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10 *Attorneys for Defendant*

11 ACE AMERICAN INSURANCE COMPANY

12 **UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA**

14 OLEN PROPERTIES CORP., IGOR M.

15 OLENICOFF, JULIE A. AULT

16 Plaintiffs,

17 v.

18 ACE AMERICAN INSURANCE
19 COMPANY and DOES 1 through 50,
20 inclusive,

21 Defendants.

Case No. 2:15-cv-9740

**DEFENDANT ACE AMERICAN
INSURANCE COMPANY'S
NOTICE OF REMOVAL
PURSUANT TO 28 U.S.C. §
1441(b)**

22
23
24 TO THE CLERK OF COURT, PLAINTIFFS, AND THEIR COUNSEL OF
25 RECORD:

26 PLEASE TAKE NOTICE that defendant ACE American Insurance
27 Company ("ACE") hereby removes to this Court the state action described below,
28

1 which is within the original jurisdiction of this Court under 28 U.S.C § 1332(a)
2 and properly removed under 28 U.S.C. § 1441(b).
3

4 **PROCEDURAL HISTORY**

5 1. On November 18, 2015, Olen Properties Corp. (“Olen”), Igor M.
6 Olenicoff (“Olenicoff”), and Julie A. Ault, (“Ault”) (collectively, “Plaintiffs”)
7 filed a complaint captioned *Olen Properties Corp., Igor M. Olenicoff, and Julie A.*
8 *Ault v. ACE American Insurance Company; and DOES 1 through 50, inclusive,*
9 *Ault v. ACE American Insurance Company; and DOES 1 through 50, inclusive,*
10 *Ault v. ACE American Insurance Company; and DOES 1 through 50, inclusive,*
11 under Case No. 30-2015-00820928 in the California Superior Court for the
12 County of Orange (the “State Court Action”).
13

14 2. The complaint was personally served on ACE’s Registered Agent for
15 service of process on November 20, 2015. This notice of removal is therefore
16 timely pursuant to 28 U.S.C § 1446(b). Pursuant to 28 U.S.C § 1446(a), true and
17 correct copies of all process, pleadings, and orders served upon ACE in the State
18 Court Action, including the Summons, and Complaint, are attached to this Notice
19 as Exhibit A.
20
21

22 3. The California Superior Court for the County of Orange is located
23 within the Central District of California. (28 U.S.C. § 84(d).) This Notice of
24 Removal is therefore properly filed in this Court pursuant to 28 U.S.C. § 1441(a).
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ALLEGATIONS OF THE COMPLAINT

4. The complaint in the State Court Action asserts causes of action for Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing arising out of ACE's alleged wrongful failure to pay all of the defense costs allegedly incurred by Plaintiffs in defending two actions filed in the County of Orange captioned *UBS AG v. Igor M. Olenicoff, Olen Properties Corp., Julie A. Ault, et al.*, Case No. 30-2012-00589134 and *Bradley Birkenfeld v. Igor Olenicoff and Olen Properties Corp. et al.* Case No. 30-2012-006131673. Plaintiffs' claim the defense of the two actions were covered under two policies of Commercial General Liability Insurance issued by ACE to Olen.

5. The complaint seeks, inter alia, damages arising out of ACE's alleged failure to pay in excess of \$700,000 in defense costs allegedly paid by Plaintiffs. (Complaint, ¶ 25.)

6. ACE disputes Plaintiffs' allegations, believes the Complaint lacks merit, and denies that Plaintiffs have been harmed in any way by any act of omission of ACE.

BASIS FOR REMOVAL

7. This action is within the original jurisdiction of this Court, and removal is therefore proper under 28 U.S.C. § 1332(a), which grants district courts original jurisdiction over civil actions where the matter in controversy

1 exceeds the sum or value of \$75,000, exclusive of interest and costs, and is
2 between citizens of different States.
3

4 8. Plaintiff Olen, at the time the complaint was filed, was and still is a
5 Florida Corporation, organized and existing under the laws of the State of Florida
6 (Complaint, ¶ 1.) with its principal place of business in Orange County,
7 California. Olenicoff at the time the complaint was filed was and still is a citizen
8 of the State of Florida. (Complaint, ¶ 2.) Ault at the time the complaint was filed
9 was and still is a citizen of the State of California. (Complaint, ¶ 3.) ACE, at the
10 time the action was commenced, was and still is a Pennsylvania corporation,
11 incorporated under the laws of the Commonwealth of Pennsylvania with its
12 principal place of business in Philadelphia, Pennsylvania. Given that Plaintiffs are
13 citizens of California or Florida and ACE is a citizen of Pennsylvania, the
14 diversity requirement is satisfied.
15
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19 9. Plaintiffs seek recovery of over \$700,000 in defense costs allegedly
20 incurred by Plaintiffs but not paid by ACE in defense of the two actions.
21 (Complaint, ¶ 25.) Plaintiffs also seek the recovery of prejudgment interest, costs
22 and punitive damages. ACE believes that no damages, compensatory or punitive,
23 should or will be awarded in this case; however, for purposes of the amount in
24 controversy requirement, the claimed damages satisfy the jurisdictional
25 prerequisite, the matter in controversy exceeds \$75,000.
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1 10. The complaint names “Does 1 through 50, inclusive”, as defendants
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3 in this lawsuit. According to 28 U.S.C. Section 1441(a), “for purposes of removal
4
5 under this chapter, the citizenship of defendants sued under fictitious names shall
6
7 be disregarded.”

8 11. Removing party is unaware of any other parties who have been
9
10 named or who have appeared in the underlying State Court Action.

11 **CONCLUSION**

12 12. For all of the reasons stated above, this action is within the original
13
14 jurisdiction of this Court pursuant to 28 U.S.C. § 1332(a). Accordingly, this action
15
16 is removable pursuant to 28 U.S.C. § 1441.

17 WHEREFORE, Defendant ACE gives notice that the above-described
18
19 action pending against it in the Superior Court of the State of California, County
20
21 of Orange is hereby removed to this Court.

22 Dated: December 18, 2015

23 Respectfully submitted,

24 **LONDON FISCHER LLP**

25 By: 

26 Richard S. Endres

27 Jonathon F.Sher

28 Attorneys for Defendant

ACE AMERICAN INSURANCE
COMPANY

EXHIBIT A

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT: ACE AMERICAN INSURANCE COMPANY
(AVISO AL DEMANDADO):** and DOES 1 through 50, inclusive

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

11/18/2015 at 11:49:14 AM
Clerk of the Superior Court
By Georgina Ramirez, Deputy Clerk

**YOU ARE BEING SUED BY PLAINTIFF: OLEN PROPERTIES CORP.,
(LO ESTÁ DEMANDANDO EL DEMANDANTE):** IGOR M. OLENICOFF
AND JULIE A. AULT

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of the State of California
700 Civic Center Drive West

CASE NUMBER:
(Número) 30-2015-00820928-CU-IC-CXC
Judge Kim G. Dunning

Santa Ana, California 92701

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

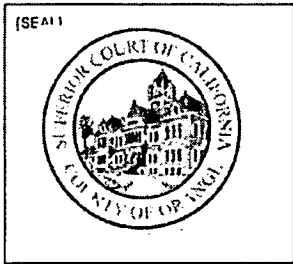
Christopher P. Wesierski [Bar No. 086736] 949-975-1000
Laura J. Barns [Bar No. 093485]
WESIERSKI & ZUREK LLP
Irvine, California 92606

DATE: 11/18/2015 ALAN CARLSON, Clerk of the Court Clerk, by Georgina Ramirez Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):
- 3. on behalf of (specify): *Ace American Insurance Company*
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- 4. by personal delivery on (date):



ELECTRONICALLY FILED
Superior Court of California,
County of Orange

11/18/2015 at 11:48:14 AM
Clerk of the Superior Court
By Georgina Ramirez, Deputy Clerk

1 Christopher P. Wesierski [Bar No. 086736]
cwesiwski@wzllp.com
2 Laura J. Barns [Bar No. 093485]
lbarns@wzllp.com
3 Christian C.H. Counts [Bar No. 208363]
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4 **WESIERSKI & ZUREK LLP**
One Corporate Park, Suite 200
5 Irvine, California 92606
Telephone: (949) 975-1000
6 Facsimile: (949) 756-0517

7 Attorneys for Plaintiffs OLEN PROPERTIES
CORP., IGOR M. OLENICOFF and JULIE
8 A. AULT

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

Judge Kim G. Dunning

30-2015-00820928-CU-IC-CXC

12 **OLEN PROPERTIES CORP., IGOR M.**
13 **OLENICOFF AND JULIE A. AULT,**

CASE NO.

CX-104

14 Plaintiffs,

**COMPLAINT FOR DAMAGES FOR:
(1) BREACH OF CONTRACT; (2)
BREACH OF THE COVENANT OF
GOOD FAITH AND FAIR DEALING;
DEMAND FOR JURY**

15 vs.

16 **ACE AMERICAN INSURANCE**
17 **COMPANY and DOES 1 through 50,**
inclusive,

18 Defendants.

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22 Plaintiffs Olen Properties Corp., Igor M. Olenicoff and Julie A. Ault, allege as
23 follows:

24 **GENERAL ALLEGATIONS**

- 25 1. Plaintiff Olen Properties Corp. is a Florida corporation which at all times
26 relevant hereto was doing business in the County of Orange, State of California.
27 2. Plaintiff Igor M. Olenicoff is a citizen of the State of Florida.
28 3. Plaintiff Julie A. Ault is a citizen of the State of California.

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1 4. Plaintiffs are informed and believe and on that basis allege that Defendant
2 ACE American Insurance Company ("ACE American") is incorporated in the State of
3 Pennsylvania and, at all times relevant, was doing business and is doing business in the
4 County of Orange, State of California.

5 5. The true names and capacities of defendants named as Doe 1 through Doe
6 50, inclusive, are presently unknown to Plaintiffs. Plaintiffs will amend this Complaint,
7 setting forth the true names and capacities of these fictitious Defendants when they are
8 ascertained. Plaintiffs are informed and believe and on that basis allege that each of the
9 fictitious defendants has participated in the acts alleged in this Complaint to have been
10 done by ACE American.

11 6. Plaintiffs are informed and believe and on that basis allege that, at all
12 relevant times, each of the defendants, whether named or fictitious, was the agent or
13 employee of each of the other defendants, and in doing the things alleged to have been
14 done in the Complaint, acted within the scope of such agency or employment, or ratified
15 the acts of the other.

16 7. Plaintiffs are informed and believe and thereupon allege that, at all times
17 material herein, ACE American and Does 1 through 50 (collectively referred to herein as
18 "Defendants") and each of them, and/or their agents, employees or supervisors, authorized,
19 condoned and ratified the unlawful conduct of each other.

20 8. Plaintiffs are informed and believe and thereupon allege that, at all times
21 material herein, Defendants and/or their agents, employees and supervisors knew or
22 reasonably should have known that unless they intervened to protect Plaintiffs, and to
23 adequately supervise, prohibit, control, regulate, discipline, and/or otherwise penalize the
24 conduct of the employees of Defendants set forth above, the remaining Defendants and
25 employees would have perceived the conduct and omissions as being ratified and
26 condoned.

27 9. Plaintiffs are informed and believe that Defendants, and each of them,
28 committed other wrongful acts or omissions of which Plaintiffs are presently unaware.

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1 Plaintiffs shall conduct discovery to identify said wrongful acts, and will seek leave of
2 Court to amend this Complaint to add said acts upon discovery.

3 10. All of the following acts occurred in Orange County, California which
4 provides subject matter and personal jurisdiction to this Court. At all times alleged herein,
5 ACE American had issued policies of insurance which provided a duty to defend causes of
6 action for malicious prosecution alleged against Plaintiffs. In 2012, two actions were filed
7 against Plaintiffs Olen Properties Corp. and Igor M. Olenicoff in the County of Orange.
8 The actions were entitled *UBS AG v. Igor M. Olenicoff, Olen Properties Corp., Julie A.*
9 *Ault, et al.*, Case No. 30-2012-00589134 (the “UBS Action”) and *Bradley Birkenfeld v.*
10 *Igor Olenicoff and Olen Properties Corp. et al.* assigned Case Nos. 30-2012-00613163
11 (the “Birkenfeld Action”). Plaintiff Julie A. Ault was named as a defendant in the UBS
12 action. The two actions were consolidated (hereinafter the consolidated actions are
13 referred to as the “Underlying Action”).

14 11. Plaintiffs timely tendered the defense of the Underlying Actions to
15 Defendants.

16 12. Defendants had a duty under the relevant policies to defend its insureds
17 (defendants in the Underlying Action) as the policies provided coverage for the defense of
18 malicious prosecution actions. Neither the policy nor the applicable law provided for
19 indemnity of a malicious prosecution action if Plaintiffs were found liable in the
20 Underlying Action.

21 13. Other than initially acknowledging receipt of the tender of the defense,
22 Defendants did not respond to the tender of defense for seven (7) months. By an undated
23 letter, Defendants finally agreed to accept the tender of defense under a reservation of
24 rights. It took seven months for Defendants to finally acknowledge their obligations under
25 the policies of insurance and accept the tender of the defense.

26 14. During the preceding seven months before Defendants accepted the tender of
27 defense, Plaintiffs were required to defend themselves in the Underlying Action, including
28 incurring substantial attorneys’ fees and costs.

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1 15. Under the policy and the law, Defendants had an immediate duty to defend
2 Plaintiffs in the Underlying Action. In failing timely to accept the tender of defense of the
3 Underlying Action, Defendants breached the policy and the covenant of good faith and fair
4 dealing. By their unreasonable delay in accepting the tender of defense, Defendants
5 waived any rights they may have had under *Civil Code* §2860.

6 16. After its belated acceptance of the defense of the Underlying Action,
7 Defendants then unreasonably delayed in paying the fees and costs incurred by Plaintiffs.
8 Defendants refused to pay for all fees incurred by Plaintiffs in defending the Underlying
9 Action.

10 17. After an unreasonable delay in accepting tender of the defense of the
11 Underlying Action and an unreasonable delay in reimbursing Plaintiffs for some of the
12 fees and costs incurred during that delay, Defendants then attempted to invoke the
13 provisions of *Civil Code* §2860 and sought to either require that Plaintiffs accept “panel
14 counsel” only a few weeks before the trial was set to begin in an extremely complicated
15 case or accept rates lower than those charged by Plaintiffs’ counsel. In failing to accept
16 the tender of the defense immediately, Defendants breached the policy, engaged in bad
17 faith, waived their right to control the defense of the Underlying Action and waived their
18 rights to rely upon *Civil Code* §2860 to appoint “panel counsel,” to “pay panel rates” or to
19 have the fee dispute arbitrated.

20 18. Defendants were unreasonably dilatory in paying fees and costs incurred in
21 the Underlying Action even after their belated acceptance of the tender of the defense.

22 19. The hourly rates charged by counsel for Plaintiffs in the Underlying Action
23 were reasonable in light of the experience of counsel, the prevailing rate in the community,
24 the complexity of the litigation and the aggressive posture taken by counsel for UBS and
25 Birkenfeld in the Underlying Action.

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FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT

(Against All Defendants)

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3 20. Plaintiffs incorporate by reference as if set forth herein in full their
4 allegations in paragraphs 1 through 19, inclusive.

5 21. At all times relevant, Defendants owed a duty under the policies issued by
6 ACE American to Plaintiffs in the Underlying Action, policy numbers PMD G23869304
7 and PMD G23869304. The CGL Policies covered damages for “personal and advertising
8 injury” to which the insurance applies. Malicious prosecution is listed as a covered offense
9 under the personal and advertising injury coverage part. The policies were in effect at all
10 times relevant.

11 22. Defendants failed and/or refused to timely and properly pay benefits due
12 under the policies and unreasonably and without proper cause withheld benefits owing to
13 Plaintiffs under the policies and breached their obligations under the policies.

14 23. Plaintiffs fulfilled all of their obligations under the policies of insurance.

15 24. As a direct and proximate result of the foregoing, Plaintiffs have been
16 damaged. They have incurred attorneys’ fees and costs in defending themselves in the
17 Underlying Action. In addition, numerous hours were spent by both Julie Ault and her
18 staff, corporate counsel for Olen Properties Corp., in assisting in the defense of the
19 Underlying Action during the time that Defendants were ignoring their obligations under
20 the policy of insurance.

21 25. Plaintiffs have sustained damages in excess of \$700,000, in attorneys’ fees
22 and costs in defending themselves in the Underlying Action as a result of Defendants
23 breach of their obligations under the policies of insurance.

24 26. As a further direct and proximate result of the foregoing, Plaintiffs are
25 entitled to all foreseeable consequential damages.

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**SECOND CAUSE OF ACTION FOR BREACH OF THE
COVENANT OF GOOD FAITH AND FAIR DEALING**

(Against All Defendants)

27. Plaintiffs incorporate by reference as if set forth herein in full their allegations in paragraphs 1 through 26, inclusive.

28. Plaintiffs entered into the contract of insurance with Defendants seeking security and peace of mind. The covenant of good faith and fair dealing is implied in every contract of insurance.

29. The covenant of good faith and fair dealing required Defendants to give Plaintiffs' interests at least as much consideration as they gave to their own interests. Defendants did not do so.

30. The covenant of good faith and fair dealing required Defendants to act reasonably and to immediately accept the tender of the defense of a claim covered under the policies of insurance. Defendants did not do so.

31. Under the covenant of good faith and fair dealing, Defendants had an unconditional and independent duty to fulfill their contractual obligations. Defendants did not do so.

32. Under the covenant of good faith and fair dealing, Defendants had the obligation to do everything that the contract of insurance presupposes they will do to further the purpose of insurance, which is the full and prompt payment of policy benefits to the policyholders. Defendants did not do so.

33. Under the covenant of good faith and fair dealing, Defendants were obligated to pay all reasonable and necessary defense costs. Defendants did not do so.

34. In breach of the covenant of good faith and fair dealing, Defendants unreasonably and without proper cause delayed in providing benefits due under the policy and refused to pay policy benefits. Defendants and their representatives elevated their interests above Plaintiffs and subordinated Plaintiffs' interest to Defendants' interests and

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1 engaged in wrongful, abusive, fraudulent, unreasonable and tortious conduct with respect
2 to Plaintiffs and their claims.

3 35. Defendants tortuously breached the covenant of good faith and fair dealing
4 by engaging in the following conduct, among others, in reckless disregard for Plaintiffs'
5 rights under the policy:

6 a. unreasonably delaying in accepting the tender of defense of the Underlying
7 Action;

8 b. unreasonably delaying in paying benefits once they finally agreed to accept
9 the tender of defense of the Underlying Action, at one point leaving an outstanding balance
10 of over \$500,000;

11 c. attempting to appoint "panel counsel" to represent Plaintiffs only weeks
12 before the initial trial date which would have severely prejudiced Plaintiffs in light of the
13 complexity of the Underlying Action and the voluminous discovery and motions in that
14 action as well as the action upon which the malicious prosecution was based;

15 d. attempting to appoint "panel counsel" when there was a clear conflict of
16 interest between Plaintiffs and Defendants;

17 e. insisting, despite legal authority to the contrary, that they would only pay
18 "panel rates" to defend Plaintiffs in the Underlying Action;

19 f. unreasonably delaying payment of fees and costs incurred, including those
20 incurred by experts retained by Plaintiffs and thereby jeopardizing the defense of the
21 Underlying Action (fees and costs are still outstanding as of the date of this filing);

22 g. delaying payment of fees and costs incurred while Defendants attempted to
23 find additional coverage from other carriers rather than paying the fees and costs to
24 Plaintiffs and seeking subrogation or equitable indemnity against those carriers if
25 additional coverage was found;

26 h. failing to properly and fully investigate Plaintiffs' claims;

27 i. failing to evaluate Plaintiffs' claims objectively;

28 j. using improper standards to adjust Plaintiffs' claims;

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1 k failing to advise Plaintiffs of all benefits, coverages, time limits and other
2 provisions that might apply to Plaintiffs' claim under the policies in a as required by Title
3 10 of the California Code of Regulations, Chapter 5, section 2695.4, subd (a);

4 l. compelling Plaintiffs to institute litigation to recover amounts due under the
5 policies;

6 m. deliberately denying benefits Defendants knew were owed under the policy
7 in conscious disregard of Plaintiffs' known rights and established California case law; and

8 n. failing to respond in writing, to claims submitted by Plaintiffs in the manner
9 and in the time frame required by the California Fair Claims Settlement Practices Act, (10
10 CCR §2695.1, et seq.)

11 36. Defendants' motivation was clear. As they had no obligation to indemnify
12 Plaintiffs if an adverse judgment was entered against them for malicious prosecution,
13 Defendants could care less about whether or not Plaintiffs would be found liable. A
14 verdict against Plaintiffs in the Underlying Action would not impact Defendants at all. As
15 a result, their only consideration was to defend as cheaply as possible regardless of the
16 consequences to Plaintiffs. There was a clear conflict of interest between Defendants and
17 Plaintiffs which would have precluded appointment of "panel counsel" only weeks before
18 the initial trial date.

19 37. As a further direct and proximate result of the foregoing, Plaintiffs have
20 incurred attorneys' fees and will continue to incur attorneys' fees in pursuing benefits
21 owed under the policies of insurance. Pursuant to *Brandt v. Superior Court* (1985) 37
22 Cal.3d 813, Plaintiffs may recover their fees and costs incurred in recovering those unpaid
23 benefits.

24 38. As a direct and proximate result of the foregoing, Plaintiffs Igor M.
25 Olenicoff and Julie A. Ault have suffered emotional distress and will seek damages for the
26 emotional distress they have had and will continue to suffer.

27 39. To prevent the continued wrongdoing set forth above and to discourage other
28 insurers from engaging in these practices, Plaintiffs seek punitive and exemplary damages.

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1 Plaintiffs are informed and believes and on that basis alleges that Defendants' conduct was
2 oppressive and malicious in that it was outrageous, intentional and demonstrated a callous
3 disregard of Plaintiffs' rights. Upon information and belief, the conduct of Defendants
4 described above was part of a pattern and practice designed to force claimants to accept
5 less benefits than they would otherwise be entitled to receive under the terms of their
6 policies and to unfairly minimize the financial exposure and risk of Defendants. In doing
7 the acts described in this Complaint, Defendants acted intentionally, with a conscious
8 disregard of the known rights of Plaintiff, and did so in a fraudulent and oppressive
9 manner, all of which warrants the imposition of punitive damages under the California
10 *Civil Code* §3294 in an amount sufficient to punish and deter Defendants from engaging in
11 similar conduct in the future.

12 40. Defendants' conduct was undertaken or approved by their officers or
13 managing agents who are and were responsible for claims supervision, operations,
14 communications and decisions. This unreasonable conduct was undertaken on behalf of
15 Defendants. Defendants had advance knowledge of the actions and conduct of said
16 individuals whose actions were ratified, authorized and approved by Defendants, including
17 managing agents whose identities are unknown at this time.

18 41. As a further direct and proximate result of the foregoing, Plaintiffs are
19 entitled to unforeseeable consequential damages.

20
21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs pray for judgment as follows:

- 23 1. For compensatory damages according to proof, including but not limited to
24 the reasonable attorneys' fees and costs incurred in defending the Underlying Action;
25 2. For damages due under the policies of insurance, plus interest, including
26 prejudgment interest and other economic and consequential damages in an amount
27 according to proof at trial;
28 3. For general damages, including emotional and mental distress, according to

- 1 proof;
- 2 4. For special damages according to proof;
- 3 5. For economic and consequential damages
- 4 6. For interest at the legal rate from the date of injury or pursuant to *Code of*
- 5 *Civil Procedure* §3287;
- 6 7. For punitive and exemplary damages, according to proof;
- 7 8. For attorneys' fees and costs of suit incurred, pursuant to *Brandt v Superior*
- 8 *Court* (1985) 37 Cal.3d 813, and any other applicable provisions of law; and
- 9 9. For any other and further relief as the Court deems just and proper.

10
11 DATED: November 18, 2015

WESIERSKI & ZUREK LLP

WESIERSKI & ZUREK LLP
 LAWYERS
 ONE CORPORATE PARK SUITE 200
 IRVINE, CALIFORNIA 92606
 (949) 975-1000

12
 13 By: Christopher P. Wesierski
 14 Christopher P. Wesierski
 15 Attorneys for Defendants IGOR M.
 16 OLENICOFF, OLEN PROPERTIES CORP.
 17 and JULIE A. AULT
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

DATED: November 18, 2015

WESIERSKI & ZUREK LLP

By: Christopher P. Wesierski
Christopher P. Wesierski
Attorneys for Plaintiffs OLEN PROPERTIES
CORP., IGOR M. OLENICOFF and JULIE A.
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Proof of Service

OLEN Properties Corp., Igor M. Olenicoff, Julie A. Ault

v.

ACE American Insurance Company and DOES 1 through 50, inclusive.

United States District Court, Central District of California
Western Division

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and am not a party to the within action. My business address is 2505 McCabe Way, Suite 100, Irvine, California 92614.

On **December 18, 2015**, I served the foregoing documents entitled:

- 1. **CIVIL COVER SHEET;**
- 2. **CERTIFICATION AND NOTICE OF INTERESTED PARTIES (F.R.CIV.P. 7.1); and**
- * 3. **DEFENDANT ACE AMERICAN INSURANCE COMPANY’S NOTICE OF REMOVAL PURSUANT TO 28 U.S.C. § 1441(b)** on the interested parties in this action as follows:

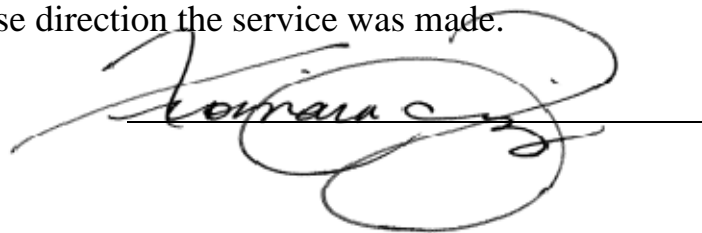
SEE ATTACHED SERVICE LIST

(BY U.S. MAIL) I caused said envelope(s), with postage fully prepaid, to be placed in the U.S. Mail at Irvine, California. I am readily familiar with the firm’s practice for collection and processing of mail. It is deposited with the U.S. Postal Service on the same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing set forth in this affidavit, addressed as listed above.

Executed on December 18, 2015, at Irvine, California.

(FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Xiomara Diaz _____



Proof of Service

OLEN Properties Corp., Igor M. Olenicoff, Julie A. Ault

v.

ACE American Insurance Company and DOES 1 through 50, inclusive.

United States District Court, Central District of California
Western Division

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