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13
14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 MARQISE LEE, an individual,
17
18 Plaintiff,

19 v.

20 CERTAIN UNDERWRITERS AT
LLOYD’S, LONDON subscribing to
21 Policy No. RCA06813392,
22 Defendants.

CASE NO.:

**COMPLAINT FOR BREACH OF
CONTRACT, AND TORTIOUS
BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH
AND FAIR DEALING**

DEMAND FOR JURY TRIAL

1 Plaintiff Marqise Lee complains of the Defendants and alleges as follows:

2 **NATURE OF THIS ACTION**

3 1. This action arises from the wrongful denial of insurance benefits under a
4 “loss of value” disability insurance policy issued by the Defendants.

5 2. Plaintiff Marqise Lee is a former NCAA (and University of Southern
6 California, hereinafter “USC”) football player who was designated an exceptional
7 student athlete prior to the 2013 college football season by the NCAA. This
8 designation encouraged Lee to continue playing college football for another season
9 despite the risks to his future NFL career. Specifically, the designation qualified him
10 to purchase loss of value and permanent disability insurance to protect him from the
11 potential financial repercussions of any injury during the 2013 college football season.
12 The NCAA designation and ability to purchase such insurance are indispensable to the
13 function of NCAA football and incentivize student athletes to continue playing college
14 football notwithstanding the risks to their future NFL careers and their projected multi-
15 million dollar earnings as professional football players.

16 3. In August 2013, Lee submitted an application to purchase a “loss of
17 value” disability policy from the Defendants, and the Defendants ultimately sold Lee
18 Disability Policy Certificate No. RCA06813392 (the “Disability Policy”). Lee
19 purchased the Disability Policy to ensure that he would recover or mitigate any future
20 loss of income that might result if he were injured during the August 15, 2013 to
21 August 01, 2014 insurance policy period, which encompassed the entire 2013 college
22 football season.

23 4. During the policy period, Lee suffered an injury and his prospects for the
24 2014 NFL Draft declined sharply as a result. As the reigning Biletnikof Award winner
25 (an honor reserved for the top receiver in all of college football), Lee was consistently
26 projected as a top first-round pick prior to the injury. As a result of the injury,
27 however, Lee was not selected until the second round and 39th selection of the 2014
28

1 NFL Draft. This decline amounted to a multi-million dollar loss in the value of Lee's
2 rookie NFL contract.

3 5. Lee subsequently made a claim to recover this "loss of value" under the
4 Disability Policy. After numerous delays and spurious requests for information, the
5 Defendants denied Lee's claim and purported to rescind the Disability Policy by letter
6 received March 4, 2015. The Defendants' denial constitutes a breach of the Disability
7 Policy, and was made in bad faith, maliciously and/or with a conscious disregard for
8 Lee's rights.

9 6. Therefore, Lee files this complaint seeking damages for breach of contract
10 stemming from the Defendant's wrongful denial of coverage. Lee also seeks damages
11 for the Defendants tortious breach of the implied covenant of good faith and fair
12 dealing in connection with same.

13 **PARTIES**

14 7. At all times relevant to this action, Plaintiff Lee resided in Los Angeles,
15 California.

16 8. Upon information and belief, Defendants Certain Underwriters at Lloyd's,
17 London, are an association of underwriters and/or individual insurance companies
18 organized and existing under the laws of a foreign sovereign (the United Kingdom)
19 that sold or subscribed to the Disability Policy, and consist of Syndicate 1206
20 (AmTrust at Lloyd's), Syndicate 3902 (Ark Syndicate Management Limited), and
21 Syndicate 5000 (Travelers Syndicate Management Limited). Upon information and
22 belief, the Defendants are authorized to transact, and transacting, business in the State
23 of California and the County of Los Angeles, through their respective agents.

24 **JURISDICTION AND VENUE**

25 9. This Court has subject matter jurisdiction over this action pursuant to 28
26 U.S.C. § 1332. Complete diversity of citizenship exists between the parties, and the
27 amount on controversy, is in excess of Seventy-Five Thousand Dollars (\$75,000.00),
28 exclusive of interest, attorney fees, and costs.

1 Management, Inc. (“Hanleigh”), and its producing agent, Ronnie Kaymore. Prior to
2 submitting the Application, Lee had been solicited by the Defendants for the express
3 purpose of selling “loss of value” disability insurance to Lee. The solicitation was
4 accomplished with the assistance of the office of NCAA Compliance at USC,
5 Hanleigh, and Ronnie Kaymore. A true and correct copy of the Application is attached
6 hereto as Exhibit “A” and is incorporated herein by reference.

7 14. In conjunction with the Application, Lee also executed the Defendants’
8 preprinted “Authorization to Release Personal Health Information” form on August 23,
9 2013 (the “First Authorization”). The express purpose of the First Authorization was to
10 permit Hanleigh and the Defendants access to nonpublic medical information regarding
11 Lee to determine his eligibility for the “loss of value” disability insurance sought.
12 Thus, by no later than August 23, 2013, the Defendants and their agents had complete
13 authorization to obtain any medical information necessary to evaluate and underwrite
14 the Disability Policy. A true and correct copy of the Authorization is attached as part of
15 Exhibit “A” and is incorporated herein by reference.

16 15. On September 16, 2013, Lee paid the Defendants a \$94,600 premium for
17 the Disability Policy, using the proceeds of a business loan specially procured for that
18 purpose in compliance with NCAA regulations.

19 16. On November 1, 2013, the Defendants issued the Disability Policy
20 (Certificate RCA06813-400) to Lee. Pursuant to the terms of the Disability Policy,
21 the Defendants agreed to indemnify Lee for “loss of value” in the event his rookie
22 NFL contract did not total \$9,600,000 or more as a result of an injury occurring during
23 the insurance policy period. Specifically, the Defendants agreed to provide
24 \$5,000,000 in “loss of value” coverage under Section “B” of the Disability Policy.
25 The Disability Policy was effective from August 15, 2013 through August 1, 2014,
26 and as such, the insurance policy period encompassed the entire 2013 college football
27 season. A true and correct copy of the Disability Policy is attached as Exhibit “B”
28 hereto and is incorporated herein by reference.

1 17. On September 28, 2013, Lee was injured in a college football game
2 against Arizona State University. Lee consulted with a physician promptly thereafter
3 and was ultimately diagnosed with a medial collateral ligament sprain, bone contusion,
4 posterior sprain, and popliteal cyst in his left knee following an MRI examination on
5 September 29, 2013. Lee missed multiple games as a result of the injury, and his skills
6 were negatively affected throughout the remainder of the 2013 college football season
7 as a result of that injury.

8 18. The 2014 NFL draft commenced on May 8, 2014, with NFL teams
9 making their first-round selections. As a result of his injury, Lee was not a first-round
10 selection and was not among the top five wide receivers chosen in the 2014 NFL Draft.

11 19. The 2014 NFL draft continued into May 9, 2014, with NFL teams making
12 their second-round selections. Lee was selected by an NFL team (the Jacksonville
13 Jaguars) with the 39th pick in the second round – well below where he was projected
14 to be drafted as the top wide receiver in college football before returning to USC for
15 the 2013 season. The decline in Lee’s draft status caused a multi-million dollar loss in
16 the value of his rookie NFL contract.

17 20. On or about May 20, 2014, a “Disability Claim Form” and “Attending
18 Physician’s Statement” were submitted to the Defendants in support of Lee’s claim for
19 coverage under Section B of the Disability Policy (the “Proof of Loss”). In
20 conjunction with the Proof of Loss, Lee also executed another “Authorization to
21 Disclose Health Information” for the express purpose of permitting the Defendants and
22 Hanleigh access to Lee’s medical information to promptly process the insurance claim
23 (the “Second Authorization”). Thus, by no later than May 20, 2014, the Defendants and
24 their agents had complete authorization to obtain any medical information necessary to
25 evaluate Lee’s claim for coverage under Disability Policy. A true and correct copy of
26 the Proof of Loss is attached as Exhibit “C” and is incorporated herein by reference.

27 21. Rather than promptly evaluate and address the claim, the Defendants
28 have engaged in repeated delay tactics for more than nine months. Indeed, Lee was

1 not even contacted by a claims handler until more than two months after the Proof of
2 Loss was submitted. On information and belief, Lee was first contacted by the
3 Defendants' appointed claims handler, Mary Ann Camp, by letter dated July 30, 2014.
4 In that letter, Camp requested information related to any offers and/or contracts Lee
5 had received with an NFL team. At that point, however, it was common knowledge
6 and widely reported in the press that Lee had already signed a contract with the
7 Jacksonville Jaguars worth several million dollars less than the \$9.6 million target in
8 the Disability Policy.

9 22. In the July 30, 2014 letter, Camp also indicated that the Defendants had
10 requested records from Lee's treating physicians (who had already been identified in
11 the Proof of Loss). Subsequent correspondence revealed, however, that the
12 Defendants had delayed requesting all available medical records, had not requested
13 records from the treating physicians identified in the Proof of Loss when previously
14 indicated, and were making belated requests for records from other sources identified
15 more than four months after they were identified in the Proof of Loss. For example,
16 the Defendants did not request records from Lee's college health insurer, Aetna
17 Student Health Insurance, until September 30, 2014.

18 23. After numerous delays and spurious requests for information, the
19 Defendants finally denied Lee's claim and purported to rescind the Disability Policy by
20 letter received March 4, 2015. The Defendants contend that Lee failed to disclose
21 certain health information when applying for the Disability Policy, as the purported
22 basis for their denial. Lee vehemently denies this allegation, and is entitled to the full
23 benefits available under the Disability Policy.

24 **FIRST CAUSE OF ACTION**
25 **(Breach of Contract against All Defendants)**

26 24. Lee realleges and incorporates by reference herein each allegation
27 contained in paragraphs 1 through 23, above.

1 25. Lee and Defendants entered into a binding enforceable contract, the
2 Disability Policy. Lee fully performed all or substantially all of the things required of
3 him under the Disability Policy, or was excused from his performance. All conditions
4 required for Defendants' performance under the Disability Policy have occurred.
5 Defendants have breached the Disability Policy by, among other things:

- 6 A. Wrongfully denying Lee's claim for benefits thereunder;
7 B. Failing to promptly and fully investigate the claim;
8 C. Purporting to impose upon Lee conditions not required by the
9 Disability Policy; and
10 D. Failing to fulfill their obligation not to impair the rights of Lee, as
11 the insured.

12 26. As a direct and proximate result of the Defendants' acts, Lee has been
13 damaged in an amount in excess of the Court's jurisdictional limits. These damages
14 include the benefits due under the Disability Policy, compensatory damages, general
15 damages, special damages, benefit of the bargain damages, interest, costs and
16 attorneys' fees, all of which Lee seeks to recover.

17 **SECOND CAUSE OF ACTION**
18 **(Tortious Breach of Duty of Good Faith**
19 **and Fair Dealing against All Defendants)**

20 27. Lee realleges and incorporates by reference herein each allegation
21 contained in paragraphs 1 through 26, above.

22 28. Implied in the Disability Policy is a covenant that the Defendants would
23 act in good faith and deal fairly with Lee, would do nothing to interfere with the rights
24 of Lee to receive the benefits due under the Disability Policy, and would give at least
25 the same level of consideration to Lee's interests as the Defendants gave their own.

26 29. In the course of denying coverage and failing/refusing to indemnify Lee
27 under the Disability Policy, the Defendants breached the implied covenant of good
28 faith and fair dealing by, among other things:

- 1 A. Wrongfully denying Lee's claim for benefits thereunder;
- 2 B. Failing to promptly and fully investigate the claim;
- 3 C. Purporting to impose upon Lee conditions not required by the
- 4 Disability Policy;
- 5 D. Failing to fulfill their obligation not to impair the rights of Lee, as
- 6 the insured;
- 7 E. Ignoring California law and insurance industry standards; and
- 8 F. Giving greater consideration to their own interests than Lee's
- 9 interests.

10 30. The Defendants did the things and committed the acts alleged above for
11 the purpose of consciously withholding from Lee the rights and benefits to which Lee
12 was entitled under the Disability Policy, and without considering the interests of Lee
13 to at least the same extent as the Defendants considered their own interests. The
14 Defendants' acts were inconsistent with the reasonable expectations of their insured,
15 contrary to established claims practices and legal requirements, and constitute bad
16 faith.

17 31. As a direct and proximate result of the Defendants' acts, Lee has been
18 damaged in an amount in excess of the Court's jurisdictional limits. These damages
19 include the benefits due under the Disability Policy, compensatory damages, general
20 damages, special damages, benefit of the bargain damages, punitive damages, costs
21 and attorneys' fees, all of which Lee seeks to recover.

22 32. Pursuant to the holding in *Brandt v. Superior Court*, 37 Cal. 3d 813
23 (1985), Lee is entitled to recover all attorneys' fees and costs that he has reasonably
24 incurred, and is incurring, in his efforts to obtain the policy benefits that the
25 Defendants wrongfully withheld, and are withholding, in bad faith, plus interest, in an
26 amount to be proven at trial.

27 33. The Defendants' conduct was despicable and was done with a conscious
28 disregard of Lee's rights, constituting oppression, fraud, and/or malice, in that the

1 Defendants engaged in a series of acts designed to delay and deny the benefits to
2 under the Disability Policy. The Defendants ignored Lee’s interests and concerns,
3 with the requisite intent to injure within the meaning of California Civil Code section
4 3294. Therefore, Lee is entitled to recover punitive damages from the Defendants in
5 an amount sufficient to punish and to make an example of the Defendants and in order
6 to deter similar conduct.

7 **CONDITIONS PRECEDENT**

8 34. All conditions precedent have been performed or have occurred as
9 required.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Lee respectfully prays for judgment entered against Defendants,
12 as follows:

13 **ON THE FIRST CAUSE OF ACTION**

14 1. For damages, plus interest, according to proof at the time of trial;

15 **ON THE SECOND CAUSE OF ACTION**

16 2. For damages, including reasonable attorneys’ fees and expenses incurred in
17 obtaining the benefits due under the Disability Policy, plus interest,
18 according to proof at the time of trial.

19 3. For punitive damages in an amount to be determined at the time of trial;

20 **ON ALL CAUSES OF ACTION**

21 4. That judgment be entered in favor of Lee and against Defendants;

22 5. For costs of suit incurred herein; and

23 6. For such other, further, and/or different relief as may be just and proper.
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26 DATED: March 4, 2015

DICKSTEIN SHAPIRO LLP

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28 By: /s/ Fiona A. Chaney

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James R. Murray (*pro hac vice* application pending)

Jared Zola (*pro hac vice* application pending)

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Attorneys for Plaintiff
MARQISE LEE

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury in this action.

DATED: March 4, 2015

DICKSTEIN SHAPIRO LLP

By: /s/ Fiona A. Chaney
Fiona A. Chaney

James R. Murray (*pro hac vice* application pending)
Jared Zola (*pro hac vice* application pending)
Omid Safa (*pro hac vice* application pending)

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MARQISE LEE