JOSHUA HAEVERNICK (SBN 308380)
joshua.haevernick@dentons.com
DENTONS US LLP
1999 Harrison Street
Suite 1300
Oakland, CA 94612-4709
Telephone: (415) 882-5000
Facsimile: (415) 882-0300

Attorneys for Travelers Casualty & Surety Company

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

In re:

THE ROMAN CATHOLIC BISHOP OF OAKLAND, a California corporation sole,

DEBTOR.

Chapter 11

Case No. 23-40523-WJL

ANSWER, AFFIRMATIVE AND ADDITIONAL DEFENSES OF TRAVELERS CASUALTY & SURETY COMPANY (F/K/A AETNA CASUALTY & SURETY COMPANY) TO PLAINTIFF'S THIRD AMENDED COMPLAINT FOR DECLARATORY JUDGMENT RELIEF, BREACH OF CONTRACT AND BREACH OF STATUTORY DUTY

JURY DEMANDED

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

THE ROMAN CATHOLIC BISHOP OF OAKLAND, PLAINTIFF, v. PACIFIC INDEMNITY, a Delaware corporation; TRAVELERS CASUALTY & SURETY COMPANY F/K/A AETNA CASUALTY & SURETY COMPANY, a Connecticut corporation; INSURANCE COMPANY OF NORTH AMERICA, a Delaware corporation; UNITED STATES FIRE INSURANCE, a Delaware corporation; WESTPORT INSURANCE CORPORATION, a Delaware corporation; CONTINENTAL CASUALTY COMPANY, a Delaware corporation; PACIFIC EMPLOYERS INSURANCE, a Delaware corporation; WESTCHESTER FIRE INSURANCE COMPANY, a Pennsylvania corporation; the CALIFORNIA INSURANCE GUARANTEE ASSOCIATION, a state entity, and CERTAIN UNDERWRITERS AT LLOYD'S, LONDON, SUBSCRIBING SEVERALLY AND NOT JOINTLY TO SLIP NOS. CU 1001 AND K 66034 ISSUED TO THE ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO, AND NOS. K 78138 AND CU 3061 ISSUED TO THE ROMAN CATHOLIC BISHOP OF OAKLAND, DEFENDANTS.[1]	ADVERSARY CASE NO. 23-04028 WJL

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Travelers Casualty & Surety Company f/k/a Aetna Casualty & Surety Company ("Travelers") hereby answers and responds to plaintiff's Third Amended Complaint as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this adversary proceeding pursuant to sections 157 and 1334 of title 28 of the United States Code ("Title 28").

[1] Footnote 1 to the Third Amended Complaint states: "After communication with the Defendants regarding the proper names of the Defendants, the Debtor has corrected and updated the named Defendants. The Debtor filed voluntary dismissal for ACE Limited, Insurance Company of America, and Certain Underwriters at Lloyd's of London Subscribing to Syndicates 2623 (AFB) And 623 (AFB). *See* Docket Nos. 65, 66, & 118, respectively." Footnote 1, however, makes no averment or allegations of fact to which a response is required by Travelers, and therefore is denied.

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 2 of 32

ANSWER: Travelers admits that this Court has subject matter jurisdiction over this Adversary Proceeding pursuant to Section 1334 of Title 28, but denies the remaining allegations of paragraph 1.

2. This proceeding is a core proceeding pursuant to sections 157(b) of Title 28.

ANSWER: Denied.

3. Venue in this Court is proper pursuant to sections 1408 and 1409 of Title 28.

ANSWER: Travelers admits that venue is proper as to Plaintiff's claims against it, but lacks knowledge and information sufficient to form a belief as to the truth of paragraph 3 as to the other parties and therefore denies same.

4. Plaintiff consents to the entry of a final order or judgment by this Court in connection with this adversary proceeding to the extent it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

ANSWER: Paragraph 4 makes no averment or allegations of fact to which a response is required, and therefore is denied. To the extent further answer is required, as this proceeding is non-core pursuant to Fed.R.Bankr.P. 7012 and Article III of the United States Constitution for which consent of the parties is required for the entry of final orders or judgments, Travelers does not provide consent to entry of final orders or judgments by this Court.

NATURE OF THE ACTION

5. This is an action for declaratory judgment, breach of contract, and breach of statutory duty.

ANSWER: Travelers admits that this action purports to state various causes of action against various defendants, but denies the remaining allegations of paragraph 5.

THE PARTIES

6. Plaintiff THE ROMAN CATHOLIC BISHOP OF OAKLAND (herein "Plaintiff", "RCBO" or the "Debtor") is a California corporation sole with its principal place of business in Oakland, California.

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 3 of 32

ANSWER: Travelers is without knowledge or information sufficient to form a belief regarding the truth of paragraph 6 and therefore denies same.

7. Defendant PACIFIC INDEMNITY (also referenced generally as "Chubb") is, on information and belief, a Delaware corporation which conducted business in this District and issued written primary policies of insurance to RCBO under Policy No. LAC127792 for the period March 12, 1962 to October 25, 1963 and Policy No. LAC 155598 for the period October 25, 1963 to October 25, 1966 (herein "PACIFIC"). Specifically PACIFIC is responsive to certain claims, including but not limited to the following claims:

- Nos. 42, 45, 53, 57, 65, 70, 74, 75, 79, 98, 107, 109, 114, 119, 120, 137, 142, 147, 150, 155, 176, 177, 185, 187, 197, 202, 204, 214, 233, 234, 239, 245, 248, 252, 257, 285, 292, 299, 307, 308, 328, 360, 381, 383, 391;

as shown on Exhibit A, and has either failed to respond to the tenders, issued reservation of rights letters or explicitly denied coverage as noted in Exhibit A. *See* Exhibit A.

ANSWER: Travelers is without knowledge or information sufficient to form a belief regarding the truth of paragraph 7 and therefore denies same.

8. Defendant TRAVELERS CASUALTY & SURETY COMPANY F/K/A AETNA CASUALTY & SURETY COMPANY is, on information and belief, a Connecticut corporation which conducted business in this District (herein "TRAVELERS"). TRAVELERS issued written primary policies of insurance to RCBO under Policy No. 05 AL 802025 CMA for the period December 1, 1975 to December 1, 1978; Policy No. 05 SM90296 FCA for the period December 1, 1978 to December 1, 1979; Policy No. 05 SM 99094 FCA for the period December 1, 1979 to December 1, 1980; and Policy No. 05 SM 107459 FCA for the period December 1, 1980 to December 1, 1981. Specifically, TRAVELERS is responsive to certain claims, including but not limited to the following claims:

- 2, 7, 10, 13, 16, 17, 19, 20, 21, 22, 25, 26, 28, 29, 31, 33, 35, 40, 41, 42, 43, 45, 54, 56, 58, 59, 61, 63, 64, 71, 80, 82, 83, 86, 88, 92, 95, 96, 97, 99, 101, 102, 103, 104, 105, 106, 110, 115, 117, 121, 126, 128, 131, 132, 133, 140, 144, 149, 152,

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 4 of 32

154, 157, 158, 163, 166, 168, 172, 174, 180, 181, 182, 189, 190, 191, 192, 193, 194, 198, 200, 203, 206, 208, 209, 210, 211, 212, 213, 215, 216, 223, 224, 225, 227, 229, 230, 243, 244, 247, 249, 250, 251, 256, 258, 259, 266, 267, 272, 273, 274, 295, 296, 297, 298, 304, 306, 310, 317, 318, 319, 321, 323, 324, 329, 333, 335, 343, 344, 345, 347, 349, 352, 353, 354, 359, 367, 368, 370, 373, 376, 377, 379, 380, 382, 384, 386, 388, 392, 393, 399, 402, 403;

as shown on Exhibit A, and has either failed to respond to the tenders, issued reservation of rights letters or explicitly denied coverage as noted in Exhibit A. *See* Exhibit A.

ANSWER: Travelers admits that it is a Connecticut corporation which conducted business in this District. With respect to the purported "primary" policies alleged in paragraph 8 (collectively, the "Alleged Primary Policies"), Travelers has been unable to locate any policy of insurance issued to RCBO and numbered as Policy No. 05 AL 802025CMA (December 1, 1975 to December 1, 1978); Policy No. 05 SM90296FCA (December 1, 1978 to December 1, 1979); and/or Policy No. 05 SM 99094FCA (December 1, 1979 to December 1, 1980), as alleged, and therefore denies RCBO's claims for coverage thereunder. With respect to purported Policy No. 05 SM 107459FCA (December 1, 1980 to December 1, 1981), Travelers has located an incomplete copy of such a purported policy but lacks knowledge or information sufficient to form a belief as to whether the material located evidences an issued and fully in-force policy as alleged, and includes all pertinent governing provisions, and therefore denies RCBO's claims for coverage thereunder. Travelers denies the remaining allegations of paragraph 8.

9. On information and belief, Commercial Union/Armour Insurance Company issued written policies of insurance to RCBO under Policy No. EF 9334-001 for the policy period October 25, 1970 to October 26, 1972; Policy No. EF 9334-003 for the policy period October 26, 1972 to October 26, 1973; and Policy No. EF 9334-008 for the policy period October 26, 1973 to December 1, 1975. Commercial Union/Armour Insurance accepted the defense of some of the underlying cases but then reported that they had become insolvent. RCBO is informed and believes and thereon alleges that defendant, the CALIFORNIA INSURANCE GUARANTEE ASSOCIATION

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 5 of 32

("CIGA"), assumed the responsibilities of Commercial Union/Armour Insurance regarding the above-identified policies. CIGA, while not an insurer, is a statutory entity, created and existing pursuant to Article 14.2 of the California Insurance Code. CIGA is responsive to certain claims, including but not limited to the following claims:

- 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 19, 22, 23, 25, 26, 27, 29, 30, 31, 33, 35, 36, 37, 39, 40, 41, 42, 43, 44, 45, 47, 49, 54, 58, 59, 60, 66, 67, 72, 76, 77, 80, 81, 82, 85, 87, 88, 94, 95, 96, 97, 99, 100, 101, 102, 103, 104, 105, 106, 110, 112, 113, 115, 117, 123, 126, 129, 131, 135, 136, 140, 143, 144, 145, 146, 151, 153, 158, 159, 160, 162, 163, 164, 165, 167, 173, 175, 178, 180, 181, 182, 184, 185, 186, 187, 188, 189, 190, 192, 195, 196, 199, 200, 201, 205, 206, 207, 209, 211, 213, 214, 215, 217, 218, 219, 220, 221, 222, 223, 229, 234, 235, 236, 237, 243, 246, 249, 251, 259, 260, 262, 265, 269, 270, 271, 273, 279, 293, 294, 295, 296, 297, 298, 302, 303, 304, 205, 306, 310, 315, 318, 320, 321, 322, 324, 325, 326, 327, 329, 330, 332, 333, 334, 335, 342, 343, 344, 346, 347, 348, 351, 353, 356, 361, 362, 365, 367, 368, 369, 373, 374, 375, 377, 378, 382, 384, 385, 388, 392, 394, 399, 401;

as shown on Exhibit A, and has either failed to respond to the tenders, issued reservation of rights letters or explicitly denied coverage as described in Ex. A. *See* Exhibit A.

ANSWER: Travelers is without knowledge or information sufficient to form a belief regarding the truth of paragraph 9 and therefore denies same.

10. PACIFIC, TRAVELERS, and CIGA will collectively be referred to herein as the "PRIMARY DEFENDANTS."

ANSWER: Travelers adopts and incorporates its responses to paragraphs 8, 19 and 22 as part of its response to paragraph 10 and denies the remaining allegations of paragraph 10.

11. Defendant INSURANCE COMPANY OF NORTH AMERICA (herein "INA") is, on information and belief, a Delaware corporation which conducted business in this District. INA issued a written excess policy of insurance to RCBO under Policy No. XBC 24312 for the period October

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 6 of 32

25, 1966 to October 25, 1970. Specifically, INA is responsive to certain claims, including but not limited to the following claims:

- 15, 19, 23, 32, 39, 42, 43, 46, 48, 50, 52, 53, 57, 66, 68, 70, 74, 75, 77, 81, 83, 86, 87, 88, 90, 91, 98, 99, 101, 102, 103, 104, 105, 106, 107, 109, 110, 129, 139, 142, 145, 147, 150, 159, 160, 175, 179, 185, 186, 187, 188, 190, 195, 196, 202, 205, 206, 207, 211, 214, 215, 218, 220, 232, 234, 235, 238, 239, 245, 251, 252, 253, 257, 264, 265, 268, 270, 279, 282, 285, 293, 303, 308, 325, 328, 336, 342, 348, 358, 360, 369, 378, 381, 385;

as shown on Exhibit A, and has either failed to respond to the tenders, issued reservation of rights letters or explicitly denied coverage as described in Ex. A. *See* Exhibit A.

ANSWER: Travelers is without knowledge or information sufficient to form a belief regarding the truth of paragraph 11 and therefore denies same.

12. Defendant UNITED STATES FIRE INSURANCE is, on information and belief, a Delaware corporation which conducted business in this District (herein "US FIRE"). On information and belief, RCBO alleges that US FIRE issued a written policy of excess insurance to RCBO under Policy No. DCL 53 9820 for the period October 25, 1970 to October 25, 1971. Specifically, US FIRE is responsive to certain claims, including but not limited to the following claims:

- 14, 15, 23, 27, 39, 42, 43, 66, 77, 81, 87, 99, 100, 101, 102, 103, 104, 105, 106, 110, 112, 123, 129, 145, 146, 153, 159, 175, 184, 185, 186, 187, 188, 190, 195, 196, 206, 207, 211, 213, 214, 215, 217, 218, 220, 221, 234, 235, 236, 246, 251, 265, 270, 271, 279, 293, 303, 304, 315, 326, 334, 342, 348, 365, 369, 374, 378, 385;

as shown on Exhibit A, and has either failed to respond to the tenders, issued reservation of rights letters or explicitly denied coverage as described in Ex. A. *See* Exhibit A.

ANSWER: Travelers is without knowledge or information sufficient to form a belief regarding the truth of paragraph 12 and therefore denies same.

13. Defendant WESTPORT INSURANCE CORPORATION is, on information and belief, a Delaware corporation which conducted business in this District (herein "WESTPORT").

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 7 of 32

On information and belief, RCBO alleges that WESTPORT issued a written policy of excess insurance to RCBO under Policy No. U10255 for the period October 26, 1971 to October 26, 1974. Specifically, WESTPORT is responsive to certain claims, including but not limited to the following claims:

- 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 19, 21, 22, 23, 25, 26, 28, 29, 30, 31, 33, 35, 36, 37, 40, 41, 42, 43, 44, 45, 47, 49, 54, 58, 59, 60, 66, 67, 72, 76, 77, 80, 81, 82, 83, 85, 87, 94, 95, 96, 97, 99, 100, 101, 102, 103, 104, 105, 106, 110, 112, 113, 115, 117, 123, 126, 129, 131, 135, 136, 143, 145, 146, 151, 153, 158, 159, 160, 162, 163, 164, 165, 167, 173, 175, 178, 180, 181, 182, 184, 185, 186, 187, 188, 190, 192, 196, 199, 200, 201, 205, 206, 207, 209, 211, 213, 215, 217, 218, 219, 221, 222, 223, 229, 235, 236, 243, 246, 251, 259, 260, 262, 265, 269, 270, 271, 273, 294, 295, 296, 297, 298, 302, 303, 304, 305, 315, 318, 320, 321, 233, 324, 325, 326, 327, 329, 330, 332, 333, 334, 335, 343, 344, 346, 347, 348, 351, 353, 356, 361, 362, 367, 368, 369, 374, 375, 377, 382, 384, 385, 392, 394, 399, 401;

as shown on Exhibit A, and has either failed to respond to the tenders, issued reservation of rights letters or explicitly denied coverage as described in Ex. A. *See* Exhibit A.

ANSWER: Travelers is without knowledge or information sufficient to form a belief regarding the truth of paragraph 13 and therefore denies same.

14. Defendant CONTINENTAL CASUALTY COMPANY is, on information and belief, a Delaware corporation which conducted business in this District (herein" CONTINENTAL"). On information and belief, RCBO alleges that CONTINENTAL issued written policies of excess insurance to RCBO under Policy No. RDU 146 74 50 for the period October 26, 1974 to December 1, 1977 and Policy No. UMB 006 46 71 53 for the period December 1, 1977 to December 1, 1980. Specifically, CONTINENTAL is responsive to certain claims, including but not limited to the following claims:

- 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 15, 16, 17, 19, 20, 21, 22, 25, 26, 31, 33, 35, 40, 41, 42, 43, 44, 47, 49, 54, 56, 58, 59, 63, 71, 76, 80, 82, 85, 86, 88, 92, 95, 96, 97,

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 8 of 32

99, 101, 102, 103, 104, 105, 106, 110, 113, 115, 117, 121, 124, 126, 131, 132, 140, 143, 144, 149, 152, 154, 157, 158, 160, 162, 163, 164, 165, 166, 168, 172, 173, 174, 178, 180, 181, 182, 183, 189, 190, 191, 192, 193, 198, 200, 201, 203, 206, 207, 208, 209, 210, 211, 212, 213, 215, 216, 217, 223, 224, 225, 229, 230, 237, 243, 244, 247, 249, 250, 251, 256, 258, 259, 260, 266, 267, 269, 272, 273, 274, 295, 296, 297, 298, 302, 304, 305, 306, 310, 315, 317, 318, 319, 321, 323, 324, 325, 329, 333, 335, 343, 344, 345, 347, 349, 352, 353, 354, 359, 361, 367, 368, 370, 373, 376, 377, 379, 380, 382, 384, 386, 388, 392, 393, 399, 402, 403;

as shown on Exhibit A, and has either failed to respond to the tenders, issued reservation of rights letters or explicitly denied coverage as described in Ex. A. *See* Exhibit A.

ANSWER: Travelers is without knowledge or information sufficient to form a belief regarding the truth of paragraph 14 and therefore denies same.

15. On information and belief, Industrial Indemnity issued a written policy of excess insurance to RCBO under Policy No. JU 8312510 for the period December 1, 1980 to December 1, 1981, and WESTCHESTER FIRE INSURANCE COMPANY assumed all the obligations under said policy (herein "WESTCHESTER"). Specifically, WESTCHESTER is responsive to certain claims, including but not limited to the following claims:

- 10, 19, 28, 33, 35, 61, 64, 104, 133, 140, 154, 157, 166, 180, 189, 191, 193, 194, 208, 212, 224, 225, 227, 244, 250, 251, 261, 267, 296, 317, 319, 352, 354, 367, 370, 373, 376;

as shown on Exhibit A, and has either failed to respond to the tenders, issued reservation of rights letters or explicitly denied coverage as described in Ex. A. *See* Exhibit A.

ANSWER: Travelers is without knowledge or information sufficient to form a belief regarding the truth of paragraph 15 and therefore denies same.

16. On information and belief, CERTAIN UNDERWRITERS AT LLOYD'S, LONDON, SUBSCRIBING SEVERALLY AND NOT JOINTLY TO SLIP NOS. CU 1001 AND K 66034 ISSUED TO THE ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO, AND NOS. K 78138 AND CU 3061 ISSUED TO THE ROMAN CATHOLIC BISHOP OF OAKLAND

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 9 of 32

("LLOYD'S") issued written policies of excess insurance to RCBO under Policies No. CU 1001 for the period March 12, 1962 to October 25, 1963, and K 78131 for the period October 25, 1963 to October 25, 1966, and LLOYD'S assumed all the obligations under said policy. Specifically, LLOYD'S is responsive to certain claims, including but not limited to the following claims:

- 15, 30, 31, 42, 45, 48, 57, 65, 74, 75, 79, 98, 107, 109, 114, 119, 120 137, 142, 147, 150, 155, 176, 177, 185, 187, 197, 202, 204, 214, 233, 234, 239, 245, 248, 252, 257, 299, 307, 308, 328, 360, 381, 383, 391;

as shown on Exhibit A, and has either failed to respond to the tenders, issued reservation of rights letters or explicitly denied coverage as described in Ex. A. *See* Exhibit A.

ANSWER: Travelers is without knowledge or information sufficient to form a belief regarding the truth of paragraph 16 and therefore denies same.

17. INA, US FIRE, WESTPORT, CONTINENTAL, WESTCHESTER LLOYD'S will collectively be referred to herein as the "EXCESS DEFENDANTS."

ANSWER: Travelers is without knowledge or information sufficient to form a belief regarding the truth of paragraph 17 and therefore denies same.

18. Defendant WESTPORT is, on information and belief, a Delaware corporation which conducted business in this District. On information and belief RCBO alleges that WESTPORT issued a written umbrella policy of insurance to RCBO under Policy No. PLE20430 for the period October 16, 1974 to October 16, 1977 (herein "WESTPORT UMBRELLA"). Specifically, WESTPORT UMBRELLA is responsive to certain claims, including but not limited to the following claims:

- 20, 21, 28, 83, 86, 88, 92, 121, 140, 144, 149, 174, 183, 189, 194, 198, 208, 216, 230, 249, 258, 266, 267, 274, 295, 306, 310, 323, 345, 349, 359, 373, 388, 393, 402;

as shown on Exhibit A, and has either failed to respond to the tenders, issued reservation of rights letters or explicitly denied coverage as described in Ex. A. *See* Exhibit A.

ANSWER: Travelers is without knowledge or information sufficient to form a belief regarding the truth of paragraph 18 and therefore denies same.

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 10 of 32

19. Defendant TRAVELERS is, on information and belief, a Connecticut corporation which conducted business in this District. On information and belief RCBO alleges that TRAVELERS issued written umbrella polices of insurance to RCBO under Policy No. 05 XN 55 WCA for the period December 1, 1978 to December 1, 1981 and Policy No. 005 FF 1390 BCA for the period 1981 to December 1, 1987 (herein "TRAVELERS UMBRELLA"). Specifically, TRAVELERS UMBRELLA is responsive to certain claims, including but not limited to the following claims:

- 10, 12, 18, 21, 24, 29, 33, 35, 56, 61, 64, 71, 73, 82, 83, 86, 92, 95, 96, 97, 99, 101, 102, 103, 104, 105, 106, 110, 115, 117, 121, 124, 125, 126, 127, 128, 130, 131, 132, 133, 140, 141, 149, 152, 154, 156, 157, 158, 163, 166, 168, 171, 174, 180, 181, 183, 189, 191, 192, 193, 194, 198, 203, 206, 208, 210, 212, 216, 224, 225, 226, 227, 228, 230, 243, 244, 247, 250, 251, 256, 258, 261, 266, 267, 272, 273, 274, 296, 297, 298, 310, 314, 316, 317, 318, 319, 321, 323, 331, 338, 339, 345, 349, 350, 352, 354, 359, 363, 367, 370, 373, 376, 379, 380, 384, 386, 402, 403, 407:

as shown on Exhibit A, and has either failed to respond to the tenders, issued reservation of rights letters or explicitly denied coverage as described in Ex. A. *See* Exhibit A.

ANSWER: Travelers admits that it issued certain excess policies to RCBO, but not "umbrella" policies as alleged, including Policy No. XN 55 WCA, although that policy was issued for the period 12/1/77 to 2/1/79, not the period alleged above (the "Excess Policy"). Travelers denies the remaining allegations of paragraph 19.

20. Defendant PACIFIC EMPLOYERS INSURANCE is, on information and belief, a Delaware corporation which conducted business in this District. On information and belief RCBO alleges that PACIFIC EMPLOYERS INSURANCE issued a written umbrella policy of insurance to RCBO under Policy No. XCC 01 2405 for the period March 13, 1985 to December 1, 1985 (herein "PACIFIC EMPLOYERS UMBRELLA"). Specifically, PACIFIC EMPLOYERS UMBRELLA is responsive to certain claims, including but not limited to the following claim:

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 11 of 32

- 12, 51, 73, 80, 118, 127, 130, 141, 171, 225, 228, 254, 314, 338, 339, 350, 363, 407;

as shown on Exhibit A, and has either failed to respond to the tenders, issued reservation of rights letters or explicitly denied coverage as described in Ex. A. *See* Exhibit A.

ANSWER: Travelers is without knowledge or information sufficient to form a belief regarding the truth of paragraph 20 and therefore denies same.

21. On information and belief, LLOYD'S issued written policies of umbrella insurance to RCBO under Policies No. K 66034 for the period March 12, 1962 to October 25, 1963, and CU 3061 for the period October 25, 1963 to October 25, 1966 (herein "LLOYD'S UMBRELLA"). LLOYD'S UMBRELLA assumed all the obligations under said policy. Specifically, LLOYD'S UMBRELLA is responsive to certain claims, including but not limited to the following claims:

- 15, 30, 31, 42, 45, 48, 57, 65, 74, 75, 79, 98, 107, 109, 114, 119, 120 137, 142, 147, 150, 155, 176, 177, 185, 187, 197, 202, 204, 214, 233, 234, 239, 245, 248, 252, 257, 299, 307, 308, 328, 360, 381, 383, 391;

as shown on Exhibit A, and has either failed to respond to the tenders, issued reservation of rights letters or explicitly denied coverage as described in Ex. A. *See* Exhibit A.

ANSWER: Travelers is without knowledge or information sufficient to form a belief regarding the truth of paragraph 21 and therefore denies same.

22. WESTPORT UMBRELLA, TRAVELERS UMBRELLA, and PACIFIC EMPLOYERS UMBRELLA will collectively be referred to herein as the "UMBRELLA DEFENDANTS."

ANSWER: Travelers adopts and incorporates by reference its responses to paragraphs 8 and 19, above, as part of its response to paragraph 22, and denies the remaining allegations of paragraph 22.

FACTUAL BACKGROUND

23. On June 22, 2023, the Debtor filed the First Amended Complaint for declaratory relief and breach of contract, seeking to liquidate the Debtor's claims against numerous of its historical insurance carriers. [Docket No. 2 with attached Exhibit and Attachment (collectively, the

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 12 of 32

"First Amended Complaint")]. On December 18, 2023, the Debtor filed the Second Amended Complaint for declaratory relief, breach of contract, and breach of statutory duty to address issues raised in various motions to dismiss, per the Court's order. RCBO incorporates herein its First Amended Complaint and Second Amended Complaint.

ANSWER: Travelers admits that RCBO filed the First Amended Complaint in this action on June 22, 2023, to which Travelers responded by way of Answer thereto filed on September 1, 2023 [Docket No. 78]. Travelers incorporates herein its Answer and denies the remaining allegations of paragraph 23.

24. The Debtor files this Third Amended Complaint to include additional insurers that it alleges are liable to provide indemnity and/or defense of the underlying complaints.

ANSWER: Travelers is without knowledge or information sufficient to form a belief regarding the truth of paragraph 24 and therefore denies same.

25. RCBO has been named in more than 400 complaints primarily filed in the Alameda Superior Court as well as proofs of claim filed in this Court seeking recovery for alleged negligent supervision and hiring of certain clerical and ministerial personnel over a period of decades. These suits and proofs of claim (collectively referred to as the "Suits") have been filed as a result of California's passing of AB 218, which extended the statute of limitations for the filing of similar civil suits.

ANSWER: Travelers is without knowledge or information sufficient to form a belief regarding the truth of paragraph 25 and therefore denies same.

26. Although section 362 of the Bankruptcy Code provides for an automatic stay of the Suits and of additional lawsuits against the Debtor, RCBO is informed, and believes, that additional suits may be filed and/or served after the filing of this proceeding and RCBO will update the list as reflected in Exhibit A to reflect all such cases as appropriate.

ANSWER: Travelers is without knowledge or information sufficient to form a belief regarding the truth of paragraph 26 and therefore denies same.

27. RCBO has maintained insurance coverage through a series of primary, excess and umbrella insurers from the early 1960's through the present time as alleged above.

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 13 of 32

ANSWER: Travelers adopts and incorporates by reference its responses to paragraphs 8, 10, 18 and 20 above, as part of its response to paragraph 27; and is without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations of paragraph 27 and therefore denies same.

28. RCBO has tendered through its broker (*i.e.*, "AJG" as designated in Exhibit A) both RCBO's defense and indemnity of the Suits under all applicable insurance policies to the associated Defendants that issued those policies and were not insolvent.

ANSWER: Travelers adopts and incorporates by reference its responses to paragraphs 8, 10, 19 and 22 above, as part of its response to paragraph 28. Travelers is without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations of paragraph 28 and therefore denies same.

29. The PRIMARY DEFENDANTS received the tenders of the Suits on behalf of RCBO but have improperly denied or failed to confirm coverage and/or provide defense and/or indemnity to RCBO for the Suits as reflected in Exhibit A. Further those PRIMARY DEFENDANTS who did accept RCBO's tender did so while refusing to pay full defense rates or requiring an agreement to a reduction of rates for defense notwithstanding the complexity of the cases and/or issued onerous guidelines which were not part of the applicable policies. RCBO contends that it is entitled to the payment of defense and/or indemnity amounts from each of the PRIMARY DEFENDANTS on the grounds that RCBO timely tendered the Suits to the PRIMARY DEFENDANTS and has met all the conditions of the respective policies of insurance. RCBO further asserts that the Suits seek recovery for claims of "bodily injury" as that term is defined in the PRIMARY DEFENDANTS' respective policies of insurance and therefore the claims come within the coverage grant of the respective insurance policies. Further, RCBO contends that the claims made in the Suits are not excluded by the respective insurance policies. Further, without limitation, RCBO contends that it did not intend nor know of any of the alleged events in the Suits such that it would result in the negation of coverage under the applicable policies. Therefore, the PRIMARY DEFENDANTS owe RCBO both defense and indemnity for the Suits.

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 14 of 32

ANSWER: Travelers adopts and incorporates its responses to paragraphs 8, 10, 19 and 22 as part of its response to paragraph 29. Travelers admits that it has received certain tenders from RCBO but denies the remaining allegations of paragraph 29 to the extent directed at it. Travelers is without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations of paragraph 29 and therefore denies same.

30. The EXCESS DEFENDANTS received the tenders of the Suits on behalf of RCBO but have improperly denied or failed to confirm coverage (including, without limitation, failure to provide both defense and/or indemnity) for the Suits as reflected in Exhibit A – including failure to recognize the exhaustion of underlying insurance through payment, liquidation or other means thereby requiring the excess insurance to drop down and provide defense and indemnity to RCBO for the Suits. RCBO contends that it is entitled to the payment of defense and/or indemnity amounts from each of the EXCESS DEFENDANTS on the grounds that RCBO timely tendered the Suits to the EXCESS DEFENDANTS and has met all the conditions of the respective policies of insurance. RCBO further asserts that the Suits seek recovery for claims of "bodily injury" as that term is defined in the EXCESS DEFENDANTS' respective policies of insurance and therefore the claims come within the coverage grant of the respective insurance policies. Further, RCBO contends that the claims made in the Suits are not excluded by the respective insurance policies. In addition, without limitation, RCBO contends that it did not intend nor know of any of the alleged events in the Suits such that it would result in the negation of coverage under the applicable policies. Finally, RCBO contends that it is presently facing in excess of 400 Suits seeking a total amount of damages which has the substantial likelihood of being in excess of the available limits of insurance available under the PRIMARY DEFENDANTS', EXCESS DEFENDANTS', and UMBRELLA DEFENDANTS' respective insurance policies. Therefore, the EXCESS DEFENDANTS owe RCBO both defense and indemnity for the Suits.

ANSWER: Travelers adopts and incorporates its responses to paragraphs 8, 10, 19 and 22 as part of its response to paragraph 30. Travelers admits that it has received certain tenders from RCBO but denies the remaining allegations of paragraph 30 to the extent directed at it. Travelers is

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 15 of 32

without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations of paragraph 30 and therefore denies same.

31. The UMBRELLA DEFENDANTS received the tenders of the Suits on behalf of RCBO but have improperly denied or failed to confirm coverage (including, without limitation, failure to provide both defense and/or indemnity) for the Suits as reflected in Exhibit A - including failure to recognize the exhaustion of underlying primary and excess insurance through payment, liquidation or other means thereby requiring the umbrella insurance to drop down and provide defense and indemnity to RCBO for the Suits. RCBO contends that it is entitled to the payment of defense and/or indemnity amounts from each of the UMBRELLA DEFENDANTS on the grounds that RCBO timely tendered the Suits to the UMBRELLA DEFENDANTS and has met all the conditions of the respective policies of insurance. RCBO further asserts that the Suits seek recovery for claims of "bodily injury" as that term is defined in the UMBRELLA DEFENDANTS' respective policies of insurance and therefore the claims come within the coverage grant of the respective insurance policies. Further, RCBO contends that the claims made in the Suits are not excluded by the respective insurance policies. In addition, without limitation, RCBO contends that it did not intend nor know of any of the alleged events in the Suits such that it would result in the negation of coverage under the applicable policies. Finally, RCBO contends that it is presently facing in excess of 400 Suits seeking a total amount of damages which has the substantial likelihood of being in excess of the available limits of insurance available under the PRIMARY DEFENDANTS', EXCESS DEFENDANTS', and UMBRELLA DEFENDANTS' respective insurance policies. Therefore, the UMBRELLA DEFENDANTS owe RCBO both defense and indemnity for the Suits.

ANSWER: Travelers adopts and incorporates its responses to paragraphs 8, 10, 19 and 22 as part of its response to paragraph 31. Travelers admits that it has received certain tenders from RCBO but denies the remaining allegations of paragraph 31 to the extent directed at it. Travelers is without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations of paragraph 31 and therefore denies same.

32. As a result of the conduct of the PRIMARY DEFENDANTS, EXCESS DEFENDANTS, and UMBRELLA DEFENDANTS, RCBO has been harmed in that it has not been

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 16 of 32

provided with the benefits of the insurance it purchased, having complied with all requirements thereunder. RCBO has been forced to defend itself against the Suits without being provided with the appropriate required defense (including full payment of defense amounts expended) and indemnity that was to be provided by the PRIMARY DEFENDANTS, EXCESS DEFENDANTS, and UMBRELLA DEFENDANTS through their respective policies of insurance. Consequently, an actual and justiciable controversy exists between the parties of sufficient immediacy and reality to warrant issuance of a declaratory judgment.

ANSWER: Travelers adopts and incorporates its responses to paragraphs 8, 10, 19 and 22 as part of its response to paragraph 32. Travelers denies the allegations of paragraph 32 to the extent directed at it. Travelers is without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations of paragraph 32 and therefore denies same.

FIRST CAUSE OF ACTION

(Declaratory Relief Against All Defendants)

33. RCBO realleges and incorporates herein paragraphs 1 through 32 of this complaint as if said paragraphs were set forth in full.

ANSWER: Travelers adopts and incorporates its responses to paragraphs 1 through 32, above, as its response to paragraph 33.

34. To state a claim for a declaratory judgment, a party needs to plead an actual controversy. 28 U.S.C. § 2201; Cal. Code. Civ. P. § 1060; *see also, e.g.*, *Marks v. UMG Recordings, Inc.*, 2023 WL 4532774, at *3 n.2 (9th Cir. July 13, 2023) (acknowledging that "California law unambiguously provides a claim for declaratory relief when there is an actual controversy about the parties' rights and duties under a contract").

ANSWER: Paragraph 34 states a conclusion of law to which no response is required and Travelers therefore denies same.

35. An actual and justiciable controversy has arisen and now exists between the parties with respect to whether the Defendants, and each of them, are obligated to provide RCBO with defense and indemnity under their respective insurance policies regarding the Suits.

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 17 of 32

ANSWER: Paragraph 35 states a conclusion of law to which no response is required and Travelers therefore denies same.

36. Pursuant to the respective insurance policies (and, in the case of CIGA, its statutory obligations), each of the Defendants is obligated to pay in full the expenditures made by RCBO to defend itself against the Suits.

ANSWER: Travelers adopts and incorporates its responses to paragraphs 8, 10, 19 and 22 as part of its response to paragraph 36. The remaining allegations of paragraph 36 state a conclusion of law to which no response is required and Travelers therefore denies same.

37. The insurance policies RCBO purchased from various insurance carriers provide coverage for many if not all of the Suits asserted against RCBO and constitute the most significant source of recovery for the alleged abuse victims in the Bankruptcy Case.

ANSWER: Travelers adopts and incorporates its responses to paragraphs 8, 10, 19 and 22 as part of its response to paragraph 37. The remaining allegations of paragraph 37 state a conclusion of law to which no response is required and Travelers therefore denies same.

38. Pursuant to the terms of the respective insurance policies, each of the Defendants is obligated to defend and indemnify RCBO for, or pay on its behalf, all sums that RCBO becomes obligated to pay, through judgment, settlement, or otherwise, arising out of the Suits.

ANSWER: Travelers adopts and incorporates its responses to paragraphs 8, 10, 19 and 22 as part of its response to paragraph 38. The remaining allegations of paragraph 38 state a conclusion of law to which no response is required and Travelers therefore denies same.

39. RCBO has fully performed under the Defendants' respective insurance policies.

ANSWER: Travelers adopts and incorporates its responses to paragraphs 8, 10, 19 and 22 as part of its response to paragraph 39. The remaining allegations of paragraph 39 state a conclusion of law to which no response is required and Travelers therefore denies same.

40. The PRIMARY DEFENDANTS have received tenders on behalf of RCBO regarding the Suits but have improperly denied and/or have failed to confirm coverage for the Suits and have further failed to provide RCBO with either defense and/or indemnity regarding the Suits as required under the respective policies. *See* Exhibit A. To the extent that the PRIMARY DEFENDANTS

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 18 of 32

have issued reservation of rights letters in response to RCBO's tenders (as reflected in Exhibit A), the PRIMARY DEFENDANTS have not actually provided the benefits of their respective policies to RCBO – *i.e.*, actual defense and/or indemnity payments. Finally, in the case of CIGA, RCBO submitted a timely proof of claim to CIGA regarding the applicable Suits and CIGA has failed to meet its statutory obligations to provide available sums in response to the Suits.

ANSWER: Travelers adopts and incorporates its responses to paragraphs 8, 10, 19 and 22 as part of its response to paragraph 40. Travelers admits that it has received certain tenders from RCBO but denies the remaining allegations of paragraph 40 to the extent directed at it. Travelers is without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations of paragraph 40 and therefore denies same.

41. The EXCESS DEFENDANTS have received tenders on behalf of RCBO regarding the Suits but have improperly denied and/or have failed to confirm coverage for the Suits and have further failed to confirm that any underlying insurance has been exhausted whether by payment, liquidation or otherwise and contrary to the coverages promised to RCBO and thus have failed to provide RCBO with either defense and/or indemnity regarding the Suits as required under the respective policies. *See* Exhibit A. To the extent that the EXCESS DEFENDANTS have issued reservation of rights letters in response to RCBO's tenders (as reflected in Exhibit A), the EXCESS DEFENDANTS have not actually provided the benefits of their respective policies to RCBO – *i.e.*, actual defense and/or indemnity payments. Further the EXCESS DEFENDANTS have not acknowledged that their insured, RCBO, faces covered claims in excess of the limits of insurance available from the PRIMARY DEFENDANTS' respective policies which would, in turn, trigger EXCESS DEFENDANTS' obligations to provide the benefits of their respective policies to RCBO.

ANSWER: Travelers adopts and incorporates its responses to paragraphs 8, 10, 19 and 22 as part of its response to paragraph 41. Travelers admits that it has received certain tenders from RCBO but denies the remaining allegations of paragraph 41 to the extent directed at it. Travelers is without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations of paragraph 41 and therefore denies same.

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 19 of 32

42. The UMBRELLA DEFENDANTS have received tenders on behalf of RCBO regarding the Suits but have improperly denied and/or have failed to confirm coverage for the Suits and have further failed to confirm that any underlying insurance has been exhausted whether by payment, liquidation or otherwise and contrary to the coverages promised to RCBO and thus have failed to provide RCBO with either defense and/or indemnity regarding the Suits as required under the respective policies. *See* Exhibit A. To the extent that the UMBRELLA DEFENDANTS have issued reservation of rights letters in response to RCBO's tenders (as reflected in Exhibit A), the UMBRELLA DEFENDANTS have not actually provided the benefits of their respective policies to RCBO – *i.e.*, actual defense and/or indemnity payments. Further the UMBRELLA DEFENDANTS have not acknowledged that their insured, RCBO, faces covered claims in excess of the limits of insurance available from the PRIMARY and EXCESS DEFENDANTS' respective policies which would, in turn, trigger UMBRELLA DEFENDANTS' obligations to provide the benefits of their respective policies to RCBO.

ANSWER: Travelers adopts and incorporates its responses to paragraphs 8, 10, 19 and 22 as part of its response to paragraph 42. Travelers admits that it has received certain tenders from RCBO but denies the remaining allegations of paragraph 42 to the extent directed at it. Travelers is without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations of paragraph 42 and therefore denies same.

43. Each of the Defendant's refusal to defend and/or indemnify RCBO constitutes a breach of the insurance policies or, in the case of CIGA, a breach of its statutory duties.

ANSWER: Travelers adopts and incorporates its responses to paragraphs 8, 10, 19 and 22 as part of its response to paragraph 43. Travelers denies the allegations of paragraph 43 to the extent directed at it. Travelers is without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations of paragraph 43 and therefore denies same.

44. In the meantime, the Suits are pending, resulting in loss and damages to RCBO including, without limitation, defense fees and costs and indemnity funds (whether via judgment or settlement or other means).

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 20 of 32

ANSWER: Travelers is without knowledge or information sufficient to form a belief regarding the truth of paragraph 44 and therefore denies same.

45. An actual controversy of a justiciable nature presently exists between RCBO and the Defendants concerning the proper construction of the respective insurance policies, the scope of the statutory obligations assumed by CIGA, and the rights and obligations of the parties with respect to the Suits. The controversy is of sufficient immediacy and magnitude to justify the issuance of a declaratory judgment.

ANSWER: Travelers adopts and incorporates its responses to paragraphs 8, 10, 19 and 22 as part of its response to paragraph 45. Travelers denies the allegations of paragraph 45 to the extent directed at it. Travelers is without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations of paragraph 45 and therefore denies same.

46. RCBO is entitled to a judgment declaring that the Defendants have issued insurance policies to RCBO and that RCBO is entitled to both defense and indemnity regarding the Suits under the respective policies of insurance issued by the Defendants including, without limitation, a declaration of exhaustion as to certain underlying policies and the requirement that the EXCESS DEFENDANTS and/or UMBRELLA DEFENDANTS drop down to provide defense and indemnity to RCBO regarding the Suits. In the case of CIGA, RCBO is entitled to a judgment declaring that CIGA is statutorily obligated to provide funds to RCBO in response to the claims made in the Suits to which it must respond (as reflected in Exhibit A).

ANSWER: Travelers adopts and incorporates its responses to paragraphs 8, 10, 19 and 22 as part of its response to paragraph 46. Travelers denies the allegations of paragraph 46 to the extent directed at it. Travelers is without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations of paragraph 46 and therefore denies same.

SECOND CAUSE OF ACTION

(Breach of Contract Against All Defendants Except for CIGA)

47. RCBO realleges and incorporates herein paragraphs 1 through 46 of this complaint as if said paragraphs were set forth in full.

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 21 of 32

ANSWER: Travelers adopts and incorporates its responses to paragraphs 1 through 46, above, as its response to paragraph 47.

48. "An insured can pursue a breach of contract theory against its insurer by alleging [1] the insurance contract, [2] the insured's performance or excuse for nonperformance, [3] the insurer's breach, and [4] resulting damages." *San Diego Housing Comm'n v. Indus. Indem. Co.*, 68 Cal. App. 4th 526, 536 (1998).

ANSWER: Paragraph 48 states a conclusion of law to which no response is required, and therefore is denied.

49. The respective Defendants' policies are valid and enforceable contracts providing insurance coverage for the damage incurred by RCBO.

ANSWER: Travelers adopts and incorporates its responses to paragraphs 8, 10, 19 and 22 as part of its response to paragraph 49. Travelers denies the allegations of paragraph 49 to the extent directed at it. Travelers is without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations of paragraph 49 and therefore denies same.

50. The respective Defendants have received timely tenders of the Suits. *See* Exhibit A.

ANSWER: Travelers adopts and incorporates its responses to paragraphs 8, 10, 19 and 22 as part of its response to paragraph 50. Travelers denies the allegations of paragraph 50 to the extent directed at it. Travelers is without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations of paragraph 50 and therefore denies same.

51. The Defendants' failure to provide defense and indemnity to RCBO for the Suits is contrary to the coverages and benefits promised RCBO under the respective policies and constitutes a breach of those policies. Said breach includes the failure to pay the full amount of defense fees and costs expended the institution of billing and defense "guidelines" not included with the terms of the applicable policies.

ANSWER: Travelers adopts and incorporates its responses to paragraphs 8, 10, 19 and 22 as part of its response to paragraph 51. Travelers denies the allegations of paragraph 51 to the extent directed at it. Travelers is without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations of paragraph 51 and therefore denies same.

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 22 of 32

52. RCBO has fully performed under the Defendants' respective insurance policies and the Defendants, and each of them, are not excused from performance.

ANSWER: Travelers adopts and incorporates its responses to paragraphs 8, 10, 19 and 22 as part of its response to paragraph 52. Travelers denies the allegations of paragraph 52 to the extent directed at it. Travelers is without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations of paragraph 52 and therefore denies same.

53. As a direct and proximate result of the Defendants' breaches, RCBO has been damaged according to proof at trial.

ANSWER: Travelers adopts and incorporates its responses to paragraphs 8, 10, 19 and 22 as part of its response to paragraph 53. Travelers denies the allegations of paragraph 53 to the extent directed at it. Travelers is without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations of paragraph 53 and therefore denies same.

54. As a result of the Defendants' breaches of their respective insurance policies, RCBO has incurred significant fees and costs in defending itself in the Suits and has not been provided with the required coverage for indemnity (including any settlement amounts), all to the injury and damage of RCBO.

ANSWER: Travelers adopts and incorporates its responses to paragraphs 8, 10, 19 and 22 as part of its response to paragraph 54. Travelers denies the allegations of paragraph 54 to the extent directed at it. Travelers is without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations of paragraph 54 and therefore denies same.

55. Furthermore, the Defendants' refusal to provide the promised coverage hampers the Debtor's ability to propose and implement a confirmable plan of reorganization.

ANSWER: Travelers adopts and incorporates its responses to paragraphs 8, 10, 19 and 22 as part of its response to paragraph 55. Travelers denies the allegations of paragraph 55 to the extent directed at it. Travelers is without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations of paragraph 55 and therefore denies same.

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 23 of 32

THIRD CAUSE OF ACTION

(Breach of Statutory Duty Against CIGA)

56. RCBO realleges and incorporates herein paragraphs 1 through 55 of this complaint as if said paragraphs were set forth in full.

ANSWER: Paragraph 56 makes no averment against Travelers or allegations of fact to which a response is required, and therefore is denied.

57. "CIGA's authority and liability are limited to paying 'covered claims.'" *Cal. Ins. Guarantee Ass'n v. Workers' Comp. Appeals Bd.*, 128 Cal. App. 4th 307, 313, 26 Cal. Rptr. 3d 845, 848 (2005).

ANSWER: Paragraph 57 makes no averment against Travelers or allegations of fact to which a response is required, and therefore is denied.

58. A covered claims means "(1) ... the obligations of an insolvent insurer, including the obligation ... (i) imposed by law and within the coverage of an insurance policy of the insolvent insurer; (ii) which were unpaid by the insolvent insurer; ... (iv) which were incurred prior to the date coverage under the policy terminated ..." *Cal. Ins. Guarantee Ass'n v. Workers' Comp. Appeals Bd.*, 153 Cal. App. 4th 524, 532-33, 62 Cal. Rptr. 3d 855, 860 (2007) (citing (Ins. Code, § 1063.1, subd. (c)(1))).

ANSWER: Paragraph 58 makes no averment against Travelers or allegations of fact to which a response is required, and therefore is denied.

59. Commercial Union/Armour Insurance Company has become insolvent but had acknowledged potential coverage for the Suits tendered to it by RCBO.

ANSWER: Paragraph 59 makes no averment against Travelers or allegations of fact to which a response is required, and therefore is denied.

60. RCBO timely presented the claims to the liquidator prior to the date coverage under the policy terminated. Therefore, the claims qualify as covered claim under the statute.

ANSWER: Paragraph 60 makes no averment against Travelers or allegations of fact to which a response is required, and therefore is denied.

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 24 of 32

61. CIGA assigned an adjuster to review the claims. CIGA confirmed that RCBO appropriately filed the claims, and CIGA understood that the claims were abuse-related claims.

ANSWER: Paragraph 61 makes no averment against Travelers or allegations of fact to which a response is required, and therefore is denied.

62. As a result of CIGA's breaches, RCBO has been damaged according to proof at trial.

ANSWER: Paragraph 62 makes no averment against Travelers or allegations of fact to which a response is required, and therefore is denied.

AFFIRMATIVE AND ADDITIONAL DEFENSES

Travelers asserts the following affirmative and other defenses without assuming any burden of proof not imposed on it by applicable law. Unless otherwise specified, the below defenses apply to the Alleged Primary Policies, the Excess Policy, and any other policy alleged, or that may in the future be alleged, by RCBO and to the extent RCBO is able to meet its burden to prove the issuance and material terms thereof. (For ease of reference and this limited purpose, all of the aforesaid, collectively, are referred to as "Travelers Policies").

FIRST DEFENSE

(Failure to State a Claim)

Coverage is barred, in whole or in part, to the extent the Third Amended Complaint fails to state a cause of action against Travelers upon which relief may be granted.

SECOND DEFENSE

(No Right of Action)

Coverage is barred to the extent the Third Amended Complaint purports to seek relief based on alleged conduct not enforceable in a private right of action, or based on alleged acts for which redress may be enforced only by regulatory authorities with jurisdiction thereof.

THIRD DEFENSE

(Statute of Limitations)

Coverage is barred, in whole or in part, by applicable statutes of limitations.

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 25 of 32

FOURTH DEFENSE

(Failure to Provide Timely Notice of Occurrence(s) and Claims)

Coverage is barred, in whole or in part, to the extent RCBO failed to comply with the terms of the Travelers Policies, including the requirement to provide timely notice of underlying occurrence(s), its knowledge of propensities and wrongful conduct of alleged or otherwise suspected wrongdoers, whether identified in the "Suits," or who are the subject of other claims/complaints of any sort made or asserted against RCBO.

FIFTH DEFENSE

(Laches)

Coverage is barred, in whole or in part, under the doctrine of laches. RCBO has relinquished and abandoned any rights it otherwise might have had under the Travelers Policies by and to the extent, among other things, concealing from Travelers knowledge or information it knew or should have known regarding the propensities and wrongful conduct of the alleged wrongdoers that are the subject of one or more claims (including the "Suits") asserted against RCBO.

SIXTH DEFENSE

(Expected or Intended Conduct)

Coverage is barred, in whole or in part, to the extent the liabilities incurred, or that may be incurred, by RCBO were expected or intended by RCBO.

SEVENTH DEFENSE

(No Coverage for Occurrences Taking Place Outside Policy Period)

Coverage is barred, in whole or in part, to the extent any one or more alleged occurrences that are the subject of one or more claims (including the "Suits") asserted against RCBO relate to, or arise out of, conduct that took place outside the period of the Travelers Policies.

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 26 of 32

EIGHTH DEFENSE

(No "Occurrence" or "Accident")

Coverage is barred, in whole or in part, to the extent one or more claims (including the "Suits") asserted against RCBO relate to, or arise out of, conduct that did not involve an "occurrence" or "accident" as defined by the Travelers Policies.

NINTH DEFENSE

(Misrepresentation/Failure to Disclose)

Coverage is barred, in whole or in part, to the extent RCBO failed to disclose and/or misrepresented material facts in connection with purchasing one or more of the Travelers Policies.

TENTH DEFENSE

(Ripeness)

All or some of RCBO's claims are not ripe for adjudication.

ELEVENTH DEFENSE

(Voluntary Payments)

Coverage is barred, in whole or in part, to the extent RCBO is seeking reimbursement for amounts it voluntarily paid, assumed an obligation to pay or otherwise paid when there was no legal obligation to do so, in violation of the Travelers Policies.

TWELFTH DEFENSE

(No "Bodily Injury" or "Personal Injury")

Coverage is barred, in whole or in part, to the extent claims (including the "Suits") for which RCBO seeks coverage do not allege or seek damages because of "bodily injury" or "personal injury" within the meaning of the Travelers Policies.

THIRTEENTH DEFENSE

(Limits of Liability)

Coverage, if any, is limited by the limits of liability set forth in the Travelers Policies, including but not limited to, applicable per occurrence limits and aggregate limits.

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 27 of 32

FOURTEENTH DEFENSE

(Incomplete or Missing Policies)

Coverage is barred, in whole or in part, to the extent RCBO is seeking coverage under policies beyond those acknowledged above as having been acquired by Travelers, and is unable to meet its burden in establishing the existence of all such policies and their material terms, including but not limited to the terms and conditions of all policies that underly the Travelers Policies.

FIFTEENTH DEFENSE

(Other Insurance)

Coverage is barred, in whole or in part, to the extent "other insurance" provisions in the Travelers Policies may apply.

SIXTEENTH DEFENSE

(Non-Covered and/or Excluded Claims)

Coverage is barred, in whole or in part, to the extent claims (including the "Suits") for which coverage is sought are outside the scope of the insuring clauses set forth in the Travelers Policies, or otherwise excluded by the terms of the Travelers Policies.

SEVENTEENTH DEFENSE

(Cooperation Clause)

Coverage is barred, in whole or in part, to the extent RCBO failed to comply with provisions in the Travelers Policies that require RCBO's assistance and cooperation once a claim (or "Suit") has been made or an occurrence has taken place.

EIGHTEENTH DEFENSE

(Failure to Mitigate)

Coverage is barred, in whole or in part, to the extent RCBO failed to take steps to mitigate, minimize or avoid its alleged liabilities and damages.

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 28 of 32

NINETEENTH DEFENSE

(Impairment of Contribution and Other Rights)

Coverage is barred, in whole or in part, to the extent RCBO has prejudiced or impaired Travelers contribution or other rights with respect to claims (including the "Suits") for which coverage is sought.

TWENTIETH DEFENSE

(Unclean Hands)

Coverage is barred, in whole or in part, by the doctrine of unclean hands to the extent RCBO has breached its duties and obligations under the Travelers Policies.

TWENTY-FIRST DEFENSE

(Waiver and Estoppel)

Coverage is barred, in whole or in part, to the extent RCBO has waived, relinquished, and/or abandoned, and is estopped from asserting, any rights it otherwise might have under the Travelers Policies by and to the extent, among other things, it failed to fully and timely notify Travelers of the claims and/or occurrences giving rise to claims or "Suits" asserted against RCBO, concealed material facts during the policy acquisition or renewal process, and/or knowingly paid more than the reasonable settlement value of claims (including as relates to "Suits") asserted against RCBO.

TWENTY-SECOND DEFENSE

(No Duty to Defend)

Travelers has no duty to defend RCBO against claims (including the "Suits") asserted against RCBO for which coverage is sought that do not trigger coverage under Travelers Policies that set forth such a duty.

TWENTY-THIRD DEFENSE

(Fines, Sanctions, Penalties, Punitive and Exemplary Damages)

Coverage is barred to the extent the terms of the Travelers Policies and/or applicable law bar coverage for amounts incurred defending against claims (including the "Suits") that seek, or indemnifying amounts incurred or awarded against RCBO in the nature of, fines, sanctions, penalties and/or punitive or exemplary damages.

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 29 of 32

TWENTY-FOURTH DEFENSE

(Known Loss)

Coverage is barred, in whole or in part, to the extent losses for which RCBO seeks coverage were known or loss in progress at the time when RCBO applied for and was issued the Travelers Policies.

TWENTY-FIFTH DEFENSE

(Exhaustion)

Coverage is barred, in whole or in part, to the extent the limits of the Travelers Policies have been exhausted by the payment of prior settlements or judgments.

TWENTY-SIXTH DEFENSE

(Non-Exhaustion)

Coverage is barred, in whole or in part, under the Travelers Policies to the extent the limits of policies that underlie the Travelers Policies, to the extent applicable, have not been fully exhausted by the payment of prior settlements or judgments.

TWENTY-SEVENTH DEFENSE

(Coverage Barred under Underlying Policy(ies))

Coverage is barred, in whole or in part, under the Travelers Policies to the extent coverage therefor is excluded under the terms of applicable underlying insurance policies.

TWENTY-EIGHTH DEFENSE

(Insured Status)

Coverage is barred, in whole or in part, to the extent RCBO is unable to meet its burden to establish that it, or any other party seeking coverage under any of the Travelers Policies, qualifies as an insured thereunder.

TWENTY-NINTH DEFENSE

(Prior Settlement)

Coverage is barred, in whole or part, to the extent released by RCBO under terms of an Amended Confidential Settlement Agreement and Mutual Release entered into in or about November, 2005.

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 30 of 32

THIRTIETH DEFENSE

(Incorporation of Defenses by Other Insurers)

Travelers incorporates and adopts the defenses asserted by other insurer defendants named in the Complaint.

Travelers reserves its rights to assert additional defenses upon further discovery of RCBO's claims and its bases for asserting coverage under one or more of the Travelers Policies.

DEMAND FOR TRIAL BY JURY

Travelers demands a trial by jury as to all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Travelers respectfully requests that the Court deny all relief requested by RCBO and enter judgment for Travelers:

a. Dismissing RCBO's Complaint with prejudice;

b. Awarding Travelers its attorneys' fees, expenses and costs herein; and

c. Granting Travelers such other and further relief that this Court deems just and proper.

Dated: January 25, 2024

Respectfully submitted,

DENTONS US LLP

By: */s/ Joshua Haevernick*

JOSHUA HAEVERNICK
(SBN 308380)
Joshua.haevernick@dentons.com
DENTONS US LLP
1999 HARRISON STREET
SUITE 1300
OAKLAND, CA 94612-4709
TELEPHONE: 415 882 5000
FACSIMILE: 415 882 0300

Attorneys for Travelers Casualty & Surety Company

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 31 of 32

OF COUNSEL:

Patrick J. Maxcy
John Grossbart
DENTONS US LLP
233 S. Wacker Drive
Suite 5900
Chicago, IL 60606
TELEPHONE: 312.876.8000
FACSIMILE: 312.876.7934

DENTONS US LLP
1999 HARRISON STREET, SUITE 1300
OAKLAND, CALIFORNIA 94612-4709
415 882 5000

Case: 23-04028 Doc# 164 Filed: 01/25/24 Entered: 01/25/24 11:02:47 Page 32 of 32