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14
 15 **IN THE UNITED STATES DISTRICT COURT**
 16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
 17 **WESTERN DIVISION**

18 HAIR PERFECT INTERNATIONAL,
 19 INC.,

20 Plaintiff,

21 v.

22 SENTINEL INSURANCE COMPANY,
 23 LIMITED, d/b/a THE HARTFORD,

24 Defendant

Case No. 2:20-cv-03729

CLASS ACTION COMPLAINT

[DEMAND FOR JURY TRIAL]

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1 Hair Perfect International, Inc., individually and on behalf of the other
2 members of the below-defined nationwide Plaintiffs' classes (collectively, the
3 "Class"), bring this class action against Defendant Sentinel Insurance Co., Ltd. d/b/a
4 The Hartford ("Hartford") and would respectfully show as follows:

5 **I. NATURE OF THE ACTION**

6 1. Plaintiff Hair Perfect International, Inc., located in Pasadena,
7 California, is a company whose existence is now threatened because of COVID-19.

8 2. Defendant is a subsidiary of The Hartford Financial Services Group,
9 Inc. The Hartford Financial Services Group, Inc.'s property insurance operations
10 are conducted primarily through Defendant.

11 3. To protect its business in the event that it suddenly had to suspend
12 operations for reasons outside of its control, Plaintiff purchased insurance coverage
13 from Defendant, including special property coverage, as set forth in Defendant's
14 Special Property Coverage Form (Form SS 00 07 07 05) ("Special Property
15 Coverage Form").

16 4. Defendant's Special Property Coverage Form provides "Business
17 Income" coverage, which promises to pay for loss due to the necessary suspension
18 of operations.

19 5. Defendant's Special Property Coverage Form also provides "Extra
20 Expense" coverage, which promises to pay the expenses incurred to minimize the
21 suspension of business and to continue operations.

22 6. Defendant's Special Property Coverage Form also provides "Civil
23 Authority" coverage, which promises to pay for loss caused by the action of a civil
24 authority that prohibits access to the insured premises.

25 7. Defendant's Special Property Coverage Form, under a section entitled
26 "Duties in the Event of Loss or Damage" mandates that Defendant's insured "must
27 see that the following are done in the event of loss". . . [t]ake all reasonable steps to
28 protect the Covered Property from further damage," "set the damaged property aside

1 in the best possible order for examination,” and “keep a record of your expenses for
2 emergency and temporary repairs for consideration in the settlement of the claim.”
3 This type of coverage has historically been known as “sue and labor” coverage or a
4 “sue and labor” provision, and property policies have long provided coverage for
5 these types of expenses.

6 8. Plaintiff was forced to suspend or reduce business due to COVID-19
7 (a.k.a. the “coronavirus” or “SARS-CoV-2”) and the resultant orders issued by the
8 Governor of California and the City of Pasadena mandating the suspension of
9 business like Plaintiff’s as well as to take necessary steps to prevent further damage
10 and minimize the suspension of business and continue operations.

11 9. Upon information and belief, Defendant has, on a widescale and
12 uniform basis, refused to pay its insureds under its Business Income, Civil
13 Authority, Extra Expense, and Sue and Labor coverages for losses suffered due to
14 COVID-19, any executive orders by civil authorities that have required the
15 necessary suspension of business, and any efforts to prevent further property
16 damage or to minimize the suspension of business and continue operations. Indeed,
17 Defendant has denied Plaintiff’s claim under its policy.

18
19 **II. JURISDICTION AND VENUE**

20 10. This Court has jurisdiction over this action pursuant to 28 U.S.C. §
21 1332, because Defendant and at least one Class member are citizens of different
22 states, and because (a) the Class consists of at least 100 members; (b) the amount in
23 controversy exceeds \$5,000,000 exclusive of interest and costs; and (c) no relevant
24 exceptions apply to this claim.

25 11. Venue is proper in this District under 28 U.S.C. § 1391 because
26 Plaintiff resides in this district, and because a substantial portion of the acts and
27 conduct giving rise to the claims occurred within the District.

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1 **III. THE PARTIES**

2 12. Plaintiff Hair Perfect International, Inc., is a California company with
3 its principal place of business in Pasadena California. Plaintiff owns and operates
4 Hair Perfect in Pasadena, California.

5 13. Defendant Sentinel Insurance Co., Ltd. d/b/a The Hartford (“Hartford”)
6 is a Connecticut company with its principal place of business in Hartford,
7 Connecticut. Defendant is authorized to write, sell, and issue insurance policies
8 providing property and business income coverage in California. At all times material
9 hereto, Defendant conducted and transacted business through the selling and issuing
10 of insurance policies within California, including, but not limited to, selling and
11 issuing property coverage to Plaintiff.

12 **IV. FACTUAL BACKGROUND**

13 ***A. The Special Property Coverage Form Protecting Plaintiff***

14 14. In return for the payment of a premium, Defendant issued Policy No.
15 72SBAAN5086 to Plaintiff for a policy period of December 8, 2019, to December 8,
16 2020, including a Businessowners Special Property Coverage Form. Plaintiff has
17 performed all of its obligations under Policy No. 72SBAAN5086, including the
18 payment of premiums. The Covered Property, with respect to the Special Property
19 Coverage Form, is the Hair Perfect salon at 135 W. California Blvd., Pasadena,
20 California.

21 15. Plaintiff’s Special Property Coverage Form includes Business Income,
22 Civil Authority, Extra Expense, and Sue and Labor coverages.

23 16. In many parts of the world, property insurance is sold on a specific
24 peril basis. Such policies cover a risk of loss if that risk of loss is specifically listed
25 (e.g., hurricane, earthquake, H1N1). Most property policies sold in the United
26 States, however, including those sold by Defendant, are all-risk property damage
27 policies. These types of policies cover all risks of loss except for risks that are
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1 expressly and specifically excluded. In the Special Property Coverage Form
2 provided to Plaintiff, under the heading “Covered Causes of Loss,” Defendant
3 agreed to pay for all risk of direct physical loss unless the loss is excluded or limited
4 by the Special Property Coverage Form.

5 17. In the Special Property Coverage Form, Defendant did not exclude or
6 limit coverage for losses from viruses.

7 18. The Special Property Coverage Form is modified by an endorsement,
8 Form SS 40 93 07 05 (the “Virus Endorsement”), which expressly provides
9 coverage for losses caused by fungi, bacteria, or viruses.

10 **LIMITED FUNGI, BACTERIA OR VIRUS COVERAGE**

11
12 This endorsement modifies insurance provided under the following:

13 **SPECIAL PROPERTY COVERAGE FORM**
14 **STANDARD PROPERTY COVERAGE FORM**
15 **PERSONAL PROPERTY OF OTHERS**
16 **COMPUTERS AND MEDIA COVERAGE**

17 19. The Endorsement requires Plaintiff to use “all reasonable means . . . to
18 save and preserve the property from further damage at the time of and after that
19 occurrence.”

20 20. Losses due to COVID-19 are a Covered Cause of Loss under the
21 Defendant’s insurance policies with the Special Property Coverage Form.

22 21. Losses due to COVID-19 are covered by the Endorsement.

23 22. Any reading of the Special Property Coverage Form and the
24 Endorsement that does not provide coverage for losses due to COVID-19 would
25 render Policy No. 72SBAAN5086 an illusory contract.

26 23. In the Special Property Coverage Form, Defendant agreed to pay for its
27 insureds’ actual loss of Business Income sustained due to the necessary suspension
28 of its operations during the “period of restoration” caused by direct physical loss or
damage. A “partial slowdown or complete cessation” of business activities at the

1 Covered Property is a “suspension” under the policy, for which Defendant agreed to
2 pay for loss of Business Income during the “period of restoration” that occurs within
3 12 consecutive months after the date of direct physical loss or damage.

4 24. “Business Income” means the net income (or loss) before tax that
5 Plaintiff would have earned if no physical loss or damage had occurred.

6 25. The presence of virus or disease can constitute physical damage to
7 property, as the insurance industry has recognized since at least 2006. When
8 preparing so-called “virus” exclusions to be placed in some policies, but not others,
9 the insurance industry drafting arm, ISO, circulated a statement to state insurance
10 regulators that included the following:

11 Disease-causing agents may render a product impure
12 (change its quality or substance), or enable the spread of
13 disease by their presence on interior building surfaces or
14 the surfaces of personal property. When disease-causing
15 viral or bacterial contamination occurs, potential claims
16 involve the cost of replacement of property (for example,
17 the milk), cost of decontamination (for example, interior
18 building surfaces), and business interruption (time
19 element) losses. Although building and personal property
20 could arguably become contaminated (often temporarily)
21 by such viruses and bacteria, the nature of the property
22 itself would have a bearing on whether there is actual
23 property damage. An allegation of property damage may
24 be a point of disagreement in a particular case.

25 26. In the Special Property Coverage Form, Defendant also agreed to pay
26 necessary Extra Expense that its insureds incur during the “period of restoration”
27 that the insureds would not have incurred if there had been no direct physical loss or
28 damage to the Covered Property.

1 27. “Extra Expense” means expenses “to avoid or minimize the
2 ‘suspension’ of business and to continue ‘operations,’ ” and to repair or replace
3 property.

4 28. Defendant also agreed to pay for “the actual loss of Business Income”
5 that Plaintiff sustains and any Extra Expense caused by action of civil authority that
6 prohibits access to the Covered Property when a Covered Cause of Loss causes
7 damage to property other than the Covered Property and the civil authority prohibits
8 access to the property and its surrounding area and takes such action in response to
9 dangerous physical conditions.

10 29. Defendant’s Special Property Coverage Form, under a section entitled
11 “Duties in the Event of Loss or Damage” mandates that Defendant’s insured “must
12 see that the following are done in the event of loss . . . [t]ake all reasonable steps to
13 protect the Covered Property from further damage, and keep a record of your
14 expenses necessary to protect the Covered Property, for consideration in the
15 settlement of the claim.” This type of coverage has historically been known as “sue
16 and labor” coverage or a “sue and labor” provision, and property policies have long
17 provided coverage for these types of expenses.

18 30. Losses caused by COVID-19 and the related orders issued by local,
19 state, and federal authorities triggered the Business Income, Extra Expense, Civil
20 Authority, and Sue and Labor provisions of the Hartford policy.

21 ***B. The Covered Cause of Loss***

22 31. The presence of COVID-19 has caused civil authorities throughout the
23 country to issue orders requiring the suspension of business at a wide range of
24 establishments, including civil authorities with jurisdiction over Plaintiff’s business
25 (the “Closure Orders”).

26 32. On March 4, 2020, California Governor Gavin Newsom issued a
27 “Proclamation of a State of Emergency.”

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1 33. On March 19, 2020, Governor Newsom issued Executive Order N-33-
2 20 (“the Closure Order”), which he found was necessary “for the preservation of
3 public health and safety throughout the entire State of California.”

4 34. The Closure Order requires “all individuals living in the State of
5 California to stay home or at their place of residence except as needed to maintain
6 continuity of operations of the federal critical infrastructure sectors.” The Closure
7 Order remains in effect until further notice.

8 35. Also on March 19, 2020, the Health Officer for the City of Pasadena,
9 California, issued a Health Officer Order “to control the spread of the Novel
10 Coronavirus (COVID-19) within the City of Pasadena.”

11 36. On March 22, 2020, the Health Officer for the City of Pasadena,
12 California, issued a revised Health Officer Order closing non-essential businesses,
13 including businesses like Plaintiff’s.

14 37. Violations of these order are punishable by fine, imprisonment, or both.

15 **C. *The Impact of COVID-19 and the Closure Orders***

16 38. The presence of COVID-19 caused “direct physical loss of or damage
17 to” each “Covered Property” under the Plaintiff’s policy and the policies of the other
18 Class members by denying use of and damaging the Covered Property and by
19 causing a necessary suspension of operations during a period of restoration.

20 39. The Closure Orders prohibited access to Plaintiff’s and the other Class
21 members’ Covered Property, and the area immediately surrounding Covered
22 Property, in response to dangerous physical conditions resulting from a Covered
23 Cause of Loss.

24 40. As a result of the presence of COVID-19 and the Closure Orders,
25 Plaintiff and the other Class members lost Business Income and incurred Extra
26 Expense.

27 41. On or about March 20, 2020, Plaintiff submitted a claim of loss to
28 Defendant under Plaintiff’s policy.

1 42. On March 24, 2020, Defendant denied Plaintiff's claims.

2 43. Defendant has, on a widescale basis with many if not all of its insureds,
3 refused to provide Business Income, Extra Expense, Civil Authority, and Sue and
4 Labor coverage due to COVID-19 and the resultant executive orders by civil
5 authorities that have required the suspension of business.

6
7 **V. CLASS ACTION ALLEGATIONS**

8 44. Plaintiff brings this action pursuant to Rules 23(a), 23(b)(1), 23(b)(2),
9 23(b)(3), and 23(c)(4) of the Federal Rules of Civil Procedure, individually and on
10 behalf of all others similarly situated.

11 45. Plaintiff seeks to represent nationwide classes defined as:

- 12 a. All persons and entities that: (a) had Business Income coverage under a
13 property insurance policy issued by Defendant; (b) suffered a suspension
14 of business related to COVID-19, at the premises covered by their
15 Hartford property insurance policy; (c) made a claim under their property
16 insurance policy issued by Defendant; and (d) were denied Business
17 Income coverage by Defendant for the suspension of business resulting
18 from the presence or threat of COVID-19 (the "Business Income Breach
19 Class").
- 20 b. All persons and entities that: (a) had Civil Authority coverage under a
21 property insurance policy issued by Defendant; (b) suffered loss of
22 Business Income and/or Extra Expense caused by action of a civil
23 authority; (c) made a claim under their property insurance policy issued
24 by Defendant; and (d) were denied Civil Authority coverage by
25 Defendant for the loss of Business Income and/or Extra Expense caused
26 by a Closure Order (the "Civil Authority Breach Class").
- 27 c. All persons and entities that: (a) had Extra Expense coverage under a
28 property insurance policy issued by Defendant; (b) sought to minimize

1 the suspension of business in connection with COVID-19 at the premises
2 covered by their Hartford property insurance policy; (c) made a claim
3 under their property insurance policy issued by Defendant; and (d) were
4 denied Extra Expense coverage by Defendant despite their efforts to
5 minimize the suspension of business caused by COVID-19 (the “Extra
6 Expense Breach Class”).

7 d. All persons and entities that: (a) had a Sue and Labor provision under a
8 property insurance policy issued by Defendant; (b) sought to prevent
9 property damage caused by COVID-19 by suspending or reducing
10 business operations, at the premises covered by their Hartford property
11 insurance policy; (c) made a claim under their property insurance policy
12 issued by Defendant; and (d) were denied Sue and Labor coverage by
13 Defendant in connection with the suspension of business caused by
14 COVID-19 (the “Sue and Labor Breach Class”).

15 e. All persons and entities that: (a) had Virus Endorsement coverage under
16 a property insurance policy issued by Defendant; (b) suffered a
17 suspension of business related to COVID-19 or sought to minimize the
18 suspension of business in connection with COVID-19 at the premises
19 covered by their Hartford property insurance policy and suffered loss of
20 Business Income and/or Extra Expense; (c) made a claim under their
21 property insurance policy issued by Defendant; and (d) were denied
22 Virus Endorsement coverage by Defendant for the loss of Business
23 Income and/or Extra Expense in connection with the suspension of
24 business caused by COVID-19 (the “Virus Endorsement Breach Class”).

25 f. All persons and entities with Business Income coverage under a property
26 insurance policy issued by Defendant that suffered a suspension of
27 business due to COVID-19 at the premises covered by the business
28 income coverage (the “Business Income Declaratory Judgment Class”).

- 1 g. All persons and entities with Civil Authority coverage under a property
2 insurance policy issued by Defendant that suffered loss of Business
3 Income and/or Extra Expense caused by a Closure Order (the “Civil
4 Authority Declaratory Judgment Class”).
- 5 h. All persons and entities with Extra Expense coverage under a property
6 insurance policy issued by Defendant that sought to minimize the
7 suspension of business in connection with COVID-19 at the premises
8 covered by their Hartford property insurance policy (the “Extra Expense
9 Declaratory Judgment Class”).
- 10 i. All persons and entities with a Sue and Labor provision under a property
11 insurance policy issued by Defendant that sought to prevent property
12 damage caused by COVID-19 by suspending or reducing business
13 operations, at the premises covered by their Hartford property insurance
14 policy (the “Sue and Labor Declaratory Judgment Class”).
- 15 j. All persons and entities with Virus Endorsement coverage under a
16 property insurance policy issued by Defendant that suffered loss of
17 Business Income and/or Extra Expense due to COVID-19 at the premises
18 covered by their Hartford property insurance policy (the “Virus
19 Endorsement Declaratory Judgment Class”).

20 46. Excluded from each defined Class is Defendant and any of its
21 members, affiliates, parents, subsidiaries, officers, directors, employees, successors,
22 or assigns; governmental entities; and the Court staff assigned to this case and their
23 immediate family members. Plaintiff reserves the right to modify or amend each of
24 the Class definitions, as appropriate, during the course of this litigation.

25 47. This action has been brought and may properly be maintained on behalf
26 of each Class proposed herein under the criteria of Rule 23 of the Federal Rules of
27 Civil Procedure.

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1 48. **Numerosity—Federal Rule of Civil Procedure 23(a)(1).** The
2 members of each defined Class are so numerous that individual joinder of all Class
3 members is impracticable. While Plaintiff is informed and believe that there are
4 thousands of members of each Class, the precise number of Class members is
5 unknown to Plaintiff but may be ascertained from Defendant’s books and records.
6 Class members may be notified of the pendency of this action by recognized, Court-
7 approved notice dissemination methods, which may include U.S. Mail, electronic
8 mail, internet postings, and/or published notice.

9 49. **Commonality and Predominance—Federal Rule of Civil**
10 **Procedure 23(a)(2) and 23(b)(3).** This action involves common questions of law
11 and fact, which predominate over any questions affecting only individual Class
12 members, including, without limitation:

- 13 a. whether Defendant issued all-risk policies to the members of the Class
14 in exchange for payment of premiums by the Class members;
- 15 b. whether the Class suffered a covered loss based on the common policies
16 issued to members of the Class;
- 17 c. whether Defendant wrongfully denied all claims based on COVID-19;
- 18 d. whether Defendant’s Business Income coverage applies to a suspension
19 of business caused by COVID-19;
- 20 e. whether Defendant’s Civil Authority coverage applies to a loss of
21 Business Income caused by the orders of state governors requiring the
22 suspension of business as a result of COVID-19;
- 23 f. whether Defendant’s Extra Expense coverage applies to efforts to
24 minimize a loss caused by COVID-19;
- 25 g. whether Defendant’s Sue and Labor provision applies to require
26 Defendant to pay for efforts to reduce damage caused by COVID-19;
- 27 h. whether Defendant’s Virus Endorsement coverage applies to a loss of
28 Business Income and Extra Expense caused by COVID-19.

- 1 i. whether Defendant has breached its contracts of insurance through a
2 blanket denial of all claims based on business interruption, income loss,
3 or closures related to COVID-19 and the related closures; and
4 j. whether Plaintiff and the Class are entitled to an award of reasonable
5 attorney fees, interest and costs.

6 **50. Typicality—Federal Rule of Civil Procedure 23(a)(3).** Plaintiff’s
7 claims are typical of the other Class members’ claims because Plaintiff and the other
8 Class members are all similarly affected by Defendant’s refusal to pay under its
9 Business Income, Civil Authority, Extra Expense, and Sue and Labor coverages.
10 Plaintiff’s claims are based upon the same legal theories as those of the other Class
11 members. Plaintiff and the other Class members sustained damages as a direct and
12 proximate result of the same wrongful practices in which Defendant engaged.

13 **51. Adequacy of Representation—Federal Rule of Civil Procedure**
14 **23(a)(4).** Plaintiff is an adequate Class representative because its interests do not
15 conflict with the interests of the other Class members it seeks to represent. Plaintiff
16 has retained counsel competent and experienced in complex litigation, including
17 cases similar to this one where insurers breached contracts with their insured by
18 failing to pay the amounts owed under their policy, and Plaintiff intends to prosecute
19 this action vigorously. The interests of the above-defined Classes will be fairly and
20 adequately protected by Plaintiff and its counsel.

21 **52. Inconsistent or Varying Adjudications and the Risk of**
22 **Impediments to Other Class Members’ Interests—Federal Rule of Civil**
23 **Procedure 23(b)(1).** Plaintiff seeks class-wide adjudication as to the interpretation,
24 and resultant scope, of Defendant’s Business Income, Civil Authority, Extra
25 Expense, and Sue and Labor coverages. The prosecution of separate actions by
26 individual members of the Classes would create an immediate risk of inconsistent or
27 varying adjudications that would establish incompatible standards of conduct for the
28 Defendant. Moreover, the adjudications sought by Plaintiff could, as a practical

1 matter, substantially impair or impede the ability of other Class members, who are
2 not parties to this action, to protect their interests.

3 **53. Declaratory and Injunctive Relief—Federal Rule of Civil**
4 **Procedure 23(b)(2).** Defendant acted or refused to act on grounds generally
5 applicable to Plaintiff and the other Class members, thereby making appropriate
6 final injunctive relief and declaratory relief, as described below, with respect to the
7 Class members.

8 **54. Superiority—Federal Rule of Civil Procedure 23(b)(3).** A class
9 action is superior to any other available means for the fair and efficient adjudication
10 of this controversy, and no unusual difficulties are likely to be encountered in the
11 management of this class action. Individualized litigation creates a potential for
12 inconsistent or contradictory judgments and increases the delay and expense to all
13 parties and the court system. By contrast, the class action device presents far fewer
14 management difficulties, and provides the benefits of single adjudication, economy
15 of scale, and comprehensive supervision by a single court.

16 **55.** The nature of notice to the proposed Classes is contemplated to be by
17 direct mail/e-mail upon certification of the Classes or, if such notice is not
18 practicable, by the best notice practicable under the circumstances including, but not
19 limited to, publication in major newspapers and on the Internet.

20 **VI. CLAIMS FOR RELIEF**

21 **COUNT I**

22 **BREACH OF CONTRACT – BUSINESS INCOME COVERAGE**

23 **(Claim Brought on Behalf of the Business Income Breach Class)**

24 **56.** Plaintiff repeats and realleges Paragraphs 1–55 as if fully set forth
25 herein.

26 **57.** Plaintiff brings this Count individually and on behalf of the other
27 members of the Business Income Breach Class.

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1 58. Plaintiff’s Hartford policy, as well as those of the other Business
2 Income Breach Class members, are contracts under which Defendant was paid
3 premiums in exchange for its promise to pay Plaintiff and the other Business Income
4 Breach Class members’ losses for claims covered by the policy.

5 59. In the Special Property Coverage Form, Defendant agreed to pay for
6 its insureds’ actual loss of Business Income sustained due to the necessary
7 suspension of its operations during the “period of restoration.”

8 60. A “partial slowdown or complete cessation” of business activities at the
9 Covered Property is a “suspension” under the policy, for which Defendant agreed to
10 pay for loss of Business Income during the “period of restoration” “that occurs
11 within 12 consecutive months after the date of direct physical loss or damage.”

12 61. “Business Income” means net income (or loss) before tax that Plaintiff
13 and the other Business Income Breach Class members would have earned “if no
14 physical loss or damage had occurred.”

15 62. COVID-19 caused direct physical loss and damage to Plaintiff’s and
16 the other Business Income Breach Class members’ Covered Properties, requiring
17 suspension of operations at the Covered Properties. Losses caused by COVID-19
18 thus triggered the Business Income provision of Plaintiff and the other Business
19 Income Breach Class members’ Hartford policies.

20 63. Plaintiff and the other Business Income Breach Class members have
21 complied with all applicable provisions of their policies and/or those provisions
22 have been waived by Defendant or Defendant is estopped from asserting them, and
23 yet Defendant has abrogated its insurance coverage obligations pursuant to the
24 Policies’ clear and unambiguous terms.

25 64. By denying coverage for any Business Income losses incurred by
26 Plaintiff and the other Business Income Breach Class members in connection with
27 the COVID-19 pandemic, Defendant has breached its coverage obligations under
28 the Policies.

1 65. As a result of Defendant's breaches of the Policies, Plaintiff and the
2 other Business Income Breach Class members have sustained substantial damages
3 for which Defendant is liable in an amount to be established at trial.

4 **COUNT II:**

5 **BREACH OF CONTRACT – CIVIL AUTHORITY COVERAGE**
6 **(Claim Brought on Behalf of the Civil Authority Breach Class)**

7 66. Plaintiff repeats and realleges Paragraphs 1–55 as if fully set forth
8 herein.

9 67. Plaintiff brings this Count individually and on behalf of the other
10 members of the Civil Authority Breach Class.

11 68. Plaintiff's Hartford policy, as well as those of the other Civil Authority
12 Breach Class members, are contracts under which Defendant was paid premiums in
13 exchange for its promise to pay Plaintiff's and the other Civil Authority Breach
14 Class members' losses for claims covered by the policy.

15 69. Defendant promised to "pay for the actual loss of Business Income"
16 sustained "and any Extra Expense caused by action of civil authority that prohibit
17 access to" the Covered Property when a Covered Cause of Loss causes damage to
18 property other than the Covered Property and the civil authority takes its action "in
19 response to dangerous physical conditions."

20 70. The Closure Orders triggered the Civil Authority provision under
21 Plaintiff's and the other members of the Civil Authority Breach Class's Hartford
22 insurance policies.

23 71. Plaintiff and the other members of the Civil Authority Breach Class
24 have complied with all applicable provisions of the Policies, and/or those provisions
25 have been waived by Defendant or Defendant is estopped from asserting them, and
26 yet Defendant has abrogated its insurance coverage obligations pursuant to the
27 Policies' clear and unambiguous terms.

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1 72. By denying coverage for any business losses incurred by Plaintiff and
2 other members of the Civil Authority Breach Class in connection with the Closure
3 Orders and the COVID-19 pandemic, Defendant has breached its coverage
4 obligations under the Policies.

5 73. As a result of Defendant’s breaches of the Policies, Plaintiff and the
6 other members of the Civil Authority Breach Class have sustained substantial
7 damages for which Defendant is liable in an amount to be established at trial.

8 **COUNT III**

9 **BREACH OF CONTRACT – EXTRA EXPENSE COVERAGE**

10 **(Claim Brought on Behalf of the Extra Expense Breach Class)**

11 74. Plaintiff repeats and realleges Paragraphs 1–55 as if fully set forth
12 herein.

13 75. Plaintiff brings this Count individually and on behalf of the other
14 members of the Extra Expense Breach Class.

15 76. Plaintiff’s Hartford insurance policy, as well as those of the other Extra
16 Expense Breach Class members, are contracts under which Defendant was paid
17 premiums in exchange for its promise to pay Plaintiff and the other Extra Expense
18 Breach Class members’ losses for claims covered by the policy.

19 77. In the Special Property Coverage Form, Defendant agreed to pay
20 necessary Extra Expense that its insureds incur during the “period of restoration”
21 that the insureds would not have incurred if there had been no direct physical loss or
22 damage to the Covered Property.

23 78. “Extra Expense” means expenses “to avoid or minimize the suspension
24 of business and to continue ‘operations,’” and also includes expenses “to repair or
25 replace property.”

26 79. Due to COVID-19 and the Closure Orders, Plaintiff and the other
27 members of the Extra Expense Breach Class incurred Extra Expense at Covered
28 Property.

1 87. In complying with the Closure Orders and otherwise suspending or
2 limiting operations, Plaintiff and other members of the Sue and Labor Breach Class
3 incurred expenses in connection with reasonable steps to protect Covered Property.

4 88. Plaintiff and the other members of the Sue and Labor Breach Class
5 have complied with all applicable provisions of the policy and/or those provisions
6 have been waived by Defendant, or Defendant is estopped from asserting them, and
7 yet Defendant has abrogated its insurance coverage obligations pursuant to the
8 policies' clear and unambiguous terms.

9 89. By denying coverage for any Sue and Labor expenses incurred by
10 Plaintiff and the other members of the Sue and Labor Breach Class in connection
11 with the Closure Orders and the COVID-19 pandemic, Defendant has breached its
12 coverage obligations under the Policies.

13 90. 85. As a result of Defendant's breaches of the policies, Plaintiff and the
14 other members of the Sue and Labor Breach Class have sustained substantial
15 damages for which Defendant is liable in an amount to be established at trial.

16 **COUNT V**

17 **BREACH OF CONTRACT – VIRUS ENDORSEMENT COVERAGE**

18 **(Claim Brought on Behalf of the Virus Endorsement Breach Class)**

19 91. Plaintiff repeats and realleges Paragraphs 1–55 as if fully set forth
20 herein.

21 92. Plaintiff brings this Count individually and on behalf of the other
22 members of the Virus Endorsement Breach Class.

23 93. Plaintiff's Hartford policy, as well as those of the other Virus
24 Endorsement Breach Class members, are contracts under which Defendant was paid
25 premiums in exchange for its promise to pay Plaintiff and the other Virus
26 Endorsement Breach Class members' losses for claims covered by the policy.

27 94. In the Virus Endorsement, Defendant agreed to pay for its insureds'
28 Business Income and Extra Expense losses to the Covered Properties.

1 95. COVID-19 caused direct physical loss and damage to Plaintiff's and
2 the other Virus Endorsement Class members' Covered Properties, requiring
3 suspension of operations at the Covered Properties. Losses caused by COVID-19
4 thus triggered the Virus Endorsement provision of Plaintiff and the other Virus
5 Endorsement Class members' Hartford policies.

6 96. Plaintiff and the other members of the Virus Endorsement Breach Class
7 have complied with all applicable provisions of the Policies, and/or those provisions
8 have been waived by Defendant or Defendant is estopped from asserting them, and
9 yet Defendant has abrogated its insurance coverage obligations pursuant to the
10 Policies' clear and unambiguous terms.

11 97. By denying coverage for any business losses incurred by Plaintiff and
12 other members of the Virus Endorsement Breach Class in connection with the
13 COVID-19 pandemic, Defendant has breached its coverage obligations under the
14 Policies.

15 98. As a result of Defendant's breaches of the Policies, Plaintiff and the
16 other members of the Virus Endorsement Breach Class have sustained substantial
17 damages for which Defendant is liable in an amount to be established at trial.

18 **COUNT VI**

19 **DECLARATORY JUDGMENT – BUSINESS INCOME COVERAGE**
20 **(Claim Brought on Behalf of the Business Income Declaratory Judgment Class)**

21
22 99. Plaintiff repeats and realleges Paragraphs 1–55 as if fully set forth
23 herein.

24 100. Plaintiff brings this Count individually and on behalf of the other
25 members of the Business Income Declaratory Judgment Class.

26 101. Plaintiff's Hartford policy, as well as those of the other Business
27 Income Declaratory Judgment Class members, are contracts under which Defendant
28 was paid premiums in exchange for its promise to pay Plaintiff and the other

1 Business Income Declaratory Judgment Class members' losses for claims covered
2 by the Policy.

3 102. Plaintiff and the other Business Income Declaratory Judgment Class
4 members have complied with all applicable provisions of the Policies and/or those
5 provisions have been waived by Defendant or Defendant is estopped from asserting
6 them, and yet Defendant has abrogated its insurance coverage obligations pursuant
7 to the Policies' clear and unambiguous terms and has wrongfully and illegally
8 refused to provide coverage to which Plaintiff is entitled.

9 103. Defendant has denied claims related to COVID-19 on a uniform and
10 class wide basis, without individual bases or investigations, such that the Court can
11 render declaratory judgment irrespective of whether members of the Class have filed
12 a claim.

13 104. An actual case or controversy exists regarding Plaintiff's and the other
14 Business Income Declaratory Judgment Class members' rights and Defendant's
15 obligations under the Policies to reimburse Plaintiff for the full amount of Business
16 Income losses incurred by Plaintiff and the other Business Income Declaratory
17 Judgment Class members in connection with suspension of their businesses
18 stemming from the COVID-19 pandemic.

19 105. Pursuant to 28 U.S.C. § 2201, Plaintiff and the other Business Income
20 Declaratory Judgment Class members seek a declaratory judgment from this Court
21 declaring the following:

- 22 a. Plaintiff's and the other Business Income Declaratory Judgment Class
23 members' Business Income losses incurred in connection with the
24 Closure Orders and the necessary interruption of their businesses
25 stemming from the COVID-19 pandemic are insured losses under their
26 Policies; and
27 b. Defendant is obligated to pay Plaintiff and the other Business Income
28 Declaratory Judgment Class members for the full amount of the Business

1 Income losses incurred and to be incurred in connection with the Closure
2 Orders during the period of restoration and the necessary interruption of
3 their businesses stemming from the COVID-19 pandemic.

4 **COUNT VII**

5 **DECLARATORY JUDGMENT – CIVIL AUTHORITY COVERAGE**
6 **(Claim Brought on Behalf of the Civil Authority Declaratory Judgment Class)**

7 106. Plaintiff repeats and realleges Paragraphs 1–55 as if fully set forth
8 herein.

9 107. Plaintiff brings this Count individually and on behalf of the other
10 members of the Civil Authority Declaratory Judgment Class.

11 108. Plaintiff’s Hartford policy, as well as those of the other Civil Authority
12 Declaratory Judgment Class members, are contracts under which Defendant was
13 paid premiums in exchange for its promise to pay Plaintiff and the other Civil
14 Authority Declaratory Judgment Class members’ losses for claims covered by the
15 Policy.

16 109. Plaintiff and the other Civil Authority Declaratory Judgment Class
17 members have complied with all applicable provisions of the Policies and/or those
18 provisions have been waived by Defendant or Defendant is estopped from asserting
19 them, and yet Defendant has abrogated its insurance coverage obligations pursuant
20 to the Policies’ clear and unambiguous terms and has wrongfully and illegally
21 refused to provide coverage to which Plaintiff is entitled.

22 110. Defendant has denied claims related to COVID-19 on a uniform and
23 class wide basis, without individual bases or investigations, such that the Court can
24 render declaratory judgment irrespective of whether members of the Class have filed
25 a claim.

26 111. An actual case or controversy exists regarding Plaintiff’s and the other
27 Civil Authority Declaratory Judgment Class members’ rights and Defendant’s
28 obligations under the Policies to reimburse Plaintiff and the other Civil Authority

1 Declaratory Judgment Class members for the full amount of covered Civil Authority
2 losses incurred by Plaintiff and the other Civil Authority Declaratory Judgment
3 Class members in connection with Closure Orders and the necessary interruption of
4 their businesses stemming from the COVID-19 pandemic.

5 112. Pursuant to 28 U.S.C. § 2201, Plaintiff and the other Civil Authority
6 Declaratory Judgment Class members seek a declaratory judgment from this
7 Court declaring the following:

- 8 a. Plaintiff's and the other Civil Authority Declaratory Judgment Class
9 members' Civil Authority losses incurred in connection with the Closure
10 Orders and the necessary interruption of their businesses stemming from
11 the COVID-19 pandemic are insured losses under their Policies; and
12 b. Defendant is obligated to pay Plaintiff and the other Civil Authority
13 Declaratory Judgment Class members the full amount of the Civil
14 Authority losses incurred and to be incurred in connection with the
15 covered losses related to the Closure Orders and the necessary
16 interruption of their businesses stemming from the COVID-19
17 pandemic.

18 **COUNT VIII**

19 **DECLARATORY JUDGMENT – EXTRA EXPENSE COVERAGE**

20 **(Claim Brought on Behalf of the Extra Expense Declaratory Judgment Class)**

21
22 113. Plaintiff repeats and realleges Paragraphs 1–55 as if fully set forth
23 herein.

24 114. Plaintiff brings this Count individually and on behalf of the other
25 members of the Extra Expense Declaratory Judgment Class.

26 115. Plaintiff's Hartford insurance policy, as well as those of the other Extra
27 Expense Declaratory Judgment Class members, are contracts under which
28 Defendant was paid premiums in exchange for its promise to pay Plaintiff and the

1 other Extra Expense Declaratory Judgment Class members' losses for claims
2 covered by the Policy.

3 116. Plaintiff and the other Extra Expense Declaratory Judgment Class
4 members have complied with all applicable provisions of the Policies and/or those
5 provisions have been waived by Defendant or Defendant is estopped from asserting
6 them, and yet Defendant has abrogated its insurance coverage obligations pursuant
7 to the Policies' clear and unambiguous terms and has wrongfully and illegally
8 refused to provide coverage to which Plaintiff is entitled.

9 117. Defendant has denied claims related to COVID-19 on a uniform and
10 class wide basis, without individual bases or investigations, such that the Court can
11 render declaratory judgment irrespective of whether members of the Class have filed
12 a claim.

13 118. An actual case or controversy exists regarding Plaintiff's and the other
14 Extra Expense Declaratory Judgment Class members' rights and Defendant's
15 obligations under the Policies to reimburse Plaintiff and the other Extra Expense
16 Declaratory Judgment Class members for the full amount of Extra Expense losses
17 incurred by Plaintiff in connection with Closure Orders and the necessary
18 interruption of their businesses stemming from the COVID-19 pandemic.

19 119. Pursuant to 28 U.S.C. § 2201, Plaintiff and the other Extra Expense
20 Declaratory Judgment Class members seek a declaratory judgment from this Court
21 declaring the following:

- 22 a. Plaintiff's and the other Extra Expense Declaratory Judgment Class
23 members' Extra Expense losses incurred in connection with the Closure
24 Orders and the necessary interruption of their businesses stemming from
25 the COVID-19 pandemic are insured losses under their Policies; and
26 b. Defendant is obligated to pay Plaintiff and the other Extra Expense
27 Declaratory Judgment Class members for the full amount of the Extra
28 Expense losses incurred and to be incurred in connection with the

1 covered losses related to the Closure Orders during the period of
2 restoration and the necessary interruption of their businesses stemming
3 from the COVID-19 pandemic.

4 **COUNT IX**

5 **DECLARATORY JUDGMENT – SUE AND LABOR COVERAGE**

6 **(Claim Brought on Behalf of the Sue and Labor Declaratory Judgment Class)**

7 120. Plaintiff repeats and realleges Paragraphs 1–55 as if fully set forth
8 herein.

9 121. Plaintiff brings this Count individually and on behalf of the other
10 members of the Sue and Labor Declaratory Judgment Class.

11 122. Plaintiff’s Hartford insurance policy, as well as those of the other Sue
12 and Labor Declaratory Judgment Class members, are contracts under which
13 Defendant was paid premiums in exchange for its promise to pay Plaintiff and the
14 other Sue and Labor Declaratory Judgment Class members’ reasonably incurred
15 expenses to protect Covered Property.

16 123. Plaintiff and the other Sue and Labor Declaratory Judgment Class
17 members have complied with all applicable provisions of the policies and/or those
18 provisions have been waived by Defendant, or Defendant is estopped from asserting
19 them, and yet Defendant has abrogated its insurance coverage obligations pursuant
20 to the policies’ clear and unambiguous terms and has wrongfully and illegally
21 refused to provide coverage to which Plaintiff is entitled.

22 124. Defendant has denied claims related to COVID-19 on a uniform and
23 class wide basis, without individual bases or investigations, such that the Court can
24 render declaratory judgment irrespective of whether members of the Class have filed
25 a claim.

26 125. An actual case or controversy exists regarding Plaintiff and the other
27 Sue and Labor Declaratory Judgment Class members’ rights and Defendant’s
28 obligations under the policies to reimburse Plaintiff and the other Sue and Labor

1 Declaratory Judgment Class members for the full amount Plaintiffs and the other
2 members of the Sue and Labor Declaratory Judgment Class reasonably incurred to
3 protect Covered Property from further damage by COVID-19.

4 126. Pursuant to 28 U.S.C. § 2201, Plaintiff and the other Sue and Labor
5 Declaratory Judgment Class members seek a declaratory judgment from this Court
6 declaring the following:

- 7 a. Plaintiff and the other Sue and Labor Declaratory Judgment Class
8 members reasonably incurred expenses to protect Covered Property from
9 further damage by COVID-19 are insured losses under their policies; and
10 b. Defendant is obligated to pay Plaintiff and the other Sue and Labor
11 Declaratory Judgment Class members for the full amount of the expenses
12 they reasonably incurred to protect Covered Property from further
13 damage by COVID-19.

14 **COUNT X**

15 **DECLARATORY JUDGMENT – VIRUS ENDORSEMENT COVERAGE**
16 **(Claim Brought on Behalf of Virus Endorsement Declaratory Judgment Class)**

17 127. Plaintiff repeats and realleges Paragraphs 1–55 as if fully set forth
18 herein.

19 128. Plaintiff brings this Count individually and on behalf of the other
20 members of the Virus Endorsement Declaratory Judgment Class.

21 129. Plaintiff’s Hartford insurance policy, as well as those of the other Virus
22 Endorsement Declaratory Judgment Class members, are contracts under which
23 Defendant was paid premiums in exchange for its promise to pay Plaintiff and the
24 other Virus Endorsement Declaratory Judgment Class members’ losses for claims
25 covered by the Policy.

26 130. Plaintiff and the other Virus Endorsement Declaratory Judgment Class
27 members have complied with all applicable provisions of the policies and/or those
28 provisions have been waived by Defendant, or Defendant is estopped from asserting

1 them, and yet Defendant has abrogated its insurance coverage obligations pursuant
2 to the policies' clear and unambiguous terms and has wrongfully and illegally
3 refused to provide coverage to which Plaintiff is entitled.

4 131. Defendant has denied claims related to COVID-19 on a uniform and
5 class wide basis, without individual bases or investigations, such that the Court can
6 render declaratory judgment irrespective of whether members of the Class have filed
7 a claim.

8 132. An actual case or controversy exists regarding Plaintiff and the other
9 Virus Endorsement Declaratory Judgment Class members' rights and Defendant's
10 obligations under the policies to reimburse Plaintiff and the other Virus
11 Endorsement Declaratory Judgment Class members for the full amount of Business
12 Income and Extra Expense losses incurred by Plaintiff and the other Virus
13 Endorsement Declaratory Judgment Class members in connection with suspension
14 of their businesses stemming from the COVID-19 pandemic

15 133. Pursuant to 28 U.S.C. § 2201, Plaintiff and the other Virus
16 Endorsement Declaratory Judgment Class members seek a declaratory judgment
17 from this Court declaring the following:

- 18 a. Plaintiff and the other Virus Endorsement Declaratory Judgment Class
19 members' Business Income and Extra Expense losses incurred in
20 connection with the Closure Orders and the necessary interruption of
21 their businesses stemming from the COVID-19 pandemic are insured
22 losses under the Virus Endorsement and their policies; and
23 b. Defendant is obligated to pay Plaintiff and the other Virus Endorsement
24 Judgment Class members for the full amount of Business Income and
25 Extra Expense losses incurred and to be incurred in connection with the
26 Closure Orders during the period of restoration and the necessary
27 interruption of their businesses stemming from the COVID-19
28 pandemic.

VII. REQUEST FOR RELIEF

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3 134. WHEREFORE, Plaintiff, individually and on behalf of the other Class
4 members, respectfully requests that the Court enter judgment in their favor and
5 against Defendant as follows:

- 6 a. Entering an order certifying the proposed nationwide Classes, as
7 requested herein, designating Plaintiff as Class representatives, and
8 appointing Plaintiff’s undersigned attorneys as Counsel for the Classes;
- 9 b. Entering judgment in favor of Plaintiff and the members of the Business
10 Income Breach Class, the Civil Authority Breach Class, the Extra
11 Expense Breach Class, and the Virus Endorsement Breach Class, and
12 awarding damages for breach of contract in an amount to be determined
13 at trial;
- 14 c. Entering declaratory judgments in favor of Plaintiff and the members of
15 the Business Income Declaratory Judgment Class, the Civil Authority
16 Declaratory Judgment Class, the Extra Expense Declaratory Judgment
17 Class, and the Virus Endorsement Declaratory Judgment Class as
18 follows:
 - 19 i. Business Income, Civil Authority, Extra Expense, and Sue and
20 Labor losses incurred in connection with the Closure Orders and
21 the necessary interruption of their businesses stemming from the
22 COVID-19 pandemic are insured losses under their Policies; and
 - 23 ii. Defendant is obligated to pay for the full amount of the Business
24 Income, Civil Authority, Extra Expense, and Sue and Labor losses
25 incurred and to be incurred related to COVID-19, the Closure
26 Orders, and the necessary interruption of their businesses
27 stemming from the COVID-19 pandemic;
- 28 d. Ordering Defendant to pay both pre- and post-judgment interest on any
amounts;
- e. Ordering Defendant to pay attorneys’ fees and costs of suit; and

1 f. Ordering such other and further relief as may be just and proper.

2 Respectfully submitted,

3 DATED: April 23, 2020

JOHNSTON & HUTCHINSON LLP

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Thomas J. Johnston
*Attorneys for Plaintiffs and the Proposed
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DEMAND FOR JURY TRIAL

1 Plaintiff hereby demands a trial by jury of any issue triable by right of a jury
2 pursuant to Rule 38 of the Federal Rules of Civil Procedure.
3

4 DATED: April 23, 2020

JOHNSTON & HUTCHINSON LLP

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6 

7
8 _____
9 Thomas J. Johnston
10 *Attorneys for Plaintiffs and the Proposed*
11 *Classes*

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