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**United States District Court  
Central District of California**

JERIE S. RYDSTROM; DONALD  
RYDSTROM,  
Plaintiffs,

v.

FEDERAL INSURANCE COMPANY;  
and DOES 1 through 50, inclusive,  
Defendants.

Case № 2:16-cv-02543-ODW (E)  
2:16-cv-02614-ODW (E)

**ORDER GRANTING  
DEFENDANT’S MOTION FOR  
SUMMARY JUDGMENT [27] AND  
DENYING PLAINTIFFS’ MOTION  
FOR PARTIAL SUMMARY  
JUDGMENT [26]**

**I. INTRODUCTION**

This insurance coverage dispute turns on the interpretation of two policy terms, “participants” and “management.” Before the Court are Defendant Federal Insurance Company’s motion for summary judgment and Plaintiffs Jerie and Donald Rydstrom’s motion for partial summary judgment. (ECF Nos. 26–27.) For the following reasons, the Court **GRANTS** Defendant’s motion and **DENIES** Plaintiffs’ motion.

## II. FACTUAL BACKGROUND

1  
2 Plaintiffs are the parents and beneficiaries/potential beneficiaries of insurance  
3 policies covering/potentially covering their deceased son Darren Rydstrom. (*See*  
4 *Consol. Compl.* ¶¶ 5, 14–18, 33–45, ECF No. 22.) Defendant is the insurer that  
5 underwrote those policies. (*Resnick Decl.*, Exs. A, B, ECF No. 27.)

6 Darren was a director of photography and camera operator by trade, primarily  
7 in the reality television genre. (*Johnson Decl.*, Ex. C, ECF No. 27.) On February 2,  
8 2013, Darren formally agreed to be the director of photography for Bongo, LLC’s<sup>1</sup>  
9 reality show “Lone Operator,” which featured “Former Special Forces operators  
10 engag[ing] in a series of challenges on [a] . . . course to determine that they are  
11 capable of operating in a non-permissive urban environment with no outside support.”  
12 (*Resnick Decl.*, Ex. C at 104.) This agreement was memorialized in two related  
13 contracts: a loan out contract<sup>2</sup> and a Crew Deal Memo. (*Johnson Decl.*, Exs. D, E.)  
14 For his services, Darren was paid \$50 an hour, which worked out to \$700 a day. (*Id.*,  
15 Ex. E at 226.)

16 Bongo had three insurance policies that functioned to protect it against adverse  
17 events arising from the production of “Lone Operator”: a Special Risk Policy (“the  
18 AD&D policy”), a Guild Travel Accident Policy (“the Travel policy”), and a workers’  
19 compensation policy. (*Resnick Decl.*, Exs. A, B; *Johnson Decl.*, Ex. A.) The AD&D  
20 policy provided \$1 million of accidental death coverage to “all participants in the  
21 production entitled ‘Lone Operator.’” (*Resnick Decl.*, Ex. B at 62–63.) The Travel  
22 policy provided accident coverage to three classes of persons: (1) employees  
23 associated with a guild; (2) employees not associated with a guild; and (3) all  
24 management employees. (*Id.*, Ex. A at 21.) The beneficiaries of Class 2 non-guild

25  
26 <sup>1</sup> Bongo is a wholly owned subsidiary of parent company Eyeworks USA, LLC (“Eyeworks”).  
27 (*Johnson Decl.* ¶ 5.) For purposes of this decision, the Court refers to the entities collectively as  
28 “Bongo.”

<sup>2</sup> Darren and his mother owned Trip 7 Media, LLC (“Trip 7”). This South Dakota limited liability  
company would “loan out” Darren’s services and camera equipment to his employers. (*Taylor*  
*Decl.*, Ex. A at 13, ECF No. 27.)

1 employees would receive \$250,000 in the event of the non-guild employee’s death  
2 and the beneficiaries of Class 3 management employees would receive \$500,000 in  
3 the event of the management employee’s death. (*Id.* at 22.)

4 On February 10, 2013, Darren was flying in a helicopter with Michael  
5 Donatelli, an “on camera personality” in “Lone Operator,” when it crashed into a  
6 hillside killing its occupants. (Johnson Decl., Ex. F at 246; Consol. Compl. ¶ 11.)  
7 After the crash, Defendant deemed Darren a Class 2 non-guild employee under the  
8 Travel policy and paid Plaintiffs \$250,000. (*See* Resnick Dep. 35:13–35:20, ECF No.  
9 27; *see also* Pls. Opp’n 7 n.2, ECF No. 31.)

10 On February 5, 2016, Plaintiff Jerie Rydstrom filed a complaint in the  
11 California Superior Court for the County of Los Angeles alleging that she was owed  
12 \$1 million dollars as a beneficiary under the AD&D policy because Darren was a  
13 “participant[] in the production of Lone Operator.” (*See* Compl., ECF No. 1-1 (case  
14 ending in 2543).) On February 9, 2016, Plaintiff Donald Rydstrom also filed a  
15 complaint in the California Superior Court for the County of Los Angeles alleging the  
16 same. (*See* Compl., ECF No. 1 (case ending in 2614).) Defendant removed these  
17 cases on April 15 and April 13, 2016, respectively.

18 On July 5, 2016, the Court consolidated Donald Rydstrom’s case with Jerie  
19 Rydstrom’s case.<sup>3</sup> (ECF No. 13.) Approximately four months later, Plaintiffs filed a  
20 consolidated complaint. (ECF No. 22.) In the consolidated complaint, Plaintiffs seek  
21 not only to recover \$1 million as beneficiaries under the AD&D policy but also an  
22 additional \$250,000 under the Travel policy, claiming that Darren should have been  
23 deemed a management employee rather than a non-guild employee. (*See* Consol.  
24 Compl. ¶¶ 33–45.) The consolidated complaint contains eight causes of action: (1)  
25 breach of contract related to the AD&D policy; (2) tortious breach of the implied  
26 covenant of good faith and fair dealing related to the AD&D policy; (3) declaratory

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27  
28 <sup>3</sup> For this reason, the Court references only the docket associated with Jerie Rydstrom’s case in  
adjudicating the instant motion.

1 relief related to the AD&D policy; (4) a common count related to the AD&D policy;  
2 (5) breach of contract related to the Travel policy; (6) tortious breach of the implied  
3 covenant of good faith and fair dealing related to the Travel policy; (7) declaratory  
4 relief related to the Travel policy; and (8) a common count related to the Travel  
5 policy. (*Id.* ¶¶ 14–60.)

6 On May 15, 2017, Defendant moved for summary judgment and Plaintiffs  
7 moved for partial summary judgment on causes of action one, three, five, and seven.  
8 (ECF Nos. 26–27.) Both motions are now fully briefed and ready for decision. (ECF  
9 Nos. 30–33.)<sup>4</sup>

### 10 III. LEGAL STANDARD

11 A court “shall grant summary judgment if the movant shows that there is no  
12 genuine dispute as to any material fact and the movant is entitled to judgment as a  
13 matter of law.” Fed. R. Civ. P. 56(a). Courts must view the facts and draw reasonable  
14 inferences in the light most favorable to the nonmoving party. *Scott v. Harris*, 550  
15 U.S. 372, 378 (2007). A disputed fact is “material” where resolution of that fact  
16 might affect the outcome of the suit under the governing law. *Anderson v. Liberty*  
17 *Lobby, Inc.*, 477 U.S. 242, 248 (1968). The dispute is “genuine” where “the evidence  
18 is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.*

19 When the moving party has carried its burden under Rule 56(c), the opposing  
20 party must show more than some metaphysical doubt as to the material facts; the  
21 nonmoving party must come forward with “*specific facts showing that there is a*  
22 *genuine issue for trial.*” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S.  
23 574, 586–87 (1986) (emphasis in original) (citing Fed. Rule Civ. Proc. 56(e)).  
24 “Where the record taken as a whole could not lead a rational trier of fact to find for the  
25 non-moving party, there is no ‘genuine issue for trial.’” *Matsushita Elec. Indus. Co.*,

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<sup>4</sup> After considering the papers submitted by the parties, the Court deemed these matters appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.

1 475 U.S. at 587 (quoting *First Nat. Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253,  
2 288 (1968)).

#### 3 IV. DISCUSSION

4 The parties disagree over whether “participants” and “management” are subject  
5 to more than one interpretation, and if the terms are subject to more than one  
6 interpretation, which interpretation controls.<sup>5</sup> As the previous sentence implies,  
7 California employs a multi-phase contract interpretation methodology in situations  
8 such as this. *See Wolf v. Walt Disney Pictures & Television*, 162 Cal. App. 4th 1107,  
9 1126 (2008).

10 In the first phase, the defendant submits extrinsic evidence to the court that  
11 points to a reasonable alternative interpretation of the relevant terms, distinct from the  
12 interpretation proposed by the plaintiff. *See id.* Once this evidence has been  
13 “provisionally receive[d],” the court conducts an examination of the evidence to  
14 determine whether the proposed alternative interpretation is reasonable. *Wolf*, 162  
15 Cal. App. 4th at 1126; *Dore v. Arnold Worldwide, Inc.*, 39 Cal. 4th 384, 393 (2006)  
16 (“When a dispute arises over the meaning of contract language, the first question to be  
17 decided is whether the language is ‘reasonably susceptible’ to the interpretation urged  
18 by the party.” (quoting *Southern Cal. Edison Co. v. Superior Court*, 37 Cal. App. 4th  
19 839, 847 (1995)).

20 If the court finds the defendant’s proposed alternative interpretation reasonable,  
21 then it progresses to the second phase. In the second phase, the court admits the  
22 defendant’s previously submitted evidence and examines it, along with any extrinsic  
23 evidence supplied by the plaintiff, to determine which of the proposed interpretations  
24 reflects the parties’ intent at the time of contracting. *Skilstaf, Inc. v. CVS Caremark*  
25 *Corp.*, 669 F.3d 1005, 1015 (9th Cir. 2012) (“If the court decides, after consideration  
26 of this evidence, that the language of a contract, in the light of all the circumstances, is  
27 fairly susceptible of either one of the two interpretations contended for, extrinsic

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28 <sup>5</sup> Neither of the terms are defined in the policies themselves.

1 evidence relevant to prove either of such meanings is admissible.” (quoting *Miller v.*  
2 *Glenn Miller Prods., Inc.*, 454 F.3d 975, 989 (9th Cir. 2006)); *see also id.* (“Under  
3 California law, [t]he fundamental goal of contract interpretation is to give effect to the  
4 mutual intent of the parties as it existed *at the time of contracting.*” (emphasis added));  
5 *Supervalu, Inc. v. Wexford Underwriting Managers, Inc.*, 175 Cal. App. 4th 64, 73  
6 (2009) (explaining that if the relevant “language is ‘reasonably susceptible’ to the  
7 interpretation urged” in the first step, the “extrinsic evidence” used in the first step “is  
8 then admitted to aid the second step—interpreting the contract.” (quoting *Gen. Motors*  
9 *Corp. v. Superior Court*, 12 Cal. App. 4th 435, 441 (1993)). When there is no conflict  
10 of “extrinsic evidence,” the court may decide as a matter of law which of the proposed  
11 interpretations reflects the parties’ intent at the time of contracting.<sup>6</sup> *Wolf*, 162 Cal.  
12 App. 4th at 1126.

### 13 **A. Participants**

14 The essence of Plaintiffs’ argument is that “all participants in the production of  
15 Lone Operator” should be interpreted in the most literal sense to mean *every* person  
16 involved in the production of “Lone Operator” from the lowliest production assistant  
17 to the producer himself. (*See* Pls. Mot. 10, ECF No. 26-1 (“Federal’s ‘Special Risk’  
18 policy unambiguously provides a \$1 million death benefit for ‘All participants in the  
19 production entitled Lone Operator’—not a few and not the anointed participants, but  
20 *all* of them. The analysis should stop there . . .” (emphasis in original)). Defendant

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21  
22 <sup>6</sup> Plaintiffs argue that California Insurance Code section 10113, California Code of Civil Procedure  
23 section 1856, and California Civil Code 1625 prohibit the Court from considering extrinsic evidence  
24 to interpret the two contracts at issue. (*See, e.g.*, Pls. Opp’n 1; *see also* Pls. Objections to Evidence,  
25 ECF No. 31-5.) These statutes are inapposite. California Insurance Code section 10113 prohibits  
26 use of incorporation by reference in insurance contracts, an issue not present here. California Code  
27 of Civil Procedure section 1856 limits the use of parol evidence but contains an explicit exception  
28 allowing for the use of such evidence to “interpret the terms of [an] agreement,” the task the Court is  
faced with here. The statute also provides an explicit exception for parol evidence of the parties’  
“course of dealing.” Cal. Code. Civ. P. § 1856. Finally, California Civil Code 1625 indicates that  
an “executed contract” “in writing” supersedes any version made during negotiations. Defendant is  
not arguing that a prior version of the contract made during negotiations controls here, it is arguing  
about what the terms of the “executed” contract mean.

1 argues that the breadth of this interpretation far exceeds the parties’ intent at the time  
2 of contracting. Defendant argues that the contracting parties intended<sup>7</sup> for  
3 “participants” to be interpreted as persons in front of the camera. (Def. Mot. 14, 17–  
4 18, ECF No. 27-1.)

5 **1. Whether Defendant’s Alternative Interpretation is Reasonable**

6 After reviewing the record, the Court finds that Defendant’s alternative  
7 interpretation is reasonable.

8 **a. Both Contracting Parties Explicitly Agree With Defendant’s**  
9 **Interpretation**

10 Defendant presents the declaration and deposition testimony of Matthew  
11 Johnson, Bongo’s Senior Vice President for Production, and Alan Resnick,  
12 Defendant’s underwriter, to demonstrate that the two parties’ representatives tasked  
13 with negotiation and execution of the AD&D policy expressly intended for  
14 “participants” to mean persons in front of the camera. This type of extrinsic evidence  
15 is permissible to assist in the interpretation process. *See Miller*, 454 F.3d at 990  
16 (“Extrinsic evidence includes testimony regarding the circumstances in which a  
17 contract was written . . .”); *Trident Ctr. v. Conn. Gen. Life Ins. Co.*, 847 F.2d 564, 569  
18 (9th Cir. 1988) (recognizing that courts may need to divine the parties’ intent from  
19 “self-serving testimony offered by partisan witnesses whose recollection is hazy from  
20 passage of time and colored by their conflicting interests.”)

21 Johnson indicates in his declaration that “In seeking AD&D/AME coverage for  
22 the ‘Lone Operator’ production Eyeworks/Bongo intended to insure and only paid to  
23 insure solely . . . ex Special Forces individuals as ‘participants’ in the ‘Lone Operator’

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24 <sup>7</sup> Plaintiffs argue that Darren’s intent is also relevant citing *Insurance Company of North America v.*  
25 *Bechtel*, 36 Cal. App. 3d 310, 317 (1973). (Pls. Mot. 8, 10.) This is absurd, as Darren was not  
26 involved with negotiating the policies at issue—there is no evidence that he even knew of their  
27 existence. *Bechtel* is not relevant here. The legal issues in *Bechtel* are materially different from the  
28 ones in this case; *Bechtel* dealt primarily with mutual mistake. 36 Cal. App. 3d at 316. The facts in  
*Bechtel* are also very different, the employee in that case knew there was an insurance contract  
between his employer and an insurer affecting him (he was issued an insurance certificate), making  
it much more reasonable that his intent might be considered. *Id.* at 318.

1 production. In seeking AD&D/AME coverage for the ‘Lone Operator’ production,  
2 Eyeworks/Bongo did not intend to insure any of the production crew for ‘Lone  
3 Operator.’ Eyeworks/Bongo did not intend to provide coverage for Mr. Rydstrom  
4 under the Federal AD&D/AME policy.” (Johnson Decl. ¶ 28 (emphasis in original).)  
5 Johnson made a similar statement during his deposition: “The AD&D/AME is—I’ve  
6 only ever bound it for on-camera talent and in this case, that was the same.” (Johnson  
7 Dep. 25:16–25:18, ECF No. 27.)

8 Defendant’s underwriter had the same understanding. Resnick indicates in his  
9 declaration that he has:

10 never issued an AD&D policy to Bongo/Eyeworks, or any other policy  
11 holder in which the term ‘participants’ was intended to encompass  
12 persons other than those who were in front of the camera. The term  
13 ‘participants’ was not intended to include, encompass or provide  
14 coverage for the production crew, even if an individual was in charge of a  
15 department, and regardless of their job title or responsibilities.

16 (Resnick Decl. ¶ 13; *see also id.* ¶ 29 (“we always intended and understood  
17 ‘participants’ to mean certain actors . . . ‘participants’ did not mean everyone involved  
18 with the production.”).) These statements show that both contracting parties actually  
19 believe/believed the policy only provides coverage to persons appearing in front of the  
20 camera.

21 **b. The Contracting Parties’ Conduct Also Demonstrates That They  
22 Believed “Participants” Referred to Persons in Front of the  
23 Camera**

24 The contracting parties’ conduct also demonstrates that they believed  
25 “participants” referred only to persons in front of the camera. Certain evidence in the  
26 record directly equates “participants” with persons in front of the camera. For  
27 instance, in one email conversation regarding add-on coverage for a sky dive, Britney  
28 Hearn, the insurance broker operating on behalf of Bongo’s Johnson, informs  
Resnick that: “Two participants will be sky diving. They each are diving once on  
their own and are extremely experienced divers (they are both ex Special Forces).”

1 (*Id.*, Ex J at 119.) In Hearn’s email, “participants” is used to describe ex Special  
2 Forces operators, the on-camera subjects of the show. Resnick then replied,  
3 confirming that the ex Special Forces operators are indeed “participants” within the  
4 meaning of the AD&D policy: “To provide coverage for this jump will be \$1,500  
5 additional premium for both people total, \$750 each. Keep in mind that we have a  
6 \$1,000,000 death benefit *on these participants.*”<sup>8</sup> (*Id.*, Ex. M at 130 (emphasis  
7 added)); *see also Miller*, 454 F.3d at 990 (explaining that the parties’ subsequent  
8 conduct is relevant to prove what terms in the executed contract mean); *Employers*  
9 *Reinsurance Co. v. Superior Court*, 161 Cal. App. 4th 906, 921 (2008) (“The conduct  
10 of the parties after execution of the contract and before any controversy has arisen as  
11 to its effect affords the most reliable evidence of the parties’ intentions.” (quoting  
12 *Kennecott Corp. v. Union Oil Co.*, 196 Cal. App. 3d 1179, 1189 (1987))).

13 Additional evidence supports the proposition that “participants” refers to  
14 persons in front of the camera, but it requires an intervening logical step: that  
15 “participants” refers to “talent” and “talent” refers to persons in front of the camera.  
16 The Court begins by examining the link between “participants” and “talent.” On  
17 November 1, 2012, Bongo’s Johnson requested two quotations for AD&D coverage,  
18 one from Defendant and one from insurance broker MIB in order to compare their  
19 prices. (Johnson Decl., Ex. K at 268, Ex. L at 271.) In an email to Hearn, Johnson  
20 requested an AD&D quote for “4 participants” for “30 shoot days.” (Johnson Decl.,  
21 Ex. K at 268.) In an email sent two minutes later to MIB, Johnson requested an  
22 AD&D quote for “4 people[,] all talent[,] 30 days.” (Johnson Decl., Ex. L at 271.)<sup>9</sup>  
23  
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25 <sup>8</sup> The AD&D policy provides a \$1 million death benefit for each participant. (Resnick Decl., Ex. B  
at 63.)

26 <sup>9</sup> Emails in the record make clear that the two quotations were obtained for the purpose of  
27 comparison with an eye towards driving down the cost of coverage. (*See* Johnson Decl., Ex. K at  
28 269.) To make this comparison work, the quotes necessarily had to be for coverage of the same  
group of persons. Johnson’s declaration confirms this understanding. (*Id.* ¶ 27 (“This was the exact  
same information I communicated to Federal . . .”).)

1 Thus, it appears Johnson believed around the time of contracting that “participants”  
2 and “talent” were interchangeable.

3 Defendant’s conduct demonstrates the same belief. On November 2, 2012,  
4 Defendant provided the aforementioned quote based on “4 participants.” (Resnick  
5 Decl., Ex. C at 103.) In the next quote, days later on November 5, 2012, “4  
6 participants” was replaced with “4 Insureds (Talent).” (*Id.*, Ex. D at 106.) This was  
7 ultimately the version that Bongo agreed to on December 5, 2012. (*Id.*, Ex. E at 108.)  
8 After receiving Plaintiffs’ assent to the policy including the “4 Insureds (Talent)”  
9 language, Defendant once again used “participants” when it issued the formal AD&D  
10 policy. (*Id.*, Ex. B at 62.) Thus, both parties appear to have used and accepted  
11 “participants” and “talent” as interchangeable.

12 With this understanding in mind, the Court turns its attention to the link  
13 between “talent” and persons in front of the camera. The most compelling evidence  
14 that these concepts are synonymous is that persons appearing in front of the camera  
15 signed Talent Agreements, while those not appearing in front of the camera signed  
16 Crew Deal Memos. For instance, Michael Donatelli, an “on camera personality,”  
17 signed a Talent Agreement while Darren signed a Crew Deal Memo. (*Compare*  
18 Johnson Decl., Ex. E, *with id.*, Ex. F.) The other cast members appearing on screen  
19 also signed Talent Agreements. (*See id.*, Ex. G at 259 (noting that “talent deals” were  
20 out for signature with a number of persons known to be appearing in front of the  
21 camera); *see also* Johnson Dep. 22:3–22:12 (explaining that the persons with whom  
22 the talent agreements were out for signature were persons appearing in front of the  
23 camera).)

24 Defendant also presents evidence of pattern and practice in the industry and in  
25 the parties’ prior dealings, which suggests that sophisticated parties, such as those  
26 contracting for the AD&D policy here, would have used “talent” to mean persons in  
27 front of the camera. (*See* Traylor Decl., Ex D at 40 (Resnick at his deposition “In the  
28 normal course of my business, when I say ‘talent,’ I am referring to on camera. I

1 don't know anyone who refers to 'talent' in my business who is referring to anyone  
2 else."); Ex. C at 31 (Johnson at his deposition essentially stating the same)); Resnick  
3 Decl. ¶ 12 ("Talent in both my custom and practice, and in particular my workings  
4 with this policy holder and its broker, always meant those persons appearing in front  
5 of the camera only.")<sup>10</sup>; *see also* *Worthington Const., Inc. v. L.A. Contractors Corp.*,  
6 No. G032063, 2004 WL 2677088, at \*7–8 (Cal. Ct. App. Nov. 24, 2004 (noting that  
7 extrinsic evidence of trade usage is relevant and admissible to interpret contract terms  
8 (citing *Hayter Trucking, Inc. v. Shell Western E & P*, 18 Cal. App. 4th 1, 17 (1993));  
9 *Ermolieff v. R.K.O. Radio Pictures*, 19 Cal. 2d 543, 550 (1942) (indicating that  
10 "[trade] usage becomes a part of the contract in aid of its correct interpretation").<sup>11</sup>

11 Based on the evidence discussed in the two prior subsections, the Court finds  
12 Defendant's alternative interpretation reasonable. As such, the Court turns to the  
13 question of whether Plaintiffs' or Defendant's interpretation should control.

## 14 **2. Which of the Two Interpretations Controls**

15 The Court finds that Defendant's interpretation expresses the parties' intended  
16 meaning of "participants" at the time of contracting. Plaintiffs' evidence and  
17 arguments in favor of their interpretation and rebuttal of Defendant's interpretation are  
18 not sufficient to avoid summary judgment.

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20  
21 <sup>10</sup> Plaintiffs argue that Resnick and Johnson are not qualified to offer custom and practice evidence.  
22 The Court disagrees. While Resnick and Johnson could have laid out their experience more clearly  
23 and more exhaustively in their declarations, their declarations make clear that both have extensive  
24 experience in their respective industries. Resnick is an underwriter, has worked sixteen years for  
25 Defendant, and has experience with at least some "similar policies." (Resnick Decl. ¶¶ 2, 7.)  
26 Johnson has been an entertainment executive in production for at least five years, a portion of that  
27 time in a Senior Vice President of Production role. (Johnson Decl. ¶ 4.) Further, Plaintiffs deposed  
28 the two declarants and had an opportunity to question them about the depth and range of their  
experience. Even if the evidence of custom and practice offered were for some reason deemed  
inadmissible, the two declarant's personal experience with the parties and types of contracts at issue  
would still carry weight.

<sup>11</sup> Conspicuously absent is any rebuttal evidence from Plaintiffs asserting that pattern and practice in  
the relevant industry is different than Defendant suggests or that the parties did not use "talent" in  
their prior dealings as Defendant suggests.

1 Plaintiffs begin by pointing to a single sentence in the Crew Deal Memo that  
2 they believe supports a broader definition of “participants” than persons appearing in  
3 front of the camera:

4 In the event Producer is prevented from or materially hampered in  
5 obtaining the materials, labor or facilities necessary for filming . . . by  
6 reason of any local, municipal, state or United States law or ordinance  
7 . . . or by . . . illness or incapacity of any key crew members and/or  
8 participants appearing in the series [“Participants”].  
(Johnson Decl., Ex. E at 229.) Plaintiffs argue that “participants” in this sentence is  
9 used as shorthand for key crew members and those appearing in front of the camera.  
10 (Pls. Reply 8, ECF No. 33.) The Court disagrees with Plaintiffs’ proposed reading of  
11 the sentence. In the context of the sentence as a whole, the summarizing parenthetical  
12 refers only to the final phrase of the sentence after the and/or, to “participants  
13 appearing in the series.” Indeed, if anything, the sentence tends to support  
14 Defendant’s interpretation—anyone “appearing in the series” suggests “participants”  
15 are persons “appearing” in front of the camera.

16 Plaintiffs next argue that the Court should adopt its broad interpretation of  
17 “participants” because the number of persons falling within Defendant’s interpretation  
18 of “participants” could have been four or five.<sup>12</sup> (*See* Pls. Reply 4.) Again, however,  
19 Plaintiffs’ argument misses the mark. To begin, the contracting parties clearly  
20 intended for the agreement to cover four insureds. (Resnick Decl. Ex. E at 108  
21 (Bongo binding coverage for “4 insureds”).) Further, even if the number of persons  
22 was unclear, the difference between four and five persons is insignificant. Blanket  
23 insurance, like the AD&D policy at issue here, specifically allows for coverage of an

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24 <sup>12</sup> Plaintiffs also argue that there were seven persons falling within the class at one point. (Mot. 4;  
25 Reply 4.) In making this argument, Plaintiffs point to the first page of a call sheet that lists seven  
26 names under the heading “Cast.” (Crook Decl., Ex. G at 119.) However, Defendant has presented  
27 the second page of the same call sheet, which shows that there were at most five persons to be filmed  
28 that day, and that all five were not being filmed at the same time. (Def. Objections to Evidence, Ex.  
A at 6, ECF No. 30-1); *see also* Fed. R. Evid. 106 (where one party submits an incomplete  
document, the other party may submit “another part” of the same document for clarification in  
response).

1 unknown, amorphous class of persons so long as those persons all fit within a defined  
2 class. (See Resnick Dep. 47:1–47:25 (explaining that even if a different number of  
3 persons fell within the class than originally priced into the policy, Defendant would be  
4 obligated to pay all those falling within the class in the event of an accident)); *see also*  
5 State of California Assembly Bill 2084, September 14, 2012, Blanket Insurance  
6 (noting blanket insurance is meant to cover groups of persons “not specifically known  
7 to the organization in advance, or, if known, [where] the identities of the participants  
8 are constantly changing within the class of people participating in the [same]  
9 activities”).<sup>13</sup> There can be no doubt that regardless of whether there were four or five  
10 persons, they all fell within the class of persons appearing in front of the camera.  
11 Thus, Plaintiffs’ argument fails.

12 Finally, Plaintiffs argue that even if Defendant’s interpretation of “participants”  
13 to mean “talent” is correct, Darren was talent. Plaintiffs cite an entertainment law  
14 treatise glossary for the following definition of “talent”: “individuals involved in the  
15 creative process, including musicians, actors, writers, directors, cinematographers, and  
16 set designers.” (Crooke Decl., Ex. J at 132, ECF No. 26-2); Selz et al., *Entertainment*  
17 *Law: Legal Concepts and Business Practices* (3d ed. 2015). Yet again, however,  
18 Plaintiffs’ argument falls flat. First, this generalized definition of talent is clearly too  
19 broad to fit the usage of talent relevant here—for instance, this definition extends to  
20 musicians, persons in an entirely different part of the entertainment industry. Second,  
21 generalized definitions of terms such as this cannot, by themselves, be used to  
22 overcome evidence of specialized meaning given to terms by the parties. *See* Cal.  
23 Civ. Code § 1644 (“The words of a contract are to be understood in their ordinary and  
24 popular sense, rather than according to their strict legal meaning; unless used by the  
25 parties in a technical sense, or *unless a special meaning is given to them by usage, in*  
26 *which case the latter must be followed*” (emphasis added)); *Pac. Gas & Elec. Co. v.*

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27 <sup>13</sup> Defendant requests that the Court take judicial notice of this bill. (See ECF No. 27-3.) As  
28 Plaintiffs do not oppose Defendant’s request and the bill is a publically available state government  
document not subject to reasonable dispute, the Court grants Defendant’s request.

1 *G. W. Thomas Drayage & Rigging Co.*, 69 Cal. 2d 33, 38 (1968) (noting that terms do  
2 not have a “fixed” or “objective” meaning and must be interpreted in light of the  
3 specific circumstances and purposes of the parties in the particular contract at issue);  
4 *Blasiar, Inc. v. Fireman’s Fund Ins. Co.*, 76 Cal. App. 4th 748, 753–54 (1999)  
5 (explaining that because “no party offered any extrinsic evidence,” the contract should  
6 be “interpreted according to the common and ordinary meaning”); *Sony Computer*  
7 *Entm’t Am. Inc. v. Am. Home Assur. Co.*, 532 F.3d 1007, 1013 (9th Cir. 2008) (noting  
8 that dictionary definitions must be considered in context with the particular policy at  
9 issue). As described at length above, the parties intended for the term “participants”  
10 to have special meaning.<sup>14</sup>

11 After considering the undisputed evidence, the Court finds that Defendant has  
12 shown that its interpretation of “participants” was the one the parties intended at the  
13 time of contracting. Having found that the correct interpretation of “participants” is  
14 persons appearing in front of the camera, the Court finds that Darren, a person behind  
15 the camera, is not covered by the AD&D policy. As such, Defendant did not breach  
16 the AD&D policy by withholding payment from Plaintiffs and cannot be held liable  
17 for tortious breach of the implied covenant of good faith related to that policy.  
18 *Fortaleza v. PNC Fin. Servs. Group, Inc.*, 642 F. Supp. 2d 1012, 1021–22 (N.D. Cal.  
19 2009) (“To establish a breach of an implied covenant of good faith and fair dealing, a  
20 plaintiff must establish the existence of a contractual obligation . . .”). Likewise,  
21 Plaintiffs are not entitled to declaratory relief and are not owed money by Defendant  
22 under the AD&D policy. As such, the Court **GRANTS** Defendant’s motion for  
23 summary judgment as to causes of action one through four and **DENIES** Plaintiffs’  
24 motion for partial summary judgment as to causes of action one and three.

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25  
26 <sup>14</sup> Plaintiffs also attempt to cobble together a definition of “talent” using a combination of logic and  
27 the two subsections of California Labor Code § 1700.4. While the Court applauds Plaintiffs’  
28 creativity, the definition of a term within a particular statute has little relevance to the definition of a  
term in a particular contract where, as here, the parties did not express any desire for the term to be  
interpreted in light of the statute and the statute does not govern the specific contract at issue.

1 **B. Management**

2 As with “participants,” Plaintiffs argue that the Court should interpret  
3 “management” in accord with its plain and ordinary meaning as any person with  
4 “management responsibilities.” (Pls. Mot. 13.) In contrast, Defendant argues that  
5 “management” refers to a specific group of twelve full-time, permanent employees  
6 working at Bongo’s corporate level. (Def. Mot. 21–22.)

7 **1. Whether Defendant’s Alternative Interpretation is Reasonable**

8 As in the “participants” section above, the Court finds that Defendant’s  
9 alternative interpretation is reasonable.

10 **a. The Evidence Suggests That “Management” Pertains Only to**  
11 **Twelve Full-Time, Permanent Employees Working at Bongo’s**  
12 **Corporate Level**

13 Significant evidence supports Defendant’s proposed interpretation. To begin,  
14 the two contracting parties’ representatives, Resnick and Johnson, have each  
15 submitted declarations indicating that they intended Class 3 of the Travel policy to  
16 cover a group of twelve, full-time, permanent employees working at Bongo’s  
17 corporate level, not Darren or persons similarly situated to Darren. (*See* Resnick Decl.  
18 ¶ 34 (indicating that Class 3 pertains to “permanent management employees of the  
19 policyholder”), 41–42; *see also* Johnson Decl. ¶¶ 34–36 (noting that “management”  
20 was intended to reference “Eyeworks’ full time professionals” not “temporary  
21 employees” or “production crew”).) Defendant further indicates that it purchased a  
22 workers’ compensation policy to cover crew rather than covering them under Class 3  
23 of this policy or the AD&D policy. (Johnson Decl. ¶ 37.)

24 Further, as Defendant highlights, the evidence makes clear that the Travel  
25 policy was a part of its broader “corporate insurance” intended to cover all of Bongo’s  
26 productions (shows, projects, etc.) over a one-year period. Traylor Decl., Ex. F at 53  
27 (Hearns noting this at her deposition); Resnick Decl. ¶ 37 (same); Resnick Decl., Ex.  
28 P (reaffirming this understanding to Hearns after being asked for clarification);

1 Johnson Decl. ¶ 32. Therefore, it does not make sense that the term “management”  
2 would refer to a person with management responsibilities in only one of Bongo’s  
3 many productions, such as “Lone Operator.”

4 Additionally, emails between Resnick and Hearn show that the group of  
5 twelve persons deemed to be “management” included at least two of Bongo’s  
6 corporate officers. (Resnick Decl., Ex. Q at 141.) This suggests that any person  
7 falling under the “management” heading would have to be sufficiently high up on  
8 Bongo’s corporate ladder to warrant consolidation under the same heading as  
9 corporate officers. Previous iterations of the Travel policy also support the conclusion  
10 that “management” was meant to reference persons high up on Bongo’s corporate  
11 ladder. (Resnick Decl. ¶ 39.) These iterations substituted “executives” for  
12 “management.” (*Id.*) Resnick intended for “management” to be consistent with the  
13 “previous [year’s] . . . use of executives” when he wrote the relevant policy. (*Id.*)

14 After reviewing the record, the Court finds Defendant’s proposed interpretation  
15 of “management” reasonable. As in the “participants” section, the Court next turns to  
16 which of the two proposed interpretations should control.

## 17 **2. Which of the Two Interpretations Controls**

18 The Court again finds that Defendant’s interpretation expresses the parties’  
19 intended meaning at the time of contracting. Plaintiffs have not offered any  
20 significant extrinsic evidence to rebut the evidence Defendant offers in support of its  
21 interpretation. Instead, Plaintiffs offer regulatory and dictionary definitions of  
22 “management” without regard for how the parties specifically intended to use the term  
23 in this particular agreement, in other words whether the term had “special meaning.”

24 First, Plaintiffs point to a definition of management in 29 C.F.R. § 541.102.  
25 (Pls. Mot. 13–14; Pls. Opp’n 11.) Section 541 provides for certain exceptions to  
26 federal wage and hour laws for “executive, administrative, or professional”  
27 employees. Section 541.100 provides the requirements to be deemed an exempt  
28 executive employee. Among other requirements, an executive employee’s “primary

1 duty” must be “management of the enterprise in which the employee is employed or  
2 of a customarily recognized department or subdivision thereof.” 29 C.F.R.  
3 § 541.100(a)(1)(2). Section 541.102 provides a definition of management for the  
4 purposes of evaluating whether the employee in question meets the requirement in  
5 subsection 541.100(a)(1)(2). Plaintiffs have not explained how a definition of  
6 “management” used to determine whether a person is an exempt executive employee  
7 is relevant to the whether an employee was “management” within the context of the  
8 travel insurance policy at issue. Therefore, while regulatory definitions can be useful  
9 in some instances to assist in the interpretation of a contract, *see, e.g., Garamendi v.*  
10 *Golden Eagle Insurance Co.*, 127 Cal. App. 4th 480, 486 (2005), the Court gives little  
11 to no weight to the regulatory definition of “management” offered here.<sup>15</sup>

12 Plaintiffs next point to a Merriam Webster Dictionary definition of “manage”:  
13 “1: Handle, control: to *direct* or carry on business or affairs . . .” (emphasis supplied).  
14 (Pls. Opp’n 23 (emphasis in original).) Plaintiffs argue that because the definition  
15 contains “to direct” and Darren was a “director of photography” “[t]his makes him a  
16 Class 3 insured. (*Id.*) This analysis amounts to a gross oversimplification and relies  
17 on the use of false equivalents. Further, as the Court indicated in the “participants”  
18 section above, evidence of plain and ordinary meaning will not function to overcome  
19 specialized meaning given to terms by the parties.

20 Even if the Court were willing to consider some colloquial definition of  
21 management, Darren was clearly not management, even within the context of the  
22 “Lone Operator” production. While he may have overseen the work of five persons in  
23 the camera department, he did not make hiring decisions or exercise creative control  
24 over the show. (Johnson Decl. ¶ 31 (acknowledging that Darren was “in charge of the  
25 camera department for ‘Lone Operator’); *but see id.* ¶ 22 (noting that Darren did not  
26 exercise creative control); Ex. E at 230 (Crew Deal Memo explaining that “As

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27 <sup>15</sup> As Defendant further points out, subsection 541.100 would not apply in any way to Darren  
28 because he was hired as an hourly employee. The first consideration in determining whether an  
employee is “executive” is whether they are salaried. 29 C.F.R. § 541.100(a)(1).

1 between the employee [Darren] and Producer, Producer will have full control and  
2 final approval over any and all business, financial, creative, artistic, and other  
3 elements in connection with the Series.”); Johnson Dep. 38:17–38:20, ECF No. 31-2  
4 (indicating that while the director of photography may be in charge of the camera  
5 department he must “answer[] to the director and executive producer and execut[e]  
6 what their vision is”); Crooke Decl. Ex. M at 197 (demonstrating that although Darren  
7 made recommendations about potential crew for the camera department, these  
8 recommendations were subject to review and approval before offers were extended).

9       The Court has considered both sides’ proposed interpretations and all of the  
10 supporting evidence and finds that Defendant’s interpretation represents the parties’  
11 intent at the time of contracting. Applying Defendant’s proposed definition, it is clear  
12 that Darren is not “management.” Darren was an employee on loan from another  
13 company, Trip 7, who received an hourly wage and worked on a production-by-  
14 production basis; he was not a permanent, full-time corporate employee of Bongo  
15 working across various Bongo productions. (Johnson Decl. ¶ 11 (personally knew  
16 Darren to be a “freelance” director of photography and camera operator “retained on a  
17 production-by-production basis”), 17 (indicating that Darren was an hourly  
18 employee), 25 (affirming that Darren never held a management position or was a  
19 management employee of Bongo and/or Eyeworks); Ex. A at 81 (California Labor  
20 Code Section 2810.5, indicating that Darren was a nonexempt employee paid on an  
21 hourly basis), 83 (non-union form showing that Darren was an hourly employee); Ex.  
22 C (Darren’s resume showing that he was a freelance director of photography/camera  
23 operator and had worked on many different projects for many different employers);  
24 Crooke Decl. Ex. O (paystubs showing hourly-wage calculations). As such,  
25 Defendant did not breach the Travel policy by withholding an additional \$250,000  
26 payment from Plaintiffs and cannot be held liable for tortious breach of the implied  
27 covenant of good faith related to that policy. *See Fortaleza*, 642 F. Supp. 2d at 1021–  
28 22. Likewise, Plaintiffs are not entitled to declaratory relief and are not owed money

1 by Defendant related to the Travel policy. As such, the Court **GRANTS** Defendant's  
2 motion for summary judgment as to causes of action one through four and **DENIES**  
3 Plaintiffs' motion for partial summary judgment as to causes of action five and seven.

4 **V. CONCLUSION**

5 This Court deeply sympathizes with Plaintiffs who lost their son in a tragic  
6 aviation accident. However, this sympathy does not change the fact that "the record  
7 taken as a whole could not lead a rational trier of fact" to find for Plaintiffs in this  
8 insurance coverage dispute. *See Matsushita*, 475 U.S. at 587. Accordingly, the Court  
9 **GRANTS** Defendant's motion for summary judgment (ECF No. 27) and **DENIES**  
10 Plaintiffs' motion for partial summary judgment (ECF No. 26). Additionally, the  
11 Court seals the record (ECF Nos. 26–33) to protect Darren's personal information.  
12 The Clerk of Court shall close the cases.

13  
14 **IT IS SO ORDERED.**

15 July 7, 2017

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17 

18 **OTIS D. WRIGHT, II**  
19 **UNITED STATES DISTRICT JUDGE**