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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 PALOMAR HEALTH, 12 Plaintiff, 13 vs. 14 AMERICAN GUARANTEE AND LIABILITY 15 INSURANCE COMPANY, MORGAN 16 JACKSON, and DOES 1 through 10, inclusive. 17 Defendants.	Case No.: <u> '21CV490 BEN BGS </u> COMPLAINT FOR BREACH OF CONTRACT, DECLARATORY RELIEF, BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING, NEGLIGENT MISREPRESENTATION, AND DEMAND FOR JURY TRIAL
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18 WHEREFORE Plaintiff, PALOMAR HEALTH, (“Palomar”) by and through its
19 attorneys, Saxe, Doernberger & Vita, P.C., hereby complains and alleges as follows against
20 Defendant AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY
21 (“American Guarantee”) for whom:

22 **JURISDICTION AND VENUE**

- 23 1. Subject matter jurisdiction is founded in diversity of citizenship pursuant to 28
24 U.S.C. § 1332, based on the facts more specifically alleged in paragraphs 4 and 5 below.
- 25 2. The amount in controversy, exclusive of interest and costs, exceeds the sum of
26 \$75,000.
- 27 3. Venue lies in this district pursuant to 28 U.S.C.A. § 1391, in that a substantial part
28 of the events or omissions giving rise to this action, including issuance of the insurance policies

1 at issue, occurred in San Diego County, California, and/or a substantial part of the insurance
2 claims that are the subject of this action pertain to property that is situated in San Diego County,
3 California.

4 **PARTIES**

5 4. Palomar is a governmental party, which, at all relevant times herein, was and is a
6 California local healthcare district organized under Division 23 of the California Health & Safety
7 Code, with its principal place of business at 456 E. Grand Avenue, Escondido, CA 92025.

8 5. Palomar is informed and believes and thereon alleges that, at all relevant times
9 herein, American Guarantee was and is an entity formed and existing under the laws of the State
10 of New York, with its principal place of business at 1299 Zurich Way, Schaumburg, Illinois
11 60196.

12 **FACTUAL ALLEGATIONS**

13 6. Palomar operates several healthcare facilities throughout San Diego County and is
14 in the business of providing healthcare services to the community, including, but not limited to,
15 elective surgical services, women’s health services, cardiac rehabilitation, and community health
16 education classes; Palomar also operates a gift shop at its Palomar Medical Center location in
17 Poway, California.

18 7. American Guarantee is an insurance carrier engaged in the business of providing
19 insurance coverage to healthcare providers, including Palomar.

20 8. Palomar and American Guarantee issued two separate insurance contracts
21 covering consecutive policy periods in consideration of premiums paid by Palomar.

22 **The Policies**

23 9. Palomar procured “The Zurich EDGE Healthcare Policy” from American
24 Guarantee, bearing Policy No. ZMD0198013-03, with an effective Policy Period of July 1, 2019
25 through July 1, 2020 (the “2019-2020 Policy”), which was renewed via Policy No. ZMD-
26 0198013-04 for the Policy Period of July 1, 2020 through July 1, 2021 (the “2020-2021 Policy”)
27 (collectively, the “Policies”).
28

1 10. The Policies obligate American Guarantee to indemnify and/or reimburse
2 Palomar for loss of or damage to its healthcare facilities and/or business activities caused by “all
3 risks of direct physical loss of or damage from any cause unless excluded,” including, but not
4 limited to, the following risks specifically covered by the Policies (emphasis added):

- 5 a. “**TIME ELEMENT**” losses provided by Section 4.01. of the Policies,
6 including loss of “Gross Earnings” and “Extra Expenses” resulting from the
7 necessary Suspension, meaning the “slow down or cessation,” of Palomar’s
8 business activities “due to direct physical loss of or damage to Property (of the
9 type insurable under th[e] Polic[ies] . . .),” including, but not limited to,
10 Palomar’s “interest in Personal Property” and/or “interest in buildings (or
11 structures).”
- 12 b. “**INTERRUPTION BY COMMUNICABLE DISEASE**” provided by
13 Section 5.02.35 of the Policies, including “loss resulting from the necessary
14 Suspension [i.e., ‘slow down or cessation’] of the Insured’s business activities
15 at an Insured Location if the Suspension is caused by order of an authorized
16 governmental agency enforcing any law regulating communicable diseases
17 and that [sic] such portions of the location are declared uninhabitable due to
18 the threat of spread of communicable disease prohibiting access to those
19 portions of the Location.”
- 20 c. “**DECONTAMINATION COSTS**” provided by Section 5.02.07 of the
21 Policies, including the increased cost of decontamination and/or removal of
22 “Contaminated Covered Property” (defined as “[a]ny condition of property
23 due to the actual presence of any foreign substance . . . pathogen, pathogenic
24 organism, bacteria, virus, disease causing or illness causing agent . . .”) when
25 such “Covered Property is Contaminated from direct physical loss of or
26 damage caused by a Covered Cause of Loss [defined as ‘all risks of direct
27 physical loss of or damage from any cause unless excluded’] and there is a
28

1 law or ordinance regulating Contamination due to the actual not suspected
2 presence of Contaminant(s).”

3 d. **“PROTECTION AND PRESERVATION OF PROPERTY”** provided by
4 Section 5.02.24 of the Policies, including “reasonable and necessary costs
5 incurred for actions to temporarily protect or preserve Covered Property,
6 [including Personal Property, buildings, and Palomar’s “interest in” Personal
7 Property and/or buildings]; provided such actions are necessary due to actual
8 or imminent physical loss or damage due to a Covered Cause of Loss to such
9 Covered Property;”

10 e. **“CIVIL OR MILITARY AUTHORITY”** losses provided by Section
11 5.02.03 of the Policies, including loss of “Gross Earnings” and “Extra
12 Expenses” resulting from the necessary Suspension (i.e., “slow down or
13 cessation”) of Palomar’s business activities at an Insured Location if the
14 Suspension is caused by order of civil or military authority that prohibits
15 access to the Location, provided that such order must result from a civil
16 authority’s response to direct physical loss of or damage caused by a Covered
17 Cause of Loss to property not owned or occupied by Palomar and located
18 within five (5) miles of the Insured’s Location.

19 f. **“PROTECTION OF PATIENTS”** provided by Section 5.02.37 of the
20 Policies, including reasonable and necessary costs incurred for actions to
21 temporarily remove and return patients at the Insured Location; provided such
22 actions are necessary “due to impending physical loss or damage due to a
23 Covered Cause of Loss to Covered Property,” which includes Personal
24 Property, buildings, and/or Palomar’s “interest in” Personal Property or
25 buildings.

26 g. **“PROFESSIONAL FEES”** provided by Section 5.02.23 of the Policies,
27 including “the actual costs incurred by [Palomar], of reasonable fees paid to
28 [Palomar’s] accountants, . . . auditors, . . . or other professional[s] and the cost

1 of using the Insured’s employees, for producing and certifying any details
2 contained in the Insured’s books or documents, or such other proofs,
3 information or evidence required by [American Guarantee] resulting from loss
4 or damage payable under this Policy for which [American Guarantee] accepts
5 liability.”

6 11. Under certain limited conditions, which are not applicable here, Sections
7 3.03.01.01 of the Policies purports to exclude coverage for costs due to “Contamination.”

8 12. Also under certain limited conditions, which are not applicable here, Section
9 3.03.02.05 of the Policies purports to exclude coverage for loss or damages arising from the
10 enforcement of specific laws and ordinance.

11 13. The exclusions cited in paragraphs 11 and 12 above do not apply if coverage for
12 such losses is “specifically stated elsewhere in the Policy,” and if such losses “result[] from direct
13 physical loss or damage not excluded by the Policy;” for these reasons and others, the exclusions
14 do not apply to limit or bar coverage for Palomar’s claims.

15 **The Claims**

16 14. On March 19, 2020, the Executive Department for the State of California issued
17 Executive Order N-33-20, mandating certain state-wide action to preserve public health and
18 safety in response to the COVID-19 pandemic.

19 15. Specifically, Order N-33-20 mandated that “[t]he healthcare delivery system shall
20 prioritize services to serving those who are the sickest and shall prioritize resources, including
21 personal protective equipment, for the providers providing direct care to them.”

22 16. Several other government orders followed, including, but not limited to, March
23 29, 2020 and December 10, 2020 Orders issued by the County of San Diego Health and Human
24 Services Agency, entitled “Order of the Health Officer and Emergency Regulations” (the
25 “County Orders”).

26 17. The County Orders mandated, among other things, that “[h]ospitals and
27 healthcare providers shall take measures to preserve and prioritize resources including delaying
28 non-emergent or elective surgeries and procedures where feasible.”

1 18. County Orders also mandated that “[n]on-essential personnel, . . . are prohibited
2 from entry into any hospital or long-term care facility. All essential personnel who show any
3 potential signs or symptoms of COVID-19 shall be strictly prohibited from entry into hospitals or
4 long-term care facilities.”

5 19. In addition, the County Orders required the closure of certain non-essential indoor
6 facilities.

7 20. As a result of Order N-33-20 and the County Orders, Palomar suffered, among
8 other covered losses, a “direct physical loss of” and/or “damage to” its “interest in Personal
9 Property and/or its “interest in buildings (or structures),” including, but not limited to, its interest
10 in the discretionary use of personal protective equipment and other resources, buildings, and
11 facilities.

12 21. Palomar’s usual business activities, including but not limited to, elective surgical
13 services, women’s health services, cardiac rehabilitation, community health education classes,
14 and gift shop operations, were Suspended, within the meaning of the Policies (i.e., slowed down
15 or ceased), due to Palomar’s “direct physical loss of” and/or “damage to” its “interest in Personal
16 Property and/or its “interest in buildings (or structures).”

17 22. Palomar suffered losses arising from the slow down or cessation of business
18 activities because Order N-33-20 and the County Order rendered portions of its facilities
19 uninhabitable due to the threat of spread of COVID-19.

20 23. Palomar suffered losses arising from the slow down or cessation of business
21 activities because Order N-33-20 and the County Order prohibited access to property within five
22 (5) miles of Palomar’s Insured Locations as a result of the Executive Department for the State of
23 California’s and the County of San Diego Health and Human Services Agency’s response to
24 direct physical loss of or damage caused by COVID-19 to property not owned or occupied by
25 Palomar and located within five (5) miles of the Palomar’s Insured Locations.

26 24. Palomar incurred costs to decontaminate its facilities due to the actual presence of
27 COVID-19.

28 25. Palomar suffered losses as a result of its efforts to protect its patients.

1 26. Palomar has and will continue to incur professional fees and costs to pay its
2 employees and/or other professionals for producing and certifying details, information, or
3 evidence required by American Guarantee resulting from covered losses or damages identified in
4 the preceding paragraphs.

5 27. The losses identified in the preceding paragraphs, and other losses sustained by
6 Palomar (the “Losses”), are expressly covered under the Policies pursuant to, but not limited to,
7 the coverage parts cited in paragraphs 10.a. through 10.g. above and are not otherwise limited or
8 excluded by the Policies.

9 **American Guarantee’s Conduct**

10 28. On April 20, 2020, by and through its insurance broker, Palomar tendered notice
11 of the aforementioned Losses to American Guarantee, seeking full coverage under the 2019-
12 2020 Policy (the “Claims”).

13 29. On April 21, 2020, American Guarantee formally acknowledged receipt of the
14 Claims and assigned National General Adjuster, Corey Canipe, to adjust the Claims.

15 30. On May 1, 2020, American Guarantee issued a reservation of rights letter,
16 denoting potentially applicable policy provisions and asserting that American Guarantee’s
17 investigation of the claim was still ongoing, and that it would provide Palomar “with [its]
18 coverage position as soon as [its] investigation is complete.”

19 31. On May 20, 2020, Palomar provided American Guarantee with a Statement of
20 Values associated with its Claims, as well as a response to a COVID-19 Questionnaire requested
21 by American Guarantee.

22 32. From May 2020 through present, Palomar communicated with American
23 Guarantee on multiple occasions, providing all information and documentation requested by
24 American Guarantee with respect to the Claims.

25 33. American Guarantee claimed, on multiple occasions, to be investigating the
26 Claims during this timeframe.

1 34. On or about September 28, 2020, American Guarantee reassigned adjustment of
2 the Claims to Morgan Jackson in her capacity as National General Adjuster, Large Property
3 Claims for American Guarantee.

4 35. On September 28, 2020, Ms. Jackson called Palomar and left a voicemail stating,
5 in part, that it was her “goal to not really have you spinning your wheels on all the locations,”
6 referring to Palomar’s pursuit of coverage under the Policies for “all facility locations” that
7 sustained loss and damage due to the COVID-19 pandemic and related government Orders.

8 36. This narrative is consistent with other telephone conversations in which Ms.
9 Jackson intended to deter Palomar from pursuing Claims, and/or asked Palomar to reconsider its
10 prior Claim submissions, for certain locations and/or for certain business activities as, according
11 to Ms. Jackson’s representations, the Policies would not coverer those Claims and/or locations.

12 37. As one example, Palomar sought coverage for its loss of “Gross Earnings” and
13 “Extra Expenses” related to elective surgeries at various Palomar locations under the TIME
14 ELEMENT coverage part in Section 4.01.01 of the Policies, the INTERRUPTION BY
15 COMMUNICABLE DISEASE coverage part in Section 5.02.35, and other coverage parts
16 including, but not limited to, those identified in paragraphs 10.a. through 10.g. above.

17 38. However, on November 12, 2020, Ms. Jackson called Palomar and left another
18 voicemail indicating that, per her last conversation with Palomar, Palomar “was going to go back
19 to the Statement of Values and see which locations, if any, would be applicable based on
20 Zurich’s coverage parameters and, just to recap that, it would be your stand-alone surgery centers
21 or any department specifically that you did close down 100% because the services that were
22 provided by that location were, in fact, Suspended by an executive order,” further stating that
23 “the ultimate [factor] is, was there an order in effect that caused suspension of basically 100%
24 of the book of business? Because the idea is that if you are still operating services at a location
25 or in a department, then you are not prohibited access into it.”

26 39. Notably, the Policies’ definition of Suspension does not require a 100% closure of
27 properties or services in order to trigger coverage under the TIME ELEMENT coverage part, the
28 INTERRUPTION BY COMMUNICABLE DISEASE, or other coverage parts because the

1 Policies expressly define Suspension as “the slow down or cessation of the Insured’s business
2 activities.”

3 40. Similarly, the TIME ELEMENT coverage does not require that Palomar be 100%
4 “prohibited access” to its locations in order to trigger coverage.

5 41. Instead, the TIME ELEMENT coverage part states that Palomar must suffer a loss
6 “due to direct physical loss of or damage to Property (of the type insurable under this
7 Policy . . .),” which expressly includes Palomar’s “interest in Personal Property” and/or its
8 “interest in buildings (or structures).”

9 42. The INTERRUPTION BY COMMUNICABLE DISEASE coverage part also
10 does not require that Palomar be 100% “prohibited access” to its location in order to trigger
11 coverage.

12 43. Instead, the INTERRUPTION BY COMMUNICABLE DISEASE coverage part
13 covers losses “resulting from the necessary Suspension of business activities at an Insured
14 Location if the Suspension is caused by order of an authorized governmental agency enforcing
15 any law regulating communicable diseases and that such portions of the location are declared
16 uninhabitable due to the threat of spread of communicable disease prohibiting access to those
17 portions of the Location.”

18 44. At the time Ms. Jackson’s representations were made, American Guarantee still
19 had not issued a substantive coverage position either accepting or denying coverage and/or
20 explaining its position based on the express language of the Policies.

21 45. Palomar relied on Ms. Jackson’s representations to its detriment in making
22 decisions about how and/or which Claims to pursue, as well as making other business decisions,
23 including, but not limited to, staff reduction decisions and providing associated severance and
24 benefits payouts, with the understanding – per Ms. Jackson’s assertions – that several of
25 Palomar’s losses would not or may not be covered under the Policies.

26 46. On March 10, 2021, American Guarantee issued a letter to Palomar rejecting
27 Palomar’s request to engage in a tolling agreement to permit more time to process the Claims
28 without the threat of impending litigation.

1 47. American Guarantee issued its first substantive coverage position to Palomar on
2 March 17, 2021, nearly a year after it first acknowledged receipt of the Claims, and on the cusp
3 of Palomar having to file the present action because of American Guarantee’s refusal to enter
4 into a tolling agreement.

5 48. Ms. Jackson issued the March 17, 2021 letter on behalf of American Guarantee,
6 which states, in part, that “[i]t was confirmed out of all the locations Palomar owns and operates
7 only 5 locations closed including a cardiac rehab center, gift shop, and 3 locations which provide
8 various community classes. All other locations including the hospital, several medical centers,
9 offices and surgery centers were not at any time prohibited access as they remained open and
10 accessible.”

11 49. American Guarantee’s March 17, 2021 letter indicated that these were the only
12 five (5) locations evaluated for coverage under the Policies, despite Palomar having sought
13 coverage for “all facility locations,” as indicated on the COVID-19 Questionnaire provided to
14 American Guarantee on May 20, 2021.

15 50. The March 17, 2021 letter states that American Guarantee is “prepared to move
16 forward with evaluating the financial loss of gross earnings for the gift shop,” but otherwise
17 denies coverage for the other locations it evaluated.

18 51. American Guarantee’s coverage positions and conclusions are inconsistent with
19 the Policies’ express language and constitute a wrongful and unreasonable refusal to provide
20 Palomar with benefits due and owing under the Policies.

21 52. In addition, American Guarantee’s negligent misrepresentations and mishandling
22 of the Claims, including through the conduct of its agent, Ms. Jackson, constitutes bad faith.

23 53. As a foreseeable consequence of American Guarantee’s wrongful and
24 unreasonable refusal to provide Palomar with benefits due and owing under the Policies, as well
25 as American Guarantee’s and/or Ms. Jackson’s negligent misrepresentations and mishandling of
26 the Claims, Palomar has suffered and will continue to suffer harm.

1 **COUNT I**

2 **BREACH OF CONTRACT AGAINST DEFENDANT AMERICAN GUARANTEE**

3 54. Palomar hereby incorporates paragraphs 1 through 53, inclusive, as though fully
4 set forth herein.

5 55. American Guarantee, in consideration for premiums paid by Palomar, delivered
6 the Policies to Palomar.

7 56. The Policies are valid and enforceable written contracts of insurance which were
8 in full force and effect at all relevant times referenced herein.

9 57. Palomar is, and at all relevant times was, in compliance with all conditions
10 precedent for coverage under the Policies, including, but not limited to, having provided timely
11 notice of the Claims.

12 58. American Guarantee is obligated, pursuant to the terms of the Policies, to pay for
13 all “direct physical loss of or damage” caused by “all risk of direct physical loss of or damage
14 from any cause unless excluded,” including but not limited to the risks covered by the following
15 coverage parts identified in paragraph 10.a. through 10.g. above: “Time Element,” “Interruption
16 by Communicable Disease,” “Decontamination Costs,” “Protection and Preservation Costs,”
17 “Civil or Military Authority,” “Research and Development,” “Protection of Patients,” and/or
18 “Professional Fees.”

19 59. Despite demands, American Guarantee unreasonably refused and/or otherwise
20 failed to pay Palomar for coverage benefits due and owing to Palomar under the Policies’ terms.

21 60. American Guarantee’s refusal and/or failure to pay coverage benefits due and
22 owing to Palomar constitutes a breach of the Policies.

23 61. As a result of American Guarantee’s refusal to provide coverage, Palomar has
24 suffered damages and will continue to suffer damages in the future.

25 **COUNT II**

26 **DECLARATORY JUDGMENT AGAINST DEFENDANT AMERICAN GUARANTEE**

27 62. Palomar hereby incorporates paragraphs 1 through 61, inclusive, as though fully
28 set forth herein.

1 63. A dispute has arisen between Palomar and American Guarantee regarding
2 whether American Guarantee is obligated to pay benefits to Palomar for past and ongoing losses
3 arising from the Claims.

4 64. An actual case and justiciable controversy exists regarding American Guarantee's
5 obligations under the Policies with respect to whether benefits arising from the Claims are due
6 and owing to Palomar.

7 65. A declaratory judgement pursuant to 28 U.S.C. § 2201 is necessary and
8 appropriate to determine the rights and duties of American Guarantee and Palomar pursuant to
9 the Policies.

10 **COUNT III**

11 **BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING AGAINST DEFENDANT**

12 **AMERICAN GUARANTEE**

13 66. Palomar hereby incorporates paragraphs 1 through 65, inclusive as though fully
14 set forth herein.

15 67. By operation of law, American Guarantee and its agents are under an implied duty
16 of good faith and fair dealing, requiring American Guarantee to deal honestly and in good faith
17 with Palomar.

18 68. The implied duty of good faith and fair dealing includes the duty to perform a
19 prompt and objective investigation, and to pay benefits due and owing to its insured, Palomar,
20 without unreasonably withholding or delaying such benefits.

21 69. American Guarantee breached its implied covenant of good faith and fair dealing
22 in various ways, including, but not limited to:

- 23 a. By failing to promptly indemnify and/or otherwise reimburse Palomar under
24 applicable coverages;
25 b. By unreasonably delaying payment of benefits owed to Palomar;
26 c. By failing and refusing to conduct a fair, thorough, prompt, and objective
27 investigation of Palomar's Claim;
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- 1 d. By violating various aspects of the California Insurance Code (the “Code”),
2 including § 790.03(h)(1) (by knowingly committing and fully
3 “misrepresenting to claimant’s pertinent facts or insurance policy provisions
4 applicable to any coverage at issue”);
- 5 e. By violating § 790.03(h)(2) of the Code (requiring an insurer to promptly
6 acknowledge and act reasonably promptly upon communications with respect
7 to claims arising under insurance policies”);
- 8 f. By violating § 790.03(h)(5) of the Code (by failing to attempt “in good faith
9 to effectuate prompt, fair and equitable settlement of claims in which liability
10 has become reasonably clear”);
- 11 g. By violating § 790.03(h)(6) of the Code (by requiring Palomar to institute
12 litigation in order to obtain a fair payment of benefits);
- 13 h. By violating § 790.03(h)(12) of the Code (by failing to settle the claim
14 promptly);
- 15 i. By violating § 790.03(h)(13) of the Code (by failing to “provide promptly a
16 reasonable explanation of the basis relied on in the insurance policy, in
17 relation to the facts or applicable law, for the denial of a claim or for the offer
18 of a compromise settlement”);
- 19 j. By violating various aspects of the 1993 Department of Insurance
20 Regulations, and subsequent amendments thereto, (the “Regulations”)
21 including § 2695.5(e) (requiring the provision of claim forms, instructions,
22 and reasonable assistance within fifteen calendar days);
- 23 k. By violating § 2695.4(a) of the Regulations (by failing to affirmatively
24 disclose all benefits, coverage, time limits or other provisions of any insurance
25 term that may apply to the claim);
- 26 l. By violating § 2695.7(d) of the Regulations (by failing to “diligently pursue a
27 thorough, fair, and objective investigation”);
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1 m. By violating § 2695.7(c)(1) of the Regulations (by failing to provide a
2 statement in writing explaining the status of the claim within forty days and
3 then on a thirty-day continuing basis); and

4 n. By engaging in the conduct described in the paragraphs incorporated by
5 reference to this cause of action or otherwise contained herein.

6 70. Palomar is informed and believes and thereon alleges that American Guarantee
7 breached its duty of good faith and fair dealing by other acts or omissions of which it is presently
8 unaware, but which it will show according to proof at trial.

9 71. American Guarantee's conduct was undertaken by its agents and representatives,
10 who were responsible for claims, supervision, operations, communications, and decisions on
11 behalf of American Guarantee, which had advanced knowledge of said actions and conduct, and
12 ratified, authorized, and approved the same.

13 72. As a direct and proximate result of the aforementioned unreasonable conduct by
14 American Guarantee, Palomar has suffered, and will continue to suffer, damages in a sum to be
15 determined at trial.

16 73. As a further proximate result of the aforementioned unreasonable conduct by
17 American Guarantee, Palomar was compelled to retain legal counsel to obtain the benefits due
18 under the Policies.

19 74. As such, American Guarantee is liable to Palomar for the attorneys' fees and costs
20 incurred by Palomar in order to obtain the benefits under the Policy, in addition to Palomar's
21 actual and consequential losses sustained as a result of American Guarantee's breach of the duty
22 of good faith and fair dealing.

23 75. American Guarantee's conduct was done with conscious disregard of Palomar's
24 rights and with an intent to vex, injure, and annoy Palomar such as to constitute oppression,
25 fraud, or malice pursuant to California Civil Code § 3294, thereby entitling Palomar to punitive
26 damages.

27 76. Alternatively, American Guarantee's conduct constitutes intentional
28 misrepresentations, deceit, or concealment of material facts known to American Guarantee with

1 the intent to deprive Palomar of property, legal rights, or to otherwise cause injury such as to
2 constitute oppression, fraud, or malice pursuant to California Civil Code § 3294, thereby
3 entitling Palomar to punitive damages.

4 **COUNT IV**

5 **NEGLIGENT MISREPRESENTATION AGAINST DEFENDANTS AMERICAN**
6 **GUARANTEE & MORGAN JACKSON**

7 77. Palomar hereby incorporates paragraphs 1 through 76, inclusive as though fully
8 set forth herein.

9 78. Ms. Jackson, in her individual capacity, and on behalf of American Guarantee,
10 made representations to Palomar about coverage benefits available to it under the terms of the
11 Policies.

12 79. Ms. Jackson, in her individual capacity, and on behalf of American Guarantee,
13 made misrepresentations about coverage benefits under the Policies without reasonable grounds
14 for believing them to be true and/or in a manner not warranted by the information available to
15 Ms. Jackson or American Guarantee.

16 80. When making these misrepresentations, Ms. Jackson, in her individual capacity,
17 and on behalf of American Guarantee, intended to induce Palomar's reliance on the fact that
18 coverage was not available for certain Claims and/or Losses.

19 81. Palomar justifiably relied on Ms. Jackson's misrepresentations, in her individual
20 capacity, and on behalf of American Guarantee and, in doing so, incurred substantial expenses
21 associated with the Claims.

22 82. Palomar's justified reliance proximately resulted in damages to Palomar,
23 including expenses paid and/or costs and losses sustained in association with the Claims and/or
24 Losses.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Palomar prays for judgment and the following specific relief against
27 American Guarantee:

- 28 1. Monetary Damages associated with the Claim;

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- 2. Pre-judgment and/or post-judgment interest as permitted by law;
- 3. A declaration that American Guarantee is obligated to pay benefits due and owing to Palomar under the Policies’ terms;
- 4. Punitive damages;
- 5. Attorneys’ fees and costs; and
- 6. Such other legal and equitable relief that this Court deems just and proper.

JURY DEMAND

WHEREFORE, Palomar hereby demands a trial by jury for all claims herein for which a jury is permitted.

SAXE DOERNBERGER & VITA, P.C.

Dated: March 18, 2021



By: _____
Cheryl L. Kozdrey, Esq.