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10  
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF STANISLAUS**

14 CITY OF MODESTO,  
15 Plaintiff,  
16 v.  
17 PETER C. FOY & ASSOCIATES  
INSURANCE SERVICES, INC., a California  
18 Corporation; and DOES 1-50, inclusive,  
19 Defendants.

Case No. CV-19-003083

**COMPLAINT FOR (1) PROFESSIONAL  
NEGLIGENCE; (2) BREACH OF  
CONTRACT; (3) PROMISSORY  
ESTOPPEL; (4) COMMON COUNTS –  
MONEY HAD AND RECEIVED; (5)  
FRAUD; (6) NEGLIGENCE  
MISREPRESENTATION; AND (7);  
DECLARATORY RELIEF; AND  
DEMAND FOR JURY TRIAL**

21 Plaintiff CITY OF MODESTO (“Plaintiff”), brings this action against Defendant PETER  
22 C. FOY & ASSOCIATES INSURANCE SERVICES, INC., a California Corporation, and DOES  
23 1-50 inclusive, and in support of its Complaint, Plaintiff alleges as follows:

24 **PARTIES**

25 1. Plaintiff, the CITY OF MODESTO, is a municipal corporation of the State of  
26 California.

27 2. Plaintiff is informed and believes and thereon alleges that Defendant PETER C.

This case has been assigned to Judge Silveira, Marie Sovey

Department Dept. 21 for all purposes including Trial.

1 FOY & ASSOCIATES INSURANCE SERVICES, INC., is and at all times relevant to this action  
2 was a California Corporation doing business in California and engaging in the business of  
3 providing insurance brokerage services in the County of Stanislaus, California.

4 3. Plaintiff is presently unaware of the true names and capacities of Defendants named  
5 herein as DOES 1 through 50, inclusive, and for that reason they have been sued herein by their  
6 fictitious names. Plaintiff is informed and believes, and hereby alleges that each of said  
7 fictitiously named Defendants is in some manner responsible for the acts, omissions, and  
8 transactions complained of herein and for Plaintiff's damages as herein alleged. Plaintiff will seek  
9 leave to amend this Complaint to allege the true names and capacities of said fictitiously named  
10 Defendants once the same have been ascertained.

11 4. Defendant PETER C. FOY & ASSOCIATES INSURANCE SERVICES, INC., a  
12 California Corporation, and DOES 1-50 inclusive, are referred to collectively herein as "FOY."

### 13 JURISDICTION AND VENUE

14 5. This Court has jurisdiction over the entire action because this is a civil action  
15 wherein the amount in controversy, exclusive of interest and costs, exceed the jurisdictional  
16 minimum of the Court. The acts and omissions complained of in this action took place, in whole  
17 or in part, in the State of California.

18 6. Venue is proper because performance was due, and/or the acts and omissions  
19 complained of took place within the venue of this Court, and/or one or more Defendants reside or  
20 do business within the venue of this Court.

### 21 GENERAL ALLEGATIONS

22 7. At all relevant times hereto, FOY acted as insurance broker on behalf Plaintiff.

23 8. Starting in or about the Fall of 2016, Plaintiff was exploring the market for  
24 employee health insurance coverage. Plaintiff needed the assistance of an expert insurance broker  
25 to enable it to evaluate competing health insurance options. It therefore retained FOY to provide it  
26 with expert advice and guidance.

27 9. FOY held itself out as having the requisite expertise.

28 10. On or about October 25, 2016, Plaintiff retained FOY to provide it insurance

1 brokerage services and entered into a brokerage services agreement with FOY for the purpose of  
2 searching the market, negotiating, securing and servicing medical insurance for Plaintiff and its  
3 employees and related parties.

4 11. FOY recommended to Plaintiff the Fortress/Riverstone medical benefits coverage  
5 plan (“Fortress/Riverstone Plan”) offered by Riverstone Capital, LLC, NexGen Insurance  
6 Services, Inc. and NGI Brokerage Services, Inc. (collectively, “Riverstone”).

7 12. At the time Plaintiff retained FOY it reasonably expected FOY to use its expertise  
8 to ensure that the products that Plaintiff purchased through FOY were appropriate, legitimate  
9 insurance, properly underwritten and financially sound.

10 13. Based on FOY’s representations, Plaintiff reasonably believed that FOY was  
11 selling it health insurance for Plaintiff’s employees.

12 14. Based on the representations made by FOY, Plaintiff purchased the insurance  
13 coverage recommended by FOY, the Fortress/Riverstone Plan.

14 15. Unbeknownst to Plaintiff, the product that it purchased – the Fortress/Riverstone  
15 Plan – was not, in fact, insurance. Instead, it was an unauthorized (and unlawful) multiple  
16 employer welfare arrangement (“MEWA”).

17 16. Had Plaintiff known the true facts, it would not have purchased the  
18 Fortress/Riverstone Plan.

19 17. In or around July 2018, Plaintiff started to receive complaints from its employees  
20 that their health care claims were not being paid.

21 18. Plaintiff reported these issues to FOY. FOY reassured Plaintiff that nothing was  
22 wrong with the Fortress/Riverstone Plan or Riverstone, that the Fortress/Riverstone Plan and  
23 Riverstone were financially sound and well managed, and that the issues arose from providers’  
24 billing errors, employee misunderstandings of the health benefits offered, a change in a third-  
25 party administrator, and other benign causes.

26 19. Unbeknownst to Plaintiff, the real cause was that Riverstone did not have sufficient  
27 funds to pay claims because it was sham insurance, that was underfunded, mismanaged, and its  
28 funds misappropriated.



1 paragraphs 1 through 23 of this Complaint, as though fully set forth herein.

2       25. At all relevant times hereto, FOY acted as insurance broker for and on behalf of  
3 Plaintiff. As such, FOY owed Plaintiff those duties owed by an insurance broker under California  
4 law including, but not limited to, the duties to use reasonable care, diligence, and judgment in  
5 procuring insurance requested by Plaintiff and to avoid misrepresentations concerning coverage  
6 procured.

7       26. In addition, at all times FOY held itself out to Plaintiff as having expertise in  
8 medical benefits insurance coverage, represented to Plaintiff that it was familiar with Plaintiff's  
9 insurance coverage needs, and represented to Plaintiff that it was familiar with Riverstone and the  
10 Fortress/Riverstone Plan that FOY presented to Plaintiff and that Plaintiff purchased.

11       27. At all times during the relationship, FOY represented to Plaintiff that all services it  
12 was providing to Plaintiff, including the procurement and recommendation of insurance, were fair,  
13 reasonable, appropriate, and in the best interest of Plaintiff.

14       28. Based on those representations, Plaintiff relied on the recommendations of FOY  
15 and purchased the Fortress/Riverstone Plan for 2017 and 2018 and part of 2019.

16       29. Plaintiff paid all premiums due, and otherwise fully performed all conditions due.

17       30. At all times during the relationship between Plaintiff and FOY, in addition to  
18 relying on FOY to procure the proper medical coverage plan, Plaintiff also relied on FOY to  
19 ensure that all services performed in conjunction with the medical plan, including payments of  
20 claims, were properly being carried out.

21       31. At all times during this relationship FOY was aware that Plaintiffs relied on FOY  
22 to ensure that all services by Riverstone (and related parties) were fair, reasonable, appropriate and  
23 in the best interest of Plaintiff.

24       32. FOY failed to carry out its responsibilities and duties to Plaintiff to use reasonable  
25 care, diligence and judgment in procuring insurance requested by Plaintiff and providing services  
26 to monitor, inform Plaintiff, and take action to resolve any breaches or failure by Riverstone to  
27 perform its obligations, as set forth in more detail throughout this Complaint, and to otherwise  
28 perform the professional services set forth in the written brokerage services agreement ("BSA")

1 between it and the Plaintiff.

2 33. FOY systematically and continuously breached their duty of care to Plaintiff.

3 34. Throughout the course of the Fortress/Riverstone Plan, Riverstone rejected  
4 payment of claims, failed to process and pay claims in a timely manner, and ultimately stopped  
5 payments of claims. FOY failed to monitor, inform and take action to resolve or address any of  
6 these issues, as FOY was required to do under the BSA, and FOY's obligations and duty of care  
7 owed to Plaintiff.

8 35. As a direct and proximate result of FOY's professional negligence alleged herein,  
9 Plaintiff has incurred special and general damages according to proof.

10 36. Plaintiff is also entitled to be indemnified for the losses that it has suffered and will  
11 suffer according to proof.

12 37. Plaintiff is also entitled to an award of attorneys' fees and costs according to proof.

13 WHEREFORE, Plaintiff prays for judgment as set forth below.

14 **SECOND CAUSE OF ACTION**

15 **FOR BREACH OF CONTRACT**

16 **(By Plaintiff Against All Defendants)**

17 38. Plaintiff incorporates by this reference each and every allegation contained in  
18 paragraphs 1 through 37 of this Complaint, as though fully set forth herein.

19 39. Plaintiff retained FOY and entered into a written broker services agreement  
20 ("BSA") with FOY wherein FOY represented and promised to provide insurance broker services  
21 for purposes of searching the market, negotiating, and securing the placement of medical  
22 insurance for Plaintiff and its employees and related individuals.

23 40. Under the BSA FOY also promised, among other things, to provide the following  
24 services: (1) account management including "working directly with" Plaintiff's "carriers"; (2) to  
25 utilize "Best Practices" "for every program, plan and function that we support"; (3) claims  
26 management; (4) administration reduction services; (5) benchmarking; (6) audits including  
27 "coverage audits, contribution audits, and carrier contract audits"; (7) compliance; (8) actuarial &  
28 underwriting service including holding itself out "as expert underwriters," and to "capture the

1 critical information of the City of Modesto plan to maximize your health care investment”; and (9)  
2 ongoing review of strategies and benefit plans. FOY promised to strategically design and  
3 implement insurance solutions that protect Plaintiff’s interests as well its employees.

4 41. Plaintiff performed all of its obligations under the BSA.

5 42. FOY breached the BSA by, among other things: (1) recommending and placing  
6 Plaintiff in the Fortress/Riverstone Plan which was not insurance at all but was an unauthorized  
7 (and unlawful) MEWA; (2) failing to perform any due diligence on Riverstone and the  
8 Fortress/Riverstone Plan before recommending them to Plaintiff; (3) failing to engage in “Best  
9 Practices” as promised; (4) misrepresenting the risk to Plaintiff; (5) failing to perform the  
10 promised actuarial and underwriting analysis of the risk, which would have disclosed that the  
11 premium charged was insufficient to cover expected losses, administrative fees, and commissions;  
12 (6) failing to analyze the Fortress/Riverstone plan cost structure which would have revealed that  
13 Riverstone was paying related entities and other vendors above-market compensation; (7) failing  
14 to take any steps to determine if Riverstone was financially sound; (8) recommending Riverstone  
15 despite it having no audited financial statements; (9) failing to inform Plaintiff that Riverstone had  
16 failed to pay numerous claims from Plaintiff’s employees and their health providers and other  
17 FOY clients; and (10) failing to use its expertise to ensure that the products that Plaintiff  
18 purchased through FOY were appropriate, legitimate insurance, properly underwritten and  
19 financially sound.

20 43. The BSA further requires FOY to indemnify Plaintiff for all losses, costs, and  
21 damages caused by a breach of the BSA or from FOY’s misconduct, and to pay Plaintiff’s  
22 prevailing party attorneys’ fees and costs in the present action, and any related actions.

23 44. As a direct and proximate result of FOY’s breach of contract, Plaintiff has incurred  
24 special and general damages according to proof.

25 45. Plaintiff is also entitled to be indemnified for the losses that it has suffered and will  
26 suffer according to proof.

27 46. Plaintiff is also entitled to an award of attorneys’ fees and costs according to proof.

28 WHEREFORE, Plaintiff prays for judgment as set forth below.

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**THIRD CAUSE OF ACTION**  
**FOR PROMISSORY ESTOPPEL**  
**(By Plaintiff Against All Defendants)**

47. Plaintiff incorporates by this reference each and every allegation contained in paragraphs 1 through 46 of this Complaint, as though fully set forth herein.

48. FOY made promises and representations to Plaintiff on which FOY knew or should have known that Plaintiff would be reasonably induced to rely. These included FOY's representations and promises to provide insurance broker services for purposes of searching the market, negotiating, and securing the placement of medical insurance for Plaintiff and its employees and related individuals. Said promises and representations by FOY were made, in among other places, by Steve Foy and Jared Foy to Plaintiff at a meeting held in or around October 2016, and in marketing materials Steve Foy and Jared Foy provided to Plaintiff in or around October 2016, and subsequently. FOY also made the representations and promises contained in the BSA. In the BSA, FOY also promised, among other things, to provide the following services: (1) account management including "working directly with" Plaintiff's "carriers"; (2) to utilize "Best Practices" "for every program, plan and function that we support"; (3) claims management; (4) administration reduction services; (5) benchmarking; (6) audits including "coverage audits, contribution audits, and carrier contract audits"; (7) compliance; (8) actuarial & underwriting service including holding itself out "as expert underwriters," and to "capture the critical information of the City of Modesto plan to maximize your health care investment"; and (9) ongoing review of strategies and benefit plans. FOY promised to strategically design and implement insurance solutions that protect Plaintiff's interests as well as its employees.

49. Plaintiff relied reasonably and foreseeably, to Plaintiff's detriment, on FOY's representations. FOY held itself out as having significant expertise in procurement of insurance and the protection of its clients. Plaintiff lacked such expertise and hired FOY to provide these services and those set forth in the marketing material Foy provided to Plaintiff and in the BSA. Plaintiff expected FOY to have the expertise that it represented it had and relied on FOY's

1 expertise when it followed FOY's recommendation and endorsement of the Fortress/Riverstone  
2 Plan, and reasonably believed that the Fortress/Riverstone Plan was insurance, and that it was a  
3 safe product to purchase.

4 50. FOY has not performed any of FOY's promises or representations. As a direct and  
5 proximate result of Plaintiff's failure to perform according to the promises and representations  
6 which FOY made, Plaintiff has sustained special and general damages according to proof.

7 51. Plaintiff is also entitled to be indemnified for the losses that it has suffered and will  
8 suffer according to proof.

9 52. Plaintiff is also entitled to an award of attorneys' fees and costs according to proof.  
10 WHEREFORE, Plaintiff prays for judgment as set forth below.

11 **FOURTH CAUSE OF ACTION**

12 **FOR COMMON COUNTS – MONEY HAD AND RECEIVED**

13 **(By Plaintiff Against All Defendants)**

14 53. Plaintiff incorporates by this reference each and every allegation contained in  
15 paragraphs 1 through 52 of this Complaint, as though fully set forth herein.

16 54. Within the last four years, FOY became indebted to Plaintiff in an amount of \$8.3  
17 million dollars (plus additional sums according to proof) for money had and received by FOY for  
18 the use and benefit of Plaintiff.

19 55. No part of this amount has been paid, though demand for payment in full has been  
20 made, and there is now due, owing and unpaid from FOY to Plaintiff the amount of \$8.3 million  
21 dollars (plus additional sums according to proof), plus prejudgment interest and attorneys' fees  
22 according to proof.

23 WHEREFORE, Plaintiff prays for judgment as set forth below.

24 **FIFTH CAUSE OF ACTION**

25 **FOR FRAUD**

26 **(By Plaintiff Against All Defendants)**

27 56. Plaintiff incorporates by this reference each and every allegation contained in  
28 paragraphs 1 through 55 of this Complaint, as though fully set forth herein.

1           57.     FOY made the following statements (among others) to Plaintiff, including by Steve  
2 Foy and Jared Foy to Plaintiff at a meeting held in or around October 2016, in marketing materials  
3 Steve Foy and Jared Foy provided Plaintiff in or around October 2016, and subsequently, in the  
4 representations and promises contained in the BSA, and in written statements made by Steve Foy  
5 to Plaintiff in or around mid-2008:

6           a.     FOY falsely represented that the Fortress/Riverstone Plan was insurance.  
7 This representation was false because it was not insurance but was an unauthorized  
8 (and unlawful) MEWA.

9           b.     FOY falsely and repeatedly referred to the amounts Plaintiff paid to  
10 Riverstone as “premiums” and referred to Riverstone as a “carrier” in order to  
11 make it falsely appear that Plaintiff had purchased health insurance from  
12 Riverstone.

13           c.     FOY falsely represented that it had provided and would provide to Plaintiff  
14 the services set forth in the BSA. FOY promised to provide a comprehensive set of  
15 services including actuarial analysis, claims analysis, risk analysis, and to optimize  
16 financial results and carrier performance throughout the plan year and during  
17 renewal. These promises were false when made. FOY had not performed an  
18 actuarial analysis of the Fortress/Riverstone Plan or taken even basic steps to  
19 determine whether the Fortress/Riverstone Plan was actuarially sound.

20           d.     FOY falsely and repeatedly stated that the Fortress/Riverstone Plan and  
21 Riverstone were financially sound, and intentionally hid from Plaintiff the fact that  
22 Riverstone had insufficient funds to pay claims. As a major source of customers  
23 for Riverstone, and as a broker who promised to assist its clients with claims-  
24 related issues, FOY knew that a large number of claims had not been paid. Instead  
25 of informing Plaintiff that there were serious issues with claims payments, FOY  
26 repeatedly offered excuses for the non-payment of claims in order to help  
27 Riverstone remain in business as long as possible.  
28

1 e. FOY failed to use its expertise to ensure that the products that Plaintiff  
2 purchased through FOY were appropriate, legitimate insurance, properly  
3 underwritten and financially sound.

4 58. FOY's false statements and concealments were intended to deceive Plaintiff into  
5 believing that Riverstone and the Fortress/Riverstone Plan were an attractive and sound option for  
6 its employee health insurance coverage so that Plaintiff would purchase the Fortress/Riverstone  
7 Plan, and remain in the Fortress/Rivserstone Plan as long as possible, so that FOY could earn  
8 commissions on Plaintiff's payments.

9 59. Plaintiff reasonably relied on FOY's false statements. FOY held itself out as  
10 having significant expertise in procurement of insurance and the protection of its clients. Plaintiff  
11 lacked such expertise and hired FOY to provide these services and those set forth in the BSA.  
12 Plaintiff expected FOY to have the expertise that it represented it had and relied on FOY's  
13 expertise when it followed FOY's recommendation and endorsement of the Fortress/Riverstone  
14 Plan, and reasonably believed that the Fortress/Riverstone Plan was insurance, and that it was a  
15 safe product to purchase.

16 60. As a direct and proximate result of Plaintiff's fraud alleged herein, Plaintiff has  
17 incurred special and general damages according to proof.

18 61. Plaintiff is entitled to be indemnified for the losses that it has suffered and will  
19 suffer according to proof.

20 62. Plaintiff is also entitled to an award of punitive damages against FOY because FOY  
21 acted with oppression, fraud and malice.

22 63. Plaintiff is also entitled to an award of attorneys' fees and costs according to proof.

23 WHEREFORE, Plaintiff prays for judgment as set forth below.

24 **SIXTH CAUSE OF ACTION**

25 **FOR NEGLIGENT REPRESENTATION**

26 **(By Plaintiff Against All Defendants)**

27 64. Plaintiff incorporates by this reference each and every allegation contained in  
28 paragraphs 1 through 63 of this Complaint, as though fully set forth herein.

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65. FOY negligently made the following false representations (among others) to

Plaintiff:

- a. FOY falsely represented that the Fortress/Riverstone Plan was insurance. This representation was false because it was not insurance but was an unauthorized (and unlawful) MEWA.
- b. FOY falsely and repeatedly referred to the amounts Plaintiff paid to Riverstone as “premium” and referred to Riverstone as a “carrier” in order to make it falsely appear that Plaintiff had purchased health insurance from Riverstone.
- c. FOY falsely represented that it had provided and would provide to Plaintiff the services set forth in the BSA. FOY promised to provide a comprehensive set of services including actuarial analysis, claims analysis, risk analysis, and to optimize financial results and carrier performance throughout the plan year and during renewal. These promises were false when made. FOY had not performed an actuarial analysis of the Fortress/Riverstone Plan or taken even basic steps to determine whether the Fortress/Riverstone Plan was actuarially sound.
- d. FOY falsely and repeatedly stated that the Fortress/Riverstone Plan and Riverstone were financially sound, and intentionally hid from Plaintiff the fact that Riverstone had insufficient funds to pay claims. As a major source of customers for Riverstone, and as a broker who promised to assist its clients with claims-related issues, FOY knew that a large number of claims had not been paid. Instead of informing Plaintiff that there were serious issues with claims payments, FOY repeatedly offered excuses for the non-payment of claims in order to help Riverstone remain in business as long as possible.
- e. FOY failed to use its expertise to ensure that the products that Plaintiff purchased through FOY were appropriate, legitimate insurance, properly underwritten and financially sound.

66. FOY made the false statements described herein without any reasonable grounds for believing that they were true.



1 PRAYER FOR RELIEF

2 WHEREFORE, Plaintiff prays for judgment as follows:

- 3 1. For a declaration of the Court that FOY has breached the BSA, and has engaged in
- 4 the other wrongful conduct alleged herein, and that Plaintiff is entitled to damages, attorneys' fees,
- 5 interest and costs according to proof, and to be defended and indemnified by FOY for the losses
- 6 that Plaintiff has suffered or will suffer according to proof at trial;
- 7 2. For general damages in an amount to be proven at trial;
- 8 3. For consequential damages in an amount to be proven at trial;
- 9 4. For punitive damages from defendants according to proof at trial;
- 10 5. For reasonable attorneys' fees according to proof at trial;
- 11 6. For prejudgment interest;
- 12 7. For cost of suit, and
- 13 8. For such other and further relief as the Court may deem just and proper.

14  
15 DATED: May 31, 2019

MEYERS, NAVE, RIBACK, SILVER & WILSON

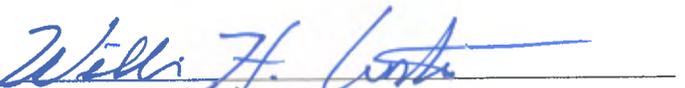
16  
17 By:   
18 William H. Curtis  
19 Attorneys for Plaintiff City of Modesto

20 DEMAND FOR JURY TRIAL

21 Plaintiff CITY OF MODESTO hereby demands trial by jury on all issues triable by jury in  
22 the above-entitled action.

23  
24 DATED: May 31, 2019

MEYERS, NAVE, RIBACK, SILVER & WILSON

25  
26 By:   
27 William H. Curtis  
28 Attorneys for City of Modesto

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