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ACE PROPERTY & CASUALTY  
7 COMPANY

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

11 ACE PROPERTY & CASUALTY  
12 INSURANCE COMPANY,

13 Plaintiff,

14 vs.

15 eBAY, INC., DEVIN WENIG,  
16 STEVE WYMER, JAMES BAUGH,  
DAVID HARVILLE, BRIAN  
17 GILBERT, STEPHANIE POPP,  
STEPHANIE STOCKWELL,  
18 PHILIP COOKE, VERONICA ZEA,  
and DOES 1 to 10, inclusive,

19 Defendants.

Case No.

**COMPLAINT FOR  
DECLARATORY JUDGMENT**

Demand for Jury Trial

21 **COMPLAINT FOR DECLARATORY JUDGMENT**

22 ACE Property and Casualty Insurance Company (“ACE”), by way of this  
23 complaint for declaratory judgment against the defendants, eBay, Inc. (“eBay”),  
24 Devin Wenig (“Wenig”), Steve Wymer (“Wymer”), James Baugh (“Baugh”), David  
25 Harville (“Harville”), Brian Gilbert (“Gilbert”), Stephanie Popp (“Popp”), Stephanie  
26 Stockwell (“Stockwell”), Philip Cooke (“Cooke”), Veronica Zea (“Zea”), and  
27 DOES 1 through 10 (collectively, the “Defendants”), alleges and states:  
28

1 **INTRODUCTION**

2 1. This is an insurance coverage action seeking declaratory relief pursuant  
3 to 28 U.S.C. §§ 2201 and 2202.

4 **JURISDICTION AND VENUE**

5 2. This Court has subject matter jurisdiction over this action for  
6 declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

7 3. An actual justiciable controversy between ACE and Defendants exists  
8 within the meaning of 28 U.S.C. § 2201 regarding whether ACE has a duty to  
9 indemnify any of the Defendants with respect to the claims asserted against them by  
10 husband and wife, David and Ina Steiner, of Natick, Massachusetts, and their  
11 company Steiner Associates, LLC, (collectively, the “Steiners”), in the United States  
12 District Court for the District of Massachusetts, captioned *Ina Steiner, et al. v. eBay,*  
13 *Inc., et al.*, Case No. 1:21-cv-11181-DPW (the “Civil Action”), as more particularly  
14 described below.

15 4. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1)  
16 because this suit is between citizens of different states and the amount in  
17 controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.  
18 Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the subject  
19 insurance policies were sold in this judicial district, the plaintiff and the named  
20 insured on those policies, eBay, maintains its principal place of business in this  
21 judicial district, and all of the defendants are, upon information and belief, residents  
22 of California.

23 **PARTIES**

24 5. Plaintiff ACE is an insurance company organized as a business  
25 corporation under the laws of the state of Pennsylvania with a principal place of  
26 business in Philadelphia, Pennsylvania.

27 6. Defendant eBay is a corporation organized under the laws of the state  
28 of Delaware with a principal place of business in San Jose, California (Santa Clara

1 County).

2 7. Defendant Wenig, eBay’s former Chief Executive Officer, is an  
3 individual who, upon information and belief, resides in California.

4 8. Defendant Wymer, eBay’s former Senior Vice President and Chief  
5 Communications Officer, is an individual who, upon information and belief, resides  
6 in California.

7 9. Defendant Baugh, eBay’s former Senior Director of Safety & Security,  
8 is an individual who, upon information and belief, resides in Utah and California.

9 10. Defendant Harville, eBay’s former Director of Global Resiliency, is an  
10 individual who, upon information and belief, resides in California.

11 11. Defendant Popp, eBay’s former Senior Manager of Global Intelligence,  
12 is an individual who, upon information and belief, resides in California.

13 12. Defendant Stockwell, a former intelligence analyst at eBay in its Global  
14 Intelligence Center, is an individual who, upon information and belief, resides in  
15 California.

16 13. Defendant Gilbert, eBay’s former Senior Manager of Special  
17 Operations for its Global Security Team, is an individual who, upon information and  
18 belief, resides in California.

19 14. Defendant Cooke, eBay’s former supervisor of security operations at its  
20 European and Asian offices, is an individual who, upon information and belief,  
21 resides in California.

22 15. Defendant Zea, a former contractor of eBay who was employed by a  
23 company called Progressive F.O.R.C.E. Concepts, LLC (“PFC”) and worked in  
24 eBay’s Global Intelligence Center, is an individual who, upon information and  
25 belief, resides in California.

26 16. The true names of the Defendants named as Does 1 through 10,  
27 inclusive, are unknown to Plaintiff. Plaintiff is informed and believes and herein  
28 alleges that there is, or will be, an actual controversy between ACE, on the one

1 hand, and each of these fictitiously named defendants, on the other hand, as to their  
2 respective rights and obligations under the ACE Umbrella Policies relating to the  
3 subject matter described below. Accordingly, ACE will move to amend this  
4 Complaint to show the true names and capacities of Does 1 through 10 when they  
5 have been ascertained.

6 **FACT ALLEGATIONS**

7 **The Steiners' Civil Action**

8 17. eBay, Wenig, and Wymer, along with the other Defendants, are each a  
9 named defendant in the Civil Action commenced by the Steiners on July 21, 2021.  
10 A copy of the Complaint filed by the Steiners in the Civil Action is attached hereto  
11 as Exhibit A.

12 18. In their Complaint filed in the Civil Action, the Steiners allege that they  
13 “operate EcommerceBytes, a trade publication where the Steiners report about  
14 various ecommerce companies, including eBay, in an effort to assist ecommerce  
15 sellers.”

16 19. The Steiners allege that, from June to August 2019, eBay “engaged in a  
17 systematic campaign to emotionally and psychologically torture” them and, along  
18 with the company PFC, “engaged in a coordinated effort to intimidate, threaten to  
19 kill, torture, terrorize, stalk and silence the Steiners, in order to stifle their reporting  
20 on eBay.”

21 20. The Steiners allege that Wenig, then Chief Executive Officer of eBay,  
22 and Wymer, then Senior Vice President and Chief Communications Officer of eBay,  
23 “consistently tracked EcommerceBytes’ reporting, and became increasingly enraged  
24 by what they perceived as the Steiners’ negative coverage of eBay and the upper  
25 echelons of the corporation.”

26 21. The Steiners further allege that “eBay, through its Chief Executive  
27 leadership, sent a directive and enlisted at least seven members of the eBay security  
28 staff – Defendants James Baugh, David Harville, Brian Gilbert, Stephanie Popp,

1 Stephanie Stockwell, Philip Cooke, and Veronica Zea, an eBay contractor employed  
2 by PFC . . . to deal with the Steiners” and that “Wenig and Wymer provided the  
3 other Defendants with carte blanche authority to terminate the reporting of the  
4 Steiners by whatever means necessary.”

5 22. According to the Complaint filed in the Civil Action, “[t]he events that  
6 followed shock the conscience, and demonstrate the utter depths eBay would stoop  
7 in order to take the Steiners down and end their reporting on eBay.” For instance,  
8 the Complaint alleges:

9 a. “Starting with an online intimidation campaign, the Defendants taunted  
10 Ina Steiner using a phony Twitter handle pretending to be an eBay  
11 seller, and directly threatened her to stop reporting on eBay.”  
12

13 b. “The online attacks continued to escalate into threatening and  
14 disturbing package deliveries, which included live spiders,  
15 cockroaches, a bloody pig mask, a funeral wreath, and a book entitled  
16 ‘Grief Diaries: Surviving Loss of a Spouse’ sent directly to David  
17 Steiner.”  
18

19 c. “These messages and deliveries often were . . . paired with taunting  
20 emails and deliveries, including pornography and ‘Hustler: Barely  
21 Legal’ magazines sent to the Steiner’s neighbors’ home in David  
22 Steiner’s name, to defame the Steiners and attempt to disgrace them  
23 and tarnish their reputation within their community.”  
24

25 d. “Defendants Wenig and Wymer’s henchmen, including Defendants  
26 Baugh, Harville and Zea, traveled over 3,000 miles from California to  
27 Natick, Massachusetts to continue the conspiracy to intimidate,  
28 threaten, terrorize, stalk and silence the Steiners.”

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- e. “Defendants Zea and Harville, carrying out the orders of eBay senior executives, menacingly stalked and tailed the Steiners in a black van and other rental vehicles, repeatedly circling the block, tracking their every move, and following David Steiner when he left the residence.”
- f. “The Defendants even went as far as to attempt to break into the Steiner garage in order to install a GPS tracking device on their vehicle.”
- g. “[T]he Defendants who remained in California, including but not limited to Defendants Popp, Stockwell, Cooke and Gilbert, continued with the online threats and stalking, and their menacing skull avatar Twitter handle began publicly posting the Steiners’ home address on Twitter along with threats to kill the Steiners.”
- h. “The Defendants also posted the Steiner’s [sic] address on Craigslist and other websites, inviting strangers to the Steiners’ home for sex parties, and advertising yard sales, announcing would-be visitors should knock on the door at all hours because ‘Everything must go!’”

23. According to the Complaint filed in the Civil Action, “[u]ltimately, Defendants Cooke, Gilbert, Popp, Stockwell, and Zea pled guilty to an Information in Federal District Court, District of Massachusetts, and Defendants Baugh and Harville were indicted, as a result of Defendants’ conspiracy to intimidate, threaten, torture, terrorize, stalk and silence the Steiners, and for misleading and tampering with the investigation.”

24. In the Civil Action, the Steiners allege that “[a]ll of the horrific, vicious and sickening conduct” against them “was committed by [the] employees of eBay

1 and PFC, while acting in the scope of their employment under the authority of and  
2 for the benefit of eBay and PFC.” They further allege that “the individually named  
3 Defendants were acting in concert with one another, as agents and employees of  
4 eBay and/or PFC, within the scope of their employment with the intent to benefit  
5 their employers in furtherance of eBay’s direct command – through Chief Executive  
6 Officer Defendant Wenig and Senior Vice President Chief Communications Officer  
7 Defendant Wymer – to silence the Steiners and their reporting, and all actions taken  
8 were in furtherance of that goal.”

9       25. For instance, the Steiners allege that “[t]he Defendants’ conspiracy to  
10 intimidate, threaten, torture, terrorize, stalk and silence David and Ina Steiner with  
11 the purpose to end their reporting about eBay was documented in emails and text  
12 messages” sent by eBay’s former executives, Wenig and Wymer, including:

- 13       a. “In response to a text sent by Defendant Wenig that linked to an article  
14 in which Ina Steiner observed that Defendant Wenig’s \$18 million  
15 compensation was 152 times that of an average eBay employee,  
16 Defendant Wymer wrote ‘[w]e are going to crush this lady.’”  
17
- 18       b. “When discussing the Wall Street Journal coverage on eBay, Defendant  
19 Wenig texted to Defendant Wymer, ‘[f]uck them. The journal is next  
20 on the list after [Ina Steiner].’”  
21
- 22       c. “Defendant Wymer texted to Defendant Baugh, ‘[Ina] is out with a hot  
23 piece on the litigation [between eBay and Amazon]. If we are ever  
24 going to take her down . . . now is the time.’”  
25
- 26       d. “When Defendant Wymer noted an article by Ina Steiner where she  
27 indicated Defendant Wenig ‘promised to give sellers greater protection’  
28 was ‘[s]hockingly reasonable,’ Defendant Wenig responded, ‘[t]ake her

1 down.”

2

3 e. “In a text exchange between Defendants Wymer and Baugh, Defendant  
4 Baugh stated, ‘[Devin Wenig] said to burn her to the ground correct?’  
5 and Defendant Wymer responded, ‘[Ina Steiner] is a biased troll who  
6 needs to get BURNED DOWN . . . I want to see ashes. As long as it  
7 takes. Whatever it takes.’”

8

9 f. “In an email from Defendant Wymer to Defendant Baugh, Defendant  
10 Wymer states that the website ‘gives [him] ulcers, harms employee  
11 moral [sic], and trickles into everything about our brand. I genuinely  
12 believe these people are acting out of malice and ANYTHING we can  
13 do to solve it should be explored. Somewhere, at some point, someone  
14 chose to let this slide. It has grown to a point that is absolutely  
15 unacceptable. It’s the ‘blind eye toward graffiti that turns into mayhem  
16 syndrome and I’m sick about it. Whatever. It. Takes.’”

17

18 g. “Defendant Wymer assured Defendant Baugh that he would ‘embrace  
19 managing any bad fall out. We need to STOP her.’”

20

21 26. The Steiners further allege that “[n]ot only were the directives from  
22 executive leadership, including Defendants Wenig and Wymer, with respect to the  
23 Steiners clear, the culture itself within eBay fostered an almost cult-like atmosphere  
24 where employees were not only expected, but required, to fulfill company  
25 directives, regardless of criminality.”

26 **Criminal Investigation, Criminal Charges and Guilty Pleas, and eBay’s Public**  
27 **Disclosures**

28 27. The criminal case against Defendants Gilbert, Popp, Stockwell, and



1 Zea for their conduct against the Steiners, referred to in the Civil Action, is *United*  
2 *States v. Gilbert, et al.*, United States District Court for the District of  
3 Massachusetts, Case No. 1:20-cr-10098-WGY (the “First Criminal Case”). As  
4 alleged in the Civil Action, in the First Criminal Case, on May 22, 2020, the United  
5 States filed an Information against Gilbert, Popp, Stockwell, and Zea, charging them  
6 with conspiracy to commit cyberstalking and conspiracy to obstruct justice. A true  
7 copy of the Information against Gilbert, Popp, Stockwell, and Zea is attached hereto  
8 as Exhibit B.

9       28. In October 2020, Gilbert, Popp, Stockwell, and Zea pleaded guilty to  
10 the charges against them in the First Criminal Case. True copies of the plea  
11 agreements of Gilbert, Popp, Stockwell, and Zea are attached hereto as Exhibit C.

12       29. The criminal case against Defendant Cooke for his conduct against the  
13 Steiners, referred to in the Civil Action, is *United States v. Cooke*, United States  
14 District Court for the District of Massachusetts, Case No. 1:20-cr-10126-ADB (the  
15 “Second Criminal Case”). As alleged in the Civil Action, in the Second Criminal  
16 Case, on July 7, 2020, the United States filed an Information against Cooke,  
17 charging him with conspiracy to commit cyberstalking and conspiracy to tamper  
18 with a witness. A true copy of the Information against Cooke is attached hereto as  
19 Exhibit D.

20       30. In October 2020, Cooke pleaded guilty to the charges against him in the  
21 Second Criminal Case. A true copy of the plea agreement of Cooke is attached  
22 hereto as Exhibit E.

23       31. The criminal case against Defendants Baugh and Harville for their  
24 conduct against the Steiners, referred to in the Civil Action, is *United States v.*  
25 *Baugh, et al.*, United States District Court for the District of Massachusetts, Case  
26 No. 1:20-cr-10263-PBS (the “Third Criminal Case”). As alleged in the Civil  
27 Action, in the Third Criminal Case, on November 3, 2020, Baugh and Harville were  
28 each indicted for conspiracy to commit stalking through interstate travel and through

1 facilities of interstate commerce, stalking through interstate travel, stalking through  
2 facilities of interstate commerce, witness tampering, and destruction, alteration, and  
3 falsification of records in a federal investigation. A true copy of the Indictment  
4 against Baugh and Harville is attached hereto as Exhibit F.

5 32. On April 25, 2022, Baugh, without any plea agreement, pleaded guilty  
6 to the charges against him in the Third Criminal Case. A true copy of the docket  
7 from the Third Criminal Case reflecting the entry of Baugh's guilty plea on April  
8 25, 2022 is attached hereto as Exhibit G.

9 33. On May 11, 2022, Harville pleaded guilty to the charges against him in  
10 the Third Criminal Case, with the exception only of the charges for witness  
11 tampering and destruction, alteration, and falsification of records. The United States  
12 agreed to dismiss the charges against Harville for witness tampering and destruction,  
13 alteration, and falsification of records, following the imposition of a sentence at the  
14 sentencing hearing. Harville pleaded guilty to all other charges against him in the  
15 Third Criminal Case. A true copy of the plea agreement of Harville is attached as  
16 Exhibit H.

17 34. As a part of the criminal investigation into eBay's conduct against the  
18 Steiners, eBay met with the Office of the United States Attorney for the District of  
19 Massachusetts on March 16, 2021 and presented a PowerPoint entitled "eBay  
20 Presentation on 'Federal Corporate Principles' to the Office of the U.S. Attorney for  
21 Massachusetts Concerning the August 2019 Crimes Committed by Former eBay  
22 Employees Against the Natick Couple" (the "eBay PowerPoint Deck"). eBay was  
23 ordered by the Court in the Third Criminal Case to disclose the eBay PowerPoint  
24 Deck.

25 35. The eBay PowerPoint Deck contained a stated purpose to persuade the  
26 United States Department of Justice ("DOJ") that, although "DOJ could take  
27 enforcement against the company [eBay]," "a decision not to take enforcement  
28 action against eBay . . . is in the interest of justice, the victims, and the public."

1           36. In the eBay PowerPoint Deck, eBay acknowledged “the seriousness of  
2 the misconduct and the company’s responsibility.” It further acknowledged, “The  
3 conduct of the seven defendants [i.e., Baugh, Harville, Popp, Stockwell, Gilbert,  
4 Cooke, and Zea] was clearly criminal, and eBay is troubled by the role here of its  
5 former-CEO [i.e., Wenig] and former Chief Communications Officer [i.e., Wymer]  
6 in particular.” The eBay Power Deck described Wymer’s conduct as “Inexcusable  
7 from any employee, much less an ELT member,” noted that eBay “fired [Wymer]  
8 for cause” “due to [the] Natick events” (emphasis original), and recognized that  
9 Wenig and Wymer had “contributed significantly to the crimes in Natick.”

#### **The ACE Umbrella Policies**

11           37. ACE issued a series of commercial umbrella liability policies to eBay,  
12 bearing policy number G27907349, with policy periods from October 1, 2015 to  
13 October 1, 2021 (collectively, the “ACE Umbrella Policies”). Copies of the ACE  
14 Umbrella Policies are attached hereto as Exhibit I.

15           38. Each of the ACE Umbrella Policies applies excess over the limits of  
16 insurance of an underlying primary commercial general liability policy issued by  
17 Zurich to eBay, bearing policy number GLO 4281314, for the same policy period as  
18 that of the ACE Umbrella Policy (collectively, the “Zurich Primary Policies”).  
19 Copies of the Zurich Primary Policies are attached hereto as Exhibit J.

20           39. Each of the ACE Umbrella Policies states, in part:

#### **I. INSURING AGREEMENT**

22           A. We will pay on behalf of the “insured” those sums in excess of  
23 the “retained limit” that the “insured” becomes legally obligated  
24 to pay as damages because of “bodily injury”, “property  
25 damage” or “personal and advertising injury” to which this  
26 insurance applies.

27           1. This insurance applies to “bodily injury” and “property  
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damage” that takes place in the “coverage territory”, but only if:

- a. The “bodily injury” or “property damage” is caused by an “occurrence”;
- b. The “bodily injury” or “property damage” occurs during the “policy period”; and
- c. Prior to the “policy period”, no “insured” and no “employee” authorized by you to give or receive notice of an “occurrence” or claim, knew that the “bodily injury” or “property damage” had occurred, in whole or in part. If any “insured” listed under Paragraph A. of Section II – Who Is An Insured or any authorized “employee” knew, prior to the “policy period”, that the “bodily injury” or “property damage” occurred, then any continuation, change or resumption of such “bodily injury” or “property damage” during or after the “policy period” will be deemed to have been known prior to the “policy period.”

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40. Each of the ACE Umbrella Policies contains the following exclusion:

**V. EXCLUSIONS**

This insurance does not apply to:

\*\*\*

**K. Expected or Intended Injury**

“Bodily injury” or “property damage” expected or

1 intended from the standpoint of the “insured”. This  
2 exclusion does not apply to “bodily injury” or “property  
3 damage” resulting from the use of reasonable force to  
4 protect persons or property.

5 41. The “Who Is An Insured” section of each of the ACE Umbrella  
6 Policies, as amended by endorsement, states:

7 B. Each of the following is an “insured”:

8 \*\*\*

9 “Employees” and co-“employees” while in the course of their  
10 employment or performing duties related to the conduct of your  
11 business are “insureds” for “bodily injury” or “personal and advertising  
12 injury”, but only if insurance for such “bodily injury” or “personal and  
13 advertising injury” is provided by a policy listed in the Schedule of  
14 “underlying insurance.” The insurance provided by this policy will not  
15 be broader than the insurance coverage provided by such policy of  
16 “underlying insurance”. Any conditions or exclusions in such policy of  
17 “underlying insurance” that limit or restrict the insurance coverage  
18 provided thereunder shall also limit and restrict the coverage provided  
19 under this policy.

20 \*\*\*

21 6. Any person or organization, if insured under “underlying  
22 insurance”, provided that coverage provided by this policy for  
23

24

1 any such insured will be no broader than coverage provided by  
2 “underlying insurance.”  
3

4 42. The ACE Umbrella Policies contain the following definition of  
5 “occurrence”:

6 O. “Occurrence” means:

7  
8 1. With respect to “bodily injury” or “property damage”, an  
9 accident, including continuous or repeated exposure to  
10 substantially the same general harmful conditions. All such  
11 exposure to substantially the same general harmful conditions  
12 shall be considered as arising out of the same ‘occurrence’,  
13 regardless of the frequency or repetition thereof, or the number  
14 of claimants.”  
15

16 43. The ACE Umbrella Policies contain the following definition of “bodily  
17 injury”:

18 C. “Bodily injury” means bodily injury, sickness or disease sustained by a  
19 person, including death resulting from any of these at any time.  
20 “Bodily injury” includes mental anguish or mental injury resulting from  
21 bodily injury.  
22

23 44. The ACE Umbrella Policies contain the following definition of  
24 “property damage”:

25 U. “Property damage” means:

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27 1. Physical injury to tangible property, including all resulting loss  
28 of use of that property. All such loss of use will be deemed to

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occur at the time of the physical injury that caused it; or

2. Loss of use of tangible property that is not physically injured. All such loss of use will be deemed to occur at the time of the “occurrence” that caused it.

For purposes of this insurance, electronic data is not tangible property. As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

45. The ACE Umbrella Policies contain the following definition of “employee”:

- E. “Employee” means an individual working for you in return for remuneration. “Employee” includes a “leased work”. “Employee” does not include a “temporary work” or independent contractor.”

46. Each of the ACE Umbrella Policies also contains a Follow Form Personal Injury Amendatory Endorsement – Exclusion of Advertising Injury endorsement, which states:

The policy is amended as follows:

1. The definition of “personal and advertising injury” is deleted.

1           2.     All references to “personal and advertising injury” in the policy  
2           or any other endorsement to the policy are deemed to refer to  
3           “personal injury” only, as that term is defined in the following  
4           “underlying insurance”:

5                     Zurich Policy Number GLO 4281314 10, effective  
6                     10/1/18<sup>1</sup> as amended by endorsement entitled Personal and  
7                     Advertising Injury Definition Amendment.

8  
9           3.     With respect to such “personal injury” coverage only, the terms,  
10           definitions, limitations and exclusions of the above “underlying  
11           insurance”, are incorporated herein by reference and apply to this  
12           insurance, provided always that this insurance is excess of the  
13           “retained limit”.

14  
15           4.     This insurance does not apply to “advertising injury”.

16  
17           5.     Under no circumstances will this insurance provide broader  
18           coverage for “personal injury” than that afforded by the above  
19           “underlying insurance.”

20           All other terms and conditions of this policy remain unchanged.

21           47.    With respect to “personal injury” coverage, each of the Zurich Primary  
22           Policies states, in part:

23                     **COVERAGE B – PERSONAL AND ADVERTISING INJURY**

24  
25           <sup>1</sup> For each of the ACE Umbrella Policies, the endorsement references the policy  
26           number of the Zurich Primary Policy with the last two digits of the policy number  
27           and the referenced effective date reflecting the policy issued for *that* particular  
28           policy period, e.g., “10” and “effective 10/1/18” for the Zurich Primary Policy in  
          effect from October 1, 2018 to October 1, 2019.



1 **LIABILITY**

2 **1. Insuring Agreement**

3 a. We will pay those sums that the insured becomes legally  
4 obligated to pay as damages because of “personal and  
5 advertising injury” to which this insurance applies . . .

6 b. This insurance applies to “personal and advertising injury”  
7 caused by an offense arising out of your business but only if the  
8 offense was committed in the “coverage territory” during the  
9 policy period.

10  
11 48. Each of the Zurich Primary Policies contains an endorsement entitled  
12 “Personal and Advertising Injury Definition Amendment,” which states:

13 THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER:  
14 COMMERCIAL GENERAL LIABILITY COVERAGE PART

15  
16 A. PERSONAL AND ADVERTISING INJURY DEFINITION  
17 AMENDMENT THE “PERSONAL AND ADVERTISING INJURY”  
18 DEFINITION UNDER DEFINITIONS SECTION IS REPLACED BY  
19 THE FOLLOWING:

20  
21 “PERSONAL AND ADVERTISING INJURY” MEANS INJURY,  
22 INCLUDING CONSEQUENTIAL “BODILY INJURY”, ARISING  
23 OUT OF ONE OR MORE OF THE FOLLOWING OFFENSES:

- 24  
25 A. FALSE ARREST, DETENTION OR IMPRISONMENT;  
26 B. MALICIOUS PROSECUTION;  
27 C. THE WRONGFUL EVICTION FROM, WRONGFUL ENTRY  
28 INTO, OR INVASION OF THE RIGHT OF PRIVATE

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OCCUPANCY OF A ROOM, DWELLING OR PREMISES THAT A PERSON OCCUPIES, COMMITTED BY OR ON BEHALF OF ITS OWNER, LANDLORD OR LESSOR;

- D. ORAL OR WRITTEN PUBLICATION, IN ANY MANNER, OF MATERIAL THAT SLANDERS OR LIBELS A PERSON OR ORGANIZATION OR DISPARAGES A PERSON’S OR ORGANIZATION’S GOODS, PRODUCTS OR SERVICES; OR
- E. ORAL OR WRITTEN PUBLICATION, IN ANY MANNER, OF MATERIAL THAT VIOLATES A PERSON’S RIGHT OF PRIVACY.

\*\*\*

49. With respect to “personal injury” coverage, each of the Zurich Primary Policies contains the following exclusions:

**2. Exclusions**

This insurance does not apply to:

**a. Knowing Violation Of Rights Of Another**

“Personal and advertising injury” caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict “person and advertising injury”.

**b. Material Published With Knowledge Of Falsity**

“Personal and advertising injury” arising out of oral or written

1 publication, in any manner, of material, if done by or at the  
2 direction of the insured with knowledge of its falsity.

3 \*\*\*

4 **c. Criminal Acts**

5  
6 “Personal and advertising injury” arising out of a criminal act  
7 committed by or at the direction of the insured.

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9 50. Pursuant to Follow Form Personal Injury Amendatory Endorsement –  
10 Exclusion of Advertising Injury endorsement contained in the ACE Umbrella  
11 Policies, the definition of “personal injury” set forth in Zurich Primary Policies, and  
12 the exclusions for Knowing Violation Of Rights Of Another, Material Published  
13 With Knowledge Of Falsity, and Criminal Acts contained in the Zurich Primary  
14 Policies, are incorporated into the ACE Umbrella Policies and apply to the insurance  
15 thereunder.

16 **ACE’s Reservation of Rights**

17 51. On or about August 11, 2021, eBay forwarded a copy of the Steiners’  
18 Complaint in the Civil Action to ACE and requested that ACE provide coverage  
19 under the ACE Umbrella Policies for the Civil Action.

20 52. By letters dated April 8, 2022 directed to eBay, Wenig, and Wymer,  
21 ACE agreed to investigate the Civil Action subject to a full reservation of rights,  
22 including its right to disclaim coverage to each of them with respect to the Civil  
23 Action. Copies of ACE’s April 8, 2022 reservation of rights letters to eBay, Wenig,  
24 and Wymer are attached hereto as Exhibit K.

25 53. ACE’s reservation of rights letters to eBay, Wenig, and Wymer  
26 specifically reserved ACE’s right to disclaim coverage for the Civil Action under  
27 the ACE Umbrella Policies based on, among other things, the absence of an  
28 “occurrence,” the Expected Or Intended Injury Exclusion, the Knowing Violation

1 Of Rights Of Another Exclusion, the Material Published With Knowledge Of Falsity  
2 Exclusion, and the Criminal Acts Exclusion.

3 54. By letters dated April 8, 2022 directed to Zea, Cooke, Stockwell,  
4 Gilbert, and Popp, ACE disclaimed coverage to each of them for the Civil Action  
5 under the ACE Umbrella Policies. ACE’s disclaimer of coverage was based upon,  
6 among other things, the absence of an “occurrence,” the Expected Or Intended  
7 Injury Exclusion, the Knowing Violation Of Rights Of Another Exclusion, the  
8 Material Published With Knowledge Of Falsity Exclusion, and the Criminal Acts  
9 Exclusion. A copy of ACE’s April 8, 2022 disclaimer letters to Zea, Cooke,  
10 Stockwell, Gilbert, and Popp are attached hereto as Exhibit L.

11 55. By letters dated May 3, 2022 and May 19, 2022 directed to Baugh and  
12 Harville, respectively, ACE disclaimed coverage to each of them for the Civil  
13 Action under the ACE Umbrella Policies. ACE’s disclaimer of coverage was based  
14 on the absence of an “occurrence” and at least four unambiguous coverage  
15 exclusions, namely, the Expected Or Intended Injury Exclusion, the Knowing  
16 Violation Of Rights Of Another Exclusion, the Material Published With Knowledge  
17 Of Falsity Exclusion, and the Criminal Acts Exclusion. True copies of ACE’s May  
18 3, 2022 and May 19, 2022 disclaimer letters to Baugh and Harville are attached  
19 hereto as Exhibit M.

20 **The ACE Umbrella Policies Do Not Cover Any Part of the Civil Action**

21 56. The liability alleged in the Civil Action does not fall within the ACE  
22 Umbrella Policies’ insuring agreement because it does not allege “bodily injury,” as  
23 defined in the ACE Umbrella Policies.

24 57. The liability alleged in the Civil Action does not fall within the ACE  
25 Umbrella Policies’ insuring agreement because it does not allege injury caused by  
26 an “occurrence,” as defined in the ACE Umbrella Policies.

27 58. The liability alleged in the Civil Action falls within the ACE Umbrella  
28 Policies’ Expected Or Intended Injury Exclusion because it alleges that the injuries

1 suffered by plaintiffs therein were expected and/or intended from the standpoint of  
2 each of the Defendants herein.

3 59. The liability alleged in the Civil Action falls within the Knowing  
4 Violation Of Rights Of Another Exclusion because it alleges that the injuries  
5 suffered by plaintiffs therein were caused by each of the Defendants herein, or at  
6 their direction, with the knowledge that the act would violate the rights of another  
7 and would inflict “personal injury.”

8 60. The liability alleged in the Civil Action falls within the Material  
9 Published With Knowledge Of Falsity Exclusion because it alleges that the injuries  
10 suffered by plaintiffs therein arose out of oral or written publication of material done  
11 by each of the Defendants herein, or at their direction, with knowledge of its falsity.

12 61. In addition, the liability alleged in the Civil Action falls within the  
13 Criminal Acts Exclusion because it alleges that the injuries suffered by plaintiffs  
14 therein arose out of criminals act committed by each Defendant herein, or at their  
15 direction, as specifically alleged in the Civil Action and as established by the  
16 Criminally Convicted Defendants’ guilty pleas in their respective criminal cases.<sup>2</sup>

17 62. The eBay PowerPoint Deck further establishes that each of the  
18 coverage limitations and exclusions set forth above in paragraphs 57 through 61  
19 forecloses coverage under the ACE Umbrella Policies.

20 63. California Insurance Code Section 533 states: “An insurer is not liable  
21 for a loss caused by the wilful act of the insured; but he is not exonerated by the  
22 negligence of the insured, or of the insured’s agents or others.” Under California  
23 law, California Insurance Code Section 533 is an implied exclusionary clause to be  
24 read into all insurance contracts, including the ACE Umbrella Policies, with the  
25

26 \_\_\_\_\_  
27 <sup>2</sup> “Criminally Convicted Defendants” refers to the seven Defendants who were  
28 criminally charged and pleaded guilty to the criminal charges against them for their  
conduct against the Steiners in the First Criminal Case, the Second Criminal Case,  
and the Third Criminal Case, as discussed above: Baugh, Harville, Popp, Stockwell,  
Gilbert, Cooke, and Zea.

1 effect of barring insurers such as ACE from providing indemnity coverage for a loss  
2 caused by willful wrongdoing.

3 64. The loss alleged by the Steiners in the Civil Action was caused by the  
4 willful acts of eBay and its former executives, Wenig and Wymer, and the  
5 Criminally Convicted Defendants within the meaning of California Insurance Code  
6 Section 533. Therefore, pursuant to California Insurance Code Section 533, ACE is  
7 not liable under the ACE Umbrella Policies for such loss.

8 65. Upon information and belief, further discovery into the conduct of  
9 eBay and its former or current executives, officers, agents, contractors and  
10 employees, including without limitation Wenig and Wymer and each of the  
11 Criminally Convicted Defendants, in relation to the Steiners would further establish  
12 that there is no coverage afforded under the ACE Umbrella Policies for the claims  
13 alleged by the Steiners in the Civil Action, for one or more of the reasons discussed  
14 above.

15 66. The ACE Umbrella Policies contain other terms, conditions,  
16 limitations, and exclusions which may further limit or preclude coverage. ACE  
17 reserves the right to assert such provisions and raise additional coverage defenses as  
18 the facts warrant.

19 67. ACE respectfully seeks the declaratory relief described below at this  
20 juncture because the unique allegations and circumstances of the Civil Action  
21 (including the Criminally Convicted Defendants' guilty pleas in separate criminal  
22 cases) render the coverage issues alleged herein ripe and amenable to judicial  
23 determination, and because any settlement efforts in the Civil Action will benefit  
24 from clarification of the ACE Umbrella Policies' coverage as they pertain to the  
25 Civil Action.

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**COUNT I**

**Declaratory Judgment – No Duty to Defend or Indemnify  
(Criminally Convicted Defendants)**

68. ACE incorporates by reference its allegations in the preceding paragraphs as if fully set forth herein.

69. The Criminally Convicted Defendants have each demanded coverage under one or more of the ACE Umbrella Policies for any settlement they may enter into or judgment that may enter against them in the Civil Action.

70. ACE believes that no coverage is owed under the ACE Umbrella Policies for the liability asserted against Criminally Convicted Defendants in the Civil Action.

71. An actual controversy has arisen between ACE, on the one hand, and each of the Criminally Convicted Defendants, on the other hand, as to their respective rights and obligations under the ACE Umbrella Policies, including, specifically, whether the ACE Umbrella Policies’ cover the Civil Action or any part of it. This controversy encompasses – among other things – the following issues:

- a. whether the Criminally Convicted Defendant Zea is an “insured” under the ACE Umbrella Policies;
- b. whether the Civil Action alleges injury caused by an “occurrence,” as defined in the ACE Umbrella Policies;
- c. whether the Civil Action alleges “bodily injury,” as defined in the ACE Umbrella Policies;
- d. whether the alleged conduct which forms the basis for the liability asserted against the Criminally Convicted Defendants in the Civil Action falls within the ACE Umbrella Policies’ Expected or Intended Injury Exclusion;
- e. whether the alleged conduct which forms the basis for the liability asserted against the Criminally Convicted Defendants in the Civil

1 Action falls within the ACE Umbrella Policies’ Criminal Acts  
2 Exclusion;

3 f. whether the alleged conduct which forms the basis for the liability  
4 asserted against the Criminally Convicted Defendants in the Civil  
5 Action falls within the ACE Umbrella Policies’ Knowing Violation Of  
6 Rights Of Another Exclusion;

7 g. whether the alleged conduct which forms the basis for the liability  
8 asserted against the Criminally Convicted Defendants in the Civil  
9 Action falls within the ACE Umbrella Policies’ Material Published  
10 With Knowledge Of Falsity Exclusion; and

11 h. whether California Insurance Code Section 533 precludes coverage  
12 under the ACE Umbrella Policies for the liability asserted against the  
13 Criminally Convicted Defendants in the Civil Action.

14 72. A binding judicial declaration determining the rights and obligations of  
15 ACE and Criminally Convicted Defendants under the ACE Umbrella Policies with  
16 respect to the Civil Action is necessary, will resolve the parties’ disagreement, and  
17 will facilitate any settlement efforts in the Civil Action.

18 73. Pursuant to 28 U.S.C. §§ 2201 and 2202, ACE respectfully requests  
19 that the Court declare the following:

20 a. the Criminally Convicted Defendant Zea is not and was not an  
21 “employee” of eBay, and therefore, she is not an “insured” under the  
22 ACE Umbrella Policies;

23 b. the Civil Action does not allege injury caused by an “occurrence,” as  
24 defined in the ACE Umbrella Policies;

25 c. the Civil Action does not allege “bodily injury,” as defined in the ACE  
26 Umbrella Policies;

27 d. the alleged conduct which forms the basis for the liability asserted  
28 against the Criminally Convicted Defendants in the Civil Action



1 unambiguously falls within the ACE Umbrella Policies' Expected or  
2 Intended Injury Exclusion;

3 e. the alleged conduct which forms the basis for the liability asserted  
4 against the Criminally Convicted Defendants in the Civil Action  
5 unambiguously falls within the ACE Umbrella Policies' Criminal Acts  
6 Exclusion;

7 f. the alleged conduct which forms the basis for the liability asserted  
8 against the Criminally Convicted Defendants in the Civil Action  
9 unambiguously falls within the ACE Umbrella Policies' Knowing  
10 Violation Of Rights Of Another Exclusion;

11 g. the alleged conduct which forms the basis for the liability asserted  
12 against the Criminally Convicted Defendants in the Civil Action  
13 unambiguously falls within the ACE Umbrella Policies' Material  
14 Published With Knowledge Of Falsity Exclusion;

15 h. California Insurance Code Section 533 precludes coverage under the  
16 ACE Umbrella Policies for the liability asserted against the Criminally  
17 Convicted Defendants in the Civil Action;

18 i. ACE has no duty to defend any of the Criminal Defendants in the Civil  
19 Action under any of the ACE Umbrella Policies.

20 j. ACE has no duty to indemnify any of the Criminal Defendants in the  
21 Civil Action under any of the ACE Umbrella Policies.

22 k. ACE has no duty to provide any form of insurance benefits to the  
23 Criminal Defendants in connection with the Civil Action.

24 **COUNT II**

25 **Declaratory Judgment—No Duty to Defend or Indemnify**  
26 **(eBay, Wenig, and Wymer)**

27 74. ACE incorporates by reference its allegations in the preceding  
28 paragraphs as if fully set forth herein

1           75. eBay, Wenig, and Wymer have each demanded coverage under one or  
2 more of the ACE Umbrella Policies for any settlement they may enter into or  
3 judgment that may be entered against them in the Civil Action

4           76. ACE believes that no coverage is owed under the ACE Umbrella  
5 Policies for the liabilities asserted against eBay, Wenig, and Wymer in the Civil  
6 Action.

7           77. An actual controversy has arisen between ACE, on the one hand, and  
8 eBay, Wenig, and Wymer, on the other hand, as to their respective rights and  
9 obligations under the ACE Umbrella Policies, including, specifically, whether any  
10 payment is required by ACE with respect to the Civil Action. This controversy  
11 encompasses – among other things – the following issues:

- 12           a. whether the Civil Action alleges injury caused by an “occurrence,” as  
13           defined in the ACE Umbrella Policies;
- 14           b. whether the Civil Action alleges “bodily injury,” as defined in the ACE  
15           Umbrella Policies;
- 16           c. whether the alleged conduct which forms the basis for the liability  
17           asserted against eBay, Wenig and Wymer in the Civil Action falls  
18           within the ACE Umbrella Policies’ Expected or Intended Injury  
19           Exclusion;
- 20           d. whether the alleged conduct which forms the basis for the liability  
21           asserted against eBay, Wenig and Wymer in the Civil Action falls  
22           within the ACE Umbrella Policies’ Knowing Violation Of Rights Of  
23           Another Exclusion;
- 24           e. whether the alleged conduct which forms the basis for the liability  
25           asserted against eBay, Wenig and Wymer in the Civil Action falls  
26           within the ACE Umbrella Policies’ Material Published With  
27           Knowledge Of Falsity Exclusion;
- 28           f. whether the alleged conduct which forms the basis for the liability

1 asserted against eBay, Wenig and Wymer in the Civil Action falls  
2 within the ACE Umbrella Policies' Criminal Acts Exclusion; and

3 g. whether California Insurance Code Section 533 precludes coverage  
4 under the ACE Umbrella Policies for the liability asserted against eBay,  
5 Wenig and Wymer in the Civil Action.

6 78. A binding declaration determining the rights and obligations of ACE  
7 and eBay, Wenig, and Wymer under the ACE Umbrella Policies with respect to the  
8 Civil Action is necessary, will resolve the parties' disagreement, and will facilitate  
9 any settlement efforts in the Civil Action.

10 79. Pursuant to 28 U.S.C. §§ 2201 and 2202, ACE respectfully requests  
11 that the Court declare the following:

- 12 a. the Civil Action does not allege injury caused by an "occurrence," as  
13 defined under the ACE Umbrella Policies;
- 14 b. the Civil Action does not allege "bodily injury," as defined in the ACE  
15 Umbrella Policies;
- 16
- 17 c. the alleged conduct which forms the basis for the liability asserted  
18 against eBay, Wenig and Wymer in the Civil Action unambiguously  
19 falls within the ACE Umbrella Policies' Expected or Intended Injury  
20 Exclusion;
- 21 d. the alleged conduct which forms the basis for the liability asserted  
22 against eBay, Wenig and Wymer in the Civil Action unambiguously  
23 falls within the ACE Umbrella Policies' Knowing Violation Of Rights  
24 Of Another Exclusion;
- 25 e. the alleged conduct which forms the basis for the liability asserted  
26 against eBay, Wenig and Wymer in the Civil Action unambiguously  
27 falls within the ACE Umbrella Policies' Material Published With  
28 Knowledge Of Falsity Exclusion;

- 1 f. the alleged conduct which forms the basis for the liability asserted  
2 against eBay, Wenig and Wymer in the Civil Action unambiguously  
3 falls within the ACE Umbrella Policies' Criminal Acts Exclusion; and  
4 g. California Insurance Code Section 533 precludes coverage under the  
5 ACE Umbrella Policies for the liability asserted against the eBay,  
6 Wenig and Wymer in the Civil Action;  
7 h. ACE has no duty to defend eBay, Wenig or Wymer any of the Criminal  
8 Defendants in the Civil Action under any of the ACE Umbrella  
9 Policies.  
10 i. ACE has no duty to indemnify eBay, Wenig or Wymer in the Civil  
11 Action under any of the ACE Umbrella Policies.  
12 j. ACE has no duty to provide any form of insurance benefits to eBay,  
13 Wenig or Wymer in connection with the Civil Action.  
14

15 **REQUEST FOR RELIEF**

16 WHEREFORE, ACE respectfully requests that the Court:

- 17 (1) grant ACE's requests for declaratory relief and enter the declaratory  
18 judgments stated and requested in Count I and Count II of this  
19 Complaint above;  
20 (2) award ACE its interest, costs, and attorneys' fees; and  
21 (3) grant such other and further relief in favor of ACE as is just and  
22 appropriate.  
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**JURY TRIAL DEMAND**

ACE demands a trial by jury on any issue presented in this matter that is properly so triable.

Respectfully submitted,

DATED: November 11, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP  
Rebecca R. Weinreich  
Aaron T. Knapp

By:           /s/ Rebecca R. Weinreich            
Rebecca R. Weinreich  
Attorneys for ACE PROPERTY &  
CASUALTY COMPANY

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