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Order Issued on Submitted Matter

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JUL 17 2019

Clerk of the Court
Superior Court of CA County of Santa Clara
BY V. Jansson DEPUTY

[illegible]FORNIA

COUNTY OF SANTA CLARA

CNEX LABS, INC., a Delaware corporation,

Plaintiff,

vs.

ALLIED WORLD ASSURANCE COMPANY (U.S.), INC., a Delaware corporation,

Defendant.

Case No. 18CV334461

ORDER RE: MOTIONS FOR SUMMARY JUDGMENT/ADJUDICATION

The two motions for summary judgment/adjudication, one by Plaintiff CNEX Labs, Inc. ("Plaintiff") and the other by Defendant Allied World Assurance Company ("Allied") came on for hearing before the Honorable Mark H. Pierce on June 16, 2019, at 9:00 a.m. in Department 2. The matters having been submitted, the Court finds and orders as follows:

This matter is a dispute over insurance coverage. Plaintiff asserts that Defendant Allied was required to provide it with coverage under a company management liability policy (including a director/officer errors & omissions policy) for a federal lawsuit filed against it in December 2017 that it notified Allied of in January 2018. Plaintiff alleges that the policy was

first entered into in June 2015 and was "renewed" in June 2016 and June 2017. (See Complaint at ¶10, a copy of the 2015-2016 policy is attached to the Complaint as exhibit A.) However, the policy attached to the Complaint states on its front page that its period ran from June 30, 2015 to June 30, 2016. Plaintiff has included in exhibit A to the Complaint copies of what it describes as "renewals" (but which are actually binders) showing that policies were in effect in 2016 and 2017, but these documents also demonstrate that each policy had its own policy period of only one year.

The events that led to the federal lawsuit against Plaintiff and one of its officers (Yiren Ronnie Huang, "Huang")) began with a dispute between Mr. Huang and his former employer Futurewei Technologies, Inc. ("Futurewei"). On July 20, 2016 Futurewei sent Mr. Huang a letter asserting that under his employment agreement Futurewei was entitled to patents Huang had applied for (naming himself as sole inventor and assigning them to Plaintiff) after leaving Futurewei. The letter (submitted, among other places, as exhibit D to the declaration of Susan Paek in support of Allied's MSJ) stated in pertinent part that "[U]nder Section 3(b) of the Employment Agreement, all right, title and interest to the '389 Provisional Application, the '335 Provisional Application, and any patent applications that claim priority to '389 Provisional Application or '335 Application, belong solely to Futurewei. Moreover, your agreement to assign all right, title and interest to these patent applications to Futurewei predates your subsequent assignment to CNEX Labs, Inc. Futurewei hopes to resolve this issue amicably by obtaining the assignment of the patent applications to Futurewei. . . . We also require you to confirm that these patent applications have not been assigned, licensed, or in any other way encumbered by CNEX or you. . . . If we do not receive your response by August 12, 2016,

Futurewei will have no choice but to pursue all available legal remedies. Futurewei's investigation in this matter is ongoing, and Futurewei reserves all its rights and remedies, none of which are waived by this letter."

Plaintiff did not notify Allied of the July 29, 2016 letter even though it clearly suggested a lawsuit against an insured under the policy then in effect (Mr. Huang) and/or Plaintiff itself was a reasonable possibility. Huang, Futurewei and Plaintiff then entered into a series of "standstill" agreements while they attempted to resolve the dispute. The first of these, dated Sept. 7, 2016 (submitted by Allied as exhibit E to the declaration of Susan Paek in support of its MSJ), stated in pertinent part that "[i]n order to facilitate a discussion between the parties regarding the possibility of a resolution to the issues raised by [the July 29, 2016 letter] the Parties hereby covenant and agree not to bring, file or institute in any way . . . any complaint, pleading, or action of any type between, among or against the Parties related to (a) any allegations in the Futurewei letter, (b) Huang's employment at Futurewei, (c) the agreement entered into in or around January 2011 between Futurewei and Huang . . . and/or (d) any patent or patent application filed by on behalf of CNEX or assigned to CNEX, in any U.S. or non-U.S. tribunal or forum of any type before the Termination Date of this Agreement . . ." Plaintiff did not notify Allied of the standstill agreements.

The attempts to resolve the dispute with Futurewei were unsuccessful and on December 28, 2017, Plaintiff and Huang sued Futurewei in this Court (case no. 17CV321153), seeking declarations that the Employment Agreement between Huang and Futurewei was illegal and void under California law and that Plaintiff had not interfered with Futurewei's contracts or business.

The complaint in that action alleges (at ¶¶ 8-9) that, after his employment with Futurewei had terminated on May 31, 2013, Huang "co-founded CNEX" in June of 2013, precisely when Futurewei claimed he began filing for patents and assigning them to Plaintiff. On that same day Futurewei sued Huang and Plaintiff in federal court in the eastern district of Texas (*Huawei Technologies Co. Ltd. and Futurewei Technologies, Inc. v. Yiren Ronnie Huang and CNEX Labs, Inc.*, case no. 4:17-cv-00893 ("underlying action")). A copy of the original Texas complaint and the two amendments are attached to the Complaint as exhibits B-D.

Plaintiff first notified Allied of Futurewei's lawsuit on January 3, 2018 and alleges that Allied denied coverage on February 8, 2018, stating that "the Texas Litigation was related to a letter sent to Mr. Huang individually in 2016 and that the Texas Litigation was excluded entirely from coverage by the Policy's intellectual property exclusion." (Complaint at ¶14.)

Plaintiff's original and still operative Complaint filed September 6, 2018 states claims for: 1) Declaratory Relief (seeking a declaration of duties owed under the 2015-2016 Policy); 2) Breach of Contract (based on the denial of coverage), and; 3) Breach of the Implied Covenant of Good Faith and Fair Dealing (insurance bad faith).

Currently before the Court are what are essentially cross-motions for summary judgment/adjudication by Plaintiff and Allied.

Requests for Judicial Notice

A precondition to judicial notice in either its permissive or mandatory form is that the matter to be noticed be relevant to the material issue before the Court. (*Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 307, citing *People v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2.)

Defendant Allied has submitted two different requests for judicial notice, one in support of its motion and the other in support of its opposition to Plaintiff's motion.

In the request made in support of its own MSJ Allied asks the Court to take judicial notice of four documents, all court filings, pursuant to Evidence Code §452(d). The first three documents (attached as exhibits B1-B3 to the declaration of Susan Paek in support of Allied's MSJ) are copies of the original and amended complaints in the underlying action in Texas (the same documents attached to the Complaint as exhibits B-D). The fourth document (submitted as exhibit 1 to the declaration of Mary Borja in support of Allied's MSJ) is a copy of the complaint from the California lawsuit filed by Plaintiff and Huang against Futurewei. Notice of all four documents is GRANTED pursuant to §452(d). Notice can only be taken of the existence and filing dates of the pleadings, and not of the truth of their contents.

In the second request, made in support of the opposition to Plaintiff's MSJ, Allied asks the Court to take notice of seven documents (previous court filings by Allied, including the papers filed in support of its own MSJ), pursuant to §452(d). Notice of these documents is DENIED as irrelevant to the analysis of Plaintiff's motion. Court records other than court orders and judgments can only be noticed as to their existence and filling dates, not as to the truth of

their contents, and the existence and filing dates of these documents are irrelevant to the Court's analysis of the motion. Declarations in particular cannot be noticed as to the truth of their contents. (See *Bach v. McNelis* (1989) 207 Cal.App.3d 852, 865 [court may not notice the truth of declarations or affidavits filed in court proceedings].)

Motions for Summary Judgment/Adjudication

The pleadings limit the issues presented for summary judgment/adjudication and such a motion may not be granted or denied based on issues not raised by the pleadings. (See *Government Employees Ins. Co. v. Sup. Ct.* (2000) 79 Cal.App.4th 95, 98; *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258; *Nieto v. Blue Shield of Calif. Life & Health Ins.* (2010) 181 Cal.App.4th 60, 73 ["the pleadings determine the scope of relevant issues on a summary judgment motion."].) The moving party bears the initial burden of production to make a prima facie showing that there are no triable issues of material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty. (See CCP §437c(f)(1); *McClasky v. California State Auto. Ass'n* (2010) 189 Cal.App.4th 947, 975 ["If a cause of action is not shown to be barred in its entirety, no order for summary judgment—or adjudication—can be entered."]; *Palm Spring Villas II Homeowners Association, Inc. v. Parth* (2016) 248 Cal.App.4th 268, 288.) Summary adjudication of general "issues" or of facts is not permitted. (See *Raghavan v. The Boeing Company* (2005) 133 Cal.App.4th 1120, 1136.)

Cal. Rule of Court 3.1350(b) states in pertinent part: "If summary adjudication is sought, whether separately or as an alternative to the motion for summary judgment, the specific cause of action, affirmative defense, claims for damages, or issues of duty must be stated specifically in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts."

The moving party's declarations and evidence will be strictly construed in determining whether they negate or disprove an essential element of a plaintiff's claim "in order to resolve any evidentiary doubts or ambiguities in plaintiff's (or opposing party's) favor." (*Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 64, parentheses added.) While the same standards of admissibility govern both, the opposition declarations are liberally construed while the moving party's evidence is strictly scrutinized. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768.) The evidence must be liberally construed in support of the opposing party, resolving any doubts in favor of that party. (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037; *Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 389.)

The moving party may generally <u>not</u> rely on additional evidence filed with its reply papers. (See *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-38 ["The general rule of motion practice . . . is that new evidence is not permitted with reply papers. This principle is most prominent in the context of summary judgment motions . . ."]; see also *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252.)

"Summary judgment is properly granted when no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. A defendant [or cross-defendant] moving for summary judgment bears the initial burden of showing that a cause of action has no merit by showing that one or more of its elements cannot be established or that there is a complete defense. Once the defendant has met that burden, the burden shifts to the plaintiff 'to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto.' 'There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.'" (*Madden v. Summit View, Inc.* (2008) 165 Cal.App.4th 1267, 1272 [brackets added, internal citations omitted].)

Where a Plaintiff moves for summary judgment/adjudication, the burden is to produce admissible evidence on each element of a "cause of action" entitling him or her to judgment. (See CCP §437c(p)(1); *Hunter v. Pacific Mechanical Corp.* (1995) 37 Cal.App.4th 1282, 1287, disapproved on other grounds in *Aguilar*; *S.B.C.C., Inc. v. St. Paul Fire & Marine, Ins. Co.* (2010) 186 Cal.App.4th 383, 388.) This means that a plaintiff who bears the burden of proof at trial by a preponderance of evidence must produce evidence that would require a reasonable finder of fact to find any underlying material fact more likely than not. "Otherwise, he would not be entitled to judgment as a matter of law." (*Aguilar*, *supra* at p. 851; *LLP Mortgage v. Bizar* (2005) 126 Cal.App.4th 773, 776 [burden is on plaintiff to persuade court there is no triable issue of material fact].)

Summary judgment may be had in a declaratory relief action since the propriety of the application of declaratory relief lies in the trial court's function to render such a judgment when only legal issues are presented for its determination. (*Las Tunas Beach Geologic Hazard Abatement Dist. v. Superior Court* (1995) 38 Cal.App.4th 1002, 1015.) "When seeking summary judgment on a claim for declaratory relief, the defendant must show that the plaintiff is not entitled to a declaration in its favor by establishing '(1) the sought-after declaration is legally incorrect; (2) [the] undisputed facts do not support the premise for the sought-after declaration; or (3) the issue is otherwise not one that is appropriate for declaratory relief.' If this is accomplished, the burden shifts to the plaintiff to prove, by producing evidence of, specific facts creating a triable issue of material fact as to the cause of action or the defense." (*Cates v. California Gambling Control Com.* (2007) 154 Cal.App.4th 1302, 1307-1308, citing *Gafcon, Inc. v. Ponsor & Associates* (2002) 98 Cal.App.4th 1388, 1402.)

As an initial matter Plaintiff's motion is one for summary judgment only, as it has not complied with Cal. Rule of Court 3.1350(b). The three requests for summary adjudication in the alternative (two numbered, one unnumbered) stated in Plaintiff's Notice of Motion at p. 2:15-28 (which do not include the third cause of action) are not repeated verbatim in the separate statement, which instead lists four "issues" for adjudication. Therefore the motion is one for summary judgment only on the basis that Allied "failed to conduct a reasonable investigation into CNEX's claim and denied CNEX's claim in bad faith." (Notice of Motion at p. 2:11-12.)

Considered as a motion for summary judgment only, Plaintiff's motion is DENIED for failure to meet the initial burden.

Plaintiff is bound by its pleading on summary judgment. The policy attached to the Complaint as Exhibit A, on which all three causes of action are based, plainly shows that its policy period ended on June 30, 2016. This is also the only policy submitted by Plaintiff as evidence in support of its motion (as exhibit 2 to the declaration of Matthew Turetzky) and the only policy cited as support for Plaintiff's undisputed material facts purporting to state policy terms. Plaintiff cannot demonstrate that Allied's denial of coverage on February 8, 2018 was a breach of a contract (the 2015-2016 policy) that had expired on its own terms on June 30, 3016, or establish that such denial was an act of bad faith. It also cannot establish that it is entitled to a declaration that Allied is required to defend and indemnify it in the underlying action filed in December 2017 based on the terms of the 2015-2016 policy, whose policy period ended on June 30, 2016.

The Court notes that Plaintiff had ample opportunity in the nearly eight months between the filing of the Complaint and the filing of its MSJ to amend its pleading to reflect that the policy it sought coverage under, and the contract it asserted Allied had breached in bad faith, was in fact the 2017-2018 policy and not the 2015-2016 policy.

The Court must still consider the parties' competing interpretations of the only policy that was actually in effect when Plaintiff first sought coverage of the underlying litigation in January 2018, the 2017-2018 policy (submitted as exhibit F to the declaration of Susan Paek in support of Allied's motion), in ruling on Defendant Allied's motion for summary judgment/adjudication directed at Plaintiff's Complaint. "As a question of law, the interpretation of an insurance policy

is reviewed de novo under well settled rules of contract interpretation. 'The fundamental rules of contract interpretation are based on the premise that the interpretation of a contract must give effect to the 'mutual intention' of the parties. 'Under statutory rules of contract interpretation, the mutual intention of the parties at the time the contract is formed governs interpretation. (Civ. Code §1636.) Such intent is to be inferred, if possible, solely from the written provisions of the contract. (Id., §1639.) The 'clear and explicit' meaning of these provisions, interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage.' (Id. §1644), controls judicial interpretation.'" (*E.M.M.I., Inc. v. Zurich American Ins. Co.* (2004) 32 Cal.4th 465, 470, internal citations omitted.)

Allied asserts that it is entitled to summary judgment "because the Claim at issue was not first made during the policy period, as required to fall within the scope of coverage of the June 30, 2017 to July 8, 2018 policy period," and "because the Intellectual Property Exclusion precludes coverage for the Claim." (Allied's Notice of Motion at p. 2:12-17.)

Allied's motion, to the extent it seeks summary adjudication in the alternative of only Plaintiff's third cause of action, does comply with Rule of Court 3.1350(b). (Compare Allied's Notice of Motion at p. 2:18-21 with "Issue No 3" listed on page 27 of Allied's Separate Statement in support of its motion.)

Allied has established through admissible evidence (primarily the Complaint itself and the declarations of Susan Paek and Mary Borja and the attached exhibits) that Plaintiff is not

entitled to coverage under the only policy in effect when it first gave Allied notice of the underlying litigation.

First, Allied has established that (regardless of the allegations in the Complaint suggesting that the 2015-2016 policy is at issue) the only policy Plaintiff is seeking coverage under is the 2017-2018 policy. In its verified December 21, 2018 response to Allied's Special Interrogatory No. 4 (set one), stating "Identify the Allied World insurance policy under which Plaintiff seeks coverage for" the underlying litigation "including the policy number and policy period," Plaintiff responded: "Policy number 0309-6691; claim period June 30, 2017 to July 8, 2018." (See exhibit 2 to the declaration of Mary Borja offered in support of Allied's MSJ.)

The 2017-2018 Policy (like the 2015-2016 policy attached to the Complaint) was a "Claims-made" policy as it states on its front page under "Notices" (in bolded capital letters): "Except to such extent as may otherwise be provided herein, the coverage of this policy is generally limited to liability for only those claims that are first made against the insureds during the policy period and reported in writing to the insurer pursuant to the terms herein. . . . The insurer does not assume the duty to defend any claim under this policy; however, if the insured tenders the defense of any claim to the insurer in accordance with the terms herein, the insurer shall assume the defense of such claim." (See exhibit F to the declaration of Susan Paek in support of Allied's motion.)

It is not unusual for "Directors and Officers" or "D&O" policies to disclaim a duty to defend. "Most D&O policies provide that the defense of a claim rests with the insured and that

the insurer has no duty to provide a defense against covered claims. 'D&O policies generally do not obligate the carrier to provide the insured with a defense. More likely, they require the carrier to reimburse the insured for defense costs as an ingredient of 'loss,' a defined term under the policy.'" (Croskey, et, al., *Cal. Prac. Guide: Insurance Litigation* (Rutter Group 2018) §7:1612, citing and quoting *Helfand v. National Union Fire Ins. Co. of Pittsburgh, Penn.* (1992) 10 Cal.App.4th 869, 879.)

"Claims-made" policies cover only claims that are asserted against the insured while the policy is in effect. (See *Feldman v. Illinois Union Ins. Co.* (2011) 198 Cal.App.4th 1495, 1501, fn. 6 [directors and officers liability policy].) "Claims-made" policies "were specifically developed to limit an insurer's risk by restricting coverage to the single policy in effect at the time a claim was asserted against the insured, *without regard to the timing of the damage or injury*, thus permitting the carrier to establish reserves without regard to possibilities of inflation, upward-spiraling jury awards, or enlargements of tort liability after the policy period." (*Montrose Chemical Corp. of Calif. v. Admiral Ins. Co.* (1995) 10 Cal.4th 645, 688 [emphasis in original].)

Threats of legal action against an insured can constitute a claim under a "claims made" policy depending on the policy terms. Here, the 2017-2018 policy's definition of "Claim" (in section II. B of the D&O liability coverage section of the policy) includes both "(1) written demand for monetary, non-monetary or injunctive relief made against an Insured," which the July 29, 2016 letter qualifies as, since Mr. Huang was an "insured" under the policy and Futurewei's demand that patents Mr. Huang had applied for and assigned to Plaintiff after co-

founding and working for Plaintiff be assigned to Futurewei was clearly a demand for non-monetary relief stemming from a purported wrongful act by Mr. Huang in his capacity as an officer and/or employee of Plaintiff. This same definition was included in the 2016-2016 policy. The 2017-2018 policy also defines "claim" to include a: "(5) written request to toll or waive the applicable statute of limitations, or to waive any contractual time bar, relating to a potential Claim against an insured for a Wrongful Act." This same definition appeared in the 2015-2016 policy (as (6) rather than (5)). The first standstill agreement on September 7, 2016 meets this definition of a "claim" as there would have been no need for Plaintiff to be a signatory to the agreement unless it reasonably expected that if it did not sign it could be immediately sued for being, as Futurewei saw it, wrongfully in possession of patents assigned to it by Mr. Huang after he left Futurewei and was working in his capacity as a co-founder/officer of Plaintiff. The definition of "claim" also states that "A claim shall be deemed first made when any Insured first receives notice of the Claim." Here, that would have been when Mr. Huang received the July 29, 2016 letter. Even if that were assumed for purposes of argument not to be the date a claim was first made against Plaintiff itself, Plaintiff's signing of the first standstill agreement on September 7, 2016 would then be the date a claim was first made against it.

The Policy's definition of "Related Claim" (stated in II. F of the general terms and conditions section of the policy) states that "'Related Claims' means all Claims for Wrongful Acts based upon, arising out of, or in consequence of the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions, or events." This language is not given a narrow interpretation. "California courts have consistently given a broad interpretation to the terms 'arising out of' or 'arising from' in

various kinds of insurance provisions. It is settled that this language does not import any particular standard of causation or theory of liability into an insurance policy. Rather, it broadly links a factual situation with the event creating liability, and connotes only a minimal causal connection or incidental relationship." (*McMillin Management Services, L.P. v. Financial Pacific Ins. Co.* (2017) 17 Cal.App.5th 187, 202, quoting *Acceptance Ins. Co. v. Syufy Enterprises* (1999) 69 Cal.App.4th 321, 328.) Thus even if it were not considered part of the "claim" that was first made on July 29, 2016 for purposes of argument, the underlying litigation meets the policy definition of a "related claim."

Section "V." of the 2017-2018 Policy's general terms and conditions section ("Notice of Claim") states in pertinent part: "A. The Insured(s) shall, *as a condition precedent to the obligations of the Insurer under this Policy*, give written notice to the Insurer . . . of a Claim made against an Insured as soon as practicable after the Company's General Counsel or Risk Manager, or any individual with functionally equivalent responsibilities, becomes aware of the Claim. . . . C. If during the Policy Period an Insured shall become aware of any circumstances which may reasonably be expected to give rise to a Claim being made against an Insured and shall, during the Policy Period, give written notice to the Insurer . . . of the circumstances, including the Wrongful Act, allegations anticipated, and the reasons for anticipating such a Claim, with full particulars as to dates, persons and entities involved, any Claim that is subsequently made against the Insured alleging, arising out of, based upon or attributable to such circumstances, shall be deemed to have been made at the time written notice of such circumstances was first given to the Insurer. D. *All Related Claims shall be deemed to be a single Claim made on the date on which the earliest Claim within such Related Claims was first*

made, or when the earliest Claim within such Related Claims is treated as having been made in accordance with Section V. C. above, whichever is earlier." (Court's emphasis.)

Thus, the only policy in effect at the time Plaintiff first reported the underlying Texas litigation to Defendant (the 2017-2018 policy) expressly did not apply to "claims" made before the start of the policy period on June 30, 2017. The evidence submitted (the July 29, 2016 letter from Futurewei, the September 7, 2016 standstill agreement, Plaintiff and Huang's California Complaint against Futurewei and Futurewei's federal complaints in particular) establishes that the "claim" for which Plaintiff sought coverage was first made well before that policy period began. In order for there to have been coverage under the policy in effect when the claim against an insured was first made (July-September 2016) Plaintiff was required, "as a condition precedent" to Allied's obligation to provide coverage, to give proper notice to Allied under the "Notice of Claim" provisions. Instead it did not give any notice of the dispute with Futurewei until January 3, 2018, after the underlying litigation had been filed, by which time an entirely different "claims made" policy period was in effect. The evidence submitted makes clear that Plaintiff at all relevant times knew or reasonably should have known that, as stated on the front page of both the 2015-2016 policy and the 2017-2018 policy, its policy coverage was "generally limited to liability for only those claims that are first made against the insureds during the policy period and reported in writing to the insurer pursuant to the terms here," and that Allied "does not assume the duty to defend any claim under this policy."

As the Court finds that Allied is entitled to summary judgment on the basis that Plaintiff cannot show that Allied owed it any coverage for the underlying litigation under the 2017-2018

policy because the "claim" at issue was not first made against Plaintiff during the June 30, 2017 to July 8, 2018 policy period, it is not necessary for the Court to address the question of whether coverage would have otherwise been precluded by the 2017-2018 policy's intellectual property exclusion.

Finally the Court notes that, with the oppositions to both motions, each side has submitted objections to the other's supporting evidence. These objections do not comply with Cal. Rule of Court 3.1354, which requires two documents to be submitted: the objections and a separate proposed order on the objections, both of which must be in one of the two approved formats stated in the Rule. As the objections submitted do not comply with the Rule the Court will not rule on them. (See *Vineyard Spring Estates v. Super. Ct.* (2004) 120 Cal.App.4th 633, 642 [trial courts only have duty to rule on evidentiary objections presented in proper format]; *Hodjat v. State Farm Mutual Automobile Ins. Co.* (2012) 211 Cal.App.4th 1 [trial court not required to rule on objections that do not comply with Rule of Court 3.1354 and not required to give objecting party a second chance at filing properly formatted papers].) Objections that are not ruled on are preserved for appellate review. (CCP § 437c(q).)

Dated: JUL 17 2019

Copy

Mark H. Pierce
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

DOWNTOWN COURTHOUSE
191 NORTH FIRST STREET
SAN JOSÉ, CALIFORNIA 95113
CIVIL DIVISION

William Fred Norton
The Norton Law Firm PC
299 Third Street sTE 106
Oakland CA 94607

RE: **CNEX Labs, Inc vs Allied World Assurance Company (U.S.), Inc.**
Case Number: **18CV334461**

PROOF OF SERVICE

Order on Submitted Matter was delivered to the parties listed below the above entitled case as set forth in the sworn declaration below.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line (408) 882-2690 or the Voice/TDD California Relay Service (800) 735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown below, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on July 17, 2019. CLERK OF THE COURT, by Mai Jansson, Deputy.

cc: Enrique Marinez Ropers Majeski Kohn & Bentley 1001 Marshall St Suite 500 Redwood City CA 94063-2052
Mary E Borja Wiley Rein LLP 1776 K Street NW Washington DC 20006
Richard A Simpson Wiley Rein LLP 1776 K Street NW Washington DC 20006

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

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cc: William Fred Norton The Norton Law Firm PC 299 Third Street sTE 106 Oakland CA 94607
Mary E Borja Wiley Rein LLP 1776 K Street NW Washington DC 20006
Richard A Simpson Wiley Rein LLP 1776 K Street NW Washington DC 20006