

CAUSE NO. 2020CI08311

VIZZA WASH, LP D/B/A THE WASH TUB	§	IN THE COUNTY COURT
	§	
V.	§	<u>407th</u> JUDICIAL DISTRICT
	§	
NATIONWIDE MUTUAL INSURANCE	§	
COMPANY AND BRADLEY WORTH	§	BEXAR COUNTY, TEXAS

**PLAINTIFF’S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, VIZZO WASH, LP d/b/a THE WASH TUB, and files this Original Petition against NATIONWIDE MUTUAL INSURANCE COMPANY, (“Nationwide”) and BRADLEY WORTH (“Worth”) and in support thereof, would show as follows:

**I.**  
**DISCOVERY CONTROL PLAN LEVEL**

Plaintiff intends for discovery to be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure. This case involves complex issues and will require extensive discovery. Therefore, Plaintiff will ask the Court to order that discovery be conducted in accordance with a discovery control plan tailored to the particular circumstances of this suit.

**II.**  
**PARTIES AND SERVICE**

Plaintiff’s principal place of business in Bexar County, Texas.

Nationwide is in the business of insurance in the State of Texas. The insurance business done by Nationwide in Texas includes, but is not limited to, the following:

- The making and issuing of contracts of insurance with the Plaintiff;
- The taking or receiving of application for insurance, including the Plaintiff’s application for insurance;

- The receiving or collection of premiums, commissions, membership fees, assessments, dues or other consideration for any insurance or any part thereof, including any such consideration or payments from the Plaintiff; and
- The issuance or delivery of contracts of insurance to residents of this state or a person authorized to do business in this state, including the Plaintiff.

Defendant **Nationwide Mutual Insurance Company** may be served, via certified mail, by serving its registered agent, Corporation Service Company, located at 211 E. 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701-3218. **Service is requested at this time.**

Defendant **Bradley Worth** is a Texas resident and may be served at his business address at 306 W. Sunset Road, Suite 100, San Antonio, Texas 78209 by certified mail, return receipt requested. **Service is requested at this time.**

### **III.** **JURISDICTION AND VENUE**

Venue is appropriate in Bexar County, Texas because all or part of the conduct giving rise to the causes of action were committed in Bexar County, Texas and Plaintiff and most of the properties which are the subject of this suit are located in Bexar County, Texas. Accordingly, venue is proper pursuant to Texas Civil Practice & Remedies Code §15.002.

### **IV.** **BACKGROUND FACTS**

Plaintiff is the owner of an Insurance Policy (hereinafter referred to as the “Policy”), for which it paid significant premiums to cover their businesses. Plaintiff owns the insured properties which are located at the following addresses:

1. 2208 NW Loop 410, San Antonio, Texas 78230;
2. 17780 Blanco Road, San Antonio, Texas 78232;
3. 951 E. Bitters Road, San Antonio, Texas 78216;
4. 4318 Broadway Street, San Antonio, Texas 78209;
5. 5998 De Zavala Road, San Antonio, Texas 78249;
6. 8250 Bandera Road, San Antonio, Texas 78250;
7. 15055 Judson Road, San Antonio, Texas 78247;

8. 1534 N Loop 1604 E, San Antonio, Texas 78232;
9. 3307 SE Military Drive, San Antonio, Texas 78223;
10. 7535 FM 78, San Antonio, Texas 78244;
11. 1250 Austin HWY, San Antonio, Texas 78209;
12. 3826 Fredericksburg Road, San Antonio, Texas 78201;
13. 24103 IH 10 W, San Antonio, Texas 78257;
14. 8935 Wurzbach Road, San Antonio, Texas 78240;
15. 10626 Potranco Road, San Antonio, Texas 78251;
16. 8235 Marbach Road, San Antonio, Texas 78227;
17. 11318 Culebra Road, San Antonio, Texas 78253;
18. 12462 Bandera Road, Helotes, Texas 78023;
19. 8231 Fourwinds Drive, Windcrest, Texas 78239
20. 1001 E. Palm Valley Blvd., Round Rock, Texas 78664;
21. 3309 Williams Drive, Georgetown, Texas 78628;
22. 1054 S. Business IH 35, New Braunfels, Texas 78130;
23. 1322 Round Rock Ave., Round Rock, Texas 78681;
24. 200 Cully Drive, Kerrville, Texas 78028;
25. 6011 FM 3009, Schertz, Texas 78154;
26. 20450 Highway 46 W, Bulverde, Texas 78070;
27. 1749 Highway 46 W, New Braunfels, Texas 78132; and
28. 1200 Thorpe LN, San Marcos, Texas 78666.

(hereinafter referred to as the “Properties”). Worth sold the Nationwide business insurance Policy insuring the Properties to Plaintiff. As explained in more detail below, Worth made several misrepresentations of coverage to Plaintiff, both by commission and omission.

During the terms of said Policy, Plaintiff has sustained and will sustain covered losses during the Covid-19 outbreak and subsequent State and County stay home orders, and Plaintiff reported same to Nationwide pursuant to the terms of the Policy. Plaintiff asked that Nationwide cover the cost for business interruption to the Properties pursuant to the Policy. To date, Nationwide has mishandled Plaintiff’s claim and caused and will continue to cause Plaintiff delay and further and additional damages.

Nationwide and Worth both made material misrepresentations about Policy provisions, coverage and the law in Texas applying thereto before and after the inception of Plaintiff’s Policy. Nationwide and its agents have kept and have in their possession a claim file which details the

Plaintiff's claim and its investigation and adjustment, or lack thereof, of the claim.

Nationwide has wrongfully withheld payment of Plaintiff's claim for business interruption even though the Policy provides coverage for losses such as those suffered by Plaintiff. Furthermore, by information and belief, Nationwide engaged its agents, including Worth, to misrepresent Policy provisions and coverage. To date, Nationwide continues to delay any payment for Plaintiff's loss of business income.

**V.**  
**CAUSES OF ACTION AGAINST NATIONWIDE**

**A. BREACH OF CONTRACT**

Plaintiff re-alleges the foregoing paragraphs. Nationwide and its agents' conduct constitutes a breach of the insurance contract between it and Plaintiff. Nationwide's failure and/or refusal, as described above, to pay Plaintiff adequate compensation as it is obligated to do under the terms of the Policy in question, and under the laws of the State of Texas, constitutes a breach of the insurance contract with Plaintiff.

Nationwide failed to perform its contractual duty to adequately compensate Plaintiff under the terms of the Policy. Specifically, Nationwide wrongfully denied coverage for loss of Business Income, Extra Expense and Civil Authority and refused to offer the full proceeds of the Policy, although due demand was made for proceeds to be paid in an amount sufficient to cover Plaintiff's business loss, and all conditions precedent to recovery under the Policy have been carried out and accomplished by Plaintiff. Nationwide's conduct constitutes a breach of the insurance contract between it and Plaintiff.

**B. NONCOMPLIANCE WITH TEXAS INSURANCE CODE**

**1. UNFAIR SETTLEMENT PRACTICES**

Plaintiff re-alleges the foregoing paragraphs. Texas law is clear that insurance companies and anyone engaged in the business of insurance by investigating and adjusting a claim must conduct a reasonable, full and fair claim investigation. Nationwide violated Chapter 541 of the Texas Insurance Code, in one or more of the following particulars:

**§ 541.061. Misrepresentation of Insurance Policy.**

- Making an untrue statement of material fact;
- Failing to state a material fact necessary to make other statements made not misleading;
- Making a misleading statement; and
- Failing to disclose a material matter of law.

**§ 541.060. Unfair Settlement Practices.**

Insurance Code chapter 541, section 541.060 by, among other things:

- misrepresenting one or more material facts and/or policy provisions relating to coverage;
- making misrepresentations of law;
- failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which their liability has become reasonably clear;
- failing to promptly provide a reasonable explanation of the basis in law or fact for the denial of Plaintiff's claims; and
- refusing to conduct a reasonable investigation.

**2. THE PROMPT PAYMENT OF CLAIMS**

Plaintiff re-alleges the foregoing paragraphs. Nationwide's conduct constitutes and will continue to constitute multiple violations of the Texas Insurance Code, Prompt Payment of Claims.

All violations made under this article are made actionable by TEX. INS. CODE §542.060.

Nationwide failed to accept or deny Plaintiff's full and entire claim within the statutorily-mandated time of receiving all necessary information. Its conduct constitutes a violation of the

Texas Insurance Code, Prompt Payment of Claims. TEX. INS. CODE §542.056.

Nationwide failed and will fail to timely pay Plaintiff's claim, and for all of the covered losses due to its wrongful denial of the policy benefits. TEX. INS. CODE §542.057.

Nationwide failed and will fail to meet its obligations under the Texas Insurance Code regarding payment of claims without delay due to its wrongful denial. Its conduct constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEX. INS. CODE §542.058.

Because of Nationwide's wrongful acts and omissions, Plaintiff was forced to retain the professional services of the attorney and law firm who is representing it with respect to these causes of action.

**C. BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

Plaintiff re-alleges the foregoing paragraphs. Nationwide's conduct constitutes a breach of the common law duty of good faith and fair dealing owed to the insureds pursuant to insurance contracts.

From and after the time Plaintiff's loss was presented to Nationwide, its liability to pay the full claim in accordance with the terms of the Policy was reasonably clear. However, it has refused to pay Plaintiff in full and wrongfully denied the claim, despite there being no basis upon which a reasonable insurance company would have relied to deny the full payment. Nationwide's conduct constitutes a breach of the common law duty of good faith and fair dealing.

Further, Nationwide's failure, as described above, to adequately and reasonably investigate and evaluate Plaintiff's claims, although, at that time, it knew or should have known by the exercise of reasonable diligence that its liability was reasonably clear, constitutes a breach of the duty of good faith and fair dealing.

**VI.**  
**CAUSES OF ACTION AGAINST DEFENDANT WORTH**

Plaintiff pleads against its agent, Worth, in the alternative as Plaintiff believes its damages are covered by the Policy. Worth is Plaintiff's insurance agent. The actions alleged against Worth in this complaint were committed by Worth and/or his agents.

The Covid-19 pandemic has been a known phenomenon since January 2020. As is being reported by the industry, including The Independent Insurance Agents & Brokers of America, insurers began directing their agents to deny certain claims, most specifically business income claims, related to Covid-19. To be sure, Nationwide and others have mounted a major media campaign to try and set the narrative that business income losses are not covered.

On information and belief, Worth was informed by Nationwide in January that it would not cover business income loss claims by its policyholders because it claimed there was no physical damage caused by the Covid-19 virus and because of the Policy's exclusions, including that it would not cover a "governmental action" as Worth told Plaintiff's representative. Though it was clear the pandemic would adversely affect business insureds, Worth failed to inform Plaintiff when policy inceptioned on January 31, 2020. Had he informed Plaintiff the Policy he was selling would not cover Plaintiff's business income losses according to Nationwide, Plaintiff would not have purchased the Policy.

Worth also misrepresented to Plaintiff that the Policy does not cover "communicable disease" as it was not a "cause of loss" in the Policy. This is flat wrong as Plaintiff's Policy is an "all-risk" policy, and there are no exclusions for communicable diseases. On information and belief, Worth was directed to purposefully tell Plaintiff's representative, as well as other business insureds, there was no coverage for "communicable disease" or "governmental actions" in order to keep Plaintiff from even submitting a claim to Nationwide.

Despite knowing Nationwide would deny any coverage for Business income loss due to the pandemic, Worth obtained coverage for the Plaintiff on the Properties with Nationwide and failed to disclose such information. Worth procured a policy for Plaintiff with endorsements that, according to Nationwide, limited and/or excluded coverage for business income. Subsequently, Nationwide denied Plaintiff's claim for Policy benefits. Worth knew Plaintiff's Properties would suffer business income loss due to the pandemic as Nationwide, on information and belief, had warned its agents and brokers in January 2020 and directed them to aid it in dissuading the submission of claims.

Finally, despite the fact that agents and brokers consistently argue that they have no duty to explain coverage to their clients, the undersigned has seen agent after agent explaining to their clients that there is no coverage and explaining *why* – talking points provided to them by the carriers. Worth did the same – whether negligently or purposefully will be determined in discovery.

#### **A. DECEPTIVE TRADE PRACTICES ACT**

Plaintiff would show that Worth engaged in the false, misleading and deceptive acts, practices and/or omissions set forth above which are actionable under the Texas Deceptive Trade Practices – Consumer Protection Act (Texas Business and Commerce Code, Chapter 17.41, *et. seq.*), as alleged below.

Unconscionable Action or Course of Action. Worth engaged in an “unconscionable action or course of action” to the detriment of Plaintiff as that term is defined by Section 17.45(5) of the Texas Business and Commerce Code, by taking advantage of the lack of knowledge, ability, experience, or capacity of Plaintiff to a grossly unfair degree.



Violations of § 17.46(b). Worth violated one or more of the following of §17.46(b) of the Texas Business and Commerce Code:

Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

Causing confusion or misunderstanding as to affiliation, connection or association with, or certification by, another;

Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have;

Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;

Representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced;

Failing to disclose information concerning goods or services which was known at the time of the transaction with the intention to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.

Producing Cause. Plaintiff would show that the acts, practices and/or omissions complained of under the Texas Business and Commerce Code were the producing cause of Plaintiff's damages.

Reliance. Plaintiff would further show the acts, practices and/or omissions complained of under §17.46(b) of the Texas Business and Commerce Code were relied upon by Plaintiff to Plaintiff's detriment.

**B. NEGLIGENT MISREPRESENTATION**

Plaintiff would further show that as set forth above, Worth supplied false information or falsely withheld information in the course of its business, profession or employment, or in the course of a transaction in which Worth has a pecuniary interest, and that such information was supplied by Worth for the guidance of Plaintiff in the transactions described above. Worth failed to exercise reasonable care or competence in obtaining or communicating such information. Plaintiff avers that it suffered pecuniary loss, described on such information. The conduct of the Worth proximately caused the damages to the Plaintiff for which it herein sues.

**C. VIOLATIONS OF THE TEXAS INSURANCE CODE**

Plaintiff would further show that as set forth above, at all pertinent times, Worth was engaged in the business of insurance as defined by the Texas Insurance Code. The acts and omissions of Worth and his agents constitute one or more violations of the Texas Insurance Code. More specifically, Worth has, among other violations, violated the following provisions of chapter 541 of the Code:

- Making an untrue statement of material fact in violation of Section 541.061(1);
- Leaving out a material fact, so that other statements are rendered misleading in violation of Section 541.061(2);
- Making a statement in a way that would lead a reasonably prudent person to a false conclusion about a material fact in violation of Section 541.061(3); and
- Not disclosing any matter required by law to be disclosed in violation of Section 541.061(5).

Such acts by Worth are the producing cause of Plaintiff's damages.

**D. NEGLIGENCE AND NEGLIGENCE BY UNDERTAKING A DUTY**

Worth failed to act as a reasonably prudent agent and failed to comply with the following standards of care an agent owes to a client:

- 1) obtain the insurance as requested by the client;
- 2) make the client aware of any coverage problems.

Additionally, an agent must also be diligent, honest and fair to clients. Plaintiff would show that Worth failed to exercise ordinary care in performing such duties.

Further, as an agent, Worth has no duty under Texas law to explain coverages to his clients. However, he undertook such a duty with Plaintiff by wrongfully explaining that the Policy does not cover Plaintiff's loss of business income. Because he undertook a duty he did not have, he is liable for his negligence performing such a duty.

The acts and/or omissions of Worth described above by which Worth breached such duties constitutes a proximate cause of the damages of Plaintiff described more fully above, for which Worth is liable to Plaintiff. Had Plaintiff known, it would not have purchased the Policy or it would have paid the higher premium to get the coverage for loss of business income due to the pandemic, which did exist at the time of Plaintiff's Policy's inception.

**VII.**  
**CAUSES OF ACTION AGAINST ALL DEFENDANTS FOR CIVIL CONSPIRACY**

Plaintiff re-alleges the foregoing paragraphs. The Defendants conspired to 1) misrepresent coverage to Plaintiff to dissuade it from submitting a claim, and 2) delay and deny Plaintiff's claim. Nationwide tasked Worth, on information and belief, to deter Plaintiff from submitting a claim because it would be denied and then delay Plaintiff's claim in order for Nationwide to avoid paying the claim covered by the Policy. The misrepresentations were either independent acts by Worth in violation of the Insurance Code and other laws, or a meeting of the minds between Worth and

Nationwide to accomplish violations of the Insurance Code – the discovery process will bear out which. On information and belief, Nationwide enlisted Worth to aid it in its anticipatory breach of the Policy. The Defendants' conspiracy was a proximate cause of Plaintiff's damages.

### **VIII. KNOWLEDGE**

Each of the acts described above, together and singularly, was done "knowingly" by Defendants as that term is used in the Texas Insurance Code and was a producing cause of Plaintiff's damages described herein.

### **IX. DAMAGES**

Plaintiff would show that all of the aforementioned acts, taken together or singularly, constitute the proximate and producing causes of the damages sustained by Plaintiff.

For breach of contract, Plaintiff is entitled to regain the benefit of the bargain, which is the amount of the claim, together with attorney's fees.

For noncompliance with the Texas Insurance Code, Unfair Settlement Practices, Plaintiff is entitled to actual damages, which include the loss of the benefits that should have been paid pursuant to the Policy but for the wrongful denial, court costs, consequential damages not covered by Plaintiff's Policy and attorney's fees. For knowing conduct of the acts described above, Plaintiff asks for three times the actual damages. TEX. INS. CODE §541.152.

For noncompliance with the Texas Insurance Code, Prompt Payment of Claims, Plaintiff is entitled to the amount of the claim, as well as eighteen (18) percent interest per annum on the amount of such claim as damages, together with attorney's fees. TEX. INS. CODE §542.060.

For noncompliance with the Deceptive Trade Practices Act, Plaintiff is entitled to actual damages, court costs and attorney's fees. For knowing conduct of the acts described

above, Plaintiffs ask for three times the actual damages. TEX. BUS. & COM. CODE §17.50.

For negligence and negligent misrepresentation, Plaintiff is entitled to recover actual damages, exemplary damages, interest and court costs.

For breach of the common law duty of good faith and fair dealing, Plaintiff is entitled to compensatory damages, including all forms of loss resulting from the insurer's breach of duty, such as additional costs, economic hardship, losses due to nonpayment of the amount the insurer owed, and exemplary damages.

For civil conspiracy, Defendants are jointly and severally liable for the damages to Plaintiff.

For the prosecution and collection of this claim, Plaintiff has been compelled to engage the services of the attorneys whose names are subscribed to this pleading. Therefore, Plaintiff is entitled to recover a sum for the reasonable and necessary services of Plaintiff's attorneys in the preparation and trial of this action, including any appeals to the Court of Appeals and/or the Supreme Court of Texas.

## X.

In addition, as to any exclusion, condition, or defense pled by Defendants, Plaintiff would show that:

The clear and unambiguous language of the policy provides coverage for business interruption and other losses to the Properties caused by losses made the basis of Plaintiff's claims;

In the alternative, any other construction of the language of the policy is void as against public policy;

Any other construction and its use by the Defendants violate the Texas Insurance Code section 541 et. seq. and is void as against public policy;

Any other construction is otherwise void as against public policy, illegal, and violates state law and administrative rule and regulation.

In the alternative, should the Court find any ambiguity in the policy, the rules of construction of such policies mandate the construction and interpretation urged by Plaintiff;

In the alternative, Defendants are judicially, administratively, or equitably estopped from denying Plaintiff's construction of the policy coverage at issue;

In the alternative, to the extent that the wording of such policy does not reflect the true intent of all parties thereto, Plaintiff pleads the doctrine of mutual mistake requiring reformation.

## **XI. REQUEST FOR DISCLOSURES**

Pursuant to the Texas Rules of Civil Procedure 194, Plaintiff requests that Defendants provide the information required in a Request for Disclosure.

## **XII. FIRST REQUEST FOR PRODUCTION TO NATIONWIDE**

- 1) Produce the non-privileged portion of Nationwide's complete claim file for Plaintiff's Properties relating to or arising out of Plaintiff's losses for which Nationwide opened a claim under the Policy.
- 2) Produce all emails and other forms of communication between Nationwide, its agents, adjusters, employees, or representatives and the agent and adjuster, and/or their agents, adjusters, representatives or employees relating to, mentioning, concerning or evidencing the Plaintiff's Policy and/or Properties which are the subject of this suit.
- 3) Underwriting documents and communications, including but not limited to, any and all materials, documents, notations, files, reports, correspondence and/or other communications related to Plaintiff's application/s for coverage, binders, proposals, and the issuance of the policy, including renewals thereof. This request also includes materials, determination and/or method for determining the forms and endorsements to be used in creating the policy. This request also includes information regarding the basis for rating and premium classifications used for Plaintiff. Finally, this request includes any internal communications or guidelines regarding the handling and/or coverage positions of Defendant regarding business interruption and other claims related to the 2019 Novel Coronavirus and/or COVID-19.

- 4) Any and all documents and/or communications from Nationwide or any parent, subsidiary or affiliated entities to any third-party, including but not limited to insurance agents and brokers, marketing and/or public relations firms, at any time after December 15, 2019, and relating in any way to coverage or exclusions or denials of coverage for civil authority or for business interruption or business income loss and/ or commercial property coverage mentioning or referencing the 2019 Novel Coronavirus, the pandemic, and/or COVID-19.

### **XIII.**

#### **FIRST REQUEST FOR PRODUCTION TO DEFENDANT WORTH**

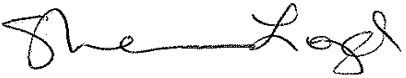
- 1) Produce Worth's complete claim or adjusting file for Plaintiff's claim.
- 2) Produce all emails and other forms of communication between Nationwide, its agents, adjusters, employees, or representatives and Worth and/or his agents, adjusters, representatives or employees relating to, mentioning, concerning or evidencing the 2019 Novel Coronavirus, the pandemic, and/or the claim which is the subject of this suit.

### **XIV.**

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendants be cited to appear and answer herein; that, on final hearing, Plaintiff have judgment against Defendants for an amount, deemed to be just and fair by the jury, which will be a sum within the jurisdictional limits of this Court. Because Plaintiff must state a range of damages, Plaintiff pleads that the damages will be more than \$1,000,000. Plaintiff further pleads for costs of suit; for interest on the judgment; for pre-judgment interest; and, for such other and further relief, in law or in equity, either general or special, including the non-monetary relief of declaratory judgment against Nationwide, to which Plaintiff may be justly entitled.

Respectfully submitted,

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BY:   
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ATTORNEY FOR PLAINTIFF

**PLAINTIFF REQUESTS A TRIAL BY JURY**