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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

LAKELAND VILLAGE HOMEOWNERS  
ASSOCIATION,  
  
Plaintiff,  
  
v.  
  
GREAT AMERICAN INSURANCE  
GROUP, TRAVELERS PROPERTY  
CASUALTY COMPANY OF AMERICA  
and DOES 1 through 50,  
  
Defendants.

Case No. 2:10-cv-00604-GEB-GGH  
STIPULATED [PROPOSED] ORDER:  
  
1) CLARIFYING THE ORDER  
DENYING PLAINTIFF'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
AND GRANTING GREAT  
AMERICAN'S CROSS-MOTION FOR  
SUMMARY JUDGMENT; AND  
  
2) PERMITTING PLAINTIFF TO  
DISMISS ITS EIGHTH CAUSE OF  
ACTION FOR VIOLATION OF  
BUSINESS AND PROFESSIONS  
CODE § 17200 WITH PREJUDICE  
AND ENTERING JUDGMENT IN  
FAVOR OF GREAT AMERICAN WITH  
RESPECT TO THE FIFTH, SIXTH,  
AND SEVENTH CAUSES OF ACTION  
FOR BREACH OF CONTRACT,  
BREACH OF THE IMPLIED  
COVENANT OF GOOD FAITH AND  
FAIR DEALING AND DECLARATORY  
RELIEF PURSUANT TO  
FED.R.CIV.PROC. RULE 54(B)

On September 14, 2010, Plaintiff Lakeland Village Homeowners  
Association ("Lakeland") and Defendant Great American Insurance Company  
("Great American") jointly requested that this court partially remove the  
pending stay of this action for the sole purpose of clarifying this Court's

1 ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY  
2 JUDGMENT AND GRANTING GREAT AMERICAN'S CROSS-MOTION FOR  
3 SUMMARY JUDGMENT, entering partial judgment in favor of Great American  
4 as to the fifth, sixth and seventh causes of action and entering a final judgment  
5 in favor of Great American pursuant to Fed. R. Civ. Proc. Rule 54(b). This  
6 court hereby grants said requests as set forth below.

7 **I. CLARIFICATION OF ORDER**

8 On July 22, 2010, the District Court issued its "Order Denying Plaintiffs  
9 Motion for Partial Summary Judgment and Granting Defendant's [Great  
10 American's] Cross-Motion for Summary Judgment ("The Order"). The Order  
11 states that Lakeland moved for partial summary judgment on its seventh cause  
12 of action for declaratory relief and that Great American "filed a cross motion for  
13 summary judgment, arguing it does not owe Plaintiff a defense and, therefore,  
14 is entitled to partial summary judgment on Plaintiff's declaratory relief claim."  
15 (pg.1:23-26). The Order concludes by stating:

16 Since Defendant has shown the absence of any potential for coverage  
17 under the policy, it does not have a duty to defend Plaintiff in Hollows'  
18 pending Cross-complaint or related administrative proceeding. Plaintiffs  
19 partial motion for summary judgment is denied and Defendant's [Great  
20 American's] cross motion for *summary judgment* is granted." (Pg.14:2-6)

21 The parties have asked the court to clarify whether the court granted summary  
22 judgment as to all claims against Great American or partial summary judgment  
23 as to the seventh cause of action for declaratory relief. The court intended to  
24 grant partial summary judgment as to the Seventh Cause of Action for  
25 Declaratory Relief only. Accordingly, the court's order as set forth above is  
26 modified by adding the word "partial" as follows:

27 Since Defendant has shown the absence of any potential for coverage  
28 under the policy, it does not have a duty to defend Plaintiff in Hollows'  
pending Cross-complaint or related administrative proceeding. Plaintiffs  
partial motion for summary judgment is denied and Defendant's [Great  
American's] cross motion for **partial** *summary judgment* is granted."  
(Pg.14:2-6)

1           **II.     DISMISSAL OF EIGHTH CAUSE OF ACTION FOR VIOLATION**  
2           **OF BUSINESS & PROFESSIONS CODE SECTION 17200**

3           Plaintiff Lakeland has requested that the Court allow Lakeland to  
4           dismiss its Eighth Cause of Action for violation of Business & Professions  
5           Code section 17200 with prejudice. Said request is hereby granted.

6           **III.     FINAL JUDGMENT IN FAVOR GREAT AMERICAN**

7           The parties have requested that this court enter judgment in favor of  
8           Great American on the Fifth, Sixth and Seventh Causes of Action pursuant to  
9           Fed. R. Civ. Proc. Rule 54(b) and have acknowledged that appeals normally  
10          only lie from final judgments and not from interlocutory orders or rulings. 28  
11          U.S.C. Section 1291. The Parties assert that this Court's ruling declaring an  
12          absence of a duty to defend owed by Great American to Lakeland, effectively  
13          defeats Lakeland's entire action against Great American.

14          California law provides that absent a duty to defend, there can be no  
15          breach of contract. *Construction Protective Services, Inc. v. TIG Specialty Ins.*  
16          *Co.*, 29 Cal.4th 189, 198-199 (2002) and that coverage under the policy is a  
17          necessary element of a cause of action for breach of the covenant of good  
18          faith and fair dealing. *Waller v. Truck Insurance Exchange, Inc.*, 11 Cal.4th 1,  
19          36 (1995). When this Court adjudicated the declaratory relief cause of action in  
20          favor of Great American, it essentially adjudicated all but the Section 17200  
21          claims in Great American's favor. The Section 17200 claims have now been  
22          dismissed with prejudice. Accordingly, the court hereby enters partial  
23          judgment in favor of Great American only on the fifth, sixth and seventh  
24          causes of action for breach of contract, breach of the implied covenant of good  
25          faith and fair dealing, and declaratory relief pursuant to Fed. R. Civ. Proc. Rule  
26          54(b).

27          ///

28          ///

1           **IV. PARTIAL JUDGMENT IS APPROPRIATE UNDER RULE 54(B)**

2           Generally an order following a motion for partial summary judgment is not final  
3 and ordinarily not appealable. Fed. R. Civ. Proc. Rule 54(b). Under limited  
4 circumstances, a party can request that a district court certify the order on partial  
5 summary judgment for interlocutory appeal. 28 U.S.C. Section 1292(b). However,  
6 such motions are rarely granted and require a showing of "exceptional  
7 circumstances."

8           A party that loses a motion for partial summary judgment cannot voluntarily  
9 dismiss its remaining claims without prejudice in order to render the order  
10 appealable. Such a dismissal is viewed as an attempt to "manufacture finality" and  
11 thus "manipulate" appellate jurisdiction. *Adonican v. City of Los Angeles*, 297 F.3d  
12 1106, 1107 (9th Cir. 2002). The Court is satisfied that Lakeland and Great American  
13 have not attempted to manufacture finality or manipulate appellate jurisdiction, but  
14 instead seek to follow the proper procedure for finally resolving the causes of action  
15 asserted by Lakeland against Great American in order to pursue appellate review.

16           In multi-party or multi-claim cases, the district court will enter final judgment  
17 against some but not all parties only if it determines under Rule 54(b) "that there is no  
18 just reason for delay" and then expressly directs entry of judgment on that basis. Fed.  
19 R. Civ. Proc. Rule 54(b); *Noel v. Hall*, 568 F.3d 743, 747 (9th Cir. 2009). Partial  
20 judgments are proper under Rule 54(b) where there are distinct and severable claims  
21 and immediate review of the portion ruled upon will not result in later duplicative  
22 proceedings in the trial or appellate court. *Wood v. GCC Bend, LLC*, 422 F.3d 873,  
23 878-879 (9th Cir. 2005). A Rule 54(b) judgment is also appropriate where the  
24 remaining claim was related entirely to a different transaction. *Stauffer Chem. Co. v.*  
25 *Keysor-Century Corp.*, 541 F.Supp. 234 (D DE 1982). It is appropriate to enter  
26 partial judgment under Rule 54(b) as to the fifth, sixth and seventh causes of action  
27 for breach of contract, breach of the implied covenant of good faith and fair dealing,  
28 and declaratory relief against Lakeland and in favor of Great American since these

1 claims are unrelated both factually and legally from the claims asserted against  
2 Travelers.

3 Lakeland could have brought separate actions against Travelers and  
4 Great America, had it so desired and not joined them together in this action.  
5 Lakeland's claims asserted against Great American relate to a different  
6 insurance policy and involve different policy provisions from those involved in  
7 the claims against Travelers. The resolution of insurance coverage issues  
8 regarding Great American has no impact on the resolution of the issues  
9 regarding Travelers. As such, those causes of action are ripe for a partial  
10 judgment under Rule 54(b). Furthermore, there is "no just reason for delay"  
11 since resolution of Great American's duty to defend Lakeland is determinative  
12 of the entire action as regards Great American.

13 On September 9, 2010, this Court granted Travelers' Motion for  
14 Certification of the Court's July 22, 2010 Order regarding Travelers' duty to  
15 defend, and stayed these proceedings pending the Ninth Circuit's review of  
16 Travelers' Motion for Certification and/or the Ninth Circuit's decision on  
17 Travelers' appeal. As such, there is "no just reason for delay" of resolution of  
18 the issues regarding Great American's duty to defend and partial judgment is  
19 appropriate under Rule 54(b).

## 20 **V. CONCLUSION**

21 For the foregoing reasons and to avoid unnecessary litigation expenses,  
22 Lakeland's and Great American's joint request is granted and this Court  
23 provides the following relief:

- 24 1. The Court's July 22, 2010 Order is clarified as set forth above;
- 25 2. Summary judgment in favor of Great American is granted as to  
26 Lakeland's fifth, sixth and seventh causes of action for breach of contract,  
27 breach of the implied covenant of good faith and fair dealing, and declaratory  
28 relief;



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