

APPENDIX

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APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 19-56320

D.C. No. 2:19-cv-04352-R-PLA

ADIR INTERNATIONAL, LLC, DBA Curacao,
FKA La Curacao, a Delaware Limited Liability
Company; RON AZARKMAN, an individual,
Plaintiffs-Counter-Defendants-Appellants,

v.

STARR INDEMNITY AND LIABILITY COMPANY,
a Texas Corporation,
Defendant-Counter-Claimant-Appellee.

Appeal from the United States District Court
for the Central District of California
Gary Klausner, District Judge, Presiding

Argued and Submitted December 11, 2020
Pasadena, California
Filed April 15, 2021

OPINION

Before: N. Randy Smith and Kenneth K. Lee, Circuit Judges, and Matthew F. Kennelly,* District Judge.

Opinion by Judge Lee

SUMMARY**

California Insurance Law

The panel affirmed the district court's summary judgment in favor of Starr Indemnity and Liability Company in a diversity insurance-coverage action.

California's Attorney General sued Adir International, LLC for violating state consumer protection laws. After initially agreeing to provide coverage, Adir's insurer, Starr Indemnity, said it would no longer pay for Adir's defense pursuant to California Insurance Code § 533.5(b), which forbids insurer coverage in certain consumer protection cases brought by the state.

The panel held Cal. Ins. Code § 533.5(b) did not facially violate the due process right of insurance holders to fund and retain the counsel of their choice in the civil context. The panel also rejected Adir's statutory argument that section 533.5 applied to actions involving only monetary relief. The panel further held that under the plain text of the statute, it applied to actions that seek injunctive relief along with monetary relief.

* The Honorable Matthew F. Kennelly, sitting by designation from the Northern District of Illinois

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Because Starr Indemnity had no duty to defend nor to indemnify, the panel affirmed the district court's determination that Starr Indemnity was entitled to reimbursement of defense costs under the explicit language of the insurance policy.

COUNSEL

Joseph S. Klapach (argued), Klapach & Klapach P.C., Sherman Oaks, California, for Plaintiffs-Counter-Defendants-Appellees.

Kevin F. Kieffer (argued) and Ryan C. Tuley, Troutman Sanders LLP, Irvine, California, for Defendant-Counter-Claimant-Appellee.

David L. Abney, Ahwatukee Legal Office P.C., Phoenix, Arizona, for Amicus Curiae United Policyholders.

Xavier Becerra, Attorney General; Nicklas A. Akers, Senior Assistant Attorney General; Michele Van Gelderen, Supervising Deputy Attorney General; Michael Reynolds and Rachel A. Foodman, Deputy Attorneys General; Office of the Attorney General, San Francisco, California; for Amicus Curiae State of California.

OPINION

LEE, Circuit Judge:

This case raises the question of whether a party has a due process right to retain and fund counsel through insurance proceeds. California's Attorney General sued Adir International for violating state consumer protection laws. To defend itself, Adir asked its insurance carrier to pay its legal fees. The insurer agreed, but the Attorney General warned that California Insurance Code § 533.5(b) forbids it from providing cover-

age in certain consumer protection cases brought by the state. The insurer reversed itself and said it would no longer pay for Adir’s legal defense. Adir challenged the law’s constitutionality, arguing that the state unfairly stripped it of insurance defense coverage based on unproven allegations in the complaint.

We affirm the district court’s dismissal of Adir’s challenge. California Insurance Code § 533.5(b) — which nullifies an insurance company’s duty to defend — does not facially violate a party’s due process right to retain counsel. In civil cases, courts have recognized a denial of due process only if the government actively thwarts a party from obtaining a lawyer or prevents it from communicating with counsel. Adir has made no such allegation. While it cannot tap into its insurance coverage, Adir has managed to obtain and communicate with counsel. We also reject Adir’s statutory argument that section 533.5 applies to actions involving only monetary relief. Under the plain text of the statute, it applies to actions that seek injunctive relief along with monetary relief.

BACKGROUND

I. Factual Background

Adir operates a retail chain called Curacao with stores in California, Nevada, and Arizona. In 2017, the California Attorney General sued Adir and its Chief Executive Officer, Ron Azarkman,¹ for unfair and misleading business tactics that allegedly exploit Curacao’s mainly low-income, Spanish-speaking customer base. The complaint alleged violations of

¹ Technically, both Adir and Azarkman are appellants, but this Opinion will refer to both appellants as “Adir” for the sake of simplicity.

California's Unfair Competition Law (UCL) and False Advertising Law (FAL), and sought restitution, civil penalties, costs of suit, and other equitable relief. Relevant for this appeal, the complaint sought injunctive relief permanently enjoining Adir from making any false or misleading statements in violation of the FAL and engaging in unfair competition in violation of the UCL.

Meanwhile, Adir had bought an insurance policy from Starr Indemnity. The policy provided that Starr would defend and indemnify Adir and its executives for losses arising from certain claims alleging wrongful acts. When the California Attorney General sued, Adir tendered the complaint to Starr and asked it to defend Adir against the lawsuit. Starr acknowledged that it would defend the action under a reservation of rights, and then became actively involved in the defense of that action.

This all halted in March 2019 when Starr received a written warning from the California Attorney General's Office. In the letter, the Attorney General's Office explained that Starr violated California Insurance Code § 533.5. (Adir also apparently received a copy of the same letter.) Section 533.5 provides:

- (a) No policy of insurance shall provide, or be construed to provide, any coverage or indemnity for the payment of any fine, penalty, or restitution in any criminal action or proceeding or in any action or proceeding brought pursuant to [the UCL or FAL] by the Attorney General . . . notwithstanding whether the exclusion or exception regarding this type of coverage or indemnity is expressly stated in the policy.

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(b) No policy of insurance shall provide, or be construed to provide, any duty to defend, as defined in subdivision (c), any claim in any criminal action or proceeding or in any action or proceeding brought pursuant to [the UCL or FAL] in which the recovery of a fine, penalty, or restitution is sought by the Attorney General . . . notwithstanding whether the exclusion or exception regarding the duty to defend this type of claim is expressly stated in the policy.

(c) For the purpose of this section, “duty to defend” means the insurer’s right or obligation to investigate, contest, defend, control the defense of, compromise, settle, negotiate the compromise or settlement of, or indemnify for the cost of any aspect of defending any claim in any criminal action or proceeding or in any action or proceeding brought pursuant to [the UCL or FAL] in which the insured expects or contends that (1) the insurer is liable or is potentially liable to make any payment on behalf of the insured or (2) the insurer will provide a defense for a claim even though the insurer is precluded by law from indemnifying that claim.

(d) Any provision in a policy of insurance which is in violation of subdivision (a) or (b) is contrary to public policy and void.

Cal. Ins. Code § 533.5.

A few weeks after receiving the letter from the Attorney General’s Office, Starr informed Adir that it would “stop making any payments for defense costs”

and reserved “its rights to seek reimbursement of all amounts paid to date.”

II. Procedural Background

After several rounds of correspondence about whether section 533.5 applied, Adir sued Starr in state court, and Starr removed to federal court under 28 U.S.C. § 1332. In August 2019, Starr filed a motion for summary judgment, while Adir cross-moved for partial summary judgment.

In September 2019, the district court granted Starr’s motion for summary judgment and denied Adir’s motion for partial summary judgment. The district court did not address Adir’s constitutional challenge to the statute’s defense prohibition, and instead focused on the statutory construction issue. Addressing first the duty to defend, the district court explained that subsection (b) — the defense provision — “clearly and explicitly establishes that there was no potential for coverage and, consequently, no duty to defend in the underlying action.” Specifically, the district court noted that subsection (b) “unambiguously precludes an insurer’s duty to defend not only a UCL or FAL claim *for* the recovery of a fine, penalty, or restitution, but also *any claim* brought pursuant to the UCL or FAL in an action *in which* the Attorney General or another state prosecuting authority seeks such fine, penalty, or restitution.”

As for the duty to indemnify under subsection (a), the district court held that because “there is no duty to defend, there can be no duty to indemnify.” The district court also noted that subsection (a) “explicitly precludes indemnification for any fine, penalty, or restitution in any action brought under the UCL or FAL by the Attorney General or another state prosecuting

authority.” Finally, the district court held that Starr was entitled to reimbursement of defense costs because the insurance policy itself explicitly provided for a right to reimbursement. Later that month, the district court amended the final judgment to specify that Adir owed Starr over \$2 million in restitution. This appeal followed.

STANDARD OF REVIEW

We review de novo the district court’s grant of summary judgment. *Baker v. Liberty Mut. Ins. Co.*, 143 F.3d 1260, 1263 (9th Cir. 1998). The court “must determine, viewing the evidence in the light most favorable to the nonmoving party, whether there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law.” *Id.* Similarly, we review de novo a challenge to the constitutionality of a statute. *Gray v. First Winthrop Corp.*, 989 F.2d 1564, 1567 (9th Cir. 1993). The same applies to the district court’s interpretation of a state statute. *Wetzel v. Lou Ehlers Cadillac Grp. Long Term Disability Ins. Program*, 222 F.3d 643, 646 (9th Cir. 2000).

ANALYSIS

On appeal, Adir challenges both the indemnification and the defense provisions of California Insurance Code § 533.5. (As a reminder, subsection (a) is the indemnity provision, while subsection (b) is the defense provision). Adir challenges subsection (b) on the basis that it violates an insurance holder’s due process right to retain and fund the counsel of its choice. Adir also asserts statutory challenges to both subsection (a) and subsection (b), arguing that the district court went beyond the bounds of the statute by interpreting both subsections to prohibit coverage of the *injunctive* relief

(rather than monetary relief) portion of the underlying action. To Adir's way of thinking, the provisions cover only "fines, penalties, and restitution" and thus do not apply to injunctive relief. Finally, Adir challenges the district court's ruling on Starr's right to reimbursement. We affirm the grant of summary judgment for Starr.

- I. California Insurance Code § 533.5(b) does not facially violate the due process right of insurance holders to fund and retain the counsel of their choice in the civil context.

Adir challenges the constitutionality of California Insurance Code § 533.5(b), which bars insurance companies from paying legal defense fees for certain consumer protection lawsuits brought by the state. Adir argues that it violates the Due Process Clauses of the Fifth and Fourteenth Amendments because it interferes with an insured's ability to fund and retain the counsel of its choice. As Adir points out, California has stacked the deck against defendants facing these lawsuits filed by the state: Although the Attorney General has yet to prove any of the allegations in his lawsuit, he has invoked the power of the state to deny insurance coverage that Adir paid for to defend itself.

In the civil context, courts have limited the reach of the Due Process Clause to cases in which the government has actively prevented hiring or communicating with counsel. Adir has not alleged such impingements by the state. There is also no allegation that Adir cannot afford competent counsel absent coverage under

the policy. We thus reject Adir’s facial constitutional challenge to California Insurance Code § 533.5(b).²

A. Courts have recognized a very limited due process right to retain and fund counsel in the civil context.

To start, this court has long held that there is “no constitutional right to counsel in a civil case.” *United States v. 30.64 Acres of Land, More or Less, Situated in Klickitat Cty., Washington*, 795 F.2d 796, 801 (9th Cir. 1986) (cleaned up). Unlike in criminal cases that implicate the Sixth Amendment right to counsel, civil litigants who cannot afford counsel are not constitutionally guaranteed the appointment of a lawyer.

Adir, though, correctly points out that courts have generally acknowledged a civil litigant’s Fifth Amendment due process right to retain and fund the counsel of their choice. *See Potashnick v. Port City Const. Co.*, 609 F.2d 1101, 1117 (5th Cir. 1980) (explaining that “the right to retain counsel in civil litigation is implicit in the concept of fifth amendment due process”). “If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense.” *Powell v. Alabama*, 287 U.S. 45, 68 (1932). Put another way, “there is no right of *subsidized* access” in civil cases like there is in the Sixth Amendment context, but if a civil litigant “*hires* a

² The district court did not address Adir’s constitutional arguments, even though Adir raised it in its briefing. We can affirm the district court’s ruling on any ground in the record. *Atel Fin. Corp. v. Quaker Coal Co.*, 321 F.3d 924, 926 (9th Cir. 2003) (per curiam).

lawyer,” then certain protections kick in. *Guajardo-Palma v. Martinson*, 622 F.3d 801, 803 (7th Cir. 2010) (cleaned up).

So, what are the contours of a civil litigant’s due process right to retain counsel? For one, a court “may not refuse to accept filings” from a civil litigant’s retained lawyer. *Id.* In addition, the right to retain counsel might be violated if a trial court prohibits a civil litigant from communicating with his or her retained counsel during breaks and recesses during a trial. *Potashnick*, 609 F.2d at 1119. A civil litigant also probably cannot be denied the opportunity to consult with retained counsel about settlement terms. *Mosley v. St. Louis Sw. Ry.*, 634 F.2d 942, 946 (5th Cir. 1981). And one sister circuit held that a trial court erred in refusing to give a civil litigant extra time to retain new counsel after the original counsel withdrew before trial. *Anderson v. Sheppard*, 856 F.2d 741, 748 (6th Cir. 1988).

Beyond that, though, courts have construed the due process right to retain counsel very narrowly. For example, our court has suggested that the right to retain counsel does not require the release of frozen assets so that a civil defendant can hire an attorney or otherwise defend his claim. *See CFTC v. Noble Metals Int’l, Inc.*, 67 F.3d 766, 775 (9th Cir. 1995). “A district court may . . . forbid or limit payment of attorney fees out of frozen assets.” *Id.* (recognizing, however, that a district court must still exercise “discretion”).

Other circuits have similarly refused to adopt an expansive reading of the due process right to retain counsel. The Third Circuit, for instance, has held that the right appears to go “no further than preventing arbitrary dismissal of a chosen attorney.” *Kentucky W.*

Virginia Gas Co. v. Pennsylvania Pub. Util. Comm'n, 837 F.2d 600, 618 (3d Cir. 1988) (cleaned up). Along those lines, the First Circuit has suggested that as long as a trial court does not affirmatively prevent a civil litigant from retaining counsel, no constitutional violation occurs, even if the civil litigant still cannot hire a lawyer. *Gray v. New England Tel. & Tel. Co.*, 792 F.2d 251, 257 (1st Cir. 1986) (no violation of due process right where court postponed trial to give civil litigant time to retain counsel, but litigant was unable to do so).

In sum, the due process right to retain counsel in civil cases appears to apply only in extreme scenarios where the government substantially interferes with a party's ability to communicate with his or her lawyer or actively prevents a party who is willing and able to obtain counsel from doing so. This narrow scope of the due process right to retain counsel — as opposed to the much more robust Sixth Amendment right to counsel — finds support in the original public meaning of the term “due process.” As the Supreme Court long ago explained, the Fifth Amendment Due Process Clause is rooted in the Magna Carta. *Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. 272, 276 (1856). See also Edward J. Eberle, *Procedural Due Process: The Original Understanding*, 4 Const. Comment. 339 (1987). At the time of the Fifth Amendment's ratification, the framers construed “due process of law” to mean the same thing as “the law of the land,” which was traditionally understood to impose a “restraint on the legislative as well as on the executive and judicial powers of the government.”³ *Murray's Lessee*, 59 U.S.

³ The Magna Carta provides that: “No freeman shall be taken, or imprisoned, or be disseized of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any otherwise destroyed;

at 276. *See also Daniels v. Williams*, 474 U.S. 327, 331–32 (1986) (discussing the “traditional and common-sense notion that the Due Process Clause, like its forebear in the Magna Carta, was ‘intended to secure the individual from the arbitrary exercise of the powers of government.’” (cleaned up)).

Meanwhile, the Supreme Court has characterized “the law of the land” as “a law which hears before it condemns.” *Powell*, 287 U.S. at 68 (cleaned up). That makes sense because “[t]he fundamental requisite of due process of law is the opportunity to be heard.” *Grannis v. Ordean*, 234 U.S. 385, 394 (1914). This is where the right to counsel comes into play. “Historically and in practice, [a hearing] has always included the right to the aid of counsel *when desired and provided by the party asserting the right.*” *Powell*, 287 U.S. at 68 (emphasis added).⁴ Thus, due process historically did not establish a broad or unfettered right to counsel in civil cases, but rather provided limited protection against the government preventing a party from being heard in court. And as a practical matter, that means due process bars the government from

nor will we not pass upon him, nor condemn him, but by lawful judgment of his peers or by the law of the land.” *See* 1 Edward Coke, *The Second Part of the Institutes of the Laws of England* 45 (1797).

⁴ Indeed, as the *Potashnick* court noted, the English system had long “recognized the right to retain civil counsel,” and it was only because the English practice was to *deny* representation to felony defendants that the framers “specifically provided for a right to retain counsel in criminal prosecutions” by way of the Sixth Amendment. *Potashnick*, 609 F.2d at 1117 (cleaned up). *See also Powell*, 287 U.S. at 60 (“Originally, in England, a person charged with treason or felony was denied the aid of counsel At the same time parties in civil cases and persons accused of misdemeanors were entitled to the full assistance of counsel.”).

actively preventing a party from obtaining counsel or communicating with his or her lawyer in civil cases.

- B. The limited right to retain counsel does not include the indirect right to fund and retain counsel through an insurance policy.

With this framework in mind, the question then becomes: Is there any way to fit Adir’s proposed right — which really boils down to an indirect right to fund and retain the counsel through an insurance contract — into the existing due process right? We see no reason to enlarge the limited due process right to retain counsel to include a constitutional right to use insurance proceeds to pay for legal fees. While Adir complains that California Insurance Code § 533.5(b) is unfair, the statute does not actively prevent Adir from obtaining counsel or communicating with its lawyers.

Adir relies heavily on *United States v. Stein*, 541 F.3d 130 (2d Cir. 2008) and *Luis v. United States*, 136 S. Ct. 1083 (2016). In *Stein*, the Second Circuit held that prosecutors violated the criminal defendants’ Sixth Amendment right to counsel — which encompasses a “right to use *wholly legitimate funds* to hire the attorney of his choice” — when they pressured the defendants’ lawyers to stop paying their legal fees. *Stein*, 541 F.3d at 155 (cleaned up). Similarly, in *Luis*, the Supreme Court articulated that “the pretrial restraint of legitimate, untainted assets needed to retain counsel of choice violates the Sixth Amendment.” *Luis*, 136 S. Ct. at 1088.

But *Stein* and *Luis* were both criminal cases interpreting the Sixth Amendment right to counsel. Adir, for its part, argues that the Sixth Amendment at least offers “guidance” for the scope of a civil litigant’s due process right to counsel. But “guidance” does not mean

that the two rights are equivalent. The Sixth Amendment’s explicit guarantee of counsel in criminal cases is broader than the judicially constructed right under the Due Process Clause. And for good reason: While a civil lawsuit may implicate large sums of money or restrictions on business practices, a criminal case may lead to the loss of liberty or life. *See Potashnick*, 609 F.2d at 1118 (stating that “an analogy can be drawn between the criminal and civil litigants’ respective rights to counsel” but also emphasizing that “[a] criminal defendant faced with a potential loss of his personal liberty has much more at stake than a civil litigant asserting or contesting a claim for damages, and for this reason the law affords greater protection to the criminal defendant’s rights”).

At the end of the day, California’s law only makes it harder, though not necessarily impossible, for a civil litigant to retain the counsel of their choice. Adir has not alleged that the government actively thwarted it from obtaining counsel, or that the law precluded it from communicating with counsel. Indeed, Adir appears to have obtained an able and competent counsel — without the use of insurance proceeds — for this appeal.⁵ We thus rule that California Insurance Code § 533.5(b) does not impinge on a due process right to retain counsel.

⁵ Adir stated at oral argument that it was bringing both a facial challenge and an as-applied challenge. But the briefing appears to set forth a facial challenge only because Adir has not alleged how the law has impaired its ability to retain counsel. We thus need not address whether Adir can raise an as-applied challenge.

II. California Insurance Code § 533.5(b) prohibits a duty to defend in an underlying action even if the attorney general seeks injunctive relief.

We next address Adir’s statutory challenge to California Insurance Code § 533.5(b). Adir argues that the statutory language bars defense coverage for actions seeking *damages* only and does not extend to claims seeking injunctive relief. It maintains that district court adopted a too-broad interpretation in ruling that the statute prohibits Starr from defending the injunctive relief portion of the underlying action. We reject Adir’s strained reading of subsection (b).

A. The text of subsection (b) forecloses a duty to defend for actions in which monetary relief is sought, even if injunctive relief is also sought.

We start, as we must, with the statutory text. *Mt. Hawley Ins. Co. v. Lopez*, 156 Cal. Rptr. 3d 771, 779 (Ct. App. 2013). Section 533.5(b) states that there can be no “duty to defend . . . any claim . . . in any action or proceeding brought pursuant to [the UCL or FAL] in which the recovery of a fine, penalty, or restitution is sought by the Attorney General” Cal. Ins. Code § 533.5(b). To begin, the parties appear to agree that the phrase “duty to defend” attaches to “any claim.” The key question posed here is whether “any claim” encompasses (1) claims that *only* seek monetary relief or (2) all claims that seek monetary relief, even if it also demands injunctive relief.

Adir argues the former, contending that “any claim” only encompasses claims for monetary relief alone. To arrive at that conclusion, Adir necessarily makes two unwarranted assumptions about the text of the statute. First, Adir assumes that the phrase “in which the

recovery of a fine, penalty, or restitution is sought” must be read to mean “in which *only* the recovery of a fine, penalty, or restitution is sought.” Second, Adir assumes that “any claim” can be bifurcated into a claim for monetary relief and a claim for injunctive relief. We disagree with both assumptions.

1. The phrase “any claim . . . in which the recovery of a fine, penalty, or restitution is sought” is not limited to claims in which *only* monetary relief is sought.

To start, there are plenty of textual clues that the phrase “any claim . . . in which the recovery of a fine, penalty, or restitution is sought” does not mean the same thing as the phrase “any claim . . . in which *only* the recovery of a fine, penalty, or restitution is sought.” Most obviously, the word “only” is absent from this section of the statute. Adir’s interpretation would require the court to impermissibly read that extra word into the statute. See *Lamie v. U.S. Trustee*, 540 U.S. 526, 538 (2004) (declining to “read an absent word into the statute”). Along those same lines, the phrase “in which” merely communicates that the claim seeks monetary relief, but beyond that, “in which” does not at all imply that *only* monetary relief is sought. As Starr points out, Adir’s interpretation essentially replaces “in which the recovery of a fine, penalty, or restitution is sought” with the more restrictive modifier “*for* the recovery of a fine, penalty, or restitution.” That reading goes against the plain text of the statute.⁶

⁶ Additionally, the phrase “in which the recovery of a fine, penalty, or restitution is sought,” also modifies “any criminal action or proceeding.” *Mt. Hawley*, 156 Cal. Rptr. 3d at 794. Thus, an interpretation limiting a claim to monetary relief would create

2. A “claim” cannot be bifurcated into a “claim” for monetary relief and a “claim” for injunctive relief for insurance defense purposes.

Adir reads “claim” to mean “relief” or “remedy” to contrive a UCL or FAL “claim” for monetary relief as distinct from a UCL or FAL “claim” for injunctive relief. But Adir does not offer any authority for that reading of the word “claim.” Nor does Adir’s reading make sense given the statute’s inclusion of the phrase “in any action or proceeding,” which seems to refer to the entire lawsuit as a whole. If “action or proceeding” refers to the entire lawsuit, then it would follow that the word “claim” refers to the individual causes of action *within* the lawsuit, which, in this case, would be the UCL claim and the FAL claim. With that framework in mind, the statute’s reference to “duty to defend . . . any claim” seems to most naturally refer to coverage (or not) for particular causes of action within a larger “action or proceeding.”

Further supporting this conclusion is the definition of “duty to defend,” which precludes an insurer from “indemnify[ing] for the cost of *any aspect* of defending *any claim . . . in any action or proceeding* brought pursuant the [UCL or FAL].” Cal. Ins. Code § 533.5(b), (c) (emphases added). Subsection (c) makes it clear that an insurer is precluded from defending any action brought under the UCL or FAL regardless of the relief sought.

an absurd result. *Jarman v. HCR ManorCare, Inc.*, 471 P.3d 1001, 1004 (Cal. 2020) (“If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend.”).

But even so, Adir argues for bifurcating the UCL or FAL claim into monetary and injunctive relief components. Adir cites *Broughton v. Cigna Healthplans of California*, 988 P.2d 67 (Cal. 1999) for the proposition that the injunctive relief “claim” can be severed from the broader UCL or FAL claim. But *Broughton*’s holding is much more limited than Adir makes it out to be. In that case, the California Supreme Court explained that it was “concerned not with distinct arbitrable and inarbitrable claims, but with arbitrable and inarbitrable *remedies* derived from the *same* statutory *claim*.” *Broughton*, 21 Cal. 4th at 1088 (emphases added). The court then concluded that the damages action should be sent to arbitration, while the injunctive relief action could proceed in a judicial forum, citing “the strong policy in both federal and state law for arbitrating private disputes, and given the inherent unsuitability of arbitration as a means of resolving plaintiffs’ action for injunctive relief under the CLRA.” *Id.*

There is nothing in *Broughton*’s reasoning to suggest that UCL and FAL claims should likewise be bifurcated by remedy for insurability purposes. Unlike in the arbitration context, the “strong policy” in this case arguably cuts the other way — that is, against insurability for UCL and FAL claims. And even if the UCL or FAL claim could somehow be severed into the injunctive relief and the monetary relief components to determine insurability, the text does not support doing so here; the statute refers only to “any claim,” rather than “the portion of any claim.”

Further, the statutory framework does not support a bifurcation of injunctive relief and civil penalties. Government officials may “seek redress through the bringing of civil law enforcement cases seeking

equitable relief and civil penalties” for violations of the UCL and FAL. *Mt. Hawley*, 156 Cal. Rptr. 3d at 794; *see also* Cal. Bus. & Professions Code § 17206. Equitable remedies (injunctive relief, restitution, and civil penalties) are the only remedies available under California Business and Professions Code §§ 17200–17210. *See Nationwide Biweekly Admin., Inc. v. Superior Ct. of Alameda Cty.*, 462 P.3d 461, 469 (Cal. 2020); *see also In re Tobacco II Cases*, 207 P.3d 20, 29 (Cal. 2009) (“To achieve its goal of deterring unfair business practices in an expeditious manner, the Legislature limited the scope of the remedies available under the UCL” to “equitable” damages such as “injunctive relief and restitution.”). “The primary form of relief available under the UCL to protect consumers from unfair business practices is an injunction.” *McGill v. Citibank, N.A.*, 9 393 P.3d 85, 89 (Cal. 2017) (cleaned up).

In light of the statutory framework as a whole, it would be illogical to conclude that the legislature intended to carve out an exception to allow for the defense for the primary form of equitable relief (injunctions) but not the others (fine, restitution, or civil penalty). *See Los Angeles Cty. Metro. Transportation Auth. v. Alameda Produce Mkt., LLC*, 264 P.3d 579, 583 (Cal. 2011) (“We must harmonize the statute’s various parts by considering it in the context of the statutory framework as a whole.”).

B. Our interpretation of subsection (b) does not render the duty to defend narrower than the duty to indemnify.

Alternatively, Adir urges the court to interpret subsection (b) with an eye toward subsection (a), which prohibits “coverage or indemnity for the payment of any fine, penalty, or restitution . . . in any action or

proceeding brought pursuant to [the UCL or FAL].” Cal. Ins. Code § 533.5(a). The relationship between the two provisions matters, Adir reminds us, because it is “well settled” under California law that “the duty to defend is broader than the duty to indemnify.” *Certain Underwriters at Lloyd's of London v. Superior Court*, 16 P.3d 94, 103 (Cal. 2001). Adir asserts that because subsection (a) does not bar indemnity for the payment of injunctive relief costs, then it would make no sense to read subsection (b) to prohibit defense coverage in the same context. That would improperly render the duty to indemnify broader than the duty to defend.

We disagree. The insurance policy does not cover the costs of injunctive relief in the first place. Nor do there appear to be any real costs⁷ associated with the injunctive relief sought here.

The text of the policy defines “claim” to encompass a “written demand for monetary, non-monetary, or injunctive relief.” But “claim” is not the same thing as “coverage.” We know this because the policy also states that the insurer shall pay “the Loss arising from a Claim” The word “Loss” is in turn defined to include “damages” but to exclude “any amounts paid or incurred in complying with a judgment or settlement for non-monetary or injunctive relief, but solely as respects the Company.” This indicates no coverage for the costs of injunctive relief under the policy. To be fair, this could still leave open the possibility of coverage for any costs that Azarkman incurs in his individual capacity in complying with the injunctive relief in this case. But it is not clear what costs those

⁷ Any defense costs would be precluded under section 533.5(c).

would be, given the injunctive relief being requested by the Attorney General.

Even if the insurance policy did cover the costs of complying with injunctive relief, the injunctive relief sought does not appear to impose any monetary costs. The California Attorney General appears to seek only (1) an order permanently enjoining Adir and its agents “from making any false or misleading statements in violation of” the FAL, and (2) an order enjoining Adir and its agents from engaging in unfair competition in violation of the UCL. Adir does not articulate how it will incur monetary costs to comply with an order to make truthful representations.

Thus, it is unnecessary to resolve on appeal whether subsection (a) prohibits Starr from indemnifying the costs of injunctive relief in the underlying action here. The insurance policy itself makes clear that the answer is no. We are also not persuaded that there even are any actual monetary costs attached to the injunctive relief sought in this case. So we leave the interpretation of subsection (a) for another day.

In any event, given (1) the premise in California law that the duty to defend is always broader than the duty to indemnify and (2) because there is no duty to defend any criminal or civil proceeding under the UCL or FAL (including this action), there would be no reason to suggest a duty to indemnify in this action under subsection (a) of the statute.

Lastly, because indemnity for restitution and indemnity for an injunction are both equitable relief, there is no reason for this court to construe the statute differently for one type of equitable relief. As the California Court of Appeal held,

When the law requires a wrongdoer to disgorge money or property acquired through a violation of the law, to permit the wrongdoer to transfer the cost of disgorgement to an insurer would eliminate the incentive for obeying the law. Otherwise, the wrongdoer would retain the proceeds of his illegal acts, merely shifting his loss to an insurer.

Bank of the W. v. Superior Ct., 833 P.2d 545 (Cal. 1992).

* * * *

To sum up, the plain meaning of the statutory text of California Insurance Code § 533.5(b) forecloses defense coverage for any claim in an UCL or FAL action in which the state seeks monetary relief. Here, the state seeks (among other things) monetary relief against Adir under the UCL and FAL. The statute thus bars defense coverage for Adir.

III. The text of the insurance policy explicitly provides for a right to reimbursement of defense costs.

Finally, Adir challenges the district court's ruling that Starr has a right to the reimbursement of the defense costs advanced in the underlying action. Unfortunately for Adir, the insurance contract appears to contain an express reservation of rights: "In the event and to the extent that the Insureds shall not be entitled to payment of such Loss under the terms and conditions of this policy, such payments by the Insurer shall be repaid to the Insurer by the Insureds" And the word "Loss" in turn includes defense costs. Because it turns out that there is no duty to defend nor to indemnify, we affirm the district court's

determination that Starr is entitled to reimbursement under the explicit language of the insurance policy.

Adir makes several arguments in response, but none of them can overcome this express contractual language. For instance, Adir relies on *Buss*, but that case only says that an *implied* right of reimbursement must be explicitly reserved. *Buss*, 939 P.2d at 776 n.13. *Buss* does not apply when there is already an express in-policy right to reimbursement; the express language controls. Adir also argues that Starr, “acting under a reservation of rights,” is entitled to reimbursement only if it “prophylactically financed the defense of claims as to which it owed no duty of defense.” But all that requires is that an insurer continue to finance a defense while acting under a reservation of rights. See *Scottsdale Ins. Co. v. MV Transp.*, 115 P.3d 460, 470 (Cal. 2005) (“The insurer should be free, in an abundance of caution, to afford the insured a defense under a reservation of rights, with the understanding that reimbursement is available if it is later established, as a matter of law, that no duty to defend ever arose.”). There does not seem to be any requirement, as Adir suggests, that the insurer do anything extra on top of acting under a reservation of rights. Indeed, the whole idea seems to be to incentivize insurers to be generous with the duty to defend. *Id.*

Lastly, Adir’s estoppel argument also fails. The standard here is whether Adir reasonably relied on Starr’s conduct to Adir’s detriment. *Chase v. Blue Cross of California*, 50 Cal. Rptr. 2d 178, 188 (Ct. App. 1996). But “failure to retain separate counsel does not by itself show any detriment.” *State Farm Fire & Cas. Co. v. Jioras*, 29 Cal. Rptr. 2d 840, 845 (Ct. App. 1994). More importantly, Adir does not explain how its reliance could have been reasonable given the insurance

policy's express reservation of rights, not to mention the fact that Starr signaled its doubts about coverage from the very beginning, when it at first denied coverage in November 2017, before agreeing to provide coverage under a reservation of rights. Thus, we affirm the district court's ruling that Starr is entitled to a reimbursement of defense costs.

CONCLUSION

The district court's order granting summary judgment for Starr is **AFFIRMED**.

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Filed September 10, 2019]

Case No. 2:19-cv-04352-R-PLA

ADIR INTERNATIONAL, LLC, *et al.*

v.

STARR INDEMNITY AND LIABILITY COMPANY, *et al.*

CIVIL MINUTES – GENERAL

Present: The Honorable R. GARY KLAUSNER,
United States District Judge

Christine Chung, Deputy Clerk

Court Reporter / Recorder: Not Reported

Attorneys Present for Plaintiff: Not Present

Attorneys Present for Defendant: Not Present

Proceedings: (IN CHAMBERS) Order re: Defendant's
Motion for Summary Judgment (DE 19) and Plaintiffs'
Motion for Partial Summary Judgment (DE 24)

I. INTRODUCTION

On June 14, 2019, Plaintiffs Adir International, LLC and Adir's CEO, Ron Azarkman, ("Plaintiffs") filed the operative First Amended Complaint ("FAC") against Defendant Starr Indemnity and Liability

Company (“Defendant”) asserting claims for (1) declaratory judgment—duty to defend, (2) breach of contract—duty to defend, (3) declaratory judgment—duty to indemnify, and (4) breach of contract—duty to indemnify. On May 24, 2019, in response to the original complaint, Defendant filed a Counterclaim for (1) declaratory relief—no duty to defend pursuant to California Insurance Code Section 533.5; (2) declaratory relief—no duty to indemnify pursuant to Section 533.5; (3) declaratory relief—no duty to defend pursuant to the terms, conditions, and exclusions of the Policy; (4) declaratory relief—no duty to indemnify pursuant to the terms, conditions, and exclusions of the Policy; (5) declaratory relief—reimbursement under the Policy; and (6) reimbursement—restitution/unjust enrichment.

Presently before the Court are Defendant’s Motion for Summary Judgment (DE 19) and Plaintiffs’ Motion for Partial Summary Judgment (DE 24). Defendant’s Motion seeks Summary Judgment on Plaintiff’s entire FAC and partial Summary Judgment on Defendant’s Counterclaim. Plaintiff’s Motion seeks Summary Judgment on the first and second claims in the FAC and on the first, third, fifth, and sixth counts in Defendant’s Counterclaim.

For the following reasons, the Court GRANTS Defendant’s Motion for Summary Judgment and DENIES Plaintiffs’ Motion for Partial Summary Judgment.

II. FACTUAL BACKGROUND

Plaintiff issued Insurance Policy No. 1000620507171 (the “Policy”), which provides Directors’ and Officers’ liability coverage to Plaintiff for the period running from October 1, 2017 through October 1, 2018. The

Policy provides defense and indemnity coverage for non-employment “Wrongful Acts” alleged against individual directors and officers of the “Company,” (Adir) as well as “Wrongful Acts” alleged against the “Company,” so long as the “Claim” is made and reported to Defendant during the policy period or within 60 days after the Policy’s expiration. The Policy imposes a duty on Defendant to defend “Insured Persons” (including Azarkman) and/or the “Company” against “Claims” that are reported to Defendant during the Policy’s coverage period. In general, both Plaintiffs qualify for coverage under the Policy.

On October 19, 2017, during the Policy’s coverage period, the California Attorney General, on behalf of the People of the State of California, filed a complaint against Plaintiffs in Los Angeles County Superior Court (the “underlying action”) asserting claims under California’s Unfair Competition Law (“UCL”) and False Advertising Law (“FAL”) and seeking (1) orders permanently enjoining Plaintiffs from conduct in violation of the UCL and FAL, (2) restitution of money or other property acquired by such conduct, (3) civil penalties for each violation, and (4) any further relief the court deems just and proper. Plaintiffs provided notice to Defendant of the underlying action on October 26, 2017.

Initially, Defendant denied coverage in the underlying action on November 20, 2017. However, in response to a letter from Plaintiffs, Defendant withdrew the denial and, by letter dated December 15, 2017, agreed to provide a defense to Plaintiffs in the underlying action, subject to a full reservation of “all rights and defenses under the Policy, at law and/or in equity, whether or not specifically referenced.”

By letter dated March 8, 2019, the California Attorney General's Office ("AGO") advised Defendant that California Insurance Code Section 533.5 prohibited coverage for Plaintiffs in the underlying action. Section 533.5 provides:

(a) No policy of insurance shall provide, or be construed to provide, any coverage or indemnity for the payment of any fine, penalty, or restitution in any criminal action or proceeding or in any action or proceeding brought pursuant to [the UCL or FAL] by the Attorney General, any district attorney, any city prosecutor, or any county counsel, notwithstanding whether the exclusion or exception regarding this type of coverage or indemnity is expressly stated in the policy.

(b) No policy of insurance shall provide, or be construed to provide, any duty to defend, as defined in subdivision (c), any claim in any criminal action or proceeding or in any action or proceeding brought pursuant to [the UCL or FAL] in which the recovery of a fine, penalty, or restitution is sought by the Attorney General, any district attorney, any city prosecutor, or any county counsel, notwithstanding whether the exclusion or exception regarding the duty to defend this type of claim is expressly stated in the policy.

(c) For the purpose of this section, "duty to defend" means the insurer's right or obligation to investigate, contest, defend, control the defense of, compromise, settle, negotiate the compromise or settlement of, or indemnify for the cost of any aspect of defending any claim in any criminal action or proceeding or

in any action or proceeding brought pursuant to [the UCL or FAL] in which the insured expects or contends that (1) the insurer is liable or is potentially liable to make any payment on behalf of the insured or (2) the insurer will provide a defense for a claim even though the insurer is precluded by law from indemnifying that claim.

(d) Any provision in a policy of insurance which is in violation of subdivision (a) or (b) is contrary to public policy and void.

On March 29, 2019, Defendant emailed Plaintiff's counsel in the underlying action, stating that based on the March 8 letter from the AGO, Defendant would stop paying defense costs for Plaintiff and that Defendant continued to reserve its express right under the Policy to seek reimbursement of all amounts already paid. On April 5, 2019, Plaintiff responded by letter to Defendant arguing that Section 533.5 does not apply to the underlying action because (1) the AGO seeks injunctive relief in the underlying action in addition to "a fine, penalty, or restitution," (2) the purpose and public policy behind Section 533.5 is not implicated by the underlying action, and (3) the UCL cause of action includes allegations that statutes other than the UCL and FAL were violated. The first argument is the primary basis for Plaintiffs' Motion for Partial Summary Judgment.

On April 12, 2019, Defendant's counsel sent a letter to the AGO seeking clarification regarding the AGO's position as to the application of Section 533.5 to the underlying action. On April 17, the instant action against Defendant was initiated in state court. On May 13, 2019, the AGO issued a letter confirming and clarifying its position that Section 533.5 "clearly

prohibits any defense or indemnity coverage for [the underlying action], even though injunctive relief is sought and even though the complaint alleges other statutory violations as predicate unlawful acts under the UCL cause of action.” Subsequently, on May 17, 2019, Defendant, through counsel, issued a letter to Plaintiff advising that it agreed with the AGO’s determination that Section 533.5 precluded Defendant from providing a defense or indemnification to Plaintiff in the underlying action and further advising that Defendant would seek a judicial determination confirming the accuracy of its position. On May 20, 2019, Defendant removed the case to this Court, and on May 24, 2019, Defendant filed its Counterclaim.

III. JUDICIAL STANDARD

Under Federal Rule of Civil Procedure 56(a), a court may grant summary judgment only where “there is no genuine issue as to any material fact and . . . the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The court may grant summary judgment on all or part of the claim, as appropriate. *See id.* Facts are “material” only if dispute about them may affect the outcome of the case under applicable substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute about a material fact is “genuine” if the evidence is such that a reasonable jury could return a verdict for the nonmovant. *Id.*

“[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp.*, 477 U.S. at 322. To defeat a summary judgment motion, the nonmovant must affirmatively

present specific admissible evidence sufficient to create a genuine issue of material fact for trial. *Id.* at 323-24. The nonmovant may not merely rely on its pleadings or on conclusory statements. *Id.* at 324.

In ruling on a summary judgment motion, the court should accept the nonmovant's evidence as true and draw all justifiable inferences in the nonmovant's favor. *Tolan v. Cotton*, 134 S. Ct. 1861, 1863 (2014). The court may not determine credibility of witnesses or weigh the evidence. *Anderson*, 477 U.S. at 255. To grant summary judgment, the court should find the evidence "so one-sided that [the movant] must prevail as a matter of law." *Anderson*, 477 U.S. at 252.

IV. DISCUSSION

The parties agree that California substantive law governs each of their respective claims and counter-claims. California law prescribes a three-step approach to statutory interpretation, starting with the plain meaning of the statutory language, then looking at its legislative history and finally the reasonableness of a party's proposed construction. *Mt. Hawley Ins. Co. v. Lopez*, 215 Cal. App. 4th 1385, 1396 (2013).

A. Duty to Defend

Under California law, to trigger the duty to defend, "the insured need only show that the underlying claim *may* fall within policy coverage; the insurer must prove it *cannot*." *Montrose Chem. Corp. v. Superior Court*, 6 Cal. 4th 287, 300 (1993) (emphasis in original). As a result, "[i]f any facts stated or fairly inferable in the complaint, or otherwise known or discovered by the insurer, suggest a claim potentially covered by the policy, the insurer's duty to defend arises and is not extinguished until the insurer

negates all facts suggesting potential coverage.” *Scottsdale Ins. Co. v. MV Transp.*, 36 Cal. 4th 643, 655 (2005). Where the potential for coverage exists, the insurer’s duty to defend continues until the underlying litigation concludes “unless the insurer sooner proves, by facts subsequently developed, that the potential for coverage which previously appeared cannot possibly materialize, or no longer exists.” *Id.* at 657.

Here, the language of California Insurance Code Section 533.5(b) clearly and explicitly establishes that there was no potential for coverage and, consequently, no duty to defend in the underlying action. The evidence indicates that Defendant chose to advance defense costs for Plaintiff in the underlying action until the applicability of Section 533.5 to the entire underlying action became clear. The AGO’s March 8 and May 13, 2019 letters to Plaintiff resolved any remaining uncertainty regarding the potential for coverage and, therefore, gave Plaintiff adequate grounds to terminate its defense of Defendant in the underlying action and to later seek reimbursement of all amounts already paid.

Section 533.5(b) provides: “No policy of insurance shall provide, or be construed to provide, any duty to defend, as defined in subdivision (c), *any claim* . . . in any action or proceeding brought pursuant to [the UCL or FAL] *in which* the recovery of a fine, penalty, or restitution is sought by the Attorney General” Cal. Ins. Code § 533.5(b) (emphasis added). Subdivision (c) defines the “duty to defend” as “the insurer’s right or obligation to investigate, contest, defend, control the defense of, compromise, settle, negotiate the compromise or settlement of, or indemnify for the cost of any aspect of defending *any claim* in any criminal action or proceeding or in any action or proceeding

brought pursuant to [the UCL or FAL] in which the insured expects or contends that (1) the insurer is liable or is potentially liable to make any payment on behalf of the insured or (2) the insurer will provide a defense for a claim even though the insurer is precluded by law from indemnifying that claim.” *Id.* § 533.5(c) (emphasis added). Subdivision (b), relying on the definition in subdivision (c), unambiguously precludes an insurer’s duty to defend not only a UCL or FAL claim *for* the recovery of a fine, penalty, or restitution, but also *any claim* brought pursuant to the UCL or FAL in an action *in which* the Attorney General or another state prosecuting authority seeks such fine, penalty, or restitution. In other words, the existence of a claim under the UCL or FAL for the recovery of a fine, penalty, or restitution precludes the duty to defend with respect to *any* such claim no matter what form of relief is sought.

Plaintiff essentially concedes that there would be no duty to defend if the AGO sought only fines, penalties, and/or restitution under the UCL or FAL. Plaintiff argues, however, that there is coverage, or at the very least potential coverage, in the underlying action because the AGO also seeks injunctive relief. Neither the plain meaning of the statutory language nor case law interpreting that language provides any support for this position. Moreover, even if the statutory language did not unambiguously establish that there is no duty to defend in any case in which a fine, penalty, or restitution is sought under the UCL or FAL, the legislative history shows that Plaintiff’s proposed interpretation is unreasonable. Section 533.5 was enacted with several goals in mind, including (1) alleviating the problem of public entities being forced to litigate against insurance companies rather than the business or individual whose conduct violated the law;

(2) facilitating the settlement of UCL and FAL claims, which was virtually “impossible” before the statute; and (3) “hold[ing] individuals personally accountable for behavior [that] constitutes an unfair business practice or false and misleading advertising.” *Lopez*, 215 Cal. App. 4th at 1402-03 (citations omitted). Allowing insurance coverage to extend a duty to defend to the injunctive relief component of a UCL or FAL claim while precluding such coverage to the extent a fine, penalty, or restitution is sought under the same cause of action would clearly undermine these legislative goals.

In sum, there is no genuine issue with respect to whether Defendant has or ever had a duty to defend Plaintiffs in the underlying action, and Defendant is entitled to judgment as a matter of law on the first and second claims of Plaintiff’s FAC and the first count of Defendant’s Counterclaim.

B. Duty to Indemnify

“The insurer’s duty to indemnify runs to claims that are actually covered, in light of the facts proved. It arises only after liability is established.” *Buss v. Superior Court*, 16 Cal. 4th 35, 46 (1997). Where there is no duty to defend, there can be no duty to indemnify. “It is . . . well settled that because the duty to defend is broader than the duty to indemnify, a determination that ‘there is no duty to defend automatically means there is no duty to indemnify.’” *Certain Underwriters at Lloyd’s of London v. Superior Court*, 16 P.3d 94 (Cal. 2001) (quoting *State of N.Y. v. Blank*, 745 F. Supp. 841, 844, *aff’d*, 27 F.3d 783 (2d Cir. 1994)).

As discussed above, Defendant had no duty to defend Plaintiff in the underlying action. Accordingly, there can be no duty to indemnify. Moreover, Section

533.5 explicitly precludes indemnification for any fine, penalty, or restitution in any action brought under the UCL or FAL by the Attorney General or another state prosecuting authority. Thus, Defendant is entitled to judgment as a matter of law on the third and fourth claims of Plaintiff's FAC and the second count of Defendant's Counterclaim.

C. Right to Reimbursement

"Where there is not even the potential for coverage because the claims do 'not even possibly embrace any triggering harm of the specified sort with the policy period caused by an included occurrence,' then the insurance company does not have a duty to defend, and any costs advanced may be recouped." *Millennium Labs., Inc. v. Allied World Assur. Co. (U.S.), Inc.*, 165 F. Supp. 3d 931, 936 (S.D. Cal. 2016) (quoting *Scottsdale Ins. Co. v. MV Transp.*, 36 Cal. 4th 643, 655 (2005)), *aff'd*, 726 F. App'x 571 (9th Cir. 2018).

Plaintiff contends that even if Defendant had no duty to defend in the underlying action, Defendant has no right to reimbursement of defense costs already paid because Defendant's December 15, 2017 reservation of rights letter did not specifically reserve its right to seek reimbursement under the Policy and because the letter did not mention Section 533.5's applicability to the underlying action. However, Plaintiff ignores the fact that the Policy itself expressly provides that "[i]n the event and to the extent that [Plaintiff] shall not be entitled to payment of [] Loss under the terms and conditions of this policy, such payments by [Defendant] shall be repaid to [Defendant] by [Plaintiff]." (DE 1-2, at 24). "Loss" is defined by the Policy to include "Defense Costs" (DE 1-2, at 32), which in turn are defined as, among other things, "reasonable and necessary fees, costs, charges or

expenses resulting from the investigation, defense or appeal of a Claim.” (DE 1-2, at 20).

As discussed in detail above, Defendant never had a duty to defend or indemnify Plaintiff in the underlying action. Defendant nevertheless accepted Plaintiff’s defense subject to a reservation of rights and paid Plaintiff’s defense costs, as defined under the Policy, in the underlying action. Because Plaintiff was not entitled to payment of any defense costs, Defendant is entitled to reimbursement pursuant to the explicit language of the Policy.

Buss v. Superior Court, 16 Cal. 4th 35 (1997), cited by Plaintiffs, does not change this conclusion since that case concerned an “implied” right of reimbursement, which must be explicitly reserved. *Id.* at 61 n.27. Although Defendant’s December 15, 2017 letter did not explicitly reserve the right to reimbursement, that right was already explicit in the policy; it is not merely implied. In fact, the *Buss* court itself acknowledged the distinction between an implied-in-law right and an express-in policy right, noting that “[t]he former renders the latter unnecessary.” *Id.* at 51 n.13.

Plaintiffs also argue that Defendant has no right to reimbursement since Plaintiff relied to its detriment on Defendant’s tender of defense without an explicit reservation of Defendant’s right to reimbursement. “An insurer is estopped from asserting a right, even though it did not intend to mislead, as long as the insured reasonably relied to its detriment upon the insurer’s action.” *Chase v. Blue Cross of California*, 42 Cal. App. 4th 1142, 1157 (1996). However, any such reliance by Plaintiff would not have been reasonable given that (1) the express language of Section 533.5

precludes coverage in the underlying action,¹ (2) the Policy explicitly provides a right of reimbursement for uncovered Loss, and (3) Defendant made its doubts regarding coverage clear as early as November 20, 2017, when it initially denied coverage.

In sum, there is no genuine issue with respect to whether Defendant is entitled to reimbursement under the Policy of defense costs paid in the underlying action. Defendant is entitled to judgment as a matter of law on the fifth and sixth counts of Defendant's Counterclaim.

V. CONCLUSION

In light of the foregoing, the Court GRANTS Defendant's Motion for Summary Judgment (DE 19) and DENIES Plaintiffs' Motion for Partial Summary Judgment (DE 24).

IT IS SO ORDERED.

¹ "As a general rule of construction, the parties are presumed to know and to have had in mind all applicable laws extant when an agreement is made. These existing laws are considered part of the contract just as if they were expressly referred to and incorporated." *Pilimai v. Farmers Ins. Exch. Co.*, 137 P.3d 939, 942 (Cal. 2006) (citation omitted).

APPENDIX C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Filed September 10, 2019]

Case No.: 2:19-cv-4352-R-PLA

ADIR INTERNATIONAL, LLC, a Delaware Limited Liability Company, DBA CURACAO (formerly known as La Curacao); and RON AZARKMAN, an individual,

Plaintiffs,

v.

STARR INDEMNITY & LIABILITY COMPANY and
DOES 1 through 100, inclusive,

Defendants.

STARR INDEMNITY & LIABILITY COMPANY and
DOES 1 through 100, inclusive,

Counter-Claimant,

v.

ADIR INTERNATIONAL, LLC, a Delaware Limited Liability Company, DBA CURACAO (formerly known as La Curacao); and RON AZARKMAN, an individual,

Counter-Defendants.

JUDGMENT

Upon consideration of Defendant Starr Indemnity & Liability Company's ("Starr") Motion for Summary Judgment as to Plaintiffs Adir International and Ron Azarkman's (collectively, "Adir") First Amended Complaint and as to Starr's Counterclaim, the concur-

rently filed Starr's Separate Statement of Uncontroverted Facts and Conclusions of Law, and all other documents and materials before the Court, and because the Court finds there is no genuine dispute as to any material fact and that Starr is entitled to judgment as a matter of law, it is hereby ORDERED that Starr's Motion is GRANTED.

The Court finds that, under California Insurance Code § 533.5, Starr does not have and never had a duty to defend or to indemnify Adir in connection with the underlying action under the Resolute Portfolio for Private Companies Policy No. 1000620507171 (the "Policy"). The Court additionally finds that, because the Policy expressly provides Starr a right to reimbursement by Adir for payments of uncovered loss, Starr is entitled to reimbursement from Adir for amounts paid in connection with defending the underlying action.

Accordingly, the Court grants Summary Judgment in favor of Starr as to Adir's FAC and Starr's Counterclaim. As the prevailing party, Starr is entitled to its costs pursuant to Federal Rule of Civil Procedure 54.

This 10th day of September, 2019.

/s/ Gary Klausner
UNITED STATES DISTRICT JUDGE

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APPENDIX D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Filed November 8, 2019]

Case No.: 2:19-cv-4352-R-PLA

ADIR INTERNATIONAL, LLC, a Delaware Limited
Liability Company, DBA CURACAO (formerly known
as La Curacao); and RON AZARKMAN, an individual,

Plaintiffs,

v.

STARR INDEMNITY & LIABILITY COMPANY and
DOES 1 through 100, inclusive,

Defendants.

STARR INDEMNITY & LIABILITY COMPANY and
DOES 1 through 100, inclusive,

Counter-Claimant,

v.

ADIR INTERNATIONAL, LLC, et al.,

Counter-Defendants.

Hon. Manuel L. Real

AMENDED JUDGMENT

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Attorneys for Defendant and Counter-Claimant
STARR INDEMNITY & LIABILITY COMPANY

AMENDED JUDGMENT

Upon consideration of Defendant Starr Indemnity & Liability Company's ("Stan") Motion for Summary Judgment as to Plaintiffs Adir International, LLC and Ron Azarkman's (collectively, "Adir") First Amended Complaint and as to Starr's Counterclaim, the concurrently filed Stan's Separate Statement of Uncontroverted Facts and Conclusions of Law, and all other documents and materials before the Court, and because the Court finds there is no genuine dispute as to any material fact and that Starr is entitled to judgment as a matter of law, it is hereby ORDERED that Starr's Motion is GRANTED.

The Court finds that, under California Insurance Code § 533.5, Starr does not have and never had a

duty to defend or to indemnify Adir in connection with the underlying action under the Resolute Portfolio for Private Companies Policy No. 1000620507171 (the "Policy"). The Court additionally finds that, because the Policy expressly provides Stan a right to reimbursement by Adir for payments of uncovered loss, Stan is entitled to reimbursement from Adir for the \$2,085,364.53 Starr paid in connection with defending the underlying action.

Accordingly, the Court grants summary judgment in favor of Starr as to the Adir's FAG and Starr's Counterclaim. The amount of the judgment in Stan's favor on its Counterclaim is \$2,085,364.53. As the prevailing party, Stan is entitled to its costs pursuant to Federal Rule of Civil Procedure 54.

This 8th day of November, 2019.

/s/ Gary Klausner
UNITED STATES DISTRICT JUDGE

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APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed May 28, 2021]

No. 19-56320

D.C. No. 2:19-cv-04352-R-PLA

ADIR INTERNATIONAL,

Plaintiff-Appellant,

v.

STARR INDEMNITY,

Defendant-Appellee.

ORDER

Before: N.R. SMITH and LEE, Circuit Judges, and
KENNELLY,* District Judge.

The panel has voted to deny the petition for panel rehearing filed by the appellant. Judge Lee has voted to deny the petition for rehearing en banc filed by the appellant, while Judges Smith and Kennelly have recommended denying the petition. The full court has been advised of the petitions for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for panel rehearing and the petition for rehearing en banc are DENIED.

* The Honorable Matthew F. Kennelly, sitting by designation from the Northern District of Illinois.

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APPENDIX F

STARR INDEMNITY & LIABILITY COMPANY
399 Park Avenue, New York, NY 10022 •
Tel. (646) 227-6377

RESOLUTE PORTFOLIOSM
For Private Companies

POLICY NUMBER: 1000620507171
RENEWAL OF: 1000056959161

NOTICE (Applicable to all Coverage Sections Other Than the Crime and Fidelity Coverage Section): EXCEPT TO SUCH EXTENT AS MAY OTHERWISE BE PROVIDED HEREIN, THE COVERAGE OF THIS POLICY IS GENERALLY LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSUREDS DURING THE POLICY PERIOD AND REPORTED IN WRITING TO THE INSURER PURSUANT TO THE TERMS HEREIN.

NOTICE (Applicable to all Coverage Sections Other Than the Crime and Fidelity Coverage Section): THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED FOR DEFENSE COSTS. AMOUNTS INCURRED FOR DEFENSE COSTS SHALL BE APPLIED AGAINST THE RETENTION AMOUNT.

NOTICE (Applicable to all Coverage Sections Other Than the Crime and Fidelity Coverage Section): THE INSURER HAS NO DUTY TO DEFEND ANY CLAIM UNDER THIS POLICY EXCEPT WITH RESPECT TO ANY CLAIM FOR WHICH THE POLICY SPECIFICALLY STATES THAT DUTY TO DEFEND COVERAGE IS PROVIDED.

NOTICE (Applicable to All Coverage Sections):
PLEASE READ THIS POLICY CAREFULLY AND
DISCUSS THE COVERAGE HEREUNDER WITH
YOUR INSURANCE AGENT OR BROKER.

DECLARATIONS

ITEM 1: PARENT COMPANY:

ADIR International, LLC dba La Curacao

ADDRESS: 1605 Olympic Blvd., Suite 600
Los Angeles, CA 90015

ITEM 2: POLICY PERIOD:

From: October 01, 2017 To: October 01, 2018
(12:01 a.m. Standard Time at the address stated in
Item 1)

ITEM 3: COVERAGE SECTIONS

This policy provides coverage only for the following
Coverage Sections if purchased by the Insured and
indicated by an X.

Directors & Officers Liability Coverage Section	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Derivative Demand Coverage	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Employment Practices Liability Coverage Section		
Third-Party Liability Coverage		
Fiduciary Liability Coverage Section		
Voluntary Compliance Program Coverage		
HIPAA Claim Coverage		
Crime and Fidelity Coverage Section		

ITEM 4: LIMITS OF LIABILITY

The Limits of Liability of this policy apply solely to the Coverage Section(s) for which a corresponding limit of liability amount is set forth below.

A. AGGREGATE LIMIT OF LIABILITY FOR EACH SEPARATE COVERAGE SECTION OTHER THAN THE CRIME AND FIDELITY COVERAGE SECTION

(i)

Separate Coverage Section: Directors & Officers Liability	N/A
Sublimit of Liability for Derivative Demand Coverage	N/A

(ii)

Separate Coverage Section: Employment Practices Liability	
Sublimit of Liability for Third-Party Liability Coverage	

(iii)

Separate Coverage Section: Fiduciary Liability	
Sublimit of Liability for Voluntary Compliance Program Coverage	
Sublimit of Liability for HIPAA Claim Coverage	

Each Sublimit of Liability set forth in Item 4 A. above is part of, and not in addition to, the Limit of Liability for the corresponding Separate Coverage Section.

B. AGGREGATE LIMIT OF LIABILITY FOR EACH COMBINED COVERAGE SECTION OTHER THAN THE CRIME AND FIDELITY COVERAGE SECTION

(i)

Combined Coverage Section: Directors & Officers Liability / Employment Practices Liability / Fiduciary Liability	\$10,000,000
Sublimit of Liability for Derivative Demand Coverage	\$150,000
Sublimit of Liability for Third-Party Liability Coverage	\$10 000 000
Sublimit of Liability for Voluntary Compliance Program Coverage	
Sublimit of Liability for HIPAA Claim Coverage	

(ii)

Combined Coverage Section: Directors & Officers Liability / Employment Practices Liability / Fiduciary Liability	N/A
Sublimit of Liability for Derivative Demand Coverage	N/A
Sublimit of Liability for Third-Party Liability Coverage	N/A

(iii)

Combined Coverage Section:	N/A
Directors & Officers Liability / Fiduciary Liability	N/A
Sublimit of Liability for Derivative Demand Coverage	N/A
Sublimit of Liability for Voluntary Compliance Program Coverage	N/A

(iv)

Combined Coverage Section: Employment Practices Liability / Fiduciary Liability	
Sublimit of Liability for Third-Party Liability Coverage	
Sublimit of Liability for Voluntary Compliance Program Coverage	
Sublimit of Liability for HIPAA Claim Coverage	

Each Sublimit of Liability set forth in Item 4 B. above is part of, and not in addition to, the Limit of Liability for the corresponding Combined Coverage Section.

The Limits of Liability set forth in Item 4 A. and B. above are the maximum limits of liability for all Loss including Defense Costs, under the applicable Coverage Section(s).

C. AGGREGATE POLICY LIMIT OF LIABILITY

\$10,000,000

The above Limit of Liability set forth in Item 4 C. above is the maximum limit of liability for all Loss, including Defense Costs, for all Coverage Sections purchased other than the Crime and Fidelity Coverage Section.

D. PER OCCURRENCE LIMIT OF LIABILITY-CRIME AND FIDELITY COVERAGE SECTION

The Limits of Liability of this policy apply solely to the Crime and Fidelity Coverage Section(s) for which a corresponding limit of liability amount is set forth below.

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Crime and Fidelity Coverage Section:

(i) Insuring Agreement A, Employee Theft	
(ii) Insuring Agreement B, Forgery or Alteration	
(iii) Insuring Agreement C, Inside the Premises — Loss of Money and Securities	
(iv) Insuring Agreement D, Inside the Premises - Robbery or Safe Burglary of Other Property	
(v) Insuring Agreement E, Outside the Premises	
(vi) Insuring Agreement F, Computer Fraud	
(vii) Insuring Agreement G, Funds Transfer	
(viii) Insuring Agreement H, Money Orders and Counterfeit Money	
(ix) Insuring Agreement I, Credit, Debit, Charge Card Forgery	
(x) Insuring Agreement J, Clients' Property	
(xi) Insuring	

**ITEM 5: RETENTION OR DEDUCTIBLE AMOUNTS
RETENTION AMOUNTS**

A. Directors & Officers Liability Coverage Section:

(i) Insuring Agreement A.	\$0
(ii) Insuring Agreement B, and C.	\$100,000
(iii) Insuring Agreement D.	\$0

B. Employment Practices Liability Coverage Section:

(i) Insuring Agreement A. - Employment Practices Liability Coverage	
(ii) Insuring Agreement B. - Third-Party Liability Coverage	

C. Fiduciary Liability Coverage Section:

(i) Insuring Agreement A. - Fiduciary Liability Coverage All Claims, except HIPAA Claims	
(ii) Insuring Agreement B. - Voluntary Compliance Program Coverage	

DEDUCTIBLE AMOUNTS

D. Crime and Fidelity Coverage Section:

(i) Insuring Agreement A, Employee Theft	
(ii) Insuring Agreement B, Forgery or Alteration	
(iii) Insuring Agreement C, Inside the Premises — Loss of Money and Securities	
(iv) Insuring Agreement D, Inside the Premises - Robbery or Safe Burglary of Other Property	
(v) Insuring Agreement E, Outside the Premises	
(vi) Insuring Agreement F, Computer Fraud	
(vii) Insuring Agreement G, Funds Transfer	
(viii) Insuring Agreement H, Money Orders and Counterfeit Money	
(ix) Insuring Agreement I, Credit, Debit, Charge Card Forgery	
(x) Insuring Agreement J, Clients' Property	
(xi) Insuring	

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ITEM 6: PENDING OR PRIOR DATE

A. Directors & Officers Liability Coverage Section:

(i) Insuring Agreement A	October 01, 2005
(ii) Insuring Agreement B. and C.	October 01, 2005

B. Employment Practices Liability Coverage Section:

(i) Insuring Agreement A - Employment Practices Liability Coverage	
(ii) Insuring Agreement B. - Third-Party Liability Coverage	

C. Fiduciary Liability Coverage Section

(i) Fiduciary Liability Coverage	
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D. Crime and Fidelity Coverage Section:

ITEM 7: Premium

A. Directors & Officers Liability coverage section:	\$37,720
B. Employment Practices Liability Coverage Section:	
C. Fiduciary Liability Coverage Section:	
D. Crime and Fidelity Coverage Section:	
E. Total Policy Premium:	

ITEM 8: DISCOVERY PERIOD (APPLICABLE TO ALL COVERAGE SECTIONS OTHER THAN CRIME AND FIDELITY)

- A. One Year: 100% of the applicable premium
- B. Two to Six Years: Premium to be determined

ITEM 9: ADDRESS OF INSURER AND ITS
AUTHORIZED CLAIMS AGENT FOR NOTICES
UNDER THIS POLICY

A. Claims-Related Notices

STARR ADJUSTMENT SERVICES, INC.
399 PARK AVENUE, 9TH FLOOR
NEW YORK, NY 10022

e-mail: StarrFLPLClaims@starrcompanies.com

B. All Other Notices To The Insurer:

STARR INDEMNITY & LIABILITY
COMPANY
ATTN: FINANCIAL LINES DEPARTMENT
399 PARK AVE. 8TH FLOOR
NEW YORK, NY 10022

In Witness Whereof, the Insurer has caused this
policy to be executed and attest. This policy shall not
be valid unless countersigned by a duly authorized
representative of the Insurer.

/s/ Charles H. Dangelo
Charles H. Dangelo, President

/s/ Nehemiah E. Ginsburg
Nehemiah E. Ginsburg, General Counsel

/s/ [Illegible]
Authorized Representative

STARR INDEMNITY AND LIABILITY COMPANY
RESOLUTE PORTFOLIOSM
For Private Companies

General Terms & Conditions Section

In consideration of the payment of the premium and in reliance upon the Application, as applicable to each Coverage Section, which shall be deemed to be attached to, incorporated into, and made a part of this policy, and subject to this General Terms & Conditions Section and any applicable Coverage Section(s), if purchased by the Insured as indicated in Item 3 of the Declarations, STARR INDEMNITY AND LIABILITY COMPANY (the “Insurer”) and the Parent Company, on behalf of all Insureds, agree as follows:

1. TERMS & CONDITIONS

The terms and conditions set forth in this General Terms & Conditions Section shall apply to all applicable Coverage Sections of this policy. The terms appearing in this General Terms & Conditions Section, which are defined in a Coverage Section, shall have the meaning provided for such terms in such Coverage Section for purposes of coverage under such Coverage Section. All defined terms used in this Policy, whether defined in Clause 2, below, or in a Coverage Section, appear in this Policy in boldface and initial-capitalized. The terms and conditions of each Coverage Section apply only to that particular Coverage Section. If any term or condition in this General Terms & Conditions Section is inconsistent or in conflict with the terms and conditions of any Coverage Section, the terms and conditions of such Coverage Section shall control.

2. GENERAL DEFINITIONS

(a) “Application” means all signed applications, including any attachments and other materials provided therewith or incorporated therein, submitted in connection with the underwriting of this policy or for any other policy of which this policy is a renewal, replacement or which it succeeds in time. Application shall also include, and incorporate, all publicly available documents.

(b) “Cleanup Costs” means expenses (including but not limited to legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of Pollutants.

(c) “Company” means:

(1) the Parent Company;

(2) any Subsidiary of the Parent Company; and

(3) the Parent Company or any Subsidiary as a debtor, a debtor-in-possession or equivalent status;

provided, however, that this Definition (c) (3) shall not apply to the Fiduciary Liability Coverage Section.

(d) “Defense Costs” means:

(1) reasonable and necessary fees, costs, charges or expenses resulting from the investigation, defense or appeal of a Claim;

(2) premium for an appeal, attachment or similar bond, but without any obligation to apply for and obtain such bond;

(3) reasonable and necessary fees, costs, charges or expenses incurred in response to any extradition

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or similar proceeding brought against an Insured in connection with a Claim; and

(4) any fees, costs, charges or expenses incurred by the Insured at the specific request of the Insurer to assist the Insurer in the investigation, defense or appeal of a Claim.

“Defense Costs” does not include: (i) amounts incurred prior to the date a Claim is first made and reported to the Insurer, pursuant to the terms of the applicable Coverage Section; and (ii) compensation or benefits of any Insured Person or any overhead expenses of the Company.

(e) “Financial Impairment” means the Company becoming a debtor-in-possession, or the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the Company.

(f) “Management Control” means: (1) owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of: the board of directors of a corporation; the management committee members of a joint venture; or the Members of the management board of a limited liability company; or (2) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of a Company, to elect, appoint or designate a majority of: the board of directors of a corporation; the management committee of a joint venture; or the management board of a limited liability company.

(g) “Manager” means a person serving in a directorial capacity for a limited liability company.

(h) “Member” means an owner of a limited liability company represented by its membership interest, who also may serve as a Manager.

(i) “Parent Company” means the entity named in Item 1 of the Declarations.

(j) “Policy Period” means the period from the inception date shown in Item 2 of the Declarations to the earlier of the expiration date shown in Item 2 of the Declarations or the effective date of cancellation of this policy. If one or more Coverage Sections have different inception, expiration or cancellation dates from those shown in Item 2 of the Declarations, the Policy Period for those Coverage Sections shall be set forth in an endorsement to this Policy.

(k) “Pollutants” means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on, any list of hazardous substances issued by the United States Environmental Protection Agency or any foreign, state, county, municipality, or locality counterpart thereof. Such substances shall include, without limitation, nuclear material or waste, any solid, liquid, gaseous or thermal irritant or contaminant, or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials. Pollutants shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products and any noise.

(l) “Pollution” means the actual, alleged or threatened discharge, dispersal, release, escape, seepage, transportation, emission, treatment, removal or disposal of Pollutants into or on real or personal property, water or the atmosphere. Pollution also means any Cleanup Costs.

3. LIMITS OF LIABILITY

The Aggregate Limit of Liability For Each Separate Coverage Section, as set forth in Item 4 A. of the Declarations, is the maximum limit of liability of the Insurer for all Loss, including Defense Costs, from all Claims first made during the Policy Period (or Discovery Period, if applicable) and reported to the Insurer in accordance with the terms of this policy, for each applicable Separate Coverage Section.

The Aggregate Limit of Liability For Each Combined Coverage Section, as set forth in Item 4 B. of the Declarations, is the maximum limit of liability of the Insurer for all Loss, including Defense Costs, from all Claims first made during the Policy Period (or Discovery Period, if applicable) and reported to the Insurer in accordance with the terms of this policy, for all of the Coverage Sections that comprise the applicable Combined Coverage Section. Any Loss paid under one of the Coverage Sections that comprises a Combined Coverage Section will reduce, and may exhaust, the limit of liability available under the other Coverage Section(s) that comprise(s) such Combined Coverage Section.

Any Sublimit(s) of Liability, whether set forth in Item 4 of the Declarations or as otherwise provided under the terms of this policy, shall be part of, and not in addition to, the applicable Aggregate Limit of Liability set forth in Item 4 A. or 4 B. of the Declarations. Each Sublimit of Liability is the maximum limit of liability of the Insurer for all Loss, including Defense Costs, from all Claims first made during the Policy Period (or Discovery Period, if applicable) and reported to the Insurer in accordance with the terms of this policy, to which the Sublimit(s) of Liability applies.

The Aggregate Policy Limit of Liability, as set forth in Item 4 C. of the Declarations, is the maximum limit of liability of the Insurer for all Loss, including Defense Costs, from all Claims first made during the Policy Period (or Discovery Period, if applicable) and reported to the Insurer in accordance with the terms of this policy, for all Coverage Section(s) combined.

If any Aggregate Limit of Liability as set forth in Item 4 A. or 4 B. of the Declarations is exhausted by the payment of Loss, all obligations of the Insurer under this policy as respects the applicable Coverage Section(s) will be completely fulfilled and the Insurer will have no further obligations under this policy of any kind as respects the applicable Coverage Section(s) and the premium as respects the applicable Coverage Section(s) as set forth in Item 7 of the Declarations will be fully earned.

Any payment of Loss under any Aggregate Limit of Liability as set forth in Item 4 A. or 4 B. of the Declarations shall reduce and may exhaust the Aggregate Policy Limit of Liability as set forth in Item 4 C. of the Declarations. If the Aggregate Policy Limit of Liability is exhausted by the payment of such Loss, the Insurer will have no further obligations of any kind as respects this policy and the applicable premium set forth in Item 7 of the Declarations will be fully earned.

Defense Costs are part of, and not in addition to, the Aggregate Limit of Liability as set forth in Item 4 of the Declarations for each applicable Coverage Section, other than the Crime and Fidelity Coverage Section, and payment by the Insurer of Defense Costs shall reduce and may exhaust such Aggregate Limit(s) of Liability. Defense Costs are subject to the Aggregate Policy Limit of Liability set forth in Item 4 C. of the Declarations.

If a Discovery Period is purchased by the Insured pursuant to Clause 8 of this General Terms & Conditions Section, the Limit of Liability for the Discovery Period shall be part of, and not in addition to, the applicable Limits of Liability as set forth in Item 4 of the Declarations.

The Limit of Liability applicable to the Crime and Fidelity Coverage Section is set forth in Clause 4 of that Coverage Section.

4. RETENTION CLAUSE

Subject to all other terms and conditions of this policy, the Insurer shall only be liable for the amount of Loss arising from a Claim which is in excess of the applicable Retention amount as set forth in Item 5 of the Declarations for each Insuring Agreement of the applicable Coverage Section(s). A single Retention amount shall apply to all Loss alleging the same or related Wrongful Acts. The Retention amount shall be borne by the Insureds and remain uninsured.

The application of a Retention to Loss under one Insuring Agreement shall not reduce the Retention that applies to Loss under any other Insuring Agreement. If different Retention amounts apply to different parts of a single Loss, the applicable Retention shall be applied separately to each part of the Loss and the sum of such Retention amounts shall not exceed the largest of the applicable Retention amounts as set forth in Item 5 of the Declarations.

If the Company is required or permitted to indemnify an Insured Person for any Loss pursuant to law, contract or the charter, bylaws, operating agreement or similar documents of a Company and does not do so for any reason, the Insurer shall not require payment of the applicable Retention by the Insured Person.

However, the Company hereby agrees to reimburse the Insurer for the full amount of such applicable Retention, unless the Company is unable to do so because of Financial Impairment.

Provided, however that this Clause No. 4, shall not apply to the Crime and Fidelity Coverage Section.

5. NOTICE OF CLAIM

The Insured(s) shall, as a condition precedent to the obligations of the Insurer under this policy, give written notice of a Claim made against an Insured or an Occurrence, as applicable under the appropriate Coverage Section, to the Insurer at the address set forth in Item 9 of the Declarations. If mailed, the date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.

With respect to the Directors & Officers Liability Coverage Section, the Insured(s) shall, as a condition precedent to the obligations of the Insurer under this policy, give written notice to the Insurer pursuant to this Clause 5, of a Claim made against an Insured as soon as practicable after the Company's general counsel or risk manager (or individuals with equivalent responsibilities) becomes aware of the Claim; however, in no event shall such notice be provided later than sixty (60) days after the expiration of the Policy Period (or Discovery Period, if applicable).

With respect to the Employment Practices Liability Coverage Section and the Fiduciary Liability Coverage Section, the Insured(s) shall, as a condition precedent to the obligations of the Insurer under this policy, give written notice to the Insurer pursuant to this Clause 5, of a Claim made against an Insured as soon as practicable after any Insured Person becomes aware of

the Claim; however, in no event shall such notice be provided later than thirty (30) days after the expiration of the Policy Period (or Discovery Period, if applicable).

With respect to all Coverage Sections, except the Crime and Fidelity Coverage Section, if written notice of a Claim has been given to the Insurer pursuant to this Clause 5, then a Claim which is subsequently made against an Insured and reported to the Insurer pursuant to this Clause 5, alleging, arising out of, based upon or attributable to the facts alleged in the previously noticed Claim, or alleging the same or related Wrongful Act alleged in the previously noticed Claim, shall be considered related to the previously noticed Claim and shall be deemed to have been made at the time notice of the previously noticed Claim was provided to the Insurer.

With respect to all Coverage Sections, except the Crime and Fidelity Coverage Section, if during the Policy Period (or Discovery Period, if applicable) an Insured becomes aware of any circumstances which may reasonably be expected to give rise to a Claim being made against an Insured, the Insured may provide written notice to the Insurer's authorized agent of such circumstances. This written notice shall include the Wrongful Act allegations anticipated and the reasons for anticipating a Claim, with full particulars as to dates, persons and entities involved. If a Claim is subsequently made against such Insured and reported to the Insurer arising out of, based upon or attributable to the previously noticed circumstances, such Claim shall be considered first made at the time notice of such circumstances was provided to the Insurer.

6. DEFENSE OF CLAIM AND SETTLEMENT

The Insurer has the right and duty to defend any Claim against any Insured covered under this policy, even if such Claim is false, fraudulent or groundless; however, the Insurer shall not have the right or duty to defend any Claim under: (1) Insuring Agreement D.: Derivative Demand Coverage of the Directors & Officers Liability Coverage Section; or (2) Insuring Agreement B: Voluntary Compliance Program Coverage of the Fiduciary Liability Coverage Section.

With respect to Insuring Agreement D.: Derivative Demand Coverage of the Directors & Officers Liability Coverage Section, the Company, and not the Insurer, has the duty to investigate and evaluate the Derivative Demand. The Insurer shall have the right to effectively associate with the Company in such process.

With respect to Insuring Agreement B: Voluntary Compliance Program Coverage of the Fiduciary Liability Coverage Section, the Company, and not the Insurer, has the duty to investigate and evaluate the Voluntary Compliance Program Loss. The Insurer shall have the right to effectively associate with the Company in such process, including the negotiation of any settlement as respects the Voluntary Compliance Program Loss.

The Insureds) shall not admit or assume any liability, incur any Defense Costs, enter into any settlement agreement or stipulate to any judgment without the prior written consent of the Insurer. Any Loss incurred by the Insured(s) and/or any settlements or judgments agreed to by the Insured(s) without such consent shall not be covered by this policy. However, the Insurer's consent is not required for the Insured to settle a Claim for a Loss amount within the applicable Retention.

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Each and every Insured shall give the Insurer full cooperation and such information as it may reasonably require relating to the defense and settlement of any Claim and the prosecution of any counterclaim, cross-claim or third-party claim, including without limitation the assertion of an Insured's indemnification or contribution rights.

The Insurer shall have the right to investigate and conduct negotiations and, with the Insured's consent, which shall not be unreasonably withheld, enter into the settlement of any Claim that the Insurer deems appropriate. In the event the Insured refuses to consent to a settlement acceptable to the claimant in accordance with the Insurer's recommendation, the Insurer's liability for Loss on account of such Claim shall not exceed: (1) the amount for which the Insurer could have settled the Claim; plus (2) any Defense Costs incurred up to the date the Insured refused to settle such Claim; plus (3) eighty percent (80%) of covered Loss, other than Defense Costs, in excess of the amount for which the Insurer could have settled the Claim. However, in no event shall the Insurer's liability exceed the applicable Limit of Liability as set forth in Item 4 of the Declarations.

The Insurer shall pay Defense Costs prior to the final disposition of any Claim, excess of the applicable retention and subject to all other terms and conditions of this policy. In the event and to the extent that the Insureds shall not be entitled to payment of such Loss under the terms and conditions of this policy, such payments by the Insurer shall be repaid to the Insurer by the Insureds, severally according to their respective interests.

7. ALLOCATION

In the event the Insured(s) incurs Loss that is both covered and not covered by this policy, either because the Claim includes both covered and uncovered matters or because the Claim includes both insured and uninsured parties, the Insured and the Insurer agree to use their best efforts to determine a fair and appropriate allocation between covered and uncovered Loss based upon the relative legal and financial exposures of the parties to such matters. In the event of a settlement of such Claim, the allocation shall also be based upon the relative benefits to the Insureds from such a settlement.

If an allocation of Loss cannot be agreed to by the Insurer and the Insured: (1) the Insurer shall pay those amounts which it believes to be fair and equitable until an amount shall be agreed upon or determined pursuant to the provisions of this policy; and (2) there will be no presumption of allocation of Loss in any arbitration, suit or other proceeding.

8. DISCOVERY CLAUSE

With respect to all Coverage Sections, except the Crime and Fidelity Coverage Section, if the Company or the Insurer refuses to renew one or more Coverage Sections of this policy, or if this policy is terminated by the Insurer for any reason (except for non-payment of premium), or if an Organizational Change as defined in Clause 13 occurs, the Insured(s) shall have the right to purchase a Discovery Period of up to six years following the effective date of such non-renewal, termination or Organizational Change. In the event of the non-renewal of one or more Coverage Sections of this policy, the Insured may purchase a Discovery

Period solely as respects the Coverage Section(s) that has been non-renewed.

The Insured's right to purchase a Discovery Period shall lapse unless written notice of election to purchase such Discovery Period and the additional premium for such Discovery Period is received by the Insurer or its authorized agent within sixty days after such non-renewal, termination or Organizational Change. The additional premium for a Discovery Period of one or two years is set forth in Item 8 of the Declarations and shall be determined by multiplying the applicable percentage set forth in Item 8 of the Declarations by the premium for each applicable Coverage Section(s) as set forth in Item 7 of the Declarations. The additional premium for a Discovery Period of more than two years shall be determined by the Insurer.

During such Discovery Period, the Insured may provide the Insurer with written notice, pursuant to Clause 5 of this policy, of Claims made against an Insured solely with respect to Wrongful Acts occurring prior to the effective date of the non-renewal or termination of the policy or the effective date of the Organizational Change and otherwise covered by this policy.

The Limit of Liability for the Discovery Period shall be part of, and not in addition to, the applicable Limits of Liability set forth in Item 4 of the Declarations.

The Discovery Period premium shall be fully earned at the inception of the Discovery Period. The Discovery Period is non-cancellable.

9. OTHER INSURANCE

The insurance provided by this policy shall apply only as excess over any other valid and collectible

insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically as excess insurance over the applicable Limit of Liability provided by this policy. This policy shall specifically be excess of any other valid and collectible insurance pursuant to which any other insurer has a duty to defend a Claim for which this policy may be obligated to pay Loss. This policy shall not be subject to the terms and conditions of any other insurance policy.

In connection with any covered Claim made against an Outside Entity Insured Person, a leased employee, or an Independent Contractor, and subject to all other terms and conditions herein, this policy shall apply specifically excess of any indemnification and any other insurance coverage available to an Outside Entity Insured Person, a leased employee or an Independent Contractor. In the event such other insurance coverage available to an Outside Entity Insured Person, a leased employee or an Independent Contractor is provided by the Insurer (or would be provided except for the application of any retention, exhaustion of a limit of liability or failure to submit notice of a claim) then the Insurer's maximum aggregate limit of liability for all Loss combined in connection with a Claim covered, in whole or in part, by this policy and such other insurance policy, shall be the greater of (1) the Limit of Liability of the applicable Coverage Section(s) of this policy; or (2) the limit of liability of such other insurance policy.

10. REPRESENTATIONS AND SEVERABILITY

It is agreed that the Insurer has relied upon the information contained in the Application, as applicable to each Coverage Section, in issuing this policy. In regard to the statements, warranties, representations

and information contained in the Application, no knowledge of any Insured shall be imputed to any other Insured for the purpose of determining whether coverage is available under this policy for any Claim made against such Insured. However, the knowledge possessed by any Insured Person who is a past or current chairman of the board, chief executive officer, president or chief financial officer of the Company shall be imputed to the Company.

11. COVERAGE EXTENSIONS

This policy shall cover Loss arising from any Claims made against the estates, heirs, or legal representatives of any deceased person who was an Insured Person at the time the Wrongful Acts upon which such Claims are based were committed; provided, however, that this extension shall not afford coverage for any Claim for any actual or alleged Wrongful Act by or on the part of any such estates, heirs, or legal representatives, but shall apply only to Claims arising out of any actual or alleged Wrongful Acts of an Insured Person.

This policy shall also cover Loss arising from any Claims made against the legal representatives of any incompetent, insolvent or bankrupt person who was an Insured Person at the time the Wrongful Acts upon which such Claims are based were committed; provided, however, that this extension shall not afford coverage for any Claim for any actual or alleged Wrongful Act by or on the part of any such legal representatives, but shall apply only to Claims arising out of any actual or alleged Wrongful Acts of an Insured Person.

This policy shall also cover Loss arising from any Claims made against the lawful spouse or domestic partner (whether such status is derived by reason of

statutory law, common law or otherwise of any applicable jurisdiction in the world or any formal program established by the

Company) of an Insured Person for all Claims arising solely out of his or her status as the spouse or domestic partner of an Insured Person, including a Claim that seeks damages recoverable from marital community property, property jointly held by the Insured Person and the spouse or domestic partner, or property transferred from the Insured Person to the spouse or domestic partner; provided, however, that this extension shall not afford coverage for any Claim for any actual or alleged Wrongful Act by or on the part of the spouse or domestic partner, but shall apply only to Claims arising out of any actual or alleged Wrongful Acts of an Insured Person.

The coverage extensions set forth in this Clause 11 are subject to all other terms and conditions of this policy.

12. CANCELLATION AND NON RENEWAL CLAUSE

This policy, or any applicable Coverage Section(s), may be cancelled by the Parent Company by sending written prior notice to the Insurer or its authorized agent as set forth in Item 9 of the Declarations stating when thereafter the cancellation of the policy, or the applicable Coverage Section(s), shall be effective. The policy, or the applicable Coverage Section(s), terminates at the date and hour specified in such notice. This policy may also be cancelled by the Parent Company by surrender of this policy to the Insurer or its authorized agent as set forth in Item 9 of the Declarations. The policy terminates as of the date and time of surrender. The Insurer shall retain the

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customary short rate proportion of the premium, unless stated otherwise herein.

This policy, or any applicable Coverage Section(s), shall not be cancelled by or on behalf of the Insurer except by reason of non-payment of the premium set forth in Item 7 of the Declarations. The Insurer may cancel the policy by delivering to the Parent Company or by mailing to the Parent Company, by registered mail, or by courier at the Parent Company's address set forth in the Declarations, written notice stating when, not less than twenty (20) days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. In the event of such cancellation, the policy will be deemed terminated as of the date indicated in the Insurer's written notice of cancellation to the Parent Company.

Payment or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable. If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

The Insurer shall have no obligation to renew this policy or any applicable Coverage Section. In the event the Insurer decides to non-renew this policy or any applicable Coverage Section, it shall deliver or mail to the Parent Company, as identified in Item 1 of the Declarations, written notice of such decision at least sixty (60) days prior to the expiration of the Policy Period.

13. ORGANIZATIONAL CHANGES

If during the Policy Period:

(1) the Parent Company shall consolidate with, merge into, or sell all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert; or

(2) any person or entity or group of persons or entities acting in concert shall acquire more than 50% of the Parent Company,

(any events described in (1) or (2) are referred to herein as an “Organizational Change”) then this policy shall continue in full force and effect as to Wrongful Acts occurring prior to the effective time of an Organizational Change. However, there shall be no coverage afforded by this policy for any actual or alleged Wrongful Act occurring after the effective time of the Organizational Change. This policy shall be non-cancellable and the entire premium shall be deemed fully earned upon the effective time of the Organizational Change. The Insureds shall also have the right to purchase a Discovery Period described in Clause 8 in the event of an Organizational Change.

The Parent Company shall give the Insurer written notice of the Organizational Change as soon as practicable, but no later than thirty days after the effective date of the Organizational Change.

14. AUTHORIZATION AND NOTICES

The Parent Company shall act on behalf of all Insureds with respect to all matters as respects this policy including: (1) giving of notice of Claim; (2) giving and receiving of all correspondence and information; (3) giving and receiving notice of cancellation; (4) payment of premiums; (5) receiving of any return

premiums; (6) receiving and accepting of any endorsements issued to form a part of this policy; and (7) the exercising of any right to a Discovery Period.

15. VALUATION AND CURRENCY

All amounts stated in this policy are expressed in United States dollars and all amounts payable under this policy are payable in United States dollars. If a judgment rendered or settlement entered into under this policy are stated in a currency other than United States dollars, then payment under this policy shall be made in United States dollars at the rate of exchange published in the Wall Street Journal on the date the final judgment is rendered or the settlement payment is established.

16. TERRITORY

This policy extends to Wrongful Acts taking place, Occurrences, or Claims made anywhere in the world to the extent permitted by law.

17. ASSIGNMENT AND CHANGES TO THE POLICY

This policy and any and all rights hereunder are not assignable without the prior written consent of the Insurer.

Notice to any agent or knowledge possessed by any agent or person acting on behalf of the Insurer, other than the Insurer's authorized agent as identified in Item 9 of the Declarations, will not result in a waiver or change in any part of this policy or prevent the Insurer from asserting any right under the terms and conditions of this policy. The terms and conditions of this policy may only be waived or changed by written endorsement signed by the Insurer or its authorized agent.

18. BANKRUPTCY

Bankruptcy or insolvency of any Insured shall not relieve the Insurer of any of its obligations hereunder.

It is understood and agreed that the coverage provided under this policy is intended to protect and benefit the Insured Persons. Further, if a liquidation or reorganization proceeding involving the Company is commenced (whether voluntarily or involuntarily) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law (collectively "Bankruptcy Law") then, in regard to a covered Claim under this policy, the Insureds shall:

a. waive and release any automatic stay or injunction to the extent it may apply in such proceeding to the policy or its proceeds under such Bankruptcy Law; and

b. agree not to oppose or object to any efforts by the Company, the Insurer or any Insured Person to obtain relief from any such stay or injunction.

In the event the Company becomes a debtor-in-possession or equivalent status under such Bankruptcy Law, and the total covered Loss under this policy exceeds the available applicable Limit of Liability, the Insurer shall:

a. first pay the Loss allocable to Wrongful Acts that are actually or allegedly caused, committed, or attempted prior to the Company becoming a debtor-in-possession or some equivalent status, then

b. pay any remaining Loss allocable to Wrongful Acts that are actually or allegedly caused, committed, or attempted after the Company became a debtor-in-possession or some equivalent status.

19. SUBROGATION

In addition to any right of subrogation existing at law, in equity or otherwise, in the event of any payment by the Insurer under this policy, the Insurer shall be subrogated to the extent of such payment to all of the Insured(s)' rights of recovery. The Insured(s) shall execute all papers required (including those documents necessary for the Insurer to bring suit or other form of proceeding in their name) and do everything that may be necessary to pursue and secure such rights.

20. ACTION AGAINST THE INSURER

No action may be taken against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all material terms of this policy and the amount of the Insured's obligation has been fully determined either by judgment against the Insured after actual trial, or by written agreement of the Insured, the claimant and the Insurer.

No person or entity shall have any right under this policy to join the Insurer as a party to any action against any Insured to determine such Insured's liability nor shall the Insurer be impleaded by such Insured or legal representatives of such Insured.

21. CONFORMITY TO STATUTE

Any terms of this policy which are in conflict with the terms of any applicable laws construing this policy, including any endorsement to this policy which is required by any state Department of Insurance, or equivalent authority ("State Amendatory Endorsement"), are hereby amended to conform to such laws. Nothing herein shall be construed to restrict the terms of any State Amendatory Endorsement.

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In the event any portion of this policy shall be declared or deemed invalid or unenforceable under applicable law, such invalidity or unenforceability shall not affect the validity or enforceability of any other portion of this policy.

22. HEADINGS

The descriptions in the headings and any subheading of this policy (including any titles given to any endorsement attached hereto) are inserted solely for convenience and do not constitute any part of this policy's terms or conditions.

STARR INDEMNITY AND LIABILITY COMPANY
RESOLUTE PORTFOLIOSM
For Private Companies

Directors & Officers Liability Coverage Section

In consideration of the payment of the premium and in reliance upon the Application, which shall be deemed to be attached to, incorporated into, and made a part of this policy, and subject to the General Terms & Conditions Section and this Coverage Section, if purchased by the Insured as indicated in Item 3 of the Declarations, STARR INDEMNITY AND LIABILITY COMPANY (the “Insurer”) and the Parent Company, on behalf of all Insureds, agree as follows:

1. INSURING AGREEMENTS

A. The Insurer shall pay on behalf of any Insured Person the Loss arising from a Claim first made during the Policy Period (or Discovery Period, if applicable) against such Insured Person for any Wrongful Act, and reported to the Insurer in accordance with the terms of this policy, except if the Company has indemnified the Insured Person for such Loss.

B. The Insurer shall pay on behalf of the Company the Loss arising from a Claim first made during the Policy Period (or Discovery Period, if applicable) against any Insured Person for any Wrongful Act, and reported to the Insurer in accordance with the terms of this policy, if the Company has indemnified the Insured Person for such Loss.

C. The Insurer shall pay on behalf of the Company the Loss arising from a Claim first made during the Policy Period (or Discovery Period, if applicable) against the Company for any Wrongful Act, and

reported to the Insurer in accordance with the terms of this policy.

D. The Insurer shall reimburse the Company for the Derivative Costs incurred by the Company in response to a Derivative Demand first made during the Policy Period (or Discovery Period, if applicable) for any Wrongful Act of any Executive, and reported to the Insurer in accordance with the terms of this policy. This Insuring Agreement D. shall apply only if purchased by the Insured as indicated in Item 3 of the Declarations and is subject to the Sublimit of Liability set forth in Item 4 of the Declarations which is the Insurer's maximum limit of liability under this Insuring Agreement D. for all Derivative Costs arising from all Derivative Demands. The Sublimit of Liability for Derivative Costs shall be part of, and not in addition to, the Limit of Liability applicable to this Coverage Section. This Insuring Agreement D. shall not provide coverage for any civil proceeding that is based upon or arises from a Derivative Demand.

2. DEFINITIONS

(a) "Claim" means any:

(1) written demand for monetary, non-monetary or injunctive relief made against an Insured;

(2) judicial, administrative or regulatory proceeding, whether civil or criminal, for monetary, non-monetary or injunctive relief commenced against an Insured, including any appeal therefrom, which is commenced by:

(i) service of a complaint or similar pleading;

(ii) return of an indictment, information or similar document (in the case of a criminal proceeding); or

(iii) receipt or filing of a notice of charges;

(3) arbitration proceeding commenced against an Insured by service of a demand for arbitration;

(4) formal civil, criminal, administrative or regulatory investigation of an Insured Person, which is commenced by the filing or issuance of a notice of charges, formal investigative order or similar document identifying such Insured Person as a person against whom a proceeding identified in (2) or (3) above may be commenced;

(5) written request to toll or waive the applicable statute of limitations relating to a potential Claim against an Insured for a Wrongful Act; or

(6) Derivative Demand, solely under Insuring Agreement D. if purchased by the Insured.

(b) “Derivative Costs” means the reasonable and necessary fees, costs, charges, or expenses incurred by the Company, its board of directors or any committee of its board of directors, solely in response to a Derivative Demand and do not include any settlements, judgments or damages, nor any compensation or benefits of any Insured Persons, or any overhead expenses of the Company. Derivative Costs shall be reimbursed by the Insurer sixty (60) days after the Company provides written notice to the Insurer of its final decision not to bring a civil proceeding against an Executive.

(c) “Derivative Demand” means a written demand by one or more shareholders of the Company upon the Company’s board of directors to bring a civil proceeding on behalf of the Company against any Executive for a Wrongful Act.

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(d) "Employee" means:

(1) any person who was, now is, or shall become a full-time, part-time, seasonal, or temporary employee of the Company, other than an Executive, but only while that person is acting in the capacity as such;

(2) any person leased to the Company so long as this person is working solely for the Company and only for conduct within his or her duties as such, but only if the Company indemnifies such leased person in the same manner as the Company's employees; and

(3) any volunteer whose labor and service is engaged and directed by the Company, but only while that person is acting in the capacity as such.

(e) "Executive" means any:

(1) past, present or future duly elected or appointed director, officer, trustee, governor, management committee Member or Member of the board of managers;

(2) past, present or future person in a duly elected or appointed position in an entity which is organized and operated in a foreign jurisdiction that is equivalent to an executive position listed in item (1) above; or

(3) past, present or future general counsel and risk manager (or equivalent position) of the Company.

(f) "Insured" means the Company and any Insured Person.

(g) "Insured Person(s)" means any:

(1) Executive;

- (2) Employee; or
 - (3) Outside Entity Insured Person.
- (h) “Loss” means:
- (1) damages, settlements or judgments;
 - (2) pre judgment or post judgment interest;
 - (3) costs or fees awarded in favor of the claimant;
 - (4) punitive, exemplary or the multiplied portion of any multiple damages awards, but only to the extent that such damages are insurable under the applicable law most favorable to the insurability of such damages;
 - (5) Derivative Costs, solely under Insuring Agreement D. if purchased by the Insured; and
 - (6) Defense Costs.

“Loss” does not include:

- (i) any amounts for which the Insureds are not legally liable;
- (ii) any amounts which are without legal recourse to the Insureds;
- (iii) taxes;
- (iv) fines and penalties, except as provided for in Definition (h) (4) above;
- (v) matters which may be deemed uninsurable under applicable law; or
- (vi) any amounts paid or incurred in complying with a judgment or settlement for non-monetary or injunctive relief, but solely as respects the Company.

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(i) “Outside Entity” means: (1) any not-for-profit entity which is exempt from taxation under Section 501(c)(3), (4) or (10) of the IRS Code, as amended, or any rule or regulation promulgated thereunder; or (2) any other entity listed as such by endorsement to this policy, for which an Executive acts as a director, officer, trustee or governor (or the equivalent thereof) at the written request of the Company. Any such person shall be referred to herein as an “Outside Entity Insured Person”, but only while that person is acting in the capacity as a director, officer, trustee or governor (or the equivalent thereof) of an Outside Entity.

(j) “Securities Claim” means a Claim, other than an administrative or regulatory proceeding against the Company or an investigation of the Company, made against any Insured:

(1) alleging a violation of any foreign, federal, state or local regulation, rule or statute regulating securities, including, but not limited to, the purchase or sale, or offer or solicitation of an offer to purchase or sell securities which is:

(i) brought by any person or entity alleging, arising out of, based upon or attributable to the purchase or sale, or offer or solicitation of an offer to purchase or sell, any securities of the Company; or

(ii) brought by a security holder of the Company with respect to such security holder’s interest in securities of such Company; or

(2) brought derivatively on behalf of the Company by a security holder of such Company.

Notwithstanding the foregoing, Securities Claim shall include any formal administrative or regulatory proceeding against the Company, but only if and only during the time that such proceeding also constitutes a Securities Claim commenced and continuously maintained against an Insured Person.

The Insurer shall not assert that a Loss incurred in a Securities Claim alleging violations of Section 11 or 12 of the Securities Act of 1933, as amended, constitutes uninsurable loss and, subject to all other terms and conditions of this policy, shall deem that portion of such Loss as constituting Loss under this policy.

(k) "Subsidiary" means any privately-held for-profit entity (except a partnership) of which the Parent Company:

(1) has Management Control ("Controlled Entity") before the inception of the Policy Period, either directly or indirectly through one or more other Controlled Entities;

(2) first acquires Management Control during the Policy Period, either directly or indirectly through one or more other Controlled Entities, if such entity's annual revenue totals less than 25% of the consolidated revenue of the Parent Company as of its latest fiscal year; or

(3) first acquires Management Control during the Policy Period, either directly or indirectly through one or more other Controlled Entities, if such entity's annual revenue totals 25% or more of the consolidated revenue of the Parent Company as of its latest fiscal year, but only if the Parent Company provides the Insurer with full particulars of the new Subsidiary within ninety (90) days after its creation

or acquisition and pays any additional premium with respect to such entity within thirty (30) days after being requested to do so by the Insurer;

provided, however, that Subsidiary as defined in items (2) and (3) above shall not mean any entity which is a financial institution, including but not limited to a bank, insurance company, insurance agent/broker, securities broker/dealer, investment advisor, mutual fund or hedge fund, unless such entity is included in the definition of Subsidiary by specific written endorsement attached to this policy.

“Subsidiary” also means any not-for-profit entity which is under the exclusive control of the Company.

With respect to a Claim made against any Subsidiary or any Insured Person thereof, this policy shall only apply to Wrongful Acts committed or allegedly committed after the effective time such entity becomes a Subsidiary and prior to the effective time that such entity ceases to be a Subsidiary.

(1) “Wrongful Act(s)” means:

(1) with respect to an Insured Person, any actual or alleged act, error, omission, neglect, breach of duty, breach of trust, misstatement, or misleading statement by an Insured Person in his or her capacity as such or any matter claimed against an Insured Person by reason of such capacity;

(2) with respect to an Outside Entity Insured Person, any actual or alleged act, error, omission, neglect, breach of duty, breach of trust, misstatement, or misleading statement by a person in his or her capacity as an Outside Entity Insured Person or any matter claimed against such Outside Entity Insured Person by reason of such capacity; or

(3) with respect to the Company, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by the Company.

3. EXCLUSIONS

This policy shall not cover any Loss in connection with any Claim:

(a) arising out of, based upon or attributable to the gaining of any profit or advantage or improper or illegal remuneration if a final judgment or adjudication establishes that such Insured was not legally entitled to such profit or advantage or that such remuneration was improper or illegal;

(b) arising out of, based upon or attributable to any deliberate fraudulent act or any willful violation of law by an Insured if a final judgment or adjudication establishes that such act or violation occurred;

(c) arising out of, based upon or attributable to the purchase or sale by an Insured of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934 and any amendments thereto or similar provisions of any state statutory law if a final judgment or adjudication establishes that a violation of Section 16(b) occurred;

In determining the applicability of Exclusions (a), (b) and (c), the facts pertaining to, the knowledge possessed by, or any Wrongful Act committed by, any Insured shall not be imputed to any other Insured; however, the facts pertaining to, the knowledge possessed by, or any Wrongful Act committed by, an Insured Person who is a past or current chairman of the board, chief executive officer, president or chief

financial officer of the Company shall be imputed to the Company.

(d) alleging, arising out of, based upon or attributable to any facts or circumstances of which an Insured Person had actual knowledge or information of, as of the Pending or Prior Date set forth in Item 6 of the Declarations as respects this Coverage Section, and that he or she reasonably believed may give rise to a Claim under this policy;

(e) based upon, arising from, or in consequence of any actual or alleged liability of any Insured under any express contract or agreement, except to the extent that such Insured would have been liable in the absence of such contract or agreement; provided, however, that this exclusion shall apply only to any Claim under Insuring Agreement C.;

(f) alleging, arising out of, based upon or attributable to, as of the Pending or Prior Date set forth in Item 6 of the Declarations as respects this Coverage Section, any pending or prior: (1) litigation; or (2) administrative or regulatory proceeding or investigation of which an Insured had notice, including any Claim alleging or derived from the same or essentially the same facts, or the same or related Wrongful Act(s), as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;

(g) alleging, arising out of, based upon or attributable to the same or essentially the same facts alleged, or to the same or related Wrongful Act(s) alleged or contained in any Claim which has been reported, or in any circumstances of which notice has been given, before the inception date of this policy as set forth in Item 2 of the Declarations, under any policy, whether

excess or underlying, of which this policy is a renewal or replacement or which it may succeed in time;

(h) alleging, arising out of, based upon or attributable to any actual or alleged act or omission of any Insured Person serving in any capacity other than as an Executive or an Employee or an Outside Entity Insured Person:

(i) brought by or on behalf of any Insured, other than an Employee; provided, however, that this exclusion shall not apply to:

(i) any Claim brought by an Insured Person that is in the form of a cross-claim or third-party claim for contribution or indemnity which is part of, and results directly from, a Claim which is not otherwise excluded under the terms of this Coverage Section;

(ii) a shareholder derivative action, but only if such action is brought and maintained without the solicitation, approval, assistance, active participation or intervention of any Insured;

(iii) any Claim brought by any Executive who has not served in such capacity, nor has acted as a consultant to the Company, for at least three (3) years prior to the Claim being first made;

(iv) any Claim brought against an Insured Person arising out of or based upon any protected activity specified in any “whistleblower” protection pursuant to any foreign, federal, state or local law;

(v) any Claim brought by any Executive of a Company formed and operating in a foreign jurisdiction against such Company and any Insured Person thereof, provided that such Claim is brought and maintained outside the United States, Canada or

any other common law country (including any territories thereof); or

(vi) any Claim brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, receiver or similar official for the Company or any assignee of such trustee, examiner, receiver or similar official.

(j) alleging, arising out of, based upon, attributable to, directly or indirectly resulting from, or in consequence of, or in any way involving, Pollution; provided, however, that this exclusion shall not apply to any Claim under Insuring Agreement A. or any Securities Claim, except for Loss constituting Cleanup Costs;

(k) alleging, arising out of, based upon or attributable to any actual or alleged violation of the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any rules or regulations of the foregoing promulgated thereunder, and any amendments thereto, or any similar foreign, federal, state or statutory law or common law;

(l) alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly any public offering of securities by the Company or an Outside Entity, or alleging a purchase or sale of such securities subsequent to such public offering; provided, however, that this exclusion shall not apply to:

(i) any purchase or sale of securities exempted pursuant to Section 3(b) of the Securities Act of 1933. Coverage for such purchase or sale transaction shall be conditioned solely upon the Company giving the Insurer written notice of any such public

offering, including all details thereof, as soon as practicable, but not later than thirty days after the effective date of such offering; or

(ii) any public offering of securities, other than an offering described in paragraph (i) above, as well as any purchase or sale of securities subsequent to such public offering. Coverage for such transaction shall be conditioned upon, within thirty days prior to the effective time of such public offering, the Company: (a) giving the Insurer written notice of such offering, including all details thereof, and any underwriting information required by the Insurer; and (b) accepting such terms, conditions and additional premium required by the Insurer for such coverage. Coverage provided pursuant to this paragraph is also subject to the Company paying such additional premium when due. The Insurer shall provide the Company with a quote for such coverage if the Company gives written notice of the offering as required in this paragraph.

(m) for any Wrongful Act arising out of any Insured Person serving as a director, officer, trustee or governor of an Outside Entity if such Claim is brought by the Outside Entity or by any director, officer, trustee or governor thereof; or which is brought by any securities holder of the Outside Entity, whether directly or derivatively, unless such securities holder's Claim is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, the Outside Entity, any director, officer, trustee or governor thereof, an Executive or the Company; provided, however, that this exclusion shall not apply to:

(i) any Claim brought by any director, officer, trustee or governor of an Outside Entity in the form

of a cross-claim or third-party claim for contribution or indemnity which is part of, and results directly from, a Claim which is not otherwise excluded under the terms of this Coverage Section;

(ii) any Claim brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, receiver or similar official for the Outside Entity or any assignee of such trustee, examiner, receiver or similar official;

(iii) any Claim brought by any director, officer, trustee or governor of an Outside Entity who has not served in such capacity, nor acted as a consultant to the Outside Entity, for at least three (3) years prior to such Claim being first made; or

(iv) any Claim brought by any director, officer, trustee or governor of an Outside Entity, formed and operating in a foreign jurisdiction against any Outside Entity Insured Person of such Outside Entity, provided that such Claim is brought and maintained outside the United States, Canada or any other common law country (including any territories thereof);

(n) for bodily injury, sickness, mental anguish, emotional distress, libel, slander, oral or written publication of defamatory or disparaging material, violation of any right of privacy, disease or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof; provided, however, that this exclusion shall not apply to any Securities Claim;

(o) alleging, arising out of, based upon, or attributable to any actual or alleged: (i) violation of the Foreign Corrupt Practices Act, any rules or regulations of the foregoing promulgated thereunder,

and any amendments thereto, or any similar foreign, federal, state or statutory law or common law; (ii) payments, commissions, gratuities, benefits or other favors for the direct or indirect benefit of any officials, directors, agents, partners, representatives, principal shareholders, or owners of the Company or employees of any customers of the Company; or (iii) political contributions;

(p) alleging, arising out of, based upon, or attributable to any actual or alleged discrimination, harassment, retaliation, wrongful discharge, termination or any other employment-related or employment practice claim, including but not limited to any wage-hour claim or any third-party discrimination or harassment claim; provided, however, that this exclusion shall not apply to any Securities Claim;

(q) alleging, arising out of, based upon, or attributable to the ownership, management, maintenance, operation and/or control by the Company of any captive insurance company or entity, including but not limited to any Claim alleging the insolvency or bankruptcy of the Company as a result of such ownership, management, maintenance, operation and/or control;

(r) alleging, arising out of, based upon, or attributable to based upon, arising from, or in consequence of any actual or alleged plagiarism, infringement or violation of any copyright, patent, trademark or service mark or the misappropriation of intellectual property, ideas or trade secrets; provided, however, that this exclusion shall apply only to any Claim under Insuring Agreement C.;

(s) alleging, arising out of, based upon or attributable to the rendering or failure to render any professional service to a customer or client of the

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Insured; provided, however, that this exclusion shall not apply to any Securities Claim, but only if such Securities Claim is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, the Company or any Insured Person.

4. ORDER OF PAYMENTS

In the event of Loss arising from a covered Claim for which payment is due under the provisions of this Coverage Section, the Insurer shall in all events:

(1) first, pay Loss for which coverage is provided under this Coverage Section for any Insured Person under Insuring Agreement A.;

(2) second, only after payment of Loss has been made pursuant to item (1) above, with respect to whatever remaining amount of any Limit of Liability applicable to this Coverage Section is available, pay the Loss for which coverage is provided under this Coverage Section for the Company under Insuring Agreement B.; and

(3) third, only after payment of Loss has been made pursuant to items (1) and (2) above, with respect to whatever remaining amount of any Limit of Liability applicable to this Coverage Section is available, pay the Loss for which coverage is provided under this Coverage Section for the Company under Insuring Agreement C. and D.

5. NON-RESCINDABLE CLAUSE

The Insurer irrevocably waives any right it may have to rescind coverage available under Insuring Agreement A. of this Coverage Section, in whole or in part, on any grounds.

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REDACTED

Endorsement No.: 1

This endorsement, effective: October 01, 2017
(at 12:01 a.m. Standard Time at the address of the
Named Insured as shown in Item 1 of the
Declarations)

Forms a part of Policy No.: 1000620507171

Issued to: ADIR International, LLC dba La Curacao

By: Starr Indemnity & Liability Company

CALIFORNIA AMENDATORY ENDORSEMENT

This endorsement modifies insurance coverage
provided under the RESOLUTE PORTFOLIO FOR
PRIVATE COMPANIES INSURANCE POLICY.

**COVERAGE PART: GENERAL TERMS AND
CONDITIONS SECTION**

It is understood and agreed:

A. The second paragraph of Clause 12. CANCEL-
LATION AND NON RENEWAL CLAUSE is amended
by the addition of the following:

Notice of cancellation shall also be sent to the
producer of record, if applicable, provided that the
producer of record is not an employee of the Insurer.

B. The last paragraph of Clause 12. CANCELLA-
TION AND NON RENEWAL CLAUSE is deleted and
replaced by the following:

The Insurer shall have no obligation to renew this
policy or any applicable Coverage Section. In the event
the Insurer decides to non-renew this policy or any
applicable Coverage Section, or to condition renewal
upon a reduction of the Policy's Limit of liability, an
elimination of coverage or an increase of more than
twenty-five percent (25%) of the current policy's pre-
mium, the Insurer shall deliver or mail to the Parent
Company, as identified in Item 1 of the Declarations,

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written notice of such decision at least sixty (60) days, but not more than one hundred twenty (120) days, prior to the expiration of the Policy Period. The notice shall state the reason for non-renewal.

C. Notwithstanding anything to the contrary in the definition of Loss in any liability Coverage Section purchased by the Insured, punitive damages are not insurable in California.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

/s/ [Illegible]
Authorized Representative

CVS FL 10107 PV (02-09)

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Endorsement No.: 2

This endorsement, effective: October 01, 2017

(at 12:01 a.m. Standard Time at the address of the
Named Insured as shown in Item 1 of the
Declarations)

Forms a part of Policy No.: 1000620507171

Issued to: ADIR International, LLC dba La Curacao

By: Starr Indemnity & Liability Company

OFAC EXCLUSION
(all Coverage Sections)

It is understood and agreed that Clause 3,
EXCLUSIONS, of all applicable Coverage Sections is
amended by adding the following exclusion:

This policy shall not cover any Loss in connection
with any Claim in the event that such coverage would
not be in compliance with any United States of America
economic or trade sanctions, laws or regulations, includ-
ing but not limited to the U.S. Treasury Department's
Office of Foreign Assets Control, or any similar
foreign, federal, state or statutory law or common law.

**ALL OTHER TERMS AND CONDITIONS REMAIN
UNCHANGED.**

/s/ [Illegible]
Authorized Representative

CVS FL 10005 PPVNP (07/08)

Endorsement No.: 3

This endorsement, effective: October 01, 2017

(at 12:01 a.m. Standard Time at the address of the
Named Insured as shown in Item I of the Declarations)

Forms a part of Policy No.: 1000620507171

Issued to: ADIR International, LLC dba La Curacao

By: Starr Indemnity & Liability Company

100% ALLOCATION DEFENSE COSTS

I. It is understood and agreed that Clause 7.
ALLOCATION of the General Terms & Conditions
Section is deleted and replaced by the following:

7. ALLOCATION

(a) If both Loss covered under this policy and
loss not covered under this policy are incurred by
the Insureds on account of any Claim because
such Claim against the Insureds includes both
covered and non-covered matters and/or parties,
then coverage under this Coverage Section with
respect to such Claim shall apply as follows:

(i) Defense Costs: One hundred percent (100%)
of reasonable and necessary Defense Costs
incurred by the Insured on account of such
Claim will be considered covered Loss; and

(ii) Loss other than Defense Costs: All
remaining loss incurred by the Insured on
account of such Claim shall be allocated by the
Insurer between covered Loss and non-covered
loss based on the relative legal and financial
exposures of the parties to such matters and, in
the event of a settlement in such Claim, also
based on the relative benefits to the Insureds
from such settlement.

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(b) If an allocation of Loss cannot be agreed to by the Insurer and the Insured:

(i) the Insurer shall pay those amounts which it believes to be fair and equitable until an amount shall be agreed upon or determined pursuant to the provisions of this policy; and

(ii) there will be no presumption of allocation of Loss in any arbitration, suit or other proceeding.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

/s/ [Illegible]
Authorized Representative

CVS FL 10837 PPVNP (4/10)

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Endorsement No.: 4

This endorsement, effective: October 01, 2017

(at 12:01 a.m. Standard Time at the address of the
Named Insured as shown in Item I of the Declarations)

Forms a part of Policy No.: 1000620507171

Issued to: ADIR International, LLC dba La Curacao

By: Starr Indemnity & Liability Company

FULL NUCLEAR EXCLUSION
(D&O Coverage Section)

It is understood and agreed that Clause 3,
EXCLUSIONS, of the Directors & Officers Liability
Coverage Section is amended by adding the following
exclusion:

This policy shall not cover any Loss in connection
with any Claim alleging, arising out of, based upon
or attributable to nuclear fission, nuclear fusion,
radioactive contamination or the hazardous proper-
ties of any nuclear materials.

**ALL OTHER TERMS AND CONDITIONS REMAIN
UNCHANGED.**

/s/ [Illegible]
Authorized Representative

CVS FL 10175 PPV (07/08)

Endorsement No.: 5

This endorsement, effective: October 01, 2017
(at 12:01 a.m. Standard Time at the address of the
Named Insured as shown in Item 1 of the
Declarations)

Forms a part of Policy No.: 1000620507171

Issued to: ADIR International, LLC dba La Curacao

By: Starr Indemnity & Liability Company

AMEND I V I FINANCIAL IMPAIRMENT
(Directors & Officers Liability Coverage Section)

It is understood and agreed that Clause 3.
EXCLUSIONS (i) of the Directors & Officers Liability
Coverage Section of the policy is amended by adding
the following:

(vii) Any Claim brought against an Insured Person
by the Company while the Parent Company is in
Financial Impairment; or

(viii) Any Claim brought against an Insured Person
by an Outside Entity while such Insured Person is
serving in his capacity as such for an Outside Entity
while such Outside Entity is in Financial Impairment.

**ALL OTHER TERMS AND CONDITIONS REMAIN
UNCHANGED.**

/s/ [Illegible]
Authorized Representative

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Endorsement No.: 6

This endorsement, effective: October 01, 2017

(at 12:01 a.m. Standard Time at the address of the Named Insured as shown in Item 1 of the Declarations)

Forms a part of Policy No.: 1000620507171

Issued to: ADIR International, LLC dba La Curacao

By: Starr Indemnity & Liability Company

EMPLOYED LAWYERS COVERAGE EXTENSION

(D&O Coverage Section)

It is understood and agreed that the Directors & Officers Liability Coverage Section is amended by adding the following:

1. This policy shall include coverage for Employed Lawyers but solely with respect to Wrongful Acts (as defined below) by an Employed Lawyer acting in the capacity as such and subject to the terms and conditions of this endorsement.

2. The coverage provided by this endorsement is specifically excess of any other valid and collectible lawyers professional liability insurance, legal malpractice or errors and omissions insurance and shall drop down and provide primary insurance only in the event of the exhaustion of such other insurance due to the payment of losses thereunder.

3. In determining whether the Retention amount for the Directors & Officers Liability Coverage Section as stated in Item 5 of the Declarations applies to a Claim under this endorsement, it is presumed that the Company shall indemnify the Employed Lawyer to the fullest extent permitted by statutory or common law or the charter, by-laws, operating agreement or similar document of the Company.

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4. The Definition of “Insured Person(s)” is amended to include any Employed Lawyer.

5. Solely with respect to the coverage provided by this endorsement, this policy shall not cover any Loss in connection with any Claim made against an Employed Lawyer:

(a) alleging, arising out of, based upon or attributable to any Wrongful Act which occurred at a time when the Employed Lawyer was not employed as a lawyer by the Company;

(b) alleging, arising out of, based upon or attributable to any Wrongful Act if, as of the Pending or Prior Date set forth below, an Employed Lawyer knew or could have reasonably foreseen that such Wrongful Act could lead to a Claim; or

(c) alleging, arising out of, based upon or attributable to any activities or conduct of the Employed Lawyer as an officer, director or governor of any entity other than the Company.

6. Solely with respect to this endorsement, the following defined terms apply:

“Employed Lawyer” means any employee of the Company who is admitted to practice law and who is employed, or was employed, at the time of the alleged Wrongful Act as a full-time lawyer for, and salaried by, the Company.

“Pending or Prior Date” means, for each Employed Lawyer, the later of October 01, 2005 or the first date that such person became an Employed Lawyer.

“Wrongful Act” means any act, error, or omission by an Employed Lawyer in the rendering or failure to render professional legal services for the Company, but solely in his or her capacity as such. “Wrongful

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Act” shall not mean any act, error, or omission in connection with such activities by such Employed Lawyer: (i) which are not related to such Employed Lawyer's employment with the Company; (ii) which are not rendered on behalf of the Company at the Company's written request; or (iii) which are performed by the Employed Lawyer for others for a fee.

7. The Sublimit of Liability for the coverage provided by this endorsement shall be \$1,000,000. This Sublimit of Liability shall be part of, and not in addition to, the Limit of Liability applicable to the Directors & Officers Liability Coverage Section as set forth in Item 4 of the Declarations.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

/s/ [Illegible]
Authorized Representative

CVS FL 10172 PPV (07/08)

Endorsement No.: 7

This endorsement, effective: October 01, 2017
(at 12:01 a.m. Standard Time at the address of the
Named Insured as shown in Item 1 of the
Declarations)

Forms a part of Policy No.: 1000620507171

Issued to: ADIR International, LLC dba La Curacao

By: Starr Indemnity & Liability Company

**AMEND NON-RESCINDABLE CLAUSE &
REPRESENTATIONS AND SEVERABILITY
CLAUSE – INSURING AGREEMENTS A. AND B.
ARE NON-RESCINDABLE**

It is understood and agreed that Clause 5, NON-RESCINDABLE CLAUSE, of the Directors & Officers Liability Coverage Section is deleted in its entirety and replaced by the following:

5. NON-RESCINDABLE CLAUSE

The Insurer irrevocably waives any right it may have to rescind coverage available under Insuring Agreements A. and B. of this Coverage Section, in whole or in part, on any grounds.

It is further understood and agreed that solely with respect to the Directors & Officers Liability Coverage Section, Clause 10, REPRESENTATIONS AND SEVERABILITY, of the General Terms & Conditions Section is deleted in its entirety and replaced by the following:

10. REPRESENTATIONS AND SEVERABILITY

It is agreed that the Insurer has relied upon the information contained in the Application in issuing this policy. In regard to the statements, warranties, representations and information contained in the Application, no knowledge of any Insured shall be

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imputed to any other Insured for the purpose of determining whether coverage is available under this policy for any Claim made against such Insured. However, in the event the statements, warranties, representations or information is not accurately and completely disclosed in the Application, no coverage shall be afforded for any Claim alleging, arising out of based upon, attributable to or in consequence of any incomplete or inaccurate statements, warranties or representations under:

(i) Insuring Agreement A., with respect to any Insured Person who knew of such inaccurate or incomplete statements, warranties, representations or information; and

(ii) Insuring Agreement B., with respect to any Company to the extent it indemnifies any Insured Person referenced in (i) above; whether or not such person knew that such facts were not accurately and completely disclosed in the Application.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

/s/ [Illegible]
Authorized Representative

CVS FL 10820 PV (04/10)

Endorsement No.: 8

This endorsement, effective: October 01, 2017

(at 12:01 a.m. Standard Time at the address of the Named Insured as shown in Item 1 of the Declarations)

Forms a part of Policy No.: 1000620507171

Issued to: ADIR International, LLC dba La Curacao

By: Starr Indemnity & Liability Company

Amend Claim — Extradition Proceeding
(D& O Coverage Section and GTC Section)

1. It is understood and agreed that the Directors & Officers Liability Coverage Section of the policy is amended as follows:

A. Section 2. DEFINITIONS (a) Claim is amended, where permitted by law, by adding the following:

Claim shall also mean any official request for Extradition of any Insured Person or the execution of a warrant for the arrest of an Insured Person where such execution is an element of Extradition.

B. For purposes of the coverage provided under this endorsement only, Section 2. DEFINITIONS is amended by adding the following:

“Extradition” means any formal process to determine if an Insured Person located in any country is surrendered to any other country to stand trial for any criminal offense arising from any Wrongful Act the Insured Person is alleged to have committed.

2. It is further understood and agreed that the General Terms and Conditions Coverage Section of the policy is amended as follows:

A. Section 2. DEFINITIONS (d) "Defense Costs" is amended by adding the following:

Defense Costs shall also mean reasonable and necessary fees, costs and expenses incurred through legal counsel and consented to by the Insurer in connection with an Extradition or similar proceeding brought against an Insured in connection with a Claim, including but not limited to fees, costs and expenses for:

(a) opposing, challenging, resisting or defending against any request for or any effort to obtain the Extradition of that Insured Person; or

(b) appealing any order or other grant of Extradition of that Insured Person.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

,/s/ [Illegible]
Authorized Representative

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Endorsement No.: 9

This endorsement, effective: October 01, 2017

(at 12:01 a.m. Standard Time at the address of the Named Insured as shown in Item 1 of the Declarations)

Forms a part of Policy No.: 1000620507171

Issued to: ADIR International, LLC dba La Curacao

By: Starr Indemnity & Liability Company

AMEND DEFINITION OF "OUTSIDE ENTITY" —
INCLUDES ANY NOT-FOR-PROFIT ENTITY
(Directors & Officers Liability Coverage Section)

It is understood and agreed that Definition (i) "Outside Entity", in Clause 2. DEFINITIONS of the Directors & Officers Liability Coverage Section is deleted in its entirety and replaced with the following:

(i) "Outside Entity" means: (1) any not-for-profit entity; or (2) any other entity listed as such by endorsement to this policy, for which an Executive acts as a director, officer, trustee or governor (or the equivalent thereof) at the written request of the Company. Any such person shall be referred to herein as an "Outside Entity Insured Person", but only while that person is acting in the capacity as a director, officer, trustee or governor (or the equivalent thereof) of an Outside Entity.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

/s/ [Illegible]
Authorized Representative

CVS FL 10862 PV (4-10)

108a
REDACTED

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Endorsement No.: 12

This endorsement, effective: October 01, 2017

(at 12:01 a.m. Standard Time at the address of the
Named Insured as shown in Item 1 of the
Declarations)

Forms a part of Policy No.: 1000620507171

Issued to: ADIR International, LLC dba La Curacao

By: Starr Indemnity & Liability Company

AMEND DEFINITION OF "SUBSIDIARY" –
CHANGE REVENUE THRESHOLD
(D&O Coverage Section)

It is understood and agreed that Definition (k),
"Subsidiary" of the Directors & Officers Liability
Coverage Section is amended by changing the
automatic subsidiary threshold in items (2) and (3) of
such Definition from 25% to 35%.

ALL OTHER TERMS AND CONDITIONS REMAIN
UNCHANGED.

/s/ [Illegible]
Authorized Representative

CVS FL 10088 PV (07/08)

110a
REDACTED

111a

Endorsement No.: 14

This endorsement, effective: October 01, 2017
(at 12:01 a.m. Standard Time at the address of the
Named Insured as shown in Item 1 of the
Declarations)

Forms a part of Policy No.: 1000620507171

Issued to: ADIR International, LLC dba La Curacao

By: Starr Indemnity & Liability Company

AMEND DEFINITION OF "COMPANY" TO
INCLUDE SPECIFIED ENTITIES WITH PENDING
OR PRIOR LITIGATION DATES
(General Terms & Conditions Section)

It is understood and agreed that General Definition (c), "Company", of the General Terms & Conditions Section is amended to include any entity listed below; however, such entity is a Company only with respect to the entity's corresponding Coverage Section(s) and the entity's corresponding Pending or Prior Date listed below. The Pending or Prior Date(s) listed below apply solely to Exclusion (d) of the Directors & Officers Liability Coverage Section, Exclusion (c) of the Employment Practices Liability Coverage Section and Exclusion (e) of the Fiduciary Liability Coverage Section.

<u>ENTITY</u>	<u>COVERAGE SECTION</u>	<u>PENDING OR PRIOR DATE</u>
Adir Services Corp. Hold Co.	Directors & Officers Liability	October 01, 2014

ALL OTHER TERMS AND CONDITIONS REMAIN
UNCHANGED.

/s/ [Illegible]
Authorized Representative

CVS FL 10676 PPV (02/10)

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Endorsement No.: 15

This endorsement, effective: October 01, 2017

(at 12:01 a.m. Standard Time at the address of the
Named Insured as shown in Item 1 of the
Declarations)

Forms a part of Policy No.: 1000620507171

Issued to: ADIR International, LLC dba La Curacao

By: Starr Indemnity & Liability Company

AMEND DEFINITION OF COMPANY

(General Terms & Conditions)

It is understood and agreed that Definition (c),
“Company”, of the General Terms & Conditions
Section is amended to include the following:

It is further understood and agreed that this
endorsement shall apply solely to the following
Coverage Section(s):

- Curacao Ltd

**ALL OTHER TERMS AND CONDITIONS REMAIN
UNCHANGED.**

/s/ [Illegible]
Authorized Representative

CVS FL 10187 PPV (07/08)

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Endorsement No.: 16

This endorsement, effective: October 1, 2017

(at 12:01 a.m. Standard Time at the address stated in
Item 1 of the Declarations)

Forms a part of Policy No.: 1000620507171

Issued to: Adir International, LLC dba La Curacao

By: Starr Indemnity & Liability Company

PROFESSIONAL SERVICES EXCLUSION
(D&O Coverage Section)

It is understood and agreed that Clause 3,
EXCLUSIONS, of the Directors & Officers Liability
Coverage Section is amended by adding the following
exclusion:

This policy shall not cover any Loss in connection
with any Claim alleging, arising out of, based upon or
attributable to the rendering or failure to render any
professional service to a customer or client of the
Insured.

**ALL OTHER TERMS AND CONDITIONS REMAIN
UNCHANGED.**

/s/ [Illegible]
Authorized Representative

CVS FL 10735 PPV (3/10)

POLICYHOLDER DISCLOSURE NOTICE OF
TERRORISM INSURANCE COVERAGE

Coverage for acts of terrorism is included in your policy. You are hereby notified that under the Terrorism Risk Insurance Act, as amended in 2015, the definition of act of terrorism has changed. As defined in Section 102(1) of the Act: The term “act of terrorism” means any act or acts that are certified by the Secretary of the Treasury—in consultation with the Secretary of Homeland Security, and the Attorney General of the United States—to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. Under your coverage, any losses resulting from certified acts of terrorism may be partially reimbursed by the United States Government under a formula established by the Terrorism Risk Insurance Act, as amended. However, your policy may contain other exclusions which might affect your coverage, such as an exclusion for nuclear events. Under the formula, the United States Government generally reimburses 85% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019 and 80% beginning on January 1, 2020, of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. The Terrorism Risk Insurance Act, as amended, contains a \$100

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billion cap that limits U.S. Government reimbursement as well as insurers' liability for losses resulting from certified acts of terrorism when the amount of such losses exceeds \$100 billion in any one calendar year. If the aggregate insured losses for all insurers exceed \$100 billion, your coverage may be reduced.

The portion of your annual premium that is attributable to coverage for acts of terrorism is \$0, and does not include any charges for the portion of losses covered by the United States government under the Act.

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CVS FL 11440 (1/17)

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APPENDIX G

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Case No. BC680425

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

v.

ADIR INTERNATIONAL, LLC, a Delaware limited
liability company, also doing business as
CURACAO and LA CURACAO; LA CURACAO, a
California corporation; RON AZARKMAN,
an individual; and Does 1 through 100, inclusive,
Defendants.

COMPLAINT FOR PERMANENT INJUNCTION,
CIVIL PENALTIES, RESTITUTION, AND OTHER
EQUITABLE RELIEF

(BUS. & PROF. CODE, §§ 17200 et seq., 17500 et seq.)

[VERIFIED ANSWER REQUIRED PURSUANT
TO CALIFORNIA CODE OF CIVIL PROCEDURE
SECTION 446]

XAVIER BECERRA
Attorney General of California
NICKLAS A. AKERS
Senior Assistant Attorney General
MICHELE VAN GELDEREN
Supervising Deputy Attorney General
ALICIA K. HANCOCK (SBN 240566)
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*Attorneys for Plaintiff, the People of the
State of California*

[EXEMPT FROM FILING FEES PURSUANT TO
GOVERNMENT CODE SECTION 6103]

Plaintiff, the People of the State of California
("Plaintiff" or the "People"), by and through Xavier
Becerra, Attorney General of the State of California,
alleges the following on information and belief:

INTRODUCTION

1. For years, Defendant Adir International, LLC, dba Curacao, a retail store chain, and its co-founder Ron Azarkman, have preyed upon Curacao's Latino customer base. While Curacao touts its commitment to the Latino community, the company actually takes advantage of its customers, many of whom are low-income, monolingual Spanish-speaking immigrants who lack access to traditional credit to purchase basic big-ticket household necessities from other retailers. Curacao victimizes consumers through a variety of unlawful, unfair, and fraudulent business practices, including the following: misleading advertising; unwanted contract add-ons; illegal sale of warranties; failure to honor warranties; failure to clearly post return policies; refusal to honor returns; illegal debt collection practices; and violating consumers' rights when suing them in small claims actions.

2. Curacao's unlawful business practices are pervasive. They begin even before a consumer walks into a store—through misleading advertisements—and may not end until months or years after the consumer's original purchase—often in a small-claims judgment obtained by violating court rules. Targeting Latino immigrants who lack credit, Curacao lures consumers into its stores by advertising easy credit and low prices on merchandise ranging from electronics to furniture to appliances. Once in the store, however, consumers discover that they can only purchase merchandise at the advertised price if they agree to buy “add-ons” such as warranties, installation services, and/or accessories. In some instances, Curacao adds these items without consumers' knowledge or consent, or tells consumers that items are free when, in fact, consumers are charged for them. Curacao conceals these contract add-ons by having consumers sign credit or retail installment contracts electronically without first showing them an itemized receipt, or by giving monolingual Spanish-speaking consumers English-language contracts, which they cannot read or understand. When consumers try to return items that were added without their consent, they are often told that Curacao's return policy—which was not disclosed to consumers—prevents Curacao from accepting the return. When consumers try to use their warranties (many of which are Curacao-backed warranties sold illegally and without the proper financial backing), Curacao often denies them service or forces them to wait months to have their merchandise repaired or replaced. All the while, Curacao expects consumers to continue making regular payments on their purchases. When consumers fall behind on their payments, Curacao debt collectors not only harass the consumers themselves, but also contact their family members

and employers. Curacao debt collectors also threaten consumers with arrest if they do not pay. Finally, when Curacao sues consumers in small claims court for outstanding debts, the company often fails to properly serve the customers it is suing. As a result, consumers sued by Curacao discover that they have had default judgments entered against them without any opportunity to defend themselves in court.

3. Such business practices are not the actions of rogue employees; they are, in fact, the consequence of Curacao's established sales incentive structure and corporate culture. Curacao instructs its employees that the company's future depends on selling high-margin warranties, services, and accessories. To ensure that sales associates push these items on its customers, Curacao imposes unrealistic sales goals on its employees, constantly monitors them to ensure goals are met, and threatens employees with demotion or termination if they fail to meet those goals. Caught between a rock and a hard place, Curacao employees, many of whom lack other job options, are forced to engage in unfair, unlawful, and fraudulent conduct in order to keep their jobs. Curacao sales representatives are encouraged to lie to customers about contract terms, pricing, and returns, and to add items and services to customers' contracts without their knowledge or consent. This conduct is condoned and sanctioned by Curacao supervisors. Curacao management and executives have been well aware of these practices, and the corresponding customer and employee complaints, for years.

4. These business practices violate California's Unfair Competition Law (Business and Professions Code section 17200), the False Advertising Law (Business

and Professions Code section 17500), and a number of other California consumer protection statutes.

PLAINTIFF

5. Plaintiff is the People of the State of California, who brings this action by and through Attorney General Xavier Becerra. The Attorney General is authorized by Business and Professions Code sections 17203, 17204, and 17206 to bring actions to enforce the Unfair Competition Law (UCL) and by Business and Professions Code sections 17535 and 17536 to bring actions to enforce the False Advertising Law (FAL).

DEFENDANTS

6. Defendant Adir International, LLC is a Delaware limited liability company with its principal place of business in Los Angeles, California. Adir International, LLC owns and operates a retail store chain under the fictitious business names of Curacao, Curacao Travel, iCuracao, and Curacao Export. At all relevant times, Adir International, LLC, itself and doing business as Curacao, Curacao Travel, iCuracao, and Curacao Export, has transacted business in the County of Los Angeles and elsewhere within the State of California.

7. Defendant La Curacao is or was a California corporation with its principal place of business in Los Angeles, California. The retail store chain now known as Curacao was formerly known as La Curacao, from its inception in 1981 until the chain was rebranded as Curacao on or around August 1, 2012. At all relevant times, La Curacao transacted business in the County of Los Angeles and elsewhere within the State of California.

8. Defendant Ron Azarkman (“Azarkman”), an individual, is a principal of Adir International, LLC

and La Curacao. According to a Statement of Information filed with the Secretary of State on September 25, 2013, Azarkman is the Chief Executive Officer of Adir International, LLC. According to a Statement of Information filed with the Secretary of State on January 26, 2006, Azarkman is or was the Chief Executive Officer and Chief Financial Officer of La Curacao, as well as a director of La Curacao. According to an application for registration filed with the Bureau of Electronic and Appliance Repair in November 1996, Azarkman is one of the two officers listed as “in charge of” Adir International LLC’s service contract program, through which Curacao ostensibly sold its warranties. Azarkman also signed this application for registration. At all times relevant, Azarkman was in a position of responsibility allowing him to create, direct, and influence corporate policies or activities with respect to Defendants’ compliance with California consumer protection laws and regulations at their retail stores and in the conduct of their business in the State of California, and had, by reason of his position in the company and corporation, responsibility and authority either to prevent in the first instance, or promptly correct, the violations complained of herein, but failed to do so. In addition to any direct personal liability, Azarkman is also personally liable as a responsible corporate officer for violations of law committed by Defendants as alleged herein. Azarkman is a resident of Los Angeles County.

9. Plaintiff is not aware of the true names and capacities of defendants sued herein as DOES 1 through 100, inclusive, and, therefore, sues these defendants by such fictitious names. Each fictitiously named defendant is responsible in some manner for the violations of law alleged. Plaintiff will amend this Complaint to add the true names of the fictitiously

named defendants once they are discovered. Whenever reference is made in this Complaint to “Defendants,” such reference shall include DOES 1 through 100 as well as the named defendants.

10. The defendants identified in Paragraphs 6 through 9 above are hereafter referred to collectively in this Complaint as “Defendants” or “Curacao.”

11. At all relevant times, each Defendant acted individually and jointly with every other named Defendant in committing all acts alleged in this Complaint.

12. At all relevant times, each Defendant acted: (a) as a principal; (b) under express or implied agency; and/or (c) with actual or ostensible authority to perform the acts alleged in this Complaint on behalf of every other named Defendant.

13. At all relevant times, some or all Defendants acted as the agent of the others, and all Defendants acted within the scope of their agency if acting as an agent of another.

14. At all relevant times, each Defendant knew or realized, or should have known or realized, that the other Defendants were engaging in or planned to engage in the violations of law alleged in this Complaint. Knowing or realizing that the other Defendants were engaging in such unlawful conduct, each Defendant nevertheless facilitated the commission of those unlawful acts.

Each Defendant intended to and did encourage, facilitate, or assist in the commission of the unlawful acts, and thereby aided and abetted the other Defendants in the unlawful conduct.

15. Defendants have engaged in a conspiracy, common enterprise, and common course of conduct, the purpose of which is and was to engage in the violations of law alleged in this Complaint. The conspiracy, common enterprise, and common course of conduct continue to the present.

JURISDICTION AND VENUE

16. This Court has original jurisdiction over this action pursuant to California, Constitution article VI, section 10.

17. This Court has jurisdiction over Defendants because Defendants, by maintaining Curacao's principal place of business in the state of California, marketing its merchandise throughout California, and operating stores and selling merchandise in California, intentionally availed themselves of the California market so as to render the exercise of jurisdiction over Defendants by the California courts consistent with traditional notions of fair play and substantial justice.

18. The violations of law alleged in this Complaint occurred in the County of Los Angeles and elsewhere throughout California.

19. Venue is proper in this Court pursuant to Code of Civil Procedure section 395.5 because Defendants' marketing and sales activities included the Los Angeles region and therefore Defendants' liability arises in the County of Los Angeles.

20. Venue is also proper in this Court pursuant to Code of Civil Procedure section 393, subdivision (a) because violations of law that occurred in the County of Los Angeles are a "part of the cause" upon which the

Plaintiff seeks the recovery of penalties imposed by statute.

DEFENDANTS' BUSINESS PRACTICES

21. Curacao operates nine retail stores in California, two retail stores in Arizona, and one retail store in Nevada, as well as an online shopping site at <http://www.icuracao.com/>.

22. Curacao actively markets its products to the Latino community, the most vulnerable members being 16w-income, monolingual Spanish-speaking immigrants. These consumers often have minimal experience with credit card and retail installment contracts because they do not qualify for traditional credit or financing. This lack of access to traditional credit makes it difficult for these consumers to purchase necessary big-ticket home staples such as refrigerators and beds at other retailers.

23. While claiming to help the Latino community, Curacao instead takes advantage of and exploits this community. Curacao takes advantage of consumers through a variety of unlawful, unfair, and fraudulent business practices, including:

a. Bait-and-switch Advertising/Bundling. Curacao lures consumers into its stores through advertisements disseminated via mailers, television, radio, and the internet. These advertisements contain false or misleading statements about the condition, price, and availability of particular products. Curacao sales associates are instructed not to sell available merchandise at the advertised prices unless they can sell the products bundled with high-margin services, warranties, and accessories. As a result, Curacao often tells consumers that merchandise advertised by Curacao is either unavailable, or

available only as part of a more expensive bundle that was not disclosed in Curacao's advertising. Curacao fails to honor prices as they are advertised and marked on its sales floor, and fails to supply reasonably expected demand for the merchandise it advertises. Curacao also markets and sells used items to consumers without disclosing that they are not new.

b. Store Credit. Curacao encourages consumers to apply for store credit and pay for merchandise via retail installment contracts. Curacao claims that opening credit with the store will improve consumers' credit scores and open up other avenues for financing in the future. Curacao also promotes low monthly payments on advertised items if purchased with Curacao credit. Such promises of easy credit and low monthly payments are attractive to many consumers, especially those who lack a positive credit history. But in reality, the advertised low monthly payments are based on an APR of 19.99%, a rate very few consumers actually get. Curacao conducts most of its sales through retail installment contracts, typically charging consumers a 34.99% APR. Once a consumer is approved for credit, Curacao sales associates encourage the consumer to use all available credit in the first purchase, as instructed by their supervisors. Sometimes, Curacao opens new accounts or sub-accounts for consumers without their knowledge or consent. Curacao sales associates also mislead consumers by telling them that Curacao can reactivate or increase a consumer's credit line without running a hard inquiry on the consumer's credit report. In reality, Curacao runs hard inquiries on consumer credit reports without the consumer's informed consent, and at

times, in direct contravention of the consumer's explicit requests.

c. Contract Add-Ons. To meet the company's aggressive and strict sales goals, Curacao sales associates add warranties and services to consumer contracts by any means possible: sometimes by misleading the consumer about the terms, conditions, or price of a warranty or service, and sometimes by simply adding a warranty or service to a consumer's contract without the consumer's knowledge or consent. Accessories are often added to a consumer's purchase through deception. Sales representatives lie about the price of accessories, and sometimes falsely claim that accessories are essential to the proper operation of certain merchandise. To hide unauthorized contract add-ons, Curacao sales associates ask consumers to electronically sign their contracts on a screen similar to a credit card terminal before showing them an itemized receipt or paper contract. Curacao does not provide consumers with a paper copy of their retail installment contract until they have already signed it. As a consequence, consumers often leave the store with a contract that binds them to pay Curacao hundreds of dollars more than they expected or intended, for services or items they did not want or did not know they purchased.

d. Contract Translations. In some instances, Curacao negotiates with consumers in Spanish, but provides those consumers with only an English-language contract. Even when Curacao sales associates provide a Spanish-language translation of the contract, important contract terms and conditions remain in English. Curacao also fails to post any signs or notices informing consumers of

their right to receive a version of their contract that is fully translated into Spanish.

e. Warranties. Curacao sales associates misrepresent the terms of the warranties (also known as service contracts) that Curacao sells and they often do not provide consumers with a copy of the warranty terms or contract. In some instances, sales associates fail to provide the consumer with any information about the warranty added to their contract. For years, Curacao misled the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation, the agency tasked with regulating the sale of warranties. While applying to sell only warranties administered by another company, Curacao actually sold its own self-administered warranties, without the necessary financial backing or insurance policy required by California law. Curacao also fails to respond in a timely manner (or at all) to consumer requests for repairs, and in many instances it cancels or voids warranties without proper justification. Curacao has refused to replace or repair defective items covered by Curacao's warranty, falsely claiming that damage to a product was caused by the consumer. Curacao has also, in several instances, charged customers for third-party warranty coverage without actually enrolling the product or activating the third-party warranty. In instances when consumers return merchandise for which a warranty was also purchased, Curacao continues to charge consumers for the warranty or charges them an insurance cancellation fee, even when consumers do not attempt to use the merchandise or the warranty and they cancel the warranty within thirty days.

f. Returns. Curacao fails to post or otherwise alert consumers to its return policies before customers make a purchase. Curacao's return policy is posted only on retail installment contracts or product receipts (both provided after purchase), and at some of its merchandise pick-up windows. Yet, Curacao often relies on its alleged return policies to refuse consumers' return attempts, claiming that merchandise is "final sale" or subject to a 10% or 15% restocking fee. Curacao associates are incentivized to reject valid returns because their strict sales goals, their compensation, and ultimately their jobs are at stake.

g. Debt Collection. When consumers fall behind in their monthly payments, Curacao's debt collection agents harass them by calling early in the morning or late at night, berating them, and threatening them with litigation, arrest, losing their home, and/or ruined credit reports. Curacao's debt collection agents also reveal details about debts to consumers' relatives, roommates, neighbors, coworkers, and/or employers. Curacao follows up its debt collection calls by sending written debt collection notices to consumers that threaten actions it does not intend to—or cannot legally—take, including seizure of consumers' homes. In some instances, Curacao continues debt collection efforts against consumers, including negative reporting to the credit reporting agencies, months and even years after having received payment in full.

h. Small Claims. Curacao files 250 to 400 small claims actions for allegedly delinquent debt against its consumers each month. Until recently, Curacao used an unregistered process server who failed to personally serve consumers, and fabricated proofs of

service. Improper or non-existent service prevented numerous consumers from contesting their alleged debt in court or seeking a stipulated judgment with Curacao. Through subsequent orders and wage garnishment, Curacao has collected on default judgments against consumers who never received proper notice of the small claims lawsuits, and had no opportunity to be heard in court. Curacao also hired an independent contractor to represent the company at small claims hearings by falsely claiming that he was Curacao's in-house "collector." This independent contractor has, on many occasions, testified against consumer defendants and provided information to the court about Curacao records and the alleged consumer debt owed.

24. When consumers attempt to contact Curacao about unauthorized contract add-ons, defective products, poor customer service, harassing debt collection, or subpar warranty service, they are confronted with long wait times. Their telephone calls are transferred among several Curacao customer service representatives, and often get disconnected in the process. Customer service representatives are rarely authorized to resolve issues themselves, so consumers are often told that someone will call them back. Consumers routinely wait weeks for a callback and, in many cases, never receive one. Consumers who go directly to a Curacao store to lodge a complaint are often confronted by hostile employees and managers who claim that nothing can be done because the consumer signed the contract and should have known what it entailed. When a consumer persists in her complaint, Curacao elevates the complaint to its Escalations Department, where it is ultimately vetted by executives. Even if Curacao resolves these elevated complaints, the resolution rarely involves making the consumer whole.

25. The pervasiveness of Curacao's unlawful, unfair, and fraudulent conduct is perpetuated by the company's sales model and corporate culture. Curacao requires its sales associates to meet daily, weekly, and monthly sales goals for each of the following categories: merchandise, accessories, warranties, services (such as delivery or installation), and approved credit applications. The monthly sales goals, however, are not always clear and often increase unexpectedly in the middle of the month. A sales associate who was on target to meet her monthly goals may suddenly discover, in the third week of the month, that Curacao has raised her goals to a level that is unattainable. Curacao sales associates often express confusion about how their sales goals are calculated and adjusted. Many are unable to meet their monthly goals without resorting to unlawful, unfair, or fraudulent tactics because there simply are not enough customers coming through their department.

26. Curacao strictly enforces its sales goals through constant monitoring of its employees. Curacao managers are required to meet their own departmental sales goals for all categories. They are instructed to create a sense of urgency in their sales associates by checking in with them on an hourly basis to ensure they are meeting goals for services, accessories, and warranties. Sales associates who are not meeting all of their goals are often approached or called by their managers and reprimanded or berated. At times, managers will actually interrupt a sale and take over communications with a particular consumer to ensure that the consumer purchases services, accessories, and a warranty along with merchandise.

27. Curacao also enforces its sales goals through its employee review process. In periodic formal perfor-

mance reviews, sales associates are rated on their ability to exceed their sales goals in each category. A sales associate cannot earn the highest performance ranking unless she has actually achieved well over 100% of her goals. Sales associate hourly pay is adjusted accordingly; if an associate exceeds her goals, her hourly pay may increase, but if she fails to meet her goals, her hourly pay often decreases, sometimes by as much as \$2.00 per hour. Managers are also subject to periodic formal performance reviews, in which they are rated and ranked based on their department's ability to sell beyond its goals in each category. Sales associates and managers both receive written performance warnings for failing to meet their goals. These documents inform sales associates and managers that their continued failure to meet Curacao's sales goals in each category will result in demotion or termination. And, indeed, Curacao regularly demotes or terminates associates and managers for failing to meet their sales goals. These performance reviews, warnings, demotions, and terminations are regularly reviewed and approved by Curacao management and executives.

28. This combination of unrealistic and opaque sales goals, the constant monitoring of those sales goals, and the severe repercussions of falling short predictably and naturally drive Curacao's associates to engage in fraudulent behavior to meet their goals and keep their jobs.

29. Since the store's inception, Azarkman has been involved in creating and revising this compensation structure, as well as directing Curacao's retail and inventory strategy, communicating with executives and store management, and cultivating Curacao's corporate culture and corporate image.

FIRST CAUSE OF ACTION AGAINST ALL
DEFENDANTS
VIOLATIONS OF BUSINESS AND
PROFESSIONS CODE
SECTION 17500 ET SEQ.
(False or Misleading Statements)

30. The People reallege and incorporate by reference each of the paragraphs above as though fully set forth herein.

31. Defendants have violated, and continue to violate, Business and Professions Code section 17500 et seq. by making or disseminating; or causing to be made or disseminated, false or misleading statements with the intent to induce members of the public to purchase Curacao products when Defendants knew, or by the exercise of reasonable care should have known, that the statements were false or misleading. The false or misleading statements include, but are not limited to, the following:

a. In print, online, and televised advertisements, as well as in in-store displays, Defendants advertise merchandise for sale at certain prices, but then refuse to sell that merchandise at the advertised price unless the consumer also agrees to purchase a warranty, services, or accessories—a condition that is not stated in the advertisements;

b. In print and online advertisements, as well as in in-store displays, Defendants advertise merchandise for sale at specified monthly payments based on an APR of 19.99%, an interest rate that most consumers do not get;

c. Defendants fail to honor prices as stated in the in-store displays; and

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d. Defendants misrepresent used or second-hand merchandise as new.

SECOND CAUSE OF ACTION AGAINST ALL
DEFENDANTS
VIOLATIONS OF BUSINESS AND
PROFESSIONS CODE
SECTION 17200 ET SEQ.
(Unlawful, Unfair, and/or Fraudulent Business
Practices)

32. The People reallege. and incorporate by reference each of the paragraphs above as though fully set forth herein.

33. Defendants have engaged, and continue to engage, in unlawful, unfair, or fraudulent acts or practices, which constitute unfair competition within the meaning of Section 17200 of the Business and Professions Code. Defendants' acts or practices include, but are not limited to, the following:

a. Defendants have violated Business and Professions Code section 17500 et seq., as alleged above in the First Cause of Action.

b. Defendants have violated the Consumer Legal Remedies Act, Civil Code section 1770 et seq., by:

i. Selling used and secondhand items as new, in violation of Civil Code section 1770, subdivision (a)(6);

ii. Advertising items for sale with an intent not to sell them as advertised, in violation of Civil Code section 1770, subdivision (a)(9);

iii. Advertising items for sale with an intent not to supply reasonably expectable demand, in violation of Civil Code section 1770, subdivision (a)(10);

iv. Adding items to consumer contracts without consumers' knowledge or consent, in violation of Civil Code section 1770, subdivision (a)(13), (14), (16), and (19);

v. Misleading consumers about the price of items added to their contracts, in violation of Civil Code section 1770, subdivision (a)(13), (14), and (16); and

vi. Misleading consumers about the terms or conditions of Curacao's contracts, in violation of Civil Code section 1770, subdivision (a)(14).

c. Defendants have violated the California Translations Act, Civil Code section 1632 et seq., by:

i. Failing to provide a full Spanish-language translation of Curacao contracts to consumers who negotiated their purchase in Spanish, in violation of Civil Code section 1632, subdivision (b); and

ii. Failing to conspicuously display a notice stating that Curacao is required to provide a contract in Spanish to consumers who negotiate their purchase in Spanish, in violation of Civil Code section 1632, subdivision (f).

d. Defendants have violated Business and Professions Code section 9855.2, subdivision (a) by issuing, selling, or offering for sale Curacao service contracts without filing with the director of the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation sufficient proof of financial backing for those contracts.

e. Defendants have violated Business and Professions Code section 9855.3 by:

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i. Issuing and using a service contract without first filing with the director of the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation the service contract form; and

ii. Failing to file with their application for registration and application for registration renewal the requisite proof of financial backing.

f. Defendants have violated California Code of Regulations section 2758 by failing to provide to the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation the records they are required to maintain.

g. Defendants have violated Civil Code section 1723, subdivision (a) by failing to conspicuously display return policies for items on which they refuse to give full cash or credit refunds or equal exchanges.

h. Defendants have violated the Rosenthal Fair Debt Collection Practices Act, Civil Code section 1788 et seq., by:

i. Threatening to arrest, garnish the wages of, and/or seize the property or homes of, consumers who owe debts to Curacao, even when such action was not in fact contemplated or permitted by law, in violation of Civil Code section 1788.10;

ii. Harassing consumers with frequent and repeated telephone calls, often made at times known to be inconvenient, in violation of Civil Code sections 1788.11 and 1788.17;

iii. Communicating repeatedly with persons other than the consumer for the purpose of acquiring location information about the consumer

and/or discussing the details of consumers' debts with consumers' employers or family members, when such communication was not necessary to the collection of debt, in violation of Civil Code sections 1788.12 and 1788.17; and

iv. Collecting or attempting to collect debts from consumers when Curacao knew that service of process of the underlying small claims actions had not been legally effected, in violation of Civil Code section 1788.15.

i. Defendants have violated the Song-Beverly Consumer Warranty Act, Civil Code section 1790 et seq., by:

i. Failing to provide consumers at or before the time of purchase a copy of the service contract sold or a brochure which specifically describes the terms, conditions, and exclusions of the service contract sold, in violation of Civil Code section 1794.41, subdivision (a)(2); and

ii. Failing to provide consumers with a full refund for service contracts on home electronic products or home appliances returned within 30 days of purchase, and where no claim was filed, in violation of Civil Code section 1794.41, subdivision (a)(4)(A).

j. Defendants have violated the Small Claims Act, Code of Civil Procedure section 116.110 et seq., by:

i. Failing to timely serve consumers with Curacao's claim and the associated order to appear, in violation of Code of Civil Procedure section 116.340, subdivisions (b) and (c); and

ii. Authorizing an independent contractor to appear on Curacao's behalf and participate in

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small claims actions, in violation of Code of Civil Procedure section 116.540, subdivision (c).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. Pursuant to Business and Professions Code section 17535, that Defendants, along with Defendants' successors, agents, representatives, employees, and all persons who act in concert with Defendants, be permanently enjoined from making any false or misleading statements in violation of Business and Professions Code section 17500 as alleged in this Complaint;

2. Pursuant to Business and Professions Code section 17203, that the Court enter all orders necessary to prevent Defendants, as well as Defendants' successors, agents, representatives, employees, and all persons who act in concert with Defendants from engaging in any act or practice that constitutes unfair competition in violation of Business and Professions Code section 17200;

3. Pursuant to Business and Professions Code section 17203, that the Court enter all orders or judgments as may be necessary to restore to any person in interest any money or other property that Defendants may have acquired by violations of Business and Professions Code section 17200, as proved at trial;

4. Pursuant to Business and Professions Code section 17536, that the Court assess a civil penalty of two thousand five hundred dollars (\$2,500) against Defendants for each violation of Business and Professions Code section 17500, as proved at trial;

5. Pursuant to Business and Professions Code section 17206, that the Court assess a civil penalty of two thousand five hundred dollars (\$2,500) against Defendants for each violation of Business and Professions Code section 17200, as proved at trial;

6. Pursuant to Business and Professions Code section 17206.1, subdivision (a), that the Court assess, in addition to any penalties assessed under Business and Professions Code sections 17206 and 17536, a civil penalty of two thousand five hundred dollars (\$2,500) against Defendants for each violation of Business and Professions Code section 17200 perpetrated against senior citizens or disabled persons, as proved at trial;

7. That Plaintiff recover its costs of suit, including costs of investigation; and

8. For such other and further relief that the Court deems just and proper.

Dated: October 19, 2017

Respectfully Submitted,

XAVIER BECERRA

Attorney General of California

NICKLAS A. AKERS

Senior Assistant Attorney General

MICHELE VAN GELDEREN

Supervising Deputy Attorney General

/s/ Alicia K. Hancock

ALICIA K. HANCOCK

Deputy Attorney General

*Attorneys for Plaintiff the People
of the State of California*

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APPENDIX H

XAVIER BECERRA

Attorney General

State of California

DEPARTMENT OF JUSTICE

300 SOUTH SPRING STREET, SUITE 1702
LOS ANGELES, CA 90013

Public: (213) 269-6000

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E-Mail: Michael.Reynolds@doj.ca.gov

March 8, 2019

Via FedEx and E-Mail

Starr Indemnity & Liability Company

ATTN: Financial Lines Department

399 Park Ave., 8th Floor

New York, NY 10022

StarrFLPLClaims@starrcompanies.com

RE: Policy Number: 1000620507171

Insured: ADIR International, LLC dba La Curacao

People of the State of California v. Adir

International, LLC, dba Curacao, et al.,

Case No. BC680425 (Cal. Super. Ct.) .

To whom it may concern:

I write on behalf of the California Attorney General's Office, which is representing the People of the State of California ("the People") in a civil law enforcement action against your insured, ADIR International, LLC dba La Curacao ("ADIR"), and its CEO, Ron Azarkman. The People's action, *People of the State of California v. Adir International, LLC, dba Curacao, et al.*, Case No. BC680425 (Cal. Super. Ct.), pending in Los Angeles

County Superior Court, alleges that ADIR and Mr. Azarkman have violated California's Unfair Competition Law, Business & Professions Code section 17200 ("UCL"), and False Advertising Law, Business & Professions Code section 17500 ("FAL"). I have attached a copy of the People's complaint for your convenience.

It has come to our attention that Starr Indemnity & Liability Co. may be providing defense coverage to ADIR and/or Mr. Azarkman under a Starr Policy No. 1000620507171 for *People vs. Adir International, LLC*. Please be advised that insurance coverage for such law enforcement actions is prohibited under California law. California Insurance Code section 533.5 mandates that:

"(a) No policy of insurance shall provide, or be construed to provide, any coverage or indemnity for the payment of any fine, penalty, or restitution in . . . any action or proceeding brought pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of, or Chapter 1 (commencing with Section 17500) of Part 3 of, Division 7 of the Business and Professions Code by the Attorney General

(b) No policy of insurance shall provide, or be construed to provide, any duty to defend . . . any claim . . . in any action or proceeding brought pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of, or Chapter 1 (commencing with Section 17500) of Part 3 of, Division 7 of the Business and Professions Code in which the recovery of a fine, penalty, or restitution is sought by the Attorney General

. . .

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(d) Any provision in a policy of insurance which is in violation of subdivision (a) or (b) is contrary to public policy and void.”

The California Legislature enacted this statute prohibiting such coverage because it is contrary to public policy to have an insurer pay defense costs, restitution, fines, or penalties on behalf of defendants in civil and criminal prosecutions. (See *Mt. Hawley Ins. Co. v. Lopez* (2013) 215 Cal.App.4th 1385, 1402-1404.)

The People’s action here against ADIR and Mr. Azarkman appears to be the type of action for which coverage is prohibited under Insurance Code section 533.5. The action alleges claims against the defendants only under the UCL and the FAL, and seeks only restitution, civil penalties, and injunctive relief. There appears to be no potential for coverage under Policy No. 1000620507171 or any insurance policy under California law.

Please let us know if Starr is currently providing defense coverage to ADIR or Mr. Azarkman and the legal authority to do so. You may contact me at the phone number or email listed above.

Sincerely,

/s/ Michael Reynolds
MICHAEL REYNOLDS
Deputy Attorney General

For XAVIER BECERRA
Attorney General

cc: Jeffrey Tsai, Esq. (Counsel for ADIR and Mr. Azarkman)

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APPENDIX I

[LOGO]

Troutman Sanders LLP
5 Park Plaza, Suite 1400
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May 17, 2019

VIA EMAIL (AFinch@ReedSmith.com)

Amber Finch, Esq.
Reed Smith LLP
355 South Grand Avenue, Suite 2900
Los Angeles, CA 90071

Re: Insurer: Starr Indemnity a Liability
Company
Insured: Adir International, LLC dba La
Curacao ("Adir")
Claimant: The People of the State of
California
Policy: Resolute Portfolio for Private
Companies
Policy No.: 100006200507171
Policy Period: October 1, 2017 to October 1,
2018
Starr Claim No.: FLSIL0445472
Matters: Coverage Action brought by
Adir against Starr

Dear Ms. Finch:

We write in follow up to our letter to Adir dated April 23, 2019. As you know, Troutman Sanders LLP serves as counsel for Starr Indemnity & Liability Company (“Starr”) concerning Adir’s coverage under the above-referenced policy (“Policy”). We have addressed this letter to you based on our understanding that you serve as Adir’s insurance representative in this matter. Please let us know if that is incorrect.

This letter supplements, and fully incorporates herein, all of Starr’s prior correspondence in this matter. This letter is intended to provide you with additional information regarding Adir’s coverage for the lawsuit, *People of the State of California v. Adir International, LLC, dba Curacao, et al.*, No. BC680425 (Cal. Super. Ct. Los Angeles Cty. Oct. 19, 2017) (“Underlying Action”), in light of (1) communications that Starr has received from the California Attorney General’s Office (“AGO”) informing Starr that, under California Code of Insurance § 533.5 (“Section 533.5”), Starr may not provide coverage to Adir in the Underlying Action, and (2) the coverage action that Adir has filed against Starr, *Adir International, LLC, a Delaware Limited Liability Company, dba Curacao (formerly known as La Curacao) and Ron Azarkman, an individual, v. Starr Indemnity & Liability Company and Does 1 through 100, inclusive*, No. 19STCV13200 (Cal. Super. Ct. Los Angeles Cty. Apr. 17, 2019) (“Coverage Action”).

We summarize below certain of the allegations against Adir in the Underlying Complaint, and, in so doing, we recognize that such allegations may be without substance. Nothing in this letter is intended to suggest that they have any legal or factual merit. Nor does Starr reallege the complete allegations in the Underlying Action in this letter. For a more complete

understanding of the AGO's allegations against Adir, we would refer you to the pleadings in the Underlying Action, which you may read with this letter.

Additionally, Starr continues to reserve all of its rights, whether or not previously asserted, as it may have under the terms of the Policy and applicable law, including, without limitation, Starr's rights to seek reimbursement of all amounts paid to date in the Underlying Action. Nothing in this letter shall be construed as a waiver of Starr's rights, which Starr expressly reserves, including, without limitation, any statement or position that Starr may assert in the Coverage Action. Any position or statement in this letter shall be superseded and replaced by any position or statement that Starr asserts in any filing in the Coverage Action.

I. FACTUAL BACKGROUND

A. The Policy

Starr Indemnity & Liability Company ("Starr") issued Resolute Portfolio for Private Companies Insurance Policy, No. 1000620507171 ("Policy") (renewal of No. 1000056959161), to Adir International, LLC dba La Curacao ("Adir") for the Policy Period of October 1, 2017 to October 1, 2018, with a Pending or Prior Date of October 1, 2005 for the Directors & Officers Liability Coverage Section ("D&O Coverage Section"). (Policy Declarations, Items 1, 2, 6.A.)

The Policy has aggregate Limits of Liability of \$10,000,000 for the D&O/EPL/Fiduciary Coverage Sections and is subject to a Retention of \$100,000 for D&O Coverage Section Insuring Agreements B. and C. (Policy Declarations, Items 4.B.(i), C., D.; 5.A.)

The applicable Insuring Agreements B. and C. in the D&O Coverage Section of the Policy state as follows:

- B. The Insurer shall pay on behalf of the Company the Loss arising from a Claim first made during the Policy Period (or Discovery Period, if applicable) against any Insured Person for any Wrongful Act, and reported to the Insurer in accordance with the terms of this policy, if the Company has indemnified the Insured Person for such Loss.
- C. The Insurer shall pay on behalf of the Company the Loss arising from a Claim first made during the Policy Period (or Discovery Period, if applicable) against any Insured Person for any Wrongful Act, and reported to the Insurer in accordance with the terms of this policy.

(D&O Coverage Section, § 1.B., C.)

B. The Underlying Action against Adir

On October 19, 2017, the State of California brought a civil action, *People of the State of California v. Adir International, LLC, dba Curacao, et al.*, No. BC680425 (Cal. Super. Ct. Los Angeles Cty. Oct. 19, 2017) (“Underlying Action”) against Adir, Adir’s subsidiary Curacao, and Ron Azarkman, who is alleged to be the CEO of Adir and CEO/CFO/Director of Curacao (collectively, “Defendants”).

The Underlying Action seeks a permanent injunction, civil penalties, restitution, and other equitable relief under Unfair Competition Law (“UCL”) (i.e., Section 17200, et seq.) and the False Advertising Law (“FAL”) (i.e., Section 17500, et seq.) of the Business and

Professions Code, based on allegations that the Defendants violated consumer protection laws through bait-and-switch advertising and bundling, store credit practices, contract add-ons, contract translation deficiencies, warranties, return practices, debt collection, and small claims tactics.¹

On October 26, 2017, Adir tendered the Underlying Action to Starr under the Policy.

On December 15, 2017, Starr issued a response letter stating that it was withdrawing its denial of coverage and would agree to defend the Underlying Action subject to the terms of the Policy.

C. The AGO Letter and Starr's suspension of defense payments

The California Attorney General's Office ("AGO"), by letter dated March 8, 2019 (the "AGO Letter"), brought to Starr's attention the provisions of Section 533.5 as they may impact Adir's coverage under the Policy for the Underlying Action. The AGO advised Starr that the Underlying Action is the type of action for which coverage is prohibited under Section 533.5 because the Underlying Action alleges claims only under the provisions of California's Uniform Competition Law (BPC §§ 17200, et seq.) ("UCL") and False Advertising

¹ Starr is aware that, on May 2, 2019, the AGO filed a Motion for Leave to File First Amended Complaint, which is pending in the Underlying Action and will come on hearing before the court on May 24, 2019. As discussed more fully below, the AGO's proposed amended complaint appears to allege additional predicate acts in support of Adir's alleged violation of the UCL, and therefore, would not appear to substantively impact any coverage issues concerning the application of Section 533.5 regarding the Underlying Action.

Law (BPC §§ 17500, et seq.) (“FAL”) and seeks only restitution, civil penalties, and injunctive relief.

On March 29, 2019, Starr issued a letter to Adir’s defense counsel, DLA Piper, advising that Starr will suspend payments of defense costs based on the AGO’s letter dated March 8, 2019.

By letter dated April 5, 2019 Adir responded to Starr and asserted, among other things, that Section 533.5 does not apply to the entire Underlying Action because it also alleges violations of statutes other than the UCL and the FAL and seeks injunctive relief in addition to any “a fine, penalty, or restitution.” Therefore, Adir requested that Starr commit to continue providing a defense by April 12, 2019.

On April 12, 2019, Starr responded by letter to Adir’s letter dated April 5, 2019, stating that Starr will follow up with the AGO regarding the points that Adir raised.

Starr also sent a letter that same day to the AGO seeking clarification regarding the points raised in the AGO’s letter dated March 8, 2019. Starr asked whether it is the AGO’s position that Section 533.5 applies in light of the circumstance that the Action seeks injunctive relief in addition to any “fine, penalty or restitution” because Adir contends that it does not apply to actions seeking injunctive relief. Additionally, Starr has asked whether it is the AGO’s position that Section 533.5 applies even when predicate statutes are alleged in the complaint.

On May 13, 2019, DAG Reynolds provided a letter to Starr (the “AGO Response Letter”), which was copied to Adir, responding to Starr’s April 12, 2019 letter. Such letter confirmed the AGO’s position that Section 533.5 “clearly prohibits any defense or indemnity cov-

erage for [the Underlying Action], even though injunctive relief is sought and even though the complaint alleges other statutory violations as predicate unlawful acts under the UCL cause of action.” Attached to this letter is a true and correct copy of the AGO Response Letter.

D. The Coverage Action filed by Adir against Starr

On April 17, 2019, Adir provided Starr with a letter stating that “as a result of Starr’s decision to suspend defense payments to Adir’s underlying defense counsel, DLA Piper, Adir had no choice but to file an action against Starr for declaratory relief and breach of contract.” The letter attached a courtesy copy of the complaint, without exhibits, in the Coverage Action.

On April 23, 2019, through its appointed process server, Starr was served with a summons and complete copy of the complaint in the Coverage Action.

II. APPLICATION OF SECTION 533.5 TO THE UNDERLYING ACTION

Starr has provided Adir with a defense in the Underlying Action from the time that Starr accepted Adir’s tender of the Underlying Action on December 15, 2017. Upon receiving the AGO Letter, Starr did not withdraw its defense but merely suspended defense payments and informed Adir that Starr would seek clarification from the AGO regarding Starr’s potential legal obligations under Section 533.5. Nevertheless, on April 17, 2019, Adir filed the Coverage Action against Starr.

Starr has thoroughly researched and sought clarification from the AGO regarding the application of Section 533.5 to the Underlying Action. Upon careful consideration of these issues, as discussed more fully

below, Starr has determined that coverage does not exist for the Underlying Action because Section 533.5 precludes, both, a defense and indemnity for this matter.

The complete text of Section 533.5 is as follows:

(a) No policy of insurance shall provide, or be construed to provide, any coverage or indemnity for the payment of any fine, penalty, or restitution in any criminal action or proceeding or in any action or proceeding brought pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of, or Chapter 1 (commencing with Section 17500) of Part 3 of, Division 7 of the Business and Professions Code by the Attorney General, any district attorney, any city prosecutor, or any county counsel, notwithstanding whether the exclusion or exception regarding this type of coverage or indemnity is expressly stated in the policy.

(b) No policy of insurance shall provide, or be construed to provide, any duty to defend, as defined in subdivision (c), any claim in any criminal action or proceeding or in any action or proceeding brought pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of, or Chapter 1 (commencing with Section 17500) of Part 3 of, Division 7 of the Business and Professions Code in which the recovery of a fine, penalty, or restitution is sought by the Attorney General, any district attorney, any city prosecutor, or any county counsel, notwithstanding whether the exclusion or exception regarding the duty to defend this type of claim is expressly stated in the policy.

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(c) For the purpose of this section, “duty to defend” means the insurer’s right or obligation to investigate, contest, defend, control the defense of, compromise, settle, negotiate the compromise or settlement of, or indemnify for the cost of any aspect of defending any claim in any criminal action or proceeding or in any action or proceeding brought pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of, or Chapter 1 (commencing with Section 17500) of Part 3 of, Division 7 of the Business and Professions Code in which the insured expects or contends that (1) the insurer is liable or is potentially liable to make any payment on behalf of the insured or (2) the insurer will provide a defense for a claim even though the insurer is precluded by law from indemnifying that claim.

(d) Any provision in a policy of insurance which is in violation of subdivision (a) or (b) is contrary to public policy and void.

Cal. Ins. Code § 533.5 (emphasis added).

As such provisions show, Section 533.5 applies where any California prosecutor has brought a criminal or civil action or proceeding against an insured under the UCL or the FAL. *See also Bank of the W. v. Superior Court*, 2 Cal. 4th 1254, 1271 (1992).

Though the Policy states that Starr has the “right and duty to defend any Claim against any Insured covered under this policy” (General Terms and Conditions, § 6), the Starr Policy contains a Conformity to Statute provision, which states as follows:

Any terms of this policy which are in conflict with the terms of any applicable laws constru-

ing this policy, including any endorsement to this policy which is required by any state Department of Insurance, or equivalent authority (“State Amendatory Endorsement”) are hereby amended to conform to such laws. Nothing herein shall be construed to restrict the terms of any State Amendatory Endorsement.

In the event any portion of this policy shall be declared or deemed invalid or unenforceable under applicable law, such invalidity or unenforceability shall not affect the validity or enforceability of any other portion of this policy.

(General Terms and Conditions, § 21.) Therefore, the Policy must be read to conform to Section 533.5 to the extent any provision in the Policy conflicts.

Even if the Policy did not contain such provision, the defense provisions of the Policy would be void under the plain terms of Section 533.5, subsection (d), which states that the statute applies regardless of whether such exception is stated in any insurance policy. Cal. Ins. Code § 533.5(d). Section 533.5 thus would supersede any conflicting provision in the Policy.

Here, the Underlying Action brought by the AGO alleges a First Cause of Action under the FAL based on Defendants’ alleged false or misleading statements and a Second Cause of Action for Defendants’ alleged unlawful, unfair, and/or fraudulent business practices. The AGO’s proposed First Amended Complaint, if adopted, would add a Third Cause of Action, which alleges additional violations of the UCL.

Adir’s position that Section 533.5 does not apply to the portions of the Underlying Action that allege violations of statutes outside of the UCL or FAL, or to

the injunctive relief portion of the Underlying Action, is based on a misreading of the statute.

While Subsection (a) applies to bar indemnity for the payment of any “fine, penalty, or restitution,” the following subsections are broader as concerns the duty to defend.

Subsection (b) bars *any* duty to defend *any* claim in *any* action or proceeding brought pursuant to the UCL or FAL *in which* the recovery of a fine, penalty, or restitution is sought by the Attorney General. Cal. Ins. Code § 533.5(b). The term “in which” indicates that the statute’s ban on the duty to defend in such actions is not limited to the portion of the action that concerns any fine, penalty, or restitution but, rather, applies to the entire action “in which” such relief is sought. Also, the AGO has stated that it would not make sense to distinguish between restitution and injunctive relief because “[e]very civil action brought under the UCL and the FAL is an ‘Action[] for [an] Injunction[].’” (See AGO Response Letter at 2 (citing Bus. & Prof. Code §§ 17204, 17535).)

Subsection (b) of Section 533.5 must be read in light of Subsection (c), which defines the “duty to defend” as concerning *any aspect of defending any claim* in any action or proceeding described in Subsection (b). The term “any aspect” could not be more broadly stated, and reasonably indicates that Subsection (b) applies to the entire Underlying Action. *See Los Angeles Cty. MTA v. Alameda Produce Mkt., LLC*, 52 Cal. 4th 1100, 1107 (2011) (In construing a statute, courts “construe the words in question in context, keeping in mind the statute’s nature and obvious purposes.”).

A plain reading of such broadly worded provisions reasonably cannot be construed as barring a duty to

defend *only* as to the portion of any such action that concerns a “fine, penalty, or restitution.” Instead, Section 533.5 applies to any predicated acts or request for injunctive relief.

A California court has expressly determined that, under Section 533.5, “no reasonable factfinder could conclude” that a request for injunctive relief constitutes “damages” under an insurance policy because Section 533.5 “expressly prohibits insurers from providing coverage or a defense for any claims brought pursuant to the UCL.” *Allen v. Steadfast Ins. Co.*, No. CV 141218 JC, 2014 WL 12569527, at *17 (C.D. Cal. Aug. 22, 2014). *See also United Cmty. And Hous. Dev. Corp. v. Ace Prop. And Cas. Ins. Co.*, 2004 WL 2633921, at *4 (Cal. Ct. App. Nov. 19, 2004) (“the complaint was filed by public and private attorneys general who sought only prospective equitable relief from unfair, unlawful and fraudulent business practices—claims that are uninsurable as a matter of law”); *Admiral Ins. Co. v. N. Am. Arms, Inc.*, 2003 WL 21588226, at *7 (Cal. Ct. App. July 11, 2003) (“The policies require a claim for damages and do not provide coverage for claims for declaratory and injunctive relief because such coverage is not permitted by law.”).

Note that the UCL, itself, provides a right of action to seek injunctive relief. *See* Cal. Bus. & Prof. Code § 17203 (“Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction.”). Therefore, the prohibition under Section 533.5 of providing any duty to defend an action under the UCL includes any request for injunctive relief.

Common sense and legislative history also make clear that a request for injunctive relief would not somehow render Section 533.5 inapplicable. *See Mt. Hawley Ins.*

Co. v. *Lopez*, 215 Cal.App.4th 1385, 1417 (2013) (“Although it is not necessary to do so, we confirm our interpretation of section 533.5, subdivision (b), by applying ‘reason, practicality, and common sense to the language’ of the statute.”). Section 533.5 was intended broadly “to preclude insurers from providing a defense in civil and criminal UCL and FAL actions brought by the Attorney General” *Id.* at 1410. There is no indication that the legislature intended to remove from Section 533.5 any action under the UCL or FAL that otherwise would not qualify for a defense but for its request for injunctive relief.

As the AGO has highlighted on this point, “[c]onsistent with the statutory text and legislative history, every court that has considered the issue has unanimously agreed that Insurance Code section 533.5 applies to bar coverage for FAL or UCL actions that seek injunctive relief.” *See* AGO Response Letter at 3 (citing cases).

Nor would the Underlying Action’s allegations of predicate unlawful acts remove, in any part, the Underlying Action from Section 533.5. As the AGO has stated, “[a]ny contrary interpretation would frustrate the purposes of the statute because, as a practical matter, most UCL claims brought by the Attorney General or other public prosecutors include predicate violations of other statutes.” AGO Response Letter at 4.

ADIR’s position that Section 533.5 does not apply is based on a misreading of the pleadings in the Underlying Action. The alleged violations of statutes outside of the UCL and FAL are alleged in support of the AGO’s causes of action for violations of the UCL and FAL.

The First Cause of Action alleges only violations of the FAL.

The Second Cause of Action, and the proposed Third Cause of Action, allege multiple provisions of California law following the statement:

Defendants have engaged, and continue to engage, in unlawful, unfair, or fraudulent acts or practices, which constitute unfair competition within the meaning of Section 17200 of the Business and Professions Code. Defendants' acts or practices include, but are not limited to, the following:

See Underlying Action, Complaint, ¶ 33.

The Underlying Action does not allege causes of action for such other statutory violations but merely alleges them as proof of Defendants' alleged violations of the UCL. Therefore, even assuming that an action could theoretically make allegations that fall outside of Section 533.5, such would not appear to be the circumstance in the Underlying Action.

III. CONCLUSION

For the reasons discussed above, Section 533.5 precludes Starr from providing Adir with any defense or indemnity for the Underlying Action. Therefore, Starr will not pay the pending defense payments to Adir and its defense counsel in the Underlying Action.

Starr intends to seek a judicial determination on these issues in the Coverage Action. In that regard, please be advised that Starr will oppose any action that Adir might take to stay the Coverage Action. However, Starr is happy to work with Adir to quickly resolve the Coverage Action by facilitating, to the extent possible, an early judicial determination.

Starr continues to reserve all of its rights in this matter under the terms and conditions of the Policy

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and applicable law. If you believe all or part of this claim has been wrongfully denied or rejected, you may have the matter reviewed by the California Department of Insurance by contacting the following address:

State of California Department of Insurance
Claims Service Bureau, 11th Floor
300 South Spring Street, South Tower
Los Angeles, California 90013
1-800-927-4357

Sincerely,

/s/ Kevin F. Kieffer

Kevin F. Kieffer

Michael L. Huggins

cc: Olivia Nelson (Olivia.Nelson@starrcompanies.com)
Bill Lutz (William.Lutz@starrcompanies.com)
Jennifer A. Ratner (jenr@icuracao.com)

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APPENDIX J

XAVIER BECERRA
Attorney General

State of California
DEPARTMENT OF
JUSTICE [SEAL]

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May 13, 2019

Via U.S. Mail and E-Mail

Kevin F. Kieffer
Michael L. Huggins
Troutman Sanders
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Kevin.Kieffer@troutman.com
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RE: Starr Indemnity & Liability Company
Insured: ADIR International, LLC dba La Curacao
Policy Number: 1000620507171
Claim Number: FLSIL0445472
People of the State of California v. Adir
International, LLC, dba Curacao, et al., Case
No. BC680425 (Cal. Super. Ct.)

Counsel:

I write on behalf of the California Attorney General's Office in response to an April 12, 2019 letter from Jana I. Lubert of Lewis Brisbois, counsel for Starr Indemnity & Liability Company ("Starr") at the time. I understand that you now represent Starr in this matter and have asked that further

correspondence regarding this matter be directed to you.

As you know, the Attorney General's Office is representing the People of the State of California ("the People") in *People of the State of California v. Adir International, LLC, dba Curacao, et al.*, Case No. BC680425 (Cal. Super. Ct.), a civil law enforcement action with two causes of action: (1) violation of the False Advertising Law, Business & Professions Code section 17500 ("FAL"); and (2) violation of the Unfair Competition Law, Business & Professions Code section 17200 ("UCL"). As I noted in my May 8, 2019 letter to Starr, it is our office's position that insurance coverage for such law enforcement actions is prohibited under California Insurance Code section 533.5.

Ms. Lubert's April 12, 2019 letter asked for our office's position on two questions regarding the applicability of Insurance Code section 533.5: (1) whether section 533.5 applies to actions in which injunctive relief is sought; and (2) whether section 533.5 applies to *People v. Adir International, LLC*, in light of the inclusion of alleged violations of statutes other than the UCL and FAL. It is our office's position that Insurance Code section 533.5 clearly prohibits any defense or indemnity coverage for *People v. Adir International, LLC*, even though injunctive relief is sought and even though the complaint alleges other statutory violations as predicate unlawful acts under the UCL cause of action, as discussed below.

Section 533.5 Prohibits Any Duty to Defend UCL or FAL Cases Where Any Equitable Relief Is Sought by the Attorney General

Insurance Code section 533.5 bars any duty to defend against any claims brought by the Attorney

General under the UCL or the FAL regardless of the specific remedies sought. This is evident from the language of section 533.5, the UCL, and the FAL, the Legislature's purpose in enacting section 533.5, and the relevant case law.

As an initial matter, defense coverage for *People v. Adir International, LLC*, is barred under the plain language of section 533.5, which states that “[n]o policy of insurance shall provide, or be construed to provide, any duty to defend . . . any claim . . . in any action or proceeding brought pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of, or Chapter 1 (commencing with Section 17500) of Part 3 of, Division 7 of the Business and Professions Code in which the recovery of a fine, penalty, or restitution is sought by the Attorney General.” *People v. Adir International, LLC*, is an action brought pursuant to the UCL (section 17200 of the Business and Professions Code) and the FAL (section 17500 of the Business and Professions Code) in which the recovery of civil penalties and restitution is sought by the Attorney General. The fact that the Attorney General is also seeking an injunction under the same two statutes does not, as a textual matter, remove this action from the scope of section 533.5.

It also does not make sense to distinguish between “restitution” and “injunctive relief,” as “restitution” is simply a form of injunctive relief under the UCL and the FAL. *Every* civil action brought under the UCL and the FAL is an “Action[] for [an] Injunction[].” (See Bus. & Prof. Code, § 17204; Bus. & Prof. Code, § 17535 [“Actions for injunction under this section may be prosecuted by the Attorney General . . .”].) Both statutes allow for only two types of remedies in these civil actions: (1) injunctive relief (Bus. & Prof. Code,

§ 17203 [“Injunctive Relief—Court Orders”]; Bus. & Prof. Code, § 17535 [“Obtaining Injunctive Relief”]); and (2) civil penalties [Bus. & Prof. Code, § 17206 (“Civil Penalty”); Bus & Prof. Code, § 17536 [“Penalty for Violation of Chapter”].) The code sections permitting injunctive relief state that any person or entity that violates the UCL or FAL “may be enjoined by any court of competent jurisdiction.” (Bus. & Prof. Code, §§ 17203, 17535.) As part of that general injunctive power, a court “may make such orders or judgments” necessary to prevent unfair competition “or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.” (Bus. & Prof. Code, §§ 17203, 17535.) The term “restitution” never appears in the statute; it is merely informal shorthand for the type of injunctive relief a court may issue under the UCL and the FAL to restore money or property to victims. (See *People v. Superior Court (Jayhill)* (1973) 9 Cal.3d 283, 286 [holding that restitution was permitted under prior version of FAL that only expressly allowed injunctive relief, as restitution was part of a court’s broad equitable power to issue injunctions].)

Thus, every FAL or UCL action seeking restitution is an action for injunctive relief. To exclude FAL or UCL actions from the scope of Insurance Code section 533.5 on the ground that the action seeks “injunctive relief” would render the statute a nullity; under such an interpretation, *no* FAL or UCL cases for restitution would fall within section 533.5. The only reasonable interpretation of section 533.5 is that the statute applies to every FAL or UCL case brought by the Attorney General, such as *People v. Adir International, LLC*, regardless of the specific remedies sought.

It is also clear from the legislative history of Insurance Code section 533.5 that the statute was intended to preclude insurance coverage (both for indemnity and defense) for any cases brought by the Attorney General under the FAL or UCL, regardless of the specific remedies sought. The legislation was sponsored by the Attorney General's Office to address the problems caused when insurance companies provided coverage for actions brought by the Attorney General under the FAL or the UCL. (Cal. Dept. of Consumer Affairs, Enrolled Bill Rep. on Assem. Bill No. 3920 (1987-1988 Reg. Sess.) prepared for Governor Deukmejian (Aug. 12, 1988), pp. 1-2.) As noted in the Senate's Floor Analysis of the legislation, coverage for these actions is contrary to public policy because having an insurance company fund defense and indemnity costs would fail to hold defendants personally accountable for acts of unfair competition or false advertising. "Instead of individual accountability, the litigation becomes a contest between the public entity and the insurance company in which the involvement of the person whose conduct is at issue is almost negligible." (Sen. Rules Com., Off. of Sen. Floor Analyses, analysis of Assem. Bill No. 3920 (1987-1988 Reg. Sess.) as amended May 9, 1988, pp. 1-2.) It "makes no public policy sense" to permit insurance companies to provide coverage "when the Attorney General or a district attorney seeks to enforce laws prohibiting unfair business practices [under the UCL] and false or misleading advertising [under the FAL]." (Assem. Comm. on Finance and Insurance, Committee Statement on Assem. Bill No. 3920 (1987-1988 Reg. Sess.)) Nothing in the legislative history suggests that the Legislature intended to allow insurers to provide defense or indemnity coverage for FAL or UCL actions when injunctive relief was sought; that would be

contrary to the Legislature's stated purpose. As noted above, every FAL or UCL action is an action for injunctive relief.

Consistent with the statutory text and legislative history, every court that has considered the issue has unanimously agreed that Insurance Code section 533.5 applies to bar coverage for FAL or UCL actions that seek injunctive relief. (See *Allen v. Steadfast Ins. Co.* (C.D. Cal., Aug. 22, 2014, No. CV 14-1218 JC) 2014 WL 12569527, at *17 [applying section 533.5 to prohibit defense and indemnity coverage for claim that “seeks injunctive relief pursuant to the UCL”]; *United Community And Housing Development Corp. v. Ace Property And Cas. Ins. Co.* (Cal. Ct. App., Nov. 19, 2004, No. B166360) 2004 WL 2633921, at *4 [finding that UCL claims which sought injunctive relief were “uninsurable as a matter of law,” in part based on Insurance Code section 533.5]; *Admiral Ins. Co. v. North American Arms, Inc.* (Cal. Ct. App., July 11, 2003, No. E032304) 2003 WL 21588226, at *3 [holding there was no duty to defend UCL action seeking injunctive relief based on Insurance Code section 533.5]; *American States Ins. Co. v. Canyon Creek* (N.D. Cal. 1991) 786 F.Supp. 821, 829 [“[B]ecause the action seeks injunctive relief and restitution [under the UCL] on behalf of all those who were defrauded by [the defendant's] allegedly unfair practices, coverage is expressly proscribed by Section 533.5 of the California Insurance Code.”].)

Section 533.5 Bars Any Duty to Defend UCL Claims Which Allege Violations of Other Statutes As Predicate “Unlawful” Acts

Insurance Code section 533.5 also prohibits coverage where the Attorney General alleges violations of other statutes as predicate violations under the UCL.

The UCL prohibits unlawful, unfair, and fraudulent business acts or practices. (Bus. & Prof. Code section 17200.) An “unlawful” business act or practice includes any activity that is forbidden by any law. Thus, the UCL “borrows” violations of other laws and makes them actionable as unlawful business practices. (*Farmers Ins. Exchange v. Superior Court* (1992) 2 Cal.4th 377, 383.) But a UCL claim is separate from the predicate violations. UCL claims “seek[] relief from alleged unfair competition” and do not seek to enforce “the statutes underlying [a] claim of unlawful business practice.” (*Rose v. Bank of America, N.A.* (2013) 57 Cal.4th 390, 397 [citing *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 570].) The UCL “provides its own distinct and limited equitable remedies for unlawful business practices, using other laws only to define what is ‘unlawful.’” (*Rose v. Bank of America, N.A., supra*, 57 Cal.4th at 397.)

The plain language of Insurance Code section 533.5 bars any duty to defend claims brought by the Attorney General under the UCL. Alleged predicate violations under a UCL claim are not claims or causes of action brought under those predicate statutes, as noted above. Thus, they have no relevance to the operation of Insurance Code section 533.5. Any contrary interpretation would frustrate the purposes of the statute because, as a practical matter, most UCL claims brought by the Attorney General or other public prosecutors include predicate violations of other statutes.

* * *

As you noted in your May 7, 2019 email, the People have filed a motion to amend the operative complaint in *People v. Adir International, LLC*. The hearing on

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that motion is currently scheduled for May 24, 2019. The proposed amended complaint adds a third cause of action, also brought under the UCL, which alleges additional predicate violations. Nothing in the proposed amended complaint would change the Attorney General's Office's position that coverage for *People v. Adir International, LLC* is barred by Insurance Code section 533.5. If the Court allows the amended complaint to be filed, coverage (defense or indemnity) would still be prohibited under section 533.5.

If you have any further questions regarding this matter, please feel free to contact me.

Sincerely,

/s/ Michael Reynolds
MICHAEL REYNOLDS
Deputy Attorney General

For XAVIER BECERRA
Attorney General

cc: Jennifer Ratner
(via email only at JenR@icuracao.com)