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8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA, SOUTHERN NEVADA**

10	BRISA ELIZABETH CHACON-SOLIS,	)	CASE NO. 2:15-cv-00627-RFB-CWH
11		)	
12	Plaintiff,	)	<b>STIPULATION AND ORDER TO AMEND</b>
13	v.	)	<b>PLAINTIFF'S COMPLAINT</b>
14		)	
15	STATE FARM FIRE & CASUALTY	)	
16	COMPANY;	)	
17	ROE INSURANCE COMPANY,	)	
18	DOES I through X, and	)	
19	ROE CORPORATIONS I through X,	)	
20		)	
21	Defendants.	)	

22 IT IS HEREBY STIPULATED by and between the parties in the above-referenced matter  
 23 by and through their attorneys of record that Plaintiff's Complaint be amended. Specifically, the  
 24 initial Paragraph of the Complaint be amended to replace FARMERS INSURANCE  
 25 EXCHANGE, (hereinafter "FARMERS"... to STATE FARM FIRE & CASUALTY COMPANY,  
 26 (hereinafter "STATE FARM"... ; and Paragraph 39 to be amended to read as follows:

27 On or about July 24, 2014, the DEFENDANTS, and each of them, sent the  
 28 Plaintiff correspondence stating that the Plaintiff had not sent any new  
 information; causing the DEFENDANTS to close the UIM claim. The  
 same correspondence stated that the UIM claim value did not exceed the  
 combined Torres-Acosta policy limits and Medical Payments coverage of

...

1 \$25,000.00. The DEFENDANTS did not provide the basis for this  
2 evaluation.

3 A copy of the proposed Amended Complaint is attached hereto as Exhibit "1".

4 DATED this 27th day of May, 2015.

5 LEWIS BRISBOIS BISGAARD & SMITH

G. DALLAS HORTON & ASSOCIATES

6  
7 /s/ Gregory S. Bean, Esq.  
8 ROBERT W. FREEMAN, ESQ.  
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10 GREGORY S. BEAN, ESQ.  
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12 6385 S. Rainbow Blvd., Suite 600  
13 Las Vegas, Nevada 89118  
14 *Attorneys for Defendant*

/s/ David L. Thomas, Esq.  
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15 ORDER

16 IT IS SO ORDERED:

17  
18  
19 Submitted by:

20 G. DALLAS HORTON & ASSOCIATES



RICHARD F. BOULWARE, II  
United States District Judge

DATED this 1st day of June, 2015.

21  
22 /s/ David L. Thomas, Esq.  
23 G. DALLAS HORTON, ESQ.  
24 Nevada Bar No. 5996  
25 DAVID L. THOMAS, ESQ.  
26 Nevada Bar No. 3172  
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11 *Attorneys for Plaintiff*

8 UNITED STATES DISTRICT COURT

9 DISTRICT OF NEVADA, SOUTHERN NEVADA

10 BRISA ELIZABETH CHACON-SOLIS, ) CASE NO. 2:15-cv-00627-RFP-CWH  
11 )  
12 Plaintiff, ) **PLAINTIFF'S PROPOSED AMENDED**  
13 v. ) **COMPLAINT**  
14 )  
15 STATE FARM FIRE & CASUALTY )  
16 COMPANY; )  
17 ROE INSURANCE COMPANY, )  
18 DOES I through X, and )  
19 ROE CORPORATIONS I through X, )  
20 )  
21 Defendants. )

18 COMES NOW, Plaintiff, BRISA ELIZABETH CHACON-SOLIS, an individual,  
19 (hereinafter "Plaintiff"), by and through her attorneys, G. DALLAS HORTON & ASSOCIATES,  
20 and for Plaintiff's causes of action against Defendant, STATE FARM FIRE & CASUALTY  
21 COMPANY, (hereinafter "STATE FARM" or "DEFENDANTS, and each of them"), a foreign  
22 corporation, and each of them, alleges as follows:  
23

24 **PARTIES**

25 1. That at all times relevant herein, Plaintiff was and is a resident of Clark County,  
26 Nevada.  
27  
28

1           2.       That at all times relevant herein, STATE FARM FIRE & CASUALTY  
2 COMPANY, was and is a foreign corporation licensed to sell insurance in the state of Nevada.

3           3.       That STATE FARM FIRE & CASUALTY maintains a place of business in  
4 Nevada, maintains business licenses issued exclusively by the State of Nevada and its political  
5 subdivisions, hires employees who work and reside in Nevada, advertises in Nevada, enters into  
6 contracts with Nevada residents with the intent that said contracts be performed in Nevada and  
7 interpreted solely under Nevada law, pays business taxes in the State of Nevada, and otherwise  
8 acts with the intent to be a corporate citizen domiciled in Nevada, with an intent to remain in the  
9 State of Nevada for an indefinite period of time.

10           4.       Pursuant to NRCP 10(a) and Nurenberger Hercules-Werke GMBH v. Virotek, 107  
11 Nev. 873, 822 P.2d 1100 (1991), the identity of resident and non-resident defendants designated  
12 herein as ROE INSURANCE COMPANY, DOES I through X, and ROE CORPORATIONS I  
13 through X, inclusive, are unknown to Plaintiff at the present time; however, it is alleged and  
14 believed these Defendants were involved in the initiation, approval, support, or execution of the  
15 wrongful acts upon which this action is premised, or of similar actions directed against Plaintiff  
16 about which they are presently unaware. It is alleged that said DOE and ROE Defendants directly  
17 and proximately caused injury and damages thereby to Plaintiff. As the specific identities of these  
18 parties are revealed through the course of discovery, the DOE and ROE appellations will be  
19 replaced to identify these parties by their true names and capacities.

20           5.       That named Defendants, ROE INSURANCE COMPANY, DOE Defendants, and  
21 ROE CORPORATION Defendants, and each of them, at all relevant times, were the owner,  
22 partner, servant, officer, agent, and employee of all the other Defendants, and each of them, and  
23  
24  
25  
26  
27  
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1 were at all relevant times acting within the scope and performance of said partnership, agency,  
2 master/servants, and employment relationship.

3 **FACTS RE: ACCIDENT**

4 6. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 5 of  
5 the Complaint as though fully set forth herein by reference.

6  
7 7. That on or about November 12, 2013, Plaintiff was stopped for a red light in a 2009  
8 Chevrolet Traverse in the left turn lane on eastbound Cheyenne Avenue at that street's intersection  
9 with Pecos Road in North Las Vegas, Clark County, Nevada.

10 8. At that same date and time, Augustin Torres-Acosta ("Torres-Acosta") was  
11 operating a 1994 Chevrolet Astro Van on eastbound Cheyenne behind the Plaintiff in the left turn  
12 lane when his vehicle struck Plaintiff's vehicle.

13  
14 9. That Torres-Acosta was negligent and was liable for Plaintiff's damages.

15 10. At that date, time and place, Torres-Acosta violated one or more statutes, codes,  
16 ordinances or rules which governed the operation of his vehicle which were enacted to protect  
17 persons such as Plaintiff and prevent the types of injuries and damages Plaintiff sustained, and  
18 Torres-Acosta was negligent *per se*, and was liable for Plaintiff's damages.

19  
20 11. That as a direct and proximate result of the acts and omissions of Torres-Acosta,  
21 Plaintiff sustained great pain of body and mind, including serious and painful physical injuries to  
22 Plaintiff, as well as shock and injury to Plaintiff's nervous system entailing mental stress, anxiety,  
23 and anguish, all or some of which conditions may be permanent and disabling in nature, all to  
24 Plaintiff's general damages in an amount in excess of \$10,000.00.

25  
26 12. That as a direct and proximate result of the acts and omissions of Torres-Acosta,  
27 Plaintiff incurred expenses for medical care and expenses incidental thereto, and upon information  
28

1 and belief, such expenses and damages will continue in the future, all to Plaintiff's damage in a  
2 presently unascertainable amount.

3 13. That as a direct and proximate result of the acts and omissions of Torres-Acosta,  
4 Plaintiff lost income and earning capacity, and upon information and belief, such damages will  
5 continue in the future, all to Plaintiff's damage in a presently unascertainable amount.  
6

7 14. That at the time of the collision, Torres-Acosta was covered by liability insurance  
8 with Allstate Insurance Company, with limits of \$15,000.00 per person and \$30,000.00 per  
9 accident.

10 15. That Plaintiff made a claim against Torres-Acosta for damages and settled for  
11 \$15,000.00 on April 11, 2014.  
12

13 16. That the settlement with Torres-Acosta did not compensate Plaintiff for all damages  
14 suffered because of the negligence of Torres-Acosta.

15 **CLAIMS AGAINST DEFENDANTS**

16 17. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 16  
17 of the Complaint as though fully set forth herein by reference.  
18

19 18. That at the time of the collision, the Plaintiff was insured for underinsured motorist  
20 ("UIM") coverage by DEFENDANTS, and each of them, for her own vehicle under policy  
21 #085947828A with coverage limits of \$100,000.00 per person and \$300,000.00 per accident.  
22

23 19. That on or about November 15, 2013, Plaintiff, through her counsel (hereinafter  
24 referred to jointly as Plaintiff), pursuant to and in compliance with all the requirements of the UIM  
25 insurance policy, notified DEFENDANTS, and each of them, of counsel's representation of the  
26 Plaintiff and the Plaintiff's UIM claim.  
27  
28

1           20.     That on or about November 18, 2013, the DEFENDANTS, and each of them,  
2 acknowledged Plaintiff's claim. On the same date, by separate correspondence, the  
3 DEFENDANTS also sent the Plaintiff a confirmation of the coverage stated above.

4           21.     That on or about November 19, 2013, the DEFENDANTS, and each of them, sent  
5 correspondence to Plaintiff confirming that they were aware that the Plaintiff was injured in the  
6 subject "loss". The same correspondence also informed that Plaintiff that the DEFENDANTS  
7 provided her Medical Payments coverage "for reasonable expenses for necessary medical  
8 treatment resulting from the accident" "for three years from the date of the accident date, up to a  
9 limit of \$10,000.00 per person." The same correspondence enclosed a Medical Authorization for  
10 Release of Information that the DEFENDANT asked the Plaintiff to complete and return. The  
11 same correspondence also informed the Plaintiff that the DEFENDANT "may require examination  
12 by a physician(s) of our choice and paid by us under the terms of this policy".

13           22.     The same correspondence informed the Plaintiff that the DEFENDANT had "the  
14 right to make or obtain a utilization review of the medical expenses and services to determine if  
15 they are reasonable and necessary".

16           23.     That on or about November 25, 2013, the Plaintiff contacted the DEFENDANTS,  
17 and each of them, by phone and provided the DEFENDANTS all of the information that the  
18 Defendants stated that they needed.

19           24.     That on or about December 3, 2013, the DEFENDANTS, and each of them, sent a  
20 correspondence again confirming that they had received the Plaintiff's letter of representation  
21 described above and again stating that they were handling the Medical Payments coverage portion  
22 of the claim. The same correspondence also requested "an injury and treatment status" in order to  
23 update their file.  
24  
25  
26  
27  
28

1           25.     That on or about December 10, 2013, the Plaintiff sent the DEFENDANTS, and  
2 each of them, executed Medical Authorization, Injury Questionnaire, and Medical Provider form.

3           26.     That on or about February 19, 2014, the DEFENDANTS, and each of them, also  
4 sent the Plaintiff correspondence informing her that the claim had been referred to "State Farm's  
5 Subrogation Services" who will attempt to recover payments made by "State Farm from the party  
6 or parties responsible for your loss."

7  
8           27.     That also on or about February 19, 2014, the DEFENDANTS, and each of them,  
9 sent the Plaintiff separate correspondence confirming counsel's representation of the Plaintiff "for  
10 damages or injuries sustained in the loss of November 12, 2013." The same letter informed  
11 counsel of the DEFENDANTS' intent to seek subrogation for "Rental/Loss of Use Coverage in the  
12 amount of \$239.41" and asked counsel to not take any action that would jeopardize those  
13 subrogation rights.  
14

15           28.     That on or about April 1, 2014, the Plaintiff sent the DEFENDANTS, and each  
16 them, correspondence enclosing billing and medical records from Dr. Brian Lemper, D.O.; Align  
17 Chiropractic; and Centennial Medical Imaging. The medical billing totaled \$40,572.50. The same  
18 correspondence requested that the DEFENDANTS make a check payable to the Plaintiff and her  
19 attorney under the Medical Payments portion of the DEFENDANTS' insurance policy.  
20

21           29.     That on or about April 2, 2014, the Plaintiff, pursuant to and in compliance with all  
22 the requirements of the UIM policy of insurance, presented DEFEDANTS, and each of them, with  
23 a proof claim for damages for injuries to the Plaintiff's neck, mid-back, low back; and abdomen.  
24

25           30.     That the proof of claim contained medical records and billing showing that the  
26 Plaintiff incurred \$78,189.00 in medical treatment and billing as a result of the subject accident; a  
27  
28



1 traffic accident report; a property damage estimate showing \$3,661.37 in property damage; and a  
2 letter from Allstate indicating its policy limits for Torres-Acosta.

3 31. That based upon the proof of claim and pursuant to and in compliance with the  
4 requirements of DEFENDANTS' UIM insurance policy, on April 2, 2014, the Plaintiff demanded  
5 the DEFENDANTS' \$100,000.00 policy limits of UIM coverage, and gave DEFENDANTS, and  
6 each of them, 30 days to evaluate and pay the claim.  
7

8 32. That based upon the proof of claim, DEFENDANTS, and each of them, knew or  
9 should have known, that Torres-Acosta's underlying \$15,000 liability policy with Allstate was  
10 insufficient to compensate the Plaintiff for the injuries Torres-Acosta caused the Plaintiff.  
11

12 33. That on or about April 9, 2014, the DEFENDANTS, and each of them, paid the  
13 \$10,000.00 Medical Payments insurance coverage.

14 34. That, as mentioned above, on or about April 14, 2014, Allstate settled with the  
15 Plaintiff for the \$15,000.00 policy limits  
16

17 35. That on or about April 22, 2014, the DEFENDANTS, and each of them, sent the  
18 Plaintiff correspondence confirming a conversation wherein the DEFENDANTS requested an  
19 itemized bill from Dr. Lemper so that they could continue their evaluation of the Plaintiff's claim.  
20 The same correspondence also indicated that the DEFENDANTS may have other questions upon  
21 receipt of the itemized billing. The correspondence did not explain why the DEFENDANTS could  
22 not have utilized the Plaintiff's medical authorization to obtain the information themselves.  
23

24 36. That on or about May 30, 2014, the Plaintiff sent the DEFENDANTS, and each of  
25 them, correspondence enclosing Dr. Lemper's itemized billing. The same correspondence  
26 confirmed the Plaintiff's correspondence that the itemized billing was all the DEFENDANTS  
27 needed to continue the evaluation of the Plaintiff's UIM demand and requested that the  
28

1 DEFENDANTS contact Plaintiff upon receipt of the itemized billing in order to proceed with  
2 settlement discussions.

3 37. That on or about June 4, 2014, the DEFENDANTS, and each of them, contacted  
4 Plaintiff and stated that they had not yet reviewed the records and that they needed until June 11,  
5 2014 to respond to the Plaintiff's policy limits demand. The Plaintiff gave the DEFENDANTS the  
6 additional week. On or about the same date, the DEFENDANTS requested an additional week in  
7 which to evaluate the demand, making the DEFENDANTS' response now due on June 18, 2014.

9 38. On or about June 11, 2014, the Plaintiff sent the DEFENDANTS, and each of them,  
10 a copy of the release Plaintiff executed for Allstate's \$15,000.00 policy limits.

11 39. On or about July 24, 2014, the DEFENDANTS, and each of them, sent the Plaintiff  
12 correspondence stating that the Plaintiff had not sent any new information; causing the  
13 DEFENDANTS to close the UIM claim. The same correspondence stated that the UIM claim  
14 value did not exceed the combined Torres-Acosta policy limits and Medical Payments coverage of  
15 \$25,000.00. The DEFENDANTS did not provide the basis for this evaluation.  
16

17 40. That based upon the proof of claim and all other evidence the DEFENDANTS, and  
18 each of them, had or should have had in their possession by this time; the DEFENDANTS knew or  
19 should have known that the above mentioned \$25,000.00 was sufficient to compensate the Plaintiff  
20 for the injuries Torres-Acosta caused the Plaintiff.  
21

22 41. The DEFENDANTS, and each them, gave a valuation to the Plaintiff's UIM claim  
23 that was so low as to shock the conscience of a reasonable person.  
24

25 42. That the DEFENDANTS' valuation of the Plaintiff's UIM claim, upon information  
26 and belief, was done without a reasonable basis or reasonable investigation prior to making it.  
27 These failures include, but are not limited to, DEFENDANTS' failure to take a recorded statement  
28

1 to determine the extent of the Plaintiff's special and general damages; failure to conduct a medical  
2 examination of the Plaintiff; failure to consult with either the Plaintiff's treating physicians or  
3 (upon information and belief) other medical consultants regarding the customary and  
4 reasonableness of the medical charges the Plaintiff's medical practitioner's charged the Plaintiff;  
5 failure to consult with either the Plaintiff's treating physicians or (upon information and belief)  
6 other medical consultants regarding the Plaintiff's injuries, and/or the reasonableness, necessity,  
7 and causation of the past treatment or any future treatment the Plaintiff sought to recover under the  
8 UIM coverage, and/or the past and future pain and suffering that the Plaintiff sought to recover  
9 under the UIM coverage, and/or the past lost wages and/or future diminished earning capacity that  
10 the Plaintiff sought to recover under the UIM coverage.  
11  
12

13 43. That the DEFENDANTS' valuation of the Plaintiff's UIM claim, upon information  
14 and belief, was done without a reasonable basis or reasonable investigation including, but not  
15 limited to, DEFENDANTS' failure to obtain any photos depicting the accident scene or vehicles  
16 involved in the subject accident; and to obtain any property damage repair estimates for the Torres-  
17 Acosta vehicle.  
18

19 44. That at all times relevant herein, DEFENDANTS, and each of them, violated  
20 multiple duties owed by an insurance company to an insured making a claim created by one or  
21 more common laws, Nevada Revised Statutes, or Nevada Administrative Code provisions;  
22 including, but not limited to, of NRS 686A.310, NAC 686A.660, and NAC 686A.675 as follows:  
23

- 24 a) DEFENDANTS, and each of them, violated NRS 686A.310 (n) which  
25 requires an insurance company to promptly provide an insured a  
26 reasonable explanation of the basis in the insurance policy, with respect to  
27 the facts of the insured's claim and the applicable law, for the denial of the  
28 claim or for an offer to settle or compromise the claim;
- b) DEFENDANTS, and each of them, violated NAC 686A.675(1) which  
prohibits an insurance company from denying a claim based upon a specific

1 policy provision, condition or exclusion without referencing that provision,  
2 condition or exclusion in the denial;

3 c) DEFENDANTS, and each of them, violated NAC 686A.675 (3) which  
4 requires an insurance company to give a first party claimant the reasons  
5 why additional time is needed to investigate the claim every 30 days after  
6 receipt of the claimant's initial proof of loss;

7 g) DEFENDANTS, and each of them, violated NRS 686A.310 (c) which  
8 requires an insurance company to create and implement reasonable  
9 standards for the prompt investigation of claims, including appropriate  
10 procedures to support the insurer's assertions that a first party claimant's  
11 injury had been adequately compensated by the underlying tortfeasor's  
12 liability insurance and/or any setoffs to which the insurer is entitled.

13 h) DEFENDANTS, and each of them, violated NRS 686A.310 (f) which  
14 prohibits an insurance company from compelling an insured to institute  
15 litigation to recover amounts due under an insurance policy by offering  
16 substantially less than the amounts the insured claimed and ultimately  
17 recovered or offering nothing at all.

18 45. That Plaintiff has demanded DEFENDANTS, and each of them, to fully perform  
19 their UIM contractual obligations and DEFENDANTS, and each of them, have not done so.

20 46. That DEFENDANTS, and each of them, have acted unreasonably in carrying out  
21 their duties to Plaintiff.

22 **FIRST CAUSE OF ACTION**  
23 **(Breach of Contract)**

24 47. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 46  
25 of the Complaint as though fully set forth herein by reference.

26 48. That in exchange for consideration, DEFENDANTS, and each of them,  
27 contractually agreed to pay benefits under the UIM provisions of DEFENDANTS' insurance  
28 policy #085947828A.



1 disregard of the rights of Plaintiff; oppression; and/or, malice, express or implied, by among other  
2 acts, deliberately, intentionally, and with cognizance of the foreseeable consequences: not  
3 following at least one or more rules of the common law, Nevada Revised Statute, and Nevada  
4 Administrative Code provisions pertaining to the adjustment of first party claims during the  
5 adjusting of Plaintiff's claims; not performing one or more contractual provisions in the policy of  
6 insurance; and reaching medical conclusions before, upon information and belief, conducting a  
7 reasonable investigation including, but not limited to, using any medical consultation. For the  
8 above reasons, Plaintiff is entitled to exemplary damages as contemplated by NRS 42.005.

10 56. Upon information and belief, the employer and corporate DEFENDANTS, and each  
11 of them, are liable for exemplary damages by knowledge and actions that satisfy NRS 42.007  
12 including but not limited to maintaining the denial of the Plaintiff's claim and asserting a defense  
13 of this litigation even after learning of the negligence, failed contractual performance, and breach  
14 of covenants of good faith and fair dealings, committed by non-management employees and low  
15 level supervisors of non- management employees.

17 57. That Plaintiff had to retain the services of an attorney to prosecute this action  
18 against the Defendants and each of them, and is entitled to reasonable attorney's fees, prejudgment  
19 interest and costs of suit incurred herein as an item of special damages.

21 **THIRD CAUSE OF ACTION**  
22 **(Negligence)**

23 58. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 57  
24 of the Complaint as though fully set forth herein by reference.

25 59. That DEFENDANTS, and each of them, had a duty to conduct itself in a reasonable  
26 manner in its adjusting and evaluating of the Plaintiff's UIM claims.  
27  
28



