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JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AMERICAN STATES INSURANCE
COMPANY, an Indiana corporation,

Plaintiff,

v.

ROBERT G. HUBBARD dba
NORTHWEST BEVERAGE
DISTRIBUTORS and dba PUR
BEVERAGES,

Defendants.

Case No. 2:16-cv-03734-RGK-JPR
Hon. R. Gary Klausner

**JUDGMENT FOR AMERICAN
STATES INSURANCE COMPANY**

ROBERT G. HUBBARD dba
NORTHWEST BEVERAGE
DISTRIBUTORS and dba PUR
BEVERAGES

Counter-claimant,

v.

AMERICAN STATES INSURANCE
COMPANY,

Counter-defendant.

1 In its Motion for Summary Judgment (Docket Entry 27), filed on
2 January 13, 2017, Plaintiff and Counterdefendant, American States Insurance
3 Company (“ASIC”), sought declarations that it (a) had no duty to defend Defendant,
4 Robert G. Hubbard d/b/a Northwest Beverage Distributors and d/b/a/ Pur Beverages
5 (“Hubbard”), in an underlying action for trademark infringement that was litigated
6 to judgment in this Court as Case No. 2:13-cv-06917-RGK, *POM Wonderful LLC et*
7 *al. v. Robert G. Hubbard, et al*, Case 2:13-cv-06917-RGK (JPRx) (the “Underlying
8 Action”); (b) it had, and has, no duty to defend or indemnify Hubbard in this
9 declaratory judgment action (“this Action”); and (c) it is entitled to restitution of
10 costs that it incurred, after April 6, 2016, defending Hubbard in the Underlying
11 Action. ASIC also sought summary judgment on Hubbard’s counterclaims.

12 By Order dated February 14, 2017 (the “Order”), the Court granted
13 ASIC’s Motion for Summary Judgment on all of ASIC’s claims, as well as on all of
14 Defendant’s counterclaims (Docket Entry 36.) Under the Order, the Court found
15 that all of the claims alleged in the Underlying Action arose out of a category of
16 claims - - trademark infringement - - specifically excluded by the ASIC insurance
17 policies at issue.¹ Accordingly, the Court determined that Hubbard did not meet his
18 initial burden of demonstrating that the claims alleged in the Underlying Action
19 created a potential for covered damages, triggering a duty to defend. Therefore, the
20 Court concluded that ASIC never had a duty to defend Hubbard in the Underlying
21 Action.

22 Hubbard’s counterclaims for breach of contract and breach of the
23 implied covenant of good faith and fair dealing also hinge on the duty-to-defend
24 determination. Because ASIC had no duty to defend, its conduct in connection with
25 the Underlying Action cannot have amounted to a breach of contract or a breach of
26

27 ¹ Policy numbers 01-CI-547356-10, 01-CI-547356-20 and 01-CI-547356-30.
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1 the implied covenant of good faith and fair dealing, and, accordingly, the Court
2 granted ASIC's motion on Hubbard's counterclaims.

3 Under the Order, the Court found that ASIC expressly reserved its
4 right, as of April 6, 2016, to recoup from Hubbard any defense or indemnity
5 payments it makes that a Court determines ASIC was not obligated to make.
6 Accordingly, the Court determined that ASIC is entitled to reimbursement of all
7 legal fees and costs that it incurred in the Underlying Action after April 6, 2016.
8 The Court found inconsistencies in the evidence ASIC submitted to demonstrate the
9 precise amount of its reimbursement claim. Accordingly, the Court ordered ASIC to
10 provide a supplemental declaration clarifying the legal costs and fees that it incurred
11 after April 6, 2016 in the Underlying Action. On February 17, 2017, ASIC filed the
12 required supplemental declaration (Docket Entry 38), which establishes that ASIC is
13 entitled to \$183,992.98 in reimbursement.

14 Accordingly, ASIC is entitled to judgment, and **the Court hereby**
15 **enters its Judgement, in favor of ASIC and against Hubbard**, that:

- 16 1. ASIC never had a duty to defend Hubbard in the Underlying
17 Action;
- 18 2. ASIC had and has no duty to defend Hubbard in this Action;
- 19 3. Hubbard is obligated to pay \$183,992.98 to ASIC;
- 20 4. Hubbard's counterclaims are dismissed; and
- 21 5. ASIC may recover its costs of suit taxed in this matter from
22 Hubbard.

23 **IT IS SO ADJUDGED.**

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26 Dated: 2/23/17

27 HON. R. GARY KLAUSNER
28 U.S. DISTRICT COURT JUDGE