.C. § 1332(d)(1)(B); Complaint ¶
24 78.

25 **Minimal Diversity**

26 18. This case satisfies the minimal diversity requirement of CAFA because
27 at least one member of the putative class is a citizen of a state different from at least
28 one defendant. *See* 28 U.S.C. § 1332(d)(2)(A). The named Plaintiffs are individuals

1 domiciled in California. (Berube Decl. at ¶ 2, Exhibit “4”.) Defendants Travelers
2 Commercial Insurance Company, Travelers Property Casualty Insurance Company,
3 and The Standard Fire Insurance Company are each corporations organized and
4 existing under Connecticut law with their principal places of business in Hartford,
5 Connecticut. (Berube Decl. ¶¶ 3-6, Exhibits “5-8”.)

6 **Amount in Controversy**

7 19. This case satisfies CAFA’s amount in controversy requirement because
8 the matter in controversy exceeds the sum of \$5 million, exclusive of interest and
9 costs. 28 U.S.C. § 1332(d)(2). CAFA provides that “the claims of the individual
10 class members shall be aggregated to determine whether the matter in controversy
11 exceeds the sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. §
12 1332(d)(6). As the Supreme Court has explained, “the statute tells the District Court
13 to determine whether it has jurisdiction by adding up the value of the claim of each
14 person who falls within the definition of [the plaintiff’s] proposed class and determine
15 [sic] whether the resulting sum exceeds \$5 million. If so, there is jurisdiction and the
16 court may proceed with the case.” *Standard Fire Ins. Co. v. Knowles*, 133 S. Ct.
17 1345, 1348 (2013).

18 20. The Supreme Court has further explained that “no antiremoval
19 presumption attends cases involving CAFA, which Congress enacted to facilitate
20 adjudication of certain class actions in federal court.” *Dart Cherokee Basin Operating*
21 *Co. v. Owens*, 135 S. Ct. 547, 554 (2014). To satisfy the statutory requirements for
22 removal, “a defendant’s notice of removal need include only a plausible allegation
23 that the amount in controversy exceeds the jurisdictional threshold.” *Id.* at 554.

24 21. Here, the amount in controversy as alleged in the Complaint exceeds \$5
25 million. Specifically, Plaintiffs on behalf of the alleged class seek, among other
26 remedies, recovery of a statutory penalty of \$2,500 for each violation of Section
27 17200, et seq., of the California Business and Professions Code. Complaint ¶ 86.
28 The putative class is defined to include all persons who, within the last four years

1 (i.e., from October 17, 2013 to October 17, 2017), received an insurance policy
2 covering property in the State of California that contains an appraisal provision and/or
3 “suit against us” provision identical to the ones in Plaintiffs’ policy. Complaint ¶ 78.
4 Based on a search of the Travelers Defendants’ data regarding policies issued in
5 California that were in effect from October 17, 2013 to October 17, 2017, there were
6 200,564 policies that contained Form HO-300 (04-13) (which is the form in Plaintiffs’
7 policy that contains the relevant Appraisal and “Suit Against Us” provisions –
8 Complaint, Exhibit 1, page 34). (See Manning Decl. at ¶ 3.) Thus, Plaintiffs assert a
9 claim to recover statutory penalties that alone puts the amount in controversy well
10 above the \$5,000,000 threshold.

11 22. Furthermore, Plaintiffs also seek punitive damages, as well as injunctive
12 relief that would require the Travelers Defendants to issue revised policy forms and
13 reopen previously adjusted claims. Plaintiffs also seek the return of alleged
14 overpayments of premiums. The presence of these additional claims further
15 demonstrates that CAFA’s \$5 million amount in controversy requirement is easily
16 satisfied. With what appears to be at least 200,564 insurance policies falling within
17 the definition of the proposed class, a recovery of merely \$25 per policy or an award
18 of injunctive relief with that value would also exceed \$5 million. Plaintiffs are plainly
19 claiming more than that amount on behalf of the proposed class.

20 **Exceptions to CAFA Jurisdiction**

21 23. None of the exceptions to CAFA jurisdiction applies. None of the
22 Travelers Defendants (which are the only defendants named in the class claims) is a
23 citizen of the state in which the action was filed, i.e., California. Accordingly, 28
24 U.S.C. §§ 1332(d)(3) and (d)(4) do not apply. Section 1332(d)(5)(A) does not apply
25 because none of the Travelers Defendants is a State, State official or other
26 governmental entity against which this Court may be foreclosed from ordering relief.
27 Section 1332(d)(5)(B) does not apply because the number of members of all proposed
28 plaintiff classes in the aggregate exceeds 100, as set forth above. Section 1332(d)(9)

1 does not apply because Plaintiffs' claims do not involve securities or the internal
2 affairs or governance of a corporation or other form of business enterprise.

3 24. Pursuant to CAFA, the Travelers Defendants may remove this case
4 without the consent of defendant Universal 1st Insurance Services. 28 U.S.C. §
5 1453(b).

6 25. Accordingly, this Court has original jurisdiction under CAFA.

7 **Supplemental Jurisdiction**

8 26. Because this Court has original jurisdiction over the class claims (Counts
9 9 and 10) under CAFA, this Court has supplemental jurisdiction over the other claims
10 in the Complaint (Counts 1 through 8), which likewise arise out of Plaintiffs' alleged
11 insurance policy and claim made under that policy. 28 U.S.C. § 1367(a).

12 **REMOVAL PROCEDURE**

13 27. A copy of this Notice of Removal is being served upon all known
14 counsel of record, along with a copy of the Notice to the Clerk of Court for the
15 Superior Court of the State of California for the County of Los Angeles, which is
16 being filed simultaneously in that court.

17 28. Pursuant to 28 U.S.C. § 1447(b), true and correct copies of all other
18 notices, processes, and proceedings served on Travelers Defendants or served and/or
19 filed by Travelers Defendants in the State Action, which consist of: Summons,
20 Application and Order for Appointment of Guardian Ad Litem, Civil Case Cover
21 Sheet, Civil Case Cover Sheet Addendum and Statement of Location, Notice of Case
22 Assignment, Voluntary Efficient Litigation Stipulations, ADR Information Packet,
23 Docket printout, and Notice of Ruling and Scheduling of an OSC re Service and
24 Continued Case Management Conference are attached as Exhibit "3" hereto. To the
25 knowledge of Travelers Defendants, no hearings or proceedings have taken place in
26 the State Action other than status conferences to monitor the status of Plaintiffs'
27 service of process on the defendants.

28 ///

1 **WHEREFORE**, The Travelers Defendants hereby provide notice that this
2 action is duly removed to this Court.

3
4 Dated: March 15, 2018

Respectfully submitted,
WESTON & McELVAIN LLP

6 By: /s/ Bevin A. Berube
7 Randy M. McElvain
8 Attorneys for Defendants
9 TRAVELERS COMMERCIAL
10 INSURANCE COMPANY,
11 TRAVELERS PROPERTY
12 CASUALTY INSURANCE
13 COMPANY, THE STANDARD FIRE
14 INSURANCE COMPANY
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Exhibit “1”

1 WLA LEGAL SERVICES, INC.
2 Steven Zelig (State Bar No. 94654)
3 1543 7th Street, Suite 300
4 Santa Monica, CA 90401
5 Tel.: 310/393-6702
6 Fax: 310/393-6703

7 Attorneys for Plaintiffs

CONFIRMED COPY
ORIGINAL FILED
Superior Court Of California
County Of Los Angeles

OCT 17 2017

Sherri R. Carter, Executive Officer/Clerk
By: Marlon Gomez, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10 KRISTINA KRPEKYAN, individually and on
11 behalf of similarly situated insureds, ARAM
12 BASMAGYAN, individually and on behalf of
13 similarly situated insureds, RICHARD
14 BASMAGYAN, a minor acting by and through
15 his guardian ad litem Kristina Krpekyan;
16 ANDRE BASMAGYAN, a minor acting by
17 and through his guardian ad litem Kristina
18 Krpekyan,

19 Plaintiffs,

20 vs.

21 TRAVELERS; TRAVELERS COMMERCIAL
22 INSURANCE COMPANY; TRAVELERS
23 PROPERTY CASUALTY INSURANCE
24 COMPANY; THE STANDARD FIRE
25 INSURANCE COMPANY; UNIVERSAL 1ST
26 INSURANCE SERVICES; and DOES 1-500;
27 inclusive,

28 Defendants.

CASE NO.

BC680135

COMPLAINT FOR
COMPENSATORY AND
PUNITIVE DAMAGES

29 Plaintiffs KRISTINA KRPEKYAN, individually and on behalf of similarly situated insureds,
30 ("KRISTINA"), ARAM BASMAGYAN, individually and on behalf of similarly situated insureds,
31 ("ARAM"), RICHARD BASMAGYAN, a minor acting by and through his guardian ad litem Kristina
32 Krpekyan ("RICHARD"); ANDRE BASMAGYAN, a minor acting by and through his guardian ad
33 litem Kristina Krpekyan ("ANDRE"), hereby allege:

1 **OVERVIEW.**

2 1. As more fully discussed below, for decades, California law has been clear. An
3 insurer in a first-party property insurance claim setting has **three** fundamental duties. **First**, an
4 insurer has the duty to fully, completely, fairly and thoroughly investigate a first-party claim, and to
5 spend whatever money is necessary for that investigation. **Second**, the insurer has a duty to counsel
6 the insureds and to disclose to them all available rights and coverages. **Third**, the insurer must
7 promptly and fairly pay the claim in accordance with the complete and thorough investigation that
8 had been conducted. As will be seen below: (1) UNIVERSAL (defined below) and Does 11-20,
9 inclusive, were agents of the TRAVELERS DEFENDANTS (defined below); (2) UNIVERSAL and
10 Does 11-20, inclusive, accepted the responsibility to counsel and advise Plaintiffs concerning an
11 insurance policy for their home, and to assist with the procurement of homeowner's coverage with
12 the TRAVELERS DEFENDANTS; (3) In exchange for UNIVERSAL and Does 11-20, inclusive's
13 work and service they received a substantial amount of money as a "commission"; (4) the
14 TRAVELERS DEFENDANTS insured Plaintiffs' home, and in exchange Plaintiffs KRISTINA and
15 ARAM paid a substantial premium; (5) In or about November 2014, a loss occurred to Plaintiff's
16 home, which should have been covered under the policy issued by the TRAVELERS
17 DEFENDANTS; (6) Plaintiffs made a legitimate claim for damage to their house under the policy
18 issued by the TRAVELERS DEFENDANTS; (7) The TRAVELERS DEFENDANTS breached the
19 insurance contract by failing to properly respond to the claim, acting in bad faith relative to the
20 claims of Plaintiffs, failing to properly investigate Plaintiffs' claims, failing to pay fair amounts on
21 Plaintiffs' claim, misrepresenting available coverages and statutes, misrepresenting the obligations
22 of the insurer, conducting lengthy and harassing Examinations Under Oath, concealing the rights of
23 Plaintiffs, contending that the application had not been properly filled out, when in fact the
24 TRAVELERS DEFENDANTS' own agent, UNIVERSAL and Does 11-20, inclusive, were the ones
25 who prepared it, and engaging in other tortious conduct; (6) Defendants' policy contained fraudulent
26 and ambiguous provisions, constituting an unfair business practice, and resulting in ill-gotten gains
27 as to Plaintiffs and other similarly situated insureds.

28

1 **DOES.**

2 2. Defendants, Does 1 through 500, inclusive, are unknown to Plaintiffs who therefore
3 sue said Defendants by such fictitious names and will ask leave of Court to amend this Complaint to
4 show the true names and capacities, whether corporate, individual, partnership, association or
5 otherwise, and said Defendants fault, tortious participation, and/or breach of contract, statute and/or
6 regulation.

7 3. Plaintiffs are informed and believe and based thereon allege that each of the
8 Defendants designated as Does 1 through 500, inclusive, are in some way responsible for the injuries
9 and damages sustained by Plaintiffs herein.

10 **AGENCY, CONSPIRACY, AIDING AND ABETTING.**

11 4. Plaintiffs are informed and believe and based thereon allege, at all times mentioned
12 herein, that certain Defendants were in fact and ultimate reality the agents, principals, partners,
13 associates, joint venturers, employees and/or co-conspirators of certain remaining co-defendants;
14 that certain Defendants were at all times acting within the course, purpose and scope of said agency,
15 partnership, association, joint venture employment and/or conspiracy and that certain Defendants
16 were acting with the authorization, permission and/or consent of certain other co-Defendants.

17 **AIDING AND ABETTING**

18 5. Certain Defendants herein aided and abetted other Defendants in perpetrating the
19 torts outlined below on Plaintiffs.

20 **CHRONOLOGY.**

21 6. In or about 2012/ 2013, KRISTINA and ARAM purchased property located at 14624
22 Adobe Place, Victorville, California ("the SUBJECT PROPERTY"). The remaining Plaintiffs,
23 RICHARD and ANDRE are the biological children of Plaintiffs KRISTINA and ARAM, and had
24 the right to use and reside in the SUBJECT PROPERTY.

25 7. In or about late August 2013, KRISTINA and in particular ARAM interacted with
26 Defendants UNIVERSAL 1ST INSURANCE SERVICES, and Does 1-10, inclusive (collectively
27 "UNIVERSAL"). Does 11-20, inclusive, were agents and employees of UNIVERSAL. In turn,
28 UNIVERSAL and Does 11-20, inclusive, were agents of "TRAVELERS", "TRAVELERS
COMMERCIAL INSURANCE COMPANY", "THE STANDARD FIRE INSURANCE

1 COMPANY,” and “TRAVELERS PROPERTY CASUALTY INSURANCE COMPANY.” As
2 such, acts and omissions of UNIVERSAL and Does 11-20, inclusive are in law the acts and
3 omissions of “TRAVELERS”, “TRAVELERS COMMERCIAL INSURANCE COMPANY”,
4 “THE STANDARD FIRE INSURANCE COMPANY,” and “TRAVELERS PROPERTY
5 CASUALTY INSURANCE COMPANY.”

6 8. UNIVERSAL, acting by and through Does 11-20, inclusive, agreed to advise and
7 assist Plaintiffs in procuring an insurance policy that would protect Plaintiffs and the SUBJECT
8 PROPERTY, and which would include insurance for property damage covered by various risks.
9 UNIVERSAL and Does 11-20, inclusive, agreed to guide Plaintiffs through the process and to assist
10 them, by among other things, drafting an application for insurance that would cause a policy to be
11 procured and which would “hold water” in the event of a claim.

12 9. Plaintiffs explained the following to UNIVERSAL and Does 11-20, inclusive:

- 13 A. That they became owners of the SUBJECT PROPERTY toward the end of 2012/early
14 2013, and that KRISTINA and ARAM lived there with their minor children
15 RICHARD and ANDRE;
- 16 B. That the personal property of KRISTINA and ARAM was located in the SUBJECT
17 PROPERTY;
- 18 C. That KRISTINA worked in North Hollywood;
- 19 D. That ARAM worked in Mission Hills;
- 20 E. That ARAM’s mother lived at in Granada Hills;
- 21 F. That RICHARD and ANDRE went to school in Granada Hills;
- 22 G. That sometimes all or part of the family would stay with ARAM’s mother in Granada
23 Hills;
- 24 H. ARAM responded to other inquiries and comments of UNIVERSAL and Does 11-20,
25 inclusive, in an honest manner and in the way that he understood the question or what
26 was being stated.

27 10. UNIVERSAL and Does 11-20, inclusive, instructed KRISTINA and ARAM that as
28 far as he was concerned the SUBJECT PROPERTY was their “primary” residence. UNIVERSAL
and Does 11-20, inclusive, filled out an application for KRISTINA and ARAM in which said

1 defendants described the SUBJECT PROPERTY as the “primary” residence of KRISTINA and
2 ARAM. More specifically, on or about August 29, 2013, UNIVERSAL faxed the original
3 homeowners application to KRISTINA and ARAM. UNIVERSAL had pre-checked off and filled
4 out the form. Everything that was checked off, was done by UNIVERSAL.

5 11. On or about August 29, 2013, Plaintiffs paid money (\$2,898 or other amount
6 according to proof) for an insurance policy that covered the SUBJECT PROPERTY. Eventually, a
7 copy of the policy was provided to Plaintiffs. The TRAVELERS DEFENDANTS (defined below)
8 issued a policy, bearing “policy number 991850911 633 1,” or other policy number according to
9 proof (hereinafter the “SUBJECT POLICY”), that was in force and effect on the date of loss herein,
10 i.e., November 2, 2014, or other date according to proof. (A true and correct copy of the SUBJECT
11 POLICY that was eventually issued is attached hereto, incorporated by reference, and marked as
12 **Exhibit 1**. For the convenience of the reader, the SUBJECT POLICY is bates stamped beginning
13 with page 001, and ending with page 042.) More specifically, as can be seen by the SUBJECT
14 POLICY itself, the SUBJECT POLICY is confusing as to the identity of the entity, or entities, who
15 actually insured Plaintiffs. More precisely, on one hand, pages 001-004 (and elsewhere) of the
16 policy indicate that the insurer is “TRAVELERS”, and Does 21-30, inclusive (hereinafter,
17 collectively “TRAVELERS”). Page 003 of the policy indicates that the insurer is “TRAVELERS
18 COMMERCIAL INSURANCE COMPANY”, and Does 31-40, inclusive (hereinafter, collectively
19 “TCIC”). At page 041 the SUBJECT POLICY is signed and indicates that the insurers are “THE
20 STANDARD FIRE INSURANCE COMPANY” and Does 41-50, inclusive (hereinafter, collectively
21 “STANDARD”), and “TRAVELERS PROPERTY CASUALTY INSURANCE COMPANY” and
22 Does 51-60, inclusive (hereinafter, collectively “TPCIC”). The entities listed in this paragraph are
23 collectively referred to as the “TRAVELERS DEFENDANTS.”

24 12. Other features of the SUBJECT POLICY are as follows:

- 25 A. The SUBJECT POLICY specified that “UNIVERSAL 1ST INS SRVS” was the
26 “agent”, thereby constituting an admission that UNIVERSAL was an agent of the
27 insurer;
- 28 B. The SUBJECT POLICY named KRISTINA and ARAM as “named insureds;”

1 C. In the section of the policy entitled "Homeowners 3 - Special Form" (page 7 of
2 **Exhibit 1**), "insured" is defined as "you and residents of your household who are: (1)
3 your relatives; or (2) other persons under the age of 21 and in the care of any person
4 named above", and accordingly, RICHARD and ANDRE (both of whom has an
5 insurable interest) are insureds;

6 D. The SUBJECT POLICY specifies that claim must be made within 2 years of the date
7 of loss (page 23 of **Exhibit 1**), while p. 35 specifies that suit must be filed in 1 year.
8 Notably, this provision is deceptive because it omits that the period of time within
9 which to make claim in California is "tolled" or suspended while the claim is
10 pending, which technically means, that this claim for breach of contract, bad faith,
11 and other causes of action arising out of the policy would be timely on or before
12 December 9, 2017, and this assumes that the purported denial letter that was
13 submitted on the claim complied with the California Code of Regulations.

14 E. Other features according to proof.

15 13. The SUBJECT POLICY included implied terms, including that said benefits would
16 not be unreasonably withheld or delayed; and, that the insurer would investigate and adjust claims in
17 accordance with applicable laws in effect in the State of California, and in accordance with standards
18 of care and practice followed by reputable adjusters and evaluators of first-party claims. The policy
19 also required the TRAVELERS DEFENDANTS to fully and fairly adjust and evaluate the loss, to
20 comply with the express terms of each policy, to comply with the implied covenant of good faith
21 and fair dealing, to comply with Insurance Code Sections 790.03(h), 2071 and 10100 (et seq), to
22 comply with Penal Code Section 550, to comply with the Insurance Regulations as well as
23 amendments thereto relating to claims handling, and various other laws, including but not limited to
24 the following:

25 A. Insurance Code Section 790.03(h)(1) – misrepresenting pertinent facts or insurance
26 policy provisions.

27 B. Insurance Code Section 790.03(h)(2) – failing to acknowledge and act reasonably
28 promptly after communications concerning a claim have been submitted.

- 1 C. Insurance Code Section 790.03(h)(5) – not attempting in good faith to effectuate
- 2 prompt, fair and equitable settlements of claims in which liability has become
- 3 reasonably clear.
- 4 D. Insurance Code Section 790.03(h)(15) – misleading a claimant as to the statute of
- 5 limitations.
- 6 E. Section 2695.7(a) (“No insurer shall discriminate in its claims settlement practices
- 7 based upon the claimant’s age, race . . . or physical disability . . .”)
- 8 F. 2695.5(a) (requires immediate acknowledgment of receipt of notice of claim);
- 9 G. 2695.5(h) (requiring the provision of claim forms, instructions, and reasonable
- 10 assistance within fifteen calendar days);
- 11 H. 2695.5(g) (requiring a response to communications from claimants within fifteen
- 12 days);
- 13 I. Insurance Code Section 790.03(h)(2) -- requiring an insurer to promptly "
- 14 acknowledge and act reasonably promptly upon communications with respect arising
- 15 under insurance policies";
- 16 J. 2695.4(a) (requiring an insurer to **affirmatively disclose all benefits, coverage, time**
- 17 **limits or other provisions of any insurance policy that may apply to the claim.**)
- 18 K. Insurance Code Section 790.03(h)(1) -- requiring an insurer to accurately and fully
- 19 "disclose to claimants pertinent facts or insurance policy provisions applicable to any
- 20 coverage at issue";
- 21 L. 2695.7(d) (requiring an insurer to "diligently pursue a thorough, fair and objective
- 22 investigation.)
- 23 M. 2695.7(b) (requiring acceptance or denial of claim in whole or in part within **forty**
- 24 **days**);
- 25 N. Insurance Code Section 790.03(h)(4) -- requiring an insurer to "affirm or deny
- 26 coverage of claims within a reasonable time after proof of loss requirements have
- 27 been completed and submitted by the insured";
- 28 O. Insurance Code Section 790.03(h)(12) -- requiring an insurer " to settle claims

- 1 promptly ...";
- 2 P. 2695.7(c) (requiring a statement in writing explaining the status of the claim within
- 3 forty days and then on a **thirty** day, continuing, basis);
- 4 Q. 2695.7(e) (prohibiting delay in settlement of a claim on the basis that responsibility
- 5 should be borne by others);
- 6 R. Section 2695.7(h) (requiring an insurer to promptly pay "amounts not reasonably in
- 7 dispute")
- 8 S. Insurance Code Section 790.03(h)(5) -- requiring an insurer to attempt "in good faith
- 9 to effectuate prompt, fair and equitable settlement of claims in which liability has
- 10 become reasonably clear";
- 11 T. Penal Code Section 550 (which precludes any person or entity from "*knowingly*
- 12 *assisting or conspiring with any person to present or cause to present any written or*
- 13 *oral statement as . . . Opposition to a claim for payment or other benefit pursuant to*
- 14 *an insurance policy, knowing that the statement contains any false or misleading*
- 15 *information; or, prepare or make any written or oral statement that is intended to be*
- 16 *presented to any insurer . . . in opposition to any claim or payment or other benefit*
- 17 *pursuant to an insurance policy, knowing the statement contains any false and*
- 18 *misleading information concealing any material fact.*")
- 19 U. Insurance Code Section 790.03(h)(13) -- requiring an insurer to "provide promptly a
- 20 reasonable explanation of the basis relied in the insurance policy in relation to the
- 21 facts or applicable law, for the denial of a claim or for the offer of a compromised
- 22 settlement";
- 23 V. Insurance Code Section 2071 – which among other things requires the insurer to
- 24 promptly (within 15 days) produce "claim related documents," which includes per
- 25 statutory definition "repair and replacement estimates and bids, appraisals, scopes of
- 26 loss, drawings, plans, reports, third party findings on amount of loss, covered
- 27 damages, cost of repairs and all other valuation from a measurement and loss
- 28 adjustment calculations of the amount of loss, covered damage and cost of repairs.

- 1 W. 2696.5(b) (requiring a written statement of closure containing references to the statute
- 2 of limitations and to the right of the insured to intervention by the DOI);
- 3 X. The Residential Bill of Rights codified in Insurance Code Section 10103.5.
- 4 Y. Numerous other applicable statutes and regulations, according to proof.

5 14. The insurance policy contained numerous illegal and invalid provisions, including the
6 provision relative to a form of arbitration (referred to in the insurance context as “appraisal”), and
7 the “suit against us” provision. The “appraisal provision” contained in the SUBJECT POLICY does
8 not comply with the mandatory requirements of Insurance Code Section 2071, and among other
9 things omits the fact that appraisal can only go forward if there is an agreement. In addition, the
10 “suit against us” provision of the SUBJECT POLICY creates the appearance that suit must be filed
11 on the “one” or “two” year anniversary of the loss (depending on which portion of the policy you are
12 reading), when in fact both provisions omit the fact that in California the statute of limitations within
13 which to make a claim is tolled or suspended while the claim is pending. Hence, the TRAVELERS
14 DEFENDANTS sold Plaintiffs an insurance policy that intentionally contained illegal and invalid
15 provisions, constituting a fraud in the procurement of the policy. As more fully set forth below, and
16 in particular in the fraud, negligent misrepresentation and unfair business practices causes of action,
17 the TRAVELERS DEFENDANTS gained a competitive advantage over other law abiding
18 companies – who issued policies that mirror the language of Insurance Code Section 2071.

19 15. As more fully set forth below, based upon events that occurred, it is Plaintiffs’
20 position that the TRAVELERS DEFENDANTS and UNIVERSAL procured substantial funds from
21 KRISTINA and ARAM under false pretenses, and hence said Defendants are liable to Plaintiffs for
22 treble damages and attorney fees per Penal Code Sections 484 and 496.

23 16. Plaintiffs are informed and believe and based thereon allege, that on a date according
24 to proof, after August 29, 2013, that the property was inspected by the TRAVELERS
25 DEFENDANTS and they recognized that Plaintiffs did not live in the property 100% of the time.
26 Yet, the TRAVELERS DEFENDANTS lay silent hoping to keep Plaintiffs’ premium, but knowing
27 that if a claim would be made that the TRAVELERS DEFENDANTS would attempt to deny same
28 on the grounds that UNIVERSAL had “checked off” the word “primary” as the description of the

1 use of the property, as set forth on the application generated by UNIVERSAL - TRAVELERS
2 DEFENDANTS' own agent.

3 17. On November 2, 2014, the SUBJECT PROPERTY was damaged by a covered type
4 of loss.

5 18. Plaintiffs timely made claim. The TRAVELERS DEFENDANTS did not investigate
6 or adjust the claim in good faith, and if anything, did the exact opposite, i.e., the TRAVELERS
7 DEFENDANTS tried to find ways to deny the claim or to lowball it.

8 19. Plaintiffs participated in the claim process in good faith, and among other things
9 endured an intentionally skewed claim investigation that was designed to deny Plaintiffs' claim,
10 including but not limited to, trying to intimidate KRISTINA and ARAM by forcing them to
11 participate in an examination under oath.

12 20. On December 9, 2015, TCIC (and no other defendant) "denied the claim" on specious
13 and bad faith grounds, including that Plaintiffs all allegedly engaged in fraud, in the application
14 process, when in fact they did not. More specifically:

15 A. The application (provided by the TRAVELERS defendants and the agent of the
16 TRAVELERS defendants, i.e., UNIVERSAL and Does 11-20, inclusive) gave the
17 applicant three "choices" as to how to describe the SUBJECT PROPERTY, i.e.,
18 "primary residence," "secondary residence," and/or "vacation home." However, as
19 set forth above, ARAM explained the circumstances to UNIVERSAL and Does 11-
20 20, inclusive, who in turn explained to ARAM that the occupancy of the SUBJECT
21 PROPERTY was most accurately described as "primary residence" – which it clearly
22 was, and who filled out the application for, and instructed ARAM to sign same.

23 B. TCIC falsely contended that ARAM made misrepresentations in their application for
24 insurance by signing an application specifying that the property was their primary
25 residence. In fact, this was not a misrepresentation but constituted a good faith and
26 logical interpretation of a "phrase of (insurance) art", i.e., "primary residence." The
27 position of the TRAVELERS DEFENDANTS was specious and in bad faith;

28 C. ARAM signed the application based upon the advice, recommendations, direction,

1 and explanation of UNIVERSAL and Does 11-20, inclusive, and based on
2 UNIVERSAL'S explanation of the phrase of insurance art "primary residence."

3 D. TCIC falsely claimed that the SUBJECT PROPERTY was at most a "secondary
4 residence" when in fact Plaintiffs disagree with such a description, especially based
5 upon their interpretation of the ambiguous phrase "secondary residence."

6 E. The third choice on the application was whether the SUBJECT PROPERTY was a
7 "vacation home" which it clearly was not. Hence, by process of elimination,
8 Plaintiffs still believe that of the 3 choices, i.e., "primary residence," "secondary
9 residence," or "vacation home," the one that fits the closest is "primary residence."

10 F. TCIC took other bad faith and arbitrary positions according to proof.

11 21. Of particular significance relative to the bad faith of TCIC and the other

12 TRAVELERS DEFENDANTS is the following:

13 A. TCIC did not factor in the significant role its own agent, i.e., UNIVERSAL, played in
14 procuring the policy, among other things, discussing with Plaintiffs their use and
15 occupancy of the SUBJECT PROPERTY and specifically filling out the application
16 and "checking off" the box that indicated that the SUBJECT PROPERTY was the
17 "primary residence" of Plaintiffs.

18 B. In its ultimate decision, TCIC did not consider in that the acts and omissions of
19 UNIVERSAL and Does 11-20, inclusive, would be imputed to TCIC.

20 C. TCIC and the other TRAVELERS DEFENDANTS did not take into account the fact
21 that they had performed an inspection after policy inception and prior to the loss
22 which disclosed that Plaintiffs were not living in the SUBJECT PROPERTY full
23 time.

24 22. It is Plaintiffs' position that the TRAVELERS DEFENDANTS have waived,
25 relinquished, are estopped to assert, and/or otherwise gave up the right to claim that the SUBJECT
26 PROPERTY was not Plaintiffs' primary residence on various grounds, including but not limited to:

27 A. KRISTINA and ARAM explained their use of the SUBJECT PROPERTY to
28 UNIVERSAL and Does 11-20, inclusive, who told them that their description

1 justified a description of the SUBJECT PROPERTY as Plaintiffs' "primary
2 residence."

3 B. Plaintiffs reserve the right to contend that the residence was their "primary residence"
4 as KRISTINA and ARAM understood and interpreted an ambiguous insurance phrase
5 of art, i.e., "primary residence";

6 C. The sign-off by "ARAM" on the application occurred in good faith and was based
7 upon the decision with the explanations of and recommendation of UNIVERSAL and
8 Does 11-20, inclusive, that Plaintiffs should describe the property as their "primary
9 residence."

10 23. As a result of the malfeasance of Defendants, Plaintiffs could not properly repair the
11 SUBJECT PROPERTY and were forced to sell same in or about April 2016 at a substantial loss.

12 24. Plaintiffs anticipate that the TRAVELERS DEFENDANTS will contend that the
13 statute of limitations on Plaintiffs' claims has already passed. However, Plaintiffs contend that the
14 TRAVELERS DEFENDANTS' anticipated "statute of limitations" defense is invalid, impotent,
15 and/or that said Defendants have waived, relinquished, or are estopped to assert same based on a
16 variety of facts, including but not limited to:

17 A. The policy is incomprehensible as a whole and is particularly incomprehensible to
18 individuals such as Plaintiffs who have no background in insurance, and are average
19 lay persons;

20 B. The policy contains two separate statements of statute of limitations, one at page 22,
21 and the second at page 34 of Exhibit 1. The definition contained at page 22 specifies
22 that the insured had two years from the date of loss to file suit, while the definition
23 contained at page 34 states that the insureds only have one year from the date of loss
24 to file suit. Plaintiffs anticipate that the TRAVELERS DEFENDANTS will contend
25 that Plaintiffs are bound by the one year "statute of limitations," when in fact an
26 average lay person would first read the definition at page 22, which specifies two
27 years.

28 C. Both provisions relative to the statute of limitations are also deceptive because as

1 literally stated they misrepresent and conceal that in fact the statutes of limitations on
2 insurance claims are “tolled” and/or suspended while the claim is pending. Plaintiff
3 believes that the TRAVELERS DEFENDANTS purposefully design their policy in
4 such a manner so as to allow deceptive language to be used in their “statute of
5 limitations provisions,” which is yet another fraud on the policy holder, as more fully
6 discussed in the fraud, misrepresentation, and unfair business practices causes of
7 action.

8 D. Other provisions according to proof.

9 25. As more fully discussed below, as a proximate result of Defendants’ malfeasance,
10 Plaintiffs have substantial suffered injury, harm and/or loss, in an amount exceeding \$1,000,000 per
11 Plaintiff, or other amount in the discretion of the trier of fact and/or according to proof, including but
12 not limited to: (1) Loss of insurance benefits; (2) Damages related to having to sell the house at a
13 substantial loss, which was directly linked to the malfeasance of Defendants; (3) Upset and
14 emotional distress, and other forms of general damages; (4) Loss of the right of quiet enjoyment of
15 the property; (5) Reimbursement of amounts that have been paid, or will be paid to consultant and
16 other professionals (including general contractors, environmental professionals etc.) in order to
17 develop a proper scope of loss, and in order to restore the property to its preloss condition; and (6)
18 Other damages according to proof.

19 26. As more fully set forth below, Defendants acted with “malice,” “oppression” and
20 “fraud,” as said words are used and described in C.C. Section 3294, justifying the imposition of
21 punitive damages against Defendants.

22 27. As a result, Plaintiffs seek compensatory and punitive damages through the following
23 causes of action:

24 A. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR
25 DEALING, by KRISTINA (individually), ARAM (individually), RICHARD
26 (individually), and ANDRE (individually), as to the malfeasance of the
27 TRAVELERS DEFENDANTS and Does 101-125, inclusive;

28

- 1 B. BREACH OF THE INSURANCE CONTRACT, by KRISTINA (individually),
2 ARAM (individually), RICHARD (individually), and ANDRE (individually), as to
3 the malfeasance of the TRAVELERS DEFENDANTS, and Does 101 - 125,
4 inclusive;
- 5 C. FRAUD IN THE INDUCEMENT AND THE PERFORMANCE, by KRISTINA
6 (individually), ARAM (individually), RICHARD (individually), and ANDRE
7 (individually), as to the malfeasance of all Defendants;
- 8 D. NEGLIGENT MISREPRESENTATION IN THE INDUCEMENT AND
9 PERFORMANCE OF THE INSURANCE CONTRACT, by KRISTINA
10 (individually), ARAM (individually), RICHARD (individually), and ANDRE
11 (individually), as to the malfeasance of all Defendants;
- 12 E. BREACH OF ORAL AND IMPLIED CONTRACT RELATIVE TO POLICY
13 PROCUREMENT AND SERVICING, by KRISTINA (individually), ARAM
14 (individually), RICHARD (individually), and ANDRE (individually), as to the
15 malfeasance of UNIVERSAL, Does 11-20, inclusive, the TRAVELERS
16 DEFENDANTS, and Does 101-150, inclusive;
- 17 F. NEGLIGENCE RELATIVE TO POLICY PROCUREMENT AND SERVICING, by
18 KRISTINA (individually), ARAM (individually), RICHARD (individually), and
19 ANDRE (individually), against UNIVERSAL, Does 11-20, inclusive, the
20 TRAVELERS DEFENDANTS, and Does 101-150, inclusive;
- 21 G. STATUTORY VIOLATION (as to procurement of money, including premiums and
22 commissions, under false pretenses, in violation of Penal Code Section 484), by
23 KRISTINA (individually), ARAM (individually), RICHARD (individually), and
24 ANDRE (individually), against the TRAVELERS Defendants, UNIVERSAL, and
25 Does 11-20, inclusive, and Does 101-150, inclusive;
- 26 H. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, by KRISTINA
27 (individually), ARAM (individually), RICHARD (individually), and ANDRE
28 (individually), as to the malfeasance of all Defendants;

1 28. KRISTINA, individually and on behalf of all others similarly situated and members
2 of the class, and ARAM, individually and on behalf of all others similarly situated and members of
3 the class, seek compensatory and punitive damages against the TRAVELERS DEFENDANTS and
4 DOES 200-225, inclusive, through the following causes of action:

5 A. Violation of Business and Professions Code Section 17200;

6 B. Unjust Enrichment.

7

8 **FIRST CAUSE OF ACTION –**
9 **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**
10 (By KRISTINA (individually), ARAM (individually), RICHARD (individually), and ANDRE
11 (individually), against the TRAVELERS DEFENDANTS and Does 101-125, inclusive.)

11 29. Plaintiffs hereby incorporate Paragraphs 1 through 26, inclusive, into this cause of action.

12 30. Plaintiffs now recognize that the TRAVELERS DEFENDANTS never had any intention
13 of conducting a full and thorough investigation, and that this was part of an illegal corporate protocol
14 implemented especially in losses involving water. Here are the reasons why. Plaintiffs are informed and
15 believe and based thereon alleges that the TRAVELERS DEFENDANTS had a broad-sweeping,
16 institutional pattern and practice, of avoiding investigating a loss (and a water loss in particular) in a full,
17 fair and thorough manner, due to the fact that the investigation cost money and is a "lose/lose". More
18 specifically, the TRAVELERS DEFENDANTS avoid investigating water losses (properly and certainly
19 not in a full and thorough manner) because an investigation (if conducted properly and in accordance
20 with law) will cost the TRAVELERS DEFENDANTS a substantial amount. Second, because interior
21 components and fixtures (such as floors, cabinets, etc.) have to be moved or damaged by the
22 investigation, the TRAVELERS DEFENDANTS is required to repair or replace these expensive fixtures
23 and components – even if the investigation does not reveal that the water invaded the floors and
24 cabinets, etc. Third, if the investigation is conducted properly and in accordance with law, on a large
25 percentage of occasions, the investigation will reveal water and related damage that has to be properly
26 repaired and remediated, which results in substantial further expenditures by the TRAVELERS
27 DEFENDANTS.

28 31. Defendants breached the implied covenant of good faith and fair dealing in a variety of

1 ways, including but not limited to:

- 2 A. Defendants violated Section 2695.7(d) of the Regulations by failing to “diligently pursue
3 a thorough, fair and objective investigation.)
- 4 B. Defendants failed to investigate;
- 5 C. Defendants failed to fund a proper investigation;
- 6 D. Defendants violated Insurance Code Section 790.03(h)(12) by failing “ to settle claims
7 promptly ...”;
- 8 E. Defendants violated Section 2695.7(h) of the Regulations by failing to promptly pay
9 “amounts not reasonably in dispute”;
- 10 F. Defendants violated Insurance Code Section 790.03(h)(5) by failing to attempt “in good
11 faith to effectuate prompt, fair and equitable settlement of claims in which liability has
12 become reasonably clear”;
- 13 G. Defendants violated Insurance Code Section 790.03(h)(1) by misrepresenting pertinent
14 facts or insurance policy provisions.
- 15 H. Defendants violated Insurance Code Section 790.03(h)(2) by failing to acknowledge and
16 act reasonably promptly after communications concerning a claim have been submitted.
- 17 I. Defendants violated Insurance Code Section 790.03(h)(5) by not attempting in good faith
18 to effectuate prompt, fair and equitable settlements of claims in which liability has
19 become reasonably clear.
- 20 J. Defendants violated Section 2695.5(h) of the Regulations by failing to provide accurate
21 instructions and reasonable assistance within fifteen calendar days;
- 22 K. Defendants violated Section 2695.5(g) of the Regulations and Insurance Code Section
23 790.03(h)(2) by providing sham responses to communications from or on behalf of
24 Plaintiff;
- 25 L. Defendants violated Section 2695.4(a) of the Regulations by failing to **affirmatively**
26 disclose **all** benefits, coverage, time limits or other provisions of any insurance policy
27 that may apply to the claim.
- 28 M. Defendants violated Insurance Code Section 790.03(h)(1) by failing to accurately and

1 fully "disclose to claimants pertinent facts or insurance policy provisions applicable o
2 any coverage at issue";

3 N. Defendants violated Section 2695.7(b) of the Regulations by failing to accept or deny
4 the claim in whole or in part within 40 days;

5 O. Defendants acted in bad faith by demanding a Proof of Loss, even though they knew a
6 Proof of Loss that was accurate could not be submitted because a proper investigation
7 had not been conducted;

8 P. Defendants violated Section 2695.7(c) of the Regulations by submitting false and sham
9 letters relative to the claim;

10 Q. Defendants violated Penal Code Section 550 by knowingly "assisting or conspiring with
11 any person to present or cause to present any written or oral statement as . . . opposition
12 to a claim for payment or other benefit pursuant to an insurance policy, knowing that the
13 statement contains any false or misleading information; or, prepare or make any written
14 or oral statement that is intended to be presented to any insurer ...
15 in opposition to any claim or payment or other benefit pursuant to an insurance policy,
16 knowing the statement contains any false and misleading information concealing any
17 material fact."

18 R. Defendants violated Insurance Code Section 2071 by failing to promptly (within 15
19 days) produce all "claim related documents," which includes per statutory definition
20 "repair and replacement estimates and bids, appraisals, scopes of loss, drawings, plans,
21 reports, third party findings on amount of loss, covered damages, cost of repairs and all
22 other valuation from a measurement and loss adjustment calculations of the amount of
23 loss, covered damage and cost of repairs.

24 S. Defendants violated the Residential Bill of Rights codified in Insurance Code Section
25 10103.5.

26 T. Defendants failed to engage appropriate consultants to investigate the loss.

27 U. Defendants failed to engage an objective licensed general contractor to investigate the
28 loss.

- 1 V. Defendants failed to treat Plaintiffs fairly relative to ALE.
- 2 W. Defendants attempted to, and in fact did intimidate KRISTINA and ARAM by forcing
3 them to attend “examination under oaths”, conducted by a lawyer. It was the plan of the
4 TRAVELERS DEFENDANTS to intimidate KRISTINA and ARAM and to force them
5 to hire legal counsel at great expense at a time that they knew that KRISTINA and
6 ARAM were very fiscally compromised.
- 7 X. Defendants refused to reimburse KRISTINA and ARAM for their substantial out-of-
8 pocket expenses related to meals.
- 9 Y. Defendants concealed from Plaintiffs that they were entitled to live in a structure of like
10 kind an quality, and that the TRAVELERS DEFENDANTS would pay for same under
11 the ALE provisions of the policy.
- 12 Z. Defendants interfered with protocols that had been established for the evaluation of the
13 nature, scope and extent of the water loss.
- 14 AA. Defendants forced Plaintiffs to engage attorneys, including but not limited to Steven
15 Zelig/ WLA Legal Services, Inc. These engagements would not have been necessary
16 had defendants acted reasonable.
- 17 BB. Defendants failed to make proper advances;
- 18 CC. Defendants attempted to control the opinions and conclusions of consultants engaged by
19 the TRAVELERS DEFENDANTS;
- 20 DD. Defendants failed to clearly communicate with the insured;
- 21 EE. Defendants lowballed;
- 22 FF. Defendants repeatedly changed adjusters thereby destroying any possibility of
23 establishing adjusting “momentum”;
- 24 GG. Defendants failed to pay proper amounts due under the structure coverage of the policy;
- 25 HH. Defendants failed to pay proper amounts due under the content coverage of the
26 policy;
- 27 II. Defendants failed to pay proper amounts for loss of use coverage of the policy;
- 28 JJ. Defendants failed to pay proper amounts due under other components of the policy;

1 KK. In various other ways as set forth herein and according to proof.

2 32. As more fully discussed below, as a proximate result of Defendants' malfeasance,
3 Plaintiffs have substantial suffered injury, harm and/or loss, in an amount exceeding \$1,000,000 per
4 Plaintiff, or other amount in the discretion of the trier of fact and/or according to proof, including but
5 not limited to: (1) Loss of insurance benefits; (2) Damages related to having to sell the house at a
6 substantial loss, which was directly linked to the malfeasance of Defendants; (3) Upset and emotional
7 distress, and other forms of general damages; (4) Loss of the right of quiet enjoyment of the property;
8 (5) Reimbursement of amounts that have been paid, or will be paid to consultant and other professionals
9 (including general contractors, environmental professionals etc.) in order to develop a proper scope of
10 loss, and in order to restore the property to its preloss condition; and (6) Other damages according to
11 proof.

12 33. Because the engagement of attorneys, including but not limited to (1), Robert Silverberg/
13 Silverberg Law Corporation, (2) Alexander Cohen/ Alexander Cohen & Associates, and/or (3) Steven
14 Zelig/ WLA Legal Services, Inc. should not have been necessary, Plaintiffs are entitled to
15 reimbursement of public adjuster and attorney fees, respectively, per Brandt v. Sup.Ct. (1985) 37 Cal.3d
16 813.

17 34. Per Civil Code Section 3294, Plaintiffs are entitled to punitive damages against
18 Defendants as a result of their malice, oppression and fraud.

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SECOND CAUSE OF ACTION -
BREACH OF INSURANCE CONTRACT
(By KRISTINA (individually), ARAM (individually), RICHARD (individually), and ANDRE
(individually), against the TRAVELERS DEFENDANTS, and Does 101 - 125, inclusive.)

35. Plaintiffs hereby incorporate paragraphs 1 through 26, inclusive, and 30 through 33,
inclusive as if fully set forth herein.

36. The TRAVELERS DEFENDANTS breached the insurance policy as set forth in
incorporated paragraphs. More specifically, the TRAVELERS DEFENDANTS breached in the
following ways:

A. Defendants breached the policy by violating Section 2695.7(d) of the Regulations by

- 1 failing to “diligently pursue a thorough, fair and objective investigation.)
- 2 B. Defendants breached the policy by failing to properly and fairly investigate;
- 3 C. Defendants breached the policy by failing to fund a proper investigation;
- 4 D. Defendants breached the policy by violating Insurance Code Section 790.03(h)(12) by
- 5 failing “ to settle claims promptly ...”;
- 6 E. Defendants breached the policy by violating Section 2695.7(h) of the Regulations by
- 7 failing to promptly pay “amounts not reasonably in dispute”;
- 8 F. Defendants breached the policy by violating Insurance Code Section 790.03(h)(5) by
- 9 failing to attempt “in good faith to effectuate prompt, fair and equitable settlement of
- 10 claims in which liability has become reasonably clear”;
- 11 G. Defendants breached the policy by violating Insurance Code Section 790.03(h)(1) by
- 12 misrepresenting pertinent facts or insurance policy provisions.
- 13 H. Defendants breached the policy by violating Insurance Code Section 790.03(h)(2) by
- 14 failing to acknowledge and act reasonably promptly after communications concerning
- 15 a claim have been submitted.
- 16 I. Defendants breached the policy by violating Insurance Code Section 790.03(h)(5) by
- 17 not attempting in good faith to effectuate prompt, fair and equitable settlements of
- 18 claims in which liability has become reasonably clear.
- 19 J. Defendants breached the policy by violating Section 2695.5(h) of the Regulations by
- 20 failing to provide accurate instructions and reasonable assistance within fifteen
- 21 calendar days;
- 22 K. Defendants breached the policy by violating Section 2695.5(g) of the Regulations and
- 23 Insurance Code Section 790.03(h)(2) by providing sham responses to
- 24 communications from or on behalf of Plaintiff;
- 25 L. Defendants breached the policy by violating Section 2695.4(a) of the Regulations by
- 26 failing to **affirmatively** disclose **all** benefits, coverage, time limits or other provisions
- 27 of any insurance policy that may apply to the claim.
- 28 M. Defendants breached the policy by violating Insurance Code Section 790.03(h)(1) by

1 failing to accurately and fully "disclose to claimants pertinent facts or insurance
2 policy provisions applicable o any coverage at issue";

3 N. Defendants breached the policy by violating Section 2695.7(b) of the Regulations by
4 failing to accept or deny the claim in whole or in part within 40 days;

5 O. Defendants breached the policy by acting in bad faith by demanding a Proof of Loss,
6 even though they knew a Proof of Loss that was accurate could not be submitted
7 because a proper investigation had not been conducted;

8 P. Defendants breached the policy by violating Section 2695.7(c) of the Regulations by
9 submitting false and sham letters relative to the claim;

10 Q. Defendants breached the policy by violating Penal Code Section 550 by knowingly
11 "assisting or conspiring with any person to present or cause to present any written or
12 oral statement as . . . opposition to a claim for payment or other benefit pursuant to
13 an insurance policy, knowing that the statement contains any false or misleading
14 information; or, prepare or make any written or oral statement that is intended to be
15 presented to any insurer ... in opposition to any claim or payment or other benefit
16 pursuant to an insurance policy, knowing the statement contains any false and
17 misleading information concealing any material fact."

18 R. Defendants breached the policy by violating Insurance Code Section 2071 by failing
19 to promptly (within 15 days) produce all "claim related documents," which includes
20 per statutory definition "repair and replacement estimates and bids, appraisals, scopes
21 of loss, drawings, plans, reports, third party findings on amount of loss, covered
22 damages, cost of repairs and all other valuation from a measurement and loss
23 adjustment calculations of the amount of loss, covered damage and cost of repairs.

24 S. Defendants breached the policy by violating the Residential Bill of Rights codified in
25 Insurance Code Section 10103.5.

26 T. Defendants breached the policy by failing to engage appropriate consultants to
27 investigate the loss.

28 U. Defendants breached the policy by failing to engage an objective licensed general

- 1 contractor to investigate the loss.
- 2 V. Defendants breached the policy by failing to treat Plaintiffs fairly relative to ALE.
- 3 W. Defendants breached the policy by attempting to, and then in fact actually
- 4 intimidating KRISTINA and ARAM by forcing them to attend “examination under
- 5 oaths”, conducted by a lawyer. It was the plan of the TRAVELERS DEFENDANTS
- 6 to intimidate KRISTINA and ARAM and to force them to hire legal counsel at great
- 7 expense at a time that they knew that KRISTINA and ARAM were very fiscally
- 8 compromised.
- 9 X. Defendants breached the policy by refusing to reimburse KRISTINA and ARAM for
- 10 their substantial out-of-pocket expenses related to meals.
- 11 Y. Defendants breached the policy by concealing from Plaintiffs that they were entitled
- 12 to live in a structure of like kind an quality, and that the TRAVELERS
- 13 DEFENDANTS would pay for same under the ALE provisions of the policy.
- 14 Z. Defendants breached the policy by interfering with protocols that had been
- 15 established for the evaluation of the nature, scope and extent of the water loss.
- 16 AA. Defendants breached the policy by forcing Plaintiffs to engage attorneys, including
- 17 but not limited to (1), Robert Silverberg/ Silverberg Law Corporation, (2) Alexander
- 18 Cohen/ Alexander Cohen & Associates, and/or (3) Steven Zelig/ WLA Legal
- 19 Services, Inc. These engagements would not have been necessary had defendants
- 20 acted in a reasonable manner;
- 21 BB. Defendants breached the policy by failing to make proper advances;
- 22 CC. Defendants breached the policy by attempting to control the opinions and conclusions
- 23 of consultants engaged by the TRAVELERS DEFENDANTS;
- 24 DD. Defendants breached the policy by failing to clearly communicate with the insured;
- 25 EE. Defendants breached the policy by lowballing the claim;
- 26 FF. Defendants breached the policy by repeatedly changing adjusters thereby destroying
- 27 any possibility of establishing adjusting “momentum”;
- 28 GG. Defendants breached the policy by failing to pay proper amounts due under the

1 structure coverage of the policy;

2 HH. Defendants breached the policy by failing to pay proper amounts due under the
3 content coverage of the policy;

4 II. Defendants breached the policy by failing to pay proper amounts for loss of use
5 coverage of the policy;

6 JJ. Defendants breached the policy by failing to pay proper amounts due under other
7 components of the policy;

8 KK. Defendants breached the policy in various other ways as set forth herein and
9 according to proof.

10 37. Plaintiffs complied with all conditions of the policy or was excused.

11 38. As a proximate result of the TRAVELERS DEFENDANTS' breach of insurance
12 contract, Plaintiffs suffered significant economic loss, in an amount exceeding \$1,000,000 per
13 Plaintiff or other amount according to proof.

14
15 **THIRD CAUSE OF ACTION - FRAUD IN THE INDUCEMENT AND PERFORMANCE**
16 (By KRISTINA (individually), ARAM (individually), RICHARD (individually), and ANDRE
(individually), against all Defendants.)

17 39. Plaintiffs incorporates paragraphs 1 through 26, inclusive, 30 through 34, inclusive,
18 36, 37, and 38.

19 40. As set forth above, it is Plaintiffs' position that all Defendants against whom this
20 cause of action is asserted acted in concert and conspiracy with each other and aided and abetted the
21 TRAVELERS DEFENDANTS in perpetrating a fraud in the performance of duties and obligations
22 owed under the SUBJECT POLICY. Defendants engaged in numerous acts of fraud in inducement
23 as more fully set forth herein, including but not limited to misrepresenting and conversely
24 concealing the following:

25 A. Defendants expressly and affirmatively promised that the SUBJECT PROPERTY
26 would be covered;

27 B. Defendants expressly and affirmatively promised and took it upon themselves to fill
28 out the insurance application on behalf of Plaintiffs, which document was later used

1 in bad faith by the TRAVELERS DEFENDANTS to deny the claim in total;

2 C. Defendants impliedly promised that the SUBJECT POLICY complied with
3 applicable law, and concealed that the SUBJECT POLICY did not comply with law
4 and contained illegal and unenforceable provisions designed to cut back the rights of
5 the policy holder;

6 D. Defendants included an "appraisal provision" in the SUBJECT POLICY that did not
7 comply with California law and was therefore illegal. The subject provision severely
8 cut back the rights of the policy holder. The TRAVELERS DEFENDANTS engaged
9 in unfair competition because they obtained an illegal advantage over law abiding
10 insurers. Defendants concealed the fact that the policy contained an illegal and
11 unenforceable appraisal provision, and that said provision severely cut back the rights
12 of the policy holder;

13 E. In addition to including two separate and confusing statute of limitations provisions,
14 the statute of limitations provisions in the policy did not comply with clear California
15 law to the effect that the limitations period is tolled or suspended while the claim is
16 open. The subject provision severely cut back the rights of the policy holder.

17 Defendants concealed that the subject provision was illegal and severely cut back the
18 rights of the policy holder. The TRAVELERS DEFENDANTS engaged in unfair
19 competition because they obtained an illegal advantage over law abiding insurers;

20 F. Defendants procured Plaintiffs' payment of premium under the false pretenses set
21 forth above;

22 G. Defendants communicated other misrepresentations and failed to review material fact
23 in other ways according to proof.

24 41. Defendants engaged in fraud in performance in various ways, including but not
25 limited to:

26 A. Defendants falsified documents, data and opinions.

27 B. The Defendants against whom this cause of action is asserted knew that Plaintiffs
28 were entitled to benefits under the SUBJECT POLICY , but intentionally opted to

1 withhold those benefits, and concealed Plaintiffs' rights thereto.

2 C. The TRAVELERS DEFENDANTS specifically implemented a bad faith policy of
3 severely scrutinizing first party claims caused by water, with the goal of denying or
4 severely lowballing the claim.

5 D. The TRAVELERS DEFENDANTS falsely represented to Plaintiffs that they had no
6 obligation to fund the investigation.

7 E. The TRAVELERS DEFENDANTS misrepresented policy benefits.

8 F. Other misrepresentations and concealments according to proof, and as set forth in the
9 paragraphs incorporated by reference.

10 42. As more fully set forth in paragraphs incorporated herein and included within this
11 cause of action, Defendants acted intentionally relative to their acts of fraud and deceit and knew
12 their statements, actions (and conversely concealments), and performance, to be false at the time
13 they were made and that same would damage and/or injure Plaintiff. The factual bases include but
14 are not limited to:

15 A. All of those facts set forth in incorporated paragraphs and above;

16 B. The conduct in question was part of an established pattern and practice;

17 C. The conduct was not accidental or coincidental;

18 D. The conduct in question represented the rule and not the exception;

19 E. Defendants specifically engaged in acts which they knew would upset and damage
20 Plaintiff;

21 F. The TRAVELERS DEFENDANTS specifically engaged alleged third party
22 consultants and vendors, who were not professional and who would intentionally
23 minimize the nature, scope and extent of the loss.

24 G. Other facts according to proof.

25 43. KRISTINA and ARAM relied upon these misrepresentations and/or conversely on
26 the concealment of material facts and/or the purported "performance" of Defendants as set forth in
27 paragraphs above. KRISTINA and ARAM specifically and necessarily relied upon the
28 representations and assurances that the SUBJECT POLICY would provide insurance to their home,

1 and did not contain illegal or unenforceable provisions.

2 44. KRISTINA and ARAM were reasonable in their reliance at all relevant times.

3 KRISTINA and ARAM's reliance was ultimately extremely detrimental, as more fully set forth
4 above. The factual support for these allegations include, but are not limited to:

5 A. Those facts set forth above;

6 B. At a minimum the TRAVELERS DEFENDANTS owed duties to Plaintiffs "akin to
7 that of a fiduciary."

8 C. The business of insurance is one which is highly regulated.

9 D. Insurers are obligated to treat insured's interests at a level equal to their own.

10 E. The TRAVELERS DEFENDANTS hold themselves out as law abiding and honest.

11 F. Plaintiffs' claim was totally legitimate and covered.

12 45. During at least the first few months of the claim, Plaintiffs specifically relied on the
13 representations and assurances of the TRAVELERS DEFENDANTS, and were reasonable in doing
14 so.

15 46. KRISTINA and ARAM's reliance was detrimental for a variety of reasons. Had
16 Plaintiffs known the true facts, she would have conducted herself in a much different manner.

17 47. The "how", "when", "where", "to whom", and "by what means" were as follows:

18 A. "How" the misrepresentations were made: As set forth in incorporated paragraphs,
19 agents and employees of UNIVERSAL, Does 11-20, inclusive, and the TRAVELERS
20 DEFENDANTS misrepresented coverages and rights to which Plaintiffs were entitled
21 relative to the claim, and concealed that the policy contained a significant number of
22 illegal and deceptive provisions. See incorporated paragraphs for further particulars.

23 B. "When" they were tendered: As set forth in incorporated paragraphs, the
24 misrepresentations and concealment of rights was made at the time the policy was
25 applied for, after the policy was issued, and throughout the course of the claim. See
26 incorporated paragraphs for further particulars.

27 C. "Where" they were tendered: As set forth in incorporated paragraphs, the
28 misrepresentations and concealment of rights took place largely by way of emails and

1 telephone calls made during the application process. Then, after the policy was
2 issued, the fraud occurred because defendants continued to conceal that the policy did
3 not provide coverage because the TRAVELERS DEFENDANTS would (in the
4 highest level of bad faith) contend that the SUBJECT PROPERTY was not the
5 primary residence of Plaintiffs. After the claim was made, the misrepresentations
6 and concealment occurred, typically, through letters and emails issued by the
7 TRAVELERS DEFENDANTS. See incorporated paragraphs for further particulars.

8 D. "To whom" they were tendered: As set forth in incorporated paragraphs the
9 misrepresentations and concealment of rights were typically made to KRISTINA and
10 ARAM. See incorporated paragraphs for further particulars.

11 E. "By what means" they were tendered: As more fully set forth in incorporated
12 paragraphs, as to Defendants UNIVERSAL, Does 11-20, inclusive, and the
13 TRAVELERS DEFENDANTS, the false promises, statements, and concealment of
14 rights were made in letters, emails, and oral statements made beginning in
15 August 2013, and continuing. After the policy was issued, Defendants against whom
16 this cause of action is asserted engaged in fraud by not revealing the significant issues
17 with the policy as set forth above. After the claim was made, the fraud was
18 accomplished through letters, emails and oral statements made by the TRAVELERS
19 DEFENDANTS.

20 48. As more fully discussed below, as a proximate result of Defendants' malfeasance,
21 Plaintiffs have substantial suffered injury, harm and/or loss, in an amount exceeding \$1,000,000 per
22 Plaintiff, or other amount in the discretion of the trier of fact and/or according to proof, including but
23 not limited to: (1) Loss of insurance benefits; (2) Damages related to having to sell the house at a
24 substantial loss, which was directly linked to the malfeasance of Defendants; (3) Upset and
25 emotional distress, and other forms of general damages; (4) Loss of the right of quiet enjoyment of
26 the property; (5) Reimbursement of amounts that have been paid, or will be paid to consultant and
27 other professionals (including general contractors, environmental professionals etc.) in order to
28 develop a proper scope of loss, and in order to restore the property to its preloss condition; and (6)

1 Other damages according to proof.

2 49. Based upon the acts described herein, Defendants acted with malice oppression and
3 fraud, entitling Plaintiffs to exemplary and punitive damages.

4

5 **FOURTH CAUSE OF ACTION - NEGLIGENT MISREPRESENTATION**
6 **IN THE INDUCEMENT AND PERFORMANCE OF THE INSURANCE CONTRACT**
7 (By KRISTINA (individually), ARAM (individually), RICHARD (individually), and ANDRE
8 (individually), against all Defendants.)

9 50. Plaintiffs incorporate by reference Paragraphs 1 through 25, inclusive, 30 through 33,
10 inclusive, 36 through 38, inclusive, and 40 through 48, inclusive, as though fully set forth herein.

11 51. This cause of action is pled in the alternative. More specifically, Plaintiffs
12 alternatively allege that the misrepresentations and concealment were negligent as opposed to
13 intentional.

14 52. As a proximate result of said interference, Plaintiffs have substantial suffered injury,
15 harm and/or loss, in an amount exceeding \$1,000,000 per Plaintiff, or other amount in the discretion
16 of the trier of fact and/or according to proof, including but not limited to: (1) Loss of insurance
17 benefits; (2) Damages related to having to sell the house at a substantial loss, which was directly
18 linked to the malfeasance of Defendants; (3) Upset and emotional distress, and other forms of
19 general damages; (4) Loss of the right of quiet enjoyment of the property; (5) Reimbursement of
20 amounts that have been paid, or will be paid to consultant and other professionals (including general
21 contractors, environmental professionals etc.) in order to develop a proper scope of loss, and in order
22 to restore the property to its preloss condition; and (6) Other damages according to proof.

23 53. Defendants acted with "malice", justifying the imposition of punitive damages.

24 **FIFTH CAUSE OF ACTION- BREACH OF ORAL AND IMPLIED**
25 **CONTRACT RELATIVE TO POLICY PROCUREMENT AND SERVICING**
26 (By KRISTINA (individually), ARAM (individually), RICHARD (individually), and ANDRE
27 (individually), against UNIVERSAL, Does 11-20, inclusive, the TRAVELERS DEFENDANTS, and
28 Does 101-150, inclusive.)

54. Plaintiffs incorporate by reference Paragraphs 1 through 25, inclusive, 30 through 33,
inclusive, 36 through 38, inclusive, and 40 through 48, inclusive, as though fully set forth herein.

1 55. An oral and implied contract was entered into by KRISTINA and ARAM (on one
2 hand), and UNIVERSAL and Does 11-20, inclusive (on the other), which is legally imputed to the
3 TRAVELERS DEFENDANTS and Does 101-150, inclusive, since UNIVERSAL and Does 11-20,
4 inclusive, acted as agents for the TRAVELERS DEFENDANTS in certain particulars.

5 56. The TRAVELERS DEFENDANTS, acting by and through UNIVERSAL and Does
6 11-20, inclusive, agreed:

- 7 A. To counsel and advise the Plaintiffs on insurance issues, to watch over Plaintiffs'
8 account and to make sure that the policy provided full coverage at all times;
- 9 B. To obtain homeowners insurance for the SUBJECT PROPERTY that would protect
10 and provide coverage for KRISTINA and ARAM from losses to the SUBJECT
11 PROPERTY and the contents contained therein, in the event of a loss such as that
12 which occurred herein;
- 13 C. To assist plaintiffs in submitting proper forms to the TRAVELERS DEFENDANTS
14 so that adequate insurance for the property was bound;
- 15 D. To provide 100% honest and accurate information regarding the appropriateness and
16 extent of the coverage afforded by the insurance products being purchased.
- 17 E. The contract included implied terms, including the implied covenant of good faith and
18 fair dealing;
- 19 F. To notify Plaintiffs in the event there was any problem with coverage, etc.;
- 20 G. To honestly handle all information provided by and/or on behalf of Plaintiffs with the
21 utmost care, beyond that already automatically required by California law, anyway,
22 not to misrepresent or alter information provided by applicants / insureds.
- 23 H. To advise Plaintiffs of any alterations or changes in any application or policy
24 coverage beyond what they were already required to do under California law.
- 25 I. Other elements of the agreement according to proof.

26 57. As set forth in incorporated paragraphs, Defendants breached the agreement in many
27 ways relative to policy procurement and policy servicing issues, including but not limited to:

- 28 A. Defendants breached the contract by failing to counsel and advise the Plaintiffs on

- 1 insurance issues;
- 2 B. Defendants breached the contract by failing to monitor Plaintiffs' account and to make
- 3 sure that the policy provided full coverage, as requested by Plaintiffs;
- 4 B. Defendants breached the contract by failing to obtain homeowners insurance for the
- 5 SUBJECT PROPERTY that would protect and provide coverage for KRISTINA and
- 6 ARAM from losses to the SUBJECT PROPERTY and the contents contained therein,
- 7 in the event of a loss such as that which occurred herein;
- 8 C. Defendants breached the contract by failing to assist plaintiffs in submitting proper
- 9 forms to the TRAVELERS DEFENDANTS so that adequate insurance for the
- 10 property was bound;
- 11 D. Defendants breached the contract by failing to provide 100% honest and accurate
- 12 information regarding the appropriateness and extent of the coverage afforded by the
- 13 insurance products being purchased.
- 14 E. Defendants breached contract by not acting consistently with implied terms, including
- 15 the implied covenant of good faith and fair dealing;
- 16 F. Defendants breached the contract by failing to notify Plaintiffs in the event there was
- 17 any problem with coverage, etc.;
- 18 G. Defendants breached the contract by failing to honestly handle all information
- 19 provided by and/or on behalf of Plaintiffs with the utmost care, beyond that already
- 20 automatically required by California law, anyway, not to misrepresent or alter
- 21 information provided by applicants / insureds.
- 22 I. Defendants breached the contract in various other ways according to proof.
- 23 58. Plaintiffs satisfied all conditions, or were excused.
- 24 59. As a proximate result of the breach of insurance contract by Defendants against whom
- 25 this cause of action is asserted, Plaintiffs suffered significant economic loss, in an amount exceeding
- 26 \$1,000,000 or other amount according to proof.
- 27
- 28

1 **SIXTH CAUSE OF ACTION – NEGLIGENCE RELATIVE TO POLICY PROCUREMENT**
2 **AND SERVICING**

3 (By KRISTINA (individually), ARAM (individually), RICHARD (individually), and ANDRE
4 (individually), against UNIVERSAL, Does 11-20, inclusive,
5 the TRAVELERS DEFENDANTS, and Does 101-150, inclusive)

6
7 60. KRISTINA and ARAM hereby incorporate by reference Paragraphs 1 through 25,
8 inclusive, 30 through 33, inclusive, 36 through 38, inclusive, and 40 through 48, inclusive, 55, 56,
9 57, and 58 as though fully set forth herein.

10 61. As more fully set forth in incorporated paragraphs above, Defendants against whom
11 this cause of action made mistakes in the process of procuring the policy, mistakes in servicing the
12 policy, and made other mistakes as to duties owed to Plaintiffs asserting this cause of action, as set
13 forth in incorporated paragraphs, and made other promises that they did not keep which contributed
14 to the decision of the TRAVELERS DEFENDANTS to fail to properly investigate and pay the
15 claims discussed in incorporated paragraphs.

16 62. The TRAVELERS DEFENDANTS, acting by and through UNIVERSAL and Does
17 11-20, inclusive, were negligent in various ways, including but not limited to:

- 18 A. Defendants were negligent in failing to properly and adequately counsel and advise
19 the Plaintiffs as to relevant issues;
- 20 B. Defendants were negligent in failing to monitor Plaintiffs' account and to make sure
21 that the policy provided full coverage, as requested by Plaintiffs;
- 22 B. Defendants were negligent in failing to obtain homeowners insurance for the
23 SUBJECT PROPERTY that would protect and provide coverage for KRISTINA and
24 ARAM from losses to the SUBJECT PROPERTY and the contents contained therein,
25 in the event of a loss such as that which occurred herein;
- 26 C. Defendants were negligent in failing to assist plaintiffs in submitting proper forms to
27 the TRAVELERS DEFENDANTS so that adequate insurance for the property was
28 bound;
- D. Defendants were negligent in failing to provide 100% honest and accurate
information regarding the appropriateness and extent of the coverage afforded by the

1 insurance products being purchased.

2 E. Defendants were negligent by not acting consistently with implied terms, including
3 the implied covenant of good faith and fair dealing;

4 F. Defendants were negligent by failing to notify Plaintiffs in the event there was any
5 problem with coverage, etc.;

6 G. Defendants were negligent by failing to honestly handle all information provided by
7 and/or on behalf of Plaintiffs with the utmost care, beyond that already automatically
8 required by California law, anyway, not to misrepresent or alter information provided
9 by applicants / insureds.

10 I. Defendants were negligent in various other ways according to proof.

11 63. As a legal result of said negligence, Plaintiffs have substantial suffered injury, harm
12 and/or loss, in an amount exceeding \$1,000,000 per Plaintiff, or other amount in the discretion of the
13 trier of fact and/or according to proof, including but not limited to: (1) Loss of insurance benefits; (2)
14 Damages related to having to sell the house at a substantial loss, which was directly linked to the
15 malfeasance of Defendants; (3) Upset and emotional distress, and other forms of general damages;
16 (4) Loss of the right of quiet enjoyment of the property; (5) Reimbursement of amounts that have
17 been paid, or will be paid to consultant and other professionals (including general contractors,
18 environmental professionals etc.) in order to develop a proper scope of loss, and in order to restore
19 the property to its preloss condition; and (6) Other damages according to proof.

20

21 **SEVENTH CAUSE OF ACTION - STATUTORY VIOLATION**
22 **PROCUREMENT OF MONEY UNDER FALSE PRETENSES**

23 (By KRISTINA (individually), ARAM (individually), RICHARD (individually), and ANDRE
24 (individually), against the TRAVELERS Defendants, UNIVERSAL, and Does 11-20, inclusive, and
25 Does 101-150, inclusive.)

26 64. Plaintiffs incorporates paragraphs 1 through 26, inclusive, 30 through 34, inclusive,
27 36, 37, and 38, 40 through 49, inclusive, 55 through 59, inclusive, and 61-63, inclusive, as though
28 fully set forth herein.

65. At all relevant times, Sections 496 and 484 of the Penal Code were in full force and

1 effect. A true and correct copy of Penal Code Sections 484 and 496 are attached and marked as
2 **Exhibit 2.**

3 66. Section 484 defines “theft” as, among other things, fraudulent appropriation of money
4 or property by knowing and designed acts including false or fraudulent representations or pretenses.

5 67. In Bell v. Feibush (2013) 212 Cal.App. 4th 1041, the Court held (1) that “theft” per
6 Section 484 includes the procurement of money and/or property by “false pretenses;” and, (2) that
7 theft includes the consensual but fraudulent acquisition of property from its owner.

8 68. Section 496 accordingly applies to the acts and omissions of Defendants for various
9 reasons. More specifically, KRISTINA and ARAM were insureds and were supposed to be given
10 the highest level of professional treatment. UNIVERSAL, Does 11-20, inclusive, and the
11 TRAVELERS DEFENDANTS, obtained insurance premiums and commissions under false and
12 fraudulent pretenses, i.e., that they would procure proper insurance, provide coverage, and would
13 fairly and legitimately investigate and adjust claims. KRISTINA and ARAM relied on the
14 statements of UNIVERSAL and Does 11-20, inclusive, to the effect that the insurance that the
15 TRAVELERS DEFENDANTS were offering would be first class as would the service in the event
16 of a claim. As KRISTINA and ARAM would learn, these were false statements, but nevertheless,
17 they induced KRISTINA and ARAM to purchase insurance through UNIVERSAL and Does 11-20,
18 inclusive, and the TRAVELERS DEFENDANTS.

19 69. Defendants sold KRISTINA and ARAM an insurance policy that contained
20 provisions that were illegal in the State of California, did it intentionally, and accordingly procured
21 payment from Plaintiffs under false pretenses. The insurance policy contained numerous illegal and
22 invalid provisions, including a provision relative to a form of arbitration (referred to in the insurance
23 context as “appraisal”), and the “suit against us” provision. The “appraisal provision” contained in
24 the SUBJECT POLICY does not comply with the mandatory requirements of Insurance Code
25 Section 2071, and among other things omits the fact that appraisal can only go forward if there is an
26 agreement. In addition, the “suit against us” provision of the SUBJECT POLICY creates the
27 appearance that suit must be filed on the “one” or “two” year anniversary of the loss (depending on
28 which portion of the policy you are reading), when in fact both provisions omit the fact that in

1 California the statute of limitations within which to make a claim is tolled or suspended while the
2 claim is pending. Hence, the TRAVELERS DEFENDANTS sold Plaintiffs an insurance policy that
3 intentionally contained illegal and invalid provisions, constituting a fraud in the procurement of the
4 policy. As more fully set forth below, and in particular in the fraud, negligent misrepresentation and
5 unfair business practices causes of action, the TRAVELERS DEFENDANTS gained a competitive
6 advantage over other law abiding companies – who issued policies that mirror the language of
7 Insurance Code Section 2071.

8 70. Section 496© specifies that any person who violates said section “may bring an action
9 for three times the amount of actual damages. . . cost of suit and reasonable attorney fees.” In
10 addition, said Plaintiffs are entitled to three times what the trier of fact awards for non-economic
11 damages. Hence, KRISTINA and ARAM requests triple their damages, or other amount in the
12 reasonable discretion of the trier of fact.

13 71. As more fully discussed herein, as a direct result of the “theft” of Defendants against
14 whom this cause of action is alleged, as defined in Section 484, and per Section 496©, KRISTINA
15 and ARAM have suffered:

- 16 A. Damages of at least \$3,000,000 per Plaintiff, or other amount according to proof;
17 B. Cost of suit and “reasonable attorney fees.”

18 72. Defendants against whom this cause of action is asserted acted with “malice,”
19 “oppression” and “fraud” as defined in Civil Code Section 3294, justifying the imposition of
20 punitive damages.

21 **EIGHTH CAUSE OF ACTION -**
22 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

23 (By KRISTINA (individually), ARAM (individually), RICHARD (individually), and ANDRE
24 (individually), against all Defendants.)

25 73. Plaintiffs incorporates paragraphs 1 through 26, inclusive, 30 through 34, inclusive,
26 36, 37, and 38, 40 through 49, inclusive, 55 through 59, inclusive, 61-63, inclusive, and 65 through
27 72, inclusive, as though fully set forth herein.

28 74. As more fully set forth herein, Defendants, and each of them, specifically knew that
KRISTINA, individually, ARAM, individually, RICHARD and ANDREW were specifically

1 susceptible to emotional distress. Defendants engaged in conduct designed to inflict emotional
2 distress; or, alternatively, engaged in conduct which carried a substantial probability of causing
3 substantial and enduring emotional distress. Said Plaintiffs did in fact suffer substantial and
4 enduring emotional distress. Defendants' conduct was outrageous per se and as a matter of law,
5 including, but not limited to, the fact that Defendants specifically issued reports and other written
6 materials that were false and, therefore, specifically in opposition and/or objection to a valid
7 insurance claim, thereby violating Penal Code Section 550.

8 75. As a proximate result of the acts, omissions and interference, Plaintiffs have
9 substantial suffered injury, harm and/or loss, in an amount exceeding \$1,000,000 per Plaintiff, or
10 other amount in the discretion of the trier of fact and/or according to proof, including but not limited
11 to: (1) Loss of insurance benefits; (2) Damages related to having to sell the house at a substantial
12 loss, which was directly linked to the malfeasance of Defendants; (3) Upset and emotional distress,
13 and other forms of general damages; (4) Loss of the right of quiet enjoyment of the property; (5)
14 Reimbursement of amounts that have been paid, or will be paid to consultant and other professionals
15 (including general contractors, environmental professionals etc.) in order to develop a proper scope
16 of loss, and in order to restore the property to its preloss condition; and (6) Other damages according
17 to proof.

18 76. Defendants' conduct was carried on with malice, oppression and fraud, thereby
19 subjecting it to exemplary and punitive damages.

20
21 **NINTH CAUSE OF ACTION – VIOLATION OF BUSINESS AND**
PROFESSIONS CODE SECTION 17200

22 (By KRISTINA (individually and on behalf of all others similarly situated and members of the class)
23 and ARAM (individually and on behalf of all others similarly situated and members of the class)
24 against the TRAVELERS DEFENDANTS and DOES 200-225, inclusive.)

25 77. Plaintiffs incorporates paragraphs 1 through 26, inclusive, 30 through 34, inclusive,
26 36, 37, and 38, 40 through 49, inclusive, 55 through 59, inclusive, and 61-63, inclusive, as though
27 fully set forth herein.

28 78. Said Plaintiffs seek relief not only for themselves, but for all other similarly situated

1 persons who received an insurance policy issued by the TRAVELERS DEFENDANTS for property
2 located in the State of California. Plaintiffs will ask the Court to certify the following class under
3 Code of Civil Procedure Section 382 and Civil Code Section 1781:

4 A. All persons or entities who received a residential insurance policy issued by the
5 TRAVELERS DEFENDANTS for property located in the State of California in the
6 last four years, which contained an “appraisal” provision identical to the one
7 contained in the SUBJECT POLICY, which did not conform with the mandatory
8 language of Insurance Code Section 2071;

9 B. All persons or entities who received a residential insurance policy issued by the
10 TRAVELERS DEFENDANTS for property located in the State of California in the
11 last four years, which contained an “suit against us” provision identical to the one
12 contained in the SUBJECT POLICY, which did not conform with the California
13 Supreme Court opinion in Prudential-LMI Com. Insurance v. Superior Court (1990)
14 51 Cal.3d 674, 678-679.

15 79. Excluded from the class are Defendants, any entity in which Defendants have a
16 controlling interest or which has a controlling interest in Defendants, and Defendants’ legal
17 representatives, predecessors, successors, assigns, and employees. Also excluded from the class are
18 the judge and staff to whom this case is assigned, and any member of the judge’s immediate family.

19 80. Plaintiffs reserve the right to revise this definition of the class based on facts they
20 learn during discovery.

21 81. An ascertainable class exists. Plaintiffs have defined the proposed class in objective
22 terms based on common facts. Consequently, the court and the parties will be able to identify
23 potential class members.

24 82. A community of interest exists. Common questions of law and fact that apply both to
25 Plaintiffs and to the class predominate over individual issues. These common questions are so
26 numerous or substantial that class treatment would be advantageous. These common questions
27 include the following:

28 ///

- 1 A. Whether the appraisal provision of the insurance policies at issue conforms, or did not
- 2 conform with Insurance Code Section 2071;
- 3 B. Whether the “suit against us” provision of the insurance policies at issue conforms, or
- 4 did not conform, with the California Supreme Court opinion in Prudential-LMI Com.
- 5 Insurance v. Superior Court (1990) 51 Cal.3d 674, 678-679.
- 6 C. Whether Defendants engaged in fraud when they issued the policies containing the
- 7 above referenced non-conforming language.

8 83. Defendants against whom this cause of action is asserted violated Business and
9 Profession Code Sections 17200, et seq., concerning unfair business practices. Said sections state in
10 pertinent part as follows:

11 *“As used in this Chapter, unfair competition shall mean and include unlawful, unfair*
12 *or fraudulent business practice and unfair, deceptive, untrue or misleading*
13 *advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of*
14 *Part 3 of Division 7 of the Business and Professions Code...”*

15 84. Defendants against whom this cause of action is asserted engaged in illegal, unfair
16 and deceptive business, advertising and solicitation practices. Defendants received an economic
17 advantage, including over its competition, by issuing policies with an appraisal provision that did not
18 make it clear: (1) That statutorily, in order to appraise the claim, that the insured and insurer had to
19 agree to go to appraisal;(2) That if the insurer demanded appraisal, that the insured had the right not
20 to agree to appraise; and (3) That the limitation period to bring suit, discussed in the “suit against us”
21 provision, should be “equitably tolled from the time the insured files a timely notice, pursuant to
22 policy notice provisions, to the time the insurer formally denies the claim in writing”, per the holding
23 of Prudential-LMI Com. Insurance v. Superior Court (1990) 51 Cal.3d 674, 678-679. As a result, all
24 Plaintiffs paid premium in excess of what they should have paid due to the fact that Defendants
25 purposely and intentionally utilized non-conforming appraisal language and “suit against us”
26 language.

27 85. Defendants have violated the statute in question which was designed to regulate
28 individuals or entities of the category and class of Defendants and was designed to protect
individuals such as Plaintiff. Defendants have gained a unfair advantage over insurers who conduct

1 themselves in a law-abiding manner.

2 86. Plaintiffs are entitled to statutory penalty in the amount of \$2,500 as a result of each
3 statutory violation of Defendants. Further, Plaintiffs are entitled to restitution and/or injunctive relief
4 to a nature, extent and/or degree according to proof and the reasonable discretion of a judge and/or
5 other trier of fact and/or law.

6 87. Defendants have been unjustly enriched due to the illegal practices described in
7 incorporated paragraphs, and should be required to disgorge all ill gotten gains.

8 88. Defendants should be enjoined as follows:

- 9 A. Defendants should be required to cease and desist from continuing to issue insurance
10 policies in California that falsely represent that the insurer can force the insured to
11 appraisal and that no agreement is required.
- 12 B. Defendants should be required to issue an endorsement or other written addendum to
13 all policy holders in the State of California to the effect that appraisal can only occur
14 if both the insured and the insurer agree thereto.
- 15 C. As to all insureds who were forced into appraisal without being told by Defendants
16 that they had a right not to go to appraisal, Defendants should be required to reopen
17 and adjust said claims.
- 18 D. Defendants should be required to cease and desist from continuing to issue insurance
19 policies in California that falsely represent that suit must be filed within "one year"
20 without including the "equitable tolling" language of Prudential-LMI Com. Insurance
21 v. Superior Court (1990) 51 Cal.3d 674, 678-679.
- 22 E. Defendants should be required to issue an endorsement or other written addendum to
23 all policy holders in the State of California to the effect that the "one-year" suit
24 provision is "equitably tolled from the time the insured files a timely notice, pursuant
25 to policy notice provisions, to the time the insurer formally denies the claim in
26 writing".
- 27 F. As to all insureds whose claims were denied without Defendants' providing the
28 insureds notice of the "equitable tolling" of the statute between the time the insured

1 gave notice, and the date of denial, Defendants should be required to reopen and
2 adjust said claims.

3 G. Defendants should be required to disgorge all ill gotten gains.
4

5 **TENTH CAUSE OF ACTION – UNJUST ENRICHMENT**

6 (By KRISTINA (individually and on behalf of all others similarly situated and members of the class)
and ARAM (individually and on behalf of all others similarly situated and members of the class)
7 against the TRAVELERS DEFENDANTS and DOES 200-225, inclusive.)

8 89. Plaintiffs KRISTINA and ARAM, individually and on behalf of those similarly
9 situated incorporate herein paragraphs 1 through 26, inclusive, 30 through 34, inclusive, 36, 37, and
10 38, 40 through 49, inclusive, 55 through 59, inclusive, 61 through 63, inclusive, and 78 through 88,
11 inclusive, as though fully set forth herein.

12 90. By issuing non-conforming policies cutting back the rights and options of the insureds,
13 and by charging premium for a conforming policy, the TRAVELERS DEFENDANTS were unjustly
14 enriched. The TRAVELERS DEFENDANTS should be required to return the amounts that said
15 Plaintiffs overpaid for the non-conforming policy.

16 **PRAYER**

17 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- 18 1. For compensatory, general, consequential, and incidental damages, in an amount of
19 \$1,000,000 per Plaintiff, or other amount in the reasonable discretion of the trier of
20 fact;
21 2. For damages for emotional distress, inconvenience, and other general damages;
22 3. For treble damages and attorney fees per Penal Code Section 484 and 496;
23 4. For pre-judgment and/or post-judgment interest at the legal rate;
24 5. For reimbursement of expenses incurred in evaluating the damage to the structure and
25 establishing a scope of loss and estimate for repairs;
26 6. For exemplary/punitive damages pursuant to Civil Code § 3294;
27 7. For attorney fees per Brandt;
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- 8. For statutory remedies per B&P Code Section 17200;
- 9. For injunctive relief;
- 10. For disgorgement;
- 11. For costs of suit;
- 12. For such other further relief that the Court may deem just and proper.

Dated: October 17, 2017

WLA LEGAL SERVICES, INC.

By:



Steven L. Zelig
Attorney for Plaintiff

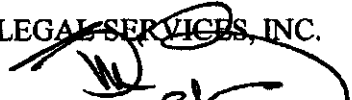
DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury.

DATED: October 17, 2017

WLA LEGAL SERVICES, INC.

By:



Steven L. Zelig
Attorney for Plaintiffs

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Filed by CA Family Over Allegedly Deceptive Insurance Policy Removed to Federal Court](#)
