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**UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION**

In re:

THE ROMAN CATHOLIC BISHOP OF
 OAKLAND,

Debtor in Possession.

THE ROMAN CATHOLIC BISHOP OF
 OAKLAND,

Plaintiff,

v.

PACIFIC INDEMNITY ET AL.

Defendants.

Chapter 11

Case No. 23-40523-WJL

Adv. Pro. No. 23-04028 WJL

**REPLY IN SUPPORT OF
 MOTION TO DISMISS THIRD
 AMENDED COMPLAINT**

Reply Due: March 20, 2024
 Date: March 27, 2024
 Judge: Hon. William J.
 Lafferty, III
 Time: 10:30 a.m.
 Place: Courtroom 220
 1300 Clay Street
 Oakland, CA 94612

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On its breach of contract claims, the Diocese does not respond to the case law or the allegations of the complaints the Moving Insurers marshalled to demonstrate that the TAC fails to plausibly allege the most fundamental element of a breach of contract claim, an actual breach. Specifically, the Diocese does not refute the Moving Insurers’ showing that there can be no claim for breach of contract based on the facts alleged in the TAC or governing law for “fail[ure] to confirm coverage,” Mot. at 10-11, that the facts alleged in the TAC make clear that the Moving Insurers did not “improperly den[y]” coverage, *id.* at 13-15, and that the Diocese’s conclusory allegation that the Moving Insurers “failed to provide defense and indemnity,” Opp. at 11, is wholly unsupported and actually contradicted by the facts alleged in the TAC. Instead, the Diocese sets forth a litany of irrelevant and non-responsive arguments, that do not and cannot save its breach of contract claims. And the declaratory relief cause of action, which arises from the same alleged failure to provide coverage, must fall too. *Park Townsend, LLC v. Clarendon Am. Ins. Co.*, 916 F.Supp.2d 1045, 1050-52 (N.D. Cal. 2013).

The Diocese’s arguments in support of its claims for excess and umbrella coverage are similarly non-responsive. On its breach of contract claim, it does not address the Court’s directive, based on controlling legal authority, that it needed to plausibly allege exhaustion of the underlying insurance to assert a viable claim for excess and umbrella coverage. It has not done so. The Diocese’s declaratory relief claim for excess and umbrella coverage fares no better, as the Diocese does not allege specific facts showing a “reasonable possibility” that the excess and umbrella coverage will be implicated. Nov. 14, 2023 Tr. at 64:10-11. This deficiency in the TAC stands in stark contrast to the cases involving declaratory relief that the Diocese cites, all of

1 which contain allegations of specific indemnity amounts that were more than the underlying
2 primary coverage limits. Because the Diocese has not made similar, specific allegations here, its
3 declaratory relief claims for excess and umbrella coverage must also be dismissed.

4 Finally, the TAC must be dismissed because it fails to identify, as it must, when the
5 underlying claims were tendered to the Moving Insurers, not just the Diocese's broker. In the
6 Diocese's opposition, it argues that an exhibit to the TAC alleges that the claims were tendered to
7 "Chubb." But listing only "Chubb" instead of the specific Chubb subsidiary that issued coverage
8 is insufficient, as Chubb is not one of the Moving Insurers or a defendant in this case.

9 ARGUMENT

10 I. THE DIOCESE FAILS TO ALLEGE VIABLE BREACH OF CONTRACT 11 CLAIMS

12 Although the Diocese recognizes that one of the "essential elements" for a breach of
13 contract claim is "defendant's breach," Opp. at 10-11, it fails to show that the TAC plausibly
14 alleges any breach by the Moving Insurers. Instead, the Diocese simply references the TAC's
15 conclusory allegations of breach, asserting that "[t]he Complaint alleges that the Moving Insurers
16 received these tenders, but either improperly denied or failed to confirm coverage, and/or failed to
17 provide defense and indemnity to RCBO as required under the policies." Opp. at 11. But the
18 Diocese does not respond to the Moving Insurers' showing that none of those allegations provides
19 a basis for any cause of action against the Moving Insurers. Apparently recognizing the legal
20 insufficiency of its allegations, the Diocese instead makes a litany of irrelevant and non-
21 responsive arguments, none of which shows that the Diocese plausibly alleged breach of contract
22 claims against the Moving Insurers.

23 **A. The Diocese Fails to Respond to the Moving Insurers' Showing that the** 24 **TAC Fails to Adequately Allege a Breach.**

25 In its opposition, the Diocese does not even attempt to rebut the Moving Insurers'
26 showing that the TAC's allegations, on their face, are insufficient to establish a breach.

27 **There is no claim for "fail[ing] to confirm coverage."** Mot. at 10-11. As demonstrated
28 in the Motion, Exhibit A to the TAC establishes that the Moving Insurers issued letters agreeing

1 to defend under a reservation of rights all the complaints alleging abuse within the policy periods
2 of the primary policies that the Moving Insurers allegedly issued. Mot. at 10. And any allegedly
3 un-responded to tenders are either for claims falling outside of the Moving Insurers' coverage
4 periods or were provided to the Diocese's broker after the bankruptcy—when the automatic stay
5 was in effect. *Id.* There can be no breach for the defense of a complaint in those circumstances,
6 Mot. at 10-11, and the Diocese does not respond to or dispute any of this. Nor does the Diocese
7 dispute that the Supreme Court of California determined that only the Insurance Commissioner
8 can enforce California Insurance Code § 790.03(h), the law governing an insurer's obligation to
9 confirm or deny coverage. *Moradi-Shalal v. Fireman's Fund. Ins. Co.*, 46 Cal. 3d 287, 304-05
10 (1988).¹ There is thus no factual or legal basis upon which the Diocese can state a cause of action
11 for failing to confirm insurance coverage.

12 **There is no plausible claim that the Moving Insurers “improperly denied” coverage.**
13 Mot. at 13-15. Exhibit A to the TAC identifies fifteen claims for which the Moving Insurers
14 allegedly improperly denied coverage, but the face of the TAC shows that none of these claims
15 alleges abuse that occurred during the Moving Insurers' alleged policy periods. *Id.* at 13. As for
16 the few purportedly improperly denied claims that are listed in Exhibit A as falling within the
17 Moving Insurers' coverage years, the actual complaints identified in Exhibit A allege abuse
18 outside the policy periods alleged by the Diocese. *Id.* at 14.² The Diocese does not dispute that
19 that this what these complaints allege, nor does it contest the blackletter principle that an insurer
20 cannot be liable for allegedly failing to provide coverage for years outside of its coverage period.

21
22 ¹ For the same reason, the insurance regulations cited by the Diocese provide no support for its
23 claims. See Opp. at 12-14 (citing Cal. Code. Reg. §§ 2695.2(s), 2695.5, 2695.7). These
24 regulations were promulgated by the Insurance Commissioner under the California Unfair
25 Insurance Practices Act, Cal. Ins. Code §§ 790, *et seq.* (“UIPA”), and neither UIPA nor its
26 implementing regulations create a private right of action. *Zhang v. Superior Ct.*, 57 Cal. 4th 364,
384 (2013) (“Private UIPA actions are absolutely barred”); *Marroquin v. Loya Cas. Ins.*
27 *Co.*, 2023 WL 9743710, at *3 (C.D. Cal. Sept. 18, 2023) (“[J]ust as the UIPA does not create a
28 private right of action, the regulations promulgated under it . . . also do not provide private
plaintiffs with a standalone, private right of action.”).

² The Diocese did not oppose the Moving Insurers' Request for Judicial Notice, which appended
the relevant complaints making clear that the alleged abuse occurred outside of the Moving
Insurers' policy periods. See RJN Exhibits 1-4.

1 *Warner v. Fire Ins. Exch.*, 230 Cal. App. 3d 1029, 1031 (1991). As the Diocese refers to these
2 complaints in Exhibit A to the TAC, they are part of the allegations of the TAC and the Court can
3 take judicial notice of their contents.³ There is thus no plausible claim that the Moving Insurers
4 improperly denied coverage.

5 **The Diocese’s allegation that the Moving Insurers “failed to provide defense and**
6 **indemnity to RCBO as required under the policies” is wholly unsupported by allegations**
7 **necessary to establish the basic elements of a breach of contract claim.** Opp. at 11. In its
8 opposition, the Diocese does not identify a single claim that the Moving Insurers improperly
9 failed to defend or indemnify. That is fatal to its breach of contract claims. To the extent that the
10 Diocese’s breach of contract claims are premised upon the Moving Insurers’ issuance of
11 reservations of rights, they fail as a matter of law. Mot. at 9 (citing *Haskins v. Employers Ins. of*
12 *Wausau*, 126 F. Supp. 3d 1117, 1125 (N.D. Cal. 2015) (holding that when an insurer “agree[s] to
13 defend a suit subject to a reservation of rights,” it thereby “meets its obligation to furnish a
14 defense without waiving its right to assert coverage defenses against the insured at a later time”
15 (internal quotations and citations omitted)); *Progressive W. Ins. Co. v. Dallo*, 2008 WL
16 11337361, at *5 (S.D. Cal. Sept. 10, 2008) (rejecting policyholder’s claim that issuing reservation
17 of rights “is a breach of contract”). The Diocese does not dispute this point or the supporting case
18 law. Nor does the Diocese dispute that reaching an agreement with a policyholder over defense
19 fees, which is what occurred here, does not constitute a breach of the duty to defend. Mot. at 11-
20 12.⁴

21 Similarly, the Diocese has no basis for asserting a breach of contract claim based on any
22 pending settlement or judgment because Debtor does not dispute that none has occurred in the
23 underlying actions. Mot. at 10.⁵ An “insurer has a duty to indemnify the insured for those sums
24

25 ³ *Id.*

26 ⁴ In any event, disputes related to fee amounts are subject to mandatory arbitration. *See Compulink*
27 *Management Center, Inc. v. St. Paul Fire & Marine Ins. Co.*, 169 Cal. App. 4th 289, 296-297 (2008); Cal.
28 Civ. Code § 2860(c).

⁵ Debtor’s attempt to distinguish *Montrose Chem. Corp. v. Admiral Ins. Co.*, 10 Cal. 4th 645 (1995) on the
grounds that an obligation to indemnify can arise based on a tender of defense is mistaken. Opp. at 11-12.
The *Montrose* court stated clearly that an insurer’s “obligation to indemnify must be distinguished from

1 that the insured becomes legally obligated to pay as damages for a covered claim,” and that duty
2 “arises only after liability is established and as a result thereof.” *Mitchell Eng’g/Obayashi Corp.*
3 *Joint Venture v. St. Paul Fire & Marine Ins. Co.*, 2020 WL 6947894, at *2 (N.D. Cal. July 2,
4 2020) (quoting *Aerojet-Gen. Corp. v. Transp. Indem. Co.*, 17 Cal. 4th 38, 56 (1997)); *see also*
5 *Buss v. Super. Ct.*, 16 Cal. 4th 35, 45 (1997) (“Standard comprehensive or commercial general
6 liability insurance policies provide, in pertinent part, that the insurer has a duty to indemnify the
7 insured for those sums that the insured becomes legally obligated to pay as damages for any
8 covered claim.”). The Diocese has thus failed to allege that Moving Insurers have any duty to
9 indemnify, let alone that this duty has been breached. *Mitchell*, 2020 WL 6947894, at *2
10 (dismissing indemnity claim). As the Diocese has failed to plead that any settlements or
11 judgments occurred, the TAC fails to meet this burden.

12 Because there is not a single issue identified in the TAC or the Diocese’s opposition brief
13 with respect to the defense or indemnity of claims that went unaddressed by the Moving Insurers,
14 the Diocese has failed to state plausible breach of contract claims.

15 **B. The Diocese’s Arguments Are Non-Responsive to the Moving Insurers’**
16 **Motion and Do Not Establish a Breach.**

17 As demonstrated directly above, the Diocese’s opposition fails to address the fundamental
18 pleading failure in the TAC—failure to plausibly allege a breach. Its opposition instead raises a
19 slew of non-responsive, irrelevant, and unsupported arguments, none of which supports a breach
20 by the Moving Insurers.

21 ***First***, the Diocese asserts that “[w]hen RCBO tendered the complaints and proofs of claim
22 to the insurers, this established Moving Insurers’ underlying liability for purposes of pleading a
23 breach of the insurance contracts.” Opp. at 12. But that statement is entirely unsupported by any
24 case law (the Diocese cites none) and is directly contradicted by the Diocese’s earlier concession
25 that an essential element of a breach of contract claim is an actual breach. Opp. at 10. More

26
27 the duty to defend. The duty to defend arises when there is a *potential* for indemnity.” *Montrose*, 10 Cal.
28 4th at 659 n.9.

1 fundamentally, it defies logic that merely tendering a claim to an insurer, and nothing else, is
2 sufficient to plead a breach of contract claim.

3 **Second**, the Diocese’s contention that “[c]ontroversies regarding insurance coverage are
4 commonly resolved before the underlying actions are finally adjudicated or primary insurance has
5 already been exhausted” does not speak at all to whether the Diocese has plausibly alleged a
6 breach of contract claim. Opp. at 12. Perhaps that is why every case that the Diocese cites to
7 support the proposition involved claims for declaratory relief, not a breach of contract. *In re*
8 *Longview Pwr., LLC*, 516 B.R. 282, 292 (Bankr. D. Del. 2014) (addresses claim for declaratory
9 relief, not breach of contract); *In re Diocese of Buffalo, N.Y.*, 616 B.R. 10 (Bankr. W.D.N.Y.
10 2020) (same); *Allstate Ins. Co. v. Huerta*, 2006 WL 2655239, at *2 (E.D. Cal. Sept. 13, 2006)
11 (same); *State Farm Fire & Cas. Co. v. LiMauro*, 481 N.Y.S.2d 90, 518 (1984) (same).

12 **Third**, the Diocese’s breach of contract claim cannot be saved because it supposedly
13 “followed the Court’s specific guidance on how to amend its Complaint,” Opp. at 11, where, as
14 here, the additional details that the Diocese added only confirm that the Moving Insurers did not
15 commit a breach. Mot. at 9-16. For the same reason, it is irrelevant whether the Moving Insurers
16 supposedly “possess more than enough information to respond to the Complaint,” Opp. at 12,
17 because the information in the TAC establishes as a matter of law that there was no breach.

18 **Finally**, the Diocese’s reliance on *In re Diocese of Buffalo, N.Y.* is misplaced. The
19 Diocese claims the bankruptcy court in that case “denied a Rule 12(e) motion involving a
20 virtually identical complaint” that alleged breach of contract and sought declaratory relief. Opp.
21 at 10. But the court did not rule on any breach of contract claims; instead, it disposed of motions
22 in an adversary proceeding seeking declaratory relief. *In re Diocese of Buffalo, N.Y.*, 616 B.R. at
23 11. The *Buffalo* case thus provides no support for the Diocese’s assertion that it has stated
24 plausible claims for breach of contract.

25 **C. The Diocese’s Claim for Declaratory Relief as to the Primary Policies Also**
26 **Fails.**

27 The Diocese’s arguments that the TAC adequately states a claim for declaratory relief,
28 Opp. at 14-16, is meritless because this claim is wholly derivative of the breach of contract claim

1 and must fail for the same reasons described above. An insurer's reservation of rights does not
2 "amount[] to misconduct" because the insured has not been found liable and thus it is not a proper
3 basis for declaratory relief. *Park Townsend*, 916 F. Supp. 2d at 1050-52. There is no basis for
4 seeking declaratory relief where, as here, an insurer's reservation of rights complies with the law.
5 *Id.* at 1052. Because there is no basis for "finding that [an insurer] has invoked its reservation of
6 rights improperly or that it must indemnify [a plaintiff]," a request for declaratory relief should be
7 dismissed. *Id.* To the extent that Debtor seeks declaratory relief for any claim where it asserts
8 that the Moving Insurers did not respond or denied coverage, the Diocese has an obligation to
9 identify such a claim because it is otherwise impossible for the Moving Insurers or the Court to
10 understand what is being alleged.

11 **II. THE DIOCESE FAILS TO ALLEGE VIABLE CLAIMS FOR EXCESS AND** 12 **UMBRELLA COVERAGE**

13 The Diocese's opposition confirms that its breach of contract and declaratory relief claims
14 for excess coverage fail because the Diocese does not plausibly allege exhaustion, a condition
15 precedent for excess coverage.

16 **Breach of Contract Claim.** In granting the Moving Insurers' motion to dismiss the
17 Diocese's initial complaint, the Court followed the holding of *Iolab Corp. v. Seaboard Sur. Co.*,
18 15 F.3d 1500 (9th Cir. 1994), stating that, on a breach of contract claim, "primary insurance must
19 be exhausted before liability attaches under a secondary policy." Nov. 14, 2023 Tr. at 64:10-11.
20 In its opposition, the Diocese does not address this blackletter law proposition. Instead, the
21 Diocese claims that "RCBO has adequately alleged an existing and *potential loss* that exceeds
22 primary limits based on the volume of cases it faces, reasonable assumptions as to the nature of
23 the cases, and the insolvency of various RCBO primary insurers." Opp. at 14 (emphasis added).
24 But allegations of a future loss that could potentially exhaust primary coverage are plainly
25 insufficient to state a breach of contract claim against an excess insurer. *Cooper v. Certain*
26 *Underwriters at Lloyd's*, 716 F. App'x 735, 735 (9th Cir. 2018) (affirming dismissal of insured's
27 claim against its excess insurer for breach of contract where the excess policy was not triggered,
28 as underlying policy limits were not exhausted).

1 The only case that the Diocese cites that addresses exhaustion is *Fremont v. Reorganizing*
2 *Corp. v. Fed. Ins. Co.*, which it contends stands for the proposition that “an insured can state a
3 breach of contract claim against an excess policy insurer . . . ‘so long as the plaintiff alleges a loss
4 that exceeds the primary coverage.’” Opp. at 14 (quoting *Fremont v. Reorganizing Corp. v. Fed.*
5 *Ins. Co.*, 2010 WL 444718, at *3-*4 (C.D. Cal. Feb. 1, 2010)).⁶ But the Diocese ignores that the
6 complaint in *Fremont*, unlike the TAC, alleged *a specific amount of loss* that exceeded the
7 primary coverage limit. *Fremont*, 2010 WL 444718, at *1-*2 (alleging a specific loss of
8 \$30,021,572, which was far above the \$15,000,000 limit on Fremont’s insurance policy).
9 Because the Diocese fails to allege the amount of exhaustion with any specificity whatsoever, its
10 breach of contract claim for excess and umbrella coverage must be dismissed.⁷

11 **Declaratory Relief Claim.** The Diocese asserts it has adequately pleaded a declaratory
12 relief claim for excess and umbrella coverage by alleging that it is facing over 400 claims
13 “seeking a total amount of damages which has the substantial likelihood of being in excess of the
14 available limits of insurance” and by speculating that the excess policies are “highly likely to be
15 triggered based on the insolvency of numerous of RCBO’s primary insurers.” Opp. at 19. But
16 based on the cases the Diocese itself cites, its conclusory statements, which do not attempt even

17 ⁶ The other case law cited by the Diocese does not support its breach of contract claim for excess
18 and umbrella coverage. Opp. at 14. The Diocese cites *The Housing Grp. v. PMA Capital Ins. Co.*
19 for the proposition that an insurer has a duty to defend when a tender is made. Opp. at 14 (citing
20 *The Housing Grp. v. PMA Capital Ins. Co.*, 193 Cal. App. 4th 1150, 1155-56 (2011)). But the
21 Diocese ignores that the case finds that an insurer can satisfy its duty to defend by issuing a
22 reservation of rights, as the Moving Insurers have done here. *Id.* at 1156 (“If an insurer is
23 providing a defense under a reservation of rights and has agreed to utilize independent counsel, an
24 insurer may compel arbitration to resolve a dispute regarding the payment of defense fees . . .”).
25 The Diocese’s reliance on *Terzian v. California Cas. Indem. Exch.* also misses the mark. Opp. at
26 14 (citing *Terzian v. California Cas. Indem. Exch.*, 42 Cal. App. 3d 942 (1974)). There, the
27 insurer did not respond to a policyholder’s demands for uninsured motorist coverage for nearly a
28 year, which the court found sufficient to constitute a breach. *Id.* at 944, 949-50. Here, by
contrast, the Moving Insurers responded promptly to the coverage claims tendered to them.

⁷ The Diocese attempts to distract from its failure to plead exhaustion by describing a series of
regulatory provisions governing an insurer’s obligation to respond to claims after receiving a
tender. Opp. at 13 (citing Cal. Code Reg. §§ 2695.2(s), 2695.5, 2695.7). But those provisions do
not speak to whether the Diocese has plausibly alleged exhaustion. Those regulatory provisions
are also irrelevant because, as demonstrated *supra* Section I.A., the face of the TAC makes clear
that the Moving Insurers responded to all tenders unless they fell outside of the Moving Insurers’
coverage periods or were provided to the Diocese’s broker after the bankruptcy.

1 to estimate the potential liability it faces, fall far short of the Court’s directive that the Diocese
2 must allege, although not “down to the penny,” a “reasonable possibility” that the excess policies
3 will be triggered. Nov. 14, 2023 Tr. at 64:10-13.

4 The Diocese repeatedly invokes *Ludgate Ins. Co. v. Lockheed Martin Corp.*, 82 Cal. App.
5 4th 592 (2000). Opp. at 16-17, 19. But it never addresses the fact that the insured’s complaint in
6 *Ludgate*, unlike the Diocese’s complaint, identified a specific amount of indemnity already
7 incurred and estimated the total amount the company would likely incur. Mot. at 16. The
8 Diocese also relies on *Fremont*, 2010 WL 444718. Opp. at 14. But there too, the complaint, in
9 contrast to the Diocese’s, included specific dollar amounts: the plaintiff alleged it had funded 136
10 fraudulent residential loans with an aggregate amount of \$30,021,572, far above the \$15,000,000
11 limit on its primary insurance policy. *Fremont*, 2010 WL 444718, at *1-*2.

12 And the *State Farm* case the Diocese cites further illustrates how deficient the TAC is.
13 Opp. at 17 (citing *State Farm Fire & Cas. Co. v. LiMauro*, 481 N.Y.S.2d 90 (1984)). In that
14 case, the court found “it can hardly be doubted that the liability, if any, against [the two insureds]
15 will exceed the excess floor” of \$100,000 per person per car accident, largely because (1) the
16 underlying wrongful death action asserted a \$2 million liability claim against the insureds, (2) a
17 separate personal injury action asserted a \$1 million claim against the insureds, and (3) the
18 personal injury claimant’s verified supplemental bill of particulars listed special damages
19 exceeding \$50,000. *Id.* at 93. Once again, the court’s conclusion that “a judicial declaration as to
20 the priority of payment from the excess insurance policies is now proper,” *id.*, was driven by the
21 fact that the complaints sought specific dollar amounts dwarfing the primary coverage limits. In
22 stark contrast, the Diocese’s utter failure to allege any dollar amount at all makes it improper for
23 this Court to grant declaratory relief with respect to excess and umbrella insurance.

24 Finally, the *Buffalo* case’s declaratory judgment analysis does not help the Diocese. The
25 Diocese latches onto the court’s statement “that the debtor’s complaint is adequately clear,” Opp.
26 at 10 (quoting *In re Diocese of Buffalo, N.Y.*, 616 B.R. at 13), but that was just a one-sentence
27 statement in a decision addressing a motion to abstain, without any elaboration, so it should have
28 little, if any, persuasive value here. The three paragraphs from the *Buffalo* opinion that the

1 Diocese block quotes about the importance of declaratory relief, Opp. at 18 (quoting *In re*
2 *Diocese of Buffalo, N.Y.*, 616 B.R. at 13), are similarly inapposite, as they too appear in a part of
3 the court’s opinion addressing a motion to abstain from exercising jurisdiction.⁸

4 The Diocese does not cite a single case allowing a declaratory relief claim for excess and
5 umbrella insurance coverage to proceed where, as here, the policyholder pleaded no dollar
6 amounts whatsoever, making it impossible to know whether there is a reasonable possibility that
7 the excess and umbrella policies will be implicated.

8 **III. THE DIOCESE’S CLAIMS ALSO FAIL BECAUSE THE DIOCESE DOES**
9 **NOT IDENTIFY WHEN ANY CLAIM WAS TENDERED TO THE MOVING**
10 **INSURERS**

11 The final reason the claims fail is that the Diocese did not follow the Court’s simple
12 instruction to provide “the dates the [Diocese] tendered the claims to the insurers.” Nov. 14, 2023
13 Tr. at 60:10-23. The Diocese asserts it met this requirement because Exhibit A of the TAC has a
14 column titled “AJG Tendered To” that includes hundreds of dates when the Diocese’s broker
15 tendered claims to “Chubb.” Opp. at 9. But listing “Chubb” as the insurer is plainly insufficient.

16 The insurance policies were issued not by “Chubb”, which is not a defendant in the
17 adversary proceeding. The defendants are the companies identified as such in the TAC, so Exhibit
18 A should have specified which insurer defendant each claim was tendered to. Indeed, courts
19 routinely distinguish between the parent company Chubb Limited and subsidiaries when
20 evaluating the sufficiency of a complaint. *Geiger v. Chubb Indem. Ins. Co.*, 2024 WL 809896, at
21 *4 (D. Colo. Feb. 27, 2024) (plaintiff “failed to make a *prima facie* showing that Chubb Limited
22 has minimal contacts” with the forum state because plaintiff was insured not by Chubb Limited
23 but by the Chubb subsidiary Great Northern Insurance Company). Moreover, the Diocese never
24 contests that “Chubb” is not a party to this action. Mot. at 3 n.2. Therefore, filling Exhibit A
25 with references to “Chubb” not only defies the Court’s directive; it also makes the TAC more
26 vague and confusing.

27 ⁸ The Diocese cites additional cases that generally describe declaratory relief, Opp. at 16-17, but
28 they are not insurance cases and do not speak to whether the Diocese has plausibly alleged a
declaratory relief claim for excess and umbrella insurance coverage.

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CONCLUSION

For all of the foregoing reasons, the Court should grant the Moving Insurers' Motion to Dismiss the TAC for failure to state a claim.

Dated: March 20, 2024

By: /s/ Karen Rinehart

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