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12
13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 C.J. SEGERSTROM & SONS,

16 Plaintiff,

17 vs.

18 LEXINGTON INSURANCE
COMPANY; STARR SURPLUS
19 LINES INSURANCE COMPANY,

20 Defendants.
21

Case No.

**COMPLAINT FOR BREACH OF
CONTRACT, TORTIOUS BREACH
OF THE IMPLIED COVENANT OF
GOOD FAITH AND FAIR
DEALING, AND DECLARATORY
RELIEF**

22
23 Plaintiff C.J. Segerstrom & Sons (“Segerstrom”) hereby complains of
24 defendants Lexington Insurance Company (“Lexington”) and Starr Surplus Lines
25 Insurance Company (“Starr”) (together, the “Insurers”) and alleges as follows:

26 **NATURE OF THIS LAWSUIT**

27 1. Segerstrom owns and operates South Coast Plaza, a shopping mall in
28 Costa Mesa, California, and the largest shopping center on the West Coast.

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1 2. Segerstrom purchased broad commercial property insurance from a
2 number of insurers that agreed to protect Segerstrom from a host of risks—
3 including, of relevance to this lawsuit, the risk of financial losses suffered by
4 Segerstrom as a result of (1) an outbreak of a contagious or infectious disease at or
5 within ten miles of the South Coast Plaza and (2) the closure of all or part of South
6 Coast Plaza due to the existence or threat of hazardous conditions. These risks were
7 expressly covered in Segerstrom’s policies by virtue of an extension of coverage
8 referred to in Segerstrom’s policies as the “Special Time Element – Cancellation
9 Coverage,” which afforded Segerstrom with up to \$5,000,000 per “Occurrence.”

10 3. On March 17, 2020, Segerstrom was forced to close South Coast Plaza
11 due to the outbreak of COVID-19 in Orange County and in order to comply with
12 related closure and stay-at-home orders issued by state and county governmental
13 authorities. South Coast Plaza was not able to re-open for several months, resulting
14 in substantial financial losses to Segerstrom. In total, Segerstrom suffered well in
15 excess of \$5,000,000 in losses due to these events.

16 4. In the face of its losses, Segerstrom turned to its commercial property
17 insurers for the insurance they promised to provide and that they led Segerstrom to
18 reasonably expect it would receive in exchange for the premiums it paid.

19 5. Given that Segerstrom’s losses fell squarely within its policies’
20 “Special Time Element – Cancellation Coverage,” most of Segerstrom’s property
21 insurers correctly honored their coverage obligations and paid Segerstrom their full
22 respective shares of the \$5,000,000 in available coverage per “Occurrence.”
23 However, two of Segerstrom’s insurers—the two Insurers named as defendants in
24 this lawsuit—wrongfully repudiated their coverage obligations and refused to
25 provide Segerstrom with the insurance coverage to which it is plainly entitled.

26 6. As explained below, the Insurers’ coverage positions are without merit.
27 Notwithstanding the fact that Lexington expressly agreed to provide the “Special
28 Time Element – Cancellation Coverage” afforded in Segerstrom’s policies,

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1 Lexington has disingenuously relied on an inapplicable policy exclusion that it
2 contends negates that express grant of coverage. Lexington’s position is contrary to
3 the facts, the law, and insurance industry custom and practice. And, worse yet,
4 Lexington’s position is directly contrary to the position that it and its affiliates have
5 taken with respect to virtually identical claims submitted by other insureds.

6 7. Starr’s position is equally untenable. Starr agreed (in exchange for a
7 substantial premium) to participate in Segerstrom’s 2019-2020 property insurance
8 program, and Starr knew that Segerstrom expected and desired a full \$5,000,000 in
9 “Special Time Element – Cancellation Coverage.” However, despite this
10 knowledge, Starr never gave any indication prior to its policy’s June 1, 2019,
11 inception date that it supposedly did not wish to provide its share of this “Special
12 Time Element – Cancellation Coverage.” Subsequently, in a transparent attempt to
13 unilaterally re-write its policy and narrow its coverage obligations, Starr issued an
14 annotated policy to Segerstrom that purported to “cross out” the “Special Time
15 Element – Cancellation Coverage.” Starr’s *post hoc* unilateral modification of its
16 policy was not and is not effective or enforceable under California law.

17 8. The Insurers’ conduct constitutes a breach of their insurance policies
18 and violates the implied covenant of good faith and fair dealing. By this lawsuit,
19 Segerstrom seeks recovery for damages the Insurers have caused by virtue of their
20 contractual breaches and bad faith. Segerstrom also seeks declaratory relief
21 confirming that the Insurers must honor the terms of their policies.

22 **JURISDICTION AND VENUE**

23 9. The Court has subject matter jurisdiction to hear this case under
24 28 U.S.C § 1332 based on complete diversity of citizenship between the parties and
25 because the amount in controversy, exclusive of the costs and interest, exceeds
26 \$75,000. The Court has personal jurisdiction over the Insurers because the Insurers
27 transact business in this District.

28

1 10. Venue is proper in this District because a substantial part of the events
2 giving rise to Segerstrom’s claims occurred in this District.

3 **THE PARTIES**

4 11. Segerstrom is a California general partnership whose partners are
5 citizens of California and Utah.

6 12. Segerstrom is informed and believes, and on that basis alleges, that
7 Lexington is a Delaware corporation, with its principal place of business in Boston,
8 Massachusetts. Segerstrom is informed and believes, and on that basis alleges, that
9 Lexington is licensed to transact business, and is transacting business, in the State of
10 California and Orange County. Lexington is a member of the AIG Group of
11 insurers.

12 13. Segerstrom is informed and believes, and on that basis alleges, that
13 Starr is a Texas corporation, with its principal place of business in New York, New
14 York. Segerstrom is informed and believes, and on that basis alleges, that Starr is
15 licensed to transact business, and is transacting business, in the State of California
16 and Orange County.

17 **THE POLICIES**

18 14. The Insurers participate in a commercial property insurance program
19 consisting of several insurance policies purchased by Segerstrom for the June 1,
20 2019, to June 1, 2020, policy period. Each of the insurers participating in this
21 insurance program is responsible for a share of Segerstrom’s overall limits of
22 coverage. Among other coverages, the policies provide up to \$5,000,000 in
23 “Special Time Element – Cancellation Coverage,” as described below. This
24 coverage extension had been a staple of Segerstrom’s commercial property
25 insurance program for several years prior to the June 1, 2019, to June 1, 2020,
26 policy period.

27 15. Lexington issued Policy No. 020412856 for the June 1, 2019, to June 1,
28 2020, policy period (the “Lexington Policy”). The Lexington Policy covers 40% of

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1 Segerstrom’s property insurance program limits for the 2019-2020 policy period,
2 including 40% of Segerstrom’s overall \$5,000,000 limit per occurrence for “Special
3 Time Element – Cancellation Coverage.” A true and correct copy of the Lexington
4 Policy is attached as Exhibit A and incorporated by reference.

5 16. Starr issued Policy No. SLSTPTY11190519 for the June 1, 2019, to
6 June 1, 2020, policy period (the “Starr Policy”). The Starr Policy covers 16.6667%
7 of Segerstrom’s property insurance program limits for the 2019-2020 policy period,
8 including 16.6667% of Segerstrom’s overall \$5,000,000 limit per occurrence for
9 “Special Time Element – Cancellation Coverage.”

10 17. The Lexington Policy (at Paragraph 6.F.) and the Starr Policy (together,
11 the “Policies”) include a host of coverage grants and extensions, including a
12 “Special Time Element - Cancellation Coverage” extension that states:

13 Notwithstanding that Time Element loss insured under this
14 Policy must be caused by or result from loss, damage or
15 destruction not otherwise excluded, this Policy is extended
16 to insure the actual loss sustained by the Insured resulting
17 from the cancellation of, and/or inability to accept
18 bookings or reservations for accommodation, receive
19 admissions, and/or interference with the business at any
20 insured location all as a direct result of the “Occurrence”
21 of:

- 22 1) murder, suicide, rape or other violent crime;
- 23 2) contagious or infectious disease (including
24 decontamination and clean-up costs);
- 25 3) food or drink poisoning;
- 26 4) any of the following that occur within a
27 radius of ten (10) miles of an insured
28 location, to the extent such Time Element

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loss is not otherwise insured elsewhere in this policy;

- a. outbreak of a contagious and/or infectious disease
 - b. outbreak of riot or civil commotion
 - c. occurrence of fire, or explosion, or windstorm, or “Flood”, or “Earthquake”
 - d. closure of a seaport or airport.
- 5) closing of the whole or part of the premises of the Insured either by the Insured or by order of a Public Authority consequent upon the existence or threat of hazardous conditions either actual or suspected at an insured location;
- 6) the pollution by oil, chemical or other substance of any beach, waterway or river within a radius of 100 miles of an insured location as a result of loss, damage or destruction not otherwise excluded;
- 7) a mandatory evacuation at an insured location due to the type of situation referred to in this clause: a compulsory notification of an evacuation of an insured location or portion thereof with an effective date and time ordered by either the Insured or by a responsible civil or military authority. Such

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1 mandatory evacuation must be initiated
2 during the term of this insurance.

3 For purposes of measurement of the Time
4 Element loss with regards to this condition,
5 the Period of Liability shall commence 48
6 hours before the mandatory evacuation
7 notification is given by the Insured or by a
8 responsible civil or military authority.

9 The length of time for which loss may be claimed shall not
10 exceed such length of time as would be required with the
11 exercise of due diligence and dispatch to restore the
12 Insured's business to the condition that would have existed
13 had no loss occurred and shall include the time required to
14 make the premises conform to the order of a competent
15 public authority, beginning with the interruption or
16 interference with the business.

17 Coverage provided under Special Time Element -
18 Cancellation Coverage shall not conflict or reduce
19 coverage provided elsewhere in this policy, most notably
20 Contingent Time Element, Interruption by Civil or
21 Military Authority, or Loss of Ingress or Egress.

22 18. Although the Starr Policy incepted on June 1, 2019, Starr did not
23 deliver a copy of the policy to Segerstrom for several weeks after the policy's
24 inception. When Starr did finally provide a copy of the Starr Policy, it included
25 several handwritten annotations dated July 26, 2019, that, in pertinent part,
26 purported to "cross out" the policy's "Special Time Element – Cancellation
27 Coverage" extension. A true and correct copy of at least the relevant portions of the
28 annotated Starr Policy is attached as Exhibit B and incorporated by reference.

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1 19. Prior to providing this annotated policy to Segerstrom, Starr gave no
2 indication that it was unwilling to provide its share of the “Special Time Element –
3 Cancellation Coverage” afforded through Segerstrom’s insurance program—even
4 though, on information and belief, Starr was well aware that Segerstrom expected
5 and desired such coverage, and Starr knew that this coverage had been included in
6 Segerstrom’s commercial property insurance program for several years. Starr’s
7 unilateral *post hoc* modification of the Starr Policy is invalid and unenforceable
8 under California law and is contrary to the parties’ mutual intent and understanding.

9 20. Segerstrom is the Named Insured under the Policies and, as such, is
10 entitled to the full benefits of coverage afforded by the Policies.

11 **COVID 19 AND THE LOSSES SUFFERED BY SEGERSTROM**

12 21. In December 2019, SARS-CoV-2 and COVID-19 broke out in Wuhan,
13 China. Since then, SARS-CoV-2 and COVID-19 have spread throughout the world,
14 prompting the World Health Organization to declare a global pandemic.

15 22. According to the World Health Organization,
16 We know that the disease is caused by the SARS-CoV-2
17 virus, which spreads between people in several different
18 ways.

- 19 • Current evidence suggests that the virus spreads
20 mainly between people who are in close contact
21 with each other, for example at a conversational
22 distance. The virus can spread from an infected
23 person’s mouth or nose in small liquid particles
24 when they cough, sneeze, speak, sing, or breathe.
25 Another person can then contract the virus when
26 infectious particles that pass through the air are
27 inhaled at short range (this is often called short-
28 range aerosol or short-range airborne transmission)

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- 1 or if infections particles come into direct contact
2 with the eyes, nose, or mouth (droplet transmission).
3 • The virus can also spread in poorly ventilated and/or
4 crowded indoor settings, where people tend to spend
5 longer periods of time. This is because aerosols can
6 remain suspended in the air or travel farther than
7 conversational distance (this is often called long-
8 range aerosol or long-range airborne transmission).
9 • People may also become infected when touching
10 their eyes, nose or mouth after touching surfaces or
11 objects that have been contaminated by the virus.¹

12 23. As to whether there are certain settings where COVID-19 can spread
13 more easily, the World Health Organization says:

14 Yes, any situation in which people are in close proximity
15 to one another for long periods of time increases the risk
16 of transmission. Indoor locations, especially settings
17 where there is poor ventilation, are riskier than outdoor
18 locations. Activities where more particles are expelled
19 from the mouth, such as singing or breathing heavily
20 during exercise, also increase the risk of transmission.

21 The “Three C’s” are a useful way to think about this. They
22 describe settings where transmission of the COVID-19
23 virus spreads more easily:

- 24 • Crowded places;

25
26 _____
27 ¹ See “How does COVID-19 spread between people?”
28 <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19-how-is-it-transmitted> (last accessed March 18, 2022, last updated December 23, 2021).

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- 1 • Close-contact settings, especially where people have
- 2 conversations very near each other; [and]
- 3 • Confined and enclosed spaces with poor ventilation
- 4 The risk of COVID-19 spreading is especially high in
- 5 places where these “3Cs” overlap.²

6 24. In response to the outbreak of SARS-CoV-2 and COVID-19, civil
 7 authorities throughout the United States began issuing “stay-at-home” and “shelter
 8 in place” orders, quarantines, limits or bans on public gatherings, and other orders,
 9 including orders requiring the suspension of non-essential business operations.

10 25. To help create a framework for the implementation of such policies in
 11 California, Governor Gavin Newsom issued Executive Order N-25-20, stating: “All
 12 residents are to heed any orders and guidance of state and local public health
 13 officials, including but not limited to the imposition of social distancing measures,
 14 to control the spread of COVID-19.” Executive Order N-25-20 took effect on
 15 March 12, 2020.

16 26. On March 17, 2020, Orange County health officer Dr. Nichole Quick,
 17 issued an emergency order banning gatherings for any non-essential purpose.

18 27. On March 19, 2020, the State of California issued an Order of the State
 19 Public Health Officer, which required all individuals living in the state to stay at
 20 home or at their place of residence “except as needed to maintain operations of the
 21 federal critical infrastructure sectors.” On that same date, California Governor
 22 Newsom issued Executive Order N-33-20, expressly requiring California residents
 23 to follow the March 19, 2020, Order of the State Public Health Officer, and
 24 incorporating by reference California Government Code section 8665, which
 25 provides that “[a]ny person . . . who refuses or willfully neglects to obey any lawful
 26 order . . . issued as provided in this chapter, shall be guilty of a misdemeanor and,
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28 ² *Id.*, “Are there certain settings where COVID-19 can spread more easily?”

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1 upon conviction thereof, shall be punishable by a fine of not to exceed one thousand
2 dollars (\$1,000) or by imprisonment for not to exceed six months or by both such
3 fine and imprisonment.” The March 19, 2020, Order of the State Public Health
4 Officer and Executive Order N-33-20 took immediate effect on March 19, 2020.

5 28. From March 16, 2020, to June 11, 2020, Segerstrom was forced to
6 suspend all operations at South Coast Plaza due to the outbreak of SARS-CoV-2 and
7 COVID-19 in the surrounding area, the resulting existence and/or threat of
8 hazardous conditions at South Coast Plaza, and the related government actions and
9 orders referenced above.

10 29. Although the suspension of operations at South Coast Plaza resulted in
11 substantial financial losses to Segerstrom, Segerstrom took reasonable and necessary
12 steps and incurred considerable expenses in an effort to mitigate its losses. Through
13 such actions, Segerstrom was able to mitigate its overall losses.

14 30. Segerstrom has suffered, and continues to suffer, loss and damage
15 covered by the Policies. In particular, Segerstrom has suffered losses well in excess
16 of \$5,000,000 that are covered under its policies’ “Special Time Element –
17 Cancellation Coverage” extension. Consequently, Lexington and Starr are
18 responsible for covering at least \$2,000,000 and \$833,335—their respective shares
19 of the \$5,000,000 in “Special Time Element – Cancellation Coverage” afforded by
20 Segerstrom’s 2019-2020 commercial property insurance program.

21 **THE INSURERS’ BREACHES OF THEIR DUTIES**

22 31. Segerstrom timely notified the Insurers of its above-described losses
23 and sought coverage under the Policies.

24 32. Other insurers providing coverage for the 2019-2020 policy period
25 include Hudson Specialty Insurance Company, Great Lakes Insurance S.E./Munich
26 Re, Lloyd’s Underwriter Syndicate No. 2987 BRIT, Lloyd’s Underwriter Syndicate
27 No. 2015 CHN, and Lloyd’s Underwriter Syndicate No. 1200 AMA. Recognizing
28 that the Special Time Element Coverage applies to Segerstrom’s claimed losses,

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1 each of these insurers has paid its share of the \$5,000,000 sublimit. Lexington and
2 Starr, however, have denied coverage and refused to pay their respective shares of
3 Segerstrom’s losses.

4 33. In denying coverage, Lexington asserted that, notwithstanding the
5 “Special Time Element - Cancellation Coverage” afforded by its policy, coverage
6 for Segerstrom’s losses was barred by an environmental pollution or contamination
7 exclusion. Segerstrom has clearly explained to Lexington that these grounds are
8 contrary to the language of the Lexington Policy and the facts of Segerstrom’s
9 claim.

10 34. Furthermore, on information and belief, Lexington knows that its
11 corporate affiliates have taken contrary positions in adjusting similar claims under
12 the same and similar policy language. For instance, in adjusting a similar claim
13 made by another insured, AIG Specialty Insurance Company—a sister company of
14 Lexington—acknowledged that the Special Time Element Coverage applies to
15 losses arising from COVID-19 and applies notwithstanding a pollution or
16 contamination exclusion. A true and correct copy of AIG’s November 18, 2020,
17 letter explaining this position, which was filed publicly in another lawsuit, is
18 attached as Exhibit C and incorporated by reference. Although Segerstrom has noted
19 Lexington’s inconsistent and illogical position with respect to Segerstrom’s losses,
20 Lexington has nonetheless unreasonably and incorrectly refused to rescind its
21 denial.

22 35. Starr has relied on the purported lack of Special Time Element
23 Coverage in its policy as the basis for denying coverage. However, the Starr Policy
24 contains the Special Time Element Coverage provision in full, albeit crossed out by
25 hand-written annotation dated July 26, 2019. Notably, there was no mention of the
26 proposed modification in connection with negotiations. Nor was the Special Time
27 Element Coverage mentioned in the policy binder, issued on May 31, 2019. A true
28 and correct copy of the Confirmation of Binding of the Starr Policy is attached as

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1 Exhibit D and incorporated by reference. Notably, Starr was aware of the text of the
2 policy form (including the inclusion of Special Time Element Coverage) at the time
3 the binder was issued, yet made no mention of any purported intent to exclude this
4 coverage for the Starr Policy. Indeed, although the binder lists numerous Starr
5 endorsements purporting to change the policy form, none reference the Special Time
6 Element Coverage.

7 36. Starr's attempt to unilaterally narrow its contractual obligations came
8 after the effective date of the Starr Policy. And this purported modification was
9 made without Segerstrom's consent. Starr's attempt to unilaterally re-write its policy
10 *after* the coverage was bound and the coverage was in effect is not permitted under
11 California law. Accordingly, Starr's position lacks merit.

12 37. Despite Segerstrom's efforts to resolve this matter, the Insurers have
13 maintained their wrongful positions and caused Segerstrom to incur significant
14 internal and external expenses. By taking the positions and acting as alleged above,
15 the Insurers breached their contractual obligations as well as the duty of good faith
16 and fair dealing. This wrongful conduct, as alleged herein, caused and will continue
17 to cause significant damage to Segerstrom.

18 38. To the extent not waived or otherwise excused, Segerstrom has
19 complied with all terms and conditions in the Policies. Therefore, Segerstrom is
20 entitled to all benefits of the insurance provided by the Policies.

21 **FIRST CAUSE OF ACTION**

22 **(Against Lexington: For Breach of Contract)**

23 39. Segerstrom realleges and incorporates by reference the allegations
24 contained in paragraph 1 through 38 above.

25 40. Implied in the Lexington Policy is a covenant that Lexington would act
26 in good faith and deal fairly with Segerstrom, would do nothing to interfere with
27 Segerstrom's right to receive the benefits due under the Lexington Policy, and
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1 would give at least the same level of consideration to Segerstrom’s interests as it
2 gives to its own interests.

3 41. Lexington also had a duty under the Lexington Policy, the law, and
4 insurance industry custom and practice to promptly conduct a full and thorough
5 investigation, including all bases that might support Segerstrom’s claim for
6 coverage.

7 42. Lexington breached its duties under the Lexington Policy by, among
8 other things:

- 9 (a) Failing and refusing to pay for Segerstrom’s losses;
- 10 (b) Asserting grounds for disputing coverage that it knows are not
11 supported by, and are contrary to, the terms of the Lexington
12 Policy, the law, insurance industry custom and practice, the
13 parties’ course of dealings, and the facts;
- 14 (c) Failing to conduct an adequate investigation of Segerstrom’s
15 losses, and asserting grounds for disputing coverage based on its
16 inadequate investigation;
- 17 (d) Failing to fully inquire into possible bases that might support
18 coverage for Segerstrom’s losses;
- 19 (e) By giving greater consideration to its own interests than
20 Segerstrom’s interests; and
- 21 (f) By otherwise acting as alleged above.

22 43. As a direct and proximate result of the Insurer’s breach of contract,
23 Segerstrom has sustained at least \$2,000,000 in damages, plus interest at the legal
24 rate. Segerstrom continues to suffer damages because of Lexington’s contractual
25 breaches and will seek leave to amend its complaint once Segerstrom ascertains the
26 full extent of its damages.

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SECOND CAUSE OF ACTION

(Against Starr: For Breach of Contract)

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3 44. Segerstrom realleges and incorporates by reference the allegations
4 contained in paragraph 1 through 38 above.

5 45. Implied in the Starr Policy is a covenant that Starr would act in good
6 faith and deal fairly with Segerstrom, would do nothing to interfere with
7 Segerstrom’s right to receive the benefits due under the Starr Policy, and would give
8 at least the same level of consideration to Segerstrom’s interests as it gives to its
9 own interests.

10 46. Starr also had a duty under the Starr Policy, the law, and insurance
11 industry custom and practice to promptly conduct a full and thorough investigation,
12 including all bases that might support Segerstrom’s claim for coverage.

13 47. Starr breached its duties under the Starr Policy by, among other things:

- 14 (a) Failing and refusing to pay for Segerstrom’s losses;
- 15 (b) Asserting grounds for disputing coverage that it knows are not
16 supported by, and are contrary to, the terms of the Starr Policy,
17 the law, insurance industry custom and practice, the parties’
18 course of dealings, and the facts;
- 19 (c) Failing to conduct an adequate investigation of Segerstrom’s
20 losses, and asserting grounds for disputing coverage based on its
21 inadequate investigation;
- 22 (d) Failing to fully inquire into possible bases that might support
23 coverage for Segerstrom’s losses;
- 24 (e) By giving greater consideration to its own interests than
25 Segerstrom’s interests; and
- 26 (f) By otherwise acting as alleged above.

27 48. As a direct and proximate result of Starr’s breach of contract,
28 Segerstrom has sustained at least \$833,335 in damages, plus interest at the legal rate.

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1 Segerstrom continues to suffer damages because of Starr’s contractual breaches and
2 will seek leave to amend its complaint once Segerstrom ascertains the full extent of
3 its damages.

4 **THIRD CAUSE OF ACTION**

5 **(Against Lexington: For Tortious Breach of the Implied Covenant of**
6 **Good Faith and Fair Dealing)**

7 49. Segerstrom realleges and incorporates by reference the allegations
8 contained in paragraph 1 through 38 and 40 through 42 above.

9 50. Implied in the Lexington Policy is a covenant that the Insurers would
10 act in good faith and deal fairly with Segerstrom, would do nothing to interfere with
11 Segerstrom’s rights to receive the benefits due under the Lexington Policy, and
12 would give at least the same level of consideration to Segerstrom’s interests as it
13 gives to its own interests.

14 51. Lexington also had a duty under the Lexington Policy, the law, and
15 insurance industry custom and practice to promptly conduct a full and thorough
16 investigation, including all bases that might support Segerstrom’s claim for
17 coverage.

18 52. Instead of complying with these duties, Lexington acted in bad faith
19 and in conscious disregard of Segerstrom’s rights by, among other things,

- 20 (a) Failing and refusing to pay for Segerstrom’s losses suffered as
21 described above;
- 22 (b) Asserting grounds for disputing coverage that it knows are not
23 supported by, and are contrary to, the terms of the Lexington
24 Policy, AIG’s own representations and conduct, the law,
25 insurance industry custom and practice, the parties’ course of
26 dealings, and the facts;

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- 1 (c) Failing to conduct an adequate investigation of Segerstrom’s
- 2 losses, and asserting grounds for disputing coverage based on its
- 3 inadequate investigation;
- 4 (d) Failing to fully inquire into possible bases that might support
- 5 coverage for Segerstrom’s losses;
- 6 (e) By giving greater consideration to its own interests than
- 7 Segerstrom’s interests; and
- 8 (f) By otherwise acting as alleged above.

9 53. In breach of the implied covenant of good faith and fair dealing,
10 Lexington did the things and committed the acts alleged above for the purpose of
11 consciously withholding from Segerstrom the rights and benefits to which it is
12 entitled under the Lexington Policy.

13 54. Lexington’s acts are inconsistent with Segerstrom’s reasonable
14 expectations, are contrary to established claims practices and legal requirements,
15 and constitute bad faith.

16 55. As a direct and proximate cause of Lexington’s breach of the implied
17 covenant of good faith and fair dealing, Segerstrom has sustained at least
18 \$2,000,000 in damages. Segerstrom continues to suffer damages because of
19 Lexington’s bad faith and will seek leave to amend its complaint once Segerstrom
20 ascertains the full extent of its damages. Also, pursuant to *Brandt v. Superior Court*,
21 37 Cal. 3d 813 (1985), Segerstrom is entitled to recover all attorneys’ fees and
22 expenses that it has reasonably incurred, and is incurring, in its efforts to obtain the
23 policy benefits that Lexington wrongfully withheld, and is withholding, in bad faith.
24 Segerstrom also is entitled to interest thereon at the maximum legal rate.

25 56. Segerstrom is informed and believes, and on that basis alleges, that
26 Lexington —acting through one or more of its officers, directors, or other corporate
27 employees with substantial independent and discretionary authority over significant
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1 aspects of the Insurers’ business—performed, authorized, and/or ratified the bad
2 faith conduct alleged above.

3 57. Lexington’s conduct is despicable and has been done with a conscious
4 disregard of Segerstrom’s rights, constituting oppression, fraud, and/or malice.
5 Lexington engaged in a series of acts designed to deny the benefits due under the
6 Lexington Policy. Specifically, Lexington, by acting as alleged above, in light of
7 information, facts, and relevant law to the contrary, consciously disregarded
8 Segerstrom’s rights and forced Segerstrom to incur substantial financial losses,
9 without any assistance from it, thereby inflicting substantial financial damage on
10 Segerstrom. Lexington ignored Segerstrom’s interests and concerns, with the
11 requisite intent to injure, and acted fraudulently, within the meaning of California
12 Civil Code section 3294. Therefore, Segerstrom is entitled to recover punitive
13 damages from the Insurers in an amount sufficient to punish and make an example
14 of Lexington and in order to deter similar conduct.

15 **FOURTH CAUSE OF ACTION**

16 **(Against Starr: For Tortious Breach of the Implied Covenant of**
17 **Good Faith and Fair Dealing)**

18 58. Segerstrom realleges and incorporates by reference the allegations
19 contained in paragraph 1 through 38 and 45 through 47 above.

20 59. Implied in the Starr Policy is a covenant that Starr would act in good
21 faith and deal fairly with Segerstrom, would do nothing to interfere with
22 Segerstrom’s rights to receive the benefits due under the Starr Policy, and would
23 give at least the same level of consideration to Segerstrom’s interests as it gives to
24 its own interests.

25 60. Starr also had a duty under the Starr Policy, the law, and insurance
26 industry custom and practice to promptly conduct a full and thorough investigation,
27 including all bases that might support Segerstrom’s claim for coverage.

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1 61. Instead of complying with these duties, Starr acted in bad faith and in
2 conscious disregard of Segerstrom’s rights by, among other things,

- 3 (a) Failing and refusing to pay for Segerstrom’s losses suffered as
4 described above;
- 5 (b) Asserting grounds for disputing coverage that it knows are not
6 supported by, and are contrary to, the terms of the Starr Policy,
7 the law, insurance industry custom and practice, the parties’
8 course of dealings, and the facts;
- 9 (c) Failing to conduct an adequate investigation of Segerstrom’s
10 losses, and asserting grounds for disputing coverage based on its
11 inadequate investigation;
- 12 (d) Failing to fully inquire into possible bases that might support
13 coverage for Segerstrom’s losses;
- 14 (e) By giving greater consideration to its own interests than
15 Segerstrom’s interests; and
- 16 (f) By otherwise acting as alleged above.

17 62. In breach of the implied covenant of good faith and fair dealing, Starr
18 did the things and committed the acts alleged above for the purpose of consciously
19 withholding from Segerstrom the rights and benefits to which it is entitled under the
20 Starr Policy.

21 63. Starr’s acts are inconsistent with Segerstrom’s reasonable expectations,
22 are contrary to established claims practices and legal requirements, and constitute
23 bad faith.

24 64. As a direct and proximate cause of Starr’s breach of the implied
25 covenant of good faith and fair dealing, Segerstrom has sustained at least \$833,335
26 in damages. Segerstrom continues to suffer damages because of Starr’s bad faith and
27 will seek leave to amend its complaint once Segerstrom ascertains the full extent of
28 its damages. Also, pursuant to *Brandt v. Superior Court*, 37 Cal. 3d 813 (1985),

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1 Segerstrom is entitled to recover all attorneys’ fees and expenses that it has
2 reasonably incurred, and is incurring, in its efforts to obtain the policy benefits that
3 Starr wrongfully withheld, and is withholding, in bad faith. Segerstrom also is
4 entitled to interest thereon at the maximum legal rate.

5 65. Segerstrom is informed and believes, and on that basis alleges, that
6 Starr—acting through one or more of its officers, directors, or other corporate
7 employees with substantial independent and discretionary authority over significant
8 aspects of Starr’s business—performed, authorized, and/or ratified the bad faith
9 conduct alleged above.

10 66. Starr’s conduct is despicable and has been done with a conscious
11 disregard of Segerstrom’s rights, constituting oppression, fraud, and/or malice. Starr
12 engaged in a series of acts designed to deny the benefits due under the Starr Policy.
13 Specifically, Starr, by acting as alleged above, in light of information, facts, and
14 relevant law to the contrary, consciously disregarded Segerstrom’s rights and forced
15 Segerstrom to incur substantial financial losses, without any assistance from it,
16 thereby inflicting substantial financial damage on Segerstrom. Starr ignored
17 Segerstrom’s interests and concerns, with the requisite intent to injure, and acted
18 fraudulently, within the meaning of California Civil Code section 3294. Therefore,
19 Segerstrom is entitled to recover punitive damages from Starr in an amount
20 sufficient to punish and make an example of Starr and in order to deter similar
21 conduct.

22 **FIFTH CAUSE OF ACTION**

23 **(Against Lexington: For Declaratory Relief)**

24 67. Segerstrom realleges and incorporates by reference herein each
25 allegation contained in paragraphs 1 through 38 above.

26 68. An actual and justiciable controversy exists between Segerstrom and
27 Lexington. Segerstrom contends that Lexington has a duty to indemnify Segerstrom
28 for at least \$2,000,000 in covered losses, plus interest at the legal rate. Segerstrom is

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1 informed and believes, and on that basis alleges, that Lexington disputes coverage
2 for this amount.

3 69. Therefore, declaratory relief is necessary to determine Segerstrom’s
4 rights under the Lexington Policy. Specifically, Segerstrom seeks a judicial
5 declaration confirming that Lexington’s contentions as stated above are wrong and
6 that Segerstrom’s contentions as stated above are correct; that Lexington must honor
7 all duties under the Lexington Policy, including its duty to pay for Segerstrom’s
8 losses; and that because of Lexington’s conduct, Segerstrom is excused from
9 performing or complying with any conditions and duties otherwise imposed on it by
10 the Lexington Policy.

11 **SIXTH CAUSE OF ACTION**

12 **(Against Starr: For Declaratory Relief)**

13 70. Segerstrom realleges and incorporates by reference herein each
14 allegation contained in paragraphs 1 through 38 above.

15 71. An actual and justiciable controversy exists between Segerstrom and
16 Starr. Segerstrom contends that Starr has a duty to indemnify Segerstrom for at least
17 \$833,335 in covered losses, plus interest at the legal rate. Segerstrom is informed
18 and believes, and on that basis alleges, that Starr disputes coverage for this amount.

19 72. Therefore, declaratory relief is necessary to determine Segerstrom’s
20 rights under the Starr Policy. Specifically, Segerstrom seeks a judicial declaration
21 confirming that Starr contentions as stated above are wrong and that Segerstrom’s
22 contentions as stated above are correct; that Starr must honor all duties under the
23 Starr Policy, including its duty to pay for Segerstrom’s losses; and that because of
24 Starr’s conduct, Segerstrom is excused from performing or complying with any
25 conditions and duties otherwise imposed on it by the Starr Policy.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Segerstrom prays for relief as follows:
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ON THE FIRST CAUSE OF ACTION

- 1. For damages according to proof at the time of trial, plus interest;

ON THE SECOND CAUSE OF ACTION

- 2. For damages according to proof at the time of trial, plus interest;

ON THE THIRD CAUSE OF ACTION

- 3. For damages according to proof at the time of trial, including reasonable attorneys’ fees incurred in obtaining the benefits due under the Lexington Policy, plus interest; and

- 4. For punitive damages in an amount to be determined at the time of trial;

ON THE FOURTH CAUSE OF ACTION

- 5. For damages according to proof at the time of trial, including reasonable attorneys’ fees incurred in obtaining the benefits due under the Starr Policy, plus interest; and

- 6. For punitive damages in an amount to be determined at the time of trial;

ON THE FIFTH CAUSE OF ACTION

- 7. For a declaration in accord with Segerstrom’s contentions stated above;

ON THE SIXTH CAUSE OF ACTION

- 8. For a declaration in accord with Segerstrom’s contentions stated above;

ON ALL CAUSES OF ACTION:

- 9. For costs of suit incurred herein; and
For such other, further, and/or different relief as may be deemed just and proper.

Dated: March 29, 2022

PASICH LLP

By: /s/ Shaun H. Crosner
Shaun H. Crosner
Attorneys for Plaintiffs

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury in this action.

Dated: March 29, 2022

PASICH LLP

By: /s/ Shaun H. Crosner
Shaun H. Crosner

Attorneys for Plaintiffs

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