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MOUNT OF OLIVES LUTHERAN CHURCH
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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

10 MOUNT OF OLIVES LUTHERAN	) Case No.
11 CHURCH, a California corporation,	) Assigned for All Purposes to:
	) Judge:
12 Plaintiff,	) Dept.:
)
13 v.	) COMPLAINT FOR:
)
14 BROTHERHOOD MUTUAL INSURANCE	) 1. INSURANCE BAD FAITH - BREACH
15 COMPANY, an Indiana corporation; and	) OF CONTRACT;
DOES 1 through 500, inclusive,	) 2. INSURANCE BAD FAITH- TORT;
)
16 Defendants.	) DEMAND FOR JURY TRIAL
)
	) (UNLIMITED JURISDICTION)
)

18
19 Plaintiff alleges as follows:

20 **THE PARTIES**

21 1. At all times herein mentioned, Plaintiff, MOUNT OF OLIVES LUTHERAN
22 CHURH (herein after referred to as "MOUNT OF OLIVES" or "Plaintiff"), is and was at all
23 times herein mentioned a nonprofit corporation in good standing that is organized and existing
24 under the laws of the State of California. MOUNT OF OLIVES principal place of business is
25 located in the County of Orange, State of California.

26 2. Plaintiff is informed and believes, and on that basis alleges that, Defendant,
27 BROTHERHOOD MUTUAL INSURANCE COMPANY (hereinafter referred to as
28 "BROTHERHOOD" or "Defendant"), is and was a corporation organized and existing under the

1 laws of the state of Indiana. Plaintiff is further informed and believes that at all times herein
2 mentioned, said BROTHERHOOD doing business in the County of Orange, State of California.

3 3. Plaintiff is ignorant of the true names and capacities of defendants sued herein as
4 DOES 1 through 500, inclusive, and each of them, and therefore sues said defendants by such
5 fictitious names. Plaintiff will amend this complaint to allege the true names and capacities of
6 said defendants when ascertained. Plaintiff is informed and believes, and based thereon alleges,
7 that each of said fictitiously named defendants acted intentionally, negligently, and/or recklessly
8 and is responsible in some manner for the occurrences herein alleged, and that Plaintiff's injuries
9 and damages as herein alleged were proximately and legally caused by said defendants' actions.

10 4. Plaintiff is informed and believes, and based thereon alleges, that all of the
11 defendants identified herein, whether identified by name or by fictitious name, were and are the
12 agents, servants, and employees of each of the remaining defendants, and that in doing the things
13 alleged herein were acting within the purpose, course and scope of said agency, service, and/or
14 employment and with the permission, consent, authorization, and subsequent ratification of each
15 of the remaining defendants.

16 5. On or about December 20, 2019, Plaintiff and Defendants, BROTHERHOOD and
17 DOES 1 through 500, inclusive, and each of them, entered into a written contract of insurance.
18 Said policy of insurance provided coverage for various losses Plaintiff might suffer for the period
19 from December 20, 2019, commencing at 12:01a.m. and continuing through and including
20 December 20, 2020, at 12:01a.m. Said contract was supported by consideration in that Plaintiff
21 paid, had paid, and continued to pay the premiums demanded therefor by Defendants, and each of
22 them. In exchange therefor, Defendants, and each of them, promised, covenanted and agreed to
23 provide, among other things, insurance coverage against loss of earnings and donation income,
24 including, but not limited to, that derived from donations, tuition, camps, and rentals, caused by
25 various perils as described in the subject policy and pursuant to the terms and conditions of the
26 subject written contract of insurance.

27 6. Among the perils for which such earnings and donation income was insured was
28 any loss caused by order of a civil authority that might prohibit Plaintiff's staff or scheduled event

1 participants from accessing Plaintiff's premises. On or about March 15, 2020, the State of
2 California issued such a civil authority order prohibiting Plaintiff's staff and scheduled event
3 participants from accessing Plaintiff's premises. Said civil authority order resulted in the
4 complete interruption of Plaintiff's operations.

5 7. Plaintiff has performed all of the acts, promises, covenants, and agreements on its
6 part to be performed under the insurance policy, except those the performance of which have
7 been excused.

8 8. As a direct, proximate and legal result of said civil authority order and in inability
9 of Plaintiff's staff and scheduled event participants to access Plaintiff's premises, Plaintiff
10 suffered earnings and donations losses in excess of \$226,000.00 during the period for which
11 Defendants' insurance policy provided coverage.

12 **FIRST CAUSE OF ACTION**

13 (INSURANCE BAD FAITH - BREACH OF CONTRACT)

14 (Plaintiff, MOUNT OF OLIVES, Against All Defendants)

15 9. Plaintiff hereby refers to and incorporates by this reference, as though set forth
16 again in full, all of the allegations of paragraphs 1 through 8 above, inclusive.

17 10. Pursuant to the terms of the subject policy of insurance, Defendants, and each of
18 them, were and are obligated to pay Plaintiff the amount of earnings and donations losses it
19 suffered by virtue of the civil authority order cited above.

20 11. Defendants, and each of them, have breached the terms of the subject policy of
21 insurance in that they have failed and refused, and continue to fail and refuse, to pay the sums due
22 thereunder; have failed, and continue to fail, to perform their duties thereunder in a reasonable
23 and good faith manner; and, have willfully and in bad faith failed and refused, and continue to fail
24 and refuse, to honor their obligations thereunder.

25 12. As a direct, proximate, and legal result of Defendants, and each of their breaches
26 of the terms of the insurance contract, Plaintiff has been damaged, and continues to be damaged,
27 in a sum in excess of \$226,000.00, together with interest at the legal rate until all such sums are
28 paid in full.

13. As a further direct and proximate result of Defendants, and each of their breaches of the terms of the insurance contract, Plaintiff has been required to retain and hire legal counsel and has incurred, and continues to incur, attorney's fees and costs of litigation, in order to obtain the benefits for which said Plaintiff contracted under the subject policy of insurance. Plaintiff will seek recovery of said sums according to proof at the time of trial herein.

SECOND CAUSE OF ACTION

(INSURANCE BAD FAITH)

(Plaintiff, MOUNT OF OLIVES, Against All Defendants)

14. Plaintiff hereby refers to and incorporates by this reference, as though set forth again in full, all of the allegations of paragraphs 1 through 13 above, inclusive.

15. At all times relevant hereto, Defendants, BROTHERHOOD MUTUAL and DOES 1 through 500, inclusive, and each of them, agreed to act in good faith and to deal fairly with persons such as Plaintiff when they entered into the policy of insurance.

16. Said Defendants, and each of them, thereby assumed fiduciary obligations to all persons such as Plaintiff in all matters pertaining to the subject policy of insurance and especially with regard to any and all claims made thereunder such as that set forth above. Further, each of said Defendants owed a fiduciary duty of utmost good faith and fair dealing to all persons such as Plaintiff with respect to all such matters.

17. At all times herein mentioned, the most confidential relations existed between Plaintiff and Defendants, and each of them. Pursuant to the public policy of this state, persons such as Plaintiff, including Plaintiff, repose the greatest confidence and trust in said Defendants, and each of them; permit them to transact the business of insurance in the State of California; and, rely upon each of said Defendants to deal fairly and justly with persons such as Plaintiff in all things pertaining to said policy of insurance and the claims made thereunder.

18. Defendants, and each of them, nevertheless refused and failed to act in good faith and to deal fairly with Plaintiff and breached said fiduciary obligations as set forth herein.

19. Among other things, BROTHERHOOD MUTUAL and DOES 1 through 500, inclusive, and each of them, arbitrarily and bad faith failed and refused, and continue to fail and

1 refuse, to pay the sums due under the subject policy of insurance. In so doing, said Defendants,
2 and each of them, have failed and refused, among other things, to investigate the subject loss; to
3 respond to Plaintiff's inquiries and requests; and/or, to pay the sums due under the subject policy
4 of insurance despite having any good faith basis on which to pay said sums.

5 20. Notwithstanding the absence of a reasonable basis for doing so, and with full
6 knowledge and in reckless disregard of the consequences, Defendants, and each of them, have
7 failed and refused to pay the sums due under the subject policy of insurance. Among other
8 things, without a reasonable basis and/or any basis for doing so, Defendants denied in bad faith
9 and refused to pay said sums.

10 21. In doing the things and acts alleged, Defendants, and each of them, have breached
11 the implied covenant under the insurance policy at issue herein and the laws of the State of
12 California to deal with Plaintiff in good faith and to deal fairly and to do nothing which would
13 injure the rights of said Plaintiff thereunder. Said conduct was, and continues to be, undertaken
14 by each of said Defendants for the specific and exclusive purpose of economically benefiting
15 themselves and preventing Plaintiff from enjoying its rights to economic compensation, benefit,
16 and security under said agreement.

17 22. The very purpose of said insurance policy and the laws of the State of California
18 applicable thereto was to benefit persons such as Plaintiff economically and otherwise by
19 providing them with the security, comfort and benefit of being compensated for the very type of
20 loss at issue herein.

21 23. Defendants, and each of them, engaged, and continue to engage, in a course of
22 conduct to further their own economic interests. Said course of conduct is in violation of their
23 contractual and fiduciary obligations to Plaintiff, and includes, but is not limited to, the bad faith
24 denial and refusal to pay the amounts due under the policy at issue in this matter. Said course of
25 conduct is continuing in nature.

26 24. Plaintiff is informed and believes, and thereon alleges, that said conduct was an
27 instance of a larger pattern of conduct involving the claims of other similarly situated insureds
28 and persons throughout California, and elsewhere, within the past several years, up to and

1 including the present. In pursuing said wrongful course of conduct herein, Defendants, and each
2 of them, were pursuing unfair trade practices.

3 25. Said course of conduct was pursued without due regard for, and in reckless and
4 conscious disregard of, the financial and other circumstances of the Plaintiff and other similarly
5 situated persons.

6 26. Defendants, and each of them, pursued said course of conduct intentionally,
7 maliciously, and in conscious disregard of Plaintiff's rights, fraudulently, and/or with reckless
8 disregard of the likelihood of causing Plaintiff harm, and at all times pursued their own economic
9 interest at the expense of Plaintiff's economic interest and well-being.

10 27. As a direct and proximate result of Defendants, and each of their, breaches of the
11 terms of the insurance contract set forth above; of said Defendants' breaches of their obligations
12 under California law; and, of said Defendants' breaches of the implied covenant of good faith and
13 fair dealing, Plaintiff has been damaged in a sum in excess of \$226,000.00, together with interest
14 thereon at the legal rate.

15 28. As a further direct and proximate result of Defendants, and each of their, breaches
16 of the terms of the insurance contract at issue herein and their breaches of the implied covenant of
17 good faith and fair dealing, Plaintiff has been required to retain and hire legal counsel and has
18 incurred, and continues to incur, attorney's fees and costs of litigation, to obtain the benefits of
19 the policy of insurance at issue herein. Plaintiff will seek recovery of said sums according to
20 proof at the time of trial herein.

21 29. Plaintiff is informed and believes, and based thereon alleges, that the acts of
22 Defendants, and each of them, as alleged, were willful, malicious, and oppressive; were done with
23 the intent to deprive Plaintiff of its rightful interests, to prevent said Plaintiff from enjoying the
24 benefits to be derived from the subject agreement, and to cause harm to said Plaintiff; and were
25 done to allow each of said Defendants to appropriate to themselves the entire benefits to be
26 derived from the subject agreement. Said Defendants, and each of them, were well aware that the
27 terms of the subject agreement and of California law required them to make the payments at issue
28 herein and that the subject insurance policy existed and is and was valid, and were fully aware

1 that they had represented and promised that they would pay said sums and that Plaintiff and
2 others similarly situated had relied thereon. Defendants, and each of them, failed and refused to
3 make said payments in conscious disregard of the likely consequences. Accordingly, the acts of
4 each of said Defendants should be punished as an example in a sum to be determined at trial
5 herein and according to proof.

6 WHEREFORE, Plaintiff prays judgment against each Defendant herein as follows:

7 1. On Plaintiff's First Cause of Action herein:

- 8 a. For special damages according to proof; and,
9 b. For general damages according to proof.

10 2. On Plaintiff's Second Cause of Action herein:

- 11 a. For special damages according to proof;
12 b. For general damages according to proof; and,
13 c. For attorney's fees and costs according to proof; and,
14 d. For punitive and exemplary damages according to proof.

15 DATED: December 4, 2021

LAW OFFICE OF TIMOTHY L. JOENS
A Professional Corporation

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18 By

TIMOTHY L. JOENS, ESQ
MATTHEW J. JOENS, ESQ.
Attorneys for Plaintiff,
MOUNT OF OLIVES LUTHERAN CHURCH

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff, MOUNT OF OLIVES LUTHERAN CHURCH, hereby requests trial by jury on
3 all matters triable thereto.
4

5 DATED: December 4, 2021

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A Professional Corporation

7
8 By

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