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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EVANSTON INSURANCE
COMPANY, an Illinois corporation,

Plaintiff,

v.

WINSTAR PROPERTIES, INC, a
California Corporation; and
MANHATTAN MANOR, LLC, a
limited liability company,

Defendants.

Case No. 2:18-cv-07740-RGK-KES

**~~PROPOSED~~ JUDGMENT IN
FAVOR OF PLAINTIFF
EVANSTON INSURANCE
COMPANY**

TROUTMAN PEPPER HAMILTON SANDERS LLP

5 PARK PLAZA

SUITE 1400

IRVINE, CA 92614-2545

JUDGMENT

Following a court trial on March 29, 2022 before the Honorable R. Gary Klausner, the Court issued Findings of Fact and Conclusions of Law on April 15, 2022 (Docket No. 172), which are incorporated herein by reference. For the reasons stated in the Court's Findings of Fact and Conclusions of Law, Plaintiff Evanston Insurance Company ("Evanston") proved by a preponderance of the evidence that it sent the subject July 20, 2017 reservation of rights letter and Defendants Winstar Properties, Inc., (now known as Winstar Properties, LLC) ("Winstar") and Manhattan Manor, LLC ("Manhattan") failed to carry their burden to establish that the July 20, 2017 letter was not received. Additionally, for the reasons stated in the Court's Findings of Fact and Conclusions of Law, Winstar and Manhattan failed to provide sufficient evidence at trial to establish the defenses of waiver and estoppel. Because this Court previously concluded that no defense or indemnity coverage is afforded under the subject insurance policy (the "Policy") for the underlying lawsuit captioned *Adela Hernandez, et al. v. Winstar Properties, Inc, et al.*, Case No. 2:16-cv-04697-ODW-KS (C.D. Cal.) (the "Hernandez Action"), and because the Ninth Circuit previously affirmed that the Policy does not afford coverage for the Hernandez Action, (Docket No. 87), **IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

1. Evanston is entitled to judgment in its favor and against Winstar and Manhattan on its First Claim for Relief for Declaratory Judgment that it had no duty to defend Winstar and/or Manhattan under the Policy in connection with the Hernandez Action;


2. Evanston is entitled to judgment in its favor and against Winstar and Manhattan on its Second Claim for Relief for Declaratory Judgment that it had no duty to indemnify Winstar and/or Manhattan under the Policy in connection with the Hernandez Action;

3. Evanston is entitled to judgment in its favor and against Winstar for Reimbursement of Defense Costs incurred in defending the Hernandez Action in the amount of \$83,227.52, plus ~~\$30,030.31~~¹ in prejudgment interest from the date to be determined by post-trial motion. ~~this action was filed on September 5, 2018, for a total amount of \$113,257.83.~~

4. Evanston is awarded its costs.

IT IS SO ORDERED.

DATED: April 26, 2022



THE HON. R. GARY KLAUSNER
UNITED STATES DISTRICT JUDGE

¹ In a diversity action such as this, the rate of prejudgment interest is determined by state law. *See, e.g., Citicorp Real Estate, Inc. v. Smith*, 155 F3d 1097, 1108 (9th Cir. 1998). The rate of prejudgment interest under California Civil Code Section 3289 is 10%. Simple interest at 10% for three years from September 5, 2018 to September 5, 2021 is \$24,968.25 (\$83,227.52 x .1 x 3). Simple interest from September 5, 2021 to April 15, 2022 (221 days) when the Court issued its Findings of Fact and Conclusions of Law is \$5,062.06 (\$83,227.52 x .1 x. (221/365)). The total prejudgment interest is \$30,030.31 (\$24,968.25 + \$5,062.06), and the total reimbursement amount including prejudgment interest is \$113,257.83 (\$83,227.52 + \$30,030.31).