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14 Attorneys for Plaintiff

15 UNITED STATES DISTRICT COURT
 16 SOUTHERN DISTRICT OF CALIFORNIA

17 PIGMENT INC., Individually and on
 18 Behalf of All Others Similarly Situated,)

19 Plaintiff,)

20 vs.)

21 THE HARTFORD FINANCIAL
 SERVICES GROUP, INC. and)
 22 SENTINEL INSURANCE COMPANY,
 LTD.,)

23 Defendants.)

Case No. '20CV0794 BEN JLB

CLASS ACTION

COMPLAINT FOR DECLARATORY
 JUDGMENT AND BREACH OF
 CONTRACT

DEMAND FOR JURY TRIAL

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 26
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1 Plaintiff Pigment Inc. (“plaintiff”), on behalf of itself and all others similarly
2 situated, brings this class action against defendants The Hartford Financial Services
3 Group, Inc. and Sentinel Insurance Company, Ltd. (together, “Defendants” or
4 “Hartford”), and alleges as follows based on personal knowledge as to itself and upon
5 information and belief as to other matters based on its counsel’s investigation.
6 Plaintiff believes additional evidentiary support exists for its allegations, given an
7 opportunity for discovery.

8 SUMMARY OF THE ACTION

9 1. Plaintiff and other businesses nationwide purchased commercial property
10 insurance to ensure that they would not be forced to close their doors for good if they
11 were shuttered temporarily by an unanticipated crisis. Such a crisis is now upon us,
12 but Hartford and other insurers are refusing to pay the claims.

13 2. On March 11, 2020, the World Health Organization’s (“WHO”) Director
14 General, Tedros Adhanom Ghebreyesus, declared the COVID-19 outbreak a
15 worldwide pandemic: “WHO has been assessing this outbreak around the clock and
16 we are deeply concerned both by the alarming levels of spread and severity, and by
17 the alarming levels of inaction. We have therefore made the assessment that COVID-
18 19 can be characterized as a pandemic.”¹

19 3. On March 13, 2020, President Trump declared the COVID-19 pandemic
20 to be a national emergency.² On March 16, 2020, the Centers for Disease Control and
21 Prevention (“CDC”) and members of the national Coronavirus Task Force issued
22 guidance to the American public, styled as “30 Days to Slow the Spread,” for stopping
23

24 ¹ See World Health Organization, *WHO Director-General's opening remarks at the*
25 *media briefing on COVID-19 - 11 March 2020* (Mar. 11, 2020),
<https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

26 ² See The White House, *Proclamation on Declaring a National Emergency*
27 *Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (Mar. 13, 2020),
28 <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

1 the spread of COVID-19. This guidance advised individuals to adopt social
2 distancing measures, such as working from home, avoiding shopping trips, avoiding
3 gatherings of more than 10 people, and staying away from bars, restaurants, and food
4 courts.³

5 4. On March 12, 2020, California Governor Gavin Newsom issued a civil
6 authority order directing California residents to cancel non-essential gatherings. On
7 March 19, 2020, Gov. Newsom issued Executive Order N-33-20, a civil authority
8 order that required all residents to stay home, except as needed to maintain federal
9 critical infrastructure sectors. All California businesses not deemed essential,
10 including plaintiff's retail locations, have been ordered to close their doors.

11 5. In addition to California, the vast majority of other states across the
12 nation have entered civil authority orders requiring residents to "stay-at-home" or
13 "shelter-in-place" and suspending or severely curtailing business operations of non-
14 essential businesses that interact with the public and/or provide social gathering places
15 for residents (collectively, the "COVID-19 Civil Authority Orders").

16 6. These far-reaching COVID-19 Civil Authority Orders have been
17 financially devastating for most non-essential businesses, especially restaurants and
18 other foodservice businesses, as well as retail establishments, entertainment venues,
19 and other small, medium, and large businesses who have been forced to close,
20 furlough employees, and endure a sudden shutdown of cash flow that threatens their
21 survival.

22 7. Many businesses have purchased insurance to protect against losses from
23 catastrophic events like the current unforeseen COVID-19 pandemic through all-risk
24 commercial property insurance policies. These policies promise to indemnify the
25 policyholder for actual business losses incurred when business operations are

26 ³ See The White House, *The President's Coronavirus Guidelines for America, 30*
27 *Days to Slow the Spread*, [https://www.whitehouse.gov/wp-](https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf)
28 [content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf](https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf) (last
visited Apr. 27, 2020).

1 involuntarily suspended, interrupted, curtailed, when access to the premises is
2 prohibited because of direct physical loss or damage to the property, or by a civil
3 authority order that restricts or prohibits access to the property. This coverage,
4 commonly known as “business interruption coverage, is standard in most all-risk
5 commercial property insurance policies.

6 8. Despite the provision of business interruption coverage in these policies,
7 Defendants are denying their obligation to pay for business income losses and other
8 covered expenses incurred by policyholders for the physical loss and damage to the
9 insured property arising from COVID-19 Civil Authority Orders put in place as a
10 precaution to slow the contagion.

11 9. Plaintiff now brings this action on behalf of a Nationwide Class and a
12 California Sub-Class (as defined below) of policyholders who purchased standard
13 Hartford commercial property insurance to insure property in the United States and
14 California, respectively, where such policies provide for business income loss and
15 extra expense coverage and do not exclude coverage for pandemics, and who have
16 suffered losses due to measures put into place by a COVID-19 Civil Authority Order.

17 10. This action seeks a declaratory judgment that Hartford is contractually
18 obligated to pay business interruption losses incurred due to plaintiff’s and other Class
19 members’ compliance with COVID-19 Civil Authority Orders. In addition, plaintiff
20 seeks damages, attorneys’ fees and costs, and any other relief that this Court deems
21 equitable and just, arising out of Hartford’s breach of contract and wrongful conduct
22 alleged herein.

23 **PARTIES**

24 11. Plaintiff Pigment Inc. (“Pigment”) is a California corporation with its
25 principal place of business in San Diego, California. Pigment operates several retail
26 stores in San Diego County that sell artisan-crafted home goods, furniture, and plants
27 and host community workshops and events. Pigment’s success depends upon patrons
28 being able to shop and attend events at its retail businesses. In March 2020, Pigment

1 was forced to close its retail locations due to the issuance of applicable COVID-19
2 Civil Authority Orders.

3 12. Defendant The Hartford Financial Services Group, Inc. (“Hartford
4 Financial”) is a Delaware corporation with its principal place of business in Hartford,
5 Connecticut. It owns subsidiaries, directly and indirectly, that issue, among other
6 things, property insurance.

7 13. Defendant Sentinel Insurance Company, Ltd. (“Sentinel”) is a
8 Connecticut corporation with its principal place of business in Hartford, Connecticut.
9 Sentinel is a subsidiary of Hartford and is duly qualified and licensed to issue
10 insurance in the State of California and other states.

11 14. Sentinel and Hartford Financial are referred to herein collectively as
12 “Defendants” or “Hartford.”

13 15. Sentinel issued the Hartford Policy No. 72 SBA UU6772 to Pigment for
14 the policy period of February 15, 2020, through February 15, 2021 (“Plaintiff’s
15 Hartford Policy”).

16 **JURISDICTION AND VENUE**

17 16. This Court has jurisdiction over this action pursuant to 28 U.S.C.
18 §1332(d) in that this is a class action in which the amount in controversy exceeds
19 \$5,000,000, exclusive of interest and costs, and plaintiff and at least one member of
20 the putative class is a citizen of a different state than the Defendants.

21 17. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) in that
22 plaintiff is located in this District and Defendants do business in this District and thus
23 reside in this District, in accordance with 28 U.S.C. §1391(c).

24 **FACTUAL BACKGROUND**

25 **A. The Global COVID-19 Pandemic**

26 18. Viruses of the family Coronaviridae, such as Middle East respiratory
27 syndrome (MERS) coronavirus (MERS-CoV) and severe acute respiratory syndrome
28

1 (SARS) coronavirus (SARS-CoV), have been responsible for the loss of human life
2 since at least 2002 and were identified in several animal hosts.⁴

3 19. In December 2019, an initial cluster of nine patients with an unknown
4 cause of viral pneumonia was linked to the Huanan seafood market in Wuhan, China,
5 where many non-aquatic animals such as birds were also on sale. However, one of the
6 patients never visited the market, though he had stayed in a hotel nearby before the
7 onset of the illness.⁵

8 20. By January 2020, genetic sequencing from patient samples was
9 conducted to identify a novel virus, SARS-CoV-2, as the causative agent for the
10 pneumonia cluster.⁶ SARS-CoV-2 is an RNA virus, with a crown-like appearance
11 under an electron microscope because of glycoprotein spikes on its envelope. Among
12

13 ⁴ See Roujian Lu, et al., Center for Disease Control, *Genomic characterisation and*
14 *epidemiology of 2019 novel coronavirus: implications for virus origins and receptor*
15 *binding* (Jan. 29, 2020), [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/downloads/genomic-characterization-of-2019-nCoV-Lancet-1-29-2020.pdf)
16 [ncov/downloads/genomic-characterization-of-2019-nCoV-Lancet-1-29-2020.pdf](https://www.cdc.gov/coronavirus/2019-ncov/downloads/genomic-characterization-of-2019-nCoV-Lancet-1-29-2020.pdf)
17 (There are four genera of coronaviruses: (I) α -coronavirus (alphaCoV) and (II) β -
18 coronavirus (betaCoV), which are probably present in bats and rodents; and (III) δ -
19 coronavirus (deltaCoV) and (IV) γ -coronavirus (gammaCoV), which probably
20 represent avian species.).

21 ⁵ See Francesco Di Gennaro et al., MDPI: International Journal of Environmental
22 Research and Public Health, *Coronavirus Diseases (COVID-19) Current Status and*
23 *Future Perspectives a Narrative Review* (Apr. 1, 2020), [https://www.mdpi.com/1660-](https://www.mdpi.com/1660-4601/17/8/2690)
24 [4601/17/8/2690](https://www.mdpi.com/1660-4601/17/8/2690) (As a typical RNA virus, the average evolutionary rate for
25 coronaviruses is roughly 10-nucleotide substitutions per site per year, with mutations
26 arising during every replication cycle. This finding suggests that COVID-19
27 originated from one source within a short period and was detected rapidly. However,
28 as the virus transmits to more individuals, constant surveillance of arising mutations is
needed.); Roujian Lu, et al., Center for Disease Control, *Genomic characterisation*
and epidemiology of 2019 novel coronavirus: implications for virus origins and
receptor binding (Jan. 29, 2020), [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/downloads/genomic-characterization-of-2019-nCoV-Lancet-1-29-2020.pdf)
[ncov/downloads/genomic-characterization-of-2019-nCoV-Lancet-1-29-2020.pdf](https://www.cdc.gov/coronavirus/2019-ncov/downloads/genomic-characterization-of-2019-nCoV-Lancet-1-29-2020.pdf),
(This finding suggests either possible droplet transmission or that the patient was
infected by a currently unknown source. Evidence of clusters of infected family
members and medical workers has now confirmed the presence of human-to-human
transmission.).

⁶ See Francesco Di Gennaro et al., MDPI: International Journal of Environmental
Research and Public Health, *Coronavirus Diseases (COVID-19) Current Status and*
Future Perspectives a Narrative Review (Apr. 1, 2020), [https://www.mdpi.com/1660-](https://www.mdpi.com/1660-4601/17/8/2690)
[4601/17/8/2690](https://www.mdpi.com/1660-4601/17/8/2690).

1 the functions of the structural proteins, the envelope has a crucial role in virus
2 pathogenicity as it promotes viral assembly and release.⁷

3 21. The first confirmed case of the virus outside China was diagnosed on
4 January 13, 2020, in Bangkok, Thailand with the number of cases rapidly increasing
5 worldwide.

6 22. On January 30, 2020, WHO declared that the SARS-CoV-2 outbreak
7 constituted a public health emergency of international concern.

8 23. By February 11, 2020, the novel coronavirus was named “COVID-19” by
9 the WHO Director-General.⁸

10 24. As of April 27, 2020, the number of confirmed cases of COVID-19
11 topped 3 million globally with over 200,000 deaths, with the United States dealing
12 with nearly 1 million confirmed cases and over 55,000 reported deaths – more than
13 any other country in the world.⁹

14 25. The clinical features of COVID-19 vary from asymptomatic forms to
15 fatal conditions of severe respiratory failure that require ventilation and support in an
16 intensive care unit (“ICU”). Pneumonia has been the most frequent severe
17 manifestation of COVID-19, with symptoms of fever, cough, dyspnea, and bilateral
18 infiltrates on chest imaging.¹⁰ There are no specific treatments recommended for
19 COVID-19, and no vaccine is currently available.¹¹

20
21 ⁷ See *id.* (To address the pathogenetic mechanisms of SARS-CoV-2, its viral
22 structure and genome must be considered. Coronaviruses are enveloped positive
strand RNA viruses with the largest known RNA genomes – 30-32 kb – with a 50-cap
structure and 30-poly-A tail.).

23 ⁸ See *id.*

24 ⁹ See Lateshia Beachum et al., Wash. Post, *Live updates: States lay out plans to*
25 *reopen as coronavirus cases surpass 3 million worldwide* (Apr. 27, 2020),
<https://www.washingtonpost.com/world/2020/04/27/coronavirus-latest-news/>.

26 ¹⁰ See Francesco Di Gennaro et al., MDPI: International Journal of Environmental
27 Research and Public Health, *Coronavirus Diseases (COVID-19) Current Status and*
28 *Future Perspectives a Narrative Review* (Apr. 1, 2020), <https://www.mdpi.com/1660-4601/17/8/2690> (Asymptomatic infections have also been described, but their
frequency is unknown. Other, less common symptoms have included headaches, sore

1 26. It has now been discovered by scientists that COVID-19 has several
 2 modes of transmission. Pursuant to a “Situation Report” released by the WHO, the
 3 virus can be transmitted through symptomatic transmission, pre-symptomatic
 4 transmission, and asymptomatic transmission.¹² Symptomatic transmission refers to
 5 transmission by a person experiencing symptoms associated with the virus who then
 6 transfers COVID-19 to another. Data from published studies provide evidence that
 7 COVID-19 is primarily transmitted from symptomatic persons to others who are in
 8 close contact through respiratory droplets, by direct contact with infected persons, or
 9 by contact with contaminated objects and surfaces.¹³

10 27. The incubation period for COVID-19 – the time between exposure to the
 11 virus (becoming infected) and symptom onset – is an average of 5-6 days, but can take
 12 up to 14 days.¹⁴ During this period, also known as the “pre-symptomatic” period,
 13 some infected persons can be contagious. For that reason, transmission from a pre-
 14 throat, and rhinorrhea. Along with respiratory symptoms, gastrointestinal symptoms
 15 (*e.g.*, nausea and diarrhea) have also been reported, and in some patients, they may be
 the presenting complaint.)

16 ¹¹ *See id.* (The treatment is symptomatic, and oxygen therapy represents the major
 17 treatment intervention for patients with severe infection. Mechanical ventilation may
 18 be necessary in cases of respiratory failure refractory to oxygen therapy, whereas
 19 hemodynamic support is essential for managing septic shock. Different strategies can
 20 be used depending on the severity of the patient and local epidemiology. Home
 21 management is appropriate for asymptomatic or paucisintomatic patients. They need
 a daily assessment of body temperature, blood pressure, oxygen saturation and
 respiratory symptoms for about 14 days. Management of such patients should focus
 on prevention of transmission to others and monitoring for clinical status with prompt
 hospitalization if needed.)

22 ¹² *See World Health Organization, Coronavirus disease 2019 (COVID-19) Situation*
 23 *Report – 73* (Apr. 3, 2020), https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2.

24 ¹³ *See id.* (Data from clinical and virologic studies that have collected repeated
 25 biological samples from confirmed patients provide evidence that shedding of the
 26 COVID-19 virus is highest in the upper respiratory tract (nose and throat) early in the
 27 course of the disease. That is, within the first three days from onset of symptoms.
 Preliminary data suggests that people may be more contagious around the time of
 symptom onset as compared to later on in the disease.)

28 ¹⁴ *See id.*

1 symptomatic case can occur before symptom onset. Pre-symptomatic transmission
2 still requires the virus to be spread through infectious droplets or touching
3 contaminated surfaces.¹⁵

4 28. An individual who does not develop symptoms – known as an
5 asymptomatic case of COVID-19 – can still transmit the virus to another. Though
6 there are few documented cases reported, it does not exclude the possibility that it has
7 or may have occurred.¹⁶

8 29. Not only is COVID-19 transmitted via human-to-human contact, but the
9 WHO and scientific studies have confirmed that the virus can live on contaminated
10 objects or surfaces. According to a study in *The New England Journal of Medicine*,
11 COVID-19 was detectable in aerosols for up to 3 hours, up to 4 hours on copper, up to
12 24 hours on cardboard, and up to 2-3 days on plastic and stainless steel.¹⁷ All of these
13 materials are used in the preparation and service of food by restaurants. The results of
14 the study suggest that individuals could get COVID-19 through indirect contact with
15 surfaces or objects used by an infected person, whether or not they were symptomatic.

16
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18 ¹⁵ See *Id.* (In a small number of case reports and studies, pre-symptomatic
19 transmission has been documented through contact tracing efforts and enhanced
20 investigation of clusters of confirmed cases. This is supported by data suggesting that
21 some people can test positive for COVID-19 from 1-3 days before they develop
22 symptoms. Thus, it is possible that people infected with COVID-19 can transmit the
23 virus before significant symptoms develop.).

24 ¹⁶ See *Id.*

25 ¹⁷ See News Release, National Institutes of Health, *New coronavirus stable for hours*
26 *on surfaces* (Mar. 17, 2020), [https://www.nih.gov/news-events/news-releases/new-](https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces)
27 *coronavirus-stable-hours-surfaces*; see also World Health Organization, *Modes of*
28 *transmission of virus causing COVID-19: implications for IPC* (Mar. 29, 2020),
[https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-](https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations)
causing-covid-19-implications-for-ipc-precaution-recommendations (Airborne
transmission of COVID-19 “may be possible in specific circumstances and settings in
which procedures or support treatments that generate aerosols are performed; *i.e.*,
endotracheal intubation, bronchoscopy, open suctioning, administration of nebulized
treatment, manual ventilation before intubation, turning the patient to the prone
position, disconnecting the patient from the ventilator, non-invasive positive-pressure
ventilation, tracheostomy, and cardiopulmonary resuscitation.”).

1 30. The *Journal of Hospital Infection* has found that human coronaviruses,
 2 such as SARS-CoV and MERS-CoV, can remain infectious on inanimate surfaces at
 3 room temperature for up to nine days.¹⁸ At a temperature of 30 degrees Celsius or
 4 more, the duration of persistence is shorter. Contamination of frequently touched
 5 surfaces is, therefore, a potential source of viral transmission.¹⁹ Though this study
 6 was not conclusive as to COVID-19, scientists are still grappling with the
 7 implications.

8 31. On March 27, 2020, the CDC released a report entitled “Public Health
 9 Responses to COVID-19 Outbreaks on Cruise Ships – Worldwide, February - March
 10 2020.”²⁰ The report detailed how, during this time frame, COVID-19 outbreaks
 11 associated with three different cruise ship voyages caused over 800 confirmed cases
 12 and 10 deaths.²¹ Of the individuals tested, a high proportion were found to be

13 _____
 14 ¹⁸ See G. Kampf et al., *Journal of Hospital Infection, Persistence of coronaviruses on*
 15 *inanimate surfaces and their inactivation with biocidal agents*, (Jan. 31, 2020),
[https://www.journalofhospitalinfection.com/action/showPdf?pii=S0195-](https://www.journalofhospitalinfection.com/action/showPdf?pii=S0195-6701%2820%2930046-3)
[6701%2820%2930046-3.](https://www.journalofhospitalinfection.com/action/showPdf?pii=S0195-6701%2820%2930046-3)

16 ¹⁹ See *id.* (Although the viral load of coronaviruses on inanimate surfaces is not
 17 known during an outbreak situation, it seems plausible to reduce the viral load on
 18 surfaces by disinfection, especially of frequently touched surfaces in the immediate
 19 area surrounding a patient where the highest viral load can be expected. The WHO
 20 recommends ensuring that “environmental cleaning and disinfection procedures are
 21 followed consistently and correctly.”).

20 ²⁰ See Leah F. Moriarty, MPH, Centers for Disease Control and Prevention, *Public*
 21 *Health Responses to COVID-19 Outbreaks on Cruise Ships - Worldwide, February -*
March 2020 (Mar. 27, 2020),
[https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm?s_cid=mm6912e3_w.](https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm?s_cid=mm6912e3_w)

22 ²¹ See *id.* (“During February 7-23, 2020, the largest cluster of COVID-19 cases
 23 outside mainland China occurred on the Diamond Princess cruise ship, which was
 24 quarantined in the port of Yokohama, Japan, on February 3. . . . On March 6, cases of
 25 COVID-19 were identified in persons on the Grand Princess cruise ship off the coast
 26 of California; that ship was subsequently quarantined. By March 17, confirmed cases
 27 of COVID-19 had been associated with at least 25 additional cruise ship voyages. On
 28 February 21, CDC recommended avoiding travel on cruise ships in Southeast Asia; on
 March 8, this recommendation was broadened to include deferring all cruise ship
 travel worldwide for those with underlying health conditions and for persons [over] 65
 years. On March 13, the Cruise Lines International Association announced a 30-day
 voluntary suspension of cruise operations in the United States. CDC issued a level 3
 travel warning on March 17, recommending that all cruise travel be deferred
 worldwide.”).

1 asymptomatic, which may explain the high rate of transmission on cruise ships.
2 Further, COVID-19 was identified on a variety of surfaces in cabins of both
3 symptomatic and asymptomatic infected passengers up to 17 days after cabins were
4 vacated on the Diamond Princess cruise line, but before disinfection procedures had
5 been conducted.²² The CDC study noted that more studies are required to understand
6 the perpetuation of transmission, but what is clear is the uncertainty around COVID-
7 19 and its implications for the lawful and safe functioning of a variety of businesses,
8 most significantly, food service businesses.

9 32. Without a vaccine to protect against COVID-19, effective control of the
10 outbreak relies on measures designed to reduce human-to-human and surface-to-
11 human exposure. Recent information on the CDC's website provides that COVID-19
12 spreads when people are within six feet of each other or when a person comes in
13 contact with a surface or object that has the virus on it.²³ Various other sources state
14 that close contact with a person with the virus or surfaces where the virus is found can
15 transmit the virus.²⁴

16 _____
17 ²² See *id.* (“Cruise ships are often settings for outbreaks of infectious diseases
18 because of their closed environment, contact between travelers from many countries,
19 and crew transfers between ships. On the Diamond Princess, transmission largely
20 occurred among passengers before quarantine was implemented, whereas crew
21 infections peaked after quarantine. . . . On the Grand Princess, crew members were
22 likely infected on voyage A and then transmitted [COVID-19] to passengers on
23 voyage B. The results of testing of passengers and crew on board the Diamond
24 Princess demonstrated a high proportion (46.5%) of asymptomatic infections at the
25 time of testing. Available statistical models of the Diamond Princess outbreak suggest
26 that 17.9% of infected persons never developed symptoms. . . . A high proportion of
27 asymptomatic infections could partially explain the high attack rate among cruise ship
28 passengers and crew. . . . Although these data cannot be used to determine whether
transmission occurred from contaminated surfaces, further study of fomite
transmission of [COVID-19] aboard cruise ships is warranted.”).

24 ²³ See Centers for Disease Control and Prevention, *How COVID-19 Spreads*,
25 [https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-COVID-
spreads.html](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-COVID-spreads.html) (last visited Apr. 27, 2020).

26 ²⁴ See G. Kampf et al., *Journal of Hospital Infection*, *Persistence of coronaviruses on*
27 *inanimate surfaces and their inactivation with biocidal agents*, (Jan. 31, 2020),
28 [https://www.journalofhospitalinfection.com/action/showPdf?pii=S0195-
6701%2820%2930046-3](https://www.journalofhospitalinfection.com/action/showPdf?pii=S0195-6701%2820%2930046-3) (remains infectious from 2 hours to 28 days depending on
conditions); see also Nina Bai, *Why One Test May Not Be Enough*, University of

1 33. The secondary exposure of humans to contaminated surfaces is
2 particularly acute in places where the public gathers to socialize, eat, drink, shop, find
3 entertainment, and recreate. This is why the CDC recommends that in viral outbreaks
4 individuals who are infected stay at home and those who are not sick engage in
5 preventive measures such as constant hand washing and avoiding activities that would
6 bring them into the close proximity of people with the virus or surfaces where the
7 virus may reside. However, because these recommendations have proven ineffective
8 to minimize the spread of COVID-19, containment efforts have led to civil authorities
9 issuing orders closing non-essential business establishments, including restaurants,
10 bars, hotels, theaters, personal care salons, gyms, and schools, and mandating social
11 distancing among the population. This has caused the cancelation of sporting events,
12 parades, and concerts, the closure of amusement parks, and substantial travel
13 restrictions. In addition, to conserve medical supplies, orders have been issued
14 prohibiting the performance of non-urgent or non-emergency elective procedures and
15 surgeries, forcing the suspension of operations at many medical, surgical, therapeutic,
16 and dental practices.

17 34. On March 4, 2020, California Governor Gavin Newsom declared a state
18 of emergency statewide. On March 12, 2020, Gov. Newsom issued an executive
19 order directing California residents to cancel large non-essential gatherings. On
20 March 19, 2020, Gov. Newsom issued Executive Order N-33-20, which required all
21 residents to stay home except as needed to maintain continuity of operations of the
22 federal critical infrastructure sectors. In addition, on March 16, 2020, the Mayor of
23 the City of San Diego issued Executive Order No. 2020-1, prohibiting any gathering
24

25 California San Francisco (Feb. 13, 2020),
26 <https://www.ucsf.edu/news/2020/02/416671/how-new-coronavirus-spreads-and-progresses-and-why-one-test-may-not-be-enough> (door knobs and table tops can contain the virus); Heather Murphy, *Surfaces? Sneezes? Sex? How the Coronavirus Can and Cannot Spread*, N.Y. Times (Mar. 19, 2020), <https://www.nytimes.com/2020/03/02/health/coronavirus-how-it-spreads.html> (virus can remain on metal, glass and plastic for several days).
27
28

1 of 50 or more people and discouraging all non-essential gatherings of any size. The
2 Mayor’s executive order has since been extended until April 30, 2020.

3 35. In addition to California, all but 6 states have enacted a COVID-19 Civil
4 Authority Order, including but not limited to “stay-at-home” or “shelter-in-place”
5 orders; 35 states have closed all non-essential businesses with other states enacting
6 measures to curtail business operations; all 50 states have closed schools; and all but
7 one state has closed restaurants and bars for services other than take-out and
8 delivery.²⁵

9 **B. Defendants’ Standard Commercial Property Insurance Policies**

10 36. Hartford’s insurance policies issued to plaintiff and other Class members
11 are standard commercial property polices that cover loss or damage to the covered
12 premises resulting from all risks other than those expressly excluded.

13 37. Plaintiff’s Hartford Policy, as well as the policies of other Class
14 members, is a standard form used by Hartford for all insureds with applicable
15 coverage.

16 38. Among the coverages provided by Plaintiff’s Hartford Policy was
17 business interruption insurance, which, generally, would indemnify plaintiff for lost
18 income and profits if its business was shut down.

19 39. Pigment’s Special Property Coverage Form, Form SS 00 07 07 05,
20 provided coverage as follows:

21 **Business Income**

- 22 (1) We will pay for the actual loss of Business Income you sustain
23 due to the necessary suspension of your “operations” during the
24 “period of restoration.” The suspension must be caused by direct
25 physical loss of or physical damage to property at the “scheduled
26 premises”, including personal property in the open (or in a
27 vehicle) within 1,000 feet of the “scheduled premises”, caused by
28 or resulting from a Covered Cause of Loss.

27 ²⁵ See Kaiser Family Foundation, *State Data and Policy Actions to Address*
28 *Coronavirus* (Apr. 27, 2020), <https://www.kff.org/health-costs/issue-brief/state-data-and-policy-actions-to-address-coronavirus/>.

1 40. Pigment's Special Property Coverage Form, Form SS 00 07 07 05,
2 provided coverage as follows:

3 **Civil Authority**

4 (1) This insurance is extended to apply to the actual loss of Business
5 Income you sustain when access to your "scheduled premises" is
6 specifically prohibited by order of a civil authority as the direct
7 result of a Covered Cause of Loss to property in the immediate
8 area of your "scheduled premises."

7 41. In addition, Pigment's Special Property Coverage Form, Form SS 00 07
8 07 05, provided coverage as follows:

9 **Extra Expense**

10 (1) We will pay reasonable and necessary Extra Expense you
11 incur during the "period of restoration" that you would not
12 have incurred if there had been no direct physical loss or
13 physical damage to property at the "scheduled premises",
including personal property in the open (or in a vehicle)
within 1,000 feet, caused by or resulting from a Covered
Cause of Loss.

14 42. Under Pigment's Special Property Coverage Form, Form SS 00 07 07 05,
15 Business Income is defined as:

- 16 (a) Net Income (Net Profit or Loss before income taxes) that
17 would have been earned or incurred if no direct physical
18 loss or physical damage had occurred; and
19 (b) Continuing normal operating expenses incurred, including
20 payroll.

20 43. Pigment's Special Property Coverage Form, Form SS 00 07 07 05,
21 defined Extra Expense as follows

- 22 (a) To avoid or minimize the suspension of business and to
23 continue "operations":
24 (i) At the "scheduled premises"; or
25 (ii) At replacement premises or at temporary locations,
26 including:
27 (aa) Relocation expenses; and
28 (bb) Cost to equip and operate the replacement or
temporary location, other than those costs
necessary to repair or to replace damaged
stock and equipment.

1 (b) To minimize the suspension of business if you cannot
2 continue “operations.”

3 (c) (i) To repair or replace any property; or

4 (ii) To research, replace or restore the lost information
5 on damaged “valuable papers and records”; to the
6 extent it reduces the amount of loss that otherwise
7 would have been payable under this Additional
8 Coverage or Additional Coverage o., Business
9 Income.

10 We will only pay for Extra Expense that occurs
11 within 12 consecutive months after the date of direct
12 physical loss or physical damage. This Additional
13 Coverage is not subject to the Limits of Insurance.

14 44. Pigment’s Special Property Coverage Form provides coverage for direct
15 physical loss of or physical damage to Covered Property at the premises described in
16 the Declarations (also called “scheduled premises” in this policy) caused by or
17 resulting from a Covered Cause of Loss.

18 45. The interruption of plaintiff’s and other Class members’ businesses was
19 not caused by any of the exclusions set forth in the applicable policies.

20 46. Pigment’s policy contains Limited Fungi, Bacteria or Virus Coverage,
21 which excludes remediation measures for a rot, bacteria or virus infestation at the
22 insured property, but covers such an infestation if it is caused by an otherwise covered
23 peril.

24 47. Plaintiff and all Class members have suffered a direct physical loss of
25 and damage to their property because they have been unable to use their property for
26 its intended purpose.

27 48. Plaintiff’s Fungi, Bacteria or Virus Coverage provision in its policy does
28 not exclude plaintiff’s losses because the efficient proximate cause of losses was
precautionary measures taken by its state to prevent the spread of COVID-19 in the
future, not because coronavirus was found on or around plaintiff’s insured property.

49. Notwithstanding the foregoing, by way of letter dated March 30, 2020,
Hartford denied Pigment’s claim for business interruption losses.

1 **C. The COVID-19 Pandemic Has Affected Policyholders Nationwide**

2 50. COVID-19 is physically impacting private commercial property
3 throughout the United States and the State of California, threatening the survival of
4 thousands of restaurants, retail establishments, and other businesses that have had
5 their business operations suspended or curtailed indefinitely by order of civil
6 authorities.

7 51. Hartford does not intend to cover losses caused by the COVID-19
8 pandemic as part of business interruption coverage. As aforementioned, Hartford
9 denied plaintiff's claim by way of a letter dated March 30, 2020, even though Pigment
10 was forced to close its retail locations due to the COVID-19 Civil Authority Orders.
11 On information and belief, Hartford has denied similar claims by other Class
12 members.

13 52. As a result, many small businesses that maintain commercial multi-peril
14 insurance policies with business interruption coverage will have significant uninsured
15 losses absent declaratory relief from this Court.

16 53. A declaratory judgment determining that the business income loss and
17 extra expense coverage provided in standard Hartford commercial property insurance
18 policies applies to the suspension, curtailment, and interruption of business operations
19 resulting from measures put into place by civil authorities is necessary to prevent
20 plaintiff and similarly situated Class members from being denied critical coverage for
21 which they have paid premiums.

22 **CLASS ALLEGATIONS**

23 54. Plaintiff brings this lawsuit pursuant to Federal Rule of Civil Procedure
24 23(a) and (b)(3) individually and on behalf of all other persons similarly situated.

25 55. The Nationwide Class is defined as:

26 All persons and entities who have entered into a standard commercial
27 property insurance policy with a Hartford insurance carrier to insure
28 property in the United States, where such policy provides for business
income loss and extra expense coverage and does not exclude coverage

1 for pandemics, and who have suffered losses due to measures put in
2 place by a COVID-19 Civil Authority Order.

3 The California Sub-Class is defined as:

4 All persons and entities who have entered into a standard commercial
5 property insurance policy with a Hartford insurance carrier to insure
6 property in California, where such policy provides for business income
loss and extra expense coverage and does not exclude coverage for
pandemics, and who have suffered losses due to measures put in place by
a COVID-19 Civil Authority Order.

7 Excluded from each of the Classes are the Defendants, their employees, officers,
8 directors, legal representatives, heirs, successors, and wholly or partly owned
9 subsidiaries or affiliated companies; Class Counsel and their employees; and the
10 judicial officers and their immediate family members and associated court staff
11 assigned to this case.

12 56. Plaintiff reserves the right to modify, expand, or amend the definitions of
13 the proposed Classes following the discovery period and before the Court determines
14 whether class certification is appropriate.

15 57. Certification of plaintiff's claims for class-wide treatment is appropriate
16 because plaintiff can prove the elements of its claims on a class-wide basis using the
17 same evidence as would prove those elements in individual actions alleging the same
18 claims.

19 **Numerosity**

20 58. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(1). The
21 Classes number at least in the hundreds and consists of geographically dispersed
22 business entities who are insured for business interruption losses. Hartford sells many
23 insurance policies nationwide and in the State of California and, therefore, joinder of
24 the Class members is impracticable.

25 59. The identity of Class members is ascertainable, as the names and
26 addresses of all Class members can be identified in Hartford's or their agent's books
27 and records. Plaintiff anticipates providing appropriate notice to the certified Classes
28

1 in compliance with Fed. R. Civ. P. 23(c)(2)(A) and/or (B), to be approved by the
2 Court after class certification, or pursuant to court order under Fed. R. Civ. P. 23(d).

3 **Typicality**

4 60. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(3) because
5 plaintiff's claims are typical of the claims of each of the Class members, as all Class
6 members were and are similarly affected and their claims arise from the same standard
7 policy provisions entered into with Hartford. Each Class member's insurance policy
8 contains the same form providing coverage for business income loss. None of the
9 forms exclude coverage due to a governmental action intended to reduce the effect of
10 the ongoing global pandemic. As a result, a declaratory judgment as to the rights and
11 obligations under plaintiff's policy will address the rights and obligations of all Class
12 members.

13 **Adequacy of Representation**

14 61. Plaintiff is committed to prosecuting the action, will fairly and adequately
15 protect the interests of Class members, and has retained counsel competent and
16 experienced in class action litigation, including litigation relating to insurance
17 policies. Plaintiff has no interests antagonistic to or in conflict with other Class
18 members. Plaintiff anticipates no difficulty in the management of this litigation as a
19 class action.

20 **Commonality**

21 62. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(2) because
22 there are questions of law and fact that are common to each of the Classes. These
23 common questions predominate over any questions affecting only individual Class
24 members. The questions of law and fact common to the Classes include, but are not
25 limited to:

26 (a) Whether there is an actual controversy between plaintiff and
27 Hartford as to the rights, duties, responsibilities and obligations of the parties under
28

1 the business interruption coverage provisions in standard commercial property
2 insurance policies;

3 (b) Whether measures to reduce the spread of the COVID-19
4 pandemic are excluded from plaintiff's and Class members' standard commercial
5 property insurance policies;

6 (c) Whether the measures put in place by civil authorities to stop the
7 spread of COVID-19 caused physical loss or damage to the covered commercial
8 property;

9 (d) Whether Hartford has repudiated and breached the insurance
10 policies with business interruption coverage by denying or intending to deny claims
11 for coverage; and

12 (e) Whether plaintiff and Class members suffered damages as a result
13 of the breach by Hartford.

14 **Superiority/Predominance**

15 63. This action satisfies the requirements of Fed. R. Civ. P. 23(b)(3). A class
16 action is superior to other available methods for the fair and efficient adjudication of
17 the rights of the Class members. The joinder of individual Class members is
18 impracticable because of the vast number of Class members who have purchased
19 commercial property insurance policies from Defendants.

20 64. Because a declaratory judgment as to the rights and obligations under the
21 uniform insurance policies will apply to all Class members, most or all Class members
22 would have no rational economic interest in individually controlling the prosecution
23 of specific actions. The burden imposed on the judicial system by individual
24 litigation, and to Hartford, by even a small fraction of the Class members, would be
25 enormous.

26 65. In comparison to piecemeal litigation, class action litigation presents far
27 fewer management difficulties, conserves the resources of both the judiciary and the
28 parties far better, and protects the rights of each Class member far more effectively.

1 The benefits to the legitimate interests of the parties, the Court, and the public
2 resulting from class action litigation substantially outweigh the expenses, burdens,
3 inconsistencies, economic infeasibility, and inefficiencies of individualized litigation.
4 Class adjudication is superior to other alternatives under Fed. R. Civ. P. 23(b)(3)(D).
5 Class treatment will also avoid the substantial risk of inconsistent factual and legal
6 determinations on the many issues in this lawsuit.

7 66. Plaintiff knows of no obstacles likely to be encountered in the
8 management of this action that would preclude its maintenance as a class action. Rule
9 23 provides the Court with the authority and flexibility to maximize the efficiencies
10 and benefits of the class mechanism and reduce management challenges. The Court
11 may, on motion of plaintiff or on its own determination, certify nationwide and
12 statewide classes for claims sharing common legal questions; use the provisions of
13 Rule 23(c)(4) to certify particular claims, issues, or common questions of law or of
14 fact for class-wide adjudication; certify and adjudicate bellwether class claims; and
15 use Rule 23(c)(5) to divide any class into subclasses.

16 **COUNT I**

17 **DECLARATORY JUDGMENT – BUSINESS INCOME COVERAGE** 18 **(Claim Brought on Behalf of the Nationwide Class and California Sub-Class)**

19 67. Plaintiff repeats the allegations set forth above as if fully set forth herein.

20 68. Plaintiff brings this Count individually and on behalf of the other
21 members of the Nationwide Class and California Sub-Class.

22 69. Plaintiff's Hartford Policy, as well as those of the other Class members,
23 is a contract under which Hartford was paid premiums in exchange for its contractual
24 agreement to pay plaintiff's, and the other Class members', losses for claims covered
25 by the policy.

26 70. As part of standard business interruption coverage, Hartford agreed to
27 pay for insureds' loss of Business Income sustained due to the necessary suspension
28 of its operations during the "period of restoration." Hartford also agreed to pay its

1 insureds' actual loss of Business Income sustained due to the necessary "suspension of
2 [their] operations" during the "period of restoration" caused by direct physical loss or
3 damage. "Business Income" under the policies means the "Net Income (Net Profit or
4 Loss before income taxes) that would have been earned or incurred," as well as
5 "[c]ontinuing normal operating expenses incurred, including payroll."

6 71. The COVID-19 Civil Authority Orders caused direct physical loss and
7 damage to plaintiff's and the other Class members' Covered Properties, requiring
8 suspension of operations at the Covered Properties. Accordingly, losses caused by the
9 COVID-19 Civil Authority Orders triggered the Business Income provision of
10 plaintiff's and the other Class members' Hartford policies.

11 72. Plaintiff and other Class members have complied with all applicable
12 provisions of the policies and/or those provisions have been waived by Hartford or
13 Hartford is estopped from asserting them. Yet Hartford has abrogated its insurance
14 coverage obligations pursuant to the policies' clear and unambiguous terms and has
15 wrongfully and illegally refused to provide the coverage to which plaintiff and Class
16 members are entitled.

17 73. Hartford has denied plaintiff's and other Class members' claims for
18 business interruption losses caused by COVID-19 Civil Authority Orders on a
19 uniform and class-wide basis without individual bases or investigations, so the Court
20 can render declaratory judgment irrespective of whether a particular Class member
21 has filed a claim.

22 74. An actual case or controversy exists regarding plaintiff's and the other
23 Class members' rights and Hartford's obligations under the policies to pay for losses
24 incurred by plaintiff and the other Class members in connection with the business
25 interruption caused by COVID-19 Civil Authority Orders.

26 75. Pursuant to 28 U.S.C. §2201, plaintiff and other Class members seek a
27 declaratory judgment from this Court as follows:

28

- 1 i. Plaintiff's and the other Class members' Business Income losses
2 incurred due to COVID-19 Civil Authority Orders are insured losses
3 under their Hartford policies; and
4 ii. Hartford is obligated to pay plaintiff and other Class members for the full
5 amount of their Business Income losses (up to the maximum allowable
6 amount under the policies) incurred in connection with the COVID-19
7 Civil Authority Orders during the period of restoration and the necessary
8 interruption of their businesses stemming therefrom.

6 **COUNT II**

7 **BREACH OF CONTRACT – BUSINESS INCOME COVERAGE**
8 **(Claim Brought on Behalf of the Nationwide Class and California Sub-Class)**

9 76. Plaintiff repeats the allegations set forth above as if fully set forth herein.

10 77. Plaintiff brings this Count individually and on behalf of the other
11 members of the Nationwide Class and California Sub-Class.

12 78. Plaintiff's Hartford Policy, as well as those of other Class members, is a
13 contract under which Hartford was paid premiums in exchange for its promise to pay
14 plaintiff's, and the other Class members', losses for claims covered by the policies.

15 79. As part of standard business interruption coverage, Hartford agreed to
16 pay for insureds' actual loss of Business Income sustained due to the necessary
17 suspension of its operations during the "period of restoration." Hartford also agreed to
18 pay its insureds' actual loss of Business Income sustained due to the necessary
19 "suspension of [their] operations" during the "period of restoration" caused by direct
20 physical loss or damage. "Business Income" under the policies means the "Net
21 Income (Net Profit or Loss before income taxes) that would have been earned or
22 incurred," as well as "[c]ontinuing normal operating expenses incurred, including
23 payroll."

24 80. The COVID-19 Civil Authority Orders caused direct physical loss and
25 damage to plaintiff's and the other Class members' Covered Properties, requiring
26 suspension of operations at the Covered Properties. Accordingly, losses caused by the
27 COVID-19 Civil Authority Orders triggered the Business Income provision of
28 plaintiff's and the other Class members' Hartford policies.

1 81. Plaintiff and the other Class members have complied with all applicable
2 provisions of their policies and/or those provisions have been waived by Hartford
3 and/or Hartford is estopped from asserting them. Yet Hartford has abrogated its
4 insurance coverage obligations under the policies' clear and unambiguous terms.

5 82. By denying coverage for any Business Income loss incurred by plaintiff
6 or other Class members as a result of the COVID-19 Civil Authority Orders, Hartford
7 has breached its coverage obligations under the policies.

8 83. As a result of Hartford's breaches of contract, plaintiff and other Class
9 members have sustained substantial damages for which Hartford is liable in an amount
10 to be established at trial.

11 **COUNT III**

12 **DECLARATORY JUDGMENT – CIVIL AUTHORITY COVERAGE** 13 **(Claim Brought on Behalf of the Nationwide Class and California Sub-Class)**

14 84. Plaintiff repeats the allegations set forth above as if fully set forth herein.

15 85. Plaintiff brings this Count individually and on behalf of the other
16 members of the Nationwide Class and California Sub-Class.

17 86. Plaintiff's Hartford Policy, as well as those of other Class members, is a
18 contract under which Hartford was paid premiums in exchange for its promise to pay
19 plaintiff's, and other Class members', losses for claims covered by the policy.

20 87. Plaintiff's Hartford Policy provided for "Civil Authority" coverage,
21 which promises to pay "the actual loss of Business Income you sustain when access to
22 your 'scheduled premises' is specifically prohibited by order of a civil authority as the
23 direct result of a Covered Cause of Loss to property in the immediate area of your
24 'scheduled premises.'" Accordingly, the COVID-19 Civil Authority Orders triggered
25 the Civil Authority provision under plaintiff's and the other Class members' Hartford
26 policies.

27 88. Plaintiff and Class members have complied with all applicable provisions
28 of the policies and/or those provisions have been waived by Hartford and/or Hartford

1 is estopped from asserting them. Yet Hartford has abrogated its insurance coverage
2 obligations under the policies' clear and unambiguous terms and has wrongfully and
3 illegally refused to provide coverage to which plaintiff and Class members are
4 entitled.

5 89. Hartford has denied claims related to COVID-19 on a uniform and class
6 wide basis without individual bases or investigations, so the Court can render
7 declaratory judgment irrespective of whether a particular Class member has filed a
8 claim.

9 90. An actual case or controversy exists regarding plaintiff's and other Class
10 members' rights and Hartford's obligations under the policies to reimburse plaintiff
11 and other Class members for the full amount of covered Civil Authority losses
12 incurred by plaintiff and other Class members in connection with COVID-19 Civil
13 Authority Orders and the necessary interruption of their businesses stemming
14 therefrom.

15 91. Pursuant to 28 U.S.C. §2201, plaintiff and other Class members seek a
16 declaratory judgment from this Court declaring the following:

- 17 i. Plaintiff's and other Class members' Civil Authority losses incurred in
18 connection with COVID-19 Civil Authority Orders and the necessary
19 interruption of their businesses stemming therefrom are insured losses
20 under their policies; and
21 ii. Hartford is obligated to pay plaintiff and other Class members for the full
22 amount of their Civil Authority losses (up to the maximum allowable
23 amount under the policies) incurred in connection with the COVID-19
24 Civil Authority Orders and the necessary interruption of their businesses
25 stemming therefrom.

26 **COUNT IV**

27 **BREACH OF CONTRACT – CIVIL AUTHORITY COVERAGE** 28 **(Claim Brought on Behalf of the Nationwide Class and California Sub-Class)**

92. Plaintiff repeats the allegations set forth above as if fully set forth herein.

93. Plaintiff brings this Count individually and on behalf of the other
members of the Nationwide Class and California Sub-Class.

1 101. Plaintiff’s Hartford Policy, as well as those of other Class Members, is a
2 contract under which Hartford was paid premiums in exchange for its promise to pay
3 plaintiff’s, and other Class members’, losses for claims covered by the policies.

4 102. Plaintiff’s Hartford Policy provided that Hartford would pay necessary
5 Extra Expense that its insureds incur during the “period of restoration” that the
6 insureds would not have incurred if there had been no direct physical loss or damage
7 to the described premises. “Extra Expense” means expenses “[t]o avoid or minimize
8 the suspension of business and to continue ‘operations,’” and to repair or replace
9 property. Due to the COVID-19 Civil Authority Orders, plaintiff and other Class
10 members incurred Extra Expense at their Covered Properties.

11 103. Plaintiff and other Class members have complied with all applicable
12 provisions of the policies and/or those provisions have been waived by Hartford
13 and/or Hartford is estopped from asserting them. Yet Hartford has abrogated its
14 insurance coverage obligations under the policies’ clear and unambiguous terms and
15 has wrongfully and illegally refused to provide coverage to which plaintiff and Class
16 members are entitled.

17 104. Hartford has denied claims related to COVID-19 on a uniform and class-
18 wide basis without individual bases or investigations, so the Court can render
19 declaratory judgment irrespective of whether a particular Class member has filed a
20 claim.

21 105. An actual case or controversy exists regarding plaintiff’s and other Class
22 members’ rights and Hartford’s obligations under the policies to reimburse plaintiff
23 and the other Class members for the full amount of Extra Expense losses incurred by
24 plaintiff and Class members in connection with COVID-19 Civil Authority Orders
25 and the necessary interruption of their businesses stemming therefrom.

26 106. Pursuant to 28 U.S.C. §2201, plaintiff and other Class members seek a
27 declaratory judgment from this Court declaring the following:
28

- 1 i. Plaintiff’s and other Class members’ Extra Expense losses incurred in
2 connection with the COVID-19 Civil Authority Orders and the necessary
3 interruption of their businesses stemming therefrom are insured losses
4 under their policies; and
- 5 ii. Hartford is obligated to pay plaintiff and other Class members for the full
6 amount of their Extra Expenses losses (up to the maximum allowable
7 amount under the policies) in connection with the COVID-19 Civil
8 Authority Orders and the necessary interruption of their businesses
9 stemming therefrom.

10 **COUNT VI**

11 **BREACH OF CONTRACT – EXTRA EXPENSE COVERAGE**
12 **(Claim Brought on Behalf of the Nationwide Class and California Sub-Class)**

13 107. Plaintiff repeats the allegations set forth above as if fully set forth herein.

14 108. Plaintiff brings this Count individually and on behalf of the other
15 members of the Nationwide Class and California Sub-Class.

16 109. Plaintiff’s Hartford Policy, as well as those of the other Class members,
17 is a contract under which Hartford was paid premiums in exchange for its promise to
18 pay plaintiff’s, and the other Class members’, losses for claims covered by the policy.

19 110. Plaintiff’s Hartford Policy provided that Hartford agreed to pay necessary
20 Extra Expense that it incurred during the “period of restoration” that would not have
21 incurred if there had been no direct physical loss or damage to the described premises.
22 “Extra Expense” means expenses “[t]o avoid or minimize the suspension of business
23 and to continue ‘operations,’” and to repair or replace property. Due to the COVID-
24 19 Civil Authority Orders, plaintiff and other Class members incurred Extra Expense
25 at their Covered Properties.

26 111. Plaintiff and other Class members have complied with all applicable
27 provisions of the policies and/or those provisions have been waived by Hartford
28 and/or Hartford is estopped from asserting them. Yet Hartford has abrogated its
insurance coverage obligations under the policies’ clear and unambiguous terms.

1 112. By denying coverage for any business losses incurred by plaintiff and
2 other Class members in connection with the COVID-19 Civil Authority Orders,
3 Hartford has breached its coverage obligations under the policies.

4 113. As a result of Hartford's breaches of the policies, plaintiff and the other
5 Class members have sustained substantial damages for which Hartford is liable in an
6 amount to be established at trial.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, plaintiff, individually and on behalf of all similarly situated
9 individuals and entities, prays for relief and judgment against Defendants as follows:

10 A. Determining that this action is a proper class action under one or more
11 provisions of Federal Rule of Civil Procedure 23, appointing plaintiff to serve as a
12 Class Representative and appointing its counsel to serve as Class Counsel;

13 B. Issuing a Declaratory Judgment declaring the parties' rights and
14 obligations under the insurance policy provisions at issue;

15 C. Awarding plaintiff and the Classes compensatory damages against
16 Defendants, jointly and severally, for all damages sustained as a result of Defendants'
17 breach of the policies in an amount to be proven at trial, including interest thereon;

18 D. Awarding plaintiff and the Classes pre-judgment and post-judgment
19 interest as well as reasonable attorneys' fees and expenses incurred in this action; and

20 E. Awarding such other relief as the Court may deem just and proper.

21 **JURY DEMAND**

22 Plaintiff demands a trial by jury on all issues so triable.

23 DATED: April 28, 2020

ROBBINS GELLER RUDMAN
& DOWD LLP
BENNY C. GOODMAN III
RACHEL L. JENSEN

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25
26 *s/Rachel L. Jensen*
27 _____
RACHEL L. JENSEN
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