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

16 FRANKLIN EWC, INC. and
 17 KATHY FRANKLIN,

18 Plaintiffs,

19 v.

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

24 Defendants.

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

**THE HARTFORD FINANCIAL
 SERVICES GROUP, INC.’S MOTION TO
 DISMISS PLAINTIFFS’ COMPLAINT**

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

Date: September 3, 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 September 3, 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; 7) unjust enrichment; 8) declaratory relief; and 9) injunctive relief.

Pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(2), and 12(b)(6), HFSG moves to dismiss Plaintiffs’ 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 and the accompanying Exhibits A and B, the Declaration of Megan Janeiro in Support of HFSG’s Motion to Dismiss Plaintiffs’ Complaint Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(2), 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.

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1 DATED: July 20, 2020

Respectfully submitted,

2
3 /s/ Anthony J. Anscombe
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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 Franklin EWC, Inc. (“Franklin EWC”) and Kathy Franklin¹ (collectively, “Plaintiffs”)
13 seek to recover from Franklin EWC’s insurer, Sentinel Insurance Company, Ltd. (“Sentinel”),
14 for economic harms allegedly caused to them by the COVID-19 pandemic and resulting
15 government closure orders. Plaintiffs have also sued The Hartford Financial Services Group,
16 Inc. (“HFSG”), the holding company that owns Sentinel, but which did not issue insurance
17 policies to Franklin EWC or anyone else.

18 HFSG respectfully requests that this Court dismiss Plaintiffs’ Complaint pursuant to Fed.
19 R. Civ. P. 12(b)(1), 12(b)(2), and 12(b)(6).² The claims against HFSG fail for the fundamental
20 reason that it is not a party to the insurance contract at issue. First, Plaintiffs lack Article III
21 standing to sue HFSG with respect to this dispute as it has no injury fairly traceable to it.
22 Second, the Court does not have personal jurisdiction over HFSG. HFSG is not “at home” in
23 California so as to permit the exercise of general jurisdiction, nor does it have any connection to
24 California with respect to this contractual dispute. Third, HFSG has no contractual obligations

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 Complaint as to HFSG, HFSG joins
in the 12(b)(6) filed on today’s date by Sentinel Insurance Company, Ltd.

1 under the insurance contract because it is not a party to the contract. HFSG cannot breach
2 obligations it does not have. Plaintiff has not, and cannot articulate a basis for liability as to
3 HFSG.

4 Accordingly, Plaintiffs cannot state a claim against HFSG and the claims against HFSG
5 should be dismissed in their entirety.

6 II. STATEMENT OF RELEVANT FACTS

7 On or about June 8, 2019, Sentinel Insurance Company, Ltd. (“Sentinel”) issued to
8 Franklin EWC a “Spectrum” Business Owner’s Policy No. 21 SBA RS4714 (the “Policy”) for
9 the policy term from June 8, 2019 to June 8, 2020. *See* Compl. ¶¶ 3, 56; Exhibit (“Ex.”) A
10 (Policy). Franklin EWC seeks to recover from HFSG and Sentinel under the Policy for alleged
11 losses caused by the COVID-19 pandemic. However, Sentinel was the only entity that issued
12 this policy. The very first page of the Policy makes clear that the “Writing Company” is
13 “Sentinel Insurance Company Ltd.” and the declarations page likewise lists the insurer as
14 “Sentinel Insurance Company Ltd.” *See* Ex. A at 1 & Form SS 00 02 12 06, at 1. The Policy
15 nowhere even mentions HFSG.

16 Plaintiffs allege that on March 19, 2020, the waxing salon located in Fresno, California
17 (“EWC Fresno”) owned by Franklin EWC, “was forced to close its doors to the public because
18 of a series of orders issued by the State of California (“Closure Orders”),” which have allegedly
19 “prohibited customers from accessing EWC Fresno’s premises due to the Coronavirus Disease
20 2019 (‘COVID-19’) pandemic.” *Id.* ¶¶ 1-2 (emphasis removed). Plaintiffs contend that they
21 have “suffered substantial financial losses and had to let go approximately 30 workers” as a
22 result of the closure orders *Id.* ¶ 1.

23 The Complaint asserts nine causes of action against HFSG: 1) breach of contract; 2)
24 breach of covenant of good faith and fair dealing; 3) bad faith denial of insurance claim; 4)
25 unfair business practices; 5) fraudulent misrepresentation; 6) constructive fraud; 7) unjust
26 enrichment; 8) declaratory relief; and 9) injunctive relief.

27 In the preamble to their Complaint, Plaintiffs lump Sentinel and HFSG together under the
28 common moniker “the Insurance Defendants.” The Complaint alleges that HFSG is “a Delaware

1 corporation with its principal place of business in Connecticut,” and that “[a]t all relevant times,
2 Hartford has been and is transacting the business of insurance in the state of California and in
3 Fresno County, and the basis of this suit arises out of said conduct.” Compl. ¶ 22. The
4 Complaint makes nearly identical allegations as to Sentinel, thus recognizing that HFSG and
5 Sentinel are distinct corporate entities. *Id.* ¶¶ 22-23. Plaintiffs allege that the “insurer
6 defendants” were in an agency and/or joint venture relationship with each other. *Id.* at ¶ 24. The
7 Complaint further seeks to impose liability on HFSG by alleging alter ego, aiding, abetting,
8 agency and conspiracy by all “Defendants.” *See* Compl. ¶¶ 27-29. The three paragraphs
9 devoted to collective liability recite legal conclusions, not evidentiary facts.

10 The Complaint does not contain a single allegation of specific conduct by HFSG with
11 respect to Plaintiffs. Plaintiffs contend that “[o]n April 8, 2020, Hartford [HFSG] issued written
12 correspondence to Plaintiffs stating that it was denying the claim, and they did so without having
13 conducted any inspection or review of the Insured Premises.” Compl. ¶ 57; Ex. B (April 8, 2020
14 Letter to Kathy Franklin). In reality, the letter advised Ms. Franklin that “The Hartford” was
15 closing its file because it had not been able to reach her by phone, and advised her that it would
16 reopen its file if she contacted it within 15 days. *See* Ex. B. The letter disclosed that Sentinel
17 Insurance Company was the “Writing Company.” *See id.* Plaintiffs apparently believe HFSG is
18 the “Hartford” that issued the written correspondence “denying” the claim. The Complaint does
19 not allege the existence of any specific corporate entity known as “Hartford” or “The Hartford.”
20 Rather, it appears that Plaintiff has sued HFSG because it has “Hartford” in its name.

21 “The Hartford” is not a legal entity, but a brand name used by multiple, distinct entities,
22 including Sentinel. *See* Declaration of Megan Janeiro in Support of The Hartford Financial
23 Services Group, Inc.’s Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(2)
24 (“Janeiro Decl.”) ¶ 9. The individual who sent the April 8, 2020 letter to Ms. Franklin was not
25 an employee of HFSG. *See id.* ¶ 12. HFSG, instead, is a publicly traded holding company, and
26 is a parent company to various writing companies that issue insurance policies. *See id.* ¶ 3.
27 HFSG does not underwrite risks itself. *Id.* In support of HFSG’s Motion to Dismiss pursuant to
28 Rule 12(b)(1) and 12(b)(2), HFSG has submitted a declaration demonstrating the relationship, or

1 lack thereof, between HFSG and the events alleged in Plaintiffs' Complaint. *See* Janeiro Decl.
 2 and Ex. A attached thereto. In addition thereto, the Court may also see via the below link to the
 3 California Department of Insurance website the identities of direct or indirect subsidiaries that do
 4 business in California.³ HFSG is not listed as an insurer in California.

5 III. LEGAL STANDARDS

6 Before the Court addresses the merits of this case, it must first be assured that it has
 7 subject matter jurisdiction over this dispute. *See Steel Co. v. Citizens for a Better Environment*,
 8 523 U.S. 83, 94-95 (1998). Plaintiffs bear the burden to plead facts showing "(1) it has suffered
 9 an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not
 10 conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the
 11 defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed
 12 by a favorable decision." *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004) (quoting
 13 *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167 (2000)). "A suit
 14 brought by a plaintiff without Article III standing is not a 'case or controversy,' and an Article III
 15 federal court therefore lacks subject matter jurisdiction over the suit," and "the suit [must be]
 16 dismissed under Rule 12(b)(1)." *Id.* (internal citations omitted).

17 In order to establish personal jurisdiction over HFSG, Plaintiffs bear the burden of
 18 demonstrating that jurisdiction is appropriate. *See Harris Rutsky & Co. Ins. Servs., Inc. v. Bell &*
 19 *Clements Ltd.*, 328 F.3d 1122, 1128-29 (9th Cir.2003). Plaintiffs' obligation is to make a prima
 20 facie showing that the requirements of California's long-arm statute and due process are met.
 21 *See Ochoa v. J.B. Martin & Sons Farms, Inc.*, 287 F.3d 1182, 1187 (9th Cir. 2002); *see also*
 22 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800-01 (9th Cir. 2004) ("Because
 23 California's long-arm jurisdictional statute is coextensive with federal due process requirements,
 24 the jurisdictional analyses under state law and federal due process are the same."). "For a court
 25 to exercise personal jurisdiction over a nonresident defendant, that defendant must have at least
 26

27
 28 ³ Cal. Dep't. of Ins.,
[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 July 20, 2020).

1 ‘minimum contacts’ with the relevant forum such that the exercise of jurisdiction ‘does not
2 offend traditional notions of fair play and substantial justice.’” *Schwarzenegger*, 374 F.3d at 801
3 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). To meet their burden,
4 Plaintiffs must base their claim on their pleadings or affidavits that support jurisdiction over
5 HFSG. *See Caruth v. Int’l Psychoanalytical Ass’n*, 59 F.3d 126, 127-28 (9th Cir. 1995) (Courts
6 “only inquire into whether [plaintiff’s] pleadings and affidavits make a prima facie showing of
7 personal jurisdiction.”).

8 In deciding a 12(b)(1) or 12(b)(2) motion, courts may consider evidence presented in
9 affidavits and declarations. *See Savage v. Glendale Union High Sch., Dist. No. 205, Maricopa*
10 *Cty.*, 343 F.3d 1036, 1039 n.2 (9th Cir. 2003) (finding proper the district court’s consideration of
11 affidavits furnished by both parties in evaluating the 12(b)(1) motion to dismiss); *Apple Inc. v.*
12 *Allan & Assocs. Ltd.*, No. 5:19-CV-8372-EJD, 2020 WL 1492665, at *2 (N.D. Cal. Mar. 27,
13 2020) (“The Court may consider evidence presented in affidavits and declarations in determining
14 personal jurisdiction” under a 12(b)(2) motion.) (citing *Data Disc, Inc. v. Sys. Tech. Assocs.,*
15 *Inc.*, 557 F.2d 1280, 1285 (9th Cir. 1977)). Therefore, the Court may consider the evidence
16 presented in the Declaration of Megan Janeiro in Support of HFSG’s Motion to Dismiss in
17 deciding HFSG’s Motion to Dismiss under 12(b)(1) and 12(b)(2).

18 The Court may dismiss Plaintiffs’ claims for “failure to state a claim upon which relief
19 can be granted.” Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide “a short and
20 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P.
21 8(a)(2); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require
22 detailed factual allegations, it demands more than “labels and conclusions” or a “formulaic
23 recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).
24 “Factual allegations must be enough to raise a right to relief above the speculative level.”
25 *Twombly*, 550 U.S. at 555. However, in alleging fraud, “a party must state with particularity the
26 circumstances constituting fraud[.]” Fed. R. Civ. P. 9(b). *See, e.g., Kearns*, 567 F.3d 1120, 1125
27 (9th Cir. 2009). To survive a motion to dismiss, Plaintiffs’ Complaint must contain sufficient
28

1 factual matter to “state a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at 678
2 (internal citations omitted).

3 A court may properly consider documents attached to a motion to dismiss without
4 converting the motion into one for summary judgment, as long as there are no disputed issues as
5 to the document’s relevance and its authenticity is not challenged. *See Coto Settlement v.*
6 *Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010). As such, this Court can consider the Policy
7 because the Complaint “necessarily relies upon” the Policy and the contents of the Policy are
8 alleged in the Complaint. *Id.* The Complaint also relies on the correspondence dated April 8,
9 2020, which bears the tradename “The Hartford.” The Court may therefore consider both
10 documents. Finally, the Court may also consider such factual materials that are matters of public
11 record and whose authenticity the Parties do not dispute, such as the link to the California
12 Department of Insurance Website set forth in footnote 3 above.

13 IV. ARGUMENT

14 A. Plaintiffs’ Undifferentiated Allegations About “Defendants” Violate Standards 15 of Notice Pleading.

16 As a preliminary matter, Plaintiffs attempt to make identical allegations against both
17 Defendants, simultaneously, is improper. Throughout the Complaint, Plaintiffs claim that they
18 believe they had a contractual relationship with HFSG based on a reference to “Hartford” or
19 “The Hartford” in their correspondence with Defendants and in the Policy. *See* Compl. ¶¶ 3, 13,
20 56, 57. Sentinel and HFSG are, in fact, distinct corporate entities. *See id.* ¶¶ 22-23. Not only is
21 HFSG not a party to the Policy, the Complaint does not contain a single allegation of specific
22 conduct by HFSG with respect to Plaintiffs.

23 Plaintiffs’ imprecise pleading violates the requirements of Fed. R. Civ. P. 8(a) and 9(b).
24 *See Swartz v. KPMG LLP*, 476 F.3d 756, 764-65 (9th Cir. 2007) (For fraud-based claims, the
25 heightened pleading standard “does not allow a complaint to merely lump multiple defendants
26 together but require[s] plaintiffs to differentiate their allegations when suing more than one
27 defendant ... and inform each defendant separately of the allegations surrounding his alleged
28 participation in the fraud.”) (internal citation and quotations omitted); *Adobe Sys. Inc. v. Blue*

1 *Source Grp., Inc.*, 125 F. Supp. 3d 945, 964 (N.D. Cal. 2015) (quoting *Gen-Probe, Inc. v. Amoco*
2 *Corp. Inc.*, 926 F. Supp. 948, 961 (S.D. Cal. 1996)) (“[A] complaint which ‘lump[s] together ...
3 multiple defendants in one broad allegation fails to satisfy [the] notice requirement of Rule
4 8(a)(2).’”); *see also Gauvin v. Trombatore*, 682 F. Supp. 1067, 1071 (N.D. Cal. 1988) (failure to
5 state a claim where “all defendants [were] lumped together in a single, broad allegation” because
6 allegations failed to “put defendants on sufficient notice of the allegations against them”).

7 Plaintiffs may have believed that the name of its insurer was “The Hartford,” but this is
8 both irrelevant and not an allegation about HFSG. Rather, the Policy identifies one proper
9 defendant to this action: Sentinel. Thus, while the Complaint makes many allegations as to the
10 activities of “the Insurance Defendants,” the Policy itself makes clear that the only entity which
11 issued insurance, and which denied coverage, was Sentinel.

12 **B. Plaintiffs Lack Article III Standing To Sue HFSG**

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

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

20 The Supreme Court has held that Article III standing has three separate requirements.
21 *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016), *as revised* (May 24, 2016). The
22 “irreducible constitutional minimum” of standing consists of three elements: “[t]he plaintiff must
23 have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the
24 defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Id.* (internal
25 citations omitted); *see also Warth v. Seldin*, 422 U.S. 490, 498-99, 95 (1975) (The “minimum
26 constitutional mandate” is that a “federal court’s jurisdiction therefore can be invoked only when
27 the plaintiff himself has suffered some threatened or actual injury resulting from the putatively
28 illegal action.”) (internal citations omitted).

1 Here, Plaintiffs cannot demonstrate that they have any injury fairly traceable to the
2 conduct of HFSG; Plaintiffs have no contract with HFSG and have not alleged any other harm
3 attributable to HFSG. HFSG did not issue the Policy or any insurance policy to Plaintiffs, and
4 did not send the letter dated April 8, 2020. *See* Janeiro Decl., ¶¶ 6-7. HFSG was not involved in
5 any manner with the insurance claims described in Plaintiffs' Complaint, including, but not
6 limited to, their investigation, handling, or denial. *Id.* ¶ 8.

7 Courts applying California law have long observed that a plaintiff cannot pursue contract
8 based claims in Federal Court against entities with which it has no contractual relationship.
9 *Easter v. Am. W. Fin.*, 381 F.3d 948, 962 (9th Cir. 2004) (finding no standing for borrowers in
10 class action for claims against defendants who never issued a loan to a named plaintiff); *Societe*
11 *D'equipments Internationaux Nigeria, Ltd. v. Dolarian Capital, Inc.*, No. 1:15-cv-01553-GEB-
12 SKO, 2016 WL 128464, at *5 (E.D. Cal. Jan. 12, 2016) (recommending dismissal of
13 counterclaim warranted under Rule 12(b)(1) because non-party to contract could not sue to
14 enforce its terms); *Vogel v. Travelers Casualty Ins. Co. of Am.*, 2017 WL 5642302 (C.D. Cal.
15 May 18, 2017) (analyzing under Rule 12(b)(1), the court found claims in the complaint were tied
16 to the policy in which a plaintiff's name was "nowhere to be found," thus dismissing plaintiff for
17 lack of standing); *Energy 2001 v. Pac. Ins. Co. Ltd.*, No. 2:10-CV-0415-JAM-KJN, 2011 WL
18 837124, at *2 (E.D. Cal. Mar. 8, 2011) (finding dismissal under Rule 12(b)(1) appropriate where
19 a person or entity that is not a party to the contract tries to enforce it or to recover extra-
20 contractual damages for wrongful withholding of benefits).

21 Plaintiffs have no contractual relationship with HFSG. HFSG has no contractual liability
22 to Plaintiffs, and all potential bases for liability arise from a contract to which it was not a party.
23 The Complaint thus demonstrates no injury fairly traceable to HFSG's conduct. Sentinel alone
24 issued the Policy, and only Sentinel could deny coverage. Therefore, Plaintiffs' Complaint
25 should be dismissed in its entirety as to HFSG under Rule 12(b)(1).
26
27
28

1 **C. There Is No Personal Jurisdiction Over HFSG**

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

4 First, HFSG is not subject to general personal jurisdiction in California. A corporation is
5 subject to general personal jurisdiction where its “affiliations with the State are so ‘continuous
6 and systematic’ as to render [it] essentially at home in the forum State.” *Daimler AG v. Bauman*,
7 571 U.S. 117, 138-39 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564
8 U.S. 915, 919 (2011)). The “paradigm” fora for general jurisdiction is a corporation’s place of
9 incorporation and principal place of business. *See Daimler AG*, 571 U.S. at 137. Only in an
10 “exceptional case” will general jurisdiction be available anywhere else. *See id.* at 139 n.19.

11 Plaintiffs cannot satisfy this standard with respect to HFSG. Plaintiffs must show that
12 HFSG’s general business contacts with the forum are sufficiently continuous and systematic as
13 to “approximate physical presence” in the forum state. *See Schwarzenegge.*, 374 F.3d at 801.
14 This inquiry “calls for an appraisal of a corporation’s activities in their entirety; [a] corporation
15 that operates in many places can scarcely be deemed at home in all of them.” *BNSF Ry. Co. v.*
16 *Tyrrell*, 137 S. Ct. 1549, 1559 (2017). As the Complaint asserts, HFSG is a Delaware
17 corporation with a principal place of business in Hartford, Connecticut. *See* Compl. ¶ 22; *see*
18 *also* Janeiro Decl. ¶ 3 (“HFSG is a publicly traded holding company incorporated in Delaware
19 with its principal place of business at One Hartford Plaza, Hartford, CT 06155.”). The
20 Complaint does not allege that HFSG is incorporated in California or that its principal place of
21 business is in California. Absent in the Complaint are factual allegations that show HFSG has
22 continuous and systematic general business contacts with California that render it having a
23 physical presence in California. Indeed, Plaintiffs would not be able to make this showing
24 because HFSG has no significant business operations in California, or at all. *See* Janeiro Decl.
25 ¶¶ 10-11, Ex. A. HFSG is not an insurance company, does not sell, write, or issue insurance
26 policies or collect premiums, and does not adjust insurance claims or oversee the adjustment of
27 insurance claims. *See id.* ¶¶ 4-5.

28

1 Therefore, HFSG is not “at home” in California for purposes of general personal
2 jurisdiction.

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

12 Second, HFSG is also not subject to specific personal jurisdiction in California based on
13 the claims advanced in this action. For “a state court to exercise specific jurisdiction, ‘the suit’
14 must ‘aris[e] out of or relat[e] to the defendant’s contacts with the forum.’” *Bristol-Myers*
15 *Squibb Co. v. Superior Court of California, San Francisco Cty.*, 137 S. Ct. 1773, 1780 (2017)
16 (quoting *Daimler AG*, 571 U.S. at 127) (emphasis omitted). In order “[f]or a State to exercise
17 jurisdiction consistent with due process, the defendant’s suit-related conduct must create a
18 substantial connection with the forum State.” *Walden v. Fiore*, 571 U.S. 277, 283-84 (2014).
19 “[T]he relationship [between the suit-related conduct and the forum] must arise out of contacts
20 that the ‘defendant [it]self’ creates with the forum State.” *Id.* at 284 (quoting *Burger King Corp.*
21 *v. Rudzewicz*, 471 U.S. 462, 475 (1985)) (emphasis in original). “[T]he plaintiff cannot be the
22 only link between the defendant and the forum.” *Id.* at 285.

23 The Ninth Circuit has adopted a three-prong test for specific jurisdiction that requires the
24 plaintiff to show: (1) the non-resident defendant purposefully directed its activities at the
25 forum’s residents or purposefully availed itself of the privilege of conducting business in the
26 forum thereby invoking the benefits and protections of its laws; (2) plaintiff’s claim arises out of
27 or relates to the defendant’s forum-related activities; and (3) the exercise of jurisdiction must be
28 reasonable, that is, it must comport with fair play and substantial justice. *See Schwarzenegger*,

1 374 F.3d at 802 (internal citation omitted). “The plaintiff bears the burden of satisfying the first
2 two prongs of the test.” *Id.*

3 Here, Plaintiffs cannot satisfy the first two prongs of the test because Plaintiffs have not
4 alleged that they had *any* contractual dealings or other contracts with HFSG giving rise to their
5 claims, much less contacts occurring in California. Nor could they because HFSG did not issue
6 the Policy or any other insurance policy to Plaintiffs. *See* Janeiro Decl. ¶¶ 6-7. HFSG also did
7 not send the April 8, 2020 letter and was not involved in any way with the insurance claims
8 described in Plaintiffs’ Complaint, including, but not limited to, their investigation, handling, or
9 denial. *Id.* ¶¶ 6, 8, 12. Plaintiffs’ claims arise from the fact that Sentinel—and Sentinel alone—
10 issued a policy and declined coverage. *See Picot v. Weston*, 780 F.3d 1206 (9th Cir. 2015)
11 (finding that even a “contract alone does not automatically establish minimum contacts in the
12 plaintiff’s home forum.... Rather, there must be ‘actions by a defendant *himself* that create a
13 “substantial connection” with the forum State.”) (internal citations omitted and emphasis in
14 original).

15 HFSG does not dispute that its subsidiary, Sentinel, issued an insurance policy to Plaintiffs
16 to insure property in California. But those actions by Sentinel do not suffice to exercise personal
17 jurisdiction over HFSG. *See United States v. Bestfoods*, 524 U.S. 51, 61 (1998) (parent
18 corporations are not liable for the acts of its subsidiaries); *Williams v. Yamaha Motor Co. Ltd.*,
19 851 F.3d 1015, 1023-1025 (9th Cir. 2017) (holding that appellants failed to show specific
20 jurisdiction over the parent corporation because the only connection appellants identified
21 between the parent corporation and California was via its wholly-owned subsidiary; appellants
22 neither alleged nor otherwise showed that the parent had the right to control the subsidiary’s
23 activities in any matter at all).

24 In sum, Plaintiffs have not alleged that HFSG has any connection to this dispute.
25 Plaintiffs, therefore, have failed to satisfy their threshold obligation to allege a prima facie basis
26 for personal jurisdiction over HFSG. The claims against HFSG must be dismissed with
27 prejudice under Rule 12(b)(2).
28

1 **D. The Absence Of A Contract Between HFSG And Plaintiffs Is Fatal To The**
 2 **Claims Against HFSG**

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

5 **1. Plaintiffs’ Undifferentiated Allegations as to “the Insurance Defendants”**
 6 **Mandate Dismissal of HFSG**

7 Plaintiffs’ undifferentiated allegations as to “the Insurance Defendants” fail to comply
 8 with Fed. R. Civ. P. 8(a) and Fed. R. Civ. P. 9(b) and require dismissal of this action as to HFSG.
 9 HFSG is regularly dismissed where parties assert undifferentiated allegations against it. *See,*
 10 *e.g., Mid-Valley Oral, Maxillofacial & Implant Surgery, P.C. v. Sentinel Ins. Co., Ltd*, No. 6:18-
 11 CV-01068-JR, 2018 WL 4658708, at *2 (D. Or. Aug. 27, 2018), *report and recommendation*
 12 *adopted sub nom.* No. 6:18-CV-01068-MK, 2018 WL 4658830 (D. Or. Sept. 27, 2018) (finding
 13 no substantive allegations as to HFSG where “the complaint confirms that the underlying
 14 contract was issued exclusively by Sentinel, and contains no specific allegations as to either
 15 Hartford Fire or Hartford Financial”); *Gauthier v. Twin City Fire Ins. Co.*, No. 2:14-CV-00693,
 16 2015 WL 12030498, at *3 (W.D. Wash. July 15, 2015) (dismissing claims against HFSG where
 17 Plaintiffs’ conflation of Twin City and HFSG makes “it impossible for the Court to determine
 18 what allegations are being made against one, the other, or both Defendants”).

19 **2. Plaintiffs Have Not Alleged Facts To Support Vicarious or Joint Liability**

20 Plaintiffs’ allegations of legal conclusions about agency, alter ego, conspiracy,
 21 aiding/abetting, and other theories of collective liability fail to state a claim against HFSG. *See*
 22 *Compl.* ¶¶ 27-29.

23 These allegations are mere recitations of legal doctrines, and do not identify a single
 24 evidentiary fact to demonstrate the plausibility of these conclusory assertions. *See Sandoval v.*
 25 *Ali*, 34 F. Supp. 3d 1031, 1040 (N.D. Cal. 2014) (“Conclusory allegations of ‘alter ego’ status are
 26 insufficient to state a claim. Rather, a plaintiff must allege specifically both of the elements of
 27 alter ego liability, as well as facts supporting each.”) (internal citation omitted); *Hockey v.*
 28 *Medhekar*, 30 F. Supp. 2d 1209, 1211 n.1 (N.D. Cal. 1998) (finding insufficient to state a basis

1 for liability a statement in the pleading that the companies were alter egos and agents); *see also*
 2 *Holly v. Alta Newport Hosp.*, 2020 WL 1853308, at *3 (C.D. Cal. Apr. 10, 2020) (“To allege
 3 claims based on agency or alter ego liability, [p]laintiff must plead specific facts, rather than
 4 mere conclusory allegations.”) (internal quotations and citation omitted). It thus follows that
 5 Plaintiffs cannot hold HFSG liable under any of their causes of action through the doctrines of
 6 aiding and abetting and conspiracy. *See PQ Labs, Inc. v. Yang Qi*, No. C 12-0450 CW, 2012
 7 WL 2061527, at *8-9 (N.D. Cal. June 7, 2012) (dismissing claims of civil conspiracy and aiding
 8 and abetting for failure to plead beyond conclusory allegations).

9 The Policy identifies Sentinel as the insurer and party to the Policy, not HFSG. *See Ex.*
 10 *A at 1 & Form SS 00 02 12 06*, at 1.

11 **3. Each of Plaintiffs’ Causes of Action Fails to State a Claim Against HFSG**

12 **a. Plaintiffs’ First,⁴ Second,⁵ and Third⁶ Causes of Action Fail Against** 13 **HFSG.**

14 HFSG cannot be held liable for breaching a contract to which it is not a party. California
 15 courts have rejected imposing liability for alleged breaches and/or other claims arising out of
 16 insurance policies on those who are not parties to the policy in question. *See Wright v. Allstate*
 17 *Ins. Co. of Cal.*, No. 15-CV-01020-SI, 2015 WL 1548949, at *2 (N.D. Cal. Apr. 7, 2015)
 18 (“Based on the face of the insurance policy at issue, it is clear that Allstate of California was not
 19

20 ⁴ In their first cause of action for breach of contract, Plaintiffs allege that “Insurance Defendants
 21 had *contractual duties* to provide Plaintiffs with insurance coverage under the applicable Policy
 22 coverages,” and that “[i]n denying Plaintiffs’ insurance claim, and otherwise refusing to perform
 under the Policy, Insurance Defendants *breached* those duties.” Compl. ¶¶ 62-63 (emphasis
 added).

23 ⁵ In their second cause of action for breach of the covenant of good faith and fair dealing,
 24 Plaintiffs allege that “[w]hen Insurance Defendants *issued* the Policy, they *undertook* and *were*
 25 *bound* to the covenants implied by law that they would deal fairly and in good faith with
 Plaintiffs,” and that they are informed and believe that “Insurance Defendants *breached* the
 26 implied covenant of good faith and fair dealing arising out of the Policy by, unreasonably and in
 bad faith, denying Plaintiffs insurance coverage to which they are entitled *under the Policy*.”
 27 Compl. ¶¶ 66-67 (emphasis added).

28 ⁶ In their third cause of action for “bad faith denial of insurance claim,” Plaintiffs allege that
 “Defendants *denied Plaintiffs’ [insurance] claim in bad faith*” and otherwise failed or refused to
 perform their obligations under the insurance policy contract. *See id.* ¶¶ 72-74 (emphasis added).

1 a party to the contract. The Court therefore finds that defendant was not a consenting party to
2 the insurance contract and cannot be held liable for breach of contract and breach of implied
3 covenant of good faith and fair dealing under the general rule.”); *Carolina Cas. Ins. Co. v.*
4 *Lanahan & Reilley, LLP*, No. C 10-04108, 2011 WL 3741004, at *3 (N.D. Cal. Aug. 25, 2011)
5 (“Under California law, it is well settled that a non-party or non-signatory to a contract cannot be
6 held liable for a breach of that agreement.”); *Monaco v. Liberty Life Assur. Co.*, No. C06-07021
7 MJJ, 2007 WL 420139, at *4 (N.D. Cal. Feb. 6, 2007) (“Here, in applying the general rule, the
8 Complaint reveals that Liberty Mutual is not liable for breach of contract because it is not a party
9 to the insurance contract.... Additionally, when a plaintiff seeks damages for commission of a
10 tort that flows from an alleged breach of contract, the defendant does not have a duty to the
11 plaintiff unless the defendant was a party to the contract.); *Salido v. Allstate Ins. Co.*, No. C 98-
12 04616 CRB, 1999 WL 977944, at *1-2 (N.D. Cal. Oct. 21, 1999) (finding that “the policy
13 unambiguously provide[d] that Allstate Indemnity—rather than Allstate Insurance—insured
14 plaintiff’s vehicle,” and thus it was undisputed that Allstate Insurance was not a party to the
15 insurance contract at issue there and could not be liable for bad faith breach of the policy or
16 conspiracy to breach the contract in bad faith); *see also United Computer Sys, Inc. v. AT&T*
17 *Corp.*, 298 F.3d 756, 761-762 (9th Cir. 2002) (“Under California law, ‘only a signatory to a
18 contract may be liable for any breach.’”) (quoting *Clemens v. Am. Warranty Corp.*, 193 Cal.
19 App. 3d 444, 452 (Cal. Ct. App. 1987); *Minn. Mut. Life Ins. Co. v. Ensley*, 174 F.3d 977 (9th Cir.
20 1999) (“Under California law, an insurance agent cannot be held liable for breach of contract or
21 breach of the implied covenant of good faith and fair dealing because he is not a party to the
22 insurance contract.”) (emphasis added and internal citation omitted).

23 Plaintiffs appear to have conflated HFSG and “The Hartford” because they both contain
24 the word “Hartford.” What the Complaint is conspicuously missing, however, is any allegation
25 that “Hartford” or “The Hartford” is the same entity as HFSG, as opposed to simply being a trade
26 name. Plaintiffs must state a claim against an actual legal entity which is a party to the contract,
27 which here is Sentinel, and only Sentinel.

28

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

19 **b. Plaintiffs’ Eighth and Ninth Causes of Action Fail Against HFSG.**

20 The same is true with respect to the declaratory judgment and injunctive relief Plaintiffs
 21 seek under their eighth⁷ and ninth causes of action, respectively. *See* Compl. ¶¶ 111-120, 122-
 22 123. HFSG is not a party to the Policy, and has no obligations under it. There is, therefore,
 23 nothing “to declare” or to enjoin, and Plaintiffs lack statutory standing to seek such relief. *See*
 24 *Lloyd v. Sjoblom*, No. C-14-0234 JSC, 2014 WL 1573061, at *2 (N.D. Cal. Apr. 17, 2014)
 25 (“Section 1060 confers standing on ‘[a]ny person interested under a written instrument . . . or
 26
 27

28 ⁷ In their eighth cause of action for declaratory relief, Plaintiffs seek a judicial declaration as to the parties’ “respective rights and duties *under the Policy*,” including in particular that “Plaintiffs are due coverage *under the Policy*” *See* Compl. ¶¶ 112-113, 120 (emphasis added).

1 under a contract’ to bring an action for declaratory relief ‘in cases of actual controversy relating
 2 to the legal rights and duties of the respective parties.’”) (quoting Cal. Civ. Proc. Code § 1060);
 3 *Rosenfeld v. JPMorgan Chase Bank, N.A.*, 732 F. Supp. 2d 952, 975 (N.D. Cal. 2010) (“[T]he
 4 Court notes that declaratory and injunctive relief are not causes of action; rather, they are
 5 remedies.”). Because Plaintiffs have failed to state a claim against HFSG for breach of contract,
 6 they also cannot assert freestanding declaratory judgment and injunctive relief claims against
 7 HFSG.

8 **c. Plaintiffs’ Fourth Cause of Action (UCL) Fails Against HFSG.**

9 Plaintiffs’ fourth cause of action, under California’s Unfair Competition Law (“UCL”),
 10 Cal. Bus. & Prof. Code § 17200 *et seq.*, likewise fails because it targets the exact same conduct
 11 as Plaintiffs’ contract-based claims, and discloses no facts to support liability against HFSG.
 12 Namely, Plaintiffs’ UCL claim rests on allegations of “unlawful or unfair acts and practices” by
 13 “Defendants,” arising out of the Policy. Compl. ¶¶ 80-88. However, HFSG is not a party to the
 14 Policy, did not issue the Policy to Franklin EWC, and, therefore, did not have any executory
 15 obligations under the contract. There are also no allegations that HFSG is the “Hartford” that
 16 purportedly denied Plaintiffs coverage in the April 8, 2020 correspondence. *See* Compl. ¶ 57;
 17 Ex. B. Plaintiffs’ claims fail to identify any unlawful, fraudulent, or unfair conduct by *HFSG*.
 18 *See Berryman v. Merit Prop. Mgmt., Inc.*, 152 Cal. App. 4th 1544, 1554 (Cal. App. 2007)
 19 (Because the “unlawful” prong of the UCL borrows violations of other laws, “a violation of
 20 another law is a predicate for stating a cause of action under the UCL’s unlawful prong.”);
 21 *Kearns*, 567 F.3d at 1125 (holding that the heightened pleading standard applies to claims of
 22 fraudulent conduct under the UCL).

23 Plaintiffs further cannot establish a UCL claim because the UCL does not permit a claim
 24 for damages, only restitution and injunctive relief. *See Korea Supply Co. v. Lockheed Martin*
 25 *Corp.*, 29 Cal. 4th 1134, 1144 & 1152, 63 P.3d 937 (Cal. 2003) (holding that under the UCL,
 26 plaintiffs’ recovery is limited to injunctive relief and restitution, and not nonrestitutionary
 27 disgorgement of profits in an individual action under the UCL). A plaintiff may only recover
 28 money that belonged to it, and which the defendant obtained by means of unfair competition.

1 *Id.* at 1144; *see also Sybersounds Records, Inc. v. UAV Corp.*, 517 F.3d 1137, (9th Cir. 2008)
 2 (affirming the dismissal of plaintiff’s UCL claim, based in part on contracts and
 3 misrepresentations to which plaintiff was not a party, for failure to plead a UCL claim against
 4 corporation defendants, and noting that allowing plaintiff to bring suit “to essentially vindicate
 5 the rights of the copyright holders and the Customers [who are not all parties to the lawsuit]
 6 would pose significant problems in administering the equitable remedy provided under the
 7 UCL”).

8 Here, Sentinel was the insurer, and Plaintiff has not alleged that it made any payment
 9 specifically to HFSG. *See* Ex. A, Form SS 00 02 12 06, at 1. HFSG therefore has nothing to
 10 “restore,” and cannot be enjoined to grant coverage.

11 **d. Plaintiffs’ Fifth and Sixth Causes of Action Fail Against HFSG.**

12 Plaintiffs fifth⁸ and sixth⁹ causes of action for fraudulent misrepresentation and
 13 constructive fraud, respectively, also fail to set out plausible claims against HFSG under the
 14 heightened pleading standard for fraud-based claims. *See Kearns*, 567 F.3d at 1126 (“[A] claim
 15 for misrepresentation in a cause of action for fraud, it (as any other fraud claim claim) must be
 16 pleaded with particularity under Rule 9(b)”; *Sonoma Foods, Inc. v. Sonoma Cheese Factory,*
 17 *LLC*, 634 F. Supp. 2d 1009 (N.D. Cal. 2007) (“facts supporting a claim for constructive fraud
 18 must be alleged with particularity under Rule 9(b)).

19 Plaintiffs’ fraudulent misrepresentation and constructive fraud claims are based on the
 20 premise that HFSG was involved in some way—and it is unclear how or in what way—with the
 21 Policy issued to Plaintiffs. In fact, the Complaint mentions nothing specific as to HFSG, what it
 22 did that might qualify as fraudulent misrepresentation, omission, or concealment, or how it
 23

24 _____
 25 ⁸ In their fifth cause of action, Plaintiffs allege that “Defendants affirmatively misrepresented that
 26 there was *full coverage*,” that “Defendants knew and concealed from the Plaintiffs that there was
 27 a *policy* that Defendants would not pay any claims during a pandemic,” and that “Defendants
 28 made or approved materially false and misleading statements to Plaintiffs when it *sold* Plaintiffs
 the *Policy*.” Compl. ¶¶ 90-91 (emphasis added).

⁹ In their sixth cause of action, Plaintiffs allege that “Defendants *owe fiduciary and quasi-*
fiduciary duties to Plaintiffs ... *in connection with their actions under the Policy*.” Compl. ¶ 98
 (emphasis added).

1 committed constructive fraud. Plaintiffs’ allegations come nowhere near to meeting the pleading
2 standard set forth at Fed. R. Civ. P. 9(b).

3 **e. Plaintiffs’ Seventh Cause of Action Fails Against HFSG.**

4 Plaintiffs’ claim for unjust enrichment—that “Defendants” were unjustly enriched by
5 receiving premiums in exchange for coverage under Policy provisions that were purportedly
6 “illegal, unfair, or deceptive” (Compl. ¶¶ 104, 106, 107)—cannot stand as to HFSG because, as
7 established above, Plaintiffs have not alleged that HFSG was a party to the Policy, or otherwise
8 committed any wrong against Plaintiffs. *See Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753,
9 762 (9th Cir. 2015) (“[T]here is not a standalone cause of action for unjust enrichment, which is
10 synonymous with restitution.”) (internal quotations and citation omitted). Because Plaintiffs’
11 unjust enrichment claim, which merely seeks restitution for purported breaches of the Policy,
12 does not properly state an independent cause of action against HFSG, it must be dismissed. *See*
13 *Low v. LinkedIn Corp.*, 900 F. Supp. 2d 1010, 1031 (N.D. Cal. 2012).

14 Even so, Plaintiffs have failed to state any allegations showing that HFSG received any
15 benefit from Plaintiffs. *See Peterson v. Cellco Partnership*, 164 Cal. App. 4th 1583, 1593 (2008)
16 (Under California law, “[t]he elements of an unjust enrichment claim are the receipt of a benefit
17 and [the] unjust retention of the benefit at the expense of another.”) Rather, Sentinel, as the
18 insurer, charged premiums under the Policy for incurring specific risk, not HFSG. *See generally*
19 *Ex. A*. Thus, HFSG has not been “enriched” in any way by the premiums paid to Sentinel under
20 the Policy.

21 **V. CONCLUSION**

22 For all of the foregoing reasons and others appearing on the record, the Complaint should
23 be dismissed in its entirety as to HFSG.

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DATED: July 20, 2020

Respectfully submitted,

/s/ Anthony J. Anscombe
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