Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically RECEIVED on 11/7/2025 5:26:57 PM

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 11/10/2025 by Gabriela Muca, Deputy Clerk

S287404

In the

Supreme Court

of the

State of California

FOX PAINE & COMPANY, LLC, *et al.*,
Plaintiffs and Appellants,

v.

TWIN CITY FIRE INSURANCE COMPANY, *et al.*,
Defendants and Respondents.

AFTER A PUBLISHED OPINION OF THE CALIFORNIA COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION TWO, CASE NO. A168803

SAN FRANCISCO COUNTY SUPERIOR COURT, CASE NO. CGC17557275, JUDGE ANDREW CHENG AND JUDGE CHRISTINE-ANNE MASSULLO

AMICUS CURIAE BRIEF OF DNAW SPV CA VINEYARD, LLC D/B/A SPRING MOUNTAIN VINEYARD IN PARTIAL SUPPORT OF APPELLANT-PETITIONERS' APPEAL

JORDAN S. STANZLER (54620)
STANZLER LAW GROUP
A Professional Corporation
665 Hobart Street
Menlo Park, California 94025
Telephone: (650) 464-1824
jstanzler@stanzlerlawgroup.com

JAY B. SPIEVACK
COHEN TAUBER SPIEVACK & WAGNER P.C.
420 Lexington Avenue, Suite 2400
New York, New York 10170
Telephone: (212) 381-8735
jspievack@ctswlaw.com

Attorneys for Proposed Amicus Curiae DNAW SPV CA Vineyard LLC D/B/A Spring Mountain Vineyard, as successor in interest to Spring Mountain Vineyard, Inc.

COUNSEL PRESS INC. · (213) 680-2300

PRINTED ON RECYCLED PAPER

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES 3

I. STATEMENT OF ISSUES 6

II. INTRODUCTION 6

III. THE STATEMENT OF CASE 12

IV. ARGUMENT 15

A. *Fox Paine* Misinterpreted *Qualcomm* and The Court of Appeal Incorrectly Ruled That The Exhaustion/Attachment Provision Operates As An Absolute Contractual Bar To Fox Paine's Declaratory Relief Count Against Its Second Through Fourth Layer Excess Insurers 15

B. This Court Should Reaffirm Policyholders' Rights to Pursue a Single Consolidated Action Against All of Their Insurers 28

C. This Court Should Hold That Excess Insurers Can Not Engage in Wrongful Acts and Omissions That Breach the Implied Covenant of Good and Fair Dealing Before Their Coverage Obligation Is Triggered 31

V. CONCLUSION 41

TABLE OF AUTHORITIES

Page(s)

Cases:

ABM Indus., Inc. v. Zurich Am. Ins. Co.,
(N.D. Cal. 2006) 237 F.R.D. 225 .... 23, 35

Ameron Int'l Corp. v. Ins. Co. of the State of Pa.,
(2010) 50 Cal.4th 1370 .... 11, 23, 28, 35

Aydin Co. v. First State Ins. Co.,
(1998) 18 Cal.4th 1183 ....*passim*

Bicoastal Corp. v. Aetna Cas. & Sur. Co.,
(N.D. Cal. Oct. 4, 1994, C–94–20108 RPA)
1994 WL 564539 .... 25, 30

Chiatello v. City & County of San Francisco,
(2010), 189 Cal.App.4th 472... 16

Cnty. of Santa Clarav. United States Fid. & Guar. Co.,
(N.D.Cal. Dec. 20, 1994, C-93-20169 RPA (EAI)),
1994 WL 715657 30

Cushman & Wakefield, Inc. v. Illinois Nat'l Ins. Co.,
(N.D. Ill. May 11, 2015, 14 C 8725)
2015 WL 2259647, at p.. 30, 31

Doan v. State Farm General Ins. Co.,
(2011) 195 Cal.App.4th 1082.. 25

Egan v. Mutual of Omaha Ins. Co.,
(1979) 24 Cal.3d 809 36

Fox Paine & Co., LLC v. Twin City Fire Ins. Co.,
104 Cal. App. 5th 1034 (2024)...*passim*

Fremont Reorg. Corp. v. Fed. Ins. Co.,
(C.D. Cal. Feb. 1, 2010, 09-01208)
2010 WL 444718 .... 23, 34, 35, 37

Frommoethelydo v. Fire Ins. Exchange,
(1986) 42 Cal.3d 208 36

Ginsberg v. Gamson,
(2012) 205 Cal.App.4th, 873... 27

Home Indem. Co. v. Mission Ins. Co.,
(1967) 251 Cal.App.2d 942 .... 10, 23, 35

Home Ins. Co. v. Superior Court,
(2005) 34 Cal.4th 1025 .... 24, 28, 39

Lockheed Martin Corp. v. Continental Ins. Co.,
(2005) 134 Cal.App.4th 187... 10, 23, 35

Love v. Fire Ins. Exch.,
(1990) 221 Cal.App.3d 33, 34

Ludgate Ins. Co. v. Lockheed Martin Corp.,
(2000) 82 Cal.App.4th 592..*passim*

Maguire v. Hibernia Sav. & Loan Soc.,
(1944) 23 Cal.2d 719... 27

Masco Contractors Services W. v. New Hampshire Ins. Co.,
C 04-4183 MJJ, 2005 WL 405361
(N.D. Cal. Feb. 17, 2005)... 33, 34, 37, 38

Meyer v. Sprint Spectrum L.P.,
(2009) 45 Cal.4th 634 28

Montrose Chem. Corp. of Cal. v. Superior Court,
(2020) 9 Cal.5th 215 .... 10-11, 23, 28, 35

Palacin v. Allstate Ins. Co.,
(2004) 119 Cal.App.4th 855.. 27

Palmer v. Truck Ins. Exch.,
(1999) 21 Cal.4th 1109 .... 25, 27

Powerine Oil Co. v. Superior Court,
(2005) 37 Cal.4th 377 .... 11, 23, 28, 35

Prudential-LMI Commercial Ins. v. Superior Court,
(1990) 51 Cal.3d 674... 26

Qualcomm Inc. v. Certain Underwriter of Lloyd's London,
(2008) 161 Cal.App.4th..*passim*

Schwartz v. State Farm Fire & Cas. Co.,
(2001) 88 Cal.App.4th 1329..*passim*

Semole v. Sansoucie,
(1972) 28 Cal.App.3d 714 21

Stamm Theatres, Inc. v. Hartford Cas. Ins. Co.,
(2001) 93 Cal.App.4th 531 .... 26, 27

State of Cal. v. Continental Ins. Co.,
(2012) 55 Cal.4th 186 .... 11, 23, 28, 35

Thomas v. Regents of the University of California,
(2023) 97 Cal.App.5th 587 22

Vu v. Prudential Prop. & Cas. Ins. Co.,
(2001) 26 Cal.4th 1142 36

Waller v. Truck Ins. Exch., Inc.,
(1995) 11 Cal. 4th 1 .... 33, 34, 37, 38

Wellenkamp v. Bank of America,
(1978) 21 Cal.3d 943 21

Wilson v. 21st Century Ins. Co.,
(2007) 42 Cal.4th 713 36

Statutes and Other Authorities:

California Civ. Code § 1641 27

California Code Civ. Proc. § 337(1) 27

California Code Civ. Proc. § 1060 ....*passim*

California Code Civ. Proc. § 1061 .... 28, 29

Ins. Code § 790.03(h) 36, 40, 41

I. STATEMENT OF ISSUES[1]

1. Where a policyholder sufficiently alleges losses that exceed all excess insurance coverage, but one or more excess insurers' obligation to pay is not yet triggered because the underlying layer or layers are not exhausted, can the policyholder pursue a consolidated action against all its insurers that includes declaratory relief causes of action against all the excess insurers, or must it wait and sue each excess insurer or layer separately, after the underlying policy or layer limits are exhausted?

2. Can a policyholder sue an excess insurer for breach of contract and bad faith before the underlying policy or layer limits are exhausted, or does an excess insurer owe no obligation to its policyholder until those limits are exhausted, such that only the policyholder has duties under their contract?

II. INTRODUCTION

Before *Fox Paine*, California policyholders (like almost all policyholders nationwide) were permitted to file consolidated actions, including, under CCP § 1060, declaratory relief counts against their excess insurers to resolve claims against all their insurers in a single action. This, indeed, was the consistent practice in insurance coverage litigation.

The Court of Appeal's decision in *Fox Paine*, however, has fundamentally changed this practice in California. As such, affirming *Fox Paine* "as is" would permanently alter this common and long-standing practice for California policyholders and usher

---

[1] Amicus SMV adopts herein Petitioners Fox Parties' defined terms and definitions.

in a new regime that disregards the strong policy interests favoring efficiency and judicial economy.

Fox Paine effectively held that in all circumstances, the upper-level excess insurers' standard form policy provision stating that they have no liability until the underlying policy has paid, admitted liability for, or been held legally liable for its full policy limit ***provides an absolute contractual bar to declaratory relief counts against those excess insurers***.[2] Under *Fox Paine*, it does not matter that the upper-level excess insurer or layer denies coverage based on a policy interpretation identical or substantially similar to the underlying excess insurer's or layers' policy interpretation. It also does not matter that *Fox Paine*'s contractual bar will lead trial courts to ignore policy language that often requires a policyholder to bring an action against an insurer within one or two years of the loss, thereby preventing the policyholder from ever pursuing its case against those excess carriers who denied coverage due to the passage of time until the previous layers are adjudicated.

---

[2] Notwithstanding St. Paul's contention that "the Court of Appeal's decision does not prohibit truly prospective declarations about excess insurance coverage before exhaustion occurs" and was limited to "the facts of *this* case" (SPAB at pp. 11-12, 26-27, 30-35), California Superior Courts (including in SMV's case) have—at the urging of excess insurer defendants in other tower insurance cases—interpreted *Fox Paine* to provide an absolute contractual bar to declaratory relief counts against all excess insurers until exhaustion of the underlying layer under the standard excess form exhaustion/attachment provision. (Notably, Liberty Mutual also agrees with St. Paul's tortured reading of the *Fox Paine* declaratory relief holding. (LMAB at pp. 40-45).)

Should this Court affirm *Fox Paine* "as is," declaratory relief counts in insurance coverage disputes where policyholders cannot only plead, but also can show catastrophic losses (*e.g.*, wildfires, natural and environmental disasters, etc.) exceeding multiple coverage layers will be eliminated if an underlying insurer (or layer) unilaterally declares that its policy does not provide coverage. This will severely prejudice California policyholders and exponentially increase their litigation costs. Affirming *Fox Paine* "as is" will also jam the California Superior Courts' dockets with multiple insurance coverage lawsuits over the same occurrence and damages, turning insurance coverage disputes for policyholders and courts into a literal "Groundhog Day."

Unless Fox Paine's declaratory relief holding is reversed or vacated, (i) policyholders and third parties will have to produce their respective witnesses for depositions and trials multiple times as the policyholder litigates separately against each insurer whose layer is triggered by exhaustion of an underlying policy or layer, (ii) policyholders will need to treat upper-level excess insurers as non-parties and subpoena documents and witnesses concerning claims handling and underwriting issues,[3] (iii) identical or similar demurrers, interrogatories, admissions, motions to compel, dispositive motions, and pre-trial motions that prior to *Fox Paine* were efficiently consolidated in a single action will be repeated as

---

[3] In a catastrophic loss, insurers in a multiple-layer insurance program regularly will hire, communicate, and share the costs of an independent adjuster, any loss estimators, and the like. The various insurers' claims handlers often speak together with their independent adjusters, loss estimators, and experts.

each underlying layer is exhausted, and a new action against the next layer is initiated, and (iv) a triggered upper-level excess layer will challenge the actions or findings in the early lawsuit against underlying layers, whether concerning the nature of payments that exhausted the underlying layer's limits, designating a claim as covered, or allocating losses between or among policies. Moreover, already crowded Superior Court dockets will be further burdened with additional insurance coverage cases, litigating and relitigating issues that could have been more effectively handled in a single, consolidated action.

Additionally, affirming *Fox Paine*'s declaratory relief holding "as is" will undermine the strong policy interest in the amicable resolution of disputes. Unless reversed or vacated, excess follow-form insurers will (a) have no legal obligation to their policyholders unless their layer is reached, and (b) risk nothing by investing their reserves and waiting to see how the policyholder's insurance claim against the underlying layers plays out in the multiple court proceedings and trials that will precede their involvement. Therefore, an excess follow-form insurer will have no reason to settle any California policyholder's pre-litigation claim if the underlying layer wrongfully refuses to pay the underlying policy or policies' limit(s), even if the upper-level excess insurer believes the reasoning of the underlying insurer is incorrect.

For their part, policyholders will not be able to settle insurance disputes for less than the underlying policy limits, as they must exhaust each underlying insurance layer before proceeding against the next layer under *Qualcomm Inc. v. Certain*

Underwriter of Lloyd's London (2008) 161 Cal.App.4th 184. Under the pre-*Fox Paine* regime, the policyholder could reach amicable global settlements where each layer contributed to the settlement payment, but not all excess layers contributed their full policy limits. If upheld, *Fox Paine* would greatly diminish—if it does not outright eliminate—that possibility.

Therefore, this Court should reverse or vacate *Fox Paine*'s holding that an excess policy's exhaustion/attachment provision provides an absolute contractual bar to declaratory relief counts against those excess insurers, and (ii) hold that CCP § 1060 permits a policyholder to pursue declaratory relief against its excess insurers in a single comprehensive insurance coverage action, where the policyholder alleged covered losses implicating excess policy coverage. This amicus urges the Court to clarify that California agrees with the long list of pre-*Fox Paine* decisions that permitted or assumed, under CCP § 1060, policyholders are entitled to pursue declaratory relief counts against excess insurers in a single comprehensive insurance coverage action where losses implicating or exhausting their policies are properly pled. (See, e.g., *Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 605–608 (pleading attachment and/or exhaustion is sufficient to pursue declaratory relief counts against all excess insurers and that actual "exhaustion is an issue of proof and entitlement to recovery, not of pleading"); *Lockheed Martin Corp. v. Continental Ins. Co.* (2005) 134 Cal.App.4th 187, 220; *Home Indem. Co. v. Mission Ins. Co.* (1967) 251 Cal.App.2d 942, 965–966; *Montrose Chem. Corp. of Cal. v. Superior Court* (2020) 9 Cal.5th

215 [addressing claim for coverage under various excess policies if the underlying policies were to pay their limits]; *State of Cal. v. Continental Ins. Co.* (2012) 55 Cal.4th 186; *Ameron Int'l Corp. v. Ins. Co. of the State of Pa.* (2010) 50 Cal.4th 1370 [declaratory relief concerning meaning of "suit" under primary and excess policies where insurers had denied coverage]; *Powerine Oil Co. v. Superior Court* (2005) 37 Cal.4th 377; *Aydin Co. v. First State Ins. Co.* (1998) 18 Cal.4th 1183.

This Court should also reverse *Fox Paine*'s holding that an excess insurer owes no obligation to its policyholder under its policy until those limits are exhausted, such that only the policyholder has duties under their contract. Only by reversing this blanket protection given to excess insurers can this Court avoid the additional, far-reaching, harsh consequences of affirming *Fox Paine*, including the lack of contractual reciprocity. Under *Fox Paine*, an upper-level excess insurer can launch a claims investigation that requires the policyholder to produce documents and appear for multiple examinations under oath. However, the policyholder has no remedy to keep that insurer, to whom it has paid premiums, from conducting a bad-faith claims examination or otherwise acting in bad faith.

For instance, a second-layer excess insurer can conduct a bad-faith claims examination, knowing it will ultimately deny the policyholder's claim, but gathering free discovery and testimony to help the underlying first-layer insurer defeat or limit coverage because the second-layer excess insurer knows that under *Fox Paine*, the policyholder has no current recourse against it unless

the underlying first-layer excess is exhausted. The second-layer insurer effectively does the first-layer's "dirty work," and policyholders are left with no recourse because the excess insurer at that stage in the proceedings has no obligations under the second-layer policy.

Misapplying *Qualcomm Inc.*, *Fox Paine* concluded that excess insurers are insulated from breach of contract and bad faith counts until the underlying layer's policy limit or limits are exhausted and their policies are triggered. Moreover, excess insurers also contend that *Qualcomm* and now *Fox Paine* insulate them from any obligation to pay damages related to the bad-faith until the underlying policy or layer is actually exhausted and their obligations are triggered and actually breached by a refusal to pay. Below, amicus SMV will urge this Court not to insulate excess insurers from their own abhorrent misconduct or conduct that violates the good faith duties under the California Insurance Code.

Accordingly, this Court should also (a) reject *Fox Paine*'s holding that the exhaustion/attachment provision is an absolute contractual bar to breach of contract and bad faith claims against excess insurers where the excess insurer breaches its duty of good faith and fair dealing during the claims handling process, and (b) outline principles or rules that permit policyholders, under certain circumstances, to sustain breach of contract and breach of the covenant of good faith and fair dealings causes of action against such insurers before their policies are triggered.

III. THE STATEMENT OF CASE

The important underlying facts are straightforward. Saul

Fox and Dexter Paine founded FPC, a private equity fund. (6AA1098.) FPC purchased a $10 million primary Private Equity Professional Liability policy from Houston Casualty Company ("HCC") and $40 million in excess follow-form FPC Excess Policies. (6AA1094-95.) FPC was the "named insured," but the FPC Policies covered all their various entities and various insured persons. (*Id.*)

During the FPC Policies' policy period, the successful Fox-Paine business partnership unraveled, and Fox and Paine became embroiled in a bitter corporate divorce. (6AA1098-99.) In August 2007, FPC sued the various Paine insured funds and persons. (*Id.*)

On November 7, 2007, the Paine insured funds and persons notified all the private equity insurers of the Fox lawsuit and sought reimbursement of their defense fees incurred and to be incurred under exceptions to the HCC FPC Policy's Insured versus Insured exclusion, which exclusion and exceptions were incorporated into the follow-form FPC Excess Policies. (6AA1104-05.)[4]

Fox and Paine fought and settled, fought again, and settled again in August 2012. (6AA1101-03, 1107, 1109.) At some point, FPC, the Fox insured funds and persons sought reimbursement of their defense costs incurred under the same exception to FPC Policies' Insured versus Insured exclusion. (6AA1104-05, 1112-

---

[4] In the TAC, the Fox Parties claim that "FPC's broker provided timely notice of the Paine Counterclaims to FPC Excess Insurers," even though "the FPC Notice contains no reference whatsoever to the Delaware Defendants or the Paine Counterclaims." (6AA1100.)

13.)[5]

When Fox and Paine finally settled, all defense fees incurred became fixed well before Fox Paine brought this insurance coverage lawsuit against Twin City and Liberty Mutual, which is the subject of this appeal. (6AA1101-03, 1107, 1109.) Put simply, FPC knew the total defense fees that it paid its attorneys shortly after the August 2012 settlement. (*Id.*)

In this action, FPC's TAC pleaded that HCC's $10 million primary policy was exhausted. (6AA1095-97, 1106.) The TAC also alleges that (i) defendants Twin City and St Paul paid $9 million to the Paine Parties to reimburse their defense costs, and (ii) $6 million of those proceeds was allocated to Twin City's first layer excess policy, and $3 million was allocated to the second layer St Paul policy. (6AA1109-10.) According to the TAC, the applicable coverage under the FPC Excess Policies was $31 million, which

[5] In the TAC, the Fox Parties allege that on or shortly after November 7, 2007, FPC Excess Insurers had the FPC Notice and knew or should have known about the Fox Parties' claim (*i.e.*, the Paine Counterclaims). (*Id.*) The Fox Parties, St. Paul, and Liberty Mutual, however, all noted that a jury found—only days before the Court of Appeal issued *Fox Paine*—that the Fox Parties "failed to give [first-layer] Twin City notice of the claim in the manner supposedly required under the Policies." (See, e.g., FPOB at p. 35; SPAB at pp. 21-22, 33; FPRB at pp. 22-25.) Thereafter, the Superior Court ruled that Twin City was not (i) estopped from denying coverage, and (ii) required to reimburse the Fox Parties for any loss. Although the Fox Parties have appealed the Superior Court's ruling, if affirmed, it would mean that the second-layer St. Paul FPC policy was not triggered because the first-layer Twin City policy was not exhausted (*i.e.*, Twin City only paid $6 million of the $10 million policy limit to the Paine Parties). (6AA1109.)

consisted of (a) $4 million under the first-layer Twin City policy, (b) $7 million under the second layer St. Paul Policy, (c) $10 million under the third-layer St, Paul policy, and (d) $10 million under the fourth layer Liberty Mutual policy. (6AA1094-97, 1109-10.)

The TAC alleges that:

> In defending themselves from and against the Delaware Litigation and Continuing Paine Claims, Plaintiffs have incurred covered "Loss" and recoverable interest exceeding $43,000,000, not subject to offset. By virtue of the Second Cause of Action in this Complaint, for Declaratory Judgment, each of the Twin City first layer, St. Paul second layer and Twin City third layer policies will be exhausted when held liable to pay, and in fact pay, the entirety of their limits of liability, thereby triggering the obligations of all FPC Excess Insurers, up to and including Liberty Mutual.

(6AA1112.)

This paragraph constituted the TAC's sole allegation regarding Fox's loss (*i.e.*, defense costs incurred in the Litigation and Continuing Paine Claims) that are allegedly recoverable under the FPC Excess Policies.

IV. ARGUMENT

A. *Fox Paine* Misinterpreted *Qualcomm* and The Court of Appeal Incorrectly Ruled That The Exhaustion/Attachment Provision Operates As An Absolute Contractual Bar To Fox Paine's Declaratory Relief Count Against Its Second Through Fourth Layer Excess Insurers

In *Fox Paine*, the Court of Appeal noted that "a demurrer tests the legal sufficiency of the complaint," and outlined a demurrer's governing principles. (See 104 Cal.App.5th at p. 1043

[quoting *Chiatello v. City & County of San Francisco* (2010), 189 Cal.App.4th 472, 480 ["on a demurrer for failure to state a cause of action, we [(a)] accept as true the well pleaded allegations in plaintiffs' [third] amended complaint[, (b)] treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law[,(c)] give the complaint a reasonable interpretation, reading it as a whole or in parts in their context[, and (d) likewise accept the facts that are reasonably applied or may be inferred from the complaint's expressed allegations."]].)

The Court of Appeal, however, misinterpreted *Qualcomm* and, as a result, did not properly analyze the TAC and created a heretofore non-existent contractual bar engrafted on all CCP § 1060 declaratory relief counts against excess insurers.

In *Qualcomm*, *supra*, 161 Cal.App.4th at p. 189, the Court held that "the excess policy compels us to conclude that the Underwriters' coverage obligation did not arise because *Qualcomm's pleadings* establish the primary insurer neither paid the 'full amount' of its liability limit nor had it become legally obligated to pay the full amount of the primary liability limit in the parties' settlement agreement" (emphasis added). The Court further stated that: "By the terms of the excess policy requiring National be 'held liable to pay' the 'full amount' of the underlying limit before Underwriters' liability attaches (even if it does not *actually* pay (citation omitted (emphasis in original), Underwriters is under no obligation to provide excess coverage." (See, *supra*, 161 Cal.App.4th at pp. 196-197).

Qualcomm sustained the Underwriters' demurrer against the policyholder because the Court of Appeal held that under the Underwriters' attachment point language, Qualcomm could not bear the $4 million gap between what primary National Union paid out it in the settlement ($16 million) and National Union $20 million primary policy limit. The Court noted that Qualcomm's complaint pled that its policy with National had a $20 million policy limit and that it settled with National for $16 million. As the Qualcomm Court found,

> Qualcomm's complaint does not indicate (nor does Qualcomm argue) that the settlement between it and National required National to accept responsibility or liability for the *full amount* of the $20 million on the underlying policy. Nor does the complaint plead that National was obligated to pay $20 million pursuant to a court order or judgment, which would plainly fall within such policy language.

161 Cal.App.4th at pp. 196-197, 205 (emphasis in original).

Therefore, the Court affirmed the trial court's opinion sustaining the Underwriters' demurrer against both Qualcomm's breach of contract and declaratory relief counts, because it was impossible for Qualcomm to prove that the Underwriters' policy was triggered, since the Qualcomm and National $16 million settlement agreement meant that the underlying layer was not, and could not be, exhausted. (See, *supra*, 161 Cal.App.4th at pp. 189, 196-197, 205.)

Critically, the *Qualcomm* Court did not impose a contractual bar to Qualcomm's declaratory relief count. (See OB at p. 47.)[6]

---

[6] St. Paul also recognized this critical distinction. (SPAB at p. 29.)

Moreover, *Fox Paine* missed that *Qualcomm* had nothing whatsoever to do with whether a policyholder could sue its excess insurers for declaratory relief before National Union's policy limit was exhausted. In fact, ironically (given *Fox Paine*'s reliance on the decision), Qualcomm *did* sue Underwriters for declaratory relief, and the Court of Appeal earlier issued declaratory relief concerning coverage under the Underwriters' policy, even though the Court ultimately found that (i) National Union did not its full $20 million policy limit, and (ii) Underwriters, as a result, owed Qualcomm nothing. Therefore, *Qualcomm* did exactly what *Fox Paine* (misinterpreting *Qualcomm*) held a court could not do, even though the *Fox Paine* exhaustion/attachment language and the Qualcomm exhaustion/attachment language considered were the same, namely, the *Qualcomm* Court earlier granted declaratory relief on the meaning of the excess insurer's policy language before the underlying policy was exhausted. As a result, *Qualcomm*—if anything—provides support for the Fox Parties because it shows that the *Fox Paine* Court got *Qualcomm* and the viability of declaratory relief counts before underlying policy exhaustion completely wrong.[7]

In contrast to what the *Fox Paine* Court mistakenly held happened in *Qualcomm*, Fox Paine alleged that (i) HCC exhausted its primary limit, (ii) Twin City paid $6 million of its $10 million policy limit under its first layer excess policy to the Paine Parties to settle their claims (not FPC's claims), (iii) St. Paul paid $3

[7] Counsel for United Policyholders ("UP"), David Goodwin, represented Qualcomm. SMV defers to UP's amicus curiae brief for any further explanation of *Qualcomm*.

million of its $10 million policy limit under its second layer excess policy to the Paine Parties to settle their claims (not FPC's claims), (iv) $31 million in coverage remained under the FPC Excess Policies, (v) FPC did not settle or release any of its claims under the FPC Excess Policies, and (vi) FPC has incurred covered "Loss" and recoverable interest exceeding $43,000,000, not subject to offset. (6AA1094-97, 1106, 1109-12.)

Therefore, the Fox Parties clearly could plead that (a) a prior layer was exhausted, (b) its covered Loss equaled or exceeded the $31 million in insurance proceeds remaining on the FPC Excess Policies, and (c) its covered Loss will exhaust all of FPC's Excess Policies. (*Id*.)[8]

The Court of Appeal's failure to recognize these critical factual distinction caused it to incorrectly impose a heretofore non-existent contractual bar to all CCP § 1060 declaratory relief counts against excess insurers, holding that "[t]he situation presented here is exactly the same as that in *Qualcomm*" and "the court held that Qualcomm could not satisfy the exhaustion in the excess policy." (See, *supra*, 104 Cal.App.5th at p. 1050.) But *Qualcomm* affirmed an opinion sustaining the demurrer because, unlike here, it was factually impossible for Qualcomm to show (or even to plead)

[8] The Fox Parties have appealed the Superior Court's subsequent post-appeal *Fox Paine* ruling that the first-layer Twin City policy was not required to reimburse the Fox Parties for any loss. There is no final non-appealable judgment that would make it impossible under *Qualcomm*, *supra*, 161 Cal.App.4th at pp. 189, 196-197, 205, for the Fox Parties to plead that the first-layer Twin City policy was exhausted.

exhaustion once it had settled for less than the underlying $20 million limit. (See, *supra*, 161 Cal.App.4th at pp. 196-197, 205.) In addition to that error, the Court of Appeal also went well beyond *Qualcomm* and any California precedent by incorrectly finding, in effect, that a declaratory relief count that properly pled covered losses that would trigger some or all excess policy coverage can never proceed against excess insurers when "the [*Qualcomm*] exhaustion rule prevents breach of contract claims from moving forward." (See *Fox Paine*, *supra*, 104 Cal.App.5th at pp. 1049, 1050.)[9]

The *Fox Paine* Court also created a strawman and then set it on fire to support its misguided statement that "*Ludgate* is not to the contrary." (104 Cal.App.5th at pp. 1050-52.) Contrary to the Court of Appeal's holding, the *Ludgate* Court clearly held:

> Code of Civil Procedure section 1060 does not support the trial court's conclusion that Lockheed needed to show a reasonable probability of exhaustion of the primary coverage before it could state a cause of action for declaratory relief against Ludgate on its excess coverage. All that Code of Civil Procedure section 1060 requires is that there be 'actual controversy relating to the legal rights and duties of the respective parties.' Exhaustion of underlying limits, while necessary to entitle the insured to recover on the

[9] The language of *Fox Paine* may be couched as an analysis of CCP §§ 1060 and 1061; however, the lower superior courts applying *Fox Paine* during the pendency of this appeal have held that the Excess Form contractual exhaustion/attachment provision bars all declaratory relief counts against excess insurers where the complaint does not—because it cannot—allege that underlying policy is actually exhausted.

> excess policy, is not necessary to create actual controversy. Exhaustion is merely an issue of proof and entitlement to recovery, not of pleading. A cardinal rule of pleading is that only the ultimate facts need be alleged. (*Semole v. Sansoucie* (1972) 28 Cal.App.3d 714, 719). In a declaratory relief action, the ultimate facts are those facts establishing the existence of an actual controversy. (Code Civ. Proc., §1060.) Facts showing exhaustion of the underlying limits merely establish the insured's right to recovery, not whether an actual controversy exists between the parties. However, to be entitled to declaratory relief, a party need not establish that it is also entitled to a favorable judgment. As stated in *Wellenkamp v. Bank of America* (1978) 21 Cal.3d 943, 947): 'A complaint for declaratory relief is legally sufficient if it sets forth facts showing the existence of an actual controversy relating to the legal rights and duties of the parties under a written instrument or with respect to property and requests that the rights and duties of the parties be adjudged by the court. If these requirements are met and no basis for declining declaratory relief appears, the court should declare the rights of the parties, whether or not the facts alleged establish that the plaintiff is entitled to [a] favorable declaration.'

82 Cal.App.4th at p. 606. *Ludgate*'s exhaustive discussion of CCP § 1060's statutory language and pleading requirements hardly constitutes, in *Fox Paine's* words, "pure dictum." (See, *supra*, 104 Cal.App.5th at p. 1051.)

The Court of Appeal in *Fox Paine* implicitly also conceded that *Ludgate* was not pure dictum when it stated that:

> *Ludgate* is distinguishable for another reason: the insured Lockheed pleaded facts that would establish exhaustion. Lockheed's cross-complaint included exhibits demonstrating that it had less than $90

> million in underlying primary limits and its indemnity claim was for 'at least $140.6 million.' The court noted that Lockheed had "sufficiently alleged exhaustion of underlying limits," demonstrating the existence of an 'actual controversy....'

104 Cal.App.5th at p. 1052 [citing and quoting *Ludgate*, *supra*, 82 Cal.App.4th at pp. 606-608].) As such, the *Fox Paine* Court conceded, contradictorily, that a complaint can, under CCP § 1060, "sufficiently allege exhaustion of underlying limits, demonstrating the existence of an actual controversy" with its excess insurer, without pleading actual exhaustion of the underlying limits. (*Id.*)

Based on the above, the *Fox Paine* Court clearly could have—and should have—limited its earlier ruling to its finding that Fox Parties failed to properly plead a declaratory relief count (*i.e.*, that an actual justiciable controversy exists) against second-layer St. Paul, third-layer Twin City, and fourth-layer Liberty Mutual because FRC did not adequately plead its covered Loss. (*Fox Paine*, *supra*, 104 Cal.App.5th at pp. 1049-50 [holding that Fox Parties did not satisfy its pleading requirements to state a declaratory relief count because, under *Thomas v. Regents of the University of California*, (2023) 97 Cal.App.5th 587, 611, "the contentions that [Fox Parties'] litigation costs are 'covered Loss' and not subject to offset are conclusions of law."].)[10]

---

[10] For instance, the Court of Appeal could have granted FPC leave to replead with instructions to plead (i) the exact amount of defense costs (exclusive of interest) it incurred in the Delaware Litigation and Continuing Paine Claims, and (ii) allegations establishing that the exact amount of those defense costs could exhaust the underlying layer and trigger each excess layer.

To avoid the confusion created by *Fox Paine*, this amicus brief urges this Court to (i) hold that a policyholder need not actually exhaust the underlying policy or layer to seek declaratory relief against all its excess insurers in a single consolidated action, and (ii) affirm in the strongest possible terms the critical and indispensable role that CCP § 1060 declaratory relief counts in resolving all disputes among policyholders and their insurers relating to the interpretation of identical or substantially similar follow-form policy language. (See, e.g., *Home Indem. Co.*, *supra*, 251 Cal.App.2d at pp. 965–966 [holding that the policyholder is entitled to bring one lawsuit against all its insurers to determine each insurer's obligations regarding that loss and that the policyholder's declaratory relief count against its excess insurers need not plead actual exhaustion, because the respective rights and obligations of an insured and its insurers "bec[o]me fixed at the time of the [loss]."]); *Ludgate*, *supra*, 82 Cal.App.4th at pp. 605–608; *Lockheed Martin Corp.*, *supra*, 134 Cal.App.4th at p. 220; *Montrose Chem. Corp.*, *supra*, 9 Cal.5th 215; *State of Cal.*, *supra*, 55 Cal.4th 186; *Ameron Int'l Corp.*, *supra*, 50 Cal.4th 1370; *Powerine Oil Co.*, *supra*, 37 Cal.4th 377; *Aydin Co.*, *supra*, 18 Cal.4th 1183; see also *Fremont Reorg. Corp. v. Fed. Ins. Co.* (C.D. Cal. Feb. 1, 2010, 09-01208) 2010 WL 444718, at p. *4 ["under *Ludgate*, so long as the plaintiff alleges a loss that exceeds the primary coverage, it may state a claim against the excess carrier"]; *ABM Indus., Inc. v. Zurich Am. Ins. Co.* (N.D. Cal. 2006) 237 F.R.D.

225, 228-29.)[11]

This Court also should reject *Fox Paine*'s holding that the exhaustion/attachment provision in excess policies operates as an absolute contractual bar to declaratory relief counts against excess insurers where the underlying policy or layer is not actually exhausted, for at least two reasons. First, affirmance will render CCP § 1060 meaningless in the insurance coverage dispute context and ignore the statute's plain meaning. CCP § 1060 states, in relevant part, that:

> Any person interested…under a written contract…may, in the cases of actual controversy relating to the legal rights and duties of the respective

---

[11] As shown above, before *Fox Paine*, every published California decision held that a policyholder who alleged covered losses above the attachment point of all its excess insurance policies could obtain declaratory relief against its entire insurance tower after its excess insurers denied coverage. Moreover, as also shown above, countless other California courts—including this Court—have assumed that declaratory relief is appropriate in that scenario. Based on its Letter in Support of the Petition for Review (at pp. 2-4), SMV anticipates that the UP will also file an *amicus curiae* brief that addresses the antitrust exemption that permits insurance companies to sell and use identical or substantially similar policy language and the historical advantages that follow-form excess insurance provides insurers. As such, SMV will adopt UP's recitation, and will not independently outline those issues here, except to note—as UP stated—"for purposes of insurance coverage litigation like the *Fox Paine* case, this means that (a) if a claim is large enough to reach the excess policies, the excess policies present the same coverage issues as the primary policy and (b) a coverage declaration as to the primary policy will equally affect coverage under the excess policies." (at 4.) Indeed, this Court has also recognized that primary and excess insurers often take identical, similar, or non-conflicting positions regarding coverage. (See *Home Ins. Co. v. Superior Court*, (2005) 34 Cal.4th 1025, 1036.)

> parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties…, including a determination of any question of construction…arising under the instrument or contract…the court may make a binding declaration about these rights or duties, whether or not further relief is or could be claimed at the time.

In the insurance coverage dispute context, declaratory relief concerning the proper construction of identical or substantially similar policy provision language is appropriate. (See CCP § 1060; *Doan v. State Farm General Ins. Co.* (2011) 195 Cal.App.4th 1082, 1096 ["Declaratory relief operates prospectively, serving to set controversies at rest before obligations are repudiated, rights are invaded or wrongs are committed."].)[12]

Second, this Court should also reject that the exhaustion/attachment provision in excess policies operates as an absolute contractual bar to declaratory relief counts because of the far-reaching ramifications that cannot be fully considered here. (See, *supra*, 104 Cal.App.5th at pp. 1049-50.)

For instance, it is well-settled that courts must interpret an insurance policy to give effect to all of the policy's language. (See, e.g., *Palmer v. Truck Ins. Exch.*, (1999) 21 Cal.4th 1109, 1115 ["We must also interpret these terms in context and give effect to every

---

[12] In its Opening Brief, the Fox Parties noted that "cases on which St. Paul relied in opposing review acknowledged that (a) '*judicial economy favors determining the rights, duties and obligations of all the parties in a single declaratory coverage action*'," and (ii) "a series of separate actions in which coverage issues are litigated one layer at a time would entail duplication and waste. [*Bicoastal Corp. v. Aetna Cas. & Sur. Co.* (N.D. Cal. Oct. 4, 1994, C–94–20108 RPA) 1994 WL 564539, at *2 (italics added).])."

part of the policy with each clause helping to interpret the other." (internal citations omitted)]; *Stamm Theatres, Inc. v. Hartford Cas. Ins. Co.*, (2001) 93 Cal.App.4th 531, 538 [same].) In the exhaustion/attachment provision, virtually all excess policies state, with some variation, that liability under the excess policy shall not attach until the underlying insurer(s) have paid, admitted liability for, or have been held legally liable for the underlying policy(ies) limits. (*See* 6AA1169, AA1184, AA1193, AA1207.) At the same time, many primary and excess policies (like the commercial property policies that SMV bought) state under their "Action Against Us" provisions that the policyholder must bring an action against its insurer within one to two years of the loss.

Under the standard form "Action Against Us" provision, the policyholder must commence an action against its primary or triggered underlying excess insurer(s) who denied coverage within the contractual time period.[13] However, under *Fox Paine*'s interpretation of the same policy's standard form exhaustion/attachment provisions, the same policyholder is contractually barred from including in that action any causes of action against excess insurers who denied coverage (declaratory relief, breach of contract, bad-faith, or otherwise) until the underlying policy or layer is exhausted.

---

[13] This Court's equitable tolling period (*i.e.*, from the time that the policyholders give notice of loss until one year after the insurer or insurers formally deny the policyholders' claims) established in *Prudential-LMI Commercial Ins. v. Superior Court*, (1990) 51 Cal.3d 674, does not help interpret the application of this conflicting contractual language under *Fox Paine*.

Applying *Fox Paine*'s absolute contractual bar to all declaratory relief counts against excess insurers who denied coverage would not give effect to the "Action Against Us" provision in case where, as here, no action or cause of action against an excess insurer could proceed because the underlying insurer or layer has refused to cover the policyholder's claim up to the policy's or layer's limit. (*Palmer*, *supra*, 21 Cal.4th at p. 1115; *Stamm Theatres*, *supra*, 93 Cal.App.4th at p. 538; accord *Palacin v. Allstate Ins. Co.*, (2004) 119 Cal.App.4th 855, 865-866; Cal. Civ. Code § 1641 ["The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other."].) Moreover, in many cases, policyholders would also not be able to commence an action against the excess insurer within four (4) years of the excess insurer's coverage denial (*i.e.*, the breach) because under *Fox Paine*, the exhaustion/attachment provision bars such actions or causes of action unless the underlying policy or layer is exhausted. (CCP § 337(1).)[14]

Accordingly, this Court should reject *Fox Paine*'s holding and hold that declaratory relief counts against excess insurers are permitted before actual exhaustion of the preceding coverage, where covered losses implicating the excess insurer's coverage are well-pled.

[14] The four (4) year statute of limitations for breach of contract claims applies to declaratory relief counts "sought with reference to an obligation which has been breached." (See *Maguire v. Hibernia Sav. & Loan Soc.*, (1944) 23 Cal.2d 719, 734; *Ginsberg v. Gamson*, (2012) 205 Cal.App.4th, 873, 883.)

B. This Court Should Reaffirm Policyholders' Rights to Pursue a Single Consolidated Action Against All of Their Insurers

As *Fox Paine* notes, this Court has observed that CCP §§ 1060 and 1061 "must be read together." (See *supra*, 104 Cal.App.5th at p. 1049 [quoting *Meyer v. Sprint Spectrum L.P.* (2009) 45 Cal.4th 634, 647].) However, amicus SMV doubts that in the context of multi-layer insurance programs, this Court would find that where the covered loss alleged implicates all layers, the resolution of controversy over the proper interpretation of identical or substantially similar policy language "would have little practical effect in terms of altering parties' behavior." (*Meyer*, *supra*, 45 Cal.4th at p. 648.) Indeed, experience and the countless cases where California Courts—including this Court—have assumed that declaratory relief against excess insurers is appropriate prove otherwise. (See, e.g., *Montrose Chem. Corp.*, *supra*, 9 Cal.5th 215; *State of Cal.*, *supra*, 55 Cal.4th 186; *Ameron Int'l Corp.*, *supra*, 50 Cal.4th 1370; *Powerine Oil Co.*, *supra*, 37 Cal.4th 377; *Aydin Co.*, *supra*, 18 Cal.4th 1183; accord *Home Ins. Co.*, *supra*, 34 Cal.4th at 1036-37 [reversing the Court of Appeal, the Court noted that the trial court determined that Montrose Chemical had alleged claims against its primary and excess insurers that were substantially related to the subject matter of the existing action."].)

Therefore, amicus SMV submits that CCP § 1061 would only apply to declaratory relief counts against excess insurers in rare or unusual circumstances. Notably, St. Paul and Liberty Mutual argue that (a) *Fox Paine*'s CCP § 1061 analysis is only relevant to

insurance coverage cases like Fox Paine, where the loss was fixed, and (b) this case is purportedly distinct from the situations presented in other California cases where the loss was likely to implicate all excess layers. (See SPAB at pp. 20, 23, 25-26, 30-36; LMAB at pp. 25-26, 40-45.) Neither St. Paul nor Liberty Mutual attempts to argue that declaratory relief counts are not appropriate where the policyholders plead facts about ongoing losses that, if proven, would establish exhaustion. (*Id.*; SPAB at pp. 20, 23, 25-26, 30-36.)[15]

St. Paul's and Liberty Mutual's proffered distinction—albeit difficult to apply—undoubtedly would have permitted SMV's declaratory relief counts to proceed against its excess defendant insurers, if the Superior Court had not read *Fox Paine* to create an absolute contractual bar before actual exhaustion. SMV has (i) estimated that it will pay approximately $51.1 million to replace and repair its covered property and BPP destroyed by the Fire, and (ii) has paid $19.9 million so far to replace and repair both covered and other losses caused by the Fire. Under the St. Paul/Liberty Mutual rule (*i.e.*, proposed *Fox Paine* holding interpretation), SMV

[15] For instance, St. Paul states that (i) "[t]o be clear, St. Paul's position is not that declaratory relief can never be granted in pre-exhaustion excess-insurance cases, and (ii) "[t]he pending and ongoing character of those proceedings plays a crucial role in the section 1060 analysis [because] [w]hen the allegedly covered litigation remains pending, the insured's complaint can plausibly allege that a future controversy over the excess insurance is probable—because the costs and liabilities associated with the pending litigation are likely to exceed the underlying policy limits in the not-too-distant future." (SPAB at pp. 25-26, 31-32; see also LMAB at pp. 25-28, 40-45.)

can—and did—plead facts about ongoing losses that, if proven, would establish exhaustion of all of its excess policies.

The Fox Parties, however, correctly noted that the proffered St. Paul/Liberty Mutual interpretation of *Fox Paine* only makes the already convoluted and confusing Court of Appeal's decision more convoluted and confusing. (FPRB at pp. 29-33 [correctly stating that "[t]he 'actual controversy' in this and every other similar [insurance coverage] action is disputed *insurance* liability, not the party disputes in the underlying action" or, in SMV's case, claim].) It is certainly telling, however, that neither St. Paul nor Liberty Mutual wants to defend the *Fox Paine* absolute contractual bar that excess defendant insurers have been successfully raising before lower courts to dismiss declaratory relief counts pled against them.

The Fox Parties also outline the biggest problems that *Fox Paine* has—certainly, in SMV's case (See SMV's Application)—and will continue to create if affirmed "as is." *Fox Paine*'s holding completely undermines the many policy interests favoring efficiency, judicial economy, and fairness to policyholders. (See, e.g., *Cnty. of Santa Clara v. United States Fid. & Guar. Co.* (N.D. Cal. Dec. 20, 1994, C-93-20169 RPA (EAI)) 1994 WL 715657, at p. *1 [a single comprehensive declaratory action is far better from the standpoint of judicial economy and fairness to the insured]; *Bicoastal Corp.*, *supra*, (N.D. Cal. Oct. 4, 1994, C–94–20108 RPA) 1994 WL 564539, at p. *2; *Cushman & Wakefield, Inc. v. Illinois Nat'l Ins. Co.* (N.D. Ill. May 11, 2015, 14 C 8725) 2015 WL 2259647, at p. *6 ["[I]t is fundamentally practical for the parties and

beneficial for purposes of judicial efficiency to have all of the implicated insurers present and participating."].)

As the Fox Parties stated (and SMV recognized when it filed its action against all its insurers in March 2022), courts have consistently acknowledged (until *Fox Paine*) that one action involving all of the insurers facilitates global resolutions. Affirming *Fox Paine* means that many Superior Courts will interpret—as the Napa Superior Court did in SMV's case—the decision as holding that policyholders must litigate the same policy interpretation and related coverage issues separately, layer by layer, with each insurer. The inefficient, highly prejudicial situation in which California policyholders will find themselves and which is fully recited in (i) the Fox Parties' briefs (FPOB at pp. 45-53; FPRB at 32-33) and (ii) SMV's Application and Introduction, does not need repeating here. (See Introduction at pp. 4-7, *supra*; see also SMV's Application,)

For all of the reasons above, this Court should (i) reaffirm that policyholders can pursue a single, consolidated action against all their insurers that include under CCP § 1060, declaratory relief counts against all excess insurers, and (ii) reject *Fox Paine*'s newfound contractual exhaustion/attachment provision bar on all such declaratory relief claims.

C. This Court Should Hold That Excess Insurers Can Not Engage in Wrongful Acts and Omissions That Breach the Implied Covenant of Good and Fair Dealing Before Their Coverage Obligation Is Triggered.

The Court of Appeal in *Fox Paine* considered whether a policyholder can sue an excess insurer for breach of contract and

bad faith based on that insurer's dishonest dealings with its policyholder before the underlying policy or policies are exhausted. Based on its misinterpretation of *Qualcomm*, *supra*, 161 Cal.App.4th at pp. 189, 196-197, 205, the *Fox Paine* Court held that an excess insurer owed no actionable contractual obligations to its policyholder until the underlying policy or layer is exhausted, and its policy is triggered. (104 Cal.App.5th at pp. 1046-48, 1056-58.)[16] Referencing its breach of contract holding (relying on its incorrect reading of *Qualcomm*), the *Fox Paine* Court held that the Fox Parties did not—because they could not—plead exhaustion under any of their excess policies, and thus, because the exhaustion/attachment provision operates as a contractual bar to a breach of contract claim against an excess insurer, the policyholders' bad faith claim could not proceed as a matter of law. (See, *supra*, 104 Cal.App. at p. 1056.)

The Court of Appeal decision is erroneous because, as shown above (at pp. 12-15, *supra*), *Qualcomm* did not hold that the exhaustion/attachment provision created a contractual bar to breach of contract and bad faith claims against excess insurers. *Qualcomm* held only that because the policyholder could not under any circumstances show that it exhausted National's $20 million

---

[16] St. Paul and Liberty Mutual contend that the Fox Parties forfeited their right to raise the most important argument that shows that the *Fox Paine* Court's bad faith holding is wrong—namely, its "the potential for coverage argument." (See, e.g., SPAB at pp. 20-21, 61). This argument is, at best, disingenuous. The Fox Parties show that (i) the *Fox Paine* decision "put at issue the meaning of potential coverage" and (ii) they raised it below. (FPRB at p. 36.)

primary limit, it could not recover from the excess carriers. (See, *supra*, 161 Cal.App.4th at pp. 189, 196-197, 205.) *Fox Paine*'s improper extension of *Qualcomm* resulted in its failure to properly interpret this Court's holding in *Waller v. Truck Ins. Exch., Inc.*, (1995) 11 Cal. 4th 1. As the *Fox Paine* Court and the Fox Parties note,

> As *Waller* itself puts it, citing to and quoting from, a leading Court of Appeal case: "It is clear that if there is no *potential* for coverage and, hence, no duty to defend under the terms of the policy, there can be no action for breach of the implied covenant of good faith and fair dealing because the covenant is based on the contractual relationship between the insured and the insurer.

(See, *supra*, 11 Cal.4th at p.36 [citing and quoting *Love v. Fire Ins. Exch.*, (1990) 221 Cal.App.3d 1135].) Put simply, the *Fox Paine* Court ignored that *Waller* and other California cases hold that breach of contract and bad faith claims can be actionable where there is potential coverage. Indeed, confronted by the Fox Parties' argument about *Schwartz v. State Farm Fire & Cas. Co.* (2001) 88 Cal.App.4th 1329, 1338, and *Masco Contractors Services W. v. New Hampshire Ins. Co.*, C 04-4183 MJJ, 2005 WL 405361, at pp. *5–6 (N.D. Cal. Feb. 17, 2005), the *Fox Paine* Court's response was only "neither case applies here." (104 Cal.App.5th at p. 1058.)

But *Schwartz*, *supra*, 88 Cal.App.4th at p. 1338, considered *Love*, *supra*, 221 Cal.App.3d at pp. 1151-53 (1990) and *Waller*, *supra*, 11 Cal. 4th at p. 36, and noted that, in *Love*, no potential coverage existed because the Court granted summary judgment to the insurer, holding that the statute of limitations barred the policyholders' claims. (See *Love*, *supra*, 221 Cal.App.3d at pp.

1143-44, 1151-52.) *Schwartz* held that *Love* and its progeny only showed that breach of contract and bad faith claims cannot be asserted "when there is no coverage, *and no potential coverage*, under the policy." (See *Schwartz, supra*, 88 Cal.App.4th at p. 1339 (emphasis in original); accord *Waller*, 11 Cal.4th at p. 36 [*Love* and its progeny apply only where there is "no *potential* for coverage" under the excess insurer's policy (emphasis in original)]; *Qualcomm*, *supra*, 161 Cal.App.4th at pp. 189, 196-197, 205.)

Schwartz rejected "the notion that, simply because a condition precedent to a particular obligation—the obligation to pay—has not yet occurred, the insurer is relieved from the implied covenants that inhere in *every* contract." (See, *supra*, 88 Cal.App.4th at pp. 1336-37.) As *Schwartz* clarified, the language in *Love*, *supra*, 221 Cal.App.3d at 1151—that "benefits due under the policy must have been withheld"—means only that the insurer's conduct must negatively affect the insured's benefits. (*Schwartz, supra*, 88 Cal.App.4th at p. 1340; see also *Masco Contractors*, *supra*, 2005 WL 405361, at pp. *5–6 [denying National Union's motion to dismiss plaintiff's contract and fair dealings claims where, as here, the plaintiff adequately alleged that the insurers (primary and excess) coordinated their coverage positions with the intent of depriving plaintiff of its indemnity rights under the excess policies]; *Fremont Reorganizing Corp. v. Fed. Ins. Co.*, Case No. SACV 09-01208 JVS, 2010 WL 444718, at pp. *3–4 (C.D. Cal. Feb. 1, 2010) [rejecting argument by excess carrier that breach of contract and implied covenant claims were "premature" where the primary carrier had not yet paid its limit,

4902-1179-5832, v. 1

because the complaint alleged a loss that exceeded the primary policy's coverage limit]; *Ludgate.*, *supra*, 82 Cal.App.4th at p. 606 (2000) ["Exhaustion of underlying limits, while necessary to entitle the insured to recover on the excess policy, is not necessary to create actual controversy. Exhaustion is merely an issue of proof and entitlement to recovery, not of pleading. A cardinal rule of pleading is that only the ultimate facts need be alleged.").

Amicus Complex Insurance Claims Litigation Association ("CICLA") contends that "the potential for coverage" only relates to the duty to defend under CGL policies. (CICLA AB at pp. 20-23.) CICLA is wrong. While comparing the allegations of a complaint to a CGL policy to see if any allegations give rise to potential coverage is certainly one place where the potential for coverage is an issue, it is hardly the only one. Indeed, all of the pre-*Fox Paine* cases dealing with declaratory relief counts considered whether the covered losses alleged gave rise to the potential for coverage under one or more excess policy layers. (See, e.g., *Home Indem. Co.*, *supra*, 251 Cal.App.2d at pp. 965–966; *Ludgate*, *supra*, 82 Cal.App.4th at pp. 605–608; *Lockheed Martin Corp.*, *supra*, 134 Cal.App.4th at p. 220; *Montrose Chem. Corp.*, *supra*, 9 Cal.5th 215; *State of Cal.*, *supra*, 55 Cal.4th 186; *Ameron Int'l Corp.*, *supra*, 50 Cal.4th 1370; *Powerine Oil Co.*, *supra*, 37 Cal.4th 377; *Aydin Co.*, *supra*, 18 Cal.4th 1183; see also *Fremont Reorg. Corp., supra*, 2010 WL 444718, at p. *4; *ABM Indus., Inc.*, *supra*, 237 F.R.D. at 228-29.) The potential for coverage is hardly the limited concept that CICLA claims it to be.

St. Paul and Liberty Mutual agree that all insurers

(primary, umbrella, and excess) have a duty to deal with their policyholders in good faith. (See, e.g., SPAB at pp. 43-44 ["St. Paul does not dispute that its contractual duty of good faith and fair dealing exists throughout the life of the insurance contract"]; LMAB at pp. 51-52.) That excess insurers owe at least some contractual obligations that attach before underlying policies are exhausted cannot be seriously disputed, including the duty not to place their own interests or the interests of others ahead of their policyholders' interests. (See, e.g., *Egan v. Mutual of Omaha Ins. Co.* (1979) 24 Cal.3d 809, 820 ["For the insurer to fulfill its obligation not to impair the right of the insured to receive the benefits of the agreement, it again must give at least as much consideration to the latter's interests as it does to its own"]; *Schwartz*, *supra*, 88 Cal.App.4th at pp. 1336-40*;* see also Cal. Ins. Code § 790.03(h).) Indeed, the duties that all insurers (primary and excess) are outlined in California's Insurance Code. (See, e.g., Ins. Code § 709.03(h).)[17]

However, St. Paul, Liberty Mutual, and amicus CICLA

---

[17] California courts have repeatedly recognized that insurers owe their policyholders heightened, fiduciary-type obligations as part of their duty of good faith and fair dealing due to the "special relationship" inherent in insurance contracts. (See, e.g., *Frommoethelydo v. Fire Ins. Exchange* (1986) 42 Cal.3d 208, 214-215; *Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 720 [insurers must give their policyholders' interests at least as much weight as their own when fulling their duty to communicate, investigate claims, and resolve coverage disputes promptly]; *Vu v. Prudential Prop. & Cas. Ins. Co.* (2001) 26 Cal.4th 1142, 1150; *Egan*, *supra*, 24 Cal.3d at p. 820; *Schwartz, supra*, 88 Cal.App.4th at 1338.)

dispute that the excess insurer's contractual duty of good faith and fair dealing is actionable or provides tort-like remedies for breach of that duty before the policyholder can show that benefits under the excess policy are owed due to actual exhaustion of the underlying policy or layer. (See, e.g., SPAB at pp. 43-44; LMAB at pp. 51-52.) And under *Fox Paine*, they would not be actionable.

This Court should reject *Fox Paine*'s blanket immunity, and the Insurer-Respondents' and the CICLA's blanket claim. Specifically, there are (and this Court should hold there are) actionable breach of contract and bad faith claims as long as the excess policy provides potential coverage. (See *Schwartz, supra*, 88 Cal.App.4th at pp. 1336-40 [if coverage exists once the underlying policy is exhausted, the policyholder has a viable claim]; *Masco Contractors*, *supra*, 2005 WL 405361, at pp. *5–6; *Reorganizing Corp.*, *supra*, 2010 WL 444718, at pp. *3–4; accord *Qualcomm*, *supra*, 161 Cal.App.4th at pp. 189, 196-197, 205; *Waller*, *supra*, 11 Cal. 4th at 36. This is also consistent with CICLA's point that excess policies are purchased for large or catastrophic loss claims that exceed primary coverage (i.e., potential coverage), although, as shown below, CICLA mistakenly argues that this marketplace should insulate excess insurers from pr-exhaustion claims. (CICLA at pp. 22-24, 27-29.)

Masco Contractors, *supra*, 2005 WL 405361, at pp. *5–6 illustrates this point. In that case, Masco Contractors alleged that umbrella excess insurer National Union and primary insurer New Hampshire coordinated their coverage positions to minimize policy benefits owed to their policyholder and, as a result, breached their

respective insurance policies. (*Id*., at p. *4.) In its motion to dismiss, National Union argued—like St. Paul, Liberty Mutual, and CICLA—that the policyholder's implied covenant claim must fail because it did not have any present duty until its policy was triggered by actual exhaustion of New Hampshire's policy. (*Id*.) Citing *Schwartz*, *supra*, 88 Cal.App.4th at pp. 1336-40, and *Waller*, *supra*, 11 Cal.4th at p. 36, *Masco Contractors* held that exhaustion of the primary coverage was not a condition precedent to a policyholder's claims for breach of contract and the implied covenant of good faith and fair dealing where the potential coverage exists. (*Masco Contractors*, *supra*, 2005 WL 405361, at pp. *5–6.)

Tellingly, CICLA ignores these cases, and St. Paul limits its discussion to *Schwartz*. (SPAB at pp. 52-53, 63.) Liberty Mutual briefly discusses *Masco Contractors,* but only to note that *Fox Paine* found it inapposite and that no such *Masco Contractors* allegations were made against Liberty Mutual in the TAC. (LMAB at pp. 28, 61.)

Amicus SMV respectfully urges this Court to reject a rule that would insulate excess insurers from any breach of contract and bad-faith claims handling claims, no matter how abhorrent their behavior, until the underlying policy or layer is exhausted and their policies are triggered. Such examples of abhorrent insurer behavior are legion. For instance, consider that, while all the other excess insurers have denied coverage, a second-layer insurer conducts, under reservations of rights, initiates a claims investigation, knowing that it will ultimately deny its policyholder

claim, but gathering free discovery and examination under oath ("EUO") testimony to help the underlying first-layer insurer defeat or limit coverage to below its policy limit. In this example, the second-layer excess insurer effectively does the first-layer's "dirty work" outside the strictures of litigation, knowing that, under *Fox Paine*, the policyholder has no recourse because its obligations to its policyholder have not attached as the underlying policy has not been exhausted.

Moreover, the second-layer shields the first-layer excess insurer from bad-faith liability despite its bad-faith refusal to cover its policyholder and its coordination with the second-layer during the purported "claims investigation." Meanwhile, the policyholder under the second-layer excess' follow-form "cooperation clause" must incur the time and expense of producing documents, sitting for EUOs, and attending inspections.[18]

This is the result of *Fox Paine,* and only by reversing this blanket protection given to excess insurers can this Court avoid the additional, far-reaching, harsh consequences resulting from that decision.

---

[18] This is precisely what happened after SMV suffered catastrophic losses from the Fire. SMV had to incur the enormous time and costs of the second-layer's purported "claims investigation," even though it was always clear that the second-layer excess insurer would deny coverage under its policy's substantially similar policy language; and, in fact, before its MJP was granted under *Fox Paine*, the second-layer insurer invoked (three years later) the very same policy language used by all the tower's insurers to deny coverage to also deny coverage. Indeed, this Court has recognized that primary and follow-form excess insurers often coordinate positions and act in concert. (See, e.g., *Home Ins. Co.*, *supra*, 34 Cal.4th at pp. 1036-37.)

CICLA conjures up purportedly strong reasons for protecting excess insurers from pre-underlying policy or layer exhaustion breach of contract and bad faith claims, including (i) their compliance with their policy obligations where their policies are not triggered, (ii) not forcing them to incur costs to investigate claims that may never implicate their policies that they will pass on to California consumers, (iii) encouraging frivolous bad faith claims and burdening courts with this litigation, and (iv) imposing a risk of bad-faith exposure on excess insurers before their obligations attach, thereby altering "the parties' core expectations" during the underwriting and policy negotiation process. (CICLA AB at pp. 14, 19-20, 23-29.)

But left out of CICLA's no breach of contract and bad-faith pre-attachment "mutual expectations" discussion is (i) the mutual expectation that excess insurance is sold and purchased to protect policyholders against proven, covered large or catastrophic losses if such losses occur (*i.e.*, the purpose of insurance is to insure), and (ii) the policyholder's reasonable expectation that the excess insurers will not weaponize their purported right to be insulated against pre-attachment breach of contract and bad-faith claims (or according to CICLA, their contractual expectation) to deprive their policyholder of the right to coverage for legitimate, proven claims.

Respectfully, this Court should not provide where the potential coverage exists, excess insurers, pre-exhaustion and attachment, the unfettered right to engage in conduct that is abhorrent or merely in violation of the Insurance Code (e.g., Cal. Ins. Code § 790.03(h)), and deprive California policyholders of any

recourse against such conduct. California correctly decided long ago that insurers (primary and excess) should not be insulated from all bad-faith breach claims, and the fact that other states may or may not have decided to provide insurance companies, at the urging of their lobbyist and trade association advocates, such protection should carry no weight here.

V. CONCLUSION

The appellate court's decision would (a) permanently alter California's common and long-standing practice of permitting policyholders to file consolidated insurance coverage actions against all insurers, including under CCP § 1060, declaratory relief counts against their excess insurers to resolve claims against all their insurers in a single action where the covered losses alleged would reach each excess insurer's policy or layer's limit, (b) badly prejudice policyholders, and (c) disregard the strong policy interests favoring efficiency and judicial economy. The appellate court decision would also, where potential coverage exists, (a) provide excess insurers, pre-exhaustion and attachment, the unfettered right to engage in code that is abhorrent or merely violates California's Insurance Code (e.g., Cal. Ins. Code § 790.03(h)), and (b) deprive California policyholders of any recourse against such conduct.

This Court, respectfully, should reverse the appellate court's decision and hold that (1) policyholders may bring consolidated actions against all their insurers, including under CCP § 1060, declaratory relief counts against their excess insurers to resolve claims against all their insurers in a single action where the

covered losses clearly alleged would reach each excess insurer's policy or layer's limit, and (2) because excess insurers have a duty of good faith and fair dealing that attaches at the time of contracting, excess insurers, pre-attachment and exhaustion, are insulated from claims and damages arising out of their behavior, abhorrent or merely violative of the California Insurance Code.

Dated: November 7, 2025

*/s/*Jordan S. Stanzler

Attorneys for Amicus Curiae Spring Mountain Vineyard, Inc. and Successor in Interest DNAW SPV CA Vinyard, LLC (d/b/a Spring Mountain Vineyard)

CERTIFICATE OF WORD COUNT

The text of this amicus brief, including footnotes, contains 9,656 words according to the word count provided by Microsoft Word, the computer program used to prepare the brief.

Dated: November 7, 2025

*/s/*Jordan S. Stanzler

Attorneys for Amicus Curiae Spring Mountain Vineyard, Inc. and Successor in Interest DNAW SPV CA Vinyard, LLC (d/b/a Spring Mountain Vineyard)

State of California)
County of Los Angeles)
)

Proof of Service by:
US Postal Service
Federal Express

I, Kristina Homa, declare that I am not a party to the action, am over 18 years of age and my business address is: 626 Wilshire Blvd., Suite 410, Los Angeles, CA 90017

On 11/7/2025 declarant served the within: AMICUS CURIAE BRIEF OF DNAW SPV CA VINEYARD, LLC D/B/A SPRING MOUNTAIN VINEYARD IN PARTIAL SUPPORT OF APPELLANT-PETITIONERS' APPEAL **upon:**

Copies FedEx USPS	Copies FedEx USPS
ELECTRONICALLY SERVED VIA TRUEFILING: SEE ATTACHED SERVICE LIST	

Copies FedEx USPS	Copies FedEx USPS

the address(es) designated by said attorney(s) for that purpose by depositing **the number of copies indicated above,** of same, enclosed in a postpaid properly addressed wrapper in a Post Office Mail Depository, under the exclusive custody and care of the United States Postal Service, within the State of California, or properly addressed wrapper in an Federal Express Official Depository, under the exclusive custody and care of Federal Express, within the State of California

I further declare that this same day the **original and** copies has/have been hand delivered for filing OR the **original and** copies has/have been filed by third party commercial carrier for next business day delivery to:

ELECTRONICALLY FILED VIA TRUEFILING:
SUPREME COURT OF CALIFORNIA
350 McAllister Street, Room 1295
San Francisco, California 94102-4797

I declare under penalty of perjury that the foregoing is true and correct:

/s/ Kristina Homa, Appellate Paralegal, Counsel Press Inc.; khoma@counselpress.com

SERVICE LIST

<table>
<tr>
<td>Michael John Miguel #"145182
mmiguel@mckoolsmith.com
McKool Smith P.C.
300 S. Grand Avenue
29th Floor
Los Angeles, CA 90071

Raymond A. Cardozo #173263
rcardozo@reedsmith.com
Reed Smith LLP
101 Second Street - Suite 1800
San Francisco, CA 94105-3659

Anne Margaret Voigts #220783
anne.voigts@pillsburylaw.com
King & Spalding LLP
601 S. California Avenue
Palo Alto, CA 94304

Attorneys for Plaintiffs-Appellants

Benjamin P. Covington #340180
bcovington@horvitzlevy.com
Horvitz & Levy LLP
3601 West Olive Avenue, 8th Floor
Burbank, CA 91505

Attorneys for Amicus Curiae American Property Casualty Insurance Association</td>
<td>Matthew Clark Lovell #189728
mlovell@nicolaidesllp.com
Nicolaides Fink Thorpe
Michaelides Sullivan LLP
101 Montgomery Street
Suite 2300
San Francisco, CA 94104

Ronald P Schiller
rschiller@hangley.com
Sharon F McKee
smckee@hangley.com
Hangley Aronchick Segal Pudlin & Schiller
One Logan Square, 27th Fl
Philadelphia, PA 19103

Attorneys for Defendant-Respondent
Liberty Mutual Insurance Company

David B. Goodwin #104469
dgoodwin@cov.com
Covington & Burling LLP
Salesforce Tower
415 Mission Street, Suite 5400
San Francisco, CA 94105-2533

Attorneys for Pub/Depublication Requestor
United Policyholders</td>
</tr>
<tr>
<td>Braden T Morell
bmorell@maynardnexsen.com
John C. Neiman
jneiman@maynardnexsen.com
C. William Courtney
wcourtney@maynardnexsen.com
Maynard Nexsen P.C.
1901 6th Ave North, Ste 1700
Birmingham, AL 35203</td>
<td>Christopher Charles Frost #315932
cfrost@maynardnexsen.com
James J. Hockel #340612
jhockel@maynardnexsen.com
Maynard Nexsen LLP
Two Embarcadero Center, Ste 1450
San Francisco, CA 94111</td>
</tr>
<tr>
<td colspan="2">Attorneys for Defendants-Respondents St. Paul Mercury Insurance Company Twin City Fire Insurance Company</td>
</tr>
</table>

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 11/10/2025 by Gabriela Muca, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **FOX PAINE & COMPANY v. TWIN CITY FIRE INSURANCE COMPANY**
Case Number: **S287404**
Lower Court Case Number: **A168803**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **jstanzler@stanzlerlawgroup.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	S287404_Amicus Brief
APPLICATION	S287404_Application for Leave to File Amicus Brief

Service Recipients:

Person Served	Email Address	Type	Date / Time
Benjamin Covington Horvitz & Levy LLP 340180	bcovington@horvitzlevy.com	e-Serve	11/7/2025 5:26:57 PM
Anne Voigts Pillsbury Winthrop Shaw Pittman LLP 220783	anne.voigts@pillsburylaw.com	e-Serve	11/7/2025 5:26:57 PM
Kathy Turner Horvitz & Levy LLP	kturner@horvitzlevy.com	e-Serve	11/7/2025 5:26:57 PM
James Hockel Maynard Nexsen LLP 340612	jhockel@maynardnexsen.com	e-Serve	11/7/2025 5:26:57 PM
Raymond A. Cardozo Reed Smith LLP 173263	rcardozo@reedsmith.com	e-Serve	11/7/2025 5:26:57 PM
Ronald Schiller Hangley Aronchick Segal Pudlin & Schiller 41357	rps@hangley.com	e-Serve	11/7/2025 5:26:57 PM
Monica Sigala Nicolaides Fink Thorpe Michaelides Sullivan LLP	msigala@nicolaidesllp.com	e-Serve	11/7/2025 5:26:57 PM
Louise Jimenez Nicolaides Fink Thorpe Michaelides Sullivan LLP	ljimenez@nicolaidesllp.com	e-Serve	11/7/2025 5:26:57 PM
David Goodwin Covington & Burling, LLP 104469	DGoodwin@cov.com	e-Serve	11/7/2025 5:26:57 PM
Anne Voigts King & Spalding LLP 220783	avoigts@kslaw.com	e-Serve	11/7/2025 5:26:57 PM
Pauleen Truong	pauleen.truong@pillsburylaw.com	e-	11/7/2025

Pillsbury Winthrop Shaw Pittman LLP 317914		Serve	5:26:57 PM
Aiko Paragas	aparagas@nicolaidesllp.com	e-Serve	11/7/2025 5:26:57 PM
Raeann Diamond Horvitz & Levy LLP	rdiamond@horvitzlevy.com	e-Serve	11/7/2025 5:26:57 PM
Cindy Barbosa Pillsbury Winthrop Shaw Pittman LLP	cindy.barbosa@pillsburylaw.com	e-Serve	11/7/2025 5:26:57 PM
Millie Cowley Horvitz & Levy LLP	mcowley@horvitzlevy.com	e-Serve	11/7/2025 5:26:57 PM
Christopher Frost Maynard Cooper & Gale, LLP 315932	cfrost@maynardcooper.com	e-Serve	11/7/2025 5:26:57 PM
John Neiman Maynard Nexsen PC 8093-O68N	jneiman@maynardcooper.com	e-Serve	11/7/2025 5:26:57 PM
Jamie Dela Cruz Nicolaides Fink Thorpe Michaelides Sullivan LLP	jdelacruz@nicolaidesllp.com	e-Serve	11/7/2025 5:26:57 PM
Ronald Schiller Hangley Aronchick Segal Pudlin & Schiller	rschiller@hangley.com	e-Serve	11/7/2025 5:26:57 PM
Eileen Kroll Reed Smith LLP	ekroll@reedsmith.com	e-Serve	11/7/2025 5:26:57 PM
Bradley Pauley Horvitz & Levy LLP 187298	bpauley@horvitzlevy.com	e-Serve	11/7/2025 5:26:57 PM
Matthew Lovell Nicolaides Fink Thorpe Michaelides Sullivan LLP 189728	mlovell@nicolaidesllp.com	e-Serve	11/7/2025 5:26:57 PM
Jordan Stanzler Stanzler Law Group 54620	jstanzler@stanzlerlawgroup.com	e-Serve	11/7/2025 5:26:57 PM
Maricar De Los Reyes Nicolaides Fink Thorpe Michaelides Sullivan LLP	mdelosreyes@nicolaidesllp.com	e-Serve	11/7/2025 5:26:57 PM
Craig Courtney Maynard Nexsen PC 8800W13T	wcourtney@maynardnexsen.com	e-Serve	11/7/2025 5:26:57 PM
Lisa Perrochet Horvitz & Levy LLP 132858	lperrochet@horvitzlevy.com	e-Serve	11/7/2025 5:26:57 PM
Kendyl Barnholtz Crowell & Moring LLP 359694	KBarnholtz@crowell.com	e-Serve	11/7/2025 5:26:57 PM
Christopher Frost Maynard Nexen LLP	cfrost@maynardnexsen.com	e-Serve	11/7/2025 5:26:57 PM
Michael Miguel McKool Smith P.C. 145182	mmiguel@mckoolsmith.com	e-Serve	11/7/2025 5:26:57 PM
Cecilia Avila Crowell & Moring LLP	cavila@crowell.com	e-Serve	11/7/2025 5:26:57 PM
Caryn Hash	chash@nicolaidesllp.com	e-	11/7/2025

Nicolaides Fink Thorpe Michaelides Sullivan LLP		Serve	5:26:57 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

11/7/2025

Date

/s/Jordan Stanzler

Signature

Stanzler, Jordan (54620)

Last Name, First Name (PNum)

Stanzler Law Group

Law Firm