

1 who therefore sue these Defendants by such fictitious names. Plaintiffs pray leave to
2 amend this Complaint to show the true names and capacities of said Does when the
3 same have been ascertained. Plaintiffs are informed and believe, and so allege, that
4 each of said Does is responsible for Plaintiffs' damages as hereinafter alleged and
5 described.

6 4. Plaintiffs are informed and believe, and so allege, that Defendants, and each of
7 them, at all times herein mentioned were, and now are, the agents, servants, employees,
8 and representatives of their co-defendants, and acting within the scope, purpose, and
9 authority of such agency, service, employment, and representation, and with the
10 permission, knowledge, and consent of their co-defendants.

11 5. Defendant Oregon Mutual under policy BSP712181 provided to Plaintiffs
12 Arvind Agarwal and Alka Agarwal coverage under a Business Owners Coverage ISO
13 form policy BP0003 0702 covering the property commonly known as 529 Calcaterra
14 Circle, Las Vegas NV 89119. Said coverage was in effect in 2009 and 2010, including a
15 renewal policy with Oregon Mutual Insurance for the policy term of April 15, 2009 through
16 April 15, 2010.

17 6. The Oregon Mutual policy states that it provides coverage for the following:

18 SECTION I – PROPERTY

19 A. Coverage

20 We will pay for direct physical loss of or damage to Covered Property at the
21 premises described in the Declarations caused by or resulting from any Covered
22 Cause of Loss.

23 The losses covered by the Oregon Mutual policy include for vandalism damage and
24 stolen / broken property not caused by normal wear and tear, marring, and deterioration.

25 Vandalism and theft are covered losses. This is confirmed by certain limitations in
26 the policy defining "Specified causes of loss" and in portions of the policy stating when
27 losses caused by vandalism are not covered. The policy states in relevant part

28 8. Vacancy

a. Description Of Terms

1 (1) As used in this Vacancy Condition, the term building and the term vacant have
2 the meanings set forth in Paragraphs (a) and (b) below:

3 (a) When this policy is issued to a tenant, and with respect to that tenant's interest
4 in Covered Property, building means the unit or suite rented or leased to the
5 tenant. Such building is vacant when it does not contain enough business
6 personal property to conduct customary operations.

7 (b) When this policy is issued to the owner or general lessee of a building, building
8 means the entire building. Such building is vacant unless at least 31% of its total
9 square footage is:

10 (ii) Used by the building owner to conduct customary operations.

11 b. Vacancy Provisions

12 If the building where loss or damage occurs has been vacant for more than 60
13 consecutive days before that loss or damage occurs:

14 (1) We will not pay for any loss or damage caused by any of the following even if
15 they are Covered Causes of Loss:

16 (a) Vandalism;

17 H. Property definitions

18 12. "Specified causes of loss" means the following:

19 Fire; lightning;vandalism; ...

20 The 529 Calcaterra property was not vacant within the meaning of the policy through at
21 least March 22, 2010. Coverage was provided under the terms of the policy for
22 vandalism losses

23 7. Plaintiffs Arvind Agarwal and Alka Agarwal sustained property damage and
24 loss within the meaning of Business Owners Coverage ISO form policy BP0003 07 02
25 due to vandalism and theft at 529 Calcaterra Circle, Las Vegas NV 89119. Plaintiffs
26 discovered the extent of the damage and loss on or about April 2, 1010.

27 8. Plaintiffs Arvind Agarwal and Alka Agarwal sustained a business interruptions
28 loss within the meaning of Business Owners Coverage ISO form policy BP 00 03 01 06
from income received from rental of housing units at 529 Calcaterra Circle, Las Vegas
NV 89119. This damage and loss was discovered on or about April 2, 1010. This
damage and loss was incurred on and after March 22, 2010.

1 9. The terms of the Oregon Mutual policy provided that Plaintiffs as beneficiaries
2 were to be paid for the amount of their property damage and loss subject to deductibles
3 and to be paid for the amount of the business interruptions loss subject to certain limits.

4 10. Plaintiffs paid premiums, and performed all other obligations they have and
5 had under the terms of said policy. Plaintiffs have fulfilled all obligations required of them
6 under the contract

7 11. Plaintiffs reported to Defendant Oregon Mutual their losses on or about April
8 2, 2010, and have at various times thereafter provided to Oregon Mutual information and
9 documentation to support their claims under the Oregon Mutual policy.

10 12. Defendant Oregon Mutual has had in its possession since at least May of
11 2010 "independent adjuster" reports by John Drase of Drase Adjusting Services, Inc.,
12 photographs attached to the Drase Reporting reports, police reports, and contractor
13 repair reports identifying covered claims.

14 13. Arvind Agarwal provided lease agreements and source documents including a
15 repair estimate and police reports. Arvind Agarwal prepared a Sworn Statement in Proof
16 of Loss. Arvind Agarwal provided documents and testimony in an Examination Under
17 Oath on September 23 and November 10, 2010. These documents and this testimony
18 provided additional facts to support coverage under the Oregon Mutual policy.

19 14. Defendant Oregon Mutual has wrongfully refused to make payment on
20 Plaintiffs' claims or to even identify any basis for denial of all or part of Plaintiffs' claims.

21 15. There was and is no basis for denying all of Plaintiffs' claims or for failing or
22 refusing to pay for undisputed portions of Plaintiffs' claims.

23 16. Plaintiffs Arvind and Alka Agarwal also sustained a loss of business income
24 since April 1, 2010. They had been renting four of the units, and have been without that
25 income because of the delays in making payments.

26 17. Plaintiffs have paid out of their own pocket for repairs, but have been unable
27 to repair the entirety of the property damage and have again been experiencing reduced
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1 rentals because of the failure and refusal of Oregon Mutual to pay any part of the claim
2 and thus an inability to afford all required repairs and replacement of stolen and
3 vandalized properties.

4 18. Plaintiffs have retained counsel to assist in obtaining payments under the
5 Oregon Mutual policy. Counsel for Plaintiffs sent letters of October 18, 19 and 26,
6 September 1, 11, and December 20, 2010 and February 18, 2011 to Oregon Mutual and
7 its counsel seeking to obtain payment for at least the undisputed elements of Plaintiffs'
8 claims. Oregon Mutual to this date has failed and refused to make any payment to
9 Plaintiffs.

10 19. Plaintiff contends, and Defendant Oregon Mutual denies, that Plaintiffs are
11 entitled to payment of benefits under that policy.

12 20. It is because of the foregoing matters that Plaintiffs desire a judicial
13 determination of their rights and duties and of the rights and duties of Oregon Mutual.
14 Plaintiffs seek a judicial a declaration that Plaintiffs are entitled to payment of policy
15 benefits in accordance with the terms of the Oregon Mutual policy. Such a declaration is
16 necessary and appropriate in order that these Plaintiffs may ascertain their rights and
17 duties, and so that a multiplicity of actions may be avoided.

18 WHEREFORE Plaintiffs pray for judgment against Defendants as hereinafter set
19 forth.

20 **Second Cause of Action**

21 **(Breach of Contract)**

22 21. Plaintiffs reallege and incorporate the allegations contained in paragraphs 1
23 through 20 of the First Cause of Action herein.

24 22. Plaintiffs have sustained losses in the amount of property damage and
25 business interruptions losses not paid, interest on the principal sum from and after not
26 later than May 22, 2010, being 40 days after the reporting of the claim and the
27 reasonable date for completion of the evaluation of the claim under the timing standards
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1 set forth in California Administration Code, title 10, section 2695.7, concerning the
2 Standards for Prompt, Fair and Equitable Settlements. These losses have been incurred
3 and sustained as a direct, proximate and legal result of Defendant Oregon Mutual's
4 breach of contract in delaying making a decision on and thereby effectively denying
5 Plaintiffs' property damage claim and business interruptions claim.

6 23. Coverage under the policy for those losses due to vandalism and theft are
7 clear. The covered losses are certain, documented, and substantial in nature and
8 amount. Yet benefits due under the policy have been withheld. There is clear evidence
9 that at least some of Plaintiffs' property damages are covered claims and that Plaintiffs'
10 business interruptions claims are covered and well founded. An insurer may not ignore
11 evidence in a file supporting a claim, while focusing on facts supporting a denial.
12 Delgado v Heritage Life Insurance Co. (1984) 157 Cal.App.3d 262, 203 Cal.Rptr. 672
13 (failure to objectively evaluate claim). An insurer cannot create a "genuine dispute" of its
14 obligations to its insured by ignoring evidence supporting the insured. "If it does so, it
15 acts unreasonably towards its insured and breaches the covenant of good faith and fair
16 dealing." Mariscal v. Old Republic Life Insurance Co. (1996) 42 Cal.App.4th 1617, 1624,
17 50 Cal.Rptr.2d 224.

18 24. Oregon Mutual had sufficient information in its possession to support
19 payments to Plaintiffs under the Oregon Mutual policy. It has unreasonably withheld
20 benefits from Plaintiffs. Oregon Mutual's unreasonableness in withholding of benefits
21 encompasses not only the failure to pay full benefits due under the policy but also the
22 unreasonable delay in payments. Love v. Fire Insurance Exchange (1990) 221
23 Cal.App.3d 1136, 1153, 271 Cal.Rptr. 246; Austero v. National Casualty Co. (1978) 84
24 Cal.App.3d 1, 29-30, 148 Cal.Rptr. 653.

25 25. Plaintiffs Alka Agarwal and Arvind Agarwal and each of them have sustained
26 severe emotional distress as a direct, proximate and legal result of Defendant Oregon
27 Mutual's failure and refusal to provide the benefits of the insurance policy.

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1 32. Defendant Oregon Mutual is aware, and since at least September of 2010
2 had been aware, of the Plaintiff's likely consequential damages caused directly,
3 proximately and legally by Defendant Oregon Mutual's unreasonable failure and delays
4 in paying for benefits when the obligation for payment is clear.

5 33. Plaintiffs Arvind and Alka Agarwal have sustained damage and impairment to
6 their credit and to their reputation as a direct, proximate and legal result of Defendant's
7 failure to provide the benefits of the insurance policy.

8 34. Plaintiffs Arvind and Alka Agarwal and each of them have sustained severe
9 emotional distress as a direct, proximate and legal result of Defendant's failure to provide
10 the benefits of the insurance policy.

11 35. Plaintiffs have been required to retain legal counsel to receive the benefits of
12 the contract. Plaintiffs are therefore entitled to recovery of court costs and reasonable
13 attorney's fees in accordance with Brandt v. Superior Court.

14 36. The actions of Defendants were taken in conscious disregard of Plaintiffs'
15 rights, and as well were fraudulent, oppressive and malicious. Plaintiffs are thus entitled
16 to recovery of exemplary damages to punish Defendant Oregon Mutual and make an
17 example of Oregon Mutual.

18 WHEREFORE Plaintiffs pray for judgment against Defendants as hereinafter set
19 forth.

20 **Fourth Cause of Action**

21 **Bad Faith**

22 37. Plaintiffs reallege and incorporate the allegations contained in paragraphs 1
23 through 36 of the First, Second and Third Causes of Action herein.

24 38. Defendant Oregon Mutual has failed to deal fairly and in good faith with its
25 insureds, Plaintiffs Alka Agarwal and Arvind Agarwal.

26 39. Plaintiffs Alka Agarwal and Arvind Agarwal have sustained monetary,
27 financial, and personal injury losses and damages as a direct, proximate and legal result

1 of Defendant Oregon Mutual's wrongful actions, .

2 40. Plaintiffs Alka Agarwal and Arvind Agarwal have sustained severe emotional
3 distress, damage to their credit and reputation, and are subject to further consequential
4 damages and losses as a direct, proximate and legal result of Defendant's failure to
5 provide the benefits of the insurance policy.

6 41. Plaintiffs have been required to retain legal counsel to receive the benefits of
7 the contract. Plaintiffs are therefore entitled to recovery of court costs and reasonable
8 attorney's fees in accordance with Brandt v. Superior Court.

9 42. The actions of Defendants were taken in conscious disregard of Plaintiffs'
10 rights, and as well were fraudulent, oppressive and malicious. Plaintiffs are thus entitled
11 to recovery of exemplary damages to punish Defendant Oregon Mutual and to make an
12 example of Oregon Mutual

13 WHEREFORE Plaintiffs pray for judgment against Defendants as hereinafter set
14 forth.

15 PRAYER FOR RELIEF

16 1. For a declaration of the rights and obligations of Plaintiffs Arvind Agarwal and
17 Alka Agarwal and of Defendant Oregon Mutual Insurance Company under the Oregon
18 Mutual policy BSP712181 including under the Businessowners Coverage Form including
19 a judicial determination that the Plaintiffs are entitled to payment for property damage
20 and for business interruptions coverage;

21 2. For payment by Defendant Oregon Mutual Insurance Company of the property
22 damage and business interruptions benefits under Oregon Mutual policy BSP712181
23 including under the Businessowners Coverage Form;

24 3. For recovery of damages and injuries including consequential damages
25 sustained by Plaintiffs including for severe emotional distress;

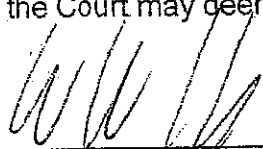
26 4. Interest thereon at the rate of ten percent per annum from and after May 22,
27 2010;

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- 5. For reasonable attorney's fees;
- 6. For costs of suit in this action;
- 7. For exemplary damages to punish and make an example of Defendants; and
- 8. For such other and further relief as the Court may deem proper.

Dated: March 21, 2011



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