

JAN 30 2023

David W. Slayton

~~Shawn H. Carter~~, Executive Officer/Clerk of Court  
By Julian Araujo Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

Case No.: BC680425

THE PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff,

vs.

ADIR INTERNATIONAL, LLC. A  
DELAWARE LIMITED LIABILITY  
COMPANY ALSO DOING BUSINESS AS  
CURACAO AND LA CURACAO; RON  
AZARKMAN, AN INDIVIDUAL; AND DOES  
1 THROUGH 100, INCLUSIVE,  
Defendants

STATEMENT OF DECISION

This is an action brought by Plaintiff The People of the State of California ("Plaintiff" or "The People") against Defendant Adir International, LLC ("Defendant" or "Adir" or "Curacao") and Ron Azarkman ("Azarkman") under Business and Professions Code sec. 17200. The case came on for a court trial on September 28, 2022, and was submitted upon the filing of post-trial briefing on November 10, 2022. The parties requested a statement of decision by the Court. The parties agreed to file their own proposed statements of decision to assist the Court in preparing its own. The Court prepared a proposed statement of decision, and the parties filed their respective

1 objections. Having considered the objections of the parties, the Court submits its final  
2 statement of decision.

### 3 **The Complaint**

4  
5 On October 19, 2017, the People filed its original Complaint against Defendants.  
6 The Complaint asserted two causes of action: (1) violation of Business and Professions  
7 Code section 17500; and (2) violation of Business and Professions Code section 17200,  
8 et seq.

9 The second cause of action asserted violations of various statutes, including, *inter*  
10 *alia*, violations of the Consumer Legal Remedies Act (Civ. Code, § 1770, et seq.); the  
11 California Translations Act (Civ. Code, § 1632, et seq.); Business and Professions Code  
12 sections 9855.2 and 985.3; California Code of Regulations section 2758; Civil Code  
13 section 1723; the Rosenthal Fair Debt Collection Practices Act (Civ. Code, § 1788, et  
14 seq.); the Song-Beverly Consumer Warranty Act (Civ. Code, § 1790, et seq.); and the  
15 Small Claims Act. (Civ. Code, § 116.110.)

### 16 **The First Amended Complaint**

17  
18 On February 19, 2020, the People filed a First Amended Complaint. The First  
19 Amended Complaint asserted the same two causes of action: (1) violation of Business  
20 and Professions Code section 17500; and (2) violation of Business and Professions  
21 Code section 17200, et seq. These causes of action, however, were based on different  
22 predicate violations.

23 For purposes of their second cause of action, the People alleged violations of the  
24 following: Business and Professions Code section 17500, the Consumer Legal  
25 Remedies Act (Civ. Code, § 1770 et seq.); the California Translations Act (Civil Code §  
1632 et seq.); Business and Professions Code section 9855.2(a); Business and

1 Professions Code section 9855.3; California Code of Regulations section 2758; Civil  
2 Code section 1723(a); the Rosenthal Fair Debt Collection Practices Act (Civ. Code, §  
3 1788 et seq.); the Song-Beverly Consumer Warranty Act (Civ. Code, § 1790 et seq.);  
4 the Truth-in-Lending Act and its implementing Regulation Z (15 U.S.C. § 1601 et seq.;  
5 12 C.F.R. § 226.1 et seq.); the California Unruh Act (Civ. Code, § 1801 et seq.); the  
6 Small Claims Act (Civ. Proc. Code, § 116.110 et seq.); and, the California Insurance  
7 Code section 1758.9 et seq.

8 In their Prayer for Relief, the People seek, inter alia, the issuance of all orders  
9 necessary to prevent Defendants from engaging in unlawful business practices (FAC,  
10 Prayer, Item 2); all orders or judgments as may be necessary to restore any person in  
11 interest any money or other property that Defendants may have acquired by violations  
12 of Business and Professions Code section 17200; and, a civil penalty of \$2,500 against  
13 Defendants, pursuant to Business and Professions Code section 17206, for each  
14 violation of Business and Professions Code section 17200. (See FAC, Prayer, Items 1-  
15 8, at pp. 21:8-22:10.)

### 16 **Partial Judgment And Permanent Injunction**

17  
18 On March 9, 2021, the parties agreed to a partial settlement of this action, which  
19 the Court entered as a "Partial Judgment and Permanent Injunction." Neither Curacao  
20 nor Ron Azarkman admitted liability as part of the settlement or Partial Judgment. The  
21 Partial Judgment had the effect of reducing the number of claims that were left to  
22 adjudicate. Specifically, the Partial Judgment stated as follows:

23 This Partial Judgment shall apply to all claims under Business and  
24 Professions Code section 17500 as alleged in paragraph 33 of the First  
25 Amended Complaint. This Partial Judgment also shall apply to all  
predicate violations of Business and Professions Code section 17200

1 as alleged in the First Amended Complaint, **with the exception of**  
2 **violations alleged in Paragraph 35, subsections k(iii), k(iv), k(v), or**  
3 **m (collectively the “Reserved Claims”)**, which concern violations of  
4 the Unruh Act related to the sale of Adir Global Protection, Curacao  
5 Credit Shield and similar products, and violations of the Insurance  
6 Code. Specifically, this Partial Judgment does not apply to, resolve,  
7 estop, adjudicate, preclude or bar the claims that Defendants engaged  
8 in unlawful, unfair or fraudulent business acts or practices as alleged in  
9 the Reserved Claims, and to any legal or factual allegations in the First  
10 Amended Complaint that relate to those claims. (emphasis added).

11 In context, the subsections follow the first two sentences of par. 35, which  
12 state:

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

17 (Partial Judgment and Permanent Injunction, 3/9/21, at ¶ 2 [emphasis added].)

18 Subsections k (iii), (iv) and (v) allege violations of Unruh Act, Civil Code  
19 section 1801 by:

20 iii. Charging consumers a fee incident to the making of a retail installment  
21 contract;

22 iv. Charging consumers a fee not allowed by law for the extension or  
23 deferment of payments under a retail installment contract; and

24 v. Charging consumers a fee incident to the making of a retail installment  
25 account.”

1 Subsection m alleges violations of California Insurance Code sec, 1758.9  
2 by:

- 3
- 4 i. "Selling and offering to sell credit insurance policies without  
5 providing the required documentation, training materials, or fees to  
6 the California Department of Insurance;
  - 7 ii. Selling and offering to sell credit insurance policies without providing  
8 the required written materials and/or making the required  
9 disclosures to prospective purchasers;
  - 10 iii. Selling credit insurance through employees who are not endorsed to  
11 sell such insurance;
  - 12 iv. Paying employees bonuses, incentives, or other compensation for  
13 selling credit insurance when those employees were not licensed as  
14 insurance agents or endorsees;
  - 15 v. Failing to train its employees about lawfully selling insurance  
16 products; and
  - 17 vi. Selling and offering to sell insurance not in conjunction with, or  
18 incidental to, a loan or extension of credit."

### 19 The Claims At Trial

20 On September 28, 2022, a court trial commenced in this Department with respect  
21 to the "Reserved Claims."

22 It should be noted that the People took a position at trial that was contrary to  
23 the allegations in ¶ 35(k)(i-v)). Whereas the complaint alleges that Defendant charged  
24 consumers a fee "incident to the making of a retail installment contract" and "incident to  
25 the making of a retail installment account", the People took the position at trial that the  
fee was *not* "incident to the making" of either a retail installment contract or account.  
While Defendant objected to the People arguing contrary to its allegations, the Court  
finds that Defendant was not surprised by the People's argument and suffered no  
prejudice in putting on a defense.

While not specifically pled in the First Amended Complaint, the People also  
pursued a claim that Defendants violated Civil Code section 1803.2 (Unruh Act's "single  
document" rule), which requires that retail installment contracts "be contained in a single

document” that contains “[t]he entire agreement of the parties with respect to the cost and terms of payment for the goods and services...”

### **Stipulations by the Parties**

On August 9, 2022, the parties stipulated to 31 undisputed facts. (Stipulated Facts.) This included a stipulation that the relevant time period for the alleged violations in this case begins May 20, 2012 and extends to the present. (Stipulated Fact No. 30.) Stipulated facts shall be referred to as necessary.

### **THE PEOPLE ALLEGE PREDICATE VIOLATIONS OF LAW – THE CIVIL CODE (THE UNRUH ACT) AND THE INSURANCE CODE**

There are two financial products at issue. The first is “Adir Global Protection” (“AGP”), later renamed as “Curacao Credit Shield” (CCS). This product is the subject of the Unruh Act claims. The second product is Credit Property Insurance, which is the subject of the Insurance Code claims. The Court will first address Adir Global Protection, “AGP”.

### **ADIR GLOBAL PROTECTION AND THE UNRUH ACT**

AGP can be best understood in the context of Adir’s business model. AGP is central to its profitability.

Defendants Adir International LLC dba Curacao (Curacao) and its owner, co-founder, and chief executive officer Ron Azarkman operate a retail store chain with 13 locations in California, Nevada, and Arizona, including 10 locations in Southern California. (Ex. 19.0008 [ADIR Consolidated Financial Statement 2020-21]; 9/30/22 Tr. 384:9-14, 441:28-442:3, 443:1-7 [Azarkman]; 10/12/22 Tr. 1377:14-17 [Illson].) Their retail stores sell electronics, appliances, furniture, and home goods. (Ex. 19.0008).

1 Curacao is also a retail creditor offering store credit to its customers. (Stipulated Fact  
2 Nos. 2 and 3.) More than 90 percent of Curacao's sales are to customers who are  
3 buying on Curacao's store credit. (10/7/22 Tr. 921:10-13 [Perez].)

4 Defendants' business model is to target a particular segment of the Latino  
5 community. Curacao's Senior Executive Vice President of Consumer Finance and  
6 Retail, Hector Perez, testified that Curacao's core customers are recent low-income,  
7 Spanish-speaking Latino immigrants who have poor credit or no credit history, and so  
8 cannot get credit elsewhere. (10/6/22 Tr. 824:12-825:2 [Perez]; 10/7/22 920:13-28  
9 [Perez]; Ex. 351 at ¶ 3 [Decl. of Hector Perez in Support of Defs. Opp. to Pltfs. Mot. For  
10 Summary Judg.]; Stipulated Fact No. 1.) Curacao profiles consumers based on their  
11 level of "Hispanicity," or acculturation. (Ex. 499 [2/9/17 email from Lizeth Rivera to Ron  
12 Azarkman and others re: Acculturation Definitions]; Ex. 122.0004-.0005; 9/30/22 Tr.  
13 443:12-447:9 [Azarkman]; Ex. 582 at 293:11-295:6 [H. Perez 8/21/19 Deposition  
14 Designations].) Defendants target the less acculturated consumers as their "prime core  
15 customers." (Ex. 122.0004-.0005; 9/30/22 Tr. 443:12-447:9, 449:19-26 [Azarkman].)

16 Since at least 2012, Curacao has used retail installment *accounts* and retail  
17 installment *contracts* to sell its products and services on credit to consumers in  
18 California. (Stipulated Fact Nos. 2 and 3; 10/7/22 Tr. 834:3-836:14 [Perez].)

19 Curacao's retail installment *accounts* are revolving accounts, like credit card  
20 accounts, that accrue interest monthly based upon the unpaid balance. A consumer can  
21 have multiple retail installment accounts with Curacao, and Curacao labels these  
22 accounts as a "sub-account" "99," "50," "51," "52," and so on, for each consumer. (Ex.  
23 306.0001 [Curacao Credit Card Brochure]; Ex. 352 at ¶8 (c)-(d) [Decl. of Hector Perez  
24 in Support of Defs. Opp. to Pltfs. Order to Show Cause Re Prelim. Injunction]; 10/7/22  
25 Tr. 835:28-837:2, 837:15-838:16 [Perez].) Consumers who purchase goods or services  
on a retail installment account with Curacao receive only a receipt at the time of  
purchase, then monthly account statements showing their minimum monthly payment,  
previous balance, charges for recent purchases, finance charge, new balance total, and  
available credit. (Ex. 352 at ¶8 (c); Ex. 235.0001-.0006 [Garcia Account Statements].)

Curacao's retail installment *contracts* are closed-end contracts, similar to auto  
sales contracts, under which the consumer agrees to pay for retail goods or services

1 through a fixed number of monthly installment payments. (10/7/22 Tr. 834:3-835:24  
2 [Perez]; Ex. 306.0001.) The finance charge is pre-computed at the time of the purchase  
3 and is added to the total amount financed, so that the consumer's payments will be the  
4 same every month. (*Ibid.*) Like with Curacao's retail installment accounts, a consumer  
5 can have multiple retail installment contracts with Curacao, and Curacao refers to its  
6 retail installment contracts as a "sub-account" "01," "02," and so on, for each consumer.  
7 (Ex. 306.0001; Ex. 352 at ¶ 8(b).) When Curacao enters into a retail installment contract  
8 with a consumer, it gives the consumer a two-page written contract with specific  
9 disclosures, including the finance charge, amount financed, total of payments, monthly  
10 payment amount, payment due date, and the number of payments required to pay off  
11 the contract. (Ex. 210 [Villalobos Contract ZETQYQR]; Ex. 211 [Villalobos Contract  
12 ZETR06A]; 557.0008 [Velarde Contract ZF6T8NU]; 10/7/22 Tr. 931:1-27, 933:22-  
13 934:24 [Perez]; Ex. 660 [Sample Curacao Retail Installment Contract].) Curacao  
14 stopped using retail installment contracts in or about July 2020. (Stipulated Fact No. 3;  
15 10/7/22 Tr. 914:15-17 [Perez].)

16 Adir charges interest that is comparable to the interest charged by other  
17 department stores that cater to those with better credit. One may wonder how it is that  
18 Adir can offer credit to the uncreditworthy at prevailing rates and stay profitable. The  
19 answer is that it offers AGP.

20 In 2006, Curacao began charging consumers a fee for optional, cancellable credit  
21 protection, known as "Adir Global Protection" (AGP), on retail installment accounts and  
22 retail installment contracts. (Stipulated Fact Nos. 4-6, 8, 10, 12, 15-16; 10/7/22 Tr.  
23 840:20-843:23 [Perez]; Ex. 43 [AGP Brochure]; Ex. 45 [AGP Brochures].) Consumers  
24 pay a monthly AGP fee on each enrolled account or contract for the ability to have their  
25 payments deferred or cancelled if they experience a "qualifying event". (Stipulated Fact  
Nos. 5, 6, 11; Ex. 43; Ex. 45; Ex. 238 [AGP Terms and Conditions]; Ex. 139 [Curacao  
Credit Shield Form]; Ex. 371.0047-.0049 [ADIR's Fourth Supp. Responses to People's  
First Set of Form Interrogatories (3/1/21)].) Until 2020, Curacao changed the name from  
AGP to "Curacao Credit Shield" (CCS) (hereafter, collectively referred to as AGP).  
(Stipulated Fact No. 14; 10/7/22 Tr. 921:19-21 [Perez]; Ex. 351 at ¶ 7 [Decl. of Hector  
Perez in Support of Defs. Opp. to Pltfs. Mot. For Summary Judg.].)



1 Under AGP, a consumer experiencing a "qualifying event" may apply to defer their  
2 scheduled minimum monthly payment for a limited time, but only for the particular retail  
3 installment account or retail installment contract that is enrolled in AGP. (Ex. 43; Ex. 45;  
4 Ex. 238; Ex. 371.0047-.0049; Ex. 139.) If Curacao accepts the consumer's AGP  
5 "activation" request and the consumer's payments are deferred, Curacao does not  
6 charge a \$10 late payment fee on the enrolled account or contract for each month that  
7 payments are deferred. (Stipulated Fact No. 11; Ex. 43; Ex. 139; Ex. 306.0007 [late  
8 payment fee of \$10]; Ex. 660 [late payment fee of \$10].) For retail installment accounts,  
9 Curacao also does not charge a finance charge on the enrolled account for the months  
10 that payments are deferred. (Stipulated Fact No. 11.) AGP "activation" for payment  
11 deferral does not reduce a consumer's outstanding account balance with Curacao, and  
12 when the period of activation ends, the consumer must resume their regular monthly  
13 payments. (10/7/22 Tr. 957:7-13 [Perez].) Under AGP, a consumer (or their  
14 representative) can apply to cancel the remaining payments on an enrolled retail  
15 installment account or contract if the consumer dies "accidentally," presents "a certified  
16 copy of [a] Social Security permanent disability award letter," or provides a police report  
17 "specifying police investigation" of theft with visible evidence of forced entry. (Ex. 43; Ex.  
18 45; Ex. 238; Ex. 371.0047-.0049; Ex. 139.)

16 Curacao automatically charges a recurring monthly fee on each retail installment  
17 account and each retail installment contract that is enrolled in AGP. (10/10/22 Tr. 982:3-  
18 19 [Perez]; Ex. 43; Ex. 45; Ex. 139.) The AGP fees vary with the outstanding balance.  
19 (Stipulated Fact No. 5.) The current AGP fee ranges from \$4.95 to \$16.95 per month,  
20 per account/contract, and the AGP Plus fee (which includes credit property insurance,  
21 as discussed below) ranges from \$5.95 to \$41.95 per month, per account. (Stipulated  
22 Fact No. 25; Ex. 139.) Curacao charges the monthly AGP fee on each enrolled  
23 account/contract regardless of whether the consumer ever seeks to defer or cancel a  
24 payment. (10/7/22 Tr. 958:22-959:2 [Perez]; Ex. 583 at 410:5-15 [H. Perez 11/7/18  
25 Deposition Designations (PMQ)]; Ex. 43; Ex. 139.) Curacao also charges an AGP fee  
each month that the consumer's payment is deferred during an AGP "activation."  
(10/7/22 Tr. 958:22-959:2 [Perez].)

1 A Curacao consumer can have multiple accounts or contracts enrolled in AGP, so  
2 a consumer might be paying multiple AGP fees at once. (See, e.g., Ex. 235 [Garcia  
3 Monthly Account Statements] [AGP fees on four separate retail installment accounts];  
4 Ex. 570.0009-.0017 [Gomez Consolidated Customer Account Statements] [AGP fees on  
5 two retail installment accounts and three retail installment contracts, amounting at times  
6 to more than \$50/month in AGP fees]; Exs. 691.0010-13; 691.0014 [Rodriguez  
7 Consolidated Customer Account Statements] [AGP fees on two retail installment  
8 accounts]; 10/18/22 Tr. 1554: 27-1555:26 [Rodriguez]; 10/10/22 Tr. 982:3-19 [Perez];  
9 10/10/22 Tr. 1146:23- 1152:13 [Jiron].) Consumers who have AGP fees added to  
10 multiple accounts can end up paying more for the same level of "credit protection" than  
11 they would pay if their balance were on a single account. (Ex. 235; 10/7/22 Tr. 957:14-  
12 961:26 [Perez]; Ex. 570.0009-.0017; 10/10/22 Tr. 1146:23-1154:4 [Jiron].) Consumers  
also may end up paying more in AGP fees than they pay in finance charges on those  
accounts. (See, e.g., Ex. 235; 10/7/22 Tr. 960:8-961:22 [Perez].)

13 AGP is extremely profitable. The parties stipulated that "Curacao's gross revenue  
14 was \$86,063,648 for AGP sales in California between January 1, 2012 and January 26,  
15 2022." (Stipulated Fact No. 29.) The parties stipulated that the relevant time period  
16 begins May 20, 2012 and extends to the present. (Stipulated Fact No. 30.) The People's  
17 expert, Travis Armstrong, adjusted the AGP gross revenue to \$83,591,688 to account  
18 for the stipulated later start date. (10/3/22 Tr. 529:9-530:28; 532:20-533:15  
[Armstrong].) Mr. Armstrong testified that due to incomplete information this does not  
capture AGP revenue after January 2022. (*Id.* at 530:12-16; 534:6-9.).

19 Based on the testimony of Mr. Armstrong and the testimony of Inna Illson,  
20 Curacao's Vice President of Finance, the total AGP benefits provided to consumers  
21 between February 2012 and January 2022 was approximately \$2,245,403 million. (See  
22 10/3/22 Tr. 539:15-540:19 [Armstrong]; 10/12/22 Tr. 1400:20-1405:23 [Illson].) Most of  
23 these benefits were suspension benefits (consisting of waived late fees and finance  
24 charges during the period of suspension) and these customers remained liable for the  
25 full amount of their debt. (See Stipulated Fact No. 11; 10/3/22 Tr. 540:20-545:20  
[Armstrong]; 10/7/22 Tr. 854:9-18; 957:7-13 [Perez]; Ex. 60.0009 [Curacao Finance  
Operations Ancillary Services AGP Operations (2/1/18)]; Ex. 84.0004 [Curacao Finance

1 Operations Ancillary Services AGP Operations (2/1/16)]; Ex. 85.0009 [Curacao Finance  
2 Operations Ancillary Services AGP Operations (2/1/17); see also fn. 2, *supra* [based on  
3 Defendants' internal reports, more than 99% of AGP activations approved by Curacao  
4 during fiscal years 2016-2018 were for debt suspension, not debt cancellation].)  
5 Evidence at trial showed that Defendants offer debt suspension assistance "not just for  
6 customers who pay a monthly AGP fee," but for other customers who are in collections  
7 or who have past due accounts. (10/10/22 Tr. 1006:6-1008:1 [Perez]; see, e.g., Ex.  
8 570.0003 [hardship refinance]; 10/10/22 Tr. 1152:14-1153:6 [Jiron].)

9 AGP was profitable to the tune of \$83,591,688 for the period May 20, 2012  
10 through January 2022.

11 **THE FAIRNESS OF AGP IS NOT AT ISSUE; THE ISSUE PRESENTED IS WHETHER**  
12 **ITS USE IS UNLAWFUL**

13  
14 While the stated purpose of AGP (or CCS) is to protect customers' credit, it  
15 primarily serves to protect Adir against defaults. Adir is able to give credit to the  
16 uncreditworthy at prevailing rates because of the profitability of AGP. Customers who  
17 choose to purchase AGP may benefit, but overall AGP greatly increases the cost of  
18 borrowing for those who choose to purchase it. Conversely, because many customers  
19 purchase AGP, Adir's target customers are able to obtain credit and purchase  
20 consumer goods they would otherwise not be able to purchase due to their poor credit.

21 Whether this outcome is socially desirable or fair to the customers who purchase  
22 AGP is not an issue to be determined by the Court. Business and Professions Code  
23 sec. 17200, the "Unfair Competition Law", prohibits any "unlawful, unfair or fraudulent  
24 business act or practice..." These are generally referred to as the three "prongs" of the  
25 Unfair Competition Law. At trial, the People proceeded only on the "unlawful" prong.  
The Court is solely tasked with determining whether the use of AGP is "unlawful" under  
the Unruh Act.

1 **INTERPRETATION OF THE RELEVANT STATUTES**

2  
3 The central Civil Code sections are secs. 1805.4, respecting retail installment  
4 *contracts*, and 1810.4, respecting retail installment *accounts*.

5 **1805.4. Included fees, expenses and charges; Fee for dishonored check**

6  
7  
8 “The finance charge shall be inclusive of all charges incident to investigating and  
9 making the contract *and for the extension of the credit provided for in the contract*, **and**  
10 **no fee, expense or other charge whatsoever shall be taken, received, reserved or**  
11 **contracted for except as otherwise provided in this chapter.**

12 The seller or holder of a retail installment contract may charge and collect a fee not to  
13 exceed fifteen dollars (\$15) for the return by a depository institution of a dishonored  
14 check, negotiable order of withdrawal, or share draft issued in connection with the retail  
15 installment contract. The fee is not included in charges as defined in this chapter or in  
16 determining the applicable charges which may be made under this chapter.”

17 **1810.4. Charges and fees**

18  
19 “The finance charge shall include all charges incident to investigating and making the  
20 retail installment account. No fee, expense, delinquency, collection, or other charge  
21 whatsoever shall be taken, received, reserved, or contracted by the seller or holder of a  
22 retail installment account except as provided in this section. A seller may, however, in  
23 an agreement which is accepted by the buyer and of which a copy is given or furnished  
24 to the buyer provide for the payment of attorneys fees and costs in conformity with  
25 Article 11 (commencing with Section 1811.1). Any subsequent change in any term of  
the agreement shall not become effective until the seller has given notice of the change  
and complies with the provisions of subdivision (d) of Section 1810.3. When credit cards  
are issued in connection with a retail installment account, the seller, either in the

1 agreement or after giving the notice required by subdivision (d) of Section 1810.3, may  
2 require the payment of an annual fee of not more than fifteen dollars (\$15) for  
3 membership in the credit card plan, which fee shall not be deemed a finance charge or  
4 interest for any purpose of the law.

5 The seller or holder of a retail installment account may charge and collect a fee not to  
6 exceed fifteen dollars (\$15) for the return by a depository institution of a dishonored  
7 check, negotiable order of withdrawal, or share draft issued in connection with the retail  
8 installment account. The fee is not included in charges as defined in this chapter or in  
9 determining the applicable charges which may be made under this chapter."

10 A retail installment *account* involves a "finance charge". Sec. 1810.4 regulates  
11 the finance charges "incident to investigating and making the retail installment account."  
12 Along with interest, sec. 1810.4 allows only fees as specified in that *code section*:  
13 attorney's fees and costs, an annual fee for membership in a credit card plan, and a fee  
14 for the return of a dishonored check.

15 Civil Code sec. 1810.12 allows an additional charge for retail installment  
16 accounts – "Delinquency and collection charges." It provides:

17 *Notwithstanding Section 1810.4*, a "seller or holder of a retail installment account  
18 may "provide that for each installment in default the buyer shall pay a delinquency  
19 charge..." The code section puts limits on the amounts that may be charged and places  
20 limitations on when these charges may be collected.

21 The Curacao credit agreement refers to "delinquency charges" as "penalties":

22 "PENALTIES: If the buyer fails to pay any fee for a period of 10 days or more, the  
23 seller will charge late fees in an amount equal to \$10.00 of said delinquent fee."

24 The statutory scheme recognizes that upon default on a retail installment *account*  
25 the seller and buyer may want to enter into an extension or extension or deferral  
26 agreement. Sec. 1810.4 prohibits delinquency charges in the following situation:

"Payments timely received by the seller under a *written extension or deferral*  
*agreement* shall not be subject to any delinquency charge." (emphasis added).

1 A retail installment *contract* also involves a “finance charge”. Sec. 1805.4 states  
2 that the finance charge shall be inclusive of all charges incident to investigating and  
3 making the contract and for the extension of the credit provided for in the contract. It  
4 only allows for the fees specified in the *chapter*. The allowable fees are therefore more  
5 extensive for retail installment *contracts* than those allowed by sec. 1810.4 with respect  
6 to retail installment *accounts*. The allowed fees are a returned check fee (sec. 1805.4);  
7 a late payment fee (1803.6); costs of collection (sec. 1803.6); cost of insurance (sec.  
8 1803.5); refinancing fee (sec. 1807.2); official fees (sec. 1807.2); and payment deferral  
9 fee (sec. 1807.1).

10 AGP does not fit neatly within the statutory scheme. AGP does not address  
11 “finance charges”. It addresses “delinquency charges” and “collection charges”, which  
12 are only assessed in the event of default. It also addresses the cause of the default  
13 itself. If purchased, AGP may be activated upon the occurrence of certain life events.  
14 These include loss of life, temporary disability, permanent disability, unemployment, and  
15 authorized leave of absence,.

16 Fundamentally, the resolution of the issue of whether AGP is an unlawful  
17 product revolves around the statutory interpretation of sec. 1805.4 and 1810.4. The  
18 fundamental disagreement between the parties is whether both sections are only  
19 directed toward fees that are incident to investigating and making the contract and for  
20 the extension of the credit provided for in the contract. If they are only directed toward  
21 fees that are incident to investigating and making the contract and for the extension of  
22 the credit provide for in the contract, the parties are free to voluntarily enter into other  
23 agreements that are not terms or conditions of extending credit. If they are intended to  
24 be more expansive, AGP might be prohibited.

25 Sec. 1805.4 and 1810.4 are directed to fees that are incident to the investigation  
and making of a credit agreement. Section 1805.4 states:

The finance charge shall be inclusive of all charges incident to  
investigating and making the contract and for the extension of the credit  
provided for in the contract, and no fee, expense or other charge

1       whatsoever shall be taken, received, reserved or contracted for except as  
2       otherwise provided in this chapter. (Cal. Civ. Code § 1805.4.)

3       The limitation on “no fee, expense or other charge” is in the same  
4       sentence as “incident to investigating and making the contract.” By its plain  
5       terms, the provisions are related to each other and the “no fee, expense, or other  
6       charge” language refers to “charges incident to investigating and making the  
7       contract.” There is no indication by the plain terms that what the legislature really  
8       meant was for “no fee, expense or other charge” unrelated to “charges incident  
9       to.” The statute restricts fees, expenses and other charges that are incident to  
10      investigating and making the contract.

11      Nothing in the Unruh Act prohibits the seller from *refraining from exercising its*  
12      *rights* to collect delinquency charges or collection charges. Indeed, nothing in the Unruh  
13      Act prohibits the seller from refraining from taking action to collect the debt at all.  
14      Nothing prevents the seller and buyer from voluntarily negotiating terms on which  
15      payment is made without a default being taken.

16      It is a fact of life that sellers and buyers will attempt to negotiate terms after  
17      default for the benefit of both parties so the default can be cured. It is this *post-default*  
18      period that AGP addresses. AGP anticipates that defaults will necessarily occur due to  
19      the less credit-worthy nature of the customer base. AGP is a voluntary agreement in  
20      advance, for a fee, that if and when default occurs due to certain life events, Adir will  
21      refrain from exercising its rights upon default. It is both voluntary and cancellable. It is  
22      not a condition of extending or obtaining credit.

23      This interpretation of section 1805.4 is consistent with other parts of the Unruh  
24      Act. Section 1805.4 specifically allows retailers to contract for other fees or expenses  
25      that are “provided in this chapter.” The other expenses allowed for in the chapter are: a  
delinquency charge that is included in the contract (§ 1803.6 [“a contract may provide”]),  
dishonored check fee “in connection with” the contract (§ 1805.4 [“issued in connection  
with the retail installment contract”]), and cost of insurance if any “is included in the

1 contract" (§ 1803.5). Each of these by their terms are related to "contract" formation in  
2 that they would be agreements reached at the time credit was extended, but they cannot  
3 be included in the finance charge because they are unknown future charges.

4 The same is true for section 1810.4. While section 1810.4 places the language  
5 regarding "No fee, expense, collection, or other charge whatsoever shall be taken..." in a  
6 separate sentence, it is reasonably interpreted as related the "incident to" language. To  
7 interpret the provision otherwise would make it inconsistent with other provisions in the  
8 Unruh Act. First, it would be inconsistent with section 1805.4 and canons of statutory  
9 interpretation which indicate that when the same words are used they should be  
10 interpreted consistently. (*See In re Marriage of Pinto* (1972) 28 Cal.App.3d 86, 89  
11 [holding that "When statutes are *in pari materia*, the interpretation of similar phrases or  
12 sentences in one controls the interpretation of virtually the same phrases or sentences in  
13 the other.) Second, section 1810.4 allows for other fees as long as they are "provided in  
14 *this section*", i.e. meaning within section 1810.4.

14 Sec. 1810.4 provides for three fees: attorneys' fees, annual credit card fees, and  
15 dishonored check fees. However, the Unruh Act *also* provides for at least one other fee  
16 that is **not** in section 1810.4: the cost of insurance (§ 1810.5). If 1810.4 were interpreted  
17 to limit all fees to *only* those specifically stated in section 1810.4, it would mean that  
18 insurance could not be charged on an installment account – which would then, in turn,  
19 contradict section 1810.5. Section 1810.4 only restricts fees, expenses and other  
20 charges that are incident to investigating and making the contract to be consistent with  
21 section 1810.5. (*People v. Garcia* (1999) 21 Cal.4th 1, 6 ["It is fundamental that  
22 legislation should be construed so as to harmonize its various elements without doing  
23 violence to its language and spirit"].)

23 Any other interpretation would have the unintended consequence of foreclosing  
24 the possibility of umbrella-type products or services that would benefit consumers and  
25 were never contemplated by the Legislature, including not only debt protection, but also



1 interest rate-lock agreements, price protection (balance credit if any item purchased with  
2 a credit account is later found at a lower price), credit monitoring, or identity protection.

3  
4 AGP is not a charge or fee “incident to investigating and making the contract and for  
5 the extension of the credit” for purposes of sections 1805.4 and 1810.4, because AGP is a  
6 separate transaction that has no effect on Curacao’s credit decision or process. AGP is an  
7 optional, cancelable product – ostensibly functioning as a consumer protection  
8 mechanism – that is available *after* credit has already been extended at some point after  
9 the original retail purchase. (Stip. Fact No. 10; Trial Tr., 10/7/22, H. Perez [Direct], at  
10 850:1-28; 867:23-868:11.) Indeed, AGP provides customers with the “option” to protect  
11 their credit accounts with Curacao from delinquency upon the occurrence of over 24  
12 different life events. (Stip. Fact No. 6; *see also* Trial Tr., 10/7/22, H. Perez [Direct], at  
13 845:4-17; 851:7-852:2 [re: AGP]; and 849:13-28; 852:3-8 [re: AGP Plus]; 868:2-5 [“totally  
14 optional”].)

15 Curacao does not require any customers to purchase AGP to obtain credit. Thus it  
16 does not relate to the inception of the credit relationship. (Trial Tr., 10/7/22, H. Perez  
17 [Direct], at 868:6-14; Trial Tr., 9/30/22, R. Azarkman [Cross], at 494:28-495:3; Trial Tr.,  
18 S. Holguin [Cross], 10/4/22, at 641:6-9; Stip. Fact Nos. 8-9; Trial Tr. 9/27/22, F.  
19 Villalobos [Direct], at 108:12-25; Trial Tr., F. Villalobos [Cross], 9/28/22, at 177:21-  
20 179:27.)

21 Based on the language of sections 1805.4 and 1810.4, the Court finds that these  
22 sections pertain to setting the terms of the credit agreement, and that AGP is not a  
23 charge or fee “incident to investigating and making the contract and for the extension of  
24 the credit.”

25 As noted above, The People alleged in its First Amended Complaint that the fees  
charged were “incident to the making of a retail installment contract” and “incident to the  
making of a retail installment account.” At some point its interpretation of the statutes  
apparently changed.

Whether fair or not (again which is not an issue for the Court to determine), AGP  
is not prohibited by Civil Code sec. 1805.4 or 1810.4.

1  
2  
3 **CIVIL CODE SEC. 1803.2**

4 Over Defendants' objection<sup>1</sup>, the People pursued a claim of violation of Civil Code  
5 sec. 1803.2, the "single document" rule of the Unruh Act. In their proposed statement of  
6 decision, the People describe the rule thusly:

7  
8 "This rule requires that retail installment contracts "be contained in a single  
9 document" that contains "[t]he entire agreement of the parties with respect to the cost  
10 and terms of payment for the goods and services . . ." (*Ibid.*) Requiring the simultaneous  
11 disclosure of all fees and terms in one document helps consumers understand the true  
12 cost of making their purchase through a retail installment contract, and provides  
13 consumers with a set number and amount of monthly payments required to fully pay off  
14 their contract."

15 As explained above, AGP does not address the cost and terms of payment for  
16 the goods and services. AGP is not a charge or fee "incident to investigating and making  
17 the contract and for the extension of the credit" for purposes of sections 1805.4 and 1810.4,  
18 because AGP is a separate transaction that has no effect on Curacao's credit decision or  
19 process. It therefore would not need to be included in the retail installment contract. Defendants  
20 did not violate sec. 1803.2 by not including AGP fees in the retail installment contracts.

21 **CIVIL CODE SEC. 1807.1**

22 The People also contend that AGP violates section 1807.1 of the Unruh Act. (Civ.  
23 Code, § 1807.1(b).) Sec. 1807.1, entitled "Extension of due date or deferral of payment  
24 of installment", permits charges for the extension or deferment of credit if certain  
25 conditions are met. Subsections (a) and (b) provide:

---

<sup>1</sup> Violation of Civil Code sec. 1803.2 was not specifically raised in the First Amended Complaint. However,  
the People did raise it in its summary judgment motion and at various times before and during trial.

1 (a) The holder of a retail installment contract may, upon agreement with the buyer,  
2 extend the scheduled due date or defer the scheduled payment of all or of any part of  
3 any installment or installments payable thereunder. No charge shall be made for any  
4 such extension or deferment unless the agreement for such extension or deferment is in  
5 writing and signed by the parties thereto.

6 (b) Where the contract includes a finance charge determined on the precomputed basis,  
7 the holder may charge and contract for the payment of an extension or deferral  
8 agreement charge by the buyer and collect and receive the same, but such charge may  
9 not exceed an amount equal to 1 percent per month simple interest on the amount of  
10 the installment or installments, or part thereof, extended or deferred for the period of  
11 extension or deferral. Such period shall not exceed the period from the date when such  
12 extended or deferred installment or installments, or part thereof, would have been  
13 payable in the absence of such extension or deferral, to the date when such installment  
14 or installments, or part thereof, are made payable under the agreement of extension or  
15 deferment; except that a minimum charge of one dollar (\$1) for the period of extension  
16 or deferral may be made in any case where the extension or deferral agreement charge,  
17 when computed at such rate, amounts to less than one dollar (\$1).

18 To determine whether sec. 1807.1 covers AGP, it is helpful to recall what AGP  
19 does upon the occurrence of certain life events. If Curacao accepts the consumer's  
20 AGP "activation" request, there are two possible consequences. First, the debt may be  
21 cancelled. Alternatively, the consumer's payments may be deferred. In the event of  
22 deferment, Curacao does not charge the \$10 late payment fee on the enrolled account  
23 or contract for each month that payments are deferred. (Stipulated Fact No. 11; Ex. 43;  
24 Ex. 139; Ex. 306.0007 [late payment fee of \$10]; Ex. 660 [late payment fee of \$10].) So  
25 again, in this situation Curacao *refrains* from enforcing its rights.

26 The People take the position that because the customer continues to pay the  
27 AGP premium during the time of deferment, the premium is a deferral fee covered by  
28 sec. 1807.1, which can far exceed 1% interest on the amount of the monthly payment  
29 that is deferred.

1 The Court need not decide whether the People are correct, as the Court does not  
2 recall there being evidence regarding the particulars of any activation of AGP with  
3 respect to a retail installment contract. In their objections The People refer the Court to  
4 ex. 557.0013-0014 (Velarde Escalation File) showing an outstanding monthly payment  
5 of \$36.51 and an AGP fee of \$10; and ex. 208.0025 (Villalobos Account Statement)  
6 showing a monthly payment of \$166.59 on a retail installment contract and AGP fee of  
7 \$12.99. An AGP fee of \$4.95 can be charged on a \$10 outstanding balance. Stipulated  
fact 25.

8 Fatimah Villalobos testified at trial. She did not activate her AGP. Velarde did not  
9 testify, and there was no evidence that Velarde activated AGP.

10 It cannot be determined from the evidence what Curacao's practice was when  
11 AGP was "activated." How many activation claims were made for AGP for retail  
12 installment contracts? How often did Curacao determine to cancel the debt rather than  
defer payments?

13 Another unanswered question is whether the AGP charge constitutes a payment  
14 deferral fee when it is offset by forgiveness of the \$10 late payment fee. If the Velarde  
15 contract had gone into default and the payments were deferred, he would have  
16 continued to pay the \$10 AGP fee; however, that would be offset by Curacao refraining  
17 from enforcing the \$10 late payment fee. Thus, there would effectively be no charge for  
18 the deferment. The same would occur when a \$4.95 AGP fee would be charged when  
19 there is an outstanding \$10 balance; the net result is a \$5.05 gain.

20 None of this is to say that AGP is a "good deal." There was just insufficient  
21 evidence to show that Curacao violated Sec. 1807.1.

## 22 **CREDIT PROPERTY INSURANCE AND THE INSURANCE CODE**

23 The evidence showed that Curacao violated sections 1758.9 and 1758.98 (c) of  
24 the Insurance Code by selling credit property insurance to California consumers through  
25 employees who were not individually licensed to sell insurance and not endorsed under

1 Curacao's credit insurance agent license, and who were paid commissions for selling  
2 that insurance.

3 With limited exceptions, a person may not "solicit, negotiate, or effect contracts of  
4 insurance," or otherwise act as an insurance agent, broker, or solicitor, "unless the  
5 person holds a valid license from the [Insurance Commissioner] authorizing the person  
6 to act in that capacity." (Ins. Code, § 1631.) For the sale of credit insurance under  
7 Article 16.7 of the Insurance Code, an unlicensed employee of a licensed credit  
8 insurance agent "may act on behalf of, and under the supervision of, the credit  
9 insurance agent in matters relating to transacting insurance under that agent's license"  
10 if the employee "is endorsed on the license of the credit insurance agent." (Ins. Code, §  
11 1758, subd. (b).) No persons other than licensed insurance agents or brokers, credit  
12 insurance agents, or endorsees "shall sell or solicit any form of credit insurance in this  
13 state, and receive a commission for their efforts." (Ins. Code, § 1758.9.)

14 The People's expert, Teresa Campbell, a Deputy General Counsel of the  
15 California Department of Insurance, testified that the purpose of the endorsement  
16 structure for credit insurance is to reduce the administrative burden of licensure while  
17 maintaining some degree of consumer protections of the Department's licensing regime.  
18 (10/19/22 Tr. 1604:20-1606:27 [Campbell].) She also testified regarding the importance  
19 of and reasons for the licensing and endorsement requirements:

- 20 •To facilitate prescreening of agents and endorsees, i.e., background checks.
- 21 •To ensure that the agents and endorsees receive training that is approved by  
22 the Department of Insurance.
- 23 •To facilitate the Dept. of Insurance having recourse against "bad actors" by  
24 suspension or revocation of their licenses or endorsement, or by sending "cease and  
25 desist" letters.
- To inform the Department of Insurance as to who is selling insurance.

The Insurance Code also prohibits a credit insurance agent from paying "any  
unlicensed person any compensation, fee, or commission dependent on the placement  
of insurance under the agent's license." (Ins. Code, § 1758.98.) An agent may provide

1 “production payments or incentive payments to an endorsee.” (*Ibid.*) The terms  
2 “compensation,” “fee,” and “commission,” as used in sections 1758.9 and 1758.98 of the  
3 Insurance Code mean “any tangible or intangible thing of value, the existence, size,  
4 quality or quantity of which depends on the quantity or value of credit insurance  
5 solicited, sold, or enrolled by the person receiving the commission.” (10 CCR, § 2192.3,  
6 subd. (e), (f), and (g).)

7 The evidence showed that Curacao sales associates, credit agents, and  
8 telemarketers sell credit property insurance on behalf of Curacao. None of these  
9 employees are individually licensed as insurance agents, brokers, or credit insurance  
10 agents, and they are not endorsed under Curacao’s credit insurance agent license. Yet,  
11 Curacao pays these employees bonus compensation for selling credit property  
12 insurance.

13 The Court finds that the bonuses paid to unlicensed, unendorsed Curacao  
14 employees are “commissions” under Insurance Code sections 1758.9 and 1758.98,  
15 subdivision (c), because they are a “thing of value ... [the] quantity of which depends on  
16 the quantity or value of credit insurance solicited, sold, or enrolled” by the Curacao  
17 employee. (10 CCR, § 2192.3, subd. (e).) A \$1 bonus for AGP Plus was paid for each  
18 policy the employee sold, so it “depends on the quantity ... of credit insurance” sold or  
19 enrolled by the employee. (See Stipulated Fact No. 20; Ex. 333.0011, .0016 [Curacao  
20 Sales Associates Compensation Plan – Management Guide].) The tiered bonus for  
21 separate credit property insurance “depends on the ... value of credit insurance” sold or  
22 enrolled by the employee. (See Stipulated Fact No. 21; Ex. 333.0011, .0016.) Each  
23 bonus is a “commission” under the Department of Insurance’s regulations.

24 Curacao presented evidence that the bonuses for AGP Plus are not automatic  
25 because they were not paid to an associate who had more than 10% of their AGP plans  
cancelled in a given month. (Stipulated Fact No. 22; Ex. 333.0011.) This extra condition  
does not affect the Court’s conclusion. If an associate did not sell AGP Plus, they would  
not receive the bonus. That makes the bonus a “commission” because it “depends on”  
the sale of insurance, regardless of whether there were other conditions to receiving the  
bonus. The evidence at trial also showed that the cancellation rate for AGP and CCS

1 plans throughout the relevant period was below 2% (10/10/22 Tr. 1112:26-1113:14  
2 [Jiron]), indicating that employees regularly receive the AGP Plus bonus despite the  
3 10% cancellation condition.

4 Defendants presented testimony from their insurance broker, Michael  
5 Sutherland, who had advised Curacao that they only needed to have one endorsee per  
6 store (10/11/22 Tr. 1286:2-15 [Sutherland]), and his understanding that "commission"  
7 referred to payments based on a "percentage of the premium written." (10/11/22 Tr.  
8 1287:5-17 [Sutherland].) To the extent Mr. Sutherland's testimony provides evidence of  
9 industry custom or practice, it is not relevant to whether Curacao's practices were  
10 unlawful under the Unfair Competition Law. (*People ex rel. Van de Kamp v. Cappuccio,*  
11 *Inc.* (1988) 204 Cal.App.3d 750, 763 ["fairness, as based upon an industry-wide custom  
12 and practice, is not a defense" to an alleged unlawful practice under the Unfair  
13 Competition Law].) Nor is Curacao's reliance on Mr. Sutherland's advice a defense to  
14 liability under the Unfair Competition Law. (*Becerra v. McClatchy Co.* (2021) 69  
15 Cal.App.5th 913, 952 ([equitable considerations, such as a defendant's good faith belief,  
16 are not a defense to liability under the Unfair Competition Law which "imposes strict  
17 liability"].)

18 Defendants presented evidence that the Department of Insurance had not taken  
19 any enforcement action against Curacao despite being aware of the People's  
20 allegations in this case as early as May 2020. (Ex. 983.0070 [CDI internal email];  
21 10/11/22 Tr. 1298:4-7 [Sutherland]; 10/7/22 Tr. 889:16-890:10 [Perez]; 10/19/22 Tr.  
22 1702:2-21 [Campbell].) The Court does not find evidence of the Department of  
23 Insurance's actions or inaction relevant to whether Curacao violated the Insurance  
24 Code. There is no evidence in the record as to why the Department of Insurance has  
25 not brought its own enforcement action, and no inference can or should be drawn from  
that fact. It was apparent at trial, however, that the Department of Insurance was  
assisting the Attorney General's Office in obtaining an expert witness, and opened its  
own investigation into Curacao in late 2021. (Ex. 983.0055-.0058, .0062-.0063 [Emails  
from Eugene Kalinsky to CDI staff (9/28/21-10/7/22)].)

1                   **Curacao did not register or endorse its employees who sell**  
2                   **credit property insurance with the Department of Insurance**

3           The evidence showed that Curacao did not register or endorse its employees  
4 who sell credit insurance under its license with the Department of Insurance, in violation  
5 of section 1758.93 of the Insurance Code and California Code of Regulations, title 10,  
6 section 2192.9.

7           The Insurance Code allows an employee of a credit insurance agent to sell  
8 insurance under the agent's license if the employee has complied with the requirements  
9 of Insurance Code section 1758.93 to become an endorsee. (Ins. Code, § 1798.94,  
10 subd. (b).) Section 1758.93 requires the employee to submit an application to the  
11 Department of Insurance attesting that the employee has received the required training,  
12 and to submit an initial application fee and an annual renewal fee. (Ins. Code, §  
13 1798.93, subd. (a).) The licensed agent must annually submit to the Department of  
14 Insurance the names all of its authorized endorsees and certify that those endorsees  
15 have received the required training. (Ins. Code, § 1798.93, subd. (b); 10 CCR, § 2192.9,  
16 subd. (a)(4), (a)(7).)

17           Curacao annually submitted forms to the Department of Insurance listing its  
18 endorsees and an "Annual Certification of Endorsee Training" in which it certified that  
19 "[n]o person other than an authorized employee sells or offers insurance on [Curacao's]  
20 behalf," and that "[a]ll authorized employees have completed the required training."  
21 (E.g., Ex. 155.0005, .0007 [CDI License Filing – 2015 Business Entity License  
22 Renewal]; Ex. 158.0002, .0003 [CDI License Filing – 2018 Business Entity License  
23 Renewal].) However, the endorsees listed on those forms were only Curacao's store  
24 and regional managers and did not include any sales associates, credit agents, or  
25 telemarketers who sell credit property insurance on Curacao's behalf. (9/29/22 Tr.  
315:3-20 [Holguin]; 10/7/22 Tr. 880:12-14, 887:5-20 [Perez]; 10/10/22 Tr. 995:5-19  
[Perez]; Ex. 585 at 104:12-14 [H. Perez 9/3/21 Deposition Designations (PMQ)].) Those  
employees are required to be licensed or endorsed to sell insurance under Curacao's  
license.



1                   **Curacao did not use approved training materials to train its**  
2                   **employees who sell credit property insurance**

3  
4           The evidence showed that Curacao violated Insurance Code section 1758.93  
5 because it did not use training materials approved by the Department of Insurance to  
6 train employees who sell credit property insurance on its behalf, and instead used  
7 unapproved training materials.

8           An employee may sell insurance as an endorsee on behalf of a licensed agent if  
9 the agent provides training required by Insurance Code section 1758.93. (Ins. Code, §  
10 1758.94, subd. (b).) The training materials used to train endorsees must be submitted to  
11 the Department of Insurance for approval. (Ins. Code, § 1758.93, subd. (b).) Any  
12 changes to training materials must be submitted the Department of Insurance before  
13 they are used. (*Ibid.*) The use of unapproved or disapproved training materials is  
14 prohibited. (*Ibid.*)

15           Teresa Campbell of the Department of Insurance testified to the harm that can be  
16 caused when insurance is sold by unlicensed, unendorsed, or untrained people:

- 17           •The seller may be supplying wrong or incomplete information to the customer.
- 18           •The customer may be paying for a product that they don't need.
- 19           •The customer may not know how to file a claim.
- 20           •The customer may have overlapping coverages of which they are not aware.

21           The evidence showed that the Department of Insurance has a record of only one  
22 credit insurance training document submitted on behalf of Curacao. (Ex. 1012.0002 at ¶  
23 5 [Decl. of Lynell Wise, Custodian of Records of the California Department of  
24 Insurance], 1012.0260-.0298; see also Ex. 359 [Ltr. from CDI to Sutherland and  
25 Associates re: Credit Insurance Training Manual].) This approved training document  
was provided to store and regional managers, but not to the sales associates, credit  
agents, or telemarketers who actually sell insurance on Curacao's behalf. (9/29/22 Tr.  
314:3-6, 344:12-345:13 [Holguin]; 10/11/22 Tr. 1290:21-27 [Sutherland].) For non-  
manager Curacao employees, Mr. Sutherland testified that his company prepared a

two-page "condensed form of the [approved] credit training materials," referred to as the "At-A-Glance" handout, in lieu of the approved training document. (10/11/22 Tr. 1290:21-27, 1291:14-28, 1292:1-5 [Sutherland]; Ex. 933 [Curacao At-A-Glance Insurance Training Handout].) This handout was not submitted to the Department of Insurance for approval. (10/11/22 Tr. 1292:16-18 [Sutherland].)

The evidence also showed that Curacao used various other documents that were never submitted to the Department of Insurance for approval to train sales associates, credit agents, and telesales agents on how to sell AGP Plus and CCS Plus. (Ex. 933; Ex. 23 [ADIR Global Protection Basic | Plus Sales Guide]; 9/29/22 Tr. 294:28-295:11 [Holguin]; 10/7/22 Tr. 894:18-28 [Perez]; Ex. 22 [ADIR Global Protection Quiz]; Ex. 140 [Curacao Credit Shield Telesales Training (3/11/21)]; Ex. 1012.0002, ¶ 5; 10/10/22 Tr. 1137:25-1138:19 [Jiron].) None of these documents describe the disclosures that are required to be made to consumers before selling credit insurance or even disclose to the trainee that AGP Plus actually contains credit insurance. (See Ex. 22; Ex. 23; Ex. 140; 9/29/22 Tr. 297:11-298:3, 305:10-306:7; 307:4-18; 341:9-27; 342:14-17 [Holguin]; 10/10/22 Tr. 985:17-26, 986:12-15; 987:27-988:5 [Perez]; 10/10/22 Tr. 1140:19-1141:4, 1141:10-22 [Jiron].)

Defendants' contention that the "At-A-Glance" handout merely summarized the same information from the approved training document is not supported by the evidence at trial. The "At-A-Glance" handout does not, for example, inform trainees of the disclosures they are required to make to consumers before selling or soliciting insurance, information that is required to be included in the training material and that is included in the approved training document. (Ex. 933 [Curacao At-A-Glance Insurance Training Handout]; Ex. 359.0018, .0019 [Ltr. from CDI to Sutherland and Associates re: Credit Insurance Training Manual].) The "At-A-Glance" handout also contains instructions that contradict the Insurance Code's mandatory disclosure that "the endorsee is not qualified or authorized to evaluate the adequacy of the purchaser's existing coverages." (Ins. Code, § 1758.97, subd. (b)(3).) The handout instructs Curacao employees to evaluate and comment on the scope of a consumers' existing insurance policies in order to convince the consumers to purchase credit property insurance. (Ex. 933.0002 [instructing trainees to tell consumers who already have

1 insurance that “[M]ost [homeowner’s or renter’s policies] have deductibles of \$500 or  
2 more. Would your policy fully replace your purchase?”].)

3 Defendants’ claim that additional insurance training was provided to employees  
4 via “Curacao University” is also not supported by the evidence at trial. (10/7/22 Tr.  
5 893:21-24, 894:2-17 [Perez].) Defendants presented no evidence of the materials used  
6 on Curacao University or whether those materials were approved by the Department of  
7 Insurance. Indeed, the evidence showed that some employees did not receive credit  
8 insurance training at all. (9/29/22 Tr. 238:16-239:2, 250:26-251:10 [Arteaga]; 9/29/22 Tr.  
342:18-24 [Holguin].)

9 **Curacao did not provide required disclosures to consumers**  
10 **before enrolling them in credit property insurance**

11 The evidence showed that Curacao regularly failed to provide disclosures  
12 required by Insurance Code section 1758.97 to consumers before it enrolled those  
13 consumers in credit property insurance.

14 Section 1758.97 prohibits a credit insurance agent from selling or offering to sell  
15 insurance unless two forms of disclosures are made, among other conditions. First,  
16 under subsection (a), the agent must provide brochures or written material that  
17 summarize the terms and conditions of the coverage, among other disclosures. (Ins.  
18 Code, § 1758.97, subd. (a).) Second, the agent must make several disclosures  
19 including: the insurance offered may duplicate the purchaser’s other insurance  
20 coverage, and that the agent’s endorsee is not qualified or authorized to evaluate the  
21 purchaser’s existing coverages. (Ins. Code, § 1758.98, subd. (b).) The disclosures  
22 under subsection (b) must be made “in a statement acknowledged by the purchaser in  
23 writing on a separate form, electronically, digitally, or by audio recording,” if the credit  
24 insurance “is sold at the same time and place as the related credit transaction.” (*Ibid.*)  
All of the disclosures above “must be printed and must be clear and conspicuous.” (10  
CCR, § 2192.6(a).)

25 The evidence presented at trial demonstrated that Curacao’s regular practice  
was to provide the disclosures required by section 1758.97, subsection (b), only after

1 the customer had already enrolled in AGP Plus or separate credit property insurance.  
2 (Ex. 585 at 32:20-33:19 [H. Perez 9/3/21 Deposition Designations (PMQ)]; 9/29/22 Tr.  
3 301:9-303:15 [Holguin]; 9/29/22 Tr. 254:28-255:13 [Arteaga].) A customer being  
4 enrolled in AGP Plus or separate credit property insurance at a store would be asked to  
5 sign an electronic keypad without being shown the disclosures either in printed form or  
6 on a computer screen. (9/29/22 Tr. 251:21-26, 252:14-18, 253:26-254:1, 254:28-255:2,  
7 255:11-13 [Arteaga]; 9/29/22 Tr. 302:8-303:15, 309:3-13, 310:15-19 [Holguin]; 9/27/22  
8 Tr. 113:13-114:2, 115:19-116:2 [Villalobos]; Ex. 341.0054 [Curacao's Hands on  
9 Systems Processes].) The insurance forms and disclosures would then be printed out  
10 with the customer's electronic signature printed on the forms. (9/29/22 Tr. 237:12-22,  
11 251:24-26, 253:26-254:1, 279:1-5 [Arteaga]; 10/4/22 Tr. 644:7-13 [Holguin]; 10/10/22  
12 Tr. 982:20-983:5 [Perez].) The evidence showed that Curacao's computer sales  
13 system—the "AR System"—did not display the credit insurance disclosures during the  
14 signature process, so a consumer could not view what they had signed until the  
15 insurance forms had been printed out with the customer's signature already appended.  
16 (9/29/22 Tr. 304:26-306:7, 307:15-18, 308:23-27 [Holguin].)

17 Curacao's practice of providing the insurance disclosures required by section  
18 1758.97, subsection (b), after the customer has enrolled in the coverage violates  
19 section 1758.97. The statute does not allow an agent to "sell or offer to sell insurance"  
20 unless the agent "makes the disclosures" under subsection (b). (Ins. Code, § 1758.97,  
21 subd. (b).) It is not permissible to provide these disclosures after the consumer has  
22 signed the contract and disclosures without seeing the terms, conditions, and  
23 disclosures that they signed.

24 Defendants elicited evidence that, as of 2017, they began providing a brochure  
25 with a description of AGP Basic and Plus before enrolling customers in AGP Plus.  
(10/4/22 Tr. 638:12-22 [Holguin]; Ex. 43 [AGP Brochure]; Ex. 45 [AGP Brochures].)  
However, that brochure does not contain the disclosures required by section 1758.97,  
subsection (b). (Ex. 43; Ex. 45.) The evidence also showed that these brochures were  
not regularly provided prior to sale before 2017. (9/29/22 Tr. 255:3-10 [Arteaga]; 10/4/22  
Tr. 638:5-11 [Holguin].)

02/01/2023  
1 Defendants also elicited evidence from Curacao's executives that Curacao  
2 employees were trained to provide verbal explanations of AGP Plus to consumers  
3 during the sales process prior to enrollment. (10/7/22 Tr. 864:11-23; 865:6-16 [Perez].)  
4 However, there was no evidence that such verbal explanations included the mandated  
5 statutory disclosures in section 1758.97(b). The Court also does not find it credible that  
6 Curacao employees were trained to recite, or did recite, the statutory disclosures  
7 verbally. None of the training documents in the record instruct the employees to make  
8 such disclosures. (See Ex. 22; Ex. 23; Ex. 140; 9/29/22 Tr. 305:10-306:4, 307:4-18,  
9 342:14-17 [Holguin]; 10/10/22 Tr. 987:27-988:5 [Perez].) The evidence showed that  
10 Curacao's telesales agents were required to follow certain scripts, but those scripts did  
11 not include any explanation of AGP Plus or CCS Plus, credit insurance generally, or the  
12 disclosures required by section 1758.97. (10/10/22 Tr. 1140:19-1141:4, 1141:10-22  
13 [Jiron]; Ex. 140.) Defendants' only evidence that employees were provided verbal  
14 disclosures came from the testimony of Curacao executives, who did not sell credit  
15 property insurance and did not train employees to sell credit property insurance.  
16 (10/7/22 Tr. 864:11-865:26 [Perez].) The Court finds that this testimony is not credible  
17 because, among other things, it was not based on the executives' personal knowledge.  
18 (See, e.g., 10/10/22 Tr. 1039:6-25 [Perez] [admitting that he did not know how certain  
19 statutorily required disclosures would have been provided verbally].) It was also  
20 contradicted by testimony from a former Curacao employee who was on the sales floor  
21 and who testified credibly that salespeople were not trained to recite the statutorily  
22 required disclosures, as well as testimony from a consumer witness that customers  
23 were sometimes not even informed of the basic fact that insurance was being added to  
24 their contract or account. (9/29/22 Tr. 254:28-255:13 [Arteaga]; 9/27/22 Tr. 117:23-28  
25 [Villalobos]; 9/28/22 Tr. 209:26-210:1[Villalobos].)

### **Ron Azarkman Is Directly Liable for Curacao's Violations of Law**

24 The Court finds that Defendant Ron Azarkman is liable for Curacao's unlawful  
25 business practices because he has complete control over those practices, he was  
aware of those unlawful business practices, and he has permitted those practices to

1 continue. He is also liable for aiding and abetting Curacao's unlawful business  
2 practices.

3 The principals or executives of a company are directly liable for the company's  
4 violations of the Unfair Competition Law where they have "control over the operations of  
5 the business," were "informed" about the practices at issue, and permitted those  
6 practices to continue. (*People v. Toomey* (1984) 157 Cal.App.3d 1, 15; *People v.*  
7 *Conway* (1974) 42 Cal.App.3d 875, 886; *People v. First Federal Credit Corp.* (2002) 104  
8 Cal.App.4th 721, 735; *People v. Sarpas* (2014) 225 Cal.App.4th 1539, 1564.) Actual  
9 knowledge of the unlawful practices is not required where the principal "reasonably  
10 should have known" that the company engaged in the challenged acts or practices.  
(*People v. Dollar Rent- A-Car Systems, Inc.* (1989) 211 Cal.App.3d 119, 132.)

11 Company principals and executives can also be held liable for aiding and abetting  
12 Unfair Competition Law violations. (*People v. Bestline Products, Inc.* (1976) 61  
13 Cal.App.3d 879, 919 [corporate officers liable for aiding and abetting where they played  
14 a role operating a deceptive marketing program and coordinating meetings in which  
15 deceptive information was conveyed]; see also *Saunders v. Superior Court* (1994) 27  
16 Cal.App.4th 832, 846 [a defendant aids and abets illegal conduct when the defendant  
17 knows that the conduct occurred and gives substantial assistance].)

18 Because the Unfair Competition Law imposes strict liability, it is irrelevant for  
19 purposes of liability whether the principal or executive knew the conduct was illegal; it is  
20 sufficient to show that the principal or executive knew the conduct was occurring and  
21 permitted it to continue. (See *Hewlett, supra*, 54 Cal.App.4th at p. 520 [holding that  
22 where the defendant intended to cut down trees, "the fact that it may have believed its  
23 conduct was lawful . . . is not a defense" to liability under the UCL's unlawful prong].)

### 24 **Ron Azarkman controls Curacao**

25 The evidence showed that Ron Azarkman controls Curacao and has controlled  
the company for years. Ron Azarkman founded Curacao with his brother. (9/30/22 Tr.  
384:12-14 [Azarkman].) Ron Azarkman is currently the sole owner of Curacao either  
directly or through entities he owns. (10/12/22 Tr. 1383:22-1384:22 [Illson].) Since 2016,

1 Mr. Azarkman and his personal trust have been the only two members of the LLC that  
2 runs Curacao and receive all of the company's distributions. (Ex. 251 [Corporate  
3 Organization Chart (Sept. 2015)]; 10/12/22 Tr. 1377:14-27, 1378:16-20 [Illson].)  
4 Curacao has not had a board of directors since 2012. (9/30/22 Tr. 385:24-386:1  
5 [Azarkman].) Because it is a privately held company, Mr. Azarkman "can make any  
6 decision [he] want[s]." (9/30/22 Tr. 503:27-28 [Azarkman].)

7 Ron Azarkman is also the Chief Executive Officer of Curacao and sits alone atop  
8 the entire corporate organization. (Ex. 121.0002 [Annual VP Meeting (3/31/2015)];  
9 9/30/22 Tr. 384:9-11, 386:2-4 [Azarkman].) As the CEO, Mr. Azarkman sets the short-  
10 and long-term strategies of the company, sets the tone for and monitors the margins,  
11 and receives and reviews monthly profit and loss reports, balance sheets, and daily  
12 sales reports. (9/30/22 Tr. 386:5-387:2, 387:19-388:1, 388:25-389:2 [Azarkman].) As he  
13 testified, Mr. Azarkman has "the authority to do anything in the company." (9/30/22 Tr.  
14 427:14-15 [Azarkman].)

15 **Ron Azarkman knew that Curacao was paying commissions to its**  
16 **unlicensed, unendorsed employees for the sale of credit property insurance**  
17 **and did not stop the practice**

18 Mr. Azarkman is directly liable for Curacao's practice of selling credit property  
19 insurance through unlicensed, unendorsed employees, who receive commissions to sell  
20 insurance. The evidence showed that Mr. Azarkman knew about this practice, that he  
21 could have stopped it but instead allowed it to continue, and did not inquire about its  
22 legality even after being informed about the People's claims in this litigation. Individual  
23 liability is appropriate for a corporate officer who, "[a]fter being informed of the practices  
24 of his subordinates ... allowed those subordinates to continue in their positions and  
25 carry on their unlawful practices for the benefit of [his company]." (See *People v.*  
*Conway, supra*, 42 Cal.App.3d at p. 886.)

1 The evidence demonstrates that Mr. Azarkman was aware that Curacao  
2 employees were selling credit property insurance and that they were being paid  
3 commissions to do so. Mr. Azarkman attended monthly meetings in which credit  
4 property insurance was discussed. (9/29/22 Tr. 347:14-348:9 [Holguin].) Mr. Azarkman  
5 was aware that Curacao stores and associates had goals for services, which included  
6 the sale of credit property insurance and received sales reports that show credit  
7 insurance sales broken down by store. (Ex. 500.0001, 500.0011 [5/12/16 email from  
8 Lizeth Rivera to Ron Azarkman re: FEB 2018 Goals]; 9/30/22 Tr. 428:1-430:1, 430:12-  
9 432:26 [Azarkman].) Mr. Azarkman was also aware that Curacao attached bonuses to  
10 those services goals. (Ex. 526 [6/28/12 email from Ron Azarkman to Hector Perez re:  
11 Anaheim and Chino stores] [referencing goals and bonuses for services sells]; 9/30/22  
12 Tr. 453:23-28 [Azarkman].)

13 Mr. Azarkman was also aware, by no later than June 2020 when he verified  
14 Defendants' discovery responses, that the Curacao sales associates who sold credit  
15 property insurance were not licensed and were not endorsed. (Ex. 382.0003, 382.0004,  
16 382.0012 [Resp. to RFA Nos. 24 and 25 and Mr. Azarkman's verification].) Mr.  
17 Azarkman also verified that these associates received bonuses for the sale of AGP  
18 Plus, which he knew included credit property insurance. (Ex. 382.0005-.0006 [Resp. to  
19 RFA No. 27]; 9/30/22 Tr. 493:1-7 [Azarkman].) Even after verifying these discovery  
20 responses, Mr. Azarkman did not ask anyone at Curacao to look into whether  
21 unlicensed, unendorsed associates were selling credit property insurance. (9/30/22 Tr.  
22 503:3-13 [Azarkman].) Curacao still pays sales associates bonuses for the sale of AGP  
23 Plus. (10/7/22 Tr. 909:13-15 [Perez].)

24 While the Court has found that selling AGP is not unlawful, Mr. Azarkman's  
25 testimony on that subject lacked credibility. Mr. Azarkman downplayed the importance  
of AGP to the company's profitability, while the evidence indicated that it was central.  
He testified that AGP was not a "top product" and is only one of about one hundred  
product lines. As described above, AGP was enormously profitable for the company and  
for Mr. Azarkman personally, and any contention that he wasn't aware that Curacao  
was paying commissions to its unregistered, unlicensed employees for the sale of credit  
property insurance is not credible.



1 Mr. Azarkman's belief about the lawfulness of Curacao's conduct, or his intent in  
2 continuing to allow that conduct, is irrelevant to Mr. Azarkman's liability for the conduct  
3 under the Unfair Competition Law. As stated above, the Unfair Competition Law is a  
4 strict liability statute. The standards for individual liability of corporate directors or  
5 officers for tortious acts do not apply to individual liability under the Unfair Competition  
6 Law. (*Bank of the West v. Superior Court*, *supra*, 2 Cal.4th at pp. 1266-1267 ["to state a  
7 claim under the [Unfair Competition Law] one need not plead and prove the elements of  
a tort"].)

## 8 REMEDIES

### 9 INJUNCTIVE RELIEF

10 Courts have "extraordinarily broad" remedial power to fashion appropriate  
11 injunctive relief (*Overstock.com*, *supra*, 12 Cal.App.5th at p. 1091), which is the "primary  
12 form of relief available under the UCL... ." (*Kwikset Corp. v. Super. Ct.* (2011) 51  
13 Cal.4th 310, 337.) Pursuant to this power, an injunction may be based on a "threat of  
14 continuing misconduct" (*Madrid v. Perot Sys. Corp.* (2005) 130 Cal.App.4th 440, 463) or  
a "reasonable probability that the past acts complained of will recur." (*Davis v. Farmers*  
*Ins. Exch.* (2016) 245 Cal.App.4th 1302, 1327.)

15 With respect to Insurance Code violations, Defendants continue to sell credit  
16 insurance through employees who are neither licensed nor endorsed and incentivize  
17 this unlawful sale of credit insurance through the unlawful payment of commissions,  
18 even after the Attorney General investigated and sued them over these practices.  
19 Injunctive relief is therefore necessary.

### 20 CIVIL PENALTIES

21 As the Court has found that selling AGP/CCS is not unlawful, no restitution or  
22 civil penalties are ordered for that practice.

23 As to the Insurance Code violations, the Court will grant injunctive relief as set  
24 forth in the proposed order served and filed concurrently with this proposed statement of  
decision.

25 With respect to civil penalties, Curacao sold 268,922 insurance policies on retail  
installment sales contracts between January 2014 and February 2022, and 49,885

1 insurance policies as part of AGP Plus or CCS Plus on retail installment sales accounts  
2 through January 2022. (Ex. 420.0008-.0009, .0019-.0020 [Adir's Supp. Response to  
3 Special Interrogatories (2/1/22)]; Ex. 424.0006 [Adir's Supp. Response to the People's  
4 Fourth Set of Special Interrogatories (2/28/20)]), for a total of 318,807 credit insurance  
5 policies sold. This does not capture insurance policies sold by Defendants on retail  
6 installment sales contracts prior to January 2014, for which data was not available (Ex.  
7 420.0019), nor does it capture insurance policies sold on retail installment sales  
accounts after January 2022.

8 The Court conservatively finds a total of 318,807 violations predicated on  
9 the Insurance Code.

10 Business & Professions Code sec. 17206 provides, in relevant part:

11 **"(a)** Any person who engages, has engaged, or proposes to engage in unfair  
12 competition *shall be liable* for a civil penalty not to exceed two thousand five hundred  
13 dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil  
14 action brought in the name of the people of the State of California by the Attorney  
15 General, by any district attorney, by any county counsel authorized by agreement with  
16 the district attorney in actions involving violation of a county ordinance, by any city  
17 attorney of a city having a population in excess of 750,000, or by a county counsel of  
18 any county within which a city has a population in excess of 750,000, by any city  
19 attorney of any city and county, or, with the consent of the district attorney, by a city  
20 prosecutor in any city having a full-time city prosecutor, in any court of competent  
21 jurisdiction.

22 **(b)** The court *shall impose a civil penalty* for each violation of this chapter. In assessing  
23 the amount of the civil penalty, the court shall consider any one or more of the relevant  
24 circumstances presented by any of the parties to the case, including, but not limited to,  
25 the following: the nature and seriousness of the misconduct, the number of violations,  
the persistence of the misconduct, the length of time over which the misconduct  
occurred, the willfulness of the defendant's misconduct, and the defendant's assets,  
liabilities, and net worth."

1 *Nature and seriousness of the misconduct:*

2 The lack of licensure, endorsement and proper training of the sales associates is  
3 not a simple matter of depriving the Dept. of Insurance of needed funds. Rather, there  
4 are very important public interests involved. As noted above, without assurance that the  
5 Dept. of Insurance regulations are being followed, there is a high risk that the seller may  
6 be supplying wrong or incomplete information to the customer; the customer may be  
7 paying for a product that they don't need; the customer may not know how to file a  
8 claim, and the customer may have overlapping coverages of which they are not aware.

9 *The number of violations:*

10 As noted above, Defendant sold 318,807 credit insurance policies between  
11 January 2014 and February 1, 2022, through unlicensed, unendorsed, and untrained  
12 employees.

13  
14 *The persistence of the misconduct:*

15 The misconduct was not random or sporadic. It was constant. The failure to  
16 endorse the sales associates who sold credit property insurance on Defendant's behalf  
17 was an annual event, occurring whenever the applicable forms were filed. The failure to  
18 provide the required disclosures before enrolling the consumers in credit property  
19 insurance was a regular occurrence. Upon being accused of Insurance Code violations  
20 via the filing of the First Amended Complaint, the misconduct did not cease, continuing  
21 up to and including the trial.

22 *The length of time over which the misconduct occurred*

23 Defendant has been selling credit property insurance policies since 1993.  
24  
25

1 *The willfulness of Defendant's conduct:*

2 Michael Sutherland, Defendant's insurance broker, testified that he advised  
3 Defendant that it could have unlicensed, unendorsed sales associates sell insurance if  
4 the store manager was an endorsee. Several of Defendant's witnesses testified that  
5 they relied on this (wrong) advice. As stated above, reliance on this advice is not a  
6 defense; it is, however, a mitigating factor.

7 *Defendants' assets, liabilities, and net worth*

8 Evidence at trial indicated that Curacao had profits of approximately \$66.8 million  
9 between February 2012 and January 2022. (10/3/22 Tr. 579:2-13 [Armstrong]; 10/12/22  
10 1386:10-26 [Illson].) As a pass-through entity, more than \$42.3 million of these profits  
11 were distributed to its members, Ron Azarkman (and his related entities) and Jerry  
12 Azarkman, between February 2012 and January 2021. (10/3/22 Tr. 579:14-27  
13 [Armstrong]; 10/12/22 Tr. 1385:4-7 [Illson].) All member distributions since February  
14 2016, in excess of \$11.5 million, went to Ron Azarkman or entities under his sole  
15 ownership and control. (10/12/22 Tr. 1377:14-27, 1378:16-20, 1381:12-23, 1384:17-  
16 1385:19 [Illson].) This does not include Mr. Azarkman's share of the \$20 million in  
profits from fiscal year 2022.

17 The company's net worth as of January 2022 was approximately \$88.2 million  
18 after accounting for profits in excess of \$20 million during the fiscal year ending January  
19 2022, which, according to Curacao's Vice President of Finance, Inna Illson, was "an  
20 exceptionally good year due to COVID, and it was a gift that was given to a lot of  
21 retailers that that was one of the lifetime gifts." (10/3/22 Tr. 577:15-26 [Armstrong];  
22 10/12/22 Tr. 1386:10-26, 1393:25-1394:3 [Illson].) In addition, the company maintains a  
23 \$217.5 million credit line, and has accounts receivable and other assets of more than  
24 \$270 million (as of January 2021). (10/3/22 Tr. 582:10-23 [Armstrong]; Ex. 19.0004;  
25 .0018 [audited financial statements].) Ms. Illson estimated that the company has about  
\$50 million currently available to borrow from its credit line. (10/12/22 Tr. 1387:19-  
1388:8 [Illson].) Defendants introduced testimony that Curacao's cash on hand is limited  
(see, e.g., 10/12/22 Tr. 1389:7-11), but evidence was also presented at trial that the

1 company is able to raise funds when needed, for example when it opened a new store  
2 in December 2021, including through its credit line and Mr. Azarkman. (10/12/22 Tr.  
3 1393:11-1400:19 [Illson].)

4 Mr. Azarkman has waived any claim of inability to pay whatever civil penalties  
5 may be awarded.<sup>2</sup>

6 The Court is required to impose a civil penalty of up to \$2,500 for each violation.  
7 Here, there was evidence that Defendant sold 318,807 credit insurance policies  
8 between January 2014 and February 1, 2022, through unlicensed, unendorsed, and  
9 untrained employees.

10 In their proposed statement of decision, the People proposed a “reasonable, if  
11 not lenient” civil penalty of \$25 per violation. They recommended that this be imposed,  
12 however, in light of its expectation that large amounts of restitution would be ordered. In  
13 the absence of such restitution, the People’s recommendation would undoubtedly be  
14 much higher.

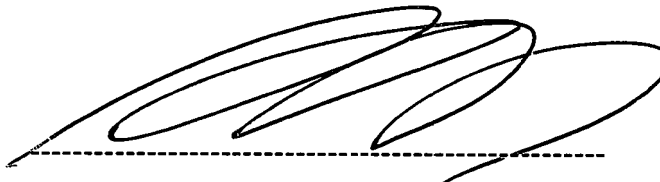
15 The Court is of the view that even in the absence of an award of restitution  
16 imposition of a civil penalty in the sum of \$25 per violation would be reasonable. While  
17 \$25 is only 1% of the maximum penalty per violation, when applied to the large number  
18 of sales the penalties should be sufficient to incentivize compliance with Insurance  
19 Code sections 1758.9 and 1758.98 (c). Civil penalties at \$25 for sales of 318,807 totals  
20 \$7,970,175. Civil penalties are therefore imposed on Defendants Adir International LLC  
21 and Ron Azarkman, jointly and severally, in the sum of \$7,970,175.

22 Plaintiff The People of the State of California is to prepare a judgment consistent  
23 with this Statement of Decision.

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24 <sup>2</sup> To secure a protective order to prevent discovery into his assets, liabilities, and net worth, Mr. Azarkman’s counsel  
25 confirmed that Mr. Azarkman “waive[d] any claim of inability to pay whatever civil penalties may be awarded for  
assessment in the case.” (Hearing Tr. at 19:27-20:4 (June 22, 2021) [“**The Court:** Let me just confirm with you, Mr.  
Tsai. It’s been stated in the papers but just for the – we have a court reporter here. Mr. Azarkman waives any claim  
of inability to pay whatever civil penalties may be awarded for assessment in the case; is that correct?” “**Mr. Tsai:**  
Yes, that’s correct, Your Honor.”].) Based on this representation, the Court found that the People’s “need for the  
discovery disappear[ed]” because “even if the Court decides to award the maximum amount as allowed by law,  
there’s going to be no claim that he can’t afford it.” (Hearing Tr. at 20:1-22 (June 22, 2021).) On this basis, the  
Court issued the requested protective order. (*Id.* at 24:17-19.)

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STEVEN J. KLEIFIELD, JUDGE  
LOS ANGELES SUPERIOR COURT