

United States District Court
Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEM, INC.,
Plaintiff,
v.
SCOTTSDALE INSURANCE COMPANY,
Defendant.

Case No. [20-cv-02950-CRB](#)

ORDER GRANTING IN PART AND DENYING IN PART SCOTTSDALE INSURANCE COMPANY’S MOTION FOR SUMMARY JUDGMENT; GRANTING IN PART AND DENYING IN PART STEM, INC.’S MOTION FOR SUMMARY JUDGMENT

Stem, Inc. has sued its liability insurer, Scottsdale Insurance Company, alleging that Scottsdale breached the terms of their insurance contract when Scottsdale failed to cover Stem’s losses associated with a 2017 lawsuit against Stem. In that underlying lawsuit, certain Stem shareholders asserted claims arising from two transactions relevant here: a 2013 Series B financing round and a 2017 loan from Stem board member David Buzby to Stem. Before this Court, Stem asserts various causes of action based on Scottsdale’s denial of coverage and requests compensatory and punitive damages, along with attorneys’ fees. Scottsdale now moves for summary judgment on all of Stem’s claims; Stem moves for partial summary judgment on Scottsdale’s obligations under the policy but seeks a jury trial on its claim for breach of the implied covenant of good faith and fair dealing and on Stem’s requests for punitive damages and attorneys’ fees.

The Court determines that no oral argument is necessary. The Court grants in part and denies in part Scottsdale’s motion for summary judgment. The Court grants Scottsdale’s motion with respect to (1) Scottsdale’s coverage obligations in relation to the 2013 Series B Financing Round Claim in the underlying 2017 Shareholder Lawsuit, (2)

1 Stem’s breach of the implied covenant of good faith and fair dealing claim, and (3) Stem’s
 2 requests for punitive damages and attorneys’ fees. The Court denies Scottsdale’s motion
 3 with respect to Scottsdale’s coverage obligations in relation to the 2017 Buzby Loan Claim
 4 in the underlying 2017 lawsuit. The Court also grants in part and denies in part Stem’s
 5 motion for summary judgment. The Court grants Stem’s motion with respect to
 6 Scottsdale’s coverage obligations in relation to the 2017 Buzby Loan Claim in the
 7 underlying 2017 Shareholder Lawsuit. The Court otherwise denies Stem’s motion.

8 **I. BACKGROUND**

9 **A. The Parties**

10 Stem is a technology company that helps customers store and manage electrical
 11 power. See Compl. (dkt. 1) ¶ 5. Scottsdale is a liability insurer that offers companies the
 12 ability to purchase “Business and Management Indemnity” policies that insure for defined
 13 losses associated with specific legal claims. See id. ¶¶ 6–18. Such a policy requires
 14 Scottsdale to cover the costs associated with litigating certain claims brought against the
 15 insured company. From October 13, 2011 to October 27, 2019, Stem was covered by
 16 consecutive Business and Management Indemnity policies. See Stem MSJ (dkt. 35) at 5.

17 **B. The 2010 Reineccius Employment Dispute**

18 In September 2010, Stem fired its co-founder Stacey Reineccius after members of
 19 the Board of Directors expressed concern over newly revealed information about
 20 Reineccius, including his purported lack of a college degree. See Scottsdale MSJ (dkt 34-
 21 1) at 1, 3–4; Scottsdale MSJ Ex. D (dkt. 34-9). Reineccius responded by contesting the
 22 Board’s decision and promising to “pursue every legal remedy available” if the company
 23 continued to spread falsehoods against him. Scottsdale MSJ Ex. G (dkt. 34-12). Stem
 24 notified Reineccius that it was repurchasing all of his unvested shares in Stem. See
 25 Scottsdale MSJ at 4; Scottsdale MSJ Ex. J (dkt. 34-15).

26 In November 2010 and January 2011, Reineccius’s attorney Richard Grimm wrote
 27 to Stem requesting access to documents and demanding to inspect Stem’s books. See
 28 Scottsdale MSJ at 4; Scottsdale MSJ Ex. L (dkt. 34-17); Scottsdale MSJ Ex. M (dkt. 34-

1 18). Reineccius also filed a claim with the Employment Development Department in
 2 California, which ultimately found that he was not terminated “for cause.” Scottsdale MSJ
 3 at 4-5; Scottsdale MSJ Ex. N (dkt. 34-19).

4 In February 2011, Stem filed a demand for arbitration against Reineccius. See
 5 Scottsdale MSJ at 5; Scottsdale MSJ Ex. O (dkt. 34-20); Stem MSJ at 4. In March 2011,
 6 Stem and Reineccius agreed to a formal settlement under which Stem issued shares to
 7 Reineccius and his lawyers (including Grimm). See Scottsdale MSJ at 5; Scottsdale MSJ
 8 Ex. N; Stem MSJ at 4. In exchange, Reineccius released all claims against Stem “arising
 9 from any omissions, acts, facts or damages that have occurred up until and including”
 10 March 28, 2011. Scottsdale MSJ Ex. N; Stem MSJ at 4.

11 **C. The Insurance Policies**

12 **1. Insurance Application**

13 Later that year, in September 2011, Stem applied to Scottsdale for a liability
 14 insurance policy. See Stem MSJ at 4; Scottsdale MSJ at 5. In its application, Stem had to
 15 answer a number of questions. Scottsdale MSJ Ex. B (dkt. 34-7). Relevant here, Stem
 16 was asked

17 Within the last three years, has any person or entity proposed
 18 for this insurance been the subject of or involved in any
 19 litigation, administrative proceeding, demand letter or formal
 20 or informal investigation of inquiry including any investigation
 by the Department of Labor or Equal Employment Opportunity
 Commission[?]

21 Id. Despite the 2010 Reineccius Employment Dispute, Stem answered no. Id.

22 **2. Policy Language**

23 In October 2011, Scottsdale issued Stem a “Business and Management Indemnity”
 24 policy that Stem renewed for eight consecutive one-year terms from October 2011 through
 25 October 2019. See Stem MSJ at 5; Stem MSJ Ex. N (dkt. 37-14).¹

26 _____
 27 ¹ Because the policies require Scottsdale to provide coverage for certain legal claims against Stem
 28 made during the one-year policy period, see Compl. ¶ 17; Scottsdale Opp’n to MSJ (dkt. 40) at 3,
 both the 2013-2014 and 2016-2017 policies are at issue here, but for all relevant purposes the
 policies contain the same language. See generally Stem MSJ Ex. A (dkt. 37-1) (2013-2014
 policy); Stem MSJ Ex. B (dkt. 37-2) (2016-2017 policy). Because the policies use the same

a. **General Coverage**

The policy contains an insuring clause that sets out the basic coverage provided.

The clause provides that

[t]he **Insurer** shall pay the **Loss** of the **Company** for which the **Company** has indemnified the **Directors and Officers** and which the **Directors and Officers** have become legally obligated to pay by reason of a **Claim** first made against the **Directors and Officers** during the **Policy Period** . . . and reported to the Insurer pursuant to Section E.1. herein, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.

Stem MSJ Ex. A. at 12; Stem MSJ Ex. B at 63 (emphasis in original).

The policy then defines the bolded terms. Relevant here, “Loss” means “damages, judgments, settlements, pre-judgment or post-judgment interest awarded by a court, and Costs, Charges and Expenses incurred by Directors and Officers” under the insuring clause. But “Loss” excludes “matters uninsurable under the laws pursuant to which this Policy is construed” and “any amounts owed or paid to one or more securities holders of the Company under any written or express contract or agreement.” “Directors and Officers” means “any person who was, now is, or shall become . . . a duly elected or appointed director, officer, or similar executive of the Company [Stem], or any member of the management board of the Company.” A “Claim” includes “a written demand against any Insured for monetary damages or non-monetary or injunctive relief; [or] a civil proceeding against any Insured seeking monetary damages or non-monetary or injunctive relief, commenced by the service of a complaint or similar pleading; [or] a civil, administrative or regulatory proceeding, or a formal governmental investigation against any Insured commenced by the filing of a notice of charges, investigative order or similar document.” Finally, “Wrongful Act” means “any actual or alleged error, omission, misleading statement, misstatement, neglect, breach of duty or act allegedly committed or attempted by . . . any of the Directors or Officers” while acting as a Director or Officer. Stem MSJ Ex. A at 7–8, 12–14; Stem MSJ Ex. B at 58–59; 63–65.

language, the Court refers to them as one “policy.”

1 Thus, under the policy, Scottsdale would pay the legal costs and cover and
 2 judgments or settlements that Stem incurred defending Stem’s indemnified Directors and
 3 Officers against written demands and lawsuits first initiated during the policy period.

4 **b. Exclusions**

5 The policy outlines several relevant exclusions from the above-described general
 6 coverage provision.

7 **i. Interrelated Wrongful Acts Exclusion**

8 First, the policy provides that “[a]ll Claims arising out of the same Wrongful Act
 9 and all Interrelated Wrongful Acts shall be deemed to constitute a single Claim and shall
 10 be deemed to have been made at . . . the time at which the earliest Claim involving the
 11 same Wrongful Act or Interrelated Wrongful Act is first made.” Stem MSJ Ex. A at 18;
 12 Stem MSJ Ex. B at 68–69. Because the policy does not cover Claims made before its
 13 inception in October 2011, see Stem MSJ Ex. A. at 12; Stem MSJ Ex. B at 63, the policy
 14 does not cover Claims arising from any Interrelated Wrongful Act that occurred before
 15 October 2011. Interrelated Wrongful Acts are “all Wrongful Acts that have as a common
 16 nexus any fact, circumstance, situation, event, transaction, cause or series of facts,
 17 circumstances, situations, events, transactions or causes.” Stem MSJ Ex. A at 13; Stem
 18 MSJ Ex. B at 64.

19 **ii. Prior or Pending Litigation Exclusion**

20 Second, the policy states that Scottsdale will not be liable for any Loss on account
 21 of a Claim

22 alleging, based upon, arising out of, attributable to, directly or
 23 indirectly resulting from, in consequence of, or in any way
 24 involving . . . any prior or pending litigation or administrative
 25 or regulatory proceeding, demand letter or formal or informal
 26 governmental investigation or inquiry filed or pending on or
 27 before the **Continuity Date**; or any fact, circumstance,
 28 situation, transaction or event underlying or alleged in such
 litigation or administrative or regulatory proceeding, demand
 letter or formal or informal governmental investigation or
 inquiry.

Stem MSJ Ex. A at 16; Stem MSJ Ex. B at 67 (emphasis in original). Continuity Date

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1 refers to October 13, 2011, when the first policy went into effect. Stem MSJ Ex. A at 1,
2 12; Stem MSJ Ex. B at 52, 63.

3 **iii. Prior Knowledge Exclusion**

4 Third, the policy excludes from coverage any Claim

5 alleging, based upon, arising out of, attributable to, directly or
6 indirectly resulting from, in consequence of, or in any way
7 involving, any **Wrongful Act**, fact, circumstance or situation
8 which any of the **Insureds** had knowledge of prior to the
Continuity Date where such **Insureds** had reason to believe at
the time that such known **Wrongful Act** could reasonably be
expected to give rise to such **Claim**.

9 Stem MSJ Ex. A at 16; Stem MSJ Ex. B at 67 (emphasis in original).

10 **iv. Breach of Application Exclusion**

11 Fourth, the policy provides that

12 [i]n the event the **Application** [for insurance], including
13 materials submitted or required to be submitted therewith,
14 contains any misrepresentation or omission made with the
15 intent to deceive, or contains any misrepresentation or
16 omission which materially affects either the acceptance of the
17 risk or the hazard assumed by the **Insurer** under this **Policy**,
18 this **Policy**, including each and all **Coverage Sections**, shall
not afford coverage to the following **Insureds** for any **Claim**
alleging, based upon, arising out of, attributable to, directly or
indirectly resulting from, in consequence of, or in any way
involving, any untruthful or inaccurate statements,
representations or information.

19 Stem MSJ Ex. A at 28; Stem MSJ Ex. B at 80. This exclusion applies to any Insured who
20 knew of the misrepresentations or omissions. Id.

21 **v. Insured vs. Insured Exclusion**

22 Finally, the policy contains an exclusion for any claims

23 brought or maintained by, on behalf of, in the right of, or at the
24 direction of any **Insured** in any capacity, . . . unless [under
25 exception iv to this exclusion] such **Claim** . . . is brought or
26 maintained by any former director or officer of the **Company**
27 solely in their capacity as a securities holder of the **Company**
and where such **Claim** is solely based upon and arising out of
Wrongful Acts committed subsequent to the date such director
or officer ceased to be a director or officer of the **Company**
and where such **Claim** is first made two (2) years subsequent
to the date such director or officer ceased to be a director or
officer of the **Company**

1 Stem MSJ Ex. A at 15; Stem MSJ Ex. B at 66 (emphasis in original). “Insured” includes
2 Stem as well as its previous, current, and future directors and officers. Stem MSJ Ex. A at
3 13; Stem MSJ Ex. B at 64.

4 **D. 2013 Series B Equity Financing**

5 In November 2013, Stem initiated a Series B equity financing round. Stem MSJ at
6 5–6. The equity financing included a 100:1 “pull forward” provision. *Id.* at 6; Buzby
7 Decl. (dkt. 35-4) ¶ 2. Under this provision, any current investor who participated in the
8 Series B Financing at a company-determined threshold level would receive 100 shares of
9 Stem stock in exchange for each existing share. Stem MSJ at 6; Buzby Decl. ¶ 3. Current
10 shareholders who did not participate at the threshold level would not receive 100 shares in
11 exchange for each current share and would thus be diluted. Stem MSJ at 6; Buzby Decl.
12 ¶ 3. Stem offered all shareholders an opportunity to participate. Stem MSJ at 6;
13 Carrington Decl. (dkt. 35-6) ¶ 3.

14 In December 2013, Grimm (Reineccius’s lawyer in the 2010 Employment Dispute
15 and a Stem stockholder after the dispute settled) sent a letter to Stem demanding
16 information about the Series B financing round for the purpose of pleading particularized
17 facts should litigation involving the financing round arise. Scottsdale MSJ at 6; Scottsdale
18 MSJ Ex. T (dkt. 34-25); Stem MSJ at 6. In February 2014, Grimm sued Stem in the
19 Delaware Court of Chancery, seeking an order requiring Stem to give him access to the
20 documents he requested. Stem MSJ at 6; see generally Stem MSJ Ex. P (dkt. 37-16). On
21 October 13, 2014, the Master in Chancery issued a final report ordering Stem to produce
22 some of the documents requested, but not others. Stem MSJ at 6; Stem MSJ Ex. Q (dkt.
23 37-17) at 310.

24 On October 17, 2014, Stem’s insurance broker notified Scottsdale about these
25 events. Stem MSJ at 7; Stem MSJ Ex. R (dkt. 37-18).² Scottsdale acknowledged
26

27 _____
28 ² Stem notified Scottsdale pursuant to an “Awareness Provision” in the policy, which permitted
Stem to “lock in” coverage under a particular liability policy by giving Scottsdale notice of
specific facts and circumstances that could give rise to a future claim. Stem MSJ at 7 n.4.

1 receiving the information and noted that while the matter was not a “Claim” because it did
2 not involve an allegation of any “wrongful act,” it might mature into a Claim in the future.
3 Stem MSJ at 7; Stem MSJ Ex. S (dkt. 37-19).

4 **E. 2017 Buzby Loan**

5 In 2017, a member of Stem’s Board of Directors, David Buzby, loaned Stem \$1.5
6 million. Stem MSJ at 7; Scottsdale MSJ at 20–21. The loan came from Buzby’s personal
7 funds. Stem MSJ Ex. W (dkt 37-23) at 385–86. Stem had recently won a contract with a
8 power company, Southern California Edison, but the contract was contingent on Stem
9 showing that it had sufficient financial resources. See Stem MSJ at 7. After Stem’s bank
10 was unwilling to provide a letter of credit, Stem needed \$1.5 million more to secure the
11 contract, which Buzby provided. See Stem MSJ Ex. W at 385.

12 **F. 2017 Shareholder Suit against Stem**

13 In May 2017, four of Stem’s shareholders, including Grimm, Reineccius, and two
14 others who received shares due to the 2010 Employment Dispute settlement, filed a lawsuit
15 against three Stem board members; Stem indemnified the defendant board members. See
16 Stem MSJ at 8; Scottsdale MSJ at 6. The original complaint asserted claims for breach of
17 fiduciary duty, unjust enrichment, and conspiracy based on the 2013 Series B Financing
18 and the 2017 Buzby Loan. Stem MSJ Ex. C (dkt. 37-3) at 98, 105–08, 111–12.

19 The original complaint characterized Stem’s allegedly unlawful actions as
20 continuations of the 2010 Employment Dispute with Reineccius. The complaint first
21 generally alleged that “[s]ince 2010, the Defendants have employed various unlawful
22 means to deprive Plaintiff Reineccius and his colleagues of the benefits of the company he
23 created. The wrongful acts and omissions described in this Complaint are part of
24 Defendants’ continuing campaign against the Plaintiffs.” Scottsdale MSJ at 22; Stem MSJ
25 Ex. C at 98. It then alleged that the acts and omissions on which the 2017 Shareholder
26 Lawsuit “is based are simply a continuation of the Defendants’ perfidious behavior” which
27 first began in the 2010 Employment Dispute. Stem MSJ Ex. C at 105.

28 The complaint then alleged that animus towards Reineccius and a desire to dilute

1 his and his lawyers' ownership in Stem motivated the 2013 Series B Financing. The
2 complaint alleged that notes from a 2012 Board meeting indicated that the Board viewed
3 ex-employee and non-employee stock ownership as a major issue. Id. As a result, "[t]he
4 Board schemed to take those shares [shares held by Reineccius and his lawyers] without
5 payment." Id. The complaint alleged that Stem used the pull forward structure in the
6 Series B Financing to dilute the shares given to Reineccius and his lawyers under the
7 earlier settlement. Id. at 105–08. The complaint alleged that any other justification for the
8 pull forward structure, including that it was necessary to obtain financing, was pretextual.
9 Id. at 108–09.

10 The original complaint did not allege the same particularized connection between
11 the Reineccius employment dispute and the 2017 Buzby Loan. Instead, the complaint
12 merely stated that "[i]n 2017, Defendant Buzby extended a short-term loan to Stem in the
13 amount of \$1,500,000. One month later the 'loan' was paid in full and Buzby received
14 cash and stock worth over \$2 million. The Buzby transaction constitutes self-dealing and is
15 a separate breach of his fiduciary duty to Plaintiffs." Id. at 111–12.

16 In 2019, Stem settled the 2017 Shareholder Lawsuit with some of the parties,
17 including Reineccius. Scottsdale MSJ at 7. Other plaintiffs in the 2017 Shareholder
18 Lawsuit, including Grimm, have not settled and have filed a third amended complaint with
19 the same relevant allegations. Id. at 8; Scottsdale MSJ Ex. HH (dkt. 38-1).

20 **G. The Instant Lawsuit**

21 In June 2017, Stem notified Scottsdale of the 2017 Shareholder Lawsuit and
22 requested coverage for three of Stem's directors. Scottsdale MSJ at 7; Stem MSJ at 8. In
23 July 2017, after reviewing the underlying 2017 Shareholder Lawsuit and the 2010
24 employment dispute, Scottsdale denied coverage. Scottsdale MSJ at 7; Stem MSJ at 8.
25 Scottsdale provided several reasons, including that the 2017 Shareholder Lawsuit involved
26 a Claim made before the policy went into effect and that coverage was barred by the Prior
27 Litigation and Prior Knowledge exclusions. Scottsdale MSJ at 7; Scottsdale MSJ Ex. AA
28 (dkt. 34-32).

1 On April 29, 2020, Stem sued Scottsdale in this Court alleging breach of contract
2 and tortious breach of the covenant of good faith, seeking declaratory relief and
3 compensatory and punitive damages. See generally Compl. Scottsdale moved to dismiss
4 on grounds that this Claim was excluded from the policy under the “Insured vs. Insured”
5 exclusion, see generally MTD (dkt. 14), but this Court denied the motion on July 20, 2020,
6 see Order Denying MTD (dkt. 23). On March 25, 2021, Scottsdale filed a motion for
7 summary judgment containing new arguments in support of Scottsdale’s position that the
8 policy does not cover the underlying 2017 Shareholder Lawsuit. See generally Scottsdale
9 MSJ. On the same day, Stem filed a cross-motion for summary judgment on Scottsdale’s
10 defense obligations under the policy. See generally Stem MSJ. Stem is seeking a jury trial
11 on its breach of the covenant of good faith and fair dealing claim and Stem’s requests for
12 punitive damages and attorneys’ fees. See generally Stem Opp’n to MSJ (dkt. 41).

13 **II. LEGAL STANDARD**

14 Summary judgment is proper when “the movant shows that there is no genuine
15 dispute as to any material fact and the movant is entitled to judgment as a matter of law.”
16 Fed. R. Civ. P. 56(a). An issue is “genuine” only if there is a sufficient evidentiary basis
17 on which a reasonable fact finder could find for the nonmoving party, and a dispute is
18 “material” only if it could affect the outcome of the suit under governing law. See
19 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248–49 (1986). The party moving for
20 summary judgment bears the initial burden of identifying those portions of the evidence
21 that demonstrate the absence of a genuine issue of material fact. See Celotex Corp. v.
22 Catrett, 477 U.S. 317, 323 (1986). “Where the record taken as a whole could not lead a
23 rational trier of fact to find for the non-moving party, there is no ‘genuine issue for trial.’”
24 Matsushita Elec. Ind. Co. v. Zenith Radio, 475 U.S. 574, 587 (1986).

25 A liability insurer owes a duty to defend when a suit brought against its insured
26 seeks damages that potentially fall within the coverage of the policy. Waller v. Truck Ins.
27 Exch., Inc., 11 Cal. 4th 1, 19 (1995). “Where there is no possibility of coverage, there is
28 no duty to defend.” Id. (internal quotation marks omitted). “To prevail, the insured must

1 prove the existence of a potential for coverage, while the insurer must establish the
 2 absence of any such potential.” Montrose Chem. Corp. of Cal. v. Super. Ct., 6 Cal. 4th
 3 287, 300 (1993) (emphasis in original). To determine whether an insurer owes a duty to
 4 defend, a court must “compar[e] the allegations of the complaint with the terms of the
 5 policy.” Id. at 295. Because California is the forum state in this diversity action,
 6 California law governs the Court’s interpretation of the Agreement. See Encompass Ins.
 7 Co. v. Coast Nat’l Ins. Co., 764 F.3d 981, 984 (9th Cir. 2014); Bell Lavalin, Inc. v. Simcoe
 8 & Erie Gen. Ins. Co., 61 F.3d 742, 745 (9th Cir. 1995).³ Under California law,
 9 “[i]nterpretation of an insurance policy is a question of law and follows the general rules of
 10 contract interpretation.” MacKinnon v. Truck Ins. Exch., 31 Cal. 4th 635, 647 (2003), as
 11 modified on denial of reh’g (Sept. 17, 2003).

12 **III. DISCUSSION**

13 Stem argues that Scottsdale must cover any loss associated with the underlying
 14 2017 Shareholder Lawsuit. According to Stem, the Court’s prior order denying
 15 Scottsdale’s motion to dismiss controls. Stem also argues that the 2017 Shareholder
 16 Lawsuit is based on two separate Claims—one arising from the 2013 Series B Financing
 17 Round and one arising from the 2017 Buzby loan—and that the general coverage provision
 18 applies to both Claims. And Stem argues that these Claims lack any connection with the
 19 2010 Employment Dispute that could trigger an exception to the general coverage
 20 provision. Finally, Stem argues that its claim for breach of the covenant of good faith and
 21 fair dealing and requests for punitive damages and attorneys’ fees should go to a jury.

22 Scottsdale argues that the 2017 Shareholder Lawsuit constitutes one Claim, and that
 23 (whether it constitutes one Claim or the 2013 Series B Financing Round Claim and the
 24 2017 Buzby Loan Claim must be considered separately) the 2017 Shareholder Lawsuit is
 25 interrelated with the 2010 Employment Dispute, such that the policy’s coverage exclusions
 26 apply. Scottsdale also argues that because it had no coverage obligations with respect to
 27

28 ³ The parties agree. See Scottsdale MSJ at 9–10; Stem MSJ at 9–10.

1 the 2017 Shareholder Lawsuit, it cannot be liable for breach of the covenant of good faith
2 and fair dealing, punitive damages, or attorneys’ fees—but that even if it must cover losses
3 associated with the 2017 Shareholder Lawsuit, Scottsdale acted reasonably and in good
4 faith such that it is not liable for breach of the covenant of good faith and fair dealing,
5 punitive damages, or attorneys’ fees.

6 The Court holds that Scottsdale must cover losses associated with the 2017 Buzby
7 Loan Claim but not losses associated with the 2013 Series B Financing Round Claim. The
8 Court further holds that Stem has failed to demonstrate a genuine issue of material fact
9 with respect to Stem’s breach of the covenant of good faith and fair dealing claim and
10 Stem’s requests for punitive damages and attorneys’ fees. Therefore, the Court grants in
11 part and denies in part Scottsdale’s motion for summary judgment, and the Court grants in
12 part and denies in part Stem’s motion for partial summary judgment.

13 **A. Effect of Order Denying Motion to Dismiss**

14 The Court must first address Stem’s threshold argument that the Court’s prior order
15 denying Scottsdale’s motion to dismiss controls the disposition of these cross-motions for
16 summary judgment. See Stem Opp’n to MSJ at 3.

17 In its order denying Scottsdale’s motion to dismiss, the Court stated that the Insured
18 vs. Insured Exclusion did not bar coverage because the “Claims in the Underlying Lawsuit
19 are based solely on alleged wrongful acts that occurred after Reineccius’s termination in
20 2010 and fall under Exception iv to the Insured v. Insured Exclusion.” Order Denying
21 MTD at 7. The Court noted that claims related to the 2010 Employment Dispute “were
22 fully and finally resolved by the Settlement Agreement and thus cannot have been the basis
23 of the claims he asserted six years later in the Underlying Lawsuit.” Id. at 6. Stem alleges
24 that Scottsdale is now attempting to relitigate the connection between the 2010
25 Employment Dispute and the underlying 2017 Shareholder Lawsuit. See Stem Opp’n to
26 MSJ at 3.

27 The Court rejects Stem’s argument that the Court’s prior order controls here. First,
28 the question whether the Insured vs. Insured Exclusion applies differs from the question

1 whether any of the additional exclusions that Scottsdale now invokes apply. Second, some
2 language in the Court’s order denying the motion to dismiss erroneously applied the
3 policy’s exclusion language. See Henslee v. Union Planters Nat. Bank & Trust Co., 335
4 U.S. 595, 600 (1949) (Frankfurter, J., dissenting) (“Wisdom too often never comes, and so
5 one ought not to reject it merely because it comes too late.”). Although the settlement
6 released legal claims related to the 2010 Employment Dispute, that release does not mean
7 that Claims asserted in the 2017 Shareholder Lawsuit could not relate to the 2010
8 Employment Dispute under the terms of the policy. The settlement would merely provide
9 a potential defense to such Claims.⁴ In general, to determine whether any Claims in the
10 2017 Shareholder Lawsuit are sufficiently connected with the 2010 Employment Dispute
11 to trigger a coverage exclusion, the Court must simply compare “the allegations of the
12 [underlying] complaint with the terms of the policy.” Montrose, 6 Cal. 4th at 295.

13 **B. Breach of Contract**

14 Stem asserts that Scottsdale has breached its coverage obligations related to the
15 2017 Shareholder Lawsuit under the insurance contract. See Stem MSJ at 21. This issue
16 turns on the insurance policy’s specific language. Recall that the policy contains a general
17 coverage provision,

18 [t]he **Insurer** shall pay the **Loss** of the **Company** for which the
19 **Company** has indemnified the **Directors and Officers** and
20 which the **Directors and Officers** have become legally
21 obligated to pay by reason of a **Claim** first made against the
22 **Directors and Officers** during the **Policy Period** or, if elected,
the **Extended Period**, and reported to the Insurer pursuant to
Section E.1. herein, for any **Wrongful Act** taking place prior to
the end of the **Policy Period**.

23 Stem MSJ Ex. A at 12; Stem MSJ Ex. B at 63. And that general policy provision is subject
24 to numerous exclusions. See supra part I.C.2.b. The parties disagree regarding whether

25
26 ⁴ The Court expresses no view on the merits of the 2017 Shareholder Lawsuit. The Court merely
27 notes that Reineccius could have (hypothetically) asserted claims in violation of the settlement,
28 and Stem’s directors could have (hypothetically) invoked the settlement as a defense. Thus, the
Court was wrong to state or imply that because the settlement released claims arising from the
2010 Employment Dispute, plaintiffs in the underlying action could not have possibly asserted
such Claims under the policy’s definition of “Claim.”

1 the 2017 Shareholder Lawsuit constitutes a single Claim made against certain Directors
 2 and Officers, or if the 2017 Shareholder Lawsuit involves two Claims. They also disagree
 3 regarding whether any exclusion to the general policy provision applies. The Court
 4 concludes that the 2017 Shareholder Lawsuit involves two Claims—one arising from the
 5 2013 Series B Financing Round and one arising from the 2017 Buzby Loan. The Court
 6 further concludes that the policy covers only the Claim arising from the 2017 Buzby Loan.

7 **1. Number of “Claims” in the 2017 Shareholder Lawsuit**

8 In California, “[i]nterpretation of an insurance policy is a question of law and
 9 follows the general rules of contract interpretation.” MacKinnon, 31 Cal. 4th at 647.
 10 Under the California Civil Code, an insurance policy, like all contracts, “must be so
 11 interpreted as to give effect to the mutual intention of the parties as it existed at the time of
 12 contracting” as long as the intention is ascertainable. Cal. Civ. Code § 1636. See also
 13 Waller, 11 Cal. 4th at 18 (“[T]he interpretation of a contract must give effect to the ‘mutual
 14 intention’ of the parties.”). When the policy language is clear, “[s]uch intent is to be
 15 inferred . . . solely from the written provisions of the contract.” Waller, 11 Cal. 4th at 18.
 16 But if the language of the contract is ambiguous, a court is to look to “the insured’s
 17 objectively reasonable expectations” of the policy to determine whether coverage exists.
 18 Bank of the W. v. Superior Ct., 2 Cal. 4th 1254, 1265 (1992). If this inquiry still does not
 19 resolve the ambiguity, the court is to resolve the ambiguity in the insured’s favor. Id.

20 As discussed above, the policy defines “Claim” to mean, in relevant part,

- 21 a. a written demand against any Insured for monetary
 22 damages or non-monetary or injunctive relief; . . .
 23 c. a civil proceeding against any Insured seeking monetary
 24 damages or non-monetary or injunctive relief,
 25 commenced by the service of a complaint or similar
 pleading; . . .
 e. an arbitration proceeding against any Insured seeking
 monetary damages or non-monetary or injunctive
 relief[.]

26 Stem MSJ Ex. A at 12; Stem MSJ Ex. B at 63. Although the policy does not define the
 27 phrase “written demand,” California court have held that in the insurance “context,”
 28 “demand means a request for something under an assertion of right.” Westrec Marina

1 Mgmt., Inc. v. Arrowood Indem. Co., 163 Cal. App. 4th 1387, 1392 (2008) (internal
2 quotation marks omitted).

3 That begs the question whether two causes of action in a lawsuit constitute separate
4 “Claims.” On the one hand, each cause of action in the complaint is a written “request for
5 something under an assertion of right,” and therefore a written demand or separate Claim.
6 On the other hand, the policy seems to define a “civil proceeding” (i.e., a lawsuit) as one
7 Claim.

8 California courts have answered this question by treating more than one cause of
9 action that qualifies as a written demand as more than one Claim. Indeed, when
10 interpreting a similar policy, the California Supreme Court has “rejected” the “argument
11 there is only one claim because there is only one lawsuit.” Bay Cities Paving & Grading,
12 Inc. v. Lawyers’ Mut. Ins. Co., 5 Cal. 4th 854, 859 (1993). “Including multiple claims
13 within a single action does not render them a single claim.” Id. In another case involving
14 a policy that defined “Claims to include lawsuits, written notices of claims, or written
15 notices of facts which may reasonably be expected to give rise to claims,” the California
16 Court of Appeal held that “Claim does not mean entire action, but is in fact limited to the
17 relevant claims within the action.” Health Net, Inc. v. RLI Ins. Co., 206 Cal. App. 4th 232,
18 246, 261 (2012), as modified on denial of reh’g (June 12, 2012).

19 Applying these rules here, the 2017 Shareholder Lawsuit involves at least two
20 “Claims” under the policy. The lawsuit first asserts causes of action for breach of
21 fiduciary duty, conspiracy, and unjust enrichment based on allegations that the underlying
22 defendants schemed to dilute the underlying plaintiffs’ shares through the 2013 Series B
23 Financing Round. See Stem MSJ Ex. C at 105–06. The lawsuit separately asserts a cause
24 of action for breach of fiduciary duty based on allegations that the 2017 Buzby Loan
25 constituted impermissible self-dealing. See id. at 111–12. Thus, the causes of action
26 relating to the 2013 Series B Financing and the 2017 Buzby Loan were separate
27 “demand[s] . . . for monetary damages,” and thus separate Claims. See Stem MSJ Ex. A at
28 12; Stem MSJ Ex. B at 63. That the policy also defines a civil proceeding (i.e., an entire

lawsuit) to constitute a Claim does not change this result. See Bay Cities Paving & Grading, 5 Cal. 4th at 859; Health Net, 206 Cal. App. 4th at 246, 261.

2. Scottsdale's Coverage Obligation

Scottsdale argues that five different provisions exclude these Claims from coverage under the policy. Thus, the Court must determine whether each provision applies to the 2013 Series B Financing Claim and the 2017 Buzby Loan Claim. As explained below, application of each provision depends on the relationship between the Claims and the 2010 Employment Dispute. The Court concludes that the 2013 Series B Financing Claim is interconnected with that dispute, but the 2017 Buzby Loan Claim is not. Therefore, Scottsdale is obligated to pay Stem's "Loss" for which Stem indemnified the Directors and Officers, and which the Directors and Officers have become legally obligated to pay by reason of the 2013 Series B Financing Claim. Scottsdale is not obligated to pay Stem's "Loss" arising from the 2017 Buzby Loan Claim.

a. Interrelated Wrongful Act Exclusion

Scottsdale first argues that the Claims are excluded from coverage because they "aris[e] out of" the 2010 Employment Dispute. Scottsdale MSJ at 13–15. Scottsdale points to policy language stating that "[a]ll Claims arising out of the same Wrongful Act and all Interrelated Wrongful Acts shall be deemed to constitute a single Claim and shall be deemed to have been made at . . . the time at which the earliest Claim involving the same Wrongful Act or Interrelated Wrongful Act is first made." Stem MSJ Ex. A at 18; Stem MSJ Ex. B at 68–69. The policy covers only Claims made during the period the policy is active. See Stem MSJ Ex. A. at 12; Stem MSJ Ex. B at 63. "Wrongful Act" means "any actual or alleged error, omission, misleading statement, misstatement, neglect, breach of duty or act allegedly committed or attempted by . . . any of the Directors or Officers solely by reason of his or her serving in such capacity." Stem MSJ Ex. A at 14; Stem MSJ Ex. B at 65. And "Interrelated Wrongful Acts" means "all Wrongful Acts that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of facts, circumstances, situations, events, transactions or causes." Stem MSJ Ex. A

1 at 13; Stem MSJ Ex. B at 64. Thus, under this exclusion, all Claims arising from conduct
2 with a common nexus will constitute a single Claim, and that Claim is deemed to have
3 happened when the relevant conduct first occurred.

4 Here, the 2013 Series B Financing Claim is interrelated with the 2010 Employment
5 Dispute. The 2010 Employment Dispute involved a “Claim” because it gave rise to
6 arbitration proceedings before it settled. The 2013 Series B Financing Claim alleges that
7 Stem pursued the 2013 Series B Financing, with its 100:1 pull forward structure, in order
8 to dilute the outside equity holders who received shares under the settlement. Stem MSJ
9 Ex. C at 105–08. In other words, at least according to the 2017 Shareholder Lawsuit, the
10 2013 Financing occurred partly in response to the settlement.

11 That said, the 2017 Buzby Loan Claim is not interrelated with the 2010
12 Employment Dispute. Although the complaint in the 2017 Shareholder Lawsuit includes
13 general allegations that the “wrongful acts and omissions described in this Complaint are
14 part of [Stem’s] continuing campaign against” Reineccius and other equity holders, the
15 complaint does not assert or even imply any connection between the 2010 Employment
16 Dispute and 2017 Buzby Loan. Stem MSJ Ex. C at 99. While the 2017 Shareholder
17 Lawsuit spends five pages detailing the specific connections between the 2010
18 Employment Dispute and 2013 Series B Financing, the Lawsuit does not spend even a
19 paragraph doing the same for the 2017 Buzby Loan. Stem MSJ Ex. C at 105–09. Instead,
20 it merely states that “[i]n 2017, Defendant Buzby extended a short-term loan to Stem in the
21 amount of \$1,500,000. One month later the ‘loan’ was paid in full and Buzby received
22 cash and stock worth over \$2 million. The Buzby transaction constitutes self-dealing and is
23 a separate breach of his fiduciary duty to Plaintiffs.” *Id.* at 111–12 (emphasis added).
24 Thus, the 2017 Shareholder Lawsuit does not show, and Scottsdale has provided no other
25 evidence demonstrating, that the 2017 Buzby Loan arises out of, or is any way related to,
26 the 2010 Employment Dispute.

27 Therefore, under the Interrelated Wrongful Act Exclusion, the 2013 Series B
28 Financing Claim and the 2010 Employment Dispute constitute one Claim, and that Claim

1 is deemed to have occurred in 2010, before the policy commenced. The same is not true
2 for the 2017 Buzby Loan Claim. The 2013 Series B Financing Claim is excluded from
3 coverage, but the 2017 Buzby Loan Claim is not.

4 **b. Prior and Pending Litigation Exclusion**

5 Scottsdale next argues that the policy provides for an exclusion for Claims related
6 to litigation pre-dating or pending at the time of the initiation of coverage. In particular,
7 the policy states that Scottsdale will not be liable for any Loss on account of a Claim

8 alleging, based upon, arising out of, attributable to, directly or
9 indirectly resulting from, in consequence of, or in any way
10 involving . . . any prior or pending litigation or administrative
11 or regulatory proceeding, demand letter or formal or informal
12 governmental investigation or inquiry filed or pending on or
13 before the **Continuity Date**; or any fact, circumstance,
14 situation, transaction or event underlying or alleged in such
15 litigation or administrative or regulatory proceeding, demand
16 letter or formal or informal governmental investigation or
17 inquiry[.]

18 (“Prior of Pending Litigation Exclusion”). Stem MSJ Ex. A at 16; Stem MSJ Ex. B at 67.
19 Continuity Date refers to October 13, 2011, the date Stem first took out a policy with
20 Scottsdale. Stem MSJ Ex. A at 1, 12; Stem MSJ Ex. B at 52, 63.

21 For reasons similar to those stated above, this provision excludes the 2013 Series B
22 Financing Claim from coverage but does not exclude the 2017 Buzby Loan Claim.⁵ The
23 2013 Series B Financing Claim is a Claim “in any way involving” the 2010 Employment
24 Dispute proceedings. But there is still no connection between the 2017 Buzby Loan Claim
25 and the 2010 Employment Dispute. Scottsdale cites no facts in support of a connection
26 beyond the general allegations at the beginning of the 2017 Shareholder Lawsuit that the
27 “wrongful acts and omissions described in this Complaint are part of [Stem’s] continuing
28 campaign against” Reineccius and other equity holders. Stem MSJ Ex. C at 99. As
Scottsdale can point to no specific connection, no matter how tangential, between the

⁵ Stem does not dispute that the events surrounding the 2010 employment dispute rise to the level of “prior or pending litigation or administrative or regulatory proceeding, demand letter or formal or informal governmental investigation or inquiry.” See Stem MSJ at Stem Opp’n to MSJ at 7–10; Stem Reply to MSJ (dkt. 43) at 4–6.

1 events surrounding the 2010 Employment Dispute and the 2017 Buzby Loan, it cannot
 2 show “the absence of . . . [a] potential” for coverage. Montrose, 6 Cal. 4th at 300
 3 (emphasis in original).

4 **c. Prior Knowledge Exclusion**

5 Scottsdale also argues that Stem’s prior knowledge of these Claims before the
 6 inception of the policy bars their coverage under the terms of the policy. Scottsdale MSJ
 7 at 16–17. Scottsdale points to the language of the policy which excludes coverage of any
 8 Claim

9 alleging, based upon, arising out of, attributable to, directly or
 10 indirectly resulting from, in consequence of, or in any way
 11 involving, any **Wrongful Act**, fact, circumstance or situation
 12 which any of the **Insureds** had knowledge of prior to the
Continuity Date where such **Insureds** had reason to believe at
 the time that such known **Wrongful Act** could reasonably be
 expected to give rise to such **Claim**.]

13 Stem MSJ Ex. A at 16; Stem MSJ Ex. B at 67. Like the exclusions discussed above, this
 14 provision’s application depends on whether there is a connection between the Claim and
 15 any circumstance or Wrongful Act occurring before the inception of the policy, but
 16 includes the added caveat that when Stem entered into the insurance agreement, Stem “had
 17 reason to believe” that the known Wrongful Act “could reasonably be expected to give rise
 18 to such Claim.” Id. Because the Interrelated Wrongful Act and Prior and Pending
 19 Litigation Exclusions apply to the 2013 Series B Financing Round Claim, the Court need
 20 not determine whether this Prior Knowledge Exclusion also applies to that Claim. And
 21 because Scottsdale has not shown that the 2017 Buzby Loan Claim is connected to the
 22 2010 Employment Dispute, it also cannot show that this Prior Knowledge Exclusion
 23 applies to the 2017 Buzby Loan Claim.

24 **d. Breach of Application Exclusion**

25 Scottsdale also argues that Stem’s insurance application, which answered “no”
 26 when asked whether in the prior three years Stem had “been the subject of or involved in
 27 any litigation, administrative proceeding, demand letter or formal or informal investigation
 28 or inquiry including any investigation by the Department of Labor or Equal Employment

1 Opportunity Commission,” Scottsdale MSJ Ex. B, triggers the Breach of Application
2 Exclusion.

3 That exclusion provides:

4 [i]n the event the **Application**, including materials submitted
5 or required to be submitted therewith, contains any
6 misrepresentation or omission made with the intent to deceive,
7 or contains any misrepresentation or omission which materially
8 affects either the acceptance of the risk or the hazard assumed
9 by the **Insurer** under this **Policy**, this **Policy**, including each
10 and all **Coverage Sections**, shall not afford coverage to the
11 following **Insureds** for any **Claim** alleging, based upon,
12 arising out of, attributable to, directly or indirectly resulting
13 from, in consequence of, or in any way involving, any
14 untruthful or inaccurate statements, representations or
15 information[.]

16 Stem MSJ Ex. A at 28; Stem MSJ Ex. B at 80. The exclusion applies to any Insured who
17 knew of the misrepresentations or omissions. Stem MSJ Ex. A at 28; Stem MSJ Ex. B at
18 80.

19 Once again, this exclusion applies to the 2013 Series B Financing Claim but not the
20 2017 Buzby Loan Claim. Stem’s application contained a misrepresentation because
21 Reineccius’s September 2010 letter to Stem was a demand letter. See Scottsdale MSJ Ex.
22 G. Thus, the Breach of Application Exclusion’s remedy for a misrepresentation in the
23 application applies, and any Claim in any way involving that misrepresentation is excluded
24 from coverage. As discussed above, the 2013 Series B Financing Claim has a connection
25 with the 2010 Employment Dispute, including Reineccius’s demand letter. But the 2017
26 Buzby Loan Claim does not.⁶

27 **e. Insured v. Insured Exclusion**

28 Finally, Scottsdale argues that the exclusion for disputes involving two insured
parties applies. The Insured v. Insured Exclusion bars coverage for any Claim

⁶ The Court rejects Stem’s argument that Stem’s initial insurance application is not an
“Application” under the later policies because the policies use that term to refer only to those
applications in connection with the immediately preceding policy. See Stem MSJ at 19. The
“Application” definition includes applications made in connection with “any” policy of which the
relevant policy constitutes a renewal. Stem MSJ Ex. A at 10.

brought or maintained by, on behalf of, in the right of, or at the direction of any **Insured** in any capacity, . . . unless [under exception iv to this exclusion] such **Claim** . . . is brought or maintained by any former director or officer of the **Company** solely in their capacity as a securities holder of the **Company** and where such **Claim** is solely based upon and arising out of **Wrongful Acts** committed subsequent to the date such director or officer ceased to be a director or officer of the **Company** and where such **Claim** is first made two (2) years subsequent to the date such director or officer ceased to be a director or officer of the **Company**.]

Stem MSJ Ex. A at 15; Stem MSJ Ex. B at 66. The term “Insured” includes Stem as well as its previous current, and future directors and officers. See Stem MSJ Ex. A at 13; Stem MSJ Ex. B at 64. For the reasons discussed above, the 2013 Series B Financing Round Claim arises from Wrongful Acts committed during the 2010 Employment Dispute, so as to trigger application of this exclusion. But the 2017 Buzby Loan Claim “is solely based upon or arising out of” acts committed more than two years after the end of Reineccius’s employment, such that this exclusion does not apply to the 2017 Buzby Loan Claim.

f. “Wrongful Act”

Scottsdale advances one last argument against its coverage obligations in relation to the 2017 Buzby Loan Claim. As discussed above, the general coverage provision covers only “Claim[s] . . . for any Wrongful Act taking place prior to the end of the Policy Period.” Stem MSJ Ex. A. at 12; Stem MSJ Ex. B at 63. Wrongful Act “means any actual or alleged error, omission, misleading statement, misstatement, neglect, breach of duty or act allegedly committed or attempted by . . . any of the Directors or Officers solely by reason of his or her serving in such capacity.” Stem MSJ Ex. A at 14; Stem MSJ Ex. B at 65. Scottsdale argues that because the loan to Stem came from Buzby in his personal capacity, Stem MSJ Ex. W at 385–86, the loan is not a Wrongful Act committed by a Director “solely by reason of his or her serving” in a capacity as a Director. Scottsdale MSJ at 20–21. Thus, Scottsdale argues, the general coverage provision cannot apply to the 2017 Buzby Loan Claim.

Scottsdale’s argument misunderstands the 2017 Buzby Loan Claim. The 2017 Shareholder Lawsuit alleges that Buzby breached his fiduciary duty as a Director when he

1 participated in this transaction using his own funds, for his personal financial benefit.
 2 Stem MSJ at 111–12. That the funds came from his personal account only bears on the
 3 impropriety of him undertaking this course of action as a Director. Thus, the underlying
 4 cause of action centers on Buzby’s conduct as a Director, and the “Wrongful Act”
 5 definition embraces the conduct giving rise to the 2017 Buzby Loan Claim. See Stem MSJ
 6 Ex. A at 14; Stem MSJ Ex. B at 65.

7 *

8 Having considered each exclusion, the Court concludes that Scottsdale is obligated
 9 to pay Stem’s “Loss” for which Stem indemnified the Directors and Officers and which the
 10 Directors and Officers have become legally obligated to pay by reason of the 2017 Buzby
 11 Loan Claim. Scottsdale is not obligated to pay Stem’s “Loss” arising from the 2013 Series
 12 B Financing Claim.⁷ Accordingly, Scottsdale is liable for breach of contract to the extent
 13 that Scottsdale has refused to cover Stem’s losses arising by reason of the 2017 Buzby
 14 Loan Claim, but is not liable to the extent that Scottsdale has refused to cover Stem’s
 15 losses arising by reason of the 2013 Series B Financing Claim.

16 Thus, the Court grants in part and denies in part Stem’s motion for summary
 17 judgment on Stem’s breach of contract claim, and grants in part and denies in part
 18 Scottsdale’s motion for summary judgment on Stem’s breach of contract claim.

19 **C. The Implied Covenant of Good Faith and Fair Dealing**

20 Stem alleges that Scottsdale breached the implied covenant of good faith and fair
 21 dealing when Scottsdale wrongfully denied coverage under the terms of the insurance
 22 policy and failed to undertake a meaningful investigation of Stem’s request for coverage
 23 before denying it. Compl. ¶ 46. Scottsdale moves for summary judgment on this claim,
 24

25 ⁷ Scottsdale argues that the settlement payments that Stem made in 2019 as well as the demands
 26 for restitution of shares in the 2017 Shareholder Lawsuit do not fall under the relevant definition
 27 of insurable “Loss” under the insurance policy. Scottsdale MSJ at 19–20. These arguments go to
 28 the magnitude of the Loss under the policy, an issue not squarely presented by the instant motions.
 Because Scottsdale has not explained why other losses like attorneys’ fees, costs, and damages are
 excluded from the definition of “Loss,” Scottsdale’s argument fails to establish that the general
 coverage provision does not apply.

1 arguing that Scottsdale owed no coverage to Stem under the policy. Scottsdale MSJ at 23.
2 In the alternative, Scottsdale argues that even if the policy covers Stem’s Claim or Claims,
3 Scottsdale did not act unreasonably in denying coverage because there was a genuine
4 dispute as to whether these Claims were covered. Id. The Court concludes as a matter of
5 law that Scottsdale did not breach the implied covenant of good faith and fair dealing.

6 “It has long been recognized in California that ‘[t]here is an implied covenant of
7 good faith and fair dealing in every contract that neither party will do anything which will
8 injure the right of the other to receive the benefits of the agreement.’” Kransco v. Am.
9 Empire Surplus Lines Ins. Co., 23 Cal. 4th 390, 400 (2000) (quoting Comunale v. Traders
10 & General Ins. Co. 50 Cal.2d 654, 658 (1958). “This principle applies equally to insurance
11 policies, which are a category of contracts.” Id. “The responsibility of the insurer to act in
12 good faith is not the requirement mandated by the terms of the policy itself but is imposed
13 by law, breach of which sounds in tort notwithstanding that the denial of benefits may also
14 constitute breach of the contract.” Amadeo v. Principal Mut. Life Ins. Co., 290 F.3d 1152,
15 1158 (9th Cir. 2002).

16 Under California law, the elements of a cause of action for breach of the implied
17 covenant of good faith and fair dealing are that “(1) benefits due under the policy must
18 have been withheld and (2) the reason for withholding benefits must have been
19 unreasonable or without proper cause.” Nationwide Mut. Ins. Co. v. Ryan, 36 F. Supp. 3d
20 930, 941 (N.D. Cal. 2014) (internal quotations omitted). “The test for determining whether
21 an insurer is liable for breach of the implied covenant turns on whether the insurer’s
22 alleged refusal or delay was unreasonable.” Id. “In the context of an insurance policy, the
23 terms and conditions of the policy define the duties and performance to which the insured
24 is entitled.” Kransco, 23 Cal. 4th at 400 (internal quotations omitted). But “where there is
25 a genuine issue as to the insurer’s liability under the policy for the claim asserted by the
26 insured, there can be no bad faith liability imposed on the insurer for advancing its side of
27 that dispute.” Chateau Chamberay Homeowners Ass’n v. Associated Int’l Ins. Co., 90 Cal.
28 App. 4th 335, 347 (2001), as modified on denial of reh’g (July 30, 2001). If a genuine

1 dispute exists, the Court may decide as a matter of law that the denial of benefits was
2 reasonable. Chateau Chamberay, 90 Cal. App. 4th at 347.

3 Scottsdale acted reasonably in denying coverage for Claims in the 2017 Shareholder
4 Lawsuit. The disputes as to (1) whether the Claims in the 2017 Shareholder Lawsuit
5 constitute one Claim or two Claims, and (2) whether those Claims were connected or
6 interrelated to the 2010 Employment Dispute, were genuine. The complaint in the 2017
7 Shareholder Lawsuit rhetorically characterized the suit as a continuation of the 2010
8 Employment Dispute. See generally Stem MSJ Ex. C. It was reasonable for Scottsdale to
9 rely on that characterization, even if a closer analysis ultimately revealed that the 2017
10 Buzby Loan Claim was entirely unconnected to the 2010 Employment Dispute. That the
11 Court has ruled, in part, against Scottsdale does not mean that Scottsdale acted in bad faith.
12 See Chateau Chamberay, 90 Cal. App. 4th at 347. Stem’s evidence regarding Scottsdale’s
13 investigation into the Claim, see Stem Opp’n to MSJ at 17–19, does not show that
14 Scottsdale’s investigation was objectively unreasonable or conducted in bad faith in any
15 respect—even if it led Scottsdale to a conclusion with which Stem disagrees and the Court
16 partially disagrees.⁸

17 Therefore, the Court grants Scottsdale’s motion for summary judgment on the
18 breach of the implied covenant of good faith claim. And because Stem requested punitive
19 damages and attorneys’ fees for Scottsdale’s alleged breach of the implied covenant of
20 good faith, the Court grants Scottsdale’s motion for summary judgment on the punitive
21 damages and attorneys’ fees issues as well.⁹

22 **IV. CONCLUSION**

23 For the foregoing reasons, the Court grants in part and denies in part Stem’s motion
24 for summary judgment—and grants in part and denies in part Scottsdale’s motion for
25

26 ⁸ Notably, Scottsdale was correct that it owed no coverage for the 2013 Series B Financing Round
27 Claim.

28 ⁹ For the same reasons discussed above, the Court would conclude that there is no genuine issue of
material fact regarding whether Scottsdale acted with oppression, fraud, or malice, see Cal. Civ.
Code § 3294, or the question whether Stem is entitled to attorneys’ fees under Brandt v. Superior
Ct., 37 Cal. 3d 813, 817 (1985).


United States District Court
Northern District of California

1 summary judgment. Stem is entitled to partial summary judgment on Stem’s breach of
2 contract claim because Scottsdale breached its defense obligations with respect to the 2017
3 Buzby Loan Claim, which was part of the underlying 2017 Shareholder Lawsuit. The
4 Court otherwise denies Stem’s motion for summary judgment. Scottsdale is entitled to
5 partial summary judgment on Stem’s breach of contract claim because Scottsdale did not
6 breach its defense obligations with respect to the 2013 Series B Financing Claim, which
7 was part of the underlying 2017 Shareholder Lawsuit. Scottsdale is also entitled to
8 summary judgment on Stem’s breach of the implied covenant of good faith and fair
9 dealing claim, along with Stem’s request for punitive damages and attorneys’ fees. The
10 Court denies Scottsdale’s motion for summary judgment on the breach of contract claim
11 with respect to the 2017 Buzby Loan Claim.

12 In light of these rulings, the Court vacates the June 13, 2021 trial date, the May 27,
13 2021 pre-trial conference, the April 30, 2021 deadline for dispositive motions, and the May
14 14, 2021 expert discovery cut-off date. The parties are instructed to file a joint status
15 report on or before May 21, 2021.

16 **IT IS SO ORDERED.**

17 Dated: May 3, 2021

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20 CHARLES R. BREYER
21 United States District Judge
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