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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

WAKAYA PERFECTION, LLC, a Utah Limited Liability Company, **TODD SMITH**, an individual; **WILLIAM ANDREOLI**, an individual; **PATTI GARDNER**, an individual; and **BRYTT CLOWARD**, an individual, Plaintiffs/Counterclaim Defendants, vs. **OHIO SECURITY INSURANCE COMPANY**, a New Hampshire corporation; **THE OHIO CASUALTY INSURANCE COMPANY**, a New Hampshire corporation; and **LIBERTY MUTUAL INSURANCE COMPANY**, a Massachusetts corporation, Defendants/Counterclaim Plaintiffs.	**ANSWER AND COUNTERCLAIM** Case No. 190902435 Judge Keith Kelly TIER III

Pursuant to Fed. R. Civ. P. 7(a), Defendants/Counterclaim Plaintiffs Ohio Security Insurance Company ("**Ohio Security**"), The Ohio Casualty Insurance Company ("**Ohio**

Casualty"), and Liberty Mutual Insurance Company ("**Liberty Mutual**") (together "**Defendants**") by and through their undersigned counsel, hereby answer the First Amended Complaint ("**FAC**") filed by Plaintiffs/Counterclaim Defendants Wakaya Perfection, LLC ("**Wakaya**"), Todd Smith ("**Smith**"), William Andreoli ("**Andreoli**"), Patti Gardner ("**Gardner**"), and Brytt Cloward ("**Cloward**") (together "**Plaintiffs**") as follows:

FIRST DEFENSE

The FAC fails to state a claim against Defendants upon which relief can be granted.

SECOND DEFENSE

Defendants respond to the specific allegations of the FAC's numbered paragraphs as follows:

PARTIES, JURISDICTION & VENUE

1. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 1, and therefore deny those allegations.

2. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 2, and therefore deny those allegations.

3. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 3, and therefore deny those allegations.

4. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 4, and therefore deny those allegations.

5. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 5, and therefore deny those allegations.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. The allegations of paragraph 10 are assertions of law to which no response is required. To the extent a response is required, Defendants admit they have transacted business within the state of Utah. Defendants deny the remainder of the allegations of paragraph 10.

11. The allegations of paragraph 11 are assertions of law to which no response is required.

12. The allegations of paragraph 12 are assertions of law to which no response is required.

GENERAL FACTUAL ALLEGATIONS

13. Admitted only to the extent that Ohio Security issued a commercial general liability policy to Wakaya, Policy No. BKS 57 19 13 77, effective February 21, 2016 through February 21, 2017 ("**BKS Policy**") and Ohio Casualty issued a commercial umbrella liability policy, Policy No. USO 57 19 13 77, effective February 21, 2016 through February 21, 2017 ("**USO Policy**") (together, the "**Policies**"). Defendants affirmatively assert that the Policies are void and unenforceable for many reasons, including intentional misrepresentations and fraud. Defendants deny the remainder of the allegations of paragraph 13.

14. Admitted.

15. The allegations of paragraph 15 are assertions of law to which no response is required. To the extent a response is required, Defendants affirmatively assert that the Policies are void and unenforceable for many reasons, including intentional misrepresentations and fraud. Defendants deny the remainder of the allegations of paragraph 15.

16. Denied.

17. Admitted

18. Admitted only to the extent that Plaintiffs demanded that Defendants defend and indemnify them in the lawsuit captioned *Youngevity International Corp. et al. v. Smith*, et al., Case Number 3:16-CV-00704 (S.D. Cal. 2016) (the "**California Lawsuit**"). Defendants affirmatively

assert that the demand for indemnification was untimely, as they waited until August 22, 2016—nearly five (5) months after the California Lawsuit was filed—to tender a claim under the Policies. Defendants deny the remainder of the allegations of paragraph 18.

19. Denied.

20. Admitted only to the extent that on or about October 24, 2016, Defendants issued Wakaya a Reservation of Rights letter ("**ROR Letter**") which stated that Ohio Security would provide a defense under a reservation of rights in the California Lawsuit to Wakaya, Smith, Andreoli, and Gardner. The ROR Letter denied the request to provide a defense as it pertained to (1) Cloward; (2) the policy issued by Ohio Casualty; and (3) any fees or costs relating to the Policies incurred prior to August 22, 2016 ("**Pre-Tender Fees**"). On or about February 9, 2017, Defendants agreed to provide a defense to Cloward in the California Lawsuit under a reservation of rights. Defendants deny the remainder of the allegations of paragraph 20.

21. Admitted only to the extent that the communication from Plaintiffs on or about December 2, 2016 occurred. The communication speaks for itself and Defendants deny any characterization inconsistent with the same. Defendants deny the remainder of the allegations of paragraph 21.

22. Admitted only to the extent that the communication from Defendants on or about February 9, 2017 occurred. The communication speaks for itself and Defendants deny any characterization inconsistent with the same. Defendants deny the remainder of the allegations of paragraph 22.

23. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 23, and therefore deny those allegations.

24. Denied.

25. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 25, and therefore deny those allegations.

26. Admitted only to the extent that Defendants have not paid any of the Pre-Tender Fees. Defendants affirmatively assert that Plaintiffs are not entitled to anything—including Pre-Tender Fees—under the Policies. Defendants deny the remainder of the allegations of paragraph 26.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment)

27. Defendants reallege and incorporate by reference the preceding responses to each and every paragraph of this Answer as if fully recited therein.

28. Admitted.

29. The allegations of paragraph 29 are assertions of law to which no response is required.

30. Admitted.

31. Admitted.

32. Admitted.

33. The allegations of paragraph 33 are assertions of law to which no response is required.

34. Denied.

SECOND CLAIM FOR RELIEF
(Breach of Contract)

35. Defendants reallege and incorporate by reference the preceding responses to each and every paragraph of this Answer as if fully recited therein.

36. Admitted only to the extent that Defendants offered the Policy to Wakaya under the false circumstances and information given to them at the time of the issuance of the Policies. Defendants deny the remainder of the allegations of paragraph 36.

37. Admitted.

38. Denied.

39. Admitted.

40. Denied.

41. Denied.

42. Admitted only to the extent that Plaintiffs' demand to defend and indemnify them in the California Lawsuit was untimely. Defendants deny the remainder of the allegations of paragraph 42.

43. Admitted only to the extent that Defendants have not paid any of the Pre-Tender Fees. Defendants affirmatively assert that Plaintiffs are not entitled to anything—including Pre-Tender Fees—under the Policies. Defendants deny the remainder of the allegations of paragraph 43.

44. Denied.

45. Denied.

46. Denied.

47. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 47, and therefore deny those allegations.

THIRD CLAIM FOR RELIEF
(Breach of Covenant of Good Faith and Fair Dealing)

48. Defendants reallege and incorporate by reference the preceding responses to each and every paragraph of this Answer as if fully recited therein.

49. The allegations of paragraph 49 are assertions of law to which no response is required.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

65. Denied.

PRAYER FOR RELIEF

Defendants reallege and incorporate by reference the preceding responses to each and every paragraph of this Answer as if fully recited therein.

A. Denied.

B. Denied.

C. Denied.

D. Denied.

E. Denied.

F. The allegations of paragraph F are assertions of law to which no response is required.

Defendants deny every allegation in the FAC, including those allegations in the Prayer for Relief, other than those allegations expressly admitted herein.

THIRD DEFENSE

The FAC is barred, in whole or in part, because the Policies are void under Utah Code Ann § 31A-21-303 because of one or more "material misrepresentations" made by Wakaya and/or Smith during the negotiation of the Policies.

FOURTH DEFENSE

The FAC is barred, in whole or in part, because the Policies are void due to the doctrines of fraud, intentional misrepresentation, negligent misrepresentation, concealment, and/or fraudulent non-disclosure, relating to one or more misrepresentations made by Wakaya and/or Smith during the negotiation of the Policies.

FIFTH DEFENSE

The FAC is barred, in whole or in part, by the doctrine of detrimental reliance.

SIXTH DEFENSE

The FAC is barred, in whole or in part, by the doctrine of unjust enrichment.

SEVENTH DEFENSE

The FAC is barred, in whole or in part, because Plaintiffs materially breached the Policies prior to any alleged breach by Defendants.

EIGHTH DEFENSE

The FAC is barred, in whole or in part, because Plaintiffs failed to timely tender a demand for indemnification as is required under the Policies.

NINTH DEFENSE

The FAC is barred, in whole or in part, because of Plaintiffs' failure to satisfy conditions precedent to any conduct allegedly required by Defendants.

TENTH DEFENSE

The FAC is barred, in whole or in part, due to Plaintiffs' own negligence, lack of reasonable care, failure to perform their duty, or other fault producing conduct or omission.

ELEVENTH DEFENSE

The FAC is barred, in whole or in part, because Plaintiffs suffered no damages and have otherwise failed to meet the other required elements for a breach of contract.

TWELFTH DEFENSE

The FAC is barred, in whole or in part, because Defendants' actions or inactions were not the proximate legal or substantial cause of any damages, injury, or loss allegedly suffered by Plaintiffs, the existence of which are denied.

THIRTEENTH DEFENSE

The FAC is barred, in whole or in part, as Plaintiffs' alleged damages, injury, or loss, the existence of which are denied, were not foreseeable.

FOURTEENTH DEFENSE

The FAC is barred, in whole or in part, due to Plaintiffs' failure to mitigate any damages, injury, or loss allegedly suffered by Plaintiffs, the existence of which are denied.

FIFTEENTH DEFENSE

The FAC is barred, in whole or in part, by the doctrines of waiver, estoppel, consent, ratification, release, acquiescence, novation, laches, excuse, mistake, and/or accord and satisfaction.

SIXTEENTH DEFENSE

The FAC is barred, in whole or in part, due to bad faith, inequitable conduct, and/or unclean hands.

SEVENTEENTH DEFENSE

The FAC may be barred, in whole or in part, by some or all of the affirmative defenses set forth in Rule 8(c) of the Utah Rules of Civil Procedure or other matters which may constitute an avoidance or affirmative defense, which matters may become known only after further information is discovered. Defendants specifically reserve the right to plead all matters which may constitute

an avoidance or affirmative defense. Defendants specifically reserve the right to plead all affirmative defenses in Rule 8(c) and any other matter constituting an avoidance or affirmative defense which may be disclosed through further discovery.

PRAYER FOR RELIEF

WHEREFORE, Defendants respectfully requests that:

1. The FAC be dismissed with prejudice and that Plaintiffs take nothing thereby;

2. The Court decline to award Plaintiffs the damages, costs, interest, and attorneys' fees sought;

3. Judgment be entered in favor of Defendants and against Plaintiffs on the FAC;

4. Plaintiffs be awarded their attorneys' fees and costs incurred in defending this matter; and

5. The Court grant such other relief as is just and proper.

COUNTERCLAIM

Defendants hereby counterclaim against Plaintiffs and allege as follows:

PARTIES, JURISDICTION, AND VENUE

1. Ohio Security is an insurance company organized under the laws of New Hampshire with its principal place of business in Massachusetts.

2. Ohio Casualty is an insurance company organized under the laws of New Hampshire with its principal place of business in Massachusetts.

3. Liberty Mutual is an insurance company organized under the laws of Massachusetts with its principal place of business in Massachusetts.

4. Both Ohio Security and Ohio Casualty are subsidiaries of Liberty Mutual.

5. On information and belief, Wakaya is a Utah limited liability company with its sole member, Smith, residing in Utah County, Utah and its principal place of business in Utah County, Utah.

6. On information and belief, Smith is an individual residing in Utah County, Utah.

7. On information and belief, Andreoli is an individual residing in New Hampshire.

8. On information and belief, Gardner is an individual residing in Utah.

9. On information and belief, Cloward is an individual residing in Utah.

10. Jurisdiction is proper in this Court pursuant to Utah Code Ann. §§ 78A-5-102; and 78B-3-205.

11. Venue is proper in this Court pursuant to Utah Code Ann. §§ 78B-3-304; and 78B-3-307.

12. This Court is expressly authorized with the power to issue declaratory judgments determining the rights, status, and other legal relations of the Parties under Utah Code Ann. § 78B-6-401.

FACTUAL ALLEGATIONS

Background

13. Prior to March 2016, Smith was a top-level independent distributor for Youngevity International, Inc. ("**Youngevity**") a multi-level marketing company ("**MLM**") that manufacturers health and nutrition products.

14. In or around October 2015, Smith acquired Wakaya—a similar, competing MLM that also manufacturers health and nutrition products.

15. On information and belief, Youngevity alleges that Smith designed Wakaya specifically to compete against Youngevity.

Wakaya Learns of Impending Litigation and Then Obtains Insurance

16. On or around February 22, 2016, Youngevity sent a demand letter to Wakaya, Smith and others accusing them of violating Youngevity's policies by attempting to induce distributors to leave Youngevity and join Wakaya.

17. On or about March 1, 2016, Wakaya applied for insurance coverage with CAL Insurance & Associates, Inc. ("**CAL**"), an independent entity who, pursuant to the terms of various agreements between CAL and Liberty Mutual, had limited authority to solicit insurance policies on behalf of Liberty Mutual.

18. During the application process, Wakaya requested that the insurance coverage be back-dated to February 21, 2016—one day before Youngevity sent its demand letter to Wakaya.

19. Wakaya represented that it was requesting the coverage to be backdated because it claimed it had an insurance policy from CNA Financial Corporation ("**CNA**") that it wanted to cancel.

20. That representation was false.

21. On or about March 2, 2016, CAL relayed the false representation regarding the cancellation of the CNA policy to Liberty Mutual and requested that Liberty Mutual backdate the insurance coverage to February 21, 2016.

22. In order to backdate the insurance coverage, Liberty Mutual required Wakaya to certify that it had no known losses from February 21, 2016 through March 3, 2016.

23. On or about March 3, 2016, Smith, on behalf of Wakaya, executed a no known losses letter which stated that Wakaya was not aware of any threatened claims or potential losses from February 21, 2016 through March 3, 2016.

24. That representation was false.

25. On or about March 17, 2016, Wakaya filed a complaint against Youngevity in Utah for various causes of action stemming from the competition between the two companies as it relates to various independent distributors. *See Wakaya Perfection, LLC v. Youngevity International, Inc.*, Case No. 160400431 (4th Dist. Utah), *removed to Wakaya Perfection, LLC, et al., v. Youngevity International, Inc. et al.*, No. 2:16-cv-315 (D. Utah 2016) ("**Utah Lawsuit**").

26. The complaint states that Youngevity "has threatened litigation against both the former Youngevity distributors . . . and against Wakaya."

27. On or about March 23, 2016, a mere six (6) days after the Utah Lawsuit was filed, Youngevity filed its complaint in the California Lawsuit.

28. On or about September 18, 2017, Smith—acting as the Rule 30(b)(6) designee of Wakaya—gave testimony via oral deposition in the California Lawsuit.

29. During his deposition testimony, Smith testified that the Utah Lawsuit was prepared "in response to being notified that Youngevity was going to" file the California Lawsuit and "it was obvious that [the complaint in the California Lawsuit] had been worked on, contemplated, and prepared long before Wakaya ever filed" the Utah Lawsuit.

30. Smith further testified that he was aware that Youngevity planned to sue him and Wakaya before the either of the lawsuits commenced:

> "Just by the extent of those -- of those pleadings and because I had been put on notice by at least three individuals that Youngevity was in the process of suing me. One of them we spoke of earlier, Mia Magistro. Others were Jerry Anderson and Vivian. I know there were others who Dr. Wallach specifically had spoken to and said we are going to – we're going to destroy these guys. We're going to sue them on numerous accounts and numerous places, and they will regret ever, ever having known our name. There were many allegations made. And so, yes, I believe that Youngevity was already in contemplation and in preparation of filing their suit when Wakaya filed theirs."

31. At the time Wakaya and Smith made the false representations, they were aware of their falsity as they had received previously been put on notice on multiple occasions that Youngevity was threatening and planning to bring litigation against Wakaya and Smith.

32. At the time Wakaya and Smith made the false representations, Defendants were unaware of their falsity.

Defendants Issue the Policies

33. On or about March 4, 2016, in complete reliance on Wakaya and Smith's false representations that Wakaya (1) requested coverage to be backdated because of the cancellation of the CNA Policy; and (2) had no known losses from February 21, 2016 through March 3, 2016, Defendants issued the Policies to Wakaya.

34. The BKS Policy states that "[b]y accepting this policy, you agree: (a) The statements in the Declarations are accurate and complete; (b) Those statements are based upon representations you made to us; and (c) We have issued this policy in reliance upon your representations."

35. The BKS Policy also states that "[y]ou represent that all information and statements contained in the Declarations are true, accurate and complete. All such information and statements are the basis for our issuing this policy."

36. The BKS Policy contains a clause that states: "[a]ny intentional: (a) Misrepresentation; (b) Omission; (c) Concealment; or (d) Misstatement of a material fact; in the Declarations or otherwise, which relates to a particular claim, shall be grounds to deny coverage."

37. The USO Policy explicitly states that it may be cancelled for a material misrepresentation.

38. Both Policies require that Wakaya by "notified as soon as practicable of an 'occurrence' which may result in a 'claim' or 'suit' under" the Policies.

39. Both Policies also required that Wakaya "immediately send [Defendants] copies of any demands, notices, summonses or legal papers received in connection with the 'claim' or 'suit.'"

Wakaya Tenders a Claim Under the Policies

40. Plaintiffs—without the prior permission, approval, or any input from Defendants—chose the law firm Parr Brown Gee & Loveless ("**Parr Brown**") to represent them in the Utah and California Lawsuits.

41. On or about August 22, 2016—nearly five (5) months after the initiation of the California Litigation—Defendants tendered a claim under the Policies.

42. On information and belief, Parr Brown conducted significant work on the California Lawsuit—without the prior permission, approval, or any input from Defendants—between the time the Lawsuit was filed on March 23, 2016 to the tender of the claim on August 22, 2016.

Defendants Issue the ROR Letter

43. On or about October 24, 2016, Defendants issued Wakaya the ROR Letter which stated that Ohio Security would provide a defense under a reservation of rights in the California Lawsuit to Wakaya, Smith, Andreoli, and Gardner beginning after the tender of the claim on August 22, 2016.

44. Accordingly, the ROR Letter agreed to pay Parr Brown (on behalf of Wakaya, Smith, Andreoli, and Gardner) for fees and costs related to the California Lawsuit.

45. The ROR Letter denied the request to provide a defense as it pertained to (1) Cloward; (2) the policy issued by Ohio Casualty; and (3) any Pre-Tender Fees.

46. The ROR Letter also stated that Ohio Casualty had no duty to defend against the California Lawsuit under the USO Policy.

47. On or about February 9, 2017, Defendants agreed to provide a defense to Cloward in the California Lawsuit under a reservation of rights.

48. Accordingly, the February 9, 2017Letter agreed to pay Parr Brown (on behalf of Cloward) for fees and costs related to the California Lawsuit.

The Various Litigations

49. To date, the California Lawsuit has amassed approximately 650 docket entries, including a multitude of dispositive motions and an interlocutory appeal to the Ninth Circuit Court of Appeals in *Youngevity International, Corp. et al., v. Andreoli, et al.*, No 18-55031 (9th Cir. 2018).

50. To date, the Utah Lawsuit has amassed approximately 60 docket entries, including dispositive motions and an appeal to the Tenth Circuit Court of Appeals in *Wakaya Perfection, LLC. et al., v. Youngevity International, Inc., et al.*, No 17-4178 (10th Cir. 2017).

51. Both the Utah and California Lawsuits are unresolved and currently pending.

52. In addition to the Utah and California Lawsuits, two related ancillary lawsuits were filed in *William Andreoli v. Youngvevity International Corp., et al.*, No. 3:16-CV-02922 (S.D. Cal. 2016) and *Joel M. Wallach v. Wakaya Perfection, LLC, et al.* No. 17-2-04566-34 (Wa. Sup. Ct., Thurston County) (the "**Ancillary Lawsuits**").

53. Under the terms of the ROR Letter, Defendants agreed to pay Parr Brown for fees and costs for the limited purposes of monitoring discovery and other events in the Ancillary Lawsuits.

54. Over the life of the California, Utah, and Ancillary Lawsuits, Defendants have paid Parr Brown (on behalf of Plaintiffs) several millions of dollars in attorneys' fees and costs.

FIRST CAUSE OF ACTION
(Declaratory Relief – Against All Plaintiffs)

55. Defendants reallege and incorporate by reference the preceding responses to each and every paragraph of this Counterclaim as if fully recited therein.

56. Under Utah Code § 78B-6-401, this court has jurisdiction to issue declaratory judgments determining the rights, status and other legal relations of the parties concerning the Policies.

57. There is a controversy between the Parties concerning whether the Policies are valid and enforceable.

58. Defendants claim that the Polices are void and unenforceable because of Wakaya and Smith's material misrepresentations when applying for the Policies. Plaintiffs contend that the Polices are valid and enforceable.

59. Each of the Parties has a legally protected interest regarding the validity of the Policies and the Parties' respective interests are adverse.

60. Declaratory relief is necessary and appropriate to resolve the present controversy between the Parties with regard to the validity of the Policies.

61. Defendants are entitled to a declaration that pursuant to Utah Code Ann. § 31A-21-303, the Polices are void and cancelled by reason Wakaya and Smith's material misrepresentations.

SECOND CAUSE OF ACTION

(Fraud – Affirmative Misrepresentation – Against Wakaya and Smith)

62. Defendants reallege and incorporate by reference the preceding responses to each and every paragraph of this Counterclaim as if fully recited therein.

63. In early March 2016, during the application process for the Policies, Wakaya requested that the insurance coverage be back-dated to February 21, 2016—one day before Youngevity sent its demand letter to Wakaya.

64. In early March 2016, during the application process for the Policies, Wakaya represented that it was requesting the coverage to be backdated because it claimed it had an insurance policy from CNA that it wanted to cancel.

65. On March 3, 2016, Smith, on behalf of Wakaya, executed a no known losses letter which represented that Wakaya had no known losses from February 21, 2016 through March 3, 2016.

66. On March 4, 2016, Wakaya accepted the terms of the Polices and thereby represented that the contents of the Policies were "accurate and complete".

67. Each of these representations were false.

68. At the time these representations were made, Wakaya and Smith knew these representations were false, as they had been put on notice multiple times, beginning no later than February 22, 2016, that litigation with Youngevity was imminent and inevitable.

69. At the very least, at the time these representations were made, Wakaya and Smith made these representations recklessly, as they had been put on notice multiple times, beginning no later than February 22, 2016, that litigation with Youngevity was imminent and inevitable.

70. Wakaya and Smith made these representations for the purpose of inducing Defendants to rely upon them when conducting their diligence regarding the application for the Policies.

71. At the time these representations were made, Defendants were unaware of their falsity.

72. Defendants relied upon these representations, as Defendants expressly asked for the execution of a no known losses letter prior to issuing the Policies and the Policies expressly state that Defendants relied upon the representations when issuing the Policies.

73. Defendants' reliance upon these representations was both reasonable and justified.

74. Due to these misrepresentations, Defendants were induced to issue the Policies.

75. As a direct result of Wakaya and Smith's misrepresentations, Defendants were forced to improperly pay millions of dollars in attorneys' fees and costs to Parr Brown and were deprived of their rights to properly analyze, supervise, and direct early litigation strategy and vet, interview, and engage counsel of their choosing.

76. As a direct result of Wakaya and Smith's misrepresentations, Defendants have been damaged in an amount to be determined at trial.

THIRD CAUSE OF ACTION

(Negligent Misrepresentation – Against Wakaya and Smith)

77. Defendants reallege and incorporate by reference the preceding responses to each and every paragraph of this Counterclaim as if fully recited therein.

78. In early March 2016, during the application process for the Policies, Wakaya requested that the insurance coverage be back-dated to February 21, 2016—one day before Youngevity sent its demand letter to Wakaya.

79. In early March 2016, during the application process for the Policies, Wakaya represented that it was requesting the coverage to be backdated because it claimed it had an insurance policy from CNA that it wanted to cancel.

80. On March 3, 2016, Smith, on behalf of Wakaya, executed a no known losses letter which represented that Wakaya had no known losses from February 21, 2016 through March 3, 2016.

81. On March 4, 2016, Wakaya accepted the terms of the Polices and thereby represented that the contents of the Policies were "accurate and complete".

82. Each of these representations were false.

83. Wakaya and Smith were in a superior position to know the material facts of the reasonable likelihood of Wakaya's immediate and imminent legal threats.

84. At the time these representations were made, Wakaya and Smith made these representations carelessly and negligently, as they failed to exercise reasonable care and/or competence required during the application process for the Policies

85. At the time these representations were made, Defendants were unaware of their falsity.

86. Defendants relied upon these representations, as Defendants expressly asked for the execution of a no known losses letter prior to issuing the Policies and the Policies expressly state that Defendants relied upon the representations when issuing the Policies.

87. Defendants' reliance upon these representations was both reasonable and justified.

88. Wakaya and Smith should have reasonably foreseen that Defendants would rely on the representations, as Defendants expressly asked for the execution of a no known losses letter prior to issuing the Policies and the Policies expressly state that Defendants relied upon the representations when issuing the Policies.

89. Due to these misrepresentations, Defendants were induced to issue the Policies.

90. As a direct result of Wakaya and Smith's misrepresentations, Defendants were forced to improperly pay millions of dollars in attorneys' fees and costs to Parr Brown and were deprived of their rights to properly analyze, supervise, and direct early litigation strategy and vet, interview, and engage counsel of their choosing.

91. As a direct result of Wakaya and Smith's misrepresentations, Defendants have been damaged in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

(Fraudulent Nondisclosure – Against Wakaya and Smith)

92. Defendants reallege and incorporate by reference the preceding responses to each and every paragraph of this Counterclaim as if fully recited therein.

93. During the application process for the Policies, Wakaya and Smith failed to disclose the existence of the February 22, 2016 demand letter and their knowledge that that litigation with Youngevity was imminent and inevitable.

94. Given the relationship between Wakaya and Smith on one hand and Defendants on the other, Wakaya and Smith had a legal duty to communicate these facts during the application process for the Policies.

95. Wakaya and Smith had knowledge of these facts, as they had been put on notice multiple times, beginning no later than February 22, 2016, that litigation with Youngevity was imminent and inevitable.

96. These nondisclosed facts were material, as Defendants would not have issued the Policies had they had knowledge of the nondisclosed facts.

97. As a direct result of Wakaya and Smith's fraudulent nondisclosure, Defendants have been damaged in an amount to be determined at trial.

FIFTH CAUSE OF ACTION
(Unjust Enrichment – Against All Plaintiffs)

98. Defendants reallege and incorporate by reference the preceding responses to each and every paragraph of this Counterclaim as if fully recited therein.

99. Defendants conferred a benefit upon Plaintiffs when Defendants paid Parr Brown (on behalf of Plaintiffs) several millions of dollars in attorneys' fees and costs related to the California, Utah, and Ancillary Lawsuits.

100. Plaintiffs knew of these benefits, accepted them, and retained them.

101. It would be inequitable for Plaintiffs to retain the benefit of the fees paid to Parr Brown because Defendants paid the fees based upon the understanding they were legally obligated to do so under the Policies, when, in reality, Defendants were under no such duty.

102. Furthermore, it would be inequitable to allow Plaintiffs to benefit from Wakaya and Smith's fraudulent misrepresentations.

103. Defendants are entitled to reimbursement of the attorneys' fees and costs they paid to Parr Brown (on behalf of Plaintiffs) related to the California, Utah, and Ancillary Lawsuits.

SIXTH CAUSE OF ACTION
(*In the Alternative* – Breach of Contract – Against Wakaya)

104. Defendants reallege and incorporate by reference the preceding responses to each and every paragraph of this Counterclaim as if fully recited therein.

105. In the event that the Court determines that the Policies are valid and enforceable, the Policies are contracts between Wakaya and Defendants.

106. Defendants fully performed their obligations under the Policies.

107. Wakaya breached the contract, by among other things, false misrepresenting that it had no known losses from February 21, 2016 through March 3, 2016 and failing to timely notify Defendants that they received threats of litigation and had been sued in the California Lawsuit.

108. As a direct result of Wakaya's breach of the Policies, Defendants were forced to improperly pay millions of dollars in attorneys' fees and costs to Parr Brown and were deprived of their rights to properly analyze, supervise, and direct early litigation strategy and vet, interview, and engage counsel of their choosing.

109. As a direct result of Wakaya's breach of the Policies, Defendants have been damaged in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION

(*In the Alternative* – Breach of the Covenant of Good Faith and Fair Dealing – Against Wakaya)

110. Defendants reallege and incorporate by reference the preceding responses to each and every paragraph of this Counterclaim as if fully recited therein.

111. A covenant of good faith and fair dealing must be implied in all written contracts and instruments, including the Policies. Under the covenant, each party has an implied duty to refrain from actions that will intentionally destroy or injure the other party's right to receive the fruits of the contract.

112. Wakaya has intentionally interfered with Defendants' rights under the Policies—including the right to cancel the Policies and the right to analyze, supervise, and direct early litigation strategy and vet, interview, and engage counsel of their choosing—by making misrepresentations and concealing the threats and existence of the California Lawsuit.

113. Wakaya's actions were designed to interfere with the Defendants rights under the Policies, including the right to cancel the Policies and the right to analyze, supervise, and direct early litigation strategy and vet, interview, and engage counsel of their choosing.

114. Wakaya's actions violate the implied covenant of good faith and fair dealing.

115. As a direct result of Wakaya's violations of the implied covenant, Defendants were forced to improperly reimburse millions of dollars in attorneys' fees and costs to Parr Brown and were deprived of their rights to properly analyze, supervise, and direct early litigation strategy and vet, interview, and engage counsel of their choosing.

116. As a direct result of Wakaya's violations of the implied covenant, Defendants have been damaged in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Defendants demands judgment on the Counterclaim as follows:

A. A declaration that, pursuant to Utah Code Ann. § 31A-21-303, the Polices are void and cancelled by reason of Wakaya and Smith's material misrepresentations;

B. An order awarding damages and interest against Plaintiffs in an amount to be determined at trial, but in no event less than $4,000,000;

C. An order awarding Defendants such reasonable attorneys' fees and costs as are allowed by Utah law; and

C. An order awarding Defendants such other relief as the Court deems just under the circumstances.

DATED this 20th day of August, 2019.

SNELL & WILMER L.L.P.

/s/ Matthew L. Lalli
Matthew L. Lalli
Douglas P. Farr
Scott A. Wiseman
Attorneys for Defendants/Counterclaim Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of August, 2019, a true and correct copy of the foregoing **ANSWER AND COUNTERCLAIM** was electronically filed with the Clerk of Court and served on the following using the Court's electronic filing system:

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/s/ Matthew L. Lalli