UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.: 2:23-cv-01399-JLS-AGR Date: July 10, 2023
Title: Scott M. Gilderman v. Argonaut Insurance Company et al

Present: **HONORABLE JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

Patricia Kim	N/A
Deputy Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:	ATTORNEYS PRESENT FOR DEFENDANT:
Not Present	Not Present

PROCEEDINGS: (IN CHAMBERS) ORDER DENYING DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS (Doc. 31)

Before the Court is a motion for judgment on the pleadings by Defendants Argonaut Insurance Company, Peleus Insurance Company, and Argo Group US, Inc. (Mot., Doc. 31; Mem., Doc. 31-1.) Plaintiff Scott M. Gilderman opposed and Defendants replied. (Opp., Doc. 33; Reply, Doc. 34.) Having considered the papers, heard oral argument, and for the following reasons, Defendants' Motion is DENIED.

I. BACKGROUND

Plaintiff Scott M. Gilderman is a Los Angeles resident who purchased a Professional Liability insurance policy (the "Policy") from Defendants.[1] (Compl., Doc.

[1] Defendants contend that the Policy was issued by Defendant Peleus, and that Argonaut and Argo Group did not issue any insurance to Gilderman and are improperly named as defendants in the action. (Mot. at 1 n.1.) Gilderman states that there is "confusion regarding the true identity of the insurer" because the insurance policy gives the address for Argo Pro Claims as the location for 'notice to the insurer,' the first letter denying Gilderman's request for coverage was from Argonaut Insurance Company, subsequent letters regarding the request for coverage stated that counsel had been retained by Argonaut, and a letter from the broker who placed the Policy for Gilderman referred to the insurer as "Argo Pro Claims." (Opp. at 9 n.8.) The Policy lists "Insurer" as Peleus Insurance Company. (Policy, Doc. 31-4 at 2.)

1-2 ¶¶ 1-4, 9.) His claims in this action arise from Defendants' denial of coverage for various claims against Gilderman regarding his involvement with the Miranda St. Trust.

The Miranda St. Trust, created in December 2006, had as its sole settlor, trustor, and trustee Evan Goldschlag. (*Id.* ¶ 14.) Evan Goldschlag and Gilderman had been close personal friends since junior high school. (*Id.* ¶ 15.) Gilderman is a CPA, and his accounting firm handled external accounting and tax work for Evan Goldschlag's business, VCI Event Technology, Inc. ("VCI") for several years. (*Id.*) Evan Goldschlag died on October 20, 2019; a few days before his death, Gilderman was informed that pursuant to a Third Amendment to the Miranda St. Trust, he was designated as the successor Trustee if Evan Goldschlag became unable to serve. (*Id.* ¶ 16.) When Evan Goldschlag died and Gilderman became the Trustee for the Miranda St. Trust, he purchased the Policy. (*Id.* ¶ 9.)

The Policy provides that:

> The Insurer agrees to pay on behalf of the Insured, Loss in excess of the Deductible amount and up to the Limits of Liability shown in Item 4 of the Declarations; provided that such Loss results from a Claim first made and reported in writing during the Policy Period or Extended Reporting Period, if applicable, arising out of a Wrongful Act committed before the end of the Policy Period and on or after the Retroactive Date.

(Policy, Doc. 31-4 at 5.) The Policy states "THIS IS CLAIMS MADE AND REPORTED COVERAGE." (*Id.*) A Claim is defined as, inter alia, "a written demand received by any Insured for monetary, non-monetary, or injunctive relief" and "a civil proceeding against any Insured commenced by the service of a complaint or similar pleading." (*Id.* at 7.) A Wrongful Act is defined as "any actual or alleged act, error, omission or breach of duty by any Insured in the rendering of or failure to render Professional Services." (*Id.* at 11.) Professional Services are defined as "those services described in Item 3 of the Declarations of this policy, performed for others." (*Id.* at 10.)

Item 3 of the Policy lists "[p]roviding trustee services for the Miranda St. Trust" as Gilderman's "Covered Professional Service." (*Id.* at 2.) The "Retroactive Date" of the Policy is November 25, 2019, and the Expiration Date of the Policy Period is November 25, 2020. (*Id.* at 2-3.) By endorsement, the policy period was extended to December 25, 2020. (*Id.* at 30.) The Policy includes a Multiple Wrongful Acts provision stating that "[t]wo or more Claims arising out of a single Wrongful Act, or any series of related Wrongful Acts, will be considered a single Claim" and that "[e]ach Wrongful Act, in a series of related Wrongful Acts, will be deemed to have occurred on the date of the first such Wrongful Act." (*Id.* at 15.) The Policy does not define "series of related Wrongful Acts."

On January 28, 2020, a beneficiary of the Miranda St. Trust, Mark Goldschlag, filed a petition naming Gilderman as respondent, individually and as Trustee of the Miranda St. Trust, challenging the changes made by the Third Amendment to the Miranda St. Trust executed by Evan Goldschlag on August 28, 2019. (Compl. ¶¶ 17-18.) The petition alleges that Gilderman exercised undue influence over Evan Goldschlag in the months leading up to Evan Goldschlag's death in the execution of the Third Amendment. (Mark Goldschlag Jan. 28 Petition ("MG First Petition"), Doc. 31-5 at 28-29.) The petition states that the case concerns "conflicts of interest and breach of trust duties." (*Id.* at 3-4.) The petition then lists the following things Gilderman did in the first three months of becoming the Trustee: he "failed to obtain an independent third-party appraisal for VCI but is selling VCI for $1,000,000," he "[a]ppointed himself CFO and Secretary of VCI," he "[a]cts as landlord (as acting trustee) and tenant (as CFO of VCI) of commercial real estate that is where VCI central business operations are held," he "[e]ntered negotiations with the employee granted the $1M option to buy VCI and aims to negotiate how much of the $1,700,000 in cash is to be left in VCI because the Third Amendment did not specify the Decedent's testamentary wishes as to whether the $1M option to buy VCI included $1.7M of cash," "as trustee paid himself individually approximately $425,000 for his 50% interest in Shookman, LLC without the aid of an independent third-party appraisal," he "[f]ailed to obtain an independent third-party

appraisal for Shookman, LLC," and he "[i]s a creditor of Shookman, LLC and/or VCI, and/or of the Decedent." (*Id.* at 3-4.) The petition alleges that Gilderman named himself CFO and secretary of VCI on November 6, 2019. (*Id.* at 6.)

Gilderman notified Defendants of the MG First Petition "[s]hortly after" Mark Goldschlag filed it, and, by letter dated March 20, 2020, Defendants informed Gilderman that they denied any obligation to defend or indemnify Gilderman against the MG First Petition. (Compl. ¶¶ 23-24.) The letter states that the allegations regarding undue influence are not covered under the Policy because "they predate the key Retroactive Date and they do not qualify as Wrongful Acts" because they were done before Gilderman became Trustee and, thus, did not involve Professional Services. (Ex. 3 to Compl. at 166.) The letter further states that the allegations regarding the 90-day period following Evan Goldschlag's death are precluded from coverage because they were part of a series of wrongful acts beginning at least as early as November 6, 2019, when petitioner alleged that Gilderman appointed himself CFO and Secretary of VCI, which was before the Retroactive Date. (*Id.* at 167.)

After the denial, a director for the wholesale insurance broker that placed Gilderman's insurance coverage with Defendants wrote a letter to Defendants that "explained that the allegations of Mark Goldschlag's petition were factually meritless, that the petition alleged 'Wrongful Acts' which occurred after the insurance policy's 'retroactive date,' and that Gilderman had actually had no involvement in, and no knowledge of, the drafting or execution of the Third Amendment to the Trust." (Compl. ¶ 25.) Gilderman's counsel sent a letter to Defendants on June 26, 2020 explaining that they had a duty to defend and indemnify Gilderman, and demanding that they immediately assume his defense. (*Id.* ¶ 26.) In the letter, Gilderman's counsel enclosed a declaration by attorney William Sauls which "sets forth specific facts which completely refute [Mark] Goldschlag's claims of undue influence." (*Id.*)

Thereafter, Gilderman notified Defendants of three more claims against him: a second petition by Mark Goldschlag, a petition filed by Kirk Rhinehart, and a complaint filed by VCI. (*Id.* ¶ 31.) Gilderman alleges that "those pleadings were all based on

Gilderman's alleged activities as Trustee after the policy's 'retroactive date.'" (*Id.*) Mark Goldschlag filed his second petition ("MG Second Petition") on June 14, 2021, and Gilderman reported it to Defendants on October 20, 2021. (*See* MG Second Petition, Doc. 31-7; *see also* Gilderman's Answer to Counterclaims, Doc. 23 ¶¶ 30, 34.) Rhinehart filed his petition on August 5, 2022, and Gilderman reported the petition to Defendants on August 30, 2022. (*See* Rhinehart Petition, Doc. 31-8; *see also* Gilderman's Answer ¶¶ 35, 39.) VCI filed its complaint against Gilderman on August 5, 2022. (*See* VCI Complaint, Doc. 31-9; *see also* Gilderman's Answer ¶ 40.) Defendants have not defended or indemnified Gilderman as to any of these claims. (Compl. ¶¶ 31-32.)

The MG Second Petition alleges that as Trustee Gilderman "paid himself an exorbitant amount of trustees' fees and legal fees from Trust assets." (MG Second Petition at 3.) The Rhinehart Petition alleges that Gilderman breached his fiduciary duty to the Trust by encouraging Rhinehart to exercise his option to purchase VCI and subsequently transferring monies out of VCI, and by then requiring Rhinehart to take out a loan from the Trust after wrongfully transferring funds out of VCI. (Rhinehart Petition at 7-8.) The VCI Complaint contains claims for conversion, breach of fiduciary duty, theft, unjust enrichment, unfair business practices, accounting, and declaratory relief. (VCI Complaint at 6-9.) Its allegations are based on the same alleged wrongful actions as the Rhinehart complaint, namely, that on or after January 15, 2020 Gilderman "converted approximately 836,000 corporate Amex rewards points to $4,185.00 in gift cards, which he then caused to be delivered to his own office;" he "transferred $1,100,000.00 out of VCI's cash account;" he "transferred $254,994.92 out of VCI's cash account, and returned only $150,000 of that amount to the account;" and that "[i]nstead of returning the funds to VCI, Mr. Gilderman forced Mr. Rhinehart and VCI to take out a 'loan' to the Trust, in the principal amount of $300,000, plus interest, thereby benefiting Gilderman and/or the Trust at the expense of VCI." (*Id.* at 5.)

Gilderman filed suit in Los Angeles County Superior Court on January 23, 2023. On February 24, Defendants removed to this Court. (Notice of Removal, Doc. 1.)

Gilderman brings claims for (1) breach of contract; (2) tortious breach of the implied covenant of good faith and fair dealing; and (3) declaratory relief regarding duty to provide defense and to indemnify. (Compl. ¶¶ 33-47.) In their Answer, Defendants bring four counterclaims for declaratory relief that the Policy provides no coverage for Gilderman as to (1) the MG First Petition; (2) the MG Second Petition; (3) the Rhinehart petition; and (4) the VCI complaint. (Defendants' Revised Answer and Counterclaims, Doc. 18 ¶¶ 47-77.) Defendants now move for judgment on the pleadings against Gilderman's claims and in favor of Defendants' counterclaims.

II. LEGAL STANDARD

A motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) is "functionally identical" to a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6); therefore, the same legal standard applies to both motions. *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). Dismissal of a complaint for failure to state a claim is not proper where a plaintiff has alleged "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). When evaluating a Rule 12(b)(6) motion, the Court must accept as true all allegations of material facts that are in the complaint, and must construe all inferences in the light most favorable to the non-moving party. *Moyo v. Gomez*, 32 F.3d 1382, 1384 (9th Cir. 1994). Judgment on the pleadings is therefore appropriate only "when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law." *Enron Oil Trading & Transp. Co. v. Walbrook Ins. Co.*, 132 F.3d 526, 529 (9th Cir. 1997) (citation omitted).

III. DISCUSSION

A. Liability Insurance Contracts

Under California law, insurance policies are interpreted according to the ordinary rules of contract construction. *Safeco Ins. Co. of Am. v. Robert S.*, 26 Cal. 4th 758, 762 (2001). "The goal of contractual interpretation is to determine and give effect to the mutual intention of the parties." *Id.* at 763. "When interpreting a policy provision, we must give its terms their ordinary and popular sense, unless used by the parties in a technical sense or a special meaning is given to them by usage." *Palmer v. Truck Ins. Exch.*, 21 Cal. 4th 1109, 1115 (1999). "A policy provision will be considered ambiguous when it is capable of two or more constructions, both of which are reasonable." *Waller v. Truck Ins. Exch., Inc.*, 11 Cal. 4th 1, 18 (1995). "[W]hile the Court resolves an ambiguity, once found, in accordance with the objectively reasonable expectations of the insured, the insured's expectations for coverage cannot alone create an ambiguity in the policy where the provisions are otherwise clear." *Berman*, 2008 WL 11339649, at *3.

Professional liability insurance contracts are typically either "occurrence" policies, "in which coverage is triggered by events that occur within the policy period, even if they lead to claims years after the policy period," or "claims-made" policies, "in which coverage is determined by claims made within the policy period, regardless of when the events that caused the claim to materialize first occurred." *Pension Tr. Fund for Operating Engineers v. Fed. Ins. Co.*, 307 F.3d 944, 955 (9th Cir. 2002). "Claims-made policies can be further classified as either claims-made-and-reported policies, which require that claims be reported within the policy period, or general claims-made policies, which contain no such reporting requirement." *Centurion Med. Liab. Protective Risk Retention Grp. Inc. v. Gonzalez*, 296 F. Supp. 3d 1212, 1217 (C.D. Cal. 2017) (quotations omitted).

Under California law, "the existence of a duty to defend turns not upon the ultimate adjudication of coverage under its policy of insurance, but upon those facts known by the insurer at the inception of a third party lawsuit." *Montrose Chem. Corp. v.*

Superior Ct., 6 Cal. 4th 287, 295 (1993). "Hence, the duty may exist even where coverage is in doubt and ultimately does not develop." *Id.* (quotations omitted). If there is any doubt that the facts alleged in the complaint give rise to a duty to defend, such doubt must be resolved in the insured's favor. *KM Strategic Mgmt., LLC v. Am. Casualty Co. of Reading, PA*, 156 F. Supp. 3d 1154, 1169 (C.D. Cal. Dec. 21, 2015). "Once the defense duty attaches, the insurer is obligated to defend against all of the claims involved in the action, both covered and noncovered, until the insurer produces undeniable evidence supporting an allocation of a specific portion of the defense costs to a noncovered claim." *Horace Mann Ins. Co. v. Barbara B.*, 4 Cal. 4th 1076, 1081 (1993). In contrast, the duty to indemnify "arises only when the insured's underlying liability is established." *Pardee Const. Co. v. Ins. Co. of the W.*, 77 Cal. App. 4th 1340, 1350 (2000). "An insurer may have a duty to defend even though it ultimately may have no obligation to indemnify, either because no damages are awarded in the underlying matter against the insured or because the actual judgment is for damages not covered under the policy." *Id.*

B. The Mark Goldschlag Petitions

Defendants argue that the Policy does not provide coverage for the MG First Petition because (1) the allegations concerning Gilderman's alleged exercise of undue influence do not arise out of a "Wrongful Act" as defined by the Policy, and, even if they did, they occurred before the Policy's Retroactive Date; and (2) per the Policy's "Multiple Wrongful Acts" provision, all of the allegations concerning Gilderman's breaches of duty to the Trust are deemed to have occurred before the Policy's Retroactive Date. "There can be no breach of contract or breach of the implied covenant of good faith and fair dealing absent a contractual duty to defend." *EurAuPair Int'l, Inc. v. Ironshore Specialty Ins. Co.*, No. 17-1661, 2018 WL 4859948, at *2 (C.D. Cal. June 19, 2018), *aff'd*, 787 F. App'x 469 (9th Cir. 2019). Thus, if Defendants can show that they had no duty to defend under the Policy, Gilderman's claims must necessarily fail.

As to the allegations that Gilderman exercised undue influence, Defendants argue that the Policy's definition of "Wrongful Acts" includes only actions taken in the rendering of "Professional Services," defined for Gilderman as "[p]roviding trustee services for the Miranda St. Trust." (Mem. at 18.) Any undue influence would have had to have been exercised prior to Evan Goldschlag's death, and Gilderman did not become Trustee of the Miranda St. Trust until after his death. Gilderman therefore could not have exercised improper influence over Evan Goldschlag in the rendering of Professional Services as Trustee. Gilderman does not appear to dispute that this set of allegations falls outside the scope of the Policy.

However, the MG First Petition also contains allegations regarding breaches of fiduciary duty by Gilderman in his first three months as Trustee. Defendants rely on the "Multiple Wrongful Acts" provision of the Policy, which states that "[e]ach Wrongful Act, in a series of related Wrongful Acts, will be deemed to have occurred on the date of the first such Wrongful Act." They point to the allegation in the MG First Petition that Gilderman named himself CFO and Secretary of VCI on November 6, 2019, which predates the Policy's Retroactive Date of November 25, 2019, and argue that it and all of the other breach of duty allegations are a "series of related Wrongful Acts." (Mem. at 21.) Defendants note that many of the allegations in the MG First Petition are "undated" and accordingly "may have occurred earlier than November 6, 2019," but that "this issue is academic since the MG First Petition specifically identifies November 6, 2019 as the date on which at least one act comprising the Trustee Breach Allegations occurred." (*Id.* at 22 n.7.) Defendants acknowledge that the Policy does not define a "series of related" actions, but argue, quoting *Bay Cities Paving & Grading, Inc. v. Lawyers' Mutual Insurance Co.*, 5 Cal. 4th 854, 866-73 (1993), that "'related' as it is commonly understood and used encompasses both logical and causal connections." Defendants do not undertake to explain how the various allegations of breach of fiduciary duty are related, arguing only that they are "undeniably" so. (Mem. at 21 n.6.)

In the first place, Defendants' argument that some of the events "may have" occurred prior to November 6, 2019 is not relevant, as an insurer's duty to defend

depends "upon those facts *known* by the insurer at the inception of a third party lawsuit." *Montrose Chem. Corp.*, 6 Cal. 4th at 295 (emphasis added). Moreover, it is not clear that all of the allegations of breach of fiduciary duty are a "series of related" actions. While the mere fact that the Policy does not define the terms "related" or "series" does not render it ambiguous, *see Liberty Ins. Underwriters, Inc. v. Davies Lemmis Raphaely Law Corp.*, 162 F. Supp. 3d 1068, 1076 (C.D. Cal. 2016), the Court will not take it as a given that all of the allegations of breach of fiduciary duty and wrongful takings are related simply because they are in one petition.

Determining whether actions are "related" under the terms of a liability insurance policy requires a fact-intensive analysis. In *Bay Cities*, the California Supreme Court considered whether two errors by an attorney – failure to serve a stop notice, and failure to seek foreclosure on a lien – that resulted in a contractor being unable to collect a substantial portion of the amount it was owed on a project were part of a "series of related acts" under an insurance policy that did not define the term. *Bay Cities*, 5 Cal. 4th at 858, 866. Rejecting an interpretation of "related" to mean only causally related, the court concluded that the two errors were in a series of related acts because they "arose out of the same specific transaction," they "arose as to the same client," they "were committed by the same attorney," and they "resulted in the same injury." *Id.* at 873. In contrast, the Ninth Circuit found that the allegations in two lawsuits brought by different investors against an investment management firm and its president based on financial advice each had received from the firm's president were not "related Wrongful Acts" under the terms of the insurance policy. *Fin. Mgmt. Advisors, LLC v. Am. Intern. Specialty Lines Ins. Co.*, 506 F.3d 922, 923-26 (9th Cir. 2007). The Ninth Circuit reasoned that though both lawsuits contained allegations regarding the same investment vehicle and alleged malfeasance by the same financial advisor, the investors were "separate clients with distinct goals" who "were advised at separate meetings on separate dates" and who suffered independent losses and brought different kinds of claims. *Id.* at 925-26.

Here, however, Defendants have not engaged in the kind of analysis outlined above. The MG First Petition contains a number of allegations of wrongdoing, including that Gilderman failed to obtain an appraisal for VCI, that he failed to obtain an appraisal for his 50% membership interest in Shookman, LLC, that he abused his discretion by allowing Rhinehart to purchase VCI for $1,000,000 while also negotiating with Rhinehart about how much of VCI's $1,700,000 in cash would be left in VCI, and that he paid himself $425,000 for his 50% interest in Shookman, LLC. Defendants have made no argument as to how all of these actions are part of a series of acts related to Gilderman's alleged appointment of himself as CFO and Secretary of VCI on November 6, 2019. In particular, it is not clear how Gilderman appointing himself CFO and Secretary of VCI is related to the allegations regarding Shookman, LLC, and therefore why those actions should be deemed to have occurred on the same date under the Policy. It is not even clear that the alleged wrongdoing with VCI's finances was necessarily related to Gilderman appointing himself CFO and Secretary. The Court will not formulate arguments or draw connections that Defendants have failed to; this is Defendants' Motion, and they have the burden to adequately support their arguments. *See United States v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990) ("It is not enough merely to mention a possible argument in the most skeletal way, leaving the court to do counsel's work, create the ossature for the argument, and put flesh on its bones.").

Still more problematic for Defendants' motion, it does not appear to the Court that the MG First Petition alleges that Gilderman breached a fiduciary duty by naming himself as CFO and Secretary of VCI. That fact is mentioned twice in the Petition. In the first instance, in the "Case Summary" section, the Petition states: "During the first three months of trust administration, following Decedent's death on October 20, 2019, Trustee Gilderman: . . . Appointed himself CFO and Secretary of VCI." (MG First Petition at 3.) Then in the "Factual Statement" section, the MG First Petition states "On November 6, less than three weeks after Decedent's death, a Statement of Information was filed with the California Secretary of State indicating that Scott M. Gilderman, CPA

is now the Director, Chief Financial Officer and Secretary of VCI." (*Id.* at 6.) Later, in the section entitled "Breaches of Fiduciary Duties," the Petition states:

> Trustee Gilderman['s] breaches stem from his:
> a. Failure to obtain an appraisal for VCI;
> b. Failure to obtain an appraisal for his [] 50% membership interest in Shookman, LLC;
> c. Abuse[] of discretion by respecting a stock option agreement in favor of Rhinehart to purchase VCI for $1,000,000 and believes that he is the benevolent dictator who is also the one to determine how much of the $1. 7M of cash in VCI, is left for the purchase of VCI, when the Third Amendment contains no relevant provisions.

(*Id.* at 17.) It makes no mention of his appointment of himself as CFO and Secretary. In fact, the Petition expressly acknowledges that "the trustee may operate a business and engage in self-dealing," but that the trustee is required to "exercise reasonable care, professional license and respect for the fiduciary's role in trust administration." (*Id.* at 18.) Accordingly, it is not clear that the November 6 conduct that Defendants rely upon is an alleged Wrongful Act within the meaning of the Policy. At any rate, Defendants have not sufficiently shown that it is to prevail at this stage.

As to the MG Second Petition, Defendants argue that it forms a single Claim under the Policy, along with the MG First Petition, because it "merely continue[s] the MG First Petition's Trustee Breach Allegations, in which the same claimant (MG) contends that the same underlying defendant (Plaintiff) breached duties owed to the same Trust by and through inappropriate takings and/or self-dealing." (Mem. at 23.) Therefore, Defendants contend, they have no obligation to defend for the same reasons they have no obligation to defend the MG First Petition. As the Court has concluded that Defendants have not shown that they had no obligation to defend the MG First Petition, this argument fails as well. Because both parties agree that the MG Second Petition forms part of the same claim as the MG First Petition (*see* Opp. at 21), the Court does not

address Defendants' alternate argument that, if they are unrelated, the MG Second Petition falls outside the Policy Period.

C. The Rhinehart Petition and VCI Complaint

Both the VCI Complaint and the Rhinehart petition were filed on August 5, 2022. The Policy expired on December 25, 2020. Defendants argue that the Policy does not require Peleus to indemnify Gilderman for these claims because they were made outside the Policy Period (which expired on December 25, 2020). (Mem. at 26-27.) They argue in the alternative that the outcome would be the same "even if the Rhinehart Petition and VCI Complaint were deemed a single Claim with the MG First Petition pursuant to the [Multiple Wrongful Acts] Provisions since, in that instance, the Policy would not provide coverage for the Rhinehart Petition or VCI Complaint for the same reasons that it does not provide coverage for the MG First Petition." (Mem. at 27 n.10.)

Once again, the key question is the relatedness of the actions alleged in these claims to the actions alleged in the MG First Petition, which remains to be determined.[2] Accordingly, Defendants' Motion is DENIED as to Gilderman's claims regarding the Rhinehart Petition and the VCI Complaint.

IV. CONCLUSION

For the foregoing reasons, Defendants' Motion is DENIED.

[2] Defendants argue that because Gilderman did not address their arguments pertaining to the Rhinehart Petition and the VCI Complaint in the Opposition, he has waived the issue. (Reply at 12-13.) However, the allegations in the Rhinehart Petition and VCI Complaint appear to be based on actions also alleged in the MG First Petition, relating to Gilderman's sale of VCI and use of VCI's cash assets. It would be inconsistent to grant judgment on the pleadings as to these later claims without first determining whether there is a duty to defend the earlier claim, where, under the Policy, the VCI Complaint, the Rhinehart Petition, and the MG First Petition could be considered a single claim.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

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