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SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JUL 30 2021

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF RIVERSIDE

9
10 PECHANGA BAND OF LUISEÑO INDIANS, a
11 federally recognized Indian tribe,

12 Plaintiff,

13 v.

14 LEXINGTON INSURANCE COMPANY, a
corporation; UNDERWRITERS AT LLOYD'S,
LONDON, INCLUDING SYNDICATE
15 NUMBERS AGR 3268, APL 1969, ASC 1414,
ATL 1861, AUL 1274, AUW 0609, BRT 2987,
16 BRT 2988, CHN 2015, CNP 4444, KLN 510,
MSP 318, NEON WORLDWIDE PROPERTY
17 CONSORTIUM, QBE 1886, TAL 1183, TMK
1880, AND XLC 2003, an association; ASPEN
18 SPECIALTY INSURANCE COMPANY, a
corporation; HOMELAND INSURANCE
19 COMPANY OF NEW YORK, a corporation;
HALLMARK SPECIALTY INSURANCE
20 COMPANY, a corporation; ENDURANCE
WORLDWIDE INSURANCE LTD., a
21 corporation; ARCH SPECIALTY INSURANCE
COMPANY, a corporation; EVANSTON
22 INSURANCE COMPANY, a corporation;
ALLIED WORLD NATIONAL ASSURANCE
23 COMPANY, a corporation; XL INSURANCE
AMERICA, INC., a corporation; and DOES 1
24 through 50, inclusive,

25 Defendants.

Case No. CVSW 2106522

COMPLAINT FOR:

- 1) **BREACH OF CONTRACT;**
- 2) **TORTIOUS BREACH OF CONTRACT; AND**
- 3) **UNFAIR COMPETITION**

1 Plaintiff alleges as follows:

2 **FIRST CAUSE OF ACTION**

3 (Breach of Contract Against All Defendants)

4 1. Plaintiff Pechanga Band of Luiseño Indians (“Pechanga”) is, and at all relevant times
5 has been, a federally recognized sovereign tribal nation. The Pechanga Indian Reservation is located
6 in Riverside County, California.

7 2. Pechanga is informed and believes, and on the basis of such information and belief
8 alleges, that Defendant Lexington Insurance Company (“Lexington”) is, and all relevant times: (a)
9 has been a corporation; and (b) has engaged in the business of providing insurance to persons and
10 entities in Riverside County, California.

11 3. Pechanga is informed and believes, and on the basis of such information and belief
12 alleges, that Defendant Underwriters at Lloyd’s, London, including but not limited to Syndicate
13 Numbers AGR 3268, APL 1969, ASC 1414, ATL 1861, AUL 1274, AUW 0609, BRT 2987, BRT
14 2988, CHN 2015, CNP 4444, KLN 510, MSP 318, Neon Worldwide Property Consortium, QBE
15 1886, TAL 1183, TMK 1880, and XLC 2003 (“Lloyd’s”) is, and at all relevant times has been: (a) an
16 association of certain insurance underwriting syndicates; and (b) engaged in the business of providing
17 insurance to persons and entities in Riverside County, California.

18 4. Pechanga is informed and believes, and on the basis of such information and belief
19 alleges, that Defendant Aspen Specialty Insurance Company (“Aspen”) is, and all relevant times: (a)
20 has been a corporation; and (b) has engaged in the business of providing insurance to persons and
21 entities in Riverside County, California.

22 5. Pechanga is informed and believes, and on the basis of such information and belief
23 alleges, that Defendant Homeland Insurance Company of New York (“Homeland”) is, and all
24 relevant times: (a) has been a corporation; and (b) has engaged in the business of providing insurance
25 to persons and entities in Riverside County, California.

26 6. Pechanga is informed and believes, and on the basis of such information and belief
27 alleges, that Defendant Hallmark Specialty Insurance Company (“Hallmark”) is, and all relevant
28 times: (a) has been a corporation; and (b) has engaged in the business of providing insurance to

1 persons and entities in Riverside County, California.

2 7. Pechanga is informed and believes, and on the basis of such information and belief
3 alleges, that Defendant Endurance Worldwide Insurance Ltd. (“Endurance”) is, and all relevant
4 times: (a) has been a corporation; and (b) has engaged in the business of providing insurance to
5 persons and entities in Riverside County, California.

6 8. Pechanga is informed and believes, and on the basis of such information and belief
7 alleges, that Defendant Arch Specialty Insurance Company (“Arch”) is, and all relevant times: (a) has
8 been a corporation; and (b) has engaged in the business of providing insurance to persons and entities
9 in Riverside County, California.

10 9. Pechanga is informed and believes, and on the basis of such information and belief
11 alleges, that Defendant Evanston Insurance Company (“Evanston”) is, and all relevant times: (a) has
12 been a corporation; and (b) has engaged in the business of providing insurance to persons and entities
13 in Riverside County, California.

14 10. Pechanga is informed and believes, and on the basis of such information and belief
15 alleges, that Defendant Allied World National Assurance Company (“Allied World”) is, and all
16 relevant times: (a) has been a corporation; and (b) has engaged in the business of providing insurance
17 to persons and entities in Riverside County, California.

18 11. Pechanga is informed and believes, and on the basis of such information and belief
19 alleges, that Defendant XL Insurance America, Inc. (“XL”) is, and all relevant times: (a) has been a
20 corporation; and (b) has engaged in the business of providing insurance to persons and entities in
21 Riverside County, California.

22 12. The names and true capacities, whether individual, corporate or otherwise, of
23 defendants named herein as Does 1 through 50, inclusive, are unknown to Pechanga, who therefore
24 sues said defendants by such fictitious names. Pechanga is informed and believes, and on the basis of
25 such information and belief alleges, that defendants Does 1 through 50, inclusive, or some of them,
26 participated in some or all of the acts as hereinafter alleged and are liable to Pechanga.

27 13. Lexington, Lloyd’s, Aspen, Homeland, Hallmark, Endurance, Arch, Evanston, Allied
28 World, XL, and Does 1 through 50, inclusive, are sometimes hereinafter collectively referred to as

1 “Defendants.”

2 14. Defendants issued, among others, Policy Nos. 017471589/06, 38412453, 38412468,
3 PJ193647, PJ1900131, PX006CP19, 798000237, 73PRX19A1B7, PJ1933021, PD-10363-05,
4 011660435/07, PJ1900134, PJ1900067, ESP7303914-02, MKLV14XP012536, 73PRX19A1EF,
5 0310-8171-1N, and US00063261PR19A (collectively, the “Policy”) with a policy period of July 1,
6 2019 to July 1, 2020. The Policy contains, *inter alia*, first party commercial property coverage for all
7 risk of direct physical loss or damage occurring during the Policy period for all property of every
8 description both real and personal of Pechanga (collectively, the “Insured Property”) including,
9 without limitation, coverages for Business Interruption, Extra Expense, Rental Income,
10 Ingress/Egress, Interruption by Civil Authority,¹ Contingent Time Element Coverage, Tax Revenue
11 Interruption, Extended Period of Indemnity, Expenses to Reduce Loss, and Protection and
12 Preservation of Property. The Insured Property includes various real properties located on the
13 Pechanga Indian Reservation and in the City of Temecula, including but not limited to Pechanga
14 Resort & Casino located at 45000 Pechanga Parkway, Temecula, CA 92592, Journey at Pechanga
15 located at 45000 Pechanga Parkway, Temecula, CA 92592, and Temecula Creek Inn located at 44501
16 Rainbow Canyon Rd, Temecula, CA 92592 (collectively, the “Insured Locations”). The Policy has
17 per occurrence limit for all perils of \$1,050,000,000 with, among others, the following sub-limits:
18 \$689,527,810 for “Business Interruption and Rental Income,” \$35,000,000 for “Extra Expense,” and
19 \$1,000,000 for “Claims Preparation Expenses.” Pechanga is a named insured under the Policy.

20 15. The pertinent coverages under the Policy contain no exclusion for COVID-19,
21 pandemics, diseases, viruses, or any similar exclusions. In fact, in the renewal to the Policy on July
22 1, 2020, Defendants added a communicable disease exclusion, thereby highlighting that the Policy
23 never before contained such an exclusion.

24 16. Commencing in or about March 2020, Pechanga has suffered loss arising from direct
25 physical loss or damage to Insured Property based on, *inter alia*, the existence of COVID-19 (the
26 “Loss”), which Loss is covered under the Policy.

27 17. COVID-19 is a communicable disease that has resulted in a worldwide pandemic.

28 _____
¹ The Policy’s coverages for Ingress/Egress and Interruption by Civil Authority have a 10 mile radius.

1 18. Pechanga is informed and believes, and on the basis of such information and belief
2 alleges, that COVID-19 spreads through three primary modes of transmission. First, COVID-19
3 spreads via airborne transmission when a person inhales droplets of the saliva or nasal discharge of a
4 person with COVID-19. Clouds of droplets of saliva or nasal discharge of a person with COVID-19,
5 which may be released by a cough, a sneeze, loud speech and other modes, can linger in the air for
6 minutes or hours, and can affect persons, personal and real property, and indoor air within real
7 property. Second, smaller droplets, known as aerosols, can linger in the air for hours, reaching
8 people further away from the person with COVID-19 and even after that person has left the premises.
9 Aerosol droplets can be pulled into air circulation systems and spread to other areas in a building
10 causing direct physical loss or damage. Third, a person can get COVID-19 by touching a surface or
11 object that has COVID-19 on it and then touching his or her own mouth, nose, or eyes or otherwise
12 introducing it into his or her body. Individuals can get COVID-19 through indirect contact with
13 surfaces or objects where COVID-19 has been left or disseminated by a person with COVID-19,
14 whether or not the person was symptomatic. The World Health Organization has confirmed that
15 COVID-19 can live on objects or surfaces. Exposure of frequently touched surfaces to COVID-19 is,
16 therefore, a potential source of disease transmission. Both porous and nonporous surfaces or objects
17 that can harbor COVID-19 and serve as vehicles of transmission. Once this occurs, the transfer of
18 COVID-19 may readily occur between inanimate and animate objects, or vice versa. A study by the
19 Virology Journal showed that COVID-19 can survive on surfaces up to 28 days, serving as a vehicle
20 for transmission during that time span.

21 19. Pechanga is informed and believes, and on the basis of such information and belief
22 alleges, that the presence of COVID-19 on property, including on and within Insured Locations,
23 caused and continues to cause physical loss and/or damage to property by causing, among other
24 things, a distinct, demonstrable, physical change and/or tangible alteration to property, causing
25 Insured Locations to remain in an unsafe and hazardous condition. Additionally, the presence of
26 COVID-19 also caused and continues to cause physical loss and/or damage by transforming the
27 physical condition of property at Insured Locations and within the covered radius, rendering the
28 property hazardous and unsafe to human health for occupancy, thereby depriving Pechanga of the

1 functionality and reliability of their property in a manner consistent with its intended purpose.

2 20. Pechanga is informed and believes, and on the basis of such information and belief
3 alleges, that mere cleaning and disinfecting of property and indoor air does not repair or remediate
4 the actual physical and tangible alteration to property caused by COVID-19 nor does it transform the
5 property from its unsafe and potentially hazardous condition. Furthermore, notwithstanding efforts to
6 clean and disinfect, under normal operating conditions continued use of commercial properties like
7 the Insured Locations results in ongoing reintroduction of COVID-19 to the property.

8 21. This physical loss and/or damage to property, including Insured Locations, has
9 required Pechanga to close the Insured Locations at various times, incur extra expense, adopt
10 remedial and precautionary measures to attempt to restore and remediate the air and surfaces at the
11 Insured Locations, and limit operations at the Insured Locations. Additionally, access to the Insured
12 Locations has at times been prevented and/or limited by actions taken by governmental authorities in
13 response to the direct physical loss and/or damage caused by COVID-19 to property within the
14 covered radius.

15 22. For example and in addition other means by which COVID-19 has come to exist at the
16 Insured Locations, employees of Pechanga have tested positive for COVID-19 resulting in the
17 existence of COVID-19 at, and direct physical loss and damage to, the Insured Locations. Indeed,
18 persons who have visited the Insured Locations—including employees of Pechanga—have exhibited
19 signs or actual symptoms of COVID-19, and/or tested positive for COVID-19, during the pandemic.
20 However, given the absence of commercially-available tests for surface and aerosol presence of
21 COVID-19 and the shortage of testing kits for humans, positive test results are not and cannot be the
22 only means of proving the presence of COVID-19.

23 23. In addition to having actual presence of COVID-19 at Insured Locations due to the
24 actual presence of persons with COVID-19, Pechanga is informed and believes, and on the basis of
25 such information and belief alleges, that it sustained a distinct, demonstrable, physical change and/or
26 tangible alteration to its property based on the statistically certain presence of COVID-19.
27 Specifically, because COVID-19 is a pandemic and is statistically certain to be carried by a number
28 of individuals who visit the Insured Locations and other properties within the covered radius daily,

1 COVID-19 is continually reintroduced to the air and surfaces of those locations. Prior to the
2 pandemic, the Insured Locations attracted numerous guests per day. At times during the pandemic
3 when the Insured Locations were open for business, guests visited the Insured Locations.
4 Additionally, according to Riverside County at least 5,000 people have tested positive for COVID-19
5 in the 92592 zip code.

6 24. Pechanga gave timely notice of the loss under the Policy and has cooperated in the
7 adjustment of the claim at all times.

8 25. Pechanga has duly performed all conditions on its part under the Policy except as
9 excused by Defendants' conduct and breaches of contract.

10 26. Defendants have breached the Policy by denying coverage for the Loss and refusing to
11 pay any Policy benefits in connection with the Loss.

12 27. The aforesaid conduct of Defendants constitutes material breaches of the Policy.

13 28. As a direct and proximate result of Defendants' breaches of contract, Pechanga has
14 suffered damages in an amount to be proven at trial.

15 **SECOND CAUSE OF ACTION**

16 (Tortious Breach of Contract Against All Defendants)

17 29. Pechanga incorporates by reference each and every allegation contained in Paragraphs
18 1 through 28, above, as though fully set forth herein.

19 30. The Policy contains an implied covenant of good faith and fair dealing requiring, *inter*
20 *alia*, that Defendants act in good faith and deal fairly with Pechanga and take no action to interfere
21 with Pechanga's rights to receive benefits which it reasonably expected to receive under the Policy.
22 Defendants have tortiously breached that implied covenant of good faith and fair dealing, as
23 hereinabove alleged, in that they, among other things:

- 24 a. Wrongfully, intentionally, unreasonably and in bad faith refused to honor their
25 obligations under the Policy;
- 26 b. Wrongfully, intentionally, unreasonably and in bad faith failed and refused to
27 evaluate Pechanga's claim in an objective fashion and instead wrongfully,
28

1 intentionally, and unreasonably denied coverage at the outset without conducting
2 any adequate investigation;

3 c. Wrongfully and in bad faith engaged in an unreasonable and arbitrary
4 interpretation of the Policy;

5 d. Wrongfully, intentionally, unreasonably and in bad faith failed and refused to fully
6 and fairly pay a covered loss under the Policy;

7 e. Fraudulently misrepresented and falsely promised that they would indemnify and
8 pay the losses incurred by Pechanga under the Policy for covered loss when they
9 had no intention of doing so;

10 f. Wrongfully, intentionally, unreasonably and in bad faith failed and refused to
11 inform Pechanga of its rights under the Policy, but instead sought to impose
12 impermissible conditions on those benefits;

13 g. Wrongfully, intentionally, unreasonably and in bad faith failed to conduct and
14 diligently pursue a thorough, fair and reasonable investigation of the claim;

15 h. Wrongfully, intentionally, unreasonably and in bad faith failed and refused to
16 adjust the claim in compliance with, among others, Sections 2695.7 and 2695.9 of
17 the Fair Claims Settlement Practices Regulations and Section 790.03(h) of the
18 California Insurance Code;

19 i. Wrongfully, intentionally, unreasonably and in bad faith persisted in seeking
20 information not reasonably required for or material to the resolution of the claim in
21 violation of, *inter alia*, Section 2695.7(d) of the Fair Claims Settlement Practices
22 Regulations;

23 j. Wrongfully, intentionally, unreasonably and in bad faith forced Pechanga to incur
24 the expense of filing the within action to recover benefits owing under the Policy;
25 and

26 k. Wrongfully, intentionally, unreasonably and in bad faith placed their own interests
27 above those of their insureds, including but not limited to Pechanga.
28

1 31. Pechanga is informed and believes, and on the basis of such information and belief
2 alleges, that Defendants have engaged in similar bad faith conduct with respect to their other insureds
3 in connection with both COVID-19 claims and otherwise as a matter of course.

4 32. In order to recover the Policy benefits sought herein, and as a result of Defendants'
5 bad faith and tortious breach of contract, Pechanga has been and will be forced to incur attorneys'
6 fees and related expenses and costs.

7 33. As a direct, proximate and foreseeable result of the aforesaid intentional and wrongful
8 conduct, Pechanga has suffered damages in an amount to be proven at trial.

9 34. Defendants engaged in the aforesaid conduct: (a) with a willful and conscious
10 disregard of Pechanga's rights; (b) with the intent to injure Pechanga; and (c) in order to subject
11 Pechanga to cruel and unjust hardships in disregard of its rights such as to constitute oppression,
12 fraud and malice under California Civil Code Section 3294. By reason of the foregoing, Pechanga is
13 entitled to recover damages from Defendants for the sake of example and to punish and deter
14 Defendants in a sum to be determined by the trier of fact.

15 **THIRD CAUSE OF ACTION**

16 (Unfair Competition Against All Defendants)

17 35. Pechanga incorporates by reference each and every allegation contained in Paragraphs
18 1 through 34 above as though fully set forth herein.

19 36. Defendants' conduct alleged herein constitutes unlawful business practices in violation
20 of the California Unfair Competition Law ("UCL," Cal. Bus. & Prof. Code § 17200 *et seq.*) Among
21 other things and without limitation, Defendants' bad faith refusal to comply with their coverage
22 obligations was unlawful and constituted a tortious breach of the subject Policy as hereinabove
23 alleged.

24 37. Pechanga has lost money as a result of Defendants' unfair competition.

25 38. In light of the foregoing, Pechanga is entitled to an injunction under the UCL
26 restraining the Defendants from engaging in the unlawful conduct alleged herein, as well as to
27 restitution of those amounts obtained by the Defendants through their unfair competition.
28

