UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL #27 (8/30)

Case No.	CV 19-10409 PSG (AGRx)	Date	July 29, 2020
Title	Associated Industries Insurance Company, Inc. v. Lisa Bloom et al.		

Present: The Honorable	Philip S. Gutierrez, United States District Judge

Wendy Hernandez	Not Reported
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s):	Attorneys Present for Defendant(s):
Not Present	Not Present

Proceedings (In Chambers): The Court DENIES the motion for summary judgment

Before the Court is Plaintiff and Counter-Defendant Associated Industries Insurance Company, Inc.'s ("Plaintiff" or "Associated") motion for summary judgment. *See* Dkt. # 27 ("*Mot.*"). Defendants and Counter-Claimants Lisa Bloom and The Bloom Firm ("Defendants" or "Bloom"), have opposed, *see* Dkt. # 34 ("*Opp.*"), and Plaintiff replied, *see* Dkt. # 35 ("*Reply*"). The Court finds the matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; L.R. 7-15. Having considered the moving, opposing, and reply papers the Court **DENIES** the motion.

I. Background

A. The Associated Policy

Associated issued a Lawyers Professional Liability Policy ("Policy") to The Bloom Firm as named insured effective from May 19, 2019 to May 19, 2020. *See Statement of Uncontroverted Facts*, Dkt. # 31-1 ("*SUF*"), ¶ 1; Dkt. # 19-1 ("*Policy*").

The Policy's first insuring agreement, Insuring Agreement A, provides that Associated will pay damages and claims expenses that:

> "the Insured shall become legally obligated to pay as a result of a Claim made against the Insured for a Wrongful Act, provided that (i) the Claim is first made against the Insured and reported to the Company, in writing, during the Policy Period or the Extended Reporting Period, if applicable; (ii) the Insured has no knowledge of such Wrongful Act prior to the Inception Date of this Policy; and (iii) such Wrongful Act took place on or

after the Retroactive Date set forth in the Declarations Page of this Policy and prior to the end of the Policy Period."

Policy at 25.

The Policy defines "Insured" to mean "any individual . . . who is . . . a partner . . . of the Named Insured, but solely while acting within the scope of their duties as such . . . in rendering Professional Services." *Id.* at 27. The Policy defines "Professional Services" to mean in relevant part services "provided by an Insured to others as a lawyer . . . ." *Id.* at 30. The term "as a lawyer" is undefined. The Policy defines "Wrongful Act" to mean "any actual or alleged negligent act, error, or omission committed or attempted in the rendering or failing to render Professional Services by the Insured on behalf of the Named Insured . . . ." *Id.*

Insuring Agreement B provides "Network Security and Privacy coverage" for claims arising from "a Network Security Wrongful Act or Privacy Wrongful Act." *Id.* at 25.

Both Insuring Agreements are subject to exclusions, including Exclusion H, which states that the Policy "shall not apply to" any claim "based upon or arising out of any actual or alleged discrimination, humiliation or harassment, including but not limited to a Claim based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual preference." *Id.* at 31–32.

The Policy also provides that Associated "shall have the right and duty to defend any Claim against the Insured to which this Policy applies, even if the allegations of the Claim are groundless, false, or fraudulent." *Id.* at 25.

B. Lisa Bloom Provides Services to Harvey Weinstein

Lisa Bloom is an attorney and the principal and sole shareholder of The Bloom Firm. *See Statement of Genuine Disputes*, Dkt. # 34-1 ("*SGD*"), ¶ 49. Bloom represented Harvey Weinstein as his attorney beginning in or around December 2016 and ending in or around October 2017. *See id.* ¶ 63. Bloom has been directed to maintain the attorney-client privilege regarding work she performed for Weinstein. *See id.* ¶ 64.

C. The *McGowan* Lawsuit

In October 2019, Rose McGowan sued Harvey Weinstein, David Boies, Boies Schiller Flexner LLP, Lisa Bloom, The Bloom Firm, and B.C. Strategies Ltd. d/b/a Black Cube in the lawsuit captioned *Rose McGowan v. Harvey Weinstein, et al.*, C.D. Cal. No. 2:19-cv-09105-ODW-GJS. *See SUF* ¶ 13; *Request for Judicial Notice*, Dkt. # 30 ("*RJN*"), Ex. 1 ("*McGowan Compl.*"). Rose McGowan, an actress and activist alleges that Weinstein raped her in 1997. *See SUF* ¶ 13; *McGowan Compl.* ¶¶ 10, 17. McGowan and Weinstein reached a settlement with respect to those allegations. *See SUF* ¶ 13; *McGowan Compl.* ¶ 19. In 2016 McGowan began working on a book about her life called *Brave*, which included claims about Weinstein. *See SUF* ¶ 15; *McGowan Compl.* ¶¶ 27–30. McGowan publicly announced that she was writing the book. *See SGD* ¶ 70; *McGowan Compl.* ¶¶ 31–32.

The complaint alleges that around December 2016 Weinstein, having hired Boies Schiller Flexner LLP, David Boies and Black Cube, an Israeli intelligence agency, "enlisted Lisa Bloom, a well-known civil-rights attorney and a self-proclaimed women's advocate" and that Bloom proposed, among other things, that she "enhance [Weinstein's] reputation and destroy McGowan's." *See SUF* ¶¶ 19–20; *McGowan Compl.* ¶¶ 48, 51. When Weinstein learned of the impending publication of McGowan's book, he sought assistance, including through Bloom, to minimize its impact, including that women might "potentially report his sexual assault." *See SGD* ¶ 81. The *McGowan* complaint brings claims against the defendants, including Bloom, for Civil RICO, 18 U.S.C. § 1962(c) & (d); Federal Wiretap Act, 18 U.S.C. § 2520; Fraudulent Deceit, Cal. Civ. Code § 1709; Common Law Fraud; Bane Act, Cal. Civ. Code § 52.1; Invasion of Privacy; Computer Crimes, Cal. Civ. Code § 502(e)(1); Conversion; Intentional Infliction of Emotional Distress; and Negligent Hiring and Supervision. *See McGowan Compl.* ¶¶ 133–225. Discovery has not opened in the *McGowan* lawsuit. *See SGD* ¶ 100.

D. Associated Declines to Defend Bloom

In October 2019, after receiving notice of the *McGowan* lawsuit, Bloom tendered her claim to Associated. *See SUF* ¶ 39. By letter dated November 25, 2019, Associated disclaimed a duty to defend Lisa Bloom or The Bloom Firm in the *McGowan* action. *See id.* ¶ 40. In December 2019, Associated, through counsel, asked The Bloom Firm's then-Managing Attorney to provide additional information. *See id.* ¶ 41. The Bloom Firm sent a letter challenging the position. *See id.* ¶ 42; *SGD* ¶ 96. Bloom cites claim correspondence indicating that it sent Associated, among other things, a legal memorandum from Bloom to Weinstein, *SGD* ¶ 99, multiple invoices that document Bloom's professional services as a lawyer, *id.* ¶ 97, and Bloom's engagement letter with Weinstein to provide "legal services," *id.* ¶ 98.

E. This Action

Associated filed this lawsuit against Lisa Bloom and The Bloom Firm on December 9, 2019 seeking a declaration that it owes no duty to defend the *McGowan* action. *See Complaint*, Dkt. # 1 ("*Compl.*"). Bloom answered and counterclaimed, alleging claims for unjust enrichment, breach of contract, declaratory judgment, and breach of the covenant of good faith and fair dealing. *See* Dkts. # 18, 19. Associated answered the counterclaim. *See* Dkt. # 21.

Associated moves for summary judgment on the duty to defend and as to all counterclaims asserted by Bloom. *See generally Mot.*

II. Legal Standard

A. Summary Judgment

"A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

A party seeking summary judgment bears the initial burden of informing the court of the basis for its motion and identifying those portions of the pleadings and discovery responses that demonstrate the absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the nonmoving party will have the burden of proof at trial, the movant can prevail by pointing out that there is an absence of evidence to support the moving party's case. *See id.* If the moving party meets its initial burden, the nonmoving party must set forth, by affidavit or as otherwise provided in Rule 56, "specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

In judging evidence at the summary judgment stage, the court does not make credibility determinations or weigh conflicting evidence. Rather, it draws all reasonable inferences in the light most favorable to the nonmoving party. *See T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630–31 (9th Cir. 1987). The evidence presented by the parties must be capable of being presented at trial in a form that would be admissible in evidence. *See* Fed. R. Civ. P. 56(c)(2). Conclusory, speculative testimony in affidavits and moving papers is insufficient to raise genuine issues of fact and defeat summary judgment. *See Thornhill Publ'g Co. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 738 (9th Cir. 1979).

B. California Insurance Contract Interpretation

In general, under California law, interpretation of an insurance policy is decided under settled rules of contract interpretation. *See California v. Cont'l Ins. Co.*, 55 Cal. 4th 186, 194 (2012) (citing *E.M.M.I. Inc. v. Zurich Am. Ins. Co.*, 32 Cal. 4th 465, 470 (2004)). "While insurance contracts have special features, they are still contracts to which the ordinary rules of contract interpretation apply." *Bank of the W. v. Superior Court*, 2 Cal. 4th 1254, 1264 (1992) (internal citations omitted). Interpretation of an insurance contract and its application to undisputed facts are questions of law. *See Westrec Marina Mgmt. Inc. v. Arrowood Indem. Co.*, 163 Cal. App. 4th 1387, 1391 (2008).

III. Discussion

Associated moves for summary judgment on the duty to defend. "An insurer has a very broad duty to defend its insured under California law." *Anthem Elecs., Inc. v. Pac. Employers Ins. Co.*, 302 F.3d 1049, 1054 (9th Cir. 2002). The California Supreme Court has stated that "the insured is entitled to a defense if the underlying complaint alleges the insured's liability for damages *potentially* covered under the policy, or if the complaint might be amended to give rise to a liability that would be covered under the policy." *Montrose Chem. Corp. v. Super. Ct.*, 6 Cal. 4th 287, 299 (1993). Thus, to prevail in a declaratory relief action on the duty to defend, "the insured must prove the existence of a *potential* for coverage, while the insurer must establish the *absence of any such potential*." *Id.*

"The determination whether the insurer owes a duty to defend usually is made in the first instance by comparing the allegations of the complaint with the terms of the policy." *Id.* at 295. "Facts extrinsic to the complaint also give rise to a duty to defend when they reveal a possibility that the claim may be covered by the policy." *Id.*; *Aetna Cas. & Sur. Co. v. Centennial Ins. Co.*, 838 F.2d 346, 350 (9th Cir. 1988). "If any facts stated or fairly inferable in the complaint, or otherwise known or discovered by the insurer, suggest a claim potentially covered by the policy, the insurer's duty to defend arises and is not extinguished until the insurer negates all facts suggesting potential coverage." *Scottsdale Ins. Co. v. MV Transportation*, 36 Cal. 4th 643, 655 (2005). On the other hand, "if, as a matter of law, neither the complaint nor the known extrinsic facts indicate any basis for potential coverage, the duty to defend does not arise in the first instance." *Id.* "[T]he insurer's obligation is not unlimited; the duty to defend is measured by the nature and kind of risks covered by the policy [citations]." *Giddings v. Indus. Indem. Co.*, 112 Cal. App. 3d 213, 218 (1980). "Any doubt as to whether the facts establish the existence of the defense duty must be resolved in the insured's favor." *Montrose*, 6 Cal. 4th at 299–300. In fact,

"[a]n insurer must defend against a suit 'even where the evidence suggests, but does not conclusively establish, that the loss is not covered.'" *Hartford Cas. Ins. Co. v. Swift Dist., Inc.*, 59 Cal. 4th 277, 287 (2014) (citation omitted).

Associated argues, first, that there is no coverage under Insuring Agreement A, second, that Exclusion H precludes coverage, and third, that summary judgment is appropriate on Bloom's counterclaims. The Court takes these in turn.

A. Insuring Agreement A

Insuring Agreement A provides coverage for a "claim" against an Insured seeking damages for a "Wrongful Act." *SUF* ¶ 3. "Wrongful Act" is defined as "any actual or alleged negligent act, error, or omission committed or attempted in the rendering or failing to render Professional Services," and "Professional Services" is defined as services "provided by an Insured to others as a lawyer . . . ." *Id.* ¶¶ 6, 7; *Policy* at 30. There is no dispute that Lisa Bloom constitutes an "Insured" under the Policy. *See generally Mot.*; *SUF* ¶ 4. Rather, Associated argues that Insuring Agreement A does not provide coverage based on the meaning of providing services "as a lawyer."

To be considered a "professional service" for insurance purposes, liability "must arise out of the special risks inherent in the practice of the profession." *PMI Mortg. Ins. Co. v. Am. Int'l Specialty Lines Ins. Co.*, 394 F.3d 761, 766 (9th Cir. 2005) ("In determining whether a particular act is of a professional nature or a 'professional service' we must look not to the title or character of the party performing the act, but to the act itself." (citation omitted)). Thus, "California state courts have uniformly held that insurance policies covering 'professional services' reach only those acts committed by the insured in his or her capacity as a professional—they do not cover general administrative activities that occur in all types of businesses." *Id.* For instance, courts have held there is no coverage for a lawsuit between attorneys based on a breach of their partnership agreement, or for alleged mismanagement of a law firm. *See id.* at 766–67 (collecting cases).

Associated first contends that the claim does not arise out of services as a lawyer, because the *McGowan* complaint repeatedly refers to Bloom "join[ing] Weinstein's team *not as lawyers, to provide legal advice*, but as fixers—to keep negative information about Weinstein from becoming public[.]" *See McGowan Compl.* ¶ 207 (emphasis added); *SUF* ¶ 37; *Mot.* 13. However, as Associated recognizes, the duty to defend is not measured solely by a plaintiff's "pleaded word," since "pleadings are malleable, changeable and amendable," but rather by the

"potential liability created by the suit." *Gray v. Zurich Ins. Co.*, 65 Cal. 2d 263, 276 (1966); *Mot.* 13:4–11. "In light of the likely overstatement of the complaint and of the plasticity of modern pleading," the third party is not "the arbiter of the policy's coverage." *Gray*, 65 Cal. 2d at 276. Rather, the Court assesses whether "any facts stated or fairly inferable in the complaint, or otherwise known or discovered by the insurer, suggest a claim potentially covered by the policy." *Scottsdale Ins. Co.*, 36 Cal. 4th at 655.

Associated and Bloom disagree as to whether the *McGowan* complaint's allegations place Bloom's liability outside the scope of covered professional services. Associated contends that the complaint's allegations describe Bloom's role as a "reputation manager" and that "reputation management" services cannot be provided to others as a lawyer. *See generally Mot.* 10–15; *Reply* 2:6–8. Associated points to allegations that, among other things, Bloom defamed McGowan as "crazy" to a prominent national reporter, met with other reporters and discussed McGowan's "sexual history," and provided insight to Weinstein about how to discredit sexual-assault victims. *See Mot.* 13:13–14:13; *SUF* ¶¶ 21–36. Associated also defines "reputation management services" as "influencing or controlling of an individual's or group's reputation," (a definition drawn from a Wikipedia article), and points to The Bloom Firm's website describing "Reputation Management" as "assist[ing] clients in developing and carrying out a comprehensive strategy to ensure that positive and neutral blogs and articles written about them rank high in online searches," and argues that such work can be done by non-lawyers. *See Mot.* 14:24–15:14; *SUF* ¶ 45; *Reply* 3:19–4:15.

Bloom responds that the *McGowan* complaint contains numerous allegations about Bloom's legal work, including: a December 2016 memorandum allegedly sent from Bloom to Weinstein that describes legal services that Bloom could provide, *see SGD* ¶ 79; that Bloom was retained because women were expected to "potentially report [Weinstein's] sexual assault," *see id.* ¶ 81, that Bloom investigated potential allegations, *see id.* ¶ 73, that Bloom engaged in pre-publication discussions on Weinstein's behalf with the *New York Times* regarding an article that had the potential to defame Weinstein, *see id.* ¶ 32, and that Bloom failed to disclose that she was "on retainer" for Weinstein, *see id.* ¶ 78. Bloom also contends that her "reputation management" law practice involves professional services "as a lawyer." *See Opp.* 13–17; *SGD* ¶¶ 53–56. Bloom argues that "reputation management" service work, while involving attention to the public image of clients, requires Bloom to "use her extensive experience as an attorney and advocate to ensure that her clients are not . . . defamed," and involves legal work of "enforcing non-disclosure agreements; drafting and sending cease-and-desist letters; investigating and pursuing legal remedies relating to potentially defamatory statements; managing the impact of potential civil and criminal actions; and pre-publication communications

with journalists and media relating to potential statements regarding client." *See Opp.* 14:9–20; *SGD* ¶¶ 53–56.

The Court concludes that Associated has failed to prove there is no genuine dispute as to whether the allegations show the "*potential* for coverage." *Montrose*, 6 Cal. 4th at 299. The complaint includes alleged facts that could be based on Bloom's providing legal services, such as the complaint's repeated reference to Bloom's wrongdoing in sending a memorandum that suggests Bloom provide a cease and desist letter to Weinstein, and that Bloom would and did investigate potential defamation allegations and claims against Weinstein. *See SGD* ¶¶ 73, 78–81; *McGowan Compl.* ¶¶ 51–53, 81, 84, 98, 141(c); *see also Pension Tr. Fund for Operating Engineers v. Fed. Ins. Co.*, 307 F.3d 944, 951 (9th Cir. 2002) ("California courts have repeatedly found that remote facts buried within causes of action that may potentially give rise to coverage are sufficient to invoke the defense duty."). The memorandum from Bloom to Weinstein proposes several causes of action that could be brought in response to McGowan's "defamatory attacks," specifically, Bloom proposes a "[c]ease and desist letter from [Bloom], warning [McGowan] of the violation of agreement with [Weinstein] and putting her on notice of causes of action for CA claims of false light, invasion of privacy, defamation, etc." *See SGD* ¶ 79; *McGowan Compl.* ¶¶ 51, 52, 141(c). The memorandum is the basis for the only RICO predicate act in the *McGowan* complaint that names Bloom. *See SGD* ¶ 80. McGowan's claims against Bloom also involve Bloom's investigation of potential allegations and claims against Weinstein, and her alleged supervision of an investigator. *See id.* ¶ 73. California courts have held that professional legal services are rendered where an attorney conducts or assists in a factual investigation in order to assess and develop potential responses to anticipated claims. *See City of Petaluma v. Super. Ct.*, 248 Cal. App. 4th 1023, 1035 (2016) (in assessing application of the attorney-client privilege, where an attorney was "expected to use her legal expertise to identify the pertinent facts, synthesize the evidence, and come to a conclusion as to what actually happened," the "dominant purpose of [her] representation was to provide professional legal services"); *Foxen v. Carpenter*, 6 Cal. App. 5th 284, 292 (2016) (professional services provided by attorneys include "nonlegal services closely associated with the performance of their professional duties as lawyers"); *see also Tichinin v. City of Morgan Hill*, 177 Cal. App. 4th 1049, 1069 (2009) ("[T]he investigation of a potential claim is normally and reasonably part of effective litigation, if not an essential part of it."). In addition, Bloom contends disclosure-related allegations, such as that Bloom did not disclose her retainer agreement with Weinstein, implicate professional services and confidentiality obligations of attorneys. *See Opp.* 8 n.2; *SGD* ¶ 78. Associated has not demonstrated that these allegations of wrongful conduct fall wholly outside of the "special risks inherent in the practice of the profession." *PMI Mortgage*, 394 F.3d at 765.

Bloom also points to various extrinsic evidence provided to Associated to support this conclusion. *See Opp.* 10–13; *Aetna Cas.*, 838 F.2d at 350. For instance, Bloom's declaration states that she provided legal services to Weinstein and that those legal services give rise to the allegations in the *McGowan* complaint, *see SGD* ¶¶ 63–69, Bloom's engagement letter relating to her work for Weinstein states that Bloom will be providing "legal services," *see id.* ¶ 98, and invoices document Bloom's legal work during the relevant time period, *see id.* ¶¶ 97, 99. Even where work, such as Bloom's work for a client here, may involve non-legal aspects, "the training and regulation that make the practice of law a profession . . . include professional obligations that go beyond duties of competence associated with dispensing legal advice or advocating for clients in dispute resolution," and "include nonlegal services governed by an attorney's professional obligations." *Lee v. Hanley*, 61 Cal. 4th 1225, 1237 (2015) (non-professional legal services such as accounting, bookkeeping, and holding property in trust can all fall under an attorney's rendering of professional services). The cases that Associated cites are inapposite, as those cases involve lawyers performing jobs clearly separate and apart from the practice of law, such as a lawyer acting as a business agent who advised a client where to invest money and became a co-venturer, *Gen. Accident Ins. Co. v. Namesnik*, 790 F.2d 1397 (9th Cir. 1986), and a lawyer acting as a partner to another law partner in conflicts arising between the two for fiduciary duties, *Blumberg v. Guarantee Ins. Co.*, 192 Cal. App. 3d 1286 (1987). If "there is doubt as to whether the duty to defend exists, the doubt must be resolved in favor of the insured." *Aetna Cas.*, 838 F.2d at 350. Associated has not carried its burden at this stage to show the absence of a genuine dispute on this basis.

In sum, Associated has failed to demonstrate the absence of any genuine dispute as to the nature of Bloom's services.

B. Exclusion H

Exclusion H states that the Policy's coverages do not apply to damages incurred with respect to any claim "based upon or arising out of any actual or alleged discrimination, humiliation or harassment, including but not limited to a Claim based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual preference." *SUF* ¶ 12; *Policy* at 32. The policy language "arising out of" is a "broad concept" requiring "only a 'slight connection' or an 'incidental relationship' between the injury and the excluded risk." *Century Transit Sys., Inc. v. Am. Empire Surplus Lines Ins. Co.*, 42 Cal. App. 4th 121, 127 n.4 (1996). This language "requires [the court] to examine the conduct underlying the . . . lawsuit, instead of the legal theories attached to the conduct." *Id.*

"[A]n insurer that wishes to rely on an exclusion has the burden of proving, through conclusive evidence, that the exclusion applies in all possible worlds." *Atl. Mut. Ins. Co.*, 100 Cal. App. 4th at 1039. Exclusionary clauses are interpreted narrowly against the insurer. *State Farm Mut. Auto. Ins. Co. v. Partridge*, 10 Cal. 3d 94, 102 (1973).

As an initial matter, the parties dispute the meaning of Exclusion H. Associated argues that Exclusion H broadly includes all claims that "aris[e] out of" *any* alleged "humiliation" and "harassment," and that per *dictionary.com*, "harass" means "to disturb persistently; torment, as with troubles or cares; bother continually; pester; persecute" and "humiliate" means "to cause (a person) a painful loss of pride, self-respect, or dignity; mortify." *See Mot.* 17:21–18:19; *Reply* 10:19–24. Bloom argues that Exclusion H does not encompass *all* claims of humiliation or harassment, but is limited to types of humiliation or harassment such as those listed – based on a protected class. *See Opp.* 18–19.

The Court need not resolve the dispute as to the construction of the Exclusion, because even construing the Exclusion broadly to exclude all types of "harassment" or "humiliation," Associated has not carried its burden to demonstrate that summary judgment is proper.

Associated argues that the *McGowan* complaint's allegations arise out of "humiliation" and "harassment," because the complaint alleges the actions of all the defendants caused McGowan "extreme emotional distress" and "humiliation," and that the claims against Bloom involve Bloom's trying to "shame, silence and ruin McGowan" by making her "seem deranged and crazy" among other things. *See Mot.* 18:9–12, 18:19–19:5; *SUF* ¶¶ 34, 38. Bloom responds that not all of the claims in the *McGowan* complaint turn on the existence of harassment or humiliation; specifically, McGowan brings various claims based on factual allegations of negligent hiring, conversion of intellectual property, investigating potential allegations of sexual assault against Weinstein, and Bloom's failure to disclose that she was on retainer with Weinstein and had a financial connection with Weinstein, which do not necessarily constitute harassment or humiliation. *See Opp.* 18:1–14; *SGD* ¶¶ 72–78.

The Court concludes that Associated has not demonstrated it is entitled to summary judgment by "conclusively negating" the potential for coverage through this Policy Exclusion. *See Atl. Mut. Ins. Co.*, 100 Cal. App. 4th at 1040. Some of McGowan's claims against Bloom are based on conversion of intellectual property or failure to disclose a retainer agreement, that may not constitute "discrimination, humiliation or harassment." *See Zurich*, 65 Cal. 2d at 277 (policy exclusion for insured's intentional acts did not eliminate insurer's duty to defend against

assault allegations because the insured might amend his complaint to allege negligent conduct, or might prove at trial that he engaged in nonintentional tortious conduct). Associated relies on *Northland Ins. Co. v. Briones*, where an insurer owed no duty to defend due to a physical/sexual abuse exclusion in a mobilehomeowners policy "for injuries arising from sexual molestation and harassment," where "all of the conduct alleged in the complaint falls within the general category" of excluded conduct, even if the insured were also negligent or reckless. 81 Cal. App. 4th 796, 810 (2000). But in that case, all of the factual allegations in the underlying complaint were about the insured's raping and sexual molestation of a child. *See id.* 800–05. Although the complaint included a cause of action for negligent infliction of emotional distress, all of the alleged physical injuries in that cause of action "arose from the alleged sexual misconduct," child molestation, by the insured. *See id.* at 805–08. Here, in contrast, the factual allegations giving rise to McGowan's claims do not arise only from, for example, instances of sexual physical or verbal harassment; rather, the complaint contains a variety of alleged wrongful conduct including conversion of intellectual property and failure to disclose professional relationships. *See SGD* ¶¶ 72–78. It is possible that these factual claims against Bloom could fall outside of instances of "harassment," and "humiliation." Associated has not carried its burden at this time "of proving, through conclusive evidence," that Exclusion H "applies in all possible worlds." *Atl. Mut. Ins. Co.*, 100 Cal. App. 4th at 1039.

In sum, Associated has not demonstrated that summary judgment is proper on its duty to defend.[1]

C. Bloom's Counterclaims

Associated argues, first, that the counterclaims fail because Associated had no duty to defend. *See Mot.* 20:4–14. The Court has concluded that Associated has not demonstrated the absence of any genuine dispute regarding its duty to defend. Second, Associated argues that summary judgment is appropriate as to Bloom's counterclaim for breach of the implied covenant of good faith and fair dealing due to the existence of a "genuine dispute." *See Mot.* 20:15–21:6. However, "an insurer may breach the covenant of good faith and fair dealing when it fails to properly investigate its insured's claim." *Egan v. Mutual of Omaha, Ins.*, 24 Cal. 3d 809, 817 (1979). Associated has not presented any evidence regarding its investigation, and appears to rely on its arguments regarding its duty to defend. *See generally Mot.*; *Opp.* 20:28–21:23; *see*

[1] Associated also argues that Insuring Agreement B does not provide coverage here. *See Mot.* 15:23–17:18. The Court need not reach this alternative argument, as it concludes there are genuine disputes as to coverage under Insuring Agreement A.

generally Reply. Accordingly, summary judgment as to Bloom's counterclaims is not appropriate.

IV. Conclusion

For the foregoing reasons, the Court **DENIES** the motion for summary judgment.

IT IS SO ORDERED.