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15 Attorneys for Plaintiff
 16 CROSS CHECK SERVICES, LLC

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 18 UNITED STATES DISTRICT COURT
 19 EASTERN DISTRICT OF CALIFORNIA
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21 CROSS CHECK SERVICES, LLC,
 22 Plaintiff,
 23 v.
 24 OLD REPUBLIC INSURANCE COMPANY, a
 25 Pennsylvania Corporation,
 26 Defendant.

Case No.: 2:15-cv-02113-MCE-EFB

**STIPULATION RE OLD REPUBLIC'S
 MOTION FOR PARTIAL SUMMARY
 JUDGMENT AGAINST CROSS CHECK
 RE CLAIM FOR UNDERLYING
 ATTORNEYS' FEES AND ORDER**

Judge: Hon. Morrison C. England, Jr.

1 STIPULATION

2 WHEREAS, plaintiff Cross Check Services, Inc. (“Cross Check”) prevailed in an underlying
3 arbitration involving the Lake Christopher Fuels Reduction project against Nevada Safe Fire Council
4 (“NVFSC”);

5 WHEREAS, in that arbitration, Cross Check sought prevailing party attorneys’ fees against
6 NVSFC based on a prevailing party attorneys’ fees provision in purchase order contracts between
7 Cross Check and NVSFC and California Civil Code section 1717;

8 WHEREAS, the arbitrator awarded Cross Check its prevailing party attorneys’ fees in the
9 amount of \$39,342.50, which Attorneys’ Fees Award was included in the final arbitration award;

10 WHEREAS, Cross Check reduced the final arbitration award, including the Attorneys’
11 Fees Award, to a judgment in the California Superior Court;

12 WHEREAS, Old Republic Insurance Company (“Old Republic”) issued a nonprofit
13 organization and management liability insurance policy, number ALT61472, to NVSFC for the
14 period January 9, 2011 to January 9, 2012 (“the Policy”);

15 WHEREAS, the Policy provides:

16 B. The Insurer shall not be liable under Insuring Agreement C to make any
17 payment for Loss as a result of a Claim made against an Organization:

18 1. for any actual or alleged obligation under or breach of any oral or
19 written contract or agreement, including any liability of others
20 assumed by the Organization under any such contract or agreement...

21 (the “Contract Exclusion”); and

22 WHEREAS, in this action, Cross Check seeks to recover the arbitration award, including the
23 Attorneys’ Fees Award, from Old Republic under the Policy;

24 WHEREAS, Old Republic brought a motion for partial summary judgment to establish that
25 Cross Check’s claim for the Attorneys’ Fees Award is not covered under the Policy based on the
26 Contract Exclusion;

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2 WHEREAS, Cross Check concedes that its claim for the Attorneys' Fees Award is not
3 covered under the Policy based on the Contract Exclusion;

4 WHEREFORE, the parties STIPULATE as follows:

5 1. That Cross Check Services prevailed in an underlying arbitration against NVSFC
6 involving the Lake Christopher Fuels Reduction project;

7 2. That Cross Check sought prevailing party attorneys' fees against NVSFC in that
8 arbitration based on a prevailing party attorneys' fees provision in the purchase order contracts
9 between Cross Check and NVSFC and California Civil Code section 1717;

10 3. That the arbitrator awarded Cross Check its prevailing party attorneys' fees in the
11 amount of \$39,342.50, which Attorneys' Fees Award was included in the final arbitration award;

12 4. That Cross Check reduced the final arbitration award, including the Attorneys'
13 Fees Award, to a judgment in the California Superior Court;

14 5. That Old Republic issued the Policy to NVSFC;

15 6. That the Policy contains the Contract Exclusion which provides:

16 B. The Insurer shall not be liable under Insuring Agreement C to make any
17 payment for Loss as a result of a Claim made against an Organization:

18 1. for any actual or alleged obligation under or breach of any oral or
19 written contract or agreement, including any liability of others
20 assumed by the Organization under any such contract or agreement...;

21 7. That in this action, Cross Check seeks to recover the arbitration award, including the
22 Attorneys' Fees Award, from Old Republic under the Policy;

23 8. That Old Republic brought a motion for partial summary judgment in this action to
24 establish that Cross Check's claim for the Attorneys' Fees Award is not covered under the Policy
25 based on the Contract Exclusion;

26 9. That the Contract Exclusion bars coverage for Cross Check's claim for the Attorneys'
27 Fees Award; and


- 1 5. That Old Republic issued the Policy to NVSFC;
- 2 6. That the Policy contains the Contract Exclusion which provides:
- 3 B. The Insurer shall not be liable under Insuring Agreement C to make any
- 4 payment for Loss as a result of a Claim made against an Organization:
- 5 1. for any actual or alleged obligation under or breach of any oral or
- 6 written contract or agreement, including any liability of others
- 7 assumed by the Organization under any such contract or agreement...;
- 8 7. That in this action, Cross Check seeks to recover the arbitration award, including the
- 9 Attorneys' Fees Award, from Old Republic under the Policy;
- 10 8. That Old Republic brought a motion for partial summary judgment in this action to
- 11 establish that Cross Check's claim for the Attorneys' Fees Award is not covered under the Policy
- 12 based on the Contract Exclusion; and
- 13 9. That the Contract Exclusion bars coverage for Cross Check's claim for the Attorneys'
- 14 Fees Award.

15 It is further ORDERED:

- 16 10. That when Judgment is entered in this action, Judgment be entered in Old Republic's
- 17 favor and against Cross Check on Cross Check's claim for the Attorneys' Fees Award.

18 IT IS SO ORDERED.

19 Dated: April 19, 2017

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21 MORRISON C. ENGLAND, JR.
22 UNITED STATES DISTRICT JUDGE

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