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**IN THE DISTRICT COURT OF GUAM**

TANOTA DEVELOPMENT, LLC, d/b/a	)	CIVIL NO. 1:25-CV-00022
Dusit Thani Hotel Guam; BAYVIEW II, LLC,	)	
d/b/a Dusit Beach Resort Guam; BAYVIEW I,	)	<b>DEFENDANT DB INSURANCE CO.,</b>
LLC; and BAYVIEW III, LLC.,	)	<b>LTD'S MOTION TO DISMISS</b>
	)	<b>PLAINTIFFS' COMPLAINT FILED ON</b>
Plaintiffs,	)	<b>MAY 21, 2025 [DOC. 1] PURSUANT TO</b>
	)	<b>FRCP 12(b)(6); MEMORANDUM IN</b>
vs.	)	<b>SUPPORT OF MOTION</b>
	)	
DB INSURANCE CO., LTD. and AIOI	)	
NISSAY DOWA INSURANCE CO. LTD.,	)	
	)	
Defendants.	)	
	)	
	)	

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**DEFENDANT DB INSURANCE CO., LTD'S  
MOTION TO DISMISS PLAINTIFFS' COMPLAINT FILED ON  
MAY 21, 2025 [DOC. 1] PURSUANT TO FRCP 12(b)(6)**

Defendant DB INSURANCE CO., LTD. (“DB Insurance”), by and through its attorneys, Blair Sterling Johnson & Martinez and Damon Key Leong Kupchak Hastert, hereby moves to dismiss the Complaint filed by Plaintiffs TANOTA DEVELOPMENT, LLC, d/b/a Dusit Thani Hotel Guam, BAYVIEW II, LLC, d/b/a Dusit Beach Resort Guam, BAYVIEW I, LLC, and BAYVIEW III, LLC (collectively, “Plaintiffs”) on May 21, 2025 [Doc. 1]. Each of the twelve (12) causes of action set forth in Plaintiffs’ Complaint is subject to dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure, for failure to state a claim against DB Insurance upon which relief can be granted.

First, the breach of contract claims (causes of action 1, 2, and 3) are subject to dismissal under Rule 12 because Plaintiffs fail to cite in their Complaint a single provision of any of the subject insurance policies. Nor do Plaintiffs attach to their Complaint copies of any of the insurance policies they claim to have been breached. These omissions deprive DB Insurance of fair notice of Plaintiffs’ claims. Since they have failed to plead the policy provision(s) from which a breach allegedly arises, Plaintiffs have not adequately alleged a breach of contract claim.

Second, having failed to adequately plead a breach of contract claim, Plaintiffs’ claims for breach of the covenant of good faith and fair dealing (causes of action 4, 5, and 6) are likewise deficient. Plaintiffs’ failure to identify any specific contractual obligation(s) from which the implied covenant of good faith and fair dealing arises is fatal, and they have failed as a matter of law to state a claim against DB Insurance for breach of the covenant of good faith and fair dealing.

Third, Plaintiffs' claims for "tortious breach of good faith and fair dealing and bad faith" (causes of action 7, 8, and 9) are subject to dismissal for at least a couple of reasons. Inasmuch as said claims merely regurgitate the same allegations (virtually word-for-word) and seek the same relief as Plaintiffs' claims for breach of the covenant of good faith and fair dealing (causes of action 4, 5, and 6), the claims are repetitive. Such repetitive claims are subject to dismissal under Rule 12. Further, to the extent that causes of action 7, 8, and 9 may be deemed to assert claims sounding in insurance "bad faith" – despite the substance of the allegations being nearly identical to the prior good faith and fair dealing claims asserted by Plaintiffs – such bad faith claims should be dismissed because they are premature as a matter of law. While there does not appear to be controlling precedent under Guam law on this issue, a clear majority of U.S. jurisdictions – including, significantly, California – espouses the "ripeness" rule for insurance bad faith claims, namely: that an insurer's liability for coverage and the extent of an insured's recoverable damages must be determined before a bad faith action becomes ripe for adjudication. In other words, bringing a cause of action for bad faith is premature, and subject to dismissal under Rule 12(b)(6), until there is first a determination of liability and the extent of damages owed on the first-party insurance policy. Here, Plaintiffs attempt to jump the gun.

Finally, Plaintiffs' claims for declaratory judgment (causes of action 10, 11, and 12) are subject to dismissal to the extent they are (i) derivative of improperly pled breach of contract claims and (ii) duplicative of the breach of contract claims. Accordingly, Plaintiffs have failed to state a claim against DB Insurance upon which relief can be granted, and the Complaint should be dismissed.

This Motion is brought pursuant to Rules 7 and 12(b)(6) of the Federal Rules of Civil Procedure and CVLR 7, and is supported by the attached Memorandum in Support of Motion, the record and files herein, and such further and additional matters as may be considered by the Court.

DATED: Tamuning, Guam, July 23, 2025.

BLAIR STERLING JOHNSON & MARTINEZ &  
DAMON KEY LEONG KUPCHAK HASTERT

*/s/ R. Marsil Johnson*

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Attorneys for Defendant  
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**IN THE DISTRICT COURT OF GUAM**

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Dusit Thani Hotel Guam; BAYVIEW II, LLC, )  
d/b/a Dusit Beach Resort Guam; BAYVIEW I, ) **MEMORANDUM IN SUPPORT OF**  
LLC; and BAYVIEW III, LLC., ) **MOTION**  
)  
Plaintiffs , )  
)  
vs. )  
)  
DB INSURANCE CO., LTD. and AIOI )  
NISSAY DOWA INSURANCE CO. LTD., )  
)  
Defendants. )  
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## MEMORANDUM IN SUPPORT OF MOTION

Defendant DB INSURANCE CO., LTD. (“DB Insurance”) moves to dismiss Plaintiffs’ Complaint for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The Complaint on its face purports to assert four theories of liability against DB Insurance on behalf of three insured entities: (1) breach of contract; (2) breach of the covenant of good faith and fair dealing; (3) “tortious” breach of good faith and fair dealing and “bad faith”; and (4) declaratory judgment. Each of these is subject to dismissal under Rule 12(b)(6):

- The breach of contract counts must be dismissed because Plaintiffs’ Complaint fails to identify, cite, or quote the policy language that has allegedly been breached, depriving DB Insurance of fair notice of the claim alleged;
- Since Plaintiffs have failed to adequately plead a claim for breach of the subject insurance policies, their claims for breach of the covenant of good faith and fair dealing must also fail;
- To the extent Plaintiffs’ “tortious” breach of good faith and fair dealing claims are merely repetitive of other claims, they should be dismissed;
- To the extent Plaintiffs attempt to assert claims of insurance bad faith against DB Insurance, such claims are premature and not ripe as a matter of law, since there has been no conclusive determination as to DB Insurance’s liability for coverage and the extent of Plaintiffs’ recoverable damages, if any; and
- The declaratory judgment counts are derivative and duplicative of Plaintiffs’ inadequately pled breach of contract claims.

Accordingly, Plaintiffs have failed to state a claim against DB Insurance upon which relief can be granted. Thus, DB Insurance respectfully requests that the Court grant its Motion to Dismiss and enter an order dismissing the Complaint as to DB Insurance.

## **I. ALLEGED FACTS**

The Complaint alleges four different entities hold three different policies issued by DB Insurance and co-defendant Aioi Nissay Dowa Insurance Co. Ltd. (DB Insurance and Aioi Nissay Dows Insurance collectively “defendants”). Plaintiff Tanota Development LLC (“Dusit Thani”) owns a hotel insured under policy number 20221215882-001 (“Dusit Thani Policy”) issued by defendants. Complaint (Doc. 1) at ¶¶ 5-6. Plaintiff Bayview II, LLC (“Dusit Beach”) owns a hotel insured under policy number 20221215883-001 (“Dusit Beach Policy”) issued by defendants. *Id.* at ¶¶ 8-9. Plaintiffs Bayview I, LLC and Bayview III, LLC (collectively, “Dusit Plaza”) own a plaza and shopping center insured under policy number 20230100749-001 (“Dusit Plaza Policy”) issued by DB Insurance. *Id.* at ¶¶ 10, 12.

The three properties owned by Plaintiffs were allegedly damaged on May 24, 2023, when Typhoon Mawar struck Guam. *Id.* at ¶ 19.

The Complaint alleges that defendants confirmed the release of advances of one million dollars to Dusit Thani and two million dollars to Dusit Beach on March 22, 2024. *Id.* at ¶ 44. The payments were authorized on April 4, 2024. *Id.* at ¶ 48. As of the filing date of the Complaint, DB Insurance had paid a total of five million dollars to Plaintiffs: two million dollars to Dusit Thani; two million dollars to Dusit Beach; and one million dollars to Dusit Plaza. *Id.* at ¶ 66.

The Complaint lists twelve causes of action. The first three causes of action allege breach of contract on behalf of each of the insured Plaintiffs. Causes of action four through six allege breach of the insurers’ duty of good faith and fair dealing. Causes of action seven through

nine are nearly verbatim repeats of causes of action four through six, with the causes of action entitled, “Tortious Breach of Good Faith and Fair Dealing and Bad Faith . . . .” Finally, causes of action ten through twelve seek a declaratory judgment. Nowhere in the Complaint do Plaintiffs cite, quote, or identify a single, specific provision(s) of any of the subject insurance policies at issue. *See generally* Complaint.

## II. LEGAL STANDARD

Pursuant to Rule 12(b)(6), Fed. R. Civ. P., dismissal of a complaint is appropriate where a plaintiff “fails to state a claim upon which relief can be granted.” *Id.* To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain sufficient factual matters, accepted as true, to “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *see also Weber v. Dep’t of Veterans Affairs*, 521 F.3d 1061, 1065 (9th Cir. 2008) (same).

Though the Court must accept as true all “well-pleaded allegations of material fact” and construe them in the light most favorable to the nonmoving party, conclusory allegations and unwarranted inferences are insufficient to defeat a motion to dismiss. *Daniels-Hall v. Nat’l Educ. Ass’n.*, 629 F.3d 992, 998 (9th Cir. 2010); *see also Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir. 2007). “Threadbare recitals of the elements of a cause of action” are similarly insufficient. *Iqbal*, 556 U.S. at 678; *see also Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011) (“[A]llegations in a complaint . . . may not simply recite the elements of a cause of action but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively”). “Nor does a complaint suffice if it tenders ‘naked assertions’ devoid of ‘further factual enhancement.’” *Iqbal*, 556 U.S. at 678. In other words, a plaintiff must provide “more than an unadorned, the-defendant-unlawfully-harmed-me

accusation.” *Id.* (citing *Twombly*, 550 U.S. at 555). “While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.” *Id.* at 679.

### III. ARGUMENT

#### A. Plaintiffs’ Breach of Contract Claims Are Not Adequately Pled and Must Be Dismissed.

The Complaint is overwhelmingly devoted to alleging bad faith claims handling, not breach of contract. None of the Complaint’s allegations state which policy provisions, if any, have been breached. Instead, the Complaint makes conclusory statements, such as the following:

Under the terms and conditions of the Dusit Thani Policy issued by Defendants, they are obligated to provide coverage for the Loss.

Complaint at ¶ 70 (emphasis added). *See also id.* at ¶ 79 (same allegations as to the Dusit Beach Policy); ¶ 89 (same allegations as to the Dusit Plaza Policy). Plaintiffs further allege,

Defendants’ failure and refusal to provide Plaintiff Dusit Thani with coverage and to provide Plaintiff Dusit Thani with full and complete payment for any and all damages (less any applicable deductible) was and is in breach of its contractual obligations under the Dusit Thani Policy.

Complaint at ¶ 73 (emphasis added). *See also id.* at ¶ 82 (same allegations as to the Dusit Beach Policy); ¶ 92 (same allegations as to the Dusit Plaza Policy).

The Complaint never bothers to explain the “terms and conditions” of any of the policies. Nor does the Complaint attempt to define the “contractual obligations” that the insurers have allegedly breached. Further, Plaintiffs did not attach copies of the subject policies to their Complaint. Therefore, DB Insurance is at a loss as to what “terms and conditions” or “contractual obligations” Plaintiffs are relying upon to allege breach of contract.

The elements of a contract under Guam law are the same as under California law. *Compare* 18 Guam Code Ann. § 85102 *with* Cal. Civ. Code § 1550.<sup>1</sup> Likewise, a cause of action

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<sup>1</sup> Guam’s statutes, generally, are historically derived from California law and, in fact, Guam’s contract statute, 18 Guam Code Ann. § 85102, is identical to Cal. Civ. Code § 1550. *See*

for breach of contract is identical under Guam and California law: (1) the existence of the contract; (2) plaintiff's performance or excuse for nonperformance; (3) the defendant's breach; and (4) resulting damages to the plaintiff. *Hemlani v. Hemlani*, 2015 Guam 16, 19, 2015 Guam LEXIS 16, at \*13 (Guam April 29, 2015); *Oasis W. Realty, LLC v. Goldman*, 51 Cal.4th 811, 821 (2011) (citing *Reichert v. General Ins. Co.*, 68 Cal.2d 822, 830, (1968)) (same); *Hibu Inc. v. Lawrence*, No. SACV 13-0333-DOC (JPRx), 2013 U.S. Dist. LEXIS 173324, at \*6 (C.D. Cal. Nov. 25, 2013) (relying on California law and citing 4 WITKIN, CAL. PROCEDURE (4<sup>th</sup> ed. 1997) Pleading, §§ 476, 570) (same criteria to establish breach of contract).

Dismissing a breach of contract claim is proper if the complaint fails to allege any provision of the contract that supports the claim. *Hibu Inc.*, 2013 U.S. Dist. LEXIS 173324, at \*6. In *Hibu Inc.*, the court found that the plaintiff did not sufficiently allege which contract terms were breached by the defendant, or how the terms were breached. Consequently, the complaint was dismissed. *Id.*, 2013 U.S. Dist. LEXIS 173324, at \*6-7.<sup>2</sup>

Numerous courts have similarly held that a breach of contract claim must identify the terms of the agreement that a defendant has breached. *See, e.g., ABC Servs. Group v. Health Net of Cal., Inc., et al.*, No. SA 19-00243-DOC-DFM, 2020 U.S. Dist. LEXIS 139339, at \*16-17 (C.D. Cal. July 29, 2020) (dismissing breach of contract claim based upon failure to plead specific contract terms that were allegedly breached); *Sutherland v. Francis*, No. 12-CV-05110-

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*Foreword* to Guam Civ. Code (1953) (“The original codes published under the Naval Government were adapted from the California codes of the same name. . . . Consequently, there is a large body of court decisions and other legal literature available to aid in the interpretation of the various sections.”); *see also Isaac v. Isaac*, 2014 Guam 21, ¶ 15 (Guam Aug. 20, 2014) (the Supreme Court of Guam citing the *Foreword* to the Guam Civil Code in tracing back from a current Guam statute to a California statute from which the former was derived).

<sup>2</sup> “[U]nder Guam law, a California case is persuasive when (1) the instant Guam case involves interpretation and construction of a Guam statute, (2) the Guam statute is based on a California statute, which is interpreted and applied in the California case, and (3) there is no compelling reason to deviate from California’s interpretation.” *Maeda Pac. Corp. v. GMP Hawaii, Inc.*, No. CV 08-00012, 2010 WL 11545528, at \*3 (D. Guam Aug. 6, 2010).

LHK, 2013 U.S. Dist. LEXIS 82104, at \*10-11 (N.D. Cal. June 10, 2013) (granting motion to dismiss breach of contract claims where plaintiff neglected to support the essential elements of a breach of contract claim by failing to attach copies of the agreement or to allege the essential terms of the agreement); *Diaz-Roa v. Hermes Law, P.C.*, 757 F.Supp.3d 498, 560 (S.D.N.Y. 2025) (“Delaware law, New York law, and the *Twombly-Iqbal* standard of federal pleading ‘require a complaint to identify, in non-conclusory fashion, the specific terms of the contract that a defendant has breached.’”) (citing *Spinelli v. Nat’l Football League*, 96 F.Supp.3d 81, 131 (S.D.N.Y. 2015)); *Hopper v. BMO Harris Bank, N.A.*, No. 22-1828 (JRT/JFD), 2023 U.S. Dist. LEXIS 133755, at \*8 (D. Minn. Aug. 2, 2023) (“To plausibly plead breach of contract it is not enough to allege that the defendants acted contrary to an agreement. The plaintiff must allege sufficient details for the Court to infer that a material term of the contract has been breached”); *Owens v. Seterus, Inc.*, No. 18-3383, 2019 U.S. Dist. LEXIS 231998, at \*4 (E.D. Pa. Feb. 26, 2019) (breach of contract claim dismissed because plaintiff failed to attach agreement to the complaint, failed to plead its essential terms, and failed to allege that defendant breached any duty imposed by the contract); *Abira Med. Labs, LLC v. The Boon Grp., Inc.*, No. 1:24-cv-00589-DAE, 2024 U.S. Dist. LEXIS 189792, at \*15 (W.D. Tex. Oct. 18, 2024) (breach of contract claim requires an identification of specific terms that the defendant breached; without identifying applicable contract terms, plaintiff’s claim fails as a matter of law); *Remembrance Grp., Inc. v. Centazzo*, No. 2:21-cv-675-JES-MRM, 2022 U.S. Dist. LEXIS 81164, at \*12 (M.D. Fla. May 4, 2022) (granting motion to dismiss where plaintiff broadly alleges that the essential terms were created by oral agreement, but does not detail any terms).

Plaintiffs’ bare allegations that DB Insurance failed to provide coverage under the “terms and conditions” of the policies, *e.g.*, Complaint at ¶ 70, or breached its “contractual obligations,” *e.g.*, *id.* at ¶ 73, without specifying the “terms and conditions” upon which they

rely, or the “contractual obligations” allegedly breached, are insufficient to avoid dismissal under Rule 12(b)(6). In order to satisfy the plausibility standard under *Iqbal*, legal conclusions contained in a plaintiff’s complaint “must be supported by factual allegations.” *Iqbal*, 556 U.S. at 679. Since the Plaintiffs here have failed to specifically identify – with factual allegations – the specific contract provisions that DB Insurance has purportedly breached, Plaintiffs’ first through third causes of action should be dismissed.

**B. Plaintiffs’ Failure to Properly Plead the Breach of Contract Claims is Fatal to the Covenant of Good Faith and Fair Dealing Claims.**

Plaintiffs’ claims for Breach of the Covenant of Good Faith and Fair Dealing must also be dismissed. Plaintiffs devote six causes of action to DB Insurance’s alleged breach of the covenant of good faith and fair dealing. *See* Complaint at ¶¶ 98-148. Under causes of action four through six, entitled “Breach of Good Faith and Fair Dealing by [Insured] Against Defendants,” Plaintiffs allege, “Defendants have violated the duty of good faith and fair dealing” and list numerous duties allegedly not fulfilled by the insurers. *Id.* at ¶ 101; *see also id.* at ¶ 110 (same); ¶ 119 (same). Plaintiffs then identically repeat these allegations in causes of action seven through nine, which are entitled, “Tortious Breach of Good Faith and Fair Dealing and Bad Faith by [Insured] Against Defendants.” These causes of action allege, “Defendants have acted in bad faith by breaching their duty of good faith and fair dealing . . . .” *Id.* at ¶ 129 (listing same duties allegedly breached as in ¶ 101); ¶ 137 (listing same duties allegedly breached as in ¶ 110); ¶ 145 (listing same duties allegedly breached as in ¶ 119).

Plaintiffs’ claims for breach of the covenant of good faith and fair dealing and/or bad faith cannot survive where they have failed to allege the specific obligation(s) from which such claims purportedly arise. Further, if Plaintiffs’ claims for breach of contract are inadequately pled by failing to allege what terms and conditions in the policy have not been met or how DB Insurance breached its contractual obligations, there can be no claim for bad faith

because such a claim, as a threshold matter, first requires that a claimant demonstrate coverage under the applicable policy and conclusively establish the extent of its recoverable damages. Otherwise, a bad faith claim is premature and subject to dismissal.

**1. Breach of the Covenant of Good Faith and Fair Dealing Claim Fails Where No Contractual Provisions Allegedly Breached are Pled.**

To state a claim for breach of the covenant of good faith and fair dealing, the specific contractual obligation(s) from which the covenant arose must be alleged. *Hibu Inc. v. Lawrence*, No. SACV 13-0333-DOC (JPRx), 2013 U.S. Dist. LEXIS 173324, at \*11 (C. D. Cal. Nov. 25, 2013); *see also Grant v. Aurora Loan Servs.*, No. CV 09-08174-MMM (CTx), 736 F. Supp. 2d 1257, 1268 (C.D. Cal. 2010) (“In order to state a claim for breach of an implied covenant of good faith and fair dealing, the specific contractual obligation from which the implied covenant of good faith and fair dealing arose must be alleged”). The Complaint herein describes certain alleged acts and failures of DB Insurance, *e.g.*, Complaint at ¶ 101, but Plaintiffs fail to specify the contractual obligation(s) from which breach of the covenant of good faith and fair dealing arises. Since the specific contractual obligations from which the claims for a breach of the covenant might arise have not been alleged in the Complaint, the claims cannot survive. *Hibu Inc.*, 2013 U.S. Dist. LEXIS 173324, at \*11. There can be no cause of action for breach of the implied duty of good faith and fair dealing where there is no breach of the underlying contract. *See Urbassik v. Am. Fam Mut. Ins. Co.*, 657 F. Supp. 3d 1015, 1024 (N.D. Ohio 2023).

**2. A Bad Faith Claim Requires First Establishing Both Coverage Under the Policy and the Extent of an Insured’s Damages.**

Even if Plaintiffs had adequately pled their claims by specifically identifying the obligation(s) from which their bad faith claim allegedly arises – which they have not – Plaintiffs’

bad faith claims (causes of action seven through nine) are nonetheless subject to dismissal under Rule 12(b)(6) since they are premature and not “ripe” as a matter of law.

There does not appear to be controlling precedent under Guam law on this issue, however, a clear majority of U.S. jurisdictions, including California, espouses the “ripeness” rule for insurance bad faith claims, namely: that an insurer’s liability for coverage and the extent of an insured’s recoverable damages must be determined before a bad faith action becomes ripe for adjudication. In other words, bringing a cause of action for bad faith is premature, and subject to dismissal under Rule 12(b)(6), unless and until there is first a determination of liability and the extent of damages owed on a first-party insurance policy.

“Where Guam law is unclear, ‘a federal court must make a reasonable determination of the result the highest state court would reach if it were deciding the case.’” *Pac. Am. Title Ins. & Escrow Co. v. Evanston Ins. Co.*, Case No. 1:22-cv-00021, 2025 U.S. Dist. LEXIS 62604, at \*15 (D. Guam Mar. 31, 2025) (citing *Med. Lab. Mgmt. Consultants v. Am. Broad Cos.*, 306 F.3d 806, 812 (9th Cir. 2002)). “This determination is guided by ‘decisions from other jurisdictions, statutes, treatises, and restatements[.]’” *Id.* (citing *In re Kirkland*, 915 F.2d 1236, 1239 (9th Cir. 1990)). In interpreting Guam insurance policies, “California law may be illuminating, as ‘Guam’s insurance statutes were adopted from California[.]’” *Guam Indus. Servs. v. Zurich Am. Ins. Co.*, Civil Case No. 11-00014, 2013 U.S. Dist. LEXIS 131527, at \*11 (D. Guam Sept. 13, 2013) (citing *Fajardo ex rel. Fajardo v. Liberty House Guam*, 2000 Guam 4, at \*15 (Guam 2000)). “And given the historical nexus between Guam and California insurance law, Guam courts likely would continue to consult California law for guidance.” *Id.* at \*11-12. Thus, in deciding this issue, the Supreme Court of Guam would likely turn to California law for persuasive instruction.

Under California law, an insured is not permitted to proceed with allegations of bad faith in the absence of a prior showing that policy benefits were due and wrongfully withheld. *See Jordan v. Allstate Ins. Co.* 148 Cal App. 4<sup>th</sup> 1062, 1078 (Cal. App. 2007). Accordingly, an insured must first establish coverage under the policy before successfully asserting a bad faith claim. *Id.* Absent a showing of coverage, California courts will not allow bad faith claims to proceed. *E.g., DeWitt v. Monterey Ins. Co.*, 204 Cal. App. 4<sup>th</sup> 233, 252 (Cal. App. 2012) (jury instruction on elements of bad faith were not required where plaintiff failed to establish there was coverage under the policy).

In this regard, California appears to espouse the majority view among other U.S. jurisdictions that require a determination of both liability and damages before a bad faith claim may be pursued. *See, e.g., Liberty Mut. Ins. Co. v. Farm, Inc.*, 754 So. 2d 865, 866 (Fla. Dist. 2000) (“Since damages have yet to be determined in the first-party action, the insured’s claim for statutory bad faith was not ripe and must be dismissed without prejudice as being premature”); *Brethorst v. Allstate Prop. and Cas. Ins. Co.*, 334 Wis. 2d 23, 52 (2011) (breach of contract claim against the insurer is a fundamental prerequisite for a first-party bad faith claim against the insurer by the insured); *Cammarata v. State Farm Fla. Ins. Co.*, 152 So. 3d 606, 609-10 (Fla. Ct. App. 2014) (holding insurer’s liability for coverage and the extent of damages must be determined before a bad faith action becomes ripe); *Breedlove v. State Farm Fire and Cas. Co.*, 690 S.W. 3d 904, 912 (Ky. Ct. App. 2024) (relying on *United States Liability Ins. Co. v. Watson*, 626 S.W. 3d 569, 575 (Ky. 2021)) (noting the Kentucky Supreme Court holds that the first element of a bad faith claim is “an obligation to pay under the policy”); *Urbassik*, 657 F. Supp. 3d at 1024 (“Because the Court dismisses Plaintiff’s underlying breach of contract claim, the Court dismisses his claim for breach of the covenant of good faith and fair dealing”).

Here, even if Plaintiffs had adequately pled a breach of contract claim (which they have not), there is no dispute that Plaintiffs have not yet obtained a determination of liability and damages as against DB Insurance. Therefore, under California law and the majority view on this issue, Plaintiffs' bad faith claims (causes of action 7, 8, and 9) are not yet actionable and should be dismissed. *See, e.g., Liberty Mut. Ins. Co.*, 754 So. 2d at 866 (prior to damages being determined in the first-party action, an insured's bad faith claim was not ripe and was subject to dismissal as being premature). Respectfully, DB Insurance suggests that the result under Guam law should and would be the same.<sup>3</sup>

### **C. Repetitive Causes of Action Should be Dismissed.**

Assuming Plaintiffs' causes of action four through nine – alleging breach of the covenant of good faith and fair dealing – could otherwise survive a motion to dismiss, the allegations underlying causes of action four through six are simply repeated (almost identically) in causes of action seven through nine. Each of the causes of action contains an identical list of duties allegedly breached by the insurers. *See* Complaint at ¶ 101 (Fourth Cause of Action); *id.* at ¶ 110 (Fifth Cause of Action); *id.* at ¶ 119 (Sixth Cause of Action); *id.* at ¶ 129 (Seventh Cause of Action); *id.* at ¶ 137 (Eighth Cause of Action); *id.* at ¶ 145 (Ninth Cause of Action).

Where two claims are practically identical and no additional facts are alleged to support the repetitive claim, the repetitive claim is properly subject to dismissal. *See, e.g., Hibu Inc.*, 2013 U.S. Dist. LEXIS 173324, at \*15-16. Consequently, even if they were not otherwise subject to dismissal for the reasons identified *supra*, Plaintiffs' causes of action seven through nine should be dismissed because the factual allegations contained therein are merely repetitive

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<sup>3</sup> While there appears to be a differing, minority view espoused by a smaller number of States, including Nevada and Hawaii, there is no compelling reason for this Court to stray from the well-reasoned decisions in California and other jurisdictions on this issue, which comprise the majority view. This is especially true “given the historical nexus between Guam and California insurance law.” *Guam Indus. Servs.*, 2013 U.S. Dist. LEXIS 131527, at \*11-12.

of causes of action four through six. There is no compelling reason to allow unnecessary clutter in Plaintiffs' Complaint.

**D. Claims for Declaratory Judgment Must be Dismissed as Derivative and Duplicative of the Failed Breach of Contract Claims.**

The Complaint includes three causes of action for a declaratory judgment.<sup>4</sup> Complaint at ¶¶ 149-156 (Tenth Cause of Action); *id.* at ¶¶ 157-164 (Eleventh Cause of Action); *id.* at ¶¶ 165-172 (Twelfth Cause of Action). The three causes of action seek “a judicial determination of [the insured’s] rights under the [policy], including [the insured’s] right to payment for all losses and any and all additional damages, costs, fees and interest to which it may be lawfully entitled.” *Id.* at ¶¶ 156, 164, 172. These causes of action for a declaratory judgment should be dismissed because they are both derivative and duplicative of the breach of contract causes of action.

**1. The Causes of Action for Declaratory Judgment Should be Dismissed Because they are Derivative of the Improperly Pled Causes of Action for Breach of Contract.**

The allegations in the claims for declaratory judgment (tenth, eleventh, and twelfth causes of action) are derivative of Plaintiffs' causes of action for breach of contract (first, second and third causes of action). Because Plaintiffs have failed to adequately plead claims for breach of contract (and breach of the covenant of good faith and fair dealing), as described *supra*, the derivative claims for declaratory judgment are also insufficient and must be dismissed. *See Urbassik*, 657 F. Supp. 3d at 1024 (plaintiff’s claim for a declaratory judgment is derivative of his claims for breach of contract; because plaintiff’s breach of contract claim does not survive a motion to dismiss, neither does his claim for a declaratory judgment); *Gillis v. Respond Power, LLC*, No. 14-38562018 U.S. Dist. LEXIS 117769, at \*10, \*30 (E.D. Pa. July 16, 2018)

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<sup>4</sup> The Complaint fails to assert the procedural mechanism for the Court to issue a declaratory judgment pursuant to 28 U.S.C. § 2201.

(plaintiffs' declaratory judgment claim is derivative of their breach of contract claim and must be dismissed for the same reasons the breach of contract claim is dismissed); *Loretto Hosp. v. Fed. Ins. Co.*, No. 23-cv-3762, 2025 U.S. Dist. LEXIS 31266, at \*23-24 (N.D. Ill. Feb. 21, 2025) (having failed to state a plausible claim for breach of the policy, plaintiff's remaining claims for declaratory judgment, seeking essentially the same relief, also fall short and must be dismissed).

**2. The Causes of Action for Declaratory Judgment Should be Dismissed Because they are Duplicative of the Improperly Pled Causes of Action for Breach of Contract.**

Plaintiffs' causes of action for declaratory judgment essentially repeat the allegations in their causes of action for breach of contract, providing yet another basis to justify dismissal. For example, the first cause of action for breach of contract alleges, "Under the terms and conditions of the Dusit Thani Policy issued by Defendants, they are obligated to provide coverage for the Loss." Complaint at ¶ 70 (emphasis added). Likewise, the tenth cause of action for declaratory judgment alleges, "Plaintiff Dusit Thani contends that under the terms and conditions of the Dusit Thani Policy issued by Defendants, they are obligated to provide coverage for the Loss." Complaint at ¶ 151 (emphasis added). In the same manner, the eleventh cause of action is repetitive of the second cause of action, and the twelfth cause of action is repetitive of the third cause of action. *Compare* Complaint at ¶ 79 *with id.* at ¶ 159 (both addressing Dusit Beach Policy); Complaint at ¶ 89 *with* ¶ 167 (both addressing Dusit Plaza Policy). It is clear that these allegations are merely duplicative of one another.

The Complaint's prayer for relief also demonstrates the duplicative nature of the breach of contract and declaratory judgment causes of action insofar as the same relief is sought in connection with each. Subparagraph (a) of the Complaint's Prayer for Relief seeks "compensatory . . . damages arising out of the Loss . . ." while subparagraph (b) requests "[a] judgment enforcing the Policy and declaring that Defendants are obligated to provide Plaintiff

[sic] with insurance coverage and pay all damages arising from the May 24, 2023 loss . . .”  
Complaint, Prayer for Relief at 26 (emphases added).

Consequently, the claims for declaratory judgment (tenth, eleventh, and twelfth causes of action) should be dismissed. *See Arch Ins. Co. v. A3 Dev., LLC*, No. 23-cv-23524, 2025 U.S. Dist. LEXIS 99821, at \*23 (S.D. Fla. May 27, 2025) (“Because litigating the question of breach in both the Declaratory Judgment and Breach of Contract claims would be ‘inefficient and unnecessary’ since resolution of the Breach of Contract claims will afford Plaintiff full and complete relief, the interest in judicial economy warrants dismissal of the Declaratory Judgment claims”); *Optanix, Inc. v. Alorica Inc.*, No. 1:20-cv-09660-GHW, 2021 U.S. Dist. LEXIS 125808, at \*9 (S.D. N. Y. July 6, 2021) (because plaintiff’s request for declaratory judgment is duplicative of the relief it seeks under its breach of contract claim, plaintiff’s claim for declaratory judgment is dismissed); *Gregor v. Rice Drilling D, LLC*, No. 2:21-cv-3999, 2024 U.S. Dist. LEXIS 7669, at \*11 (S.D. Ohio Jan. 16, 2024) (finding plaintiffs’ declaratory judgment claim is unnecessary and duplicative of their breach of contract claim); *Vincent Cusumano Architect P.C. v. Berkshire Hathaway Direct Ins., Co.*, No. 23-cv-22970, 2025 U.S. Dist. LEXIS 60164 at \*11 (D. N.J. March 29, 2025) (plaintiff’s declaratory judgment claim cannot survive because it is duplicative and is based on the same issues as those in the breach of contract claim); *State Farm Life Ins. Co. v. Wisocki*, No. 3:23-cv-45929, at \*16 (N.D. Tex. Feb. 21, 2025) (magistrate judge recommends dismissal of counterclaimant’s declaratory judgment claims because they are not independent, as they all pertain to her contention that she is entitled to the policy proceeds due to the insurers not paying the insurance proceeds to her as requested).

#### **IV. CONCLUSION**

Plaintiffs’ Complaint should be dismissed as to DB Insurance. The breach of contract claims fail to allege any specific provision of the policies that was breached. Because a

claim for breach of the covenant of good faith and fair dealing must rely on specific contractual obligations in the policies, the failure to plead any policy provision also requires the dismissal of such claims. Moreover, since an insured must establish a right to coverage and the extent of its recoverable damages under an insurance policy before it can pursue adjudication of a bad faith claim, Plaintiffs' bad faith claims must be dismissed as premature in this case. Finally, Plaintiffs' causes of action for declaratory judgment should be dismissed because they are merely derivative and duplicative of the breach of contract claims.

For these reasons, DB Insurance respectfully requests that the Court grant its Motion to Dismiss and enter an order dismissing Plaintiff's Complaint as against DB Insurance.

DATED: Tamuning, Guam, July 23, 2025.

BLAIR STERLING JOHNSON & MARTINEZ and  
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