

1 Ronald F. Remmel (#87628) rremmel@newtonremmel.com
 Lenell Topol McCallum (#84024) lmccallum@newtonremmel.com
 2 NEWTON REMMEL
 A Professional Corporation
 3 1451 Grant Road, P.O. Box 1059
 Mountain View, CA 94042
 4 Telephone: (650) 903-0500
 Facsimile: (650) 967-5800
 5
 Attorneys for Defendant
 6 FEDERAL INSURANCE COMPANY

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 8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 OAKLAND DIVISION

12 SECOND WALNUT CREEK MUTUAL,) Case No.: CV08-2874 CW
)
 13 Plaintiff,) **ORDER GRANTING DEFENDANTS’**
) **MOTION TO DISMISS FOR FAILURE**
 14 vs.) **TO STATE A CLAIM UPON WHICH**
) **RELIEF CAN BE GRANTED (RULE**
 15 TRAVELERS PROPERTY CASUALTY) **12(b)(6)**
 COMPANY OF AMERICA, FEDERAL)
 16 INSURANCE COMPANY and DOES 1) Hearing Date: November 6, 2008
 through 20, inclusive,) Time: 2:00 p.m.
 17) Courtroom: 2
 Defendants.)
 18)

19 The Court has considered the motion of Defendants Travelers Property Casualty
 20 Company of America and Federal Insurance Company to dismiss the complaint of plaintiff
 21 Second Walnut Creek Mutual, pursuant to Federal Rule of Civil Procedure 12(b)(6), along with
 22 the stipulation executed by plaintiff and defendants granting the motion to dismiss.
 23

24 Upon having considered the written arguments of defendants and the stipulation of all
 25 parties granting the motion to dismiss, and good cause appearing, the Court rules and orders as
 26 follows:

- 27 1. Defendants’ motion to dismiss plaintiff’s Complaint for Breach of Contract,
 28 Breach of Implied Covenant Of Good Faith And Fair Dealing, Declaratory

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Relief And Punitive Damages, with prejudice, is granted on the grounds that the complaint fails to state a claim upon which relief can be granted. Defendants' denial of the costs incurred by plaintiff to repair the underground portion of the plumbing system was proper because those costs are excluded under the involved insurance policy, which is attached to the Complaint, and there has been no breach of contract as a matter of law. Furthermore, since the denial of coverage was proper, the facts do not support a claim for breach of the covenant of good faith and fair dealing or punitive damages as a matter of law.

DATED: 12/5/08 _____



CLAUDIA WILKEN
JUDGE OF THE UNITED STATES DISTRICT
COURT