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SAN DIEGO COUNTY, CA

**SUPERIOR COURT FOR STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

Michael
Foxhoven, an individual,

Plaintiff,

v.

ALLSTATE, a corporation,
and DOES 1-25, Inclusive

Defendant.

Case No. 37-2019-00017338-CU-IC-CTL
Filing Date:
Dept.
Judge: Hon.

PLAINTIFF'S COMPLAINT FOR:

- 1.) Breach of Contract (CA Common law)**
- 2.) Breach of Covenant of Good Faith and Fair Dealing (CA Common law)**

DEMAND FOR JURY TRIAL

PLAINTIFF MICHAEL FOXHOVEN'S COMPLAINT FOR DAMAGES AGAINST ALLSTATE

Plaintiff MICHAEL FOXHOVEN ("Mr. FOXHOVEN") brings this action against defendants ALLSTATE, an insurance company, (hereinafter "ALLSTATE") AND DOES 1-25 (collectively "DEFENDANTS"). The following allegations are based on Mr. FOXHOVEN's personal knowledge, on investigation by Mr. FOXHOVEN's attorney, and on information and belief.

NATURE OF THE CASE

1. This is an action for damages in contract and tort arising out of Defendant, ALLSTATE's bad faith breach of its homeowner's insurance policy with insured and Plaintiff, MICHAEL FOXHOVEN. ALLSTATE issued a liability "Deluxe" homeowners insurance policy to Mr. FOXHOVEN, covering losses with limits ranging from \$1,000 to \$191,000 depending on the coverage category. The underlying policy provided coverage for the type of losses sustained and timely



1 communicated by Mr. FOXHOVEN to ALLSTATE.

2 2. ALLSTATE accepted premium payments from its insured, Mr.
3 FOXHOVEN, and then when its insured sought benefits under the policy for what
4 he reasonably believed to be a covered loss ALL STATE refused to find coverage
5 for the loss and withheld policy benefits.

6 3. ALLSTATE has treated its insured in an unethical and callous manner,
7 putting its own interests ahead of the insured and refusing to act like a reasonable
8 insurer under the circumstances and safeguarding the interests of the insured. In
9 fact, one All State claims adjuster denied his claim on the same day that Mr.
10 FOXHOVEN was assured by another claims department representative at ALL
11 STATE that he was "in good hands". At the time Mr. FOXHOVEN assumed that
12 this

13 4. On the basis of a selective and expansive reading of a policy exclusion,
14 ALLSTATE is seeking to disclaim coverage for a loss that a reasonable reading of
15 the policy would lead the insured to not only anticipate but rely upon. Mr.
16 FOXHOVEN purchased his policy from ALLSTATE with the thought that securing
17 this protection from loss would provide much needed peace of mind and assurance
18 in the event of unexpected misfortune and resulting damage to his home. Such
19 reasonable expectations were disappointed by ALLSTATE's bad faith breach of its
20 duty to act in good faith and deal fairly with its insured. As a direct and proximate
21 result of ALLSTATE's bad faith refusal to comply with its obligations under the
22 policy, and in complete disregard of Mr. FOXHOVEN's rights as a first-party
23 insured, Mr. FOXHOVEN has suffered significant loss to his home and has also
24 incurred substantial costs in pursuing benefits under the policy.

25 **PARTIES**

26 5. Mr. FOXHOVEN is and at all times mentioned was an individual
27 residing in the County of San Diego, State of California.

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1 6. Plaintiff is informed, believes and thereon alleges that defendant
2 ALLSTATE, is an affiliate of the ALL STATE Corporation (“ALL STATE Corp.”)
3 the largest publicly held personal lines insurer in the United States. ALLSTATE
4 Corp. offers insurance and other financial products through a number of affiliate
5 companies, including: Auto, Home, Life, Motorcycle, Renters, Boat, Landlord,
6 Condo, Off-road vehicle, Business Insurance Retirement, Investment products, and
7 Banking services. Defendant ALL STATE is a Delaware corporation headquartered
8 in the Chicago suburb of Northbrook, Illinois with offices throughout the United
9 States is, and at all relevant times was, a corporation authorized to transact the
10 business of insurance in the State of California and County of San Diego.

11 7. Plaintiff is currently ignorant of the true names and capacities, whether
12 individual, corporate, associate, or otherwise, of the defendants sued herein under
13 the fictitious names Does 1 through 25, inclusive, and therefore, sue such defendants
14 as Doe Defendants. Plaintiff will move to amend this complaint to allege the true
15 names and capacities of said fictitiously named defendants when their true names
16 and capacities have been ascertained. Plaintiff is informed, believe and thereon
17 allege that each of the fictitiously named Doe Defendants are legally responsible in
18 some manner for the events and occurrences alleged herein, and for the damages
19 suffered by Plaintiff.

20 8. Plaintiff is informed, believe and thereon alleges that all Defendants,
21 including the fictitious Doe Defendants, were at all relevant times acting as actual
22 agents, conspirators, ostensible agents, partners and/or joint venturers, and
23 employees of all other defendants, and that all acts alleged herein occurred within
24 the course and scope of said agency, employment, partnership, and joint venture,
25 conspiracy, or enterprise, and with the express and/or implied permission,
26 knowledge, consent, authorization, and ratification of their co-defendants; however,
27 each of these allegations are deemed “alternative” theories whenever not doing so
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1 would result in a contraction with the other allegations.

2 JURISDICTION AND VENUE

3 9. California courts may “exercise jurisdiction on any basis not
4 inconsistent with the Constitution of this state or of the United States.” CCP §
5 410.10. Due process considerations require that the defendant have “meaningful
6 contacts, ties or relations” with the forum state so that local courts' exercise of
7 jurisdiction over defendant does not offend “traditional conception[s] of fair play
8 and substantial justice.”¹ This Court has jurisdiction over the subject matter of this
9 action because injury to Plaintiff occurred in this jurisdictional area. Furthermore,
10 this Court’s jurisdiction is proper because Defendant entered into the contract here
11 with Plaintiff with expectation that benefits would accrue and obligations
12 undertaken would be discharged here. Additionally, Defendants were at all times
13 mentioned herein, operating and doing business in the San Diego County, with said
14 benefits accruing from these business contacts and likely to put Defendants that they
15 would be amenable to suit from actions arising from these in-state contacts. Finally,
16 jurisdiction is proper because the damages sought exceed the jurisdictional
17 minimum of this Court.

18 10. Venue is Proper pursuant to CCP § 392 et seq. because the majority of
19 the events giving rise to this action occurred in San Diego County; because
20 Defendants were at all times mentioned herein, operating and doing business in San
21 Diego County; and because the majority of witnesses and events occurred in San
22 Diego County.

23 Factual Allegations

24 11. The ALLSTATE Corporation is one of the largest insurance providers
25 in the United States and one of the largest that is publicly held. ALL STATE was

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27 ¹ *Burger King Corp. v. Rudzewicz* (1985) 471 US 462, 464, 476-477, 105 S.Ct. 2174, 2178, 2184-2185 (internal
28 quotes omitted).

1 founded in 1931 as part of Sears, Roebuck and Co., and was spun off in 1993. The
2 company has had its headquarters in Northfield Township, Illinois, near Northbrook
3 since 1967. ALLSTATE ranked No. 79 in the 2018 Fortune 500 list of the largest
4 United States corporations by total revenue. Its current advertising campaign, in use
5 since 2004, asks, "Are you in good hands?"

6 12. ALLSTATE 's slogan "You're in good hands" was created in the 1950s
7 by Allstate Insurance Company's sales executive, Davis W. Ellis based on a similar
8 phrase he used to reassure his wife about a doctor caring for their child. It has been
9 the slogan ever since 1950. ALLSTATE also referred to themselves as the Good
10 Hands People. A study in 2000 by Northwestern University's Medill Graduate
11 Department of Integrated Marketing Communications found that the ALLSTATE
12 slogan "You're in good hands" ranked as the most recognizable in America.

13 ALLSTATE's original hands logo was originally designed Theodore Conterio in the
14 1950s. The employees were told whoever could come up with the best logo would
15 win \$50. Theodore Conterio came up with the design based on the slogan, "You're
16 in good hands," and won the \$50 prize.

17 13. Beginning in 2003, as policy growth slowed, Allstate's television
18 commercials used spokesman Dennis Haysbert. The ads were intended to carry the
19 message that ALLSTATE's service was superior to that from low-cost providers
20 GEICO and Progressive. Haysbert appeared in more than 250 commercials between
21 2003 and 2016. Beginning in 2010, ALLSTATE used Dean Winters as "Mayhem",
22 mean to personify the hazards drivers face. The ads conclude with Haysbert asking
23 "Are You In Good Hands?"

24 14. PLAINTIFF, Mr. FOXHOVEN was insured under ALSLTATE Deluxe
25 Homeowners policy # 967 051 437 (the "POLICY"). On or about October 17, 2017
26 Mr. FOXHOVEN received confirmation that he was "extending his relationship
27 with" ALLSTATE upon his payment of a \$536 yearly premium, so that he would
28

1 remain in "good hands" with policy period to run until October 17, 2018.

2 15. PLAINTIFF, Mr. FOXHOVEN is informed and believes and thereon
3 alleges that the POLICY was in full force and effect on the date of the events as
4 hereinafter alleged. Mr. FOXHOVEN is informed and believes and thereon alleges
5 that the POLICY provides coverage to Plaintiff for losses sustained to his dwelling,
6 other structures, personal property, as well as loss of use in the event of damage to
7 these items.

8 16. The POLICY's insured location was 1940 Ensenada St, Lemon Grove,
9 CA 91945-3738.

10 17. Since Mr. FOXHOVEN first purchased his policy, Plaintiff has paid
11 the premiums and performed each act required on their part to keep the POLICY in
12 full force and effect.

13 18. Mr. FOXHOVEN's insured residential property was located at 1940
14 Ensenada St, Lemon Grove, CA 91945-3738. The home is a 738 sq. ft. one-story
15 ranch style, single family detached dwelling with one-car attached garage and was
16 constructed in 1955. The interiors consisted of approximately 21% hardwood
17 flooring; 11% carpet over hardwood; 52% wall to wall carpet; 11% vinyl; and 5%
18 ceramic tile flooring. Coverage details included: Limits of Liability for dwelling
19 protection was \$191,000; other structures \$19,100; personal property protection
20 \$133,700, and family liability \$100,000 per occurrence.

21 19. On or about January 23, 2018 ALLSTATE implemented a change to
22 the policy and advised Mr. FOXHOVEN that the cost to replace his home had been
23 estimated at \$176,692 which was the maximum for which ALLSTATE would insure
24 him in the event that the home was declared a total loss. Mr. FOXHOVEN had a
25 \$200,000 insurance policy covering protection of Dwelling Building Structure,
26 Other Structures, Personal Property, Additional Living Expense, Family Liability,
27 Guest Medical Costs, Workers' Compensation and Employers' Liability as

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1 applicable. As the agent, Marisol Trujillo, who sold Mr. FOXHOVEN the policy
2 assured him, it was her “job to make sure” Mr. FOXHOVEN was “in good hands”.

3 20. Mr. FOXHOVEN trusted ALLSTATE with his modest but most vital
4 possession, believing that he really was in good hands and that in exchange for
5 paying his premiums every month that ALL State would step in and cover him in
6 the event that he reported a loss. ALLSTATE is perhaps the largest and most
7 widely known insurer that has spent considerable money on cultivating its carefully
8 crafted public image. ALLSTATE’s mission is indeed clear: “We don’t just talk
9 about good – we make it happen”. ALLSTATE’s website lists one example after
10 another of how they “go the extra mile for customers”, give back to local
11 communities, advocate for good causes, and keep people “in good hands” because
12 “doing good work is in our DNA”. As a matter of fact, ALLSTATE’s
13 administrators and 83,000 employees and agency members could boast very large
14 amounts of good deeds by 2017: 18,779, 402 autos insured; 7,911,725 homes
15 insured; 1,819,131 lives insured; 6,736,928 claims settled; and \$15,351,886,354 in
16 paid claims.

17 21. Mr. FOXHOVEN was certainly inconvenienced but was not distraught
18 when a skunk from one of the nearby canyons entered his house through the doggie
19 door one evening, likely in search of food, and when the skunk happened upon Mr.
20 FOXHOVEN’s dog all hell broke loose. The skunk, now loose in the house, did
21 what wild animals do when confronted and fought for its life in order to escape. In
22 the process the skunk sprayed the living room carpet, walls, and furniture of Mr.
23 FOXHOVEN’s home. Mr. FOXHOVEN works as a contractor and is used to
24 working with his hands and got about cleaning up the mess as best he could,
25 although it must be said that the considerable stench from a skunk spray does not
26 soon abate, especially when applied to porous materials like carpet and drywall.
27 Skunks are common in suburban areas. Frequent encounters with dogs and other
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1 domestic animals, and the release of the odor when a skunk is run over is how many
2 people experience the phenomena. Skunk spray is composed mainly of three low-
3 molecular-weight thiol compounds, (E)-2-butene-1-thiol, 3-methyl-1-butanethiol,
4 and 2-quinolinemethanethiol, as well as acetate thioesters of these. These
5 compounds are detectable by the human nose at concentrations of only 10 parts per
6 billion Mr. FOXHOVEN filed a claim with ALLSTATE on or about May 14, 2018
7 counting on ALLSTATE's famous "good hands" to be there for him now that he
8 was reporting a loss.

9 22. At first, Mr. FOXHOVEN was optimistic- sure dealing with the mess
10 and damage that the wild animal had caused to his home was not how he wanted to
11 spend his evenings and nights after work, but like someone who is used to work
12 with his hands he knew that unpleasant jobs don't go away and it is better to simply
13 get started doing what needs to be done.

14 23. On or about May 16, a mere two days after the claim, ALLSTATE
15 agent Walter McCurley acknowledged receipt of the claim. Mr. McCurley assured
16 Mr. FOXHOVEN that "we're here for you and committed to resolving your claim as
17 soon as possible". Mr. FOXHOVEN was still thinking that this meant the "good
18 hands" approach. Mr. McCurley was unambiguous in his support: "Our goal at
19 ALLSTATE Insurance Co. is to keep you completely satisfied with your claim
20 experience, by providing prompt, fair claims handling." In support of his
21 commitment to fairness, Mr. McCurley even enclosed a document spelling out the
22 Section 790.03 of the California Insurance Code that ALLSTATE embraces and
23 abides by in terms of fair practices.

24 24. Mr. FOXHOVEN's sigh of relief and satisfaction that he had trusted
25 the right insurance company with protecting the roof over his head was short lived.
26 A letter by a second ALLSTATE agent, dated of the same May 16, 2018 day,
27 contradicted Agent Marisol TRUJILLO, Walter McCURLEY and ALLSTATE's
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1 emphatic statements about their reliability, accountability and, most of all fairness.
2 Far from acting as the “force for good [...] going the extra mile for customers”,
3 claims adjuster Ashley Parsons hardly appeared to take the time even look at the
4 circumstances surrounding the loss when she denied coverage of the claim with
5 scant little effort to look at the policy to find coverage. Good hands time was over.
6 Mr. FOXHOVEN was now getting acquainted with the boxing gloves.

7 25. Ms. Parsons and ALLSTATE denied the claim under Section 1 of the
8 policy there is a list of losses **not** covered under the categories A and B. It includes:
9 “15. e) Contamination including but not limited to presence of toxic, noxious,
10 hazardous gasses, chemicals, solids and other substances at residence premises.”
11 This is ambiguous exclusion was leveraged and extended by ALLSTATE to defeat
12 coverage and frustrate the insured’s reasonable expectation that the damage caused
13 by the wild animal would be covered. An objective reading of the exclusion cited
14 by All STATE as the reason for the denial of the claim would lead one to believe
15 that when ALL STATE was drafting the exclusion they were contemplating an
16 insured storing toxic or hazardous chemicals, the chemicals leaking or escaping
17 from their containers, and damage to the property resulted. This sort of moral
18 hazard exclusion makes sense because it would be an instance in which the insured
19 introduced the agent of loss and effectively had control over it. But this was not the
20 scenario that surrounded Mr. FOXHOVEN’s loss, as he did not store chemicals,
21 toxic, noxious, or hazardous, at his home. Instead the loss was caused by a wild
22 animal that got loose inside the home and caused damage to the interior finished
23 surfaces and personal property of the insured.

24 26. The argument defeating coverage favors ALLSTATE at the expense of
25 the insured. There are many areas in the policy where losses are carved out as
26 exceptions and not covered in the loss event, seeking to take back a significant
27 portion of the coverage and protection that insured, Mr. FOXHOVEN, believed that
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1 he was purchasing with his premium payments. Despite this bait and switch, Swiss
2 cheese approach to coverage, nothing in the policy language put Mr. FOXHOVEN
3 on notice that in the event of loss caused by a wild animal that entered his home
4 would he be left without coverage. Also nowhere is there a rider or offer to
5 purchase additional coverage against damages caused by a wild animal, which
6 would have afforded the insured the possibility of considering whether additional
7 premiums would have warranted this additional protection. Any reasonable insured
8 would logically assume that losses resulting from the damage caused by the skunk
9 would fall within Dwelling or Personal Property coverage of the "Deluxe" policy.
10 Ironically, Ms. Parsons, the claims adjuster, volunteered the additional information
11 in her denial, noting that had there been "direct physical damage cause by the
12 skunk", then Mr. FOXHOVEN's reported loss would have been covered. But there
13 was direct physical damage to the interior of Mr. FOXHOVEN's home and personal
14 property- it had been destroyed by the skunk, as much of the personal property
15 including furniture in the living room was no longer usable. Additionally, the
16 flooring needed to be replaced and the drywall in sections removed in order to abate
17 the smell.

18 27. The exclusion on which ALLSTATE based its denial discusses
19 "contamination" by presence of toxic gasses and other pollutants "at the residence
20 premises". Additionally, the policy excludes coverage for losses resulting from
21 "vapors, fumes, toxic chemicals, toxic gasses, toxic liquids, waste materials and
22 other irritants, contaminants, or pollutants". Any insured reading these exclusions
23 would reasonably conclude that these exclusions would refer to chemicals or agents
24 that the insured introduced and stored at the premises. The context in which the
25 vapors and other toxic chemicals are not covered by the policy is clear and suggests
26 that it is informed by moral hazard considerations and not insuring against a loss
27 risk of which the insured has control over.

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1 28. The policy exclusion further states that losses caused by “vapors,
2 fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste
3 materials or other irritants, contaminants or pollutants” are not covered. The policy
4 states then “In addition, we do not cover loss consisting of or caused by any of the
5 following: [...] 15. e) Contamination including but not limited to presence of toxic,
6 noxious, hazardous gasses, chemicals, solids and other substances at residence
7 premises.”

8 29. Skunks, like other wild animals are capable of doing serious damage to
9 a home, and, an insured that has purchased protection in the form of a homeowners
10 insurance policy would expect that this sort of coverage would be in place.
11 Obviously, the business of insurance requires anticipation of the unexpected but in
12 this case the unexpected was the denial of coverage for a loss that the insured
13 reasonably anticipated would be covered under the policy. As ALLSTATE’s Mr.
14 McCurley assured Mr. FOXHOVEN, the insured will receive, “a fair claims
15 handling”. There is nothing fair about equating skunk spray with cyanide, heavy
16 metals, and other poisonous, toxic, or hazardous chemical agents that would be
17 released in the event of a toxic spill.

18 30. Furthermore, ALL STATE specified that the loss of resulting from
19 “direct physical damage caused by skunks” would be covered, but the smell cannot
20 be as a result of toxic chemical pollution exclusion. To be indeed “fair” in handling
21 this claim, not to mention ensure that the insured is safely in “the good hands that
22 are doing more than ever before”, ALLSTATE should specify what “direct physical
23 damage by animals” consists of, and for each possible animal likely to invade the
24 home, owing to each animal’s unique signature or proclivity for inflicting damage,
25 because damages vary greatly from one animal to the next, and insured should know
26 what to expect as far as what will be covered and what will not be under the policy.
27 A snake’s or spider’s bite in your garden can cause loss of life; a cow or a horse
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1 entering a ranch's living-room can cause loss of a china plates collection; a dog may
2 offend the sanctity of the living room by micturating upon the rug and then knock an
3 end table and break a lamp on the way out, etc. The kind of damages that skunks are
4 well known for causing is precisely spraying and rendering places and things
5 unusable. So, the loss to Mr. FOXHOVEN's property indeed resulted from "direct
6 physical damage" given what this particular animal does in terms of damages.
7 Would the damage be any less significant if the skunk had taken its claws and
8 ripped the sofa until the stuffing came out?

9 31. It is also significant to note that Mr. McCurley, in his zealous and well-
10 intended affirmation of ALLSTATE's admirable corporate conduct, included the
11 Section 790.03 of the California Insurance Code. It states that, among many other
12 possible violations to their industry's code of ethics, insurance companies cannot be
13 "(h) Knowingly committing or performing with such frequency as to indicate a
14 general business practice any of the following unfair claims settlement practices:
15 [...] (5) Not attempting in good faith to effectuate prompt, fair, and equitable
16 settlements of claims in which liability has become reasonably clear." That liability
17 under "skunk smell damage" belonged to, as the whole category indicates, losses
18 such as caused by NEPACCO's dioxin infested air, or MANPADS, is not
19 reasonably clear. Nor is the equation close to being in good faith.

20 32. ALL STATE adjuster's Ms. Parsons boxing gloves approach exhibited
21 in the denial came quick on the heels of Mr. McCurley's assurance of a fair claims
22 handling and good hands. It is evidence that ALLSTATE sought to benefit at the
23 expense of its insured by using a clause utterly unrelated to the circumstances of the
24 loss in order to defeat coverage. Curiously the adjusters that issued the denial of the
25 claim acknowledged that damages by animals were in fact covered. The denial
26 appeared to be in violation of the letter of Mr. FOXHOVEN's "Deluxe"
27 homeowners' policy with ALLSTATE. The expansive and benevolent message
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1 delivered to the public to attract insureds, like Mr. FOXHOVEN, to purchase
2 ALLSTATE insurance products is certainly different than the reality of being
3 insured with ALLSTATE, as Mr. FOXHOVEN learned. The promises and
4 assurances of fairness, protection, peace of mind, and security quickly receded when
5 Mr. FOXHOVEN experienced ALL STATE's good hands to boxing gloves
6 approach to claims handling.

7
8 **FIRST CAUSE OF ACTION**
9 **Breach of Contract**
10 **(California Common Law)**
11 **(Against All Defendants)**

12 33. Plaintiff incorporates by reference each of the preceding paragraphs as
13 though fully set forth herein.

14 34. Plaintiff, Mr. FOXHOVENFOXHOVEN and ALLSTATE entered into
15 a contract for the provision of homeowner's property damages and liability
16 insurance coverage in exchange for premium payments.

17 35. Mr. FOXHOVEN did all, or substantially all, of the significant things
18 that the contract required him to do in timely paying premiums and reporting losses.

19 36. All conditions required by the contract for ALLSTATE's performance
20 were satisfied in that ALLSTATE was obligated to pay out policy benefits for
21 covered losses when presented by the insured.

22 37. ALLSTATE failed to do something that the insurance contract required
23 it to do in that ALLSTATE refused to provide coverage for a covered loss in
24 frustration of the insured's reasonable expectation that he would have access to
25 policy benefits.

26 38. Mr. FOXHOVEN was harmed by ALLSTATE's denial of policy
27 benefits for a covered loss.

28 39. ALLSTATE's breach of contract was a substantial factor in causing
Mr. FOXHOVEN's harm.

1 claims under the policy.

2 46. All conditions required for ALLSTATE's performance had occurred, in
3 that ALLSTATE was obligated to pay out policy benefits for covered losses when
4 presented by the insured. Under the terms of the POLICY and the laws of the State
5 of California, Defendants, and each of them, became obligated to honor Plaintiffs'
6 demand to pay benefits under the POLICY.

7 47. ALLSTATE unfairly interfered with Mr. FOXHOVEN's right to
8 receive the benefits of the insurance contract. In the absence of a reasonable basis
9 for doing so, and with full knowledge and/or conscious disregard of the
10 consequences, said Defendants, and each of them, have failed and refused to abide
11 by their obligations under the POLICY. The handling of this claim by defendants
12 has been approved and ratified by various managerial and supervisory employees
13 of defendants.

14 48. Mr. FOXHOVEN was harmed by ALLSTATE's conduct in refusing to
15 provide the benefits under the insurance policy.

16 49. Defendants have breached their duty of good faith and fair dealing
17 owed to Plaintiff by unreasonably and in bad faith engaging in underwriting
18 practices designed to under-insure their insured for Dwelling and Personal Property
19 coverage.

20 50. Defendants have also breached their duty of good faith and fair dealing
21 owed to Plaintiff by unreasonably and in bad faith placing its own financial interests
22 ahead of its insured in violation of California's statutory, regulatory and common
23 law.

24 51. Defendants have further breached their duty of good faith and fair
25 dealing by unreasonably and in bad faith failing and refusing to give at least as
26 much consideration to the interests of its insured as it gave to its own interests.

27 52. Defendants have breached their duty of good faith and fair dealing by
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1 unreasonably and in bad faith withholding payment of sums due and owing to
2 Plaintiff.

3 53. Defendants have breached their duty of good faith and fair dealing by
4 unreasonably and in bad faith delaying payment of sums due and owing to Plaintiff.

5 54. Defendants have breached their duty of good faith and fair dealing by
6 unreasonably and in bad faith failing to reasonably investigate and process
7 Plaintiff's claims for benefits under the POLICY.

8 55. Defendants have breached their duty of good faith and fair dealing by
9 unreasonably and in bad faith failing to diligently search for evidence that could
10 support payment of the claim.

11 56. Defendants have breached their duty of good faith and fair dealing by
12 unreasonably and in bad faith compelling Plaintiff to institute litigation to recover
13 amounts due under an insurance Policy.

14 57. Finally, Defendants have breached their duty of good faith and fair
15 dealing by unreasonably and in bad faith interpreting the POLICY in an arbitrary
16 and capricious manner for the purpose of deny and/or delay payment on a legitimate
17 claim under the POLICY.

18 58. Defendants have unreasonably attempted to evaluate and focus strictly
19 on portions of the POLICY which would exclude coverage while ignoring those
20 provisions of the POLICY and Endorsement which clearly provided coverage.

21 59. As a proximate result of the aforementioned unreasonable and bad faith
22 conduct of Defendants, Plaintiff has suffered, and will continue to suffer in the
23 future, damages, plus interest, and other economic and consequential damages, for a
24 total amount to be shown at the time of trial.

25 60. As an actual and proximate result of Defendant's acts, Plaintiff suffered
26 financial injury. Plaintiff has experienced mental anguish, stress, aggravation,
27 anxiety, humiliation, embarrassment, sleeplessness, and difficulty accomplishing
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1 daily tasks. Plaintiff claims general damages for financial injury and mental distress
2 in an amount according to proof at time of trial.

3 61. As a further direct and proximate result of Defendant's conduct,
4 Plaintiff has suffered loss of financial stability, peace of mind and future security,
5 and has suffered embarrassment, humiliation, mental and emotional pain and
6 distress and discomfort, all to his detriment and damage in amounts not fully
7 ascertained but within the jurisdiction of this court and subject to proof at the time
8 of trial.

9 62. As a proximate result of the unreasonable and bad faith conduct of
10 Defendants, and each of them, Plaintiff was compelled to retain legal counsel to
11 obtain the benefits due under the Policy. Therefore, Defendants are liable to
12 Plaintiffs for those attorneys' fees, witness fess, and cost of litigation reasonably
13 necessary and incurred by Plaintiffs in order to obtain the benefits under the Policy,
14 in a sum to be determined at the time of trial.

15 63. As a further proximate result of the aforementioned wrongful conduct
16 of Defendants, Plaintiff has suffered other consequential economic damages in a
17 sum to be determined at the time of trial.

18 64. Defendants' conduct described herein was intended by Defendants to
19 cause injury to Plaintiff or was despicable conduct carried on by Defendant with a
20 willful and conscious disregard of the rights of Plaintiff, subjected Plaintiff to cruel
21 and unjust hardship in conscious disregard of Plaintiff's rights, or was an intentional
22 misrepresentation, deceit, or concealment of a material fact known to Defendants
23 with the intention to deprive Plaintiff of property or legal rights or to otherwise
24 cause injury, such as to constitute malice, oppression or fraud under California Civil
25 Code §3294, thereby entitling Plaintiff to punitive damages in an amount
26 appropriate to punish or set an example of Defendants.

27 65. Defendants' conduct described herein was undertaken by its corporate
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1 officers or managing agents, identified herein as DOES 1 through 25, who were
2 responsible for claims supervision and operations, underwriting, communications,
3 and/or decisions. The aforementioned conduct of said managing agents and
4 individuals was therefore undertaken on behalf of the corporate Defendants. Said
5 corporate Defendants further had advance knowledge of the actions and conduct of
6 these individuals whose actions and conduct were ratified, authorized, and approved
7 by managing agents whose precise identities are unknown to Plaintiff at this time
8 and are therefore identified and designated herein as DOES 1 through 25, inclusive
9

10 PRAYER FOR RELIEF

11 WHEREFORE, Plaintiffs pray for judgment as follows:

- 12 1. For general, special, and consequential damages according to proof;
 - 13 2. For attorneys' fees, witness fees and costs of litigation incurred by
14 Plaintiffs to obtain the Policy benefits in an amount to be determined at trial
 - 15 3. For punitive and exemplary damages;
 - 16 4. For equitable entitlement to attorney's fees and costs;
 - 17 5. For a preliminary and permanent injunction prohibiting ALLSTATE
18 from engaging in the conduct described herein;
 - 19 6. For any and all other relief available under Business and Professions
20 Code sections 17200 and 17500, et. seq., including but not limited to disgorgement
21 of profits received through ALLSTATE's failure to abide by the notice provisions
22 under CA Insurance Code Section 661 et. seq. when an insured's policy lapses due
23 to non-payment of premium.
 - 24 7. For pre-judgment interest on the sums owing under the contract; and
 - 25 8. For such other and further relief as the Court deems just and proper.
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Dated: April 2, 2019

By: *David Kaufman*
David Kaufman
Attorney for Plaintiff
MICHAEL FOXHOVEN