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 9 Claimant New York Marine and General  
 Insurance Company

10 UNITED STATES DISTRICT COURT  
 11 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

13 Travelers Commercial Insurance  
 14 Company, a Connecticut Corporation,

15 Plaintiff,

16 v.

17 New York Marine and General  
 Insurance Company, a Delaware  
 18 Corporation,

19 Defendant.

Case No. 2:21-cv-5832-GW (PDx)

**DECLARATION OF JAMES P.  
 WAGONER IN SUPPORT OF  
 OPPOSITION TO MOTION TO  
 CONSOLIDATE**

Date: October 17, 2022  
 Time: 8:30 a.m.  
 Crtrm.: 9D

Hon. George H. Wu

20 New York Marine and General  
 21 Insurance Company, a Delaware  
 corporation

22 Counter-Claimant

23 v.

24 Travelers Commercial Insurance  
 25 Company, a Connecticut corporation,

26 Counter-Defendant

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DECLARATION OF JAMES P. WAGONER

I, James P. Wagoner, declare as follows:

1. I am an attorney duly admitted to practice before the Courts of the State of California and before this Court. I am a member of the firm of McCormick Barstow Sheppard, Wayte & Carruth LLP, attorneys of record for Defendant and Counter-Claimant New York Marine and General Insurance Company in case no. 2:21-cv-5832-GW(PDx) and plaintiff in case no. 2:22-cv-04685.

2. If called as a witness, I would and could competently testify to all facts stated herein from my personal knowledge except where stated upon information and belief and, as to these matters, I am informed and believe them to be true. I am submitting this Declaration in support of New York Marine’s Opposition To Travelers’ Motion To Consolidate the two Actions.

3. On August 25, 2022, Kirk Pasich, counsel for the mutual insured, the defendant in case no. 2:22-cv-04685, contacted both our office and counsel for Travelers and requested that Travelers withdraw the Motion to Consolidate to provide the mutual insured with an opportunity to evaluate the issues involved. Specifically, Mr. Pasich noted that the insured is not a party to case no. 2:21-cv-5832-GW(PDx) (the First Action) and that the insured has not appeared in in case no. 2:22-cv-04685 (the Second Action). Moreover, Mr. Pasich noted that because the insured “is not a party to the Travelers lawsuit, she has no meaningful way to assess whether it is appropriate to consolidate the two lawsuits or what any prejudicial impact might be from consolidation.” Mr. Pasich invited both counsel for Travelers and my office to confer on these issues and requested that Travelers motion be withdrawn until the insured had an opportunity to evaluate the issues involved. A true and correct copy of Mr. Pasich’s email is attached hereto as Exhibit A.

4. As of the date of this declaration, counsel for Travelers has not responded to this request and no conference on these issues involving counsel for the insured, Travelers, and New York Marine has occurred.

1 I declare under penalty of perjury that the foregoing is true and correct.  
2 Executed on September 19, 2022, at Fresno, California.

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4 /s/ James P. Wagoner

5 James P. Wagoner

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**PROOF OF SERVICE**

**Travelers Commercial Insurance Company v. New York Marine and General Insurance Company**

**STATE OF CALIFORNIA, COUNTY OF FRESNO**

At the time of service, I was over 18 years of age and **not a party to this action.** I am employed in the County of Fresno, State of California. My business address is 7647 North Fresno Street, Fresno, CA 93720.

On September 19, 2022, I served true copies of the following document(s) described as **DECLARATION OF JAMES P. WAGONER IN SUPPORT OF OPPOSITION TO MOTION TO CONSOLIDATE** on the interested parties in this action as follows:

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Kathleen O. Peterson  
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*Attorneys for Plaintiff Travelers Commercial Insurance Company*

**BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on September 19, 2022, at Fresno, California.

/s/ Marisela Taylor  
Marisela Taylor