**UNITED STATES DISTRICT COURT**
**CENTRAL DISTRICT OF CALIFORNIA**

**CIVIL MINUTES -- GENERAL**

Case No. **CV 19-1337-JFW(RAOx)** Date: August 12, 2019

Title: Houston Casualty Company *-v-* Great American Chicken Corporation, Inc., et al.

**PRESENT:**
**HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE**

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| **Shannon Reilly** | **None Present** |
| **Courtroom Deputy** | **Court Reporter** |

| **ATTORNEYS PRESENT FOR PLAINTIFFS:** | **ATTORNEYS PRESENT FOR DEFENDANTS:** |
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| None | None |

**PROCEEDINGS (IN CHAMBERS):** **ORDER GRANTING IN PART AND DENYING IN PART HOUSTON CASUALTY COMPANY'S MOTION TO DISMISS COUNTERCLAIM AND FOR JUDGMENT ON THE PLEADINGS [filed 7/10/19; Docket No. 20]**

On July 10, 2019, Plaintiff and Counter-Defendant Houston Casualty Company ("HCC") filed a Motion to Dismiss Counterclaim and for Judgment on the Pleadings ("Motion"). On July 22, 2019, Defendants and Counter-Claimants Great American Chicken Corporation, Inc. ("GAC") and Christopher Fonseca ("Fonseca") (collectively, "Defendants") filed their Opposition. On July 29, 2019, HCC filed a Reply. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court found the matter appropriate for submission on the papers without oral argument. The matter was, therefore, removed from the Court's August 12, 2019 hearing calendar and the parties were given advance notice. After considering the moving, opposing, and reply papers, and the arguments therein, the Court rules as follows:

## I. Factual and Procedural Background

This is an insurance coverage action in which HCC seeks a declaratory judgment against Defendants that: (1) the underlying Los Angeles Superior Court action entitled *King, et al. v. Great American Chicken Corporation, Inc., et al.,* Case No. BC645064 (the "King/Gonzalez Action"), and the underlying Los Angeles Superior Court Action entitled *Lowe v. Great American Chicken Corp., Inc., et al.*, Case No. BC 699183 (the "Lowe Action"), constitute "one insured event" under the subject insurance policy and, thus, are subject to a single $1,000,000 limit of liability; and (2) the underlying Los Angeles Superior Court action entitled *King, individually and on behalf of all other similarly situated, v. Great American Chicken Corp., Inc.*, Case No. BC 646368 (the "King Wage Action"), does not constitute a claim for an "insured event" and coverage for that action is limited to



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$25,000 in defense costs under the policy's Wage and Hour Endorsement.[1] Defendants filed a Counterclaim seeking converse declarations that: (1) the King/Gonzalez Action and Lowe Action do not constitute "one insured event" and are subject to separate $1,000,000 policy limits per claimant; and (2) the King Wage Action is a claim for an "insured event" and is not limited to $25,000 in defense cost coverage under the Wage and Hour Endorsement.

**A. The Policy**

HCC issued Employment Practices Liability Insurance Policy No. H716-913534 to GAC for the April 4, 2016 to April 4, 2017 Policy Period (the "2016 Policy"). HCC also issued Employment Practices Liability Insurance Policy No. H717-916206 to GAC for the April 4, 2017 to April 4, 2018 Policy Period (the "2017 Policy").[2] The 2016 Policy was issued on a claims-made-and-reported basis and contains a limit of liability of $1,000,000 for each "claim" (including "defense costs") and $3,000,000 for the total of all "claims" (including "defense costs"), subject to a $20,000 Retention for each "claim."[3]

The 2016 Policy provides that although HCC "will pay 'loss' that the insured is legally obligated to pay because of an 'insured event' to which this Policy applies . . . the amount we will pay is limited as described in the LIMITS OF INSURANCE (SECTION IV), and RETENTION (SECTION V) sections." The Policy defines an "insured event" as "actual or alleged acts of 'discrimination,' 'harassment,' and/or 'inappropriate employment conduct' by an Insured against an 'employee,' former 'employee,' or an applicant seeking employment with the Named Insured."

The 2016 Policy provides that the $1,000,000 limit for each "claim" "is the most we will pay for 'claims' made or brought during the Policy Period for 'loss' that results from any 'one insured event' regardless of the number of 'claims.'" It further states that "[a]ll 'claims' because of 'one insured event' will be considered to have been made or brought on the date that the first of those 'claims' was first made or brought." The 2016 Policy defines "one insured event" as either (a) "'insured events' which are (1) related by an unbroken chain of events or (2) made or brought by the same claimant;" or (b) "class action or multiple plaintiffs suits arising out of related 'insured events.'"

The 2016 Policy also contains a Wage and Hour Laws Legal Defense Costs with Increased Retention & Retroactive Date Endorsement ("Wage and Hour Endorsement"), which provides in relevant part as follows: "a. This Policy does not cover any 'loss' arising out of any private, governmental or administrative 'claim' alleging violations of federal, state or local wage and hour

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[1] GAC provided notice of all three actions to HCC, and HCC agreed to defend all three actions. On February 9, 2018, HCC paid GAC $25,000 for defense costs related to the King Wage Action and thereafter claimed that it had satisfied any and all of its obligations under the 2016 Policy with respect to the King Wage Action.

[2] Other than the Policy Period, the terms of the 2017 Policy are the same as the 2016 Policy in all respects relevant to this action.

[3] The terms "claim" and "defense costs" are defined in Section IX of the 2016 Policy.

laws or regulations, including, but not limited to, any laws or regulations concerning monetary or non-monetary compensation or benefits that may be owed to a past or present 'employee' based upon misclassification of their job status, title or duties; b. However, we will pay 'defense costs' up to, but in no event greater than $25,000 in the aggregate for all 'claims' made during this Policy Period and excluded by a. above without any liability by us to pay such monetary portion that you shall become legally obligated to pay because of any damages, judgment or settlement, including punitive damages. The $25,000 'defense costs' provided under this Endorsement is part of and not in addition of the Limits of Liability stated in the Declarations."

**B. The Underlying Actions**

**1. The King/Gonzalez Action**

On December 27, 2016, Celena King ("King") and Brittany Gonzalez ("Gonzalez") filed an action against GAC and Fonseca in Los Angeles Superior Court, entitled *King, et al. v. Great American Chicken Corporation, Inc., et al.,* Case No. BC645064 (the "King/Gonzalez Action"). In their Complaint, King and Gonzalez allege that GAC operates Kentucky Fried Chicken ("KFC") restaurants throughout California, including the KFC restaurant in Lancaster, California where they were employees. They also allege that Fonseca, an Assistant Store Manager and later Store Manager for KFC, was King and Gonzalez's supervisor during their employment at the Lancaster KFC. In addition, King and Gonzalez allege that Fonseca engaged in a series of offensive actions toward one or both of them and other female employees, and that GAC refused to take any action to remedy that conduct. Specifically, King and Gonzalez allege that Fonseca engaged in the following conduct: (1) repeatedly referred to King and Gonzalez, as well as other female employees, as "bitches"; (2) physically assaulted King and Gonzalez, including striking King on the buttocks, kicking King in the leg in Gonzalez's presence, and then slapping Gonzalez in her face in King's presence; (3) sent text messages "of a sexual nature" to female employees, including King; (4) made racially insensitive comments or "jokes" in the presence of Gonzalez and King, to both at the same time and separately, including an offensive joke about Martin Luther King, Jr.; (5) made sexualized comments to Gonzalez and King, including telling Gonzalez in front of another worker that he would be taking Gonzalez's virginity; (6) used offensive racial epithets, including the "n" word, in the presence of employees, including Gonzalez and King, both at the same time and separately; (7) engaged in a sexual relationship with an employee, Christina Luevano ("Luevano"), including engaging in sex acts with her at work, within earshot of employees; (8) engaged in sexual touching with Luevano in employees' presence; and (9) promoted Luevano over other employees despite her lack of experience and knowledge. In addition, King and Gonzalez allege that although GAC was notified of Fonseca's conduct, GAC failed to investigate or take any other action to stop his conduct and that the District Manager for the Store, Labon Wittington ("Wittington"), failed to act after King advised him of Fonseca's actions in May 2016. In their Complaint, King and Gonzalez allege causes of action for: (1) assault; (2) battery; (3) sexual battery; (4) sexual discrimination; (5) racial discrimination; (6) sexual harassment (including paramour sexual harassment); (7) racial harassment; (8) failure to take steps necessary to prevent sexual and racial harassment; (9) retaliation for opposing sexual and racial harassment; (10) failure to take steps necessary to prevent retaliation; (11) negligent hiring, supervision, and/or retention;

and (12) wrongful and tortious discharge in violation of public policy.[4]

**2. The Lowe Action**

On March 21, 2018, Cassandra Lowe ("Lowe") filed an action against GAC and Fonseca in Los Angeles Superior Court, entitled *Lowe v. Great American Chicken Corp., Inc., et al.*, Case No. BC 699183 (the "Lowe Action"). In her Complaint, Lowe alleges that she worked for GAC at its Lancaster, California location from approximately January 2016 to July 7, 2016. Lowe also alleges that she was the target of or witness to misconduct by Fonseca, who was her supervisor, and that GAC failed to address that conduct. Many of the acts of Fonseca's misconduct that are alleged in the Lowe Action are the same as those alleged in the King/Gonzalez Action. In her Complaint, Lowe alleges causes of action for: (1) assault; (2) battery; (3) sexual discrimination; (4) racial discrimination; (5) sexual harassment (including paramour sexual harassment); (6) racial harassment; (7) failure to take steps necessary to prevent sexual and racial harassment; (8) retaliation for opposing sexual and racial harassment; (9) failure to take steps necessary to prevent retaliation; (10) negligent hiring, supervision, and/or retention; and (11) wrongful and tortious discharge in violation of public policy.[5]

**3. The King Wage Action**

On January 10, 2017, King filed an action against GAC in Los Angeles Superior Court, entitled *King, individually and on behalf of all other similarly situated, v. Great American Chicken Corp., Inc.*, Case No. BC 646368 (the "King Wage Action"). In her Complaint, King alleges that GAC failed to provide employees with meal and rests periods, failed to reimburse business expenses, and failed to pay minimum and overtime wages. King alleges causes of action for: (1) failure to provide meal periods; (2) failure to authorize and permit rest periods; (3) failure to pay minimum wages; (4) failure to pay overtime wages; (5) failure to pay all wages due to discharged and quitting employees; (6) failure to maintain required records; (7) failure to furnish accurate itemized wage statements; (8) failure to indemnify employees for necessary expenditures incurred in discharged duties; and (9) unfair and unlawful business practices.

**C. Procedural History**

On February 22, 2019, HCC filed a Complaint against Defendants, alleging claims for relief for: (1) declaratory relief against Defendants with respect to the King/Gonzalez Action and the

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[4] On November 1, 2017, the Court in the King/Gonzalez Action ordered Gonzalez's claims to arbitration pursuant to her employment agreement with GAC and stayed her claims in the King/Gonzalez Action pending arbitration. For purposes of this Order, any reference to the King/Gonzalez Action will include any arbitration proceedings involving Gonzalez's claims.

[5] On October 18, 2018, the Court in the Lowe Action ordered Lowe's claims to arbitration pursuant to her employment agreement with GAC and stayed the Lowe Action pending arbitration. For purposes of this Order, any reference to the Lowe Action will include any arbitration proceedings involving Lowe's claims.

Lowe Action; and (2) declaratory relief against GAC with respect to the King Wage Action. On June 19, 2019, Defendants filed an Answer and a Counterclaim, alleging claims for: (1) breach of contract by GAC with respect to the King Wage Action; (2) breach of the implied covenant of good faith and fair dealing by GAC with respect to the King Wage Action; (3) declaratory relief by GAC with respect to the King Wage Action; and (4) declaratory relief by Defendants with respect to the King/Gonzalez Action and the Lowe Action.

## II. Legal Standard

### A. Rule 12(b)(6)

A motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the claims asserted in the complaint. "A Rule 12(b)(6) dismissal is proper only where there is either a 'lack of a cognizable legal theory' or 'the absence of sufficient facts alleged under a cognizable legal theory.'" *Summit Technology, Inc. v. High-Line Medical Instruments Co., Inc.*, 922 F. Supp. 299, 304 (C.D. Cal. 1996) (quoting *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988)). However, "[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations and alterations omitted). "[F]actual allegations must be enough to raise a right to relief above the speculative level." *Id.*

In deciding a motion to dismiss, a court must accept as true the allegations of the complaint and must construe those allegations in the light most favorable to the nonmoving party. *See, e.g., Wyler Summit Partnership v. Turner Broadcasting System, Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). "However, a court need not accept as true unreasonable inferences, unwarranted deductions of fact, or conclusory legal allegations cast in the form of factual allegations." *Summit Technology*, 922 F. Supp. at 304 (citing *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981) *cert. denied*, 454 U.S. 1031 (1981)).

"Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n. 19 (9th Cir. 1990) (citations omitted). However, a court may consider material which is properly submitted as part of the complaint and matters which may be judicially noticed pursuant to Federal Rule of Evidence 201 without converting the motion to dismiss into a motion for summary judgment. *See, e.g., id.*; *Branch v. Tunnel*, 14 F.3d 449, 454 (9th Cir. 1994).

Where a motion to dismiss is granted, a district court must decide whether to grant leave to amend. Generally, the Ninth Circuit has a liberal policy favoring amendments and, thus, leave to amend should be freely granted. *See, e.g., DeSoto v. Yellow Freight System, Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). However, a Court does not need to grant leave to amend in cases where the Court determines that permitting a plaintiff to amend would be an exercise in futility. *See, e.g., Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) ("Denial of leave to amend is not an abuse of discretion where the pleadings before the court demonstrate that further amendment would be futile.").

### B. Rule 12(c)

Federal Rule of Civil Procedure 12(c) governs motions for judgment on the pleadings. *See* Fed. R. Civ. P. 12(c). "A Rule 12(c) motion is functionally identical to a motion pursuant to Fed. R. Civ. P. 12(b)(6)." *Lonberg v. City of Riverside*, 300 F. Supp. 2d 942, 945 (C.D. Cal. 2004) (citing *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989)). "A judgment on the pleadings is properly granted when, taking all the allegations in the pleading as true, the moving party is entitled to judgment as a matter of law." *Heliotrope General, Inc. v. Ford Motor Co.*, 189 F.3d 971, 979 (9th Cir. 1999) (quoting *Nelson v. City of Irvine*, 143 F.3d 1196, 1200 (9th Cir. 1998)). As with motions brought pursuant to Rule 12(b)(6), in addition to assuming the truth of the facts plead, the court must construe all reasonable inferences drawn from those facts in the nonmoving party's favor. *See Lonberg*, 300 F. Supp. 2d at 945*; see also Wyler Summit Partnership v. Turner Broadcasting System, Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). "However, judgment on the pleadings is improper when the district court goes beyond the pleadings to resolve an issue; such a proceeding must properly be treated as a motion for summary judgment." *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1550 (9th Cir. 1990) (internal citations omitted).

## III. Discussion

### A. The King Wage Action is a "Claim" Alleging Violations of Federal, State, or Local Wage and Hour Laws or Regulations.

Defendants' first counterclaim for breach of contract, second counterclaim for breach of the implied covenant of good faith and fair dealing, and third counterclaim for declaratory relief are all based on their claim that the Wage and Hour Endorsement in the 2016 Policy does not apply to the King Wage Action. Similarly, HCC's second claim for declaratory relief is based on its claim that the Wage and Hour Endorsement in the 2016 Policy does apply to the King Wage Action.

The Wage and Hour Endorsement in the 2016 Policy provides that the Policy "does not cover any 'loss' arising out of any . . 'claim' alleging violations of federal, state or local wage and hour laws or regulations." In addition, it provides that any such "claim" will be covered for "defense costs" only, up to a maximum of $25,000. It is undisputed that HCC paid GAC $25,000 for defense costs related to the King Wage Action on February 9, 2018, and thereafter claimed that it had satisfied any and all of its obligations under the 2016 Policy with respect to the King Wage Action.

In its Motion, HCC argues that the King Wage Action is a "claim" alleging violations of federal, state, or local wage and hour laws or regulations and, thus, the Wage and Hour Endorsement in the 2016 Policy applies. In their Opposition, Defendants argue that the phase "wage and hour law" is, at a minimum, ambiguous. Defendants also argue that California Labor Code §§ 226, 1174, and 2802, as alleged in the King Wage Action, are not "wage and hour laws."

#### 1. The Term "Wage and Hour Law" is Not Ambiguous.

With respect to Defendants' argument that the term "wage and hour law" is ambiguous, "the words of the policy must be interpreted according to the plain meaning that a layperson would ordinarily attach to them." *Mercury Ins. Co. v. Pearson*, 169 Cal. App. 4th 1064, 1070 (2008).

However, "[t]he fact that a term is not defined in the policies does not make it ambiguous. Nor does [d]isagreement concerning the meaning of a phrase, or the fact that a word or phrase isolated from its context is susceptible of more than one meaning." *First American Title Ins. Co. v. XWarehouse Lending Corp*., 177 Cal. App. 4th 106, 114-15 (2009). The Court concludes that Defendants' argument that the phrase "wage and hour laws" is ambiguous is, at a minimum, disingenuous. Numerous courts have found exclusions using the phrase "wage and hour laws" to apply unambiguously in several contexts, including, as discussed below, to the types of claims at issue in the King Wage Action.

**2. California Labor Code § 2802 is a "Wage and Hour Law."**

The eighth cause of action in the King Wage Action alleges a violation of California Labor Code § 2802(a), which "requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties or of his or her obedience to the directions of the employer." In *Admiral Insurance Co. v. Kay Automobile Distributors*, 82 F.Supp. 3d 1175, 1181-82 (C.D. Cal. 2015), the Court held that although Section 2802 "does not directly touch on wages paid or hours worked," It nonetheless fell squarely within the scope of an exclusion for claims arising out of "any federal, state, local or foreign wage and hour laws." The Court explained that:

> [Section] 2802 is frequently paired with the Division 2 sections listed above in actions against employers who allegedly underpay their employees; often such actions are described as "wage and hour" actions by the courts, without distinguishing the business expense claim. And this makes sense. The function of § 2802 parallels the function of the minimum wage and other wage and hour laws – they all prevent employers from offloading expenses onto their employees, whether by wage theft or by failing to reimburse them for business costs. And similarly, the logic of the wage and hour exclusion applies to § 2802 – employers should not be able to obtain a windfall by forcing their insurers to reimburse their employees for the employer's expenses.

*Id.* at 1181-82 and n. 7 ("The Court therefore finds that § 2802 is also a wage and hour law and subject to the exclusion"). Similarly, in *Phase II Transportation, Inc. v. Carolina Casualty Insurance Co.,* 228 F.Supp. 3d 999 (C.D. Cal. 2017), the court held that "if a California court were to consider this question, . . . it would find that § 2802 is a 'wage and hour' law for purposes of the insurance exclusion." The *Phase II* court went on to explain that "payment for uniforms concerns wages because, '[t]he real effect of the order is to increase the . . . employees' wages by the amount which in the absence of the regulation they would have to pay towards the cost of their uniforms.'" *Id*. at 1005-06 (citations omitted). The Court held that "this rationale applies equally to any reimbursement for a business expenditure." *Id.*

Therefore, the Court concludes that the eighth cause of action in the King Wage Action for violation of Section 2802 is a "wage and hour law" claim within the meaning of the Wage and Hour



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Endorsement.[6]

### 3. California Labor Code §§ 226 and 1174 Are "Wage and Hour Laws."

The sixth cause of action in the King Wage Action alleges a violation of California Labor Code § 226(a), which sets for the required information that each employer must provide to each employee "as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash." The seventh cause of action in the King Wage Action is based upon a failure to maintain the records required by California Labor Code §§ 226 and 1174, which includes "total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized wage statements." Courts have routinely held that the "failure to keep adequate time records" constitutes "a violation of California wage and hour regulations." *Santos v. Piad (In re Santos)*, 2007 WL 7540980 (B.A.P. 9th Cir. July 11, 2007); *Moreno v. JCT Logistics, Inc.*, 2019 WL 960188 (C.D. Cal. Jan. 8, 2019) (referring to "the requirement to keep accurate employment records" as one of the "categories of California wage and hour laws"). For example, the court in *Kay Automobile* held that the "record-keeping" statutes of California Labor Code §§ 226(a) and 1174 – the same statutes at issue in the sixth and seventh causes of action in the King Wage Action – are "without dispute, 'wage and hour laws' under the [insurance policy] exclusion provision." 82 F.Supp. at 1181 and n. 5 (noting that "these sections are part of California's comprehensive scheme of 'wage and hour laws'"). In addition, several courts have held that "[i]naccurate wage statement claims are quintessential wage and hour allegations under California law because they are derivative of other wage and hour violations." *E.H. Summit, Inc. v. Carolina Cas. Ins. Co.*, 2016 WL 7496142 (C.D. Cal. Feb. 24, 2016); *see also Weber Distribution, LLC v. RSUI Indem. Co.*, 2018 WL 5374615 (C.D. Cal. Aug. 2, 2018) (noting that "several [District Courts] have held that [Fair Labor Standards Act] exclusions, similar to the one in the Policy, encompass itemized wage statement claims brought under § 226(a)").

Therefore, the Court concludes that the sixth cause of action for violation of Section 226(a) and the seventh cause of action for violation of Sections 226 and 1174 alleged in the King Wage Action are "wage and hour laws" within the meaning of the Wage and Hour Endorsement.

Accordingly, the Court concludes that the Wage and Hour Endorsement of the 2016 Policy applies to the King Wage Action and, thus, HCC's obligation with respect to the King Wage Action was limited to $25,000, which was satisfied by its February 9, 2018 payment to GAC. Therefore, the Court grants HCC's Motion to Dismiss Defendants' first counterclaim for breach of contract, second counterclaim for breach of the implied covenant of good faith and fair dealing, and the third counterclaim for declaratory relief. In addition, the Court grants HCC's Motion for Judgment on the

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[6] In addition, the Court concludes that an alleged failure to reimburse an employee for business expenses is not a claim for "'discrimination,' 'harassment,' and/or 'inappropriate employment conduct'" as required for coverage under the 2016 Policy. Thus, if the eighth cause of action of the King Wage Action for violation of Section 2802 does not allege a violation of "wage and hour laws or regulations," triggering the limited coverage under the Wage and Hour Endorsement, there would be no coverage for the eighth cause of action under the 2016 Policy.

Pleadings with respect to Count II of its Complaint.

### B. The King/Gonzalez Action and the Lowe Action

As to the issue of whether the King/Gonzalez Action and the Lowe Action constitute "one insured event" under the 2016 Policy and, thus, are subject to a single $1,000,000 limit of liability, the Court finds that these issues are more appropriately resolved on a motion for summary judgment.

## IV. Conclusion

For all the foregoing reasons, HCC's Motion is **GRANTED in part** and **DENIED in part**. The Court concludes that the King Wage Action is covered by the 2016 Policy's Wage and Hour Endorsement (and, thus, limited to $25,000 in defense costs) and **DISMISSES without leave to amend** GAC's first, second, and third counterclaims alleging claims relating to the King Wage Action. The Court also **GRANTS** judgment on the pleadings in favor of HCC on Count II of its Complaint. HCC's Motion is **DENIED** with respect to Defendants' fourth counterclaim alleging claims related to the King/Gonzalez Action and the Lowe Action and Count I of its Complaint.

IT IS SO ORDERED.



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