

1 SEDGWICK LLP
2 BRUCE D. CELEBREZZE Bar No. 102181
3 *bruce.celebrezze@sedgwicklaw.com*
4 NICHOLAS J. BOOS Bar No. 233399
5 *nicholas.boos@sedgwicklaw.com*
6 333 Bush Street, 30th Floor
7 San Francisco, California 94104
8 Telephone: (415) 781-7900
9 Facsimile: (415) 781-2635

10 Attorneys for Plaintiffs
11 TRAVELERS CASUALTY INSURANCE
12 COMPANY OF AMERICA and TRAVELERS
13 INDEMNITY COMPANY OF CONNECTICUT

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 TRAVELERS CASUALTY INSURANCE
17 COMPANY OF AMERICA, a Connecticut
18 corporation, and TRAVELERS
19 INDEMNITY COMPANY OF
20 CONNECTICUT, a Connecticut
21 corporation,

22 Plaintiffs,

23 v.

24 AMERICAN HOME REALTY
25 NETWORK, INC., a Delaware
26 corporation, JONATHAN J. CARDELLA,
27 an individual,

28 Defendants.

CASE NO. 4:12-cv-02637-PJH

**FIRST AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT AND
REIMBURSEMENT**

[JURY DEMAND INDORSED HEREON,
Fed.R.Civ.P. 38]

Plaintiffs Travelers Casualty Insurance Company of America and Travelers Indemnity
Company of Connecticut (collectively, "Travelers") allege as follows:

JURISDICTION AND VENUE

1. Jurisdiction of this action is founded upon 28 U.S.C. § 1332, as the parties are
citizens of different states, and the amount in controversy exceeds the sum of \$75,000, exclusive of
interest and costs.

2. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(a)(3), in that one or more defendants are residents of the City and County of San Francisco, California, and are therefore subject to personal jurisdiction in this district at the time the action is commenced.

PARTIES

3. Travelers Casualty Insurance Company of America is a corporation organized and existing under the laws of the State of Connecticut, with its principal place of business in Hartford, Connecticut.

4. Travelers Indemnity Company of Connecticut is a corporation organized and existing under the laws of the State of Connecticut, with its principal place of business in Hartford, Connecticut.

5. American Home Realty Network, Inc. ("AHR") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in the City and County of San Francisco, State of California.

6. Travelers is informed and believes and thereon alleges that Jonathan J. Cardella ("Cardella") is an individual residing in the City and County of San Francisco, State of California.

PRELIMINARY ALLEGATIONS

A. The Travelers Insurance Policies

7. Travelers Casualty Insurance Company of America issued Technology Office Pac insurance policy no. I-680-5278R919-ACJ-10 to named insured "American Home Realty Net., Inc." for the policy period July 23, 2010 to July 23, 2011 ("the AHR Policy"). The AHR Policy provided commercial general liability insurance subject to a \$2,000,000 each occurrence limit, a \$2,000,000 personal and advertising injury limit, and a \$4,000,000 general aggregate limit. The AHR Policy provided coverage pursuant to all of the terms, conditions, limitations, exclusions, and endorsements contained therein.

8. Travelers Indemnity Company of Connecticut issued Technology Office Pac insurance policy no. I-680-2118M772-TCT-11 to named insured "Neighborhubs LLC" for the policy period March 20, 2011 to March 20, 2012 ("the Neighborhubs '11-'12 Policy"). The

Neighborhubs '11-'12 Policy provided commercial general liability insurance subject to a \$2,000,000 each occurrence limit, a \$2,000,000 personal and advertising injury limit, and a \$4,000,000 general aggregate limit. The Neighborhubs '11-'12 Policy provided coverage pursuant to all of the terms, conditions, limitations, exclusions, and endorsements contained therein. Travelers Indemnity Company of Connecticut issued Technology Office Pac insurance policy no. I-680-2118M772-TCT-12 to named insured "Neighborhubs LLC" for the policy period March 20, 2012 to March 20, 2013 ("the Neighborhubs '12-'13 Policy"). The Neighborhubs '12-'13 Policy provided commercial general liability insurance subject to a \$2,000,000 each occurrence limit, a \$2,000,000 personal and advertising injury limit, and a \$4,000,000 general aggregate limit. The Neighborhubs '11-'12 Policy provided coverage pursuant to all of the terms, conditions, limitations, exclusions, and endorsements contained therein.

9. The AHR Policy, the Neighborhubs '11-'12 Policy, and the Neighborhubs "12-'13 Policy are collectively referred to herein as "the Travelers Policies."

10. The Travelers Policies state, in part:

COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. . . .
- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

* * *

SECTION V – DEFINITIONS

* * *

- 1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

* * *

11. The Travelers Policies include an endorsement entitled, "Amendment of Coverage B – Personal and Advertising Injury Liability – Technology." That endorsement states, in part, that "personal and advertising injury" means 'personal injury' or 'advertising injury'."

12. The "Amendment of Coverage B – Personal and Advertising Injury Liability – Technology" endorsement contains the following additional definitions:

"Advertising injury":

- a. Means injury, other than "personal injury", caused by one or more of the following offenses:
 - (1) Oral or written publication, including publication by electronic means, of material in your "advertisement" that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, provided that the claim is made or the "suit" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged;
 - (2) Oral or written publication, including publication by electronic means, of material in your "advertisement" that:
 - (a) Appropriates a person's name voice, photograph or likeness;
 - (b) Unreasonably places a person in a false light; or
 - (c) Discloses information about a person's private life; or
 - (3) Infringement of copyright, "title" or "slogan" in your "advertisement", provided that the claim is made or the "suit" is brought by a person or organization that claims ownership of such copyright, "title" or "slogan".
- b. Includes "bodily injury" caused by one or more of the offenses described in Paragraph a. above.

1 “Personal Injury”:

2 a. Means injury, other than “advertising injury”, caused by one or more of
3 the following offenses:

- 4 (1) False arrest, detention or imprisonment;
- 5 (2) Malicious prosecution;
- 6 (3) The wrongful eviction from, wrongful entry into, or invasion of the
7 right of private occupancy of a room, dwelling or premises that a person occupies,
8 provided that the wrongful eviction, wrongful entry or invasion of
9 the right of private occupancy is committed by or on behalf of the
10 owner, landlord or lessor of that room, dwelling or premises;
- 11 (4) Oral or written publication, including publication by electronic
12 means, or material that slanders or libels a person or organization
13 or disparages a person’s or organization’s goods, products or
14 services, provided that the claim is made or the “suit” is brought by
15 a person or organization that claims to have been slandered or
16 libeled, or that claims to have had its goods, products or services
17 disparaged; or
- 18 (5) Oral or written publication, including publication by electronic
19 means, of material that
- 20 (a) Appropriates a person’s name, voice, photograph or
21 likeness;
- 22 (b) Unreasonably places a person in a false light, or
- 23 (c) Discloses information about a person’s private life.

24 b. Includes “bodily injury” caused by one or more of the offenses described
25 in Paragraph a. above.

26 “Slogan”:

27 a. Means a phrase that others use for the purpose of attracting attention in
28 their advertising.

b. Does not include a phrase used as, or in, the name of:

- (1) Any person or organization, other than you; or
- (2) Any business, or any of the premises, goods, products, services or
work, of any person or organization, other than you.

“Title” means a name of a literary or artistic work.

* * *

13. The Travelers Policies' commercial general liability coverage provisions provide in part:

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

* * *

- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

* * *

14. The Travelers Policies contain a "Technology Xtend Endorsement" which modifies Section II of the commercial general liability coverage provisions in part as follows:

M. WHO IS AN INSURED – UNNAMED SUBSIDIARIES

The following is added to SECTION II – WHO IS AN INSURED:

Any of your subsidiaries, other than a partnership or joint venture, that is not shown as a Named Insured in the Declarations is a Named Insured if:

- a. You maintain an ownership interest of more than 50% in such subsidiary on the first day of the policy period; and
- b. Such subsidiary is not an insured under similar other insurance.

* * *

B. The Underlying Metropolitan Action

15. On March 28, 2012, Metropolitan Regional Information Systems, Inc. ("Metropolitan") filed a complaint against AHR and Cardella in the United States District Court for the District of Maryland, Case No. 8:12-cv-00954-AW ("the *Metropolitan* complaint"). The *Metropolitan* complaint purports to allege claims against AHR for Direct Willful Copyright Infringement – Reproduction; Direct Willful Copyright Infringement – Derivative Works; Direct Willful Copyright Infringement – Public Display; Inducement of Copyright Infringement;

Contributory Copyright Infringement; Vicarious Copyright Infringement; False Designation of Origin; Passing Off and Unfair Competition Under Section 43(a)(1)(A) of the Lanham Act against AHR; and Tortious Conversion and Unjust Enrichment. The *Metropolitan* complaint purports to allege a claim against Cardella for Vicarious Copyright Infringement. A true and correct copy of the *Metropolitan* complaint is attached hereto as Exhibit 1.

16. The *Metropolitan* complaint alleges:

This is an action for direct and secondary copyright infringement against AHR and secondary vicarious copyright liability against Cardella, and all entities and persons acting in concert and participation with AHR and Cardella in connection with their infringing activities and other illegal actions. [Metropolitan] seeks to recover damages from AHR and Cardella as the result of AHR's unauthorized reproduction, preparation of derivative works, distribution, and public display of [Metropolitan's] copyrighted [Metropolitan] database and informational content. [Metropolitan] also seeks preliminary and permanent injunctive relief to prevent any further damage to [Metropolitan] as a result of the unauthorized, infringing activities of AHR and Cardella, and recovery of attorneys' fees to the extent permitted by 17 U.S.C. § 505.

(*Metropolitan* Complaint, ¶ 1.)

17. The *Metropolitan* complaint alleges that AHR is a corporation, and that "[t]he domain name neighborcity.com is registered to AHR and AHR does business as NeighborCity.com." (*Metropolitan* Complaint, ¶ 9.) The *Metropolitan* complaint alleges that Cardella "is the CEO and President of Defendant AHR and has oversight and management responsibility for AHR's activities, including the content of NeighborCity.com." (*Metropolitan* Complaint, ¶ 11.)

18. The *Metropolitan* complaint alleges:

[Metropolitan] provides one of America's largest Multiple Listing Services ("MLS"), facilitating more than \$100 million per day in residential real estate transactions in the Mid-Atlantic region. [Metropolitan] is charged with the responsibility of creating, maintaining, operating, protecting, and providing authorized, licensed subscribers and other authorized licensees access to and use of a copyrighted automated database consisting of a compilation of regional real estate property listings and related and related informational content (collectively, the 'MRIS Database'). [Metropolitan] delivers real estate information, such as inventory and pricing, and provides through its system and services immediate, high quality, and actionable data to over 40,000 real estate professionals, including agents, brokers, and appraisers. [Metropolitan] listings information is also available to consumers in limited form via a free portal, www.homesdatabase.com and to journalists and others via the Pending Homes Sales Index monthly market summary.

1 (*Metropolitan* Complaint, ¶ 13.)

2 19. The *Metropolitan* complaint alleges that “[Metropolitan] maintains a copyright
3 registration program for the MRIS Database with the U.S. Copyright Office under the registration
4 procedures applicable to automated databases,” and that “[Metropolitan] owns copyrights in and to
5 the unpublished MRIS Database. . . .” (*Metropolitan* Complaint, ¶¶ 17, 18.)

6 20. The *Metropolitan* complaint alleges the following regarding AHR and Cardella:

7 AHR and Cardella operate a national real estate referral business that includes the
8 NeighborCity.com website, and has geographic coverage both inside and outside
9 of Maryland as well as the other jurisdictions in the [Metropolitan] territory.
10 Defendants maintain a national database of real estate listings through which they
11 misappropriate the MRIS Database as well as other MLS databases. Accordingly,
12 AHR provides customers unauthorized access to and use of the copyrighted MRIS
13 Database and informational content in support of their referral business. Internet
14 users are able to access the NeighborCity.com website, and by clicking a link or
15 entering a URL they are able to copy and download the relevant content to their
16 computer.

13 (*Metropolitan* Complaint, ¶ 26.)

14 21. The *Metropolitan* complaint further alleges that AHR and Cardella “are obtaining
15 and copying [Metropolitan] copyrighted information, without authorization, from or sourced from
16 the MRIS Database,” and that AHR and Cardella “have received substantial revenues and other
17 benefits from their unauthorized access to and unauthorized reproduction, public display, and
18 distribution of, property listings and other copyrighted content contained in the MRIS Database.”

19 (*Metropolitan* Complaint, ¶¶ 29-30.)

20 22. The *Metropolitan* complaint prays for:

- 21 • “a judgment that Defendant AHR willfully infringed [Metropolitan’s] copyrights in
22 and to each copyrighted version of the MRIS Database, both directly and
23 secondarily”;
- 24 • “a judgment that Defendant Cardella is liable for vicarious copyright infringement”;
- 25 • “a judgment that Defendant AHR is liable to [Metropolitan] for conversion and
26 unjust enrichment by its illegal actions”;
- 27 • “an Order requiring Defendants to account for and pay to [Metropolitan] any and all
28 profits arising from the foregoing acts of false designation of origin, and unfair

1 competition, and increasing such profits for payment to [Metropolitan] in
 2 accordance with 15 U.S.C. § 1117 and other applicable laws”;

- 3 • a permanent injunction requiring that AHR and Cardella “cease directly or
 4 indirectly infringing, or causing, enabling, facilitating, encouraging, promoting, and
 5 inducing or participating in the infringement of, any of [Metropolitan’s] respective
 6 copyrights or exclusive rights protected by the Copyright Act, whether now in
 7 existence or hereafter created, or displaying any inaccurate or misleading
 8 information about [Metropolitan] or listing content from [Metropolitan]”; and
- 9 • Metropolitan’s costs, reasonable attorneys’ fees, compensatory damages, treble
 10 damages, pre-judgment interest, and post-judgment interest.

11 (*Metropolitan* Complaint, Prayer.)

12 C. The Underlying *Regional* Action

13 23. On April 18, 2012, Regional Multiple Listing Service of Minnesota, Inc. dba
 14 NorthstarMLS (“*Regional*”) filed a complaint against AHR in the United States District Court for
 15 the District of Minnesota, Case No. 0:12-cv-00965-JRT-FLN (“the *Regional* complaint”). The
 16 *Regional* complaint purports to allege claims against AHR for Copyright Infringement of
 17 Compilation Content – 17 U.S.C. §§ 101 *et seq.*; and Copyright Infringement of Photographic
 18 Works – 17 U.S.C. §§ 101 *et seq.* A true and correct copy of the *Regional* complaint is attached
 19 hereto as Exhibit 2.

20 24. The *Regional* complaint alleges that “[t]his is an action for copyright infringement
 21 brought under the Copyright Laws of the United States, 17 U.S.C. § 101 *et seq.*” (*Regional*
 22 Complaint, ¶ 1.)

23 25. The *Regional* complaint further alleges that Regional “brings this action because
 24 defendant [AHR] willfully infringed [Regional’s] copyrights in the original compilation of its
 25 regional multiple listing service database, which it markets as its ‘NorthstarMLS® Database,’ as
 26 well as in photographs published on the NorthstarMLS Database, by reproducing, distributing, and
 27 displaying these copyrighted works without authorization.” (*Regional* Complaint, ¶ 2.)

1 26. The *Regional* complaint alleges that AHR is a corporation, and that it “is a real
2 estate brokerage that owns and operates the website located at <http://www.neighborcity.com> (the
3 ‘Neighborcity Website’).” (*Regional* Complaint, ¶ 4.)

4 27. The *Regional* complaint alleges:

5 [Regional] is a multiple listing service company that serves more than 13,000 real
6 estate brokers and agents in Minnesota and western Wisconsin. As a broker-to-
7 broker cooperative, [Regional] facilitates the sale of real property to the benefit of
 buyers and sellers by providing, among other things, fast and reliable information
 services and resources to participating brokers and agents.

8 (*Regional* Complaint, ¶ 8.)

9 28. The *Regional* complaint further alleges that Regional’s “NorthstarMLS Database . .
10 . provides access to tens of thousands of active real estate listings, more than one million
11 comparable and sold properties, and nearly three million property records from numerous
12 Minnesota and Wisconsin counties,” and that Regional “owns the copyrights relating to the
13 selection, coordination, and arrangement of the fields, descriptors, and content on its
14 NorthstarMLS Database (collectively referred to as the ‘Compilation Content’).” (*Regional*
15 Complaint, ¶¶ 9, 11.) It is also alleged that Regional “owns the copyrights in certain photographs
16 accompanying listings for real estate on the NorthstarMLS Database (collectively referred to as the
17 ‘Photographic Works’),” and that Regional “has complied with all statutory requirements in
18 securing federal copyright registrations for the copyrights in the Compilation Content and the
19 Photographic Works (such content and works hereinafter collectively referred to as the
20 ‘Copyrighted Works’).” (*Regional* Complaint, ¶¶ 12, 13.)

21 29. The *Regional* complaint alleges that AHR’s “Neighborcity Website contains copies
22 of the Copyrighted Works that have been reproduced by [AHR] in whole or in part and without
23 authorization from [Regional], including the selection, coordination, and arrangement of fields,
24 descriptors, and other content from the Compilation Content as well as Photographic Works.”
25 (*Regional* Complaint, ¶ 16.) It is further alleged that AHR “is not now, and never has been,
26 authorized or licensed to reproduce, distribute, or display any of the Copyrighted Works.”
27 (*Regional* Complaint, ¶ 17.)

28 30. The *Regional* complaint prays that the court:

- “Enter judgment that [AHR] has willfully infringed the Copyrighted Works”;
- Enter orders preliminarily and permanently enjoining “[AHR] from infringing any of [Regional’s] exclusive rights in the Copyrighted Works, including the Compilation Content and the Photographic Works”;
- “Order the impounding for destruction of all unauthorized copies or reproductions of any products containing unauthorized reproductions of the Copyrighted Works, including but not limited to all infringing works displayed on the Neighborcity Website”;
- “Order an accounting of [AHR’s] profits attributable to [AHR’s] infringement of the Copyrighted Works”; and
- Award Regional monetary relief, costs, attorneys’ fees, pre-judgment interest, and post-judgment interest.

(Regional Complaint, Prayer.)

D. The Tender of Defense of the *Metropolitan* Action

31. AHR notified Travelers Casualty Insurance Company of America of the *Metropolitan* complaint, and requested a defense and indemnity for AHR and Cardella. After investigating the matter, Travelers Casualty Insurance Company of America accepted AHR’s and Cardella’s tender of defense of the *Metropolitan* action under a full and complete reservation of rights. Travelers Casualty Insurance Company notified AHR and Cardella that it disputes whether it has a duty to defend, it disputes any obligation to indemnify, and it reserves the right to seek a declaratory judgment and reimbursement from the court.

32. Thereafter, AHR requested that Travelers Indemnity Company of Connecticut defend and indemnify AHR as respects the *Metropolitan* action under the Neighborhubs ’11-’12 Policy and the Neighborhubs ’12-’13 Policy (collectively “the Neighborhubs policies”). Travelers Indemnity Company of Connecticut notified AHR that it was not a named insured under the Neighborhubs ’11-’12 Policy from the period March 20, 2011 to July 23, 2011, and that AHR likely had other similar insurance subsequent to July 23, 2011, such that AHR likely never was a named insured at any time under the Neighborhubs policies. Travelers Indemnity Company of

1 Connecticut further notified AHR that, in any event, its coverage positions as respects the
2 *Metropolitan* action would be the same under the Neighborhubs policies as they are under the
3 AHR Policy.

4 33. Travelers Casualty Insurance Company of America has incurred and will incur
5 attorneys' fees and other expenses in connection with its defense of AHR and Cardella in the
6 *Metropolitan* action.

7 E. The Tender of Defense of the *Regional* Action

8 34. AHR notified Travelers Casualty Insurance Company of America of the *Regional*
9 complaint, and requested a defense and indemnity for AHR. After investigating the matter,
10 Travelers Casualty Insurance Company of America declined the tender.

11 35. Thereafter, AHR requested that Travelers Indemnity Company of Connecticut
12 defend and indemnify AHR as respects the *Regional* action under the Neighborhubs policies.
13 Travelers Indemnity Company of Connecticut notified AHR that it was not a named insured under
14 the Neighborhubs '11-'12 Policy from the period March 20, 2011 to July 23, 2011, and that AHR
15 likely had other similar insurance subsequent to July 23, 2011, such that AHR likely never was a
16 named insured at any time under the Neighborhubs policies. Travelers Indemnity Company of
17 Connecticut further notified AHR that, in any event, its coverage positions as respects the *Regional*
18 action would be the same under the Neighborhubs policies as they are under the AHR Policy.

19 FIRST CLAIM FOR RELIEF – DECLARATORY JUDGMENT

20 REGARDING DUTY TO DEFEND

21 (Regarding *Metropolitan* Action)

22 36. Travelers incorporates herein by reference, as if fully restated, paragraphs 1 through
23 35 above.

24 37. An actual controversy has arisen and now exists between Travelers, on the one
25 hand, and AHR and Cardella, on the other hand, concerning their respective rights and duties under
26 the Travelers Policies.

27 38. Travelers contends it has no duty to defend AHR or Cardella in the *Metropolitan*
28 action under the Travelers Policies.

39. Travelers is informed and believes AHR and Cardella contend Travelers is obligated to provide them a defense to the *Metropolitan* action.

40. Travelers desires a judicial determination of its rights and duties under the Travelers Policies, if any, with respect to AHR's and Cardella's request for a defense to the *Metropolitan* action.

41. A judicial determination is necessary and appropriate at this time under the circumstances in order that the parties may ascertain their rights and duties as aforementioned. Said controversy is incapable of resolution without judicial adjudication. Accordingly, Travelers has no plain, speedy and adequate remedy at law, and requests a declaratory judgment, adjudging that Travelers has no duty to defend AHR or Cardella in the *Metropolitan* action under the Travelers Policies.

SECOND CLAIM FOR RELIEF – DECLARATORY JUDGMENT

REGARDING DUTY TO DEFEND

(Regarding *Regional* Action)

42. Travelers incorporates herein by reference, as if fully restated, paragraphs 1 through 41 above.

43. An actual controversy has arisen and now exists between Travelers, on the one hand, and AHR, on the other hand, concerning their respective rights and duties under the Travelers Policies.

44. Travelers contends it has no duty to defend AHR in the *Regional* action under the Travelers Policies.

45. Travelers is informed and believes AHR contends Travelers is obligated to provide it a defense to the *Regional* action.

46. Travelers desires a judicial determination of its rights and duties under the Travelers Policies, if any, with respect to AHR's request for a defense to the *Regional* action.

47. A judicial determination is necessary and appropriate at this time under the circumstances in order that the parties may ascertain their rights and duties as aforementioned. Said controversy is incapable of resolution without judicial adjudication. Accordingly, Travelers

1 has no plain, speedy and adequate remedy at law, and requests a declaratory judgment, adjudging
 2 that Travelers has no duty to defend AHR in the *Regional* action under the Travelers Policies.

3 THIRD CLAIM FOR RELIEF – REIMBURSEMENT REGARDING ATTORNEYS’

4 FEEES AND EXPENSES IN THE DEFENSE OF THE *METROPOLITAN* ACTION

5 48. Travelers Casualty Insurance Company of America incorporates herein by
 6 reference, as if fully restated, paragraphs 1 through 47 above.

7 49. Travelers Casualty Insurance Company of America has incurred and will incur
 8 attorneys’ fees and other expenses in connection with its defense of AHR and Cardella in the
 9 *Metropolitan* action.

10 50. Travelers Casualty Insurance Company of America had and has no duty under the
 11 Travelers Policies to afford a defense to AHR and Cardella in the *Metropolitan* action, and
 12 Travelers Casualty Insurance Company of America therefore has an equitable and quasi-
 13 contractual right to be reimbursed by AHR and Cardella for all attorneys’ fees and other expenses
 14 which may be paid or incurred by Travelers Casualty Insurance Company of America in the
 15 defense of the *Metropolitan* action, pursuant to *Buss v. Superior Court*, 16 Cal.4th 35 (1997),
 16 *Scottsdale Ins. Co. v. MV Transportation*, 36 Cal.4th 643 (2005), *Blue Ridge Ins. Co. v. Jacobsen*,
 17 25 Cal.4th 489 (2001), and related cases.

18 PRAYER FOR RELIEF

19 WHEREFORE, plaintiffs Travelers Casualty Insurance Company of America and Travelers
 20 Indemnity Company of Connecticut pray for relief as follows:

21 1. For a judgment that Travelers Casualty Insurance Company of America and
 22 Travelers Indemnity Company of Connecticut have no duty to defend AHR or Cardella with
 23 respect to the *Metropolitan* action;

24 2. For a judgment that Travelers Casualty Insurance Company of America and
 25 Travelers Indemnity Company of Connecticut have no duty to defend AHR with respect to the
 26 *Regional* action;

3. For a judgment that Travelers Casualty Insurance Company of America is entitled to restitution and reimbursement from AHR and Cardella for all sums expended in defense of the *Metropolitan* action;

4. On all causes of action, for interest, including prejudgment interest;

5. On all causes of action, for costs incurred herein; and

6. For such other and further relief as the Court deems just and proper.

DATED: September 18, 2012 SEDGWICK LLP

By: /s/ Nicholas J. Boos

Bruce D. Celebrezze

Nicholas J. Boos

Attorneys for Plaintiffs

TRAVELERS CASUALTY INSURANCE COMPANY
OF AMERICA and TRAVELERS INDEMNITY
COMPANY OF CONNECTICUT

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiffs Travelers Casualty Insurance Company of America and Travelers Indemnity Company of Connecticut hereby demand a jury trial for this action.

DATED: September 18, 2012 SEDGWICK LLP

By: /s/ Nicholas J. Boos

Bruce D. Celebrezze

Nicholas J. Boos

Attorneys for Plaintiffs

TRAVELERS CASUALTY INSURANCE COMPANY
OF AMERICA and TRAVELERS INDEMNITY
COMPANY OF CONNECTICUT