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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

FRANKLIN EWC, INC. and
KATHY FRANKLIN,

Plaintiffs,

v.

THE HARTFORD FINANCIAL SERVICES
GROUP, INC., SENTINEL INSURANCE
COMPANY, LTD., and Does 1 through 10,
inclusive,

Defendants.

Case No.: 3:20-cv-04434-JSC

**THE HARTFORD FINANCIAL
SERVICES GROUP, INC.’S NOTICE OF
MOTION AND MOTION TO DISMISS
PLAINTIFFS’ AMENDED COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

[Fed. R. Civ. P. 12(b)(1), 12(b)(2), 12(b)(6)]

Date: December 10, 2020
Time: 9:00 a.m.
Courtroom: E
Judge: Hon. Jacqueline Scott Corley

NOTICE OF MOTION AND MOTION TO DISMISS

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 10, 2020 at 9:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Jacqueline Scott Corley of the United States District Court for the Northern District of California located at San Francisco, Courtroom E, 15th Floor, Defendant The Hartford Financial Services Group, Inc. (“HFSG”) will, and hereby does, move the Court, pursuant to Rules 12(b)(1), 12(b)(2), and 12(b)(6) of the Federal Rules of Civil Procedure, for an order that dismisses all claims asserted against HFSG by Franklin EWC, Inc. and Kathy Franklin (“Plaintiffs”): 1) breach of contract; 2) breach of covenant of good faith and fair dealing; 3) bad faith denial of insurance claim; 4) unfair business practices; 5) fraudulent misrepresentation; 6) constructive fraud; and 7) declaratory relief.

Pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(2), and 12(b)(6), HFSG moves to dismiss Plaintiffs’ Amended Complaint for lack of Article III standing, lack of personal jurisdiction, and failure to state a claim upon which relief may be granted. The grounds for this motion are set forth in the accompanying memorandum of points and authorities in support.

This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities set forth below; HFSG’s Request for Judicial Notice and Exhibits thereto; any reply HFSG may make; the pleadings and records in this action; and any other such matters, evidence, and arguments as may be presented at or prior to the hearing.

DATED: October 27, 2020

Respectfully submitted,

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1 **STATEMENT OF THE ISSUES TO BE DECIDED**

- 2 1. Do Plaintiffs have Article III standing to sue The Hartford Financial Services
3 Group, Inc. (“HFSG”) where they have no injury fairly traceable to its conduct?
4 2. Does the Court have personal jurisdiction over HFSG where HFSG is not “at
5 home” in California and does not have case-specific ties to the State of California?
6 3. Have Plaintiffs set out a plausible claim against HFSG where HFSG has no
7 contractual relationship to Plaintiffs, where Plaintiffs have not alleged facts that would permit the
8 Court to disregard the corporate separateness of HFSG and Sentinel, and Plaintiffs have not
9 identified any wrongful conduct specific to HFSG?

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. INTRODUCTION**

12 Plaintiffs’ Amended Complaint (“FAC”) does nothing to cure the defects that led to the
13 dismissal of their original Complaint.¹ Of course, no amendment could turn HFSG into
14 something it is not – a party to the insurance policy issued to Franklin EWC. HFSG is a holding
15 company that owns Sentinel, but it is not an insurer and had no involvement in the matters
16 alleged in the FAC. Sentinel alone insured Franklin EWC, and only Sentinel could have
17 breached the agreement (which, of course, it denies).

18 HFSG respectfully requests that this Court dismiss Plaintiffs’ FAC pursuant to Fed. R.
19 Civ. P. 12(b)(1), 12(b)(2), and 12(b)(6).² First, Plaintiffs lack Article III standing to sue HFSG
20 with respect to this dispute. As HFSG did not issue the policy or fail to meet contractual
21 obligations, Franklin EWC has no injury fairly traceable to it. *See Franklin EWC, Inc. v.*
22 *Hartford Fin. Servs. Grp., Inc.*, No. 20-CV-04434 JSC, 2020 WL 5642483, at *4-5 (N.D. Cal.
23 Sept. 22, 2020); *see also Founder Institute Inc. v. Hartford Fire Ins. Co.*, No. 3:20-cv-04466-
24 VC, No. 2020 WL 6268539, at *1 (N.D. Cal. Oct. 22, 2020). Second, the Court does not have
25

26 _____
27 ¹ Kathy Franklin (“Ms. Franklin”), the owner of Franklin EWC, has also joined this action as a
28 plaintiff, but is not an insured under the Sentinel Policy.

² In the event that this motion is not fully dispositive of the FAC as to HFSG, HFSG joins in the
12(b)(6) filed on today’s date by Sentinel Insurance Company, Ltd.

1 personal jurisdiction over HFSG. HFSG is not “at home” in California so as to permit the
2 exercise of general jurisdiction, nor does it have any connection to California with respect to this
3 contractual dispute. Third, HFSG has no contractual obligations under the insurance contract.
4 HFSG cannot breach obligations it does not have. Plaintiffs have not, and cannot articulate a
5 basis for liability against HFSG. Accordingly, Plaintiffs cannot state a claim against HFSG and
6 the claims against HFSG should be dismissed in their entirety with prejudice.

7 II. STATEMENT OF RELEVANT FACTS

8 On or about June 8, 2019, Sentinel Insurance Company, Ltd. (“Sentinel”) issued to
9 Franklin EWC a “Spectrum” Business Owner’s Policy No. 21 SBA RS4714 (the “Policy”) for
10 the policy term from June 8, 2019 to June 8, 2020. *See* FAC ¶ 3; ECF Doc. No. 11-1 (Policy).
11 Franklin EWC seeks to recover from HFSG and Sentinel under the Policy for alleged losses
12 caused by the COVID-19 pandemic. The FAC alleges, on information and belief, that the
13 Spectrum Business Owner’s Policy and the Limited Virus Coverage endorsement (Form SS 40
14 93 07 05) “are unique and proprietary to Hartford and its subsidiaries including, but not limited
15 to, Sentinel” and are “standard insurance products sold by the Defendants in every state in the
16 nation, appearing not just in the Policy but in countless other policies sold by the Insurance
17 Defendants in California[.]” FAC ¶ 77. Plaintiffs allege that they are informed and believe that
18 HFSG, or “Hartford,” wrote and approved the relevant portions of the Policy. *See id.* However,
19 Sentinel was the only entity that issued this Policy. The very first page of the Policy makes clear
20 that the “Writing Company” is “Sentinel Insurance Company Ltd.” and the declarations page
21 likewise lists the insurer as “Sentinel Insurance Company Ltd.” *See* Doc. No. 11-1 at 2 & 13
22 (Form SS 00 02 12 06, at 1). The Policy nowhere even mentions HFSG.

23 The FAC asserts seven causes of action against HFSG: 1) breach of contract; 2) breach
24 of covenant of good faith and fair dealing; 3) bad faith denial of insurance claim; 4) unfair
25 business practices; 5) fraudulent misrepresentation; 6) constructive fraud; and 7) declaratory
26 relief.

1 As did the original Complaint, the FAC lumps Sentinel and HFSG together under the
2 common moniker “the Insurance Defendants,” (*see* Preamble) but also acknowledges that HFSG
3 and Sentinel are separate entities. Namely, the FAC alleges that HFSG is “a Delaware
4 corporation with its principal place of business in Connecticut,” and that “[a]t all relevant times,
5 Hartford has been and is transacting the business of insurance in the state of California and in
6 Fresno County, and the basis of this suit arises out of said conduct.” FAC ¶ 23. The FAC makes
7 nearly identical allegations as to Sentinel. *Id.* ¶¶ 23-24. Plaintiffs allege that the “Insurance
8 Defendants” were in an agency or joint venture relationship with each other. *Id.* ¶ 25. The FAC
9 further seeks to impose liability on HFSG by alleging alter ego, aiding, abetting, agency and
10 conspiracy by all “Defendants.” *Id.* ¶¶ 28-30. The three paragraphs devoted to collective
11 liability recite legal conclusions, not evidentiary facts.

12 The FAC does not contain a single allegation of specific conduct by HFSG with respect
13 to Plaintiffs. Plaintiffs contend that “[o]n April 8, 2020, Insurance Defendants issued written
14 correspondence to Plaintiffs stating that it was denying the claim (‘Declination Letter’),” and
15 they did so “without having conducted any inspection or review of the Insured Premises.” FAC
16 ¶ 63; Doc. No. 11-2 (April 8, 2020 Letter to Kathy Franklin). Plaintiffs allege on information
17 and belief that “the Declination Letter is a form letter, written or approved by Hartford, that
18 Insurance Defendants have used to issue to blanket denials to their policyholders[.]” FAC ¶ 63.
19 To be clear, the letter advised Ms. Franklin that “The Hartford” was closing its file because it
20 had not been able to reach her by phone, and advised her that it would reopen its file if she
21 contacted it within 15 days. *See* Doc. No. 11-2. The letter disclosed that Sentinel Insurance
22 Company was the “Writing Company.” *See id.*

23 Plaintiffs apparently believe HFSG is the “Hartford” that issued the written
24 correspondence “denying” the claim. The Complaint does not allege the existence of any
25 specific corporate entity known as “Hartford” or “The Hartford.” Rather, it appears that Plaintiff
26 has sued HFSG because it has “Hartford” in its name.

1 “The Hartford” is not a legal entity, but a brand name used by multiple, distinct entities,
 2 including Sentinel. HFSG’s Form 10-K explains that the term “The Hartford” is a name that
 3 generally refers to it and its subsidiaries:

4 The Hartford Financial Services Group, Inc. (together with its subsidiaries, ‘The
 5 Hartford’, the ‘Company’, ‘we’, or ‘our’) is a holding company for a group of
 6 subsidiaries that provide property and casualty (‘P&C’) insurance.... As a holding
 7 company, The Hartford Financial Services Group, Inc. is separate and distinct from its
 8 subsidiaries and has no significant business operations of its own.

9 Doc. No. 11-4, at 7. This fact is readily confirmed by a search for “The Hartford” on the US
 10 Patent and Trademark Office’s (“USPTO”) online database of registered trademarks, which
 11 reveals many dozens of live and dead trademarks for “The Hartford.” *See* Request for Judicial
 12 Notice in Support of HFSG’s Motion to Dismiss (“RJN”), Exhibit (“Ex.”) 1, at pp. 1-10. In
 13 addition, as HFSG disclosed in its Form 10-K, it is a publicly traded holding company, and is a
 14 parent company to various writing companies that issue insurance policies. *See* Doc. No. 11-4,
 15 at 7. HFSG “has no significant business operations of its own.” *Id.*

16 Although the FAC alleges that HFSG is an insurer, authorized to do business in
 17 California, neither allegation is correct. The California Department of Insurance website lists the
 18 identities of HFSG’s direct or indirect subsidiaries that do business in California, but it does not
 19 list HFSG itself.³ *See* RJN Ex. 2. Nor is HFSG listed on the Secretary of State’s website as
 20 authorized to do business in the State. *See* RJN Ex. 3.

21 **III. LEGAL STANDARDS**

22 **A. Lack of Subject Matter Jurisdiction**

23 Before the Court addresses the merits of this case, it must first be assured that it has
 24 subject matter jurisdiction over this dispute. *See Steel Co. v. Citizens for a Better Environment*,
 25 523 U.S. 83, 94-95 (1998). Plaintiffs bear the burden to plead facts showing “(1) it has suffered
 26 an ‘injury in fact’ that is (a) concrete and particularized and (b) actual or imminent, not

27 ³ Cal. Dep’t. of Ins.,
 28 [https://interactive.web.insurance.ca.gov/companyprofile/companyprofile?event=companyProfile
 &doFunction=getGroupList&naicGroupNumber=0091](https://interactive.web.insurance.ca.gov/companyprofile/companyprofile?event=companyProfile&doFunction=getGroupList&naicGroupNumber=0091) <last visited Oct. 17, 2020>.

1 conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the
2 defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed
3 by a favorable decision.” *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004) (quoting
4 *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167 (2000)). “A suit
5 brought by a plaintiff without Article III standing is not a ‘case or controversy,’ and an Article III
6 federal court therefore lacks subject matter jurisdiction over the suit,” and “the suit [must be]
7 dismissed under Rule 12(b)(1).” *Id.* (internal citations omitted).

8 **B. Lack of Personal Jurisdiction**

9 In order to establish personal jurisdiction over HFSG, Plaintiffs bear the burden of
10 demonstrating that jurisdiction is appropriate. *See Harris Rutsky & Co. Ins. Servs., Inc. v. Bell &*
11 *Clements Ltd.*, 328 F.3d 1122, 1128-29 (9th Cir. 2003). Plaintiffs’ obligation is to make a prima
12 facie showing that the requirements of California’s long-arm statute and due process are met.
13 *See Ochoa v. J.B. Martin & Sons Farms, Inc.*, 287 F.3d 1182, 1187 (9th Cir. 2002); *see also*
14 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800-01 (9th Cir. 2004) (“Because
15 California’s long-arm jurisdictional statute is coextensive with federal due process requirements,
16 the jurisdictional analyses under state law and federal due process are the same.”). “For a court
17 to exercise personal jurisdiction over a nonresident defendant, that defendant must have at least
18 ‘minimum contacts’ with the relevant forum such that the exercise of jurisdiction ‘does not
19 offend traditional notions of fair play and substantial justice.’” *Schwarzenegger*, 374 F.3d at 801
20 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). To meet their burden,
21 Plaintiffs must base their claim on their pleadings or affidavits that support jurisdiction over
22 HFSG. *See Caruth v. Int’l Psychoanalytical Ass’n*, 59 F.3d 126, 127-28 (9th Cir. 1995) (Courts
23 “only inquire into whether [plaintiff’s] pleadings and affidavits make a prima facie showing of
24 personal jurisdiction.”).

25 In deciding a 12(b)(1) or 12(b)(2) motion, courts may consider evidence. *See Savage v.*
26 *Glendale Union High Sch., Dist. No. 205, Maricopa Cty.*, 343 F.3d 1036, 1039 n.2 (9th Cir.
27 2003) (finding proper the district court’s consideration of affidavits and public documents
28

1 furnished by both parties in evaluating the 12(b)(1) motion to dismiss); *Stewart v. Screen Gems-*
2 *EMI Music, Inc.*, 81 F. Supp. 3d 938, 951 (N.D. Cal. 2015) (in deciding a 12(b)(2) motion, “a
3 court may consider extrinsic evidence—that is, materials outside of the pleadings”).

4 **C. Failure to State a Claim Upon Which Relief Can Be Granted**

5 The Court may dismiss Plaintiffs’ claims for “failure to state a claim upon which relief
6 can be granted.” Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide “a short and
7 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P.
8 8(a)(2); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require
9 detailed factual allegations, it demands more than “labels and conclusions” or a “formulaic
10 recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).
11 “Factual allegations must be enough to raise a right to relief above the speculative level.”
12 *Twombly*, 550 U.S. at 555. However, in alleging fraud, “a party must state with particularity the
13 circumstances constituting fraud[.]” Fed. R. Civ. P. 9(b). *See, e.g., Kearns v. Ford Motor Co.*,
14 567 F.3d 1120, 1125 (9th Cir. 2009). To survive a motion to dismiss, Plaintiffs’ FAC must
15 contain sufficient factual matter to “state a claim to relief that is plausible on its face.” *Iqbal*,
16 556 U.S. at 678 (internal citations omitted).

17 A court may properly consider documents attached to a motion to dismiss without
18 converting the motion into one for summary judgment, as long as there are no disputed issues as
19 to the document’s relevance and its authenticity is not challenged. *See Coto Settlement v.*
20 *Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010). The Court may therefore consider the Policy
21 because the FAC “necessarily relies upon” the Policy and the contents of the Policy are alleged
22 in the FAC. *Id.* The FAC also relies on the correspondence dated April 8, 2020, which bears the
23 tradename “The Hartford.” The Court may therefore consider both documents. It may also
24 consider matters of public record and whose authenticity the parties do not dispute, such as
25 HFSG’s Form 10-K, webpages from the California Department of Insurance website and the
26 California Secretary of State website, and the USPTO trademark results containing “The
27 Hartford.” *See, e.g., Stewart*, 81 F. Supp. 3d at 951 (“[A] court may take judicial notice of
28

1 matters of public record” for a 12(b)(6) motion.) (citing *Coto Settlement*, 593 F.3d at 1038); *Mk*
 2 *Mgmt. v. Hartford Casualty Ins. Co.*, No. SA CV 19-01567-DOC (ADSx), 2019 WL 9464304, at
 3 *1, *3 (C.D. Cal. Sept. 20, 2019) (taking judicial notice of HFSG’s Form 10-K in considering
 4 defendant’s 12(b)(6) motion).

5 IV. ARGUMENT

6 A. Plaintiffs’ Undifferentiated Allegations About “Defendants” Violate Standards 7 of Notice Pleading

8 As a preliminary matter, Plaintiffs improperly lump HFSG and Sentinel under common
 9 monikers such as “Insurance Defendants.” Throughout the FAC, Plaintiffs claim that they
 10 believe they had a contractual relationship with HFSG based on a reference to “Hartford” or
 11 “The Hartford” in their correspondence with Defendants and in the Policy, and a belief that
 12 HFSG, or “Hartford,” “wrote and approved the relevant portions of the Policy.” *See* FAC ¶¶ 3,
 13 14, 62, 63, 77. But Plaintiffs’ allegations cannot make HFSG a party to a policy it did not issue.
 14 Even if HFSG had written certain portions of the Policy—and there is no factual allegation in the
 15 FAC that it did—does not make it liable under the Policy any more than the author of a legal
 16 form book would be party to a contract based on one of its forms. As the FAC recognizes,
 17 Sentinel and HFSG are, in fact, distinct corporate entities. *See id.* ¶¶ 23-24. HFSG is not a party
 18 to the Policy, and the FAC does not contain a single allegation of specific conduct by HFSG with
 19 respect to Plaintiffs.

20 Plaintiffs’ imprecise pleading violates the requirements of Fed. R. Civ. P. 8(a) and 9(b).
 21 *See Swartz v. KPMG LLP*, 476 F.3d 756, 764-65 (9th Cir. 2007) (For fraud-based claims, the
 22 heightened pleading standard “does not allow a complaint to merely lump multiple defendants
 23 together but require[s] plaintiffs to differentiate their allegations when suing more than one
 24 defendant . . . and inform each defendant separately of the allegations surrounding his alleged
 25 participation in the fraud.”) (internal citation and quotations omitted); *Adobe Sys. Inc. v. Blue*
 26 *Source Grp., Inc.*, 125 F. Supp. 3d 945, 964 (N.D. Cal. 2015) (quoting *Gen-Probe, Inc. v. Amoco*
 27 *Corp. Inc.*, 926 F. Supp. 948, 961 (S.D. Cal. 1996)) (“[A] complaint which ‘lump[s] together . . .
 28

1 multiple defendants in one broad allegation fails to satisfy [the] notice requirement of Rule
2 8(a)(2).”); *see also Gauvin v. Trombatore*, 682 F. Supp. 1067, 1071 (N.D. Cal. 1988) (failure to
3 state a claim where “all defendants [were] lumped together in a single, broad allegation” because
4 allegations failed to “put defendants on sufficient notice of the allegations against them”).

5 HFSG and other Hartford entities have regularly been dismissed where parties assert
6 undifferentiated allegations against them. *See, e.g., Mid-Valley Oral, Maxillofacial & Implant*
7 *Surgery, P.C. v. Sentinel Ins. Co., Ltd*, No. 6:18-CV-01068-JR, 2018 WL 4658708, at *2 (D. Or.
8 Aug. 27, 2018), *report and recommendation adopted sub nom.* No. 6:18-CV-01068-MK, 2018
9 WL 4658830 (D. Or. Sept. 27, 2018) (finding no substantive allegations where “the complaint
10 confirms that the underlying contract was issued exclusively by Sentinel, and contains no
11 specific allegations as to either Hartford Fire or Hartford Financial”); *Gauthier v. Twin City Fire*
12 *Ins. Co.*, No. 2:14-CV-00693, 2015 WL 12030498, at *3 (W.D. Wash. July 15, 2015)
13 (dismissing claims against HFSG where Plaintiffs’ conflation of Twin City and HFSG makes “it
14 impossible for the Court to determine what allegations are being made against one, the other, or
15 both Defendants”).

16 **B. Plaintiffs Fail to Allege Vicarious or Joint Liability**

17 Plaintiffs’ allegations of legal conclusions about agency, alter ego, conspiracy,
18 aiding/abetting, and other theories of collective liability fail to state a claim against HFSG. *See*
19 *FAC* ¶¶ 28-30. These allegations are mere recitations of legal doctrines, and do not identify a
20 single evidentiary fact to demonstrate the plausibility of these conclusory assertions. *See*
21 *Sandoval v. Ali*, 34 F. Supp. 3d 1031, 1040 (N.D. Cal. 2014) (“Conclusory allegations of ‘alter
22 ego’ status are insufficient to state a claim. Rather, a plaintiff must allege specifically both of the
23 elements of alter ego liability, as well as facts supporting each.”) (internal citation omitted);
24 *Hockey v. Medhekar*, 30 F. Supp. 2d 1209, 1211 n.1 (N.D. Cal. 1998) (finding insufficient to
25 state a basis for liability a statement in the pleading that the companies were alter egos and
26 agents); *see also Holly v. Alta Newport Hosp.*, 2020 WL 1853308, at *3 (C.D. Cal. Apr. 10,
27 2020) (“To allege claims based on agency or alter ego liability, [p]laintiff must plead specific
28

1 facts, rather than mere conclusory allegations.”) (internal quotations and citation omitted). It
2 thus follows that Plaintiffs cannot hold HFSG liable under any of their causes of action through
3 the doctrines of aiding and abetting and conspiracy. *See PQ Labs, Inc. v. Yang Qi*, No. C 12-
4 0450 CW, 2012 WL 2061527, at *8-9 (N.D. Cal. June 7, 2012) (dismissing claims of civil
5 conspiracy and aiding and abetting for failure to plead beyond conclusory allegations).

6 Indeed, allegations of “aiding and abetting” and “co-conspirators” in the FAC remain
7 unchanged from its initial Complaint against HFSG, which the Court has already determined to
8 constitute “conclusory, boilerplate allegations” that failed to “demonstrate [Plaintiffs] have
9 suffered any injury that is fairly traceable to HFSG[.]” *Franklin EWC*, 2020 WL 5642483, at *5.
10 The Policy identifies Sentinel as the insurer and party to the Policy, not HFSG. *See* Doc. No. 11-
11 1 at 2 & 13 (Form SS 00 02 12 06, at 1). Thus, HFSG’s purported liability cannot rest on these
12 theories.

13 **C. Plaintiffs Lack Article III Standing To Sue HFSG**

14 Lacking contractual privity with HFSG, Plaintiffs lack Article III standing to sue it as
15 there is no injury that is fairly traceable to the challenged action of HFSG.

16 In *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332 (2006), the Supreme Court observed
17 that its “standing cases confirm that a plaintiff must demonstrate standing for each claim he
18 seeks to press.” *Id.* at 352. “The standing inquiry requires careful judicial examination of a
19 complaint’s allegations to ascertain whether the particular plaintiff is entitled to an adjudication
20 of the particular claims asserted.” *Allen v. Wright*, 468 U.S. 737, 752 (1984) (emphasis added).

21 The Supreme Court has held that Article III standing has three separate requirements.
22 *See Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016), *as revised* (May 24, 2016). The
23 “irreducible constitutional minimum” of standing consists of three elements: “[t]he plaintiff must
24 have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the
25 defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Id.* (internal
26 citations omitted); *see also Warth v. Seldin*, 422 U.S. 490, 498-99 (1975) (The “minimum
27 constitutional mandate” is that a “federal court’s jurisdiction therefore can be invoked only when
28

1 the plaintiff himself has suffered some threatened or actual injury resulting from the putatively
2 illegal action.”) (internal citations omitted).

3 Courts applying California law have long observed that a plaintiff cannot pursue contract-
4 based claims in federal court against entities with which it has no contractual relationship. *See*
5 *Franklin EWC*, 2020 WL 5642483, at *5 (“Absent any contractual relationship, . . . or any
6 specific allegations of any injuries fairly traceable to HFSG beyond those arising from the
7 Policy, Plaintiffs have not met their burden of showing they have Article III standing to sue
8 HFSG.”); *accord Founder Institute Inc.*, 2020 WL 6268539, at *1 (granting Hartford Fire
9 Insurance Co.’s motion to dismiss for lack of standing because it was “clear from the allegations
10 in the complaint and the judicially noticeable materials that HFIC is not a party to the contract
11 and has no obligations under the contract”); *Easter v. Am. W. Fin.*, 381 F.3d 948, 962 (9th Cir.
12 2004) (finding no standing for borrowers in class action for claims against defendants who never
13 issued a loan to a named plaintiff); *Societe D’equipments Internationaux Nigeria, Ltd. v.*
14 *Dolarian Capital, Inc.*, No. 1:15-cv-01553-GEB-SKO, 2016 WL 128464, at *5 (E.D. Cal. Jan.
15 12, 2016) (recommending dismissal of counterclaim warranted under Rule 12(b)(1) because non-
16 party to contract could not sue to enforce its terms); *Vogel v. Travelers Cas. Ins. Co. of Am.*, No.
17 SACV 17-00612 AG (JDEx), 2017 WL 5642302, at *3 (C.D. Cal. May 18, 2017) (analyzing
18 under Rule 12(b)(1), the court found claims in the complaint were tied to the policy in which a
19 plaintiff’s name was “nowhere to be found,” thus dismissing plaintiff for lack of standing);
20 *Energy 2001 v. Pac. Ins. Co. Ltd.*, No. 2:10-CV-0415-JAM-KJN, 2011 WL 837124, at *2 (E.D.
21 Cal. Mar. 8, 2011) (finding dismissal under Rule 12(b)(1) appropriate where a person or entity
22 that is not a party to the contract tries to enforce it or to recover extra-contractual damages for
23 wrongful withholding of benefits).

24 Here, Plaintiffs cannot demonstrate that they have any injury fairly traceable to the
25 conduct of HFSG. None of Plaintiffs’ allegations in the FAC refute the reality that Plaintiffs
26 have no contract with HFSG. HFSG did not issue the Policy or any insurance policy to
27 Plaintiffs, and did not involve itself with the insurance claims described in the FAC. *See* Doc.
28

1 No. 11-1 at 2, 13; Doc. No. 11-2 (showing the Writing Company as Sentinel). Nor do Plaintiffs
 2 allege any facts demonstrating specific harm attributable to HFSG under a theory of joint or
 3 vicarious liability. *See supra* Section IV.B. Sentinel alone issued the Policy, and only Sentinel
 4 could deny coverage.⁴

5 Thus, the FAC should be dismissed in its entirety as to HFSG under Rule 12(b)(1). *See*
 6 *Franklin EWC, Inc.*, 2020 WL 5642483, at *5 (dismissing Plaintiffs claims against HFSG on the
 7 additional ground for lack of standing because Plaintiffs “failed to show that HFSG is a party to
 8 the Policy”; “[a]bsent any contractual relationship . . . or any specific allegations of any injuries
 9 fairly traceable to HFSG beyond those arising from the Policy, Plaintiffs have not met their
 10 burden of showing they have Article III standing to sue HFSG.”).

11 **D. The Court Lacks Personal Jurisdiction Over HFSG**

12 The Court should also dismiss the claims against HFSG because it lacks personal
 13 jurisdiction over it.

14 First, HFSG is not subject to general personal jurisdiction in California. A corporation is
 15 subject to general personal jurisdiction where its “affiliations with the State are so ‘continuous
 16 and systematic’ as to render [it] essentially at home in the forum State.” *Daimler AG v. Bauman*,
 17 571 U.S. 117, 138-39 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564
 18 U.S. 915, 919 (2011)). The “paradigm” fora for general jurisdiction is a corporation’s place of
 19 incorporation and principal place of business. *See Daimler AG*, 571 U.S. at 137. Only in an
 20 “exceptional case” will general jurisdiction be available anywhere else. *See id.* at 139 n.19.

21
 22 ⁴ To the extent that Plaintiffs rely on *Images by Karen Marie v. Hartford Fin. Servs. Grp., Inc.*,
 23 No. CIV S 12-3005 KJM KJN, 2013 WL 1832772 (E.D. Cal. May 1, 2013) and *Martin v. Twin*
 24 *City Fire Ins. Co.*, No. 08-5651RJB, 2009 WL 902072 (W.D. Wash. Mar. 31, 2009), their
 25 reliance is misplaced. *Images by Karen Marie* did not consider subject matter or personal
 26 jurisdiction, and did not have before it the same judicially noticeable evidentiary materials
 27 presented here. *See Images by Karen Marie*, 2013 WL 1832772, at *2-3 (“This court cannot
 28 resolve the relationship, if any, between the parties by the documents [i.e., the policy] subject to
 judicial notice”). In *Martin*, the court determined, with little reasoning, that it was satisfied with
 plaintiff’s response that she had “sufficiently alleged the corporate structure and business inter-
 relationship of the named defendants.” *Martin*, 2009 WL 902072, at *2. It too did not have the
 same materials, subject to judicial notice, that HFSG has presented here.

1 Plaintiffs cannot satisfy this standard with respect to HFSG. Plaintiffs must show that
2 HFSG’s general business contacts with the forum are sufficiently continuous and systematic as
3 to “approximate physical presence” in the forum state. *See Schwarzenegger*, 374 F.3d at 801.
4 This inquiry “calls for an appraisal of a corporation’s activities in their entirety; [a] corporation
5 that operates in many places can scarcely be deemed at home in all of them.” *BNSF Ry. Co. v.*
6 *Tyrrell*, 137 S. Ct. 1549, 1559 (2017) (internal quotations omitted). As the FAC asserts, HFSG
7 is a Delaware corporation with a principal place of business in Hartford, Connecticut. *See* FAC ¶
8 23. It does not allege that HFSG is incorporated in California or that its principal place of
9 business is in California. Absent in the Complaint are factual allegations that show HFSG has
10 continuous and systematic general business contacts with California that render it having a
11 physical presence in California. Indeed, Plaintiffs would not be able to make this showing
12 because HFSG has no significant business operations in California, or at all. *See* Doc. No. 11-4
13 at 7; RJN Exs. 2-3 (HFSG is not listed as an insurer on the California Department of Insurance
14 website or registered with the California Secretary of State.). Therefore, HFSG is not “at home”
15 in California for purposes of general personal jurisdiction.

16 Neither is Plaintiffs’ case an exceptional one that allows for general jurisdiction. The
17 kind of “exceptional case” the Supreme Court has held up as an exemplar of when a
18 corporation’s contacts are sufficiently continuous and systematic to render it “at home” in the
19 forum was where “war had forced the defendant corporation’s owner to temporarily relocate the
20 enterprise from the Philippines to [the forum].” *BNSF Ry. Co.*, 137 S. Ct. at 1558. Here,
21 Plaintiffs’ allegations as to HFSG – that it is “authorized to do business,” “is doing business,”
22 and “is transacting the business of insurance” in California and in Fresno County – do not rise to
23 the level of creating general jurisdiction. *See* FAC ¶ 23.

24 Second, HFSG is also not subject to specific personal jurisdiction in California based on
25 the claims advanced in this action. For “a state court to exercise specific jurisdiction, ‘the suit’
26 must ‘aris[e] out of or relat[e] to the defendant’s contacts with the forum.’” *Bristol-Myers*
27 *Squibb Co. v. Superior Court of California, San Francisco Cty.*, 137 S. Ct. 1773, 1780 (2017)
28

1 (quoting *Daimler AG*, 571 U.S. at 127) (emphasis omitted). In order “[f]or a State to exercise
2 jurisdiction consistent with due process, the defendant’s suit-related conduct must create a
3 substantial connection with the forum State.” *Walden v. Fiore*, 571 U.S. 277, 283-84 (2014).
4 “[T]he relationship [between the suit-related conduct and the forum] must arise out of contacts
5 that the ‘defendant [it]self’ creates with the forum State.” *Id.* at 284 (quoting *Burger King Corp.*
6 *v. Rudzewicz*, 471 U.S. 462, 475 (1985)) (emphasis in original). “[T]he plaintiff cannot be the
7 only link between the defendant and the forum.” *Id.* at 285.

8 The Ninth Circuit has adopted a three-prong test for specific jurisdiction that requires the
9 plaintiff to show: (1) the non-resident defendant purposefully directed its activities at the
10 forum’s residents or purposefully availed itself of the privilege of conducting business in the
11 forum thereby invoking the benefits and protections of its laws; (2) plaintiff’s claim arises out of
12 or relates to the defendant’s forum-related activities; and (3) the exercise of jurisdiction must be
13 reasonable, that is, it must comport with fair play and substantial justice. *See Schwarzenegger*,
14 374 F.3d at 802 (internal citation omitted). “The plaintiff bears the burden of satisfying the first
15 two prongs of the test.” *Id.*

16 Here, Plaintiffs cannot satisfy the first two prongs of the test because they have not
17 alleged that they had *any* contractual dealings or other contracts with HFSG giving rise to their
18 claims, much less contacts occurring in California. Plaintiffs’ claims arise from the fact that
19 Sentinel—and Sentinel alone—issued a policy and declined coverage. *See Picot v. Weston*, 780
20 F.3d 1206, 1212 (9th Cir. 2015) (Finding that even a “contract alone does not automatically
21 establish minimum contacts in the plaintiff’s home forum Rather, there must be ‘actions by
22 a defendant *himself* that create a “substantial connection” with the forum State.’”) (internal
23 citations omitted and emphasis in original).

24 HFSG does not dispute that its subsidiary, Sentinel, issued an insurance policy to
25 Plaintiffs to insure property in California. But those actions by Sentinel do not suffice to
26 exercise personal jurisdiction over HFSG. *See United States v. Bestfoods*, 524 U.S. 51, 61
27 (1998) (parent corporations are not liable for the acts of its subsidiaries); *Williams v. Yamaha*
28

1 *Motor Co. Ltd.*, 851 F.3d 1015, 1023-1025 (9th Cir. 2017) (holding that appellants failed to show
2 specific jurisdiction over the parent corporation because the only connection appellants identified
3 between the parent corporation and California was via its wholly-owned subsidiary; appellants
4 neither alleged nor otherwise showed that the parent had the right to control the subsidiary’s
5 activities in any matter at all).

6 In sum, Plaintiffs have not alleged that HFSG has any connection to this dispute.
7 Plaintiffs, therefore, have failed to satisfy their threshold obligation to allege a prima facie basis
8 for personal jurisdiction over HFSG. The claims against HFSG must be dismissed with
9 prejudice under Rule 12(b)(2).

10 **E. The Absence Of A Contract Between HFSG And Plaintiffs Is Fatal To The**
11 **Claims Against HFSG**

12 Even if Plaintiffs could avoid dismissal under Fed. R. Civ. P. 12(b)(1) and 12(b)(2), they
13 cannot avoid dismissal for failure to state a claim under Fed. R. Civ. P. 12(b)(6).

14 **1. Plaintiffs’ First, Second, Third, and Seventh Causes of Action Fail**
15 **Against HFSG**

16 The first (breach of contract), second (breach of covenant of good faith and fair dealing),
17 third (bad faith denial of insurance claim), and seventh (declaratory relief) causes of action are
18 all premised on the contractual relationship at issue – the Policy Sentinel issued to Franklin
19 EWC.

20 HFSG cannot be held liable for breaching a contract to which it is not a party. California
21 courts routinely refuse to impose liability on non-parties to an insurance contract for alleged
22 breaches of the contract and other policy-based claims. *See Wright v. Allstate Ins. Co. of Cal.*,
23 No. 15-CV-01020-SI, 2015 WL 1548949, at *2 (N.D. Cal. Apr. 7, 2015) (“Based on the face of
24 the insurance policy at issue, it is clear that Allstate of California was not a party to the contract.
25 The Court therefore finds that defendant was not a consenting party to the insurance contract and
26 cannot be held liable for breach of contract and breach of implied covenant of good faith and fair
27 dealing under the general rule.”); *Carolina Cas. Ins. Co. v. Lanahan & Reilley, LLP*, No. C 10-
28 04108, 2011 WL 3741004, at *3 (N.D. Cal. Aug. 25, 2011) (“Under California law, it is well

1 settled that a non-party or non-signatory to a contract cannot be held liable for a breach of that
2 agreement.”); *Monaco v. Liberty Life Assur. Co.*, No. C06-07021 MJJ, 2007 WL 420139, at *4
3 (N.D. Cal. Feb. 6, 2007) (“Here, in applying the general rule, the Complaint reveals that Liberty
4 Mutual is not liable for breach of contract because it is not a party to the insurance contract
5 Additionally, when a plaintiff seeks damages for commission of a tort that flows from an alleged
6 breach of contract, the defendant does not have a duty to the plaintiff unless the defendant was a
7 party to the contract.); *Salido v. Allstate Ins. Co.*, No. C 98-04616 CRB, 1999 WL 977944, at *1-
8 2 (N.D. Cal. Oct. 21, 1999) (finding that “the policy unambiguously provide[d] that Allstate
9 Indemnity—rather than Allstate Insurance—insured plaintiff’s vehicle,” and thus it was
10 undisputed that Allstate Insurance was not a party to the insurance contract at issue there and
11 could not be liable for bad faith breach of the policy or conspiracy to breach the contract in bad
12 faith); *see also United Computer Sys, Inc. v. AT&T Corp.*, 298 F.3d 756, 761-762 (9th Cir. 2002)
13 (“Under California law, ‘only a signatory to a contract may be liable for any breach.’”) (quoting
14 *Clemens v. Am. Warranty Corp.*, 193 Cal. App. 3d 444, 452 (Cal. Ct. App. 1987); *Minn. Mut.*
15 *Life Ins. Co. v. Ensley*, 174 F.3d 977, 981 (9th Cir. 1999) (“Under California law, an insurance
16 agent cannot be held liable for breach of contract or breach of the implied covenant of good faith
17 and fair dealing because he is not a party to the insurance contract.”) (emphasis added and
18 internal citation omitted).

19 Plaintiffs appear to have conflated HFSG and “The Hartford” because they both contain
20 the word “Hartford.” What the FAC is conspicuously missing, however, is any allegation that
21 “Hartford” or “The Hartford” is the same entity as HFSG, as opposed to simply being a trade
22 name. Moreover, as shown above, Sentinel is authorized to use The Hartford trade name. Thus,
23 even if “The Hartford” appeared on every single page of the Policy, it would remain indisputably
24 clear that only one entity agreed to be bound by that contract: Sentinel.

25 Courts have routinely dismissed claims against HFSG, or other affiliated subsidiaries,
26 where, as here, they have no contractual relationship to the insured. *See, e.g., Founder Institute*
27 *Inc.*, 2020 WL 6268539, at *1 (dismissing with prejudice defendant Hartford Fire Insurance Co.
28

1 because it was not a party to the contract and had no obligations under it); *LV Diagnostics, LLC*
2 *v. Hartford Fin. Servs. Grp., Inc.*, No. 2:17-CV-1371 JCM (PAL), 2018 WL 651327, at *2 (D.
3 Nev. Jan. 31, 2018) (“Further, as defendant is not plaintiff’s insurer and is not in privity with
4 plaintiff, dismissal of plaintiff’s claims against defendant is appropriate.”); *Chaichian v. Hartford*
5 *Fin. Servs. Grp., Inc.*, No. 1:16-CV-01026, 2016 WL 4480038, at *2 (W.D. Ark. Aug. 3, 2016),
6 *report and recommendation adopted*, No. 16-CV-1026, 2016 WL 4467910 (W.D. Ark. Aug. 23,
7 2016) (“Upon review of the contract in this matter, Plaintiff has not demonstrated a contractual
8 relationship exists between her and Defendant[] Hartford Financial Services Group, Inc. . . .
9 Without a contractual relationship, Plaintiff cannot demonstrate she is entitled to breach of
10 contract damages or bad faith damages.”); *NBL Flooring, Inc. v. Trumbull Ins. Co.*, No. CIV.A.
11 10-4398, 2014 WL 317880, at *3 (E.D. Pa. Jan. 28, 2014) (dismissing claims against HFSG
12 where relevant policies were issued by subsidiary Trumbull Insurance Company); *see also Engel*
13 *v. Hartford Ins. Co. of the Midwest*, No. 2:11-CV-01103-RCJ-PAL, 2012 WL 275200, at *2 (D.
14 Nev. Jan. 31, 2012) (HFSG’s alleged status as parent company of insurer not sufficient basis to
15 state a claim against it); *Winkler v. Hartford Fin. Servs. Grp., Inc.*, No. 2:10-cv-02222-RLH-
16 LRL, 2011 WL 1705559, at *2 (D. Nev. May 3, 2011) (dismissing claims against HFSG because
17 it was not the insurer).

18 Further, because HFSG is not a party to the Policy, and has no obligations under it, there
19 is, therefore, nothing “to declare,” and Plaintiffs lack statutory standing to seek such relief. *See*
20 *Lloyd v. Sjoblom*, No. C-14-0234 JSC, 2014 WL 1573061, at *2 (N.D. Cal. Apr. 17, 2014)
21 (“Section 1060 confers standing on ‘[a]ny person interested under a written instrument . . . or
22 under a contract’ to bring an action for declaratory relief ‘in cases of actual controversy relating
23 to the legal rights and duties of the respective parties.’”) (quoting Cal. Civ. Proc. Code § 1060);
24 *Rosenfeld v. JPMorgan Chase Bank, N.A.*, 732 F. Supp. 2d 952, 975 (N.D. Cal. 2010) (noting
25 that declaratory relief is not a cause of action but rather a remedy). Because Plaintiffs have
26 failed to state a claim against HFSG for breach of contract, they also cannot assert a freestanding
27 declaratory judgment claim against HFSG.

28

1 **2. Plaintiffs' Fourth Cause of Action (UCL) Fails Against HFSG**

2 Plaintiffs' fourth cause of action under California's Unfair Competition Law ("UCL"),
3 Cal. Bus. & Prof. Code § 17200 *et seq.*, likewise fails because it targets the exact same conduct
4 as Plaintiffs' contract-based claims, and discloses no facts to support liability against HFSG.
5 Namely, Plaintiffs' UCL claim rests on allegations of "unlawful or unfair acts and practices" by
6 "Defendants," but assumes that HFSG was a party to the contract. FAC ¶¶ 109-117. HFSG is
7 not a party to the Policy, and, therefore, does not have any executory obligations under it. Only
8 Sentinel does.

9 Plaintiffs further cannot establish a UCL claim because the UCL does not permit a claim
10 for damages, only restitution and injunctive relief. *See Korea Supply Co. v. Lockheed Martin*
11 *Corp.*, 29 Cal. 4th 1134, 1144 & 1152 (Cal. 2003) (holding that under the UCL, plaintiffs'
12 recovery is limited to injunctive relief and restitution, and not nonrestitutionary disgorgement of
13 profits in an individual action under the UCL). A plaintiff may only recover money that
14 belonged to it, and which the defendant obtained by means of unfair competition. *See id.* at
15 1144; *see also Sybersounds Records, Inc. v. UAV Corp.*, 517 F.3d 1137, 1152-53 (9th Cir. 2008)
16 (affirming the dismissal of plaintiff's UCL claim, based in part on contracts and
17 misrepresentations to which plaintiff was not a party, for failure to plead a UCL claim against
18 corporation defendants, and noting that allowing plaintiff to bring suit "to essentially vindicate
19 the rights of the copyright holders and the Customers [who are not all parties to the lawsuit]
20 would pose significant problems in administering the equitable remedy provided under the
21 UCL").

22 Here, Sentinel was the insurer, and Plaintiff has not alleged that it made any payment
23 specifically to HFSG. Moreover, in paragraph 116 of the FAC, Plaintiffs allege that they "have
24 suffered and continue to suffer damages" and contend that they are "entitled to and seek
25 restitution of all the monies paid to Defendants for retaining benefits that were due and owing to
26 Plaintiffs (with interest thereon), disgorgement of all Defendants' profits arising out of their
27 unlawful conduct (with interest thereon), and payment of all benefits due to Plaintiffs under the
28

1 Policy that Defendants wrongfully retained by means of its unlawful business practices.” FAC ¶
 2 116. In other words, Plaintiffs want the Court to order HFSG to pay what they believe they are
 3 owed as *damages* in their claim for breach of contract. HFSG has nothing to “restore.” It cannot
 4 be enjoined to pay money that did not belong to Plaintiffs, which it did not obtain by unfair
 5 competition, and which is the same money Plaintiffs seek in damages.

6 **3. Plaintiffs’ Fifth and Sixth Causes of Action Fail Against HFSG**

7 Plaintiffs fifth (fraudulent misrepresentation) and sixth (constructive fraud) causes of
 8 action for fraudulent misrepresentation and constructive fraud, respectively, also fail to set out
 9 plausible claims against HFSG under the heightened pleading standard for fraud-based claims.
 10 *See Kearns*, 567 F.3d at 1126 (“[A] claim for misrepresentation in a cause of action for fraud, it
 11 (as any other fraud claim claim) must be pleaded with particularity under Rule 9(b)"); *Sonoma*
 12 *Foods, Inc. v. Sonoma Cheese Factory, LLC*, 634 F. Supp. 2d 1009, 1021 (N.D. Cal. 2007)
 13 (“facts supporting a claim for constructive fraud must be alleged with particularity under Rule
 14 9(b)).

15 Plaintiffs’ fraudulent misrepresentation and constructive fraud claims are based on the
 16 premise that HFSG was involved in some way—and it is still unclear how or in what way—with
 17 the Policy issued to Franklin EWC. But the FAC mentions nothing specific as to HFSG, what it
 18 did that might qualify as fraudulent misrepresentation, omission, or concealment, or how it
 19 committed constructive fraud. Plaintiffs’ allegations come nowhere near to meeting the pleading
 20 standard set forth at Fed. R. Civ. P. 9(b).

21 **V. LEAVE TO AMEND SHOULD NOT BE GRANTED BECAUSE** 22 **AMENDMENT WOULD BE FUTILE**

23 Plaintiffs should not be granted leave to amend because amendment would be futile, as
 24 clearly demonstrated by this FAC. “A district court does not err in denying leave to amend
 25 where the amendment would be futile.” *Gardner v. Martino*, 563 F.3d 981, 990 (9th Cir. 2009)
 26 (citing *Thinket Ink Info. Res., Inc. v. Sun Microsystems, Inc.*, 368 F.3d 1053, 1061 (9th Cir.
 27 2004)). “When a proposed amendment would be futile, there is no need to prolong the litigation
 28

1 by permitting further amendment.” *Id.* (citing *Chaset v. Fleer/Skybox Int’l, LP*, 300 F.3d 1083,
2 1088 (9th Cir. 2002) (affirming denial of leave to amend where plaintiffs “cannot cure a basic
3 flaw in their pleading”)); *Gompper v. VISX, Inc.*, 298 F.3d 893, 898 (9th Cir. 2002) (finding no
4 error in district court’s dismissal with prejudice because leave to amend would “have been a
5 futile exercise”).

6 Here, Plaintiffs had an opportunity to cure the deficiencies of their initial Complaint
7 against HFSG. They did not. Plaintiffs can never cure the fundamental flaw in their pleading—
8 HFSG’s lack of privity to the Policy.

9 **VI. CONCLUSION**

10 For all of the foregoing reasons and others appearing on the record, the FAC should be
11 dismissed in its entirety as to HFSG with prejudice.

12 DATED: October 27, 2020

Respectfully submitted,

13
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