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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION**

**AROVAST CORPORATION,**

**Plaintiff,**

**v.**

**GREAT AMERICAN E&S  
INSURANCE COMPANY,**

**Defendant.**

**Case No.: SACV 21-00596-CJC (KESx)**

**ORDER DENYING DEFENDANT’S  
MOTION TO DISMISS PLAINTIFF’S  
FIRST AMENDED COMPLAINT  
[Dkt. 19]**

**I. INTRODUCTION**

In this case, Plaintiff Arovast Corporation alleges that Defendant Great American E & S Insurance Company owes a duty to defend and indemnify it in a case pending in the District of Colorado. (Dkt. 17 [First Amended Complaint, hereinafter “FAC].)

1 Before the Court is Defendant’s motion to dismiss the First Amended Complaint. (Dkt.  
2 19 [hereinafter “Mot.”].) For the following reasons, Defendant’s motion is **DENIED**.<sup>1</sup>

3  
4 **II. BACKGROUND**

5  
6 Plaintiff purchased from Defendant a commercial general liability insurance policy  
7 for the period of November 8, 2018 through November 18, 2019. (FAC ¶ 5, Ex. A  
8 [hereinafter the “Policy”].) The Policy provides coverage for bodily injury and property  
9 damage liability:

<p>10 <b>SECTION I - COVERAGES</b></p> <p>11 <b>Coverage A - Bodily Injury and Property Dam-</b></p> <p>12 <b>age Liability</b></p> <p>13 <b>1. Insuring Agreement</b></p> <p>14 <b>a. We will pay those sums that the Insured</b></p> <p>15 <b>becomes legally obligated to pay as dam-</b></p> <p>16 <b>ages because of "bodily injury" or "prop-</b></p> <p>17 <b>erty damage" to which this insurance ap-</b></p> <p>18 <b>plies. We will have the right and duty to</b></p> <p>19 <b>defend the Insured against any "suit" seek-</b></p> <p>20 <b>ing those damages. However, we will have</b></p> <p>21 <b>no duty to defend the Insured against any</b></p> <p>22 <b>"suit" seeking damages for "bodily injury"</b></p> <p><b>or "property damage" to which this insur-</b></p> <p><b>ance does not apply. We may, at our dis-</b></p> <p><b>cretion, investigate any "occurrence" and</b></p> <p><b>settle any claim or "suit" that may result.</b></p>
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23 (*Id.* ¶ 7, Policy § 1.A.) The Policy also provides coverage for personal and advertising  
24 injury liability:

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26  
27 <sup>1</sup> Having read and considered the papers presented by the parties, the Court finds this matter  
28 appropriate for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15.  
Accordingly, the hearing set for August 9, 2021, at 1:30 p.m., is hereby vacated and off  
calendar.

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<p><b>Coverage B - Personal and Advertising Injury Liability</b></p> <p><b>1. Insuring Agreement</b></p> <p>a. We will pay those sums that the Insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the Insured against any "suit" seeking those damages. However, we will have no duty to defend the Insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:</p>
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(Policy at 14.)

On January 8, 2021, a minor in Colorado sued Plaintiff over a pressure cooker Plaintiff designed, manufactured, distributed, or sold. *C.A.L., a minor by and through Paul Alan Leafstedt v. Arovast Corporation d/b/a Cosori Corporation*, Case No. 1:21-cv-00288-NYW (D. Colo.) (“*Leafstedt*”). In *Leafstedt*, the plaintiff alleges that he suffered serious burn injuries when “safety mechanisms failed” and the lid of the pressure cooker opened while the contents were still under pressure, thereby allowing the heated contents to escape. (FAC ¶¶ 10–11.) *Leafstedt* includes claims for (1) strict liability, (2) negligence, (3) breach of express warranty, (4) breach of the implied warranty of fitness for a particular purpose, (5) breach of the implied warranty of merchantability, and (6) violation of the Colorado Consumer Protection Act. (*Id.* ¶¶ 11, 14.) The Colorado Consumer Protection Act makes it a deceptive trade practice when a business “represents that goods . . . are of a particular standard, quality or grade . . . if [it] knows or should know they are of another.” (*Id.* ¶ 14.)

1 The sixth claim is particularly important to this motion. That is because an  
2 endorsement to the Policy contains an exclusion of claims and suits alleging violation of  
3 any unfair trade practices laws:

4 **B. The following exclusion is added to COMMERCIAL GENERAL LIABILITY COVERAGE FORM,  
5 SECTION I - COVERAGES, Coverage B - Personal and Advertising Injury Liability, 2.  
6 Exclusions:**

7 **Claim or Suit Alleging Violation of Laws Concerning Unfair Competition or Similar Laws**

- 8 1. Any claim or "suit" that alleges "personal and advertising injury" arising out of any actual, alleged,  
9 or threatened violation of any statutes, common law, or other laws or regulations concerning  
10 unfair competition, antitrust, restraint of trade, piracy, unfair trade practices, or any similar laws  
11 or regulations.  
12 2. Any "personal and advertising injury" alleged in a claim or "suit" that also alleges any actual,  
13 alleged, or threatened violation of any statutes, common law, or other laws or regulations  
14 concerning unfair competition, antitrust, restraint of trade, piracy, unfair trade practices, or any  
15 similar laws or regulations.

16 This exclusion applies to our duty to defend and our duty to pay damages whether such  
17 misappropriation, infringement, or violation is committed in your "advertisement" or otherwise.

18 (Policy at 69.)

19 Plaintiff tendered *Leafstedt* to Defendant under the terms of the Policy, expecting  
20 to be covered. (*Id.* ¶¶ 12–13, 15.) By letter dated March 11, 2021, however, Defendant  
21 “disclaim[ed] coverage for [Plaintiff] based upon the Exclusion of Claims and Suits  
22 Alleging Infringement of Intellectual Property or Unfair Competition endorsement  
23 contained in the Policy.” (*Id.* ¶ 16.)

24 **III. LEGAL STANDARD**

25 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the legal  
26 sufficiency of a plaintiff’s claims. The issue on a motion to dismiss for failure to state a  
27 claim is not whether the plaintiff will ultimately prevail, but whether the plaintiff is  
28 entitled to offer evidence to support the claims asserted. *Gilligan v. Jamco Dev. Corp.*,

1 108 F.3d 246, 249 (9th Cir. 1997). Rule 12(b)(6) is read in conjunction with Rule 8(a),  
2 which requires only “a short and plain statement of the claim showing that the pleader is  
3 entitled to relief.” Fed. R. Civ. P. 8(a)(2); *see Whitaker v. Tesla Motors, Inc.*, 985 F.3d  
4 1173, 1176 (9th Cir. 2021). When evaluating a Rule 12(b)(6) motion, the district court  
5 must accept all material allegations in the complaint as true and construe them in the light  
6 most favorable to the non-moving party. *Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.3d  
7 1005, 1014 (9th Cir. 2012). To survive a motion to dismiss, a complaint must contain  
8 sufficient factual material to “state a claim to relief that is plausible on its face.” *Bell Atl.*  
9 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A complaint must contain well-pleaded  
10 factual allegations, not legal conclusions, that “plausibly give rise to an entitlement to  
11 relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

#### 12 13 **IV. ANALYSIS**

14  
15 Defendant argues that the Court should dismiss Plaintiff’s claims for breach of  
16 contract and punitive damages.

##### 17 18 **A. Breach of Contract**

19  
20 Defendant first argues that Plaintiff cannot state a claim for breach of contract  
21 because the unfair competition endorsement bars coverage for *Leafstedt*. (Mot. at 9–17.)  
22 Though “insurance contracts have special features, they are still contracts to which the  
23 ordinary rules of contractual interpretation apply.” *Bank of the W. v. Superior Court*, 2  
24 Cal. 4th 1254, 1264 (1992). Accordingly, “[c]lear, explicit, and unambiguous contractual  
25 language governs.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031  
26 (9th Cir. 2008) (citing *Boghos v. Certain Underwriters at Lloyd’s of London*, 36 Cal. 4th  
27 495, 501 (2005) and Cal. Civ. Code § 1638). “When interpreting an insurance policy, the  
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1 intent of the parties and the reasonable expectations of the insured are considered.”  
2 *Cont'l Cas. Co. v. City of Richmond*, 763 F.2d 1076, 1079–80 (9th Cir. 1985).

3  
4 Defendant argues that the unfair competition exclusion renders products liability  
5 lawsuits alleging bodily injury and property damage uncovered under the Policy when the  
6 lawsuits also allege a deceptive trade practices claim. But at this stage, the Court cannot  
7 conclude that it is clear, explicit, and unambiguous that this is so. The exclusion on  
8 which Defendant relies is contained in an endorsement on page 69 of the Policy, under a  
9 heading referencing “unfair competition or similar laws,” not deceptive trade practices.  
10 Moreover, Plaintiff reasonably expected that a products liability case alleging bodily  
11 injury and property damage would be covered under Coverage A of the Policy, even if  
12 the case also alleged a claim for deceptive trade practices. As Plaintiff explains, “Almost  
13 any products liability claim could involve a claim of deceptive marketing of the product  
14 which allegedly caused injury.” (Opp. at 17.) Additionally, the bolded language  
15 describing which portion of the policy the exclusion applies to does not reference  
16 Coverage A, but rather only an exclusion to Coverage B. Finally, Plaintiff also alleges  
17 Defendant’s parent company “advised the California Department of Insurance in filings  
18 for the Endorsement that the Endorsement was not meant to narrow the scope of coverage  
19 provided by the [Commercial General Liability] form.” (FAC ¶ 20.)

20  
21 In sum, it is not so clear, explicit, and unambiguous that the *Leafstedt* action is  
22 barred from coverage as to require dismissal at the pleadings stage. It may be that the  
23 evidence adduced at summary judgment will show that the unfair competition exclusion  
24 does bar coverage of the *Leafstedt* case. But at this early stage, dismissal is not  
25 warranted.<sup>2</sup>

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28 <sup>2</sup> Because the Court does not dismiss Plaintiff’s breach of contract claim, it also does not dismiss  
Plaintiff’s claims for breach of the covenant of good faith and fair dealing and *Brandt* fees.

